

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

Decision on acceptance of undertakings in lieu of reference

ME/6579/15

Introduction

1. Tullett Prebon plc (**Tullett**) has agreed to acquire ICAP plc's (**ICAP**) global wholesale broking and information businesses (the **Merger**). As part of the transaction, Tullett will acquire ICAP Global Broking Holdings Limited (**IGBHL**) - the proposed holding company of ICAP's global wholesale broking business comprising associated technology and broking platforms (including i-Swap, Scrapbook and Fusion), data sales business and interests in certain joint ventures and associates (together referred to as **IGBB**) (the **Merger**).
2. Tullett and IGBB are together referred to as the **Parties**. Tullett and ICAP are together referred to as the **Notifying Parties**.
3. 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).
4. On 14 June 2016, the Notifying Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to the Notifying Parties, on 21 June 2016, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was considering the Notifying Parties' offer (the **UILs Notice**).

5. The text of the SLC Decision and the UILs Notice are available on the CMA webpages.¹

The undertakings offered

6. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to voice/hybrid broking within the Oil product category.
7. As set out in the UILs Notice, to address the SLC identified by the CMA the Notifying Parties have offered undertakings to divest 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, as set out in the text of the consultation in Annex 1 below (the **UILs**).
8. The Notifying Parties have also entered into an agreement for the sale and purchase of the Divestment Assets with an upfront buyer, before the CMA finally accepts the Proposed Undertakings. The Notifying Parties have proposed INTL FCStone Ltd (**IFL**) as the upfront buyer.

Consultation

9. On 2 August 2016, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.² For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.³
10. The CMA received no submissions during the consultation period. Accordingly, the CMA did not have cause to change its preliminary view that the UILs would be acceptable.
11. The CMA therefore considers that the UILs offered by the Notifying Parties are clear-cut and appropriate to remedy, mitigate or prevent the competition

¹ See [Decision that undertakings might be accepted](#), and the [SLC Decision](#).

² The full consultation text was published on the [case page](#).

³ *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).

concerns identified in the SLC Decision and that IFL is a suitable purchaser of the Divestment Assets.

Decision

12. For the reasons set out above, the CMA considers that the UILs provided by the Notifying Parties are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by the Notifying Parties pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
13. The undertakings, which have been signed by the Notifying Parties and will be published on the CMA webpages,⁴ will come into effect from the date of this decision.

Andrea Coscelli
Acting Chief Executive
Competition and Markets Authority
8 September 2016

⁴ See [Tullett Prebon/ICAP merger inquiry case page](#).

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

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on the proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6579/15

Introduction

1. Tullett Prebon plc (**Tullett**) has agreed to acquire ICAP plc's (**ICAP**) global wholesale broking and information businesses (the **Merger**). As part of the transaction, Tullett will acquire ICAP Global Broking Holdings Limited (**IGBHL**) - the proposed holding company of ICAP's global wholesale broking business comprising associated technology and broking platforms (including i-Swap, Scrapbook and Fusion), data sales business and interests in certain joint ventures and associates (together referred to as **IGBB**) (the **Merger**).
2. Tullett and IGBB are together referred to as the **Parties**. Tullett and ICAP are together referred to as the **Notifying Parties**.
3. 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**).
4. On 14 June 2016, the Notifying Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
5. The CMA gave notice to the Notifying Parties, on 21 June 2016, pursuant to section 73A(2)(b) of the Act, that it considers that there were 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

was considering the Notifying Parties' offer. A copy of that decision is available on the CMA's webpages.¹

6. The text of the SLC Decision is available on the CMA webpages.²

The undertakings offered

7. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to voice/hybrid broking within the Oil product category.
8. As set out in the UILs Notice, to address the SLC identified by the CMA the Notifying Parties have offered undertakings to divest 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**). The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).³
9. The Notifying Parties have also entered into an agreement for the sale and purchase of the Divestment Assets with an upfront buyer, before the CMA finally accepts the Proposed Undertakings. The Notifying Parties have proposed INTL FCStone Ltd (**IFL**) as the upfront buyer. This agreement is conditional on acceptance by the CMA of the Proposed Undertakings, including approval of IFL as the buyer of the Divestment Assets.

CMA assessment

10. The CMA currently considers, subject to responses to the consultation required by Schedule 10 of the Act that the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.⁴ This is because it is a clean break divestment of broking desks which are capable of being sold to a competitor who has the infrastructure in place to support the desks. The CMA also considers that the Proposed Undertakings would be capable of ready implementation.

¹ See the [Decision that undertakings might be accepted](#).

² See the [SLC Decision](#)

³ See the [case page](#).

⁴ *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).

Suitability of the proposed purchaser

11. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:
 - (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it;
 - (b) the proposed purchaser is independent of and unconnected to the merging parties;
 - (c) the proposed purchaser has the necessary financial resources, expertise, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;
 - (d) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
 - (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.⁵
12. INTL FCStone Inc. (IFL's parent) is a Fortune 500 firm known for developing specialised financial services in commodities, securities, global payments, foreign exchange and other markets. INTL FC Stone Inc.'s headquarters are in New York and it operates in the UK (covering EMEA) through its London based subsidiary, IFL.
13. IFL's customers include the producers, processors and end-users of many major traded commodities; commercial counter-parties; governmental, non-governmental and charitable organisations; institutional investors; brokers; professional traders; commercial banks; and major investment banks.
14. As regards the independence of IFL, the CMA notes that neither IFL nor any of the INTL group companies has an equity interest in or interest in any debt of Tullett Prebon or ICAP.
15. There are some limited contractual relationships between IFL, Tullett Prebon and ICAP. These are:

⁵ [OFT1122](#), paragraphs 5.25–5.30.

- (a) IFL has a historic inactive relationship with ICAP Energy Ltd which was originally set up by a London based INTL employee who subsequently moved back to the US. The rationale at the time was to trade futures and options but the relationship was never utilised by any IFL desk. IFL is presently in the process of closing this relationship down.
 - (b) IFL's newly launched fixed income desk recently established a relationship with ICAP Securities Ltd. IFL engages with fixed income counterparties in the selling and buying of LatAm corporate and sovereign bonds as matched principal. In that respect, ICAP Securities Ltd. is one of the principle trading counterparties that IFL's fixed income desk can trade with in the market by way of utilising liquidity in LatAm bonds. The present economic value of the relationship is minimal as IFL has only traded once to date with ICAP Securities Ltd.
 - (c) Tullett Prebon (Europe) and Cosmorex AG (a Swiss based Tullett subsidiary) are both customers of IFL's FX prime brokerage desk for FX voice brokerage purposes. IFL uses the former's electronic FX trading platform, called EBS, which is given out to IFL customers to trade on.
16. However, the CMA notes that the above do not represent significant connections to the divesting party and are non-exclusive. These types of relationship are not uncommon in the industry and none of the above involve relationships with the brokers of the divestiture package. Overall, the CMA considers that there are no material links between IFL or any INTL group companies and Tullett Prebon and ICAP.
17. As regards financial resources, the CMA notes that IFL intends to fund the transaction from its existing cash resources. The CMA has no concerns over the financial resources of IFL to acquire and support the proposed divestment package.
18. In terms of expertise and commitment to the market, IFL has experience in commodities trading in several product areas and has undertaken a small amount of activity in the oil market. The sector-specific expertise required for the Divestment Assets to be successful under new ownership will be acquired through the brokers transferring. The CMA has no concerns as to IFL's ability to enable the transferring brokers to build and maintain trading relationships, thereby ensuring that the Divestment Assets continue to develop as part of an effective competitor.
19. IFL told the CMA that it has the ability and capacity to assimilate the ICAP brokers into their existing infrastructure. The only transitional arrangements

expected relate to IT services to ensure that the brokers do not have any disruption to the systems they use.

20. IFL has demonstrated its success through its profitability and commitment to the market through continued expansion and acquisitions in recent years, namely the acquisition of Ambrian Commodities Ltd, MF Global's LME team, TRX Futures Limited and most recently the Jefferies agricultural and energy teams.
21. The CMA also notes that no consents or approvals are required to complete the acquisition and commence trading, other than CMA approval and confirmation from the FCA.
22. Therefore, subject to the outcome of this consultation, the CMA considers IFL to be a suitable purchaser of the Divestment Assets.

Proposed decision and next steps

23. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Assets by IFL are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
24. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA case page.⁶
25. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.⁷
26. Representations should be made in writing to the CMA and be addressed to:

⁶ See the [case page](#).

⁷ Under paragraph 2(4) of Schedule 10 to the Act.

Carole Bowley
Mergers Group
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Email: carole.bowley@cma.gsi.gov.uk

Telephone: 020 3738 6912

Deadline for comments: 17 August 2016