NOTICE 1003 OF 2013

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

A NEWLY FORMED ENTITY TO BE INCORPORATED IN THE REPUBLIC OF MAURITIUS WHICH WILL BE CONTROLLED BY CHINA INTERNATIONAL TELEVISION CORPORATION TO BE CALLED INTERACOM INVESTMENT HOLDINGS LIMITED.

AND

SEKUNJALO INDEPENDENT MEDIA PROPRIETARY LIMITED

AND

INDEPENDENT NEWS & MEDIA SOUTH AFRICA PROPRIETARY LIMITED

CASE NUMBER: 2013JUL0317

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The proposed transaction involves two acquiring firms. The first acquiring firm is Sekunjalo Independent Media (Pty) Ltd ("Sekunjalo"), a private firm incorporated in terms of the laws of the Republic of South Africa ("SA"). Sekunjalo is a newly incorporated entity and does not control any other firm either directly or indirectly.

The second acquiring is Newco, a newly formed entity to be incorporated in the Republic of Mauritius. In the Shareholders Agreement entered between China International Television Corporation ("CITVC") and China Africa Development fund ("CADF"), it is indicated that Newco shall be called Interacom Investment Holdings Limited.

There is no horizontal overlap and/or a vertical overlap in the activities of the merging parties (i.e. Sekunjalo, Sekunjalo Investment, CITVC (acting through Newco) and INMSA). As a result of PIC's involvement in the proposed transaction, any likely horizontal or vertical overlap only arise in the event that the PIC exercises control as defined in sections 12 (2) of the Act over TMG and Naspers, and/or whether the 25% shareholding at INMSA confers control to it post-merger.

In the initial transaction,[1] the Commission concluded that PIC does not currently exercise control over TMG or Naspers. As such, the Commission is of the view that it is unlikely that the proposed transaction will result in unilateral and vertical effects in any markets where the TMG, Naspers and INMSA are active. Similarly, the Commission does not deem it necessary to undertake a unilateral or vertical effects analysis as the proposed transaction does give rise to horizontal or vertical overlaps.

Notwithstanding the aforesaid, the shareholding interest held by PIC in three competing entities TMG, Naspers and INMSA post-merger raises concerns related to potential information exchange post-merger. The potential presence of the PIC on the board of directors of INMSA, Naspers and the TMG post-merger, could facilitate the sharing of competitively sensitive information among the three competing companies that could increase the likelihood of anti-competitive coordination between them. The Commission concludes that it is necessary to impose conditions to address the likely competition concerns that may arise due to the cross-ownership of shares by PIC in competing entities. The conditions imposed by the Commission in the initial transaction aimed to address the possibility of PIC being in control of INMSA in whatever form post-merger and the possible information exchange that could arise as a result of PIC's shareholding and potential board representation at TMG, Naspers and INMSA.

The conditions sought ensure that the ambiguity with regards to the control of INMSA post-merger is addressed as the shareholders agreements between Sekunjalo and PIC and Sekunjalo and CITVC in respect of INMSA has not been finalised.

The Commission therefore approves the proposed transaction subject to the following condition to which the merging parties are amenable, that:

- Newco and Sekunjalo shall submit the signed shareholders agreement in respect of INMSA, and all ancillary agreements thereto, in respect of INMSA, to the Commission within 5 business days of its signature by the parties thereto;

[1] Refer to Commission case no: 2013Apr0167

- Sekunjalo shall submit the signed loan agreement in respect of the Newco's and PIC's loan(s) to INMSA, and all ancillary agreements thereto, to the Commission within 5 business days of its signature by the parties thereto;
- In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and TMG post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and TMG;
- In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and Naspers post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and Naspers;
- The PIC shall, notwithstanding the listing of INMSA or delisting of TMG and Naspers, ensure that its investments in INMSA, Naspers and TMG remain housed in different departments within PIC and shall continue to adhere to the existing safe guards,
- If, after the Approval Date and/or the shareholders agreement in 3.1 has been finalised, PIC acquires a form of control over INMSA as contemplated in section 12(2) of the Act, the Merging Parties shall file a new merger notification with the Commission in terms of the Act within 30 business days; and
- In the event that the PIC enters into any loan agreement with Sekunjalo and such a loan is converted into shares such that PIC acquires additional shares in INMSA; Sekunjalo will inform the Commission of this conversion within 5 business days of the conversion and will submit to the Commission all the necessary information including the signed loan agreement to enable the Commission to determine whether a notification is required. In the event that a merger notification is required, PIC will not, prior to obtaining the approval of the Competition Authorities, implement the transaction by exercising any of the rights accruing to such shares that may afford it control over INMSA.

The Commission approved the proposed transaction with conditions in terms of section 14(1) (b) (ii) of the Act, as amended.

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

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

1.2. "Approval Date" means the date of the merger clearance certificate;

1.3. "CADF" means China-Africa Development Fund, a limited liability company established and validly existing under the law of the People's Republic of China;

1.4. "CITVC" means China International Television Corporation, a limited liability company established and validly existing under the law of the People's Republic of China;

1.5. "Commission" means the Competition Commission of South Africa;

1.6. "Competition Authorities" means the Commission and the Competition Tribunal of South Africa;

1.7. "Competitively Sensitive Information" includes any trade secrets, prices, discounts, rebates margins, circulations figures, advertising rates, distribution methods, editorial content, promotional plans, business plans and strategies, customer information;

1.8. "Conditions" means these conditions;

1.9. "INMSA" means Independent News & Media South Africa (Pty) Ltd, with registration number: 1991/005270/07, or any subsequent name which may lawfully be registered to that entity;

1.10. "Merger" means the acquisition of control over INMSA by Newco and Sekunjalo;

1.11. "Merging Parties" means Newco, Sekunjalo and INMSA;

1.12. "Naspers" means Naspers Limited;

1.13. "Newco" means a newly formed entity to be incorporated in the Republic of Mauritius controlled by CITVC to be called Interacom Investment Holdings;

1.14. "PIC" means the Government Employee Pension Fund acting through its authorised representative the Public Investment Corporation SOC Limited;

1.15. "Sekunjalo" means Sekunjalo Independent Media (Pty) Ltd; and

1.16. "TMG" means Times Media Group Limited.

2. Recordal

2.1. In terms of the proposed transaction, Sekunjalo intends to acquire 55%, PIC intends to acquire 25% and Newco intends to acquire 20% of the shares in INMSA. The shareholders of Newco are CITVC, which owns 75% of the shares, and CADF, which owns 25% of the shares in Newco. CITVC controls Newco as contemplated in section 12(2) of the Act, whereas CADF does not have any form of control over Newco as contemplated in section 12(2) of the Act.

2.2. Given that the shareholders agreement between Newco, Sekunjalo and PIC in respect of INMSA has not been finalised, the Commission assessed the proposed merger in the absence of a shareholders agreement or any other document(s) that articulates the nature of the relationship between Newco, Sekunjalo and PIC post-merger. The Commission is concerned that in the absence of a shareholders agreement it is uncertain whether PIC will acquire a form of control over INMSA post-merger, as contemplated in section 12(2) of the Act.

2.3. There is currently also no shareholders agreement or any other document(s) that articulates the nature of the relationship between Newco, Sekunjalo and INMSA post-merger. The Commission is concerned that in the absence of a shareholders agreement the nature and extent of Newco's control over INMSA is uncertain.

2.4. According to the Merging Parties, PIC will, in addition to its own direct acquisition of equity in INMSA, also provide a loan to Sekunjalo to fund a portion of the purchase price. In the event that a loan agreement is concluded between Sekunjalo and PIC, the parties to this agreement have indicated that such a loan is unlikely to be convertible into equity in the event of a default; and is therefore unlikely to afford PIC any rights that will confer control to it in terms of section 12(2) of the Act. Given the uncertainty regarding the terms of any loan agreement that may be entered into between Sekunjalo and PIC, the Commission is concerned that the terms of such loan agreement may confer some form of control in terms of section 12(2) of the Act to PIC, in the event of a default.

2.5. In addition, post-merger, PIC will have shareholding in TMG, Naspers and INMSA and may appoint representatives on the board of directors of TMG, Naspers and INMSA. Given PIC's common shareholding in the three competing firms post-merger, the Commission is concerned that if PIC appoints representatives to the board of directors of TMG, Naspers and INMSA, this could potentially facilitate the sharing of Competitively Sensitive Information between INMSA, Naspers and TMG.

2.6. The Commission is therefore of the view that the Conditions set out in paragraph 3 below are necessary and sufficient to address the Commission's concerns as set out above. For the avoidance of doubt, the Conditions seek to remedy the following concerns –

2.6.1. the likelihood of any potential co-ordination which may result from the sharing of Competitively Sensitive Information given PIC's shareholding in INMSA, Naspers and TMG post-merger, which are competing firms;

2.6.2. the uncertainly with respect to the shareholding and management structure of INMSA post-merger; and

2.6.3. the uncertainly with respect to the terms of PIC's loan agreement to Sekunjalo.

3. Conditions to the approval of the Merger

3.1 Newco, Sekunjalo and PIC shall submit the signed shareholders agreement in respect of INMSA, and all ancillary agreements thereto, in respect of INMSA, to the Commission within 5 business days of its signature by the parties thereto;

3.2 Sekunjalo shall submit any signed loan agreement in respect of the Newco and PIC's loan(s) to INMSA, and all ancillary agreements thereto, to the Commission within 5 business days of its signature by the parties thereto;

3.3 In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and TMG post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and TMG;

3.4 In order to ensure that no Competitively Sensitive Information is exchanged between INMSA and Naspers post-merger, PIC shall not appoint any common directors and/or representatives to the board of directors of INMSA and Naspers;

3.5 PIC shall, notwithstanding the listing of INMSA and/or delisting of TMG and/or Naspers, ensure that its investments in INMSA, Naspers and TMG remain housed in different departments within PIC and shall continue to adhere to the existing safe guards, thus ensuring:

3.5.1 the physical separation, including controlled access to office space, of the Listed Equities department and Unlisted Equities department of PIC, to continue to regulate the restricted access of the Listed Equities department and Unlisted Equities department to shared IT systems;

3.5.2 that Competitively Sensitive Information in respect of either INMSA or Naspers or TMG is not shared among the different management teams within PIC managing Listed and Unlisted Equities respectively; and

3.5.3 in addition to clause 3.3 and 3.1 above, should either TMG or Naspers be delisted and INMSA be listed at the same time, PIC will manage its investments in the three entities separately, thus ensuring that PIC personnel managing its investment in each of TMG, Naspers and INMSA will not be the same.

3.6 If, after the Approval Date and/or the shareholders agreement in Error! Reference source not found. has been finalised, PIC acquires a form of control over INMSA as contemplated in section 12(2) of the Act, the parties to this merger shall file a new merger notification with the Commission in terms of the Act within 30 business days;

3.7 In the event that PIC enters into any loan agreement with Sekunjalo and such a loan is converted into shares such that PIC acquires additional shares in INMSA; Sekunjalo will inform the Commission of this conversion within 5 business days of the conversion and will submit to the Commission all the necessary information including the signed loan agreement to enable the Commission to determine whether a notification is required. In the event that a merger notification is required, PIC will not, prior to obtaining the approval of the Competition Authorities, implement the transaction by exercising any of the rights accruing to such shares that may afford it control over INMSA; and

3.8 If, after the Approval Date and/or the shareholders agreement in respect of Newco has been finalised, CADF acquires a form of control over Newco as contemplated in section 12(2) of the Act, by any amendment to the shareholders agreement in respect of Newco, the parties to this merger shall file a new merger notification with the Commission in terms of the Act within 30 business days.

4 Duration

4.1 Clause 3.3 and 3.4 of these Conditions shall remain in place for as long as PIC has shareholding in INMSA, Naspers and TMG; and

4.2 Clause 3.5 of these Conditions shall remain in place for as long as PIC has shareholding in INMSA, TMG and Naspers.

5 Monitoring of compliance with the Conditions

5.1 Should there be any deviation to the existing safe guards as captured in clause 3.5 of these Conditions, INMSA and/or PIC must inform the Commission of such changes within 10 business days.

5.2 An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

5.3 The Commission may on good cause shown, lift, revise or amend these Conditions.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.