

## COMPETITION TRIBUNAL SOUTH AFRICA

Case NO: 12/LM/Jan09

In the matter between:

**MTN Group Ltd**

Acquiring Firm

And

**New Shelf 664 (Pty) Ltd**

Target Firm

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Panel : N Manoim (Presiding Member); U Bhoola (Tribunal Member) and M Mokuena (Tribunal Member)

Heard on : 11 March 2009

Decided on : 11 March 2009

Reasons Issued on : 01 April 2009

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### Reasons for Decision

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#### Approval

[1] On 11 March 2009 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between MTN Group Ltd and New Shelf 664 (Pty) Ltd. The reasons appear below.

#### Parties

[2] The acquiring firm is MTN Group Ltd ("MTN"), a public company incorporated under the of laws of the Republic of South Africa and it is listed on the Johannesburg Stock Exchange. MTN is not controlled by any single shareholder.<sup>1</sup>

[3] The primary target firm is Newshelf 664 (Pty) Ltd ("Newshelf") laws of the Republic of South Africa.<sup>1</sup> Newshelf is a wholly owned subsidiary of The Alpine Trust ("the Alpine Trust"), a trust registered under the laws of the Republic of South Africa.

#### Transaction

[4] In terms of the proposed transaction, MTN will acquire Public Investment Corporation ("PIC")'s preference shares in Newshelf. PIC currently owns more than 50% preference shares in Newshelf and Newshelf owns 13% ordinary shares in MTN.

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<sup>1</sup> The shareholders holding in excess of 5% of the issued share capital in MTN as at 31 December 2007 were: Public Investment Corporation 13.27%;Newshelf 664 (Pty)Ltd 13.06% and Lomard Odier Darier Hentsch & Cie (M1 Limited) 9.82%.

## **Rationale for the Transaction**

[5] The parties submit that Newshelf and its shareholder, the Alpine Trust, were established in 2002 as a mechanism through which certain MTN employees could participate in the benefits of a significant shareholding in MTN. The scheme of arrangement was for six years and that period lapsed in December 2008 and therefore they have to unwind it.

## **Parties Activities**

[6] MTN is a multinational provider of telecommunications services, offering cellular network access and solutions. In South Africa, MTN is primarily a mobile network operator, providing mobile voice and data.

[7] Newshelf is not involved in any business activities. Its only asset is the 13% in MTN, the primary firm.

## **Competition Analysis**

[8] According to the Commission there is no overlap in the activities of the merging parties, as the primary acquiring firms is not involved in any business activities. We agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. There are no public interest issues.

## **Conclusion**

[9] Accordingly the transaction is unconditionally approved.

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**N Manoim**

Tribunal Member

**01 April 2009**

**Date**

## **U Bhoola and M Mokuena concurring**

**Tribunal Researcher : Jabulani Ngobeni**

For the merging parties : Webber Wentzel

For the Commission : Kwena Mahlakoana (Mergers and Acquisitions)