

In the large merger between:

Manupont 198 (Pty) Limited

and

IST Group Limited

Reasons for Decision

Approval

1. On 29 September 2004 the Competition Tribunal issued a Merger Clearance Certificate approving unconditionally the merger between Manupont 198 (Pty) Ltd ("Manupont") and IST Group Ltd ("IST"). The reasons for this decision follow.

Merging parties

2. The **primary acquiring firm** is Manupont, a special purpose vehicle created solely for purpose of this transaction. Manupont will be 100% controlled by Swanvest 320 (Pty) Ltd ("Swanvest") which in turn will be controlled by Ethos Private Equity Ltd ("Ethos Private Equity") (as to 52%) – via a subscription for shares by Ethos Private Equity Fund IV and Ethos Technology Fund 1, 25% by a consortium comprising a BEE partner, 20% by management and other shareholders holding 2.3% of the shares.¹

3. The **primary target firm** is IST, a public company listed on the JSE. No firm directly or indirectly controls IST.² IST Holdings (Pty) Ltd ("IST Holdings") is a wholly owned subsidiary of IST and controls a number of firms, which include *inter alia* IST Data (Pty) Ltd ("IST Data") (as to 100%).

The merger transaction

4. A Consortium led by Ethos wish to purchase 100% of the issued share capital of IST. Manupont will acquire the IST shares in one indivisible transaction. The members of the Consortium will become indirect shareholders in Manupont as per the proportions stipulated in the Consortium Agreement.

¹ For more information as to the various others partners involved see pages 10-15, 28-33 of the Record and the Commission's report (pages 3-4).

² Its shareholders as at 29 February 2004 holding in excess of 5% of the issued share capital include Co-ordinated Network Investments (Pty) Ltd (28.10%), Sanlam Investment Management (20.22%) and Coronation Asset Management (6%).

5. Subsequent to concluding the Consortium Agreement, the parties have established an intermediate holding company, Swanvest, to hold their interests in Manupont. This transaction will unfold in 2 stages. In stage one, Manupont will - via a scheme of arrangement – acquire 100% of the issued shares of IST and the listing of the IST shares on the JSE will be terminated. Prior to the scheme becoming operative, each consortium member will subscribe and pay for their respective shareholdings in the holding company.

6. In the second stage, once the shares are purchased from IST, Manupont will then directly acquire from IST and its subsidiaries their businesses as going concerns.³ Post-merger, Manupont will hold 100% of the issued share capital in IST. Swanvest will hold 100% of the shares in Manupont with the latter being held as follows: Ethos (52.7%), Empowerment SPV (12.5%), ICT BEE Empowerment SPV (12.5%), Lindsay Robertson (1.15%), Alistair Moffat (1.15%) and management (20%).⁴

Rationale for the transaction

7. IST states that it needs to have a significant BEE shareholding for it to achieve its strategic objectives. IST's board believes that the BEE objective could be achieved more effectively as a privately owned company as opposed to a public listed company.

The merging parties' main activities

The Primary Acquiring Firm

8. **Manupont** is a special purpose vehicle established for purpose of acquiring IST. It does not provide any products or services. **Swanvest** is also created for purposes of holding shares in Manupont for the benefit of Consortium members. It does not trade in any product market. **Ethos Holdings** is the holding company for Ethos Private Equity. It provides private equity funding through the raising of private equity funds which are managed by the general partners. **Ethos Private Equity** is an equity fund manager in South Africa. It provides investment capital to management teams, investor groups, entrepreneurs and companies in need of finance. It also provides support in the form of strategic direction and management and is often involved in the development of companies in which it invests. Ethos Private Equity together with its partners also operates and manages three other private equity funds on behalf of investors, namely Ethos Private Equity Fund II, Ethos Private Equity Fund III and Ethos Private Technology Fund I. These are collectively referred to as “**Ethos Funds**”. The Ethos Funds have shareholdings in various operating companies and are involved in advising these portfolio companies on strategic guidance and investment decisions and provides other on-going support.

9. Ethos Technology Fund I holds investments of more than 50% in INGO Information Solutions (Pty) Ltd (90%) (“**INGO**”) and Tilos Business Solutions (Pty) Ltd (88%) (“**Tilos**”). The latter seems to be relevant for purposes of this transaction. Tilos is involved in the development of especially developed software products used

³ See the Record (pages 2-3).

⁴ See the Record (pages 42-43) and the Commission's recommendations (page 5).

as building blocks for the creation of a wide range of business solutions. It also specialises in the provision of IT services such as software development, system implementation and product consulting.

The Primary Target Firm

10. **IST** is an engineering solutions company which provides solutions for capital-intensive industries. It operates 7 (seven) divisions, which are:

- IST Dynamics – involved in embedded software products for the international defence industry.
- IST Energy – engaged in specialised electronic equipment and software for electrical utilities.
- IST Industrial – active in multidisciplinary turnkey systems and plants.
- IST Otokon – provides utility information solutions and energy management systems.
- IST Telecom – involved in data and voice access networks for the telecommunications industry.
- IST Nuclear – provides solutions for the nuclear power industry.
- IST Data – provides IT solutions for energy, fuel and asset management systems. The parties indicated that IST Data is the primary software business of IST and is primarily a Value Added Reseller (VAR) representing some of the world's leading software brands. It also develops asset management software with its principal focus in the telecommunications industry.

Competition Evaluation

11. The parties stated that neither Manupont, Swanvest, Ethos Private Equity Fund IV nor any of their portfolio companies in Ethos are involved in any similar product markets in South Africa. Only Tilos and IST Data appear to be relevant for purposes of considering this transaction. Tilos is the only Ethos Technology Fund I controlled portfolio company involved in the software market. IST Data is also active in this market. Tilos specialises in the development of uniquely architected flexible software products utilised as building blocks for more complex software packages. Its products are used for applications such as employee relationship management (“ERM”), human resource specific MIS solutions and other service related products.

12. On the other hand, IST Data is a distributor for GE Smallworld (a US-based product) and MRO software Maximo products. The former is used for integrated network planning and inventory control whilst the latter is a provider of asset management systems for production, fleet and IT assets.⁵ It is submitted that the customer base of Tilos and IST Data are different. The customers of IST Data are mainly industrial companies such as Telkom, Eskom and Nampower whilst Tilos' main customers are more service orientated businesses like FNB, Key Concepts and Pay People.

13. In light of the above, the Commission concluded that no overlaps exists in the merging parties' activities in that IST Data and Tilos compete in separate product categories within the broad software market. The parties also contend that IST offers

⁵ Refer to page 94 of the record as well as Mr Colin Vallis' testimony (pages 2-4 of the transcript).

value added services in respect of the provision of engineering solutions, specialised software and certain ancillary IT services whilst Tilos is an information technology, business solutions and systems integration service provider. The Commission and the parties further contended that the market for software development is competitive because both parties appear to compete with major competitors in their respective software market segments. There a number of large IT companies within South Africa which resell various components of portal, workflow, document management and MIS software. These include Comparex, Dimension Data, CS Holdings, Computer Associates, Arravia.kom and T Systems.⁶

14. The merger does not result in any vertical integration.

Public Interest Concerns

15. No public interest issues militate against the approval of this transaction. The parties stated that the merger would not result in any job losses.

David Lewis

13 October 2004

Date

Concurring: Norman Manoim and Medi Mokuena

For the merging parties: Jocelyn Katz (*Webber Wentzel Bowens*)

For the Commission: Maarten van Hooven (*Mergers & Acquisitions*)

⁶ See page 46 as well as 85-86 embracing a list of competitors to IST Data.