



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR294Feb18/SA038Apr18

In the matter between:

The Competition Commission

Applicant

And

Mediamark (Pty) Ltd

Respondent

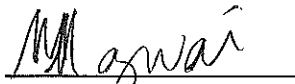
Panel : M Mazwai (Presiding Member)
A Ndoni (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 16 May 2018

Decided on : 16 May 2018

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Mediamark (Pty) Ltd annexed hereto marked "A".



Presiding Member
Ms Mondo Mazwai

16 May 2018
Date

Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CR294Feb18/SA038AP18

CT Case No.

CC Case No. 2011Nov5779 / 2015Dec0695 /

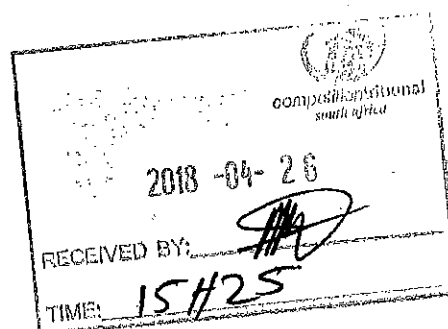
2017Oct0028

In the matters between:

THE COMPETITION COMMISSION

and

MEDIAMARK PROPRIETARY LIMITED



APPLICANT

RESPONDENT

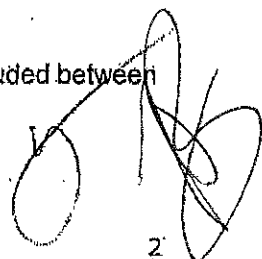
CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) AND 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998 (AS AMENDED), BETWEEN THE COMPETITION COMMISSION AND MEDIAMARK (PTY) LTD IN RESPECT OF A CONTRAVENTION OF SECTIONS 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF 1998

The Competition Commission and Mediamark (Pty) Ltd 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

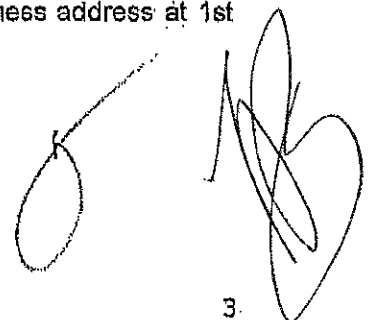
For the purposes of this consent agreement the following definitions shall apply:

- 1.1 "Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.2 "Accredited Media Agents" means media agencies endorsed by MCC through Corex and have provided security to MCC. MCC holds securities for its members 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 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 "Complaints" means the complaints initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2011Nov5779 and 2015Dec0695 and 2017Oct0028;
- 1.7 "Consent Agreement" means this Agreement duly signed and concluded between the Commission and Mediamark (Pty) Ltd;



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- 1.8 "CoreX" means Corexalance Proprietary Limited; a 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 "Economic Development Fund" means the fund referred to in paragraph 7.2 below;
- 1.10 "Economic Development Fund Manager" means Media Development and Diversity Agency;
- 1.11 "MCC" means the Média 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;
- 1.12 "MCC Members" means media owners and/or intermediaries who have subscribed with MCC and are active in the provision or sale of advertising space or airtime;
- 1.13 "MDDA" means Media Development and Diversity Agency a juristic person established in terms of section 2 of the Media Development and Diversity Agency Act no 14 of 2002, as amended, with its principal place business address at 1st Floor, 5 St Davids Place, Parktown, Johannesburg, Gauteng;

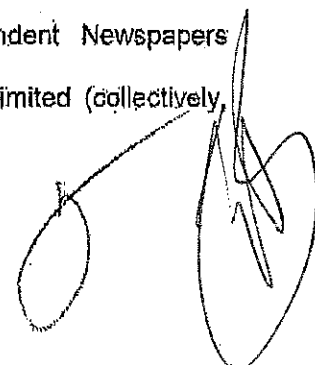


3.

- 1.14 "Mediamark" means Mediamark (Pty) Ltd (formerly known as Radmark Proprietary Limited), a private company incorporated under the company laws of South Africa, with its principal place of business at 36 Homestead Road, Rivonia, Johannesburg, Gauteng;
- 1.15 "Qualifying Small Agencies" means those Small Agencies which meet the criteria set out in the Broad Based Black Economic Empowerment Act 53 of 2003 and the codes of good practice issued thereunder;
- 1.16 "Small Agencies" means media or media related agencies or organisations with an annual turnover not exceeding R50 000 000 (fifty million rand) and which are majority owned by Black People;
- 1.17 "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 INVESTIGATIONS 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;

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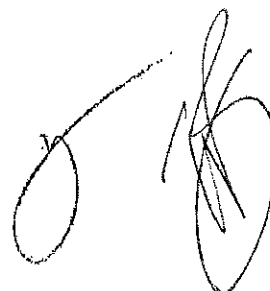
2.2 In December 2015 (under case number 2015Dec0695) the Commission expanded the initial complaint to include 24 additional respondents.

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 was 16.5% for 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 respondents as members of the MCC employ services of an intermediary company called Corex to perform the credit risk assessment on advertising agencies for purposes of imposing the above settlement discount structure and terms on advertising agencies.

2.3.3 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 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)(i) of the Act.

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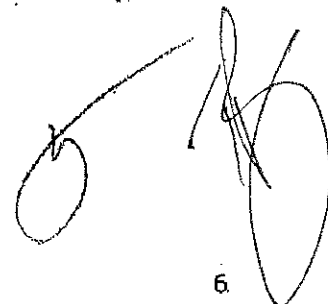
3 ADMISSION OF LIABILITY

Mediamark admits that it engaged in the prohibited practices set out in clause 2 above in contravention of sections 4(1)(b)(i) of the Act.

4 CO-OPERATION

Insofar as the Commission is aware, Mediamark:

- 4.1 has provided the Commission with truthful and timely disclosure, including information in its possession or under its control, relating to the prohibited practices;
- 4.2 has provided full and expeditious co-operation to the Commission concerning the prohibited practices;
- 4.3 has ceased to engage in the prohibited practices and has also ceased to be a member of the MCC. Mediamark has removed all media agency commission and/or settlement discounts;
- 4.4 has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practices; 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

Mediarnark 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 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;
 - 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 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;

5.1.6 actively endeavour to put in place measures to facilitate the ability of Qualifying Small Agencies to transact with Mediamark, as set out in paragraph 7 of this Consent Agreement.

6 ADMINISTRATIVE PENALTY

6.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, Mediamark is liable to pay an administrative penalty.

6.2 Mediamark agrees and undertakes to pay an administrative penalty in the amount of **R1,013 803.94 (one million and thirteen thousand, eight hundred and three rand and ninety-four cents)** which does not exceed 10% (ten percent) of Mediamark's annual turnover in the Republic of South Africa for its financial year ended 2016.

6.3 Mediamark shall pay the amount set out above in paragraph 6.2 to the Commission in two equal instalments of **R506 901.97 (Five hundred and six thousand nine hundred and one rand and ninety seven cents)**, the first payment being made within 30 (thirty) days from the date of confirmation of this Consent Agreement as

an order of the Tribunal. The remaining instalment being paid three months following the payment date of the first instalment.

- 6.4 The administrative penalty shall be paid into the Commission's bank account, details of which are as follows:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: 4050778576

Branch Code: 323 345

Ref: 2015Dec0695/Mediamark

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

7 OTHER REMEDIES

7.1 SMALL AGENCY PARTICIPATION

- 7.1.1 Further, Mediamark undertakes to provide 25% (twenty five percent) in bonus advertising space for every Rand of airtime bought by all Qualifying Small Agencies. The bonus airtime will be utilised at times scheduled at the discretion of Mediamark, which discretion shall be reasonably exercised, taking into account the airtime package purchased, the target audience and advertising requirements of the clients of Qualifying Small Agencies. Mediamark will offer these terms for a period of 3 (three) years from the date of confirmation of this Consent Agreement as an order of the Tribunal, subject

to a total annual bonus airtime cap of R2,500 000 (two million five hundred thousand).

7.1.2 Mediamark undertakes to publish the terms in paragraph 7.1 of the Consent Agreement using national media that has a reach to Qualifying Small Agencies within 10 (ten) business days from the date of confirmation of this Consent Agreement as an order of the Tribunal, inviting all Qualifying Small Agencies to participate. Mediamark will thereafter publish these terms every year on the anniversary of the first publication for a period of 3 (three) years.

7.1.3 Mediamark undertakes to provide the Commission with a written report in respect of the utilisation of the 25% bonus airtime by Qualifying Small Agencies. Such report shall include information on the number of Qualifying Small Agencies who have utilised the bonus airtime, as well as the names, contact details and the Rand value of the bonus airtime received by each Qualifying Small Agency.

7.1.4 Mediamark shall submit such report 1 (one) month after every 6 (six) month period from the date of confirmation of this Consent Agreement, for a period of 3 (three) years referred to in paragraph 7.1.1 above.

7.2 ECONOMIC DEVELOPMENT FUND

7.2.1 Mediamark undertakes to contribute an amount of R364 969.42 (three hundred and sixty-four thousand nine hundred and sixty nine rand and forty two cents) over a period of 3 (three) years from the date of confirmation of this Consent Agreement as an order of the Tribunal to the Economic

Development Fund, to enable the development of Qualifying Beneficiaries referred to in paragraph 7.2.4 below.

7.2.2 Mediamark undertakes to make 3 (three) equal contributions of **R121 656.48** (one hundred and twenty one thousand six hundred and fifty six rand and forty eight cents) into the Economic Development Fund. The first contribution is payable within 3 (three) months from the date of confirmation of this Consent Agreement as an order of the Tribunal and thereafter make the second and third contributions by the first and second anniversary of the first contribution respectively to the Economic Development Fund.

7.2.3 These contributions shall be made into an account created and managed by MDDA, which account details will be made available to Mediamark by the Commission within 2 (two) months from the date of confirmation of this Consent Agreement as an order of the Tribunal.

7.2.4 The Qualifying Beneficiaries are Black People and include the following:

7.2.4.1 students requiring bursaries to study media or advertising qualifications at tertiary institutions;

7.2.4.2 individuals requiring assistance to acquire necessary post-qualifications experience to participate in the advertising industry;

7.2.4.3 individuals requiring assistance with sponsorship for mentoring or training in areas of media and/or advertising business fundamentals

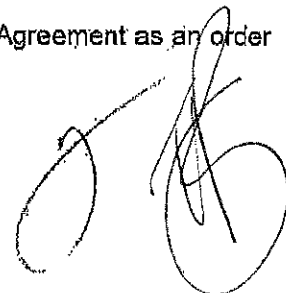
including working capital management, capitalisation and HR processes;

7.2.4.4 black owned small media or advertising agencies requiring assistance with start-up capital.

7.2.5 The Economic Development Fund will be managed and administered by the MDDA and will be subject to annual audits by an auditing firm. MDDA shall submit an audited report relating to the management and administration of the activities of the Economic Development Fund to the Commission within 3 months of the completion of the audit.

7.2.6 In addition, the MDDA shall provide the Commission with a written report in respect of the utilisation of the contributions made by Mediamark to the Economic Development Fund, including the number of Qualifying Beneficiaries who derived benefits from such contributions, as well as the names, contact details and the Rand value of the benefits received by Qualifying Beneficiaries. Such report shall be submitted every 6 (six) months for a period of 3 (three) years.

7.2.7 In accordance with clause 4.1 of the MDDA agreement, MDDA shall publish the terms in paragraphs 7.2.4 to 7.2.7 of this Consent Agreement using national media that has a reach to Qualifying Beneficiaries within 3 (three) months from the date of confirmation of this Consent Agreement as an order of the Tribunal.

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8 FULL AND FINAL SETTLEMENT

This agreement is entered into in full and final settlement of all conduct engaged in by Mediamark with its competitors as set out in paragraph 2 of this Consent Agreement and, upon confirmation of this Consent Agreement as an order by the Tribunal, concludes all proceedings between the Commission and Mediamark in this regard.

For MEDIAMARK (PTY) LTD

Date and signed at Pretoria, JHB on the 11 day of April 2018

Name in full:

DEBORAH SWAN

Designation:

Financial Director

For the Commission

Date and signed at PRETORIA on the 20th day of April 2018

TEMBINKOSI BONAKELE

COMMISSIONER