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COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO061May17

In the matter between:

The Competition Commission

Applicant

And

DSTV Media Sales (Pty) Ltd

Respondent

Panel : AW Wessels (Presiding Member)
A Ndoni (Tribunal Member)
M Mokuena (Tribunal Member)

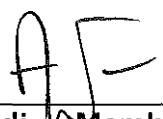
Heard on : 28 June 2017

Addendum received on : 24 July 2017

Decided on : 27 July 2017

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and DSTV Media Sales (Pty) Ltd annexed hereto marked "A" together with the attached addendum annexed "A1".



Presiding Member
Mr AW Wessels

27 July 2017
Date

Concurring: Ms Andiswa Ndoni and Mrs Medi Mokuena

"A"


IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No. *CO061May17*
CC Case No. 2011Nov5779
/ 2015Dec0695

In the matter between:

THE COMPETITION COMMISSION

and

 competitiontribunal south africa
2017 -05- 25
RECEIVED BY: _____
TIME: _____

APPLICANT

DSTV MEDIA SALES PROPRIETARY LIMITED

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 DSTV MEDIA SALES PROPRIETARY LIMITED IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF 1998

The Competition Commission and Dstv Media Sales Proprietary Limited 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 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 **"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 **"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);
- 1.5 **"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;
- 1.6 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.7 **"Complaint"** means the complaint initiated by the Commissioner of the Competition Commission in terms of section 49B(1) of the Act under case numbers 2011Nov5779 and 2015Dec0695;
- 1.8 **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and DStv Media Sales Proprietary Limited;



- 1.9 **"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;
- 1.10 **"DMS"** means DStv Media Sales Proprietary Limited, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business at MultiChoice City, 144 Bram Fischer, Randburg, Gauteng;
- 1.11 **"Economic Development Fund"** means the fund referred to in paragraph 7.2 below;
- 1.12 **"Economic Development Fund Manager"** means Media Development and Diversity Agency;
- 1.13 **"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;
- 1.14 **"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;
- 1.15 **"MCC Members"** means media owners that have subscribed with MCC and are active in the provision of advertising space;

- 1.16 **"Qualifying Small Agencies"** means those 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;
- 1.17 **"Small Agencies"** means media or media related agencies or organisations with a turnover not exceeding R50 000 000 (fifty million rand) and which are majority owned by Black People;
- 1.18 **"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 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 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.

2.3.3 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.

3. ADMISSION OF LIABILITY

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



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4. CO-OPERATION

Insofar as the Commission is aware, DMS:

- 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. On 28 April 2016, DMS resigned from MCC with immediate effect and without serving any notice period. Further, DMS has removed all media agency commission and/or early settlement discounts;
- 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

DMS 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 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 DMS.

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, DMS is liable to pay an administrative penalty.
- 6.2 DMS agrees and undertakes to pay an administrative penalty in the amount of R22 262 599 (**twenty two million, two hundred and sixty two thousand, five hundred and ninety nine rand**) which does not exceed 10% (ten percent) of DMS's annual turnover in the Republic of South Africa for its financial year ended 31 March 2016.
- 6.3 DMS shall pay the amount set out above in paragraph 6.2 to the Commission within 30 (thirty) days from the date of confirmation of this Consent Agreement as an order of the Tribunal.
- 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: _____

Branch Code: 323 345

Ref: 2015Dec0695/DMS

- 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 In order to facilitate the ability of Qualifying Small Agencies to transact with DMS, DMS will obtain its own credit insurance so that these agencies are not required to commit any securities or guarantees in order to book airtime;

- 7.1.2 Further, DMS undertakes to provide 25% (twenty five percent) in bonus airtime for every Rand of airtime bought by all Qualifying Small Agencies. The bonus airtime will be utilised at times scheduled at the discretion of DMS and this discretion shall be reasonably exercised. DMS will offer these terms for a period of 3 (three) years from the date of confirmation of this Consent Agreement, subject to a total annual airtime cap of R50 000 000 (fifty million rand).

- 7.1.3 DMS undertakes to publish the terms in paragraph 7.1 of the Agreement using national media that has a reach to Qualifying Small Agencies within 60 (sixty) days from the date of confirmation of this

Consent Agreement as an order of the Tribunal.

7.2 **ECONOMIC DEVELOPMENT FUND**

7.2.1 DMS undertakes to contribute R8 000 000 (**eight million rand**) over 3 (three) years from the date of confirmation of this Consent Agreement to the Economic Development Fund to enable the development of Qualifying Beneficiaries.

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

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

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

7.2.2.3 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;

7.2.2.4 black owned small media or advertising agencies requiring assistance with start-up capital;

7.2.3 The Economic Development Fund will be managed and

administered by MDDA and will be subject to annual audits by an auditing firm. MDDA shall submit 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.

7.2.4 MDDA shall publish the terms in paragraph 7.2 of this Agreement using national media that has a reach to Qualifying Beneficiaries within 12 months from the date of confirmation of this Consent Agreement as an order of the Tribunal and shall thereafter publish these terms every 6 months for the period of 2 years.

7.2.5 DMS will make its first contribution into the Economic Development Fund within 3 (three) months of the later of the date of confirmation of this Consent Agreement as an order of the Tribunal, or the established of the Trust and thereafter make the second and third contributions at the anniversary of the first contribution.

7.2.6 These contributions shall be made into an account created and managed by MDDA.

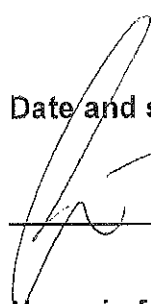
8. FULL AND FINAL SETTLEMENT

This agreement is entered into in full and final settlement of all conduct engaged in by DMS and its competitors 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 DMS in this regard.

For DStv Media Sales Proprietary Limited

Date and signed at RANDSBURG on the 15th day of MAY 2017.



Name in full: CHRISTOPHER JOHN HITCHES

Designation: CEO DSTV MEDIA SALES.

For the Commission

Date and signed at PRETORIA on the 23rd day of MAY 2017



TEMBINKOSI BONAKELE

COMPETITION COMMISSIONER

"A1"

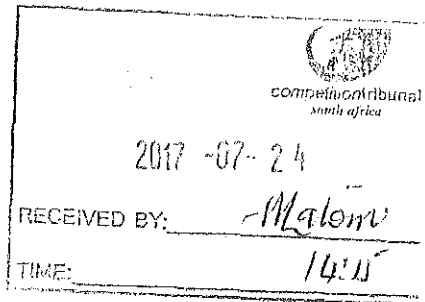
IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No. CO061May17
CC Case No. 2011Nov5779
/ 2015Dec0695

In the matter between:

THE COMPETITION COMMISSION

and



APPLICANT

DSTV MEDIA SALES PROPRIETARY LIMITED

RESPONDENT

ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND DSTV MEDIA SALES PROPRIETARY LIMITED
DATED 23 MAY 2017

It is hereby recorded, by agreement between the parties, that the consent agreement concluded between The Competition Commission and DStv Media Sales Proprietary Limited, signed on 23 May 2017 and presented for confirmation by the Competition Tribunal on 28 June 2017 (the "Consent Agreement"), is amended as follows:

1. AD PARAGRAPH 5 (FUTURE CONDUCT)

1.1 Paragraph 5.1.6 is amended as follows:

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

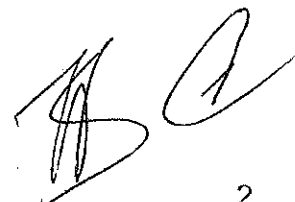
2. AD PARAGRAPH 7.1 (SMALL AGENCY PARTICIPATION)

2.1 Paragraph 7.1.2 is amended as follows:

Further, DMS undertakes to provide 25% (twenty five percent) in bonus
airtime for every Rand of airtime bought by all Qualifying Small Agencies.
The bonus airtime will be utilised at times scheduled at the discretion of
DMS, 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. DMS will offer
these terms for a period of 3 (three) years from the date of confirmation of
this Consent Agreement, subject to a total annual airtime cap of
R50 000 000 (fifty million rand).

2.2 Paragraph 7.1.3 is amended as follows:

DMS 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. DMS will thereafter publish these terms every year
on the anniversary of the first publication for a period of 3 (three) years.

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.

2.3 **The following paragraphs are inserted as paragraphs 7.1.4 and 7.1.5:**

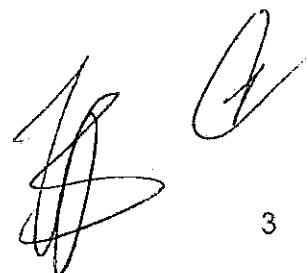
2.3.1 DMS will provide the Commission with a written report in respect of the utilisation of the 25% bonus airtime by Qualifying Small Agencies. Such report shall include information on the number of Qualifying Small Agencies who have utilised the bonus airtime, as well as the names, contact details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

2.3.2 DMS 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.

3. **AD PARAGRAPH 7.2 (ECONOMIC DEVELOPMENT FUND)**

3.1 **The following paragraph is inserted after paragraph 7.2.3:**

7.2.4. In addition, the MDDA shall provide the Commission with a written report in respect of the utilisation of the contributions made by DMS 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 from the date of the first contribution by DMS, for a period of 3 (three) years.



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3.2 Paragraph 7.2.4 is amended as follows:

MDDA shall publish the terms in paragraph 7.2 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 and shall thereafter publish these terms every 6 (six) months on the anniversary of the first publication, for a period of 3 (three) years.

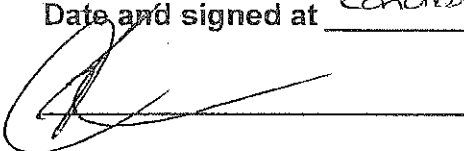
3.3 Paragraph 7.2.5 is amended as follows:

DMS will make its first contribution into the Economic Development Fund within 3 (three) months from the date of confirmation of this Consent Agreement and thereafter make the second and third contributions at the anniversary of the first contribution.

4. 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 DStv Media Sales Proprietary Limited

Date and signed at Randburg on the 10th day of July 2017.



Name in full: FAHMEEDA CASSIM-SURTEE

Designation: ACTING, CHIEF EXECUTIVE OFFICER



For the Commission

Date and signed at PRETORIA on the 10th day of July 2017



TEMBINKOSI BONAKELE

COMPETITION COMMISSIONER