

**Section 57 of the Competition Act (Cap. 50B)**

**Grounds of Decision issued by the Competition and Consumer Commission of Singapore**

**In relation to the notification for decision of the proposed acquisition of Cinnober Financial Technology AB by Nasdaq Technology AB pursuant to section 57 of the Competition Act**

**27 November 2018**

**Case number: CCCS 400/010/18**

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## TABLE OF CONTENTS

<b>I.</b>	<b>Introduction .....</b>	<b>3</b>
<b>II.</b>	<b>The Parties .....</b>	<b>3</b>
<b>III.</b>	<b>The Transaction .....</b>	<b>4</b>
<b>IV.</b>	<b>Competition Issues .....</b>	<b>5</b>
<b>V.</b>	<b>Counterfactual.....</b>	<b>5</b>
<b>VI.</b>	<b>Relevant Markets .....</b>	<b>5</b>
<b>VII.</b>	<b>CCCS's Assessment .....</b>	<b>6</b>
<b>VIII.</b>	<b>Efficiencies .....</b>	<b>8</b>
<b>IX.</b>	<b>Conclusion.....</b>	<b>8</b>

## I. Introduction

### The notification

1. On 15 October 2018, Nasdaq, Inc. (“**Nasdaq**”) and Cinnober Financial Technology AB (“**CINN**”) (collectively, the “**Parties**”) made a joint application pursuant to section 57 of the Competition Act (Cap. 50B) (the “**Act**”) for a decision by the Competition and Consumer Commission of Singapore (“**CCCS**”) as to whether the acquisition of 100% of the issued shares and warrants in CINN by Nasdaq Technology AB (“**Nasdaq Technology**”) (the “**Proposed Transaction**”), will infringe section 54 of the Act (the “**section 54 prohibition**”), if carried into effect.
2. In reviewing the Proposed Transaction, CCCS sought feedback from a total of 12 third parties, comprising eight (8) competitors<sup>1</sup> and four (4) customers.<sup>2</sup> Five (5) substantive third parties responses were received.
3. At the end of the consultation process and after evaluating all the submissions, CCCS has concluded that the Proposed Transaction, if carried into effect will not infringe section 54 of the Act.

## II. The Parties

### Nasdaq

4. Nasdaq Technology is a private limited company founded and registered in Stockholm, Sweden. Nasdaq Technology is a wholly-owned subsidiary of Nasdaq, a Delaware (US) corporation with shares of its common stock listed on The Nasdaq Stock Market in New York, US.<sup>3</sup>
5. In Singapore, market technology solutions by Nasdaq are sold under the following brand names – the Nasdaq Financial Framework, used for trading and clearing; and SMARTS, used for market surveillance.<sup>4</sup> Nasdaq maintains one leased location in Singapore.<sup>5</sup>

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<sup>1</sup> [REDACTED].

<sup>2</sup> [REDACTED].

<sup>3</sup> Paragraph 8.1 of Form M1.

<sup>4</sup> Paragraphs 10.4 and 10.5 of Form M1.

<sup>5</sup> Paragraph 10.26 of Form M1.

6. The Singapore turnover of Nasdaq was US\$ 26.1 million (approximately S\$ 36.0 million)<sup>6</sup> and the worldwide turnover for Nasdaq's business was US\$ 2,428 million (approximately S\$ 3,350 million)<sup>7</sup> in the financial year ended 31 December 2017.

### CINN

7. CINN is a Swedish public limited company with its headquarters in Stockholm, Sweden. The company does not have a physical presence in Singapore, but currently provides clearing solutions, with risk management and market surveillance added on (using an Irisium Solution) to a customer in Singapore, using its Real Time Clearing system.<sup>8</sup>
8. The Singapore turnover of CINN was approximately S\$ 4.1 million and the worldwide turnover for CINN's business was S\$ 58 million in the financial year 2017.<sup>9</sup>

## **III. The Transaction**

### Nature of the Proposed Transaction

9. The Proposed Transaction will involve, through a public cash offer (the “**Offer**”), the acquisition of 100% of the issued shares and warrants in CINN by Nasdaq Technology for approximately US\$ 190 million,<sup>10</sup> which will result in CINN becoming a wholly-owned subsidiary of Nasdaq.
10. The Offer was announced on 14 September 2018.<sup>11</sup> The acceptance period for the Offer commenced around 29 October 2018 and will end around 14 December 2018.<sup>12</sup> Settlement is subject to conditions for completion having been fulfilled or if Nasdaq Technology otherwise elects to complete the Offer. Following the Proposed Transaction, CINN will cease to be distinct from Nasdaq.

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<sup>6</sup> Paragraph 13.1 of Form M1.

<sup>7</sup> Paragraph 13.3 of Form M1.

<sup>8</sup> Paragraph 10.25 of Form M1.

<sup>9</sup> Paragraphs 13.2 and 13.4 of Form M1.

<sup>10</sup> Paragraph 11.1 of Form M1.

<sup>11</sup> Paragraph 11.1 of Form M1.

<sup>12</sup> Paragraph 11.8 of Form M1.

## Merger under section 54 of the Act

11. Based on the Parties' submissions, CCCS is of the view that the Proposed Transaction constitutes a merger pursuant to section 54(2)(b) of the Act.

## **IV. Competition Issues**

12. The Parties submitted that they both overlap, on a global basis, in the supply of market technology solutions that fall within four functional categories, namely: trading solutions; clearing solutions; trade and/or market surveillance solutions; and risk management solutions.<sup>13</sup> These market technology solutions are used by customers such as banks, brokers, clearinghouses, exchanges and regulators through the lifecycle of a trade, and such products cut across all asset/securities classes.
13. In evaluating the potential impact of the Proposed Transaction, CCCS considered whether the Proposed Transaction will lead to coordinated and non-coordinated effects that would substantially lessen competition in Singapore in the supply of the four types of market technology solutions.

## **V. Counterfactual**

14. The Parties submitted that, in the absence of the Proposed Transaction, they will continue to operate separately and independently. However, end customers will lose the opportunity to benefit from efficiencies likely to arise from the Proposed Transaction.<sup>14</sup>
15. Having reviewed the internal board documents submitted by the Parties, CCCS is of the view that there is no evidence to suggest that the Parties will not continue to operate separately and independently if the Proposed Transaction did not take place. Therefore, CCCS is of the view that the prevailing conditions of competition is the relevant counterfactual in applying the Substantially Lessening of Competition ("SLC") test.

## **VI. Relevant Markets**

16. Based on the Parties' and third parties' submissions, CCCS is of the view that the relevant market for the purposes of this assessment is the global supply of market technology

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<sup>13</sup> Paragraph 18.2 of Form M1.

<sup>14</sup> Paragraph 23.1 of Form M1.

solutions to Singapore, namely: (i) trading solutions, (ii) clearing solutions, (iii) market surveillance solutions, and (iv) risk management solutions, separately or together in a bundle.

## **VII. CCCS's Assessment**

### **(a) Market shares and market concentration**

17. While there is no official market share data available for market technology solutions, the estimates by the Parties on total worldwide market shares (based on the number of customers that purchase market technology solutions) indicate that their market shares of 14% to less than 20% do not cross the indicative thresholds as set out in the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.<sup>15</sup> For market shares in Singapore (based on estimated number of market technology solutions supplied to customers in Singapore), the case team notes that the indicative thresholds would be exceeded. However, CCCS also note that as there are very few customers of the Parties in Singapore and customers procure solutions through long-term contracts, there are actually very few purchases, if any at all, in a given year. Sales to each customer would also represent a large proportion of the share of supply in Singapore and the Parties did not both have sales in every type of market technology solution in Singapore, for example, CINN has not made a sale for its trading solution while Nasdaq has not made a sale for its risk management solution in Singapore. The market share figures alone are therefore not a good indicator of the level of competition between suppliers in this instance.

### **(b) Barriers to entry and expansion**

18. Based on the Parties' submissions and third party feedback, CCCS is of the view that the barriers to entry are not insurmountable but a moderate amount of resources and time would have to be invested by any new potential entrant before it can be considered a significant competitive constraint. Furthermore, CCCS also notes that there is already a multitude of existing global suppliers that can readily supply market technology solutions and barriers are not high for them to expand supply to Singapore.

### **(c) Countervailing buyer power**

19. CCCS notes that the customers of market technology solution providers in Singapore tend to be large and sophisticated, and a few customers account for all of the Parties' sales in

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<sup>15</sup> Paragraph 5.15 of the *CCCS Guidelines on the Substantive Assessment of Mergers 2016*.

Singapore. Even though the information received indicates that customers are likely to continue using the same supplier throughout the term of contract, and possibly renew a contract with the same supplier for ease, third party feedback indicates that customers are able to credibly threaten to switch away from existing suppliers to strengthen their bargaining position. On balance, CCCS is of the view that there is relatively strong countervailing buyer power, which would pose a competitive constraint on the merger parties.

**(d) Non-coordinated effects**

20. As noted above, while the Parties' total worldwide market shares for the supply of market technology solutions would not cross CCCS's indicative thresholds, the Parties' market shares in Singapore would. However, CCCS has also noted that market shares are not a good indication of the level of competition between suppliers in this instance. CCCS agrees with the Parties' submissions, in light of third party feedback, that there are a large number of credible competitors who are capable of supplying to Singapore and that customers can switch to, which would pose a competitive constraint on the Parties. The information received also does not indicate that customers in Singapore considered the Parties as close competitors. Additionally, there is relatively strong countervailing buyer power.
21. CCCS therefore assesses that the Proposed Transaction would not lead to adverse non-coordinated effects in Singapore.

**(e) Coordinated effects**

22. CCCS notes that:
  - (a) There are many competitors to the Parties in the global market for the supply of market technology solutions;
  - (b) There is a limited number of customers, who are sophisticated and possess significant countervailing buyer power; and
  - (c) The sale of the solutions is usually done through a competitive RFP or a bidding process, which are lumpy in frequency and non-transparent, and hence it would be difficult for suppliers to co-ordinate their actions.
23. CCCS therefore assesses that the Proposed Transaction would not lead to adverse coordinated effects in Singapore.

### **VIII. Efficiencies**

24. Given that the above competition assessment did not point to an SLC, CCCS is of the view that it is not necessary to make an assessment on the claimed efficiencies by the Parties.

### **IX. Conclusion**

25. For the reasons above and based on the information available, CCCS assesses that the Proposed Transaction will not lead to an SLC and accordingly will not infringe the section 54 prohibition, if carried into effect.
26. In accordance with section 57(7) of the Act, this decision shall be valid for a period of one year from the date of this decision.



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Chief Executive  
Competition and Consumer Commission of Singapore