



## **THE PROPOSED ACQUISITION OF A 35% EQUITY STAKE IN OFGEN LIMITED BY CFAO KENYA LIMITED.**

1. The Competition Authority of Kenya has approved the acquisition of a 35% equity stake in OFGEN Limited by CFAO Kenya Limited unconditionally, thereby enhancing investments in renewable energy in the country.
2. CFAO Limited, the acquiring undertaking, is incorporated in Kenya and is the business arm of the Toyota Group of companies in East Africa.
3. The acquirer's activities comprise the importation, distribution, and service of tractors, sale of spare parts and implements, sale and servicing of motor vehicles, sale of fertilizer feedstock, infrastructure development for renewable energy plants, and port development in Kenya.
4. OFGEN Limited, the target undertaking, is a company incorporated in Kenya. OFGEN is a solar energy company which provides services such as development, design, procurement, construction, operation, and maintenance of photovoltaic systems for commercial and industrial use.
5. The proposed transaction involves the acquisition of a 35% equity stake and veto rights in OFGEN Limited by CFAO Kenya Limited leading to a change in control in the target. The transaction therefore qualified as a merger within the meaning of Section 2 and 41 of the Competition Act No. 12 of 2010.



6. The parties' combined and relevant assets for the preceding year was **over Sh1 billion**. The transaction, therefore, met the threshold for mandatory notification and full merger analysis as provided in the **Competition (General) Rules, 2019**.
7. The parties' activities do not overlap horizontally. However, the target provides solar services to the acquirer, hence there exists vertical integration. Therefore, for purposes of analyzing this transaction, the relevant product market was determined as the **market for the provision of solar-photovoltaic (solar PV) solutions**.
8. The target distributes its products across the country and therefore the relevant geographic market was determined to be **national**.
9. According to the Energy and Petroleum Regulatory Authority (EPRA), the country's estimated solar potential is approximately 15000 Megawatts (MW). At the moment, the installed capacity is over 100MW. In terms of the installed capacity and effective power generation, the Rural Electrification Program's off-grid power stations are leading in terms of market shares.
10. With regard to non-State providers, Malindi Solar Group Limited and Garissa Solar are the market leaders with similar market shares of below 2%. The target's installation and market share in the renewable energy sector is less than 1%. The acquirer is not involved in commercial solar generation.
11. Post-merger there will be no change in market structure and concentration since the parties are not currently horizontally integrated. In addition, the Kenyan Government's strategy has been to increase renewable energy generation in the country. Indeed, one of the pillars of achieving the Vision 2030 is manufacturing and whose key enable is



availability of clean and reliable energy, including renewable energy sources such as solar and wind power.

12. In terms of integration, there is likely downward vertical integration in respect of the transacting parties' activities, since CFAO is OFGEN's client. However, based on the number of investors in this sector, customers will still have sufficient choice post-merger.
13. Further, as far as the parties' current engagement is concerned, the solar PV solutions installed and electricity generated are purely for CFAO's consumption. There is no risk of foreclosure to other target's clients.
14. Given that plants are intended to serve a customer's needs for between 10 and 20 years, it is in the best interest for Engineering Procurement and Construction (EPC) or Power Purchase Agreement (PPA) contractors to secure more customers for whom to install and/or operate solar PV plants.
15. In addition, the Government has approved the expression of interest of more than 35 projects under the Feed-in-Tariff plan. More than six (6) projects are currently under construction. This further augments the Authority's view that, post-transaction, the proposed transaction will not lead to lessening of competition in the relevant market and that the vertical integration inherent in the market will not limit competition
16. During merger analysis, the Authority also considers the impact that a proposed transaction will have on public interest. The public interest concerns considerations include;
  - i. extent to which a proposed merger would impact employment opportunities;
  - ii. impact on competitiveness of small and medium enterprises (SMEs);



- iii. impact on particular industries/sectors; and
- iv. impact on the ability of national industries to compete in international markets.

17. With regard to employment, the target is being acquired on a going concern basis and the acquirer has indicated to the Authority does it does not plan change the target's organizational structure. Further, the proposed transaction is unlikely to negatively impact SMEs' competitiveness and access to international markets.

18. The proposed transaction is therefore unlikely to raise any negative public interest issues.

19. Based on the foregoing, the Authority approved the acquisition, the Authority approved the acquisition of a 35% equity stake in OFGEN Limited by CFAO Kenya Limited unconditionally.