

Anticipated acquisition by Iron Mountain Incorporated of Recall Holdings Limited

Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups

Introduction

1. On 14 January 2016, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated acquisition by Iron Mountain Incorporated (Iron Mountain) of Recall Holdings Limited (Recall) for further investigation and report by a group of CMA panel members (the inquiry group).¹
2. In its provisional findings on the reference notified to Iron Mountain and Recall (the main parties) on 4 May 2016, the CMA provisionally concluded that the acquisition will result in the creation of a relevant merger situation and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in certain product markets in the Aberdeen and Dundee areas.
3. As a consequence of the merger, suppliers will face less risk of losing customers to competitors, and therefore individually negotiated prices for storage fees and service fees may increase. Similarly, suppliers may in consequence reduce the level and quality of service offered, and/or investment and innovation may be deterred.
4. This Notice sets out the actions that the CMA considers it might take for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings. The CMA invites comments on possible remedies by **18 May 2016**.

¹ The merger was anticipated when it was referred, but has just completed at a global level. 'Hold separate' undertakings prevent Iron Mountain from integrating Recall's UK business until completion of the investigation.

Criteria

5. In choosing appropriate remedial action, the CMA must have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.² When deciding on an appropriate remedy, the CMA will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.³

The provisional SLCs

6. We have provisionally identified the following SLCs:
- (a) The supply of RMS in each of the Aberdeen and Dundee areas.
 - (b) The supply of OSDP in the Aberdeen area.
 - (c) The supply of OSDP in the Dundee area.
 - (d) The supply of RIMS services to the oil and gas sector for customers in the Aberdeen area.

Possible remedies on which views are sought

7. In merger inquiries, the CMA will generally prefer structural remedies, such as divestiture, rather than behavioural remedies because:
- (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
 - (b) behavioural remedies may not have an effective impact on remedying the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and
 - (c) structural remedies do not normally require monitoring and enforcement once implemented.⁴

² Section 36(3) of the Act.

³ *Merger Remedies: Competition Commission Guidelines (CC8)*, paragraph 1.9. CC8 has been adopted by the CMA Board.

⁴ CC8, paragraph 2.14.

8. At this stage the CMA has provisionally identified two potential structural remedies, which are:
 - (a) complete divestiture of Recall UK;⁵ or
 - (b) a divestiture package of facilities in Aberdeen and Dundee to create a competitor at least equivalent to that of Recall's current presence.
9. The CMA will consider whether either of these remedies or a combination of them (or variants of them) may be appropriate. The Group will consider any other practicable remedies that the main parties, or any interested third parties, may propose in order to address the SLC and any resulting adverse effects.
10. The Group's current view is that a behavioural remedy is very unlikely to be an effective remedy to the SLCs that it has provisionally identified. However, the Group will consider any behavioural remedies put forward as part of this consultation and including whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies.

Complete divestiture of Recall UK

11. The complete divestiture of Recall's businesses in the UK would prevent an SLC from arising in any relevant market.
12. The Group therefore takes the view that full divestiture of Recall's businesses in the UK would represent a comprehensive solution to all aspects of the SLCs it has provisionally found, and that it has very few risks in terms of effectiveness.
13. However, the Group is currently of the view that this remedy would be disproportionate given the SLCs identified, which are restricted to the Aberdeen and Dundee areas, and is therefore not minded to pursue this option.

Divestiture package

14. The Group will consider the likelihood of achieving a successful divestiture and the associated risks when evaluating possible divestitures as a remedy to

⁵ Recall UK comprises Recall Limited, Preferred Media Limited, C21 Data Services Limited and Recall GQ Limited.

the provisional SLCs it has found. In reaching its view, the Group will have regard to the following critical elements of the design of divestiture remedies.

The scope of the divestiture package.

15. The Group's current view is that, to be effective in remedying each provisional SLC, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser(s) to operate effectively as (an) independent competitor(s) in the Aberdeen and Dundee areas.
16. The Group's current view is that the most appropriate divestiture package would comprise all of Recall's facilities in Aberdeen and Dundee along with their operational assets and customer contracts. Since these facilities and contracts are held by C21 Data Services Limited (C21) (which was acquired by Recall in July 2015), the divestiture could take the form of a sale of the shares in C21.
17. An alternative solution would be for Iron Mountain to divest some of its sites equivalent in size to those held by C21. The Group invites views on whether Iron Mountain should be given the choice of which sites (ie Recall or Iron Mountain sites) it is required to divest in each local area where it has provisionally identified an SLC.
18. The Group welcomes all views in relation to the appropriate divestiture package and any issues that might arise as a result of such a divestiture but it specifically invites feedback on the following areas:
 - (a) Recall operates two facilities in Dundee, both of which provide RMS services. The Group invites views on whether both of the Dundee sites should be divested to ensure an effective and proportionate remedy.
 - (b) Certain customers who currently use Recall's Aberdeen and/or Dundee facilities may choose to exercise a contractual right to prevent the transfer of their business to a new purchaser and opt to stay with the merged entity. The Group invites views on: (i) whether it is necessary for the effectiveness of the remedy to require Iron Mountain to transfer other customer contracts, of an equivalent size, from Iron Mountain sites to compensate for this; and (ii) the feasibility and difficulties of carrying out such transfers.
 - (c) In case customers of the Aberdeen and Dundee sites also have items stored outside of these locations, the Group invites views on whether such customers' contracts, including the holdings outside of Aberdeen and Dundee, should be included within the divestiture package.

- (d) The Group welcomes views on the attractiveness to a potential purchaser of selling the Aberdeen and Dundee sites as one divestiture package compared with the attractiveness of selling these as two separate packages.
19. For the avoidance of doubt, the Group considers that no charges arising out of the divestiture package, including any associated perm-out fees, should be borne by customers.

Identification of a suitable purchaser

20. The Group will wish to satisfy itself that a prospective purchaser is independent of the main parties, has the necessary financial and reputational capability to compete, is committed to competing in the relevant markets and that divestiture to the purchaser will not create further competition concerns.
21. The Group welcomes all views in relation to the identification of a suitable purchaser and specifically invites feedback on:
- (a) whether the required purchaser needs to have experience of storing core samples;
 - (b) whether the purchaser should be required to have coverage already in a number of other UK regions in order to offer services to customers who require storage outside of Aberdeen and Dundee; and
 - (c) whether the sale to a local purchaser who currently provides RMS would create any further competition concerns.

Effective divestiture process

22. The Group will consider the appropriate timescale for achieving a divestiture and what procedural safeguards may be required to minimise the risks associated with this remedy option.
23. The Group is of the view that Iron Mountain should be required to appoint a divestment trustee or a monitoring trustee to oversee the divestitures and to ensure that the businesses to be divested are maintained during the course of the process. The Group's view is that this would be overseen by the current monitoring trustee.
24. The Group welcomes views on what an appropriate timescale would be and what procedural safeguards may be required.

Relevant customer benefits

25. The Group will have regard to the effects of remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the merger situation. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. A benefit is only a relevant customer benefit if the CMA believes that:
- (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and
 - (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.⁶
26. The Group welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent to which these are preserved by the different remedy options we are considering.

Next steps

27. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the Group to consider, by **18 May 2016**.⁷
28. A copy of this notice will be posted on the [CMA website](#).

⁶ [Enterprise Act 2002](#), Section 134.

⁷ This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings announced on **4 May 2016**. The main parties have until **25 May 2016** to respond to the provisional findings. The Group's findings may alter in response to comments it receives on its provisional findings, in which case the Group may consider other possible remedies, if appropriate.