



COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 1 772 466
Email- compcom@comesacompetition.org



**Common Market for Eastern
and Southern Africa**

Case File No. CCC/MER/06/15/2023

**Decision¹ of the Ninety-Eighth (98th) Committee Responsible
for Initial Determinations Regarding the Acquisition of
Control by Africa Telecom Infrastructure Services of NETIS
Holding Limited**

ECONOMIC SECTOR: Telecommunication

12 October 2023



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 Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the “**COMESA Treaty**”);

Having regard to the COMESA Competition Regulations of 2004 (the “**Regulations**”), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the “**Rules**”);

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States’ economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 29 June 2023, the COMESA Competition Commission (the “**Commission**”) received a notification regarding the acquisition of control by Africa Telecom Infrastructure Services (“**Newco**”) of NETIS Holding Limited (“**NETIS**”), pursuant to Article 24(1) of the Regulations.
2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.
3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.



The Parties

4. Newco is a company incorporated under the laws of Mauritius. It is a newly established entity that is indirectly jointly controlled by:
 - i. Amethis Fund II S.C.A., SICAR. acting through its general partner, Amethis Fund II Management S.À.R.L (“**Amethis**”, together with its controlling affiliates and their controlled portfolio companies, the “**Amethis Group**”); and
 - ii. AfricInvest Fund IV LLC (“**AfricInvest I**”) and AfricInvest IV Netherlands C.V (“**AfricInvest II**”) (AfricInvest I and AfricInvest II are collectively referred to as “**AfricInvest**”). AfricInvest I is managed by AfricInvest Capital Partners Management III LLC, and AfricInvest II is managed by its Managing General Partner, ACPMIV Limited and its Administrative General Partner, AfricInvest Netherlands B.V.

5. The Amethis Group is a private equity group active in investments across Europe and Africa, with a particular focus on diversified economies. Its portfolio companies operate across a wide variety of industries, including agriculture and food production, healthcare and pharmaceuticals, and technology and media. The Amethis Group operates within the Common Market through the following entities:

Table 1: Entities through which the Amethis Group operates in COMESA

Member State	Name of Entity
Burundi	- Kenafric Industries Limited
Democratic Republic of Congo (“ DRC ”)	- Kenafric Industries Limited
Egypt	- Global Corp for Financial Services S.A.E.
Eswatini	- Swazipharm Wholesale (Pty) Ltd - Avapharm (Pty) Ltd - Intellectus Campus (Pty) Ltd
Kenya	- Broekhof Africa Limited - Ecopallets Kenya Limited - Kenafric Industries Limited - Ramco Plexus Limited Kenya - Polythene Industries Limited - The Print Store Limited - ASL Packaging Limited - Market Power International Limited - Pressmaster Africa Limited - Panthera Publishers Limited - Wild Elegance (Africa) Limited - Sintel Security Print Solutions Limited - Platinum Packaging Limited - Ramco Printing Works Limited - Avacare Kenya Limited - Statim Pharmaceuticals Limited
Madagascar	- BSA Madagascar SA



Malawi	- Avacare Health Limited
Mauritius	- Ramco Plexus Limited - Rogers Hospitality Operations Limited - Avacare Global –Co. - Innovata – Co.
Rwanda	- Kenafic Industries Limited
Uganda	- Ovidian Uganda Limited
Zambia	- Augusta Pharmaceuticals
Zimbabwe	- New Avakash International - STM Holdings (PVT) - Devices and Disposables (Pvt) Ltd (t/a as DMD Healthcare (Pvt) Ltd - Intellectus Campus Zimbabwe - Avacell Biotechnology

6. AfricInvest is part of the broader AfricInvest group of funds, which is a private equity group active in investments on the African continent. It has portfolio companies that operate across several key growth industries, including financial services, agri-business, consumer/retail, education, and healthcare. AfricInvest operates within the Common Market through the following entities:

Table 2: Entities through which AfricInvest operates COMESA

Member State	Name of Entity
Kenya	- AutoXpress Limited
Mauritius	- AutoXpress Holdings Mauritius Limited - AutoXpress International Ltd - Firebird Limited
Rwanda	- AutoXpress Rwanda Ltd
Uganda	- AutoXpress Uganda Limited

7. NETIS is a company incorporated in accordance with the laws of Mauritius. NETIS is wholly owned by NEKO, a private limited company also incorporated under the laws of Mauritius. NETIS is active in the telecommunications and energy industries. It designs and builds global systems for mobile communication, fibre optic and energy networks, as well as maintains existing infrastructure, across Africa. NETIS operates within the Common Market through the following entities:

Table 3: Entities through which NETIS operates in COMESA

Member State	Name of Entity
DRC	- NETIS RDC SAU
Ethiopia	- Netis Ethiopia ICT
Kenya	- NETIS East Africa Limited
Rwanda	- Netis Rwanda Limited - Reime Rwanda Limited
Uganda	- Netis Uganda Limited



Jurisdiction of the Commission

8. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") provides that:

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:

- a) *the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds COM\$ 50 million; and*
 - b) *the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds COM\$ 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.*
9. The undertakings concerned have operations in two or more Member States. The undertakings concerned derived asset of more than the threshold of USD 50 million in the Common Market and they each derived asset of more than USD 10 million in the Common Market. In addition, the parties do not derive more than two-thirds of their respective aggregate COMESA-wide asset from one and the same Member State. The notified transaction is, therefore, notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

10. The transaction entails the proposed acquisition by Newco of control of NETIS.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

11. The CID noted that Newco, is newly created and has no operations in the Common Market but the private equity funds that control Newco, namely Amethis Group and AfricInvest have operations in the Common Market. It was observed that the Amethis Group has interests in several sectors, namely agriculture and food production, healthcare and pharmaceuticals, and technology and media. Further, AfricInvest has interests in portfolio companies that operate across several key growth industries such as financial services, agri-business, consumer/retail, education, and healthcare.



12. The CID also noted that NETIS is active in the provision and maintenance of passive and active telecommunication infrastructure, and deployment and maintenance of fiber optics networks.
13. The CID considered that there is no horizontal overlap between the activities of the parties given that they are not active in the provision of similar products and services. Therefore, the CID limited its assessment of relevant product markets to the activities of the target undertaking as it is likely that any change in the market structure resulting from the proposed transaction will only be in this market.

Provision and maintenance of passive and active telecommunication infrastructure services

14. Passive and active telecommunication infrastructure are the main types of infrastructure that support provision of telecommunication services.
15. Passive infrastructure forms the large part of the cost of building telecommunication networks and forms a large percentage of the sunk costs for network installation². It encompasses all the non-electronic elements required at a cell site such as telecommunication towers, buildings or shelter, air conditioning plant, security, electricity generation capability for back-up, an electrical supply, technical premises and pylons (i.e., vertical steel tower supporting power lines). Passive infrastructure is used by mobile network operators (“MNOs”) to deploy their active connectivity and communications infrastructure to transmit their digital information to end-consumers. Passive infrastructure enables the operation of active infrastructure through hosting the antenna to pre-determined and technically viable heights for optimum coverage of cellular network.
16. To the contrary, active telecommunication infrastructure consists of electronic infrastructure and facilities of a telecommunication tower and such include base transceiver station, spectrum, antenna, feeder cable, radio access network, microwave radio equipment, base station controller/ radio network controller³. Active infrastructure includes the core elements of cellular electronic infrastructure used to support mobile network operators in the provision of telecommunication services.
17. Considering the above, the CID considered that passive and active telecommunication infrastructure can be construed as different given their unique features and end uses as such, the two are not likely to be substitutable. The CID observed that while passive infrastructure provides a platform for different mobile network operators to setup their telecommunication equipment, active infrastructure is the one that is placed on the passive infrastructure and tends to

² OECD and IDB (2016), *Broadband Policies for Latin America and the Caribbean: A Digital Economy Toolkit*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264251823-en>

³ <https://www.lawinsider.com/dictionary/active-infrastructure>



be unique to a particular mobile network operator and its purpose is to ensure actual transmission of telecommunication services⁴. Essentially, passive telecommunication infrastructure plays a supportive role by providing a platform on which active infrastructure can be mounted. Therefore, the CID considered the two services as distinct by virtue of the different roles that each play.

18. The CID observed that from a supply perspective, other types of infrastructure could serve the role of passive telecommunication infrastructure. For instance, it is not unusual for MNOs to use high-rise buildings, air-conditioning plants or pylons to mount their equipment and provide telecommunication services. Thus, passive telecommunication infrastructure may be fragmented according to the type of infrastructure used to provide the service. However, for purposes of the current transaction, a further fragmenting of the market was not considered since this was unlikely to alter the competitive assessment given that the market structure is unlikely to change because of the merger.
19. The CID noted that passive telecommunication infrastructure can be accessed by different customers thus this could form a basis for segmenting the market according to customer type. For example, the infrastructure may be accessed by MNOs, internet service providers or broadcasting service providers. The CID however considered that from a supply perspective passive telecommunication infrastructure may not be specialised to a specific customer such that space on a single infrastructure could be leased to different customers, subject to available space. Therefore, the CID considered that a further segmentation on the basis of customer type was not necessary because this would not affect the assessment of the transaction.
20. On the basis of the foregoing, the CID identified distinct relevant product markets for the provision of passive telecommunication infrastructure services, and the provision of active telecommunication infrastructure services.

Deployment and maintenance of fiber optics networks

21. A fiber optic network consists of cables which contain bundles of glass or plastic strands called optical fibers. The optical fibers carry data that has been transformed into light. The light is transmitted along the fiber optic network by a laser, after having been converted by a computer into digital data signals. Deployment of the fiber network involves installing fiber optic cables to provide high-speed internet access and voice services which businesses and consumers can purchase to access faster, more reliable internet service.
22. The CID noted that the services supplied by NETIS entail the setting up of an entire network together with maintenance services. Further, the deployment and

⁴ See CCC/MER/24/2019 – Eaton Towers/ATC merger



maintenance of fiber optical network is likely to comprise a distinct market from the other services provided by NETIS being provision of passive and active telecommunication infrastructure services.

23. The CID considered that, from a demand perspective, it may be argued that fiber optical networks are substitutable with traditional copper-based networks on grounds that both networks seek to provide internet connectivity. However, the CID observed that fiber optical network can be categorised as unique and more appealing to customers in the sense due to the high-speed and stable internet connectivity they provide, contrary to traditional networks. Considering the above and only for purposes of this transaction, the CID defined the relevant product market as the deployment and maintenance of optical fiber networks.
24. Based on the foregoing assessment and without prejudice to its approach in similar future cases, the CID considered that the relevant product markets are:
 - a) The provision of passive telecommunication infrastructure services,
 - b) The provision of active telecommunication infrastructure services, and
 - c) The deployment and maintenance of optical fiber networks.

Relevant Geographical Market

25. The CID notes that the markets for the provision of passive and active infrastructure; and deployment of fiber optical network were likely to be national in scope given the licensing and regulatory requirements that each entail. Further, the setting of infrastructure is likely to be costly and would limit the timely switching between geographic areas by the parties in an event of a small but significant non-transitory increase in the prices or any deterioration in the business environment for providing the services.
26. Considering the above, the CID considered that the relevant geographic markets are national in scope and related to the Member States where the target entity operates, namely DRC, Ethiopia, Kenya, Rwanda and Uganda.

Conclusion on Relevant Markets

27. Based on the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant markets have been identified as the:
 - a) **Provision of passive telecommunication infrastructure services in DRC, Ethiopia, Kenya, Rwanda and Uganda,**
 - b) **Provision of active telecommunication infrastructure services DRC, Ethiopia, Kenya, Rwanda and Uganda, and**



c) Deployment and maintenance of optical fiber networks DRC, Ethiopia, Kenya, Rwanda and Uganda.

Market Shares and Concentration

28. The CID noted that the activities of the parties do not overlap in the relevant markets. Therefore, the structure of the relevant market will not change due to the proposed transaction. The CID further noted that the relevant markets comprise alternative suppliers of similar services to those provided by the parties. The CID noted that the target competes with the with following entities in the respective Member States:
- i. DRC (I Engineering Group, Lusaka Telecom Solutions, Burotop Iris, Congo Energy, Bia RDC);
 - ii. Ethiopia (ALKAN CIT, I Engineering Group Ethiopia, Omnicom, Broadband Communication Networks, Sino Hydro Corporation);
 - iii. Kenya (Atlas Tower Kenya Limited, Adrian Kenya Limited, Unitel Services Limited, Sealtowers Limited, ATC Kenya);
 - iv. Rwanda (Trust Engineering Solutions LTD, VANU Rwanda, Africa Energy Services Group, IHS Rwanda Ltd, Teleptima Ltd, Minega Networks Ltd); and
 - v. Uganda (Camusat Uganda Limited, I Engineering Group Uganda).
29. Considering the above, the CID concluded that the proposed transaction is not likely to raise any competition concerns in the relevant markets given that the market structure will not be altered. Further, the market will remain competitive considering the presence of competitors.
30. Barriers to entry refer to obstacles for potential new entrants to enter the market and compete with the incumbent firms. They are a critical element in determining whether the incumbent has market power or not and whether such market power will be guaranteed, post-merger.
31. The telecommunication sector is characterised by barriers to entry which include licensing and regulatory requirements. Further, entry into the relevant markets for the provision of passive and active telecommunication infrastructure and deployment of fiber optical network is capital intensive which may also act as a barrier to entry.
32. Despite the presence of barriers to entry, it is unlikely that the merged entity will be influenced by the barriers to engage in a foreclosure strategy. This is so since the market structure will not change because of the merger and the since the market is fragmented with several competitors.



Consideration of Third-Party Views

33. The CID considered submissions from national competition authorities of Egypt, Eswatini, Ethiopia, Kenya, Malawi, Mauritius and Zimbabwe which confirmed that the transaction is not likely to substantially prevent or lessen competition in the Common Market or be contrary to public interest, in line with the CID's findings as set out above.

Determination

34. Based on the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States.
35. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 12th day of October 2023

Commissioner Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan

