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8<sup>th</sup> August 2005

Damien Kelly  
Inquiry Officer  
The Competition Commission  
Victoria House  
Southampton Row  
London WC1 4AD

Dear Damien,

**Re: Francisco Partners LP and G International Inc Merger Inquiry**

**Please pass this letter to members of the Competition Commission dealing with the above matter**

As members of the Competition Commission (CC) will be aware, on 4<sup>th</sup> July 2005 Perwill plc (Perwill) was acquired by Kewill Systems plc. I am now no longer associated with Perwill plc (of which I was a founder and the Managing Director) and as such I am no longer constrained by any need to protect the interests of Perwill plc when communicating with the CC.

There are three key issues that I wish to bring to your attention and a number of other matters concerning the 'Provisional findings report' Published 14<sup>th</sup> July 2005 (PFR):

1. In the original submission by Francisco Partners at item 9.16 it stated that Perwill plc were a Reseller of GXS Limited (GXS) services with the implication that GXS was implementing its Partner Grid Program in the UK. I wrote to the CC pointing out that this was not the case and I believe that nearly ten months after the announcement of the merger that GXS have not signed up any companies that are based in the UK to its Partner Grid. I would add that as Managing Director of Perwill I did meet with a Director of GXS in May 2005 and I asked why Perwill could not be a member of Partner Grid and was told 'we had to prove ourselves first' yet a subsequent draft press release suggesting that Perwill was a member of Partner Grid was prepared by GXS (but not approved by Perwill so what not released).

During the discussion of 'how Perwill could work with GXS' it became clear that the GXS Director who was party to the discussions considered that GXS had a full complement of products and services from its own resources and as such did not need third party solutions such as those offered by Perwill (or presumably other competitors of GXS).

2. In the PFR is a statement that says GXS infers it waives its charges for the interconnection. I would ask the CC to find out exactly how many are charged the amount for the interconnection service. I have seen invoices to different organizations that clearly show a monthly charge of £50.00 (fifty pounds sterling) that is subject to VAT called 'interconnection charge'. That is £600.00 (six hundred pounds) plus VAT per annum. No other VAN provider applies such a charge.

I was present during the Network Liaison Group Meetings that established the 'rules of engagement' for interconnection between VAN's and the spirit of the agreement that was thrashed out was there would be no interconnection charges. No other VAN provider makes such a charge for interconnection and I know that the charge levied by GXS flies in the face of the original agreement for interconnection.

[paragraph deleted]

Dealing with other matters raised in the PFR I would comment as follows (using numbers from the report):

### Summary

2. EDI is generally accepted as having started in 1967 with the introduction of the TDCC standard in North America. EDI came to the UK in the early 1980's when promoted by the then ANA UK.

2. VAN's have existed since the late 1960's. It was merely that their usage in the UK did not start until the late 1970's (if you ignore BACS) with the eventual establishment of Tradanet in the early 1980's.

6. "... technically feasible and economically viable." I strongly disagree with the final part of this note. As I will note elsewhere, for a company such as Tesco, Sainsbury's, Somerfield, Morrison's (and other major players) to move from any existing VAN infrastructure to any other VAN or internet infrastructure is not economically viable.

I believe that Tesco has up to five thousand trading suppliers who would take up to three years to migrate from their existing usage of the Tradanet VAN Service to any other service. It is not simply a case of changing a 'telephone number' but software configuration changes are also required. There is also the important consideration that a number of users of software products for undertaking EDI have acquired those products from GXS and they are constrained to work solely with GXS Tradanet. For a supplier to make a change to another service they would be required to 'pay more' to GXS (based upon historic working)<sup>1</sup>. Then there is the need to parallel run, undertake testing and then go live with the replacement service. Even assuming a miracle and that each supplier comes on board to the new service in four hours (I have never seen this) extrapolation by even two thousand suppliers assumes one thousand days – hence my optimistic three year period presented above (for five thousand).

It would be useful for the CC to see when ASDA started moving to AS2 and establish where they are today (I have heard of some companies taking nine months to implement AS2 with ASDA even though ten working days should be more than sufficient!).

7. See my point above challenging the assumption "economically viable".

11. "... this competition was for generally larger customers ..." properly continues with "... small customers, which tended to follow(ed) their trading partners' preferences." The point here is that by securing the 'hub' (the main player) their smaller trading partners would tend to adopt the solution selected. In the late 1980's suppliers to retailers using Tradanet were told to come to presentations with authority to spend up to £7,000 and then they were 'coerced' to place an order for the then software recommended by INS (the early owner of Tradanet). The CC should not underestimate the power of securing the hub by a VAN. The fact that a VAN service provider discounts its prices to hubs is surely an indication of the consequential non-discounted sales that can be made to the trading partners. If Tesco had not adopted Tradanet all those years ago there would be far fewer users of the GXS Tradanet service than currently and maybe the matter would not have merited presentation to the OFT and subsequently the CC.

12. Please refer to the 'logistics and cost of change' to the likes of Tesco presented at 6 above.

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<sup>1</sup> Tradanet has a unique communications protocol called TIP that only works to the Tradanet Service. A software package that only has TIP cannot be used to connect to an alternative VAN Supplier.



16. It has been the threat from what was IBM, not BT or AT&T that has kept a check on prices from the Tradanet Service. As I have previously noted in my earlier submission (when I was with Perwill), the IBM prices for the smaller user are probably 40% less than that listed for GXS Tradanet.

17. An alternative is only viable if it offers minimal effort to embrace. To change from Tradanet to another service is not a simple exercise and I have already provided illustrations of the costs above.

18. This assumes that G International continues to operate through resellers. If there is only one service (the internationally offered ICS service from GXS) and there is still no demonstration of working with resellers (the Partner Grid program is merely 'words' at this time for the UK), why should GXS use resellers when it has its own dedicated sales force who make comments as presented on the first page of this letter?

19. Your summary is flawed. If GXS have control of the IBM service it is in their interest to replace it with their own service and to normalize their pricing of that service. Such normalization is unlikely to lead to price decreases!

20. Consolidation of the service, which I am sure will be facilitated by GXS, offers GXS the enviable position from which to totally dominate the market in the UK.

**21. I believe that the two members of the committee who have dissented have properly interpreted the issues that confront the UK business community. I urge the CC to review its provisional findings as I believe that to simply allow the merger to go ahead without any controls on what GXS can do with the G International (IBM) Business will not be good for UK Companies.**

#### **Provisional findings**

I have not replicated herein any point that I believe has been dealt with in the foregoing.

3.3 The situation of GXS Tradanet and its dominance in the UK market is unique and to state that two other jurisdictions cleared the transaction is not appropriate as their markets have significant differences (and less historical 'baggage') to the situation prevailing in the UK.

#### **[paragraph deleted]**

3.10 I do not doubt the comments of GXS but I would remind the CC that GXS' track record of working with third parties (Resellers) in the UK is virtually non-existent because they have their own solution sets. I see this situation continuing and the current competitive nature of third party solution providers confronting GXS with partnerships with BT and G International are likely to significantly reduce as a result of a merger.

4.7 This statement is simply not true! In the early 1980's the then cost of leased lines was extremely high and only larger companies could afford their usage. One of the benefits of traditional EDI messaging was that the data is condensed and thus the early dial-up modem speeds of 1200 or 2400 allowed delivery of significant volumes of EDI 'documents' (unlike XML where the data size is significantly increased). The vast majority of users adopted dial-up modem links to VAN Services – very few used Leased lines!

4.22 Communication Software is needed to communicate with a VAN and it is normally delivered by the company who provides software to facilitate data conversion to or from EDI formats (translation software), not by the VAN.

4.23 The statement as presented is not correct. See comment at 4.22 above.

4.25 Leased lines have been rarely used for VAN access and as such this statement needs to be moderated as per my previous comments.



**5.4 How many people responded to the survey sent by the CC? To say 55% of the respondents use third party software does not provide an indication of exact numbers. Historically INS, GE and then GXS (all owners of Tradanet) relied on Software and Service provision to augment the income from the VAN Service. Was a breakdown of the income apportionment provided to the CC by GXS on the basis of it may demonstrate that GXS have no real interest in working with third parties in the UK?**

5.5 These are the very services offered by third parties at the moment and their offering by GXS can only reduce competition because, again historically, the management of the Tradanet Service has not been forthcoming with working with third parties (at any level).

5.20 GXS has increased its prices in the last three years and thus I refute the comment 'broadly unchanged'. IBM has not changed its prices to my knowledge in the last three years.

5.22 I have already noted that central players such as Tesco can get preferential VAN pricing because 'owning the hub' by a VAN Service provider guarantees income from its suppliers.

5.23 GXS (and GE before it) have been offering three-year contracts for some time! I believe the six months cancellation is to a renewal date thus if you miss the renewal date you have to wait for the next renewal date before cancellation can be effected – thus paying for up to twelve months, even if the service is not used (another reason not to change arbitrarily – as the annual charges are not low).

**5.34 The only time I have seen this charge waived is when the likes of Tesco have objected to it. No small supplier (who make up the bulk of the users of the Tradanet Service) has to my knowledge had this price waived by GXS. It represents at least £600.00 plus VAT per annum per affected user. I believe the CC should investigate the total charges levied for interconnection by GXS! Will they introduce such charges to users of the current G International I.E. Service – in effect raising serious income?**

5.36 Did the CC determine all the reasons why some 'customers' had multiple VAN Service connections (to different VAN's)? Some customers have determined that it is more cost effective to send data that is not time critical over a lower cost VAN (even when using an interconnect). I know of one instance where the savings for sending data overnight via the IBM Service to interconnect to the Tradanet Service approached £1,000 a month.

5.41 I have not seen within the report any comment on the communication protocols used to connect to a VAN service. There is an impact on the communication protocol used that has repercussions when using an interconnect. For example, OFTP is available for connection to all major traditional VAN's in the UK. GXS Tradanet charges a premium for its usage because the sending of packets of data requires an acknowledgement to be sent to the originator of the data when OFTP is used. When using an interconnect it follows that when data is passed by Tradanet to another VAN service that a similar acknowledgement is received by Tradanet that is then passed back to the originator (this does not happen in all circumstances) – leading to more traffic and thus some justification for the extra charges. Tradanet has a proprietary solution called Tradanet Interface Protocol (TIP) that can be used to communicate with Tradanet Services. The TIP communication protocol does not work with other VAN Services.

**5.43 As noted, securing a major retailer secures the community that trades with it. Did GXS explain how much they discounted prices to retailers and whether the prices gained covered their costs? IBM adopted a policy of working with resellers who could offer complimentary products and services that it did not have and thus it could not compete with GXS without its reseller channel. GXS has its own additional products and services.**



5.46 Here the word 'mandated' is used – a further reinforcement that price reductions to major retailers (hubs) could easily be justified!

5.53 Changing from traditional VAN services to internet based solutions still require time and energy of all parties and the same problems of changing from one Van supplier to another will arise. As such, although there is a likelihood that companies will move to the internet I do not foresee that occurring for many years.

5.58 The only justification to move to internet-based communications would occur if the major hubs (retailers) mandated or accepted its usage. As has been seen in the report and my comments, GXS has discounted its prices to retailers to 'retain' their business. Why should a retailer accept the 'pain' of moving from Tradanet when it is the suppliers who are expected to pay any increases that may be levied by GXS?

5.67 For the IBM EDI Business to have been sold globally it could have gone to an organization that was not established as an EDI VAN provider. However, there are a number of potential bidders for the UK element of the IBM EDI Business who would not offer the same kind of threat to the business community as that offered by GXS.

5.72 The final argument is voided if the community being looked after by a small reseller connects to a hub (retailer) that has mandated the use of a specific VAN.

5.75 This presumes that a large retailer is prepared to take the time to move their existing business from the likes of Tradanet to another service. As already noted, for a large retailer to make such a move will take a considerable period of time and investment. The services in use today work and retailers are being confronted by other technologies in other areas (like RFID) that are occupying their time and budgets. Even assuming retailers get their prices kept much as now, it will not stop GXS increasing prices to their suppliers!

5.77 I have spoken to a number of third party suppliers and I do not see a credible situation of readily moving from IBM to the likes of BT or even a new entrant. In my previous capacity as MD of Perwill plc I worked for five years to get clients to move from traditional VAN's to the internet and only achieved limited success – because major retailers got the prices they expected from their VAN's and rarely considered the price paid by their suppliers.

**In summary I believe that to permit the merger of the former IBM I.E. Business with that of GXS Limited will lead to a lessening of effective competition and thus removal of brakes on price increases by GXS. Either the CC should impose strong restrictions on GXS in the event of the merger being allowed or the merger should be rejected and market forces should be allowed to continue, with the possibility of the UK IBM I.E. business being offered for sale to any interested third party – thus keeping the only effective competition that exists to GXS.**

I would add that these thoughts are delivered based upon my nineteen years of direct experience of the EDI and related markets both in the UK and internationally. I am prepared to meet with members of the CC to answer any questions that this letter raises.

Yours sincerely

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Managing Director

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# Pugsley