



THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM148DEC21/INT100OCT23

In the *intervention application* between:

**MOBILE TELEPHONE NETWORKS
PROPRIETARY LIMITED**

Applicant

and

VODACOM PROPRIETARY LIMITED

First Respondent

**BUSINESS VENTURE INVESTMENTS NO 2212
PROPRIETARY LIMITED**

Second Respondent

THE COMPETITION COMMISSION

Third Respondent

In re the large merger between:

VODACOM PROPRIETARY LIMITED

Primary Acquiring Firm

and

**BUSINESS VENTURE INVESTMENTS NO 2212
PROPRIETARY LIMITED**

Primary Target Firm

ORDER

Having read the papers of record and heard counsel for the parties, it is hereby ordered as follows:

- 1 The Applicant is granted leave to intervene as a participant in the large merger proceedings before the Competition Tribunal (“Tribunal”) in relation to the proposed acquisition of joint control by Vodacom Proprietary Limited over Business Venture Investments No 2213 Proprietary Limited in terms of section 53(c)(v) of the Competition Act 89 of 1998, as amended (“the Act”) (“the merger proceedings”).

- 2 The Applicant is permitted to participate in the merger proceedings in respect of the following matters:
 - 2.1 whether or not the proposed merger is likely to substantially prevent or lessen competition, including by assessing the factors set out in section 12A(2)(b) to (f) of the Act; and

 - 2.2 the conditions proposed by the merger parties and/or to be considered by the Tribunal in relation to any approval of the proposed merger.

(collectively the “Scope of Intervention”)

3 Subject to the Scope of Intervention and appropriate confidentiality undertakings being provided, the Applicant's participation in the merger proceedings shall include the rights to:

3.1 attend all pre-hearing conferences;

3.2 have access to and inspect any documents and other items filed by the merger parties or other participants in the merger proceedings, including inspection by the Applicant's legal representatives and economic experts, subject to appropriate confidentiality undertakings, of any confidential information filed by any participants subject to a claim of confidentiality;

3.3 have access to the Competition Commission's record which has been referred to the Tribunal in this matter, including access by the Applicant's legal representatives and economic experts, subject to appropriate confidentiality undertakings, to any information contained in the record which is subject to a claim of confidentiality;

3.4 call for the discovery and production of further relevant documents or records by the merger parties and/or other participants in the merger proceedings;

- 3.5 participate in any interlocutory proceedings in respect of the merger proceedings;
 - 3.6 adduce oral and documentary evidence, including expert evidence, relevant to the merger proceedings;
 - 3.7 cross-examine the witnesses of the merger parties and/or other participants at the merger hearing; and
 - 3.8 present written and oral argument at the merger hearing.
- 4 In relation to 3.2 and 3.3 above, to the extent that any third-party documents in the record contain information claimed as confidential by them, the Competition Commission will endeavour to secure the necessary permissions to allow for the third-party confidential information to be released to the Applicant's legal representatives and economic experts that have signed the requisite confidentiality undertakings.
- 5 There is no order as to costs.

16 November 2023

Mr Andreas Wessels

Date

Professor Thando Vilakazi and Adv Geoff Budlender SC concurring.

Tribunal case managers:

Theodora Michaletos and Sinethemba Mbeki

For the Applicant: Adv Robin Pearce SC assisted by Adv Ammara Cachalia instructed by Ahmore Burger-Smidt of Werksmans Attorneys

For the First and Second Respondents: Jerome Wilson SC assisted by Adv Duncan Turner, Adv Phumlani Ngcongco, Adv Lerato Zikalala and Adv Silindile Mhlongo instructed by Andries Le Grange of Cliffe Dekker Hofmeyr Inc and Janine Simpson DLA Piper

For the Commission: Adv Daniel Berger SC Assisted by Adv Nyoko Muvangua instructed by Raphela Attorneys