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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

TI INVESTMENT SERVICES, LLC and	:	
WORLD PHONE INTERNET SERVICES	:	Civil Action No.
PVT. LTD.,	:	(Newark Vicinage)
	:	
Plaintiffs,	:	
	:	
vs.	:	Case No.
	:	
MICROSOFT CORPORATION,	:	COMPLAINT AND JURY DEMAND
	:	
	:	
Defendant.	:	

Plaintiffs TI Investment Services, LLC and World Phone Internet Services Pvt. Ltd., by
way of Complaint against Defendant, say:

PARTIES

1. Plaintiff TI Investment Services, LLC (“TI Investment”) is a limited liability company headquartered in Colts Neck, New Jersey.
2. Plaintiff World Phone Internet Services Pvt. Ltd. (“World Phone”) is a private limited company headquartered in New Delhi, India.
3. Upon information and belief, Defendant Microsoft Corporation (“Microsoft”) is headquartered in Redmond, Washington and maintains several offices in New Jersey.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §

1332 given there is complete diversity of citizenship of all parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. The Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction under 28 U.S.C. § 1367 because this cause of action arises from the same transactions and from a common nucleus of operative facts as the federal questions raised. Venue is proper in this District pursuant to 28 U.S.C. § 1391(d) given that Defendant Microsoft conducts business within this District. Personal jurisdiction is available as against Defendant Microsoft given its significant and ongoing contacts with New Jersey, including but not limited to its maintaining and staffing several offices in New Jersey.

BACKGROUND AND FACTS

World Phone Internet Services Pvt. Ltd

5. Upon information and belief, Plaintiff World Phone is one of the largest providers of Voice-over Internet Protocol (“VoIP” or “Internet Telephony”) services in India and has been licensed for over a decade to provide such services within India by the Ministry of Communications and Information Technology, Department of Telecommunications, Telecom Commission of the Government of India.

TI Investment Services, LLC

6. TI Investment was formed in 2000 as a New Jersey limited liability company and special purpose vehicle (“SPV”) to fund and form World Phone. To that end, Plaintiff TI Investment is the majority owner of Plaintiff World Phone and has provided telecommunications consulting services to World Phone since World Phone’s formation. On a corporate level, TI Investment is more than merely the majority shareholder in World Phone given that it is also the SPV created specifically to commercialize Internet services with Plaintiff World Phone.

Accordingly, it has sustained direct economic injury as a result of Defendants' conduct set forth herein.

Microsoft Corporation

7. Upon information and belief, Defendant Microsoft is a publicly traded company which offers Internet Telephony services to persons in India. Defendant Microsoft is not licensed to provide such services within India.

Skype Global S.a.r.l.

8. Upon information and belief, Skype Global S.a.r.l. ("Skype") was originally founded in 2003 by Niklas Zennström from Sweden and Janus Friis from Denmark and has been a provider of VoIP services on an international basis since its founding. In September 2005, eBay, Inc. ("eBay") purchased Skype for \$2.5 billion dollars. Reportedly due to low revenue and an incongruous business fit, in September 2009 eBay sold 70 percent of Skype to a group of investors for an estimated \$1.9 billion dollars, valuing the company at \$2.75 billion dollars overall.

Acquisition of Skype by Defendant Microsoft

9. On May 10, 2011, Defendant Microsoft announced its acquisition of Skype for \$8.5 billion dollars. At the time of the Microsoft offer, Skype had a reported 663 million global users – making it by far the largest VoIP provider in the world. As acknowledged by Defendant Microsoft in its filings with the European Commission, Skype enjoyed market share power for both international VoIP carrier traffic and PC-to-PC VoIP traffic. *See Case No COMP/M.6281 - Microsoft/ Skype*, Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004 at ¶ 107 (July 10, 2011) ("EU Commission Decision").

10. At the time of the Microsoft offer, a relatively small amount of Skype's connected users actually paid for Skype's services – only about 8 million users were paying for certain of its VoIP services. Skype's revenue was driven largely from a single product, namely SkypeOut, which enables calls that terminate on the public switched telephone networks (“PSTN”). In the United States, Skype customers can also use the service to receive calls from the PSTN. According to filings by Microsoft with the European Commission, in 2010, SkypeOut accounted for more than 75% of Skype's total revenues of € 650 million Euros.

11. According to at least one analyst, the allure of Skype to Microsoft was as follows: “Skype integrates telephone connectivity and is able to make both outbound and inbound phone calls, and while its online services are all free to use, these phone services cost money. Skype also has points of presence across the globe, making it easy to buy phone numbers in foreign markets to cheaply establish an international telepresence.” Peter Bright, *Microsoft Buys Skype for \$8.5 Billion. Why, Exactly?*, Wired (May 10, 2011).

12. On June 16, 2011, Microsoft's request for “early termination” of the Hart-Scott-Rodino Act waiting period was granted for the proposed acquisition of Skype – in effect, allowing the merger to proceed without any anti-trust objections from the Federal Trade Commission or the Department of Justice Antitrust Division. The EU Commission approved the merger on July 10, 2011, finding that “the notified operation does not raise serious doubts as to the compatibility with the internal market with regard to the provision of voice calls.” EU Commission Decision at ¶ 119.

13. On October 13, 2011, the acquisition closed and Skype became a Microsoft division. In or around July 11, 2013, the Skype Division was folded into Defendant Microsoft's Applications and Services Engineering Group and became one facet of the new “One Microsoft”.

Upon information and belief, Defendant Microsoft assumed all of Skype's past, present, and future liabilities and Skype no longer exists as a separate business entity apart from Defendant Microsoft. Upon information and belief, the new One Microsoft will further integrate Skype functionality into its various products and services.

14. Many analysts publicly questioned why Microsoft would pay more than twice the purported value of Skype. In the press release announcing the closing of the deal, Microsoft CEO Steve Ballmer had this to say: "Skype is a phenomenal service that is loved by millions of people around the world. Together we will create the future of real-time communications so people can easily stay connected to family, friends, clients and colleagues anywhere in the world." (emphasis added). In the same press release, Tony Bates, the then President of Microsoft's Skype Division and now leader of its Business Development and Evangelism Group said, "Together, we will be able to accelerate Skype's goal to reach 1 billion users daily."

15. As stated in Mr. Ballmer's July 11, 2013 memo to its investing community: "Other companies provide strong experiences, but in their own way they are each fragmented and limited. **Microsoft is best positioned to take advantage of the power of one, and bring it to our over 1 billion users.**" (emphasis in original). As stated by both Mr. Bates and Mr. Ballmer, Defendant Microsoft seeks to ensure that its entire installed base will be touched by Skype's services.

16. In an action brought on February 15, 2012 by Cisco Systems and an Italian ISP, Messagenet, the EU Commission's decision to approve the merger was challenged. *See Cisco Systems and Messagenet v Commission* (Case T-79/12) (2012/C 109/62) ("Cisco Action"). Specifically, the charge brought against the European Commission was that it "committed a manifest error of assessment in holding that the merger would not raise any anti-competitive

horizontal concerns in the consumer unified communications markets.” The Cisco Action is still pending.

TI Investment Forms World Phone

17. Internet services were beginning to open up to private firms by the Indian Government and TI Investment recognized the potential of such new market opportunity. In its capacity as a SPV based in Colts Neck, New Jersey, TI Investment invested approximately \$1,200,000 so that World Phone could begin its operations. Beginning in 2000, TI Investment and its affiliate companies also provided management consulting services to World Phone. TI Investment holds directly and indirectly almost 90% equity in World Phone. Today, two of the largest media companies in India, HT Media Limited and Bennett Coleman and Company Ltd, also own approximately 7% of World Phone.

18. World Phone currently has approximately 100 employees and is headquartered in Delhi with regional offices in Mumbai, Ahmadabad, Patna and Hyderabad and a partner operated office in Bangalore. These offices connect to 97 cities across India through various distribution channels. In several of these locations, World Phone has its own Network Operation Centers (“NOC”) and other infrastructure as required by the Indian Government.

19. The Government of India allowed Internet Telephony services to be provided by private companies effective on April 1, 2002 and began issuing licenses to that effect soon thereafter.

World Phone becomes a Licensed Internet Telephony Provider in India

20. On April 8, 2002, World Phone entered into a License Agreement for Provision of Internet Services (with Internet Telephony) with the Ministry of Communications and

Information Technology, Department of Telecommunications, Telecom Commission of the Government of India (“India License Agreement”). Under Section 1.14(b) of the India License Agreement, Internet Telephony is defined to include “PC in India to Telephone outside India.” For purposes of conducting business as a VoIP provider, World Phone and TI Investment have jointly seen to it that World Phone complied with all Indian requirements regarding the provision of Internet Telephony services.

21. The Government of India created a regulatory scheme that on its face was meant to protect consumers by ensuring certain minimum standards and access to services, quality control audit capabilities, local infrastructure requirements to ensure security and connectivity, and the collection of regulatory fees needed to ensure proper funding for follow-up consumer protection activities.

22. Under Section 2.2 of the India License Agreement titled Quality Assurance, “[t]he Telecom Authority shall have the right to check and measure the quality of service provided by the licensee at any time during the currency of the license. The LICENSEE shall submit to the LICENSOR a half yearly report on the quality of SERVICE offered to its subscribers indicating the levels of performance achieved.”

23. Under Section 3.1 of the India License Agreement, “[t]he LICENSEE shall be responsible for installation, testing and commissioning of all the equipment to provide the services. It will be the responsibility of the Licensee to obtain IP address, domain name, etc. from competent authority.”

24. Under Section 3.5 of the India License Agreement, World Phone “shall provide the SERVICE in the Service Area to any individual or legal person including customers located

in Rural Belt(s) of the licensed service area without any discrimination unless directed by the LICENSOR in writing to so refuse.”

25. Pursuant to a March 3, 2006 amendment to the India License Agreement, World Phone became subject to “an annual licence fee annually @ 6% of Adjusted Gross Revenue (AGR), excluding spectrum charges...” Failure to provide timely payment of this regulatory fee would cause an additional interest charge of 5% above the Prime Lending Rate of the State Bank of India prevalent on the day the payment became due. Moreover, “short payments” are subject to a penalty of 150% of the entire amount of the short payment.

26. In October 2006, World Phone launched its Internet Telephony services with TI Investment's assistance. World Phone's servers were located in New Jersey and configured and supported by TI Investment.

27. In January 2008, licensed providers of Internet Telephony services in India were required for the first time to have their equipment and hardware physically located in India. Specifically, on July 17, 2007, the License Agreement was amended by virtue of a letter sent by the Government of India. Pursuant to this letter from the Assistant Director General for and on behalf of the President of India, the following requirement became effective September 1, 2007:

The Licensee shall install necessary infrastructure in the service area with respect to Internet Telephony services offered by the Licensee for processing/routing/directing/managing/authenticating the Internet Telephony calls including generation of Call Details Records (CDRs). The CDRs shall contain calling/called IP address, called numbers and time, date, duration, charges of the Internet Telephony call. The licensee shall ensure that the above amendment is fully complied by 1st January, 2008.

28. In order to maintain lawful service to its customers in India, all equipment used by World Phone was eventually re-located to India.

Plaintiffs Spend \$3 Million to Market VoIP Services in India

29. From 2008 to 2010, World Phone spent ₹ 167,000,000 rupees (or over \$3 million) to market its Internet Telephony services within India. All advertising and marketing activities were suspended by TI Investment in 2010 after it was determined that despite World Phone being a large and respected Internet Telephony provider for the Indian market and despite spending this significant amount of money on advertising and marketing activities, the VoIP revenue of World Phone did not only not increase – it decreased.

30. In 2011 and 2012, World Phone and TI Investment engaged auditors to assist in determining the cause of World Phone's decline in its Internet Telephony revenues – which was in contrast to its bandwidth revenues increasing by 50% from year 2009 to 2012.

31. It was ultimately determined that World Phone was losing prospective and existing customers as a result of unlawful conduct. Specifically, Defendant Microsoft and others were – and to this day still are not – complying with the civil and criminal laws promulgated in India to regulate Internet Telephony service providers. The Indian civil and criminal requirements violated are set forth above.

32. The violations by Defendant Microsoft are both knowing and deliberate. Upon information and belief, the Government of India requested in September 2010 that Skype set up its VoIP infrastructure in India in order to comply with the local law. Defendant Microsoft has not made any public statement regarding how it has handled this request. Upon information and belief, despite having ten offices in India, Defendant Microsoft does not currently have any NOC infrastructure located in India dedicated to the provision of Indian VoIP services. Moreover, Defendant Microsoft is not listed as a licensed VoIP operator by the Government of India.

Microsoft's Plan to Market to Customers in New Jersey and India

33. Upon information and belief, Defendant Microsoft capitalized on Skype's market presence soon after its acquisition of Skype – including such marketing that was also directed towards residents of New Jersey. Upon information and belief, Defendant Microsoft has consistently used the New Jersey Indian community to increase its market share of Internet Telephony services to and from India. According to the 2010 Census, there are now 292,256 Asian Indians in New Jersey, as the Census Bureau terms Indian Americans – which constitutes 3.3 percent of the state's total population. This places New Jersey only behind California and New York as the state with the most Asian Indians.

34. Microsoft's conduct, including its marketing efforts aimed at procuring US-based customers for Skype's India-VoIP services, has had a direct, substantial, and reasonably foreseeable effect on domestic intrastate commerce as well as commerce within New Jersey and commerce between New Jersey and India. Defendant Microsoft necessarily intended to impact domestic commerce by way of its conduct and such domestic effect is evident to a reasonable person making practical business judgments given the significant concentration of Indian expatriates who live in New Jersey and who routinely go back to India for business and personal reasons as well as their doing work in Indian offices while using Skype services. Such travel back and forth to India also engenders the need for low-cost communication between the two countries, exposes buyers to the marketing of Defendant Microsoft, and ultimately drives buyers to utilize the VoIP services provided by Defendant Microsoft to a greater degree given its anti-competitive behavior. The fact that a larger number of India-based businesses and individuals are also impacted by Defendant Microsoft's improper conduct does not in any way detract from the fact such conduct has a significant impact on domestic consumers.

35. Plaintiffs retained counsel an Advocate of the Supreme Court of India who has confirmed that Defendant Microsoft doing business without the prescribed license would be doing business illegally and subject to prosecution for civil and criminal violations by the Government of India.

36. Despite knowing that its Internet Telephony service was not compliant with local laws – including those of India – upon information and belief, Defendant Microsoft tech support call center scripts responded to the following question from prospective and current clients: “Please provide me the call rates for calling from India to United states” with the following stock answer: “With Skype it doesn't matter where you are calling from. Calls to or within the USA from anywhere cost 2.3 cents per minute or part thereof. If you use Skype Credit to fund the call rather than a Call Plan a connection fee of 3.9 cents per call (not per minute) is charged. There is no connection fee if you use a Call Plan.”

37. In the Skype Terms of Service (TOS), Defendant Microsoft attempts to inoculate itself from its illegal conduct by passing the responsibility for legal compliance to its customers: “You must use the Software, Products and Skype Websites in accordance with the laws of where you are located. In some countries there are restrictions on the download and use of the Software, Products and/or Skype Websites. It is your responsibility to ensure that you are legally allowed to use the Software, Products and/or Skype Websites where you are located.” Skype TOS, 6.2 Lawful Use (last updated April 2013).

38. The anti-competitive behavior of Defendant Microsoft has effectively stifled competition from companies such as Plaintiffs who are compliant with Indian VoIP regulatory law, *i.e.*, those VoIP providers who comply with the Indian regulatory requirements set up to protect VoIP customers (“Indian-Complaint Companies”).

COUNT I

VIOLATIONS OF THE SHERMAN ACT
(15 U.S.C. §§ 1, 2, 3(B); 15 U.S.C. § 6(A))

39. Plaintiffs repeat and reallege each of the allegations contained in paragraph 1 through 38 of this Complaint with the same force and effect as if fully set forth herein.

40. Section 1 of The Sherman Act renders illegal every “conspiracy, in restraint of trade or commerce among the several States, or with foreign nations...” 15 U.S.C. § 2. Section 2 of The Sherman Act makes it illegal for any person to “monopolize, or attempt to monopolize . . . any part of the trade or commerce among the several States, or with foreign nations.” 15 U.S.C. § 2. Section 4 of The Clayton Act provides in relevant part that “any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor” for treble damages. 15 U.S.C. § 15(a). Section 16 of The Clayton Act provides, in relevant, part that: “Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief ... against threatened loss or damage by a violation of the antitrust laws....” 15 U.S.C. § 26.

41. The Foreign Trade Antitrust Improvements Act of 1982 curtailed antitrust actions involving foreign trade but sanctions claims which involve foreign trade, such as this one, when the defendant’s conduct has a direct, substantial, and reasonably foreseeable effect on domestic commerce, import commerce, or certain export commerce and that conduct otherwise gives rise to a Sherman Act claim. 15 U.S.C. § 6a. As detailed below, Defendant Microsoft’s violations of the Sherman Act have had a direct, substantial, and reasonably foreseeable effect on domestic commerce.

42. The relevant market for purposes of this claim derives from the business for non-

mobile VoIP traffic originating or terminating between the United States and India (hereinafter “the Relevant Market”). As outlined herein, Defendant Microsoft has continued Skype’s efforts to erode competition in the Relevant Market by gaining an unlawful advantage as against Indian-Compliant Companies such as Plaintiffs.

43. Defendant Microsoft, by virtue of its global dominance in computing services and its unlawful behavior, is now seeking to acquire monopoly power within the Relevant Market. Moreover, Defendant Microsoft’s impairment of the competitive process does not readily reflect on how customers within the Relevant Market are adversely impacted. For example, as part of its deliberate scheme, potential buyers of VoIP services are never told by Defendant Microsoft that its provision of VoIP services runs afoul of Indian regulatory law. More importantly, they are not informed that their use of such services is unlawful for both Defendant Microsoft and themselves. The global nature of VoIP communications renders Defendant Microsoft’s attempt at achieving monopoly power especially pernicious to Indian-Compliant Companies given that those looking for VoIP services may not recognize the need to be tethered to an Indian-Compliant Company for this “global service”. Defendant Microsoft has capitalized on the fact many businesses and persons looking for such services will often simply resort to online price comparisons without delving into the legalities of using one particular service over another.

44. Televisions, sirloins, cookware, and cigarettes are far removed from this case – a case which does not involve products that were shipped in a container ship or bought in a store. This case involves the sort of software which is downloaded online by clients in Edison, New Jersey for use in Bangalore, India and Edison, New Jersey. As publicly stated by Defendant Microsoft in justifying its purchase of Skype, the Microsoft goal is to “create the future of real-time communications so people can easily stay connected to family, friends, clients and

colleagues anywhere in the world.” This public pronouncement instructs that the Relevant Market actually consists of a symbiotic “domestic” and “foreign” component – providing a blueprint for the monopolistic intent of Defendant Microsoft. Unlike in the United States, however, VoIP services provided within India are, as discussed above, heavily regulated to protect consumers of VoIP services.

45. By means of its unlawful conduct geared towards reducing competition from Indian-Compliant Companies, Defendant Microsoft’s conduct has created a dangerous probability of its obtaining a monopoly within the Relevant Market and has placed Plaintiffs at an unfair disadvantage while also causing Plaintiffs significant antitrust injury.

46. Some of Defendant Microsoft’s anticompetitive conduct, *e.g.*, disregarding regulatory law, may at first glance appear to *help* customers and the competitive process. After all, if Defendant Microsoft unlawfully disregards regulatory fees, infrastructure requirements, *etc.*, it can presumably offer its VoIP services at a lower rate than other competitors. And, such a result would appear to spur on competitors to follow suit or lose out on business – all the while apparently helping those actually looking to buy within the Relevant Market. Moreover, it would appear on the surface to have an additional beneficial effect on competition by decreasing concentration away from smaller Indian Compliant Companies to globalist companies such as Defendant Microsoft and Google, Inc. – who would presumably have the means to squeeze out more efficiencies than smaller companies.

47. This inch-deep perspective disregards several important factors found within the available landscape. First and foremost, the regulatory scheme set in motion by the Government of India is meant to protect VoIP users – whether those haling solely from India or those who may happen to have a presence in both India and New Jersey – and is not merely to create an

additional cost for VoIP providers. Defendant Microsoft is not violating a law such as a duly-enacted tax and merely passing on its “savings” to its customers. Defendant Microsoft is also not underpaying its employees in violation of some minimum wage act or reducing its costs by violating environmental protection laws. Such violations – as with violations based on the failure to pay some sort of tax – would only inure to the detriment of entities unrelated to the sale of a Defendant’s services, *i.e.*, tax authorities, employees, or some person situated near a Microsoft facility. This case involves violations which are at the very heart of the services in question – regulatory protections afforded for those who use VoIP services within the Relevant Market. Moreover, Defendant Microsoft’s violations actually open up its users to potential liability.

48. In other words, this case is not merely about cutting prices – it is also about Defendant Microsoft unlawfully disregarding a regulatory scheme meant to protect consumers within the Relevant Market. Moreover, by virtue of its conduct, Defendant Microsoft has also created the risk that customers would be fined by the Government of India. Specifically, under the Indian Telegraph Act, each transmission or reception of a communication in violation of the above applicable law opens both the sender and recipient to a fine of up to ₹ 50 rupees. Although Defendant Microsoft has willfully chosen to violate Indian civil and criminal law, its clients were never told about the adverse implications of choosing Defendant Microsoft’s VoIP services. It is this hidden agenda and ensuing ramifications which help to frame Defendant Microsoft’s unlawful conduct. The fact that the regulatory framework giving rise to the bulk of Defendant’s unlawful conduct is located outside the United States is of no consequence given the lack of any direct conflict with domestic law.

49. Unlike the other publicly-traded VoIP competitors in the Relevant Market who

have tacitly joined Defendant Microsoft in disregarding Indian regulatory law, *e.g.*, Google, Inc., Vonage Holdings Corp., and magicJack VocalTec, Ltd, Microsoft's global brand and market presence has uniquely impacted competition within the Relevant Market. In fact, Defendant Microsoft has not been shy about giving a glimpse of its anti-competitive intent. For example, the Skype app link that is pre-loaded with every instance of Windows 8 is twice the size of other pre-loaded apps. With regards to Skype, Defendant Microsoft has already publicly stated it will leverage its market power across at least two dominant platforms, *e.g.*, PC and Xbox, in order to enhance its market share. Although Defendant Microsoft has long enjoyed a monopoly in personal-computer operating systems, this market dominance has spilled over to the online gaming world – a future fertile foothold for its monopoly in the Relevant Market. *See cf. Datel Holdings Ltd. v. Microsoft Corporation*, 712 Supp.2d 974, 982 (N.D. Cal. 2010) (Defendant Microsoft's share of the online gaming market was approximately 66% as of July 2009).

50. Although there are other firms competing in the Relevant Market who have tacitly conspired with Defendant to also not comply with Indian law, the injury sustained by the competitive process is greatest as a result of Defendant Microsoft's conduct because of its attempted monopolistic position within the Relevant Market. Defendant Microsoft's "stamp of approval" regarding non-compliance with Indian regulatory law has likely emboldened other smaller players to continue with their violations.

51. Competition in the Relevant Market is merely illusory for those companies such as Plaintiffs given that Defendant Microsoft's conduct places a restraint on the ability of Indian Compliant Companies to effectively compete within the Relevant Market. Consumers have, in effect, become closed out to the only source of legally compliant services within the Relevant Market. These directed efforts at lessening competition are in direct violation of the Sherman

Act.

52. One facet of Defendant Microsoft's efforts was to continue with Skype's predatory pricing scheme and the anticipated benefit to be derived by eliminating competition. As discussed herein, this scheme was not, however, premised on simply charging a below-cost price for goods for long enough to recoup losses and harvest some future gains. As recognized by the Courts, "anti-competitive conduct" can come in too many different forms, and is too dependent on context, for any court or commentator ever to have enumerated all the varieties. It is respectfully submitted that this case involves one such undocumented flavor of anti-competitive conduct.

53. The non-financial components of this case are what render Defendant Microsoft's anti-competitive conduct so unique. Specifically, in addition to having traditional financial components, Defendant Microsoft's cost basis for services within the Relevant Market also contains certain non-financial risk components. Accordingly, although its VoIP pricing for the Relevant Market may or may not be above its current dollar measure of cost, there are additional "losses suffered" by Defendant Microsoft that render its cost structure higher.

54. Specifically, what makes the pricing predatory turns on two related factors. First, Defendant Microsoft's "measure of cost" has been artificially kept low due to its failure to comply with applicable law. Defendant Microsoft had and continues to have as its goal the sustained growth of its Internet Telephony business in India without being encumbered by the costs, efforts, and legal obligations necessary to comply with local regulatory law.

55. If Defendant Microsoft actually complied with applicable law, its cost basis would be much higher and the predatory impact would be readily apparent. More importantly,

Defendant Microsoft has suffered ongoing intangible losses based on the reputational risk it was accepting by ignoring applicable regulatory law. And, Defendant Microsoft doubled down on its unlawful behavior when it refused to comply with India's requests – especially taking into consideration Defendant Microsoft's status as a worldwide market leader in computing. This risk is very real as demonstrated by the way Indian authorities can seek enforcement as against multi-nationals. For example, according to the Wall Street Journal, in early 2013, Indian tax authorities raided Nokia Corp.'s phone-manufacturing facility and ordered its local unit to pay ₹20.8 billion rupees allegedly due in unpaid taxes and fees.

56. Upon information and belief, Defendant Microsoft was and still is hoping to ride out these risks until such time as there is a change in the law. Such present risk acceptance is a very real “loss component” that should be imputed and added to calculate the applicable measure of cost. By all practical measure, it is not much different from the monetary costs attached to buying an insurance policy – except in this case Defendant Microsoft was itself self-funding this potential exposure.

57. Upon information and belief, Defendant Microsoft's goal has been to remove from competition all Indian Compliant Companies so that the initial conspiring VoIP providers within the Relevant Market all have similar legal footing. Only after it has neutered the lawful competition would Defendant Microsoft be situated to recoup the lost profits sustained – but only after it has separated from the conspiring pack and attained its monopoly position within the Relevant Market. Defendant Microsoft would also be uniquely situated to leverage its well-known high switching costs within the PC arena.

58. Defendant Microsoft may have already begun the process of separating from the non-compliant pack within the Relevant Market. Less than a year after its acquisition of Skype,

Defendant Microsoft decided to discontinue the Unlimited India subscription and began charging consumers on a much more profitable “per minute” basis. Upon information and belief, Microsoft will not only obtain future increased revenues by virtue of its unlawful conduct, it will be closer to realizing its goal of monopolizing global unified communications – the very result feared by the plaintiffs who filed and are still pursuing the Cisco Complaint.

59. Defendant Microsoft has had and continues to have a reasonable expectation of recovering, in the form of future monopoly profits, more than the losses outlined above. Such predatory scheme has been and continues to be conducted by Defendant Microsoft in order to adversely impact competition from Indian-Compliant Companies within the Relevant Market as well as those who, like Defendant Microsoft, have failed to comply with relevant law.

60. One major component of the specific damages sustained as a result of Defendant Microsoft’s unlawful conduct turns on the approximately \$3 million spent by Plaintiffs on advertising and marketing their VoIP services for the Relevant Market. Skype – and now Defendant Microsoft – rigged the deck by declining to comply with Indian and New Jersey law. In so doing, it was able to sell its services for the below valid cost structure referenced above – it is this exact anti-competitive behavior which inflicted a direct injury on Plaintiffs and reduced competition from Plaintiffs as well as other Indian Compliant Companies. Moreover, it was this conduct which rendered valueless the \$3 million spent by Plaintiffs on advertising and marketing.

61. Moreover, additional unlawful acts committed by Defendant Microsoft includes violations of the following New Jersey laws: N.J.S.A. 2C:21-7(e) (“A person commits an offense if in the course of business he . . . [m]akes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of

promoting the purchase or sale of property or services”) and N.J.S.A. 2C:21-7 (h) (“A person commits an offense if in the course of business he . . . [m]akes a false or misleading written statement for the purpose of obtaining property or credit”).

62. Upon information and belief, from 2009 to the present, Defendants promoted its services to New Jersey and Indian residents and business owners by way of the online advertising and marketing, including but not limited to keyword ads purchased and search engine optimization techniques deployed, directly or indirectly, by Defendant Microsoft. The exact language used in such Indian advertising and marketing materials or deployed in its keyword ads or search engine optimization techniques is exclusively within the possession of Defendant Microsoft and its marketing partners. Internet searches conducted by Plaintiffs prior to the filing of this Complaint were unable to obtain the targeted marketing material used by Defendant Microsoft. Upon information and belief, such marketing and advertising placements were misleading to the intended consumer audience given they failed to inform regarding the adverse legal ramifications of using Defendant Microsoft’s services within India. Defendant Microsoft failed to inform potential customers that using its services was unlawful under Indian law and could lead to monetary fines levied against the consumer should such services be used by the consumer.

63. If these material omissions had been made, consumers would have been informed that there was a potential fine that could be levied against them for using Defendant’s VoIP services in the Relevant Market. Those consumers unwilling to violate Indian law or be subject to a fine would be more willing to use Indian-Compliant Companies such as Plaintiffs. Unfortunately, prospective clients were not told the truth and Plaintiff World Phone wasted over

\$3 million to market and advertise Internet Telephony to an audience rendered deaf to its message by Defendant Microsoft.

64. Such conduct on the part of Defendant Microsoft has injured Plaintiffs in an amount to be determined at trial and has caused and threatens to cause irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law.

COUNT II

NEW JERSEY ANTITRUST ACT **(N.J.S.A. 56:9-3; N.J.S.A. 56:9-4)**

65. Plaintiffs repeat and reallege each of the allegations contained in paragraph 1 through 64 of this Complaint with the same force and effect as if fully set forth herein.

66. The aforementioned acts of Defendant Microsoft are also in violation of the New Jersey Antitrust Act.

67. Such conduct on the part of Defendant Microsoft has injured Plaintiffs in an amount to be determined at trial and has caused and threatens to cause irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law.

COUNT III

COMMON LAW UNFAIR COMPETITION

68. Plaintiffs repeat and reallege each of the allegations contained in paragraph 1 through 67 of this Complaint with the same force and effect as if fully set forth herein.

69. The aforementioned acts of Defendant Microsoft constitute unfair competition in violation of the common law of the State of New Jersey.

70. Such conduct on the part of Defendant Microsoft has injured Plaintiffs in an amount to be determined at trial and has caused and threatens to cause irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law.

COUNT IV

**TORTIOUS INTERFERENCE WITH PROSPECTIVE
ECONOMIC RELATIONS**

71. Plaintiffs repeat and reallege each of the allegations contained in paragraph 1 through 70 of this Complaint with the same force and effect as if fully set forth herein.

72. As one of the largest providers of Internet Telephony services in India, Plaintiff World Phone enjoyed a reasonable expectation of economic benefit in the growth of its Internet Telephony business in India. This expectation was reasonable by virtue of Plaintiffs' significant marketing expenditures, compliance with local law, and interested prospective customers.

73. Upon information and belief, Defendant Microsoft had knowledge of the expectancy of economic benefit had by all Indian-Compliant Companies, including Plaintiffs, but chose to intentionally and without justification or excuse interfere with that expectancy by virtue of the predatory conduct outlined herein.

74. There was and is a reasonable probability that Plaintiffs would have received the above-referenced anticipated economic benefit in the absence of the Defendant Microsoft's interference and failure to adhere to the "rules of the game" by virtue of its unlawful conduct. Specifically, and by way of example, the following companies who approached Plaintiff World Phone to obtain Internet Telephony services ultimately purchased such services from Defendant Microsoft after receiving predatory quotes: Aris Global Software Pvt. Ltd and Aldius Consulting Service Pvt. Ltd.

75. Such conduct on the part of Defendant Microsoft has injured Plaintiffs in an amount to be determined at trial and has caused and threatens to cause irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs TI Investment Services, LLC and World Phone Internet Services Pvt. Ltd. demand judgment against Defendant Microsoft Corporation, as follow:

- (a) Judgment in an amount to be determined at trial but of no less than \$9 million, including interest, treble final damages awarded, reasonable attorney's fees, cost of suit, costs of investigation and expenses;
- (b) Punitive damages in an amount to be determined by the jury and as allowed by law;
- (c) Compensatory, consequential, incidental and direct damages attributable to the conduct of Defendant;
- (d) A permanent injunction preventing Defendant from continuing with the conduct deemed by the Court to violate New Jersey law; and
- (e) Such further and additional relief as to the Court deems just and appropriate.

By: /s/Jean-Marc Zimmerman
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