

SOUTH AFRICA / JUDGMENT

## Infinity Renewable Energy B.V. v Actis Sky B.V. and Lekela Power B.V (LM128Oct22) [2022] ZACT 55 (21 November 2022) [2022] ZACT 55

COURT  
Competition Tribunal

BEFORE  
Y Carrim, F Tregenna, S Goga

CASE / FILE NUMBER  
LM128Oct22

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### COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM128Oct22

In the matter between:

Infinity Renewable Energy B.V.

Primary Acquiring Firm

and

Actis Sky B.V. and Lekela Power B.V. Primary Target Firms

Panel: Y

Carrim (Presiding Member)

F Tregenna (Tribunal Member)

S Goga (Tribunal Member)

Heard on: 18

November 2022

Order issued on: 18 November 2022

### Reasons

issued on: 21 November 2022

## REASONS

### FOR DECISION

#### Introduction

- [1] On 18 November 2022, the Tribunal unconditionally approved the large merger in which Infinity Renewable Energy B.V. (“Infinity Renewable”) intends to acquire all of the issued share capital in Actis Sky B.V. (“Actis Sky”) and Lekela Power B.V. (“Lekela Power”).

#### Primary acquiring firm

- [2] Infinity Renewable is a company incorporated in accordance with the laws of the Netherlands and does not currently control any firms.
- [3] The proposed transaction will be implemented alongside an internal restructuring that will take place in a number of steps and ultimately, Infinity Renewable will be wholly owned and controlled by Infinity Power Holdings B.V. (“Infinity Power”).[1]
- [4] Infinity Renewable, Infinity Energy, Masdar Egypt B.V., the firms they control and all the firms controlling them (the “Acquiring Group”) largely provides comprehensive renewable energy solutions to power cities, industries, and homes.[2]
- [5] In addition, the Acquiring Group develops, finances, owns and operates renewable energy solutions that facilitate long-term clean power across Africa. However, the Acquiring Group does not have operations in the renewable energy sector in South Africa.

#### Primary target firms

- [6] The primary target firms are Actis Sky and Lekela Power. Actis Sky is wholly owned and controlled by Actis Sky Limited. On the other hand, Lekela Power is jointly controlled by Actis Sky and Mainstream Renewable Power Africa Holdings Limited
- [7] Other than its joint control of Lekela Power, Actis Sky does not control any other firms in South Africa and has no activities other than holding the shares in Lekela Power. Lekela Power indirectly controls five renewable energy project companies in South Africa.[3]
- [8] Lekela Power and all the firms controlled by Lekela Power (“Lekela Power Group”), as well as Actis Sky, are primarily active in the generation of renewable power and deliver utility-scale projects that supply clean energy to communities across Africa, taking projects from mid- or late-stage development into long-term operation. In South Africa, the target firms have a controlling interest in wind energy plants.

#### Competition Assessment

#### Single indivisible transaction

[9] The Commission noted that both Actis Sky and Lekela Power are subject to the common shareholding of Actis Sky Limited and both acquisitions will occur simultaneously to ensure that the primary objective of the acquiring group, to acquire sole control over Lekela Power, is achieved.

[10] Therefore, the Commission was of the view that the proposed transaction is indivisible and assessed it as a single transaction.

#### Relevant product market

[11] There is a horizontal overlap in the activities of the merging parties in respect of the provision of renewable energy utilizing onshore wind technology.

[12] Previously, the Tribunal has considered the narrow market for the generation of electricity (i.e., renewable energy) using onshore wind technology as distinct and separate from the market for the generation of electricity using different technological methods, such as solar photovoltaic (PV).[4] Further, the Tribunal has considered the geographic scope for the generation of electricity using onshore wind technology to be national.[5]

[13] As such, in this proposed transaction, the Commission assessed the effects of the proposed transaction in the relevant national market for the generation of electricity using wind technology.

#### Relevant geographic market

[14] As the Acquiring Group does not have operations in the South African market for the generation of electricity using onshore wind technology and more broadly in the renewable energy market segment, the proposed transaction does not result in a geographic overlap.

[15] Having considered the above, the Tribunal concluded that it is unlikely that the proposed merger will result in a substantial prevention or lessening of competition in the national market for the generation of electricity using onshore wind technology.

#### Public Interest

##### Effect on employment

[16] Infinity Renewable and Actis Sky do not have any employees in South Africa. Due to the lack of geographical overlap in the merging parties' activities, the merging parties submitted that the proposed transaction will not have any negative effects on employees in South Africa and no retrenchments are envisaged as a result of the proposed transaction.

[17] The employees of the Lekela Power Group were informed about the proposed transaction and did not raise any employment related concerns and were assured that the merger is simply a change in ownership and all employment terms and conditions will remain unchanged.[6]

[18] Accordingly, the proposed transaction is unlikely to raise employment concerns.

### Effect on the spread of ownership

[19] The merging parties submitted that the proposed transaction is a sale by a foreign company to another foreign entity and will thus not have any impact on HDP ownership. Further, the merging parties submitted that the proposed transaction will not result in any change pertaining to the broad-based black economic empowerment ("B-BBEE") shareholding in the South African project companies which are controlled by Lekela Power.

### Other public interest issues

[20] The proposed transaction raised no other public interest concerns.

### Third Party Views

[21] No third party raised any concerns.

## Conclusion

[22] Having considered the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not have a negative impact on the public interest.

Signed by: Yasmin Tayob Carrim

Signed at: 2022-11-21 17:15:10 +02:00

Reason: Witnessing Yasmin Tayob Carrim

Date: 21 November 2022

Ms Yasmin Carrim

Prof. Fiona Tregenna and Ms Sha'ista Goga concurring

Tribunal Case Manager: Juliana Munyembate

For the Merging Parties: Rosalind Lake and Marianne Wagener of Norton

Rose Fulbright South Africa Inc

For the Commission: Zukile Sokapase and Grashum Mutizwa

[1] Infinity Power will be jointly owned and controlled by Infinity Energy and Masdar Egypt B.V.

[2] The purpose of these renewable energy solutions is to improve energy security and support environmental sustainability.

[3] Khobab Wind Farm (RF) Proprietary Limited, Loeriesfontein 2 Wind Farm (RF) Proprietary Limited, Noupoot Wind Farm (RF) Proprietary

Limited, Kangnas Wind Farm (RF) Proprietary Limited and Perdekraal East Wind Farm (RF) Proprietary Limited.

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- [4] Globeleq South Africa Holdings (Pty) Ltd v SA Springbok Holdings (Pty) Ltd, Sunedison Firefly Holding (Pty) Ltd, Sunedison Renewable Energy Holding (Pty) Ltd and Terraform Global Africa Operating (Pty) Ltd (2018), case no. LM164Aug18 and Mulilo Renewable Energy Solar, PV Prieska (RF) (Pty) Ltd v Mulilo Renewable Energy Solar PV De Aar (Pty) Ltd (2020), case no. LM174Mar20.
- [5] Globeleq South Africa Holdings (Pty) Ltd v SA Springbok Holdings (Pty) Ltd, Sunedison Firefly Holding (Pty) Ltd, Sunedison Renewable Energy Holding (Pty) Ltd and Terraform Global Africa Operating (Pty) Ltd (2018), case no. LM164Aug18.
- [6] Page 1218 of Merger Record.
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**CASE PAGE**              <https://chat.esheria.ai/case-law/south-africa/infinity-renewable-energy-bv-v-actis-unknown-topic-act-2022>

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