COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 15/LM/Jun11
(012179)

In the large merger between:

MEDIA24 LIMITED Acquiring Firms

PAARL COLDSET (PTY) LTD

And

THE NATAL WITNESS PRINTING AND PUBLISHING COMPANY (PTY) LTD Target Firm

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Panel	:	N Manoim (Presiding Member) A Wessels (Tribunal Member) M Holden (Tribunal Member)
Heard in period	:	15 to 30 March 2012 and 05 April 2012, with last written submission received on 30 April 2012
Order issued on	:	14 May 2012
Confidential Reasons issued on	:	29 June 2012
Non-Confidential Reasons issued on	:	5 July 2012

Reasons for Decision

Conditional approval

1. The Competition Tribunal ("Tribunal") on 14 May 2012, in terms of section 16(2)(b) of the Competition Act of 1998[1], conditionally approved the large merger involving Media24 Limited ("Media24") and Paarl Coldset (Pty) Ltd ("Paarl Coldset") as the acquiring firms and The Natal Witness Printing and Publishing Company (Pty) Ltd ("Natal Witness") as the target firm (these parties are collectively referred to as the "merging parties").

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[1] Act No. 89 of 1998, as amended.

2. The Tribunal's reasons for conditionally approving the transaction are set out below.

Background

3. The issues of contention between the various parties involved in this merger related to both competition and public interest aspects. The one issue is whether the proposed merger would likely give rise to exclusionary conduct by the merged entity, which post-merger is active both in the publishing of community newspapers and the printing of these newspapers. The printing aspect specifically relates to the fact that through this transaction Media24 is increasing its direct shareholding in Africa Web Printers ("Africa Web") to 80%. Africa Web is a so-called "coldset"[2] printer of community newspapers in KwaZulu-Natal and the Northern Eastern Cape. The other issue is whether or not the proposed merger would negatively affect the public interest since the small community newspaper publishing businesses in KwaZulu-Natal and the Northern Eastern Cape require coldset printing services, such as that provided by Africa Web. The arguments thus focused on the potential effect of the proposed transaction on the small community newspaper publishers in KwaZulu-Natal and the Northern Eastern Cape that require coldset printing services for their newspapers, and directly related thereto the potential effect on these publishers from a public interest perspective.

4. On 14 July 2011 the Competition Commission ("Commission") referred the proposed merger to the Tribunal with the recommendation that the transaction should be conditionally approved.

5. Caxton and CTP Publishers and Printers Limited ("Caxton"), a regional competitor of the merging parties, filed an application to intervene in the merger proceedings on 16 August 2011, alleging that the proposed merger was likely to give rise to substantial anti-competitive effects and further contending that the Commission's recommended conditions were inadequate to address the concerns arising from the merger. The Tribunal

[2] In general terms coldset printing is a printing mechanism used in the printing of newspapers; heatset printing is used for the printing of glossy titles such as magazines.

heard Caxton's intervention application on 06 September 2011. On 07 September 2011 the Tribunal granted Caxton leave to intervene. The intervention was restricted to the following: (i) whether the merger would lead to foreclosure of firms in the newspaper publishing market(s); (ii) whether the merger would lead to predatory pricing and/or bundling in the newspaper publishing market(s); (iii) alleged prior implementation of mergers by the merging parties insofar as it relates to the economic analysis of this case, including the determination of the relevant counterfactual(s) to the proposed merger, but excluding the question of whether or not an acquisition was lawful; and (iv) the adequacy of the Commission's recommended conditions.[3]

6. The hearing of the main matter took place from 15 to 30 March 2012 and closing arguments were heard on 05 April 2012. On the evening before closing arguments the merging parties presented the Commission with a revised set of proposed conditions to address any potential competition and/or public interest concerns. At the conclusion of argument the Tribunal therefore afforded the Commission and Caxton the opportunity to submit further written submissions relating to the merging parties' proposed remedies. The Commission and Caxton served and filed these written responses on 16 April 2012.

7. The Tribunal also requested the Commission to obtain further information in relation to the current printing facilities of two competitors of Africa Web (see paragraphs 24 to 28 below) namely Rising Sun and Guardian Web. This information was received from the Commission on 11 April 2012.

8. On 13 April 2012 the Tribunal invited further submissions from the merging parties, the Commission and Caxton on various potential conditions. These potential conditions related *inter alia* to (i) a structural condition involving the post-merger divestiture by the merged entity of Africa Web; (ii) the removal of post-merger cross-directorships between the publishing activities of the Media24 group and its printing activities of

[3] Tribunal order of 07 September 2011.

community newspapers; and (iii) notification by the Media24 group to the Commission of all future "small" mergers relating to its publishing and/or printing activities. The Tribunal received Caxton's further submissions on 18 April 2012; that of the merging parties effectively on 19 April 2012 and that of the Commission effectively on 30 April 2012.[4] Below we summarise the ultimate positions of each of these parties.

9. The Commission concluded that the proposed merger is likely to raise competition and public interest concerns in relation to the post-merger ability of small independent community newspaper publishers in KwaZulu-Natal and the Northern-Eastern Cape to access printing services at competitive conditions of supply, including competitive prices.

10. The merging parties argued that the proposed merger raises no competition or public interest concerns, but if it did they offered a set of conditions, which they believed would address any such concerns. They further argued that the Commission's sole concern was a desire to have enhanced competition or to secure the sufficiency of competition in the relevant printing market. This, the merging parties argued, was not a concern which meets the statutory standard for a substantial prevention or lessening of competition in section 12A(1) of the Act.[5]

11. Caxton at the end of the Tribunal proceedings maintained that the proposed merger raises serious competition concerns. Although neither Caxton nor Jacobs (see list of witnesses in paragraph 12 below) were permitted to intervene in these proceedings on public interest grounds, Caxton argued that the Tribunal in its assessment of this merger should seriously consider the public interest issues.

Witnesses

[4] The merging parties and the Commission's submissions were received after hours on 18 April 2012 and 26 April 2012 respectively and therefore in terms of Rule 6(4) of the *Rules for the Conduct of Proceedings in the Competition Tribunal* were deemed to have been received on 19 April 2012 and 30 April 2012 respectively.
[5] See letter dated 18 April 2012, paragraph 5.1.2.1.

12. The Commission, the merging parties and Caxton each called both factual and expert witnesses to testify at the Tribunal hearing.

13. The factual witnesses were:

For the Commission:

- Mr. Simangaliso Samuel Masinga ("Masinga"), the owner and editor of a small commercial community newspaper called *Maputaland Mirror.*

  The *Maputaland Mirror* was launched in 2005 as a monthly commercial tabloid costing R1.50 per copy. Its publication was however stopped in 2007, but resumed in 2009 from which time on the paper was distributed for free. It is published in Tsonga, Zulu and Swati with a 20% English content. Since July 2011 it publishes more than ten thousand copies twice a month;

- Mr. Max Mxabo ("Mxabo"), the owner and editor of a small commercial community newspaper called *Pondo News.*

  Pondo News was launched in 1996 and sold for 50 cents per copy. In 2008 it started printing ten thousand copies weekly. It is presently distributed in and around the Northern Eastern Cape districts bordering KwaZulu-Natal (Sisonke, Alfred Nzo and O.R. Tambo districts), as well as in KwaZulu-Natal. It is published in Xhosa; and

- Mr. Lumko Caesario Mtimde ("Mtimde"), the chief executive officer of the Media Development and Diversity Agency[6] ("MDDA").

For the merging parties:

- Mr. Gregory Rayen Orsmond ("Orsmond"), the current managing director of both Natal Witness and Fever Newspapers (Pty) Limited ("Fever Newspapers") and its subsidiaries Sky Blue Media (Pty) Ltd ("Sky Blue Media") and Zululand Media (Pty) Ltd ("Zululand Media"); and
- Mr. Pieter Carel Le Roux ("Le Roux"). Le Roux stated that he continues to serve as a director of Natal Witness and as a director and current chairman of Zayle Investments (Pty) Ltd ("Zayle Investments") trading as Africa Web during the transitional period pending the outcome of these merger proceedings. With effect from 01 July 2010 he was appointed as an executive director of Paarl Media Group (Pty) Ltd. With effect from June 2011 he was appointed as an executive director of Paarl Media Gauteng (Pty) Ltd.[7]

We note that the merging parties withdrew Mr. James Stuart Craib, the current chairman of Natal Witness, as a factual witness.

For Caxton:[8]

- Mr. Stephen Thomas ("Thomas"), the Regional Manager of Caxton Community Newspapers, Durban;
- Mr. Paul Michael Jenkins ("Jenkins"), the non-executive Chairman of Caxton; and
- Mr. Riquadeu Jacobs ("Jacobs"), the founder of Biz Afrika 614 (Pty) Ltd trading as *Public Eye* and Gemini Moon Trading 389 (Pty) Ltd trading as *Edendale Eyethu*.

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[6] A statutory body established in terms of the Media Development and Diversity Agency Act No. 14 of 2002.
[7] See Le Roux's witness statement paragraphs 3 and 4.
[8] We note that Caxton withdrew Mr. Gavin Anthony, a director of Zululand Observer (Pty) Ltd and Darwain Printers (Pty) Ltd, and Mr. Bevis Fairbrother, the branch manager of South Coast Herald, a division of Caxton and CTP Publishers and Printers Limited, as factual witnesses. Mr. Naeem Jamal, a current member of East Griqualand Printers CC (trading as the Kokstad Advertiser), withdrew as a factual witness for Caxton citing personal reasons.

In 1999 Jacobs launched *Public Eye,* a community newspaper targeted primarily at the Indian community in the Pietermaritzburg area. In 2008 he launched a second community newspaper called *Edendale Eyethu*. In 2009/2010 he entered into a joint venture with Caxton, which gave rise to the establishment of Capital Newspapers (Pty) Ltd ("Capital Newspapers").

14. The expert witnesses called to testify were:

- For the Commission:

  Dr. Simon John Roberts ("Roberts"), the Chief Economist at the Commission.

- For the merging parties:

  Mr. James Hodge ("Hodge") of Genesis Analytics (Pty) Ltd, an economics consultancy.

- For Caxton:

  Dr. Robert Stillman ("Stillman") of Charles River Associates, an economic consulting firm.

  We note that Caxton withdrew Dr. Robert Jeffrey Levinson of Charles River Associates ("CRA") as an expert witness.

Parties to transaction and their activities

Acquiring firms

15. The primary acquiring firms are Media24 and Paarl Coldset.

16. Media24 is a subsidiary of Naspers Limited ("Naspers"), a multinational media group. Naspers is listed on the Johannesburg Securities Exchange and the London Stock Exchange. The South African business operations of Naspers include subscription television, internet (e-commerce), communications, social networks, entertainment and print media (including newspapers, magazines, printing, distribution and book publishing). Of relevance to the assessment of this proposed transaction is

the print media side of the Naspers business, more specifically the publishing and printing of community newspapers.

17. Media24 has a large number of subsidiaries and below we shall refer to Media24 and its subsidiaries collectively as Media24.

18. Paarl Coldset is a subsidiary of Paarl Media Group (Pty) Ltd ("Paarl Media"), which is a wholly-owned subsidiary of Media24. Paarl Media is the Media24 printing establishment[9], which is active in the printing of newspapers and high volume commercial/retail inserts and pamphlets. It has coldset printing operations in Cape Town, Port Elizabeth, Bloemfontein and Johannesburg enabling it to service these metropolitan areas.[10] We however note that it has no coldset printing operations in KwaZulu-Natal.

Target firm

Natal Witness

19. The primary target firm is Natal Witness, currently jointly owned by Media24 (owning 50% of the issued share capital) and Lexshell 496 Investments (Pty) Ltd ("Lexshell") (owning the other 50% of the issued share capital). The shareholders of Lexshell are the Craib family members/trusts.

20. The history to this is that Natal Witness in the course of 2000 sold 50% of its shares to Media24. The merging parties notified this transaction late and therefore the Tribunal only approved it in 2005 (also see paragraph 158 below).

21. Natal Witness is a publisher and printer of regional newspapers primarily in the Pietermaritzburg and surrounding areas of KwaZulu-Natal. It has coldset printing operations in Pietermaritzburg, which service the regional Pietermaritzburg/Durban metropolitan areas.[11]

[9] Le Roux: transcript page 912.
[10] Merging parties' Form CC4(2), page 11.
[11] Merging parties' Form CC4(2), page 11.

22. Natal Witness publishes *inter alia* the *Witness,*[12] an English language paid-for daily regional newspaper distributed mainly in Pietermaritzburg and the inland areas of KwaZulu-Natal as well as *Weekend Witness*, a Saturday publication.[13] It also publishes the following free community newspapers: (i) the *Mirror*, an English, weekly published paper which is distributed in Pietermaritzburg; and (ii) the *Echo*, a mostly English paper with a little Zulu content; it is a free insert in the *Witness* on Thursdays and is also bulk-dropped in the Edenvale Valley area of Pietermaritzburg.[14]

23. Natal Witness also directly or indirectly controls the following firms which own community newspaper publication titles:

(i) Drendy Investments (Pty) Ltd (80%), which publishes the *Stanger Weekly*, *Coastal Weekly* and *Eastern Express* community newspapers;

(ii) Fever Newspapers (85%), which owns 100% in Sky Blue Media[15] and 100% in Zululand Media (see paragraph 12 above). Sky Blue Media publishes the *South Coast Fever; UvoLwethu Fever*; *Isolomzi Fever*; *Mthatha Fever*; *Upper Coast Fever*; and *East Griqualand Fever*. Zululand Media publishes the *Zululand Fever* community newspaper;

The background to the first *Fever* publication, the *South Coast Fever*, is as follows: it was launched in 1997 by South Coast Publications (Pty) Ltd (which was owned at the time by the Moss family and managed by Orsmond) as a paid-for weekly community newspaper in the Port Shepstone area on the KwaZulu-Natal south coast and had a nominal cover price.[16]

(iii) Izimpondo Communications (Pty) Ltd (67%), which publishes *UmAfrica*, a paid-for Zulu community newspaper; and

(iv) Midlands Media (Pty) Ltd (50%), which publishes *Greytown Gazette*, a free community newspaper.[17]

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[12] Previously the *Natal Witness*.
[13] Record page 208.
[14] Record page 208.
[15] Sky Blue Media was established as the entity through which Natal Witness acquired an interest in the titles owned by South Coast Publications (Pty) Ltd and EG Herald.
[16] Orsmond's witness statement paragraph 2.4.
[17] See *inter alia* Genesis Report paragraph 2.

Africa Web

24. Of particular relevance to the assessment of this transaction is that Natal Witness has a 30% shareholding in Zayle Investments trading as Africa Web. The other current shareholders of Africa Web are Media24 (with a 50% shareholding); Mr Haresh Ouderajh ("Ouderajh") (the founder of Africa Web, with a 15% shareholding); and Janette Trust (with a 5% shareholding).

25. Africa Web owns coldset newspaper printing facilities in KwaZulu-Natal. It commenced operations as a printing press on 01 September 2006. Africa Web prints some of the community newspapers owned by Natal Witness, for example the *Eastern Express* titles and the *Stanger Weekly* and *Coastal Weekly*. It also prints certain community newspapers published by independent third parties, for example the *Maputaland Mirror* and *Sporting Post*.[18]

26. Natal Witness acquired its 30% shareholding in Africa Web in 2006 from Ouderajh.[19] Ouderajh at that time also had publishing interests in the *Stanger Weekly* and *Coastal Weekly* and when Natal Witness acquired the 30% stake in Africa Web, it also acquired a 30% stake in Ouderajh's publishing business via a newly established company called Lamara Investments (Pty) Ltd ("Lamara").[20] The printing assets were acquired from Paraiso CC by Zayle Investments and the publishing assets were acquired by Lamara.

27. The relevant parties did not notify the above-mentioned transactions to the Commission at the time since allegedly they were two separate transactions (i.e. (i) printing and (ii) publishing assets being acquired) each falling below the then relevant merger notification thresholds. Caxton however argued that because these target businesses were vertically integrated these two transactions ought to have been treated as a composite transaction and thus notified. For the purpose of

[18] Le Roux's witness statement paragraph 62.
[19] Letter of 03 April 2012 from Werksmans Attorneys.
[20] Le Roux's witness statement paragraph 65.

this decision we do not need to decide this matter. We deal more generally with the relevance of the issue of non-notification later.

28. As stated in paragraph 24 above, pre-merger Media24 has a 50% shareholding in Africa Web. Media24 first acquired a 30% shareholding in Africa Web from Ouderajh in 2008 (taking Natal Witness and Media24's combined shareholding in Africa Web to 60%) and a further 20% in 2009 (taking Natal Witness and Media24's combined shareholding in Africa Web to 80%).[21] These two transactions were not notified to the Commission.

29. The merging parties alleged that both the afore-mentioned transactions at the time constituted "small" mergers in terms of the Act and therefore did not require notification to the Commission and furthermore that they were not staggered as a deliberate ploy to circumvent notification.[22] The merging parties argued that they could not be said to have engaged in prior implementation of those transactions since they were free to implement them as "small" mergers without competition notification or approval. Caxton had a different point of view and disputed that these transactions constituted "small" mergers.

30. We note that if there was prior non-notification of merger(s) that led to a change in the control of Africa Web, then that has implications for what one considers to be the relevant counterfactual against which this proposed merger should be assessed. However an alternative counterfactual (as contended for by Caxton) does not alter our ultimate conclusion in this case.

Lincroft Books

31. We shall discuss below the historic notification of the transaction in which Media24 bought 50% of the shares in Natal Witness, and the condition that the Tribunal imposed on the approval of that transaction. That condition was aimed at preventing collusion between Media24 and

[21] See letter from Werksmans Attorneys dated 03 April 2012.
[22] Le Roux's witness statement paragraph 70.

Caxton via Lincroft Books (Pty) Ltd ("Lincroft Books"), a subsidiary of Lexshell. Lincroft Books publishes *Village Talk*, an English, weekly, free community newspaper in the Howick area.[23] We discuss the relevance of Lincroft Books in paragraphs 158 to 160 below.

Proposed transaction

Natal Witness

32. In terms of the concluded *Sale of Shares Agreement*, Lexshell will sell its 50% shareholding in Natal Witness to Media24. The merging parties submitted that this will result in a shift from joint control[24] to sole control by Media24 of Natal Witness since Media24 will post-merger have a 100% shareholding in Natal Witness.[25]

33. The merging parties in their merger filing further indicated that as part of an internal restructuring within Media24, the print business of Natal Witness will then be sold as a going concern to Paarl Coldset.[26]

34. Caxton argued that Media24 currently already exercises *de facto* control of Natal Witness.[27] However even if that was true, and we make no finding in that regard, it does not alter our final decision in this case.

35. The real question is if and how the proposed transaction changes the merged entity's incentives to act anti-competitively after the merger. We explain below why in this case we had to approach the issue of control and a change in post-merger incentives with caution.

36. Le Roux's testimony in relation to the pre- and post-merger control of Natal Witness was unsatisfactory. Le Roux alleged that before the current proposed transaction there was *"... a coincidence and alignment between the Media24 interests and the Lexshell interests with respect to investment in, growth and expansion of the Natal Witness business,*

[23] Commission's record page 209.
[24] According to the merging parties they exercise joint control by virtue of the provisions of a shareholders agreement; see Commission's record page 53.
[25] Commission's record pages 14 and 31.
[26] Commission's record pages 6, 9, 14 and 31; Le Roux's witness statement paragraph 8.
[27] See, for example, Caxton's Heads of Argument, paragraph 29.4.

chiefly through increased printing capacity and the rapid expansion of its community newspaper business"[28] and that "... *Media24 never insisted that the Natal Witness utilise a particular strategy or resource*."[29] He was, however, unable to reconcile this version with what the merging parties had previously told the competition authorities in their 2005 (late) merger filing regarding the first Natal Witness acquisition (see paragraph 158 below). The merging parties then submitted: "*As explained, Media24 purchased a 50% interest in Natal Witness leaving the management control of Natal Witness with the Craib family. The Craib's have continued to make strategic decisions regarding the Natal Witness (vetted by the board of directors) and conduct the day-to-day management of the business. In effect, there is a large measure of separation between the ownership of Natal Witness and the control exercised by the appointed managers. Even when the objectives of management and owners of Natal Witness did not coincide in the past, the decision of the Craib's was respected. For example, the purchase of the new printing press by Natal Witness of a type different to those preferred by Media24, (which decision in addition also caused the loss if a financial benefit of purchasing more than one press from the same supplier), confirms the independence of the Natal Witness management. The competition presented by Natal Witness is thus very much determined by its manager and can be at odds with Media24's strategic plans for whole group*." The latter statement also accords with the provisions of the Natal Witness shareholders agreement, which entitles Craib to appoint the managing director of the company, and provides that Craib and the managing director are responsible for the day-to-day management of Natal Witness.[30] That was clearly also the Tribunal's understanding when it conditionally approved the first Natal Witness acquisition in 2005. This is, however, wholly inconsistent with the version advanced by Le Roux during the hearing. Furthermore, he was unable to offer a credible explanation for this difference.[31]

[28] Le Roux's witness statement paragraph 23.
[29] Le Roux's witness statement paragraph 25.
[30] See Natal Witness shareholders agreement; also see transcript pages 910 and 1007.
[31] Transcript *inter alia* page 1156.

37. We further note that the merging parties did not put up a witness at a level more senior than Le Roux to explain the post-merger strategy in relation to Natal Witness and Africa Web (also see paragraph 39 below).

Africa Web

38. Since Natal Witness currently owns 30% and Media24 directly holds 50% of Africa Web, the proposed transaction will increase Media24's direct shareholding in Africa Web to 80%.

39. Le Roux however could not confirm if post-merger the Africa Web printing operation will form part of Paarl Media (see paragraph 18 above) or if it would to be housed somewhere else in the Media24 group as part of its publishing business. He testified: "*I have no clarity on what that intention is, I would imagine there could be an alignment in order to move that across to Paarl Media in due course, but I've not been involved with those discussions*";[32] *"... there is no clarity and I can't give you any clarity on that*";[33] and "... *the matter has been really left up in the air to see what the final recommendations of the Tribunal will be*."[34] He however later stated: "*I am not sure how Africa Web, which is a printing company, would stay with the publishing operations*."[35] We note that no factual witness was put up by the merging parties who could clarify this issue.

Rationale for proposed transaction

40. Media24's stated rationale for the proposed deal is that it would like to bring Natal Witness more fully into its structures and streamline its business by having its coldset print businesses within one firm.[36]

41. The Craib family which controls Lexshell indicated that they wished to realise their investment in Natal Witness, after many years as there were no successors in the next generation to continue with a role in the business.

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[32] Transcript pages 914 and 915.
[33] Transcript page 917.
[34] Transcript page 918.
[35] Transcript pages 912 to 914.
[36] Record page 32.

Competition analysis

Overlap in activities

42. From the above description of the activities of the merging parties and the proposed transaction, it is evident that the proposed merger combines Media24's control of the Africa Web printing operations with the ownership of the Natal Witness newspaper publishing business.

43. As is evident from paragraphs 22 and 23 above, Natal Witness itself publishes and distributes community newspapers primarily in the Pietermaritzburg and surrounding areas, whilst certain subsidiaries of Natal Witness publish a number of community newspapers in the rest of the KwaZulu-Natal province. Media24 publishes certain paid-for newspapers that have some circulation in the Pietermaritzburg area, but does not currently publish any community newspapers in the KwaZulu-Natal region.[37] In regard to printing, other than Media24's current 50% interest in Natal Witness its only other interest in coldset printing operations in KwaZulu-Natal is in Africa Web.

44. The proposed merger therefore has a vertical dimension since Natal Witness is active in the market for community newspaper publishing and the merged entity will have control of Natal Witness and Africa Web's coldset printing operations.

Relevant markets

45. The Commission and the merging parties were largely in agreement regarding the delineation of the relevant product and geographic markets affected by the proposed transaction. The merging parties in their Heads of Argument[38] identified these markets as:

(i) the market for the coldset printing of community newspapers in KwaZulu-Natal and the Northern Eastern Cape[39]; and

[37] Record page 38.
[38] See paragraph 26 of the merging parties' Heads of Argument.
[39] See Commission's economic analysis paragraphs 102 to 128.

(ii) the market for community newspaper publishing[40] in KwaZulu-Natal and the Northern Eastern Cape. The merging parties stated that in regard to its geographic scope this market may be analysed either on a province-wide basis or by reference to localised markets for community newspapers in KwaZulu-Natal and the Northern Eastern Cape.

46. Although the market delineation largely is common cause, we describe these markets in brief below to give context to the assessment of the competition and public interest issues.

Coldset printing of community newspapers

47. In regard to the printing market, the merging parties in their merger filing indicated that when considering their activities one should have regard to their printing of newspapers and of high volume commercial/retail inserts and pamphlets. Inserts refer to advertisements of the large supermarkets and other large retailers who publish weekly specials in stand-alone pamphlets that are then manually inserted into *inter alia* community newspapers (hence their name in the trade, "inserts"). As already indicated, the technical term used for this type of printing is coldset printing.[41]

48. It is common cause that coldset and heatset printing constitute two separate relevant product markets and that coldset printing is an essential input in the publication of community newspapers. The merging parties indicated that the printing techniques other than coldset are not as cost effective for the printing of newspapers and of high volume commercial/retail inserts and pamphlets. They further indicated that newspaper print runs generally constitute approximately [80-100]% of the business of coldset print operations with the remainder being retail inserts.[42]

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[40] See Genesis Report paragraph 52.
[41] Commission's record pages 33 and 34.
[42] Commission's record page 41. Also see the Commission's economic analysis, paragraphs 107 to 109 and 118 to 122.

49. From the perspective of printing customers who publish community newspapers, it is evident that the time of printing, the quality of the printing and the service provided are all crucial competition factors. We elaborate on this below. The Commission's evidence was further that the coldset printers are able to alter prices based on these characteristics.

50. The time slots when community newspapers generally must be printed, depending on when a specific community newspaper needs to be distributed and delivered to its reading customers, are termed the "golden hours" indicating the time-sensitive hours on a printing press. The existence of these golden hours is common cause, although there was some dispute between the merging parties and Caxton as to the exact parameters thereof. The important issue to note from a competition perspective is that these golden hours in practice limit the printing capacity that is available to community newspapers.

51. In regard to the geographic dimensions of the market for coldset printing the merging parties indicated that the printing of newspapers is highly time sensitive and that for this reason it is neither economic nor practical to print a newspaper or its inserts a far distance from its distribution area. For instance, all Media24's national newspapers distributed in the Pietermaritzburg/Durban area are printed by Natal Witness in Pietermaritzburg and not at the nearest Paarl Coldset operation in Johannesburg. The merging parties therefore concluded that Natal Witness and Paarl Coldset operate in different relevant geographic markets.[43]

Community newspaper publishing

52. In regard to the differentiation of offerings in the publishing market the merging parties in their merger filing indicated that international and South African case precedent suggests that newspaper publishing markets should be defined narrowly for competition purposes, depending on a number of key characteristics including frequency, language, target

[43] Commission's record page 41.

market, whether it is a free or paid-for newspaper, region and content. The merging parties furthermore submitted that this is in line with the way in which the newspaper industry views the markets.[44] The merging parties concluded that in respect of the newspaper publishing market no horizontal competition issues arise from this transaction since the regional Natal Witness publications do not compete to any significant extent with the national Media24 publications circulated in the KwaZulu-Natal region and which target different demographics.[45]

53. We conclude that elements such as language, income group targeted, day of publication and whether the title is paid-for or free all influence the degree of substitutability within the community newspaper publishing market. In Roberts' words: "*So, we have geography, we have language, we will have content issues and ... competition is multidimensional*."[46]

54. It is common cause between the expert witnesses that the community newspaper publishing market is a so-called "two-sided" market since the customers in this market include the readers of the community newspapers, on the one hand, and the advertisers in these papers, on the other hand. The Commission concluded that the relevant product markets are the markets for reading and advertising in community newspapers;[47] and Hodge confirmed that the relevant publishing market is the two-sided market for community newspapers in KwaZulu-Natal.[48]

55. With regard to the advertising side of this market there is a spectrum of advertisers in community newspapers and competition for advertisers happens across that spectrum. Although advertising is commonly also placed by local government, the primary advertising clients are various categories of retailers at a national, regional and local level.[49] The national advertisers include the large supermarket chains, financial

[44] Commission's record pages 34 to 36.
[45] Commission's record page 40.
[46] Transcript page 1771.
[47] Commission's economic analysis paragraphs 82 to 101.
[48] See Genesis Report paragraph 75.
[49] Genesis Report paragraph 55.

institutions and cell phone companies, for example Shoprite Checkers, Pick ‘n Pay and MTN. Smaller commercial concerns, for example regional supermarkets and local restaurants, hardware stores, car retailers and the like also advertise in community newspapers.

56. Le Roux confirmed that when Natal Witness expanded in KwaZulu-Natal it targeted areas with “*economically active consumers who are the target markets for advertisers (both local business and national brands). Public sector advertising expenditure was also likely in these areas*.”[50] In relation to public sector advertising he however stated that “*[t]he budget available for this [Government] advertising has, however, reduced and had consequences such as disrupting the frequency of publication*.”[51] He further confirmed “*[o]f course, national brands also advertise in community newspapers and attracting these advertisers is a goal of any community newspaper publisher*.”[52]

57. Although the majority of community newspapers in KwaZulu-Natal are free,[53] they still compete to attract both readers and advertisers. The evidence confirmed that from the publishers’ perspective competition for readers comes first since they cannot attract advertisers if they do not have a readership base. In Le Roux’s words: “*It is the size of this loyal readership that is attractive to advertisers, and publishers sell reliable access to this group of consumers to advertisers*.”[54]

58. The packaging of national advertising is usually done through advertising agencies such as CAPRO (which serves the small independent community newspapers), NAB (which is affiliated with Caxton), Ads24 (which is affiliated with Media24) and INC (which serves the Independent). Media buyers looking to use community newspapers in their national campaigns generally approached these agencies. The evidence however was that CAPRO is of limited value to the small

[50] Le Roux’s witness statement paragraph 28.
[51] Le Roux’s witness statement paragraph 40.
[52] Le Roux’s witness statement paragraph 39.
[53] Genesis Report paragraph 54.
[54] Le Roux’s witness statement paragraph 36.

independent community newspaper publishers: Mxabo confirmed that *Pondo News* gets national advertising through CAPRO but stated that "*[i]t's not enough*"[55] and that his business "*... cannot rely on Capro for survival ... .*"[56] Orsmond testified that "*CAPRO has a rule that they do not represent any other newspaper that conflicts geographically.*"[57] In relation to the *South Coast Fever* Orsmond further stated: "*... although the South Coast Fever was a member of CAPRO ..., the South Coast Fever could not secure any national advertising since these advertisers remained loyal to the Caxton titles already covering the Port Shepstone area*."[58]

59. The MDDA provides non-financial and limited financial support to small community newspaper publishers. Whilst the MDDA plays a very important role in promoting entry by smaller players, consumer choice and media diversity, it has a limited annual budget[59] and therefore nationally can only assist a limited number of community newspapers. Mtimde testified that MDDA "*funding would be for a specified period which would range from 12 months to 36 months ... because we encourage projects to not be dependent on us forever, but rather our support is intended to start up ... and grow them so that they can then on their own sustain themselves*"[60]; and that the MDDA is not a "*long term safety net*"[61] and supports small entrepreneurs "*on the basis that they can sustain themselves in future without on-going support*."[62] He further confirmed that the MDDA has "*... negotiated discounts with Rising Sun, with Paarl Media ...*"[63] and that the MDDA "*prioritise[s] indigenous languages*."[64] We note that Naspers and the Media24 group are amongst the current financial supporters of the MDDA and emphasise the importance of

[55] Transcript pages 133 and 134.
[56] See paragraph 3 of Mxabo's witness statement under the heading "Advertising".
[57] Transcript page 1401.
[58] Orsmond's Witness statement paragraph 4.3.
[59] See Mtimde's evidence, transcript page 163. Also see paragraph 26 of Mtimde's witness statement.
[60] Transcript page 163.
[61] Transcript page 164.
[62] Mtimde's witness statement paragraph 12.
[63] Transcript page 169.
[64] Transcript page 163. Also see paragraph 15 of Mtimde's witness statement.

continued and increased funding for the MDDA and support for small participants in the community newspaper publishing market.

60. In regard to geographic scope, Hodge confirmed that community newspapers service a specific geographic community such as a town, region or even a suburb. As a result of this localized distribution their content differs from regional and national newspapers. As such, they usually attract advertisers seeking to target that localized market.[65] The Commission concluded that the geographic scope of the publishing market is confined to the local areas where the community newspapers are distributed.

Competition and public interest analysis

61. The theory of harm in this case concerns whether the merged entity will have the incentive and ability post-merger to foreclose other community newspaper publishers particularly through its control of the printing firm Africa Web. From a customer perspective the potential concerns in this case therefore centre on the impact of the proposed merger on the small independent community newspaper publishers, and in particular the importance of them being able to obtain competitive print alternatives to get their publications to the market at a particular time.

62. In this case, it is crucial whether real alternatives to Africa Web will exist post-merger to which small printing customers can switch their community newspaper printing. The merging parties' counsel emphasised this aspect by quoting the following passages from Motta's book[66]: "*The analysis of productive capacities is also very important. The ability to raise prices by any given firm is limited by the existence of rivals, to which consumers can switch*"; "*[i]t is therefore crucial that such rivals be effectively competitive and may be able to satisfy the possible additional demand*"[67]; and "*[t]herefore other things being equal the larger the unused*

[65] Genesis Report paragraph 53.
[66] Massimo Motta, *Competition Policy: Theory and Practice,* Cambridge University Press, 2004, page 236.
[67] Transcript page 1708.

capacity of rivals, the less likely it is that merging firms will exercise market power."[68] Roberts agreed that printing capacity is a central issue in this case but added the proviso that "*when you go to the customers the buyers, you have got [to] look [at] what's [on] offer for them*" in terms of the community newspaper slots.[69] We have explained these golden hour time slots in paragraph 50 above and we shall below elaborate on the evidence in this regard.

63. An important feature of the analysis of this case is that the publishing businesses that the merged entity could potentially foreclose post-merger are typically small businesses which, furthermore, often are also black owned. Section 12A(3) of the Act provides that "*[w]hen determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on— ...*

(c) the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive; ... ."

64. The Commission's assessment was that many of the small independent community newspaper businesses active in the local markets met the criteria of a *small business* as defined in the Act and/or of *firms controlled or owned by historically disadvantaged persons*.[70] This view was echoed in Mtimde's evidence: *"[w]e should be small publishers in terms of the SMME Act*."[71] This aspect was not disputed by the merging parties.

65. It is further common cause that there are a number of small community newspaper publishers in KwaZulu-Natal and the Northern Eastern Cape that require coldset printing services. It is precisely the ability of these current (and potential future) small independent community newspaper publishers to become competitive in the community newspaper publishing market and remain so that is at stake.

[68] Transcript page 1709.
[69] Transcript page 1708.
[70] Commission's expert report paragraph 277.
[71] Transcript page 156.

66. We conclude that the current (as well as potential future) small independent community newspaper publishers in KwaZulu-Natal and the Northern Eastern Cape using coldset printing services clearly meet the requirements of Section 12A(3)(c) of the Act, either as *small businesses* or *firms controlled or owned by historically disadvantaged* or as both of these.

67. There is, however, in this case no need for us to take a definitive view on whether or not the issue of media diversity falls within the ambit of the public interest provisions of the Act. In this case, if one addresses the issue of effects on *small businesses*, then one also addresses the issue of media diversity since it is precisely these small publishers that provide such diversity. Furthermore, the issues of whether or not the proposed merger is likely to affect the choices available to final customers, i.e. community newspaper readers, as well as the quality of the community newspaper offerings, for example the content of newspapers, in any event fall squarely within the category of legitimate antitrust issues in merger control.

68. It is against this background that we shall analyse the likely effects of this proposed merger. We shall first describe the characteristics and dynamics of the community newspaper publishing market in which these small businesses operate, before describing their need for reliable and affordable printing services and determining the printers that from a customer perspective are real post-merger alternatives.

Community newspaper publishing

69. The players in the community newspaper publishing market in KwaZulu-Natal and the Northern Eastern Cape include Natal Witness, Caxton, Tabloid Media, Rising Sun (of which the publishing business is part-owned by Caxton but not the printing business[72]) and Capital Media (part-owned by Caxton).

[72] Transcript page 1643.

70. Natal Witness and its subsidiaries have 24 community newspapers in this area including the *Mirror* and *Echo*. Caxton has a total of 40 newspapers in KwaZulu-Natal. Tabloid Media, an independent group, publishes 13 newspapers in KwaZulu-Natal.[73] Rising Sun comprises of five newspapers.[74] Capital Media Group owns five[75] newspapers that are distributed in the Pietermaritzburg region.[76] In addition to the community newspapers owned or affiliated with the larger media companies, KwaZulu-Natal has several independent (generally single-title) publishers that have launched community newspapers with varying levels of success. As noted above, the focus of the Commission's concern and Caxton's reason for intervention are these independent community newspaper publishers.

71. Stillman estimated that these small independent publishers collectively constitute approximately 6% of the total community newspapers in circulation in the region,[77] while the merging parties found that they collectively could constitute 15% of the publishing market by including those publications that appear sporadically and infrequently on the print schedules produced.[78] These figures illustrate the small size of the individual small players compared to the larger groups.

72. Based on their relative sizes and market positions, the merging parties argued that these single-title independent community newspapers offer attenuated competition to the groups publishing multiple titles.[79] We discuss below why these small players are significant both from an actual and potential competition perspective.

73. Le Roux initially testified that he considered the independent players to be successful niche players but that he did not encounter them

[73] It is especially strong in and around the Durban area with a number of free sheets serving the Indian community.
[74] Distributed in the greater Durban area, predominantly serving the Indian community.
[75] *Public Eye*, *Maritzburg Sun*, *Eyethu Intshonalanga*, *Eyethu Umla*zi and *Edendale Eyethu*.
[76] Genesis Report paragraph 62. Record page 38.
[77] CRA Stillman Report, Table1.
[78] Genesis Report, Table 7 and paragraph 63.
[79] Merging parties' Heads of Argument, paragraph 44.

as competitors.[80] He, however, later conceded that he would consider certain weekly independent publications to be competitors. He stated that the market that he knows best is the Maritzburg/Midlands area and that two independent community newspapers circulate in that area, namely the *Kokstad Advertiser* and *Pondo News*. Le Roux stated "*The Kokstad Advertiser I would always have considered perhaps, because it's weekly, it would have been a competitor to certainly products that the Fever Group has down there ... .*"[81] He further testified that if *Pondo News* was a weekly publication with circulation of 10 000 copies per week (which it is) then he would indeed consider *Pondo News* a competitor.[82] Orsmond also confirmed that *Pondo News* is a competitor in this geographic area. With certain corrections to his witness statement he testified that "*The Kokstad Advertiser was the main competitor of the East Griqualand Kei Herald*[83] *at the time. In addition, however, the East Griqualand Kei Herald also competed (and continues to compete) with Caxton's South Coast Herald ... and Pondo News*."[84]

74. We note that from a readership and local community perspective the independent community newspapers are significant. For example, both *Pondo News* and the *Kokstad Advertiser* have circulations of 10 000 copies per week[85] and Pondo News competes for the same readers and advertisers as the *East Griqualand Fever* which has a circulation of approximately 15 000 copies per week.

75. Orsmond further stated "*[i]n addition to the South Coast Fever, other independent community newspapers in KZN did compete with these Caxton titles, such as the Kokstad Advertiser (independently-owned), Ladysmith Herald and Newcastle Express (owned by the Tabloid Media Group). In addition, at the same time Natal Witness was strong in its home*

[80] Transcript pages 1204 and 1205.
[81] Transcript page 1206.
[82] Transcript page 1207.
[83] Now the *East Griqualand Fever*. In 2003 EG Herald CC (a close corporation of which Orsmond was the sole member), launched the *East Griqualand Kei Herald*, a free weekly community newspaper which was distributed in Kokstad, Matatiele, Lusikisiki and Flagstaff.
[84] Orsmond's witness statement paragraph 2.11; transcript page 1277.
[85] Transcript pages 1216 and 1591.

base in Pietermaritzburg with its daily paid for Witness and its community Mirror and Echo publications, but was increasingly surrounded by competitors for advertising revenues and readers in the Pietermaritzburg market."[86]

76. Furthermore, Masinga from the *Maputaland Mirror* testified that he competed with the *Zululand Fever* for a number of local customers in Richards Bay which he lost to the *Zululand Fever*. Orsmond did not contradict this evidence.[87]

77. In relation to the Pietermaritzburg area Le Roux's evidence in chief that he did not regard the *Maritzburg Views* and *Galaxy*, both independent community newspapers, to be competitors was contradicted by the merging parties' own strategic documents. The Natal Witness Business Plan for 2011/12 clearly records that these two publications form part of the main opposition for the Natal Witness publication, the *Mirror*, in the Pietermaritzburg area.[88]

78. Furthermore there is clear evidence that advertising customers have benefited from increased competition through new entry in the local areas. Le Roux confirmed that "*[t]he expansion of the community newspapers published and printed by the Natal Witness enhanced competition and media diversity in KwaZulu-Natal*."[89] He also stated that the aggressive entry of Capital Newspapers' three newspapers into the Pietermaritzburg market "... *drove down margins within the Natal Witness' home base as the Natal Witness had to meet these prices in the market. This has clearly been good for advertising customers. Not only have they received reduced pricing but also an alternative avenue through which to reach their desired consumers*."[90] In relation to the launch of the *South Coast Fever* in competition with Caxton's publications Orsmond stated: "*Tellingly, advertisers advised me that Caxton was prepared to cut its*

[86] Orsmond's witness statement paragraph 3.4.
[87] Transcript pages 1520 and 1521.
[88] Record page 1494; transcript page 1218.
[89] Le Roux's witness statement paragraph 26.3.
[90] Le Roux's witness statement paragraph 29.

advertising rates by as much as 50% to retain advertising, confirming the large margins it had previously been earning without an effective competitor in the market."[91]

79. The evidence furthermore clearly shows that the locally focused small community newspapers contribute significantly to the choices of offering available to reading customers and the servicing of their needs, in particular in niche areas, for example local indigenous language communities, which may otherwise not be served. The evidence has specifically shown language to be an important distinguishing characteristic in that the targeting of readers by indigenous African languages is an important dynamic. The merging parties conceded that the language of a publication will clearly exclude readers that do not speak the language making substitution impossible for such a group of consumers and that more generally language will be an important determinant of the purchase and consumption decision.[92]

80. Mtimde's evidence was that small community newspapers tend to be closer to the community which means that they are more responsive to their readers. Mtimde cited as an example the fact that that many of these newspapers are published in indigenous languages and often include editorial content in several of these languages, whereas the titles operated by the major media groups tend to be published in English, possibly with a small amount of content in one indigenous language.[93] He stated that most small publishers *"... produce their media in the languages spoken in those areas they are operating, whether it's Tshivenda in Limpopo or Xhosa, Zulu elsewhere ... .*"[94]

81. Of particular importance is that in regard to the growth of indigenous language community newspapers, the undisputed evidence is that the smaller independent players have led the way. Orsmond had to

[91] Orsmond's witness statement paragraph 4.6.
[92] Commission's record page 35.
[93] Mtimde's witness statement paragraph 37.
[94] Transcript page 156.

concede that in relation to circulating community newspapers in Black languages *"[i]n most areas the independents are the pioneers*."[95]

82. Masinga's *Maputaland Mirror* is a telling example of a pioneering publication that publishes in a number of indigenous languages. Masinga testified that the *Maputaland Mirror* "*... concentrates largely on indigenous languages which are IsiZulu, [Xishonga], Tshironga (sic), SiSwati and some English*" and that to his knowledge it is the only publication in the area in which he distributes which has those qualities.[96]

83. Furthermore, the introduction of Xhosa publications in the Northern Eastern Cape area was started and perpetuated by the independent publishers and the *Fever* publications are followers. For example, *Pondo News* has for many years circulated primarily in Xhosa with some English content and the Natal Witness Group is only planning a Xhosa publication in the Eastern Cape and KwaZulu-Natal in 2011/2012.[97]

84. Mtimde further testified "*I don't think there will be a doubt on this fact. I think it is a fact that even prior to our democracy in 1994 community media led this agenda and post 1994 it is again community media and small commercial media that increasingly produced media in the indigenous languages. Yes, the mainstream groups [are] taking a cue from success stories like Isolezwe owned by the Independent Newspapers and others, including the success stories in the community and small commercial media, is increasingly following the trend*."[98]

85. Jacobs highlighted the importance of the black township market to retailer advertisers and explained that when he launched the *Edendale Eyethu* in the Pietermaritzburg region he identified a need to service the local township: "*[w]e then looked at the market and we said, look, Maritzburg, the one key area that we need to move into would be the black township market, because we believed that we will have an impact*

[95] Transcript page 1552.
[96] Transcript page 55.
[97] Transcript pages 1548 to 1551.
[98] Transcript page 175.

there and in terms of what we publish will resonate to that community. There was also the business aspect, because a lot of the independent retailers that again went to target advertised (sic) in the black retail market."[99]

86. We need to stress, however, that from a competition perspective these small independent publishers are important not only in the sense that they are currently actual competitors but also that they are potential larger and more effective competitors in future. It is precisely these small players who represent potential future effective competition to the merging parties and thus, from a competition perspective, a future threat to the merging parties. The concerns in this case therefore are not limited to the current independent community newspaper publishers but extend to the ability of potential new publishers to enter successfully and operate sustainably in the market, with particular reference to their ability to secure affordable, high-quality printing services at appropriate times. We agree with Roberts' conclusion that *"... the independents are a very, very important source of rivalry and dynamism in these markets and it's very important therefore to understand their competitive relevance in that sense going forward and over time ... ."*[100]

87. We conclude that there are a number of examples of small independent publishers at different points over time being effective competitors in the local community newspaper publishing markets. Furthermore, the evidence supports a finding that the small independent publishers play an important role in a growing community newspaper space, offering readers real benefits such as increased product choice and diversity in content.

88. We next shall discuss the barriers faced by new entrants in the community newspaper publishing market.

[99] Transcript page 414.
[100] Transcript page 1599.

89. The merging parties conceded that new entrants in the community newspaper publishing market "*... expect to incur losses for a number of years before breaking even*."[101] For example, Orsmond stated "*The South Coast Fever business ran at a loss for many years*."[102] Although that in itself is not necessarily a significant barrier since new businesses often initially incur financial losses, the environment in which a small entrant competes could be a significant barrier, as discussed below.

90. The merging parties also conceded that new entrants in the community newspaper publishing market "*..., whether independent or part of a multi-title stable of publications, must engage in aggressive price competition in order to establish its credibility and value to advertisers. This includes providing advertising at low rates or even free as a trial in a new publication*."[103]

91. Jacobs explained that when he launched the *Public Eye* in 1999, he had problems with meeting the advertising rates of competitors and sustaining the paper *"..., but by 2002, 2003 clearly you could see that we weren't going to be able to sustain the newspaper. We just couldn't match the advertising rates that were being offered by the market. Clearly the advertisers that we had thought would support us had come under pressure ...* ."[104]

92. Mtimde also testified about the difficulties facing independent community newspapers and said that the major factors that constrain small community newspaper publishers, and ultimately affect their viability, are printing, distribution and access to advertising. With regard to the ability to compete effectively, he stated that the ability to attract advertising is critical to the survival of the small community newspapers and that for many publications it takes up to five years of investing in the business to build sufficient credibility and readership to attract advertisers.[105] With

[101] Merging parties' Heads of Argument, paragraph 49.
[102] Orsmond's witness statement paragraph 4.7.
[103] Merging parties' Heads of Argument, paragraph 49.
[104] Transcript pages 408 and 409.
[105] Mtimde's witness statement paragraph 32.

regard to printing he stated that there are questions of both quality and timing.[106]

93. Timing is crucial to advertisers who want their adverts to be seen by as many potential customers as possible.[107] This relates directly to the need to print timeously, but also to the barrier faced by small publishers to demonstrate to their advertising customers their ability to deliver publications ahead of targeted prime shopping times. The timing of printing is dictated by the demands of the publishers' advertising customers since they often specifically want to target the week-end shoppers. Advertisers demand that publications must be out in circulation in time for those shoppers, ideally this would be as late in the week as possible but certainly before the weekend. For commercial reasons these retail advertisers hold back their decisions around specials as long as possible since they want to wait until the last minute before they decide what particular discounts to give. Roberts explained that "*... an advertiser in, certainly like ... local supermarket[s] are in almost like local price wars and they are announcing discounts very late*."[108] This was echoed in Le Roux's testimony: *"... most of the small retailers hold their advertising back as late as possible, because they are concerned that their prices leak and their specials are matched by their competitors*."[109]

94. Orsmond and Jacobs also spoke to the difficulties faced by them when they first entered the publishing market. These barriers include the need to build up a reputation and a readership base in order to convince advertisers that you can effectively reach a specific group of consumers. Orsmond was absolutely clear that when Natal Witness expanded into the community newspaper market it had to overcome a number of challenges in order to be an effective competitor. He stated "*... I chose to use the Media24 brand prominently since the key to its success was overcoming advertisers' reluctance to test a new community newspaper against its Caxton competitor ... I believed that the Media24 brand was recognizable*

[106] Transcript pages 218 and 219.
[107] See, for example, Masinga's witness statement paragraph 19.
[108] Transcript page 1735.
[109] Transcript page 823.

to advertisers and stood for reliability and sustainability ... A publication with those characteristics should attract advertisers since it should be able to establish readership, publish on time and be effectively distributed"[110]; and "*I used this indirect relationship with Media24 when launching titles in the hope that this would establish credibility in the mind of a potential advertiser. Knowing that a new publication was not small and independent should translate into a level of trust that it will publish regularly, frequently and at an acceptable print quality*."[111] Brand recognition is a hurdle which Mtimde also highlighted when he stated that "*advertisers naturally gravitate to a national name*."[112]

95. Orsmond further stated "*[i]nitially, South Coast Fever struggled to attract advertising and find suitable outlets to sell their paper. It faced immediate competition from Caxton, which used various strategies to prevent its acceptance by advertisers and readers. As a result, the South Coast Fever struggled to get the circulation sales ...";*[113] and "*[a]s an independent community newspaper publisher, it was difficult to compete with large media groups such as Caxton*."[114]

96. With regard to bundling practices in community newspaper publishing Hodge confirmed that the packaging and discounting of advertising is a common feature. He stated that "*[t]his is a common practice across the larger media groups, particularly those with affiliated agencies. For example, Stillman notes that bundling is pervasive and that both Caxton and Media24 bundle advertising*."[115]

97. We acknowledge that there may be efficiencies in offering advertising together as bundles and that bundling therefore is not necessarily in and of itself anti-competitive. This practice may however be exploited to undermine competition. Roberts gave the following example of this: the larger publishers that are able to offer bundled products can

[110] Orsmond's witness statement paragraph 6.6.
[111] Orsmond's witness statement paragraph 12.4.2.
[112] Mtimde's witness statement paragraph 35.
[113] Orsmond's witness statement paragraph 2.6.
[114] Orsmond's witness statement paragraph 6.1.
[115] Genesis Report paragraph 56.

structure their pricing in such a way that they "*make an offer in the contestable area or target the particular competitor potentially where the ... independent is not able to meet that. And there may be an as efficient operator in that area, they may have a good readership base, they may be investing in that readership base, they may have a high quality newspaper, but they will not be able to offer the same pricing on that component of what is the bundle for the bigger paper*."[116]

98. Orsmond gave the following practical example of how Caxton allegedly strategically responded to the entry of the *South Coast Fever*: "*Caxton entered into agreements with advertisers in terms of which the latter agreed to spend 95% of their advertising expenditure with Caxton's South Coast Herald to the exclusion of other regional newspaper (of which the South Coast Fever was the most obvious alternative for these advertisers). In return, advertisers were given a discount by Caxton. However, if they were found to have spent more than 5% with another title, their entire advertising expenditure with Caxton would then be backdated at a higher rate, removing the discount*."[117] Orsmond further stated that in Zululand Caxton has a "country" business model in terms of which "*Caxton usually publishes a paid for paper which covers a region and which is usually published twice a week. This is coupled with free sheets, or free community newspapers, targeted at the smaller surrounding towns, and advertising in these publications is all bundled together for sale to advertisers in advertising packages. The free sheets would carry some of the same advertising that appeared in the regional newspaper in these bundled offers*."[118]

99. Mtimde explained that "*[i]n [the MDDA's] recent survey, most respondents felt that the major media owners bundle their offering to advertisers, making competition with them much more difficult for small*

[116] Transcript pages 1597 and 1598.
[117] Orsmond's witness statement paragraph 4.2.
[118] Orsmond's witness statement paragraph 7.2.

commercial publishers with only one title. On occasion it may even be that advertisers effectively get free adverts."[119]

100. In relation to Natal Witness Orsmond further confirmed that sales representatives "*have authority to secure advertising customers by offering deals such as two-for-the-price-of-one ... .*"[120]

101. We conclude that new entrants in the community newspaper publishing market seeking to attract readers and to effectively sell to advertisers face significant barriers to being effective participants. These barriers include the need to establish a readership base, build credibility with advertisers and establish a recognisable brand. Furthermore, the manner in which the industry is structured and its established practice of bundling make it very difficult for current and future small businesses to effectively compete in this space.

Coldset printing of community newspapers

102. The extent of the debate before the Tribunal with regard to the printing market largely centred around the question of identifying the printing market participants that post-merger would be real alternatives for a community newspaper publisher in KwaZulu-Natal and the Northern Eastern Cape. This debate included the question of which printers should be included in the market given *inter alia* (i) the nature and suitability of the various presses for community newspaper printing and ultimately the pricing of the print work; and (ii) for the vertically integrated printers the capacity available for the printing of independent third parties' titles after in-house publications are printed. The issue that we thus had to assess was which printing presses are real alternatives to a small independent community newspaper publisher requiring secure and affordable printing services in the post-merger world.

103. It is common cause that the following players engage in coldset printing in KwaZulu-Natal: (i) Africa Web; (ii) Natal Witness; (iii) Guardian

[119] Mtimde's witness statement paragraph 33.
[120] Orsmond's witness statement paragraph 10.6.

Web; (iv) Rising Sun; (v) Caxton, at three separate presses namely Highway Printers ("Highway"), Darwain Printers[121] ("Darwain") and Newcastle; and (vi) the Independent.

104. Past entry in the KwaZulu-Natal coldset printing market has primarily occurred through the backward integration of publishers based on their own printing needs. This explains the entry of Africa Web, Rising Sun and Guardian Web into the market.

105. The fact that a very significant portion of the cost of producing community newspapers is directly attributed to printing costs was not in dispute. Mtimde, based on research conducted by the MDDA, put this figure at 50% to 60% of total production costs.[122] Orsmond estimated printing costs to represent 30% to 40% of the running costs of a community newspaper and added that "*as a result, it can take years before a title becomes commercially viable through advertising sales*."[123] Mxabo stated that *"[t]he biggest challenge for Pondo News is printing*"[124] and Mtimde in relation to a survey conducted by the MDDA stated that "*all respondents classed the quality, affordability and day of printing as important, very important or critical*."[125]

106. A further issue that is common cause is that the reliability of printing is crucial. Le Roux stated "*... both newspaper and commercial insert customers require absolute dependability and reliability from their printers*."[126] Masinga also confirmed that reliability is very important to advertisers.[127]

107. It is further common cause that the vertically integrated printers will ordinarily prioritise the printing of their own newspapers.

[121] Caxton has a 60% shareholding in Darwain Printers (Pty) Ltd; the rest of the shares are held by the Anthony Family Trust. See Jenkins' witness statement paragraph 18.
[122] Mtimde's witness statement paragraph 23.
[123] Orsmond's witness statement paragraph 9.1.
[124] Mxabo's witness statement, paragraph numbered as 8 under the heading "Challenges".
[125] Mtimde's witness statement paragraph 24.
[126] Le Roux's witness statement paragraph 59.9.
[127] Masinga's witness statement paragraph 10.

108. Self-evidently there would be degrees of printing flexibility between daily, weekly, bi-monthly and monthly publications. However we note that from a competition perspective we are concerned with the publishing and printing of weekly community newspapers. The evidence was that there is an evolution from moving from a monthly paper targeted at month-end shopping, towards a fortnightly paper, towards a weekly paper and also an evolution in the market in growing towards having more than one paper by expanding to different geographic areas. Relevant to the competition assessment is that these community papers, if not already weekly, aspire to be weekly publications to attract the large retail advertisers. The smaller publishers' newspapers are growing, moving into different geographic areas and post-merger real printing alternatives are very important to the very ability to do that.

109. With regard to differentiation in the printing market the Commission, the merging parties[128] and Caxton all agreed that the market is significantly differentiated, but they disagreed regarding the extent of this. We summarise these positions below.

110. Roberts argued that from a customer perspective the community newspaper printing market is differentiated to the extent that it includes only three players namely Africa Web, Rising Sun and Guardian Web. Hodge was in substantial agreement with Roberts, but was of the view that Caxton's three presses should be included in the market. Stillman sought to exclude Caxton from the relevant market on the basis that its business strategy was to satisfy its own demand, but sought to include Natal Witness.[129]

[128] Genesis Report paragraph 35.

[129] We do not deal with Stillman's theory in any detail in these reasons, except to note that his highly speculative and complex enquiry urged on the Tribunal failed to be based on compelling evidence. Stillman would have the Tribunal postulate competition concerns in a "bidding market" for coldset printing of community newspapers in KwaZulu-Natal in which the players (including Natal Witness) and outcomes vary in a seemingly endless range of possible outcomes. See transcript pages 1868 and 1869, 1964 and 2022 to 2024.

111. Before we deal with the issue of post-merger alternative printing service providers, we first provide further background to this market from a customer perspective.

112. The factual witnesses were clear on the score that when it comes to selecting a printing service provider three issues are critical and may to some extent be traded-off against each other namely (i) the price of the printing; (ii) the quality of the printing; and (iii) the service provided *inter alia* secure and timely printing to meet publishers' distribution and delivery deadlines.

113. Mtimde explained that small "*newspapers face a number of market challenges when it comes to accessing printing facilities with favourable printing slots, affordable printing prices, distribution networks and access to advertising income*."[130] He further made it clear that price is not the only competitive parameter: "*[u]nfortunately even in light of successful negotiations for lower printing rates with some printing companies, these "successful" negotiations are often insufficient given the severity of the constraint. This is because small commercial newspapers generally still do not have affordable alternatives to go to should print quality or service deteriorate, and this gives them little bargaining power with the printer they use*."[131] Mtimde further stated that the MDDA had received complaints from small community newspapers complaining of poor printing quality and high printing costs.[132] Masinga also explained how competitors can be potentially foreclosed by means of a reduction in print quality and delays: "*... if the quality of pictures printed is bad, advertisers will not continue to use my publication. Similarly, if the newspaper is not distributed on time, then advertisers will stop trusting the reliability of Maputaland Mirror and may take their business elsewhere. Timing is crucial to advertisers who want their advert to be seen by as many potential customers as possible*."[133] Mxabo stated that "*challenges faced in printing quality also*

[130] Mtimde's witness statement paragraph 19.
[131] Mtimde's witness statement paragraph 25.
[132] Mtimde's witness statement paragraph 28.
[133] Masinga's witness statement paragraph 19.

affect revenue generated from advertising"[134] and Orsmond confirmed that "*... a new community newspaper faces significant operational challenges to become sufficiently reliable to secure advertising revenue on a consistent basis*."[135]

114. The above implies that it is not simply access that is important, but that access to favourable, secure and affordable printing slots is crucial. As explained in paragraph 93 above community newspaper publishers, from an advertising revenue perspective, are concerned not only with delivering up to date news to readers, but also timely advertising decisions to consumers. A print customer further requires the guarantee of security of supply and quality of print throughout the year including at certain peaks, for example at Christmas and Easter, when advertising expenditure and thus print pagination increase significantly. Bottlenecks at peak times are therefore a critical factor for a printer to consider when deciding whether or not to take on the printing work of a new independent weekly community newspaper title given the customer's need for security of supply at all times - including peak times. From the printing customers' perspective it is thus not relevant if a particular printing press has capacity on an *ad hoc* basis at certain times, for example less busy months or days of the year. A vertically integrated printer would therefore consider how its own publications are expected to grow in size and at peak times before allocating capacity to a new independent title.

115. The merging parties argued that printers have relatively high fixed capital costs with the result that these firms require a minimum base load (to cover these and reduce their average fixed costs) and that any incremental printer utilisation for third party customers contributes directly to the bottom line. They argued that for this reason securing third party customers is important for the viability of printers. They based this on Jacobs' evidence at pages 551 and 552 of the record.[136] Jacobs' evidence was however much more nuanced, as explained below.

[134] Mxabo's witness statement paragraph 1 under the heading "Advertising".
[135] Orsmond's witness statement paragraph 12.3.8.
[136] Merging parties' Heads of Argument paragraph 34.

116. Although one can accept that the coldset printing firms strive to be profit-maximising, the evidence is clear that commercially rational behaviour in this market dictates that these printers, if they are vertically integrated in both printing and publishing (as is for example Caxton), would not jeopardise the printing of their own publications. Jacobs in this regard explained that a "*responsible*" printing firm would not just accept the printing work of a new small weekly community newspaper customer if it cannot guarantee the customer printing throughout the year given the significant fluctuations in the pagination demand of its own publications/existing customers. In Jacobs' words: "*... there are times when the market was quiet and there [are] times when the market just goes ballistic and paginations increase to such an extent that we're under enormous pressure to either return to that small independent guy and tell him, sorry Joe, please take a hike or as a responsible business do we say up front, listen here, if it's a one-off, if you're coming to me now and you just want this printed on Monday the 9th, absolutely, please put the money in my account, I've got sufficient time. But if this is a regular, weekly independent newspaper, there are going to be times that we will not have capacity to print his newspaper. And I will not then take his business on, on the basis that down the line I'm going to let him down*."[137] From the perspective of a small community newspaper publisher he stressed "*I've been there, I know that it's very important for a community newspaper to get a secure print slot ... Not on a once-off basis. But to secure their printing down the line ...* ."[138]

117. The merging parties further argued that the staff members of the printing presses are willing to work overtime and that therefore a printer could accommodate the modest needs of a single title community newspaper publisher.[139] This they based on Le Roux's evidence that "*... from my calculations the overtime cost relating to labour even at your double time rates if it happened to be a Sunday or a public holiday the*

[137] Transcript pages 550 and 551.
[138] Transcript page 552.
[139] Merging parties' Heads of Argument paragraph 40.4.

impact on your margin would be small enough for that [to] add value to your business in terms of the contribution to the bottom line."[140] Thomas however testified that when one has to employ overtime staff the cost of "*labour is actually double and you factor in the double time as a significant thing*"; and "*... the crew I would have to bring in would have to be brought in on 8 hours double time, it's significant*."[141] Such significant increased labour input costs would ultimately increase the final price charged to the printing customer.

118. Given the above characteristics and dynamics of the relevant publishing and printing markets it is not useful in this case to consider theoretical maximum printer capacities as an indicator of the potential ability to foreclose small publishers from printing. Roberts pointed out "*I mean typically firms don't operate at full capacity. I think what Prof Holden*[142] *... I mean full may be a particular percentage 70 or 80% because obviously there are lots of things that constrain you*."[143] Furthermore Le Roux's evidence was that certain change-over times in the printing processes can be significant and that certain processes of the different players are less advanced and require more time than others (see paragraphs 125 and 136 below).

119. The merging parties argued that the capacity information based on actual tonnages printed demonstrates that the merging parties' estimates of market shares for Africa Web (as contained in Exhibit 24) are accurate and show that the merging parties do not have market power.[144] Roberts conceded that on those figures Africa Web would not be dominant but correctly stressed that what is relevant in terms of capacity is what a printer "*could do in terms of the community newspaper slots*."[145] The

[140] Transcript pages 854 and 855.
[141] Transcript page 391.
[142] This refers to a Statistics South Africa document showing the results of a survey on the utilisation of production capacity by the publishing and printing media sector. (*Manufacturing: Utilisation of production capacity by large enterprises* (Statistical Release P3043, November 2011), available at: www.statssa.gov.za/publications/stats). Prof. Holden identified this document and the Tribunal invited all expert witnesses to comment on it.
[143] Transcript page 1681.
[144] See letter dated 18 April 2012, paragraphs 5.2.1.1 and 5.2.1.2.
[145] Transcript page 1708.

calculations in Exhibit 24 thus do not take the matter further since they do not tell one what capacity would be available in the appropriate time slots.

120. We conclude that in an analysis of what real printing alternatives would be available to independent community newspaper publishers post-merger only the availability of suitable printing slots in the so-called golden hours (given the publishers' distribution and delivery deadlines) is relevant. Any other printing capacity indicator, albeit maximum theoretical capacity or actual already committed capacity would be misleading and would not answer this question. Roberts accurately summarised this issue as follows: "*[w]hat we weren't seeking to evaluate was share based on the practical capacity when that involves running your press at a 24 hour day, 7 days a week. It's about who is able to provide additional ... has available capacity to provide an input to independent community newspapers who are oriented with advertisers, including retail advertisers and you have to come out for the week, the weekend or the month end*."[146]

121. Against this background we assess which printers would be real alternatives to Africa Web in a post-merger world.

Africa Web, Rising Sun and Guardian Web

122. It is common cause that three printers namely Africa Web, Rising Sun and Guardian Web are set up for the printing of small independent community newspapers.

123. Le Roux confirmed that the coldset printing market is differentiated as between the larger presses which are better suited to large pagination long run print jobs and the smaller presses which are better suited to smaller pagination small run printing. The economies of scale achieved at the larger presses make them less economical for lower volume printing and make the smaller presses more attractive. Le Roux expressly stated "*Africa Web, Guardian Web and Rising Sun are smaller printers with*

[146] Transcript page 1687.

smaller capacity, whose quality of printing is generally lower than that of the large presses. They are best suited to low volume, low pagination printing requirements that are not time sensitive, as well as high volume, low pagination commercial inserts with long lead times. These printers are therefore generally used to print community newspapers and commercial inserts."[147] Le Roux ultimately confirmed that a "*small volume or a small pagination printer*" is ideally suited to the printing of the smaller independent community newspapers.[148]

124. Furthermore Le Roux confirmed the economics in describing the rationale for Natal Witness's historic investment in Africa Web: "*... it allowed us to increase the flexibility we had in terms of printing, in other words, we had addressed the top end of the market in terms of high quality high speed printing with our new print plant, but there is definitely a demand in the marketplace for a bottom end low cost printer at that area and it fitted very neatly for us to have two venues and to have exposure in both the high level print market and the more economic print market*"[149]; and "*[i]t gave us the opportunity to have, as I said, the bottom-end printing plant in Africa Web*."[150]

125. Le Roux went on to explain that the bottom end printers have more manual processes which are time consuming, for example in the case of most of the low end market presses "*... you stop the press, you take the empty reel casing out, you put the new reel casing in and you start the press up again. The time taken is quite significant in the process*"[151]; and "*... the small lower end presses ... don't have automatic blanket washing*."[152]

126. Hodge also confirmed that there is an important segmentation of the printing market in terms of printers that are oriented towards community newspapers. He stated "*Rising Sun, Guardian Web and Africa*

[147] Le Roux's witness statement paragraph 50.
[148] Transcript page 942.
[149] Transcript page 915.
[150] Transcript page 943.
[151] Transcript pages 940 and 941.
[152] Transcript page 941.

Web are optimized for smaller pagination and print runs and this is the focus of their community newspaper printing and commercial insert work."[153]

127. Furthermore from the evidence it is clear that Africa Web regards Guardian Web as a competitor. Le Roux reported the entry of Guardian Web into the printing market to the Africa Web board as follows: "*[t]he Chairman informed the meeting of the new press recently commissioned in Pietermaritzburg, trading under the name Guardian Web. Riquadeu Jacobs, the Managing Director of competition newspapers, Public Eye and Edendale Eyethu, recently commissioned a press in Pietermaritzburg comprising two towers and two folders. As such, the printing of Public Eye and Edendale Eyethu had been lost to Africa Web. The Chairman reported that Guardian Web was competing for national retail inserts*."[154]

Printing presses of the Independent and Natal Witness

128. The Independent is focused on high volume, high quality (primarily paid-for) publications. It prints newspapers, including its own titles such as *Daily News* and the *Mercury*, as well as third party publications, the most prominent being Avusa's *Sunday Times*. Natal Witness prints *inter alia* the *Witness*, *Daily Sun* and weekly papers for Mandla-Matla, Avusa and the Mail and Guardian.

129. As stated in paragraph 110 above, Stillman sought to include Natal Witness in the market for the coldset printing of community newspapers. Le Roux's testimony was that "*[t]he Natal Witness is a plant that is very, very focused on producing high volume throughput ...We have very tight deadlines and schedules and we need to have very quick turnarounds*";[155] and "*[s]o, it's really a focus on ensuring that you meet tight deadlines, that you get high throughput through your very, very tight schedule times, whereas in the lower end of the market you have more time to do the manual processes and to run the manual systems*."[156] Hodge similarly was

[153] Genesis Report paragraph 36.4.
[154] Minutes of directors meeting of Zayle Investments of 22 September 2009, record page 1005.
[155] Transcript page 940.
[156] Transcript page 941.

of the view that "*... the 10 000 print run small independent would simply be wasting its time knocking on Natal Witness' door*."[157] He further testified that the Natal Witness press costs "*hundreds of millions*"[158] and confirmed that it prints "*high volume, multiple page, big run numbers*."[159]

130. In relation to the Sky Blue Media titles (which were subsequently re-branded as *Fever* titles) other than the *South Coast Fever,* Orsmond stated that they continued to be printed by Africa Web despite the fact that Africa Web's aging press did not deliver the same level of or consistent quality as that of the Natal Witness since "*it was the most cost effective printing option with capacity available to Sky Blue Media and Zululand Media*."[160]

131. Furthermore, Roberts testified that the significant difference in printing prices between Natal Witness and Guardian Web was one of the reasons for not including Natal Witness in the market.[161]

132. The evidence was clear in that the Independent and Natal Witness printing presses are geared towards long run prints largely of so-called dailies and weeklies[162] and we found no cogent evidence supporting the view that either of these presses would be a viable printing alternative for the small independent community newspaper publishers post-merger.

Caxton's printing presses

133. Although the Darwain, Newcastle and Highway presses "*are printing presses that are geared towards the printing of community newspapers,*"[163] Caxton excluded itself from the relevant market, chiefly as a result of its proclaimed priority of the printing of its own titles. In relation to Highway Thomas stated "*... Highway Printers exists primarily to serve the printing needs of the Caxton's own community newspapers*"[164] and

[157] Transcript page 2099.
[158] Transcript page 2103.
[159] Transcript page 2103.
[160] Orsmond's witness statement paragraph 9.2.
[161] Transcript page 1747.
[162] Transcript page 1644.
[163] Transcript pages 1643 and 1644.
[164] Thomas' witness statement paragraph 23.

testified that "*[w]e primarily are a printing one that serves our own publications. That's fundamental*."[165] This is consistent with Orsmond's statement that "*Caxton terminated its print contract with South Coast Printers in 1997 and moved its printing volumes to Highway Mail. In other words, it consolidated its printing volumes from some of its community newspapers to make Highway Mail a viable print business*."[166] Orsmond, despite expansions at Highway, concluded "*I understand that the majority of the Highway Mail's printing capacity was consumed by Caxton's own titles and the printing of commercial inserts for distribution in its titles*."[167]

134. Although Thomas conceded that from time to time and to a limited extent, Caxton prints for independent community newspaper publishers,[168] he testified that the only capacity Highway would have available for an independent publisher is six hours on Thursdays.[169] He however made it clear that this available Thursday slot would be for what he called "*walk-in business, that ad hoc business*"[170] and furthermore that even in respect of the Thursday slot the priority on the night would be the *New Age* publication followed by Highway's own publications.[171] He ultimately stated that Highway does not currently have any capacity to commit to a community newspaper publisher who wishes to have its paper on the streets by Friday morning.[172]

135. The merging parties further argued that Caxton was adding 50% capacity at its Newcastle and Darwain printing plants. However, Caxton led no evidence to specify how this capacity would be used. In particular there is no evidence that such additional printing capacity would be available to small independent community newspaper publishers. The available evidence rather suggests that Caxton's historic commercial practice has always been to use its relevant printing facilities for its own

[165] Transcript page 272.
[166] Orsmond's witness statement paragraph 3.1.
[167] Orsmond's witness statement paragraph 3.3.
[168] Transcript page 264.
[169] Transcript page 261.
[170] Transcript page 263.
[171] Transcript page 271.
[172] Transcript pages 273 and 274.

publications, despite its averred altruistic interest throughout this hearing to assist small commercial community newspaper publishers. Therefore it is reasonable to assume that Caxton's capacity expansion is driven by its own publishing needs, since it always has been orientated towards its own titles without any desire to maintain space for independent community newspapers.

136. Furthermore from Le Roux's evidence we know that Caxton's current processes are not as time efficient as that of Natal Witness, which would affect their printing output. He testified that the Natal Witness printing process was more advanced than Caxton's in certain respects and therefore faster since "*... the process of plates where we have a computer-to-plate structure at the Natal Witness, which means we produce our plates from the digital image directly onto the aluminium image and then out onto the plant. From what I understand certainly at Caxton's they are still doing the old photographic process where they photograph the pages, then expose those and then make the page, which is the time taken in their process.*"[173]

137. From a pricing perspective the available evidence furthermore suggests that the Caxton printers are not real alternatives for the small independent community newspaper publishers (even in an existing world where Caxton allegedly, according to the merging parties, already has excess print capacity). Masinga highlighted this when he testified that he had approached Darwain and "*[t]he problem I had with the [Darwain] Press, that is the Zululand Observer, their prices are not affordable as well.*"[174]

138. We have no reason to question Caxton's commercial rationale for not accepting (additional) third party printing work based on the optimal planning of its own publications. Furthermore, we have no doubt that if there are expanded printing needs at peak times Caxton will prioritise the printing of its own internal titles.

[173] Transcript page 941.
[174] Transcript pages 65 and 66.

Guardian Web

139. Jacobs testified that Guardian Web had not expanded, and furthermore that it did not intend to pursue any expansion plans. Le Roux, however, raised the issue of capacity expansion by Guardian Web for the first time during his cross-examination in response to a question by counsel for Caxton (and not during his examination in chief). However, the merging parties failed to put to Jacobs through their counsel this fundamentally opposing proposition. It is a basic principle, particularly on issues of importance, that a version be put to a witness when he is being cross-examined. It was unfair of the merging parties to ask the Tribunal to disbelieve Jacobs when the contrary version was not put to him during cross-examination. The merging parties further did not apply to the Tribunal for leave to recall Jacobs who had testified before Le Roux, to put Le Roux's version to him. It is for this reason that at the conclusion of closing arguments the Tribunal requested the Commission to investigate Guardian Web's printing capacity (see paragraph 7 above). The Commission served and filed this additional information on 16 April 2012.

140. The Commission verified Guardian Web's printing capacity in three ways namely (i) a field visit and physical inspection on 12 April 2012 of its printing premises in Chatsworth; (ii) contacting Guardian Web's overseas printing press supplier; and (iii) contacting Guardian Web's local paper supplier. Based on these three sources of information the Commission concluded that Guardian Web indeed has not expanded its capacity, contrary to Le Roux's oral evidence.[175] More particularly it has not doubled its capacity as suggested by Le Roux whilst under cross-examination by Caxton's counsel.[176] We therefore find that Jacobs was entirely truthful when testifying that he has not expanded the print capacity at Guardian Web and we accept his testimony that "*... now is not the time for us to be making any decisions on putting in more investment in the press ... our*

[175] See paragraph 3.1 of the Commission's submission.
[176] Transcript page 1145.

fears and anxieties about the market ... I'm not prepared to put a cent more into the press."[177]

Rising Sun

141. At the Tribunal's request the Commission also visited the premises of Rising Sun in Chatsworth and interviewed Mr. Vijay Maharaj (also see paragraph 7 above).

142. The Commission's site visit confirmed that Rising Sun has indeed increased its printing capacity. Before the expansion Rising Sun had a press facility with three towers and one folder in one location and two towers and one folder in another location across the road. Rising Sun could print up to 24 pages at these facilities but not really beyond that. The Commission's investigation confirmed that this configuration was a constraining factor in terms of actual output.[178] The new press comprises 5 towers and 2 folders at a single location allowing for higher pagination printing.[179]

143. According to the Commission's report Rising Sun's main reason for the expansion was not motivated by capacity problems or an intention to service independent community newspapers,[180] but by a desire to print larger jobs above 24 pages such as inserts and dailies. Before the expansion Rising Sun could not print inserts for a certain large retailer since they exceeded 24 pages and required too many copies to be printed. Mr. Maharaj further gave the example of the printing of the *New Age* newspaper, which Rising Sun would have wanted to bid for but could not prior to the expansion.[181]

144. It is clear that Rising Sun is not intending to use its newly installed press for the printing of small community newspapers, but for higher

[177] Transcript pages 557 and 558.
[178] Transcript page 1645.
[179] See paragraphs 3.2.4 and 3.2.5 of the Commission's submission; Goss Press Release, available at: http://www.gossinternational.com/news/2012/06/25/newspaper-press-news/rising-sun-of-south-africa-selects-new-five-tower-goss-newspaper-press [accessed 5 July 2012].
[180] See paragraph 3.2.3 of the Commission's submission.
[181] See paragraph 3.2.6 of the Commission's submission.

pagination, longer run printing work, such as daily newspapers and high volume inserts, which it up to now has not been able to do. We therefore conclude that the additional capacity at Rising Sun does not over time address the printing needs of small independent community newspaper publishers.

Competition and public interest concerns

145. Two types of harm were identified in the evidence. First, foreclosure in a broad sense of small independent community newspaper publishers on the printing side – this is a traditional competition harm in terms of section 12A(2), and second, public interest harm to the ability of these small publishers owned largely by historically disadvantaged persons to compete on the publishing side – a section 12A(3)(c) harm.

146. In paragraph 32 above we explained that through this merger Media24 will increase its shareholding in Natal Witness from 50% to 100% thus doubling its share of any increase in profits in Natal Witness's publishing business. We further noted that the merger, according to the merging parties, results in a change from joint to sole control by Media24 of Natal Witness. Lexshell as the pre-merger 50% shareholder in Natal Witness had a different incentive to Media24. Lexshell's incentive would have been to grow and maximise the short-term value of Natal Witness. As we pointed out in paragraph 41 above, according to Lexshell its rationale for this transaction is its wish to realise its investment in Natal Witness. Media24, as a 50% shareholder, would have had a longer-term horizon of growing and expanding the business, which strategy it can pursue aggressively after this proposed merger as the 100% shareholder of Natal Witness. This increases the incentive of the merged entity to post-merger act in the interest of publishing, potentially at the expense of the smaller printing business. Since the increased incentive to act in the interest of the publishing business is as a result of the proposed merger, specifically the 50% increase in the shareholding of Media24 in Natal Witness, it is merger-specific.

147. Furthermore, the publishing business of Natal Witness is far larger than the Africa Web printing business in which Media24 will hold 80% post-merger. Therefore, post-merger when the merged entity is faced with a decision whether to forego printing revenue in Africa Web versus the benefits which would follow on the publishing side from foreclosing an existing or potential future publishing rival, then Media24 owning the entire publishing interest will almost certainly favour its greater publishing interest.

148. This is underscored by the evidence that the merged entity plans to expand its publishing activities in the relevant geographic areas where Africa Web provides its printing services. From the strategic documents of the merging parties, it is evident that they plan to expand their publishing footprint of community newspapers in the geographic areas under consideration. *The Witness Group Business Plan and Budget 2011/12*[182] states that the strategic objectives are to "*[e]xpand the footprint of the consolidated community brand to cover the entire KZN province as well as selected target markets in Eastern Cape ...*" and further "*[t]o launch Zulu and Xhosa publications by August 2011.*"[183] Hodge confirmed that it was his understanding that there are plans to launch new community titles in the Northern Eastern Cape;[184] and further conceded that if the merging parties post-merger were "*... going to print something at Africa Web they would most likely prioritise themselves*."[185] We further note that there are no current plans to expand the printing capacity at Africa Web, but only to maintain the current capacity, as confirmed by both Le Roux and Hodge.[186]

149. We stress that the concerns resulting from this transaction must be seen in the context of the ability of the *small businesses* that are likely to be affected by the proposed transaction to compete in the publishing market. As we highlighted in paragraphs 63 to 66 above, the small

[182] Dated 28 November 2010, record page 5086.
[183] Record page 5101.
[184] Transcript pages 2093 and 2097.
[185] Transcript page 2098.
[186] Transcript pages 1185 to 1187 and 2091 to 2093.

independent community newspaper publishers requiring printing services in the geographic areas affected by this merger are *small businesses* in terms of the Act, often owned by *historically disadvantaged persons*. Given the dynamics of the community newspaper publishing market, these small firms require access to competitive printing prices, printing of an acceptable and consistent quality and in favourable time slots so that their titles can be distributed and delivered in time in order for them to be, remain or become competitive in the community newspaper publishing market. From the testimony of the factual witnesses we know that the foreclosure of smaller publishing rivals from printing can take many forms: it can increase print prices and/or provide lower quality and/or lower service. This would have the effect of raising the small rivals' costs and/or diminishing their credibility with advertisers with detrimental effects on these small firms that would threaten their very viability. Higher printing costs would further inhibit new entry in publishing. Under cross-examination Roberts summarized these concerns as follows: "*... foreclosure covers a wider set of activities than just this single dominant firm excluding. It's an undermining through the printing of the effective rivalry in the publishing market*"[187]; "*So, to the extent to which ... [small printing customers have] moved to the Rising Sun, ... critical for their ability to have competitive print offerings going forward will be the rivalry that's maintained or rivalry being maintained ...*"[188]; and "*I think we are very clear where we come out, which is around competitive offerings of printing of those three presses for community newspapers*",[189] those three presses being Africa Web, Guardian Web and Rising Sun.

150. With regard to the issue of a natural experiment in the event of the merging parties' alleged non-notification and prior implementation of one or more transactions (see paragraphs 28 to 30 above), we note the following: both Mxabo and Masinga[190] raised questions about poorer printing quality and service over time at Africa Web. Mxabo stated that the

[187] Transcript page 1641.
[188] Transcript page 1777.
[189] Transcript page 1779.
[190] Masinga's witness statement paragraph 19.

decision to change printers was based on poor customer care at Africa Web and even though the paper would be distributed on time, quality deteriorated;[191] and Masinga stated "*... although the quality of Africa Web's printing was generally good, they would at times print the Maputaland Mirror newspaper late and thereby cause it to miss deadlines for distribution*."[192]

151. There are no post-merger real printing alternatives for small independent community newspaper publishers other than the limited available "golden-hour" time slots of Africa Web, Rising Sun and Guardian Web. As we stated above Highway does not have suitable printing slots available, Guardian Web has not increased its printing capacity and the planned additional printing capacity at Darwain and Newcastle, as well as the additional capacity at Rising Sun, would likely not be made available to small independent publishers.

152. We conclude that the proposed transaction is likely to result in a substantial prevention or lessening of competition through the likely foreclosure of small independent community newspaper publishers and thus is contrary to section 12A(2), and furthermore that the proposed transaction cannot be justified on section 12A(3)(c) public interest grounds. This merger leads to an increased incentive post-merger to act in the interest of Media24's larger publishing business rather than in the interest of its smaller printing business. We have noted that Media24 is ambitious about a post-merger expansion in community newspaper publishing, and given the limited post-merger alternative printers with appropriate slots for small independent community newspapers, this raises legitimate foreclosure concerns. Furthermore, from both a competition and a public interest perspective the small independent community newspaper publishers, although small, are competitively significant in the publishing market. The evidence has shown that the large publishing companies are highly responsive to these small players, and moreover that the entry of these small players had positive effects on

[191] Mxabo's witness statement paragraph 19.
[192] Masinga's witness statement paragraph 18.

advertising rates in the localized markets. Thus, these small players, through their differentiated product offerings, are responsible for rivalry at a localised level in the community newspaper publishing market. They bring with them new ideas and an innovative approach, and furthermore although they are currently small, they are a serious future competitive threat. By conditionally approving this merger we are thus not protecting individual small competitors, but protecting the competitive process in the community newspaper publishing market in KwaZulu-Natal and the Northern Eastern Cape.

153. The harm to competition and public interest are consistent and can therefore be cured by the same remedies. From both a competition and public interest perspective Africa Web must be retained as a printing alternative for the small independent publishers and this we have done through the mechanism of the imposed remedies, which, as explained below, include pro-competitive investment conditions. The aim of these conditions is to post-merger ensure printing access at reasonable pricing and other conditions of supply for the independent small publishers so that these firms and potential new small entrants have the ability to effectively compete.

154. We note however that we have imposed the printing capacity, access, pricing and other supply conditions on the merged entity for a limited period of five years. This is consistent with Mtimde's considerable experience in the publishing industry that it takes up to five years for a small publisher to build a viable business (see paragraph 92 above). We have imposed this limited duration since post-merger the small independent community newspaper publishers have limited and imperfect printing alternatives available in the relevant geographic areas, but also because we recognise that printing capacity is not a static issue. The imposed conditions will allow the small publishing rivals to grow their businesses for five years after which they may be able to vertically integrate into printing. We note that all the current coldset printers in KwaZulu-Natal are owned by entities with their own publishing interests

and that those publishing interests would have been a strong motivation to acquire the printing facilities.

Alleged history of collusion

Alleged market division

155. During the hearing the Commission spent a lot of time arguing that there are objective facts, at a high level, that raise suspicions of collusion between Media24 and Caxton, specifically through market division.

156. From a broader geographic market perspective the Commission highlighted that there is not a single Caxton community newspaper in the Western Cape, whilst Media24 has many titles in this geographic area. On the other hand there is not a single Media24 community newspaper[193] in Johannesburg and surrounds whilst Caxton has many titles in this geographic area.[194] Furthermore, notwithstanding that there is contestation in KwaZulu-Natal there are other arrangements between Caxton and Media24 that endure. The shareholdings in Lincroft Books (although with Lexshell) and in Mooivaal in the Vaal Triangle come to mind. The Lincroft Books issue is discussed in more detail below.

157. Despite this interesting observation by the Commission there is however no evidence that this proposed merger would facilitate collusion between Media24 and Caxton, or enhance the alleged existing coordination assuming it existed.

Lincroft Books: non-compliance with merger condition

158. In relation to *Lincroft Books* the Commission, based on evidence discovered during the hearing of this matter, concluded that in the

[193] *Shoppers Friend* is not a community newspaper.

[194] When Jenkins was questioned by the Commission's counsel on the "sold" community newspaper publications of Media24, Caxton and CAPRO throughout South Africa, he confirmed that in Gauteng, Limpopo, Mpumalanga and North West Media24 has only two sold titles (transcript page 615). He further confirmed that in the Western Cape, that is Cape Town and its surrounds, Caxton has not a single sold title (transcript page 615); and in KwaZulu-Natal Caxton has 12 sold community titles and Media24 zero (transcript page 616). In regard to "free" community newspapers, Jenkins confirmed that Caxton has a single title in the Eastern Cape and is unrepresented in the Western Cape (transcript page 619) and that Media24 has zero free titles in Johannesburg and Pretoria (transcript pages 620 and 621).

previous merger[195] between Media24[196] and Natal Witness,[197] the merging parties failed to comply with the Tribunal's imposed condition on which the approval of that transaction was premised. Media24 was buying 50% of the shares in Natal Witness. Based on the evidence before the Tribunal at the time, it found that Natal Witness would remain under the management control of the Craib family, which would hold the remaining 50% via a new company, Lexshell[198] and would make all the strategic decisions in the business (also see paragraph 36 above). We note that this was a prior-implemented merger since it was implemented by the merging parties in 2000 without competition approval.

159. The competition concern in that case was that of post-merger collusion between Media24 and Caxton through the Lincroft board where both parties would have representation - Caxton held 40% and Natal Witness 60% of the shares in Lincroft Books, which publishes community newspapers. It was therefore agreed that Natal Witness's stake in Lincroft Books must be transferred to Lexshell, which would remove any structural links as well as any competition concerns.[199] The merger was consequently approved subject to the condition that Media24 had to divest all direct or indirect interest in Lincroft Books to Lexshell. The Tribunal stated that "*[i]n 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*."[200]

160. The Commission now argued that the merging parties only paid lip service to that condition and have not complied with it in practice.[201] In short, although the shares were divested to Lexshell, by all indications it

[195] Tribunal Case No: 102/LM/Dec04, decided on 17 October 2005.
[196] The primary acquiring firm.
[197] The primary target firm.
[198] Lexshell was formed by the Natal Witness shareholders as a SPV for the transaction.
[199] See paragraphs 20 and 21 of the Tribunal's Reasons for Decision.
[200] See paragraph 19 of the Tribunal's Reasons for Decision.
[201] See transcript *inter alia* pages 799, 849 to 851, 919 to 922, 925 to 935, 1224 to 1256 and 2270 to 2272. Also see the Commission's Heads of Argument at paragraphs 116 to 125.

was a divestiture at face value of the shares, namely for R[...],[202] which Le Roux conceded was not the real value of the shares. However, after this “divestiture” nothing changed at Lincroft. Le Roux represented Natal Witness (50% owned by Media24) as chairman of the Lincroft Board prior to the divestiture. After the divestiture Le Roux continued as chairman of the Lincroft board but he alleged that he wore a different hat, namely a Lexshell hat. Le Roux however remained the managing director of Natal Witness whilst he wore this Lexshell cap and was chairman of the Lincroft board. Furthermore, the financial results of Lincroft were reported to the Natal Witness Board where Media24 directors were present[203] and the merging parties continued to treat Lincroft as a “division” or as part of Natal Witness, which was not justified by an argument that it was entitled to do so because it was managing the business.[204] Furthermore, Le Roux conceded that if there was no cancellation of the shareholders agreement to which Natal Witness was a party and no new agreement reflecting Lexshell as a shareholder, then it would be yet a further indication that nothing had changed.[205] On 04 April 2012 the merging parties wrote to the Commission confirming that no such replacement shareholders’ agreement exists.

Conclusion

161. These are however not matters that we had to decide in the context of this merger. The remedies imposed, as we discuss later, would equally apply to remedy co-ordinated effects assuming the merger lead to an enhancement of them. Our remedies, through the imposed conditions, reduce the barriers to entry into the community newspaper publishing market. Any potential collusion between Media24 and Caxton emphasises the importance of having small independent players in the community newspaper publishing market as a (future) competitive constraint.

[202] Figure not shown due to confidentiality; see transcript pages 1228 to 1230.
[203] See Board Report, March 2011, record page 1960 at page 1967.
[204] Transcript page 1236.
[205] Transcript pages 1236 to 1238.

162. However, the alleged geographic market division between Media24 and Caxton in a broader community newspaper market and non-compliance by the merging parties with a previous merger remedy that was meant to prevent collusion between Media24 and Caxton via Lincroft are very serious causes for concern.

Imposed conditions

163. Below we briefly state the final stance of the merging parties, the Commission and Caxton in relation to proposed remedies.

Merging parties

164. The merging parties submitted that neither the Commission nor Caxton had established that the merger would cause a substantial prevention or lessening of competition, and that accordingly there was no justification for conditions of any nature to be imposed on them. They submitted however that to allay the Commission's concerns and enhance the print quality achievable by Africa Web, they accept certain conditions as agreed with the Commission if the Tribunal was minded to impose them.[206] In addition, the merging parties were willing to amplify those conditions with a commitment to install a further printing press at Natal Witness and to reserve some of that resultant capacity for Small Independent Publishers.[207] The merging parties' final proposed set of conditions was proposed as a consolidated package of remedies and in their view addressed all potential competition and/or public interest concerns associated with the proposed transaction. We note that this set of conditions was tendered on the basis that the merged entity would retain 80% control of Africa Web post-merger (see paragraph 38 above).

165. The merging parties however opposed the conditions listed as (ii) and (iii) in paragraph 8 above on the basis that they allegedly were not proportional to any of the competition or public interest harms canvassed in these merger proceedings, were over-broad and extremely onerous on

[206] The merging parties were willing to abide to their proposed conditions of 05 April 2012.
[207] See definition of *Small Independent Publishers* in the attached conditions.

them. We explain below the limitations of the conditions that we have imposed and why they are warranted.

Commission

166. When the Commission first referred this matter to the Tribunal it recommended that: (i) Media24 post-merger must divest its shareholding in Africa Web to an independent third party so that it holds no more than 30% of the shares in Africa Web; (ii) Media24 must not have any control of the management of Africa Web; and (iii) the governance structures of Natal Witness and Africa Web must be kept separate at all times in that no directors of Natal Witness sit on the board of Africa Web. The merging parties persuaded the Commission that if they had to divest their interest in Africa Web to 30% no satisfactory investment would be made in Africa Web and this would defeat the purpose of the Commission in ensuring printing capacity for small independent newspapers. In lieu of the structural remedy they offered the Commission certain behavioural conditions to remedy any concerns. The Commission was persuaded to alter its divestiture remedy but it could not reach agreement with the merging parties on the terms and duration of a compensating behavioural remedy.

167. The Commission at the closing of the Tribunal proceedings argued for a post-merger partial divestiture of Africa Web, with an additional governance condition, together with a set of enhanced behavioural conditions. In terms of this proposal Media24 would retain management control of Africa Web post-merger. With regard to the post-merger shareholding structure the Commission suggested that the merged entity's shareholding in Africa Web may not exceed 50.1% and that the remaining shares in Africa Web must be held by third parties independent of the three large groups, i.e. independent of Media24, Caxton and the Independent.

Caxton

168. Caxton submitted that insofar as the Tribunal was minded to approve the proposed merger conditionally, such conditions should be substantially structural in nature, i.e. a post-merger complete divestiture of Africa Web to an appropriate third-party.

Assessment

169. The conditions that we imposed fall into the following categories:

(i) printing capacity conditions, i.e. an investment in Africa Web to maintain its current printing capacity (see paragraph 5 of the conditions) and the installation of additional printing capacity at Natal Witness (see paragraph 6 of the conditions);

(ii) access by Small Independent Publishers to Africa Web's printing services at certain maximum prices and other conditions of supply (see paragraph 7 of the conditions);

(iii) a restriction on Media24 in relation to Africa Web (see paragraph 3 of the conditions). This condition relates to the separate governance of the merged entity's community newspaper publishing and printing businesses in the relevant geographic areas so that the strategic decisions on the publishing side do not drive the printing decisions;

(iv) the future notification by Media24 of "small" mergers relating to community newspaper publishing and printing in the relevant geographic areas (see paragraph 4 of the conditions);

(v) an extension of the current relationship between Paarl Media and the MDDA (see paragraph 8 of the conditions); and

(vi) monitoring of the conditions (see paragraph 9 of the conditions).

170. Before we deal with the issue of a post-merger potential partial or full divestiture of Africa Web as a remedy to the concerns, we first discuss the enhanced conditions put up by the merging parties and imposed by the Tribunal in relation to the printing capacity of Africa Web and Natal Witness, as well as certain printing access, pricing and other supply conditions.

Printing capacity conditions

Printing capacity at Africa Web

171. In relation to Africa Web the merging parties tendered a capacity condition. Through a minimum expenditure commitment, they would ensure that Africa Web's current printing capacity would at least be maintained.

172. In terms of our imposed conditions the acquiring firms undertake to utilise their shareholding in and control over Africa Web to ensure that Africa Web engages in an upgrade of its printing facilities ("Upgrade") on the following conditions (i) the Upgrade will be determined by the acquiring firms so as to ensure that Africa Web's current printing capacity is at least maintained; (ii) the Upgrade may be by way of maintenance, repairs, refurbishment, replacement and/or upgrade of the printing facilities or any part of them and may be implemented in separate or related phases over the duration of the conditions; and (iii) the aggregate expenditure required in terms of the Upgrade must not be less than [a certain determined Rand amount][208] over the duration of the conditions.

Printing capacity at Natal Witness

173. As stated in paragraph 164 above the merging parties also, as part of their final proposed remedies, committed to the installation of an additional printing press at Natal Witness.

174. In terms of our imposed conditions the acquiring firms undertake, within six months of the date of our order, in addition to Natal Witness's current facilities to commence the installation of [a certain printing press][209] and/or any related building expansions. The conditions further state that not less than 1 000 tons of such capacity of this press per annum must be made available to Small Independent Publishers[210] for the duration of the conditions. The conditions also state that the price, service levels and

[208] Actual figure not shown due to confidentiality.
[209] Details not given due to confidentiality.
[210] As defined in the conditions.

printing slots offered to such Small Independent Publishers must be consistent with the terms and conditions specified in the conditions.

Access, pricing and other supply conditions for printing services

175. As part of their final tendered conditions the merging parties offered and we, with certain enhancements, imposed conditions that relate to *inter alia* (i) long-term contracts with the current group of Small Independent Publishers and future qualifying Small Independent Publishers; (ii) maximum printing prices that may be charged to these publishers; and (iii) printing quality and service standards including printing slots. These conditions seek to cure the concerns in terms of the post-merger ability of Small Independent Publishers to get competitive print offerings from Africa Web. The conditions are:

175.1. For a period of five years from the date of the Tribunal's order, the acquiring firms must ensure that Africa Web continues to print for any Small Independent Publisher on the following conditions –

175.1.1. Africa Web must offer to conclude written long-term contracts with all Small Independent Publishers on terms no less favourable to Small Independent Publishers than the terms set out in Annexure A[211];

175.1.2. the price charged to such Small Independent Publishers for printing services during the twelve months commencing 01 April 2012 must not exceed a price that is equivalent to the Average Price[212] as at the date of the Tribunal's order;

175.1.3. the price may be subject to an annual maximum escalation at a rate not exceeding the Inflationary Increase[213];

We note that the above pricing provisions are maximum price caps intended to protect printing customers on the upside and that nothing prevents Africa Web from offering discounts to these customers.

[211] "Annexure A" to the conditions is a typical long term customer agreement.
[212] As defined in the conditions.
[213] As defined in the conditions.

175.1.4. the print quality and service standards provided by Africa Web to Small Independent Publishers must be equivalent to the print quality and service standards provided by Africa Web to the merging parties' publications of equivalent pagination and print run;

175.1.5. the print slots offered to Small Independent Publishers must be offered on a reasonable assessment of press availability according to practices in the printing industry at the relevant time and Africa Web may not unreasonably withhold available press capacity; and

175.1.6. the print slots offered to Small Independent Publishers must be offered between Monday and Thursday unless otherwise agreed between Africa Web and a Small Independent Publisher.

176. Furthermore, the acquiring firms must undertake to ensure that the above conditions will apply to Small Independent Publishers in respect of their current newspapers (both in respect of current print orders and any expansion to such print orders), as well as any new newspapers published by such publishers.

177. We note that in terms of the definition of a Small Independent Publisher the above conditions apply to both existing and future Small Independent Publishers. This is so because a Small Independent Publisher refers to a publisher with the primary business of publishing newspapers in KwaZulu-Natal and the Northern Eastern Cape, regardless of whether or not it is a customer of Africa Web at the date of our order.

Post-merger divestiture of Africa Web

178. Although as a general principle the Tribunal and other competition agencies prefer structural to behavioural remedies, for various reasons as advanced *inter alia* in *Pioneer/Pannar*,[214] the evaluation of an appropriate remedy must be done on a case-by-case basis by considering such

[214] See the Tribunal's Reasons for Decision in the intermediate merger involving *Pioneer Hi-Bred International Inc* and *Pannar Seed (Pty) Ltd*, Tribunal case no. 81/AM/Dec10, paragraph 361.

remedy within the wider context of the characteristics and dynamics of the relevant markets in question and the specific competition and/or public interest concerns that such remedy is intended to address.

179. In this case we concluded that neither a post-merger partial divestiture of Africa Web (as suggested by the Commission) nor a full divestiture (as suggested by Caxton) was the most appropriate remedy given the circumstances and dynamics of this case. We explain this finding below.

A potential partial divestiture of Africa Web

180. As stated in paragraph 167 above, the Commission argued for a partial divestiture of Africa Web where post-merger Media24 would reduce its stake in Africa Web from 80% to 50.1%. The Commission advanced three reasons for this recommendation:

(i) there is a greater prospect that outside shareholders holding 49.9% of Africa Web will do what they can to act in the interest of Africa Web alone, and that printing decisions will thus be made on the basis of what is best for Africa Web. This argument was based on the assertion that post-merger foreclosure by Media24 of small independent community newspaper publishers, even if it owns 50.1% and has management control of Africa Web, will be more difficult when there is a significant number of outside shareholders in Africa Web;

(ii) there is a greater prospect of compliance with conditions when there are outside shareholders; and

(iii) without a controlling stake in Africa Web (i.e. 50.1%) it is unlikely that Media24 would contribute the capital for the required refurbishment work at Africa Web.

181. Stillman, however, argued that the Commission's suggested post-merger lower shareholding by Media24 in Africa Web (i.e. 50.1% as opposed to 80%) implies a greater post-merger incentive to foreclose on the part of Media24. He argued that in such a scenario the scales would

be heavier in favour of conduct that rather benefits the publishing side of the Media24 business since Media24 would suffer less of an impact if print revenue is foregone as a result of foreclosing a print customer. Stillman summarised this effect as follows: "... *Media24 having a 80% in Africa Web versus a 50.1 or a 50% interest at Africa Web, actually a 50% is worse, because if you had an 80% interest then if you did things that were bad for Africa Web, but benefitted Natal Witness, you would bear more or the costs. So actually having a 50% interest and control can result in a worse outcome from a competitive point of yield than the 80%. And that's actually a point that also applies on investment decisions, because again if you have control but you have 50% stake, you're going to be less concerned about effects on Africa Web than if you have an 80%*."[215] He concluded that a post-merger 50.1% interest by Media24 in Africa Web "*perversely will tend to make the upward price pressure worse*" since Media24 will have an incentive to set higher prices at Africa Web than if it had the 80% interest implied by the merger.[216]

182. We accept Stillman's argument that a post-merger 50.1% shareholding by Media24 in Africa Web (as opposed to an 80% shareholding as implied by the proposed merger) will in fact enhance Media24's incentive to act in its own interests (and in the interests of its community newspaper titles) as opposed to acting in the interests of Africa Web.

183. Furthermore, a partial divestiture condition also gives rise to the possibility of decreased incentives for Media24 to invest in Africa Web's presses as a result of its lower economic interest. The effect of such a condition therefore gives rise to uncertainty regarding Africa Web's post-merger printing capacity that would be available to small independent community newspaper publishers, as well as Africa Web's longer-term position in the coldset printing market.

[215] Transcript pages 1887 and 1888.
[216] See Stillman's slides presented during his evidence in chief, slide 10.

184. A partial divestiture condition further gives rise to a potential practical difficulty in that a potential buyer would have to commit its share of the required capital expenditure in Africa Web. This required capital expenditure in Africa Web is not disputed by the Commission and we discuss this in more detail below.

A potential full divestiture of Africa Web

185. As stated in paragraph 168 above, Caxton argued for a post-merger complete divestiture of Africa Web to an appropriate third party.

186. The Commission however rejected Caxton's proposal on the basis that such an order would not be the most effective outcome in this case in terms of addressing the identified concerns resulting from the proposed merger. This argument was premised on the importance of ensuring Africa Web's long-term sustainability. The Commission stated that the risk associated with a post-merger total divestiture order was that it was uncertain who would buy the 80% stake in Africa Web, and moreover if such a potential purchaser would be willing to make the required capital investment in Africa Web's printing operation. The Commission further argued that, depending on the potential purchaser, the concern may arise that such purchaser may prioritise its own publications thereby reducing Africa Web's printing capacity that is made available to independent community newspaper publishers.

187. The merging parties objected to a potential post-merger full divestiture of Africa Web raising the issue that the current commercial printing work for Shoprite Checkers constitutes a very large portion[217] of Africa Web's printing revenue and that uncertainty regarding the future of this contract could affect the ability of Africa Web to achieve a minimum base load and remain a commercially viable printer in the market.[218]

188. To give context to this issue we provide the following background: on a Friday[219] Africa Web does commercial printing for Shoprite Checkers,

[217] See, for example, transcript page 1177.
[218] See the Minutes of the Zayle Director's meeting of 15 June 1011.
[219] Transcript pages 2080 and 2081.

i.e. the printing of retail inserts. Le Roux in his oral testimony confirmed that Shoprite Checkers is currently a dominant customer of Africa Web.[220] He further testified that *"... the value of the [Shoprite Checker] advertising would certainly be a major contributor to the value of the company [Africa Web]*."[221] He also confirmed that "*[a]t the Witness we have a small portion of commercial print, but the majority of it is at Africa Web*";[222] and further confirmed that Paarl Media does printing work for Shoprite Checkers in all the other provinces.[223]

189. To put this issue further in context we briefly explain below how commercial insert/leaflet printing differs from the printing of community newspapers: Le Roux described commercial insert printing as "*desirable for printers since they are usually the product of high volume print runs and, critically, are not as time-sensitive as newspapers to their printing times*."[224] He went on to explain that the retailers determine the contents of these inserts at least one week prior to their announcement to the market, thus providing sufficient lead time to complete print production and that community newspapers generally come out on a Wednesday or Thursday, and contain these commercial inserts detailing the coming week's special offers and promotions.[225] Thus, while they must be included in the weekly community newspaper, they can be printed at any time up until the conclusion of the print run of the community newspaper itself.[226] For example, commercial inserts printed at Africa Web will be delivered to the premises of Caxton and the Independent for insertion into the titles published by those firms.[227]

190. Orsmond highlighted that given the type of printing machine at Africa Web and the nature of the commercial printing required by Shoprite Checkers one had more time to make any needed corrections in the

[220] Transcript page 1177. Also see paragraph 62.1 of Le Roux's witness statement, as well as footnote 45 of the Genesis Report.
[221] Transcript page 1260.
[222] Transcript page 1182.
[223] Transcript page 1179.
[224] Le Roux's witness statement paragraph 59.
[225] Le Roux's witness statement paragraphs 59.2 and 59.3.
[226] Le Roux's witness statement paragraph 59.4.
[227] Le Roux's witness statement paragraph 59.6.

quality of the printing: "... *that type of machine on a very long run which Shoprite Checkers would be – would be an easier job so to speak to manage, because you could run the whole run and then there could be a lot of make ready, which you time to get the quality of the printing right, whereas in a community newspaper which is fitted in around the Shoprite job time is limited to get the quality right*."[228]

191. From a competition perspective, Le Roux testified that when Ouderajh put up his printing plant and got the Shoprite Checkers commercial business "*[w]hat that did was it once again introduced a new competitor into the market and that competitor could print at a much lower price and I think that the KZN operations of Checkers benefited significantly from that. They were able to really show an improvement in their performance*."[229] Furthermore, when the Commission's counsel suggested to Le Roux that Shoprite Checkers could post-merger move its commercial printing work from Africa Web to Paarl Media his assessment of this potential risk was as follows: "*... as long as Mr Ouderajh stays involved at Africa Web and Africa Web's prices are competitive, I would say the risk is low*."[230]

192. Although we are not able to take any formal view in regard to Shoprite Checkers's reaction to a hypothetical post-merger full divesture by the merged entity of Africa Web since we do not have any evidence from Shoprite Checkers, we do note that in such a scenario and from a customer perspective Shoprite Checkers may place a meaningful value on having Africa Web as an alternative printing services provider. We are not convinced that Shoprite Checkers in that situation would easily give up such an alternative since it potentially could harm its ability to negotiate better printing terms. We note that the available evidence suggests that Shoprite Checkers has in the past managed to negotiate lower printing prices from Africa Web based on its national price reviews.[231]

[228] Transcript page 1495.
[229] Transcript page 1180.
[230] Transcript page 1183.
[231] See Minutes of directors meeting of Zayle Investments of 15 June 2011, record pages 1022 to 1024.

193. In the context of an appropriate and workable post-merger remedy we were however mindful of maintaining Africa Web's current printing capacity and longer-term sustainability in the coldset printing market. We were persuaded that in a forced divestiture scenario the possibility exists that a potential buyer of Africa Web may well be motivated by short-term gains with no interest or incentive to maintain or invest in the press and subsequently degrade the press. This would be an ineffective outcome and would not be in the best interest of the small independent community newspaper publishers requiring printing services.

194. We note that the concerns regarding Africa Web's quality of printing as a result of the current state of its printing equipment are well and clearly documented in the merging parties' strategic documents, as illustrated by the following extracts from the Africa Web Board minutes: "*The Chairman*[232] *raised concerns with the work lifespan of the equipment and the level of quality of the work produced due to the age of the equipment. The Chairman further reported that the staff in the press have done all they could to improve the quality of the work produced*";[233] and "*[t]he Chairman stated that the publishing clients have raised numerous complaints about the quality of the material printed. The Chairman added that he has discussed this issue with the management of the press and they continue to do their best with the aged and worn equipment they have. The board has requested evaluation on possible solutions whether to upgrade or replace the existing press ...*"[234]

195. As stated in paragraph 164 above, the merging parties specified their willingness to commit to a minimum capital investment in Africa Web over five years, as well as the installation of an additional printing press at Natal Witness. We had to weigh these firm commitments against the uncertainty regarding whether an independent third-party purchaser would be willing to make the required investment in Africa Web to maintain its current printing output.

[232] Le Roux.
[233] Minutes of directors meeting of Zayle Investments of 15 June 2011, record page 1023.
[234] Ibid.

196. In conclusion, a post-merger complete divestiture of Africa Web would in this case not achieve the intended goal of preventing adverse effects on the small independent community newspaper publishers. More specifically we were not persuaded that the commercial structure resulting from a full divestiture would be sufficiently workable to ensure that there would be no significant impediment to competition in the coldset printing market. Our imposed set of behavioural remedies, where the merged entity retains 80% control of Africa Web (as intended in the proposed deal), provides a regulated and certain outcome which ensures that there is adequate capital investment in the Africa Web presses to at least maintain their current printing levels. These conditions will ensure that Africa Web remains a viable alternative printer for the small independent community newspapers in KwaZulu-Natal and the Northern Eastern Cape. We are further satisfied that Media24 as the post-merger 80% controlling shareholder in Africa Web would have the ability to inject further capital in Africa Web over a longer term.

197. However, if the merged entity was allowed to have 80% control of Africa Web post-merger, the Tribunal was concerned about post-merger cross-directorships between the publishing activities of the Media24 group and its printing activities of community newspapers. In its letter of 13 April 2012 the Tribunal therefore specifically requested the merging parties to comment on a potential condition to address this concern.

198. The merging parties in reaction stated that any such condition, if imposed, should not be overbroad and disproportionate and therefore would have to be restricted to the merging parties' community newspapers in the relevant geographic areas affected by the proposed deal. We note that we have indeed limited this condition to the relationship between the KwaZulu-Natal and Northern Eastern Cape community newspaper publishing businesses within the Media24 group and Africa Web's printing activities. The merging parties' objection to this condition being overbroad is therefore not valid.[235]

[235] See merging parties' letter of 18 April 2012, paragraph 7.3.3.3.

199. The merging parties further raised the objection that any such condition would be "*impractical to implement across the Media24 group and will give rise to operational inefficiency and difficulties. Furthermore, the conditions will impose financial, managerial and governance burdens on the merging parties ... .*"[236] We note that these contentions of the merging parties were not motivated, quantified or supported by any factual information. Furthermore, the condition that we have imposed, as stated above, does not apply across the Media24 group.

200. We further note that the merging parties did not call any representative from Media24 as a witness who could speak to the rationale for the proposed transaction and potential efficiencies, as well as the post-merger intentions, objectives and management of the Natal Witness and Africa Web businesses. It is regrettable that the merging parties did not take the Tribunal into their confidence and the Tribunal therefore was placed in the invidious position of having to assess the likely effects of the proposed transaction without the assistance of the party best placed to assist it in that regard. As we pointed out in paragraph 39 above, Le Roux was frank about the fact that he did not even know whether Africa Web will be placed under the control of Media24 or Paarl Media post-merger.

201. Furthermore, the merging parties' past competitive responses demonstrate that the incentives qua publishing are greater than qua printing. Although Le Roux provided a list of small independent printing customers that Africa Web lost allegedly through more competitive prices being offered by competing printers,[237] we saw no evidence of Africa Web actively trying to win back these printing customers. On the publishing side, by contrast, Natal Witness engaged in an aggressive price response to win back advertising customers lost *inter alia* to Jacobs.[238]

[236] See merging parties' letter of 18 April 2012, paragraph 7.1.2.3.
[237] Le Roux's witness statement paragraph 54.
[238] Transcript pages 825 to 830.

202. In lieu of a post-merger full or partial divestiture of Africa Web, and in addition to the above-mentioned capacity and supply conditions, we therefore imposed a condition aimed at ensuring that the merged entity's community newspaper printing and publishing activities in the relevant geographic areas are governed separately such that the objectives of the publishing side of the business do not drive the strategy of Africa Web's printing. The imposed condition states that post-merger, for a period of five years, the KwaZulu-Natal and Northern Eastern Cape community newspaper publishing businesses within the Media24 group, and representatives thereof, must have no influence over operational and/or strategic decisions at Africa Web. This includes, but is not limited to, representation on the Africa Web board and any form of strategic or operational oversight over Africa Web by any Media24 representative with control or insight into the publishing side of the Media24 business.

203. Furthermore the Tribunal ordered that the acquiring firms must undertake to utilise their shareholding in, and control over, Africa Web to ensure that any material printing asset of Africa Web cannot be sold by Africa Web or transferred out of Africa Web, without the prior approval of the Tribunal.

Notification of "small" mergers

204. The evidence in this case has shown that increased market concentration is prevalent in the relevant markets under consideration through a strategy of creeping acquisition. The familiar pattern is that of the large publishing companies such as Media24 and Caxton acquiring direct or indirect stakes in small independent publishers of community newspapers. Hodge confirmed that "*KwaZulu-Natal has historically had a wide range of community newspapers, most of which were initially independently owned*"[239] and furthermore gave the following historical examples of concentrations:

- The *Stanger Weekly* and the *Coastal Weekly* newspapers established by Ouderajh was sold in part to Natal Witness in 2007;

[239] Genesis Report paragraph 57.

- the publishing business of the *South Coast Herald*, owned by the Moss family up to 1982, was sold to Caxton;[240]
- Caxton in 2005 acquired a 40% share in Rising Sun Community Newspapers (Pty) Ltd which started in 1986 as a community newspaper in the North Coast. Between 1993 to 2000 an additional five newspapers were added to the group;[241]
- *South Coast Fever* was sold in part to Natal Witness in 2005 under the banner of Sky Blue Media.[242] It was established as an independent newspaper in 1997 by the Moss family. Orsmond grew the South Coast publications company which launched the first *Fever* community newspaper, *The South Coast Fever,* from 1997 to the extent that it *inter alia* expanded to the *East Griqualand F*ever in 2003 and *The Mthatha Herald* in 2005 (also see paragraph 23 above).

205. In relation to Caxton's expansion and acquisition strategy Le Roux stated that Caxton *"... in KwaZulu-Natal ... pursued a strategy of expansion (launching new titles frequently into the market) and consolidation (purchasing independent newspapers and converting them to Caxton publications)*."[243] This was echoed by Orsmond: "*Caxton's business model was to expand its community newspaper business by acquiring in whole or partnering with (by taking a partial stake in) existing community newspapers*".[244]

206. In relation to Natal Witness, we have listed in paragraph 23 above the various firms owning community newspaper publication titles that Natal Witness directly or indirectly controls. Le Roux in relation to Natal Witness's community newspaper strategy stated that its "*community*

[240] Also see Orsmond's witness statement paragraph 2.2.
[241] Also see Jenkins' witness statement paragraph 16.3.
[242] Sky Blue Media was established as the entity through which Natal Witness acquired an interest in the titles owned by South Coast Publications and EG Herald. In 2005, Natal Witness, South Coast Publications (publisher of the *South Coast Fever*) and EG Herald (publisher of the *Eastern Cape* titles) amalgamated to form Sky Blue Media. The Natal Witness owned 40%, while South Coast Publications and EG Herald each held 15%. Subsequently, in 2007, South Coast Publications exited Sky Blue Media as a shareholder. Natal Witness increased its shareholding from 40% to 50% while EG Herald increased its shareholding from 15% to 20%. See Orsmond's witness statement paragraph 6.2.
[243] Le Roux's witness statement paragraph 21.
[244] Orsmond's witness statement paragraph 3.2.

newspaper strategy was accelerated from 2007 following the creation of Sky Blue Media, led by Orsmond" but that "*it had been adopted at a much earlier stage when the Natal Witness took a stake in Village Talk and the Greytown Gazette, and published, Echo and Mirror ... ."*[245] He further confirmed that this strategy is an ongoing one.[246] Le Roux also confirmed that "*[t]owards the end of 2006, I approached Mr Jacobs, who was the proprietor of Public Eye, with a proposal to form a joint venture*".[247] He went on to state that "*[i]n my view, the hope of being bought out by one of the large media groups is one of the primary motivations for small independent publishers launching a community newspaper*".[248]

207. Jacobs, however, explained as follows why he eventually sold a share of his business to Caxton: "*[i]t was never my intention to sell-out my aspirations of becoming a successful independent black commercial newspaper publisher ... Capital Media's decision to enter into a joint venture with Caxton was based on a sobering reality that it required access to substantial backing to survive the anti-competitive strategy employed by Natal Witness*".[249]

208. There clearly is an established and ongoing practice in the community newspaper sector for the large players to acquire competitors in whole or in part while they are still relatively small. Such acquisitions often constitute "small" mergers in terms of the Act and therefore are not required to be notified to and considered by the competition authorities, despite the fact that the acquiring firm(s) involved may have large and growing market positions in the relevant markets and that the transactions thus have the potential effect of substantially preventing or lessening competition and/or raising public interest concerns.

[245] Le Roux's witness statement paragraph 27.
[246] Transcript page 903.
[247] Le Roux's witness statement paragraph 72.
[248] Le Roux's witness statement paragraph 21.
[249] Jacobs' witness statement paragraph 57.

209. It is in this context that the Tribunal on 13 April 2012 directed a letter to all parties indicating that it is considering imposing a condition on Media24 in relation to the notification of future “small” mergers.

210. The Commission pointed out that it has previously published a notice that requires notification of all mergers relating to companies which are under investigation or respondents before the Tribunal.[250] By virtue of being a company under investigation Media24 is therefore currently required to notify all its “small” mergers to the Commission. However, the existence of such notice does not render the Tribunal’s condition redundant since the Commission’s restrictive practice investigations may cease.[251] We note that the Commission’s investigations are not concerned with the issue of creeping acquisition and furthermore that they have a limited life span and therefore are not aligned to the ongoing practice of creeping acquisition. A merger condition is therefore needed to address this issue.

211. The merging parties in response submitted that the threshold question for the consideration of any further condition should first be whether any such condition is necessary in light of the conditions already tendered. We note that the merging parties’ tendered conditions do not at all relate to or address the issue of creeping acquisition in the relevant markets.

212. The merging parties further objected insofar as a notification condition is a response to Caxton's allegations regarding alleged failures to notify intermediate/large mergers subject to a mandatory notification requirement, since Caxton was permitted to intervene in the current merger proceedings only insofar as such allegations have a bearing on the assessment of the relevant counterfactual (also see paragraph 5 above). We note that we have made no ruling regarding the alleged non-notification of the merging parties’ past transactions. However, in the context of the need for the imposed notification condition it does not matter

[250] See Commission’s submission on conditions in response to the Tribunal’s request, paragraph 3.3.3.
[251] Ibid, paragraph 3.3.4.

if the merging parties' past transactions were in fact legally notifiable or not since those transactions, even if correctly classified by the merging parties as "small" mergers, would have raised likely competition effects and public interest concerns in the relevant markets which could have been dealt with at the time if they had been notified. Furthermore, the Tribunal's concerns in this regard do not relate to Caxton's arguments but relate to its concerns regarding creeping concentration in the relevant markets since it is evident that "small" mergers in these markets can have both competition and public interest consequences that require scrutiny.

213. The other issue raised by the merging parties is whether the condition is suitable or appropriate. We find that a "small" merger notification condition on Media24 is both suitable and appropriate given the clear evidence of creeping acquisition strategies in the community newspaper market, the fact that this merger consolidates Media24's position in the relevant markets and the fact that this merger raises significant public interest concerns.

214. The merging parties also alleged that a "small" merger notification requirement on Media24 would hamstring Media24 from pursuing its legitimate commercial interests under the same regulatory conditions that apply to its competitors in South Africa and that such regulatory asymmetry is unjustified as a consequence of these merger proceedings. We have indeed stressed above that the practice of creeping acquisition appears not to be limited to Media24 but is rather a widespread phenomenon in the community newspaper market. The fact that this is a broader concern is however no reason not to impose such a condition on Media24 in this case since this merger consolidates Media24's position in the relevant markets. If other parties that are not a party to this merger in future contemplate transactions in the relevant markets then the Commission/Tribunal can consider if such mergers warrant similar conditions to be imposed on such parties.

215. We have therefore ordered the merging parties to notify the Commission of all future "small" mergers between Media24 or any other

entity controlled by it and a target firm which is a Small Independent Publisher and/or a target firm that provides printing services to a Small Independent Publisher. This condition will apply for as long as the acquiring firms, or any entity controlled by the acquiring firms, control Africa Web. We note that we have limited this requirement of the merging parties to the relevant product and geographic markets affected by this transaction since a Small Independent Publisher means a small independent community newspaper publisher which has its primary business as the publishing of newspapers in KwaZulu-Natal and the Northern Eastern Cape.[252]

Monitoring of conditions

216. We have ordered the following monitoring conditions that relate to all aspects of the conditions:

216.1. All shareholders and board members of Natal Witness and Africa Web must be given a copy of the imposed conditions within 10 days of the date of the Tribunal's order;

216.2. All new shareholders and new board members of Natal Witness and Africa Web must be given a copy of the imposed conditions within 10 days of becoming a shareholder or a board member; and

216.3. Africa Web must submit an annual report to the Commission on each anniversary of the date of the Tribunal's order on all matters pertaining to its compliance with the conditions, including but not limited to –

(i) any upgrade during the previous twelve months;

(ii) a statement of the aggregate expenditure in respect of any Upgrade by Africa Web during the previous twelve months. To the extent required by the Commission, Africa Web must provide copies of any documentary evidence of the expenditure; and

[252] See definitions section of imposed conditions.

(iii) the names and contact details of all Small Independent Publishers and MDDA-supported publishers for whom Africa Web and Natal Witness have provided printing services during the immediately preceding twelve months, accompanied by monthly print schedules and a summary of any disputes which may have arisen with any such publisher(s) and the manner in which such disputes were resolved.

Conclusion

217. For the above reasons we approved the proposed merger subject to the conditions as set out in the attached "**Annexure 1**" hereto.

____________________	05 July 2012
Andreas Wessels	**DATE**

Norman Manoim and Merle Holden concurring

Tribunal researchers:	Songezo Ralarala and Elizabeth Preston-Whyte
For the merging parties:	Adv David Unterhalter, Adv Alfred Cockrell and Adv Michelle Le Roux instructed by Werksmans Attorneys
For the Commission:	Adv M du P Van der Nest
For Caxton:	Adv Jerome Wilson and Adv Gavin Marriot instructed by Nortons Inc