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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/02/10/2024

Decision[1] of the 108th Meeting of the Committee Responsible for Initial Determinations Regarding the proposed Acquisition by Delta Mining Limited of 51% of the Issued Shares in Mopani Copper Mines Plc

ECONOMIC SECTOR: Mining

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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 22 March 2024, the COMESA Competition Commission ("**Commission**") received a notification for the approval of the merger involving Delta Mining Limited ("**Delta**" or the "**acquiring firm**"), an affiliate of International Resources Holding RSC LTD ("**IRH**"), together with their controlled affiliates, the "acquiring group" and Mopani Copper Mines Plc ("**Mopani**" or the "**target**") pursuant to Article 23(6) of the COMESA Competition Regulations (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.

The Parties

Delta (the "acquiring firm")

4. The parties submitted that Delta is a company incorporated under the laws of the Abu Dhabi Free Zone, UAE. Delta is a special-purpose vehicle established for the purposes of the proposed transaction. Delta is wholly owned by IRH, a company incorporated under the laws of the Abu Dhabi Global Market, United Arab Emirates.

5. The parties submitted that IRH is an affiliate of International Holding Company PJSC ("**IHC**"), a company incorporated under the laws of the United Arab Emirates. IRH is an Abu Dhabi-based natural resources extraction company, with a portfolio of diverse metals and minerals and operations across the entire mining value chain.

Mopani (the "target")

6. The parties submitted that Mopani is a company incorporated under the laws of Zambia. The parties further submitted that Mopani is a multi-faceted mining company with its operations in Kitwe and Mufulira districts of the Copperbelt Province in Zambia. The assets of Mopani in Kitwe and Mufulira include underground mines, concentrators, a smelter, and a refinery, as well as three deep shafts sunk and equipped between 2014 and 2021 to extend the life of the mine by over 25 years.

7. Mopani is in the mining sector and it's operations encompass the full range of the copper production value chain from extracting copper underground to concentrating, smelting, refining and packaging the finished copper product for export. More specifically, Mopani produces and sells the following products:

   (i) copper cathodes,

   (ii) copper concentrates; and

   (iii) secondary copper products, comprising copper anodes and copper blisters.

8. Mopani's activities in the Common market are limited to Zambia.

Jurisdiction of the Commission

9. 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.*

10. On 29 February 2024, the parties submitted the merger filing to the Commission with the view that the transaction was notifiable. However, the Commission's assessment established that the transaction was not notifiable.

11. The CID noted that in 2023, IRH held dormant subsidiaries in the African continent, with the acquisition of a majority shareholding in Mopani marking IRH's initial investment in Zambia. Therefore, Article 23(3) (a) of the Regulations was not satisfied since neither of the parties operated in two or more Member States. **Thus, the Commission concluded that the proposed transaction did not meet the Regional Dimension test.**

12. In view of the foregoing, the Commission found that the transaction was not notifiable on the basis that Article 23(3) (a) of the Regulations was not satisfied since both the acquiring undertaking and the target undertaking did not operate in two or more Member States within the Common Market.

13. However, to investigate potential future competition effects and public interest concerns that the transaction may raise, the Commission reviewed the merger pursuant to Article 23(6) of the Regulations. The basis for invoking article 23(6) was to ensure that no transaction, such as the current transaction, that could potentially raise competition concerns in future escapes regulatory oversight. The Commission considered that reviewing this transaction will ensure that there are no enforcement gaps which may render the review of any future transactions and any future resultant competition concerns improbable.

Details of the Merger

14. The proposed transaction involved Delta acquiring 51% of the issued share capital of Mopani.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

15. 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".

16. The standard approach to defining relevant product markets is to firstly consider the products and services that the merging parties provide, on which a substitutability test is initially conducted which may extend to other products. To this end, the next section considers determination of the relevant product market by applying the substitutability test on the products which the parties provide.

17. IRH is a natural resources extraction company, with a portfolio of diverse metals and minerals operations across the entire mining value chain and has mining operations globally. The company utilizes an off-take platform to secure materials for its downstream operations. Stringent due diligence processes are applied to all off-take agreements to ensure compliance with global supply standards. During 2023, IRH did not have any off-take trading agreements, investments or subsidiaries in Zambia.

18. Mopani's activities encompass a full range of the copper production value chain from extracting copper underground to concentrating, smelting, refining and packaging the finished copper product for export. More specifically, Mopani produces and sells (i) copper cathodes; (ii) copper concentrates; and (iii) secondary copper products, comprising copper anodes and copper blisters.

19. The CID noted that whilst the acquiring group is also active in the broad mining industry globally. IRH's existing off-take agreements in African countries were concluded and terminated as of January 1, 2024. The acquisition of Mopani signifies IRH's entry into the copper sector. The target on the other hand is active in the mining and processing of copper in Zambia. Accordingly, the CID observed that there is no overlap in the activities of the Parties in the Common Market and focused its assessment on the activities of the target in Zambia.

Copper mining

20. The copper mining value chain entails mining and processing of copper ore into various products. A copper mine generally covers one of two types of copper ore: copper oxide or copper sulphide. Copper oxide is processed into copper metal at the mine by first leaching the ore and applying a process known as Solvent Extraction and Electro Winning ("SX-EW")[2]. The production process from copper oxide to refined copper via the SX-EW process is vertically integrated and does not normally give rise to traded intermediate products. Copper sulphide, on the other hand, is first transformed into an intermediate product, copper concentrate. Copper concentrate production is processed at integrated smelters. However, some of the copper concentrate producers sell the copper concentrate to independent smelters located close to the end-customer markets[3]. From the

[2] Case No COMP/M.6541 - GLENCORE / XSTRATA - Microsoft Word - m6541_6(2).doc (europa.eu)
[3] Ibid

parties' submissions it is noted that the type of copper ore the parties' mine is copper sulphide and not copper oxide. It is however noted that copper metal produced from copper sulphide and copper oxide is virtually indistinguishable. Copper cathode produced from sulphide and oxide ore are entirely substitutable from a demand-side perspective[4].

21. Copper metal is a natural product gained from copper ore, which contains only a low concentration of the copper metal. After extraction from the copper mine, it is enriched in processing facilities into copper concentrates and copper scraps. Thereafter, both copper concentrate and copper scraps are converted into anodes, which are then used to produce copper cathodes (flat pieces of various grades of copper) in an electrolytic process in a copper tank house. The copper mining process is elaborated in more detail below[5].

21.1. ***Mining***: Copper ore is a rock which contains copper along with other minerals. Copper ore 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.

21.2. ***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.

21.3. ***Concentrating:*** The next step involves concentrating the milled copper ore. 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% pure copper. Copper concentrates are a type of semi-processed ore material that contains a high concentration of copper along with other elements.

21.4. ***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. Copper concentrate is typically converted to copper cathode through a refining process, involving the three following stages: (i) production of copper matte, (ii) production of copper blister, (iii) production of copper anode. Copper concentrate is transported to a smelter where the concentrate is melted and the copper is separated as a metallic sulphide, called matte, from

[4] Case No COMP/M.6541 - GLENCORE / XSTRATA - Microsoft Word - m6541e6(2).doc (europa.eu)
[5] https://www.sciencedirect.com/topics/engineering/copper-concentrate

the gangue[6] material that contains iron and other materials. In a converter, copper matte is oxidized to produce 98% pure copper blister. The molten copper blister is then further processed in an anode furnace to produce 99.4% copper, which is cast into moulds to form copper anodes. Other sources of copper, e.g. copper scrap and spent copper anodes can be fed into this production process as well.

21.5. ***Refining:*** Finally, the refined copper is produced through an electrolytic refining process in a so called "tank house", copper anodes are converted to copper cathodes or refined copper metal. 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.

22. The CID noted that the merging parties, like most copper mine operators, are "integrated" producers (i.e., they concentrate and smelt/refine the copper ore themselves, and then sell the finished product for transformation into rod, wire or other applications). A minority of producers, however, sell the copper concentrate to independent smelters, who in turn resell the finished product. Some of the integrated producers' concentrate is also sold in the Common Market[7].

23. The CID observed that the activities of the target encompass the full range of the copper production chain highlighted above, that is from extracting copper underground to concentrating, smelting, refining, and packaging the finished copper product. The CID considered that the target's ultimate final products resulting from copper production chain, namely copper cathodes, copper concentrate and secondary copper products which can be construed as distinct as further presented below.

Copper Concentrate

24. Copper concentrate is a fine black powder which looks like pounded charcoal whose primary use is to produce copper cathodes through smelting and refining. 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. As such it can be noted that processing of copper concentrate is unique given that the end product, copper cathodes, cannot easily be substituted for other metals because of differences in physical characteristics, intended use and value.

25. From a supply side, 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,

[6] Gangue refers to the commercially valueless material in which ore is found
[7] Microsoft Word - m2413_en.doc (europa.eu)

they would incur huge costs in acquiring a mining license to mine copper[8] as well as acquiring land with copper ore deposits. As such miners of other metals cannot swiftly switch to producing copper in response to a permanent price increase of 5% to 10% in copper concentrate. It should be recalled that one of the indicators of effective entry is that it should be timely. Timely entry in this case is unlikely because of the reasons advanced above.

26. In terms of pricing, the London Metal Exchange (LME) largely dictates the price at which copper products can be sold across the globe. 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)[9].

27. Given the foregoing, the CID observed that copper concentrate can be distinguished from other copper products in the value chain and as such, there exists a separate market for the mining, processing and supply of copper concentrate.

Copper cathodes

28. Copper cathodes are high-quality copper products that are produced by refining copper ore through the electrolysis process. Copper cathodes are used as an input in various production processes: the production of copper rods (wire and cables), rolled copper products (e.g. tubes and sheets) and copper alloys (e.g. brass and bronze).

29. There exist two kinds of copper cathodes: high quality copper cathodes (copper content of at least 99.99%) and off-grade cathodes (copper content of less than 99.99%), the latter being cathodes of lower quality that have been rejected in the production process as failing to meet the required quality standards for high grade cathode. High quality copper cathodes are typically registered and traded on metal exchanges, the most important metal exchange being the London Metal Exchange (LME) which accounts for the majority of the volume of registered cathode. The other major metal exchange is the New York Commodity Exchange[10].

30. Copper cathodes are used as an input in the production of copper rods (wire and cables), rolled copper products (e.g. tubes and sheets) and copper alloys (e.g. brass and bronze). The degree of demand side substitutability of copper grades

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[8] 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.

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

[10] Case No COMP/M.4505 - Freeport-Mcmoran Copper & Gold / Phelps Dodge Corporation- m4505_20070220_20310_en.pdf (europa.eu)

differs depending on the intended end-use. For rolled copper products and copper alloys, A-grade and standard/off-grade copper metal is to a significant extent deemed substitutable. Copper rod production however requires a high degree of A-grade copper as impurities affect the integrity of the process of drawing cables and wires from copper rod. Whereas for the production of rolled copper products and copper alloys, standard/off-grade copper, can be deemed substitutable with A-grade copper, this may not be the case for the production of copper rods. Significant price differences also exist between A-grade and standard/off-grade. The production of wires from copper rods (which constitutes the vast majority of copper rod consumption) only allows to a very limited extent the use of standard/off-grade copper in the production process.

31. Generally, standard grade/off-grade copper is produced only in case of production disturbances, unintentionally and in small quantities. In view of this, they may not be needed for segmentation of the copper cathodes market on the basis of grades. Copper metal for the production of copper rods can nonetheless be considered to be in the same product market as that of other grades and end-uses and as such there is no need to segment the refined copper by grades. In ***Freeport- Mcmoran Copper & Gold / Phelps Dodge Corporation***[11], the EC also argued that it is not necessary to distinguish between high quality and off-grade cathodes as these two products belong to the same product market and are largely substitutable.

32. From a demand perspective, copper cathodes cannot easily be substituted for the other products along the copper processing value chain. For instance, copper cathodes cannot be substituted with copper concentrate, or other secondary products of copper. Copper concentrate and other secondary products of copper must be refined in order to produce the copper cathodes (refined copper). 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. Copper cathodes are not easily substitutable due to differences in physical characteristics, intended use and value.

33. The EC has previously defined relevant markets in relation to copper products. In ***Glencore/Xstrata***[12], the EC found that there were relevant product markets for (i) copper concentrate (ii) secondary copper products and (iii) refined copper. In ***BHP/ Billton,*** the EC defined distinct markets for (i) copper concentrate, and (ii) copper cathodes. The EC determined that copper products can be distinguished based on their distinct characteristics and uses.

[11] Case No COMP/M.4505 - Freeport-Mcmoran Copper & Gold / Phelps Dodge Corporation m4505_20070220_20310_en.pdf (europa.eu)*Ibid*
[12] Case No COMP/M.6541 - Glencore / Xstrata Microsoft Word - m6541-6(2).doc (europa.eu)

34. Based on the above, the CID considered that there exists a distinct market for the processing and supply of refined copper (or "copper cathode")[13].

Secondary copper products

35. Copper concentrate is transported to a smelter where the concentrate is melted and the copper is separated as a metallic sulphide, called matte, from the gangue material that contains iron and other materials. In the converter, copper matte is oxidised to produce 98% pure copper blister. This process also produces sulphur as a by-product, which is captured as sulphur dioxide and used to produce sulphuric acid for industrial purposes. The molten copper blister is then transported to an anode furnace, where it is further processed to produce 99.4% copper, which is cast into moulds to form copper anodes[14].

36. Mopani supplies secondary copper products such as anodes and blisters to one customer only, [redacted]. Copper blisters are impure copper blocks formed during the smelting process that contain a higher level of impurities compared to copper cathodes. Copper blisters are often further refined to produce copper anodes which are further refined to produce copper cathodes or subjected to additional processing to extract other valuable metals. There seems to exist a distinct product market for secondary copper products which would consist of copper blister, scrapes and anodes. Copper anodes can either be consumed internally or sold to third parties. Most competitors and customers of intermediate copper products consider that copper blisters and copper anodes are substitutable from a demand side perspective, in that they are all intermediate products for the production of copper metal. Secondary copper products i.e., copper blisters, anodes and copper scrap need prior treatment (depending on impurities) before they can be used. Even with regards to price, there is no significant price differences existing between these intermediate products[15].

37. Given the foregoing, the CID noted that the different types of copper products produced by the parties are distinguishable from one another and from other metal products. The CID considered that there exist separate markets for the different products in the value chain, consistent with its previous decision in ***Reunert/Metal Fabricators*** [16] where it defined the relevant markets for the supply of (i) copper rods, (ii) bare copper conductors, and (iii) copper strip in the Common Market. Further, in ***Eurasian Resource Group/ Eurasian Natural Resources***, the CID defined separate relevant product markets for the production of (i) refined copper, and (ii) unwrought copper alloys while in ***Lubambe/JCHX*** the mining and processing of copper concentrated was identified as a separate market. The CID observed that the determination of the relevant markets in these transactions was

[13] Case No COMP/M.2413 - BHP / BILLITON (see ECSC.1356)- Microsoft Word - m2413_en.doc (europa.eu)
[14] Ibid
[15] Case No COMP/M.6541 - GLENCORE / XSTRATA - Microsoft Word - m6541-6(2).doc (europa.eu)
[16] Case No. CCC/MER/05/11/2016 Reunert Limited & Metal Fabricators of Zambia plc (Reunert) CID decision issued on 22 November 2016

based on the lack of substitutability between the copper products that are distinguishable and have distinct uses from one another.

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

    i. **The mining processing and supply of copper concentrate;**

    ii. **The processing and supply of copper cathodes (refined copper); and**

    iii. **The supply of secondary copper products such as anodes and blisters.**

Relevant Geographic Market

39. 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"*[17].

Copper concentrates

40. The CID noted that Mopani sells a small proportion of copper concentrate to copper smelters as a by-product with its primary customer, [redacted]. The CID noted that by its nature, copper concentrate is a bulky and heavy-duty product. Copper concentrate contains about 20% to 45% refined copper. Further, it must be refined by smelters to produce refined copper (copper cathodes). In countries with low demand for copper concentrate, it can be exported to other neighboring countries. Countries with low copper ore reserves can also import copper concentrate. Most of the world's independent smelter/refinery are located in places where there is significant demand for copper, but where copper mining has become either impossible (exhausted ore reserves) or uneconomic such as Japan, China, South Korea and Europe[18].

41. The CID noted that Zambia has sufficient copper ore deposits and does not need to import copper concentrate for production of copper cathodes. Copper concentrate producing mines could export copper concentrate if they so wish. However, there is likely to be little incentive to export copper concentrate but rather sell it locally to smelters who then refine it into copper cathodes which is more lucrative and yields higher returns when exported. The CID further noted that

[17] Paragraph 8
[18] Case No COMP/M.6541 - GLENCORE / XSTRATA - Microsoft Word - m6541-6(2).doc (europa.eu)

copper concentrate is not the target's core product as a vertically integrated entity in the copper mining sector, with copper cathodes as its primary core product. The CID noted that the concentrate that is offloaded on the market by the Target is likely to be leftovers/excess of copper cathodes production.

42. From a demand perspective, it is unlikely that a significant number of smelters in Zambia would be able to substitute the purchase of copper concentrate from Zambia with purchasing copper from 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 Mopani wanted to switch to other suppliers, they are likely to opt switching to suppliers of copper concentrate in the vicinity of their mining plant for ease of transportation to their plant. Further, international customers who wish to purchase copper concentrates will normally opt to source it from depos near their smelter mines for ease of transportation.

43. The CID 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 (as is the case for [redacted] but sourcing Copper concentrate from Zambia), it is easier and more economical for the smelter to source the copper concentrate from companies located in their vicinity to avert high transportation costs given the bulky nature of the copper concentrate. Majority of customers are likely to prefer importing refined copper as opposed to sourcing copper concentrate from the international market for smelting into copper cathodes. However, if smelters are unable to source copper concentrate from mines located in their vicinity, they are likely to resort to sourcing the copper concentrates from international markets through imports. Further, exporting of copper concentrate from a copper producing country such as Zambia may be motivated by excess production of copper concentrate beyond the smelting capacity existing in the country in question. However, evidence suggests that this may not be done on a sufficient scale to support the definition of a global market for copper concentrate. It is reported that in 2021, Zambia produced over 880,000 metric tons of copper, an increase from around 869,000 metric tons in in 2020[19]. Further, Zambia is reported to have one of Africa's main copper smelting capacity, with a copper smelting capacity of 1.11 million tons[20]. This suggests that majority of copper concentrate produced in Zambia is likely to be processed within Zambia, thus limiting the geographic scope of the market to Zambia.

44. The CID considered that the geographic scope for the relevant market for copper concentrate is likely to be national or at least be the location where a copper mine exists given the cost limitations.

[19] https://www.statista.com/statistics/1330818/copper-production-in-zambia/, accessed on 3 July 2024
20 https://www.linkedin.com/pulse/brief-analysis-global-copper-mine-smelting-capacity-copperepc/ , accessed on 3 July 2024

Copper cathodes

45. The CID noted that the majority (about [redacted]%) of the copper produced by Mopani is used for the production of copper cathodes which are sold to major customers. [redacted] is the largest off taker and offtakes [redacted]% of the copper cathodes[21].

46. The CID noted that the geographic scope for the supply of refined copper (copper cathodes) is likely to be world-wide give copper cathode is a high value, globally traded commodity, and is traded on international markets such as LME and New York Commodity Exchange. Additionally, the CID noted that, based on Mopani's major customer Glencore based in Switzerland, copper cathodes are exported from Zambia to Switzerland with ease. Customers of refined copper such as Glencore, consider that no obstacles exist in purchasing refined copper from international markets. The CID also considered that most refined copper producers around the world export refined copper to different places. For instance, in 2022, Zambia exported USD 2.78 billion in refined copper, making it the 8th largest exporter of refined copper in the world. In the same year, refined copper was the 2nd most exported product in Zambia. The main destination of refined copper exports from Zambia were: Switzerland (USD 1.11 Billion), China (USD 384 million , Pitcairn Islands (USD 306 Million), Egypt (USD 212 Million), and Equatorial Guinea (USD 120 Million)[22]. The CID considered this as an indication that the geographic scope of the refined copper product goes beyond national markets.

47. The CID also noted that in ***BHP/Billton***, the European Commission ("EC") held that the relevant product market for the supply of refined copper to third parties was world-wide in geographic scope. In ***Glencore/Xtrata***, the EC held that, regardless of grade, the market for refined copper is worldwide in scope. The EC considered that no obstacles exist in purchasing refined copper from different parts of the world. The EC, however, left the market open as the proposed transaction did not give rise to any competition concerns on the market for refined copper under the alternative geographic scope of the market. The CID considered this as supporting the assertion of the geographic market for refined copper product to be broader than national.

48. Given the foregoing, the CID considered that the market for the supply of refined copper as likely to extend beyond COMESA and be as wide as globe. However, given the transaction was not likely to raise any competition concerns under any alternative market definition, the CID construed the relevant geographic scope for the market for refined copper to be at least COMESA-wide.

[21] [redacted]

[22] Refined Copper in Zambia | The Observatory of Economic Complexity (oec.world)

Secondary copper products

49. The CID considered that similar to the market for refined copper, the geographic market for secondary copper products can be held to be world-wide in scope[23], consistent with EC decisions, in ***Freeport-Mcmoran Copper & Gold/Phelps Dodge Corporationn***[24], ***Glencore / Xstrata***[25], and ***BHP/ Billiton***[26] where it was held that the geographic market relating to secondary copper products such as blisters and anodes is likely to be at least regional-wide.

Conclusion of Relevant Market Definition

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

    i. **The mining, processing and supply copper concentrate on the Copperbelt province of Zambia.**

    ii. **The processing and supply of copper cathodes (refined copper) in a geographic market which is at least COMESA-wide; and**

    iii. **supply of secondary copper products (anodes and blisters) in a geographic market which is at least COMESA-wide.**

Market Shares and Concentration

Manufacture and supply of copper concentrate

51. The CID considered the the parties submitted that the estimated market shares for Mopani and its competitors in the mining and processing of copper concentrate in Zambia as presented in table 2 below.[27].

Table 2 - Estimated Market Shares in the supply of copper concentrate in Zambia

Market Player	Percentage shareholding (%)
FQM Trident Limited	[30 – 40]
Kansanshi Mining Limited	[10 – 20]
Lumwana Mining Limited	[10 – 20]
NFC Africa Mining Plc	[0 – 10]
CNMC Luanshya Copper Mines Plc	[0 – 10]
Konkola Copper Mines Plc	[0 – 10]
Mopani Copper Mines Plc	**[0 – 10]**
Others	[0 – 10]
Total	**100**

[23] Case No COMP/M.2413 - BHP / BILLITON - Microsoft Word - m2413_en.doc (europa.eu)
[24] Case No COMP/M.4505
[25] Case No COMP/M.6541 - GLENCORE / XSTRATA
[26] Case No COMP/M.2413 - BHP / BILLITON (see ECSC.1356)
[27] CCPC Board Decision on the proposed merger between Mopani Copper Mines Plc ("MCM") and Carlisa Investment Corporation 2021

52. From the table above, the target's market shares in the supply of copper concentrate is [0 – 10]% 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 the pre- and post-merger CR3 is [redacted]% (FQM [redacted]% + Kansanshi [redacted]% + Lumwana [redacted]%). The CID considered this as an indication that the market is concentrated. However, the CID considered that 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, the CID noted that none of the three major players were party to the transaction at hand. The CID further noted that copper concentrate is not the primary business of the acquirer and accounts for only a small portion (about [redacted]%) of Mopani's business activities. Therefore, the CID considered that it was unlikely that anti-competitive conduct in the market for supply of copper concentrates will occur as a result of the merger. *Stricto sensu*, competition among the identified market participants is artificial in the short term as the sale of copper products is premised on long term off take agreements.

53. With respect to mining, processing, and supply of copper cathodes (refined copper), the CID noted that copper is one of the most used metals worldwide, and many of the largest mining companies are involved in its extraction from the earth. In 2022, the total global smelter production of copper stood at approximately 25.6 million metric tons[28]. Ten of the largest copper mining companies in the world are highlighted in the table below[29]:

Table 3- Largest copper mining companies (2022)

Name	Country	Copper production (Metric tons)
Freeport-McMoRan	Indonesia	1,530,000
Codelco	Chile	1,450,000
BHP	Chile, Peru	1,130,000
Grupo Mexico	Mexico	1,130,000
Glencore International AG	Switzerland, Australia, Chile, Congo	1,010,000
Zijin Mining Group	China	859,000
First Quantum Minerals	Zambia	776,000
KGHM Polska Miedz	Europe, Noth America and South America	733,000
Anglo American	Chile, Peru	664,000

[28] Global copper refinery production 2022 | Statista
[29] Top 10 Copper-producing Companies (Updated 2024) (investingnews.com)

Antofagasta	Chile	646,000
Others	Global	15,672,000

54. The global overview of the copper production market in Table 3 shows that there are several global producers of copper metal which may be an indication that the global copper market is highly competitive. As such, the market shares of the merging parties, beyond COMESA, are likely to be diminished and the merged entity is unlikely to acquire market power post-merger. It is unlikely that anti-competitive conduct in the markets for refined copper and secondary copper products will occur as a result of this transaction.

55. In its assessment of barriers to entry, the CID considered whether entry by new competitors or expansion by existing competitors may be timely, sufficient and likely to deter or defeat any attempts by the parties or their competitors to exploit the reduction in rivalry flowing from the transaction, whether through coordinated or non-coordinated strategies.

56. The CID considered that key barriers to entry into mining such as capital requirements, regulatory requirements, environmental requirements, resource scarcity and quality. The CID observed that the mining sector in Zambia has experienced recent entry and new investments such as the Anglo-American Plc earn-in- agreement with Arc Minerals in 2023, Chibuluma formation of joint venture with Kobold Metals in 2023, Lubambe Copper Mines Limited Fomation of joint venture with Novum Metals- 2022, among others. The CID considered this as an indication of entry being likely and that the barriers may not be significant to deter new entry. With respect to countervailing buyer power, the CID considered that this will be present given the presence of significant customers such as [redacted] and the presence of competitors both on the local and international markets.

57. The CID considered that the transaction will not confer upon the merged entity significant market power and unilateral concerns were not likely. Further, there will be no vertical overlaps between the parties and the transaction would not present any potential vertical effects.

Consideration of Third-Party Views

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

Determination

59. 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.

60. The CID, therefore, approved the transaction.

61. 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**