

## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case no: LM184Feb23**

In the large merger between:

**Greenstreet 1 (Pty) Ltd**

Primary Acquiring Firm

And

**Scatec Solar South Africa B.V**

Primary Target Firm

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Panel:	S Goga (Presiding Member) I Valodia (Tribunal Member) A Ndoni (Tribunal Member)
Heard on:	24 March 2023
Order issued on:	24 March 2023
Reasons Issued on:	13 April 2023

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### REASONS FOR DECISION

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#### Introduction

[1] On 24 March 2023, the Competition Tribunal (“the Tribunal”) unconditionally approved the merger whereby Greenstreet 1 (Pty) Ltd (“Greenstreet”), intends to acquire 100% of Scatec Solar South Africa B.V. (“Scatec SSA”). Greenstreet will also acquire the loans to the Target Project Companies by Norfund and Scatec ASA.

[2] The two interrelated transactions are as follows: Greenstreet will acquire 30% of the shares in Scatec SSA from Norfund (“Norfund Transaction”). Subsequently, Scatec Solar Netherlands B.V. exercised its tag along right to sell its 70% in Scatec SSA to Greenstreet (SSN Transaction). Greenstreet is now obliged to acquire all of shares available from the SSN Transaction on the same terms and conditions as the purchase of the shares in the Norfund transaction.

[3] Post-merger, Greenstreet will solely control Scatec SSA.

## **The Parties**

### *Primary acquiring firm*

[4] Greenstreet's renewable energy investments are in relation to solar photovoltaic ("solar PV") projects for the supply of renewable solar energy to Eskom in terms of the Department of Mineral Resources and Energy's ("DMRE") Renewable Energy Independent Power Producer Procurement Programme ("REIPPPP"). The Acquiring Group has a total capacity of 298 MW in solar PV for the REIPPPP.

### *Primary target firm*

[5] Scatec SSA is an investment holding company that has a total capacity of 225MW in solar PV projects for the REIPPPP.

## **Proposed transaction and rationale**

### *The transaction*

[6] In terms of the proposed transaction, Greenstreet will ultimately acquire 100% shareholding in Scatec SSA through two interrelated transactions. Greenstreet will also acquire the loans to the Target Project Companies by Norfund and Scatec ASA.

### *Rationale for the transaction*

[7] Stanlib Infrastructure Fund II invests in projects in the power and renewable energy sectors. The proposed transaction provides an investment opportunity in line with the Fund's mandate. From the sellers' perspective, the proposed transaction provides them with an opportunity to realise a return on their investment. Specifically, Norfund is an early-stage investor in renewable energy projects. Norfund's investment in Scatec SSA was to provide financing to ensure the facilitation of new power generation. This was achieved in 2020 when the Target Project Companies became operational. As such, the investment mandate has

been fulfilled and the sellers intend to exit this investment to focus on other early-stage investment opportunities.

### **Relevant markets**

[8] The Commission is of the view that it is not necessary to form a definitive view on the market given the lack of competition concerns likely to arise from this transaction. The Commission does however note that in terms of the REIPPPP, each IPP enters into a Power Purchase Agreement (PPA) with Eskom for a period of 20 years, for the full output of the renewable plant at an upfront agreed price (with associated escalation clauses). The IPP can only supply electricity to Eskom. As such, the price and quantity are agreed upfront for the 20-year period and there is only one customer supplied, Eskom. The Commission assessed the effects of the proposed transaction for the supply of solar PV via the REIPPPP.

[9] The Commission is of the view that it is not necessary to form a definitive view of the relevant geographic market as no competition concerns are likely to arise. The Commission did however assess the effects of the proposed transaction nationally.

### **Competition assessment**

[10] The Competition Commission (“the Commission”) considered the activities of the merging parties and found that both the Acquiring Group and Scatec SSA are involved in the supply of solar PV to Eskom under the REIPPPP. The Commission is of the view that there is a horizontal overlap between the merging parties in the supply of solar PV. The Commission assessed the national market for the supply of solar PV via the REIPPPP.

[11] The Commission assessed the market shares based on the total contracted capacity of solar PV for the REIPPPP in 2022. The Commission found that the Acquiring Group has a market share of 6.3% in 2022 and Scatec SSA has a market share of 4.8% in 2022. The merging parties will have a combined post-merger market share of 11.1%. The Commission further notes that there are currently approximately 70 solar PV projects for the REIPPPP. Based on this, the Commission is of the view that the proposed transaction is unlikely to result in unilateral effects.

[12] The Commission considered whether the proposed transaction is likely to result in information exchange concerns given that the Acquiring Group has interests in multiple solar PV projects for the REIPPPP. The Commission found that this concern is unlikely to arise in relation to solar PV projects for the REIPPPP due to the nature of REIPPPP. For the REIPPPP, Eskom is the only customer of each solar PV project and the price and quantity to be supplied is agreed upfront. Further, the different IPPs supplying to Eskom under the REIPPPP are not competitors as each project is a ringfenced entity and once an IPP is awarded a bid, that IPP cannot participate in another bid window. This is different to the supply of solar PV to the commercial and industrial sector where suppliers compete with each other for customers and the price and quantity supplied are not fixed.

[13] The Commission is of the view that coordination concerns are unlikely to arise post-merger. We agree with this view.

## **Public interest**

### *Employment*

[14] The merging parties submitted that there are no employment concerns likely to arise from this transaction.

[15] The Commission contacted the employee representative of the merging parties who confirmed that there are no employment concerns arising from this transaction.

### *Spread of ownership*

[16] The Acquiring Group has 37.77% HDP ownership. Scatec SSA has no HDP ownership. Consequently, the merger increases HDP ownership at Scatec SSA by 37.77% percentage points.

[17] Further, the Target Project Companies have 5% ownership by the Trust. The merging parties submit that this will remain unchanged post-merger. As such, the Commission concluded that the merger increases HDP participation.

[18] The proposed transaction raises no other public interest concerns.

## **Conclusion**

[19] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not raise any public interest concerns.

**13 April 2023**

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**Ms Sha'ista Goga**

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**Date**

**Ms Andiswa Ndoni and Prof Imraan Valodia**

Tribunal Case Manager:           Theodora Michaletos

For the Merging Parties:           Leana Engelbrecht of Herbert Smith Freehills

For the Commission:                Wiri Gumbie and Raksha Darji