

# ANTICIPATED ACQUISITION BY TULLETT PREBON PLC OF ICAP PLC'S VOICE AND HYBRID BROKING AND INFORMATION BUSINESSES

## Undertakings given by Tullett Prebon plc and ICAP plc to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002

### Whereas:

- (a) Tullett Prebon plc (**TP**) entered into an agreement with ICAP plc (**ICAP**) on 11 November 2015 according to which TP 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 have acquired, in aggregate, 36.1% of the shares in TP, and the remainder of the ICAP business (**ICAP Newco**), which will not transfer to TP, would have acquired 19.9% of the shares of TP (the **Transaction**).<sup>1</sup> TP and IGBB will therefore cease to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) Under section 33(1) of the Act the Competition and Markets Authority (**CMA**) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (d) As set out in the CMA's decision of 7 June 2016 (the **Decision**), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation;

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<sup>1</sup> By subsequent agreement between TP and ICAP, ICAP Newco will no longer acquire 19.9% of the shares of TP, these will instead be acquired by the current shareholders of ICAP, which will therefore acquire, in aggregate, 56% of the shares of TP.

- (e) The CMA considers that the undertakings given below by TP and ICAP are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which may be expected to result from the Transaction, as specified in the Decision; and
- (f) Prior to the acceptance of these undertakings by the CMA, ICAP entered into a legally binding agreement dated 28 July 2016 (as amended and restated on 5 September 2016) to divest the Divestment Business as a going concern to the Proposed Purchaser on terms approved by the CMA. This agreement is conditional only on formal CMA and other regulatory approval of the Proposed Purchaser and acceptance by the CMA of these undertakings. This agreement includes a warranty that the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with TP and other competitors in the provision of voice/hybrid broking services in relation to the relevant products.

**NOW THEREFORE**, TP and ICAP hereby give to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect may be expected to result from the Transaction.

## **1 EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These undertakings shall take effect from the date that, having been signed by TP and ICAP, they are accepted by the CMA.

## **2 DIVESTMENT OF THE DIVESTMENT BUSINESS**

- 2.1 TP and ICAP shall ensure that the completion of the divestment of the Divestment Business to the Proposed Purchaser contemplated by the agreement referred to in recital (f) of these undertakings takes place within a period not exceeding three months from the date these undertakings take effect.
- 2.2 TP and ICAP shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Divestment Business, including, if necessary, by offering reasonable financial rewards to brokers to incentivise them to remain at the Divestment Business and transfer to the Proposed Purchaser.
- 2.3 In the event that TP and ICAP fail to complete the divestment of the Divestment Business in accordance with paragraphs 2.1 and 2.2 above, the CMA may, whether or not initiating the Trustee Functions as set out in paragraph 4 below,

require TP and ICAP to divest the Divestment Business as a going concern at no minimum price to a purchaser or purchasers approved by the CMA.

### **3 APPROVAL OF PURCHASER(S) AND TERMS OF DIVESTMENT**

3.1 For the purposes of the CMA approving a Proposed Purchaser and the terms of the divestment of the Divestment Business in accordance with these undertakings, TP and ICAP shall, save as required or permitted by the CMA, satisfy the CMA that:

- (a) the acquisition by the Proposed Purchaser of the Divestment Business, on the terms set out above, remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (b) the Proposed Purchaser is independent of and unconnected to each of TP and ICAP and the Group of Interconnected Bodies Corporate to which TP and ICAP, respectively, belong and any Associated Person or Affiliate of each of TP and ICAP or such Group of Interconnected Bodies Corporate;
- (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as a viable and active business in competition with TP and other competitors in the provision of voice/hybrid broking services in relation to the relevant products from the date of completion of the divestment of the Divestment Business;
- (d) the Proposed Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority, including (where applicable) landlord's consent to the transfer of any leasehold interest; and
- (e) the acquisition by the Proposed Purchaser of the Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The CMA may require TP and ICAP to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Purchaser will fulfil the requirements in paragraph 3.1 above.

## **4 APPOINTMENT OF A TRUSTEE**

- 4.1 The provisions of paragraph 4.2 to paragraph 4.7 below shall apply only as long as TP and ICAP have not satisfied, or where the CMA has reasonable grounds for believing that TP and ICAP will not satisfy, all or any part of the obligation to divest the Divestment Business in accordance with paragraph 2 above.
- 4.2 Within 5 Working Days of the CMA notifying each of TP and ICAP in writing that it must do so, TP and ICAP shall propose to the CMA for approval:
- (a) the names of at least two individuals to exercise the Trustee Functions; and
  - (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.
- 4.3 TP and ICAP and/or any individuals nominated pursuant to paragraph 4.2 shall satisfy the CMA that, save as required or permitted by the CMA:
- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
  - (b) such nominated individuals are each independent of each of TP and ICAP and of the Group of Interconnected Bodies Corporate to which TP and ICAP, respectively, belong and of any Associated Person or Affiliate of TP or ICAP or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Divestment Business to be sold pursuant to these undertakings, and, in the reasonable opinion of TP and ICAP, are appropriate to be appointed as Trustee; and
  - (c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.
- 4.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by TP and ICAP and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, each of TP and ICAP shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 4.2 above.

4.5 In the event that:

- (a) TP and ICAP fail to propose any person or persons in accordance with paragraph 4.2 above; or
- (b) none of the persons proposed by TP and ICAP pursuant to paragraph 4.2 is approved by the CMA; or
- (c) TP and ICAP are unable for any reason to appoint within the time limit stipulated in paragraph 4.4 above any such person following approval by the CMA,

TP and ICAP shall each use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. Each of TP and ICAP shall use its best endeavours to make such an appointment within 5 Working Days of receiving the nominations from the CMA.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or paragraph 4.5 above shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform the Trustee Functions; or
- (c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, each of TP and ICAP shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. Each of TP and ICAP shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

## **5 THE MANDATE**

5.1 The terms of the mandate proposed by TP and ICAP pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee

to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) an exclusive, irrevocable mandate to sell the Divestment Business as required by paragraph 6.1 below to a purchaser or purchasers as directed or approved in writing in advance by the CMA at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of the Divestment Business;
- (d) a mandate to comply with any orders and/or directions given by the CMA; and
- (e) a mandate to appoint at TP and/or ICAP's expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

## **6 FUNCTIONS OF TRUSTEE**

6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the CMA, the completion of the sale of the Divestment Business at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 6.3 below.

6.2 Without prejudice to the generality of paragraph 6.1 above, the Trustee shall take the following measures in relation to the Divestment Business to the extent to which such measures may be necessary to effect the divestment of the Divestment Business in accordance with the provisions of these undertakings:

- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
- (b) any other transfer of interests that will take effect with the sale;
- (c) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;

- (d) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
- (e) the formation or winding up of a company.

- 6.3 The Trustee shall not sell or permit the divestment of the Divestment Business to a Proposed Purchaser unless it has been directed to do so by the CMA or has obtained the CMA's prior written approval in respect of the identity of that Proposed Purchaser. The Trustee shall notify the CMA of the identity of a Proposed Purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.
- 6.4 Pending the divestment of the Divestment Business pursuant to paragraph 6.1 above, the Trustee shall monitor TP and ICAP's compliance with its obligations under paragraph 7.1 and paragraph 7.2 below and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Trustee concludes on reasonable grounds that TP and ICAP are failing or will fail to comply with such obligations.
- 6.5 The Trustee may give written directions to TP and ICAP to take such steps as may be specified or described in the directions for the purpose of securing TP and ICAP's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require TP or ICAP to:
- (a) offer any reverse premium or similar inducement to a purchaser(s); or
  - (b) accept any actual or contingent liability towards a purchaser(s) or otherwise in connection with the divestment of the Divestment Business which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds that TP or ICAP are failing or will fail to comply with any of its obligations under these undertakings.

6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of TP or ICAP nor shall the Trustee Functions be extended or varied in any way by TP or ICAP save with the prior express written consent of the CMA.

## **7 OBLIGATIONS OF TP AND ICAP FOLLOWING APPOINTMENT OF TRUSTEE**

7.1 TP and ICAP shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.

7.2 TP and ICAP shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:

- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.6 above; and
- (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

## **8 REMUNERATION OF TRUSTEE**

8.1 TP and/or ICAP shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5 above.

## **9 INTERIM ACTION**

9.1 Pending the completion of the divestment of the Divestment Business to the satisfaction of the CMA in accordance with the provisions of these undertakings, save as otherwise agreed in advance in writing by the CMA, TP and ICAP shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business and in particular ensure that:

- (a) the Divestment Business is carried on separately from the TP Business and the Divestment Business's separate sales or brand identity is maintained;
- (b) the Divestment Business and the TP Business are maintained as a going concern and sufficient resources are made available for the development of the Divestment Business and the TP 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 TP Oil Business;
- (d) the nature, description, range and quality of services supplied in the UK by each of the Divestment Business and the TP Oil Business are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the Divestment Business and the TP Oil Business:
  - (i) all of the assets of the Divestment Business and the TP Oil Business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of the Divestment Business or the TP Oil Business are disposed of; and
  - (iii) no interest in the assets of the Divestment Business or the TP Oil Business is created or disposed of;
- (f) there is no integration of the information technology of the Divestment Business or TP Businesses, 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 TP 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 alone and for the avoidance of doubt the TP 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 TP Business continue to be serviced by the business to which they were awarded;
- (i) no changes, at the initiation of either TP or ICAP, are made to Key Staff of the Divestment Business or TP Oil Business other than in the ordinary course of business;
- (j) no Key Staff are transferred between the Divestment Business and either the TP Business or IGBB;
- (k) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Business and the TP 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 TP Business shall pass, directly or indirectly, from the Divestment Business (or any of its employees, directors, agents or affiliates) to the TP 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 TP 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 TP 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).

9.2 At all times, TP and ICAP will actively keep the CMA informed of any material developments relating to the Divestment Business, which includes, but is not limited to:

- (a) details of Key Staff who leave the TP Oil Business or the Divestment Business;
- (b) any interruption of the TP 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
- (d) substantial changes in the TP Oil Business's or the Divestment Business's contractual arrangements or relationships with key suppliers.

## 10 CONTINUED SEPARATION

10.1 Except with the prior written consent of the CMA, for a period of 2 years following the divestment of the Divestment Business pursuant to these undertakings, TP, or any member of the Group of Interconnected Bodies Corporate to which TP belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
  - (i) an Interest in the Divestment Business; or
  - (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of TP or of any members of the Group of Interconnected Bodies Corporate to which TP belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
  - (iii) other than in the normal course of business, any of the assets of the Divestment Business;
- (b) shall procure that no employee or director of TP or any member of the Group of Interconnected Bodies Corporate to which TP belongs for as long as they are an employee or director of TP or any member of the Group of Interconnected Bodies Corporate to which TP belongs holds or is nominated to any directorship or managerial position in the Divestment Business or directorship or managerial position in any company or other undertaking carrying on or having control of the Divestment Business without the CMA's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Divestment Business or any company or other undertaking carrying on or having control of that Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of TP or of any member of the Group of Interconnected Bodies Corporate to which TP belongs directly or indirectly acquiring the Divestment Business or doing any of the things listed in sub-paragraphs 10.1 (a), 10.1 (b) and 10.1 (c) above.

## **11 COMPLIANCE**

- 11.1 TP 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 these undertakings; or
- (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.

11.2 TP and ICAP shall co-operate fully with the CMA when the CMA is:

- (a) monitoring compliance with the provisions of these undertakings; and
- (b) investigating potential breaches of the provisions of these undertakings.

11.3 TP and ICAP shall procure that any member of the same Group of Interconnected Bodies Corporate as TP or ICAP, respectively, complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as TP or ICAP, respectively, shall be attributed to TP or ICAP, as relevant, for the purposes of these undertakings.

11.4 Where any Affiliate of TP or ICAP is not a member of the same Group of Interconnected Bodies Corporate as TP or ICAP, respectively, TP or ICAP, as relevant, shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

## **12 PROVISION OF INFORMATION**

12.1 TP and ICAP shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

## **13 EXTENSION OF TIME LIMITS**

13.1 The CMA may, in response to a written request from TP and ICAP, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

## **14 SERVICE**

14.1 TP hereby authorises Alasdair Balfour and Thomas Masterman of Allen & Overy LLP (defined hereafter as "**Allen & Overy LLP**"), whose address for service is One Bishops Square, London, E1 6AD, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to TP, or any of its Subsidiaries in

connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).

- 14.2 ICAP hereby authorises Alex Nourry and Christopher Duff of Clifford Chance LLP (defined hereafter as “**Clifford Chance LLP**”), whose address for service is 10 Upper Bank Street, London E14 5JJ, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to ICAP, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 14.3 Unless TP or ICAP inform the CMA in writing that Allen & Overy LLP or Clifford Chance LLP, respectively, has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries’ behalf, any document, order, request, notification or other communication shall be validly served on TP or ICAP if it is served on Allen & Overy LLP or Clifford Chance LLP, respectively; and service shall be deemed to have been acknowledged by TP or ICAP if it is acknowledged by Allen & Overy LLP or Clifford Chance LLP, respectively, or such other nominee.
- 14.4 Paragraph 14.2 above has effect irrespective of whether, as between TP or ICAP and Allen & Overy LLP or Clifford Chance LLP respectively, or other nominees, Allen & Overy LLP or Clifford Chance LLP or other nominees has or continues to have any authority to accept and acknowledge service on TP and ICAP’s or any of its respective Subsidiaries’ behalf.
- 14.5 No failure or mistake by Allen & Overy LLP or Clifford Chance LLP or other nominees (including a failure to notify TP or ICAP, respectively, of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 14.6 Any communication from TP or ICAP to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing.

## **15 EFFECT OF INVALIDITY**

- 15.1 Should any provision of these undertakings be contrary to law or invalid for any reason, TP and ICAP undertake to continue to observe the remaining provisions.

## **16 GOVERNING LAW**

- 16.1 TP and ICAP recognise and acknowledge that these undertakings shall be governed and construed in all respects in accordance with English law.
- 16.2 In the event that a dispute arises concerning these undertakings, TP and ICAP undertake to submit to the courts of England and Wales.

## **17 TERMINATION**

- 17.1 TP and ICAP recognise and acknowledge that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 17.2 TP and ICAP recognise and acknowledge that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

## **18 INTERPRETATION**

- 18.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 18.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 18.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 18.4 For the purposes of these undertakings:

**“the Act”** means the Enterprise Act 2002;

**“Affiliate”** a person is an affiliate of another person if they or their respective enterprises 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 TP 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;

**“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”** shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**“Decision”** means the CMA’s decision under section 33 of the Act dated 7 June 2016 in connection with the Transaction;

**“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 customers in EMEA in relation Oil Products;

**“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;

**“IGBB”** means 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, of target of Transaction;

**“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 TP Business, as the case may be;

**“Oil Products”** means Crude Oil, Middle Distillates, Fuel Oil, Crude Oil Options and Commodity and Oil Futures;

**“Proposed Purchaser”** means IFL as proposed purchaser of the Divestment Business;

**“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 TP of 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 will acquire, in aggregate, 56% of the shares in TP;

**“TP”** means Tullett Prebon PLC (company number: 05807599);

**“TP Oil Business”** means the business of TP and its Group of Interconnected Bodies carried on as at 7 June 2016 that provide voice/hybrid oil broking services (and, for the avoidance of doubt, including the PVM business operated by TP);

**“TP Business”** means the business of TP and its Group of Interconnected Bodies Corporate carried on as at 7 June 2016, and including (as from the date of closing of the Transaction) IGBB;

**“Trustee”** means the person appointed pursuant to paragraph 4.4, paragraph 4.5 or paragraph 4.7 to carry out the Trustee Functions;

**“Trustee Functions”** means the functions set out in paragraph 6;

**“UK”** means the United Kingdom of Great Britain and Northern Ireland;

**“Working Day”** means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales;

**“IFL”** means INTL FCStone Limited;

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



**FOR AND ON BEHALF OF TP**

Signature

Name

Title

Date

**FOR AND ON BEHALF OF ICAP**

Signature

Name

Title

Date

**DATE ACCEPTED BY THE CMA:**