

COMMERCE ACT 1986: BUSINESS ACQUISITION
SECTION 66: NOTICE SEEKING CLEARANCE
(PUBLIC COPY)

Date: 20 August 2004

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

PART 1: TRANSACTION DETAILS

1 The business acquisition for which clearance is sought

- 1.1 Clearance is sought for the acquisition by iSOFT NZ Limited of certain assets currently owned by Hewlett-Packard New Zealand, comprising:
- 5 customer contracts for the provision of software support services; and
 - associated goodwill and intellectual property rights in the HOMER and ORA*CARE software, being the software being supported under the customer contracts.

The 5 customer contracts are with the following organizations:

- (a) Healthcare Otago Limited – (using the ORA*CARE software);
- (b) Good Health Wanganui Limited – (using the ORA*CARE software);
- (c) Nelson Marlborough Health Services Limited – (using the ORA*CARE software);
- (d) Midcentral Health Limited – (using the HOMER software);
- (e) Canterbury Health Limited – (using the HOMER software).

1.2

2 The person giving the notice

- 2.1 This notice is given on behalf of iSOFT NZ Limited by:

Brookfields Lawyers (solicitor for the acquirer)
Brookfields House

19 Victoria Street West
Auckland

PO Box 240, Auckland 1

Attention: Ewe Leong Lim

Telephone: (9) 379 9350

Fax: (9) 379 3224

DX CP24134

Email: lim@brookfields.co.nz

2.2 Contact details of the acquirer are:

iSOFT NZ Limited
c/- Ewe Leong Lim
Brookfields Lawyers
Brookfields House
19 Victoria Street West
Auckland

PO Box 240, Auckland 1

Telephone: (9) 379 9350

Fax: (9) 379 3224

DX CP24134

Email: lim@brookfields.co.nz

3 Confidentiality

iSOFT seeks that the Commission treats the acquisition agreement provided under section 1.2 above as confidential given the commercial nature of the contents of the agreement, and the likelihood that the disclosure of the contents of the agreement would prejudice the commercial position of the parties involved. iSOFT does not seek to require confidentiality over any other information provided in this document. If further information is required by the New Zealand Commerce Commission from iSOFT, then iSOFT will advise the Commission if it wishes such information to be treated as confidential.

4 Details of the Participants

4.1 The person who proposes to acquire the assets referred to in section 1 above is iSOFT NZ Limited. No shares are being acquired. The owner of the assets is Hewlett-Packard New Zealand.

4.2 Contact details for iSOFT NZ Limited are set out in section 2 above.

Contact details for Hewlett-Packard New Zealand are:

Hewlett-Packard New Zealand
Viaduct Harbour Avenue
Maritime Square
PO Box 3860, Auckland
Attention: Prenil Balia
Finance Manager, HP Services

Telephone: (9) 918 9203
Fax: (9) 918 9592
Email: prenil.balia@hp.com

5.1 Acquirer group/associates:

iSOFT NZ Limited was recently incorporated in New Zealand. It was incorporated as the entity to acquire a small part of the Hewlett-Packard New Zealand business and other businesses of Galen Group Limited and i-Health Limited and will be the entity that conducts the business operation of the iSOFT Group in New Zealand. It is a wholly-owned subsidiary of iSOFT Overseas Holdings Limited (a UK corporation), which in turn is a wholly-owned subsidiary of iSOFT Group plc. iSOFT Group plc is a UK corporation and is listed on the London Stock Exchange.

iSOFT Group plc is the ultimate parent company of a number of subsidiaries operating in various parts of the world. One of these subsidiaries is iSOFT Australia Pty Ltd (an Australian corporation). iSOFT Australia Pty Ltd has 3 customers in New Zealand to which it provides software support and related services for the i.Patient Manager (formerly called PiMS) software. This software is used in hospitals as patient administration software, as is the HOMER and ORA*CARE software which is being acquired from Hewlett-Packard New Zealand.

iSOFT Group plc has recently merged with Torex, which is another company listed on the London Stock Exchange. Torex had previously acquired HAS Solutions Pty Ltd, which has 2 patient administration software customers (with a total of 7 hospitals) in NZ. At this stage, HAS Solutions Pty Limited is a separate operating entity with its own management team.

5.2 Target company group/associates:

Hewlett-Packard New Zealand is an unlimited liability company. It is owned by Hewlett-Packard Australia & New Zealand Pty Limited, which is a wholly owned subsidiary of Hewlett-Packard Australia Pty Limited. The ultimate parent company is Hewlett-Packard Company, a US-listed corporation.

No shares in Hewlett-Packard New Zealand are being acquired by iSOFT NZ Limited. iSOFT NZ Limited is only acquiring a small part of the total business of Hewlett-Packard NZ, specifically the customer contracts relating to the provision of software support for 3 customers using the ORA*CARE software and 2 customers using the HOMER software.

- 6 Neither iSOFT NZ Limited nor Hewlett-Packard New Zealand nor any of their interconnected bodies corporate has a beneficial interest in, or is beneficially entitled to, any shares or other pecuniary interest in the other participant.
- 7 Neither iSOFT NZ Limited nor Hewlett-Packard New Zealand nor any of their interconnected bodies corporate has any links, formal or informal, with the other participant and other persons identified in section 5 and its/their existing competitors in each market.
- 8 There are 2 persons who are directors of both iSOFT Australia Pty Ltd and iSOFT NZ Limited, namely Richard Craven and Nigel Lutton. Richard Craven is the CEO of both companies and is responsible for iSOFT business activities in Australia, New Zealand and Asia.

iSOFT Australia Pty Ltd has 3 customers in New Zealand to which it provides software support and related services for the i.Patient Manager (formerly called PiMS) software. This software is used in hospitals as patient administration software, as is the HOMER and ORA*CARE software which is being acquired from Hewlett-Packard New Zealand.

- 9 iSOFT NZ Limited was recently incorporated in New Zealand. It's business activities will consist of supplying software for use primarily in hospitals and related implementation, consulting and support services.

Hewlett-Packard New Zealand is engaged in the following business activities:

- **Enterprise Systems** - provides the key technology components of enterprise IT infrastructure to enhance business agility, including enterprise storage, servers, management software and a variety of solutions.
- **Imaging and Printing** - provider of printing and imaging solutions for both business and consumer use. Imaging and Printing includes printer hardware, all-in-ones, digital imaging devices such as cameras and scanners, and associated supplies and accessories. It also is expanding into the commercial printing market.
- **HP Services** - HP Services is a premier, global IT services team. It offers guidance, know-how and a comprehensive portfolio of services to help customers realize measurable business value from their IT investments.

- **Personal Systems** - supply simple, reliable and affordable personal-computing solutions and devices for home and business use, including desktop PCs, notebooks, workstations, thin clients, smart handhelds and personal devices.

10 This proposal is made to seek clearance from the New Zealand Commerce Commission to the acquisition by iSOFT NZ Limited of the assets identified in section 1 above.

iSOFT NZ Limited intends to continue to provide software support services to the 5 customers whose contracts are being acquired. It will seek to persuade these customers to replace the legacy patient administration software currently being supported with iSOFT's new generation software. iSOFT recognizes that this replacement process is likely to require each customer to go to public tender for a replacement system, which will provide iSOFT's competitors with the ability to win the business from iSOFT.

iSOFT understands that the NZ Ministry of Health would like to achieve greater standardisation in the type of hospital software used in NZ (in view of the variety of systems currently in place) and greater integration and interoperability between the different systems and, eventually, the different geographic areas. iSOFT suggests that the Commerce Commission contact Mike Rillstone, Chief Advisor – Health Sector I & T of the Ministry of Health to obtain further information. Mr. Rillstone's contact details are: Phone (04) 496 2152; Fax (04) 496 2341; Mobile 027 229 3616; email mike_rillstone@moh.govt.nz

Part of the rationale for iSOFT's acquisition is to enable it to be better positioned as a supplier in the NZ marketplace should the MOH plan to rationalize IT systems proceed to implementation. iSOFT understands that the MOH has issued guidelines to District Health Boards (DHBs) to ensure that a contestable process takes place and that any procurement is done in collaboration with other DHBs in their region.

PART II: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11.1 iSOFT NZ Limited has recently acquired the business of Galen Group Limited, whose InteHealth patient administration software has 5 customers (with a total of 9 hospitals) in NZ. iSOFT NZ Limited was recently incorporated in NZ and has not previously conducted another business in NZ.

By virtue of its acquisition of the ORA*CARE and HOMER customer contracts currently owned by Hewlett-Packard New Zealand, iSOFT NZ Limited will add 5 customers (with a total of 11 hospitals) to its customer list.

iSOFT Australia Pty Limited is an associated company to iSOFT NZ Limited and currently has 3 patient administration customers (with a total of 4 hospitals) in NZ.

Following the merger between iSOFT Group plc and Torex (see section 5.1 above), HAS Solutions Pty Ltd now forms part of the iSOFT group of companies. HAS Solutions currently has 2 patient administration customers (with a total of 7 hospitals) in NZ.

- 11.2 iSOFT considers that the relevant market is the market for supplying hospitals in New Zealand with patient administration software (also known as ADT software) and related implementation, consulting and support services.

Set out in section 16 of this Clearance Application are 3 possible ways of analyzing the market shares – By Hospital, By Customer and By Customer Beds.

Differentiated Product Markets

- 12 iSOFT considers that the buyers in the ADT market make their purchases on the basis of product characteristics as well as price. When buyers go out to the market for ADT systems they invariably issue tender documentation that requires detailed information to be given about the functionality and performance of the software. Buyers also invariably require suppliers to provide detailed product demonstrations to verify that the software has the required functionality and performance characteristics. This information is also verified by buyers contacting other users of each supplier's software to establish whether the software performs satisfactorily.
- 13 Patient Administration Systems ("PAS") are designed to capture key administrative detail for patients on and during admission to hospital. Typically the Ministry of Health drives a large component of the requirements that are determined for data capture, and as such, most PAS ultimately provide the same outcome/output.

Principal characteristics that differentiate the products are primarily displayed around:

- workflow – the design of the screens;
- configurability of the application – ability to customize by users, or departments;
- ease of use – usability;
- technology - determined by the customer ie Windows, SQL v Sybase database etc; and
- integration to other components such as Billing.

PAS is a niche market, with products developed specifically for this health market only. The product differentiators outlined above do not determine particular buyer groups.

iSOFT considers that there is a material degree of supply-side substitutability in the provision of IT software and services for a large number of different applications within secondary healthcare services. Although different health professionals (clinicians, managers, technicians, administrators) and different hospital departments (Maternity, Accident & Emergency, Theatre) have different functional requirements, from a supply-side perspective very similar equipment, skills and know-how are used in order to produce and supply a wide variety of IT products and services.

iSOFT considers that supply-side substitution is facilitated by the relative ease with which IT implementation staff can be re-deployed within an organisation in order to quickly focus on, and develop, a new IT capability as necessary.

Accordingly, iSOFT suggests that the Commerce Commission should not place an over-emphasis on volume shares of the historic installed base (provided in section 16.2 below) for what is essentially a narrow product category (patient administration systems) given the scope for supply-side substitutability and the fact that market shares do not necessarily provide a good measure of the dynamics of the market going forward given the procurement changes being introduced by the Ministry of Health (discussed further below).

Vertical Integration

14 FT does not consider that the proposed acquisition will result in vertical integration at different functional levels. Both iSOFT and Hewlett-Packard New Zealand operate at the same levels in the supply chain – they both develop and modify software for hospitals and distribute that software directly to hospitals. There is no intermediate level in the supply chain.

15.1 In respect of the market the subject of this application, iSOFT NZ Limited has not notified to the Commerce Commission in the last 3 years of the acquisition of any assets of a business in NZ or shares involving a company in NZ, nor has any interconnected body corporate of iSOFT NZ Limited.

In respect of the market the subject of this application, Hewlett-Packard has not notified to the Commerce Commission in the last 3 years the acquisition of any assets of a business in NZ or shares involving a company in NZ, nor has any interconnected body corporate of Hewlett-Packard New Zealand.

15.2 In respect of the market the subject of this application, iSOFT NZ Limited has not acquired any assets of a business in NZ or shares involving a company in

NZ in the last 3 years, except for the recent acquisition of the business assets of Galen Group Limited.

In respect of the market the subject of this application, iSOFT Australia Pty Limited has in the last 3 years entered into contracts with 3 customers in NZ. These contracts were not acquired by iSOFT Australia Pty Limited as a result of an acquisition of assets of a business or of shares in another company.

Hewlett-Packard New Zealand acquired the assets the subject of this clearance application from CSC New Zealand Limited in December 2001.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

Existing Competitors

- 16.1 The suppliers of PAS software systems that are currently installed in NZ hospitals are listed below, together with details of the origin of the software:
- (a) iSOFT Australia Pty Limited – importer from Australia;
 - (b) Galen Group Limited (business assets now acquired by iSOFT NZ Limited) – NZ-based supplier;
 - (c) Hewlett-Packard New Zealand – NZ-based supplier;
 - (d) HAS Solutions Pty Ltd – importer from Australia;
 - (e) IBA Health Limited – importer from Australia;
 - (f) SMS – importer from USA;
 - (g) HOSPRO – importer from Australia;
 - (h) Boulcott – origin unknown;
 - (i) Elizabeth Knox – NZ based supplier;
 - (j) EPI – origin unknown;
 - (k) Auckland DHB – in-house system developed in NZ;
 - (l) South Canterbury DHB – in-house system developed in NZ;
 - (m) Jade Corporation – NZ based supplier; and
 - (n) Miscellaneous suppliers account for 13 customers (with a total of 15 hospitals) – names and origin unknown.
- 16.2 Included in this Clearance Application are 3 possible ways of analyzing market shares of the various competitors in the market for PAS software– By Hospital/By Customer/By Customer Beds.

iSOFT considers that the most appropriate measure is the Breakdown of Market Share by Customers as tenders are usually now issued with a view to all of a customer's sites being implemented with a common software system.

iSOFT does not have information which would enable it to provide a breakdown of market share on the basis of revenues obtained by its competitors in the market from their activities in the market.

Breakdown of Market Share By Hospital

Rank	Supplier	No. of Hospitals	% of total Hospitals
1	Hewlett-Packard	11	15.0%
2	IBA	9	12.3%
3	iSOFT NZ (Galen)	9	12.3%
4	HAS Solutions	7	9.6%
5	HOSPRO	5	6.8%
6	Auckland DHB	5	6.8%
7	iSOFT Australia	4	5.5%
8	SMS	3	4.1%
9	Jade	1	1.4%
10	Boulcott	1	1.4%
11	Elizabeth Knox	1	1.4%
12	EPI	1	1.4%
13	IntraHealth Profile	1	1.4%
14	Miscellaneous unknown suppliers	15	20.5%
TOTAL		73	100.0%

On the basis of the above table, after the proposed acquisition, iSOFT Group's market share by hospital will comprise 42.4% (being the combined shares of Hewlett-Packard, Galen, HAS Solutions and iSOFT Australia), which combined with the next 2 biggest suppliers (IBA and HOSPRO) will result in a 3 firm market concentration of 61.5%.

Breakdown of Market Share By Customer

Rank	Supplier	No. of Customers	% of Customers
1	IBA	6	14.0%
2	iSOFT NZ (Galen)	5	11.6%
3	Hewlett-Packard	5	11.6%
4	iSOFT Australia	3	7.0%
5	HAS Solutions	2	4.6%
6	Auckland DHB	1	2.3%
7	HOSPRO	1	2.3%
8	SMS	1	2.3%
9	Jade	1	2.3%
10	Boulcott	1	2.3%

11	Elizabeth Knox	1	2.3%
12	EPI	1	2.3%
13	South Canterbury DHB	1	2.3%
14	Jade	1	2.3%
15	IntraHealth Profile	1	2.3%
16	Miscellaneous unknown suppliers	13	30.2%
TOTAL		43	100%

On the basis of the above table, after the proposed acquisition, iSOFT Group's market share by customer will comprise 34.8% (being the combined shares of Hewlett-Packard, Galen, HAS Solutions and iSOFT Australia), which combined with the next 2 biggest suppliers (IBA and HOSPRO) will result in a 3 firm market concentration of 51.1%.

Breakdown of Market Share By Customer Beds

Rank	Supplier	No. of Customer Beds	% of Customer Beds
1	Hewlett-Packard	3,022	26.9%
2	IBA	1,768	15.8%
3	iSOFT Australia	1,7055	15.2%
4	Auckland DHB	1,381	12.3%
5	ISOFT NZ (Galen)	787	7.0%
6	HOSPRO	600	5.3%
7	SMS	550	4.9%
8	HAS Solutions	400	3.6%
9	South Canterbury DHB	133	1.2%
10	Elizabeth Knox	74	0.7%
11	EPI	70	0.6%
12	Boulcott	44	0.4%
13	Jade		%
14	Miscellaneous unknown suppliers		%
TOTAL		11,217	100%

On the basis of the above table, after the proposed acquisition, iSOFT Group's market share by customer beds will comprise 52.7% (being the combined shares of Hewlett-Packard, Galen, HAS Solutions and iSOFT Australia), which combined with the next 2 biggest suppliers (IBA and HOSPRO) will result in a 3 firm market concentration of 73.8% (Auckland DHB is not a commercial supplier at present).

Sources of Estimates:

- 16.3 The source material for these estimates is the 2003 Hospital and Health Services Yearbook published by APN Business Information Group, whose contact details are:

Ms Elaine Starkey
National Product Manager
APN Business Information Group
Level 3, 2 Elizabeth Plaza
North Sydney NSW 2060
Australia
Tel: +61 +2 9936 8750
Fax: +61 +2 9936 8777
Email: estarkey@apnbig.com.au

- 16.4 iSOFT considers that the Commerce Commission should not place an over-emphasis on the volume shares of the historic installed base set out above in its assessment of the potential effect on competition of the proposed acquisition.

Shares of the Historic Installed Base should not be over relied on

Market shares, calculated on the basis of installed base, are an unreliable indicator of market power. Market share of installed base merely reflects an historic position based on contracts already awarded, not the current competitive landscape nor the dynamism of the market going forward. Accordingly, historical market shares by reference to the installed base of contracts do not capture the ability of many current suppliers to offer credible tenders.

In addition, in focusing on historical sales, a market share based on installed base gives no indication of the firms likely to be feasible and credible bidders in the current competitive environment.

The historical view quickly becomes out of date as an indicator of current competitive constraints in an innovative and changing IT market with high rates of incumbent displacement. The experience in the UK market bears this out - it is noteworthy that of the 31 Electronic Patient Record (EPR) contracts awarded in recent years where the incumbent is known (in 26 cases), the incumbent supplier has been displaced in 21 cases (i.e. in 81 per cent of cases), indicating that significant swings in market share can occur in this market.

Volatility of Market Position

It should be noted that in a bidding market where reasonably sized contracts are awarded on an infrequent basis (given that these IT systems last between 8 and

12 years), market shares tend to be volatile and a market position can change significantly depending on success or otherwise in winning contracts.

Frequency of Purchase Decisions

Because most customers retain their PAS software for a number of years after their initial installation, purchase decisions are infrequent. The historical installed base figures in many instances reflect purchase decisions that were made some years ago. The pattern of purchasing in the distant past is not a good reflection of the competitiveness of the market going forward. In particular, they do not capture the fact that the position of key players can change significantly depending on their success or otherwise in winning contracts.

Supply Side Substitutability

It is also important to appreciate that iSOFT considers that there is a material degree of supply-side substitutability between the provision of IT software and services for a large number of different applications within secondary healthcare services. As a result it may not be particularly meaningful to examine market shares on the basis of narrowly defined product categories, such as patient administration systems. This section therefore provides a brief overview of the scope for IT providers to diversify between supplying different products/services within the secondary healthcare sector.

Secondary healthcare services, i.e. those services provided by hospitals, require a very wide variety of different IT products and services. In terms of the requirements of different healthcare professionals, managers and administrators require systems to assist with resource and capacity planning (for example information on patient flows, waiting lists and associated resources such as theatre capacity and beds); clinicians, on the other hand, require information on their patients, their medical history and demographics, their test results and systems which assist the ordering of investigations and services. Beyond this, certain hospital departments will have individual requirements which might necessitate specific modules added to the broad functions outlined above (for example accident and emergency, theatre and maternity).

Demand Side Perspective

From a demand-side perspective, the different health professionals and different hospital departments have requirements for specific functions. For example, a maternity department has different needs to a pharmacy department within a hospital. However, the increased emphasis on inter-operability, central databases, centralised reporting and single systems means that increasingly customers expect these systems to be run from the same type of software (recognising that the customer-facing element may differ) and will form part of

one procurement, suggesting that all IT products and services should be assessed similarly from a demand side perspective.

Supply Side Perspective

From a supply-side perspective, it is the case that very similar equipment, skills and know-how may be used in order to produce and supply a very wide variety of IT products and services for different departmental applications and healthcare professionals. Whilst different programming codes may be used in different software products, the general programming expertise is common to all healthcare applications. Differences tend to arise as regards background knowledge of the workings of different hospital departments and health professionals. For example, as described above, some systems are aimed at administrators, and require knowledge of administration/management, whilst others will be aimed at doctors/technical staff, requiring a different type of background knowledge. To the extent that the relevant know-how is not held in-house by an IT systems supplier, such know-how can be readily acquired by employing personnel with the relevant experience, or by working with the customer to develop an understanding. Furthermore, certain aspects of the development and production of the IT product can be sub-contracted to third parties with the relevant expertise.

In this connection it is noteworthy that a large number of IT products and services suppliers are active in the supply of products and services for a wide variety of departmental applications, demonstrating the significant degree of supply-side substitutability between these products.

A further factor supporting the opportunity available to existing suppliers to quickly diversify is the relative ease with which staff can be transferred within an organisation in order to develop a new product using the existing skills and knowledge base of IT staff.

Accordingly, the ability of suppliers to provide IT software and services for a large number of applications within the secondary health care sector means that over-emphasis should not be given to market shares on the basis of narrowly defined product categories.

Historic Market Changes

iSOFT does not have information on what changes to market share has occurred over the last 5 years.

Other Considerations

- 16.5 Appendix A provides a list of some companies that would be expected to respond to customer tenders for a suite of administrative or clinical software for

hospitals. Most of the companies on the list are not incumbent suppliers to NZ customers, but could enter the market quickly (“near entrants”).

- 16.6 Appendix A provides details of the financial strength of these near entrants, many of which are much larger than iSOFT based on worldwide annual revenues.

16.7 **Imports**

Imports have the potential to provide a considerable constraint on domestic suppliers. There are no significant cost constraints on importers seeking to supply the NZ market. For example, there are no import quotas or import duties imposed on patient administration software. Also, the nature of software is that it can be transported around the world at negligible cost, either by email or on CD-ROM. Furthermore, there are no licences required by NZ government authorities to import or to supply patient administration systems to NZ customers.

Implementation

Implementation of PAS software can usually be achieved in around 6 months with limited numbers of implementation staff who can be brought to NZ and accommodated at low cost. On-going software support can easily be provided from off-shore locations. For example, iSOFT Australia currently supports its 3 customers in NZ from its Asia/Pacific Support Centre in Brisbane, Australia and from its Head Office in the UK. Use of remote access to customers’ computer systems is the common approach to providing software support – physical presence at the location of the customer is rarely necessary.

The only additional cost that a new entrant to the NZ market would face is the initial cost of incorporating the minimum mandatory reporting requirement of the NZ Ministry of Health into the software functionality.

Consequently, it is quite feasible for non-NZ companies to compete in the NZ market.

Experience from the UK bears this out. It is significant that of the 18 Electronic Patient Record contracts awarded since 2001 a third were won by new entrants offering products originally sold in overseas markets but subsequently adapted for the UK market (namely Per-Se, McKesson, Cerner and IBA).

- 16.8 Most companies involved in supplying patient administration software sell their software and services in more than one country. The Hewlett-Packard New Zealand software products that iSOFT will acquire if the acquisition proceeds

are considered to be “legacy” products that are based on out-moded technology and are not likely to be able to be exported to other countries.

- 16.9 Hewlett-Packard is not considered to be a vigorous and effective competitor in the area of patient administration software. Since acquiring its patient administration software business from CSC in December 2001, Hewlett-Packard has not added new customers to its existing hospital customer base.

Conditions of Expansion

- 17 iSOFT does **not** believe that any of the following market conditions are likely to act as a barrier to the expansion of existing competitors:

- *Frontier entry conditions e.g. tariffs; quarantine requirements; international freight costs.*
- *Legislative/regulatory conditions e.g. licensing; Resource Management Act requirements; health and safety standards.*
- *Industrial/business conditions e.g. critical inputs; economies of scale; access to technical knowledge requirements; capital requirements (and capital market’s perception of the risk and return); sunk costs (i.e. irrevocable or exit costs); influence of branding and sales promotion; technical specifications.*
- *Other conditions e.g. responses to expansion by major firms; lack of additional productive capacity; additional productive capacity having a relatively high cost.*

Examples of expansion in the NZ market in the last 5 years by existing competitors are provided below:

- IBA has recently been selected as the preferred vendor to supply its PAS system to Capital and Coast DHB;
- Jade Corporation are providing the PAS system for the new Women’s Hospital at Canterbury DHB.

- 18 Any of the existing suppliers to the market (see 16.2 above) could readily increase their capacity to supply the market. Software is not a product that is inherently limited by production capacity which some manufactured products are.
19. A decision to increase supply would be influenced by any sale opportunity that arises.

- 20 Given the nature of the product, increase of supply by an existing supplier could occur virtually instantaneously.
- 21/22 The iSOFT entity following the proposed acquisition would continue to be constrained from conduct that would be detrimental to its customers. If iSOFT was to attempt to substantially raise its prices its existing competitors would be better placed to put forward an alternative commercial proposition to iSOFT's customers that would involve the swapping out of iSOFT's products for competitors' products. Any attempt by iSOFT to change the commercial basis on which its products and services are supplied to the detriment of its customers would provide those customers with an incentive to seek alternative sources of supply from iSOFT's competitors.

Coordinated Market Power

- 23 iSOFT does **not** consider that the characteristics of the market, post-acquisition, would facilitate coordination efforts, such that the remaining firms are more easily able to form and maintain collusive arrangements (whether tacit or explicit) through which market power can be exerted. The market will still be composed of a significant number of existing competitors and an even greater number of potential competitors. Purchase decisions in relation to PAS systems are made relatively rarely by hospital customers and, as a result, competitors are highly motivated to be selected as the supplier as their chance of competing again for that business is unlikely to arise again for some years. Hence, there is no incentive for suppliers to collude to spread market share around or to maintain prices. History has shown that substantial discounts from suppliers' list prices are necessary to win new business. Further, the technology of the PAS systems is not static and is constantly been developed, increasing the difficulty for collusion to occur.
- 24 iSOFT does **not** consider that the characteristics of the market, post-acquisition, would impede the monitoring and enforcement of coordinated behaviour by market participants. Purchase decisions are invariably made after a structured tender process. Competitors are never informed by customers of the commercial aspects of other tenders.
- 25 There is no history of price coordination, price matching or price following by market participants. Pricing is something that is maintained as strictly commercial-in-confidence information that is never revealed by suppliers to their competitors. There is no history that iSOFT is aware of customers revealing the prices of suppliers to competitors of those suppliers.
- 26 iSoft does **not** consider that the proposed transaction will increase the risk of coordinated behaviour in the market for the reasons set out in section 23 above, that is, as the market will still be composed of a significant number of existing

competitors and an even greater number of potential competitors. Purchase decisions in relation to PAS systems are made relatively rarely by hospital customers and, as a result, competitors are highly motivated to be selected as the supplier as their chance of competing again for that business is unlikely to arise again for some years. Hence, there is no incentive for suppliers to collude to spread market share around or to maintain prices. Further, the technology of the PAS systems is not static and is constantly been developed, increasing the difficulty for collusion to occur.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

Conditions of Entry

27 iSOFT does **not** believe that any of the following market conditions are likely to act as a barrier to the entry of new competitors:

- *Frontier entry conditions e.g. tariffs; quarantine requirements; international freight costs.*
- *Legislative/regulatory conditions e.g. licensing; Resource Management Act requirements; health and safety standards.*
- *Industrial/business conditions e.g. critical inputs; economies of scale; access to technical knowledge requirements; capital requirements (and capital market's perception of the risk and return); sunk costs (i.e. irrevocable or exit costs); influence of branding and sales promotion; technical specifications.*
- *Other conditions e.g. responses to expansion by major firms; lack of additional productive capacity; additional productive capacity having a relatively high cost.*

Imports have the potential to provide a considerable constraint on domestic suppliers. There are no significant cost constraints on importers seeking to supply the NZ market. For example, there are no tariffs, import quotas or import duties imposed on patient administration software. Also, the nature of software is that it can be transported around the world at negligible cost, either by email or on CD-ROM. Furthermore, there are no licences required by NZ government authorities to import or to supply patient administration systems to NZ customers.

Implementation of PAS software can usually be achieved in around 6 months with limited numbers of implementation staff who can be brought to NZ and

accommodated at low cost. On-going software support can easily be provided from off-shore locations. For example, iSOFT Australia currently supports its 3 customers in NZ from its offices in Brisbane, Australia and in the UK. Use of remote access to customers' computer systems is the common approach to providing software support – physical presence at the location of the customer is rarely necessary.

Consequently, it is quite feasible for non-NZ companies to compete in the NZ market.

28 iSOFT considers that the following companies which do not currently supply the PAS software market in NZ could supply that market:

- Cardinal
- McKessonHBOC
- 3M
- KPMG
- SAP
- Siemens
- DMR
- Cerner
- Cap Gemini Ernst & Young
- Per-se/ Misys
- Working Systems
- Trakhealth Systems
- Orion
- Filetek
- IDX

See Appendix A Competitors of iSOFT for details on some of these companies.

Due to the nature of software development and support, which can be carried out remotely from the markets in which it is supplied, these competitors could effectively compete in NZ without establishing a permanent presence in NZ.

29 Any sizeable sale opportunity has the potential of enticing any of the international suppliers of PAS systems to try to enter the NZ market.

Likelihood, Sufficiency and Timeliness of Entry

30 It would not take long for new business entrants to enter the NZ market due to the nature of software development, supply and support. No production facilities are needed in NZ. Software can be instantaneously transmitted around the world, so there are no transportation delays that other products are subject to. Implementation of PAS systems can be carried out relatively quickly (in around 6 months) by the use of relatively few personnel being brought into NZ on a

temporary basis. Software support can be provide remotely from the overseas locations of new competitors.

- 31 Given the low costs of entry, it is likely that entry to the NZ market will be attractive at any time that a sizeable sale opportunity arises.
- 32 Many of the potential new entrants to the NZ market are international corporations of considerable size and with a wide product range. The financial substance of these international corporations are likely to be a strong selling point with purchasers who require suppliers with the financial resources to guarantee their continuation in business. Current market participants will likely have to seek to compete on price grounds to maintain their customer base.
- 33 The conditions of entry that would influence the business decision to enter the market by setting up from scratch (i.e. *de novo* entry) include the existence of the stated aim of the Ministry of Health to encourage the replacement by District Health Boards of legacy PAS systems with more modern systems in the next few years and the substantial increase of business that would flow from new licence fees, implementation services fees and support fees as this replacement strategy is progressed.
- 34 *De novo* entry could occur swiftly – see section 30 above.
- 35 The possibility of *de novo* entry is an influential factor as many of the potential new entrants already competes against iSOFT in a number of overseas markets.

PART V: OTHER POTENTIAL CONSTRAINTS

Constraints on Market Power by the Conduct of Suppliers

- 36/37/38 The merged entity will not rely on suppliers. Its software development and implementation and support services are all provided by employees of iSOFT Group companies.

Constraints on Market Power by the Conduct of Acquirers

- 39 The acquirers of goods and services supplied by iSOFT after the acquisition will be:
- Healthcare Otago Limited – ORA*CARE;
 - Good Health Wanganui Limited – ORA*CARE;
 - Nelson Marlborough Health Services Limited – ORA *CARE;
 - Midcentral Health Limited – HOMER;
 - Canterbury Health Limited – HOMER;
 - Counties Manakau DHB – PiMS;

- Waitemata DHB – PiMS;
- Mercy Ascot Hospital – PiMS;
- Northland DHB – InteHealth;
- Lakes DHB – InteHealth;
- Tairāwhiti DHB – InteHealth;
- Wairarapa DHB – InteHealth;
- St. Georges Private Hospital – InteHealth;
- Southern Cross Group – HAS Solutions software;
- Cornwall Park Hospital – HAS Solutions software.

40 All but 4 of the customers in section 39 are part of the public health sector. There are 4 private hospital entities – Mercy Ascot Hospital, St. Georges Private Hospital, Southern Cross Group and Cornwall Park Hospital.

41 **Sophisticated Purchasers**

The acquirers of goods and services supplied by iSOFT are all sophisticated purchasers of IT products and services. Many are part of the public health sector and are experienced at obtaining the best deal possible through competitive tendering processes and hard bargaining. They are clearly able to exert constraints on suppliers of IT healthcare systems who are conscious of customers' ability and willingness to switch to a number of other credible alternative suppliers.

Influence of Purchasers

Also, by being part of the public health sector, they are very powerful influencers of the decisions of other potential major customers of iSOFT in NZ. Acquirers of new PAS systems invariably rely on the experience of existing users of a supplier's products and services. It is critical for iSOFT to be successful in further promoting the adoption of its products and services that it has customers willing to act as reference sites. Reference sites host visits by other potential customers and show the software in use in a working hospital. They also provide critical evaluation of iSOFT's track record in supplying software and services. iSOFT does not pay its customers to act as reference sites, so their feedback is not influenced by the prospects of being rewarded for future sales by iSOFT to new customers. Therefore, their feedback is unbiased. iSOFT needs to be perceived as treating its customers fairly from pricing and quality of product and service perspectives for its business to grow. This requirement, together with the presence of strong competitors in the market, provides a significant constraint on all suppliers to the PAS market in NZ.

Future Procurement

iSOFT understands that the NZ Ministry of Health would like to achieve greater standardisation in the type of hospital software used in NZ (in view of the

variety of systems currently in place) and greater integration and interoperability between the different systems and, eventually, the different geographic areas. iSOFT understands that the MOH has issued guidelines to District Health Boards (DHBs) to ensure that a contestable process takes place and that any procurement is done in collaboration with other DHBs in their region.

It is expected that over 50% of the market will go to tender in the next 5 years, which will provide a considerable impetus to the competitive process between existing suppliers and new entrants to the market. Expected to go to tender in the next 12 months are Otago DHB (which will lead a South Island collaboration of 3 other DHBs), Waikato DHB and Pacific (Bay of Plenty) DHB.

Recent tender experience

Recent tender experience demonstrates the competitiveness of the market. In the past 3 years the following customers went to tender and received tenders from the following competitors:

- (a) Auckland Healthcare – went to tender 3 years ago – did not select any tendered solution; continues to operate its own in-house developed PAS. Companies that iSOFT is aware of who tendered include Cerner, SAP, IBA and iSOFT. Auckland Healthcare can be contacted for a list of other tenderers.
- (b) Capital and Coast DHB – went to tender 1 year ago – has selected IBA as the preferred vendor to replace its SMS system. Companies that iSOFT is aware of who tendered include Orion, IBA, iSOFT, Trakhealth, Precept and Jade. Capital and Coast DHB can be contacted for a list of other tenderers.
- (c) Southland DHB – went to tender 1 year ago – no decision made. Companies that iSOFT is aware of who tendered include Orion, IBA, iSOFT, Trakhealth and Jade. Southland DHB can be contacted for a list of other tenderers.

SUMMARY

iSOFT considers that the proposed acquisition will **not** lead to a substantial lessening of competition given:

- The competition it will continue to face from competitors with an existing presence in NZ.
- The threat of entry and expansion from sizeable international competitors.
- The scope for pressure to be exerted by purchasers on the suppliers of IT healthcare products and service.

- Low barriers to entry and expansion.

THIS NOTICE is given by Richard Craven, Chief Executive Officer, iSOFT NZ Limited

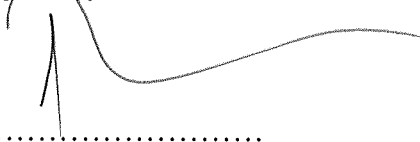
iSOFT NZ Limited hereby confirms that:

- all information specified by the Commission has been supplied;
- all information known to the applicant which is relevant to the consideration of this application/notice has been supplied;
- all information supplied is correct as at the date of this application/notice.

iSOFT NZ Limited hereby undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 20th day of August 2004

Signed by iSOFT NZ Limited:



.....
Director/Chief Executive Officer
by its Duly Authorised Solicitor

Name: Ewe Leong Lim