Decision\(^1\) of the Seventieth (70\(^{th}\)) Committee Responsible for Initial Determination Regarding the Proposed Acquisition of 30\% of the Issued Share Capital of Naivas International by Amethis Retail

ECONOMIC SECTOR: Retail Sector

10\(^{th}\) March 2020

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\(^1\) In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.
Information and Relevant Background

1. On 16th January 2020, the COMESA Competition Commission (hereinafter referred to as the "Commission") received a notification for approval of the merger involving the proposed acquisition of 30% of the Issued Share Capital of Naivas International ("Naivas") by Amethis Retail ("Amethis").

2. The transaction was notified with the Commission under Article 24(1) of the COMESA Competition Regulations, 2004 (the "Regulations"). Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would, or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.

3. The Committee Responsible for Initial Determination (the "CID") established that the parties operate in more than one COMESA Member State and they meet the prescribed notification thresholds. This therefore means that the regional dimension requirement under Article 23(3) of the Regulations is satisfied and asserts jurisdiction on the Commission to assess the transaction.

The Parties

Amethis (the Acquirer)

4. It was submitted that the acquiring undertaking Amethis, is a special purpose vehicle incorporated in accordance with the Laws of Mauritius. It is a subsidiary of Amethis Fund II S.C.A. SICAR (Amethis Fund II), a pan-African private equity fund. Amethis II belongs to a platform of several investment funds dedicated to the African continent. The platform includes Amethis Fund II, Amethis Finance Luxembourg S.C.A. SICAR (Amethis Fund I) and Amethis Maghreb Fund I and each one of these has invested in and hold indirect control over some companies present in the COMESA region. It was submitted that Amethis Fund I has invested in and indirectly controls Chase Bank, Ramco Plexus and Kenafric Limited in Kenya. Kenafric is a leading fast moving consumer goods manufacturer and distributor in East Africa, with a strong focus on confectionery. Ramco Plexus is active in the printing and packaging sector, including off-set and digital print, flexible packaging and corrugation.

5. Further, it was submitted that Amethis Fund I has invested in and indirectly controls CFL and Velogic in Mauritius. CFL is a Mauritius based financial services platform, which owns BankOne in Mauritius and Banque Nationale Industrielle de Madagascar in Madagascar. CFL also owns an assets management company (IPRO), a management services company (MITCO) and two private equity funds (KIDO 1 & 2). Velogic is a leading transport and logistics company. The parties have submitted that Amethis Maghreb Fund I has also invested in and indirectly controls Disway, a Tunisian integrated IT equipment distributor. Therefore, the acquiring group has operations in the following COMESA Member States: Kenya, Madagascar, Mauritius, and Tunisia.

Naivas International (the Target Undertaking)

6. It was submitted that the target undertaking is an international investment holding company registered in Mauritius which controls Naivas Limited, a Kenya grocery retailer. Naivas Limited is a leading supermarket chain in Kenya with 58 stores spread across the country. It is a family owned business that was founded in 1990 and is well known for delivering value
to its customers in Kenya. The target undertaking has operations in only one COMESA Member State namely, Kenya.

**Nature of the Transaction**

7. The parties submitted that the proposed transaction involved the acquisition of a minority stake by Amethis Retail in Naivas International which will result in Amethis Retail indirectly gaining control of the Target’s Kenyan subsidiary, Naivas Limited.

**Competition Analysis**

8. The CID observed that the parties were not involved in overlapping activities in the Common Market but had a vertical relationship. It was observed that the target undertaking was active in the retail sector while the acquiring undertaking supplied confectionary and packaging products to the target undertaking and other retailers in Kenya.

9. The CID defined the relevant market as follows:
   a) Retail sale of daily consumer goods in Kenya (within a radius of 30-minute drive to a retail outlet); and
   b) Retail sale of non-consumer goods in Kenya.

10. The CID observed that the transaction is not likely to lead to a change in the market structure due to the absence of horizontal overlap in the products supplied by the parties. Further, it was observed that the market is fragmented hence competition will continue to thrive post-merger. Nevertheless, the CID observed that the merger could raise vertical concerns in the identified relevant markets of Kenya. Further, the CID took note that the Competition Authority of Kenya requested for a referral on the grounds that the merger, if carried out, was likely to disproportionately reduce competition to a material extent in Kenya. The CID observed that the Secretariat referred the merger to the Competition Authority of Kenya on 27th February 2020.

11. However, the CID considered whether the merger would substantially prevent or lessen competition in the Common Market other than Kenya. The CID determined that the merger is not likely to substantially lessen or prevent competition in the Common Market. The CID therefore approved the transaction.

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

**Dated this 10th March, 2020**

[Signatures]

Commissioner Thembelihle P. Dube Nk Dlamini (Chairperson)

Commissioner Deshmuk Kowlessur

Commissioner Brian M. Lingela