

## JUSTICE NEWS

### Department of Justice

Office of Public Affairs

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### **Tullett Prebon and ICAP Restructure Transaction after Justice Department Expresses Concerns about Interlocking Directorates**

The Department of Justice announced today that the restructuring of the \$1.5 billion transaction between Tullett Prebon Group Ltd. (Tullett Prebon) and ICAP plc addresses the Department's concerns that the transaction would violate Section 8 of the Clayton Act by creating an interlocking directorate. An interlocking directorate is where one person – or an agent of one person or company – sits on the board of directors of two competitors.

As originally structured, the transaction would have resulted in ICAP owning 19.9 percent of Tullett Prebon and having the right to nominate one member of Tullett Prebon's board of directors. Given that ICAP and Tullett Prebon would continue to compete after the transaction, the department had serious concerns that ICAP's ability to nominate a Tullett Prebon board member would create an interlocking directorate in violation of Section 8 of the Clayton Act. The revised agreement will provide that ICAP will not own any part of Tullett Prebon after the transaction and will have no right to nominate a member of Tullett Prebon's board of directors.

"Robust competition depends on competitors being actually independent of each other – that's what Section 8 requires," said Principal Deputy Assistant Attorney General Renata Hesse of the department's Antitrust Division. "As originally proposed, this deal would have violated that core principle – creating a cozy relationship among competitors."

Section 8 of the Clayton Act was enacted to provide a bright line rule prohibiting interlocking directorates which could otherwise facilitate coordination among competitors. Section 8 serves a prophylactic purpose "to nip in the bud incipient violations of the antitrust laws by removing the opportunity or temptation to such violations through interlocking directorates," according to *United States v. Sears, Roebuck & Co.*, 111 F. Supp. 614, 616 (S.D.N.Y. 1953).

During the investigation, the division cooperated with the United Kingdom's Competition and Markets Authority, the Australian Competition and Consumer Commission and the Competition Commission of Singapore.

Tullett Prebon, a publicly-held British corporation headquartered in London, United Kingdom, and operating in the United States, is a leading provider of voice, hybrid and purely electronic brokerage services across asset classes. Tullett Prebon reported 2015 annual revenues of \$1.18 billion.

ICAP is also headquartered in London and operates in the United States. After the transaction, the company will be called NEX Group Ltd. and will focus on providing electronic trading platforms for numerous asset classes and associated market data and services. ICAP reported annual revenues of \$1.78 billion for its fiscal year ending March 2016.

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