



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR294Feb18/SA007Apr21

In the matter between:

The Competition Commission

Applicant

And

Media Credit Coordinators NPC

Respondent

Panel: Y Carrim (Presiding Member)
E Daniels (Tribunal Member)
H Cheadle (Tribunal Member)

Heard on: 22 April 2021

Decided on: 22 April 2021

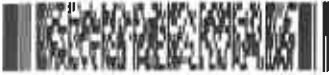
Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Media Credit Coordinators NPC annexed hereto.

Presiding Member
Ms Yasmin Carrim

22 April 2021
Date

Concurring: Mr Enver Daniels and Prof. Halton Cheadle



IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

**CT Case No. CR294Feb18
CC Case No. 2011Nov5779,
2015Dec0695 & 2017Oct0028**

In the matter between:

THE COMPETITION COMMISSION

APPLICANT

and

MEDIA CREDIT COORDINATORS NPC

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 MEDIA CREDIT COORDINATORS NPC IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(I) OF THE COMPETITION ACT, NO. 89 OF 1998.

The Competition Commission and Media Credit Coordinators NPC ("MCC") 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 as read with Sections 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;


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- 1.2 **"Accredited Media Agents"** means advertising agents endorsed by MCC and have provided security to MCC. MCC holds securities for its members (media owners) on behalf of an accredited media agency.
- 1.3 **"Black People"** bears the same meaning as that set out in section 1 of the Broad Based Black Economic Empowerment Act 53 of 2003 as amended;
- 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 Commission, appointed in terms of section 22 of the Act;
- 1.6 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2011Nov5779, 2015Dec0695 and 2017Oct0028;
- 1.7 **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and MCC;
- 1.8 **"MCC"** means the Media Credit Co-ordinators, a non-profit company duly incorporated under the laws of the Republic of South Africa with its principal place of business at Building A, Office 103, Cresta Junction, Cnr of Beyers Naude and Judges Street, Cresta, Gauteng;
- 1.9 **"MCC Members"** means media owners that have subscribed with MCC and are active in the provision of advertising space;


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1.10 "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 In November 2011, the Commission initiated a complaint in terms of section 49(B)(1) of the Act (under case number 2011Nov5779) against Avusa Media Limited, Caxton Community Newspapers Limited, Independent Newspapers Proprietary Limited, Media24 Limited, Radmark Proprietary Limited (collectively, the "respondents") and MCC.

2.2 In December 2015 (under case number 2015Dec0695) the Commission expanded the initial complaint to include 24 additional respondents.

2.3 The allegations against the respondents are that:

2.3.1 through the medium of the MCC, the respondents agreed to offer similar discounts and payment terms to advertising agencies that place advertisements with MCC members. For accredited agencies, the discount offered is 16.5% for all payments made within 45 days of the date of the statement while for the most part the discount offered to non-accredited agencies is 15% for payments made within the same period.

2.3.2 The Commission found that the above-mentioned practices by the respondents gave rise to a restriction of competition amongst competing respondents in that they did not independently determine


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an element of a price in the form of discount or trading terms. These practices amount to price fixing and the fixing of trading conditions in contraventions of section 4(1)(b)(l) of the Act.

3. ADMISSION OF LIABILITY

MCC admits that it engaged in the practices set out in clause 2 above in contravention of section 4(1)(b)(l) of the Act for the period 26 March 2003 to 31 December 2006.

4. CO-OPERATION

Insofar as the Commission is aware, MCC:

- 4.1 has provided the Commission with truthful and timely disclosure, including information in its possession or under its control, relating to the prohibited practice;
- 4.2 has provided co-operation to the Commission concerning the prohibited practice;
- 4.3 has ceased to engage in the prohibited practice;
- 4.4 has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practice; and
- 4.5 has not misrepresented or made a wilful or negligent misrepresentation concerning the material facts of any prohibited practice or otherwise acted dishonestly.


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5. FUTURE CONDUCT

MCC agrees and undertakes to:

- 5.1 provide the Commission with full and expeditious co-operation from the time the Consent Agreement is concluded until the subsequent proceedings in the Tribunal or the Competition Appeal Court are completed. This includes, but is not limited to:
- 5.1.1 to the extent that it is in existence and has not yet been provided, providing evidence, written or otherwise, which is in its possession or under its control, concerning the contraventions in this Consent Agreement; and availing its employees to testify as witnesses for the Commission in any cases regarding the contraventions contained in this Consent Agreement;
- 5.1.2 prepare and circulate a statement summarising the content of this 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;
- 5.1.3 refrain from engaging in conduct which contravenes section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;
- 5.1.4 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


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identification, prevention, detection and monitoring of any contravention of the Act;

5.1.5 submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of the Consent Agreement as an order by the Tribunal;

6. ADMINISTRATIVE PENALTY

6.1 The parties agree that no administrative penalty will be paid by MCC.

6.2 All compliance reports relating to this matter shall be forwarded to the Commission at the following Email Address:
CartelSettlements@compcom.co.za.

7. FULL AND FINAL SETTLEMENT

7.1 This agreement is entered into in full and final settlement of all conduct engaged in by the non-profit company, MCC and its members as set out in paragraph 2 of this Consent Agreement and, upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and MCC in this regard.

For Media Credit Coordinators NPC

Date and signed at Johannesburg on the 12 day of March 2021.


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Dlamini

Name in full: Thabile Sylvia Dlamini
Designation: Director.

For the Commission

Date and signed at _____ on the ___ day of _____ 2021.



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**TEMBINKOSI BONAKELE
COMMISSIONER**