

**Competition Commission Acceptance of Interim Undertakings  
(replacing Adoption of OFT Undertakings of 22 February 2005)**

**IN THE MATTER of a reference to the Competition Commission dated  
22 March 2005 concerning the acquisition by Francisco Partners LP of  
G International Inc**

Whereas the Office of Fair Trading (the OFT), for the purpose of preventing pre-emptive action, accepted undertakings from Francisco Partners LP (Francisco) and Global Exchange Services Limited (GXS Limited) on 22 February 2005 (the OFT Undertakings) in accordance with section 71 of the Enterprise Act 2002 (the Act) in connection with the completed acquisition by Francisco of G International, Inc.

And Whereas on 22 March 2005 the OFT made a reference to the Competition Commission (the Commission) under section 22 of the Act concerning the completed acquisition by Francisco of G International, Inc (the Reference).

And Whereas on 23 March 2005 the Commission adopted the OFT Undertakings in accordance with section 80 of the Act for the purpose of preventing pre-emptive action, to ensure that no action is taken which might prejudice the Reference or impede the taking of any action by the Commission under Part 3 of the Act which may be justified by the Commission's decisions on the Reference.

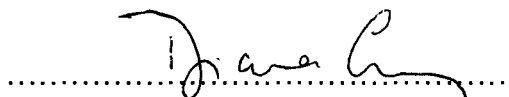
And Whereas the Reference has not been finally determined in accordance with section 79(1) of the Act but Francisco and Global Exchange Services, Inc (GXS Inc) would like to make certain changes to the organisation and structure of G International Limited (G International) that will not prejudice the Reference or impede the taking of any action by the Commission under Part 3 of the Act which may be justified by the Commission's decisions on the Reference and the Commission also considers further restrictions/obligations to be necessary for the purpose of preventing pre-emptive action.

And Whereas Francisco, GXS Inc and GXS Limited have given to the Commission the undertakings set out in the Appendix (these undertakings) with a view to them being accepted by the Commission in place of the OFT Undertakings.

And Whereas following the release of the OFT Undertakings in accordance with the powers conferred on the Commission by section 80 of the Act, the Commission or the OFT may still take action against Francisco and GXS Limited in respect of any breach of the OFT Undertakings that may have occurred prior to the Commission's release of the OFT Undertakings.

**Now** the Commission, in exercise of the powers conferred on it by sections 80(2) and 80(4) of the Act, without prejudice to any rights of the Commission or the OFT to take action against Francisco and GXS Limited in respect of any breach of the OFT Undertakings that may have occurred prior to the date hereof, hereby releases Francisco and GXS Limited from the OFT Undertakings and accepts these replacement undertakings (a copy of which is set out in the attached Appendix) given by Francisco, GXS Inc and GXS Limited.

Signed by authority of the Competition Commission

A handwritten signature in black ink, appearing to read 'Diana Guy', is written over a horizontal dotted line. The signature is fluid and cursive.

Diana Guy  
Group Chair  
26 May 2005

**Interim Undertakings given to the Competition Commission by  
Francisco Partners LP, Global Exchange Services, Inc and Global Exchange  
Services Limited**

**Non-confidential Version**

**Whereas:**

- (a) On 22 March 2005, the Office of Fair Trading (the OFT) made a reference to the Competition Commission (the Commission) under section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by Francisco Partners LP (Francisco) of G International, Inc (the Reference).
- (b) Prior to making the Reference the OFT, for the purpose of preventing pre-emptive action, accepted undertakings from Francisco and Global Exchange Services Limited (GXS Limited) on 22 February 2005 (the OFT Undertakings) in accordance with section 71 of the Act.
- (c) The Commission adopted the OFT Undertakings in accordance with section 80 of the Act on 23 March 2005 for the purpose of preventing pre-emptive action, to ensure that no action is taken which might prejudice the Reference or impede the taking of any action by the Commission under Part 3 of the Act which may be justified by the Commission's decisions on the Reference.
- (d) The Reference has not been finally determined in accordance with section 79(1) of the Act but Francisco and Global Exchange Services, Inc (GXS Inc) would like to make certain changes to the organisation and structure of G International Limited (G International) that will not prejudice the Reference or impede the taking of any action by the Commission under Part 3 of the Act which may be justified by the Commission's decisions on the Reference and the Commission also considers further restrictions/obligations to be necessary for the purpose of preventing pre-emptive action.

**Now Therefore** Francisco, GXS Inc and GXS Limited hereby give to the Commission the following varied undertakings under section 80 of the Act for the purpose of preventing pre-emptive action.

## 1. Interpretation

1.1. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

1.2. In these undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word 'include' and its derivatives shall be construed accordingly.

1.3. For the purposes of these undertakings the following terms have the meaning ascribed to them below:

**"the acquisition"** means the acquisition by Francisco Partners LP of G International, Inc, completed on 30 November 2004;

**"the Act"** means the Enterprise Act 2002;

**"an affiliate"** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**"Assets"** means all the assets of the G International business as were acquired by G International under the Acquisition Agreement between IBM United Kingdom Limited and G International Limited dated 30 November 2004;

**"business"** has the meaning given by section 129(1) and (3) of

the Act;

**“the Commission”**

means the Competition Commission;

**“control”**

includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, and in the case of a body corporate, a person shall for the purposes of these undertakings be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**“the decisions”**

means the decisions of the Commission on the questions which it is required to answer by virtue of section 35 of the Act;

**“EDI Van”**

means electronic data interchange value added network;

**“Francisco”**

means Francisco Partners LP;

**“G International”**

means G International Limited;

**“GXS Group”**

means Global Exchange Services, Inc and all its subsidiaries;

**“GXS Inc”**

means Global Exchange Services, Inc;

**“GXS Limited”**

means Global Exchange Services Limited;

<b>“the OFT”</b>	means the Office of Fair Trading;
<b>“the OFT Undertakings”</b>	means the undertakings accepted by the OFT from Francisco and GXS Limited on 22 February 2005
<b>“the ordinary course of business”</b>	means matters connected to the day to day supply of EDI Van products by G International and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of G International Limited;
<b>“the Reference”</b>	means the reference made by the OFT on 22 March 2005 to the Commission under section 22 of the Act concerning the completed acquisition by Francisco of G International, Inc;
<b>“the specified period”</b>	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;
<b>“subsidiary”,</b>	unless otherwise stated, has the meaning given by section 736 of the Companies Act 1985 (as amended);
<b>“the two businesses”</b>	means the GXS Group business and the G International business;
<b>“Trusec”</b>	means Trusec Limited.

## **2. General Prohibitions**

2.1. Except with the prior written consent of the Commission, Francisco, GXS Inc and GXS Limited shall not during the specified period take any action which might prejudice the Reference or impede the taking of any action under the Act

by the Commission or by any other party which may be justified by the Commission's decisions on the Reference.

2.2. Further and without prejudice to the generality of paragraph 2.1, Francisco, GXS Inc and GXS Limited shall not, except with the prior written consent of the Commission, take any action which might:

2.2.1. lead to the integration of G International's business as carried on in the UK with that of GXS Group. For the avoidance of doubt this paragraph does not apply to any integration of the two businesses that occurred prior to the acceptance of the OFT Undertakings;

2.2.2. transfer the ownership or control of G International or any of its subsidiaries.

2.2.3. impair the ability of G International to compete independently for customers (including resellers) in any of the markets in the United Kingdom affected by the acquisition.

### **3. Management of G International Limited's Business**

3.1. Further and without prejudice to the generality of paragraphs 2.1 and 2.2, Francisco, GXS Inc and GXS Limited shall at all times during the specified period, procure that except with the prior written consent of the Commission:

3.1.1. a separate sales and brand identity is maintained for G International including a totally separate website for the use of the G International business in the United Kingdom which contains no references or links to any website associated with the GXS Group ;

3.1.2. G International's business for the provision of EDI Van products in the United Kingdom shall be maintained and sufficient resources shall be made available to support such business and its customers in the same or comparable manner as such resources were made available on the date the OFT Undertakings were accepted.;

3.1.3. [✂]

3.1.4. the nature, description, range and quality of EDI Van products currently supplied in the United Kingdom by G International are maintained and preserved;

3.1.5. except in the ordinary course of business:

3.1.5.1. the Assets of G International are maintained and preserved, including facilities in the United Kingdom and goodwill;

3.1.5.2. none of the Assets of G International in the United Kingdom are disposed of; and

3.1.5.3. no interest in the Assets of G International is created or disposed of;

3.1.6. the software and hardware platforms used to provide the EDI Van products of G International in the United Kingdom shall continue to be maintained (to a standard that provides equivalent or better functionality) including the performance of routine changes and maintenance;

3.1.7. reasonable steps are taken to encourage employees whose responsibilities pertain exclusively or primarily to the United Kingdom to remain with G International. For these purposes, reasonable steps shall not require Francisco, GXS Inc or GXS Limited to enhance the responsibilities or remuneration (in any way) of any G International employees.

#### **4. Permitted Actions**

4.1. Subject to paragraph 2.1 above Francisco, GXS Inc and GXS Limited are permitted to make the following changes to the organisation and structure of G International:

4.1.1. the supply by the GXS Group of help desk client services, invoicing and billing services, revenue collection and treasury services and procurement services to G International;

4.1.2. the transfer of G International's employees to different premises providing that such premises are sub-let to G International and are separate from those occupied by any employees of the GXS Group;

4.1.3. the use of G International's employees for the projects listed in Annex A.

4.2. For the avoidance of doubt nothing in these undertakings shall prevent Francisco, GXS Inc and GXS Limited from restructuring the arrangements for the provision of debt finance to the GXS Group (as enlarged by the acquisition and merger of G International Inc.), provided that any such change does not result in an increase in the extent of any security interest (if any) over the Assets of G International in the United Kingdom.

## **5. Confidentiality**

5.1. Francisco GXS Inc and GXS Limited shall ensure that no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to G International's business in the United Kingdom shall pass, directly or indirectly from G International to any employee, director, agent or affiliate of the GXS Group who has responsibility for sales or marketing within the United Kingdom unless such information was disclosed prior to the acceptance of the OFT Undertakings and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to G International or destroyed. For the purposes of this paragraph GE Investments Inc. shall not be considered an affiliate of GXS Inc.

## **6. Compliance**

6.1. Francisco, GXS Inc and GXS Limited shall procure that their subsidiaries comply with these undertakings as if such subsidiaries had given them.

6.2. Francisco, GXS Inc and GXS Limited shall comply insofar as they are able with such written directions as the Commission may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings

6.3. Francisco, GXS Inc and GXS Limited shall promptly provide to the OFT and the Commission such information as either may from time to time require for the purposes of monitoring compliance by Francisco, GXS Inc and GXS Limited and their subsidiaries with these undertakings. In particular, on the first working day of each month or the next working day thereafter commencing 1 July 2005, Gary Greenfield the operating partner of Francisco and Chief Executive Officer of GXS Inc and Bob Symmons, Company Director of GXS Limited shall provide monthly statements to the Commission (in the form set out in Annex B) confirming compliance with these undertakings.

## **7. Acceptance of Service**

7.1. Francisco and GXS Inc both hereby authorise Trusec to accept on behalf of either or both Francisco and/or GXS Inc service at Trusec's offices at 2 Lambs Passage, London EC1Y 8BB of all documents (including any document of any kind which falls to be served on or sent to Francisco and/or GXS Inc in connection with any proceedings in courts in the United Kingdom) orders, requests, notifications or other communications connected with these undertakings.

7.2. Any document, order, request, notification or other communication shall be deemed to have been validly served on Francisco and/or GXS Inc if it is served on Trusec at its offices; and service or receipt shall be deemed to be acknowledged by Francisco and/or GXS Inc if it is acknowledged by Trusec.

7.3. Paragraph 7.2. has effect irrespective of whether, as between Trusec and either or both Francisco and/or GXS Inc Trusec has or continues to have, any authority to accept and acknowledge service on Francisco and/or GXS, Inc's behalf; and no failure or mistake by Trusec (including a failure to notify Francisco and/or GXS Inc of the service of any document, order, request,

notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceeding or judgement.

7.4. The Commission shall also send copies of any documents served on Trusec to Francisco and/or GXS Inc by e-mail or post. Failure or delay on the part of the Commission in so doing shall not prejudice the effectiveness of service of the service document.

7.5. In the event that Francisco and GXS Inc are no longer represented by Slaughter and May they shall:

7.5.1. appoint and authorise GXS Limited to accept service on their behalf in relation to these undertakings

7.5.2. notify the Commission that GXS Limited has been appointed as their agent and that service of all documents (including any document of any kind which falls to be served on or sent to Francisco and/or GXS Inc in connection with any proceedings in courts in the United Kingdom) orders, requests, notifications or other communications connected with these undertakings should be served on GXS Limited at its registered office.

7.6. Following receipt by the Commission of the notification referred to in paragraph 7.5.2 above paragraphs 7.1 to 7.3 (inclusive) shall apply to GXS Limited as they applied to Trusec.

**FOR AND ON BEHALF OF FRANCISCO PARTNERS LP**

..... Signature

..... Name

..... Title

..... Date

**FOR AND ON BEHALF OF GLOBAL EXCHANGE SERVICES, INC**

..... Signature

..... Name

..... Title

..... Date

**FOR AND ON BEHALF OF GLOBAL EXCHANGE SERVICES LIMITED**

..... Signature

..... Name

..... Title

..... Date

## **Annex A**

### **Permitted Projects**

[Confidential]

**Annex B**

**Compliance Statement for Francisco and GXS Inc**

I Gary Greenfield confirm on behalf of Francisco Partners LP (Francisco) and Global Exchange Services, Inc (GXS Inc) that to the best of my knowledge and belief:

- (a) no action has been taken by either Francisco or GXS Group after the acceptance of the OFT Undertakings that might prejudice the Reference or impede the taking of any action in relation to G International Limited by the Commission or by any other party which may be justified by the Commission's decisions on the reference;
- (b) Francisco and GXS Inc have complied with the undertakings given by us and accepted by the Commission on [date]; and
- (c) , GXS Inc's subsidiaries have also complied with the undertakings given by us and accepted by the Commission on [date].

**FOR AND ON BEHALF OF FRANCISCO PARTNERS LP AND GLOBAL EXCHANGE SERVICES, INC**

Signature .....

Name .....

Title .....

Date .....

**Compliance Statement for GXS Limited**

I [●] confirm on behalf of Global Exchange Services Limited (GXS Limited) that, to the best of my knowledge and belief,

(a) no action has been taken by either GXS Limited after the acceptance of the OFT Undertakings that might prejudice the Reference or impede the taking of any action in relation to G International Limited by the Commission or by any other party which may be justified by the Commission's decisions on the reference; and

(b) GXS Limited have complied with the undertakings given by us and accepted by the Commission on [date]

**FOR AND ON BEHALF OF GLOBAL EXCHANGE SERVICES LIMITED**

Signature .....

Name .....

Title .....

Date .....

## Annex A

### Permitted Projects

[✂]