



Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA
(Combination Registration No.C-2016/06/410)

30th August 2016

**Notice under Section 6 (2) of the Competition Act, 2002 jointly given by
FIH Mobile Limited and HMD Global OY**

CORAM

Devender Kumar Sikri

Chairperson

S. L. Bunker

Member

Sudhir Mital

Member

Augustine Peter

Member

U. C. Nahta

Member

M.S. Sahoo

Member

G. P. Mittal

Member

Legal Representatives of the parties: Shardul Amarchand Mangaldas & Co

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

1. On 17th June 2016, the Competition Commission of India (“**Commission**”) received a notice jointly filed by FIH Mobile Limited (“**FIH**”) and HMD Global Oy (“**HMD**”), under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”). The notice has been



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given pursuant to execution of Stock and Asset Purchase Agreement (“**SAPA**”) between FIH, HMD and Microsoft Mobile Oy (“**Microsoft MO**”) dated 18th May 2016. The notice of combination has been filed in relation to acquisition by FIH of certain assets that are utilized in feature phone business from Microsoft MO and simultaneous acquisition by HMD of the IP rights pertaining to feature phone business from Microsoft Corporation (“**Microsoft**”).

2. The proposed combination contemplates following acquisition by FIH from Microsoft MO and other entities affiliated to Microsoft MO (all of which are subsidiaries or affiliates of Microsoft): (a) 100 per cent of the equity share capital of Microsoft Mobile (Vietnam) Limited Liability Company (“**MMV**”) through an indirect wholly owned subsidiary of FIH; and (b) certain assets utilized in the manufacturing of feature phones. Simultaneously, the SAPA also envisages acquisition of intellectual property (“**IP**”) rights related to feature phone business by HMD from Microsoft. (Hereinafter, referred to as the “**Proposed Combination**”).
3. In terms of Regulation 5(6) of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), *vide* letter dated 17th June 2016, the parties had undertaken to submit, *inter alia*, details about market size and market share of the parties and their competitors. The parties filed the requisite information on 15th July 2016.
4. FIH, a company incorporated in Cayman Islands and headquartered in China, is a wholly owned subsidiary of Hon Hai Precision Industry Co., Ltd. (“**Hon Hai**”). It is a contract manufacturer for mobile handset and a provider of third-party electronic manufacturing services (“**EMS**”)¹ to original equipment manufacturers (“**OEM**”) of electronic products, both globally as well in India. In India, FIH is stated to be present through FIH India Private

¹ EMS consists of products and services that an electronics OEM requires to produce its end products, including the design of the product, component selection and procurement, prototyping, product assurance, production, assembly, testing etc.



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Limited, FIH India Developer Private Limited and Rising Stars Mobile India Private Limited.

5. HMD, incorporated and headquartered in Finland, is a newly created limited liability company and is not engaged in any business activity, at present. It has been created to manufacture and sell new generation Nokia-branded smart phones and feature phones.
6. Microsoft MO, a public company incorporated and headquartered in Finland, is a subsidiary of Microsoft. It is engaged in development, licensing and support of software products, technology services and hardware devices related to mobile phones, both globally as well in India. In India, it is present through Nokia India Sales Private Limited (“**NISPL**”).
7. MMV, incorporated and headquartered in Vietnam, is wholly owned by Microsoft MO and is engaged in the manufacture of feature phones.
8. Based on the submission of the parties, the Commission observed that the activities of the parties overlap in India as both Hon Hai and Microsoft are active in the business of EMS. Thus, there exists horizontal overlap between Hon Hai and Microsoft in relation to EMS in India. The Commission also noted that the provision of EMS may be sub-segmented into EMS for communications, *i.e.*, EMS communications, EMS for computers, EMS for automotive sector etc. Based on the submission of the parties, the Commission observed that the activities of Hon Hai and Microsoft overlap in the EMS communications sub-segment in India. The Commission further observed that the market share of Hon Hai and Microsoft in both EMS segment and EMS communications sub-segment is insignificant in India and that HMD is not engaged in any business in India. Therefore, delineation of relevant market is left open.
9. As per the submission of the parties, combined market shares of Hon Hai and Microsoft in EMS segment as well as in EMS communications sub-segment is between 0 to 5 percent in India. Further, based on the submission of the parties, the Commission observed that



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competitors (range of market share indicated along with) such as, Samsung (20 to 25 percent), Micromax (20 to 25 percent), Flextronics (5 to 10 percent), Intex (0 to 5 percent) etc. are present in EMS as well as EMS communications sub-segment in India. As a result, the aforesaid competitors with sizeable market shares would continue to pose competitive constraint to the parties, post combination.

10. On the basis of the submissions of the parties, the Commission observed that there exist vertical relationship between Hon Hai and Microsoft in India - Microsoft had purchased certain components from Hon Hai for use in the manufacturing of feature phone. Further, it has been submitted that proportion of sales to Microsoft to total sales of Hon Hai is insignificant. Accordingly, the vertical relationship between Hon Hai and Microsoft is not likely to result in vertical foreclosure in India.
11. It has also been submitted that there is no vertical relationship between HMD and Microsoft in India. It has been stated that post combination, FIH would manufacture and distribute feature phones for HMD. Accordingly, there would be a potential vertical relationship between HMD and Hon Hai (through FIH). In this context, the Commission observed that pursuant to the proposed combination, HMD will emerge as a new player in the feature phone business in India. The Commission is of the opinion that the potential vertical relationship between HMD and Hon Hai is not capable of causing appreciable adverse effect in India.
12. Considering facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment of the proposed combination on the basis of factors stated 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 same under sub-section (1) of Section 31 of the Act.



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13. This order shall stand revoked if, at any time, the information provided by the parties is found to be incorrect.
14. The information provided by the parties is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
15. The Secretary is directed to communicate to the parties accordingly.