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Tribunal dismisses market allocation complaint against Nu Metro and Ster-Kinekor

The Tribunal has dismissed a complaint lodged by the Competition Commission in which it submitted that the two biggest competitors in the film exhibition market, Primedia's subsidiary Ster-Kinekor Theatres and Avusa's subsidiary Nu Metro Entertainment (Pty) Ltd, engaged in market allocation with regards to lease agreements at the V&A Waterfront shopping complex in Cape Town.

The Tribunal in dismissing the complaint found that a settlement agreement reached by Nu Metro and Ster-Kinekor that was made an order of the court in May 1998 was concluded before the Competition Act came into operation.

The history of the case was that a lease agreement was entered into by Nu Metro with its then landlord Transnet Pension Fund, wherein Nu Metro had an oral right of first refusal in relation to any film exhibition on the Waterfront premises. When Nu Metro discovered that there were negotiations with Ster-Kinekor, about the operator also operating at the Waterfront Shopping Complex, Nu Metro filed an interdict at the High Court. Nu Metro and Ster-Kinekor later entered into a settlement agreement, that was subsequently made an order of the court, in which Nu Metro would withdraw its objection to Ster-Kinekor's lease agreement and that Nu Metro would only show commercial films while Ster-Kinekor could only show subtitled or art movies.

The Commission contended that while the settlement agreement was concluded before the Act there was continuing conduct regarding the implementation of the agreement after the Competition Act came into force. The Tribunal in its decision said this was not borne out by the facts presented by employees from Ster-Kinekor Distribution who testified that Ster-Kinekor had never implemented the settlement agreement and that they were alerted to this agreement in December 2008 by Nu Metro.

The Commission initiated the complaint in May 2009 after Avusa applied for conditional immunity and provided evidence of the existence of collusion in the film exhibition market at the V&A Waterfront shopping complex.

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