

17 May 2016

ANTICIPATED ACQUISITION BY IRON MOUNTAIN INCORPORATED
OF RECALL HOLDINGS LIMITED
RESPONSE TO NOTICE OF POSSIBLE REMEDIES

This submission is made on behalf of Iron Mountain Incorporated (“Iron Mountain”) in response to the CMA’s Notice of Possible Remedies under Rule 12 of the CMA’s rules of procedure for merger, market and special reference groups dated 4 May 2016 (the “Remedies Notice”).

In its Remedies Notice, the CMA has invited feedback on two possible options to remedy the substantial lessening of competition (“SLC”) it has identified in the Provisional Findings: [i] complete divestiture of Recall UK; and [ii] divestiture of a package (most likely consisting of all of Recall’s facilities in Aberdeen and Dundee along with their operational assets and customer contracts) that would allow a potential purchaser to operate as an independent competitor in the Aberdeen and Dundee areas. The CMA has suggested that the second alternative could take the form of a sale of the shares of C21 Data Services Ltd (“C21”). Iron Mountain agrees that such a sale (the “C21 Divestment”), which encompasses all of Recall’s facilities and operations in Aberdeen and Dundee, would be the most appropriate remedy for the concerns laid out in the Provisional Findings.

I. Scope of remedy

A. Divestiture of Recall UK

Iron Mountain agrees with the view expressed by the Inquiry Group that divestment of Recall UK (including Recall’s operations in England) would be a disproportionate means of

addressing the SLC identified in the Provisional Findings (which relates solely to the supply of RIMS in Scotland).¹ More particularly, the SLC arises solely with respect to the services provided by the C21 business, which is distinct from Recall's operations in England and operated on an entirely standalone basis until Recall acquired it less than one year ago. Given the foregoing, divestment of C21 alone would constitute a comprehensive, reasonable and practical remedy. Adoption of more widespread measures would not satisfy the requirement that the CMA, when choosing between two equally effective alternatives, adopt the measure that is the least costly or restrictive.² Accordingly, Iron Mountain respectfully submits that complete divestment of Recall UK does not merit any further consideration.

B. Divestiture of C21

As noted above, Iron Mountain proposes to sell all of the shares of C21, which were acquired by Recall UK in July 2015. This will result in a complete divestment of all of Recall's facilities/operations in Aberdeen and Dundee, preserving the competitive conditions that existed prior to Iron Mountain's acquisition of Recall.

To the best of Iron Mountain's knowledge, Recall has operated C21 essentially as a stand-alone business, with no material integration into the rest of the Recall business. In particular, C21's management, sales and operations all continue to be separate from the larger Recall business. While Recall has undertaken some facilities upgrades (e.g. to bring the safety and security systems in C21's warehouses into conformity with Recall's standards), these do not entail any operational integration with other Recall facilities. Further, any integration of C21's information systems or other overhead functions can readily be unwound, with appropriate transitional support if necessary.

Divestment of C21 will enable the purchaser to provide RIMS (including RMS, OSDP, and other so-called "specialty" services for oil-and-gas customers) as an independent and

¹ Remedies Notice, paragraph 13.

² Merger Remedies: Competition Commission Guidelines (CC8), paragraph 1.9. See also Case ME/6524/15, *Anticipated acquisition by Müller UK & Ireland Group LLP of the dairies operations of Dairy Crest Group plc* (17.7.15) (limiting remedy to the single catchment area in which an SLC was found). The requirement of proportionality has been judicially affirmed in a variety of cases. See, e.g. *Ryanair Holdings Plc v Competition Commission* [2014] CAT 3, paragraph 195, *appeal dismissed*, [2015] EWCA Civ 83; *Groupe Eurotunnel S.A. v Competition Commission* [2013] CAT 30, paragraph 381.

effective competitor in both Aberdeen and Dundee, just as C21 did in its roughly 17 years of operation as an independent company. The C21 Divestment therefore offers a comprehensive, reasonable and practicable remedy to the SLC identified in the Provisional Findings.

With respect to the specific points on which the CMA is seeking comment, Iron Mountain offers the following responses:

- Iron Mountain proposes to divest the entire C21 business, as Iron Mountain considers that this is most likely to attract prospective purchasers and to expedite prompt implementation of the remedy. Accordingly, Iron Mountain does not invite the choice of a “mix-and-match” asset divestiture, and the risks associated with such measures (which are generally disfavoured) need not be of concern here.³ Similarly, Iron Mountain does not envisage the retention of any C21 site in Dundee, or a sale of the Aberdeen and Dundee sites in separate packages.
- Sale of the entire C21 business will entail transfer to the purchaser of all customer records and relationships at each of the former C21 facilities, insofar as such transfers are permitted by existing customer contracts. While the C21 contracts must be reviewed in order to determine where any customer consents might be required, Iron Mountain understands that such requirements (if any) are few. Given the fact that Recall did not encounter any difficulties with customer consents in its acquisition of C21, and the fact that numerous companies that are comparable to Recall are believed to be interested in purchasing the C21 business (as discussed below), Iron Mountain considers it highly unlikely that any withheld customer consents could have an appreciable effect on the divested business.
- Because Iron Mountain and Recall operated as independent competitors prior to closing and Recall UK has been held subject to “hold separate” undertakings since then, Iron Mountain has little insight into Recall’s customer base in Scotland.⁴

³ See Merger Remedies: Competition Commission Guidelines (CC8), paragraph 3.12.

⁴ Iron Mountain did not do any “due diligence” on the C21 operations, in contemplation of its acquisition of Recall, because Recall acquired C21 after the Scheme of Arrangement was finalized and without prior notice to Iron Mountain.

However, Iron Mountain's outside counsel have been advised that Recall has contracts to serve [*confidential information redacted*] in both Scotland and England, and that it won the business of [*confidential information redacted*] before it acquired C21 (i.e. before it had any facilities in Scotland). [

confidential information redacted

] Accordingly, none of these customers operates multi-regional, single-source RIMS service requirements, and the C21 Divestment should not create any problem for them. Insofar as other customers are concerned, Iron Mountain believes that the C21 Divestment will essentially maintain the *status quo*.

II. Suitable purchaser

As the CMA notes throughout the Provisional Findings, a number of RIMS companies are committed and credible suppliers. Further, as highlighted in Iron Mountain's submission relating to Entry and Expansion,⁵ many of these have shown a strong intention and ability to expand through acquisitions of local suppliers in recent years. Accordingly, there is a large pool of potential purchasers for the C21 business. Indeed, following on publication of the Remedies Notice, Iron Mountain has already received [*confidential information redacted*], and believes that a number of other sizeable RIMS providers (including [*confidential information redacted*]) are likely to be interested as well.

Iron Mountain offers the following responses in relation to the CMA's invitation to comment on a potential suitable purchaser:

- Iron Mountain considers that the purchaser need not have any experience of core sample storage. Recall had none when it acquired C21 last year, and the divestment purchaser will readily acquire credible core storage capability (as Recall did) in the C21 Divestment itself.

⁵ Entry and Expansion Submission dated 14 April 2016.

- It is not necessary for any potential purchaser to have a multi-region network of facilities. C21 operated successfully as a standalone business for approximately 17 years before Recall acquired it, and the divested business can continue to do so. It might be noted, in any event, that a number of the companies that are believed likely to be interested in purchasing C21 (e.g. [*confidential information redacted*]) have a regional presence that is comparable to (or greater than) that of Recall prior to its merger with Iron Mountain.

III. Divestiture process

Iron Mountain is highly experienced in executing corporate transactions, and envisages that the C21 Divestment will require no longer than the CMA's standard six-month process. Given the large pool of potential purchasers, as well as the fact that the divestment business already is subject to "hold separate" undertakings and that RSM already is operating as a Monitoring Trustee, Iron Mountain agrees with the CMA's suggestion no further appointments need to be made and that RSM may most appropriately oversee the divestiture process.

IV. Customer benefits

To the extent that the Transaction may be expected to give rise to an SLC, the C21 Divestment maintains the *status quo*, allowing customers to benefit from the current conditions of competition.

Conclusion

Given the ease of entry and expansion in this industry, and recent examples of that in Northern Scotland, Iron Mountain considers that its acquisition of Recall cannot reasonably be expected to lead to an SLC in that area. Nonetheless, to the extent that the CMA concludes otherwise, Iron Mountain agrees that a divestiture of C21 offers a reasonable and comprehensive solution, entirely eliminates the competitive overlap between the parties, and can be implemented quickly and effectively given C21's recent and longstanding history of operations as an independent RIMS provider there.