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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/02/06/2024

Decision[1] of the 106th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition by JCHX Mining Management Co., Ltd of Lubambe Copper Mines Limited

ECONOMIC SECTOR: Mining

COMESA COMPETITION COMMISSION
04 MAY 2024

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 22 March 2024, the COMESA Competition Commission (the "**Commission**") received a notification for the approval of a merger involving JCHX Mining Management Co., Ltd ("**JCHX Mining**" or the "**acquiring undertaking**") and Lubambe Copper Mines Limited ("**Lubambe**" or the "**target undertaking**"), 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

JCHX Mining (the acquiring undertaking)

4. The parties submitted that JCHX Mining is a company incorporated in the Peoples' Republic of China. The Parties further submitted that JCHX is a global mining company that focuses on engineering, mine construction, underground development, contract mining, and research & development in non-ferrous, ferrous and chemical industries.

5. The parties submitted that within the Common Market, JCHX Mining operates through the following entities, as presented in Table 1.

Table 1: JCHX Mining entities that have activities and generate turnover in the Common Market

Member State	Name of Entity	Product/service	Country of incorporation
Democratic Republic of Congo ("**DRC**")	Sabwe Mining Sarl	Business includes research, exploration, extraction and mining operations of mineral substances, as well as concentration, metallurgical and chemical processing, transformation, sale and export of mineral substances and their derivatives. Sabwe Mining Sarl provides/sells copper cathodes	DRC
	JCHX Mining Congo SARL	Mining contractor whose main business is providing mining engineering and mining management related services. JCHX Mining Congo SARL does not sell or provide products.	
	Beam Mining & Construction SARL	Mining contractor whose main business is providing mining engineering and mining management related services. Beam Mining & Construction SARL does not sell or provide products.	
	Bienview Mining SARL	Mining contractor whose main business is providing mining engineering and mining management related services. Bienview Mining SARL does not sell or provide products	
	Everbright Mining SARL	Active in business include mining; exploration, development, production and sales of minerals; geological and mining research; import and export products. Everbright Mining SARL provides/sells copper concentrates.	
	Kingko Construction	Mining contractor whose main business is providing mining engineering and mining management related services. Kingko Construction does not sell or provide products.	

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	Kinki Mining SAS	Mining contractor whose main business is providing mining engineering and mining management related services. Kinki Mining SAS does not sell or provide products.	
Zambia	JCHX Mining Construction Zambia Limited	Mining contractor whose main business is providing mining engineering and mining management related services. JCHX Mining Construction Zambia Limited does not sell or provide products.	Zambia
	Master Mine Service Zambia Ltd	Mining contractor whose main business is providing mining engineering and mining management related services. Master Mine Service Zambia Ltd does not sell or provide products.	

6. The parties further submitted that the acquirer has an existing business relationship with Lubambe, which covers extracting copper from the mine's south limb, located in the mineral rich Copperbelt province, from 1 June 2023 to 31 May 2026.

Lubambe (the target undertaking)

7. The Parties submitted that Lubambe is a private limited company incorporated in Zambia which is owned by Konnoco (B) Inc ("**Konnoco**") and ZCCM Investment Holdings Plc. The parties further submitted that Konnoco is an entity registered under the laws of Barbados and is 100% owned by Lubambe Copper Holdings Limited (an entity registered under the laws of Cayman Islands) which in turn is 100% owned by EMR Capital. EMR Capital is a private equity firm focusing on mining resources with an asset management scale of about USD 5 billion and aims at investing in copper, gold etc.

8. The parties submitted that ZCCM Investment Holdings Plc is a publicly listed entity at the Lusaka Securities Exchange, and is majority owned by the Industrial Development Corporation an entity wholly owned by the Zambian Government.

9. The parties submitted that Lubambe is involved in the mining sector, in particular the mining, processing, and sale of copper concentrate in Zambia. Lubambe's activities in the Common market are limited to Zambia only.

Jurisdiction of the Commission

10. 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.*

11. 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.

12. 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

13. The parties submitted that Konnoco (B) Inc. will sell its 80% shares in Lubambe to Sundimo Mining Investment Limited, a wholly owned subsidiary of Conest Resources Limited which in turn is a wholly owned subsidiary of JCHX Mining.

14. The parties submitted the structure of ownership of the target firm before and after the proposed transaction as per figures 1 and 2 below:

Figure 1: Pre-merger structure of the target

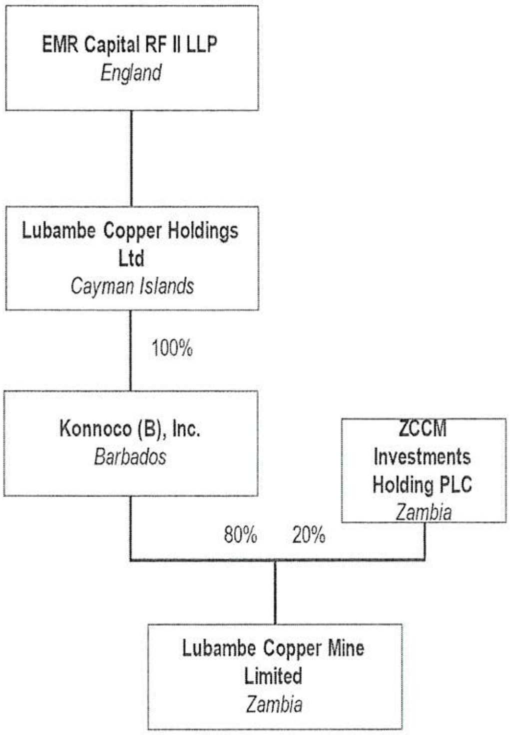
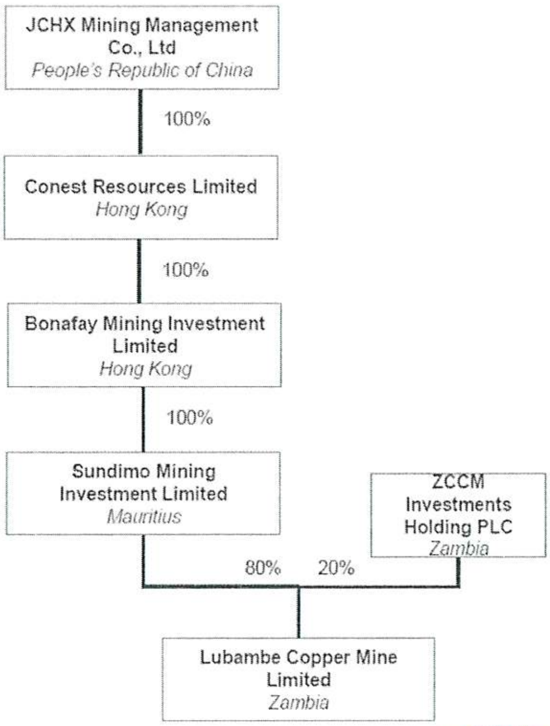


Figure 2: Post-merger structure of the target



15. The parties submitted that, for the target undertaking, the rationale for the proposed transaction is to save its business activity which is currently failing. The parties also submitted that the transaction will enable the target undertaking to enhance its copper production as well as benefit from the acquiring firm's technical knowledge in the mining industry thereby improving its overall efficiency.

16. The parties submitted that, for the acquirer, the transaction is an investment opportunity in which the acquirer believes Lubambe can be further improved by full optimization of the production capacity of the mine which has not been running at optimal capacity due to several financial constraints. The parties further submitted that a feasibility study was conducted on the assets of Lubambe which have shown that the business is a lucrative investment which will likely yield high profits.

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. It is recalled that JCHX Mining has mining operations globally including in the Common market. It is further noted that the acquirer is active in the provision of mining engineering and mining management related services in Zambia. In DRC, the acquirer is active in the provision of contract mining services and in the mining and production of copper concentrate and production of copper cathodes. Further, the acquirer also provides mining engineering and mining management related services, and it has an existing business relationship with Lubambe through a mining contract.

19. Lubambe is involved in the mining sector, in particular the mining, processing, and sale of copper concentrate in Zambia.

20. For purposes of this assessment, having regard to the areas of overlaps between the parties' products, the Commission has focused on copper concentrate as well as mining engineering and mining management-related services.

Copper Concentrate

21. Lubambe mines, processes, and sells copper concentrate to copper smelters (its primary customers being Chambishi Copper Smelter, Konkola Copper Mine and Kansanshi Mining Limited) on the Copperbelt province in Zambia, these smelters

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then smelt and refine the copper concentrate into copper cathodes. Copper concentrate is a fine black powder which looks like pounded charcoal.

22. Copper concentrate is extracted from copper ore mineral stone through crushing and concentrating. The copper concentrate is then roasted, smelted and converted into refined copper cathodes[2] (flat pieces of refined copper) in an electrolytic process in a copper tank house. Copper cathodes contain 99.9% pure copper. Copper cathodes are used to stretch out into very thin, flexible but strong wires which are ideal for use in electrical infrastructure such as in the manufacturing of power cables and wires, or other copper products, such as rolled copper products which are in turn used in the manufacturing of, amongst other things, electric motors, air conditioning and brake pads. Refined copper is also used in heating elements, motors, renewable energy, internet lines, and electronics.

23. The copper value chain includes the processing of copper ore and the stages involved in the mining and processing of copper ore into refined copper, as reflected below:[3]

    a. ***Mining***: Copper is extracted from above-ground and underground deposits. Mining operations involve digging deeper and deeper into the earth over time, creating a series of stepped benches. Boring machinery drills holes into the hard rock, and explosives are inserted into these holes to blast and break the rock. The resulting boulders are then ready for hauling to the processing site using specialized haul trucks, conveyors, trains, or shuttle cars. the copper ore contains less than 1% copper.

    b. ***Crushing and Milling***: Most ores are sent through a primary crusher, which reduces the size of the ore from boulder to golf ball-sized rocks. After crushing, the ore is milled to separate the copper from the rest of the rock.

    c. ***Concentrating***: The next step involves concentrating the copper. This process aims to increase the copper content in the ore. Various techniques, such as froth flotation, are used to achieve this concentration. The product that results from the process of concentrating is called copper concentrate which contains 20% to 45% copper.

    d. ***Smelting***: Once the copper has been concentrated, it must be smelted to extract the metal from the rest of the materials present. Smelting involves high temperatures and physical steps to separate copper from impurities.

    e. ***Refining***: Finally, the refined copper is produced. Refining further purifies the copper, ensuring it meets the required purity standards. The end product is sheets of 99.99% pure copper, known as cathodes, which can be used to create everyday products such as wires and cables.

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[2] https://education.nationalgeographic.org/resource/mining/

[3] https://www.sciencedirect.com/topics/engineering/copper-concentrate accessed on 27th February, 2024.

24. It is observed that the target's activities are limited to the production of copper concentrate which is sold to local smelters in Zambia. The target does not smelt or refine copper to make copper cathodes, thus production of copper concentrate may be construed as a separate activity in the copper production value chain.

25. In terms of price, copper concentrate pricing usually depends on prevailing prices of copper cathodes at London Metal Exchange (LME). The difference between the price of copper cathodes and the price of copper concentrate is that the buyers of copper concentrate pay for the copper contained in the concentrate after deducting refining costs, freight, and other charges from the prevailing price of copper cathodes per tonne at LME. Price of copper concentrate ranges between 30% to 35% of the price of copper cathodes on LME (hypothetically, if copper cathodes cost USD 10, 000 per tonne, then copper concentrate constitutes between USD 3000 to USD 3500 of the price per tonne)[4].

26. Given the foregoing, it is clear that copper concentrate can be distinguished from other copper products in the value chain such as copper cathodes and as such there exists separate markets in the value chain. Given that the target is involved only in the production of copper concentrate, the assessment can thus be limited to copper concentrate.

27. Copper concentrate is only used for the purpose of producing high purity copper or copper cathodes. Copper concentrate is an intermediate product that is smelted into refined copper. The mining and processing of copper ore into copper concentrate is not substitutable with the mining and processing of other metals. Further, even the final refined copper by its nature is a difficult metal to substitute with other metals due to its versatility, relatively low cost and conductivity properties which are only surpassed by the more expensive precious metals. As such it can be noted that processing of copper concentrate is unique given that the end product, refined copper, cannot easily be substituted for other metals because of differences in physical characteristics, intended use and value. As such, in the case of a small but significant non transitory 5% to 10% increase in price of copper concentrate, smelters would not easily switch to purchase other products.

28. Copper concentrate is produced from copper ore deposits which can only exist in a particular location and its exploitation is limited to persons owning rights to extract and exploit the deposits. These mineral rights are attached to the land where deposits exist and are subject to laws/regulations governing mineral extraction. If miners of other metals wanted to switch to producing copper, they would incur huge costs in acquiring a mining license to mine copper[5] as well as acquiring land with copper ore deposits. As such miners of other metals cannot

[4] Home | London Metal Exchange (lme.com)

[5] For completeness it is noted that a copper mining license is usually acquired alongside licenses for other minerals that are often by products of copper such as cobalt, gold and nickel among others

swiftly switch to producing copper in response to a permanent price increase of 5% to 10% in copper concentrate.

29. The European Commission (the "**EC**") has also considered cases in the mining sector. In Glencore/Xstrata[6] the EC found that there were relevant product markets for (i) copper concentrate and (ii) secondary copper products. Further, the market for copper concentrate comprises the preparation of copper concentrate, an intermediate copper product, from mined copper ore. This copper concentrate can then be processed at integrated smelters, which typically entails conversion of the copper concentrate into copper cathodes.

30. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant product market is determined as the **mining, processing and supply of copper concentrate.**

Mining engineering and management-related services

31. There exists a vertical relationship where the acquirer has a contractual agreement with the target to provide mining engineering and mining management-related services to the target in Zambia. Mining services can be defined as services that support mining activities, including land/project evaluation, staffing services, field crew services, equipment rental, consulting, and more. Mining engineering encompasses a wide range of activities related to the extraction of valuable minerals and resources from the Earth.

32. In this respect, the proposed transaction raises vertical linkages between the target and the acquirer in the provision of mining engineering and mining management-related services. As such, for the purposes of assessing the effects of the vertical relationship between the target and acquirer, the CID has defined the relevant product market as the **provision of mining engineering and mining management related services**.

Relevant Geographic Market

33. Paragraph 8 of the Market Definition defines the relevant geographic market 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".

[6] Case no. COMP/M.6541.

34. With respect to the production and supply of copper concentrate, it is recalled that the acquirer provides copper concentrate at national level in DRC. The target provides 100% of its copper concentrate to its customers who are smelters that are all concentrated on the Copperbelt province of Zambia with its main customers being Konkola Copper Mines, Chambishi Copper Smelter and Kansanshi Mining. It is noted that the target entity's activities and operations are limited to the Zambian market, as such the effects of the transaction are likely to only be felt in the Zambian market.

35. It is further noted that by its nature, copper concentrate is a bulky and heavy-duty product. Copper concentrate contains about 20% to 45% pure copper. Copper concentrate must be further refined by smelters to produce high purity copper (copper cathodes). In countries with low demand for copper concentrate, it can be exported to other neighboring countries. However, this is not the case for Zambia as all copper concentrate produced by Lubambe is sold locally. Further, because of the low contents of pure copper in the copper concentrate, copper concentrate yields lower returns whereas copper cathodes are a higher value-added product. As such, there is no incentive to export copper concentrate but rather selling it locally to smelters who then refine it into high purity copper (copper cathodes) that is then exported for a higher revenue yield.

36. From a demand perspective, it is unlikely that a significant number of smelters in Zambia would be able or willing to substitute purchase of copper concentrate from Zambia to another country in response to a small but significant change in the trading conditions offered by suppliers of copper concentrate in Zambia. If customers of Lubambe wanted to switch to other suppliers, they would opt to switch to suppliers of copper concentrate that are within a close vicinity to their mining plant for ease of transportation of the concentrate to their plant.

37. It is further noted that whereas it is possible for a smelter located in one part of Zambia to source copper concentrate from another part of the country, it is easier and more economical for the smelter to source the copper concentrate from companies located in the same vicinity to avoid the high transportation costs due to the bulky nature of the copper concentrate.

38. The above demonstrates that the geographic scope for the relevant markets is likely to be national and the located where a copper mine exists given the cost limitations which may limit the geographic scope of supply of copper concentrate.

39. Further reference is made to the Zambian jurisprudence, specifically in *Lubambe Copper Mines Limited/Lubambe Holdings Limited/Novum Limited*[7] wherein the geographic scope for the mining, processing and supply of copper concentrate was

[7] Board Decision on Case No: MERG/06/06/2022/00060

considered as a region in Zambia. The Board of the CCPC noted that the mine in question was in Chililabombwe District of Zambia. Further, the geographical location within Zambia in which the bulk of sales took place was the Copperbelt Province of Zambia as all customers of the parties to this transaction were local copper smelters situated in the Copperbelt Province (i.e. Konkola Copper Mines Limited and Chambishi Copper Smelter). On this premise, the Board considered that the relevant geographic market was the Copperbelt Province of Zambia.

40. In another merger, the *Chibuluma Mines Plc/Tigerfish Exploration*[8], the Board of CCPC determined the geographic scope as the Copperbelt province of Zambia having noted that the location of the target entity, Chibuluma Mines was in Lufwanyama area in Kalulushi district, Copperbelt Province of Zambia. The geographic market was based on the extent of the bulk of sales of the target entity, which was limited to one customer located in Kitwe, Copperbelt Province, Zambia. As such the relevant geographic market was limited to the Copperbelt Province of Zambia.In view of the above and giving further recognition to the fact that the customers of the target entity are located on the Copperbelt province of Zambia, it can be determined that the relevant geographic market is national and pertaining to Zambia and specifically the Copperbelt Province of Zambia.

41. The Commission further notes that the provision of mining engineering and management related services to the target entity by the acquirer is conducted in Zambia. As such, for the purposes of this transaction, it can be determined that the relevant geographic market for the provision of mining engineering and management related services to the target is national and pertaining to Zambia.

Conclusion of Relevant Market Definition

42. For purposes of assessing the proposed transaction, and without prejudice to its approach in future similar cases, the CID has identified the relevant market to be:

    a) **The mining, processing, and supply of copper concentrate in the Copperbelt Province of Zambia; and**

    b) **The provision of mining engineering and management related services in Zambia.**

Market shares and Concentration

43. The estimated market shares for Lubambe and its competitors in the mining and processing of copper concentrate in Zambia are reflected in the table below[9].

[8] Board Decision on Case No. MERG/08/06/2023/00030

[9] CCPC Board Decision on the proposed merger between Mopani Copper Mines Plc ("MCM") and Carlisa Investment Corporation 2021

Table 2: Estimated Market Shares in the mining and processing of copper concentrate in Zambia, 2021

Name	Market Share
FQM- Kansanshi Mine	30%
Konkola Copper Mine	24%
Barrick Lumwana Mine	22%
Mopani Copper Mine	19%
Lubambe Mining	**3.1%**
Others	1.9%
Total	**100%**

44. From table 2 above, the target's market share in the supply of copper concentrate was 3.1% which will not change post transaction as there is no market share accretion resulting from this transaction. A consideration of the CR3 for the top players in the relevant market indicates that CR3 pre- and post-merger was 76% (Kansanshi 30% + Konkola 24% and Barrick Lumwana 22%). This is an indication that the market is concentrated. However, despite the market being concentrated, the merged entity is not amongst the three major players hence the transaction will not impact competition as the target will still face competition from the three major players. Further, it is noted that none of the three largest players in this relevant market is party to the transaction at hand. As such, it is unlikely that anticompetitive conduct in the defined market will occur as a result of this transaction.

Mining engineering and management-related services

45. For the provision of mining engineering and management related services, the parties submitted that due to the lack of third-party statistics on mine engineering and management related services industry, they were unable to ascertain the specific market shares of the target's services as well as those of its competitors. The parties submitted that to the best of JCHX's knowledge, the number of mines serviced by JCHX represented a relatively small portion of the mines in the overall market. The parties further submitted that for most of the mines serviced by JCHX, JCHX normally only acts as one of the contractors for a portion of these mines, with the rest of the portion of mine being serviced by other contractors or mine owner's own in-house teams.

46. The parties submitted that most mining companies use their in-house teams to do mining engineering and management-related services instead of engaging third party service providers like JCHX. The parties submitted that the main competitors of JCHX in the provision of mining engineering and management-related services in Zambia are Reliant Mining and Construction Limited and Tongguan Mines Construction Co., Ltd of Tongling Nonferrous Metals Group.

47. The parties also submitted that other than JCHX, Lubambe Mining sources all its mining engineering and management-related services from Zambia through contracts with Zambian entities which include, *inter alia*, Reliant, Tamaja, Carmine and AECL explosives.

48. Based on the ability of mining companies such as Lubambe to use their inhouse teams to do mining engineering and management-related services as well as the ability of the mining companies to engage third parties such as Reliant, Tamaja, Carmine and AECL explosives, among others, it can be said that the market for mining engineering and management related services is competitive and is therefore unlikely to be concentrated. Further the transaction will not lead to any change in the market structure in the defined market, and there will be no changes to the market concentration levels in the relevant market post transaction. As such, it is unlikely that anti-competitive conduct in the defined market would arise as a result of this transaction.

49. The parties submitted the key barriers to entry into mining to be as follows:

    i. Capital requirements: Mining is a highly capital-intensive business. Large sums of money are required upfront to construct mines and production facilities, and to sustain the exploration and development needed to replenish reserves.

    ii. Regulatory requirements: Regulatory approvals are required to obtain a mining licence and a right to mine. Regulatory regimes differ in every jurisdiction, which can impact the economic viability of a resource and development of a mining project.

    iii. Environmental requirements: Environmental studies, approvals and expenditure are required to obtain and maintain a mining licence and a right to mine. The environmental requirements differ in every jurisdiction, which can impact the economic and technical viability of a mining project.

    iv. Resource Scarcity and Quality: Copper mineral Resources are finite and are of increasing scarcity. Whilst there are is many participants in the market for copper driving competition, the scarcity of available Resources is a key barrier to entry for new participants.

50. The parties submitted that the Zambian mining sector has seen several new entrants within the last few years. The mining sector had also received a lot of investment from investors through mergers and acquisitions in the last few years. Examples of recent transactions in the mining sector include Anglo American Plc earn-in- agreement with Arc Minerals – 2023, Chibuluma formation of joint venture with Kobold Metals- 2023, Lubambe Copper Mines Limited Fomation of joint venture with Novum Metals- 2022, ZCCM acquisition of Mopani- 2023, among

others. This is an indication of entry being likely in the Zambian market and that the barriers may not be significant to deter new entry.

51. In the current transaction, it was considered that copper concentrate prices usually depend on current prices of copper cathodes at London Metal Exchange (LME). It is further noted that the market structure will not change post transaction and as such the customer dynamics are unlikely to be affected by the transaction. It is also considered that the merged entity will continue to face competition from other bigger and smaller players in the relevant market. In the event that the services provided by the merged entity are not meeting the customers' standards, they can easily switch to other suppliers of copper concentrate such as Lumwana, First Quantum mine (Kansanshi) and Konkola Copper Mines among others who offer similar products.

52. As noted above, in the defined relevant market, the parties' pre-merger market share is estimated at 3.1% and will not change post transaction as there is no market share accretion resulting from this transaction. As such Lubambe is not a leading player in the mining sector in Zambia and hence not likely to hold a dominant position. Therefore, it is unlikely that competition concerns will arise post-merger.

53. The CID noted that there exists a vertical linkage between the parties' operations in Zambia. There exists a contract between JCHX and Lubambe wherein, JCHX is to operate the Lubambe copper mine in Zambia. The contract covers extracting copper from the mine's south limb, located in the Copperbelt province, from June 1, 2023, to May 31, 2026. Further, due to financial failures, Lubambe has been unable to pay JCHX for the contractual services they have been providing to JCHX.

54. The parties submitted that for most of the mines serviced by JCHX, JCHX normally only acts as one of the contractors for a portion of these mines, with rest of the portion of mine being serviced by other contractors or mine owner's own in-house teams.The parties submitted that most mining companies use their in-house teams to do mining engineering and mining management-related services instead of engaging third party service providers such as JCHX. The parties submitted that the market has several players that will offer competition to JCHX.

55. The CID observed that Lubambe Mining, besides JCHX, obtains its mining engineering and management-related services from competitors of JCHX in Zambia through contracts with entities like Reliant, Tamaja, Carmine, and AECL explosives. It is important to note that these competitors have the option to engage with other market providers, some of whom have a larger market share than the target entity. Consequently, if the merged entity ceases its procurement of these services from the acquirer's competitors, these competitors may opt to contract with alternative providers.

56. Based on the ability of mining companies such as Lubambe to use their inhouse teams to do mining engineering and mining management-related services as well as the ability of the mining companies to engage third parties such as Reliant, Tamaja, Carmine and AECL explosives, among others, It is considered that vertical effects are not likely to occur in the proposed transaction because the parties do not have substantial market shares in either of the markets of integration.

57. Further, the parties submitted that the services provided by JCHX under the existing contracts with Lubambe mining will remain unchanged after this transaction. The parties also submitted that the transaction will not affect the existing contracts that JCHX has with other mines in Zambia. As such the vertical integration between the parties is unlikely to be problematic or to have a negative effect on the existing market conditions in the defined relevant markets.

Consideration of the Failing Firm Scenario

58. In the transaction under review, the parties have submitted that they are a failing firm. In forming a view on a failing undertaking scenario, the CID considered whether:

    a) the target undertaking would have exited the market in the near future; and, if so

    b) there would have been an alternative purchaser for the target undertaking or its assets to the acquiring undertaking.

59. The CID observed that Lubambe has been having challenges in meeting its financial obligations and the proposed transaction is an investment opportunity to financially resuscitate the business by clearing off the shareholder loans and further investing into the business. It is noted that absent the proposed transaction, Lubambe is likely to fail. It is further noted that the transaction will be beneficial to the regional Zambian Copperbelt communities through continued employment of local workforce.

60. The failing firm assessment further considered whether there would have been an alternative purchaser for the target undertaking or its assets to the acquiring undertaking. It is noted that other bidders such as United Arab Emirates's International Resources Holding has expressed interest in bidding for a stake in Lubambe[10]. As such, in the absence of the proposed transaction, there are alternative purchasers of Lubambe's shareholding/ assets.

[10] UAE's IRH plans bid for stake in Zambia's Lubambe copper mine | Reuters

61. The above notwithstanding, Lubambe can be said to be a failing firm. However, because the transaction does not pose any competition concerns, the CID has not relied on the failing firm defence to grant authorization to the proposed transaction.

Consideration of Third-Party Views

62. In arriving at its determination, the CID also considered submissions from the National Competition Agency of Zambia, which confirmed the absence of competition and public interest concerns.

Determination

63. 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.

64. The CID, therefore, approved the transaction.

65. 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**