

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 386

30 April 2021

GOVERNANCE PRINCIPLES FOR THE ECONOMIC DEVELOPMENT FUND

MEMORANDUM OF AGREEMENT

("MOA")

Entered into between

THE COMPETITION COMMISSION OF SOUTH AFRICA

("the Commission")

a juristic person established in terms of section 19 of the Competition Act No. 89 of 1998 as amended, ("the Competition Act"), herein duly represented by **Mr. Tembinkosi Bonakele**, in his capacity as the **Commissioner** of the Competition Commission of South Africa

And

MEDIA DEVELOPMENT AND DIVERSITY AGENCY

(the "MDDA")

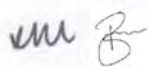
a statutory development agency established in terms of section 2 of the Media Development And Diversity Agency Act No. 14 of 2002, ("the MDDA Act"), herein duly represented by **Mr. Norman Munzhelele**, in his capacity as the **Chairperson** of the Media Development And Diversity Agency Board.



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PREAMBLE

WHEREAS, the Commission is mandated by the Competition Act No 89 of 1998 as amended ("the Competition Act") to, *inter alia*, investigate and evaluate restrictive practices, abuse of dominant position, exemptions and mergers, as well as conducting market inquiries;

WHEREAS MDDA is established in terms of section 2 of the Media Development and Diversity Agency Act No. 14 of 2002 ("the MDDA Act") to help create an enabling environment for media development and diversity that is conducive to public discourse an which reflects the needs and aspirations of all South Africans;

WHEREAS the objectives in the MDDA in terms of section 3 of the MDDA Act is to promote development and diversity in the South African media throughout the country, consistent with the right to freedom of expression as entrenched in section 16 (1) of the Constitution. In particular - (a) freedom of the press and other media; and (b) freedom to receive and impart information or ideas, and for that purpose to –

- encourage ownership and control of, and access to, media by historically disadvantaged communities as well as by historically diminished indigenous language and cultural groups;
- encourage the development of human resources and training, and capacity building, within the media industry, especially amongst historically disadvantaged groups;
- encourage the channelling of resources to the community media and small commercial media sectors;
- raise public awareness with regard to media development and diversity issues;
- support initiatives which promote literacy and its culture of reading;
- encourage research regarding media development and diversity; and
- liaise with other statutory bodies such as the Independent Communications Authority of South Africa and the Universal Service Agency.

AND WHEREAS, the purpose of this MOA is to outline the governance principles for the economic development fund to be managed by the MDDA on behalf of the Commission for purposes of receiving contributions from any of the respondents that

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are settling with the Commission in cases investigated under case numbers 2011Nov5779 and 2015Dec0695;

NOW THEREFORE, the Parties agree to cooperate as follows:

1. INTERPRETATION

- 1.1. In the interpretation of any term used in this MOA, any word or expression to which a meaning is assigned in the Media Development and Diversity Agency Act No. 14 of 2002 and the Competition Act, No. 89 of 1998, as amended, has the meaning assigned to it unless otherwise specified.
- 1.2. In this MOA, unless inconsistent with the context, the following expressions and words bear the meanings set out below and derivative expressions and words will have corresponding meaning:
- 1.2.1. **"Black People"** bears the same meaning as that set out in section 1 of the Broad Based Black Economic Empowerment Act 53 of 2003 as amended;
 - 1.2.2. **"Commission"** means the Competition Commission, a juristic entity established in terms of the Competition Act;
 - 1.2.3. **"Competition Act"** means Competition Act, No. 98 of 1998, as amended from time to time;
 - 1.2.4. **"Complaint"** means the complaint initiated by the Commissioner of the Competition Commission in terms of section 49B(1) of the Act under case numbers 2011Nov5779 and 2015Dec0695;
 - 1.2.5. **"Consent Agreement"** means an agreement duly signed and concluded between the Commission and each of the respondents in case numbers 2011Nov5779 and 2015Dec0695;

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- 1.2.6. **"Economic Development Fund"** means the fund established for the purpose of receiving contributions from any of the respondents that are settling with the Commission cases investigated under case numbers 2011Nov5779 and 2015Dec0695;
- 1.2.7. **"Economic Development Fund Manager"** means MDDA;
- 1.2.8. **"MDDA"** means a statutory development agency established in terms of the MDDA Act;
- 1.2.9. **"MDDA Act"** means the Media Development and Diversity Agency Act No. 14 of 2002;
- 1.2.10. **"Qualifying Small Agencies"** means those agencies which meet the criteria set out in the Broad Based Black Economic Empowerment Act 53 of 2003 and the codes of good practice issued thereunder;
- 1.2.11. **"Small Agencies"** means media or media related agencies or organisations with a turnover not exceeding R50 000 000 (fifty million rand) and which are majority owned by Black People;
- 1.2.12. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 3rd Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3. The headings of the clauses in this MOA are for purposes of convenience and reference only, and shall not be used in the interpretation of, nor modify, nor amplify the terms of this MOA or any clause hereof.
- 1.4. Unless the context indicates otherwise:
- 1.4.1. a reference to a person includes natural persons, juristic persons,

partnerships and trusts;

- 1.4.2. a reference to the singular includes the plural and vice versa; and
- 1.4.3. one gender includes the other genders.

2. PURPOSE OF THIS MEMORANDUM OF AGREEMENT

- 2.1. The purpose of this memorandum of agreement is to provide a governance framework for the establishment of the Economic Development Fund and for the appointment of MDDA as the administrator and manager of the Economic Development Fund.

3. MDDA'S OBLIGATIONS

- 3.1. Subject to the provision of the Consent Agreement, MDDA agrees to publish the terms for the establishment of the Economic Development Fund using national media that has reach to Qualifying Beneficiaries within 3 months from the date of implementation of this MOA and shall thereafter publish these terms every 6 months for as long as the Economic Development Fund is active.
- 3.2. MDDA shall utilise 30% of the fund for bursaries to study media or advertising qualifications at tertiary institutions. The rest shall be used for the development of Black People who are qualifying beneficiaries as stipulated here below:
 - 3.2.1. Individuals requiring assistance to acquire necessary post-qualifications experience to participate in the advertising industry;
 - 3.2.2. Individuals requiring assistance with sponsorship for mentoring or training in areas of media and/or advertising business fundamentals including working capital management, capitalisation and HR processes;
 - 3.2.3. Black owned small media or advertising agencies requiring assistance with start-up capital; and
 - 3.2.4. Black owned small media or advertising agencies requiring assistance with sustainability funding.

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- 3.3. MDDA shall provide the Commission with a report every 6 (six) months in respect of the utilisation of the contributions made by the respondents to the Economic Development Fund, including the number of Qualifying Beneficiaries who derived benefits from such contributions, as well as the names, contact details and the Rand value of the benefits received by Qualifying Beneficiaries.
- 3.4. In addition to this, the MDDA shall submit an audit report to the Commission within 3 (three) months of the completion of the audit every year for the existence of the Economic Development Fund.
- 3.5. MDDA shall ensure that all monies it receives from the respondents in terms of the Consent Agreement are deposited into an independent bank account which is separate from its operational account.

4. BANK DETAILS

- 4.1. All monies received from the respondents in terms of the Consent Agreement shall be deposited into the following bank account:

Name: Media Development and Diversity Agency

Bank: ABSA

Account No: 932 806 6577

5. ADMINISTRATION COSTS OF THE FUND

- 5.1. MDDA shall be entitled to deduct an amount equivalent to 10% of the total money contributed by the respondents into the Economic Development Fund as administration costs.
- 5.2. MDDA shall deduct the administration costs annually.

6. APPOINTMENT OF THE ECONOMIC DEVELOPMENT FUND MANAGER

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- 6.1. MDDA shall appoint a manager who will be responsible for the day to day running of the Economic Development Fund.

7. AUDITING OF THE ECONOMIC DEVELOPMENT FUND

- 7.1. MDDA's external auditors will be responsible for the audit of the Economic Development Fund.
- 7.2. MDDA shall appoint an independent auditor registered with the Independent Regulatory Board for Auditors to audit the books of the Economic Development Fund annually.
- 7.3. The auditor shall submit a report to the Commission within three months of the completion of such audit.
- 7.4. The costs for the audit shall form part of the administration costs referred to in clause 5 above.

8. COMMISSION'S OBLIGATIONS

- 8.1. At all material times, the Commission shall remain the sole custodian of the Economic Development Fund.
- 8.2. The Commission shall cooperate with the MDDA to ensure that the provisions of the Consent Agreement, which require the respondents to contribute an amount equivalent to 0.36% of their advertising turnover generated in the year ending 2016 to the Economic Development Fund, are enforced.
- 8.3. The monies referred to in clause 8.2 above shall be paid by the respondents in 3 equal instalments into the account referred to in clause 4 above.
- 8.4. The first instalment shall be within 3 (three) months of the date of confirmation of



each of the respondent's Consent Agreements being made an order of the Tribunal.

- 8.5. The rest of the instalments shall be paid on the anniversary of the date of the Consent Order.

9. CONTACT PERSONS

- 9.1. The Parties designate the following individuals as their contact persons who will have the authority to administer this MOA on their behalf and who will be responsible for the communication between them:

For the Commission:

Mrs. Khanyisa Qobo

Manager: Advocacy Division

Contact number: (012) 394-3580

E-mail address: khanyisaq@compcom.co.za

And

For the MDDA:

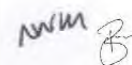
Ms Zukiswa Potye

Chief Executive Officer: MDDA

Contact number: (011) 643-1100

E-mail address: zukiswa@mdda.org.za

10. Either Party may, by way of a letter to the other, replace its contact person referred to in clause 9.1 with any other person. The letter shall be deemed to have been received and the replacement shall be deemed to have been made on the fourteenth (14) calendar day of the one Party dispatching the said letter to the other, unless the contrary is established.



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11. WARRANTIES

11.1. MDDA warrants that the Economic Development Fund shall be independent from the normal operation of its affairs and its Board of Directors.

12. VARIATION OF THE MOA

12.1. This constitutes the entire agreement between the Parties on matters covered in this MOA. Any variation or amendment of this MOA shall have no legal effect and shall not be binding on the Parties unless reduced to writing and signed by persons authorized to act on behalf of both Parties.

13. EFFECTIVE DATE OF THE MOA

13.1. This MOA shall come into effect on the date on which it is last signed by the persons authorized to act on behalf of either of the Parties.

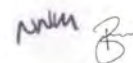
13.2. This MOA shall be governed and construed in accordance with the laws of the Republic of South Africa.

14. DURATION OF THIS MOA

14.1. This MOA shall remain in force until it is amended or repealed by both Parties acting jointly.

15. TERMINATION OF THE MOA

15.1. In the event of termination, the MDDA shall return all unused funds remaining in the Economic Development Fund, including all interest that would have accrued over the period.



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16. DOMICILIUM CITANDI ET EXECUTANDI

16.1. The Parties choose the following addresses as their respective *domicilium citandi et executandi* for purposes of this MOA:

The Competition Commission:

Block C, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, 0002

Contact Person: Mrs Khanyisa Qobo, Manager: Advocacy Division

MDDA:

1st Floor, 5 St Davids Place, Parktown, Johannesburg, 2193.

Contact Person: Ms Zukiswa Potye, Chief Executive Officer: MDDA

SIGNATURE

Signed at PRETORIA on this 3RD day of JULY 2020 by
Mr. Tembinkosi Bonakele, Commissioner of the Competition Commission of South
Africa.




COMPETITION COMMISSION

In the presence of:

WITNESS 1

WITNESS 2

Signed at PRETORIA on this 26th day of JUNE by
Mr. Norman Munzhelele, the Chairperson of the Media Development And Diversity
Agency Board



Media Development And Diversity Agency

In the presence of:

WITNESS 1

WITNESS 2