



# DETERMINATION OF MERGER NOTIFICATION M/18/066 – EQT / SUSE

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## Section 21 of the Competition Act 2002

**Proposed transaction by EQT, through EQT Fund Management S.ár.l., of sole control of SUSE LLC, SUSE Linux GmbH and Mertus 435. GmbH (renamed SUSE International Holdings GmbH)**

**Dated 18 September 2018**

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### Introduction

1. On 9 August 2018, 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 notification of a proposed transaction whereby investment fund EQT VIII, through EQT Fund Management S.ár.l. (“EQT Fund Management”), would acquire sole control of SUSE LLC, SUSE Linux GmbH (“SUSE Linux”) and Mertus 435. GmbH (renamed “SUSE International Holdings GmbH”) (collectively “SUSE”), from Micro Focus International plc (“MIT International”) (the “Proposed Transaction”). [...]

### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a Share Purchase Agreement dated 1 July 2018 between MIT International, Marcel Holdings LLC<sup>1</sup>, Novell Cayman Software Unlimited Company<sup>2</sup>, Micro Focus Software Inc<sup>3</sup>, Marcel Bidco GmbH<sup>4</sup> and Marcel Lux IV S.ár.l. (the “SPA”).

### The Undertakings Involved

*Acquirer - EQT Fund Management*

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<sup>1</sup> [...]

<sup>2</sup> [...]

<sup>3</sup> [...]

<sup>4</sup> [...]



3. EQT Fund Management is the fund manager of the acquiring investment fund, EQT VIII, and has its registered seat at Luxembourg.

#### *EQT*

4. EQT is a group of private equity funds that invest in portfolio companies in Europe, Asia and the USA. EQT is active within a variety of industries, with investment advisory teams in 14 countries.
5. EQT VIII<sup>5</sup> was launched in 2018 with commitments of approximately [...]. The fund seeks to make investments primarily in Northern Europe.

**Table 1: EQT Fund portfolio companies with turnover/assets in the State**

	Turnover (Million EUR)	Assets (Million EUR)
<b>EQT VI</b>		
Nordic Aviation Capital Designated Activity Company	[...]	[...]
Sivantos Pte. Ltd.	[...]	
Sportradar AG	[...]	
Zebra A/S (Flying Tiger Copenhagen)	[...]	[...]
<b>EQT VII</b>		
Apleona Group GmbH	[...]	[...]
Certara Holdco, Inc	[...]	
Delta Topco N.V. (Desotec Group)	[...]	
Eton Group AB	[...]	
Industrial and Financial Systems IFS AB	[...]	
Limacorporate S.p.A	[...]	
Sitecore Corporation A/S	[...]	
<b>EQT Infrastructure III</b>		
GlobalConnect A/S	[...]	
<b>EQT Greater China II</b>		
PSM Investments Limited (PSM International)	[...]	
<b>EQT Mid-Market</b>		
Avenso GmbH	[...]	

<sup>5</sup> The other EQT funds with current investments are the EQT funds known as EQT Credit II, EQT Expansion Capital II, EQT Greater China II, EQT Infrastructure I, EQT Infrastructure II, EQT Infrastructure III EQT Mid-Market, EQT Mid-Market Europe, EQT Mid-Market US, EQT Mid-Market Credit, EQT Opportunity, EQT Real Estate I, EQT Ventures, EQT V, EQT VI and EQT VII.



IP-Only AB	[...]	
TIA Technology A/S	[...]	
<b>EQT Mid-Market Europé</b>		
Dunlop Protective Footwear B.V.	[...]	[...]
Epidemic Sound AB	[...]	
Fertin Pharma A/S	[...]	
<b>EQT Mid-Market US</b>		
Clinical Innovations, LLC	[...]	
Storm UK Holdco Limited (Innovyze)	[...]	
Dorner Holding Corp	[...]	
FVW Consolidated Holding Corporation	[...]	
Zemax, LLC	[...]	
<b>TOTAL</b>	[...] <sup>6</sup>	[...]

6. For the financial year ending 31 December 2017, the worldwide turnover of all EQT fund portfolio companies was approximately [...], approximately [...] of which was generated in the State.
7. Four EQT portfolio companies are active in the software sector in the State (“EQT Software Companies”):
- i. Sitecore Corporation A/S (“Sitecore”) is a provider of digital marketing and customer experience management software. This software collects consumer data, evaluating, managing and analysing it to determine patterns, consumer behaviours, and decision making processes. Sitecore generates turnover of [...] in the State.
  - ii. FVW Consolidated Holding Corporation (“Focus Vision”) is a provider of technology solutions to the market research industry, providing an online survey platform, research facility video streaming, webcam focus groups, ethnography streaming, mobile device usability studies, content management and end-to-end project management solutions. Focus Vision generates turnover of [...] in the State.

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<sup>6</sup> If turnover is adjusted to reflect joint control of certain entities the EQT Fund portfolio companies have an Irish turnover of [...].



- iii. Industrial and Financial Systems IFS AB (“IFS”) provides business software in three core areas: enterprise resource planning; enterprise asset management; and enterprise service management. IFS generates turnover of [...] in the State.
- iv. Zemax LLC provides optical product design software (i.e. OpticStudio and LensMechanix), which helps optical and mechanical engineering teams to reduce design iterations and repeated prototypes. Zemax LLC generates turnover of [...] in the State.

*Target - SUSE*

8. SUSE is an open source software provider which focuses on operating systems for servers and other infrastructure software. Its most prominent products are based on Linux open source operating systems, the main product being SUSE Linux Enterprise Server. SUSE’s software can be used for both on premises IT infrastructure, in particular servers, and cloud-based workloads. In addition to its operating system products and services, SUSE also offers solutions for storage systems as well as container application delivery technology.
9. SUSE sells a range of software products to customers based in the State, including the SUSE Linux Enterprise Server and associated extensions, and other consulting<sup>7</sup> and premium services<sup>8</sup>. Consulting and premium services account for around [...] % of SUSE’s total revenues in the State, generating approximately [...]. SUSE also operates offices in Galway and Dublin.
10. Currently, SUSE is part of MIT International, a global software and information technology provider.
11. For the financial year ending 31 December 2017, the worldwide turnover of SUSE was approximately [...], [...] of which was generated in the State.

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<sup>7</sup> SUSE offers consulting via SUSE IT Consulting, to assist with deploying SUSE technologies. SUSE IT Consulting offers various services including Linux migration assessments, core build design and certification, design and implementation of High Availability solutions and retail Linux design and certification.

<sup>8</sup> Premium services supplement a customer’s current support in order to help the customer get the most from the IT investment generally, and thereby ensure an enhanced level of service in utilising SUSE technologies. SUSE’s premium support offering can include provision of a premium support engineer, project support, service account managers, health checks and other on-site support.



### Rationale for the Proposed Transaction

12. The notification states:

*“For EQT, the Proposed Transaction is a financial investment corresponding to its objectives as an investment fund. Given that EQT currently has no interests in companies operating in infrastructure software, the Proposed Transaction is an opportunity to continue the diversification of its portfolio of investments.”*

### Third Party Submissions

13. No submission was received.

### Competitive Assessment

14. The European Commission has previously assessed the competitive impact of transactions involving software<sup>9</sup>, having recently classified software products by functionality into: (i) infrastructure software; (ii) middleware (i.e., integration platforms); (iii) application software; and (iv) operating/browser software<sup>10</sup>.

15. Infrastructure software refers to the first layers of software on a computer that are required to run applications: the initial layer is an operating system, which is required for servers to function; and secondly, databases operate on these systems and enable storing and sorting of data. Operating systems and database software are therefore sub-segments of infrastructure software.

16. The next layer is so-called middleware, which includes a wide category of software products that provide the infrastructure for applications to run on a server which can be accessed from a variety of clients over a network and are capable of connecting to a variety of information sources.<sup>11</sup>

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<sup>9</sup> See Case M.8223 – Micro Focus/HPE Software Business, Case M.5529 – Oracle/Sun Microsystems.

<sup>10</sup> See Case M.6237 Computer Sciences Corporation/iSoft Group, European Commission Decision of 20 June 2011, paragraph 23; Case M.7458 – IBM/INF Business of Deutsche Lufthansa, European Commission Decision of 15 December 2014, paragraph 35.

<sup>11</sup> See paragraph 24 of European Commission decision - Case M.5529 – Oracle/Sun Microsystems.



17. Within application software, a distinction is made between consumer application software and business application software<sup>12</sup>. The Commission has further divided the business application software market on the basis of the industry sector of the application.<sup>13</sup>
18. Application and office software are software used for attaining specific tasks such as word processing, presentation and spreadsheet creation. Finally, operating/browser software are software applications, such as Google Chrome or Mozilla Firefox, used to locate, retrieve and display content on the World Wide Web, including webpages, images, video and other files.
19. Infrastructure software is either based on proprietary software, such as Oracle's Solaris (Unix-based) or Microsoft's Windows, or on open source software, such as Linux. Infrastructure software and its sub-segments can therefore be further differentiated into proprietary and open source segments. However, the European Commission's market investigations for *Case M.5529 – Oracle/Sun Microsystems* found that proprietary and open source infrastructure software are largely substitutable from a consumer's perspective.<sup>14</sup>
20. The European Commission has previously found that the market for infrastructure software is at least EEA-wide, but is likely worldwide.<sup>15</sup>

#### Horizontal Overlap

21. As the EQT Software Companies are not active in the provision of infrastructure software or middleware software, and as SUSE is not active in the provision of application software in any industry sector in which an EQT Software Company is also active, there is no horizontal overlap in the State.
22. In light of the above, the Commission considers that the Proposed Transaction is not likely to lead to any negative horizontal competitive effects in respect of the provision of infrastructure, middleware or application software within the State.

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<sup>12</sup> See paragraph 24 of Case M.6237 Computer Sciences Corps – iSoft.

<sup>13</sup> See Case M.5763 – Dassault Systemes - IBM DS PLM Software Business.

<sup>14</sup> See paras. 107-109.

<sup>15</sup> See para 111-113 of Case M.5529 – Oracle/Sun Microsystems.



### Vertical Overlap

23. The Proposed Transaction gives rise to vertical integration as SUSE is active upstream in the provision of both infrastructure and middleware software while the EQT Software Companies operate downstream of SUSE in the provision of application software.
24. The parties have provided estimated market shares of SUSE in operating systems, and in Linux based operating systems for servers, more specifically, in the worldwide, EU and Irish markets<sup>16</sup>. This is displayed in Table 2.

**Table 2: SUSE market shares in operating system software**

	Operating system software	Linux operating systems for servers
Worldwide	approx. [...]	approx. [...]
EU	approx. [...]	approx. [...]
Ireland	approx. [...]	approx. [...]

Source: Gartner<sup>17</sup> Software Marketshare: All Software Markets, Worldwide 2017.

25. SUSE is primarily an operating systems vendor and is not materially active in the development and sale of other software products. [...].

**Table 3: SUSE market shares in the Worldwide Middleware and Database market segments:**

Worldwide (2017)			
Company	Middleware software	Company	Database software <sup>18</sup>
SUSE	[...]	SUSE	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]

<sup>16</sup> The parties were able to provide market shares for each of the operating systems and Linux operating systems for servers segments as [...]. Therefore, the parties are unable to provide specific market share estimates for Linux-based products in each of the infrastructure software, middleware software or database software categories.

<sup>17</sup> Gartner Inc. is a well-known market intelligence source for software markets. Both the European Commission and the parties refer to the market reports of this company, which the European Commission has found, through its market investigations, to be a reliable source of market intelligence on software.

<sup>18</sup> [...].



[...]	[...]	[...]	[...]
Others	[...]	Others	[...]
Total	100%	Total	100%

Source: Gartner Software Marketshare: All Software Markets, Worldwide 2017.

**Table 4: SUSE market shares in the European Middleware and Database market segments:**

Europe (2017)			
Company	Middleware	Company	Database software
SUSE	[...]	SUSE	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
Others	[...]	Others	[...]
Total	100%	Total	100%

Source: Gartner Software Marketshare: All Software Markets, Worldwide 2017.

**Table 5: SUSE market shares in the Irish Middleware and Database market segments:**

Ireland (2017)			
Company	Middleware	Company	Database software
SUSE	[...]	SUSE	[...]
IBM	[...]	Oracle	[...]
Oracle	[...]	IBM	[...]
Sales Force	[...]	Microsoft	[...]
Microsoft	[...]	SAP	[...]
TIBCO	[...]	Amazon	[...]
Others	[...]	Others	[...]
Total	100%	Total	100%

Source: Gartner Software Marketshare: All Software Markets, Worldwide 2017.

26. Assuming that there is a potential narrow market for Linux operating systems for servers in the State, SUSE has a market share of approximately [...]. On a broader market definition SUSE's market share drops to under [...] for all operating system software for





servers in the State. Additionally, SUSE possesses shares of under [...] of the middleware software and [...] of the database software markets in the State.

27. A potential anti-competitive effect sometimes associated with vertical integration is foreclosure. Although the Commission is not defining a precise relevant market in this matter, for the purposes of this competitive analysis and taking into account the activities of the parties, there appear to be two possible market levels at which potential vertical foreclosure could arise, i.e. upstream in the supply of infrastructure, middleware and database software, and downstream in the purchasing of infrastructure, middleware and database software.

#### Upstream input foreclosure – supply of infrastructure, middleware and database software

28. On the basis of the above market shares the Commission considers that, post-transaction, EQT will not possess the ability to foreclose the supply of Linux operating systems for servers, or any other infrastructure, middleware or database software, from downstream competitors in application software in the State.

#### Downstream customer foreclosure – purchasing of infrastructure, middleware and database software

29. Furthermore, given the minor turnovers of the EQT Software Companies in application software, the Commission considers that, post-transaction, EQT will not possess the ability to foreclose access to application software providers from rival upstream providers of infrastructure, middleware or database software.
30. On this basis the Commission considers that the Proposed Transaction does not raise any vertical competition concerns within the State.

#### **Conclusion**

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

#### **Ancillary Restraints**



32. The SPA contains [...] <sup>19</sup> [...].<sup>20</sup> The Commission considers these restrictions 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>19</sup> [...]

<sup>20</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 Transaction, whereby investment fund EQT VIII, through EQT Fund Management, would acquire sole control of SUSE LLC, SUSE Linux GmbH and Mertus 435. GmbH (renamed SUSE International Holdings GmbH), will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the transaction may be put into effect.

For the Competition and Consumer Protection Commission

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