

## ANTICIPATED ACQUISITION BY S&P GLOBAL, INC OF IHS MARKIT LTD

### Directions issued on 10 November 2021 pursuant to paragraph 9 of the Initial Enforcement Order imposed by the Competition and Markets Authority on 9 November 2021 on IHS Markit Ltd and IHS Markit Group Holdings

Whereas:

- (a) On 29 November 2020, S&P Global Inc. (**S&P**) and IHS Markit Ltd (**IHSM**) signed a binding agreement to combine in an all-stock transaction (the **Merger**). S&P and IHSM are together referred to as the **Parties**.
- (b) On 19 October 2021, the Competition and Markets Authority (**CMA**) decided that it is or may be the case that the Merger has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom.
- (c) On 20 October 2021, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Enterprise Act 2002 (the **Act**).
- (d) On 26 October 2021 pursuant to section 73A(2)(b) of the Act, the CMA gave notice to the Parties that it considered that there were reasonable grounds for believing that the undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act, and that it was considering the Parties' offer.
- (e) On 9 November 2021, the CMA made an Initial Enforcement Order addressed to IHS Markit Ltd (**IHSM**) and IHS Markit Group Holdings (**IHSM UK**) (the **Order**) for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act. The Order is still in force.
- (f) The CMA now issues written directions under paragraph 9 of the Order that, for the purpose of securing compliance with the Order, IHSM and IHSM UK must appoint a monitoring trustee (**MT**) in accordance with the terms provided for in this Annex, and must comply with the obligations set out in the Annex.

Signed,

**Ricardo Zimbron**

Director, Mergers

Competition and Markets Authority

10 November 2021

## Annex

### Directions to appoint a monitoring trustee

#### Interpretation

In these directions:

**‘Act’** means the Enterprise Act 2002;

**‘Affiliate’** a person is an affiliate of another person if they satisfy the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**‘business’** has the meaning, unless otherwise stated, given by section 129(1) and (3) of the Act;

**‘Chemicals Divestment Business’** means IHSM’s Base Chemicals business, including IHSM Market Advisory Services and World Analysis businesses;

**‘CMA’** means the Competition and Markets Authority;

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

**‘Control’** shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to control it if he holds, or has an Interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**Decision** means the decision by the CMA on 19 October 2021 that it is or may be the case that the Merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom;

**‘Divestment Businesses’** means each of (1) the Price Assessment Divestment Business, and (2) the Chemicals Divestment Business;

**‘enterprise’** has the meaning given in section 129(1) of the Act;

**‘IHSM’** means IHS Markit Ltd, a company incorporated under the laws of Bermuda, with its principal office at 4th Floor, Ropemaker Place, 25 Ropemaker Street, London, England EC2Y 9LY, United Kingdom, and its subsidiaries (including IHS Markit Group Holdings, a company incorporated under the Companies Act 2006 (company number 06240773), with its registered office at 4th Floor, Ropemaker Place, 25 Ropemaker Street, London, England EC2Y 9LY, United Kingdom;

**‘Interest’** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**‘Merger’** means the anticipated merger between S&P and IHSM pursuant to a binding agreement dated 29 November 2020 to combine in an all-stock transaction;

**‘MT’** means the monitoring trustee appointed in accordance with this Annex;

**‘Order’** means the initial enforcement order made by the CMA on 9 November 2021 to IHSM and IHSM UK;

**“Price Assessment Divestment Business”** means IHSM’s Coal, Metals and Mining division and Oil Price Information Service business, including Petrochem Wire;

**‘subsidiary’** has the meaning, unless otherwise stated, given by section 1159 of the Companies Act 2006 (and ‘subsidiaries’ shall be construed accordingly);

**‘S&P’** means S&P Global Inc, a company organised under the laws of United States of America, which has its registered seat at 55 Water Street, New York, NY 10041;

**‘SLC’** means the substantial lessening of competition within a market or markets in the United Kingdom as more particularly referred to in the Decision; and

**‘UILs’** means the undertakings offered by the Parties to the CMA on 20 October 2021 for the purpose of remedying, mitigating or preventing the SLC.

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

## **Appointment**

1. IHSM and IHSM UK must appoint a MT in order to ensure compliance with the Order, in particular to:
  - a. monitor and report to the CMA on compliance by IHSM and IHSM UK with the Order; and
  - b. support the CMA taking any action to ensure compliance with the Order and maintain the Divestment Businesses as viable going concerns.
2. The MT must act on behalf of the CMA and be under an obligation and duty of care to the CMA to carry out his or her functions to the best of his or her abilities.
3. IHSM and IHSM UK must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of IHSM and IHSM UK as set out in these directions.

## General

4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs his or her objectivity and independence in discharging his or her duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. IHSM and IHSM UK shall remunerate and reimburse the MT 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 MT's independence or ability to effectively and properly carry out his or her functions.
7. IHSM and IHSM UK must appoint the MT as soon as is reasonably practicable and in any event by **5pm on 17 November 2021** and the MT will continue to act either until the CMA decides the MT is no longer required or the completion of the divestment of the Divestment Businesses.
8. The appointment of a MT by IHSM and IHSM UK is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
  - a. the name and contact details of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable;
  - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on 12 November 2021**; and
  - c. once the MT has been approved by the CMA and appointed, the Parties must provide the CMA with a copy of the agreed terms and conditions of appointment.

## Functions

9. The functions of the MT will be to:
  - a. ascertain and report to the CMA in relation to the current level of compliance by IHSM, IHSM UK and its subsidiaries with the Order;
  - b. assess and report to the CMA in relation to the arrangements made by IHSM and IHSM UK for compliance with the Order and what changes to those arrangements, if any, are necessary to protect the Divestment Businesses, if required;

- c. identify and supervise if necessary the arrangements made by IHSM and IHSM UK for ensuring compliance with the Order; and
  - d. without prejudice to the right of IHSM and IHSM UK (including the Divestment Businesses) to directly contact the CMA, respond to any questions which IHSM and IHSM UK may have in relation to compliance with the Order, in consultation with the CMA.
- 10. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within and between IHSM, IHSM UK and the Divestment Businesses, such as written and electronic communications, telephone conversations and meetings as may be required.
- 11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance with the Order.

### **Obligations of IHSM and IHSM UK**

- 12. IHSM and IHSM UK its respective Affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
  - a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of IHSM, IHSM UK and the Divestment Businesses as the MT may reasonably require; and
  - b. the provision of such office and supporting facilities as the MT may reasonably require.
- 13. If IHSM and IHSM UK are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.
- 14. If IHSM and IHSM UK have any reason to suspect that the Order may have been breached, they must notify the MT and the CMA immediately.

### **Reporting functions**

- 15. The MT is required to provide an initial report to the CMA no later than **3 weeks following the MT's appointment**, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
  - a. details of the current extent of compliance with the Order;

- b. a description of the current arrangements made for the operation of the Divestment Businesses and for the preservation of the assets; and
  - c. recommendations as to what changes to those arrangements, if any, are necessary.
16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA within **15 days of the end of each month thereafter** (or otherwise as required by the CMA) stating whether or not, in his or her view, IHSM and IHSM UK have and are complying with the Order. At the same time, the MT must provide the CMA with a report setting out the following:
- a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
    - i. anything has caused the MT to be concerned as to whether the IHSM and IHSM UK have complied with the Order, and if so, whether those concerns have been resolved and why;
    - ii. the MT has any remaining doubts or uncertainties as to whether IHSM and IHSM have complied with the Order; and
    - iii. anything that causes the MT to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
  - b. details of the operational and financial performance of the Divestment Businesses, including any factors that might indicate asset deterioration;
  - c. whether appropriate steps are being taken to maintain the Divestment Businesses as a going concern;
  - d. the extent to which IHSM and IHSM UK have cooperated with the MT in relation to the MT's task of monitoring IHSM and IHSM UK compliance with the Order, including providing details of any aspects of the cooperation of IHSM and IHSM UK that he or she considers could be improved;
  - e. the extent to which the MT considers that the MT is in an appropriate position to monitor the compliance of IHSM and IHSM UK with the Order and if there is anything that the MT considers would assist them in monitoring compliance; and
  - f. the information the MT used to compile the report.
17. At any time, the MT will provide to the CMA, at its request (or on the MT's own initiative), a written or oral report on matters falling within the scope of these directions.

18. When providing reports to the CMA, the MT must ensure that they do not disclose any information or documents to the CMA which IHSM and IHSM UK would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires IHSM, IHSM UK or their subsidiaries to produce any information or documents to the MT which are privileged.
19. The MT must immediately notify the CMA in writing if they form a reasonable suspicion that the Order has been breached, or if the MT considers that they are no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).
20. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to IHSM, IHSM UK or their subsidiaries, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.