



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 019034

In the matter between:

Vodacom (Proprietary) Limited
and

Primary Acquiring Firm

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 –

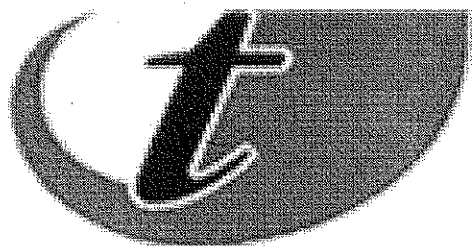
1. In light of the undertakings given by the parties, attached hereto as **Annexure A**, the merger between Vodacom (Proprietary) Limited ("**Vodacom**") and Nashua Mobile (Proprietary) Limited ("**Nashua**") in respect of Nashua's Vodacom subscriber base be approved unconditionally in terms of section 16(2)(a) of the Act; and

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

A handwritten signature in black ink, appearing to read 'Y Carrim', written over a horizontal line.

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: Norton Rose Fulbright SA and Cliffe Dekker Hofmeyr

Case Number: 019034

Vodacom (Pty) Ltd and Nashua Mobile (Pty) Ltd in Respect of The Subscriber Base of Vodacom (Pty) Ltd

You applied to the Competition Commission on 28 May 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

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

The Registrar, Competition Tribunal:

P.P. 

ANNEXURE A

UNDERTAKINGS by

VODACOM (PROPRIETARY) LIMITED

and

NASHUA MOBILE (PROPRIETARY) LIMITED

CT CASE NUMBER: 019034

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 Vodacom (Pty) Ltd;

- 1.3.3. **"Affected Employee/s"** – means all relevant affected Nashua Mobile (Pty) Ltd employees at the date of transfer of the Vodacom Nashua Mobile subscriber base.
- 1.3.4. **"Clearance Date"** – the date that the Tribunal approves the transaction and as referred to in the Merger Clearance Certificate (Form CT10);
- 1.3.5. **"the Commission"** – means the Competition Commission of South Africa;
- 1.3.6. **"Days"** – means business days;
- 1.3.7. **"Merger"** - means the acquisition of control by Vodacom over the Vodacom subscriber base of Nashua Mobile;
- 1.3.8. **"Merging Parties"** – Vodacom (Pty) Ltd and Nashua Mobile;
- 1.3.9. **"Nashua Mobile"** – means Nashua Mobile (Pty) Ltd;
- 1.3.10. **"Proposed Transaction"** - means the transaction in terms of which Vodacom will purchase from Nashua Mobile, the Nashua Vodacom subscriber base and will subsequently own the Vodacom Subscriber Agreements entered into between subscribers and Nashua Mobile for access to the Vodacom network.
- 1.3.11 **"the Reunert Group"** – means Reunert Limited
- 1.3.12 **"the Regulations"** - means any regulations made in terms of the Act;
- 1.3.13 **"Target Firm"** – means the Vodacom Nashua Mobile subscriber base consisting of all the rights and obligations in and to all of the Subscriber Agreements held by Nashua Mobile (Pty) Ltd;
- 1.3.14 **"the Tribunal"** – means the Competition Tribunal of South Africa;
- 1.3.15 **"Vodacom"** – means Vodacom (Pty) Ltd.

2. UNDERTAKINGS OF THE ACQUIRING FIRM

- 2.1. Vodacom undertakes that it will for a period of 18 (eighteen) months after date of transfer of the Vodacom Nashua Mobile subscriber base use all reasonable endeavours to commit to fulfilling the undertakings listed hereunder.
- 2.2. When an external position arises to be filled within Vodacom, Vodacom shall, at the same time the position is advertised externally, forward a batch communiqué via SMS and email to all the Affected Employees per specific job category, providing such Affected Employees 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 Affected Employee to apply for a vacant position.

2.3. Should an affected employee meet the relevant criteria and job requirements in terms of qualification, experience, and skills required, the application will be processed through Vodacom HR.

2.4. In the event that two equally qualified and skilled individuals apply for a position, one being an affected employee and one being an external applicant, Vodacom will give preference to the affected employee, subject to employment legislation and existing Vodacom Labour Law practices and policies. In the event that there are two affected employees who apply for the same position, Vodacom may select one of them in its sole discretion, subject to employment legislation and existing Vodacom Labour Law practices and policies.

3. UNDERTAKINGS BY NASHUA MOBILE

3.1. Nashua Mobile shall:

3.1.1. Nashua Mobile will, within 7 (seven) days of the date of transfer of the Vodacom Nashua Mobile subscriber base, be obliged to provide Vodacom with a detailed list of employees in the employ of Nashua Mobile which will be affected by the proposed transaction, reflecting full names, current job title, one line job description and contact details i.e. email address and mobile telephone number, in respect of the affected employees on date of merger approval.

3.1.2. Nashua Mobile shall provide Vodacom with written consent by all affected employees that they consent to receiving vacancy communications from Vodacom for the duration of the 18 (eighteen) month period.

3.1.3. 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 Affected Employees with the Reunert Group and/or with any other third party.

4. CONFIDENTIALITY

4.1. The contents of "Annexure A" are not confidential.