



EUROPEAN COMMISSION

COMPETITION DG

Policy and Strategy

**Antitrust and Mergers – Policy and Scrutiny**

## **OPINION**

### **OF THE ADVISORY COMMITTEE ON MERGERS AT ITS MEETING OF 9 NOVEMBER 2011 CONCERNING A DRAFT DECISION RELATING TO CASE COMP/M. 6203 – WESTERN DIGITAL IRELAND/ VIVITI TECHNOLOGIES**

**RAPPORTEUR: ITALY**

#### *Concentration*

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The Advisory Committee agrees with the Commission that the notified transaction has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

#### *Market definition*

3. The Advisory Committee agrees with the Commission's definitions of the relevant product markets in the draft Decision.

In particular, concerning the product market definition, the Advisory Committee agrees that the impact of the proposed transaction must be assessed on the following markets:

- (a) The market for Mission Critical Enterprise HDDs;
  - (b) The market for 3.5" Business Critical HDDs;
  - (c) The market for 3.5" Desktop HDDs;
  - (d) The market for 3.5" CE HDDs;
  - (e) The market for 2.5" Mobile HDDs;
  - (f) The market for 2.5" CE HDDs; and
  - (g) The XHDD market.
4. The Advisory Committee agrees with the geographic market definition for:
    - (a) HDDs; and
    - (b) XHDDs.

#### *Counterfactual*

5. The Advisory Committee agrees with the Commission that, for the purpose of the competitive assessment of the proposed transaction, the most appropriate approach is to adopt the priority principle ("first come, first served") based on the date of notification and that the proposed transaction must be assessed taking into account the

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Seagate/Samsung transaction which has been approved by the Commission decision of 19 October 2011 (Case No COMP/M.6214 Seagate/HDD Business of Samsung). One Member State disagrees.

### *Competitive assessment*

#### Non-coordinated effects

6. The Advisory Committee agrees with the Commission's conclusion that the proposed transaction is not likely to give rise to non-coordinated effects that would significantly impede effective competition on the worldwide markets for Mission Critical HDDs, 2.5" Mobile HDDs and 2.5" CE HDDs.
7. The Advisory Committee agrees with the Commission's assessment that the proposed transaction as notified is likely to give rise to a significant impediment to effective competition as a result of non-coordinated effects in the worldwide markets for 3.5" Desktop HDDs, 3.5" CE HDDs and 3.5" Business Critical HDDs.
8. The Advisory Committee agrees with the Commission's assessment that although there are indications that the proposed transaction as notified may give rise to a significant impediment to effective competition as a result of non-coordinated effects in the EEA-wide XHDD market, in light of the remedies removing the significant impediment to effective competition in the upstream worldwide markets for 3.5" Desktop HDDs, 3.5" CE HDDs and 3.5" Business Critical HDDs, the proposed transaction is in any event not likely to give rise to a significant impediment to effective competition in the downstream EEA-wide XHDD market.

#### Coordinated effects

9. The Advisory Committee agrees with the Commission's assessment that the proposed transaction is not likely to give rise to coordinated effects that would significantly impede effective competition on the worldwide HDD markets and on the EEA-wide XHDD market.

#### Vertical effects

10. The Advisory Committee shares the Commission's conclusion that the proposed transaction is not likely to significantly impede effective competition as a result of the foreclosure of manufacturers of components (heads and media) from a sufficient customer base which in turn would undermine Toshiba's ability to compete in the HDD markets.

### *Efficiencies*

11. The Advisory Committee agrees with the Commission's view that the alleged efficiencies brought about by the proposed transaction do not allow the Commission to declare the proposed transaction, as notified, compatible with the internal market with respect to the worldwide markets for 3.5" Desktop, 3.5" CE and 3.5" Business Critical HDDs and the EEA-wide market for XHDDs.

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*Remedies*

12. The Advisory Committee agrees with the Commission's view that the remedy package submitted by the Parties fully addresses the competition concerns identified by the Commission on the worldwide market for 3.5" Business Critical HDDs, worldwide market for 3.5" Desktop HDDs, the worldwide market for 3.5" CE HDDs and the EEA-wide market for XHDDs.

*Conclusion*

13. The Advisory Committee agrees with the Commission's conclusion that, subject to the full compliance with the commitments offered by the Parties, the proposed transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it.
14. The Advisory Committee agrees with the Commission's conclusion that the notified concentration must be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
15. The Advisory Committee recommends the publication of its Opinion in the Official Journal of the European Union.

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