Competition & Markets Authority

ANTICIPATED ACQUISITION BY IRON MOUNTAIN INCORPORATED OF RECALL HOLDINGS LIMITED

Statement of issues

3 February 2016

The reference

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).

2. The CMA must decide:

   (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

   (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom for goods or services.

3. In this statement, we set out the main issues we are likely to consider in reaching our decisions, having had regard to all the evidence gathered to date including evidence set out in the phase 1 decision (the reference decision), which will shortly be published on the CMA website. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.

4. We are publishing this issues statement in order to assist parties submitting evidence to focus on the issues we currently envisage being relevant to our inquiry and to invite parties to notify us if there are any additional relevant issues which they believe we should consider.

5. Throughout this document, where appropriate, we refer to Iron Mountain and Recall collectively as ‘the Parties’.

Background

6. The Merger relates to the anticipated purchase by Iron Mountain of Recall by way of a court-sanctioned Scheme of Arrangement. On completion, Iron Mountain will hold all of the ordinary shares of Recall and Recall's existing shareholders will own approximately 21% of Iron Mountain's share capital.

7. Iron Mountain is a Real Estate Investment Trust, listed on the New York Stock Exchange, and is principally engaged in the provision of records and information management services (RIMS). Iron Mountain's turnover in the financial year ending 31 December 2014 was around £1.9 billion worldwide of which approximately £170 million was generated in the UK. Iron Mountain operates from 46 sites in the UK, although only a minority of sites offer all RIMS services.

8. Recall is listed on the Australian Stock Exchange and is also principally engaged in the provision of RIMS. Recall's turnover in the financial year ending June 2015 was around £524 million worldwide. It has 13 sites in Great Britain.

9. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in Australia, Canada and the USA.

10. The RIMS which the Parties supply comprise:

    (a) Records management services (RMS), consisting of the collection, transportation, storage and retrieval of paper documents and other physical records (eg microfiche).

    (b) Off-site data protection services (OSDP), consisting of the storage of records/data on electronic media such as magnetic tapes and discs (physical OSDP), typically for back-up or disaster recovery purposes.

    (c) Ancillary services, consisting of services such as photocopying, document scanning, sale of storage materials and document management consulting services. On the basis of the information available to the CMA at that stage, it appeared that these services are mostly complementary to RIMS services and sold to RIMS customers by their RIMS provider, and therefore the CMA did not consider it necessary in the reference decision to address this overlap separately.

11. Recall is also active in the provision of electronic OSDP, ie the storage of records and data on a network or cloud. Iron Mountain does not offer this service in the UK. Recall also offers shredding services. However, the Parties'

activities do not overlap in this respect as Iron Mountain sold its shredding activities business in the UK in November 2014.

Market definition

12. Market definition is a useful analytical tool, but not an end in itself, and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[1]

13. As set out in paragraph 32 of the reference decision, Iron Mountain submitted that the relevant product scope should include all RIMS, with no distinction by either service or customer type. It said:

    (a) suppliers can easily switch between RMS and OSDP as where additional or different storage equipment is required for OSDP this can be easily installed by a RMS supplier at minimal cost;

    (b) electronic OSDP is a strong and growing constraint on physical OSDP; and

    (c) customers' readiness and ability to retain in-house provision exerts a competitive pressure over the entire outsourced business, such that it is not appropriate to consider a narrower segment of vended/out-sourced RIMS.

14. The reference decision reported that customers said that RMS and OSDP services were distinct and used for different purposes. Paper records often have to be stored for legal or regulatory reasons, whereas (as noted above) OSDP services are typically used for back-up and disaster recovery purposes. The majority of customers indicated that they would not substitute between storing records on paper and electronically. The Parties have stated that vaults suitable for OSDP can easily be built within an RMS facility. However, these facilities (temperature-controlled vaults with inert gas and special fire protection) may differ from RMS facilities and not all suppliers offer both services; those that do sometimes do so at separate facilities.

15. From the information available at this stage, we note that physical and electronic OSDP are generally offered by different suppliers, and Iron

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[1] *Merger Assessment Guidelines* (CC2/OFT1254), September 2010), paragraph 5.2.2.

Mountain does not offer electronic OSDP. The reference decision does not report the extent to which customers could and would readily substitute between physical OSDP and electronic OSDP.

16. The reference decision reports that most customers and suppliers did not believe customers could generally switch to in-house RMS in response to a price rise due to the costs involved and the storage space that would be required. Views on taking OSDP in-house were more mixed although where this was for disaster recovery purposes, in-house physical storage arrangements would not be appropriate.

17. The reference decision also reported that oil and gas customers indicated they had distinct and specific requirements from a RIMS provider, such as the ability to store heavy samples, provision of viewing rooms, experience in handling seismic data/core samples, specialised staff for tape transcription, specific environmental controls, etc (specialist services). In particular, customers appeared to rate more highly those suppliers that were perceived to be able to provide good core storage and viewing facilities. There was mixed evidence on how substantial these differences were and whether specialist services could readily be provided by other RIMS suppliers.

18. Apart from the oil and gas sector, we have not yet seen evidence to suggest that there are other markets for distinct customers segments, eg on the basis of different storage or access requirements (speed of access to files or requiring special security or viewing facilities).

19. The CMA will investigate the extent to which RIMS can be aggregated on the basis of demand-side and/or supply-side substitution. In particular, we will consider:

(a) the extent to which different RIMS services may be in separate markets;

(b) whether ancillary services should be considered as part of or complementary to RMS or OSDP, or constitute a separate market;

(c) the extent to which electronic OSDP is a constraint on physical OSDP;

(d) the extent to which in-house provision is a constraint on RMS, and whether it is a constraint on physical OSDP and if so, to what extent;

(e) whether there is a distinct market for the provision of RIMS to oil and gas customers, or whether these services could be provided by non-specialist RIMS providers; and

(f) whether there are any other services to particular types of customers, or customers with distinct needs, which might constitute distinct markets or segments.

20. We will also consider whether and to what extent the market is changing with the need for paper-based RIMS being replaced by electronic document storage, and whether this will provide a constraint on the provision of RMS, for new documents and also for existing documents (through scanning and digital storage), ie whether customers would be likely to switch to such techniques in response to a relative price change.

21. We will also consider the relevant catchment areas for RIMS. Catchment areas are constrained by the need for records to be returned to customers reasonably quickly and efficiently. Some customers will require rapid document retrieval, for example within a few hours. At phase 1, Iron Mountain submitted that the relevant geographic scope should be identified by reference to a catchment area of 45 to 50 miles around Recall's sites. We shall investigate how local catchments should be defined to inform the assessment of local competition, both for RMS and for OSDP.

22. We will also seek to understand whether OSDP is required in a more limited range of geographic areas (for example, only required by company headquarters to back up data). OSDP is offered from fewer sites than is the case for RMS.

23. Some customers are likely to have a national requirement for RIMS, if they operate multiple sites across the country which each require document storage and retrieval with easy access. We will seek to understand whether a separate market exists for customers with a national requirement, ie whether they require a single supplier to provide all RIMS or whether they can readily multi-source their requirements from different local suppliers. We will therefore explore evidence as to the extent that such customers multi-source, and understand customers' reasons for doing so (ie whether it is for legacy reasons or an actively exercised preference).

Assessment of the competitive effects of the merger

Counterfactual

24. We will assess the possible effects of the merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation absent the merger).

25. For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the

merger. However, we note that on or around 7 December 2015, Restore Plc (Restore), acquired the records management business of Wincanton plc (Wincanton). Restore and Wincanton are active in the supply of the same services as the parties. Therefore in assessing the Merger we will need to consider the conditions of competition that are expected to exist following Restore's acquisition of Wincanton.

Theories of harm

26. Theories of harm describe the possible ways in which an SLC could arise as a result of the merger and provide the framework for our analysis of the competitive effects of the merger. We have set out below the theories of harm which we intend to investigate. However, we may revise our theories of harm as our inquiry progresses. Also, the identification of a theory of harm does not preclude an SLC being identified on another basis following further work by us, or the receipt of additional evidence. We welcome views on all the theories of harm set out below.

Horizontal unilateral effects

27. The concern under this theory of harm is that, as a result of the merger, the removal of one party as a competitor could allow the merging parties to increase prices, lower quality, reduce the range of their services and/or reduce innovation. After the merger, it is less costly for the merged company to raise prices (or lower quality) because it will recoup the profit on recaptured sales from those customers who would have switched to the offer of the other merging company.

28. On the basis of the evidence currently available to us, issues which we are likely to consider include:

(a) how RIMS suppliers compete and the importance of factors such as pricing, quality, capacity, support for promotions, innovation, service, security, etc;

(b) the process through which customers choose suppliers of the relevant services, including through formal bids or bilateral negotiations, and the frequency with which this occurs;

(c) the factors underlying customers' choice of supplier, any barriers to switching and the extent of switching between suppliers;

(d) whether behaviours and requirements differ between different types of customer according to their requirements for service standards, geographic coverage, etc;

(e) whether there is any customer perception of differentiation between suppliers according to reputation and security (whether or not objectively justified);

(f) the extent to which, and how, competition for new RIMS requirements may differ from that for existing (legacy) records;

(g) the history of past negotiation/tendering behaviour and what this reveals about the extent of competition between the Parties, and between the Parties and other suppliers, prior to the merger; and

(h) the spare capacity of rivals and the ability to supply services and to expand provision at short notice;

Other possible theories of harm

Coordinated effects

29. Coordination can occur where potential competitors choose not to actively compete with each other, in the expectation that rivals are likely to respond in a similar way. This reduction in competitive intensity can arise where rivals have similar incentives and can observe what rivals are doing. In consequence there may be an implicit understanding of pricing, market share, not seeking to poach each other's customers and so on, without any form of explicit contact or agreement (ie this theory of harm does not consider explicit collusive conduct).

30. The concern under this theory of harm is that the merger may make coordination more likely if it does not already take place, or more effective/stable if it does take place. However, it appears to us unlikely that the conditions for coordination applied pre-merger or that they will be significantly affected by the merger. We are not currently minded to investigate the possibility of the merger increasing the likelihood of coordinated effects. However, should any party have reason for believing that we should investigate this possible harm, it should tell us and provide a reasoned submission.

Vertical and conglomerate effects

31. There appear to be no vertical concerns arising from the merger given the lack of vertical links between the Parties or with competing services. Similarly there appear to be no conglomerate concerns due to the operations of the Parties being restricted to those described in paragraph 10.

32. Therefore we are not currently minded to investigate the possibility of the merger giving rise to these effects. However, should any party have reason

for believing that we should investigate this possible harm, it should tell us and provide a reasoned submission.

Countervailing factors

33. We will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. In particular, we intend to consider the following.

34. **Entry and expansion**. We will consider how easy it is to enter and expand the supply of RMS and OSDP, including specialist RIMS to oil and gas customers, and whether entry and/or expansion could be expected to be timely, likely and sufficient to prevent any SLC. To do this we will:

    (a) look at the history of actual entry, expansion and exit by the Parties and by their competitors and review any future plans; and

    (b) examine the factors which might inhibit entry or the expansion of existing competitors including spare capacity and the ability of existing customers to readily switch (eg taking account of the existence of perm-out fees); and

    (c) consider the cost of expanding or developing new facilities, and the importance of scale, geographic coverage, reputation and other incumbency advantages.

35. **Buyer power**. We will assess whether any customers of Iron Mountain and Recall have countervailing buyer power (ie a degree of power over and above normal negotiating power which could arise for specific unusual reasons) and whether the buyer power of these customers would be sufficient to protect customers from any effects of an SLC. In this regard, we note that prices tend to be individually negotiated. We would also consider the likely impact of the merger on any pre-existing countervailing buyer power.

36. **Efficiencies**. We will examine any arguments made in relation to efficiencies arising from the merger. In particular, we will examine whether any potential efficiencies are rivalry-enhancing and could be expected to offset any loss of competition.

37. We are not currently aware of any other possible countervailing factors.

Possible remedies and relevant customer benefits

38. Should we decide that the merger may be expected to result in an SLC in any market(s), we will consider whether, and if so what, remedies might be appropriate, and will issue a further statement.

39. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits in relation to the merger and, if so, what these benefits are likely to be and which customers would benefit.

Responses to the issues statement

40. Any party wishing to respond to this issues statement should do so in writing, by no later than **5pm on 17 February 2016**. Please email iron.recall@cma.gsi.gov.uk or write to:

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