

ACQUISITION BY ION TRADING TECHNOLOGIES LIMITED OF A CONTROLLING STAKE IN BROADWAY TECHNOLOGY HOLDINGS LLC

Directions issued pursuant to paragraph 11 of the Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

On 2 April 2020 the Competition and Markets Authority (**CMA**) issued an Initial Enforcement Order in accordance with section 72(2) of the Enterprise Act 2002 (the **Act**) concerning the completed acquisition by ION Investment Group Limited (**ION**) of a controlling stake in Broadway Technology Holdings LLC (**Broadway**), through its wholly-owned subsidiary, ION Trading Technologies Limited (**ION Trading**) (the **Initial Enforcement Order**).

On 17 April 2020, the CMA issued directions to ION and ION Trading to appoint a monitoring trustee (**MT**) for securing compliance with the Initial Enforcement Order.

The CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act 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 decision on the reference.

On 9 April 2020, the CMA received ION's response to the CMA's integration questionnaire. In its response, ION explained that Broadway's commercial decision-making has been centralised and merged with ION [X].

The CMA now issues written Directions under paragraph 11 of the Initial Enforcement Order that, for the purpose of securing compliance with the Initial Enforcement Order, ION and ION Trading must appoint a formal Hold Separate Manager (**HSM**) of the acquired Broadway business in accordance with the terms provided for, and must comply with the obligations set out, in Annex 1.

Alex Knight
Assistant Director, Remedies, Business and Financial Analysis
28 April 2020

ANNEX 1

Directions to appoint a hold separate manager

Interpretation

1. In these Directions:

'the Act' means the Enterprise Act 2002;

'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;

'Commencement date' means 2 April 2020, which is the commencement date of the Initial Enforcement Order;

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

'HSM' means the Hold Separate Manager appointed in accordance with these Directions;

'Initial Enforcement Order' means the Initial Enforcement Order issued by the CMA on 2 April 2020 and addressed to ION and ION Trading;

'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 by ION and ION Trading pursuant to the directions issued by the CMA on 17 April 2020 under paragraph 11 of the Initial Enforcement Order;

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

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

Appointment

2. ION and ION Trading must appoint a formal HSM to ensure that the Broadway business operates as a viable and competitive business, separately from and independently of the ION business. The HSM must be subject to the approval by the CMA of his or her identity and the terms and conditions of appointment. Any appointment must be made in accordance with the provisions of these Directions.
3. ION and ION Trading must appoint the HSM without delay and in any event by 5 May 2020 (or such longer period as the CMA may reasonably agree in writing) and the HSM will continue to act until the CMA has finally determined the reference (within the meaning of section 79 of the Act) or revoked the Initial Enforcement Order. ION and ION Trading must provide the CMA with the draft terms and conditions of appointment of the potential candidate HSMs, by 30 April 2020 (or such longer period as the CMA may reasonably agree in writing).
4. The HSM 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.
5. ION and ION Trading must ensure that the terms and conditions of appointment of the HSM reflect and give effect to the functions and obligations of the HSM and the obligations of ION and ION Trading as set out in these Directions.
6. ION and ION Trading, their subsidiaries and their employees, officers, directors, advisers and consultants must provide the HSM with all cooperation, assistance and information as the HSM may reasonably require in order to discharge his or her functions.

Functions

7. The functions of the HSM will be to exercise day-to-day management and control of the Broadway business so that:

- (a) it operates as a viable and competitive business, separately from and independently of the ION business and competes actively with the ION business;
 - (b) appropriate management, reporting and decision-making systems are put in place to preserve the independence of the Broadway business and ensure such independence on an ongoing basis;
 - (c) the Broadway business is maintained as a going concern with access to sufficient resources for its continued operation and development.
8. The HSM will also be required to:
- (a) ensure that the Broadway business complies with the Initial Enforcement Order;
 - (b) ensure the economic viability and competitiveness of the Broadway business in accordance with good business practice;
 - (c) minimise, as far as possible, any risk of loss of competitive potential of the Broadway business;
 - (d) assist the CMA and MT in monitoring the extent of compliance by ION and ION Trading with the Initial Enforcement Order (including any direction issued under paragraph 11 of the Initial Enforcement Order) or any other order issued by the CMA pursuant to section 72 of the Act;
 - (e) discuss with the MT arrangements which have been, or should be, put in place to ensure the separate operation from the Broadway business of a viable, competitive Broadway business and compliance by ION and ION Trading with the Initial Enforcement Order; and
 - (f) provide every two weeks (or otherwise as required by the CMA) a statement stating whether or not the Broadway business has complied with the Initial Enforcement Order.
9. The HSM must take such steps as he or she reasonably considers necessary in order to carry out the HSM's functions effectively.
10. The HSM must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by ION and ION Trading with the Initial Enforcement Order.
11. The HSM must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Initial Enforcement Order has been breached or if

he or she considers that he or she is no longer in a position to effectively carry out the HSM's functions.

General

12. The HSM must possess the appropriate qualifications and experience to carry out the HSM's functions.
13. The HSM must neither have nor become exposed to a conflict of interest that impairs the HSM's objectivity and independence in discharging his or her functions under these Directions, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
14. ION and ION Trading shall remunerate and reimburse the HSM 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 HSM's independence or ability to effectively and properly carry out the HSM's functions.
15. ION and ION Trading must provide the CMA with a copy of the agreed terms and conditions of the appointment of the HSM prior to his or her appointment.
16. Any termination of the appointment of the HSM is subject to the agreement of the CMA, such agreement not to be unreasonably withheld.
17. All communications between the HSM and the CMA are confidential and should not be disclosed to ION and ION Trading, save with the prior written consent of the CMA. The HSM shall not disclose such communications to third parties.
18. The CMA may issue such further directions as it considers necessary to ensure compliance with the Initial Enforcement Order, including, where the appointment of the HSM has been terminated, directions for the appointment of a further HSM.