

***Case No COMP/M.6323 -
TECH DATA EUROPE/
MuM VAD BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/10/2011

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EUROPEAN COMMISSION

Brussels, 27/10/2011

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6323 – Tech Data Europe/ MuM VAD Business
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 22.09.2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the undertaking Tech Data Europe GmbH ("Tech Data Europe", Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of the undertaking Mensch und Maschine Software SE and its related undertakings ("MuM VAD Business", Germany) by way of acquisition of assets.

I. THE PARTIES

2. Tech Data Europe is ultimately controlled by Tech Data Corporation (USA), which supplies products to customers in over 100 countries. Tech Data Europe is mainly active in the wholesale distribution in the EEA of information technology ("IT") products, including hardware, components, peripherals, software and network products from a variety of hardware and software producers ("IT Manufacturers"). To a more limited

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.

extent, Tech Data Europe is active in the wholesale distribution of consumer electronics ("CE"). Tech Data Europe does not itself develop or produce any products. Its services are mainly logistics oriented. Tech Data Europe also provides services related to the Value-Added Distribution ("VAD") of software² from a number of different IT Manufacturers such as Cisco, IBM, or HP to both IT Manufacturers and software resellers ("Value Added Resellers" or "VARs") in connection with the sale of specialised software.

3. MuM VAD Business is active in the VAD of software for computer aided design ("CAD") software manufactured by Autodesk³. The MuM VAD Business resells Autodesk CAD software to VARs and provides VAD services comparable to those offered by Tech Data. The MuM VAD Business is exclusively active in the EEA.

II. THE OPERATION AND THE CONCENTRATION

4. The Asset Purchase Agreement regarding the sale and purchase of the MuM VAD Business was signed on 09.09.2011. Tech Data Europe and its entities in Belgium, the Czech Republic, France, Germany, Italy, Poland and the United Kingdom will acquire the assets pertaining to the MuM VAD Business in Austria, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Poland, Romania, Switzerland and the United Kingdom from Mensch und Maschine Software SE and its affiliated entities in Belgium, France, Germany, Italy, Poland, Romania and the UK⁴. As a result, Tech Data Europe will acquire, by purchase of the assets pertaining to MuM VAD Business, the direct control of parts of MuM, and thus of another undertaking.
5. MuM VAD Business constitutes a business with a market presence to which a market turnover can be clearly attributed. MuM VAD Business represents a distinct commercial activity of MuM which can be clearly separated from other activities. MuM VAD Business also consists of a dedicated set of assets comprising in particular the client base, know-how and employees carrying this know-how. The client base will be acquired by a handing over of the customer database as well as a transfer of confidential information about MuM VAD Business' contractual relationships with its customers.
6. The proposed operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

² VAD comprise services such as technical support and training, marketing, strategic management consultancy for Value Added Resellers, sales training, etc.

³ Autodesk, Inc, is a software company based in the US. It claims to be the leader in design, engineering and entertainment software.

⁴ The Czech Tech Data company will acquire the MuM VAD Business of the Romanian MuM affiliate, the German Tech Data company will acquire the MuM VAD Business of Germany, Austria and Switzerland from the Mensch und Maschine Deutschland GmbH, Germany, and Tech Data bvba/sprl Belgium will buy the MuM VAD Business of the Belgian Man and Machine Benelux NV, i.e. the Netherlands, Luxembourg and Belgian assets.

III. EU DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2 500 million⁵ (Tech Data Europe: EUR [...], MuM VAD Business: EUR [...]). They have a combined aggregate turnover of more than EUR 100 million in [...] EU Member States [...]. However, the aggregate turnover of each of the two undertakings concerned is above EUR 25 million in less than 3 of the [...] above Member States. The notified operation therefore has no EU dimension.
8. On 26 July 2011 the Commission received, by means of a reasoned submission, a referral request pursuant to Article 4(5) of the Merger Regulation with respect to the transaction cited above. The Commission transmitted this submission to all Member States on 27 July 2011. The Member States competent to examine the concentration did not within 15 working days express their disagreement to the request for referral. The case is therefore deemed to have an EU dimension.

IV. ASSESSMENT

IV.1. Relevant markets

9. The proposed operation concerns the acquisition of MuM VAD Business by Tech Data Europe. Both undertakings are active in the IT distribution sector. While the MuM VAD Business is focused on the distribution of Autodesk software only, Tech Data Europe is mainly a broad-line distributor with some divisions being active in the VAD business. One of its divisions, Datech, is acting as a VAD for Autodesk software.

IV.1.1. Product markets

Products concerned

10. The notifying parties submit that the relevant product market on which both Tech Data Europe and MuM VAD Business are active is the market for the wholesale distribution of all electronic products. They submit that a distinction between different product groups is not 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.
11. However, they further submit that, should the Commission consider a narrower market definition necessary, the relevant market is not narrower than the market for the wholesale distribution of IT products.
12. In its previous decisions, the Commission has considered a separate market for the wholesale distribution of IT products⁶. Furthermore, related services such as after-sales

⁵ 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).

⁶ 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

support, training and financial services to customers were also considered in past decisions as part of the same market.⁷ Although the market investigation in its previous decision did not support the definition of product market along IT product segments, the Commission has left open whether the market for wholesale distribution of IT products should be further divided according to the various IT product segments (PC, servers, software, etc).⁸ In the present case this would mean that a possible market for the wholesale distribution of software would also be considered.

13. During the course of the Commission investigation, two market participants submitted that the relevant product market should be narrower than the wholesale distribution of software. According to these market participants, a market for the wholesale distribution of Autodesk software, or at most a market for wholesale distribution of Computer Aided Design ("CAD") software should be defined. They were concerned that on the market for wholesale distribution of Autodesk software, post-transaction, the merged entity would be the only VAD of Autodesk in ten Member States. As a result it may be able to increase the prices for Autodesk software to VARs and eventually to end-customers⁹.
14. One of these market participants did not provide arguments supporting its view of a product market limited to the distribution of Autodesk and/or CAD software. The other market participant explained that the market should be at most confined to the wholesale distribution of CAD software, essentially because CAD software is highly specialised, its value added distribution requires specific expertise, and VADs of CAD software focus only on these and do not combine them with other activities.
15. The Commission considers that these arguments are not convincing. Whereas some Value Added Services are specific to CAD software, most services are generic in nature and consist of distribution support in the widest sense. They include VAR channel management, marketing, new business development, subscription and maintenance contract business, financial services and operations and administration. These services are provided across different types of software.
16. Value Added Services provided by Tech Data are also offered by other VADs such as Ingram Micro and Esprinet and by many software manufacturers such as Adobe, Autodesk, CA Technologies, IBM SW, EMC/Iomega International, McAfee, Microsoft, Oracle, Symantec, Trend Micro, and others.

May 2008 in Case COMP/M.5099 - *Arrow Electronics/Logix*; Commission decision of 2 July 2010 in Case COMP/M.5864 - *Avnet/Bell Micro*.

⁷ Commission decision of 24 March 2003 in Case COMP/M. 3107 – *Tech Data Corporation/Azlan Group plc*.

⁸ Commission decision of 28 April 2008 in Case COMP/M. 5091 – *Tech Data/Scribona*.

⁹ The notifying parties argue that the market share of Autodesk on a hypothetical CAD software manufacturing market would be only [10-20]% in EEA (Cambashi research report). According to a report from John Peddy research, the market share of Autodesk for the production of CAD software would be about [30-40]% in the EEA in 2010 which was confirmed by a market participant. In any event, even on the basis of the higher market share, Autodesk faces strong competitors including Bentley, Dassault, PTC, Siemens PLM, ESRI, and Ansys, as well as a number of smaller CAD software producers. The presence of many competitors to Autodesk also producing CAD software should exclude any significant effect on VAR and end-consumers stemming from a hypothetical price increase of Autodesk software by Tech Data post-transaction.

17. Furthermore, even though some VADs have a more limited portfolio and may focus on products such as CAD software, Tech Data and some of the other larger VADs such as Ingram Micro and Esprinet are offering a broader range of electronic and IT products including CAD and other types of software.
18. A wider product market definition not limited to the wholesale of Autodesk software or CAD software is also supported by the activity of VARs on the retail level. VARs that offer Autodesk or other CAD software packages which include other software from other manufacturers, such as networks (Cisco based products), data security (Symantec, McAfee), virtualization (VMware, Citrix) and increasingly also cloud services, data bases and product data management (EMC). The design software solution VARs also sell specialized hardware to the end user such as 2D and 3D scanners, 3D mice, large format printers or 3D printers. This was confirmed by one market participant, who explained that as a VAR, they sold in 2010 Autodesk and Siemens PLM software, and that they are planning to develop the Value Added Reselling of other software than CAD software.
19. With regard to wholesale distribution of IT products the Commission has never considered a narrow product market which would be based on the wholesale distribution of only one brand such as Autodesk software, or the wholesale distribution of a certain type of software such as CAD software. Instead, the Commission defined wholesale distribution as the supply of a broad range of IT products purchased from many IT manufacturers and software vendors to a large number of re-sellers and retailers, none of which are end-users¹⁰. Contrary to the manufacturing of IT products which may imply the definition of narrower product markets, with respect to the distribution of these products, it has been common practice, even in recent decisions, to define product markets which cover a range of different products, even if these are not always substitutable from a demand-side perspective.
20. This view is supported by wholesale distributors of IT products, such as Avnet, Arrow Electronics and Tech Data that have consistently claimed that the relevant products of distribution of IT products should be broadly defined¹¹.
21. Based on the above, the Commission considers that the wholesale distribution of CAD software and a fortiori the distribution of Autodesk software do not constitute relevant product markets for the purpose of the present investigation. With regard to the products concerned the product market is not narrower than the wholesale distribution of software products.

Distribution channels

22. As regards distribution channels, the notifying parties submit that the relevant product markets for IT products or for software should include direct sales from the manufacturer to end-customers, indirect sales from manufacturers to VARs, and indirect sales from manufacturers to wholesale distributors (VADs) who in turn sell the products to VARs and retailers.

¹⁰ Commission decision of 28 April 2008 in Case COMP/M. 5091 – *Tech Data/Scribona*.

¹¹ See previous Commission decisions.

23. In its decision *Arrow Electronics/Logix*,¹² 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.
24. It can be left open for the purpose of the present transaction whether the wholesale distribution of electronic, IT or software products should be sub-segmented according to direct and indirect sales to VADs and indirect sales to VARs/retailers, since the proposed transaction does not give rise to any competition concerns under any of these alternative product markets considered.

Conclusion

25. With regard to the distribution of the products concerned for the purpose of the present transaction the product market is not narrower than wholesale distribution of software products.
26. However, it can be left open for the purpose of the assessment of the present transaction whether a product market for the wholesale distribution of all electronic products or for IT products or for software products should be further sub-segmented according to direct sales and indirect sales to VADs and indirect sales to VARs/retailers, since the proposed transaction does not give rise to any competition concerns under any of these alternative product markets considered.

IV.1.2. Geographic markets

27. The notifying parties submit that the relevant geographic market is EEA-wide. They explain that nothing prevents both VARs and end-customers from buying IT products including software outside their home country from software manufacturers or VADs. The customers of IT products including software have similar requirements throughout the EEA. IT products do not significantly vary between Member States. With regard to languages, most products are usually available with multi-lingual manuals and different language versions, and price levels do not vary or vary only insignificantly between Member States. In previous cases, the Commission indicated that the geographic market was probably national in scope but the ultimate geographic market definition was left open¹³.
28. For the purpose of the assessment of the present transaction, the exact geographic scope can be left open as the notified operation does not give rise to any competition concerns even on the narrowest possible geographic market.

IV.2. Competitive assessment

29. The proposed transaction does not give rise to vertical relationships as neither Tech Data Europe, nor the MUM VAD Business is vertically integrated on any of the affected markets. The activities of the parties only overlap horizontally on the market / segments for the wholesale distribution of electronic products, of IT products and of software in the EEA.

¹² Commission decision of 19 May 2008 in Case COMP/M.5099 - *Arrow Electronics/Logix*.

¹³ 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*.

IV.2.1. Wholesale distribution of electronic products

30. Under the widest possible product market definition, the combined market share of the notifying parties will be below 15% post-transaction in the EEA and the respective Member States. These markets will therefore not be affected by the transaction.

IV.2.2. Wholesale distribution of IT products

31. Under narrower product market definitions for the wholesale distribution of IT products, including all distribution channels (direct sales, and indirect sales to VADs and to VARs/retailers), the combined market share of the notifying parties will be below 15% post-transaction in the EEA and the respective Member States. These markets will therefore not be affected by the transaction.
32. When considering indirect sales only, the combined market share of the notifying parties will be over 15% post-transaction in Belgium, Austria, the Netherlands and Poland, as illustrated below.

IT Products - 2010	Tech Data Europe	MuM VAD Business	Combined market share
BE – indirect sales to VADs and to VARs/retailers	[10-20]%	[0-5]%	<i>[10-20]%</i>
BE – indirect sales to VADs	[20-30]%	[0-5]%	<i>[20-30]%</i>
AT – indirect sales to VADs	[10-20]%	[0-5]%	<i>[10-20]%</i>
NL – indirect sales to VADs	[10-20]%	[0-5]%	<i>[10-20]%</i>
PL – indirect sales to VADs	[10-20]%	[0-5]%	<i>[10-20]%</i>

33. Nevertheless, the combined market share of the parties in these markets post transaction will remain relatively low.
34. Furthermore, the increment in market share post-transaction would be minimal (+[0-5]%) in the wholesale market for the distribution of IT products in Belgium, when considering indirect sales to VADs and to VARs/retailers. The increment would also be minimal in the wholesale market for the distribution of IT products, when considering indirect sales to VADs only in the following Member States: Austria (+[0-5]%), the Netherlands (+[0-5]%) and Poland (+[0-5]%).
35. The highest combined market share would be reached in the wholesale market for the indirect distribution to VADs of IT products in Belgium, with [20-30]%. However, the increment in the market share following the transaction would also be insignificant, amounting to only [0-5]%.
36. Furthermore, there would remain a sufficient number of significant competitors post-transaction, as according to the parties, the major competitors in the wholesale market for the indirect distribution to VADs of IT products in Belgium are Ingram Micro with an estimated market share of around [20-30]% and four other major competitors with estimated market shares of around [5-10]%.

37. On the basis of the above, the Commission considers that on the markets for the wholesale distribution of IT products, the notified operation does not raise serious doubts as to the compatibility with the internal market.

IV.2.3. Wholesale distribution of software products

38. Under even narrower product market definitions for the wholesale distribution of software, including indirect sales to VADs and to VARs/retailers, the combined market share of the notifying parties will be below 15% post-transaction in the EEA and the respective Member States. These markets will therefore not be affected by the transaction.

39. When considering the narrowest indirect sales to VADs segment only, the combined market share of the notifying parties will be over 15% post-transaction in the EEA, Austria, Belgium, France, Germany, the Netherlands and Poland, as illustrated below.

Software - 2010	Tech Data Europe	MuM VAD Business	Combined market share
EEA – indirect sales to VADs	[10-20]%	[0-5]%	<i>[10-20]%</i>
AT - indirect sales to VADs	[20-30]%	[0-5]%	<i>[20-30]%</i>
BE - indirect sales to VADs	[20-30]%	[0-5]%	<i>[20-30]%</i>
FR - indirect sales to VADs	[10-20]%	[0-5]%	<i>[10-20]%</i>
DE - indirect sales to VADs	[10-20]%	[0-5]%	<i>[10-20]%</i>
NL - indirect sales to VADs	[10-20]%	[0-5]%	<i>[20-30]%</i>
PL - indirect sales to VADs	[20-30]%	[5-10]%	<i>[20-30]%</i>

40. Nevertheless, the combined market share of the parties in these markets post transaction will remain relatively low.

41. Furthermore, the increment in market share post-transaction would be minimal in the wholesale market for the indirect distribution to VADs of software in the EEA (+[0-5]%) and the following Member States: Austria (+[0-5]%), Belgium (+[0-5]%), France (+[0-5]%), Germany (+[0-5]%), and the Netherlands (+[0-5]%).

42. The highest combined market share would be reached in the wholesale market for the indirect distribution to VADs of software in Poland. However, the increment in the market share would be relatively low, amounting to only [5-10]%.

43. Finally, there would remain a sufficient number of significant competitors post-transaction, as according to the parties, the major competitors in the wholesale market for the indirect distribution to VADs of software in Poland are ABC Data with an estimated market share of around [20-30]% and Arrow with an estimated market share of around [10-20]%, together with two other competitors holding estimated market shares of around [10-20]%, and four other competitors with estimated market shares of around [0-10]%.

44. In light of the analysis above, the Commission considers that on the markets for the wholesale distribution of software products, the notified operation does not raise serious doubts as to the compatibility with the internal market.

V. 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 Commission
(Signed)
Joaquín ALMUNIA
Vice-President