



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM181Sep17

In the matter between:

Prepaid Company (Pty) Ltd

Primary Acquiring Firm

And

3G Mobile (Pty) Ltd

Primary Target Firm

Panel	: Mr Norman Manoim (Presiding Member)
	: Mrs Medi Mokuena (Tribunal Member)
	: Prof. Fiona Tregenna (Tribunal Member)
Heard on	: 6 December 2017
Order Issued on	: 6 December 2017
Reasons Issued on	: 14 December 2017

REASONS FOR DECISION

Approval

- [1] On 6 December 2017, the Tribunal unconditionally approved the large merger between the Prepaid Company (Pty) Ltd ("TPC") and 3G Mobile (Pty) Ltd ("3G Mobile"), hereinafter collectively referred to as the merging parties.
- [2] The reasons for the approval follow.

Parties to the transaction

Primary Acquiring Firm

- [3] TPC is a wholly owned subsidiary of Blue Label Telecoms Limited ("BLT"), a public company listed on the Johannesburg Stock Exchange. BLT together with TPC and its subsidiaries are collectively referred to as the BLT Group.
- [4] TPC is a wholesale supplier of prepaid secure electronic tokens, mobile phones and tablets in South Africa. It does not however sell directly to members of the public.
- [5] Of relevance to the proposed transaction are the activities of TPC in the market for the wholesale of mobile telecommunication products.

Primary Target Firm

- [6] 3G Mobile sells, distributes and finances new mobile handsets, electronic tablets and accessories related to such products to customers such as Edcon, and the Foschini Group. 3G Mobile also provides its product offering to certain mobile network operators in other African countries. It does not however actively sell or market its products to end customers.
- [7] TPC currently holds 47.37% of the ordinary share capital in 3G Mobile. 3G Mobile directly and indirectly controls a number of firms.
- [8] Of relevance to the proposed transaction is 3G Mobile's subsidiary, Comm Equipment Company (Pty) Ltd ("CEC").

Proposed transaction

- [9] In terms of the Sale, Subscription and Repurchase Agreement, the transaction as a whole is executed in two stages. Phase 1 of the transaction – the acquisition of the initial 47.37% non-controlling interest in 3G Mobile – has already been implemented. Phase 2 of the transaction is the subject of this matter. In terms of Phase 2, TPC will acquire the remaining 52.63% ordinary share capital in 3G

Mobile. The non-fulfilment of Phase 2 shall have no bearing on Phase 1. Upon completion of the proposed transaction, TPC will exercise sole control over 3G Mobile.

Relevant market and impact on competition

- [10] The Commission considered the activities of the merging parties and found a horizontal overlap as the merging parties are active in the national market for the supply and sale of mobile telecommunication products such as handsets, tablets, airtime vouchers and other related products ("the relevant market").
- [11] Market share estimates proved difficult to ascertain. The Commission's rough estimation was that post-merger the market share would approximate less than 15%. The merging parties at the hearing stated this figure is likely to be overstated and their estimates were based on figures for what they considered to be the number of phones sold.
- [12] However we took into account that the rival suppliers in the market include the four major networks (Vodacom, MTN, Cell C and Telkom Mobile) whose market presence is likely to be larger than that of the merging parties. Further, even at present the two firms do not consider the other a competitor as they offer differentiated products. Nor did any other party in the market consulted by the Commission raise any concerns. As such, the proposed transaction does not raise any concerns.
- [13] The Commission also found an existing vertical relationship between TPC and CEC, as TPC supplies mobile handsets to CEC. From its investigation, the Commission concluded that the proposed transaction is unlikely to give rise to any input foreclosure or customer foreclosure concerns as CEC only supplies a minute percentage of mobile handsets to TPC. This illustrates that CEC is not TPC's major customer and thus it would not be feasible for TPC to restrict its supply to CEC. In addition, CEC's suppliers of mobile handsets are not solely dependent on CEC and such suppliers have alternative customers. No concerns by CEC's suppliers were raised.

- [14] In view of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

- [15] The merging parties submitted that the proposed transaction will not have any adverse effects on employment as it was not contemplated that retrenchments will result upon the implementation of the proposed transaction. According to the Commission no employees had raised concerns about the merger.
- [16] However at the hearing it emerged that the two employee representatives who were notified of the merger were Human Resource (HR) managers at the respective firms. We queried whether this was adequate notification as persons in senior management would seem inappropriate to represent the interest of employees when they primarily represent the interest of their respective firms. The merging parties indicated that neither firm had a trade union or any form of organised employee representation and hence the HR managers had performed this task. They did indicate that the employees had all been emailed the notification and that no queries had been raised. Given that no retrenchments are contemplated we will regard this as adequate consultation.

Conclusion

[17] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no adverse public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.



Mr Norman Manoim

14 December 2017

Date

Mrs Medi Mokuena and Prof. Fiona Tregenna concurring

Tribunal Case Manager: Mr Ndumiso Ndlovu.

For the Merging Parties: Mr Dominique Arteiro of Werksmans Attorneys.

For the Commission: Ms Rethabile Ncheche.