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**Common Market for Eastern
and Southern Africa**

Staff Paper No. 2016/11/LV/01

**Decision¹ of the Twenty Seventh Committee Responsible for Initial
Determination on the Application for Authorisation of the Acquisition of
Metal Fabricators of Zambia Plc by Reunert Limited**

ECONOMIC SECTOR: Manufacturing of Industrial Metals

22nd November 2016 – Livingstone, Zambia

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 14th June 2016, the COMESA Competition Commission (hereinafter referred to as "the Commission") received a notification for approval of a merger between Reunert Limited (hereinafter referred to as "Reunert") as the acquiring undertaking and Metal Fabricators of Zambia Plc (hereinafter referred to as "Zamefa") as the target undertaking.
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 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. 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 on the Commission to assess the transaction.

The Parties

Reunert

4. Reunert is a public company listed on the Johannesburg Stock Exchange established in 1888 in South Africa. The Reunert group manages a portfolio of businesses through its subsidiaries in the fields of electrical engineering, information and communication technologies and applied electronics.
5. African Cables, which is the relevant subsidiary for the purposes of this transaction is involved in the design and manufacture of a comprehensive range of electrical energy cables and conductors. It is also involved in the installation and maintenance of medium and high-voltage cable systems, circuit breakers and switchgears. The Reunert Group operates in five COMESA Member States namely; the Democratic Republic of Congo, Malawi, Swaziland, Zambia and Zimbabwe.

ZAMEFA

6. Zamefa is a Zambian based manufacturer of copper rods which supplies its products throughout sub-Saharan Africa. It also manufactures small volumes of copper and aluminium wire, cable, and conductor products. Zamefa is ultimately controlled by General Cable Corporation (75.4%), a company incorporated under the laws of Delaware in the United States of America.

Nature of the Transaction

7. The Transaction involves the acquisition by Reunert of 75.39% of the issued share capital held by General Cable Corporation in Zamefa.

Competition Analysis

8. The CID defined the relevant market as the supply of-
 - copper rod in the Common Market;
 - low and medium voltage cables in the Common Market;
 - bare copper conductors in the Common Market;
 - aluminium conductors in the Common Market; and
 - copper strip in the Common Market.
9. The CID observed that the transaction involves the acquisition of a significant supplier of copper rods by a downstream producer of copper products. The CID raised concern that the vertically integrated entity would have an incentive to foreclose competitors to protect the merged entity's market share in the upstream market and/or extend its market share in the downstream markets.
10. In particular, the CID raised concerns about potential input foreclosure because ZAMEFA is a significant supplier of copper rods to downstream producers of copper products. Zamefa has, pre-merger, significant market power in the upstream market for copper rods in Kenya, Malawi and Uganda, with an estimated market share of at least 50% and as such would have an ability to engage in foreclosure.
11. As regards the incentive of the merged entity to foreclose the market, the CID noted that the acquirer had no presence in the downstream markets for power cables in Kenya, Malawi and Uganda pre-merger. With the acquisition of Zamefa's copper rod supply and existing business in the downstream cables market, the merged entity may have an incentive to limit the supply of copper rods to Reunert's competitors in Kenya, Malawi and Uganda, so as to allow the merged entity's downstream business to gain market share.

Determination

12. The Commission engaged the merging parties on the competition concerns identified by the CID. The parties submitted the following undertakings to address the concerns - :

- a) The Merged Entity undertakes that it will, for a period of 2 (two) years from the Clearance Date, continue to supply copper rods into the Common Market to Customers in a manner similar to how Zamefa did pre-Merger. For the avoidance of doubt, subject to clause b) below, for as long as Customers are willing to purchase copper rods on the same or substantially similar terms and conditions, Zamefa will continue to supply them.
- b) The undertaking set out in clause a) shall cease to apply in the event that:
 - (i) it is no longer appropriate given the presence of new competitors with the ability to supply copper rods of sufficient quality and quantity to satisfy the requirements and demand in the Common Market; (ii) due to financial, technical, Force Majeure or commercial circumstances, Zamefa has to reduce or cease its copper rods production (in which case it shall have the right to reduce sales to customers in the Common Market, and will do so on a pro-rata and non-discriminatory basis); or (iii) Reunert ceases to exercise control over Zamefa.
- c) The Merging Parties will, for the duration of this Undertaking, and within 30 (thirty) Days of each anniversary of the Clearance Date, and on subsequent anniversaries on request by the Commission, submit to the Commission an affidavit prepared by a senior official of Zamefa confirming that it has complied with clauses a) and b) of this Undertaking.
- d) Should the Commission receive any complaint(s) from Customers regarding the Merged Entity's compliance with this Undertaking, the Merged Entity will, upon written request from the Commission, provide the Commission with the information it may reasonably require in order to ascertain whether the Merged Entity has breached this Undertaking.
- e) The Commission may, on good cause shown, request verification of compliance with this Undertaking at any point in time during the duration of this Undertaking, in which case the Merged Entity shall submit such verification, within a reasonable time period, taking into account the circumstances of the Commission's request.

13. The CID noted that the undertaking seeks to restore or maintain competition at the level existing pre-merger, while permitting the realisation of relevant merger benefits. The CID was thus satisfied that the undertaking proposed above adequately addresses competition concerns. The CID therefore approved the merger based on the undertaking submitted by the parties.

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

Dated this 22nd day of November, 2016.



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Commissioner Matthews Chikankheni (Chairman)



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Commissioner Thabisile Langa (Member)



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Commissioner Chilufya Sampa (Member)