

VERBUND Trading GmbH, Am Hof 6a, 1010 Vienna, Austria

Competition & Markets Authority
Project Manager ICE Trayport merger
Victoria House
Southampton Row
London WC1B 4AD

Per e-mail:

Vienna, 22.9.2016

ICE-Trayport merger

Dear Sir or Madam,

VERBUND is Austria's leading electricity company and one of the largest producers of electricity from hydropower in Europe. VERBUND Trading GmbH is the trading subsidiary of the VERBUND group and actively trading in the European market over various market places.

We would like to take the opportunity to submit our serious concerns relating to the acquisition of Trayport by the Intercontinental Exchange, Inc. (ICE) in the following areas:

- Foreclosure of market access

Due to its contractual set-up, Trayport has de facto established a monopoly of accessing the OTC markets. In order to retain unlimited access to the OTC-market, a neutral and independent service provider to guarantee equitable and undiscriminating access for trading companies is required.

Whereas neutrality has been ensured by Trayport so far, VERBUND is very concerned that the acquisition will not offer the same degree of neutrality, in particular if ICE integrates Trayport. The Trayport back-end system guaranteed that the data were operated in a neutral way and not being freely disseminated toward other systems. The integration of the existing Trayport back-end service into the back-end system of ICE (WebICE) might gradually phase out the service offered by Trayport and replace it by WebICE services which might be freely available for all companies of the ICE group.

VERBUND underlines the need for:

- keeping Trayport as a separate and independent provider for access services to the OTC and exchange markets;
- guaranteeing an independent management of Trayport as provider of access and connectivity services.

- **Foreclosure for reporting services**

Electronic reporting as required by EMIR¹ and REMIT² is a very important service for the energy trading community. REMIT applies to all orders and transactions recorded by exchanges and OTC brokers.

ICE has been promoting their own reporting service to the detriment of independent solutions in the past. Trayport equally is offering their bespoke reporting service to market participants. In particular, VERBUND has made the experience that ICE has systematically refused to allow ICE-clients to use any reporting service other than the one offered by ICE. When VERBUND requested access to the reported data for its own monitoring, ICE would only offer such access for a charge.

The acquisition leads to a more than 25% increase in market share, if the Trayport reporting solution will no longer be offered to the market due to the implementation of the Trayport reporting services into those of ICE.

VERBUND underlines the need to offer alternative reporting services and prevent market foreclosure for reporting which is expected by implementing the acquisition by requesting ICE to

- pro-actively co-operate with alternative reporting service providers;
- allow any ICE customer to use alternative reporting services for transactions executed on ICE platforms;
- offer any ICE customer free access to its reported data and unrestricted download of these data;
- keep the Trayport reporting service as separate and neutral reporting services for market participants as reporting venue of their choice.

- **Foreclosure of data services**

The acquisition enables ICE to gain a complete overview of the traded OTC and exchange market. Due to the access to Trayport data combined with the significance of data processed through Trayport, ICE would gain a significant degree of market intelligence, compared to any other exchange, broker or any other market participant. ICE would de facto gain a complete

¹ Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, also European Market Infrastructure Regulation.

² Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency.

market overview over the OTC business, and this position can enable the foreclosure of data service providers.

The acquisition would lead to a “de facto” monopoly on OTC data at ICE, this would significantly increase ICE’s possibilities to offer data services. The acquisition signifies a substantial rise in market share for these services. The increase would be substantially higher than the 25% increase required by UK regulation.

VERBUND underlines the need to prevent market foreclosure expected for data services by requiring ICE to

- ring-fence the operation of Trayport in a way to prevent the automatic exchange of data processed through Trayport with any other ICE-data processing;
- keep the Trayport data processing service as separate and neutral for market participants.

- **Foreclosure of clearing services**

Trading companies such as VERBUND have benefited significantly from the competition between brokers, exchanges and clearing houses in providing access to trading and clearing services for energy traders, in order to have an efficient and cost-effective clearing.

VERBUND wishes to retain a free choice of execution venue and a choice of clearing services. Experience with ICE has shown that transactions executed over any of the ICE platform automatically have been made subject to clearing via ICE’s clearing house ICE-CLEAR. If Trayport was integrated into ICE and lost its independence, the acquisition would have a significant foreclosure effect on clearing of a number of pan-European gas and power products.

The increase in clearing would substantially increase ICE’s position in the clearing market well above the 25% required by UK regulation.

VERBUND underlines the need for:

- guaranteeing that freedom of the clearing venue is retained for any transaction arranged over Trayport;
- providing for protection of existing clearing preferences by market participants;
- guaranteeing that ICE-CLEAR will not be automatically imposed on OTC market participants.

We remain at your disposal for any question or additional information you may have in relation to this letter.

Yours faithfully,

VERBUND Trading GmbH