

SOUTH AFRICA / JUDGMENT

**Caxton and CTP Publishers and Printers
Limited v Media24 (Proprietary) Limited
and Others (019323) [2014] ZACT 96;
[2014] 2 CPLR 502 (CT) (18 August 2014)**
[2014] ZACT 96

COURT

Competition Tribunal

BEFORE

A Wessels, M Mazwai, A Roskam

CASE / FILE NUMBER

019323

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 019323

In the matter between:

CAXTON AND CTP PUBLISHERS AND PRINTERS LIMITED.....Applicant
and

MEDIA24 (PROPRIETARY) LIMITED.....1st
Respondent

PAARL MEDIA GROUP (PROPRIETARY) LIMITED.....2nd Respondent

PAARL MEDIA HOLDINGS (PROPRIETARY) LIMITED.....3rd Respondent

PAARL COLDSET (PROPRIETARY) LIMITED.....4th Respondent

THE COMPETITION COMMISSION.....5th
Respondent

Panel: A Wessels (Presiding Member),

M Mazwai (Tribunal Member) and

A Roskam (Tribunal Member)

Heard on : 13 August 2014

Decided on : 18 August 2014

ORDER

Having heard the parties to the application for intervention, the Tribunal orders the following:

1. The applicant is granted leave to intervene in the merger proceedings before the Tribunal under the above case number, such intervention

being limited to the likely effect of the merger between the merging parties under sections 12A(2) and 12A(3) of the Competition Act, 1998 (“the Act”), with specific reference to the following issues:

1.1 the current firm or firms directly or indirectly controlling Naspers Limited (specifically the following shareholders of the unlisted A ordinary shares: Naspers Beleggings Ltd (“Nasbei”), Keeromstraat 30 Beleggings Ltd (“Keerom”), Wheatfields 221 (Pty) Ltd (“Wheatfields”), Sholto Investments BVI, De Goedgedacht Trust, Sanlam Ltd and Messer’s Stofberg and Bekker) and their interests in the printing and publishing industries and the competition effects thereof in the context of the proposed merger;

1.2 whether or not the proposed merger will enhance access to or the sharing of confidential competitive information; give rise to, or increase the risks of, coordinated effects in the printing and/or publishing markets. This includes the issue of how the proposed merger changes the pre-merger control of the 2nd, 3rd and 4th Respondents (i.e. the “target firms” in the proposed merger) and the post-merger incentives of Media24 (Pty) Ltd;

1.3 the effect of the proposed merger on the public interest, and in particular its effect on the media sector as contemplated in section 12A(3)(a) of the Act; and

1.4 the conditions, if any, to be considered by the Tribunal in relation to a potential conditional approval of the proposed merger.

2. The applicant’s participation in the merger hearing shall include the right to:

2.1 attend pre-hearing conferences;

2.2 to have access to, and to inspect, any documents filed by any of the merger parties and other participants in the merger proceedings to the extent that they relate to the issues set out in paragraph 1 above, provided that any confidential information shall unless otherwise directed be limited to the applicant’s legal representatives and (economic) experts on the condition that they provide appropriate undertakings to respect and protect confidentiality;

2.3 call for the discovery of further documents from the merger parties and other participants in the merger proceedings to the extent that they relate to the issues set out in paragraph 1 above;

2.4 request the Tribunal to direct, summon and/or order any person to appear at the merger hearing and/or to produce documents relevant to the merger hearing to the extent that they relate to the issues set out in paragraph 1 above;

2.5 participate in any interlocutory proceedings in respect of the merger hearing;

2.6 adduce oral and documentary evidence at the merger hearing to the extent that it relates to the issues set out in paragraph 1 above;

2.7 cross-examine any of the witnesses of the merger parties and any other participants of the merger hearing to the extent that it is relevant to the issues set out in paragraph 1 above; and

2.8 present argument at the merger hearing to the extent that it relates to the issues set out in paragraph 1 above.

3. The participants rights granted in paragraph 2 above will be subject to:

3.1 limitations on their exercise imposed by the Tribunal from time to time during the course of the proceedings to ensure the expedition and efficiency of the hearings;

3.2 adherence by the applicant to any timetable set by the Tribunal for attending to any pre-hearing procedures and filing of any processes in this matter; and

3.3 the requirement that the applicant produce its list of proposed witnesses by no later than 3 (three) business days after date of receipt of the confidential record; provided further that if the applicant seeks to call any witnesses to also be called by the Commission in this matter the Commission shall have the priority to lead such witness.

4. The Commission must, subject to the appropriate confidentiality undertakings, provide the applicant with the confidential record of its proceedings within three business days of this order.

5. The costs of this application are reserved pending determination of the merger at the main hearing.

18 August 2014

Date

Presiding Member

A Wessels

Concurring: M Mazwai and A Roskam

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Prepared on 13 October 2026 · Esheria