THE COMPETITION APPEAL COURT OF SOUTH AFRICA

JUDGMENT

Reportable

CASE NO: 260/CAC/Nov2024

261/CAC/Nov2024

In the matter between:

VODACOM (PROPRIETARY) LIMITED	First Appellant
BUSINESS VENTURE INVESTMENTS NO 2213 (PROPRIETARY) LIMITED	Second Appellant
THIE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Appellant

and

THE COMPETITION COMMISSION OF SOUTH AFRICA	Respondent

Coram: Manoim JP, Nuku JA and Davis AJA

Heard: 22 July 2025

Delivered: 14 August 2025

ORDER

On appeal from: The Competition Tribunal:

1. The Tribunal's order prohibiting the merger is set aside and replace with the following order:
    a) The merger is approved subject to conditions which are attached to this Judgment.
2. There is no order as to costs.

JUDGMENT

Davis AJA (Manoim JP and Nuku JA concurring)

Introduction

[1] The control of mergers as provided in the Competition Act 89 of 1998 (the Act) has a widespread impact on investment, both local and foreign and thus on economic growth. In an analysis of the approach to merger control over the past twenty-five years, Professor Willem Boshoff has found a noticeable increase in interventionism in merger control which is reflected in the growing proportion of mergers that are approved subject to conditions or are visited with outright prohibitions. While an application for approval of a merger may not be considered to be inherently urgent, many mergers do have time constraints. Accordingly, the increased level of intervention documented by Professor Boshoff can result in a very lengthy process of litigation culminating in the creation of an adverse investment climate.[1]

[2] The present case is illustrative. In November 2021, first appellant announced its plan to acquire a 30 % stake in Maziv (Pty) Ltd (Maziv), an entity designed to consolidate all fibre assets owned by Community Investment Venture Holdings (Pty) Ltd (‘CIVH’).

[3] After an intensive investigation, in August 2023 the respondent (the Commission) recommended the prohibition of the merger. During 2024 the Competition Tribunal (the Tribunal) heard evidence for some 26 days and on 29 October 2024 it prohibited the merger.

[4] Some six months later, on 28 March 2025, the Tribunal published an extensive set of reasons detailing its justifications for the prohibition of the merger. The decision to prohibit the proposed merger was then appealed to this Court both by the first and

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[1] See Willem H Boshoff Competition Policy in South Africa from 1994 to now: Two competing approaches in South African competition policy; merger control and anti-cartel enforcement over three decades. Economic Research South African Policy Paper (14 May 2025)

second appellants (the merging parties) and by the third appellant (the Minister of Trade, Industry and Competition).

[5] Comprehensive heads of argument in justification of these appeals were filed by the merging parties and by the Minister. Before the date in terms of which the Commission was obliged to file its heads of argument, it sought an extension from the Judge President. Thereafter a further letter on 4 July 2025 was generated in which it informed the Court that there were discussions taking place between the merging parties, the Commission and the Department of Trade, Industry and Competition and that the filing of the heads would take place on 7 July 2025.

[6] As was fairly clear from this latter correspondence, the parties had entered into discussions with regard to revised conditions, as a result of which on 8 July 2025 the Commission abandoned its opposition to the appeals, which had been brought against the decision of the Tribunal.

[7] This meant that when the hearing before this Court took place on 22 July 2025, the Court was faced with the anomalous situation of comprehensive heads of argument having been filed both by the merging parties and by the Minister to the effect that the Tribunal's decision should be set aside, and silence from the Commission. Both the merging parties and the Minister submitted that the proposed merger should be approved subject either to the reinstatement of the original conditions, which had been rejected by the Tribunal, or by the revised conditions which had been agreed between the parties pursuant to their negotiations which had led to the decision of the Commission to abandon its opposition to the appeal.

[8] This presented this Court with a considerable difficulty. If the Court was to set aside the entirety of the Tribunal's decision, in particular the justification for its finding that there was a substantial preventing or lessening of competition (SLC) as a result of the proposed merger, it would have to do so without the benefit of any argument being presented in opposition by the Commission which filed no heads of argument. The Commission, at the request of the Court, filed an important note which explained why in its view the revised conditions remedied the harms the Tribunal had identified.

[9] Within this context, the Court was confronted with a series of possibilities; in particular to set aside the SLC findings of the Tribunal on the basis of the arguments presented by the merging parties and the Minister and then proceed to deal with the conditions including the amended conditions in that the abandonment of the opposition to the appeal by the Commission could be taken to lead to the inference that it had no case to offer in opposition to such an approach. The alternative, which is the approach which I intend to adopt is, subject to some pertinent observations about the inadequacy of the Tribunal's reasoning, to leave the SLC findings intact and then to evaluate whether the revised conditions which have now been agreed between the parties suffice to justify the approval of the merger. In other words, the Court is required to examine whether these conditions are of such a weight that they gainsay any adverse competition finding as set out by the Tribunal in its determination of the SLC test.

[10] In my view, this is the more prudent course of action in that it is always dangerous to evaluate detailed findings, in the case of the Tribunal, where the Court does not have the benefit of competing arguments which would allow it to come to a carefully reasoned decision as to why certain findings should be set aside. Accordingly, the approach which is adopted in this judgment is to accept the essential findings of the Tribunal with regard to the issue of SLC as it applies to the proposed merger and then to evaluate whether the amended conditions suffice to justify a finding by this Court that the merger should be approved subject to these conditions.

The core of the Tribunal's findings

[11] The transaction which was the subject of such detailed litigation before the Tribunal concerned Maziv, a holding company with two subsidiaries. Dark Fibre Africa (Pty) Ltd (DFA' and Vumatel (Pty) Ltd ('Vumatel'). DFA is a network operator which operates fixed line telecommunication infrastructure, and which provides wholesale fibre mainly at the national long distance and metro levels of the value chain but also in some last mile wholesale markets. Its primary activity is the deployment of metro fibre networks and wholesale access to this infrastructure to fixed and mobile network operators and service providers. Vumatel (Pty) Ltd (Vumatel) is a fixed network operator (FNO) providing open access wholesale fibre connecting homes and

businesses at the last mile level of the value chain. Maziv is a wholly owned subsidiary of CIVH which, in turn, is controlled by Remgro Ltd.

[12] Vodacom is the largest mobile network operator(MNO) in South Africa, active in the provision of mobile wholesale and retail voice, messaging and data services to residential and business customers. The Commission found that Vodacom was active at all levels of the telecommunications value chain. It builds, acquires and leases infrastructure and sells services using that infrastructure.

[13] Vodacom also has limited FNO as well as certain internet service provider operations. It is a wholesale customer of DFA for metro backhaul, for fibre to site (FTTS), which is an access network structure in which the optical fibre network runs from the aggregation point to a base station as well as fibre to the home (FTTH), an access network (or last mile) structure in which the optical fibre network runs from the aggregation point to customer homes ordinarily on a gigabyte passive optic network (GPON).

[14] Its internet service provider business is a wholesale customer of Vumatel for access to FTTH. At present, that is prior to the proposed merger, Vodacom owns and operates fibre links at the metro level, which were self-built to connect its own installations to shared aggregation points and fibre connection to business. It also has a small set of open access FTTH networks, mainly in residential areas.

[15] In terms of the negotiations between the merging parties, Vodacom is to acquire a minority stake in Maziv, being an initial acquisition of 30% of the shares in Maziv with an option to increase its stake to 40%. The consideration for the initial 30% was approximately R14 billion, made up of R10 billion in cash and R4 billion in fibre assets. An additional R 4 billion would be payable in cash, if Vodacom exercised its option to increase its shareholding.

[16] In respect of the R4 b in fibre assets, that is the transfer of assets which are part of the proposed transaction, these constitute all of Vodacom’s fibre assets at the metro FTTS and FTTH level. In the result, if the merger is implemented, Vodacom would no longer be an FNO because it would no longer own and operate its own metro

FTTS and FTTH fibre infrastructure. It would however continue to operate as a mobile network operator and as a retail internet service provider in the FTTH and FTTS markets using the fibre supplied by specialist FMO's.

[17] As noted by counsel for the merging parties, ordinarily a minority stake of between 30% to 40% of the shares of the target company would not trigger the merger notification provisions as required in terms of the Act, where another shareholder, in this case CIVH and ultimately Remgro, owns the balance of the shares.

[18] However, in this case, Vodacom had negotiated for certain minority protections additional to those automatically available to minorities under the Companies Act 71 of 2008.

[19] Hence, while CIVH will remain the majority controlling shareholder and continue to exercise positive shareholder control over Maziv, Vodacom, albeit being a minority shareholder, would acquire certain elements of what was referred to as negative control. In summary, the Memorandum of Incorporation (MOI) will provide that Maziv shall not perform, permit, conclude or implement any reserved matters set out unless every controlling shareholder has confirmed its support for the relevant reserved matter in writing. These are set out in detail in schedules to the MOI and include the approval of Maziv's annual budget and business plan and the appointment of a CEO and a CFO. In short, Maziv will require the written consent of Vodacom to engage in conduct as specified in schedule 2 of the MOI. The view was taken by the merging parties that these additional minority protection rights amounted to a material influence for the purposes of s 12(2)*(g)* of the Act and therefore merger approval was required from the competition authorities.

The Tribunal's decision

[20] With this context, I turn, albeit briefly, to deal with the fundamental concerns raised by the Tribunal in its justification for refusing to approve the merger. In essence, the Tribunal found that the merging parties had not been able to satisfy it with regard to various vertical and horizontal competition concerns. The horizontal effects which the Tribunal found as a result of the merger were that there would be a potential reduction of competition between Vodacom and Maziv in FTTH, FTTB services and

metro/backhaul infrastructure. In its view, the proposed transaction would entrench Vodacom's dominance. The merger would reduce potential future competition between Vodacom and Maziv in building out overlapping fibre networks, particularly FTTH. It found that, absent the merger, Vumatel would expand into areas where Vodacom had plans or existing coverage suggesting the possibility of rivalry between these firms which the merger would eliminate; in particular the elimination of potential competition and the reduction of rivalry particularly in high income suburbs and emerging townships.

[21] The Tribunal criticised the evidence of the economic experts who testified on behalf of the merging parties as representing a static approach to the potential of horizontal foreclosure. It said:

'A static competition assessment is deeply unsatisfactory when a merger has a defensive motive (as we have noted Maziv has) and furthermore takes place in markets enjoying substantial and dynamic growth. An assessment of dynamic competitive effects is appropriate given *inter alia* that the FTTH/FTTB space is set for a second land grab with follow-through growth for the backhaul infrastructure, driven by 5G roll out also.'[2]

[22] In the view of the Tribunal, the strategic documents of the merging parties showed as did, in particular, the evidence of Mr Pieter Uys head of strategic investments at Remgro Ltd and the chairperson of the CHVH board, that Vodacom would have pursued options alternative to the proposed merger, in the event that the latter did not take place. It found that it would grow its fibre footprint in both metro and FTTB and would grow to be an effective and even formidable competitor to Maziv's business in respect of these markets.

[23] The Tribunal was of the view that the evidence confirmed that, in a counter factual, Vodacom would look at a joint venture and partnerships to expand in fibre and thus compete with Maziv. Were the merger not to be implemented, a range of pro-competitive benefits of future competition between Maziv and Vodacom would occur. It was this possibility that was seen by Maziv as a massive threat to its businesses with significant impact on its pricing policy.

[2] Para 632 of Tribunal 's reasons

[24] Turning to vertical foreclosure, being the risk that the merged entity could cause harm by limiting rival firms' access to credible upstream or downstream inputs, the Tribunal focussed its reasoning on Vodacom's ability and incentive to foreclose MNO'S together with ISP's from accessing fibre infrastructure owned by Maziv via its subsidiaries, DFA and Vumatel. It noted that DFA had provided dark fibre on a wholesale open access basis, which was essential to MNO's mobile networks and backhaul while Vumatel supplied FTTH and FTTB, often on an open access model used by ISP's.

[25] The Tribunal found that it was able to locate credible concerns that the merging entities would discriminate in pricing by giving Vodacom better wholesale terms than its rivals, it would delay access or degrade quality through slower provisioning or lower service levels it would refuse to deal or limit capacity and would engage in bundling or cross subsidisation by combining Vodacom's mobile and fibre services in a way that rivals could not match without equivalent access.

[26] It therefore concluded that Vodacom had a strong incentive to foreclose, especially as it competed directly with MNO's like MTN and Rain and ISP's, using DFA and Vumatel. The merged entity would consequently have the ability to do so given the scale and significance of Maziv's infrastructure. As noted, the Tribunal relied for these findings on internal Vodacom strategy documents which showed an intent to gain a competitive advantage by bundling fixed and mobile services. It concluded that Vodacom's interest in Maziv was not purely passive but strategically motivated; that is to consolidate power in fibre and reduce infrastructure competition.

[27] Turning to the remedies proposed by the merging parties, it found that behavioural remedies such as non-discrimination clauses and price reporting monitory trustees would be insufficient to mitigate the foreclosure risks which it had found.

[28] The Tribunal found that the only structural remedy offered in relation to its findings of horizontal foreclosure related to a divestiture of FTTH infrastructure, which it considered was both limited and insufficient. It further found that the complex and technical behavioural remedies offered by the merging parties which were aimed at addressing vertical foreclosure such as discriminatory access to fibre infrastructure

were ‘not effective’ and would fail to prevent preferential treatment to Vodacom post the merger. Furthermore, it found that the remedies were unenforceable in practice owing to their complexity and the indefinite time frame over which they would need to operate. These remedies would require the Commission and subsequently the Tribunal to act as *de facto* sector regulators which fell outside of the institutional mandate of these bodies. It found further that the DFA’s post-merger incentive to foreclose access and to offer favourable terms to Vodacom at the expense of competitors remained intact. The remedies did not trigger structural change to these incentives. Despite proposed ring-fencing and non-disclosure arrangements, the Tribunal was not satisfied that these measures would prevent leakage of sensitive competitor information between DFA and Vodacom. Furthermore, there were no credible punitive consequences built into the proposed remedies in the event that violations of the proposed remedies occurred. While it noted that the vertical remedies might be regarded as theoretically appealing, they were practically flawed due to their complexity and enforceability problems and inability to change underlying economic incentives.

[29] In summary, the competitive risks were long term and dynamic, involving complex commercial strategies that would be extremely difficult to police. The only effective remedy would be to prohibit the merger rather than allow the merger to take place subject to the inadequate conditions as proposed.

Material misdirections by the Tribunal

[30] As indicated earlier, it is not the intention of this judgment to traverse all of the findings of the Tribunal in respect of horizontal and vertical foreclosure. However, counsel for the merging parties emphasised that there was some extremely important misdirection’s on the part of the Tribunal and these do deserve some analysis.

[31] Counsel for the merging parties attacked the basis by which the Tribunal had sought to deal with the relevant counterfactual. As Richard Whish has noted with respect to the obligations of a competition authority in evaluating a potential counterfactual:

‘The counterfactual will usually be the prevailing conditions before the merger although there may be cases in which it is necessary to take into account conditions as they would be in the near future if, for example, it is known that other firms are about to enter or exit the market or to expand capacity; another example would be that one of the merging parties was on the point of failing so that it would not be present on the market in the future anyway.'[3]

[32] This succinct description of what is required in the determination of a counter factual emphasises that, unless there is clear evidence that there is a dynamism in the market such as that change will happen, it does not behove the Tribunal to find material changes to a status quo, in the absence of clear evidence to that effect. That, according to counsel for the merging parties, did not occur in this case. To the contrary, the evidence relied upon by the Tribunal to support its conclusion was, in his view, at worst non-existent and at best tendentious. For example, the Tribunal relied on the CIVH board minute of March 2021, where the CIVH board raised a concern that Vodacom could explore 'other options' if no deal was reached with CIVH. This reference to 'other options' flowed from a discussion between Mr Uys and Mr Mohammed Joosub, the CEO of the Vodacom Group, in which Mr Joosub expressed frustrations at delays on the part of CIVH in concluding the deal. In reading this evidence in context, this remark was no more than a loose threat made in the context of difficult negotiations in order to compel CIVH to agree to the deal.

[33] As Rogers JA (as he then was) noted in *Mediclinic South Africa (Pty) Ltd and Another v The Competition Commission*[4] in respect of certain corporate documents which were employed by the Commission: 'This document confirms the puffery one might expect in a sales pitch'.

[34] This observation is clearly applicable to the 'other options reference made by Mr Joosub. Furthermore, both Mr Uys and Mr Joosub confirmed the context in which the statement had been made and no other evidence was produced to justify a conclusion that Vodacom would develop its own independent business in competition to Maziv.

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[3] Richard Whish and David Bailey Competition Law (10th ed) at 865.

[4] *Mediclinic South Africa (Pty) Ltd and Another v The Competition Commission* [2020] ZACAC 3 para 78

[35] To the extent that the Tribunal sought to impugn the credibility both of Mr Joosub and Mr Uys, regrettably the Tribunal did not follow the accepted approach to evidence as set out in the *Stellenbosch Farmers Winery Ltd and Another v Martell & Cie* SA and Others:[5]

'To come to a conclusion on disputed issues the court must make findings on (a) the credibility of the various factual witnesses [their reliability] … (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as; (i) the witness's candour and demeanour in the witness box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events.'

[36] In short, the Tribunal is required to follow this approach to evidence. It failed to do so in this case and accordingly its rejection, without more, of the evidence of both Mr Uys and Mr Joosub was correctly criticised by counsel for the merging parties. As an example of the flawed reading of the evidence, the Tribunal focused on five pages of a 117-page document which was part of the board pack prepared for a special board meeting of CIVH. It then emphasised the SWOT analysis as set out therein but ignored the full analysis to concentrate exclusively on the threats section of the SWOT analysis. In turn, it ignored Mr Uys' evidence that the SWOT analysis was a general SWOT analysis for CIVH and was not the rationale for the proposed merger. The Tribunal also ignored the explanation of the chairman of the investment committee of the Board, who had commissioned the presentation. He said the presentation was prepared by 'management and the advisors listing all possible scenarios they could think of'. In summary, the Tribunal had failed to read the context of the very document upon which it had heavily relied.

[37] Counsel for the merging parties then sought to locate fundamental misdirections, which he submitted were committed by the Tribunal on the basis of the

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[5] *Stellenbosch Farmers Winery Ltd and Another v Martell & Cie* SA and Others 2003 (1) SA 11 SCA para 5

assumptions which it had made and on which the entire decision then proceeded to be developed.

[38] The Tribunal at para 75 of its reasons emphasised the importance of context as follows: 'To provide context to the assessment that will follow we explain certain general features of the sector and the terminology used ...'.

[39] That context is then developed at para 95 under the header 'alleged history of collusion between Vodacom and MTN'. The Tribunal proceeded to refer to a 1996 Financial Mail (FM) report regarding a meeting between Vodacom and MTN, which took place in London in 1994 to discuss pricing. A memorandum was then prepared which 'allegedly outlined agreements on tariff structures, airtime discounts and connection bonusses. At the time, Vodacom and MTN said that the agreement reached in London was 'legal and not anti-competitive'. Reference is then made in the FM report to a comment of the former Competition Tribunal chairperson Mr David Lewis that Vodacom and MTN 'concocted legal stratagems designed to keep the issue out of court'.

[40] The inclusion of this report in its decision and the reliance thereon is regrettably disturbing in that, as counsel for the merging parties informed the Court, none of this was placed into evidence before the Tribunal in circumstances where the parties had an opportunity to deal therewith. This is not a case where the Tribunal took judicial notice of facts that were widely known and not subject to reasonable dispute. This was an exercise in which the Tribunal relied on evidence, which was never part of the record, which was never presented to the parties, and which clearly compromised the fairness and impartiality of the proceedings. Manifestly, when the Tribunal engaged with the rationale for the proposed transaction, the assumption of 'nefarious practices' committed in part by Vodacom was on its mind when it considered the rational for the transaction. In summary it found that:

'[W]e have to reject the merger parties' claim that Maziv would continue doing business as if it were unaware of Vodacom's presence. MTN in our view correctly characterises as "artificial" the merger parties' arguments that Vodacom's and Maziv's "perspectives would remain discrete rather than intertwined".'

[41] The approach that the Tribunal clearly adopted as to the motivations of Vodacom in particular were correctly described by counsel for the merging parties as the source of the infection in respect of the reasoning which followed in order to dismiss the evidence presented by the merging parties as to the justifications for the prosed transactions.

[42] A number of further instances of misdirection were raised by counsel for the merging parties. On the basis of the approach which I intend to adopt to this appeal, it is not necessary to traverse each and every such alleged misdirection notwithstanding the merits thereof. his is because this appeal, as indicated in the introduction, can be disposed of on the basis that even if the Tribunal was correct with regard to its findings on foreclosure, its decision to refuse to approve the proposed merger must now be reevaluated on the basis of the amended conditions agreed to between the merging parties and the Commission. The purpose however for referring in some detail to these disturbing features of the Tribunal's reasoning is to guide it in future so as to ensure meticulous and careful application of established rules of evidence, which must be followed.[6]

The role of the amended conditions

[43] In order to approach the consequences of the conditions to which the merging parties and the Commission have now agreed and which the parties now argue must form the basis upon which the approval of the merger should take place, it is important to deal with the legal framework pertaining to both the conditions and the further issues as to the public interest grounds, upon which it was contended before the Tribunal that the merger could be justified, as well as the implications that the conditions hold for an overall SLC test.

[44] Section 12A of the Act, as amended, requires in relevant part that:

'(1) Whenever required to consider a merger, the Competition Commission or Competition Tribunal must initially determine whether or not the merger is likely to substantially prevent or lessen competition, by assessing the factors set out in subsection (2), and if it appears that the merger is likely to substantially prevent or lessen competition, then determine –

[6] The approach adopted by the Constitutional Court in *Vodacom (Pty) Ltd v Makate and others* [2025] ZACC 13 at para 41-49 is instructive.

(a) whether or not the merger is likely to result in any technological, efficiency or other pro-competitive gain which will be greater than, and offset, the effects of any prevention or lessening of competition that may result or is likely to result from the merger, and would not likely be obtained if the merger is prevented; and

(b) whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3).

(1A) Despite its determination in subsection (1), the Competition Commission or Competition Tribunal must also determine whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3).

…

(3) When determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on –

(a) a particular industrial sector or region;

(b) employment;

(c) the ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in or expand within the market;

(d) the ability of national industries to compete in international markets; and

(e) the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market.'

[45] Counsel for the Minister provided a helpful basis by which to analyse the structure of the inquiry as envisaged in terms of s 12A. The initial step is to determine whether the proposed merger would result in a substantial lessening of competition (SLC) using the factors, which are set out in subsection 12A(2). In this regard, the Tribunal is required to assess all the available evidence against, *inter alia*, the factors set out in s 12A(2) as they apply to the particular transaction; for example whether the merger would result in a removal of an effective competitor, the presence of barriers to entry, foreclosure concerns or the likelihood of coordinated conduct.[7] Once the Tribunal has engaged with the SLC test and, on the basis that it had established that the SLC test will be met, it is required to weigh such effects against merger specific technological efficiency or other pro-competitive gains that could not otherwise be achieved in the absence of the merger.

[7] Section 12A(2) unlike section 12A(3) is not a closed list of factors to be considered.

[46] This then permits the Tribunal to arrive at the final competition effect by an evaluation of the SLC effects against any efficiency or other pro-competitive gains. Once this enquiry has been concluded, the Tribunal is then required to engage with the public interest test. It must be conducted independently of the competition test which has been undertaken. The public interest inquiry, as set out in subsection 12A(3), confines that enquiry to five enumerated factors, which are listed in subsections *(a)* to *(e)* of s 12A(3). It is important to emphasise that the legislature did not provide for an unenumerated list of public interest concerns. It confined the enquiry to the five specific factors

[47] Section 12(1A) emphasises that, notwithstanding the outcome of the SLC test, the enquiry with regard to public interest focus on whether the merger can or cannot be justified on substantial public interest grounds.

[48] That leads to the manner in which the five enumerated factors are to be considered. In *Epiroc Holdings SA v K2022596519 (South Africa) (Pty) Ltd and Polka Dots Properties 117 (Pty) Ltd*, the Tribunal said:[8]

‘As regards the public interest analysis under s 12A(3) of the Act, the Tribunal has previously explained that it is holistic one, in terms of which the different public interest grounds listed in section 12A(3) must be separately assessed and then, if necessary, weighed against each other in order to arrive at a net conclusion on the public interest effects of the merger.’

[49] In effect, as I understand this *dictum*, it indicates that each of the individual public interest factors as well as any commitments made by the merging parties to address these are evaluated, and thereafter the public interest consequences must be considered cumulatively. While an individual commitment may be modest on its own terms, a cumulative assessment could conclude that the overall public interest effect on the merger in terms of all the s 12A factors (or as many as may be relevant to the merger under scrutiny) can dictate a particular positive or negative conclusion in respect of the impugned merger.

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[8] *Epiroc Holdings SA v K2022596519 (South Africa) (Pty) Ltd and Polka Dots Properties 117 (Pty) Ltd* [2023] 2 CPLR 20 (CT) para 75.

[50] Finally, the Tribunal needs to weigh up the conclusion it reached in respect of the SLC test with the conclusion it reached in respect of the public interest factors to arrive at the final outcome. In many cases the two conclusions may point in the same direction, in which case the balancing exercise is unnecessary. But where it does not, the weighing exercise must be conducted. This is no easy task. Nevertheless whilst such balancing is not susceptible to a mathematical evaluation it must at least be the basis of a rational explanation for whatever conclusion is finally adopted in respect of the merger.

[51] In the present case, the Tribunal dismissed the relevance of the majority of the public interest conditions that were raised by the merging parties for a lack of merger specificity because it was of the view that these commitments would eventuate regardless of whether the merger took place. This raises the question of merger specificity. Although it concerned the question of whether the party had retrenched staff in breach of certain employment related conditions, which had been stipulated by the Commission, the Constitutional Court in *Coca Cola Beverages Africa (Pty) Ltd v Competition Commission and Another*[9] in dealing with the test for a causal nexus on which a merger specificity could be found, noted that part of the test was an examination of the '"pre-merger counterfactual"; that is, what would have happened if the merger had not taken place and whether the impugned decision-making was "sufficiently closely related to the merger"'.

[52] In the present case the evidence indicated that the involvement of Vodacom as a strategic investor in Maziv, committed to a long-term investment, provided greater weight to the probability that there would be further investments in fibre roll outs in unserved areas. Mr Uys testified that having a long term investor already heavily invested and committed in South Africa to share the risks associated with these roll outs permitted the opportunity for Maziv to expand the roll out into unserved areas. In addition, the Tribunal found that the merging parties made a series of public interest commitments without any evidential justification that these would take place no matter whether the merger was approved. The Tribunal found, regrettably on the basis of a

[9] *Coca Cola Beverages Africa (Pty) Ltd v Competition Commission and Another* 2024 (4) SA 391 (CC) para 62.

misreading of the strategic documents, that the various public interest commitments would have happened even absent the proposed merger. There can be little doubt that but for the conditional approval of the proposed merger the various public interest commitments may not have been realised. Once the implementation of the transaction was made conditional on this realisation of the merger, it became certain that each of them, read together, complied with the approach adopted by the Constitutional Court in *Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another* particularly at para 73, where the Court said: [10]

'Maintaining or increasing the scope for choice of essential and much-needed services with particular regard to the plight of the financially under-resourced or the vulnerable, should always be at the back of the decision-makers' minds when dealing with mergers.'

[53] As counsel for the Minister noted, the commitment by the merging parties to invest in lower income areas, the proposed FTTH connection of schools and police stations, which at present are without such connection, held the possibility of significant change in under resourced communities. That the Tribunal elided over the impact of these commitments to the public interest provisions as set out in the Act compounded the conclusion that the Tribunal's approach to public interest conditions constituted the kind of misdirection which justifies its finding being set aside.

[54] In addition, the Tribunal appears to have conflated the SLC test with specific public interest factors. As counsel for the Minister emphasised, s 12A(3) only provides for five specific public interest grounds; anything which falls outside of these factors must be located within the context of the SLC test. But compare this conclusion to the Tribunal's attempt at a weighing up exercise;

'The economic experts agree that to the extent that a merger results in substantial harm to competition in the provision of data services, this is likely to worsen the terms of access to data services and will harm South African consumers. On the other hand, to the extent that a merger results in fibre being deployed faster and more extensively in the market as a whole than without the merger, particularly to low-income areas this would be likely to benefit consumers. The Tribunal must in this case determine whether or not the merger-specific public interest benefits outweigh the competitive harm.'

[10] *Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another* 2022 (4) SA 323 (CC) para 73.

[55] The problem is that conditions that are likely to benefit consumers cannot be located in the five factors set out in s 12A(3). By contrast, these need to form part of the enquiry relating to the SLC test, which the Tribunal failed to do.

[56] In *Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another*[11] 2022 (4) SA 323 (CC) Mogoeng CJ said at para 71:

'In Interpreting section 12A of the Act, the Competition Appeal Court majority was required to have had regard to the provisions of s 39(2) of the Constitution which provides instructive guidance in construing any provision, including s 12A, the Preamble and purpose of the Act. This should have been done also with due regard to the State's constitutional obligation to give effect to the rights in the Bill of Rights. Besides, both the Tribunal and the Competition Appeal Court are institutions of the State that bear the obligation to facilitate rather than impede, albeit inadvertently, the right of access to healthcare services.'

[57] The breath of this *dictum* indicates that not only does the Constitution impact upon the interpretation of the public interest grounds but also must be employed in the development of the SLC test. Accordingly, the SLC test needs to be broadened in order to take account of the constitutional imperative of interpretation through the prism of the normative framework of the Constitution.

[58] This approach now finds considerable support in a burgeoning literature in which the Chicago orientated approach to the SLC test has now been revisited.[12] For example, Stavros Makris has argued that there should be a recalibration of competition law in that, in effect, the SLC test cannot simply be located in a narrow conception of consumer welfare. In this connection he contends that competition law should seek to protect what he refers to as "the most vulnerable consumers", a standard which focuses on the most vulnerable consumers, and which would concern itself with the impact of an agreement or a practice on a particular cluster of consumers (or end users) being the least fortunate or most vulnerable.[13]

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[11] Fn 1o above para 7.

[12] By this is meant a narrow consideration of the effect of price and output as a consequence of an impugned transaction.

[13] Stavros Makris 'A Smithian Political Economy Approach for the Competition Law of Twenty First Century' 2025 (88) *Modern Law Review* 712; see also Elettra Bietti 'Rawlsian Anti-Trust' *North Eastern University School of Law Research Pape*r 261 (2025).

Application of the law to the amended conditions

[59] As indicated earlier in this judgment, the Tribunal considered that the remedies were insufficient to address both the horizontal and vertical theories of harm. The reasoning employed by the Tribunal in rejecting the remedies proposed is critical to show how the agreed revised remedies have sought to cure the objections. For example, with regard to a proposed remedy in which there would be divestiture of the overlapping wholesale fibre infrastructure of either Vodacom or Maziv within of the implementation date, it found 'that the divestiture condition does not address SLC that is likely to result from the merger and the harm to consumer welfare remains'. The Tribunal found that this condition lacked sufficient detail since there were no provisions for a trustee to ensure that the overlapping infrastructures be divested, should the merging parties fail to find a buyer or maintain the infrastructure pending the sale thereof, ensure that the assets would not be devalued in any way, ensure that there was no reduction in quality or erosion of customer services where applicable.

[60] With regard to vertical foreclosure, the remedies which were offered with regard to the regulation of who could be appointed or nominated to the board of directors of an entity within the Maziv Group and the proposed restrictions regarding reserved matters and Vodacom shareholder representation, the Tribunal concluded that the conditions tendered did not adequately address concerns regarding Vodacom's exercising co-control or influence over the policy of Maziv post the merger. In summary, the Tribunal was of the view that the proposed conditions were incapable of being effectively monitored and enforced. In particular, the Tribunal emphasised the point that the appointment of a monitoring trustee 'had no legal remedial or enforcement powers. The monitoring trustee will not be able to prevent non-compliance and will simply react by reporting its view of non-compliance to the Commission in order to be fair to all parties concerned. It will then have to commence its own thorough investigations to independently establish whether there has been a breach of the conditions. By the time the Commission receives the complaint from the monitoring trustee and then completes its own investigation it may be too late to "unscramble the egg" and undue any harm that would have occurred from the conduct.

[61] While the merging parties contended that the Tribunal had erred materially in its evaluation of the initial conditions, both it and the Commission were of the view that the amended conditions which had been agreed to by the parties satisfactorily cured all the earlier deficiencies.

[62] As indicated earlier in this judgment, certain of the proposed conditions must be located within the broad context of an SLC test. Thus, the revised conditions impose a clear obligation on the merging parties to divest wholesale fibre infrastructure in areas where Vodacom has rolled out infrastructure which;

(i) has overbuilt Maziv FTTH infrastructure;

(ii) has been transferred to Maziv in terms of the merger; and

(iii) Vodacom is using to provide wholesale FTTH services.

[63] A revised clause now imposes significant powers insofar as the monitoring trustee is concerned. It obliges Maziv and Vumatel to conduct a divestiture subject to a transparent and competitive bidding process which will facilitate broad participation by a prospective purchaser. The monitoring trustee shall, during the divested period, have sole discretion to determine a fair value for the overlapping infrastructure. Where the monitoring trustee accepts an offer from any purchaser, he or she shall not require engagement or be subject to the input of the merging parties. An obligation is imposed upon the parties to ensure that the divested agreement is implemented as soon as practical after the date of signature of the agreement of Maziv. From the implementation date until the infrastructure has been sold they are obliged to preserve and maintain the overlapping infrastructure and manage the overlapping infrastructure with reasonable care and skill pursuant to good business practices.

[64] This condition is clearly designed to respond to the concerns of the Tribunal, in particular the possible increase in concentration and overlapping FTTH areas and, if a new entrant buys the infrastructure, the difficulty it may have to become an effective competitor without Vodacom as an anchor customer.

[65] Clauses 3, 11 and 12 of the revised conditions seek to dilute the extent of the control that Vodacom may exercise over Maziv, thereby reducing the ability to foreclose and thus diminishing the risks of foreclosure that need to be policed through

the conditions. In particular, Vodacom has undertaken that it will not increase its shareholding with Maziv to more than 34.95% without the consent of the Commission. This was a response to a concern which was clearly motivated by the judgment in *Competition Commission of South Africa v Hosken Consolidated Investments Ltd and Another,*[14] in which the Court had held that a transaction involving Tsogo Sun Holdings Limited (Tsogo) in 2017 was not a notifiable merger in terms of Act since the acquisition of Tsogo by the appellant had been notified and approved in 2014. In short, the 2017 transaction was merely the implementation of the 2014 merger and accordingly the Commission could not reinvestigate the 2014 merger. The fact that the merger had been notified in 2014 meant that the appellant's intention to acquire additional shares in Tsogo in order to increase its shareholding from between 47% to more than 50% of Tsogo's issued share capital did not necessitate a further investigation by the Commission. By contrast, clause 3.6 circumvents this *dictum* by obligating Vodacom to seek the consent of the Commission if it wishes to increase such shareholding in Maziv beyond 34.95%.

[66] Similarly, clause 11 provides for an additional independent director to be appointed to the Maziv board and an additional independent director to be appointed to the nominations committee of the board. These changes reduce the influence that Vodacom will have on the Maziv board. In addition, Vodacom's veto rights may only be used in instances where the proposed business plan and budget would result in the impairment of Vodacom's investment in Maziv. The new clause 12.3 limits the veto right, stipulating that Vodacom shall not use its veto right in respect of any of Maziv's entities business plan and budget to restrict capital expenditure below the stated threshold. In short, these additions are designed to address the concern about the control that Vodacom could potentially have exercised over Maziv and accordingly therefore have a direct effect on the evaluation of the SLC test.

[67] Clause 10 of the revised conditions includes a commitment by Vodacom to achieve a 5G population coverage of 90% within five years. Accordingly, it has committed to R 60b of capital expenditure spent on rolling out no less than 564 5G

[14] *Competition Commission of South Africa v Hosken Consolidated Investments Ltd and Another* 2019 (3) SA 1 (CC).

sites per annum. Clause 10.2 also contains connecting additional fixed wireless access users over a five-year period with packages of 100GB or more per month. Of particular importance is clause 17.6 in terms of which Maziv undertakes that by [redacted] it will achieve an average connection rate across existing and new infrastructure in lower income areas which means in each suburb, town, village, township and informal settlement in South Africa where the average household income is less than or equal to R 254 495 per annum. That undertaking imposes obligations upon Maziv to achieve an average connection rate of at least... in reach areas and in key areas subject to a stipulated variation.

[68] Key areas are defined to mean an average household income of less than R 60 000 per annum which amount shall be adjusted for inflation annually. Reach areas means lower income areas that are not key areas. In short, clause 17.6 imposes an obligation upon Maziv to connect significant cohorts of the population in impoverished areas, at the very least areas where consumers would struggle to otherwise be connected. This particular provision will ensure that consumers pay the lowest possible price or in certain instances may not have to pay any price at all in order for Maziv to fulfil its obligation contained in clause 17.6.

[69] In summary, none of these particular provisions can be located in the five areas specified as public interest concerns. All of these address the most vulnerable consumers in society and accordingly must form part of an SLC test. To that extent therefore, even if the Tribunal's decision on foreclosure was to stand, an overall evaluation of an SLC test, taking into account the obligation to interpret the test within the prism of the Constitution and therefore within a broader concept of consumer welfare as indicated justifies the conclusion that these conditions outweigh the initial concerns articulated in the Tribunal's decision.

[70] In addition, the revised agreement unquestionably includes commitments which are required to be included in the determination of the public interest test. Clause 17.3 provides for the establishment of an Enterprise and Supply and Development Fund which has as identified beneficiaries, local contractors and distributors involved in infrastructure build and fibre uptake process fund. It will pay for business support

and/coaching services rendered to small and medium size enterprises (SME's) particularly vendors owned by historically disadvantaged persons in the telecommunications sector as well as support and development training of SME's including in respect of business accounting, finance planning, strategy communications, advertising governance and human resources. [redacted]. There is also an increase in procurement spend on goods manufactured and assembled and services provided in South Africa from a benchmark ratio of [redacted]% (of approximately [redacted]) to at least [redacted]%.

[71] The revised agreement also provides for the creation of 10 000 direct or indirect jobs, which clearly fall within the framework of the public interest concerns. The same would apply to an increase in an amount contributed by Maziv to an employment benefit scheme in the amount of [redacted]. To the extent that certain regions will be substantially affected by the commitments made by the merging parties, reference should be made to clause 10.4 whereby the merging parties commit to increase the number of police stations to be provided with fixed wireless access to 100. There is also a commitment to provide such access to 1573 health care facilities, and 210 libraries. Clause 17.2.1 provides free uncapped access to wholesale FTTH services to every school, both private and public.

[72] Manifestly, these conditions will have a material effect on poorer areas of the country which to date have been denied the obvious benefits of such access. When account is taken of the conditions which must now form part of the SLC test, and the various public interest commitments which are directed, to a significant extent, to benefitting the poorest sections of the South African population, there is little room for any other conclusion than that the decision by the Tribunal to refuse approval of the merger must be set aside.

[73] Two parties, Amandla Mobi and Wireless Access Providers Association were afforded the right to make submissions, notwithstanding that neither party had been

an intervenor in the proceedings before the Tribunal. They placed no new arguments before this Court that could have led to a different conclusion.

[74] In the result therefore the following order is made:

1. The Tribunal's order prohibiting the merger is set aside and replace with the following order:
    a) The merger is approved subject to conditions which are attached to this Judgment.
2. There is no order as to costs.

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Davis AJA

Appearances

For the first appellant:	D Turner SC and L Zikalala
Instructed by:	Cliffe Dekker Hofmeyr
For the second appellant:	J Wilson SC, N Luthuli and K Williams
Instructed by:	DLA Piper
For the third appellant:	M Le Roux SC and K Gwaza
Instructed by:	Werksmans Attorneys
For the respondent:	D Berger SC, N Muvangua and A Msimang
Instructed by:	Cheadle Thompson & Haysom Inc Attorneys
For MTN:	R Pearse SC and A Cachali
Instructed by:	a Werksmans Attorneys
For Amandla Mobi:	P Ngutshana SC, N Sakata and Y Pattni
Instructed by:	Mbuyisa Moleele Attorneys

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ANNEXURE A

Commission Case No: 2021Dec0018

In the large merger between:

VODACOM PROPRIETARY LIMITED

And

BUSINESS VENTURE INVESTMENTS NO 2213 PROPRIETARY LIMITED ("MAZIV"), A WHOLLY OWNED SUBSIDIARY OF COMMUNITY INVESTMENT VENTURES HOLDINGS PROPRIETARY LIMITED

CONDITIONS

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1 **DEFINITIONS**

1.1 "**Affected Employees**" means (i) in the case of Vodacom SA, Employees of Vodacom SA who will be relocated within Vodacom SA as a result of the Merger, being Vodacom SA Employees currently associated with the Vodacom FTTH business and the Vodacom Transfer Assets who will be redeployed to other divisions within Vodacom SA; and (ii) in the case of Maziv means all Employees of Vumatel and DFA and their respective wholly-owned subsidiaries at the Implementation Date;

1.2 "**Approval Date**" means the date of the approval by the Tribunal or the Competition Appeal Court, as the case may be, of the Merger;

1.3 "**B-BBEE Act**" means the Broad-Based Black Economic Empowerment Act 53 of 2003;

1.4 “**B-BBEE Ownership Status**” means the percentage ownership attributable to an entity by virtue of it being owned by Black People, as determined in terms of the Codes of Good Practice (excluding the modified flow through principle);

1.5 "**Black People**" means Africans, Coloureds and Indians (a) who are citizens of the Republic of South Africa by birth or decent; or (b) who became citizens of the Republic of South Africa by naturalisation – (i) before 27 April 1994; (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date, as per Schedule 1 of the Codes of Good Practice;

1.6 "**Business Day**" means Business Day as contemplated in section 1(1A) of the Competition Act;

1.7 **“Capex”** means capital expenditure;

1.8 "**CIVH**" means Community Investment Ventures Holdings Proprietary Limited;

1.9 “**CIVH/Vumatel Merger**” means the large merger involving CIVH and Vumatel with Tribunal case number LM109Jul18;

1.10 "**Codes of Good Practice**" means the Codes of Good Practice on Broad-Based Black Economic Empowerment published by the Minister of Trade, Industry and Competition under section 9.1 of the B-BBEE Act;

1.11 “**Committed Expenditure**” means planned corporate social investment expenditure of the Maziv Group that has been included in the approved Maziv Group budget for the 2024 financial year;

1.12 **“Commission”** means the Competition Commission of South Africa.

1.13 "**Competition Act**" means the Competition Act 89 of 1998;

1.14 "**Competition Appeal Court**" means the Competition Appeal Court of South Africa.

1.15 **“Conditions”** mean these conditions;

1.16 "**Confidential Information**" means trade, business or strategic information that has particular economic value and is not publicly or generally available to or known by others;

1.17 "**Defaulting Shareholder**" means any shareholder in Maziv which for a period of 7 (seven) years from the Implementation Date, or for as long as they are shareholders of Maziv (whichever is the shortest period), fails to maintain a B-BBEE Ownership Status of at least 30% (thirty per centum) measured in terms of the ICT Sector Codes (but excluding the modified flow through principle) for so long as the shares of Maziv are unlisted;

1.18 “**Divestiture**” means the sale, either collectively or individually, of the overlapping infrastructure referred to in clause 8.1 to one or more Purchasers;

1.19 “**Divestiture Agreement**” means the written sale and purchase agreement(s) to be entered into between Maziv and/or Vumatel and the Purchaser(s) in respect of the Divestiture.

1.20 **“DFA”** means Dark Fibre Africa Proprietary Limited;

1.21 **“DTIC”** means the Department of Trade, Industry and Competition;

1.22 "**Employee**" means any person who is an employee of any of the Merger Parties or, where the context so requires, their wholly owned subsidiaries, in terms of South African labour law;

1.23 "**Employee Benefit Scheme**" means an employee share scheme (or alternatively a profit participation scheme) to be established for the benefit of employees of the Maziv Group in terms of clause 17.8.1;

1.24 "**Excluded Employee**" means any person who is employed by Vodacom SA (or has during the preceding six months been employed by Vodacom SA) and/or any person who serves in (or has during the preceding six months served in) any Excluded Role;

1.25 "**Excluded Role**" means any role which entails the relevant person:

1.25.1 serving on (i) the Vodacom Group board of directors, (ii) the Vodacom SA board of directors, or (iii) the Vodacom SA Executive Committee; and/or

1.25.2 being involved in the effective management of any business of the Vodacom SA Group which provides products or services in South Africa that are reasonable substitutes for products or services provided by Maziv Group in South Africa, including:

1.25.2.1 Vodacom SA Group's Consumer Business Unit;

1.25.2.2 Vodacom SA Group's ISP business, in relation to the supply of retail FTTH services to residential customers and retail FTTB services to businesses.

1.25.2.3 Vodacom SA Group's Enterprise Business Unit (EBU); and

1.25.2.4 Vodacom SA Group's Wholesale business, which provides services on its national long-haul fibre and the provision of lit or managed services, such as Carrier Connect Metro and Access products (or the division, such as the EBU business unit, in which the provision of lit or managed services will reside after the Implementation Date);

1.26 **"FTTB"** means fibre to the business;

1.27 **"FTTH"** means fibre to the home;

1.28 **"FTTS"** means fibre to the site;

1.29 "**First Divestiture Period**" means a period of [redacted] from the Implementation Date;

1.30 **"Fixed Mobile Services**" means the operation of wireless communication links used to connect two fixed locations (for example tower to end user) by a Mobile Network Operator but not including microwave backhaul;

1.31 **"HDP"** means historically disadvantaged persons within the meaning of the Competition Act;

1.32 **"Herotel"** means Hero Telecoms Proprietary Limited;

1.33 **"Herotel Competitively Sensitive Information"** means Confidential Information belonging to Herotel Group, the exchange of which could result in a contravention of section 4(1)(a) or (b) and/or section 5(1) of the Competition Act, including any and all information relating to:

1.33.1 pricing – including pricing of products, prices/rebates/discounts offered to customers and/or planned price changes;

1.33.2 customer lists, customer-specific information (including details of customers' agreements with Herotel and their roll-out plans), data relating to customers and/or client strategy; specific subscriber contact details;

1.33.3 the portions of its business plan over which Vodacom SA is not entitled to exercise a veto right (and thus not have access to), as contemplated in clause 12.8 below;

1.33.4 detailed costs, turnovers, budgets, sales figures in each instance in respect of particular products and customers;

1.33.5 research and development programmes;

1.33.6 capacity information;

1.33.7 quality of services;

1.33.8 margin information of products or in relation to customers;

1.33.9 future rollout plans, future product developments, and/or present or future technologies to be utilised in such plans or developments; and/or

1.33.10 presentations to any planning committee, including submissions, presentations and minutes;

1.34 "**Herotel Group**" means Herotel and its subsidiaries from time to time;

1.35 "**ICT Sector Codes**" means the Code of Good Practice on Broad Based Black Economic Empowerment for the Information Communications Technology sector published by the Minister of Trade, Industry and Competition in Government Gazette No. 40404 on 7 November 2016 in terms of the B-BBEE Act;

1.36 **"ISP"** means any licensed internet service provider;

1.37 "**Implementation Date**" means the date after the Approval Date on which the Merger is implemented by the Parties;

1.38 "**Key Areas**" means each suburb, town, village, township and/or informal settlement in South Africa where the average household income is less than or equal to the Key Income Value;

1.39 "**Key Income Value**" means at the Approval Date shall mean an average household income of less than R60,000 (sixty thousand Rand) per annum which amount shall be adjusted for inflation annually on each anniversary of the Approval Date by a percentage equal to the percentage change in the consumer price index, as per the most recent information published by Statistics South Africa or its successor;

1.40 **"Licensed"** means an entity duly licensed to provide electronic communications services and/or electronic communications network services as defined in the Electronic Communications Act 36 of 2005;

1.41 "**Lower Income Areas**" means each suburb, town, village, township and/or informal settlement in South Africa where the average household income is less than or equal to the Lower Income Value. For clarity, this definition comprises both Reach Areas and Key Areas;

1.42 **"Lower Income Value"** at the Approval Date shall mean an average household income of less than R254,495 per annum which amount shall be adjusted for inflation annually on each anniversary of the Approval Date by a percentage equal to the percentage change in the consumer price index, as per the most recent information published by Statistics South Africa or its successor;

1.43 **"MOI"** means the Memorandum of Incorporation of Maziv;

1.44 "**Maziv**" means Maziv Proprietary Limited (previously named Business Venture Investments No 2213 Proprietary Limited);

1.45 **"Maziv Group"** means Maziv and its subsidiaries from time to time and will include the Herotel Group from the Vumatel/Herotel Implementation Date;

1.46 "**Maziv's Competitively Sensitive Information**" means Confidential Information belonging to Maziv Group, the exchange of which could result in a contravention of section 4(1)(a) or (b) and/or section 5(1) of the Competition Act, including any and all information relating to:

1.46.1 pricing – including pricing of products, prices/rebates/discounts offered to customers and/or planned price changes;

1.46.2 customer lists, customer-specific information (including details of customers' agreements with Maziv and their roll-out plans), data relating to customers and/or client strategy; specific subscriber contact details;

1.46.3 the portions of its business plan over which Vodacom SA is not entitled to exercise a veto right in relation to (and thus not have access to), as contemplated in clause 12.8 below;

1.46.4 detailed costs, turnovers, budgets, sales figures in each instance in respect of particular products and customers;

1.46.5 capacity information,

1.46.6 quality of services;

1.46.7 research and development programmes;

1.46.8 margin information of products or in relation to customers;

1.46.9 future rollout plans, future product developments, and/or present or future technologies to be utilised in such plans or developments; and/or

1.46.10 presentations to any planning committee, including submissions, presentations and minutes;

1.47 "**Merger**" means the proposed acquisition by Vodacom SA of control in terms of section 12(2)(g) of the Competition Act of Maziv, and the proposed acquisition by Maziv of the Vodacom FTTH Business and the Vodacom Transfer Assets;

1.48 "**Merger Parties**" means the parties to the Merger namely Vodacom SA and Maziv Group;

1.49 **"Mobile Network Operator**" means a Licensed operator that provides wireless voice and data communication for its subscribed users;

1.50 "**Monitoring Period**" means a period commencing on the Implementation Date and ending 30 (thirty) days after the last monitoring report referred to in clause 19.11of the Conditions has been submitted to the Commission and the Monitoring Trustee by Maziv, in accordance with clause 19.11 of the Conditions;

1.51 "**Monitoring Trustee**" means one or more natural or legal persons approved by the Commission and appointed by Maziv, and who shall have the duties as set out in the Monitoring Trustee Mandate;

1.52 "**Monitoring Trustee Mandate**" means the mandate annexed hereto marked **Appendix B**;

1.53 "**Ordinary Course of Business**" means the business conducted as a reasonable and prudent operator operating in accordance with the business plan of the business;

1.54 **"Product Rules**" means the DFA product-specific product rules for the various DFA products and services, including product-specific SLAs;

1.55 **"Purchaser"** means an acquirer of the whole or part of the overlapping infrastructure referred to in clause 8.1;

1.56 "**Reach Areas**" means Lower Income Areas that are not Key Areas;

1.57 **"Reasonably Capable"** means, at the time that a service is requested by a potential customer, that: (i) the Maziv Group has existing infrastructure with available fibre capacity on the duct route required to provide the service, (ii) wayleaves and/or all other approvals required to provide the service have been or can be obtained, (iii) the provision of such services is reasonably feasible (technically and/or commercially) with the application of good faith and reasonable endeavours; and (iv) additional capital expenditure or direct costs do not need to be incurred unless the customer is willing to commit to pay for such additional costs, it being recorded that the Maziv Group shall not reserve any Wholesale Metropolitan Fibre Service, Wholesale FTTH Service, Wholesale FTTB Service and/or Wholesale Key Service for any entity within the Maziv Group and/or Vodacom SA Group;

1.58 **"Reseller"** means a person who (a) acquires, through lease or other commercial arrangement, any electronic communications network service or electronic communications service; and (b) makes such electronic communications network service or electronic communications service available to subscribers for a fee, whether or not such electronic communications network services or electronic communications services made available by the reseller (i) are identical to the electronic communications network service or electronic communications service acquired; (ii) are packaged, bundled or otherwise re-grouped to form new or varied service offerings; (iii) are combined, linked or used in connection with electronic communications networks or electronic communications facilities owned by the reseller; and/or (iv) add value to such electronic communications network services or electronic communications services;

1.59 "**SLA"** means service level and/or related agreements as described in DFA's Product Rules and/or customer agreements or Vumatel Framework Agreements;

1.60 "**SMEs**" means small and medium businesses, as defined in the Competition Act;

1.61 "**Substantial Fibre Infrastructure**" means fibre infrastructure that costs more than R15,000 (fifteen thousand Rand) adjusted for inflation annually on the anniversary of the Approval Date by a percentage equal to the percentage change in the consumer price index, as published by Statistics South Africa or its successor;

1.62 **"Third Party FTTB ISPs"** means Licensed ISPs (including ISPs in the Vodacom SA Group) that provide retail FTTB services to enterprise end consumers and that meet the Maziv Group's minimum criteria for onboarding;

1.63 **"Third Party FTTB Providers"** means Licensed providers of wholesale FTTB Services (including entities in the Vodacom SA Group, if any) and that meet the Maziv Group's minimum criteria for onboarding;

1.64 **"Third Party FTTH ISPs"** means Licensed ISPs (including ISPs in the Vodacom SA Group) that provide Retail FTTH services to end consumers and that meet the Maziv Group's minimum criteria for onboarding;

1.65 **"Third Party FTTH Providers"** means Licensed providers of wholesale FTTH services (including entities in the Vodacom SA Group, if any) and that meet the Maziv Group's minimum criteria for onboarding;

1.66 **"Third Party Herotel Resellers"** means Licensed or un-Licensed Resellers of Wholesale Herotel Services that meet the Herotel Group's minimum criteria for onboarding (including Third Party Herotel Resellers in the Vodacom SA Group, if any);

1.67 **"Third Party Key Resellers"** means Licensed or un-Licensed Resellers of Wholesale Key Services that meet the Maziv Group's minimum criteria for onboarding (including Third Party Key Resellers in the Vodacom SA Group);

1.68 **"Transfer Pricing"** means the Maziv Group's internal transfer pricing for Wholesale Metropolitan Fibre Services, Wholesale FTTH Services, or Wholesale FTTB Services supplied by the Maziv Group to FTTH Providers, FTTB Providers, FTTB ISPs, FTTH ISPs, or Mobile Network Operators that are controlled by the Maziv Group;

1.69 **"Tribunal"** means the Competition Tribunal of South Africa;

1.70 **"Trustee Divestiture Period"** means a period of [redacted] following the expiry of the First Divestiture Period;

1.71 "**Underserviced Areas**" means areas listed in Annexure A of the Under-serviced Area Definitions Regulations, 2012 and as contemplated in Vodacom's radio frequency spectrum licence No.: IMT/AMD/RF0002/November/2023;

1.72 "**Vumatel/Herotel Approval Date"** means the date of the approval by the Tribunal or the Competition Appeal Court, as the case may be, of the Vumatel/Herotel Merger;

1.73 **"Vumatel/Herotel Implementation Date"** means the date after the Vumatel/Herotel Approval Date on which the Vumatel/Herotel Merger is implemented;

1.74 **"Vumatel/Herotel Merger"** means the proposed acquisition by Vumatel of more than 50% (fifty percent) of the issued share capital of Herotel, submitted to the Commission for approval on 30 June 2022 under Commission case number 2022Jun0077;

1.75 "**Vodacom's Competitively Sensitive Information**" means Confidential Information belonging to Vodacom SA Group, the exchange of which could result in a contravention of section 4(1)(a) or (b) and/or section 5(1) of the Competition Act, including any and all information relating to:

1.75.1 pricing – including pricing of products, prices/rebates/discounts offered to customers and/or planned price changes;

1.75.2 customer lists, customer-specific information (including details of customers' agreements with Vodacom SA and their roll-out plans), data relating to customers and/or client strategy, specific subscriber contact details;

1.75.3 its business plan;

1.75.4 detailed costs, turnovers, budgets, sales figures in each instance in respect of particular products and customers;

1.75.5 capacity information, quality of services;

1.75.6 research and development programmes;

1.75.7 margin information of products or in relation to customers;

1.75.8 future rollout plans, future product developments, and/or present or future technologies to be utilised in such plans or developments; and/or

1.75.9 presentations to any planning committee, including submissions, presentations and minutes;

1.76 **“Vodacom Fixed Mobile Services Rate Card Prices”** means prices charged by Vodacom SA Group for Fixed Mobile Services, as listed on Vodacom SA Group's rate cards;

1.77 "**Vodacom FTTH Business**” means the FTTH business of Vodacom SA comprised of Vodacom SA’s FTTH network infrastructure and related assets (including contracts and fixed assets);

1.78 “**Vodacom Group**" means Vodacom Group Limited;

1.79 "**Vodacom SA**" means Vodacom Proprietary Limited (for the purposes of clarity a reference to Vodacom SA shall not include a reference to Vodacom SA's nominated directors appointed to the Maziv board);

1.80 **“Vodacom SA Group”** means Vodacom SA, all firms directly or indirectly controlled by Vodacom SA, all firms directly or indirectly controlling Vodacom SA and all firms directly or indirectly controlled by the firms that directly or indirectly control Vodacom SA including any infrastructure companies directly or indirectly controlled by Vodacom SA;

1.81 "**Vodacom Transfer Assets**" means Vodacom SA's fibre infrastructure on metro fibre routes and FTTB access routes into buildings;

1.82 "**Vumatel**" means Vumatel Proprietary Limited;

1.83 "**Vumatel Framework Agreements**" means standardised frameworks for agreements between Vumatel and ISPs;

1.84 **"Wholesale FTTB Services"** means wholesale FTTB services provided by the Maziv Group to Third Party FTTB ISPs or Third Party FTTB Providers (including to the Vodacom SA Group);

1.85 **"Wholesale FTTH Services"** means wholesale FTTH services provided by the Maziv Group to Third Party FTTH ISPs (including to the Vodacom SA Group);

1.86 **"Wholesale Herotel Services"** means wholesale technology-agnostic internet services provided by the Herotel Group to Third Party ISPs or Third Party Herotel Resellers;

1.87 **"Wholesale Key Services"** means wholesale technology-agnostic internet services provided by the Maziv Group to third party ISPs or Third Party Key Resellers (including to the Vodacom SA Group); and

1.88 **"Wholesale Metropolitan Fibre Services**" means metropolitan backhaul connectivity which include connectivity services between one or more data centres, points of presence and base station towers, FTTS and dark and lit metropolitan backhaul fibre products provided by the Maziv Group to Third Party FTTH ISPs, Third Party FTTB ISPs, Third Party FTTH Providers, Third Party FTTB Providers, or Mobile Network Operators anywhere in South Africa and does not, in respect of any customer, or potential customer (including the Maziv Group or Vodacom SA Group) include access to infrastructure not provided for in the Product Rules and Vumatel Framework Agreements (unless the Maziv Group provides access to infrastructure to Vodacom SA Group, in which case such access to infrastructure shall not be excluded).

2 DURATION AND APPLICATION

2.1 Subject to clause 2.2, the obligations imposed on the Merger Parties in these Conditions will, unless specified otherwise, apply for as long as Vodacom SA controls Maziv in terms of section 12 of the Competition Act (or until such earlier date on which the subject of any clause is superseded by legislation or regulation binding on the Maziv Group or Vodacom SA Group that conflicts with the condition).

2.2 Notwithstanding the provisions of clause 2.1, the public interest Conditions set out in clauses 10 and 15 to 17 shall continue to apply during the time periods set out in those clauses respectively.

3 **NOTIFICATION OF MERGERS OR TRANSFERS AND RESTRICTIONS**

3.1 The Merger Parties shall notify all mergers in respect of which any firm in the Maziv Group is an acquiring firm or target firm, including small mergers, to the Commission and shall not implement any such merger until it has been approved by the Commission, Tribunal or Competition Appeal Court, whichever is the authority of final instance in respect of that merger.

3.2 Maziv shall notify the Commission if the Maziv Group intends to transfer any last mile fibre assets (including any customer contracts for the supply of Wholesale FTTH Services, or Wholesale FTTB Services, commercial arrangements, or businesses or parts thereof) to the Herotel Group post-Approval Date and shall not implement such a transfer without the Commission’s written consent. This condition shall cease to apply from the Vumatel/Herotel Implementation Date.

3.3 Vodacom SA and Maziv Group (excluding Herotel Group) shall not use Herotel metropolitan backhaul, FTTH or FTTB infrastructure to provide Wholesale FTTB Services, Wholesale FTTH Services, Wholesale Key Services or Wholesale Metropolitan Services, nor shall they sell any such services through the Herotel Group, unless such services are offered on an open access basis and on non-discriminatory terms by Herotel Group.

3.4 Vodacom SA and Maziv Group (excluding Herotel Group) shall not procure or receive any services from Herotel Group unless such services are offered on an open access basis and on non-discriminatory terms by Herotel Group.

3.5 Vodacom SA and Maziv Group (excluding Herotel Group) shall not provide Wholesale FTTB Services, Wholesale FTTH Services, Wholesale Key Services or Wholesale Metropolitan Services through, on, connecting to, or otherwise using the Herotel Group network, unless access to the Herotel Group network is offered on an open access basis and on non-discriminatory terms.

3.6 Vodacom undertakes that it will not increase its shareholding in Maziv to beyond 34.95% without the consent of the Commission.

3.7 Prior to (1) Vodacom beneficially owning more than one half of the issued share capital of Maziv (thereby acquiring control as contemplated in section 12(2)(a) of the Competition Act), (2) Vodacom becoming entitled to vote a majority of the votes that may be cast at a general meeting of Maziv, either directly or through a controlled entity of Vodacom (thereby acquiring control as contemplated in section 12(2)(b) of the Competition Act) or (3) Vodacom being able to appoint of veto the appointment of a majority of the directors of Maziv (thereby acquiring control as contemplated in section 2 (2)(c) of the Competition Act), Vodacom and Maziv shall file and obtain merger approval from the Competition authorities.

4 **OPEN ACCESS**

4.1 Subject to clause 6 below, the Maziv Group may not refuse to offer:

4.1.1 Wholesale Metropolitan Fibre Services to any Third Party FTTH ISP, Third Party FTTB ISP, Third Party FTTH Provider, Third Party FTTB Provider, or Mobile Network Operator, if and for as long as it is Reasonably Capable of rendering such Wholesale Metropolitan Fibre Services in the Ordinary Course of Business of the Maziv Group;

4.1.2 Wholesale FTTH Services to any Third Party FTTH ISP, if and for as long as it is Reasonably Capable of rendering such Wholesale FTTH Services in the Ordinary Course of Business of the Maziv Group;

4.1.3 Wholesale FTTB Services to any Third Party FTTB ISP or Third Party FTTB Provider, if and for as long as it is Reasonably Capable of rendering such Wholesale FTTB Services in the Ordinary Course of Business of the Maziv Group;

4.1.4 Wholesale Key Services to any third party ISP or Third Party Key Reseller for re-sale, if and for as long as it is Reasonably Capable of offering such Wholesale Key Services in the Ordinary Course of Business of the Maziv Group; and/or

4.1.5 Wholesale Herotel Services to any third party ISP or Third Party Herotel Reseller for re-sale, if and for as long as it is Reasonably Capable of offering such Wholesale Herotel Services in the Ordinary Course of Business of the Herotel Group.

4.2 Maziv Group shall, for as long as it supplies dark fibre services to Vodacom SA Group, Maziv Group and/or any other customer in South Africa, not cease to supply dark fibre services to third parties and shall not terminate any contracts concluded prior to the Implementation Date for the provision of dark fibre services. Dark fibre services supplied by the Maziv Group to any party in South Africa shall be provided on an open access and non-discriminatory basis as provided for in clauses 4.1 above and 5 below. This clause 4.2 shall not prevent the Maziv Group from terminating any contract for dark fibre services as a result of breach of the terms of such contract.

5 NON-DISCRIMINATORY TERMS

5.1 Subject to clause 6 below, the Maziv Group shall provide Wholesale Metropolitan Fibre Services, Wholesale FTTH Services, Wholesale FTTB Services on terms and conditions, including prices, which are:

5.1.1 transparent, in that key component elements of the pricing of products are set out separately in rate cards and, where applicable, reflected in Transfer Pricing so that it is possible to compare pricing applied to FTTH Providers, FTTB

Providers, FTTB ISPs, FTTH ISPs, or Mobile Network Operators that operate within, or are controlled by, the Maziv Group, the Herotel Group, or the Vodacom SA Group, versus those applied to third parties; and

5.1.2 non-discriminatory, in that the Maziv Group shall (subject to clauses 5.2 and 5.3) offer standard rate card prices to its third party customers and to the Maziv Group, the Herotel Group and Vodacom SA Group for equivalent services, and shall offer the Maziv Group, the Herotel Group and Vodacom SA Group no advantage in respect of pricing, requisite quality, hand-off locations or demarcation points, and timelines and security of delivery for the supply of Wholesale Metropolitan Fibre Services, Wholesale FTTH Services, or Wholesale FTTB Services.

5.2 The requirements in clause 5.1.2. shall not preclude the Maziv Group from offering prices to its third-party customers that are lower than the standard rate card prices. The Maziv Group may therefore charge third party customers less than its rate card prices but may never charge third party customers more than its rate card prices.

5.3 The requirements in clause 5.1.2. shall not preclude the Maziv Group from offering the Maziv Group, the Herotel Group or Vodacom SA Group prices that are lower than the standard rate card prices in instances where discounts are given in order to match a legitimate alternative competitor quote received by the Maziv Group, the Herotel Group or Vodacom SA Group for the same product or service, provided that Maziv Group notifies the Commission and the Monitoring Trustee of such discounted price and provides the Commission and the Monitoring Trustee with evidence of the alternative competitor quote that the discounted price seeks to meet. The Maziv Group may therefore only charge Maziv Group, the Herotel Group or Vodacom SA Group less than its standard rate card prices to match an alternative competitor quote and if Maziv Group has provided evidence of the alternative competitor quote to the Commission and the Monitoring Trustee.

5.4 Subject to clause 6 below, the Maziv Group shall provide Wholesale Key Services to third party ISPs and Third Party Key Resellers and Wholesale Herotel Services to third party ISPs and Third Party Herotel Resellers for re-sale on terms and conditions, including prices, which are:

5.4.1 transparent, so that it is possible to compare pricing applied to ISPs, Herotel Resellers and Key Resellers that operate within, or are controlled by, the Maziv Group, the Herotel Group or the Vodacom SA Group, versus those applied to third parties; and

5.4.2 non-discriminatory, in that the Maziv Group shall offer Wholesale Key Services to third party ISPs and Third Party Key Resellers and Wholesale Herotel Services to third party ISPs and Third Party Herotel Resellers at the same price that the Maziv Group offers Wholesale Key Services to ISPs and Key Resellers or

Wholesale Herotel Services to third party ISPs and Third Party Herotel Resellers that operate within, or are controlled by, the Maziv Group, the Herotel Group or the Vodacom SA Group, and shall offer the Maziv Group, the Herotel Group and Vodacom SA Group no advantage in respect of pricing, requisite quality, and timeliness and security of delivery for the supply of Wholesale Key Services or Wholesale Herotel Services.

5.5 The Maziv Group shall employ best endeavours to ensure that Wholesale Metropolitan Fibre Services, Wholesale FTTH Services, Wholesale FTTB Services and Wholesale Key Services are provided to customers (including entities within the Maziv Group) in line with product-specific terms and conditions, as described in the Product Rules, or Vumatel Framework Agreements, which require such services to be provided on an equal and non-preferential basis in respect of:

5.5.1 resolution of logged incidents;

5.5.2 timely access to the network services; and

5.5.3 active service availability

and shall ensure that, if Maziv Group is unable to comply with such product-specific terms and conditions, as described in the Product Rules, or Vumatel Framework Agreements, that any such failure to comply is remedied without delay.

5.6 The Maziv Group shall publish its standard Product Rules (including SLA terms) and Vumatel Framework Agreements on its website within 10 (ten) Business Days of the Implementation Date and, if the Product Rules or Vumatel Framework Agreements are amended, ensure that the amended Product Rules or Vumatel Framework Agreements are published on its website within 10 (ten) Business Days from the amendment having come into effect.

5.7 The Maziv Group shall ensure that compliance with the Product Rules and Vumatel Framework Agreements is consistently applied and monitored.

5.8 The non-discrimination obligations in this clause 5 apply to all contracts (including proposals made to third parties participating in a tender process) for the provision of the relevant services by the Maziv Group that are concluded following the Implementation Date, as well as to all adjustments to the prices or other terms of all contracts for the provision of the relevant services by the Maziv Group that are made by the Maziv Group after the Implementation Date, in respect of contracts concluded before or after the Implementation Date.

6 EXCLUSIONS

6.1 The open access Conditions in clause 4 and the non-discrimination clause in 5 shall not be interpreted to create any obligation on the Maziv Group to supply Wholesale Key Services, Wholesale Metropolitan Fibre Services, Wholesale FTTH Services, or Wholesale FTTB Services to any third party who refuses or fails to adhere to the general commercial terms subject to which the services are offered, or who commits a breach of the terms subject to which the services are rendered.

6.2 Other than the Condition in clause 4.1.5, the open access Conditions in clause 4 shall not apply to the Herotel Group either before or after the Vumatel/Herotel Implementation Date.

6.3 The open access Condition in 4.1.5 and the non-discrimination Conditions in clause 5.4 shall not apply until 6 (six) months after the Vumatel/Herotel Implementation Date.

7 EXPANSION PLANS

7.1 Maziv Group shall publish all relevant information (comprising live, work in progress and planned routes (i.e. routes that will be constructed)) about all of its own metropolitan (including FTTS), FTTB and FTTH fibre infrastructure network expansion programmes on its website at least every second week, without providing this information to the Vodacom SA Group, Herotel Group or the Maziv Group's own FTTH providers, FTTB providers, FTTS providers or ISPs prior to publication on the website.

7.2 For the avoidance of doubt, this obligation does not require Maziv Group to publish plans to build infrastructure specifically in order to serve a third party customer's expansion plans. Such build plans will constitute Confidential Information and will be protected by Maziv Group's obligations in clauses 14.4and 14.5.

8 DIVESTITURE OF WHOLESALE FIBRE INFRASTRUCTURE

8.1 In all areas, including suburbs, estates, or business parks, where Vodacom SA Group has rolled out infrastructure which: (i) has overbuilt Maziv Group FTTH infrastructure as at the Implementation Date, (ii) is being transferred to Maziv in terms of the Merger; and (iii) Vodacom SA is using to provide Wholesale FTTH Services as at the Implementation Date, the Merger Parties shall apply good faith and best endeavours to, by the end of the First Divestiture Period, conclude one or more Divestiture Agreements, with one or more Purchasers.

8.2 Maziv and/or Vumatel must conduct the Divestiture subject to a transparent and competitive bidding process to facilitate broad participation by prospective Purchasers.

8.3 If Maziv or Vumatel is not able to conclude the Divestiture Agreement(s) for the Divestiture within the First Divestiture Period, the Monitoring Trustee will have an exclusive mandate and a power of attorney to, during the Trustee Divestiture Period, conclude one or more Divestiture Agreement(s), with one or more Purchasers.

8.4 The Monitoring Trustee shall, during the Trustee Divestiture Period have sole discretion to determine fair value for the overlapping infrastructure and whether the Monitoring Trustee accepts an offer from any Purchaser shall not require engagement with, or be subject to, the input of the Merger Parties.

8.5 A Purchaser of the overlapping infrastructure referred to in clause 8.1 shall be a firm:

8.5.1 that does not own FTTH infrastructure that overlaps with FTTH infrastructure being purchased; and

8.5.2 that is independent from, and unrelated to, either of the Merger Parties.

8.6 Once a Divestiture Agreement has been concluded, the parties to that Divestiture Agreement must use their reasonable commercial endeavours to ensure that the Divestiture Agreement becomes unconditional and that it is implemented as soon as practical after the date of signature of the Divestiture Agreement, subject to any regulatory approvals which may apply. This shall be included as a provision in each Divestiture Agreement.

8.7 The Divestiture (or any part thereof) must be notified to the Commission, in the prescribed form, as a merger, prior to its implementation and irrespective of whether the mandatory thresholds for notification of mergers contemplated by the regulations to the Act, are met.

8.8 Maziv shall, from the Implementation Date until the overlapping infrastructure referred to in clause 8.1 has been sold:

8.8.1 preserve and maintain the the overlapping infrastructure referred to in clause 8.1;

8.8.2 manage the overlapping infrastructure referred to in clause 8.1 with reasonable care and skill, pursuant to good business practices.

9 PRICING OF LOWEST PRICED WHOLESALE FTTH SERVICES AND WHOLESALE KEY SERVICES

9.1 Maziv shall, for a period of [redacted] from the Implementation Date, not cease to offer for sale (i) its lowest priced Wholesale FTTH Service in Reach Areas, or (ii) its lowest priced Wholesale Key Service in Key Areas, that are on offer as at the Approval Date, however, if market conditions change to such an extent that it becomes impossible for Maziv to comply with the conditions in this clause 9.1, Maziv shall be permitted to approach the Commission for a variation of the conditions in this clause 9.1.

9.2 Maziv shall, for a period of [redacted] from the Implementation Date, not increase the price of (i) its lowest priced Wholesale FTTH Service in Reach Areas, or (ii) its lowest priced Wholesale Key Service in Key Areas, as at the Approval Date, [redacted]

[redacted]

10 **VODACOM SA GROUP ROLL-OUT COMMITMENTS**

10.1 Vodacom SA Group shall spend at least R60,000,000,000 (sixty billion Rand) in Capex in South Africa over a 5 (five) year period from the Implementation Date at a rate of approximately R12,000,000,000 (twelve billion Rand) per annum, including for the roll out of no less than 564 (five hundred and sixty-four) 5G sites in South Africa on average per annum.

10.2 Vodacom SA Group currently offers 5G FWA in all areas where 5G is available and intends to continue this policy. Consequently, wherever Vodacom SA Group continues to roll out 5G infrastructure, Vodacom SA Group shall offer 5G FWA immediately, at competitive pricing. Furthermore, Vodacom SA undertakes (1) to achieve 90% 5G population coverage within 5 years of the Approval Date and (2) to add an additional [redacted] FWA and/or 100 Gig connections by the end of 2030 (for the purposes of this clause "100 Gig" connections are packages of 100 Gigs or more per month). A [redacted] variation will permitted in respect of such [redacted] FWA and/or 100 Gig connections, provided that the variation is caught up by 31 December 2031)

10.3 Vodacom SA Group undertakes that during each year until March 2030, measured at the end of March 2025, and each anniversary thereof, it shall roll out no less than 200 5G sites annually in Underserviced Areas.

10.4 Vodacom SA shall provide mobile broadband access to the 100 police stations listed in Appendix "D" as well as to 1573 Healthcare Facilities (i.e. Government clinics and Government hospitals) and 210 libraries on the terms contemplated in Vodacom 2024 Spectrum Licence (clause 1.3.5 of Radio Spectrum Licence No.: IMT/AMD/RF0002/November/2023) through FWA router/s with a bundle of 500GB zero-rated data free of charge, subject to the fair usage restriction contained in the applicable terms and conditions, as soon as practically possible but in any event by no later than 2 (two) years after the Implementation Date, in the case of the 100 police stations and, in the case of the Healthcare Facilities and libraries, within the period contemplated in the Vodacom 2024 Spectrum Licence.

11 **VODACOM SA NOMINEES ON MAZIV GROUP BOARDS AND INDEPENDENT DIRECTORS**

11.1 For as long as Vodacom SA can appoint or nominate individuals to the board of directors of any entity within the Maziv Group, it shall ensure that its appointees or nominees shall not include Excluded Employees, or individuals who have been Excluded Employees in the 2 (two) years preceding their appointment or nomination and will notify the Commission of the identity of each individual appointed or nominated to the board of directors of any entity within the Maziv Group within 10 (ten) Business Days of such appointment or nomination.

11.2 Vodacom SA and CIVH agree that an additional independent director shall be added to Maziv's board of directors (increasing the number of independent directors from 3 (three) to 4 (four) in terms of clause 6.2.5.1 of the MOI).

11.3 The number of independent directors on the nominations committee of the Maziv board shall be increased from one to two (as per clause 6.3.17.1 (b) of the MOI).

11.4 Vodacom SA, as shareholder, shall not be entitled to approve or veto the appointment of the nomination of the independent directors appointed to the Maziv board as is currently the case in terms of clause 6.2.5.4 of the MOI.

11.5 The MOI shall within 10 (ten) Business Days of the Approval Date be amended to provide for the conditions set out in clauses 11.3 to 11.4.

12 **RESTRICTIONS REGARDING RESERVED MATTERS AND VODACOM SA SHAREHOLDER REPRESENTATION**

12.1 With reference to Vodacom SA’s representation at Maziv shareholder meetings, clause 6.2.6.1(a) of the MOI shall, within 10 (ten) Business Days of the Approval Date, be amended to provide that no person serving as a director on any Maziv Group entity’s board of directors shall be entitled to be a Vodacom SA representative at Maziv shareholder meetings.

12.2 Vodacom SA’s veto right in respect of any Maziv Group entity’s business plan and budget, as provided for in Schedule 2 of MOI, shall be restricted in that Vodacom may only use such veto in instances where the proposed business plan and budget would result in an impairment of Vodacom’s investment in Maziv.

12.3 Vodacom SA shall not use its veto right in respect of any Maziv Group entity’s business plan and budget, as provided for in Schedule 2 of MOI to restrict the capital expenditure of Maziv to below the numbers reflected in the Vodacom SA projected business plan and/or budget for Maziv (as provided to the Commission by Vodacom SA on 3 July 2025), however, if there is a fundamental change in the performance of Maziv's business, Vodacom will be permitted to approach the Commission for a variation of the condition in this clause 12.3.

12.4 In an event, where Vodacom SA exercises its veto in respect of any such entity’s business plan and budget, the relevant Maziv Group entity’s board shall present a plan to the satisfaction of controlling shareholders of Maziv for the preservation of the value of Maziv..

12.5 In addition, until such time as every controlling shareholder of Maziv has confirmed its support for the relevant Maziv Group entity’s business plan and budget, that entity shall continue to operate with the latest proposed business plan and budget recommended by the relevant board for shareholder approval.

12.6 The MOI shall within 10 (ten) Business Days of the Approval Date be amended to provide for the conditions set out in clauses 12.2 to 12.5 above.

12.7 For as long as Vodacom SA is a Maziv shareholder, Vodacom SA shall only be entitled to receive a redacted version of any proposed or approved budget and business plan of any Maziv Group entity in respect of which all detailed product-planning, product or customer-specific pricing and detailed roll-out plans have been removed.

12.8 Accordingly, a definition of "Vodacom SA Redacted Budget and Business Plan" shall within 10 (ten) Business Days of the Approval Date be inserted into Schedule 2 of the MOI (and shall remain there for as long as Vodacom SA remains a shareholder of Maziv) which reads as follows: "Vodacom SA Redacted Budget and Business Plan" shall mean any proposed or approved budget and business plan of the Company and/or the Group and/or any Group Member, which, if provided to Vodacom SA Group, shall be redacted to exclude product-planning, product- or customer-specific pricing and detailed roll-out plans in respect of any markets (or areas such as suburbs, estates or business parks) for FTTH/B fibre or specific routes for metro and backhaul fibre.

12.9 When any Maziv Group entity prepares and adopts any budget and business plan and shares it with Vodacom SA (in its capacity as a shareholder of Maziv), it must do so in a manner that is compliant with these Conditions.

13 FIXED MOBILE SERVICES PROVIDED BY VODACOM SA GROUP TO THE MAZIV GROUP

13.1 Vodacom SA Group shall from Implementation Date not provide Fixed Mobile Services to any party on wholesale terms that are discriminatory, i.e. such terms and conditions shall be the same (including in respect of pricing, requisite quality, and timeliness and security of delivery) as those offered to the Maziv Group, Herotel Group or any related entity for the supply of Fixed Mobile Services of like grade and quality and in equivalent transactions and measured on an aggregated basis per product category, per customer.

13.2 Vodacom SA Group shall from Implementation Date and for as long as Vodacom SA Group controls Maziv, only provide Fixed Mobile Services to the Maziv Group and Herotel Group at Vodacom Fixed Mobile Services Rate Card Prices, unless Vodacom SA notifies the Commission and the Monitoring Trustee of its intention to provide bespoke (customer-specific) Fixed Mobile Services to the Maziv Group or Herotel Group.

13.3 From Implementation Date and for as long as Vodacom SA Group controls Maziv, if Vodacom SA Group provides bespoke (customer-specific) Fixed Mobile Services to the Maziv Group or Herotel Group, such bespoke (customer-specific) Fixed Mobile Service shall also be offered to third parties and will be added to Vodacom SA's rate card within 10 (ten) Business Days of being sold and Vodacom SA shall notify the Commission and the Monitoring Trustee that such services have been added to the rate cards withing 5 (five) Business Days of adding the services to the rate cards.

14 CONFIDENTIALITY OF INFORMATION

14.1 Other than to comply with its obligations under clause 7, Maziv Group shall not, for as long as Vodacom SA is a shareholder of Maziv, discuss, disclose or share Maziv's Competitively Sensitive Information or Herotel Competitively Sensitive Information (if in Maziv Group's possession) in any form with Vodacom SA or any employee, representative or member of a division or firm within Vodacom SA Group (however such Competitively Sensitive Information may be shared with the appointed or nominated directors of Vodacom SA, subject to the provisions of the Confidentiality Undertaking referred to in clause 14.3 below).

14.2 For as long as Vodacom SA is a shareholder of Maziv, neither Vodacom SA, nor any Vodacom SA appointed or nominated director shall discuss, disclose or share Vodacom's Competitively Sensitive Information in relation to any company in the Vodacom SA Group (excluding the Maziv Group) in any form with Maziv or Herotel, or any employee, representative, or member of a division or firm within the Maziv Group or Herotel Group, other than to the extent that it is necessary for such information to be shared in order for a firm in the Maziv Group or Herotel Group to provide products or services to Vodacom SA Group.

14.3 The appointed or nominated directors of Vodacom SA contemplated in clause 11.1 shall be required to sign a Confidentiality Undertaking in favour of Maziv and Vodacom SA in which each such director undertakes not to divulge to:

14.3.1 Maziv Group or employees of Maziv Group any of Vodacom's Competitively Sensitive Information;

14.3.2 Vodacom SA or any employee, representative or member of a division or entity within the Vodacom SA Group any Confidential Information relating to third parties (including current and/or future expansion plans) that is disclosed to the Vodacom SA appointed or nominated director by the Maziv Group; and

14.3.3 Vodacom SA or any employee, representative or member of a division or entity within the Vodacom SA Group any of Maziv's Competitively Sensitive Information that is disclosed to the Vodacom SA appointed or nominated director by the Maziv Group.

14.4 Maziv Group shall, for as long as Vodacom SA is a shareholder of Maziv, use Confidential Information obtained by it from any party contracting with Maziv exclusively for the purpose of servicing such Third Party.

14.5 Maziv Group will, for as long as Vodacom SA is a shareholder of Maziv, procure that any Confidential Information it receives from any third party contracting with Maziv, including current and/or future expansion plans, is not divulged by Maziv Group to:

14.5.1 Any firm, entity, business unit or division (or employee, representative or member of such firm, entity, business unit or division) of Maziv Group that competes with such third party contracting with Maziv;

14.5.2 Herotel Group; or

14.5.3 Vodacom SA Group or any employee, representative or member of a division or entity within Vodacom SA Group (however, such Confidential Information may be shared with the appointed or nominated directors of Vodacom SA, subject to the provisions of the Confidentiality Undertaking referred to in clause 14.

15 **EMPLOYMENT**

15.1 Employment Guarantee

15.1.1 Maziv Group and Vodacom SA Group shall not retrench any Affected Employee as a result of the Merger for a period of 5 (five) years from the Implementation Date.

15.1.2 For the avoidance of doubt, retrenchments do not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act 66 of 1995 ("**LRA**"); (iv) resignations or retirements in the normal course; and (v) terminations in the normal course of business, including dismissals as a result of misconduct or poor performance, and necessary steps taken by Maziv Group and/or Vodacom SA Group in terms of section 189 or 189A of the LRA, should operational requirements in the Ordinary Course of Business that are not merger specific (i.e. not related to or as a result of the Merger) necessitate that such steps be taken.

15.2 Headcount Maintenance

15.2.1 Maziv shall ensure that Vumatel and DFA and their wholly owned subsidiaries shall maintain the total aggregate number of all Employees of Vumatel and DFA and their wholly owned subsidiaries as at the Approval Date, for a period of 5 (five) years from the Approval Date.

15.2.2 Should there, during such 5 (five) year period, be job losses in respect of Employees of Vumatel, DFA or their wholly owned subsidiaries that are unrelated the Merger, including dismissals as a result of poor performance, resignations and/or retirements in the normal course of business, Maziv shall ensure that Vumatel and/or DFA and/ or the relevant subsidiaries replace such Employees within a reasonable time period (which shall not exceed 6 (six) months after the job loss in question) in order to maintain the aggregate headcount referred to in clause 15.2.1.

16 **HEAD OFFICE**

16.1 For a period of 7 (seven) years from the Implementation Date, Maziv shall remain incorporated and headquartered in South Africa and place operational and strategic responsibility in the hands of local management in South Africa. Maziv shall remain a tax resident of South Africa.

17 **PUBLIC INTEREST**

17.1 B-BEEE

17.1.1 Vodacom SA and CIVH shall:

17.1.1.1 take all such steps as are necessary to ensure that the B-BBEE Ownership Status in Maziv shall not be less than [redacted] on the Implementation Date;

17.1.1.2 for a period of at least [redacted] from the Implementation Date, Vodacom SA and CIVH shall not dispose of or dilute their shareholding in Maziv (other than in respect of a listing of the shares of Maziv on the JSE) such that the B-BBEE Ownership Status in Maziv shall be reduced below [redacted].

17.1.2 For a period of [redacted] from the Implementation Date, or for as long as they are shareholders of Maziv (whichever is the shortest period), Vodacom SA and CIVH shall ensure that the Maziv MOI will require every Maziv shareholder to achieve and maintain a B-BBEE Ownership Status of at least [redacted] measured in terms of the ICT Sector Codes (but excluding the modified flow through principle).

17.1.3 A Defaulting Shareholder shall promptly notify Maziv and the other Maziv shareholders in writing that it has become a Defaulting Shareholder and it shall be allowed the longer of: [redacted], to remedy the breach. In addition, the Defaulting Shareholder shall:

17.1.3.1 at inception of the remedy period, provide Maziv with a written plan which sets out its plan to increase its B-BBEE Ownership Status by the next annual expiry of Maziv's current B-BBEE verification certificate to at least [redacted]; and

17.1.3.2 at the end of each calendar month during the remedy period, provide Maziv with a written report recording all progress made by that Defaulting Shareholder to remedy its breach.

17.1.4 If the Defaulting Shareholder fails to remedy its breach within the period contemplated in clause 17.1.3and, as a result of such breach Maziv's B-BBEE Ownership Status measured in accordance with clause 17.1.2remains below 30% (thirty per centum), then Vodacom SA, Maziv and CIVH shall take all necessary steps to ensure that a solution is implemented that will result in Maziv achieving at least a [redacted] B-BBEE Ownership Status within the shortest time possible in accordance with a practical and reasonable timetable determined by the Maziv board of directors in consultation with the DTIC.

17.1.5 If the remedy contemplated in clause 17.1.3 to 17.1.4 is successfully implemented in accordance with the provisions set out above, the temporary reduction in B-BEE Ownership shall not constitute a breach of these Conditions. However, if the remedy is not fully and successfully implemented in accordance with the abovementioned provisions set out above, this will constitute a material breach of these Conditions without the further opportunity to remedy it.

17.1.6 Maziv shall improve its current B-BBEE Score Card rating in terms of the ICT Sector Codes from its current [redacted] to a [redacted] B-BBEE Score Card rating within [redacted] of the Implementation Date and thereafter maintain such rating for a period of at least [redacted] after the Implementation Date, subject thereto that the ICT Codes are not amended to make the achievement of such level more onerous than as at the Approval Date.

17.2 Services to Schools, Libraries and Clinics

17.2.1 For a period of [redacted] from the Implementation Date, the Maziv Group shall provide [redacted] free uncapped access to Wholesale FTTH Services for every public library or public clinic and every public or private, *((i)* pre-primary school which forms part of and resides on the property of a qualifying primary school, *(ii)* primary school, *(iii)* high school, and *(iv)* special needs school) it passes provided they are registered with the relevant government authority (collectively "**School**"). The Maziv Group shall provide the aforementioned access to the extent that:

17.2.1.1 new service activation will only require the installation and/or connection of a drop cable from the public library, public clinic, or School's passed point (e.g. fibre-pedestal, manhole, chamber, utility-pole) to the public library, public clinic, or School; and

17.2.1.2 the connection will not require installation of Substantial Fibre Infrastructure per public library, public clinic, or School such as feeder and distribution fibre cables to reach the public library, public clinic, or School.

17.2.2 The free service referred to in clause 17.2.1 shall include the installation and/or connection of a drop cable from the public library, public clinic, or School's passed point (e.g. the point where the Maziv Group's relevant fibre-pedestal, manhole, chamber and/ or utility-pole is located) to the School's premises.

17.2.3 For the avoidance of doubt, the reference to Schools passed shall include public schools that DFA provides lit FTTS for.

17.2.4 Without derogating from the generality of clause 17.2.1, the Maziv Group shall within a period of [redacted] from Implementation Date, connect at least [redacted] Schools in addition to the Schools connected as at the Implementation Date on the basis set out in that clause.

17.2.5 The Maziv Group shall take all such steps as may be necessary to ensure that one or more ISPs to whom it renders Wholesale FTTH Services, shall provide Retail FTTH services to the public library, public clinic, or Schools referred to in 17.2.1 free of any charge, fee, compensation or commission, including installation of subscriber equipment at the public library, public clinic, or Schools, which comprise a working Wifi-router and internet connection.

17.2.6 For the purpose of this clause 17.2 the terms "passed" and "passes" shall have the same meaning as set out in clause 17.5.6.

17.3 Enterprise and Supplier Development Fund

17.3.1 Maziv shall establish an Enterprise and Supplier Development Fund and, subject to clause 17.3.3, contribute a total amount of R400,000,000 (four hundred million Rand) to such fund over a period of [redacted] from the Implementation Date, at a rate of [redacted] per annum.

17.3.2 The R400,000,000 (four hundred million Rand) that shall be contributed by the Maziv Group shall be fully disbursed within [redacted] from the Implementation Date. The Enterprise and Supplier Development Fund shall be disbursed on various initiatives including, *inter alia*:

17.3.2.1 meeting Maziv’s obligations under clause 17.4.2;

17.3.2.2 research and development initiatives in respect of South African suppliers in the telecommunications sector;

17.3.2.3 paying for business support and/or coaching services rendered to SME and HDP owned vendors in the telecommunications sector; and

17.3.2.4 supporting development and training of SMEs including in respect of business accounting, finance, planning, strategy, communications, advertising, governance and human resources.

17.3.3 [redacted].

17.3.4 For the avoidance of doubt, the amounts to be contributed and disbursed by the Enterprise and Supplier Development Fund ([redacted]) shall be incremental to any Committed Expenditure on the part of the Maziv Group. In particular, such expenditure shall be over and above any pre-existing planned enterprise and supplier development expenditure as aligned with the ICT Sector Code on the part of the Merger Parties.

17.3.5 Administration fees or other similar costs of no more than [redacted] in total may be deducted from the aggregate value of the Enterprise and Supplier Development Fund during the [redacted] period referred to in clause 17.3.2.

17.4 Downstream Agreements

17.4.1 For a period of [redacted] from the Implementation Date, as it builds infrastructure into new Lower Income Areas, the Maziv Group shall continue to work with local contractors and distributors driving their involvement in the infrastructure build and fibre uptake process.

17.4.2 In particular, within [redacted] from the Implementation Date, the Maziv Group undertakes, that 10,000 (ten thousand) direct or indirect employment opportunities shall be created or enabled through the introduction of an Internet Retailer distribution model for services in Lower Income Areas.

17.5 Merger Specific Capex

17.5.1 The Maziv Group shall invest or spend cumulative Capex of at least R12,000,000,000, (twelve billion Rand) (including capitalised internal costs and maintenance Capex) over a period of 5 (five) years from 1 April 2025, provided that where Capex is used to acquire one or more businesses, such businesses should be of the kind that will enhance localisation in South Africa. A [redacted] variation will be permitted in respect of such R12,000,000,000 (twelve billion Rand), provided that the variation is caught up by [redacted]).

17.5.2 The Capex amount referred to in clause 17.5.1 will not include acquisition costs of the Vumatel/Herotel Merger.

17.5.3 Over a period of [redacted] from [redacted] no less than [redacted] of the Capex amount referred to in clause 17.5.1 will be spent on the roll-out of new FTTB, FTTH and FTTS projects, or the acquisition of businesses by the Maziv Group.

17.5.4 The Capex amount referred to in clause 17.5.1 will be primarily, but not exclusively, spent on rollout of infrastructure in Lower Income Areas.

17.5.5 For the avoidance of doubt, the obligations in clauses 17.5.1 to 17.5.4 above place no limit on Maziv Group's total Capex spend and do not limit Maziv Group's Capex spend on maintenance during the period of [redacted] from [redacted] to [redacted] or less. Maziv Group may therefore over the period of [redacted] from [redacted] spend any amount necessary to maintain its existing infrastructure, in addition to spending at least [redacted] on the roll-out of new FTTB, FTTH and FTTS projects, or the acquisition of businesses.

17.5.6 Capex spend will result in at least 1,000,000 (one million) homes in Lower Income Areas being passed with fibre infrastructure on a cumulative basis within a period of 5 (five) years from 1 April 2025 (which homes were not already passed as at 31 March 2025). Maziv Group will ensure that no less than [redacted] homes in Lower Income Areas are passed with fibre infrastructure, per year, for the five-year period from 1 April 2025 to 31 March 2030 (which homes were not already passed as at [redacted]). For the purpose of this clause 17.5.6, the term homes "passed" means homes which the Maziv Group has the capability to technically and legally connect to an FTTH network in a service area (i.e. new service activation in respect of such home will require only the installation and/or connection of a drop cable from the homes passed point (e.g. fibre pedestal, manhole, chamber, utility-pole) to the home and the installation of subscriber equipment at the home such that the home is capable of connecting. For the avoidance of doubt, this definition excludes homes that cannot be connected without further installation of substantial fibre plant such as feeder, distribution cables and active equipment to reach the area in which a potential new subscriber is located.

17.5.7 Of the 1,000,000 (one million) homes passed referred to in 17.5.6 at least [redacted] will be homes passed in Key Areas.

17.5.8 If the Capex amount referred to in 17.5.1 is not sufficient to pass the homes that Maziv Group is required to pass to comply with clause 17.5.6 read with 17.5.7, Maziv Group will spend such additional Capex as is required to ensure compliance with clauses 17.5.6 and 17.5.7.

17.5.9 For the five-year period from 1 April 2025 to 31 March 2030, Maziv Group will also provide sufficient Capex to ensure that every home passed in terms of clause 17.5.6 and 17.5.7 that wishes to be connected on the prevailing terms and conditions for connection, is connected.

17.5.10 The Capex that Maziv Group is required to spend to comply with the conditions in clauses 17.5.3, 17.5.5, 17.5.6 and 17.5.7 shall not include Capex spent by Herotel Group and for purposes of calculating the number of homes to be passed in terms of clauses 17.5.6 and 17.5.7, the homes passed by the Herotel Group as at the Implementation Date shall not be included.

17.5.11 Homes that have been passed, at Implementation Date, by the Vodacom FTTH business that is being transferred to Maziv Group in terms of the Merger, shall not be included in the homes passed referred to in clause 17.5.6.

17.5.12 For clarity, where a block of flats is passed, the number of homes passed shall be counted as the number of flats in such block.

17.6 Connectivity in Lower Income Areas

17.6.1 Maziv undertakes that by 31 March 2030, it will achieve an average connection rate across existing and new infrastructure in Lower Income Areas (where connections include connections through third parties and Maziv Group businesses) of at least:

17.6.1.1 [redacted] in Reach Areas; and

17.6.1.2 [redacted] in Key Areas (however, in respect of such average connection rate of [redacted] in Key Areas, [redacted] variation will be permitted, to [redacted], provided that the variation is caught up by [redacted].

17.6.2 If market conditions change fundamentally, making it impossible for Maziv to comply with 17.6.1.1 and/or 17.6.1.2 Maziv shall be permitted to engage with the Commission for a variation in respect of the average connection rates set out in 17.6.1.1 and/or 17.6.1.2.

17.7 Local Procurement and HDP Suppliers

17.7.1 For a period of [redacted] from the Implementation Date, Maziv Group shall, *inter alia* and on a non-exclusive basis, use HDP suppliers for network build contracts, if HDP suppliers offer the requisite network build contracts at the appropriate quality standards and on reasonably competitive commercial terms.

17.7.2 During the 2022 financial year, the Maziv Group's estimated procurement spend on goods manufactured and assembled in and services provided in South Africa consisted of approximately 60% (sixty per centum) out of its total procurement spend (measured by the Rand value of goods and services in South Africa against the Rand value of total goods and services), equivalent to approximately [redacted] ("**Benchmark Ratio**").

17.7.3 The Maziv Group undertakes to increase its procurement spend on goods manufactured and assembled in and services provided in South Africa from the Benchmark Ratio to at least [redacted] within a period of [redacted] from the Implementation Date.

17.7.4 In relation to the procurement contemplated in this clause 17.7 , Maziv shall maximise where reasonable, and practically feasible, having regard to the technical nature of the goods and services required, the procurement of goods and services from SMEs and HDPs in South Africa.

17.7.5 To the extent that it is reasonably possible, in cases where third parties supply goods and services into Maziv's value chain, Maziv shall engage with such third-party suppliers to encourage them to commit to sourcing their goods and/or services from South African based suppliers.

17.8 Employee Benefit Scheme

17.8.1 Maziv shall within [redacted] after the Implementation Date, implement an Employee Benefit Scheme in accordance with the key design principles set out in **Appendix C**.

18 **APPOINTMENT OF MONITORING TRUSTEE**

18.1 Maziv shall, with the prior written approval of the Commission, appoint a Monitoring Trustee to carry out the Monitoring Trustee Mandate.

18.2 The Monitoring Trustee shall be independent of the Merger Parties, possess the necessary qualifications and resources to carry out the Monitoring Trustee Mandate and shall at the date of appointment not be exposed to any conflict of interest.

18.3 Maziv shall propose a Monitoring Trustee for the Commission’s written approval within 10 (ten) Business Days of the Implementation Date.

18.4 The proposal shall contain such information as may enable the Commission to determine whether or not the proposed Monitoring Trustee is suitable to execute the Monitoring Trustee Mandate and shall include the proposed Monitoring Trustee’s contact details, employment history and details regarding the Monitoring Trustee and the Monitoring Trustee’s team’s relationship (if any) with the Merger Parties for the 12 (twelve) months prior to the Approval Date.

18.5 The Commission shall have the discretion to canvass the views of participants in the merger proceedings and to approve or reject the appointment of the proposed Monitoring Trustee. Such approval or rejection shall be made in writing and provide reasons for the Commission’s decision. Approval shall not be unreasonably withheld.

18.6 Maziv shall appoint the proposed Monitoring Trustee within 5 (five) Business Days of receiving the Commission's approval of such proposed appointment.

18.7 If the appointment of the proposed Monitoring Trustee is rejected by the Commission, Maziv shall submit the names of at least 2 (two) more proposed Monitoring Trustees within 5 (five) Business Days of being informed of the Commission's rejection.

18.8 If the Commission, acting reasonably and following the process outlined in 18.5 above, rejects all further proposed Monitoring Trustees, the Commission shall nominate a Monitoring Trustee, whom Maziv shall appoint, or cause to be appointed, within 5 (five) Business Days of being informed by the Commission of such Monitoring Trustee's identity.

18.9 Maziv shall pay the fees and expenses of the Monitoring Trustee and the Monitoring Trustee's team on the terms and conditions agreed upon in writing between Maziv and the Monitoring Trustee, provided that such terms and conditions do not in any way impede the Monitoring Trustee from exercising its mandate as agreed with the Commission.

18.10 The Monitoring Trustee shall have the right to request any information that it deems necessary to execute its mandate.

19 MONITORING OF COMPLIANCE WITH CONDITIONS

19.1 Maziv shall inform the Commission and the Monitoring Trustee of the Implementation Date within 5 (five) Business Days of it becoming effective.

19.2 Within 5 (five) Business Days of the Implementation Date, Maziv shall provide the Commission and the Monitoring Trustee with a copy of the Confidentiality Undertakings referred to in clause 14.3 signed by each Vodacom SA appointed or nominated director and, for as long as Vodacom SA nominates directors to the Maziv board, Maziv shall, on an annual basis, within 90 days of the anniversary of the Implementation Date, submit to the Commission and the Monitoring Trustee an affidavit deposed to by each Vodacom SA appointed or nominated director confirming awareness of and compliance with, and disclosing any non-compliance with, the Conditions.

19.3 Maziv shall:

19.3.1 provide the Commission and the Monitoring Trustee with copies of its Product Rules, including their SLAs terms and Vumatel Framework Agreements within 5 (five) Business Days of the Implementation Date; and

19.3.2 for as long as Vodacom SA controls Maziv, advise the Commission and the Monitoring Trustee if any non-trivial amendments are made to the Product Rules, including their SLA terms and Vumatel Framework Agreements, and shall provide the Commission and the Monitoring Trustee with a copy of the amended

Product Rules, including their SLA terms and Vumatel Framework Agreements within 5 (five) Business Day of such amendments coming into effect.

19.4 Maziv shall furnish the Commission and the Monitoring Trustee with a copy of the MOI within 15 (fifteen) Business Days after Implementation Date.

19.5 Within 1 (one) month of the Implementation Date Maziv shall notify existing customers who procure Wholesale Key Services, Wholesale Metropolitan Fibre Services, Wholesale FTTH Services, or Wholesale FTTB Services from Maziv Group at the Implementation Date of these Conditions and shall place a non-confidential version of the Conditions on its website.

19.6 If Maziv asserts an inability or unwillingness to provide access to Wholesale Key Services, Wholesale Metropolitan Fibre Services, Wholesale FTTH Services, Wholesale FTTB Services, in terms of 4.1, it shall for as long as Vodacom SA controls Maziv:

19.6.1 notify the Commission and the Monitoring Trustee of any formal written complaints received from customers pertaining to Maziv’s assertion that Maziv is unable to provide access within 14 (fourteen) Business Days of receiving the formal written complaint from the customer; and

19.6.2 on request from the customer, and within 10 (ten) Business Days of receiving the request from the customer, provide detailed and specific written reasons to the affected customer, Monitoring Trustee and the Commission, for Maziv’s inability or unwillingness to provide access.

19.7 For as long as Vodacom SA controls Maziv, Maziv shall publish any changes to its prices for Wholesale Key Services, or rate cards for Wholesale Metropolitan Fibre Services, Wholesale FTTH Services and Wholesale FTTB Services, within 10 (ten) Business Days of such changes coming into effect and provide a written explanation to the Commission and the Monitoring Trustee, of changes to its prices for Wholesale Key Services or its rate card for Wholesale Metropolitan Fibre Services, Wholesale FTTH Services and Wholesale FTTB Services within 20 (twenty) Business Days of such changes coming into effect.

19.8 The Maziv Group shall for as long as Vodacom SA controls Maziv, notify the Commission and the Monitoring Trustee of any formal written complaints received from customers pertaining to the time taken by the Maziv Group to approve requests for access to (i) Wholesale Metropolitan Fibre Services, (ii) Wholesale FTTH Services), (iii) Wholesale FTTB Services and (iv) Wholesale Key Services within 14 (fourteen) Business Days of receiving the formal written complaint from the customer; and shall at the same time provide the Commission and the Monitoring Trustee with detailed and specific written reasons for the time taken to approve the request for access.

19.9 On an annual basis, Vodacom SA will prepare a confirmatory statement to be delivered to the Commission and the Monitoring Trustee confirming:

19.9.1 Vodacom SA Group's adherence to the 5G/FWA roll out commitments offered; and

19.9.2 that Vodacom SA Group and the Maziv Group have not coordinated in relation to planning, network build, and the exchange of any competitively sensitive information.

19.10 If Vodacom SA Group starts providing Fixed Wireless Services to any firm in the Maziv Group, Vodacom SA shall:

19.10.1 within one month of the date on which its starts providing such Fixed Mobile Services to a firm within the Maziv Group, notify existing customers who procure Fixed Wireless Services from Vodacom SA Group of these Conditions and shall place a non-confidential version of the Conditions on its website; and

19.10.2 from the date on which it starts providing Fixed Mobile Services to a firm within the Maziv Group and thereafter for a period of [redacted]:

19.10.2.1 provide the Commission and the Monitoring Trustee with copies of the Vodacom Product Rules, including their SLA terms within 5 (five) Business Days of the of the date on which its starts providing Fixed Mobile Services to a firm within the Maziv Group

19.10.2.2 advise the Commission and the Monitoring Trustee if any material amendments are made to the Vodacom Product Rules, including their SLA terms, which pertain to Fixed Mobile Services and shall provide the Commission with a copy of such amended Vodacom Product Rules, including their SLA terms within 5 (five) Business Day of such amendments coming into effect;

19.11 For as long as Vodacom SA controls Maziv), Maziv shall submit a compliance report on an annual basis to the Monitoring Trustee and Commission within 90 days of the anniversary of the Implementation Date detailing compliance with, and disclosing any non-compliance with, the Conditions in the preceding 12 (twelve) months.

19.12 The report referred to in clause 19.11 above shall include the following information in relation to the following products or services provided by the Maziv Group: (i) Wholesale Metropolitan Fibre Services provided to any Third Party FTTH ISP; (ii) Wholesale Metropolitan Fibre Services provided to any Third Party FTTH Provider; (iii) Wholesale Metropolitan Fibre Services provided to any Third Party FTTB ISP; (iv) Wholesale Metropolitan Fibre Services provided to any Third Party FTTB Provider; (v) Wholesale Metropolitan Fibre Services provided to any Mobile Network Operator, (vi) Wholesale FTTH Services provided to any Third Party FTTH ISP, (vii) Wholesale FTTB Services provided to any Third Party FTTB Provider; (viii) Wholesale FTTB

Services provided to any Third Party FTTB ISP; and (ix) Wholesale Key Services provided to any third party ISP or Third Party Key Reseller:

19.12.1 Where applicable, Transfer Pricing reflecting the internal price charged per product or service for access to the Maziv Group's backhaul, or last mile fibre infrastructure;

19.12.2 The terms and conditions, including Product Rules (and SLAs), Vumatel Framework Agreements, payment terms, and prices charged by the Maziv Group in the preceding 12 (twelve) months for (i) Wholesale Metropolitan Fibre Services, (ii) Wholesale FTTH Services (iii) Wholesale FTTB Services and (iv) Wholesale Key Services to:

19.12.2.1 entities in the Maziv Group;

19.12.2.2 entities in the Vodacom SA Group;

19.12.2.3 third parties;

19.12.3 The names and contact details (including regional location) of any parties who applied for access to (i) Wholesale Metropolitan Fibre Services and (ii) Wholesale FTTH Services; (iii) Wholesale FTTB Services; or (iv) Wholesale Key Services during the preceding 12 (twelve) months.

19.12.4 The names and contact details (including regional location) of all parties who were granted access to (i) Wholesale Metropolitan Fibre Services, (ii) Wholesale FTTH Services, (iii) Wholesale FTTB Services; or (iv) Wholesale Key Services pursuant to the former’s applications in the preceding 12 (twelve) months.

19.12.5 Details of each instance where the Maziv Group failed to comply with its SLA’s mean time to repair obligations, per customer, per product for the Maziv Group top 20 customers (and specifically including the Vodacom SA Group) of (i) Wholesale Metropolitan Fibre Services, or (ii), Wholesale FTTB Services.

19.13 Maziv and Vodacom SA shall within 10 (ten) Business Days from the Approval Date circulate to the Employees of DFA, Vumatel and their wholly-owned subsidiaries and Vodacom SA a copy of these Conditions relating to employment.

19.14 As proof of compliance with these Conditions, Maziv and Vodacom SA shall within 5 (five) Business Days of circulating these Conditions in terms of clause 19.13, provide the Commission and the DTIC with affidavits by the Chief Executive Officers of Maziv and Vodacom SA (a) stating the number of Employees of Vumatel and DFA and their wholly owned subsidiaries as at the Approval Date, and (b) attesting to such circulation of these Conditions and attach a copy of the said notice.

19.15 Maziv shall submit a compliance report ("**Public Interest Annual Report**") on an annual basis to the Commission and the DTIC within 90 (ninety) days of each anniversary of the Implementation Date detailing compliance with, and disclosing any non-compliance with, the public interest obligations set out in this Agreement in the preceding 12 (twelve) months. The obligation to submit the Public Interest Report shall cease one year after the expiry of the period for compliance with the applicable public interest obligations set out in clauses 10 and 15 to 17.

19.16 Without derogating from the generality of clause 19.15, the Public Interest Annual Report shall include the following information:

19.16.1.1 Details of the police stations, Healthcare Facilities and libraries provided with 5G mobile broadband access in terms of clause 10.4 during the preceding 12 (twelve) months.

19.16.1.2 Details of the Capex spend during the preceding 12 (twelve) months including the number homes passed and the number of homes connected in Reach Areas and Key Areas, per suburb, town, village, township and/or informal settlement in South Africa.

19.16.1.3 Details of the Schools, public libraries and clinics provided with 1 (one) Gbps uncapped access in terms of clause 17.2.1;

19.16.1.4 Details of the Employee Benefit Scheme established in terms of clause 17.8including the number of Employees then benefitting from the Scheme and the amount allocated to each Employee in terms of such Scheme during the preceding 12 (twelve) months.

19.17 Maziv shall, for a period of [redacted] from the Implementation Date, or for as long as Vodacom SA and CIVH are direct or indirect shareholders of Maziv (whichever is the shorter period) annually, within 10 (ten) Business Days of the annual renewal of Maziv's shareholders' B-BBEE verification certificates, provide the Commission, the DTIC and the Monitoring Trustee with proof of its shareholders' B-BBEE Ownership Status.

19.18 Maziv shall appoint an independent auditor of its choice approved by the Commission and the DTIC to complete agreed upon procedures on each Public Interest Annual Report and each such Public Interest Annual Report shall be accompanied by a written agreed upon procedures declaration from such independent auditor confirming the accuracy of the information contained in the report.

19.19 The Commission and the DTIC may request any information that relates to these Conditions, which information shall, unless the Commission or the DTIC, as the case may be, agrees to an extension, be provided by the Merger Parties within the time specified by the Commission or the DTIC (as the case may be) when making its request.

19.20 The Commission and/or the DTIC shall be entitled in the exercise of their respective reasonable discretions within 14 (fourteen) days of receiving the Public Interest Annual Report or the information requested in terms of clause 19.19 to require the Merger Parties to provide an affidavit attested to by the chief executive officer(s) Maziv and/or Vodacom SA (as appropriate, in relation to a specific Condition) confirming the accuracy of any aspect of the Public Interest Annual Report and full compliance with the Conditions in the year to which the Report relate. Such affidavit(s) shall be provided within 14 (fourteen) days after written request from the Commission or the DTIC, as the case may be.

20 **CONDITIONS SUPERSEDE PREVIOUS CONDITIONS**

20.1 Post-Implementation Date, these Conditions supersede the following conditions imposed by the Tribunal in the CIVH/Vumatel Merger and CIVH and Vumatel will, from the Approval Date, no longer be required to comply with such conditions imposed by the Tribunal in the CIVH/Vumatel Merger:

20.1.1 Clause 3 (open access)

20.1.2 Clause 4 (expansion plans)

20.1.3 Clause 7.2 (free school access)

20.1.4 Clauses 8.2,

20.1.5 Clause 8.3, 8.4.1, 8.4.2, 8.4.3, 8.4.4, 8.4.5, 8.4.6, 8.4.7, (compliance report)

20.1.6 Clause 8.5 (Accounting Officer affidavit)

20.1.7 Clause 8.9 (notice of conditions to customers)

20.2 Furthermore, CIVH will no longer be required to submit the information referred to in clauses 8.4.8 (update on public interest condition implementation) and 8.4.9 (details of confidentiality policies) in the compliance report referred to in clause 8.2 of the CIVH/Vumatel Merger conditions and shall instead, as from the Approval Date and for the remainder of the duration of the CIVH/Vumatel Merger conditions, be required to submit such information in the compliance report that is to be submitted in terms of 19.11 of these Conditions.

21 **APPARENT BREACH OF CONDITIONS**

21.1 In the event that the Commission receives a complaint regarding non-compliance by the Parties with these Conditions, or otherwise is of the view that there may have been an apparent breach by the Parties of the Conditions, the matter shall be dealt with in terms of Rule 39 of the Conduct of Proceedings in the Commission.

22 **VARIATION OF CONDITIONS**

22.1 The Parties or the Commission may at any time, and on good cause shown, apply to the Tribunal for any of the Conditions to be waived, relaxed, or modified and/or substituted.

22.2 The Commission, the DTIC and/or any registered trade union (as contemplated in section 13A(2)(a) of the Competition Act) of the Maziv Group shall be entitled to oppose any variation of the Conditions.

23 CORRESPONDENCE

23.1 All correspondence in relation to the Conditions must be submitted to the following email address: **mergerconditions@compcom.co.za**.

APPENDIX "B"

IN THE LARGE MERGER BETWEEN:

VODACOM PROPRIETARY LIMITED

and

BUSINESS VENTURE INVESTMENTS NO 2213 PROPRIETARY LIMITED ("MAZIV"), A WHOLLY OWNED SUBSIDIARY OF COMMUNITY INVESTMENT VENTURES HOLDINGS PROPRIETARY LIMITED

MONITORING TRUSTEE MANDATE

1 **DUTIES OF THE TRUSTEE**

1.1 The Monitoring Trustee shall in consultation with Maziv and the Commission prepare a detailed working plan, including a resourcing schedule, describing how the Monitoring Trustee intends to monitor compliance with the Conditions and shall send a copy of such working plan to Maziv and the Commission within 30 (thirty) days of the Monitoring Trustee's appointment.

1.2 The Monitoring Trustee shall, for the duration of the Monitoring Period, act on behalf of the Commission to monitor the Merger Parties' compliance with the provisions of the Conditions and shall carry out the following duties:

1.2.1 monitor the steps that Maziv is taking to maintain the overlapping infrastructure referred to in clause 8.1 of the Conditions and to report to the Commission whether it is managed in the ordinary course of business, pursuant to good business practices;

1.2.2 observe and inform the Commission of the progress of the negotiations between Maziv and/or Vumatel and the proposed Purchaser(s);

1.2.3 monitor compliance with the Conditions by the Merger Parties, including by assessing on an annual basis the Monitoring Report detailed in clause 19.11 of the Conditions;

1.2.4 provide to the Commission a written report annually within 60 (sixty) days of receiving each monitoring report referred to in clause 19.11 of the Conditions from Maziv so that the Commission can assess whether or not the Conditions are being complied with, 1.2.5 send Maziv a non-confidential copy at the report referred to in 1.2.4 of this mandate at the same time that the Monitoring Trustee sends such report to the Commission; and

1.2.6 assess any concerns or complaints raised by third parties that suggest a possible non-compliance with the Conditions.

1.3 The Monitoring Trustee shall, from the date of its appointment until the end of the First Divestiture Period, furnish the Commission with a monthly written report that shall cover the following topics:

1.3.1 monitoring of the preservation of the overlapping infrastructure referred to in clause 8.1 of the Conditions;

1.3.2 Maziv's compliance with its obligations to manage the overlapping infrastructure referred to in clause 8.1 of the Conditions with reasonable care and skill;

1.3.3 the progress of Maziv and/or Vumatel’s negotiations with potential Purchasers;

1.3.4 any issues or concerns regarding the divestiture of the overlapping infrastructure referred to in clause 8.1 of the Conditions.

1.4 A detailed plan describing how the Monitoring Trustee intends to dispose of the overlapping infrastructure referred to in clause 8.1 of the Conditions will be drawn up by the Trustee and submitted to the Commission by the Monitoring Trustee, within 15 (fifteen) Days of the commencement of the Trustee Divestiture Period. The Monitoring Trustee shall send Maziv a copy of the plan at the same time.

1.5 The Monitoring Trustee shall, for the duration of the Trustee Divestiture Period, furnish the Commission with a report (every month) concerning his/her efforts to identify a suitable Purchaser(s) and the progress made in concluding the Divestiture within the Trustee Divestiture Period. The Monitoring Trustee shall send Maziv a copy of each such report at the same time.

2 ASSISTANCE BY THE MERGER PARTIES TO THE TRUSTEE

2.1 The Merger Parties shall provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may require to perform his or her mandate.

2.2 The Monitoring Trustee shall have full and complete access to any of Maziv Group’s books, records, documents, management or other personnel, facilities, sites and technical information reasonably necessary for fulfilling its duties under this mandate and Maziv shall provide the Monitoring Trustee upon request with copies of any documents except where such disclosure would give rise to a loss of any applicable legal privilege.

3 **CONFIDENTIALITY**

3.1 The Monitoring Trustee's report and any other document generated by the Monitoring Trustee in relation to his or her mandate will be confidential and for the sole use of the Monitoring Trustee, the Commission and Maziv (or Maziv’s advisors).

3.2 The Monitoring Trustee shall present its draft non-confidential reports to Maziv in advance of the submission of these reports to the Commission, in order that Maziv may review the factual content of the report and provide Maziv’s comments.

3.3 Any unresolved disagreement between the Monitoring Trustee and Maziv concerning the content of the draft report must be noted in the final report.

3.4 Any report obtained by the Commission from the Monitoring Trustee shall only be used by the Commission for purposes of assessing the Merger Parties’ compliance with the Conditions; and not, without Maziv’s consent, be shared with any persons, entities, regulators or departments other than the DTIC (whether based in South Africa or elsewhere).

4 **FEES AND EXPENSES**

Maziv shall pay the Monitoring Trustee's fees and expenses.

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5 REPLACEMENT, DISCHARGE AND RE-APPOINTMENT OF TRUSTEE

5.1 The Commission may, at any time, after consultation with the Monitoring Trustee, order Maziv to remove the Monitoring Trustee, if the Monitoring Trustee has not acted in accordance with the Monitoring Trustee's mandate.

5.2 In such event, a new Monitoring Trustee shall be appointed in accordance with the procedure referred to in the Conditions.

6 TERMINATION OF THE MANDATE

The Monitoring Trustee's mandate will automatically terminate at the end of the Monitoring Period.

7 FAST-TRACK EXPERT DETERMINATION

7.1 If any third party ("Complainant") submits a complaint of alleged non-compliance by the Parties with these Conditions to the Commission for investigation in accordance with the provisions of Rule 39 of the Rules for the Conduct of Proceedings in the Commission ("Commission Rule 39"), as contemplated in clause 21 of the Conditions ("Rule 39 Complaint"), the Complainant may also request a fast-track expert determination ("Expert Determination") in terms of this clause 7 for interim relief pending the resolution of its Rule 39 Complaint.

7.2 A Complainant's request for an Expert Determination ("Request") must be submitted in writing to the Monitoring Trustee and:

7.2.1 specify (i) the nature of the alleged non-compliance and (ii) the interim remedy sought by the Complainant;

7.2.2 must be supported by an affidavit setting out all the facts relied on by the Complainant in support of its Request;

7.2.3 attach the Rule 39 Complaint submitted to the Commission; and

7.2.4 be copied to the Commission and the Merger Parties.

7.3 Within 15 business days after receipt of the Request, the Merger Parties may respond to the request (the "Response"). The Response shall:

7.3.1 take the form of an affidavit;

7.3.2 set out the Merger Parties' response to the Request, all the facts on which they rely, and the relief (if any) they propose be imposed while the Rule 39 Complaint is resolved by the Commission; and

7.3.3 be sent to the Monitoring Trustee and copied to the Complainant and the Commission.

7.4 On receipt of the Response, or within 20 days of receiving the Request if no Response is received, the Monitoring Trustee shall appoint an individual person (the "Expert") from within the ranks of the Monitoring Trustee or from an external source, with the specific expertise required to determine the issues raised in the Request and the Response.

7.5 The costs of the Expert shall be borne by Maziv.

7.6 Within 30 business days after the appointment of the Expert or such longer period as may be agreed by the Complainant and Merger Parties in writing, the Expert shall issue an Expert Determination which shall:

7.6.1 set out the Expert's findings on the factual allegations made by the Complainant and the Merger Parties;

7.6.2 record the interim relief granted (if any) pending the final resolution of the Rule 39 Complaint by the Commission;

7.6.3 include the Expert's reasons for such findings and relief (if any); and

7.6.4 be sent to the Complainant, the Merger Parties, the Monitoring Trustee and the Commission.

7.7 For the purposes of making the Expert Determination, the Expert:

7.7.1 may request such further documents and information from the Complainant and the Merger Parties it believes necessary to determine the issues raised in the Request and the Response;

7.7.2 may adopt such procedures and timelines to obtain any further documents and information as it considers appropriate; and

7.7.3 shall at all times act impartially as an expert and not as an arbitrator.

7.8 The Merger Parties shall take all necessary steps to implement any interim relief granted by the Expert and maintain compliance therewith pending the resolution of the Rule 39 Complaint.

7.9 The provisions of this clause 7, including any findings made or interim relief granted by an Expert, shall in all respects be subject to, and replaced by, the outcome of the Commission's investigation and determination of the Rule 39 Complaint. For the avoidance of doubt:

7.9.1 In the event that the Commission decides not to issue a Notice of Apparent Breach in relation to the Rule 39 Complaint:

7.9.1.1 it shall communicate that decision in writing to the Complainant, the Merger Parties and the Monitoring Trustee as soon as it is made; and

7.9.1.2 the Merger Parties shall no longer be required to comply with the determination of the Expert as contemplated in clause 7.6 above, which shall cease to be of any force or effect.

7.9.2 In the event that the Commission decides to issue a Notice of Apparent Breach in relation to the Rule 39 Complaint:

7.9.2.1 it shall send that Notice to the Complainant, the Merger Parties and the Monitoring Trustee as soon as it is issued; and

7.9.2.2 the Merger Parties shall be required to comply with any Expert Determination as contemplated in clause 7.6 above until such time as the Commission accepts a proposed remedial plan as provided for in Commission Rule 39, or the Merger Parties successfully review the Notice of Apparent Breach before the Tribunal, at which time the Expert Determination shall cease to be of any force or effect.

7.9.3 Any determination by an Expert in terms of this clause 7 shall not in any respect be binding on the Commission or the Tribunal.

APPENDIX "C"

MAIN PRINCIPLES OF EMPLOYEE BENEFIT SCHEME

1. **Type of benefit**: Participatory phantom share scheme i.e. Employees will share in the value of Maziv through a synthetic structure involving a bespoke Special Purpose Vehicle (SPV).

2. **Participation right**: [redacted] ESOP pool per Employee, irrespective of job grade, ethnic grouping, demographic, or any other qualitative aspect.

3. **Funding**: No underlying funding (notional or otherwise) applicable – no hurdle rate applicable for economic participation of Employees. No administrative costs of the SPV or otherwise to be deducted.

4. **Duration of the scheme**: Evergreen (in perpetuity).

5. **Value participation**: Within 5 (five) Business Days of the Implementation Date, the ESOP benefit to the Employees will be determined based [redacted] ESOP pool of [redacted]. This pool of funds will be used for the SPV to notionally subscribe for the equivalent amount of Maziv shares based on a similar valuation used in respect of the transaction value of the Merger. Within 5 (five) Business Days after at the date of implementation of the Merger, the Parties shall submit the equivalent percentage shareholding that the Initial Value would represent as a shareholding in Maziv. Thereafter, on an annual basis as and when Maziv declares and pays dividends to its shareholders, the SPV will receive from Maziv its pro rata share of notional dividends and distribute same to Employees evenly.

6. Whereas the value of the underlying Maziv shares will fluctuate on the basis of market dynamics the number of shares will not fluctuate.

7. **Listing/capitalisation/restructuring**: These and similar capital events shall not be allowed to diminish the economic value of the scheme to Employees except for rights issues at market related rights issue pricing. To the best of the parties' knowledge, no capital calls are foreseen in the immediate future.

APPENDIX "D"

LIST OF POLICE STATIONS TO BE PROVIDED WITH MOBILE BROADBAND ACCESS BY VODACOM SA GROUP

PROVINCE	NO. OF SELECTED POLICE STATIONS	
[redacted]	[redacted]	[redacted] [redacted] [redacted] [redacted]
[redacted]	[redacted]	[redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]
N[redacted]	[redacted]	[redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]
[redacted]	[redacted]	[redacted] [redacted] [redacted] [redacted] [redacted] [redacted]

		[redacted]
[redacted]	[redacted]	[redacted]

		[redacted]r
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

		[redacted]
[redacted]	[redacted]	