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.

I would like to thank you for the information you have already provided to the CMA. 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.**

On the energy trading front-end access services market, we do consider ICE and Trayport being competitors. ICE possess its own platform (WebICE) providing front-end access services limited to ICE orders when Trayport offers an access to all exchanges but also to brokers and clearing services. Therefore, the merger would result in a reduction of the competition on this market.

On the back-end technology to over-the-counter brokers and exchanges market and the execution of trade market, we do consider that the merger would result in a reduction of the competition on these markets since we only trade with brokers and exchanges available on Trayport or WebIce that we do consider as competitor on these markets.

On the supply of straight through processing access to clearinghouses, we do consider ICE and Trayport as competitors: ICE provides clearing services through ICEClear and Trayport proposes though STP services to clear OTC trades on different exchanges/brokers. Therefore the merger would result in a reduction of competition on this market. There is no alternative.

On the market of clearing, ICE and Trayport offer the possibility through ICEClear and STP to clear OTC trades. As an alternative, traders can post OTC cleared trades directly on the platform of exchanges. It is however very marginal and cumbersome.

ICE through Trayport, would have the ability and the incentive to foreclose competition and to direct liquidity toward its own exchange and clearing service. Having less exchanges and clearing services available on Trayport, a number of product will be delisted, fees will likely increase to the detriment of traders.

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.**

Since there is no viable alternative today and taking into account that Trayport is an essential facility for our commodity trading business we do not consider that users possess sufficient buyer power to resist any increases in price or reduction in product or service quality.

As a matter of fact we are currently negotiating a new license contract with Trayport and are facing a very important price increase of the license fees. As shown, the strong position of Trayport on this market is already a serious concern to us and we expect this situation to further deteriorate with the implementation of the merger by strengthening Trayport's position on the relevant markets.

ICE used to exert significant competition constraints on Trayport, which will be removed with the transaction.

Cost of access to the platform may also be used as a serious barrier to market entry for small market participants; example: industrial customers.

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

Since there is no viable alternative to Trayport, it is not possible for users in the trading commodity business to switch to another supplier.

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

In a situation of fee increase of ICE products, ICE users would potentially prefer to trade futures on other exchanges that are the most credible competitors available only on Trayport (EEX/ PEGAS).

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.**

There is no existing producer of similar products or suppliers of similar services other than Trayport. Alternative exchanges to ICE could potentially develop their own trading platform but the development of an effective OTC Trading platform and in particular of a credit aware matching engine is very difficult and the success very uncertain since Trayport is very well established within trading houses, traders are used to it.

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.**

Considering energy market specificities in terms of products (eg Physical delivery or maturities) and market structure (eg extensively traded Location spreads) it is unlikely for a supplier in alternative commodities/asset classes to easily adapt to operate on energy markets.

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).**

Cost and time to market are a first barrier: cost of development could be estimated around several tens of millions euros for a development time of minimum one year for a first delivery on a limited scope only.

In particular, it is key that a new entrant be able to manage to capture a significant part of the market share, which is not guaranteed since European gas and power markets are not very liquid and any fragmentation of the market would have a negative impact on the global liquidity: this is the main reason why Griffin failed to launch its own platform using ICE technology.

In addition, alignment and coordination of main market actors (Liquidity providers, Brokers & Exchanges) would be required to enhance the chance for success.