

In the Larger Merger Between:

**Vodacom Group (Pty) Ltd**

Acquiring Firm

and

**Cointel VAS (Pty) Ltd**

Target Firm

---

### **Reasons for Decision**

---

#### **Approval**

1. On 3 August 2005, the Competition Tribunal issued a Merger Clearance Certificate approving unconditionally the merger between Vodacom Group (Pty) Ltd (“Vodacom”) and Cointel VAS (Pty) Ltd (“Cointel”). The reasons for the approval appear below.

#### **The transaction and its rationale**

2. The parties to this merger are Vodacom<sup>1</sup> and Cointel.<sup>2</sup> Vodacom owns and controls a substantial number of subsidiaries.<sup>3</sup> Cointel has shares in three dormant companies.<sup>4</sup> Both parties have entered into a sale agreement in terms of which Vodacom acquired 51% of the shares in Cointel. The remaining 49% of the shares in Cointel will be held by a number of individuals.<sup>5</sup>

3. According to the parties, the Wireless Application Service Provider (“WASP”) and M-commerce businesses are at an early stage of development and the

---

<sup>1</sup> Vodacom is one of the national cellular networks currently operating in South Africa. At the time of the notification of this transaction, Vodacom’s controlling shareholders were Telkom South Africa Ltd (“Telkom”) (50%); Vodafone Group plc (“Vodafone”) (35%); and Venfin Ltd (“Venfin”) (15%).

<sup>2</sup> Cointel’s pre-merger shareholders are Mark Russel Attieh (31.33%); Ahmed Omar Ayob (28.92%); Grace Mary Houlston (24.10%); Leon Carl Richards (7.23%); Gary Lawrence Nunez (7.02%); and Cornelius Nicolaas Van Rooyen (1.42%).

<sup>3</sup> Vodacom (Pty) Ltd (“Vodacom”) (100%); Vodacom International Holdings (Pty) Ltd (100%); Vodacom Service Provider Holdings (Pty) Ltd (“VSP”) (100%); Vodacom Tanzania Ltd (65%); Smartphone SP (Pty) Ltd (“Smartphone”) (51%); Vodacom Properties No. 1 (Pty) Ltd (100%); and Vodacom Properties No. 2 (Pty) Ltd (100%). Smartphone in turn has two subsidiaries, viz., Smartcom (Pty) Ltd (86%); and Ithuba Smartcall (Pty) Ltd (52%).

<sup>4</sup> Cointel Technology Solutions (Pty) Ltd; Amafone (Pty) Ltd; and Easiconnect (Pty) Ltd.

<sup>5</sup> Mark Russel Attieh (15.35%); Ahmed Omar Ayob (13.86%); Grace Mary Houlston (11.81%); Leon Carl Richards (3.54%); Gary Lawrence Nunez (3.44%); and Cornelius Nicolaas Van Rooyen (1.00%).

potential upside to these businesses are quite large. From Vodacom side, the strategic rationale for acquiring Cointel is that there is an opportunity to acquire a proven intellectual property (“IP”), which is value and earnings enhancing, and it will give Vodacom access to intellectual capital in the mobile commerce arena. Cointel’s shareholders seek to dispose of shares to Vodacom.

### **The activities of the parties**

4. Vodacom is active in the upstream network market as well as in the downstream service provider market. Upstream, Vodacom is one of the three national cellular networks. It owns the network licence and operates IT systems, and also performs head office functions, compiles standard contracts, establishes distribution channels and develops new product trends. Downstream, Vodacom’s downstream players are its subsidiaries Vodacom Service Provider Company (Pty) Ltd (“VSP”), Smartphone Service Provider (Pty) Ltd, trading as Smartcall (“Smartcall”), and Tiscali (Pty) Ltd (“Tiscali”). These three Vodacom entities distribute prepaid starter packs, vouchers and airtime (“top-up-solutions”), provide wireless application services, and distribute cellular handsets, accessories and contracts.

5. Cointel is a value added service provider which provide a number of services, viz., top-up solutions, wireless application services, recharge services in relation to subsidized community service pay phones which are operated by community service operators using the Vodacom cellular network, and recharge services in relation to commercial public payphones.

### *Product overlap*

6. No horizontal overlap exists between the activities of the merging parties insofar as it relates to the provision of community and commercial recharge services, the distribution of handsets, accessories and contracts. The only overlaps exist in the provision of top-up solutions to networks and the wireless application services (“WASP”) (through SMS and IVR services).

### **Impact on competition**

7. The only issue that arises for consideration in this merger is a vertical one. The horizontal overlap between the two businesses is not significant.<sup>6</sup>

---

<sup>6</sup> The parties were able to furnish us with the market share information of the WASP service providers only in relation to Vodacom. Cointel has a total market share of 5,7% in the WASP market only in relation to Vodacom. The market shares of the other service providers only in Vodacom are as follows: iTouch (15,9%); Exactmobile (13,5%); First National Bank (10%); Foneworx (4%). We were told that the small WASP service providers constitute 51% of Vodacom’s expenditure. The parties were unable to provide market share figures of the WASP service providers as other networks do not generally make this information public. Similarly, Cointel does not know in detail what its shares are in relation to other networks. Their best estimate was that the above ratios are duplicated in relation to other networks. The parties

8. Cointel presently provides WASP services to MTN and Cell C in addition to Vodacom. Would Vodacom post merger foreclose these services to its two network rivals? The answer, from the evidence in the hearing, was that this would not be the case for two reasons. Cointel's business model depends on its working for all three companies and it would not be in its interest to stop offering its services to Vodacom's rivals, indeed it intends to do so post merger. The parties pointed out that although MTN and Cell-C are very small customers when it comes to both the WASP and the Re-charge categories, they have no intention to terminate the relationships, as it is important from a business perspective for WASPS to service all the three networks.<sup>7</sup>

9. Secondly, and more importantly, neither MTN nor Cell C are dependent on Cointel's services. There are a large number of competitors in this business, which is characterized by new entry and innovation and the bulk of Cointel's business to date has been with Vodacom. MTN employs 49 WASPs many of which provide both SMS and IVR services.<sup>8</sup> There are many other service providers that are able to provide these types of services.<sup>9</sup>

10. Foreclosure is thus neither rational nor if it happened likely to impact on rivals costs or levels of service.

11. In light of the above, we are satisfied that the proposed transaction would not result in the substantial prevention or lessening of competition regardless of any market definition pursued.

---

maintained that Cointel does not have significant sales in relation to the other networks and that its market shares will therefore dilute in relation to services provided to the other networks. From the market information given to us, Cointel is the fifth largest player with a small market share of about 5,7%. We note that the WASP does seem to be a market characterized by a lot of small players given also that not even the biggest players have significant market shares.

<sup>7</sup> Approximately 85% of Cointel's revenues are generated from the Community Re-charge Services, which is provided exclusively to Vodacom.

<sup>8</sup> We were advised during the hearing of the proposed merger that the IVR Services form part of the broader market known as the WASP services or a Wireless Application Services. They form a small portion of the total Wireless Application Services making up approximately 20% of the total revenue which is generated. The IVR services are based on a technology, which is an interactive voice recognition technology which is only one of the technologies which is used in Wireless Application Services. This technology is gradually phasing out with it being replaced by SMS and USSD. We were told that the importance of the IVR service in relation to the Wireless Application Services is not that significant. The parties have of late seen the data services coming up and premium rated SMS and WAP Services which have tended to take the high ground in terms of WASP Services as opposed to the voice based services like the IVR. **See the transcript, pages 1 - 2.**

<sup>9</sup> The parties testified that there are currently about sixty (60) WASPs on MTN and about one hundred and eighty (180) on Vodacom who could offer similar services to MTN. In addition, there are currently plus minus two hundred WASP service providers in the country. **See the transcript, pages 2 – 3.**

## **Public Interest**

12. There are no substantial public interest issues at stake here. In addition, the merging parties do not anticipate any job losses.

## **Conclusion**

13. There is nothing that would alter our conclusion above; hence the transaction is unconditionally approved.

\_\_\_\_\_  
**N. Manoim**

**19 April 2006**  
**DATE**

Concurring: **Y. Carrim, M. Mokuena**

For the Merging Parties: Andries le Grange (*Hofmeyr, Herbstein & Gihwala Inc*)

For the Commission: Odie Strydom assisted by Tshepo Letsietsa (*Mergers & Acquisitions*)