EN

Case No COMP/M.5385 - AVNET / ABACUS

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REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: **Case No COMP/M.5385 – Avnet/ Abacus**
Notification of 4 December 2009 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 4 December 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Avnet Inc. ("Avnet", United States) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Abacus Group plc ("Abacus", United Kingdom) by way of a public bid announced on 10 October 2008. Avnet and Abacus are together referred to below as "the parties".

I. THE PARTIES

2. **Avnet[2]** is a distributor of electronic components, computer products and technology services. Avnet through its Electronics Marketing division ("EM") distributes a wide range of electronic components, including semiconductors, interconnect, passive and electromechanical devices, radio frequency and microwave products. It also distributes some embedded products, including displays, embedded boards and systems and networking devices.

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1 OJ L 24, 29.1.2004 p. 1.

2 Avnet is a public company listed on the New York Stock Exchange. It is not controlled by any company or any person alone or jointly, directly or indirectly.

3. **Abacus**[3] is a distributor of electronic components in ten EEA countries[4] with a very limited and complementary manufacturing/assembly capability. It also has a customer and supplier support centre in Hong Kong to liaise with Far East suppliers and to ease the transition by existing customers off-shoring their manufacturing to Asia. Abacus offers electronic component distribution, own brand products, distribution of displays, embedded computing and wireless communications. Abacus' manufacturing activities are complementary to its distribution business and it focuses on (i) manufacturing a small range of filters and connectors, and (ii) carrying out the assembly work to customer specifications.

II. THE CONCENTRATION

4. The proposed transaction concerns the acquisition of sole control by Avnet over Abacus, which will take place through a voluntary takeover bid announced on 10 October 2008 and issued by Avnet Holdings Limited, a wholly-owned subsidiary of Avnet, for all issued and to be issued shares in Abacus.

5. Thus, the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover for the year 2007 of more than EUR 5 000 million[5] (Avnet[6]: EUR 12 208 million, Abacus[7]: EUR 419 million). Each of Avnet and Abacus has a Community-wide turnover for the year 2007 in excess of EUR 250 million (Avnet: EUR […] million, Abacus: EUR […] million), without achieving more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

7. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

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3 Abacus is listed on the London Stock Exchange. It is not controlled by any undertaking or any person alone or jointly, directly or indirectly.

4 Austria, Denmark, Finland, France, Germany, Italy, Netherlands, Sweden, United Kingdom and Norway.

5 Turnover calculated in accordance with article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice of 10 July 2007.

6 Fiscal year 2008, ended 31 June 2008.

7 Fiscal year 2007 ended 30 September 2007.

V. COMPETITIVE ASSESSMENT

1. Relevant markets

Product Markets

8. Both parties are active in the distribution of electronic components. According to Commission previous decisions[8], the wholesale distribution of electronic components includes the following three main categories: (i) semiconductors (ii) interconnect components and (iii) electromechanical components.

9. In previous decisions[9], the Commission has assumed a product market comprising all three categories of electronic components, on the ground that it is common practice with respect to distribution businesses to define product markets covering a range of different products even if these are usually not substitutable from the demand-side perspective. The reason is that the market players do not mainly compete against each other with specific products but with a range of products and services, even if the assortments offered may differ from one another.

10. In the present case, the parties submit that the electronic products supplied by the industry typically include the following four main categories: (i) semiconductors[10], (ii) passive components[11], (iii) electromechanical and interconnect components[12], and (iv) embedded products[13].

11. The respondents to the market investigation generally confirmed the categorisation of electronic products provided by the parties.

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[8] Case COMP/M.3820 – Avnet/Memec, COMP/M.2134 – Avnet/Veba Electronics, COMP/M. 1871 - Arrow Electronics/Tekelec.

[9] Case COMP/M.3820 – Avnet/Memec , Case IV/M.1700 - Avnet/Eurotronics, Case COMP/M.1871 - Arrow Electronics/Tekelec; Case COMP/M.2134 - Avnet/Veba Electronics and Case COMP/M.2136 - Schroder Ventures/Memec

[10] Semiconductors are materials which have conductivity between conductors (metals) and non-conductors or insulators. They are extensively used in the manufacture of electronic devices. There are a wide variety of semiconductors including discretes, analogue IC, programmable logic, MOS Micro Logic devices and memory devices.

[11] Passives are defensive components which include capacitors, resistors, and electronic filters.

[12] Electromechanical products include a wide range of other components, including relays, switches, circuit protection devices (e.g. fuses), batteries, racks etc. Interconnect components includes all types of connectors. Connectors are also a form of electromechanical product and since they represent the largest category of electromechanical products, they are often classified separately. Many companies and market consultancies, including Europartners include connector sales within the electromechanical product category.

[13] Embedded products include semi-finished board products, complete embedded boards and systems composed of passive and active components, including semiconductor. The product category also extends to displays (LCD) and some industrial networking technology.

12. Avnet and Abacus are both distributors of electronic components in the four categories described above. Avnet is also active in the distribution of computer products and in technology services, markets in which Abacus is not active. Conversely, Abacus also has minor activities in manufacturing/assembly of electronic components[14], a market in which Avnet is not active. Thus, the parties also define the market for the distribution of electronic components as the relevant product market for the purpose of the present transaction.

13. According to the parties, distributors of electronic components provide customers with a "one stop shop" destination for a range of electronic components. All the major distributors stock a wide range of different electronic products under one roof and even smaller distributors rarely specialize in supplying only one category of electronic components and they typically supply a number of product categories.

14. This was partially confirmed by the market investigation: several respondents suggested that the categories of electronic components described by the parties should indeed not be considered as separate markets, at least at the distribution level, given that many distributors distribute a full range of components and similarly, most customers are usually not different for each components category and generally buy a full range of components.

15. However, some of the respondents also indicated that an expansion by specialized companies (which are often niche players active in the distribution of one product category only) into the distribution of other product categories, although feasible, might cause difficulties and take time. The main reasons mentioned with respect to such difficulties were (i) the lack of product-specific know-how to provide support functions, (ii) the need to establish good relationships with suppliers and get the relevant franchises and (iii) the storage capabilities. Distributors of electronic components do not only sell the products, but they also regularly provide a range of value added services including notably technical advice. In order to be able to advise the customers on the decision for a product / brand to be used as input in the customer's production process and to provide technical services in addition, a sound knowledge of the product is necessary. This is especially relevant in the case of so called design-in activities where the distributor acts as a mediator between customer and manufacturer and participates in the design of a component. While the parties submit that personnel with the necessary technical expertise are easily available on the market, the respondents stated that the entry into a new product category requires time to find this personnel, training for the staff and significant investments (for example into additional warehouse capacity).

16. For the purpose of the present transaction, the exact delineation of the product market can be left open since under any alternative market definition considered the proposed transaction does not raise any competition concerns.

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14 Abacus' limited manufacturing activities concern filters and connectors. The activity essentially involves assembling and testing the electronic components so that they meet specific customer specifications. Abacus does not produce the underlying components itself and as far as the connectors are concerned, it limits itself to selling the product (sourced primarily from Asia) under its own label.

Direct supply

17. The customers of distributors of electronic components are primarily Electronic Manufacturing Services (EMSs) and Original Equipment Manufacturers (OEMs) but also supply system integrators, installers, government agencies, other distributors and non-manufacturing organisations in a wide range of sectors (for example, automotive, computer, office equipment and telecommunications). The parties submit that larger customers, in particular EMSs or OEMs, may also be supplied directly by manufacturers[15].

18. The Commission has, however, in previous cases[16] found that it was not appropriate to include the direct supply by manufacturers in the relevant market. The distribution of electronic components has been found to constitute a separate product market since it is characterised by a number of significant differentiating features such as a product mix from different suppliers, value added services, large stock, local warehouses and short delivery times. The parties confirm the analysis previously made by the Commission and also consider that the distribution of electronic components can be identified as a distinct product market.

19. This view has also been widely confirmed by the large number of respondents to the market investigation, at all level of the value chain (suppliers of electronic components, distributors and customers). Several market participants indicated that many manufacturers often supply their production of electronic components directly to the customers without using any distributor in the case of very large volume orders and of special conditions, such as the production of tailor-made electronic components, which are adapted to the customer's specific needs. However, a large number of these market participants indicated at the same time that, for distributors' clients, a switch to direct supply is not easily feasible.

20. First of all, such a switch to direct supply would only be possible for customers who purchase very large volumes since the manufacturers usually refuse to deal with many clients themselves and therefore reject medium- or small-sized orders (a threshold of €/$ 1 million per year was often mentioned). Their aim is often to reduce their customer contacts at least with respect to smaller orders and they use distributors exactly for this reason. In addition, the distributors fulfil an important function with respect to the timing and the logistics of the supply, while manufacturers constantly try to reduce their stock-keeping. This adjustment of the manufacturer's production and the customer's requirements is done by the distributor who uses warehouses in order to deliver the electronic components on a just in time basis.

21. Another important reason for the use of distributors is the already described technical advice. Distributors offer more extensive technical services than the manufacturers. Moreover, if the customers wanted to circumvent the distributors, not only would they have to contact the different manufacturers individually in order to be able to compare

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15 According to the parties, for European distributors, OEMs/ODM represent around 50-60% of the customer base. EMS companies account for a further 30-35% of the customer base and other customers including resellers and integrators of embedded products account for a further 10-15% of the market.

16 See Commission decision in case COMP/M.3820 - AVNET/MEMEC.

their products, but they would also have to do without the advice of a technical expert knowing many brands and therefore being able to compare and evaluate them. If a customer, in addition, needs several different components, a switch to direct supply would lead to an increase of transaction costs for the customer who would not be able to order several components at once.

22. In view of this, it can be concluded that for the vast majority of customers of electronic components who currently purchase from the distributors, a switch to the manufacturers is not easily feasible. This is confirmed by the fact that most of the market participants could name only a few instances of such switches in the past three years. The direct supply by manufacturers can therefore be excluded from the relevant product market.

Line card vs. catalogue

23. According to the parties and in line with previous Commission decisions[17], distributors use mainly two different ways of offering their products: line cards or catalogues. Distributors who use catalogues mainly sell on a rather irregular basis small quantities of electronic components to customers who address these distributors on the basis of their catalogues[18]. The other group of distributors, to which Avnet and Abacus belong, uses line cards. A line card is a simple list which contains all the manufacturers the respective distributor cooperates with and whose electronic components the distributor is able to deliver[19]. Distributors who use line cards tend to sell larger quantities than catalogue distributors. The main difference to catalogue distributors is that they supply the customers with the bulk of components needed as regular input in their production processes.

24. The respondents to the market investigation did not express any concern in that respect. In any case, it should be noted that the market for catalogue distribution is very small as a proportion of the total EEA market. The market shares on a separate market for line card distribution, therefore, would only marginally differ from those in a market including catalogue distribution.

25. Therefore, whether or not these markets have to be distinguished can be left open since under any alternative market definition considered the proposed transaction does not raise any competition concerns.

Geographic market

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17 Cfr footnote 9.

18 Catalogues provided by distributors, such as Digi-Key, list many hundreds of manufacturers' products and also provide an indicative price for the product. The components are sold through telesales or over the internet and customers do not receive the sales support directly at their premises.

19 In particular, they identify a selection of components that the distributor supplies to the market and also highlight the particular uses or applications of the specific components. This is normally presented in the form of a product matrix. The line cards also identify the manufacturers for whom the distributors supply the products (typically include the manufacturers' logo). The line cards only cover a couple of pages and are intended to quickly inform the customer about the franchises and products offered by the distributors. They do not contain detailed technical product or price information.

26. The parties submit that the relevant geographic market for the distribution of electronic components is at least EEA-wide. This would be borne out by the facts that transportation costs are very low, technical sales and field application engineers provide cross border support, customers tend to source their demand on a global basis with prices and conditions increasingly decided at a European or global level, and many manufacturers selling electronic components in Europe are based outside Europe, in particular in Asia.

27. In previous decisions[20], the Commission has - even though acknowledging a tendency towards a widening of the market - assumed national geographic markets. This definition was based on the fact that distributors used local sales offices, the local presence of technical staff for product customisation, development and quality control, and the proximity of warehousing.

28. The market investigation generally confirmed this view: although several distributors serve clients without having sales forces and technical support in the countries at stake (including via "international framework agreements" – i.e. framework agreements covering more than one country), having local sales and field application engineers is generally considered as a key competitive advantage.

29. The geographic market definition can, however, be left open since under any alternative market definition considered the proposed transaction does not raise any competition concerns.

2. Competitive assessment

Assessment on a EEA-wide basis

30. According to the information submitted by the parties, considering an overall market for the distribution of electronic components at the EEA level , the parties' combined market shares would be below [20-30]% ([20-30]%; Avnet: [10-20]% and Abacus: [0-5]%). Arrow would still remain the largest distributor with a [20-30]% market share.

31. Also at the EEA level, but according to a narrower definition of the relevant markets based on different segments of electronic components, the parties' combined market share would give rise to affected markets in relation to semiconductors ([30-40]%) however with an increment of less than [0-5]% (Avnet: [30-40]%; Abacus: [0-5]%). Moreover, Arrow would remain a strong competitor to Avnet, with a [20-30]% market share in relation to semiconductors.

Assessment of the national markets

32. At the national level, the transaction would give rise to affected markets in different countries: UK, France, Austria, Italy, Sweden, Norway, Denmark, Netherlands and Germany. However, except in the UK, the transaction would only marginally affect the market structure due to Abacus' small market shares compared both to Avnet and other leading distributors on national basis. Following the merger, Avnet will only become the

20 Cfr footnote 9.

strongest player in the UK and Germany (it is already the strongest player in Austria, France and Netherlands).

	EEA	Austria	Denmark	France	Germany
Avnet	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%
Abacus	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[30-40]%**	**[10-20]%**
Arrow	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%

	Italy	Netherlands	Norway	Sweden	UK
Avnet	[10-20]%	[20-30]%	[10-20]%	[5-10]%	[10-20]%
Abacus	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%
Combined	**[20-30]%**	**[20-30]%**	**[10-20]%**	**[10-20]%**	**[20-30]%**
Arrow	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[10-20]%

Source: Notifying party based on Europartner Electronic Components Distribution Report 2008

33. In the UK, Avnet would become the largest distributor. Indeed, the parties' combined market shares would give rise to affected markets in relation to (i) the market for the distribution of electronic components as a whole ([20-30]%; Avnet: [10-20]%; Abacus: [10-20]%); (ii) the market for the distribution of semiconductors ([30-40]%; Avnet: [20-30]%; Abacus: [10-20]%); (iii) the market for the distribution of passive components ([20-30]%; Avnet: [5-10]%; Abacus: [10-20]%); and (iv) the market for the distribution of electromechanical components ([10-20]%; Avnet: [0-5]%; Abacus: [10-20]%). Even though, post-merger, Avnet will become the leading distributor of electronic components in the UK, the parties submit that it will continue to face strong competition from its major rival (Arrow) and also from other important distributors active in all these markets such as Electrocomponents, Premier Farnell, Future, Acal, Anglia and new entrant Nu Horizons, as well as from a large number of smaller niche players focussed on specific customers categories or one of the product markets described above. This was confirmed by the market investigation. Avnet will also be constrained by the increasing overseas sourcing by customers and ultimately by manufacturer's ability to determine how by whom their products will be supplied to the market.

34. In France, Austria, Italy and the Nordic area (Finland, Sweden and Norway), the parties' combined market share would give rise to affected markets in relation to (i) the market for the distribution of electronic components as a whole (France: [30-40]%; Avnet: [20-30]% and Abacus: [5-10]%; Austria: [20-30]%; Avnet [20-30]% and Abacus [0-5]%; Italy: [20-30]%; Avnet: [10-20]% and Abacus [0-5]%); Nordic Area: [10-20]% Avnet: [10-20]% and Abacus: [0-5]%); and (ii) the market for the distribution of semiconductors (France: [40-50]%; Avnet: [40-50]% and Abacus: [0-5]%; Austria: [30-40]%; Avnet: [30-40]% and Abacus: [0-5]%; Italy: [30-40]%; Avnet: [20-30]% and

Abacus: [0-5]%; Nordic Area: [20-30]%; Avnet: [20-30]% and Abacus: [0-5]%). The proposed transaction will not give rise to any affected markets in relation to the distribution of passive components and the distribution of electromechanical components.

35. In Denmark the parties' combined market share would give rise to affected markets in relation to (i) the market for the distribution of electronic components as a whole ([20-30]%; Avnet: [10-20]%; Abacus: [5-10]%), (ii) the market for the distribution of semiconductors ([20-30]%; Avnet: [20-30]%; Abacus: [0-5]%) and (ii) the market for the distribution of electromechanical components ([30-40]%; Avnet: [0-5]%; Abacus: [30-40]%).

36. In the Netherlands the parties' combined market share would give rise to affected markets in relation to (i) the market for the distribution of electronic components as a whole ([20-30]%; Avnet: [20-30]%; Abacus: [0-5]%) and (ii) the market for the distribution of electromechanical components ([10-20]%; Avnet: [10-20]%; Abacus: [0-5]%).

37. In Germany, the parties' combined market share would give rise to affected markets only in relation to the market for the distribution of electronic components as a whole ([10-20]%; Avnet: [10-20]%; Abacus: [0-5]%).

38. The market investigation did not bring any element to challenge the market figures reported by the parties and based on the Europartner report. In all the countries reported above, and regardless the product market, the increment related to the transaction is usually marginal and the market investigation confirmed that the impact is likely to be of little importance, also in view of the strong position of Arrow in all these countries and in all the different product markets. The transaction would bring Avnet to the leading position only in a few markets: the market for the distribution of electronic components as a whole in Germany and UK, and electromechanical components in Netherlands. Although it would also strengthen its already leading position in France, Austria and the Netherlands, it would be by a marginal or limited increment ([0-5]% in Austria, [0-5]% in the Netherlands and [5-10]% in France). In any event, the market investigation did not raise any specific concern on these national markets.

39. Moreover, the market investigation confirmed that the manufacturers of the electronic components are able to restrain Avnet's market power, and notably Arrow which was perceived as the closest competitor to Avnet, but also several other distributors in specific national market (such as Future Electronics and Premier Farnell in UK, Codico in Austria and Rutronik in Germany). The competitive pressure of these strong rivals would effectively restrain Avnet's future market position.

40. In addition, it can indeed be expected that a price increase by Avnet, which would be an increase of the margin on the purchasing price from the manufacturers, would not only be to the detriment of the customers but would also directly affect the sales of the manufacturers themselves since with a higher price the quantity sold in the market could be expected to decrease. The market investigation has shown that in such an event the manufacturers would have the incentive and the ability to switch away from the merged

entity and to conclude franchise contracts[21] with other distributors in order to avoid the risk of losing sales. These contracts are usually not concluded on a long-term basis (mostly one year): a switch to alternative distributors is therefore quickly possible.

41. In this respect, some respondents to the market investigation among the manufacturers submitted that they could even consider sponsoring entry of a new distributor on the market[22] if they were unsatisfied with the existing ones, for instance if they were to raise prices to final customers in order to increase margins.

42. Finally, some respondents to the market investigation mentioned that the transaction would have a positive effect for customers given that Avnet will have an improved set of technical skills, thus provide better technical support to customers, and will propose an enlarged portfolio of products.

Vertical relations

43. The proposed transaction does not give rise to any vertically-affected markets as Avnet and Abacus[23] do not hold a market share of 25% in any market upstream or downstream of the distribution of electronic components.

Coordinated behaviour

44. After the transaction, Avnet will consolidate its position as leading player or second after Arrow in most of national markets. The market investigation did, however, not support the possible allegation that the merger could lead to coordinated behaviour between Avnet and Arrow. Conversely, it indicated that Avnet and Arrow would continue to actively compete against each other and would in any event not have the ability to coordinate behaviour. First, the wide variety and large number of different products which are sold by distributors, the rebate policy based on quantities, and the combination of the product supply with various services does not seem to provide the necessary degree of transparency to establish and monitor terms of coordination. Second, any attempt to establish coordination between major players at the distribution level would probably be destabilised by manufacturers whose business would be harmed if the distributors were to raise prices. Finally, a significant competitive fringe consisting of the main internationalized competitors and the different local players speak against a coordinated behaviour, which could also be circumvented by new entries on the market.

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[21] Distributors typically supply their products through authorisations or franchises granted by manufactures. The franchise entitles the distributor to officially supply the manufacturers' components in particular territory. Most manufacturers typically appoint three or more distributors in each territory, although each manufacturer has its own distribution business model.

[22] As this has recently been the case with Nu Horizon sponsored by Xilinxs

[23] Abacus has a negligible market share in the manufacturing of filters and connectors (less than [0-5]% of the EEA market). Neither the filters nor the connectors that Abacus supplies as part of its "manufacturing" activities are particularly sophisticated and there are no barriers preventing other suppliers from providing the same products.

45. Thus, in the light of all the foregoing factors and given that the market investigation has not revealed any serious concerns with regard to the competitive impact of the operation by the competitors, customers and suppliers of the parties, the Commission considers that the proposed transaction will not significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

VI. CONCLUSION

46. 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 by)*
Neelie KROES
Member of the Commission