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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/04/15/2024

Decision[1] of the 108th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Merger involving SAMS Investment Holding Co. SRL/BV and Ariozo Group Holding SA/NV

ECONOMIC SECTOR: Construction and Mining Equipment

11 July 2024

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[1] In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

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

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

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

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

Recalling the overriding need to establish a Common Market;

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

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

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

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 13 May 2024, COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger involving SAMS Investment Holding Co. SRL/BV ("**SAMS**" or the "**acquirer**") and Ariozo Group Holding SA/NV ("**Ariozo**", or together with its subsidiaries the "**BIA Group**"), 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

SAMS (the Acquirer)

4. The parties have submitted that SAMS is a private limited liability company (société à responsabilité limitée/besloten vennootschap) registered with the Crossroads Bank of Enterprises[2] and with its head office located in Belgium. SAMS is a newly-formed subsidiary of Sumitomo Corporation ("**SC**"), established for the purposes of the proposed transaction.

5. SC is a Japanese trading company listed on Tokyo Stock Exchange. SC and its subsidiaries (the "**acquiring group**") are engaged globally in several industries, including metal products, transportation and construction systems, infrastructure, mineral resources, energy, chemicals and electronics, media and digital media, energy innovation, construction and real estate, and retail- and healthcare-related businesses.

6. In the Common Market, the acquiring group is present in Egypt, Ethiopia, Kenya, Libya, Madagascar, and Tunisia.

7. The parties submitted a description of the activities of SC and those of its directly or indirectly controlled entities in the Common Market as presented in Table 1 below.

Table 1 – Activities of the acquiring group in the Common Market[3]

Member State	Entity Name	Description of activities	SIC Code
Kenya	Sumitomo Corporation	Supply of commercial vehicles to an importing & distributing company inside Kenya	45 - Wholesale and retail trade and repair of motor vehicles and motorcycles
Tunisia	Sumitomo Corporation	Supply of power plant equipment and railway car-related equipment in Tunisia.	30200 - Manufacture of railway locomotives and rolling stock 27100 - Manufacture of electric motors, generators, transformers, and electricity distribution and control apparatus

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[2] The Crossroads Bank for Enterprises (CBE) is a database owned by the Federal Public Service Economy of Belgium. The purpose of the CBE is to increase the efficiency of public services and to simplify administrative procedures for companies. The CBE centralises the basic data of companies and business unit and disseminates it to several competent authorities. The CBE assigns a unique identification number to each company and business unit. Accessed at: https://economie.fgov.be/en/themes/enterprises/crossroads-bank-enterprises accessed on 3 July 2024.

[3] The parties submitted that this reflects the activities of SC and its subsidiaries that it directly or indirectly controls. It does not reflect the activities of subsidiaries in which SC has non-controlling interests.

Egypt	Sumitomo Corporation Egypt S.S.C.	Wholesale & trading business	5063 - Electrical Apparatus and Equipment Wiring Supplies, and Construction Materials
Libya	Toyota Libya F.Z.C.	Distributorship of Toyota passenger car	45 - Wholesale and retail trade and repair of motor vehicles and motorcycles
Madagascar	• Ambatovy Minerals S.A. • Dynatec Madagascar S.A	Nickel & cobalt mining & refining	07 - Mining of metal ores
	Sumitomo Corporation	• Supply of raw materials (such as coal and limestone) to nickel & cobalt mining project in Madagascar (Ambatovy) • Purchase of nickel & cobalt from Ambatovy (Madagascar)	

Ariozo (the Target)

8. The parties have submitted that Ariozo is a limited liability company based in Belgium, registered with the Crossroads Bank of Enterprises. Together with its subsidiaries, the BIA Group, Ariozo is primarily engaged in the distribution and rental of earthmoving and construction equipment, including trucks, across various sectors such as mining and energy. The BIA Group, a family-owned business, also provides equipment repair and maintenance services and distributes second-hand earthmoving and construction equipment.

9. The BIA Group holds a distribution agreement with Komatsu, a renowned Original Equipment Manufacturer. Additionally, the BIA Group maintains dealership agreements with other reputable manufacturers, including Metso, Cummins, Bomag, MAN, Furukawa, GHH, and Foton.

10. The BIA Group distributes these products to customers in its African territory through its areal distribution branches located in Mauritania, Senegal, Guinea, Mali, Burkina Faso, Liberia, Niger, Ivory Coast, Togo, Benin, Cameroon, the Democratic Republic of Congo (DRC), and Zambia.

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11. In the Common Market, the BIA Group operates in Burundi, DRC, Mauritius, Rwanda, and Zambia. The BIA Group has limited sales through its DRC entity (BIA RDC) into Burundi and through its Mauritian entity (Equipements & Services BIA) into Rwanda. Apart from its sales in the DRC, Zambia, and to a limited extent in Burundi and Rwanda, the BIA Group's activities in Mauritius are confined to holding company activities.

12. A description of the BIA Group's activities in the Common Market is presented in Table 2 below.

Table 2 – Activities of the BIA Group in the Common Market

Member State	Entity Name	Description of activities	SIC Code
Mauritius	BIA Africa Group	Holding company, provision of support services to subsidiaries	64205 – Activities of holding company
	African Coordination Center BIA	Holding company, provision of support services to subsidiaries	
DRC	BIA RDC	Heavy equipment sales (new & used) for construction and mining industries, & related aftermarket activities in respect of brands including Komatsu, Metso, Cummins, Topcon, Hensley, Bomag, and Smartfleet.	• 3531- Construction machinery and equipment • 3532 – Mining machinery and equipment • 3621 – Motors and generators • 3714 – Motor vehicle parts and accessories • 7600 – Services – Miscellaneous report services
DRC	Immobilière Ngafula	Ownership of industrial property for internal use by BIA DRC	
Mauritius	Equipements & Services BIA	Heavy equipment sales (new & used) & aftermarket activities into other African jurisdictions in which the BIA group has distribution activities	
Zambia	BIA Zambia	Heavy machinery and equipment sales (new & used) & aftermarket activities in respect of the following brands: Komatsu, Metso, Cummins, Topcon, Hensley, Bomag, and Smartfleet	

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:

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 an asset value of more than the threshold of USD 50 million in the Common Market and they each held an asset value of more than USD 10 million in the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate asset value in one and the same Member State. The Commission is thus satisfied that the transaction constitutes a notifiable transaction within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

15. Pursuant to the Share Purchase Agreement ("**SPA**") entered into between Ariozo, Partners ("**JBI**"), SAMS, and SC (the "**proposed transaction**"), executed on 25 March 2024, SAMS will hold a total of 25% of the shares in Ariozo through the subscription for the new shares, as well as the purchase of the existing shares.

16. Following the completion of the proposed transaction, the business will continue to operate as Ariozo and will consist of a single corporate structure incorporated in Belgium with JBI holding 75% of the shares and SAMS holding 25% of the shares.

17. Pursuant to the SPA, JBI and SAMS will be in a position of exercising joint control over Ariozo, since SAMS will be afforded certain control rights.

18. The parties have submitted that the rationale for the proposed transaction is to enable two strategically aligned and complementary businesses to combine their expertise, thereby better serving customers and capitalizing on opportunities in key sectors, particularly those critical to the energy transition. They also recognize the growth potential in Africa, particularly in the construction and mining sectors, and the likely impact on demand for related equipment. Through SAMS' acquisition of a 25% stake in Ariozo, SC will be able to enter new portions of the African market by the BIA Group's footprint, which does not overlap with that of SC.

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19. The parties submitted that following the proposed transaction, the acquirer intends to leverage its existing expertise and infrastructure to accelerate the target's growth. This will enhance the target's service portfolio and product offerings, ultimately benefiting customers and contributing to increased business in the COMESA territories.

20. While the target primarily distributes machinery for the mining and construction sectors, the acquirer distributes machinery for additional sectors, including agriculture. The acquirer's experience in distributing agricultural machinery in various markets worldwide will allow it to introduce new products that have synergies with the target's current business, thereby expanding the target's reach and diversifying the sectors it supplies. Further, based on its technical expertise, SC offers a range of advanced services aimed at improving operational efficiency and reducing downtime for customers. These services include advanced welding solutions, equipment component remanufacturing, and autonomous haulage solutions, which are not currently offered by the target. According to the parties, incorporating the acquirer's knowledge and capabilities will enhance the target's service offerings following the proposed transaction.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

21. 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**".*

22. It is recalled from the parties' submission that the acquiring group is engaged globally in several industries, including metal products, transportation, infrastructure, mineral resources, energy, chemicals and electronics, media and digital media, energy innovation, construction and real estate, and retail- and healthcare-related businesses.

23. In the Common Market, the acquiring group is involved in:

   a) supplying commercial vehicles to an importing and distributing company;

   b) supplying raw materials like coal and limestone and purchasing nickel and cobalt;

   c) supplying power plant equipment and railway car-related equipment;

   d) wholesale and trading business;

   e) distributing Toyota passenger cars; and

f) mining and refining nickel and cobalt.

24. The BIA Group is active in the distribution of heavy construction equipment; distribution of heavy mining equipment; and after-sales services including commissioning, maintenance, repair, technical support, spare parts and accessories supply, training, and warranty follow-up in the Common Market.

Distribution of construction and mining equipment

25. Construction equipment encompasses a broad range of heavy-duty machines designed for performing various construction activities[4] while mining equipment encompasses large-scale machines designed specifically for mining operations, which involve extracting & processing minerals and other geological materials from the earth.

26. Construction equipment is utilized for diverse activities, including soil excavation, material transportation, loading, unloading, and waste management.[5] It is essential in the construction industry for tasks such as loading and unloading materials, transporting materials and tools to and from the site, moving materials within the site, feeding materials into processing machines, retrieving processed materials, handling raw materials, and transporting them for further processing. Additionally, it is used for cutting down trees and other vegetation.

27. On the other hand, mining equipment are designed for extracting and processing minerals and resources from the earth. They include underground mining machinery, surface mining machinery, drills and breakers, crushing, pulverizing, and screening equipment, miner processing machinery, feed conveyors, stackers, and reclaimers.[6] It is therefore evident from the above that construction equipment are different from mining equipment based on their intended functionalities and applications. This is supported by the decision of the CID in ***Deere/Wirtgen (2017)***[7] where the distribution of road construction equipment and the distribution of mining equipment were considered distinct product markets.

28. The CID considered whether there exist distinct products under these two market segments, in terms of heavy and light construction and mining equipment. Heavy construction and mining equipment includes earthmoving machines, road-making machines, and material handling machines, such as heavy excavators, heavy loaders, and heavy levelling machines (including dozers and graders); light construction equipment includes light excavators, skid steer loaders, mini wheel loaders, and backhoe loaders.

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[4] https://www.constructionplacements.com/construction-equipment, accessed on 27 May 2024.
[5] https://www.ferrovial.com/en/stem/construction-machinery/, accessed on 27 May 2024.
[6] https://www.thebusinessresearchcompany.com/report/mining-machinery-and-equipment-global-market-report, accessed on 27 May 2024.
[7] Case No. 2017/09/LV/06, Deere & Company and Wirtgen Group Holding GmbH, dated 1 October 2017.

29. The CID noted that the primary distinctions between heavy and light construction equipment lie in their size, capacity, and intended use.

30. Heavy construction equipment are larger and more powerful than light equipment. It is designed for large-scale projects, capable of handling substantial loads. Examples include excavators for digging and moving large amounts of earth, bulldozers for pushing soil, sand, and other materials, and dump trucks for transporting large volumes of material. The complexity and potential hazards associated with heavy construction equipment often necessitate specialized training and certification[8].

31. On the other hand, light construction equipment is smaller and more manageable, suitable for lighter tasks and smaller projects. Examples include[9] light excavators for small digging tasks and skid steer loaders for activities such as digging, grading, and lifting. Light construction equipment may not usually require specialized training or certifications compared to heavy equipment.

32. In view of the above, it can be concluded that heavy construction and mining equipment and light construction and mining equipment belong to separate market segments.

33. It is recalled from the parties' submission that the target's distribution of construction and mining equipment are limited to heavy construction and mining equipment. Thus, the competition assessment has focused on the distribution of heavy construction and mining equipment markets.

34. The CID further noted that the heavy construction and heavy mining equipment product categories can be segmented into narrower submarkets. For instance, based on its end-use earthmoving machines, road-making machines, and material-handling machines can be considered as distinct products. Earthmoving machines are heavy-duty machinery or vehicles used for building and demolishing buildings, digging trenches, and constructing roads[10] comprising products distributed by the target such as dump trucks, Bulldozers, wheel loaders, hydraulic excavators, wheel dozers, backhoe loaders, asphalt rollers, road pavers, and compactors, where each has its unique function and application.[11] The EC[12], in ***DEMAG/KOMATSU (1995)*** held that wheel loaders are different from hydraulic excavators due to their significant differences in the specific tasks performed. Wheel loaders are less effective in handling hard materials and unblasted rock and struggle with benches over 8 meters high. They are also less economical with

[8] https://www.oteplace.com/en/top-6-machinery-and-heavy-equipment-safety-tips-to-consider, accessed on 20 June 2024.
[9] https://www.warrencat.com/news/construction-equipment-size-guide/, accessed on 27 June 2024
[10] https://www.heavyequipmenttransport.com/blog/what-is-considered-earth-moving-equipment, accessed on 27 May 2024.
[11] https://biagroup.com/group/en/products?sector, accessed on 27 May 2024.
[12] See paragraph 13, Case No IV/M.674 DEMAG / KOMATSU, dated 21 December 1995.

dumpers over 130 tons. However, wheel loaders are more mobile, suitable for short-distance tasks, and useful for auxiliary mining tasks like ground cleaning. In contrast, excavators can dig deeper. While all two machines can sometimes be used interchangeably, they also have distinct roles that make them irreplaceable in certain situations.

35. Notwithstanding the above, since there is no overlap in the activities of the parties, further narrowing of the market is not necessary. Any alternative market definition will not alter the competitive assessment with respect to the distribution of heavy construction and heavy mining equipment.

Provision of after-sales services

36. As noted above, the target is also active in the provision of after-sales services. After-sales service refers to the support and assistance provided to customers after they have purchased a product.[13] This service includes maintenance, repair, and customer support activities aimed at ensuring that machines operate efficiently throughout their lifecycle.[14] For construction and mining equipment distributors such as the target, after-sales services are crucial for maintaining the performance, reliability, and longevity of machinery and customer retention.

37. After-sales services include essential maintenance and support services to customers with relevant information for the optimization of operations such matters as load factors, fuel consumption and machine operation status.[15] For example, after-slae services provided by the BIA Group to its customers in the Common Market include commissioning, maintenance, repair, technical support, spare parts and accessories supply, training, and warranty follow-up services. These services are designed to support customers throughout the lifecycle of their equipment, ensuring optimal performance and customer satisfaction.

38. The CID[16] has previously considered after-sales service as a distinct product market. This is because customers are inclined to obtain after-sales services from the manufacturer or authorised distributors who typically provides these services. Manufacturers are preferred due to their access to genuine spare parts and the specialized tools necessary for servicing the equipment. Thus, in line with its previous decisions, the CID considered that after-sale service for heavy construction and mining equipment as a distinct product market.

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[13] https://www.markt-pilot.com/en/glossary/after-sales-in-machine-manufacturing, accessed on 28 May 2024.
[14] Ibid.
[15] https://www.apec.org/docs/default-source/publications/2015/11/services-in-global-value-chains-manufacturing-related-services/toc/chapter-4-manufacturing-of-mining-and-construction-equipment.pdf?sfvrsn=1e2419da_1, accessed on 28 May 2024.
[16] See Case No. CCC/MER/04/13/2023: Kuramo Africa Opportunity Kenyan Vehicle Ltd and Trans-Century PLC, paragraph 20, decision dated 11 March 2024.

39. On the basis of the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant product markets are construed as follows:

a) **Distribution of heavy construction equipment**

b) **Distribution of heavy mining equipment**

c) **Provision of after-sale services for heavy construction equipment, and**

d) **Provision of after-sale services for heavy mining equipment.**

Relevant Geographic Market

40. 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".***

41. Construction equipment and mining equipment market are sourced from global manufacturers (such as Komatsu (Japan), Caterpillar (USA), Liebherr (Germany), XCMG (China). For instance, it is noted that Caterpillar has a global presence through its dealers cover over 50 African countries with a presence in nearly 150 cities in the Continent[17]. It is recalled that the BIA Group is a distributor of globally reputable construction and mining equipment manufacturers such as Komatsu, Metso, Cummins, Bomag, Foton, Topcon, Furukawa, Portafill, RT Drill, GHH. It is further observed that the target distributes construction and mining equipment of these global Original Equipment Manufacturers through its subsidiaries to its customers located in different territories such as Belgium, Luxembourg, Netherlands, Benin, Burkina Faso, Cameroon, DRC, Guinea, Ivory Coast, Liberia, Mali, Mauritania, Niger, Rwanda, Burundi, Senegal, Togo, Zambia.[18]

42. Further, it is likely that multinational companies operating in the mining sector would be sophisticated and well-informed, often soliciting offers from suppliers worldwide before making purchasing decisions. Considering the substantial value and infrequent procurement resulting from the long shelf life of heavy mining and construction equipment, it is likely that large multinational customers would organise their procurement internationally. Nonetheless, it is observed that distribution of the equipment is likely to be made through dealers serving a particular region or territory, given the size of the products and the need for after-

[17] https://www.caterpillar.com/en/company/global-footprint/eame/africa.html, accessed on 20 June 2024.
[18] https://biagroup.com/group/en/in-brief. Accessed on 28 May 2024.

sales services. This is supported by the parties' submissions who stated that while both in DRC and Zambia, it is easy for customers to purchase mining and construction equipment from dealers outside the national territory, they would need a local presence for service and maintenance purposes. In view of the foregoing, for purposes of this assessment, the geographic market for the distribution of construction and mining equipment can be taken as national, or at most COMESA-wide in line with the CID's approach in ***Weir/ESCO (2018)***[19].

43. As discussed above, with respect to the provision of after-sales services for heavy construction and mining equipment, the geographic scope is likely to be national. Customers rely on the manufacturers' local distributors or agents for specialized after-sales services and spare parts in a timely and effective manner. Most spare parts are not available outside the equipment supplier's distribution network, and for complex or critical maintenance operations, using the distributor is necessary.

44. Even for services that can be sourced from suppliers outside their territory, it is often more efficient and competitive to rely on their local distributor of the product. Distributors typically consider after-sales service an integral part of the heavy construction and mining equipment sales process, often providing these services at fair rates or even free of charge. While requesting that the scope be left open, the parties cited the CID's previous decision[20], where it considered that the geographic market for the provision of after-sale services for heavy construction and mining equipment to be national.

45. In view of the above and noting that the target's activities are limited to Burundi, DRC, Rwanda, and Zambia, the relevant geographic markets for the after-sales services are construed as the national markets in Burundi, DRC, Rwanda, and Zambia.

Conclusion of Relevant Market Definition

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

   a) **Distribution of heavy construction equipment in COMESA**

   b) **Distribution of heavy mining equipment in COMESA**

   c) **Provision of after-sale services for heavy construction at national level in Burundi, DRC, Rwanda, and Zambia.**

   d) **Provision of after-sale services for heavy mining equipment at national level in Burundi, DRC, Rwanda, and Zambia.**

[19] See Case No. CCC/MER/5/21/2018; Weir Group Plc and ESCO Corporation, dated 4 October 2018.
[20] *Ibid.*

Market Shares and Concentration

47. The parties have provided estimated market shares in the DRC and Zambia, being Member States where the target primarily operates. This includes the target's own turnover and estimated market share, focusing on its overall activities in the distribution of heavy equipment and machinery, as well as related aftersales services in these countries. The parties further submitted that the market shares are primarily based on the volume of new equipment sales.

Table 3: Estimated Market Shares of the target and its competitors in the broader market for sales of construction and mining equipment in DRC and Zambia

Member State	Name of Company	Estimated Market Share (%)
DRC	Congo equipment	[20-30]
	XCMG	[20-30]
	SMT	[15-25]
	SJMC	[15-25]
	BIA Group	***[0-10]***
	Kanu equipment	[0-10]
	Others	[0-10]
	Total	**100**
Zambia	Hitachi	[25-35]
	BIA Group	***[15-25]***
	Liebherr	[10-20]
	Barloworld Equipment	[5-15]
	Babcock	[0-10]
	Delta Auto	[0-10]
	Others	[10-20]
	Total	**100**

48. As indicated in Table 3 above, in DRC, the market leaders are Congo Equipment and XCMG, each holding a substantial [20-30]% share. The BIA Group holds a relatively smaller position with a [0-10]% market share.

49. In Zambia, the market for heavy construction and mining equipment sales features several key players competing for market share. Hitachi leads the market with a significant [25-35]% share, indicating its relatively strong presence and brand recognition in Zambia. The BIA Group follows with a [15-25]% share, also positioning it as a major player in the market. Liebherr, Barloworld Equipment, Babcock, and Delta Auto each hold varying but notable shares, contributing to the competitive dynamics of the industry. The remaining [10-20]% is distributed among other players in the market, suggesting a fragmented landscape with smaller participants.

50. It is noted that the target and its competitors distribute different construction and mining equipment brands. The parties have submitted that in DRC, Congo

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Equipment distributes Caterpillar brands, while XCMG distributes its own XCMG brand. SMT handles the distribution of VOLVO, Dongfeng, Marcopolo, Dressta, Sennebogen, and SDLG brands. Additionally, SJMC distributes its own Sany brand. Kanu Equipment distributes several brands, including Bell, Bomag, Case, Liebherr, Kemach, Manitou, New Holland, McCloskey, and Tigercat. The parties further submitted that in Zambia, Hitachi distributes its own brand, Hitachi, while Liebherr distributes its own brand, Liebherr. Barloworld Equipment distributes Caterpillar while Babcock distributes Volvo and Sennebogen, and Delta Auto distributes Foton, Sany and Shantui.

51. The parties submitted that the BIA Group has distribution agreements in place with equipment manufacturers covering the DRC and/or Zambia, as well as other territories, some of which are exclusive.

52. The parties estimate the market share of mining equipment by brand within the BIA Group's territory for the year 2022 as follows: Caterpillar ([55-65]%), ***Komatsu*** ([25-35]%), Hitachi ([0-10]%), Liebherr ([0-10]%), and others ([0-10]%). The market for mining equipment within the BIA Group's territory in 2022 was led by Caterpillar brand. With global 2023 sales and revenues of $67.1 billion, Caterpillar Inc. is the world's leading manufacturer of construction and mining equipment.[21] ***Komatsu*** was the second-largest brand supplied into the market. Although smaller than Caterpillar brand's share, Komatsu brand still commanded nearly a third of the market, showing its competitiveness and significant footprint in the region.

53. Notwithstanding the relative strength of the brands distributed exclusively by the target, it is recalled that the acquirer was not present in the relevant markets pre-merger. As a result, in both DRC and Zambia, the merging parties will continue to compete with the existing other players post-merger since the transaction will not lead to a change in the existing market structure.

54. With regard to the after-sales market, the Commission observed that a similar market share structure is likely to prevail in view of exclusivity dealerships arrangements in the market. Having regard to the nature of the products, it appears unlikely that third-party distributors would constitute a significant competitive pressure. This notwithstanding, in the absence of pre-merger overlap, the CID observes that there will not be market share accretion as a result of the transaction, and there will thus be no change to the market structure.

55. Whilst the parties submitted that there are no significant barriers to entry into the broad market for heavy equipment and machinery supply, along with related aftersales services, in the Common Market, the CID considered that the main barriers to entry and expansion are capital investment and access to reputable

[21] https://www.caterpillar.com/en/company, accessed on 20 June 2024.

brands. Establishing a distribution network requires substantial funds for purchasing equipment inventory, warehousing, and transportation facilities. Additionally, forging and maintaining relationships with manufacturers can be challenging, especially with well-established brands that may have exclusive agreements with current distributors. However, it is unlikely that entry into the relevant markets would be further impeded by the current transaction, given the absence of overlap between the merging parties.

56. Given the market shares of the parties are small and considering that the relevant market is characterised by the presence of numerous stronger global rivals, the transaction is therefore unlikely to result in the creation or strengthening of a dominant position which could lead to unilateral effects, nor is it likely to facilitate or enhance collusion among existing rivals on the markets.

Consideration of Third-Party Views

57. In arriving at its determination, the CID also considered submissions from the National Competition Agencies of Egypt, Ethiopia, Kenya, Libya, Mauritius, and DRC which confirmed the absence of competition and public interest concerns.

Determination

58. 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.

59. The CID, therefore, approved the transaction.

60. 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**