

DETERMINATION OF MERGER NOTIFICATION M/23/054 GREENVOLT/ ENERPOWER & SUSTAINABLE POWER PURCHASE SOLUTIONS

Section 21 of the Competition Act 2002

Proposed acquisition by Greenvolt Next Holdings S.A. of the issued share capital of Bioenergy Power Systems Limited and of the issued share capital of Sustainable Power Purchase Solutions Limited.

Dated 13 November 2023

Introduction

1. On 24 October 2023, in accordance with s18(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 whereby Greenvolt Next Holdings S.A. (“Greenvolt”), would acquire sole control over Bioenergy Power Systems Limited (trading as Enerpower)(“Enerpower”) and Sustainable Power Purchase Solutions Limited (the “PPA Company”) (the “Proposed Transaction”). Greenvolt, Enerpower and the PPA Company are collectively referred to as the Parties.

The Proposed Transaction

2. In relation to Greenvolt’s acquisition of Enerpower, the Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 19 October 2023 between Owen Power, John Carty, Cormac Power and Coolbunnia Holdings Limited (“the Sellers”¹) (the “SPA”). Pursuant to the SPA, Greenvolt will acquire 50.24% of the issued share capital of Enerpower from the Sellers. Following implementation of the Proposed Transaction, Greenvolt will acquire negative sole control of Enerpower.
3. In relation to Greenvolt’s acquisition of the PPA Company, the Proposed Transaction is to be implemented pursuant to an Acquisition and Subscription Agreement between Coolbunnia

¹ Owen Power, one of the Enerpower Sellers, is the sole shareholder of Coolbunnia Holdings Limited.

Holdings Limited and Ellagh Solar Limited (the “Acquisition Agreement”).² Pursuant to the Acquisition Agreement, Greenvolt will acquire 50.25% of the issued share capital of the PPA Company. Following implementation of the Proposed Transaction, Greenvolt will acquire negative sole control of the PPA Company.

4. In relation to Greenvolt’s acquisition of the PPA Company, the Proposed Transaction is to be implemented pursuant to an Acquisition Agreement between Coolbunnia Holdings Limited and Ellagh Solar Limited.³
5. Given that the PPA Company does not currently generate any revenue in the State, this second transaction would ordinarily not be notifiable under section 18(1)(a) of the Competition Act. However, the Parties have notified both transactions to the CCPC, on the basis that both transactions are inter-related as the undertaking acquiring control in both firms is the same. Both transactions are further inter-related given that the completion of the PPA Company Acquisition Agreement is conditional upon satisfaction of the conditions in the Enerpower Acquisition Agreement. Similarly, both transactions were negotiated simultaneously with the same economic objective and the same short timeline.⁴
6. The business activities of the undertakings involved are:
 - The Acquirer - Greenvolt:
 - Greenvolt is a private company limited by shares. Greenvolt is involved in the distributed generation sector, specifically in the installation of solar photovoltaic (PV) panels and the provision of operational and maintenance services in relation to solar PV panels.
 - Greenvolt is part of the wider Greenvolt Group. The main business activities of the Greenvolt Group are centred on renewable energy such as biomass, wind and solar with a particular focus on electricity generation and the wholesale supply of electricity. The Greenvolt Group operate in many countries including the United Kingdom, Poland, the United States and Mexico. Greenvolt is indirectly active in the State via its 51% stake in Tilbury

² These Acquisition and Subscription Agreements are interconditional and, for the purposes of merger review, can be considered as one single transaction due to the fact that they are linked de jure within the meaning of paragraphs 39 and 43 of the European Commission Consolidated Jurisdictional Notice, which is available [here](#). Therefore, the transactions are linked and are notifiable together.

³ John Carty, one of the Enerpower Sellers, is the sole shareholder of Ellagh Solar Limited.

⁴ Clause 4.1 of the PPA Acquisition Agreement states that [...]

Green Power Limited (“TGP”). TGP owns a biomass plant in the UK and [...], a company incorporated in the Republic of Ireland. TGP generated turnover in the State in 2022 via [...].

- Greenvolt facilitates the installation and maintenance of solar photovoltaic (PV) panels as well as the provision of power to commercial and industrial sectors via power purchase agreements and energy efficiency solutions.

- The Target - Enerpower:

- Enerpower is an Irish-headquartered private company who facilitate the installation of sustainable energy solutions including solar PV panels, heat pumps, wind turbines, biomass boilers and district heating systems.
- Enerpower also provide customers with the opportunity to enter into a Power Purchase Agreement for the installation of energy solutions. Such agreements allow Enerpower to retain ownership of the equipment whilst the customer is responsible for paying for the energy generated by the specific equipment which is often offered based on a hire purchase agreement.

- The Target – The PPA Company:

- The PPA Company is a recently formed private limited company which has not currently commenced trading and as such does not currently supply any goods or services in the State or any jurisdiction. The PPA Company seeks to construct and own solar PV projects and sell the electricity to customers in the commercial and industrial sector in Ireland.

7. After examination of the notification, the Commission has concluded that the Proposed Transaction falls within the scope of paragraph 2.1 of the Simplified Merger Notification Procedure Guidelines (“SMNPG”) for assessing certain notifiable mergers or acquisitions under section 18(1)(a) of the Act since no Party to the Proposed Transaction is active or potentially active in the same product and geographic markets, or in any market(s) which is upstream or downstream to a market(s) in which any Party is active or potentially active in the State. Additionally, none of the exclusions stipulated in paragraphs 2.8 to 2.15 of the SMNPG apply to the Proposed Transaction.

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

Ancillary Restraints

9. The Commission notes that Clause 12.2(d) and Clause 12(f) of the SPA, dated 19 October 2023, contain non-compete and non-solicitation obligations on the Sellers. These obligations last for a duration of two years and relate to the general non-solicitation of all customers or suppliers of Enerpower for 12 months prior to the agreement. The Commission notes that these restrictions are limited in scope and do not exceed the maximum duration acceptable to the Commission. The Commission considers that they are directly related to and necessary for the implementation of the Proposed Transaction, in so far as they relate to the State.

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 Greenvolt Next Holdings S.A would acquire sole control over Bioenergy Power Systems Limited and Sustainable Power Purchase Solutions 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

Ibrahim Bah
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Competition and Consumer Protection Commission