Media Statement

For Immediate Release

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COMMISSION RECOMMENDS PROHIBITION OF VODACOM/MAZIV MERGER

The Competition Commission (Commission) has recommended that the proposed large merger whereby Vodacom (Pty) Ltd (Vodacom), intends to acquire control in Business Venture Investments no 2213 Proprietary Limited ("Newco"/ “Maziv”) be prohibited. The Commission is of the view that the proposed transaction is likely to substantially prevent or lessen competition in several markets and that the conditions offered do not fully address the resultant harm to competition. Further, the public interest commitments provided by the merger parties do not outweigh the competition concerns.

The primary acquiring firm is Vodacom. Vodacom is ultimately controlled by Vodacom Group Limited (“Vodacom Group”). The primary target firm is Newco, which owns and controls Dark Fibre Africa (Pty) Ltd (“DFA”) and Vumatel (Pty) Ltd (“Vumatel”), amongst other companies. Newco is a wholly owned subsidiary of Community Investment Ventures Holdings (Pty) Ltd (“CIVH”). Newco was renamed Maziv (Pty) Ltd (“Maziv”) during the course of the Commission’s investigation.

The proposed merger combines one of South Africa’s largest fibre infrastructure players, Maziv, and South Africa’s largest mobile operator, Vodacom. Vodacom also has fibre assets which would have been transferred to Maziv. The proposed transaction raises several vertical and horizontal competition concerns.

From a horizontal perspective, the Commission’s investigation shows that 5G Fixed Wireless Access (FWA) and fibre compete in the same relevant market and that consumers stand to benefit from increasing competitive rivalry between FWA and fibre. The proposed merger will result in the loss of direct competition between Vodacom and Maziv in the areas where both Vodacom and Maziv have deployed fibre. The Commission’s investigation has shown that fibre players tend to reduce prices in areas where more than one fibre network provider has deployed fibre. This price competition is lost with the merger.

Importantly, the proposed merger is also likely to result in the prevention or lessening of future competition in relation to fibre and 5G FWA. Both Maziv and Vodacom have significant pre-merger plans to expand coverage, particularly in underserved low-income areas. Vodacom, through its spectrum allocation obligations, and Maziv, through its planned Vumatel roll-out plans, are both investing in infrastructure rollout to target underserved low-income and more rural consumers. These expansion plans would bring benefits of price competition and consumer choice to underserved or unserved consumers. The proposed merger will likely prevent or lessen this competitive rivalry and deprive low-income consumers of the benefits that fixed competition exerts on mobile products as currently enjoyed by wealthier and urban consumers in South Africa.

In addition, the evidence shows that fibre exerts a constraint on the extent to which mobile operators can set prices for mobile data more generally. The merger will reduce this constraint.

From a vertical perspective, the Commission's investigation identified several concerns about incentives for self-preferencing and foreclosure of competitors post-merger. One concern arises from the fact that MNOs rely on Maziv, and DFA specifically, to a varying but significant degree for fibre backhaul and metropolitan connectivity services to provide mobile retail services. The merger creates the ability and (increased) incentive to partially foreclose or otherwise disadvantage rival MNOs. Similarly, providers of lit FTTB services rely on the merger parties, and particularly DFA, to a significant but varying degree for dark fibre. The merger amplifies the merged entity's incentive to preference their own retail businesses over those of competitors.

Importantly, there are no significant benefits arising from the proposed merger that are not already independently planned prior to the merger or not already in place. Moreover, the supposed benefits of Maziv's open access regime have not been universally confirmed by the investigation; instead, evidence and allegations of self-preferencing behaviour and discriminatory pricing have arisen. The merger is likely to further reinforce the incentives for self-preferencing and discriminatory behaviour.

The Commission conducted an extensive investigation consulting with several market participants including mobile network operators (MNOs), fibre network operators, internet service providers and others and the majority of these market participants have expressed opposition to the merger.

The efficiencies submitted to arise from the proposed merger have not been found to be merger specific or substantial enough to outweigh the likely anticompetitive effects of the transaction.

Although the merging parties have also proposed open-access remedies that seek to address the competition concerns arising, the Commission found that the remedies are complex, incapable of being effectively monitored and do not address the full extent of the competition concerns likely to arise from the proposed transaction.

The merging parties have submitted that the merger will contribute to the public interest through 5G and fibre rollout commitments, the establishment of a supplier development fund, the implementation of a notional employee benefit scheme, a moratorium on retrenchments, the creation of additional employment opportunities, and maintaining the use of suppliers owned/controlled by Historically Disadvantaged Persons. The Commission found that most of these public interest commitments would occur absent the merger either as a result of existing spectrum obligations or existing rollout plans. Therefore, these commitments do not outweigh the competition harm that has been identified.

Therefore, the Commission recommends that the proposed merger be prohibited.

[ENDS]

Issued by:
Siyabulela Makunga, Spokesperson
On behalf of: The Competition Commission of South Africa
Tel: 012 394 3493 / 0674219883
Email: SiyabulelaM@compcom.co.za

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