

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM157DEC22

In the matter between:

Starsight Energy Africa Holding (Pty) Ltd

Primary Acquiring Firm

And

SolarAfrica Energy (Pty) Ltd

Primary Target Firm

Panel: J Wilson (Presiding Member)
I Valodia (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on: 22 February 2023

Order Issued on: 22 February 2023

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that—

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Signed by: Jerome Wilson
Signed at: 2023-02-22 11:17:15 +02:00
Reason: Witnessing Jerome Wilson

Jerome Wilson

Presiding Member
Mr Jerome Wilson

22 February 2023
Date

Concurring: Professor Imraan Valodia and Professor Fiona Tregenna



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 22 February 2023

To : DLA Piper Attorneys

Case Number: LM157DEC22

Starsight Energy Africa Holding (Pty) Ltd And SolarAfrica Energy (Pty) Ltd

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **28 November 2022** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

ANNEXURE A
STARSIGHT ENERGY AFRICA HOLDING LTD

and

SOLARAFRICA ENERGY (PTY) LTD

CASE NUMBER: LM157DEC22

CONDITIONS

1. DEFINITIONS

1.1 The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1.1 **“AIIM C&I”** means AIIM C&I Clean Energy Platform (Pty) Ltd;

1.1.2 **“AIIF 3”** means African Infrastructure Investment Fund 3 Partnership;

1.1.3 **“Approval Date”** means the date referred to in the Tribunal’s merger clearance certificate;

1.1.4 **“Commission”** means the Competition Commission of South Africa;

1.1.5 **“Commission rules”** means the Rules for the Conduct of Proceedings in the Commission

1.1.6 **“Competing Firm”** means individually, Orionis, AIIM C&I and SolarAfrica Energy or any firm which competes for the supply of Solar PV to the commercial and industrial sectors in South Africa;

1.1.7 **“Competitively Sensitive Information”** includes, but is not limited to:

1.1.7.1 Pricing – including, but not limited to, pricing of specific products within those overlapping relevant markets, prices / discounts / rebates offered to specific clients and planned reductions or increases;

1.1.7.2 Margin information by product or client;

- 1.1.7.3 Financial data;
- 1.1.7.4 Cost Information;
- 1.1.7.5 Information on specific clients and client strategy, including information with respect to the sales volume of clients;
- 1.1.7.6 Marketing strategies;
- 1.1.7.7 Advertising strategies;
- 1.1.7.8 Customer information;
- 1.1.7.9 Budgets and business plans; and
- 1.1.7.10 Agreements and other (non-standard) terms and conditions relating to the supply and distribution of the relevant products.
- 1.1.8 “**Conditions**” means these conditions;
- 1.1.9 “**Days**” means any day that is not a Saturday, Sunday or public holiday in South Africa;
- 1.1.10 “**Dogstar Mauritius**” means Dogstar Mauritius, a company incorporated and registered in Mauritius;
- 1.1.11 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.1.12 “**Merger**” means the acquisition of control by Starsight Energy of SolarAfrica Energy;
- 1.1.13 “**Merger Parties**” means Starsight Energy and SolarAfrica Energy;
- 1.1.14 “**OM**” means Old Mutual Ltd;
- 1.1.15 “**OM Group**” means OM and any firm controlled (either directly or indirectly) by OM;
- 1.1.16 “**Operational Involvement**” means the day to day running and management of the supply of renewable solar energy activities of any of the Competing Firm/s by any individual/s as part of their employment, contractual or directorship responsibilities;
- 1.1.17 “**Orionis**” means Orionis Holdings RF (Pty) Ltd;
- 1.1.18 “**SolarAfrica Energy**” means SolarAfrica Energy (Pty) Ltd;
- 1.1.19 “**Solar PV**” means renewable energy generated using solar photovoltaic technology;

1.1.20 “**Starsight Energy**” means Starsight Energy Africa Holding Ltd;

1.1.21 “**Tribunal**” means the Competition Tribunal;

1.1.22 “**Tribunal Rules**” means the Rules for the Conduct of Proceedings in the Tribunal.

2. CONDITIONS

2.1. Board seats and management

2.1.1 For as long as AIIF 3 is able to nominate or appoint an individual/s to the board of directors of Dogstar Mauritius, it shall ensure that -

2.1.1.1 any individual/s nominated to the board of Dogstar Mauritius are not the same individual/s serving, nominated, and/or appointed by AIIF 3 on any other board or management committees or sub-committee of any Competing Firm/s;

2.1.1.2 In addition to and without derogating from the requirement in clause 2.1.1.1–

2.1.1.2.1 any individual serving, nominated and/or appointed by AIIF 3 to the board of Dogstar Mauritius or management committee or sub-committee of Dogstar Mauritius, should not have had any Operational Involvement in a Competing Firm for 6 months preceding their appointment to the board or management committees or sub-committee of Dogstar Mauritius;

2.1.1.2.2 any individual/s appointed by AIIF 3 to the board of directors of Dogstar Mauritius must not have served on the board of directors and/or management committees of any other Competing Firm in the preceding 6 (six) month period.

2.2. Information flow restriction

2.2.1. AIIF 3 shall procure that all existing representative/s appointed to the board of Dogstar Mauritius sign a confidentiality undertaking confirming that he or she will keep confidential, the Competitively Sensitive Information of SolarAfrica Energy from any individual/s or representatives of any other Competing Firm.

- 2.2.2. AIIF 3 shall procure that prior to the appointment of new representative/s to the board of Dogstar Mauritius that such representative/s sign a confidentiality undertaking confirming that he or she will keep confidential, the Competitively Sensitive Information of SolarAfrica Energy, from any individual/s or representatives of any other Competing Firm.

2.3. Confidentiality and Information Exchange Policy

- 2.3.1. AIIF 3 shall design and implement a Confidentiality and Information Exchange Framework to the satisfaction of the Commission that will be in respect of the Merger. The Confidentiality and Information Exchange Framework shall stipulate *inter alia* that the AIIF 3 representative/s on the board of Dogstar Mauritius shall not share or discuss any Competitively Sensitive Information of SolarAfrica Energy with any OM Group representatives on any other Competing Firm board or having Operational Involvement in any other Competing Firm.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Merger Parties shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 3.2. AIIF 3 shall within 60 (sixty) Days of the Approval Date, develop and submit for approval a Confidentiality and Information Exchange Policy to the Commission in line with the Conditions.
- 3.3. The Commission shall provide comments to the Confidentiality and Information Exchange Policy contemplated in these Conditions within 60 (sixty) Days of receipt.
- 3.4. AIIF 3 shall within 20 (twenty) Days of receipt of the Commission's comments provide the Commission with a final version of the Confidentiality and Information Exchange Policy.
- 3.5. Within 20 (twenty) Days of the Implementation Date, AIIF 3 shall submit to the Commission an affidavit, deposed to by a senior official –

- 3.5.1. confirming that a copy of these Conditions has been circulated to AIIF 3's representatives and nominees to the board of directors of Dogstar Mauritius;
- 3.5.2. listing the names of its representative/s on the board of directors of Dogstar Mauritius;
- 3.5.3. attaching a copy of the signed confidentiality undertakings referred to in clause 2.2.1 and 2.2.2 above.
- 3.6. On each anniversary of the Implementation Date, AIIF 3 shall provide the Commission with an affidavit deposed to by a senior official –
 - 3.6.1. attesting to compliance with the Conditions;
 - 3.6.2. highlighting any changes to the AIIF 3's representatives on the board of Dogstar Mauritius.

4. DURATION OF THE CONDITIONS

- 4.1. These Conditions shall apply for as long as the AIIF 3 is able to appoint representatives to the board of Dogstar Mauritius.

5. VARIATION

- 5.1. The Commission and/or the Merger Parties may at any time, on good cause shown, apply to the Tribunal for the waiver, relaxation, modification, variation and/or substitution of one or more of the Conditions.

6. BREACH

- 6.1. In the event that the Commission receives any complaint in relation to non-compliance with the Conditions, or otherwise determines that there has been a breach by the Merging Parties of the Conditions, the breach will be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

7. GENERAL

- 7.1. All correspondence in relation to the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za