COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM174Mar20

In the matter between:

Mulilo Renewable Energy Proprietary Limited	Primary Acquiring Firm(s)
and Greenstreet 1 (Pty) Ltd	
And	
Mulilo Renewable Energy Solar	Primary Target Firm(s)
PV Prieska (RF) (Pty) Ltd	
and Mulilo Renewable Energy Solar PV De Aar (Pty) Ltd	

Panel	:	Enver Daniels (Presiding Member)
	:	Fiona Tregenna (Tribunal Member)
	:	Thando Vilakazi (Tribunal Member)
Heard on	:	13 May 2020
Order Issued on	:	13 May 2020
Reasons Issued on	:	07 July 2020

Reasons for Decision

Approval

[1] On 13 May 2020, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving Mulilo Renewable Energy (Pty) Ltd and Greenstreet 1 (Pty) Ltd and Mulilo Prieska and Mulilo De Aar.

[2] The reasons for approving the proposed transaction follow.

Parties to the proposed transaction

Primary acquiring firm

[3] The primary acquiring firms are Mulilo Renewable Energy (Pty) Ltd ("Mulilo") and Greenstreet 1 (Pty) Ltd ("Stanlib Fund II SPV"). Mulilo is wholly owned and controlled by Mulilo Group Holdings (Pty) Ltd ("Mulilo Group Holdings"), which is in turn wholly owned and controlled by Mulilo Energy Holdings (Pty) Ltd ("Mulilo Energy Holdings").

[4] Stanlib Fund II SPV is ultimately controlled by Stanlib Asset Management, a subsidiary of Stanlib Ltd ("Stanlib"). Stanlib Fund II SPV is a private equity investment fund established with the objective of acquiring a portfolio of long-term infrastructure assets.

[5] Mulilo is ultimately controlled by Mulilo Energy Holdings (Pty) Ltd ("Mulilo Energy Holdings"). In addition to Mulilo, Mulilo Energy Holdings controls various other firms within the renewable energy industry. Moreover, Mulilo Energy Holdings is an independent renewable energy developer and strategic equity investor.

[6] Mulilo Prieska and Mulilo De Aar are jointly controlled by Mulilo and X-Elio Energy S.L ("X-Elio") as to 20% and 60%, respectively. The remaining 20% non-controlling interest in Mulilo De Aar is held by Mulilo De Aar Solar Community (RF) (Pty) Ltd ("De Aar Solar Community"). The remaining 20% non-controlling interest in Mulilo Prieska is held by Mulilo Prieska Solar Community (RF) (Pty) Ltd ("De Aar Solar Community"). Mulilo De Aar and Mulilo Prieska are involved in the production of renewable energy using photo-voltaic (PV) technology.

[7] Mulilo and Stanlib Fund II SPV shall be referred to as the “Acquiring Firms”.

Primary target firm

[8] The primary target firms are Mulilo Prieska and Mulilo De Aar. Mulilo Prieska and Mulilo De Aar are jointly controlled by Mulilo as to 20% and X-Elio Energy S.L (“X-Elio”) as to 60%.

[9] The remaining non-controlling 20% in Mulilo Prieska is held by Mulilo Prieska Solar Community (RF) (Pty) Ltd (“Prieska Solar Community”). The remaining 20% non-controlling interest in Mulilo De Aar is held by Mulilo De Aar Solar Community (RF) (Pty) Ltd (“De Aar Solar Community”).

[10] Mulilo Prieska and Mulilo De Aar, shall jointly be referred to as the Project Companies. The Project Companies do not control any firm.

[11] Mulilo De Aar and Mulilo Prieska are involved in the production of renewable energy using photo-voltaic (PV) technology.

Proposed transaction and rationale

[12] The Commission and the merging parties submitted that the proposed transaction would take place in two steps:

[13.1] Step one, according to the Subscription Agreement concluded by Mulilo Group Holdings and Mulilo Energy Holdings, Stanlib Fund II SPV will subscribe for 56.25% interest in Mulilo. Post this step, Stanlib Fund II SPV will hold 56.25% in Mulilo and the remaining 43.75% will be held by Mulilo Group Holdings.

[13.2] Step two, according to the Equity Purchase Agreement entered by X-Elio and Mulilo, Mulilo will exercise its pre-emptive rights and acquire 60% interest in Mulilo Prieska and Mulilo De Aar, from X-Elio. Post transaction, Mulilo will have sole control over Mulilo De Aar and Mulilo Prieska. As a result of its interest in Mulilo, Stanlib Fund II SPV will also have indirect control over the Project Companies.

[13] The Acquiring Firms submitted that Mulilo currently holds a 20% interest in the Project Companies. They also submitted that the decision by X-Elio, as the current majority shareholder in the Project Companies, to exit as a shareholder in the Project Companies provides an opportunity for Mulilo to increase its shareholding in the Project Companies. The Project Companies operate profitably and as an existing shareholder with pre-emptive rights it makes commercial sense for Mulilo to increase its shareholding in the Project Companies and, in so doing, strengthen it owns balance sheet and increase its operational scale for the future.

[14] According to the Target Group, Stanlib Fund II SPV has a mandate to invest in renewable energy infrastructure assets. Acquiring a significant shareholding in Mulilo and an indirect shareholding in the Project Companies will provide meaningful exposure to this asset class from an overall portfolio perspective, commensurate with the increase in the size of the fund.

Impact on competition

[15] The Commission considered the activities of the merging parties and found that there are overlaps in (i) private equity investments and (ii) the supply of Solar PV and wind energy to Eskom. The Commission found that the Acquiring Firms are both involved in private equity investments. In addition, the Acquiring Firms both hold interests in firms that are involved in the production of renewable wind and Solar PV energy.

[16] In relation to the overlap in private equity investments, the Commission found that this market is highly fragmented with at least 166 private equity firms. The Commission also found that Stanlib holds approximately 1% of general private equity investments.

[17] Regarding overlaps in the production and supply of renewable wind and Solar PV energy, the Commission found that the merging parties and their subsidiaries form part of South Africa's Renewable Energy Independent Power Producer Procurement Programme ("REIPPPP"). In terms of the REIPPPP, Independent Power Producers (IPPs) enter standardised non-negotiable, 20-year power purchasing agreements (PPAs) with Eskom. In terms of these PPAs, the IPPs cannot alter the price and volume of energy supplied to Eskom. As such, post-transaction the merged entity will not have the ability to substantially change prices and/or volumes supplied to Eskom. The Commission submits that the merged entity will have 9.10% and 18.81% market share in the national market for the production and supply of wind energy and solar energy, respectively. The Commission also found that the merged entity will continue to face competition from other firms such as Mainstream, African Clean Energy Developments and EDF, amongst others.

[18] The Commission also considered the impact that this merger will have at a local level. In relation to operations at District Municipality level, the Commission found that Stanlib and the Mulilo Group both operate projects located in towns that fall under the Pixley Ka Seme District Municipality in the Northern Cape and that there are also six alternative projects in Pixley Ka Seme District. The Commission also found that the merged entity (Stanlib) will hold approximately 51% of the market for renewable energy in the Pixley Ka Seme District, with 32% accretion. The merged entity will continue to face competition from Solar Capital (26%), Greefspan (11%), De Aar Solar Power (9%) and Herbert PV Power Plant (3%).

[19] At Local Municipality Level, the Commission submitted that the activities of the merging parties overlap in Emthanjeni Local Municipality. The Commission submitted that there are currently three other renewable energy projects in this Municipality and that the merged entity is likely to hold 38% market share in Emthanjeni, with an accretion of 5%. The Commission found that the merged entity will continue to face competition from other projects such as those operated by Solar Capital (46%) and De Aar Solar Power (15%).

[20] The Commission indicated that, it is worth noting that these market shares (at both District and Local Municipalities) are likely to be overstated as most of the current capacity by each of the merging parties' projects is committed to Eskom for a period of 20 years. Furthermore, the terms at which Municipalities are likely to procure electricity from, as well as the process to be undertaken in identifying IPPs is still unclear. The Commission submitted that it would continue to monitor policy and concentration changes at municipal level.

[21] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa.

Public interest

[22] The merging parties confirmed that the proposed transaction will have no adverse effect on employment in South Africa.[1] With respect to the effect on shareholdings by historically disadvantaged individuals, the Commission found that Prieska Solar Community holds 20% non-controlling interest in Mulilo Prieska and that De Aar Solar Community holds 20% non-controlling interest in Mulilo De Aar. Both Prieska Solar Community and De Aar Solar Community (jointly the Communities), are companies established to benefit their respective communities. In this regard, the Commission found that the shareholding held by the Communities in the Project Companies will not be affected by the proposed transaction.

[23] [redacted]

[1] Merger Record, pages 17.

[redacted]

[redacted]

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

Conclusion

[25] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition,

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[redacted]

no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.

Signed by: Enver Daniels
Signed at: 2020-07-07 16:06:10 +02:00
Reason: I approve this document

Enver Daniels

<u>07 July 2020</u>

Mr Enver Daniels **DATE**

Prof Fiona Tregenna and Dr Thando Vilakazi concurring

Tribunal Case Manager	:	Ms Busisiwe Masina
For the merging parties	:	Ms Leana Engelbrecht and Mr Nick Altini of Herbert Smith Freehills South Africa LLP
For the Commission	:	Mr Hlumani Mandla and Mr Magau Aphane