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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Infinigate Holding AG
Grundstrasse 14
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Switzerland

Subject: **Case M.10840 – INFINIGATE / NUVIAS**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 16 September 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Infinigate Holding AG ("Infinigate" or the "Notifying Party", Switzerland), part of the group headed by Bridgepoint Group plc (UK), will acquire sole control of RPE Investments Limited ("RPE", UK), ultimately controlled by Rigby Group (RG) plc ("Rigby", UK), within the meaning of Article 3(1)(b) of the Merger Regulation (the "Transaction").[3] Infinigate and RPE are together referred to as the "Parties".

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this Decision.
2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').
3 Publication in the Official Journal of the European Union No C 367, 26.09.2022, p. 14.

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1. THE PARTIES

(2) **Infinigate** is a wholesale distributor of Information Technology ("IT") products with a focus on cybersecurity products (including firewalls, VPN gateways, intrusion detection and prevention systems, encryption, virus protection, email and content security solutions, and cloud-enabled security solutions) in Western Europe.

(3) **RPE** is the holding company of the Nuvias Group, which consists of Nuvias Group Ltd. and Nuvias UC Overseas Limited ("Nuvias", UK). Nuvias is a wholesale distributor of IT products, which also provides supporting value-adding services, with a focus on cybersecurity products and networking solutions in Western Europe.[4]

2. THE OPERATION

(4) The Transaction will be implemented by means of a Sale and Purchase Agreement entered into on 30 June 2022 by Rigby Private Equity Ltd. (UK) and a number of individuals (together, "the Sellers"), and Infinigate Holding UK Ltd. (UK) (the "Buyer").[5] Upon closing, the Sellers will transfer 100% of the shares in RPE to the Buyer, which in turn is 100% controlled by Infinigate. Closing is conditional on obtaining the necessary regulatory approvals and governmental consents.[6]

(5) The Transaction will therefore lead to the acquisition of sole control by Infinigate over RPE, within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) In the last financial year, Bridgepoint Group plc and RPE achieved a combined aggregate worldwide turnover of more than EUR 5 billion.[7] Each of the two undertakings concerned achieved an EU-wide turnover in excess of EUR 250 million, and not each of the undertakings concerned achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.[8]

(7) Therefore, the Transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.[9]

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4 Form CO, paragraph 11 and Annex 6, clause 4.1.d. As set out in the Share Purchase Agreement, the communication business segment, which Nuvias runs under the division brand "unified communications", falls outside the scope of the Proposed Transaction and it will not be transferred to Infinigate.

5 Form CO, Annex 6.

6 Form CO, paragraph 27.

7 Turnover calculated in accordance with Article 5 of the Merger Regulation.

8 Form CO, Annex 5.

9 Form CO, paragraph 19.

4. RELEVANT MARKETS

4.1. The Parties' activities

(8) The Parties are both active in the wholesale distribution of IT products, with a focus on cybersecurity products, in Western Europe. Therefore, the Transaction concerns the market for the wholesale distribution of IT products (the "IT distribution market").

4.2. Overview of the IT distribution sector

(9) IT distribution involves the supply of IT products (such as servers, software, storage devices, PCs, etc.), by different IT manufacturers ("vendors", *e.g.*, Check Point, Sophos, McAfee) to wholesale distributors (such as TD Synnex, Ingram, ALSO) and to resellers (such as Computacenter, T-Systems or Bechtle), who then sell the products to end customers.

(10) In general, vendors have two channels to reach end consumers: direct sales to end users and indirect sales to distributors and resellers. **Direct sales** are made by vendors to end customers directly, without using any intermediary. **Indirect sales** are sales where the product passes through one or more intermediaries (IT distributors or resellers) before reaching the end user. Vendors choose direct or indirect routes to market based on factors such as geographical reach, logistical capability and efficiency, and familiarity with the relevant product. Almost all vendors use both channels. Similarly, IT product purchasers have two basic options for acquiring almost any product: buying directly from the vendor or buying from a reseller.

(11) Indirect sales can occur through one-tier or two-tier routes to market. In **one-tier distribution**, vendors supply resellers, which then supply end users. In **two-tier distribution**, vendors supply wholesale distributors, such as the Parties, which in turn supply resellers, which then supply end users. Resellers may operate simultaneously under both one-tier and two-tier models, acquiring some products directly from vendors and others from wholesale distributors.

(12) A range of different services may be associated with the distribution of IT products. Basic, large-scale delivery of products is generally referred to as **broadline distribution**. Additional services, such as consulting or system configuration support, sales training, marketing, and financial solutions can also be offered by IT distributors. These services are generally referred to as value added services or **value added distribution**. Distributors who also offer such additional services are commonly referred to as value-added distributors or specialist distributors ("VAD").

4.3. Product market definition

4.3.1. Past Commission decisions

(13) In previous decisions, the Commission considered that the distribution of IT products should constitute a separate market from the distribution of other electronic products.[10]

(14) In *Tech Data / Avnet's Technology Solutions*[11], the Commission further considered a potential segmentation of the IT distribution market, in particular based on (i) product category (*e.g.*, enterprise servers, enterprise storage, networks), (ii) type of sale (direct versus indirect); and (iii) distribution model (broadline or VAD).

4.3.2. The Notifying Party's views

(15) The Notifying Party submits that the relevant product market is the market for the wholesale distribution of IT products, and that a further segmentation of the market is not required.[12]

(16) As regards a potential differentiation by product group (i.e. security, networking, communications, etc.) or type (software vs. hardware), the Notifying Party argues that both large and small IT distributors typically offer a wide range of products and services, addressing very different product groups (and including software as well as hardware).[13] Moreover, the Notifying Party submits that the Canalys Report[14], as well as IDC and Gartner consider there is no clear line between cybersecurity and networking products.[15] Similarly, there is no clear distinction between software and hardware, as hardware may be sold in combination with (pre-installed) software or certain hardware may work best with a certain brand of software, making it a typical bundle product.[16]

(17) From a demand-side perspective, the Notifying Party submits that resellers (i.e. the distributors' customers) expect distributors to manage a portfolio that covers the whole range of different products, including hardware and software, as they will typically require a mix of these products to meet the demand of their end customers and prefer a one-stop-shop solution for their supply.[17] Therefore, a segmentation

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10 Case M.8248 *Tech Data/Avnet's Technology Solutions*, paragraph 10 and 19; Case M.8175 *Exertis/Hammer*, paragraph 10; Case M.6577 *Avnet/Magirus*, paragraph 10*;* Case M.6323 *Tech Data Europe/MuM VAD Business*, paragraph 12*;* Case M.5099 *Arrow/Logix*, paragraphs 19 and 21*;* Case M.5091 *Tech Data/Scribona*, paragraph 11.

11 Case M.8248 *Tech Data/Avnet's Technology Solutions*, paragraphs 15-19.

12 Form CO, paragraph 70.

13 Form CO, paragraphs 72 and 77.

14 Form CO, Annex 10. Upon the Parties' request, market research company Canalys has prepared a market report on "*Distributors in the evolving German cybersecurity sector*" dated June 2022 ("Canalys Report").

15 Form CO, paragraphs 74 and 79.

16 Form CO, paragraph 77.

17 Form CO, paragraph 78.

between product group or type would be artificial, as it does not reflect market reality.[18]

(18) The Notifying Party also submits that there is no clear distinction between direct sales and indirect sales or between one-tier and two-tier distribution (within the indirect sales channels). From a demand-side perspective, the Notifying Party submits that the different sales channels are interchangeable as end customers consider them as alternative sources of supply.[19] Moreover, the Notifying Party considers that particularly larger vendors always have a choice to circumvent (at least) one level of the value chain, as they may have the relevant scale effects to justify establishing, inter alia, a substantial in-house sales division.[20] Therefore, the Notifying Party submits that segmenting the market for the wholesale distribution of IT products by channel does not reflect today's market reality.[21]

(19) Furthermore, the Notifying Party claims that no distinction should be made between broadline distribution and VAD.[22] The Notifying Party submits that it is not feasible to draw a clear line along which distributors could be classified as either a broadliner or a VAD. This concerns the degree of specialisation but also the extent of additional services offered by the respective distributors. The Notifying Party submits that VADs very often distribute products without rendering any of the additional services that are supposedly characteristic for these type of distributors.[23] Further, the Parties market themselves as VADs but compete with all types of distributors, regardless of their qualification as either "broadliner" or "VAD". [24] From a demand-side perspective, a reseller may or may not request additional services in each transaction.[25] Therefore, the Notifying Party submits a segmentation between broadliners and VADs is artificial and implausible.[26]

(20) In any event, the Notifying Party submits that the definition of the relevant product market can be left open as competition concerns do not arise even on the narrowest possible product market.[27]

4.3.3. The Commission's assessment

(21) The results of the market investigation are inconclusive regarding whether the IT distribution market should be segmented into separate markets based on (i) product category, (ii) sales channel (direct vs. indirect), or (iii) distribution model (broadline vs. VAD).

(22) A slight majority of market respondents[28] considered that the IT distribution market in Germany[29] should not be further divided into different segments based on

18 Form CO, paragraphs 72 and 77. The Notifying Party mentions that although it is a small player, Nuvias' offering is not limited to cybersecurity products but includes advanced networking products as well as unified communication products.
19 Form CO, paragraph 80.
20 Form CO, paragraph 82.
21 Form CO, paragraph 85.
22 Form CO, paragraph 86.
23 Form CO, paragraph 92 and 93.
24 Form CO, paragraph 90.
25 Form CO, paragraph 93.
26 Form CO, paragraph 100.
27 Form CO, paragraph 101.

(i) different categories of products; (ii) direct vs. indirect sales, or (iii) different distribution models.[30] One respondent highlighted that "*a subdivision into different segments by any of the above categories would not be appropriate because it would not adequately reflect market realities. IT distribution services are generic in nature and do not differ meaningfully between products. Furthermore, the growth of cloud services is further blurring the distinction between IT product categories*".[31]

(23) All remaining respondents indicated the market should be further divided.[32] With regard to the appropriate segmentation, differentiations between product category, type of sales (with and without a further distinction between two-tier sales and one-tier sales), and distribution model were all considered relevant.[33]

(24) As regards the conditions of supply by wholesale distributors of different **IT product categories**, the vast majority of respondents considered that there are no significant differences between different categories.[34] The market investigation also shows that the majority of distributors typically distribute several types of products (i.e., all products of a vendor as opposed to focusing on a specific category).[35]

(25) Concerning the **sales channels**, respondents unanimously considered that resellers/retailers and end customers buy IT products indifferently directly from vendors or indirectly from distributors/wholesalers.[36] One respondent explained that "*end users switch back and forth from vendors or resellers on a regular basis. Likewise, resellers and retailers are generally able to procure indifferently from manufacturers and resellers. However, this is subject to a vendor's independent distribution strategy, as a vendor may unilaterally decide on the distribution channels for its products*".[37]

(26) Moreover, in view of the market respondents, the supply in indirect sales channels is to some extent constrained by conditions set by vendors as direct suppliers, in particular price.[38] One respondent explained that "*because IT vendors can and do sell to customers directly, they largely determine end-user prices. Users will not pay material price premiums to product resellers. This limits IT distributors' pricing power in two respects. If an individual IT distributor raised prices for its reseller partners, making those resellers uncompetitive against vendor direct sales, those resellers would immediately switch (some or all of the relevant accounts) to competing distributors or procure product from vendors themselves (thereby acting*

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28 Market participants consists of vendors (suppliers), distributors (competitors) and resellers (customers). All references throughout the decision to "market respondents" are considered as those respondents which expressed an opinion.

29 See recital (39) below.

30 Q1 – questionnaire to market participants, replies to question 6.

31 Q1 – questionnaire to market participants, reply to question 6.2.

32 Q1 – questionnaire to market participants, replies to question 6.

33 Q1 – questionnaire to market participants, replies to question 6.1.

34 Q1 – questionnaire to market participants, replies to question 7.

35 Q1 – questionnaire to market participants, replies to question 8.

36 Q1 – questionnaire to market participants, replies to question 9.

37 Q1 – questionnaire to market participants, replies to question 9.1.

38 Q1 – questionnaire to market participants, replies to question 10. On a scale between 1 (very much constrained) and 5 (not at all constrained), the average responses over all respondents in relation to price, speed of delivery, trade credit and after-sales support rank between 1 and 3.

as Tier 1 resellers). This ability of both users and resellers to procure the same products directly from vendors means that IT distributors lack pricing power. Other conditions, such as speed of delivery and trade credit, may be less of a constraint. According to their business model, which involves delivering products at relatively low margins based on an ultraefficient logistics and supply organization, distributors are typically well positioned to meet customer expectations in terms of speed of delivery, credit terms and after sales support".[39] In case of a price increase in the indirect sales channel, the majority of respondents considered that customers would switch to direct sales.[40] Further, the majority of market participants considered the growth of cloud services (which vendors sell directly to end users) leads to increased competitive pressure on the indirect sales channels, namely because cloud-based services have the benefit of a quick/instant delivery to end customers.[41]

(27) As regards different **distribution models**, the results of the market investigation were mixed: the same amount of respondents replied that resellers and end-users would consider broadline distribution and VAD as interchangeable and non-interchangeable.[42] While one respondent mentioned that "*all added value distributors can usually provide broad line distribution but broad line distributors usually provide only broad line distribution*", another explained that there are no clear boundaries between value-added and broadline distributors: "*value added distribution essentially means providing additional technical expertise when and if required by vendors and/or customers. However, the need for additional technical expertise is subject to change throughout the product life cycle (i.e. VAD may be more involved at the introduction of a product, but during its maturity and decline stages, distribution becomes more broadline). This further blurs any potential boundaries by distribution model*."[43] In case of a sustained price increase in by broadline distributors, the vast majority of market respondents considered that customers would switch to VAD distributors.[44]

(28) The Commission considers that the market investigation does not provide clear indications as to the exact scope of the relevant product market. In light of the above, the Commission concludes, for the purpose of this decision, that the question whether the IT distribution market should be segmented based on (i) product category, (ii) sales channel (direct vs. indirect), or (iii) distribution model (broadline vs. VAD), can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible product market definition.

39 Q1 – questionnaire to market participants, reply to question 10.1.
40 Q1 – questionnaire to market participants, replies to question 11.
41 Q1 – questionnaire to market participants, replies to question 12 and 12.1.
42 Q1 – questionnaire to market participants, replies to question 13.
43 Q1 – questionnaire to market participants, reply to question 13.1.
44 Q1 – questionnaire to market participants, reply to question 14.

4.4. Geographic market definition

4.4.1. Past Commission decisions

(29) In previous decisions, the Commission left the exact geographic market definition for the IT distribution market open.[45] For instance, in *Tech Data / Avnet's Technology Solutions*, the Commission considered a worldwide, EEA-wide, regional or national market definition, but ultimately left the exact definition open.[46]

4.4.2. The Notifying Party's views

(30) The Notifying Party submits that the relevant market is at least EEA-wide based on the following factors: (i) vendors typically operate on a global scale and often use EEA-wide price lists, (ii) there are common global standards for IT products, (iii) shipping costs are not a relevant factor; (iv) products are typically available on a multi-lingual basis, with English being the common language; (v) vendors typically offer EU-wide distribution and have at least an EEA-wide footprint, and (vi) cloud services continue to grow and challenge more narrow geographic markets.[47]

(31) In any case, the Notifying Party submits that the relevant geographic market definition can be left open, because the Transaction does not give rise to competition concerns regardless of the precise geographic market delineation.[48]

4.4.3. The Commission's assessment

(32) The results of the market investigation are inconclusive as to whether the IT distribution market, and its potential segments identified in Section 4.3.3 above, should be defined as national, regional, EEA-wide or worldwide.

(33) First, market respondents to the market investigation did not agree on whether distributors negotiate contracts for the distribution of IT products with vendors on a national, regional, EEA-wide or worldwide basis.[49] One market respondent mentioned that "*whilst some contracts may be negotiated on a global basis, others may cover only a specific region*".[50]

(34) Second, a slight majority of market respondents expressing an opinion stated that contracts between IT distributors and their customers are negotiated at a regional level. However, several other market respondents considered such contracts to be worldwide, EEA-wide or national.[51] In this regard, one market respondent explained that "*depending on the customers procurement strategy, distribution*

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45 Case M.8248 *Tech Data/Avnet's Technology Solutions*, paragraph 26; Case M.6323 *Tech Data Europe/ MuM VAD Business*, paragraph 28; Case M.6577 *Avnet/Magirus*, paragraph 27; Case M.7708 *ALSO/PCF*, paragraph 17.

46 Case M.8248 *Tech* Data/*Avnet's Technology Solutions*, paragraphs 24-26.

47 Form CO, paragraphs 102-109.

48 Form CO, paragraph 110.

49 Q1 – questionnaire to market participants, replies to question 15.

50 Q1 – questionnaire to market participants, reply to question 15.1.

51 Q1 – questionnaire to market participants, replies to question 16.

contracts will be negotiated on a worldwide, European, regional or national basis".[52]

(35) Third, in relation to the price lists used by vendors, a slight majority of market respondents stated that such price lists would typically be EEA-wide. However, several other market respondents considered such lists to be worldwide, regional or national in scope.[53] One respondent explained that it "*depends on the vendor and could be and is different from vendor to vendor*".[54]

(36) Fourth, the majority of market respondents considered that distributors set prices for their customers on a national basis. Nevertheless, a very significant amount of market respondents considered distributors set prices for their customers on a worldwide basis, EEA or regional basis (multiple answers were possible).[55] Some respondents underlined that the distributor price model is connected to vendor price model and although the vendor often sets a purchase price at a EEA-level, "*individual customer conditions may be determined by local market conditions*".[56]

(37) Fifth, in relation to whether a national presence (in terms of logistics) would be a key requirement for the distribution of IT products, the majority of market respondents answered "yes"[57], and explained that this is "*due to local legislation (taxes, GDPR, etc.)*". Although there are local markets which are served from other countries, from a sales or commercial point of view, a national presence can be important. One market respondent stated "*as often the vendor does not have the local presence, this is one of the main advantages of the distributor*".[58] Notwithstanding, a slight majority of market respondents expressing an opinion stated that distributors typically supply all customers established in a particular region across several countries from a logistic centre located in that region, and almost the same amount of respondents indicated there would be one logistic centre for the EEA.[59] Some respondents explained this "*depends on the size of the vendor and turnover*" and that "*distributors may have a combination of EEA-wide, cross-country regional and national supply chain towards customers*".[60]

(38) The Commission considers that the market investigation does not provide clear indications as to the exact scope of the relevant geographic market. However, for the purpose of this decision, the question whether the IT distribution market should be defined as national, regional, EEA-wide or worldwide, can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible geographic market definition.

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52 Q1 – questionnaire to market participants, reply to question 16.1.
53 Q1 – questionnaire to market participants, replies to question 17.
54 Q1 – questionnaire to market participants, reply to question 17.1.
55 Q1 – questionnaire to market participants, replies to question 18.
56 Q1 – questionnaire to market participants, replies to question 18.1.
57 Q1 – questionnaire to market participants, replies to question 19.
58 Q1 – questionnaire to market participants, replies to question 19.1.
59 Q1 – questionnaire to market participants, replies to question 20.
60 Q1 – questionnaire to market participants, replies to question 20.1.

(39) Since the Transaction may lead to affected markets only in Germany or the German/ Austrian/ Swiss ("DACH") region, the Commission focussed its market investigation on these areas.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

(40) The Guidelines on the assessment of horizontal mergers ("Horizontal Merger Guidelines")[61] describe two main ways in which horizontal mergers may significantly impede effective competition. In particular, the proposed concentration might be creating or strengthening a dominant position: (i) by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour (non-coordinated effects); and (ii) by changing the nature of competition in such a way that firms that previously were not coordinating their behaviour, are significantly more likely to coordinate and raise prices or otherwise harm effective competition (coordinated effects).

(41) A merger giving rise to horizontal non-coordinated effects might significantly impede effective competition by creating or strengthening the dominant position of a single firm, one which, typically, would have an appreciably larger market share than the next competitor post-merger. Moreover, also mergers that do not lead to the creation of or the strengthening of a single firm's dominant position may create competition concerns under the substantive test set out in Article 2(2) and Article 2(3) of the Merger Regulation. Regarding mergers in oligopolistic markets, the Merger Regulation clarifies that "*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition*".[62]

(42) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. Not all those factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[63]

(43) Furthermore, in some markets, a merger may give rise to coordinated effects where the structure is such that firms would consider it possible, economically rational, and hence preferable, to adopt on a sustainable basis a course of action on the

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61 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004, paragraph 22.

62 Merger Regulation, recital 25. Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines.

63 Horizontal Merger Guidelines, paragraph 26.

market aimed at selling at increased prices.[64] According to the Horizontal Merger Guidelines, coordination is more likely where it is relatively simple to reach a common understanding on the terms of coordination. Moreover, three conditions need to be met for coordination to be sustainable: (i) the coordinating firms must be able to monitor to a sufficient degree whether the terms of the coordination are being adhered to; (ii) there must be some form of credible deterrent mechanism that can be activated if deviation is detected; and (iii) the reactions of outsiders as well as customers should not be able to jeopardise the results expected from the coordination.[65]

5.2. Identification of affected markets

(44) The activities of the Parties overlap horizontally on the IT distribution market at a global, EEA, regional and national level. In an overall IT distribution market (global, EEA, regional and national), the Parties' combined market shares remain well below 1%. In such case, the proposed Transaction does not lead to any affected markets.

(45) However, under potential narrowly defined markets that would only include two-tier[66] VAD-only[67] distribution of cybersecurity products, the proposed Transaction gives rise to three affected markets in Germany and the DACH region. On these markets, Infinigate and Nuvias held market shares of [10-20]% and [5-10]% respectively in 2021 (combined [20-30]%)[68] in Germany, and approx. [10-20]% and [5-10]% respectively in 2021 (combined approx. [20-30]%)[69] in the DACH region. When this market in Germany would also include cybersecurity-related products[70], these shares would decrease to [10-20]% and [5-10]% respectively (combined [20-30]%)[71]. These three markets will be analysed below together. Any statement below relating to Germany also applies to the DACH region (unless stated otherwise).[72]

(46) The Transaction does not lead to any vertically affected relationships between the Parties. On an overall IT distribution market including direct and indirect sales, there could be theoretical vertical links between Infinigate upstream for the development and supply of enterprise application software and Nuvias downstream in the overall IT distribution market, based on two of Bridgepoint's portfolio companies which develop and supply software products related to financial services and workflow management to enterprise customers.[73] However, both their individual as well as their combined activities are limited and in any event significantly below 30%. Therefore, there are no vertically affected markets.

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64 Horizontal Merger Guidelines, paragraph 39.
65 Horizontal Merger Guidelines, paragraph 41.
66 Excluding direct sales and one-tier indirect sales. See paragraph (11) above.
67 Excluding broadline distribution. See paragraph (12) above.
68 Form CO, Annex 10, based on the Canalys Reports.
69 Based on Parties' best estimates.
70 These include network infrastructure, network and application performance monitoring as well as backup and disaster recovery (Canalys).
71 Form CO, Annex 10, based on the Canalys Report.
72 The market share in the DACH region is mostly based on its market share in Germany.
73 Form CO, paragraph 67.

5.3. Horizontal relationships

(47) As set out above in paragraph (45), both Parties are active in the IT distribution market. Such horizontal overlap is expected to give rise to three narrowly defined affected markets with regards to (i) the two-tier VAD distribution of cybersecurity products in the DACH region; (ii) the two-tier VAD distribution of cybersecurity products in Germany; and (iii) the two-tier VAD distribution of cybersecurity products and cybersecurity related products in Germany.

5.3.1. The Notifying Party's views

(48) The Parties submit that the proposed Transaction will not give rise to competitive concerns for the following reasons.

(49) First, in the overall IT distribution market in Germany, the Parties' combined market shares are negligible (well below 1%). The Parties' combined market shares only rise slightly above 20%, with small increments, in the narrow market segmentation focusing the market on cybersecurity products (and related products), excluding broadliners, which, according to the Parties, constitutes a definition of the market that does not represent market reality.[74]

(50) Second, the Parties consider that they will continue to face fierce competition from a high number of strong competitors post-Transaction. The German market is fragmented and highly competitive. A number of competitors are German-based such as Tarox, TIM and ADN, which gives them highly effective access to these potential markets in Germany or the DACH region. Other competitors include Arrow, Westcon and Exclusive Networks, which are strong international players with similar profiles as the Parties. In addition to these major players, there are also well-established niche players including Allnet, Sysob, Ebertlang, Etacom, Veronym or Cyber Monks, all of which are also active in the cybersecurity IT distribution market in Germany.[75]

(51) Third, the Parties' main customers with regard to cybersecurity products are well-established, international resellers, many of which are substantially larger than the Parties themselves. This includes companies like Bechtle, Computacenter or Softcat as well as telecommunication companies like Telekom Deutschland, British Telecommunications and Vodafone. These resellers can exercise strong countervailing buyer power against any attempt by the merged entity to increase prices post-Transaction.[76]

(52) Finally, on the upstream level, the Parties need to secure vendor contracts for which they are challenged both by other distributors and retailers but also by the vendors themselves who are in a position to sell directly to the end-customers. This affects the Parties' ability to negotiate certain details of vendor contracts such as rebates. The Parties' key vendors are well established suppliers, such as Fortinet and Check Point, and distributors cannot risk to lose contracts with them. These

74 Form CO, paragraphs 117-129.
75 Form CO, paragraphs 130-142.
76 Form CO, paragraphs 143-144.

vendors can easily react against any attempt by the merged entity to increase prices post-Transaction.[77]

5.3.2. The Commission's assessment

(53) The Commission considers that the Transaction is unlikely to raise horizontal concerns in the two-tier VAD distribution market of cybersecurity products in Germany and the DACH region, and in the two-tier VAD distribution market of cybersecurity and cybersecurity related products in Germany, for the following reasons.

(54) First, the Parties' combined 2021 market shares in a narrowly defined two-tier VAD distribution market of cybersecurity products in **Germany** will remain moderate ([20-30]%).[78] Similarly, in a narrowly defined two-tier VAD distribution market of cybersecurity products in **DACH region**, the market shares remain limited (approx. [20-30]%).[79] The same applies when looking at the two-tier VAD distribution market of cybersecurity and cybersecurity related products in **Germany** ([20-30]%).[80]

(55) Second, Nuvias' offering in Germany and the DACH region would only increase modestly Infinigate's position in these markets. The increment contributed by Nuvias in Germany in the two-tier VAD distribution market of cybersecurity products amounts to [20-30]%, and in the DACH region to approx. [5-10]%. With regard to the two-tier VAD distribution market of cybersecurity and cybersecurity related products, the increment amounts to [5-10]%.

(56) Third, the combined entity will continue to compete with a large number of other distributors. In particular, but not only, on a German two-tier VAD distribution of cybersecurity products market (2021), competitors include Arrow (approx. [10-20]%), Westcon (approx. [10-20]%), Tarox (approx. [5-10]%), Exclusive Networks (approx. [5-10]%), TIM (approx. [5-10]%) and ADN (approx. [5-10]%).[81] In relation to the two-tier VAD distribution market of cybersecurity products in the DACH region, the Parties estimate that the competitors' shares for 2021 are similar, *i.e.*, Arrow (approx. [10-20]%), Westcon (approx. [10-20]%), Tarox (approx. [5-10]%), Exclusive Networks (approx. [5-10]%), TIM (approx. [5-10]%), and ADN (approx. [5-10]%). Finally, on a German two-tier VAD distribution of cybersecurity products and cybersecurity related products (2021), these competitors have the following shares, i.e. Arrow (approx. [10-20]%), Westcon (approx. [10-20]%), TIM (approx. [10-20]%), Exclusive Networks (approx. [5-10]%), Tarox (approx. [5-10]%) and ADN (approx. [5-10]%). Among these distributors, Arrow, Westcon and Exclusive Networks are strong international players.[82] When looking at a wider market (not limited to VAD-only), the Parties

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77 Form CO, paragraphs 145-148.

78 The Parties estimate that their 2019 and 2020 combined shares in this market ranges between [20-30]%.

79 Ibid.

80 Ibid.

81 Form CO, Tables 7 and 8.

82 Response to RFI 4, question 3. This is also evidenced by these players' recent published financials. Arrow's ECS business unit (incl. Cybersecurity) generated EEA revenues of USD 838 million for Q2 in 2022. Westcon generated a revenue of approx. USD 2.89 billion in 2022. Exclusive Networks generated revenues of approx. EUR 1.2 billion in EMEA for the 1st half of 2022.

also compete against major players such as Ingram Micro, TD SYNNEX and Also.[83] During the market investigation, the distributors and vendors expressing an opinion stated that vendors will have sufficient alternative distributors for their IT products.[84] One respondent noted: "*There are many bigger distributors on the market, like Arrow or Exclusive*".[85] Another distributor stated: "*The IT distribution landscape will remain fiercely competitive post-transaction. In addition, vendors can always appoint additional distributors or decide to start or increase selling directly to resellers and end users.*"[86] The majority of customers expressing an opinion similarly stated that they would, post-Transaction, have sufficient choice between distributors for the supply of their IT products.[87]

(57) Fourth, the Commission considers that the Parties do not appear to compete closely. The vast majority of competitors, customers and suppliers expressing their opinion consider that Infinigate and Nuvias do not compete head-to-head for the distribution of cybersecurity IT products in Germany and the DACH region.[88] One respondent noted: "*they have different vendors in their portfolio*". Another vendor noted that it distributed two of its product via Infinigate, while two of its other products were distributed via Nuvias.[89]

(58) Finally, the Commission notes that all respondents expressing an opinion to the market investigation considered that the Transaction would either have a positive or neutral impact on their company.[90] One respondent highlighted that "*vendor consolidation is very important to reuse workload and facilitate scale impacts*.[91] Similarly, the majority of market participants expressing an opinion considered that the impact on the overall IT distribution market in Germany would have no or a positive material impact.[92] The majority of respondents expressed the same opinion in relation to the more narrowly defined markets of the two-tier VAD cybersecurity IT distribution market in Germany[93], and the DACH region[94], and in relation to the two-tier VAD cybersecurity and cybersecurity related products IT market in Germany.[95] One respondent noted: "*In comparison to larger distributors like Tech Data, Ingram or Westcon, both Infinigate and Nuvias are rather small – to join forces and extend the portfolio by the merger will help the new company to invest in services, logistics, cloud business, etc.*".[96]

(59) For all the above reasons, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market with

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83 Response to RFI 4, question 3. Ingram Micro generated approx. USD 54.5 billion in total net sales. TD SYNNEX has a yearly revenue of approx. USD 62 billion (September 2022). Also generated net sales in 2021 of approx. EUR 12.4 billion.

84 Q1 – questionnaire to market participants, replies to question 25.

85 Q1 – questionnaire to market participants, replies to question 25.1.

86 Q1 – questionnaire to market participants, replies to question 25.1.

87 Q1 – questionnaire to market participants, replies to questions 26 and 29.

88 Q1 – questionnaire to market participants, replies to question 24.

89 Q1 – questionnaire to market participants, replies to question 24.1.

90 Q1 – questionnaire to market participants, replies to question 37.

91 Q1 – questionnaire to market participants, replies to question 37.1.

92 Q1 – questionnaire to market participants, replies to question 38.

93 Q1 – questionnaire to market participants, replies to question 38.3.

94 Q1 – questionnaire to market participants, replies to question 38.2.

95 Q1 – questionnaire to market participants, replies to question 38.4.

96 Q1 – questionnaire to market participants, replies to question 38.5.

respect to possible effects on the two-tier VAD cybersecurity IT distribution market in Germany and the DACH region, and on the two-tier VAD cybersecurity and cybersecurity related IT distribution market in Germany.

6. CONCLUSION

(60) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President