

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 87/LM/Oct04

In the large merger between:

Vodacom Service Provider Company (Pty) Ltd

and

Tiscali (Pty) Ltd

Reasons for Decision

APPROVAL

On 12 January 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Vodacom Service Provider Company (Pty) Ltd and Tiscali (Pty) Ltd in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Parties

1. The acquiring firm is Vodacom Service Provider Company ("VSP"), subsidiary of VSP Holdings (Pty) Ltd, whose ultimate owner is the Vodacom Group (Pty) Ltd.
2. The primary target firm is Tiscali, owned by an international company, Tiscali BV.

The Merger Transaction

3. VSP is acquiring the business of Tiscali as a going concern. This includes the Vodacom network airtime contract business and income-earning activity of Tiscali.

Rationale for the Transaction

4. Tiscali is disposing of its interest in RSA. M-Web is acquiring the internet access business and Vodacom will be acquiring the cellular mobile telephony business, more particularly, the cellular service provider business (this merger transaction)- comprising the Vodacom contract subscriber base.

5. This transaction amounts to a “shortening of the distribution chain” in that Vodacom is essentially acquiring control over one of its service providers downstream, Tiscali. This is apparently part of an international trend to integrate the cellular distribution network

Structure of Industry

Operators / Networks	=	Cell C, Vodacom, MTN
Service Providers (contract or prepaid)	=	VSP, Tiscali , Smartcall, Autopage, Nashua Mobile, Global Telematics
	=	
Point of sale		Retailers, franchises, cellular and independent dealers.

The relevant product market

6. Vodacom is active in the downstream market via VSP, which sells and distributes handsets, accessories and Vodacom cellular airtime.

vii.Tiscali sources clients, concludes and administers contracts on behalf of Vodacom with subscribers to Vodacom’s network and distributes cellular handsets and accessories in the cellular industry. Tiscali is already licensed to act as an exclusive Vodacom service provider.

8. In line with previous decisions, the Commission did not define a market since even on the narrowest of market definitions, they felt there is no substantial prevention or lessening of competition. They do however work hypothetically with the market for provision of cellular telephony services to Vodacom subscribers only.

COMPETITIVE ANALYSIS

Competitive Impact of Merger:

Horizontal Effects

9. Tiscali and VSP recruit only Vodacom customers and only deal in Vodacom products, therefore this merger only affects ***intra-brand competition***.
10. Furthermore, Tiscali is already licensed to act as an exclusive Vodacom service provider. We agree with the Commission that the transaction makes no material difference to the market as the market share accretion is minimal. The stated market share figures, based on sales revenue, is 65% and 2% for VSP and Tiscali respectively. Based on number of contract subscribers it is 71% and 1.2% respectively¹. Tiscali has 2% of the cellular market in RSA. Therefore, Vodacom already is dominant in the market for provision of cellular services to Vodacom contract subscribers and this merger makes no material difference.
11. Concerns were notified to the Commission to the effect that Vodacom was entrenching its market power in the contract subscriber market by buying out all service providers. The concern was raised that this would increase its vertical links in the supply chain and allow it to eliminate all discounts currently given, thereby increasing Vodacom's margins in a saturated market and entrench their market power to set high prices on a take it or leave it basis.
12. Indeed it seems that VSP has already acquired the majority of the exclusive Vodacom service providers. There are, however, other factors that persuade us that this transaction will not substantially prevent or lessen competition.
13. Firstly, the evidence confirms that the role of service providers, in line with world-wide trends, is diminishing with the advent of prepaid packages since there is less of a role for service providers to do credit checking, attend to billing of customers and other administrative functions.

¹ See page 363 or Record.

14. At the hearing it emerged that Tiscali target the corporate, as opposed to the consumer market. They therefore do not regard themselves as competing directly in the consumer market with Vodacom. However, it seemed they were talking more about the least-cost routing system, as opposed to cellular contracts. Be that as it may, their market share contribution to the transaction in respect of cellular service provision remains low. Though Vodacom's acquisition of the target firm would swallow up a competitor and reduce to some extent the level of intra-brand competition in the market, the parties advised that pre-merger, the level of intra-brand competition at service provider level, is limited in any event due to the discount structure within which they operate and the need to cover overhead costs. The parties further pointed out that most of the competition in the market takes place at network level, between the three cellular networks. The role of the service provider has, in line with international trends, therefore become obsolete, because they act as an intermediary, where the real competition is happening at network level.
15. This confirms our finding in respect of another, similar merger where we stated, in respect of horizontal effects²:

"In respect of contract services, the tariffs (approved by ICASA) and terms of the contracts are set by the cellular networks. Thus service providers have no product or pricing power. They compete primarily in terms of convenience to the customer and the packaging of the offer (handsets and discounted subscriptions). The service providers apply the discounts which they receive from the networks differently, though ultimately, the total packages offered to customers match each other...therefore no reduction in intrabrand competition and no substantial lessening of competition."

Vertical Effects

16. This merger will entail further consolidation downstream but Tiscali is almost an exclusive provider of Vodacom services. Therefore, there is not likely to be any foreclosure of access to Vodacom rivals. Similarly, in the Smartphone merger, it was held that:

"Since Smartcall exclusively provides Vodacom services, this merger does not further Vodacom's ability to foreclose access to its rivals."

Conclusion

We conclude that the merger will not lead to a substantial lessening of

² Vodacom and Smartphone merger

competition.

The Tribunal therefore approves the transaction unconditionally. There are no public interest concerns which would alter this conclusion.

D. H. Lewis

5 April 2005
Date

Concurring: N. Manoim, M. Madlanga

For the merging parties: A. Le Grange, Hofmeyer Herbststein & Gihwala Inc

For the Commission: H. Ratshisusu, Competition Commission