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***Case No COMP/M.6713 - TECH DATA/ SPECIALIST  
DISTRIBUTION GROUP/ ETC METROLOGIE/  
BEST'WARE FRANCE/ SDG BV***

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: 24/10/2012



EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 24.10.2012  
C(2012) 7615

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.6713 – TECH DATA/ SPECIALIST DISTRIBUTION GROUP/ ETC METROLOGIE/ BEST'WARE FRANCE/ SDG BV  
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup>**

1. On 19 September 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Tech Data Europe GmbH ("Tech Data Europe", Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of seven subsidiaries of Specialist Computer Holdings plc ("SCH plc"), by way of purchase of shares.
2. Tech Data Europe plans to acquire control of the following subsidiaries of SCH plc (jointly referred to as "SCH Distribution Business" or the "Target"):
  - a) Specialist Distribution Group Limited (United Kingdom), together with its wholly-owned subsidiary, ISI Distribution Ltd (United Kingdom);
  - b) ETC Metrologie Sarl (France);
  - c) ETC Africa SAS (France);
  - d) Best'Ware France SA (France);
  - e) SDG B.V. (The Netherlands), together with its wholly-owned subsidiary ETC B.V. (The Netherlands).

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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.

3. Tech Data Europe is designated hereinafter as the “Notifying Party”. Tech Data Europe and the Target are designated hereinafter as the “Parties”.

## **I. THE PARTIES**

4. **Tech Data Europe** is ultimately controlled by Tech Data Corporation (United States), which supplies products to customers in over 100 different countries. Tech Data Europe distributes a diverse portfolio of electronic products in the EEA, namely information technology ("IT"), consumer electronics and telecommunications/mobile phone products. Tech Data Europe does not itself develop or produce any products. In addition to wholesale distribution, Tech Data Europe also provides value-added distribution ("VAD") services<sup>2</sup> as part of its distribution activities.
5. **SCH Distribution Business** is the distribution business of SCH plc in the EEA (and in the case of France based ETC Africa SAS - in Africa). It consists of the subsidiary companies of SCH plc in the United Kingdom (Specialist Distribution Group Limited and its subsidiary ISI Distribution Ltd), France (ETC Metrologie Sarl and Best'Ware France SA; and ETC Africa SAS, based in France and distributing in Africa) and the Netherlands (SDG B.V. and its subsidiary ETC B.V.). SCH Distribution Business distributes IT products but not consumer electronics or telecommunications/mobile phone products. In addition to wholesale distribution, SCH Distribution Business also provides VAD services as part of its distribution activities.

## **II. THE OPERATION AND CONCENTRATION**

6. The sale and purchase agreement regarding the acquisition of shares in SCH Distribution Business by Tech Data Europe was signed on 4 September 2012. This agreement provides for an acquisition of 100% of the shares of SCH Distribution Business by Tech Data Europe. A wholly-owned Tech Data Europe subsidiary in Europe (either Tech Data Europe or an affiliated company nominated by Tech Data Europe) will solely control one or more of the companies constituting SCH Distribution Business. Tech Data Europe will thus become the ultimate parent entity of the Target, having sole control over it.
7. The proposed operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. EU DIMENSION**

8. The undertakings concerned had a combined aggregate worldwide turnover of more than EUR 5 000 million in 2011 (Tech Data Europe: EUR [...], SCH Distribution Business: EUR [...]). They both had a combined aggregate EU-wide turnover of more than EUR 250 million in 2011 (Tech Data Europe: EUR [...], SCH Distribution Business: EUR [...]) but did not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
9. The proposed operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

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<sup>2</sup> VAD services comprise technical support and training, marketing, strategic management consultancy for Value Added Resellers, sales training, etc.

## IV. ASSESSMENT

### IV.1 Relevant markets

10. Both Tech Data Europe and SCH Distribution Business are distributors in the EEA of a wide range of electronic products required by both consumers and businesses. In addition to wholesale distribution, the Parties also provide VAD services. Whereas Tech Data Europe distributes a diverse portfolio of electronic products (namely IT, consumer electronics and telecommunications/mobile phone products), SCH Distribution Business at present only distributes IT products, but not consumer electronics or telecommunications/mobile phone products.

#### IV.1.1 Product markets

##### *Products concerned*

11. The Notifying Party submits that the relevant product market should be the market for the wholesale distribution of all electronic products that the Parties distribute (i.e. IT products, consumer electronics products and telecommunications/mobile phone products).
12. The Notifying Party believes that a further segmentation of the product market based on the type of electronic product (i.e. IT, consumer electronics or telecommunications products) and a further distinction based on separate IT product categories (personal computers, servers, etc.) would be incorrect due to:
  - a) the actual similarities in the distribution of electronic products;
  - b) the ability of distributors to distribute various electronic products and the relative ease with which various electronic products can be distributed by the same distributor;
  - c) the continuing convergence of electronic products and related market developments;
  - d) the expectation and requirements of customers for a “one stop shop” for all kinds of electronic products.
13. In its previous decisions, the Commission distinguished a separate market for the wholesale distribution of IT products.<sup>3</sup> Furthermore, related services such as after-sales support, training and financial services to customers were also considered to be part of the same market.<sup>4</sup>

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<sup>3</sup> Commission decision of 24 March 2003 in Case No COMP/M. 3107 – *Tech Data Corporation/Azlan Group*; Commission decision of 5 October 2007 in Case No COMP/M. 4868 - *Avnet/Magirus EID*; Commission decision of 28 April 2008 in Case No COMP/M. 5091 – *Tech Data/Scribona*; Commission decision of 19 May 2008 in Case No COMP/M.5099 - *Arrow Electronics/Logix*; Commission decision of 2 July 2010 in Case No COMP/M.5864 - *Avnet/Bell Micro*; Commission decision of 27 October 2011 in Case No COMP/M.6323 *Tech Data Europe/MuM VAD Business*.

<sup>4</sup> Commission decision of 24 March 2003 in Case No COMP/M.3107 – *Tech Data Corporation/Azlan Group*.

14. The Commission has also considered a possible definition of product markets along various IT product categories (such as servers, personal computers, storage devices, peripherals, software, etc.) or along even narrower segmentations within such categories (for instance, high-end, mid-range and low-end servers).<sup>5</sup> However, in previous cases it was left open whether the relevant product market encompassed distribution of all IT product categories or should be defined along IT product segments.
15. In the present case, the exact product market definition can be left open since under any possible definition, the notified operation does not raise serious doubts as to its compatibility with the internal market.

*Direct sales versus indirect sales*

16. The Notifying Party submits that the relevant product markets should include both indirect (Tier 1 and Tier 2) sales<sup>6</sup> and direct sales from manufacturers to customers. The Notifying Party justifies the inclusion of the direct distribution by manufacturers in the relevant market in particular with:
  - a) the competitive pressure exercised by manufacturers on wholesale distributors and *vice versa*;
  - b) the presence in distribution of various delivery models, with end users preferring multichannel purchasing; and
  - c) the high degree of substitutability in distribution channels (for example, corporate accounts or end users can purchase from manufacturers, wholesale distributors or resellers, depending on the best pricing/timing/volumes available).
17. During the course of previous market investigations, the Commission found both indications that direct and indirect sales are interchangeable, with manufacturers also being able to bypass distributors and distribute to (value-added) resellers without the involvement of distributors, and indications that direct and indirect sales are not fully interchangeable.<sup>7</sup> For example in Case COMP/M.5864 – *Avnet/Bell Micro* it was found that the purchase of IT products through value-added distributors offered their customers advantages in terms of broader IT product range, better logistics and shorter delivery time, financing services, assistance with integration and marketing.<sup>8</sup> However, in previous decisions the Commission

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<sup>5</sup> Commission decision of 28 April 2008 in Case No COMP/M.5091 – *Tech Data/Scribona*; Commission decision of 19 May 2008 in Case No COMP/M.5099 – *Arrow Electronics/Logix*; Commission decision of 26 June 2008 in Case No COMP/M.5162 – *Avnet/Horizon*; Commission decision of 2 July 2010 in Case No COMP/M.5864 – *Avnet/Bell Micro*; Commission decision of 22 September 2010 in Case No COMP/M.5903 – *Tech Data Europe/Brightstar Europe/Triade Holding*; Commission decision of 27 October 2011 in Case No COMP/M.6323 – *Tech Data Europe/MuM VAD Business*.

<sup>6</sup> “Tier 1” and “Tier 2” are indirect types of distribution. In a Tier 1 relationship resellers order directly from manufacturers, while in a Tier 2 distribution relationship resellers order from a distributor who orders from manufacturers.

<sup>7</sup> Commission decision of 5 October 2007 in Case No COMP/M.4868 – *Avnet/Magirus EID*; Commission decision of 28 April 2008 in Case No COMP/M.5091 – *Tech Data/Scribona*; Commission decision of 19 May 2008 in Case No COMP/M.5099 – *Arrow Electronics/Logix*; Commission decision of 26 June 2008 in Case No COMP/M.5162 – *Avnet/Horizon*; Commission decision of 25 June 2012 in Case No COMP/M.6515 – *Arrow Electronics/Altimate Group*.

<sup>8</sup> Commission decision of 2 July 2010 in Case No COMP/M.5864 – *Avnet/Bell Micro*, paragraph 18.

always kept the question regarding substitutability of direct and indirect sales open as the exact market definition did not have a material influence on the outcome of its analysis.<sup>9</sup>

18. Similarly, in the present case, it can be left open whether direct and indirect sales channels form part of the same relevant market since under any possible definition, the notified operation does not raise serious doubts as to its compatibility with the internal market.

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

19. The Notifying Party submits that the relevant geographic market is at least EEA-wide in scope. The Notifying Party substantiates its view with the following reasons:

- a) the existence of Europe-wide distribution systems;
- b) similar requirements of customers throughout the EEA;
- c) similarities in the distributed products amongst different Member States;
- d) insignificant variation in pricing levels between Member States; and
- e) the fact that language does not play a significant role in the distribution of the products in question.

20. In previous decisions, the Commission considered that the language differences and local presence provided indications that the market for the distribution of IT products could be national in scope.<sup>10</sup> In some cases, the Commission also considered that there were indications that the market for the distribution of IT products is EEA-wide in scope as products may be purchased on an EEA-wide basis.<sup>11</sup> However, the precise geographic market definition was ultimately left open.

21. For the purpose of the present case, the exact geographic market definition can be left open as the notified operation does not raise serious doubts as to its compatibility with the internal market even on the narrowest possible geographic market.

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

22. The proposed operation does not give rise to vertical relationships as neither Tech Data Europe, nor SCH Distribution 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 specific IT product categories.

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<sup>9</sup> Commission decision of 5 October 2007 in Case No COMP M.4868 - *Avnet/Magirus EID*; Commission decision of 19 May 2008 in Case No COMP/M.5099 - *Arrow Electronics/Logix*; Commission decision of 27 October 2011 in Case No COMP/M.6323 - *Tech Data Europe/MuM VAD Business*.

<sup>10</sup> Commission decision of 28 April 2008 in Case No COMP/M.5091 - *Tech Data/Scribona*, paragraph 28; Commission decision of 19 May 2008 in Case No COMP/M.5099 - *Arrow Electronix/Logix*, paragraph 25; Commission decision of 26 June 2008 in Case No COMP/M.5162 - *Avnet/Horizon*, paragraph 17.

<sup>11</sup> Commission decision of 24 March 2003 in Case No COMP/M.3107 - *Tech Data Corporation/Azlan Group*, paragraph 14; Commission decision of 2 July 2010 in Case No COMP/M.5864 - *Avnet/Bell Micro*, paragraphs 29 and 30.

#### IV.2.1 Wholesale distribution of electronic products

23. Under the widest possible product market definition encompassing wholesale direct and indirect distribution of electronic products, the combined market share of the Parties will be below 15% in the EEA and the respective Member States, as illustrated below.

**Table 1: The parties' market shares in the wholesale direct and indirect distribution of electronic products (based on value of sales)**

Electronic products - CY 2011	Tech Data Europe	SCH Distribution Business	Combined
EEA – direct and indirect sales	[0-5]%	[0-5]%	[0-5]%
France – direct and indirect sales	[0-5]%	[0-5]%	[5-10]%
Netherlands – direct and indirect sales	[5-10]%	[0-5]%	[10-20]%
United Kingdom – direct and indirect sales	[0-5]%	[0-5]%	[5-10]%

24. Regarding the wholesale indirect only distribution of electronic products, the combined market share of the Parties will be below 15% post-merger in the EEA, as well as in France and the United Kingdom. The combined market share of the Parties for the wholesale indirect-only distribution of electronic products will be above 15% only in the Netherlands ([10-20]%). Nevertheless, the combined market share of the Parties in this market will remain moderate, with an increment of [0-5]%.  
 25. On the basis of the above, the Commission considers that with regard to the market for the wholesale distribution of electronic products the notified operation does not raise serious doubts as to its compatibility with the internal market.

#### IV.2.2 Wholesale distribution of IT products

26. Under a narrower product market definition for the wholesale distribution of IT products, including direct and indirect (Tier 1 and 2) sales, the combined market share of the Parties will be below 15% in the EEA and the respective Member States. These markets will therefore not be affected by the proposed operation.  
 27. When considering indirect sales only, the combined market share of the Parties will be above 15% only in the Netherlands, as illustrated below.

**Table 2: The parties' market shares in the wholesale indirect distribution of IT products (based on value of sales)**

<b>IT products - CY 2011</b>	<b>Tech Data Europe</b>	<b>SCH Distribution Business</b>	<b>Combined</b>
Netherlands – indirect sales	[10-20]%	[5-10]%	[10-20]%

28. Nevertheless, the combined market share of the Parties in this market will remain moderate.
29. Furthermore, there will remain a sufficient number of significant competitors. While the merged entity will become the market leader with an estimated market share of [10-20]%, there will remain three significant competitors (Copaco, Ingram Micro, and Bas Group) with a market share of [5-10]% each. Hence, the Parties' customers will continue to have alternative sources of supply of IT products.
30. Moreover, according to the Notifying Party, there are typically no exclusive arrangements, neither upstream (i.e. in relation to manufacturers) nor downstream (i.e. in relation to resellers/retailers). Manufacturers typically use three or more distributors and, in addition, directly supply resellers and retailers as well as end users. Resellers and retailers also typically deal with several distributors and frequently change between them. The Commission therefore considers that the possibility to switch to another distributor will thus provide a competitive constraint on the merged entity.
31. On the basis of the above, the Commission considers that with regard to the market for the wholesale distribution of IT products the notified operation does not raise serious doubts as to its compatibility with the internal market.

#### **IV.2.3 Wholesale distribution of IT products by category**

32. Under a narrower product market definition for the wholesale distribution of IT products by category, including only indirect (Tier 1 and 2) sales, the combined market share of the Parties will be above 15% in the distribution of several IT products in the EEA, the Netherlands, France and the United Kingdom, as described below.

#### EEA

33. In the EEA, the Parties' combined market share is just above 15% in the distribution of low-end servers (i.e. a sub-segment of servers) and storage devices, as illustrated below.



**Table 3: The parties' market shares in the wholesale indirect distribution of IT products by category in the EEA (based on value of sales)**

IT product category – CY 2011	Tech Data Europe	SCH Distribution Business	Combined
Low-end servers	[5-10]%	[5-10]%	[10-20]%
Storage devices	[10-20]%	[0-5]%	[10-20]%

34. Nevertheless, the combined market share of the Parties in this market in the EEA will remain moderate.

Netherlands

35. In the Netherlands, the Parties' combined market share is above 15% in the distribution of a number of IT products, as illustrated below.

**Table 4: The parties' market shares in the wholesale indirect distribution of IT products by category in the Netherlands (based on value of sales)**

IT product category – CY 2011	Tech Data Europe	SCH Distribution Business	Combined	Competitors
Personal computers	[10-20]%	[10-20]%	[20-30]%	Ingram ([10-20] %), Copaco ([10-20]%), Bas Group ([10-20]%), Five4U ([10-20]%)
Servers (all)	[0-5]%	[30-40]%	[30-40]%	(See below)
<i>High-end and mid-range servers</i>	--	[20-30]%	[20-30]%	Copaco ([20-30]%), Avnet ([20-30]%) and Comstor ([0-5]%)
<i>Low-end servers</i>	[0-5]%	[30-40]%	[30-40]%	Copaco ([20-30]%), Avnet ([20-30]%), Ingram ([5-10]%) and Comstor (0-5]%)
Storage devices	[10-20]%	[5-10]%	[10-20]%	Avnet ([10-20]%), Ingram ([10-20]%), Copaco ([10-20]%) and Arrow ([5-10] %)
Hardcopy peripherals	[10-20]%	[0-5]%	[10-20]%	Copaco ([10-20]%), Ingram ([10-20]%), Bas Group ([5-10]%) and Actebis ([0-5]%)
Tablets, e-readers and display	[20-30]%	[0-5]%	[20-30]%	Five4U ([10-20] %), Bas Group ([10-20]%), Copaco ([5-10]%) and iCenter ([5-10]%)

36. In the Netherlands, the merged entity will be the market leader in the distribution of each IT product listed above. The merged entity will achieve its highest market share in the distribution of servers ([30-40%]), due to the Parties' position in the distribution of low-end servers ([30-40%]). Tech Data Europe does not currently supply high-end and mid-range servers in the Netherlands.
37. Nevertheless, in relation to the distribution of IT product categories the increment in market share will generally be relatively small: [0-5]% for hardcopy peripherals, [0-5]% for all servers (with [0-5]% for low-end servers), and [0-5]% for tablets, e-readers and display.
38. Moreover, in each segment/market there will remain significant competitors. Thus, regarding personal computers, four competitors will be present: Ingram ([10-20]% market share), Copaco ([10-20]% market share), and Bas Group and Five4U with [10-20]% market share each. Under a narrow market definition for low-end servers, four competitors will be present: Copaco ([20-30]% market share), Avnet ([20-30]% market share), Ingram ([5-10]% market share) and Comstor ([0-5]% market share). Regarding storage devices, four competitors will be present: Avnet ([10-20]% market share), Ingram ([10-20]% market share), Copaco ([10-20]% market share) and Arrow ([5-10]% market share). Regarding hardcopy peripherals, four competitors will be present: Copaco ([10-20]% market share), Ingram ([10-20]% market share), Bas Group ([5-10]% market share) and Actebis ([0-5]% market share). Finally, regarding tablets, e-readers and display, four competitors will be present as well: Five4U ([10-20]% market share), Bas Group ([10-20]% market share), Copaco ([5-10]% market share) and iCenter ([5-10]% market share). Hence, the Parties' customers will continue to have alternative sources of supply.

#### France

39. In France, the Parties' combined market share is above 15% in the distribution of servers and storage devices, as illustrated below.

**Table 5: The parties' market shares in the wholesale indirect distribution of IT products by category in France (based on value of sales)**

IT product category – CY 2011	Tech Data Europe	SCH Distribution Business	Combined	Competitors
Servers (all)	[0-5]%	[10-20]%	[20-30]%	
<i>High-end and mid-range servers</i>	[0-5]%	[20-30]%	[20-30]%	Arrow ([20-30]%) and Unisys ([5-10]%)
<i>Low-end servers</i>	[5-10]%	[10-20]%	[20-30]%	Actebis ([10-20]%), Ingram ([5-10]%) and Arrow ([5-10]%)
Storage devices	[10-20]%	[10-20]%	[20-30]%	Arrow ([10-20]%), Avnet-Magirus ([10-20]%), Ingram ([10-20]%) and Actebis-Also ([10-20]%)

40. Post-transaction, there will remain a number of significant competitors. Thus, under a narrow market definition for low-end servers, three competitors will be present: Actebis ([10-20]% market share), Ingram ([5-10]% market share) and Arrow ([5-10]% market share). For a narrow market definition for high-end and mid-range servers, where the overlap between the Parties is only [0-5]%, Arrow ([20-30]% market share) holds an even larger market share, and in addition competitive pressure will remain from Unisys ([5-10]% market share). For storage devices, the market position of Arrow is comparable to the Parties ([10-20]% market share), with three smaller competitors – Avnet-Magirus, Ingram, Actebis-Also – having market shares between [5-10]% and [10-20]% each. Based on the above, the Parties' customers will continue to have alternative sources of supply.

United Kingdom

41. In the United Kingdom, the Parties' combined market share is above 15% in the distribution of servers. The overlap arises only in relation to low-end servers, since Tech Data Europe does not currently distribute high-end and mid-range servers in the United Kingdom.

**Table 6: The parties' market shares in the wholesale indirect distribution of IT products by category in the UK (based on value of sales)**

IT product category – CY 2011	Tech Data Europe	SCH Distribution Business	Combined	Competitors
Servers (all)	[0-5]%	[10-20]%	[20-30]%	
<i>High-end and mid-range servers</i>	[0-5]%	[20-30]%	[20-30]%	Avnet ([20-30]%) Ingram ([5-10]%) and Arrow ([5-10]%)
<i>Low-end servers</i>	[5-10]%	[10-20]%	[10-20]%	Ingram ([10-20]%), Avnet ([10-20]%), Westcoast ([10-20]%) and Arrow ([5-10]%)

42. Post-transaction, there will remain a number of significant competitors in the distribution of servers in the United Kingdom. Thus, under a narrow market definition for low-end servers, the merged entity will continue to face competition from Ingram ([10-20]% market share), Avnet ([10-20]% market share), Westcoast ([10-20]% market share) and Arrow ([5-10]% market share). Based on the above, the Parties' customers will continue to have alternative sources of supply.

43. In the Commission's recent market investigations (see, for example, Case No COMP/M.6515 – *Arrow Electronics/Altimate Group* and Case No COMP/M.5864 – *Avnet/Bell Micro*) – looking in particular at the servers and data storage products segments in a number of EEA countries – respondents confirmed that vendors 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. Second, the vast majority of respondents in *Avnet/Bell Micro* considered that the distribution of servers and storage products is characterised by substantial intra-brand and inter-brand competition. Third, the Commission concluded in its decision in *Avnet/Bell Micro* that barriers to entry (and expansion) in the distribution of specific IT products are relatively low. The great majority of the responding vendors to the market investigation in that case had explicitly stated that they would appoint additional distributors or value-added resellers if the merged entity increased the prices at which it sells its products<sup>12</sup>.
44. On the basis of the above, the Commission considers that with regard of the market for the wholesale distribution of IT products by category the proposed operation does not raise serious doubts as to its compatibility with the internal market.

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12 On 18 October 2012, a wholesale distributor of IT products contacted the Commission to raise the concern that the proposed transaction will lead to the creation of a monopoly in the distribution of virtualisation software in the Netherlands. According to this distributor, Citrix and VMware are currently the two largest, if not the only, providers of virtualisation software in the world with a combined market share of 90%. As their two virtualisation software solutions are currently distributed respectively by Tech Data Europe and SDG B.V. in the Netherlands, the combined entity will remain the only distributor of Citrix and VMware in the country, possibly leading to price increases for consumers. The Commission first notes that the distributor raised its concern extremely late in the Commission's first phase investigation, that is to say more than 10 days after the expiration of the deadline for third parties comments (8 October 2012) and only four working days before the deadline for adoption of the Commission's decision. Nevertheless, the Commission investigated, to the best of its ability given the late stage of the proceedings, whether the concerns set out in this late complaint were founded. First, the Commission understands that other virtualisation software competitors than VMware and Citrix exist, namely Microsoft, Oracle, Red Hat, traditional IT manufacturers and system integrators. Even if Citrix and VMware products were distributed by only one distributor in the Netherlands post-transaction, the Commission notes that there would remain alternatives to customers. Second, the Commission understands that contracts between software manufacturers and distributors are not exclusive and that barriers to entry for distributors are low. Third, as was found in Case No COMP/M.6323 *Tech Data Europe/MuM VAD Business*, 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 Citrix or VMware software, or the wholesale distribution of a certain type of software such as virtualisation 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-users. 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. This view is supported by wholesale distributors of IT products, such as Avnet, or Arrow Electronics that have consistently claimed that the relevant products of distribution of IT products should be broadly defined. The Commission therefore considers that the wholesale distribution of virtualisation software and a fortiori the distribution of Citrix and VMware 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. For all the above reasons, the Commission considers that the concerns raised by the distributor are unfounded.

## V. CONCLUSION

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