

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

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) Tullett Prebon plc (**Tullett**) entered into an agreement with ICAP plc (**ICAP**) (the **Notifying Parties**) on 11 November 2015 according to which Tullett will acquire ICAP's global wholesale broking business comprising ICAP's associated technology and broking platforms (including i-Swap, Scrapbook and Fusion), data sales business and interests in certain joint ventures and associates (**IGBB**) by way of a share purchase whereby the current shareholders of ICAP would acquire, in aggregate, 36.1% of the shares in Tullett and the remainder of the ICAP business (**ICAP Newco**), not transferring to Tullett, would acquire 19.9% of the shares of Tullett. By way of a subsequent agreement between Tullett and ICAP, ICAP Newco will no longer acquire 19.9% of the shares of Tullett, these will instead be acquired by the current shareholders of ICAP, which will therefore acquire, in aggregate, 56% of the shares of Tullett (the **Transaction**). Tullett and IGBB will therefore cease to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) 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 transaction 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**);
- (c) the Notifying Parties, pursuant to section 73A(1) of the Act, offered undertakings (the **Undertakings**) to the CMA on 14 June 2016, for the purposes of section 73(2) of the Act;
- (d) the CMA gave notice, pursuant to section 73A(2)(b) of the Act, to the Notifying Parties on 21 June 2016 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;

- (e) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 or section 33 of the Act as the case may be which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (f) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now, for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to each of Tullett, and ICAP (**Order**).

Commencement, application and scope

1. This Order commences on the commencement date: 30 June 2016.
2. This Order applies to Tullett and ICAP.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Tullett and ICAP to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Divestment Business until determination of proceedings

4. Except with the prior written consent of the CMA, Tullett and ICAP shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or section 33 of the Act as the case may be or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Divestment Business with the Tullett Business;
 - (b) transfer the ownership or control of the Tullett Oil Business or the Divestment Business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Divestment Business or the Tullett Oil Business to compete independently in any of the markets affected by the transaction.

5. However, this Order shall not prevent the legal completion of the transaction.
6. Further and without prejudice to the generality of paragraph 4 and subject to paragraphs 3 and 5, Tullett and ICAP shall, pending the completion of the divestment of the Divestment Business to the satisfaction of the CMA in accordance with the provisions of the Undertakings, save as otherwise agreed in advance in writing by the CMA, ensure:
 - (a) the Divestment Business is carried on separately from the Tullett Oil Business and the Divestment Business's separate sales or brand identity is maintained;
 - (b) the Divestment Business and the Tullett Oil Business are maintained as a going concern and sufficient resources are made available for the development of the Divestment Business and the Tullett Oil Business, on the basis of their respective pre-Transaction business plans;
 - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Divestment Business or the Tullett Oil Business;
 - (d) except for as a result of any changes that may occur from time to time in the ordinary course of business, the nature, description, range and quality of services supplied in the UK by each of the Divestment Business and the Tullett Oil Business are maintained and preserved;
 - (e) except in the ordinary course of business, the separate operation of the Divestment Business and the Tullett Oil Business, including by ensuring that:
 - (i) all of the assets of the Divestment Business and the Tullett Oil Business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Divestment Business or the Tullett Oil Business are disposed of; and
 - (iii) no interest in the assets of the Divestment Business or the Tullett Oil Business is created or disposed of;
 - (f) there is no integration of the information technology systems of the Divestment Business with that of the Tullett Business, and the software and hardware platforms of the Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;

- (g) the customer lists of the Divestment Business and the Tullett Oil Business shall be operated and updated separately and any negotiations with any existing or potential customers in relation to the Divestment Business will be carried out by the Divestment Business or ICAP only and for the avoidance of doubt the Tullett Business will not negotiate on behalf of the Divestment Business (and vice versa) or enter into any joint agreements with the Divestment Business (and vice versa);
- (h) all existing contracts of the Divestment Business and the Tullett Oil Business continue to be serviced by the business to which they were awarded;
- (i) no changes, at the initiation of either Tullett or ICAP, are made to Key Staff of the Divestment Business or Tullett Oil Business other than in the ordinary course of business;
- (j) no Key Staff are transferred from the Divestment Business to either the Tullett Business or IGBB;
- (k) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Business and the Tullett Oil Business, including, if necessary, by offering reasonable financial rewards to brokers to incentivise them to remain at the Divestment Business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature (**Confidential Information**) relating to either of the Divestment Business or the Tullett Business shall pass, directly or indirectly, from the Divestment Business (or any of its employees, directors, agents or affiliates) to the Tullett Business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) or any steps necessary in order for Tullett and ICAP to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by Tullett and ICAP in relation to the Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed (except as may be necessary for the purposes of compliance with the obligations above).

COMPLIANCE

7. Tullett and ICAP shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
8. Tullett and ICAP shall comply promptly with such written directions as the CMA may from time to time give:
 - (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order; or
 - (b) to do or refrain from doing anything so specified or described which it might be required by this Order to do or to refrain from doing.
9. Tullett and ICAP shall co-operate fully with the CMA when the CMA is:
 - (a) monitoring compliance with the provisions of this Order; and
 - (b) investigating potential breaches of the provisions of this Order.
10. Tullett and ICAP shall procure that any member of the same Group of Interconnected Bodies Corporate as Tullett or ICAP, respectively, complies with this Order as if the Order had been issued to each of them, and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Tullett or ICAP, respectively, shall be attributed to Tullett or ICAP, as relevant, for the purposes of this Order.
11. Where any Affiliate of Tullett or ICAP is not a member of the same Group of Interconnected Bodies Corporate as Tullett or ICAP, respectively, Tullett or ICAP, as relevant, shall use its best endeavours to procure that any such Affiliate shall comply with this Order as if the Order had been issued to each of them.
12. Each of Tullett and ICAP shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Tullett and ICAP respectively and their respective subsidiary(ies) with this Order. In particular, on 7 July 2016 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the relevant persons of each of Tullett and ICAP as agreed with the CMA shall, on behalf of Tullett and ICAP respectively, provide a statement to the CMA in the form set out in Annex A to this Order for Tullett and, Annex B to this Order for ICAP, in each case confirming its compliance with this Order.
13. At all times, Tullett and ICAP will actively keep the CMA informed of any material developments, as assessed by ICAP in respect of its own business,

relating to the Tullett Oil Business and the Divestment Business, which includes, but is not limited to:

- (a) details of Key Staff who leave the Tullett Oil Business or the Divestment Business;
 - (b) any interruption of the Tullett Oil Business or the Divestment Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes lost over a material period of time by the Divestment Business and the Tullett Oil Business; and
 - (d) substantial changes in the Tullett Oil Business's or Divestment Business's contractual arrangements or relationships with key suppliers.
14. If Tullett or ICAP has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Tullett or ICAP may be directed to appoint under paragraph 15.
15. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.

Interpretation

16. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
17. For the purposes of this Order:

'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;

'Associated Person' means a person or persons associated with Tullett or ICAP within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

'business' has the meaning given by section 129(1) and (3) of the Act;

'commencement date' means the date specified in paragraph 1;

'CMA' means the Competition and Markets Authority or any successor body;

'Confidential Information' means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

'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;

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

'Divestment Business' means all brokers, trainee brokers and business support staff on the London ICAP Oil desks responsible for providing voice/hybrid broking services to EMEA customers in relation to oil products and identified in Annex B to this Order;

'EMEA' means Europe, Middle East and Africa, and includes: Bahrain, Belgium, Denmark, France, Germany, Israel, Italy, Luxembourg, Netherlands, Norway, Poland, Russia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and United Arab Emirates.

'enterprise' has the meaning given in section 129(1) of the Act;

'Group of Interconnected Bodies Corporate' has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

'ICAP' means ICAP plc (company number: 03611426);

'IGBB' means the target of the Transaction, including ICAP's global wholesale broking business comprising ICAP's associated technology and broking platforms (including i-Swap, Scrapbook and Fusion), data sales business and interests in certain joint ventures and associates, excluding the Divestment Business;

'Interest' includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

'Key Staff' means staff in positions of executive or managerial responsibility employed on the relevant desks and/or whose performance affects the viability of the Divestment Business or the Tullett Oil Business, as the case may be;

'Oil Products' means Crude Oil, Middle Distillates, Fuel Oil, Crude Oil Options, Commodity and Oil Futures;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'Subsidiary' shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

'the Transaction' means the means the acquisition by Tullett of IGBB by way of a share purchase by which Tullett and ICAP will cease, or have ceased, to be distinct within the meaning of section 23 of the Act;

'Tullett' means Tullett Prebon PLC (company number: 05807599);

'Tullett Oil Business' means the business of Tullett and its Group of Interconnected Bodies carried on as at the commencement date that provide voice/hybrid oil broking services to EMEA customers (and, for the avoidance of doubt, including the PVM business operated by Tullett);

'Tullett Business' means the business of Tullett and its Group of Interconnected Bodies Corporate carried on as at the commencement date;

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by ICAP or Tullett and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Tullett and ICAP;

'the two businesses' means the Tullett Oil Business and the Divestment Business;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Greg Bonné
Assistant Director of Mergers

Compliance statement for Tullett Prebon PLC

I *[insert name]* confirm on behalf of Tullett that:

Compliance in the Relevant Period

1. In the period from *[insert date]* to *[insert date]* (the **Relevant Period**):
 - (a) Tullett has complied with the Order of 30 June 2016 made by the CMA in relation to the transaction (the Order).
 - (b) Tullett's subsidiaries have also complied with this Order.
2. Subject to paragraphs 3 and 5 of the Order, except with the prior written consent of the CMA:
 - (a) No action has been taken by Tullett that might prejudice a reference of the transaction under section 22 or section 33 of the Act as the case may be or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Divestment Business with the Tullett Business; transfer the ownership or control of the Tullett Oil Business or the Divestment Business or any of their subsidiaries; or
 - (ii) otherwise impair the ability of the Divestment Business or the Tullett Oil Business to compete independently in any of the markets affected by the transaction.
 - (b) The Divestment Business has been carried on separately from the Tullett Business and the Divestment Business's separate sales or brand identity has been maintained.
 - (c) The Tullett Oil Business has been maintained as a going concern and sufficient resources have been made available for the development of the Tullett Oil Business, on the basis of its pre-merger business plans.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Tullett Oil Business, except in the ordinary course of business.
 - (e) Save for as a result of any changes that may occur from time to time in the ordinary course of business, the nature, description, range and quality of goods and/or services supplied in the UK by the Tullett Oil Business have been maintained and preserved.

- (f) Except in the ordinary course of business for the separate operation of the two businesses:
- (i) all of the assets of the Tullett Oil Business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Tullett Oil Business have been disposed of; and
 - (iii) no interest in the assets of the Tullett Oil Business has been created or disposed of.
- (g) There has been no integration of the information technology systems of the Divestment Business and Tullett Business.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Divestment Business have been carried out by the Divestment Business alone or ICAP and, for the avoidance of doubt, the Tullett Business has not negotiated on behalf of the Divestment Business (and vice versa) or entered into any joint agreements with the Divestment Business (and vice versa).
- (i) All existing contracts of the Tullett Oil Business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
 - (ii) No changes have been made to Key Staff of the Tullett Oil Business.
- (i) No Key Staff have transferred from the Divestment Business to the Tullett Business.
- (j) All reasonable steps have been taken to encourage all key staff to remain with the Tullett Oil Business.
- (k) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Divestment Business (or any of its employees, directors, agents or affiliates) to the Tullett Business (or any of its employees, directors, agents or affiliates), or vice versa.
- (l) Except as listed in paragraph (m) below, there have been no:

- (i) Key Staff that have left or joined the Tullett Oil Business;
- (ii) interruptions of the Divestment Business or the Tullett Oil Business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Tullett Oil Business; or
- (iv) substantial changes in the Tullett Oil Business's contractual arrangements or relationships with key suppliers.

(m) *[list of material developments]*

- 3. Tullett and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Tullett business in accordance with paragraph 12 of the Order.

Interpretation

- 4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF TULLETT PREBON plc

Signature

Name

Title

Date

Compliance statement for ICAP plc

I *[insert name]* confirm on behalf of ICAP that:

Compliance in the Relevant Period

1. In the period from *[insert date]* to *[insert date]* (the **Relevant Period**):
 - (a) ICAP has complied with the Order of 30 June 2016 made by the CMA in relation to the transaction (the Order).
 - (b) ICAP's subsidiaries have also complied with this Order.
2. Subject to paragraphs 3 and 5 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by ICAP that might prejudice a reference of the transaction under section 22 or section 33 of the Act as the case may be or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Divestment Business with the Tullett Oil Business; transfer the ownership or control of the Tullett Oil Business or the Divestment business or any of their subsidiaries; or
 - (ii) otherwise impair the ability of the Divestment Business or the Tullett Oil Business to compete independently in any of the markets affected by the transaction.
 - (iii) the Divestment Business has been carried on separately from the Tullett Oil Business and the Divestment Business's separate sales or brand identity has been maintained.
 - (b) The Divestment Business has been maintained as a going concern and sufficient resources have been made available for the development of the Divestment Business, on the basis of its pre-merger business plans.
 - (c) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Divestment Business, except in the ordinary course of business.
 - (d) Save for as a result of any changes that may occur from time to time in the ordinary course of business, the nature, description, range and quality

of goods and/or services supplied in the UK by the Divestment Business has been maintained and preserved.

- (e) Except in the ordinary course of business for the separate operation of the Divestment Business:
- (i) all of the assets of the Divestment Business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Divestment Business have been disposed of; and
 - (iii) no interest in the assets of the Divestment Business has been created or disposed of.
 - (iv) There has been no integration of the information technology systems of the Divestment Business or Tullett Business, and the software and hardware platforms of the Divestment Business have remained essentially unchanged, except for routine changes and maintenance.
 - (v) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Divestment Business have been carried out by the Divestment Business or ICAP alone and, for the avoidance of doubt, the Tullett business has not negotiated on behalf of the Divestment Business (and vice versa) or entered into any joint agreements with the Divestment Business (and vice versa).
 - (vi) All existing contracts of the Divestment Business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
 - (vii) No changes have been made to key staff of the Divestment Business.
 - (viii) No Key Staff have been transferred from the Divestment Business to the Tullett business.
 - (ix) All reasonable steps have been taken to encourage all key staff to remain with the Divestment Business.
 - (x) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the

Divestment Business (or any of its employees, directors, agents or affiliates) to the Tullett business (or any of its employees, directors, agents or affiliates), or vice versa.

(xi) Except as listed in paragraph (f)**Error! Reference source not found.** below, there have been no:

- i. Key Staff that have left or joined the Divestment Business;
- ii. interruptions of the Divestment Business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- iii. substantial customer volumes won or lost or substantial changes to the customer contracts for the Divestment Business; or
- iv. substantial changes in the Divestment Business's contractual arrangements or relationships with key suppliers.

(f) *[list of material developments]*. ICAP has provided below information on the current status of the Divestment Business staff.

3. ICAP and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Divestment Business in accordance with paragraph 12 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF ICAP plc

Signature

Name

Title

Date