



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO149Dec23

In the matter between:

The Competition Commission of South Africa

Applicant

And

Primedia Outdoor, a Division of Primedia (Pty)
Ltd

Respondent

Panel: L Mncube (Presiding Member)
T Vilakazi (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on: 13 February 2024
Decided on: 13 February 2024

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and Primedia Outdoor, a Division of Primedia (Pty) Ltd annexed hereto.

Presiding Member
Prof. Liberty Mncube

13 February 2024
Date

Concurring: Prof. Thando Vilakazi and Ms Andiswa Ndoni

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

CT Case No:

CC Case No:2018Dec0052

In the matter between

COMPETITION COMMISSION

APPLICANT

and

PRIMEDIA OUTDOOR, A DIVISION OF PRIMEDIA (PTY) LTD RESPONDENT

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(III) AND 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND PRIMEDIA OUTDOOR, A DIVISION OF PRIMEDIA (PTY) LTD (PRIMEDIA OUTDOOR), IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b)(I) OF THE COMPETITION ACT, 1998, AS AMENDED

The Competition Commission and Primedia Outdoor hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b)(i) of the Act, on the terms set out below.

1. DEFINITIONS

For the purposes of this Consent Agreement, the following definitions shall apply:

1.1. **"Act"** means the Competition Act, No. 89 of 1998, as amended;



- 1.2. **"Commlssion"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal business address at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3. **"Commlssloner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.4. **"Complalnt"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number:2018Dec0052;
- 1.5. **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and Primedia Outdoor in full and final settlement of Commission case number 2018Dec0052;
- 1.6. **"Day"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.7. **"HDP"** means a historically disadvantaged person as defined In the Act;
- 1.8. **"OHMSA"** means Out of Home Media South Africa (NPC), a non-profit company duly registered and incorporated under the laws of South Africa, which seeks to promote and protect the interests of the association and its members while serving the needs of consumers, advertisers, and the public, and whose members provide media platforms across the entire spectrum of Out-of-home advertising services;
- 1.9. **"Out-of-home advertising services"** means out of home advertising services, which include but are not limited to outdoor advertising, rank advertising, programmatic digital advertising, street furniture, and in-mall advertising;
- 1.10. **"Primedia Outdoor"** means Primedia Outdoor, a division of Primedia Proprietary Limited, a private company duly registered and incorporated under the laws of South Africa, with its principal place of business situated at

15 Fredman Drive, Primedia Place, Sandown, Gauteng;

- 1.11. **"Parties"** means the Commission and Primedia Outdoor;
- 1.12. **"Qualifying SMMEs"** means SMMEs with a total annual turnover not exceeding R5 million (five million Rand) and are owned by HDPs;
- 1.13. **"Rate Card"** means the monthly rate for the sites for the placement of advertisements;
- 1.14. **"SMMEa"** means small, medium and micro enterprises as defined in the Act; and
- 1.15. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 04 December 2018, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against OHMSA and all its members ("the Respondents") for the alleged contravention of section 4(1)(b)(i) of the Act. This complaint was investigated under case number **2018Dec0052**.
- 2.2 It was alleged that the Respondents, under the auspices of OHMSA, agreed to develop a Code of Practice and Standards ("Code of Practice") that fix payment and settlement terms, penalties and cancellation fees that they impose on advertising agencies, advertisers and Poster Buying Specialists that purchase advertising space from them.
- 2.3 The Commission investigation found that from around September 2004 to about March 2018, OHMSA issued various versions of the Code of Practice for its members, recording the following agreements reached between the Respondents:

- 2.3.1 They agreed that where an out-of-home media campaign is cancelled by an advertiser or the advertising agency, a cancellation fee of 75% (seventy five per cent) of the balance of the contract is payable to the media owner.
- 2.3.2 They agreed that where illumination of a sign has been sub-standard for a month or part thereof, 25% (twenty five per cent) of the monthly rental fee is to be credited to the client or customer.
- 2.3.3 They agreed that where a client or advertising agency is responsible for supplying material for display on or in out-of-home media and delivered later than the date agreed, the media owner will be entitled to charge for the entire exposure period without compensation for late lighting.
- 2.3.4 They agreed that where campaigns run for 3 (three) months or less, a fee for the removal of faces or blanking of boards will be levied. This is a fee for cleaning of the billboards. This means the advertising firm will be charged a fee to remove its advertised material from the boards.
- 2.4 The agreements recorded in the various versions of the Code of Practice constitute conduct amounting to fixing of prices and/or trading conditions in contravention of section 4(1)(b)(i) of the Act.
- 2.5 The collusive agreements ended when OHMSA adopted a revised Code of Practice around March 2018.
- 3. ADMISSION OF LIABILITY**
- 3.1. Primedia Outdoor does not admit liability in respect of the prohibited conduct described in paragraph 2 above.

4. AGREEMENT REGARDING FUTURE CONDUCT

4.1. Primedia Outdoor agrees and undertakes to:

- 4.1.1 refrain from engaging in any conduct that may be in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;**
- 4.1.2 prepare and circulate a statement summarising the content of this Consent Agreement to its employees, managers and directors within 30 (thirty) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;**
- 4.1.3 develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act; and**
- 4.1.4 submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of this Consent Agreement as an order by the Tribunal.**

5. ADMINISTRATIVE PENALTY

- 5.1. Primedia Outdoor agrees and undertakes to pay an administrative penalty in the amount of R2 717 950 (two million seven hundred and seventeen thousand nine hundred and fifty Rands). [REDACTED]**

- 5.2. Primedia Outdoor will pay the amount of the administrative penalty set out in paragraph 5.1 above to the Commission in 12 (twelve) equal instalments, the first instalment being paid within 7 (seven) Days of this Consent Agreement**

being confirmed as an order of the Tribunal and the remaining 11 (eleven) instalments by the last Day in each succeeding 11 (eleven) months.

- 5.3. The payment shall be made into the Commission's bank account, details of which are as follows:

Bank name: Absa Bank
Branch name: Pretoria
Account holder: Competition Commission Fees Account
Account number: 4087641778
Account type: Current Account
Branch Code: 632005
Reference: 2018Dec0052/Primedia Outdoor

- 5.4. The penalty will then be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

6. OTHER REMEDIES

- 6.1. Primedia Outdoor also agrees and undertakes to provide free Out-of-home advertising services to Qualifying SMMEs, to the value of R1 358 975 (One million three hundred and fifty-eight thousand nine hundred and seventy-five rands), over a period of 12 (twelve) months commencing on the Day this Consent Agreement is confirmed as an order of the Tribunal. [REDACTED]
[REDACTED]
[REDACTED]

- 6.2. Primedia Outdoor shall make an offer to 10 (ten) Qualifying SMMEs who may elect to accept the offer at no cost to themselves. Primedia Outdoor shall prepare and provide the list of the 10 (ten) Qualifying SMMEs to the Commission within 1 (one) month from the date of the confirmation of this Consent Agreement as an order of the Tribunal.

- 6.3: Each Qualifying SMME shall be allocated R135 897 (one hundred and thirty-five thousand eight hundred and ninety seven Rand) worth of free Out-of-home advertising services during the 12 (twelve) month period.

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6.4. Primedia Outdoor shall provide free Out-of-home advertising services to the 10 (ten) Qualifying SMMEs in the following manner:

6.4.1. The number and duration of advertising campaigns will be determined by the sites and advertisement display frequency chosen by each Qualifying SMME.

6.4.2. Primedia Outdoor will utilise its digital advertising and electronic billboards to display an advertisement.

6.4.3. The campaign will include designing and lighting the Qualifying SMME's advertisement.

6.4.4. The cost of the advertisement will be at Primedia Outdoor's current rate card.

7. MONITORING

7.1. Primedia Outdoor undertakes to:

7.1.1 in accordance with clause 6.2, provide the Commission with the details of the Qualifying SMMEs who have accepted Primedia Outdoor's offer;

7.1.2 report to the Commission on its compliance with this Consent Agreement every third month within the period commencing on the Day this Consent Agreement is confirmed as an order of the Tribunal and ending (i) 18 (eighteen) months thereafter or (ii) 3 three (months) after the value referred to in clause 6.1 is expended, whichever occurs earlier; and

7.1.3 provide such other information as the Commission may reasonably require in relation to the advertising campaigns.

7.2. Primedia Outdoor shall, in addition:

7.2.1 at all times, maintain an up to date register, which shall be available for inspection by the Commission; and

7.2.2 ensure the register contains information on each campaign that Primedia Outdoor has designed and flighted, including details of each of the 10 (ten) Qualifying SMMEs, copies of the advertisements comprising each campaign, the number of advertisements flighted, and the Rand value for each campaign.

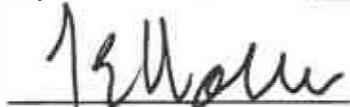
7.3. The Commission shall have the right to request any further information that it determines is necessary from Primedia Outdoor concerning any aspect of these advertising campaigns.

8. FULL AND FINAL SETTLEMENT

Upon confirmation as an order of the Tribunal, this Consent Agreement is entered into in full and final settlement and concludes all proceedings between the Commission and Primedia Outdoor relating to the conduct that is the subject matter of the Commission investigation under Case No. 2018Dec0052.

For Primedia Outdoor

Dated and signed at Sandton on the 16th day of November 2023



Chief Executive Officer, Primedia Proprietary Limited

Name In Full: JONATHAN EDWARDS PROCTOR

For the Commission

Dated and signed at Pretoria on the 14th day of December 2023



Doris Tshepe
Commissioner