Intercontinental Exchange and Trayport Merger Inquiry: Initial Submission by RWE Supply & Trading

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RWE Supply & Trading (RWEST) is a leading European energy trading house. RWEST acts as the interface between the RWE Group's operating companies and global wholesale markets for energy and energy-related commodities in both their physical and derivative forms. This includes power, gas, coal, freight, oil, weather derivatives, biomass, emissions certificates and renewable energy. RWEST is responsible for the economic optimisation of RWE's power generation capacity and the unregulated gas business of the RWE Group, including all procurement, storage and LNG-related activities. RWEST also provides supply and portfolio management services to large industrial companies and other trading partners. RWEST's headquarters in Germany boasts Europe's largest energy trading floor, complementing the network of additional trading floors in London and Swindon, as well as branch offices in Den Bosch, Geneva, Prague, Singapore, New York, Mumbai and Jakarta.

RWEST is concerned that the merger of Intercontinental Exchange (ICE) will significantly reduce competition in the wholesale energy markets and the ability of other exchanges, OTC brokers and trading service providers to compete with ICE and Trayport in providing a range of trading services. This could have profound impacts on EU energy markets and lead to significant additional costs. We therefore welcome the CMA's decision to examine the transaction in greater detail.

Trayport has an effective monopoly over access to the brokered OTC markets. The contractual framework surrounding the back-end broker trading systems and the Trading Gateway means that any market participant needs to purchase the Trading Gateway to trade energy in Europe and any broker or exchange has to be available via Trayport. The barriers to entering on either side of this monopolistic nexus are extremely high. Trayport has to date, however, operated in a neutral way between the various OTC broker and exchange platforms. This has led to a degree of industry acceptance of Trayport despite misgivings over its de facto monopoly. ICE's acquisition of Trayport threatens this neutrality and raises concerns that ICE will benefit from Trayport's monopoly in ways which foreclose competition in a range of different services and provide an unfair advantage to ICE.

These developments threaten to undermine competition "for the market" between the exchanges and OTC brokers and significantly reduce competition for a range of trade-related services including clearing, trade confirmation, trade reporting and market data services. This directly increases the cost of trading services, increases the cost of trading and threatens to reduce market liquidity by raising barriers to traders entering into the wholesale energy markets. The indirect costs of any reduction in liquidity are substantial; even modest changes in market spreads can have dramatic impacts on the total cost borne by energy consumers in terms of higher risk management costs and reduced energy market competition.

These developments also run directly against the aims of recent financial market legislation which seeks to preserve "interoperability" of clearing and other post-trade services to prevent the development of "silos" of services attached to individual execution platforms. Requirements for interoperability have been a necessary adjunct to rules requiring mandatory exchange trading and mandatory clearing for financial and some non-financial firms.

To address these concerns, RWEST would ask the CMA to investigate measures which protect Trayport's neutrality as an independent provider of trade aggregation and hosting services and ensure continuing competition in post-trade services. Specifically, we would ask the CMA to consider whether:

- Trayport should remain a ring-fenced and independently managed entity within the ICE Group;
- Trayport's relationship with ICE should remain at arm's length and the terms for ICE's access to the Trading Gateway should be the same as for other providers.
- OTC brokers should be released from exclusive arrangements in respect of Trayport's back-end broker trading systems and the Trading Gateway, ie, the Trayport broker systems should be capable of feeding third-party aggregation/execution platforms and the Trading Gateway should allow feeds from other back-end systems (facilitated by "open source" protocols for data submission and handing).
- ICE/Trayport should guarantee interoperability for market participants seeking to use third-party trade reporting, confirmation and clearing services.
- Trayport should ring fence trade data to prevent the automatic sharing and dissemination with any other data processes within ICE.
- Trayport should undertake to publish and licence the use of market trade data to market participants and other customers on an open "utility" basis linked to the costs of performing that service.
- ICE should establish independent governance structures to oversee the ring-fencing and any undertakings, eg, establish a "Market Council" with representatives from market participants, brokers and other exchanges.

We address the specific questions raises in the initiation letter below.

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.

The merger has the potential to reduce competition significantly for a range of services. As noted above, the transaction moves Trayport from being a neutral conduit to several brokers, exchanges, clearing houses and reporting services to being owned by a provider of those services. In turn this raises the risk that Trayport's de facto monopoly over access to the pool of market liquidity acts or is used to foreclose the market for the providers of a range of services, specifically:

1. **Competition for trade execution services between the OTC brokers, ICE and other exchanges risks being undermined** if the current neutral window onto a range of OTC broker and exchange prices becomes tilted in favour of ICE's own execution platform. The danger is that the access to the OTC brokers and other exchanges (eg, EEX) via the Trading Gateway is progressively degraded or priced out.
2. **Providers of other energy trading front-end access services (eg, Exxeta)** will be even further constrained as the de facto monopoly over the OTC brokers effectively also broadens to include access to ICE. This will diminish the incremental benefit of other aggregation services and further constrains their ability to provide a viable alternative.
3. **The provision of back-end broker trading services.** Trayport and ICE currently have their own systems for entering prices and matching engines and Trayport further has exclusive agreements with the brokers to host their back-end trading systems. The acquisition allows ICE to integrate the back-end systems across the broker and exchange platforms and to require the use of ICE trading systems.
4. **The provision of post-trade trade reporting, confirmation and clearing services.** ICE has its own trade reporting, confirmation and clearing offerings which compete with Trayport's own services and with those of third parties. The acquisition will not only increase concentration significantly in the provision of these services, but threatens the ability of market participants to use independent reporting, confirmation and clearing services (ie, "interoperability").
5. **The Provision of Market Data Services.** The transaction gives ICE a complete overview of all transactions in European energy markets and a monopoly over all trade data. This trade data would give ICE an undue advantage in the development and market of new trade offerings to the detriment of other exchanges and the OTC brokers. However, it also allows ICE to commercialise and extract value from market data which is currently available to all market participant's via Trayport without additional charges. This would also frustrate the desire of many market participants to increase the transparency of the wholesale energy markets through the wider publication and dissemination of anonymised trade data.

While alternative suppliers exist for many of these products and services, as we explain below, there are significant barriers to the uptake of their products and services in these markets. The availability of alternative suppliers would not therefore be sufficient to maintain a competitive threat to counteract the reduction in competition resulting from the transaction.

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.

Users of Trayport and ICE have little if any buyer power and the fees paid for these services are typically treated as an unavoidable cost of doing business rather than an item subject to negotiation or competitive procurement. A subscription to Trayport's Gateway is essential in nearly all energy and related markets. Prices to access the Trading Gateway are high and there has been long-standing industry dissatisfaction with the services provided.

More widely, the ability to switch between different execution platforms is constrained by traders' need to transact where market liquidity lies. Traders' ability to trade relies on their access to

sufficient market liquidity to be able to put on and take off trading positions without significant transaction costs and without materially affecting market prices. As a consequence of this need to trade "where everyone else is trading", liquidity tends to be focused either in the OTC market or on exchange and there is typically only one leading exchange for each product. Once liquidity is focused on a particular platform, there is significant inertia and barriers to migrating that liquidity to another platform. For example, UK power is traded almost exclusively via the OTC brokers to which Trayport provides exclusive access and it has been difficult to develop liquidity in the parallel ICE futures contract. In turn, anyone seeking to trade EU Emissions Allowances (EUAs) would effectively have to trade on ICE (which accounts for 99 per cent of trade volumes).

While possible to transact the same products on alternative venues, this comes at the significant cost and risk of trading in an illiquid contract/venue away from the main liquidity pool. Users cannot therefore switch to an alternative platform without losing access to market liquidity, taking more risk and paying more to trade. Indeed to make a switch viable – as we discuss below – the entire liquidity pool and all traders and/or brokers would need to move to the new platform or venue. There are significant barriers to any such transition: Trayport's exclusivity over access to the OTC brokers would need to be released; there would be significant cost duplication in any period of "dual running"; and brokers and users would face the commercial risk of an unsuccessful migration.

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

Users of Trayport's Trading Gateway cannot switch between different suppliers in response to small – or even relatively large - changes in relative prices. Trayport have a de facto monopoly over access to the OTC brokers and there is no way for users of the trade aggregation service to access the brokers directly or to maintain access to market liquidity without using Trayport.

While there is competition between the OTC brokers hosted by Trayport, it has not proved possible for brokers to sustain an independent, competitive offering outside of Trayport (eg, Griffin Markets). The risk of splitting liquidity and being left as an outlier also effectively means that the OTC brokers also don't have any choice but to use Trayport. The move to an alternate service provider or platform would require all the brokers and major liquidity providers to switch to a single new venue. This would be very costly and risky for them to orchestrate and would require the brokers to be released from their exclusive arrangements with Trayport.

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

The main constraint on switching from ICE to different exchanges or to the brokers is the barrier presented by available liquidity described above rather than the relative trading charges. it would prove very be difficult to move liquidity in EUAs away from ICE. Similarly it has proved challenging to attract liquidity to ICE in the UK power market. The exception would be UK natural gas which is fairly evenly traded between ICE and the OTC market and where some switching in response to trading fees might be expected .

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.

From a software perspective it is relatively straightforward to provide products which replicate or improve on the functionality of the existing trade-related services and there are several providers of similar products and services along the lifecycle of a trade. However, there are several constraints which limit the practical ability to offer and take up those services. For example:

- While some traders prefer to use the Exxeta front end for presentational and analytical reasons, a Trading Gateway subscription is still required to be able to execute trades via Exxeta.
- There has to be a well maintained and seamless interface between execution, aggregation and other post-trade services to allow straight-through processing and the "interoperability" of different products at different stages of the trade life cycle (ie, different execution venues, confirmation matching, trade reporting). It can take significant effort, resources and good will to make this happen and to ensure that the software is adequately maintained. For example, Trayport and EEX have worked closely to ensure that the EEX plug-in to Trayport works well. Historically, the link to ICE via Trayport has not worked as well and, at times, it has not been possible to access ICE reliably via Trayport. We are concerned that ICE-Trayport would have significantly less interest in investing in and maintaining such links to other exchanges in future.
- Liquidity acts to constrain the use of alternate clearing offerings. Although traders can choose where products are cleared, liquidity tends to concentrate on particular clearing houses for particular products. As a result, there is not a free, unencumbered and independent choice on where to clear.
- ICE has traditionally followed a vertical "silo" approach to trades executed on its platform and has required the use of ICE Clear and ICE Vault (for transaction reporting). It has also proved difficult recently for market participants to access their ICE trade data in suitable formats to facilitate reporting to regulators independently of ICE under the Regulation on Energy Market Integrity and Transparency (REMIT).

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).

There are a range of existing providers of similar services and products that could switch elements of their service and/or enter the market to provide an offering similar to Trayport. That would remain, however, an "empty" offering in that Trayport has exclusive relationships with the OTC brokers and all market users would need to maintain a Trayport Gateway subscription in any case. The alternate offering would therefore appear as an incremental cost without the benefit of being able to access any additional market liquidity.

The only viable means of switching would be an attempt to switch the entire pool of market liquidity to a different platform. This would require the migration of all major liquidity providers and brokers etc to the new platform. All of the major brokers would have to move their broking systems to other providers and/or chose to operate them on an “open access” basis allowing them to connect to one or more user interfaces for trade aggregation and execution. In practice, it has proved impossible to date to get a third-party alternative to the Trayport Gateway off the ground and attempts to provide brokerage services outside of Trayport (eg, by Griffin Markets) have come to nothing.

This would be a complex, costly and risky undertaking. There will inevitably be a period of “double running” and duplicated costs associated with the wind down of existing trades and open interest executed on the existing platforms during the period of transition. There is no guarantee that liquidity would migrate sufficiently to a new, open and (hopefully) competitive platform to justify the cost incurred of building or procuring an alternative platform.