

No. 96056

## **Fujitsu Services Limited**

Minutes of a Meeting of the Board of Directors

held on 28 March 2003 at 26 Finsbury Square, London EC2A 1SL

Present: R. Christou (in the Chair)  
T. Adachi

In attendance: R. Moseley  
R.A.J. Allnutt

Apologies: D. J. Courtley  
R. Leek  
H. Hirata

### **BACKGROUND**

1. It was noted that notice had been given to all the Directors of the Meeting and there was a quorum present.
2. It was reported that the meeting had been convened to consider certain actions to be taken by the Company pursuant to a proposed restructuring (the "Restructuring") of the Fujitsu Services group in the United Kingdom (the "FS Group"). It was explained that the primary reasons for the Restructuring were:
  - (a) to enable the Company's holding company, Fujitsu Services Holdings plc ("FSH") to continue paying preference dividends out of profits available for distribution in respect of its Preference Shares and to fully or partially repay amounts owing in respect of its Preference Shares of approximately £168,000,000 in July 2005; and
  - (b) to improve the financial position of the Company so as to provide further comfort and confidence to its customers and suppliers and reflect the FS Group's improving financial performance.
3. There was tabled before the meeting a copy of a memorandum setting out in outline the terms of the Restructuring which was envisaged in relation to the FS Group (the "Restructuring Memorandum"). It was explained that, as part of the Restructuring, the Company would be required to perform various actions pursuant to Steps 1, 2, 4 and 5 of the Restructuring Memorandum. The meeting would consider the

commercial reasons for and legal issues relating to these proposed actions and, if appropriate, approve these actions in anticipation of the Restructuring.

## **LEGAL ISSUES**

4. There was produced to the meeting a memorandum from the Company's legal advisors, Mayer, Brown, Rowe & Maw explaining the principal legal issues arising in relation to the proposed Restructuring and the matters to be considered by the directors of the relevant FS Group companies ("Legal Issues Memorandum"). The directors considered the Legal Issues Memorandum.

## **SALE OF PATHWAY BUSINESS TO THE COMPANY**

5. It was noted that Step 1 in the Restructuring Memorandum involved the proposed acquisition by the Company (the "FSPL Purchase") of the entire business and assets of Fujitsu Services (Pathway) Limited ("FSPL") (other than cash and the shares in FSPL's subsidiary, Fujitsu Services (Pathway Asset Company) Limited ("FSPAL") and the proposed acquisition by the Company of the entire business and assets of FSPAL (the "FSPAL Purchase") as a going concern on the terms of draft sale and purchase agreements to be entered into between respectively (1) the Company and (2) FSPL (the "FSPL Purchase Agreement") and (1) the Company and (2) FSPAL (the "FSPAL Purchase Agreement") (together the "Purchase Agreements"). Copies of the latest drafts of the Purchase Agreements were tabled to the meeting and initialled by the Chairman for the purposes of identification. It was noted that, in relation to the FSPL Sale, the consideration was £59,400,000 in respect of the Goodwill and £25,100,000 in respect of the Assets (as adjusted in accordance with the terms of the FSPL Sale Agreement) and that, in relation to the FSPAL Purchase the consideration was £9,700,000. The directors noted that the basis for the valuations of the asset transfers in respect of the FSPL Purchase and the FSPAL Purchase were set out in a board paper prepared by Neil Henfrey addressed to the directors of FSPL and FSPAL (the "Pathway Board Paper"). The Pathway Board Paper confirmed that the consideration for the FSPL Purchase would be equal to the net book value of the FSPL's assets plus an amount representing goodwill. The consideration payable for the FSPAL Purchase would be the economic value of FSPAL's deferred tax assets.

The directors concluded that, on the basis of the information set out in the Pathway Board Paper, the consideration payable for the FSPL Purchase and the FSPAL Purchase represented the market value of the businesses being acquired. Accordingly the directors noted that the issues referred to in the Legal Issues Memorandum in relation to the transfers were satisfactory addressed.

## NOVATION OF POST OFFICE AGREEMENT AND RELATED MATTERS

6. It was reported that under the agreement between Post Office Limited (the "Post Office") and FSPL dated 28 July 1999, in its revised form dated 31 December 2002, (the "Post Office Agreement"), FSPL is obligated to novate the Post Office Agreement to the Company (the "Novation"), subject to receiving confirmation from the Post Office that it wishes the Novation to be carried out. It was explained that such confirmation has been received from the Post Office and that the Novation is due to occur on or before 1 April 2003.
7. It was explained that under the Post Office Agreement, the Post Office had agreed that, having given the confirmation referred to in the previous minute, it would enter into a deed of novation (subject to agreement on the precise terms of that deed) under which the entire benefit and burden of FSPL's rights and obligations under the Post Office Agreement would be transferred to the Company.
8. A copy of the form of the deed of novation (the "Post Office Novation Agreement") which had agreed by FSPL, the Post Office and the Company was tabled to the meeting. It was noted that the effect of the Deed of Novation would be:
  - 8.1 to place the Company in a position as if it was, and had at all times been, an original party to the Post Office Agreement in place of FSPL;
  - 8.2 that the Post Office would release and discharge FSPL from any further performance under the Post Office Agreement and from all claims, demands and obligations whatsoever in relation to the Post Office Agreement; and
  - 8.3 that any further performance under the Post Office Agreement would be undertaken by the Company and all claims, demands and obligations whatsoever in relation to the Post Office Agreement would be made against the Company.
9. It was reported that in connection with the Novation:
  - 9.1 under the Post Office Agreement, FSPL would be required to novate relevant subcontracts to the Company; and
  - 9.2 a number of other third party contracts and licence agreements would need to be transferred to the Company by FSPL and by FSPAL to enable the Company to perform its obligations under the Post Office Agreement following the Novation.
10. Pursuant to Minute 9.1, copies of the forms of the novation agreements (the "Subcontract Novation Agreements") proposed to be entered into by (1) the



Company, (2) FSPL and (3) the relevant subcontractor were tabled to the meeting. It was noted that the relevant subcontractors were the following entities:

- Energis Communications Limited
- The Escher Group Limited
- Fujitsu Consulting Limited
- Hypercom Financial Terminals AB
- Romec

11. Pursuant to Minute 9.2, copies of the forms of the novation agreements (the "Supplier Novation Agreements") proposed to be entered into by (1) the Company, (2) FSPL or FSPAL (as appropriate) and (3) the relevant principal supplier in relation to the Post Office Agreement, were tabled to the meeting. It was noted that the principal suppliers were the following entities:

- IBM UK Limited (Sequent)
- EMC<sup>2</sup> Computer Systems (UK) Limited
- IBM UK Limited (Tivoli)
- Oracle Corporation UK Limited
- Metron Technology Limited.

12. It was reported that the intention was that each Subcontract Novation Agreement and each Supplier Novation Agreement would be entered into on, or as soon as the Novation is completed after, 31 March 2003.

13. It was further reported that:

- 13.1 all other agreements between FSPL and third parties relevant to the performance of the Post Office Agreement were listed in Schedule 2 (Contracts Schedule) to the FSPL Purchase Agreement which it is intended be entered into by FSPL and the Company on 31 March 2003; and
- 13.2 it was intended that the transfer of those agreements would be effected by the FSPL Purchase Agreement or by such other additional agreements as may be necessary to effect such transfer.



14. The directors present carefully considered:
  - 14.1 the form of the Post Office Novation Agreement;
  - 14.2 the forms of the Supplier Novation Agreements;
  - 14.3 the forms of the Subcontract Novation Agreements; and
  - 14.4 the form of Schedule 2 (Contracts Schedule) to the FSPL Purchase Agreement.
15. The meeting discussed the financial and commercial aspects of the Novation, including the requirement to novate relevant subcontracts to the Company (as noted in Minute 9.1) and the need to transfer a number of other third party contracts and licence agreements to the Company (as noted in Minute 9.2) (together, the "Transaction") and concluded that:
  - (a) the Transaction is in the best interests of the Company; and
  - (b) the Post Office Novation Agreement, the Subcontract Novation Agreements; Supplier Novation Agreements, and the list in Schedule 2 to the FSPL Purchase Agreement each be and are hereby approved subject to such changes as the Committee (established pursuant to Minute 9.2) (the "Committee") may approve.
16. It was noted that FSH was party to a guarantee entered into on 31 December 2002 (the "Guarantee") relating to FSPL's obligations and liabilities under the Pathway Contract. It was also noted that the provisions of the Guarantee confirmed that, following execution of the Novation Agreement, FSH would guarantee the performance of the Company's obligations and liabilities (in substitution for FSPL's obligations and liabilities) under the Pathway Contract. Consequently, no re-statement or re-execution of the Guarantee was required as part of the Restructuring.

## **FSPL LOAN**

17. The Chairman explained that, as part of Step 1 of the Restructuring, FSPL would on 31 March 2003 lend to the Company an amount equal to the consideration payable by the Company in relation to the FSPL Purchase (as adjusted in accordance with the FSPL Sale Agreement) (the "FSPL Loan"). The FSPL Loan would be interest free, unsecured and repayable on demand. The meeting noted the issues raised in the Legal Issues Memorandum and it was noted that in practice this meant that were FSPL ever to go into insolvent liquidation, the Company would be required to repay to FSPL an amount equal to the value of the loss of interest (that is, an amount equal to the

commercial rate of interest that would have been payable on the FSPL Loan). However, it was also noted that it was intended that FSPL was to be left dormant and then wound up or dissolved after the proposed Restructuring so that there was no reason to believe FSPL would be insolvently wound up.

#### **FSPAL LOAN**

18. The Chairman explained that, as part of Step 1 of the Restructuring, FSPAL would on 31 March 2003 lend to the Company an amount equal to the consideration payable by the Company in relation to the FSPAL Purchase (the "FSPAL Loan"). The FSPAL Loan would be interest free, unsecured and repayable on demand. The meeting noted the issues raised in the Legal Issues Memorandum and it was noted that in practice this meant that were FSPAL ever to go into insolvent liquidation, the Company would be required to repay to FSPAL an amount equal to the value of the loss of interest (that is, an amount equal to the commercial rate of interest that would have been payable on the FSPAL Loan). However, it was also noted that it was intended that FSPAL was to be left dormant and then wound up or dissolved after the proposed Restructuring so that there was no reason to believe FSPAL would be insolvently wound up.

#### **SORBUS LOAN**

19. The Chairman explained that, as part of Step 2 of the Restructuring, ICL Sorbus Limited ("Sorbus") would on 31 March 2003 lend to the Company the amount of £101,834,000 (the "Sorbus Loan"). The Sorbus Loan would be interest free, unsecured and repayable on demand. The meeting noted the issues raised in the Legal Issues Memorandum and it was noted that in practice this meant that were Sorbus ever to go into insolvent liquidation, the Company would be required to repay to Sorbus an amount equal to the value of the loss of interest (that is, an amount equal to the commercial rate of interest that would have been payable on the Sorbus Loan). However, it was also noted that it was intended that Sorbus was to be left dormant and then wound up or dissolved after the proposed Restructuring so that there was no reason to believe Sorbus would be insolvently wound up.

#### **FSIL LOAN**

20. It was noted that Step 2 of the Restructuring also contemplated the creation of an inter-company loan between Fujitsu Services Investments Limited ("FSIL") and the Company (the "FSIL Loan"). It was explained that the terms of the FSIL Loan were set out in a draft loan agreement (the "FSIL Loan Agreement"). A copy of the latest



draft of the FSIL Loan Agreement was tabled to the meeting. It was noted that interest would be repayable at the rate of 1% above LIBOR and the FSIL Loan would be repayable on 16 March 2004 (or as otherwise contemplated by the FSIL Loan Agreement). The directors considered whether FSIL ought to be capable of repaying the FSIL Loan and concluded that there was no reason for this not to be the case, given the existence of the comfort letter from the Company's ultimate shareholder, Fujitsu Limited (and Fujitsu Limited's strong balance sheet). The directors also noted that the legal issues relating to the establishment of the FSIL Loan had been set out in the Legal Issues Memorandum and considered earlier in the meeting.

#### **CONVERSION OF FSL SUBORDINATED LOAN**

21. It was explained that Step 4 of the Restructuring involved the Company converting £125,000,000 of a subordinated loan of £210,000,000 between the Company and FSH to 125,000,000 ordinary shares of £1 each in the share capital of the Company. The meeting noted that the legal issues relating to the conversion had already been discussed earlier in the meeting and that, in view of the primary reasons for the Restructuring (as stated above) the conversion of the Subordinated Loan would be in the best interests of the Company. The meeting also noted that the Company would be required to pass the necessary ordinary and special resolutions in order to give effect to the conversion. This would involve increasing the authorised share capital of the Company by £210,000,000, granting the directors of the Company the necessary authority under s80 CA to allot relevant securities up to a maximum nominal amount of £210,000,000 and disapplying the provisions of s89 CA in relation to such allotment as set out in the draft notice of Extraordinary General Meeting which was produced to the meeting.

#### **AMENDMENT OF MEMORANDUM**

22. It was proposed that Clause 3 of the Memorandum of Association of the Company be amended with respect to its objects in order to reflect a change in activities conducted by the Company. The meeting noted that the Company would be required to pass the necessary special resolution in order to give effect to the amendment and that such resolution was set out in the draft notice of Extraordinary General Meeting which was produced to the meeting. A print of the amended Memorandum of Association (the "Amended Memorandum") was also produced to the meeting.



## **EXTRAORDINARY GENERAL MEETING**

23. It was noted that the sole shareholder of the Company, FSH, would be required to provide its consent to hold the Extraordinary General Meeting of the Company at short notice so as to pass the resolutions contemplated by Paragraphs 10 and 11 (the "Resolutions"). After due and careful consideration IT WAS RESOLVED, subject to the requisite consent to short notice being obtained, to convene an Extraordinary General Meeting of the Company for the above purpose to be held at [26 Finsbury Square, London EC2A 1SL] on [31] March 2003. The Secretary was instructed to make the necessary arrangements for such meeting and, subject to the Resolutions being passed, to file a copy thereof with the Registrar of Companies.
24. The meeting was then adjourned for the purpose of holding the Extraordinary General Meeting. On resumption it was reported that the Resolutions (set out in the consent to short notice of the Extraordinary General Meeting) had been duly passed at the Extraordinary General Meeting.

## **THE FSH LOAN**

25. It was reported that Step 5 of the Restructuring contemplated the creation of an inter-company loan between the Company and FSH whereby the Company would lend to FSH the amount of £64,000,000 (the "FSH Loan"). It was explained that the terms of the FSH Loan were set out in a draft loan agreement (the "FSH Loan Agreement"). A copy of the latest draft of the FSH Loan Agreement was tabled to the meeting. It was noted that interest would be charged at the rate of 0.375% above LIBOR and the FSH Loan would be repayable on 30 March 2004 (or as otherwise contemplated by the FSH Loan Agreement). The directors considered whether FSH ought to be capable of repaying the FSH Loan and concluded that there was no reason for this not to be the case, given the existence of the comfort letter from the Company's ultimate shareholder, Fujitsu Limited (and Fujitsu Limited's strong balance sheet). The directors also noted that the legal issues relating to the establishment of the FSH Loan had were set out in the Legal Issues Memorandum and had been considered earlier in the meeting.

## **TPT LOAN**

26. The Chairman explained that, as part of Step 5 of the Restructuring, ICL Third Party Trading (Holdings) Limited ("TPT") would on 31 March 2003 lend to the Company the amount of £64,000,000 (the "TPT Loan"). The TPT Loan would be interest free, unsecured and repayable on demand. The meeting noted the issues raised in the Legal

Issues Memorandum and it was noted that in practice this meant that were TPT ever to go into insolvent liquidation, the Company would be required to repay to TPT an amount equal to the value of the loss of interest (that is, an amount equal to the commercial rate of interest that would have been payable on the TPT Loan). However, it was also noted that it was intended that TPT was to be left dormant and then wound up or dissolved after the proposed Restructuring so that there was no reason to believe TPT would be insolvently wound up.

## RESOLUTIONS

27. The directors present took time to consider all the proposed actions of the Company pursuant to the Restructuring. Having fully and carefully considered those actions and the legal issues relevant to those actions (which had been discussed earlier in the meeting) the directors present were unanimously of the opinion that it was in the best commercial interests of the Company and the FS Group to approve the Restructuring and for the Company to enter into the documents set out in the Resolutions contained in this Minute 27.

and **IT WAS THEREFORE UNANIMOUSLY RESOLVED** that

- (a) the terms of the proposed Restructuring in substantially the form set out in the Restructuring Memorandum be approved (subject to any amendments considered appropriate by Toshio Adachi and Richard Christou);
- (b) the terms of the Purchase Agreements, the FSPL Loan, the FSPAL Loan, the Sorbus Loan, the FSIL Loan Agreement, the FSH Loan Agreement and the TPT Loan be and they are hereby approved subject to such final amendments as the directors may in their sole discretion consider to be necessary or appropriate in the interests of the Company;
- (c) any director, or in the case of any deed any two directors or any director and the secretary, be and is hereby authorised to sign the Purchase Agreements, the FSIL Loan Agreement and the FSH Loan Agreement for and on behalf of the Company;
- (d) the Company enter into the Post Office Novation Agreement and each of the Supplier Novation Agreements and Subcontract Novation Agreements in the form presented to the meeting or in such form as the Committee may approve;
- (e) in order to effect the transfers of the other third party contracts and licence agreements to the Company, the Company enter into such additional agreements as may, in the

opinion of the Committee, be necessary and in such form as the Committee may approve;

- (f) Richard Christou and Toshio Adachi be and are hereby appointed as a Committee of the Board and that such Committee be and is hereby given full authority to do all such things as might seem to the Committee to be necessary, desirable or expedient in connection with (whether directly or indirectly) the Transaction including (but without limitation):
  - (i) approving the Post Office Novation Agreement, the Subcontract Novation Agreements, the Supplier Novation Agreements, and the list in Schedule 2 in their final forms;
  - (ii) approving any additional agreements which may be necessary in order to effect the transfers of the other third party contracts and licence agreements to the Company;
  - (iii) approving any other documents, deeds, matters, acts or things which might be necessary or desirable in connection with the Transaction;
- (g) that in connection with the Transaction:
  - (i) any document requiring a signature on behalf of the Company should be signed by any director of the Company or Colin Lenton-Smith;
  - (ii) any document to be executed by the Company should be executed as provided by the Company's Articles of Association or as otherwise provided by law and that such document be exchanged with the other parties thereto but pending any such exchange any such document would not be considered as delivered; and
  - (iii) that approval of any document may be given by the Committee; and
- (h) any director, or in the case of any deed any two directors or any director and the secretary, be and is hereby authorised to take all steps and do all such things and deeds as they consider necessary to give effect to the Restructuring and to the above resolutions and to agree any amendments to the above which he may consider necessary to give effect to the Restructuring.



**MEETING CLOSED**

28. There being no further business, the Chairman declared the meeting closed.

**GRO**

Chairman

31 Mar 03 03:12

No. 96056

**Fujitsu Services Limited**

Resolutions in writing of the Board of Directors in accordance with the Articles of Association.

Whereas:

It was reported that an application had been received for the issue and allotment of ordinary shares in the capital of the Company from the person and for the number of shares set out below. It was noted that the directors were, by a resolution of the Company passed on 28 March 2003, authorised to make such allotment and that the allotment could validly be made to the applicant and in the number listed below since the pre-emption rights conferred on existing members by Section 89 Companies Act 1985 did not apply to the allotment by virtue a resolution of the Company passed on 28 March 2003.

Accordingly:

**IT WAS RESOLVED** to allot to the person listed below the number of ordinary shares in the capital of the Company set against their name credited as fully paid at par by way of capitalisation of the £125,000,000 being part of the moneys owing to the applicant by the Company:

| Applicant                     | Number of shares | Moneys owing to applicant to be capitalised |
|-------------------------------|------------------|---|
| Fujitsu Services Holdings plc | 125,000,000      | £125,000,000                                |

The Secretary was instructed to issue appropriate share certificate, to file the necessary return with the Registrar of Companies and to make all arrangements incidental to such issue and allotment.

**GRO**

Richard Christou

Date: 31/03/2003

Date: 2003

David Courtley

RM11B01 F: 060086-1

No. 96056

## Fujitsu Services Limited

Resolutions in writing of the Board of Directors in accordance with the Articles of Association.

Whereas:

It was reported that an application had been received for the issue and allotment of ordinary shares in the capital of the Company from the person and for the number of shares set out below. It was noted that the directors were, by a resolution of the Company passed on 28 March 2003, authorised to make such allotment and that the allotment could validly be made to the applicant and in the number listed below since the pre-emption rights conferred on existing members by Section 89 Companies Act 1985 did not apply to the allotment by virtue a resolution of the Company passed on 28 March 2003.

Accordingly:

**IT WAS RESOLVED** to allot to the person listed below the number of ordinary shares in the capital of the Company set against their name credited as fully paid at par by way of capitalisation of the £125,000,000 being part of the moneys owing to the applicant by the Company:

| Applicant                     | Number of shares | Moneys owing to applicant to be capitalised |
|-------------------------------|------------------|---|
| Fujitsu Services Holdings plc | 125,000,000      | £125,000,000                                |

The Secretary was instructed to issue appropriate share certificate, to file the necessary return with the Registrar of Companies and to make all arrangements incidental to such issue and allotment.

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Date: 2003

Richard Christou

**GRO**

David Courtley

Date: 31/03/ 2003



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Date: 2003

Toshio Adachi

**GRO**

Date: 31/03/ 2003

Hiromichi Hirata

.....

Date: 2003

Roger Leek

.....

Date: 2003

Toshio Adachi

.....

Date: 2003

Hiromichi Hirata

**GRO**

Date: 31-03-2003

Roger Leek

**GRO**

Date: 2003

Toshio Adachi

Date: 2003

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Hiromichi Hirata

Date: 2003

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Roger Leek