



## **DETERMINATION OF MERGER NOTIFICATION M/13/035 – Toshiba / OCZ**

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### **Section 21 of the Competition Act 2002**

### **Proposed acquisition by Toshiba Corporation of OCZ Technology Group**

**Dated 6 January 2014**

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#### **Introduction**

1. On 10 December 2013, in accordance with section 18 of the Competition Act 2002 (“the Act”), the Competition Authority (“the Authority”) received a notification of a proposed acquisition of control by Toshiba Corporation (“Toshiba”) of the assets of the OCZ Technology Group (“OCZ”).

#### **The Undertakings**

##### *Toshiba*

2. Toshiba is a diversified electronic and electrical product manufacturer, headquartered in Tokyo, Japan. Toshiba is active on a global basis across four business segments, namely, digital products (e.g. Toshiba TVs, Blu-ray Disc™ players, PCs and Tablets), home appliances, infrastructure systems and, electronic devices (e.g. data storage products) and components.<sup>1</sup>
3. Toshiba electronic devices and components business segment manufactures semiconductor and data storage products including hard disk drives (“HDD”) and solid state drives (“SSD”) for both business and consumer use. Toshiba also manufactures NAND Flash memory, which is used in the production of SSD and other memory products.
4. Within the State, Toshiba operates through Toshiba TEC Europe Retail Information Systems S.A. which is active in the retail sale of multifunctional peripherals (“MFPs”), POS systems, barcode printers and RFID information processing systems, inkjet heads, kiosk and signage solutions in Ireland.<sup>2</sup>
5. For the financial year ending 31 March 2013, Toshiba had a worldwide turnover of approximately €54 billion and a turnover in the State of approximately €[..].

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<sup>1</sup> For more information on Toshiba see <http://www.toshiba.co.jp/worldwide/index.html>

<sup>2</sup> In addition Toshiba also operates through the following subsidiaries: Medical Imaging (N.I.) Limited, active in the sale of medical equipment, and T.O.S. Ireland Limited, active in the distribution of office document imaging solutions operate as sales agents of Toshiba in the island of Ireland.

## OCZ

6. OCZ is headquartered in San Jose, California in the US and is listed on NASDAQ in New York. OCZ is active in the design, manufacturing, and distribution of consumer and business SSD and power management/supply solutions.<sup>3</sup>
7. Although, OCZ has no subsidiaries or any supply or distribution facilities on the island of Ireland, its products are available through a number of distributors including Avent Technology Solutions, CMS Distribution, Exertis Micro-P and IngramMicro.<sup>4</sup>
8. For the financial year ending 28 February 2013, OCZ had a worldwide turnover of approximately €[...] and a turnover in the State of approximately €[...].

### **Rationale for the Proposed Acquisition**

9. Toshiba has stated that *"The Proposed Transaction is an investment opportunity for the Purchaser and will enhance its offering of SSD solutions for the ultimate benefit of its customers."*

### **Third Party Submissions**

10. No third party submission was received.

### **Competitive Analysis**

#### Product and Geographic Markets

11. The parties submit that the industry sector involved is the computer hardware sector. In addition the parties submit that the relevant product market could be considered to be market for SSD, with possible further segmentation based on PC (consumer) and Enterprise use (which, the parties submit, can be left open).
12. The Authority considers that it is not necessary to define the product market with precision in this case as the proposed acquisition will not substantially lessen competition in the State in any of the potential markets or market segments.
13. When examining markets for HDDs, the Commission has previously concluded that SSDs and HDDs are not substitutable products. *"[C]urrently SSDs and HDDs are not sufficient substitutes for each other due to the significant price differential between the two and the limited storage capacities of SSDs"* and continued by stating it did not *"expect that the situation will dramatically change in the short term."*<sup>5</sup>
14. SSDs have no moving mechanical parts, which distinguishes them from storage devices such as hard disc drives or floppy discs which contain

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<sup>3</sup> The notifying parties have confirmed that the Proposed Transaction does not include the OCZ power management/supply business.

<sup>4</sup> For more information on each of these companies see [http://www.ts.avnet.com/ie/press\\_centre/about\\_us.html](http://www.ts.avnet.com/ie/press_centre/about_us.html), <http://www.cmsdistribution.com/business/ocz-technology/>, <http://www.exertismicro-p.co.uk/?mcsid=%7BC1C75238-57A7-4547-9F95-8F442E5B59F2%7D> and <http://www.ingrammicro-dcpos.eu/COMPANY/UK.php>

<sup>5</sup> In case COMP/M.6214 - Seagate/ HDD Business of Samsung, paragraph 235.

spinning discs and a movable arm to read or write to the device. SSDs are thus less susceptible to physical shock and mechanical failures than HDDs, typically run silently, and have lower access time and less latency.

15. The parties submit that the geographic market concerned is global in nature and point to recent European Commission Decisions on HDD where the Commission has accepted that the geographic market was world-wide<sup>6</sup> on the basis that customers' requirements are similar throughout the world, requirements are generally sourced globally, and prices typically do not differ across regions.

#### Horizontal Overlap

16. Toshiba designs, manufactures and sells semiconductor and data storage products, including HDD and SSD for business and consumer use. OCZ designs, manufactures and sells SSD. Thus although neither of the parties have production facilities for the manufacture of SSD on the island of Ireland, there is a horizontal overlap in the design, manufacturing and sale of SSD.
17. Gartner estimates global demand<sup>7</sup> for SSD to be approximately US\$[...] billion (i.e., the combination of \$[...] billion (approx. €[...] billion) from sales of Enterprise SSD such as those used in servers or networked storage and \$[...] billion (approx. €[...] billion) from sales of PC/consumer SSD.<sup>8</sup>
18. The parties have confirmed that Toshiba has total global sales of SSD of approximately €[...] million and the parties estimate that Toshiba's global SSD share is approximately [5 – 10] per cent. OCZ's global SSD revenues are approximately €[...] million and the parties estimate that it's global share is approximately [0 – 5] per cent.
19. As noted in paragraph 17 Gartner estimates the global demand for Enterprise SSD at approximately €[...] billion. Toshiba estimates that the combined share of the parties in the Enterprise SSD segment to be, at most, [0 - 5 per cent globally].<sup>9</sup>
20. With respect to the global demand for PC (consumer) SSD Gartner again estimates this at €[...] billion. Toshiba estimates its global sales of PC (consumer) SSD at approximately €[...] million giving it a global share in PC (consumer) SSD of approximately [10 – 15] per cent (estimated at [15 – 20] per cent share by Gartner). OCZ estimates that it generates global revenues of approximately €[...] million through the sale of PC (consumer) SSD accounting for a global share of [5 – 10] per cent (estimated by Gartner at approximately [5 – 10] per cent).

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<sup>6</sup> In case *COMP/M.6214 - Seagate/ HDD Business of Samsung*, paragraph 282 and case M. 6203 *Western Digital Ireland/Viviti Technologies*, paragraph 389.

<sup>7</sup> Market share data for the State is not available. However, the parties argue that since the demand and supply of SSD is global and given that the commercial focus of the Parties is not on Europe, market shares in Ireland are, at most, the same, but likely lower than the global shares.

<sup>8</sup> Gartner Report NAND & SSD Industry 2013: "*The Year of the Jugular*", March 2013, pp24-25.

<sup>9</sup> Based on the parties estimates of combined sales of approximately €[...] million of Enterprise SSD.

21. Post acquisition and based on the parties' estimates<sup>10</sup> provided above, the merged entity would have a combined global market share for the supply of
- (i) enterprise SSD of approximately [0 – 5] per cent;
  - (ii) PC (Consumer) SSD of approximately [15 – 20] %; and
  - (iii) the entire SSD market of approximately [10 – 15] %.
22. The merged entity would continue to face competition in the supply of SSD (both Enterprise SSD and PC (Consumer) SSD) from several global players such as Samsung (20-25%), Intel (15-20%), SanDisk (10-15%), Micron Technology Inc (5-10%) and other players such as Kingston, sTec, NetApp, Lite-On.<sup>11</sup>
23. Given the global nature of the SSD product segments together and the relatively small turnover of the parties in Ireland the impact of the merger on the markets for goods and services in the State will be relatively minor.

#### Vertical Overlap

24. Toshiba designs, manufactures and sells NAND Flash memory, a component used in the production of SSD, and other memory products. Although a vertical overlap exists between the parties on a global scale it is negligible and the merger is unlikely to give rise to competitive concerns in this respect.
25. The parties submit that Toshiba generated approximately US\$[...] billion (about €[...] billion) in revenues from the supply of NAND Flash Memory, representing an estimated global share of about [20 – 25] per cent. However, OCZ's purchases of NAND Flash Memory, from all vendors, correspond to less than [0 - 5] per cent of total Toshiba sales of NAND Flash Memory globally.

#### Conclusion

26. In light of the above the proposed transaction will not result in a substantial lessening of competition in any market for goods or services in the State.

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<sup>10</sup> The parties estimates of market shares are used since they provide more consistent data on sales in both SSD segments. However the conclusions reached by the Authority would not be affected if the Gartner estimates had been used instead.

<sup>11</sup> Ibid.

## **DETERMINATION**

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Toshiba Corporation would acquire sole control of the OCZ Technology Group will not be to substantially lessen competition in markets for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

**For the Competition Authority**

**Stephen Calkins**

**Member of the Competition Authority**

**Director, Mergers Division**