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Mr R Raath
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Per email: RRaath@werksmans.com

30 March 2015

Dear Rudolph

CAXTON AND CTP PUBLISHERS AND PRINTERS LIMITED / THE TRUSTEES FOR THE TIME BEING OF THE MEDIA MONITORING PROJECT BENEFIT TRUST / S.O.S SUPPORT PUBLIC BROADCASTING COALITION / MULTICHOICE (PTY) LTD / SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED / THE COMPETITION COMMISSION

1. We refer to your letter dated 27 March 2015 in which your client (Multichoice) requires one of our clients (The Trustees for the time being of the Media Monitoring Project Benefit Trust), to remove its founding affidavit from its website and to provide undertakings that it (and the other applicants) will not publicise Multichoice's and the SABC's answering affidavits (or our clients' founding affidavit "or any correspondence … pertaining to this matter") prior to the commencement of the hearing of the matter. Your client's approach is concerning for a variety of reasons (not least that it relies on an incorrect understanding of the relevant legal position), but primarily because it does not comport with the constitutional precept of open justice which the Supreme Court of Appeal (and various foreign courts) has stressed forms a core component of the rule of law, which is a foundational principle of our constitutional democracy.

2. Our client is surprised by your client's request for a number of reasons.

3. Firstly, because Multichoice seeks to transpose its incorrect understanding of the Uniform Rules of the High Court into the proceedings before the Tribunal. In this regard, Rule 13 of the Tribunal Rules provide that any person may inspect the Tribunal records (unless they have been claimed as confidential). You will be aware of the fact that the Supreme Court of Appeal has previously stated that the equivalent rule of the Commission (Rule 15) provides for equivalent access to the Commission records when a matter is referred to the Tribunal. This does not contain any qualification of the sort suggested in your letter.

4. Secondly, your client's position is not consistent with the position which has previously been adopted by the High Court itself. In this regard in *Romero v Gauteng Newspapers Ltd and Others* 2002 (2) SA 431 (W) the Court rejected precisely the contention that no reference may be made to the contents of papers filed in Court before the matter had been heard.

5. Thirdly, to the extent that there may have been any doubt on the part of Multichoice, its position has been roundly rejected by the Supreme Court of Appeal this morning in the SANRAL matter. In that decision it was stated that:

> "[47] *The animating principle therefore has to be that all court records are, by default, public documents that are open to public scrutiny at all times. While there may be situations justifying a departure from that default position - the interests of children, State security or even commercial confidentiality - any departure is an exception and must be justified. The high court's judgment, which is inconsistent with that basic principle with regard to both the rule and subrule, cannot be endorsed by this court. Its interpretation of the subrule creates a default rule of secrecy for all court records. In addition, its application of the rule limits the ability of litigants to ensure publicity when they challenge the actions of the State. In order meaningfully to exercise the right to open justice, members of the public (and the media) cannot simply be relegated to the role of spectator. While the gist of the matter may be apparent to a person attending the hearing, it is only through an understanding of the background and issues raised on the papers that proper*

comprehension and critical analysis of the proceedings, and ultimately the court's findings, is possible. This is especially so in motion proceedings, which are based on the affidavits before the court and their annexures, and where oral evidence is not given in open court. This means that court challenges to government action will be less open than they currently are. Thus where openness is most sorely needed - the consideration of government conduct - the high court judgment limits openness the most. The blanket of secrecy it throws over previously open proceedings undermines the legitimacy and effectiveness of the courts."

6. Lastly, it is particularly surprising and regrettable that your client would have seen fit to seek to suppress our client's founding affidavit in this matter. In the judgment just referred to, the SCA stressed the constitutional duties which media groups bear, by quoting from the Constitutional Court's decision in Holomisa "*In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture. As primary agents of the dissemination of information and ideas, they are, inevitably, extremely powerful institutions in a democracy and they have a constitutional duty to act with vigour, courage, integrity and responsibility.*"

7. It is therefore most concerning that your client sees fit to try to prevent the public from having access to our clients' founding affidavit. This is especially the case given the obvious legitimate public interest in the present application, particularly seeing as it involves the public broadcaster.

8. Accordingly, our client declines to provide any of the undertakings requested in your letter.

Yours faithfully

Anthony Norton
NORTONS INC.