

ENGIE Global Markets response to CMA consultation on potential remedies pursuant to ICE-Trayport merger

1. Pre-merger situation

As argued in the Provisional Findings Report, the situation pre-merger was already source of concern because:

- “Trayport operates a policy whereby it does not allow users of its back-end systems to connect via an API to an alternative front-end screen or STP clearing link without the permission of Trayport. This is referred to as Trayport’s “Closed API” policy”
- “Over 85% of EU utilities derivative trades are underpinned by the Trayport platform”

The situation post-merger is further concerning due to the behaviors that could be adopted by ICE as pointed out in the report under the different theories of harm.

2. Opening the APIs

As a consequence of the pre-merger situation, ENGIE Global Markets considers the behavioral remedy consisting in “opening the APIs” as a required pre-requisite to recreate an environment favoring competition and innovation in the field of trading platform. Opening the APIs would mean at least that:

- Any users of the Trayport back-end (BTS or ETS) must be able to use any front-end provided by any provider other than Trayport;
- Any users of a back-end software provided by any providers other than Trayport, must be able to push its prices into Trayport front-end or to use the Clearing link;
- Any front-screen must be able to get the prices aggregated by the Trayport trading gateway or the GV Portal;
- Every single piece of software provided by Trayport (namely BTS, ETS, Trading Gateway, GV Portal, Joule, Clearing Link) must be commercialized independently from the others without any obligation to buy any other component and without any financial incentive to bundle the products;
- The API must be well documented to be useable easily by any market participants;
- The API must allow an access to all the services and data provided by each single piece of software provided by Trayport.
- The APIs must be commercialized in a ‘fair, reasonable and non-discriminatory’ way

Such measures would certainly help to foster competition and as such reduce the effect of the SLC. However, the implementation of these measures will most probably take significant time and it is difficult to assess what the actual result will look like. Moreover, opening the APIs is a behavioral remedy with all the drawbacks of such remedies. Consequently, ENGIE Global Markets considers that opening the API is a **pre-requisite** but questions the fact that this remedy would be enough to alleviate the SLC resulting from the ICE-Trayport merger. Indeed, even with open APIs, ICE/Trayport could still seek to exercise behaviors described in the different theories of harm.

3. Divestiture

The only way to ensure that the behaviors described in the different theories of harm do not take place is to impose a **divestiture**.

3.1. Full divestiture

Full divestiture has the advantage of being a structural remedy and of placing the parties in the situation they were before the merger. However it does not alleviate the initial issue as identified in the Provisional Findings Report related to the structure of the market and to the so-called closed APIs described above.

3.2. Partial divestiture

The option of a partial divestiture, whereby ICE should divest only Trayport's front-end (i.e. Trading Gateway, Joule, Clearing Link and GV Portal), is, according to ENGIE Global Markets, the most favorable remedy for the whole market. Indeed it reaches two main objectives at the same time: (i) it implies a divestiture of ICE from Trayport and as such reduces the risk of behaviors described under the different theories of harm and (ii) it makes sure that the opening of the APIs becomes a structural remedy making such opening of APIs more robust.

In order to be efficient, the partial divestiture implies that Trayport's front-end is not acquired by any player that has a direct interest in a specific market venue since controlling Trayport's front-end gives its owner the potential to discriminate competing market venues (i.e. brokers or exchange/clearing house) in its access to the trading gateway which is counterproductive for the whole market as rightly put forward by the CMA in the provisional findings.

Such partial divestiture must (i) be implemented in a 6-9 months max timescale under the control of an divestiture trustee and (ii) ensure that the provisions put forward under the point "Opening APIs" above are met.

4. **FRAND**

In any case, fair and non-discriminatory access should be ensured as the Trayport software is essential to any market participants to perform its day-to-day-job. However we do not believe that this remedy per se is sufficient to alleviate the SLC identified by the CMA as the issue is mainly the "closed APIs" between the back-end and the front-end software provided by Trayport. FRAND must be a principle that comes on top of the remedies described before and certainly not the only remedy imposed to ICE/Trayport.

5. **Other point**

The question of the property of data is not addressed in the CMA report whereas it is also a point of concern for market participants: Trayport considers that once a price is posted on the platform by e.g. a trader, the trader cannot send this price to a customer's screen without paying Trayport a license fee for this client. This is an issue in the sense that this price fundamentally belongs to the trader that should be able to do whatever he wants with that price.