



EUROPEAN COMMISSION  
DG Competition

***Case M.8175 - EXERTIS / HAMMER***

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: 19/12/2016

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Brussels, 19.12.2016  
C(2016) 8867 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the Notifying party:

**Subject: Case M.8175 - EXERTIS / HAMMER**  
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 16 November 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking Exertis (UK) Ltd ("Exertis") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of Hammer Consolidated Holdings Limited<sup>3</sup> ("Hammer") by way of purchase of shares, hereinafter the "Transaction".<sup>4</sup> Exertis and Hammer are collectively referred to as the "Parties", Exertis is referred to as the "Notifying Party".

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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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

<sup>3</sup> This is the new name of Megafun Limited, effective 12 September 2016, the name under which the Form RS was filed.

<sup>4</sup> Publication in the Official Journal of the European Union No C 429, 22.11.2016, p. 8.

## 1. THE PARTIES

- (2) Exertis is a wholly owned subsidiary of DCC plc, an international sales, marketing, distribution and business support services group, with four separate divisions: DCC Energy, DCC Healthcare, DCC Technology and DCC Environmental. Exertis is part of the DCC Technology division and is a wholesale distributor of a wide range of IT products across the EEA.
- (3) Hammer is the ultimate parent company of the Hammer plc group of companies. Hammer is a wholesale distributor of a range of IT products across the EEA, with a particular focus on IT storage and server products.

## 2. THE CONCENTRATION

- (4) On 13 October 2016, the Parties signed a sale and purchase agreement under which Exertis will acquire the entire issued share capital of Hammer. The Transaction will result in the acquisition of sole control of the whole of the undertaking and therefore fulfils the definition of a concentration under Article 3(1)(b) EUMR (the "Transaction").<sup>5</sup>

## 3. EU DIMENSION

- (5) The Transaction does not have a Union dimension within the meaning of Article 1 of the Merger Regulation as it does not meet the thresholds set out therein.
- (6) The Parties submitted a referral request pursuant to Article 4(5) of the Merger Regulation on 16 September 2016. The concentration was capable of being reviewed under the laws of at least three Member States, namely Austria, Germany, Ireland, Malta and the United Kingdom. None of these Member States expressed its disagreement as regards the request to refer the case to the Commission.

## 4. MARKET DEFINITION

- (7) Both Parties are active in the EEA for the wholesale distribution of IT products.

### 4.1. Product market definition

- (8) Exertis submits that the relevant product market covers the wholesale distribution of all IT product categories, including both direct and indirect sales, and also including any after-sale services.
- (9) *Product categories* - Exertis considers that it is not appropriate to segment the market by product category, and that the relevant product market covers the distribution of all IT product categories (for example: servers, storage devices, network devices, etc.) and services. This is because of industry trends towards

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<sup>5</sup> For completeness, the Transaction agreement [contains provisions regarding the management of Hammer post-completion; none of these provisions concern veto rights over strategic decisions of the business]. In any event, the sellers have confirmed that they are [...] and therefore cannot be considered to acquire control on a lasting basis under the Consolidated Jurisdictional Notice.

product convergence, the fact that many distributors offer a one-stop-shop solution and the fact that the same knowledge and skills are required to distribute each of the different product categories.

- (10) In its previous decisions, the Commission identified a separate market for the wholesale distribution of IT products.<sup>6</sup> The Commission has also considered possible distinct product markets for the various IT product categories, or along even narrower segmentations within such categories (for instance, high-end, mid-range and low-end servers).<sup>5</sup> This said, the market investigation in a more recent case<sup>7</sup> indicated that distributors frequently offer a wide range of products and that there is increasing technological convergence between different product categories. Ultimately it was left open whether the relevant product market encompassed wholesale distribution of all IT product categories or should be defined along IT product categories.
- (11) The Commission has considered related services such as after-sales support, training and financial services to customers to be part of the market for the wholesale distribution of IT products.<sup>8</sup>
- (12) ***Direct sales vs indirect sales*** - Exertis considers that the wholesale distribution market should comprise both direct sales by manufacturers and indirect sales by distributors because they constitute alternative sources of supply from the point of view of the final customers who are generally resellers and large retailers.
- (13) In previous decisions, the Commission has left the market definition open in this regard. It has noted that manufacturers are able to bypass distributors and distribute to (value-added) resellers without the involvement of distributors, suggesting that direct and indirect sales could be interchangeable. On the other hand, it has noted that the purchase of IT products through value-added distributors offers customers certain advantages including a broader IT product range, better logistics and shorter delivery time, financing services, assistance with integration, and marketing, which would suggest that direct and indirect sales are not interchangeable.<sup>9</sup>
- (14) For the purposes of the present decision, the exact scope of the product market definition can be left open, since no serious doubts as to the compatibility of the Transaction with the internal market arise under any plausible alternative product market definition.

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<sup>6</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>7</sup> Commission decision of 21 September 2012 in Case COMP/M.6577 – *Avnet / Magirus*.

<sup>8</sup> Commission decision of 24 March 2003 in Case No COMP/M.3107 – *Tech Data Corporation/Azlan Group*.

<sup>9</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*.

## 4.2. Geographic Market Definition

- (15) Exertis submits that the geographic market for the wholesale distribution of IT products is EEA-wide because: (i) all leading IT distribution companies have Europe-wide distribution systems with either centralised warehouses and logistic networks, or local offices in a number of European Member States; (ii) customers have similar requirements across the EEA, and many are multinational corporations purchasing on a European wide basis; (iii) there are no material technical or linguistic barriers between EEA countries in relation to IT products themselves; (iv) prices are homogeneous across the EEA.
- (16) In previous decisions, the Commission has considered whether the geographic market for the distribution of IT products was EEA-wide or narrower, but ultimately left the geographic market definition open. In some cases, the Commission has considered that the language differences and a customer preference for local presence provided indications that the market for the distribution of IT products could be national in scope.<sup>10</sup> In other cases however, the Commission has observed that the market could be EEA-wide as products may be purchased on an EEA-wide basis.<sup>11</sup>
- (17) For the purposes of the present decision, the exact scope of the geographic market definition can be left open, since no serious doubts as to the compatibility of the Transaction with the internal market arise under any plausible alternative geographic market definition.

## 5. COMPETITIVE ASSESSMENT

- (18) The Notifying Party submits that under all plausible market definitions (that is broken down by product segment, including and excluding direct sales on a national or EEA basis), the combined market share of the Parties in all markets is less than 20% and therefore these overlaps (and potential vertical relationships) do not give rise to affected markets.
- (19) The only exception to this is in relation to the wholesale distribution of IT networking products in Ireland.

### 5.1. Horizontal overlap

- (20) When considering both direct and indirect sales, the Parties' combined market share would be [20-30]% with a small increment (Exertis – [20-30]%, Hammer – [0-5]%).<sup>12</sup> When considering just indirect sales, the Parties' combined market share would be [30-40]%, again with a small increment (Exertis – [30-40]%,

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<sup>10</sup> Commission decision of 24 October 2012 in Case COMP/M.6713 *Tech Data / Specialist Distribution group / ETC Metrologie / Best'Ware France / SDG BV*; Commission decision of 21 September 2012 in Case COMP/M.6577 – *Avnet / Magirus*

<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.

<sup>12</sup> Form CO, paragraph 96.

Hammer – [0-5]%).<sup>13</sup> The HHI increment in relation to both direct and indirect sales is less than 150.<sup>14</sup>

- (21) The Commission notes that this increment is minimal and that there are a number of other players active on the market, such as Avnet, Westcoast, Data Solutions and Tech Data.<sup>15</sup> Moreover, the results of the Commission's market investigation regarding the market for the distribution of IT networking products in Ireland, did not reveal any concerns.
- (22) Based on the above, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in relation to horizontal overlap in the wholesale distribution of IT networking products in Ireland.

## 5.2. Vertical relationship

- (23) In Ireland, Exertis is a customer of Hammer, buying a range of IT products, including IT networking products.<sup>16</sup> With regard to the indirect distribution of IT networking products, Hammer has a market share of [0-5]% (which includes Hammer's sales to Exertis) and Exertis estimates that its share of purchases is [30-40]% of IT networking products sold indirectly in Ireland.
- (24) Despite Exertis' [30-40]% market share and share of purchases with regard to the indirect distribution of IT networking products, the Commission considers it unlikely that the Transaction will raise serious doubts as a result of the vertical relationship.<sup>17</sup>
- (25) First, given Hammer's minimal sales of IT networking products in Ireland, the Commission considers that the risks of input foreclosure can be excluded.
- (26) Second, with regard to customer foreclosure, there is no evidence on the Commission's file indicating that the merged entity would have the ability to foreclose rivals, for example because Exertis has significant market power on the downstream market. There are multiple other distributors which are active with regard to the purchase and sale of IT networking products. In addition, these distributors are only one customer group as IT networking products can be sold to other customers, such as retail customers, small and medium enterprises (SMEs) and large business customers.
- (27) Third, the results of the Commission's market investigation regarding this vertical link did not reveal any complaints. On the contrary a number of companies that responded did not expect the Transaction to have an impact on the market for the distribution of IT networking products in Ireland.
- (28) The Commission therefore concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market due to input or customer

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<sup>13</sup> Form CO, paragraph 96.

<sup>14</sup> Form CO, paragraph 96.

<sup>15</sup> Form CO, Tables 5, 6 and 7.

<sup>16</sup> Form CO, paragraph 96 and paragraph 112.

<sup>17</sup> It should be noted that a large share of Hammer's sales in Ireland for IT networking products are already to Exertis (GBP [...] out of GBP [...] in 2015) therefore the Transaction will not likely change the current structure of supply - Form CO paragraph 98 and Annex 6.

foreclosure in relation to the wholesale distribution of IT networking products in Ireland.

**6. CONCLUSION**

- (29) 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 and Article 57 of the EEA Agreement.

*For the Commission  
(Signed)  
Margrethe VESTAGER  
Member of the Commission*