

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NO. 5656****13 December 2024****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****IBC SOLAR AG
AND
SWSA HOLDINGS (PTY) LTD****CASE NUMBER: 2024SEP0009**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

1. On 04 September 2024, the Competition Commission ("Commission") received a notice of an intermediate merger whereby IBC Solar AG ("IBC Solar") intends on acquiring 70% of the shareholding interest in SWSA Holdings (Pty) Ltd ("SWSA Holdings"). Post-merger, the shareholding in SWSA Holdings shall be held by IBC Solar (70%) and Klaus Gregor Kupper (30%).
2. The primary acquiring firm is IBC Solar. IBC Solar is jointly controlled by Udo Möhrstedt and Julius Möhrstedt. IBC Solar controls more than 10 firms globally and only controls IBC Solar South Africa (Pty) Ltd (100%) ("IBC Solar SA") in South Africa. The merging parties submit that IBC Solar does not have any shareholding held by historically disadvantaged persons ("HDPs").
3. Möhrstedt, Julius Möhrstedt, IBC Solar and IBC Solar SA shall be referred to as the "Acquiring Group".
4. The Acquiring Group, through IBC Solar, provides solar energy solutions including solar modules, inverters, accessories and storage solutions. IBC Solar's business is focussed

predominantly on customers in the residential sector but it also services customers in the commercial and industrial sector (albeit to a limited extent).

5. The product and service offering by IBC Solar includes (i) Sourcing, assembling and distributing the solar energy products (IBC Solar does not manufacture the solar energy products) (ii) Project development in large-scale solar projects and (iii) operation and maintenance (O&M) services for solar installations, ensuring long-term performance and reliability.
6. The primary target firm is SWSA Holdings (Pty) Ltd ("SWSA Holdings"). SWSA Holdings is 100% controlled by Klaus Gregor Kupper. SWSA Holdings controls SolarWorld Africa (Pty) Ltd ("SolarWorld") (100%). The merger parties submit that SWSA Holdings does not have any ownership by HDPs.
7. SWSA Holdings and SolarWorld shall be referred to as the "Target Group".
8. The Target Group, through SolarWorld, is active as a wholesale distributor of photovoltaic ("PV") modules, inverters and electronics, as well as battery and energy storage systems to qualified installers and to engineering, procurement and construction (EPC) contractors in various sectors. SolarWorld has clients within the residential sector and commercial and industrial sectors. However, SolarWorld's business focuses predominantly on the commercial and industrial sector.

Relationship between the parties

9. The Commission found that the proposed transaction results in a horizontal overlap given that the Acquiring Group and Target Group provide energy storage solutions which comprise of PV modules, inverters and electronics as well as battery and energy storage systems.

Assessment of the horizontal overlap

10. The merger parties' combined post-merger market share in the broad market for the supply and sale of solar products, solar inverters, inverters and solar batteries is estimated to be less than 5%. The Commission consulted competitors of the merger parties who submit that the Target Group is relatively small compared to the likes of

SegenSolar and ARB and that the presence of IBC Solar as an international player may assist in growing the footprint of the Target Group.

11. In the narrow market for the supply and sale of solar products, solar inverters, inverters and solar batteries nationally for commercial buildings, the merger parties will have an estimated post-merger market share of less than 2%. The relevant market is fragmented with several alternative players.
12. In respect of market for the supply and sale of solar products, solar inverters, inverters and solar batteries nationally for residential buildings, the merger parties will have a post-merger market share of less than 5%. The relevant market is fragmented with several alternative players.
13. None of the third parties engaged by the Commission raised concerns with the proposed transaction.
14. In light of the above, the Commission concludes that the merger is unlikely to result in any substantial lessening of prevention of competition in any market.

Public Interest considerations

15. The Commission notes that the Acquiring Group and the Target Group do not have any ownership by HDPs. In order to address the positive obligation to promote a greater spread of ownership arising from section 12A(3)(e) of the Competition Act, 89 of 1998 (as amended), the merger parties have agreed to the following conditions:
 - 15.1. **HDP enterprise development:** The merger parties will offer preferential pricing (discount of **(CONFIDENTIAL)**) to HDPs purchasing from the merger parties regardless of the volumes purchased. This applies to companies owned by HDPs, with an annual turnover of less than R40 million.
 - 15.2. **Skills development commitments:** The merger parties will allocate an amount of R400 000 to sponsor sector-specific training for up to 60 students (whichever occurs first) within two years of implementing the proposed transaction.

- 15.3. **Procurement from HDPs:** The merger parties will sponsor two solar PV systems valued at R500 000 for small HDP-owned businesses, public interest institutions or remote HDP communities. The aforementioned solar PV Systems shall be installed by HDP-owned installers.
16. In addition to the above, the merger parties have provided an employment condition in which they commit not to retrench any employees for reasons related to the merger, for a period of 3 years from implementation. These conditions are attached hereto as **Annexure A**.

Conclusion

17. The Commission approves the proposed transaction subject to the conditions attached hereto as **Annexure A**.

ANNEXURE A: CONDITIONS**IBC SOLAR AG****AND****SWSA HOLDINGS (PTY) LTD****CASE NUMBER: 2024SEP0009**

CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions, the following words will, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) will bear corresponding meanings:
- 1.1.1 **"Acquiring Firm"** means IBC Solar AG, its controllers and all the firms that it controls.
- 1.1.2 **"Business Days"** means any day which is not a Saturday, Sunday or an official public holiday in South Africa;
- 1.1.3 **"Commission"** means the Competition Commission of South Africa;
- 1.1.4 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.5 **"Competition Act"** means the Competition Act 89 of 1998, as amended from time to time;
- 1.1.6 **"Conditions"** mean these conditions;
- 1.1.7 **"DTIC"** means the Department for Trade, Industry and Competition of the South African Government;

- 1.1.8 **"Employee"** means any person that is, in terms of South African labour law, an employee of Transferred Firms in South Africa, whether on a permanent or a fixed term basis,
- 1.1.9 **"HDP"** means historically disadvantaged person as contemplated in section 3(2) of the Competition Act;
- 1.1.10 **"HDP-Owned Entity"** means a business which is majority owned by HDP(s); has an annual turnover that is less than ZAR40 000 000;
- 1.1.11 **"Implementation Date"** means the date, occurring after the date the Commission issues a Clearance Certificate in terms of the Competition Act, on which the Merger is implemented in accordance with its terms;
- 1.1.12 **"Merger"** means the acquisition of control over the Target Firm by the Acquiring Firm;
- 1.1.13 **"Merged Entity"** means the Transferred Firms, subject to the control of the Acquirer;
- 1.1.14 **"Merger Parties"** means the Acquiring Firm and the Target Firm;
- 1.1.15 **"Proposed Transaction"** means the merger between the Acquirer and the Transferred Firms;
- 1.1.16 **"Solar PV"** means solar photovoltaic systems;
- 1.1.17 **"Target Firm"** means SWSA Holdings Proprietary Limited its controllers and all the firms that it controls;
- 1.1.18 **"Tribunal"** means the Competition Tribunal of South Africa established in terms of section 26 of the Competition Act; and
- 1.1.19 **"Tribunal Rules"** means the means Rules for the Conduct of Proceedings in the Tribunal.
- 1.2 In these Conditions, any definition, wherever it appears, will bear the same meaning and apply throughout these Conditions unless otherwise stated or inconsistent with the context in which it appears.

2. EMPLOYMENT

- 2.1 The Merged Entity will not retrench any employees as a result of the Proposed Transaction for a period of 3 (three) years from the Implementation Date.
- 2.2 For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act of 1995, as amended; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to dismissals as a result of misconduct or poor performance.

3. PROCUREMENT FROM HDPs

- 3.1 The Merger Parties will donate 2 (two) or more solar PV systems within 2 (two) years of the Implementation Date to either an HDP-owned business, public interest institution or a community-based organisation principle serving a historically disadvantaged community.
- 3.2 The combined value of the donations made in terms of this clause will be no less than ZAR500 000.
- 3.3 The solar PV systems will be installed by an HDP-owned installer.

4. EDUCATION, TRAINING AND COMMUNITY SUPPORT

- 4.1 The Merger Parties will sponsor the training of HDP students by an accredited third-party training provider which provides skills and certifications aimed at obtaining employment or starting a business in the solar PV industry.
- 4.2 The sponsorships will provide 60 students with access to training or amount to a total spend of ZAR400 000 within 2 (two) years of the Implementation Date.

5. ENTERPRISE DEVELOPMENT

- 5.1 For a period of 2 (two) years following the implementation of the Proposed Transaction, the Merger Parties will provide a **(CONFIDENTIAL)** discount on any purchase by a HDP-Owned Entity.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 6.1 The Merged Entity shall notify the Commission in writing of the Implementation Date within 5 (five) Business Days of the Implementation Date.
- 6.2 The Merged Entity shall circulate a copy of the employment conditions to the Merged Entity's employees and employee representatives within 5 (five) Business Days of the Implementation Date.
- 6.3 As proof of compliance with paragraph 6.2 a senior executive of the Merger Parties shall, within 10 (ten) Business Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notices that were circulated to the employees and their employee representatives.
- 6.4 Within 45 (forty-five) Days of each anniversary of the Implementation Date up until the second anniversary of the Implementation Date, the Merged Entity shall provide the Commission and the DTIC with an appropriately detailed report regarding the Merged Parties' compliance with the Conditions.
- 6.5 The report referred to in clause 6.4 shall be accompanied by an affidavit attested to by the chief executive officer of the Merged Entity confirming the accuracy of the annual report and full compliance of these Conditions in the year to which the reports relate.
- 6.6 The Commission may request any additional information from the Merger Parties that it may, from time to time, deem necessary to monitor the extent of compliance with these Conditions.

7. APPARENT BREACH

Should the Commission receive any complaint in relation to non-compliance with the above Conditions or otherwise determine that there has been an apparent breach by the Merger Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

8. VARIATION OF CONDITIONS

The Merger Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties shall apply to the Tribunal, on good cause shown and on notice to the Commission, for the Conditions to be waived, relaxed, modified and/or substituted.

9. GENERAL

All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298