

13 November 2014

Consent to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 30 September 2014

Completed acquisition by Xchanging Holdings Limited and Xchanging, Inc. of certain companies comprising all of the European operations of Agencyport Software Group

We refer to your emails dated 5 and 7 November 2014 requesting that the CMA consents to derogations to the Initial Enforcement Order of 30 September 2014 (the 'Initial Order'). Under the Initial Order, save for written consent by the CMA, provision was made that Xchanging plc, Xchanging Holdings Limited and Xchanging, Inc. ('Xchanging') will hold separate the Agencyport Europe business from the Xchanging business (as defined in the Initial Order respectively). After due consideration of your request for derogations from the Initial Order, Xchanging may carry out the following actions, in respect of the specific paragraphs:

Paragraphs 4(a) and 5(g) of the Initial Order

Pursuant to paragraphs 4(a) and, in particular, 5(g) of the Initial Order, during the specified period (as defined in the Initial Order), Xchanging shall procure that, except with the prior written consent of the CMA, the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Agencyport Europe business will be carried out by the Agencyport Europe business alone and for the avoidance of doubt the Xchanging business will not negotiate on behalf of the Agencyport Europe business (and vice versa) or enter into any joint agreements with the Agencyport Europe business (and vice versa).

In order to ensure compliance with paragraphs 4(a) and 5(g) of the Initial Order, the CMA consents to the Xchanging business continuing to bid jointly with the Agencyport Europe business (as was the case pre-implementation of the Initial Order) in order to supply [X]. The derogation is granted subject to the following conditions:

1. One or more companies constituting Agencyport Europe (as defined in the Initial Order) will be the contracting party if the joint bid is successful; and

2. In the event that the CMA accepts undertakings or imposes an order such that all, or the relevant part of, the Agencyport Europe business is divested, Xchanging undertakes to enter a services agreement on arm's length terms to provide Agencyport Europe with the necessary capabilities to fulfil the contract with [X] (if the joint bid is successful) in circumstances where the Agencyport Europe business, or the relevant part of it, is divested to a purchaser that could not replicate those services.

The CMA has provided its consent on the basis that:

1. Only the specific personnel identified in your email of 7 November 2014 will be involved in the joint bid process.
2. The preparation for the initial pitch(es) to [X] will not involve the exchange of any commercially sensitive information in respect of either Agencyport Europe or Xchanging.
3. Agencyport Europe will conduct a 'proving exercise' to demonstrate the fitness for purpose of its product for [X]'s requirement. However, Xchanging will not be involved in this process and the Xchanging business and the Agencyport Europe business will not exchange any information in relation to this exercise.
4. Should Agencyport Europe be nominated as the preferred bidder, the following information will need to be exchanged:
 - a) [X];
 - b) [X]; and
 - c) [X].

In order to protect this information, Xchanging and Agencyport Europe will put in place the following information safeguards by signing a 'Teaming Agreement', which will (1) set out the respective roles and responsibilities for persons involved in the bid from Xchanging and Agencyport Europe and the related commercial terms agreed between the parties and (2) contain undertakings in relation to confidentiality obligations owed by the parties to each other. The conclusion of the Teaming Agreement is subject to the CMA's prior written approval.

For the avoidance of doubt, this does not extend to performing the contract services should the bid be successful without further derogation.