PHILIPPINE COMPETITION COMMISSION
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IN THE MATTER OF THE PROPOSED ACQUISITION BY NEWMONT CORPORATION OF SHARES IN NEWCREST MINING LIMITED THROUGH ITS SUBSIDIARY NEWMONT OVERSEAS HOLDINGS PTY. LTD.

MAO Case No. M-2023-019

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COMMISSION DECISION NO. 17-M-019/2023

This refers to the proposed acquisition of Newcrest Mining Limited (Newcrest) by Newmont Corporation (Newmont), through its subsidiary Newmont Overseas Holdings Pty. Ltd. (Newmont Overseas) (hereinafter shall be collectively referred to as Parties). This acquisition (Transaction) is submitted to the Philippine Competition Commission (the Commission) for review.[1]

Upon careful review of the existing market conditions, various submissions and representations of the Parties to the Commission, the application of the PCA, its Implementing Rules and Regulations, related issuances, and based on the findings and recommendation of the Mergers and Acquisitions Office (MAO), the Commission finds that the Transaction will not likely result in substantial prevention, restriction, or lessening of competition in the relevant market for the reasons discussed below.

The Parties and the Transaction

Newmont Overseas is a foreign company based in Western Australia. Its Ultimate Parent Entity (UPE) is Newmont, a publicly-listed American corporation primarily engaged in gold mining with significant assets and operations in various locations worldwide. The Newmont Notifying Group does not have any assets in the Philippines, but it sells copper concentrate to the [redacted] which is the only viable user of copper concentrate in the country.

[1] The Philippine Competition Commission conducts review of mergers and acquisitions, including joint ventures, pursuant to Sections 16 and 17 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (PCA), and Section 1, Rule 4 of the Implementing Rules and Regulations of the PCA.

Newcrest is a mining company based in Australia and generates revenues mainly from the sale of gold, copper, silver, and molybdenum produced from its mining operations. The Newcrest Notifying Group likewise sells copper concentrate to [redacted]

Newmont Overseas entered a Scheme Implementation Deed with Newcrest to acquire 100% of the issued shares of the latter. Newmont will swap 0.400 of its shares for every one (1) Newcrest share. Post-Transaction, the share swap will result in the 31% ownership of Newmont by existing Newcrest shareholders.

The Relevant Market

In the review of a merger or acquisition, the Commission examines all the relevant markets[2] that may be potentially affected by the Transaction to determine whether significant harm to competition is likely to occur in any of them.[3]

Newmont and Newcrest directly compete at the same level of the supply chain pre-Transaction. Both are engaged in the production and sale of copper concentrates. It is in this market that the Parties might have the incentive to unilaterally exercise market power post-Transaction. On this basis, the relevant product market is defined as the production and sale of copper concentrates.

The relevant product market is limited to copper concentrate because it is not substitutable with copper ore and refined copper. Copper concentrate is different from copper ore in terms of tradability, physical properties, copper production processes, and purpose. Refined copper, which is the end-product of smelting and refining process applied to copper concentrates, also differs in composition, processing, trading considerations, and industry standards.

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[2] Philippine Competition Act, Section 4(k). *Definition of Terms*. – Relevant market refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:
(1) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices, and their intended use; and
(2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

[3] PCC, Merger Review Guidelines, Section 2.5.

Market investigation confirms that the geographic market for copper concentrate is global.[4] Industry practice reveals that domestic mining companies sell copper concentrate globally; traders and foreign entities submit bids on the supply contracts of the different domestic mining companies.[5]

Copper concentrates are also shipped in bulk cargoes worldwide and the costs of transporting from mines to different smelting and refining hubs are substantially the same. It was observed that shipping costs do not significantly influence the decision on where to source copper concentrates. This enables the domestic copper mining companies to sell all their copper supply overseas where they can obtain higher prices.[6] For instance, [redacted] has to source its copper concentrate from foreign suppliers. It cannot match the higher prices foreign customers are willing to pay for the "clean" qualities of the locally produced copper concentrates.[7]

Competition Assessment

The Commission recognizes the importance of the copper industry to the Philippine economy. The Philippines ranks among the top countries for copper reserves.[8] Due to its significant copper reserves, there is a high demand for its copper products, particularly for the electronics and automative parts manufacturing.[9] However, local production of copper concentrates remain insufficient to meet the demand of domestic copper

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4 Further, this is also consistent with other Competition Authorities' findings in the same relevant market, the geographic dimension of the market for copper concentrate is global. *See* European Commission Decision in Case No. COMP/M.2413 – BHP/Billiton [2001]. Available at https://ec.europa.eu/competition/mergers/cases/decisions/m2413_en.pdf. [Accessed 18 September 2023]. European Commission Decision in Case No. COMP/M.4055 – Freeport McMoRan Copper/Gold/Phelps Dodge Corporation [2007]. Available at https://ec.europa.eu/competition/mergers/cases/decisions/m4505_20070220_20310_en.pdf [Accessed 18 September 2023].
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5 MAO's Interview with Market Stakeholders.

6 MAO's Interview with Market Stakeholders.

7 MAO's Interview with Market Stakeholders.

8 Department of Trade and Industry and Board of Investments (DTI-BOI), *available at* https://industry.gov.ph/industry/copper/ **(last accessed 18 September 2023).**

9 *Id.*

manufacturers such as [redacted].[10] Local competition is also driven by its interactions with international trade as domestic mining companies export their supply of copper concentrate due to competitive bids tendered by foreign entities.[11] Consequently, competition analysis undertaken for this Transaction is not confined to a domestic perspective, as the Commission finds that there are factors relevant to its analysis of competition from a broader perspective.

The Commission finds that the Transaction will not result in any significant change in the market structure of global production and sale of copper concentrates. The Parties do not appear to have a significant market share in global copper production, which includes copper concentrates. Based on the Global Copper Production Rankings, the Parties' combined market shares will only account for [redacted] of the market.[12] Using the Herfindahl-Hirschman Index as reference to determine market shares and concentration, the Transaction will only result in a 0.24 difference in index points,[13] indicating that the market would remain unconcentrated post-Transaction.

Additionally, the acquiring party will not have the ability nor incentive to unilaterally increase prices or decrease the quality of its products post-Transaction. Copper concentrate prices are influenced by global pricing mechanisms, like the London Metal Exchange.

The Commission also observed that customers have specific requirements for copper concentrates. This diversifies suppliers for raw materials as a matter of industry practice.[14] The ability of customers to easily switch suppliers would discourage Newmont Overseas to decrease the quality of its copper concentrates.

Even supposing that the Parties could unilaterally exercise market power post-Transaction, it would have little to no effect on the domestic market. [redacted] the sole customer of the Parties in the Philippines, sources only a combined [redacted]% (or less) of its copper concentrates requirements from Newmont and Newcrest. Should the Parties unilaterally increase prices or decrease the quality of its products, [redacted] could readily source its copper concentrates from a vast array of mining companies throughout the world.

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[10] *Id.*; MAO's Interview with Market Stakeholders.
[11] MAO's Interview with Market Stakeholders.
[12] [redacted]
[13] Based on the HHI computation, Pre-Merger HHI is estimated at 515.70, while Post-Merger HHI is estimated at 515.94.
[14] MAO's Interview with Market Stakeholders.

Lastly, it appears that the Transaction will not likely result in a substantial lessening of competition or have a significant effect on the competitive dynamics of the industry supply chain, considering that no vertical relationship exists between the Parties.

After careful review of the existing market conditions, various submissions and representations of the Parties, the application of the PCA, its Implementing Rules and Regulations, and related issuances, the Commission finds that the Transaction is not likely to result in the substantial prevention, restriction, or lessening of competition.

ACCORDINGLY, the Commission resolves to **CLEAR** the proposed acquisition by Newmont Corporation of shares in Newcrest Mining Limited through its subsidiary Newmont Overseas Holdings Pty. Ltd.

This Decision is rendered solely based on the facts disclosed, documents submitted by the Parties, and the circumstances of the Transaction known to the Commission during the review period.

SO ORDERED.

26 September 2023

[redacted]

MICHAEL G. AGUINALDO
Chairperson

[redacted]

MARAH VICTORIA S. QUEROL
Commissioner

[redacted]

MICHAEL B. PELOTON
Commissioner

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