

MTN gets approval to sell its towers to IHS

The Competition Commission (CC) has approved with conditions the acquisition by IHS Towers of 5,713 passive tower infrastructure sites and the associated business operations owned by MTN SA.



Source: [Unsplash](#)

After the merger, the relevant MTN towers will be wholly-owned by a subsidiary of IHS Towers, a public company listed on the New York Stock Exchange. In turn, IHS Towers will form a South African subsidiary, IHS Towers South Africa (IHS SA) which will hold these tower assets.

The transaction, which involves the sale of a part of MTN SA's tower infrastructure, means after the merger the two companies will remain direct competitors in the passive tower infrastructure market as MTN SA will retain some of its tower infrastructure which is not part of the transaction.

"The Commission identified competition and public interest concerns arising from the transaction, specifically related to the exclusion of rival independent tower operators and vendors from the market, as well as the potential exclusion of rivals from access to space on the affected towers."

"The Commission was particularly concerned about the ability of SMME and HDP tower vendors and independent tower operators to effectively participate in and expand in the tower infrastructure market, particularly at a time when mobile operators are considering the technical and other imperatives of rolling out 5G technology," the CC said in a statement.

The CC approved the merger subject to the following conditions:

Employment condition

MTN SA shall not retrench any of its employees in South Africa as a result of the merger for a period of 24 (twenty-four) months from the implementation date. The Commission notes that IHS Towers does not presently have any employees in South Africa.

B-BBEE condition

IHS SA shall:

- within 18 (eighteen) months of the implementation date, achieve a minimum Level 4 B-BBEE Status;
- within 4 (four) years of the implementation date, achieve a Level 1 B- BBEE Status;
- within 24 (twenty-four) months of the implementation date, achieve 30% B-BBEE Ownership. Further particulars of the B-BBEE condition are subject to a confidentiality claim made by the merging parties. The merging parties' confidentiality claim will be adjudicated by the Tribunal.

Procurement condition

IHS SA and MTN have committed to procuring a substantial proportion of the goods and services required for (1) the construction of its tower sites and (2) the management, maintenance, and security of tower sites from SME and HDP Tower Vendors in South Africa (either directly or indirectly), subject to IHS SA, MTN and the relevant Tower Vendor agreeing commercial terms, including terms related to quality and service standards as well as competitive pricing.

The procurement conditions shall endure for a period of 10 years from the implementation date.

For each contract awarded to SME and HDP Tower Vendors in terms of the procurement condition, MTN SA and IHS SA shall provide preferential payment terms to support the working capital requirements of the SME and HDP Tower Vendors.

New tower site rollouts

The Commission notes that there is a structural link between MTN SA and IHS SA. This raised a concern that IHS SA may be the preferred partner for new site rollouts. In order to limit any exclusionary effect associated with such a strategy, the Commission has imposed a condition limiting preferential allocation of MTN's new site rollout in terms of both the number of sites and the period in which IHS SA may be given first preference for new site rollouts.

Supplier development condition

MTN SA shall spend R60m per annum for 10 years from the implementation date to support SME and HDP owned vendors in the telecommunications sector. The annual spend shall escalate by CPI in each year for 10 years.

Site access condition

In relation to the sites that are to be acquired and transferred to the IHS Towers as part of the merger, IHS Towers will continue to make electronic communications facilities available to all existing users on the same terms and conditions as are currently applicable in terms of the agreements between MTN SA and those users.

On the expiry of those agreements, in relation to both the towers infrastructure sites being acquired and any new sites constructed by the IHS Towers, the IHS Towers will, on request, provide services (including, but not limited to, lease space on towers) to any party licensed in terms of the Electronic Communications Act (including existing users) on fair, reasonable and non-discriminatory terms, provided that it is technically, commercially and legally feasible to do so and subject to performance by the third parties of their respective obligations under the applicable commercial agreements.

The site access conditions set out above will endure for as long as the IHS Towers is a site owner in South Africa.

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