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Competition and Markets Authority
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Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market, and special reference groups

Nasdaq welcomes the opportunity to provide comments on the Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market, and special reference groups (the "Notice").

Summary of Nasdaq's comments regarding the Notice

- Nasdaq agrees that the merged firm would possess the ability to foreclose ICE's rivals.
- Nasdaq agrees with the finding of significant gains for the merged firm which would likely result from a weakening of rivals.
- Nasdaq agrees that there would likely be a loss of competition between ICE and other trading venues/clearinghouses to be the principal host of liquidity and/or clearing volumes.
- Nasdaq agrees that the effect of any foreclosure strategy would be to harm ICE's main rivals and, as a result, have an impact on their ability to compete effectively with ICE for the execution and clearing of trades.
- Nasdaq agrees that the Merger between ICE and Trayport may be expected to result in a substantial lessening of competition (SLC) in the supply of trade execution services to energy traders and trade clearing services to energy traders in the EEA as a result of the merged entity implementing a foreclosure strategy.
- Nasdaq agrees that a complete divestiture of Trayport by ICE (Divestiture remedy) would be likely to be an effective remedy to the SLC and the resulting adverse effects that CMA has provisionally identified.
- Nasdaq do not see any other effective remedy.
- The alternative remedies proposed are, as the CMA indicates, de facto not sufficient to hinder ICE from exercising anti-competitive activities. Due to the complexity of a technical gateway and related services, there is a wide range of ways how ICE could circumvent any contractual provisions without risk of prosecution. These tactics can be slow service, unfair pricing of an

open API etc. meaning that it would be very difficult to monitor any behavioral remedies. The only efficient way to hinder such activity is divestiture.

- Nasdaq believes that a divestiture should take place as soon as practicable possible and that ICE should be required to appoint a divestiture trustee as the acquisition has already been completed and it is important that ICE does not try and secure certain advantages in the divestiture process.
- [X]

Summary of Nasdaq's previous comments and answers as part of the CMA inquiry

- Nasdaq's ETS is a back-end software/matching engine, which can be accessed through Nasdaq's own front-end, Trayport's Joule/Trading Gateway and/or an alternative third party front-end provider (ISVs) with an open API policy.
- In order to compete in the European energy space it is close to impossible to ignore Trayport due to their aggregation screen and strong position. Thus it is not the front end system and functionality itself that is unique, but their level of distribution and market information in order to get a complete view of the respective markets.
- The very strong position of Trayport lies primarily in terms of the number of traders it can reach through its single aggregated front-end screen Joule/Trading Gateway, matching engine and STP by giving access to multiple exchanges and trading venues including brokers. The Trayport platform allows interaction for both exchange and cleared liquidity as well as OTC non-cleared liquidity. In Nasdaq's view, Trayport is unique in its ability to aggregate all price information from multiple venues into one hub and, in this sense, there are no practical alternatives in Europe to reach the same amount of information and liquidity.
- For markets where liquidity resides with venues listed on Trayport, it will be close to impossible for an exchange and clearinghouse to attract trading volumes in the European energy markets without connectivity with Trayport.
- [X]