

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 48/LM/Jun06

In the matter between:

**Vodacom Services Provider Company (Pty) Ltd and
Vodacom Properties No.2 (Pty) Ltd**

Acquiring Firm

And

Africell Cellular Services (Pty) Ltd

Target Firm

Panel : DH Lewis (Presiding Member), Y Carrim (Tribunal Member), and M Mokuena (Tribunal Member)

Heard on : 16 August 2006

Decided on : 16 August 2006

Reasons issued: 23 August 2006

REASONS FOR DECISION (NON-CONFIDENTIAL)

Approval

[1]. On the 16th of August 2006, the Tribunal unconditionally approved the proposed merger between the abovementioned parties. The reasons for the decision follow.

Parties

[2]. The primary acquiring firm are Vodacom Service Provider Company (Pty) Ltd ("VSP") and Vodacom Properties No.2 (Pty) Ltd ("Vodacom Properties"). The Vodacom Group (Pty) Ltd ("Vodacom Group") controls VSP and Vodacom Properties. Telkom (SA) ("Telkom") and Vodafone Holding SA (Pty) Ltd ("Vodafone") jointly control the Vodacom Group. No firm directly or indirectly controls Vodafone.

[3]. The primary target firm is Africell Cellular Services (Pty) Ltd ("Africell"). Africell is a wholly owned subsidiary of the Teljoy Group (Pty) Ltd "Teljoy"

Transaction

[4]. VSP and Vodacom Properties intend to acquire the franchise business of Africell. In terms of the offer letter VSP and Vodacom Properties will

purchase Africell's franchise business once Africell has converted its retail stores into franchise operations. The merger will result in the termination of the Dealer Agreement entered into between Africell and VSP.

Rationale for the Transaction

[5]. From the primary acquiring firm's perspective, the acquisition of Africell business presents an opportunity of buying back margin by reducing the total commission payments that Vodacom would have had to make to Africell on the existing Africell base. According to the parties, the transaction is also in line with Vodacom's overall strategy to consolidate and own more of its subscribers.

Parties' Activities

[6]. Africell currently conducts a retail cellular business, which comprises of selling cellular airtime and accessories through seventeen retail outlets that it currently leases. VSP is involved in the business of selling and distributing cellular handsets and accessories, as well as prepaid starter packs, vouchers and airtime to distribution channels and directly to customers. VSP also acts as a franchiser of franchised businesses.

Relevant market

[7]. VSP and Africell are involved in the selling and distribution of cellular handsets, cellular accessories, pre-paid contracts and cellular contracts. We agree with the Commission that the relevant geographic market is national.

Competition Analysis

[8]. The transaction has both horizontal and vertical effects. The horizontal overlap occurs in respect of prepaid and contract airtime sale, cellular telephones, accessories and mobile data products. Africell's retail distribution network competes with dealership and franchise stores owned by VSP. According to the parties Africell's retail outlets sell Vodacom network's airtime exclusively and therefore the merger will only affect intra-brand competition, to an extent that it can be said that VSP will acquire a measure of greater control over the franchised dealerships.

[9]. The vertical integration between the activities of the merging firms occurs in that Africell is a dealer of VSP, and it operates a retail distribution network of Vodacom branded retail outlets. Vertical integration will occur to the extent that VSP will acquire greater influence over Africell retail distribution network. The Commission examined the possibility of whether or not the proposed transaction would result in foreclosure of other network

operators and other retailers of Vodacom. The Commission found that the proposed transaction would not result in any foreclosure. We agree with the Commission's conclusion on this aspect because the target firm is an exclusive dealer of the acquiring firm.

Public interest issues

[11]. The parties submit that all employees of Africell will either transfer to the franchisee in terms of the Labour Relations Act or they will take advantage of the severance packages that Africell will offer to them. Accordingly, the transaction will not impact negatively on employment.

Conclusion

[12]. We conclude that the merger will not lead to a substantial lessening of competition. The merger is therefore unconditionally approved._

D. Lewis
Tribunal Member

23 August 2006
Date

Y Carrim and M Mokuena Concurring

Tribunal Researcher : J Ngobeni

For the Merging Parties : Andries Le Grange (Hofmeyr Herbstein & Gihwala Inc

For the Commission: Leornard Lamola (Mergers and Acquisition)

