

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

Directions issued on 19 May 2020 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

On 6 February 2020, ION Trading Technologies Limited (**ION Trading**), a wholly-owned subsidiary of ION Investment Group Limited (**ION**) acquired a controlling stake in Broadway Technology Holdings LLC (**Broadway**).

On 2 April 2020, the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order (the **Initial Order**) addressed to ION and ION Trading in accordance with section 72(2) of the Enterprise Act 2002 (the **Act**) for the purpose of preventing pre-emptive action. The Initial Order is still in force.

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

On 7 May 2020, the CMA received the initial report from the MT which identified actions necessary to ensure: (i) ION and ION Trading's compliance with the Initial Order, and (ii) that the Broadway business continues to be operated independently and is maintained as a going concern.

The CMA now issues written directions to ION and ION Trading under paragraph 11 of the Initial Order to take the actions specified in **Annex 1** for the purpose of carrying out, or ensuring compliance with, the Initial Order, and to comply with the obligations set out in **Annex 1**.

Alex Knight
Assistant Director, Remedies, Business and Financial Analysis
19 May 2020

Annex 1

Directions to ION and ION Trading

Interpretation

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;

‘CMA’ means the Competition and Markets Authority.

‘commencement date’ means 2 April 2020;

‘confidential information’ means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature;

‘the Initial Order’ means the initial enforcement order imposed by the CMA pursuant to 72(2) of the Act with a commencement date of 2 April 2020;

‘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;

‘key staff’ means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

‘the MT’ means the monitoring trustee appointed in accordance with the CMA’s written directions issued on 17 April 2020 under paragraph 11 of the Initial Order;

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

Specified actions

1. Information sharing

- (i) In accordance with paragraph 5(l) of the Initial Order, ION and ION Trading must procure (**on 19 May 2020**) the immediate cessation of the exchange (written, verbally or otherwise) of confidential information of the ION business to the Broadway business and vice versa except:
 - a. where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction); or
 - b. where expressly permitted by the CMA by way of derogation which provides ION and ION Trading with written consent to undertake certain actions that would otherwise be prohibited by the Initial Order.
- (ii) Where ION, ION Trading or any of their subsidiaries (including Broadway) propose to exchange confidential information between the ION business and the Broadway business in accordance with paragraphs 1(i)(a) and 1(i)(b) above, ION and ION Trading must procure that:
 - a. a record is kept of (i) all confidential information exchanged, (ii) the purpose of the exchange, (iii) a list of the recipients, and (iv) safeguards (procedural or otherwise) put in place to ensure that any confidential information is only shared to the extent strictly necessary, including for example the use of non-disclosure agreements in a form satisfactory to the CMA by all recipients of such information, and that the record is promptly made available to the CMA on request; and
 - b. the MT is copied on all written correspondence (including for the avoidance of doubt emails) in which confidential information is exchanged; and
 - c. the MT is provided with the opportunity to attend any discussions, including by phone (at the MT's request), where confidential information may be exchanged between the ION business and the Broadway business.

2. Incentive schemes

- (i) In accordance with paragraph 5(k) of the Initial Order, ION and ION Trading are required to take all reasonable steps to encourage all key staff to remain with the Broadway business and ION business.
- (ii) In furtherance of this obligation, ION and ION Trading must procure that an appropriate scheme designed to ensure the retention of key staff of the Broadway business is implemented in accordance with paragraph 2(iii) below.
- (iii) ION and ION Trading must procure that:
 - a. a list of all key staff of the Broadway business (having regard to the definition of key staff in the Initial Order) is identified and provided to the CMA without delay, and in any event **by 21 May 2020**;
 - b. an appropriate incentive scheme for the retention of key staff of the Broadway business is designed in coordination with the MT which will be provided to the CMA without delay, and in any event **by 26 May 2020** for CMA approval;
 - c. the incentive scheme for the retention of key staff of the Broadway business is implemented without delay, and in any event, within **24 hours** of CMA approval of the proposed scheme.

3. Written communications to employees and third parties

- (i) ION and ION Trading must procure that a written communication containing the information set out in paragraph 3(ii) below is prepared and issued to:
 - a. all employees of the ION business and the Broadway business; and
 - b. all third parties, including customers and suppliers, of both the ION business and the Broadway business;
- (ii) The written communication must explain ION and ION Trading's obligations under the Initial Order and in particular that the ION business and the Broadway business are held separate whilst the Initial Order is in force.
- (iii) ION and ION Trading must procure that:

- a. draft written communications are provided to the CMA for approval without delay and in any event **by 21 May 2020**.
- b. The written communications are issued to the individuals listed in paragraphs 3(i)(a) and 3(i)(b) above without delay, and in any event, within **24 hours** of CMA approval of the draft communications.

4. Deadlines

- (i) The CMA may, where it considers it appropriate, in response to a written request from ION or ION Trading showing good cause, or otherwise at its own discretion, grant an extension in writing (including via email) of any period specified in these Directions within which ION and ION Trading must take action.