

Intercontinental Exchange Inc. / Trayport Inc. merger inquiry

As you may be aware, the Competition and Markets Authority (CMA) has referred the completed acquisition by Intercontinental Exchange Inc. (ICE) of Trayport Inc. (Trayport) (the Parties) for an in-depth (Phase 2) merger investigation. A Group of CMA Panel Members have been asked to decide whether the acquisition may be expected to result in a substantial lessening of competition within any market or markets for goods or services in the UK. Further information, including the terms of reference, can be found on the CMA's case page. The full text of the CMA's Phase 1 decision will be available on the case page shortly.

In particular, the CMA is concerned with the possibility that there might be a substantial lessening of competition within a market or markets in the United Kingdom for goods or services, including:

- (i) energy trading front-end access services;
- (ii) back-end technology to over-the-counter brokers and exchanges, respectively;
- (iii) supply of straight through processing access to clearinghouses; and
- (iv) execution of trades; and
- (v) clearing of trades.

The CMA is concerned that a lessening of competition may result in higher prices, a reduction in choice or quality for users (ie traders, brokers, exchanges and clearinghouses) and/or a reduction in innovation for these products/services offered to users. The CMA is concerned this may arise as a result of a loss of competition between the Parties, to the extent that their products/services may be considered to compete from the perspective of traders, and to the extent that there are no alternative providers that would replace such competitive constraint. The CMA is also concerned that a lessening of competition may arise as a result of foreclosure of ICE's competitors (ie brokers, exchanges and/or clearinghouses) from accessing Trayport's products/services and, in doing so, hamper the ability of these competitors to offer products/services in competition with the Parties.

The CMA is now seeking views from interested parties.

Now that we are moving to an in-depth phase 2 investigation, I am writing to ask if you wish to make further representations or provide information on any matter relevant to this inquiry. Please feel free to cross-refer to any earlier responses but if you would like to make an initial submission we would find it extremely helpful and would help shape our investigations. We would welcome your response by close of business on Tuesday 24 May 2016s.

We may in due course wish to invite you to a hearing and/or to complete a questionnaire to provide us with relevant information to help us assess the effects of the merger.

I should like to draw your attention to the following issues which appear to be relevant to the inquiry and to invite your comments on them:

1. **Whether the merger between ICE and Trayport would result in a reduction in competition for any of the markets listed above or whether there are sufficient viable alternative suppliers available such that competition would not be expected to be affected.**
2. **Whether users possess sufficient buyer power that they would be able to resist any increases in prices (or diminution of service, promotions or other aspects) or reduction in product or service quality, through resisting changes in terms or switching to alternative suppliers.**
3. **Whether users of Trayport's products would switch between different suppliers in response to small changes in relative prices.**
4. **Whether users of ICE's products would switch between different suppliers in response to small changes in relative prices.**
5. **Whether other existing producers of similar products, or suppliers of similar services, would be easily able to provide a similar product and/or service.**
6. **Whether existing producers of similar products and/or services to Trayport active in alternative commodities/asset classes would be able to easily switch to operate in those energy market asset classes currently served by Trayport.**
7. **Whether entry by an alternative independent software vendor into the relevant energy related asset classes on a significant scale is possible and likely, and what barriers may exist (such as reputational, regulatory, legal or cost barriers).**

We should be grateful if you would observe the deadline as this will assist us in gathering evidence and help to ensure that the timetable for the inquiry is met. However, if you do anticipate problems in meeting this date please contact me as soon as possible.

Should this request be better directed to another individual within your organization, I would be most grateful if you would please pass it on to the appropriate person.

Finally, I enclose with this letter a note explaining the CMA's powers to gather, handle and disclose information. The CMA aims to be open and transparent during its inquiries. In considering whether to disclose or publish any representations or information that you may submit, we will take into account your views on the sensitivity of the material you provide and any request you may make for anonymity. When you reply to this letter, therefore, please say whether or not you are content for your views to be published on our website and attributed to you. If the submission contains information that you consider to be sensitive, please provide a separate version that you would be content to see published, omitting the sensitive information.

1. **Whether the merger between ICE and Trayport would result in a reduction in competition for any of the markets listed above or whether there are sufficient viable alternative suppliers available such that competition would not be expected to be affected.**

As Trayport is the leading provider of software for several market participants (i.e. trading companies, brokers, exchange and clearing houses) in the commodity market where ICE is trying to win market shares, the merger will have a huge impact on competition as the entire commodity market will be dominated by one company- ICE. No other company can offer an equivalent range of combined services and functionality (e.g. straight through processing (**STP**) and several exchanges and clearing houses in combination with a broker trading system (**BTS**)).

Trayport has a virtual monopoly on the OTC markets in power and gas trading as this is the trading system used by all major brokers. Furthermore, all trading members active in power and gas trading have to connect to Trayport to access best execution prices. Due to Trayport’s established position in the market, as well as the integration of the Trayport system into the IT architecture of virtually all trading companies, any trading company or exchange not granted access to Trayport is put at a significant competitive disadvantage.

ICE’s natural competitors are the OTC brokers and other exchanges, which all require access to Trayport’s liquidity network as well as Trayport’s other products and services to remain competitive. If ICE were to control this access to Trayport, these OTC brokers and exchanges could easily be squeezed out of the market. This is a particular risk for a number of products where ICE does not have a significant market share, such as power commodities.

Prior to the merger, it was already difficult for any single player in competition with ICE to reduce its dependency on Trayport’s products and services. Post-merger, ICE’s controlling stake in Trayport [REDACTED] **CONFIDENTIAL – Contains information relating to EEX’s internal business strategy, and which may affect the competitive process in the market**

Services/Markets	Reduction of Competition
(i) energy trading front-end access services;	Competitive disadvantage for companies who are not connected as Trayport is the leading provider of software for the commodity market
(ii) back-end technology to over-the-counter brokers and exchanges, respectively;	
(iii) supply of straight through processing access to clearinghouses; and	
(iv) execution of trades; and	
(v) clearing of trades.	
Services/Markets	Availability of alternative suppliers
(i) energy trading front-end access services;	EEX-TT Screen, T7 GUI, ISV EXXETA - [REDACTED] [CONFIDENTIAL – Contains information relating to EEX’s internal

	business strategy, and which may affect the competitive process in the market]
(ii) back-end technology to over-the-counter brokers and exchanges, respectively;	Exchanges: DBAG M7 / T7 systems - [REDACTED][CONFIDENTIAL – Contains information relating to EEX’s internal business strategy, and which may affect the competitive process in the market]
(iii) supply of straight through processing access to clearinghouses; and	Manual Trade Entry; STP via EFETnet eXRP; Direct STP Connection; CLTX Broker Trading System incl. STP link to ECC; Trigonal Broker Trading System, incl. STP link to ECC - [REDACTED] [CONFIDENTIAL – Contains information relating to EEX’s internal business strategy, and which may affect the competitive process in the market]
(iv) execution of trades; and	
(v) clearing of trades.	

2. Whether users possess sufficient buyer power that they would be able to resist any increases in prices (or diminution of service, promotions or other aspects) or reduction in product or service quality, through resisting changes in terms or switching to alternative suppliers.

Trayport is already regarded as a high-cost provider in the market. This is reflective of the difficulty that market participants face in moving away from Trayport. Every market participant wanting to trade the OTC markets via brokers require access to Trayport. Individual brokers do not want to move away from Trayport to alternative providers due to the reduction this would have on their market share. There is no alternative for most of the services offered by Trayport. As a result of the merger, brokers, exchanges and clearing houses therefore risk increased prices and reduced quality. In a worst case scenario, this could result in bankruptcy of certain market participants. This would have a significantly detrimental effect on the market.

3. Whether users of Trayport’s products would switch between different suppliers in response to small changes in relative prices.

The cost of moving away from Trayport, as well as the necessary changes to back-office systems, together with the risk of losing market share for the brokers and best price execution for trading participants makes the market insensitive to smaller changes in prices. Trayport provides direct trading screens to access/trade prices available on Trayport back-ends. The Trayport back-end database is thus currently closed and can only be accessed through Trayport systems. Data is in the possession of Trayport and cannot be freely disseminated to other systems.

Following the merger, customers will need either a Trayport front-end to access Trayport back-ends or an ICE front-end (or ICE certified ISV) to access the ICE back-ends. For customers who prefer alternative front-ends it is not possible to obtain access to Trayport prices. For customers using ICE, WebICE is the most commonly used front-end even if other alternatives do exist.

[REDACTED] [CONFIDENTIAL – Contains information relating to EEX’s internal business strategy, and which may affect the competitive process in the market]

4. Whether users of ICE’s products would switch between different suppliers in response to small changes in relative prices.

Following the merger, the users of ICE’s products will no longer have the possibility to switch between different suppliers. The market would be dominated by ICE and no alternatives would be available.

5. Whether other existing producers of similar products, or suppliers of similar services, would be easily able to provide a similar product and/or service.

Trayport has a significant offering of products, functions and services. Similar products or suppliers of similar services are available, but not in the same combination or combined with the same functionality that Trayport provides. This makes the Trayport offering entirely unique. Trayport offers a consolidated trading screen that is essential for all major brokers, and they would not be willing (or indeed able) to move away to any other product that is currently available on the market. Trading companies could potentially move to another system provider, but will still need to connect to Trayport to receive OTC prices. Therefore, even if another system is in place, Trayport access is required, and this access is entirely within the control of Trayport’s owner, ICE.

[REDACTED] [CONFIDENTIAL – Contains information relating to EEX’s internal business strategy, and which may affect the competitive process in the market]

6. Whether existing producers of similar products and/or services to Trayport active in alternative commodities/asset classes would be able to easily switch to operate in those energy market asset classes currently served by Trayport.

This would be difficult to implement in practice. Trayport is used by all major brokers as a back-end system provider, offering a consolidated trading screen, as well as an integrated multi-clearing house STP solution to the market. This consolidated offering from one provider, as well as the bundling of services and lack of interoperability on other platforms is a significant barrier to brokers moving away from the Trayport offering, or parts of it. An alternative offering from similar providers is virtually impossible – this would only be feasible if the “monopoly” Trayport holds over the consolidated system used by all brokers is broken. There are no existing producers of equivalent products or services currently available on the market, so it is not possible for existing producers to switch to operate in energy market asset classes.

7. Whether entry by an alternative independent software vendor into the relevant energy related asset classes on a significant scale is possible and likely, and what barriers may exist (such as reputational, regulatory, legal or cost barriers).

Entry by an alternative independent software vendor (**ISV**) is currently not possible or likely due to a) all major brokers using Trayport and b) the market share of the OTC market. If an ISV was available, the most significant barriers to entry would be the time and cost of developing a product that provides all the functionalities currently offered by Trayport. To date, no ISV has achieved this.

If larger brokers were to stop using Trayport, and consequently move market share away from Trayport screens, it could be feasible for alternative providers to enter the market. The key to being able to move away from Trayport is the access to broker prices. As a typical trading company is predominately active on the OTC market in energy commodities, any broker and exchange not accessing those prices through Trayport is put at a competitive disadvantage. Any broker or exchange which has its license to use Trayport revoked will instantaneously lose market share.