



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM314Mar18

In the matter between:

**Cell C Limited and Cell C Service Provider
Company (Pty) Ltd**

Primary Acquiring Firm

and

Glocell Service Provider (Pty) Ltd

Primary Target Firm

Panel : Andiswa Ndoni (Presiding Member)
: Imraan Valodia (Tribunal Member)
: Medi Mokuena (Tribunal Member)
Heard on : 06 June 2018
Order Issued on : 06 June 2018
Reasons Issued on : 27 June 2018

Reasons for Decision

Approval

- [1] On 06 June 2018, the Competition Tribunal ("Tribunal") approved the proposed transaction between Cell C Service Provider Company (Pty) Ltd and Glocell Service Provider (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Cell C Service Provider Company (Pty) Ltd ("Cell C SP"), which is controlled by Cell C Limited ("Cell C"). Cell C is not controlled by any firm.¹ Other than Cell C SP, Cell C directly and indirectly controls a number of other firms.²
- [4] Cell C is South Africa's 3rd largest Mobile Network Operator ("MNO") and operates through its subsidiaries, including Cell C SP.
- [5] Cell C is a MNO active in the provision of mobile network access and distribution of its products through various channels. Cell C is active in the telecommunications sector in South Africa, and specifically in providing mobile services to corporate and consumer subscribers. Cell C, through Cell C SP, retails a variety of products and service including *inter alia*, handsets, sim cards, accessories as well as pre and post-paid phone contracts.

Primary target firm

- [6] The primary target firm comprises of certain assets³ of GloCell Service Provider (Pty) Ltd ("GSP") relating to the Cell C post-paid subscriber base ("Target Business"). GSP is controlled by GloCell (Pty) Ltd ("GloCell")
- [7] GSP is an independent Service Provider ("SP") that provides post-paid as well as prepaid services including prepaid airtime, electricity and handsets. The post-paid part of GSP's business is provided by the Target Business and *only* relates to Cell C subscribers/contracts.
- [8] The activities of the Target Business includes, *inter alia*, billing, collections and customer servicing functions relating to Cell C's post-paid customers. The Target Business is also tasked with invoicing the Cell C subscriber base and collecting amounts owed to Cell C.

¹ The shareholding of Cell C is as follows: Blue Label Telecoms ("BLT") (45%); Cedar Cellular Investment 1 (11.8%); Magnolia Cellular Investment 2 (16%); Net1 Universal Electronic Technological Solutions (15%); Cell C Management and Staff (10%); and Yellowwood Cellular Investment 3 (2.2%). Note: the merging parties submit that Cell C is not controlled by any of its shareholders. The Commission disagrees and is investigating the control of BLT over Cell C. This will not affect the present transaction as BLT is not involved in the services provided by the Target Business.

² Cell C Property Company, Cell C Tower Company, Number Portability Company, Fibreco Telecommunications.

³ The assets include agreements, the post-paid subscriber base, handset revenue, fixed assets, and GSP's 45% interest in Questshelf. GSP currently shares joint control of Questshelf with Water Time Investments.

- [9] Questshelf is the insurance cell captive for GPS. It provides insurance services in relation to the products that GPS offers on behalf of Cell C including handsets, sim cards, accessories, as well as pre-paid and post-paid contracts. It was submitted by the merging parties that as part of the proposed transaction, the insurance policies associated with the Subscriber Base will move with each relevant subscriber comprising part of the Target Business.

Proposed transaction and rationale

Primary acquiring firm

- [10] GSP submitted that should the transaction not take place, the Cell C subscribers it services will be cut off from the Cell C network. This could be detrimental to subscribers and businesses that may be subscribers.

Primary target firm

- [11] Cell C submitted that MNO's currently have an increased need to engage with their subscriber base directly due to changes and successes in the market such as the introduction of prepaid products and regulatory developments over time. MNO's now invest heavily at the retail level and have therefore diversified their distribution channels, rather than using third party SP's.
- [12] In terms of the proposed transaction, Cell C SP intends to purchase the Target Business which comprises of certain assets of GSP relating to the servicing of Cell C post-paid subscribers.

Impact on competition

- [13] The Tribunal noted the Commission's observation that there is an existing trend of MNO's vertically integrating by acquiring their subscriber bases, leading to the demise of the role and services offered by independent SP's.
- [14] The Commission found a horizontal overlap in the activities of the merging parties, as they are both involved in the provision of Cell C post-paid contracts/services. This is because GSP is a reseller of Cell C pots-paid contracts and Cell C, through Cell C SP is also involved in the reselling of Cell C contracts.
- [15] The Commission's investigation showed that the post-merger market share of the merged entity would remain below 15%, with an accretion of 0.5%. The Commission concluded that this was too low to raise competition concerns. Further, the merging

parties will continue to face competition from other integrated MNO's such as MTN and Vodacom.

- [16] Further, the Commission found a vertical relationship between the merging parties. Cell C is active as an MNO (upstream) and it provides or distributes its products or services through downstream SP's such as GSP. Cell C as an MNO distributes its products and services through Independent SP's such as GSP and Cell C SP who are both active in the downstream market for the provision of post-paid and pre-paid services of the MNO.
- [17] The vertical relationship between Cell C and GSP originates from a commercial agreement whereby GSP is appointed by Cell C to distribute its products. This relationship is effectively terminated by the transaction. Therefore, the Commission was of the view that typical input and customer foreclosure associated with vertical relationships will not arise as the Target Business only provided post-paid contracts services to Cell C subscribers on behalf of Cell C. Post-merger these services will still be rendered by Cell C SP. Further, the merging parties will continue to face competition from other integrated MNO's such as MTN and Vodacom.
- [18] Lastly, the Commission found that there may be a potential overlap in the provision of handset insurance. Questshelf is active in the short-term insurance market, providing insurance to various GloCell subscribers, including GSP subscribers. Cell C also has its own insurance offering known as C Surance which covers Cell C subscriber contracts purchased from Cell C.
- [19] The Commission found that these products are not available in the open market for non-Cell C subscribers and are offered only in relation to the products they would have purchased from Cell C as value added services. Thus this aspect of the proposed transaction was unlikely to prevent or lessen competition.

Public interest

[20] The Commission found that as a result of GSP's decision to close down business operations and sell back its subscribers to Cell C, approximately 38⁴ of GSP's employees (the total workforce as of April 2018) will be retrenched.

[21] The Commission was of the view, that although this number is significant, the retrenchment would have occurred regardless of the proposed transaction because GSP had already taken the decision to wind down the business before the merger. The Commission contemplated employment conditions but was cognisant of the fact that Cell C is only acquiring the subscribers and not the business as a going concern. The merging parties have further committed to providing support to the affected employees including:


- a. Communicating monthly any and all job opportunities within Cell C to the affected employees and provide them with equal opportunity to apply.
- b. GloCell has made undertakings through the s189 notice to commit to finding alternatives for the affected employees and to consider any application for MSA.

[22] The Commission was of the view that given the circumstances, the above measures aimed at ameliorating the effect on employment are appropriate.

[23] There are no other public interest concerns arising from the proposed transaction.

Conclusion

[24] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Accordingly, we approved the proposed transaction unconditionally.



Ms Andiswa Ndoni

27 June 2018

DATE

Prof. Imraan Valodia and Mrs Medi Mokuena concurring

⁴ This number has since been reduced to 37 employees as the result of a resignation – Transcript page 9.

Case Manager: Kameel Pancham
For the merging parties: Judd Lurie and Sarah Jackson of Bowmans
For the Commission: Busisiwe Ntshingila and Themba Mahlangu