CAK DECISION ON THE PROPOSED SALE AND PURCHASE OF ASSETS OF MOMBASA APPAREL (EPZ) LIMITED BY NAVA APPARELS L.L.C-FZ

1. The Competition Authority of Kenya has approved the proposed acquisition of the entire assets of Mombasa Apparel (EPZ) by Nava Apparels L.L.C-FZ **on condition that the acquirer retains all the target's 4,478 employees on terms that are no less favorable than their current terms of employment subject to the individual employees accepting the acquirer's retention of employment.**
2. This approval has been granted based on the finding that the transaction is unlikely to negatively impact competition in the market for the manufacture of clothing apparel for export, a key consideration during merger analysis.
3. Nava Apparels L.L.C-FZ is a limited liability company involved in the manufacture of clothing apparel for export to the United States of America (USA), Canada, and Europe. However, it does not have operations in Kenya.
4. Mombasa Apparel (EPZ) Limited is a limited liability company in Kenya. It is an apparel manufacturing company, located in Kenya, and whose market is the United Arab Emirates and the United States of America. It does not sell its products in Kenya, nor have local subsidiaries.
5. The proposed transaction involves the acquisition of assets of Mombasa Apparel (EPZ) by Nava Apparels L.L.C-FZ.
6. The transaction therefore, qualified as a merger within the meaning of Section 2 and 41 of the Competition Act No. 12 of 2010. The Act stipulates that a merger, or takeover, may occur when an undertaking directly or indirectly acquires control over another business within Kenya. This may happen through, among others, purchase/lease of shares, exchange of shares, vertical integration.
7. Further, merging parties whose combined turnover or assets, whichever is higher, is over Ksh. 1 Billion are required to seek approval from the Authority prior to implementing the proposed transaction. The transaction between Nava Apparels

L.L.C-FZ and Mombasa Apparel (EPZ) met this threshold for mandatory notification and full analysis as provided in the Competition (General) Rules, 2019.

8. During merger analysis, and in order to determine the impact that a transaction will have on competition, the Authority identifies the **relevant product market** as well as the **relevant geographic market.**

9. The **relevant product market** comprises products/services that are interchangeable or substitutable by the consumer due to their characteristics, prices and/or intended use. Based on this criteria, the relevant product market for the proposed transaction is the **market for the manufacture of clothing apparel for export**.

10. Determination of the **relevant geographic market** involves interrogating the area in which merging parties undertake the business and in which competition conditions are sufficiently similar. With regard to the proposed transaction, the manufacture of clothing apparel for export is done throughout the country. Therefore, the Authority determined that the relevant geographical market for the proposed transaction is **national.**

11. The textiles and apparel sector is the third largest foreign exchange earner in Kenya. The apparel sector has a three-tiered structure: in the EPZ, there are approximately 36 large companies, and outside the EPZ there are over 170 medium and large companies and more than 70,000 micro and small ones.

12. Currently, there are seven operational export processing zones which include: Athi River EPZ, Nairobi EPZ, Mombasa Port City EPZ, Kilifi EPZ, Malindi EPZ, Voi EPZ, and Kimwarer EPZ with 36 registered apparel manufacturers in the EPZ zone in Kenya.

13. Exports to the USA account for the largest share of garment/apparel exported from the EPZ zones in Kenya, under the African Growth and Opportunity Act (AGOA). In 2019 the volume exported to the USA vis-à-vis the rest of the world was 95%.

14. One criteria of assessing a merger's impact on competition is the post-merger market share of the undertakings involved in the transaction. With regard to the proposed merger, post-merger, the merged entity's market share will increase marginally to 3.83%. The parties face competition from other players controlling 96.17% of the market. Premised on this, **the proposed transaction is unlikely to lead to a substantial lessening of competition in the market for manufacture of clothing apparel for export.**

15. During merger analysis, the Authority also considers the impact that a proposed transaction will have on public interest. Public interest in this case refers to various economically inclined concepts that, when considered, protect the welfare of the Public. In the Competition Act, some of the public interest considerations are;

   a) extent to which a proposed merger would impact employment opportunities;
   b) impact on competitiveness of SMEs;
   c) impact on particular industries/sectors; and
   d) impact on the ability of national industries to compete in international markets.

16. As per the parties' submissions, negative public interest concerns regarding employment are envisaged based on the nature of the industry. However, Nava Apparels L.L.C-FZ has committed to offer employment to all the employees of the Mombasa Apparel at the completion of the transaction.

17. Premised on the above, the Authority approved the proposed acquisition of assets of Mombasa Apparel (EPZ) Limited by Nava Apparels L.L.C-FZ **on condition that the acquirer retains all the 4,478 employees of the target on terms that are no less favorable than their current terms of employment subject to the individual employees accepting the acquirer's retention of employment.**