COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 (0)111 772 466/529/530
Email- compcom@comesacompetition.org

Common Market for Eastern and Southern Africa

Case File No. CCC/MER/01/01/2024

Decision[1] of the 106th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition by Discovery Energy Holdings, L.P. of Sole Control Over the Energy Business of Kohler CO.

ECONOMIC SECTOR: Manufacturing (diesel generators)

04 May 2024

COMESA COMPETITION COMMISSION
04 MAY 2024

[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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 13 February 2024, the COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger involving Discovery Energy Holdings, L.P. ("**Discovery Energy Holdings**" or the "**acquirer**") and the energy business of Kohler CO. ("**Kohler Energy**" or the "**target**"), pursuant to Article 24(1) of 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

Discovery Energy Holdings (the acquirer)

4. The parties submitted that Discover Energy Holdings is a newly incorporated limited partnership established under the laws of the Cayman Islands. Discovery Energy Holdings is among the entities that are fully-owned, directly or indirectly managed and/or advised (including through intermediaries and funds) by Platinum Equity Advisors, LLC ("**Platinum Equity Advisors**") and ultimately controlled by Platinum Equity, LLC ("**Platinum Equity**"). Platinum Equity is a limited liability company incorporated in accordance with the laws of the United States of America ("**USA**"). All the entities that are directly or indirectly managed and/or advised (including through intermediaries and funds) by Platinum Equity Advisors and ultimately controlled by Platinum Equity are herein collectively referred to as the "**Platinum Equity Group**" or the "**acquiring group**".

5. The parties submitted that the Platinum Equity Group, headquartered in the United States of America ("**USA**"), specializes in the merger, acquisition, and operation of companies that provide services and solutions to customers in a broad range of business, including information technology, telecommunications, logistics, metal services, manufacturing, and distribution.

6. The parties also submitted that the acquiring group is active in all the Member States except Burundi, Comoros, and Somalia. The activities of entities that form part of the group that are active in the Common Market include:

   (i) The provision of specialized injection moulding equipment and services;

   (ii) Solutions tailored for industries with high-temperature conditions, such as iron and steel, thermal, and foundry markets;

   (iii) The provision of comprehensive supply chain management solutions specifically designed for the aerospace and defence industry;

   (iv) The provision of educational materials catering to both higher education and K-12 markets and related content creation for medical, technical, and business professional training;

   (v) The provision of end-to-end technology and human-powered communication solutions, empowering marketing and communications professionals to understand;

   (vi) The provision of innovative specialty chemicals and services for process, functional and water treatment applications; and

   (vii) The provision of swimwear products.

Kohler Energy (the target)

7. The submitted that Kohler Energy comprises certain entities controlled by Kohler Co. ("**Kohler**"), a private company incorporated in accordance with the laws of the USA.

8. Kohler Energy is a manufacturing company providing industrial energy systems, powertrain technologies, and home energy solutions. In the Common Market, Kohler Energy, through entities it controls, sells diesel generator sets and related components.

9. Within the Common Market, Kohler Energy generated turnover in the financial year 2022 through the following entities which are part of the proposed transaction, as presented in Table 1.

Table 1: Kohler Energy entities that have activities and generate turnover from the Common Market

Member State	Name of Entity	Product/service	Country of incorporation
Comoros, DRC, Djibouti, Egypt, Ethiopia, Kenya, Libya, Madagascar, Mauritius, Seychelles, Sudan, Zambia and Zimbabwe	SDMO Industries SAS	Sale of diesel generator sets for backup power applications.	France
Egypt	1. SDMO Cairo L.L.C[2] 2. SDMO Industries SAS	Sale of diesel generator sets for backup power applications	1. Egypt 2. France
Tunisia	1. Clarke Energy Tunisie SARL 2. Clarke Energy Tunisie Services CETS 3. Clarke Energy Tunisia Trading SARL 4. Clarke Energy France S.A.S. 5. SDMO Industries SAS	Supply of diesel generator sets and components/parts relating to the diesel generator sets	1. Tunisia 2. Tunisia 3. Tunisia 4. France 5. France

10. The parties submitted that Kohler Energy typically supplies its diesel generator sets within the Common Market through distributors. However, there are instances where Kohler Energy (via its affiliates i.e., Clarke Energy France S.A.S. and SDMO Industries

[redacted]

04 MAY 2024

SAS) directly supplies customers[3]. It is important to note that Kohler Energy does not manufacture diesel generator sets within the Common Market; instead, these sets may be assembled and/or manufactured in France and/or Austria.

Jurisdiction of the Commission

11. 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 USD 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 USD 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.*

12. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived turnover of more than the threshold of USD 50 million in the Common Market and they each derived turnover of more than USD 10 million in the Common Market. In addition, the parties did not derive more than two-thirds of their respective aggregate turnover in one and the same Member State. The Commission is thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

13. The parties have submitted that the proposed transaction will entail Platinum Equity Group indirectly acquiring approximately [redacted] of the share capital of Kohler Energy, while Kohler will remain with an approximate [redacted] minority shareholding. Kohler will not retain any veto rights over the strategic commercial decisions of Discovery Energy Holdings or Kohler Energy, such as approval or amendment of Discovery Energy Holdings' annual budget or business plan, and/or the appointment/dismissal of senior management. Therefore, after completion of the

[3] Details of Kohler Energy's affiliates which supply the Common Market were submitted in the Statement of Merger for Kohler Energy

Proposed Transaction, Platinum Equity Group, through Discovery Energy Holdings, will have sole control over Kohler Energy.

14. The CID observes that the transaction meets the definition of a merger as contemplated under Article 23(1) of the Regulations given that the acquiring undertaking will establish a controlling interest on the target, which will not retain any veto rights over the strategic decisions, approval or amendment of annual budget, business place or appointment of dismissal of senior management.

15. The parties submitted that the proposed transaction serves as an investment opportunity for Platinum Equity Group, aligning with its strategy of investing in attractive companies to realize long-term growth potential, enhance business processes, and increase overall business value. Additionally, the proposed acquisition is stated to align with Kohler's strategic objectives by enabling a more focused and intensified investment in Kohler's Kitchen & Bath and Hospitality businesses.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

16. Paragraph 7 of the Commission's Guidelines on Market Definition provides that a *"relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer/customer, by reason of the products' characteristics, their prices and their intended use".*

17. The acquiring group specializes in mergers, acquisitions, and the operation of companies across various industries, including information technology, telecommunications, logistics, metal services, manufacturing, and distribution.

18. Kohler Energy is a manufacturing company providing industrial energy systems, powertrain technologies, and home energy solutions globally. Specifically, Kohler Energy sales diesel generator sets for backup power applications into the Common Market.

19. Since the proposed transaction is not likely to affect the markets in which the acquiring group operates, the competitive assessment has been focused on the products provided by Kohler Energy.

The sales of diesel generator sets

20. A diesel generator is a machine that converts mechanical energy into electrical energy[4], utilizing diesel engines that run on diesel fuel. Essentially, a diesel genset functions as a standalone electricity generator powered by a diesel engine[5]. These

[4] https://www.emsa.gen.tr/en/products/diesel-generators, accessed 27 February 2024.
[5] See Case No IV/M.700 - EMERSON/CATERPILLAR, para 15.

generator sets are extensively employed for backup power generation across residential, commercial, industrial, and institutional settings.

21. The diesel generator engine transforms the chemical energy of diesel fuel into mechanical energy, which subsequently propels a generator[6]. This generator then converts the mechanical energy into electrical energy, enabling the powering of lights, appliances, and equipment. Diesel generators serve as crucial backup power sources for buildings and find utility in industrial, construction, and mining operations where grid electricity might be inaccessible.

22. The primary role of diesel generator sets is electricity generation, offering standby power during utility outages or serving as the primary power source in remote areas without grid access.

23. The CID observes that generator sets can be further categorized based on the type of fuel they employ, including diesel generator sets and gas generator sets. The key distinction lies in the fuel type: diesel generator sets utilize diesel fuel, while gas generators typically run on natural gas, propane, or gasoline. A diesel generator set operates as a standalone electricity generator powered by a diesel engine, while a gas generator set similarly functions with a gas engine.

24. The European Commission ("**EC**") has considered that diesel gensets and gas gensets constitute separate product markets. It was argued that "*even though diesel gensets can be assembled on the same production lines as gas gensets, they constitute a different market from gas gensets. Firstly, and most importantly, diesel gensets are particularly suitable for standby applications, as an emergency source of power, while gas gensets are more efficiently used as a continuous source of power, and an alternative to the power grid. Using diesel gensets as a continuous source would be sub-optimal, for example, in terms of fuel cost (diesel is more expensive than gas, and fuel represents up to 70% of the total cost for operating a genset) but could be justified in situations where the gas network or other gas sources (that is to say, no natural gas) are not accessible*".

25. Diverse in their sizes, power capacities, and features, diesel generator sets offer a broad spectrum of options. The EC, while leaving the matter open, has previously[7] considered delineating narrower sub-markets within the diesel genset industry. It has been suggested that the market can be segmented into four distinct categories based on power rating:

    1. Under 150 kVA (Kilovolt-Amperes)
    2. 151-1000 kVA
    3. 1001-2500 kVA
    4. Over 2500 kVA

---

[6] https://www.emsa.gen.tr/en/products/diesel-generators, accessed 27 February 2024.

[7] See Case No IV/M.700 - EMERSON/CATERPILLAR, para 18

26. This segmentation approach provides a clearer understanding of the diesel genset market landscape.

27. The CID considers diesel generator market can be segmented based on the generator's end-use sector such as generators for residential, commercial or industrial power generation purposes.

28. The above notwithstanding, given that there is no overlap in the activities of the parties, a further narrowing of the market is not necessary as any alternative market definition will not alter the competitive assessment with respect to the sale of diesel generators.

29. Based on the foregoing assessment and without prejudice to its approach in similar future cases, the CID considers that the relevant product market is **the sale of diesel generator sets**.

Relevant Geographic Market

30. The Commission Guidelines on Market Definition define the relevant geographic market in Paragraph 8 as follows:

> "*The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas*".

31. The CID observes that all diesel genset manufacturers conduct their manufacturing operations at select locations worldwide and export their products to numerous countries across the globe. For example, Kohler, with headquarters in France, supplies its diesel genset products globally[8].

32. The parties have submitted that the most active and established generator set brands competing extensively in the African market, regardless of local manufacturing or assembly presence, include Caterpillar Inc., based in the USA, Cummins Inc., also headquartered in the USA, as well as MTU, based in the USA. Other prominent brands competing vigorously across Africa include Aska, headquartered in Turkey, Himoinsa in Spain, Jubaili Bros with headquarters in Nigeria and Lebanon, Mikano based in Nigeria, and Onis Visa, headquartered in Italy.

33. The parties additionally stated that in the fiscal year 2022, the primary countries of origin for imported diesel gensets into the Common Market comprised Italy, China,

[8] https://www.fortunebusinessinsights.com/blog/top-10-diesel-generator-manufacturers-10648, accessed on 26 February 2024.

France, USA, South Africa, India, UK, Lebanon, Singapore, Japan, Brazil, Spain, Turkey, Belgium, Portugal, Bulgaria, and Estonia.

34. In view of the above assessment, the geographic scope for the sale of diesel generators is likely to be broader than national and may extend globally given that sales of generators occur globally. However, recognizing that the target entity is only active in the sale of diesel generators in the Common Market, the geographic scope is considered as COMESA-wide.

Conclusion on Relevant Markets

35. Based on the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant market has been identified as **the market for the sale of diesel generator sets in COMESA.**

Market Shares and Concentration

36. The parties have submitted details of Kohler Energy's estimated market share with respect to the supply of diesel generator sets in the following Member States in which Kohler Energy was active in the 2022 financial year.

Table 2: Estimated market share in the supply for diesel generator sets into the Common Market over the 2022 financial year[9]

Member State	*Estimated market shares in %*
Tunisia	<50
Mauritius	[30 – 40]
Madagascar	[10 – 20]
Comoros	[10 – 20]
Egypt	[5 – 10]
Kenya	[0 – 5]
Zambia	[0 – 5]
Djibouti	[0 – 5]
Ethiopia	[0 – 5]

37. From Table 2 above, it is noted that the target's market share in the supply of diesel generator sets in the Common Market includes Tunisia (<50%), Mauritius [30 – 40]%, Madagascar [10 – 20]%, Comoros [10 – 20]%, Egypt [5 – 10]%, Kenya [0 – 5]%, Zambia [0 – 5]%, Djibouti [0 – 5]%, and Ethiopia [0 – 5]%. It is noted that the target has a significant market share in Tunisia and Mauritius while its market share in the rest of the Member States is insignificant. It was further noted from the parties' submission that the locally assembled diesel generator sets cover about [15 – 25]% of the market share in Egypt.

[9] Confidentiality of information claimed by the parties.

38. The parties have submitted that the diesel generator sets are common across Africa (including the Common Market), as reliable access to electricity is not always available. The parties further submitted that generator ownership, especially in relation to diesel generators, is common across the continent. The status of electricity accessibility in Africa was submitted as presented in Table 3 below.

Table 3: Estimated electricity access in Africa[10]

Member State	*Population (m)*	*Population without access to electricity (m)*	*% without access to electricity*
Nigeria	208	93	45
DRC	93	75	81
Ethiopia	117	57	49
Tanzania	62	37	60
Uganda	44	26	58
Mozambique	31	22	69
Sudan	44	20	45
Niger	24	20	81
Madagascar	28	19	66
Angola	33	18	53
Burkina Faso	22	17	81
Malawi	19	16	85
Kenya	52	15	29
Chad	17	15	89
Burundi	12	11	88
Zambia	19	11	55
Mali	21	10	49
Others	511	117	23
Africa	1,359	599	44

39. Table 3 above indicates that significant percentage of the African population is without access to electricity, suggesting a substantial untapped market for new diesel generator suppliers. With millions of people relying on alternative sources or living without electricity altogether, there exists a pressing demand for reliable power solutions. New diesel generator suppliers have an opportunity to address this gap by providing affordable, efficient, and accessible energy solutions to meet the needs of both residential and commercial users across the continent. Furthermore, as electrification efforts continue and infrastructure development projects expand, the demand for diesel generators as a reliable backup or primary power source is likely to persist, presenting a favorable environment for suppliers to establish and grow their presence in the African market.

[10] Confidentiality of information claimed by the parties.

COMESA COMPETITION COMMISSION
04 MAY 2024

40. The parties submitted that competition within the diesel generator set market in Africa, including the Common Market, is characterized by diversity. With both local assembly and imports playing significant roles, there exists a wide array of competitors offering products spanning various costs and qualities. Trade relationships are notably influenced by geo-political dynamics, as evidenced by import data. For instance, Kohler Energy observes robust Chinese imports in countries where China's Belt and Road Initiative holds sway, such as the Democratic Republic of Congo and Kenya. Conversely, there are strong imports from former colonial powers in regions where their historical influence persists, such as the United Kingdom in Egypt or France in Comoros.

41. The CID observes that the African diesel generator market has witnessed substantial growth over the past decade, propelled by various factors[11]. Chief among these are the unreliability of grid power, the burgeoning pace of urbanization, escalating industrialization, rapid infrastructure development, and the increasing demand for backup power solutions. This market landscape is characterized by intense competition, featuring both global and regional players striving to capture market shares. These major players prioritize strategies such as product innovation, forging strategic partnerships, and expanding into previously unexplored markets to fortify their positions within the sector.

42. The parties submitted that the merged entity would continue to face significant competition from their competitor's post-transaction. Further, with there being no overlaps between the merging parties' activities, the proposed transaction will not result in market share accretion.

43. The CID notes that there would be no change in the existing market structure post-merger in view of the absence of overlap pre-merger and further that the merged entity would continue to face competition from the existing competitors which include major global and regional players such as Caterpillar Inc., Cummins Inc., MTU, Aska, Himoinsa, Jubaili Bros, Mikano, Onis Visa, Generac Holdings Inc., Atlas Copco AB, and Kirloskar Oil Engines Limited.

44. The CID notes that through the proposed transaction, the target is likely to benefit by enabling a more focused and intensified investment in Kohler's Kitchen & Bath and Hospitality businesses. However, it is unlikely that the proposed merger will result in the creation of a dominant position for the parties that would allow them to engage in unilateral conduct in the market.

---

[11] https://markwideresearch.com/africa-diesel-generator-market/#:~:text=Market%20Overview.%20The%20Africa%20diesel%20generator%20market,areas%20with%20limited%20access%20to%20grid%2Dbased%20power., accessed on 26 February 2024.

Consideration of Third-Party Views

45. In arriving at its determination, the CID also considered submissions from the National Competition Agencies of Egypt, Madagascar, Mauritius, Eswatini, Ethiopia, Malawi, Democratic Republic of Congo, Seychelles and Libya which confirmed the absence of competition and public interest concerns.

Determination

46. 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 will it be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.

47. The CID, therefore, approved the transaction.

48. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 04th day of May 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma **Commissioner Islam Tagelsir Ahmed Alhasan**