

***Case No COMP/M.6685 - INGRAM MICRO/  
BRIGHTPOINT***

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: 11/10/2012

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## EUROPEAN COMMISSION

Brussels, 11.10.2012

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.6685 – INGRAM MICRO/ BRIGHTPOINT  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 07.09.2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the undertaking Ingram Micro, Inc. ("Ingram Micro", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertaking Brightpoint, Inc. ("Brightpoint", USA) by way of purchase of shares.

### **I. THE PARTIES**

2. Ingram Micro, a US-based company mainly active in the US, Europe, and Asia, is a wholesale distributor of Information Technology ("IT") products (PCs, servers, networking equipment, and software) and to a lesser extent of mobility/telecommunication and consumer electronic products.
3. Brightpoint, a US-based company, is a wholesale distributor of mobility/telecommunication (mainly feature phones and smartphones).

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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.

## II. THE OPERATION AND THE CONCENTRATION

4. Merger Sub, an Ingram Micro wholly-owned subsidiary, merges with Brightpoint. As a result of the merger, the Merger Sub will cease to exist as a separate corporate entity and Brightpoint will continue as the surviving corporation and wholly-owned subsidiary of Ingram Micro. Ingram Micro will therefore acquire sole control of Brightpoint.
5. The proposed concentration therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## III. EU DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million<sup>2</sup> (Ingram Micro: EUR 26 098 million, Brightpoint: EUR 3 768 million) and a combined aggregate EU-wide turnover of more than EUR 250 million each in 2011 (Ingram Micro: EUR [...], Brightpoint: EUR [...]). They did not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The concentration therefore has an EU dimension.

## IV. ASSESSMENT

### IV.1. RELEVANT MARKETS

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

*Wholesale distribution of all electronics products and related services versus narrower product segments*

7. According to the notifying party, the relevant product market comprises the wholesale distribution of all electronics products. Hence, a distinction between the wholesale distribution of IT products, mobility/telecommunication products, and consumer electronics products would not be appropriate. According to the notifying party, supply-side and demand-side considerations back this statement: (i) recent upstream technical developments, such as digitalisation, have blurred the traditional distinction between IT products, consumer electronic products and telecommunication products<sup>3</sup>; (ii) specialised retailers dedicated to one product segment have been replaced by large retailers and "e-tailers" that sell technical products from all traditional product groups.
8. In previous decisions, the Commission considered a separate market for the wholesale distribution of IT products<sup>4</sup>. Furthermore, related services such as after-sales support,

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<sup>2</sup> 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, p. 25).

<sup>3</sup> The Notifying party uses the term "mobility" rather than "telecommunication"; this includes devices such as mobile phones that access a mobile network provided by a Mobile Network Operator ("MNO").

<sup>4</sup> Commission decision of 24 March 2003 in Case COMP/M. 3107 – *Tech Data Corporation/Azlan Group plc.*; Commission decision of 5 October 2007 in Case COMP M. 4868 - *Avnet/Magirus EID*; Commission decision of 28 April 2008 in Case COMP/M. 5091 – *Tech Data/Scribona*; Commission decision of 19 May 2008 in Case COMP/M.5099 - *Arrow Electronics/Logix*; Commission decision of 2 July 2010 in Case COMP/M.5864 - *Avnet/Bell Micro*.

training and financial services to customers were also considered to be part of the same market<sup>5</sup>.

9. In previous decisions, the Commission has also considered the existence of separate markets along different IT product categories, but ultimately left open whether the market should be divided further according to segments<sup>6</sup>. Relevant categories of products previously considered include software, storage products, and servers.
10. The Commission also considered a separate market for the wholesale distribution of telecommunication products<sup>7</sup>.

#### *Distribution channels - Direct sales versus indirect sales*

11. The notifying party submits that the relevant product market should include both direct and indirect sales.
12. The Commission, in its previous decisions<sup>8</sup>, has left open whether direct sales should be included in the relevant product market but pointed out that the market investigation showed that direct and indirect sales are not fully interchangeable<sup>9</sup>.

#### *Provision of logistics services as a separate market*

13. The notifying party submits that the provision of logistics services is a different activity from distribution, and should as a result be treated as a separate market.
14. According to the notifying party, supply-side and demand-side consideration back this statement. In particular, providers of logistics services do not take credit risks and do not set the prices of the products transported. Furthermore, competitors are different in the provision of logistics and distribution services. Furthermore, customers also treat distributors and logistics providers differently (logistics services being arranged by supply chain management while purchases from distributors are made by procurement specialists).

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<sup>5</sup> Commission decision of 24 March 2003 in Case COMP/M. 3107 – *Tech Data Corporation/Azlan Group plc*.

<sup>6</sup> Commission decision of 27 October 2011 in Case No COMP/M.6323 – *Tech Data Europe/MuM VAD Business* paragraph 18; Commission decision of 22 September 2010 in Case No COMP/M.5903 – *Tech Data Europe/Brightstar/Triade Holding*; Commission decision of 2 July 2010 in Case No COMP/M.5864 – *Avnet/Bell Micro*; Commission decision of 26 June 2008 in Case No COMP/M.5162 – *Avnet/Horizon*; Commission decision of 19 May 2008 in Case No COMP/M.5099 – *Arrow Electronics/Logix*.

<sup>7</sup> Commission decision of 22 September 2010 in Case No COMP/M.5903 – *Tech Data/Brightstar Europe/Triade Holdings*.

<sup>8</sup> Commission decision of 27 October 2011 in Case No COMP/M.6323 – *Tech Data Europe/MuM VAD Business*, Commission decision of 19 May 2008 in Case No COMP/M.5099 – *Arrow Electronics/Logix*, Commission decision of 5 October 2007 in Case No COMP M.4868 – *Avnet/Magirus EID*.

<sup>9</sup> In one of its several decisions relating to the wholesale distribution of IT products (decision of 27 November 2011 in Case No COMP/M.6323 – *Tech Data/MuM VAD Business*), the Commission has left open whether the wholesale distribution of IT products and services should be further segmented according to sales to "value added distributors" (VADs) and "value added resellers" (VARs). For the purpose of the assessment of the present case, the Notifying Party provides the market shares of the merging parties for all possible market segments.

15. In previous decisions, the Commission treated logistics as part of the market for the wholesale distribution of IT products<sup>10</sup>.

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

16. The notifying party submits that the relevant geographic market is EEA-wide. This is because: (i) there are few technical barriers to the use of products across the different Member States; (ii) different product versions are available in several languages at no extra cost; (iii) OEMs are increasingly looking to award distribution contracts for an area which is broader than national; (iv) there is evidence that distributors seek to purchase their products on a broader than national basis; (v) distributors (including the merging parties) sell on a cross-border basis.
17. In previous decisions, while the geographic market definition was ultimately left open, the Commission indicated that the geographic market was probably national in scope due to: (i) the language differences; (ii) the national organization of distributors and re-sellers; (iii) the methods of delivery; and (iv) the after-sale services.<sup>11</sup>

#### ***IV.1.3 Conclusion on the Market Definition***

18. For the purpose of this decision, the exact product and geographic market definition can be left open, since, under any possible alternative definition the proposed concentration does not raise serious doubts as to its compatibility with the internal market.

### **IV.2. COMPETITIVE ASSESSMENT**

19. The activities of the merging parties overlap horizontally both at EEA and national level on the markets for the wholesale distribution of consumer electronics products, mobility/telecommunication products, IT products and some of its segments.

#### ***IV.2.1. Wholesale distribution of electronics products***

20. On a market for the wholesale distribution of electronics products including either direct and indirect sales or indirect sales only, the combined market share of the merging parties is below 15% at the EEA level and in each of the Member States where the activities of the merging parties overlap. These markets will therefore not be affected by the transaction.

#### ***IV.2.2. Wholesale distribution of consumer electronics products***

21. On a market for the wholesale distribution of electronics products including either direct and indirect sales or indirect sales only, the combined market share of the merging parties is below [0-5]% at the EEA level and in each of the Member States where the activities of the merging parties overlap.<sup>12</sup> These markets will therefore not be affected by the transaction.

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<sup>10</sup> Commission decision of 19 May 2008 in Case No COMP/M.5099 - *Arrow Electronics/Logix*.

<sup>11</sup> Commission decision of 19 May 2008 in Case No COMP/M.5099 - *Arrow Electronics/Logix*.

<sup>12</sup> The only exception is Germany where the parties combined market share amounts to [0-5]%.

### *IV.2.3. Wholesale distribution of mobility/telecommunication products*

22. On a market for the wholesale distribution of mobility/telecommunication products including direct and indirect sales, the merging parties' combined market shares in 2011 would amount to [0-5]% in the EEA and it would remain below 15% in each of the Member States where the parties' activities overlap, except in Sweden ([10-20]%). However, in Sweden the increment in market shares would be limited (less than [0-5]%) due to Ingram Micro's limited activity in this market.
23. On a market for the wholesale distribution of mobility/telecommunication products including indirect sales only, the merging parties' combined market shares in 2011 would amount to [0-5]% at EEA level and it would remain below 15% in each of the Member States where the parties' activities overlap, except in Denmark ([40-50]%), Finland ([10-20]%), and Sweden ([40-50]%). However, the increment in market shares would be limited in these three Member States ([0-5]% in each Member State) due to Ingram Micro's limited activity in this market.
24. Moreover, post-transaction the combined entity would continue to face competition from well-established pan-European distributors and a number of nationally or regionally focused distributors in all the affected national markets.
25. In Denmark, the combined entity would face competition from 20:20<sup>13</sup> (with distribution deals with all major producers, such as Samsung, Nokia, HTC and LG), Tech-Data<sup>14</sup> (with distribution deals with Samsung), and ALSO-Actebis<sup>15</sup> (with distribution deals with Samsung and Nokia).
26. With regard to Finland, the combined entity would face competition from Oy Anglo Nordic<sup>16</sup> (with distribution deals with Nokia), Tech Data (with distribution deals with Samsung), ALSO-Actebis (with distribution deals with Samsung, LG, Huawei, and HTC), and Telia-Sonera (an MNO with distribution deals with numerous vendors).
27. Finally, in Sweden, the combined entity would face competition from 20:20 (which distributes all vendors' products with the exception of RIM and Motorola). Tech-Data (with distribution deals with Samsung) and Order Nordic<sup>17</sup> (distributing Sony, HTC, and Samsung products).

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<sup>13</sup> 20:20 is a UK based distributor of mobile phones products with operations in UK, Spain, Sweden, Denmark, Finland, Hong Kong, Hungary, Germany, the Netherlands, Norway, Poland, Portugal, Romania, and the United Arab Emirates.

<sup>14</sup> Tech Data Corporation is a US-based company active in the wholesale distributors of technology products. Tech Data Europe is mainly active in the wholesale distribution in the EEA of IT products and consumer electronics.

<sup>15</sup> ALSO-Actebis, headquartered in Switzerland, is a wholesale distributor of IT and consumer electronics products with operations in Austria, Denmark, Estonia, Finland, France, Germany, Latvia, Lithuania, the Netherlands, Norway, Sweden and Switzerland.

<sup>16</sup> Oy Anglo Nordic is a Finnish distributor of consumer products and mobility/telecommunication products.

<sup>17</sup> Order Nordic AB is a Swedish company active in the distribution of consumer electronics and mobile phone products.

28. In addition, MNOs, purchasing directly from manufacturers and reselling directly to customers or resellers, exert competitive pressure on indirect sales.
29. The proposed concentration is therefore unlikely to raise serious doubts on the market for the wholesale distribution of mobility/telecommunication products in the internal market or any substantial part of it.

#### *IV.2.4. Provision of logistics services*

30. In the potential market for the provision of logistic services, the merging parties' combined market shares in 2011 would remain below [5-10]% in the EEA and in each of the Member States where the parties' activities overlap. These markets will therefore not be affected by the transaction.

#### *IV.2.5. Wholesale distribution of IT products and narrower product segments*

##### *Direct and Indirect Sales*

31. On a market for the wholesale distribution of IT products, including both direct and indirect sales (including logistics), the merging parties' combined market shares in 2011 would remain below 15% in the EEA and in each of the Member States where the parties' activities overlap.<sup>18</sup> These markets will therefore not be affected by the transaction.

##### *Indirect Sales*

32. In the potential market for the wholesale distribution of IT products, including indirect sales only (including logistics), the merging parties' combined market shares in 2011 would remain below 15% in the EEA and in each of the Member States where the parties' activities overlap, except in Austria ([10-20]%). However, the increment in market shares would be limited in Austria (less than [0-5]%) due to Brightpoint's limited presence in the market<sup>19</sup>.
33. The proposed concentration is therefore unlikely to raise serious doubts on the market for the wholesale distribution of all IT products in the internal market or any substantial part of it.

##### *Wholesale Distribution of Laptops (indirect sales)*

34. In the potential market for the wholesale distribution of laptops, including indirect sales only, the combined market share of the merging parties is [5-10]% at EEA level and below 15% in each of the Member States where the activities of the parties overlap with the sole exception of Austria ([20-30]%) and Spain ([10-20]%). However, the increment in market shares would amount to [0-5]% in each of these Member States due to the limited presence of Brightpoint in these markets.

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<sup>18</sup> If logistics were to be excluded, the merging parties' combined market shares in 2011 would remain below 15% at EEA level and in each of the Member States where the parties' activities overlap with an increment of less than [0-5]% in each market.

<sup>19</sup> If logistics were to be excluded, the merging parties' combined market shares in 2011 would remain below 15% at EEA level and in each of the Member States where the parties' activities overlap with the sole exception of Austria ([10-20]%) where however the increment is negligible (less than [0-5]%).

35. The proposed concentration is therefore unlikely to raise serious doubts on the market for the wholesale distribution of laptops in the internal market or any substantial part of it.

*Wholesale Distribution of Tablets (indirect sales)*

36. Similarly, in the potential market for the wholesale distribution of tablets, including indirect sales only, the combined market share of the merging parties is [5-10]% at EEA level and below 15% in each of the Member States where the activities of the parties overlap with the exception of Germany ([20-30]%) and Sweden ([10-20]%). However, the increment in market shares would be limited in each of these Member States as Brightpoint's market shares are small (respectively [0-5]% in Germany and [0-5]% in Sweden).
37. The notifying party considers that in all affected markets/segments, a number of market characteristics make it unlikely that the merged entity would be able to exercise market power: (i) Manufacturers/vendors typically use non-exclusive distribution agreements to increase market penetration and are able to influence prices at wholesale level; (ii) Manufacturers and customers/retailers can easily switch to other distributors; (iii) Direct sales exert competitive pressure on indirect sales; (iv) Competitors are large distributors offering a full range of products; (iv) The distribution of computer/ IT products is characterized by substantial intra-brand and inter-brand competition. (v) Barriers to entry are low so that other players can expand the range of distributed products; (vi) resellers themselves exercise a competitive constraint over distributors
38. In the Commission's recent market investigations in this sector in *Avnet/Magirus*, *Arrow Electronics/Altimate Group*, *Avnet/Bell Micro* – with a particular focus on servers and data storage products segments- respondents confirmed that vendors in a number of EEA countries have contractual relationships with multiple partners in every country which can be terminated for no cause with a notice period (generally 60 to 90 days) and at little cost.<sup>20</sup> Second, the vast majority of respondents in these cases considered that the distribution of servers and storage products are characterised by substantial intra-brand and inter-brand competition.<sup>21</sup> Third, the Commission concluded in its decisions in cases *Avnet/Bell Micro* and *Arrow Electronics/Altimate Group* that barriers to entry (and expansion) in the distribution of specific IT products are relatively low<sup>22</sup>. The only potential barrier to entry for a distributor is the need to obtain vendor licences to distribute products within a particular geographic area. The great majority of the responding vendors to the market investigation in *Avnet/ Bell Micro* had explicitly stated that they would appoint additional distributors or value-added resellers if the merged entity increased the prices at which it sells their products<sup>23</sup>.
39. The concentration is therefore unlikely to raise serious doubts on the potential market for the wholesale distribution of tablets.

## V. CONCLUSION

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<sup>20</sup> Commission decision of 2 July 2010 in Case No COMP/M.5864 – *Avnet/Bell Micro*

<sup>21</sup> Commission decision of 2 July 2010 in Case No COMP/M.5864 – *Avnet/Bell Micro*; Commission decision of 21 September 2012 in Case No COMP/M.6577 – *Avnet/Magirus*,.

<sup>22</sup> Commission decision of 25 June 2012 in Case No COMP/M.6515 – *Arrow Electronics/Altimate Group*; Commission decision of 2 July 2010 in Case No COMP/M.5864 – *Avnet/Bell Micro*.

<sup>23</sup> Commission decision of 2 July 2010 in Case No COMP/M.5864 – *Avnet/Bell Micro*.



40. For the above reasons, the Commission considers that the notified concentration does not raise serious doubts as to its compatibility with the internal market.
41. It has therefore decided not to oppose the notified concentration 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*