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**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2013/10/134)

**24.10. 2013**

**Notice u/s 6 (2) of the Competition Act, 2002 given by:**

- Microsoft Corporation (“**Microsoft**”)
- Microsoft International Holdings B.V. (“**Microsoft International**”)

**Order under Section 31(1) of the Competition Act, 2002**

1. On 3<sup>rd</sup> October, 2013, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice relating to a proposed combination under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the “**Act**”) given by Microsoft and Microsoft International (hereinafter collectively also referred to as the “**Acquirers**”).
2. The proposed combination relates to the acquisition, by Microsoft Corporation and Microsoft International, a wholly owned subsidiary of Microsoft, of the Devices and Services (hereinafter also referred to as “**D&S**”) Business of Nokia Corporation (hereinafter referred to as “**Nokia**”) and related arrangements. The said notice was given pursuant to a Purchase Agreement, dated 2<sup>nd</sup> September, 2013, entered into between Microsoft International and Nokia and other documents/agreements executed in relation to the proposed combination.



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3. As stated in the notice, in terms of the Purchase Agreement, Microsoft will acquire substantially the entire D&S business of Nokia, which includes the mobile phones and smart devices business units, as well as industry design team, operations including D&S production facilities, D&S related sales and marketing activities, support functions, and design patents of the devices produced by the D&S business.
4. Further, as stated in the notice, as a part of the proposed transaction, Nokia will grant Microsoft a ten year non-exclusive license to its patents, as at the time of closing, with an option to extend the same to perpetuity. Microsoft will grant Nokia reciprocal rights to use Microsoft patents in the services offered by HERE North America LLC (hereinafter referred to as “**HERE**”) a subsidiary of Nokia. Additionally, as stated in the notice, Microsoft will also become a strategic licensee of Nokia’s HERE platform, as Nokia will grant Microsoft a four-year non-exclusive license to the HERE geospatial data and services. As stated in the notice, Microsoft would have a ten year license arrangement with Nokia to use the Nokia brand on current and subsequently developed products based on the Series 30 and Series 40 Operating System and that Nokia will continue to own and maintain the Nokia brand.
5. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), on 15<sup>th</sup> October, 2013, the Acquirers were required to remove certain defects and provide information/document(s). The reply of the Acquirers was received on 21<sup>st</sup> October, 2013



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6. The proposed combination falls under Section 5 of the Act.
7. Microsoft is a multinational software corporation headquartered in USA, and is primarily involved in the design, development and supply of computer software, hardware devices and related services. This includes operating softwares from console to mobile devices, personal computers and back end systems; applications and services; core technologies of communication, search and other information categories; back-end technologies like data-centres and specific technologies for the enterprises; development tools, and enterprise resource planning and customer relationship management applications. Microsoft International is an investment holding company headquartered in Netherlands.
8. In India, Microsoft operates through its subsidiaries and divisions, which represent its products cycle, systems and applications and various state -of-the-art technologies.
9. Nokia is a multinational communications and information technology corporation, headquartered in Finland. Nokia is active in the development and supply of mobile devices (smartphones as well as basic/feature phones), maps, mobile and fixed telecom networks & associated services, location based services through its business division like D&S, which comprise smart devices like smartphones, mobile feature phones etc; HERE, which develops location based products and services including content and platform services for device manufactures, application developers, internet service providers, merchants and advertisers etc; Nokia Solutions Networks,



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which provides mobile and fixed networks infrastructure, communications and network service platforms, for the operators and the service providers.

10. In India, Nokia is engaged in its D&S business and Nokia Solutions Networks business through its various subsidiaries and divisions. It also conducts research and development and has mobile device manufacturing facilities in India.
11. In India, the proposed combination, therefore, relates to the mobile handsets (including the smartphones and tablets) business and the business related to the operating systems, used in these devices. It has been stated in the notice that the proposed combination aims to enhance Microsoft's device business and strengthen opportunities for Microsoft and its developers across the Windows phone eco-system. Further, in addition to the innovation and strength of the devices at all price points, the proposed acquisition of the D&S business of Nokia, would give Microsoft a proven capability and talent in the critical mass including the hardware design & engineering, supply chain, sales, and marketing. It has been stated in the notice that the proposed transaction would assist Microsoft and its partners in developing a competitive eco-system other than that of Google and Apple which would therefore, provide an option to the consumers for more choice, innovation and high end quality products.
12. It is observed that the mobile handsets can be broadly characterized as basic phones, feature phones and smartphones. It is primarily the difference in the spectrum of functionalities attached with the phone



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that distinguishes between the different categories of mobile handsets. The mobile hand sets may also be broadly categorized on the basis of their operating system, hardware configuration and internet functionality like 2G/3G/4G etc. The mobile operating system (OS) for the smartphones, unlike that for the basic phones, is designed to support the provision of computer like features, including easier internet connectivity, enabling the use of browsers that are similar to those used in computers; ability to download and install variety of applications; multiple communication options like emails; internet protocol based notifications through the use of various applications etc. The price of the mobile handsets also seemingly increases with the inclusion of additional features and functionalities. As regards the tablets, it is generally seen that while smartphones are used for SIM card based voice/SMS communications, the tablets usually cannot be used for the same services, although this line of distinction is now getting somewhat blurred. The difference between smartphones and tablets is also observed in the way both the devices are used, like the nature of activity, time spent or usage location, in respect of each one of them.

13. The operating software that controls the basic functions of a mobile phone, enables and defines the use and running of application programmes on it. It is the installation and use of applications on a smart phone device, that distinguishes it from a low-end mobile phone. Therefore, it is the performance capacity of the operating software and the applications which run on the same, which makes the smartphones/tablets different from the basic/feature phones. It is also generally seen that the applications are dependent on the OS for which they are specifically designed and that the applications made to



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run on mobile phones using a particular type of OS do not usually integrate with the mobile phones using a different OS. It is noticed that Microsoft licenses Windows Phone and Windows RT OS for its smartphones and tablets. Google makes Android OS available for its smartphones and tablets, whereas Apple maintains its separate OS for its smartphones and the tablets. Similarly, Research in Motion (RIM) maintains its own OS for its range of smartphones, alongwith some other players using their own line of mobile phones and tablets.

14. As regards the proposed combination, it is noticed that in India, while Nokia is active in the D&S business of mobile handsets, Microsoft is not active in that business. As on the date of filing of the notice, both Microsoft and Nokia were also not active in the business of manufacturing and sale of tablets in India. As regard the operating software used in the mobile/smartphones and tablets, it is noted that, in India, Nokia is not active in the said business. There exists a vertical relationship between Microsoft and Nokia, as Microsoft's Windows Phone OS is used in the Nokia Lumia range of smartphones. However, this relation is relatively insignificant, taking into consideration the minimal share of Microsoft as well as the presence of major players like Google and Apple, as well as other players like RIM, Linux, Mozilla etc. in the business of the operating software used in the mobile/smartphones and tablets in India, and also given the minimal share of Nokia in the business of mobile/smartphones and the presence of numerous other global and local players like Samsung, Apple, Blackberry, Sony, HTC, LG, Lenovo, Micromax, Lava, Spice, Karbonn etc. in the business of mobile/smartphones in India.



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15. It is also generally observed that the D&S business of mobile/smartphones and tablets, along with the business of operating system and other applications that are used in the devices, is extremely dynamic and is constantly evolving, which makes the product life cycles of such devices very short. Further, the technology in these businesses is also primarily driven by the eco-systems and its ability to swiftly integrate the different smart products within a given ecosystem, which incentivises the application developers to constantly innovate for new and better quality products. Therefore, it is the ecosystem in this business which drives the demand between the users, application developers, and designers/manufacturers.
16. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and the assessment of the combination after considering the relevant factors mentioned in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act.
17. This approval is without prejudice to any other legal/statutory obligations as applicable.
18. This order shall stand revoked if, at any time, the information provided by the notifying parties is found to be incorrect.



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19. The Secretary is directed to communicate to the Acquirers accordingly.

(Ashok Chawla)  
Chairperson

(Geeta Gouri)  
Member

(M.L. Tayal)  
Member

(S. N. Dhingra)  
Member

(S.L. Bunker)  
Member