

SOUTH AFRICA / JUDGMENT

**Greenstreet 1 (Pty) Ltd v Scatec Solar SA 164
(Pty)
Ltd Scatec Solar SA 165 (Pty) Ltd (LM096SEP24)
[2024] ZACT 33 (12 November 2024)
[2024] ZACT 33**

COURT

Competition Tribunal

BEFORE

T Vilakazi, I Valodia, G Budlender

CASE / FILE NUMBER

LM096SEP24

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM096SEP24

Greenstreet 1 (Pty) Ltd Primary Acquiring Firm And Scatec Solar SA 164 (Pty) Ltd Scatec Solar SA
165 (Pty) Ltd Primary Target Firms

Panel

: T Vilakazi (Presiding Member)

:

I Valodia (Tribunal Member)

:

G Budlender (Tribunal Member)

Heard on

: 25 October 2024

Order issued on

: 25 October 2024

Reasons

issued on : 12 November 2024

REASONS FOR DECISION**Introduction**

[1] On 25 October 2024, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger in terms of which Greenstreet 1 Proprietary Limited (“Greenstreet”) wishes to acquire an additional [...] the issued shares in both Scatec Solar SA 164 Proprietary Limited (“Scatec 164”) and Scatec Solar SA 165 Proprietary

Limited (“Scatec 165”) from Scatec ASA.

[2] On completion of the proposed transaction, Greenstreet’s shareholding in Scatec 164 will increase from [...] to [...] and in Scatec 165 it will increase from [...] Greenstreet will hold a controlling shareholding in both Scatec 164 and Scatec 165.

Parties and their activities**Primary acquiring firm**

[3] The primary acquiring firm is Greenstreet, a company incorporated in accordance with the laws of South Africa. Greenstreet is wholly owned by STANLIB Infrastructure Fund II (“STANLIB II”) and is represented by its general partner STANLIB Infrastructure GP 2 Proprietary Limited (“GP 2”).

[4] STANLIB II is managed by STANLIB Asset Management Proprietary Limited (“STANLIB Asset Management”) as its investment manager. STANLIB Asset Management is also the investment manager of STANLIB Infrastructure Fund I (“STANLIB I”) which is represented by its general partner STANLIB Infrastructure GP 4 Proprietary Limited (“GP 4”).

[5] STANLIB Asset Management is controlled by STANLIB Limited which is in turn wholly owned by Liberty Holdings Limited (“LHL”). LHL is wholly owned by Standard Bank Group Limited (“SBG”). SBG is a public company registered on the JSE Limited and Namibian Stock Exchange and is thus not controlled by any firm.

[6] STANLIB I is controlled by its general partner GP4 and holds the following interests in the renewable energy sector in South Africa:

6.1. [...]

6.2. Scatec Solar 164, one of the primary target firms through a [...] interest held by [...]

6.3. Scatec Solar 165, one of the primary target firms through a [...] interest held in [...]

6.4. Simacel 160 Proprietary Limited (“Project Dreunberg”) through a direct interest of [...] and an indirect interest of [...] held by Scatec 164;

6.5. Scatec Solar Kalkbult (RF) Proprietary Limited (“Project Kalkbult”) through a direct interest of [...] and an indirect interest of [...] held by Scatec 165;

6.6. Simacel 155 Proprietary Limited (“Project Linde”) through a direct interest of [...] an indirect interest of [...] held by Scatec 165;

6.7. Kouga Wind Farm (RF) Proprietary Limited (“KWF”) with a [...]

direct interest;

6.8. [...]

6.9. [...]

6.10. [...]

6.11. [...]

[7] Greenstreet controls the following firms:

7.1. Renewable Energy Solar PV Prieska (RF) Proprietary Limited as to [...]

7.2. Mulilo Renewable Energy Solar PV De Aar (RF) Proprietary Limited as to [...]

7.3. Solar Capital De Aar 3 (RF) Proprietary Limited as to [...];

7.4. [...]

7.5. Kouga Wind Farm (RF) Proprietary Limited as to [...] and

7.6. Solareff Proprietary Limited as to [...]

[8] Greenstreet, its controlling entities and all the firms controlled by its controlling entities will collectively be referred to as the “Acquiring Group”.

[9] Greenstreet is a renewable energy investment platform. Greenstreet invests in renewable energy assets such as independent power producer project companies (“IPPs”) operating under the Renewable Energy Independent Power Producer Programme (“REIPPPP”) and in Solareff. Solareff is a supplier of renewable solar PV energy to the private, commercial, industrial, agricultural and mining sectors locally.

Primary target firms

[10] The primary target firms are:

10.1. Scatec 164, a company incorporated in accordance with the laws of the Republic of South Africa.

10.2. Scatec 165, a company incorporated in accordance with the laws of the Republic of South Africa.

[11] Scatec 164 controls the following firms:

11.1. Project Dreunberg [...]

11.2. Project Linde [...]

[12] Scatec 165 controls Project Kalkbult [...]

[13] Project Kalkbult, Project Dreunberg and Project Linde will collectively be referred to as the “Target Project Companies”.

[14] Scatec 164 and Scatec 165, its controlling entities and all the firms controlled by its controlling entities will collectively be referred to as the “Target Group”.

[15] Scatec 164 and Scatec 165 are special purpose vehicles incorporated to hold interests in certain IPPs operating under the REIPPPP. Scatec 164 and Scatec 165 have a controlling shareholding in each of the Target Project Companies.

Transaction

[16] In terms of the proposed transaction, Greenstreet will acquire an additional [...]shareholding in both Scatec 164 and Scatec 165 from Scatec ASA.

[1][2]

Indivisibility

[17] The transaction was notified as one indivisible transaction. The Competition Commission (“Commission”) considered the

Tribunal’s precedent which is premised upon two essential elements, namely that there should, inter alia, exist a legal and a factual justification for the subject transaction to be regarded as a single indivisible transaction.[3]

[18] The Commission found that the proposed transaction constitutes an indivisible transaction for several reasons including that: (i) the Target Firms are both controlled by Scatec ASA; (ii) acquisition of the Target Firms and in turn the Target Project Companies forms part of a composite transaction; and (iii) the Target Firms are involved in the same line of business. Accordingly, the Commission concluded that both a factual and legal basis exists to consider the transaction as indivisible.

[19] We are satisfied that the transactions are indivisibly linked.

Rationale

[20] From the Acquiring Group’s perspective, the rationale for the proposed transaction is to increase its investment in infrastructure projects in which the Acquiring Group holds existing interests.

[21] The Target Firms submit that the proposed transaction presents an opportunity for Scatec ASA to further its growth in the region as well as abroad.

Competition assessment

- [22] The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap since the merging parties are active in the market for the supply of Solar PV to Eskom in terms of the REIPPPP. The Target Project Companies have already concluded supply agreements with Eskom under the REIPPPP and are already in operation. In addition, we note that they are only allowed to provide solar PV to Eskom and no other customer.
- [23] The Acquiring Group has a total market share in the range of 10% – 15% (including the Target Project Companies) measured in terms of total capacity in the national market for the supply of solar PV energy to Eskom under the REIPPPP, and that this will not change as a result of the proposed transaction. The Target Project Companies have market shares in the range of 1% – 5%.
- [24] We find that the proposed transaction does not raise competition concerns in any market in light of the fact that the Acquiring Group is increasing its shareholding in the Target Firms from a non-controlling to a controlling shareholding but without any market share accretion.
- [25] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Creeping mergers

- [26] The Commission noted an increase in recent years of the acquisitions by the Acquiring Group. The Commission assessed the extent of consolidation in the market involving the Acquiring Group, if any, as contemplated in section 12A(2)(k) of the Act (so-called creeping mergers).
- [27] The merging parties submitted that Greenstreet only implemented five[4] large mergers in the past four years and one[5] merger that was not notifiable to the Commission.
- [28] In its creeping merger assessment involving private equity firms, the Commission and the merging parties considered the Tribunal's

previous decision in the transaction between Greenstreet 1 Proprietary Limited and Solar Capital DE AAR 3 (RF) Proprietary Limited, where the Tribunal found that given the short-term nature of private equity investments, any concerns of concentration contemplated in section 12A(2)(k) of the Act are unlikely.[6] The merging parties further submitted that the number of IPP projects in which the merger parties have interests pre-merger is only 10 out of 104 existing IPP projects (of which 95 are solar PV projects). Through the proposed transaction, the merging parties' involvement in IPP projects will remain at ten, which is relatively limited.

- [29] Accordingly, the Commission identified no creeping merger concerns that are raised by the proposed transaction. We agree with this assessment.

Public interest

Effect on employment

- [30] The Target Firms have no employees.
- [31] The Commission contacted the employee representatives of the Acquiring Group and obtained confirmation that no employment concerns were raised in relation to the proposed transaction. Furthermore, we take into account the unequivocal statement of the merging parties that the transaction will not lead to any merger-specific job losses or retrenchments.
- [32] In light of the above, we conclude that the proposed merger does not raise employment concerns.

Effect on the promotion of a greater spread of ownership

- [33] The Commission found that Acquiring Group currently has an effective shareholding by historically disadvantaged persons ("HDPs") of approximately 29.34%.
- [34] In respect of the Target Firms, the Commission found that post-merger, the shareholding of HDPs in Scatec 164 will increase from a range of 5%-10% to 20% - 25% and from a range of 5%- 10% to 20%-25% in Scatec 165.
- [35] The Commission's investigation further found the following in respect of the Target Project Companies;
- 35.1. The HDP shareholding in Project Kalkbult will increase from a range of 20% - 25% to a range of 35% - 40%; and
- 35.2. The HDP shareholding in Project Linde will increase from a range of 25% -30% to a range of 35% - 40%.
- [36] Accordingly, the proposed transaction will result in an increase in the levels of ownership by HDPs.

Other public interest considerations

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

Third Party views

- [38] No third party expressed concerns about the proposed transaction.

Conclusion

- [39] For the reasons set out above, we approve the proposed transaction without conditions.

12 November 2024

Prof T Vilakazi

Date

Adv G Budlender SC and Prof I Valodia concurring.

Tribunal Case Manager: Nomkhosi Mthethwa-Motsa For the Merging Parties: Leana Engelbrecht of Alchemy Law Africa Inc For the Commission: Mishkar Sattar, Ndivhuwo Moleya and Ratshi Maphwanya

- [1] The remaining shareholding is held by STANLIB I [...]
- [2] The remaining shareholding is held by STANLIB I [...]
- [3] Premier SA (Pty) Ltd and Talhado Fishing Enterprises (Pty) Ltd (LM299Mar18).
- [4] These cases are: (i) Mulilo Renewable Energy Proprietary Limited and MRE Prieska and MRE DE AAR, Case Number: LM174Mar20; (ii) Greenstreet 1 Proprietary Limited and Solar Capital DE AAR 3 (RF) Proprietary Limited, Case Number: LM155Nov20; (iii) Greenstreet 1 Proprietary Limited and Scatec Solar South Africa B.V., Case Number: LM184Feb23; (iv) Greenstreet 1 Proprietary Limited and Kouga Wind Farm (RF) (Pty) Ltd, Case Number: LM094SEP23;) and (v) Greenstreet 1 Proprietary Limited and Solareff (Pty) Ltd, Case Number: LM069Aug23.
- [5] [...]
- [6] Case Number: LM155Nov20.

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Prepared on 9 October 2026 · Esheria