Intercontinental Exchange Inc. / Trayport Inc. merger inquiry

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

[Yes, the merger would result in a reduction of competition for the said markets. By ICE's own admission, there are few other competitors to it in the relevant markets prior to the acquisition[2]. Trayport was listed as being one of the few other active marketplaces for such electronic trading. Trayport's software also enjoys a near monopoly in the OTC energy markets.

ICE and Trayport were therefore major competitors in the relevant markets prior to the acquisition. This impelled each firm to deliver benefits to their customers in terms of price, quality and choice. At present, there are no other viable alternative suppliers and the acquisition would invariably result in the exhibition of certain non-coordinated or coordinated anti-competitive effects.]

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.

[Due to the monopoly that the combined entity would enjoy, there is no commercial likelihood of any user of Trayport's services being able to resist changes in terms or increases in prices.]

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

[As stated in the response to point 2 above, users would not have the ability to switch between different suppliers in response to changes in relative prices.]

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

[Prior to the acquisition, it is likely that users of ICE's products can opt for alternatives, as ICE's proprietary platform, WebICE, is not dominant in the OTC energy markets space. It is a platform that is mainly used by participants who trade and clear with ICE.

The combination of a clearing house and Trayport could result in a dominant scenario where, post-acquisition, trading traffic from Trayport is directed by ICE to its proprietary platform for clearing, which would be difficult for users to counter.]

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.

---

[1] 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; (iv) execution of trades; and (v) clearing of trades.

[2] See page 3 of Amendment No. 1 to ICE's registration statement on its Form S-1 dated 16 May 2005, which was filed with the U.S. Securities and Exchange Commission. See the following link: http://www.sec.gov/Archives/edgar/data/1174746/000095012305006398/filename23.htm.

[Trayport's platform is entrenched in the OTC energy markets space. The barriers to entry, given the pervasive use of the platform by the participant ecosystem, are hard to surmount. There is currently a lack of similar products in the market that are able to act as viable replacements for Trayport.]

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.

[As stated in the response to the point 5 above, due to the wide use of Trayport's platform by participants, it would be difficult even for a producer of similar products to break into the market. The participant base and ecosystem for the OTC energy markets are sufficiently different to prevent an easy switch by such providers (where they are available) into the areas 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).

[At this stage, an entry by an alternative software vendor into the markets dominated by the combined ICE and Trayport entity is unlikely.

The barriers to shifting liquidity from front and back-end participants in the market who are currently subscribing to Trayport are highly prohibitive, unless the new platform is intrinsically linked to Trayport's software (e.g. in a case where ICE links the trades done on Trayport's software with its proprietary platform). The added layer of complexity introduced by a new platform will ultimately discourage adoption.

Further, as stated above, the participant base in the relevant markets has formed an ecosystem within Trayport's software. In order for another platform to succeed as a viable alternative, it would need to convince existing players in the market that it has sufficient scale to facilitate a switch in adoption of trading platform. This is a difficult task to achieve given the entrenchment of Trayport into the front-end and back-end trading and operational processes.]