

INTERCONTINENTAL EXCHANGE/TRAYPORT MERGER INQUIRY

Summary of Response Hearing with RWE Supply and Trading (RWE) on 23 August 2016

Remedies – Divestment

1. RWE said it did not think partial divestiture would remedy the SLC as it would leave intact Trayport's closed back-end application programming interface (API). It said that if the back-end system was left unchanged its owners could reproduce a front-end system to reinstate Trayport's dominant position.
2. RWE said that exchanges or brokers would not make suitable purchasers of Trayport if full divestiture was pursued. It said this would raise the same competition concerns as ownership by ICE. It said an ideal purchaser would be independent and without an incentive to foreclose rivals.
3. RWE said that Trayport ownership by a trader would raise concerns around the trader's access to confidential market-wide data, but that these barriers could be overcome. It said it could conceive of a trader-owner Trayport platform provided it was structured correctly to align its incentives with encouraging liquidity and ring-fenced from utilising confidential market data.
4. RWE said ownership by an exchange, broker or trader would require additional remedial action, such as behavioural remedies, to allay competition concerns. It suggest full divestiture might require opening Trayport's API and ring-fencing market data.
5. RWE said ownership by an independent software vendor (ISV) would replicate the lack of competition in the market caused by Trayport's closed API, and which existed pre-merger. It said Trayport's ownership by an ISV would, however, address the SLC concerns specific to ICE's ownership of Trayport.
6. RWE said if the process of full divestiture is chosen then it should be completed in approximately nine months.
7. RWE said that it thought there would be a sufficient number of interested buyers in Trayport to allow for full divestiture.

8. RWE said that if divestiture was pursued then Trayport's new owners should have the option to renegotiate suspended arrangements made by ICE and Trayport since its merger.

Remedies - FRAND

9. RWE said a behavioural remedy would be ineffective as it would be difficult to enforce and monitor fair and non-discriminatory provisions. It said that such a remedy would not be effective to prevent ICE executing a partial foreclosure strategy or from degrading the quality of the service it provides.

Remedies – Open API

10. RWE said opening Trayport's API would address the competition concerns raised by the SLC in conjunction with FRAND terms. It said an open API could pool liquidity across a wider set of trading venue types, independent of platform, facilitate new entrants to the market, and introduce competition for software provision.
11. RWE said the remedy would permit new providers to enter the market and create alternatives for front-end systems which would more efficiently meet the specific needs of market players and enhance functionality. It said firms operating in other markets might also provide software alternatives, attracting traders who used their software in other commodity markets.
12. RWE said the remedy would enable firms to create their own competing back-end aggregation platforms that routed data in ways that improved functionality within the market.
13. RWE said the remedy would permit price aggregation across product types in a single screen, decreasing desktop real estate by requiring fewer screens.
14. RWE said that the current difficulty of moving liquidity to an alternative platform represented a significant barrier for any alternative to Trayport to overcome. It said this would be eased were liquidity not dependent on a single platform but pooled across varying platform types.
15. RWE said the remedy could expand the pool of potential customers for Trayport, but that Trayport would also be exposed to greater competitive pressure from new entrants.
16. RWE said FRAND terms would be necessary to ensure consistent, transparent and standardised interface to an open API. It said that it was important that Trayport was not able to undermine open access to the API.

Benefits of the merger

17. RWE said there were no major customer benefits as a result of the merger.