

***Case No COMP/M.3838 -
AVID / PINNACLE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/08/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.08.2005

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject : Case No COMP/M.3838 – Avid/Pinnacle
Notification of 29/06/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

I. INTRODUCTION

1. On 29.06.2005 the Commission received a notification of a proposed concentration pursuant to Article 4, and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004, by which Avid Technology Inc. (“Avid”, U.S.A.), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Pinnacle Systems Inc. (“Pinnacle”, U.S.A) .

¹ OJ L 24, 29.1.2004 p. 1. Council Regulation (EC) No 139/2004 is hereinafter also referred to as “the Merger Regulation”.

II. THE PARTIES

2. **Avid**, the acquirer is a US-based company that manufactures and sells digital video and audio software and hardware products for digital media production, management and distribution.
3. The US-based target company, **Pinnacle**, focuses on the manufacturing and sale of digital video products to consumers and the professional media industry.
4. Avid and Pinnacle are both active in the digital video broadcasting sector. While Avid's activities are mainly targeted towards the professional media industries, Pinnacle manufactures and sells digital video products to both consumers, as well as to the professional media industries, but with a focus on consumer products, where it enjoys brand recognition across its product lines.
5. The purpose of the acquisition is therefore to allow Avid to broaden its product portfolio and extend its activities onto the consumer segment of the digital video broadcasting markets.

III. CONCENTRATION

6. The envisaged transaction concerns the acquisition of sole control by Avid of Pinnacle, through cash and stock transactions. The transaction will be carried out through Highest Mountain Corporation, a transitory vehicle company that is part of the Avid Group, which shall be merged with and into Pinnacle. The transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of Council Regulation 139/2004.

IV. COMMUNITY DIMENSION

7. The operation does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation. For the purposes of Article 1(2), the undertakings concerned have a combined aggregate world-wide turnover of less than EUR 5 billion² (€ 474 million for Avid, € [250-300] million for Pinnacle).
8. The criteria set out in Article 1.3 are not met either, as the undertakings concerned have a combined aggregate worldwide turnover that is also below € 2,500 million. However on 12 May 2005 Avid informed the Commission in a reasoned submission that the concentration was capable of being reviewed under the national competition laws of more than three Member States (namely Germany, Greece, Spain, Portugal, the United Kingdom) as well as one EFTA State (Norway) and requested the Commission to examine it. The Commission transmitted the submission to all Member States without delay. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the EC Merger Regulation. On 9 June 2005 the Commission confirmed that the case is therefore deemed to have a Community dimension pursuant to Article 4(5) of the EC Merger Regulation.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

V. RELEVANT MARKETS

RELEVANT PRODUCT MARKET

GENERAL

9. Digital video products are products which enable professionals to digitally record, store, edit, mix, assemble and play the moving images, graphics and other elements that are part of the content creation process. Digital video products comprise mainly five categories of products as follows: non-linear editors (NLEs), storage, I/O servers, asset management, graphics.
10. Avid and Pinnacle are both active in the digital video broadcasting sector. Avid's video business sales have been oriented to the professional markets, with no sales presence in the consumer market. Avid manufactures and sells: NLEs, I/O servers, storage and asset management products. Pinnacle is active in different segments of consumer digital video but also targets the professional media industry. It manufactures and sells consumer NLEs, graphics and I/O server products. It also offers video capture hardware devices which come with basic consumer non-linear editors as add-ons.
11. Based on this product segmentation, the parties have overlapping activities in the NLE, I/O server and to a minimum extent in storage segments of the digital video broadcasting product markets.
12. Against this background, the Commission's market investigation aimed inter alia to shed a light on whether or not consumer and professional segments of the digital video products should be considered as separate markets. In this context, it was also investigated whether there would have been a need to further distinguish the overall market of professional NLEs according to high-end, mid-range and low-end separate markets.

Professional v. Consumer Digital Video Products

13. The parties submitted that the market for digital video products should be divided into a professional and a consumer segment. The reason for this is that professional products serve the sophisticated individual needs of the motion picture industry and broadcasters and are sold at a relatively high price level, while consumer products are much cheaper and are mainly used for editing "home videos". Customers in the professional segment include studio facilities in the motion picture industry; audiovisual production companies and TV broadcasters (particularly news stations).
14. In the course of the Commission's market investigation, the majority of respondents considered that the division of consumer and professional segments of the digital video products indeed makes it plausible to envisage the existence of separate markets for antitrust purposes. However, some of the competitors indicated that there is a visible trend of convergence of the two product lines.
15. For the purposes of the current case however it is not necessary to reach a definitive conclusion on the question of whether the consumer and professional segments represent separate product markets, since the market investigation and the assessment of the parties' position took place in all alternative markets, in particular in the narrower possible market segments i.e. on the professional NLE product market (and

possible further sub-segmentation thereof). This is because Avid is not present in the market of consumer products. The assessment would a fortiori not be different under an overall digital video product market.

16. In the light of the above, the parties have overlapping activities in relation to professional NLEs, I/O servers, and, storage. Among these product markets, the market for professional NLEs (and the possible further market segments thereof) is(are) the only affected market (see further below).

Professional Non-Linear Editors

17. Professional NLEs are software and optional additional computer hardware associated with software that allow professionals either in an online or an offline working environment to take raw video footage and transform it into the final product by e.g. cutting the footage and editing its colours. Unlike linear editors NLEs allow professionals to randomly access material rather than requiring them to work sequentially. The typical customers of professional NLEs are news and television broadcasters and the movie industry.
18. Professional NLEs are highly differentiated products, as suppliers offer different features and functionality to address the specific needs of each individual customer. Professional customers generally use a mixture of professional NLEs, storage, I/O servers, asset management, graphics, on a stand-alone basis, to interconnect with adjacent products or a widely varying product bundle of some or all of these products. Some customers provide their own integration while others purchase an integrated bundle of products, so called turnkey editing systems. It is also common for some users, in particular for larger broadcasters, to put in requests for proposals setting out exactly their specific needs.
19. The market investigation raised the possibility that professional NLEs products could be further distinguished between high-end, mid-range and low-end markets; alternatively, it would be possible to carve out at least the high-end tier of the whole professional NLEs. This segmentation would have been based on the claims that: a) the prices of these distinct product levels vary to a large extent (mid-range NLEs would be priced 40%-50% of the price of high-end NLEs and the same difference or more would be between low-range NLEs compared to mid-range NLEs); b) professional NLEs have a higher level of functionality and sophistication than lower level products, c) high-end professional NLEs are more complex products and require much more intensive training and support service than the other two types; and d) the market's sensitiveness to innovation and the high costs of R&D would result in a weak supply side substitutability in between mid-range solutions vis-à-vis these upper market solutions.
20. The parties claim that while prices of the professional NLEs products may differ significantly in relation to each other (prices ranging usually from US\$ 1000 to US\$ 15.000 or more, but in certain cases between US\$400-1000), nevertheless there is a continuous price spectrum ranging from professional NLEs that are priced at the lower-end to professional NLEs that are priced at the upper levels. Therefore although high-end and low-end do not compete directly, due to a continuous chain of substitution between NLEs of a certain level and those above and below this level, the parties argue that professional NLEs share certain common features making it inappropriate to further segment these products between high-end and low-end,

according to the prices, different customer groups or special characteristics of the products.

21. Besides the claim that this chain of substitution justifies the conclusion that NLEs of all price levels form part of the same product market, the parties also added that vendors can exploit the commonality in design and functionality of professional NLEs to produce an extensive range of products which can be priced at upper or lower levels on the basis of the specific features of the product; Therefore, there would be a high supply-side substitutability with regard to professional NLEs.
22. In addition to the above mentioned arguments, and in support for an overall professional NLE market, the parties also put forward that professional NLE vendors are expanding the products' features, and therefore it is difficult to separate segments of such a dynamic market. Large entities frequently purchase a mix of professional NLEs, containing a whole range of products. Furthermore, as regards training and support, the parties claimed that these services are not only available from the digital vendors themselves but also from third party distributors.
23. The market investigation neither supported nor clearly denied this possible further market segmentation within professional NLEs. On one hand some information gathered through the investigation spelled out that the very high functional and support requirements that go together with these products may imply a different demand pattern and different use in the high-end domain of the professional NLEs. On the other hand, several respondents to the questionnaire have dismissed any further segmentation of the professional editing market. In any event, as already mentioned above, it is not necessary to reach a definitive view on the issue as it does not in any way affect the assessment of this case.
24. It has to be mentioned that the investigation also pointed to the existence of a possible different market within the digital video editing products. This would be represented by integrated editing systems for newsroom and other broadcasting services, which could form the object of a separate demand and be traded under different patterns compared to other NLEs. The parties argued that the fact of integration and bundling of certain stand-alone products would not justify such an approach to the professional NLE product markets. As regards this possible market, no firm conclusion needs to be reached, since the assessment of the transaction would not change even considering the effects of the merger on this separate market (integrated editing systems for newsroom and other broadcasting services).

I/O Servers

25. Ingest and play-out servers (I/O servers) are products designed to handle incoming and outgoing video data. I/O servers allow professionals to record incoming video sequences, and play out digital video content, in a manner similar to a conventional videotape recorder. In any event, despite the existence of an overlap, the I/O Servers market does not constitute an affected market for the purpose of the assessment of this transaction, since the parties' combined shares are below 15% in all alternative definitions (see below).

Storage

26. Storage products allow for the permanent archiving of the material used by professionals. The storage products offered to media professionals may consist of hard

drives as customarily included in personal computers, and can be either integrated with the computer or be attached externally through standard IEEE1394/FireWire or USB connectors available on most of the current generation of computers. In all cases, the type of storage used by the professional media is based on the same type of information technologies as is commonly available in general business computing systems.

27. Avid and Pinnacle are present to an insignificant extent in the market for storage, moreover this market is served by large OEM vendors, like HP, IBM, Sun, Dell, etc. Therefore this market is not further discussed.

RELEVANT GEOGRAPHIC MARKET

28. The parties consider that the relevant geographic market for professional digital video products (including the possible high-end segment) is worldwide, and in any event at least EEA-wide. The main players active in the markets for professional digital video products operate and compete on a worldwide scale and are generally present in all regions of the world and in particular in all main European countries as the parties themselves. Prices within the different countries of the EEA are essentially homogeneous, due to their calculation on the basis of the US prices with only small adjustments and the low costs of transport and logistics.
29. The Commission's market investigation showed that the geographic market for professional digital video products is at least EU/EEA-wide. It has been confirmed in the answers to the questionnaires that there are no substantial differences between countries as to the price, quality and other characteristics of digital video products. The same conclusion would apply as regards integrated systems for newsrooms and other broadcasting services.

VI. COMPETITIVE ASSESSMENT

I/O Servers

30. While both Avid and Pinnacle are present in the market for I/O servers, their position in this market is not significant. Pinnacle has an estimated worldwide market share in I/O servers of [0-10%] and an EU/EEA market share of [0-10%]. Avid is a small player in this market, with an estimated worldwide market share in I/O servers of [0-10%] and a EU/EEA market share also of [0-10%]. The market for I/O servers is served by other important vendors like Thomson Grass Valley (with an estimated worldwide market share above [10-20%]), Omneon (with an estimated worldwide market share of [10-20%], Leitch [0-10%], Sony, Seachange and others.

Professional Non-Linear Editors (including high-end and low-end segments)

31. Based on the parties' segmentation, the professional NLE market is the only affected market. In any event, given the possible sub-segmentation thereof and in lack of a definitive conclusion on the exact scope of the relevant product market, the

competitive assessment has been carried out also considering the narrowest possible definition of the NLE market, i.e. high-end and lower-end segments of the market.

32. According to the information supplied by the parties, in an overall world-wide market for professional NLEs, their combined market share would be [20-30%] (Avid [20-30%]; Pinnacle [0-10 %]). Other important competitors in this market include Apple with [10-20%], AD/Discreet [10-20], Adobe[10-20%], Quantel [0-10%].
33. At overall EU/EEA-wide level, the parties' combined market share would be [20-30%] (Avid [20-30%]; Pinnacle [0-10%]). Other strong competitors with important market positions in this market include Apple with [10-20%], AD/Discreet with [10-20%] and Adobe with [0-10%].
34. If a separate market for high-end and lower-end segments were considered, the relevant positions of the parties would be the following: in the high-end level of professional NLEs market in the EU/EEA they would have a [40-50%] combined market share (Avid [40-50%]; Pinnacle [0-10%]), while in the lower-end level they would possess a combined market share of [10-20%] (Avid [10-20%]; Pinnacle [0-10%]). In the high-end segment the parties' main competitors are AD/Discreet with [30-40%], Quantel with [10-20%], Sony with [0-10%]. In the lower-end segment there is strong competition stemming from Apple (having a [20-30%] market share in the EU/EEA), Adobe [10-20%], and Matrox [0-10%].
35. The market investigation revealed that overall Avid is probably the strongest player in the professional NLE market. At the same time, it appeared that Pinnacle does not constitute the most important competitive constraint in the professional NLEs market, especially as regards the high-end of the market.
36. Pinnacle has historically focused and been successful in the consumer NLE products. As regards professional NLEs, Pinnacle's high-end products (Liquid Blue & Chrome) have substantially less functionality and features than many of the high-end products sold by the other players such as Avid, AD/Discreet, Quantel; to a certain extent, these Pinnacle's products could be considered equally in mid-range segment as well as in the high-end segment of professional NLE's. Furthermore, there are no particular market trends or other indications that would justify the assumption that Pinnacle's presence in the professional NLE market is likely to be more prominent in the future. There are more important players in the market (such as Apple) than Pinnacle [...].
37. The market investigation provided some indications that the market for professional NLEs would be characterised by certain entry barriers and by interoperability issues. In particular, barriers to entry may exist as regards the high-end professional NLE segment/market³. Nevertheless, in this respect, some respondents suggested that these barriers are not necessarily insurmountable. In any event, the merger does not appear to have any significant adverse effects on those possible barriers to entry, given the

³ Some assets would appear to be critical in order to enable effective entry, such as intellectual property rights (software source code) owned by important players. Also the number of software engineers with knowledge or experience of professional NLE software would be an important element, as professional NLE products comprise millions of lines of software code, requiring sometimes thousands of man-hours by experienced developers.

limited share of sales that Pinnacle represent both in the overall and in the high-end of the NLE market.

38. As regards the lack of full interoperability between the proprietary products of different market players, the investigation showed that indeed this may be a problematic issue in the digital video broadcasting industry. However, there is a general trend towards the promotion and growing use of two already established industry standards, AAF and MXF, and the market investigation did not indicate that the acquisition of Pinnacle's by Avid would adversely affect this situation.
39. As stated above, the parties' EEA combined shares would be [20-30%] as regards the overall professional NLE market and [40-50%] as regards the high-end of the professional NLE product market (with a [0-10%] the increment due to the merger, i.e. the estimated shares of sales of Pinnacle's products). During the review, the Commission received submissions from a third party indicating that the market shares of the parties may be higher than the figures submitted by the parties. Based on industry reports and own estimates, the complaining third party attributed significantly higher market shares to Avid and Pinnacle in the overall professional NLEs market, and in the high-end (as well as in the low-end) segment, than the ones put forward by the parties on notification. In any event, it has to be noted that the complaining third party had assumed the overall size for the NLEs market (including relevant segments thereof) to be approximately the same as the market size stated by the parties⁴. Based on the parties' sales of relevant products as stated on notification, the complaining third party's estimates would appear to overstate the merging parties' sales of relevant products. In addition, the complaining third party estimated Pinnacle's market share to be in the same order of magnitude as that estimated by the parties, this being the case especially as regards the high-end of the professional NLE market. Furthermore, the investigation did not show any convincing element that would induce the Commission to depart from the estimated shares of sales declared by the parties on notification.
40. As regards the substantive issues, in its complaint the third party also set forth its concern that the merger would result in the loss of an independent competitive constraint, Pinnacle, in the market. In the third party's view Pinnacle is one of the strongest competitors of Avid, even irrespective of the fact that Pinnacle's products are or not the closest substitutes for Avid's products.
41. In this respect, based on the result of the market investigation as set out above, the target of this merger (Pinnacle) does not appear to be the most important of Avid's competitors in the marketplace. In any event, the investigation did not indicate that Pinnacle's foothold and competition constraint posed in the "high-end" Professional NLEs is more important than what its limited share of sales [0-10%] would indicate. The removal of Pinnacle would not adversely affect the conditions of competition post-merger and the transaction would not significantly impede competition vis-à-vis Avid in any relevant market.
42. Considering a possible separate market for integrated editing systems for newsroom and other broadcasting services, some indications would show that there are different

⁴ In any event, based on the information available to the Commission the possible difference between the parties' and the third party' estimate of the NLE market size would not be such as to lead a different assessment.

patterns and structure of demand, supply and trading terms compared to other services within the professional video editing industry; other elements would instead indicate that this segment could be part of the high-end layer of the professional NLEs market. In any event, even if integrated systems for newsrooms and other broadcasting services were defined as a separate market, the proposed acquisition would not affect the competitive structure of this segment. Pinnacle's Vortex offering (specifically aimed at these functions) has been sold only to a few newsroom customers in Europe prior to the merger. The weak position of Pinnacle is also reflected by the small share of sales of Pinnacle with regard to the installed base of newsroom installations in Europe. [...] In view of the above, it has to be concluded that the acquisition of Pinnacle by Avid will not affect the condition of competition as regards integrated systems for newsrooms and other broadcasting services to any significant extent (similar to the situation in the high-end professional NLE market).

VII. CONCLUSION

43. In the light of all the elements of assessment described above, the Commission has concluded that the notified transaction does not give rise to competition concerns in the professional NLEs markets (and segments thereof) and that as a result it does not significantly impede effective competition in the common market or a substantial part of it.
44. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council regulation (EC) No 139/2004.

For the Commission
(Signed)
Vladimir ŠPIDLA
Member of the Commission