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***Case No COMP/M.6853 -
FLEXTRONICS
INTERNATIONAL /
CERTAIN ASSETS
BELONGING TO
MOTOROLA MOBILITY***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/03/2013

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Brussels, 8.3.2013
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 No COMP/M.6853 - Flextronics International / Certain Assets belonging to Motorola Mobility
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹**

1. On 05.02.2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Flextronics Sales & Marketing (A-P) Ltd., a wholly-owned subsidiary of Flextronics International Ltd. ("Flextronics", Singapore), acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of certain manufacturing assets located in China and Brazil (respectively, the "Chinese Assets" and the "Brazilian Assets", and together the "Motorola Assets"), engaged in the production of mobile devices and tablets, by way of purchase of assets, from Motorola Mobility LLC ("Motorola") a wholly-owned subsidiary of Google Inc. ("Google", United States of America).²
2. Flextronics is designated hereinafter as the "Notifying Party". Flextronics and the Motorola Assets are designated together hereinafter as the "Parties."

(1) THE PARTIES AND THE OPERATION

3. Flextronics is a global provider of electronic manufacturing services ("EMS") to original equipment manufacturers ("OEMs"). It provides end-to-end, vertically-integrated global

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 Publication in the Official Journal of the European Union No C 041, 13.02.2013, p. 14.

supply chain services, through which it designs, builds and ships a complete packaged product to OEMs.

4. Motorola is a supplier of mobile devices, tablets, TV set-top boxes, end-to-end video solutions and cable broadband access solutions. Motorola was spun off from Motorola Inc. in January 2011 and was acquired by Google in 2012.³
5. The Motorola Assets are engaged in the production of mobile devices and tablets. They are currently used captively by Motorola.
6. The Chinese Assets include machinery, motor vehicles, equipment, real property and inventory relating to their manufacturing operations. Pursuant to an agreement between Flextronics and Motorola, [Business Secrets – private contractual terms and Flextronics’ future business plans relating to the Chinese Assets].⁴
7. The Brazilian Assets comprise similar assets to the Chinese Assets.⁵ [Business Secrets – private contractual terms relating to the Brazilian Assets].
8. The Motorola Assets also comprise the relevant personnel, licences and warranties related to the operation of the assets. Motorola's own trademarks and intellectual property rights will not be transferred to Flextronics, although Flextronics will obtain the relevant licences to manufacture products for Motorola.
9. The Notifying Party submits that the proposed transaction essentially consists of an outsourcing transaction and that the transferred assets do not constitute the whole or part of an undertaking, i.e. a business with access to the market within the meaning of paragraphs 25 to 37 of the Consolidated Jurisdictional Notice.⁶ The Notifying Party argues that the Motorola Assets do not comprise the core elements that would allow a purchaser to build up a market presence or the means to develop a market access. It points, among other things, to the fact that the Motorola Assets lack marketing and sales personnel, reputation, capitalisation, relationships with suppliers, as well as legal, regulatory and tax personnel.
10. The Commission considers that the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation, as it entails the transfer of a business with access to the market within the meaning of paragraph 26 of the Consolidated Jurisdictional Notice.
11. The Commission's conclusion is based on the fact that the Motorola Assets, on a stand-alone basis (and therefore regardless of Flextronics' existing activities, which may complement them post-transaction) include the necessary elements to supply third parties (in addition to Motorola) either immediately (the Brazilian Assets) or within a short period of time (the Chinese Assets) following completion of the proposed transaction.

³ Decision of 13 February 2012 in Case COMP/M.6381 Google/Motorola Mobility.

⁴ Section 4.3 e of the Master Asset Sale Agreement concluded between Motorola and Flextronics on 7.12.2012.

⁵ [Business Secrets – private contractual terms relating to the Brazilian Assets].

⁶ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.04.2008, p.1.

12. The Notifying Party acknowledges that it will, in principle, be able to use the Motorola Assets to manufacture mobile phones and tablets for third party OEM customers and to deliver their output on an ex-factory basis, as well as to repair the products returned to the factory. The Notifying Party also acknowledges that the Motorola Assets have personnel that can negotiate with OEMs on specifications, costs and delivery times. The Commission considers these are core elements that will allow the Notifying Party to build up a market presence.
13. The fact that the Motorola Assets as such do [...] * have an established reputation on the market and/or immediately available capital and/or may lack certain procurement, sales and marketing and back-office personnel does not undermine the above conclusion. Indeed, while these additional elements would arguably improve the ability of the Motorola Assets to successfully operate on the market, they do not appear as such to be indispensable for these assets to have a market presence. Moreover the Notifying Party is already active in the markets where the Motorola Assets operate and has all these necessary capabilities as of the completion of the proposed transaction, including the marketing and sales personnel to use the Motorola Assets and to supply third parties (in addition to Motorola). In other words, for all practical purposes, the proposed transaction entails the transfer from Motorola to Flextronics of certain manufacturing assets, which were previously used captively, and which, post transaction, will be used, at least in part, to supply third parties, therefore bringing about a long-lasting structural modification in the competitive structure of the relevant markets.
14. Based on the above, the Commission concludes that the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

(2) EU DIMENSION

15. Prior to the transaction, the turnover of the Motorola Assets is internal to Motorola. In such a scenario, according to paragraph 163 of the Consolidated Jurisdictional Notice, the turnover of the Motorola Assets should normally be calculated on the basis of that previously internal turnover. On that basis, the current internal turnover of the Motorola Assets would amount to EUR [...]. Paragraph 163 of the Consolidated Jurisdictional Notice further notes that where the previously internal turnover does not appear to correspond to a market valuation of the activities in question (and, thus, to the expected future turnover on the market), the forecast revenues to be received on the basis of an agreement with the former parent may be a suitable proxy. In this scenario, the turnover of the Motorola Assets would amount to EUR [...].
16. As regards the geographic allocation of the above-mentioned turnover to the EU, a distinction has to be drawn between the turnover of the Brazilian Assets and that of the Chinese Assets.
17. On the one hand, [Business Secrets – geographic sales of the Brazilian Assets].
18. On the other hand, [Business Secrets – geographic sales of the Chinese Assets]. While the Notifying Party does not take a firm view on how that turnover should be allocated, it explains that, if such turnover is allocated exclusively either to the place where the products first change title ([Business Secrets – commercial details about the

* - Should read "do not"

organisation of sales by Motorola]) or to the place where the Motorola subsidiary, which first takes title to the products, is based ([Business Secrets – commercial details about the organisation of sales by Motorola]), the proposed concentration will not have an EU dimension as the Motorola Assets will not achieve any turnover in the EU.

19. Conversely, the Notifying Party explains that if the turnover of the Chinese Assets is allocated to the EU Member States, where the Motorola subsidiary to which the relevant products are actually shipped (directly from the Chinese Assets) is based, or to the EU Member States, where the end customers, which ultimately purchase the products, are based, then the proposed transaction will constitute a concentration with an EU dimension.
20. Consistent with paragraphs 196 and 198 of the Consolidated Jurisdictional Notice, the Commission considers that the turnover of the Chinese Assets has to be allocated to the place where the customer is located and where competition with alternative suppliers takes place, which in this case is either the EU Member States where the relevant Motorola subsidiary to which the products are shipped is based and the EU Member States, where the final customer, which actually purchases the product is sold. It would be artificial to allocate the turnover in another manner since: [Business Secrets – commercial details about the organisation of sales by Motorola].
21. Based on the above, the Commission's assessment of the EU dimension of the proposed transaction can be summarised as follows:
 - a. If the turnover of the Chinese Assets is calculated on the basis of the "internal" turnover and by allocating the sales to the location of the Motorola legal entities in the EU, the proposed transaction will exceed the turnover thresholds of Article 1(2) of the Merger Regulation. The undertakings concerned will have a combined aggregate worldwide turnover of more than EUR 5 000 million (Flextronics: EUR 21 331 million and the Motorola Assets: [...]); each of them will have an EU-wide turnover in excess of EUR 250 million (Flextronics: EUR [...] and the Motorola Assets: [...]), and both undertakings will not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
 - b. In all other scenarios,⁷ the proposed transaction will exceed the turnover thresholds of Article 1(3) of the Merger Regulation. The undertakings concerned will have a combined aggregate worldwide turnover of more than EUR 2 500 million; the undertakings concerned will have a combined aggregate turnover in excess of EUR 100 million in at least three Member States ([...]); in each of these three Member States, two undertakings will achieve more than EUR 25 million; the aggregate EU-wide turnover of the two undertakings will be in excess of EUR 100 million; and both undertakings will not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

⁷ Namely: (i) turnover calculated based on the current "internal" turnover of the Motorola Assets and allocated to the location of the Motorola end customer in the EU; and (ii) turnover calculated based on the forecast revenues to be received from the Motorola Assets and allocated to the location of the Motorola legal entities in the EU and to the location of the end customer in the EU.

(3) RELEVANT MARKETS

22. The Motorola Assets essentially manufacture mobile phones and tablets. More specifically, mobile phones account for [80-100]% of the production of these assets, with tablets accounting for the remaining [0-20]%.
23. The Notifying Party submits that the provision of mobile phones and tablets is part of an overall market including all types of EMS. In the Notifying Party's view, there is no need to further subdivide the EMS market on a product-by-product basis since different electronic products are manufactured using similar production processes and production equipment is not product-specific and can be easily and cheaply re-programmed to manufacture different products.
24. The Notifying Party further submits that the relevant product market for the purposes of assessing the proposed transaction is the EMS market including both EMS produced in-house by OEMs for their own consumption and EMS supplied by third parties to OEMs. In the Notifying Party's view, OEMs can easily switch between in-house production and third party supplies and even use a combination of own production and outsourcing.
25. In previous decisions, the Commission has contemplated, but ultimately left open, whether the EMS market should be subdivided into narrower segments based on different product categories (such as communications, computers, and consumer goods).⁸ The Commission has also contemplated, but ultimately left open whether in-house EMS production by OEMs and EMS production by third parties should be part of the same relevant product market.⁹
26. As regards the geographic scope of the relevant market, the Notifying Party submits that it is worldwide since barriers to cross-border trade and transport costs of EMS are very low. Moreover, OEMs typically source globally on the basis of global agreements with EMS suppliers.
27. In previous decisions, the Commission has contemplated, but ultimately left open, the question whether the EMS market should be considered as EEA-wide or worldwide in scope.¹⁰
28. Since the concentration does not raise serious doubts under any possible approach, the exact product and geographic market in this case can be left open.

⁸ Case COMP M.5140, Foxconn/Sanmina SCI, Commission decision of 24 June 2008, paragraph 11; Case COMP M.5870, Foxconn/Sony LCD TV Manufacturing Company in Slovakia, Commission decision of 25 June 2010, paragraph 17, 20 Case COMP/M.6603, Hon Hai/Sharp/Sharp Display Products, Commission decision of 22 June 2012, paragraph 30.

⁹ COMP M.5140, Foxconn/Sanmina SCI, Commission decision of 24 June 2008, paragraphs 11-17; Case COMP M.5870, Foxconn/Sony LCD TV Manufacturing Company in Slovakia, Commission decision of 25 June 2010, paragraph 19.

¹⁰ Case COMP M.2479, Flextronics/Alcatel, Commission decision of 29 June 2001, paragraphs 11-12; Case COMP M.2629, Flextronics/Xerox, Commission decision of 12 November 2001, paragraphs 10-11; Case COMP M.5140, Foxconn/Sanmina SCI, Commission decision of 24 June 2008, paragraphs 18 and 20; Case COMP M.5870, Foxconn/Sony LCD TV Manufacturing Company in Slovakia, Commission decision of 25 June 2010, paragraphs 23-25.

(4) COMPETITIVE ASSESSMENT

Horizontal overlaps

29. The proposed transaction does not give rise to any horizontally affected market under any possible market definition (i.e., including or excluding in-house production, including all EMS products or segmented by product category, worldwide or EEA-wide), with the only exception of a possible market segment for the manufacturing of mobile phones, excluding in-house production, where, in the EEA, the Parties' combined share would be [15-20]%, with a very limited increment (around [0-5]%) deriving from the proposed transaction.
30. Based on the market share of the Parties, the limited increment arising from the proposed transaction and the fact that, post transaction, the relevant market segments will be characterised by the presence of a number of competitors such as Foxconn (Hon Hai), Quanta Computer, Wistron, Jabil Circuit, Pegatron, Inventec and Celestia, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as a result of the horizontal overlap between the activities of the Parties.

Vertical overlaps

31. The proposed transaction does not give rise to any vertically affected market under any possible market definition, both upstream in the supply of components for EMS, where Flextronics is active, and downstream in the supply of EMS where the Motorola Assets are active, since the share of the Parties of such markets and/or segments is below 25%.
32. The Commission therefore concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as a result of the vertical relationship between the activities of the Parties.

(5) CONCLUSION

33. 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