

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

APPLE INC., and NEXT SOFTWARE,
INC. (f/k/a NeXT COMPUTER, INC.),

Plaintiffs and
Counterclaim-
Defendants,

v.

MOTOROLA, INC. and MOTOROLA
MOBILITY, INC.

Defendants and
Counterclaim-
Plaintiffs

Case No. 10-CV-662 (BBC)

**DECLARATION OF ALEXANDER VIKTOROVICH VIKTOROV IN
SUPPORT OF PLAINTIFFS AND COUNTERCLAIM-DEFENDANTS APPLE
INC. AND NEXT SOFTWARE, INC.'S REPLY IN SUPPORT OF THEIR
MOTION FOR A STAY PURSUANT TO FED. R. CIV. P. 19**

I **ALEXANDER VIKTOROVICH VIKTOROV** of Freshfields Bruckhaus Deringer LLP, 14/2 Kadashevskaya nab., Moscow, 119017, Russia, hereby declare:

1. I am counsel at the Moscow office of the law firm of Freshfields Bruckhaus Deringer LLP. I received my law degree from the Lomonosov State University in Moscow (MGU) in 1997 and an LLM from New York University in 1998. I have been qualified as a lawyer in Russia since 1997. I practice Russian competition law, and advise Apple in that capacity. The matters referenced in this declaration are based on personal knowledge and, if called as a witness, I could, and would, testify competently to these matters.

2. I set out below the basic process and timetable for clearance of a transaction in Russia pursuant to Russian Federal Law "On the Protection of Competition" No 135-FZ of 26 July 2006 (the "Law"). Attached at **Exhibit 1** is a copy of the relevant provisions of the Law together with their certified translation into English, and below is a summary of the provisions of the Law which relate to the timing of a transaction review in Russia. References below to "Article" are to the relevant sections of the Law.

3. Pursuant to the Law, transactions which trigger certain thresholds must be notified to the Federal Antimonopoly Service of the Russian Federation (the "FAS") and cannot be consummated without the approval of the FAS. I understand that these thresholds are triggered by the proposed acquisition of Motorola Mobility, Inc. ("MMI") by Google, Inc. (the "Merger") because MMI has confirmed publicly that a merger filing in Russia is required as a result of the Merger. Attached at **Exhibit 2** is a copy of the "Proxy Statement" pursuant to section 14(a) of the United States Securities Exchange Act of 1934, published by MMI on 27 September 2011, in which MMI confirms that pre-closing antitrust clearances are required in a number of jurisdictions, including Russia.

Initial review

4. Once a transaction is formally notified, the FAS will undertake an initial review pursuant to Article 33.1 of the Law. At the end of the initial review, the FAS must make a decision to:

- (a) grant consent to the transaction if it does not lead to a limitation of competition (Article 33.2(1)); or
- (b) extend the review period if additional review is needed or if further information is required if it is determined that the transaction may lead to a limitation of competition (Article 33.2(2)); or
- (c) extend the review period in relation to certain transactions, namely incorporation of commercial organizations by way of contributing to their capital assets other than cash, consolidations of commercial organizations and mergers of one or more commercial organizations with and into another commercial organization ("Consolidations"), setting conditions which must be fulfilled before the FAS will take a decision on whether to clear the

transaction, and setting a time period within which such conditions have to be fulfilled, which period shall not exceed 9 months (Article 33.2(3)); or

- (d) extend the review period if the transaction requires clearance under Russian law on foreign investments in strategic assets (Article 33.2(3.1)); or
- (e) grant consent to the transaction subject to a binding order to take certain actions aimed at ensuring competition (Article 33.2(4)); or
- (f) refuse consent if the transaction may lead to a limitation of competition, or if the information provided within the filing is inaccurate, or if the applicant does not provide information which is available to and has been requested from the applicant and without which the decision cannot be taken (Article 33.2(5)); or
- (g) refuse consent if the transaction has not been cleared under Russian law on foreign investments in strategic assets (Article 33.2(6)).

5. Article 33.1 provides that the FAS must make a decision under Article 33.2 within 30 days of the receipt of the notification.

6. Accordingly, the initial review in Russia takes 30 calendar days.

Extension

7. If the FAS decides that a transaction gives rise to competition concerns or if further information is required, it will extend the review period by a term of up to two months (Article 33.3). In the period between 1 June 2011 and 27 September 2011, the FAS extended the period of review of more than 50 merger control applications, as evidenced by more than 50 extension decisions which have been posted on the FAS website in this period, as of 27 September 2011.

Initial review + extension

8. As discussed in paragraphs 5 and 7 above, in accordance with Articles 33.1 and 33.3 of the Law, if the review period for a transaction is extended, the review may take up to three months.

Conditions

9. As mentioned in paragraph 3(c) above, before taking a decision on whether to clear Consolidations, the FAS may set conditions to be fulfilled by the parties. The time period within which the parties must fulfil such conditions may be up to 9 months. In such cases the FAS must make a decision within 30 days after receipt of documents evidencing that the conditions have been fulfilled (Article 33.6).

10. Therefore, where conditions are set in relation to Consolidations, the process may take up to 11 months.

Possibility to re-submit

11. If the FAS refuses to grant consent to a transaction, the parties can re-submit an application. By way of example, under a scenario involving an initial review, an extension and a rejection, followed by re-submission, a new initial review and an extension, the process may take more than 6 months. According to information available on the FAS' website as of 27 September 2011, this process has been followed in practice. For example, in the context of the acquisition by Solvay Participations France S.A.S. of Bereznikovsky Sodovy Zavod (Soda Ash Plant), the FAS review commenced on or around 15 December 2009 and was completed on or around 7 June 2010, i.e. it took more than 5.5 months. Attached at **Exhibit 3** are the relevant materials printed out from the FAS' website together with their certified translation into English.

Incomplete application

12. Article 32.5.1 provides that if an application is not complete, it is deemed to be 'non-submitted', and the FAS must notify the applicant accordingly within 10 days after submission.

13. Therefore, each of the periods discussed above may be by at least 10 days longer in case of an incomplete application. In practice, the relevant delays are longer, as further time is required to collect the incomplete notification from the FAS, update and resubmit it.

Formal notification of the acquisition of Motorola Mobility, Inc. by Google, Inc.

14. In Russia, there is no way to check whether a transaction has been notified to the FAS.

Refusal to grant consent

15. It is not uncommon for the FAS to refuse to approve a transaction, including because the FAS deems information provided within a filing to be inaccurate or incomplete. As of 27 September 2011, the FAS' website contains more than 40 decisions refusing consent, which were issued for various reasons, in the period October 2008 through August 2011.

Statement of Truth

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 28 day of September 2011 at Moscow, Russia.

Signed.....
ALEXANDER VIKTOROVICH VIKTOROV