

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CR294Feb18/SA155Aug18

In the matter between:

The Competition Commission

Applicant

And

Trudon (Pty) Ltd

Respondent

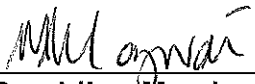
Panel : M Mazwai (Presiding Member)
M Mokuena (Tribunal Member)
A Roskam (Tribunal Member)

Heard on : 26 September 2018

Decided on : 26 September 2018

Settlement Agreement

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



Presiding Member
Ms Mondo Mazwai

26 September 2018
Date

Concurring: Mrs Medi Mokuena and Mr Anton Roskam

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

CT Case No: CR294Feb18/SA/55Aug18
CC Case No: 2011Nov5779 /
2015Dec0695

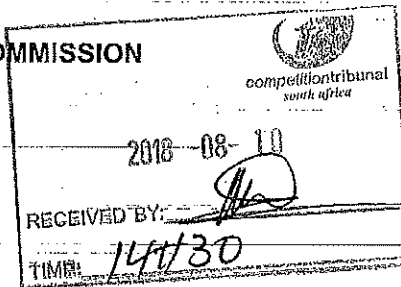
In the matter between:

THE COMPETITION COMMISSION

Applicant

And

TRUDON (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, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND TRUDON (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i) OF THE COMPETITION ACT, 1998.

Preamble

The Competition Commission and Trudon (Pty) Ltd hereby agree that 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 **"Accredited Media Agents"** means advertising agents endorsed by MCC through Corex and have provided security to MCC. MCC holds securities for its members (media owners) on behalf of an accredited media agency;
- 1.3 **"CLP"** means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No.31064 of 23 May 2008);
- 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 place of business 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 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2011Nov5779 & 2015Dec0695;

- 1.7 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Trudon;
- 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 **"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;
- 1.10 **"MCC Members"** means media owners that have subscribed with MCC and are active in the provision of advertising space;
- 1.11 **"Parties"** means the Commission and Trudon; and
- 1.12 **"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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.13 **"Trudon"** means Trudon (Pty) Ltd, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business at

Cambridge Office Park, 5 Bauhinia Street, Highveld Techno Park, Pretoria, Gauteng.

2. 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 30 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 respondents also charge 50% cancellation fee in respect of all adverts that the advertising agencies withdraw 24 hours before publication.

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

2.3.4 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.

3. ADMISSION OF LIABILITY

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

4. CO-OPERATION

Insofar as the Commission is aware; Trudon;

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 full and expeditious 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.

5. FUTURE CONDUCT

Trudon 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;

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, Trudon is liable to pay an administrative penalty.
- 6.2 Trudon agrees and undertakes to pay an administrative penalty in the amount of **R1,324,496 (One million, three hundred and twenty four thousand four hundred and ninety six rand)** which does not exceed 10% (ten percent) of Trudon's annual turnover in the Republic of South Africa for its financial year ended 2016.
- 6.3 Trudon shall pay the above-mentioned administrative penalty within 30 (thirty) days from date of confirmation of this Consent Agreement as a consent order by the Tribunal.
- 6.4 The administrative penalty must be paid into the Commission's bank account which is as follows:

Name: The Competition Commission
Bank: Absa Bank, Pretoria
Account Number: 4087641778
Branch Code: 632005
Ref: 2011Nov5779 & 2015Dec0695/Trudon

- 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 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;
- 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 Small Agencies to transact with Trudon.

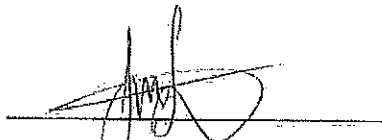
6.5 The administrative penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

7. FULL AND FINAL SETTLEMENT

This Consent Agreement is entered into in full and final settlement of the Commission's investigations under Case Numbers: 2011Nov5779 & 2015Dec0695 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Trudon relating to the conduct that is the subject of the Commission's investigations under Case Numbers: 2011Nov5779 & 2015Dec0695.

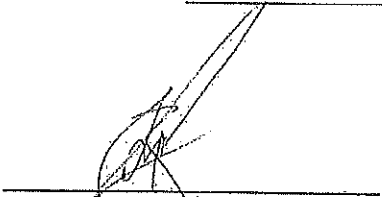
Dated and signed at BRUMA on the 11 day of MAY 2018

For Trudon Limited



Chief Executive Officer

Name in Full: _____



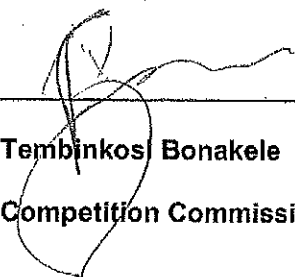
Chief Financial Officer

Name in Full: BRADLEY SWANEROLL



Dated and signed at PRETORIA on the 06 day of AUGUST 2018

For the Commission



Tembinkos Bonakele
Competition Commissioner