COMESA Competition Commission
COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 111 772 466/529/530
Email - compcom@comesacompetition.org

Common Market for Eastern and Southern Africa

Case File No. CCC/MER/03/13/2024

Decision[1] of the 110th Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of joint control of Cementis Madagascar by Gamma Civic Ltd and WH Investments Pte. Ltd

ECONOMIC SECTOR: Manufacturing (Cement)

COMESA COMPETITION COMMISSION * 20 OCT 2024

20 October 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 31 May 2024, the COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger involving merger involving Gamma Civic Ltd (**"Gamma")**, WH Investments Pte. Ltd (**"WH"**) (together the "**acquiring firms**") and Cementis Madagascar SA ("**Cementis**" or the "**target firm**"), 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.

The Parties

Gamma (the "acquiring undertaking")

1. Gamma is a Mauritian investment holding company which, through its subsidiaries, operates in various industries including cement manufacturing, construction, building materials, real estate, financial services, lottery and gaming technology and hospitality. The parties submitted that Gamma is active in two (2) COMESA Member States, namely Madagascar and Mauritius. In Mauritius, Gamma controls Kolos Cement Ltd (Mauritius), which is involved in the trade and distribution of cement in Mauritius. In Madagascar, Gamma, through Kolos Madagascar, imports bulk cement which it bags under the name Mafonja and supplies to customers in Madagascar. Kolos Madagascar sells imported bagged grey cement only.

2. The operations of Gamma in the Common market were submitted as highlighted in Table 1 below.

Table 1: Operations of Gamma in the Common market

Name	Business address	Commercial Activities
Madagascar		
Kolos Madagascar SA	Salone, Immo 112, Antananarivo 102, Madagascar	Cement Importation and sale
Mauritius		
Acacias Co Ltd	5th Floor Alexander House 35 Cybercity Ebene Mauritius	Investment
A.S. Burstein Management Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Lottery
Bitumen Storage Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Dormant
Boron Investments Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Dormant
BR Capital Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Property Investment
BR Hotel Resorts Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Property Investment
Broadgate Holding Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Dormant
Burford Development Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
Burford Investments Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Property Investment
Burford Property Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Property Investment
Burford Realty Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Property Investment

Cement Logistics Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Cement Manufacturing
Centreview Development Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Property investment
Gamma Asia Construction Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
Gamma Asia Investment Pte. Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Dormant
Gamma Capital Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
RedCircle Investment Ltd (Previously Gamma Cement Holdco Ltd)	Royal Road Chapman Hill Beau Bassin Mauritius	Dormant
Gamma Cement Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
Gamma Corporate Services Ltd	18 Bank Street Cybercity, Ebene 72201 Mauritius	Secretariat services
Gamma-Civic Construction Holdings Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
Gamma-Civic Construction Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Construction
Gamma-Civic Hotel Holdings Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
Gamma Construction Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Construction
Gamma Energy Holdings Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
Gamma Energy Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Dormant
Green Sparrow International Ltd (Previously Gamma FinTech Holding Ltd)	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
Gamma Land Ltd	C/O Gamma Civic Ltd 4th Floor, HSBC Centre Ebene Mauritius	Investment
Gamma Materials Ltd	Industrial Zone, Le Hub, Phoenix Mauritius	Building materials
GammaTech Ltd	18 Bank Street, Cybercity, Ebene 72201 Mauritius	I.T. Application
Gamma Treasury Management Limited	18 Bank Street, Cybercity, Ebene 72201 Mauritius	Treasury
Gammafin Resource Management Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Dormant
Gamma Leisure Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
Govenland Co Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Property Investment
Glot Holdings (Mauritius) Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment

COMESA COMPETITION COMMISSION
20 OCT 2024

Glot Management Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
Infina Investment Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Real Estate
Insignia Leisure Resorts Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Dormant
Kolos Building Materials Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Retail sales of cement
Kolos Cement Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Cement Manufacturing
Kolos International Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Investment
Insignia Resorts Ltd	Royal Road Chapman Hill Beau Bassin Mauritius	Dormant
Lottotech Ltd	Bank Street, 18 Cybercity, Ebene 1704-01 Mauritius	Lottery
Loterie Vert Ltd	Bank Street, 18 Cybercity, Ebene 1704-01 Mauritius	Lottery
Ludgate Investments Ltd	Cybercity, Ebene Mauritius	Real Estate
Maurilot Investments Ltd	Royal Road, Beau Bassin, Mauritius	Investment
Natlot Investments Ltd	Royal Road, Beau Bassin, Mauritius	Land Promoter and Property developer
Osterley Investments Ltd	Royal Road, Chapman Hill, Beau Bassin Mauritius	Dormant
Pool Joseph Merven Ltd	Bank Street, 18 Cybercity, Ebene 72201 Mauritius	Lottery
Princegate Holdings Ltd	Cybercity, Ebene Mauritius	Real estate activities
Regency Realty Ltd	Royal Road, Chapman Hill, Beau Bassin Mauritius	Dormant
RHT Media Ltd	Royal Road, Chapman Hill, Beau Bassin Mauritius	Consultancy
Star Cement Ltd	Royal Road, Chapman Hill, Beau Bassin Mauritius	Investment
Traxx Ltd	Royal Road, Chapman Hill, Beau Bassin Mauritius	Trading
Westbourne Properties Ltd	Royal Road, Chapman Hill, Beau Bassin Mauritius	Property Investment
Westview Realty Ltd	Royal Road, Chapman Hill, Beau Bassin Mauritius	Property Investment
Jasiri Investment Ltd	Rue De L'institut, C/O Aaa Consulting Services Ltd, 4th Floor, Iconebene, Ebene, 80817, Mauritius	Financial services
CG Re (Africa) Ltd	Rue De L'institut, C/O Aaa Consulting Services Ltd, 4th Floor, Iconebene, Ebene, 80817, Mauritius	Re-insurance broking
Morning Light Co. Ltd	Rue De L'institut, C/O Aaa Consulting Services Ltd, 4th	Hospitality

	Floor, Iconebene, Ebene, 80817, Mauritius	

WH (the acquiring firm)

4. WH is an investment holding company incorporated in Singapore with interests in various industrial entities including those in the production and distribution of cement and cement products. WH has no activities in the Common Market. The parties submitted that WH will undertake the investment in the target through a special purpose vehicle known as Cemindo Investments Pte. Ltd. For completeness, the parties also submitted that WH owns a [redacted]% minority non-controlling stake in each of Kolos Cement Ltd (Mauritius) and Kolos Madagascar SA (Madagascar)[2].

Cementis (the "target firm")

3. Cementis is a Malagasy entity which is involved in the manufacture, importation and supply of cement. Cementis quarries and mines products such as limestone and pozzolana which it uses for the manufacture of cement which it bags and sells. The cement production of Cementis accounts for approximately [redacted]% of its total cement sales in Madagascar.

4. The parties submitted Cementis supplements its locally produced cement with imported bulk cement from Pakistan and Vietnam and this accounts for approximately [redacted]% of its sales of cement in Madagascar. The parties further submitted that Cementis puts imported bulk cement through an additional step, a blending process in which certain raw materials such as fly ash are added to the cement. Once the blending process is complete, Cementis sells [redacted]% of the cement in bulk to one (1) customer, and the rest is bagged for sales to customers.

5. The parties submitted that the target firm directly and indirectly controls other entities in Madagascar, which together with the target are referred to as the target group. The entities controlled by the target firm are presented in table 2 below.

Table 2: Activities of the Target Group in Madagascar

Name	**Activities**
Binastore SARLU	Selling of cement and other construction materials
Chaumad Finance S.A.R.L.	Holding company
Chaux de Madagascar S.A.R.L.	Production of building materials, especially lime
Cementis Madagascar Immobilier S.A.R.L.	Acquisition and management of real estate

[2] Parties claimed confidentiality on this information

Jurisdiction of the Commission

5. 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".

6. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived value of asset of more than the threshold of USD 50 million in the Common Market and they each derived a turnover 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 turnover or asset value in one and the same Member State. 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

7. The proposed transaction entails the joint acquisition by Gamma and WH of 99.99% of the share capital in Cementis. Gamma and WH, through a special purpose vehicle known as Ciment de Madagascar S.A.R.L, have agreed to jointly acquire 99.99% of the issued share capital of Cementis Madagascar SA.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

8. 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".

9. The CID observed that the merging parties are both active in the cement industry. The acquiring firm, Gamma through Kolos Madagascar, imports and sells bagged grey cement exclusively at wholesale level. The target, Cementis Madagascar, imports bulk cement which it blends and bags (at its plant located at the port of Tamatave) before selling through distributors and other different range of customers. The cement sold by target is bagged grey cement at wholesale level. It is also noted that the target supplies bulk cement to a single customer, on demand. Further, the target also produces cement from locally sourced raw materials at its Ibity plant. The CID observed that neither of the parties are active in the downstream construction market.

10. The CID noted that the transaction is both a horizontal and vertical merger given the activities of the parties. The CID hence focused on the different segments where the parties are active, namely manufacturing, importation and sale of cement, whether in bagged form or bulk.

Manufacture and supply of cement

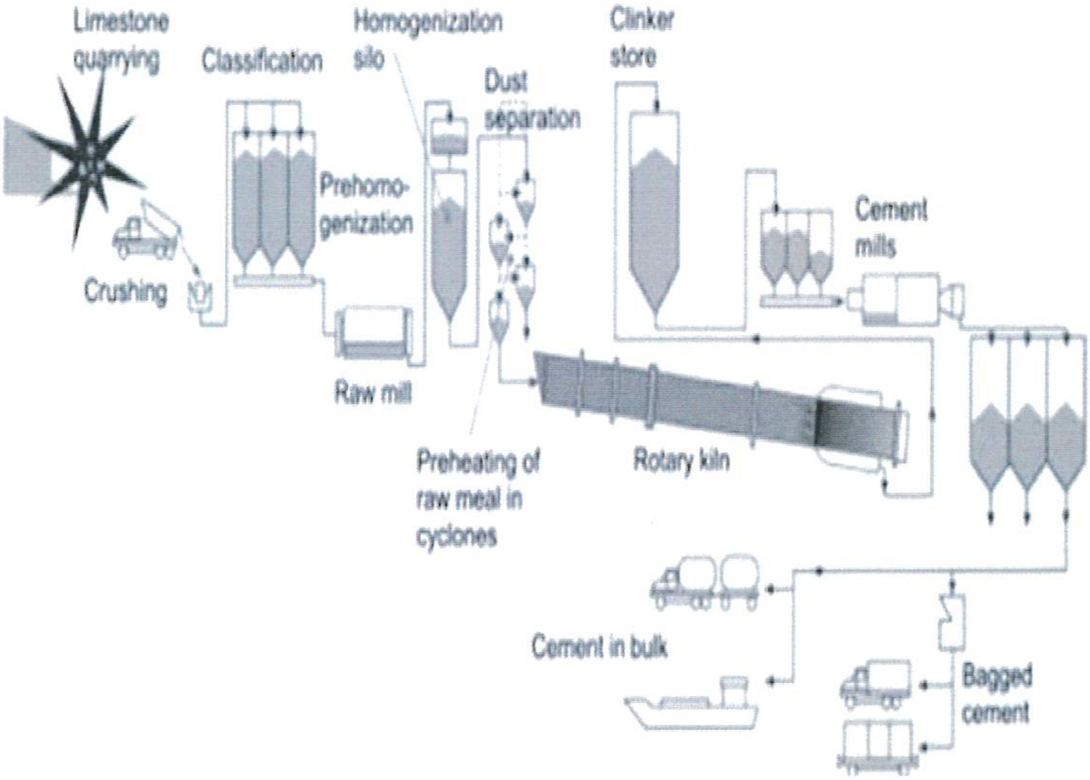
11. Cement is a fine powder produced from limestone, alumino-silicate and other constituents which is used in the building and construction sector because it has a superior power to harden once mixed with water, and to bind other materials for stability and strength[3]. Cement plays a pivotal role in various construction sectors public, residential and commercial construction works by acting as a binder, facilitating the adhesion of materials to one another. It is extensively utilized to produce mortar for masonry work and concrete. Additionally, cement serves as an essential intermediary in the manufacturing of ready-mixed concrete, pre-cast concrete products, and mortar, making it indispensable in construction projects[4].

12. Cement that is produced using limestone as the main raw material is known as Portland cement. The raw materials used for producing Portland cement (calcium carbonate, silica, alumina and iron ore) are generally extracted from limestone ore. These raw materials are then put through a grinding and burning process. Very fine grinding produces a fine powder (raw meal), which is preheated and then sent to the kiln where the material is heated to 1500 degrees Celsius and then suddenly cooled using bursts of air. This process produces marble-sized pellets called clinker which is the basic material required for the production of all cement types. Cement is produced by grinding clinker and gypsum (regulates how the cement will set) or alternative cementitious materials. Alternative cementitious materials refer to substances other than clinker that have cementitious, or hydraulic binding

[3] Case No Comp/M.7750 – CRH/Holcim Lafarge Divestment Business
[4] See Case No Comp/M.7009-Holcim/Cemex West, para 24.

properties and that are used as supplementary materials in the production of cement and concrete. The most common alternative cementitious materials are fly ash (a by-product of coal combustion in thermal power plants), pozzolana (a volcanic powder which contains silica and aluminous in a reactive form) and blast furnace slag (a by-product in the production of iron). Clinker is however the main ingredient in the production of cement, produced at high temperatures from limestone and other constituents in cement kilns. In some cases, mineral components and other cementitious materials are added to the mixture by either grinding them together with clinker or blending separately ground materials together. The figure below shows the production process of cement[5].

Figure 1: production process of cement[6]



13. Cement can be supplied in two forms, namely white cement and grey cement, the main difference being the quality of limestone used in the production process. The limestone to produce white cement is of a higher grade. White cement is manufactured by using raw materials which are free from iron and oxide. White cement has lime and clay in a higher proportion and is more expensive than ordinary Portland cement. In terms of usage, white cement is mostly used for architectural beauty, interior, and exterior decorations, floorings, ornamental

[5] m7550_20150424_20310_4250723_EN.pdf (europa.eu)
[6] m7550_20150424_20310_4250723_EN.pdf (europa.eu)

concrete products, whereas the grey cement is mostly used for construction purposes such as bridges, buildings and others[7]. White cement is reported to be more expensive than grey cement as a result of "*higher selectivity of the raw materials and the increased production complexities involved*"[8]. It can hence be concluded that there exist distinct markets for white and grey cement. It is noted that both parties are only involved in the supply of grey cement, hence the focus in the assessment is limited to grey cement.

14. Within grey cement, there are several classes available and further grades can be produced according to customer requirements. Cement classes are defined by strength development and setting times, which are in turn determined by the proportions and nature of the different raw cementitious products used to make that cement type[9]. The EU standard EN 197-1 defines five classes of common cement that comprise Portland cement as a main constituent as shown in the table below.

Table 3: Classes of common cement[10]

Class	Type	Characteristics
CEM I	Portland cement	Comprising Portland cement and up to 5% of minor additional constituents
CEM II	Portland-composite cement	Portland cement and up to 35% of other single constituents
CEM III	Blast furnace cement	Portland cement and higher percentages of blast furnace slag
CEM IV	Pozzolanic cement	Portland cement and up to 55% of pozzolanic constituents (volcanic ash)
CEM V	Composite cement	Portland cement, blast furnace slag or fly ash and pozzolana

15. Other than the classification in the table above, cement is also categorised by strengths. Cement strength is determined by the varied tests done on the mortar and concrete cubes at specified intervals of 2 days, 7 days, and 28 days of hardening. There are three main strength classes for cement: 32.5, 42.5 and 52.5

---

[7] *Ibid.*

[8] Global Cement, White Cement Review, accessed at https://www.globalcement.com/magazine/articles/890-white-cement-review. In particular, it was stated that for white cement, "*the iron oxide and iron sulphate content in the limestone must be as low as possible as each 0.1% increase in iron oxide reduces cement reflectivity by 2.5%, producing darker cement. To ensure that all of the raw materials are fully converted in the kiln in the absence of iron oxide, mineralisers are added and higher temperatures are used, which uses more fuel. Additionally, the white clinker must be cooled rapidly, often with water, to prevent the oxidation of trace iron impurities that would darken the cement*", which makes white cement more costly to produce.

[9] Anglo American PLC and Lafarge S.A. A report on the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.

[10] *Ibid*

followed by an R or N. The R refers to rapid or early strength development and the N to normal or standard strength development. While 32.5 is the low strength, 42.5 is the middle strength, and 52.5 is the highest strength as highlighted in the table below[11].

Table 4: Categories of cement according to strength and use[12]

Category	Characteristics	Uses
32.5	Low strength	Typically used for applications where a high initial strength is not needed, at average ambient temperatures (10 – 15°C) and with constructions of standard thicknesses
42.5	This is a stronger class of cement, able to withstand higher pressures and loads.	This class of cement should be used when a higher initial strength is needed during the curing phase; mainly to support the weight of a heavy structure. This type of cement is used for heavy structure like dams, high rise buildings, bridges. It is most often used in buildings that require the compressive strength of concrete at 28 days exceed 30 N/mm², while also being suitable for use in lower temperatures.
52.5	This is the highest strength	Used for structures where a higher initial compressive strength is required. e.g. for the rapid stripping of prefabricated elements.

16. Most cement companies use both CEM I to CEM V and 32.5N to 42.5N classes when categorising their cement. For instance, a cement bag may be labelled as CEM I, 32.5 N, to indicate that it is ordinary cement comprising Portland cement and up to 5% of minor additional constituents and that it has low strength.

17. Cement is largely a homogenous product in the sense that the production process is similar across all producers in the industry[13]. It is homogenous in composition due to quality-assured production and material-handling processes. Therefore, the production and supply of cement may broadly be considered as a single relevant market. However, segmenting the broad market is possible according to the different strengths and applications of cement[14]. Most cement manufacturers produce all the various grades of cement. The CID observed that the primary distinction among various grades of cement lies in their properties, applications,

---

[11] Cement Strength Classes and What They Mean - Reinforcing Steel Contractors
[12] *Ibid*
[13] https://unctad.org/system/files/non-official-document/CCPB_RPP2014_Study_Cement_ACF_en.pdf, accessed on 16 February 2024.
[14] https://www.structuralguide.com/classification-of-cement/.

and constituent materials utilized in their production. Cement is thus categorized based on the strength it attains and its setting times, characteristics that are indicative of its grade or classification, and its intended application. For example, rapid-setting cements are preferred in rapid-paced construction projects due to their early strength development.

18. The CID noted that the target only produces cement of 22.5 type.

19. From a supply perspective, the CID considered that substitution in the production and supply of the various classes/grades is likely to be possible due to the flexibility inherent in manufacturing processes. Producers are likely transition between different cement classes/grades, without incurring significant costs since the same production technologies and machinery will be used to allow producers manufacture the various types of cement. The significant degree of supply-side substitutability among different classes/grades of cement suggests that in the event of a SSNIP ranging from 5 to 10%, cement producers would be capable of transitioning to the production of alternative cement grades without incurring substantial costs.

20. From a demand side, consumer behaviour in the cement market may be influenced by various factors. Consumers, particularly individual or retail customers, may prioritize price over technical differences or cement grades when making purchasing decisions[15]. This inclination towards price sensitivity is mainly evident in smaller construction activities or home improvement tasks. However, in cases where projects entail specific technical requirements or demand adherence to stringent quality standards, consumers may exhibit a willingness to invest in higher-grade cement, even at a premium price. Moreover, in commercial or industrial settings characterized by more rigorous construction specifications, while price remains a consideration, it typically does not serve as the sole determining factor in the purchasing decision.

21. The CID recalled its previous decisions[16] where it considered a mixed approach of either defining the production and supply of cement broadly or segmenting according to the various grades supplied by the merging parties. The CID observed that the European Commission (EC)[17] has taken the approach of not further segmenting the market according to grades or classes (32.5 to 52.5 and CEM I to CEM V), mainly since such distinction did not have an impact on the outcome of the competitive assessment.

---

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

[16] See Case File No. CCC/MER/8/35/2022, Barak Asset Recovery Limited and Seruji Limited; Case File CCC/MER/01/03/2024, National Cement Holding Limited and Cimerwa Plc

[17] m5476_20090717_20212_en.pdf (europa.eu)

22. In the current case, the CID considered that the manufacturing and supply of cement comprises a separate market and it is justified to leave this market as broad considering that any alternative narrower market definition will not change the competitive assessment. **Therefore, the CID identified the upstream market as the manufacture and supply of grey cement**

23. The CID recalled that Cementis sells bagged cement through distributors and also sells its cement to certain construction companies/contractors, retailers and specialized shops while Kolos Madagascar sells bagged grey cement exclusively at the wholesale level through distributors. As stated earlier, Cementis has sold 3% of its cement in bulk after the blending process. The sale of cement at wholesale level, either as bagged or bulk are additional parameters on which basis the market for the sale of cement can be further segmented. Further, the grade at which the cement is sold at wholesale or as bagged/bulk may further be another parameter for segmenting the market since the sale would be targeting customers/users who may have different preferences in terms of what the cement is intended to be used for.

Sale of cement as bagged or bulk

24. According to the Secretariat's interviews with several distributors in Madagascar, it was confirmed that distributors such as building material retailers source bagged cement from the merging parties which they sell to final users at the retail level. Wholesale and retail sale of cement should be distinguished. Wholesale buyers often buy a substantial amount of cement for further resale or for use in big projects. This should be distinguished from retail buyers who may buy a few bags of cement for their own consumption. Wholesale buyers tend to benefit from volume discounts given the purchase of a substantial amount of cement from the manufacturer but this may not be the case for the end consumer of cement. The Secretariat's investigation indeed confirmed that the customers from the merging parties, can get volume discounts for their purchases from the merging parties. On this basis, sale of cement at wholesale level is considered to comprise a separate market from retail level as such the focus of this assessment is limited to sale of grey cement at wholesale level.

25. Bagged and bulk cement can be distinguished on account of the packaging and means of supply. Bagged cement, containing utmost 50 kilograms of cement, are often sold at building material retailers while bulk cement is mostly delivered to customers through trucks. The EC has deliberated on segmentation of the relevant market and considered that the market for grey cement could be further segmented according to whether grey cement is sold bulk or bagged. This is because additional investment will be required to switch production from bulk cement to bagged cement if there is no bagging and palletising installation in place, and the lead times to complete the investment were estimated at up to 36 months. Secondly, from the

demand-side perspective there appear to be differences in terms of customers, prices and performance. Nearly all the customers that responded to the market investigation will be unable to switch from bagged to bulk cement (and vice versa). The EC however left open the precise product market definition in that respect[18].

26. In the current case, The CID noted that the acquirer supplies only bagged cement while the target supplies both bulk and bagged cement with majority of its supplies (i.e., 97%) being bagged cement. The CID considered it relevant to segment the sale of grey cement market as either bulk or bagged noting that the competitive assessment may be altered since the entry requirements in each of the segments are not the same. For instance, the target which is a cement manufacturer that already sells bulk cement may have a competitive advantage over other players that are not involved in the sale of bulk cement. On a cost saving basis, manufacturers of cement are in a far better position to supply bulk cement compared to players that are not active in manufacturing of cement, i.e., entities importing cement. Further the CID noted that the customers for bagged and bulk cement are not the same. The CID considered that a customer for bulk cement is more likely to switch its purchases to bagged cement while the reverse is not likely.

27. On this basis, the CID considered that the market for grey cement should be further segmented into bulk and bagged cement. Noting that the target is active in the sale of grey cement at wholesale level either as bulk or bagged and further that the grade of cement demanded by the final user may influence the purchases the distributors make from cement suppliers, the following additional relevant markets are identified:

- ***The sale of various grades of bagged grey cement at wholesale level; and***
- ***The sale of bulk grey cement at wholesale level.***

Relevant Geographic Market

28. The COMESA Competition Commission Guidelines on Market Definition define the relevant geographic market in Paragraph 8 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*".

29. The geographic scope of the market for cement is largely determined by transportation costs as cement is a heavy product to transport, which affects the

[18] m7744_3373_3.pdf (europa.eu) Case M.7744 - HEIDELBERGCEMENT / ITALCEMENTIC

radius within which a typical cement plant is competitive. The parties submitted that they are involved in the production, importation and sale of grey cement in Madagascar. The parties submitted that the target is the only entity in Madagascar, which is involved in the production of cement locally, which it bags and sells and which accounts for approximately 30% of its total cement sales. For the remainder of its sales (approximately 70%), the target supplements its locally produced cement with imported bulk cement. Once the blending process is complete, the target makes its sales of the bagged cement to retail customers through its depots in Madagascar.

30. The EC has considered that the geographic market for grey cement consists of a group of geographic markets centred on different cement plants, overlapping one another. The scope of the relevant geographic market was determined by the distance from the plant at which cement may be sold, which influences the transport costs. Transport costs depend on a variety of factors including the availability of transport infrastructure and modalities (such as highways, shipping routes, railways or storage terminals) as well as the topography of the respective region[19].

31. Similarly, in ***Taylor Smith/Holcim***[20], the CID considered that the geographic scope of the market for cement was largely determined by transport costs as cement is a heavy product to transport. In this respect, the CID noted that since the parties' activities overlapped in Comoros, Mauritius, Madagascar and Seychelles and the remote geographic location of these Member States could restrict the ability of the wholesale and retail customers to source cement from regional suppliers, the relevant geographic market was thus determined as national (specifically, Comoros, Madagascar, Mauritius and Seychelles).

32. The CID noted that there are significant trade flows of cement across certain Member States in the Common Market[21], such as across the borders of Kenya-Uganda, Malawi-Zambia, and Rwanda-Uganda, given the relatively close geographic proximity of these countries and the fact that cross-border trade of cement benefits from tax exemptions under the COMESA trade liberalisation programme[22]. The CID noted that the geographic scope for the identified relevant product markets is likely to be narrower due to limitations of transportation costs as cement is naturally heavy to transport. However, advancements in technology and infrastructure have significantly expanded the distance over which cement can be competitively transported[23], allowing for more efficient and cost-effective delivery to distant markets. Consequently, the relevant geographic market is likely to be

---

[19] m7744_3373_3.pdf (europa.eu) Case M.7744 - HEIDELBERGCEMENT / ITALCEMENTI
[20] CCC/MER/07/19/2021 Taylor Smith Investment Limited and Holcim Limited
[21] https://www.comesa.int/wp-content/uploads/2021/01/2019-Annual-Report_online.pdf, discussing cement among main products for intra-COMESA trade.
[22] See Case File No. CCC/MER/8/35/2022, Barak Asset Recovery Limited and Seruji Limited.
[23] See Case File No. CCC/MER/8/35/2022, dated 18 November 2022.

broader than national. However, it is worth noting that the geographic reach of intra-COMESA exports for cement is predominant between those Member State sharing borders. This may imply that proximity plays a critical role of facilitating such trade. Therefore, given that the proposed transaction entails the acquisition of control of an entity operating in Madagascar and following the parties' submissions that the cement they produce, and import is supplied only in Madagascar, it can be held that the geographic scope for the relevant markets is Madagascar.

Conclusion on Relevant Markets

33. Based on the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant markets were identified as follows:

    a) The manufacture and supply of grey cement in Madagascar;

    b) The sale of various grades of bagged grey cement at wholesale level in Madagascar; and

    c) The sale of bulk grey cement at wholesale level in Madagascar.

Market Shares and Concentration

34. The parties submitted their market shares and those of their main competitors, for the cement market in Madagascar for the years 2022 and 2023, as per the table below.

Table 5: Estimated Market shares for the supply of grey cement[24]

Competitors	***Estimated Market shares year 2022 (%)***	***Estimated Market shares year 2023 (%)***
Cementis Madagascar	***[25 – 30]***	***[22 – 27]***
NS Enterprise (Lucky Cement)	[18 – 23]	[26 – 31]
Kolos Madagascar	***[5 – 10]***	***[1 – 5]***
ETS ENAC (Global Cement)	[4 – 9]	[8 – 13]
ETS SS (Power Cement)	[1 – 4]	[2 – 7]
Others	[19 – 24]	[12 – 17]
Total	**100**	**100**

35. From the above, the CID observed that in 2023, Cementis had market shares of [22 – 27]% and post-merger, there will be a market share accretion of [0 – 5]%, with the merged entity enjoying a market share of [25 – 32]%. The transaction will result

[24] Confidentiality of information claimed by the parties.

in reduction in the number of head-to-head competitors from 5 to 4 market players in the market for cement in Madagascar. The CID also considered the three-firm market concentration ratio (CR3) for the manufacture of cement in Madagascar based on 2023 market share as follows:

Pre-merger

Lucky Cement ([redacted]%) + Cementis ([redacted]%) + Kolos Madagascar ([redacted]%) = [65 – 71]%

Post-merger

Merged Entity ([redacted]%) + Lucky Cement ([redacted]%) + Global Cement ([redacted]%) = [71 -76]%

36. Based on the market share accretion and the concentration levels post transaction, the CID observed that competition concerns could arise from the proposed transaction. The CID formed this observation on the basis of Section 8 of the COMESA Merger Assessment Guidelines which states that the Commission ",,, *is unlikely to find concern in horizontal mergers, be it of a coordinated or of a non-coordinated nature, where the market share* post-merger of *the new entity concerned is below 15% and the sum of the market shares of the top three firms is less than 70%.*" The CID noted that post transaction the merged entity will have market share of [25 – 32] % and the market concentration for manufacture of cement will be [71 – 76]%.

37. The CID observed the changes in the market shares from 2022 to 2023 and noted some market dynamism in the year 2023. The CID noted that the suppliers of Lucky Cement, which is priced lower than the cement of the target has seen an increase in its market shares.

38. In view of the market share accretion, combined with the reduction in the number of competitors that will remain on the market post-merger, the CID assessed whether the transaction could create unilateral effects and/or coordinated effects in the cement market in Madagascar. The CID considered that the transaction may raise both non-coordinated and coordinated effects which are further assessed below.

Barriers to Entry/Exit

39. The CID considered that the cement market in Madagascar has no significant barriers to entry. The CID noted that a potential entrant is required to incorporate a trading company in Madagascar which takes about two (2) weeks and costs approximately USD 417. Additionally, a potential entrant must factor in the cost of cement, cost of depots and warehouse, sales and back-office teams and entry into transport contracts with logistics and transport companies which is approximately USD 40,000 annually. Further, other considerations include transportation of the cement from the port to a warehouse which is the most significant operational cost

in the market which is estimated to be USD 116,000 annually. Notably, warehouses are easily available, and the term of the lease depends on the needs of the market player. In terms of access to financing, a potential entrant with a good business case can easily access capital through foreign or local debt or equity investments.

40. The CID observed that there are no regulatory requirements for the importation of both bagged and bulk cement and as such a potential entrant in the market for importation of cement does not need to apply for and procure a specific license to import cement. In addition to the costs set out above, the CID noted that a potential market participant which intends to import bulk cement for local bagging must incur costs such as the machinery used for unloading the cement at the port and the machinery used for blending the cement which is approximately USD 1,254,206; cost of the raw materials such as fly ash for blending of the bulk cement prior to bagging which is approximately USD 591,000 annually; cost of the packaging materials for purposes of bagging cement which is approximately USD 1,900,000 annually. In addition, cost of the machinery used for bagging the cement is approximately USD 238,483; and if applicable, cost of additional warehousing or storage facilities which is approximately USD 165,000 annually.

41. The CID observed entrants in the relevant market for the past three (3) years as follows:

Table 6: new entrants in the cement market in Madagascar during the last 3 years

Entrant	Entry Date	Exit Date
Raysut (FOSA Cement)	March 2020	June 2020
ETS SS/Power	July 2020	Active
Kolos Madagascar (Mafonja Cement)	September 2021	Active

42. The CID recognized that entry into the cement market is possible at different levels, namely on the importation and sale of bagged cement and manufacturing and supply of cement and this has been corroborated by information gathered during the stakeholder's consultations. With respect to the importation and sale of bagged cement, it is considered that entry is likely and may occur timely given the limited restrictions to entry. This is corroborated from the Commission's onsite investigation which confirmed the presence of imported bagged cement on the market where companies do not face onerous requirements to operate.

43. With regards to market for manufacturing and supply of cement, it is considered that entry is not likely and may not occur timely given entrants require to have access sufficient raw materials (limestone), sufficient capital, have high economies of scale and set up a manufacturing plant. Such barriers may limit the number of

new entrants in the upstream market for manufacturing and supply, thus impede the timeliness of entry or expansion. Timely entry is essential for thwarting anti-competitive strategies by incumbent firms. Hence, the capital-intensive nature and extended timelines associated with cement manufacturing suggest that timely entry may be hindered.

44. The CID however noted that entry is likely especially through other segments of the market such as importation and this is likely to be sufficient and offer competition constraint to the merged entity. This is further justified by the fact that even the target entity, Cementis Madagascar, only has [redacted]% of its supply in Madagascar while the remaining [redacted]% is imported and supplied on the market after blending and bagging. It is also noted from the Table 6 above that there has been entry in the cement market in Madagascar in the last 3 years including by the acquirer, Kolos Madagascar in September 2021, which suggests that entry into the relevant markets is likely to occur in a timely manner to pose an effective constraint on the existing players.

45. The CID held the view that the transaction is not likely to heighten barriers to entry into the relevant markets.

Countervailing Buyer Power

46. Countervailing buyer power is the ability of an individual customer or a group of customers to use their negotiating strength to limit the ability of a merged entity to abuse its market power such as by raising prices and thus affecting competition in the relevant markets. The existence of countervailing power in the relevant markets may be a factor to consider in determining whether or not a merger is more likely to give rise to substantial prevention and lessening of competition.

47. The possibility of customers switching demand from the merged entity to alternative suppliers' post-merger may be one factor that confirms the existence of countervailing buyer power. However, the mere existence of a group of customers post-merger is not enough to confirm the existence of countervailing power after the merger. Therefore, the assessment of countervailing power needs to consider if the transaction impacts the continued existence of customers.

48. The CID observed that customers in the market have significant countervailing power due to the similarity of products sold by the market players. The parties submitted that should there be a small but permanent increase in price, the customers can easily switch to other products of competing players. The parties submitted their top five customers in Madagascar as well as the sales attributable to them as shown below.

COMESA COMPETITION COMMISSION
29 OCT 2024

Table 7: Top five customers of the merging parties in Madagascar and their value of sales[25]

Party	Name of Customer	Value of sales (USD)
Acquirer	Societe De Metallurgie De L'ocean Indien	[redacted]
	Mico Commerce SARL	[redacted]
	Auto Kams Madagascar	[redacted]
	Enterprise Mahavantana	[redacted]
	Cemento SARL	[redacted]
Total sales		[redacted]
Target	Q.De La Rn1 126	[redacted]
	Enterprise Mahavantana	[redacted]
	Vivato D° Sarlu	[redacted]
	Auto Kams Madagascar	[redacted]
	Q.Sariaka	[redacted]
Total sales		[redacted]

49. Based on above table, the CID noted that the top five customers of the acquirer account for approximately 39% of the acquirer's total sales in Madagascar[26]. The CID also considered that the top five customers of the target account for approximately 33% of the target's total sales[27]. It is noted that the biggest customer of the target, Enterprise Mahavantana, only accounts for 9% of total sales of the target. This gives the indication that the top five customers of both the acquirer and target may not have sufficient countervailing power as to influence the decisions of the merging parties. Further, even if the largest customer of the target entity decided to stop purchasing its cement from the target, the target will still have sales from the remaining four major customers as well as the remaining approximately 70% of sales made from other smaller customers. It can hence be said that customers in the relevant market may not have sufficient countervailing power as to limit the ability of the merged entity to abuse its market power. The CID also noted that based on the reduction in competition and the increase in concentration levels that will be resulting from the proposed merger, the countervailing power, if

[25] The parties claimed confidentiality on this information

[26] Total sales made by the acquirer in Madagascar are indicated in table 7

[27] Total sales made by the target in Madagascar are indicated in table 7

any, possessed by the customers may be reduced following the implementation of transaction.

50. However, following engagements with the relevant stakeholders in Madagascar, the CID observed that the relevant markets have alternative suppliers of cement especially imported cement which will still give a competitive constraint to the merged entity in the event of any strategy to abuse its market power. For instance, it was observed that imported brands of cement such as Lucky cement are available on the Madagascar market which offer alternative supply to cement by the merged entity.

Consideration of Dominance/ Unilateral Effects

51. Unilateral effects may arise where the merged entity finds it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities. pre-merger, any increase in the price of one of the merging parties' products could lead to a diversion of its sales to the other party (depending on the extent of competition between them). However, post-merger the competitive constraints that each firm imposed on the other is eliminated which may provide incentives for the merged entity to increase prices.

52. For unilateral effects to occur, the merged entity must hold a dominant position. A dominant position characterized by economic strength that allows the merged entity to significantly influence market competition independently of its competitors, its customers, and, ultimately, consumers.

53. In the year 2022, pre- merger, the target and acquirer were generally competitors in the cement market. The target entity is a market leader holding market shares of [redacted]% and the acquirer competes with the target and holds market shares of 10%. Post-merger the transaction will lead to the elimination of a direct competitor. This entails that the transaction will significantly enhance the merging parties' market position, with an accretion of [redacted]% in 2022 and [redacted]% in 2023. Post-merger, the merged entity will be a market leader that will possess economic strength that can allow it to significantly influence market competition independently of its competitors.

54. The CID noted that based on the significant market shares that will be held by the merged entity post transaction, leading to an increase in the market power of the merged entity, the merged entity may find it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities. Pre-merger, any increase in the price of cement by one of the merging parties could lead to a diversion of its sales to the other party. However, post-merger the competitive constraints that each firm imposed on the other will be eliminated which may provide incentives for the merged entity to increase prices. Prior to a merger, the merging firms compete with one another and with other competitors on price,

quality and innovation. Post-merger, the merging firms will internalise the effects of any strategic decisions on the overall profits of the merged entity rather than their individual profits, which may change their incentives. Any changes in the merging firms' incentives may lead to higher prices, lower output, lower quality or less innovation by the merging firms. Changes in the merging firms' incentives may also lead to strategic actions by the merged firms' competitors as they respond to the changed landscape of the industry.

55. The CID however observed that the while the transaction results in the direct removal of a competitor and an increase in market concentration, the presence of alternative suppliers of grey bagged cement particularly from imports will continue to offer a competitive constraint as the entry in this market is not prohibitive more so that even the merged entity imports a substantial amount of its cement which is processing and bagged at the port. With regards to imported bagged cement, there is no strict regulatory requirements and cement is offloaded straight on trucks at the port.

Consideration of Vertical Effects

56. For vertical effects to arise, it should be the case that the vertical integration between the parties in the market results in an appreciable adverse effect on competition. Vertical effects are likely where the parties have substantial market shares in one of the markets of integration.

57. The CID noted from the submissions of the parties that the target, mines and quarries limestone and pozzolana that are used as an input to the production of cement. The CID however noted that the limestone and pozzolana that are produced by the target are strictly for its internal production of cement. As such the target is not a market player in the provision of limestone and pozzolana. As such, no vertical effects can arise from this transaction.

Consideration of Coordinated Effects

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

59. The CID noted that the structure of the market for cement is changing post transaction. The concentration levels in the defined market are moving from 71% pre-merger to 76% post-merger. This indicates that the market is moving from a non-concentrated market to a concentrated market which increases the likelihood of collusion by the 3 largest players in the defined market. The number of players

in the market for cement in Madagascar is also reducing from 5 to 4 major players which entails a reduction in competition levels.

60. On the basis of the information available, the CID did not establish whether or not there has been history of collusive conduct in this relevant market. However, the CID observed that the merger may result in a change in the market structure and the nature of competition in such a way that it will significantly increase the probability that the merged undertaking and its competitors may coordinate their behaviour in an anti-competitive way. The changes in the existing dynamics of the market could create an alignment of shared interests between the major competitors to cooperate to maintain their market shares in the relevant market. The CID observed that the transaction will result in a significantly concentrated market which could be conducive for collusive behaviour.

61. Notwithstanding the foregoing, the CID observed that there exists strong competition among market players and competition occurs on the parameters of price. This removes the likelihood of coordination among the players.

Consideration of Effect on Trade between Member States

62. The consideration of the effect on trade between Member States is central in the disposition of merger cases under the Regulations. This is because Article 3(2) of the Regulations requires that for a merger to be incompatible with the Regulations, it should, *inter alia*, have an appreciable effect on trade between Member States. Mergers that are likely to lead to an appreciable effect on trade between Member States are those that result in high market shares and foreclosure concerns. Where there are foreclosure concerns, it is highly likely that firms may find it difficult to operate in some Member States and goods and services may not easily move from one Member State to another. Further, conduct that would significantly diminish the conditions of competition resulting in increased prices of the traded commodity and other unfavourable conditions of trade may be construed to have an effect on trade between Member States.

63. The CID noted that the target firm is the only entity in Madagascar which imports bulk cement for local bagging and the parties do not import any cement from COMESA and neither do they export cement from Madagascar to COMESA. The CID further noted that cement in the Madagascar is typically imported from Pakistan and Vietnam. The CID thus considered that there will be no effect, be it negative or positive, on trade between Member States resulting from the proposed transaction.

Consideration of Third-Party Views

64. Submissions were received from the Competition Commission of Mauritius which did not raise any concerns in relation to the transaction.

65. Engagements with relevant stakeholders in Madagascar were also conducted comprising distributors and other customers of the merging parties, Government agencies, competitors and the Conseil de la Concurrence. The CID observed from the submissions of the stakeholders that the transaction is likely to result in an increase in market concentration. However, as per its assessment above, the CID reiterated its observation that the market is characterised by the presence of import competition which will continue to offer competitive constraint to the merged entity. Further, the CID noted that the transaction will be beneficial to Madagascar as it will in the long run ensure manufacturing of cement is boosted.

Determination

66. 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.

67. The CID, therefore, approved the transaction.

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

Dated this 20th day of October 2024

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma | **Commissioner Vipin Naugah**