Case No COMP/M.6237 - COMPUTER SCIENCES CORPORATION/ iSOFT GROUP

Only the English text is available and authentic.

REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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EUROPEAN COMMISSION

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<tr><td>In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.</td><td>MERGER PROCEDURE</td></tr>
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To the notifying party:

Dear Sir/Madam,

Subject: **Case No COMP/M.6237 - COMPUTER SCIENCES CORPORATION/ iSOFT GROUP**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1.   On 12.05.2011, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking CSC Computer Sciences Australia Holdings Pty Ltd ("CSC Australia", Australia) controlled by the undertaking Computer Sciences Corporation ("CSC", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking iSOFT Group Limited ("iSOFT", Australia) by way of purchase of shares[2]. CSC is designated hereinafter as the "notifying party".

1.   THE PARTIES

2.   CSC is a provider of IT services to a large base of multinational companies, governments and agencies across a range of industries.

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[1]   OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

[2]   Publication in the Official Journal of the European Union No C 151, 21.05.2011, p. 25.

3.   iSOFT is a provider of healthcare software. iSOFT works with healthcare professionals to design and build software applications for a range of needs across the healthcare sector, principally in Australia and Europe.

2.   THE OPERATION

4.   On 01.04.2011, CSC announced its intention to acquire control of iSOFT. CSC, through its wholly-owned subsidiary CSC Australia, will acquire all the shares of iSOFT currently listed on the Australian Securities Exchange. The acquisition will be made by way of a scheme of arrangement between iSOFT and its shareholders, pursuant to which all the shares in iSOFT will be transferred to CSC Australia. On 02.04.2011, the board of directors of iSOFT unanimously recommended that iSOFT shareholders vote in favour of the scheme of arrangement.

3.   CONCENTRATION

5.   The proposed operation qualifies as an acquisition of sole control over iSOFT by CSC within the meaning of Article 3(1)(b) of the Merger Regulation.

4.   EU DIMENSION

6.   The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2 500 million[3] [CSC: EUR 11 490 million; iSOFT: EUR 273 million]. In each of at least three Member States [Denmark, France, Germany, the Netherlands, United Kingdom], their combined aggregate turnover is more than EUR 100 million and the aggregate turnover of each is more than EUR 25 million [Germany, The Netherlands, United Kingdom]. The aggregate EU-wide turnover of each of the undertakings concerned is more than EUR 100 million [CSC: EUR […] million; iSOFT: EUR […] million]. The undertakings concerned do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The operation therefore has an EU dimension within the meaning of Article 1(3) of the Merger Regulation.

5.   COMPETITIVE ASSESSMENT

7.   CSC and iSOFT operate at different levels in the IT industry. CSC is active across the different segments of the IT services market in various industries including, but not limited to, healthcare. iSOFT is active in software, only in the healthcare sector. The relationship between the parties' activities in the EEA is essentially of a vertical or conglomerate nature.

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[3]   Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.04.2008, p. 1).

5.1. MARKET DEFINITION

5.1.1. IT services

5.1.1.1. Product market definition

8. The notifying party takes the view that the relevant market is the market for IT services. According to the notifying party, further segmentation of the market for IT services is not appropriate because many customers purchase all of their IT services from a single provider. The notifying party also claims that all major global players in IT services are active in all or most segments of IT services and that there is therefore a high degree of supply-side substitutability in the provision of these services.

9. The Commission however considered in the past that IT services markets could be segmented according to (i) the functionality of the services and (ii) the different sectors concerned[4].

10. As regards functionality, the Commission usually considers that the main segments of IT services are (i) consulting, (ii) development and integration, (iii) hardware and maintenance, (iv) management services, (v) business process outsourcing, (vi) software maintenance and (vii) education and training[5].

11. In *HP/EDS*[6], the Commission also considered a sub-segmentation of the IT services based on the following sectors: (i) agriculture, mining and construction; (ii) process manufacturing; (iii) discrete manufacturing; (iv) utilities; (v) wholesale; (vi) retail; (vii) transportation; (viii) communications; (ix) financial services; (x) healthcare; (xi) services; (xii) education; (xiii) national and international government; and (xiv) local and regional government.

12. The present case concerns only one vertical sector, namely healthcare.

13. All the IT services providers who replied to the market investigation consider that from a supply-side point of view, they operate across each individual vertical sector. They therefore argue that a vertical segmentation of the IT services market based on the sector concerned would not be appropriate today.

14. All the customers who replied to the market investigation consider however that the relevant market is the market for healthcare IT services because of the specialization of the providers of healthcare IT services.

15. For the purposes of this decision, the exact product market definition as regards IT services can be left open since the proposed transaction does not give rise to any competition concerns even on the narrowest possible markets, namely the markets for the provision of the various functions of healthcare IT services.

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[4]   COMP/M.3398 – *Hewlett Packard /Triaton*, 26 March 2004, COMP/M.5917 – HP/EDS, 25 July 2008.

[5]   See COMP/M.3398 – *Hewlett Packard /Triaton*, 26 March 2004, or COMP/M.2946 – IBM/PWC Consulting, 23 September 2002.

[6]   COMP/M.5917 – *HP/EDS*, 25 July 2008.

5.1.1.2. Geographic market definition

16. The notifying party considers that the geographic scope of the IT services market (and any of its potential segments) is worldwide or at least EEA-wide.

17. The Commission considered in the past that IT services are provided on a national basis, mainly due to the fact that customized solutions are offered according to languages and local business particularities[7]. However, the Commission's recent decisional practice in IT services has specifically pointed towards a broader geographic scope than national markets, as major providers of IT services operate on a worldwide basis and customers frequently have worldwide/EEA-wide tenders[8].

18. The market investigation confirmed that today, the geographic scope of the IT services market could be wider than national (and at least EEA). The IT services providers who replied to the market investigation almost unanimously indicated that IT services contracts are awarded on a global basis.

19. For the purposes of this decision, the exact geographic scope of the IT services market (and any potential submarkets) can be left open since the proposed transaction does not give rise to any competition concerns even on the narrowest possible geographic market (i.e. national).

5.1.2.   Software

5.1.2.1. Product market definition

20. The notifying party submits that segmentation of the overall software market is inappropriate because of supply-side considerations.

21. First, the notifying party considers that most large software vendors are able to offer a suite and/or a range of types of software across sectors and size of customers. Secondly, it claims that the core functionalities and basic configurations of many types of software are not industry-specific. Thirdly, it submits that certain niche applications or niche markets should not justify an overall segmentation of the relevant software market.

22. The Commission however considered in the past that software markets could be segmented on the basis of (i) the different functionalities of the software and the sector concerned, and (ii) the end uses offered by the particular software[9].

23. First, as regards functionality, the software industry generally distinguishes between the following types of software within the "IT stack"[10]: (i) infrastructure software (i.e.

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[7]   COMP/M.2478 – *IBM Italia/Business Solutions/JV*, 26 January 2001.
[8]   COMP/M.5666 – *Xerox/ACS*, 19 January 2010.
[9]   COMP/M.5763 – *Dassault Systemes/IBM DS PLM Software Business*, 29 March 2010, COMP/M.5904 – *SAP/Sybase*, 20 July 2010.
[10]   The so-called "IT stack" or "technology stack" consists of the various hardware and software components necessary for companies to ultimately use business software applications.

servers and databases); (ii) middleware (i.e. integration platforms); (iii) application software and office software; and (iv) operating/browser software.

24. Within application software, a further distinction is made between consumer and business software. In the present case, iSOFT is only active in business application software and office software.

25. The Commission also segmented in the past the software market on the basis of the industry sector of the application[11]. In the present case, the applications concern only healthcare software.

26. The notifying party suggests that healthcare software comprises the following modules:

(i)   Hospital Information System ("HIS"). The HIS is a fully integrated hospital solution that addresses all the departmental needs of a hospital and provides additional business support functionalities. In general, hospitals require a HIS solution. However, HIS may have a variety of different functionalities and focus on different departmental needs depending on the structure of a particular hospital. In turn, HIS generally includes several modules.

(ii)   Electronic Patient Record ("EPR") / Electronic Medical Record ("EMR"). The EPR is a hospital solution that centralises all patient information in a patient focused record, whilst providing continuity of healthcare services across departments and patient management tools. More developed versions of the EPR with increased interoperability across hospitals are sometimes called EMR.

(iii)   Patient Administration System ("PAS"). The PAS is used primarily to manage information about the patient.

(iv)   Clinical Information Systems ("CIS"). CIS deal primarily with clinical information related to the care of the patient, whether departmental based or enterprise wide such as requesting and prescribing.

(v)   Transactional Clinical Information Systems ("TCIS"). TCIS interact with the different departmental software modules to simplify clinical processes. TCIS could be further sub-segmented by considering two specific functions:

        (v.a) Portal Solutions are components of TCIS or Enterprise Solutions. They give outside healthcare providers and authorised individuals access to data contained within a HIS. For example, they could provide a nurse with access to patient records contained on the systems of an outside hospital.

        (v.b) Scheduling/Appointment Software. They provide improved functionalities for all departments of the hospital enterprise by interacting with existing CIS modules. While many of their functions can be duplicated by customisation of the

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11   COMP/M.5763 – *Dassault Systemes/IBM DS PLM Software Business*, 29 March 2010, COMP/M.5904 – *SAP/Sybase*, 20 July 2010.

individual CIS modules, the enterprise solution can often be installed more easily and is built using modern standards (e.g., being web compliant), making future upgrading easier.

(vi)   Radiology and Diagnostics Systems ("RIS"). RIS are a computerized database used by radiology departments to manage the investigation of patients with a variety of diagnostic imaging tools and the generation of the associated reports which are then transmitted to the clinicians responsible for the treatment and care of the patient.

(vii)   Accident & Emergency Systems ("A&E"). A&E manage the patient from initial presentation in the department, through triaging and subsequent treatment (which may extend to scheduled follow up visits by the relevant specialist services) to discharge or admission.

(viii)   Operating Theatre Management Systems ("Theatre"). Theatre provides a comprehensive set of features to enable management of the patient episode in a surgical environment. Their primary purpose is to schedule and manage patients and resources effectively and efficiently.

(ix)   Laboratory Information Management Systems ("LIS"). LIS deal with the laboratory and pathology needs of the hospital.

(x)   Medication Management. Medication Management is composed of two main functions, Pharmacy Management and Electronic Prescribing and Medication Administration, and these are often separate but interfaced systems.

(x.a) Pharmacy Management ("Pharmacy"). Pharmacy concentrates more on the logistical functions, providing functionality ranging from drug ordering, stock control, ward stock top-up including direct ward delivery, dispensing, labelling, and aseptic manufacture.

(x.b) ePrescribing and Medicines Administration ("ePrescribing"). ePrescribing is closely associated with pharmacy management and streamlines the prescribing process by using electronic transmissions of data.

(xi)   Obstetrics & Gynaecology ("Maternity"). Maternity systems provide functionality to support the care of pregnant women, new mothers and their babies.

(xii)   Primary Care Information Systems ("PCIS"). PCIS are a computerized system designed to meet all the patient management (individual and population) needs of the primary care services provider.

27.   Secondly, as regards end-use, the Commission also previously defined software markets on the basis of the end-use of the software, either by distinguishing between

high-end and low-end[12] or by distinguishing between high-end, mid-range and low-end[13].

28. However in the present case, all healthcare software belongs to the category of high-end use. Therefore applying this further segmentation would not change the competitive assessment.

29. Respondents to the market investigation generally confirmed the relevance of the segmentation of the software markets described above. Overall, respondents considered that a segmentation of the software markets based on functionality and sector is relevant[14], namely healthcare application software (hereafter "healthcare software")[15]. The market investigation is however inconclusive as regards a possible further segmentation of the healthcare software by modules[16]. Although all the software providers who replied to the market investigation indicated that there would be a separate healthcare software market, they disagree on the relevance of a further segmentation.

30. According to one software provider, although historically healthcare software providers have been specialised in a particular module, they are increasingly investing and developing an expansive array of modules to meet the complex needs of the healthcare systems. This software provider added that the larger healthcare software suppliers are characterised by their broad software modules products portfolio.

31. This argument finds some support by the table below, showing that healthcare software providers are present in different modules in the EEA:

	PCIS	PAS	TCIS	LIS	RIS	A&E	Pharmacy	Theatre
Ascribe	X	x	x			x	x	
McKesson	X	x	x				x	x
Siemens	X	x	x	x	x		x	x

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12   COMP/M.5763 – *Dassault Systemes/IBM DS PLM Software Business*, 29 March 2010.
13   COMP/M.5904 – *SAP/Sybase*, 20 July 2010.
14   One respondent pointed to a possible evolution concerning healthcare software. According to this respondent, "the description of the various logical and physical elements of software does not necessarily reflect how they are deployed within a healthcare system. Another important contemporary and emerging dimension to the delivery of healthcare software to provider organisations is that hosting, utility computing and "Sofware as a Service" (SaaS) are becoming increasingly popular mechanisms to deliver and consume software services. […] All of the major technology companies upon which software vendors build their solutions are moving to cloud based technologies to support this new paradigm of software provisions". However, the Commission has not considered such an evolution of the software market for the purpose of its competitive assessment in this case, although an increasing use of SaaS in the healthcare sector in the future is possible as the cloud becomes the norm.
15   See paragraphs 23 and 24 of the present decision.
16   See paragraph 26 of the present decision.

Cerner		x	x	x	x	x	x	x
GE		x	x	x	x	x	x	x
iSOFT	X	x	x	x	x	x	x	x

32. For the purposes of this decision, the exact product market definition as regards the healthcare software market can be left open, since the proposed transaction does not give rise to any competition concerns even on the narrowest possible product market (i.e. healthcare software further segmented by modules).

5.1.2.2. Geographic market definition

33. The notifying party considers that the geographic scope of the market for healthcare software is worldwide or at least EEA-wide.

34. The Commission notes, however, that regulations relating to national healthcare schemes may affect the geographic scope of the healthcare software market (and any potential submarkets). There are for instance geographic variations in the nature of billing and reimbursement.

35. The market investigation was inconclusive on the relevant geographic scope of the healthcare software market(s). Half of the respondents consider that the healthcare software market is national. Half of the respondents consider that this market is wider than the EEA.

36. For the purposes of this decision, the exact geographic market definition of the software market(s) may be left open since the proposed transaction does not give rise to any competition concerns even on the narrowest possible geographic market (i.e. national).

5.2. COMPETITIVE ASSESSMENT

37. There is no horizontal overlap between the parties as CSC is active in IT services (including in the healthcare sector) and iSOFT is a healthcare software provider[17].

38. The relationships between healthcare IT services providers and healthcare software providers can be of a vertical or conglomerate nature[18]. It is of a vertical nature when

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[17] The notifying party indicated that CSC has limited sales of healthcare software in Denmark (and to a smaller extent in Sweden) where iSOFT is not independently active.

[18] One market participant claimed that iSOFT and CSC are in competition for the procurement of healthcare IT systems in the UK. However, iSOFT is not in fact active on any IT services market. iSOFT is a software developer and when it provides 'IT services' of any nature, these are only for its own software and part and parcel of the overall software provision/licence contract. iSOFT is not considered by any independent third party to be an IT services provider. CSC therefore has never competed directly with iSOFT as iSOFT is unable to offer competing services across the range of requirements demanded by a customer.

healthcare IT services providers partner with a healthcare software provider to furnish a global service (including the relevant software). It is of a conglomerate nature when the services and the software are provided independently.

39. Assuming that the relevant markets have a geographic scope that is worldwide or EEA-wide, the proposed transaction does not give rise to any affected markets since CSC's market share would not exceed [10-20]% and iSOFT's market share would not exceed [5-10]% on all the relevant healthcare IT services and healthcare software markets in which they operate.

40. At the national level, CSC and iSOFT are both active in only three Member States, namely Germany, the Netherlands and the United Kingdom.

5.2.1. Germany

41. CSC and iSOFT do not have any contractual arrangement in Germany. In that country, it is usually the healthcare software providers (i.e. iSOFT and its competitors) which install the software and then offer all the related services necessary to ensure that the software is operational as an overall package, and contracts generally also include ongoing maintenance. Therefore, the relationships between CSC and iSOFT are rather of a conglomerate nature and not of a vertical nature in Germany.

42. The proposed operation does not give rise to any affected market in Germany, since the parties' market shares are below 25% on all the relevant healthcare IT services and healthcare software markets in which they operate[19].

43. In Germany, iSOFT has an estimated market share of [0-5]% on an overall market for healthcare software. More particularly, iSOFT is active in the following healthcare software modules: HIS (with a market share of [5-10]%), ERP ([5-10]%), RIS ([20-30]%)[20], LIS ([10-20]%)[21], scheduling/appointment ([10-20]%) and portal solutions ([5-10]%). On each of these segments, iSOFT faces competition from numerous healthcare software providers, such as Agfa, Siemens, and Nexus.

44. In Germany, CSC has a market share of [5-10]% for healthcare IT services ([10-20]% for healthcare IT management services, the market segment where CSC has the highest market share). CSC faces the competition of numerous healthcare IT services providers, such as HP ([10-20]%), T-Systems ([10-20]%), Oracle ([0-5]%), and Dell ([0-5]%). On the narrower market for healthcare IT management services, the market leader in Germany is HP ([10-20]%).

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[19] See Commission guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008 ("Non-Horizontal Merger Guidelines"), p. 9, paragraph 25: "The Commission is unlikely to find concern in non-horizontal mergers, be it of a coordinated or of a non-coordinated nature, where the market share post-merger of the new entity in each of the markets concerned is below 30% and the post-merger HHI is below 2 000".

[20] In the RIS segment, iSOFT's main competitors are Nexus ([20-30]%), Siemens ([10-20]%) and Agfa ([10-20]%).

[21] In the LIS segment, iSOFT's main competitors are MCS ([20-30]%) and Roche ([10-20]%).

45.   Based on the above, the Commission finds that the proposed operation does not raise any competition concerns of a conglomerate nature in Germany.

5.2.2.   The Netherlands

46.   In the Netherlands, for most potentially affected modules of the healthcare software market, IT services providers and healthcare software vendors are rarely directly in a vertical relationship. However, for the supply of HIS, an IT services provider and a healthcare software vendor may have a more vertical relationship since there could be partnerships between them.

47.   iSOFT has an estimated market share of [5-10]% on an overall market for healthcare software in the Netherlands. More particularly, iSOFT is active in the following healthcare software modules: HIS (with a market share of [10-20]%)[22], PCIS ([20-30]%)[23], RIS ([10-20]%)[24], LIS ([0-5]%), pharmacy ([30-40]%), and scheduling/appointment ([10-20]%)[25].

48.   In the pharmacy segment, where iSOFT's market share is the highest ([30-40]%), the main competitors are Pharmapartners ([30-40]%), which was acquired by PinkRoccade in 2011, Inhouse ([10-20]%) and Chipsoft ([5-10]%).

49.   In the Netherlands, CSC has a market share of [0-5]% for healthcare IT services ([5-10]% for healthcare IT management services, the market segment where CSC has the highest market share). CSC faces competition from numerous healthcare IT (management) services providers, such as Atos Origin ([10-20]%), CapGemini ([10-20]%), Getronics ([5-10]%), HP ([5-10]%) or Oracle ([0-5]%).

50.   With the exception of the pharmacy segment, the parties' market shares are below 25% on all the relevant healthcare IT services and healthcare software markets in which they operate.

51.   In the pharmacy segment, the relationship between the parties is of a conglomerate nature since IT services providers are not involved in integrating, implementing or working with hospital pharmacy software in the Netherlands. Considering the existence of other credible pharmacy software providers and the absence of market power of CSC in the healthcare IT management services market in the Netherlands, the risk of foreclosure can be dismissed.

52.   In light of the above, the Commission finds that the proposed operation does not raise any competition concerns of a vertical or conglomerate nature in the Netherlands.

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[22]   In the HIS segment, iSOFT's main competitors are Chipsoft ([30-40]%), McKesson ([10-20]%) and Siemens ([10-20]%).

[23]   In the PCIS segment, iSOFT's main competitors are Promedico ([20-30]%) and Pharmapartners ([20-30]%).

[24]   In the RIS segment, iSOFT's main competitors are AGFA ([20-30]%), Chipsoft ([10-20]%), Philips ([10-20]%) and Kodak ([10-20]%).

[25]   In the scheduling/appointment segment, iSOFT's main competitors are Chipsoft ([40-50]%), McKesson ([10-20]%) and Siemens ([10-20]%).

5.2.3. *The United Kingdom*

53. In the UK, healthcare software is sold to primary care providers (general practitioners or "GPs") and to secondary healthcare providers (hospitals, mental health trusts and community health services). Purchasing decisions for secondary healthcare providers are made by public regional bodies (called Trusts) and by private healthcare organisations (primary care providers take their own purchasing decisions). The National Health Service (NHS) is the public healthcare provider in the UK and accounts for around 85% of the total spend for healthcare software in that country.

54. Generally procurement for healthcare software and/or IT services is subject to the same supply and demand side characteristics as there are, in general, limited differences in the purchase of IT services and software in the private or public sphere respectively.

55. In both the public and private healthcare sectors, hospitals or groups of hospitals are the principal bodies responsible for procurement of IT services and software. Whether a hospital is run by the public or private sector, the procurement will typically follow a similar process.

56. In the UK, the National Programme for IT ("NPfIT") is an initiative by the NHS that aims to improve the IT infrastructure and services of the NHS.

57. In addition to the national services, the NPfIT also concerns a range of Local Services delivered by a number of Local Service Providers ("LSPs") who are IT service providers selected through a competitive procurement under EU rules.

58. Initially the United Kingdom was divided into five regional clusters – each with a different LSP. However, due to mainly delivery concerns, the clusters have been merged and only CSC and British Telecom ("BT") remain as LSPs.

59. The primary role of LSPs is to deploy, integrate, host and support the range of local systems to meet national standards and to ensure interoperability between local and national systems. In order to deliver the contracted services, LSPs subcontract to software and hardware vendors.

60. For the majority of healthcare IT services in the UK provided through the NPfIT, the relationship between an IT services provider and a healthcare software vendor is, in general, vertical. The UK government and/or individual NHS Trusts contract with the IT services provider which in turn has sub-contracts with software providers. This is especially the case for secondary care organisations where, generally, larger and more complex systems are needed. However, even in the primary care sector, where additional services are required, the vertical nature of the relationship is likely to continue with IT services providers as the principal contractual body with healthcare organisations.

61. However, outside of the NPfIT, the relationship between software vendors and IT services providers is at present generally of a conglomerate nature (although it can also be of a vertical nature in some cases). Thus, healthcare software suppliers

generally provide their software to individual hospitals/Trusts without the need for any downstream IT services.

(i) The parties' market position

62. In the UK, iSOFT has a market share of [5-10]% on an overall market for healthcare software. More particularly, iSOFT is mainly active in the following healthcare software modules: PAS (with a market share of [40-50]%), LIS ([30-40]%), and Theatre ([30-40]%)[26]. In the remaining potential modules for healthcare software, the market shares of iSOFT are lower than 25% and it faces competition from stronger players. On each of the three former segments, iSOFT faces competition from numerous healthcare software providers, as shown in the table below:

PAS	LIS	Theatre
iSOFT ([40-50]%)	Clinisys ([30-40]%)	iSOFT ([30-40]%)
McKesson/SystemC ([10-20]%)	iSOFT ([30-40]%)	Trisoft ([10-20]%)
Cerner ([10-20]%)	Others: Technidata, GE, Sunquest, Cerner, Détente, Inhouse, Inter-Systems, Sysmex.	PICIS ([5-10]%)
Others: Ascribe, HP/EDS, IMS, Inhouse, Meditech, Oasis, Cambio, GE/IDX, Silverlink, Atos/Helix.		Others: Newgate, Meitech, PerSe, Cerner, Ascribe, GE, McKesson/SystemC.

63. According to the notifying party, each of these competitors offers a proven, existing solution and the know-how and expertise to implement these solutions. McKesson, Cerner, IMS and Oasis have been the most often quoted by respondents to the market investigation as companies with which IT services providers are able to partner and source software from, as an alternative to iSOFT.

64. In the UK, CSC has a market share of [5-10]% on the market for healthcare IT services ([20-30]% for healthcare IT management services, the segment market where CSC has the highest market share). CSC faces competition from numerous healthcare IT services providers, such as Capita Group ([5-10]%), HP ([5-10]%), Cognizant ([0-5]%), Logica ([0-5]%) or Dell ([0-5]%). Concerning healthcare IT management services, CSC's competitors are HP ([5-10]%), Cognizant ([5-10]%), Fujitsu ([5-10]%), Capita Group ([0-5]%), Logica ([0-5]%) and BT ([0-5]%).

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[26]   iSOFT's market shares in value are lower: [30-40]% for PAS, [10-20]% for LIS and [20-30]% for theatre. The notifying party explains that iSOFT's market share in terms of revenues is comparatively lower than its volume market share because iSOFT's applications' installed base includes mature products that require less ongoing maintenance. The market shares provided by the parties are issued from Silicon Bridge Report for COCIR, 2010.

65. However, the healthcare software providers who replied to the market investigation consider that CSC holds significant market power in the market for healthcare IT services in the UK.

66. CSC's current market position is actually the consequence of the NPfIT currently in place in the UK[27].

67. Although CSC has clusters covering three out of the five regions in the UK which were designated by NPfIT, the nature of its contracts is such that CSC has exclusivity only for those systems which are within the scope of the LSP agreements. The core LSP solutions covered by the LSP agreements are GP solution, PAS, Maternity, Theatre, Order Requesting and Results Reporting, Prescribing and Medications, Clinical Assessments and Documentation, and Ambulance solution. The NPfIT does not cover other modules such as LIS and Pharmacy, back-office applications or clinical systems which are already in use by an NHS Trust. These other modules combined with their hosting and support account for a large portion of NHS IT spend. This explains why, despite the high number of regional clusters allocated to CSC, CSC holds a market share of only [20-30]%.

68. Moreover, the current NPfIT is being renegotiated and the notifying party has informed the Commission that […].

69. The ongoing negotiations between the NHS and CSC are confidential and none of the parties to these negotiations has communicated on their outcome. On a confidential basis, the Commission received confirmation from the notifying party that there will be new opportunities for competitors to enter that market […].

70. In light of the above, the market share of [20-30]% provided by the notifying party is a correct indication of the market position of CSC in the market for healthcare IT (management) services in the UK.

(ii) Assessment of the risk of input foreclosure

71. The Commission examined whether the proposed transaction could lead to a risk of input foreclosure as regards access to iSOFT's healthcare software to the detriment of competitors of CSC on the market for healthcare IT services (more particularly healthcare IT management services) in the UK.

72. In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines (i) whether the merged entity would have post-merger the ability to substantially foreclose access to the input; (ii) whether the merged entity would have the incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental impact on effective competition downstream[28].

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[27] See paragraphs 56 to 61 of this decision.

[28] See Non-Horizontal Merger Guidelines, paragraph 32.

73. As iSOFT's market shares are the highest on the PAS, LIS and Theatre healthcare software modules, the competitive assessment will focus on these products[29].

The notifying party's arguments

74. According to the notifying party, the proposed operation will not restrict competing IT services providers' from accessing healthcare software in the UK for the following reasons.

75. First, countervailing buyer power is particularly strong in the healthcare sector. Customers will therefore always retain the ability to impose their preferred healthcare software provider.

76. Secondly, CSC will continue to face strong competitive constraints from alternative IT services providers. In healthcare IT services specifically, the merged entity will remain subject to competition from large and sophisticated entities such as Accenture, British Telecom ("BT"), Atos Origin, Fujitsu, and Cable & Wireless which all have the ability to partner with various software suppliers in the healthcare sector.

77. Thirdly, iSOFT faces strong competition from alternative software providers and healthcare IT services providers in the UK have access to and can rely on such healthcare software providers.

78. Fourthly, CSC would have no incentive to lose software revenues from third party IT services providers when those revenues make up half of healthcare IT spending, knowing that it could not recoup those lost revenues by imposing its IT services.

79. Lastly, the notifying party underlines the importance of software interoperability in the healthcare sector. Interoperability in the healthcare sector aims to ensure that all different types of software may be used across the EEA thereby making it impossible for software providers to protect their nationally installed markets. According to the notifying party, the NHS IT infrastructure depends on the range of services and software being interoperable. Consequently, CSC does not have the ability to make iSOFT software incompatible with the technologies chosen by competitors of CSC. The latest procurement in the UK stipulated that interoperability with competitor systems is a mandatory requirement and suppliers who do not commit to interoperability would not be selected.

The results of the market investigation and the Commission's assessment

80. The Commission's review of the file, and the results of the market investigation, confirms that the merged entity would not have the ability and the incentives to engage in input foreclosure. The following points are notable in this regard.

81. With regards the ability to foreclose, first, the Commission has previously recognised that even if an IT services provider would like to give preference to its own software,

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[29]   As indicated in paragraph 62, in the other modules for healthcare software, the market shares of iSOFT are lower than 25% and it faces competition from stronger players.

it would lack the ability to do so, if customers retain a high degree of discretion as to their software provider[30]. This countervailing buyer power concerns mainly hospitals and groups of hospital who choose independently their providers of healthcare software and healthcare IT services. Moreover, the notifying party indicated that a number of NHS trusts where CSC is the LSP have imposed a different healthcare software provider than iSOFT[31].

82. Furthermore, the sophistication of customers, who enjoy strong buyer power, was also confirmed by the market investigation. As indicated by one respondent, "*depending on the underlying cause of dissatisfaction, if hospitals or groups of hospitals are not satisfied with the services provided by a healthcare software vendor, they will enter into negotiations with the relevant IT services provider* [...] *with the view to addressing the issue or having this healthcare software vendor removed from the supply contract. Hospitals or groups of hospitals have therefore significant bargaining power.*"

83. Secondly, with respect to CSC's competitors, all the IT services providers who replied to the market investigation confirm that they have the ability to source themselves and partner with various healthcare software providers in the UK. One of them explained that "*despite the issues with the National Programme there are a range of software supplier organisations that [it] can utilise to provide services to the NHS*". Incidentally, almost all IT services providers who replied to the market investigation also consider that CSC would not have the ability to make iSOFT software incompatible with their technologies and therefore do not anticipate any risk of input foreclosure. The importance of software interoperability in the healthcare sector was confirmed by some market respondents. One respondent indicated said that: "*[a]ll patient record health solutions conform (or are in the process of conforming) with International healthcare standards.* […] *Conformance with these standards allows these software solutions to support clinical healthcare and interoperate to support patient care across the care settings and organisations they interact with. Conformance with these standards is generally stated as contractual requirements.*"

84. The Commission also received confirmation from several of CSC's main competitors that they will not exit the market of healthcare IT services post-merger.

85. Thirdly, the market investigation confirmed the existence of credible alternatives to iSOFT in the procurement of healthcare software in the UK. As stated in the Non-Horizontal Merger Guidelines, input foreclosure will occur "if it concerns an important input for the downstream product" such as "a critical component without which the downstream product could not be manufactured or effectively sold on the market"[32]. In the present case, despite relatively lower market shares, iSOFT competitors are numerous in each of the healthcare software modules where iSOFT has the highest market shares (see table in paragraph 62). CSC competitors and customers largely confirmed that they can and do procure healthcare software from iSOFT competitors.

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[30]   COMP/M.5197 – *HP/EDS*, 25 July 2008, paragraph 40.

[31]   In April 2010, the UK Department of Health contracted with McKesson in 26 NHS trusts, 18 of which in CSC's North/Midlands/East region contracts.

[32]   Non-Horizontal Merger Guidelines, paragraph 34.

86. Customers who replied to the market investigation also generally confirmed that iSOFT currently faces effective actual or potential competition from other healthcare software providers in the UK. All customers also indicated that they have sufficient alternatives for the purchase of healthcare software. One of them even indicated that it is developing its own solution internally as an alternative to iSOFT's software.

87. In particular, the NHS explained that it has sufficient alternatives for the purchase of healthcare software, even if the choice is limited due to the complexity and large scale nature of deployments and development. It quoted as alternative suppliers Cerner (working together with BT) and SystmOne developed by TPP.

88. The Commission notes that a number of healthcare software providers who replied to the market investigation expressed a number of concerns. They globally considered that the merged entity would have a dominant position through its acquisition of the large installed base of iSOFT software in the UK. They also adverted to an alleged dominant position of CSC with the NHS clusters that cover a majority of the UK.

89. However, most of the concerns expressed by those healthcare software providers are linked to the National Programme process selection, and as such, they are not merger-specific. As pointed out by one respondent, "*the market has been stagnated by the National programme and many suppliers have elected not to participate as the IT services companies and their chosen software partners have had exclusive access to the NHS market*". In addition, the Commission considers that the available evidence shows that both the other IT services providers and the customers considered that there are accessible alternatives to iSOFT and, moreover, that customers have strong bargaining power.

90. As regards incentive to foreclose, two IT service providers confirmed the notifying party's argument that the merged entity would have no economic incentive to make iSOFT software incompatible with their IT services activities. Two of them explained that such a strategy would be a risk for CSC of losing revenues, notably because iSOFT invested a lot in its Lorenzo software and, as a result would need to recoup its costs.

91. With regards to the likely impact on effective competition, the Commission notes that pre-merger, CSC is the only IT services provider with whom iSOFT has contracted to deliver or maintain software in the UK. The installed base of iSOFT is therefore either serviced by CSC or by iSOFT itself (for limited services). This means that currently, none of CSC's competitors has contracted with iSOFT for the procurement of software. Therefore the proposed operation will have no incidence on the procurement of healthcare software by CSC's competitors.

92. In light of the above, with respect to input foreclosure as regards access by competing healthcare IT services providers to healthcare software (PAS, LIS or Theatre) in the UK, the Commission considers that no serious doubts arise as to the proposed transaction's compatibility with the internal market.

(iii) Assessment of the risk of customer foreclosure

93. The Commission also examined whether the proposed transaction could lead to a risk of customer foreclosure as regards access by healthcare software companies competing with iSOFT to a sufficient customer base, depending on the position of CSC on the market for healthcare IT services (more particularly healthcare IT management services) in the UK.

94. In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines (i) whether the merged entity would have post-merger the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals; (ii) whether the merged entity would have the incentive to reduce its purchases from its upstream rivals; and (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market[33].

The notifying party's arguments

95. According to the notifying party, the proposed operation will not restrict competing healthcare software providers' access to a sufficient customer base, for the following reasons.

96. First, CSC's competitors in the IT services markets are large and sophisticated entities such as Accenture, BT, Atos Origin, Fujitsu and Cable & Wireless. If CSC refused to deal with other healthcare software providers, these healthcare software providers could easily partner with a number of other IT services providers.

97. Secondly, CSC will continue to face large and sophisticated customers who have the ability to impose the IT software partners they prefer CSC to work with. According to the notifying party, if a customer wants a specific software provider, CSC will not have the ability or incentive to foreclose that software provider.

98. Thirdly, CSC and iSOFT have prior to the merger a strong vertical relationship in the UK in the context of the NPfIT. The transaction therefore merely formalises the vertical relationship that already exists by bringing iSOFT 'in house'. Only a few iSOFT competitors are currently partnering with CSC, which would limit the scope of any (hypothetical) tentative of customer foreclosure by CSC.

99. Fourthly, CSC would not have the incentive to change its current practice of providing services relating to competing software providers. Since iSOFT cannot deliver all functionalities required by healthcare providers, it would be unprofitable for CSC to risk their overall contract with large customers and revenues as an IT services provider by failing to appropriately service sub-contractors other than iSOFT and by seeking to force iSOFT onto customers.

The results of the market investigation and the Commission's assessment

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33   Non-Horizontal Merger Guidelines, paragraph 59.

100. None of CSC's competitors or customers who replied to the market investigation expressed concerns as regards a risk of customer foreclosure arising from the proposed transaction.

101. The Commission notes that a number of iSOFT's competitors expressed concerns that the proposed transaction would restrain their access to NHS trusts belonging to clusters where CSC is or will be the appointed LSP.

102. One iSOFT competitor considered that even if the NHS is going to reduce the number of contracts granted to CSC because of its delays in implementing the NPfIT programme, the hospitals that have already installed iSOFT software are currently not returning to the market with those contracts for new tenders. As a result, iSOFT competitors are not given the opportunity to bid for a part of that market.

103. The Commission however considers that this concern is not merger-specific. In any event, as a subsidiary point, the information provided by the notifying party indicates that […].

104. Another iSOFT competitor considered that post-transaction, where hospitals already use iSOFT software, the merged entity will force these hospitals to use CSC as IT services provider. This would in turn affect iSOFT's competitors which would not be able to work anymore with the competitors of CSC that would have been foreclosed from the market. However, this concern is contradicted by the information provided by the notifying party and the market investigation showing that CSC cannot force hospitals to use CSC as their IT services provider.

105. With regards to the ability to foreclose, for customer foreclosure to be a concern, it must be the case that the vertical merger involves a company which is an important customer with a significant degree of market power in the downstream market[34].

106. The Commission considers that CSC does not have the ability to engage in a customer foreclosure strategy following its acquisition of iSOFT. As detailed above, CSC's position in healthcare IT (management) services in the UK is constrained by the organization of the NPfIT, the existence of strong competitors and the strong bargaining power of the final customers (in particular of the NHS). The market investigation largely confirmed these arguments[35].

107. As a subsidiary point, CSC's current market position is expected to decrease as a result of the negotiations that are currently taking place between the NHS and CSC[36].

108. As regards incentives to foreclose, as iSOFT has a relatively strong position in the PAS and Theatre segments (and to a lesser extent LIS) of the IT healthcare software market, the Commission could not conclude on whether the merged entity would have the economic incentive to engage in a customer foreclosure strategy. However, this

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34   Non-Horizontal Merger Guidelines, paragraph 61.
35   See paragraphs 81 to 84 of the present decision.
36   See paragraph 69 of the present decision.

issue can be left open as the Commission concluded that the merged entity will not have the ability to engage in a customer foreclosure strategy.

109. With regards to the overall likely impact on effective competition, as mentioned by the NHS, "*the impact of the merger will be limited as iSOFT is currently a sub-contractor to CSC who acts as a prime contractor to the wider NHS*". Currently CSC works to a great extent with iSOFT and not with the main iSOFT competitors.

110. In light of the above, with respect to customer foreclosure to the detriment of competing healthcare software providers in the UK, the Commission considers that no serious doubts arise as to the proposed transaction's compatibility with the internal market.

6. CONCLUSION

111. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President