

To: Louise Hornabrook, Manager Applications, Overseas Investment Office

ASSESSMENT REPORT: Microsoft New Zealand Limited

Date	25 August 2020	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	201900507	Priority	High

Action Sought

Decision Maker	Action	Suggested Deadline
Louise Hornabrook, Manager Applications, Overseas Investment Office	<ol style="list-style-type: none"> 1. Review the attached report and decide whether 'investor' test is met 2. Sign the attached letter to Minister of Finance referring on the National Interest test assessment if the investor test is met 3. Forward the report and attachments to the Primary Assessor 	28/08/2020

LINZ Contacts

Name	Position	Contact number	First contact
Louise Hornabrook	Manager Applications	[s 9(2)(g)(ii)]	<input checked="" type="checkbox"/>
[s 9(2)(g)(ii)]	Solicitor	[s 9(2)(g)(ii)]	<input type="checkbox"/>
[s 9(2)(g)(ii)]	Solicitor	[s 9(2)(g)(ii)]	<input type="checkbox"/>

ASSESSMENT REPORT: Microsoft New Zealand Limited

Overview

Purpose

1. We seek your decision on an application by Microsoft New Zealand Limited and Microsoft 6399 New Zealand Limited under the Overseas Investment Act 2005 (the **Act**) to acquire various [s 9(2)(b)(i)] interests in [s 9(2)(b)] of non-sensitive land in Auckland, New Zealand.
2. This transaction requires consent for the acquisition of interests in significant business assets, as the total consideration for the acquisition of property used in carrying on business in New Zealand exceeds \$100 million. We have confirmed none of the land being acquired is sensitive land for the purposes of the Act.
3. This decision is delegated as it relates to significant business assets only.¹

Key information

Applicant	Microsoft New Zealand Limited and Microsoft 6399 New Zealand Limited (United States 60.283%, United Kingdom 5.026%, Canada 1.729%, Norway 1.142%, Various overseas persons 31.82%)
Vendors	[s 9(2)(b)(i)] [s 9(2)(b)(i)] [s 9(2)(b)(i)]
Consideration	Not confirmed, [s 9(2)(b)(i)] [s 9(2)(b)(i)] non-sensitive land
Application type	Significant business assets only
Relevant tests	Investor test (s18(1)(a)-(d) of the Act) National interest (ss18(1)(e), 20A and 20C of the Act)

4. Please refer to the **A3** in Attachment 5 for overview tables summarising the application and the Overseas Investment Office's (**OIO's**) assessment

Provisional recommendation

5. This application includes a transaction of national interest that requires a mandatory national interest assessment (section 20A of the Act) because it includes an investment in a strategically important business. This means if you decide the Application meets the investor test, you must refer the investment to the Minister of Finance for a decision about whether the transaction(s) are contrary to New Zealand's national interests. Once the Minister of Finance has made his decision (section 20C of the Act), you will be able to make the final decision about whether to grant or decline consent to the Application.
6. My recommendation (subject to the Minister of Finance not declining consent under section 20C) is to **grant consent**.
7. If you agree to grant consent, we recommend that you make the determinations set out in paragraphs 7 to 10 below.

¹ Designation and Delegation Letter, 17 October 2018, Table A, Row A.

[s 9(2)(g)(ii)]

Solicitor

Date: 25/08/20

Decision

8. I determine that:

8.1 the 'relevant overseas person' is (collectively):

ROP	Role
Microsoft New Zealand Limited	Applicant
Microsoft 6399 New Zealand Limited	Applicant
Microsoft Corporation	Ultimate 100% owner of Microsoft New Zealand Limited and Microsoft 6399 New Zealand Limited

8.2 the 'individuals with control of the relevant overseas person' are:

IWC	Role
Vanessa Stacey Sorenson	Director of Microsoft 6399 New Zealand Limited
Keith Ranger Dolliver	Director of Microsoft New Zealand Limited Director of Microsoft 6399 New Zealand Limited
Benjamin Owen Orndorff	
Vanessa Medley Cope	Director of Microsoft New Zealand Limited
Thomas William Keane	Corporate Vice President for Microsoft Azure Global

8.3 the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment;

8.4 the relevant overseas person has demonstrated financial commitment to the overseas investment;

8.5 all the individuals with control of the relevant overseas person are of good character; and

8.6 each individual with control of the relevant overseas person is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under the Immigration Act); and

9. I am satisfied that the investor test in section 18(1)(a)-(d), as outlined in paragraph 8 above, has been met; and

10. The Minister of Finance has not declined consent to this transaction on the basis that the transaction is contrary to New Zealand's national interest; and

11. Consent is granted to the investment in the form of the Proposed Decision in Attachment 1

[s 9(2)(g)(ii)]

Louise Hornabrook

Manager Applications (Overseas Investment Office)

Date: 25 / 08 / 2020

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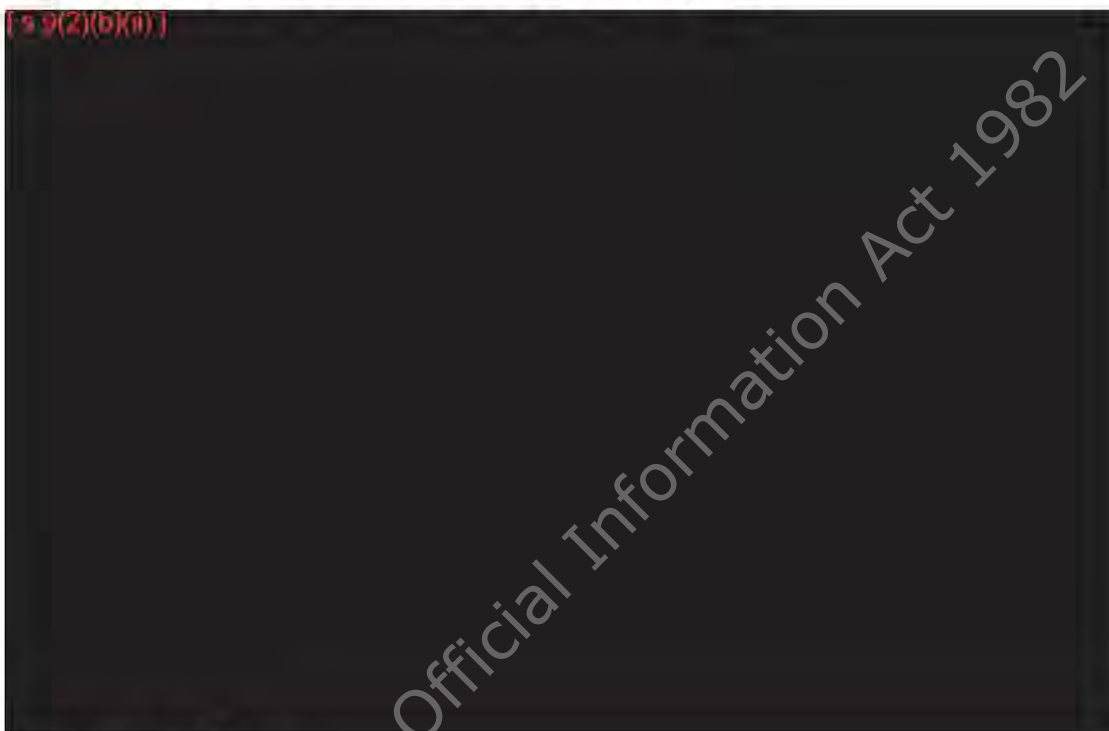
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Application summary

12. Microsoft New Zealand Limited (**Microsoft NZ**) and Microsoft 6399 New Zealand Limited (**Microsoft 6399**) seek consent to acquire [REDACTED] interests in [s 9(2)(b)(i)] in New Zealand, for the purpose of developing and operating a cloud based data centre.
13. The land to be acquired is comprised of the following sites:

[s 9(2)(b)(i)]



together, the **Land**.

National interest assessment

14. The investment includes a transaction of national interest under the mandatory criteria of s20A of the Act because the [s 9(2)(b)(i)] includes an investment in a strategically important business (being a transaction involving a business which itself is involved in telecommunications infrastructure or services).
15. As the investment is a transaction of national interest the Minister of Finance must consider whether the transaction is contrary to New Zealand's national interest under section 20C of the Act, if you consider that the other criteria for consent are met for this investment.
16. The Supplementary Ministerial Directive Letter of 8 June 2020 from the Minister of Finance directs the regulator to provide advice to him about whether a transaction is in the national interest. We will prepare a separate report to the Minister of Finance for the national interest assessment, which we will send to him if you consider that the investment test is met
17. The Minister of Finance will determine whether the investment is contrary to the national interest. If you consider that the investor test is met and if the Minister of Finance determines that the investment:
 - is contrary to New Zealand's national interest, then consent must be declined
 - is not contrary to New Zealand's national interests, then you must grant consent

- is not contrary to New Zealand's national interests but that actions are desirable to manage the risks posed by the investment, then you may consider what conditions are necessary to mitigate the risks posed by the investment.

18. Guidance for applying the Act is set out in **Attachment 2**.

Timing

19. The Applicant has requested a decision be made by 30 August 2020, as this is the date that consent under the Act is required by under the **s 9(2)(b)(i)**

20. The processing of this application is well within our Standard Performance Expectations for applications for consent to acquire significant business assets (40 working days).

21. The number of 'Waiting for Applicant / Vendor' days is large because not all of the details of all the sites were able to be provided on submission of the application, and further details were being sought from the Applicant throughout the application process.

22. Processing days for the application to date are:

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
9	5	54	0

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Description of the investment

The Land

23. The Applicant will acquire a [s 9(2)(b)(ii)] [redacted]. The [s] data centre facilities at [s 9(2)(b)(ii)] [redacted] will be constructed on land owned [s 9(2)] [redacted] or by a third party [s 9(2)] [redacted]. The Applicant is [s 9(2)(b)(ii)] [redacted].

[redacted] is at an existing site owned by a third party in which the Applicant will premises. The [s 9(2)(b)(ii)] [redacted] were entered into [redacted].

[s 9(2)(b)(ii)] [redacted]

24. The Applicant seeks to acquire a freehold interest in [s 9(2)(b)(ii)] [redacted]. The land will be acquired, developed, and operated by the Applicant. The Applicant submits that [s 9(2)(b)(ii)] [redacted] would have no involvement other than selling the land to the Applicant. The development work will be contracted out to local architectural / engineering firms and construction companies. It is likely the freehold interests [redacted] will be held by Microsoft 6399. [s 9]
25. We confirm none of the Land constitutes sensitive land for the purpose of the Act.

The use of the Land

26. The various pieces of Land will be held for the purpose of developing and operating a cloud based data centre. While the locations are physically separate, the Applicant's data centre "region" will include use of all of the locations once the appropriate subdivision and work required on each piece of land is completed.
27. The Applicant submits 'hyperscale cloud services' (i.e. massive scale cloud computing) are a key ingredient to every country's government, industry and other organisations' digital transformation (similar to electricity). Microsoft provides these

'hyperscale cloud services' which, along with the physical data centres, act as a platform supporting the functions of its partners.

28. Virtually all ICT companies (including New Zealand entities such as Spark or Datacom) build their ICT solutions on top of cloud platforms. In order to serve their customers overseas ICT companies chose hyperscale cloud platforms due to a mix of factors such as price, scalability, improved security and advanced technological capabilities (such as machine learning/Artificial Intelligence).
29. Data centres are centralised locations where cloud computing and networking equipment is concentrated for the purpose of storing and processing large amounts of data. In order to meet latency² and data residency³ requirements, Microsoft delivers hyperscale cloud services from over 60 so-called "regions" worldwide. Microsoft Corp is planning to add a region in New Zealand to meet expectations of its New Zealand customers and any other organisations that would like to store and process data in New Zealand. The data centre and the cloud it creates is a platform business, so its main function is to support New Zealand's digital ecosystem.
30. The Applicant recognises that some organisations (such as governments and financial institutions) may either have regulatory requirements or preference to use onshore services rather than offshore. A notable group is also Māori. [s 9(2)(ba)(i)]

[Redacted]

This appears to align with the Government Chief Data Steward's 'Data Strategy and Roadmap' from 2018⁴, which equates New Zealanders' data as a 'taonga'. The proposed data centre was announced by the Prime Minister on 6 May 2020, who described the data centre as a 'significant investment' which 'serves as a signal to the world New Zealand is open for business and quality investment'.

The transactions

31. The total consideration for the Investment is in excess of NZ\$100 million. This has been calculated by the Applicant with reference to the total consideration payable for the freehold land, the amount that will be payable under the relevant [s] agreements [s 9(2)(b)(ii)] development costs in establishing the cloud based data centre. A breakdown of the consideration is:

[s 9(2)(b)(i)]

[Redacted]

² The delay before a transfer of data begins following an instruction for its transfer, also known as 'lag'.

³ The physical or geographic location of data or information, also refers to the legal or regulatory requirements imposed on data based on the country or region in which it resides.

⁴ <https://www.data.govt.nz/about/data-strategy-and-roadmap-setting-the-direction-for-new-zealands-data/>

32. [s 9(2)(b)(ii)]
 The Applicant has advised us that it may use finance from New Zealand banks if the terms are advantageous.

Applicant and investor test

33. This section describes the Applicant, and whether the investor test criteria in the Act are likely to be met.

Who is making the investment

34. The investment is being made by Microsoft New Zealand Limited (**Microsoft NZ**) and Microsoft 6399 New Zealand Limited (**Microsoft 6399**), together, the **Applicant**. Microsoft 6399 will either acquire the Investment directly or from Microsoft NZ. The Applicant is wholly owned, through various subsidiaries, by Microsoft Corporation (**Microsoft**).
35. The Investment is being made to support Microsoft's core business in New Zealand and entry into the New Zealand data-storage market. The strategy includes [s 9(2)]
 [s 9(2)] acquiring land to build a Microsoft owned data [s 9(2)]
 centre which will comprise the New Zealand cloud services "region".

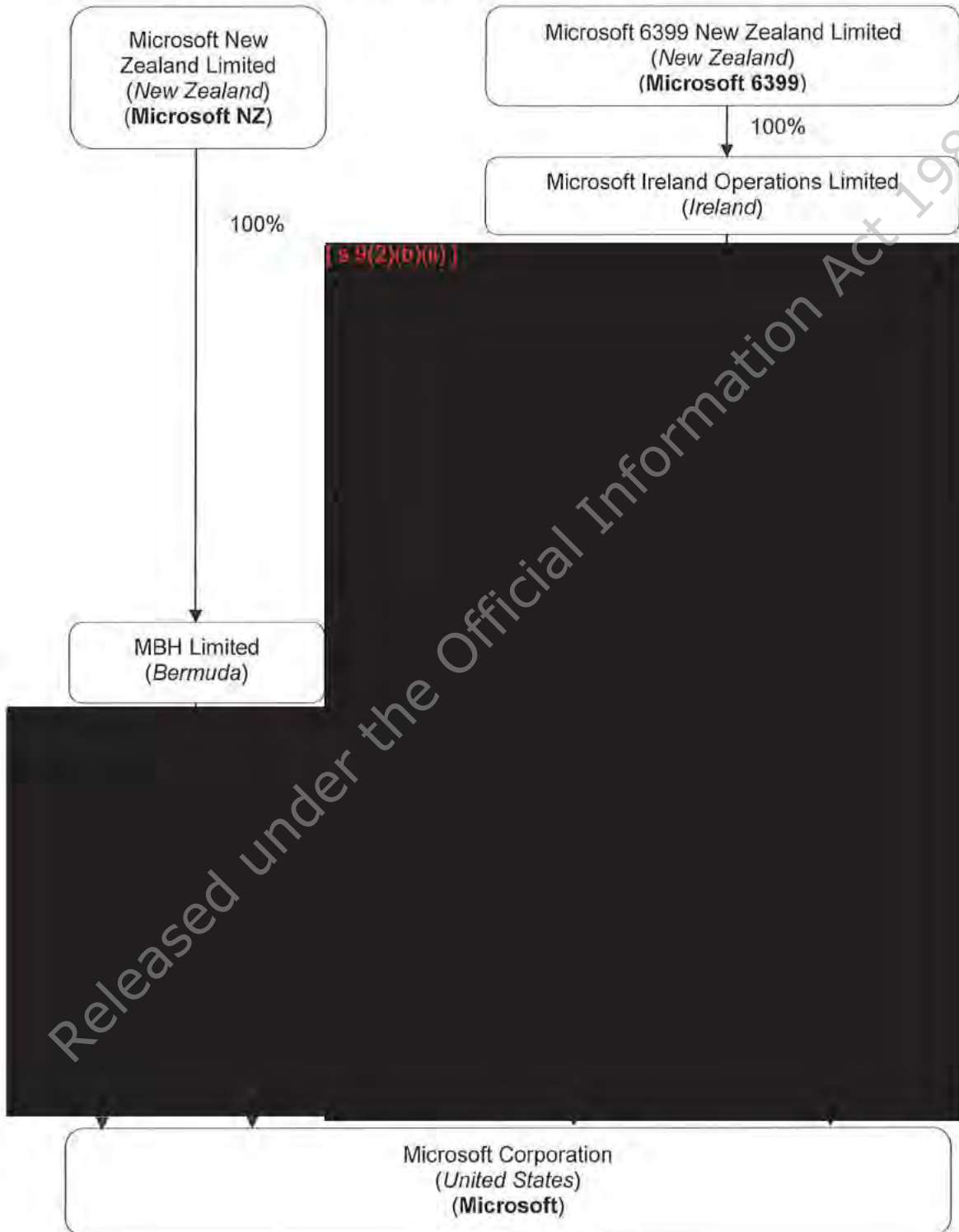
Overview of assessment: investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROP and IWC identified	ROP and IWC identified.	Paras 40-41. Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWCs have significant general business experience and specific technology and software experience.	Paras 43-45. Section 18(1)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment to the Investment through expenditure on site visits, legal fees and internal due diligence.	Section 18(1)(b) of the Act.
Good character	Some concerns	There are a number of matters identified that are relevant to Microsoft Corporation (the ultimate 100% owner of both of the applicants), however we do not consider these matters preclude a finding that the individuals with control of the investment are of good character.	Paras 46-48 and Attachment 3 . Section 18(1)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	Statutory declarations provided confirming that each IWC is not of the kind referred to in ss 15 or 16 of the Immigration Act. No additional assessment required.	Section 18(1)(d) of the Act.

Ownership and control of the Applicant

Ownership

36. The Applicant is Microsoft NZ and Microsoft 6399. Both entities are ultimately wholly owned by Microsoft, as shown in the structure diagram below:



Microsoft NZ

37. Microsoft NZ was incorporated in New Zealand on 29 May 1991. It is wholly owned by MBH Limited, which in turn is 100% indirectly owned by Microsoft Corporation (**Microsoft**).

Microsoft 6399

38. Microsoft 6399 was incorporated in New Zealand on 11 May 2020 for the purposes of this transaction. It is wholly owned by Microsoft Ireland Operations Limited (**MIOL**), which, too, is 100% indirectly owned by Microsoft.

Microsoft

39. Microsoft is a stock corporation registered in Seattle, Washington. It is a publicly traded company, whose stock is listed on the NASDAQ index. It is widely owned, as shown in the table below:

Entity	Percentage of ownership
The Vanguard Group, Inc.	11.30%
BlackRock Institutional Trust Company, N.A	6.19%
State Street Global Advisors	5.61%
Fidelity Management & Research Company	4.11%
T. Rowe Price Associates, Inc.	3.07%
Capital World Investors	2.48%
Geode Capital Management, LLC	2.06%
Capital International Investors	1.85%
Capital Research Global Investors	1.66%
BlackRock Investment Management (U.K.)	1.49%
Other	60.17%
Total	100%

Control

40. The strategic decision to complete the Investment was made by Tom Keane, on behalf of Microsoft. Tom Keane is the Corporate Vice President of Microsoft Azure Global (**Microsoft Azure**), which is a key business division within Microsoft's Cloud + AI Division. It is this business team that is responsible for making strategic decision on Microsoft's datacentre footprint and expansion. Mr Keane will also make decisions on any expansion at the existing sites (e.g. taking up any reserved or additional capacity). While we consider Mr Keane to be an IWC in his role at Microsoft Azure, we do not consider Microsoft Azure Global to be an ROP as decision making authority lies with Mr Keane only and not any other individuals at Microsoft Azure.
41. The Investment only requires formal approval as to the level of capital expenditure by Microsoft's board of directors, who will also be able to approve the divestment of

the Land. No shareholder approval will be required for the Investment. Mr Keane is authorised to the full level of expenditure required to make the Investment as outlined in this application.

42. It is expected that the Applicant will establish a local datacentre operation team (**DC Ops**), under the control of the Applicant, in place when the datacentre [s 9(2)(b)] is operational. The DC Ops team will be responsible for day to day control and decision-making authority over the Investment, which includes running the datacentres and making daily operational decisions.
43. The day to day management of Microsoft NZ will continue to be within the control of Vanessa Sorenson as General Manager of that entity.
44. The day to day management of Microsoft 6399 will be within the control of DC Ops, which will be established before the datacentres are operational. [s 9(2)(a)] may be appointed the General Manager for Microsoft 6399, but that will be confirmed in the same process as appointing the DC Ops team.
45. We have determined that the '**relevant overseas person**' (**ROP**) is (collectively):

ROP	Role
Microsoft New Zealand Limited	Applicant
Microsoft 6399 New Zealand Limited	Applicant
Microsoft Corporation	Ultimate 100% owner of Microsoft New Zealand Limited and Microsoft 6399 New Zealand Limited

46. We have determined that the '**individuals with control of the relevant overseas person**' (**IWC**) are:

IWC	Role
Vanessa Stacey Sorenson	Director of Microsoft 6399 New Zealand Limited
Keith Ranger Dolliver	Director of Microsoft New Zealand Limited
Benjamin Owen Orndorff	Director of Microsoft 6399 New Zealand Limited
Vanessa Medley Cope	Director of Microsoft New Zealand Limited
Thomas William Keane	Corporate Vice President for Microsoft Azure Global

Business experience and acumen

s16(2)(a) and 18(1)(a) of the Act.

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

47. The Investment can be described as [s 9(2)(b)(ii)] interests in non-sensitive land in New Zealand, to be used for the development and operation of a cloud based data centre.
48. Microsoft is an American multinational technology company with headquarters in Redmond, Washington. It develops, manufactures, licences, supports and sells computer software, consumer electronics, personal computers and related services. Its best known software products are the Microsoft Windows line of operating systems, the Microsoft Office suite and the Internet Explorer and Edge web

browsers. Microsoft has had a presence in New Zealand, through the Applicant, since 1991. Microsoft, and therefore the Applicant, has established it has extensive business experience and acumen in consumer and business software and hardware provision, as well as the provision of cloud computing services in New Zealand and overseas.

49. We consider the IWCs collectively have the required business experience and acumen in relation to the Investment on the basis that:
- the IWCs are experienced in overseeing investments in the technology and computer software industry;
 - the Applicant is part of a global technology company; and
 - the Microsoft group has a track record of making strategic and profitable investments in the technology sector.

Good character assessment

s16(2)(c) and 18(1)(c) of the Act.

The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision maker must take the following factors into account (without limitation):

- offences or contraventions of the law by A, or by any person in which A has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
- any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

50. The Applicant provided a statutory declaration stating the individuals with control are of good character, have not committed an offence or contravened the law and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
51. Our good character searches identified matters relating to Microsoft Corporation which we considered required comment from the Applicant. The Applicant provided comment on these matters, and on considering these comments we consider that none of the individuals considered IWCs for the purpose of this investment were directly involved in the matters identified. In addition, the Applicant has provided detail of how Microsoft Corporation has taken action to prevent the recurrence of these or similar matters, where possible.
52. These matters have been assessed and included as **Appendix 3**. We do not consider any of these matters preclude a finding that the IWCs are of good character. We are, therefore, satisfied that the good character test is met.

Provisional conclusion – Investor test

53. Our conclusion is that the investor test is met.

Provisional recommendation

54. It is a criterion of consent under section 18(e) that if the overseas investment involves a transaction of national interest, then before consent can be granted the Minister of Finance must not have declined consent to the transaction on the grounds that it is contrary to New Zealand's national interests under section 20C.
55. We consider the investor test is **met**. If you agree, and the Minister does not consider the transaction is contrary to New Zealand's national interest, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to paragraphs 7 to **Error! Reference source not found.** of this Assessment Report to record your decision.

List of Attachments

1. Proposed Decision
2. Guidance for applying the Act
3. Good Character table
4. Overview Tables for Microsoft New Zealand Limited 201900507

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ATTACHMENT 1 - PROPOSED DECISION

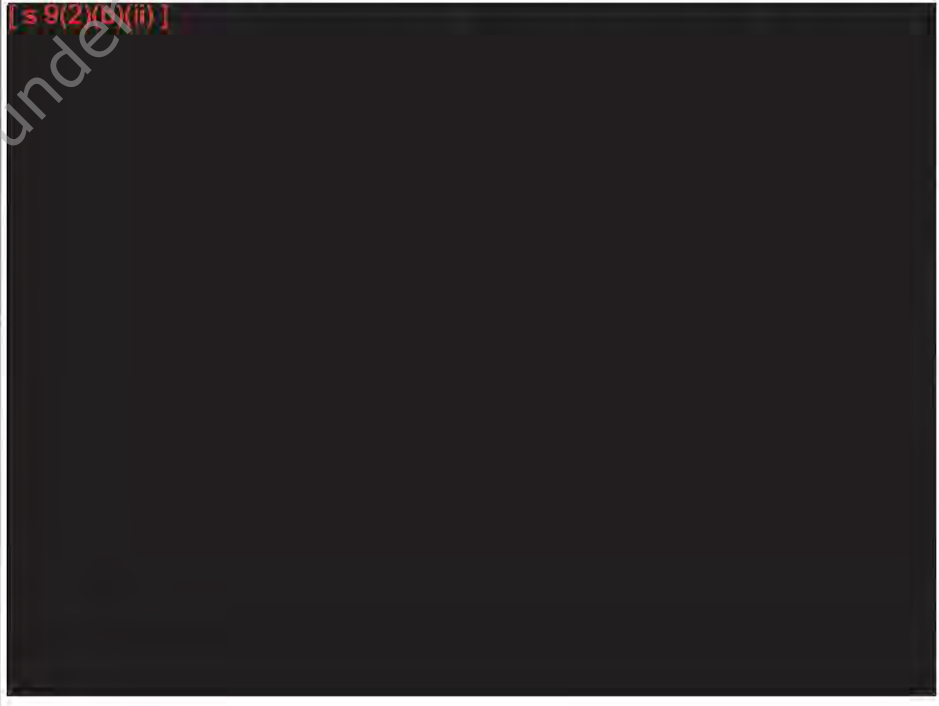
Consent for Overseas Person to Acquire Significant New Zealand Business Assets

Read this consent carefully - you must comply with all the conditions. If you do not, you may be subject to fines or other penalties.

Consent

Decision date: [date]

The following people have been given the following **consent**:

Case	201900507
Consent holder/s	Microsoft New Zealand Limited Microsoft 6399 New Zealand Limited We will also refer to each Consent holder and the Consent holders together as you .
Consent	You may acquire the Assets subject to the Conditions set out below.
Assets	Property in New Zealand used in carrying on business in New Zealand where the total value of the consideration provided exceeds \$100 million, being [s 9(2)(b)(ii)] 

Timeframe	You have until 31 August 2021 to enter all agreements necessary to acquire the Assets.
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Conditions

Your Consent is subject to the conditions set out below. These apply to all overseas people who are given consent to acquire significant business assets, including you.

You must comply with them all. Be aware that if you do not comply with the conditions you may be subject to fines or other penalties.

In the Consent and the Conditions, we refer to the Overseas Investment Office as **OIO, us or we**.

Details	Required date
Standard condition 1: acquire the Assets	
<p>The agreements by which you are completing the acquisition of the Assets:</p> <ol style="list-style-type: none"> 1. must be entered into by the Consent holder by the date stated in the Consent. If they are not, your Consent will lapse and you must not acquire the Assets, and 2. must use the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent holder – may acquire the Assets, not your subsidiary, trust or other entity.</p>	As stated in the Consent
Standard condition 2: tell us when you acquire the Assets	
<p>You must tell us in writing when you have acquired each of the Assets.</p> <p>Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Assets (settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Assets, and 4. copies of any transfer documents and settlement statements. 	As soon as you can, and no later than two months after settlement
Standard condition 3: automatic condition for transaction of national interest	
You must not, in relation to the Assets, act or omit to act with a	At all times.

<p>purpose or an intention of adversely affecting national security or public order.</p>	
<p>Standard condition 4: remain of good character</p>	
<p>You and the Individuals Who Control You:</p> <ol style="list-style-type: none"> 1. must continue to be of good character, and 1. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. These sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to be a threat or risk to security, public order or the public interest. <p>The Individuals Who Control You are individuals who:</p> <ol style="list-style-type: none"> (a) are members of your governing body (b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. To avoid doubt, this includes the members of your governing body. 	<p>At all times</p>
<p>Standard condition 5: tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Assets; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 3). 3. You cease to be an overseas person or dispose of all or 	<p>Within 20 working days after the change</p>

<p>any part of the Assets.</p> <p>4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You, hold (or at the time of the event held) a 25% or more ownership or control interest:</p> <ul style="list-style-type: none">(a) becomes bankrupt or insolvent(b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or(c) becomes subject to any form of external administration.	
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ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT

1. You⁵ must grant consent to this overseas investment if you are satisfied that all of the applicable criteria in the Overseas Investment Act 2005 (**Act**) and the Overseas Investment Regulations 2005 (**Regs**) are met. You must decline to grant consent if you are not satisfied that all of the applicable criteria are met. You must not take into account any criteria or factors other than those identified as applying to this application in the table below.
2. The type of application you are considering is an application under the Significant business assets only pathway.
3. The following table sets out the criteria and factors that apply to this application.

Pathway	Criteria and factors (post-October 2018)
Significant business assets	Investor test – s 18(1)(a)-(d) Not contrary to national interest – s 18(1)(e)

4. Following is guidance in relation only to the criteria that apply to this application.

Investor test – good character criterion

5. You must be satisfied that the relevant overseas person or (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
6. The term “good character” is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the “good character” test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
7. When undertaking the good character assessment, you must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.
8. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a body corporate to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual's interest in the body corporate is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.
9. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person is of good character:
 - (a) offences or contraventions of the law by the person, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
 - (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

⁵ 'You' here refers either to the decision-maker, being the relevant Minister(s) for a Ministerial application or the delegated decision-maker for a delegated application

10. All relevant matters must be weighed up before you make a decision that an individual is of good character. If you wish to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given in order to meet the requirements of natural justice.
11. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate decision as to the weighting to be given to relevant matters is for you.
12. Matters which might be relevant include:
 - (a) credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);
 - (b) investigations, prosecutions or other enforcement action by regulatory or professional bodies;
 - (c) track record in New Zealand.
13. Matters which are unlikely to be relevant include:
 - (a) adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
 - (b) where the decision maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing;
 - (c) adverse information that does not impact on the character of a relevant overseas person or individual with control.
14. Briefly, some of the things we consider when weighing up "good character" include:
 - (a) the seriousness of the matter, which may include considerations of: what the matter was and the level of actual or potential harm; whether the matter was established by a relevant regulator or the Court and attributed to an Individual with Control (IWC) or Relevant Overseas Person (ROP); what the penalty or other sanction was (if any); whether the matter was a one-off event or repeated breaches, including a pattern of non-compliance across a range of regulatory regimes; whether what occurred was inadvertent, negligent, reckless or deliberate; whether what occurred was legal in New Zealand but illegal in the jurisdiction in which it occurred, in which case we consider the culture and context of that country;
 - (b) relevance to this investment: we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm;
 - (c) if a matter is an allegation, the credibility of the allegation including the reliability of the source and credibility of the information raised. Generally, if an allegation is reported in a number of sources and is not simply 'copy and pasted' it is likely to be regarded as having credibility;

- (d) connection to the Individuals with Control (IWCs) or Relevant Overseas Person (ROP): we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who was an executive director of the parent company, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC;
- (e) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
15. The onus is on the applicant to satisfy the decision maker that all the individuals with control are of good character.
16. If you have doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

National interest assessment

17. It is a criterion of consent under section 16(g)/18(e) that if the overseas investment involves a transaction of national interest, then before consent can be granted the Minister of Finance must not have declined consent to the transaction on the grounds that it is contrary to New Zealand's national interests under section 20C.
18. Before making your decision, you must establish whether the transaction is a transaction of national interest. A transaction is of national interest if it involves investment by non-New Zealand government investors or investments into strategically important businesses under section 20A. The Minister of Finance has discretion and may also notify the applicant that the transaction is a transaction of national interest under section 20B.
19. The Supplementary Ministerial Directive Letter (8 June 2020) sets out at paragraph 5 that the starting point is to begin with the assumption that an investment is in New Zealand's national interest. Paragraph 6 of the Supplementary Directive Letter directs the regulator to only advise that a transaction should be escalated to a national interest assessment under s20B if the proposed investment:
- could pose risks to New Zealand's national security or public order,
 - would grant an investor significant market power within an industry or result in vertical integration of a supply chain,
 - has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets; or
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives.
20. If you are satisfied that the investment does not involve a transaction of national interest, you may grant consent, provided you are satisfied that all other relevant criteria are met.
21. If the investment does involve a transaction of national interest, you determine the investor test, but you may only grant consent after the Minister of Finance has considered the transaction under section 20C and has not declined consent to the transaction on the grounds that it is contrary to national interest.

Conditions

22. Conditions may be imposed on any consent that is granted, under section 25(A) of the Act⁶. The attached Report recommends some conditions that you may wish to consider imposing in this case.

Decision

23. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.

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⁶ Section 25 of the Act prior to the Amendment Act

ATTACHMENT 3 - GOOD CHARACTER SEARCHES AND ANALYSIS

The OIO undertook an open-source search of the relevant overseas persons (ROPs) and individuals with control (IWCs).

The searches of the International Consortium of Investigative Journalists (ICIJ) database, United Nations Security Council (UNSC) Terrorist Entities List, and Interpol Red Notice List did not produce any relevant results.

Our internet searches turned up some results for individuals that are not the IWC but happen to have the same name. This often occurs, particularly where an individual has a common name. As the information is not relevant to the individual whose character is being assessed, we have not included these results in the table below.

Two of the things we consider when weighing up 'good character' include:

- **connection to the Individuals with Control (IWCs) or Relevant Overseas Person (ROP):** we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who was an executive director of the parent company, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC.
- **relevance to this investment:** we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm.

When making our assessment of character we also look at:

- How reliable is the allegation? For example a conviction would be a highly reliable, whereas a report in a tabloid newspaper or an internet forum would be less reliable.
- Is the explanation provided by the Applicant persuasive? Is it internally consistent and does it adequately address the concerns?
- Is there a pattern of similar allegations or offences? Do common themes emerge?
- How serious is the allegation? What actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring?

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
1. Foreign regulatory compliance	In 2019, Microsoft Corp. agreed to pay \$25 million to settle with the United States Securities and Exchange Commission, an investigation into potential violations of a law prohibiting the bribery of foreign government officials.. These were in Hungary, Saudi Arabia, Thailand and Turkey.							We did not seek comment from the Applicant given the reasoning set out in the next column.	This matter refers to specific individuals who are not related to the investment, and are no longer employed by Microsoft Corporation or its subsidiaries. We do not consider the conduct of these individuals is relevant to the good character of the individuals with control for the purpose of this investment.
2. Intellectual property	In 2014, Microsoft paid USD \$23 million to Virnetx to settle a patent dispute. In 2005, Microsoft US paid a \$60 million settlement for Burst.com over patent litigation.							As an innovator and holder of thousands of patents, Microsoft respects intellectual property rights. As is typical for a large technology company, Microsoft is accused of patent infringement regularly in the ordinary course of business. These claims stem from a wide variety of patent owners, some of which are competitors and others simply patent aggregation and enforcement entities. All Microsoft employees are required to take business conduct training, which includes training on respecting third parties' proprietary rights.	This matter consists of (a) a settlement of a patent infringement dispute by way of a non-exclusive licence to Burst.com's patent portfolio for a one time licence fee of \$60 million, and (b) settlement of a patent infringement suit with Virnetx and extension of a licence arrangement with Virnetx. There were no civil findings in either dispute, and no admission of guilt by Microsoft. Both matters occurred at least 5 years ago. We consider that none of the individuals with control were directly involved in this matter, and Microsoft has taken

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
									steps to prevent its recurrence. We consider this does not preclude a finding of good character on the part of the IWCs.
3. Foreign regulatory compliance	<p>A senior Microsoft executive and his friend face charges of insider trading after they were alleged to have made nearly \$400,000 in illegal profits from trading on confidential company information, including Microsoft's \$300 million investment in Barnes & Noble's e-reader.</p> <p>In 2016, a former Microsoft senior manager agreed to pay nearly \$380,000 to settle federal allegations that he traded on confidential information.</p> <p>In 2019, a former Director of Sports Marketing at Microsoft pleaded guilty to wire fraud for his scheme to profit by stealing more than \$1.5 million from Microsoft through the creation and submission of fraudulent invoices and the unauthorised use of other Microsoft assets.</p>							We did not seek comment from the Applicant given the reasoning set out in the next column.	This matter refers to specific individuals who are not related to the investment. We do not consider the conduct of these individuals is relevant to the good character of the individuals with control for the purpose of this investment.
4. Competition-EU and Korea	In 2004, the European Union found Microsoft guilty of abusing the "near-monopoly" of its PC operating system and fined							Microsoft was a defendant in several government-led competition law cases in the U.S., Europe, and Korea in the early 2000s. These cases were resolved by paying fines and/or	These matters relating to Microsoft Corp are relatively serious being major breaches of antitrust and competition

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
	<p>them €497 million.</p> <p>In 2006, Microsoft failed to comply with the 2004 EU decision and the Competition Commission fined Microsoft again for €280.5 million for continued non-compliance (a daily penalty of €1.5 million).</p> <p>In 2013, the European Union fined Microsoft €561 million for breaking a pledge to offer personal computer users a choice of Internet browsers when they install the company's flagship Windows operating system.</p> <p>In 2008, further non-compliance meant Microsoft were fined €899 million by the EU.</p> <p>In 2005, South Korea fined Microsoft \$32 million for violating Korea's monopoly rules.</p>							<p>damages as well as orders or consent decrees remedying the underlying conduct. Some of these consent decrees have expired, but two, with the European Commission, are still in effect. Additionally, Microsoft has created a comprehensive antitrust compliance framework to ensure continued compliance with our regulatory obligations as well as the global competition laws more broadly.</p>	<p>law. Nevertheless, we consider that they relate to historic actions by Microsoft that have since been addressed both by its implementation of an antitrust compliance framework, and by consent decrees (resolving a dispute where no guilt or liability is admitted). We consider that none of the IWCs were involved in these matters, and that this matter does not preclude a finding of good character on the part of any of the IWCs.</p>
5. Competition-US	<p>In 2004, Microsoft settled with California government agencies for US \$70 million for damages due to Microsoft's price fixing.</p> <p>In 2003, Microsoft agreed to provide \$19.7 million in vouchers and \$300,000 for legal fees to resolve West Virginia's lawsuit of anti-competitive practices.</p> <p>In 2009, Microsoft agreed to pay \$40 million and provide</p>							<p>Microsoft was a defendant in several government-led competition law cases in the U.S., Europe, and Korea in the early 2000s. Microsoft settled the case with the U.S. DOJ and several of the U.S. State Attorneys General in 2001, resulting in a consent decree with the U.S. DOJ resolving the underlying anticompetitive conduct, as well as settlements with certain of the states providing for payment of fines and/or damages. The consent decree required Microsoft to provide PC</p>	<p>These matters are similar to the matters identified above. They relate to competition and antitrust cases against Microsoft in the early to mid 2000s. Ultimately, the matters were settled with a consent decree with the Department of Justice which resolved the conduct, and cash settlement to pay fines</p>

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
	\$60 million in hardware/software vouchers for state organizations in settlement of allegations it used the dominant position of Microsoft Windows in Mississippi.							manufacturers broad contractual freedom in how they installed Windows and worked with Windows competitors. It also required Microsoft to provide certain interoperability information to competitors to allow them to interoperate with Windows on more equal footing to Microsoft. This consent decree expired in 2011. In addition to the case described above, some U.S. States also pursued damage or fines from Microsoft. Microsoft settled each claim with the relevant U.S. States, and paid fines and/or damages accordingly.	and damages. Microsoft put in place mechanisms by which the conduct was avoided in future, and settled with each plaintiff in turn. We consider none of the individual IWCs were involved in this conduct, and therefore that these matters do not preclude a finding of good character on the part of the IWCs.
6. Competition-US	In 1998, US court found that Microsoft wilfully maintained its monopoly in the market for PC operating systems in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.							See above.	As above, we consider that this matter is historic, none of the IWCs were involved in this conduct, and Microsoft has since put in place mechanisms by which the conduct will be prevented from recurring. We consider this matter does not preclude a finding of good character.
7. Product safety	There are several allegations of product quality issues. In 2016, 2.25 million AC power cords were recalled in North America following 56 reports of overheating. In 2017, Microsoft failed to fix a security flaw in its Internet Explorer and Edge							We did not seek comment from the Applicant regarding the product recalls given the reasoning set out in the next column. In terms of the security flaw- In this instance, the 'vulnerability' identified by Google did not result in a security breach. There was no breach and we have no	The faulty product was recalled and there does not appear to have been any action taken. We do not consider this matter prevents a finding that the individuals with control are of good character.

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
	browsers, despite Google warning the company about it in November. In 2017, a large attack on Windows 10 users occurred through weaknesses in Windows 10.							evidence of active attacks against customers. Microsoft Corporation has specific teams dedicated to constant monitoring and updating of the security of its systems and products, and relies on those internal teams, rather than a competitor such as Google, who does not have all the necessary information to make an informed decision as to the key points of focus for security.	We note there was no actual breach only a vulnerability identified by an outside source, who according to Microsoft 'does not have all the necessary information to make an informed decision as to the key points of focus for security'. We also note that vulnerabilities in software are common, and it does not go to the character of the Applicant that they did not note comment from a competitor as to aspects of its software. Nor were any of the IWCs directly involved in this matter. We therefore conclude that these matters do not preclude a finding of good character on the part of the IWCs.
8. Employment	Between 2010 - 2019, there were 108 complaints about sexual harassment, 119 about gender discrimination and 8 retaliation complaints and 3 pregnancy discrimination at Microsoft. This has led to a class action lawsuit, which is ongoing.							Microsoft takes complaints of workplace harassment and discrimination seriously. As a company, we have been working to prevent these incidents from occurring, and act swiftly when learning of such allegations and employee concerns. The class action lawsuit was found to be without merit in late 2019, with the U.S. court denying the plaintiffs' request to proceed as a class.	Sexual harassment, gender discrimination, retaliation, and pregnancy discrimination are all very serious matters. However, none of the matters identified relate directly to any of the IWCs related to the Investment, and only relate indirectly to IWCs

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
				High		High		in their capacity as directors of Microsoft subsidiaries. Microsoft has identified numerous measures by which it intends to treat future allegations of the nature referred to above, as well as allegations of past such behaviour. As such, we consider the allegations do not preclude a finding that the IWCs are of good character.	
9. Employment	In 2014, Michael Mercieca accused Microsoft of unfair retaliation via bad performance reviews and a demotion, and also defamation stemming from a meritless sexual harassment complaint. Microsoft Corporation paid him \$11.6 million for retaliation and defamation.			High		High	Mr. Mercieca's claims were wholly without merit. The favorable outcome he obtained in the trial court was overturned on appeal. The appeals court in Texas ruled fully in Microsoft's favor and vacated the award. The United States Supreme Court declined further review. In the end, as the prevailing party, Microsoft was granted its court costs for the burden of having to defend against Mr. Mercieca's meritless claims.	This matter does not relate directly to any of the IWCs, and in addition was reversed on appeal. Microsoft maintains the claim was entirely without merit. We therefore consider it does not preclude a finding of good character on the part of any of the IWCs.	
10. Employment	In 2008, New Zealand Microsoft had to pay holiday pay for the six years before the resignation of an employee when they failed to do this for the employees' Commitment Based Incentive Awards and Revenue Based Incentive Awards.			High		High	The case of Watson v Microsoft New Zealand Ltd related to a genuine interpretation dispute about whether bonus payments were discretionary and could therefore be excluded from holiday pay calculations under the Holidays Act 2003. At this time there was no statutory definition of "discretionary payment" and the parties were unable to resolve the dispute at mediation.	This matter appears to be an issue of contractual interpretation, rather than being misconduct or conduct showing 'bad conduct' on the part of any of the IWCs. None of the IWCs are named in the reporting of the matter, but some are	

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
								<p>No allegation was made that Microsoft New Zealand Limited was guilty of any criminal act or that it was deliberately in breach of the Holidays Act. The Employment Relations Authority resolved the interpretation dispute between the two parties. It is noted that the Holidays Act was amended on 1 April 2011 to now include a statutory definition of "discretionary payment". Microsoft is aware of the need to ensure that its payroll systems, policies and practices comply with the Holidays Act, and to seek local legal advice in this regard, where appropriate.</p>	likely indirectly involved in their capacities as directors of Microsoft New Zealand. Given the ambiguity has since been cleared up, and the matter settled, we consider that this matter does not preclude a finding on the part of the IWCs.
11. Human rights	<p>In 2020, Australian Strategic Policy Institute identified 83 foreign and Chinese companies "directly or indirectly benefiting from the use of Uyghur workers outside Xinjiang through potentially abusive labour transfer programs." One of these companies is Microsoft. In 2016, Amnesty International and African Resources Watch released a report that links several companies to child mining of cobalt in the Congo. Microsoft is one of these companies.</p>						<p>Microsoft's code of conduct explicitly prohibits the use of child labour. "We are committed to responsible and ethical sourcing of materials and do not tolerate child labour in our supply chain. We hold our suppliers to the high standards prescribed in our Supplier Code of Conduct, including upholding our human rights, labour, health and safety, environmental, and business ethics".</p> <p>Microsoft Devices' Responsible Sourcing Team has reviewed audit records, investigated the allegations, and found no evidence of forced labor associated with those factories.</p>	<p>Microsoft's internal investigations have uncovered no evidence of forced labour either of Uyghur workers or of child mining associated with the manufacturing of its products.</p> <p>The matters are serious, but currently exist solely as allegations and have not been proven.</p> <p>We note that none of the IWCs are named in either of these good character matters. As such, we do not consider these matters to prevent a finding of good character on the part of the IWCs.</p>	
12. Tax- New	In 2019, Microsoft paid a							s 9(2)(ba)(i)	This matter appears to

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
Zealand	\$24.7 million settlement to IRD after an investigation into international transfer pricing.							[s 9(2)(ba)(i)]	relate to a disagreement in interpretation in New Zealand's tax law between Microsoft and Inland Revenue. The matter was settled between the two parties, and Microsoft made a back-payment to Inland Revenue as a result. We consider this matter does not in itself allege bad character on the part of Microsoft or any of the IWCs, but resulted from differences in statutory interpretation. We consider this matter does not preclude a finding of good character on the part of the IWCs.
13. Tax- Israel and China	In 2017, a court ruled in favour of the Israeli Tax Authority (ITA) over transfer pricing taxation for Microsoft's acquisition of Gteko Inc. (an Israeli startup). In 2014, Microsoft was charged \$140 Million in China for tax evasion.							[s 9(2)(ba)(i)]	The matter relating to China and the US does not allege any misconduct on the part of Microsoft, and therefore does not preclude a finding of good character on the part of the IWCs. The matter relating to the Gteko litigation was previously untested in Israeli courts, and while the courts eventually found in the Israeli Tax Authority's favour. We

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
									consider this matter does not allege intentional misconduct on the part of Microsoft or its IWCs, and therefore does not preclude a finding of good character on the part of the IWCs in this application.
14. Personal data	<p>(a) In 2020, a data breach occurred at Microsoft where 250 million customer service and support records were unsecured on a cloud database.</p> <p>(b) In 2017, EU privacy regulators wrote to Microsoft about concerns its Windows 10 operating system did not respect data protection regulations.</p> <p>(c) In 2016, an article by Amnesty International said that Microsoft are failing to adopt basic privacy protections of their products, particularly Skype.</p> <p>(d) In 2016, France's National Data Protection Commission (CNIL) said that it revealed many</p>						[s 9(2)(ba)(i)]		<p>(a) Microsoft has remedied the identified breach and has taken action to prevent recurrence of that type of issue.</p> <p>(b) Microsoft has identified that the letter from the EU privacy regulator did not contain any specific allegations of misconduct, and was rendered irrelevant once GDPR was passed (which Microsoft has since complied with).</p> <p>(d) The investigation by the CNIL was discontinued in response to changes made by Microsoft that showed it was now complying with data protection</p>

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
	<p>failures at Microsoft including collecting irrelevant or excessive user data.</p> <p>(e) In 2014, allegations were made that Microsoft read a user's Hotmail email account that allowed them to discover the identity of someone now charged with stealing company secrets.</p> <p>(f) In 2013, the Federal Court in Sao Paulo, Brazil fined Microsoft Informática Ltd R \$ 650,000 for failure to comply with a court order for breach of confidentiality of data in an e-mail account.</p> <p>(g) In 2007, Microsoft New Zealand Limited was mentioned regarding the initial withholding of information from the New Zealand Police for privacy reasons.</p> <p>(h) In 2002, Microsoft New Zealand Limited was mentioned in a number of articles regarding a complaint received by the commerce commission about Microsoft NZ's software upgrade payment policy.</p>							<p>- Expanding the scope of the mechanisms that detect security rule misconfiguration</p> <p>- Adding additional alerting to service teams when security rule misconfigurations are detected.</p> <p>(b) The Article 29 Working Party's letter didn't result in a specific Article 29 Working Party investigation, and the Article 29 Working Party ceased existence with the entry into force of the GDPR (General Data Protection Regulation) on May 25, 2018.</p> <p>(c) We did not seek Microsoft's comment on matter (c) as we did not consider these matters alleged Microsoft of any specific behaviour or misconduct. (d) the CNIL closed its investigation into Microsoft in June 2016. It</p> <p>[s 9(2)(ba)(i)]</p>	<p>regulations (including GDPR)</p> <p>(e) Microsoft has explained controls it has initiated to avoid recurrence of matters such as this.</p> <p>(f) Compliance with court orders by governments to provide information from an email account is an ongoing issue. Microsoft has provided an explanation as to their compliance with these types of requests. We consider none of the IWCs of this investment were in charge of Microsoft Brazil's policy in this area.</p> <p>(g) We consider there are no specific allegations made in the article, and makes only speculative mention of Microsoft.</p> <p>(h) We do not consider this matter contains any allegations of wrongdoing or misconduct. Microsoft complied with court orders to provide information.</p> <p>We do not consider that any of the matters</p>

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
								<p>[s 9(2)(ba)(i)]</p> <p style="background-color: black; color: red; font-weight: bold; padding: 5px;">[REDACTED]</p> <p>Microsoft has imposed additional controls, as set out in other responses.</p> <p>(f) the Brazilian court ordered Microsoft to provide data from an email user's account to the Brazilian government. Microsoft's priority was to protect the privacy of the account holder, and are willing to dispute government requests which we think are ultra vires.</p> <p>(g) We do not consider this allegation reflects negatively on Microsoft NZ's</p>	<p>identified relate directly to any of the IWCs, or if they do, do not preclude a finding of good character on the part of any of those individuals.</p>

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Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
								<p>character. There is no finding of wrongdoing and the articles are merely speculative.</p> <p>(h) We do not consider this allegation reflects negatively on Microsoft NZ's character. Microsoft NZ had obligations of privacy to uphold due to potential uncertainty of the owner. When provided with a court ordered search warrant, Microsoft NZ complied with its obligations.</p>	
15. Personal data	In 2013, documents alleging US spying under the PRISM surveillance programme were released. PRISM is said to give the US National Security Agency and FBI easy access to the systems of nine of the world's top Internet companies including Microsoft.							<p>There are significant inaccuracies in the interpretations of leaked government documents referred to in the OIO's query [s 9(2)(ba)(i)]</p> <p>At Microsoft, we believe customers deserve to understand our policies for responding to government requests for their data. This transparency also helps inform policymakers as they work to modernize laws that impact our customers. There are some core policies we adhere to across our services:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Microsoft does not provide any government with direct and unfettered access to our customers' data, and we do not provide any government with our encryption keys or the ability to break our encryption. <input type="checkbox"/> If a government wants customer data, it must follow applicable legal process. It must serve us with a warrant or court order for content, or a subpoena for subscriber information or 	Microsoft has provided detail about how they comply with requests for information from government and law enforcement entities. It attempts not to provide government with unlimited access to personal information of users. We consider this does not establish any wrongdoing or misconduct on the part of Microsoft or any of the IWCs involved in the investment. As such, we consider this matter does not preclude a finding of good character on the part of the IWCs.

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
								<p>other noncontent data.</p> <p><input type="checkbox"/> All requests must target specific accounts and identifiers.</p> <p>Microsoft's legal compliance team reviews all requests to ensure they are valid, rejects those that are not valid, and only provides the data specified.</p> <p>Our Law Enforcement Request Report and U.S. National Security Order Report are updated every six months and show that the vast majority of our customers are never impacted by government requests for data.</p>	

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ATTACHMENT 4 - DRAFT LETTER TO MINISTER OF FINANCE

OVERSEAS INVESTMENT OFFICE



Case ref. 201900507

Hon Grant Robertson
Minister of Finance
PARLIAMENT BUILDINGS

cc Vanessa Horne, Group Manager (Overseas Investment), vhorne@linz.govt.nz

Dear Minister

National interest assessment under the Overseas Investment Act 2005

I seek your decision about whether the following investment is contrary to New Zealand's national interests.

Microsoft New Zealand Limited and Microsoft 6399 New Zealand Limited seek consent under the Overseas Investment Act 2005 (**the Act**) to acquire various **§ 9(2)(b)(ii)** interests in **§ 9(2)(b)** of non-sensitive land in Auckland, New Zealand.

This investment requires a national interest assessment because it is an acquisition, by an overseas person, of property used in carrying on business in New Zealand where the total value of consideration exceeds \$100 million, and the property is being acquired from a business that is a strategically important business being a business involved in telecommunications infrastructure or services (section 20A(1)(e) of the Act).

I have made an assessment that the four elements of the investor test have been met, namely that:

- the individuals with control have business experience and acumen relevant to the overseas investment;
- the relevant overseas person has demonstrated financial commitment to the overseas investment;
- all the individuals with control of the relevant overseas person are of good character
- each individual with control of the relevant overseas person is not an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009.

As this decision relates to an investment in significant business assets, it is delegated to the regulator pursuant to the Designation and Delegation Letter of 17 October 2018. Before I can determine whether to grant or decline the application, I need your decision about whether the investment is contrary to the New Zealand's national interest (sections 16(1)(g) and 20C of the Act). To aid your consideration of the national interest assessment, I attach the Proposed Consent Decision that outlines the standard conditions that would apply if consent is granted.


The Overseas Investment Office will provide you with a separate report addressing the national interest assessment.

Yours sincerely

Louise Hornabrook
Manager, Applications
Overseas Investment Office

Encl.

ATTACHMENT 5 - OVERVIEW TABLES FOR MICROSOFT NEW ZEALAND LIMITED 201900507

	<p>Application</p> <p>Microsoft New Zealand Limited and Microsoft 6399 New Zealand Limited seek consent under the Overseas Investment Act 2005 (the Act) to acquire [s 9(2)(b)(ii)] interests in [s 9(2)(b)(ii)] and in New Zealand, for the purpose of developing and operating a cloud based data centre.</p> <p>This is an investment in significant business assets because it is expected that the total cost to acquire [s 9(2)(b)] these sites will exceed \$100 million.</p> <p>The land to be acquired is comprised of sites in Auckland, [s 9(2)(b)(ii)] [redacted] [redacted] None of these sites is considered 'sensitive land' under the Overseas Investment Act 2005.</p> <p>The vendors and lessors are [s 9(2)(b)(ii)] [redacted]</p>	<p>Provisional recommendation</p> <ul style="list-style-type: none"> • Our provisional recommendation is to grant consent. • Relevant tests for this transaction: <ul style="list-style-type: none"> ○ Investor Test (s16)
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Overview of assessment: Investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROP and IWC identified	ROP and IWC identified.	Paras 40-41. Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWCs have significant general business experience and specific technology and software experience.	Paras 43-45. Section 18(1)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment to the Investment through expenditure on site visits, legal fees and internal due diligence.	Section 16(2)(b) and 18(1)(b) of the Act.
Good character	Some concerns	There are a number of matters identified that are relevant to Microsoft Corporation (the ultimate 100% owner of both of the applicants), however we do not consider these matters preclude a finding that the individuals with control of the investment are of good character.	Paras 46-48 and Attachment 3 . Section 18(1)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	Statutory declarations provided confirming that each IWC is not of the kind referred to in ss 15 or 16 of the Immigration Act. No additional assessment required.	Section 18(1)(d) of the Act.

Decision	Consent Granted Section 13(1)(c) Overseas Investment Act 2005
Decision Maker	Overseas Investment Office
Decision Date	25 August 2020
Pathway(s)	Significant business assets National interest assessment
Investment	An overseas investment in significant business assets, being the Applicant's acquisition of interests in non-sensitive land used in carrying on business in New Zealand for consideration exceeding \$100m.
Consideration	The investment involves the acquisition of interests in land for the operation of data centres, the value of which is not yet confirmed but will exceed \$100,000,000.
Applicant	Microsoft New Zealand Limited Microsoft 6399 New Zealand Limited United States Public (60.28%) Various overseas persons (31.83%) United Kingdom Public (5.02%) Canada Public (1.73%) Norway Public (1.14%)
Vendor	Various data centre service providers and property owners with assets and land in New Zealand.
Background	<p>The Applicant is a wholly owned indirect subsidiary of multinational computer hardware and software company Microsoft Corporation. Microsoft Corporation is a NASDAQ listed company with operations worldwide.</p> <p>The Investment involves the Applicant's acquisition of various interests in several pieces of land in Auckland for the purposes of establishing a cloud based data centre in New Zealand. Data centres are centralised locations where cloud computing and networking equipment is present, for the purposes of storing and processing large amounts of data. The Applicant proposes to improve its 'hyperscale cloud services' available to organisations in New Zealand, by creating an on-shore data region, which will allow organisations and agencies to keep at rest in New Zealand data (including sensitive data about New Zealanders), to help organisations and agencies comply with regulatory requirements.</p> <p>The proposed data centre was announced by the Prime Minister on 6 May 2020, who described the data centre as a 'significant investment' which 'serves as a signal to the world New Zealand is open for business and quality investment'.</p> <p>The Applicant has satisfied the OIO that the individuals who will control</p>

the investment have the relevant business experience and acumen and are of good character. The Applicant has also demonstrated financial commitment to the investment.

The Minister of Finance has determined that the Investment is not contrary to New Zealand's national interest.

More information

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