



31.01.2017

**Notice under Section 6 (2) of the Competition Act, 2002 given by Manta Holdings L.P.
and Thoma Bravo Fund XII L.P.**

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S.L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U.C. Nahta
Member

Mr. G. P. Mittal
Member

Legal Representatives: Shardul Amarachand Mangaldas & Co

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

1. On 05.10.2016, the Competition Commission of India (“**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) given by Manta Holdings L.P., previously known as TPG VII Manta Holdings (hereinafter “**TPG Manta**” or the “**Acquirer**”). The notice has been given pursuant to execution of



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(Combination Registration No. C-2016/10/439)



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Subscription Agreement (“SA”) dated 06.09.2016 entered into between Foundation Technology Worldwide LLC (“FTW” or “Target”), Intel Corporation (“Intel”) and TPG Manta.

2. The proposed combination is structured as an acquisition under Section 5 (a) of the Act and contemplates inter-connected steps: (i) Intel will transfer global assets and legal entities relating to the Intel Security Business to its newly created wholly owned subsidiary namely, FTW; and (ii) TPG Manta would acquire fifty-one (51) percent equity stake in FTW, while the remaining forty-nine (49) percent would continue to be held by Intel (“**Proposed Combination**”). Apart from the common equity shareholding in FTW, TPG Manta will also hold certain redemption units in FTW. While assessing the Proposed Combination, it was observed that there are two inter-connected transactions: (a) Co-investment agreement between Thoma Bravo Fund XII, L.P. (“**Thoma Bravo**”) and TPG Manta and (b) Co-investment agreement between GIC and TPG Manta. In terms of sub-regulation (4) of Regulation 9 of the Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011 (“**Combination Regulations**”), where the ultimate intended effect of a business transaction is achieved by way of a series of steps or smaller individual transactions which are inter-connected, one or more transactions may amount to a combination, a single notice, covering all these transactions, shall be filed by the parties to the Combination.
3. In terms of the provisions of Regulation 14 of the Combination Regulations, *vide* letters dated 25.10.2016 and 23.11.2016, the Acquirer was, *inter alia*, asked to clarify the rights associated with the co-investment agreements with Thoma Bravo and GIC, which were stated to be under negotiation at the time of filing of notice. The Acquirer, after seeking extension of time, filed initial response on 15.11.2016 and 23.12.2016, and complete response on 11.01.2017.
4. TPG Manta, an affiliate of TPG Capital (“**TPG**”), is a limited partnership incorporated under the laws of the State of Delaware, United States. It is a special purpose vehicle, formed by TPG for the purpose of the Proposed Combination. TPG, based in Fort Worth



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(Texas) and San Francisco, (California) in United States, is a private investment firm that manages funds for investing in a variety of companies through acquisitions and corporate restructurings.

5. Intel, incorporated under the laws of the State of Delaware, United States, is stated to be engaged in manufacture of central processing units (“CPU”), chipsets, designing and manufacturing integrated circuits for computing and communications. Further, information technology (“IT”) security business of Intel comprises of the legal entities and assets, engaged in the provision of IT security products and services (“**Intel Security Business**” or “**Target Business**”). Intel Security Business is focused on developing security solutions and services that protect computers, systems, networks, and mobile devices for business and personal use. In India, Intel is engaged in the Target Business through McAfee Software (India) Private Limited (“**McAfee Software**”) and McAfee India Sales Private Limited (“**McAfee Sales**”).
6. FTW is a limited liability corporation, incorporated under the laws of the State of Delaware, United States. As a result of the Proposed Combination, Intel will transfer the Target Business to FTW. In India, McAfee Software and the assets relating to the Target Business, currently held by McAfee Sales, will be transferred to FTW.
7. Thoma Bravo is stated to be a private investment firm headquartered in the United States. GIC is stated to be a Singapore based sovereign wealth fund.
8. On the basis of submissions and subsequent responses of the Acquirer, it is noted that GIC, through its Special Purpose Vehicle (SPV) namely Snowlake Investment Pte Ltd, entered into an equity commitment letter/Co-investment agreement dated 13.10.2016 (revised on 15.12.2016) with TPG Manta. It is submitted that GIC’s shareholding in TPG Manta would effectively provide economic interest in FTW but no actual shareholding or voting rights are acquired by GIC in FTW. Similarly, Thoma Bravo entered into a Co-investment agreement dated 09.10.2016 with TPG controlled entities. Accordingly, Thoma Bravo will acquire economic interest in FTW commensurate to its



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investment in TPG Manta. It is further stated that neither GIC nor Thoma Bravo have been granted any affirmative voting right, ability to cause any deadlock in relation to strategic business decisions such as approval/change of business plan, approval of budget or appointment of key managerial personnel in FTW. However, the Commission noted that through the Co-investment agreement, Thoma Bravo has acquired certain investor protection rights and a board seat in FTW. As per Item 1 of Schedule I of the Combination Regulations, an acquisition of less than 10% of the total shares or voting rights of an enterprise shall be treated as an acquisition made solely as an investment, provided there is no acquisition of control, special shareholder rights, board seat or participation in the management or affairs of the enterprise whose shares or voting rights are being acquired (“**Item 1 Exemption**”). The Commission noted that though the equity commitment letter/co-investment agreement form part of the notice but neither GIC nor Thoma Bravo are party to the SA. The Commission further noted that the investment by GIC would qualify for Item 1 Exemption, but the investment by Thoma Bravo would fall outside the purview of Item 1 Exemption since Thoma Bravo obtained the right to appoint a board member of FTW. Thus, Thoma Bravo is required to notify to the Commission as per the provisions of Regulation 9(1) of the Combination Regulations. Accordingly, Thoma Bravo gave declaration as per the provision of Regulation 9(1) of the Combination Regulations.

9. As regards the market for provision of IT security solutions, the Commission observed that given the fragmented nature and presence of a number of players in market for provision of IT security solutions in India, the Proposed Combination is not likely to raise significant competition concern and accordingly decided that the exact delineation of the relevant market be left open.
10. With regard to the horizontal overlap in the market for provision of IT security solutions, it is stated in the notice that TPG holds non-controlling minority interests in certain companies namely, Avanan Inc. (“**Avanan**”), Tanium Inc. (“**Tanium**”) and Zscaler Inc. (“**Zscaler**”) (Avanan, Tanium and Zscaler are collectively referred to as “**Portfolio Companies**”), which are engaged in the provision of IT security solutions. The Commission observed that TPG, through its non-controlling portfolio companies, has



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less than 0.5 percent share in the market for provision of IT security solutions in India. Further, Thoma Bravo has a controlling interest in an internet security company, Landesk Software Inc. (“**Landesk**”), however, there is insignificant overlap between Landesk and the Target Business in India. Thus, the Commission noted that Portfolio Companies have miniscule presence in the market for provision of IT security solutions in India. Further, the Commission observed that the market for IT security solutions is characterised by presence of many well established players like Symantec, Blue Coat Systems Inc., IBM and Cisco having market share (in value terms) of 12.7 percent, 9.9 percent, 8.9 percent and 8.8 percent, respectively in 2015 (as per IDC data submitted by the Acquirer). Taking into consideration above factors, the Commission did not find any horizontal overlap in the market for provision of IT security solutions to raise any appreciable adverse effect on competition.

11. As regards vertical relationships, Commission observed that neither the Acquirer nor the Portfolio Companies, in which the Acquirer has minority interest, are engaged in any vertical relationship with the Target Business.
12. Considering facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment 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.
13. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
14. The information provided by the Acquirer is confidential at this stage, in terms of and subject to the provisions of Section 57 of the Act.



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15. The Secretary is directed to communicate to the Acquirer accordingly.