Summary of Commission Decision of 19 October 2011

declaring a concentration compatible with the internal market and the functioning of the EEA Agreement

(Case COMP/M.6214 — Seagate/HDD Business of Samsung)
(notified under document C(2011) 7592)
(Only the English version is authentic)
(Text with EEA relevance)
(2012/C 154/06)

On 19 October 2011, the Commission adopted a decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (1) (hereinafter referred to as the ‘Merger Regulation’), and in particular Article 8(1) of that Regulation. A non-confidential version of the full decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address:

http://ec.europa.eu/comm/competition/index_en.html

I. THE PARTIES

(1) Seagate Technology Public Limited Company (‘Seagate’, US) designs, manufactures and sells a broad range of computer storage devices, consisting mostly of hard disk drives (HDDs) and external hard disk drives (XHDDs). Its operations are vertically-integrated upstream in the manufacturing of key components, such as read/write heads and thin-film recording media.

(2) Samsung Electronics Co., Ltd (‘Samsung’, South Korea) is active in high-tech electronics manufacturing and digital media. The HDD Business of Samsung (hereinafter ‘Samsung HDD’) designs, manufactures, markets and sells HDDs and XHDDs. Samsung HDD is not vertically-integrated upstream in the manufacturing of components. Although Samsung is also active in solid state drives (SSDs), this business will not be transferred to Seagate.

II. THE OPERATION

(3) On 19 April 2011, the Commission received a formal notification pursuant to Article 4 of the Merger Regulation by which Seagate, through its subsidiary Seagate Technology Public Limited Company, acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the HDD business of Samsung by way of purchase of assets.

(4) The transaction concerns the acquisition by Seagate of sole control over the HDD Business of Samsung. The business to be acquired consists of substantially all tangible and intangible assets used exclusively by Samsung in the

research and development, manufacture and sale of HDDs and XHDDs which are owned or leased by Samsung. The transaction constitutes therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

(5) The transaction has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

III. SUMMARY

A. Analytical framework

(6) Another concentration affecting the same markets, namely the acquisition by Western Digital (‘WD’) of the HDD and SSD businesses of Hitachi Global Storage Technologies (‘HGST’), was notified to the Commission on 20 April 2011, one day after the present transaction.

(7) Assessing the competitive effects of a proposed concentration under the Merger Regulation involves a comparison of the competitive conditions that would result from the notified merger with the conditions that would have prevailed in absence of the merger. In principle, the competitive conditions existing at the time of notification constitute the relevant framework of comparison for evaluating the effects of a concentration. However, in some circumstances the Commission may take into account future changes to the market that can reasonably be predicted.

(8) It is inherent in the general system of the Merger Regulation that a party that is the first to notify a concentration which, assessed on its own merits, would not significantly

impede effective competition in the internal market or in a substantial part thereof, is entitled to have its operation declared compatible with the internal market within the applicable time limits. It is neither necessary nor appropriate to take into account future changes to the market conditions resulting from concentrations subsequently notified.

(9) The 'first come, first served' approach is the only one that ensures sufficient legal certainty and objectivity. Ensuring legal certainty is one of the primary aims of the Merger Regulation.

(10) Furthermore, under the scheme of the Merger Regulation, the date of notification is the most appropriate basis for applying the priority rule. It is a clear and objective criterion, determined in all cases in accordance with the rules of Article 5 of Regulation (EC) No 802/2004, which fits into a notification-based system of merger control.

(11) Consistent with its recent practice, the Commission has decided to assess the present transaction according to a priority rule ('first come, first served') based on the date of notification. Therefore, in view of the dates of notification, the present transaction is assessed independently from the WD/HGST transaction taking into account as starting point of the Commission's assessment a market structure with the following HDD suppliers: Seagate, WD, HGST, Toshiba, and Samsung HDD.

B. The relevant market

1. Introduction

(12) HDDs are devices that use one or more rotating disks with magnetic surfaces (media) to store and allow access to data. HDDs provide non-volatile data storage, which means that the data remains present when power is no longer applied to the device.

(13) The main components of a hard drive are the head disk assembly (HDA) and the printed circuit board assembly (PCBA). Toshiba and Samsung HDD purchase major components such as heads and media from third party manufacturers, such as TDK for heads and Showa Denko for media. Other suppliers, namely Seagate, WD and HGST, self-supply the large majority of these key components.

(14) Differentiation of HDDs is possible according to their technical characteristics, such as size (3.5", 2.5", 1.8" form factors), rotational speed (seek time), storage capacity and the type of interface.

(15) Further, HDDs are customarily categorised by reference to their end use, in particular:

(a) Enterprise HDDs

(16) Enterprise HDDs are used mainly in servers and enterprise storage systems. Enterprise HDDs can be further segmented in: (i) mission critical HDDs (employed in high performance servers or storage arrays which require 99.999% reliability); and (ii) business critical HDDs (used in the large storage facilities or server farms of Internet companies which run 24/7).

(b) Desktop HDDs

(17) Desktop HDDs are incorporated in personal computers intended for regular use at a single location (homes, businesses and multi-user networks). Nearly all HDDs for desktop applications are based on the 3.5" form factor, which offers the highest storage capacity with the lowest price per GB.

(c) Mobile HDDs

(18) Mobile HDDs are incorporated primarily in notebook computers and other mobile devices. Individuals use mobile computers both in and away from homes and businesses. Most mobile HDDs are based on the 2.5" form factor. They are generally more expensive and have less capacity than 3.5" desktop HDDs.

(d) CE HDDs

(19) CE HDDs are used in: (i) digital video recorders (DVRs) and satellite and cable set-top boxes (STBs); and (ii) game consoles. HDDs supplied for CE applications include both 3.5" and 2.5" form factor drives as well as a small volume of 1.8" drives (1). As opposed to HDDs used in PC applications (whether desktop or mobile), 2.5" and 3.5" HDDs used in CE products are provided with specific firmware codes customised according to the specific application purpose.

2. Different HDDs markets according to form factor and end-use

(20) The Commission's investigation revealed that there is no demand-side substitutability across all HDDs since the various end-use applications where HDDs are incorporated largely determine the technical requirements of HDDs (capacity, interface, rpm and form factor). In addition, within the same end-use application HDDs with different form factors (namely 3.5" and 2.5") are not substitutable from a customer stand-point.

(1) The 1.8" drive will not be discussed as neither Seagate nor Samsung manufactures this type of HDDs.
HDDs employed in different end-use applications are also subject to different industry dynamics and different supply chain models. The Commission’s investigation also indicated that there is no sufficient supply-side substitutability across all types of HDDs in terms of effectiveness and immediacy. In the absence of such supply-side substitution, the market cannot be defined in a broader manner.

The Commission defined the following relevant product markets: (i) enterprise mission critical HDDs (1); (ii) 3.5″ enterprise business critical HDDs; (iii) 3.5″ desktop HDDs; (iv) 3.5″ consumer electronics (CE) HDDs; (v) 2.5″ mobile HDDs; and (vi) 2.5″ CE HDDs.

The Commission’s investigation and previous decisions indicated that all the HDD markets are worldwide in scope.

### 3. XHDDs

External hard disk drives (XHDDs) allow PC users to supplement the storage space of their PC systems, their home and small office networks, or their CE devices. They provide stand-alone storage solutions. XHDDs use HDDs as inputs. Unlike internal HDDs, XHDDs are sold as finished products on the merchant market and substantially target different customers, mainly end users of PC and CE devices as opposed to original equipment manufacturers (OEMs). XHDDs are a predominantly branded business.

The Commission considers that XHDDs constitute a separate product market that is downstream of HDDs. The Commission further considers that the XHDD market is currently regional and therefore must be assessed at the EEA-wide level as the customers as well as the customer mix differ significantly between the regions. Also the identity and numbers of XHDD suppliers vary across the different regions in the world.

### C. Competitive assessment

#### Non-coordinated effects

According to its own estimates, Seagate is currently the largest HDD supplier in terms of revenues, and a close second to WD in terms of volume for HDDs overall. It is the largest supplier on the markets for enterprise mission critical HDDs ([60-70] % market share in revenues), enterprise business critical HDDs ([30-40] % market share in revenues) and 3.5″ CE HDDs ([40-50] % market share in revenues), the second largest supplier on the market for 3.5″ desktop HDDs ([30-40] % market share in revenues) and the third largest supplier on the market for 2.5″ mobile HDDs ([10-20] % market share in revenues).

The activities of Seagate and Samsung HDD overlap in all the HDD markets with the exception of the market for enterprise mission critical HDDs (where Samsung is not present) which is therefore not assessed for the purpose of the present decision. As a result of the proposed transaction, Seagate will become the leading player on all the HDDs markets with the exception of the market for 2.5″ CE HDDs which is not affected (2).

Market structure and competitive dynamics vary for each of the relevant HDDs markets. A number of factors are nonetheless relevant for the Commission’s competitive assessment for each of these markets, as explained herein below.

The Commission finds that products on the HDD markets have features of differentiated products rather than pure commodity products.

The Commission’s investigation indicated that multi-sourcing is very important for HDD customers for reasons of security of supply as well as to receive competitively priced supply. The Commission’s investigation further pointed out that three qualified and reliable suppliers would be enough for an effective multi-sourcing policy. Since the Commission’s investigation confirmed that both WD and HGST are qualified as valid and reliable HDD suppliers by HDD customers, it follows that post-transaction the ability of OEMs to multi-source will not be impacted.

Seagate and Samsung HDD are not close competitors. Samsung HDD and Seagate have different customer groups. Samsung HDD does not appear to be a significant supplier to OEMs as compared to Seagate and the other HDD competitors.

Vertical integration upstream confers a significant competitive advantage to HDD suppliers. While Seagate is vertically integrated, Samsung HDD has to rely on a third party for its supply of key HDD components.

The Commission’s investigation indicated that there would be no likelihood of timely and sufficient entry by a new (3) Given that the parties’ combined market share is below 15 %.

(1) For the purpose of the decision, there is no need to differentiate enterprise mission critical HDDs according to form factor as no competition concerns arise in this market under any alternative product market definition.
HDD competitor. In any event, the proposed transaction will not significantly impede effective competition in any of the HDD markets.

For the reasons explained hereinafter, the proposed transaction will not significantly impede effective competition in any of the worldwide HDD markets or on the EEA-wide XHDD market.

The transaction will lead to a reduction in the number of suppliers from four to three on the markets for 3,5" desktop HDDs and 3,5" CE HDDs, and from five to four suppliers on the markets for 2,5" mobile HDDs and 3,5" enterprise business critical HDDs.

On the markets for 3,5" CE HDDs and 3,5" enterprise business critical HDDs, the transaction will only lead to a small increment in Seagate's market share as Samsung's market share is very small (less than 2 %).

The Commission's investigation revealed that although the merged entity will enjoy a substantial market share on the market for 3,5" desktop HDDs, it will continue to face at least two strong competitors with significant market shares, namely WD and HGST. Moreover, Seagate and Samsung are not particularly close competitors. With three remaining suppliers, customers will retain sufficient possibilities to switch suppliers and effectively multi-source. In case of a price increase, HGST and WD are likely to have the ability and the incentive to increase supply. Lastly, the merger does not eliminate a particularly important competitive force on the market for 3,5" desktop HDDs.

These findings are a fortiori valid for the market for 2,5" mobile HDDs where after the transaction there will remain four competitors and, in addition to WD and HGST, the merged entity will also face Toshiba as a competitor.

As regards the EEA XHDD market, this market is growing faster than the internal HDD markets. On the supply side, the XHDD market seems to be less concentrated than the HDDs markets. In addition to the HDD producers, there are alternative XHDD suppliers which are not vertically-integrated upstream in the manufacturing of HDDs.

The Commission's investigation indicated that: (i) Seagate is only the second biggest player in the market (10-20 %) and shares its second position with Iomega; (ii) the acquisition of Samsung HDD which is currently the number six player in the market (10-5 %) would not increase considerably Seagate's market position and the merged entity would have a market share below 25 % on the EEA XHDD market, from which the absence of any anticompetitive effects can be presumed; (iii) there would be still enough players active on the EEA XHDD market in the near future which would compete with the merged entity; and (iv) the proposed transaction is unlikely to enable the merged entity to hinder expansion by most of its competitors as it will not have the ability nor incentive to make the expansion of non-vertically integrated players more costly.

Coordinated effects

The Commission's market investigation did not reveal evidence of successful coordination in the relevant markets in which there are currently four HDD suppliers, such as the market for 3,5" desktop HDDs. This indicates that a reduction to four HDD manufacturers post-merger will not automatically lead to a merger-specific risk of coordination.

The removal of Samsung HDD does not bring a material merger-specific effect in a number of relevant markets due to Samsung HDD's lack of or small presence (1) on these markets prior to the proposed transaction. This applies notably to the markets for enterprise mission critical HDDs, for 3,5" enterprise business critical HDDs, and for 3,5" CE HDDs.

As regards the market for 3,5" desktop HDDs, it can be noted that Samsung HDD is not a particularly strong innovative force or a particularly strong competitor.

In the market for 3,5" desktop HDDs, the level of post-merger asymmetry would remain high taking into account that the difference between the combined entity and HGST is more than 3,5:1, and between Western Digital and HGST of more than 3:1. In addition, the Commission's investigation showed that HGST has the incentive to expand sales and grow its [10-20] % share and it is unlikely to accept the status quo of remaining in a distant third place on the market.

The proposed transaction does therefore not give rise to a significant impediment to effective competition stemming from coordinated effects in the relevant HDD markets.

Vertical relationships

The proposed transaction gives rise to vertical relationships between the upstream markets for: (i) heads and (ii) media which are two of the components used in the manufacture of HDDs, and (iii) the downstream markets for HDDs which use those components.

(1) Equal or less than 2 % market share.
(47) Contrary to Seagate, Samsung is not vertically-integrated upstream in the production of HDD components such as heads or media. Toshiba is also not vertically-integrated and depends on third party suppliers for its sourcing of heads and media.

(48) The Commission’s investigation however revealed that after the transaction Seagate will not have the ability or incentive to pursue a foreclosure strategy against TDK (the only supplier of heads in the merchant market) which would risk weakening TDK and in turn endanger the competitive supply of this key component to Toshiba. In particular, pursuant to the Letter of Intent entered between Seagate and TDK on 3 August 2011, the merged entity will continue buying a sufficient volume of heads from TDK at least until 2014.

(49) The Commission’s investigation also indicated that the proposed transaction is not likely to have any significant adverse effect on Samsung’s current suppliers of media (Showa Denko and Fuji).

IV. CONCLUSION

(50) For the reasons mentioned above, the decision concludes that the proposed concentration will not significantly impede effective competition in the internal market or in a substantial part of it.

(51) Consequently, the concentration should be declared compatible with the internal market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.