

Commission studying predatory pricing ruling

The Competition Commission on Wednesday, 14 September 2016, said it was still studying the remedies set down by the Competition Tribunal in the precedent-setting predatory pricing case against Media24.



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The commission, which asked for much tougher remedies, is entitled to appeal against the tribunal's rulings.

During the tribunal's hearing into the remedies, the commission sought an interdict against Media24 preventing it from publishing a further title in the Goldfields area for six years.

It also called for Media24 to sponsor a new rival in the area at a cost of R10m. The R10m was to be administered by the Media Diversity Development Agency for three years.

Media24 said it was taking advice from its legal team. "This has been a complex matter and is the first time a contravention of this nature has been prosecuted by the competition authorities." The group's Anika Ebrahim said the company would publish the remedy's terms and explanation in two newspapers by 26 September, as required by the tribunal.

The tribunal rejected the commission's suggested remedies. It also rejected Media24's proposal to spend less than R1m training "would-be journalists" in a bid to remedy the effect of its predatory pricing on media competition in the Goldfields area near Welkom.

In its recently released order, the tribunal described Media24's proposed remedy as "remarkably meagre" and instead ruled that the media group provides 90-day credit facilities for the printing and distribution needs of current and new entrants to the market. This is the first time in its 17-year history the tribunal has set down a remedy for predatory pricing.

The credit facilities are to cover the cost of printing and distribution for any community newspaper in the Goldfields' market. The credit will be provided by printing company Paarl Coldset and door-to-door distributor OnTheDot, which are associates of Media24. The credit facility must be available for three years.

The unusual terms of the tribunal's remedy reflect the unusual circumstances surrounding the case. In September 2015, in its first ruling of its kind, the tribunal found that Media24 used predatory pricing to drive an independent community newspaper out of business.

The case involved a battle for dominance in the Welkom market and Media24's actions were judged to have resulted in the permanent removal of a vibrant independent competitor, Gold Net News (GNN).

In its ruling a year ago, the tribunal said Media24 had used one of its two Welkom-based community newspapers, Forum, a "fighting brand" to ensure GNN could not survive. Forum charged advertising rates that were below its costs and for a lengthy period operated at a loss. Ten months after GNN was finally forced to close, Forum also closed leaving Media24's second paper, Vista, in a dominant position. This allowed Vista to raise its advertising rates.

Media24 is the first company to be found guilty of predatory pricing in terms of the Competition Act. In an earlier case of predation brought by Nationwide Airways against SAA, no final ruling was made.

The tribunal could not levy a fine against Media24 because the charge of predatory pricing was in terms of section 8(c) of the Competition Act, for which no first-time fines can be levied.

Tribunal member Yasmin Carrim said the market continued to be uncompetitive and it was clear that major challenges for current and potential rivals to Media24 were the expense of printing and distribution.

Source: Business Day via I-Net Bridge

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