Case M.8223 - MICRO FOCUS / HPE SOFTWARE BUSINESS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 08/03/2017

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EUROPEAN COMMISSION

Brussels, 8.3.2017
C(2017) 1680 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.8223 – Micro Focus / HPE Software Business**
               Commission decision pursuant to Article 6(1)(b) of Council
               Regulation No 139/2004[1] and Article 57 of the Agreement on the
               European Economic Area[2]

Dear Sir or Madam,

(1)   On 1 February 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Micro Focus International plc ("Micro Focus", United Kingdom) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the software business of Hewlett Packard Enterprise Company ("HPE", United States) (hereinafter "the first Transaction").

(2)   Furthermore, Micro Focus (through its subsidiary SUSE LLC "SUSE") and HPE have entered into an understanding pursuant to which HPE will transfer to Micro

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[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.

[2]   OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

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Focus certain assets related to HPE's "Helion OpenStack products" and "Helion Stackato products" (hereinafter "the second Transaction").[3]

(3)   For ease of reference, "the Transaction" will be understood to include the first Transaction and the second Transaction.

(4)   Micro Focus will be referred to as "the Notifying Party" and Micro Focus and HPE collectively as "the Parties".

1.   THE PARTIES

(5)   **Micro Focus** is a software and information technology business based in the United Kingdom and listed on the London Stock Exchange. Its product portfolio includes COBOL[4] (a programming language) development and mainframe solutions, identity access and security solutions, development and IT operations management tools, host connectivity solutions, collaboration and networking solutions and SUSE, an open source operating system.

(6)   **HPE** is an enterprise information technology company based in the United States. HPE has four main business units: (1) the Enterprise Group, which produces servers, storage, networking, consulting, and support; (2) Services; (3) Financial Services; and (4) Software.

(7)   **HPE's software business** unit develops a range of enterprise software products, including software for business service management, application lifecycle management, mobile application testing, big data analytics, service and portfolio management, automation and orchestration, and enterprise security.

(8)   **HPE's "Helion OpenStack products" and "Helion Stackato products"** are part of HPE's Helion suite. The Helion OpenStack product is an open-source, configurable and secure, Infrastructure as a Service (IaaS) cloud solution which is based on the free and open-source "OpenStack" software which enables a user to choose its own mix of technology software or hardware providers and integrate it with a chosen vendor, thereby acting as an alternative to vendor-locked solutions. The Helion Stackato product is an application platform or Platform as a Service (PaaS) that enables developers to develop, deploy and scale cloud applications across a mixture of public and private clouds.[5]

2.   THE OPERATION

(9)   The first Transaction will be effected as follows:

    a. HPE will transfer its software business into a newly created company Entco Spinco, Inc ("Seattle").

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[3]   Publication in the Official Journal of the European Union No C 42, 9.2.2017, p. 9.

[4]   The acronym stands for COmmon Business Oriented Language.

[5]   Both Helion Open Stack and Helion Stackato fall under the Automation Tools segment (within IT Operation Management software), according to the Gartner categorisation.

b. Seattle will be separated from HPE as a standalone entity and its newly issued shares will be distributed to HPE shareholders.

c. Immediately following the step described in b, an indirect, wholly-owned subsidiary of Micro Focus will merge with and into Seattle, with Seattle surviving the merger. The shares Seattle distributed to HPE shareholders will be converted into the right to receive a number of shares in Micro Focus, such that: (i) the original HPE shareholders will hold 50.1% of Micro Focus; (ii) the current Micro Focus shareholders will hold the remaining 49.9%; and (ii) Seattle, holding HPE's software business will become an indirect, wholly-owned subsidiary of Micro Focus.

(10) The second Transaction will be effected through a separate and non-conditional agreement, whereby HPE will transfer to Micro Focus certain assets related to HPE's Helion OpenStack and Stackato products.[6]

(11) In view of Article 5(2) of the Merger Regulation and of paragraph 50 of the Commission's Consolidated Jurisdictional Notice,[7] the first Transaction and the second Transaction will be treated as part of a single concentration.[8]

(12) The Transaction will result in Micro Focus acquiring sole control over HPE's software business and over the assets related to HPE's Helion OpenStack and Stackato products.

(13) The Transaction constitutes therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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[6] The HPE assets that will be transferred are certain tangible assets, intellectual property assets, contracts and employees relating to the activity of developing, licensing, distributing and/or hosting software and related products within HPE's open source "Helion Open Stack" and "Helion Stackato" product divisions. This agreement foresees that HPE and Micro Focus will establish an OEM relationship. The consideration for the transfer of these assets will be the assumption by Micro Focus of the liabilities relating to certain contracts and transferring employees. Post-Transaction, SUSE will provide the OpenStack and PaaS Solution software back to HPE on an ordinary course of business OEM relationship (i.e. where Micro Focus makes available a range of software solutions to participating hardware vendors under a standard set of commercial terms). As HPE will receive a non-exclusive license to the SUSE OpenStack and SUSE PaaS Solution, SUSE will be permitted to offer the same products to other vendors. HPE will be permitted to sell the SUSE OpenStack and PaaS Solution software under its own Helion OpenStack and Helion Stackato trademarks.

[7] Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008), paragraph 50. In particular the Notice mentions that "*It is sufficient if the transactions, although not carried out between the same companies, are carried out between companies belonging to the same respective groups*". In this case, the second Transaction concerns HPE and Micro Focus, while the main transaction concerns HPE's software business and Micro Focus, but both transactions are carried between companies belonging to the same respective groups.

[8] Pursuant to Article 5(2), second subparagraph, of the Merger Regulation, two or more transactions within the meaning of Article 5(2), first subparagraph, which take place within a two-year period between the same persons or undertakings, shall be qualified as one and the same concentration arising on the date of the last transaction.

3.   EU DIMENSION

(14)   The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2 500 million[9] (Micro Focus: EUR 1 279 million; HPE's software business: EUR 3 271 million).[10] In each of at least three Member States, the combined aggregate turnover is more than EUR 100 million. In each of these Member States, the aggregate turnover of each of the undertaking concerned is more than EUR 25 million (Germany - Micro Focus: EUR […] million; HPE's software business: EUR […] million; France - Micro Focus: EUR […] million; HPE's software business: EUR […] million; United Kingdom - Micro Focus: EUR […] million; HPE's software business: EUR […] million). The aggregated Union-wide turnover of each of the undertakings concerned was more than EUR 100 million (Micro Focus: EUR […] million; HPE's software business: EUR […] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

(15)   The notified operation therefore has a Union dimension within the meaning of Article 1(3) of the Merger Regulation.

4.   MARKET DEFINITION

4.1.   Introduction

(16)   The Transaction concerns the market for the supply of software. More specifically, the Parties are active in the supply of infrastructure software. Infrastructure software or "middleware" refers to a wide category of software products that (i) provide the infrastructure for applications to run on a server, (ii) can be accessed from a variety of clients over a network and (iii) are capable of connecting to a variety of information sources.[11]

(17)   The Commission has in the past classified software products on the basis of functionality, the end user (business software and consumer software) and the specific sector in which the software is used (e.g. healthcare software).[12]

(18)   In relation to functionality, in past cases, the Commission has distinguished between "infrastructure software" and "application software".[13] In more recent cases, the Commission classified software products with regard to functionality in: (i) infrastructure software, (ii) middleware (i.e. integration platforms);

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[9]   Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

[10]   The turnover of HPE's software business includes turnover allocated to the Salem transaction, which corresponds to revenues generated from the sale of the Helion OpenStack and Helion Stackato IP rights. It is worth noting that this turnover will not be transferred to the merged entity as HPE will maintain its ongoing OEM relationships with its own customers (Response to the European Commission's request for information of 29 November 2016, question 13).

[11]   Case M.5080 – *Oracle / Bea*, Commission Decision of 29 April 2008, paragraph 8.

[12]   Case M.6237 – *Computer Sciences Corporation / iSoft Group*, Commission Decision of 20 June 2011, paragraph 22-25.

[13]   Case M.3216 – *Oracle / Peoplesoft*, Commission Decision of 26 October 2004, paragraph 15.

(iii) application software and office software; and (iv) operating/browser software.[14]

(19) The Parties' software product portfolios only overlap in the following categories and segments of infrastructure software, based on the categorisation by Gartner:[15]

Table 1: Categories/segments of infrastructure software in which the Parties' products overlap

Category	Segment
Application Development (AD) Software	Application Development & Lifecycle Management (ADLM)
	Automated Testing
Security Software	Security Information & Event Management (SIEM)
IT Operations (ITOM) Software	Software Asset Management & IT Financial Management (SAM & ITFM)
	Application Performance Monitoring
	IT Service Support Management (ITSSM) Tools
	Automation Tools
Storage Management Software	Archive Software

Source: Form CO, Table 1.1 and Annex 1.1.h (Gartner – Market Definitions and Methodology)

(20) The Transaction only gives rise to limited horizontal overlaps (which amount to combined market shares of the Parties below 20%) in these categories or segments of software products (each of which could potentially constitute a separate product market) identified in Table 1, with the exception of the Application Development & Lifecycle Management (ADLM) and Automated Testing software segments, where the Parties' estimate their combined market shares to be above 20%. Therefore, Sections 4.2 and 4.3 will only discuss product and geographic market definition with respect to the AD software category and the relevant segments therein (ADLM and Automated Testing).

(21) The Transaction does not give rise to vertically affected markets, as there is no vertical link between the different types of software supplied by the Parties.

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[14] Case M.6237 – *Computer Sciences Corporation / iSoft Group*, Commission Decision of 20 June 2011, paragraph 23; Case M.7458 – *IBM / INF Business of Deutsche Lufthansa,* Commission Decision of 15 December 2014, paragraph 35. In past cases, the Commission noted that middleware, together with operating systems and databases are sometimes referred to as "infrastructure" software, see case M.5529 – *Oracle / Sun Microsystems*, Commission Decision of 21 October 2010, paragraph 24. For the purpose of this Decision, "infrastructure software" is to be understood as including infrastructure software, middleware, databases and operating systems, as per the Gartner report.

[15] Gartner, Inc. is a well-known market intelligence source for software markets. The Parties' proposed categorisation of software products is based on Gartner's information. A large majority of customers and competitors that replied to the market investigation confirmed that the Gartner reports are a reliable source of market intelligence about the software industry (see responses to Question 5 of Q1 – Questionnaire to competitors and to Question 5 of Q2 – Questionnaire to customers).

4.2.   Product market definition

4.2.1.   *The Notifying Party's views*

(22)   The Notifying Party submits that AD software comprises tools that are used in software and application development.[16]

(23)   The Notifying Party also submits that it is not necessary to take a view as to the question whether the relevant product market is AD software as a whole or whether ADLM and Automated Testing constitute separate relevant product markets within AD software, since the Transaction does not give rise to competition concerns. The Notifying Party further submits that it does not consider appropriate to segment ADLM and Automated Testing software into "high-end" customers that purchase custom, bundled solutions and "low-end" customers that purchase point products.[17]

4.2.2.   *Commission's assessment*

(24)   The Commission assessed the supply of AD software in *IBM/Telelogic* and left open the question of whether an overall market for software development tools exists, or whether distinct product markets have to be defined within the area of software development tools.[18] In an earlier decision,[19] the Commission analysed different categories within AD software, such as testing tools or software configuration management tools, but it ultimately did not conclude whether these constitute separate relevant product markets.[20]

(25)   The Commission has also considered in a previous case that, for AD software, customer group segmentation is an important element which has to be taken into consideration for the competitive assessment, but did not conclude on the existence of different product markets according to customer groups or industry verticals.[21]

(26)   For the purpose of the present decision, the possible relevant product markets within AD software where the Parties' activities overlap and which are relevant for the assessment of the Transaction are ADLM and Automated Testing.

(27)   According to Gartner, ADLM software is used across different stages of the software development process and includes requirements definition management,

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[16]   Form CO, paragraph 176.

[17]   Notifying Party's email to the European Commission of 27 February 2017.

[18]   Case M.4747 – *IBM / Telelogic*, Commission Decision of 5 March 2008, paragraph 59.

[19]   Case M.3062 – *IBM / Rational*, Commission Decision of 20 February 2003, paragraphs 8-27.

[20]   However, the AD software categories described in *IBM / Rational* are not fully equivalent to those provided by the Parties for the present decision, based on the Gartner reports. See also Case M.4747 – *IBM / Telelogic*, Commission Decision of 5 March 2008, paragraph 60. In the latter case, the Commission came to the preliminary conclusion that the concentration might have a significant competitive impact in the markets for UML-based (Unified Modelling Language) modelling tools and for requirement management tools (both within AD software).

[21]   Case M.4747 – *IBM / Telelogic*, Commission Decision of 5 March 2008, paragraphs 111-121.

software change and configuration management and test management.[22] Also according to Gartner, Automated Testing applies to commercially or internally developed software or services to assist in the testing process, including functional and load/stress testing.[23]

(28)   Most competitors and customers that responded to the market investigation questionnaires considered that ADLM and Automated Testing are complementary products, rather than substitutes.[24] Furthermore, while the results of the market investigation were mixed as regards the question of whether providers of one type of AD software (such as Automated Testing software) could start providing another type of AD software (such as ADLM software), most competitors recognised that it would require extensive financial and human resources to expand from one segment to another.[25]

(29)   Furthermore, as to the question whether a distinction should be made by industrial sector with regard to AD software, the majority of competitors responding to the market investigation questionnaire considered AD software products used in different sectors as alternatives.[26] The same considerations apply to ADLM and Automated Testing software.

(30)   Finally, in relation to a possible distinction by type of customer (AD software for high-end and low-end customers), competitors responding to the market investigation questionnaire took the view that such distinction could be envisaged since AD software includes different functionalities when targeted to high-end or to low-end customers.[27] This view was shared by most customers. The same considerations apply to ADLM and Automated Testing software.

(31)   Based on the results of the market investigation, ADLM and Automated Testing could constitute separate product markets. The Commission also notes that a further distinction within the AD software market by industrial sector may not be warranted and that, based on the results on the market investigation, ADLM and Automated Testing software may include different functionalities if targeted to high- or low-end customers.

(32)   However, for the purpose 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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[22]   Form CO, paragraph 179 and Annex 1.1 h, "Gartner Software Methodology Report, page 47".

[23]   Form CO, Annex 1.1 h, "Gartner Software Methodology Report, page 48".

[24]   See responses to Question 7 of Q1 – Questionnaire to competitors and responses to Question 7 of Q2 – Questionnaire to customers.

[25]   See responses to Question 6 of Q1 – Questionnaire to competitors and responses to Question 6 of Q2 – Questionnaire to customers.

[26]   See responses to Question 8 of Q1 – Questionnaire to competitors.

[27]   See responses to Question 10 of Q1 – Questionnaire to competitors and responses to Question 10 of Q2 – Questionnaire to customers.

4.3. Geographic market definition

4.3.1.   The Notifying Party's view

(33)   The Notifying Party submits that the relevant geographic market for each type of software product is worldwide in scope because software products are sourced by customers beyond national borders, without any barriers that limit the worldwide distribution of these types of software.[28]

4.3.2.   Commission's assessment

(34)   In previous cases, the Commission concluded that the geographic market for infrastructure software was worldwide in scope.[29] In relation to AD software products, the Commission left open whether the geographic market definition was EEA-wide or worldwide.[30]

(35)   The majority of the competitors that responded to the market investigation questionnaire indicated, with respect to AD software, that there are no different sourcing patterns or requirements in the EEA compared to the rest of the world and that they are able to provide AD software to the EEA and worldwide.[31] Likewise, the majority of customers of AD software stated that they are able to source AD software in the EEA and worldwide.[32]

(36)   For the purpose of the present decision, the exact scope of the geographic market (whether EEA-wide or worldwide) of AD software and its possible sub-segments of ADLM and Automated Testing, 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

5.1.   Introduction

(37)   The Parties' combined share in the overall market for AD software amounts to less than [10-20]% worldwide and less than [10-20]% in the EEA. Therefore the Transaction does not lead to an affected market in relation to AD software.

(38)   However, the Transaction gives rise to horizontally affected markets in relation to the possible markets for ADLM software and for Automated Testing software. The Notifying Party submits that it is unable to provide separate market share figures for the ADLM and Automated Testing segments and can only report them together. The Notifying Party estimates that the merged entity's market share for both segments taken together would be [20-30]% in 2015 (HPE: [20-30]%; Micro

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28   Form CO, paragraph 173.

29   Case M.5080 – *Oracle / Bea*, Commission Decision of 29 April 2008, paragraphs 14-15; Case M.5529 – *Oracle / Sun Microsystems*, Commission Decision of 21 October 2010, paragraphs 767-769.

30   Case M.4747 – *IBM / Telelogic*, Commission Decision of 5 March 2008, paragraphs 124-126.

31   See responses to Question 9 and Question 10 of Q1 – Questionnaire to competitors.

32   See responses to Question 11 of Q2 – Questionnaire to customers.

Focus: [5-10]%) in the EEA and that its market share for each ADLM and Automated Testing would not differ substantially from the share of both segments combined.

(39)   Table 2 shows the Parties' market share in AD software as reported by Gartner.

Table 2: Market shares of the Parties in AD software, EEA and worldwide, based on Gartner (2015)

	Micro Focus		HPE		Combined	
	EEA	**WW**	**EEA**	**WW**	**EEA**	**WW**
AD software	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
ADLM	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%
Automated Testing	[0-5]%	[0-5]%	[50-60]%	[40-50]%	[50-60]%	[40-50]%

Source: Form CO, Annex 6.b "Gartner Market Shares: All Software Markets, Worldwide, 2015

(40)   The Notifying Party submits that the Gartner report […] included all revenues of HPE's "Quality Center" product under Automated Testing segment, […] this product performs both ADLM and Automated Testing functionalities.

(41)   In the analysis of the potential markets for the supply of ADLM (Section 5.2) and Automated Testing (Section5.3), the Commission will take into account the Parties' market shares as estimated by the Parties as well as those based on the Gartner reports.

5.2.   ADLM

5.2.1.   The Notifying Party's view

(42)   The Notifying Party submits that no competition concerns can be expected to arise in this market post-Transaction because: (i) the Parties have a low combined market share and there are other strong competitors (such as IBM and Microsoft) active in this market;[33] (ii) the Parties are not close competitors and do not commonly compete in the same tenders because […];[34] (iii) entry and expansion is easy through the proliferation of open-source software which provides a basis for software developers to innovate and through the introduction of cloud-based software;[35] and (iv) customers that buy enterprise software are sophisticated and

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[33]   Form CO, Tables 6.2 to 6.7. According to the Parties, their combined market share for the aggregated ADLM and Automated Testing segments would be [20-30]% (HPE: [20-30]%, Micro Focus: [0-5]%).

[34]   Form CO, paragraphs 300, 302 and 316-318.

[35]   Form CO, paragraphs 120-122 and 136-150.

able to exert buyer power and the increased interoperability of software solutions make switching easier.[36]

5.2.2. Commission's assessment

(43) The Commission considers that for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to ADLM software.

(44) First, the Parties do not have a significant share of the market. Relying on the market share estimate provided by the Notifying Party, the Parties' combined market share would be around [20-30]%. According to Gartner, the Parties' combined market share is [10-20]% worldwide and [10-20]% in the EEA.

(45) Second, a large number of competitors remain active in the potential ADLM market such as IBM ([30-40]% market share worldwide and [30-40]% in the EEA), Microsoft ([10-20]% and [5-10]%), Atlassian ([5-10]% and [10-20]%), CA Technologies ([0-5]% and [0-5]%), Flexera ([5-10]% and [5-10]%) and will continue to constrain the merged entity post-Transaction. A large majority of respondents to the market investigation questionnaires, both customers and competitors, supported the view that a sufficient number of competitors will remain active in the ADLM market post-Transaction.[37] In relation to the potential narrower markets for ADLM software for high-end and low-end customers, the increment resulting from the Transaction is likely to be low, given that, as discussed below in paragraph (46), the Parties focus on different types of customers […].[38]

(46) Third, the Parties do not appear to compete closely in the supply ADLM software. Most competitors responding to the market investigation questionnaire indicated that HPE's closest competitors in ADLM software are Microsoft and IBM, rather than Micro Focus.[39] […] based on the data provided by the Notifying Party, only […]% of HPE's lost tenders in AD software were lost to Micro Focus.[40] This provides further indication that the Parties are not close competitors in the supply of ADLM software.

(47) Fourth, the Commission observes that entry or significant expansion of offerings in the ADLM market has occurred in the last years. During the market investigation, all competitors that expressed a view stated that entry had occurred in the last five years, either a new entry or the significant expansion of operations (such as transitioning from being a niche player to a major competitor).[41]

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[36] Form CO, paragraphs 124-128 and 302.

[37] See responses to Question 14 of Q1 – Questionnaire to competitors and to Question 14 of Q2 – Questionnaire to customers.

[38] Form CO, paragraph 47.

[39] See responses to Question 17 of Q1 – Questionnaire to competitors and to Question 17 of Q2 – Questionnaire to customers.

[40] Form CO, paragraphs 124 and 316.

[41] See responses to Question 15 of Q1 - Questionnaire to competitors.

Examples of new entrants in the ADLM segment mentioned by participants to the market investigation included Inflectra and Jama.[42]

(48) Fifth, open source software competes against traditional software and this trend has increased in the past few years. This finding is supported by the market investigation results as a majority of respondents considered that open source software competes directly with traditional software and that it has increased competition in ADLM software.[43] An example of an open-source project in ADLM is Git.[44]

(49) Finally, all competitors responding to the market investigation questionnaire stated that the impact of the Transaction on their companies and on the ADLM market would be neutral or positive.[45] Likewise, a large majority of customers that responded to the market investigation were of the view that the impact of the Transaction on the ADLM market would be neutral or positive.[46]

(50) For all these reasons, the Commission takes the view that the Transaction does not raise serious doubts as regards its compatibility with the internal market with respect to ADLM software.

5.3. Automated Testing

5.3.1. The Notifying Party's view

(51) The Notifying Party submits that no competition concerns can be expected to arise in this market post-Transaction because: (i) the Parties have a low combined market share and there are other strong competitors (such as IBM and Microsoft) active in this market;[47] (ii) the Parties are not close competitors and do not commonly compete in the same tenders because […];[48] (iii) entry and expansion is easy through the proliferation of open-source software which provides a basis for software developers to innovate and through the introduction of cloud-based software;[49] and (iv) customers that buy enterprise software are sophisticated and able to exert buyer power and the increased interoperability of software solutions make switching easier.[50]

(52) The Notifying Party further claims that Gartner's figures […] seem to include all revenues from HPE's Quality Center product, which has ADLM capabilities in

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[42] See responses to Question 15 of Q2 - Questionnaire to customers.

[43] See responses to Questions 19 and 20 of Q1 – Questionnaire to competitors and to Questions 20 and 21 of Q2 – Questionnaire to customers.

[44] Form CO, paragraph 319.

[45] See responses to Question 24 and 25 of Q1 - Questionnaire to competitors.

[46] See responses to Question 25 and 26 of Q2 - Questionnaire to customers.

[47] Form CO, Tables 6.2 to 6.7. According to the Parties, their combined market share for the aggregated ADLM and Automated Testing segments would be [20-30]% (HPE: [20-30]%, Micro Focus: [0-5]%).

[48] Form CO, paragraphs 300, 302 and 316-318.

[49] Form CO, paragraphs 120-122 and 136-150.

[50] Form CO, paragraphs 124-128 and 302.

addition to Automated Testing and is offered as a bundle by HPE, thus overestimating HPE's presence in that market.[51] Moreover, the Notifying Party submits that revenue-based market shares do not adequately reflect the competitive pressure from free-of-charge open-source software providers.[52]

5.3.2. Commission's assessment

(53) The Parties' combined market share is around [20-30]%, based on the market share estimates provided by the Notifying Party. If the Commission were to consider the market share data reported by Gartner, the Parties' combined market share would be [50-60]% in the EEA and [40-50]% worldwide. The increment brought about by the Transaction is in any event small: [0-5]% according to the estimates of the Notifying Party and [0-5]% both worldwide and in the EEA according to Gartner. Although the combined market share, based on Gartner data, is high, the Commission considers that for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to Automated Testing software.

(54) First, a large number of competitors remain active in the Automated Testing market. These include IBM ([5-10]% market share worldwide and [5-10]% in the EEA), Microsoft ([5-10]% market share worldwide and [5-10]% in the EEA), CA Technologies ([5-10]% market share worldwide and [0-5]% in the EEA) and Atlassian ([0-5]% market share worldwide and [0-5]% in the EEA). These competitors will continue to constrain the merged entity post-Transaction. The market investigation results supported these findings, as most responding competitors and customers stated that there would be a sufficient number of players in the market for Automated Testing post-Transaction.[53] In relation to the potential narrower markets for Automated Testing software for high-end and low-end customers, the Commission considers that the increment resulting from the Transaction is likely to be low, given that, as discussed below in paragraph (55), […].[54]

(55) Second, the Parties do not appear to compete closely in the supply of Automated Testing software. Most competitors responding to the market investigation indicated that HPE's closest competitors in this segment were Microsoft and IBM, rather than Micro Focus.[55] […] based on the data provided by the Notifying Party, only […]% of HPE's lost tenders in the AD segment were lost to Micro Focus.[56] This provides further indication that the Parties are not close competitors in the supply of Automated Testing software.

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[51] Form CO, paragraph 298. Accordingly, the Notifying Party submits that HPE's market share in ADLM is […] by Gartner.

[52] Form CO, paragraph 319.

[53] See responses to Question 14 of Q2 – Questionnaire to customers and to Question 14 of Q1 – Questionnaire to competitors.

[54] Form CO, paragraph 47.

[55] See responses to Question 17 of Q1 – Questionnaire to competitors and to Question 17 of Q2 – Questionnaire to customers.

[56] Form CO, paragraphs 124 and 316.

(56)   Third, the Commission observes that entry or significant expansion of offerings in the Automated Testing market has occurred in the last years. This is in line with the results of the market investigation, where all competitors who took a view expressed that entry had occurred in the last five years, either new entry or the significant expansion of operations (such as transitioning from a niche player to a major competitor).[57] New entrants in this segment which were mentioned by market participants included Tricentris and Smartbear.[58]

(57)   Fourth, open source software competes against traditional software and this trend has increased in the past few years. This finding is supported by the market investigation results as a majority of respondents considered that open source software competes directly with traditional software and that it has increased competition in Automated Testing software.[59] An example of an open-source product in Automated Testing is Selenium.[60]

(58)   Finally, all competitors responding to the market investigation qualified the impact of the Transaction on their companies and on the Automated Testing market as neutral or positive.[61] Likewise, a large majority of customers that responded to the market investigation were of the view the impact of the Transaction on the Automated Testing market would be neutral or positive.[62]

(59)   For all these reasons, the Commission takes the view that the Transaction does not raise serious doubts as regards its compatibility with the internal market with respect to Automated Testing software.

6.   CONCLUSION

(60)   For the above reasons, the 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

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[57]   See responses to Question 15 of Q1 - Questionnaire to competitors.

[58]   See responses to Question 15 of Q1 - Questionnaire to competitors.

[59]   See responses to Questions 19 and 20 of Q1 – Questionnaire to competitors and to Questions 20 and 21 of Q2 – Questionnaire to customers.

[60]   Form CO, paragraph 319.

[61]   See responses to Question 24 and 25 of Q1 - Questionnaire to competitors.

[62]   See responses to Question 25 and 26 of Q2 - Questionnaire to customers.