

***Case No COMP/M.5903 -
TECH DATA EUROPE/
BRIGHTSTAR
EUROPE/ TRIADE
HOLDING***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/09/2010

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EUROPEAN COMMISSION

Brussels, 22.09.2010

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.5903 – Tech Data Europe/ Brightstar Europe/ Triade Holding
Notification of 18/08/2010 pursuant to Article 4 of Council Regulation No 139/2004¹**

1. On 18 August 2010, 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 (i) the undertaking Tech Data Europe GmbH ("Tech Data Europe", Germany) controlled by Tech Data Corporation (United States of America) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of Triade Holding B.V. ("Triade Holding", The Netherlands) by way of purchase of shares, and (ii) the undertaking Brightstar Europe Ltd ("Brightstar Europe", United Kingdom) controlled by Brightstar Corporation (United States of America) and by Tech Data Corporation (United States of America) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of Triade Holding by way of purchase of shares.

¹ 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.

I. THE PARTIES

2. Tech Data Europe is active in the wholesale distribution of (and related services for) IT products, and to a minor extent, consumer electronics in the EEA. It is a subsidiary of Tech Data Corporation, an international group of companies involved in the wholesale distribution of IT products and, to a minor extent, consumer electronics.
3. Brightstar Europe is active as a wholesale distributor of mobile telephones, tariffs/contracts and accessories in a number of EEA Member States, primarily the UK and Germany. Brightstar Europe is a 50/50 joint venture between Brightstar Corporation and Tech Data Corporation. Brightstar Corporation is active in the provision of supply chain and distribution services for the wireless telecommunication industry.
4. Triade Holding is active in the wholesale distribution of (and related service for) consumer electronics, mobile telephone equipment and accessories and, to a minor degree, IT products.

II. THE OPERATION AND THE CONCENTRATION

5. The transaction consists of two parts, which are interdependent. Both parts concern the acquisition of (parts of) the Triade group of companies.
6. Before completion of the transaction, Triade Holding will sell its shareholdings in two of its subsidiaries to a newly incorporated limited liability company [...]. The parties confirmed that the sale of these two subsidiaries is not part of the notified transaction and that it is not subject to merger control by the European Commission because it does not pass the thresholds laid down in the Merger Regulation or the Dutch Competition Authority.
7. The two parts of the notified transaction are subject to one integrated Share Purchase Agreement (SPA) concluded between Tech Data Europe and Brightstar Europe as the purchasers on the one hand and Triade Holding's shareholders as the sellers on the other hand. The SPA specifies that Triade Holding's shareholders sell and undertake to transfer the shares in Triade Holding to Tech Data Europe and that Tech Data purchases and undertakes to accept the shares. Similarly the SPA specifies that Triade Holding sells and undertakes to transfer the shares of two subsidiaries of Triade Holding to Brightstar Europe on the completion date, i.e. the day on which the transaction shall be consummated, immediately prior to the transfer of the shares in Triade Holding to Tech Data Europe and that Brightstar Europe purchases and undertakes to accept the shares of these two subsidiaries on the completion date. The SPA does not provide for the possibility that only one of the two acquisitions is completed and the other is not.
8. According to the agreement, Tech Data Europe will acquire control over Triade Holding and five of its subsidiaries² by acquisition of 100% of the shares in Triade Holding. Before control over Triade Holding is transferred to Tech Data Europe, Triade Holding

² (1) Rosenmeier IT Holdings AS (Denmark), including its subsidiaries Rosenmeier Electronics AS and Triade Rosenmeier Electronics AS (Norway); (2) Hakro-Oosterberg-Nijkerk B.V.; (3) European Communication Association B.V. with its subsidiaries Quote Components B.V. and European Communication Association Productie B.V.; (4) Battrex B.V.; (5) Mobile Communication Company Spain SL.

will have divested 100% of its shares in two subsidiaries³ of Triade Holding to Brightstar Europe.

9. The parties estimate that the total purchase price will be approximately EUR [...].
10. Recital 39 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Jurisdictional Notice")⁴ states that it is appropriate to treat as a single concentration transactions that are closely connected in that they are linked by condition. Furthermore, recital 42 of the Jurisdictional Notice states that transactions involving the acquisition of joint control of one part of an undertaking and sole control of another part constitute only one concentration if they are interdependent and if the undertaking acquiring sole control is also acquiring joint control⁵.
11. The Commission considers that Tech Data Corporation has sole control over Tech Data Europe, which will acquire sole control of the Triade Holding. As a result, Tech Data Corporation will acquire sole control of the Triade Holding. Tech Data Corporation also has joint-control of Brightstar Europe, which will acquire sole control over two subsidiaries of the Triade Holding. As a result, Tech Data Corporation will acquire joint control of the two subsidiaries of the Triade Holding sold to Brightstar Europe.
12. Given that the two transactions are subject to one SPA and that the SPA does not provide for the possibility that only one of the two acquisitions is completed and the other is not, it can be concluded that the two transactions are interdependent. It can also be concluded that Tech Data Corporation acquires sole control over the Triade Holding and joint control over the two subsidiaries of the Triade Holding sold to Brightstar Europe. The two transactions can therefore be considered as one concentration within the meaning of Article 3, paragraph 1 (b) of the Merger Regulation.

III. EU DIMENSION

13. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million⁶ (Tech Data Corporation: EUR [...], Brightstar Corp.: EUR [...], Triade Holding (the subsidiaries acquired by Tech Data Europe and Brightstar Europe) EUR [...]). Two of the undertakings concerned have a Community-wide turnover of more than EUR 250 million (Tech Data Corporation EUR [...], Triade Holding (the subsidiaries acquired by Tech Data Europe and Brightstar Europe) EUR [...]) while Brightstar Europe

³ (1) Mobile Communicatio Company Nederland B.V, including ist subsidiary AVC Nederland B.V. and (2) Mobile Communication Company Belgium N.V.

⁴ OJ C 95, 16.4.2008, p.1.

⁵ See recitals 39 and 42 of the Jurisdictional Notice.

⁶ 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).

has no Community turnover⁷. Triade Holding (the subsidiaries acquired by Tech Data Europe and Brightstar Europe) achieves more than two-thirds of its aggregate Community-wide turnover within the Netherlands but the other undertakings do not. The notified operation therefore has an EU dimension.

IV. COMPETITIVE ASSESSMENT

1. *Product market definition*

14. The parties submit that the relevant product market should be the market for the wholesale distribution of electronic products. They submit that a distinction between different product groups is no longer appropriate as upstream, recent technical developments such as digitalisation have blurred the traditional distinction between IT products, consumer electronics and telecom products. They also submit that downstream, 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.
15. However, they further submit that should the Commission consider such a product market definition as too broad, the relevant product markets should be the wholesale distribution markets for (i) IT products, (ii) consumer electronics, and possibly (iii) (mobile) telephone equipments. Furthermore, the relevant product markets should include indirect sale as well as direct sales from the manufacturer to the consumers.
16. In previous decisions, the Commission has defined a separate market for the wholesale distribution of IT products⁸. The Commission left open whether the market should be divided further according to segments.
17. In *Arrow Electronics/Logix*⁹ the Commission 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.
18. In any event, the definition of the product market can be left open in this case as no competition concerns arise under any possible product market definition.

2. *Geographic market definition*

19. The parties submit that the relevant geographic market is EEA wide.
20. In previous decisions, the Commission indicated that the geographic market was probably national in scope, while the ultimate geographic market definition was left open¹⁰.

⁷ Brightstar Europe carries out its activities primarily through dedicated Brightstar business units within local Tech Data Europe companies. In the audited financial accounts the turnover of these business units is reported under the Tech Data Europe company.

⁸ Commission decision of 19 May 2008 in Case COMP/M. 5099 - *Arrow Electronics/Logix*.; Commission decision of 5 October 2007 in Case COMP M. 4868 - *Avnet/Magirus EID*.

⁹ Commission decision of 19 May 2008 in Case COMP/M. 5099 - *Arrow Electronics/Logix*.

¹⁰ Commission decision of 19 May 2008 in Case COMP/M. 5099 - *Arrow Electronics/Logix*.

21. In any event, the definition of the geographic market can be left open in this case as no competition concerns arise under any possible geographic market definition.

3. *Competitive assessment*

22. The parties have calculated their combined market share taking into account the market share of Tech Data Europe, Brightstar Europe as well as the market share of the subsidiaries of the Triade Holding that will be acquired by Tech Data Europe and of the subsidiaries of the Triade Holding that will be acquired by Brightstar Europe.

23. According to its financial accounts, Brightstar Europe does not achieve any turnover in the European Union. This is because Brightstar Europe does not have any business units on its own but executes its distribution activities primarily through dedicated Brightstar business units within local Tech Data Europe companies. While these business units are, from a formal point of view, part of the local Tech Data Europe companies, they report directly to and receive instructions as regards their day-to-day commercial activities from Brightstar Europe's management. For that reason, the parties consider that from a commercial or economic perspective, the Brightstar business units rather "belong to" Brightstar Europe than to Tech Data Europe.

24. For the calculation of the market shares the parties have therefore chosen to separate the turnover related to Tech Data Europe's commercial activities from the turnover related to Brightstar Europe's commercial activities as in their view this provides the best approximation of the economic reality. As a result, the market share figures of Tech Data Europe presented below are based on the turnover achieved by Tech Data Europe, exclusive of the turnover of Brightstar Europe's business units within these Tech Data Europe companies. Conversely, the market shares for Brightstar Europe are based on the turnover of the Brightstar business units within the Tech Data Europe companies.

25. In any event, the Commission considers that the allocation of turnover between Tech Data Europe and Brightstar Europe for the determination of their respective market shares has no impact on the competitive assessment as it does not affect the combined market share of the parties and the increment of the market share related to this transaction.

3.1. Analysis based on an EEA-wide geographic market

26. The parties submit that their combined market share after the transaction will be below 15% in the EEA under any possible product market definition.

Table 1 – Combined market share of the parties

EEA	Tech Data Europe	Brightstar Europe	Triade - subsidiaries that will be acquired by Tech Data Europe	Triade - subsidiaries that will be acquired by Brightstar Europe	Combined
Electronic products as a whole	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
IT products (direct and indirect sales)	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%
IT products (only indirect sales)	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%
Consumer electronics (only indirect sales)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Telecommunication (only indirect sales)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: notifying parties' calculation based on EITO press release: http://www.eito.com/pressinformation_20091112.htm. The split between total IT market and indirect IT market is based on the IDC IT Spending in Western Europe report, December 2009.

27. The Commission notes that the market shares provided by the parties for the wholesale market for consumer electronics and for telecommunication only include indirect sales. This is however a narrower market definition than if direct sales were included and the parties would have an even lower share in a market that would include direct sales.
28. On the basis of the above, the Commission notes that none of the relevant product markets are affected. Therefore, the proposed transaction is unlikely to have any anti-competitive effect on an EEA-wide market for the wholesale of electronic products as a whole or on an EEA-wide market for IT products, consumer electronics products, and telecommunication products.

3.2. Analysis based on national geographic markets

29. The parties submit that the activities of the subsidiaries of Triade Holding that will be acquired by Tech Data Europe and by Brightstar Europe overlap with the activities of Tech Data Europe and Brightstar Europe in Belgium, Denmark, Luxembourg, and the Netherlands.
30. Under the assumption of national markets, the parties submit that their combined market shares post-transaction will be insignificant, and that they will not exceed 15% under a wide product market definition including the distribution of all electronic products. Under a narrow product market definition, their market shares will only exceed 15% in the following markets in Belgium, Denmark and the Netherlands:

Table 2 – Combined market share of the parties under a narrow product market definition

	Tech Data Europe	Brightstar Europe	Triade - subsidiaries that will be acquired by Tech Data Europe	Triade - subsidiaries that will be acquired by Brightstar Europe	Combined
BE – IT products (only indirect sales)	[20-30]%	-	-	[0-5]%	[20-30]%
NL – IT products (only indirect sales)	[10-20]%	-	[0-5]%	[0-5]%	[20-30]%
NL – Telecommunication (only indirect sales)	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%
DK - IT products (only indirect sales)	[10-20]%	[0-5]%	[0-5]%	-	[10-20]%

Source: notifying parties' calculation based on IDC report, December 2009 for IT products and on GfK TEMAX "Technical Market Report Q4 2009", for consumer electronics and telecommunication products.

3.2.1. Belgium

31. The highest combined market share of the parties ([20-30]%) will be reached in the wholesale indirect distribution of IT products in Belgium. However, the parties submit that the increment in the market share is minimal, amounting to only [0-5]% of the market. They also submit that, Ingram Micro (23-26% market share), Avnet-Bell Micro (10-12% market share) and Copaco (8-10% market share) will remain significant competitors of the parties post-transaction¹¹.
32. The market investigation confirmed that the transaction should not raise concern as the parties will only acquire a small competitor, and that there will remain other significant competitors post-transaction in this market, including the market leader, Ingram Micro, and a smaller but growing competitor, Copaco.
33. Based on the fact that the combined market share of the parties post-transaction will remain under 30%, that the transaction - with a market share increment of [0-5]% - will not change the structure of the market, and that there will remain a number of significant competitors to the parties after the transaction, it can be concluded that the transaction is unlikely to raise concerns in the wholesale indirect distribution of IT products in Belgium.

3.2.2. Netherlands

34. In the wholesale indirect distribution of IT product in the Netherlands, the combined market share will be [20-30]% with an increment of [0-5]% from Triade Holding. According to the parties, the major competitors in this market in the Netherlands are Copaco with an

¹¹ The market shares of the competitors are the parties' estimates.

estimated market share of around 14-17%, Ingram with an estimated market share of around 12-16%, and ETC with an estimated market share of 5-9%¹².

35. As regards the wholesale indirect distribution of IT products, the Commission notes that the combined market share of the parties will remain modest ([20-30]%) and well below the level at which unilateral effects are presumed. Furthermore, there will remain significant competitors such as Copaco, Ingram and ETC on the market after the transaction.
36. The market investigation confirmed that the transaction should not raise concerns as the parties will only acquire a small competitor, and that there will remain other competitors post-transaction in this market, including Copaco, ETC and Ingram Micro.
37. In the wholesale distribution of telecommunication products in the Netherlands, the parties submit that the market share increment is low, as the market share of Tech Data Europe and Brightstar Europe is below [0-5]% before the transaction.
38. As regards the wholesale distribution of telecommunication products, the Commission notes that the combined market share of the parties will only be slightly above 15% post-transaction ([10-20]%) and well below the level at which unilateral effects are presumed. Furthermore, there will remain sufficient other competitors such as Copaco (6-8% market share) and Brightpoint (4-6%).
39. The market investigation confirmed that the transaction should not raise concerns.
40. Based on the above, it can be concluded that the transaction is unlikely to raise concerns in the wholesale indirect distribution of IT products and of telecommunication products in the Netherlands.

3.2.3. Denmark

41. In the wholesale indirect distribution of IT products in Denmark the combined market share will be [10-20]% with an increment of [0-5]% from Triade Holding. According to the parties, the major competitors in Denmark are Actebis with an estimated market share of around 30-45% and Arrow with an estimated market share of around 12-18%¹³.
42. The market investigation confirmed that the transaction should not raise any competition concerns as the parties will not become the largest wholesaler of IT products in Denmark, and that there will remain other significant competitors post-transaction in this market. Furthermore, the Commission notes that the combined market share of the parties will only be slightly above 15% post-transaction.
43. Based on the above, it can be concluded that the transaction is unlikely to raise concerns in the wholesale market for the indirect distribution of IT products in Denmark.
44. Therefore, the Commission comes to the conclusion that the proposed transaction does not raise serious doubts in Belgium, the Netherlands and Denmark for the wholesale of IT and telecommunication products.

¹² The market shares of the competitors are the parties' estimates.

¹³ The market shares of the competitors are the parties' estimates derived from the (public) annual accounts 2009 of the companies mentioned.

VI. CONCLUSION

45. For the above reasons, the European Commission has 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 European Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European
Commission