



## **OPINION**

**of the ADVISORY COMMITTEE on MERGERS**

**at its meeting on 30/06/2023**

**concerning a draft decision**

**in case M.10806 – BROADCOM / VMWARE**

**(Text with EEA relevance)**

**RAPPORTEUR: FINLAND**

### **Concentration**

1. The Advisory Committee (10 Member States) agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings (the "Merger Regulation")<sup>1</sup>.

### **Market definition**

#### *Product market definition*

2. The Advisory Committee (10 Member States) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the following relevant product markets for:
  - a) IT Asset Management & Software Asset Management ("ITAM & SAM");
  - b) IT Automation and Configuration Management software ("ITACM");
  - c) Datacenter System and Application Control software ("DSAC");
  - d) Network software;
  - e) Server virtualization software;
  - f) The supply of Fibre Channel Host-Bus Adapters ("FC HBAs");
  - g) The supply of storage adapters;
  - h) The supply of Network Interface Cards ("NICs").

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1.

### Geographic market definition

3. The Advisory Committee (10 Member States) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the relevant geographic market for the following product markets for:
  - a) ITAM&SAM (i.e. at least EEA-wide, if not worldwide);
  - b) ITACM (i.e. at least EEA-wide, if not worldwide);
  - c) DSAC (i.e. at least EEA-wide, if not worldwide);
  - d) Network software (i.e. at least EEA-wide, if not worldwide);
  - e) The supply of server virtualization software (i.e. worldwide);
  - f) The supply of FC HBAs (i.e. worldwide);
  - g) The supply of storage adapters (i.e. worldwide);
  - h) The supply of NICs (i.e. worldwide).

### **Competitive assessment**

4. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition, as a result of horizontal non-coordinated effects arising from the combination of Broadcom and VMware's **ITAM & SAM software**.
5. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition, as a result of horizontal non-coordinated effects arising from the combination of Broadcom and VMware's **ITACM software**.
6. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition, as a result of horizontal non-coordinated effects arising from the combination of Broadcom and VMware's **DSAC software**.
7. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition, as a result of horizontal non-coordinated effects arising from the combination of Broadcom and VMware's **Network software**.
8. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction would likely significantly impede effective competition, as a result of conglomerate effects arising from the foreclosure of providers of **FC HBAs** caused by the restriction or degradation of interoperability between rival FC HBAs and VMware's server virtualization software.
9. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective

competition, as a result of conglomerate effects arising from the foreclosure of providers of **storage adapters** caused by the restriction or degradation of interoperability between rival storage adapters and VMware's server virtualization software.

10. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition, as a result of conglomerate effects arising from the foreclosure of providers of **NICs** caused by the restriction or degradation of interoperability between rival NICs and VMware's server virtualization software.
11. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition, as a result of conglomerate effects arising from the foreclosure of **SmartNICs** providers by delaying or hindering the development of SmartNICs through Project Monterey.
12. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition, as a result of conglomerate effects arising from any bundling of **VMware's server virtualization software with Broadcom's (enterprise, mainframe or security) software**.

### **Commitments**

13. The Advisory Committee (9 Member States) agrees with the Commission's conclusion that the (i) Open Access to APIs and Certification (ii) Open Source Driver Grant, and (iii) Organizational Separation and Confidentiality Commitments, as offered by the Notifying Party on 14 June 2023 remove concerns as to foreclosure of providers of FC HBAs caused by the restriction or degradation of interoperability between rival FC HBAs and VMware's server virtualization software. 1 Member State abstained.
14. The Advisory Committee (9 Member States) agrees with the Commission that, subject to the full compliance with the final commitments offered by the Notifying Party on 14 June 2023, the notified transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it. 1 Member State abstained.

### **Compatibility with the internal market and the Agreement on the European Economic Area**

15. The Advisory Committee (9 Member States) agrees with the Commission that the notified concentration must therefore be declared compatible with the internal market and the Agreement on the European Economic Area<sup>2</sup> in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the Agreement on the European Economic Area. 1 Member State abstained.

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<sup>2</sup> OJ L 1, 3.1.1994, p.3.