COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no: 83/LM/Sep05

In the large merger Between:

MTN Service Provider (Pty) Ltd **Acquiring Firm**

and

Cell Place (Pty) Ltd **Target Firm**

Reasons for Decision

Approval

On 8 December 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between MTN Service Provider (Pty) Ltd and Cell Place (Pty) Ltd. The reasons for this decision follow.

The transaction

1. The acquiring firm is MTN Service Provider (Pty) Ltd ("MTN-SP"), a firm wholly owned by Mobile Telephone Networks Holdings (Pty) Ltd ("MTN Holdings"), which in turn is a wholly owned subsidiary of MTN Group Limited ("MTN Group").[1] Apart from its shareholding in Cell Place, MTN-SP has two wholly owned subsidiaries viz. Guard Risk Insurance Company Ltd ("Guard Risk") and Cell Captive No 72 (Pty) Ltd ("Cell Captive").

2. The target firm is Cell Place (Pty) Ltd ("Cell Place"). Pre-merger, MTN-SP and Mobile Solutions (Pty) Ltd ("Mobile Solutions") hold 35% and 65% in Cell Place, respectively. This results in joint control of Cell Place.

3. Shareholding in Mobile Solutions is held as follows:

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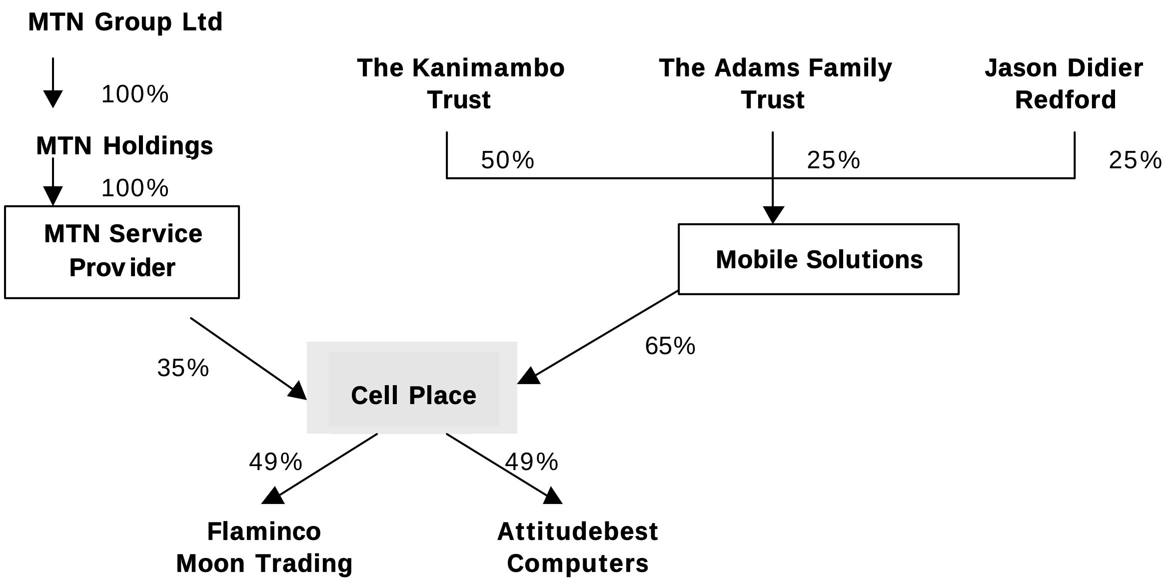
[1] MTN Group is listed on the JSE Securities Exchange South Africa and does not have a controlling shareholder. For a list of shareholders which have at least 1% of the issued share capital of MTN Group, please see page 3 of the Commission's Report. Detailed information on the MTN Group, including the subsidiaries of MTN Holdings can be found on pages 2-3 of the Commission's Report as well on pages 246-247, 547 and 318 of the record.

- The Kanimambo Trust (50%);
- The Adams Family Trust (25%); and
- Jason Didier Redford (25%)

4. In terms of the merger transaction, MTN is acquiring an additional 16% of the issued share capital in Cell Place from Mobile Solutions, thereby increasing MTN-SP's shareholding in Cell Place to 51%. According to the parties, Mobile Solutions will then be dissolved and its remaining 49% shareholding will be transferred to The Kanimambo Trust (33%) and to Jason Didier Redford (16%). Mobile Solutions' third shareholder, The Adams Family Trust will exit as a shareholder. According to the parties, Cell Place will be jointly controlled by its shareholders post merger.[2]

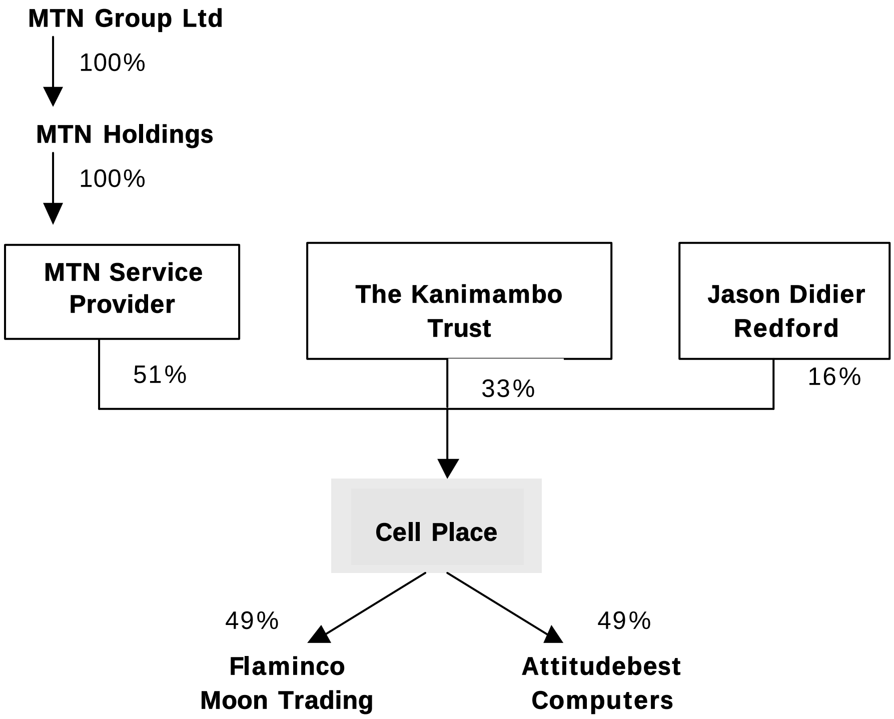
5. The pre- and post- merger structures are depicted below:

Pre merger structure



[2] At page 249 of the record.

Post merger structure



Rationale for the transaction

6. The parties submit that by acquiring one of its licensed exclusive dealers, MTN is seeking to "…consolidate its service delivery channels in order to bolster the quality of service offered to end-users."[3] They assert that they are "shortening the distribution chain" which is in line with international trends to vertically integrate into the cellular distribution network.

7. Cell Place is concerned with the growth of competing networks as well as the trend of these networks to vertically integrate downstream. The transaction will allow Cell Place to consolidate its gains and concentrate on competing vigorously against the other networks.

Competition analysis

Relevant Market

[3] At page 248 of the record.

Product market

8. The MTN Group is a provider of communications services. MTN is South Africa's second largest cellular network operators.

9. MTN-SP is a service provider to the MTN network. [4] Service providers may be appointed to exclusively deal with MTN's network service requirements, alternatively can do so for all three cellphone networks. MTN-SP operates various MTN Service Provider Service Centres around South Africa. It is charged with taking care of all the customer's MTN service needs in terms of his or her cell phone contract, including credit vetting, contract connections, billing, customer care, upgrades, migration and other services relating to the administration of the cell phone account. Cell phone users subscribe to either prepaid or post paid accounts.

10. Other service providers such as Orion, Augopage, Nashua Mobile and iTalk sell MTN contract airtime and prepaid airtime through their dealer networks. In addition to consumers' MTN cellphone needs being attended to by the MTN centers, there are also various independent distributors which sell MTN products as well as the large retail chain stores, such as Pick 'n Pay and Game, amongst others. These service providers are required to sign a distribution agreement for contract airtime or prepaid airtime with MTN. These service providers enter into distribution agreements with "dealers" or distributors, who on-sell the network's products for a commission.

11. Cell Place is licensed to act as an exclusive MTN dealer and operates 90 stores around South Africa which sell contract airtime, prepaid airtime, as well as providing cell phone rentals and accessories.

12. *The overlap occurs in respect of the markets for the sale of MTN contract and prepaid airtime.*

Geographic market

13. We agree with the commission that the relevant geographic market is national.

Impact on competition

14. It is common cause that there is an increasing trend amongst network providers to vertically integrate downstream, by buying up their service providers and provide the services themselves. The merging parties assert that due to the advent of the prepaid market, the role of service providers has become less important, as consumers can typically buy prepaid contracts from retailers.

15. This transaction has both a horizontal and a vertical dimension. Horizontal, because the MTN service centers and Cell Place compete in the distribution market. Vertical,

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[4] In terms of MTN's ICASA licensing conditions, MTN may itself provide these services, or appoint a sub-licence a service provider to distribute their products through the dealership networks.

because MTN is consolidating with its dealer downstream, again in the distribution market.

16. Horizontally, post-merger, the merged entity will have less than 2% market share in the prepaid market. This is largely because of the presence of the large retailers in this market. In the market for the sale of MTN contract airtime, the post-merger market share will be 40%, which is quite high. We evaluate this latter market in the context of concerns raised by various industry players.

Industry Concerns

17. There is a vertical dimension to this merger. The upstream market is that for the sale of MTN cellular services. Downstream, the MTN service providers are a channel between the dealers and the MTN network operator.

18. Some concerns were expressed by third party service providers.[5] They asserted there would be a loss of intra-brand competition brought about as a result of this merger. They were of the view that the merger would nullify the countervailing power the SPs have, insofar as they contended that MTN will, through CellPlace, itself compete and be operative in the downstream market and favour its own retail partner. They argue that the loss of intra-brand competition could lead to trading restrictions being imposed on the MTN dealers thereby luring away their customers, ultimately entrenching MTN's upstream power vis-a-vis the consumer. In other words, they fear loss of competition amongst service providers selling the MTN product.

19. Related to this concern, the third party service providers asserted that vertical integration by MTN-SP will result in increased dominance by the networks. This is because they will force out the "tri-service" providers (like themselves) that compete by offering consumers a choice of network based on the best tariff. [6]They contended that in the long-term, exit of these SPs could enable the networks to raise prices of deals and reduce their competitiveness. Also, with the advent of number portability, they asserted that the role of the tri-service SP will become more important, as they can facilitate customers switching networks more easily.

20. The merging parties countered this allegation by asserting that due to the introduction of number portability, it will now be easier for dealers to switch between network providers and therefore they will have even more market power to switch from one network to the other. Furthermore, that the relationship is between the consumer and the network directly and the dealer's role is likened to that of an agent or go-between between the parties. The true competition takes place at the network level, between the three different network operators, and competition at the

[5] Three service providers made submissions to the Commission. They were invited to amplify their submissions at the hearing, but declined, choosing instead to rely on their written submissions.
[6] Tri –service providers are firms not contracted exclusively to any of the three networks but rather serve to distribute the products of all three, hence the name.

downstream level is limited to competing for commission from the relevant network. We agree with this last submission. The various package offerings by the cellular networks are the same, therefore it would be irrelevant to the consumer which dealer she would go to. Again, in line with other mergers, we find that there does not seem to be any significant competition at dealer level, which would be compromised by this merger.

21. The commission further found that barriers to entry into the market for the sale of MTN contract airtime is not prohibitive. We are also mindful of the parties' point that this merger is not substantially changing the competitive landscape, in that it involves an increase of shareholding from 35% to 51%. Accordingly any foreclosure effects that exist now would have existed before this merger in any event. Furthermore, since Cell Place is an exclusive dealer for MTN-SP, this is another reason why input or customer foreclosure is highly unlikely.

22. As already explained, vertical integration of service providers is a well-documented international trend and in view of the lack of horizontal concerns raised by this merger, we have no reason to impugn it on the basis of any vertical concerns.

Conclusion

We conclude that the merger will not lead to a substantial lessening or prevention of competition. There are no public interest concerns which would alter this conclusion.

The Tribunal therefore approves the transaction unconditionally.

N. Manoim **<u>20 December 2005</u>**
Date

Concurring: D. Lewis

For the merging parties: M. Brassey instructed by KPMG

For the Commission: H. Ratshisusu, Mergers and Acquisitions