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Decision of the Competition Commission

CC/DS/0046

NON CONFIDENTIAL

Advertising for Real Estates

05 April 2021

**Decision of the Commissioners of the Competition Commission (the
'Commission') on the investigation on advertising for Real Estates.**

THE COMMISSION

Mr. M.A. Bocus	-	Chairperson
Mr. A. Mariette	-	Vice-Chairperson
Mr. C. Seebaluck	-	Commissioner
Mrs. M. B. Rajabally	-	Commissioner
Mrs. V. Bikhoo	-	Commissioner

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to the Guidelines published under Section 38 of the Competition Act 2007,

Having regard to the Final Report of Investigation of the Executive Director dated 06 January 2021 under section 51 of the Competition Act 2007 upon completion of his investigation into the advertising for Real Estates, referenced INV 040 (the "Final report"),

Having regard to the Decision of the Competition Commission of 05 March 2020 on the Executive Director's Report on Undertakings offered by Mediatiz Ltd for the investigation into advertising for real estates bearing reference CCM/DS/0039,

INTRODUCTION

1. The Executive Director of the Competition Commission (the 'Executive Director') opened an investigation bearing reference INV 040 pursuant to s.51 of the Competition Act 2007 (the 'Act') in March 2018 as he had reasonable grounds to believe that Mediatiz Ltd was potentially coercing real estate agents into exclusive arrangement.
2. Following undertakings offered by Mediatiz Ltd in June 2018, pursuant to s. 63 of the Act, the Executive Director submitted a Report of Undertakings dated 02.07.2019 to the Commissioners for their determination on the matter.
3. In March 2020, the Commission decided to remit the matter to the Executive Director for the completion of the investigation on the ground that the undertakings offered by Mediatiz Ltd had lapsed in December 2019.
4. The Executive Director resumed the investigation INV 040 and proceeded with further information gathering and submitted his Final Report with his recommendation to the Commission on 06 January 2021 pursuant to s. 51(2) of the Act and r. 15 of the Competition Commission Rules of Procedure 2009 (the 'Rules').



5. Having taken cognizance of the Final Report, the Commission made a determination pursuant to s.5 of the Act.

BACKGROUND

(i) Parties

6. The main party to the investigation is Mediatiz Ltd. Mediatiz Ltd has been incorporated in 2008 and specializes in online classified ads and specialists publications. Mediatiz Ltd is wholly owned by La Sentinelle Ltd. The brands associated with Mediatiz Ltd include, amongst other L'express property, L'express classified, L'Express cars, Mauritius Luxury and Lacase.
7. The auxiliary parties to the investigation are Atol Internet Services Ltd (the Complainant); PropertyCloud; Clic Once Ltee; and real estate agents as well as property developers who advertise their properties in property portals.
8. Atol Internet Services Ltd, incorporated in 2014, operates an online property listing portal business. It traded as Lamudi Mauritius and was rebranded as Jumia House.
9. PropertyCloud, in operation since 2014, is a property portal which operates through Rushbox Ltd.
10. Clic Once Ltee, incorporated in 2009, is a solutions provider for real estate agents operation under the trade name Activimmo Clic Once Ltee ('Activimmo').
11. More than 150 real estate agents and property developers have been identified dealing in the sale, rental or development of real estate properties. Real estate agents and property developers are referred to as property listers and they are the very targets of the alleged conduct.

(ii) The impugned conduct

12. The alleged concerned conduct was that Mediatiz Ltd was coercing property listers to enter into exclusive agreements by providing special conditional offers to the latter for not dealing with any other online portal for listings.

(iii) The Investigation

13. Following the remission of the matter to the Executive Director in March 2020 to complete his investigation into the alleged conduct of Mediatiz Ltd, the Executive Director resumed his investigation.
14. In the context of his investigation, factual meetings were held with Mediatiz Ltd and Rushbox Ltd. The Executive Director also contacted a list of property listers who carried out activities exclusively with Mediatiz Ltd to verify any existence of the alleged conduct.



15. Based on the information gathered, the Executive Director found no evidence to the effect that Mediatiz Ltd was coercing real estate agents into exclusive arrangements for listing properties in its L'express Property Portal.
16. The Executive Director produced a provisional report on 18 November 2020 and upon response of Mediatiz Ltd on 15 December 2020, the provisional findings were made final and the Final Report was produced and submitted to the Commission on 06 January 2021.
17. It is to be noted that the complainant had already exited the market at the time the provisional report was produced.

THE LEGAL FRAMEWORK

18. Section 46(1) of the Act provides for the existence of a monopoly situation based on a market share threshold and s.46(2) provides that a monopoly situation shall be reviewed by the Commission where the Commission has reasonable grounds to believe that an enterprise in the monopoly situation is engaging in conduct that either has the object or effect of preventing, restricting or distorting competition (exclusionary conduct) ; or in any other way constitutes exploitation of the monopoly situation (exploitative conduct).
19. S.46(3) of the Act provides for factors that the Commission shall take into account in reviewing a monopoly situation. The factors are: -
 - (a) *The extent to which an enterprise enjoys or a group of enterprises enjoy, such a position of dominance in the market as to make it possible for that enterprise or those enterprises to operate in that market, and to adjust prices or output, without effective constraint from competitors or potential competitors;*
 - (b) *the availability or non-availability of substitutable goods or services to consumers in the short term;*
 - (c) *the availability or non-availability of nearby competitors to whom consumers could turn in the short term; and*
 - (d) *evidence of actions or behaviour by an enterprise that is, or a group of enterprises that are, a party to the monopoly situation where such actions or behaviour that have or are likely to have an adverse effect on the efficiency, adaptability and competitiveness of the economy of Mauritius, or are or are likely to be detrimental to the interests of consumers.*
20. It follows from s.46(3) of the Act that the determination of an abuse of monopoly situation is not a mere exercise of establishing market share threshold. To be able to establish that an enterprise is in breach of the Competition Act 2007 for abuse of monopoly situation, it is determinant to prove that the impugned enterprise is in a position of dominance. Dominance as per paragraph 2.1 (c) of the Competition Commission Guidelines 4 on Monopoly Situations and Non-Collusive Agreement (the "Competition Commission Guidelines 4") means 'the enterprise(s) have some market power, that by virtue of their position in the market they can act to some extent free of the constraints that competition would normally be expected to provide'.



THE FINDINGS OF THE EXECUTIVE DIRECTOR

The Market Definition

21. As indicated above, market share thresholds need to be determined to establish the existence of a monopoly situation. And, in order to calculate a market share, the 'relevant market' needs to be defined, essentially by determining what constitutes 'similar,' or 'substitutable' products. The starting point is to establish a focal service or focal product. The substitution analysis considers the focal service or focal product's objective characteristics and availability of substitutes as well as the geographic market within which the service/product is being supplied or acquired.
22. The Executive Director finds that the focal service is identified as a property portal which is a specially designed online platform offering property (real estate) listing services to real estate agents.
23. A property portal is a two-sided market connecting two customer groups. On one side there are real estate agents and property developers listing their properties on the website against a fee. On the other side of the market, there are property seekers who are being offered browsing services free of charge. This interactive relationship between the two customer groups creates a phenomenon called the 'network effects'. This means that the more properties listed on the portal, the more property seekers will visit the website and the more property seekers visit the website, the more attractive is the portal to property listers.
24. The Executive Director is of the view that the conventional approach of using the hypothetical monopolist test to define market is not particularly useful in the technological field. The SSNIP test is deemed inappropriate in a multi-sided market like a property portal which is characterised by network effects. The reasons are two-fold. Firstly, property seekers use the portal free of charge thus rendering the SSNIP test ineffective. Secondly, the profitability of a price increase on one market side also depends on the user reactions on the other side of the market. Therefore, the Executive Director considered non-price factors such as the characteristics and purpose that these property platforms serve to determine the relevant market.
25. The Executive Director initially considered that property portals do not compete with other online and offline channels. Mediatiz Ltd disagreed with this stand of the Executive Director on the ground that offline channels are substitutes rather than complements. The Executive Director therefore gathered information from property listers who use property portals, print media as well as their own websites for advertising and their views were to the effect that the other online and offline channels were indeed complementary channels of advertisements. As a result, the Executive Director concluded that the likely product market to be the online portal for listing properties.
26. The Executive Director further found the geographic market to be Mauritius since the property portals list properties located in Mauritius.
27. It is to be noted that Mediatiz Ltd disputes the findings of both the product market and the geographic market on the ground that no proper qualitative or quantitative analysis was undertaken.

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28. Since the relevant market has been identified based on objective characteristics and based on the submission of parties, the Executive Director considers that the relevant market, which has been identified as the market for online portal services for listing properties (property portal) in Mauritius, not be conclusive, but this likely relevant market may be used as a basis for assessing whether Mediatiz Ltd is in a monopoly situation.

The market share threshold

29. The Executive Director found that the three main property portals operating in the relevant market to be Mediatiz Ltd, PropertyCloud Ltd and Property24. After an analysis of the listings on each portal, it is revealed that Mediatiz has a market share of around 58%; PropertyCloud Ltd has 35% while Property24 has 7% of the market share. Based on the market threshold of 30% as provided for under s.46(1)(a) of the Act, the Executive Director concluded that the portal of Mediatiz Ltd, which is L'Express Property is likely to be in a monopoly situation.
30. It is again to be noted that Mediatiz Ltd disagrees with the conclusion of the Executive Director that L'Express Property is likely to be in a monopoly situation since multi-homing flaws the conclusion on the relevant market.
31. The Executive Director opined that despite the multi-homing, L'Express Property has more listing on its portal and it also attracts a far greater number of property listers¹.
32. The next step is to assess the alleged breach by Mediatiz Ltd.

The Competition Concern

33. To assess the competition concerns of the Executive Director, firstly, it is important to determine the existence of the impugned conduct and secondly to determine whether this impugned conduct may have the object or effect of preventing, restricting or distorting competition.
34. It is worth recalling that the imputed conduct was that Mediatiz Ltd was inducing property listers into exclusive agreements through conditional offers for not dealing with any other online property listing portal other than its portal, L'Express Property. Those alleged conditional offers by Mediatiz Ltd included a) free account upgrades; b) free CRM software to manage listings and simultaneous listings in both L'Express Property and PropertyCloud; c) free listings onto lepressclassified.mu; d) free boosting credits for client listings to appear on top pages; and e) free monthly subscriptions.

Findings and Conclusion

35. Following a thorough assessment of the information gathered, the Executive Director did not find any evidence to substantiate the claim that Mediatiz Ltd has engaged in coercing its clients into exclusive agreements through conditional offers for the following reasons: -

- (i) The two real estate agents, [REDACTED] [REDACTED] who purported to having been offered additional incentives by Mediatiz Ltd in exchange


¹ Paragraph 4.15 of the Final Report.









of operating exclusively with Mediatiz Ltd, could not substantiate same through documentary evidence.

- (ii) [REDACTED] [X] clarified that it terminated a free trial period rather than a subscription with Lamudi Mauritius for not being successful in terms of lead and not because it had an exclusive contractual arrangement with Mediatiz Ltd.
- (iii) The 13 property listers which, according to Lamudi Mauritius terminated their subscription with the latter because of the incentives from Mediatiz Ltd, had submitted valid reasons for doing so. Some claimed that there were either no leads or fake leads from Lamudi Mauritius². Another one claimed that it was unable to manage listings and the CRM software used did not feed to Jumia House's portal³. A different property lister indicated that it was not happy with the service provided by Lamudi Mauritius⁴. Others explained that they discontinue business with Lamudi Mauritius because of administrative reasons⁵. [REDACTED] [X] who claimed having received offers from L'Express Property or Property Cloud, did not however indicate that those offers were conditional.
- (iv) Information was gathered through comparative analysis of property listers of L'Express Property and PropertyCloud and it was found that out of 153, 79 property listers are using L'Express Property exclusively. A questionnaire was given to the 79-sole property listers of Mediatiz Ltd and 63 responded. It was found that some listers who had subscriptions with Lamudi Mauritius terminated their contract with the latter for dissatisfaction of service⁶; some averred never having dealt with Lamudi Mauritius before⁷; other mentioned that they did receive offers from Mediatiz Ltd but those offers were either one-off or for a short period of time and never conditional⁸; and some 37 property listers confirmed not having been offered any sort of exclusive agreements and submitted that they choose Mediatiz Ltd because of the good service offered, long standing client relationship and satisfactory leads⁹.
- (v) Verification of contracts of 12 different property listers submitted by Mediatiz Ltd showed no evidence of any exclusive listing or conditional offers¹⁰.
- (vi) The Executive Director also gathered that property listers value the network effects¹¹, brand loyalty and notoriety¹² of L'Express Property.
- (vii) In respect of the alleged exclusivity contract of Mediatiz Ltd with the CRM software provider, Activimmo, the executive Director found no coercion on part of Mediatiz Ltd for all the reasons provided at paragraph 5.43 to 5.49 of the Final Report.

² Paragraph 5.19 of the Final Report

³ Paragraph 5.19 of the Final Report

⁴ Paragraph 5.19 of the Final Report

⁵ Paragraph 5.19 of the Final Report

⁶ Paragraph 5.28 of the Final Report

⁷ Paragraph 5.29 of the Final Report

⁸ Paragraph 5.30 of the Final Report

⁹ Paragraph 5.32 of the Final Report

¹⁰ Paragraphs 5.32 and 5.33 of the Final Report

¹¹ Paragraph 5.38 of the Final Report

¹² Paragraph 5.39 of the Final Report

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36. The Executive Director also found that PropertyCloud, a competitor of Mediatiz Ltd which partnered for a year and a half with Mediatiz Ltd in around 2017, submitted not to have come across any exclusivity agreements or conditional offers by Mediatiz Ltd nor did it make mention of facing any restrictive business practices by the latter.
37. The Executive Director concluded that no evidence has been gathered that Mediatiz Ltd is coercing property listers into exclusive agreement through conditional offers.

THE DETERMINATION BY THE COMMISSIONERS

38. The Commission takes note of the Final Report of the Executive Director which provided relevant considerations to the provisions of the Act in his investigation, INV 040- Advertising for real estates.
39. The Commission takes note of the response of Mediatiz Ltd to the draft Report of Undertakings.
40. The Commission is satisfied that the Executive Director has had regard to the views of Mediatiz Ltd while drafting his Final Report.
41. Having regard to the information gathered by the Executive Director, the assessment exercise carried out by the Executive Director and having regard to the views of Mediatiz Ltd, the Commission is satisfied of the following: -
- a. That the SSNIP test is not effective in delineating the relevant market with respect to multi-sided markets which are characterised by network effects such as the property portal in the present matter;
 - b. That instead of the SSNIP test, the Executive Director considered non-price factors such as the characteristics and purpose served by property portals in order to determine the product market;
 - c. That the likely product market to be online portal for listing properties.
 - d. That the geographic market to be Mauritius as the online portal services list properties in Mauritius;
 - e. That the identified likely relevant market to be the market for online portal services for listing properties in Mauritius;
 - f. That the identified relevant market by the Executive Director is not conclusive but may nonetheless be used as a basis of assessment as to whether Mediatiz Ltd is in a monopoly situation;
 - g. That, for the reasons provided at paragraphs 4.15, 4.16 and 4.17 of the Final Report, L'Express Property has a market share exceeding 30 %. This satisfies the market share threshold of 30 per cent or more as provided for at s.46 (1)(a) of the Act. The Commission is therefore satisfied that L'Express Property is likely to be in a monopoly situation.



42. Based on the information gathered by the Executive Director with respect to the competition concern raised and which have been reproduced at paragraph 35 above, the Commission is satisfied that no evidence has been found to substantiate the alleged claim that Mediatiz has been engaging in conducts coercing property listers into exclusive agreement with it through the use of conditional offers. The Commission further notes that no evidence has been found to prove the existence of any conditional offers.

DECISION

43. In light of the above, the Commission decides no remedial action is warranted.

Mr. M. A. Bocus (Chairperson)


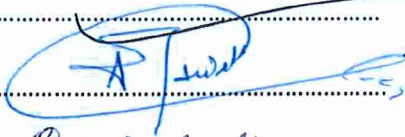



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