

SOUTH AFRICA / JUDGMENT

Vodacom Proprietary Limited and Another v Vox Telecommunications Proprietary Limited and Another (LM148Dec21 / CNF120Nov23) [2024] ZACT 5 (5 February 2024)

[2024] ZACT 5

COURT

Competition Tribunal

BEFORE

Andreas Wessels, Thando Vilakazi, Anisa Kessery

CASE / FILE NUMBER

LM148Dec21 / CNF120Nov23

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM148Dec21 / CNF120Nov23

In the matter between: VODACOM PROPRIETARY LIMITED First Applicant BUSINESS VENTURE INVESTMENTS NO 2213 PROPRIETARY LIMITED Second Applicant And VOX TELECOMMUNICATIONS PROPRIETARY LIMITED First Respondent THE COMPETITION COMMISSION OF SOUTH AFRICA Second Respondent In re the large merger between: VODACOM PROPRIETARY LIMITED Primary Acquiring Firm And BUSINESS VENTURE INVESTMENTS NO 2213 PROPRIETARY LIMITED Primary Target Firm

ORDER

Having heard counsel for the merging parties and the first respondent, Vox Telecommunications Proprietary Limited (“Vox”), the Competition Tribunal orders as follows:

1. “Access”, for purposes of this order, means the provision of copies of Vox’s data and documents, and of the relevant paragraphs of the Competition Commission’s referral, to the merger parties’ external legal representatives and independent economic experts (“independent advisors”) for use at their own offices and at the Competition Tribunal. Copies of any Excel documents must be provided in open-file electronic format.
2. Vox is ordered to provide the merger parties’ independent advisors who have signed confidentiality undertakings in the form attached to the application (ALG3) with access to all the information contained in, referred to, or relied upon in the Competition Commission’s merger report that is claimed as confidential by Vox; and to permit the Competition Commission to provide such independent advisors with access to unredacted copies of all

paragraphs in its merger report containing such information except for Vox's information contained in paragraph 376 and the letter dated 21 March 2022 referred to in footnote 443 of paragraph 376 of the Competition Commission's merger report.

3. In respect of the information contained in paragraph 376 and the letter dated 21 March 2022, Vox must furnish a version redacting the information that it considers highly competitively sensitive information and which it alleges must be subject to limited access as set out in paragraph 4 below. Access must be provided to the redacted version of paragraph 376 of the Commission's merger report and the letter dated 21 March 2022.
4. In respect of all information claimed as confidential by Vox that does not fall within paragraph 2 above, including the redacted information contained in paragraph 376 and the letter dated 21 March 2022, the following regime will apply:

4.1 Subject to the provision of confidentiality undertakings, Vox will make available for inspection to the merger parties' independent advisors, all such information.

4.2 The information referred to in paragraph 4.1 above shall be:

4.2.1 in unredacted form, with the merger parties' independent advisors having unrestricted rights of inspection and the right to take notes;

4.2.2 available for inspection for a sufficient period of time to enable the merger parties' independent advisors to engage meaningfully with the information and to determine its relevance to the merger proceedings;

4.2.3 available in hard copy or in soft copy, as required by the merger parties' independent advisors; and

4.2.4 made available by Vox for inspection in Johannesburg, Stellenbosch and in London.

4.3 Following the exercise by the merger parties' independent advisors of the unrestricted inspection rights referred to above, such advisors shall identify the information (if any) to which they require access (as defined above) and state why access is required.

4.4 Vox undertakes to consider any such request in good faith and shall indicate within five business days upon receipt of any such request whether or not it is willing to provide the merger parties' independent advisors with access to the information in question.

4.5 Insofar as Vox is willing to provide the merger parties' independent advisors with access to all or any of the information in question, they shall immediately permit the Competition Commission to provide such advisors with access to the relevant information.

4.6 Insofar as Vox is not willing to provide the merger parties' independent advisors with access to all or any of the information in question, Vox shall provide the reasons for its refusal within five business days upon receipt of any such request for access from the merger parties.

4.7 The merger parties shall be entitled to approach the Competition Tribunal on an urgent basis in order to seek such access.

5. There is no order as to costs.

Presiding Member

5 February 2024

Mr Andreas Wessels

Date

Concurring: Prof Thando Vilakazi and Ms Anisa Kessery

Tribunal case managers: Theodora Michaletos and Sinethemba Mbeki For the First and Second Applicants: Adv Jerome Wilson SC assisted by Adv Duncan Turner, Adv Phumlani Ngcongco, and Adv Lerato Zikalala instructed by Andries Le Grange of Cliffe Dekker Hofmeyr Inc and Janine Simpson of DLA Piper For the First Respondent: Adv Shannon Quinn instructed by John Oxman of Primerio International For the Commission: Candice Slump, Mpumi Tshabalala, Omphemetse Kgaladi and Tshagofatso Koma

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