

# Media24 "predatory pricing" case referred to tribunal



By [Chris Charter](#)

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The recent announcement by the Competition Commission that it will refer Media24 to the Competition Tribunal will be the first occasion that the commission has referred a predatory pricing case to the tribunal. This case will be watched with interest by practitioners, economists and any dominant firms that seek to price aggressively, or introduce "fighting brands" and "loss leaders" as part of their sales strategy.

## Tribunal ruled against a referral in 2000

In 2000, the tribunal ruled against a referral by Nationwide Airlines against South African Airways for alleged predatory pricing; however this complaint was not referred by the commission and Nationwide took the case to the tribunal itself.

My sense is that the commission has for some time been anxious to test its theory of harm on price predation - one that is not always predicated on the strict requirements of the Act that prices be below marginal or average variable cost, but rather that any targeted "below cost" (or even merely low) pricing can be seen to be an abuse of dominance if it is calculated to raise barriers to entry for smaller players. On such a view, even reacting to the threat of competition so as to protect market share with low prices or fighting brands may be problematic.

## Obvious tension

The obvious tension is that price predation is predicated on the rather counter-intuitive notion that low prices can be bad for competition; or that incumbent firms should "make room" for new entrants by charging uncompetitive prices. As a result, the threshold test for price predation is likely to be set quite high by the tribunal (which said as much in 2000, when it dismissed a complaint of predatory pricing brought by Nationwide airlines against South African Airways).

In this case, I'd be interested to see how the commission goes about proving the marginal or average variable costs of advertising in printed media (particularly given the double-sided nature of the media market - price is not always predicated on actual publishing costs, but is equally dependent on readership). If that proves difficult, the commission will need to run a case based on prices being below some other measure of costs, coupled with "predatory intent" and an ability to recoup losses by charging more once the competing newspaper had exited the market.

## Media industry the subject of considerable focus

As an aside, it seems that the media industry has recently been the subject of considerable focus by the authorities here. In addition to this case, media houses are currently under investigation for alleged market division on distribution while the commission's approval of the merger between Paarl Media (part of Media24) and Primedia@Home was successfully overturned on review by a competitor in the affected "knock-and-drop" leaflet market and is now being reconsidered.

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