

ACQUISITION BY iSOFT GROUP PLC OF TOREX PLC

UNDERTAKINGS GIVEN BY iSOFT GROUP PLC TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 23 December 2003, iSOFT acquired all the shares in Torex;
- (b) It appears to the OFT that as a consequence of that transaction a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the Competition Commission for further investigation where it believes that it is or may be the case that the merger situation in question has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the UK;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the transaction to the Competition Commission;
- (f) The OFT further considers that the undertakings given below by iSOFT are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it as specified in its decision of 24 March 2004;
- (g) iSOFT gave initial undertakings on 23 January 2004 in respect of the acquisition of Torex pursuant to section 71 of the Enterprise Act 2002 for the purpose of preventing pre-emptive action. These initial undertakings cease to be in force on acceptance of the undertakings in lieu of reference given below by iSOFT.

NOW THEREFORE iSOFT hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Divestment of Torex's LIMS business

- 1.1 iSOFT shall effect, using its best endeavours and acting in good faith, the divestment of Torex's LIMS business by the end of the Divestment Period to a purchaser approved by the OFT.
- 1.2 iSOFT shall be deemed to have complied with the obligation at paragraph 1.1 if, by the end of the Divestment Period it has entered into a legally binding sale and purchase agreement with a purchaser approved in advance by the OFT in writing pursuant to these undertakings provided that, if later than the end of the Divestment Period, the final closing in respect of the divestment of Torex's LIMS business takes place within a period not exceeding 2 months (subject to obtaining all the necessary approvals and consents from third parties) after the approval of the relevant purchaser by the OFT.
- 1.3 Without prejudice to the generality of paragraph 1.1, iSOFT shall take any of the following measures to the extent to which they may be necessary to effect the divestment of Torex's LIMS business in accordance with that provision:-
 - (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits and consents);
 - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (d) the formation or winding up of a company.
- 1.4 In the event that iSOFT fails to complete the divestment of Torex's LIMS business within the Divestment Period, the OFT may, whether or not initiating the Trustee Functions set out below, require iSOFT to divest Torex's LIMS business as a going concern at no minimum price to a purchaser approved by the OFT.

Purchaser Approval

- 2.1 A proposed purchaser for Torex's LIMS business will need to satisfy the OFT that:
 - (a) it is independent of and unconnected to iSOFT and the Group of Interconnected Bodies Corporate to which iSOFT belongs and any

Associated Person or Affiliate of iSOFT or such Group of Interconnected Bodies Corporate;

(b) it has the financial resources, expertise and incentive to maintain and develop Torex's LIMS business as a viable and active business in competition with iSOFT and other competitors; and

(c) it must reasonably be expected to obtain all necessary approvals and consents from any relevant competition authority or other regulatory authority.

2.2 The OFT may require iSOFT and/or a proposed purchaser to provide it with such information and documentation as it may reasonably require to demonstrate to the OFT that the proposed purchaser will fulfil the requirements set out in paragraph 2.1 above.

Appointment of a Trustee

3.1 The provisions of paragraphs 3.2 to 3.7 below shall apply only as long as iSOFT has not satisfied the requirement to divest Torex's LIMS business in accordance with paragraphs 1.1 and 1.2.

3.2 Within fifteen Working Days of the OFT notifying iSOFT that it must do so, iSOFT shall propose to the OFT the names of at least two individuals to exercise the Trustee Functions and the full terms of their proposed mandates.

3.3 The individuals nominated by iSOFT pursuant to paragraph 3.2 shall meet the following requirements:

(a) they shall each be EU nationals with the necessary qualifications to carry out their mandates, and employees or partners of an investment bank, bank, building society, law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;

(b) they shall each be independent of iSOFT and of the Group of Interconnected Bodies Corporate to which iSOFT belongs and of any Associated Person or Affiliate of iSOFT or of such Group of Interconnected Bodies Corporate and of any proposed purchasers of Torex's LIMS business, and in the opinion of iSOFT, appropriate to be appointed as Trustee; and

(c) they shall neither be nor become exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

3.4 Within twenty Working Days of the OFT approving, at its discretion, one or more of the persons nominated by iSOFT pursuant to paragraph 3.2 above and their proposed mandates, and subject to any modifications the OFT deems necessary for the Trustee to carry out the Trustee Functions, iSOFT shall use all reasonable endeavours to appoint from the person or persons so approved one person to carry out the Trustee Functions, in accordance with the mandate approved by the OFT pursuant to this paragraph.

3.5 In the event that:

- (a) iSOFT fails to nominate any person or persons in accordance with the provisions of paragraph 3.2 above; or
- (b) none of the persons nominated by iSOFT pursuant to paragraph 3.2 is approved by the OFT; or
- (c) iSOFT is unable for any reason to conclude within the time limit stipulated in paragraph 3.4 the appointment of any such person following approval by the OFT;

iSOFT shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is approved by the OFT. iSOFT shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT.

3.6 The appointment of the Trustee pursuant to paragraphs 3.4 or 3.5 above shall be irrevocable unless (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises; or (b) the OFT is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

3.7 In the event that the appointment of the Trustee is terminated under paragraph 3.6 above, iSOFT shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is approved by the OFT. iSOFT shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT. Where required by the OFT, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

Functions of Trustee

- 4.1 The Trustee shall procure within 3 months of the OFT making such a request in writing, or within such other later period as may be specified by the OFT, the divestment of Torex's LIMS business at no minimum price, to a purchaser approved by the OFT in accordance with paragraph 4.3.
- 4.2 Without prejudice to the generality of paragraph 4.1, the Trustee shall take any of the measures set out in paragraph 1.3 in relation to Torex's LIMS business to the extent to which they may be necessary to effect the divestment of Torex's LIMS business in accordance with that provision.
- 4.3 The Trustee shall not sell or permit the divestment of Torex's LIMS business to a proposed purchaser unless it has obtained the OFT's prior approval in writing in respect of the identity of the purchaser. The Trustee shall notify the OFT of the identity of a proposed purchaser as soon as reasonably practicable and in any event at least twenty Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.
- 4.4 Pending the divestment of Torex's LIMS business pursuant to paragraph 4.1, the Trustee shall monitor iSOFT's compliance with its obligations under these undertakings and shall take such measures as it considers necessary to ensure such compliance.
- 4.5 The Trustee may give written directions to iSOFT to take such steps within its competence as may be specified or described in the directions for the purpose of securing iSOFT's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require iSOFT to:-
 - (a) offer any reverse premium or similar inducement to a purchaser; or
 - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment which would be unusual in scope, duration or financially having regard to the price and usual market practice in relation to similar disposals.
- 4.6 The Trustee shall provide to the OFT such information and reports in relation to the carrying out of the Trustee Functions as the OFT may require and shall promptly report in writing to the OFT if the Trustee concludes on reasonable grounds that iSOFT is failing to comply with any of its obligations under these undertakings.

- 4.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of iSOFT nor shall the Trustee Functions be extended or varied in any way by iSOFT save with the express written consent of the OFT.

iSOFT obligations in respect of Trustee

- 5.1 iSOFT shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 5.2 iSOFT shall take all such steps as are necessary to enable the Trustee to carry out the Trustee Functions and shall take all such steps, including complying with such written directions as the Trustee may from time to time give pursuant to paragraph 4.5, and provide the Trustee with all such assistance and information, including copies of all relevant documents, as it may require in carrying out the Trustee Functions.
- 5.3 iSOFT shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of its mandate.

Interim Action

6. Pending the divestment of Torex's LIMS business in accordance with the provisions of these undertakings, iSOFT shall ensure that:
- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the acquisition, Torex's LIMS business shall be maintained as a going concern;
 - (b) except with the prior written consent of the OFT no step shall be taken which might lead to the integration of Torex's LIMS business with any other business carried on, by or under the Control of iSOFT or of any member of the Group of Interconnected Bodies Corporate to which iSOFT belongs;
 - (c) except with the prior written consent of the OFT the assets of Torex's LIMS business are maintained and preserved, including facilities and goodwill;
 - (d) the nature, description, range and standard of services currently supplied by Torex's LIMS business are maintained and preserved;
 - (e) except in accordance with paragraph 1.1, paragraph 1.2 or paragraph 4.1 above, no assets of Torex's LIMS business shall be

disposed of, and no Interest in such assets shall be created or disposed of, other than in the ordinary course of business of Torex.

7. The generality of the above paragraph is subject to the right of iSOFT to deploy iSOFT staff, iSOFT contractors and iSOFT resources in order to ensure that:
 - (a) emergency work on LIMS supplied or supported by Torex's LIMS business is carried out, in order to remedy or prevent the failure of such products and systems, in circumstances where Torex's LIMS business is unable to carry out such emergency work;
 - (b) Torex's contractual obligations with respect to the supply and support of LIMS are met in circumstances where the Torex LIMS business is unable to meet such obligations and there is an immediate risk of the Torex LIMS business defaulting on such obligations.

Continued Separation

8. Except with the prior written consent of the OFT, following the divestment of Torex's LIMS business pursuant to paragraph 1.1, paragraph 1.2 or paragraph 4.1, iSOFT or any member of the Group of Interconnected Bodies Corporate to which iSOFT belongs:
 - (a) shall not, directly or indirectly, hold, acquire or use:
 - (i) any Interest in Torex's LIMS business
 - (ii) any Interest in any company carrying on or having Control of Torex's LIMS business; or
 - (iii) other than in the ordinary course of business, any of the assets of Torex's LIMS business;
 - (b) shall procure that no employee or director of iSOFT or of any member of the Group of Interconnected Bodies Corporate to which iSOFT belongs will hold or be nominated to any directorship or managerial position in Torex's LIMS business or in any company or other undertaking carrying on or having Control of Torex's LIMS business, unless that person has ceased to be an employee or director of iSOFT or of any member of the Group of Interconnected Bodies Corporate to which iSOFT belongs;

- (c) shall not participate in the formulation or making of, or (other than in the ordinary course of business) influence or attempt to influence the policy of Torex's LIMS business or, the policy of any person carrying on or having Control of Torex's LIMS business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of iSOFT or of any member of the Group of Interconnected Bodies Corporate to which iSOFT belongs, directly or indirectly, doing any of the things listed in sub-paragraphs 8(a) - (c) above.

Information

- 9. iSOFT shall provide promptly to the OFT such information as the OFT may reasonably require for the purpose of ascertaining that these undertakings are being or have been complied with, or of performing any of the OFT's functions under chapter 4 of Part III of the Act.

Compliance and Cooperation

- 10.1 iSOFT shall comply with such written directions as the OFT may from time to time give:
 - (a) to take such steps within its competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which might be required by these undertakings to do or refrain from doing.
- 10.2 In the event that iSOFT relies on paragraph 7 in order to deploy iSOFT staff, iSOFT contractors and iSOFT resources to carry out emergency work as described in paragraph 7 on behalf of Torex's LIMS business or to ensure that the contractual obligations of Torex's LIMS business referred to in paragraph 7 are met, iSOFT will inform the OFT of such deployment as soon as practicable and, in any event, after no more than 5 working days.
- 10.3 iSOFT will cooperate fully with the OFT when:
 - (a) monitoring compliance with these undertakings; and
 - (b) investigating potential breaches of these undertakings.

11. iSOFT shall procure that each of the members of the Group of Interconnected Bodies Corporate to which iSOFT belongs complies with these undertakings as if it had given them.

Extension of time limits

12. The OFT may, where appropriate, in response to a written request from iSOFT showing good cause, or otherwise at its own discretion, grant an extension of any period specified in paragraphs 1.1, 1.2, 3.2, 3.4, 3.5, 3.7, 4.1 and 4.3 above.

Interpretation and Definitions

13. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
14. References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
15. In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
16. For the purpose of these undertakings:

"the Act" means the Enterprise Act 2002;

an **"Affiliate"** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with iSOFT within the meaning of section 127(4) of the Act and including any Subsidiary of such a person or persons construed in accordance with section 129(1) of the Act;

"business" has the meaning given by section 129(1) of the Act;

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate

amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more or of the total number of votes which may be cast at such meetings;

"Divestment Period" means the period of time determined by the OFT and notified in writing to iSOFT by the OFT in confidence;

"Interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of any such right;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"iSOFT" means iSOFT Group plc;

"OFT" means the Office of Fair Trading;

"Subsidiary" shall be construed in accordance with section 736(1) of the Companies Act 1985;

"Torex's LIMS business" means the business and assets of Torex used in the development, licensing, installation and maintenance of Laboratory Information Management Systems for the secondary healthcare sector in the UK as at 23 December 2003 and any additional business carried on by, and assets used by, such business since that date, including without prejudice to the foregoing:

- (a) all tangible and intangible assets which contribute to Torex's LIMS business or are necessary to ensure the viability or competitiveness of Torex's LIMS business;
- (b) all licences, permits, consents and authorisations issued by any governmental organisation for the benefit of Torex's LIMS business;
- (c) all contracts, leases, commitments and customer orders of or associated with Torex's LIMS business; all customer and other records of Torex's LIMS business; and
- (d) the personnel of Torex's LIMS business.

"Trustee" means the person appointed pursuant to paragraph 3.4, 3.5 or 3.7 to carry out the Trustee Functions;

"Trustee Functions" means the functions set out in paragraphs 4.1, 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7;

"UK" means the United Kingdom of Great Britain and Northern Ireland;

"Working Days" mean any days of the week other than a Saturday, Sunday or any other day that is a public holiday in England.

SIGNED FOR AND ON BEHALF OF iSOFT GROUP plc

... .. Signature Signature

... .. Name Name

... .. Title Title

... .. Date Date

(Company Director)

(Company Director/Secretary)