

**PROPOSAL TO REMEDY THE PROVISIONAL SLC IDENTIFIED BY THE CMA  
IN THE ICE/TRAYPORT MERGER INQUIRY**

**A. Legally enforceable commitment for Trayport to continue to license, improve and support its key software products used by traders, trading venues and clearinghouses**

*Key Products: BTS, ETS, Joule, Trading Gateway/Joule Direct, GV Portal/analogous exchange connectivity and STP Link, or successor products, for use in respect of European utility trading and clearing markets (i.e. European gas and power, emissions and coal).*

Trayport will license, improve and support its Key Products for a 10 year period on a venue-neutral basis with regard to choice of trading venue and/or clearing house and in particular will not give any ICE affiliate preferential treatment such that it could obtain unfair competitive advantage over competitors.

Trayport will adhere to the following obligations and standards:

1. Trayport will honour the terms of all licenses of Key Products with trading venues and clearinghouses currently in effect.
2. At the request of a trading venue or clearinghouse with a current license for a Key Product, Trayport will agree an extension of the fixed term of the licence for an additional 3 year period on substantially similar terms as currently.
3. At the request of a trading venue or clearinghouse without a licence or for when a licence expires, Trayport will negotiate a new license for use of one or more Key Products for a term of up to 5 years on commercial terms (e.g. price) that are FRAND judged in relation to (1) the customer's chosen term, user numbers and market coverage and (2) the commercial terms in effect between Trayport and similarly situated customers including ICE affiliates.
4. Trayport may not include an exclusivity term that prohibits the customer from using alternative software products sold by companies other than Trayport.
5. Trayport will maintain substantially similar or improved performance of Key Products consistent with past practice, with respect to price dissemination, order routing and mapping new products.
6. Trayport without additional charge will make available ordinary course upgrades to Key Products to all relevant customers at substantially the same time including ICE affiliates. In the case of GV Portal and STP Link, equivalent exchange API features will be made available.
7. Trayport will, on an annual basis, devote equivalent engineering resources (in terms of budget and full-time employees) to the research and development and maintenance of the Key Products for the use of customers as Trayport as it did in the average of the prior 2 years – both in aggregate for Key Products and individually for BTS and ETS. Provided, however, that if the amount of revenue derived by Trayport from licensing the Key Products materially decreases, Trayport shall be permitted to make a corresponding reduction in the amount of resources committed with the prior consent of the CMA which consent shall not be unreasonably withheld or delayed.
8. Trayport will make commercially reasonable efforts to respond to customer requests with respect to development of Key Products, consistent with Trayport's past practice.

## **B. Confidentiality firewall**

*Commercially Sensitive Information: customer-specific confidential information held by or accessible to Trayport regarding trading and/or clearing activity on any third party trading venue or clearinghouse, including without limitation trading and clearing volume and activity and new product and technical developments.*

*Relevant Employee: an employee of ICE Group having as a job responsibility operation or development of, or strategic decision-making with respect to, ICE exchanges or clearing houses active in respect of European utilities.*

9. Trayport will not use Commercially Sensitive Information for any purpose other than in connection with developing, supplying and supporting its software products.
10. No Relevant Employee will have access to any Commercially Sensitive Information.
11. Trayport and ICE will implement reasonable procedures to prevent Commercially Sensitive Information from being used or accessed by employees other than those having a legitimate need for such information in connection with the permitted uses detailed in para 9 including:
  - a. Trayport will include confidentiality obligations in its licences on substantially the same terms as currently.
  - b. Trayport will maintain confidentiality controls within its business at least as stringent as the ISO 27001 standard.
  - c. Trayport employees will be physically separated from Relevant Employees.
  - d. Effective firewall mechanisms will be put in place consisting of physical segregation of, and access controls to, Trayport IT systems.
  - e. Employees will be bound by a code of conduct requiring compliance with the confidentiality safeguards, with any breach giving rise to disciplinary sanctions.
12. Trayport and ICE will submit to the CMA a document setting forth in detail the procedures implemented to effect compliance.

## **C. Autonomous operation of Trayport**

*Trayport: software technology business supplying the Key Products pursuant to Obligation A*

13. Trayport will be a separate legal entity within the ICE Group and operate as a separate and distinct business with its own independent Board of Directors and senior management team.
14. The Trayport Board of Directors will comprise a majority of non-ICE affiliated, non-executive directors (“Independent Directors”) including an independent Chairman.
  - a. Subject to the CMA’s approval, ICE will appoint the original Independent Directors who shall be independent of ICE and have suitable expertise.
  - b. Thereafter, the replacement of Independent Directors will be determined by the Trayport Board not ICE.
  - c. Procedures will be put in place to limit the participation of the Directors representing ICE as appropriate in light of conflicts of interest or confidentiality requirements.

15. The Trayport Chief Operating Officer (“COO”) and senior management will be determined by the Trayport Board not ICE.
16. Trayport’s senior management will report to ICE’s data services business, subject to the confidentiality safeguards in Obligation B. There will be no management reporting lines, formal or otherwise, to ICE’s exchange or clearinghouse businesses.
17. The Trayport Board not ICE will determine the compensation of senior management.
18. The Trayport Board and senior management will have full operational and strategic discretion with respect to the licensing, improvement and support of the Key Products within high level Opex and Capex thresholds which will not interfere in the ordinary course operation of Trayport.
19. ICE’s exercise of its veto rights as Trayport’s parent will be limited to appropriate protections such as those minority shareholders that are typically specified in a shareholders’ agreement, which do not interfere in the ordinary course operation of Trayport, and which would not themselves give rise to decisive influence in the meaning of the EU Merger Control Regulation. For the avoidance of doubt, ICE will retain 100% ownership of Trayport.
20. Commercial arrangements between ICE and Trayport:
  - a. All commercial arrangements will be on an arms-length basis.
  - b. Neither ICE nor Trayport will tie the sale of any other products or services to the Key Products.
  - c. At ICE’s option, and consistent with obligations a. and b. above, there will be an agreement between ICE and Trayport with regard to the use and/or distribution by Trayport of ICE data products and services.
21. In consultation with a customer committee with a membership representative of Trayport’s customer base, the Trayport COO will produce an annual innovation plan in respect of the Key Products based on the resources stipulated in Obligation A.7 for approval by the Trayport Board.

**D. Monitoring/Enforcement**

22. A quarterly report will be prepared by the Trayport COO on dealings with Key Product customers using criteria set by the Trayport Board designed to ensure that the provisions of these commitments are adhered to. The Board will issue a compliance report annually as part of Trayport’s published Annual Report that Trayport has complied with these commitments.
23. A complaints procedure substantially similar to the procedures operated by regulated ICE affiliates IFEU and IBA will be put in place to hear disputes in connection with compliance with Trayport’s remedy obligations.
24. A binding arbitration dispute resolution mechanism will be put in place to resolve within a reasonable period any dispute which is not addressed via the complaints procedure.