

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

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6888/20

Please note that [✂] indicates text or figures 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 situation¹ 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**). The text of the SLC Decision is available on the CMA webpages.²
3. On 14 July 2020, ION offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 21 July 2020, the CMA gave notice to ION, pursuant to section 73A(2)(b) of the Act, that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be

¹ Pursuant to section 25(4) of the Act the four-month period mentioned in section 24 of the Act is extended while the CMA is seeking undertakings in lieu of reference.

² See <https://www.gov.uk/cma-cases/ion-investment-group-limited-broadway-technology-holdings-llc>.

accepted by the CMA under section 73(2) of the Act and that it is considering the ION offer (the **UIL Provisional Acceptance Decision**).

The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the supply of sell-side front-office systems for fixed income (**FI**) electronic trading, worldwide.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA ION has offered undertakings 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**). The text of the Proposed Undertakings is available on the CMA webpages.³
7. The Proposed Undertakings include the divestment of Broadway's **FI business**:
 - (a) The entire share capital of Broadway;
 - (b) All of the Broadway staff related to supporting its current FI business, including Tyler Moeller (Broadway CEO and co-founder), 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 bus⁴, 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
 - (g) Broadway's hosting service: Greyspan.

Together, the **Divestment Business**.

³ See <https://www.gov.uk/cma-cases/ion-investment-group-limited-broadway-technology-holdings-llc>.

⁴ 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.

8. Under ION's Proposed Undertakings, the following would be transferred back to / remain with ION:
- (a) Certain members of Broadway's management including [✂];
 - (b) The Barracuda FX business, which specialises in the design and development of enterprise class FX trading and risk management software solutions and focuses on the order management space (eg FX Order Management technology);
 - (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**.

9. The Proposed Undertakings also include the following temporary licences and/or transition arrangements:
- (a) The Divestment Business granting a binary licence of the TOC to ION to facilitate the transfer of Broadway FX customers [✂]. The licence will be (i) time limited to no more than three years; (ii) for use exclusively in respect of the FX business; (iii) not for use in FI; and (iv) ION shall not, during the term of the licence, offer any new licences of its own non-FX modules to customers on the TOC;
 - (b) The Divestment 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 [✂].
10. As set out in the UIL Provisional Acceptance Decision, ION has also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, before the CMA finally accepts the Proposed Undertakings.
11. ION has proposed as the upfront buyer a consortium led by Mr Tyler Moeller and Long Ridge Equity Partners (**Long Ridge**), with HPS Investment Partners LLC (**HPS**) and BC Partners Holdings Ltd (**BCP**) as minority investors (together, the **Consortium**).

12. ION and the Consortium are in the process of preparing the transaction agreement and associated documents, including the binary licence agreement for the TOC (the **Transaction Documents**). The terms of the Transaction Documents will be subject to review, to confirm that they reflect the Proposed Undertakings, and approval by the CMA before final approval of the Consortium as the buyer of the Divestment Business. The Transaction Documents will also be conditional on acceptance by the CMA of the Proposed Undertakings.

CMA assessment

13. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.⁵
14. This is because the Divestment Business comprises:
 - (a) the entirety of the sell-side front-office FI business of Broadway including all staff needed to support its current FI business, including Tyler Moeller (Broadway CEO and co-founder);
 - (b) all of the necessary software and assets to run the FI business, including the TOC, Broadway brand and Greyspan; and
 - (c) all current FI customers.
15. The Proposed Undertakings therefore addresses directly the realistic prospect of an SLC the CMA found in relation to the supply of sell-side front-office systems for FI electronic trading worldwide.
16. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because they are structured as the sale of the entire share capital of Broadway (ie the entity and all its subsidiaries purchased by ION) and the transfer back to ION of the Broadway FX business. This results in the sale of a standalone viable business.

⁵ [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3, paragraph 3.28.

Suitability of the proposed purchaser

17. In approving a purchaser, the CMA's starting position is to seek an outcome that restores competition to the level that would have prevailed absent the merger (ie pre-merger competition levels), thereby comprehensively remedying an SLC.⁵
18. The CMA therefore seeks to ensure that:
 - (a) The acquisition by the proposed purchaser must remedy, mitigate or prevent the SLC concerned or any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable.
 - (b) The proposed purchaser should be independent from and have no significant connection to the merger parties that may compromise the purchaser's incentives to compete with the merged entity (eg an equity interest, common significant shareholders, shared directors, reciprocal trading relationships or continuing financial assistance).
 - (c) The purchaser must have sufficient capability, including access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, to enable the divested business to be an effective competitor in the market. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor. For example, a highly-leveraged acquisition of the divestiture package which left little scope for competitive levels of capital expenditure or product development is unlikely to satisfy this criterion. The proposed purchaser will be expected to obtain in advance all necessary approvals, licences and consents from any regulatory or other authority.
 - (d) The CMA will wish to satisfy itself that the purchaser is committed to, and has an appropriate business plan and objectives for competing in, the relevant market(s), and that the purchaser has the incentive and intention to maintain and operate the relevant business as part of a viable and active business in competition with the merged party and other competitors in the relevant market.
 - (e) Divestiture to the proposed purchaser should not create a realistic prospect of further competition or regulatory concerns.⁶
19. The Consortium comprises:

⁵ [Mergers remedies \(CMA87\), December 2018](#), paragraphs 5.20 to 5.27.

- (a) Tyler Moeller, co-founder and current CEO of Broadway.
 - (b) Long Ridge, an investment firm that manages over \$900 million in capital and partners with, and invests in, fast growing companies in the financial and business technology sector. It currently has three committed funds under management. It was a partner and minority investor in Broadway between 2017 and 2020. It currently holds investments in a number of capital markets technology businesses including TradAir (Trading software for FX) and NinjaTrader (trading software for retail futures).⁷
 - (c) BCP, an investment firm with over €23 billion of assets under management in private equity, private credit and real estate. BCP funds have invested in a number of technology and financial services businesses around the world.⁸
 - (d) HPS, an investment adviser with assets under management in excess of \$62 billion (as of 1 July 2020). HPS focusses on managing debt and equity investments, including loan, mezzanine, credit opportunities, private equity and other investments.
20. Subject to the responses to this consultation, and having regard in particular to the criteria set out in paragraph 18 above, the CMA currently considers the Consortium to be a suitable purchaser of the Divestment Business for the following reasons:
- (a) The acquisition by the Consortium of the Divestment Business would remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it, achieving as comprehensive solution as is reasonable and practicable, as it would allow the Divestment Business to compete effectively in the supply of sell-side front-office systems for FI electronic trading, worldwide.
 - (b) The evidence available to the CMA indicates that Tyler Moeller and Long Ridge, who are leading the Consortium, do not appear to have any significant connection to ION that may compromise their incentives to compete with the ION if they were to acquire the Divestment Business.⁹ Both minority investors, BCP and HPS, have connections with ION: BCP has an equity stake in Acuris (an ION subsidiary) and HPS has debt investments in [ION COMPANIES]. However, the CMA considers that

⁷ <https://long-ridge.com/>

⁸ <https://www.bcpartners.com/>

⁹ [REDACTED]. Post-divestment, Tyler Moeller will have no beneficial interest in ION.

these connections are not significant in terms of the Proposed Undertakings for the following reasons:

- (i) Both BCP and HPS will be minority investors in the Divestment Business. Each of their respective shareholdings would be below 15%. They will not, individually or collectively, have the right to appoint a director in the Divestment Business and will only have very limited shareholder information rights. The CMA considers that this means that neither BCP or HPS, individually or collectively, have a material influence on the Divestment Business.
 - (ii) BCP's equity holding of [MINORITY INTEREST] in Acuris¹⁰ will be reduced to [X]. The CMA considers that as a result of the proposed reduction of BCP's shareholding in Acuris and its minority shareholding position in the Divestment Business, BCP is not in a position to compromise the Divestment Business' incentives to compete with the ION.
 - (iii) HPS holds certain debt investments in ION companies. The minority shareholding in the Divestment Business would be held by [X] or [X]. However, in either case, the relevant investment committee at HPS will not have the ability to take decisions in respect of the operations of both the Divestment Business and ION (the relevant investment committee will retain the right to take decisions in respect of HPS investments and it will receive standard financial reporting information to monitor those investments). The CMA considers that the limited information that HPS could receive from its debt investments and its lack of material influence on the Divestment Business means that HPS is not in a position to compromise the Divestment Business' incentives to compete with the ION.
- (c) The evidence available to the CMA indicates that the Consortium is capable of, and has access to appropriate financial resources, to acquire and operate the Divestment Business as an effective competitor.
- (i) In relation to expertise, the Consortium is led by Tyler Moeller, the current CEO and co-founder of Broadway. The Proposed Undertakings also includes all of the Broadway staff and software related to supporting its current FI business. Further, Long Ridge has prior experience of the Divestment Business, having invested in

¹⁰ Acuris is a part of ION Analytics. Broadway is part of ION Markets, a separate business division of the ION Group.

Broadway between 2017 and 2020. As such, the CMA considers that the Divestment Business will have access to appropriate managerial, operational and technical expertise and assets needed to operate as an effective competitor in the market.

- (ii) In relation to financial resources, the Consortium has provided detailed information in regard to the initial funding for the Divestment Business including the proposed funds under management from which Long Ridge, HPS and BCP will make their respective investments and the ability for each of them to access additional funding from those or other funds under management, if required. The CMA has also been provided with details of how Tyler Moeller will fund his investment and debt finance. On the basis of the evidence presented to it, the CMA considers the Consortium will have appropriate financial resources.
 - (d) Each member of the Consortium has discussed their business plans for the Divestment Business with the CMA, and provided associated financial projections. The evidence available to the CMA indicates that the Consortium is committed to operating the Divestment Business as a viable and active business in competition with the ION and other competitors in the supply of sell-side front-office systems for FI electronic trading.
 - (e) The evidence available to the CMA indicates that the acquisition of the Divestment Business by the Consortium should not create a realistic prospect of further competition concerns as none of the Consortium members own, operate or have a material influence over any business involved in the supply of sell-side front-office systems for FI electronic trading, worldwide. Further, the CMA is not aware, and has not been made aware by the Consortium, of any approvals, licences and consents from any regulatory or other authority required for the transaction to occur.
21. Therefore, subject to responses to this consultation and to the CMA's review and approval of the Transaction Documents, the CMA currently considers the Consortium to be a suitable purchaser of the Divestment Business.

Proposed decision and next steps

22. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by the Consortium are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision

and form as comprehensive a solution to these concerns as is reasonable and practicable.

23. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.¹¹
24. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.¹²
25. Representations should be made by email only:

Email: kalani.herath@cma.gov.uk; loic.laude@cma.gov.uk

Telephone: 020 3738 6645

Deadline for comments: 5.00pm on 10 October 2020

¹¹ See <https://www.gov.uk/cma-cases/ion-investment-group-limited-broadway-technology-holdings-llc>.

¹² Under paragraph 2(4) of Schedule 10 to the Act.