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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 020511

In the matter between:

K2014158795 PROPRIETARY LIMITED Acquiring Firm

And

INTIKON ENERGY PROPRIETARY LIMITED Primary Target Firm

Panel	: Anton Roskam (Presiding Member) : Fiona Tregenna (Tribunal Member) : Imraan Valodia (Tribunal Member)
Heard on	: 18 March 2015
Order Issued on	: 18 March 2015
Reasons Issued on	: 15 April 2015

Reasons for Decision

Approval

[1] On 18 March 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between K2014158795 (Proprietary) Limited ("TriAlpha SPV") and Intikon Energy (Proprietary) Limited ("Intikon").

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

Parties to Transaction and their Activities

Primary acquiring firm

[3] The primary acquiring firm is TriAlpha SPV, a newly formed entity specifically incorporated for the purpose of the proposed transaction. It is a wholly owned subsidiary of TriAlpha Specialised Investments Trust III ("TriAlpha Trust"). TriAlpha SPV is managed by Gaia Energy Infrastructure Funds ("GAIA"). TriAlpha is managed by TriAlpha Investment Management Proprietary Limited ("TriAlpha Investment"). Neither TriAlpha SPV nor TriAlpha Trust controls any firms.

[4] TriAlpha SPV is a special purpose vehicle established for the current transaction and as such does not conduct any operations. TriAlpha is an investment firm that manages various investment mandates, predominantly for institutional clients in various sectors within South Africa.

Primary target firm

[5] The primary target firm is Intikon, a firm incorporated in accordance with the laws of the Republic of South Africa. Intikon is controlled by the Triangle Unit Trust, a trust incorporated in Australia and which is controlled by the S Donnelly Family Trust. Neither the Triangle Trust nor the S Donnelly Family Trust controls any firm. Intikon controls Oakleaf 90 (Pty) Ltd and Oakleaf 83 (Pty) Ltd, collectively referred to as the "Intikon Group."

[6] The Intikon Group comprises of Independent Power Producers (IPPs) that generate renewable energy, using solar photovoltaic technology (Solar PV) at plants in the Free State and the Northern Cape Provinces. The electricity generated by the Intikon Group is exclusively supplied to Eskom.

Proposed Transaction and Rationale:

[7] TriAlpha SPV will obtain all the issued share capital in Intikon from the respective shareholders. Following the implementation of the proposed transaction, TriAlpha will have sole control over Intikon.

[8] TriAlpha intends to invest in renewable energy whilst Intikon wishes to expand its footprint.

Relevant market and Impact on competition

[9] As stated above, the Intikon Group comprises of IPPs that produce renewable energy. On the other hand, TriAlpha is an investment firm which does not hold any shares in any firms that produce renewable energy in South Africa. Thus, there is no product overlap in the activities of the merging parties. However, the Commission considered the extent of TriAlpha's investment in the energy sector as TriAlpha has notified another transaction to the Commission in terms of which it intends to acquire control over Dorper Wind Farm (RF) Proprietary Limited ("DWF"), an IPP firm that produces renewable energy.[1] Accordingly, the Commission considered the overlap in respect of the production of renewable energy in South Africa.

[10] In relation to the market for the production of renewable energy in South Africa, the Commission found that DWF and the Intikon Group are both IPP's meaning that their operations are limited to the provisions of the Renewable Energy Independent Power Producers Programme ("REIPP"). Thus, the Commission considered the procurement process and the roles of the key participants directly involved in the programme, namely the Department of Energy ("DOE"), the National Energy Regulator of South Africa ("NERSA") and Eskom Holding SOC Limited (Eskom).

[1] See K2014158670 (Pty) Ltd and Dorper Wind Farm (RF) (Pty) Ltd Case no: 020222.

[11] Upon considering this supply chain, the Commission found that competition between IPPs takes place at the bidding stage where firms compete to be appointed as preferred renewable energy suppliers. Further, services of IPPs are procured per technology meaning that only companies with the same technology are considered competitors.

[12] The Commission ultimately concluded that although both the Intikon Group and DWF produce electricity under the REIPP and supply it exclusively to ESKOM, they do not use the same technology for this purpose. The Intikon Group generates electricity through Solar PV whereas DWF generates electricity using onshore wind technology. Thus, members of the Intikon Group and DWF are not competitors in the market and there is no product overlap.

[13] Further, based on the fact that Eskom has Power Purchase Agreements (PPA's) with approximately 60 IPPs which will continue to supply renewable energy until 2030, it is unlikely that the merged entity will have market power.

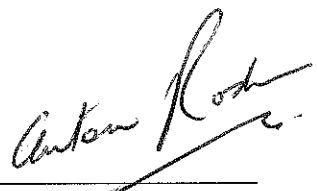
[14] The Commission thus concluded that the proposed transaction will not substantially lessen or prevent competition in any relevant or related market.

Public interest:

[15] The Commission concluded that the proposed transaction does not raise any public interest concerns.

Conclusion:

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transactions. Accordingly we approve the proposed transaction unconditionally.



Anton Roskam **DATE: 15 April 2015**
Fiona Tregenna and Imraan Valodia concurring

Tribunal Researcher:	Ammara Cachalia
For the merging parties:	Leana Engelbrecht, DLA Cliffe Dekker Hofmeyr.
For the Commission:	Dineo Mashego.