

Completed acquisition by ION Investment Group Limited of Broadway Technology Holdings LLC

Decision that undertakings might be accepted

ME/6888/20

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

Introduction

1. On 6 February 2020, ION Trading Technologies Limited (**ION**), a wholly owned subsidiary of ION Investment Group Limited (**ION Group**), acquired a controlling stake in Broadway Technology Holdings LLC (**Broadway**) (the **Merger**).
2. On 7 July 2020, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to ION of the SLC Decision. However, in order to allow ION the opportunity to offer undertakings to the CMA for the purposes of section 73(2) of the Act, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision. On 7 July 2020 the CMA extended the statutory four-month period mentioned in section 24(1) of the Act by notice pursuant to section 25(4) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 14 July 2020, ION offered undertakings to the CMA for the purposes of section 73(2) of the Act.

5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to ION that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to the supply of sell-side front-office systems for fixed income (**FI**) electronic trading, worldwide. To address this SLC, ION has offered to give undertakings in lieu of a reference to divest the Broadway FI business. This will be achieved through the sale of the entire share capital of Broadway (ie the entity and all its subsidiaries purchased by ION) to a suitable purchaser and the transfer back to ION of the Broadway foreign exchange (**FX**) business (the **Proposed Undertakings**).
8. The Proposed Undertakings include the divestment of:
 - (a) The entire share capital of Broadway;
 - (b) All of the Broadway staff related to supporting its current FI business, including [PART OF SENIOR MANAGEMENT...], sales, marketing, development and [✂] back-office staff;
 - (c) All of the software, including the **TOC**, Broadway's core platform which forms part of Broadway's software bus¹, required to run the current FI business;
 - (d) The current Broadway offices, facilities, IT and infrastructure;
 - (e) All of Broadway's current FI customers;
 - (f) The Broadway brand; and

¹ A software bus is a programming interface that allows software modules to transfer data to one another and thus facilitates connections and communication between software modules. In other words, it acts as the central hub or platform through which modules interact.

(g) Broadway's hosting service: Greyspan.

Together, the **FI business**.

9. Under ION's Proposed Undertakings, the following would be transferred back to / remain with ION:

- (a) Certain members of Broadway's management [✂];
- (b) The Barracuda FX business;
- (c) Broadway's FX only customers;
- (d) Certain Broadway staff required for the FX business; and
- (e) Software that is required to serve Broadway's FX customers.

Together, the **FX business**.

10. The Proposed Undertakings also include the following temporary licences and/or transition arrangements:

- (a) The FI business granting a binary licence of the TOC to ION, time limited to no more than three years and for use exclusively in respect of FX, to facilitate the transfer of Broadway FX customers [✂];
- (b) The FI business entering into transitional services arrangements with ION for six months to facilitate the transition of the Barracuda FX and Broadway FX clients that are being transferred to ION; and
- (c) The continued use by certain Broadway FX and Barracuda FX clients of Greyspan until [✂].

11. Under the Proposed Undertakings, ION has also committed to enter into a sale and purchase agreement with a purchaser approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

The CMA's provisional views

12. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut, ie effective and capable of ready implementation.²

² [Mergers remedies \(CMA87\), December 2018](#), Chapter 3, paragraph 3.28.

The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.³

13. The Proposed Undertakings comprise the entirety of Broadway's FI business including all existing FI customers, FI software and IP (including the TOC), as well as the majority of Broadway staff and infrastructure to operate the pre-merger FI business of Broadway.
14. As such, the CMA believes that the Proposed Undertakings or a modified version of them may allow a suitable purchaser to compete effectively in the supply of sell-side front-office systems for FI electronic trading, worldwide and thus restore the competitive constraint provided by Broadway that would otherwise be lost following the Merger.
15. Moreover, the CMA believes that the Proposed Undertakings or a modified version of them may be capable of ready implementation as they comprise the sale of a standalone business (with a carve-out of the FX business), by way of a share sale.
16. Accordingly, the CMA currently believes that the Proposed Undertakings or a modified version of them may be capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns and may be capable of ready implementation.
17. The CMA notes however that, under the Proposed Undertakings, links would exist between ION and a suitable purchaser following the divestment as a result of the transfer back to ION of the FX business, in particular in the form of the TOC licence. Based on the information currently provided by the Parties, the CMA believes that these links are not likely to impede the successful, independent operation of the FI business. This is because the terms of the TOC licence are binary (ie ION will not have access to the TOC source code), the licence is granted exclusively for use in relation to Broadway's current FX customers, and the licensing period is restricted to what is strictly necessary to transfer customers to another solution while complying with existing contractual obligations. The CMA will seek to test the impact of these links (including the length of their duration) on the effectiveness of the Proposed Undertakings when it consults on the Proposed Undertakings more fully.

³ [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

18. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after ION has entered into an agreement with a nominated buyer that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer, as well as other aspects of the Proposed Undertakings. In order to consider the proposed buyer as being suitable, the CMA will need to be satisfied that the purchaser suitability criteria in the Remedies Guidance are met.⁴ These criteria include the requirement that the proposed purchaser has the financial resources, expertise, incentive and intention to maintain, operate and develop the divestment business as part of a viable and active business in competition with the merged entity in the relevant market. Owing to the fact that certain members of Broadway's staff [INCLUDING SENIOR MANAGEMENT] are not transferring as part of the Proposed Undertakings, the CMA will wish to ensure that the nominated buyer has the necessary expertise to address any technical and/or management gaps from within its own organisation.
19. For these reasons, the CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA.
20. The CMA's decision on whether to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, amongst other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the nominated buyer is effective and credible in its ability to operate and develop Broadway such that the competitive constraint provided by Broadway absent the Merger is replaced.

Consultation process

21. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.⁵

⁴ [Mergers remedies \(CMA87\), December 2018](#), Chapter 4 (in particular paragraphs 4.30 – 4.34), and Chapter 5 (in particular paragraphs 5.20 – 5.32).

⁵ [CMA2](#), paragraph 8.29.

Decision

22. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by ION, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 16 September 2020 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 11 November 2020 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Joel Bamford
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