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Common Market for Eastern
and Southern Africa

Case File No. CCC/MER/07/03/2021

**Decision¹ of the Seventy-Sixth (76th) Committee Responsible for
Initial Determination Regarding the Proposed Merger Involving
Old Mutual Alternative Investments Proprietary Limited and
ACTOM Investment Holdings Proprietary Limited**

**ECONOMIC SECTOR: Banking and Financial Services; Electrical
Equipment**

27th June 2021

¹ In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

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Introduction and Relevant Background

1. On 16th March 2021, the Commission received a notification for approval of a merger involving Old Mutual Alternative Investments Proprietary Limited (“**OMAI**”) through OMPE V GP Proprietary Limited (“**OMPE V Pty Ltd**”) and ACTOM Investment Holdings Proprietary Limited (“**AIH**”) pursuant to Article 24(1) of the COMESA Competition Regulations of 2004 (the “**Regulations**”).
2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.
3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

The Parties

OMPE V Pty Ltd & OMAI

4. The direct acquiring undertaking is OMPE V Pty Ltd. The parties submitted that for the purposes of the Regulations, OMPE V Pty Ltd is controlled by Old Mutual Private Equity (“**OMPE**”), a division of OMAI, by virtue of a management agreement that has been concluded between OMAI and OMPE V Pty Ltd. OMAI is a private alternative investment manager, with its registered address at Mutualpark, Jan Smuts Drive, Pinelands, Cape Town, South Africa. The parties submitted that OMAI itself does not have any operations in the Common Market and OMPE does not control any portfolio companies with operations in the Common Market.
5. OMAI is ultimately controlled by Old Mutual Limited (“**OML**”). The Old Mutual Group (being OML and the entities it controls) is a diversified African financial services group that offers a broad spectrum of financial solutions to retail and corporate customers across key markets in 14 countries. OML is the ultimate holding company for a number of subsidiaries operating across various lines of businesses in the financial services industry, including amongst others, life assurance products, short term insurance, savings, property, asset management, banking and lending.
6. The activities of the Old Mutual Group can be broadly categorised into the following divisions:
 - a. Personal Financial Services
 - The Old Mutual Group provides the following financial services products to individuals:
 - i. Banking and borrowing services such as banking accounts, personal loans and credit life insurance.

- ii. Saving and investment services such as retirement plans, education savings plans and other investment plans.
 - iii. Insurance services such as life and disability insurance, funeral cover, health insurance and non-life insurance.
 - iv. Financial advisory services in respect of wills, trusts and estates, financial coaching and consultancy services.
- b. Wealth Management and Investment Solutions
- The Wealth management services offered by the Old Mutual Group include financial and lifestyle planning, fiduciary services and retirement planning for high-net individuals. Investment solutions provided to these individuals include providing access to strategic funds, offshore investing, private client securities, index funds and multi-managed funds.
- c. Business Development
- The Old Mutual Group provides various advisory services and resources to businesses aimed at assisting new businesses from the start-up, growth and operating phases of running a business. This includes providing access to business tools from business plans, expert insights to assist with growing businesses, and solutions aimed at maintaining strong businesses and sustainable operations.
- d. Corporate Financial Services
- The Old Mutual Group following financial services are offered to corporate clients:
 - i. retirement annuity solutions;
 - ii. group assurance services such as disability and income protection solutions;
 - iii. financial consulting services, particularly dealing with corporate retirement funds;
 - iv. business insurance covering a wide range of cover options to insure business related risks including risks relating to accounts receivable, business interruption, electronic equipment, employers liability, fidelity, goods in transit, group personal accident, legal liability arising out of business activities, motor vehicles, office contents, plant and equipment, public liability, reduction in turnover following material damage and stock.
- e. Institutional/investment management
- OML offers a range of local and global investments managed by independent specialist investment teams under OML's investment arm, Old Mutual Investment Group Holdings Proprietary Limited.

7. Table 1 below lists the activities of the Acquiring Group in the Common Market.

Table 1 – Activities of the Acquiring Group in the Common Market

Member State	Name of Entity	Description of Products and Services Offered
Eswatini	Old Mutual (Eswatini) (Pty) Ltd	<p>The Personal Financial Services, Wealth Management and Investment Solutions, Corporate Financial Services, and Institutional / investment management divisions operate in Eswatini.</p> <p>However, the Personal division does not offer banking and borrowing services, or financial advisory services in Eswatini; and the Corporate division provides only group assurance services in Eswatini.</p>
Kenya	Old Mutual Holdings (Pty) Ltd	<p>The Personal Financial Services, Wealth Management and Investment Solutions, Corporate Financial Services, and Institutional / investment management divisions operate in Kenya.</p> <p>The Personal Financial Services division, however, does not provide financial advisory services and the Corporate Financial Services division only provides group assurance services and business insurance services in Kenya.</p>
Malawi	Old Mutual (Malawi) Limited	<p>All the divisions of the acquiring group operate in Malawi.</p> <p>The Personal division does not offer banking and borrowing services and the Corporate division does not offer business insurance in Malawi.</p>
Mauritius	Africa Midstream Holdings Mauritius, AHF3 Clean Energy (Pty) Ltd, AHM Hydroneo,	Provision of management, advisory and general

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	Triangle Real Estate India Limited and subsidiaries, Triangle India (Mauritius), OMP Holdco (Pty) Ltd and subsidiaries, UFF Management (Mauritius) Ltd, African Fund Managers (Mauritius), African Infrastructure Investment Holding Company 2 (Mauritius), African Infrastructure Investment Holding Company 2 (Mauritius), Old Mutual Holdings (Mauritius) Ltd and subsidiaries, UAP Global Services Ltd.	administrative services to intra-group companies. Leasing of retail and office premises. Fund management activities focused on agricultural investments in Africa Insurance agent, professional reinsurer. Investment holding companies.
Rwanda	UAP Insurance Rwanda Ltd	The Personal and Corporate divisions operate in Rwanda. The Personal division offers only insurance services and the Corporate division offers only business insurance services in Rwanda.
Uganda	UAP Financial Services Ltd, UAP Old Mutual Life Assurance Uganda Ltd, UAP Old Mutual Insurance Uganda Ltd, UAP Properties Ltd (Uganda)	The Personal Financial Services, Wealth Management and Investment Solutions, Corporate Financial Services, and Institutional / investment management divisions operate in Uganda. The Personal division provides only saving and investment services, and insurance services and the Corporate division provides only group assurance services and business insurance services in Uganda.
Zambia	Mercury Diamonds Limited	Lease of farmland and infrastructure to a commercial dairy operator
Zimbabwe	Old Mutual Zimbabwe Ltd	All the divisions of the acquiring group operate in Zimbabwe and provide all its services.

8. The parties submitted that another entity in the Old Mutual Group, Old Mutual Life Assurance Company (South Africa) (“OMLACSA”), currently holds 19.62% of the issued share capital of the target, AIH. OMLACSA operates as an insurance company. It provides investment products and retirement annuities as well as life, health and disability insurance products.

AIH

9. AIH is incorporated and domiciled in South Africa. The parties submitted that AIH is a holding company and the companies controlled by AIH are active in the manufacture, solution provision, repair, maintenance and distribution of electromechanical equipment in Africa. The ACTOM Group has two subsidiaries that are incorporated in Zambia, namely ACTOM Zambia Proprietary Limited² and ACTOM R&S Limited which repairs motors and electrical equipment.
10. The parties submitted that the following divisions in the ACTOM Group (which are based in South Africa) derived turnover from the Common Market during AIH's preceding financial year:
- a. ACTOM Energy - operating under the name ACTOM Energy. It provides integrated solutions aimed at existing plant refurbishments and upgrades.
 - b. Distribution Transformers - manufactures a comprehensive range of distribution transformers for use in several industries.
 - c. Electrical Equipment; consisting of
 - ACTOM Electrical Products, a stockist and supplier of competitively priced, quality electrical products and equipment with a product range that includes medium voltage distribution transformers, minisubs, switchgear and cable.
 - Genlux Lighting, a manufacturer of a range of luminaires for roadway lighting, high mast floodlights, stadium lights and general outdoor area lighting.
 - ACTOM Appliance Components, a manufacturer of electric heating elements and controls used in the liquid and air-heating industry. Satchwell also manufactures and distributes products used in commercial and domestic appliance markets.
 - d. Engineering Projects and Construction; consisting of
 - ACTOM Contracting, which is a systems integrator and general contractor that provides turnkey projects for electrical power and instrument control systems in the mining and manufacturing industries, as well as to the public sector.
 - ACTOM Industry, which is a supplier of mine winder hoists and provides turnkey solutions for most specialised industrial rotating drive and power applications in the mining, metals, paper and processing industries.

² The parties submitted that this entity is currently not trading.

- ACTOM Power Systems, which delivers complete extra-high, high and medium voltage turnkey projects (including complete substations) to the electrical power industry;
 - ACTOM Signalling, which is a specialised railway signalling business.
- e. High Voltage Equipment, supplying high voltage products and services and operates under the name ACTOM High Voltage Equipment.
- f. LH Marthinusen; consisting of
- LH Marthinusen Fan Service, which designs, manufactures, installs maintains and repairs fan installations.
 - LH Marthinusen Motors, which repairs rotating machines.
 - LH Marthinusen Transformers, which repairs and refurbishes transformers.
- g. Marthinusen and Coutts, operating through:
- ACTOM Turbo Machines Proprietary Limited ("ACTOM Turbo Machines"), which offers specialist engineering, site services, fitting, machining and fabrication of all types of turbomachinery and high-speed rotating equipment to all industries.
 - Marthinusen & Coutts, which provides services in respect of electrical and mechanical rotating machines. These services include: (i) asset management and maintenance contracts; (ii) periodic on-site servicing; (iii) testing; (iv) maintenance; and (v) repairs. This division also manufactures: (i) flameproof traction motors; (ii) generators; (iii) alternators; (iv) ancillary power generation equipment; (v) turbomachinery; and (vi) transformers.
 - Metalplus, which is an expert mechanical facility with core competencies that include machining, grinding and micro welding of all types of shafts and other mechanical components.
- h. Medium Voltage and Protection, operating through:
- ACTOM MV Switchgear, which designs, manufacturers, supplies, maintains and repairs equipment and systems for medium voltage electricity distribution.
 - ACTOM Protection & Control, which supplies protection, telecontrol and metering solutions for the electrical industry.
 - Current Electric, which manufactures current and voltage transfers.
- i. Power transformers - manufactures power transformers for use in a number of industries.
- j. Power division - operates under the name John Thompson, and provides boiler and environmental solutions, which services the power generation and industrial industries.
- k. Power Conversion Division – the only business units operating in this division are:

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- ACTOM Electrical Machines, which supplies high, medium and low voltage rotating electrical machines. This business unit also manufactures laminated components and tooling for the electric motor manufacturing and repair industries;
- ACTOM HVAC Systems, which designs and installs industrial ventilation and air-conditioning.
- Static Power, which manufactures alternating current ("AC") and direct current ("DC") standby equipment, including: (i) standby battery chargers; (ii) industrial batteries; (iii) power supplies; (iv) rectifiers; (v) DC / DC converters; (vi) DC / AC inverters; (vii) furnace control panels; (viii) capacitor trip units; (ix) battery trip units; and (x) power distribution boards.

11. The parties submitted the activities of the Target Group in the Common Market as per Table 2 below:

Table 2 – Activities of the Target Group in the Common Market

Member State	Operating Division(s)
DRC	ACTOM Industry; ACTOM Distribution Transformers Marthinusen & Coutts; ACTOM MV Switchgear Incidental insignificant sales by John Thompson, LH Marthinusen, Genlux Lighting and ACTOM Static Power.
Eritrea	ACTOM Electrical Products
Eswatini	ACTOM Electrical Products; ACTOM Distribution Transformers; ACTOM High Voltage Equipment, John Thompson; ACTOM MV Switchgear; LH Marthinusen; Marthinusen and Coutts; and Static Power. Incidental insignificant sales by Genlux Lighting and Appliance Components
Ethiopia	John Thompson
Kenya	ACTOM Distribution Transformers and John Thompson Incidental insignificant sales by LH Marthinusen, Electrical Products, HVAC Systems and Static Power
Madagascar	LH Marthinusen Incidental insignificant sales by ACTOM Distribution Transformers, Marthinusen and Coutts and Electrical Machines.
Malawi	John Thompson Incidental insignificant sales by Electrical Products, Appliance Components and Electrical Machines

Mauritius	John Thompson, Marthinusen and Coutts and ACTOM MV Switchgear. Incidental insignificant sales by Current Electric, Electrical Products and HVAC Systems.
Rwanda	Incidental insignificant sales by John Thompson and Marthinusen and Coutts
Seychelles	Incidental insignificant sales by John Thompson
Uganda	John Thompson and Static Power
Zambia	Operates in Zambia through its subsidiary, ACTOM R&S. ACTOM Electrical Products, ACTOM Industry; and ACTOM Power Systems; ACTOM Distribution Transformers, John Thompson; Marthinusen and Coutts, ACTOM MV Switchgear; ACTOM Power Transformers; Protection and Control; ACTOM Turbo Machines; and Static Power Incidental insignificant sales by Current Electric, Genlux Lighting, Appliance Components, Electrical Machines, and ACTOM Power Systems.
Zimbabwe	ACTOM Electrical Products, ACTOM Distribution Transformers, John Thompson ³ ; ACTOM MV Switchgear; ACTOM Power Transformers; and Marthinusen and Coutts. Incidental insignificant sales by Current Electric, Protection and Control, LI Marthinusen, Electrical Machines and Static Power

Jurisdiction of the Commission

12. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "Merger Notification Thresholds Rules") provides that:

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:

- a) *the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds COM\$ 50 million; and*
- b) *the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds COM\$ 10 million, unless each of the parties to a merger achieves at least two-thirds of*

³ The parties submit that John Thompson sold products and services through GEC Zimbabwe Pvt Ltd, an associate company of the ACTOM Group in Zimbabwe

its aggregate turnover or assets in the Common Market within one and the same Member State.

13. The merging parties have operations in more than two COMESA Member States. The parties' combined turnover in the Common Market exceeds the threshold of USD 50 million and they each derive turnover of more than USD 10 million in the Common Market. In addition, the merging parties do not achieve more than two-thirds of their respective COMESA-wide turnover within one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

14. The notified transaction involves OMPE V Pty Ltd, a division of OMAI, acquiring 34.34% of the issued share capital of AIH. As noted above, another entity in the Old Mutual Group, OMLACSA, currently holds 19.62% of the issued share capital of AIH. OMAI controls the voting rights in respect of these shares for the purposes of the Regulations by virtue of a management agreement that has been concluded between OMAI and OMLACSA. Consequently, as a result of the proposed transaction, OMAI will have voting rights of 53.96% of AIH and thereby acquire indirect control over AIH.

Relevant Markets

Relevant Product Market

15. The acquiring group operates across various lines of business in the financial services industry, including amongst others, life assurance products, short term insurance, savings, property, asset management, banking and lending. The acquiring group portfolio of activities in the Common Market comprise of personal financial services, wealth management and investment solutions, business development, corporate financial services and institutional investment management.
16. AIH positions itself as a "manufacturer, solution provider, repairer, maintainer and distributor of electro-mechanical equipment in Africa"⁴. In the Common Market, AIH operates through its subsidiaries in Zambia which are involved in the repair of motors and electrical equipment; as well as through the following divisions which are based in South Africa: ACTOM Energy, Distribution Transformers, Electrical Equipment, Engineering Projects and Construction, High Voltage Equipment, LH Marthinusen, Marthinusen and Coutts, Medium Voltage and Protection, Power Transformers, the Power Division, and the Power Conversion Division.
17. The acquiring group does not have controlling interests in any firms involved in the manufacture, solution provision, repair, maintenance and distribution of electromechanical equipment which are the areas of activity of the Target Undertaking. For purposes of the

⁴ www.actom.co.za/about-actom/company-overview/ accessed 11th May 2021

competitive assessment of the current transaction and without prejudice to the CID's approach in similar future cases, the CID focused on the activities of the target group in the Common Market, as these are the markets where any competitive impact of the merger is likely to be felt.

Manufacture, repair, maintenance and distribution of electro-mechanical equipment

18. The activities of AIH can be broadly regrouped into the manufacture, repair, maintenance and distribution of electro-mechanical equipment. On the demand side, the various types of electro-mechanical equipment constitute distinct markets by virtue of their intended use and prices. For instance, voltage products are clearly different from fans or transformers. Each group of electro-mechanical equipment is designed to perform a specific function, whether as a cooling, stabilising, or heating agent. Within each group, further distinctions are possible; for instance, a customer requiring a domestic electrical appliance is unlikely to purchase a similar item intended for industrial use. Similarly, the lighting to be used in stadiums or for street lighting is likely to be different from the one used in domestic households. Further, a distinction among the products can be made based on the strength of voltage power required to use the product⁵.
19. Notwithstanding the limited demand side sustainability, on the supply side, there may be certain overlaps between the equipment manufactured. The target group is itself active in the manufacture of a wide range of equipment. On the supply side, it has been generally noted that there exists supply-side substitutability in the manufacture of the range of electro-mechanical equipment. The main suppliers of the equipment can supply both mechanical and electrical components, even if market presence and reputation with customers are not the same⁶. This is mainly because the product itself has both in-built mechanical and electrical components which are required for its functioning.
20. Having regard to the wide range of products supplied by AIH, and the lack of horizontal overlap and vertical relationship with the activities of the acquirer pre-merger, for purposes of this transaction, a broad market for electro-mechanical equipment can be identified. The CID observed that the repair services can be considered within the same market as such services are typically provided as part of the after-sales and warranty services, particularly for complex or high valued equipment. In any event, the transaction will not lead to any competition concerns under any alternative market definition.
21. In view of the foregoing, the CID concluded that the relevant product market can be construed as the broad market for manufacture, distribution and repair of electro-mechanical equipment.

⁵ The European Commission considered that power system management and protective relays in turnkey project each constitute a separate market and indeed high-voltage products, transformers, power system management and protective relays was considered as one market in Case No COMP/M.3653 - Siemens/VA Tech.

⁶ Case No COMP/M.3653 - Siemens/VA Tech

Relevant Geographic Market

22. The CID considered that the geographic market for the manufacture and repair of electro-mechanical products is likely to be wider than national. From a demand side perspective, customers can source these products from any Member State or even from any jurisdiction outside the Common Market. Further, it is noted from AIH's activities that they only have a subsidiary in one Member State but its sales to the rest of the Common Market are through Divisions based in South Africa. Therefore, for purposes of this transaction, the relevant geographic market is construed as global.
23. Thus, for the purpose of assessing the proposed transaction, and without prejudice to future cases, the CID identified the relevant market as **the global market for manufacture, distribution and repair of electro-mechanical products.**

Competitive Assessment

24. The parties submitted the following market shares of the divisions of AIH that had sales in the Member States, namely (i) DRC; (ii) Eswatini; (iii) Kenya; (iv) Mauritius; (v) Zambia; and (vi) Zimbabwe, as presented in Tables 3 to 6 below:

Table 3: Market shares of AIH in DRC for the year 2020

Member State	Division	Products	Estimated Market Shares
DRC	Marthinusen & Coutts	Specialist engineering, site services, fitting, machining and fabrication of all types of turbomachinery and high-speed rotating equipment and services in respect of electrical and mechanical rotating machines.	%
	MV Switchgear	Designs, manufactures, supplies, maintains and repairs equipment and systems for medium voltage electricity distribution	%

Table 4: Market shares of AIH in Eswatini for the year 2020

Member State	Division	Products	Estimated Market Shares
Eswatini	Marthinusen & Coutts	Specialist engineering, site services, fitting, machining and fabrication of all types of turbomachinery and high-speed rotating equipment and services in respect of electrical and mechanical rotating machines.	%

	MV Switchgear	Designs, manufactures, supplies, maintains and repairs equipment and systems for medium voltage electricity distribution	
	Distribution Transformer	Manufacturer of a comprehensive range of distribution transformers for use in several industries	
	Electrical Products	Stockist and supplier of competitively priced, quality electrical products and equipment with a product range that includes medium voltage distribution transformers, minisubs, switchgear and cable	
	John Thompson	Provision of boiler and environmental solutions	

Table 5: Market shares of AIH in Zambia for the year 2020

Member State	Division	Products	Estimated Market Shares
Zambia	Marthinusen & Coutts	Specialist engineering, site services, fitting, machining and fabrication of all types of turbomachinery and high-speed rotating equipment and services in respect of electrical and mechanical rotating machines.	
	MV Switchgear	Designs, manufactures, supplies, maintains and repairs equipment and systems for medium voltage electricity distribution	
	R&S	Reparation of motors and electrical equipment	
	Electrical Products	Stockist and supplier of competitively priced, quality electrical products and equipment with a product range that includes medium voltage distribution transformers, minisubs, switchgear and cable	
	John Thompson	Provision of boiler and environmental solutions	

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Table 6: Market shares of AIH in Zimbabwe for the year 2020

Member State	Division	Products	Estimated Market Shares
Zimbabwe	Marthinusen & Coutts	Specialist engineering, site services, fitting, machining and fabrication of all types of turbomachinery and high-speed rotating equipment and services in respect of electrical and mechanical rotating machines.	██████████%
	Electrical Products	Stockist and supplier of competitively priced, quality electrical products and equipment with a product range that includes medium voltage distribution transformers, minisubs, switchgear and cable.	██████████
	John Thompson	Provision of boiler and environmental solutions	██████████

25. The CID observed that the transaction is not capable of leading to any market share accretion in the broad market for the manufacture and repair of electro-mechanical products nor in any potential submarkets, in view of the absence of overlap between the activities of the merging parties pre-merger.

Third-Party Views

26. Submissions were received from the Competition Authority of Kenya, the Competition Commission (Mauritius), the Competition and Consumer Protection Commission (Zambia), Eswatini Competition Commission, the Conseil de la Concurrence de Madagascar, the Trade Competition and Consumer Protection Authority (Ethiopia), the Competition and Tariff Commission (Zimbabwe), and the Competition and Fair Trading Commission (Malawi). The third party submissions were consistent with the CID's conclusion that the transaction was unlikely to raise competition concerns in the relevant markets.

Determination

27. Based on the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

28. The CID therefore **approved** this transaction. This decision was adopted in accordance with Article 26 of the Regulations.

Dated this 27th day of June 2021



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Commissioner Justice Charlotte Wezi Malonda (Chairperson)



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Commissioner Brian M. Lingela



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Commissioner Ellen Ruparanganda