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COMESA
Common Market for Eastern and Southern Africa

Case File No. CCC/MER/01/03/2024

Decision[1] of the 108th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Merger Involving National Cement Holding Limited and Cimerwa Plc

ECONOMIC SECTOR: Manufacturing (Cement)

11 JUL 2024

11 July 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 8 February 2024, the COMESA Competition Commission (the "**Commission**") received a notification regarding the proposed merger involving National Cement Holding Limited ("**NCHL**" or the "**acquiring undertaking**") and Cimerwa Plc ("**Cimerwa**" 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.

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The Parties

NCHL (the "acquiring undertaking")

4. The parties submitted that NCHL is a private company incorporated in the Republic of Rwanda and a special-purpose vehicle established for the purposes of the proposed transaction. NCHL is directly controlled by ERC Holdings Limited, a company registered in the Isle of Man and controlled by a Trust in which Dr. Narendra Raval is a controlling beneficiary.

5. The parties submitted that the controlling beneficiary controls Devki Group of Companies which consists of National Cement Company Limited[2] ("**National Cement Kenya**"), a private company incorporated in Kenya and National Cement Company Uganda Limited[3] ("**National Cement Uganda**"), a private company incorporated in Uganda. The parties further submitted that, although not part of the same corporate entity, NCHL, National Cement Kenya, and National Cement Uganda are the "**acquiring group**" due to their common beneficial owner.

6. The parties submitted that National Cement Kenya and National Cement Uganda are both involved in the production and supply of cement in Kenya and Uganda, respectively. National Cement Kenya is also active in the production and supply of clinker and related products like precast concrete paving blocks and ready-to-mix concrete[4]. The acquiring group, through National Cement Kenya, produces 4 million tonnes of clinker in Kenya which is approximately 50% of all clinker produced in the Country. Further, National Cement Kenya supplies clinker to cement manufacturers in Kenya, on an *ad hoc* basis, in response to requests from cement manufacturers. The acquiring group also supplies clinker to Uganda, particularly, to its affiliate National Cement Uganda, and its customers Hima Cement Uganda and Metro Cement Uganda. In this regard, National Cement Kenya supplies, on an annual basis, approximately 600,000 metric tonnes of clinker, 240,000 tonnes of clinker, and 60,000 tonnes of clinker, respectively to the three entities.

7. The parties submitted that neither National Cement Kenya nor National Cement Uganda supplies any clinker into Rwanda nor to any third parties who subsequently supply clinker into Rwanda. However, the acquiring group has recently commissioned a clinker plant in Western Kenya, which may result in additional clinker availability to the target. The parties further, submitted that the acquiring group also has access to cement manufacturing materials such as coal

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[2] See https://nccke.com/, accessed on 15 February 2024.
[3] See https://nccke.com/nccl-uganda/, accessed on 15 February 2024.
[4] https://cak.go.ke/sites/default/files/2019-06/CAK_Decision_on_the_proposed_acquisition_of_Cemtech_Company_Limited_by_Simba_Cement_Company_Limited.pdf, accessed on 6 March 2024.

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and gypsum, which are expected to benefit the target's production in Rwanda through the creation of greater economies of scale in the procurement, supply, and transport of necessary inputs.

8. The parties submitted that the acquiring group, through National Cement Kenya, currently has minimal cement sales in Rwanda approximately totalling 7,000 tonnes annually. The sales by National Cement Kenya in Rwanda are executed indirectly, whereby customers, predominantly distributors, based in Rwanda procure products from factory in Kenya.

9. Within the Common Market, the acquiring group operates in Kenya and Uganda.

Cimerwa (the "target")

10. The parties submitted that Cimerwa is a publicly traded company with a segment of its shares listed on the Rwanda Stock Exchange[5]. Cimerwa is an integrated cement producer and supplier of cement such as Ordinary Portland Cement, Portland pozzolana Cement, and Mpuzamigoga Cement under its brand portfolio within Rwanda. Its supply extends to customers in the eastern region of the Democratic Republic of Congo ("**DRC**") (specifically Goma and Bukavu). Cimerwa supplies 40% of its cement products to the Eastern DRC, particularly in Bukavu and Goma region[6].

11. The parties submitted that the target does not supply any clinker, clinker concentrate, or other cement production raw materials to any third-party cement manufacturers. It is reported that Cimerwa produces clinker for its own internal use, and packs and sells cement for general and civil construction purposes[7].

12. The parties submitted that the export sales of cement to the DRC are managed and settled in Rwanda. Cimerwa does not directly export to DRC but instead specific customers based in DRC obtain the products from Cimerwa on a "call and collect basis". Within the Common Market therefore, the target operates in DRC and Rwanda.

Jurisdiction of the Commission

13. 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:

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[5] The Commission previously approved a merger between PPC International and Cimerwa - See Case File No. CCC/MER/8002/2013, decision dated October 2013

[6] https://africafinancetoday.beehiiv.com/p/kenya-billionaire-narendra-raval-buys-rwanda-cement-manufacturer.

[7] https://cimerwa.rw/wp-content/uploads/2022/09/CIMERWA-Prospectus_compressed.pdf, accessed on 6 March 2024.

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.*

14. The undertakings concerned have operations in two or more Member States. The undertakings concerned held a combined value of assets in excess of the threshold of USD 50 million in the Common Market and each of the parties held an asset value of more than USD 10 million in the Common Market. In addition, both of the parties did not hold more than two-thirds of their aggregate COMESA-wide value of assets from one and the same Member State.

15. The Commission was thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

16. The proposed transaction entails NCHL acquiring 51% of the shareholding in Cimerwa from PPC International.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

17. Paragraph 7 of the Commission's Guidelines on Market Definition states 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".*

18. The CID noted that Cimerwa produces and supplies cement, particularly, Ordinary Portland Cement, Portland pozzolana Cement and Mpuzamigoga Cement. Cimerwa also produces clinker for its own use in the production of cement. Similarly, the acquiring group is involved in the production and supply of cement and production of other related products including clinker, and precast

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concrete paving blocks. The acquiring group's primary brand is Simba Cement, produced through National Cement Kenya.

19. The CID observed that the transaction is both a horizontal and vertical merger since both parties are active in the production and supply of cement and the acquiring group produces clinker which it intends to supply the target. The CID focused is assessment of the relevant product markets on the production and supply of cement and clinker.

Production and supply of Clinker

20. Clinker is a nodular material used as input for the cement production process. It is ground into a fine powder and combined with gypsum to produce cement[8]. Clinker plays a fundamental role in cement manufacturing. It is created through the sintering of limestone and alumino-silicate materials like clay in the cement kiln phase[9]. It is an intermediate product in cement manufacturing, formed through the heating and chemical transformation of raw materials. As the primary component, clinker is essential for producing Portland cement, widely recognized as one of the most used types of cement in the construction sector.

21. The significance of clinker in cement production underscores its profound impact on the quality and effectiveness of cement in various construction applications. Cement manufacturers utilize a grinding process that incorporates gypsum with clinker to enhance its reactivity, making it suitable for a wide range of construction purposes. This process augments clinker's reactivity, rendering it suitable for a myriad of construction uses.

22. Both the target and the acquirer possess integrated facilities capable of producing both clinker and cement on-site. It is essential to recognize that while both clinker and cement are integral to the manufacturing process, their production plants serve distinct functions. A clinker plant is primarily focused on producing the intermediate material by grinding raw materials like limestone and clay into a fine powder and blending them to create clinker. In contrast, a cement plant is where the final product, cement, is manufactured. At a cement plant, clinker is finely ground and processed into cement before being distributed for use. Transitioning swiftly from establishing a clinker plant to a cement plant or vice versa may present challenges due to the inherent differences in their purposes, production processes, and associated costs. Each plant's operations are optimized for its specific role within the overall manufacturing process, making significant changes complex and potentially a costly endeavor.

[8] https://www.worldcementassociation.org/about-cement/cement-facts, accessed on 11 March 2024.
[9] https://arijco.com/brief-introduction-to-clinker/, accessed on 11 March 2024

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23. The CID considered that from a demand perspective, clinker and cement are demanded differently on account to end usage as such the two comprise separate markets. While clinker is a raw material for cement production, cement is a final product. Given an increase in the price of cement, it is not possible that a customer would switch to purchase clinker since the usages are different.

24. The CID, therefore, considered that manufacture and supply of clinker is a distinct market from the manufacture and supply of cement on account of the differences in end use and the different production processes. **Therefore, the CID identified the market for manufacture and supply of clinker as a separate relevant market.**

Production and supply of cement

25. Cement is used in the construction industry, particularly in the production of concrete. Cement is a fine powder that is made by first crushing and heating limestone along with clay or shale[10]. It is manufactured through a closely controlled chemical combination of calcium, silicon, aluminium, iron and other ingredients[11]. The precise chemical proportions of lime, silica, aluminia and iron produces a finished product know as cement clinker[12]. Acting as a binding agent, cement solidifies when mixed with water, gradually transforming into a durable material over time. The final product is obtained from grind clinker along with gypsum to control the setting time.

26. Cement plays a pivotal role in various construction sectors including public, residential and commercial construction works by acting as a binder, facilitating the adhesion of materials to one another. It is extensively utilized to produce mortar for masonry work and concrete. Additionally, cement serves as an essential intermediary in the manufacturing of ready-mixed concrete, pre-cast concrete products, and mortar, making it indispensable in construction projects[13].

27. Cement is largely a homogenous product in the sense that the production process is similar across all producers in the industry[14]. It is homogenous in composition due to quality-assured production and material-handling processes. Therefore, the production and supply of cement may broadly be considered as a single relevant market. However, segmenting the broad market is possible according to the different strengths and applications of cement. This is evidenced by the

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[10] https://www.worldcementassociation.org/about-cement/cement-facts, accessed on 16 February 2024.
[11] https://www.cement.org/cement-concrete/how-cement-is-made, accessed on 16 February 2024.
[12] Cement Raw Materials (November, 2005), https://www.cemnet.com/public/courses/srm01L1/story_content/external_files/Cement%20Raw%20Materials.pdf, accessed on 27 March 2024
[13] See Case No Comp/M.7009-Holcim/Cemex West, para 24.
[14] https://unctad.org/system/files/non-official-document/CCPB_RPP2014_Study_Cement_ACF_en.pdf, accessed on 16 February 2024.

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classification of cement by strength such as 22.5 N, 32.5 N, 42.5 N, 52.5 N, and 62.5 N which is based on the compressive strength at 28 days measured on mortar prism[15]. It is observed that the target produces various grades of cement tailored for specific applications such as SURECEM 32.5N for general-purpose construction, and SUREBUILD 42.5 N for advanced construction projects[16]. The parties confirmed that Cimerwa discontinued the production of SUREBUILD 22.5X in January 2024 due to low demand.

28. Further, the CID noted that the acquirer[17] produces and supplies Simba Cement 32.5R, Simba Barabara 32.5N, and Simba Cement 42.5N which are intended for different applications. The Simba 32.5N is for use in road stabilization and is specially formulated to improve the engineering properties of soil[18]. The Simba 42.5N is a Portland limestone cement with limestone additive and a high strength class used in various applications such as reinforced concrete for foundations, columns, beams, slabs, girdles, and bearing walls; precast elements made of normal and reinforced concrete used for repairs in civil and industrial works, fillings, coating, and special floor screeds and mortars[19].

29. The production of difference cement grades is not unique to the parties but applies across the cement industry. This demonstrates that the market for cement may be segmented by grades based on varying strengths, specific property/chemical composition and intended specific applications.

30. The CID recalled it has previously[20] defined narrower sub-product markets for cement. The CID considered that there is a diverse range of cement grades utilized in the construction industry, including:

    (i) Ordinary Portland cement - which is used to produce concrete widely used in the construction of buildings and the cement is also used for joining masonry and as plaster to give smooth finish to walls;

    (ii) Portland pozzolana cement - is used in construction of marine structures, sewage works, bridges, piers, dams;

    (iii) Rapid hardening cement – which is used in rapid constructions such as pavements; and

    (iv) Low heat cement – which is used in mass concrete construction such as gravity dams.

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15 https://www.structuralguide.com/classification-of-cement/, accessed on 20 April 2024.
16 https://cimerwa.rw/products/, accessed on 5 March 2024.
17 https://nccke.com/product-category/simba-cement/, accessed on 17 February 2024.
18 https://simbacement.co.tz/simba-barabara-32-5-n/, accessed on 27 March 2024
19 Ibid 24, accessed on 27 March 2024
20 See Case File No. CCC/MER/8/35/2022, paras 13-15, dated 18 November 2022, a merger involving Barak Asset Recovery Limited and Seruji Limited .

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31. The CID observed that the primary distinctions among various grades of cement lie in their properties, applications, and constituent materials utilized in their production. Cement is thus categorized based on the strength it attains and its setting times, characteristics that are indicative of its grade or classification, and its intended application. For example, rapid-setting cements are preferred in rapid-paced construction projects due to their early strength development.

32. From a supply perspective, substitution in the production and supply of the various classes/grades is possible due to the flexibility inherent in manufacturing processes. Producers can transition between different cement classes/grades, such as 42.5 N to 32.5 N, without incurring significant costs since the same production technologies and machinery will be used to allow producers manufacture the various types of cement. This is evidenced by the supply of the target where it allocates its production capacity among different classes of cement depending on each class's demand.

33. The significant degree of supply-side substitutability among different classes/grades of cement suggests that in an event of a SSNIP ranging from 5 to 10%, cement producers would be capable of transitioning to the production of alternative cement grades without incurring substantial costs. Additionally, cement producers typically offer a variety of cement types/grades suitable for different applications.

34. On the demand side, consumer behaviour in the cement market may be influenced by various factors. Consumers, particularly individual or retail customers, may prioritize price over technical differences or cement grades when making purchasing decisions[21]. This inclination towards price sensitivity is mainly evident in smaller construction activities or home improvement tasks. However, in cases where projects entail specific technical requirements or demand adherence to stringent quality standards, consumers may exhibit a willingness to invest in higher-grade cement, even at a premium price. Moreover, in commercial or industrial settings characterized by more rigorous construction specifications, while price remains a consideration, it typically does not serve as the sole determining factor in the purchasing decision.

35. The CID noted the parties' submission that "*although 42.5N notionally has a higher initial strength, suitable for heavier construction projects, 32.5N is in most cases substitutable as it is a general-purpose cement with sufficient strength for most uses. In Rwanda, there is an even higher degree of substitutability due to the low cost of imported 42.5N cement from Tanzania. Price is the key factor influencing this substitutability in the Rwandan market, with customers selecting the class of*

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[21] See Case File No. CCC/MER/8/35/2022, paras 16, dated 18 November 2022, a merger involving Barak Asset Recovery Limited and Seruji Limited.

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cement based on its sale price, which can vary depending on availability". The CID observed that in these contexts, factors such as strength, technical specifications, and quality assurances play pivotal roles alongside pricing considerations.

36. In view of the foregoing, the CID considered the relevant product market as the market for the production and supply of cement with possible segmentation according to cement strength, namely 32.5 N, and 42.5 N, being the grades supplied by the target.

37. **Therefore, for purposes of this transaction, the CID construed the manufacture and supply of various grades of cement (32.5N, and 42.5N) as the relevant product market.**

Relevant Geographic Market

38. The Commission's Guidelines on Market Definition define the relevant geographic market as comprising:

    "…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"[22].

39. The CID noted that the geographic scope for the manufacture and supply of cement is likely to be narrower in scope due to limitations of transportation costs as cement is naturally heavy to transport. However, advancements in technology and infrastructure have significantly expanded the distance over within which cement can be competitively transported[23], allowing for more efficient and cost-effective delivery to distant markets. For instance, the development of bulk cement carriers equipped with advanced logistics and transportation systems is one recent technological advancement that has significantly expanded the distance over which cement can be competitively transported. This may be evidenced by statistics on cement exports between COMESA Member States especially those sharing borders. For instance, it is noted that cement produced in Zambia is exported to DRC, the great lakes region and Malawi[24].

40. The CID further noted that cement imported from Tanzania into Rwanda is cheaper than cement produced locally[25]. It is reported that a 42.5N bag of Tanzanian brand Twiga costs Rwf11,500, while locally manufactured Cimerwa costs Rwf12000.

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[22] Paragraph 8
[23] See Case File No. CCC/MER/8/35/2022, dated 18 November 2022.
[24] https://unctad.org/system/files/non-official-document/CCPB_RPP2014_Study_Cement_ACF_en.pdf, accessed on 11 March 2024.
[25] https://rwandatoday.africa/rwanda/news/rwanda-local-cement-firms-struggle-to-match-large-volume-of-imports-3442032, accessed on 6 March 2024.

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Further, Member States sharing borders such as Kenya-Uganda, Malawi-Zambia, and Rwanda-Uganda are reported to experience increased cement trade flows particularly in the border towns[26]. These countries benefit from close geographic proximity and tax exemptions under the COMESA free trade area, facilitating cross-border cement trade. This is further evidenced in that Portland cement was ranked seventh (7th) among intra-COMESA export products in 2019[27].

41. The CID also observed that the acquirer's Nakuru cement plant in Kenya which, located approximately 500 km from the Rwandan border exports cement to Rwanda[28] which also suggests a broader geographic scope than national. The CID further observed that the target's cement reaches eastern DRC following procurement by customers in eastern DRC on a call-and-collect basis. Further, 7% of Rwanda's intra-Africa imports in 2018 was cement, and in terms of total trade, Rwanda's main African trade partners include DRC (accounting for 30% of Rwanda's total intra-Africa trade), Uganda (25%), Kenya (15%), Tanzania (12%) and South Africa (6%)[29].

42. The CID, therefore, considered that the relevant geographic market is likely to be broader than national. However, the CID considered that the geographic reach of intra-COMESA exports for cement is predominant between those Member States sharing borders. This may imply that proximity plays a critical role of facilitating such trade. Therefore, given that the proposed transaction entails the acquisition of control of an entity operating in Rwanda and noting the existence of exports/imports between Rwanda and its neighbouring countries namely DRC, Kenya, Uganda, and Tanzania, it is concluded that the geographic scope for the production and supply of cement can be extended to the neighbouring countries of Rwanda.

43. Considering the aforementioned factors, the CID deemed the relevant geographic scope for the **manufacture and supply of various grades of cement to be Rwanda and its neighbouring countries.**

44. The CID considered that the geographic scope of the clinker market is primarily limited by transportation costs, given the heavy nature of the product. It is however observed that clinker can be stored for extended periods in dry conditions without any degradation in quality. Consequently, it can be traded within the Common Market and utilized by cement manufacturers during times when raw materials are scarce or unavailable. The CID noted that in 2021, amid clinker deficits in Kenya,

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26 see Case File No. CCC/MER/07/19/2021, decision dated 5th November 2021, para 17.
27 https://www.comesa.int/wp-content/uploads/2021/10/COMESA-Annual-Report-2020-English.pdf, accessed on 16 February 2024.
28 https://www.cemnet.com/News/story/169785/national-cement-starts-supplying-rwandan-market.html, accessed on 16 February 2024.
29 https://www.tralac.org/documents/publications/trade-data-analysis/3064-rwanda-intra-africa-trade-and-tariff-profile-december-2019, accessed on 16 February 2024.

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of the 40 percent of clinker imported into Kenya, 60 percent originated from Egypt at zero tariff rate by virtue of the two countries belonging to a common Customs Union under the COMESA free trade area arrangement[30]. It is further reported that, in 2020, Egypt and the UAE accounted for 92 percent of the clinker imported by Kenyan companies, with 7 percent coming from Saudi Arabia[31]. It was further reported that in the 5 years leading to 2020, local cement makers in Kenya spent an annual average of Sh 8.3 billion to import 4,439.7 tonnes of clinker from Saudi Arabia, United Arab Emirates, Egypt, and Pakistan[32].

45. Further, commercial clinker manufacturers were also advised to take advantage of the growing East African Community and COMESA regional markets for clinker through exports where the preferential rate for this product in the region is zero percent[33]. In 2020, Kenya exported 223,000 tonnes of clinker mainly to Uganda, accounting for 98 percent of the total exports of clinker from Kenya[34]. Further, the parties submitted that some cement manufacturers in Rwanda, such as Anija Prefabricated Limited and Prime Cement, import clinker for use in their production of cement from DRC, Tanzania, and Saudi Arabia.

46. The CID considered that the above statistics demonstrated that in an event of a small but significant non-transitory increase in the price of clinker in a Member State, cement producers are able to switch to imports from COMESA and beyond.

47. In view of the above, the CID considered the geographic scope for **the manufacture and supply of clinker was at least COMESA-wide**.

Conclusion on Relevant Market Definition

48. For the purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID identified the relevant markets as the:

   a) the manufacture and supply of various grades of cement (32.5 N and 42.5 N) in Rwanda and its neighbouring countries; and

   a) the manufacture and supply of clinker in a market which is at least COMESA-wide.

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[30] https://www.theeastafrican.co.ke/tea/business/kenyan-cement-makers-suffer-clinker-shortfall-3580302, accessed on 11 March 2024.
[31] Ibid.
[32] https://www.standardmedia.co.ke/business/news/article/2001426589/why-cement-makers-shun-local-clinker-for-expensive-imports.
[33] https://www.theeastafrican.co.ke/tea/business/kenyan-cement-makers-suffer-clinker-shortfall-3580302, accessed on 11 March 2024.
[34] Ibid.

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Market Shares and Concentration

Manufacture and supply of cement

49. The CID considered the parties submission of their market shares and those of their main competitors, for the broader cement market in the Member States where the parties are active, as per Table 1 below.

Table 1: the merging parties and their competitors market shares in the supply of cement into the affected Member States

Member State	*Competitors*	*Pre-merger estimated market shares in %*	*Post-merger estimated market shares in %*
Rwanda	***Cimerwa Plc***	***[40 – 50]***	***[40 – 50]***
	Twiga Heidelberg	[35 – 40]	[35 – 40]
	Prime Cement	[10 – 15]	[10 – 15]
	Anjia Prefabricated Ltd/West China	[0 – 5]	[0 – 5]
	Simba Cement – National Cement Company	***[0 – 5]***	***Merged with Cimerwa***
	Total	**100**	**100**
Eastern DRC	***Cimerwa Plc***	***[40 – 50]***	***[40 – 50]***
	Prime Cement	[45 – 50]	[45 – 50]
	Anjia Prefabricated Ltd/West China	[5 – 10]	[5 – 10]
	Total	**100**	**100**
Kenya	***National Cement Company Limited***	***[30 – 35]***	***[30 – 35]***
	Bamburi Cement	[25 – 30]	[25 – 30]
	Mombasa Cement	[20 – 25]	[20 – 25]
	East African Portland Cement	[10 – 15]	[10 – 15]
	Savannah Cement	[0 – 5]	[0 – 5]
	Rai Cement	[0 – 5]	[0 – 5]

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	Ndovu Cement	[0 – 5]	[0 – 5]
	Total	**100**	**100**
Uganda	Tororo Cement Uganda	[35 – 40]	[35 – 40]
	Hima Cement Uganda	[25 – 30]	[25 – 30]
	National Cement Company Uganda Ltd	***[20 – 25]***	***[20 – 25]***
	Kampala Cement	[10 – 15]	[10 – 15]
	Total	**100**	**100**

50. The CID observed that Cimerwa is a market leader in the Rwandan cement market, pre-merger and the transaction will result in a market share accretion of [0 – 5]% resulting from imports of Simba Cement, the acquirer's brand imported from Kenya. The CID considered the likely change in market concentration and assessment the three firm concentration ratio (CR3) for the manufacture of cement in Rwanda as follows:

Pre-merger

Cimerwa [40 – 50]%+Twiga [35-40]% + Prime Cement [10-15]% = [90 – 95]%

Post-merger

Cimerwa [40 – 50]%+Twiga [35-40]% + Prime Cement [10-15]% = [90 – 95]%

51. The CID observed that competition concerns were unlikely to arise given the insignificant market share accretion of [0 – 5]%. The CID noted that the CR3 indicates that, pre-merger, the relevant market in Rwanda is highly concentrated given the CR3 of [90 – 95]%. Post-merger, market concentration will be enhanced given the CR3 of [90 – 95]%. In view of this and given that the merged entity's market is above 15% (i.e., 47%) and the CR3 post-merger is above 70% (i.e., 95%), the CID observed that the transaction is likely to raise competition concerns in the form of unilateral or coordinated effects.

52. The CID further assessed the Herfindahl-Hirschman Index ("HHI") for the cement market in Rwanda. The CID noted that according to the 2010 Horizontal Mergers Guidelines of the U.S. Department of Justice and the U.S. Federal Trade Commission, a market with an HHI of below 1,500 is considered to be an unconcentrated market while an HHI between 1,500 to 2,500 is considered to be moderately concentrated and an HHI of above 2,500 is considered to be highly concentrated. Further, mergers that increase the HHI between 100 and 200 points potentially raise significant competitive concerns and often warrant scrutiny.

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Mergers that increase HHI by more than 200 points in highly concentrated markets will generally raise anti-trust concerns since they are assumed to raise market power. Below is a presentation of the HHI for the pre-and post-merger levels of HHI for the manufacture and supply of cement in Rwanda:

HHI for manufacture and supply of cement in Rwanda

Pre-Merger:$[40 - 50]^2 + [35\text{-}40]\%^2 + (12\%)^2 + [10\text{-}15]^2 + [0 - 5]^2 = (2025) + (1296) + (25) + (4) = 3350$

Post-Merger: :$[40 - 50]^2 + [35\text{-}40]\%^2 + (12\%)^2 + [10\text{-}15]^2 + [0 - 5]^2 = (2209) + (1296) + (25) = 3530$

53. The CID noted that the HHI pre- and post-merger for Rwanda confirmed that the market for the manufacture and supply of cement in Rwanda is highly concentrated given the HHI of more than 2500. Further, the increase in HHI of 180 (i.e., 180) indicates that the transaction could potentially raise significant competition concerns in Rwanda.

54. The CID observed that the acquirer's presence in Rwanda is limited, with minimal indirect exports and approximately 7,000 tonnes of cement sold in 2022. The parties reported that these sales occur indirectly through Rwandan distributors procuring products from the acquirer's ex-works in Kenya. Importantly, these sales lack long-term agreements, being characterized as spot transactions.

55. With regards to the cement market in Eastern DRC, the CID observed that the market structure will not be altered by virtue of the transaction. Further, the merged entity will continue to face an effective competitor at the national level, Prime Cement, which will hold a market share of [45 – 50]% close to Cimerwa's market share of [45 – 50]%, post-merger.

56. With respect to the Kenyan cement market, the CID considered that the competitive landscape will remain the same post-merger given the absence of market share accretion. The CID observed that the target entity is not operational in Kenya. Further, with respect to the Ugandan cement market, the CID considered that the market structure will also not be altered since the target is not operational in this market.

57. The CID also considered the market shares in the narrower cement markets in Rwanda and noted the parties' submissions of Cimerwa's and its competitors' estimated market shares for 32.5N and 42.5N in Rwanda as follows:

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Table 2: Market shares for various cement grades in Rwanda

42.5 N Grade	
Name of Entity	**Market Share (%)**
Twiga Heidelberg	70%
Cimerwa	15%
Other Competitors (*Anjia Fabricated Cement, West China Cement, and Prime Cement*)	15%
32.5 N Grade	
Name of Entity	**Market Share (%)**
Cimerwa	50%
Anjia Fabricated Cement	30%
Others (Local suppliers and imports)	20%

58. With respect to the 22.5X grade, the CID noted that although Cimerwa historically offered the 22.5X grade, its production has been discontinued due to minimal demand, accounting for less than 1% of Cimerwa's total cement sales.

59. The CID observed that Twiga Heidelberg is dominant in the supply of 42.5N grade given its 70% market share while Cimerwa is dominant in the supply of 32.5N grade which the 50% market share. The CID noted that at the fragmented markets, the market structure is expected to remain the same post-merger as such the transaction is unlikely to raise competition concerns. The CID considered that given the dominance of 42.5N grade supplied by a competitor of Cimerwa, Cimerwa is likely to continue facing stiff competition.

60. The CID further considered RICA's submissions that Twiga controls over 70.1% of the 42.5 N cement grade market while Cimerwa leads in the 32.5 N cement grade market with over 40% share.

61. The CID also observed that the various players supplying cement in Rwanda closely compete on prices as presented in table 3 below:

Table 3: Market shares for various cement grades in Rwanda

Metrics	**Cimerwa 32.5**	**Cheetah 32.5**	**Prime 32.5**	**Cimerwa 42.5**	**Twiga 42.5**
Price			**Rwf/bag**		
Effective Price	10,700	10,300	10,300	11,600	12,100

The manufacture and supply of clinker

62. The CID noted that Cimerwa operates both an integrated cement plant and a clinker plant in Rwanda. While the company benefits from its own limestone deposits and crushing facilities for clinker processing, Rwanda faces a significant shortage in clinker production. It is noted from the parties' submission that only

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0.48 million tonnes of clinker is produced domestically while its cement production reaches 1.2 million tonnes annually. The CID also noted that according to competitors of the merging parties in Rwanda, Cimerwa's clinker production capacity is around 500,000 metric tonnes which is not enough only for itself. It is further recalled that the rationale of the transaction is to increase the clinker availability to Cimerwa, through the acquirer's clinker production plant in Western Kenya. To address the clinker shortfall, competitors like Anija Prefabricated Limited and Prime Cement resort to importing clinker from countries such as the DRC, Tanzania, and Saudi Arabia to sustain their cement production.

63. The CID noted that the acquiring group produces 4 million tonnes of clinker in Kenya, which accounts for approximately 50% of Kenya's total clinker production. The acquiring group not only supplies clinker to cement manufacturers in Kenya but also exports to neighbouring Uganda, including to its affiliate National Cement Uganda, as well as customers such as Hima Cement Uganda and Metro Cement Uganda. Furthermore, the acquiring group's recent commissioning of a clinker plant in Western Kenya and its investment of $45 million to $50 million into Cimerwa's operations signals a significant incentive to boost the target's clinker and cement plant capacities, potentially increasing Cimerwa's market position in the clinker market in Rwanda and the wider COMESA region.

64. Given these dynamics in the clinker market, the CID observed that the proposed transaction may raise potential future competition concerns in the clinker market, particularly in Rwanda and Uganda in the form of foreclosure of the merging parties competitors. To this end, the CID further considered unilateral and coordinated concerns.

Consideration of Dominance/ Unilateral Effects

65. The CID observed that unilateral effects may arise where the merged entity finds it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities. Pre-merger, any increase in the price of one of the merging parties' products could lead to a diversion of its sales to the other party (depending on the extent of competition between them). However, post-merger the competitive constraints that each firm imposed on the other is eliminated which may provide incentives for the merged entity to increase prices. Further, for unilateral effects to occur, the merged entity must hold a dominant position. A dominant position characterized by economic strength that allows the merged entity to significantly influence market competition independently of its competitors, its customers, and, ultimately, consumers.

66. The CID considered that in the market for the supply of cement, the merged entity is a pre-merger market leader and will retain a substantial market share of 47% in

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Rwanda post-merger, despite a modest increase of 2% from indirect sales of the acquirer. This market is highly concentrated, raising concerns about potential unilateral effects. However, the CID observed that there exists a close competitor with a market share of 36% in Rwanda and that other major players[35] in the East African cement market namely Cement Limited, ARM Cement PLC, East African Portland Cement PLC, Dangote Cement Plc, and Mombasa Cement Limited, mitigate some of the likely concerns. The CID considered that customers have viable alternatives within the East African cement market and could shift demand to other suppliers. Further, the possibility of importing cement from across East Africa provides additional alternative options to customer in case the merged entity engages in restrictive practices.

Consideration of Vertical Effects

67. The CID observed that the target operates as an integrated cement manufacturer, producing both clinker and cement. The target possesses a comprehensive facility for clinker production from limestone, which is subsequently ground with additives to yield the final cement product. Cimerwa engages in raw material mining, clinker concentrate production, and packaging and selling of cement.

68. The CID noted that neither the acquiring undertaking nor the target supplies any clinker, clinker concentrate, or other raw materials for cement production to third-party cement manufacturers in Rwanda. However, the acquiring group has recently established a clinker plant in Western Kenya, potentially increasing clinker availability for the target.

69. The CID noted that the target's competitors in Rwanda import clinker from other suppliers outside of Rwanda. For instance, Anjia Prefabricated Ltd sources its clinker products from Kalemie Plant and Tanga Cement, companies domiciled in the DRC and Tanzania respectively; Prime Cement sources its 50% clinker products the Middle East suppliers such as Saudi Arabia, while it imports 50% of its clinker input from the East African region such as Tanzania (from Tanga Cement), and Kenya. The CID further noted that other competitors of the target such as West China Cement Limited imports its clinker from the DRC. It is further observed that the clinker market within the COMESA is open to imports from within the region and outside which gives a possibility for an alternative supply of clinker in an event of input foreclosure strategies by the merged entity.

70. The CID assessed that any foreclosure is unlikely in Rwanda considering the acquirer's minimal market share in Rwanda's cement supply sector and given the

[35] https://www.imarcgroup.com/east-africa-cement-market, accessed on 7 May 2024.

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availability of alternative sources of clinker by the other cement companies (i.e., Twiga Heidelberg, Prime Cement, and Anjia Prefabricated Ltd.

71. Further, the CID considered that it is improbable that the acquiring group would withhold clinker supply to Hima Cement Uganda and Metro Cement Uganda post-transaction since the rationale for the proposed merger aims to address the target's clinker supply challenges in Rwanda through the acquirer's recently established clinker plant in Western Kenya.

72. The CID considered that the negligible market share of the acquirer in Rwanda, where both merging parties have clientele, weakens the argument and theory of harm related to foreclosure.

73. In view of the foregoing, it was concluded that a customer foreclosure strategy was unlikely in Rwanda.

Consideration of Coordinated Effects

74. The removal of a firm through a merger may facilitate coordination, express or tacit, among the remaining firms in the industry, leading to reduced output, increased prices, or diminished innovation. Stable or successful coordination requires an ability to detect and punish deviations that would undermine the coordinated interaction.

75. The CID considered that since the proposed transaction is not anticipated to significantly alter the landscape of cement manufacturing and supply in Rwanda and the Eastern DRC, where the target operates, it is unlikely to encourage or facilitate collusive behaviours among competitors in these relevant markets. The existing players such as the target, Twiga Heidelberg, Prime Cement, and Anjia Prefabricated Ltd, as well as other major players such as Cement Limited, ARM Cement PLC, East African Portland Cement PLC, Dangote Cement Plc, and Mombasa Cement Limited, will continue to operate post-merger.

Assessment of entry and expansion

76. The CID observed that assessment of entry or expansion is pivotal to determining whether a merger may raise substantial competition concerns. The assessment considers the extent entry of new competitors is possible in the long term and the extent competitors of the merged entity may take action to enhance their ability to compete. The strategies that competitors may take may include investment in new capacity or conversion of existing capacity to a new use. In assessing entry or expansion, the Commission will consider whether such entry or expansion would be timely, likely and sufficient[36]. In considering the timeliness of entry, the

[36] See Section 8 of the COMESA Merger Assessment Guidelines

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Commission will assess if entry is rapid enough to make the exercise of market power by the merged entity unprofitable. Further, in assessing likelihood, the Commission will assess whether entry will be profitable while considering of sufficiency will assess the extent for entry to deter or counteract the competitive effects of concerns.

77. The parties have submitted in the context of the manufacturing and supply of cement that these barriers to entry are primarily two-fold:

    i. the availability of capital for establishing cement factories; and

    ii. the time required to develop projects to the point of commercialization.

78. High capital expenditure and substantial operational costs emerge as the foremost barriers hindering entry into both the cement and clinker markets. The parties submitted that cement factories necessitate significant initial investments for the construction of production facilities, distribution network development, brand building and market awareness, workforce training, working capital, and ongoing operational expenses, notably for energy and logistics. This financial burden presents a considerable challenge for aspiring entrants, particularly in terms of establishing competitive pricing amidst soaring operational costs.

79. The CID noted that approximately USD 50 million is the requisite initial capital for entering the cement market at a scale sufficient to secure a notable market share. This figure underscores the formidable financial commitment necessary for both new entrants and established firms seeking to expand their operations. Further, the parties submitted that the timeline for developing cement factories and entering the market poses another barrier. The parties further submitted that the process typically spans three to four years, encompassing plant setup and market penetration efforts. While smaller-scale entry may be feasible within a shorter timeframe, substantial resources and time investment remain indispensable for achieving a meaningful market presence.

80. The CID noted that over the last five years, the Rwanda cement market has experienced more entries than exits, given the accelerated growth in national cement demand due to infrastructure development. The parties further submitted recent examples of new entrants in the Rwandan cement industry, such as Anjia Cement Limited (2023) – a subsidiary of West International Holding of the African business of West China Cement Ltd, and Prime Cements Limited (2020) – owned by Milbridge Holding, underscore the challenges and opportunities associated with penetrating this market.

81. The CID considered that existing entry requirements, including capital-intensive investments, high economies of scale, regulatory compliance, and access to raw

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materials, present significant hurdles for potential entrants. Such barriers may limit the number of new suppliers entering the market and impede the pace of entry or expansion. Timely entry is essential for thwarting anti-competitive strategies by incumbent firms. The capital-intensive nature and extended timelines associated with cement manufacturing may suggest that rapid entry may be hindered.

82. The CID observes that the cement market in Rwanda has experience past entry of new players, namely Anjia Cement Limited in 2023 and Prime Cements Limited in 2020 which attest to the possibility of entry. It is further observed that the supply of cement currently faces a competitive constraint from imported cheaper cement from Tanzania which is even of a stronger strength (42.5N) than the grade predominantly supplied by Cimerwa.

83. The CID considered that entry will be timely, thus rapid enough to counter any anti-competitive strategy by the merged entity and make such strategies unprofitable. For instance, the CID considered existing competition from cement imports from Tanzania are likely to counter any anti-competitive strategies by the merged entity given the imports are cheaper yet of superior strength. It is further noted the recent entry such as by Anjia Cement Limited is timely since it is positioned to become a significant market player with the largest cement production capacity in Rwanda. The CID consideration was also confirmed from the submission by RICA that Anjia Prefabricated Construction Rwanda has installed annual production capacity of 1,200,0000 tons compared to Cimerwa's and Prime Cement's production capacity of 600,000 tons.

84. The CID noted that entry and expansion in Rwanda is likely given the potential profitability to be derived from the supply of cement in Rwanda and the neighbouring countries. It is noted that the presence of imported cement on the Rwandan market and the fact that producers in Rwanda such as the target Cimerwa export cement to eastern DRC implies available market that justify likelihood of entry. It is further assessed that entry will be sufficient to the extent that any likely competitive effects of the merger will be deterred. This can be confirmed from the scale of Anjia Prefabricated Construction Rwanda that is poised to have the largest production capacity. It is further noted that Anjia's scale is further strengthened by its accessibility to clinker from its affiliated company located in the Eastern DRC.

85. Aside from the potential barriers, the CID considered that the market structure in Rwanda may not be significantly impacted by the current transaction, given the minimal indirect exports to Rwanda by the acquiring group which are unsolicited. The CID further considered that the East African Community Common Market Protocol and the Common Market for Eastern and Southern Africa (Comesa) free trade area arrangement will also facilitate entry by reducing taxes and eliminating

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trade barriers, facilitating increased competition in both the cement and clinker markets. Consequently, the transaction is unlikely to heighten barriers to entry into the relevant markets

Consideration of Third-Party Views

86. In arriving at its determination, the CID also considered submissions from the National Competition Agencies of Kenya and Rwanda which confirmed the absence of competition and public interest concerns.

Determination

87. 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.

88. The CID, therefore, approved the transaction.

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

Dated this 11th day of July 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan