



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM196Dec20

In the large merger between:

Greenstreet 1 (Pty) Ltd (Primary Acquiring Firm)

And

Solar Capital De Aar 3 (RF) (Pty) Ltd (Primary Target Firm)

Heard on: 26 February 2021

Order Issued on: 26 February 2021

REASONS FOR DECISION

- [1] On 26 February 2021, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger between Greenstreet 1 (Pty) Ltd (“Stanlib Fund II SPV”) and Solar Capital De Aar 3 (RF) (Pty) Ltd (“SCDA 3”).
- [2] In a previous merger between these two parties, the Tribunal on 21 January 2021 unconditionally approved Stanlib Fund II SPV’s acquisition of a 40% joint controlling stake in SCDA 3. In the present transaction, Stanlib Fund II SPV intends to acquire an additional 32% shareholding in SCDA 3, such that Stanlib Fund II SPV will exercise sole control over SCDA 3.
- [3] Stanlib Fund II SPV is a private equity investment fund established with the objective of acquiring a portfolio of long-term infrastructure assets. Stanlib Fund II SPV is ultimately controlled by Stanlib Ltd (“Stanlib”).¹ Stanlib holds controlling interests in 6 other independent power producers (“IPPs”): 4 solar photovoltaic (“PV”) projects in the Northern Cape, and 1 solar PV project and 1 wind project in the Eastern Cape.
- [4] SCDA 3 is a solar PV project located within the Pixley ka Seme District Municipality, Northern Cape. SCDA 3 is contracted to supply 75MW of electricity produced from solar energy to Eskom under the Renewable Energy Independent Power Producer Procurement Programme (“REIPPPP”).²
- [5] The Competition Commission (“Commission”) found overlaps in the activities of the merging parties and assessed the competition effects of the proposed transaction in (i) the (broad) market for the supply of renewable energy, and (ii) the (narrow) market

¹ Stanlib is involved in the provision of financial services.

² The REIPPPP office’s mandate is to enhance South Africa’s power generation capacity by securing electricity from various renewable energy sources from the private sector. This is done through a tender process facilitated by the Department of Mineral Resources and Energy, that culminates in the IPPs selling electricity to Eskom.

for the supply of solar PV. From a geographic market perspective, the Commission assessed these two product markets at a national, district (Pixley ka Seme District Municipality) and local level (Emthanjeni Local Municipality). The Commission assessed the district municipality and local municipality levels as worst-case scenarios because it is not clear whether or not the Electricity Regulation Act 4 of 2006 provides the Minister of the Department of Mineral Resources and Energy (“DMRE”) the discretion to allow municipalities to directly procure electricity from IPP projects.

- [6] We have assessed the competition effects of the proposed transaction on the above basis, however, since the renewable energy markets are relatively new and developing, we leave the exact product and geographic market delineation open. The Commission’s findings follow:

Geographic market level	Market shares for the merged entity	Accretion
Product market for the supply of renewable energy		
National	5%	1%
District	17%	6%
Local	28%	9%
Product market for the supply of renewable energy by solar PV		
National	12%	3%
District	35%	12%
Local	25%	19%

- [7] The respective national markets above were fragmented. The district-level markets above were assessed as a worst-case scenario, and the merged entity would be constrained by a number of players. The local-level markets above were also assessed as a worst-case scenario, and the merged entity would be constrained by a number of players.
- [8] In addition to the above, the Commission found that the merging parties entered into non-negotiable, 20-year power purchasing agreements to supply Eskom as preferred bidders under the REIPPPP. The Commission found that to the extent that the merger may result in relatively high market share accretions, the merged entity’s long-term agreements under the REIPPPP would constrain it from acting unilaterally to the detriment of customers or competitors as pricing is determined upfront when the bid is awarded and cannot be altered.³
- [9] The present transaction represents a change from joint control of SCDA 3 to sole control by Stanlib Fund II SPV. In our recent merger decision, we already assessed the competition effects of the merging of these two parties and we concluded that it would not lead to a substantial prevention or lessening of competition in any relevant market. This change in control does not alter the market structure..
- [10] We note that in the previous merger decision, while cognisant that the customer, volumes and price are determined at bid stage and therefore unlikely to change, we had a residual concern regarding the use of information obtained through common

³ The Commission also consulted the National Energy Regulator of South Africa (“NERSA”). NERSA reiterated that the IPP projects awarded in terms of the REIPPPP are to supply Eskom only and municipalities are thus not able to procure renewable energy from any of these existing projects

shareholding and whether this could influence future competition. We noted that in each of the REIPPPP's four previous bid windows, no less than 53 bids were submitted with no less than 13 bidders awarded preferred bidder status. We concluded that the bidding process appears competitive given the number of participants. However, information exchanges in the renewable energy markets should be more fully investigated on a case-by-case basis in future mergers.

- [11] The potential concern of creeping mergers in the renewable energy markets affected by this transaction was already assessed in our abovementioned recent merger decision and the change from joint to sole control over SCDA 3 brought about by this transaction does not alter our conclusion in that regard.
- [12] We conclude that the proposed transaction does not substantially prevent or lessen competition in any relevant market.
- [13] In relation to public interest considerations, we note that the merging parties submitted that Stanlib Fund II SPV does not have any employees, and that the employee representative of Stanlib Asset Management (Pty) Ltd did not raise any concerns regarding the proposed transaction. The merging parties also submitted that the proposed transaction would not result in retrenchments or any other negative effects on employment in any of the firms involved. Furthermore, the proposed transaction raises no other public interest concerns. We conclude that no public interest concerns arise from the proposed transaction.

Mr Enver Daniels
Ms Mondo Mazwai and Mr Andreas Wessels concurring.

29 March 2021
Date

Tribunal Case Manager: P Kumbirai
For the Merging Parties: L Engelbrecht and N Altini of Herbert Smith Freehills
South Africa LLP
For the Commission: W Gumbie and T Loate