

Completed acquisition by GTCR Canyon UK Investments Ltd of Gorkana Group Limited

ME/6479-14

Introduction

1. On 21 October 2014, GTCR Canyon UK Investments Ltd (**GTCR**) acquired Gorkana Group Limited (**Gorkana**) (the **Merger**). GTCR and Gorkana are together referred to as the **Parties**.
2. On 27 March 2015, 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 7 April 2015, GTCR offered an undertaking to the CMA for the purposes of section 73(2) of the Act. As required under section 73A(1) of the Act, GTCR made this offer within five working days beginning with the day after the CMA notified it of the SLC decision under section 34ZA(1)(b) of the Act.
4. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to GTCR that it considers that there are reasonable grounds for believing that the undertaking offered, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.
5. On 10 April 2015, the CMA extended the statutory four-month period set out in section 24(1) of the Act by notice pursuant to section 25(4) of the Act.

The undertaking 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. GTCR has offered to divest the entire businesses of Cision UK Limited and Vocus UK Limited to an upfront buyer. The proposed divestment is intended to remove the overlap between the Parties that resulted in the SLC finding and address any concerns regarding the viability of the businesses to be divested. The CMA therefore considers that there are reasonable grounds for believing that the undertaking, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act.

Upfront buyer

8. The CMA will only accept undertakings that are capable of ready implementation.¹ The CMA's guidance states that 'the CMA will normally seek an upfront buyer where the divestiture package is not an existing standalone business'.² In this case, the proposed undertaking includes standalone businesses that are at present part of international groups [X]. However, the CMA considers that seeking an upfront buyer is appropriate in this case to ensure the ongoing commercial viability of the business to be divested. The CMA also considers that there are likely to be only a small number of potential purchasers in a position to implement these remedies in a manner that would resolve the identified SLC in a clear-cut, effective and timely manner.³
9. In order to consider a proposed purchaser as being suitable, the CMA will need to be satisfied that the undertaking resolves the identified SLC. Intrinsic to this is 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 party in the relevant market.⁴
10. An upfront buyer requirement means that the proposed purchaser will be required to have committed contractually, generally subject only to formal CMA approval of the undertakings, to acquiring the relevant divestment businesses before the CMA accepts the undertakings. This means that the CMA will accept undertakings only where a sale to an upfront buyer has been agreed subject only to the condition that the CMA approves the sale, thereby demonstrating that a sale to a suitable buyer is achievable. It also means that the CMA will consult

¹ *Mergers – Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122, December 2010), paragraph 5.7. This guidance has been adopted by the CMA (see *Mergers: Guidance on the CMA's Jurisdiction and Procedure* (CMA2, January 2014), Annex D).

² *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2, January 2014), paragraph 8.34.

³ A small number of suitable candidate purchasers was also identified in the CMA's Guidance as a reason for seeking an upfront buyer (*Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraph 8.34).

⁴ See *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraph 5.26.

publicly on the suitability of the proposed buyer, as well as any other aspects of the draft undertakings, during the public consultation period.

Consultation process

11. Full details of the undertaking 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

12. The CMA considers that there are reasonable grounds for believing that the undertaking offered by GTCR, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 11 June 2015 pursuant to section 73A(3) of the Act to decide whether to accept the undertaking, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 6 August 2015 if it considers that there are special reasons for doing so. If no undertaking is accepted, then the CMA will refer the Merger to phase 2 pursuant to sections 22(1) and 34ZA(2) of the Act.

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14 April 2015

⁵ *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2, January 2014), paragraph 8.29.