



## **DETERMINATION OF MERGER NOTIFICATION M/06/002 – IBM / Micromuse**

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### **Section 21 of the Competition Act 2002**

### **Proposed acquisition by IBM Corporation of Micromuse Inc**

**Dated 09/02/06**

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#### **Introduction**

1. On 16 January 2006 the Competition Authority, in accordance with Section 18 (1) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby IBM Corporation (“IBM”) through Rooster Acquisition Corporation (“Rooster”) would acquire the entire shareholding in Micromuse Inc. (“Micromuse”) (“the Transaction”).

#### **The Undertakings**

2. Rooster is a wholly-owned acquisition vehicle and subsidiary of IBM Corporation (“IBM”).
3. IBM, the acquirer, is a publicly-held company, listed on the New York and several other Stock Exchanges in the United States and world-wide.
4. IBM’s world-wide consolidated turnover for the financial year ended 31 December 2004 was US\$96,293million (ca. €80,377million<sup>1</sup>). Its turnover in the State for the same period was [ ].
5. IBM is active in the development, production and marketing of a variety of IT solutions on a world-wide basis. These solutions are comprised of software, systems, servers, storage systems and other business consulting and IT infrastructure services.
6. IBM’s software activities are diverse and include, but are not limited to the development and marketing of System Infrastructure Software (“SIS”) solutions. SIS solutions are, in part, aimed at managing IT systems and applications.
7. Within SIS, IBM provides Network and Services Management (“NSM”) software for both centralised and distributed IT systems. It also active in the provision of Security and Vulnerability Services (“SVM”) software.

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<sup>1</sup> On the basis of the exchange rate used by the Authority on 09 February 2006 of US\$1: €0.83517.

8. Micromuse, the target, is a publicly-held company, listed on the Nasdaq Stock Market Inc. Micromuse is based in San Francisco in the United States.
9. Its turnover for the financial year ended 30 September 2005 was US\$160.8million (€134.26 million<sup>2</sup>). In the financial year ended 30 September 2004, Micromuse did not have any turnover in the State and in the financial year ended 30 September 2005 it generated turnover of [ ] in the State.
10. Micromuse is also active in the provision of NMS software, in particular, software for distributed systems known as Distributed Network and Service Management (“DNSM”) software. Like IBM, it is also active in the provision of SVM software but it is not active in the provision of NSM software for centralised host systems.
11. Its software enables its customers to “manage increasingly complex IT systems that support the proliferation of voice and video traffic in addition to data, due to the growing adoption of voice over IP (“VOIP”) audio and video services delivered over the internet”<sup>3</sup>. In addition, Micromuse’s software enables quick diagnosis of the performance of IT environments and the alerting of staff to attempted security breaches of their systems.

### **The Transaction**

12. The transaction will enable IBM to provide customers with a network and service management solution to more completely address their requirements through the acquisition of:
  - Micromuse’s software generally which, together with IBM’s portfolio of software systems and services, will enable companies to better manage their sophisticated IT environments and deliver new services to their customers, employees and business partners; and
  - Micromuse’s Distributed Network Services Management software which will complement IBM’s Legacy Network and Services Management software, providing customers with a more complete solution and lowering of their operational costs.
13. Post-merger, IBM intends to:
  - Establish Micromuse’s operations as a business unit within IBM’s Tivoli Software division;
  - Incorporate Micromuse software technology and solutions into IBM’s Tivoli software offerings as well as in IBM’s hardware and services;
  - Market and sell Micromuse software products through IBM’s and Micromuse’s world-wide sales channels and IBM Business Partners; and
  - Build upon the companies’ existing business relationship, which includes more than 500 joint customers world-wide.

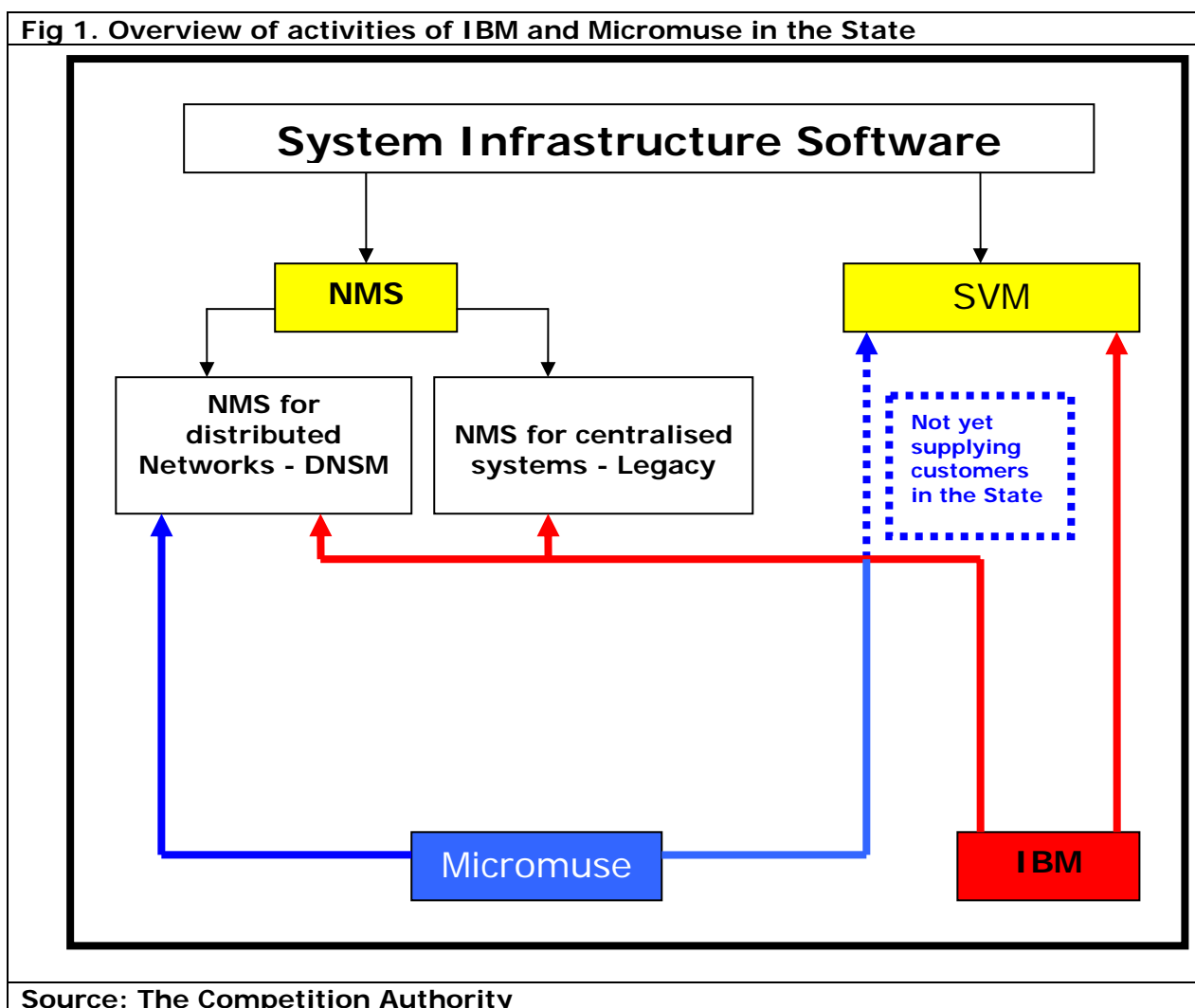
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<sup>2</sup> See *Fn. 1* of this Determination.

<sup>3</sup> IBM Press Release dated 21 December 2005 available at <http://www-3.ibm.com/press/us/en/pressrelease/19066.was>.

## Analysis

14. The Undertakings' activities in the State overlap horizontally in respect of their provision of NMS software and SVM software as displayed in Figure 1 below.



### ***NMS Software***

15. NMS software has the general functions of:
- Monitoring the health of an IT network, systems and services, through real-time reporting in a graphical interface; and
  - Detection and analysis of problems with IT networks, systems and services. Alerts systems may be included.
16. In respect of the current transaction, two types of NSM software are considered: NMS software for centralised host systems ("Legacy") and NMS software for distributed systems, also known as "DNSM" software.
17. IBM provides NSM software for both "Legacy" systems and, to a lesser extent, NSM software for distributed systems. The term "Legacy" is used to denote centralised host systems and operating software and applications, such as IBM's mainframe offerings.

18. Micromuse's main activity is in relation to DNSM software. Approximately [ ] % of its turnover derives from its DNSM activities alone. Unlike IBM, Micromuse is not active in the provision of NSM software for Legacy systems.
19. Micromuse's DNSM software also allows for the management of "increasingly complex IT systems that support the proliferation of voice and video traffic in addition to data, due to the growing adoption of voice over IP ("VOIP") audio and video services delivered over the internet"<sup>4</sup>. In addition, Micromuse's DNSM software enables its customers to quickly diagnose the performance of their IT environments and alert staff to attempted security breaches of their systems.

*Overlap in provision of DNSM Software*

20. While the Undertakings' activities overlap in respect of DNSM software, neither Undertaking has a substantial share of DNSM software offerings globally, across Western Europe or in the State.
21. On the basis of data supplied by IDC<sup>5</sup>, the world-wide DNSM software sector was estimated to be worth approximately US\$3.37 billion in 2004. As set out in Table 1 below, Micromuse's and IBM's respective world-wide DNSM shares, pre-merger, are 4.2% and 1.6% (on this basis, combined share post-merger is estimated at 5.8%)<sup>6</sup>. In Western Europe, the Undertakings' respective shares of DNSM software provision are 6.1% (Micromuse) and 2.2% (IBM) (on this basis, combined share post-merger estimated at 8.3%).

	<b>IBM</b>	<b>Micromuse</b>	<b>Combined</b>
<b>Global</b>	1.26%	4.2%	5.4%
<b>Western Europe</b>	2.2%	6.1%	8.3%
<b>Ireland (the State)</b>	N/A	N/A	N/A

**Source: The Competition Authority using IDC<sup>7</sup> data**

22. In the State, Micromuse has [ ] customers while IBM similarly has a low number of DNSM software customers.
23. On reviewing the world-wide and Western Europe NSM software sectors, the Authority found a large number of DNSM software providers with low markets shares. Of the DNSM software providers active in the sector, such as Lucent Technologies, McAfee, Cisco, HP,

<sup>4</sup> IBM Press Release dated 21 December 2005 available at <http://www-3.ibm.com/press/us/en/pressrelease/19066.was>.

<sup>5</sup> IDC, according to its website is "the premier global provider of market intelligence, advisory services, and events for the information technology and telecommunications industries. IDC helps IT professionals, business executives, and the investment community make fact-based decisions on technology purchases and business strategy. Over 775 IDC analysts in 50 countries provide global, regional, and local expertise on technology and industry opportunities and trends. For more than 40 years, IDC has provided strategic insights to help our clients achieve their key business objectives. IDC is a subsidiary of *IDG*, the world's leading technology media, research, and events company". Available at <http://www.idc.com/about/about.jsp>.

<sup>6</sup> Data provided through IDC in respect of 2004.

<sup>7</sup> See *Fn 7* of this Determination.

Computer Associates, Cisco, at 8.0%, had the largest share of DNSM software sales world-wide in 2004<sup>8</sup>.

24. Most of the NSM (including DNSM) providers operate globally. Customers purchasing DNSM products may download the product from the DNSM supplier's website or the product may be mailed in CD format to the customer wherever it is based in the world.
25. Customers in Ireland wishing to purchase DNSM software can do so from a large number of DNSM providers such as Computer Associates, Hewlett Packard, Cisco, McAfee Inc and Lucent and SVM software from NEC, Fujitsu, Nortel Networks, Computer Associates, NtelQ, Bindview Corp, Symantec, Internet Security Systems, and Hewlett Packard.
26. On the basis of the Undertaking's low shares in the provision of DNSM software products, the existence of a large number of DNSM software suppliers and the small number of customers that both Undertakings have in the State, the Authority has concluded that the overlap in the Undertakings' DNSM software activities does not give rise to competition concerns.

#### *Substitutability of NMS software for Legacy Systems with DNSM Software*

27. The Authority also considered whether NMS software for Legacy systems and DNSM software is substitutable. It found several differences between the NSM products offerings of IBM's Legacy software and Micromuse's DNSM software:
  - Micromuse's DNSM software can be classified as "Middleware" software. The term "Middleware" software is used to describe a layer of software between the operating system and the service networks they support. Middleware software provides services such as identification, database facilities, web application, server support authentication, communications, security and translating directories. IBM's NSM software offerings are not considered as Middleware;
  - IBM's NMS software is used for centralised systems while Micromuse's DNSM software is used for distributed systems and are not interchangeable;
  - Legacy systems (and consequently Legacy compatible NMS software) are being increasingly displaced by distributed systems using DNSM software. This is evidenced, according to the Undertakings, by declining shares for Legacy systems and increasing shares for distributed systems
28. The Authority is satisfied that IBM's NSM software for Legacy systems is not substitutable with DNSM software.

#### ***SVM Software***

29. SVM software is designed to ensure the integrity and confidentiality of data, in particular where data is exchanged between different applications and across different platforms.

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<sup>8</sup> Source of data, IDC. See *fn 7*.

30. Both Undertakings are active in the provision of SVM software. Micromuse's activities in SVM software represents a very small share of its activities – approximately [ ] % based on revenue derived from sales of SVM software as against its total revenue figures - of which the provision of DNSM software is its predominant activity.
31. On the basis of data supplied by the Undertakings from IDC<sup>9</sup>, the world-wide SVM software sector was estimated to be worth approximately US\$1,369 million in 2004. The Undertakings' activities in SVM software, as set out in Table 2 below, collectively accounts for 2% of worldwide sales of SVM software and 2.6% of sales in Western Europe. No breakdown share figures or data is available in respect of Ireland.

<b>Table 2: Overview of Sales and Supplies of SVM software (2004)</b>			
	<b>IBM</b>	<b>Micromuse</b>	<b>Combined</b>
<b>Global</b>	1.6%	0.4%	2.0%
<b>Western Europe</b>	2.1%	0.5%	2.6%
<b>Ireland (the State)</b>	N/A	N/A	N/A
<b>Source: The Competition Authority using IDC<sup>10</sup> data</b>			

32. Currently, Micromuse does not have any SVM customers in the State, while IBM has less than five SVM customers in the State.
33. Like the DNSM software sector, suppliers of SVM software products generally operate globally, supplying SVM software to their customers which may be located anywhere in the world from the suppliers' websites directly or in CD format posted to the customer. The SVM software sector is made up of a large number of SVM software suppliers, with low market shares, of which the leading supplier, Computer Associates, had a sector share in 2004 of 6.9% world-wide and 6.0% in Western Europe<sup>11</sup>. Breakdown figures for the supply of SVM software products in the State are not available.
34. On the basis of the Undertakings' low market shares world-wide and in Western Europe, the large number of SVM software suppliers available to customers in the State and the small number of customers supplied by the Undertakings in the State, the Authority has concluded that the overlap in the Undertakings' SVM software activities does not give rise to competition concerns.

<sup>9</sup> See *Fn. 7* of this Determination.

<sup>10</sup> See *Fn 7* of this Determination.

<sup>11</sup> Sector share figures are based on sales and shares of SVM software in 2004 as provided for by IDC See. *Fn. 7* of this Determination

## **Determination**

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by IBM Corporation, through Rooster Acquisition Corporation, of Micromuse Inc. will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

## **For the Competition Authority**

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**Dr. Paul K. Gorecki**  
**Member of the Competition Authority**