

28 September 2011

**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 XIE GUANBIN 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**

**XIE GUANBIN** of Lifang & Partners, Level 11, Tower A, Nan Xin Cang International Building, No. A22 Dongsishitiao, Dongcheng District Beijing, People's Republic of China ("PRC"), 100007 hereby declare:

1. I am a partner at the law firm of Lifang & Partners. I received my law degree from Wuhan University in 1993, an LLM and a PhD degree from Wuhan University in 1995 and Beijing University in 2002 respectively, and qualified as a PRC attorney in 1999. I practice PRC 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 merger within the PRC, pursuant to Chapter IV of the PRC Anti-Monopoly Law (adopted on 30 August 2007, effective as of 1 August 2008) (the "AML"), on the control of concentrations between undertakings.

3. Attached at **Exhibit 1** is a true and correct copy of the AML and below is a summary of the provisions of the AML which relate to the timing of a merger review in the PRC.

4. Pursuant to the Chapter IV of the AML, concentrations of undertakings which meet the relevant thresholds in the PRC must be notified to the anti-monopoly enforcement agency under the State Council, namely, the Ministry of Commerce ("MOFCOM") and cannot be consummated without the approval of MOFCOM.

5. I understand that the Chinese 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 notification to MOFCOM is required as a result of the Merger. Attached at **Exhibit 2** is an extract from 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 China.

*Preliminary review*

6. Article 25 of the AML provides that MOFCOM shall conduct a preliminary review ("Preliminary Review") of a concentration of undertakings and make a written decision within 30 days upon receipt of a notification which contains the relevant documents and materials set out in Article 23 (see further below regarding incomplete notifications).

7. At the end of the Preliminary Review, MOFCOM may either:

- (a) decide not to conduct a further review (Article 25) and clear the concentration conditionally or unconditionally (Articles 25 and 29);
- (b) decide not to make a decision upon expiry of the stipulated period (Article 25), in which case the concentration is deemed cleared; or

- (c) decide to initiate a further review (Article 25).

#### *Further Review*

8. If MOFCOM decides to initiate a further review (“Further Review”), such Further Review needs to be completed within 90 days from the date of the decision. At the end of the Further Review, MOFCOM must make a written decision, either that:

- (a) the concentration should be prohibited (Articles 26 and 28); or
- (b) concentration is cleared unconditionally or conditionally (Articles 26 and 29).

9. In any of the following cases, MOFCOM may extend the time limit for further review up to 60 days (“Extended Further Review”), if:

- (a) the undertakings agree to extend the time limit (Article 26, paragraph 2(1)); or
- (b) the documents or materials submitted by the undertakings are inaccurate and need further verification (Article 26, paragraph 2(2)); or
- (c) material changes have occurred with respect to relevant circumstances since the filing of the notification by the undertakings (Article 26, paragraph 2(3)).

10. Accordingly, a Further Review (including the “Extended Further Review”) in the PRC can take up to 150 days (approximately 22 weeks).

#### *Preliminary Review and Further Review (including Extended Further Review)*

11. A merger which is referred to Further Review may therefore take a total of 180 days from the date that MOFCOM formally accepts the notification (see further below regarding the pre-acceptance phase), which is equal to approximately 26 weeks, or approximately 6 months.

#### *Incomplete notification*

12. Article 25 provides that MOFCOM shall initiate the Preliminary Review upon the receipt of the relevant documents and materials set out in Article 23. According to Article 24, if the documents and materials submitted for notification by the undertakings are not complete, the undertakings shall supplement the documents and materials within the time limit specified by MOFCOM. Parties who fail to supplement such documents or materials within the time limit shall be deemed not to have filed a notification.

#### *Pre-acceptance Phase*

13. Attached at **Exhibit 3** is the Measures on the Notification of Concentrations of Undertakings (Ordinance of the Ministry of Commerce, 2009 No. 11). These guidelines further clarify in Article 14, that upon receipt of the notification, MOFCOM will verify the notification documents and materials. If MOFCOM finds that the notification documents and materials meet the relevant requirements, it shall

accept the case and notify the notifying party in writing on the date of receipt of the complete notification documents and materials. The Preliminary Review only starts once MOFCOM issues a formal acceptance notice pursuant to Article 14, as described above.

14. MOFCOM is not obliged to publish any information on whether a concentration is notified. However, a report of a press conference of MOFCOM on 24 August 2011 (attached at **Exhibit 4**) indicates that Google had not, at that date, made a notification to MOFCOM. In response to a question raised at the conference, the spokesman for MOFCOM, said *“recently, we noticed media reports that Google announced to purchase Motorola Mobility. But up to now MOFCOM has not received the application of anti-monopoly review about that case. After receiving the application, we will take the due responsibilities to review the case according to the regulations of the Anti-monopoly Law.”*

#### **MOFCOM Statistics**

15. According to a report of a press conference of MOFCOM on 12 August 2010, (attached at **Exhibit 5**), as of the end of June 2010, MOFCOM had received over 140 notifications in total. Approximately 50 notifications (or one third of the total notifications reviewed by MOFCOM at that time) were cleared only during the Further Review (without going into the Extended Further Review) (i.e. within 120 days or approximately 17 weeks from the formal acceptance of the notification).

#### **16. PRC and other jurisdictions**

17. MOFCOM is not bound by the findings of other competition regulators outside the PRC. It may, and has previously, come a decision which differs from that of other non-PRC regulators. For example, on 28 September 2009 MOFCOM conditionally cleared a merger between General Motors Company and Delphi Corporation (attached at **Exhibit 6**), which had been approved unconditionally by the United States Federal Trade Commission as a result of an early termination on 2 September 2009 (attached at **Exhibit 7**).

18. I understand, based on publicly available information, that MOFCOM clearance has been granted significantly later than clearance in the United States in a number of cases. For example, for Nokia Siemens Networks' acquisition of Motorola's cellular networks infrastructure business, the parties announced the acquisition on July 19, 2010 and originally intended to close the transaction by the end of 2010 (see their joint press release attached at **Exhibit 8**). On 28 December 2010, Nokia Siemens Networks announced in a press release (attached at **Exhibit 9**) that it expected to complete the acquisition in the first quarter of 2011 because *“the transaction has not yet received regulatory approval”* from MOFCOM, though it had received all the other regulatory clearances, including the US clearance. Nokia Siemens Networks further announced in a press release dated 9 March 2011 (attached at **Exhibit 10**) that the transaction was still pending MOFCOM's approval and the transaction could not be closed in the first quarter of 2011. Based on a FT report on 21 April 2011 (attached at **Exhibit 11**), I understand Nokia Siemens Networks finally obtained the MOFCOM clearance on 20 April 2011.

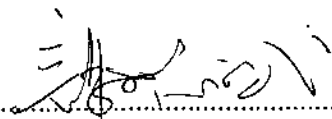
19. Set out below is a table showing two other cases where MOFCOM clearance was granted after the US agencies approved the transactions.

Case	MOFCOM Clearance	US Clearance
Caterpillar Inc. / Bucyrus International, Inc.	7 July 2011 (Caterpillar press release attached as <b>Exhibit 12</b> )	20 May 2011 (Caterpillar press release attached as <b>Exhibit 13</b> )
Hewlett-Packard Company / 3Com Corporation	7 April 2010 (a press report attached as <b>Exhibit 14</b> )	Early termination on 22 December 2009 (United State "transaction granted early termination" attached as <b>Exhibit 15</b> )

**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 28th day of September 2011 at Beijing, China.

Signed.....

**XIE GUANBIN**