

INFRINGEMENT NOTICE

**NOTICE ISSUED UNDER SECTION 67 OF THE COMPETITION ORDINANCE (CAP. 619)
REGARDING ANTI-COMPETITIVE CONDUCT IN OCEAN PARK BIDDING EXERCISE**

This is a formal notice with legal effect. Please read it carefully. You may wish to obtain legal advice before responding.

To: Nintex Proprietary Limited
[Address of legal representative]

10 January 2020

Confidential information has been redacted from this non-confidential version for publication and is indicated with the designation [...].

TABLE OF CONTENTS

1.	INTRODUCTION AND SUMMARY	2
2.	THE FACTS AND EVIDENCE	3
2.1	THE BIDDING EXERCISE	3
2.2	THE SUBJECT CONDUCT	4
2.3	NINTEX MANAGEMENT’S LACK OF KNOWLEDGE OF THE SUBJECT CONDUCT	6
3.	LEGAL ASSESSMENT	6
3.1	LEGAL FRAMEWORK UNDER THE ORDINANCE	6
3.1.1	<i>The first conduct rule and serious anti-competitive conduct.....</i>	6
3.1.2	<i>Issuance of an infringement notice under the Ordinance.....</i>	7
3.2	THE CONTRAVENTION	8
3.2.1	<i>Legal principles</i>	8
	Agreement	8
	Concerted practice	9
	Agreement/concerted practice involving parties at different levels of distribution chain	10
	Exchange of competitively sensitive information.....	10
	Subsequent conduct on the market.....	11
3.2.2	<i>Application in the present case.....</i>	11
	Agreement/concerted practice to exchange competitively sensitive information.....	11
	Subsequent conduct on the market.....	12
	Conclusion.....	13
3.2.3	<i>Serious anti-competitive conduct.....</i>	14
4.	RESPONDING TO THIS INFRINGEMENT NOTICE	14
4.1	REQUIREMENTS OF THIS INFRINGEMENT NOTICE	14
4.2	NOTIFICATION PERIOD	14
4.3	COMPLIANCE PERIOD	14
4.4	PUBLICATION OF INFRINGEMENT NOTICE AND COMMITMENT.....	15
	ANNEX (1) COMMITMENT TO COMPLY WITH REQUIREMENTS OF INFRINGEMENT NOTICE.....	16

1. INTRODUCTION AND SUMMARY

1. The Competition Commission (“**Commission**”) has conducted an investigation pursuant to its power under section 39 of the Competition Ordinance (Cap. 619) (“**Ordinance**”) into conduct relating to a bidding exercise held by Ocean Park Corporation (“**Ocean Park**”) in June 2017 (“**Bidding Exercise**”). The Bidding Exercise concerned the supply and installation of IT workflow automation software offered by Nintex Proprietary Limited (“**Nintex**”). The Commission’s case reference number is EC/02U6.

2. The information obtained by the Commission during its investigation shows that Nintex’s former representative in Hong Kong, Mr [Nintex representative], made an agreement and/or engaged in a concerted practice with two of Nintex’s resellers participating in the Bidding Exercise, i.e. Quantr Limited (“**Quantr**”) and [Company X], that Quantr and [Company X] were to collude with each other by:

- (a) discussing who would win the Bidding Exercise; and
- (b) exchanging competitively sensitive information in relation to their intended bids.

3. The Commission has reasonable cause to believe that, by the conduct of its former representative in Hong Kong, Nintex has contravened the first conduct rule in section 6 of the Ordinance, and that the contravention involves serious anti-competitive conduct as defined in section 2(1) of the Ordinance.

4. On this basis, the Commission issues the present infringement notice to Nintex under section 67(2) of the Ordinance.

5. Part 2 below sets out the facts and evidence relied upon by the Commission and the conduct alleged to contravene the first conduct rule (“**Subject Conduct**”). Part 3 sets out the Commission’s legal assessment, including details of the contravention alleged by the Commission (“**Contravention**”). Part 4 sets out the requirements of this infringement notice and how and when Nintex should respond to this infringement notice.

2. THE FACTS AND EVIDENCE

2.1 The Bidding Exercise

6. In early 2017, the Innovation and Information Technology Department at Ocean Park (“**IT Department**”) initiated a project to digitise and/or automate certain paper-based processes within the company (“**Project**”). Staff within the IT Department identified software offered by Nintex as suitable for implementing the digitisation (“**Software**”).

7. In around March 2017, the IT Department made contact with Mr [Nintex representative], who was then (though is no longer) Nintex’s Territory Manager – North Asia based in Hong Kong, and held some initial discussions, including regarding the requirements, scope, budget, and size of the Project. The IT Department thereafter initiated the process for the procurement of the Software and accompanying services to develop and install the Software. Since Nintex did not provide implementation services, Mr [Nintex representative] recommended four Nintex resellers that offered the Software and relevant IT services: (1) [Company X], (2) Four Directions Limited (“**Four Directions**”), (3) SoftwareONE Hong Kong Limited (“**SoftwareONE**”) and (4) Quantr (together, the “**Resellers**”)¹.

8. On 9 June 2017, the IT Department sent separate emails to the four Resellers requesting their quotations.² The emails attached certain documents relating to the specifications for the Project, and requested interested Resellers to return completed versions of the attached Compliance Form and Quotation Form to Ocean Park by 3:30 pm on 15 June 2017.

9. The Quotation Form requested the Resellers to provide quotations in respect of:

- (a) two mandatory items, being:

¹ Email from Mr [Nintex representative] to Ocean Park dated 10 May 2017 with the subject “RE: SharePoint workflow automation”.

² Emails from Ocean Park to Quantr, Four Directions, SoftwareONE, and [Company X] respectively, all dated 9 June 2017 with the subject “Request for Quotation (RFQ) for IT Services Application on SharePoint with Nintex”.

- (1) the license fee for the Software for the first year; and
- (2) the accompanying development and installation services (titled ‘Workflow Development for IT Services Application’) (“**Item (2)**”);

(b) as well as certain optional items.

10. On or around 15 June 2017, each of the Resellers submitted a response to Ocean Park, including a completed Quotation Form.³

11. Ocean Park assessed the responses to the Bidding Exercise by reference to price and technical competency. It decided to award the Project to Quantr. On 28 June 2017, it issued a purchase order to Quantr for the relevant items to complete the Project.⁴ On the same date, Quantr purchased the Software from Nintex at a price of US\$[...]⁵, which was Nintex’s standard sales price for the Software offered to qualified resellers⁶.

2.2 The Subject Conduct

12. On 9 June 2017, shortly after Ocean Park’s issuance of the request for quotation mentioned in paragraph 8 above, Mr [Nintex representative] initiated a series of communications among himself, Mr Cheung Man Kit, Peter, the sole director and sole shareholder of Quantr (“**Mr Cheung**”) and Mr [Company X representative], the sole director and sole shareholder of [Company X] via WhatsApp.⁷

³ Ocean Park Record on Opening of Quotations dated 15 June 2017, appending responses submitted by, inter alia, [Company X] and Quantr.

⁴ Ocean Park’s Purchase Order No. 3010026414 to Quantr dated 28 June 2017.

⁵ Email from Mr Cheung to Mr [Nintex representative] dated 28 June 2017 with the subject “Re: Ocean Park - Quantr”, embedding a Nintex Partner Order Form signed by Quantr.

⁶ Nintex Subscription Pricing Model – Global Pricing Models Americas & Asia, effective between 1 January and 30 September 2017.

⁷ WhatsApp messages among Mr [Nintex representative], Mr Cheung and Mr [Company X representative] on 9 June 2017.

13. These messages demonstrate that, Mr [Nintex representative] was actively using Nintex's influence as Quantr and [Company X]'s supplier to direct the two companies to communicate with each other prior to the submission of their respective Quotation Forms to Ocean Park, while knowing that Quantr and [Company X] were competitors in the Bidding Exercise since he was the one who had recommended them as bidders:

- (a) Mr [Nintex representative] expressly specified that Mr Cheung and Mr [Company X representative] should coordinate regarding what proposals each would submit to Ocean Park in their companies' responses to the request for quotation, and who was going to win the Project based on those proposals;
- (b) To ensure that Mr Cheung would communicate with Mr [Company X representative], Mr [Nintex representative] indicated that Mr [Company X representative] of [Company X] would let Mr Cheung of Quantr carry out the work, if [Company X] won the tender. Mr [Nintex representative] was aware that Mr Cheung and Mr [Company X representative] knew each other;
- (c) Mr [Nintex representative] pressed Mr Cheung to engage with Mr [Company X representative] on those points on that day or the next. Mr Cheung then messaged Mr [Company X representative] in relation to the "arrangement" for the Ocean Park Bidding Exercise and asked Mr [Company X representative] if he wanted to win the deal;
- (d) Mr [Company X representative] and Mr Cheung, in response to Mr [Nintex representative]'s suggestion that each coordinate with the other, then shared their fee quotes in respect of the Bidding Exercise;
- (e) Specifically, Mr Cheung disclosed to Mr [Company X representative] that he intended to quote a price of \$[...] in the Bidding Exercise, calculated by [...] man days at \$[...] per day. This price refers to Item (2) on the Quotation Form, i.e., the relevant development and installation services, as this was the only item on the Quotation Form which could be determined by reference to "man days";
- (f) Mr [Company X representative] in turn informed Mr Cheung that he

intended to quote a lower price of \$[...] for the same work; and

- (g) Almost at the same time, Mr Cheung provided Mr [Nintex representative] with a screen capture of the relevant WhatsApp messages that he had exchanged with Mr [Company X representative].

14. Subsequent to this exchange of messages, Quantr and [Company X] both quoted \$[...] in respect of Item (2) on the Quotation Forms, which were submitted to Ocean Park on 15 June 2017.⁸ This was the price Quantr ultimately charged Ocean Park for Item (2) when selected to install the Software.⁹

2.3 Nintex management’s lack of knowledge of the Subject Conduct

15. Mr [Nintex representative]’s employment with Nintex was terminated on 30 June 2017. At the time of the Subject Conduct, he was the highest ranking employee based in Hong Kong and authorised by Nintex to develop relationships with and manage reseller partners in Hong Kong for Nintex. He reported to Nintex’s Vice President (Sales APAC) in Australia.

16. The Commission’s investigation does not show that Nintex management had knowledge of the Subject Conduct, or that it was aware of communications conducted by Mr [Nintex representative] through his personal phone. The available evidence suggests that Nintex only became aware of the Subject Conduct after the Commission contacted the Company in connection with its investigation. Nintex has cooperated with the Commission throughout its enquiries.

3. LEGAL ASSESSMENT

3.1 Legal framework under the Ordinance

3.1.1 The first conduct rule and serious anti-competitive conduct

17. Section 6(1) of the Ordinance sets out the first conduct rule and provides that an undertaking must not:

⁸ Ocean Park Record on Opening of Quotations cited in footnote 3 above.

⁹ See Ocean Park Purchase Order cited in footnote 4 above.

- (a) make or give effect to an agreement;
- (b) engage in a concerted practice; or
- (c) as a member of an association of undertakings, make or give effect to a decision of the association,

if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong.

18. Section 2(1) of the Ordinance defines certain conduct as being “serious anti-competitive conduct” for the purposes of the first conduct rule, namely any conduct that consists of any of the following or any combination of the following:

- (a) fixing, maintaining, increasing or controlling the price for the supply of goods or services;
- (b) allocating sales, territories, customers or markets for the production or supply of goods or services;
- (c) fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services;
- (d) bid-rigging (as further defined in section 2(2) of the Ordinance).

3.1.2 Issuance of an infringement notice under the Ordinance

19. Under section 67(1) of the Ordinance, the Commission may issue an infringement notice to a person where:

- (a) it has reasonable cause to believe that a contravention of the first conduct rule in section 6 of the Ordinance has occurred, and the contravention involves serious anti-competitive conduct; and
- (b) it has not yet brought proceedings in the Competition Tribunal (“**Tribunal**”) in respect of the contravention.

20. Where the Commission issues an infringement notice to a particular person, it offers not to bring proceedings in the Tribunal, on condition that the person commits to comply with the requirements of the notice (section 67(2)). The requirements of

the notice may include, but are not limited to, a requirement to refrain from or take specified action and a requirement to admit a contravention of the relevant conduct rule (section 67(3)).

21. If the person commits to comply with the requirements of the infringement notice, the Commission may not bring proceedings in the Tribunal against that person in respect of the alleged contravention (section 75) and may publish the infringement notice on its website (sections 72(2) and 78). However, if the Commission subsequently has reasonable grounds for suspecting that the person who has made a commitment has failed to comply with one or more of the requirements of the infringement notice, it may bring Tribunal proceedings against that person (section 76).

22. As specified in section 68 of the Ordinance, a person is not *obliged* to make a commitment to comply with the requirements of an infringement notice. Where they do not do so, the Commission may bring proceedings against that person in the Tribunal, in which it may seek a number of orders. A copy of section 68 of the Ordinance is enclosed with this infringement notice.

3.2 The Contravention

23. The Commission has reasonable cause to believe that, by engaging in the Subject Conduct, Nintex (via the acts of its former representative Mr [Nintex representative]) made an agreement and/or engaged in a concerted practice with the object of preventing, restricting or distorting competition, in contravention of the first conduct rule.

24. The Commission also has reasonable cause to believe that the Subject Conduct amounted to serious anti-competitive conduct within the meaning of section 2(1) of the Ordinance, in the form of fixing, maintaining, increasing or controlling the price for the supply of goods or services.

3.2.1 Legal principles

Agreement

25. As stated in the Commission’s Guideline on the First Conduct Rule (“**FCR Guideline**”), the term agreement is a broad concept. It is defined in section 2(1) of the

Ordinance to include any agreement, arrangement, understanding, promise or undertaking, whether express or implied, written or oral, and whether or not enforceable or intended to be enforceable by legal proceedings.¹⁰ Where there is a “meeting of minds” or a “concurrence of wills” between the parties concerned, the form in which it is manifested is unimportant.¹¹

26. The Commission considers that it is not necessary to show that an undertaking participated in or agreed to each and every aspect of an anti-competitive agreement for the undertaking to be held responsible for the agreement as a whole. An undertaking may be found to be a party to and responsible for an overall cartel agreement even though it participated only in certain of its constituent elements if it can be shown that the undertaking knew, or should have known, that the collusion in which it participated was part of an overall plan intended to harm competition.¹²

Concerted practice

27. Related to the concept of an agreement, a concerted practice is a form of coordination between undertakings by which, without it having been taken to the stage where an agreement has been concluded, practical cooperation is knowingly substituted for the risks of competition. In order to prove a concerted practice, it is not necessary to show that the competitor in question has formally undertaken to adopt a particular course of conduct. It is sufficient that, by its statement of intention, the competitor should have eliminated or substantially reduced uncertainty as to the conduct to expect of the other on the market.¹³

28. Inherent in the concept of a concerted practice is the notion that each economic operator must determine independently the policy which he intends to adopt on the market, which strictly precludes any direct or indirect contact between competitors, the aim or consequence of which is to influence conduct on the market of an actual or potential competitor, or disclose to such a competitor the course of

¹⁰ See definition of ‘agreement’ in section 2(1) of the Ordinance, and FCR Guideline, paragraph 2.22.

¹¹ *Competition Commission v Nutanix Hong Kong Limited & Ors* [2019] HKCT 2 (“*Nutanix*”), paragraph 26.

¹² FCR Guideline, paragraph 2.26.

¹³ *Nutanix*, paragraphs 28 and 33.

conduct which they themselves have decided to adopt or contemplate adopting on the market, in particular their policies as regards price, product quality and other competitive parameters.¹⁴

Agreement/concerted practice involving parties at different levels of distribution chain

29. Vertical restrictions may serve to facilitate horizontal coordination between competing suppliers and/or downstream distributors.¹⁵ The first conduct rule catches agreements and concerted practices whether between undertakings at different levels or between those at the same level of commercial operation, as well as trilateral or multilateral agreements and concerted practices between two or more customers and their common supplier.¹⁶

Exchange of competitively sensitive information

30. A concerted practice typically involves an exchange of competitively sensitive information.¹⁷ In this context, “competitively sensitive information” includes information relating to price, elements of price or price strategies, customers, production costs, quantities, turnover, sales, capacity, product quality, marketing plans, risks, investments, technologies and innovations.

31. If competitors share information in private on their future individual intentions or plans with respect to price, the Commission will likely consider the exchange of such information as having the object of harming competition.¹⁸ The Commission considers that such an exchange of information can be regarded, by its very nature, as so harmful to the proper functioning of normal competition in the market that there is no need to examine its effects.¹⁹ On this basis, it is not necessary for the Commission

¹⁴ *Nutanix*, paragraph 29; FCR Guideline, paragraph 2.27.

¹⁵ FCR Guideline, paragraph 6.7

¹⁶ *Nutanix*, paragraph 43.

¹⁷ FCR Guideline, paragraph 2.28.

¹⁸ FCR Guideline, paragraphs 2.28 and 6.40.

¹⁹ FCR Guideline, paragraph 3.3.

to also demonstrate that such conduct has an anti-competitive effect.²⁰

Subsequent conduct on the market

32. Where competitively sensitive information such as an undertaking's planned prices or planned pricing strategy is exchanged between competitors, Commission will likely conclude that there exists a concerted practice where:

- (a) the information is given with the expectation or intention that the recipient will act on the information when determining its conduct in the market; and
- (b) the recipient does act or intends to act on the information.²¹

33. Without a legitimate business reason for such an information exchange, the Commission will likely infer from the information exchange that (a) above is satisfied. Similarly, without a legitimate business reason for taking receipt of the information exchanged, or other evidence showing that the recipient did not act or intend to act on the information when determining its conduct in the market, the Commission will likely infer that (b) above is satisfied.²²

3.2.2 Application in the present case

Agreement/concerted practice to exchange competitively sensitive information

34. Nintex, Quantr and [Company X] are each separate undertakings. Quantr and [Company X] were competing on the same level of the distribution chain for the purposes of the Bidding Exercise.

35. In these circumstances, Quantr and [Company X] should have determined independently the prices they quoted in response to Ocean Park's request for quotations, and refrained from any direct or indirect contact with each other by which they may have influenced their respective conduct on the market or disclosed to each other their respective decisions or intentions concerning their conduct in the Bidding

²⁰ FCR Guideline, paragraph 3.2.

²¹ FCR Guideline, paragraph 2.28.

²² FCR Guideline, paragraphs 2.29 and 2.30.

Exercise.

36. On the contrary, Mr Cheung and Mr [Company X representative] acceded to Mr [Nintex representative]'s direction that they coordinate with each other, and did in fact exchange the prices relating to the development and installation services each intended to quote, which information is clearly competitively sensitive. While not having agreed upon the final prices they would quote, the information exchange substantially reduced the strategic uncertainty as between Quantr and [Company X] regarding the conduct of each in the Bidding Exercise, giving rise to an agreement and/or concerted practice with the object of harming competition.

37. As the person who directed that Mr Cheung and Mr [Company X representative] exchange information, Mr [Nintex representative] was a party to the agreement and/or concerted practice. He brought the two companies together by directing their respective directors to coordinate with each other, thus creating a shared understanding among himself, Mr Cheung and Mr [Company X representative] that Quantr and [Company X] would discuss their respective bidding intentions and then submit coordinated bids to Ocean Park based on that discussion.

38. Although Mr [Nintex representative] was not directly involved in the WhatsApp exchanges between Mr Cheung and Mr [Company X representative], looking at the messages and sequence of events on the evening of 9 June 2017 as a whole, Mr [Nintex representative] could reasonably have foreseen that Mr Cheung and Mr [Company X representative] would exchange competitively sensitive information in response to his message. Mr [Nintex representative] had actual knowledge of Mr Cheung's and Mr [Company X representative]'s discussion, as Mr Cheung provided Mr [Nintex representative] a screen capture of those WhatsApp exchanges.

Subsequent conduct on the market

39. Having exchanged competitively sensitive information on intended bidding prices, Quantr and [Company X] then engaged in subsequent conduct on the market, i.e. by submitting respective quotations in the Bidding Exercise.

40. In line with the guidance in the FCR Guideline, it can be inferred from the circumstances of the case that:

- (a) There was a common objective among Nintex, Quantr and [Company X], which was for Ocean Park to treat Quantr and [Company X]'s quotations as genuinely competing bids and finalise the purchase of the Software following the Bidding Exercise. Based on that objective, Quantr and [Company X] exchanged their pricing information with the expectation or intention that the other would act on the information when determining its conduct in relation to the Bidding Exercise;
- (b) There was no legitimate business reason for Quantr and [Company X], as direct competitors in the Bidding Exercise, to have exchanged their intended pricing with each other in advance of submitting their quotations; and
- (c) At least Quantr did act or intend to act on the information exchanged. This is on the basis that there is no legitimate business reason for the relevant information to have been exchanged and there is no evidence which is sufficient to show that Quantr did not act or intend to act on the information when determining its conduct in the market. In this respect, Mr Cheung provided an explanation in his interview with the Commission as to the reason he amended Quantr's price for Item (2) from \$[...] to \$[...]. Mr Cheung suggested that, before submitting the Quotation Form, certain Ocean Park personnel requested him over the phone to revise his initial intended quotation of \$[...] to reflect the removal of the "SAP integration" element, and that he amended Quantr's price in response by an arbitrary amount (i.e. by \$[...]). The Commission does not, however, consider this explanation sufficient to displace the inference that Quantr acted and/or intended to act on the pricing information exchanged by [Company X].

Conclusion

41. Based on all the evidence, the Commission has reasonable cause to believe that the Subject Conduct gave rise to an agreement and/or a concerted practice among Nintex, Quantr and [Company X] to distort the normal competitive process of the Bidding Exercise with the object of harming competition, in contravention of the first conduct rule.

3.2.3 *Serious anti-competitive conduct*

42. The Subject Conduct falls within the first type of serious anti-competitive conduct as defined in section 2(1) of the Ordinance, namely “*fixing, maintaining, increasing or controlling the price for the supply of goods or services*”.

43. In this respect, the Commission takes the view that price fixing can be achieved by indirect means (i.e., and not only through an agreement specifically fixing the prices to be charged).²³ This is particularly the case since, for the purposes of the definition of serious anti-competitive conduct, price fixing is broad in ambit, covering “*any conduct that consists of... fixing, maintaining, increasing or controlling the price*”.

44. As such, the exchange of information on future pricing intentions, as occurred in this case, may be assessed as price fixing in the form of a concerted practice.²⁴ The Commission thus has reasonable cause to believe that the Contravention involves serious anti-competitive conduct.

4. RESPONDING TO THIS INFRINGEMENT NOTICE

4.1 Requirements of this infringement notice

45. The requirements of this infringement notice are set out in paragraphs (1) and (2) of the commitment at **Annex (1)** to the notice. Should Nintex make a commitment in the form set out in Annex (1) within the compliance period, the Commission will not institute proceedings against Nintex in respect of the Subject Conduct.

4.2 Notification period

46. Nintex must notify the Commission in writing whether or not it proposes to comply with requirements of this infringement notice set out in Part 4 above no later than by 4:00 pm on 15 January 2020.

4.3 Compliance period

47. If Nintex notifies the Commission that it proposes to comply with the

²³ FCR Guideline, paragraph 6.12.

²⁴ FCR Guideline, paragraph 6.12.

requirements of the infringement notice within the notification period, it must then submit a commitment to the Commission in the form set out in **Annex (1)** no later than by 4:00 pm on 17 January 2020.

48. In accordance with section 74 of the Ordinance, Nintex may apply in writing to the Commission for an extension of the compliance period, before that period has expired. The Commission may extend the period if it considers there is a good reason for doing so.

4.4 Publication of infringement notice and commitment

49. If Nintex makes a commitment to comply with the requirements of this infringement notice within the compliance period, the Commission will publish the infringement notice and the commitment provided on its website, in accordance with sections 72(2), 77 and 78 of the Ordinance.

* * *

Issued 10 January 2020.

[Signed]

Anna WU Hung-yuk
for and on behalf of the
Competition Commission

Annex (1)

**COMMITMENT TO COMPLY WITH REQUIREMENTS OF INFRINGEMENT NOTICE
ISSUED TO NINTEX PROPRIETARY LIMITED BY COMPETITION COMMISSION**

Whereas:

- (a) On 10 January 2020, the Competition Commission (“**Commission**”) issued an infringement notice to Nintex Proprietary Limited (“**Nintex**”) under section 67 of the Ordinance (“**Infringement Notice**”);
- (b) The Infringement Notice was issued on the basis that the Commission had reasonable cause to believe that:
 - (i) Nintex had contravened the first conduct rule in the Competition Ordinance (Cap. 619) (“**Ordinance**”), by its former manager Mr [Nintex representative] engaging in the conduct relating to a bidding exercise held by Ocean Park Corporation in June 2017, as more particularly described in Part 2 of the Infringement Notice (“**Subject Conduct**”); and
 - (ii) the contravention involved serious anti-competitive conduct within the meaning of section 2(1) of the Ordinance;
- (c) Pursuant to the Infringement Notice, the Commission offered not to bring proceedings in the Competition Tribunal against Nintex, on condition that Nintex made a commitment to comply with the requirements of the Infringement Notice, as more particularly described below,

Nintex hereby makes a commitment to the Commission to comply with the requirements of the Infringement Notice as follows:

- (1) Nintex admits that, by Mr [Nintex representative] engaging in the Subject Conduct as more particularly described in Part 2 of the Infringement Notice, Nintex has contravened the first conduct rule in section 6 of the Ordinance; and
- (2) Nintex commits to adopt and implement, to the satisfaction of the Commission, an effective competition compliance programme, in the

time period and manner set out in the confidential letter from the Commission to Nintex of 10 January 2020.

SIGNED for and on behalf of Nintex Proprietary Limited

Date:

Name:

Position: