

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM038Jul21

In the matter between:

Digital Infrastructure Investment Holdings (Pty) Ltd

Primary Acquiring Firm

And

Metro Fibre Networx (Pty) Ltd

Primary Target Firm

Panel: E Daniels (Presiding Member)
Y Carrim (Tribunal Member)
H Cheadle (Tribunal Member)

Heard on: 26 August 2021
Order Issued on: 26 August 2021
Reasons Issued on: 26 August 2021

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. the merger between the abovementioned parties 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).

Enver Daniels

**Presiding Member
Mr Enver Daniels**

**26 August 2021
Date**

Concurring: Ms Yasmin Carrim and Mr Halton Cheadle



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 26 August 2021

To : Bowmans Attorneys

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.

Case Number: LM038Jul21

Digital Infrastructure Investment Holdings (Pty) Ltd And Metro Fibre Networkx (Pty) Ltd

You applied to the Competition Commission on **01 July 2021** 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.

Contacting the Tribunal

The Competition Tribunal
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The Registrar, Competition Tribunal



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM038Jul21

Digital Infrastructure Investment Holdings Proprietary Limited (Primary Acquiring Firm)

And

Metro Fibre Networx Proprietary Limited (Primary Target Firm)

Heard on: 26 August 2021

Order Issued on: 26 August 2021

REASONS FOR DECISION

- [1] On 26 August 2021, the Competition Tribunal unconditionally approved a large merger between Digital Infrastructure Investment Holdings (Pty) Ltd (“DIIH”) and Metro Fibre Networx (Pty) Ltd (“MetroFibre”).
- [2] The shares in DIIH are held by Old Mutual Life Assurance Company (South Africa) Limited (“OMLACSA”) in its capacity as a general partner of African Infrastructure Investment Fund 3 (“AIIF3”), in respect of the pooled portfolio of assets of the Infrastructural, Developmental and Environmental Assets Managed Fund (“IDEAS Fund”) holding and African Infrastructure Investment Fund 3 GP (Pty) Ltd. OMLACSA is controlled by Old Mutual Emerging Markets (Pty) Ltd (“OMEM”) which is in turn wholly owned by Old Mutual Limited (“OML”). DIIH does not own or control any firms in South Africa. DIIH was established in 2020 for the purposes of facilitating initial investments in Metro Fibre Networx (Pty) Ltd (“MetroFibre”) by funds managed and advised by African Infrastructure Investment Managers (“AIIM”). AIIM is a subsidiary of Old Mutual Alternative Investment Holdings (Pty) Ltd which is in turn a subsidiary of OML. AIIM manages AIIF3 and the IDEAS Fund and they first made investments in MetroFibre in December 2020 (through DIIH) and consequently have (indirect) beneficial interests in MetroFibre (“the Primary Transaction”).
- [3] The shares in MetroFibre are currently held by the IDEAS fund (through DIIH), AIIF3 (through DIIH), Levoca 805 (RF) (Pty) Ltd (“Levoca”), STOA S.A. (“STOA”), Sanlam Life Insurance Limited (“Sanlam”), ARC Fund (“ARC”), SPE Team Co-Investment Partnership (“SPE”) and others, who are not relevant to this transaction. MetroFibre controls K2020707915 (South Africa) (Pty) Ltd (“K2020”) and Evilet (Pty) Ltd (“Evilet”).
- [4] DIIH was formed in 2020, as a special purpose vehicle to facilitate investments in MetroFibre and does not conduct independent operations.
- [5] MetroFibre was launched in 2010 and operates as a provider of Fibre-To-The-Home (FTTH) and Fibre-To-The-Business (FTTB), supplying both residential and corporate customers.
- [6] Sanlam, ARC and SPE intend to sell their respective interests in MetroFibre to DIIH, Levoca and STOA. The Commission considered the proposed transaction as a single indivisible transaction because it involves existing shareholders of MetroFibre increasing their shares in MetroFibre. From this, the only entity that will acquire a

controlling interest in MetroFibre is DIIH. The merging parties confirm that the sale and purchase of the shares in MetroFibre are all inter-conditional.

- [7] The proposed transaction presents no vertical or horizontal overlaps and MetroFibre will continue to face competition in the FTTB or FTTH markets from competitors such as Vumatel, Openserve, Vodacom, Frogfoot, Octotel, Telkom, amongst others. The Commission was, therefore, of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market.
- [8] The merging parties provided an unequivocal statement that there will be no job losses as a result of the proposed transaction. Regarding the spread of ownership, the merging parties submitted that BEE ownership in MetroFibre will be maintained at 30% following the transaction, in accordance with the requirements stipulated by the Independent Communications Authority of South Africa (“ICASA”). The merger raises no other public interest concerns.
- [9] We concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on public interest.

Mr Enver Daniels
Ms Yasmin Carrim and Mr Halton Cheadle concurring.

26 August 2021
Date

Tribunal Case Manager: Camilla Mathonsi
For the Merging Parties: Shakti Wood and Caroline Fairon of Bowman Gilfillan Inc.
For the Commission: Portia Bele and Grashum Mutizwa