

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

DECISION ON ACCEPTANCE OF UNDERTAKINGS IN LIEU OF REFERENCE

ME/6918/20

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 25 February 2022. Full text of the decision published on 1 March 2022.

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 20 October 2021, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to the Parties on 26 October 2021, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was considering the Parties' offer (the **UILs Provisional Acceptance Decision**).
4. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.¹

¹ See <https://www.gov.uk/cma-cases/s-and-p-global-inc-slash-ihs-markit-ltd-merger-inquiry>.

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 biofuels, coal, oil, and petrochemicals price assessments in the UK.
6. As set out in the UILs Provisional Acceptance Decision, the Parties have offered to divest IHSM's: (1) Coal, Metals and Mining division; (2) Oil Price Information Service business, which includes IHSM's Petrochem Wire business; and (3) Base Chemicals business, including substantially all of the assets, personnel, and liabilities that contribute to each of these businesses (the **Divestiture Businesses**).² The text of the undertakings is available on the CMA webpages (the **UILs**).³
7. While the Divestiture Businesses form part of broader businesses at present, the CMA's investigation found that they include all that is required to replace the competitive constraint that would otherwise be lost as a result of the Merger.
8. Certain transitional services arrangements (the **TSAs**) will be required to ensure the seamless continuity of the operations of the Divestiture Businesses immediately post-divestiture.⁴ The CMA considers (following detailed engagement with the Parties and third parties) that these do not undermine the effectiveness of the remedy or otherwise give rise to significant distortion risks.⁵
9. The Parties offered to enter into agreements for the sale and purchase of the Divestiture Businesses with an upfront buyer before the CMA's final acceptance of the UILs. The Parties have proposed News Corporation (**News Corp**) as the upfront buyer. The Parties and News Corp have signed the purchase agreements and related transaction documents for the sale and purchase of the Divestiture

² Regarding the divestment of IHSM's Base Chemicals business, the Parties offered to divest the entire business division, which includes activities that extend beyond the scope of the SLC areas, to ensure that the Base Chemicals business remains an attractive and viable business post-divestment.

³ See <https://www.gov.uk/cma-cases/s-and-p-global-inc-slash-ihs-markit-ltd-merger-inquiry>.

⁴ This includes time-limited access to part of IHSM's wider technological infrastructure and data. IHSM's Connect and Phoenix platforms, which IHSM uses primarily for activities unrelated to the markets relevant to the SLC Decision, were not offered as part of the Divestment Businesses. The CMA found that price assessments can be distributed in a variety of ways (with IHSM's platforms being only one of them) and that, having regard to the specific characteristics of the market, the proposed purchaser would be able to compete effectively on the basis of a bespoke platform that is compatible with its own existing technology stack.

⁵ The CMA understands that certain Base Chemicals staff included with the Divestment Business may spend a low proportion of their time helping to complete certain pre-existing consultancy projects for IHSM's customers on areas that were not the focus of the SLC Decision. The CMA found that this will not materially affect the viability or competitive capability of the Divestment Business.

Businesses, which were conditional on final acceptance by the CMA of the UILs, as well as CMA approval of the proposed purchaser and terms of the agreements.⁶

Consultation

10. On 18 January 2022, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs and invited interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.⁷ For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.⁸
11. The CMA received no submissions during the consultation period. Accordingly, the CMA has not received any information that would cause the CMA to change its preliminary view that the UILs would be acceptable.
12. The CMA therefore considers that the UILs offered by the Parties are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and that News Corp is a suitable purchaser of the Divestiture Businesses.

Decision

13. For the reasons set out above, the CMA considers that the UILs provided by the Parties are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by the Parties pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
14. The undertakings, which have been signed by the Parties and will be published on the CMA webpages, will come into effect from the date of this decision.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
25 February 2022

⁶ The text of the UILs is available on the CMA case page.

⁷ The full consultation text was published on <https://www.gov.uk/cma-cases/s-and-p-global-inc-slash-ihs-markit-ltd-merger-inquiry>.

⁸ [Merger remedies, \(CMA87\), December 2018](#), Chapter 3, in particular paragraphs 3.27, 3.28 and 3.30.

ANNEX 1

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

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/6918/20

Introduction

1. S&P Global Inc. (**S&P**) has 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**). The text of the SLC Decision is available on the CMA webpage.⁹
3. On 20 October 2021, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 26 October 2021, the CMA gave notice to the Parties, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 Parties' offer (the **UIL Provisional Acceptance Decision**).

⁹ See [S&P/IHSM merger inquiry – GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/slp-ihs-merger-inquiry): SLC Decision on the Merger.

The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC as a result of horizontal unilateral effects in the following products:
 - (a) the supply of biofuels price assessments in the UK (the **Biofuels PA SLC**);
 - (b) the supply of coal price assessments in the UK (the **Coal PA SLC**);
 - (c) the supply of oil price assessments in the UK (the **Oil PA SLC**); and
 - (d) the supply of petrochemicals price assessments in the UK (the **Petrochemicals PA SLC**).
6. As set out in the UIL Provisional Acceptance Decision, to address the SLCs identified by the CMA, the Parties have offered undertakings to divest IHSM's: (i) Coal, Metals and Mining division (**CMM**); (ii) Oil Price Information Service business (**OPIS**), which includes Petrochem Wire; and (iii) Base Chemicals business (together the **Divestment Package**).
7. The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).¹⁰
8. As set out in the UIL Provisional Acceptance Decision, the Parties have also offered to enter into an agreement for the sale and purchase of the Divestment Package with an upfront buyer (or multiple upfront buyers, as the case may be), before the CMA finally accepts the Proposed Undertakings (the **Upfront Buyer Condition**).
9. The Parties have proposed News Corporation (**NewsCorp**) as the upfront buyer for the Divestment Package. The agreements between the Parties and NewsCorp for the purchase and sale of the Divestment Package are conditional on acceptance by the CMA of the Proposed Undertakings, including the CMA's approval of NewsCorp as the buyer.

CMA assessment

10. 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

¹⁰ See [S&P/IHSM merger inquiry – GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/s-and-p-ihsm-merger-inquiry).

or material concerns about their implementation.¹¹ This is because they would remedy the SLC through divestment of the overlapping activities identified in the SLC Decision in relation to the supply of biofuels,¹² 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. The CMA also considers that the Proposed Undertakings would be capable of ready implementation. This is because:
 - (a) the Divestment Package is comprised of viable standalone business units that are capable of being transferred to an upfront buyer (or multiple upfront buyers, as the case may be).
 - (b) the Upfront Buyer Condition means that the CMA would accept the Proposed Undertakings only after the Parties have entered into an agreement with a proposed purchaser (or multiple purchasers, as the case may be) that the CMA considers to be suitable.¹³
 - (c) the Divestment Package is profitable and therefore likely to attract purchaser interest, which the CMA believes would facilitate a quick sale process with appropriate sale agreements finalised prior to the expiry of the CMA's deadline of 25 February 2022.
12. In addition, the Parties have offered to enter into a transitional services agreement and a mutual data licensing agreement with the proposed purchaser to ensure the continuity of the Parties' business and of the Divestment Package businesses.¹⁴

Suitability of the proposed purchaser

13. In approving any purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-Merger levels of competition. The CMA therefore seeks to ensure that:

¹¹ [Merger remedies \(CMA87\)](#), December 2018, Chapter 3, paragraph 3.28.

¹² 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.

¹³ CMA87, paragraphs 5.28-5.32.

¹⁴ IHSM and the proposed purchaser are granting to each other non-exclusive, worldwide licenses to use the specified data for the purposes for which such data was used as of the date of the sale and purchase agreement.

- (a) the acquisition by the proposed purchaser must remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable.
- (b) The purchaser should be independent from and have no significant connection to the 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). It may also be appropriate to consider links between the purchaser and other market players.
- (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 Divestment Package to continue to develop as an effective competitor. For example, a highly-leveraged acquisition of the Divestment 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 divested business as part of a viable and active business in competition with the merged entity and other competitors in the relevant market.
- (e) Divestiture to the purchaser should not create a realistic prospect of further competition or regulatory concerns.¹⁵

- **NewsCorp**

14. Subject to the responses to this consultation, and having regard in particular to the criteria set out in paragraph 13 above, the CMA currently considers NewsCorp to be a suitable purchaser based on its initial view that:
- (a) the sale of CMM and OPIS and the Base Chemicals business to NewsCorp would remedy, mitigate or prevent the Biofuel PA SLC, Coal PA SLC and Oil PA SLC and the Petrochemicals PA SLC, and any adverse effect resulting from

¹⁵ [Merger remedies \(CMA87\)](#), December 2018, Chapter 5, paragraphs 5.20 to 5.27.

them, achieving as comprehensive a solution as is reasonable and practicable for those SLCs.

- (b) The evidence available to the CMA indicates that NewsCorp is independent and does not appear to have any significant connection to the Parties that may compromise its incentives to compete with the Parties if it were to acquire the Divestment Package businesses. NewsCorp is not active in any of the relevant product markets where CMM and OPIS and the Base Chemicals businesses are active.
- (c) The evidence available to the CMA indicates that NewsCorp has the appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, and incentive needed to maintain and develop the Divestment Package businesses as viable and active competitive businesses in competition with the Parties and other competitors on an ongoing basis.
- (d) The evidence available to the CMA indicates that the acquisition of the Divestment Package by Newscorp should not create a realistic prospect of further competition concerns, as Newscorp does not supply biofuels, coal or oil price assessments in the UK or globally and, therefore, there is no existing overlap between the Parties and Newscorp in this area. Moreover, the CMA has considered the regulatory requirements for the provision of these price assessment products (eg financial regulations concerning the supply of certain benchmark price assessments) and does not anticipate that the acquisition will give rise to any such regulatory concerns.

15. Therefore, subject to responses to this consultation, the CMA currently considers NewsCorp to be a suitable purchaser of the Divestment Package.

Proposed decision and next steps

16. For the reasons set out above, the CMA currently considers that the Proposed Undertakings 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.

17. 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.¹⁶
18. 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.¹⁷
19. Representations should be made by email only, referring the consultation in the email title to:

Bix Gould: bix.gould@cma.gov.uk

Davide Canzano: davide.canzano@cma.gov.uk

Marta Freire: marta.freire@cma.gov.uk

Liana Sandulescu: liana.sandulescu@cma.gov.uk

Deadline for comments: 1 February 2022

¹⁶ See [S&P/IHSM merger inquiry – GOV.UK \(www.gov.uk\)](https://www.gov.uk).

¹⁷ Under paragraph 2(4) of Schedule 10 to the Act.