Anticipated acquisition by S&P Global, Inc of IHS Markit Ltd.

Decision that undertakings might be accepted

ME/6918/20

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 26 October 2021. Full text of the decision published on 2 November 2021.

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

Introduction

1. On 29 November 2020, S&P Global Inc. (**S&P**) agreed to acquire IHS Markit Ltd. (**IHSM**) (the **Merger**). S&P and IHSM are together referred to as the **Parties**.

2. On 19 October 2021, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this 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 the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) 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

20 October 2021, the Parties 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 the Parties 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 biofuels, coal, oil, and petrochemical price assessments in the UK. To address the SLC Decision, the Parties have offered to give undertakings in lieu of a reference (the **Proposed Undertakings**) to divest IHSM's:

    a) Coal, Metals and Mining division;

    b) Oil Price Information Service business, which includes Petrochem Wire; and

    c) Base Chemicals business,

    (each a **Divestment Business**).

8. Under the Proposed Undertakings, the Parties have offered to enter into a purchase agreement with a buyer approved by the CMA for each Divestment Business before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

The CMA's provisional views

9. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. 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.[1] However, it is open to the parties to persuade the CMA that a proposed remedy that does not directly restore competition to pre-merger levels nevertheless clearly and comprehensively removes the SLC identified.[2]

10. 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, given that they would result in the divestment of the overlapping activities identified by the SLC decision in relation to biofuels,[3] coal, oil, and petrochemical price assessments. As such, the Proposed Undertakings may result in the replacement of the competitive constraint provided by IHSM that would otherwise be lost following the Merger.

11. As a result of the Parties competing in a regulated industry, the Proposed Undertakings reflect certain specific requirements which arise (eg the necessity for certain transitional agreements while regulatory approvals are sought), as well as allowing for the orderly transfer and integration of the assets and related contracts.

12. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation.

13. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after the Parties have entered into an agreement with a nominated buyer that the CMA considers to be suitable for each Divestment Business. 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 and operate the Divestment Business as part of a viable and active business in competition with the merged entity in the relevant market.

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[1] *Mergers remedies (CMA87)*, December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).
[2] *Mergers remedies (CMA87)*, December 2018, Chapter 3 (in particular paragraph 3.30).
[3] The Proposed Undertakings will not remove a minor increment of [✂]% in biofuels price assessments, but the CMA considers that this will not have any material impact on their effectiveness.
[4] Remedies Guidance, Chapter 4 (in particular paragraphs 4.30 – 4.34), and Chapter 5 (in particular paragraphs 5.20 – 5.32).

14. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.

15. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among 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 such that the competitive constraint provided by IHSM absent the Merger is replaced to a sufficient extent.

Consultation process

16. 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]

Decision

17. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 30 December 2021 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 25 February 2022 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 33(1) and 34ZA(2) of the Act.

Colin Raftery
Senior Director
Competition and Markets Authority
26 October 2021

[5] *CMA2*, paragraph 8.29.