

## ANNEXE 1

### CASE CE/9496-11

#### STATEMENT OF COMMITMENTS

##### INTRODUCTION

The **OFT** is investigating certain business practices of Epyx Limited ("**Epyx**") under Chapter II of the Competition Act 1998 (as amended) (the "**Act**") and Article 102 of the Treaty on the Functioning of the European Union.

In the interests of an efficient disposal of the investigation, the Parties have offered Commitments (the "**Commitments**") under section 31A of the Act. Consistent with sections 31A and 31B of the Act, the Commitments are offered on the understanding that, if the Commitments are accepted, the OFT will close its investigation without any finding of any infringement.

For the avoidance of doubt, the offering of the Commitments does not constitute an admission by the Parties of any matter of fact or law relevant to the investigation. The Parties have not been the subject of any infringement decision or statement of objections in respect of the investigation.

##### GENERAL PRINCIPLES

The Commitments shall be binding on Epyx and its ultimate parent company, FleetCor Technologies, Inc., a Delaware corporation ("**FleetCor**"). The Parties shall not in any way circumvent, by actions and/or omissions, any commitments contained in this document, including by selling, assigning or otherwise transferring any part of Epyx's business to any other entity within the FleetCor corporate group as a result of which that entity would do anything that is prohibited by these Commitments.

##### THE COMMITMENTS

The Commitments shall apply for a period of 5 years commencing on the date on which the OFT publishes a decision accepting the Commitments.

Epyx undertakes to:

- a. act in compliance with the principles set out below;
- b. within 14 days of the date on which the OFT publishes a decision accepting the Commitments, amend<sup>1</sup> its Existing contracts and Supplier T&Cs to be compliant with these principles; and
- c. ensure that all New contracts and Supply-side contracts are entered into on terms that are compliant with these principles.

##### Principles relating to all Customers

1. All Customers will be permitted to develop, market, or support the sale of Alternative Systems at any time during their contract with Epyx.

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<sup>1</sup> Where required under the terms of any Existing contract, Epyx to send letters of variation to its Demand-side customers for countersignature. In the event that any Demand-side customer does not formally accept such variation, Epyx will conduct its business with that customer as though it had accepted the variation and in accordance with the principles of the Commitments, to the maximum extent compatible with that customer's Existing contract.

2. All Customers will be free to engage with providers of Alternative Systems and/or other third parties, for the purpose of developing, evaluating, and/or promoting Alternative Systems, at any time during their contract with Epyx. This includes, without limitation:
  - a. meeting with suppliers of Alternative Systems and discussing Alternative Systems with third parties;
  - b. inviting suppliers of Alternative Systems to demonstrate their products and services;
  - c. discussing with suppliers of Alternative Systems technical matters relating to that supplier's Alternative System;
  - d. discussing with suppliers of Alternative Systems time schedules for testing, integrating and implementing that supplier's Alternative System;
  - e. disclosing to suppliers of Alternative Systems when their contracts with Epyx will expire or be up for renewal;
  - f. evaluating Alternative Systems and engaging with potential suppliers of such Alternative Systems in their development, including testing<sup>2</sup> such Alternative Systems otherwise than by processing live transactions ("**dummy testing**"); and
  - g. promoting the use of Alternative Systems to other Customers.
3. For the avoidance of doubt, paragraph 2 applies equally to any Customer which develops, or collaborates with any third party to develop, its own Alternative System.

**Additional principles relating to Demand-side customers**

*Evaluation of Alternative Systems, including live testing*

4. In addition to the activities set out in paragraphs 1 to 3 of these Commitments, Demand-side customers will be permitted at any time during their contract with Epyx to carry out testing of Alternative Systems using "live" transactions ("**live testing**") up to a maximum volume of SMR transactions, being:
  - a. in the first Operating Year of any New contract, 6% (by number) of the total number of SMR transactions which would be required to be processed on 1link Service Network in that Operating Year by the relevant Customer in order to comply with any Minimum Annual Fee; or
  - b. in any other case, 5% (by number) of the total number of SMR transactions processed on 1link Service Network in the previous completed Operating Year by the relevant customer, measured with reference to Invoice Record or Work Record transactions.<sup>3</sup>
5. Customers will not be required to notify Epyx of the occurrence of live testing or of the volume of transactions processed via live testing. Any Minimum Annual Fee will be set at a level intended not to inhibit live testing of the maximum permitted volume of transactions, and where a Minimum Annual Fee is already set in any Existing contract, it will not be enforced in such a way so as to inhibit live testing of the maximum permitted volume of transactions.

<sup>2</sup> Such testing may include the use of Customer Information.

<sup>3</sup> For Demand-side contracts entered into prior to 1 January 2013, the relevant measure is Invoice Records as defined in the contract. For contracts entered into from 1 January 2013, the relevant measure is Work Records. These measures are, in effect, interchangeable, and reflect a wording amendment made to Epyx's template contracts as of 1 January 2013.

*Duration and termination of Demand-side customer contracts*

6. The Minimum Period for any New contracts entered into with Future customers will be limited to a maximum of 18 months. The Minimum Period for any New contracts entered into with Existing customers will be limited to a maximum of 12 months. Minimum Periods under Existing contracts will be unaffected.
7. Demand-side contracts (including Existing contracts) will automatically renew for contract periods of 12 months upon the expiry of the Minimum Period or any anniversary thereof.
8. Any Demand-side customer not wishing to renew its contract will be able to terminate with effect from the end of the then current contract period<sup>4</sup> by giving at least three months' prior notice.

*Exclusions from Demand-side customer contract provisions*

9. New contracts will allow Demand-side customers to exclude tyre and/or glass transactions from the scope of their contract (including their obligation to process such transactions using 1link Service Network).
10. If a Demand-side customer wishes to exclude tyre and/or glass transactions from the scope of an Existing contract, Epyx will offer a variation of its contract to this effect. If appropriate, such variations may be subject to a reduction in the Minimum Annual Fee and corresponding increase in other Fees reflecting the reduction in anticipated transaction volumes.
11. In addition to carrying out live testing as set out at paragraph 4 (above), Demand-side customers will be permitted to process the following further categories of transaction outside of 1link Service Network:
  - a. transactions where the Demand-side customer and Supply-side customer are part of the same corporate group (defined on the basis of company law principles); and
  - b. any other types of transactions agreed with Epyx,

provided that, for Existing contracts, no adjustment shall be made to any Minimum Annual Fee in respect of such transactions. For New contracts, the above shall be factored into the agreed Minimum Annual Fee.

*"Transitional multi-homing"*

12. Where a Demand-side customer serves notice to terminate its contract with Epyx, Epyx will permit a period of "transitional multi-homing" to facilitate the customer's transition to an Alternative System. This will include:
  - a. a period of up to six months from the date on which termination takes effect (the "**transitional period**") during which Epyx will permit the Demand-side customer to continue processing SMR transactions through 1link Service Network. During the transitional period, there shall be no restrictions on the processing by the Customer of transactions via such Alternative System. For the first three months of such transitional period, the same transaction fee rates will apply as applied in the immediately preceding contract period. For the remainder of the transitional period transaction fees will be charged at Epyx's volume-based list prices, unless the Customer and Epyx agree

<sup>4</sup> That is: (i) for Existing contracts, at the end of the existing Minimum Period; (ii) for New contracts with Existing customers, 12 months from commencement of the contract; (iii) for New contracts with Future customers, 18 months from commencement of the contract; or (iv) in each case, any subsequent anniversary of the date referred to in point (i), (ii) or (iii).

- otherwise.<sup>5</sup> No Minimum Annual Fee or Shortfall Fee will apply in respect of the transitional period, but registration fees will be payable on a pro-rata basis;
- b. continued provision of day-to-day technical support during the transitional period, including relevant platform upgrades and other improvements made available to other subscribers where required for continued use of 1link Service Network; and
  - c. from the date on which notice to terminate is given until the earlier of either six months after the date on which termination takes effect or the end of the transitional period, the provision of such support as is reasonably necessary to facilitate the transfer of the customer to any Alternative System.<sup>6</sup> Such support will include, at no charge, the provision of Customer Information to the Customer or, at the Customer's request, to the supplier of the Alternative System, in a format chosen by Epyx and normally used by commercial persons for data interchange between computer systems (such as delimited text files).
13. Except as described above, from the date on which notice of termination is given until the date on which termination is effective, and for the duration of any transitional period after termination both Epyx and the Demand-side customer will continue to be bound in full by the terms of the contract which existed between them at the date on which notice to terminate was given.

#### **Additional principles relating to Supply-side customers**

14. Supply-side customers will be permitted to use an Alternative System when trading with 1link Service Network's Demand-side customers in circumstances where the Demand-side customer either (i) expressly makes such request, or (ii) initiates a transaction using the Alternative System in question. Supply-side customers will not be required to check that the Demand-side customer is doing so in compliance with its contract.

For the avoidance of doubt, Supply-side customers continue to be free to use Alternative Systems to process any transactions with any party which is not a Demand-side customer.

#### **Reporting and compliance**

15. The Parties:
- a. will provide to the OFT any information and documents which the OFT reasonably requires for the purposes of enabling the OFT to monitor and review the operation of the Commitments or any provisions of the Commitments; and
  - b. may be required by the OFT to keep, maintain and produce those records reasonably specified in writing by the OFT that relate to the operation of any provision of the Commitments.
16. The OFT may take action in accordance with its statutory powers should it become aware of non-compliance by the Parties with these Commitments.

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<sup>5</sup> Epyx will publish an annual price list for this purpose.

<sup>6</sup> Unless otherwise agreed with the Customer, such support shall be limited to that which is typically required to implement a Demand-side customer on the 1link Service Network, and, unless otherwise specified in these Commitments, is subject to payment of applicable fees in line with Epyx's standard rates. Epyx will under no circumstances be required to provide to a customer or its new platform provider Epyx's Proprietary, Technical or Confidential information.

## DEFINITIONS

**1link Service Network** means the electronic SMR platform known as 1link Service Network.

**Alternative System** means any platform, system or method, electronic or otherwise, for the provision of SMR transaction processing services other than 1link Service Network. For the avoidance of doubt, this includes in-house systems proprietary to a Customer.

**Customer** means any Demand-side customer or any Supply-side customer.

**Customer Information** means any data specific to the Customer or provided by the Customer or which the Customer inputs into or transmits via 1link Service Network.

**Demand-side contracts** means the contract (in whatever form) by which a Demand-side customer contracts to use 1link Service Network for the purposes of procuring or processing SMR transactions.

**Demand-side customer** means a party which is a subscriber to 1link Service Network in its capacity as the party responsible for procuring SMR work in respect of one or more vehicles.

**Existing contract** means a Demand-side contract in force at the date on which the OFT publishes a decision accepting the Commitments (including an Existing contract which is subsequently amended).

**Existing customer** means a party which is a Demand-side customer at the date on which the OFT publishes a decision accepting the Commitments.

**Fee** means any monetary sum payable to Epyx pursuant to the provisions of any Demand-side contract or any Supply-side contract, except to the extent that Epyx is required to account for such sum to any third party.

**Future customer** means a party which is not an Existing customer.

**Invoice Record** means the invoice record generated by 1link Service Network in connection with each transaction.

**Minimum Annual Fee** means any clause in any Demand-side contract which requires the Demand-side customer to process transactions representing a minimum volume, value or Fees payable in any given period.

**Minimum Period** means any period of time provided for in any Demand-side contract as the initial minimum duration of the contract during which the contract is not terminable by the giving of notice to terminate.

**New contract** means a Demand-side contract which is not in force at the date on which the OFT publishes a decision accepting the Commitments, including new contracts that replace a terminated Existing contract.

**OFT** means the Office of Fair Trading and, from 1 April 2014, its successor organisation, the Competition and Markets Authority.

**Parties** means Epyx and FleetCor.

**Proprietary, Technical or Confidential information** includes (i) details of any of Epyx's current, former or prospective customers (save for such details as can be accessed by a Demand-side customer from 1link Service Network, including details of that Demand-side customer's suppliers and its spend with those suppliers), and (ii) any information provided to Epyx under licence by any third party.

**SMR** means service, maintenance or repair of vehicles.

**Supplier T&Cs** means the 1link Supplier Terms and Conditions incorporated into Supply-side contracts.

**Supply-side contract** means the contract (in whatever form) by which a Supply-side customer contracts to use 1link Service Network for the purposes of providing or processing SMR transactions.

**Supply-side customer** means a party which is a subscriber to 1link Service Network in its capacity as a provider of SMR work or in any other capacity under which it is subject to the Supplier T&Cs.

**Work Record** means each electronic work request, invoice or invoice record whether received or processed by the Customer via 1link Service Network.

[To be executed by Epyx and FleetCor]