
Announcement of Decision after Anti-Monopoly Review to Give Conditional Approval to the Acquisition of the Hard Disk Drive Business of Samsung Electronics Co. Ltd. by Seagate Technology LLC

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The Ministry of Commerce of the People’s Republic of China (“MOFCOM”) has received an anti-monopoly notification for concentration of business operators from Seagate Technology LLC (“Seagate” or “Notifying Party”) in respect of its proposed acquisition of the hard disk drive (“HDD”) business of Samsung Electronics Co., Ltd. (“Samsung”, and collectively the “Parties” with Seagate). After reviewing the case, MOFCOM decides to give approval to this concentration of business operators with restrictive conditions and hereby makes the announcement as follows pursuant to Article 30 of the Anti-Monopoly Law of the People’s Republic of China (“Anti-Monopoly Law”):

1 Registration and Review Procedure

On 19 May 2011, MOFCOM received an anti-monopoly notification for concentration of business operators from Seagate in respect of its proposed acquisition of Samsung's HDD business. Upon examination, MOFCOM was of opinion that the notification documents and materials were incomplete and requested the Notifying Party to submit supplementary materials. On 13 June, MOFCOM confirmed that the notification documents and materials as supplemented had met the requirements under Article 23 of the Anti-Monopoly Law, and therefore registered the notification and commenced the initial review thereon.

After its initial review, MOFCOM opined that the concentration might have the effect to restrict or exclude the competition in the HDD market. On 13 July, MOFCOM decided to conduct a further review of such concentration. On 11 October, it decided to extend the further review period to 12 December 2011.

In the course of its review, MOFCOM examined the truthfulness, completeness and accuracy of the documents and materials submitted by the Notifying Party, solicited written opinions of relevant governmental authorities, industrial associations and downstream enterprises, collected information concerning the relevant products, relevant market definition, market structure, transaction model and market development prospects, etc. from manufacturers, customers and relevant experts, as well as entrusted experts to conduct competition analysis and assessment for the concentration in question.

2 Competition Analysis

In accordance with the Anti-Monopoly Law and other relevant regulations, MOFCOM considered the market conditions, procurement model, capacity utilisation, product innovation, buyer bargaining power, market entry and effects on consumers in the HDD industry which the concentration would affect. MOFCOM also made an analysis of the preceding transactions and price changes over a specified period of time in the relevant
product market and made a comprehensive assessment as to the effect of the concentration on the market competition.

2.1 Concentration and relevant market definition

Under the Assets Purchase Agreement between Seagate and Samsung, Seagate will acquire the HDD business related assets from Samsung. Seagate is an enterprise which is engaged in production and sale of HDDs and other digital memory devices. The target assets include all plants, equipment and other assets owned by Samsung for research, development, production and sales of HDDs.

HDD is a memory device using the magnetic storage technology, and is usually the most important auxiliary storage medium in computers and other electronic consumer goods. As HDDs are substantially different from solid state drives, flash memories or other auxiliary storage devices in terms of capacity, price and usage, etc. and constitutes a separate relevant product market. Base on their end use application, the HDD market can be further segmented into narrower markets of relevant products, such as the enterprise HDDs, desktop HDDs, laptop HDDs and HDDs used in electronic consumer goods. Since the procurement and supply of HDDs are conducted on a worldwide scale, the relevant geographic market relating to the concentration is the global market.

2.2 Market conditions

Upon its investigation, MOFCOM found the following features of the HDD market:

First, the HDD market is highly concentrated. Over the past twenty years, this market is becoming increasingly concentrated. Currently, there are only five producers of HDDs, i.e., Seagate, West Digital, Hitachi Storage, Toshiba and Samsung. Similar to market shares in China, their global shares in 2010 were 33%, 29%, 18%, 10% and 10%, respectively.

Second, HDD products are remarkably homogenous. Distinctions are just minor among the HDDs supplied by different HDD producers, and downstream users may switch to other HDD suppliers within a short time and at a low price.

Third, the HDD market is quite transparent. Due to the small number of HDD producers and homogeneity of their products, competitors are well aware of each other’s technology, costs, production and sales. HDD producers can predict the price and price range to be determined by their competitors based on relevant facts and their experience. Meanwhile, information on various brand of HDD products are easily accessible from the distributors whose channels are usually shared by the HDD producers.

Fourth, large-sized computer manufacturers are the key downstream customers of HDD products. HDD products may be sold to downstream users through distributors or directly to large-sized computer manufactures which are the main customers of HDD products. The HDD market price is determined by the transaction price between large-sized computer manufactures and HDD producers.

2.3 Procurement model

In order to secure and maintain competitive price, large-sized computer manufactures usually adopt private bidding as part of their HDD procurement process and hold bilateral negotiations with a number of HDD producers separately on a quarterly basis. They allocated portions of their total demand to two to four HDD producers based on price or other factors to ensure the continuity and safety of their supply. In one single bidding, the bidder with most competitive offer will win the largest portion in the order, the bidder with a
less competitive offer may win a smaller portion, and the bidder with the least competitive offer may be rejected. In the procurement model, HDD producers compete for orders and more portions in the orders. Therefore, it is important to maintain the current procurement model of large-sized computer manufactures in order to maintain the competition in the HDD market.

2.4 Capacity utilisation

The investigation reveals that the HDD industry has a relatively high capacity utilisation rate. In particular, since the fourth quarter of 2008, the capacity utilisation rates of all HDD producers has been increasing as the market demand grew. In the fourth quarter in 2010, the average capacity utilisation rate of all the five HDD producers was around 90%, and the remaining capacity was very limited.

2.5 Product innovation

The investigation reveals that innovation plays a significant role in the HDD industry. A producer who launches the innovative products first can gain a large market share and high profits, and the profit margin of the products will significantly fall once other competitors launch products of the same type. HDD producers need to reduce their cost by way of constant innovation which is an important factor to the success of HDD producers. The investigation also reveals that competition in the HDD market is a significant incentive for continuing product innovation, and that elimination or restriction of competition will remarkably reduce HDD producers' aspiration for and lower down the speed of innovation.

2.6 Buyer bargaining power and effects on consumers

According to the investigation, HDD producers dominates the sale price by downstream distributors, and the distributors do not possess countervailing buyer power. The price hike by HDD producers, if not specifically aiming to certain enterprises, may not be objected by large-sized computer manufactures, because they are able to pass the increased cost to end consumers by increasing the computer price. Therefore, they has no motivation to exercise any countervailing buyer power. End consumers which are highly dispersed have little bargaining power with respect to the price hike of HDDs and computers.

Due to the flooding in Thailand since July 2011, West Digital incurred a loss in its HDD capacity and became the first producer who increased its HDD prices. Other HDD producers including the Parties also increased their prices, even by over 100% for some products. According to the investigation, in the circumstances that other conditions remained substantially the same, the rising selling price of personal computers was as result of passing by computer manufactures of the increased cost of HDDs directly to end consumers.

2.7 Market entry

According to the investigations, intellectual property rights and other proprietary knowledge are crucial to the HDD industry and, in particular, the key technologies which are not the intellectual property rights, the technique process and the technical team are the substantial barrier to entry into the market. Economy of scale is also very important in the relevant market. New joiners cannot survive if they can not reach a certain scale of production and sales, however which involves a huge amount of investment in production, research and development, and market development and was associated with massive potential risks. In the recent ten years, no new competitors have entered the relevant market. Therefore, MOFCOM is of the opinion that it is extremely difficult to enter the HDD market.
2.8 Effect of the concentration on the relevant product market and consumers

In the HDD market, both the Parties are the important players and the concentration will reduce one important competitor. Considering the aforementioned procurement model adopted by large-sized computer manufactures, such concentration will increase the chance of the remaining HDD producers to obtain the orders and reduce the competition pressure of the procurement model on HDD producers. In addition, as the HDD market is highly transparent, HDD producers are able to forecast the acts of other competitors, so the concentration will also increase the likelihood of coordination between the market competitors to eliminate or restrict competition. Currently, China has one of the largest market for personal computers in the world, and this concentration will have a negative impact on the interests of the Chinese consumers.

2.9 Conclusion

Above all, MOFCOM is of the opinion that this concentration will have an effect of eliminating or restricting competition in the HDD market.

3 Discussion on the Imposition of Restrictive Conditions

During the review, MOFCOM has indicated to the Parties the effect of eliminating and restricting competition the concentration will cause and held several rounds of negotiations on how to resolve the competition issues described above. The Parties also have proposed several resolutions plans. Upon the appraisal, MOFCOM is of the opinion that the final resolution plan submitted by the Parties was able to eliminate the adverse effect on competition caused by the concentration of business operators.

4 Decision

Upon the review, MOFCOM is of the opinion that the acquisition by Seagate of the HDD business of Samsung will have an effect of eliminating or restricting competition in the HDD market and decides to give conditionally approve the concentration, and the Notifying Party shall perform the following obligations:

4.1 The Notifying Party shall maintain Samsung HDD as an independent competitor in the relevant market and the relevant obligations include without limitation:

Firstly, Seagate will incorporate an independent subsidiary after the transaction, which will be responsible to independently determine prices of HDD products manufactured by the original production line of Samsung (the “Samsung Product”) and sell these products separately with Samsung’s brand. Both the sales teams of Seagate and Samsung shall report to the monitoring trustee and be subject to their supervisor under this Decision.

Secondly, during the transition period commencing from the establishment of the above-mentioned independent sales team till its effective operation, the original sales team of Samsung shall continue to sell the Samsung Product. The sales activities during the transition period shall not impair the competitiveness of the Samsung Product. The arrangements for Samsung to continue the sale of products and the monthly sales information shall be reported to the monitoring trustee and subject to their supervision under this Decision.

Thirdly, after the completion of the transaction, Seagate shall keep the pricing and sales team for the Samsung Product completely independent and shall set up a firewall between the pricing and sales team for the Samsung Product and the pricing and sales teams of
Seagate for other products with a view to preventing the exchange of competitive information between these two teams. Competitive information refers to any information which may lead the competitors to coordinate their respective business behavior, especially including the information regarding product prices, output quantity, customers and bidding details. The sales team for the Samsung Product shall designate only one responsible person to report to another responsible person designated by Seagate. The designation and change of these two responsible persons shall be reported to the monitoring trustee in advance. The two responsible persons must not communicate between the two teams about the competitive information. Any communication of information between these two responsible persons shall be reported to the monitoring trustee in advance or simultaneously and subject to their supervision under the Decision.

Fourthly, Seagate shall ensure the independent operation of Samsung’s production line which shall use Samsung’s equipment, process and production system. Seagate may offer technical support and innovation on the production line of the Samsung Product to improve the production efficiency and enhance the competitiveness of the Samsung Product. Such technical support and innovation shall not have any restrictive effect on the output or capacity of the Samsung Product and shall be reported to the monitoring trustee in advance and afterwards and subject to their supervisions under this Decision.

Fifthly, Seagate shall ensure that a reasonable product pricing mechanism for the Samsung Product will be set up independently and implemented strictly. The set-up of and any amendment to or any deviation from the pricing mechanism shall be reported to the monitoring trustee with the explanations and subject to their supervision under this Decision.

Sixthly, Seagate shall establish the independent research and development center for the Samsung Product, and may provide technical support to the research and development center, including providing them the access to its standard process in order to improve the production efficiency and enhance the competitiveness of the Samsung Product. Such technical support and any information and personnel exchange shall be reported to the monitoring trustee in advance or simultaneously and subject to their supervision under this Decision.

4.2 Seagate shall perform its commitment to maintain and expand the production capacity of the Samsung Product within 6 months after this Decision, and reasonably determine the capacity and output quantity of the Samsung Product based on the market demands thereafter. Information on the capacity and output quantity of Seagate’s product and Samsung Products shall be reported to the monitoring trustee on a monthly basis.

4.3 After the completion of the concentration, Seagate shall not materially change its current business model or force (or force in a disguised form) the clients to purchase its HDD products exclusively from Seagate or any company controlled by Seagate.

4.4 After the completion of the concentration, Seagate shall not force TDK (China) Co., Ltd. (“TDK”) to supply HDD magnetic heads exclusively to Seagate or any company controlled by Seagate or restrict the quantity of the magnetic heads supplied by TDK to other HDD producers.

4.5 Seagate undertakes that it will invest at least USD 800 million each year within three years upon the Decision and maintain the momentum of recent years investing in research and development in the innovation field so as to supply more innovative products and solutions to the customers.
4.6 In accordance with the *Interim Provisions on Divestiture of Assets or Business for Concentrations of Business Operators* promulgated by MOFCOM (No. 41 of 2010 Circular of MOFCOM), Seagate shall entrust an independent monitoring trustee to supervise the performance by Seagate of the aforementioned obligations.

After 12 months of the implementation of the Decision, Seagate may apply to MOFCOM for a release of its obligations under the above items 4.1 and 4.2. The application shall specify the situation relating to implementation of the restrictive conditions under the Decision, the reasons for the release of its obligations under the above items 4.1 and 4.2, accompanied with relevant evidences. MOFCOM will make its decision based on the application and the competition situation in the market.

For the purpose of performing the aforementioned obligations, Seagate shall submit to MOFCOM the detailed practicing plan within one week upon the appointment of the monitoring trustee for approval by the Ministry of Commerce.

MOFCOM has the right to supervise and inspect the performance by Seagate of the obligations set out above through the monitoring trustee or by itself. Where Seagate fails to duly perform these obligations, MOFCOM has the right to take actions in accordance with the relevant rules stipulated in the *Anti-Monopoly Law*.

The public announcement shall take effect as of the date of promulgation.

The Ministry of Commerce

12 December 2011