



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: CO076Sep21**

In the matter between:

The Competition Commission of South Africa

**Applicant**

And

Insight Outdoor (Pty) Ltd

**Respondent**

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Panel: E Daniels (Presiding Member)  
F Tregenna (Tribunal Member)  
I Valodia (Tribunal Member)

Addendum filed on: 11 October 2021

Heard on: 18 October 2021

Decided on: 18 October 2021

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**CONSENT AGREEMENT**

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The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and Insight Outdoor (Pty) Ltd; including the addendum to the agreement of 16 September 2021, as annexed hereto.

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**Presiding Member  
Mr Enver Daniels**

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**18 October 2021**

**Date**

**Concurring: Prof. Fiona Tregenna and Prof. Imraan Valodia**

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

**RECEIVED**

*By Themba Chauke at 12:12 pm, Sep 16, 2021*

CT Case No.

CC Case No: 2020JUN0048

In the matter between

COMPETITION COMMISSION

APPLICANT

and

TRACTOR OUTDOOR (PTY) LTD

FIRST RESPONDENT

RELATIV MEDIA (PTY) LTD

SECOND RESPONDENT

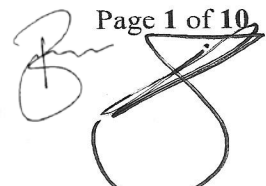
INSIGHT OUTDOOR (PTY) LTD

THIRD RESPONDENT

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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 INSIGHT OUTDOOR (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT 89 OF 1998

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The Competition Commission ("Commission") and Insight Outdoor (Pty) Ltd ("Insight") 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)(b) of the Competition Act no. 89 of 1998, as amended ("the Act"), in respect of a contravention 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. **"Out-of-home digital advertising services"** means out of home advertising that entails the placing of advertisement for display on digital screens;
- 1.3. **"Rate Card"** means the monthly rate at which the rentals for placing or displaying of advertisement on a digital screen has been marketed and sold;
- 1.4. **"Commission"** 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;

- 1.5. **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6. **"Complaint"** means the complaint submitted by Primedia Outdoor (Pty) Ltd on 22 June 2020 and investigated by the Commission under case number 2020Jun0048;
- 1.7. **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and Insight;
- 1.8. **"Tractor"** means Tractor Outdoor (Pty) Ltd, a private company duly registered and incorporated in accordance with the laws of the Republic of South Africa with its principal place of business situated at 28 Wesley Street, Observatory, Cape Town;
- 1.9. **"Relativ"** means Relativ Media (Pty) Ltd, a private company duly registered and incorporated in accordance with laws of the Republic of South Africa with its principal place of business situated at 118 4<sup>th</sup> Street, Parkmore, Sandton.
- 1.10. **"Insight"** means Insight Outdoor (Pty) Ltd , a private company duly registered and incorporated in accordance with laws of the Republic of South Africa with its principal place of business situated at 5 Viceroy Link, Irene Road, Pretoria.
- 1.11. **"Parties"** means the Commission and Insight;

1.12. **“Respondents”** means Tractor; Relativ and Insight;

1.13. **“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 3rd Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

## 2. THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1. On 22 June 2020, Primedia Outdoor (Pty) Ltd (“Primedia Outdoor”) submitted a complaint against Tractor Outdoor (Pty) Ltd (“Tractor”); Relativ Media (Pty) Ltd (“Relativ”) and Insight Outdoor (Pty) Ltd (“Insight”), collectively referred to as (“the respondents”). This complaint was investigated under case number: **2020Jun0048.**

2.2. The Respondents are independent media owners who *inter alia* provide outdoor digital advertising services. Outdoor digital advertising services includes placing advertisements for display on digital screens.

2.3. The Commission’s investigation revealed the following:

2.3.1. The Respondents agreed and/or engaged in a concerted practice to fix the advertising rate card for marketing and selling of digital advertising slots to customers on the digital screens.

2.3.2. In and around March 2020, the Respondents concluded a Memorandum of Understanding (“MoU”) in terms of which they each contributed certain ‘slots’ on certain of their digital advertising screens into one pool, comprising 19 (3mx6m) digital screens and housed them under an unincorporated joint venture to operate under the name of ‘United Network’ (the “unincorporated JV”). The unincorporated JV was intended to be used by the Respondents to pool slots on these digital advertising screens in order to collectively market and sell the placing of outdoor adverts along the highways in various parts of Gauteng.

2.3.3. The MoU of the unincorporated JV contained the price fixing agreement between the Respondents in that it fixed the rate card for advertising slots contributed by each Respondent at R10 000.00 per digital screen (the first sales in accordance with the agreement were only made pursuant to the establishment of Andocan, as set out below).

2.3.4. On 17 July 2020 the Respondents formalised the activities of the unincorporated JV into an incorporated company called Andocan (Pty) Ltd (“Andocan”). Each Respondent nominated one director into Andocan.

2.3.5. Andocan thereafter charged advertisers (customers) the same

R10 000.00 rate for one advertising slot of 3 minute loop, per screen, per month that was previously set by the Respondents in terms of the MOU.

- 2.3.6. The fixing of the digital advertising rates amongst the Respondents described above constitutes price fixing in contravention of section 4(1)(b)(i) of the Act.

### **3. ADMISSION OF LIABILITY**

- 3.1. Insight does not admit liability in respect of the conduct described in paragraph 2 above.

### **4. AGREEMENT REGARDING FUTURE CONDUCT**

Insight agrees and undertakes to:

- 4.1. Refrain from engaging in price fixing or fixing of trading conditions in contravention of section 4(1)(b)(i) of the Act, and from engaging in any prohibited practice in future;
- 4.2. Unilaterally or independently, and without any agreement or alignment between any or all the Andocan joint venture participants, determine the prices at which it markets and sells advertising slots on the digital screens allocated to the Andocan joint venture. Such prices will be determined based on,

amongst other things / factors, Insight's particular cost structure, discounts offered and required margins.

4.3. Prepare and circulate a statement summarizing the content of this agreement to all management and operational staff employed by Insight and Andocan within 30 (thirty) days from the date of confirmation of this Consent Agreement as an order of the Tribunal;

4.4. Develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its management and operational staff 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.

## 5. ADMINISTRATIVE PENALTY

5.1. Insight agrees and undertakes to pay an administrative penalty in the amount of R65,017.62 (**Sixty-Five thousand rand Seventeen rand sixty two cents**).

This amount does not exceed 10% of Insight's annual turnover derived from/through Andocan for the financial year ended 28 February 2021.

5.2. Insight will pay the administrative penalty set out in paragraph 5.1 above to the Commission within 30 (Thirty) days of the confirmation of the Consent Agreement as an order of the Tribunal.



- 5.3. The payments 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:** Case no: 2020Jun0048/Insight

- 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. MONITORING

- 6.1. Submit to the Commission within 60 (sixty) days from date of confirmation of the Consent Agreement by the Tribunal a copy of written agreement between the Respondents which records that each shall negotiate its digital advertising rate card individually in respect of slots on digital signs made available by them to / through Andocan.
- 6.2. Submit to the Commission a report demonstrating that Insight determined its prices independently. The information contained in this report shall contain but

not be limited to Insight's annual rate card (including changes thereto from time to time), discounts offered and margins derived over time. The report shall be submitted to the Commission on the first anniversary of the confirmation of this Consent Agreement by the Tribunal and will continue to do so annually for as long Insight remains part of the Andocan joint venture.

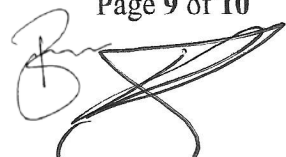
6.3. The obligation under paragraph 6.2 will come to an end upon Insight ceasing to be part of Andocan joint venture whereupon Insight shall provide the Commission with a 'close out report'.

6.4. Notwithstanding paragraph 6.2 above the Commission may require production of the report mentioned in 6.2 from Insight at any time within a reasonable period of no more than 60 (sixty) business days.

6.5. All reports in relation to conditions set out in this agreement, including but not limited to compliance programmes, proof of payment(s) etc. shall be submitted to the Commission at [CartelSettlements@compcom.co.za](mailto:CartelSettlements@compcom.co.za).

## 7. FULL AND FINAL SETTLEMENT

This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation under Case No. **2020Jun0048** and concludes all proceedings between the Commission and the Insight relating to the conduct that is the subject of the Commission's investigation as described in clause 2 above.

A handwritten signature in black ink, consisting of a stylized 'B' followed by a large, sweeping flourish that extends across the bottom right of the page.

For Insight Outdoor (Pty) Ltd

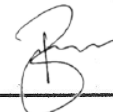
Dated and signed at Pretoria on the 1<sup>st</sup> day of September 2021

  
\_\_\_\_\_  
Chief Executive Officer

Name in Full: Hendrik Smith

For the Commission

Dated and signed at PRETORIA on the 06 day of SEPTEMBER 2021

  
\_\_\_\_\_  
TEMBINKOSI BONAKELE  
COMMISSIONER

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

**CT Case No: CO076Sep21**

**CC Case No: 2020Jun0048**

In the matter between

**COMPETITION COMMISSION**

**APPLICANT**

and

**INSIGHT OUTDOOR (PTY) LTD**

**RESPONDENT**

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**ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE  
COMPETITION COMMISSION AND INSIGHT OUTDOOR (PTY) LTD DATED 01  
SEPTEMBER 2021.**

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It is hereby recorded, by agreement between the parties, that the Consent Agreement concluded between the Competition Commission and Insight Outdoor (Pty) Ltd ("Insight Outdoor"), filed on 16 September 2021 for confirmation by the Competition Tribunal, be supplemented as recorded below.

**1. INSERTING PARAGRAPH 3.2 TO READ AS FOLLOWS:**

- 3.2. The Commission decided not to insist on an admission of liability based on, amongst others, the following:

3.2.1 The Respondents take the position that the Andocan joint venture is pro-competitive in that it enables them as small firms to effectively compete in the digital advertising market and, in their view / according to their submissions, was undertaken: (i) with the pro-competitive intention of attaining the scale required to compete with significantly larger incumbent firms operating in the market; (ii) in an endeavour to provide advertisers / customers with a convenient and cost-effective product; and (iii) without having lessened or prevented competition amongst them (outside of the Andocan joint venture). The Commission, on the other hand, holds the view that the purpose of the Andocan joint venture can still be achieved without the fixing of the digital advertising rate cards.

3.2.2 Given that the matter raises a complex legal issue of the legitimacy of the joint venture, the outcome of its trial before the Tribunal is thus not a foregone conclusion.

3.2.3 The Commission deemed it efficient to resolve this matter by correcting the conduct in the market rather than expending its limited resources on litigation.

3.2.4 The conduct that is the subject of the Consent Agreement was in place for a relatively short period of 10 (ten) months, was relatively limited in its scope (the conduct only implicated 13 unique advertising campaigns), and was suspended by the Respondents pending the Commission's investigation.

3.2.5 Insight Outdoor has not been found guilty of contravening the Competition Act.

2. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning ascribed to them in the Consent Agreement.

**For Insight Outdoor (Pty) Ltd**

Dated and signed at PRETORIA on the 5<sup>TH</sup> day of SEPTEMBER 2021.

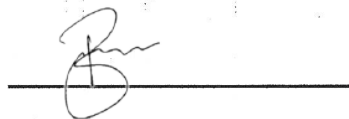


**Chief Executive Officer**

Name in Full: NEIL DAVID JONES

**For the Commission**

Dated and signed at PREORIA on the 11 day of OCTOBER 2021.



**TEMBINKOSI BONAKELE**

**COMMISSIONER**