



EUROPEAN COMMISSION
DG Competition

***Case M.9110 - AMERRA /
MUBADALA / NIREUS / SELONDA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Decision on the implementation of the commitments -
Purchaser approval
Date: 25.10.2019



EUROPEAN COMMISSION

Brussels, 25.10.2019
C(2019) 7855 final

PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sir/Madam,

Subject: Case M.9110 – AMERRA / MUBADALA / NIREUS / SELONDA
Approval of Diorasis as purchaser of the Divestment Business following your letter of 9 August 2019 and the Trustee’s opinion of 30 August 2019, 25 September 2019, 9 October 2019 and 14 October 2019

1. FACTS AND PROCEDURE

1.1. Introduction

- (1) By decision of 15 February 2019 (“the Decision”) based on Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No. 139/2004 (“the Merger Regulation”),¹ the Commission declared the operation by which Amerra Capital Management LLC (“Amerra”), incorporated in the United States, and MDC Industry Company LLC (“Mubadala”), incorporated in the United Arab Emirates, acquired joint control, within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation, over Andromeda Seafood Limited (“Andromeda”) and, through Andromeda, over Nireus Aquaculture S.A. (“Nireus”) and Selonda Aquaculture S.A. (“Selonda”) (the “Transaction”) compatible with the internal market following modifications and subject to conditions and obligations (the “Commitments”).

¹ OJ L 24, 29.1.2004, p. 1.

1.2. The Commitments

1.2.1. A menu of assets

- (2) In particular, the Commitments provide for the divestment of the following three main components (“the Divestment Business”):
 - (a) The divestment of Mediterranean fish farms, as identified by the purchaser, from certain locations in Greece (grouped in geographic clusters) that produced approximately but not less than a volume of 10,000 tonnes of Mediterranean farmed fish.
 - (b) The divestment of hatcheries, as identified by the purchaser, that produced approximately but not less than 50 million pieces of Mediterranean fish fry.
 - (c) The divestment of packaging facilities, as identified by the purchaser, that have the capacity to package approximately but not less than 10,000 tonnes of Mediterranean farmed fish.
- (3) More specifically, the Commitments provide for two possible options, depending on the number of purchasers :
- (4) In case of a single purchaser, the Commitments provide for the following three cumulative components to be divested:
 - (a) Anyone of the following combinations, as identified by the purchaser:
 1. [...],² [...]³ [...]⁴ to reach a total of approximately but not less than 10,000 tonnes of Mediterranean farmed fish; or
 2. [...]⁵, [...] to reach a total of approximately but not less than 10,000 tonnes of Mediterranean farmed fish; or
 3. [...],⁶ [...]⁷ [...] to reach overall a total of approximately but not less than 10,000 tonnes of Mediterranean farmed fish; or
 4. [...] to reach overall a total of approximately but not less than 10,000 tonnes of Mediterranean farmed fish;
 - (b) Any combination of hatcheries in the relevant clusters, as identified by the purchaser, that produced approximately but not less than 50 million pieces of Mediterranean fish fry. The Commitments ensure that the best genetic improvement programme (“GIP”) and related know-how for each of seabass and seabream owned by Andromeda, Nireus and Selonda at closing is shared with the purchaser. In addition, the hatcheries to be divested will have to contain broodstock that is of the same quality as the broodstock that would be

² See Schedule to the Commitments, Part A (vi).

³ See Schedule to the Commitments, Part A (iii).

⁴ See Schedule to the Commitments, Part A (iv).

⁵ See Schedule to the Commitments, Part A (ii).

⁶ See Schedule to the Commitments, Part A (i).

⁷ See Schedule to the Commitments, Part A (v).

retained post-Transaction as well as the data and know-how associated with the broodstock that they will be supplied with. This would enable the purchaser to produce fry and, as a result, fish of an equivalent quality; and

- (c) Any combination of packaging facilities in the relevant clusters, as identified by the purchaser, that have the capacity to package approximately but not less than 10,000 tonnes of Mediterranean farmed fish.
- (5) In case of two purchasers, the Commitments provide for the following three cumulative components to be divested:
 - (a) Any combination of Mediterranean fish farms, [...], that produced a combined volume of approximately but not less than 10,000 tonnes of Mediterranean farmed fish; and
 - (b) Any combination of hatcheries, as identified by each of the two purchasers, that produced approximately but not less than 50 million pieces of Mediterranean fry. Each purchaser should acquire a hatchery or hatcheries capable of producing at least sufficient volume of fry corresponding to the volumes of Mediterranean farmed fish that each purchaser has agreed to purchase (by applying a multiplier of approximately 3,000 pieces of fry for each tonne of Mediterranean farmed fish). As it is the case with a single purchaser, the Commitments ensure that the best GIP and related know-how owned by Andromeda, Nireus and Selonda at closing is shared with the purchasers. The same applies to the quality of the broodstock as well as data and know-how associated with the broodstock that they will be supplied with; and
 - (c) Any combination of packaging facilities currently serving the farms to be acquired, as identified by each of the two purchasers that has or have the capacity to packaged corresponding volumes of Mediterranean farmed fish that each purchaser has agreed to purchase;
- (6) The volumes referred to above are to be calculated by reference to the average production volumes of fish and fry (as relevant) over the last three financial years but not including any financial year in which the relevant farm or hatchery suffered an event that materially impacted the volumes produced.
- (7) In addition, at the option of the purchaser(s), the Divestment Business includes:
 - (a) A supply agreement of Mediterranean fish feed [...]; and
 - (b) Technical support and assistance for the purchaser to utilise the GIP and related know-how shared with the purchaser and the data transferred with the broodstock for a period of [...].
- (8) The Divestment Business includes all assets and staff that contribute to the operation and that are necessary to ensure its viability and competitiveness.
- (9) In addition, Amerra and Mubadala committed to not close the Transaction before the Commission's approval of the potential purchaser(s).

1.2.2. Open sales process and comparability level of competitiveness between Divestment Business and Retained Business

- (10) The Commitments, at paragraphs 18 and 19, provide respectively (i) for an open sales process on an equal and non-discriminatory way and (ii) that the assets (as identified by the purchaser) sold to the purchaser shall ensure that the Divestment Business will be able to replicate at least a comparable level of competitiveness as the retained business. This is assessed by the Commission assisted by the Monitoring Trustee on the basis of objective criteria such as ability to form clusters, ability to expand, and size of farms and cages and objective metrics to assess biological suitability. Such provision ensured that the Divestment Business is not less efficient than the retained business allowing the purchaser to compete intensively with the merged entity as well as with other competitors.
- (11) Compliance with this is assessed in Section 3.1 below.

1.2.3. Deviation of the asset package acquired by Diorasis from package configurations provided in the Commitments

- (12) The Commitments, at paragraph 20, provided that the Commission may approve, at its own discretion, the sale of the Divestment Business without one or more assets or by substituting one or more assets with one or more different assets, if it does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.
- (13) By letter of 9 August 2019, Amerra and Mubadala proposed Diorasis International S.A., a private alternative investment advisory firm established in Luxembourg, which manages Diorafish S.C.A., which in turn wholly owns the Greek aquaculture player Filosofish (all together “Diorasis”) for approval by the Commission as purchaser of (i) all [...] fish farms,⁸ (ii) two [...] fish farms,⁹ (iii) two [...],¹⁰ (iv) hatcheries in [...] and (v) packaging stations in [...] leased to Nireus by [...]¹¹ and submitted the proposed Sale and Purchase Agreement, with its Schedules (including a fish feed agreement and a technical assistance agreement) (all together the “SPA”). Diorasis was one of the five bidders that initially made a non-binding offer and that subsequently made, together with Kefalonia Fisheries (“Kefalonia”) a joint binding offer for the Divestment Business. However, given that, as explained in the following paragraph, Diorasis’s part of the joint binding offer itself, contained in the SPA, surpasses the quantities required by the Commitments, Kefalonia’s part of the joint binding offer (and its separate sales and purchase agreement) falls outside the scope of the Commitments and is therefore outside of the scope of this purchaser’s approval decision.

⁸ Within the [...] cluster, selected by Diorasis, two fish farms, namely [...], are leased to Nireus under a facon contract with [...]. Such contracts are offered as an extra over and above the requirements in the Commitments and do not therefore contribute to the volumes of production needed to be divested by Amerra and Mubadala pursuant to the Commitments. As a consequence, the transfer of these facon contracts fall outside the scope of this purchaser approval decision.

⁹ More specifically: [...].

¹⁰ More specifically: [...], both in [...].

¹¹ The same as explained in footnote 8 above applies to the packaging stations that are under facon contracts with [...] in the relevant clusters.

- (14) The production volumes to be acquired by Diorasis equate to more than 10,000 tonnes of production of Mediterranean farmed fish, but in terms of the geographical location of the farms to be acquired, the assets to be acquired by Diorasis do not correspond to any one of the four combinations available to a single purchaser and identified in paragraph (4)a(1)-(4) above. Prior to the signing of the SPA with Diorasis, Amerra and Mubadala via the Monitoring Trustee asked the Commission whether Diorasis could be considered as a single purchaser for the purposes of the Commitments.
- (15) The Commission's preliminary view was that to be considered as single purchaser, Diorasis would need to acquire a combination of assets in accordance with the constellation mentioned in paragraph (4)a(1)-(4) above. Based on Diorasis's offer and as explained in paragraph (13) above, Diorasis would acquire all production in the [...] cluster and part of the production in the [...] cluster (which would both fall under paragraph 4a(1) above) with additional capacity in [...] (which forms part of the [...] cluster¹²). Thus, Diorasis only reaches the minimum 10,000 tonnes of production when Larymna, which forms part of the Central Greece cluster and which therefore falls under part of the constellation of assets available under paragraph (4)a(3) above, is included. In this context, the Commission had already communicated to Amerra and Mubadala via the Monitoring Trustee on 25 July 2019 that under the Commitments Amerra and Mubadala could indeed submit their application under paragraph 20 of the Commitments and explained in paragraph (12) above and that the Commission would consider, at its own discretion and at the appropriate time
- (16) Such submission was made in the letter of 9 August 2019 mentioned above and it is assessed in Section 4.3 below.

1.2.4. Appointment of the technical expert

- (17) Due to the high complexity of the divestment package and the characteristics of the purchaser, the Commitments provided that the Monitoring Trustee could appoint a technical expert, subject to Amerra's and Mubadala's approval, to mostly assist in the evaluation of compliance with paragraphs 18 and 19 of the Commitments, whose content is explained in paragraph (10) above. The technical expert was indeed appointed by the Monitoring Trustee on 22 May 2019.

1.2.5. The Complainant

- (18) On 9 August 2019, the Monitoring Trustee received a letter from one of the rival bidders of Diorasis ("the Complainant"), complaining that the sales process was not run in an open, equal and non-discriminatory manner as provided by the Commitments and as explained in paragraph (10)(i) above. The complaint is assessed in Section 3.1 below.

1.2.6. Preliminary Conclusions

- (19) On 30 August 2019, the Monitoring Trustee submitted a preliminary assessment of Diorasis's suitability as a purchaser, presented as "work in progress". Although such preliminary assessment was overall positive, there were several points that needed

¹² See Schedule to the Commitments, Part A (i).

further investigation from the case team such as (i) compliance with the requirement for Amerra and Mubadala to run an open sale process, (ii) the comparative analysis in terms of competitiveness with the retained business under paragraph 19 of the Commitments and (iii) the transfer of the GIP. Simultaneously, there were multiple exchanges between the Commission and the Monitoring Trustee on, inter alia, the relevance of the Complainant's submission.

- (20) The Commission sent also requests for further information to Amerra and Mubadala and to the Monitoring Trustee relating, inter alia, to the scope of the asset package to be acquired by Diorasis and the financial situation of Diorasis.
- (21) Between 25 September 2019 and 14 October 2019, the Monitoring Trustee submitted updated versions (and then the final) assessment of Diorasis's suitability ("Reasoned Opinion") and, in particular, has indicated that it fulfils the criteria of the purchaser requirements in Section D of the Commitments attached to the Decision. In this assessment, the Monitoring Trustee also indicated that, on the basis of the SPA, the Divestment Business would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSED PURCHASER

2.1. Legal framework

- (22) Pursuant to paragraph 17 of the Commitments, in its assessment of the Proposed Agreement the Commission must ensure that:
 - the Proposed Purchaser is independent of and unconnected to Amerra and Mubadala;
 - the Proposed Purchaser has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors; and
 - the acquisition of the Divestment Business by the Proposed Purchaser does not create *prima facie* competition concerns or give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Proposed Purchaser must reasonably be expected to obtain all necessary approvals from the relevant authorities for the acquisition of the Divestment Business.

2.2. Description of the Proposed Purchaser

- (23) The Proposed Purchaser, Diorasis, is a private alternative investment advisory firm established in Luxembourg in 2010 and is regulated by the Commission de Surveillance du Secteur Financier ("CSSF"). It invests on behalf of its partners and for its own account in private equity transactions, acquiring majority or strategic minority stakes in sectors across South-eastern Europe and sometimes beyond. The ultimate beneficial owners of the shares in Diorasis are Mr Constantin Papadimitriou and Mr David Cowling, who are both senior executives at General Oriental

Investments S.A. (Geneva, Switzerland), a company that invests for the benefit of the family of the late Sir James Goldsmith.¹³

- (24) Diorasis is a shareholder in and manages Diorafish SCA (“Diorafish”), a Luxembourg based Alternative Investment Fund recorded at the CSSF. One of Diorafish’s other shareholders, Cascade Investment LLC, has as its ultimate beneficial owner William Henry Gates III (the founder of Microsoft).
- (25) In 2014, Diorasis decided to enter the aquaculture markets and, having created Diorafish as a platform for this entry, acquired Aquaculture G&P Bitsakos S.A. (“Bitsakos”), which was later named Philosofish (“Philosofish”). Philosofish is a Greek aquaculture player, established in 1996, and has been active in the aquaculture industry for more than 20 years. Philosofish focuses its activities on the production of sea bass and sea bream. The Philosofish operation comprises [...] distinct farm parks, controlled and operated from the main installation in Koronies, Greece. The main unit includes [...]. The fish-farming activities are supported by a central feeding station and [...] silos, with a total storage capacity of [...] of fish feed.
- (26) The main activities of Philosofish are the production of juveniles and fish as well as their trading and distribution. Philosofish is certified to sell its farmed fish products both on the European and US markets. Philosofish has a wholly-owned subsidiary, Martinou Aquaculture S.A., which operates a growing park in close proximity to the facilities of Philosofish on the basis of a service level agreement between them. At the time when Diorasis acquired Philosofish in 2014, Philosofish’s production was [...] of Mediterranean fish. In the years since the acquisition, Philosofish has grown to a production of ca. [...].

2.3. Independence from the Parties

- (27) The Notifying Parties submit that the Proposed Purchaser is independent from and unconnected to Amerria and Mubadala. They stress in particular that there are no institutional links between the Proposed Purchaser and the Notifying Parties, and that the Proposed Purchaser is not economically or strategically dependent on them, with only *ad hoc* supplies having occurred between Philosofish and each of Andromeda, Nireus and Selonda.

¹³ Sir James Goldsmith (1933-1997) was an Anglo-French financier and politician.

- (28) In its Reasoned Opinion, the Monitoring Trustee concurs with the reasons submitted by the Notifying Parties and finds that the Proposed Purchaser is independent of and unconnected to the Notifying Parties, within the meaning of paragraph 17 of the Commitments. Subject to certain caveats regarding the information made available to them¹⁴, the Monitoring Trustee has confirmed in particular that:
- in terms of cross-shareholdings, there is no relationship between the various companies involved other than between the Proposed Purchaser and Selonda in the context of the “organized growth of aquaculture” areas, (‘POAY’ – the acronym of the respective Greek terminology). As part of the reorganisation of its aquaculture industry (initiated by the Commission), the Greek government has developed a new licensing regime, the so-called POAY or Areas of Organised Development of Aquaculture. The creation of these areas should help increase the production capacity of fish farms in Greece. The Monitoring Trustee has found that for instance, there are ten shareholders of one of these designated areas, the Lokrida POAY, of which one is Selonda and another one is Filosofish, but that following the completion of Diorasis’ acquisition of the Divestment Business, any current association with Selonda will end;
 - no joint ventures exist in which any of Amerra, Mubadala, Andromeda, Nireus or Selonda participate with the Proposed Purchaser;
 - the Proposed Purchaser does not share any directors with any of the Amerra, Mubadala, Andromeda, Nireus or Selonda; and
 - the existing commercial relationships which are in place between the Proposed Purchaser and any of Amerra, Mubadala, Andromeda, Nireus or Selonda appear to be immaterial to the Proposed Purchaser in view of the latter’s overall revenues.
- (29) Based on the information made available by Amerra and Mubadala and on the Monitoring Trustee’s Reasoned Opinion, which the Commission considers is based on sufficiently reliable information, the Commission considers that the Proposed Purchaser meets the requirement of being independent of and unconnected to the Notifying Parties.

¹⁴ The Monitoring Trustee notes that the financial statements of Filosofish, prepared by Ernst & Young for the years 2016, 2017 and 2018, were provided to the Monitoring Trustee, and that they contained different revenue figures to those provided by the Proposed Purchaser. The Monitoring Trustee has relied upon the financial statements of Ernst & Young to assess materiality of the commercial links between the Proposed Purchaser and Amerra, Mubadala, Andromeda, Nireus and Selonda. The Monitoring Trustee also notes that information in respect of the Proposed Purchaser’s commercial, investment and governance links with Nireus and Selonda were provided only by the Proposed Purchaser, as in light of the sensitivity during the sales process, the Monitoring Trustee has not approached Nireus or Selonda to request this information.

2.4. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

2.4.1. Financial resources

- (30) The Notifying Parties submit that the Proposed Purchaser has the financial resources to fund the acquisition of the Divestment Business and to maintain and develop the Divestment Business as part of its existing operations.
- (31) The Monitoring Trustee has analysed the Proposed Purchaser's financial situation and concluded that in its view, the Divestment Business indeed has the necessary financial resources.
- (32) First, the Monitoring Trustee has found that the purchase price for the Divestment Business will be financed by equity of EUR [...] and a bond loan of EUR [...]. The Monitoring Trustee also notes that Filosofish has access to an additional working capital facility of EUR [...] and that the shareholders of Diorafish (which is managed by the Proposed Purchaser and is the direct parent company of Filosofish) will inject in total EUR [...]. Hence, the Monitoring Trustee confirms that there is at least an additional EUR [...] buffer at the level of Diorafish which could be injected into Filosofish if required.
- (33) Second, while the Monitoring Trustee has noted that Filosofish is [...] and is in breach of the covenants for an existing loan of EUR [...] with Piraeus Bank, the latter has confirmed in an e-mail that despite the breach, it will not call in the bank loan.
- (34) Third, the Monitoring Trustee has confirmed that if Diorasis achieves its business plan, then the key ratios would result in a financially healthy business. However, the Monitoring Trustee has noted that several key assumptions must be met in order for this business plan to be achieved, including:
- a continuous price increase in the overall market during the business plan period from currently [...];¹⁵
 - external hatchery sales of the hatcheries of the Divestment Business of EUR [...] per year;
 - an improvement of the FCR of Filosofish as well as that of the Divestment Business.
- (35) At the request of the Commission and the Monitoring Trustee, the Proposed Purchaser has also provided a downside business case, which will be the basis for the negotiations of the covenants with the banks. In this regard, the Monitoring Trustee's analysis has shown that if the EUR [...] buffer of equity at the level of Diorafish is used and the company would realise the planned synergy effects, it would still be able to achieve acceptable key ratios, even if the price of fish only increased to EUR [...] in 2022. To achieve a net debt/EBITDA ratio of below [...]

¹⁵ Diorasis assumes a price increase because prices in 2019 and 2020 reflect current bad market conditions, while the market is expected to recover by 2021 because of the decrease in 2019 stocking levels (both in Greece and in Turkey).

(which is one of the covenants agreed with Greek lending banks), the price would have to increase to EUR [...]. Based on historical prices, the expected launch of a multi-year marketing campaign of Greek producers, and the currently relatively low stockings of fry, which point to an expected supply contraction over the next 18 to 24 months, the Monitoring Trustee considers that these price assumptions are in a reasonable range of prices in the future.

- (36) Based on the information made available by Amerra and Mubadala and on the Monitoring Trustee's Reasoned Opinion, the Commission considers that the Proposed Purchaser meets the requirement of having the financial resources necessary to fund the acquisition of the Divestment Business and to maintain and develop the Divestment Business as part of its existing operations.

2.4.2. Proven expertise

- (37) The Notifying Parties submit that the Proposed Purchaser has proven that it has the expertise and incentive to maintain and develop the Divestment Business into a meaningful competitive force.
- (38) The Notifying Parties point out that Filosofish has been active in the aquaculture sector for more than 20 years. They point out that when the Proposed Purchaser acquired Filosofish in 2014, [...] in the operation in spite of the economically uncertain situation in Greece at the time. The Notifying Parties submit that the Proposed Purchaser is among few investors in the Greek aquaculture sector to have delivered a successful turnaround of a business. The Notifying Parties also point out that the Proposed Purchaser was the runner-up in the bid to acquire the entirety of Nireus and Selonda.
- (39) The Monitoring Trustee confirms the elements put forward by the Notifying Parties, in particular that the Proposed Purchaser indeed delivered a successful turnaround of Filosofish, whose annual production quadrupled in 3-4 years after having been acquired by the Proposed Purchaser. The Monitoring Trustee concludes that the Proposed Purchaser is well placed and suitably experienced to integrate the Divestment Business into its existing practice and operate the Divestment Business as a strong and viable competitive force.
- (40) Based on the information made available by Amerra and Mubadala and on the Monitoring Trustee's Reasoned Opinion, the Commission considers that the Proposed Purchaser meets the requirement of having the necessary proven expertise to maintain and develop the Divestment Business as part of its existing operations.

2.4.3. Incentive to maintain and develop the Divestment Business

- (41) Regarding the Proposed Purchaser's incentive to develop the Divestment Business, the Notifying Parties submit that the Proposed Purchaser's [...] evidences clear financial commitments to develop it and turn it into an important competitive force. The Notifying Parties also point out that in accordance with the Commitments, the Proposed Purchaser will benefit from technical support from the Notifying Parties, as well as from [...] (see also paragraph (70) below). The Notifying Parties also indicate that the Proposed Purchaser's business plan includes [...], and that pursuant to Schedule 9 of the SPA concluded with the Proposed Purchaser, Andromeda commits to deliver additional broodstock for the purposes of enabling the Proposed Purchaser to develop its genetic selection programme, such broodstock having to

meet a number of requirements. In the Notifying Parties' view, this will allow the Proposed Purchaser to develop the Divestment Business as a qualitative player. The Notifying Parties also stress that the Proposed Purchaser's business plan demonstrates its intention to expand the international reach of the Divestment Business. Finally, the Notifying Parties submit that under the new POAY licencing regime, the Divestment Business should potentially be granted a significantly increased licence capacity, which in their view provides great potential and a clear incentive for the Proposed Purchaser to further develop the Divestment Business.

- (42) The Monitoring Trustee's assessment confirms that the Proposed Purchaser has the incentive to maintain and develop the Divestment Business. The Monitoring Trustee points out that the Proposed Purchaser has indicated to them that the time horizon for their investment in the Divestment Business is between [...]. The Monitoring Trustee also refers to the Proposed Purchaser's business plan for the Divestment Business, in particular that the Proposed Purchaser will use this acquisition [...]. Finally, the Monitoring Trustee reiterates its assessment that the increases in the price of fish assumed in the Proposed Purchaser's downside business case are not unrealistic and that these would still enable the Divestment Business to achieve a reasonable net debt/EBITDA ratio.
- (43) Based on the information made available by Amerra and Mubadala and on the Monitoring Trustee's Reasoned Opinion, the Commission considers that the Proposed Purchaser meets the requirement of having the incentive to maintain and develop the Divestment Business as part of its existing operations.

2.5. Absence of prima facie competition problems and of the risk that the implementation of the Commitments will be delayed

- (44) The Notifying Parties submit that the Proposed Purchaser's acquisition of the Divestment Business will not give rise to any competition concerns, in view of the Proposed Purchaser's limited market shares on all relevant markets, and that the acquisition is not anticipated to trigger any merger control filings. The Notifying Parties also consider that the long-stop date at [...] from signing will be sufficient for them to implement the spin-off structure provided in the SPA¹⁶, obtain the Commission's approval and ensure deal certainty (assuming the Notifying Party shows good cause for the extension of the closing period).
- (45) The Monitoring Trustee's assessment confirms that the acquisition of the Divestment Business by the Proposed Purchaser is unlikely to give rise to prima facie competition concerns on the relevant markets and that this acquisition is not expected to trigger any merger control filings. The Monitoring Trustee is also of the view that the acquisition does not give rise to a risk that the implementation of the Commitments will be delayed.
- (46) Based on the information made available by Amerra and Mubadala and on the Monitoring Trustee's Reasoned Opinion, the Commission considers that the Proposed Purchaser's acquisition of the Divestment Business meets the requirement

¹⁶ Rather than as a transfer of assets, the acquisition is set up as a transfer of shares, which, under Greek law, should result in a universal succession of all rights and obligations to the acquirer, including a transfer of all licences.

of not giving rise to prima facie competition problems or to a risk that the implementation of the Commitments will be delayed.

- (47) This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by the Proposed Purchaser by a competent competition authority under applicable merger control rules.

3. SPECIFIC CRITERIA IN RELATION TO THE PROCESS AND THE SELECTED ASSETS

3.1. Commitment to organise an open sales process

- (48) As explained in paragraph (10), Paragraph 18 of the Commitments provide that the Notifying Parties will organise an open sales process and will keep the Commission and the Monitoring Trustee regularly informed about its progress, to enable the Monitoring Trustee to ensure that potentially suitable purchasers are given the opportunity to participate in the sales process on an equal and non-discriminatory way.
- (49) The Monitoring Trustee held weekly calls with Andromeda throughout the First Divestiture Period requesting updates generally on progress with the sales process, discussions with interested bidders, timelines and next steps. By the deadline of 25 April 2019, Andromeda received five non-binding offers for acquisition of the Divestment Business from Diorasis and four other potential bidders. The initial deadline for binding offers was set at 31 May 2019 but extended by Andromeda to 7 June 2019. By the revised deadline of 7 June 2019, Andromeda received binding offers from Diorasis and a second bidder.
- (50) On 9 August 2019, the Monitoring Trustee received a complaint letter from the other bidder having submitted a binding offer ('the Complainant'). [...].
- (51) Based on the updates provided to the Monitoring Trustee on its weekly calls with Andromeda, the Monitoring Trustee had understood that Andromeda continued to engage with both the Complainant and Diorasis during the final stages of the sales process, although more progress was made with Diorasis, given that there were fewer issues to discuss, including on the SPA text, and due to the fact that the Diorasis managed to secure their financing with the Greek banks on a more timely basis than the Complainant to enable a signing within the First Divestiture Period. Moreover, contrary to the submission made by the Complainant, the Monitoring Trustee also understands that Andromeda and Diorasis did not enter into exclusivity arrangements. The Commission also verified this point through a request for information sent to Andromeda on 11 October 2019, to which Andromeda replied on 14 October 2019.
- (52) Based on the information made available to the Monitoring Trustee, the Monitoring Trustee understands that the Complainant was provided with Divestment Business turnover information in a similar format to that provided to Diorasis (in the relevant countries). Therefore, it does not appear that the Complainant was disadvantaged in the sales process through means of Andromeda providing inaccurate turnover information for the Complainant to fully assess its merger notification requirements.
- (53) On this point, the Monitoring Trustee also notes that [...].

- (54) Based on the above and the opinion of the Monitoring Trustee, the Commission considers that the Notifying Parties organised an open sales process and ensured that potentially suitable purchasers were given the opportunity to participate in the sales process on an equal and non-discriminatory way.

3.2. Level of competitiveness of the divested assets

- (55) As explained in paragraph (10) above, Paragraph 19 of the Commitments provide that the assets (as identified by the purchaser) sold to the purchaser shall ensure that the Divestment Business will be able to replicate at least a comparable level of competitiveness as the assets which are retained by Andromeda.
- (56) The Monitoring Trustee's Technical Experts ([...]) have produced a report that compares the hatcheries and fish farms selected by Diorasis and those of Nireus, Selonda and Andromeda using various objective metrics.
- (57) In formulating its assessment of the comparison of the hatchery assets, the Technical Expert reviewed the following metrics: (i) production volumes for 2016-2018; (ii) maximum estimated production of each hatchery; (iii) land size; (iv) tank volume; (v) electrical energy consumption; (vi) total water supply; and (vii) algae, rotifer and artemia¹⁷ volumes. The Technical Expert concluded that it appears that the Divestment assets are not inferior as regards these criteria in comparison to the retained assets.
- (58) As regards fish farms, the Technical Expert applied four principal evaluation criteria as follows: (i) FCR;¹⁸ (ii) production volumes; (iii) licences and sea areas and (iv) the Maximum Fetch-Wave Height ("MFWH")¹⁹. On the basis of these criteria, the Technical Expert concluded that the fish farms meet the requirement for the Purchaser to acquire 10,000 tonnes of production of Mediterranean fish, as required in the Commitments and the farms are able to produce large quantities with both the current production licenses as well as the future additional licenses with material scope for production increases of approximately 15,000 tonnes. The FCR of the selected fish farms over the past three years has been similar to that of the retained fish farms, ([...]) although the 2019 YTD FCR shows some discrepancies. As far as the MFWH is concerned, the Divestment Business fish farms appear to be safer than the retained business fish farms.
- (59) On the basis of the above, the Commission considers that the selected assets taken as a whole are of at least comparable level of competitiveness as those of the retained business of Nireus, Selonda and Andromeda.

¹⁷ Rotifer and Artemia are food items for fish larvae.

¹⁸ Feed Conversion ratio ("FCR") is a ratio measuring the efficiency with which the bodies of livestock convert animal feed into the desired output. In aquaculture, FCR of farms is the mass of feed provided to fish divided by the mass of fish flesh produced. The lower the FCR, the more efficient the farm.

¹⁹ Fetch Length is the horizontal distance over which wave-generating winds blow. Fetch is an important factor in the development of wind waves, which increase in height with increasing fetch up to a maximum of 1,600 km (1,000 miles). The greater the Fetch Length, the larger the Wave Height generated. A fish farm located at an area of larger Fetch will be hit by higher waves therefore creating issues to the fish farm while a fish farm with lower Fetch will have calmer waters therefore having an advantage in comparison to other fish farms.

4. ASSESSMENT OF THE TRANSACTION DOCUMENTS AND CONSISTENCY OF THE DOCUMENTS WITH THE COMMITMENTS

- (60) The Monitoring Trustee has assessed the Sale and Purchase Agreement which constitutes the only Transaction Agreement entered into for the purposes of the sale of the Divestment Business to Diorasis. There are various agreements attached as Schedules to the SPA (including a technical assistance agreement and feed supply agreement).
- (61) In general, the Monitoring Trustee considers that the SPA is consistent with the Commitments, with three main points worth discussion: The Genetic Improvement Programme, the Fish Feed Supply Agreement and the request of the Notifying Parties pursuant to Article 20 of the Commitments.

4.1. The Genetic Improvement Programme (GIP)

- (62) Pursuant to paragraph 6(b) of the Commitments and paragraph 3 of Part C to the Schedule to the Commitments, Andromeda, Nireus and Selonda are required to ensure that the best genetic improvement programme and related know-how for each of seabass and seabream owned by the “Targets” (defined in Section A of the Commitments as Andromeda, Nireus and Selonda) at Closing, is transferred to the Purchaser.
- (63) The Trustee noted that “know-how” is defined in clause 6.1.2 of the SPA as the best genetic improvement programme and related know-how for each of seabass and seabream owned by each “Seller” (defined in the SPA to include Nireus and Selonda only) associated with the broodstock included in the Divestment Business. As the intention of the Commitments is for Diorasis to have access to Andromeda’s know-how, Andromeda confirmed that an addendum to the SPA could be executed prior to Closing to address any inconsistencies in relation to the SPA and the Commitments.
- (64) Diorasis has expressed an interest in the genetic programmes of Andromeda or Nireus. [...]. Nireus' genetic programme has been assessed in detail by the Monitoring Trustee's technical expert (the “Technical Expert”).
- (65) The Nireus genetic improvement programme is managed in close cooperation with [...]. The programme is carried out as follows: [...].
- (66) In the light of the involvement of [...] in the programme and in order to ensure that the Purchaser can acquire the data and know-how of Nireus and take the Nireus genetic improvement programme forward successfully, the Technical Expert submitted that it is paramount that the Purchaser partners with a third party expert to provide the services which [...] currently provides to Nireus. In particular, the Technical Expert submitted that the Diorasis Business Plan is based on the assumption that the Nireus GIP transfers to Diorasis, will be fully utilised and will result in considerable decreases in FCR.
- (67) The Monitoring Trustee has submitted there are a number of universities/third party companies which provide the same services as [...].
- (68) The agreement between Nireus and [...].

- (69) Based on the above, the Commission considers that it is crucial that Diorasis enters into a cooperation with an appropriate partner to ensure a full application of the GIP. Diorasis has the choice between a number of potential available partners, including [...], but also other potentials partners. [...].

4.2. Fish Feed Supply Agreement

- (70) Paragraph 1 of Part D of the Schedule of the Commitments states that *'the Divestment Business shall include at the Purchaser's request, an agreement for the supply of Mediterranean fish feed, sufficient for up to 10,000 tonnes of Mediterranean fish per annum, supplied for a transitional period of up to two years from Closing'*.
- (71) Pursuant to clause 2.1 of the SPA, Andromeda agrees that it shall supply to the Purchaser a minimum of [...] and a maximum of [...] of fish feed annually in order to cover the needs of the Divestment Business for a transitional period of up to 2 years. The Technical Expert has assessed whether the volumes proposed under the agreement would be sufficient for up to the volume of production that is being acquired by Diorasis.
- (72) Diorasis is acquiring [...] of production under the Commitments and based on an average [...] (which is the benchmark used by Diorasis to calculate its fish feed supply needs), it appears that supply in excess of the [...] maximum provided under the Supply Agreement may be required.
- (73) However, based on further substantiated claims from Diorasis with an average improved [...], supply of maximum [...] of fish feed would just meet the needs of the Divestment Business. The Technical Expert noted that this [...] has not been reached on average in the last three years by the farms included in the Divestment Business. However, he also noted that the divested farms have hitherto not been well managed and, therefore, under proper management it may be possible to reduce the FCR with the consequence that if an [...] is achieved (as envisaged by Diorasis) supply of [...] would be sufficient to meet the needs of the Divestment Business based upon these assumptions. This level of FCR is also consistent with the assumptions of Diorasis in its business plan.
- (74) On the basis of the above, the Commission considers that the Fish Feed Supply Agreement provides for feed volumes which are sufficient for up to [...] of production that is being acquired by Diorasis.

4.3. Request of the Notifying Parties pursuant to Article 20 of the Commitments

- (75) In their Reasoned Proposal, the Notifying Parties submit an application to the Commission under paragraph 20 of the Commitments to approve a divestment where the Divestment Business comprises assets different from the combinations enumerated in paragraph 6 of the Commitments.
- (76) Article 20 of the Commitments indeed provides the Commission with the possibility to approve the sale of the Divestment Business by inter alia substituting one or more Assets with one or more different assets if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

- (77) Pursuant to the SPA which has been signed with Diorasis, Diorasis is acquiring assets located in [...]. The acquisition by Diorasis therefore does not strictly fall within the constellations provided for in the Commitments in case of a single purchaser.²⁰
- (78) Firstly, the Divestment Business totalled [...] of average own production of Mediterranean fish in the period 2016-2018 and therefore complies with the requirement set out in paragraph 6 of the Commitments that the Divestment Business has a production of no less than 10 000 tonnes.
- (79) Secondly, it has been established (see paragraph (59)) that the selected assets taken as a whole are of at least comparable level of competitiveness as those of the retained business of Nireus, Selonda and Andromeda. It does not appear therefore that this different selection of assets would impair the viability and competitiveness of the Divestment Business.
- (80) Moreover, the Monitoring Trustee has indicated that given the location of Diorasis' existing assets (mostly in [...]), the acquisition of the Divestment Business assets in [...] and [...] imply significant operational synergies for Diorasis due to their close proximity, and provides for the efficient integration of assets post-Closing.
- (81) Furthermore, in the Decision, the Commission found that farms in the Islands were not seen as equally suitable to serve the export markets as farms located in the Mainland clusters due to transportation issues with the mainland and logistical challenges forcing island farms to harvest a day before the ones in the mainland in order to serve the same customer in EEA.²¹ A split of assets giving prominence to mainland farms would render the Divestment Business more competitive as regards export markets.
- (82) In that regard, Diorasis submitted that it does not wish to acquire more island capacity over and above the farms in [...]. Although paragraph 6(a) of the Commitments foresees the divestment of more island capacity to an island Purchaser, Diorasis takes the view that island assets are less attractive than mainland assets and are expensive to operate, which has also been mentioned by the Commission in the Decision. The Divestment Business assets in [...] are regarded as the most attractive island assets, but from an operational perspective, it makes more sense for Diorasis to acquire assets in [...] which sit next to its existing operations.
- (83) On the basis of the above, the Commission considers that the asset selection of Diorasis as a single purchaser does not affect the viability and competitiveness of the Divestment business, taking into account of the proposed Purchaser.

5. CONCLUSION

- (84) On the basis of the above assessment and for the above-mentioned reasons the Commission approves Diorasis as a suitable purchaser.

²⁰ The acquisition of assets included in two mainland clusters and one island clusters were only possible according to Article 6 of the Commitments if [...].

²¹ Decision, paragraphs 259-260.

- (85) On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
- (86) This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Amerra and Mubadala has complied with its Commitments.
- (87) This decision is based on Paragraph 17 of the Commitments attached to the Commission Decision of 15 February 2019.

For the Commission

(Signed)
Cecilio MADERO VILLAREJO
Acting Director-General