

SOUTH AFRICA / JUDGMENT

Competition Commission v Media24 (Pty) Ltd and Another (FTN026May19) [2019] ZACT 31 (10 July 2019)

[2019] ZACT 31

COURT

Competition Tribunal

BEFORE

N Manoim, Y Carrim, I Valodia

CASE / FILE NUMBER

FTN026May19

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COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: FTN026May19

In the matter between:

The Competition Commission

Applicant

And

Media24 (Pty) Ltd

First Respondent

Novus Holdings Ltd

Second Respondent

Panel: N Manoim (Presiding Member)

Y Carrim (Tribunal Member)

I Valodia (Tribunal Member)

Heard on: 10 July 2019

Decided on: 10 July 2019

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Media24 (Pty) Ltd; Novus Holdings Ltd annexed hereto marked "A".

Presiding Member

Mr Norman Manoim

10 July 2019

Date

Concurring: Ms Yasmin Carrim and Prof. Imraan Valodia

1. Definitions

For the purposes of this Consent Agreement the following definitions shall apply:

1.1. "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;

1.2. "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;

1.3. "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;

1.4. "Consent Agreement" means this agreement duly signed and concluded between the Commission and the Respondents;

1.5. "Media24" means the primary acquiring firm, Media24 Proprietary Limited, private company duly incorporated in accordance with the company laws of the Republic of South Africa with its principal place of business at 40 Heerengracht Cape Town, 8001.

1.6. "Media24/Novus transaction" means the acquisition by Media24 of sole control over Novus which occurred pursuant to the implementation of the Restated Management Agreement of Novus on or about 31 March 2015, as determined by the Novus Judgment subsequent to the implementation of the Restated Management Agreement;

1.7. "Novus" means Novus Holdings Limited a public company duly incorporated in accordance with the company laws of the Republic of South Africa with its principal place of business at 10 Freedom Way, Milnerton, 7441.

1.8. "Novus Judgment" means the judgment and order of the Competition Appeal Court issued on 25 November 2015 in Caxton and CTP Publishers and Printers Limited v Media24 Proprietary Limited and others (Case No. 136/CAC/Mar2015);

1.9. "Parties" means the Commission and the Respondents, namely Media24 and Novus;

1.10. "Restated Management Agreement" means the management agreement entered into by Media24 and Novus signed on 23 February 2015;

1.11. "Respondents" means Media24 and Novus;

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.

2. Background to the transaction

2.1. On 23 February 2015, Media24 and Nevus concluded the Restated Management Agreement which redefined certain of the powers of Mr Lambert Relief, the then Chairman of Nevus. The Restated Management Agreement was a restatement of the Management Agreement of 2008, which conferred certain minority protections and powers on Mr Retief. The implementation of the Restated Management Agreement occurred as part of the process of the listing of Nevus on the Johannesburg Securities Exchange ("JSE").

2.2. Prior to implementation of the Restated Management Agreement, the merging parties' legal representatives engaged the Commission and appraised it of their intention to list Nevus and implement the Restated Management Agreement.

2.3. Subsequent thereto, and before implementation of the Restated Management Agreement-

2.3.1. Caxton and CTP Publishers and Printers Limited ("Caxton") brought an urgent application to the Tribunal seeking an order interdicting the implementation of the Restated Management Agreement, and thus the listing of Novus on the JSE;

2.3.2. on 23 March 2015, the Tribunal held that the Restated Management Agreement did not give rise to a change in control; and

2.3.3. the Restated Management Agreement and the listing of Novus on the JSE occurred on or about 31 March 2015.

2.4. Subsequently, Caxton appealed the decision of the Tribunal to the Competition Appeal Court ("CAC").

2.5. On 25 November, the CAC handed down the Novus Judgement and held that there had been a change of control when Media24 and Novus implemented the Restated Management Agreement. The CAC concluded that the 2008 Management Agreement conferred on Mr Relief joint control over Novus, while the Restated Management Agreement diminished that control.

2.6. The effect of the Novus Judgement was that the implementation of the Restated Management Agreement on 31 March 2015 (which coincided with the listing of Novus on the JSE) conferred on Media 24 sole control over Novus and hence constituted a notifiable merger in terms of section 12(2) of the Act.

2.7. Consequently, the earlier implementation by Media24 and Novus of the Restated Management Agreement on or about 31 March 2015 without the approval of the Competition Authorities is a contravention of section 13A(3) of the Act, notwithstanding the Tribunal's earlier order that the Restated Management Agreement did not give rise to a change in control.

2.8. Pursuant to the Novus Judgement, the Respondents notified the Media24/Novus transaction to the Commission on 19 February 2016 as a large merger. Conditions were tendered by Media24 and Novus for Media24 to divest itself of the ability to control Novus by reducing its shareholding in Novus from 66.5% before the merger to 19% after the merger with no minority protections.

2.9. On 3 August 2017, the Tribunal approved the merger between Media24 and Novus with conditions.

3. Background to this settlement

3.1. The Commission, Media24 and Novus agree to settle the contravention of section 13A(3) which occurred pursuant to implementation of the Restated Management Agreement without a penalty, because Media24 and Novus implemented the Restated Management Agreement after -

3.1.1. they had approached the Commission appraising it of the Media24/Novus transaction; and

3.1.2. the order of the Tribunal confirming that such an implementation would not amount to a merger.

3.2. Furthermore, the merger was approved subject to conditions in terms of which Media24 would divest itself of the ability to control Novus by reducing its shareholding from 66.5% to 19%.

4. Admissions

Media24 and Novus admit that, as a consequence of a subsequent ruling by the CAC, the Media24/Novus transaction constituted a notifiable large merger as defined in section 11(5)(c) of the Act and was implemented in contravention of section 13 A(3) of the Act.

5. Agreement concerning the Respondent's future conduct

5.1. The Respondents agree and undertake to notify the Commission of any future transactions that constitute a notifiable merger as defined in section 12(1) of the Act read together with section 11(5) of the Act. The Respondents furthermore agree and undertake to refrain from engaging in prior implementation of notifiable mergers in contravention of section 13A(3) of the Act.

5.2. The Respondents also agree and undertake to develop and implement 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 Chapter 3 of the Act. In particular, such compliance programme will include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act.

5.3. The Respondents furthermore agree and undertake to submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of this Consent Agreement as an order by the Tribunal.

6. Full and Final Settlement

This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings

between the Commission and the Respondents relating to the contraventions of section 13A(3) of the Act by the Respondents that

were the subject of the Commission's investigation under cases CC2011Feb5016 and CC2016Feb0055.

Dated and signed at Cape Town on the 26th day of February 2019

For the First Respondent

Ishmet Davidson

(duly authorised)

CEO

(Insert Position held)

For the Second Respondent

Neil Birch

Chief Executive Officer

Dated and signed at Tshwane on the 6th day of May 2019

For the Competition Commission

Tembinkosi Bonakele

Competition Commssioner

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Prepared on 12 October 2026 · Esheria