# INTERCONTINENTAL EXCHANGE/TRAYPORT MERGER INQUIRY

## Summary of hearing with European Energy Exchange AG (EEX) on 9 June 2016

## Introductory remarks

1. EEX said it offered exchange traded products in Germany, France, the Netherlands, Belgium, the United Kingdom, Scandinavia, Italy, Greece, Romania, Spain and Switzerland. EEX said it also served select gas markets via its subsidiary Powernext under the brand PEGAS.

2. EEX said it currently operated regulated markets and exchanges only, though due to recent regulatory changes (MiFID II, Annex 1, C6) it intended to additionally introduce a new trading venue for power and gas with an alternative regulatory status. EEX said this new venue would have the same regulatory status than over the counter (OTC) trading, offering EEX and Powernext products in power and gas that it currently provided in the regulated market as well. EEX said it was taking this approach to provide customers with a choice and to also serve those customers that in future didn't want to trade on regulated markets.

## EEX on Trayport

3. EEX said that the use of Trayport's front-end screen was widespread due to its price aggregation on a single screen and the competition it produced amongst venues to lower fees.

4. EEX said that it connected to Trayport's front-end screen via GV Portal but that it did not use Trayport's back-end products for power trading but used Trayport's back-end for gas trading through its subsidiary Powernext.

5. EEX said that in gas and power markets the Trayport Joule/Trading Gateway screens were the only way to access the market successfully. EEX said that trading venues or clearing houses could not compete with ICE if they were not connected to Trayport. EEX said that approximately 80% of European power was traded via Trayport and that any trading venue excluded from using the system would face a rapid drop in market share and competitiveness.

6. EEX said that it was important at least during periods of market volatility for its exchange to be accessible via Trayport. It said that were Trayport's service

limited, or its technical connection made unstable, it was possible that an exchange may disappear from the screen. It said that this could cost EEX millions of pounds and the reputational damage could lead to a liquidity shift to a trading venue with more reliable connection to Trayport front ends.

## Competition for execution

7. EEX said there was active competition between itself and ICE for providing trading and clearing services and that traders regularly substituted between the two based on available prices. EEX said that it competed with ICE's exchange, 'ICE Endex', especially since ICE began offering similar products to EEX in the futures market. It also competed with ICE in spot power markets through its subsidiary 'EPEX SPOT SE' and in Emission market with Ice day and long term futures.

8. EEX said that it and ICE were both strong potential entrants against each other in markets where only one of them operated. It said that it actively sought to enter markets where ICE operated and that it was in ICE's interests to prevent competing venues from expanding in such markets.

9. EEX also said that ICE had been unaware of EEX's new trading venue until it had announced it publically, despite a year of preparation with Trayport, but that the merger jeopardised this competitive approach as in the future Trayport might share this information – and a wide range of other sensitive information that was critical to the commercial and competitive success of EEX – with ICE.

10. EEX said that energy products (futures/forwards) available through exchanges and OTC brokers were highly substitutable and in competition, despite in some markets traders primarily using one type of trading venue.

11. EEX said that exchanges had opportunities to compete with brokers as well, and that, as an example, EEX had entered the Italian power market where traders previously tended to use brokers only, but that it had obtained a significant market share over three years.

12. EEX said that the merger would permit ICE, through Trayport, to affect the entry and the expansion of competitors into new marketplaces, weakening competition between ICE and other trading venues. EEX said a reduction in competition would result in higher energy prices for consumers.

13. EEX said that exchange and clearing houses competed on services, fees, transaction costs, bid-ask spread, and settlement costs, all of which impacted a traders' decisions of which trading venue and clearing house to use.

14. EEX said that in addition to exchanges competing with one another in the energy market, they also competed with OTC brokers. It said that liquidity could be shifted between exchanges and OTC. It said that traders determined their venue of choice based primarily on best available prices; though it explained that exceptions existed as traders in bespoke markets were benefited by the knowledge of a broker.

## Competition for clearing services

15. EEX said that once traders had chosen to execute through an EEX exchange, a trade was automatically forwarded to European Commodity Clearing AG (ECC) for clearing. It said that it was typical for an exchange to have one partner clearing house but one clearing house might serve multiple exchanges. It said that this differed for brokers, where there was no obligation to clear, but should they select from a variety of clearing houses on behalf of traders (who choose between clearing houses).

16. EEX said that it competed with ICE Clear, London Clearing House, Nasdaq Clearing and CME Clear to provide clearing services.

17. EEX said it provided clearing serves for other exchanges (CEGH, HUPX, NOREXECO, PXE, SEEPEX).

18. EEX said that it had marketing agreements with brokers that offered a variety of incentives for them and their customers to clear using EEX's clearing house, such as; service quality, pooling risk and fees. EEX said that Trayport's straight-through processing (STP) service was a key part of its clearing service infrastructure as it was used in around half of EEX's exchange volume.

19. EEX said approximately half its volumes were registered trades the vast majority forwarded automatically through the STP link, Manual entry was no alternative as well due to the volumes registered, the additional operational burden on traders, and the risk of human error which was considerably higher.

20. EEX said that Trayport's clearing link, STP, was a vital instrument for the multiple parties involved in clearing operations. It said that there was no viable alternative on the market, and stressed that it was business critical that it functioned correctly.

21. EEX said it had concerns that ICE's ownership of Trayport risked an incremental diminution of the STP service. It said a reduction in STP service might see volumes of clearing switch to ICE, which would gradually deteriorate EEX's offering.

## Summary of EEX's concerns with the merger

22. EEX said that it had serious concerns regarding the acquisition of Trayport by ICE, and that Trayport could be used to adopt a strategy of foreclosing its competitors to drive liquidity towards its own exchange and clearing services. It said that this would permanently change the competitive landscape of the energy trading sector for the worse.

23. EEX said that it was vital that the technical infrastructure of Trayport, such as the aggregator function of Trayport GV Portal/Joule and STP link, was maintained and not hindered in order to disadvantage competitors. EEX said that ICE could materially reduce the competition it faced by weakening EEX alone, an effect further compounded if it were to target other exchanges and brokers.

24. EEX said that bringing new products to market, or entering new markets, would require telling Trayport months in advance – it suggested there was not sufficient contractual protection for parties to be confident that ICE and Trayport would not share this and other critical information.

25. EEX said that ICE would also have access via Trayport to vital data of how its competitors managed liquidity. It said such information as how many market makers were active, the liquidity spread on offer, and who was trading products, should not become available to ICE.

26. EEX said that firms who used Trayport had weak bargaining powers when negotiating its licence price due to Trayport's dominant market position. EEX said that ICE could raise prices to disadvantage its competitors, as there were no alternatives to Trayport.