



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019166

In the matter between:

**ALTECH AUTOPAGE CELLULAR
(PROPRIETARY) LIMITED**

Primary acquiring firm

And

**NASHUA MOBILE (PROPRIETARY) LIMITED
IN RESPECT OF ITS CELL C SUBSCRIBER BASE**

Primary target firm

Panel	: Yasmin Carrim (Presiding Member)
	: Andreas Wessels (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 26 September 2014
Order Issued on	: 29 September 2014
Reasons Issued on	: 04 November 2014

Reasons for Decision

Approval

- [1] On 29 September 2014 the Competition Tribunal ("Tribunal") unconditionally approved an acquisition by Altech Autopage Cellular (Pty) Ltd ("Altech Autopage") of the Cell C subscriber base of Nashua Mobile (Pty) Ltd ("Nashua Mobile") and certain of the franchisees and dealers of Nashua Mobile (as explained below).
- [2] The reasons for approving the transaction follow.

Parties to transaction

Primary acquiring firm

- [3] The primary acquiring firm is Altech Autopage. Altech Autopage is a wholly owned subsidiary of Autopage Holdings Limited ("Autopage Holdings"). Autopage Holdings is ultimately controlled by Allied Electronics Corporation Limited ("Altron"). Altron is a public company listed on the Johannesburg Securities Exchange Limited ("JSE") and its shares are widely held. It is not controlled, directly or indirectly, by any single firm.
- [4] Altech Autopage is an independent telecommunications service provider ("SP") operative in the mobile telecommunications market throughout South Africa. Its independent status allows it to provide cellular voice and data contracts from any of the mobile network operators ("MNOs") in South Africa, or the fixed line operators. In addition, Altech Autopage is also a retailer of telecommunications and internet access hardware and related systems support. Altech Autopage thus procures subscribers on behalf of the MNOs and provides value added services to these subscribers.

Primary target firm

- [5] The primary target firm is Nashua Mobile in respect of its Cell C subscriber base. Nashua Mobile is a wholly-owned subsidiary of Reunert Limited ("Reunert"), a public company listed on the JSE.
- [6] Nashua Mobile is an independent telecommunications solutions provider, acting as a retail and distribution channel that provides a range of mobile telecommunication services to end-users. It provides credit vetting, billing and customer care for the subscribers that subscribe to packages for connection to any one of the MNOs. Thus, Nashua Mobile has historically provided a choice of different options for subscribers in choosing their network and has provided a route to market for the MNOs.

Proposed transaction and rationale

- [7] The proposed transaction forms part of a series of transactions. The effect of these transactions, when viewed cumulatively, results in Nashua Mobile exiting the market and no longer operating as an SP in the telecommunications industry.
- [8] This proposed transaction involves two distinct components. The first involves Nashua Mobile selling its Cell C subscriber base to Altech Autopage. By virtue of the implementation of that aspect of the proposed transaction, Altech Autopage will have sole control over Nashua Mobile's Cell C subscriber base.
- [9] Before dealing with the second aspect of the transaction it is worth noting that as a consequence of Nashua Mobile exiting the telecommunications market, Nashua Mobile will terminate its retail and supply agreements with the retailers that operate its distribution outlets. Some of these outlets are operated by Nashua Mobile itself while others are operated by franchisees, dealers and/or agents ("Channel Partners"). These Channel Partners hold individual leases for the premises from which they operate.
- [10] The second aspect of the transaction involves an *Option Agreement* entered into between Altech Autopage and Nashua Mobile, in terms of which Nashua Mobile will facilitate the process of Altech Autopage entering into franchisee agreements with some of Nashua Mobile's Channel Partners in order for Altech Autopage to operate its own distribution outlets from those outlets.¹
- [11] Altech Autopage submitted that it views the transaction as attractive since it provides it with the opportunity to make a strategic investment.
- [12] Nashua Mobile submitted that the sale of its subscriber bases is an opportunity to realise a return on investment and exit the market while it is in a

¹ See *inter alia* pages 16 to 18 of the transcript.

position where it is able to offer its employees favourable severance packages.

Competition analysis

- [13] The merging parties' activities overlap in relation to the retailing of mobile telecommunication services to both corporate and consumer subscribers.
- [14] As background, MNOs such as Vodacom, MTN and Cell C are active in the provision of mobile network access and the distribution of their products through various channels. The relationship between the MNO and SP is governed by an agreement that specifies the compensation for the specific SP's role. As stated above, both Nashua Mobile and Altech Autopage are independent SPs that contract with consumer and corporate subscribers for the provision of airtime, handsets and related services. Both Nashua Mobile and Altech Autopage sell products from all the MNOs.
- [15] The merging parties submitted that the relevant product market is the provision of mobile telecommunications services at the retail level. They further submitted that the geographic scope of this market is national. According to RBB Economics,² Vodacom is the largest MNO in South Africa, followed by MTN, and Nashua Mobile is a relatively small player in the provision of mobile telecommunications services at the retail level.
- [16] The Commission, however, considered the relevant product market to be considerably narrower but agreed that the market was national in its geographic scope. For purposes of its analysis the Commission considered the relevant product market to be the provision of (pre- and post-paid) mobile telecommunication products and services by independent service providers in South Africa.

² The economics firm commissioned by the merging parties to provide a competitiveness report on the proposed transaction.

- [17] The Commission however also pointed out that the pre- and post-paid market segments differ in that pre-paid customers make payment upfront such that the distributor assumes no risk. The Commission further found that the pre-paid market segment in South Africa is by far larger than the post-paid market segment. Since Nashua Mobile derives a very small percentage of its revenue from pre-paid customers, the Commission specifically considered the potential effects of the proposed transaction in the post-paid market segment.
- [18] We have considered the potential competition effects of the proposed transaction on: (i) the pre- and post-paid market subscriber segments potentially representing a single relevant product market; and (ii) the (narrower) post-paid subscriber market segment as a potential separate relevant product market.
- [19] The Commission's analysis of the effects of the proposed transaction on the (broader) market for *"the sale of pre-paid and post-paid mobile telecommunication products and services"* revealed that the merged entity will have a national market share of less than 5%.
- [20] If one only considers the narrow market segment of post-paid subscribers, Altech Autopage accounts for approximately [5-10]% of all post-paid mobile services in 2013 in South Africa.³ Nashua Mobile is a relatively small competitor in this segment accounting for approximately [5-10]% of all post-paid subscribers in South Africa⁴ and only a small portion of this market share will shift to Altech Autopage as a result of the proposed transaction, i.e. only that related to the Cell C subscriber base.⁵
- [21] In respect of the transaction resulting in Altech Autopage acquiring channel partner contracts, the Commission concluded that the merged entity's post-merger retail store presence would be less than 20%, even if Altech Autopage were to convert all of the current Nashua Mobile stores in South Africa.

³ Commission's Recommendation, pages 15 and 16, Table 5.

⁴ Commission's Recommendation, pages 15 and 16, Table 5.

⁵ Commission's Recommendation, page 16.

[22] Based on its analysis the Commission concluded that the proposed transaction was unlikely to result in a substantial prevention or lessening of competition in any relevant market. This is a finding with which we concur.

[23] We next consider the effect of the proposed transaction on employment.

Public interest

[24] The merging parties were at pains to impress upon the Tribunal that the proposed transaction does not constitute the sale of a business as a going concern, and that Nashua Mobile's employees would thus not be transferred to the acquiring firm.⁶ The Tribunal is acutely aware of the fact that approving the proposed transaction necessarily results in Nashua Mobile exiting the market and many of Nashua's employees facing retrenchment.

[25] At first we were uncertain as to the exact number of employees adversely affected by the transaction since the figures provided by the merging parties were somewhat inconsistent. At the hearing of 26 September 2014, the position regarding employment effects was clarified by counsel for the merging parties.

[26] While we deem the employment effects of the proposed transaction to be significant, we are mindful of the fact that Nashua Mobile has elected to exit the market. We have also taken cognisance of the substantial commitments made by Nashua in respect of minimising the adverse effects on employment.

[27] Nashua has undertaken to redeploy as many affected employees within the Reunert Group as possible and expects this figure to be between 100 and 150. The severance packages Nashua has offered all of its employees ("the Severance Packages") appear to be particularly generous, being between three and five times more than they would be in terms of the Labour Relations

⁶ *Inter alia* page 14 of the Merger Record.

Act.⁷ It also appears that many employees elected to accept the Severance Packages.⁸ Further, the merging parties have established support structures which provide affected employees with *inter alia* psychological and financial counselling; assistance in updating their curricula vitae; having their curricula vitae circulated within the Reunert Group and afforded preferential consideration in the event of vacancies arising; and letters of reference.⁹

[28] It is also necessary to remark here that Nashua has provided specific undertakings in respect of all affected unskilled employees, i.e. those deemed most vulnerable and least likely to find alternative employment were they to be retrenched as a result of the proposed transaction. Nashua has undertaken to redeploy each affected unskilled employee within the Reunert Group.¹⁰

[29] In addition to the Severance Packages, our fears regarding adverse employment effects have been further allayed by Altech Autopage having given certain undertakings which also go towards mitigating the employment concerns. These undertakings are set out fully in the Tribunal's Order and Merger Clearance Certificate dated 29 September 2014.¹¹

[30] The proposed transaction raises no public interest concerns other than those relating to employment.

Conclusion

[31] In conclusion we find that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in the relevant market(s), howsoever defined.

⁷ Act No. 66 of 1995.

⁸ See *inter alia* pages 13 and 14 of the transcript.

⁹ *Inter alia* Merger Record page 17.

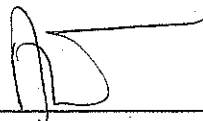
¹⁰ Merger Record page 17.

¹¹ See **Annexure A** to the Tribunal's order, paragraph 3.

[32] Notwithstanding the absence of any material competition effects, we have remained concerned with the proposed transaction due to the serious public interest effects and have not arrived at our decision lightly.

[33] While we do consider the employment concerns elucidated above to be significant, these have been ameliorated by the employment related undertakings put forward by the merging parties.

[34] For the reasons set out above and in light of the undertakings given by the merging parties with regards to employment, we approve the proposed transaction unconditionally.



Andreas Wessels

04 November 2014

DATE

Yasmin Carrim and Medi Mokuena concurring

Tribunal Researcher: Derrick Bowles and Shannon Quinn

For the target firm: Adv David Unterhalter SC instructed by Norton Rose
Fulbright

For the acquiring firm: Lee Mendelsohn of ENS Africa

For the Commission: Grashum Mutizwa