



DETERMINATION OF MERGER NOTIFICATION M/17/013 – PANDA GREEN (SRETAW) / BIOVERDA POWER SYSTEMS & STARRUS LFG

Section 21 of the Competition Act 2002

Proposed acquisition by Sretaw Unlimited Company, through PandaGreen Limited, of the entire issued share capital of Bioverda Power Systems Limited and of Starrus LFG Limited

Dated 18 April 2017

Introduction

1. On 22 March 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed acquisition (“the Proposed Transaction”) whereby Sretaw Unlimited Company (“Sretaw”), through its wholly-owned subsidiary, PandaGreen Limited (“PandaGreen”) (collectively “the Purchaser Group”), would acquire the entire issued share capital and thus sole control of each of Bioverda Power Systems Limited and Starrus LFG Limited, (collectively the “Target Companies”). The Target Companies trade as Bioverda Power Systems and operate a landfill gas electricity generation portfolio across nine landfill sites located in the State.

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of an agreement for the sale and purchase of the entire issued share capital of the Target Companies (“SPA”) entered into between Promontoria Holdings 52 B.V. (“the Vendor”) and PandaGreen on 16 March 2017.
3. Following implementation of the Proposed Transaction, PandaGreen would have sole control of the Target Companies.



The Undertakings Involved

PandaGreen

4. PandaGreen is a private company limited by shares, incorporated in the State, which has its registered address at Rathdrinagh, Beauparc Business Park, Navan, Co. Meath. PandaGreen is a wholly-owned subsidiary of Sretaw¹, and as such is a member of the Purchaser Group, which operates in the following sectors in the State:
 - waste collection, processing and recycling;
 - fleet lease and maintenance services; and
 - retail supply of electricity.
5. For the financial year ended 31 December 2016², the Purchaser Group's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.
6. The Purchaser Group operates in the electricity industry via Panda Power Limited ("Panda Power") which purchases electricity from the Single Electricity Market³ and sells the electricity to end consumers in the State.
7. For the financial year ended 30 December 2015, Panda Power's worldwide turnover was approximately €[...] of which was generated in the State.

The Vendor

8. The Vendor is a private company with limited liability, registered under the laws of the Netherlands, which is controlled by investment funds affiliated with the Cerberus group of companies.⁴

¹ Sretaw is an investment management company owned by two individuals, Eamon Waters (99%) and Robert Water (1%).

² Turnover figures as per management accounts.

³ The Single Electricity Market (SEM) is the wholesale electricity market operating in the State and Northern Ireland.

⁴ Cerberus Capital Management, L.P. is a private investment firm based in New York City with affiliate and advisory offices across the United States, Europe and Asia. For more information about the Cerberus group of companies see <http://www.cerberuscapital.com/>



The Target Companies

9. The Target Companies are currently wholly-owned subsidiaries of the Vendor and trade as Bioverda Power Systems, operating a landfill gas⁵ portfolio across nine landfill sites located in the State⁶. At each site, the Target Companies have a licence with the relevant landfill site owner providing the Target Companies with the exclusive right to generate electricity from landfill gas extracted from that landfill site.⁷ In return, the Target Companies make royalty payments to each of the relevant landfill site owners. At each landfill site, the Target Companies also have a grid connection and a power purchase agreement (“PPA”) with a licensed electricity supplier⁸, providing for the purchase by the electricity supplier of all electricity generated by the Target Companies from landfill gas extracted from the relevant landfill site. The majority of the Target Companies’ PPAs are supported by the Renewable Energy Feed in Tariff (“REFIT”). REFIT PPAs provide for a minimum price per Megawatt hour (MWh) and normally last for fifteen years.⁹
10. For the financial year ended 31 March 2016, the Target Companies’ combined worldwide turnover was approximately €[...], of which was generated in the State.¹⁰

Rationale for the Proposed Transaction

11. The notification states:

“The Proposed Transaction will provide a financial return on investment for the Purchaser Group. The Target Companies trade in renewable energy will further enhance the Purchaser Group’s “green” environment market position.”

⁵ Landfill gas is a naturally occurring product of decomposing organic matter in landfill waste sites. Landfill gas is composed of methane (a fuel), with the balance largely consisting of carbon dioxide, nitrogen and water vapour.

⁶ The nine sites are Arthurstown, Co. Kildare; Balleally Co. Dublin; Ballyogan, Co. Dublin; Dunsink, Co. Dublin; Friarstown, Co. Dublin; Kilconnell, Co. Galway; KTK Kilcullen, Co. Kildare; Knockharley, Co. Meath; and Ballynagran, Co. Wicklow. In addition, the Target Companies maintain a grid connection at two additional landfill sites where gas operations have ceased, namely, Tramore Valley (landfill owner - Cork City Council) and Silliot Hill (landfill owner - Kildare County Council).

⁷ Landfill gas is directed into gas engines which drive an alternator to generate electricity. Electricity generated from landfill gas is classified as renewable energy.

⁸ The Target Companies sell the majority of electricity generated from landfill gas extracted from these landfill sites to Airtricity Limited and Vayu Limited.

⁹ The Target Companies are party to seven PPAs supported by REFIT and [...] % of the Target Companies’ revenue for the financial year ended 31 March 2016 were derived from REFIT-supported PPAs.

¹⁰ Bioverda Power Systems Limited’s turnover for the financial year ended 31 March 2016 was €[...] and Starrus LFG Limited’s turnover for the financial year ended 31 March 2016 was €[...], of which was generated in the State.



Third Party Submissions

12. No submission was received.

Competitive Analysis

13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise markets because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State.

Horizontal Overlap

14. The electricity industry consists of a number of distinct activities at different segments of the supply chain, namely:
- electricity generation and wholesale supply;
 - electricity transmission;
 - distribution of electricity; and
 - retail supply of electricity.
15. In the State, the Target Companies are active in electricity generation and wholesale supply, whilst the Purchaser Group is active in the retail supply of electricity. Therefore, the Commission considers that the Proposed Transaction does not give rise to a horizontal overlap in the activities of the parties in the State and as such raises no horizontal competition concerns within the State.

Vertical Relationship

16. In the State, the Target Companies have activities upstream of the Purchaser Group, as they are active in electricity generation and wholesale supply, while the Purchaser Group is active in the retail supply of electricity. The parties have estimated that the Target Companies have a share of approximately 0.4% of the potential market for electricity generation and wholesale supply in the State.



17. For the following reasons, the Commission considers that the Proposed Transaction is unlikely to give rise to any vertical foreclosure concerns:

- Both of the Target Companies and the Purchaser Group have a very minimal presence in the electricity supply chain within the State.
- Post-transaction, there will remain a large and varied (in size) number of competitors which are active across the electricity supply chain within the State that will constrain the activities of the Purchaser Group.
- As mentioned in footnote 9, the Target Companies are party to seven REFIT PPAs with licenced electricity suppliers, either Airtricity Limited or Vayu Limited, which will remain in force for a number of years following implementation of the Proposed Transaction (between 5 and 12 years post-transaction). While, theoretically, the Purchaser Group could seek to substitute Panda Power for Airtricity Limited or Vayu Limited in the relevant REFIT PPAs, this would require the agreement of the relevant counterparty to each REFIT PPA (i.e. either Airtricity Limited or Vayu Limited). The Department of Communications, Climate and Environment (as the guarantor of REFIT) would also have to agree to such substitution. Therefore, immediately post-transaction, the Commission considers that the Purchaser Group will not be in a position to purchase from the Target Companies electricity which is to be supplied to Airtricity Limited or Vayu Limited under the REFIT PPAs currently in force. After the expiration of the REFIT PPAs¹¹, if there is any landfill gas available to be extracted from the relevant landfill sites, the Purchaser Group would not be prevented from purchasing from the Target Companies electricity generated from such landfill gas.¹²

Conclusion

¹¹ The REFIT PPAs have staggered expiry dates of between September 2022 and December 2029.

¹² According to the Commission for Energy Regulation's Electricity and Gas Retail Markets Report Q3 2016, the share of the domestic electricity market, by number of customers, for the category "others", in which Panda Power is included, was 1.02% or 20,709 customer sites <http://www.cer.ie/docs/000646/CER17033%20Q3%202016%20Electricity%20and%20Gas%20Retail%20Markets%20Report.pdf>.



18. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

19. The SPA contains restrictive covenants on the Vendors, in particular non-compete and non-solicitation obligations. The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission. The Commission considers that these restraints are directly related and necessary to the implementation of the Proposed Transaction¹³.

¹³ In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2002). For more information see

[http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby Sretaw Unlimited Company, through its wholly-owned subsidiary PandaGreen Limited, would acquire the entire issued share capital and thus sole control of each of Bioverda Power Systems Limited and Starrus LFG Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Patrick Kenny
Member
Competition and Consumer Protection Commission