

***Case No COMP/M.7202 - LENOVO/ MOTOROLA
MOBILITY***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 26/06/2014

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EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party

**Subject: Case M.7202 - Lenovo/ Motorola Mobility
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

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.

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- (1) On 19 May 2014, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Lenovo Group Limited ('Lenovo', China) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Motorola Mobility Holdings LLC ('Motorola Mobility', USA) by way of purchase of shares². Lenovo will hereinafter also be referred to hereinafter as the "Notifying Party"; Lenovo and Motorola Mobility together will hereinafter also be referred to as the "Parties" to the proposed transaction.

1. THE PARTIES

- (2) **Lenovo** is a multinational computer technology group that develops, manufactures and markets desktop and notebook PCs, workstations, servers, storage drives, and IT management software. It also manufactures smart mobile devices, and offers IT services. Founded in Beijing, Lenovo operates its business from three principal operations worldwide (Morrisville, North Carolina, USA; Beijing, China; and Singapore).
- (3) **Motorola Mobility** is a supplier of smart mobile devices. Motorola Mobility is currently solely controlled by Google Inc. ("Google"). As part of the proposed transaction, Lenovo will acquire Motorola Mobility's smart mobile devices business, approximately [2000-3000] design patents and a limited number of patents ([100-200] utility patents and [<100] patent applications) relating to infrastructure network and mobile handsets. Google retains the vast majority of Motorola Mobility's patent portfolio and will grant Lenovo broad patent licenses in relation to all the retained patents.

2. THE OPERATION

- (4) Pursuant to an Acquisition Agreement dated 29 January 2014, Lenovo has agreed to acquire from Google 100% of the shares of Motorola Mobility. As a result, Lenovo will acquire sole control over Motorola Mobility.
- (5) Therefore, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
- (6) The Notifying Party submits that through its acquisition of Motorola Mobility, it seeks to become a more effective competitor of Samsung, Apple and other suppliers of smart mobile devices worldwide. Lenovo also seeks to generate cost savings through increased scale and combining aspects of the Motorola Mobility and Lenovo smart mobile devices businesses.

3. EU DIMENSION

- (7) The proposed concentration does not have a Union Dimension within the meaning of Article 1 (2) and (3) of the Merger Regulation, but it fulfils the conditions set out in Article 4(5) of the Merger Regulation. On 17 March 2014, the Notifying Party

² Publication in the Official Journal of the European Union No C 157, 24.5.2014, p. 2.

submitted, by means of a reasoned submission, a referral request pursuant to Article 4(5) of the Merger Regulation with respect to the proposed concentration.

- (8) As none of the Member States competent to review the proposed concentration expressed its disagreement as regards the request to refer the case, the notified concentration is deemed to have a Union dimension pursuant to Article 4(5) of the Merger Regulation.

4. PRODUCT AND GEOGRAPHIC MARKET DEFINITIONS

- (9) Both Parties supply smart mobile devices worldwide. In the EEA, Lenovo sells tablets, but does not sell smartphones. Motorola Mobility supplies smartphones in the EEA. While it has sold a small number of tablets outside the EEA in 2013, it has now ceased manufacturing tablets. Both Parties use the Android operating system for their smart mobile devices.
- (10) In April 2014, Lenovo acquired around 110 patents from Unwired Planet Inc., which included 7 European patents and 14 US patents which have been declared standard essential to smart mobile devices. Through the proposed transaction, Lenovo also acquires [2000-3000] design patents and a limited number of utility patents. With the exception of the aforementioned patents previously acquired from Unwired Planet Inc., the Notifying Party submits that none of the patents held by Lenovo has been declared standard essential with respect to smart mobile devices, or is likely to be considered by third parties as "commercially essential" to smart mobile devices.
- (11) The Commission notes that, according to its previous practice, each Standard Essential Patent ("SEP") gives rise to technically vertically-affected markets involving the SEP upstream and the supply of smart mobile devices downstream.³

4.1. Relevant product market

4.1.1 Smart mobile devices

4.1.1.1 View of the Notifying Party

- (12) The Notifying Party submits that the relevant product market is the market for smart mobile devices.
- (13) Lenovo submits that smart mobile devices are mobile devices with advanced Internet browsing, multimedia and app capabilities⁴. Smart mobile devices are available in a variety of designs, and with a range of different features and hardware components. There are, in particular, two types of smart mobile devices: smartphones and tablets.

³ See below for relevant earlier Commission decisions.

⁴ See Commission Decision of 13 February 2012 in Case No M. 6381 - *Google/Motorola Mobility*, recital 41: the Commission took the view that basic and feature phones may not fall into the same product market as smart mobile devices.

- (14) According to the Notifying Party, **smartphones** are wireless phones with advanced Internet browsing and app capabilities. Smartphones incorporate hardware and software features that enable them to fulfil many of the functions traditionally associated with state of the art computing. There is no industry standard definition of a smartphone, but rather a spectrum of functionalities⁵, and handsets therefore vary in terms of size, weight, durability, screen size, audio quality, camera size/zoom, web speed, computer processing power, memory, ease-of-use, optical quality, casing quality/design, and additional multimedia offerings.
- (15) **Tablets** are consumer mobile devices between a smartphone and a laptop computer. Tablets are a relatively new and rapidly growing product, accounting for around 10% of worldwide sales of smart mobile devices. Tablets are generally operated using a touch screen and run a mobile operating system, which may be proprietary (e.g., iOS on the Apple iPad) or non-proprietary (e.g. Android on the Samsung Galaxy Tab). Tablets are based on very similar hardware to advanced touch-screen based smartphones, and similarly provide a rich multimedia experience along with many of the functions of a personal computer.
- (16) The Notifying Party submits that given that the proposed transaction does not raise competitive concerns under any alternative product market definition, the question whether smartphones and tablets belong to the same market may be left open. The Notifying Party further submits that it is not necessary to distinguish between business and personal users, as most smart mobile devices can be customised to support advanced security features and businesses are increasingly permitting staff to use their own smart mobile devices for business purposes.

4.1.1.2 Previous Commission decisions, results of the market investigation and Commission's assessment

- (17) In its recent decision *Microsoft/Nokia*⁶ the Commission assessed the proposed transaction on the basis of the product market being “smart mobile devices” comprising smartphones and tablets, and excluding basic and feature phones.
- (18) With regard to the question whether smartphones and tablets belong to separate product markets, the market investigation in that case indicated that from the supply-side perspective, smartphones and tablets are comparable to one another in terms of technical characteristics (operating system, hardware requirements) and for certain functionalities (web browsing, email access, watching videos, games, maps, etc.). On the other hand, the market investigation also revealed that from a demand-side perspective, smartphones offer certain functionalities that tablets typically do not offer (for example, the ability to make a telephone call), while tablets, due to their larger screen size, may be better suited than smartphones for other uses (for example, watching long videos, reading books or newspapers and/or extensive

⁵ For example, in addition to mobile voice and text message communication, the latest smartphones include advanced hardware (e.g. touch-screen interfaces, several gigabytes of flash storage, GPS navigation, WI-FI) and software (e.g. rich web browsers, full-featured e-mail accounts, and a sophisticated user interface), and a range of other capabilities (e.g. music and video streaming; downloading; playback; video calling; cameras and camcorders; GPS; radio receiver; personal digital assistant functions; USB, Bluetooth).

⁶ Commission Decision of 4 December 2013 in Case No 7047 - *Microsoft/Nokia*, recitals 15-16.

work sessions). However, the Commission ultimately left open the question whether there may be separate product markets for smartphones and tablets.

- (19) In the present case, the exact definition of the product market can be left open, as the proposed transaction does not raise any competitive concern under any plausible market definition.

4.1.2 *Patents reading on smart mobile devices*

- (20) Thousands of different patents may be needed for the functioning of a smart mobile device. Smart mobile devices (operating on a mobile software platform) must, in order to operate effectively, comply with various standards that have been developed for mobile communications. In its previous decisional practice, the Commission has distinguished between standard essential patents ("SEPs") and non-standard essential patents ("non-SEPs")⁷.

4.1.2.1 *View of the Notifying Party*

- (21) The Notifying Party submits that SEPs held by Lenovo relating to smart mobile devices⁸ do not each constitute a separate market since the standards used in the mobile telecoms industry are rapidly evolving, multiple licensees already use this technology⁹ and many other SEPs are relevant to the UMTS 3G and 4G LTE standards¹⁰.
- (22) In relation to the non-SEPs acquired by Lenovo through the proposed transaction, the Notifying Party submits that design patents relate to the aesthetic design of a functional item, which can be easily worked around by competitors by simply adopting different design features. Therefore, they do not usually operate as a barrier to entry or limit innovation.

4.1.2.2 *Previous Commission decisions, results of the market investigation and Commission's assessment*

- (23) In its decision *Google/Motorola*¹¹, the Commission considered that Standard Essential Patents (SEPs) are patents which are, or have been declared, essential to the implementation of a standard in a Standard Setting Organisation (SSO) and which cannot be designed around. Therefore, each SEP constitutes a separate relevant technology market in its own.

⁷ Commission Decision of 4 December 2013 in Case No 7047 - *Microsoft/Nokia*, recital 186.

⁸ Lenovo has recently acquired a small number of patents (around 110 patents from Unwired Planet Inc., which included 7 European patents and 14 US patents that have been declared standard essential to either the MNTS 3G standard or to the release 8 LTE 4G standard, both of which are relevant to smart mobile devices).

⁹ These SEPs have already been licensed to a large number of companies, including [Confidential – list of licensees] which count for a substantial proportion of competing suppliers.

¹⁰ Universal Mobile Telecommunications System ("UMTS") is a third generation ("3G") mobile telecoms system. Long-Term Evolution ("LTE") is a fourth generation ("4G") mobile telecoms system. Both systems have been developed and maintained by the 3rd Generation Partnership Project.

¹¹ Commission Decision of 13 February 2012 in Case No M. 6381 - *Google/Motorola Mobility*, recital 51.

- (24) The European Telecommunication Standard Institute's ("ETSI") IPR (Intellectual Property Right) Policy defines SEPs as follows: "ESSENTIAL" as applied to IPR means that it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization, to make, sell, lease, otherwise dispose of, repair, use or operate EQUIPMENT or METHODS which comply with a STANDARD without infringing that IPR. For the avoidance of doubt in exceptional cases where a STANDARD can only be implemented by technical solutions, all of which are infringements of IPRs, all such IPRs shall be considered ESSENTIAL".
- (25) As regards non-SEPs (implementation/utility or design patents), the Commission considered that, although they may bring additional value to the mobile operating system (OS), they are not by definition technically essential for access to a standard and can be worked around¹².
- (26) In the present case, the exact definition of the product market can be left open, as the proposed transaction does not raise any competitive concern under any plausible market definition.

4.2. Relevant geographic market

4.2.1 Smart mobile devices

- (27) In accordance with previous Commission decisions¹³, the Notifying Party submits that the relevant geographic market for smart mobile devices is at least EEA-wide, if not worldwide.
- (28) The market investigation did not provide any indications that would justify a change in the Commission's practice as regards the geographic market definition.
- (29) The Commission therefore considers that the geographic scope of the relevant market is at least EEA-wide, if not worldwide. However, in this case the exact scope of the market can be left open, as the proposed transaction does not raise competition concerns under any alternative geographic market definition considered.

4.2.2 Patents reading on smart mobile devices

- (30) The Notifying Party notes the Commission has previously assessed the licensing of SEPs on at least EEA-wide basis¹⁴.

¹² Commission Decision of 13 February 2012 in Case COMP/M.6381 - Google / Motorola Mobility, recital 60.

¹³ Commission Decision of 4 December 2013 in Case No 7047 - Microsoft/Nokia, recital 70. See also Commission Decision of 13 February 2012 in Case COMP/M.6381 - Google / Motorola Mobility, recitals 43 to 47 and Commission Decision of 2 July 2008 in Case COMP/M.4942 Nokia / Navteq, recital 140.

¹⁴ Commission Decision of 13 February 2012 in Case No M. 6381 - Google/Motorola Mobility, recital 61.

- (31) Similarly in this case, the Commission considers that the geographic scope of the relevant market is at least EEA-wide, if not worldwide. However, this question can be left open as the proposed transaction does not raise competition concerns under either market definition.

5. COMPETITIVE ASSESSMENT

- (32) The proposed transaction results in minor horizontal overlap in the market(s) for smart mobile devices. As Lenovo holds a limited number of recently acquired standard essential patents relevant to the smart mobile devices business, the transaction will lead to technically vertically affected markets involving each standard essential patent upstream and the supply of smart mobile devices downstream.

5.1. Horizontal assessment

- (33) The Parties' activities overlap on a possible market comprising the development, manufacturing and sale of both smartphones and tablets. However, the proposed transaction would not give rise to any affected markets, as the Parties' combined share in 2013 remains far below 20% at both EEA and worldwide level.
- (34) Lenovo submits that it supplies smartphones and tablets worldwide. In the EEA, Lenovo only supplies tablets. Motorola Mobility supplies smartphones worldwide (including in the EEA). Motorola Mobility ceased manufacturing tablets and in 2013 it only sold a small number of tablets outside the EEA. The Parties have a rather complementary geographic focus, as Lenovo focuses on China and Asia/Pacific and Motorola Mobility on the Americas.
- (35) However, irrespective of both product and geographic market definition, the Parties' combined market share would never be greater than [5-10]% in value or [5-10]% in volume¹⁵. Indeed, if a separate market for smartphones were to be considered, the Parties' combined market share would be below [0-5]% both in volume and in value in the EEA, and to [5-10]% in volume and [0-5]% in value world-wide.
- (36) Similarly, if a separate market for tablets were to be considered, the Parties' combined market share would amount to [5-10]% in volume and [0-5]% in value in the EEA, and to [0-5]% in volume and [0-5]% in value world-wide.
- (37) Furthermore, the Commission notes that strong suppliers exist in this market, such as Samsung, Apple, Huawei, LG, Yulong, Sony, ZTE, Microsoft/Nokia, Blackberry or HTC.
- (38) Respondents to the market investigation have not expressed any concerns as regards a possible significant impediment to effective competition arising from horizontal overlaps between the activities of the Parties.
- (39) In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal overlaps between the activities of the Parties.

¹⁵ Source: Gartner and Canalys, January 2014.

5.2. Vertical assessment

5.2.1 View of the Notifying Party

- (40) Lenovo submits that it will not have either the ability or the incentive to foreclose competing suppliers of smart mobile devices by restricting willing licensees' access to the patents recently acquired from Unwired Planet and which have been declared essential to the UMTS 3G standard and LTE release 8 standard.
- (41) With regard to ability, Lenovo submits that it will continue to be constrained by the FRAND commitments that Unwired Planet has given for these patents, which will substantially reduce its ability to engage in input foreclosure by threatening injunctive relief against willing potential licensees. The Notifying Party also submits that its ability to foreclose competing smart mobile device manufacturers is further impeded by the fact that the SEPs acquired from Unwired Planet have already been widely licensed¹⁶ to a large number of other companies¹⁷ which count for a significant proportion of competing suppliers of smart mobile devices. Lenovo will thus be bound by the terms of these licenses and covenants.
- (42) Lenovo further claims that given that its share on the downstream market for smart mobile devices would be enlarged through the acquisition of Motorola Mobility by only [0-5]% and [0-5]% of the total supply in the EEA and worldwide respectively, the transaction will have no impact on its abilities or incentives as regards the exercise of its SEPs. Second, Lenovo would have no incentive to seek to impose non-FRAND terms or use the threat of injunctions in respect of the SEPs in a manner that may be contrary to Article 102 TFEU. Third, Lenovo submits that it would have no incentive to engage in input foreclosure of SEPs relevant to smart mobile devices because of the threat of counter-suits against it, either in the smart mobile device sector or in other areas of its business where competing smart mobile device manufacturers may also hold relevant patents. Fourth, Lenovo submits that its intention is to use the patents that it has acquired from Unwired Planet, including the SEPs, to protect its commercial position and facilitate negotiation of cross-licences with other patent holders, thereby enabling it to compete and innovate free from the costs and uncertainties of litigation.

5.2.2 Results of the market investigation and Commission's assessment

- (43) First, the Commission notes that the FRAND commitments which Unwired Planet has given for the SEPs acquired by Lenovo will continue to apply and constrain Lenovo in the exercise of these patents. These commitments have been transferred with the patents and are also binding on Lenovo as acquirer.¹⁸ As set out in the Horizontal Guidelines: "FRAND commitments are designed to ensure that essential IPR protected technology incorporated in a standard is accessible to the users of that standard on fair, reasonable and non-discriminatory terms and conditions. In particular, FRAND commitments can prevent IPR holders from making the implementation of a standard difficult by refusing to license or by requesting unfair

¹⁶ Or have been subject to a covenant not to sue in favour of.

¹⁷ Such as [Confidential – list of Licensees].

¹⁸ Form CO, paragraph 108. By e-mail of 24 June 2014 the Notifying Party clarified that this is specifically provided for in the Patent Purchase Agreement between Lenovo and Unwired Planet.

or unreasonable fees (in other words excessive fees) after the industry has been locked-in to the standard or by charging discriminatory royalty fees".¹⁹

- (44) Lenovo has thus to abide by its FRAND commitments in relation to the licensing of these SEPs to third parties. FRAND commitments essentially oblige SEP holders: (i) to make the patent in question available to all interested third parties; (ii) not to discriminate between different licensees; and (iii) to offer a licence to the patent on fair and reasonable terms. SEP holders do, however, have the right to conduct undistorted negotiations with interested parties concerning the exact terms and conditions of the licence, including the exact level of royalties and the right to enforce agreements on such terms by means of litigation.
- (45) Second, in its recent antitrust decision *Motorola Mobility - Enforcement of GPRS standard essential patents*²⁰, the Commission took the view that it would be an abuse of dominance for the holder of a FRAND-encumbered SEP to seek and enforce an injunction against a potential licensee willing to enter into a license agreement on FRAND terms and conditions. These conclusions are of a nature as to discourage undertakings to engage into conduct contrary to Articles 102 of the Treaty.²¹
- (46) Third, as the SEPs owned by Lenovo have already been licensed to a number of other companies, the Notifying Party is constrained in its exercise of these patents.
- (47) These factors lead to the conclusion that it is unlikely that Lenovo would be able to engage into an input foreclosure strategy against competitors by refusing to license these SEPs to a willing licensee.
- (48) Moreover, the Commission notes that Lenovo already owns the SEPs concerned and that it is already active on the downstream market for supply of smart mobile devices. Given the small increment (less than [0-5]%) brought by the proposed transaction on the downstream market for smart mobile devices, the Commission considers that it is unlikely that Lenovo's incentives would change so that to engage into an input foreclosure strategy.
- (49) In addition, with regard to a possible customer foreclosure scenario, given the low presence of the Parties on the downstream market for smart mobile devices, the Commission considers that the risk of such foreclosure is minimal. As explained before, irrespective of both product and geographic market definition, the Parties' combined market share would never be greater than [5-10]% in value or [5-10]% in volume.
- (50) Finally, none of the respondents to the market investigation raised input or customer foreclosure concerns regarding the SEPs that Lenovo has in relation to smart mobile devices.

¹⁹ Commission Communication, Guidelines on the applicability of Article 101 of the TFEU to horizontal co-operation agreements (OJ C 11, 14.1.2011, page 1-72), paragraph 287.

²⁰ Commission Decision in Case COMP/C-3/39.985- *Motorola Mobility - Enforcement of GPRS standard essential patents*.

²¹ See also Court of Justice's judgment in Case C-12/03 P *Commission v Tetra Laval*, ECLI:EU:C:2005:87, paragraph 74.

- (51) In the light of the above, the Commission takes the view that the proposed transaction is unlikely to give rise to any input or customer foreclosure concerns in relation to the SEPs that Lenovo already owns and the downstream market for smart mobile devices.

5.3. Acquisition of patents of Motorola Mobility by Lenovo

- (52) As part of the proposed transaction, Lenovo is also acquiring approximately [2000-3000] design patents relating to the ornamental appearance of Motorola Mobility's products or components and images displayed on a mobile phone or computer. Lenovo is also acquiring [100-200] utility patents and [<100] patent applications [Confidential – details of transaction].
- (53) Google will however retain the vast majority of the Motorola Mobility's patent portfolio. For all of the retained patents currently held by Motorola Mobility, Google will grant Lenovo [Confidential – detail of transaction] license [Confidential – detail of transaction].

5.3.1 View of the Notifying Party

- (54) Lenovo submits that the acquisition of these design and other patents will not give rise to any competition concerns.
- (55) Concerning design patents, Lenovo submits that such patents can be easily worked around by adopting different design features and do not operate as a barrier to entry, or limit innovation. Such design patents are therefore not important inputs that may raise input foreclosure concerns.
- (56) Regarding implementation patents, the Notifying Party submits that the number of acquired patents is too low to give rise to any concerns. Furthermore, any existing encumbrances concerning these patents will continue to apply, including any existing licensing and cross-licensing obligations –thus constraining Lenovo in the exercise of those patents.

5.3.2 Results of the market investigation and Commission's assessment

- (57) In general, the market investigation did not raise concerns regarding the design and other patents acquired by Lenovo. One respondent claimed that, as the patents it would acquire are not standard essential, Lenovo would not be bound by FRAND commitments, and therefore would be able to charge high royalties to its competitors, which, as a result, would be eliminated from the market.
- (58) The Commission considers that such concerns regarding the acquired patents are unfounded for a number of reasons.
- (59) First, the total number of patents acquired by Lenovo through the proposed transaction remains low ([100-200] patents and [<100] patent applications) as

compared to the patent portfolios of many other smart mobile suppliers and major patent holders, such as Samsung, Apple, Microsoft or Nokia.²²

- (60) Second, the Commission notes that none of the patents acquired has been declared standard essential. As regards non-SEPs (utility or design patents), the Commission considers, in line with its previous decisional practice, that the commercial importance of these patents varies. Such patents are not part of a formal technical standard, the nature of many such patents may be incremental, and it is often easier to design around a patent falling in this category. Non-SEPs may relate to features used to differentiate competing products on the market, thus creating dimensions on which firms compete. In this case, the Notifying Party confirmed that none of the patents to be acquired by it under the proposed transaction is to be considered as commercially essential, nor did the market investigation provide evidence of the contrary.
- (61) Third, any existing licensing and cross-licensing obligations regarding the patents acquired will continue to apply, and therefore will constrain Lenovo in its exercise of these patents.
- (62) In the light of the above, the Commission considers that it is unlikely that the acquisition of these patents under the proposed transaction would give Lenovo enough negotiating power to impose excessive royalties to potential licensees. The Commission takes the view that, given the limited number of acquired patents which have not been declared either standard or commercially essential, it is unlikely that Lenovo will have the ability to engage in any input foreclosure strategy. Similarly, given the low presence of the Parties on the downstream market for smart mobile devices the Commission considers that any customer foreclosure concerns can be excluded.

5.4. Licensing of Motorola Mobility's patent portfolio

- (63) As already mentioned, the vast majority of Motorola Mobility's patent portfolio will be retained by Google. During the market investigation, one respondent claimed that, if post-transaction Google were to provide Lenovo with more advantageous licensing terms to the retained patents of Motorola Mobility, in comparison to the terms offered to other original equipment manufacturers ("OEMs"), this would significantly impact the competitiveness of the smart mobile devices market.
- (64) First, the Commission notes that the concern raised relates to the possible post-transaction licensing practices of the seller, Google.²³ In accordance with its previous decisional practice, the Commission considers that the conduct of the

²² The patents acquired by Lenovo constitute a marginal fraction of the portfolio acquired by Google in 2012, which already at that time proved to be small. See Commission Decision of 13 February 2012 in Case No M. 6381 - *Google/Motorola Mobility*, recital 110.

²³ Concern was also raised during the market investigation in relation to Google's and other OEMs' potential anti-competitive conduct on the market for smart mobile devices. However, as these concerns do not fall into the remit of the Merger Regulation, they will not be further analysed in this decision.

sellers falls outside the scope of its assessment of the transaction under the Merger Regulation.²⁴

- (65) Second, even if Google were to offer more beneficial licensing terms to the merged entity, the proposed transaction would not have a material impact on competition in the smart mobile device sector because: (i) it is unlikely that the Motorola Mobility business would gain access to the patents on more favourable terms than it did prior to the proposed transaction, when it was the owner of these patents (that is to say there is no merger-specific effect); and (ii) the Parties' combined market share on the downstream market for smart mobile devices remains low and, in particular, much lower than that of the largest suppliers.²⁵ Irrespective of both product and geographic market definition, the Parties' combined market share would never be greater than [5-10]% in value or [5-10]% in volume. It is thus unlikely that other competing OEMs could be foreclosed or marginalised.

6. CONCLUSION

- (66) 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.

For the Commission

(signed)

Joaquín ALMUNIA
Vice-President

²⁴ Commission Decision of 4 December 2013 in Case No 7047 - *Microsoft/Nokia*, recital 224.

²⁵ Such as Samsung or Apple.