Why Competition Commission blocked Vodacom's fibre bid

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Vodacom, one of South Africa's mobile network operators, has been dealt a major blow by the Competition Commission, which on 8 August recommended that it should not be allowed to acquire a significant stake in two of the country's leading fibre infrastructure providers, Vumatel and Dark Fibre Africa (DFA).

Competition Commission found that Vodacom would own 60% of the national fibre network. Source: Compare Fibre/Unsplash

The deal, which was announced in June 2021, would have seen Vodacom buying an initial 30% stake (with an option to increase it to 40%) in Maziv, a company owned by Remgro that holds the two fibre groups. The transaction was valued at more than R13bn and was part of Vodacom's strategy to expand its fixed-line broadband offerings.

However, the commission has found that the deal would have serious negative effects on competition and consumer welfare in the fibre market, which is already highly concentrated and dominated by a few players. The commission said that the merger would reduce the number of independent fibre network operators from four to three and would give Vodacom access to more than 60% of the national fibre infrastructure.

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It also found that the deal would harm the interests of internet service providers (ISPs) that rely on wholesale access to fibre networks to offer retail services to customers.

The commission received several complaints from ISPs that were worried about being excluded or discriminated against by Vodacom, which currently only offers wholesale access to certain ISPs. Vodacom and Maziv's proposed remedies to address these concerns, such as committing to an "open access" regime that would treat all ISPs equally, were found to be inadequate and unenforceable.

Argument rejected

"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 said in a statement.

Vodacom's argument that the deal would not affect competition in the retail market, claiming that fibre and 5G fixed wireless access (FWA) were not substitutes but complements, was also rejected. The commission disagreed, saying that fibre and 5G FWA compete in the same relevant market and that consumers stand to benefit from increasing rivalry between them.

"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," the commission said.

Big plans

Vodacom responded in a statement on Tuesday that its "planned investment holds particular significance as a considerable proportion will be focused on developing new fibre infrastructure at a time when attracting capital investment is particularly challenging".

Masiv also issued a statement expressing its disappointment, saying that the investment would enable the company to "extend fibre infrastructure to an estimated 1,000,000 new households in lower income areas, create up to 10,000 new jobs, commit at least R10bn to capital expenditure, and facilitate the creation of small to medium enterprises through a fund formed specifically for this purpose with R300m of committed capital".

The commission's recommendation is not binding, but it carries significant weight and will influence the final decision of the Competition Tribunal, which will hold hearings on the matter in due course. If the tribunal agrees with the commission, Vodacom will have to either abandon or revise its deal with Maziv, or face a lengthy and costly legal battle.

ABOUT LINDSEY SCHUTTERS

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