



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 019018

In the matter between:

Mobile Telephone Networks (Proprietary) Limited

Primary Acquiring firm

and

Nashua Mobile (Proprietary) Limited in respect of its Mobile Telephone
Networks (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

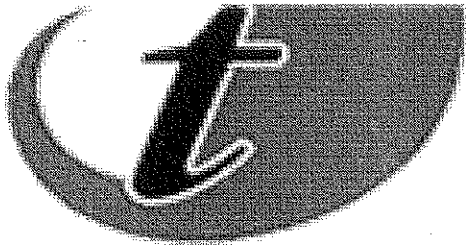
In light of the undertakings provided by the merging parties, attached hereto as **Annexure A**, the Competition Tribunal orders that

1. the merger between Mobile Telephone Networks (Proprietary) Limited ("MTN") and Nashua Mobile (Proprietary) Limited ("Nashua") in respect of Nashua's MTN subscriber base be approved 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@comtrib.co.za

Merger Clearance Certificate

Date: 29 September 2014

To: Werksmans Attorneys and Norton Rose Fulbright
SA

Case Number: 019018

Mobile Telephone Networks (Pty) Ltd and Nashua Mobile (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

- 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:

P.P.

ANNEXURE A

UNDERTAKINGS by
NASHUA MOBILE (PROPRIETARY) LIMITED
and
MOBILE TELEPHONE NETWORKS (PROPRIETARY) LIMITED
CT CASE NUMBER: 019018

1. INTERPRETATION

- 1.1.1. 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. **"Acquiring Firm"** - means Mobile Telephone Networks (Proprietary) Limited;
 - 1.3.2. **"the Act"** – means the Competition Act No. 89 of 1998;
 - 1.3.3. **"Affected Employee(s)"** – means any or all relevant affected employees of Nashua Mobile (Proprietary) Limited as at the date of transfer of Nashua Mobile (Proprietary) Limited's MTN 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. **"the Employee Database"** – means a list of Nashua Mobile (Proprietary) Limited employees who were retrenched by, or voluntarily left the employ of, Nashua Mobile (Proprietary) Limited in the implementation of the Proposed Transaction. This list is to include but is not limited to details regarding the full names and identity numbers, the position(s) held while in the employ of Nashua Mobile, accurate and concise contact details including the e-mail addresses and cellular telephone numbers, and the level of qualification held by such employees;
- 1.3.7. **"Days"** – means business days;
- 1.3.8. **"MTN"**- means Mobile Telephone Networks (Proprietary) Limited;
- 1.3.9. **"MTN HR"**- means the MTN Human Resources Department;
- 1.3.10. **"Merger"** - means the acquisition of control in terms of section 12 of the Act by MTN over the MTN subscriber base of Nashua Mobile (Proprietary) Limited;
- 1.3.11. **"Nashua"** - means Nashua Mobile (Proprietary) Limited;
- 1.3.12. **"Proposed Transaction"** – means the sale of Nashua's MTN subscriber base to the Acquiring Firm; and
- 1.3.13. **"the Tribunal"** – means the Competition Tribunal of South Africa.

2. ACQUIRING FIRM'S UNDERTAKINGS

2.1. MTN undertakes, for a period of 18 (eighteen) months from the date of transfer of Nashua's MTN subscriber base, to use all reasonable endeavours to fulfil the undertakings listed hereunder:

- 2.1.1. When an external vacancy arises to be filled within MTN, MTN will forward a batch communiqué via SMS and e-mail to all Affected Employees per specific job category, providing the Affected Employees with the information and details of the position as well as contact details regarding whom to contact within MTN HR to enable them to apply should they wish to do so. Under all circumstances, the onus rests on the Affected Employee to apply for a vacant position;
- 2.1.2. Should an Affected Employee meet the relevant criteria and job requirements in terms of qualification, experience and skills required, the application shall be facilitated through MTN HR; and
- 2.1.3. In the event that two equally qualified and skilled individuals apply for a position at MTN, MTN shall give preference to the Affected Employee subject to existing MTN Labour Law practices and policies.

3. TARGET FIRM'S UNDERTAKINGS

3.1. Nashua undertakes to;

3.1.1. Forward to MTN, within a period of 7 (seven) days of the date of transfer of the Nashua MTN subscriber base, the Employee Database;

3.1.2. Provide MTN with written consent of all Affected Employees to the effect that they are agreeable with receiving communications relating to vacancies from MTN for the duration of the 18 (eighteen) month period; and

3.1.3. Inform the Commission of the placement of any Affected Employees within the Reunert Group or any other third parties within 6 (six) months of the Clearance Date.

4. CONFIDENTIALITY

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