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**Common Market for Eastern
and Southern Africa**

Staff Paper No. 2016/09/JB/02

**Decision¹ of the Twenty Fourth Meeting of the Committee Responsible
for Initial Determination Regarding the Proposed Acquisition of ARM
Cement Limited by CDC Group Plc**

ECONOMIC SECTOR: Cement and Agriculture

28th September 2016 – Johannesburg, South Africa

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Information and Relevant Background

1. On 20th June 2016, the COMESA Competition Commission (hereinafter referred to as "the Commission") received a notification regarding the proposed merger between CDC Group Plc (hereinafter referred to "CDC") as the acquiring firm and ARM Cement Limited (hereinafter referred to as "ARM") as the target firm.
2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations (hereinafter referred to as "the Regulations"). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the proposed transaction is likely to have the effect of substantially preventing or lessening competition; or would be contrary to public interest in the Common Market.
3. The Committee responsible for Initial Determination (hereinafter referred to as "the CID") established that the parties operate in more than one COMESA Member State. This, therefore, means that the regional dimension requirement under Article 23(3) of the Regulations is satisfied and asserts jurisdiction of the Commission to assess the transaction.

The Parties

CDC

4. CDC is a United Kingdom's development finance institution incorporated in the United Kingdom and wholly owned by the United Kingdom Government. CDC invests in companies directly and indirectly by providing equity, debt, mezzanine finance and guarantees to businesses. CDC aims to invest where job creation focus can have the greatest impact: for example, in sectors where growth leads to jobs – directly and indirectly – such as manufacturing, agribusiness, infrastructure, financial institutions, construction, health and education.

ARM

5. ARM is a public company initially incorporated in Kenya on 31st July, 1976 as a private limited liability company. ARM converted itself into a public company and listed on the Nairobi Securities Exchange (NSE) on 13th June 1997 where it currently trades on the Main Investment Market Segment. ARM is active in the manufacture of cement, formulated fertilizer, sodium silicate and industrial minerals.

Nature of the Transaction

6. Pursuant to an Investment Agreement dated 29th April 2016, CDC intends to subscribe for a total of three hundred and fifty three million six hundred and sixty five thousand two hundred (353,665,200) ordinary shares of ARM, representing 40.7% of ARM's issued share capital, by investing USD one hundred and forty million (USD 140,000,000) in ARM.

Competition Analysis

7. The CID defined the relevant market as the production and sale of cement and fertiliser in the Common Market. The CID observed that the market structure is likely to remain unaltered post-merger, therefore no significant competition concerns are likely to arise. Further, the CID noted that the Common Market has in the recent past witnessed expansion of plants and new entrants in the cement sector.

Determination

8. The CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market. The CID further determined that the merger is not likely to negatively affect trade between Member States and is compatible with the Treaty establishing the Common Market for Eastern and Southern Africa. The CID approved the transaction.
9. This decision is adopted in accordance with Article 26 of the Regulations.


Dated this 28th day of September, 2016.



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Commissioner Matthews Chikankheni (Chairman)



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Commissioner Thabisile Langa (Member)
(Member)



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Commissioner Chilufya Sampa