

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

Directions issued pursuant to paragraph 11 of the Undertakings in Lieu accepted by the CMA on 8 September 2016

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**).

Tullett Prebon plc (Tullett Prebon) and ICAP plc (ICAP), 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.

The CMA considers that the Undertakings given by Tullett Prebon and ICAP on 8 September 2016 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 SLC Decision. Having been signed by Tullett Prebon and ICAP, the Undertakings were accepted by the CMA on and took effect as of 8 September 2016.

Paragraph 11 of the Undertakings provided that Tullett Prebon 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 the Undertakings; or
- (b) to do or refrain from doing anything so specified or described which it might be required by the Undertakings to do or to refrain from doing.

The CMA now issues written Directions under paragraph 11 of the Undertakings that, for the purpose of carrying out or securing compliance with the Undertakings, Tullett Prebon and ICAP must appoint a monitoring trustee (MT) in accordance with the terms provided for in the Annex, and that Tullett Prebon and ICAP must comply with the obligations set out in the Annex.

Sheldon Mills, Senior Director
Competition and Markets Authority
12 September 2016

Annex: Directions to appoint a monitoring trustee

Interpretation

1. In these Directions:

The '**Act**' means the Enterprise Act 2002.

'**CMA**' means the Competition and Markets Authority.

'**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 oil products including those staff listed in Annex B of the Initial Enforcement Order, subject to any derogations from that Initial Enforcement Order consented to by the CMA.

'**ICAP**' means ICAP plc.

'**Initial Enforcement Order**' made by the CMA on 30 June 2016 under section 72(2) of the Act addressed to Tullett and ICAP for the purposes of preventing pre-emptive action.

'**MT**' means the monitoring trustee appointed in accordance with paragraphs 2 and 7 below.

'**Proposed Purchaser**' means INTL FCStone Limited as proposed purchaser of the Divestment Business.

'**Transitional Arrangements**' means arrangements relating to the Divestment Business during the period after completion of the Transaction but prior to the completion of divestment of the Divestment Business.

'**Transaction**' means the acquisition by Tullett 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.

'**Tullett**' means Tullett Prebon plc.

'**Undertakings**' means the undertakings offered by Tullett and ICAP pursuant to section 73A(1) of the Act to the CMA on 14 June 2016 for the purposes of section 73(2) of the Act and accepted by the CMA on 8 September 2016.

Appointment

2. Tullett and ICAP must appoint an MT in order to:
 - (a) monitor and report to the CMA on compliance by ICAP with regard to compliance with the Undertakings;
 - (b) support the CMA in:
 - (i) monitoring compliance with the provisions of the Undertakings; and/or
 - (ii) investigating potential breaches of the provisions of the Undertakings;
 - (c) support the CMA taking any remedial action which may be required to ensure compliance with the Undertakings; and
 - (d) assess and report to the CMA in relation to the arrangements made by ICAP and Tullett for divestment of the Divestment Business, including the transfer of broking staff and associated accounts, and what changes to those arrangements, if any, are necessary to ensure the divestiture process is carried out in accordance with the terms of the Undertakings.
3. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
4. Tullett and ICAP must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Tullett and ICAP as set out in these Directions.

General

5. The MT must possess appropriate qualifications and experience to carry out his or her functions.
6. The MT must neither have nor become exposed to a conflict of interest that impairs the MT's objectivity and independence in discharging his or her duties under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
7. Tullett and/or ICAP shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to carry out his or her functions effectively and properly.

8. The appointment of an MT by Tullett and ICAP must be subject to the approval of the CMA as to the identity of the MT and his or her terms and conditions of appointment in their entirety.
9. Tullett and ICAP must inform the CMA as soon as reasonably practicable and in any event by 5pm (UK time) on 13 September 2016 of the identity of the MT that Tullett and ICAP propose to appoint and provide the draft terms and conditions of appointment in their entirety. If Tullett and ICAP fail to do so, the CMA may notify Tullett and ICAP of the identity of the MT that Tullett and ICAP must appoint.
10. Tullett and ICAP must appoint the MT as soon as is reasonably practicable and in any event within two working days of the CMA giving its approval of the identity of the MT and his or her terms and conditions of appointment.
11. The MT must be appointed to act until the expiry three months from the date the Undertakings taking effect or, if earlier, the completion of the divestment of the Divestment Business to the Proposed Purchaser to the satisfaction of the CMA.
12. Once the MT has been approved by the CMA and appointed, Tullett and ICAP must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

13. The functions of the MT will be to:
 - (a) ascertain and report to the CMA in relation to the current level of compliance by ICAP and Tullett with the Undertakings, including the communications within and between ICAP senior managers, ICAP's Human Resources function and the Divestment Business, such as written and electronic communications, telephone conversations and meetings;
 - (b) assess and report to the CMA in relation to the arrangements made by ICAP to ensure compliance with the Undertakings, and what changes to those arrangements, if any, are necessary and proportionate to preserve the possibility of the CMA taking remedial action if required, including to ensure that all reasonable steps are taken to ensure divestment of the Divestment Business under the terms of the Undertakings;
 - (c) assess and report to the CMA in relation to the arrangements made by ICAP and Tullett for divestment of the Divestment Business, and what changes to those arrangements, if any, are necessary to ensure the

divestiture process is carried out in accordance with the terms of the Undertakings; and

(d) without prejudice to the right of Tullett and/or ICAP to contact the CMA, respond to any questions which Tullett and/or ICAP may have in relation to compliance with the Undertakings, in consultation with the CMA.

14. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively.
15. The MT must comply with any written requests made by the CMA for the purpose of ensuring the full and effective compliance by Tullett and ICAP with the Undertakings.

Obligations of Tullett and ICAP

16. Tullett, ICAP, their subsidiaries and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
 - (a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Divestment Business as the MT may reasonably require (save to the extent that such books, records, documents, or information are protected by legal privilege); and
 - (b) the provision of such office and supporting facilities as the MT may reasonably require;
 - (c) where reasonably practicable, ICAP providing advance notice of, including advance sight of any agenda, and right to attend any proposed meeting relating to Transitional Arrangements; and
 - (d) compliance with any reasonable request by the MT to be copied into correspondence between Tullett and ICAP which is relevant to compliance with the Undertakings, including but not limited to Transitional Arrangements, and/or to enable the MT to fulfil its functions as set out in these directions (save to the extent that such correspondence is protected by legal privilege);
 - (e) ICAP copying the MT into all correspondence between ICAP Human Resources and ICAP senior staff relating to the employment terms of the brokers within the Divestment Business (save to the extent that such correspondence is protected by legal privilege).

17. If Tullett, ICAP or any of their subsidiaries is in any doubt as to whether any action or communication would infringe the Undertakings, it is permitted to contact the MT for clarification.
18. If Tullett, ICAP or any of their subsidiaries has any reason to suspect that the Undertakings may have been or may be about to be breached, it must notify the MT and the CMA immediately.

Reporting functions

19. The MT is required to give a presentation on the key initial findings to the CMA no later than two weeks following the date of his or her appointment (followed by a written report upon request by the CMA, if necessary) giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Undertakings, and/or to preserve the possibility of the CMA taking any remedial action, if required, and including, among other things:
 - (a) a description and assessment of the current arrangements made for the retention of the Divestment Business staff and how this compares with arrangements prior to the CMA's acceptance of the Undertakings;
 - (b) a description and assessment of the steps taken by the parties and the parties' future plans to ensure completion of the Undertakings; and
 - (c) recommendations as to what changes to the above arrangements, if any, or other actions are necessary and proportionate to preserve the possibility of the CMA taking any remedial action, if required.
20. In addition to providing the initial presentation referred to in paragraph 19 above, the MT must provide an update to the CMA once every two weeks thereafter (or otherwise as required by the CMA) relating to the matters set out in paragraph 19 and as may be additionally required by the CMA.
21. The MT must notify the CMA immediately where, in his or her view:
 - (a) ICAP has failed, or appears likely to fail, to comply with the Undertakings, any known or suspected cause for such concerns, whether those concerns have been resolved and why; and/or
 - (b) there are grounds to consider that there is a reasonable prospect of a future breach of the Undertakings.
22. Where necessary the MT may also be required as part of this assessment to consider and report on:

- (a) the extent to which ICAP has cooperated with the MT in his or her task of monitoring compliance with the Undertakings or details of any aspects of the cooperation of Tullett and ICAP that he or she considers could be improved;
 - (b) the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance with the Undertakings or if there is anything that the MT considers would assist him or her in monitoring compliance;
 - (c) any current or anticipated requests for CMA consents under the terms of the Undertakings;
 - (d) any information which causes him or her to be concerned that the possibility of the CMA taking any remedial action, if required, is or may be put at risk, with an explanation of any such concern; and
 - (e) the information he or she used to compile the update.
23. When reporting to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which Tullett or ICAP would be entitled to withhold from the CMA on the grounds of legal privilege.
24. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Undertakings have been breached, or if he or she considers that he or she is no longer in a position to carry out his or her functions effectively. In that situation, the MT must give reasons for this view; including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 23 above).
25. All communications between the MT and the CMA (including the statements and reports referred to from paragraph 19 to 21 above) are confidential and should not be disclosed to third parties, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.
26. The MT will report each month to the CMA the fees that he or she has charged to Tullett and ICAP for his or her services.