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***Case No COMP/M.6572 - KEMET/ NEC/ NEC TOKIN***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 11/07/2012

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## EUROPEAN COMMISSION

Brussels, 11.7.2012  
C(2012) 4998 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.6572 – KEMET/ NEC/ NEC TOKIN  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 7 June 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings KEMET Electronics Corporation ("KEMET", USA) and NEC Corporation ("NEC", Japan), acquire within the meaning of Article 3(1)(b) of the Merger Regulation, joint control of the whole of NEC Tokin Corporation ("NEC TOKIN", Japan) by way of purchase of shares (the "Proposed Transaction"). NEC TOKIN is currently solely controlled by NEC. KEMET and NEC are hereinafter designated as the "Notifying Parties".

#### **I. THE PARTIES**

2. **KEMET** predominately manufactures various types of capacitors, which it sells on a worldwide-basis. KEMET markets its capacitors to a wide range of industries, with a higher proportion of its sales to customers in the industrial, lighting and transportation sectors. KEMET also recently acquired a manufacturing capability for the production of tantalum powder in Nevada, USA. That manufacturing capability was previously operated by Niotan Inc. ("Niotan").

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

3. **NEC** provides a broad range of IT products and services to business enterprises, communication services providers and governments.
4. **NEC TOKIN** sells electronic devices and components (including capacitors) on a worldwide-basis. **NEC TOKIN** markets its capacitors to a wide range of industries, although the bulk of its sales are to the consumer electronics sector, for use in laptop computers, mobile phones, smartphones and flat screen televisions.

## **II. THE OPERATION AND THE CONCENTRATION**

5. **NEC**, together with **NEC Capital Solutions Limited** ("**NECAP**"), a subsidiary of **NEC**, currently holds all of the issued common stock of **NEC TOKIN**.
6. On 12 March 2012, **NEC TOKIN**, **KEMET** and **NEC** entered into both a Stock Purchase Agreement ("**SPA**") and a Stockholders' Agreement. Pursuant to the terms of the **SPA**, on completion of the notified operation, **KEMET** will hold 51% of the outstanding shares of the common stock of **NEC TOKIN** whereas **NEC**, together with **NECAP**, will hold 49% of such shares.
7. Pursuant to the terms of the Stockholders' Agreement, **KEMET** will appoint four<sup>2</sup> and **NEC** three<sup>3</sup> of the seven directors of the board of **NEC TOKIN**. Moreover, as long as **KEMET** and **NEC** each holds at least 34% of the outstanding shares of the common stock of **NEC TOKIN**, each will have a veto right over the approval of the business plan and budget of **NEC TOKIN**.
8. As a result of these provisions, both **KEMET** and **NEC** will have the power to exercise decisive influence over the commercial policy of **NEC TOKIN** and thus jointly control **NEC TOKIN**.
9. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. EU DIMENSION**

10. In 2011, the undertakings concerned had a combined aggregate worldwide turnover of more than EUR 5 000 million<sup>4</sup> (**KEMET**: EUR 770 million; **NEC**: EUR 27 526 million, **NEC TOKIN**: EUR [...] million). Two of them had an EU-wide turnover in excess of EUR 250 million (**KEMET**: EUR [...] million; **NEC**: EUR [...] million) and the three undertakings did not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
11. The notified operation therefore has an EU dimension according to Article 1(2) of the Merger Regulation.

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<sup>2</sup> Provided **KEMET** holds no less than [50-60]% of the common stock of **NEC TOKIN**.

<sup>3</sup> Provided **NEC** holds no less than [40-50]% of the common stock of **NEC TOKIN**.

<sup>4</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

## IV. ASSESSMENT

### IV.1. Relevant markets

12. The notified operation concerns only capacitors because while NEC TOKIN supplies various types of passive and electromechanical components, KEMET supplies only capacitors and NEC is not active in the supply of any passive and electromechanical components.

#### *IV.1.1. Product markets*

13. Capacitors are one of the five main categories of passive and electromechanical components. They serve to store, filter and regulate electrical energy and current flow. Capacitors can be made from various dielectrics, including tantalum, ceramic, glass, film, aluminium, niobium oxide, plastic, paper, barium titanate and other conductive materials.
14. In its most recent decision regarding passive and electromechanical components, the Commission contemplated, but ultimately left open, whether the market for capacitors should be further sub-divided depending on the specific dielectric used.<sup>5</sup>
15. The Notifying Parties submit that the relevant product market is the market for the supply of all capacitors. Alternatively, if the Commission were to define narrower product markets for the purpose of this case, the Notifying Parties submit that such a sub-division should be based on the dielectric used.
16. Respondents to the market investigation<sup>6</sup> unanimously considered that the market for capacitors should be further sub-divided based on the dielectric used. First, even if all types of capacitors display the same functionality, customers cannot easily switch between different types of dielectrics. Second, each type of dielectric capacitor targets specific market segments characterised by the presence of a different competitive landscape. Finally the prices of different dielectric types of capacitors vary due to different price trends of the underlying raw material.
17. Since the concentration does not raise serious doubts under any possible approach, the exact product market definition in this case can be left open.

#### *IV.1.2. Geographic markets*

18. In its most recent decision regarding passive and electromechanical components, the Commission considered the relevant geographic market for the supply of all capacitors to be at least EEA-wide, if not worldwide.<sup>7</sup>
20. The Notifying Parties submit that the relevant geographic market for all capacitors is worldwide in scope, in light of low import barriers, low transportation costs, technical

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<sup>5</sup> Case No. COMP/M.5255 - *TDK/EPCOS*, decision of 15 September 2008, recitals 12(i), 16 and 22.

<sup>6</sup> See responses to questions 6 and 7 of the questionnaire to competitors of 11 June 2012 and responses to questions 7 and 8 of the questionnaire to customers of 11 June 2012.

<sup>7</sup> Case COMP/M.5255 - *TDK/EPCOS*, decision of 15 September 2008, paragraphs 17 to 20.

standardisation and an absence of quotas or tariffs. Alternatively, if the Commission were to define narrower product markets for the purpose of this case on the basis of the dielectric used, the Notifying Parties submit that the relevant geographic markets for these sub-markets should also be at least EEA-wide, if not worldwide.

21. Respondents to the market investigation<sup>8</sup> unanimously confirmed the Notifying Parties' submissions.
22. Since the concentration does not raise serious doubts under any possible approach, the exact geographic market definition in this case can be left open.

## **IV.2. Competitive assessment**

### ***IV.2.1. Horizontal overlaps***

23. A horizontal overlap between KEMET and NEC TOKIN exists with regard to the supply of: (i) all capacitors; (ii) tantalum capacitors; and (iii) solid aluminium capacitors.

#### **IV.2.1.1. All capacitors**

24. The notified operation does not lead to any affected market on the potential market for all capacitors, both on an EEA-wide and worldwide basis.
25. The combined market share of the Notifying Parties in 2011 was approximately [10-20]% by value and [5-10]% by volume in the EEA, and approximately [5-10]% by value and [0-5]% by volume on a worldwide basis. The notified operation will lead to a market share increment of less than [0-5]% in both the EEA and on a worldwide basis.
26. In addition, the merged entity will continue to face competition from a number of capacitor suppliers both in the EEA and on a worldwide basis, including from TDK/Epcos, Murata, SEMCO, Kyocera/AVX, NCC, Rubycon and Taiyo Yuden.

#### **IV.2.1.2. Tantalum capacitors**

27. The overlap between the activities of the Notifying Parties on the potential market for tantalum capacitors does not give rise to any competition concerns, both on an EEA-wide and worldwide basis.
28. The combined market share of the Notifying Parties in 2011 for tantalum capacitors was approximately [30-40]% by value and [30-40]% by volume, both in the EEA and on a worldwide basis. The notified operation will lead to a market share increment of approximately [0-5]% in the EEA and [10-20]% on a worldwide basis.
29. However, the merged entity will continue to face competition from a number of tantalum capacitor suppliers, including from AVX ([20-30]%) and Vishay ([20-30]%) in the EEA, and from AVX ([20-30]%), Panasonic/Sanyo ([10-20]%), Vishay ([10-20]%) and Nichicon ([5-10]%) on a worldwide basis. Other major global tantalum

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<sup>8</sup> See responses to questions 9 and 10 of the questionnaire to competitors of 11 June 2012 and responses to questions 10 and 11 of the questionnaire to customers of 11 June 2012.

manufacturers include Holy Stone, Rohm Semiconductor and Samsung Electro-Mechanics. There are also numerous manufacturers of tantalum capacitors in China.

30. The Commission therefore considers that a sufficient large number of competitors will continue to compete with the merged entity in the market for tantalum capacitors, and that customers will be able to source their needs of tantalum capacitors from these competitors.
31. In addition, the vast majority of respondents to the market investigation were of the view that KEMET and NEC TOKIN are not each other's closest competitors, and that the notified operation will not have a negative effect on competition in relation to the supply of tantalum capacitors.

#### IV.2.1.3. Solid aluminium capacitors

32. The notified operation does not lead to any affected market on a potential market for solid aluminium capacitors, both on an EEA-wide and worldwide basis.
33. NEC TOKIN does not sell solid aluminium capacitors in the EEA and the combined market share of the Notifying Parties in 2011 was only [0-5]% by value and [0-5]% by volume on a worldwide basis. The notified operation will also lead to a market share increment of less than [0-5]% on a worldwide basis.
34. The merged entity will continue to face competition from a number of solid aluminium capacitor suppliers in both the EEA and on a worldwide basis, including from AVX, Vishay, Panasonic/Sanyo, Nichicon and SEMCO.

#### IV.2.2. *Vertical relationships*

35. The transaction will give rise to a vertical relationship between the supply by KEMET of tantalum powder and the supply by NEC TOKIN of tantalum capacitors. However, such a relationship will not give rise to any competition concerns on both a worldwide and EEA-wide basis.
36. First, the worldwide market for the supply of tantalum powder is dominated by two companies, Cabot and H.C. Starck, which together control approximately [80-90]% of that market. Niotan has an estimated market share of approximately only [0-5]%.
37. [...]
38. Finally, KEMET will, in any case, still need to purchase tantalum powder from other third parties in order to satisfy its production demand.

### V. **CONCLUSION**

39. For the above reasons, the Commission considers that the notified operation does not raise serious doubts as to its compatibility with the internal market.

40. It has therefore decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission  
(signed)*

*Joaquín ALMUNIA  
Vice-President*