NOTICE 998 OF 2013

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SEKUNJALO INDEPENDENT MEDIA PROPRIETARY LIMITED

AND

INDEPENDENT NEWS & MEDIA SOUTH AFRICA (PROPRIETARY) LIMITED

2013APR0167

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:

On 30 April 2013 the Competition Commission (the Commission) received a notice of an intermediate merger whereby Sekunjalo Independent Media (Pty) Ltd (Sekunjalo) and Public Investment Corporation (PIC) will acquire 75% and 25%, respectively, of the entire share capital as well as claims in Independent News & Media South Africa (Pty) Ltd (INMSA). Following implementation, Sekunjalo will have sole control over INMSA. Although PIC is not an acquiring firm for competition law purposes as it will not acquire control of INMSA, its 25% acquisition is relevant for purposes of assessing the proposed transaction. The Commission has also been informed that over and above the 25% acquisition, PIC will also partly finance the transaction.

The Commission, during the investigation of the proposed transaction, also learnt that Sekunjalo was in discussions with two sovereign wealth funds (i.e., China Africa Development Fund and China International Television Corporation) which could result in the acquisition of direct interest in INMSA (i.e., potentially lowering Sekunjalo's interest to less than 75%). However, for the purposes of this review, the Commission did not assess in any further detail the potential acquisition of interest in INMSA by the two sovereign funds, as that has subsequently been notified under case 2013Jul0317.

Sekunjalo is a newly formed entity and it has no existing business activity. The Sekunjalo group of companies (i.e., Sekunjalo Investment Holdings (Pty) Ltd and Sekunjalo Investment Limited) have interests in various sectors such as Health; Technology; Private Equity; and Telecoms. The Sekunjalo group of companies currently do not have any interest in the print media industry (i.e., newspapers, publishing, printing, etc.) where the target firm is active. According to the submissions from the merging parties none of the shareholders of Sekunjalo has any interest in the print media industry.

PIC holds investment interests in various sectors including in the media industry through its 19.2% interest in Times Media Group (TMG), formerly known as AVUSA – a direct competitor of INMSA. In addition to its shareholding in TMG in the media industry, PIC also has a 17.22% shareholding in Naspers Limited (Naspers). PIC submits that it does not currently exercise control over Naspers. The media and entertainment products owned by TMG include newspapers (i.e., Sunday Times, The Times, Sowetan, Sunday World, Weekend Post, The Herald, Saturday Dispatch and Daily Dispatch); magazines (i.e., SA Mining, South African Home Owner, Elle and Elle Decoration, Built, Pursuit, etc.).

Through its subsidiaries, Naspers newspapers titles include; City Press, Beeld, Soccer Laduma, Rapport, Volksbald, Daily Sun, Sondag, Sunday Sun, Daily Sun, Ulundi Media, UmAfrika and numerous other community newspapers in various local languages. Magazines owned by Naspers include; FHM, Drum, Women Health, Destiny, Kick-off, House &Garden, Fin Week, Heat, You, Huisegenoot, TV Plus, Golf Digest, Fairlady, True Love, Home, amongst several others. Some of these newspapers and magazines compete with those owned by INMSA.

The INMSA group's main business activity is in the publication, printing and distribution of 18 daily and weekly paid for newspapers (i.e., The Star, Pretoria News, Saturday Star, The Sunday Independent, The Mercury, Daily News, Isolezwe, Post, Sunday Tribune, Cape Times, Cape

Argus, and Daily Voice amongst others). The INMSA also has interests in free community newspapers (i.e., Record, Berea Mail, Highway Mail, Rising Sun, Tygertalk and Vukani amongst others) that are distributed in Gauteng, KwaZulu Natal and the Western Cape. In addition, the INMSA group publishes and distributes three magazines, namely: Glamour, GQ and House & Garden and also has interests in the online space (electronic media) through its IOL portal.

Any likely horizontal or vertical overlap only arise in the event that PIC exercises control over TMG, Naspers and/or INMSA as defined in section 12 (2) (a) – (g) of the Act, post-merger. According to the merging parties, there is currently no shareholders agreement in place or any other document that defines the relationship between the merging parties and how INMSA will be run post-merger. The Commission's view on control is thus based on other submissions made by the merging parties. The Commission is however concerned that, in the absence of a shareholders agreement the issues of control by PIC over Sekunjalo as contemplated in Section 12 (2) of the Act remain uncertain. The Commission is of the view that the issue of whether PIC has control or will have influence over the business operations of INMSA post-merger is critical because if it were found that PIC, post-merger has some control over INMSA, the proposed merger notice would likely exceed the threshold for an intermediate merger and therefore the ultimate jurisdiction rests with the Competition Tribunal. In order to address the ambiguity with respect to the governance structure of INMSA post-merger, the Commission deems it necessary to impose a remedy which would require the merging parties to inform and/or notify it when a change in control over INMSA is contemplated.

Based on the information provided by the merging parties, the Commission finds that it is unlikely that the proposed transaction will result in unilateral and vertical effects in any markets where the merging parties and its shareholders are active and/or have investments. This is because PIC does not exercise any control over TMG or Naspers and it will not assume control of INMSA in any form contemplated in the Act, post-merger.

TMG is a listed company with wide range of shareholders all whom have equal rights and none of the shareholders at TMG have the right to appoint or vote on the appointment of a majority of directors. PIC has the right to appoint two directors on the board of directors of TMG. PIC, despite its majority shareholding in TMG does not have a representative on the board of directors of TMG. The Commission therefore considers that it is not necessary to conduct an extensive unilateral and vertical effects analysis of this ownership interest.

With regards to PIC's shareholding in Naspers, PIC submits that it is currently not represented on Naspers' board of directors and it does not have a specified right to appoint a director. Further, according to PIC there is no shareholder's agreement in place that affords it rights that may confer control on it, for competition law purposes. As such, the Commission is similarly of the view that it is not necessary to conduct an extensive unilateral and vertical effects analysis of PIC's share ownership in Naspers.

Notwithstanding the aforesaid, the shareholding interest held by PIC in three competing entities TMG, Naspers and INMSA raises concerns related to potential information exchange post-merger. The potential presence of the PIC on boards of INMSA, Naspers and the TMG could facilitate the sharing of competitively sensitive information between companies that could increase the likelihood of anti-competitive coordination between them.

Furthermore, according to the merging parties, PIC will also provide a loan to Sekunjalo for purposes of financing the proposed transaction. The merging parties have indicated that it is not contemplated that such a loan will be convertible into equity and that the loan will not afford PIC any rights that will afford it control. As merger assessment is forward looking, the Commission is concerned that should Sekunjalo default on the loan, PIC will be in a position to take control over INMSA.

The Commission is of the view that conditions are necessary to address the likely competition concerns that may arise due to the cross-ownership of shares by PIC in competing entities. Essentially the conditions will 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 will ensure that the ambiguity with regards to the control of INMSA is addressed and that any possible information exchange is alleviated. Therefore, the Commission approves the proposed transaction subject to the following conditions, the merging parties have agreed to these conditions and the merging parties accept that these may change following discussion at the Commission Meeting:

- 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;

- Sekunjalo shall submit the signed loan agreement in respect of the PIC's loan to it, 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 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:

    - 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;
    - that Competitively Sensitive Information in respect of either INMSA or Naspers or TMG is not shared between the different management teams within PIC

managing Listed and Unlisted Equities respectively.; and

- Should either TMG or Naspers be delisted and INMSA be listed at the same time, the PIC will manage its investments in the three entities separately, thus ensuring that the PIC personnel managing its investment in each of TMG, Naspers and INMSA will not be the same.

- If, after the Approval Date and/or the shareholders agreement 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 proposed transaction will not result in retrenchments. On a likely positive note, it may result in the transformation of the print media industry. Historically disadvantaged persons currently do not have any shareholding in INMSA and INMSA is 100% foreign owned. The rationale for the transaction includes to - increase black shareholding in the media sector in South Africa and to return an important asset to South African ownership.

The proposed transaction does not raise any other public interest concerns.

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

Definitions

1. 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. **"Commission"** means the Competition Commission of South Africa;

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

1.5. **"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;

1.6. **"Conditions"** means these conditions;

1.7. **"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;

1.8. **"Merger"** means the acquisition of control over INMSA by Sekunjalo;

1.9. **"Merging Parties"** means Sekunjalo and INMSA;

1.10. **"Naspers"** means Naspers Limited

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

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

1.13. **"TMG"** means Times Media Group Ltd.

2. Recordal

2.1. Given that the shareholders agreement between 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 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.

2.2. 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 Merging Parties 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 on 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 a loan agreement may confer some form of control in terms of section (12)(2) of the Act to the PIC, in the event of a default.

2.3. In addition, post-merger, PIC will have shareholding in TMG, Naspers and INMSA and may appoint representatives on 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.

2.4. 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 -

2.4.1. the likelihood of any potential coordination 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;

2.4.2. the uncertainty with respect to the shareholding and management structure of INMSA post-merger; and

2.4.3. the uncertainty with respect to the terms of PIC's loan agreement to Sekunjalo.

3. Conditions to the approval of the Merger

3.1. 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;

3.2. Sekunjalo shall submit the signed loan agreement in respect of the PIC's loan to it, 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. The PIC shall, notwithstanding the listing of INMSA or delisting of TMG 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 between the different management teams within PIC managing Listed and Unlisted Equities respectively; and

3.5.3. In addition to clause 3.3 and 3.4 above, should either TMG or Naspers be dilested and INMSA be listed at the same time, the PIC will manage its investments in the three entities separately, thus ensuring that the 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 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

3.7. 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.

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.