# INTERCONTINENTAL EXCHANGE/TRAYPORT MERGER INQUIRY

## Summary of Response Hearing with Independent Software Vendor B on 24 August 2016

### Remedies – Divestment

1. Independent Software Vendor B said that full divestiture could be a solution to the competition issues raised by the Intercontinental Exchange (ICE) and Trayport merger. In particular, it said that full divestiture could resolve the problem of ICE pressuring Trayport for preferential treatment in configuring its front-end and back-end products.

2. Independent Software Vendor B said that full or partial divestiture would not correct the lack of competition that existed pre-merger, where there was a restriction on alternative independent software vendors (ISVs) having read/write access to market data.

3. Independent Software Vendor B said that a full or partial divestiture should be completed in a short timescale.

4. Independent Software Vendor B said that a possible remedy was a partial divestiture of Trayport's back-end Exchange Trading System (ETS) and Broker Trading System (BTS), and allowing these to connect to alternative front-ends. It said partial divestiture could create the kind of competition necessary to improve product innovation and functionality by increasing competitive pressure from new alternatives entering into the market.

5. Independent Software Vendor B said that FRAND terms and an open access programming interface (API) might be necessary even under separate ownership of Trayport's back and front-end systems. It said such terms would be necessary to prevent Trayport and its new owner from maintaining the previous closed API business model.

6. Independent Software Vendor B said that Trayport was sold for above its market value based on the revenue generated by Trayport. It said this could only be justified if ICE intended to expand Trayport in alignment with its current model in order to take advantage of its dominant market position.

7. Independent Software Vendor B said it did not view traders, exchanges, brokers, or any private equity firm with an interest in trading venues, as

suitable purchasers of Trayport under divestiture. It said that each had its own market interests that would provide an incentive to undermine the neutrality of Trayport to the detriment of other participants. It said, for example, that a broker might improve Trayport functionality for its own use as was the case under GFI ownership. It also said exchanges might establish preferential treatment for trades to clear through its partner clearing house. It said that traders would also be reluctant to improve Trayport's offering outside of their trading areas.

8.   Independent Software Vendor B said a new owner who continued Trayport's business unchanged would raise the same competition concerns as was the case under ICE. It said that such a purchaser would not meet the criteria that divestiture ought not to create or worsen competition concerns.

## Remedies - FRAND

9.   Independent Software Vendor B said FRAND terms alone would not be effective in preventing Trayport from pursuing a strategy of increasing its fees or degrading its services to the harm of ICE's rivals.

10.   Independent Software Vendor B said that FRAND might work in conjunction with opening up Trayport's closed API.

## Remedies – Open API

11.   Independent Software Vendor B said that its own aggregating software was in a ready position to compete with Trayport's offering, but it was prevented from doing so as a result of closed access to Trayport's API. It said other ISVs were in a similar position.

12.   Independent Software Vendor B said that its preferred remedy was for a change in control over the terms of access to trading venues from Trayport to the respective trading venue.  It said Trayport should be obligated to open its API at the discretion of the trading venue, and that Trayport could define and standardise the criteria for access. It said a certification process would ensure that each party utilizing the API respected the technical parameters set forth by Trayport and trading venues. It said the front-end services offered by Trayport should be required to utilize the API under the same terms as third parties and not be permitted special access to trading venues.

13.   Independent Software Vendor B said a change in control over terms of access would allow a trading venue operator to much more easily switch its back-end systems by having a transition phase where both back-end systems (new and Trayport) could be running in parallel and could be synchronized via the use

of the open API.  It said this could incentivise Trayport to provide a good service and improve functionality.

14.    Independent Software Vendor B said that there were two different technical options for opening Trayport's API. It said Trayport could provide open access to its programming library or its communication protocol –both of which should be well documented. Independent Software Vendor B also said that a certification process could be established to ensure functionality within the API and that the applications accessing the API acted within the parameters set forth by Trayport.

15.    Independent Software Vendor B said an increase in competition created by an open API would decrease Trayport's revenue if it did not respond by improving its services, increasing innovation and providing new functionality.

16.    Independent Software Vendor B said that opening Trayport's API was proportionate to the provisional SLC due to the lack of alternative cost efficient solutions in the marketplace caused by Trayport's monopolistic position and poor competition. It said new customers and businesses could not enter the market due to increasing costs imposed by Trayport as a result of a lack of competition.

## Benefits of the merger

17.    Independent Software Vendor B said benefits of the merger included ICE products, such as oil, being more widely disseminated through Trayport's Trading Gateway.

## Closing remarks

18.    Independent Software Vendor B requested that the CMA consider the impact of a loss of competition between third party ISVs and the post-merger ICE/Trayport entity for front-end access services in its decision. It said the merger could have substantial adverse effects in this area.