

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM148Dec21 / CNF 119 Nov 23

In the matter between:

VODACOM PROPRIETARY LIMITED

First Applicant

**BUSINESS VENTURE INVESTMENTS NO
2213 PROPRIETARY LIMITED**

Second Applicant

And

FROGFOOT NETWORKS 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, Frogfoot Networks Proprietary Limited (“Frogfoot”), the Competition Tribunal orders as follows:

1. “Access”, for purposes of this order, means the provision of copies of Frogfoot’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. Frogfoot 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 Frogfoot; 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.

3. In respect of all information claimed as confidential by Frogfoot that does not fall within 2 above, the following regime will apply:

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

3.2. The information referred to in paragraph 3.1 above shall be:

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

3.2.2 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;

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

3.2.4 made available by Frogfoot for inspection in Johannesburg, Stellenbosch and in London.

3.3. 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.

3.4. Frogfoot 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.

3.5. Insofar as Frogfoot 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.

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

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

4. There is no order as to costs.

Presiding Member
Mr Andreas Wessels

5 February 2024
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 Michael-
James Currie of Primerio International

For the Commission:

Candice Slump, Mpumi Tshabalala, Omphemetse
Kgaladi and Tshegofatso Koma