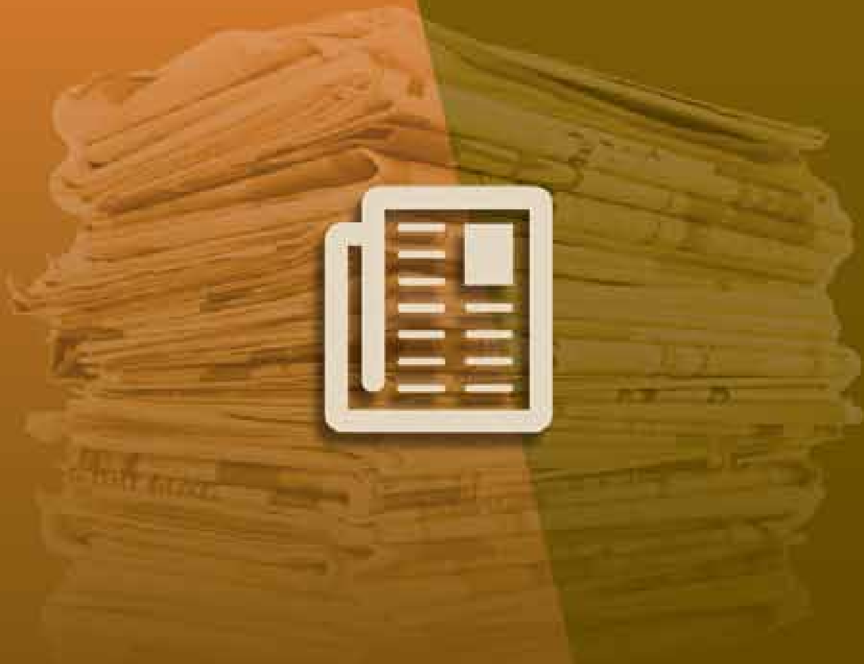


CHAPTER 5

COMPETITION COMMISSION CASES IN THE MEDIA: PRINT MEDIA

BY TAMARA PAREMOER

Tamara Paremoer

Tamara Paremoer is a principal policy analyst in the Advocacy and Stakeholder Relations Division of the Competition Commission of South Africa. She is responsible for research and strategic analysis that shapes the work and priorities of the Competition Commission. Tamara has identified the promotion of competition in print and broadcast media markets as one of her key areas of focus. Her other research interests include health care and competition in regulated industries such as aviation, telecommunications and energy.

INTRODUCTION

The Competition Commission of South Africa is a statutory body established in terms of section 19 of the Competition Act, 89 of 1998 (as amended) and responsible for investigating anti-competitive conduct, considering exemptions from competition law, and regulating mergers within South Africa. The Commission's primary purpose is to promote competition in order to improve the efficiency and adaptability of the economy, to promote a greater spread of ownership, to increase consumer choice, and to make it easier for all South Africans to start, build and sustain successful businesses.

This chapter focuses on the work that the Competition Commission has done within the South African media sector. We describe the competitive dynamics and competition concerns observed during merger evaluations and complaint investigations in media markets.

The chapter is based on the findings made in completed investigations. For that reason, we will focus only on print media – newspapers in particular – and will not cover broadcast and digital media, as we have not completed investigations in those markets.

There are three parts to the chapter. First, we outline the purpose and objectives of the Competition Commission in order to understand the role that the Commission plays in the economy. Second, we describe the major players in the newspaper market. The final part sets out the challenges that new entrants face when entering the newspaper market and shows what the competition authorities have done to reduce these barriers.

WHAT IS THE ROLE OF THE COMPETITION COMMISSION IN THE ECONOMY?

The South African economy is characterised by high levels of concentration. A 2009 study on trends in income distribution indicates that national income has become increasingly concentrated at the top end. In 1993, the richest 10 per cent of South Africans held 54 per cent of national income. By 2008, this concentration increased to 58 per cent.[1] Business concentration is also very high. According to February 2013 data, only ten companies account for more than 55 per cent of the FTSE JSE All Share Index.[2] High levels of concentration are compounded by South Africa's low rate of new business formation compared to its developing country peers.

This raises a question: why is there a seeming lack of competition in the South African economy? The lack of competition has been attributed to various factors, including the relatively small size of our local market, and our legacy of state-centred, protectionist apartheid capitalism.

It is well known that the apartheid regime actively supported businesses in the energy (for example, Sasol), industrial products (for example, Iscor) and mining sectors. The state also actively regulated prices in many agricultural markets through state-controlled 'marketing boards'.[3] Many of the conglomerates and large corporations fostered under apartheid capitalism simply did not know how to function in a competitive market.

1. Leibbrandt M, I Woolard, A Finn and J Argent, J (2010) 'Trends in South African income distribution and poverty since the fall of apartheid', OECD Social, Employment and Migration Working Papers, No. 101, OECD Publishing.
2. FTSE Group, 28 February 2013, Available at http://www.ftse.com/Indices/FTSE_JSE_Africa_Index_Series/
3. Seekings J and N Nattrass (2004) The post-apartheid distributional regime. CSSR Working Paper No 76, University of Cape Town.

State-sponsored dominance also extended to the media sector. Until the early 1990s, the sector was characterised by duopolies in the Afrikaans and English language press and an effective state monopoly in radio and television.[4] These four newspaper groups also collectively ran the Newspaper Press Union, which controlled all newspaper distribution networks and regulated prices in the newspaper industry.[5] There was clearly very limited competition.

In the 1990s, as South Africa emerged from its isolationist past, competition policy was viewed as a crucial instrument for introducing dynamism into the economy and encouraging the transformation of inherited monopolistic markets. The objective of introducing competition into the South African economy had to be balanced with the need to address the legacy of extreme inequality and the historical exclusion of the majority of the population from meaningful participation in the economy.[6]

A balance had to be struck between, on the one hand, the strict application of competition principles and, on the other hand, the use of competition policy as an instrument of economic transformation. In a strict sense, competition law is used to prosecute collusion and exclusionary activity by monopolies. In a broader sense, competition law and competition policy can be a transformative tool that reduces barriers to entry for new business, broadens the ownership base in the economy, and improves the international competitiveness of South African firms.

The balancing act between strict and broad interpretations of competition law led to the inclusion of 'public interest' considerations in South Africa's Competition Act. This peculiar aspect of our legislation compels the Commission to consider the impact of merger activity on public interest matters such as employment, the ability of firms owned by historically disadvantaged persons to compete, and the international competitiveness of South African firms. The competition authorities can impose conditions on merging firms to mitigate any negative impact on these public interest matters. The Act also makes provision for the Commission to grant exemptions that allow firms to engage in prohibited behaviour if this will have certain defined pro-competitive benefits such as the promotion of exports and improving the ability of small firms and black-owned firms to compete in the economy.

The inclusion of the public interest considerations shows that the policy makers indeed intended to use competition law as a transformative economic tool. The Commission has internalised this spirit in the manner in which it approaches investigations and has prioritised sectors and products for investigation based on the impact that these sectors have on the poorest South Africans as well as the role that the sectors play in government's industrial and economic policy.

The media sector has emerged as one such priority sector. The Commission's interest in the print media, and the newspaper market in particular, was sparked by a notable increase in the number of competition cases in the sector over the past few years.[7] Concerns have arisen at the printing and distribution stage of the newspaper publication process about high barriers to entry and potentially anti-competitive activity by large firms.

The rest of this chapter examines these competition challenges in the newspaper market in more detail.

4. A duopoly is a market wherein there are only two firms.
5. Jacobs S (1999) Tensions of a free press: South Africa after apartheid. Research paper R-22. The Joan Shorenstein Center, Harvard University.
6. Lewis, D (2011) Thieves at the Dinner Table – A Personal Account. Johannesburg: Jacana.
7. Between 2004 and 2012 the Commission initiated a total of 13 investigations in the media sector consisting of six cartels and seven abuse of dominance cases.

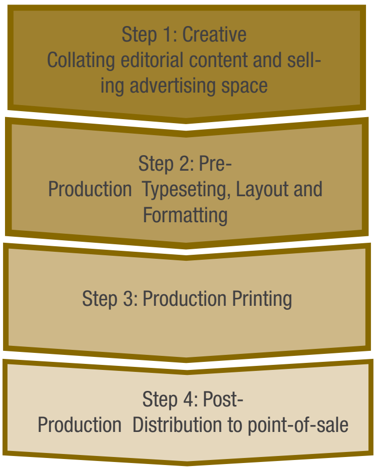
UNDERSTANDING THE NEWSPAPER MARKET

The newspaper market can be split into two broad types of publications; 'paid-for' publications where consumers pay a fee to access content, and 'free' publications that are distributed to their target market free of charge. Free publications are usually circulated in a small geographic area and are delivered directly to readers' homes. The majority of free publications are what the Commission refers to as 'community newspapers'.[8]

WHAT ARE THE STEPS TO PUBLISH A NEWSPAPER?

There are four main steps in the publishing process. The first step, the creative phase, involves collecting and collating editorial content and selling advertising space. The second phase, pre-production, involves typesetting, layout and formatting. The third phase, production, is the printing. The final stage, post-production, involves distribution.[9]

Figure 1: The Newspaper Publishing Process



WHAT IS THE STRUCTURE OF THE SOUTH AFRICAN NEWSPAPER MARKET?

The South African print media industry is highly concentrated, with a small number of firms with large market shares at each level of the value chain. Four main media houses account for a significant portion of the newspaper market. These media houses also have considerable influence over printing and distribution.

WHO ARE THE MAJOR PLAYERS IN THE SOUTH AFRICAN PRINT MEDIA SECTOR?

There are four main players: Naspers through its subsidiary Media24, Caxton, The Times Media Group and Independent Newspapers.

Media24 controls the Naspers group's publishing and printing activities. It is the largest publisher, printer and distributor of magazines and newspapers in Africa.[10] Media24 publishes more than 60 newspapers including The Daily Sun, City Press, Beeld, Die Burger and Rapport. About 50 of these publications are community papers with localised distribution. The group's largest presence in community papers is in the Western Cape.

The Caxton Group has one paid-for newspaper, The Citizen, which has a national footprint. The group has an interest in more than 150 community newspapers that are distributed throughout the country.[11]

The Times Media Group, formerly Avusa, publishes 19 newspapers including South Africa's biggest Sunday paper, the Sunday Times. Their

8. The Commission notes that this is not the definition of 'community newspaper' contained in the MDDA Act. The MDDA Act defines 'Community Media' as any media project that is owned and controlled by a community where any financial surplus generated is reinvested in the media project; and 'community' means a geographically founded community or any group of persons or sector of the public having a specific ascertainable common interest. The MDDA Act defines 'Small Commercial Media' as independent media enterprises or initiatives that are run for personal gain as micro, very small or small businesses as classified in the National Small Business Act, 1996. Our definition of community newspapers is thus similar to the definition of small commercial media in the MDDA Act. The term 'community newspapers' is henceforth used to describe local newspapers that target a specific community.
9. Who owns whom (2012), Publishing of Newspapers, Magazines and Journals, September: 8.
10. Naspers Fact Sheet, Available at http://www.naspers.com/naspers_factsheet.php
11. Caxton, available at http://www.caxton.co.za/pages/pub_CommNews.htm, and National Advertising Bureau, available at http://www.nab.co.za/about-us/.

community newspapers division publishes nine weekly titles in the Eastern Cape.[12] Time Media Group is involved in the publication of the Financial Mail and Business Day though a joint venture with the British publisher Pearson.[13]

The Independent Newspapers Group is a wholly owned subsidiary of Independent News and Media Limited.[14] Independent Newspapers publishes ~30 daily and weekly newspapers. The group has a large presence in the English reader market, estimating that it reaches 63 per cent of the English market in Gauteng, KwaZulu-Natal and the Western Cape. Independent Newspapers also publishes the only isiZulu daily in South Africa, Isolezwe.[15] Tables 1 and 2 show the geographic distribution of the newspaper titles held by these major publishers.

Table 1: Number of community newspaper titles held by major groups[16]

Province	Media24	Caxton	Times Media Group	Independent Newspapers Group
Gauteng	4	55		
Mpumalanga		20		
North West	2	10		
Limpopo		11		
KwaZulu Natal	8	41		
Eastern Cape	8	6	9	
Western Cape	15	7		17
Northern Cape	2	1		
Free State	11	4		
Total	50	155	9	17
Other SADC countries		14		

Table 2: Number of paid-for newspaper titles held by the major groups per province[17]

Province	Media24	Caxton	Times Media Group	Independent Newspapers Group
National	11	1	5	5
Gauteng			1	2
Mpumalanga				
North West				
Limpopo				
KwaZulu Natal	3		1	5
Eastern Cape				
Western Cape	1		3	4
Northern Cape				1
Free State				
Total	15	1	10	17

WHAT CAN WE ASCERTAIN FROM THESE GEOGRAPHIC FOOTPRINTS?

Tables 1 and 2 show that there is very little geographic overlap in the footprints of the four major print media players. Caxton has the largest number of community newspapers but only one paid-for publication. It has a strong presence in Gauteng, KwaZulu-Natal and Mpumalanga. Conversely, Media24 and Independent Newspaper Group both have a relatively limited presence in community papers but a large presence in 'paid-for' publications. Media24 and Independent Newspapers have a strong presence in the Western Cape; a province wherein Caxton has a smaller presence. Times Media Group's community newspapers are all in the Eastern Cape, one of Caxton's smallest markets. The media houses have limited geographic overlap and seem to focus on different product markets.

12. Times Media Group, available at http://www.timesmedia.co.za/.
13. Richtrau No.229, a wholly owned subsidiary of Mvelaphanda Group Ltd, acquired the entire issued share capital of Avusa Ltd. Richtrau No. 229 was renamed 'Times Media Group' and listed on the Johannesburg Stock Exchange. See large merger 68/LM/Jun12 and Business Day article, Three biggest Avusa investors to remain TMG shareholders, 25 September 2012, available at http://www.bdlive.co.za/business/media/2012/09/25/three-biggest-avusa-investors-to-remain-tmg-shareholders
14. On 18 February 2013, Sekunjalo issued a SENS announcement stating that it will acquire Independent Newspapers' South African operations. At the time of writing, the merger had not been notified to the Commission.
15. Independent Newspapers website. Available at http://www.iol.co.za/independent-group-1.123723
16. Based on information collated from corporate websites in March 2013.
17. Based on information collated from corporate websites in March 2013.

The major media houses are also still split according to language. Media24 dominates Afrikaans-language papers and the other media houses focus on English publications. The market for isiZulu publications is emerging as a site of increased competition between the major media houses.[18]

The limited overlap in both product and geographic markets raises some concerns about whether the media houses are competing as effectively as they should. The limited presence of Media24 in the English-language market and limited presence of Caxton, Independent Newspapers and Times Media Group in the Afrikaans-language market may indicate limited competition, but could also be the consequence of maintaining historical areas of focus in an over-serviced market.

WHAT ARE THE DYNAMICS IN THE PRINTING MARKET?

As in the publishing market, the printing of newspapers is also concentrated among the large media houses.

Paarl Media Group (Pty) Ltd is a wholly owned subsidiary of Media24 with newspaper and commercial printing plants in Johannesburg, Cape Town, Bloemfontein and Port Elizabeth. In May 2012, Media24 acquired an 80 per cent interest in Africa Web, thus extending its printing footprint to KwaZulu-Natal.[19]

CTP Printers, a subsidiary of Caxton, has newspaper printing facilities in Johannesburg and Cape Town. It also has interests in approximately 10 smaller newspaper-printing facilities that provide it with national coverage. [20]

The Independent Newspapers Group has large newspaper printing plants in Johannesburg and Durban.[21] The Johannesburg-based printing division is optimised for newsprint and cannot print community papers.

The large media groups have extensive printing footprints with established printing capacity, either in-house or outsourced.[22] There are few independently-owned newspaper printing presses, and those that do exist often have agreements to print on behalf of the large media houses. The effect of this is that independently-owned community newspapers are forced to compete with larger competitors for printing slots and struggle to access reliable, good quality and timely printing services. This presents a considerable challenge.

It is unsurprising that smaller independent community newspapers cite access to printing and the cost of printing as the greatest obstacle to building a successful business.[23]

HOW DOES MARKET STRUCTURE AFFECT ENTRY BY NEW PLAYERS?

'Barriers to entry' are obstacles that make it difficult to enter a particular market. Competition authorities evaluate barriers to entry to help them understand the ease of entering a market and the likelihood that new firms will enter a market and increase competition. If barriers to entry are low, new businesses can enter a market quite easily in response to unmet demand. High barriers to entry, on the other hand, deter entry, effectively protecting incumbents from competition.

Many barriers to entry; such as (sunk) start-up costs, regulatory requirements and equip-

18. Independent Newspapers (Pty) Ltd, Caxton, and Media24 are active in this market.
19. Who owns whom (2012) Publishing of Newspapers, Magazines and Journals, September: 96, and Media24 website, available at http://www.financial-results.co.za/2012/media24_ar2012/m-group-glance.php.
20. According to a press release by US-based EFI™, a Caxton supplier, Caxton has 10 coldset facilities across the country. See http://www.technique-mis.com/news/technique-mis-selected-by-caxton-and-ctp-publishers-printers-limited.
21. Media24/Natal Witness merger, case No. 2011Feb5670.
22. The fact that all media houses have access to printing facilities across the country makes the limited geographic overlap in their publishing operations even more curious.
23. Media24/Natal Witness merger, case No. 2011Feb5670.

ment, can be anticipated. A challenge for competition authorities is that barriers can also be raised artificially by the anti-competitive conduct of incumbent firms. We will show how this manifests in print media.

The following sections evaluate the most significant barriers to entry in the print media market. Ownership concentration, 'creeping acquisition' and limited access to printing and publishing raise the barriers to entry and make it difficult for new entrants to compete effectively against established media houses.

BARRIER TO ENTRY 1: OWNERSHIP CONCENTRATION

As demonstrated above, the South African print media industry is very concentrated. The large media houses have the benefit of an established reputation, a national footprint and economies of scale. Their reputation gives them bargaining power relative to smaller publications, as they can assure their readers and advertisers that their publications will be available regularly and will be of consistent quality.

Their national footprint allows them to offer advertisers space in a range of publications through a central point of contact; which gives them a considerable competitive advantage over disparate small, independent community newspapers.

The diversified portfolios and extensive reach of large media houses also gives them the benefit of economies of scale. They can spread their costs over a broader range of publications than the smaller community newspapers, which often own only one publication.

In terms of anti-competitive conduct, the lower average costs and broader product range of large media houses may give the larger players an incentive to engage in predatory behaviour. If a large media house, for instance, faces tough competition from a smaller community newspaper in a specific area, it may respond by offering extremely low advertising rates to customers in that particular contested market; it can absorb the losses from these discounts because it receives additional revenue from its other publications in markets where it still charges higher rates. Smaller independent community papers do not have this advantage as they often depend on a single publication for all their revenue.

The practice of selling goods and services at prices that do not cover costs is known as 'predatory pricing' and is prohibited in terms of Section 8 of the Competition Act.[24] The Commission has investigated a complaint of exactly this type of predatory behaviour in the market for community newspapers in the Free State. On 31 October 2011, the Commission referred a complaint of predatory pricing against Media24 to the Tribunal.[25] [26]The complainant, Berkina Twintig (Pty) Ltd, operated a community newspaper called Gold-Net News in the Goldfields area. Media24 operated two competing community newspapers, Vista and Goudveld Forum, in the Goldfields area at the time. Berkina Twintig alleged that Media24 engaged in predatory pricing during the period January 2004 to February 2009 by offering advertising in Goudveld Forum at rates that could not possibly have covered their costs. Gold-Net News could not match the low advertising rates and lost advertising customers to the Media24 publications. Goudveld Forum closed its doors and exited the market in 2009.

[24] A predatory price is one below marginal or average variable cost. This means that the firm cannot possibly cover the additional cost incurred to produce the good or service at the sale price.
[25] Media Release issued by the Competition Commission, Commission refers predatory pricing case against Media24, 31 October 2011.
[26] This matter will be contested by Media24 before the Competition Tribunal. The information contained in this chapter does not pre-empt any finding by the Tribunal, but simply sets out the findings of the Commission based on its investigation.

The Commission's investigation showed that Media24 charged predatory advertising rates for advertising space in Goudveld Forum. It seems that Media24 did so for purpose of defending the market share of its more lucrative publication, Vista against competition from Gold-Net News. The investigation showed that Media24 budgeted to operate Goudveld Forum at a loss during the predatory pricing period; once Gold-Net News exited the market, Goudveld Forum was closed and Vista continued to operate.

Media24's response to competition from Gold-Net News may have sent a message to any potential entrant that Media24 can, and will, defend its market share aggressively against competition, raising barriers to entry.

BARRIER TO ENTRY 2: CREEPING ACQUISITION

'Creeping acquisition' refers to the situation in which large firms acquire small competitors to prevent them from growing into large, effective competitors. These acquisitions are often too small to warrant merger notification to the competition authorities. Considered in isolation, any one of these small mergers would not raise competition concerns – however, on aggregate, a number of successive small mergers may lessen competition significantly in the long-term.

In the recent merger between Media24, Paarl Coldset and Natal Witness Printing & Publishing Company, the Tribunal raised concern about creeping acquisition in the market for African-language community newspapers.[27] The Tribunal found that community newspapers have been very successful in the underserviced African language segment. However, large firms often respond by acquiring these successful African-language community papers instead of competing with them in local markets. In order to address the practice of creeping acquisition in the Media24 merger, the Tribunal imposed a condition on the merger that prevented Media24 from acquiring any community newspaper in the KwaZulu-Natal and north Eastern Cape region without the approval of the Competition Commission. This condition ensures that the Commission is aware of any acquisition and can determine whether it would have anti-competitive effects.

This example shows that competition authorities are interested in existing competition and also in potential competition. The practice of creeping acquisition limits competition and makes potential entrants nervous about venturing into the community newspaper market.

BARRIER TO ENTRY 3: ACCESS TO PRINTING

We have shown that the printing level of the value chain is also very concentrated. Ownership concentration at this level limits the ability of independent newspapers to access quality printing at the right time. In the Commission's interactions with community newspapers, the owners have confirmed that access to quality printing facilities at the right time is a considerable challenge.

The ability of independently-owned community newspapers to access printing facilities on fair terms was a major concern in the large merger of Media24, Paarl Coldset and the Natal Witness. As a result of this merger,

[27] Large merger between Media24 Limited, Paarl Coldset (Pty) Ltd and The Natal Witness Printing & Publishing Company (Pty) Ltd, 15/LM/Jun11.

Media24 was set to increase its stake in the KwaZulu-Natal based Africa Web from 50 per cent to 80 per cent. Africa Web provided printing services to various community newspapers in KwaZulu-Natal and the northern Eastern Cape that competed with Media24's community newspapers. The Commission was concerned that Media24 would use its greater stake in Africa Web to exclude independent community newspapers from these printing facilities in favour of Media24's own publications. The merging parties did not deny that they would prioritise their own printing. The Tribunal agreed with the Commission that the merged entity would indeed have the incentive and the ability to exclude competing community newspapers from accessing Africa Web's printing facilities. This meant that the Tribunal had to consider how to prevent the potentially anti-competitive exclusion of community newspapers. It imposed three conditions on the merged entity to reduce its incentive to exclude competitors after the merger.

The first condition was that the merged entity should increase Africa Web's printing capacity by 1000 tons and make this capacity available to small independent publishers. The second condition was that Africa Web should be managed independently of Media24, to limit Media24's influence over the operations and decisions of Africa Web. Finally, the Tribunal stipulated that Africa Web should enter into agreements with existing customers affirming that it would continue providing printing services to them on favourable terms. The merger conditions are effective for a period of five years from July 2012.

These merger conditions show how the competition authorities mitigate competition concerns in the public interest and in the interest of competitive markets. These particular conditions will allow new entrants to enter the markets without fear that Media24 would use its dominance to exclude them from the printing market and will ensure that current community newspapers have access to reliable, good quality printing. The Tribunal also ensured that the conditions are in place for a period of time that is long enough to allow smaller firms to become competitive. The merger conditions give new entrants a fair chance to compete against a large incumbent.

WHAT ABOUT DISTRIBUTION?

The Competition Tribunal has considered one case that concerns distribution in the print media market. The complaint was lodged in June 2004 by Mandla Matla Publishing (Pty) Ltd against the Independent Newspaper Group. It related to the distribution of isiZulu newspapers in KwaZulu-Natal.

Ilanga, the country's first isiZulu newspaper, was established by John Langalibalele Dube in 1903, and acquired in its entirety by Independent Newspapers (then Argus Group) in 1963.[28] In 1987, Independent Newspapers sold Ilanga to Mandla Matla. Although Mandla Matla bought the rights to Ilanga, it entered into an agreement with Independent Newspapers to continue printing, distributing and providing administrative support for the publication. For the next 15 years, Independent Newspapers distributed Ilanga on behalf of

[28] Gillwald A (1988) 'A Black Coup'- Inkatha and the sale of Ilanga. Transformation (7).

Mandla Matla using its own exclusive distribution network. At the end of the 15 year contract, Mandla Matla chose not to renew the service agreement with Independent Newspapers. Instead, Mandla Matla entered into an agreement with Natal Witness Printing & Publishing Company (Pty) Ltd, to publish and distribute Ilanga.

Independent Newspapers responded to the loss of the Ilanga contract by launching a competing isiZulu daily newspaper, Isolezwe, for distribution throughout KwaZulu-Natal. Independent Newspapers instructed its network of distributors not to distribute their competitor's publication. Mandla Matla argued that this was anti-competitive.

The Competition Tribunal found against Mandla Matla, arguing that the exclusion from Independent Newspapers' distribution network did not have any anti-competitive effect. In support of this finding, the Tribunal noted that Natal Witness (Mandla Matla's new distributor) was able to establish its own distribution network within just two months of getting the contract to distribute Ilanga. The pace and ease with which Natal Witness replicated a rival distribution network showed that there was no anti-competitive exclusion. In the Mandla Matla case, distribution was not considered a significant barrier to entry.

This finding, however, is not applicable to all cases. In this case, the Tribunal dealt with a newspaper that had been in the market for more than 100 years, and had an established reputation and a loyal reader and advertising base. It is considerably easier for a paper with an established reputation to find alternative distributors but this does not necessarily apply to new entrants. A new entrant would have no way of ensuring steady, large distribution quantities to a new distribution network and may not have been as successful in establishing a rival network. A smaller player would possibly have had more success in arguing that the exclusion from an existing (dominant) distribution network constituted anti-competitive behaviour.

CONCLUSION

Before 2004 the Commission investigated three cases in the print media market. Since 2004, the Commission has investigated thirteen cases in the print media sector. Six of these cases were alleged cartel behaviour – the most egregious competition law contravention. In the remaining seven cases, the dominant media houses are alleged to have abused this dominance, which indicates that the structure of the print media market may make it prone to anti-competitive exclusion. The Commission has responded by declaring the print media market an area of focus, and will continue to monitor competition in print media in support of a more diversified and competitive print media industry over the next five years. The dynamism of new entry and the growth of sustainable new businesses in the newspaper market are central to our objectives and to increasing the diversity of voices in South African print media.