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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM117Aug15

In the matter between:

CELL C SERVICE PROVIDER COMPANY (PTY) LTD Primary Acquiring Firm

and

ALTECH AUTOPAGE, A DIVISION OF ALTRON TMT (PTY) LTD Primary Target Firm

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Panel	: Andreas Wessels (Presiding Member)
	: Andiswa Ndoni (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 09 December 2015 and 10 February 2016
Order Issued on	: 12 February 2016
Reasons Issued on	: 30 March 2016

Reasons for Decision

Conditional Approval

[1] On 12 February 2016, the Competition Tribunal ("Tribunal") conditionally approved the merger between Cell C Service Provider Company (Pty) Ltd and Altech Autopage, a division of Altron TMT (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"), a company incorporated in accordance with the company laws of the Republic of South Africa. Cell C SP is in turn controlled by Cell C (Pty) Ltd ("Cell C"), a company incorporated in accordance with the laws of the Republic of South Africa.

[4] Cell C is a mobile network operator ("MNO") active in the telecommunications sector and provides mobile services to corporate and consumer subscribers.

Primary target firm

[5] The primary target firm is Altech Autopage Cellular ("Altech Autopage"), a division of Altron TMT (Pty) Ltd. Only Altech Autopage's post-paid subscriber base subscribed to the Cell C network ("Altech Autopage's Cell C Subscriber Base") is being acquired. Altron TMT (Pty) Ltd is a wholly-owned subsidiary of Bytes Technology Group (Pty) Ltd.

[6] Altech Autopage is an independent telecommunications service provider in South Africa and delivers a range of customized mobile and fixed line, voice and data packages and services to both consumers and corporate clients.

Proposed transaction and rationale

[7] Cell C intends to acquire Altech Autopage's Cell C Subscriber Base from Altech Autopage.

[8] As a result of Altech Autopage exiting the telecommunications market, it will also terminate its retail and supply agreements with the retailers that operate its distribution outlets. While some of these outlets are operated by Altech Autopage, others are operated by franchisees, dealers and agents ("Channel Partners").

[9] The proposed transaction is one of three transactions that have been notified to the Competition Commission ("Commission") involving Altech Autopage. The other two

transactions are for the disposal of Altech Autopage's Subscriber Bases of Vodacom (Pty) Ltd ("Vodacom") and Mobile Telephone Network (Pty) Ltd ("MTN"), which were separately notified to the Commission under case numbers 2015Oct0584 and 2015Oct0583 respectively.

[10] The merging parties submitted that Altech Autopage has decided to exit the telecommunications market, given that it is no longer viable to sustain a multi-party independent service provider model. According to Altech Autopage, over the past year, market and industry changes have resulted in a sustained decline of the independent multi-party SP channel. A notable development has been the alternative routes to market created by the MNOs which include the rolling out of their own store networks. As a result, Altech Autopage has offered to sell its MTN, Vodacom and Cell C subscriber bases back to the respective MNOs. A number of other such SPs have exited the market and pre-merger, Altech Autopage is the only independent multi-party SP channel operating in the market.

[11] It is worth noting that following the Altech Autopage/Nashua Mobile transaction on 29 September 2014[1], Altech Autopage had viewed the acquisition of the Cell C Subscriber Base from Nashua Mobile as a strategic investment. Altech Autopage further submitted that while it was aware that its business model would be placed under pressure, it did not foresee the regulatory changes in respect of both fixed line and mobile termination rates which would further erode its revenues.

[12] According to Cell C, the proposed transaction presents an opportunity for Cell C to protect its subscriber base and maintain those subscribers on its network. In addition, Cell C intends on appointing Seventy2 Telecommunications (Pty) Ltd ("Seventy2") to act as its agent in administering this base on an exclusive basis. Seventy2 already distributes Cell C contracts on an exclusive basis and thus the proposed transaction will enable Cell C to optimize this distribution channel by having subscribers serviced by Seventy2.

Impact on competition

[13] During its investigation the Commission identified a horizontal overlap between the activities of the merging parties. Altech Autopage and Cell C are both active as retailers of handsets, products and services related to the mobile telecommunication

[1] Tribunal case number LM046Jul14.

industry. The proposed transaction also has a vertical dimension since Cell C is active as a MNO (upstream market) and provides products and services to Altech Autopage (a downstream service provider).

[14] The Commission assessed the competitive effects of the proposed transaction in the national market for the resale of Cell C post-paid subscription and services.

[15] The Commission found that the MNOs operate in upstream markets, providing mobile network access, which is then sold in downstream markets through various channels. One of these channels is the service provider channel, wherein Altech Autopage operates as an independent service provider. In this way, service providers provide a link between the MNOs and the customers, both corporate and individuals. Altech Autopage has service provider agreements with all MNOs, and as such, it is not exclusively associated with any single MNO.

[16] The Commission further found that the service providers have the responsibility for marketing and selling different MNO's services; billing customers; setting credit limits; collecting debts; and offering after sales service and technical support. There are two classes of customers in the downstream market, (i) pre-paid customers who purchase airtime to obtain mobile services each time they need it; and (ii) customers on contracts, i.e. post-paid customers. Post-paid customers are considered more credit worthy and hence pay after usage, hence post-paid. Traditionally, the service providers have served this customer segment because they assume the risk of non-payment. Hence, service providers receive discounts from the MNOs for selling the MNOs products.

[17] The Commission's assessment of market shares revealed that Altech Autopage accounted for less than 10% of the total market for post-paid services in South Africa, of which the Cell C Altech Autopage subscriber base accounted for less than [0-10]%. The Commission concluded that regardless of the market share assessment adopted, the post-merger market share of the merged entity would remain below 15% and too low to raise any significant competition concerns.

[18] In terms of intra-brand Competition, the Commission found that there were various channels through which Cell C sold its products to the market of which Altech Autopage is one of those routes. In assessing the strength of intra-brand competition the Commission compared the various packages offered by Cell C and Altech

Autopage, specifically in relation to Cell C's packages. The Commission found that customers had a choice between Cell C and Altech Autopage depending on their preference for data versus voice or airtime. While the packages were priced similarly they were still different in order to address customer preference for benefits. In other words the role of the service provider is providing structured deals tailored to capture a particular clientele base.

[19] In assessing intra-brand competition, the Commission further made reference to Tribunal Case Number 87/LM/Oct04, in which it was noted that contract services, tariffs (approved by ICASA) and terms are set by the cellular networks, as such the service provider has no product or pricing power. As a result, the package offered by the service provider will always be similar / match that of the network provider. The Commission was therefore of the view that the proposed merger did not appear to remove strong intra-brand competition.

[20] In terms of inter-brand competition, the Commission assessed the extent to which Altech Autopage was able to provide a platform through which the three MNOs in South Africa, being MTN, Vodacom and Cell C, compete. The importance of Altech Autopage in this regard was that it offered a platform for customers to compare packages offered by all MNOs in one store. While the Commission noted that Altech Autopage would effectively be removed as a route to market, the Commission found that post-merger customers will still have access to the products and services of other third parties and will be able to compare prices directly from the MNOs. Therefore, while inter-brand competition may be dampened as a result of the removal of Altech Autopage from the market, the Commission was of the view that that there would not be significant competition concerns given that customers could still approach the MNOs directly for packages.

[21] The Commission also conducted a vertical assessment in which it considered potential input foreclosure and customer foreclosure concerns. However, it noted that this relationship was not a typical vertical relationship between a customer and supplier as it originated from a commercial agreement between Cell C and Altech Autopage, whereby Altech Autopage has been appointed by Cell C to distribute its products.

[22] In terms of input foreclosure, the Commission found that there was unlikely to be input foreclosure given that Cell C currently distributes less than [0-10]% of its

products through Altech Autopage while the remainder is done through other distribution channels.

[23] In terms of customer foreclosure, given that Cell C distributes less than [0-10]% of its products through Altech Autopage, Altech Autopage only contributes to a small proportion of Cell C's business. Secondly, the Commission noted that Cell C is not acquiring the business of Altech Autopage but only its subscriber base. The Commission therefore concluded that it was unlikely that any upstream competitors would be foreclosed of Altech Autopage as a customer post-merger given that it is also exiting the market.

[24] The Commission therefore concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market and recommended that the Tribunal approve the proposed transaction without conditions, but subject to certain employment-related undertakings provided by the merging parties. Employment will be dealt with separately below.

[25] At the Tribunal hearing of 09 December 2015, Saicom Holdings (Pty) Ltd ("Saicom Holdings"), a customer of Altech Autopage, was allowed to make oral submissions and raised certain concerns regarding the above-mentioned transactions involving MTN and Vodacom as buyers.

[26] Saicom Holdings, Saicom Voice (Pty) Ltd ("Saicom Voice") and Tariffic (Pty) Ltd ("Tariffic"), collectively referred to here as Saicom, deal directly or indirectly with Altech Autopage. Saicom stated that Saicom Holdings held a large number of sim cards purchased either directly from Altech Autopage or indirectly from the Post-Paid company (a reseller of Altech Autopage) on both the Vodacom and MTN networks.[2] In addition, Saicom Voice, which is also a telecommunications company, uses the SIM cards purchased by Saicom Holdings for the routing of international voice traffic to third party destinations. Finally, the third business, Tariffic, optimizes company cell phone bills and supplies contracts to such companies.

[27] Saicom classified itself as a so-called "on-biller" in the supply chain and submitted that Altech Autopage was responsible for having created what is referred to as the

[2] Saicom submitted that it did not hold any Cell C sim cards (See Transcript of 09 December 2015, page 32).

"On-Biller Model", through which Altech Autopage has structured innovative contracts and offered discounts to its customers.

[28] Saicom raised the concern that the Commission had failed in its investigation to consider the "on-biller" segment of the market and had not contacted a number of on-billers who comprise Altech Autopage's largest customers. In addition, the Commission had also not considered the effect of the proposed transaction on call centres who sell products supplied to them by Altech Autopage to ordinary consumers.

[29] In a submission made to the Tribunal prior to the hearing, Saicom ventilated a number of issues and allegations which it raised at the hearing and which it submitted should have been considered by the Commission. Briefly, Saicom's concerns included that the proposed transaction *inter alia* would result in (i) the complete destruction of the "on-biller" model created by Altech Autopage; (ii) the price to customers who have benefited from the existence of the Service Provider ("SP") structuring and discounts provided by Altech Autopage, would rise substantially post-merger; (iii) a loss of jobs at call centres which sell the contracts to consumers which are currently supplied at discounted rates by Altech Autopage; and (iv) the closure of the business of Saicom if the merger proceeds. Saicom requested that certain conditions be imposed on the merging parties to ensure security of supply to Saicom and other on-billers in the market. In light of the above, Saicom requested that the matter be referred back to the Tribunal for further investigation.

[30] In addressing the concerns raised by Saicom, Cell C submitted that in terms of the Sale Agreement between Altech Autopage and Cell C, no re-sellers (or on-billers) formed part of the Altech Autopage Cell C Subscriber base. As a result, any impact on on-sellers or on competition arising from the transfer of the on-sellers' contacts to the other MNOs, would not arise as a result of the Cell C transaction.

[31] In reacting to the concerns raised by Saicom, the Commission confirmed that it was not given the customer details of Saicom in the merger filing and that it did not specifically investigate any potential effects of the proposed transaction on the on-biller segment. As a result the Commission was not in a position to confirm the submissions of either Cell C or Saicom with regards to the Cell C/Altech Autopage transaction.

[32] Given the *prima facie* potential concern relating to certain clusters of customers having not been interviewed by the Commission, the Tribunal decided to stand the matter down and referred the matter back to the Commission for the further investigation of specific issues. The Commission was directed to fully investigate the concerns raised by Saicom and any potential competition effects arising from the proposed transaction on certain identified customer groups, specifically "on-billers" and call centres. In addition, the Tribunal also requested the Commission to make a submission on the relevant counterfactual absent the above-mentioned proposed three transactions.

[33] Following the hearing, Saicom in a letter to the Tribunal dated 11 December 2015 confirmed that it had no concerns relating to the proposed transaction involving Cell C and that its concerns related only to the above-mentioned Vodacom and MTN transactions with Altech Autopage.

[34] In a supplementary report submitted to the Tribunal and presented at the hearing on 10 February 2016, the Commission confirmed that Cell C does not have on-billers on its Altech Autopage subscriber base. Furthermore, in relation to call centres, the Commission found that the merging parties had since addressed a concern raised by one of the call centres in relation to the Cell C/Altech Autopage transaction and no further issues remained in dispute.

[35] Given the above facts and in line with its original recommendation, the Commission was of the view that the proposed transaction should be approved without conditions.

[36] We concur with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

[37] Although the Tribunal concurred with the Commission with regards to the impact of the proposed merger on competition, the Tribunal was concerned about the effect of the proposed transaction on employment. We deal with this aspect next.

Public Interest

[38] The proposed transaction raised certain employment concerns, but did not raise any other public interest concerns. We deal with the employment concerns below.

Employment

[39] The merging parties noted that as a result of Altech Autopage exiting the market there would be a number of employment effects. As noted previously, in terms of the proposed transaction, Cell C will only acquire the Cell C subscriber base and not the business as a going concern. Therefore, in terms of the merger agreement between the parties, Cell C will not be taking up any of Altech Autopage's employees. However, the merging parties committed to taking certain steps to mitigate the negative employment effects.

[40] In its assessment of the public interest the Commission considered firstly the retrenchments within Altech Autopage and secondly the retrenchments that will occur at Altech Autopage's Channel Partners or franchise stores.

[41] At the hearing on 09 December 2015, the Tribunal requested clarity regarding the number of employees likely to be affected by the proposed transaction and the merging parties provided clarity. The merging parties submitted *inter alia* that at the time of the hearing all 510 employees of Altech Autopage had signed a mutual separation agreement. The merging parties however noted that certain employees had elected not to take this up due to voluntary resignations and/or redeployment back into the Altron Group. In terms of redeployment, at the time, the merging parties submitted that they were still engaged in negotiations with some third parties. At the 09 December 2015 hearing, the merging parties estimated that 282 people still required redeployment opportunities, although they had signed mutual separation agreements.

[42] With regards to call centres, the merging parties submitted that all Altech Autopage call center employees have been guaranteed a contract of employment with Bytes People Solutions post their individual termination dates. In addition, all the sister companies of the Altron Group had agreed to give preference to Altech Autopage's employees during upcoming interview processes at their respective companies, subject to certain provisions.

[43] In addition, the merging parties also submitted that they had started an employee assistance programme through a professional service provider which offers Altech Autopage employees and their families various support services ranging from emotional support, financial support and legal support.

[44] In terms of the additional employment effects arising from the termination of the retail and supply contracts between Altech Autopage and its Channel Partners, it was estimated that approximately 520 employees may also be negatively affected by the proposed transaction. As such, Altech Autopage engaged with a number of third parties such as Seventy2, Blue Label Telecoms Limited ("Blue Label") and Buffet Investment Limited, trading as Glocell ("Glocell") with a view to take over its Channel Partners. In this regard Seventy2, while not in a position to absorb or take over the employment of any persons at the retail outlets, made an undertaking that should any vacancies arise within its business, that it would consider those employees that were not redeployed by Altech Autopage subject to its human resources policies and standard employment interviews and vetting. The merging parties submitted that through these initiatives it is anticipated that the employment effects will be significantly mitigated.

[45] According to the Commission, while the number of affected employees was significant, these retrenchments would have occurred regardless of the proposed transaction, given Altech Autopage's decision to sell back the subscriber bases as well as its decision to exit the market.

[46] As stated above, the merging parties made certain undertakings towards mitigating the employment effects, which the Commission accepted. However, the Tribunal requested that these undertakings be made conditions to the approval of the proposed transaction, *inter alia* so that the undertakings could be properly monitored by the Commission. The merging parties agreed to that and submitted a set of conditions for the Tribunal's consideration.

[47] After suggesting certain enhancements to the conditions at our hearing of 10 February 2016, which the merging parties then incorporated, we approved the proposed transaction subject to the tendered conditions. Certain of the conditions that we have imposed are applicable to Cell C and others to Altech Autopage / The Altron Group. The imposed conditions are set out fully in the Tribunal's Order and Merger Clearance Certificate dated 12 February 2016 and include appropriate monitoring conditions.

[48] The conditions imposed on The Altron Group include that it will make offers of redeployment to 86 employees (this includes 56 employees who have already been redeployed to the Altron Group from 1 March 2015 to 11 February 2016 and 30

employees who have redeployment opportunities in the Altron Group post their employment termination dates). Altech Autopage will further continue to make certain training initiatives available to all the employees within the employ of Altech Autopage as at the date of approval of the merger until the date of implementation of the proposed transaction. Altech Autopage will also make available for a specific period an Employee Assistance Programme covering certain counselling services to all employees within the employ of Altech Autopage as well as their direct families.

[49] The conditions imposed on Cell C include that when an external vacancy arises to be filled within Cell C, Cell C must, for a period of 12 (twelve) months after the date of transfer of Altech Autopage's Cell C Subscriber Base, forward a batch communique via SMS and/or email to all Identified Candidates[3], providing such Identified Candidates with the information and details of the position as well as contact details as to whom to contact within Cell C HR to enable them to apply should they wish to do so. Under all circumstances the onus will rest on the Identified Candidate to apply for a vacant position.

Conclusion

[50] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. However, due to the significant employment effects associated with the proposed transaction, we approved the proposed transaction subject to a set of conditions aimed at mitigating these negative effects.

Prof Imraan Valodia

30 March 2016
DATE

Ms Andiswa Ndoni and Mr Andreas Wessels

3 "Identified Candidates" are Affected Employees, who, in the opinion of Cell C, are potentially suitable for the position sought to be filled; and "Affected Employees" means all employees within the employ of Altech Autopage as at the Merger Approval Date who have entered into voluntary separation arrangements with separation packages who have not already been redeployed within the Altron Group, do not already have confirmed redeployment opportunities within the Altron Group post their employment termination date at Altech Autopage, and who have not already resigned.

Tribunal Researcher:	Karissa Moothoo Padayachie
For the merging parties:	Lara Granville from Norton Rose Fulbright for Cell C and Advocate Arnold Subel SC instructed by Lee Mendelsohn and Derushka Chetty of ENSafrica for Altech Autopage
For the Commission:	Mogau Aphane, Kholiswa Mnisi and Lindiwe Khumalo
Intervenor:	Rafik Bhana with Luke Kelly instructed by Manong Attorneys for Saicom.