

Response to remedies proposal put forward by ICE to remedy the provisional SLC identified by the CMA in the ICE/Trayport merger

We have reviewed the remedies proposed by ICE in relation to the above acquisition in light of the report published by the CMA including its notice of possible remedies.

As a first point, we do not see the benefit in potentially requiring the divestment of Trayport by ICE. While there are some potential future risks (as highlighted by the CMA in its report) we believe the best way of countering these is to facilitate the conditions for new entry to the market in which Trayport currently provides services. A requirement on ICE to divest Trayport will not, of itself, change the current competitive situation.

We continue to believe that the best way of facilitating competitive entry to this market would be to break open Trayport's closed API system. The CMA has expressed concerns about whether this remedy will facilitate the entry of a viable alternative provider to Trayport and whether entry would be sufficient, timely or certain in order to ameliorate the SLC or adverse effects identified by the CMA. Clearly, new market entry will take some time but there are no intrinsic reasons why viable competitive offerings cannot be brought to market in a reasonable timeframe. The barriers to entry are not prohibitive – the costs of developing a competing service are not expected to act as a restriction to potential market entrants. The technology required in providing a competing service does not pose any particular barriers. In the present circumstances – the existence of a closed API system - means it is not possible for other firms to efficiently and effectively enter the market with a competing service.

We believe the API should be opened for both Trayport's front-end access and back-end matching engine products. We do not think it is necessary to identify any upfront third parties who would be committed to the development of a viable alternative to Trayport's service offering. Potential service providers are likely to see an opportunity for efficient market access once the API system is opened up.

We do not believe there are material direct costs to ICE/Trayport or other parties of implementing an open API system. We do not envisage there would be unintended consequences or distortions from implementing an open API as long as the point below is taken into account in the design of the final package of remedies.

In the intervening period before competition becomes effective it is necessary to ensure the risks identified by the CMA do not manifest. As such, we welcome the remedies proposed by ICE as a good starting point to ensuring effective arrangements are in place. They need to be reviewed carefully to ensure they deliver sufficient protection against the concerns identified by the CMA. For example, there is a clear need for sustained investment and development in the suite of products and services provided by Trayport – both for trading firms and trading venues. We do not consider that maintaining the status quo is sufficient in this respect. Arguably, product and service development by Trayport over recent years has not been sufficient and locking this in through the proposed remedies would not be appropriate. As such, the commitment to future product and service development must be more ambitious.

In addition, if the API system is not opened up (to facilitate competitive entry) the CMA should consider some form of restriction on the charges Trayport can levy on its customers. Trayport's existing position in the market arguably allows it to currently extract rent from its customers that is not consistent with what could be expected in a competitive market.

There will also need to be effective policing, by the CMA, of the commitments proposed by ICE. If the API system is opened up, and as competition develops, we expect the CMA to review the remedies to ensure that all parties in this market can compete on a level playing field.