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**Common Market for Eastern
and Southern Africa**

Staff Paper No: 2016/03/07/04/JB

**Decision¹ of the Nineteenth Committee Responsible for Initial
Determination Meeting Regarding the Proposed Merger between
China National Tire & Rubber Co. Ltd and Pirelli & C.S.p.A**

ECONOMIC SECTOR: Tyre Products

7 March 2016 – Johannesburg, South Africa

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Information and Relevant Background

1. This decision concerns the merger between China National Tire & Rubber CO., Ltd. (hereinafter referred as "CNRC") and Pirelli & C. S.p.A. (hereinafter referred to as "Pirelli"). The Proposed Transaction constitutes a 'merger' for purposes of the COMESA Competition Regulations, 2004 (hereinafter referred to "the Regulations").
2. The transaction was notified with the Commission under Article 24(1) of the Regulations. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the proposed transaction between the parties would, or is likely to have the effect of substantially preventing or lessening competition; or would be contrary to public interest in the Common Market.
3. The Committee of Initial Determination (hereinafter referred to as "the CID") noted that the parties operate in two or more COMESA Member States. The CID further noted that the merger notification thresholds were met in accordance with Rule 4 of the COMESA Competition Rules on the Determination of Merger Notification Thresholds and Method of Calculation. This means that the regional dimension requirements under Articles 23(3) and 23(5) of the Regulations are satisfied and asserts jurisdiction of the Commission to assess the transaction.

The Parties

CNRC

4. CNRC is a company incorporated in the People's Republic of China. It is active in the sale, research and development of tyres, rubber products and other related products. Through independent distributors, its products are sold worldwide including the Common Market.

Pirelli

5. Pirelli is a company incorporated in Italy. It has a global presence and is active in the production, sale and distribution of tyres to original equipment manufacturers ("OEM") and independent distributors as new replacement tyres. Pirelli is mainly active in the global production and distribution of heavy vehicle tyres and consumer tyres sold to OEMs and as new replacement tyres.

Nature of the Transaction

6. CNRC intends to acquire sole control of Pirelli, a publicly listed company, by way of the indirect acquisition of control of a newly established Italian joint stock company (societa per azioni) (Bidco). Bidco is a special purpose vehicle company set up for the sole purpose of launching a mandatory tender offer

(offerta pubblica di acquisto obbligatoria) for Pirelli's outstanding ordinary share capital and a voluntary tender offer (offerta pubblica di acquisto volontaria) for the entire saving share capital of Pirelli, with the objective of acquiring and subsequently delisting Pirelli. CNRC will have an indirect stake in Pirelli of between 50% and 65%.

7. Following the completion of the acquisition, it is envisaged that, subject to required shareholders' approvals, (a) Pirelli saving shares will be mandatorily converted into non-voting and non-listed newly issued shares; and (b) Pirelli and Bidco will merge together.

Competition Analysis

8. The CID defined the relevant market as the global supply of replacement tyres. The CID established that the same market concentration will remain post-merger as the parties are not among the top three market players in the relevant market both pre-merger and post-merger. This therefore means that the market structure is likely to remain unaltered post-merger.
9. However, the CID observed that within the Egyptian market, the proposed transaction may create a dominant position in the trucks tyres market because currently Pirelli Egypt has a market share of around 45% and CNRC has a market share of around 15 %. The CID noted that while a dominant position is not illegal, the parties should exercise special responsibility as regards their conduct in the market in Egypt. If the merged firm were to abuse its dominant position, the firm may be subject to Article 8 of the Egyptian Competition Law; and/or Part 3 of the COMESA Competition Regulations if such conduct affects two or more COMESA Member States.
10. The CID established that the merger will not result in the elimination of competition in the Common Market and neither input nor customer foreclosure shall arise to interfere with the pattern of trade. The merger is also not likely to frustrate other firms from entering the Common Market through anti-competitive behaviour. In view of the foregoing, and based on objective factors of law and fact, the CID noted that it is not possible to foresee with sufficient degree of probability that the transaction will have an appreciable effect on trade between Member States. This is because investigations established that the transaction is not likely to eliminate or threaten to eliminate competitors operating within the Common Market.

Determination

11. The CID determined that the merger is not likely to substantially prevent or lessen the degree of competition in the Common Market and is not likely to negatively affect trade between Member States.

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

Dated this 7th day of March, 2016.



Commissioner Matthews Chikankheni (Chairman)



Commissioner Thabisile Langa (Member)
(Member)



Commissioner Georges Tirant