



COMMERCE COMMISSION

Statement of Preliminary Issues

Seagate Technology / Samsung Electronics

15 July 2011

11.4/12921

INTRODUCTION

1. On 5 July 2011, the Commerce Commission (the Commission) received an application from Seagate Technology Plc seeking clearance to acquire certain assets of the hard disk drive business of Samsung Electronics Co. Limited. The public version of the application can be accessed on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/detail/721>

2. This Statement of Preliminary Issues outlines the key competition issues the Commission currently considers will be important in deciding whether or not to grant clearance. The issues highlighted in this statement are based on the information available at the time of publication, and may change as the Commission's assessment of the application for clearance progresses. Therefore, the issues highlighted in this Statement of Preliminary Issues are not binding on the Commission.
3. The Commission invites interested parties to make comment on the likely competitive effects of the proposed merger.

RELEVANT PARTIES

The Applicant – Seagate Technology Plc

4. Seagate Technology Plc (Seagate) Seagate is active worldwide in the design, and manufacture of a broad range of computer storage devices, consisting of hard disk drives (HDDs) and hybrid hard disk drives (H-HDDs) that are used in a wide range of electronic devices, and sold to distributors, resellers and retailers.

The Target – Samsung Electronics Co. Ltd

5. The HDD business of Samsung Electronics Co. Limited (Samsung) also designs, manufactures, and sells HDDs on a worldwide basis for use in electronic devices, and to distributors, resellers and retailers.

ANALYTICAL FRAMEWORK

6. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition. The first step of the Commission's

analytical framework¹ is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target where aggregation of market share may arise from the proposed acquisition. The Commission then considers the relevant products and geographic regions that constitute close substitutes from both a customer's and a supplier's point of view.

7. The Commission uses a forward-looking type of analysis to assess the degree of any potential lessening of competition in the relevant market or markets arising from a proposed acquisition. Therefore, the next step is to establish the two hypothetical future scenarios:

- with the acquisition in question (the factual); and
- without the acquisition (the counterfactual).

The impact of the acquisition on competition is then viewed as the difference between those two scenarios.

8. The Commission analyses the extent of competition in each relevant market for both the factual and counterfactual scenarios, in terms of:

- existing competition - the degree to which existing competitors compete and their ability to expand production in the event that the combined entity raises prices;
- potential competition - the ability of businesses to readily enter the market and thereafter expand, given an inducement to do so;
- the countervailing market power of buyers - the potential for a business to be sufficiently constrained by purchasers' ability to exert an influence on price, quality and/or terms of supply; and
- coordinated behaviour - whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.

9. A comparison of the extent of competition in the relevant markets both with and without the acquisition enables the Commission to assess the degree by which the proposed acquisition may lessen competition. If the lessening is substantial the Commission may not give clearance to the proposed acquisition.

PRELIMINARY ISSUES

10. Of the factors outlined in the previous section, the Commission currently considers its focus in respect of the proposed acquisition will be on the following areas:

Market Definition

11. The Application relates to both parties' involvement in the manufacture/import and supply of HDDs. HDDs are data storage systems that can be used in a variety of applications.

12. In assessing the relevant market in respect of HDDs, the Commission will consider the following topics:

¹ Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

- whether HDDs with different end uses such as desktop computing, notebooks, consumer electronics and server/enterprise form one market, or are in separate markets;
- whether HDDs with a different form factor/disk size (i.e., 1.8”, 2.5” and 3.5”) and different interfaces form one market, or are in separate markets; and
- whether other storage technologies such as Solid State Drives (SSDs) are in the same market as HDDs or are in a separate market.

Existing Competition

13. Presently there are five competitors in the market for the manufacture/import and supply of HDDs: Seagate, Samsung, Western Digital, Hitachi and Toshiba. However, in addition to the proposed acquisition of Samsung’s HDD assets by Seagate, Western Digital is proposing to acquire the HDD business of Hitachi. The Commission will take this parallel acquisition into account in its analysis.
14. In its application, Seagate submitted the merged entity would continue to face significant competition from the combined Western Digital/Hitachi entity and Toshiba. Seagate further submitted that it would face significant constraint from other storage technologies such as SSDs. The Commission will test the accuracy of these submissions.
15. In assessing the constraint posed by these competitors, the Commission will also consider whether technical compatibility, intellectual property or long-term contracts could make switching suppliers difficult for customers.

Potential Competition

16. Seagate has provided the Commission with information on entry conditions, and suggests that barriers to entry would not be insurmountable. The Commission is interested in testing these assertions to understand how difficult it would be for a new entrant to commence manufacturing HDDs.
17. In its application, Seagate set out a number of different ways in which market entry could be facilitated: switching from contract manufacture of HDDs, importing, and greenfields entry. The Commission will test whether entry in each of these ways would be likely, sufficient in extent and timely enough to act as a constraint should the combined entity exercise market power post-acquisition.

Countervailing Power

18. The Commission will consider whether large purchasers of HDDs could constrain the combined entity by threatening to switch suppliers, self-supply, or sponsoring new entry.

Other Competition Factors

19. The Commission will assess whether the reduction in the number of competitors, as a result of the proposed acquisition, will enhance the ability of the remaining market participants to collude either tacitly or explicitly.

NEXT STEPS

20. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at www.comcom.govt.nz), the Commission has established a draft timeframe for consideration of the issues and Seagate's application for clearance. An extension of time was agreed to by the Applicant such that the Commission should make its final decision by 19 August 2011. However, also in line with the Merger and Acquisitions Clearance Process Guidelines, this timeframe could change. To keep abreast of possible changes in relation to timing and to find relevant documents, visit the Clearance Public Register on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/>

21. As part of its investigation, the Commission will identify the parties it believes will provide the best information to help it assess the preliminary issues identified above. The Commission will be contacting those parties over the next few weeks.

22. The Commission also invites submissions from any other parties who consider they have information relevant to the Commission's consideration of this matter. If you wish to make a submission, please send it to the Registrar, at registrar@comcom.govt.nz with the reference Seagate/Samsung in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by **Wednesday 22 July 2011**. Please clearly identify any confidential information contained in the submission and provide contact details.