

**ECONOMIC DEVELOPMENT DEPARTMENT
NOTICE 1065 OF 2015
COMPETITION COMMISSION**

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

NOKIA CORPORATION

AND

ALCATEL-LUCENT SOCIÉTÉ ANONYME

2015JUN0323

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

1. On 15 June 2015 the Competition Commission ("the Commission") received notice of an intermediate merger. Nokia Corporation ("Nokia") intends to acquire between 50% and 100% of the share capital issued by Alcatel-Lucent ("Alcatel-Lucent") to be effected by means of a public tender for offers ("the proposed transaction").
2. On completion of the proposed transaction, Nokia will acquire sole control over Alcatel-Lucent in terms of sections 12(2)(a), (b) and (c) of the Competition Act No. 89 of 1998, as amended ("the Act").
3. It is the intention of the merging parties that following the completion of the proposed transaction anticipated in 2016, the various Nokia and Alcatel-Lucent entities, including in South Africa, will be integrated.
4. Nokia is a multinational company incorporated in Finland. It is a public company listed on the Helsinki Stock Exchange and the New York Stock Exchange and is not controlled by

any single shareholder. In South Africa, it controls Nokia Solutions and Networks Holdings Proprietary Limited and Nokia Solutions and Networks South Africa Proprietary Limited.

5. Alcatel-Lucent is a public company incorporated in France and listed on the Euronext and New York Stock Exchange. It is not directly or indirectly controlled by any one firm. In South Africa, it controls Alcatel-Lucent South Africa Proprietary Limited and Lucent Technologies South Africa Proprietary Limited.
6. Nokia is an international mobile telecommunications company involved in the manufacture and sale of cellular telephony and related services. It is organised into three business units, namely Nokia Networks, HERE and Nokia Technologies. For purposes of analysis of the proposed transaction, the activities and products supplied by Nokia Networks in the South African market are relevant.
7. Alcatel-Lucent is a telecommunications solutions provider. Its business is organised into Access and Core Networking operating units. The Access unit includes its activities in RAN equipment. Core Networking includes Core Network System ("CNS") equipment and associated unattached network infrastructure services such as Internet Protocol (IP) Routing, IP Transport and IP Platforms.
8. As part of its investigation, the Commission obtained the views of an independent expert, the European Commission and competitors and customers of the merging parties to gather evidence to enable it to formulate its view on the relevant markets and the likely competitive effects of the proposed transaction.
9. In line with the Commission's decision in the *Nokia/Siemens* merger and the Tribunal's previous ruling in the *Nokia/Motorola* merger, the Commission concluded that for the purpose of the proposed transaction, the provision of Core Network Systems (including equipment) and unattached network infrastructure services associated to mobile network services constitute the relevant product markets.

10. The competitive assessment of the markets for the supply of core network systems and unattached network infrastructure services was limited to the South African market.
11. The Commission's investigation found that the activities of the merging parties overlap horizontally in respect to the following:
 - (i) the national supply of Core Network Systems (including equipment)
 - (ii) the national supply of unattached network infrastructure services
12. In relation to the national market for the supply of Core Network Systems (including equipment), the combined post-merger market share of the merged entity is approximately [between 20% and 30%] which accords with the Dell-Oro market share data received from the merging parties. The market share accretion arising is relatively low [less than 5%]. There are a small number of large players active in the relevant market such as Ericsson [between 60% and 70%], Huawei [between 10% and 20%] and Cisco [less than 5%], among others. These rivals will continue to constrain the merged entity post-merger. Given the low market accretion, the proposed transaction is unlikely to alter the market structure in the affected market in South Africa post-merger.
13. In relation to the national market for the supply of unattached network infrastructure services, according to DellOro market share data, the merged entity's combined post-merger market share is [between 10% and 20%]. There are large players active in the relevant market such as Huawei [between 40% and 50%], Ericsson [between 20% and 30%], ZTE [between 10% and 20%] and Cisco [less than 5%], among others. They will continue to constrain the merged entity post-merger. In light of the small market share accretion [**less than 5%**], **the** proposed transaction is therefore unlikely to alter the market structure in the affected market in South Africa post-merger.
14. The market share assessment has shown that for each relevant market credible alternative players will continue to constrain the merged entity post-merger. The Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the markets where the merging parties compete.

15. In addition, the Commission found that coordinated effects are unlikely to arise from the proposed transaction. The products involved are complementary and the affected markets are characterised by innovation, which makes collusion on price less likely to be sustained.
16. In relation to the concerns raised by market participants, the Commission found that the merged entity is legally obligated to comply with the terms of existing agreements, including service level agreements, entered into with its customers. Furthermore, there are remedies available to customers should the merged entity default on its obligations, which will be provided for in the termination clause of the respective agreements.
17. In addition, customers have some degree of countervailing power since the affected markets are characterised by bidding processes and prices are negotiated on the basis of global benchmarks. The Commission found that it is unlikely that the proposed merger raises a significant change in the bargaining position of the market participants.
18. The Commission also found that the OSSii initiative exists irrespective of the proposed transaction. The negotiation for an OSS license is not performed on a national level. Any condition imposed by the Commission on the merged entity would need to take cognisance of the OSSii initiative's free, reasonable and non-discriminatory ("FRAND") terms, which on the submission of Nokia were complied with.
19. Furthermore, the merged entity is obligated to comply with the terms of existing license agreements negotiated and entered into between Alcatel-Lucent and third parties post-merger. In addition, the Commission found that there are remedies available to third parties should the merged entity default on its obligations which are provided for in the termination clause of the agreements. The Commission found that the concerns raised by the market participants do not warrant behavioural remedies.
20. The proposed transaction is likely to raise public interest concerns due to employment losses. The Commission found that the retrenchments of the 60 employees may be inevitable due to the duplication of roles identified by the merging parties. The potential affected employees are a relatively substantial proportion of the merged entity's combined workforce (402 employees), at approximately 15%. The potential affected employees are

skilled and are likely to find alternative employment in the short term since they possess transferrable skills and have sufficient tertiary qualifications to find alternative employment in the short term. Nevertheless, it is the Commission's view that an employment condition is imposed upon the merging parties to ensure that no more than 60 employees will be retrenched as a result of the proposed merger in South Africa.

21. In relation to the effect of the proposed transaction on BEE, the merging parties confirm that the shareholding of the BEE shareholders of Nokia Holdings SA, namely Business Venture Investments No1126 Proprietary Limited and Business Venture Investments No1125 Proprietary Limited will remain unchanged post-merger, however there is a possibility that their shareholding will be adjusted once Nokia commences with integration planning. The merging parties have committed to consider potential changes to the BEE structure and implications in the appropriate time.
22. The Commission is concerned about the uncertainty regarding the post-merger impact in respect of BEE. This impact is merger specific, however the Commission was unable to determine whether it is substantial (positive or negative) or justified given that the merging parties were not forthcoming with this information during the investigation. Given this uncertainty in relation to the post-merger impact on BEE, the Commission has imposed a condition in this regard.
23. The Commission is of the view that the harm identified can be corrected by way of remedies. These are attached as Annexure A to the Commission's recommendation.
24. The Commission approves the proposed transaction subject to the conditions contained in **Annexure A.**

ANNEXURE A

CC Case Number:2015Jun0323

In the intermediate merger between:**NOKIA CORPORATION**

Primary acquiring firm

and

ALCATEL-LUCENT SOCIÉTÉ ANONYME

Primary target firm

CONDITIONS

1. DEFINITIONS

In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings—

- 1.1 **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
- 1.2 **“Affected Employees”** mean no more than 60 employees identified and employed by the merged entity falling within Grade E, Grade D and Grade C of the Paterson Grading System as set out in Annexure A.
- 1.3 **“Alcatel-Lucent”** means Alcatel-Lucent Société Anonyme, a public company duly incorporated in France, with its principal place of business at 148/152 route de la Reine, 92100 Boulogne-Billancourt, France;

- 1.4 “**Approval Date**” means the date referred to in the Competition Commission’s Merger Clearance Certificate (Form CC15);
- 1.5 “**Business Days**” mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.6 “**Clearance Date**” means the date referred to in the Commission’s Merger Clearance Certificate (Form CC15);
- 1.7 “**Conditions**” mean the employment conditions set out in paragraph 3 below;
- 1.8 “**Condition Period**” means the period commencing on the Implementation Date and ending on three years post the Implementation Date;
- 1.9 “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
- 1.10 “**Competition Tribunal**” means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act;
- 1.11 “**Competition Appeal Court**” means the Competition Appeal Court of South Africa, a court established in terms of section 36 of the Act;
- 1.12 “**Implementation Date**” means the date, occurring after the Approval Date, on which the merger is implemented by the merging parties;
- 1.13 “**Labour Relations Act**” means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.14 “**Merger**” means the acquisition by Nokia of the issued share capital of Alcatel-Lucent, and to the extent possible, the entire issued ordinary share capital of Alcatel-Lucent, to be effected by way of a public tender for offers;
- 1.15 “**Merged Entity**” means the legal entity to be established pursuant to the successful implementation of the Merger;

- 1.16 **“Merging Parties”** mean, collectively, Nokia and Alcatel-Lucent;
- 1.17 **“Nokia”** means Nokia Corporation, a public company duly incorporated in Finland, with its principal place of business at Karaportti 3 P.O Box 226, FI-00045 Nokia Group, Finland;
- 1.18 **“Nokia South Africa”** means Nokia Solutions and Networks Holdings Proprietary Limited; and
- 1.19 **“Paterson Grading System”** refers to the job grading system set out in Annexure A.

2. RECORDAL

- 2.1 The merging parties notified the merger to the Commission on 15 June 2015 in terms of which Nokia proposed acquiring between 50% and 100% of the share capital issued by Alcatel-Lucent to be affected by means of a public tender for offers in France and in the United States.
- 2.1.1 The Commission's assessment of the merger identified the following relevant markets:
- 2.1.1.1 The market for the provision of Core Network Systems, including equipment in South Africa.
- 2.1.1.2 The market for the provision of associated unattached network infrastructure services in South Africa.
- 2.1.2 The Commission's concerns are set out in paragraph 2.2 and 2.3 below.

2.2 Effect of the Merger on employment

2.2.1 In respect to the public interest, the merging parties submit that the merger may result in the retrenchment of a maximum of 60 (sixty) affected employees of the merged entity in South Africa.

2.2.2 The Commission finds that the merger may result in employment losses of up to 60 employees over a 3 (three) year period in South Africa. Such employment losses directly arise as a result of the merger. Accordingly, the Commission is concerned about the likely impact of the merger on employment.

2.2.3 In order to remedy the public interest concerns arising from the merger as identified by the Commission, the Commission and the merging parties hereby agree to the Conditions set out in paragraph 3 below.

2.3 Effect of the Merger on Black Economic Empowerment (BEE)

2.3.1 In relation to the effect of the proposed transaction on BEE, the merging parties confirm that the shareholding of the BEE shareholders of Nokia Holdings SA, namely Business Venture Investments No1126 Proprietary Limited and Business Venture Investments No1125 Proprietary Limited will remain unchanged post-merger, however there is a possibility that their shareholding will be adjusted once Nokia commences with integration planning.

2.3.2 The merging parties have committed to consider potential changes to the BEE structure and implications in the appropriate time.

2.3.3 Given this uncertainty in relation to the post-merger impact on BEE, the Commission has imposed a condition in this regard.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

3.1 Employment Conditions

3.1.1 The Merged Entity shall limit the number of retrenchments of Affected Employees arising as a result of the proposed merger to 60.

3.1.2 For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

3.1.3 The Affected Employees shall be the first to be offered employment within Nokia in South Africa, for which they are suitably qualified, when vacant positions become available and this will occur before the vacant positions are advertised externally. This offer to Affected Employees will continue for a period of 12 (twelve) months after the expiry of the moratorium referred to in paragraph 3.1.1 of these Conditions. Employment of the Affected Employees will be subject to the

Affected Employees meeting the standard requirements for employment in such vacant positions.

3.2 Effect of the Merger on BEE

3.2.1 The Merged Entity shall not, as a result of the merger, dilute the shareholding of the BEE shareholders, Business Venture Investments No. 1126 Proprietary Limited and Business Venture Investments No 1125 Proprietary Limited in Nokia Solutions and Networks Holdings Proprietary Limited.

3.2.2 The Merged Entity shall not, as a result of the merger, dilute the shareholding of the BEE shareholder, Kunene Technology Investments Proprietary Limited, in Alcatel-Lucent South Africa Proprietary Limited.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1 An apparent breach by the Merged Entity of any of the Conditions will be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

4.2 Employment Conditions

4.2.1 The Merging Parties or its South African subsidiaries shall circulate a copy of the Conditions to all employees and their respective employee representatives within 7 (seven) business days of the Approval Date.

4.2.2 As proof of compliance thereof, the Merging Parties or Nokia South Africa shall within 7 (seven) business days of circulating the Conditions, provide the Commission with an affidavit by a senior representative attesting to the circulation of the Conditions and attach a copy of the notice sent to the employees and employee representatives.

- 4.2.3 Nokia shall inform the Commission in writing of the Implementation Date, within 7 (seven) business days of it becoming effective.
- 4.2.4 Any employee who believes that his/her employment with the merging parties has been terminated in contravention of the Conditions may approach the Commission with his or her complaint.
- 4.2.5 The Merged Entity shall submit a report on an annual basis confirming compliance with the Conditions set out in paragraph 3. The report shall indicate the number of retrenchments and the reasons for the retrenchments as well as the changes in BEE shareholding. The report shall be accompanied by an affidavit confirming the accuracy of the information contained in the report. The affidavit must be duly attested to by a senior official of the Merged Entity.
- 4.2.6 The first report shall be submitted on the anniversary of the Implementation Date. The remaining two reports will each be submitted on the second and third anniversary of the Implementation Date, respectively.
- 4.2.7 All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

5. TERMINATION OF THE CONDITIONS

- 5.1 The Conditions will automatically terminate upon fulfilment by the Merged Entity of its obligations contained herein, subject to the written approval of the Commission.

Annexure A

F Band – Strategic Intent

Policy making decisions (Top Management)

Top-level management give the overall direction of the firm. Top management decides on policy in all major areas of operation (finance, production, marketing).

E Band – Strategy Execution

Programming Decisions/Long Term Strategy/Strategy Execution (Senior or General Management)

Senior management decides on organisational structure and the overall programme for major functions.

D Band – Tactical management

Interpretive/Probabilistic Decisions (Middle Management/Professional)

Middle management decides on systems and procedures, rules and regulations.

C Band – Advanced operational

Determined/Process/System Decisions (skilled employees)

B Band – Operational

Operational/Sub-system (Semi-skilled Employees)

A Band – Primary

Defined Decisions (Basic skills)

Basic skills regarding the elements of an operation.
