

View of the representatives of the EFTA States and the EFTA Surveillance Authority presented at the meeting of the Advisory Committee on mergers given at its meeting of 4 October 2011 regarding a draft decision relating to Case COMP/M.6214 — Seagate Technology/The HDD Business of Samsung

Rapporteur: Italy

(2012/C 154/11)

Concentration

1. The EFTA States and ESA agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The EFTA States and ESA agrees with the Commission that the notified transaction has an EU dimension pursuant to Article 1(3) of the Merger Regulation.

Market definition

3. The EFTA States and ESA agrees with the Commission's definitions of the relevant product markets in the draft Decision.

In particular, concerning the product market definition, the EFTA States and ESA agrees that the impact of the proposed transaction must be assessed on the following markets:

- (a) The market for 3,5" Mission Critical Enterprise HDDs;
 - (b) The market for 3,5" Business Critical Enterprise HDDs;
 - (c) The market for 3,5" Desktop HDDs;
 - (d) The market for 3,5" CE HDDs;
 - (e) The market for 2,5" Mobile HDDs;
 - (f) The market for 2,5" CE HDDs; and
 - (g) The XHDD market.
4. The EFTA States and ESA agrees with the geographic market definition for:
 - (a) HDDs; and
 - (b) XHDDs.

Counterfactual

5. The EFTA States and ESA agrees with the Commission that, for the purpose of the competitive assessment of the proposed transaction, the most appropriate approach is to adopt the priority rule ('first come, first served') based on the date of notification.
6. The EFTA States and ESA agrees with the Commission that the proposed transaction must be assessed in the light of the competitive situation that prevailed at the time of its notification, i.e. without taking into consideration the transaction in Case COMP/M.6203 Western Digital/Viviti Technologies (Hitachi Global Storage Technologies, recently renamed Viviti Technologies).

Competitive assessment

Non-coordinated effects

7. The EFTA States and ESA agrees with the Commission's view that non-coordinated effects must be assessed on the following markets:
 - (a) The worldwide market for 3,5" Desktop HDDs;
 - (b) The worldwide market for 2,5" Mobile HDDs;
 - (c) The worldwide market for 3,5" Business Critical Enterprise HDDs;

- (d) The worldwide market for 3,5" CE HDDs; and
 - (e) The EEA-wide XHDD market.
8. The EFTA States and ESA agrees with the Commission's assessment that post transaction customers will have the possibility to source from at least three strong HDD suppliers and that the proposed transaction will not impact the ability of customers to multi-source and switch suppliers in all of the relevant HDD markets.
9. The EFTA States and ESA agrees with the Commission's assessment that Seagate and Samsung HDD are not particularly close competitors in any of the relevant HDD markets.
10. The EFTA States and ESA agrees with the Commission's assessment that the proposed transaction will not eliminate an important competitive force due to Samsung's less competitive and innovative abilities.
11. As regards the EEA-wide XHDD market, The EFTA States and ESA agrees with the Commission's assessment that:
- (a) The acquisition of Samsung would not considerably increase Seagate's market position;
 - (b) Even considering the current market trend of HDD manufacturers gaining rapidly market shares to the detriment of the non-integrated XHDD suppliers, three credible alternative suppliers would remain present in the EEA-wide XHDD market after the transaction; and
 - (c) The merged entity will have neither the ability nor the incentive to foreclose a significant part of the market.
12. The EFTA States and ESA agrees with the Commission's conclusion that the proposed transaction is not likely to give rise to non-coordinated effects that would significantly impede effective competition on the worldwide HDD markets for 3,5" Desktop HDDs, 2,5" Mobile HDDs, 3,5" Business Critical HDDs, and 3,5" CE HDDs nor on the EEA-wide XHDD market.

Coordinated effects

13. The EFTA States and ESA agrees with the Commission's assessment that it is likely that the proposed transaction will not increase the ability of the remaining HDD suppliers to reach terms of coordination.
14. In particular, The EFTA States and ESA agrees with the Commission's view that:
- (a) The removal of Samsung HDD does not cause a material merger-specific effect in a number of relevant markets due to Samsung's lack of or insignificant presence on the markets for 3,5" Business Critical Enterprise HDDs and 3,5" CE HDDs;
 - (b) On the 3,5" Desktop HDD market, Samsung is not a particularly strong innovative force or a particularly strong competitor and therefore the effect of Samsung's removal is likely to be limited with regard to coordinated effects;
 - (c) On the 3,5" Desktop HDD market the level of post-merger asymmetry would remain high;
 - (d) It appears likely that HGST would have strong incentives not to participate in any coordination in the 3,5" Desktop HDD market.
15. The EFTA States and ESA agrees with the Commission's conclusion that the proposed transaction is not likely to give rise to a significant impediment to effective competition stemming from coordinated effects.

Vertical effects

16. Concerning vertical relationships between the downstream HDD markets and the upstream markets for head components, The EFTA States and ESA agrees with the Commission's conclusion that the proposed transaction is not likely to impede effective competition.
17. Concerning vertical relationships between the downstream HDD markets and the upstream markets for media components, The EFTA States and ESA agrees with the Commission's conclusion that the proposed transaction is not likely to impede effective competition.

Conclusion

18. The EFTA States and ESA agrees with the Commission's conclusion that the proposed transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it.
19. The EFTA States and ESA agrees with the Commission's conclusion that the notified concentration must be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(2) and 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.

EFTA Surveillance Authority

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