

MOBILE TELEPHONE NETWORKS (PTY) LTD
Head Office: 216 14th Ave Fairland 2195
Private Bag 9955 Cresta 2118 South Africa
Tel +2711 912 3000 Fax +2711 912 3001 <http://www.mtn.co.za>



15 October 2014

Dr Tracy Cohen

Chief Corporate Services Officer
Neotel (PTY) Ltd
44 Old Main Pretoria Road
Halfway House
Midrand
1685

Attention : Tracy Cohen
Via Email : tracy.cohen@neotel.co.za

Dear Dr Cohen,

RE: APPLICATION FOR APPROVAL OF THE ACQUISITION OF NEOTEL (PTY) LTD BY VODACOM SA (PTY) LTD

Please see the below written comments on the application for approval of the acquisition of Neotel (Pty) Ltd by Vodacom SA (Pty) Ltd

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Graham de Vries', with a flourish at the end.

GRAHAM DE VRIES
GENERAL MANAGER: REGULATORY AFFAIRS
MTN (PTY) LTD

Directors: RS Dabengwa (Chairman), A Farroukh (CEO)*^β, R Gasant, NWC Molohe, PD Norman, S Fokie, KW Pienaar, P Sibiyi*, B Goschen, M Fleischer.

Acting Company Secretary: Z Malinga *Executive ^βCanadian

Reg No. 1993/001436/07

Vat Reg. No. 4630140434

MTN is opposed to the Application to the extent that the high demand frequency spectrum currently assigned to Neotel is allowed to become concentrated under Vodacom's control. This is driven by the following two considerations:

- The frequency spectrum currently assigned to Neotel is a public asset. The acquisition price for the Neotel share capital embeds a significant premium relating to this spectrum portfolio. This scarce, national resource has largely been left unutilised during Neotel's tenure as the SNO due to minimal investment in mobile infrastructure to leverage it. The South African public has therefore not benefited from the allocation of this scarce and highly valuable resource to Neotel over the last 7 years. It seems therefore highly inappropriate that the Neotel shareholders should now realise a significant windfall from the sale of the assignment of a scarce public asset that they simply hoarded at the expense of the South African public over the last 7 years. Such behaviour should not be rewarded by the Authority; instead the return of the spectrum as a condition to the Application being granted appears to be the sensible way forward in this case.
- The acquisition which includes the assignment of the 90MHz of high demand spectrum to Vodacom would provide the already dominant SA mobile player with an additional and substantial cost, capacity and time-to-market advantage relative to its competitors, while at the same time removing a potential mobile competitor from the market (Neotel). While consumers will likely benefit from the earlier and wider availability of LTE through this process, ICASA must be concerned about the competitive impact of providing an already dominant player with such a structural and timing advantage over its competitors thus giving it the opportunity to entrench its dominance even further. This is especially relevant given significant uncertainty and delays surrounding the release of additional LTE spectrum in the market. Vodacom's advantage could well be measured in years, rather than months. As a result, MTN believes the return and re-assignment of the Neotel spectrum on the basis of either the soon-to-be-released spectrum policy and the current frequency spectrum band plan would provide a more pro-competitive outcome than allowing this spectrum to be concentrated in the sole hands of the dominant market player being Vodacom. If a number of players in the market become more cost-efficient (instead of Vodacom being the sole beneficiary of the Neotel spectrum), then competition between more-efficient competitors could drive prices down further than would be the case if Vodacom were the only competitor with a significant cost advantage.

Vodacom's current market position emerged from a situation of spectrum assignment parity between Vodacom, MTN and Cell C (Telkom, the last entrant in the SA mobile market benefits from significant spectrum advantage in the higher, capacity-oriented bands, but does not have access to the lower, coverage-oriented, spectrum bands). It is conceivable that such an assignment seeks to promote competition by ensuring that each competitor has the potential to attain similar cost structures relative to the others. .

¹¹ MTN understands just 200,000 subscribers are served from a few hundred sites, i.e. the current use of this significant spectrum portfolio by Neotel is nothing more than an advanced market trial.

The proposed transaction radically changes this landscape, providing Vodacom with control over a 90MHz spectrum advantage over its competitors. Critically, Vodacom would control twice the amount of prime LTE 1800 MHz spectrum as the rest of the market and, uniquely would get access to spectrum in the 800MHz band. The 800MHz band provides significant advantage over 1800MHz in providing geographic coverage and in-building penetration. This combination provides a un-replicable advantage of LTE coverage and capacity as both frequency spectrum bands can readily be applied and used today across all of Vodacom's 10,000 sites. The Neotel WiMax spectrum (2x28MHz in the 3.5GHz band) is also capable of being used for LTE purposes. While this is a high frequency band resulting in relatively small coverage, this is a very large spectrum assignment which would provide Vodacom with a significant potential LTE capacity layer (e.g. for small cell deployment) to cater for the massive data growth expected in the future. See Table 1.

Table 1. Current high demand spectrum allocations in SA (MHz)

Band (MHz)	← Best for coverage			Best for capacity→				High demand spectrum	
	800	900	1800	2100	2300	2600	3500	Total MHz	Share %
Telkom			24	30	<u>60</u>		56	170	32%
Neotel	10		24				56	90	17%
Vodacom		22	24	30				76	14%
MTN		22	24	30				76	14%
Cell C		22	24	30				76	14%
WBS			24			<u>15</u>		39	7%
VC+Neo	10	22	48	30			56	166	31%

Keys: Denotes TDD spectrum

² Source: Whole Vodacom network now 4G ready at: <http://mybroadband.co.za/news/cellular/110476-whole-vodacom-network-now-4g-ready.html>

³ 2100MHz TDD allocations excluded as this spectrum is not supported for mobile at present; 1900MHz allocation excluded as this spectrum is reserved for cordless applications (DECT).

The impact of this substantial spectrum advantage would be twofold:

- Vodacom would be able to launch a national LTE network (without the need to reform any of its existing spectrum away from voice) well in advance of any other competitor in the mobile market today – providing an already dominant player with a competitive advantage and head-start in the all-important LTE data market;
- Vodacom would benefit from an additional, structural cost and/or capacity advantage relative to its mobile competitors as this additional spectrum would mean significantly less radio sites need to be built (and maintained) in order to serve demand (conversely, significantly more demand can be served out of the same number of radio sites).

Vodacom's control of 90MHz of additional high demand spectrum – directly, or indirectly, through the acquisition of Neotel will therefore layer a market *head start*, and a *structural* cost advantage on top of the *scale* cost advantage already enjoyed by Vodacom through its leading market position.

It is worth noting that Vodacom already has significantly more sites and a much larger capex envelope than any other players in the market.

MTN submits that the proposed transaction, as far as its spectrum element is concerned, would lead to entrenching Vodacom's dominant position in the mobile market, as the network, market and cost advantage available to Vodacom would then become unassailable.

MTN can do no better than quote Vodafone UK's reaction to the 2012 decision by Ofcom, in the UK, to allow Everything Everywhere (the entity created by the T-Mobile and Orange merger) to use the 1800MHz spectrum advantage delivered by the merger and launch a nation-wide LTE network ahead of other market players (who were having to wait for a much delayed auction to get access to additional LTE spectrum):

"We are frankly shocked that Ofcom has reached this decision. The regulator has shown a careless disregard for the best interests of consumers, businesses and the wider economy through its refusal to properly regard the competitive distortion created by allowing one operator to run services before the ground has been laid for a fully competitive 4G market".²

The situation presented by the proposed Vodacom/Neotel merger is strikingly similar to the position in the UK at the time. Vodacom would now need to show why the arguments used by Vodafone against the Everything Everywhere LTE spectrum / market advantage in the UK should not apply to it in South Africa, too³.

Even the proposed alternative RAN share / roaming agreements between other MNOs cannot appropriately redress the competitive imbalance that will be created. By sharing the capex and opex of expanding and maintaining a shared RAN, and by roaming on one another's network capacity, a number of MNOs could in theory achieve similar types of cost efficiencies to that which would be enjoyed by Vodacom post-merger (e.g. the MTN/Telkom RAN outsource and bilateral roaming proposed transaction). However, an important distinction is that a RAN-roaming arrangement does not reduce the number of wholesale and retail competitors in the market. As a result, competition between MNO operators party to such an arrangement would ensure the cost efficiencies identified above are more likely to be passed-through to consumers. Such an outcome may result in greater consumer benefits relative to a case where only a single competitor enjoys such a cost advantage.

Moreover, since there is no consolidation of frequency spectrum holdings (a scarce and essential input resource to the provision of mobile telecommunication services) in the case of a RAN outsource -roaming arrangements, no detrimental dynamic effect on the market would likely arise: each MNO that is a party to such an agreement would retain its bargaining power through its spectrum assignments and be able to negotiate similar deals in the future. In the case of a merger where there is spectrum consolidation, competitors (and competition) may be weakened in the long-run to the eventual detriment of consumers.

Faced with such a possibility, and given the state of Vodacom's dominance in the South African mobile market, MTN submits that the proposed transaction should not be allowed to proceed unless the Neotel assigned spectrum is returned to ICASA for downstream re-assignment, informed by the soon-to-be released spectrum policy and in alignment Keys: Denotes TDD spectrum

⁴ <http://blog.vodafone.co.uk/2012/08/21/responding-to-ofcoms-decision-to-allow-everything-everywhere-to-use-existing-spectrum-for-4g/>

The impact of this substantial spectrum advantage would be twofold:

- Vodacom would be able to launch a national LTE network (without the need to refarm any of its existing spectrum away from voice) well in advance of any other competitor in the mobile market today – providing an already dominant player with a competitive advantage and head-start in the all-important LTE data market;
- Vodacom would benefit from an additional, structural cost and/or capacity advantage relative to its mobile competitors as this additional spectrum would mean significantly less radio sites need to be built (and maintained) in order to serve demand (conversely, significantly more demand can be served out of the same number of radio sites).

Vodacom's control of 90MHz of additional high demand spectrum – directly, or indirectly, through the acquisition of Neotel will therefore layer a market head start, and a structural cost advantage on top of the scale cost advantage already enjoyed by Vodacom through its leading market position.

It is worth noting that Vodacom already has significantly more sites and a much larger capex envelope than any other players in the market.

MTN submits that the proposed transaction, as far as its spectrum element is concerned, would lead to entrenching Vodacom's dominant position in the mobile market, as the network, market and cost advantage available to Vodacom would then become unassailable.

MTN can do no better than quote Vodafone UK's reaction to the 2012 decision by Ofcom, in the UK, to allow Everything Everywhere (the entity created by the T-Mobile and Orange merger) to use the 1800MHz spectrum advantage delivered by the merger and launch a nation-wide LTE network ahead of other market players (who were having to wait for a much delayed auction to get access to additional LTE spectrum):

"We are frankly shocked that Ofcom has reached this decision. The regulator has shown a careless disregard for the best interests of consumers, businesses and the wider economy through its refusal to properly regard the competitive distortion created by allowing one operator to run a service before the ground has been laid for a fully competitive 4G market".

The situation presented by the proposed Vodacom/Neotel merger is strikingly similar to the position in the UK at the time. Vodacom would now need to show why the arguments used by Vodafone against the Everything Everywhere LTE spectrum / market advantage in the UK should not apply to it in South Africa, too.

Even the proposed alternative RAN share / roaming agreements between other MNOs cannot appropriately redress the competitive imbalance that will be created. By sharing the capex and opex of expanding and maintaining a shared RAN, and by roaming on one another's network capacity, a number of MNOs could in theory achieve similar types of cost efficiencies to that which would be enjoyed by Vodacom post-merger (e.g. the MTN/Telkom RAN outsource and bilateral roaming proposed transaction). However, an important distinction is that a RAN-roaming arrangement does not reduce the number of wholesale and retail competitors in the market. As a result, competition between MNO operators party to such an arrangement would ensure the cost efficiencies identified above are more likely to be passed-through to consumers. Such an outcome may result in greater consumer benefits relative to a case where only a single competitor enjoys such a cost advantage.

Moreover, since there is no consolidation of frequency spectrum holdings (a scarce and essential input resource to the provision of mobile telecommunication services) in the case of a RAN outsource -roaming arrangements, no detrimental dynamic effect on the market would likely arise: each MNO that is a party to such an agreement would retain its bargaining power through its spectrum assignments and be able to negotiate similar deals in the future. In the case of a merger where there is spectrum consolidation, competitors (and competition) may be weakened in the long-run to the eventual detriment of consumers.

Faced with such a possibility, and given the state of Vodacom's dominance in the South African mobile market, MTN submits that the proposed transaction should not be allowed to proceed unless the Neotel assigned spectrum is returned to ICASA for downstream re-assignment, informed by the soon-to-be released spectrum policy and in alignment

⁵The full Vodafone UK response to the Ofcom consultation can be found at:
<http://stakeholders.ofcom.org.uk/binaries/consultations/variation-900-1800mhz-lte-wimax/responses/Vodafone.pdf>