Anticipated acquisition by Tullett Prebon plc of ICAP plc's voice and hybrid broking and information businesses

Decision that undertakings might be accepted

ME/6579/15

Introduction

1. Tullett Prebon plc (**Tullett**) has agreed to acquire ICAP plc's (**ICAP**) global wholesale broking and information businesses.[1]

2. Tullett will acquire ICAP Global Broking Holdings Limited (**IGBHL**) - the proposed new holding company of ICAP's global wholesale broking business, data sales business and interests in certain joint ventures and associates (together referred to as **IGBB**) (the **Merger**). The remainder of ICAP's businesses will not transfer to Tullett.

3. Tullett and IGBB are together referred to as the **Parties**. Tullett and ICAP are together referred to as the **Notifying Parties**.

4. On 7 June 2016, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).

5. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Notifying Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Notifying

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[1] Further details as to the structure of the transaction announced on 11 November 2015 are set out in the following ICAP RNS announcement: http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/IAP/12576897.html

Parties the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.

6. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 14 June 2016, the Notifying Parties offered undertakings to the CMA for the purposes of section 73(2) of the Act.

7. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to the Notifying Parties that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

8. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

9. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to voice/hybrid broking within the Oil product category. To address this SLC, the Notifying Parties have offered to give undertakings in lieu of a reference to effect the divestment of ICAP's London-based Oil desks (including key staff) responsible for providing broking services to EMEA-based customers in relation to (i) Crude Oil (ii) Middle Distillates (iii) Fuel Oil (iv) Crude Oil Options (v) Commodity and Oil Futures (the **Divested Assets**) as a going concern to a purchaser approved by the CMA (the **Proposed Undertakings**). Under the Proposed Undertakings, the Notifying Parties also offered to enter into a purchase agreement with a buyer approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Up-front Buyer Condition**).

The CMA's provisional views

10. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that

restores competition to the level that would have prevailed absent the merger.[2]

11. The CMA considers that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that the proposed divestment of ICAP's Oil desks restores competition to the level that would have prevailed absent Tullett's acquisition of IGBB with respect to voice/hybrid broking in the Oil product category. As such, the Proposed Undertakings may result in replacing the competitive constraint provided by IGBB's Oil broking business that would otherwise be lost following the Merger.

12. The CMA currently considers that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation, in particular as it is a clean break divestment of broking desks which are capable of being sold to a competitor who would likely have the infrastructure in place to support the desks (or who could readily build it).

13. The Notifying Parties have submitted that in this sector teams of brokers or individual desks have been transferred to other brokerages in the past. Accordingly, the CMA considers that the individual teams or desks forming the Divested Assets may be sold to a single purchaser or separately to different purchasers.

14. The Up-front Buyer Condition means that the CMA will only accept the Proposed Undertakings after the Notifying Parties have entered into an agreement with a nominated buyer(s) that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer(s), as well as other aspects of the Proposed Undertakings. The CMA considers that an Up-front Buyer Condition[3] is necessary:

    (a) as the Divested Assets are not an existing stand-alone business;

    (b) to minimise composition risks (that the scope of the divestment package may not attract a suitable purchaser);

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[2] *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).
[3] See *OFT1122*, paragraphs 5.31–5.37, and *CMA2*, paragraph 8.34.

(c) to minimise purchaser risks (that a suitable purchaser is not available or appropriate, particularly given that there may be only a small number of suitable candidate purchasers for Oil voice/hybrid broking);

(d) to ensure the CMA's concerns regarding the ongoing viability of the divestment package are addressed, including whether the purchaser owns the necessary complementary assets and is a sufficiently credible future employer of the transferring brokers; and

(e) to mitigate against asset risk (in particular the risk that the competitive capability of the divestiture package deteriorates before divestiture through loss of key members of staff and their associated customers).

15. For these reasons, the CMA currently considers that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.

16. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the nominated buyer(s) is effective and credible such that the competitive constraint provided by IGBB's Oil voice/hybrid broking business absent the Merger is replaced to a sufficient extent.

Consultation process

17. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.[4]

Decision

18. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Notifying Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 16 August 2016 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act if it considers that

[4] *CMA2*, paragraph 8.29.

there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

Andrea Coscelli
Executive Director, Markets and Mergers
Competition and Markets Authority
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