

## EXCHANGE A

### Comments on Remedies for Acquisition of Trayport by Intercontinental Exchange

#### 1 Introduction

- 1.1 We refer to the notice of possible remedies (the “**Remedies Notice**”) issued by the Competition and Markets Authority (“**CMA**”) on 16 August 2016, in connection with the CMA’s provisional findings on Intercontinental Exchange, Inc.’s (“**ICE**”) acquisition of Trayport Limited (“**Trayport**”).
- 1.2 We set out our views below on the potential remedies that may address the substantial lessening of competition resulting from the acquisition.

#### 2 Comments on Potential Remedies

- 2.1 We agree with the CMA’s position that a structural remedy, particularly a full divestiture of Trayport, is preferred as it comprehensively addresses the issue’s core.
- 2.2 ICE’s ownership of Trayport presents a scenario where a key market infrastructure provider is operated and governed by an entity that has a deep-seated interest in the same marketplace. As a result, the merged entity’s actions are likely to be skewed towards benefitting ICE’s interest in the relevant markets, to the exclusion of other participants’ interests. This is exacerbated by ICE’s own dominant presence in related market segments.
- 2.3 Any remedy apart from a full divestiture is inadequate to address this concern. Behavioural remedies (for instance, access on fair, reasonable and non-discriminatory terms or opening up Trayport’s closed API framework) may address particular issues identified at the point of their imposition, but may be superseded by new issues or practically circumvented in manner of implementation or form.
- 2.4 Monitoring of compliance with any behavioural remedies, and of further issues that may arise, would be impracticable and costly. For instance, gradual tweaks to Trayport’s service standards and prices would be difficult to apprehend. A third party will also be unable to identify changes to Trayport’s internal processes (e.g. if Trayport delays software updates to ICE’s competitors). It is likely that any measures taken to address such deficiencies would be *ex post facto*, and an adverse impact on competition would already be sustained.
- 2.5 As such, we submit that a full divestiture of Trayport by ICE is the only credible remedy to address the probable lessening of competition in the relevant markets. A suitable potential purchaser would preferably not occupy a dominant position in the relevant markets, not possess an ability to direct Trayport’s services into its own systems to the detriment of other competitors, and/or not have other conflicting interests that would invite Trayport to benefit the purchaser at the expense of market participants. This should be assessed on a case-by-case basis, as the mere fact that a

purchaser is a broker or exchange may not necessarily indicate that it is able to exert influence on the relevant markets in the manner that ICE could.

- 2.6 It would be beneficial to have an independent third party oversee the divestiture process to ensure that the divestiture is a true sale. The purchaser should also have the ability to re-assess the agreement entered into by ICE and Trayport in May 2016, in case the agreement implements anti-competitive measures or otherwise prejudices the purchaser.

### **3 Conclusion**

- 3.1 Thank you for taking our feedback into account in the CMA's investigation and report processes thus far. We will stand guided by the CMA's final findings and direction on this matter.