

INFINERA CORP
Form S-4
June 08, 2015
Table of Contents

Index to Financial Statements

As filed with the Securities and Exchange Commission on June 8, 2015

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

INFINERA CORPORATION
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of

3661
(Primary Standard Industrial

77-0560433
(I.R.S. Employer

incorporation or organization)

Classification Code Number)

Identification Number)

140 Caspian Court

Sunnyvale, CA 94089

(408) 572-5200

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

James L. Laufman

Infinera Corporation

140 Caspian Court

Sunnyvale, CA 94089

(408) 572-5200

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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650 Page Mill Road

Palo Alto, CA 94304

(650) 493-9300

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after the effective date of this registration statement and the satisfaction or waiver of all other conditions of the Offer (as defined below) described herein.

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If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer
 Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company
 If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered | Amount to be Registered⁽¹⁾ | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price⁽²⁾ | Amount of Registration Fee |
|---|--|--|--|-----------------------------------|
| Common Stock, \$0.001 par value | 13,037,699 | N/A | \$272,421,339 | \$31,656 |

(1) Represents the maximum number of shares of the registrant's common stock expected to be issued in connection with the transactions described herein to holders of the securities of Transmode, upon the closing of the Offer described herein.

(2) Pursuant to Rule 457(c) and Rule 457(f) under the Securities Act, and solely for the purpose of calculating the registration fee, the market value of the securities to be received was calculated as the product of (i) 27,709,236 shares of Transmode AB, a public corporation organized under the laws of Sweden, and (ii) the average of the high and low sale prices of Transmode shares as reported on Nasdaq Stockholm on June 3, 2015 (SEK 110.75) (equivalent to \$13.17 based on the June 3, 2015 applicable exchange rate from Sveriges Riksbank of SEK

8.4118/\$), minus \$92,399,257, the estimated maximum aggregate amount of cash to be paid by Infinera Corporation in the Offer described herein.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) under the Securities Act, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

Index to Financial Statements

The information in this preliminary prospectus is not complete and may be changed. Infinera may not exchange these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to exchange these securities, and is not soliciting an offer to exchange these securities, in any jurisdiction where the exchange is not permitted.

Subject to Completion, Dated June 8, 2015

PRELIMINARY PROSPECTUS

On behalf of the board of directors of Infinera Corporation (Infinera), Infinera is pleased to deliver this Prospectus relating to the proposed combination of Transmode AB, a public company organized under the laws of Sweden (Transmode), with Infinera. Infinera is making a public offer to the shareholders of Transmode to tender all their shares in Transmode to Infinera (the Offer). The total Offer consideration consists of a mixture of cash and shares of Infinera s common stock (Infinera Shares), with each Transmode share valued at SEK 107.05. With respect to approximately 73.80 percent of the shares of Transmode tendered by each shareholder, Infinera is offering approximately 0.6376 shares of Infinera common stock per Transmode share (the Share Consideration); and with respect to the remaining approximately 26.20 percent of the shares of Transmode tendered by such shareholder, Infinera is offering SEK 107.05 in cash per Transmode share (the Cash Consideration). Infinera is conducting the Offer to acquire Transmode as a wholly owned subsidiary of Infinera.

Infinera Shares are traded on the NASDAQ Global Select Market under the symbol INFN. On June 5, 2015, the closing price of Infinera s common stock as reported on the NASDAQ Global Select Market was \$21.40 per share.

Infinera has issued a press release that states the terms and conditions of the Offer. Infinera s obligation to pay the Cash Consideration for and to exchange shares of its common stock for shares of Transmode, is subject to the conditions listed herein under Terms of the Offer Conditions to the Offer. This prospectus provides information about Infinera and Transmode and the Offer that Transmode shareholders should know when they decide whether or not to tender their shares in the Offer.

Please read this entire prospectus carefully, including the section entitled Risk Factors beginning on page 17 of this prospectus.

Table of ContentsIndex to Financial Statements

TABLE OF CONTENTS

| | Page |
|--|-------------|
| <u>Summary</u> | 1 |
| <u>Risk Factors</u> | 17 |
| <u>Terms of the Offer</u> | 33 |
| <u>Material U.S. Federal Income Tax Considerations</u> | 59 |
| <u>Information Regarding Transmode</u> | 68 |
| <u>Unaudited Pro Forma Condensed Combined Financial Information</u> | 73 |
| <u>Material Contracts Between Infinera and Transmode</u> | 84 |
| <u>Security Ownership of Certain Beneficial Owners and Management of Transmode</u> | 103 |
| <u>Experts</u> | 105 |
| <u>Legal Matters</u> | 105 |
| <u>Where You Can Find More Information</u> | 105 |
| <u>Incorporation of Certain Information by Reference</u> | 106 |

You should rely only on the information contained in this prospectus, including the documents incorporated by reference. Infinera has not authorized anyone to provide you with any different information. Infinera is offering to exchange Transmode shares for shares of Infinera common stock only in jurisdictions where the Offer is permitted. The information contained in this prospectus is accurate only as of the date of such document, and the information contained in any document incorporated herein by reference is accurate only as of the date of such document incorporated by reference. Infinera's business, financial condition, liquidity, results of operations, and prospects may have changed since those dates.

This prospectus incorporates important business and financial information about Infinera that is not included or delivered with this prospectus. This information is available without charge to security holders upon written or oral request. Requests for copies should be directed to Infinera Corporation, 140 Caspian Court, Sunnyvale, CA 94089, Attention: Corporate Secretary, Telephone: (408) 572-5200. To obtain timely delivery, security holders must request the information no later than five business days before [], 2015, the date they must make their investment decision. These filings are also made available, free of charge, on Infinera's website at www.infinera.com. The information contained in, and that can be accessed through, Infinera's website is not incorporated into and does not form a part of this prospectus.

Trademarks

This prospectus contains the trademarks of Infinera and Transmode, which, to Infinera's knowledge, are the property of Infinera and Transmode, respectively. Solely for convenience, the trademarks of Infinera and Transmode referred to in this prospectus may be listed without the ® and ™ symbols.

Table of Contents

Index to Financial Statements

SUMMARY

This summary provides an overview of selected information and does not contain all the information you should consider. For a more complete understanding of the Offer, you should carefully read the entire prospectus, including the section entitled Risk Factors and the financial data and other documents incorporated by reference in this prospectus, and the Swedish offer document that has been filed for approval and registration with the Swedish Financial Supervisory Authority (SFSA).

Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to Infinera, refer to Infinera Corporation (or its subsidiaries when applicable). All references to Transmode refer to Transmode AB (or its subsidiaries when applicable).

References in this prospectus to USD or to \$ are to United States dollars. References in this prospectus to SEK are to Swedish kronor.

The Companies

Infinera

Infinera Corporation (NASDAQ: INFN) is a U.S. corporation incorporated in the State of Delaware, USA. Infinera Shares are traded on the NASDAQ Global Select Market. Infinera was incorporated in December 2000, and is headquartered in Sunnyvale, California, USA. Infinera's principal executive offices are located at 140 Caspian Court, Sunnyvale, CA 94089, USA.

Infinera provides optical transport networking equipment, software and services to Tier 1 and Tier 2 telecommunications service providers, Internet content providers, cable operators, wholesale and enterprise carriers, research and education institutions, and government entities (collectively, Service Providers) across the globe. Infinera's technologies and platforms enable Service Providers to automate, converge and scale their metro, long-haul and subsea optical networks. As of December 27, 2014, Infinera had 1,495 employees. A total of 567 of those employees were located outside of the United States. Total revenue was USD 668.1 million in 2014 and USD 544.1 million in 2013. Infinera's market capitalization as of May 29, 2015 was approximately USD 2,707 million.

Additional information concerning Infinera is included in Infinera's reports filed under the Securities Exchange Act of 1934, as amended (the Exchange Act), that are incorporated by reference into this prospectus. See the section entitled Where You Can Find More Information on page 105.

Transmode

Transmode is a global provider of packet-optical networking solutions that enable fixed line and mobile network operators to cost effectively address the capacity needs created by the rapid growth in video and data traffic. These solutions are important building blocks in next-generation high-speed optical networks that support services such as broadband backhaul, mobile data backhaul, video delivery services and cloud computing. Transmode's solutions are designed to increase the capacity, flexibility and functionality of metro and regional networks and are based on Wavelength Division Multiplexing (WDM) and transport technologies such as Ethernet. Transmode's Native Packet Optical 2.0 architecture gives customers key advantages such as cost efficient Ethernet services, ultra-low latency, low power consumption and future proof network design.

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Transmode is headquartered in Stockholm, Sweden and is listed on Nasdaq Stockholm, Mid Cap (TRMO). Since 2000, Transmode has installed more than 50,000 systems for over 650 fixed and mobile network operators, service providers, large enterprises and public institutions in over 50 countries across the globe.

-1-

Table of Contents

Index to Financial Statements

The principal executive offices of Transmode are located at Fredsborgsgatan 24, SE-117 43 Stockholm, Sweden. Its telephone number is +46 8 410 88 000 and its website address is www.transmode.com. The information contained in, and that can be accessed through, its website is not incorporated into and does not form a part of this prospectus.

Table of Contents

Index to Financial Statements

SUMMARY OF THE OFFER

The following summary contains the principal terms of the Offer and is not intended to be complete. It does not contain all of the information that is important to you. For a more detailed description of the Offer, please refer to the section entitled Terms of the Offer in this prospectus.

Infinera is offering each shareholder of Transmode, a company organized under the laws of Sweden:

with respect to approximately 73.80 percent of the Transmode shares tendered by each shareholder: approximately 0.6376 Infinera Shares per Transmode share; and

with respect to the remaining approximately 26.20 percent of the Transmode shares tendered by each shareholder: SEK 107.05 in cash per Transmode share.

Accordingly, for every 10 Transmode shares tendered, each Transmode shareholder will receive SEK 280.50 in cash and approximately 4.705 Infinera Shares.

The Infinera Shares being offered per Transmode share would be equivalent to a value of approximately SEK 107.05 per Transmode share (based on the closing price of \$19.43 for Infinera's common stock on April 8, 2015, the last trading day prior to announcement of the Offer and a SEK/USD mid exchange rate of 8.6414 published by the Swedish Central Bank (*Sw. Riksbanken*) on April 8, 2015).

Upon expiration of the acceptance period in the Offer, assuming the satisfaction or waiver of the conditions to the completion of the Offer, Infinera will publicly announce the outcome of the Offer and will promptly begin settlement. The acceptance period will commence on [], 2015, and expires at 5:00 PM, Central European Summer Time (11:00 AM, Eastern Time) on [], 2015, unless Infinera exercises its right to extend the acceptance period. If Infinera becomes the owner of more than 90 percent of the shares of Transmode, Infinera intends to initiate a compulsory acquisition procedure with respect to the remaining shares in Transmode under Swedish law so that Infinera may acquire any securities that remain outstanding after the completion of the Offer.

Conditions to the Offer

The Offer is subject to a number of conditions described in more detail later in this prospectus under the heading *Terms of the Offer Conditions to the Offer*.

Material U.S. Federal Income Tax Considerations

For a discussion of the material federal income tax considerations relating to the Offer, see *Certain Material U.S. Federal Income Tax Considerations*.

Certain Tax Considerations in Sweden

For a discussion of the material Swedish tax considerations relating to the Offer, see *Certain Tax Considerations in Sweden*.

Anticipated Accounting Treatment

The acquisition of Transmode shares acquired in the Offer will be accounted for under the acquisition method of accounting under accounting principles generally accepted in the U.S. (U.S. GAAP), which means that Transmode's results of operations will be consolidated with Infinera's from the date of the closing of the Offer and their respective assets and liabilities, including identified intangible assets, will be recorded at their then fair values at the same time with the excess purchase price allocated to goodwill.

Table of Contents

Index to Financial Statements

Regulatory Approvals

No filing under the Hart-Scott-Rodino Antitrust Improvements Act (the HSR Act), or under Swedish or European Union law, is required in connection with the Offer. However, the Antitrust Division of the Department of Labor and the Federal Trade Commission, which regulate the HSR Act, may challenge the Offer on antitrust grounds notwithstanding the fact that no filings were required. Additionally, at any time before or after the completion of the Offer, any U.S. state could take action under the antitrust laws as it deems necessary or desirable in the public interest, or other persons, including non-U.S. governmental authorities, could take action under antitrust or competition laws, including seeking to enjoin the Offer. Infinera cannot assure you that a challenge to the Offer will not be made, or that, if a challenge is made, that Infinera will prevail. Infinera does not believe any other regulatory filings are required in connection with the Offer that would materially affect Infinera's ability to complete the Offer or affect the post-closing operations of the combined business.

Appraisal Rights

Infinera stockholders are not entitled to any rights to seek appraisal of their shares or to exercise any preemptive rights in connection with the issuance of shares of Infinera Shares in connection with the Offer. Under Swedish law and Transmode's articles of association, Transmode shareholders are not entitled to any rights to seek appraisal of their Transmode shares in connection with the Offer, though certain related rights exist in connection with the compulsory acquisition proceedings described under *Terms of the Offer Special Considerations*.

Ownership of Directors and Officers

At the close of business on April 30, 2015, directors and executive officers of Transmode and their affiliates beneficially owned and were entitled to vote approximately 35.3 percent of the 27,778,676 Transmode shares outstanding on that date. Neither a vote of Infinera stockholders nor a vote of Transmode shareholders is required to approve the Offer.

Undertaking to accept the Offer and lock-up undertaking

In connection with the Offer, Pod Investment AB (Pod), which as of May 29, 2015 holds approximately 33.2 percent of the total number of shares and votes in Transmode, entered into an irrevocable undertaking agreement with Infinera, pursuant to which Pod has agreed to accept the Offer, subject to certain conditions (the Irrevocable Undertaking).

In addition, Pod entered into a holding agreement with Infinera (the Lock-Up Agreement), pursuant to which Pod is restricted for a certain period from transferring the Infinera Shares it receives pursuant to the Offer.

Table of ContentsIndex to Financial Statements**SELECTED HISTORICAL FINANCIAL DATA OF INFINERA**

The following table sets forth the selected historical financial data for the five years ended December 27, 2014, which has been derived from the audited consolidated financial statements of Infinera. The selected historical financial data for the three month periods ended March 28, 2015 and March 29, 2014 are derived from Infinera's unaudited financial statements as of such dates and for those periods. The historical financial and operating information may not be indicative of Infinera's future performance. You should read the following summary selected historical consolidated financial data in conjunction with the consolidated financial statements of Infinera and the notes thereto and the discussion under Management's Discussion and Analysis of Financial Condition and Results of Operations included as part of Infinera's Annual Report on Form 10-K for the fiscal year ended December 27, 2014 and Quarterly Report on Form 10-Q for the quarter ended March 28, 2015, which are incorporated by reference into this prospectus. For more information, see the section entitled Where You Can Find More Information beginning on page 105.

Consolidated Statements of Operations

| | Q1 Ended | | Years Ended | | | | |
|---|----------------------------------|----------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| | March 28, 2015 (Unaudited) | March 29, 2014 (Unaudited) | December 27, 2014 | December 28, 2013 | December 29, 2012 | December 31, 2011 | December 25, 2010 |
| (In thousands, except per share data) | | | | | | | |
| Revenue: | | | | | | | |
| Product | \$ 160,843 | \$ 124,242 | \$ 572,276 | \$ 465,424 | \$ 380,035 | \$ 352,644 | \$ 407,733 |
| Services | 26,019 | 18,573 | 95,803 | 78,698 | 58,402 | 52,233 | 46,619 |
| Total revenue | 186,862 | 142,815 | 668,079 | 544,122 | 438,437 | 404,877 | 454,352 |
| Cost of revenue: | | | | | | | |
| Cost of product | 89,506 | 78,438 | 340,856 | 295,715 | 259,437 | 220,806 | 228,400 |
| Cost of services | 9,244 | 5,971 | 38,919 | 29,768 | 21,431 | 18,580 | 19,945 |
| Restructuring and other costs (credit) related to cost of revenue | | | | | | | (182) |
| Total cost of revenue | 98,750 | 84,409 | 379,775 | 325,483 | 280,868 | 239,386 | 248,163 |
| Gross profit | 88,112 | 58,406 | 288,304 | 218,639 | 157,569 | 165,491 | 206,189 |
| Operating expenses: | | | | | | | |
| Research and development | 39,257 | 29,346 | 133,484 | 124,794 | 117,233 | 127,120 | 118,518 |
| Sales and marketing | 21,042 | 17,862 | 79,026 | 72,778 | 75,862 | 64,773 | 58,103 |
| General and administrative | 12,656 | 12,254 | 48,452 | 45,253 | 47,475 | 54,375 | 58,098 |
| Restructuring and other costs (credit) | | | | | | (129) | 159 |

| | | | | | | | |
|--|------------------|-------------------|------------------|--------------------|--------------------|--------------------|--------------------|
| Total operating expenses | 72,955 | 59,462 | 260,962 | 242,825 | 240,570 | 246,139 | 234,878 |
| Income (loss) from operations | 15,157 | (1,056) | 27,342 | (24,186) | (83,001) | (80,648) | (28,689) |
| Other income (expense), net: | | | | | | | |
| Interest income | 414 | 336 | 1,456 | 923 | 911 | 1,014 | 1,390 |
| Interest expense | (2,890) | (2,677) | (11,021) | (6,061) | | | |
| Other gain (loss), net | 301 | (729) | (1,365) | (1,141) | (1,050) | (419) | (316) |
| Total other income (expense), net | (2,175) | (3,070) | (10,930) | (6,279) | (139) | 595 | 1,074 |
| Income (loss) before income taxes | 12,982 | (4,126) | 16,412 | (30,465) | (83,140) | (80,053) | (27,615) |
| Provision for income taxes | 616 | 248 | 2,753 | 1,654 | 2,190 | 1,691 | 317 |
| Net income (loss) | \$ 12,366 | \$ (4,374) | \$ 13,659 | \$ (32,119) | \$ (85,330) | \$ (81,744) | \$ (27,932) |
| Net income (loss) per common share: | | | | | | | |
| Basic | \$ 0.10 | \$ (0.04) | \$ 0.11 | \$ (0.27) | \$ (0.77) | \$ (0.78) | \$ (0.28) |
| Diluted | \$ 0.09 | \$ (0.04) | \$ 0.11 | \$ (0.27) | \$ (0.77) | \$ (0.78) | \$ (0.28) |
| Weighted average shares used in computing net income (loss) per common share: | | | | | | | |
| Basic | 127,840 | 121,352 | 123,672 | 117,425 | 110,739 | 105,432 | 99,380 |
| Diluted | 137,304 | 121,352 | 128,565 | 117,425 | 110,739 | 105,432 | 99,380 |

Table of Contents**Index to Financial Statements****Consolidated Balance Sheets**

**March 28, March 29,
2015 2014 December 27, December 28, December 29, December 31, December 25,
(Unaudited)(Unaudited) 2014 2013 2012 2011 2010
(In thousands, except par values)**

ASSETS**Current assets:**

| | | | | | | | |
|---|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Cash and cash equivalents | \$ 118,623 | \$ 85,249 | \$ 86,495 | \$ 124,330 | \$ 104,666 | \$ 94,458 | \$ 113,649 |
| Short-term investments | 215,080 | 226,705 | 239,628 | 172,660 | 76,146 | 101,296 | 168,013 |
| Accounts receivable, net | 131,224 | 107,405 | 154,596 | 100,643 | 107,039 | 80,616 | 75,931 |
| Inventory | 157,195 | 126,465 | 146,500 | 123,685 | 127,809 | 88,996 | 81,893 |
| Prepaid expenses and other current assets | 23,112 | 20,537 | 24,636 | 17,752 | 13,837 | 17,865 | 22,109 |
| Total current assets | 645,234 | 566,361 | 651,855 | 539,070 | 429,497 | 383,231 | 461,595 |
| Property, plant and equipment, net | 82,661 | 78,801 | 81,566 | 79,668 | 80,343 | 76,753 | 51,740 |
| Long-term investments | 69,835 | 32,756 | 59,233 | 64,419 | 2,874 | 54,315 | 9,953 |
| Cost-method investment | 14,500 | 9,000 | 14,500 | 9,000 | 9,000 | 9,000 | 4,500 |
| Long-term restricted cash | 5,108 | | | | | | |