

Consent to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (CMA) on 11 January 2016

Completed acquisition by Intercontinental Exchange, Inc. (ICE) of Trayport, Inc. and GFI TP Limited, including their subsidiaries (together Trayport)

On 11 January 2016 the CMA issued an Initial Enforcement Order (the Order) under section 72 of the Enterprise Act 2002 (the Act) for the purpose of preventing pre-emptive action. Under the Order, save for written consent by the CMA, provision was made that ICE will hold separate the ICE business from the Trayport business (as defined in the Order respectively).

On 3 May 2016 the CMA made a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in accordance with section 22 of the Act, regarding the completed acquisition by ICE of Trayport, in order that the group may investigate and report on the following questions in accordance with section 35(1) of the Act:

- (a) whether a relevant merger situation has been created; and
- (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the UK for goods or services.

The reference has not been finally determined. The Order is still in force.

On 13 July 2016 ICE requested that the CMA consents to the engagement of ICE's [redacted] capabilities to assess the [redacted]. After due consideration of the request and based on the particular circumstances of this case, ICE and Trayport may carry out the following actions:

Paragraphs 4, 5(f) and 5(l) of the Order

ICE may use its [redacted] capabilities to assess the Trayport [redacted]. In particular, ICE is permitted to:

- (a) review and provide comments on Trayport's [redacted];

- (b) provide advice regarding [REDACTED];¹
- (c) provide [REDACTED]; and
- (d) coordinate [REDACTED] service for Trayport, which will include [REDACTED].

The following individuals are permitted to receive confidential information as strictly necessary for this purpose. This will be restricted to relevant high-level technical information regarding Trayport and ICE's [REDACTED].

Trayport employees:

[REDACTED]

ICE employees:

[REDACTED]

The CMA gives its consent subject to the following conditions:

- (a) only the Trayport and ICE employees named above are permitted to be involved in the assessment of the Trayport [REDACTED];
- (b) all the Trayport and ICE employees named above must sign a non-disclosure agreement, in a form agreed to by the CMA;
- (c) all ICE and Trayport employees named above are instructed not to share any commercially sensitive information relating to either of the ICE or Trayport businesses, recognising that the sharing of such information would constitute a breach of the Order;
- (d) the Monitoring Trustee attends all calls and/or meetings between ICE and Trayport and is copied into all correspondence between ICE and Trayport in relation to this matter; and
- (e) to the extent any [REDACTED] agreement is entered into by Trayport this is entered into:
 - i. on an independent, fully transferable basis; and
 - ii. does not rely on ICE's expertise or input for any future advice and/or [REDACTED].

2 August 2016

¹ [REDACTED].