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THIRTEENTH PARLIAMENT - FOURTH SESSION - 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES

REPORT ON
THE INQUIRY INTO THE PROPOSED SALE OF SHARES IN EAST AFRICAN
PORTLAND CEMENT PLC

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 19 NOV 2025	DAY: WED
TABLED BY:	Vice-chair Trade Committee Hon. Marianne Kitany Mado Atubo

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LIST OF ABBREVIATIONS

AG	- Attorney-General
AIC	- Associated International Cement Limited
CAK	- Competition Authority of Kenya
Cap	- Chapter (of the Laws of Kenya)
CMA	- Capital Markets Authority
CoK	- Constitution of Kenya, 2010
CS	- Cabinet Secretary
EAPC Plc	- East African Portland Cement Public Limited Company
GoK	- Government of Kenya
KES	- Kenya Shillings
MITI	- Ministry of Investment, Trade and Industry
NSE	- Nairobi Securities Exchange
NSSF	- National Social Security Fund
SPA	- Share Purchase Agreement
TOR	- Terms of Reference

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CHAIRPERSON'S FOREWORD

This report details the consideration, findings and recommendations of the Departmental Committee on Trade, Industry, and Cooperatives arising from the inquiry into the proposed sale of shares held by Holcim Group in East African Portland Cement PLC (EAPC PLC) to Kalahari Cement Limited.

The Committee undertook this inquiry pursuant to its mandate under Standing Order 216 (5) of the National Assembly Standing Orders which empowers the Committee to, *inter alia*, investigate, inquire into, and report on all matters relating to the mandate, management activities, administration, operations and estimates of the assigned Ministries and Departments.

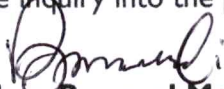
The inquiry was occasioned by heightened public interest and the potential implications of the proposed sale on corporate governance, market competition, public investment, and national industrial policy. The Committee examined in particular, the potential shift in corporate control arising from Kalahari Cement Limited's proposed acquisition of a combined 41.7% shareholding in EAPC PLC, through the purchase of shares held by Holcim's subsidiaries namely, Associated International Cement Limited and Cementia Holding AG. The Committee also interrogated the proposed sale price of KES 27.30 per share, a valuation substantially below the prevailing market price averaging KES 58 per share during the period under review.

The Committee held several meetings in the course of this inquiry, and it heard and received submissions from the East African Portland Cement (EAPC PLC) Competition Authority of Kenya (CAK), Capital Markets Authority (CMA, National Treasury in its capacity as a major shareholder in EAPC PLC, The Office of the Attorney-General as the principal legal advisor to the government and the Principal Secretary for Industrialization.

The Committee acknowledges the strategic role of EAPC PLC in Kenya's cement industry and recognizes that its stability is of both economic and public interest. This warrants a transparent and well-regulated process in any transfer of significant ownership. The inquiry revealed regulatory and legislative gaps regarding off-market share transfers, takeover exemptions, and public interest assessments, which could expose the market to undervaluation, erosion of shareholder value, and concentration of control in strategic sectors. Accordingly, the Committee has proposed specific recommendations and legislative interventions aimed at strengthening investor protection, ensuring market fairness, and aligning Kenya's competition and capital markets frameworks with international best practice.

The Committee is thankful to the Office of the Speaker, the Office of the Clerk and the Secretariat for their support. The Committee recognizes and appreciates the contributions made by each member of the Committee in the course of this investigation.

On behalf of the Members of the Departmental Committee on Trade, Industry and Cooperatives and pursuant to Standing Order 199, it is my pleasant duty and honour to submit to this House, the Committee's report on the inquiry into the proposed sale of shares in East African Portland Cement PLC.


Hon. Bernard Masaka Shinali, MP

Chairperson, Departmental Committee on Trade, Industry and Cooperatives

CHAPTER ONE

I.0 PREFACE

I.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Trade, Industry and Cooperatives is one of the Departmental Committees of the National Assembly established under Standing Order 216 whose mandate pursuant to the Standing Order 216 (5) is as follows:
 - a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - c) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - d) *To study and review all legislation referred to it;*
 - e) *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - f) *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - g) *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - h) *To examine treaties, agreements and conventions;*
 - i) *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - j) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - k) *To examine any questions raised by Members on a matter within its mandate.*
2. In accordance with the Second Schedule to the Standing Orders, the Committee is mandated to consider, Trade, including securities exchange, consumer protection, pricing policies, commerce, industrialization including special economic zones, enterprise promotion and development, Micro, small & medium enterprise (MSMEs), and small and medium enterprise (SMEs), intellectual property, industry standards, anti-counterfeit and cooperative development.

3. In executing its mandate, the Committee oversees the Ministry of Investments, Trade and Industry and the Ministry of Cooperatives and Micro, Medium and Small Enterprises (MSMEs) Development.

I.2 Committee Membership

5. The House constituted the Committee on Thursday, 27th October, 2022 and it comprises the following Members:

Chairperson

Hon. Bernard Masaka Shinali, MP
Ikolomani Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Marianne Jebet Kitany, MP
Aldai. Constituency

United Democratic Alliance (UDA)

Hon. Robert Githinji Gichimu, MP
Gichugu Constituency

United Democratic Alliance (UDA)

Hon. (Dr.) Wilberforce Ojiambo Oundo, MP
Funyula Constituency

Orange Democratic Movement (ODM)

Hon. Dr. Beatrice Kahai Adagala, MP
Vihiga County

Amani National Congress (ANC)

Hon. Joyce Kamene, MP
Machakos County

Wiper Democratic Movement–Kenya

Hon. Joshua Mbithi Mutua Mwalyo, MP
Masinga Constituency

Independent Member

Hon. Anthony Tom Oluoch, MP
Mathare Constituency

Orange Democratic Movement (ODM)

Hon. Michael Wainaina Wambugu, MP
Othaya Constituency

United Democratic Alliance (UDA)

Hon. Alfred Kiprono Mutai, MP
Kuresoi North

United Democratic Alliance (UDA)

Hon. Guyo Adhe Wario, MP
North Horr Constituency

KANU

Hon. Samuel Sakimba Parashina, MP
Kajiado South

Orange Democratic Movement (ODM)

Hon. Amos Maina Mwago, MP
Starehe Constituency

Jubilee Party

Hon. Adams Korir Kipsanai, MP
Keiyo North Constituency

United Democratic Alliance (UDA)

CHAPTER TWO

2.0 INTRODUCTION

4. The Departmental Committee on Trade, Industry and Cooperatives of the National Assembly, during its Sitting held on 14th August 2025, resolved to carryout an inquiry into the proposed sale of shares of East African Portland Cement (EAPC) PLC.
5. The inquiry was triggered by public interest and significant concerns surrounding a transaction involving a publicly listed company of strategic national importance.
6. The subject of this inquiry is the proposed sale of 26,324,884 shares, representing a 29.25% stake in EAPC PLC, held by Holcim Group.
7. The shares are being sold to Kalahari Cement Ltd at an alleged price of Kshs. 27.30 per share. This price is a cause for concern as it is substantially below the prevailing market average of approximately Kshs. 53 per share and the Committee believes that the undervaluation could undermine market fairness.
8. If the sale is finalized, Kalahari Cement would become the largest shareholder with a cumulative 41.7% stake considering its affiliation with Bamburi Cement Ltd which currently holds 12.5% of EAPC PLC. This proposed change in the shareholding structure has raised concerns regarding potential altering of corporate control given that the change would surpass the National Treasury's 25.3% and the National Social Security Fund's (NSSF) 27% holdings.

2.1 TERMS OF REFERENCE

In conducting this investigation, the Committee was guided by the following terms of reference:

9. Based on the terms of reference the Committee raised the following issues for determination:

- a. **To examine** the applicable legal framework and the transaction's compliance with the Companies Act, the Capital Markets Act, the Competition Act, and other applicable laws.
- b. **To scrutinize** the process followed in the proposed share sale, including the role of the National Treasury, the Capital Markets Authority (CMA), the Competition Authority of Kenya (CAK), and the Office of the Attorney-General, particularly with respect to approvals issued and legal advice provided.
- c. **To assess** the potential alteration of corporate control and evaluate measures in place to safeguard the interests of all shareholders, particularly the Government (National Treasury), pensioners (NSSF), and minority investors.
- d. **To investigate** the methodology used to determine the value of the shares and the rationale for the proposed sale price.
- e. **To inquire** into the anticipated impact of the proposed sale on the company's employees, customers, the broader public, and national industrial policy.

CHAPTER THREE

3.0 SUBMISSIONS

3.1 Submissions by East African Portland Cement (EAPC)

10. EAPC submitted that, the current shareholding structure of EAPC PLC is as follows: National Social Security Fund (NSSF) holds 27%, The National Treasury holds 25.3%, Cementia Holdings AG and Associated International Cement Ltd (both subsidiaries of Holcim Group) each hold 14.6%, Bamburi Cement Ltd holds 12.5%, and minority shareholders hold 6%. The proposed sale of shares from the Holcim Group subsidiaries to Kalahari Cement Ltd would result in the buyer holding 29.2% of the company's shares. When combined with the existing association with Bamburi Cement Ltd, the acquirer's total stake would be 41.7%.
11. Regarding board representation, two of the five directors representing shareholders are currently nominated by the Holcim Group, a reflection of their historical 41.7% ownership. EAPC PLC anticipates that this level of representation will be transferred to the new acquirer, Kalahari Cement Ltd, upon completion of the sale. The board also includes directors nominated by the National Treasury and the parent ministry, as well as a government-appointed director representing minority shareholders⁸. The Chairman is also appointed by the Government of Kenya.
12. EAPC PLC stated that there are no formal shareholder agreements currently in place. The company's five-year strategic plan, which runs until June 2027, aims to safeguard the interests of pensioners (through NSSF) and taxpayers by pursuing value through dividends. The plan includes initiatives like balance sheet restructuring by selling off investment property at market value to reduce liabilities and reinvest in plant refurbishment. These efforts are designed to enhance operational capacity and achieve a long-term goal of 30% market share. The company also noted its strategic alignment with government priorities, such as the Affordable Housing program and infrastructure expansion.
13. EAPC PLC has not been engaged in any communication with Kalahari Cement Ltd about their strategic plans for the company after the acquisition. As a result, the company requested the committee to direct inquiries regarding the buyer's long-term plans, employment levels, wages, benefits, and share valuation methodology to Kalahari Cement Ltd or the Holcim Group.
14. Furthermore, the company clarified that it could not provide details on the due diligence undertaken for the transaction, as the engagements between Holcim Group and Kalahari Cement Ltd are outside its purview.

3.2 Submissions by National Treasury

15. The proposed sale of East African Portland Cement Plc is governed by the following capital markets legal framework:
 - i. Section 31 (1A) of the Capital Markets Act and Regulation 84 (c) of the Capital Markets (Public Offers, Listing and Disclosure Regulations) 2023, which require approval of CMA where there is a transfer of securities outside the Securities Exchange;
 - ii. The eligibility requirements stipulated under the Capital Markets (Public Offers, Listing and Disclosure Regulations) 2023, which demand free transferability of listed securities; and
 - iii. Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, which mandates CMA to grant an exemption in certain circumstances where a person who has acquired significant shareholding in a company do not wish to buy out other shareholders.
16. In December 2024, Holcim made a decision to exit some markets in Africa as part of a global strategy to streamline its operations. As a result of this decision, Holcim sold its businesses in Nigeria, Uganda, Tanzania and Zimbabwe.
17. In Kenya, Holcim (through its subsidiaries Fincem and Kencem) entered into an irrevocable undertaking to sell 58.6 % of its shareholding in Bamburi Cement Plc to Amsons Industries (K) Limited. The acquisition was concluded in December 2024 following a mandatory takeover offer by Amsons. The offer by Amsons also targeted other shareholders of Bamburi leading to acquisition of 100% shareholding in Bamburi Cement Plc
18. Acquisition of East African Portland Cement Plc shares by Kalahari Cement Limited. As required by the Regulation 4 (1), CMA was served with a Notice of Intention by Kalahari Cement Limited on July 31, 2025
19. The background of the transaction is that the parties entered into a Share Purchase Agreement dated 31 July 2025 ("SPA"), under which Kalahari Cement Limited will acquire the following:
 - a) 13,144,442 ordinary shares in EAPC (representing 14.6% of the issued share capital) from Associated International Cement Limited (AIC), a company incorporated under the laws of England; and 13,180,442 ordinary shares in EAPC (also representing 14.6%) from Cementia Holding AG, a company incorporated under the laws of Switzerland.
20. Holcim Limited is the ultimate beneficial owner of the 26,324,884 ordinary shares in EAPC approximately 29.2% of the issued share capital, held through the above-named subsidiaries AIC and Cementia ("Sellers").
21. If successfully completed, the transaction will result in Kalahari and its related parties, acquiring a controlling interest in EAPC, with a total shareholding of approximately 41.7%, inclusive of the 12.5% already held indirectly through Bamburi Cement's stake in EAPC.
22. Legal Requirements and Procedure: A person who has acquired effective control in a listed company is required to follow the following procedure:
 - i. Issue a public announcement.

- ii. Prepare, publish and serve a Notice of Intention on CMA, the Exchange, the listed company as well as the Competition Authority of Kenya.
 - iii. Apply for an exemption under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, where they do not wish to buy out other shareholders.
23. Application for Exemption to make a mandatory takeover offer: Regulations 4(3) of the Capital Markets (Take-overs and Mergers) Regulations 2002 provides that where a person has acquired effective control in a listed company and has no intention of making a take-over offer to the other shareholders, shall make a public announcement and shall apply to the Authority for exemption from the take-over requirements under regulation 5. Effective control threshold is from 25% of the issued share capital and above.
24. Regulation 5(1) of the Regulations provides that the Authority may in writing grant an exemption from complying with the provisions of regulation 4 to any particular person or take-over offer or to any particular class, category, description of persons or take-over offers subject to such conditions as may be imposed by the Authority.
25. According to Regulation 5 (2) an exemption may be granted on any of the following grounds:
- i. an acquisition for the purpose of a strategic investment in a listed company that is tied up with management or any other technical support relevant to the business of such company;
 - ii. a management buy-out involving a majority of the employees of the offeree;
 - iii. a restructuring of the listed company's share capital including acquisition, amalgamation and any other scheme approved by the Authority;
 - iv. an acquisition of a listed company in financial distress;
 - v. an acquisition of effective control arising out of disposal of pledged securities;
 - vi. the maintenance of domestic shareholding for strategic reason(s); or
 - vii. any other circumstances which in the opinion of the Authority serves public interest.
26. Kalahari sought an exemption pursuant to Regulation 5(2) of the Takeovers Regulations on the grounds of being a strategic investor in a listed company that is tied up with management or other technical support relevant to the business of such company. The applicant also relied on circumstances which serve the public interest, by ensuring that Kalahari, as a long-term strategic investor, assists EAPC in achieving its strategic objectives whilst deepening the capital markets regime which is vital for Kenya's economic prosperity.
27. Grant of Exemption: After review of the application, the capital markets Authority granted the exemption on the following conditions: obtaining the requisite approvals from the Competition Authority of Kenya as per part D of the Competition Act. notification to, and approval of the material change by

the Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs as per Sections 51(6) and (7) of the Mining Act.

28. The prerequisite documents as per the Regulations are an announcement to shareholders and issue of a Notice of Intention which is also published in the newspapers. We confirm that Kalahari complied with all these requirements. The relevant announcements were published in the Daily Nation as well as the East African Standard newspapers on August 1, 2025.
29. The Share Purchase Agreement and Conditions Precedent: Kalahari entered into a Share Purchase Agreement and each of the Sellers accepted Kalahari's offer to acquire the shares. Completion of the transaction is conditional upon the satisfaction or, where legally permissible, waiver of the following conditions precedent:
 - i. Receipt of approval from the Competition Authority;
 - ii. The granting by the CMA of an exemption to Kalahari under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, exempting Kalahari from the obligation to make a mandatory takeover offer to EAPC shareholders;
 - iii. With respect to EAPC's mining licence, notification to and receipt of written approval from the Cabinet Secretary for the Ministry of Mining, Blue Economy and Maritime Affairs, in accordance with Sections 51(6) and 51(7) of the Mining Act;
 - iv. Receipt from CMA of approval to implement the transaction as a private transfer; and
 - v. Should Kalahari opt to finance any portion of the consideration rather than pay it fully in cash, it shall provide the Sellers with an unconditional, irrevocable, on-demand guarantee.
30. Kalahari does not intend to delist EAPC upon completion of the proposed acquisition. Instead, Kalahari plans to maintain EAPC's status as a publicly listed company, recognizing the strategic value of retaining a diverse base of local and international investors as co-shareholders. Kalahari indicated its position that a continued listing will support EAPC's long-term growth ambitions by enhancing access to both equity and debt capital markets when required. Maintaining EAPC's listing will also offer investors the opportunity to participate in the growth of a key player in the cement industry, which is instrumental to infrastructure development across Kenya, Uganda, and the broader East African region.
31. After considering the application, CMA granted an exemption on August 5, 2025. The transaction also got the following subsequent approvals:
 - i. Approvals by the Competition Authority of Kenya as per part D of the Competition Act.
 - ii. Approval of the material change by the Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs as per Sections 51(6) and (7) of the Mining Act.
32. The National Treasury confirmed that, the proposed transaction was reviewed and an exemption granted as required under the Capital Markets (Take-overs and Mergers) Regulations 2002. All disclosures to shareholders were made in

accordance with the Capital Markets Act and the Capital Markets (Take-overs and Mergers) Regulations 2002.

3.3 Submission by the Board Members of East Africa Portland Cement

The board submitted that,

33. The proposed transaction is a private sale between Holcim Group (through its subsidiaries Cementia and Associated International Cement) and Kalahari Cement Ltd. EAPC Plc was not a party to the valuation or negotiation process. Therefore, the Company does not possess the documentary evidence of the specific valuation methodology used by the seller and buyer.
34. However, the Board's primary concern is that the transaction price of KES 27.30 per share is significantly below the current market price (approximately KES 58.25). To safeguard *all* shareholders, the Board's duty is to ensure the company's intrinsic value is reflected in its performance. Our five-year strategic plan, focused on balance sheet restructuring and operational efficiency, is designed to deliver this value.
35. Regarding statutory disclosure obligations under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, the Company's primary duty was triggered by the receipt of a formal Notice of Intention from Kalahari Cement received on 30th July 2025. This notice was promptly disclosed to the public on 31st July 2025 via the Nairobi Securities Exchange, fulfilling our initial obligation.
36. However, the Board recognizes a critical dimension that elevates this transaction beyond a simple block trade: the beneficial owner of Kalahari Cement also holds a controlling interest in Bamburi Cement PLC, which is a current 12.5% shareholder of EAPC Plc.
37. This fact of common control is highly material. Post-transaction, the beneficial owner would exercise influence over a combined stake of approximately 41.7% in EAPC Plc (29.2% from Kalahari + 12.5% from Bamburi). While the 29.2% acquisition alone sits below the 30% threshold for a mandatory takeover offer, the Regulations require assessment of whether parties are "acting in concert" or are under common control.
38. Therefore, while the literal 29.2% transaction may not trigger a mandatory offer, the substance of the transaction the aggregation of a 41.7% stake under a single beneficial owner raises significant questions that may necessitate further disclosure and regulatory scrutiny to ensure a complete and transparent view for all shareholders and the market. The Board is seeking further legal advice on the applicability of these provisions to ensure full compliance with the spirit and letter of the law.
39. The sale of shares by a major shareholder is an ownership change, not an operational decision by the Company. EAPC Plc's strategic vision, as detailed in our five-year plan, remains unchanged and is focused on growth, market share expansion, and supporting national infrastructure goals. The Board's role is to ensure that any new significant shareholder aligns with this vision. Corporate governance regulations, including the Code of Corporate

- Governance, provide the framework for the Board to hold management accountable to this strategy, regardless of shareholder identity.
40. The proposed sale will profoundly affect ownership and is likely to lead to a significant shift in control and board voting rights.
 41. While Kalahari Cement will become the direct registered holder of a 29.2% stake, the critical factor is that the beneficial owner of Kalahari Cement also controls Bamburi Cement Ltd, which already holds a 12.5% stake in EAPC Plc.
 42. This means that post-transaction, a single beneficial owner will exert influence over a combined 41.7% of the company. This consolidated block is substantially larger than that of any other shareholder, including NSSF (27%) and the National Treasury (25.3%).
 43. Based on prevailing corporate practice, it is expected that this level of ownership will translate into a request for proportional board representation. However, the key implication is that the beneficial owner may effectively control the votes of directors nominated by *both* Kalahari and the existing Bamburi stake.
 44. Therefore, this is not merely a change in one shareholder, but a consolidation of control. The Board anticipates that this will alter the dynamics of board deliberations and voting, moving from a structure with several significant, distinct shareholders to one where a single controlling interest holds a dominant influence. The alignment between NSSF and the National Treasury will become even more critical to balance this consolidated influence.
 45. The primary legal safeguard against undue concentration of ownership is the regulatory review by the Competition Authority of Kenya (CAK) and the continuous disclosure regime of the Capital Markets Authority (CMA).
 46. The Board has received no communication from Kalahari Cement regarding its strategic intentions. Therefore, it is impossible to provide a definitive impact assessment. The Board's commitment is to ensure operational continuity and stability. We have assured our employees that the company's strategic plan remains in effect. For customers and the public, the Board is focused on maintaining a reliable supply of quality cement to all our customers, and we do not foresee any immediate disruption.
 47. The transacting parties are responsible for securing necessary approvals. From the Company's perspective, the process to date has complied with the initial disclosure requirements under CMA rules. The Board is aware that the transaction is subject to successful transfer of shares on the company's register, which our legal and company secretariat team will ensure is done in strict compliance with the Companies Act and our Articles of Association.
 48. The governance structure of EAPC Plc is designed to comply with the Companies Act, the State Corporations Act (as a state corporation), and the CMA Code of Corporate Governance. The Board composition includes directors nominated by major shareholders and government representatives, as is standard for a hybrid entity with both private and government ownership. This structure has been validated through years of operation and audits.
 49. The Board is aware of a court order temporarily halting the transaction, obtained on grounds of potential anti-competitive effects. The Company has been joined to the proceedings. Our legal strategy is to cooperate fully with the court while demonstrating that EAPC Plc is an independent entity focused

on its commercial objectives. We are seeking legal advice to ensure the Company's interests are protected throughout the process.

50. The overarching principle of public interest is paramount. The Board assures the Committee that its every decision is guided by the long-term sustainability of EAPC Plc, which directly serves the public interest through job creation, support for infrastructure, and safeguarding the investments of Kenyan pensioners (NSSF). The Board remains ready to work with the Committee and all regulators to ensure this transaction, if it proceeds, ultimately benefits the company and the nation.

3.4 submission by Competition Authority of Kenya (CAK)

The Competition Authority of Kenya (CAK) submitted that,

51. The CAK's core mandate includes regulating market structure by analyzing and approving or disapproving mergers and takeovers in the Kenyan economy, with the analysis focusing on potential impacts on competition and public interest. Kenya operates a suspensory merger regime, meaning any merger falling under the Competition Act, Cap 504, is unenforceable without the Authority's approval. A merger or takeover occurs when one undertaking directly or indirectly acquires or establishes control over the whole or part of another undertaking's business.
52. The merger application process is detailed in the Act, placing a mandatory obligation on undertakings to notify the Authority in writing. The Authority assesses the application, potentially requesting more information, inviting parties for a hearing, or inviting views from relevant stakeholders and government agencies.
53. The Authority's determination, which may approve, decline, or approve with conditions, must be made within sixty days after receiving complete information and is based on a balancing approach using the substantial lessening of competition test and public interest test. Key criteria for determination include the extent to which the merger would lessen competition, restrict trade, result in a dominant position, affect a particular sector/region, affect employment, or affect the ability of small undertakings to compete.
54. Regarding the specific proposed transaction, Kalahari Cement Limited sought to acquire 29.2% of the shares in EAPCC from Associated International Cement Limited and Cementia Holdings AG. The Authority received a notice of intention to acquire these shares on July 31, 2025, and a subsequent request for an advisory opinion on August 13, 2025. The ultimate control of both Bamburi Cement and Kalahari Cement Limited is held by Edhah Abdallah Munif, who, post-transaction, would have a 41.7% shareholding in EAPCC through the entities he controls.
55. However, the Authority concluded in its advisory opinion that the proposed acquisition does not amount to a merger because the 41.7% shareholding will not result in a change of control of the target undertaking, nor do the shares confer any veto rights that would amount to indirect control.
56. Consequently, the transaction does not require notification before its implementation under Section 43(1) of the Act. Since the transaction is not notifiable, the Authority is legally constrained from conducting a competition

- and public interest assessment as per Section 42 of the Act. The Authority's focus is on the effect of the merger on the market and consumers, not on shareholders' gains. The advisory opinion was sought as per Rule 14 of the Competition (General) Rules, 2019.
57. The Competition Authority of Kenya (CAK), established under the Competition Act, Cap 504, is mandated to promote and safeguard competition, prohibit restrictive trade practices, and regulate mergers in the country. The Act provides a clear framework that requires mergers meeting notification thresholds to be reviewed to determine their potential impact on market structure, competition, and public interest.
 58. The Authority assesses whether proposed transactions may result in dominance, defined as more than 50% market share, or strengthen an existing dominant position. Kenya's merger regime is suspensory, meaning mergers cannot be implemented without prior approval by the Authority. Transactions that meet the criteria of a merger include acquisitions of shares, assets, controlling interests, amalgamations, takeovers, vertical integrations, or indirect control through foreign subsidiaries.
 59. The submission under review involved a request for advisory opinion regarding the acquisition of a 41.7% shareholding in East African Portland Cement Company (EAPCC) by Kalahari Cement Limited, both under the ultimate control of Edhah Abdallah Munif. The Authority established that the proposed acquisition would not confer direct or indirect control since the shares did not include veto rights or majority ownership, and thus the transaction did not amount to a merger under the Act.
 60. Consequently, no notification was required, and no public interest or dominance assessment was conducted. Nevertheless, in line with Section 9(g) of the Act, the Authority has embarked on a market study of the cement sector, aimed at understanding market dynamics, concentration levels, pricing, production trends, and contractual practices. This study also seeks to determine the presence of cartel behavior, the impact of buyer power on SMEs, and potential exploitative practices within distribution and retail chains.
 61. The Authority noted that while no party to this transaction would acquire dominance, it remains vigilant against mergers that may substantially lessen competition or facilitate monopolistic structures. Safeguards within the Act also prohibit abuse of dominance under Sections 23 and 24, ensuring that even dominant firms cannot exploit their position to the detriment of competitors or consumers.
 62. The submission also benchmarked international best practices, citing the United States and European Union merger control regimes. In the U.S., merger review under the Clayton Act and Sherman Act is non-suspensory, emphasizing early prevention of anti-competitive effects, while in the EU, merger control is suspensory, requiring notification for large transactions that may distort competition. Both jurisdictions stress the importance of market shares, entry barriers, and the durability of market power when assessing dominance.
 63. With regard to the Kenyan cement industry, the Authority observed significant challenges, including declining local demand, rising production costs, and

increased exports in 2023, which may signal a shift by producers toward more profitable external markets at the expense of local supply.

64. The sector is dominated by established players such as Bamburi Cement, Mombasa Cement, EAPCC, Savannah Cement, ARM Cement (now National Cement), Rai Cement, Karsan Ramji & Sons (Ndovu Cement), and National Cement, alongside imports from Uganda, Tanzania, COMESA countries, and Asia. Risks of unwarranted concentration arise from strategic information sharing, reduced innovation, coordinated behavior, and cross-directorships that create barriers for new entrants.
65. The Authority emphasized the need for continuous surveillance to monitor competition, protect consumer welfare, and ensure a level playing field in this strategically important sector.
66. In conclusion, the Authority clarified that the reviewed transaction did not constitute a merger as defined by the Act and therefore required no notification or public interest review. However, the ongoing market study of the cement sector is expected to shed light on its structural, competitive, and operational dynamics, ultimately informing regulatory action to prevent anti-competitive practices and safeguard consumer and market interests.

3. 5 Submission by Attorney General

The Attorney General submitted that,

67. The legal and regulatory requirements for the sale involve compliance with the Capital Markets Authority (CMA), the Competition Authority of Kenya (CAK), and the Companies Act, Cap 486.
68. For CMA, the transaction must comply with the Capital Markets (Take-Overs And Mergers) Regulations, which are triggered when a person acquires more than 5% of voting shares in any one year while holding between 25% and 50% of voting shares (i.e., exercising "effective control"). The company must announce the proposed offer or seek an exemption from CMA. The Attorney General is not aware whether these CMA requirements have been met or if approval/exemption was issued.
69. For the CAK, the Authority must determine if the sale amounts to a merger by conferring direct or indirect control under the Competition Act, and if so, apply the competition and public interest tests to approve, decline, or approve with conditions. Under the Companies Act, the sale must adhere to the company's Articles of Incorporation and could be subject to existing shareholders' pre-emption/right of refusal requirements, which can be modified or excluded by a special resolution.
70. The Office of the Attorney General (AG)'s role is strictly limited to providing legal advisory if and when requested by EAPC, and they have not been requested to or provided any approvals, opinions, or certifications regarding this matter. Consequently, the office is unaware of any steps taken for public participation or stakeholder engagement. Furthermore, since the office has not been provided with the terms of the transaction, it is unable to advise whether the proposed sale protects citizens from exploitation or loss of strategic assets, or to clarify the legality of agreements or shareholder arrangements.

71. The Attorney General confirmed that they are currently not aware of any ongoing or possible court challenges concerning the sale. The governance structure of EAPC should comply with its Articles of Incorporation and Memorandum of Association, read together with the Companies Act.

3.6 Submission by Capital Markets Authority

Capital Markets Authority's submitted that,

72. The proposed transaction stems from Holcim Limited's global strategy to exit certain African markets, which previously resulted in the sale of its businesses in Nigeria, Uganda, Tanzania, and Zimbabwe. In Kenya, Holcim, through subsidiaries, sold 58.6% of its shareholding in Bamburi Cement Plc to Amsons Industries (K) Limited in December 2024, which led to Amsons acquiring 100% of Bamburi following a mandatory takeover offer.
73. The current proposed transaction involves Kalahari Cement Limited acquiring 26,324,884 ordinary shares in EAPC, representing approximately 29.2% of the issued share capital, from Holcim's subsidiaries, Associated International Cement Limited (AIC) and Cementia Holding AG. If successful, this acquisition, combined with the 12.5% EAPC stake already held indirectly by Kalahari through Bamburi Cement Plc (a related company), will result in Kalahari and its related parties acquiring a controlling interest of approximately 41.7% in EAPC. Kalahari Cement Limited is a private company incorporated in Kenya as an investment vehicle.
74. The CMA confirmed that the proposed transaction was reviewed and an exemption from the obligation to make a mandatory takeover offer to all EAPC shareholders was granted to Kalahari under the Capital Markets (Take-overs and Mergers) Regulations 2002. A mandatory takeover offer is typically required when a person acquires "effective control" (25% or more of the issued share capital) in a Listed company.
75. Kalahari sought the exemption on the grounds of being a strategic investor tied to management or technical support, and also relying on the grounds of serving the public interest by assisting EAPC in achieving its strategic objectives and deepening capital markets. Kalahari has also indicated that it does not intend to delist EAPC and plans to maintain its status as a publicly listed company to support its long-term growth and access to capital markets.
76. The CMA granted the exemption subject to two key conditions precedent, which are also conditions for the completion of the Share Purchase Agreement (SPA)
- i. Obtaining the requisite approvals from the Competition Authority of Kenya
 - ii. Notification to, and approval of the material change by the Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs, in accordance with the Mining Act
77. The agreed consideration for the Sale Shares is Kshs 27.30 per share, which amounts to a total consideration of approximately Kshs 718,669,333.2 (USD 5,565,340.10) The CMA noted that this negotiated price represents a

significant discount compared to the current market value, which has been volatile partly due to speculative trading following Holcim's announced exit from Africa.

78. The CMA also confirmed that all disclosures to shareholders were made in accordance with the Capital Markets Act and the relevant Regulations. Kalahari complied with the requirement to make a public announcement and issue a Notice of Intention, with relevant announcements published in the *Daily Nation* and *East African Standard* newspapers on August 1, 2025 PORTLAND CEMENT PLC share price movement from May 2024 to August 2025.

3.7. Submission by Ministry of Investment, Trade, and Industry State Department for Industry

The state Department for Industry submitted that,

79. EAPC PLC which is listed in the Nairobi Securities Exchange (NSE) and is owned by;
- i. National Social Security Fund – NSSF (27%);
 - ii. National Treasury (25.3%);
 - iii. Cementia Holdings (14.6%);
 - iv. Associated International Cement (14.6%);
 - v. Bamburi Cement (12.5%) and;
 - vi. Others- traded at the NSE (6%).
80. The Cementia Holdings AG and Associated International Cement Limited are subsidiaries of the Holcim Group. The proposed sale of their shares to Kalahari Cement Ltd will result in acquirer holding 29.2% of the company's authorized shares.
81. Additionally, the company maintains a close association with Bamburi Cement Ltd, as outlined in the disclosure accompanying the notice of intent regarding Holcim's stake acquisition in EAPC Plc.
82. EAPCC LTD comprises six members, out of which two of the members are nominated by the Holcim Group, reflecting a longstanding practice aligned with its historical 41.7% ownership of the company's authorized and issued shares. It is expected that this level of board representation will be available to the acquirer upon completion of the transaction.
83. Existence and terms of shareholder agreement, particularly protection for minority shareholder and the government interest.
84. There no shareholder agreement in place at EAPCC LTD. Government interests are represented on the Board through the nomination of two directors, one from the National Treasury and another from the parent ministry. Minority shareholders are represented by the director appointed by the Government of Kenya. Based on the above representation, the interest of government and minority shareholders in the company are well taken care of.
85. Safeguards on Pensioners' Funds (NSSF) and Taxpayers' Interests

The Ministry notes that East African Portland Cement Plc (EAPC) is actively implementing its five-year strategic plan, running through June 2027, with notable progress already achieved. Pensioners' and taxpayers' interests are being addressed primarily through the pursuit of value via dividends.

In light of the proposed acquisition, the Ministry emphasizes that any significant discount on the prevailing market value could undermine the progress already made in aligning the company's book value with its open market value.

86. The Ministry has, to date, received no engagement or communication from Kalahari Cement Ltd regarding its long-term strategic direction following the proposed acquisition. Consequently, MITI currently has no visibility on the buyer's plans with respect to: Sustaining cement production in Kenya, protecting employment levels, wages, and benefits, ensuring alignment with government policy and sectoral goals, and the methodology and basis for the share valuation. The Ministry, however, undertakes to disclose this information to the Committee once a formal engagement avenue is established.
87. The Ministry noted that the Company is pursuing its strategic plan through June 2027, with significant milestones already achieved. Key initiatives include: Balance sheet restructuring through the disposal of investment property at market value to reduce liabilities, Reinvestment in plant refurbishment to enhance operational capacity, and A long-term goal of capturing a 30% market share. These measures provide safeguards against undervaluation and mitigate risks of asset stripping.
88. The Ministry confirmed that engagements between Kalahari Cement Ltd and the Holcim Group fall outside its purview. Accordingly, MITI is not in a position to provide details on the due diligence conducted in relation to the proposed transaction.
89. Additional Information for the Committee.
The Ministry wishes to highlight that EAPC is currently experiencing a period of stable and sustainable growth following a significant turnaround. MITI continues to oversee the company's strategic plan, which is closely aligned with national development priorities, including the Affordable Housing Program and infrastructure expansion.
90. The Ministry underscores that EAPC's return to profitability and its positive growth trajectory reflect the collective efforts of all stakeholders. The primary objective remains ensuring this momentum is not disrupted, thereby safeguarding shareholder value.
91. MITI has confidence in the existing regulatory frameworks overseen by the Capital Markets Authority (CMA) and the Competition Authority of Kenya (CAK) to review and regulate any corporate actions. The Ministry respectfully submits that the Committee take into account the importance of stability while allowing established regulatory processes to proceed.

CHAPTER FOUR

4.1 COMMITTEE OBSERVATIONS

The Committee observed as follows with respect to the terms of reference-

- I. To examine the applicable legal framework transaction's compliance with the Companies Act, the Capital Markets Act, the Competition Act, and other applicable laws**

92. The Committee observed that the transaction of transfer of shares in EAPC Plc as a public listed company in Kenya is governed by the Capital Markets Act, the Companies Act, the Competition Act, the Mining Act together with the relevant subsidiary legislation.
93. In particular, the relevant capital market provisions are-
 - i. Section 31 (1A) of the Capital Markets Act and Regulation 84 (c) of the Capital Markets (Public Offers, Listing and Disclosure Regulations) 2023, which require approval of CMA where there is a transfer of securities outside the Securities Exchange;
 - ii. The eligibility requirements stipulated under the Capital Markets (Public Offers, Listing and Disclosure Regulations) 2023, which demand free transferability of listed securities;
 - iii. The Capital Markets (Take-Overs And Mergers) Regulations, which are triggered when a person acquires more than 5% of voting shares in any one year while holding between 25% and 50% of voting shares (i.e., exercising "effective control").
94. The Committee observed that a person who has acquired effective control in a listed company is required to follow the following procedure-
 - i. Issue a public announcement.
 - ii. Prepare, publish and serve a Notice of Intention on CMA, the Exchange, the listed company as well as the Competition Authority of Kenya.
 - iii. Apply for an exemption under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, where here no takeover of other shareholders is intended.
95. The Committee observed that effective control is attained from ownership of 25% of the issued share capital and above.
96. With respect to competition law, the Competition Authority of Kenya must determine if the sale amounts to a merger by conferring direct or indirect control under the Competition Act, and if so, apply the competition and public interest tests to approve, decline, or approve with conditions.
97. Under the Companies Act, the sale must adhere to the company's Articles of Incorporation or other governing instruments.

98. With respect to the Mining Act, the relevant provision is Section 51(6) and (7) of the Mining Act, 2016, which govern transfer or assignment of mineral rights. It provides that a transfer or assignment of a mineral right must be approved by the Cabinet Secretary.
99. Completion of the transaction is conditional upon the satisfaction or, where legally permissible, waiver of the following conditions precedent-
- i. Receipt of approval from the Competition Authority;
 - ii. The granting by the CMA of an exemption to Kalahari under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, exempting Kalahari Ltd from the obligation to make a mandatory takeover offer to EAPC shareholders where Kalahari after acquiring significant shareholding in the company does not wish to buy out other shareholders.
 - iii. With respect to EAPC's mining licence, notification to and receipt of written approval from the Cabinet Secretary for the Ministry of Mining, Blue Economy and Maritime Affairs, in accordance with Sections 51(6) and 51(7) of the Mining Act;
 - iv. Receipt from CMA of approval under section 31 of the CMA Act for Kalahari Ltd to implement the transaction as a private transfer; and
 - v. Should Kalahari opt to finance any portion of the consideration rather than pay it fully in cash, it shall provide the sellers with an unconditional, irrevocable, on-demand guarantee.

2. To scrutinize the process followed in the proposed share sale, including the role of the National Treasury, the Capital Markets Authority (CMA), the Competition Authority of Kenya (CAK), and the Office of the Attorney-General, particularly with respect to approvals issued and legal advice provided

100. Kalahari Cement Limited entered into a Share Purchase Agreement dated 31 July 2025, under which Kalahari Cement Limited will acquire the following-
- (a) 13,144,442 ordinary shares in EAPC (representing 14.6% of the issued share capital) from Associated International Cement Limited (AIC), a company incorporated under the laws of England; and
 - (b) 13,180,442 ordinary shares in EAPC (also representing 14.6%) from Cementia Holding AG, a company incorporated under the laws of Switzerland.
101. Holcim Limited is the ultimate beneficial owner of the 26,324,884 ordinary shares in EAPC approximately 29.2% of the issued share capital, held through the above-named subsidiaries AIC and Cementia ("the sellers").
102. Kalahari Ltd served the Capital Markets Authority (CMA) with a Notice of Intention under Regulation 4(1) on 31 July 2025.

103. The National Treasury is key shareholder in EAPC Plc and CMA advised the Committee that Kalahari Ltd indicated that it did not intend to delist EAPC but to maintain it as a publicly listed company, citing benefits of access to equity and debt capital markets and broad investor participation in the growth of the cement sector.
104. The Office of the Attorney General indicated that its role was provision of legal advice if and when requested by EAPC Plc but none had been sought;
105. With respect to the specific regulators, their roles are as below-
- (i) Capital Markets Authority**
106. The Committee observed that the prerequisite documents as per the Regulations are an announcement to shareholders and issue of a Notice of Intention which is also published in the newspapers. CMA confirmed that Kalahari complied with these requirements and the Committee observed that the Notice of Intention was published in the Daily Nation as well as the Standard newspapers on August 1st, 2025.
107. The Capital Markets Authority advised that with respect to the transaction under scrutiny the Notice of Intention by Kalahari Ltd indicated that the purchaser does not intend to takeover shares held by other shareholders therefore there is no proposal for takeover. A mandatory takeover offer is typically required when a person acquires "effective control" (25% or more of the issued share capital) in a Listed company
108. Kalahari Ltd was therefore required to seek an exemption under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002 and the grounds upon which the exemption may be granted are listed under sub regulation 2.
109. CMA confirmed that Kalahari Ltd sought an exemption from CMA pursuant to Regulation 5(2) on the grounds of being a strategic investor in a listed company that is tied up with management or other technical support relevant to the business of the company and as serving the public interest. In short, Kalahari argued that it is a strategic partner with technical and managerial support and does not intend to takeover.
110. The CMA confirmed that the proposed transaction was reviewed and an exemption from the obligation to make a mandatory takeover offer to all EAPC shareholders was granted to Kalahari under the Capital Markets (Take-overs and Mergers) Regulations 2002 on August 5th 2025.
111. The CMA also required Kalahari Ltd to obtain the requisite approvals from the Competition Authority of Kenya and the Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs as per Sections 51(6) and (7) of the Mining Act, which were both subsequently granted.
112. CMA was also required to grant an approval under section 31 of the CMA Act for the transaction to be implemented as a private transfer.

(ii) Competition Authority of Kenya

113. The Committee observed that CAK's core mandate includes regulating market structure by analyzing and approving or disapproving mergers and takeovers in the Kenyan economy, with the analysis focusing on potential impacts on competition and public interest. This is intended to regulate market structure by reviewing mergers and takeovers in order to safeguard competition and public interest. This mandate includes assessing whether a transaction is likely to substantially lessen competition, result in dominance, restrict trade, or harm consumers and small undertakings.
114. The Committee observed that under the Competition Act, Cap 504, a merger is unenforceable without the Authority's approval. A merger or takeover occurs when one undertaking directly or indirectly acquires or establishes control over the whole or part of another undertaking's business.
115. The CAK received a notice of intention to acquire these shares on July 31, 2025, and a subsequent request for an advisory opinion on August 13, 2025 per Rule 14 of the Competition (General) Rules, 2019. The Authority concluded in its advisory opinion that the proposed acquisition does not amount to a merger because the 41.7% shareholding will not result in a change of control of the target undertaking, nor do the shares confer any veto rights that would amount to indirect control. Consequently, in CAK's determination, the transaction does not require notification before its implementation under Section 43(1) of the Act.
116. As a result, the CAK indicated that it was legally constrained from conducting a competition and public interest assessment as per Section 42 of the Act.

3. To assess the potential alteration of corporate control and evaluate measures in place to safeguard the interests of all shareholders, particularly the Government (National Treasury), pensioners (NSSF), and minority investors.

117. The current shareholding structure of EAPC PLC is: National Social Security Fund (NSSF) (27%), The National Treasury (25.3%), Cementia Holdings AG (14.6 %), Associated International Cement Ltd holds (14.6%) , Bamburi Cement Ltd (12.5%), while minority shareholders hold 6%;
118. Cementia Holdings AG and Associated International Cement Ltd are subsidiaries of Holcim Group giving it a 29.2% stake in EAPC PLC;
119. Kalahari Cement Ltd is a major shareholder in Bamburi Cement Ltd which holds 12.5% shares in EAPC PLC and by virtue of that association, the transaction would result in a combined influence of 41.7% by Kalahari Cement Ltd;
120. Regarding board representation, two of the five directors representing shareholders are currently nominated by the Holcim Group;

121. The Government of Kenya appoints directors to represent the National Treasury, the Parent Ministry, NSSF, the minority shareholders, and a Chairperson appointed by the President
122. EAPC PLC stated that there are no formal shareholder agreements currently in place.
123. The Committee observed that the First Schedule to the Capital Markets (Public Offers, Listings and Disclosures) Regulations 2023, LN 172 of 2023 requires that Securities to be listed shall be fully paid up, freely transferable with no restrictions on marketability or preferential treatment.
124. The Board of EAPC raised concerns that post-transaction, the beneficial owner would exercise influence over a combined stake of approximately 41.7% in EAPC Plc. In its view, while the 29.2% acquisition alone sits below the 30% threshold for a mandatory takeover offer, the Regulations require assessment of whether parties are "acting in concert" and 'common control'.
125. The committee observed that "common control" means shares are ultimately held by the same owner, and "acting in concert" means coordinated action between shareholders. Both are anti-avoidance concepts that are designed to prevent shareholders from sidestepping takeover rules by splitting stakes or working behind the scenes.
126. The committee further observed that in that case, given Kalahari is the ultimate beneficial owner of Bamburi Cement (which is a shareholder in EAPC Plc) it may not be able to argue that each stake is "independent" hence regulators would treat them as one. Ordinarily, this should force a mandatory takeover bid to all other shareholders in order to protect minority interests.
127. In this case, Kalahari Ltd indicates that it does not intend to acquire the shares of other shareholders and sought an exemption under Regulation 5(2) of the Capital Markets (Takeovers and Mergers) Regulations 2002 arguing that it is a strategic investor and not pursuing a takeover.
128. The CAK submitted that the transaction does not amount to a notifiable merger for under Section 43(1) of the Act before its implementation since it does not confer control in terms of veto rights or decisive influence.
129. The Government of Kenya holds 25.3% of EAPC Plc directly through the National Treasury. The National Treasury, acts as a major shareholder, responsible for protecting public investment value and ensuring that any corporate action (such as share transfers, board restructuring, or strategic partnerships) aligns with national interests.

3. On the proposed consideration and the methodology used to determine the value of the shares

130. The Committee observed that proposed consideration for the transaction is Kshs. 27.30 per share. On the 1st August 2025, a day after Kalahari issued the Notice of Intention, the share price stood at Kshs. 50.75 rising to Kshs. 58.75 by 2nd October 2025. This reflects steady gains over a two month period.
131. The EAPC PLC Board of Directors indicated that the proposed transaction is a private sale between Holcim Group (through its subsidiaries Cementia and Associated International Cement) and Kalahari Cement Ltd. As such, EAPC Plc was not a party to the valuation or negotiation process and therefore the EAPC Plc did not have access to the specific valuation methodology used.
132. The EAPC Plc Board's further expressed concern that the transaction price of KES 27.30 per share is significantly below the prevailing market value. It reiterated its fiduciary duty to safeguard all shareholders by ensuring that the company's intrinsic value is reflected in its performance, noting that its five-year strategic plan on balance sheet restructuring and operational efficiency designed to unlock and deliver this value.
133. The Committee noted that the Board complied with disclosure obligations by publishing the Notice of Intention through the Nairobi Securities Exchange.
134. The Principal Secretary for Investment stated that he did not consider the transaction price a cause for concern, describing it as a matter between a willing buyer and a willing seller
135. The CMA role may not enable it to judge the price but it is to ensure full and fair disclosure and to ensure there is no insider trading or market manipulation. Such disclosure allows for shareholders to take decisions regarding their shareholding. In this case the transaction price is material information that requires to be disclosed under the CMA rules.

4. To inquire into the anticipated impact of the proposed sale on the company's employees, customers, the broader public, and national industrial policy.

136. EAPC PLC indicated that it had not been engaged in any communication with Kalahari Cement Ltd regarding its strategic plans for the company post acquisition.
137. As a result, the buyer's long-term plans, employment levels, wages, benefits, capital investment and its approach to valuation and corporate governance remain unclear and unknown.
138. The Competition Authority did not undertake a public interest review of the transaction hence the safeguards are non-existent.
139. EAPC Plc has expressed a desire to buy back the shares proposed to be sold by Holcim Group in the interest of the company and the broader public. The committee observed that under Section 447 of the Companies Act, 2015, a company limited by shares may purchase its own shares out of distributable profits or through a fresh issue of shares, subject to shareholder approval by special

resolution and compliance with disclosure and solvency requirements prescribed by the Act.

140. In accordance with the submission under paragraph 139, the Committee observed that the EAPC Plc proposal is more than a routine corporate action. It brings together the provisions of the Companies Act with the implementation of national policy under the Privatization Act.
141. In accordance with the submission under paragraph 139, the Committee observed that the two-stage process involving a company buy back followed by a public offer is an effective approach. It transfers ownership from a single foreign shareholder to many Kenyan investors. It also promotes wider economic participation and local ownership.
142. In accordance with the submission under paragraph 139, the Committee observed that supporting this proposal helps to implement an approved privatization programme of the National Assembly. It converts policy objectives of privatization into practical results.
143. In accordance with the submission under paragraph 139, the Committee observed that the transaction structure preserves the listing of the EAPC Plc and stability while promoting the national goals of inclusive ownership and capital market growth.

4.2 COMMITTEE FINDINGS

Based on the above observations, the Committee finds that-

1. The proposed transaction and the approvals process was subject to multi-layered regulation under the Capital Markets Act (Cap. 485A), the Competition Act (Cap. 504), the Companies Act, (Cap. 486), and the Mining Act, (Cap 306), which seek to protect investors, ensure fair competition, and safeguard national mineral resources;
2. Owing to the complex multi-layered regulatory framework, regulators must coordinate their review processes to avoid gaps in oversight;
3. The transaction therefore required approvals or exemptions from the Capital Markets Authority (CMA) including approvals under Section 31(1A) of the Capital Markets Act and the relevant subsidiary legislation, the Competition Authority of Kenya (CAK), and the Cabinet Secretary for Mining under Sections 51(6)–(7) of the Mining Act for the transfer of a controlling interest in a licensee;
4. CAK did not conduct a merger review as provided for under sections 42-47 of the Competition Act, having concluded that the transaction was non-notifiable. Consequently, no public interest or competition assessment was undertaken;

5. CAK has neither determined market concentration or dominance risks in cement sector or risks of dominance nor assessed whether the transaction may lessen competition in production, distribution and pricing;
6. CAK has not determined whether the transaction can proceed without harming competition, employment, SME participation in the cement sector or public interest or conflict with national industrial policy, as required under the public interest test in Section 46(2)(a) to (c) of the Competition Act;
7. The CAK has not determined whether the transaction constitutes a restrictive trade practice within the meaning of Section 21 of the Competition Act, which prohibits agreements, decisions, or concerted practices between undertakings that have the object or effect of preventing, distorting, or lessening competition in trade.
8. Kalahari Cement Ltd through its combined interests in Bamburi Cement could command a substantial share of Kenya's cement production and distribution capacity. This could lead to horizontal coordination and collective dominance where two or more undertakings, acting in concert, control the market even if neither individually holds over 50%+ market share. CAK has not determined market concentration in cement sector or risks of dominance in production, distribution and pricing;
9. The absence of a full competition and public interest review by CAK leaves a regulatory vacuum, particularly in a sector that is strategic to Kenya's economic and infrastructure agenda. Such review is essential before completion of the transaction to ensure that the transaction does not harm competition, employment, or public welfare;
10. Regulation 5(2) of the Capital Markets (Takeovers and Mergers) Regulations 2002 provides CMA discretion to exempt an acquirer from making a takeover offer where the transaction serves public or market interest. The CMA must therefore ensure that any exemption granted under this provision is balanced by safeguards that protect minority shareholders and uphold investor confidence;
11. A determination by CMA as to whether to grant an exemption under Regulation 5(2) of the Capital Markets (Take-Overs and Mergers) Regulations, 2002 must go beyond the applicant's declaration and CMA must objectively test the investor's intention, technical competence, strategic capacity, and track record;
12. While Kalahari Ltd's exemption application is consistent with Regulation 5(2) of the Capital Markets (Take-Overs and Mergers) Regulations, 2002, minority shareholders remain exposed to influence from a dominant beneficial owner. Unless carefully conditioned, any approval or exemptions granted by CMA could undermine confidence in takeover rules and investor protection;

13. It is unclear whether CMA satisfied itself that there is no creeping takeover, that is, an incremental acquisition resulting in effective control in disguise and further whether minority shareholders are being prejudiced.
14. Kalahari Ltd's current declaration that it does not intend to takeover EAPC or acquire control does not preclude future acquisitions or public offers that could confer it with effective control or market dominance, potentially distorting pricing, investment inflows, or industrial competition.
15. The transaction price of KES 27.30 per share rests substantially below the prevailing NSE market price of approximately KES 58.75 suggesting possible undervaluation and erosion of shareholder value including the government's own equity stake
16. No independent valuation report or fairness opinion has been furnished to justify the transaction price, raising questions about the methodology used to determine share value and the rationale for the sale
17. Reliance on the principle of "willing buyer-willing seller" is inadequate where a listed company of strategic national importance is concerned, as public interest extends beyond the immediate parties to encompass capital market integrity, investor confidence, and protection of public assets.
18. Past privatizations demonstrate that undervalued disposals of strategic assets have resulted in public loss and as such, a recurrence must be guarded against to preserve public resources.
19. The large off-market disposal block sale well below the prevailing NSE trading levels may trigger market distortion a speculative trading as investors may query whether the market is overvalued or why Holcim is selling at a 'loss' hence shaking confidence in EAPCC value. This may potentially lead to sharp downward correction on the NSE which ultimately undermines investor confidence in the NSE and Kenya's Capital Markets.
20. While Section 31(1A) of the Capital Markets Act requires CMA's approval for any transfer of securities outside the Exchange, such approval relates to the legality and transparency of the transfer. However, where transaction prices deviate significantly from prevailing market levels, CMA should, before granting approval, require adequate disclosure of valuation methodology and ensure there is no market manipulation or insider trading, consistent with Regulations 111-114 of the Capital Markets (Public Offers, Listing and Disclosures) Regulations, 2023.
21. There is a credible risk that non-core assets, including land, could be subject to asset stripping if adequate safeguards are not put in place.
22. The National Treasury and NSSF, as major shareholders, have a fiduciary duty to safeguard public investment and pensioners moneys by ensuring that any future capital restructuring or disposal or sale of assets (e.g. land) is properly disclosed and approved in accordance with Sections 158 and 238 the Companies Act

23. Cement production is of strategic importance to Kenya's infrastructure and housing agenda, and the stability of EAPC Plc serves and bears a significant public interest.
24. Cement and associated limestone deposits constitute a strategic sector for national development with direct implications for infrastructure, housing, and industrial growth.
25. Whereas the entry of a long-term strategic investor may be beneficial to the company by injecting capital and providing technical support, and operational efficiency, the absence of a publicly disclosed strategic plan from Kalahari Ltd raises uncertainty over the over employment stability, operational strategy, and alignment with national industrial policy;
26. The absence of a public interest review by CAK under Sections 42–47 of the Competition Act, means that no safeguards or conditions have been imposed to protect public interest, consumer welfare and leaving potential risks of market concentration, dominance, and pricing control in the cement sector unmitigated;
27. Specifically, without a public interest assessment, there are no safeguards to protect employment, including the job security and labour conditions of employees at EAPC and within the wider cement value chain; Consumers, who could be exposed to higher cement prices arising from possible market coordination or dominance; Small and Medium Enterprises (SMEs) involved in distribution and related construction supply businesses, who could face reduced market access or discriminatory trading conditions; and National industrial policy objectives, which seek to ensure affordable construction materials, competitive domestic production, and sustainable exploitation of strategic mineral resources.
28. EAPC Plc has expressed desire to buy-back the shares proposed to be sold in the interest of the company and for the broader public. Buy-back of company shares is possible under Section 447 of the Companies Act, 2015 which provides that a company limited by shares may purchase its own shares out of distributable profits or through a fresh issue of shares, subject to shareholder approval by special resolution and compliance with disclosure, approvals and solvency requirements prescribed by the Act.
29. The continued listing of EAPC Plc in the Nairobi Securities Exchange is beneficial as it enhances transparency, facilitates access to capital, and allows wider investor participation.
30. The Committee noted that the existing legal framework governing off-market share transfers, takeovers, and mergers of public listed companies under the Capital Markets Act and the Capital Markets (Takeovers and Mergers) Regulations, 2002, lacks explicit provisions for exercise of pre-emptive rights by existing shareholders in private sale transaction or competitive bidding or transparent sale mechanisms where significant shareholding in a listed public

company is being disposed outside the exchange. These gaps expose listed companies, particularly those of strategic or public interest, to risks of opaque transactions, insider arrangements, and erosion of shareholder and public value. A harmonised legislative framework would strengthen market integrity, investor confidence, and fairness in capital markets.

31. From the submission proposing EAPC buys back its shares, the Committee finds that in respect to the Legal Framework, section 447 of the Companies Act, 2015 allows a listed company such as EAPC Plc to buy back its own shares. The law requires that the buy back be financed from distributable profits or from the proceeds of a fresh issue of shares. It also requires approval of shareholders through a special resolution and compliance with all disclosure and solvency rules to protect creditors and investors. (see *paragraph 139 of the Report*)
32. From the submission proposing EAPC buys back its shares, the Committee finds that in respect to the alignment with National Policy, EAPC Plc appears on the Privatization Programme 2023–2028 approved by the National Assembly and published in the Kenya Gazette Special Issue Vol. 78 No. 21 of 15 March 2023. This inclusion shows government intends to reduce state ownership and promote private participation in the company.
33. From the submission proposing EAPC buys back its shares, the Committee finds that in respect to the advancement of public policy goals, the proposed transaction in which EAPC Plc buys back shares from Holcim Group and later offers them to the public supports the objects of the Privatization Act, 2025 (No. 18 of 2025). Section 5(c) of the Act promotes public participation in the sustainable development and protection of the economy. The plan will allow Kenyans to hold a direct stake in an important industrial enterprise.
34. From the submission proposing EAPC buys back its shares, the Committee observed that in respect to the strategic economic benefits, the proposed transaction supports the objectives set out under Section 6 of the Privatization Act (No. 18 of 2025). It will broaden ownership in the economy by encouraging private investment under section 6(c) of the Privatization Act. It will also enhance and develop the capital markets under Section 6(f) of the Privatization Act through new public shareholding and increased market activity.

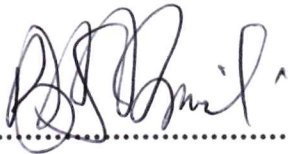
4.3 COMMITTEE RECOMMENDATIONS

91. The Committee, having considered the submissions made by stakeholders and the evidence presented during its inquiry into the proposed sale of shares held by Holcim Limited in East African Portland Cement PLC (EAPC Plc) to Kalahari Cement Limited, and having reviewed the applicable laws and regulatory framework, makes the following recommendations-

1. Kalahari Cement Limited should submit a written undertaking to the current shareholders, business partners and staff of East Africa Portland Cement, Plc, that it will safeguard jobs, support the company's five year turn around business strategic plan including a commitment that Kalahari Cement Limited will not cause asset stripping and disposal of non-core assets.
2. The Competition Authority of Kenya should, within sixty (60) days, conduct a comprehensive public interest and competition assessment of the cement industry in Kenya and submit a report to the National Assembly. The review should determine market concentration levels, risks of dominance or coordinated conduct, pricing trends, and the adequacy of existing safeguards for employment, SMEs, and consumers
3. The Board of Directors of East African Portland Cement Plc may evaluate the feasibility of implementing a share buy-back programme under Section 447 of the Companies Act. The evaluation may consider the buying back of shares proposed to be sold by Associated International Cement Limited (AIC) and Cementia Holding AG, as a lawful means of stabilising ownership, preserving shareholder value, and safeguarding public interest in a strategic national enterprise.
4. The Board of Directors of East African Portland Cement Plc should, within sixty (60) days, review its Memorandum and Articles of incorporation to align them with the Companies Act, the Capital Markets Act and current best corporate governance and business practices.
5. In view of the legislative gaps identified with respect to transfer of shares in public companies listed in the Nairobi Securities Exchange, the Committee recommends that the National Treasury in consultation with the Capital Markets Authority should undertake a legislative audit of the Capital markets Act, the Capital Markets (Takeovers and Mergers) Regulations, 2002, and present a legislative proposal to-
 - a. provide for exercise of preemptive rights in the sale and transfer of shares of a public listed company through private sale;
 - b. introduce competitive bidding for the purchase of shares among existing shareholders
6. Pursuant to the findings and observations on the proposal by EAPC Plc to buy back its shares, the Committee recommends that the National Assembly resolves that EAPC Plc buys back shares from Holcim Group and offer them to the public through a fresh Initial Public Offering on the basis that the transaction aligns with the Privatization Policy in Kenya and will deliver clear public benefits.
7. Pursuant to the recommendation under paragraph 6, the Committee recommends that the National Assembly resolves that the National Treasury, the Capital Markets Authority, the Privatization Authority and any other

relevant agencies give regulatory guidance and approvals to enable smooth and lawful execution of the transaction.

8. Pursuant to the findings and observations on the proposal by EAPC Plc to buy back its shares, the Committee recommends that the National Assembly resolves that EAPC Plc buys back shares from Holcim Group and offer them to the public through a fresh Initial Public Offering on the basis that the transaction aligns with the Privatization Policy in Kenya and will deliver clear public benefits.
9. Pursuant to the recommendation under paragraph 6, the Committee recommends that the National Assembly resolves that the National Treasury, the Capital Markets Authority, the Privatization Authority and any other relevant agencies give regulatory guidance and approvals to enable smooth and lawful execution of the transaction.
10. **In relation to criteria for determining dominant position**, CAK should be directed to immediately calculate and disclose the current market shares of EAPC, Bamburi Cement, and other major players to properly assess if the post-transaction entity, through common control, holds a dominant position as per Section 23.
11. **In relation to criteria for determining dominant position**, the mandate of CAK should be interpreted to include ex-post facto assessments of dominance, even for transactions that did not meet the notification threshold. The Authority should proactively investigate whether this consolidation of shareholding under a single beneficiary creates a *de facto* dominant position.
12. **In relation to criteria for determining abuse of dominant position**, CAK should use its powers under Section 24 of the Competition Act to initiate an investigation into the conduct of the commonly controlled EAPC-Bamburi entity post-transaction. Particular attention should be paid to pricing strategies, plant investment decisions, and market allocation.
13. **In relation to criteria for determining abuse of dominant position** as a condition for any future approvals (or as part of the ongoing court case), Kalahari Cement should be required to submit and publicly disclose a legally binding memorandum on its strategic plans for EAPC, guaranteeing operational independence, continued investment, and non-collusion with Bamburi Cement.
14. **In relation to abuse of buyer power**, the ongoing market study being undertaken by CAK of the cement sector should explicitly include an analysis of buyer power in the chain of supply of the sector to identify and prevent potential future abuses under Section 24A.

Signature  Date 18/11/2025

**HON. BERNARD MASAKA SHINALI, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON TRADE,
INDUSTRY AND COOPERATIVES**

 THE NATIONAL ASSEMBLY PAPERS LAID	
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THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

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REPORT

**ON THE RATIFICATION OF THE INQUIRY INTO THE PROPOSED SALE OF
SHARES IN EAST AFRICAN PORTLAND CEMENT PLC**

VOLUME II

LIST OF ANNEXURES

Adoption List

Minutes

National Treasury

The Board Members of East African Portland Cement

Competition Authority of Kenya (CAK)

Attorney General

Capital Markets Authority (CMA)

Ministry of Investments, Trade and Industry and State Department for Industry



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION - 2025
DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES
Consideration and Adoption of the report on the proposed sale of EARC
ADOPTION SCHEDULE shares 4/11/2025

No.	MEMBER NAME	SIGNATURE
1.	Hon. Benard Masaka Shinali, MP- <i>Chairperson</i>	
2.	Hon. Kitany Marianne Jebet, MP - <i>Vice Chairperson</i>	
3.	Hon. Dr. Oundo Wilberforce Ojiambo, MP	
4.	Hon. Adagala Beatrice Kahai, MP	
5.	Hon. Githinji Robert Gichimu, MP	
6.	Hon. Kamene Joyce, MP	
7.	Hon. Mwalyo Joshua Mbithi Mutua, MP	
8.	Hon. Oluoch Anthony Tom, MP	
9.	Hon. Guyo Adhe Wario, MP	
10.	Hon. Korir Adams Kipsanai, MP	
11.	Hon. Maina Mwago Amos, MP	
12.	Hon. Sakimba Parashina Samuel, MP	
13.	Hon. Alfred Kiprono Mutai, MP	
14.	Hon. Michael Wainaina Wambugu, MP	
15.	Hon. John Bwire, MP	

MINUTES OF THE 36th SITTING OF THE FOURTH SESSION OF THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES, HELD AT THE VICTORIA CONFERENCE ROOM, ARGYLE GRAND HOTEL ON SATURDAY, 4TH OCTOBER 2025, AT 9.00 a.m.

PRESENT

- | | | |
|--------------------------------------------|---|-------------------------|
| 1. Hon. Benard Masaka Shinali, M.P | - | Chairperson |
| 2. Hon. Kitany Marianne Jebet, M.P | - | Vice-Chairperson |
| 3. Hon. Sakimba Parashina Samuel, M.P | | |
| 4. Hon. Alfred Kiprono Mutai, M.P | | |
| 5. Hon. Githinji Robert Gichimu, M.P | | |
| 6. Hon. (Dr) Oundo Wilberforce Ojiambo M.P | | |
| 7. Hon. Adhe Wario Guyo, MP | | |
| 8. Hon. Dr. Adagala Beatrice Kahai, M.P | | |
| 9. Hon. Bwire John Okano, M.P | | |
| 10. Hon. Korir Adams Kipsanai, M.P | | |

APOLOGIES

1. Hon. Oluoch Anthony Tom, M.P
2. Hon. Maina Mwago Amos, M.P
3. Hon. Mwalyo Joshua Mbithi Mutua, M.P
4. Hon. Kamene Joyce, M.P
5. Hon. Michael Wainaina Wambugu, M.P

SECRETARIAT

- | | | |
|-------------------------|---|---------------------------------------|
| 1. Mr. Abenayo Wasike | - | Principal Clerk/Head of Secretariat |
| 2. Ms. Carolyne Musyoka | - | Hansard Reporter II (Clerk Assistant) |
| 3. Ms. Evelyn Orina | - | Clerk Assistant III |
| 4. Ms. Priscilla Wangu | - | Fiscal Analyst II |
| 5. Ms. Priscilla Saidi | - | Research Officer |
| 6. Ms. Cosmas Akhonya | - | Audio Officer |
| 7. Ms. Lynn Masai | - | Intern |

AGENDA

1. Preliminaries/Introductions
 - i. Prayers
 - ii. Adoption of the Agenda
 - iii. Remarks by the Committee Chairperson
2. Confirmation of Minutes / Matters Arising
3. **Consideration and adoption of the Report on the inquiry into the proposed sale of shares held by Holcim Limited in East African Portland Cement PLC (EAPC Plc) to Kalahari Cement Limited**
4. Any other Business/Adjournment/Date of the next meeting

MIN.NO NA/TIC/2025/166:

PRELIMINARIES

The Chairperson called the meeting to order at 09.05 am. A word of prayer was said, followed by self-introductions by the Committee Members and the Secretariat. The Chairperson briefed the Members of the Agenda which was adopted, having been proposed by the Hon. (Dr) Oundo Wilberforce Ojiambo M.P and seconded by the Hon. Githinji Robert Gichimu, M.P.

MIN.NO NA/TIC/2025/167:

CONFIRMATION OF MINUTES

The agenda was deferred.

MIN.NO NA/TIC/2025/168:

**CONSIDERATION AND ADOPTION OF
THE REPORT ON INQUIRY**

COMMITTEE OBSERVATIONS

The Committee observed as follows with respect to the terms of reference-

1. To examine the applicable legal framework transaction's compliance with the Companies Act, the Capital Markets Act, the Competition Act, and other applicable laws

1. The Committee observed that the transaction of transfer of shares in EAPC Plc as a public listed company in Kenya is governed by the Capital Markets Act, the Companies Act, the Competition Act, the Mining Act together with the relevant subsidiary legislation.
2. In particular, the relevant capital market provisions are-
 - i. Section 31 (1A) of the Capital Markets Act and Regulation 84 (c) of the Capital Markets (Public Offers, Listing and Disclosure Regulations) 2023, which require approval of CMA where there is a transfer of securities outside the Securities Exchange;
 - ii. The eligibility requirements stipulated under the Capital Markets (Public Offers, Listing and Disclosure Regulations) 2023, which demand free transferability of listed securities;
 - iii. The Capital Markets (Take-Overs And Mergers) Regulations, which are triggered when a person acquires more than 5% of voting shares in any one year while holding between 25% and 50% of voting shares (i.e., exercising "effective control").
3. The Committee observed that a person who has acquired effective control in a listed company is required to follow the following procedure-
 - i. Issue a public announcement.
 - ii. Prepare, publish and serve a Notice of Intention on CMA, the Exchange, the listed company as well as the Competition Authority of Kenya.
 - iii. Apply for an exemption under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, where here no takeover of other shareholders is intended.
4. The Committee observed that effective control is attained from ownership of 25% of the issued share capital and above.
5. With respect to competition law, the Competition Authority of Kenya must determine if the sale amounts to a merger by conferring direct or indirect control under the Competition

Act, and if so, apply the competition and public interest tests to approve, decline, or approve with conditions.

6. Under the Companies Act, the sale must adhere to the company's Articles of Incorporation or other governing instruments.
7. With respect to the Mining Act, the relevant provision is Section 51(6) and (7) of the Mining Act, 2016, which govern transfer or assignment of mineral rights. It provides that a transfer or assignment of a mineral right must be approved by the Cabinet Secretary.
8. Completion of the transaction is conditional upon the satisfaction or, where legally permissible, waiver of the following conditions precedent-
 - i. Receipt of approval from the Competition Authority;
 - ii. The granting by the CMA of an exemption to Kalahari under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, exempting Kalahari Ltd from the obligation to make a mandatory takeover offer to EAPC shareholders where Kalahari after acquiring significant shareholding in the company does not wish to buy out other shareholders.
 - iii. With respect to EAPC's mining licence, notification to and receipt of written approval from the Cabinet Secretary for the Ministry of Mining, Blue Economy and Maritime Affairs, in accordance with Sections 51(6) and 51(7) of the Mining Act;
 - iv. Receipt from CMA of approval under section 31 of the CMA Act for Kalahari Ltd to implement the transaction as a private transfer; and
 - v. Should Kalahari opt to finance any portion of the consideration rather than pay it fully in cash, it shall provide the sellers with an unconditional, irrevocable, on-demand guarantee.

2. To scrutinize the process followed in the proposed share sale, including the role of the National Treasury, the Capital Markets Authority (CMA), the Competition Authority of Kenya (CAK), and the Office of the Attorney-General, particularly with respect to approvals issued and legal advice provided

Kalahari Cement Limited entered into a Share Purchase Agreement dated 31 July 2025, under which Kalahari Cement Limited will acquire the following-

- (a) 13,144,442 ordinary shares in EAPC (representing 14.6% of the issued share capital) from Associated International Cement Limited (AIC), a company incorporated under the laws of England; and
 - (b) 13,180,442 ordinary shares in EAPC (also representing 14.6%) from Cementia Holding AG, a company incorporated under the laws of Switzerland.
1. Holcim Limited is the ultimate beneficial owner of the 26,324,884 ordinary shares in EAPC approximately 29.2% of the issued share capital, held through the above-named subsidiaries AIC and Cementia ("the sellers").
 2. Kalahari Ltd served the Capital Markets Authority (CMA) with a Notice of Intention under Regulation 4(1) on 31 July 2025.
 3. The National Treasury is key shareholder in EAPC Plc and CMA advised the Committee that Kalahari Ltd indicated that it did not intend to delist EAPC but to maintain it as a publicly listed company, citing benefits of access to equity and debt capital markets and broad investor participation in the growth of the cement sector.

4. The Office of the Attorney General indicated that its role was provision of legal advice if and when requested by EAPC Plc but none had been sought;
5. With respect to the specific regulators, their roles are as below-

(i) Capital Markets Authority

1. The Committee observed that the prerequisite documents as per the Regulations are an announcement to shareholders and issue of a Notice of Intention which is also published in the newspapers. CMA confirmed that Kalahari complied with these requirements and the Committee observed that the Notice of Intention was published in the Daily Nation as well as the Standard newspapers on August 1st, 2025.
2. The Capital Markets Authority advised that with respect to the transaction under scrutiny the Notice of Intention by Kalahari Ltd indicated that the purchaser does not intend to takeover shares held by other shareholders therefore there is no proposal for takeover. A mandatory takeover offer is typically required when a person acquires "effective control" (25% or more of the issued share capital) in a Listed company
3. Kalahari Ltd was therefore required to seek an exemption under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002 and the grounds upon which the exemption may be granted are listed under sub regulation 2.
4. CMA confirmed that Kalahari Ltd sought an exemption from CMA pursuant to Regulation 5(2) on the grounds of being a strategic investor in a listed company that is tied up with management or other technical support relevant to the business of the company and as serving the public interest. In short, Kalahari argued that it is a strategic partner with technical and managerial support and does not intend to takeover.
5. The CMA confirmed that the proposed transaction was reviewed and an exemption from the obligation to make a mandatory takeover offer to all EAPC shareholders was granted to Kalahari under the Capital Markets (Take-overs and Mergers) Regulations 2002 on August 5th 2025.
6. The CMA also required Kalahari Ltd to obtain the requisite approvals from the Competition Authority of Kenya and the Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs as per Sections 51(6) and (7) of the Mining Act, which were both subsequently granted.
7. CMA was also required to grant an approval under section 31 of the CMA Act for the transaction to be implemented as a private transfer.

(ii) Competition Authority of Kenya

1. The Committee observed that CAK's core mandate includes regulating market structure by analyzing and approving or disapproving mergers and takeovers in the Kenyan economy, with the analysis focusing on potential impacts on competition and public interest. This is intended to regulate market structure by reviewing mergers and takeovers in order to safeguard competition and public interest. This mandate includes assessing whether a transaction is likely to substantially lessen competition, result in dominance, restrict trade, or harm consumers and small undertakings.
2. The Committee observed that under the Competition Act, Cap 504, a merger is unenforceable without the Authority's approval. A merger or takeover occurs when one undertaking directly or indirectly acquires or establishes control over the whole or part of another undertaking's business.

3. The CAK received a notice of intention to acquire these shares on July 31, 2025, and a subsequent request for an advisory opinion on August 13, 2025 per Rule 14 of the Competition (General) Rules, 2019. The Authority concluded in its advisory opinion that the proposed acquisition does not amount to a merger because the 41.7% shareholding will not result in a change of control of the target undertaking, nor do the shares confer any veto rights that would amount to indirect control. Consequently, in CAK's determination, the transaction does not require notification before its implementation under Section 43(1) of the Act.
4. As a result, the CAK indicated that it was legally constrained from conducting a competition and public interest assessment as per Section 42 of the Act.

3. To assess the potential alteration of corporate control and evaluate measures in place to safeguard the interests of all shareholders, particularly the Government (National Treasury), pensioners (NSSF), and minority investors.

1. The current shareholding structure of EAPC PLC is: National Social Security Fund (NSSF) (27%), The National Treasury (25.3%), Cementia Holdings AG (14.6 %), Associated International Cement Ltd holds (14.6%) , Bamburi Cement Ltd (12.5%), while minority shareholders hold 6%;
2. Cementia Holdings AG and Associated International Cement Ltd are subsidiaries of Holcim Group giving it a 29.2% stake in EAPC PLC;
3. Kalahari Cement Ltd is a major shareholder in Bamburi Cement Ltd which holds 12.5% shares in EAPC PLC and by virtue of that association, the transaction would result in a combined influence of 41.7% by Kalahari Cement Ltd;
4. Regarding board representation, two of the five directors representing shareholders are currently nominated by the Holcim Group;
5. The Government of Kenya appoints directors to represent the National Treasury, the Parent Ministry, NSSF, the minority shareholders, and a Chairperson appointed by the President
6. EAPC PLC stated that there are no formal shareholder agreements currently in place.
7. The Committee observed that the First Schedule to the Capital Markets (Public Offers, Listings and Disclosures) Regulations 2023, LN 172 of 2023 requires that Securities to be listed shall be fully paid up, freely transferable with no restrictions on marketability or preferential treatment.
8. The Board of EAPC raised concerns that post-transaction, the beneficial owner would exercise influence over a combined stake of approximately 41.7% in EAPC Plc. In its view, while the 29.2% acquisition alone sits below the 30% threshold for a mandatory takeover offer, the Regulations require assessment of whether parties are "acting in concert" and 'common control'.
9. The committee observed that "common control" means shares are ultimately held by the same owner, and "acting in concert" means coordinated action between shareholders. Both are anti-avoidance concepts that are designed to prevent shareholders from sidestepping takeover rules by splitting stakes or working behind the scenes.
10. The committee further observed that in that case, given Kalahari is the ultimate beneficial owner of Bamburi Cement (which is a shareholder in EAPC Plc) it may not be able to argue that each stake is "independent" hence regulators would treat them as one.

Ordinarily, this should force a mandatory takeover bid to all other shareholders in order to protect minority interests.

11. In this case, Kalahari Ltd indicates that it does not intend to acquire the shares of other shareholders and sought an exemption under Regulation 5(2) of the Capital Markets (Takeovers and Mergers) Regulations 2002 arguing that it is a strategic investor and not pursuing a takeover.
12. The CAK submitted that the transaction does not amount to a notifiable merger for under Section 43(1) of the Act before its implementation since it does not confer control in terms of veto rights or decisive influence.
13. The Government of Kenya holds 25.3% of EAPC Plc directly through the National Treasury. The National Treasury, acts as a major shareholder, responsible for protecting public investment value and ensuring that any corporate action (such as share transfers, board restructuring, or strategic partnerships) aligns with national interests.

3. On the proposed consideration and the methodology used to determine the value of the shares

1. The Committee observed that proposed consideration for the transaction is Kshs. 27.30 per share. On the 1st August 2025, a day after Kalahari issued the Notice of Intention, the share price stood at Kshs. 50.75 rising to Kshs. 58.75 by 2nd October 2025. This reflects steady gains over a two month period.
2. The EAPC PLC Board of Directors indicated that the proposed transaction is a private sale between Holcim Group (through its subsidiaries Cementia and Associated International Cement) and Kalahari Cement Ltd. As such, EAPC Plc was not a party to the valuation or negotiation process and therefore the EAPC Plc did not have access to the specific valuation methodology used.
3. The EAPC Plc Board's further expressed concern that the transaction price of KES 27.30 per share is significantly below the prevailing market value. It reiterated its fiduciary duty to safeguard all shareholders by ensuring that the company's intrinsic value is reflected in its performance, noting that its five-year strategic plan on balance sheet restructuring and operational efficiency designed to unlock and deliver this value.
4. The Committee noted that the Board complied with disclosure obligations by publishing the Notice of Intention through the Nairobi Securities Exchange.
5. The Principal Secretary for Investment stated that he did not consider the transaction price a cause for concern, describing it as a matter between a willing buyer and a willing seller
6. The CMA role may not enable it to judge the price but it is to ensure full and fair disclosure and to ensure there is no insider trading or market manipulation. Such disclosure allows for shareholders to take decisions regarding their shareholding. In this case the transaction price is material information that requires to be disclosed under the CMA rules.

4. To inquire into the anticipated impact of the proposed sale on the company's employees, customers, the broader public, and national industrial policy.

1. EAPC PLC indicated that it had not been engaged in any communication with Kalahari Cement Ltd regarding its strategic plans for the company post acquisition.

2. As a result, the buyer's long-term plans, employment levels, wages, benefits, capital investment and its approach to valuation and corporate governance remain unclear and unknown.
3. The Competition Authority did not undertake a public interest review of the transaction hence the safeguards are non-existent.
4. EAPC Plc has expressed a desire to buy back the shares proposed to be sold by Holcim Group in the interest of the company and the broader public. The committee observed that under Section 447 of the Companies Act, 2015, a company limited by shares may purchase its own shares out of distributable profits or through a fresh issue of shares, subject to shareholder approval by special resolution and compliance with disclosure and solvency requirements prescribed by the Act.
5. In accordance with the submission under paragraph 139, the Committee observed that the EAPC Plc proposal is more than a routine corporate action. It brings together the provisions of the Companies Act with the implementation of national policy under the Privatization Act.
6. In accordance with the submission under paragraph 139, the Committee observed that the two-stage process involving a company buy back followed by a public offer is an effective approach. It transfers ownership from a single foreign shareholder to many Kenyan investors. It also promotes wider economic participation and local ownership.
7. In accordance with the submission under paragraph 139, the Committee observed that supporting this proposal helps to implement an approved privatization programme of the National Assembly. It converts policy objectives of privatization into practical results.
8. In accordance with the submission under paragraph 139, the Committee observed that the transaction structure preserves the listing of the EAPC Plc and stability while promoting the national goals of inclusive ownership and capital market growth.

COMMITTEE FINDINGS

Based on the above observations, the Committee finds that-

1. The proposed transaction and the approvals process was subject to multi-layered regulation under the Capital Markets Act (Cap. 485A), the Competition Act (Cap. 504), the Companies Act, (Cap. 486), and the Mining Act, (Cap 306), which seek to protect investors, ensure fair competition, and safeguard national mineral resources;
2. Owing to the complex multi-layered regulatory framework, regulators must coordinate their review processes to avoid gaps in oversight;
3. The transaction therefore required approvals or exemptions from the Capital Markets Authority (CMA) including approvals under Section 31(1A) of the Capital Markets Act and the relevant subsidiary legislation, the Competition Authority of Kenya (CAK), and the Cabinet Secretary for Mining under Sections 51(6)–(7) of the Mining Act for the transfer of a controlling interest in a licensee;
4. CAK did not conduct a merger review as provided for under sections 42–47 of the Competition Act, having concluded that the transaction was non-notifiable. Consequently, no public interest or competition assessment was undertaken;
5. CAK has neither determined market concentration or dominance risks in cement sector or risks of dominance nor assessed whether the transaction may lessen competition in production, distribution and pricing;

6. CAK has not determined whether the transaction can proceed without harming competition, employment, SME participation in the cement sector or public interest or conflict with national industrial policy, as required under the public interest test in Section 46(2)(a) to (c) of the Competition Act;
7. The CAK has not determined whether the transaction constitutes a restrictive trade practice within the meaning of Section 21 of the Competition Act, which prohibits agreements, decisions, or concerted practices between undertakings that have the object or effect of preventing, distorting, or lessening competition in trade.
8. Kalahari Cement Ltd through its combined interests in Bamburi Cement could command a substantial share of Kenya's cement production and distribution capacity. This could lead to horizontal coordination and collective dominance where two or more undertakings, acting in concert, control the market even if neither individually holds over 50%+ market share. CAK has not determined market concentration in cement sector or risks of dominance in production, distribution and pricing;
9. The absence of a full competition and public interest review by CAK leaves a regulatory vacuum, particularly in a sector that is strategic to Kenya's economic and infrastructure agenda. Such review is essential before completion of the transaction to ensure that the transaction does not harm competition, employment, or public welfare;
10. Regulation 5(2) of the Capital Markets (Takeovers and Mergers) Regulations 2002 provides CMA discretion to exempt an acquirer from making a takeover offer where the transaction serves public or market interest. The CMA must therefore ensure that any exemption granted under this provision is balanced by safeguards that protect minority shareholders and uphold investor confidence;
11. A determination by CMA as to whether to grant an exemption under Regulation 5(2) of the Capital Markets (Take-Overs and Mergers) Regulations, 2002 must go beyond the applicant's declaration and CMA must objectively test the investor's intention, technical competence, strategic capacity, and track record;
12. While Kalahari Ltd's exemption application is consistent with Regulation 5(2) of the Capital Markets (Take-Overs and Mergers) Regulations, 2002, minority shareholders remain exposed to influence from a dominant beneficial owner. Unless carefully conditioned, any approval or exemptions granted by CMA could undermine confidence in takeover rules and investor protection;
13. It is unclear whether CMA satisfied itself that there is no creeping takeover, that is, an incremental acquisition resulting in effective control in disguise and further whether minority shareholders are being prejudiced.
14. Kalahari Ltd's current declaration that it does not intend to takeover EAPC or acquire control does not preclude future acquisitions or public offers that could confer it with effective control or market dominance, potentially distorting pricing, investment inflows, or industrial competition.
15. The transaction price of KES 27.30 per share rests substantially below the prevailing NSE market price of approximately KES 58.75 suggesting possible undervaluation and erosion of shareholder value including the government's own equity stake
16. No independent valuation report or fairness opinion has been furnished to justify the transaction price, raising questions about the methodology used to determine share value and the rationale for the sale

17. Reliance on the principle of “willing buyer–willing seller” is inadequate where a listed company of strategic national importance is concerned, as public interest extends beyond the immediate parties to encompass capital market integrity, investor confidence, and protection of public assets.
18. Past privatizations demonstrate that undervalued disposals of strategic assets have resulted in public loss and as such, a recurrence must be guarded against to preserve public resources.
19. The large off-market disposal block sale well below the prevailing NSE trading levels may trigger market distortion a speculative trading as investors may query whether the market is overvalued or why Holcim is selling at a ‘loss’ hence shaking confidence in EAPCC value. This may potentially lead to sharp downward correction on the NSE which ultimately undermines investor confidence in the NSE and Kenya’s Capital Markets.
20. While Section 31(1A) of the Capital Markets Act requires CMA’s approval for any transfer of securities outside the Exchange, such approval relates to the legality and transparency of the transfer. However, where transaction prices deviate significantly from prevailing market levels, CMA should, before granting approval, require adequate disclosure of valuation methodology and ensure there is no market manipulation or insider trading, consistent with Regulations 111–114 of the Capital Markets (Public Offers, Listing and Disclosures) Regulations, 2023.
21. There is a credible risk that non-core assets, including land, could be subject to asset stripping if adequate safeguards are not put in place.
22. The National Treasury and NSSF, as major shareholders, have a fiduciary duty to safeguard public investment and pensioners moneys by ensuring that any future capital restructuring or disposal or sale of assets (e.g. land) is properly disclosed and approved in accordance with Sections 158 and 238 the Companies Act
23. Cement production is of strategic importance to Kenya’s infrastructure and housing agenda, and the stability of EAPC Plc serves and bear a significant public interest.
24. Cement and associated limestone deposits constitute a strategic sector for national development with direct implications for infrastructure, housing, and industrial growth.
25. Whereas the entry of a long-term strategic investor may be beneficial to the company by injecting capital and providing technical support, and operational efficiency, the absence of a publicly disclosed strategic plan from Kalahari Ltd raises uncertainty over the over employment stability, operational strategy, and alignment with national industrial policy;
26. The absence of a public interest review by CAK under Sections 42–47 of the Competition Act, means that no safeguards or conditions have been imposed to protect public interest, consumer welfare and leaving potential risks of market concentration, dominance, and pricing control in the cement sector unmitigated;
27. Specifically, without a public interest assessment, there are no safeguards to protect employment, including the job security and labour conditions of employees at EAPC and within the wider cement value chain; Consumers, who could be exposed to higher cement prices arising from possible market coordination or dominance; Small and Medium Enterprises (SMEs) involved in distribution and related construction supply businesses, who could face reduced market access or discriminatory trading conditions;

and National industrial policy objectives, which seek to ensure affordable construction materials, competitive domestic production, and sustainable exploitation of strategic mineral resources.

28. EAPC Plc has expressed desire to buy-back the shares proposed to be sold in the interest of the company and for the broader public. Buy-back of company shares is possible under Section 447 of the Companies Act, 2015 which provides that a company limited by shares may purchase its own shares out of distributable profits or through a fresh issue of shares, subject to shareholder approval by special resolution and compliance with disclosure, approvals and solvency requirements prescribed by the Act.
29. The continued listing of EAPC Plc in the Nairobi Securities Exchange is beneficial as it enhances transparency, facilitates access to capital, and allows wider investor participation.
30. The Committee noted that the existing legal framework governing off-market share transfers, takeovers, and mergers of public listed companies under the Capital Markets Act and the Capital Markets (Takeovers and Mergers) Regulations, 2002, lacks explicit provisions for exercise of pre-emptive rights by existing shareholders in private sale transaction or competitive bidding or transparent sale mechanisms where significant shareholding in a listed public company is being disposed outside the exchange. These gaps expose listed companies, particularly those of strategic or public interest, to risks of opaque transactions, insider arrangements, and erosion of shareholder and public value. A harmonised legislative framework would strengthen market integrity, investor confidence, and fairness in capital markets.
31. From the submission proposing EAPC buys back its shares, the Committee finds that in respect to the Legal Framework, section 447 of the Companies Act, 2015 allows a listed company such as EAPC Plc to buy back its own shares. The law requires that the buy back be financed from distributable profits or from the proceeds of a fresh issue of shares. It also requires approval of shareholders through a special resolution and compliance with all disclosure and solvency rules to protect creditors and investors. *(see paragraph 139 of the Report)*
32. From the submission proposing EAPC buys back its shares, the Committee finds that in respect to the alignment with National Policy, EAPC Plc appears on the Privatization Programme 2023–2028 approved by the National Assembly and published in the Kenya Gazette Special Issue Vol. 78 No. 21 of 15 March 2023. This inclusion shows government intends to reduce state ownership and promote private participation in the company.
33. From the submission proposing EAPC buys back its shares, the Committee finds that in respect to the advancement of public policy goals, the proposed transaction in which EAPC Plc buys back shares from Holcim Group and later offers them to the public supports the objects of the Privatization Act, 2025 (No. 18 of 2025). Section 5(c) of the Act promotes public participation in the sustainable development and protection of the economy. The plan will allow Kenyans to hold a direct stake in an important industrial enterprise.
34. From the submission proposing EAPC buys back its shares, the Committee observed that in respect to the strategic economic benefits, the proposed transaction supports the objectives set out under Section 6 of the Privatization Act (No. 18 of 2025). It will broaden ownership in the economy by encouraging private investment under section 6(c) of the Privatization Act. It will also enhance and develop the capital markets under Section 6(f) of the Privatization Act through new public shareholding and increased market activity.

COMMITTEE RECOMMENDATIONS

The Committee, having considered the submissions made by stakeholders and the evidence presented during its inquiry into the proposed sale of shares held by Holcim Limited in East African Portland Cement PLC (EAPC Plc) to Kalahari Cement Limited, and having reviewed the applicable laws and regulatory framework, makes the following recommendations-

1. Kalahari Cement Limited should submit a written undertaking to the current shareholders, business partners and staff of East Africa Portland Cement, Plc, that it will safeguard jobs, support the company's five year turn around business strategic plan including a commitment that Kalahari Cement Limited will not cause asset stripping and disposal of non-core assets.
2. The Competition Authority of Kenya should, within sixty (60) days, conduct a comprehensive public interest and competition assessment of the cement industry in Kenya and submit a report to the National Assembly. The review should determine market concentration levels, risks of dominance or coordinated conduct, pricing trends, and the adequacy of existing safeguards for employment, SMEs, and consumers
3. The Board of Directors of East African Portland Cement Plc may evaluate the feasibility of implementing a share buy-back programme under Section 447 of the Companies Act. The evaluation may consider the buying back of shares proposed to be sold by Associated International Cement Limited (AIC) and Cementia Holding AG, as a lawful means of stabilising ownership, preserving shareholder value, and safeguarding public interest in a strategic national enterprise.
4. The Board of Directors of East African Portland Cement Plc should, within sixty (60) days, review its Memorandum and Articles of incorporation to align them with the Companies Act, the Capital Markets Act and current best corporate governance and business practices.
5. In view of the legislative gaps identified with respect to transfer of shares in public companies listed in the Nairobi Securities Exchange, the Committee recommends that the National Treasury in consultation with the Capital Markets Authority should undertake a legislative audit of the Capital markets Act, the Capital Markets (Takeovers and Mergers) Regulations, 2002, and present a legislative proposal to-
 - a. provide for exercise of preemptive rights in the sale and transfer of shares of a public listed company through private sale;
 - b. introduce competitive bidding for the purchase of shares among existing shareholders
6. Pursuant to the findings and observations on the proposal by EAPC Plc to buy back its shares, the Committee recommends that the National Assembly resolves that EAPC Plc buys back shares from Holcim Group and offer them to the public through a fresh Initial Public Offering on the basis that the transaction aligns with the Privatization Policy in Kenya and will deliver clear public benefits.
7. Pursuant to the recommendation under paragraph 6, the Committee recommends that the National Assembly resolves that the National Treasury, the Capital Markets Authority, the Privatization Authority and any other relevant agencies give regulatory guidance and approvals to enable smooth and lawful execution of the transaction.

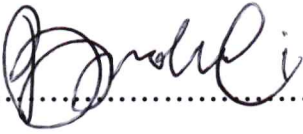
8. Pursuant to the findings and observations on the proposal by EAPC Plc to buy back its shares, the Committee recommends that the National Assembly resolves that EAPC Plc buys back shares from Holcim Group and offer them to the public through a fresh Initial Public Offering on the basis that the transaction aligns with the Privatization Policy in Kenya and will deliver clear public benefits.
9. Pursuant to the recommendation under paragraph 6, the Committee recommends that the National Assembly resolves that the National Treasury, the Capital Markets Authority, the Privatization Authority and any other relevant agencies give regulatory guidance and approvals to enable smooth and lawful execution of the transaction.
10. **In relation to criteria for determining dominant position**, CAK should be directed to immediately calculate and disclose the current market shares of EAPC, Bamburi Cement, and other major players to properly assess if the post-transaction entity, through common control, holds a dominant position as per Section 23.
11. **In relation to criteria for determining dominant position**, the mandate of CAK should be interpreted to include ex-post facto assessments of dominance, even for transactions that did not meet the notification threshold. The Authority should proactively investigate whether this consolidation of shareholding under a single beneficiary creates a *de facto* dominant position.
12. **In relation to criteria for determining abuse of dominant position**, CAK should use its powers under Section 24 of the Competition Act to initiate an investigation into the conduct of the commonly controlled EAPC-Bamburi entity post-transaction. Particular attention should be paid to pricing strategies, plant investment decisions, and market allocation.
13. **In relation to criteria for determining abuse of dominant position** as a condition for any future approvals (or as part of the ongoing court case), Kalahari Cement should be required to submit and publicly disclose a legally binding memorandum on its strategic plans for EAPC, guaranteeing operational independence, continued investment, and non-collusion with Bamburi Cement.
14. **In relation to abuse of buyer power**, the ongoing market study being undertaken by CAK of the cement sector should explicitly include an analysis of buyer power in the chain of supply of the sector to identify and prevent potential future abuses under Section 24A.

MIN.NO NA/TIC/2025/169: ADOPTION OF THE REPORT

The Committee adopted the report having been proposed by Hon. Kitany Marianne Jebet, M.P and seconded by Hon. Sakimba Parashina Samuel, M.P and further resolved that the Secretariat undertakes the necessary polishing, refining, and consolidation of the recommendations for tabling before the House.

MIN.NO NA/TIC/2025/170: ADJOURNMENT AND DATE OF THE NEXT MEETING

The meeting was adjourned at 2:35 pm. The next meeting will be held on notice.

Signature  Date 19/11/2025

HON. BERNARD MASAKA SHINALI, MP CHAIRPERSON, DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES



EAST AFRICAN PORTLAND CEMENT PLC

**SUBMISSIONS BY
CPA MOHAMED O. ADAN, MANAGING DIRECTOR
EAST AFRICAN PORTLAND CEMENT PLC**

**INQUIRY INTO THE PROPOSED SALE OF EAST AFRICAN
PORTLAND CEMENT PLC (EAPC PLC) SHARES HELD BY
HOLCIM LIMITED TO KALAHARI CEMENT LTD**

Tuesday, 16th September, 2025 at 10.00am

Parliament Buildings



Holding Life Together

EAST AFRICAN PORTLAND CEMENT PLC

Athi River Off Namanga Road
P.O Box 20-00204 Athi River
Tel: (254) 709 835 000/001
E-mail: info@eapcc.co.ke
Website: www.eastafricanportland.com

Ref: EAPCPLC/NA/MD/TIC/cfo/19925

August 19, 2025

Clerk of the National Assembly,
Parliament Buildings,
P.O. Box 41842 - 00100
NAIROBI

Dear Sir,

RE: INQUIRY INTO THE PROPOSED SALE OF EAST AFRICAN PORTLAND CEMENT (EAPC) PLC SHARES HELD BY HOLCIM LIMITED TO KALAHARI CEMENT LTD

Reference is made to your letter REF: NA/DDC/TIC/2025/049 dated 15th August 2025 on the above subject.

Chair, thank you for the opportunity to respond to the matters raised by the committee. We; EAPC PLC, hereby submit our comments and responses on the issues as follows;

1. The resulting shareholder structure after the sale and whether it grants the buyer effective control over EAPC Limited

EAPC Plc shareholding structure is as shown below:

i.	National Social Security Fund (NSSF)	27%
ii.	The National Treasury	25.3%
iii.	Cementia Holdings AG	14.6%
iv.	Associated International Cement Ltd	14.6%
v.	Bamburi Cement Ltd	12.5%
vi.	Minority Shareholders	6%



RESPONSE TO TRADE COMMITTEE ON INQUIRY OF HOLCIM GROUP SHARES SALE TO KALAHARI CEMENT

Directors: Brig (Rtd.) Richard K. Mbithi (Chairman), Mr. Mohamed O. Adan (Managing Director), Dr. Eusebius Juma Mukhwana

(Alt. Martin Masibo), Hon. CPA John Mbadi, EGH. (Alt. Edward Wamweya), Patrick K.Ole Tutui, Kungu Gatabaki, Prof. Sarone Ole Sena, NSSF.

Cementia Holdings AG and Associated International Cement Limited are subsidiaries of the Holcim Group. The proposed sale of their shares to Kalahari Cement Ltd will result in the acquirer holding 29.2% of the company's authorized shares. Additionally, the company maintains a close association with Bamburi Cement Ltd, as outlined in the disclosure accompanying the notice of intent regarding Holcim's stake acquisition in EAPC Plc. This will yield 41.7% stake in the business.

2. The allocation of board representation post-sale

The current Board of Directors includes two members (out of five directors representing shareholders) nominated by the Holcim Group, reflecting a longstanding practice aligned with its historical 41.7% ownership of the company's authorized and issued shares. The Principal Secretary, State Department for Industry and a representative of the State Corporations Advisory Committee also sit on the board by virtue of classification of the entity as a state corporation. It is expected that this level of board representation will be available to the acquirer upon completion of the transaction.

3. Existence and terms of shareholder agreements, particularly on protections for minority shareholders and the government interests

There are currently no shareholder agreements in place. Government interests are represented on the Board through the nomination of two directors—one from the National Treasury and another from the parent ministry. Minority shareholders are represented by a director appointed by the Government of Kenya to act on their behalf. Additionally, the Chairman of the Board is appointed by the Government of Kenya.

4. Safeguards on pensioners' funds (through NSSF) and taxpayers' interests

The Company is actively implementing its five-year strategic plan, which runs through June 2027, with notable progress already achieved. As part of this strategy, the interests of pensioners and taxpayers, primarily through the pursuit of value via dividends, are addressed.

5. The buyer's strategic long-term plan for EAPC Plc; Measures to maintain production in Kenya, protect employment levels, wages and benefits and ensure alignment with government policy on industry and cement sector goals and the methodology and basis for the share valuation

EAPC Plc currently has no visibility into the strategic direction of Kalahari Cement Ltd following the proposed acquisition, as there has been no engagement or communication on this matter. Accordingly, we respectfully request the Committee to direct these inquiries to Kalahari Cement Ltd or the Holcim Group.

6. Plans for the Athi River land and other strategic company assets and safeguards against undervaluation or asset stripping

The Company is actively executing its five-year strategic plan through June 2027, with significant milestones already achieved. Key initiatives include balance sheet restructuring through the disposal of investment property at market value to reduce liabilities and reinvest in plant refurbishment. These efforts aim to enhance operational capacity, with a long-term target of capturing 30% market share.

7. Details of any due diligence undertaken

The engagements between Kalahari Cement Ltd and the Holcim Group fall outside the purview of EAPC Plc. As such, we cannot provide any information regarding the due diligence conducted in relation to the proposed transaction.

8. Any other information you deem may assist the Committee during the inquiry

The Company wishes to highlight its current period of stable and sustainable growth following a significant turnaround. EAPC Plc is now firmly focused on executing its strategic plan, which is closely aligned with and actively supports the Government's national development priorities, such as the Affordable Housing program and infrastructure expansion. We believe the Company's return to profitability and positive trajectory is a testament to the efforts of all stakeholders.

Our primary objective is to ensure this positive momentum is maintained without disruption, thereby safeguarding the value for our shareholders.

While we acknowledge the Committee's interest, we respectfully submit that the Company's current focus is on operational continuity and delivering on its commitments. We are confident in the existing regulatory frameworks overseen by the Capital Markets Authority and the Competition Authority of Kenya to appropriately review any corporate actions. We trust the Committee will consider the importance of stability and allow these established processes to run their course.

Conclusion

Chair, we would like to express our appreciation to the Committee for their time and their attention in this matter. We are committed to working collaboratively with the Committee to ensure that we continue to meet the expectations of all our stakeholders.

Yours Sincerely,

For: **East African Portland Cement Plc**



Mohamed O. Adan
MANAGING DIRECTOR



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

Telegraphic Address: 22921
FINANCE – NAIROBI
Fax No. 315779
Telephone: 2252299

THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI
KENYA

Ref: TNT/CONF 269/02 'A' (89)

24th September, 2025

SAMUEL NJOROGE, CBS
Clerk of the National Assembly
Parliament Buildings
Nairobi

Dear

Re: INQUIRY INTO THE PROPOSED SALE OF EAST AFRICAN PORTLAND CEMENT (EAPC) PLC SHARES HELD BY HOLCIM LIMITED TO KALAHARI CEMENT LTD

Reference is made to your letter No. NA/DDC/TIC/2025/065 dated 18th September 2025 regarding the above subject. I have been invited by the Departmental Committee on Trade, Industry and Cooperatives to a meeting on **Thursday, 25th September, 2025** to deliberate on issues arising from the above matter.

The purpose of this letter is to submit The National Treasury's submission on the same;

1. Context:

The proposed sale of East African Portland Cement Plc is governed by the following capital markets legal framework:

1. Section 31 (1A) of the Capital Markets Act and Regulation 84 (c) of the Capital Markets (Public Offers, Listing and Disclosure Regulations) 2023, which require approval of CMA where there is a transfer of securities outside the Securities Exchange;
2. The eligibility requirements stipulated under the Capital Markets (Public Offers, Listing and Disclosure Regulations) 2023, which demand free transferability of listed securities; and
3. Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, which mandates CMA to grant an exemption in certain circumstances

where a person who has acquired significant shareholding in a company do not wish to buy out other shareholders.

In December 2024, Holcim made a decision to exit some markets in Africa as part of a global strategy to streamline its operations. As a result of this decision, Holcim sold its businesses in Nigeria, Uganda, Tanzania and Zimbabwe. In Kenya, Holcim (through its subsidiaries Fincem and Kencem) entered into an irrevocable undertaking to sell 58.6 % of its shareholding in Bamburi Cement Plc to Amsons Industries (K) Limited. The acquisition was concluded in December 2024 following a mandatory takeover offer by Amsons. The offer by Amsons also targeted other shareholders of Bamburi leading to acquisition of 100% shareholding in Bamburi Cement Plc.

2. Acquisition of East African Portland Cement Plc shares by Kalahari Cement Limited:

As required by the Regulation 4 (1), CMA was served with a Notice of Intention by Kalahari Cement Limited on July 31, 2025.

The background of the transaction is that the parties entered into a Share Purchase Agreement dated 31 July 2025 ("SPA"), under which Kalahari Cement Limited will acquire the following:


- a) 13,144,442 ordinary shares in EAPC (representing 14.6% of the issued share capital) from Associated International Cement Limited (AIC), a company incorporated under the laws of England; and
- b) 13,180,442 ordinary shares in EAPC (also representing 14.6%) from Cementia Holding AG, a company incorporated under the laws of Switzerland.

Holcim Limited is the ultimate beneficial owner of the 26,324,884 ordinary shares in EAPC approximately 29.2% of the issued share capital, held through the above-named subsidiaries AIC and Cementia ("Sellers").

If successfully completed, the transaction will result in Kalahari and its related parties, acquiring a controlling interest in EAPC, with a total shareholding of approximately 41.7%, inclusive of the 12.5% already held indirectly through Bamburi Cement's stake in EAPC.

3. Legal Requirements and Procedure:

A person who has acquired effective control in a listed company is required to follow the following procedure:

1. Issue a public announcement. 
2. Prepare, publish and serve a Notice of Intention on CMA, the Exchange, the listed company as well as the Competition Authority of Kenya.
3. Apply for an exemption under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, where they do not wish to buy out other shareholders.

Application for Exemption to make a mandatory takeover offer:

Regulations 4(3) of the Capital Markets (Take-overs and Mergers) Regulations 2002 provides that where a person has acquired effective control in a listed company and has no intention of making a take-over offer to the other shareholders, shall make a public announcement and shall apply to the Authority for exemption from the take-over requirements under regulation 5. Effective control threshold is from 25% of the issued share capital and above.

Regulation 5(1) of the Regulations provides that the Authority may in writing grant an exemption from complying with the provisions of regulation 4 to any particular person or take-over offer or to any particular class, category, description of persons or take-over offers subject to such conditions as may be imposed by the Authority.

According to Regulation 5 (2) an exemption may be granted on any of the following grounds:

1. an acquisition for the purpose of a strategic investment in a listed company that is tied up with management or any other technical support relevant to the business of such company;
2. a management buy-out involving a majority of the employees of the offeree;
3. a restructuring of the listed company's share capital including acquisition, amalgamation and any other scheme approved by the Authority;
4. an acquisition of a listed company in financial distress;
5. an acquisition of effective control arising out of disposal of pledged securities;
6. the maintenance of domestic shareholding for strategic reason(s); or
7. any other circumstances which in the opinion of the Authority serves public interest.

Kalahari sought an exemption pursuant to Regulation 5(2) of the Takeovers Regulations on the grounds of being a strategic investor in a listed company that is tied up with management or other technical support relevant to the business of such company. The applicant also relied on circumstances which serve the public interest, by ensuring that Kalahari, as a long-term strategic investor, assists EAPC in achieving its strategic objectives whilst deepening the capital markets regime which is vital for Kenya's economic prosperity.

Grant of Exemption:

After review of the application, the capital markets Authority granted the exemption on the following **conditions**:

- A. obtaining the requisite approvals from the **Competition Authority of Kenya** as per part D of the Competition Act.
- B. notification to, and approval of the material change by the **Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs** as per Sections 51(6) and (7) of the Mining Act.

The prerequisite documents as per the Regulations are an announcement to shareholders and issue of a Notice of Intention which is also published in the newspapers. We confirm that Kalahari complied with all these requirements. The relevant announcements were published in the Daily Nation as well as the East African Standard newspapers on August 1, 2025.

4. The Share Purchase Agreement and Conditions Precedent:

Kalahari entered into a Share Purchase Agreement and each of the Sellers accepted Kalahari's offer to acquire the shares. Completion of the transaction is conditional upon the satisfaction or, where legally permissible, waiver of the following conditions precedent:

- a) Receipt of approval from the Competition Authority;
- b) The granting by the CMA of an exemption to Kalahari under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, exempting Kalahari from the obligation to make a mandatory takeover offer to EAPC shareholders;
- c) With respect to EAPC's mining licence, notification to and receipt of written approval from the Cabinet Secretary for the Ministry of Mining, Blue Economy and Maritime Affairs, in accordance with Sections 51(6) and 51(7) of the Mining Act;
- d) Receipt from CMA of approval to implement the transaction as a private transfer; and
- e) Should Kalahari opt to finance any portion of the consideration rather than pay it fully in cash, it shall provide the Sellers with an unconditional, irrevocable, on-demand guarantee.

5. Policy on continued listing:

Kalahari does not intend to delist EAPC upon completion of the proposed acquisition. Instead, Kalahari plans to maintain EAPC's status as a publicly listed company, recognizing the strategic value of retaining a diverse base of local and international investors as co-shareholders. Kalahari indicated its position that a continued listing will support EAPC's long-term growth ambitions by enhancing access to both equity and debt capital markets when required. Maintaining EAPC's listing will also offer investors the opportunity to participate in the growth of a key

player in the cement industry, which is instrumental to infrastructure development across Kenya, Uganda, and the broader East African region.

6. Conclusion:

After considering the application, CMA granted an exemption on August 5, 2025.

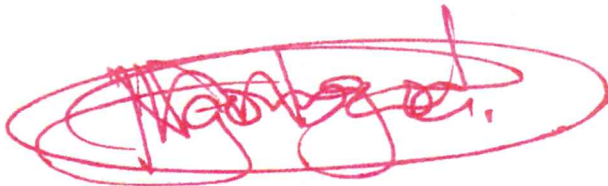
The transaction also got the following subsequent approvals:

- a. Approvals by the **Competition Authority of Kenya** as per part D of the Competition Act.
- b. Approval of the material change by the **Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs** as per Sections 51(6) and (7) of the Mining Act.

The National Treasury therefore wishes to confirm to the Departmental Committee on Trade, Industry and Cooperatives that:

1. The proposed transaction was reviewed and an exemption granted as required under the Capital Markets (Take-overs and Mergers) Regulations 2002.
2. All disclosures to shareholders were made in accordance with the Capital Markets Act and the Capital Markets (Take-overs and Mergers) Regulations 2002.

Yours Sincerely,



Hon. FCPA. John Mbadi Ng'ongo, EGH
CABINET SECRETARY



EAST AFRICAN PORTLAND CEMENT PLC

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Tel: (254) 709 835 000/001
E-mail: info@eapcc.co.ke
Website: www.eastafricanportland.com

Ref: EAPCPLC/BOD/CAN/22925

22nd September, 2025

The Clerk of the National Assembly,
Parliament Buildings,
P.O. Box 41842 – 00100,
NAIROBI

Dear **SIR,**

RE: INQUIRY INTO THE PROPOSED SALE OF EAST AFRICAN PORTLAND CEMENT (EAPC) PLC SHARES HELD BY HOLCIM LIMITED TO KALAHARI CEMENT LTD

Reference is made to your letter REF: NA/DDC/TIC/2025/064 dated 18th September, 2025 on the above subject.

Honourable Chair and members of Parliament, thank you for the opportunity to respond to the matters raised by the committee. We EAPC PLC, hereby submit our comments and responses on the issues as follows;

- 1. Explain the methodology used to determine the value of the shares proposed for sale and provide documentary evidence of the valuation and how the pricing safeguards the interest of all shareholders**

Honourable Chair and members of Parliament, the proposed transaction is a private sale between Holcim Group (through its subsidiaries Cementia and Associated International Cement) and Kalahari Cement Ltd. **EAPC Plc was not a party to the valuation or negotiation process.** Therefore, the Company does not possess the documentary evidence of the specific valuation methodology used by the seller and buyer.

However, EAPC PLC Board of Directors primary concern is that the transaction price of KES 27.30 per share is significantly below the current market price (approximately KES 58.25). To safeguard all shareholders, the Board's duty is to ensure the Company's intrinsic value is reflected in its performance. Our five-year strategic plan, focused on balance sheet restructuring and operational efficiency, is designed to deliver this value.

2. Provide full disclosure of the terms of the transaction in line with the disclosure obligations under the relevant laws

Honourable Chair and members of Parliament, regarding our statutory disclosure obligations under the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, the Company's primary duty was triggered by the receipt of a formal Notice of Intention from Kalahari Cement received on 30th July 2025. This notice was promptly disclosed to the public on 31st July 2025 via the Nairobi Securities Exchange, fulfilling our initial obligation.

However, the Board recognizes a critical dimension that elevates this transaction beyond a simple block trade: **the beneficial owner of Kalahari Cement also holds a controlling interest in Bamburi Cement PLC, which is a current 12.5% shareholder of EAPC Plc.**

This fact of common control is highly material. Post-transaction, the beneficial owner would exercise influence over a combined stake of approximately 41.7% in EAPC Plc (29.2% from Kalahari + 12.5% from Bamburi). While the 29.2% acquisition alone sits below the 30% threshold for a mandatory takeover offer, the Regulations require assessment of whether parties are "acting in concert" or are under common control.

Therefore, while the literal 29.2% transaction may not trigger a mandatory offer, the **substance of the transaction—the aggregation of a 41.7% stake under a single beneficial owner—raises significant questions** that may necessitate further disclosure and regulatory scrutiny to ensure a complete and transparent view for all shareholders and the market. The Board is seeking further legal advice on the applicability of these provisions to ensure full compliance with the spirit and letter of the law.

3. Explain how the proposed sale of shares aligns with EAPC Plc's strategic vision and long term growth plans: and compliance with corporate governance and securities regulations

Honourable Chair and Members of Parliament, the sale of shares by a major shareholder is an ownership change, not an operational decision by the Company. **EAPC Plc's strategic vision, as detailed in our five-year plan, remains unchanged and is focused on growth, market share expansion, and supporting national infrastructure goals.** The Board's role is to ensure that any new significant shareholder aligns with this vision. Corporate governance regulations, including the Code of Corporate Governance, provide the framework for the Board to hold management accountable to this strategy, regardless of shareholder identity.

4. State whether the proposed sale will affect ownership, control, or voting rights of the Board Members

Yes, Honourable Chair and Members of Parliament, the proposed sale will profoundly affect ownership and is likely to lead to a significant shift in control and Board voting rights.

While Kalahari Cement will become the direct registered holder of a 29.2% stake, the critical factor is that **the beneficial owner of Kalahari Cement also controls Bamburi Cement Ltd, which already holds a 12.5% stake in EAPC Plc.**

This means that post-transaction, a single beneficial owner will exert influence over a combined 41.7% of the Company. This consolidated block is substantially larger than that of any other shareholder, including NSSF (27%) and the National Treasury (25.3%).

Based on prevailing corporate practice, it is expected that this level of ownership will translate into a request for proportional board representation. However, the key implication is that the beneficial owner may effectively control the votes of directors nominated by both Kalahari and the existing Bamburi stake.

Therefore, this is not merely a change in one shareholder, but a **consolidation of control**. The Board anticipates that this will alter the dynamics of board deliberations and voting, moving from a structure with several significant, distinct shareholders to one where a single controlling interest holds a dominant influence. The alignment between NSSF and the National Treasury will become even more critical to balance this consolidated influence.

5. Elaborate the measures put in place to prevent concentration of ownership (avoiding monopoly or dominance by one shareholder). Clearly state the safeguards for minority shareholders including any exit options available

Honourable Chair and members of Parliament, the primary legal safeguard against undue concentration of ownership is the regulatory review by the Competition Authority of Kenya (CAK) and the continuous disclosure regime of the Capital Markets Authority (CMA).

6. Provide the anticipated impact of this sale on employees, customers, and the broader public

Honourable Chair and members of Parliament, the Board has received no communication from Kalahari Cement regarding its strategic intentions. Therefore, it is impossible to provide a definitive impact assessment. The Board of Directors commitment is to ensure operational continuity and stability. We have assured our employees that the Company's strategic plan remains in effect. For customers and the public, the Board is focused on maintaining a reliable supply of quality cement to all our customers, and we do not foresee any immediate disruption.

7. Provide approvals or any relevant documentation that the process complies with Company law, capital markets regulations, competition laws and other relevant laws or authorities

Honourable Chair and members of Parliament, the transacting parties are responsible for securing necessary approvals. From the Company's perspective, the process to date has complied with the initial disclosure requirements under CMA rules. The Board is aware that the transaction is subject to successful transfer of shares on the Company's register, which our legal and Company secretariat team will ensure is done in strict compliance with the Companies Act and our Articles of Association.

8. Advise on whether the governance structure of EAPC complies with the Companies Act, Cap 486, State Corporations Act, Cap.446 and any other relevant laws

Yes, Honourable Chair and members of Parliament, the governance structure of EAPC Plc is designed to comply with the Companies Act, the State Corporations Act (as a state corporation), and the CMA Code of Corporate Governance. The Board composition includes Directors nominated by major shareholders and Government representatives, as is standard for a hybrid entity with both private and government ownership. This structure has been validated through years of operation and audits.

9. Highlight ongoing or possible court challenges and advise on measures to mitigate or resolve them

The Board is aware of a court order temporarily halting the transaction, obtained on grounds of potential anti-competitive effects. The Company has been joined to the proceedings. Our legal strategy is to cooperate fully with the court while demonstrating that EAPC Plc is an independent entity focused on its commercial objectives. We are seeking legal advice to ensure the Company's interests are protected throughout the process.

10. Provide any other information you may deem relevant to the Committee in regards to the above subject to fully understand the implications of the proposed transaction, including compliance with Article 227 of the Constitution of Kenya, 2010 where applicable, and any potential impact on national policy or public interest

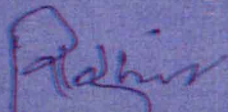
Honourable Chair and members of Parliament, the overarching principle of public interest is paramount. The Board assures the Committee that its every decision is guided by the long-term sustainability of EAPC Plc, which directly serves the public interest through job creation, support for infrastructure, and safeguarding the investments of Kenyan pensioners (NSSF). The Board remains ready to work with the Committee and all regulators to ensure this transaction, if it proceeds, ultimately benefits the Company and the nation.

Conclusion

Honourable Chair and members of Parliament, we would like to express our appreciation to the Committee for their time and their attention in this matter. We are committed to working collaboratively with the Committee to ensure that we continue to meet the expectations of all our stakeholders.

Yours Sincerely,

For: East African Portland Cement PLC



Brig (Rtd) Richard Mbithi
BOARD CHAIRMAN



THE COMPETITION AUTHORITY OF KENYA MEMORANDUM ON THE PROPOSED ACQUISITION OF EAST AFRICAN PORTLAND CEMENT PLC BY KALAHARI CEMENT LIMITED

A. Background

1. The Competition Authority of Kenya (“the Authority”) in response to the invitation from the Departmental Committee on Trade, Industry and Cooperatives regarding the acquisition of East African Portland Cement Plc by Kalahari Cement Ltd, makes its submissions as follows:
2. The Authority is established by section 7 of the Competition Act, Cap 504 (“the Act”). **The Authority’s key mandate, among others, is regulation of market structure. This involves analyzing and thereafter approving or disapproving mergers/takeovers in all the sectors of the Kenyan economy.**
3. The analysis focuses on identifying the potential impacts on competition and public interest arising from merger transactions.
4. It is important to highlight, *ab initio*, **that Kenya’s merger regime is suspensory. This means that any merger falling under the precincts of the Competition Act is not enforceable without the approval of the Authority.**
5. The law provides that a **merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking.** The terms merger and takeover are used interchangeably.
6. Section 41 of the Act further explains the various ways in which a merger can be achieved. These include: -
 - (a) The purchase or lease of shares, acquisition of an interest, or purchase of assets of the other undertaking in question;

- (b) The acquisition of a controlling interest in a section of the business of an undertaking capable of itself being operated independently whether or not the business in question is carried on by a company;
 - (c) The acquisition of an undertaking under receivership by another undertaking either situated inside or outside Kenya;
 - (d) Acquiring by whatever means the controlling interest in a foreign undertaking that has got a controlling interest in a subsidiary in Kenya;
 - (e) In the case of a conglomerate undertaking, acquiring the controlling interest of another undertaking or a section of the undertaking being acquired capable of being operated independently;
 - (f) Vertical integration;
 - (g) Exchange of shares between or among undertakings which result in substantial change in ownership structure through whatever strategy or means adopted by the concerned undertakings; or
 - (h) Amalgamation, takeover or any other combination with the other undertaking.
7. Control may be procured through, *inter alia*:
- i. Acquiring over 50% of the issued shares;
 - ii. Majority votes cast at a general meeting; and
 - iii. Acquisition of powers to veto key decisions.
8. Section 42 of the Act (under Part IV of the Act on Control of Mergers) prohibits implementation of mergers by undertakings unless the proposed merger has an approval from the Authority in accordance with section 42 (2) of the Act.
9. **Any parties that implement a merger without the approval of the Authority are liable to a penalty and the merger is not enforceable in law.** In addition, the Authority may revoke a merger if it approved it without adequate information or through parties providing misleading information.
10. The persons entitled to notify the Authority of a proposed merger are undertakings which are defined under Part I of the Act as:
- “any business intended to be carried on, or carried on for gain or reward by a person, a partnership or a trust in the production, supply or distribution of goods or provision of any service, and includes a trade association.”*
11. These undertakings include cement manufacturing companies. To facilitate analysis of merger applications emanating from regulated sectors, the Authority pursuant to section 5 of the Competition Act, has developed MOUs with sector regulators. In regard to

mergers which may occur through privatization process, the Privatization Commission usually consults the Authority.

B. Merger Application Process

12. The process for merger application and review is detailed in Sections 43-49 of the Act.
13. The Act in Section 43 places a mandatory obligation on each of the undertakings to a proposed merger to notify the Authority in writing or in the prescribed manner.
14. The Authority may give an approval, decline to give approval or give an approval for the implementation of the merger with conditions. Section 46 (2) of the Act sets out the criteria for merger determination which the Authority considers relevant to a proposed merger.
15. The process, in summary, to which a proposed merger notification is subjected to is as follows:
 - i. The undertakings make a mandatory notification in writing to the Authority;
 - ii. The Authority assesses the application and if further information is required it may request for such information within thirty (30) days of the date of receipt of the notification or invite the undertakings for a hearing conference;
 - iii. The Authority may:
 - a. If necessary, invite the views of relevant stakeholders;
 - b. Consult the Government agency or Ministry responsible for the administration of any law governing the sector in which the parties to a merger operate in.
 - iv. After the process in (ii) above has taken place, the Authority is then required by the Act to assess the application taking into account the submissions, if any, by the interested parties and the Government agency or Ministry, responsible for the sector.
 - v. The Authority has a mandatory obligation to:
 - a. Make a determination within sixty days after receipt of the complete information; and
 - b. Communicate the decision by Notice in writing with respect to the merger notification
 - vi. The Notice is then published in the Gazette informing the public of the decision.
16. In making a determination, the Authority **considers:** -

- i. Extent to which the proposed merger would be likely to prevent or lessen competition or to restrict trade or the provision of any service or to endanger the continuity of supplies or services;
- ii. Extent to which the proposed merger would be likely to result in any undertaking, including an undertaking not involved as a party in the proposed merger, acquiring a dominant position in a market or strengthening a dominant position in a market;
- iii. Extent to which the proposed merger would be likely to result in a benefit to the public which would outweigh any detriment which would be likely to result from any undertaking, including an undertaking not involved as a party in the proposed merger, acquiring a dominant position in a market or strengthening a dominant position in a market;
- iv. Extent to which the proposed merger would be likely to affect a particular industrial sector or region;
- v. Extent to which the proposed merger would be likely to affect employment;
- vi. Extent to which the proposed merger would be likely to affect the ability of small undertakings to gain access to or to be competitive in any market;
- vii. Extent to which the proposed merger would be likely to affect the ability of national industries to compete in international markets; and
- viii. Benefits likely to be derived from the proposed merger relating to research and development, technical efficiency, increased production, efficient distribution of goods or provision of services and access to markets.

17. Therefore, the Authority must generally use a balancing approach in assessing the substantial lessening of competition test and public interest test while ensuring that the principle of merger specificity is maintained. Additionally, the concept of counterfactual is applied in assessing the effects of a merger on competition and/or the public interest tests. This involves comparing the situation that would result from the notified merger with the situation that would have prevailed without the merger.

18. Also, the Authority takes into consideration how a proposed merger is **likely to salvage a failing or dormant undertaking thus ensuring that the firm does not exit the market which would be detrimental to the economy and consumers.**

19. In addition, section 47 of the Act provides for revocation of approval of a proposed merger whose decision was based on materially incorrect or misleading information or any condition attached to the approval is not complied with.
20. Section 49 of the Act stipulates that an approval of a proposed merger does not relieve undertakings from complying with any other applicable laws.
21. The Act provides for an appeal process to any person aggrieved by a determination of the Authority which is to be made to the Competition Tribunal. Additionally, a person dissatisfied with the decision of the Tribunal may appeal to the High Court against that decision within thirty days after the date on which a notice of that decision has been served.
22. Lastly, Rule 14 of the Competition (General) Rules, 2019, undertakings may seek an advisory opinion from the Authority on whether there is a need to notify the transaction in accordance with section 43 (1) of the Act on *pro bono* basis and welcomes parties for pre-notification meetings.
23. However, we would like to point out that the Authority **does not get involved in the negotiations between shareholders, valuation and closing the deal. The Authority's attention is not attracted to shareholders gains but rather to the effect of the merger on the market and specifically consumers.**

C. Previous merger notifications in the Cement Industry

24. Highlighted below are some of the mergers approved by the Authority in the cement industry. One of them met the thresholds for COMESA notification and was therefore jointly handled by the Authority and the COMESA Competition Commission, a regional competition regulator.
25. In 2019, the Authority received a merger notification regarding the proposed acquisition of control of all the Kenyan business, assets and properties of ARM Cement Plc, which was under Administration then, by National Cement Company Limited. After the Authority's assessment the transaction was approved on 4th October, 2019, with conditions addressing public interest concerns.
26. On 10th July, 2024, Amsons Industries (K) Ltd wrote to the Authority informing it on the notice of intention to make a take-over offer proposing to acquire up to 100% of the ordinary shares of Bamburi Cement Plc and its subsidiaries. Subsequently, since the transaction met the thresholds for COMESA notification, 10th September, 2024, the COMESA Competition Commission sought the Authority's views on the effects of the

transactions on the Kenyan market. After the Authority's assessment, the Authority recommended that the aspects of the proposed transaction relating to Kenya be approved unconditionally since no concerns were determined.

27. Lastly, on 15th July, 2025 the Authority received a notification regarding the proposed acquisition of the business and assets of Savannah Cement Limited (under receivership) by Savannah Cement 2025 Limited.
28. The target firm was a failing firm since it was unable to meet its obligations as a result of its financial performance declining since 2019 resulting to its inability to meet financial commitments on a timely basis and erosion of its net worth. The company was indebted to various classes and categories of creditors. In addition, there were delayed in payments to suppliers and further led to the accumulation of the debt. Based on the target's financial report for 2020, the firm would reasonably be expected to exit the market if it was not acquired.
29. However, under the proposed transaction, the acquirer will acquire the target's business and assets, thereby preventing their exit and ensuring their continued productivity and preservation. It is anticipated that salvaging the target's business will potentially create additional employment opportunities. Therefore, the transaction was **approved without conditions** on August 25th, 2025 since it was unlikely to lead to a substantial prevention or lessening of competition and no negative public interest concerns were envisaged.

D. Kalahari Cement Limited (Kalahari) and East African Portland Cement Plc (EAPCC)

30. On 31st July, 2025 the Authority received a notice of intention by Kalahari Cement Limited (Kalahari) to acquirer: 1) 13,144,442 ordinary shares in EAPCC from Associated International Cement Limited, and 2) 13,180,442 ordinary shares in EAPCC from Cementia Holding AG through a private transaction.
31. Further, on 13th August, 2025, the Authority received a request for advisory regarding acquisition of shares in EAPCC by Kalahari upon entering into a share purchase agreement dated 31st July, 2025, pursuant to which, and subject to completion of the SPA in accordance with its terms.
32. The proposed transaction involves the acquisition of 29.2% of the shares in East African Portland Cement PLC from Associated International Cement Limited and Cementia Holdings AG by Kalahari Cement Limited.
33. The Authority has undertaken a review of the advisory opinion request to establish whether the parties need to notify the transaction in accordance with Section 43(1) of the

Act. Both Bamburi Cement and Kalahari Cement Limited are under the ultimate control of Edhah Abdallah Munif. Post-transaction he will have 41.7% shareholding in EAPCC through the entities he controls.

34. The 41.7% will not result in acquisition of control directly by Mr. Munif. Additionally, the shares do not confer any veto rights that would amount to indirect control. Therefore, the proposed transaction **DOES NOT** amount to a merger as outlined in Para 6. This is due to the fact that there will be no change in control of the target undertaking as highlighted in Para 7.
35. Having concluded the assessment, the Authority has advised the parties accordingly.

D. Conclusion

36. The Authority wishes to highlight to the Committee that;
- a. Kenya has a suspensory merger regime that bars implementation of mergers without an authorizing order from the Authority;
 - b. The parties sought an advisory opinion as per the provisions of Rule 14 of the Competition (General) Rules, 2019 which has been rendered;
 - c. Based on the information provided by the parties, the Authority opined that the proposed transaction does not require notification before its implementation.
 - d. In light of (c) above, the Authority is legally constrained from conducting a competition and public interest assessment since the transaction is not notifiable in accordance within Section 42 of the Act.



David K. Kemei
DIRECTOR-GENERAL

25th August, 2025



THE COMPETITION AUTHORITY OF KENYA'S RESPONSE TO INQUIRY INTO THE PROPOSED SALE OF EAST AFRICAN PORTLAND CEMENT (EAPC) PLC SHARES BY HOLCIM LIMITED TO KALAHARI CEMENT LIMITED

A. BACKGROUND

1. The Competition Authority of Kenya ("the Authority") in response to the National Assembly's letter dated 18th September, 2025 regarding the inquiry into the proposed sale of East African Portland Cement (EAPC) Plc shares held by Holcim Limited Kalahari Cement Ltd, makes its submissions as follows:
2. The Authority is established by section 7 of the Competition Act, Cap 504 ("the Act") to promote and safeguard competition in the national economy.

B. RESPONSES

- a) **Safeguards in place to ensure that the sale of shares does not create monopolistic structure contrary to the competition regulations**
3. Monopolistic structure safeguards are provided for in the Competition Act, Cap 504 of the Laws of Kenya ("the Act"), which establishes the legal framework to promote and protect competition, prohibit restrictive trade practices and the regulation of mergers.
4. The Authority, as provided for in the Act, is mandated to review and scrutinize mergers that meet the notification thresholds, including the sale and acquisition of substantial shares that could result in a party establishing market power. To achieve this, the Authority has developed procedures and guidelines that guides it in defining the relevant market in notified merger transactions and assessing the merger's likely effect on competition and public interest.
5. In assessing the likely effect of a merger on competition, the Authority considers, among others, the extent to which the proposed merger would be likely to result in any undertaking, including an undertaking not involved as a party in the proposed merger, acquiring a dominant position in a market (more than 50% market share) or strengthening a dominant position in a market.



ISO 9001:2015 CERTIFIED

6. The merger analysis process, depending on the nature of the proposed transaction, may entail engaging all the players in the relevant value chain to obtain necessary data to aid in determination.
7. If the Authority identifies substantial likely anti-competitive effects, including the possible creation of a monopoly, it can approve the merger with structural or behavioral remedies in the form of imposed conditions, or prohibit the transaction altogether to safeguard competition in the relevant market. The remedies may include divestitures, realignment of assets or conditions on ongoing anti- competitive conduct to preserve competition.

b) Review of Kalahari Cement Limited (Kalahari) and East African Portland Cement Plc (EAPCC) transaction within the confines of the Act

8. The Kenya's merger regime is suspensory. This means that any merger falling in Authority's key mandate, among others, is addressed through regulation of market structure. This involves analyzing and thereafter approving or disapproving mergers/takeovers in all the sectors of the Kenyan economy.
9. The analysis focuses on identifying the potential impacts on competition and public interest arising from merger transactions.
10. It is important to highlight, *ab initio* under the precincts of the Competition Act is not enforceable without the approval of the Authority.
11. The law provides that a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking. It should be noted here that the terms 'merger' and 'takeover' are used interchangeably.
12. Section 41 of the Act further explains the various ways in which a merger can be achieved. These include: -
 - (a) The purchase or lease of shares, acquisition of an interest, or purchase of assets of the other undertaking in question;
 - (b) The acquisition of a controlling interest in a section of the business of an undertaking capable of itself being operated independently whether or not the business in question is carried on by a company;
 - (c) The acquisition of an undertaking under receivership by another undertaking either situated inside or outside Kenya;

- (d) Acquiring by whatever means the controlling interest in a foreign undertaking that has got a controlling interest in a subsidiary in Kenya;
 - (e) In the case of a conglomerate undertaking, acquiring the controlling interest of another undertaking or a section of the undertaking being acquired capable of being operated independently;
 - (f) Vertical integration;
 - (g) Exchange of shares between or among undertakings which result in substantial change in ownership structure through whatever strategy or means adopted by the concerned undertakings; or
 - (h) Amalgamation, takeover or any other combination with the other undertaking.
13. Control may be procured through, *inter alia*:
- i. Acquiring over 50% of the issued shares;
 - ii. Majority votes cast at a general meeting; and
 - iii. Acquisition of powers to veto key decisions.
14. The subject transaction was filed as a request for advisory opinion as provided for under Rule 14 of the Competition (General) Rules, 2019, *undertakings may seek an advisory opinion from the Authority on whether there is a need to notify the transaction in accordance with section 43 (1) of the Act.*
15. The Authority concluded that the acquisition of the 41.7% shareholding will not result in the acquisition of control directly by Mr. Edhah Munif. Additionally, the shares do not confer any veto rights that would amount to indirect control. Therefore, the proposed transaction did not amount to a merger. This is due to the fact that there will be no change in control of the target undertaking.
16. However, pursuant to section 9 (g) of the Act, the Authority, on its own motion, is currently undertaking a market study in the cement sector to be completed by the end of October, 2025.
17. The market study seeks to understand the cement market structure, concentration and the overall market dynamics, by collecting historical data trends regarding prices, production capacity/output and demand. To establish the financial performance of the market players and the efficiency of the current Public Interest Test. Additionally, the study will establish whether there is presence of cartel conduct in the market, the impact of buyer power on small and medium-sized enterprises in the cement value chain and further to understand the contractual practices between cement manufacturers and distributors/retailers, and whether these may amount to exploitative conduct.

c) The likely effect on market fairness and investor confidence if one party gains dominant control over the sale of shares

18. In this transaction no party is expected to gain dominance over the other, since there is no acquisition of control over the target undertaking at the onset.
19. However, the Authority in making its determination of a proposed merger, prevents acquisition of dominance as provided for in section 46 (2) (b) of the Act which states that:-
(2) The Authority may base its determination in relation to a proposed merger on any criteria which it considers relevant to the circumstances involved in the proposed merger, including— (b) the extent to which the proposed merger would be likely to result in any undertaking, including an undertaking not involved as a party in the proposed merger, acquiring a dominant position in a market or strengthening a dominant position in a market.

d) Public interest considerations in preventing monopolistic tendencies in this Share transfer

20. The Authority received a request for advisory regarding acquisition of shares in EAPCC by Kalahari on 13th August, 2025 upon entering into a share purchase agreement dated 31st July, 2025, pursuant to which, and subject to completion of the SPA in accordance with its terms.
21. The Authority reviewed the advisory opinion request to establish whether the parties need to notify the transaction in accordance with Section 43(1) of the Act. Both Bamburi Cement and Kalahari Cement Limited are under the ultimate control of Edhah Abdallah Munif. Post-transaction he will have 41.7% shareholding in EAPCC through the entities he controls.
22. The 41.7% will not result in acquisition of control directly by Mr. Munif. Additionally, the shares do not confer any veto rights that would amount to indirect control. Therefore, the proposed transaction DOES NOT amount to a merger as outlined in Para 6. This is due to the fact that there will be no change in control of the target undertaking as highlighted in Para 7.
23. Consequently, the Authority did not conduct any assessment on public interest to prevent any monopolistic tendencies as the transaction does not satisfy the definition of a merger within the meaning of the Act.

e) What mechanisms exist to protect minority shareholders from the risks of monopolization?

24. When making a merger determination the Authority assesses whether the proposed transaction may lead to competition concerns hence prevention of substantially lessen or prevent competition which prevents a majority shareholder from acquiring overwhelming control without regulatory scrutiny.
25. Additionally, the Act prevents against Abuse of Dominance under sections 23 and 24 of the Act. This means that even if one shareholder gains a dominant position, they cannot abuse this dominance to the detriment of the market, competitors, or indirectly, minority shareholders.

f) INTERNATIONAL BEST PRACTICES

The Department of Justice (DoJ), USA

26. The U.S Department of Justice (DoJ) and the Federal Trade Commission (FTC) merger guidelines identify the procedures and enforcement practices the DoJ and the FTC (“the Agencies”) most often use to investigate whether mergers violate the antitrust laws. The Agencies enforce Section 7 among other Sections of the Clayton Act¹. The Congress has charged these Agencies with administering these statutes as part of a national policy to promote open and fair competition, including preventing mergers and acquisitions that would violate these laws.
27. Section 7 of the Clayton Act prohibits mergers and acquisitions where “in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisitions may be substantially to lessen competition, or to tend to create monopoly.” Therefore, the US merger regime is considered to be **non-suspensory** which means that mergers can be implemented without a prior approval from the DoJ. Further Section 7 was designed to arrest anticompetitive tendencies in their incipiency. The Act therefore requires the Agencies to assess whether mergers present risk to competition.
28. In addition to the Clayton Act, the DoJ merger regime is guided by the Merger Guidelines in assessing whether a merger presents sufficient risks to warrant an enforcement action. These frameworks are tailored for industry-specific market realities ranging from market structure to direct evidence of the effect on competition, to examine whether the proposed merger may harm competition. To promote efficient review, for any given transaction, the Agencies may limit their analysis to any one Guideline or subset of the Guidelines that most readily demonstrates the risks to competition from the transaction.

¹ <https://www.govinfo.gov/content/pkg/COMPS-3049/pdf/COMPS-3049.pdf>

29. The DoJ enforces antitrust laws like the Sherman Act which prohibits monopolies that stifle competition and harm consumers. It identifies that market power and monopoly power are related but not the same. The Supreme Court has defined market power as "the ability to raise prices above those that would be charged in a competitive market, and monopoly power as "the power to control prices or exclude competition. monopoly power requires, at a minimum, a substantial degree of market power. Moreover, before subjecting a firm to possible challenge under antitrust law for monopolization or attempted monopolization, the power in question is generally **required to be much more than merely fleeting; that is, it must also be durable.**
30. Monopoly Power is demonstrated by both (1) a high share of the relevant market (or in the case of attempted monopolization, has a dangerous probability of attaining) and (2) there are entry barriers. Parameters of identifying monopoly power include:
- i. *Market shares* – courts have required a dominant market share to infer monopoly power, significance of a dominant market share and market-share safe harbor. A **market share of greater than fifty percent (50%)** has been necessary for courts to find the existence of monopoly power. If a firm has maintained a **market share in excess of two-thirds for a significant period** and the firm's market share is unlikely to be eroded in the near future, the Department believes that such facts ordinarily should establish a rebuttable presumption that the firm possesses monopoly power.
 - ii. *Durability of market power* - firm cannot possess monopoly power in a market unless that market is also protected by significant barriers to entry.

DG Competition ("DG COMP") – EU

31. The DG Comp is a **suspensory merger regime** that regulates mergers to the extent that they do not impede competition. The annual turnover of the combined businesses exceeds specified thresholds in terms of global and European sales, the proposed merger must be notified to the European Commission. Below these thresholds, the national competition authorities in the EU Member States may review the merger, under the applicable national merger control rules.
32. Article 102 of the Treaty on the Functioning of the European Union (TFEU) prohibits abusive conduct by companies that have a dominant position on a particular market.
33. It is essential to assess dominance because a dominant position can only exist on a particular market. Before assessing dominance, the Commission defines the product and the geographic markets.

- i. Relevant product market - made of all products/services which the consumer considers to be a substitute for each other due to their characteristics, their prices and their intended use; and
 - ii. Geographic market - area in which the conditions of competition for a given product are homogenous.
34. Market shares are a useful first indication of the importance of each firm on the market in comparison to the others. The Commission's view is that **the higher the market share, and the longer the period of time over which it is held, the more likely it is to be a preliminary indication of dominance. If a company has a market share of less than 40%, it is unlikely to be dominant.**
35. The Commission also takes other factors into account in its assessment of dominance, including the ease with which other companies can enter the market; whether there are any barriers to this; the existence of countervailing buyer power; the overall size and strength of the company and its resources and the extent to which it is present at several levels of the supply chain (vertical integration).
36. The Commission, in conclusion, notes that **to be in a dominant position is not in itself illegal. A dominant company is entitled to compete on the merits as any other company.** However, a dominant company has a special responsibility to ensure that its conduct does not distort competition.

g) AUTHORITY'S CURRENT STUDY INTO THE CEMENT INDUSTRY

37. The main aim of enforcing competition law revolves around balancing between beneficial market power and market power that is detrimental to consumer welfare. The Authority under Section 3 of the Act has the mandate to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct in order to:
 - a) Increase efficiency in the production, distribution and supply of goods and services;
 - b) Promote innovation;
 - c) Maximize the efficient allocation of resources;
 - d) Create an environment conducive for investment, both foreign and local; and
 - e) Promote the competitiveness of national undertakings in world markets.

38. Further, Section 9 (g) of the Act permits the Authority to carry out inquiries, studies and research into matters relating to competition and protection of the interests of consumers.
39. The cement industry has recently faced significant pricing challenges, primarily due to decrease in demand. According to the Economic Survey, 2024, cement production dropped by 1.8% from 9,791.4 thousand tons in 2022 to 9,616 thousand tons in 2023. Similarly, cement consumption declined from 9,494 thousand tons in 2022 to 9,201 thousand tons in 2023. The declining rate can be attributed to the current economic state which has in turn fostered increased production cost (raw materials and the entire production of cement) with a decrease in demand.
40. Production and consumption levels have been steadily rising side-by-side with a slight decline in 2023. However, the quantities of exports have also been on the rise with a sharp upsurge in 2023, contrary to the imported quantities, which maintained levels below 50 million tonnes over the five years.
41. The steady rise in production and consumption suggests a generally expanding market, but the sharp upsurge in exports in 2023 could indicate manufacturing prioritizing external markets over the local market possibly due to higher export prices or more profitable foreign demand at the expense of local supply. If domestic availability is squeezed, this could lead to price hikes, reduced consumer choice, or increased market concentration especially if only a few large firms control both local and export channels.
42. Over the years, the cement industry has been inhabited by established market players: Bamburi Cement Plc, Mombasa Cement Limited, East Africa Portland Cement Company (under acquisition), Savannah Cement Limited (currently under administration), ARM Cement Limited (acquired by National Cement Limited in 2019), Rai Cement, Karsan Ramji & Sons Limited (Ndovu Cement) and National Cement Company Limited. These players compete vigorously, both on price and through distribution networks across the country. In addition, the Kenyan market is served by imports from Uganda, Tanzania (such as Hima Cement and Tororo Cement in Uganda, Dangote Cement and Tanga Cement in Tanzania), other COMESA member states and overseas producers in Asia.
43. Unwarranted concentration of economic power in the cement industry may be as a result of few market players who are dominant and results to sharing of strategic information: pricing strategies, customer lists and future plans between competitors, unreasonably reduced innovation, coordinated behavior which reduces competition. In addition, cross-directorship in the cement industry stifles new entrants to maintain their dominant positions.
44. Following the above, it is of interest to the Authority to establish the working dynamics of the cement industry to appreciate any underlying issues that may be affecting investment, both for current and future reference. In light of this and in addition, the

Authority is currently undertaking a surveillance into the entire cement industry value chain to appreciate any underlying issues including the market structure and estimated market shares of the key players, among others.

h) CONCLUSION

45. The Authority wishes to highlight to the Committee that;

- a. The parties sought an advisory opinion as per the provisions of Rule 14 of the Competition (General) Rules, 2019 which has been rendered based on the fact that the proposed transaction would not lead to a change in control and hence no notification is required before implementation; and
- b. The Authority is currently undertaking a market study on the cement industry to identify, among others, the structure of the market, the players and competition attributes.



David K. Kemei
DIRECTOR-GENERAL

25th September, 2025



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/CONF/2/C/125 VOL.I
Your Ref: NA/AA&OSC/PIC-G&E/2023(067)

24th September, 2025

Jeremiah Ndombi, MBS
Clerk of the National Assembly
Main Parliament Buildings
NAIROBI

RE: INQUIRY INTO THE PROPOSED SALE OF EAST AFRICAN PORTLAND CEMENT (EAPC) PLC SHARES HELD BY HOLCIM LIMITED TO KALAHARI CEMENT LTD

Hon. Chair and members of the Committee

Pursuant to a letter dated 18th September, 2025 under Ref. NA/DDC/TIC/2025/061 the Hon. Solicitor General has been requested to appear before the Departmental Committee on Trade, Industry and Cooperatives to submit on the following issues:

- a) Clarify to the Committee, the legal and regulatory requirements with regard to the proposed sale of share.
- b) The role of the Attorney General in the proposed sale of shares in EAPC, including the provision of legal advice.
- c) Provide any approvals, opinions or certifications the Attorney General issued in connection with the proposed sale of shares.
- d) Appraise the Committee on the steps taken to ensure alignment with constitutional provisions such as public participation and stakeholder's engagement, equity and accountability in the proposed sale of shares.
- e) Advise whether the terms of the proposed transaction protect citizens from exploitation or loss of strategic assets are in place and indicate any safeguards or conditions precedent in place.
- f) Inform the Committee on the relevant laws against monopolistic practices and whether the transaction creates unfair market dominance.

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DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
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- g) Clarify on the legality, agreements or shareholder arrangements in relation to the proposed sale.
- h) Advise on whether the governance structure of EAPC complies with the Companies Act, Cap 486, State Corporations Act, Cap 446 and any other relevant laws.
- i) Highlight ongoing or possible court challenges and advise on measures to mitigate or resolve them.

Having reviewed the issues, we respond as follows:

Clarify to the Committee, the legal and regulatory requirements with regard to the proposed sale of share.

Capital Markets Authority Approval

- 1) The EAPC being a listed company is required to comply with the regulations and requirements as provided by the Capital Markets Authority (CMA).
- 2) The Capital Markets (Take-Overs And Mergers) Regulations, Legal Notice No. 126 of 2002 provides for the manner by which an entity may exercise "effective control" over another by acquisition of shares.
- 3) According to the Regulation 3, "effective control" is triggered when, *inter alia*, a person holds more than 25% but less than 50% of the voting shares of a listed company, and who acquires in any one year more than 5% of the voting shares of such company.
- 4) Regulation 4 provides that a company that desires to exercise "effective control" should therefore announce the proposed offer by press notice and serve a notice of intention, in writing of the take-over scheme in compliance and in the manner stipulated in this Regulation.
- 5) Regulation 5 provides that CMA may in writing grant an exemption from complying with the provisions of regulation subject to such conditions as may be imposed by the Authority. The granting of an exemption shall, however, serve the wider interests of the shareholders and the public.
- 6) This Office is not aware if above requirements have been undertaken by EAPC and and whether CMA has issued the requisite approval or exemption, as the case may be.

Competition Authority of Kenya (CAK)

- 7) Section 23 of the Competition Act, Cap 504 describes "dominant undertaking" to mean an undertaking which:

favourable terms, a proportion of those securities that is as nearly as practicable equal to the proportion in nominal value held by the person of the ordinary share capital of the company; and

b) the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.

15) Section 348 further provides that if the directors of a company are authorized for the purposes of Section 329 (by resolution of the company whether generally or otherwise), the company may by special resolution resolve that Section 338 (right of pre-emption) does not apply to a specified allotment of equity securities to be made in accordance with that authorization; or applies to such an allotment with such modifications as may be specified in the resolution.

16) The sale of EAPC shares should be undertaken in accordance with the Companies Act, Articles of Incorporation including existing shareholders approvals and right of refusal, if applicable.

The role of the Attorney General in the proposed sale of shares in EAPC, including the provision of legal advice.

17) The role of the Office of the Attorney General is provision of legal advisory if and when requested by EAPC. Currently EAPC has not requested any legal advise in this matter.

Provide any approvals, opinions or certifications the Attorney General issued in connection with the proposed sale of shares.

18) This Office has not provided any approvals, opinions or certifications in this matter to EAPC or at all noting that non has been requested for.

Appraise the Committee on the steps taken to ensure alignment with constitutional provisions such as public participation and stakeholder's engagement, equity and accountability in the proposed sale of shares.

19) This Office is not aware of any steps taken in relation to public participation and stakeholder engagement. EAPC should be able to provide an update on compliance.

20) The Office is ready and willing to assist EAPC in undertaking public participation and stakeholder engagement if and when requested by EAPC.

- a) produces, supplies, distributes or otherwise controls not less than one-half of the total goods of any description which are produced, supplied or distributed in Kenya or any substantial part thereof; or
 - b) provides or otherwise controls not less than one-half of the services which are rendered in Kenya or any substantial part thereof.
 - c) though not dominant, controls at least 40% but not more than 50% of the market share unless it can show that it does not have market power; or
 - d) controls less than 40% of the market share but has market power.
- 8) Section 41 (1) of the Competition Act, further stipulates that a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking.
- 9) According to Section 41(2) (a) a merger may occur where an entity purchases or leases shares, acquisition of an interest, or purchase of assets of the other undertaking in question. Section 41(3) specifies that a person controls an undertaking if it beneficially owns more than one half of the issued share capital of the undertaking.
- 10) CAK is required to determine whether the proposed sale of shares amounts to a direct control or indirect control as contemplated under Section 41 of the Competition Act and whether it is subject to the notification requirement.
- 11) CAK should therefore apply both competition and public interest tests in determining whether the transaction should be: (i) approved; (ii) declined or (iii) approved with conditions.
- 12) In this regard, CAK may use a balancing approach in assessing the competition test and the public interest test in determining whether the merger will create or strengthen a dominant position held by one or more undertakings in a market in Kenya or a substantial part of Kenya.

Companies Act, Cap 486

- 13) Section 329 provides that the directors of a company may exercise a power of the company to allot shares in the company; or grant rights to subscribe for or to convert any security into shares in the company, only if they are authorized to do so by a resolution of the company.
- 14) Section 338 (1) of the Companies Act provides that existing shareholders shall have the right of pre-emption/right of refusal. The same provides that:

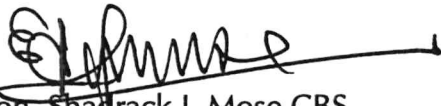
A company shall not allot equity securities to a person on any terms unless:

- a) *the company has made an offer to each person who holds ordinary shares in the company to allot to the person on the same or more*

28) The governance structure of EAPC should therefore be in accordance with its Articles of Incorporation and Memorandum of Association as read together with the Companies Act.

Highlight ongoing or possible court challenges and advise on measures to mitigate or resolve them.

29) At the moment, the Office is not aware of any ongoing or possible court challenges that requires to be mitigated.

A handwritten signature in black ink, appearing to read 'Shadrack J. Mose', with a long horizontal line extending to the right.

Hon. Shadrack J. Mose CBS
SOLICITOR GENERAL

Advise whether the terms of the proposed transaction protect citizens from exploitation or loss of strategic assets are in place and indicate any safeguards or conditions precedent in place.

- 21) This Office has not been provided with any terms of the transaction hence at this point we are unable to advise whether the terms protect citizens from exploitation or loss of strategic assets.
- 22) Once the Office is provided with the transaction documents we shall be able to guide in accordance with the law and ensure safeguard of citizens and protection of strategic assets.

Inform the Committee on the relevant laws against monopolistic practices and whether the transaction creates unfair market dominance.

- 23) This has already been canvassed above under the heading "*Clarify to the Committee, the legal and regulatory requirements with regard to the proposed sale of share*". The Committee is requested to refer to the submissions herein above.

Clarify on the legality, agreements or shareholder arrangements in relation to the proposed sale.

- 24) The Office has not had sight of the transaction documents or proposed shareholder arrangement from EAPC, hence we are handicapped to clarify on the proposed sale at this moment.
- 25) We undertake do so when provided with the requisite transaction arrangements for the proposed sale. We have however provided the legal requirements under various statutes in the initial submissions herein and the roles of CMA, CAK and compliance with the Companies Act, CAP 486.

Advise on whether the governance structure of EAPC complies with the Companies Act, Cap 486, State Corporations Act, Cap 446 and any other relevant laws.

- 26) Section 12 of the Companies Act provides that a company may not be registered unless its memorandum of association is in the form prescribed by the regulations; and authenticated by each subscriber.
- 27) Section 21 of the Companies Act, further provide that on the formation of a limited company if its articles are not registered; or if its articles are registered, in so far as they do not exclude or modify the relevant model articles, the relevant model articles, so far as applicable, form part of the company's articles in the same manner and to the same extent as if articles in the form of those articles had been duly registered.

Chief Executive's Office

Our Ref: CMA/CMD/216

Your Ref: NA/DDC/TIC/2025/049

August 25, 2025

Samuel Njoroge, CBS
Clerk of the National Assembly
Main Parliament Buildings
NAIROBI.

Dear Mr. Njoroge,

**RE: INQUIRY INTO THE PROPOSED SALE OF EAST AFRICAN PORTLAND CEMENT
(EAPC) PLC SHARES HELD BY HOLCIM LIMITED TO KALAHARI CEMENT LIMITED**

We refer to the above matter and your letter dated August 15, 2025.

We confirm our availability to appear before the Departmental Committee on Trade, Industry and Cooperatives on **Tuesday, 26th August 2025 at 10:00 am.**

1. Required Response

The Capital Markets Authority (CMA) was required by the Departmental Committee on Trade, Industry and Cooperatives to respond to the following:

1. Whether the CMA approved the transaction and if so, on what conditions.
2. Whether all disclosures to shareholders were made in accordance with the Capital Markets Act.

The reference invite letter is attached as Annexure 1.

We wish to respond as follows:

2. Background:

The proposed sale of East African Portland Cement Plc is governed by the following capital markets legal framework(**See extracts attached as Annexure 2**):

1. Section 31 (1A) of the Capital Markets Act and Regulation 84 (c) of the Capital Markets (Public Offers, Listing and Disclosure Regulations) 2023, which require approval of CMA where there is a transfer of securities outside the Securities Exchange;

2. The eligibility requirements stipulated under the Capital Markets (Public Offers, Listing and Disclosure Regulations) 2023, which demand free transferability of listed securities; and
3. Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, which mandates CMA to grant an exemption in certain circumstances where a person who has acquired significant shareholding in a company do not wish to buy out other shareholders.

In December 2024, Holcim made a decision to exit some markets in Africa as part of a global strategy to streamline its operations. As a result of this decision, Holcim sold its businesses in Nigeria, Uganda, Tanzania and Zimbabwe. In Kenya, Holcim (through its subsidiaries Fincem and Kencem) entered into an irrevocable undertaking to sell 58.6 % of its shareholding in Bamburi Cement Plc to Amsons Industries (K) Limited. The acquisition was concluded in December 2024 following a mandatory takeover offer by Amsons. The offer by Amsons also targeted other shareholders of Bamburi leading to acquisition of 100% shareholding in Bamburi Cement Plc.

3. Proposed acquisition of East African Portland Cement Plc shares by Kalahari Cement Limited:

Where a party has an interest in taking over shareholding exceeding 25% in a listed company, it does not require a prior approval from the Authority but is expected to serve the company this intention and copy the Authority and the Exchange where the company is listed. Therefore, as required by the Regulation 4 (1), CMA was served with a Notice of Intention by Kalahari Cement Limited on July 31, 2025.

The background of the transaction is that the parties entered into a Share Purchase Agreement dated 31 July 2025 ("SPA"), under which Kalahari Cement Limited will acquire the following:

- a) 13,144,442 ordinary shares in EAPC (representing 14.6% of the issued share capital) from Associated International Cement Limited (AIC), a company incorporated under the laws of England; and
- b) 13,180,442 ordinary shares in EAPC (also representing 14.6%) from Cementia Holding AG, a company incorporated under the laws of Switzerland.

Holcim Limited is the ultimate beneficial owner of the 26,324,884 ordinary shares in EAPC approximately 29.2% of the issued share capital, held through the above-named subsidiaries AIC and Cementia ("Sellers").

If successfully completed, the transaction will result in Kalahari and its related parties, acquiring a controlling interest in EAPC, with a total shareholding of approximately 41.7%, inclusive of the 12.5% already held indirectly through Bamburi Cement's stake in EAPC.

The Holcim Group, legally known as Holcim Limited, (formerly known as LafargeHolcim) is a Swiss multinational company that manufactures building materials. It has a presence in around 45 countries, and employs around 48,300 employees.

4. Legal Requirements and Procedure on Reference Transaction:

A person who has acquired effective control in a listed company is required to follow the following procedure:

1. Issue a public announcement.
2. Prepare, publish and serve a Notice of Intention on CMA, the Exchange, the listed company as well as the Competition Authority of Kenya.
3. Apply for an exemption under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, where they do not wish to buy out other shareholders.

Application for Exemption to make a mandatory takeover offer:

Regulations 4(3) of the Capital Markets (Take-overs and Mergers) Regulations 2002 provides that where a person has acquired effective control in a listed company and has no intention of making a take-over offer to the other shareholders, shall make a public announcement and shall apply to the Authority for exemption from the take-over requirements under regulation 5. Effective control threshold is from 25% of the issued share capital and above (See Annexure 3)

Regulation 5(1) of the Regulations provides that the Authority may in writing grant an exemption from complying with the provisions of regulation 4 to any particular person or take-over offer or to any particular class, category, description of persons or take-over offers subject to such conditions as may be imposed by the Authority.

According to Regulation 5 (2) an exemption may be granted on any of the following grounds:

1. an acquisition for the purpose of a strategic investment in a listed company that is tied up with management or any other technical support relevant to the business of such company;
2. a management buy-out involving a majority of the employees of the offeree;
3. a restructuring of the listed company's share capital including acquisition, amalgamation and any other scheme approved by the Authority;
4. an acquisition of a listed company in financial distress;
5. an acquisition of effective control arising out of disposal of pledged securities;
6. the maintenance of domestic shareholding for strategic reason(s); or
7. any other circumstances which in the opinion of the Authority serves public interest.

Kalahari sought an exemption pursuant to Regulation 5(2) of the Takeovers Regulations on the grounds of being a strategic investor in a listed company that is tied up with management or other technical support relevant to the business of such company. The applicant also relied on circumstances which serve the public interest, by ensuring that Kalahari, as a long-term strategic investor, assists EAPC in achieving its strategic objectives whilst deepening the capital markets regime which is vital for Kenya's economic prosperity.

Grant of Exemption:

After review of the application, the capital markets Authority granted the exemption on the following **conditions**:

- A. obtaining the requisite approvals from the **Competition Authority of Kenya** as per part D of the Competition Act.
- B. notification to, and approval of the material change by the **Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs** as per Sections 51(6) and (7) of the Mining Act.

The prerequisite documents as per the Regulations are an announcement to shareholders and issue of a Notice of Intention which is also published in the newspapers. We confirm that Kalahari complied with all these requirements. The relevant announcements were published in the Daily Nation as well as The Standard on August 1, 2025. (**See Annexure 4**).

5. Information on Kalahari (Offeror):

The Offeror, Kalahari, is a private company incorporated in Kenya as an investment vehicle specifically established for the purpose of making the Offer. The issued and fully paid-up share capital of the Offeror is KES 1,000,000 divided into 1,000 ordinary shares with a nominal value of KES 1,000 each. All the issued shares are fully paid or credited as fully paid.

The shareholding structure is as follows:

Name	Nationality	% Shareholding
Pacific Cement Limited	Tanzanian	90%
Comercio Et Consiel Limited	Tanzanian	10%
Total		100%

Related Parties to Kalahari

While Kalahari does not directly hold any shares in EAPC, a related company (Bamburi Cement Plc) holds approximately 12.5% of the ordinary shares in EAPC.

Companies Related to Kalahari

Name	Country of Incorporation	Percentage Shareholding	Principal Activities
Pacific Cement Limited	Mauritius	Edhah Abdallah Munif – 100%	Investment holding company.
Comercio Et Consiel Limited	Mauritius	Edhah Abdallah Munif – 100%	Investment holding company.
Bamburi Cement PLC	Kenya	Amsons Industries (K) Ltd -90% Edhah Abdallah Munif – 10%	Cement Manufacturing
Amsons	Kenya	Amsons Industries (K) Ltd -90%	Investment holding company.

Name	Country of Incorporation	Percentage Shareholding	Principal Activities
Industries (K) Ltd		Edhah Abdallah Munif – 10%	
Amsons Industries (T) Ltd.	Tanzania	Edhah Abdallah Munif – 80% Hassan Abdallah Nahdi – 10% Yasser Abdallah Nahdi – 10%	Manufacturing cement, lime plaster and gain mill products.
Camel Oil (T) Ltd	Tanzania	Abdallah Munif Nahdi – 50% Amsons Group Trading DMCC – 40% Edhah Abdallah Munif – 10%	Wholesale of solid, liquid and gaseous fuels and related products

6. Information on East African Portland Cement Company (Offeree):

East African Portland Cement Company, registration number C15/54, is a public limited liability company incorporated in Kenya in 1933. The company owns and operates an integrated cement manufacturing plant located on the outskirts of Nairobi, Kenya's capital.

EAPC's current top 5 shareholders

Name of Shareholder	% shares held
Bamburi Cement Plc	12.5%
Associated International Cement Limited	14.6%
Cementia Holding AG	14.6%
The National Treasury	25.3%
National Social Security Fund	27%
Total	94%

7. Share Price:

The agreed consideration for the Sale Shares is Kshs 27.30 per share, payable in United States Dollars. The total consideration being approximately Kshs 718,669,333.2 (USD 5,565,340.10). The agreed consideration represents a significant discount compared to the current market value, had the shares been acquired through an on-market transaction. However, the pricing reflects a negotiated price between two shareholders.

The share price of East African Portland Cement Company has been volatile for some time. This is partly due to speculative trading as a result of Holcim announcing its intended exit from Africa markets. The investors could have been speculating on a possible takeover of all existing shareholders at a premium as was the case in other recent takeover offers.

The following graph demonstrates the share price movement from May 2024 to date:



8. The Share Purchase Agreement and Conditions Precedent:

As noted above, Kalahari entered into a Share Purchase Agreement and each of the Sellers accepted Kalahari's offer to acquire the shares. Completion of the transaction is conditional upon the satisfaction or, where legally permissible, waiver of the following conditions precedent:

- Receipt of approval from the Competition Authority;
- The granting by the CMA of an exemption to Kalahari under Regulation 5 of the Capital Markets (Takeovers and Mergers) Regulations 2002, exempting Kalahari from the obligation to make a mandatory takeover offer to EAPC shareholders;
- With respect to EAPC's mining licence, notification to and receipt of written approval from the Cabinet Secretary for the Ministry of Mining, Blue Economy and Maritime Affairs, in accordance with Sections 51(6) and 51(7) of the Mining Act;
- Receipt from CMA of approval to implement the transaction as a private transfer; and
- Should Kalahari opt to finance any portion of the consideration rather than pay it fully in cash, it shall provide the Sellers with an unconditional, irrevocable, on-demand guarantee.

9. Policy on continued listing:

Kalahari does not intend to delist EAPC upon completion of the proposed acquisition. Instead, Kalahari plans to maintain EAPC's status as a publicly listed company, recognizing the strategic value of retaining a diverse base of local and international investors as co-

shareholders. Kalahari indicated its position that a continued listing will support EAPC's long-term growth ambitions by enhancing access to both equity and debt capital markets when required. Maintaining EAPC's listing will also offer investors the opportunity to participate in the growth of a key player in the cement industry, which is instrumental to infrastructure development across Kenya, Uganda, and the broader East African region.

10. Conclusion:

After considering the application, CMA granted an exemption on August 5, 2025. The transaction is yet to be concluded since the following is still pending:

- a. Approvals by the **Competition Authority of Kenya** as per part D of the Competition Act.
- b. Approval of the material change by the **Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs** as per Sections 51(6) and (7) of the Mining Act.
- c. Submission of a duly executed Form CDS 7 to facilitate private transfer of the shares.

The Capital Markets Authority therefore wishes to confirm to the Departmental Committee on Trade, Industry and Cooperatives that:

1. The proposed transaction was reviewed and an exemption granted as required under the Capital Markets (Take-overs and Mergers) Regulations 2002.
2. All disclosures to shareholders were made in accordance with the Capital Markets Act and the Capital Markets (Take-overs and Mergers) Regulations 2002.

We will be available to provide any required clarification to the Committee during the scheduled meeting.

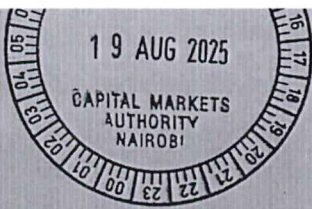
Yours Sincerely,



FCPA Wyckliffe Shamiah
CHIEF EXECUTIVE OFFICER

CC: Hon. Lee Kinyanjui, EGH
Cabinet Secretary
Ministry of Investments, Trade & Industry
17th Floor, NSSF Building Block A
NAIROBI

Hon. FCPA John Mbadi Ng'ongo, EGH
Cabinet Secretary
The National Treasury & Economic Planning
Treasury Building
NAIROBI



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When replying, please quote:
Ref: NA/DDC/TIC/2025/049

15th August, 2025

Dr. Juma Mukhwana, CBS
Principal Secretary
State Department for Industry
Ministry of Investments, Trade and Industry (MITI)
NAIROBI

CPA Mohammed Osman Adan
Managing Director
East African Portland Cement PLC
Athi River, off Namanga Road, Kenya
ATHI RIVER

✓ **Mr. Wycliffe Shamiah**
Chief Executive Officer
Capital Market Authority
NAIROBI

Mr. David Kibet Kemei
Director General
Competition Authority of Kenya
NAIROBI

Dear *Sir,*

RE: INQUIRY INTO THE PROPOSED SALE OF EAST AFRICAN PORTLAND CEMENT (EAPCC) PLC SHARES HELD BY HOLCIM LIMITED TO KALAHARI CEMENT LTD

The Departmental Committee on Trade, Industry and Cooperatives is a Committee of the National Assembly mandated by Standing Order 216 (5) (a) (e) *inter-alia*; "to investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments" and "to investigate and inquire into all matters relating to the assigned Ministries and Departments, as they may deem necessary, and as may be referred to it by the House".

MANAGEMENT
Chief Executive
Director-DMO
Director-PMD
Director-CS
Director-IA
Director CS & LA
Director TRKM
SM-Commodities
SM-3RP
Mr. ... Chain

representing a 27.25% stake, held by Holicim Group in East African Portland Cement Co. (EAPC), a publicly listed company, to Kalahari Cement at an alleged price of Kshs. 27.30 per share. If concluded, the sale would make the purchaser the largest shareholder (41.7%), ahead of the National Treasury (25.3%) and NSSF (27%). This heightens strategic uncertainty, and raises concerns on potential altering of corporate control and on minority shareholder protection, governance, and compliance with takeover rules. Of particular concern is the proposed price of Kshs. 27.30, an amount which is substantially below the prevailing market average of approximately Kshs. 53 per share, potentially undermining market fairness.

In exercise of its oversight mandate, the Committee has since April 2023 engaged EAPC Ltd on matters of accountability, transparency and proposed turnaround strategies amid governance challenges. At the time of the initial engagement, EAPC Ltd had been grappling with issues of operational inefficiencies, high debt and significant litigation including disputes over legal ownership of portions of its land occupied by squatters. The Committee was equally concerned about the company's financial health, noting that in the 2022 financial year it had recorded a 71.3% decline in profit.

During these engagements, the then Managing Director of EAPC Ltd and the Principal Secretary for the State Department of Industry, outlined various strategic interventions being implemented including debt settlement and proposal for sale of shares held by the two major shareholders, namely NSSF and the National Treasury. The Committee has since undertaken various interventions to support the company's stability including proposing strategic options, mobilizing support across government agencies to resolve some of the recurring security and land disputes and, maintaining ongoing consultations with EAPC Ltd. Further meetings and site visits are scheduled as part of this oversight process.

In view of the public interest that the matter has elicited, and the potential implications for governance, market integrity and industrial policy, the Committee seeks to inquire into the disposal of shares and requests that:-

I. the Principal Secretary and the EAPC Ltd provide information on-

- a) the resulting shareholding structure after the sale and whether it grants the buyer effective control over EAPC Limited;
- b) the allocation of board representation post-sale;
- c) existence and terms of shareholder agreements, particularly on protections for minority shareholders and the government interests;
- d) safeguards protect pensioners' funds (through NSSF) and taxpayers' interests;
- e) the buyer's strategic long-term plan for EAPC Ltd;
- f) measures to maintain production in Kenya, protect employment levels, wages and benefits and ensure alignment with government policy on industry and cement sector goals;
- g) the methodology and basis for the share valuation;
- h) plans for the Athi River land and other strategic company assets and safeguards against undervaluation or asset stripping;
- i) details of any due diligence undertaken; and
- j) any other information you deem may assist the Committee during the inquiry.

2. the Capital Markets Authority (CMA) and Competition Authority of Kenya (CAK) apprises it on-

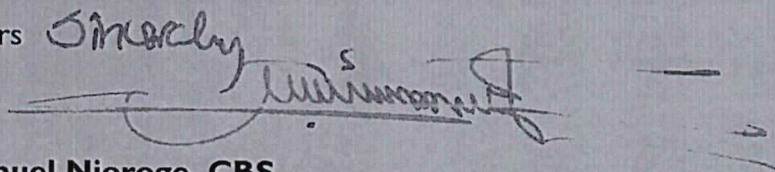
- a) whether the CMA and CAK approved the transaction and if so, on what conditions;
- b) whether CAK reviewed the transaction for competition concerns, potential dominance or harm to consumers and the economy; and
- c) whether all disclosures to shareholders were made in accordance with the Capital Markets Act.

The Committee, during its 28th Sitting on Thursday, 14th August, 2025, resolved to invite you to a meeting to be held on **Tuesday, 26th August 2025 at 10:00 am** to apprise it on the above issues, in accordance with its mandate under Standing Order 216 (5) and Article 95 (2) of the Constitution of Kenya. The venue of the meeting shall be communicated in due course.

Further, you are required to submit twenty (20) copies of your written submissions during the meeting responding to each of the issues raised. Soft copies of the same may be sent via email to cna@parliament.go.ke and copied to the underlisted email addresses.

Our liaison officers are **Mr. Abenayo Wasike (Principal Clerk Assistant)** or email address: ddc@parliament.go.ke

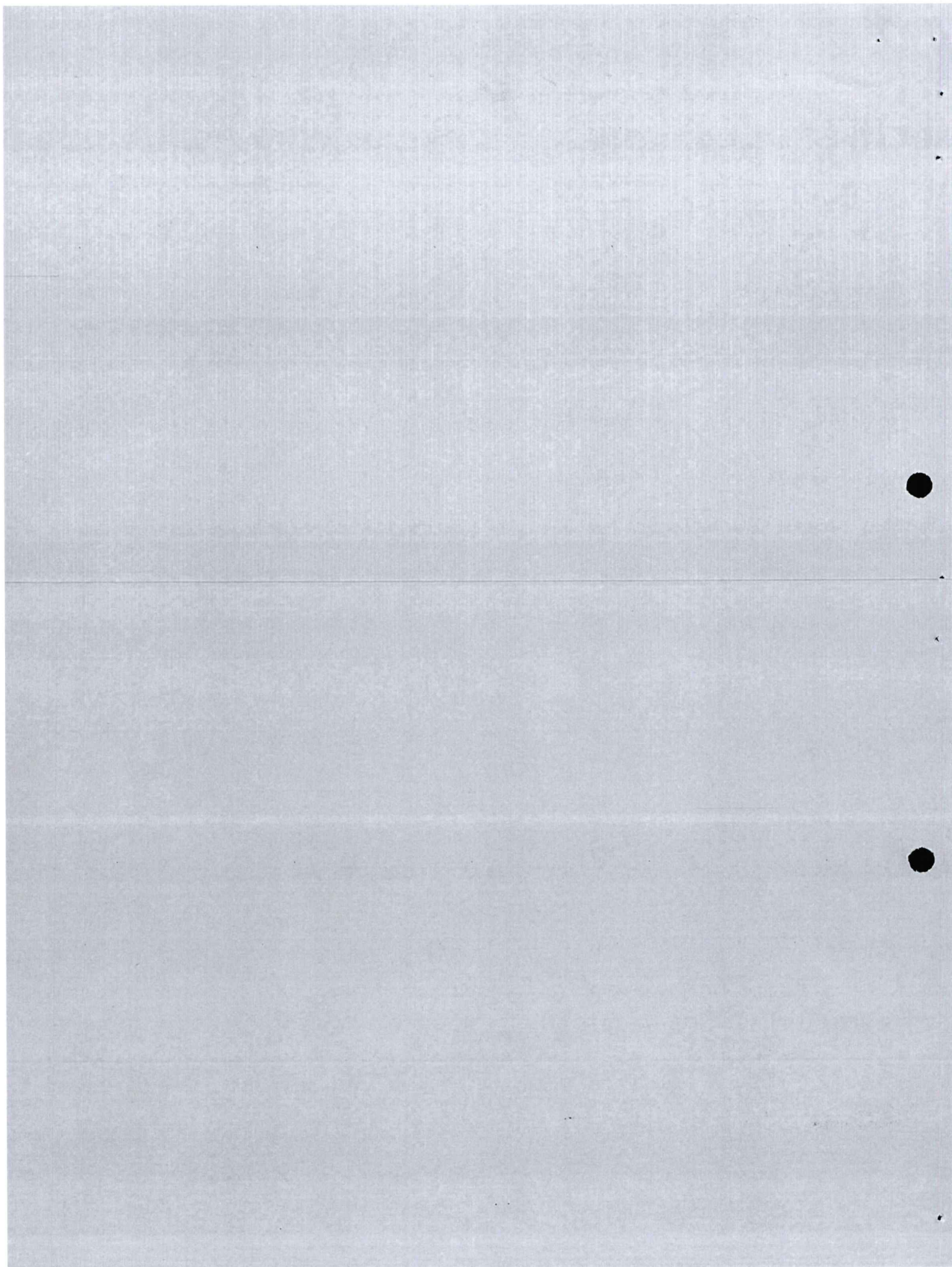
Yours

Sincerely


Samuel Njoroge, CBS
CLERK OF THE NATIONAL ASSEMBLY

Copies to: Hon. Lee Kinyanjui, EGH
Cabinet Secretary
Ministry of Investments, Trade and Industry
17th Floor, NSSF Building Block A
NAIROBI.

Hon. FCPA John Mbadi Ng'ongo, EGH
Cabinet Secretary
The National Treasury and Economic Planning
Treasury Buildings
Harambee Avenue
NAIROBI



Part V – SECURITIES TRANSACTIONS AND REGISTERS

31. Transactions in securities

- (1) No licensed person, broker or dealer shall transfer listed securities outside the securities exchange in which he or she is a trading participant except as provided for by the Authority in rules or as authorised by the Authority on a case by case basis, and on payment of a prescribed fee.
- (1A) The Authority may authorise the transfer of a listed security outside the securities exchange if the Authority is satisfied that—
 - (i) the transaction is a private transaction as prescribed by the Authority;
 - (ii) the security trades over the counter and such trade is reported in accordance with the rules prescribed by the Authority; or
 - (iii) it would be in the interest of the holders of ordinary shares of the company having regard to the prevailing conditions and all factors which are relevant in the circumstances to so authorise.

FIRST SCHEDULE

[r. 11(a), (b)]

ELIGIBILITY REQUIREMENTS FOR PUBLIC OFFERING AND LISTING OF
EQUITIES IN THE MAIN INVESTMENT MARKET SEGMENT AND THE SME
MARKET SEGMENT

	PART A	PART B
<i>Requirement</i>	<i>Criteria for the Main Investment Market Segment</i>	<i>Criteria for the SME Market Segment</i>
Incorporation/ Registration status	The issuer to be listed shall be a body corporate duly incorporated or registered under the Laws of Kenya.	The issuer to be listed shall be a body corporate duly incorporated or registered under the Laws of Kenya.
	The issuer must have been in business operations for at least five (5) years.	The issuer must have been in business operations for at least two (2) years.
Minimum Size (Share capital and shareholding)	The issuer shall have a minimum issued and fully paid-up ordinary share capital of fifty million shillings.	The issuer shall have a minimum issued and fully paid-up ordinary share capital of ten million shillings.
	The Issuer must have a minimum of 250 shareholders	The Issuer must have a minimum of 7 shareholders.
Total Assets	The total assets immediately before the public offering or listing of shares should not be less than one billion shillings (unless exempted by the Authority).	The total assets immediately before the public offering or listing of shares should not be less than one hundred million shillings (unless exempted by the Authority).
Free transferability of securities	Securities to be listed shall be fully paid up, freely transferable and not subject to any restrictions on marketability or any preemptive rights.	Securities to be listed shall be fully paid up, freely transferable and not subject to any restrictions on marketability or any preemptive rights.
Availability and reliability of financial records	The issuer shall have audited financial statements complying with International Financial Reporting Standards (IFRS) for the last three accounting periods including the accounting period ending on a date not more than four months prior to the proposed date of the commencement of the offer or listing for issuers whose securities are not listed at the	The issuer shall have audited financial statements complying with International Financial Reporting Standards (IFRS) for the last one accounting period including the accounting period ending on a date not more than four months prior to listing for issuers whose securities are not listed at the securities exchange, and six months for issuers whose securities are listed at

in any one year in such listed company upto a maximum of fifty percent.

Take-over
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4.(1) A company or person who intends or acquire effective control in a listed company shall not later than twenty four hours from the resolution of its board to effective control in the company or not later twenty four hours prior to making a decision to acquire effective control in the company in the case of any other person announce the proposed offer by press notice and serve a notice of intention, in writing of the take-over scheme containing the particulars set out in paragraph (2), to the -

- (a) proposed offeree at it's registered office;
- (b) securities exchange at which the offeree's voting shares are listed;
- (c) Authority; and
- (d) the Commissioner of Monopolies and Prices appointed under the Restrictive Trade Practices, Monopolies and Price Control Act, where the offeror is engaged in the same business as the offeree.

Cap. 504

(2) The press notice referred to in paragraph (1) shall-

- (a) be made in at least two English language dailies of national circulation;
- (b) be made after the notice of intention has been served on the proposed offeree;

5.(1) Subject to this regulation, the Authority may in writing grant an exemption from complying with the provisions of regulation 4 to any particular person or take-over offer or to any particular class, category, description of persons or take-over offers subject to such conditions as may be imposed by the Authority.

(2) The granting of an exemption under paragraph (1) shall serve the wider interests of the shareholders and the public and such circumstances shall include -

- (a) an acquisition for the purpose of a strategic investment in a listed company that is tied up with management or any other technical support relevant to the business of such company;
- (b) a management buy-out involving a majority of the employees of the offeree;
- (c) a restructuring of the listed company's share capital including acquisition, amalgamation and any other scheme approved by the Authority;
- (d) an acquisition of a listed company in financial distress;
- (e) an acquisition of effective control arising out of disposal of pledged securities;
- (f) the maintenance of domestic shareholding for strategic reason(s); and
- (g) any other circumstances which in the opinion of the Authority serves public interest.

(3) Nothing in these Regulations shall require any person to comply with the take-over procedure provided

under regulation 4 if such person at the commencement of these Regulations holds -

- (a) twenty five percent or more of the voting shares of a listed company; or
- (b) twenty five percent or more of the voting shares in an issuer applying for listing, at the date of listing whichever is later.

PART XIV—TRANSACTIONS OF LISTED SECURITIES
OUTSIDE A SECURITIES EXCHANGE

84. An application to the Authority for approval of a private transaction shall be considered if the transaction is for the—

Nature of transactions.

- (a) the transfer in the form of a gift;
- (b) a settlement of a will or estate of a deceased person;
- (c) restructuring, merger or acquisition in a scheme which has been approved by the Authority;

- (d) the transfer of an exceptional nature of a listed security that the Authority considers to be proper and acceptable with respect to a strategic investor and serves the investor or public interest; or
- (e) the transfer shall not result in any change in beneficial ownership otherwise than for purposes of paragraphs (c) or (d) or section 31(1A)(ii) of the Act.

"Board" has the meaning assigned to it in the Act;

"competing take-over offer" means an offer made by a person with respect to the offeree's voting shares in response to an offer that has already been made and such other person shall be deemed to be the competing offeror.

"counter offer" means a take-over offer made by an offeree to an offeror;

"effective control" is where a person or a company makes an offer for the acquisition of effective control of an offeree which holds shares which together with shares, if any, already held by such person or an associate person or a company or by any other company that is deemed by virtue of being a related company or by persons acting in concert with such person carry the right to exercise or control the exercise of not less than twenty five percent of the votes attached to the ordinary shares of an offeree which shall be deemed to be a take-over and the provisions of these Regulations shall apply except where that person or associate person or related company or persons acting in concert with the person, already hold shares carrying more than ninety percent voting rights in the offeree;

"days" means calendar days excluding Saturdays, Sundays and public holidays;

"merger" means an arrangement whereby the assets of two or more companies become vested in or under the control of one company;

"offeror" in relation to a take-over scheme or a take-over offer means any person who acquires or agrees to acquire effective control in the offeree either directly or with any associated person or related company or any person acting in concert with the offeror but does not include a person who holds shares carrying more than ninety percent voting rights in the offeree;

KALAHARI CEMENT LIMITED
INCORPORATED IN THE REPUBLIC OF KENYA ON 27 MAY 2025 UNDER THE COMPANIES ACT CHAPTER 485, LAWS OF KENYA
(COMPANY REGISTRATION NUMBER PVT-PQ158DYM)

THE CAPITAL MARKETS ACT
(CHAPTER 485A, LAWS OF KENYA)

REGULATION 4(3) OF
THE CAPITAL MARKETS (TAKE-OVERS & MERGERS) REGULATIONS, 2002

NOTICE

NOTICE OF INTENTION BY KALAHARI CEMENT LIMITED (KALAHARI OR THE OFFEROR) TO ACQUIRE: 1) 13,144,442 ORDINARY SHARES IN EAST AFRICAN PORTLAND CEMENT PLC (EAPC OR THE OFFEREE) FROM ASSOCIATED INTERNATIONAL CEMENT LIMITED, (AIC) 2) 13,180,442 ORDINARY SHARES IN EAPC FROM CEMENTITA HOLDING AG

1 Introduction

1.1 Pursuant to regulation 4(3) of the Capital Markets (Take-overs & Mergers) Regulations, 2002 (the "Take-over Regulations"), Kalahari hereby announces that on 31 July 2025, it served a notice on EAPC, the Capital Markets Authority ("CMA"), the Nairobi Securities Exchange ("NSE") and the Competition Authority of Kenya ("CAK") to acquire:

1.1.1 13,144,442 ordinary shares (the "AIC Sale Shares") in the issued share capital of EAPC from Associated International Cement Limited (AIC), a company registered in accordance with the laws of England with registration number 00470173, and whose registered office is at Barton Hill, Barton Road, Coalville, Leicestershire, England, LE67 1TL (AIC) (the "Proposed AIC Acquisition"); and

1.1.2 13,180,442 ordinary shares (the "Cementita Sale Shares") in the issued share capital of EAPC from Cementita Holding AG, a company registered in accordance with the laws of Switzerland with registration number CHE-107867696 and whose registered office is at Grafenauweg 10, 6300 Zug, Switzerland (Cementita) (the "Proposed Cementita Acquisition").

The AIC Sale Shares and the Cementita Sale Shares together are referred to as the "Sale Shares".

AIC and Cementita together are referred to as the "Sellers".

The Proposed AIC Acquisition and the Proposed Cementita Acquisition together are referred to as the "Proposed Transaction".

2 The Offeror

2.2 The Offeror is an investment vehicle that has specifically been incorporated for the purpose of making the Offer. The Offeror is registered in the Republic of Kenya with registration number PVT-PQ158DYM under the Companies Act, Chapter 485, Laws of Kenya whose registered office is at ALN House, Eldama Ravine Close, Off Eldama Ravine Road, Westlands, P.O. Box 764 - 00606, Nairobi, Kenya.

2.3 The Offeror is a subsidiary of Pacific Cement Limited (Company number 219881) which holds 90% of the paid-up shares in the Offeror and Comercio Et Constel Limited (Company number 221514) which holds 10% of the paid-up shares in the Offeror.

2.4 The following are companies related to and associated with the Offeror:

Name	Country of Incorporation	Shareholder and Percentage Shareholding	Principal Activities

5315949

5.	National Social Security Fund	27%
Total for the Top Five Shareholders		64%
Other Shareholders		6%
Total		100%

4 The Sellers

4.1 AIC is presently the owner of the AIC Sale Shares that are the subject of the Proposed AIC Acquisition and the AIC Sale Shares amount to approximately 14.60% of the total issued share capital of EAPC.

4.2 Cementita is presently the owner of the Cementita Sale Shares that are subject of the Proposed Cementita Acquisition and the Cementita Sale Shares amount to approximately 14.60% of the total issued share capital of EAPC.

5 Current shareholding by Kalahari and related parties in EAPC

20 The Offeror does not hold any shares directly in EAPC.

5.1 Bamburi Cement Plc (a related company to the Offeror) holds approximately 12.5% of ordinary shares in EAPC. Mr. Edraih Abdallah Munnif indirectly holds shares in Bamburi Cement Plc through Amsons Industries (K) Ltd.

5.2 None of the directors of the Offeror hold directorships in EAPC.

6 Share Purchase Agreement

6.1 Kalahari entered into a share purchase agreement with the Sellers on 31 July 2025 pursuant to which each Seller has accepted Kalahari's offer to purchase the Sale Shares and agreed to sell the Sale Shares to Kalahari, the ("SPA") subject to the terms and conditions contained therein.

6.2 Completion of the Proposed Transaction will be subject to all the conditions set out in paragraph 11 below having been satisfied or (to the extent legally capable of waiver) waived and the SPA completed in accordance with its terms. The conditions of the SPA are outlined in paragraph 11 below.

7 Completion

7.1 Pursuant to the SPA, closing shall take place five (5) business days following the first business day on or by which all the conditions in the SPA as more particularly set out in paragraph 11 below have been fulfilled (or waived to the extent legally capable of waiver).

KALAHARI CEMENT LIMITED
INCORPORATED IN THE REPUBLIC OF KENYA ON 27 MAY 2025 UNDER THE COMPANIES ACT
CHAPTER 486, LAWS OF KENYA
(COMPANY REGISTRATION NUMBER PVT-PQ158DVM)

THE CAPITAL MARKETS ACT
(CHAPTER 485A, LAWS OF KENYA)

REGULATION 4(1) OF
THE CAPITAL MARKETS (TAKE-OVERS & MERGERS) REGULATIONS, 2002

NOTICE OF INTENTION

From: Kalahari Cement Limited
ALN House
Eldama Ravine Close, Off Eldama Ravine Road
Westlands
P.O. Box 764 - 00606
Nairobi, Kenya

To: East African Portland Cement Plc
LR No. 337/113/1, Namanga Road
Off Mombasa Road
P.O. Box 40101-00100
Nairobi, Kenya

**NOTICE OF INTENTION BY KALAHARI CEMENT LIMITED (KALAHARI OR THE OFFEROR) TO
ACQUIRE: 1) 13,144,442 ORDINARY SHARES IN EAST AFRICAN PORTLAND CEMENT PLC (EAPC OR
THE OFFEREE) FROM ASSOCIATED INTERNATIONAL CEMENT LIMITED, AND 2) 13,180,442
ORDINARY SHARES IN EAPC FROM CEMENTIA HOLDING AG**

1 Introduction

- 1.1 Pursuant to regulation 4(1) of the Capital Markets (Take-overs & Mergers) Regulations, 2002 (the "Take-over Regulations"), we, Kalahari hereby give you notice that upon successful completion of the proposed Transaction described in paragraph 1.2 below, Kalahari will acquire effective control of EAPC. Although we have no intention of making a take-over offer for EAPC, we are required by the Take-over Regulations to: (i) issue this Notice of Intention to EAPC, (ii) issue a public announcement under regulation 4(2) of the Take-over Regulations, and (iii) apply to the Capital Markets Authority, Kenya ("CMA") for an exemption from the Take-over Regulations pursuant to regulation 5 of the Take-over Regulations.
- 1.2 Pursuant to a share purchase agreement dated 31 July 2025 ("SPA"), Kalahari will acquire:
- 1.2.1 13,144,442 ordinary shares (the "AIC Sale Shares") in the issued share capital of EAPC from Associated International Cement Limited (AIC), a company registered in accordance with the laws of England with registration number 00470173, and whose

registered office is at Bardon Hill, Bardon Road, Coalville, Leicestershire, England, LE67 1TL (AIC) (the “Proposed AIC Acquisition”); and

- 1.2.2 13,180,442 ordinary shares (the “Cementia Sale Shares”) in the issued share capital of EAPC from Cementia Holding AG, a company registered in accordance with the laws of Switzerland with registration number CHE-107.867.696 and whose registered office is at Grafenauweg 10, 6300 Zug, Switzerland (Cementia) (the “Proposed Cementia Acquisition”),

The AIC Sale shares and the Cementia Sale Shares together are referred to as the “Sale Shares”.

AIC and Cementia together are referred to as the “Sellers”.

The Proposed AIC Acquisition and the Proposed Cementia Acquisition together are referred to as the “Proposed Transaction”.

2 The Offeror

- 2.1 The Offeror is an investment vehicle that has specifically been incorporated for the purpose of making the Offer. The Offeror is registered in the Republic of Kenya with registration number PVT-PQ158DVM under the Companies Act, Chapter 486, Laws of Kenya whose registered office is at ALN House, Eldama Ravine Close, Off Eldama Ravine Road, Westlands, P.O. Box 764 - 00606, Nairobi, Kenya.
- 2.2 The Offeror is a subsidiary of Pacific Cement Limited (Company number 219881) which holds 90% of the paid-up shares in the Offeror and Comercio Et Consiel Limited (Company number 221514) which holds 10% of the paid-up shares in the Offeror.
- 2.3 The following are companies related to and associated with the Offeror:

Name	Country of Incorporation	Shareholder and Percentage Shareholding	Principal Activities
Pacific Cement Limited	Mauritius	Edhah Abdallah Munif – 100%	Investment holding company
Comercio Et Consiel Limited	Mauritius	Edhah Abdallah Munif – 100%	Investment holding company
Bamburi Cement PLC	Kenya	Amsons Industries (K) Ltd: 100%	Manufacturing of cement
Amsons Industries (K) Ltd	Kenya	i. Amsons Industries (T) Ltd – 90% ii. Edhah Abdallah Munif – 10%	Investment holding company
Camel Oil (T) Ltd	Tanzania	i. Abdallah Munif Nahdi – 50% ii. Amsons Group Trading DMCC – 40% iii. Edhah Abdallah Munif – 10%	Wholesale of solid, liquid and gaseous fuels and related products.
Amsons Industries (T) Ltd.	Tanzania	i. Edhah Abdallah Munif – 80% ii. Hassan Abdallah Nahdi – 10% iii. Yasser Abdallah Nahdi – 10%	Manufacturing of cement, lime plaster and of gain mill products.

East Africa Warehousing (T) Limited	Tanzania	<ul style="list-style-type: none"> i. Edhah Abdallah Munif – 80% ii. Hassan Abdallah Nahdi – 10% iii. Yasser Abdallah Nahdi – 10% 	Freight transport by road.
Camel Oil Limitada - Mozambique	Mozambique	<ul style="list-style-type: none"> i. Abdallah Munif Nahdi – 70% ii. Edhah Abdallah Munif – 10% iii. Hassan Abdallah Nahdi – 10% iv. Yasser Abdallah Nahdi – 10% 	Wholesale of solid, liquid and gaseous fuels and related products - Main Activity.
Kalahari Trans Zambia Limited	Zambia	<ul style="list-style-type: none"> i. Camel Oil (T) Ltd – 90% ii. Edhah Abdallah Munif – 10% 	Freight transport by road and cargo handling.

3 The Offeree

- 3.1 EAPC (registration number: C15/54) is a public limited liability company incorporated in Kenya in 1933, and whose registered office is situated at LR No. 337/113/1, Namanga Road, off Mombasa Road, P.O. Box 40101-00100, Nairobi, Kenya.
- 3.2 EAPC is listed on the Nairobi Securities Exchange and trades under the ticker symbol "PORT".
- 3.3 EAPC owns an integrated cement plant located on the outskirts of Kenya's capital, Nairobi. Its brands include Blue Triangle Cement, its longest-standing brand in the market, and Green Triangle Cement, an innovative product designed with less clinker and lower energy consumption, providing a sustainable alternative that meets the growing demands of environmentally-conscious customers in the construction sector. Other brands in its product portfolio include Falcon Cabro, Olympia Cabro, Tri-Hex Cabro, Cosmic Cabro and Brick (Quad) Cabro.
- 3.4 EAPC has a long history of working with the local communities in the areas in which it operates via its corporate social responsibility (CSR) activities. EAPC's CSR initiatives focus on three key pillars: education, environmental stewardship, and water provision. It has identified three primary communities where its operations have the most impact: Kibini Hill and Bissil in Kajiado County, and Athi River in Machakos County. Additionally, EAPC responds to urgent philanthropic requests and unforeseen natural disasters, such as floods and famines, as part of its broader community engagement efforts.
- 3.5 EAPC owns 100% of East African Portland Cement Uganda Limited.
- 3.6 As set out in EAPC's annual report for the year ended 30th June 2024, the details of EAPC's current top 5 shareholders as at 30th June 2024 are set out below:

S/N	Name of Shareholder	Percentage of shares held
1.	Bamburi Cement Plc	12.5%
2.	Associated International Cement Limited	14.6%
3.	Cementia Holding AG	14.6%
4.	The National Treasury	25.3%
5.	National Social Security Fund	27%
Total for the Top Five Shareholders		94%
Other Shareholders		6%
Total		100%

4 The Sellers

- 4.1 AIC is presently the owner of the AIC Sale Shares that are the subject of the Proposed AIC Acquisition and the AIC Sale Shares amount to approximately 14.60% of the total issued share capital of EAPC.
- 4.2 Cementia is presently the owner of the Cementia Sale Shares that are subject of the Proposed Cementia Acquisition and the Cementia Sale Shares amount to approximately 14.60% of the total issued share capital of EAPC.

5 Current shareholding by Kalahari and related parties in EAPC

- 5.1 The Offeror does not hold any shares directly in EAPC.
- 5.2 Bamburi Cement Plc (a related company to the Offeror) holds approximately 12.5% of ordinary shares in EAPC. Mr. Edhah Abdallah Munif indirectly holds shares in Bamburi Cement Plc through Amsons Industries (K) Ltd.
- 5.3 None of the directors of the Offeror hold directorships in EAPC.

6 Share Purchase Agreement

- 6.1 Kalahari entered into the SPA pursuant to which each of the Sellers have accepted Kalahari's offer to purchase the Sale Shares and agreed to sell the Sale Shares to Kalahari, subject to the terms and conditions contained therein.
- 6.2 Completion of the Proposed Transaction will be subject to all the conditions set out in paragraph 11.11 below having been satisfied or (to the extent legally capable of waiver) waived and the SPA completed in accordance with its terms. The conditions of the SPA are outlined in paragraph 11.11 below.

7 Completion

- 7.1 Pursuant to the SPA, closing shall take place five (5) business days following the first business day on or by which all the conditions in the SPA as more particularly set out in paragraph 11.11 below have been fulfilled (or waived to the extent legally capable of waiver).

8 Consideration

- 8.1 The consideration for the Sale Shares is KES 27.30 per Sale Share, payable in USD as determined in accordance with the SPA.

9 Application for exemption from making a take-over offer

- 9.1 Kalahari does not intend to make a general offer to acquire all the voting shares in EAPC following the Proposed Transaction, and will apply to the Capital Markets Authority for an exemption from the requirement to make a take-over offer to all shareholders of EAPC.
- 9.2 Kalahari does not intend to delist EAPC from the NSE after completion of the Proposed Transaction.
- 9.3 Consequently, pursuant to Regulation 5 of the Take-over Regulations, Kalahari shall submit an application to the Capital Markets Authority for a written exemption from compliance with Regulation 4 of the Take-over Regulations on the grounds that such exemption shall: (i) facilitate the Proposed Transaction that is an acquisition for the purpose of a strategic investment in a listed company that is tied up with management or other technical support relevant to the business of such company; and (ii) there are circumstances which serve the public interest, by ensuring that Kalahari, as a long-term strategic investor, assists EAPC in achieving its strategic objectives whilst deepening the capital markets regime which is vital for Kenya's economic prosperity.

10 Persons acting in concert, current holdings and agreements with holders of voting shares

There are no persons acting in concert with Kalahari and Kalahari does not have an option to acquire any additional shares in EAPC. The Sellers and Kalahari have entered into the SPA.

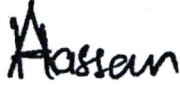
11 Conditions

- 11.1 Completion of the Proposed Transaction will be subject to the fulfilment (or waiver to the extent legally capable of waiver by the written agreement of the Sellers and Kalahari) of the conditions precedent listed below:
- 11.1.1 obtaining competition approval from the relevant competition authority provided that if such approval is given with any conditions, then such conditions are acceptable to Kalahari in accordance with the terms of the SPA;
- 11.1.2 the granting of an exemption by the Capital Markets Authority to Kalahari under Regulation 5 of the Take Over Regulations from the obligation to make a mandatory takeover offer for EAPC;
- 11.1.3 in respect of the mining licence held by EAPC, notification to and the granting, by the Cabinet Secretary for the Ministry of Mining, Blue Economy and Maritime Affairs of its written approval to the change of control of EAPC in accordance with Section 51 (6) and (7) of the Mining Act (Chapter 306 of the Laws of Kenya) (the **Mining Licence Approval**), provided that if such approval is given with any conditions provided that if such approval is given with any conditions, then such conditions are acceptable to Kalahari in accordance with the terms of the SPA;
- 11.1.4 if the Proposed Transaction is capable of being executed as a block trade, approval having been obtained from the NSE and CMA (the **Block Trade Approval**), or if the Block Trade Approval is not granted by the NSE or CMA, the granting of an approval from the CMA to implement the sale of the Sale Shares as a private transfer in accordance with section 31(1A) of the Capital Markets Act and regulation 57(d) of the Licensing Regulations (the **Private Transfer Approval**);
- 11.1.5 if required by the CMA, Kalahari procuring the publication by EAPC of the circular to the shareholders of EAPC in relation to the Private Transfer Approval application pursuant to the Capital Markets Act; and

11.1.6 if Kalahari elects for the balance of the Consideration to be to be financed rather than paid in cash, Kalahari shall provide the Sellers with an unconditional, irrevocable on-demand guarantee from a licensed and reputable bank, in a form and substance acceptable to the Sellers, to secure the payment of the balance.

Dated 31 July 2025

By Order of the Board of Directors



For and on behalf of KALAHARI CEMENT LIMITED

c.c. The Chief Executive, The Capital Markets Authority
The Chief Executive, The Nairobi Securities Exchange
The Director-General, The Competition Authority of Kenya



MINISTRY OF INVESTMENTS, TRADE, AND INDUSTRY
State Department for Industry

Office of the Principal Secretary

Telephone: +254-(0)20-2731531-9
0704097021/23, 0788484840/41
Web: www.industrialization.go.ke
Email: ps@industrialization.go.ke

Social Security House, Block 'A'
Bishops Road, Capital Hill
P.O. Box 30547 - 00100
NAIROBI, GPO
KENYA

When replying, please quote

Ref. MITI/SDI/1/5

Date: 30th September, 2025

The Clerk of the National Assembly
Parliament Buildings,
P.O. Box 41842 - 00100
NAIROBI

Dear Sir,

INQUIRY INTO THE PROPOSED SALE OF EAST AFRICAN PORTLAND CEMENT (EAPCC) PLC SHARES HELD BY HOLCIM LIMITED TO KALAHARI CEMENT LTD

Reference is made to your letter Ref NA/DDC/TIC/2025/049 dated 15th August 2025 and additional letters Ref: NA/DDC/TIC/2025/050 and NA/DDC/TIC/2025/066 inviting me to apprise the committee on the above captioned matter.

Hon. Chair and Members, first allow me to extend my sincerely gratitude for your magnanimity in acceding to my requests vide my letters Ref: MITI/SDI/1/10 and MITI/SDI/1/10 VOL.VI/(19) of 19th August 2025 and 22nd September 2025 respectively to reschedule this engagement. While extending my appreciation, it is not lost to me that this rescheduling could have inconvenienced the membership of the committee and distorted its calendar, for that I am really apologetic and undertake to always cooperate with the committee to ensure that we actualize the mandate of our institutions.

Hon. Chair, having stated that, allow me to respond to the concerns raised by the committee in respect to the proposed sale of East African Portland Cement (EAPCC) Plc Shares held by Holcin Limited to Kalahari Cement limited. While responding to the concerns, I appreciate the fact that the committee has previously engaged with the Managing Director of EAPCC

PLC and as such, my response here below is an affirmation of the Government position on this matter as presented therebefore.

1. The resulting shareholder structure after the sale and whether it grants the buyer effective control over EAPC Limited.

Hon. Chair,

The shareholder structure of East African Portland Cement comprises of both Government and other private entities; the shareholder structure is as shown below:

i.National Social Security Fund (NSSF)	27%
ii.The National Treasury	25.3%
iii.Cementia Holdings AG	14.6%
iv.Associated International Cement Ltd	14.6%
v.Bamburi Cement Ltd	12.5%
vi.Minority Shareholders	6%

It should be noted that Cementia Holdings AG and Associated International Cement Limited are subsidiaries of the Holcim Group. The proposed sale of their shares to Kalahari Cement Ltd will result in the acquirer holding 29.2% of the company's authorized shares. Additionally, the company maintains a close association with Bamburi Cement Ltd, as outlined in the disclosure accompanying the notice of intent regarding Holcim's stake acquisition in EAPC Plc.

2. The allocation of board representation post-sale.

Hon Chair, the current Board of Directors of EAPCC LTD Comprises Six members, out of which two of the members are nominated by the Holcim Group, reflecting a longstanding practice aligned with its historical 41.7% ownership of the company's authorized and issued shares. It is expected that this level of board representation will be available to the acquirer upon completion of the transaction.

3. Existence and terms of shareholder agreements, particularly on protections for minority shareholders and the government interests

Hon Chair, currently there are no shareholder agreements in place at EAPCC LTD. Government interests are represented on the Board through the nomination of two directors, one from the National Treasury and another from the parent ministry. Minority shareholders are represented by a director appointed by the Government of Kenya to act on their behalf. Additionally, the Chairman of the Board is appointed by the Government of Kenya. Based on the above representation, the interests of the government and minority shareholders in the company are well taken care of.

4. Safeguards on pensioners' funds (through NSSF) and taxpayers' interests

The Company is actively implementing its five-year strategic plan, which runs through June 2027, with notable progress already achieved. As part of this strategy, the interests of pensioners and taxpayers, primarily through the pursuit of value via dividends, are addressed. Considering the proposed acquisition, any significant discount on market value risks undermining the progress made in aligning the book value with the open market value.

5. The buyer's strategic long-term plan for EAPC Plc; Measures to maintain production in Kenya, protect employment levels, wages and benefits and ensure alignment with government policy on industry and cement sector goals and the methodology and basis for the share valuation

Hon Chair, the Ministry of Investment, Trade and Industry (MITI) currently has no visibility into the strategic direction of Kalahari Cement Ltd following the proposed acquisition, as there has been no engagement or communication on this matter. However we intend to fully disclose this information once the avenue for this engagement starts.

6. Plans for the Athi River land and other strategic company assets and safeguards against undervaluation or asset stripping

Hon Chair, as earlier postulated by the Managing Director, the Company is actively executing its five-year strategic plan through June 2027, with significant milestones already achieved. Key initiatives include balance sheet restructuring through the disposal of investment property at market value to reduce liabilities and reinvest in plant refurbishment. These efforts aim to enhance operational capacity, with a long-term target of capturing 30% market share

7. Details of any due diligence undertaken

The engagements between Kalahari Cement Ltd and the Holcim Group fall outside the purview of the Ministry. As such, we cannot provide any information regarding the due diligence conducted in relation to the proposed transaction.

8. Any other information you deem may assist the Committee during the inquiry

Hon Chair, the Ministry of Investment, Trade and Industry (MITI) wishes to highlight East African Portland company limited's current period of stable and sustainable growth following a significant turnaround. MITI is overseeing EAPCC strategic plan which is closely aligned with and actively supports the Government's national development priorities, such as the Affordable Housing program and infrastructure expansion. We believe the Company's return to profitability and positive trajectory is a testament to the efforts that all stakeholders are making. Our primary objective is to


ensure this positive momentum is maintained without disruption, thereby safeguarding the value of all shareholders.

While we acknowledge the Committee's interest, we respectfully submit that the Ministry's current focus is on EAPCC operational continuity and delivering on its commitments. We are confident in the existing regulatory frameworks overseen by the Capital Markets Authority and the Competition Authority of Kenya to appropriately review any corporate actions. We trust the Committee will consider the importance of stability and allow these established processes to run their course.

Conclusion

Chair, we would like to express our appreciation to the Committee for their time and their attention in this matter. We are committed to working collaboratively with the Committee to ensure that we continue to meet the expectations of all our stakeholders.

Yours Sincerely,



Juma Mukhwana, PhD, CBS
PRINCIPAL SECRETARY

Copy to: Hon. Lee Kinyanjui
Cabinet Secretary
Ministry of Investments, Trade and Industry
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Dr. Aurelia Rono, CBS
Principal Secretary
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