competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM036Jun23

In the matter between:

G.D.F International S.A.	Acquiring Firm
And	
Actis Energy Okavango Mauritius Limited	Target Firm

Panel:	Sha'ista Goga (Presiding Member) Fiona Tregenna (Tribunal Member) Andiswa Ndoni (Tribunal Member)
Heard on:	07 September 2023
Order issued on:	07 September 2023
Reasons issued on:	05 October 2023

REASONS FOR DECISION

Introduction

[1] On 07 September 2023, the Competition Tribunal ("Tribunal") unconditionally approved the large merger whereby G.D.F International S.A. ("GDFI") intends to acquire a 100% interest in Actis Energy Okavango Mauritius Limited ("Actis Okavango").

[2] Upon implementation of the proposed transaction, GDFI will exercise sole control over Actis Okavango.

Parties to the transaction and their activities

Primary acquiring firm

[3] The primary acquiring firm is GDFI, a wholly owned subsidiary of Engie S.A. Engie S.A. is a public company dual listed on the Paris and Brussels stock exchanges.

[4] The shares of Engie S.A. are widely dispersed and no single firm or individual controls Engie S.A.

[5] Internationally, GDFI's subsidiaries include Engie Asia Pacific (Singapore) Pte Ltd, Mescat Middle East DMCC and Engie Renewables Australia Proprietary Ltd. GDFI does not directly or indirectly control any firm in South Africa.

[6] GDFI, all the firms that it controls and the firms controlling it will collectively be referred to as the "Engie Group".

[7] The Engie Group operates globally as an independent power producer ("IPP") in the fields of low carbon dioxide power generation, power and natural gas transmission and the distribution and the provision of related energy services.

Primary target firm

[8] The primary target firm is Actis Okavango, a wholly owned subsidiary of Actis Energy Okavango Holdings Mauritius Limited ("Actis Holdings"). Actis Holdings is a wholly owned subsidiary of Actis Energy 4 LP and Actis Energy 4A LP (the "Actis Fund").

[9] Actis Okavango owns and controls the Actis Energy Okavango Services Limited, Okavango Kenya Mauritius Limited and Okavango Biology Mauritius Limited.

[10] Actis Okavango and all the entities under its control are referred to as the "Actis Group".

[11] Actis Okavango is an IPP operating through several subsidiaries and has an operating portfolio of nearly 500 MW of onshore wind and solar photovoltaic ("solar PV") power projects in South Africa and Kenya.

Proposed transaction and rationale

Transaction

[12] In terms of the proposed transaction, GDFI will acquire 100% of the issued shares in Actis Okavango from Actis Holdings. Upon the implementation of the proposed transaction, GDFI will exercise sole control over Actis Okavango.

Rationale

[13] The Engie Group submits that it has identified Actis Okavango as an attractive investment opportunity and contributing to the group's growth. The proposed transaction offers the Engie group the opportunity to increase its global presence and operations in renewable energy generally, and in the onshore wind and solar PV energy markets specifically, as well as reinforce the acquiring group's industrial footprint in the fast-growing renewable energy market in South Africa.

[14] From the seller's perspective, the proposed transaction will enable the seller to deliver a return to its institutional investors.

Relationship between the parties

[15] The proposed transaction gives rise to a horizontal overlap in the market for the (i) production and supply of renewable energy by IPPs under Power Purchase Agreements ("PPAs"); (ii) production and supply of electricity in terms of PPAs using solar PV; and (iii) production and supply of electricity in terms of PPAs using onshore wind.

Relevant markets

[16] In *Globeleq South Africa Holdings (Pty) Ltd and SA Springbok Holdings (Pty) Ltd and Others*[1] wherein the Tribunal acknowledged that there is a separate and distinct product market for the generation of electricity using wind farms, which is different from the market for the generation of electricity using solar plants.

[17] In light of the above and without definitively concluding on the relevant product market, we consider the effects of the proposed transaction in the narrow market for (i) the production and supply of renewable energy by IPPs under PPAs; (ii) the production and supply of electricity by IPPs using solar PV; and (iii) the production and supply of electricity by IPPs using onshore wind.

[18] As regards the geographic ambit of the relevant markets, we consider the the geographic market for the provision of renewable energy as national.

Competition assessment

[19] Based on market share estimates provided by the merging parties, the Commission found that the merged entity will have a post-merger market share of approximately 10% with a market share accretion of 5.4% in the market for the production and supply of renewable energy.

[20] As regards the market for production and supply of electricity by IPPs using solar PV, the merged entity will have a post-merger market share of approximately 10.4% with a market share accretion of 9.5%.

[21] Additionally, the merged entity would have a combined market share of 7.2% with an accretion of 4.5% in the market for the production and supply of electricity by IPP using onshore wind.

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[1] *Globeleq South Africa Holdings (Pty) Ltd and SA Springbok Holdings (Pty) Ltd and Others* (LM164Aug18).

[22] Both merging parties have tendered and entered into contracts for rounds of the Renewable Energy Independent Power Producer Procurement Programme ("REIPPPP") with Eskom in South Africa. In terms of the REIPPP, IPPs enter into non-negotiable contracts with Eskom which fixes the prices and volume of energy to be supplied. As such, there is no competition between the existing projects of the two companies at present as they are bound by the terms of their contract.

[23] In terms of future competition, the merger is not likely to have a significant impact on competition. Competition between IPPs occurs at the bidding stage and despite the reduction in one potential bidder for the next bidding window as a result of the merger, the merged entity will continue to face competition from other bidders including Red Rocket South Africa, African Infrastructure Investment Managers, Mainstream Renewable Power, EDF Renewables, Scatec Solar Africa and Enel Green Power RSA, amongst others. Furthermore, as a single buyer, Eskom, is able to exert countervailing power.

[24] In light of the above, the horizontal overlap between the activities of the merging parties is unlikely to result in a substantial prevention or lessening of competition given the characteristics of the market and the fact that the merging parties combined market shares and market share accretions in the relevant markets are relatively low.

[25] Based on the above, we are of the view that the proposed transaction is unlikely to result in any substantial prevention or lessening of competition in any relevant market.

Public interest assessment

Effect on employment

[26] The merger parties submitted that there will be no retrenchments in South Africa as a result of the proposed transaction.

[27] GDFI does not have any employees in South Africa while the employees of the Engie Group are represented by both the National Union of Metal Workers of South Africa ("NUMSA") and Thuli Moloto ("Ms Moloto").

[28] NUMSA did not make any submissions despite the Commission reaching out to them on several occasions. On the other hand, Ms Moloto submitted that the employees of Engie Group had been notified about the proposed transaction and all employee-related concerns, which mostly relate to the employees' role in the new organization, have been addressed by the management.

[29] The employees of Actis Okavango are not unionised and are represented by Mr Simamkele Mngqete. Mr Mngqete submitted to the Commission that all employees have been notified about the proposed transaction and no major concerns were raised.

[30] We therefore conclude that the proposed transaction is unlikely to have a negative effect on employment.

Effect on the spread of ownership

[31] Both GDFI and Actis Okavango do not have any shareholdings held by historically disadvantage persons ("HDPs") in South Africa. However, each of the Engie Group project companies has between 10% and 50.275% of their shares held by HDPs whilst each of the project companies of Actis Okavango have 40% of their shares held by HDPs.

[32] Although both the merging parties have no HDP ownership, their REIPPP project companies of the merging parties have notable HDP ownership. The merging parties further confirmed to the Commission that the HDP shareholding in the project companies will not change post-merger.

[33] Considering the above, the Commission concluded that the proposed merger is a foreign-to-foreign transaction, and the Engie Group will be operating through project companies that are transformed and with shareholding held by HDP

ranging between 10% and 51%. Thus, the proposed merger will not reduce participation by local firms in the REIPPPP.

[34] Based on the above facts, there was no evidence by the Commission or any party that the transaction has a negative effect on the greater spread of ownership in terms of the Competition Act 89 of 1998, as amended.

Conclusion

[35] For the reasons set out above, the Tribunal concludes that the proposed transaction does not raise any significant competition or public interest concerns, and therefore approves the proposed transaction unconditionally.

Signed by:Shaista Goga
Signed at:2023-10-05 11:46:24 +02:00
Reason:Witnessing Shaista Goga

Shaista Goga

05 October 2023

Ms Sha'ista Goga **Date**

Concurring: Prof. Fiona Tregenna and Ms. Andiswa Ndoni

Tribunal case manager	:	Juliana Munyembate and Baneng Naape
For the merging parties	:	Chris Charter and Leago Mathabathe of Cliffe Dekker Hofmeyr
For the Commission	:	Nhlakanipho Mbhense, Zanele Hadebe and Ratshi Maphwanya