



# DETERMINATION OF MERGER NOTIFICATION M/17/063 – ARROW/COMMTECH

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Arrow Electronics Inc. of sole control of Commtech IOM 2 Unlimited

Dated 19 December 2017

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#### Introduction

1. On 13 November 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction (the “Proposed Transaction”) whereby Arrow Electronics Inc. (“Arrow”), through its wholly-owned subsidiary Arrow Enterprise Computing Solutions Limited (“Arrow Enterprise”), would acquire sole control of Commtech IOM 2 Unlimited (“Commtech”).

#### The Proposed Transaction

2. The Proposed Transaction will be implemented by way of a Share Purchase Agreement (the “SPA”) between Justin Owens, Commtech IMO 1 Limited<sup>1</sup> and Arrow Enterprise dated 20 October 2017. Pursuant to the SPA, Arrow Enterprise will acquire the entire share capital in and, ultimately, sole control of Commtech.

#### The Undertakings Involved

##### *The Acquirer – Arrow*

3. Arrow Enterprise, a company incorporated in the United Kingdom, is a wholly-owned subsidiary of Arrow. Arrow, a public company incorporated in the United States, is a

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<sup>1</sup> Justin Owens currently owns Commtech, through Commtech IMO 1 Limited.



global provider of electronic components and enterprise computing products, services and solutions to industrial and business users.

4. Arrow is active in two business segments:

- The global components element of Arrow's business markets and distributes electronic components and provides a range of value-added capabilities throughout the entire life cycle of technology products and services to original equipment manufacturers and contract manufacturers; and
- The global enterprise computing solutions ("ECS") element of Arrow's business provides value-added computing solutions and services. Arrow's global ECS portfolio of computing solutions includes datacentre, cloud, security, and analytics solutions. Arrow's global ECS business works with value-added resellers of enterprise computing solutions to tailor information technology ("IT") systems, such as engineering and integration support, warehousing and logistics, hardware and software training, to meet the needs of their customers. In 2016, within Arrow's global ECS business segment, approximately 43% of sales comprised software, 35% storage, 8% proprietary servers, 9% industry standard servers, and 5% other products and services.

5. In 2016, approximately 65% of Arrow's turnover was generated from the global components business segment while 35% was generated by the global ECS business segment.

6. For the financial year ending 31 December 2016, Arrow's worldwide turnover was approximately €[...] billion, of which approximately €[...] million was generated in the State.

#### *The Target - Commtech*

7. Commtech, incorporated in the Isle of Man, is the holding company of a group of companies, i.e., Commtech Solutions (UK) Limited, Commtech Solutions Unlimited Company, Commtech Distribution Limited and CT3 Europe Unlimited Company. Commtech is headquartered in Dublin with sales offices in Belfast and London.



8. Commtech is a distributor of IT products including enterprise infrastructure technologies and solutions and computer storage and security solutions in the State. Commtech also provides enablement services (including market entry and product launches, client consultancy and support, ongoing brand promotion and the sharing of facilities including offices and logistics) and specialist technical and marketing support to industrial and business users.
9. For the financial year ending 30 December 2016, Commtech's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

#### **Rationale for the Proposed Transaction**

10. The parties state in the notification:

*“The Proposed Transaction will broaden Arrow’s geographic reach in a growing sector, while supporting Arrow’s strategy to meet the evolving needs of suppliers and customers.”*

#### **Third Party Submissions**

11. No submission was received.

#### **Competitive Analysis**

##### *Horizontal overlap*

12. There is horizontal overlap between the business activities of the parties in the State. Both Arrow and Commtech distribute a range of IT products, services and solutions in the State. The particular areas of business activity where Arrow and Commtech are both active include enterprise infrastructure technologies and solutions, enterprise storage and data solutions (including backup and recovery solutions, big data, cloud, content management, data protection, document imaging and infrastructure management), and IT security solutions in the State.



### Overview of IT Distribution Sector

13. IT products include, for example, PCs, servers, software and storage systems. In its decision in *M. 8248 - Tech Data/Avnet's Technology*, the European Commission stated that manufacturers of IT products can either sell their products directly to the end user ("direct sale") or to intermediaries (such as IT distributors and/or resellers) who sell to the end user ("indirect sale").<sup>2</sup> The distribution of IT products is generally referred to as "broadline" distribution.<sup>3</sup> Additional services associated with the distribution of IT products, such as consulting or system configuration support, sales training, marketing, repair and financial solutions, are generally referred to as value added distribution ("VAD").
14. Indirect sales take place in a one-tier or two-tier distribution system. A one-tier distribution system is where IT manufacturers supply resellers who then supply to the end user. A two-tier distribution system is where IT manufacturers supply wholesale distributors, such as Arrow and Commtech, who in turn supply resellers, who then supply to end users.
15. Both Arrow and Commtech distribute the following IT products in the State:
  - Enterprise infrastructure technologies and solutions - this refers to the concept of IT resources and data that are shared across an enterprise and includes infrastructure engineering for building, managing, and evolving shared IT;
  - Computer storage solutions – this refers to the various devices and equipment whose function is to store and protect data on a computer network and computer storage;<sup>4</sup>

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<sup>2</sup> IT manufacturers choose direct or indirect sale routes based on various factors such as geographical reach, logistical capability and efficiency, and familiarity with the relevant products. Most IT manufacturers use both channels. Please see paragraph 7 of the European Commission's decision *M. 8248 - Tech Data/Avnet's Technology* [http://ec.europa.eu/competition/mergers/cases/decisions/m8248\\_659\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8248_659_3.pdf)

<sup>3</sup> Broadline distribution is typically complemented by services such as credit services, e-commerce, logistics services and marketing services. Please see paragraph 9 of the European Commission's decision *M. 8248 - Tech Data/Avnet's Technology* [http://ec.europa.eu/competition/mergers/cases/decisions/m8248\\_659\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8248_659_3.pdf)

<sup>4</sup> In its decision in *M. 8248 - Tech Data/Avnet's Technology*, the European Commission stated in paragraph 51 that "International Data Corporation ("IDC") defines an enterprise storage systems (or disk system) as a set of storage elements, including controllers, cables, and (in some instances) a host bus adapter associated with there or more mass storage devices (hard disk drives ("HDDs") or solid state drives ("SSDs")) with the exception of entry-level business storage." Please see: [http://ec.europa.eu/competition/mergers/cases/decisions/m8248\\_659\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8248_659_3.pdf)



- Enterprise network (hardware and software) – this includes the hardware and software used to interface and link equipment (including computers and devices) with applications and databases. Enterprise network allows business users, regardless of location, to pass and share information within a corporate environment.<sup>5</sup>
- Enterprise security solutions – this refers to the various devices and equipment whose function is to protect and secure data in the various components of a computer system. These solutions include backup and recovery solutions, big data solutions, cloud, content management, data protection as well as document imaging and infrastructure management; and
- Ancillary services to the distribution of IT – this refers to pre-sales and after-sales services, technical training, marketing support, solutions-testing and services relating to the customisation and implementation of solutions.

#### *Product Market Definition*

16. The parties state in the notification that *“The relevant product market is the wholesale distribution of IT products including related services such as marketing and pre-sales advice.... This product market definition should include both sales of IT products by manufacturers (i.e., direct sales) and sales by distributors (i.e., indirect sales). Reseller customers can and do purchase IT products directly from IT Vendors (i.e., manufacturers).”*
17. In its determination in *M/15/056 - Exertis Ireland (DC)/Espion Distribution*, the Commission did not come to a definitive view on the precise relevant product market and examined the competitive impact of that transaction in the following potential

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<sup>5</sup> In its decision in *M. 8248 - Tech Data/Avnet's Technology*, the European Commission stated in paragraph 63 that *“IDC defines enterprise network as hardware purchased by enterprise customers for the implementation of wired and wireless computer networks, which may be utilized for the transfer of data and voice traffic. It includes router, switch, analogo-to-digital converter, wide area network optimization, IOP telephony, enterprise video conferencing, and wireless local area network.”* Please see [http://ec.europa.eu/competition/mergers/cases/decisions/m4868\\_20071005\\_20310\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m4868_20071005_20310_en.pdf)



markets: (a) the sale of IT products by distributors to resellers in the State; and (b) distribution of IT security and networking products to resellers/retailers.<sup>6</sup>

18. In its decision in *M.4868 - Avnet/Magirus EID*, the European Commission did not come to a definitive view on the precise product market definition and stated<sup>7</sup> that “*The Commission envisaged the existence of an overall distribution market comprising all IT products and services as well as narrower categories (servers, storage devices), and even distinction within categories (high-end, mid-range and entry level servers) drawn from price band classifications.*”
19. In its recent decision in *M. 8248 - Tech Data/Avnet’s Technology*, the European Commission also left the precise product market open and stated<sup>8</sup> that “*Further distinctions between different (IT) product categories or different sales channels have been considered but left open.*” In its assessment of the likely competitive impact of that transaction, the European Commission examined the potential market for the wholesale distribution of all IT products, and some narrower potential markets comprising specific segments of IT products.
20. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission considers that there are no reasons to depart from the Commission’s and the European Commission’s previous approach to product market definition for the purpose of assessing the Proposed Transaction. Therefore, the Commission does not need to come to a definitive view on the precise relevant product market in this instance, since its conclusion on the likely competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is either broad, to include the wholesale distribution of all IT products or narrow, by segments of IT products (such as, for example, the following potential product markets: the wholesale distribution of enterprise infrastructure and solutions; the wholesale distribution of computer storage systems; the wholesale distribution of

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<sup>6</sup> The Commission’s decision in *M/15/006 – Exertis Ireland (DC)/Espion Distribution* can be accessed at [https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-15-056-Determination-Exertis-Ireland-DCC\\_Espion-Distribution.pdf](https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-15-056-Determination-Exertis-Ireland-DCC_Espion-Distribution.pdf)

<sup>7</sup> Please see paragraph 10 of that decision, which can be accessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m4868\\_20071005\\_20310\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m4868_20071005_20310_en.pdf)

<sup>8</sup> Please see paragraph 10 of the European Commission’s decision *M. 8248 - Tech Data/Avnet’s Technology* which can be accessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m8248\\_659\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8248_659_3.pdf)



enterprise network systems; the wholesale distribution of security solutions; and the wholesale distribution of ancillary services).

#### *Geographic Market Definition*

21. In its decision in *M/15/056 Exertis Ireland (DC)/Espion Distribution*, the Commission examined the competitive effect of that transaction in the State.<sup>9</sup>
22. The European Commission left the geographic market definition open in its decision in *M.4868 -Avnet/Magirus EID* and assessed the competitive impact of that transaction in specific national markets.<sup>10</sup>
23. Following the approach taken by the Commission and the European Commission, the Commission has analysed the likely competitive impact of the Proposed Transaction by reference to the potential relevant market for the wholesale distribution of all IT products in the State. The Commission has not uncovered any information that suggests that the merged entity will acquire market power in any of the market segments identified in paragraph 20 above in the State following implementation of the Proposed Transaction.

#### *The Wholesale Distribution of all IT Products in the State*

24. In the notification, the parties provided estimated shares in the potential market for the wholesale distribution of all IT products in the State, as set out in Table 1 below:

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<sup>9</sup> The Commission's determination *M/15/056 Exertis Ireland (DC)/Espion* can be accessed at <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-15-056-Determination-Exertis-Ireland-DCC-Espion-Distribution.pdf>

<sup>10</sup> The European Commission's decision *M.4868 - Avnet/Magirus EID* can be accessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m4868\\_20071005\\_20310\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m4868_20071005_20310_en.pdf)



<b>Table 1 - Estimated Market Shares of wholesale distributors of all IT products in the State</b>	
<b>Company</b>	<b>Estimated Market Share (%)</b>
Tech Data Corporation	25-30
Westcoast Electrical Limited	20-25
Micro Warehouse Limited	15-20
Exertis Ireland Limited	5-10
Commtech	5-10
Arrow	5-10
Data Solutions Limited	0-5
Others	15-20

Source: This Table is based on information provided by the Parties, which is represented in the notification as the Parties' best estimates based on their knowledge of the market.

25. The parties state in the notification that their combined share in the potential market for the wholesale distribution of all IT products in the State is approximately [10-20]%. The Commission has not uncovered data that contradicts the market share estimates of the parties.
26. Table 1 shows that, following implementation of the Proposed Transaction, Arrow will continue to face competition in the State from wholesale distributors of all IT products such as Tech Data Corporation, West Coast Electrical Limited, Micro Warehouse Limited, Exertis Ireland Limited, and Data Solutions Limited. Therefore, following implementation of the Proposed Transaction, there will remain sufficient competitors to Arrow in the potential market for wholesale distribution of all IT products.
27. Furthermore, the Commission contacted Commtech's five largest customers in the State. None of those who responded raised any concerns regarding the Proposed Transaction. One of Commtech's customers expressed the following view to the Commission: *"Arrow have little of [sic] no presence previously. Entry of another large global distributor [sic] good thing for competition in ireland [sic]."* *"Commtech was a niche distributor. Consolidation of smaller distributors with globals like Arrow are common due to diminishing margin on IT products. More aggressive prices and competition expected with increased global suppliers of IT products."*





28. In light of the above, the Commission considers that the Proposed Transaction does not raise any competition concerns in relation to the potential market for the wholesale distribution of all IT products in the State.

#### *Vertical Relationship*

29. There is no identifiable vertical relationship between Arrow and Commtch in the State. Therefore, the Proposed Transaction does not raise any vertical competition concerns in the State.

#### *Conclusion*

30. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

#### **Ancillary Restraints**

31. Clause 16 of the SPA contains a number of restrictive obligations including non-compete and non-solicitation obligations on Justin Owens. The duration of these restrictive obligations does not exceed the maximum duration acceptable to the Commission.<sup>11</sup> The Commission considers those restrictive obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

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<sup>11</sup> In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Arrow Electronics Inc., through its wholly-owned subsidiary Arrow Enterprise Computing Solutions Limited, would acquire sole control of Commtech IOM 2 Unlimited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**