

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 019166

In the matter between:

Altech Autopage (Proprietary) Limited

Primary Acquiring Firm

and

Nashua Mobile (Proprietary) Limited
in respect of the Vodacom
(Proprietary) Limited subscriber base

Primary Target Firm

Panel : Y Carrim (Presiding Member)
A Wessels (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 26 September 2014

Decided on : 29 September 2014

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that –

1. In light of the undertakings given by the parties, attached hereto as **Annexure A**, the merger between Altech Autopage (Proprietary) Limited ("**Altech Autopage**") and Nashua Mobile (Proprietary) Limited ("**Nashua**") in respect of Nashua's Cell C

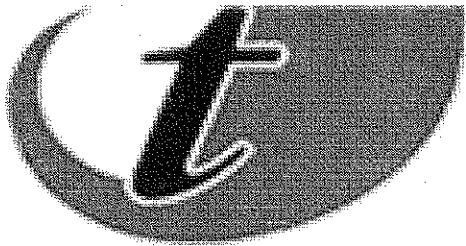
subscriber base be approved unconditionally in terms of section 16(2)(a) of the Act; and

2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).



Presiding Member
Ms Y Carrim

Concurring: Mr A Wessels and Ms M Mokuena



competitiontribunal south africa

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date: 29 September 2014

To: ENS Africa

Case Number: 019166

Altech Autopage Cellular (Pty) Ltd and The Cell C Subscriber Base of Nashua Mobile (Pty) Ltd and Potentially, All Or Some of The Channel Partners of Nashua Mobile

You applied to the Competition Commission on 27 June 2014 for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

☒ no conditions.

☐ the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal:

ANNEXURE A

UNDERTAKINGS by NASHUA MOBILE (PROPRIETARY) LIMITED

and

ALTECH AUTOPAGE CELLULAR (PROPRIETARY) LIMITED

CT CASE NUMBER: 019166

1. INTERPRETATION

1.1. The headings of the clauses in this Annexure "A" are for the purpose of convenience and reference only, and shall not be used in the interpretation of, or to modify or amplify, the terms of the Competition Tribunal of South Africa's decision to which this document is annexed.

1.2. In this Annexure "A", unless a contrary intention clearly appears, words importing:

- 1.2.1 any one gender include the other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 natural persons include legal persons and vice versa.

1.3. The following terms shall have the meanings assigned to them hereunder and in any Annexure to it, and cognate expressions shall have corresponding meanings, namely:

- 1.3.1 **"the Act"** - means the Competition Act 89 of 1998, as amended;
- 1.3.2 **"Acquiring Firm"** - means Altech Autopage (Proprietary) Limited;
- 1.3.3 **"Altech Autopage"** - means Altech Autopage Cellular (Proprietary) Limited
- 1.3.4 **"Altron"** - Allied Electronics Corporation Limited
- 1.3.5 **"Clearance date"** - the date that the Tribunal approves the transaction and as referred to in the Merger Clearance Certificate (Form CT10)
- 1.3.6 **"the Commission"** - means the Competition Commission of South Africa;
- 1.3.7 **"Days"** - means business days;
- 1.3.8 **"Employee Database"** - is a Nashua Mobile employee database setting out a list of employees who were retrenched by, or voluntarily left the employ of, Nashua Mobile in the implementation of the Proposed Transaction.

- 1.3.9 **"Former Nashua Mobile Employees"**- are employees who were retrenched by, or voluntarily left the employ of, Nashua Mobile in the implementation of the transactions to which this notified merger forms part;
- 1.3.10 **"Identified Candidate"**- are Former Nashua Mobile Employees, who potentially in the opinion of Altech Autopage, in its sole discretion find suitable for the position sought to be filled;
- 1.3.11 **"Nashua Mobile"** - means Nashua Mobile (Proprietary) Limited;
- 1.3.12 **"Merger"** - means the acquisition of control by Altech Autopage over the Cell C subscriber base of Nashua Mobile in terms of section 12 of the Act;
- 1.3.13 **"Proposed Transaction"** - means the sale of the Cell C subscriber base to the Acquiring Firm where Nashua Mobile will subsequently own the Vodacom Subscriber Agreements entered into between subscribers and Nashua Mobile for access to the Cell C network ;
- 1.3.14 **"Prescribed form"** – is communication sent to Identified Candidates by email and short messaging service to any Former Nashua Mobile Employee;
- 1.3.15 **"the Reunert Group"**- means Reunert Limited;
- 1.3.16 **"the Tribunal"** - means the Competition Tribunal of South Africa;

2. TIME PERIODS

- 2.1. Altech Autopage commits to adhering to the undertakings listed below for a period of 18 (eighteen) months from date of transfer of the Cell C Nashua Mobile subscriber base.

3. UNDERTAKINGS BY ALTECH AUTOPAGE

- 3.1. Altech Autopage undertakes to do the following:

- 3.1.1. Altech Autopage will use all reasonable endeavours to commit to fulfilling the undertakings listed hereunder; and
- 3.1.2. Altech Autopage will attempt to notify Identified Candidates, using the Employee Database and in the Prescribed Form, of the vacancy and invite them to apply for the position. Under all circumstances the onus will rest on the Identified Candidates to apply for the vacant position; and

3.1.3. Altech Autopage may offer employment to an Identified Candidate who applied for a position, where the Identified Candidate meets Altech Autopage's minimum criteria, be successful through Altech Autopage's interview process (meeting both the procedural and substantive requirements that govern recruitment in the Altron group) and be, in the subjective view of Altech Autopage, better in all respects than all other applicants applying for the same position;

3.2. Notwithstanding the obligations placed on Altech Autopage by virtue of its undertakings in clause 3.1 above, in the event that Altech Autopage seeks to fill a vacancy:

3.2.1. First preference will be given to employees who were retrenched from Altech Autopage during the retrenchment process concluded by it on 31 March 2014.

3.2.2. Second preference will be given to any employee from the Altron group of companies who may find themselves in a similar position whereby a retrenchment may have taken place and employment back into the Altron group is an option.

4. UNDERTAKINGS BY NASHUA MOBILE

4.1. With a view to effectively allow Altech Autopage to adhere to its undertakings, Nashua Mobile must provide within 7 (seven) days of the date of transfer of the Cell C Nashua Mobile Subscriber base;

4.1.1. A detailed Nashua Mobile Employee Database setting out, *inter alia*, the full names and identity numbers of all Former Nashua Mobile Employees, the position of such employees at Nashua Mobile, accurate and concise contact details (email and cellular telephone numbers) for such employees and the level of qualification held by such employees; and

4.1.2. Written consent by all Former Nashua Mobile employees that they consent to receiving vacancy communications from Altech Autopage for the duration of the undertaking; and

4.1.3. Nashua Mobile will advise the Commission, by no later than 6 (six) months of the Clearance Date, of the outcome of its efforts to place any Former Nashua Mobile Employees with the Reunert Group and/or with any other third party.