



Approved
SNA
19/11/25


THE NATIONAL ASSEMBLY

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:	<i>Vice-chair Trade Committee</i> <i>Hon. Marianne Kitany</i> <i>Modo Atabo</i>

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NAIROBI**

NOVEMBER 2025

**NATIONAL ASSEMBLY
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SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

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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

1.0 PREFACE

1.1 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 & and; 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)

Hon. John Okano Bwire, MP
Taveta Constituency
Wiper Democratic Movement Kenya

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 (IA) 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.

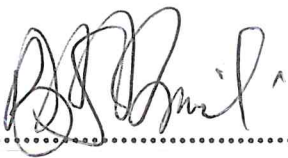
31. From the submission proposing EAPC buys back its shares, the Committee finds that in respect to the Legal Framework, section 447 of the Companies Act, 2015 allows a listed company such as EAPC Plc to buy back its own shares. The law requires that the buy back be financed from distributable profits 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**







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 EAPC shares 4/11/2025
ADOPTION SCHEDULE

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	

