

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM167Dec22

In the matter between:

IDEAS Infrastructure I GP (Pty) Ltd

**Primary Acquiring Firm**

And

SolarAfrica Energy (Pty) Ltd

**Primary Target Firm**

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

Heard on: 22 February 2023

Order Issued on: 22 February 2023

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### ORDER

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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 11:48:03 +02:00  
Reason: Witnessing Jerome Wilson

*Jerome Wilson*

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**Presiding Member**  
**Mr Jerome Wilson**

**22 February 2023**

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**Date**

**Concurring: Professor Imraan Valodia and Professor Fiona Tregenna**



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date** : 22 February 2023

**To** : Bowmans

Case Number: LM167Dec22

IDEAS Infrastructure I GP (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 **19 December 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](mailto:ctsa@comptrib.co.za)

### The Registrar, Competition Tribunal

**ANNEXURE A**  
**IDEAS INFRASTRUCTURE I GP (PTY) LTD**  
**and**  
**SOLARAFRICA ENERGY (PTY) LTD**  
**CASE NUMBER: LM167Dec22**

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**CONDITIONS**

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**1. DEFINITIONS**

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

1.1.1 **“Acquiring Firm”** means IDEAS;

1.1.2 **“Acquiring Group”** means IDEAS and the firms controlling it;

1.1.3 **“AIIM C&I”** means AIIM C&I Clean Energy Asset Co. Platform (Pty) Ltd;

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

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

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

1.1.7 **“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;

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

1.1.8.1 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;

- 1.1.8.2 Margin information by product or client;
- 1.1.8.3 Financial data;
- 1.1.8.4 Cost Information;
- 1.1.8.5 Information on specific clients and client strategy, including information with respect to the sales volume of clients;
- 1.1.8.6 Marketing strategies;
- 1.1.8.7 Advertising strategies;
- 1.1.8.8 Customer information;
- 1.1.8.9 Budgets and business plans; and
- 1.1.8.10 Agreements and other (non-standard) terms and conditions relating to the supply and distribution of the relevant products.
- 1.1.9 **“Conditions”** means these conditions;
- 1.1.10 **“Days”** means any day that is not a Saturday, Sunday or public holiday in South Africa;
- 1.1.11 **“IDEAS”** means IDEAS Infrastructure I GP (Pty) Ltd;
- 1.1.12 **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.13 **“Merger”** means the acquisition of control by IDEAS of SolarAfrica Energy;
- 1.1.14 **“Merging Parties”** means the Acquiring Firm and the Target Group;
- 1.1.15 **“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 ;
- 1.1.16 **“Orionis”** means Orionis Holdings RF (Pty) Ltd;
- 1.1.17 **“SolarAfrica Energy”** means SolarAfrica Energy (Pty) Ltd;
- 1.1.18 **“Solar PV”** means renewable energy generated using solar photovoltaic technology;
- 1.1.19 **“Target Group”** means SolarAfrica Energy and the firms controlled by it;
- 1.1.20 **“Tribunal”** means the Competition Tribunal;

1.1.21 “**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 IDEAS is able to nominate or appoint an individual/s to the board of directors of any Competing Firm, it shall ensure that -

2.1.1.1 any individual/s nominated to the board of the Competing Firm are not the same individual/s serving, nominated, and/or appointed on any other board or management committees or sub-committee of any other 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 IDEAS on any other board or management committees or sub-committee of one Competing Firm, should not have had any Operational Involvement in another Competing Firm for 6 months preceding their appointment to the board or management committees or sub-committee of another Competing Firm; and

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

### **2.2. Information flow restriction**

2.2.1. IDEAS shall procure that prior to the appointment of any of its representative/s to the board of any Competing Firm, such representative/s sign a confidentiality undertaking confirming that he or she will keep confidential, the Competitively Sensitive Information of the Competing Firm to whose board he or she will be appointed, from any individual/s or representatives of any other Competing Firm.

### **2.3. Confidentiality and Information Exchange Policy**

- 2.3.1. IDEAS shall design and implement a Confidentiality and Information Exchange Framework to the satisfaction of the Commission that will be used in respect of the Merger. The Confidentiality and Information Exchange Framework shall stipulate *inter alia* that the IDEAS representative/s on the board of any Competing Firm shall not share or discuss any Competitively Sensitive Information with any IDEAS 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 Merging Parties shall inform the Commission in writing of the Implementation Date within 14 (fourteen) Days of it becoming effective.
- 3.2. IDEAS 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 these Conditions.
- 3.3. The Commission shall provide comments on the Confidentiality and Information Exchange Policy contemplated in these Conditions to IDEAS within 60 (sixty) Days of receipt.
- 3.4. IDEAS 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, IDEAS 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 IDEAS's representatives and nominees to the board of directors of each Competing Firm;
  - 3.5.2. listing the names of its representative/s on the board of directors of each Competing Firm;
  - 3.5.3. confirming that the requirements set out in clauses 2.2 and 2.2.1 have been met; and

3.5.4. attaching a copy of the signed confidentiality undertakings referred to in clause 2.2.1 above.

3.6. IDEAS shall provide the Commission with an affidavit deposed to by a senior official –

3.6.1. attesting to compliance with clause 2.1 of the Conditions;

3.6.2. attesting to compliance with clause 2.2.1 of the Conditions;

3.6.3. attesting to compliance with clause 2.3.1 of the Conditions; and

3.6.4. highlighting any changes to the IDEAS's representatives on the board of any Competing Firm on each anniversary of the Implementation Date for a period 3 (three) years.

#### **4. DURATION OF THE CONDITIONS**

4.1. These Conditions shall apply for a period of 3 (three) years from the Implementation Date.

#### **5. VARIATION**

5.1. The Commission and/or the Merging 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](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).