

1 November 2023

**Competition Commission**

**Attention: Tarryn Sampson, Analyst**

Per email: [TarrynS@compcom.co.za](mailto:TarrynS@compcom.co.za)

Your reference: 2022Jun0077

Dear Tarryn

**THE PROPOSED LARGE MERGER BETWEEN VUMATEL (PTY) LTD AND HERO TELECOMS (PTY) LTD**

1. ISPA refers to the Commission's correspondence dated 18 October 2023 relating to a proposed large merger in terms of which Vumatel (Pty) Ltd ("**Vumatel**") will obtain a controlling interest in Hero Telecoms (Pty) Ltd ("**Herotel**") and – after consultation with its members – sets out below its responses to the questions raised.
2. ISPA has noted in particular that:
  - 2.1. Vumatel is controlled by Community Investment Ventures Holdings (Pty) Ltd ("**CIVH**" / "**the acquiring group**") which in turn controls Dark Fibre Africa (Pty) Ltd ("**DFA**") and other fibre network operators (**FNOs**) and internet service providers (**ISPs**) and related entities.
  - 2.2. CIV-H is itself party to a proposed large merger with Vodacom SA (Pty) Ltd ("**Vodacom**") which will be considered by the Competition Tribunal next year. The Commission has noted that Vodacom – which stands to be part of the acquiring group – is traditionally a vertically-integrated, closed-access provider.
  - 2.3. Herotel does not provide electronic communications network services (ECNS) on an open access basis to ISPs, i.e. it does not provide wholesale access services to third-party ISPs.
  - 2.4. There is no indication as to whether Herotel - once under the control of Vumatel – will continue to operate on this basis or whether it will move towards an open access approach as currently practised by Vumatel.
  - 2.5. There are substantial horizontal and vertical overlaps between the infrastructure and services offered by Vumatel – and the broader acquiring group – and those offered by Herotel.
  - 2.6. The Tribunal proceedings and ruling in the Vodacom CIV-H merger are likely to develop the law around and our understanding of open access and its role in curbing anti-competitive conduct.
3. As the Commission is aware, ISPA members are dependent on FNO services – including those offered by the acquiring group – in order to provide internet access, voice and other services to subscribers. ISPA promotes FNOs providing non-discriminatory wholesale services on a wholesale basis to maximise the potential for competition in the delivery of layer 3 services over their networks.

4. As such, if it is a consequence of the transaction that Herotel's network becomes available on an open access basis, then ISPA is broadly supportive of the proposed transaction.
5. ISPA members have raised the following concerns in relation to any potential impact of the proposed transaction on competition in the wholesale FTTH and wholesale FTTB markets.
  - 5.1. The proposed transaction must be evaluated with reference to the Vodacom CIV-H transaction. What are the implications of Herotel as the largest fixed wireless internet service provider in South Africa and a significant player in the FNO market falling within the control of Maziv (assuming that transaction is fulfilled)?
  - 5.2. There is the potential for Vumatel to migrate business to a closed network which is part of the acquiring group.
  - 5.3. Vumatel provides an open access model to ISPs for both Vumatel and Vuma Reach products. Herotel does not provide an open access service. Herotel has overbuilt in Vumatel and other competing FNOs areas. Both companies will seek to look for synergies to save on costs and to gain competitive advantage. This may include switching areas to from open access to close access networks, providing access to areas with competing FNOs and providing sharing of network to reduce costs. This will give both companies competitive advantage over ISPs and FNOs.
  - 5.4. This deal will have the potential of eliminating some of their competing FNOs and ISPs in the market, which will reduce competitive choice for consumers and adversely influence the open access market.
6. ISPA trusts that the above is of assistance.

Regards

ISPA