

## **REFERENCE RELATING TO THE ANTICIPATED ACQUISITION BY IRON MOUNTAIN INCORPORATED OF RECALL HOLDINGS LIMITED**

### **Notice of acceptance of interim undertakings pursuant to section 80 of the Enterprise Act 2002**

On 8 June 2015 Iron Mountain Incorporated (Iron Mountain) and Recall Holdings Limited (Recall) entered into a Scheme Implementation Deed pursuant to which Iron Mountain would acquire all of the shares in Recall and thereby ownership of Recall's global business, including Recall's business in the UK.

On 14 January 2016, the Competition and Markets Authority (CMA) made a reference (the Reference) to its chair in accordance with section 33(1) of the Enterprise Act 2002 (the Act) for the constitution of a Group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to investigate and report on the proposed acquisition.

On 26 January 2016, Iron Mountain requested the CMA's consent under section 78(2) of the Enterprise Act 2002 to the acquisition by Iron Mountain of shares in Recall. Broadly, Iron Mountain was concerned that section 78(2) of the Act might operate to prevent the acquisition from proceeding at a global level.

On 26 February 2016, the CMA wrote to Iron Mountain indicating that it was prepared, in principle, to give its consent in due course to the acquisition subject to agreement on two sets of undertakings. The first set of undertakings concerns the appointment of a monitoring trustee. The second set of undertakings includes the remainder of the proposed hold separate arrangements.

The CMA wishes to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the Reference. The Reference has not been finally determined in accordance with section 79(1) of the Act.

Now, pursuant to section 80(2) of the Act, for the purpose of preventing pre-emptive action, the CMA accepts the undertakings from Iron Mountain and its subsidiaries set out in the Annex (the first set of undertakings) and accordingly the first set of

undertakings comes into force pursuant to section 80(5) of the Act with immediate effect.

Signed by authority of the CMA

Anne Lambert  
*Inquiry Chair*  
21 March 2016

## ACQUISITION BY IRON MOUNTAIN INCORPORATED OF RECALL HOLDINGS LIMITED

### Undertakings given by Iron Mountain Incorporated, Iron Mountain UK Services (Holdings) Limited, Iron Mountain (UK) Services Limited and Iron Mountain (UK) Limited pursuant to section 80 of the Enterprise Act 2002

Whereas:

- (a) on 14 January 2016, the Competition and Markets Authority (**CMA**), made a reference (the **Reference**) to its chair in accordance with section 33(1) of the Enterprise Act 2002 (the **Act**) for the constitution of a Group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to investigate and report on the proposed acquisition by Iron Mountain Incorporated (**Iron Mountain Inc**) of Recall Holdings Limited (**Recall**);
- (b) on 26 January 2016, Iron Mountain Inc, through its advisers, requested the consent of the CMA under section 78(2) of the Act to the acquisition by Iron Mountain Inc of shares in Recall;
- (c) the CMA has indicated that it is prepared, in principle, to give its consent in due course, subject to the agreement of undertakings substantially in the form of two sets of draft undertakings attached to a letter of 26 February 2016;
- (d) these Undertakings constitute the first set of such undertakings;
- (e) the CMA wishes to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (f) the Reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 80(2) of the Act, Iron Mountain Inc and its UK subsidiaries - namely Iron Mountain UK Services (Holdings) Limited, Iron Mountain (UK) Services Limited and Iron Mountain (UK) Limited (together, **Iron Mountain UK**) - give to the CMA the following Undertakings.

## **Commencement and application**

1. These Undertakings apply from 16 March 2016.
2. These Undertakings apply to Iron Mountain Inc and Iron Mountain UK.
3. Any reference to these Undertakings shall be taken to include the second set of undertakings (unless the context requires otherwise), once the second set of undertakings has been accepted by the CMA.

## **Appointment**

1. Iron Mountain Inc and Iron Mountain UK shall appoint a monitoring trustee (**MT**) in order to:
  - (a) report on the current state of any integration between Iron Mountain Inc and Iron Mountain UK and Recall UK;
  - (b) monitor compliance by Iron Mountain Inc and Iron Mountain UK with the second set of undertakings once accepted by the CMA; and
  - (c) support the CMA taking any remedial action which may be required.
2. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
3. Iron Mountain Inc and Iron Mountain UK must cooperate fully with the MT, in particular as set out below, and Iron Mountain Inc and Iron Mountain UK must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Iron Mountain Inc and Iron Mountain UK as set out in these Undertakings.

## **General**

4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
5. The MT must neither have nor become exposed to a conflict of interest that impairs the MT's objectivity and independence in discharging his or her duties under these Undertakings, unless it can be resolved in a manner and within a

timeframe acceptable to the CMA. Where the MT has concerns that such a conflict of interest may have arisen, the MT must communicate those concerns to the CMA immediately.

6. Iron Mountain Inc and Iron Mountain UK shall remunerate the MT and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.
7. The appointment of a MT by Iron Mountain Inc and Iron Mountain UK shall be subject to approval by the CMA including with respect to the identity of the MT and his or her terms and conditions of appointment in their entirety.
8. Iron Mountain Inc and Iron Mountain UK shall appoint the MT as soon as is reasonably practicable and, in any event, within 24 hours of the CMA giving its approval as to the identity of the MT and his or her terms and conditions of appointment in their entirety and the MT will continue to act for the specified period.
9. Once the MT has been approved by the CMA and appointed, Iron Mountain Inc and Iron Mountain UK shall provide the CMA with a copy of the agreed terms and conditions of appointment.

## **Functions**

10. The functions of the MT will be to:
  - (a) assess and report to the CMA the extent of any integration between Iron Mountain Inc and/or Iron Mountain UK with Recall UK;
  - (b) assess the arrangements proposed by the Parties for compliance with the draft second set of undertakings and what changes to those arrangements, if any, would be necessary to preserve the possibility of the CMA taking any remedial action, if required;

(c) following acceptance by the CMA of the second set of undertakings, ascertain and report to the CMA on the level of compliance by Iron Mountain Inc and Iron Mountain UK with such undertakings;

(d) following acceptance by the CMA of the second set of undertakings, assess the arrangements made by the Parties for compliance with such undertakings and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required; and

(e) report to the CMA on any such recommended changes and the steps required to implement them.

The MT will also be required to:

(f) identify (and supervise if necessary) the arrangements made by Iron Mountain Inc for ensuring compliance with these Undertakings;

(g) without prejudice to the right of Iron Mountain Inc and Iron Mountain UK to contact the CMA, respond to any questions which Iron Mountain Inc and Iron Mountain UK may have in relation to compliance with these Undertakings, in consultation with the CMA; and

(h) assist in the consideration of derogation requests or consents relating to these Undertakings.

11. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively.

12. The MT must comply with any written requests made by the CMA for the purpose of ensuring the full and effective compliance by Iron Mountain Inc and Iron Mountain UK with these Undertakings.

### **Obligations of Iron Mountain Inc and Iron Mountain UK**

13. Iron Mountain Inc and Iron Mountain UK and each of their affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:

(a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of Iron Mountain Inc and Iron Mountain

UK and Recall UK (as available to Iron Mountain Inc and Iron Mountain UK) as the MT may reasonably require; and

(b) the provision of such office and supporting facilities as the MT may reasonably require.

14. If Iron Mountain Inc or Iron Mountain UK or any of their subsidiaries is in any doubt as to whether any action or communication would infringe these Undertakings, they are required to contact the MT for clarification.
15. If Iron Mountain Inc or Iron Mountain UK or any of their subsidiaries has any reason to suspect that these Undertakings may have been breached, they must notify the MT and the CMA immediately.

### **Reporting functions**

16. The MT is required to provide an initial written report to the CMA no later than 5pm (UK time) the day which falls one week after the MT's appointment, giving details of any operational risks regarding information-sharing and integration.
17. In addition to providing the initial written report referred to in paragraph 16 above, the MT must provide a written statement to the CMA no later than 5pm (UK time) on the date which falls every two weeks following the date of the initial written report (or otherwise as required in writing by the CMA) stating whether or not, in his or her view, Iron Mountain Inc and Iron Mountain UK have complied with these Undertakings. At the same time, the MT must provide the CMA with a report setting out the following:

(a) the basis for the MT's view that these Undertakings have or have not, as the case may be, been complied with and in particular whether:

- (i) anything has caused him or her to be concerned as to whether Iron Mountain Inc and Iron Mountain UK have complied with these Undertakings, and if anything has caused such concerns, whether those concerns have been resolved and why;
- (ii) he or she has any remaining doubts or uncertainties as to whether Iron Mountain Inc and Iron Mountain UK have complied with these Undertakings; and
- (iii) anything that causes him or her to be concerned about a possible future breach of these Undertakings (whether deliberate or inadvertent);

(b) the extent to which Iron Mountain Inc and Iron Mountain UK have cooperated with the MT in his or her task of monitoring their compliance with these Undertakings and details of any aspects of the cooperation of Iron Mountain Inc and Iron Mountain UK that he or she considers could be improved;

(c) the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of Iron Mountain Inc and Iron Mountain UK with these Undertakings and if there is anything that the MT considers would assist him or her in monitoring compliance;

(d) any current or anticipated requests for a derogation from these Undertakings; and

(e) the information the MT used to compile the report.

18. When providing reports to the CMA the MT must ensure that he or she does not disclose any information or documents to the CMA which any of the Parties has identified to the MT as information or documents which the relevant party would be entitled to withhold from the CMA on the grounds of legal privilege.
19. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that these Undertakings have been breached. In addition, the MT must immediately notify the CMA in writing if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 18 above).
20. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 16 and 17) are confidential and should not be disclosed to Iron Mountain Inc or Iron Mountain UK, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.

### **Interpretation**

21. In these Undertakings:

**'Act'** means the Enterprise Act 2002

**'CMA'** means the Competition and Markets Authority

**'Iron Mountain Inc'** means Iron Mountain Incorporated of One Federal



Street, Boston, Massachusetts 02110;

**'Iron Mountain UK'** means Iron Mountain (UK) Limited (company registration number 01478540); Iron Mountain UK Services (Holdings) Limited (company registration number 08322913); and Iron Mountain (UK) Services Limited (company registration number 08322913) whose registered offices are Cottons Centre 3rd Floor, Tooley Street, London, SE1 2TT

**'MT'** means the monitoring trustee appointed in accordance with these Undertakings.

**'Parties'** means Iron Mountain Inc, Iron Mountain UK, Recall and Recall UK collectively, and any subset of them, as appropriate.

**'Recall'** means Recall Holdings Limited (ABN 27 116 537 832) of 697 Gardeners Road, Alexandria, Sydney, Australia

**'Recall UK'** means Recall Limited whose registered address is Level 8 4 Thomas More Square, London, E1W 1YW and whose company registration number is 01331798, as well as its subsidiaries, including Preferred Media Limited (company registration number 02974071), C21 Data Services Limited (company registration number SC187604) and Recall GQ Limited (company registration number 02457556)

**'Specified period'** means the period beginning on the date of these Undertakings and terminating when the Reference is finally determined in accordance with sections 79(1) and (2) of the Act

For and on behalf of Iron Mountain Incorporated

.....Signature

.....Name

.....Title

.....Date

For and on behalf of Iron Mountain (UK) Limited

.....Signature

.....Name

.....Title

.....Date

For and on behalf of Iron Mountain UK Services (Holdings) Limited Incorporated

.....Signature

.....Name

.....Title

.....Date

For and on behalf of Iron Mountain Iron Mountain (UK) Services Limited

.....Signature

.....Name

.....Title

.....Date