



THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM148Dec21/INT099Oct23

In the *intervention application* between:

RAIN PROPRIETARY LIMITED Applicant

and

VODACOM PROPRIETARY LIMITED First Respondent

**BUSINESS VENTURE INVESTMENTS NO 2213
PROPRIETARY LIMITED** Second Respondent

COMPETITION COMMISSION OF SOUTH AFRICA Third Respondent

In re of the large merger between:

VODACOM PROPRIETARY LIMITED Primary Acquiring Firm

and

**BUSINESS VENTURE INVESTMENTS NO
2213 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 relation to the following matters:
 - 2.1. whether or not the proposed merger is likely to substantially prevent or lessen competition in relation to the following theories of harm:
 - 2.1.1. the effect of the proposed merger on the Applicant's ability to compete in respect of retail internet services and mobile services as a result of portfolio effects and bundling;
 - 2.1.2. the risk and potential effects of input foreclosure, reduction in competition in wholesale markets (including metro fibre backhaul used for mobile networks), and open access to fibre infrastructure and services; and

2.1.3. information sharing.

2.2. whether the proposed merger should be approved (with or without conditions) or prohibited including whether any conditions proposed by the merging parties to the Tribunal adequately address any anti-competitive consequences of the proposed merger and/or conditions 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. participate in any interlocutory proceedings in respect of the merger proceedings;
 - 3.5. adduce oral and documentary evidence, including expert evidence, relevant to the merger proceedings;
 - 3.6. cross-examine the witnesses of the merger parties and/or other participants at the merger hearing; and
 - 3.7. present written and oral argument at the merger hearing.
4. In relation to paragraph 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 Piet Olivier instructed by Stewart Payne and Jean Meijer of Herbert Smith Freehills South Africa
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