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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM185Nov15

In the matter between:

VODACOM (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	: 9 December 2015 and 10 February 2016
Order Issued on	: 12 February 2016
Reasons Issued on	: 18 April 2016

Reasons for Decision

Approval

[1] On 12 February 2016, the Competition Tribunal ("Tribunal") conditionally approved the proposed transaction between Vodacom (Pty) Ltd and Altech Autopage, a division of Altron TMT (Pty) Ltd.

[2] The reasons for approving the proposed transaction follow.

Background

Concerns raised by Saicom and referral back to Commission

[3] At the Tribunal hearing of 09 December 2015, the Tribunal allowed Saicom Holdings (Pty) Ltd ("Saicom Holdings"), a customer of Altech Autopage, to make oral submissions in which it raised certain concerns regarding the above-mentioned transaction, as well as the proposed transaction involving Mobile Telephone Networks (Pty) Ltd ("MTN") and Altech Autopage[1].

[4] Saicom Holdings, Saicom Voice (Pty) Ltd ("Saicom Voice") and Tariffic (Pty) Ltd ("Tariffic"), collectively referred to hereinafter 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.

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

[6] Saicom raised the concern that the Competition Commission ("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.

[7] 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

[1] Tribunal Case No. LM182Nov15.
[2] Saicom submitted that it did not hold any Cell C sim cards (See Transcript of 09 December 2015, page 32).

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.

[8] 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 market segment.

[9] Given the concerns raised by Saicom and furthermore that the Commission did not specifically investigate the potential effects of the proposed transactions on certain customer groups, the Tribunal referred the above-mentioned two proposed transactions back to the Commission for further investigation, together with the proposed transaction involving Cell C Service Provider Company (Pty) Ltd ("Cell C") and Altech Autopage[3].

[10] When referring the matter back, the Tribunal directed the Commission to investigate and comprehensively assess a number of issues including the concerns raised by Saicom in relation to the proposed transactions (other than the alleged prior implementation of the proposed transactions which the Commission was directed to investigate separately). The Commission further had to specifically investigate any potential competition effects resulting from the proposed transactions on certain customers and/or customer groups, i.e. (i) the top five (5) customers of Altech Autopage based on both the number of SIM cards and revenue; (ii) the category of customers referred to as "on-billers"; and (iii) the category of customers referred to as "call centers". The Commission was also directed to assess the relevant counterfactual absent the proposed transactions.

[3] Tribunal Case No. LM117Aug15.

[11] The proposed mergers were set down for further hearing on 10 February 2016.

[12] The Commission upon completion of its further investigation filed supplementary reports with the Tribunal on 03 February 2016 setting out the results of its further investigation and its ultimate conclusions.

Saicom's intervention application

[13] On 09 February 2016 Saicom informed the Tribunal that it intended to bring a formal application to intervene in the above-mentioned proposed mergers. This intervention application was filed with the Tribunal after office hours on 09 February 2016.

[14] We note that the intervention application did not implicate the above-mentioned transaction involving Cell C. 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.

[15] Altech Autopage, MTN and Vodacom all opposed a formal intervention application.

[16] In short, Saicom submitted that the Tribunal should grant it leave to intervene in the merger proceedings because it has a material interest in the matter(s) as the largest on-biller customer of Altech Autopage and because of this position it is uniquely placed to speak to the effects of the proposed transaction on Altech Autopage's customers and on end-consumers.

[17] Saicom further alleged that the supplementary reports furnished by the Commission after investigating the issues raised by it in December 2015 were still fundamentally flawed because the Commission did not appreciate the nature of the on-biller market and Altech Autopage's role in this market - and how as South Africa's current only independent service provider Altech Autopage offers consumers lower prices and greater choice – which post-merger will be replaced by a monopoly over the supply of SIM cards by Vodacom and MTN. Saicom further submitted that the proposed transactions would lead to Saicom closing its business and the destruction of the entire on-biller market segment. Saicom also alleged that it could assist the Tribunal in determining the appropriate counterfactual absent the proposed transaction(s)

since the Commission erroneously adopted a counterfactual where Altech Autopage will exit the relevant market. In this regard Saicom alleged that Altech Autopage is financially a strong company and that it will not inevitably exit the market. Finally, Saicom alleged that it would be able to assist the Tribunal in relation to a remedy and to determine whether Vodacom, MTN and Autopage had pre-implemented the proposed merger(s).

Merging parties' objection to the intervention

Altech Autopage

[18] Altech Autopage argued that the intervention should be refused because Saicom had nothing to add to the enquiry, but in the alternative suggested that Saicom could make oral submissions on the day of the hearing. Counsel for Altech Autopage indicated that the merging parties were not reluctant to engage with the facts in any way and that they had representatives of the merging parties present to deal with any concerns raised so that these matters could proceed on the day.[4] Thus Altech Autopage had no difficulty about Saicom being granted *audi alteram* about the merits or otherwise of the proposed mergers but contended that Saicom should not be allowed an intervention in the full sense.

[19] Altech Autopage further pointed out that Saicom was given the opportunity to place whatever concerns it had before the Commission and the Tribunal prior to the present hearing. It argued that Saicom was heard in detail at the previous hearing of 09 December 2015, where it voiced its concerns regarding the proposed transactions, and since then there has been further correspondence between the Commission and Saicom. Moreover, as directed by the Tribunal, the Commission supplemented its recommendation in view of the concerns raised by Saicom at the December 09 hearing. Furthermore, Saicom's concerns raised in its intervention application were no different from the concerns raised at the December 09 hearing, which were investigated by the Commission.

[20] Altech Autopage further argued that to allow the application for intervention (that was submitted only the day before the 10 February 2016 hearing) would be highly prejudicial to the merging parties and result in an unreasonable delay in the conclusion of the proposed transactions.

[4] Transcript of 10 February 2016, *inter alia* pages 25, 27, 28 and 37.

[21] Altech Autopage further averred that Saicom's allegations were not merger-specific, since nothing of what it said related specifically to the proposed merger(s). More specifically, it argued that Saicom could not contribute to the debate regarding Altech Autopage's decision to cease the relevant business, i.e. the appropriate counterfactual, which Altech Autopage's senior representatives would speak to at the hearing. It further argued that Saicom faced another hurdle because certain contractual issues had changed the benefits that Saicom used to receive from Altech Autopage and that there was no basis to assume that Saicom would enjoy the same benefits as before from Altech Autopage absent the proposed transaction(s).[5]

Vodacom

[22] Vodacom had no objection to Saicom ventilating its concerns that were outlined in its intervention application at the hearing, as it did on 09 December 2015, but objected to a formal intervention, arguing that a further delay would prejudice the merging parties.

[23] Vodacom further argued that that the concerns raised by Saicom were not merger-specific and that there was no evidence in the Saicom application which warranted further investigation by the Tribunal, in relation to retrenchments of employees or in relation to the financial position of Altech. Vodacom was of the view that Saicom was not in a position to assist the Tribunal materially in respect of these matters.

[24] Vodacom also submitted that Saicom is not a traditional "on-biller" (as alleged by Saicom). According to Vodacom, Saicom is involved in so-called "grey routing" which Vodacom regards to be fraudulent and to be in contravention of the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 ("RICA"). According to Vodacom, Saicom currently purchases packages from Altech Autopage effectively to route international traffic from one foreign country to another foreign country through South Africa by way of arbitrage in order to gain a benefit for itself. Vodacom alleged that this therefore had nothing do with South African consumers. It said that this was not a merger-specific concern, but stemmed from a contractual prohibition, which exists in Vodacom's agreements with Altech Autopage, which it has acted upon and which it has sought to stamp out.

[5] Transcript, page 39.

[25] Vodacom highlighted however that it has made a tender and continues to make a tender to conclude an international interconnect agreement with Saicom, if Saicom engages in such an arrangement on its standard terms. Vodacom also tendered to conclude a traditional on-billing arrangement with Saicom, as it does with other on-billers, if Saicom engages in a legitimate on-billing business.

MTN

[26] MTN argued that Saicom had not demonstrated that it will be able assist the Tribunal since the issues raised by Saicom were not merger-specific and furthermore that Saicom could not make any additional contribution to the financial standing of Altech Autopage beyond the allegations already made in its application.

[27] MTN further pointed out that with regard to the issue of potential prior-implementation of the proposed transaction(s), the Commission will investigate such allegations (as directed by the Tribunal) and in due course come to a conclusion. As stated above, the Tribunal directed the Commission to investigate any alleged prior implementation as a separate issue that need not delay adjudication on the competition and public interest effects of the proposed merger(s).

Tribunal grants Saicom limited participation rights

[28] Having heard all parties and arguments, the Tribunal refused Saicom formal intervention, but granted it limited participation rights to make (further) oral submissions in relation to the MTN and Vodacom transactions at the hearing. The Tribunal further directed that the merging parties must respond to the issues raised by Saicom in the hearing *inter alia* by putting up appropriate witnesses that could speak to the issues raised.

[29] Regrettably, Saicom decided not to make any oral submissions and left the hearing. The Tribunal proceeded with the hearing of the mergers.

[30] We set out below the basis for granting Saicom limited but not full intervention.

[31] It is trite that it is within the discretion of the Tribunal[6] to decide the extent of third parties' [participation] rights in hearings, to limit or widen it, as it deems fit in order to fulfil its mandate in accordance with the provisions of the Act.[7]

[32] In a large merger context the purpose of any third party participation is to assist the Tribunal[8], considering that the Commission has already done an investigation of the matter and has made a recommendation to the Tribunal. In deciding whether to allow a party to intervene and the scope thereof the Tribunal must therefore consider whether the party applying will assist it with additional information not otherwise available to it, to consider the merger in terms of section 12A of the Act. It then follows that the Tribunal can exercise its discretion to limit (or widen) participation rights, based on the degree of assistance that a particular participant can offer the Tribunal. The Tribunal must further balance any potential assistance that could be offered against the consequences of the intervention in terms of expedition and resolution of the proceedings.

[33] As pointed out above, the intervention application was only received on the eve of the hearing of 10 February 2016.

[34] As also indicated above, Saicom was given the opportunity to fully ventilate its concerns at the 09 December 2015 hearing. Not only did it participate in the December hearing where it raised its concerns, it was also involved in the Commissions supplementary investigation where it gave written and oral submissions.

[35] The Commission addressed the concerns raised by Saicom in its supplementary report and also engaged with various players in the on-biller and call centre market segments regarding any potential competition concerns resulting from the proposed transactions.

[36] Saicom did not show any theory of harm other than those already investigated by the Commission and also did not show that it had useful additional information about the effects of the proposed transaction which could assist the Tribunal, given the Commission's supplementary report which dealt specifically with Saicom's concerns,

[6] See, for example, *Anglo South Africa Capital (Pty) Ltd and Others v Industrial Development Corporation of South Africa* (CAC) 26/CAC/Dec02, paragraph 28.
[7] *Healthbridge (Pty) Ltd and Digital Healthcare Solutions (Pty) Ltd* (CT) 41/AM/Jun02, page 7.
[8] See, for example, *Anglo South Africa Capital (Pty) Ltd and Others v Industrial Development Corporation of South Africa* (CAC) 26/CAC/Dec02, paragraph 28.

as well as the views of on-billers and call centres about the proposed transaction(s). More specifically, we were not persuaded that Saicom could make a meaningful contribution to the counterfactual debate. The Commission fully investigated this matter, analysed the merging parties' strategic documents, and reached the conclusion that the relevant counterfactual was that Altech Autopage would exit the market.

[37] In summary, Saicom did not put up convincing evidence that it, through a full intervention, would make a significant contribution to the Tribunal process in the adjudication of the matters in question. We further had to consider the prejudice that the merging parties would suffer if the merger hearings were postponed further, given that the hearings of the proposed transactions were already delayed by two months. Mr Wattrus of Altech Autopage spoke to the prejudice should the proposed transactions be delayed further[9]. We furthermore also took into consideration the effect that a further postponement would have on the large number of employees affected by the proposed transactions. The merging parties gave certain undertakings/commitments to mitigate the negative employments effects which gave the affected employees some certainty about their future.

[38] Based on the above, we denied Saicom formal intervention but, as stated, gave it limited participation rights to make (further) oral submissions at the hearing(s) of the proposed transactions.

[39] We next deal with the competition assessment of the proposed transaction and the public interest effects.

Parties to proposed transaction

Primary acquiring firm

[40] The primary acquiring firm is Vodacom (Pty) Ltd ("Vodacom"), a company incorporated in accordance with the laws of the Republic of South Africa. Vodacom is controlled by Vodacom Group Limited ("Vodacom Group").

[9] Transcript, pages 69 to 72.

[41] Vodacom is a communications and cellular network operator which provides a number of products and services to its customers in both the wholesale and retail markets.

Primary target firm

[42] 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 Vodacom network ("Altech Autopage's Vodacom Subscriber Base") is being acquired. Altron TMT (Pty) Ltd is a wholly-owned subsidiary of Bytes Technology Group (Pty) Ltd.

[43] 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

[44] Vodacom intends to acquire Altech Autopage's Vodacom Subscriber Base from Altech Autopage.

[45] As a result of Altech Autopage exiting the telecommunications market, it will also terminate 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").

[46] 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 Mobile Telephone Network (Pty) Ltd ("MTN") and Cell C Service Provider Company (Pty) Ltd ("Cell C"), which were separately notified to the Commission under case numbers 2015Oct0583 and 2015Aug0481 respectively.

[47] 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.

[48] It is worth noting that following the Altech Autopage/Nashua Mobile transaction on 29 September 2014[10], 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.

Impact on competition

[49] During its investigation the Commission identified a horizontal overlap between the activities of the merging parties. Altech Autopage and Vodacom are both active as retailers of handsets, products and services related to the mobile telecommunication industry. The proposed transaction also has a vertical dimension since Vodacom is active as a MNO (upstream market) and provides products and services to Altech Autopage (a downstream service provider).

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

[51] 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.

[10] Tribunal case number LM046Jul14.

[52] 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.

[53] 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 Vodacom Altech Autopage subscriber base accounted for less than 5%. The Commission concluded that regardless of the market share assessment adopted, the post-merger market share of the merged entity would remain too low to raise any significant competition concerns.

[54] In terms of intra-brand Competition, the Commission found that there were various channels through which Vodacom 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 Vodacom and Altech Autopage, specifically in relation to Vodacom's packages. The Commission found that customers had a choice between Vodacom 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.

[55] 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.

[56] 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.

[57] 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 Vodacom and Altech Autopage, whereby Altech Autopage has been appointed by Vodacom to distribute its products.

[58] In terms of input foreclosure, the Commission found that there was unlikely to be input foreclosure given that Vodacom currently distributes less than 5% of its products through Altech Autopage while the remainder is done through other distribution channels.

[59] In terms of customer foreclosure, given that Vodacom distributes less than 5% of its products through Altech Autopage, Altech Autopage only contributes to a small proportion of Vodacom's business. Secondly, the Commission noted that Vodacom 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.

[60] 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.

[61] In a supplementary report submitted to the Tribunal and presented at the hearing on 10 February 2016, with respect to Vodacom and MTN, the Commission submitted that an investigation of the relevant counterfactual confirmed that regardless of whether the proposed transactions were approved, Altech Autopage would still exit the relevant market.

[62] The Commission broadly found the following. Firstly, the Commission was of the view that Saicom acts as an intermediary wherein it uses the SIM cards to provide services to other customers such as the routing of international calls and is not an on-biller as defined by MTN and Vodacom. Secondly, the proposed merger will not lead to the destruction of the on-biller model, as Vodacom and MTN currently have various on-billers that they provide with SIM cards for on-selling to the market. Thirdly, while concerns were raised by call centres, the Commission notes that these have since been addressed by the merging parties. Fourth, Altech Autopage will exit the relevant market regardless of the merger as a result Saicom will have to seek alternative suppliers for SIM cards.

[63] Furthermore, as stated above, at the hearing Vodacom confirmed that it had made a tender and continues to make a tender to conclude an international interconnect agreement with Saicom, should it want to engage in such an arrangement on its standard terms. In addition, Vodacom also tendered and continues to make a tender to conclude a traditional on-billing arrangement with Saicom, as it does with other on-billers, if it wants to engage in legitimate on-billing business and not for the purposes of grey routing.[11]

[64] 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.

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

[11] See Transcript of 10 February 2016, page 63.

[66] 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

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

Employment

[68] 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, Vodacom will only acquire the Vodacom subscriber base and not the business as a going concern. Therefore, in terms of the merger agreement between the parties, Vodacom 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.

[69] 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.

[70] 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.

[71] 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.

[72] 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.

[73] 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.

[74] 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.

[75] 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.

[76] 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 Vodacom 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.

[77] 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.

[78] The conditions imposed on Vodacom include that when an external vacancy arises to be filled within Vodacom, Vodacom must, for a period of 12 (twelve) months after the date of transfer of Altech Autopage's Vodacom Subscriber Base, forward a batch communique via SMS and/or email to all Identified Candidates[12], providing such Identified Candidates with the information and details of the position as well as contact details as to whom to contact within Vodacom 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

[79] 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

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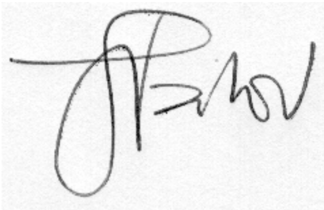
12 "Identified Candidates" are Affected Employees, who, in the opinion of Vodacom are potentially suitable for the position sough to be filled; and "Affected Employees" means all employees within the employ of Altech Autopage as at the Merger Approval Date who have entered into voluntary separation arrangements 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.

the significant employment effects associated with the proposed transaction, we approved the proposed transaction subject to a set of conditions aimed at mitigating those negative effects.



____________________ 18 April 2016

Prof Imraan Valodia DATE

Ms Andiswa Ndoni and Mr Andreas Wessels concurring

Tribunal Researcher:	Karissa Moothoo Padayachie
For the merging parties:	Jerome Wilson instructed by Cliffe Dekker Hofmeyr Inc for Vodacom, 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
For Saicom:	Rafik Bhana with Luke Kelly instructed by Manong Attorneys