

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

ME/6540/14

Background

1. On 27 March 2015, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it believes that it is or may be the case that the completed acquisition by GTCR Canyon UK Investments Ltd (**GTCR**) of Gorkana Group Limited (**Gorkana**) (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 (the **SLC Decision**). The text of the SLC Decision is available on the CMA case page.¹
2. Under section 73 of the Act, the CMA may, instead of making a reference for a phase 2 investigation, 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 parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
3. On 7 April 2015, GTCR offered an undertaking in lieu of a reference to the CMA for the purposes of section 73(2) of the Act (the **UIL**). As required under section 73A(1) of the Act, GTCR made this offer within five working days beginning on the day after the CMA notified it of the SLC Decision under section 34ZA(1)(b) of the Act. The CMA gave notice on 14 April 2015, pursuant to section 73A(2)(b) of the Act, to GTCR that it considered that there were reasonable grounds for believing that the UIL offered, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act and that it was considering GTCR's offer (the **UIL Decision**). A copy of this Notice is available on the CMA case page.²

¹ See the [GTCR/Gorkana merger inquiry case page](#).

² See the [GTCR/Gorkana merger inquiry case page](#).

The undertaking offered

4. As set out in the SLC Decision, the CMA found that:
 - (a) the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the provision of media contact databases (**Databases**) in the UK; and
 - (b) the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the provision of media monitoring, distribution and/or analysis services in the UK.
5. To address the CMA's concerns, GTCR offered to divest the entire UK businesses of Cision UK Limited (**Cision**) and Vocus UK Limited (**Vocus**) (together, the **Divestment Businesses**) to an upfront buyer. GTCR's offer does not include the Cision and Vocus brand names, since these will remain in use by the Cision and Vocus businesses outside the UK.
6. As set out in the UIL Decision, the CMA's preliminary view was that the proposed divestment to a suitable purchaser would create a clear-cut remedy for the identified SLC. Cision and Vocus both provide Databases and were identified by the CMA as Gorkana's closest competitors in the provision of Databases in the SLC Decision. The sale of Cision and Vocus will eliminate the overlap between GTCR and Gorkana in the UK. The CMA considered it appropriate to seek an upfront buyer in respect of the Divestment Businesses, which formed part of the undertaking offered by GTCR.
7. GTCR proposed two potential purchasers of the Divestment Businesses: (a) Access Intelligence plc or its group company AIMediaComms (**AIMC**) (together, **AI**), and (b) Innodata Inc or its group company MediaMiser (together, **Innodata**).

Consultation

8. On 28 May 2015, pursuant to paragraph 2(1) of Schedule 10 of the Act, the CMA published the proposed undertakings in lieu of a reference that it was minded to accept, inviting interested parties to give their views in relation to the proposed undertakings, including AI or Innodata as purchaser of the Divestment Businesses. The relevant text from the consultation is set out at Annex 1 of this decision.³

³ The full consultation text was published on the CMA's website alongside the proposed undertakings. See the [CMA case page](#).

9. The CMA did not receive any comments on the consultation. Therefore, on 12 June the CMA notified GTCR that it was minded to accept either AI or Innodata as the purchaser of the Divestment Businesses. GTCR has notified the CMA that it has selected AI as the purchaser of the Divestment Businesses and has entered into an asset purchase agreement with AIMediadata Limited (a subsidiary of AI) to transfer the Divestment Businesses, conditional only upon acceptance by the CMA of the UIL.
10. For the reasons set out in the consultation text (set out as Annex 1), the CMA considers that AI is a suitable purchaser of the Divestment Businesses and that the undertakings offered by GTCR and the purchase of the Divestment Businesses by AI are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision. No third parties made any representations to the contrary.

Decision

11. The CMA found in its SLC Decision that the Merger would be referred for a phase 2 investigation if GTCR failed to give suitable undertakings in lieu of reference pursuant to section 73 of the Act to address the competition concerns identified in the SLC Decision.
12. The CMA considers that the undertakings provided by GTCR are clear cut and appropriate to 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 undertakings offered by GTCR pursuant to section 73 of the Act, including AI as the purchaser of the Divestment Businesses. The Merger will therefore not be referred for a phase 2 investigation.
13. The undertakings, which have been signed by GTCR, will come into effect from today.

**Andrea Coscelli
Executive Director
Competition and Markets Authority
16 June 2015**

Extract from the CMA's consultation text covering the reasons the CMA considers why AI is a suitable purchaser of the Divestment Businesses

Suitability of the proposed purchaser

9. In approving a 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.⁴ The CMA therefore seeks to ensure that:
 - (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned;
 - (b) the proposed buyer is independent of and unconnected to the merged parties;
 - (c) the proposed purchaser has the necessary expertise, financial resources, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;
 - (d) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority and
 - (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.⁵

AI

10. Access Intelligence plc is an AIM-listed company delivering Software as a Service (SaaS) solutions to enable companies to create and release value within their businesses by supporting the full lifecycle management of all their governance, risk and compliance activities.

⁴ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT 1122, December 2010), paragraph 5.11. The *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* has been adopted by the CMA (see Annex D to CMA2 *Mergers: Guidance on the CMA's Jurisdiction and Procedure*, January 2014).

⁵ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraphs 5.25–5.30.

11. Access Intelligence plc's group company, AIMediaComms Ltd, was formed in 2009. It is a software company focusing on media relations and stakeholder interactions, and operates a platform called Vuelio.
12. As regards the independence of AI, the CMA notes that neither Access Intelligence plc nor any of its group companies (including AIMC) has an equity interest in or interest in any debt of GTCR or Gorkana.
13. There are some limited contractual relationships between Access Intelligence plc group companies and Gorkana. Specifically, AIMC signed two agreements with Gorkana in 2014:
 - (a) A non-exclusive Master Service Agreement to allow AIMC to promote the Gorkana monitoring service.
 - (b) A short-form collaborative sales agreement in response to short-term changes in the market.
14. However, the CMA notes that these agreements are short term and non-exclusive. There could be potential for a degree of 'continuing relationship' between the Divestment Businesses and Gorkana via a media monitoring service (MMS) feed into AI's platform, Vuelio, but the CMA notes that this type of relationship is common in the industry and Vuelio is capable of ingesting content from multiple competing providers. Overall, the CMA considers that there are no material links between AIMC or AI group companies and GTCR and Gorkana.
15. As regards financial resources, the CMA notes that Access Intelligence plc intends to fund the transaction from its existing cash resources and, if required, has access to additional debt and equity funding.
16. In terms of expertise and commitment to the market, AIMC runs its Vuelio platform. Using this platform, it currently competes with Cision and Vocus providing integrated media solutions, primarily to public sector clients, and as part of which it supplies a Databases service on a non-exclusive re-seller basis (on a relatively small scale) thereby giving it experience and knowledge of the product. By adding Cision's and Vocus's Databases service to its product suite, AIMC will become a head-to-head rival with Gorkana for the provision of these services. Furthermore, AIMC has been active in this industry since 1995 (through its predecessor entities) and has demonstrated a commitment to this market through its recent significant investments in R&D and its growing pool of clients.
17. The CMA also notes that no consents or approvals are required to complete the acquisition and commence trading, other than CMA approval and landlord

approval to the assignment of the lease to the head office of Cision and Vocus, which the CMA has no reason to believe would be withheld.

18. Therefore, subject to the outcome of this consultation, the CMA considers Access Intelligence plc to be a suitable purchaser of the Divestment Businesses.