



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2016/01/370)

13<sup>th</sup> April 2016

**Notice under Section 6 (2) of the Competition Act, 2002 given by Denali Holding Inc.**

**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: AZB Partners**

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

1. On 21<sup>st</sup> January 2016, the Competition Commission of India (“**Commission**”) received a notice filed by Denali Holding Inc. (“**Denali**” or “**Acquirer**”) under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”). The proposed combination relates to acquisition of EMC Corporation (“**EMC**”) by Denali, pursuant to Agreement and Plan of Merger dated 12<sup>th</sup> October 2015 (“**Agreement**”) entered into amongst Denali, EMC, Dell Inc. (“**Dell**”) (a wholly owned subsidiary of Denali) and Universal Acquisition Co. (a wholly owned subsidiary of Denali).



2. In relation to the proposed combination, the Commission had received a Form I notification (“**Form I**”), bearing Combination Registration No. – C-2015/11/338, from Denali on 9<sup>th</sup> November 2015, to which it was observed that given the nature of the products and services involved in the proposed combination, a comprehensive assessment would be required to be undertaken including, *inter alia*, in terms of substitutability for exact delineation of the relevant market.
3. Based on the substantial overlap in some of the market segments and vertical relationship in other market segments, the Commission, in its meeting held on 8<sup>th</sup> December 2015, decided that information in Form II is required in order to form a *prima facie* opinion whether the proposed combination is likely to cause an appreciable adverse effect on competition or not within the relevant market in India. Accordingly, the Acquirer was directed to file notice in Form II. In compliance with the directions of the Commission, the Acquirer filed notice in Form II on 21<sup>st</sup> January 2016.
4. Denali is the holding company of Dell, approximately 70% of equity share capital of Denali is held by Michael Dell and Susan Lieberman Dell Separate Property Trust. Further, Silver Lake Partners (through its funds), a U.S. based private equity firm, hold approximately 24% of Denali’s equity shares and approximately 4% equity shares of Denali are held by two entities (*i.e.*, MSDC Denali Investors, L.P. and MSDC Denali EIV, LLC) managed by MSD Partners, L.P.
5. Denali is present in India through its various subsidiaries. Dell, headquartered in Texas, USA, is a global information technology (“**IT**”) company which develops, sells and supports computers and related products and services including servers, networking products, storage systems, software, IT and business services at worldwide level and in India.
6. EMC, headquartered in Massachusetts, is a publicly traded corporation listed on the New York Stock Exchange. It offers data storage, information security, Server Virtualization software, analytics, cloud computing and other products and services that enable businesses to store, manage, protect and analyse data. Further, EMC is a majority owner of VMware, Inc., a listed company based in California, USA and a provider of Server Virtualization software.



7. The proposed combination involves the acquisition of EMC by Denali by way of a reverse triangular merger. Denali has incorporated a wholly owned subsidiary, Universal Acquisition Co. (“**Merger Sub**”). Merger Sub will subsequently merge into EMC, with EMC being the surviving corporation and EMC becoming a wholly owned subsidiary of Denali.
8. In an inter-connected step to the proposed combination, on 12<sup>th</sup> October 2015, Stock Purchase Agreements were entered into between Denali and each of (i) Silver Lake Partners III, L.P. and Silver Lake Partners IV, L.P, (ii) Michael S. Dell and the Susan Lieberman Dell Separate Property Trust, (iii) MSDC Denali Investors, L.P. and MSDC Denali EIV, LLC, and (iv) Temasek, a sovereign wealth fund of Government of Singapore. All of them being investors are collectively referred to as the “**Investors**”. Pursuant to which the Investors agreed to purchase shares of Denali on the closing of the merger. In this regard, it has been submitted that the said acquisition of shares by the Investors is for the purpose of infusing capital to finance the proposed combination and the Investors will not acquire any affirmative rights / veto rights conferring control in Denali as a result of the said transaction.
9. In terms of sub-regulation 6 of the Regulation 5 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as “**Combination Regulations**”), *vide* letter dated 21<sup>st</sup> January 2016, the Acquirer had undertaken that requisite document pertaining to declaration from representative of the notifying party signing Form II under Regulation 9(1) of the Combination Regulation shall be provided. The Acquirer filed the requisite information/gaps in the notice on 27<sup>th</sup> January 2016. Further, in terms of Regulation 14 of the Combination Regulations, *vide* letter dated 18<sup>th</sup> February 2016, the Acquirer was required to remove defects and furnish certain information/document(s) pertaining to, *inter alia*, the overlapping product segments, market share of the parties in Identity and Access Management (“**IAM**”) solutions in India. The Acquirer filed its response on 11<sup>th</sup> March 2016 after seeking extension of 17 days.
10. The business activities of the parties to the combination overlaps in the following segments in India, as follows:



- 10.1 External enterprise disk storage system (“**EEDSS**”) - Enterprise disk storage is a broad category of IT storage that includes products and services designed to assist organizations with saving and retrieving digital information. It can handle large volumes of data and large numbers of users. The storage system may be located outside or within the server. A server is a computer program or a machine that waits for requests from other machines or software (clients) and responds to them. Where the storage system is located external to the server, it is referred to as EEDSS. EEDSS may be sub-segmented into entry-level EEDSS (priced at less than USD 25,000), mid-range EEDSS (priced between USD 25,000 to USD 249,999) and high-end EEDSS (priced at USD 250,000 and above).
- 10.2 Backup Software, (*i.e.*, software designed to make additional copies of data onto separate storage devices) are used to ensure data protection and integrity (and then restore such data to primary storage as necessary).
- 10.3 IAM solutions refer to software that governs various processes to manage identity and access information across different applications / systems.
11. On the basis of foregoing and submission of the parties, following relevant markets may be delineated in India as development/manufacture and sale of:
- i. EEDSS (sub-segmented into entry-level, mid-range and high-end);
  - ii. Backup software;
  - iii. IAM solutions;
12. With respect to EEDSS market, the Acquirer submits that Dell primarily competes in entry-level and lower mid-range EEDSS, whereas EMC’s presence is in premium mid-range and high-end EEDSS sub-segments. Further, the parties are stated not to be close competitors in EEDSS segment as there are clear distinct and varied purchase requirements of the customer for different sub-segments of EEDSS. On the basis of submission of the Acquirer, the combined market share of the parties in the overall EEDSS as well as in entry-level EEDSS sub-segment is between 35-40 percent. For both the other sub-segments of EEDSS, namely, mid-range and high-end EEDSS, the combined market share of the parties is between 40-45 percent. However, with respect to



the mid-range and high-end EEDSS sub-segments, the Commission noted that the incremental market share of the parties in the said sub-segments is marginal.

13. The Commission, based on the information submitted by the Acquirer and other documents on record, noted that the competitors (along with their market share) such as HP (between 15-20 percent), IBM (between 10-15 percent), NetApp (between 10-15 percent) and Hitachi (between 5-10 percent) are present in EEDSS business in India. Moreover, these competitors are present in each sub-segment of EEDSS. In entry-level EEDSS sub-segment HP and IBM has market share between 15-20 percent each. With respect to mid-range EEDSS sub-segment, NetApp has a market share between 15-20 percent in India and IBM of 15-20 percent. Further, with respect to high-end EEDSS sub-segment, the Commission observed that Hitachi (between 20-25 percent), HP (between 15-20 percent) and IBM (between 20-25 percent) are present in India.
14. As regards Backup Software, the combined market share of the parties is between 20-25 percent. Further, based on the information submitted by the Acquirer and other documents on record, Symantec and IBM, among others, are present in India with market share of 30-35 percent and 25-30 percent, respectively. In IAM solutions, the combined market share of the parties is relatively lower at 15-20 percent. However, there are competitors, such as, IBM (between 10-15 percent), Symantec (5-10 percent) etc., present in this segment which would provide competitive constraint to the parties post-combination.
15. The Acquirer also submitted that there is potential vertical relationship between businesses of the parties in India, as follows:
  - 15.1 Dell is engaged in the upstream business of X86 server in India. Servers are the computing power of the data centre, and can be used in many ways, for example, file servers, printer servers or web servers etc. The purpose of a server is to share data or hardware and software resources among clients.
  - 15.2 EMC, through its subsidiary VMWare, is engaged in downstream business of Server Virtualization software in India. Server Virtualization software allows a single physical server (or host) to simultaneously run multiple “virtual machines,” each of



which can simultaneously be running a different operating system, different applications, and is completely isolated from any other virtual machines running on the same physical server.

16. As per the information submitted in the notice, the market share of Dell in the (upstream) market for X86 servers in India is less than 25 percent and the market share of EMC in the (downstream) market for Server Virtualization software in India is around 45 percent. With respect to the potential vertical relationship, the Commission, based on the submission of the Acquirer, observed as follows:

- 16.1 Dell's business model for servers depends on an open ecosystem, which assures the compatibility of its servers with third party infrastructure, such as storage solutions. Thus, a "mix-and-match" between servers and storage systems from different brands is possible.

- 16.2 Further, there is inter-operability of servers of Dell with Server Virtualisation software provided by Microsoft, Red Hat Inc., etc.

- 16.3 Moreover, VMware's business strategy is hardware and software-neutral and it has been working with different server vendors such as IBM, HP etc. that will continue to operate either in partnership with VMware or with third party Server Virtualisation software providers, thereby, providing competitive constraint to Dell post-combination.

17. Given that the proposed combination is a global transaction and market share of the parties in most of the abovementioned business segment is sizeable in India, non-confidential and informal discussions were held with the competition authorities of Australia, European Union and United States of America. The delineation of relevant products market by the Commission is in line with that of the competition authorities of the aforementioned jurisdictions.

18. Further, the Commission considered the proposed combination in its meeting held on 30<sup>th</sup> March 2016. The Commission, in exercise of its power under Section 36(3) of the Act read with Regulation 52 of the Competition Commission of India (General)



Regulations, 2009 and Regulation 19(3) of the Combination Regulations, decided to seek expert opinion on various aspects relating to IT industry (hardware as well as software) in India and the growth of the sector over the past decades.

19. Subsequently, the Commission in its meeting held on 13<sup>th</sup> April 2016, heard the opinion of the expert on market dynamics of the industry. While giving an overview about the industry, the expert provided a general introduction about, *inter alia*, the key characteristic for each product markets, its usage, players operating in the said businesses in India, new entrants in the said product markets, nature and extent of technical innovation in the said industry, extent of barriers to entry, etc.
20. The Commission, on the basis of the documents on record, observed that the product offering of the parties in the case of EEDSS market is such that the product of EMC is suited for large enterprises which require high-end storage solutions or at the most mid-range storage solutions. However, Dell is mostly engaged in providing entry-level storage solutions. The Commission also noted that HP and Huawei have emerged as new players in the EEDSS segment.
21. In case of Back-up Software and IAM solutions, the Commission noted that companies like Symantec have sizeable market shares.
22. On vertical integration of X86 Server Business of Dell and Server Virtualization software business of EMC (through VMware), based on the documents on record, the Commission observed that products of VMware are facing increasing competition from other providers of Server Virtualization software such as Microsoft and Red Hat Inc. Further, in the server market, Dell has strong competitors that would continue to operate either in partnership with VMware or with third party Server Virtualisation software providers on account of interoperability.
23. The Commission observed that the customer, at the time of purchasing various IT products, purchase security, storage, server and/or Server Virtualization software solutions, etc. typically as separate products. Thus, there is a limited possibility of tying/bundling of the products.



24. On the basis of foregoing, it is noted that each of the relevant product markets would remain competitive post combination, as the key characteristic of each of the product markets is technical innovation with low barriers to entry. Further, there is a presence of new entrants in each of the relevant product markets.
25. Considering the facts on record and the 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 an 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.
26. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
27. The information provided by the Acquirer is confidential at this stage subject to provisions of Section 57 of the Act.
28. The Secretary is directed to communicate to the Acquirer accordingly.