

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 102/LM/Dec04

In the large merger between:

Media 24 Limited and Lexshell 496 Investments (Pty) Ltd

and

The Natal Witness Printing and Publishing Company (Pty) Ltd

Reasons for Decision

APPROVAL

On 20 July 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Media 24 Limited and Lexshell 496 Investments (Pty) Ltd and The Natal Witness Printing and Publishing Company (Pty) Ltd , in terms of section 16(2)(b) subject to the conditions.

The reasons for the approval of the merger appear below.

The Parties

1. The acquiring firm is Media 24 Limited ("Media 24") and Lexshell 496 Investments (Pty) Ltd ("Lexshell"). Media 24 is a subsidiary of Naspers Limited. Lexshell was formed by the Natal Witness shareholders as an SPV for this transaction.
2. The primary target firm is the Natal Witness Printing and Publishing Company (Pty) Ltd ("NW"). It's a subsidiary of The Natal Witness (Pty) Ltd [what do they do]. NW has a 60% interest in Lincroft Books (Pty) Ltd and a 50% interest in Midlands Media (Pty) Ltd.

The Merger Transaction

3. This is a post-implementation merger as it was implemented by the parties in 2000 without Commission approval.¹
4. Media 24 is buying 50% of the shares in Natal Witness, which remains under the management control of the Craib family. The latter hold the remaining 50% via a new company, Lexshell and have made all the strategic decisions in the business.

Rationale for the Transaction

5. Media 24 seeks to expand into the English newspaper market and to enter the Kwazulu-Natal market. The investment will enable Natal Witness to purchase the requisite equipment so that it can expand its product base and generate additional revenue.

The relevant product market

6. Media 24 is involved in publishing and printing magazines and newspapers; electronic news provision and magazine content via the internet; distribution of newspapers, magazines and digital products as well as printing works. It owns four daily newspapers; two weekly newspapers; three Sunday newspapers and 37 community newspapers nationwide. Its magazine division has 33 sector-wide magazine publications. Its internet business offers leading brands in news, motoring, property, health and food.
7. NW prints and publishes various regional newspapers and community newspapers in Pietermaritzburg.
8. There is an overlap in the activities of newspaper publishing and printing.

Newspaper Publishing

9. The Commission in its investigation found that Media24 publishes primarily Afrikaans newspapers², while NW publishes English newspapers. This causes it to conclude that the newspapers of the two firms do not compete and we agree with this conclusion.

Newspaper Printing

10. Both parties have printing equipment and are able to print their own newspaper publications and that of others. The Commission excludes magazine and brochure printing from this market because different paper is

¹ This failure to notify is being investigated by the Commission.

² With the exception of City Press, an English newspaper sold nationally.

used for newspaper print; size or run-lengths of newspaper and magazine printing differ; as well as differences in quality, pagination, technology. Finally, the deadlines vary – newspapers have to meet tighter delivery schedules than magazines. Furthermore, the Commission’s investigation revealed that significant retooling would be required to print these sorts of publications.

Geographic Market for Newspaper Printing

11. Printing presses are located in the primary distribution areas of particular newspapers because they are typically cumbersome and difficult to move. The same applies with printed newspapers. It therefore makes sense that mainstream newspapers are printed in particular areas –either of Gauteng, Cape Town or Durban.
12. We agree with the Commission’s conclusion that the market is regional.
13. We further agree that there is no horizontal overlap since at the relevant time, Media 24 had no printing capacity in KZN and NW only had same in Pietermaritzburg.

Vertical Integration

14. There are no vertical concerns arising from this transaction.

Collusion

15. The Commission highlighted the fact that there is a complaint being investigated by them against Caxton Publishers and Printing Limited (“Caxton”).³ In addition, an allegation is being made that Naspers and Caxton are colluding by allocating markets.
16. Caxton is the only other major participant in the newspaper industry, along with Media 24. Caxton is a major printing and publishing company publishing primarily community –based newspapers.
17. The Commission’s concern arises from the fact that these two competitors – Media 24 and Caxton - jointly own a firm, Lincroft Books (Pty) Ltd (“Lincroft”), Caxton having a 40% shareholding and NW holding a 60% interest. Lincroft publishes a series of community newspapers and earns its income by selling advertising space.

³ Caxton had initially noted its concerns to this transaction, describing Naspers’ practice of buying-up small community or regional newspapers and printing companies as a series of “creeping acquisitions” which the competition authorities should be concerned about. However, it did not take these allegations further during the hearing.

18. Since both Media 24 and Caxton compete in the same market, the Commission raised the concern that this transaction, whereby Media 24 is acquiring NW, will create a platform for collusion (between Media 24 and Caxton) via Lincroft.
19. In previous dealings between the two, Caxton and Media 24 had agreed not to compete in respect of certain geographic markets. The Commission fears that the same will happen in respect of the community newspaper market, where the largest publishers account for a 63% market share.
20. To remedy this concern, the Commission suggested a condition, in terms of which NW would divest its 60% interest in Lincroft. In terms of the Lincroft shareholder's agreement, Caxton has a pre-emptive right to acquire the shares and the concern was raised that this would entrench Caxton's dominance in the broader KwaZulu Natal market.
21. Accordingly, it was agreed between the parties and the commission that NW's stake in Lincroft be transferred to Lexshell, which would remove any structural links as well as any competition concerns.
22. During the merger hearing, the parties advised that NW had set up an administrative company which offered outsourced administration services for the various operating companies within the group. The merging parties were queried as to why the administration service was being paid for by Lexshell, the shareholder in Linkcroft, as opposed to Linkcroft itself, which is the operating company. The tribunal was concerned that this might have been a disguised way of getting around the fact that Media 24 had to relinquish its share and that the administration agreement was a means to get back the dividend that might have otherwise come through Linkcroft, by way of this administration fee paid by Lexshell.
23. The merging parties, assured the tribunal that there was no residual economic benefit flowing back to Media 24. They explained that the administrative fee paid to NW was in respect of services rendered to Lincroft for which Lincroft paid a fee. They dismissed a reference in the correspondence from Lexshell to NW which stated that Lexshell would pay NW an annual management fee, as actually being supposed to read that Lexshell was merely confirming that Lincroft would pay the annual management fee to NW for services rendered. ⁴

Public Interest Issues

24. There are no public interest concerns.

⁴ See record page C44

Conclusion

We are satisfied that the condition addresses any competition concerns arising from this merger.

The Tribunal therefore approves the transaction subject to the condition attached to the order dated 20 July 2005.

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17 October 2005

Date

Concurring: Y Carrim, T Orleyn

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| For the merging parties: Jan S De VilliersAttorneys |
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| For the Commission: M. Worsely and L. Blignaut ,Competition Commission |
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