

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no.: 119/X/Dec05

In the application of:

VNU N.V.


and

Competition Commission SA

ORDER

Further to the application by the Applicants in terms of Rule 34(2)(b) of the Rules for the Conduct of Proceedings in the Competition Commission and in accordance with Rule 31(1) (f) of the Rules for the Conduct of Proceedings in the Competition Tribunal, and by agreement between the Applicants and the Competition Commission, the Competition Tribunal orders that –

The Commission refund the Applicants the amount of R 12 500. 00 (twelve thousand five hundred rands) paid as part of the filing fee in respect of the notified intermediate merger, Commission reference number 2005 Oct 1897, which the Applicants have abandoned.


Y Carrim

18 January 2006
Date

Concurring: **N. Manoim, T. Orleyn**

**IN THE COMPETITION TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
HELD IN PRETORIA**

**COMPETITION TRIBUNAL
CASE NO.:**

**COMPETITION COMMISSION
CASE NO.: 2005OCT1897**

In the matter between:

VNU N.V

APPLICANT

and

COMPETITION COMMISSION SOUTH AFRICA

RESPONDENT

**NOTICE OF APPLICATION IN TERMS OF RULE 34(2)(b) OF THE COMPETITION
COMMISSION RULES**

KINDLY TAKE NOTICE THAT an application in terms of Rule 34(2)(b) of the Competition Commission Rules will be made to the above Honourable Competition Tribunal by the abovementioned Applicant as soon as the matter may be heard for an order in the following terms:

- 1 Directing the Respondent to refund part of the filing fee being an amount of R12 500 (Twelve Thousand Five Hundred Rands)
- 2 Directing that, to the extent that the Respondent opposes this application, the costs of this application be paid by the Respondent
- 3 Granting further and/or alternative relief as the above Honourable Competition Tribunal deems fit

TAKE NOTICE FURTHER that the accompanying **FOUNDING AFFIDAVIT** of **DEREK ANDREW LOTTER** will be used in support of this application and discloses the basis for the application

TAKE NOTICE FURTHER that the Applicant will serve notice of this application upon the Respondent

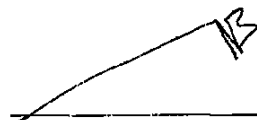
TAKE NOTICE FURTHER that the Applicant has appointed Bowman Gilfillan Inc, 165 West Street, Sandton, Johannesburg (Ref: Mr. Ndumiso Ncube) as the address at which it will accept notice and service of all process in these proceedings

TAKE NOTICE FURTHER that if you intend opposing this application you are required:

- (a) pursuant to Competition Tribunal Rule 43(1), to deliver an Answering Affidavit within 10 business days after this application has been served; and
- (b) that if you fail to do so, the matter may be heard in your absence and an order of costs may be made

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

DATED AT SANDTON THIS 14th DAY OF DECEMBER 2005



BOWMAN GILFILLAN INC.

Applicant's attorneys

165 West Street

Sandton

Johannesburg

(P O Box 785812, Sandton, 2146)

TEL: (011) 669-9528

FAX: (011) 669-9001

E-mail: n.ncube@bowman.co.za

REF: Mr. Ndumiso Ncube/1107351

TO:

THE REGISTRAR OF THE COMPETITION TRIBUNAL

Competition Tribunal

Mulayo Building (Block C)

The DTI Campus

77 Meintjies Street

SUNNYSIDE

PRETORIA

AND TO:

COMPETITION COMMISSION SOUTH AFRICA

Respondent

Mulayo Building (Block C)

The DTI Campus

77 Meintjies Street

SUNNYSIDE

PRETORIA

REF: 2005OCT1897

Received copy hereof on this the day of December 2005

For the Competition Commission

IN THE COMPETITION TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
HELD IN PRETORIA

COMPETITION TRIBUNAL
CASE NO.:

2005-10-15

COMPETITION COMMISSION
CASE NO.: 2005OCT1897

In the matter between:-

Maloni

VNU N.V.

APPLICANT

and

COMPETITION COMMISSION SOUTH AFRICA

RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

DEREK ANDREW LOTTER

do hereby make oath and say that:

1. I am a Director of Bowman Gilfillan Inc., the Attorneys for the Applicant in this matter.
2. I am duly authorised to make an affidavit on behalf of the Applicant.
3. The facts contained herein are within my personal knowledge, unless otherwise appears, and are, to the best of my knowledge and belief, true and correct
4. The Applicant is VNU N.V ("VNU"), a public company listed on the Euronext Amsterdam stock exchange (ASE: VNU) and is part of the AEX index of leading Netherlands-based stocks VNU is also listed on the stock exchanges of Brussels and Luxembourg VNU has its business address at Ceylonpoort 5-25, 2037 AA Haarlem, The Netherlands
5. The Respondent is the Competition Commission South Africa, an administrative body duly established and constituted as a juristic person in terms of Section 19(1) of the

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Competition Act, 1998 as amended ("the Act"), and which conducts its administrative functions from its premises situated at Mulayo Building (Block C), The DTI Campus, 77 Meinjies Street, Sunnyside, Pretoria, Gauteng.

- 6 The application contemplated hereby constitutes a motion by the Applicant to recover part of the filing fee being an amount of R12 500 paid to the Respondent pursuant to a merger notification. A brief background to this application is as follows:
- 6.1 On the basis of the Agreement and Plan of Merger entered into between the Applicant and IMS Health Incorporated ("IMS Health") on 10 July 2005 (the "Agreement"), the transaction involved the acquisition of sole control by the Applicant of IMS Health. As will be further described below, after the transaction IMS Health was going to exist as a wholly owned subsidiary of the Applicant.
- 6.2 Under the terms of the Agreement, Isaac Acquisition Corp., a special purpose vehicle that is wholly owned by the Applicant (indirectly via Isaac Holdings Corp.), was going to be merged with and into IMS Health. The separate corporate existence of Isaac Acquisition Corp. was going to cease and IMS Health was going to survive as a wholly owned subsidiary of the Applicant.
- 6.3 Post transaction, the Applicant's shareholders were going to hold approximately 65 percent of the combined company, and IMS Health shareholders approximately 35 percent.
- 6.4 Closing of the transaction was conditional, *inter alia*, on the receipt of all applicable regulatory approvals. The parties anticipated closing the transaction during the first quarter of 2006.
7. On the basis of the Agreement and on the instructions of Simpson Thacher & Bartlett LLP on 14 October 2005, I submitted merger notification documents on behalf of the Applicant as the primary acquiring firm and IMS Health as the primary target firm (the "Parties") to the Respondent. The Parties notified the transaction in South Africa because it constituted a merger as defined in section 12 of the Act and the Parties met the thresholds set out in terms of the Act. The merger constituted an Intermediate Merger and accordingly a cheque in the amount of R75 000 in respect of the filing fee accompanied the filing. A copy of the acknowledgement of receipt from the Respondent is attached hereto as **Annexure "A"**.



- 8 The Respondent duly commenced its investigation into effects of the merger in South Africa soon thereafter
- 9 However, on or about 17 November 2005, the Applicant announced that it had agreed with IMS Health to terminate the planned merger of the two companies. In a press release issued by the Applicant, the Applicant said the two companies decided to call off their merger after shareholders claiming to represent nearly 50% of the Applicant's outstanding shares said they would not support the transaction under any circumstances. The merger, announced on 11 July 2005, would have required approval from a majority of shareholders to be completed
- 10 On 18 November 2005 I sent an email to the Respondent advising them of the official termination of the transaction by the Parties and requesting the filing fee to be reimbursed. A copy of this email is attached hereto as **Annexure "B"**. In response the Respondent advised that the Parties need to file a Form CC6 formally withdrawing the matter and then make application to the above Honourable Competition Tribunal (the "Honourable Tribunal") in terms of Rule 34 of the Competition Commission Rules to have all or part of the filing fee reimbursed. A copy of this email from the Respondent is attached hereto as **Annexure "C"**.
- 11 On 1 December 2005, Ndumiso Ncube an Associate at Bowman Gilfillan Inc sent an email to the Respondent on behalf of the Parties attaching the Form CC6 formally withdrawing the whole matter and setting out the Parties' intention to make an application to the above Honourable Tribunal to recover part of the filing fee being an amount of R12 500. A copy of this email together with the Form CC6 is attached hereto as **Annexure "D"**.
- 12 The Respondent sent an email to the Applicant's attorneys on 6 December 2005 confirming that it will not oppose the Parties' application to the above Honourable Tribunal for the refund of R12 500 in respect of the filing fee. A copy of this email is attached hereto as **Annexure "E"**

WHEREFORE I pray that it may please the above Honourable Tribunal to grant the Order as sought in the Notice of Motion to which this affidavit is attached


FRLA

"C"

Ndumiso Ncube

From: Lizel Blignaut [LizelB@compcom.co.za]
Sent: 18 November 2005 08:36 AM
To: Derek Lotter; Geoffrey Mudzanani
Cc: Ndumiso Ncube
Subject: RE:

Attachments: Form CC6.doc



Form CC6.doc (43 KB)

Dear Derek

You need to file a form CC6 and then make an application to the Tribunal in terms of Rule 34 to have all or part of the fee refunded. I attach the CC6 for your convenience.

Lizel Blignaut
Manager: Mergers and Acquisitions
Competition Commission South Africa

Tel: +27 12 394 3295
Fax: +27 12 394 4295

-----Original Message-----

From: Derek Lotter [mailto:d.lotter@bowman.co.za]
Sent: 18 November 2005 07:29 AM
To: Geoffrey Mudzanani
Cc: Lizel Blignaut; Ndumiso Ncube
Subject: Re:

Dear Geoffrey,

As you might have seen in the press, the parties have officially terminated the transaction. This means that a decision from the Commission is no longer required. With this in mind, would hereby request that the filing be withdrawn and the filing fee be reimbursed.

Please let me know if you wish to discuss the above.

Best regards,

Derek

Sent from a BlackBerry Wireless device

-----Original Message-----

From: Derek Lotter <d.lotter@bowman.co.za>
To: 'geffreym@compcom.co.za' <geffreym@compcom.co.za>
Sent: Thu Nov 17 10:35:25 2005

Dear Geoffrey,

Please refer to our call. You have asked for the rationale of the transaction for the target firm and for information on the status of the filings in other jurisdictions. I understand that you no longer require the estimated market shares of the parties with respect to "market research services" in general.

As you may have seen in the press, VNU is currently having wide-ranging discussions with IMS Health to address the development that shareholders claiming to represent 48% of VNU's outstanding shares have informed VNU that they would not support the

transaction under any circumstances.

VNU announced that although both companies continue to believe the transaction, as negotiated, is in the best interests of their respective shareholders, the companies have discussed various possible alternatives, including a revised merger agreement as well as termination of the agreement. VNU said there can be no assurance as to the outcome of these discussions and pending any such development, the companies are moving forward pursuant to their merger agreement (see http://www.vnu.com/press/releases/2005/pa_2005_110/_001.html).

Assuming the transaction moves forward, it will combine two complementary businesses that focus on serving different markets. The combined business will have enhanced focus, growth and stability, as well as greater global scale. It will be in a position to offer more comprehensive information and analysis services, through the introduction of a range of innovative new offerings and the expansion of consulting and service capabilities. This rationale applies to both the acquiring and target firm.

Please note that the transaction has been filed in the USA, and received clearance on October 24, 2005. The transaction has been filed Australia, Brazil, and in draft form in the EU. Assuming the transaction moves forward, the parties will file the final filing in the EU, and will file in Turkey.

We trust that this is in order. We will update you if the parties terminate the agreement.



Keep well

Derek

Sent from a BlackBerry Wireless device

Confidentiality Notice : This message is intended for the person/entity to whom it is addressed and contains privileged and confidential information. Should the reader hereof not be the intended recipient, kindly notify us immediately by return e-mail and delete the original message.

A full list of the directors of the company can be found on the company web site at <http://www.bowman.co.za/directors/>



competition commission south africa

Form CC6

Withdrawal Notice

About this Form

- This Form is issued in terms of Competition Commission Rule 28
- Within 3 days after filing this document, you may file a substitute notice or statement, without paying an additional fee
- You must deliver a copy of a substitute document to any person who was entitled to the original document, in terms of section 13 of the Act, or in terms of the Competition Commission Rules
- Please refer to Competition Commission Rules 28 and 29

You have a right to identify information that you believe is confidential, by completing Form CC7 and submitting it with this Statement

To: The Competition Commission

From:

(Name of participant:)

(Name and file number of merger:)

Take notice that the above named participant withdraws the document indicated below, which was filed by the participant on

☐

Merger Notice

☐

Statement of Merger Information

Name and Title of person authorised to sign:

Authorised Signature:

Date:

Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
Tel: 27 012 482 9000
Fax: 27 012 482 9001
e-mail: ccsa@compcom.co.za

For Office
Use Only:

Commission file number:

Date filed:

[Handwritten signature]
RMU

"D"

Ndumiso Ncube

From: Ndumiso Ncube
Sent: 01 December 2005 09:19 AM
To: 'lizelb@compcom.co.za'; 'seeman@compcom.co.za'
Cc: 'geffrey@compcom.co.za'; 'ccsa@compcom.co.za'; Derek Lotter
Subject: VNU N.V. AND IMS HEALTH INCORPORATED CASE NO : 2005OCT1897
Attachments: Document.pdf

Dear Lizel and Seema,

Please refer to our email of 18 November 2005 in which we indicated that the parties have officially terminated the transaction, subsequent thereto we understood from our discussions that the parties could expect recovering about R12 500 with respect to the filing fee in this matter (although you mentioned that this still needs to be confirmed by the Commission). With this in mind we attach hereto a Form CC6 formally withdrawing the whole matter and ask that you confirm that the Commission will not oppose an application to the Competition Tribunal to recoup the amount.

Best regards,

Derek Lotter / Ndumiso Ncube
Bowman Gilfillan
165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa
Tel: (+27-11) 669-9357/9528
Fax: (+27-11) 669-9001





08/12/2005



competition commission south africa

Form CC6

Withdrawal Notice

About this Form

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- Within 3 days after filing this document, you may file a substitute notice or statement, without paying an additional fee
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- Please refer to Competition Commission Rules 28 and 29

You have a right to identify information that you believe is confidential, by completing Form CC7 and submitting it with this Statement

To: The Competition Commission

From:

(Name of participant:)

VNU N V

(Name and file number of merger:)

INTERMEDIATE MERGER NOTIFICATION: VNU N V AND IMS
HEALTH INCORPORATED FILE NO 2005OCT1897

Take notice that the above named participant withdraws the document indicated below, which was filed by the participant on
14 October 2005



Merger Notice



Statement of Merger Information

Name and Title of person authorised to sign:
Derek Lotter, Director, Bowman Gilfillan Inc

Authorised Signature:

PP

Date:

30 November 2005

Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
Tel: 27 012 482 9000
Fax: 27 012 482 9001
e-mail: ccsa@compcom.co.za

For Office
Use Only:

Commission file number:

Date filed:

"E"

Ndumiso Ncube

From: Seema Nunkoo [SeemaN@compcom.co.za]
Sent: 06 December 2005 03:11 PM
To: Ndumiso Ncube
Subject: RE: VNU N V AND IMS HEALTH INCORPORATED CASE NO : 2005OCT1897

Dear Ndumiso

This serves to inform you that the CC will not oppose the parties application to the Tribunal for a refund of R 12 500

Regards Seema

-----Original Message-----

From: Ndumiso Ncube [mailto:n.ncube@bowman.co.za]
Sent: Thursday, December 01, 2005 9:19 AM
To: Lizel Blignaut; Seema Nunkoo
Cc: Geoffrey Mudzanani; General Email; Derek Lotter
Subject: VNU N V AND IMS HEALTH INCORPORATED CASE NO.: 2005OCT1897

Dear Lizel and Seema,

Please refer to our email of 18 November 2005 in which we indicated that the parties have officially terminated the transaction, subsequent thereto we understood from our discussions that the parties could expect recovering about R12 500 with respect to the filing fee in this matter (although you mentioned that this still needs to be confirmed by the Commission) With this in mind we attach hereto a Form CC6 formally withdrawing the whole matter and ask that you confirm that the Commission will not oppose an application to the Competition Tribunal to recoup the amount.

Best regards,

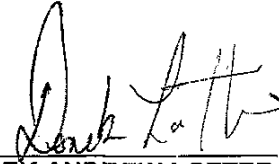
Derek Lotter / Ndumiso Ncube
Bowman Gilfillan
165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa
Tel: (+27-11) 669-9357/9528
Fax: (+27-11) 669-9001

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A full list of all the directors of the company can be found on the company web site at <http://www.bowman.co.za/directors/>



RLU

08/12/2005



DEREK ANDREW LOTTER

I CERTIFY that this affidavit was signed and sworn to before me at SANDTON on this the 14TH day of December 2005, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God".



COMMISSIONER OF OATHS

Name:

Address:

Capacity:

RACHAEL HANNAH UNDERWOOD
EX OFFICIO
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA
165 WEST STREET
SANDTON