

COMPLETED ACQUISITION BY ION INVESTMENT GROUP LIMITED OF BROADWAY TECHNOLOGY HOLDINGS LLC

Directions issued on 17 April 2020 pursuant to paragraph 11 of the Initial Enforcement Order imposed by the Competition and Markets Authority on Ion Investment Group Limited and Ion Trading Technologies Limited on 2 April 2020

On 6 February 2020, Ion Investment Group Limited (**Ion**), through its subsidiary, Ion Trading Technologies Limited (**Ion Trading**), completed the acquisition of a controlling stake of Broadway Technology Holdings LLC (the **Transaction**).

Material facts regarding the Transaction were made public on 14 February 2020. On 2 April 2020, the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order (the **Order**) addressed to Ion and Ion Trading in accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action. The Order is still in force.

The CMA now issues written directions under paragraph 11 of the Order that, for the purpose of securing compliance with the Order, Ion and Ion Trading must appoint a monitoring trustee in accordance with the terms provided for in this Annex and must comply with the obligations set out in the Annex.

Elizabeth Sinclair
Assistant Director, Mergers
Competition and Markets Authority
17 April 2020

Annex

Directions to appoint a monitoring trustee

Interpretation

In these Directions:

'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;

'Broadway' means Broadway Technology Holdings LLC, incorporated in Delaware, USA, with file number 5037139;

'the Broadway business' means the business of Broadway and its subsidiaries carried on as at the commencement date;

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

'CMA' means the Competition and Markets Authority;

'Derogations' means any derogations granted whether before or after the appointment of the MT by the CMA by which Ion or Ion Trading may undertake certain actions that derogate from the Order;

'ION' means ION Investment Group Limited, registered in Ireland with company number 496108;

'the ION business' means the business of ION and its subsidiaries but excluding the Broadway business, carried on as at the commencement date;

'ION Trading' means ION Trading Technologies limited, registered in Ireland with company number 526505;

'the ION Trading business' means the business of ION Trading and its subsidiaries but excluding the Broadway business, carried on as at the commencement date;

'MT' means the monitoring trustee appointed in accordance with this Annex;

'Order' means the initial enforcement order made by the CMA on 02 April 2020 and addressed to Ion and Ion Trading;

'the Transaction' means the transaction by which ION acquired a controlling interest in Broadway within the meaning of section 26 of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

Terms and expressions defined in the Order have the same meaning in these directions, unless the context requires otherwise.

Appointment

1. Ion and Ion Trading must appoint a MT in order to ensure compliance with the Order, in particular to:
 - a. monitor and report to the CMA on compliance by Ion and Ion Trading with the Order; and
 - b. support the CMA taking any remedial action which may be required to maintain the ION business and the Broadway business as going concerns.
2. 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.
3. Ion and Ion Trading 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 Ion and Ion Trading business as set out in these directions.

General

4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs his or her 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.
6. Ion and Ion Trading 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 effectively and properly carry out his or her functions.
7. Ion and Ion Trading must appoint the MT as soon as is reasonably practicable and in any event by **5pm on 24 April 2020** and the MT will continue to act either until the CMA reaches a decision to clear the Transaction or until the CMA directs that the MT is no longer required.
8. The appointment of a MT by Ion and Ion Trading is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
 - a. the name of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to

the CMA as soon as is reasonably practicable and in any event by **5pm on 21 April 2020**;

- b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on 21 April 2020**; and
- c. once the MT has been approved by the CMA and appointed, Ion and Ion Trading must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

9. The functions of the MT will be to:

- a. ascertain and report to the CMA in relation to the current level of compliance by Ion and Ion Trading and their subsidiaries with the Order;
- b. assess and report to the CMA in relation to the arrangements made by Ion and Ion Trading for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
- c. identify and supervise if necessary the arrangements made by Ion and Ion Trading for ensuring compliance with the Order;
- d. monitor compliance by Ion and Ion Trading and their subsidiaries with the Order;
- e. assist the CMA with the consideration of any derogation requests made by Ion and Ion Trading and monitor compliance by Ion and Ion Trading and their subsidiaries with any derogations granted by the CMA; and
- f. without prejudice to the right of Ion and Ion Trading to contact the CMA, respond to any questions which Ion and Ion Trading may have in relation to compliance with the Order, in consultation with the CMA.

10. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Ion business and the Broadway business, such as written and electronic communications, telephone conversations and meetings as may be required.

11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by with the Order.

Obligations of Ion and Ion Trading

12. Ion, Ion Trading, their affiliates 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 Ion business and the Broadway business as the MT may reasonably require; and
 - b. the provision of such office and supporting facilities as the MT may reasonably require.
13. If the Ion business or the Broadway business are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.
14. If Ion and/or Ion Trading has any reason to suspect that the Order may have been breached, it must notify the MT and the CMA immediately.

Reporting functions

15. The MT is required to provide an initial report to the CMA no later than **8 May 2020**, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
 - a. details of the current extent of compliance with the Order;
 - b. a description of the current arrangements made for the operation of the Broadway business and for the preservation of the assets required to operate the Broadway business; and
 - c. recommendations as to what changes to those arrangements, if any, are necessary.
16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in his or her view, Ion and Ion Trading and their subsidiaries have complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:
 - a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
 - i. anything has caused him or her to be concerned as to whether Ion and Ion Trading and their subsidiaries have complied with the Order, and if it has, whether those concerns have been resolved and why;

- ii. he or she has any remaining doubts or uncertainties as to whether Ion and Ion Trading and their subsidiaries have complied with the Order; and
 - iii. anything that causes him or her to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
 - b. details of the performance of the Broadway business, including any factors that might indicate asset deterioration;
 - c. whether appropriate steps are being taken to maintain the Broadway business as a going concern;
 - d. the extent to which Ion and Ion Trading and their subsidiaries have cooperated with the MT in his or her task of monitoring its compliance with the Order and details of any aspects of the cooperation of Ion and Ion Trading that he or she considers could be improved;
 - e. the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of Ion and Ion Trading and their subsidiaries with the Order and if there is anything that the MT considers would assist him or her in monitoring compliance;
 - f. any current or anticipated requests for consent to vary the Order; and
 - g. the information he or she used to compile the report.
- 17. When providing reports to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which Ion and Ion Trading would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Ion and Ion Trading to produce any information or documents to the MT which are privileged.
- 18. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Order has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. 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 17 above).
- 19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to Ion and Ion Trading or to the Broadway business, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.