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Decision of the Competition Commission

On the Executive Director's Report on Undertakings offered by Mediatiz Ltd for the investigation into advertising for real estates (INV040)

CCM/DS/0039

05 March 2020

**Decision of the Competition Commission (the 'Commission')
of 05 March 2020**

**relating to a proceeding under section 63 of the Competition Act 2007
further to a report from the Executive Director in the matter referred to as
'INV040 - Advertising for real estates'**

THE COMMISSION –

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

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009 (the 'Procedural Rules'),

Having regard to undertakings offered by Mediatiz Ltd (the 'Undertakings'),

Having regard to a report of the Executive Director of the Competition Commission dated 02 July 2019 on the Undertakings (the 'Report'),

WHEREAS:

I. Introduction

- 1.0 The Executive Director of the Competition Commission (the 'Executive Director'), upon a complaint dated 01 June 2016 from Atol Internet Services Ltd (then trading as 'Lamudi Mauritius') and pursuant to an enquiry, opened an investigation (referenced as INV040) on the matter. The Executive Director found reasonable grounds to believe that Mediatiz Ltd could be restricting competition by coercing real estate agents into exclusivity arrangements for listing properties on its online portal - L'Express Property. The investigation sought to assess whether Mediatiz Ltd's conduct was reviewable pursuant to section 46 of the Competition Act 2007 (the 'Act').
- 2.0 Mediatiz Ltd, previously Property Finder Ltd, is a subsidiary of La Sentinelle Ltd and operates an online property listing portal under the trade name of L'Express Property. Mediatiz Ltd also specialises in online classified ads and specialist publications, which include brands such as 'L'Express classified', 'L'Express cars', 'Mauritius luxury', 'Find me' and 'Lacase'.
- 3.0 Atol Internet Services Ltd (ex-Lamudi Mauritius) and presently trading as 'Jumia House', operates a web-portal business and at the time of the complaint also operated in the property advertising platform business. The complaint was

directed against Mediatiz Ltd's alleged "special offers" to real estate agents, which were conditional upon the latter signing exclusivity contracts with Mediatiz Ltd for listing their properties on Mediatiz Ltd's portal. Such "special offers" included free account upgrades, free access to Customer Relationship Management (CRM) software to manage listings, free listings onto lepressclassified.mu and free boosting credits for client listings to appear on top pages. The complaint further alleged that clients of Lamudi Mauritius had consequently terminated their contractual agreements with Lamudi Mauritius, which resulted in its exit from the market.

II. The Executive Director's Investigation and Assessment of Undertakings

- 4.0 The Executive Director notified Mediatiz Ltd of the launch of INV040 - investigation on 05 March 2018. The underlying concern of the Executive Director at investigation was whether Mediatiz Ltd's conduct may have foreclosed access of actual and potential competing property portals to real estate agencies (their customers); thus, harming competition in the property portal market.
- 5.0 During investigation, Mediatiz Ltd, without admitting to the Executive Director's assessment, or to being in a monopoly situation or in breach of section 46 or any other provision of the Act, voluntarily offered undertakings concerning its commercial practices in view of allaying the competition concerns identified during investigation (the 'Undertakings'). On 14 June 2018, Mediatiz Ltd submitted its Undertakings, pursuant to section 63 of the Act. Mediatiz Ltd has stated, in its submissions dated 12 June 2019 in reply to the Executive Director's draft report, that by submitting undertakings in this case, it hoped to shorten an otherwise lengthy investigation, which would be costly to it, by proposing measures that are intended to allay the competition concerns identified.
- 6.0 As part of its Undertakings, Mediatiz Ltd committed :
 - 6.1 not to enter into any exclusivity agreement with any real estate agent in Mauritius where the aim of such an agreement is directly to provide it with an exclusivity for online advertising of the real estate agent's portfolio of properties. It further undertakes not to interfere with its customers' choice of buying and selling classified postings of any third party nor to require a real estate agent not to purchase classified advertising space for online advertising with any of its competitors;
 - 6.2 not to incentivise or otherwise entice or coerce any real estate agent to enter into exclusivity agreements;
 - 6.3 to ensure that any existing agreements, either oral or written entered into by Mediatiz Ltd (or Property Finder) with real estate agents in Mauritius or new agreements to be signed, be brought into compliance with its undertakings; and

- 6.4 not to enter into or maintain in force any agreement provisions that condition the supply of any of its branded online advertising service or the availability or extent of any payment or other advantage on the customer's obligation to discontinue, reduce, or vary the terms of any agreement or commercial relationship with any other supplier.
- 7.0 Mediatiz Ltd furthermore committed to be bound by the Undertakings for the whole territory of Mauritius. The Undertakings would take effect from the date it is notified of the Commission's decision up to and including 31 December 2019.
- 8.0 The Executive Director proceeded to assess the efficacy of the Undertakings and to that end, met with several market participants.
- 9.0 On 02 July 2019, the Executive Director submitted his report on the matter (the 'Report') to the Commission for its determination. The Report has neither validated the purported allegation nor made any finding of infringement but has assessed whether the undertakings offered by Mediatiz Ltd satisfactorily address the competition concern identified *viz.*, the impugned conduct of Mediatiz Ltd coercing real estate agents into exclusivity for listing properties on L'Express Property.
- 10.0 The Executive Director recommended that the Commission accepts the Undertakings offered by Mediatiz Ltd insofar as they satisfactorily address the anti-competitive foreclosure concern arising from the impugned conduct. According to the Executive Director, the Undertakings of Mediatiz Ltd will effectively remove any financial or other incentives in coercing real estate agents for exclusive listing on L'Express Property. With the Undertakings in place, real estate agents can choose to list properties on multiple portals. This could benefit property seekers with their search experience, which otherwise could have been affected.

III. The law

- 11.0 Under section 63(1) of the Act, an enterprise may offer undertakings to the Commission "*to address any concern that has arisen, or is likely to arise, during an investigation in respect of (...) a monopoly situation (...)*". From section 2 of the Act, "undertaking" in turn means "*an obligation or commitment given in writing by an enterprise to, and accepted by, the Commissioners, to prevent or terminate a restrictive business practice*". Rule 28 of the Procedural Rules prescribes the form and content of an undertaking and requires that the undertaking be signed by at least two directors of the enterprise or any other authorized person.
- 12.0 Pursuant to section 63(3) of the Act, the "*Commission may, after having taken cognizance of the report of the Executive Director on the matter, determine a case on the basis of an undertaking if it considers that the undertaking satisfactorily addresses all the concerns it has about any prevention, restriction, distortion or substantial lessening of competition*".

- 13.0 Where the Commission accepts an undertaking, it shall publish same in the form of a decision and the undertaking shall have the effect as if it were a direction under section 60 of the Act.

IV. Determination

- 14.0 We believe it worthy, for the purposes of assessing the present matter, to retrace certain procedural aspects thereof.
- 15.0 Mediatiz Ltd submitted its Undertakings in the present matter on 14th June 2018 and following assessment thereof, the Executive Director only submitted his Report to the Commission on 02nd July 2019. When the matter came before us, we were made aware that Mediatiz Ltd's Undertakings, if accepted, were to remain effective until 31st December 2019. We also took cognizance of the fact that the said Undertakings were signed by one company director contrary to the requirement set out at rule 28 of the Procedural Rules *viz*, that an undertaking offered to the Commission be duly signed by at least two directors or any other authorised person.
- 16.0 The Commission, by letters dated 17th September, 30th October, 04th November and 26th November 2019, requested Mediatiz Ltd to make good the flaw in its Undertakings by filing Undertakings properly signed by two directors of Mediatiz Ltd. By the same token, the Commission also sought clarification on the validity period stated in its Undertakings. On 29th November 2019, Mediatiz Ltd communicated its stance on the clarification sought by the Commission and subsequently filed its previous Undertakings duly signed by two directors on 03rd December 2019.
- 17.0 By the time we were in receipt of Undertakings proper and were assessing, pursuant to the provisions of section 63(3) of the Act, whether said Undertakings satisfactorily address all the concerns we have regarding any prevention, restriction or distortion of competition; the Undertakings had lapsed. In the given circumstances, the determination which is spelt out at section 63(3) of the Act became a moot point. There are no valid Undertakings ***on the basis of which*** we would have applied our minds for determination purposes.
- 18.0 It is further apposite to note that the Report before us has been prepared on the basis of and submitted pursuant to the provisions of section 63 of the Act. To this effect, it was only incumbent upon the Executive Director to conduct his analysis thereof and address in his Report whether the Undertakings satisfactorily address the concerns he identified during investigation on any prevention, restriction or distortion of competition. The Executive Director, rightly so, has not made any finding on whether Mediatiz Ltd has infringed any provisions of the Act. Likewise, the Commission may only exercise the function vested in it pursuant to section 5(b) of the Act *viz*, to determine whether a restrictive business practice is occurring or has occurred when the Executive Director, upon completion of his investigation, submits his report on the investigation to the Commission pursuant to section 51(2) of the Act. There being no such report that has been submitted to the Commission, we find no

legal basis on which the Commission would ground any further action, even less any alternate form of determination under section 5(b) of the Act, in the present matter.

V. Decision

19.0 In light of the above, the Commission therefore decides as follows:

19.1 the need no longer arises for a determination pursuant to section 63 of the Act;

19.2 neither is a determination of whether a restrictive business practice is occurring or has occurred, pursuant to section 5(b) of the Act, warranted nor appropriate at present; and

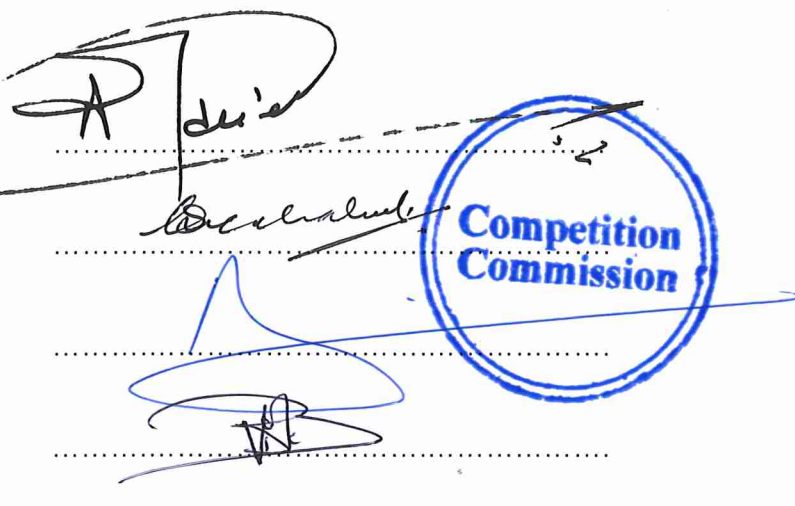
19.3 the matter is remitted back to the Executive Director to complete his investigation and submit, pursuant to section 51 of the Act, his report on the investigation to the Commission.

Mr A. Mariette
(Vice-Chairperson)

Mr. C. Seebaluck
(Commissioner)

Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)

The image shows four handwritten signatures in black ink, each written over a horizontal dotted line. The signatures are: 1. A large, stylized signature at the top, possibly 'A. Mariette'. 2. A signature that appears to be 'C. Seebaluck'. 3. A signature that appears to be 'M. B. Rajabally'. 4. A signature that appears to be 'V. Bikhoo'. To the right of the signatures is a blue circular stamp with the words 'Competition Commission' in blue capital letters. A blue line is drawn across the stamp and the signatures.

05 March 2020