



MERGER DECISION NO 17: 2021

Notice in Terms of Section 53(4) (a) (ii) of the Competition Act 2018

DECISION ON THE PROPOSED ACQUISITION OF 34.34% OF THE ISSUED SHARE CAPITAL IN ACTOM INVESTMENT HOLDINGS (PTY) LTD BY OMPE V GP PROPRIETARY LIMITED

Introduction of the Merging Parties

Pursuant to section 53(4)(a)(ii) of the Competition Act of 2018 (“the Act”), notice is hereby given on the decision made by the Competition and Consumer Authority (“the Authority”) in relation to the proposed acquisition of 34.34% of the issued share capital in Actom Investment Holdings (Pty) Ltd (“AIH” or the “Target Enterprise”) by OMPE V GP Proprietary Limited (“OMPE V Pty Ltd” or the “Acquiring Enterprise”). The transaction was notified to the Authority on 18th March 2021 and the merger assessment was completed on 14th April 2021.

The primary Acquiring Enterprise, OMAI, is a private company incorporated in accordance with the Laws of South Africa. OMAI does not have any operations in Botswana and OMPE does not control any companies with operations in Botswana.

The Target Enterprise, AIH, is a private company incorporated in accordance with the Laws of South Africa. AIH is not controlled by any single firm or a combination of firms. The names of shareholders that hold more than 5% of the Target Enterprise’s issued share capital are: Actis LLP (34.34%); OMLACSA (19.62%); Kagiso Power Services III (Pty) Ltd (9.31%); and Tiso Electrical (Pty) Ltd (9.31%). AIH controls ACTOM SA (Pty) Ltd, which is a private company incorporated in South Africa. ACTOM SA (Pty) Ltd in turn controls ACTOM (Pty) Ltd, a private company also incorporated in South Africa.

Relevant Markets

The primary Acquiring Enterprise, OMAI, is an alternative investment manager, which forms part of the Old Mutual Group. The Old Mutual Group or OML is described as 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 business in the financial service industry, including among others, life assurance products, short term insurance, savings, property, asset management, banking and lending.

The activities of the Old Mutual Group in Botswana (through its subsidiary companies – Old Mutual Financial Services Botswana (Pty) Ltd; Old Mutual Life Insurance Company (Botswana) (Pty) Ltd; and Old Mutual Short-Term Insurance (Botswana) Limited) form part of its Personal and Corporate divisions. The Personal division is involved in the provision of insurance services such as life and disability insurance, funeral cover, health insurance, and non-life insurance, whereas the Corporate division provides group assurance services such as disability and income protection solutions as well as business insurance covering a wide range of cover options to insure business related risks.

The Target Enterprise, AIH is a holding company for a group of companies which are involved in the manufacture; supply; distribution; installation and repair of a wide range of electrical equipment used in the power generation and industrial segments in Africa. In Botswana ACTOM (Pty) Ltd controls ACTOM Botswana (Pty) Ltd ("ACTOM Botswana"), which does not have ongoing operations. However, at times the ACTOM Group's South African business units conduct projects in Botswana through ACTOM Botswana.

The South African based divisions through which ACTOM Group made sales into Botswana are: ACTOM Power Systems; ACTOM High Voltage Equipment; ACTOM Distribution Transformers; ACTOM Electrical Products; Genlux Lighting; LH Marthinusen Fan Service; LH Marthinusen Motors; LH Marthinusen Transformers; ACTOM MV Switchgear; and ACTOM Protection & Control.

Geographic Market

The geographical market is national (Botswana).

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the proposed transaction is not expected to reduce the level of competition in the market under consideration in Botswana. The assessment of the proposed merger did not reveal any horizontal overlaps in the activities of the Merging Parties. The Acquiring Enterprise does not own any business which is engaged in activities similar to those of the Target Enterprise in Botswana. Therefore, the Authority does not expect the proposed transaction to give rise to any Substantial Lessening of Competition; restrict trade or the provision of services; or to endanger the continuity of supplies in the relevant market in Botswana.

The analysis further revealed no product overlap in the activities of the Merging Parties hence the structure of the relevant market is not expected to change post-merger. The proposed transaction is therefore not expected to result in a market share accretion of the merged entity or any other entity in Botswana. Thus, the proposed merger will not result in the Acquisition of a Dominant Position by the merged entity or by any enterprise in Botswana.

In terms of Public Interest Considerations, the proposed merger will not have any negative effects on public interest issues in Botswana. In particular, there will be no adverse effects on employment since both OMAI and AIH do not have employees in Botswana. In terms of the subsidiaries to the Merging Parties which are based in Botswana, it is not expected that the proposed transaction will have any negative effect on employment, hence no retrenchments or redundancies are expected to occur at either of the transacting parties' enterprises in Botswana by virtue of the merger's implementation. On this basis, the Authority does not foresee any detriment to matters of public interest that will arise as a result of the transaction under consideration.

The Determination

The Authority determined through the analysis of the facts of the merger that the structure of the relevant market is not expected to significantly change upon the implementation of the proposed merger and the proposed transaction is not likely to result in any adverse effects on competition, nor endanger the continuity of the supply of goods and services in the relevant market in Botswana. Furthermore, the proposed merger will not have any negative effect on public interest matters in Botswana as per the provisions of section 52(2) of the Competition Act 2018.

Pursuant to the provision of section 53 of the Act, the Authority has unconditionally approved the proposed acquisition of 34.34% of the issued share capital in Actom Investment Holdings (Pty) Ltd by OMPE V GP Proprietary Limited.

However, as stated under section 61 of the Act, this approval does not override or negate any other mandatory statutory approvals or processes that any of the parties to this merger must comply with under the Laws of Botswana.

Dated at Gaborone on this 14th day of April 2021.

Tebelelo Pule, Chief Executive Officer, Competition and Consumer Authority,
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