INTERCONTINENTAL EXCHANGE/TRAYPORT MERGER INQUIRY

Summary of hearing with Powernext on 10 June 2016

Introduction

1. Powernext said it was created in 2001 as a spot exchange for French power products. It said in 2008 that it diversified into French gas and placed its power activities into a subsidiary of EEX Group (EEX). In 2013, it expanded into the European market, once again partnering with EEX, cooperating under the name PEGAS.

2. Powernext said it was active under the PEGAS brand in six countries - France, Germany, Italy, Belgium, the Netherlands and the UK. It said it offered gas spot and derivatives products of varying maturity, from hourly markets to three years ahead.

Powernext on Trayport

3. Powernext said it was the first exchange venue to use Trayport's software and that it had been a customer since 2004. It said that it had utilised Trayport for all its product offerings and praised its history of delivering a quality service. Powernext considered Trayport to have been an integral part of its success; helping to design complex products and entering new markets. Powernext said its internal expertise and software was built around Trayport technology.

4. Powernext said it used Trayport's back-end matching engine and that it was the key component for running its exchange. It said its customers therefore had to use the Trayport direct screen or the Trading Gateway aggregator with the Joule front-end screen. Powernext said it also relied on Trayport's straight-through-processing (STP) link to clear its gas products.

5. Powernext said that extensive reliance on Trayport's products was common throughout the market for both brokers and exchanges, and that this was due to the closed access programming interface (API) strategy adopted by Trayport which had effectively made its software the backbone of European energy trading.

6. Powernext said that traders required Trayport technology to compare prices on one aggregated screen, and that traders considered price the primary factor in execution, rather than the trading venue. It said brokers and

exchanges competed heavily in spot and futures gas markets, and relied on Trayport to do so. Powernext said that Trayport's Trading Gateway currently acted as a spur to competition, allowing firms to enter new markets and challenge rivals.

7.   Powernext said that it differed from other Trayport customers in that it hosted Trayport's products on its own servers on a deployed basis. Trayport typically provided its clients with software as a service (SaaS). Powernext said it hosted Trayport's products for historic reasons, as it had invested in the requisite infrastructure and expertise from its inception. It said that Trayport could only access their platform by request, which it considered a key component to maintaining its reputation for server reliability.

8.   Powernext said Trayport offered thousands of products that provided valuable services, especially to small firms, but that its wide offering also increased dependability on Trayport. It said switching to an alternative could be inhibited if companies outsourced more of their technical infrastructure to Trayport.

9.   Powernext said it had continued to use Trayport's products as Powernext had the expertise and knowledge-base to make best use of the software, and because Trayport had the most advanced products. It said that using familiar and reliable software was important as it enabled them to focus on expanding from being a French gas exchange to a European one.

10. Powernext said its use of Trayport's back-end technology was one of the reasons it was successful in gas markets. [✂]

11. Powernext said it had a contractual obligation that required that all its products be made available for listing on Trading Gateway but that Trayport did not have a reciprocal obligation to ensure that they were in fact always listed. Trayport accepted an amendment which however does not ensure maximum legal certainty. It said that as a result Powernext was very dependent on Trayport's closed model without any certainty that products would be listed and on a timely basis.

12. Powernext said, by way of example, it was confronted with the limiting aspects of Trayport's business model when Powernext attempted to connect to new customers which used their own independent software vendor (ISV). Powernext was prevented from connecting to Trayport's closed API without significant additional costs for the new customers. Powernext said going forward it required open access to Trayport's API in order to reach new customers, propose alternative front end choices to its existing customers, and remain competitive against ICE.

13.   Powernext said that despite its very good relationship with Trayport, its dominant market position had given it significant bargaining power over Powernext in negotiating new contracts.

Powernext on ICE

14.   Powernext said that historically ICE had a strong market position in providing exchange services in the UK owing to its acquisition of International Petroleum Exchange[1], but that they had struggled to launch products on the Continent. It said that ICE acquired Endex in 2012, forming ICE Endex, thereby entering gas spot markets in the Netherlands, Belgium and the UK.

15.   Powernext said ICE's acquisition of Endex had been successful and had increased the volume of ICE Endex trading in the Netherlands futures market and Powernext is still far behind ICE Endex futures volumes. Powernext said it had gained much of the volume of ICE Endex in continental spot -it said this was because ICE had reduced a large portion of its staff - to the deterioration of its service and products.

16.   Powernext said that ICE ownership of Trayport prompted different competition concerns compared to GFI's acquisition of Trayport in 2007. It said that it feared ICE would diminish Powernext's ability to compete or meet regulatory requirements by delaying or withholding new software features.

Competition for execution

17.   Powernext said that the liberalisation of European gas markets started in 2007 and that since then seven brokers had emerged as its primary competition.

18.   In addition to brokers, Powernext said there was significant competition from ICE, CME and Nasdaq OMX to provide exchange services. It said that it was aware that large exchanges had millions to invest in diversifying into new asset classes and that a price war might develop to fight for the top space on trader's screens. It said the competition was fierce and pushed firms to develop innovative new products and remain commercially aware of what its competitors were developing.

19.   Powernext said it attracted liquidity to its derivatives market by forming market-making and liquidity-provision agreements with new customers. It said

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[1] Renamed ICE Futures in 2005.

new customers from small markets could also be attracted by waiving fees for the first year.

20. Powernext said it had acquired significant market share from ICE, which was the leading exchange in Dutch TTF Gas Futures spot and Belgian ZTP spot gas products, after it launched its own products in October 2013 on Trayport. It attributed this shift to actively working to change traders' habits and breaking down historic connections between traders and trading venues. It said that there was a long history of failed attempts by firms trying to move liquidity, that entering new markets required expanding a network of customers by building trust.

21. Powernext said Trayport had historically allowed a level playing field among competitors vying for liquidity or entering new markets, but that in the future it could begin to hinder participants' visibility on its Trading Gateway. It said this would lead to a near-instant loss of liquidity as traders relied on Trayport's price aggregation screen.

Competition for clearing services

22. Powernext said all its STP products are cleared via European Commodity Clearing (ECC). Powernext said when it only operated in the French gas market, volume was small and trades were cleared manually through a web-based interface. When it expanded into high-volume European gas markets the STP link took time to set up with the ECC, so for two years manual clearance was completed through a web-based interface until the STP link was completed. It said the tendency will be for the STP link to take over almost all volumes in the months to come as it was observed with other venues.

23. Powernext said that no viable alternative existed to Trayport's STP link. It said that eXRP and EFETnet were contenders but they lacked functionality by comparison. It said eXRP did not operate seamlessly within Trayport's Trading Gateway, required important IT development from the brokers, and still relied on Trayport to access their back-end system.

Powernext concerns with the merger

24. Powernext said that it was common for it to discuss product plans with Trayport a year in advance. It said this arrangement would not be feasible were ICE to own Trayport as it may leak back to ICE, giving it the ability to foresee market changes and launch projects before its competitors. Powernext said it had already started withholding information from Trayport

until the last minute that it would have otherwise typically shared, as a result of this concern.

25.   Powernext said it had recently launched an hourly spot product after significant time spent on design collaboration with Trayport. It considered Trayport's input as key to the early success of this product as it ensured the screen design was well suited to the complexity of the product. Powernext said this was one example of how the two companies worked to release new products, and how a lack of future collaboration with Trayport would hinder Powernext releasing innovative products.

26.   Powernext said that post-merger ICE might potentially access confidential data that it currently cannot. It said that access to full databases was not likely or necessary to cause harm; that the revealing of basic information such as Powernext's top customers would irredeemably harm their business. It said that even legal recourse, were it pursued in the event of a contractual breach, could not reverse the liquidity shift once it had moved from its exchange.

27.   Powernext said it was concerned that informal breaches of confidentiality might occur between ICE and Trayport which could not be demonstrably evidenced or traced.

28.   Powernext said that ICE's history of acquiring firms and reducing staffing costs would place an additional burden on Trayport to deliver added value, adding an incentive for the Trayport staff to leak information informally that it did not have pre-merger.

29.   Powernext said that in the long-term it might be possible to develop a whole new alternative to Trayport's back-end system but it would take years to complete, millions of Euros of finance, a complex IT system and requisite expertise, regulatory compliance, and diversion of vital resources from multiple market players. Powernext said that conducting normal operations during such a period would affect their ability to compete.

Concluding remarks

30.   Powernext said it believed that the merger would have extreme consequences for ICE's rivals to compete and survive. It also said that the effect of the merger would have a negative impact on the entire market.

31.   Powernext said that at a minimum Trayport should be operated totally independently of ICE (including HR management and office location), that Trayport's service for its software should be maintained, and that the API should be opened. It said that these basic protections would be difficult to

enforce and expressed doubt that they were really practical. It said that a degradation of service by Trayport and data sharing across companies would be likely, and that divestiture might be a more suitable solution.