

## **COMPLETED ACQUISITION BY INTERCONTINENTAL EXCHANGE, INC. OF TRAYPORT, INC. AND GFI TP LTD**

### **Notice of making the Final Order pursuant to section 84 of and Schedule 10 to the Enterprise Act 2002**

1. On 3 May 2016, the Competition and Markets Authority (CMA), exercising its powers under section 22 of the Enterprise Act 2002 (the Act) referred the completed acquisition by Intercontinental Exchange, Inc. of Trayport, Inc. and GFI TP Ltd., including their subsidiaries, (the Merger) for further investigation and report by a group of CMA panel members.
2. On 11 January 2016, the CMA issued an Initial Enforcement Order to Intercontinental Exchange, Inc. (ICE) in respect of the Merger pursuant to section 72 of the Act to prevent further integration of Trayport, and to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decision on the reference.
3. The CMA issued directions to ICE under the Initial Enforcement Order:
  - (a) on 18 May 2016 to appoint a monitoring trustee; and
  - (b) on 10 November 2016 that ICE and Trayport must suspend the implementation of certain agreements, as subsequently defined in a variation to the directions on 28 November 2016.
4. The CMA published *Intercontinental Exchange and Trayport: A report on the completed acquisition by Intercontinental Exchange, Inc. of Trayport* (the Report) on 17 October 2016 under [section 38](#) of the Act. In the Report, the CMA concluded, in accordance with [section 35](#) of the Act, that:
  - (a) a relevant merger situation has been created as a result of the Merger;
  - (b) the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (SLC) within the market for the supply of trade execution services to energy traders and trade clearing services to energy traders in the EEA, including to UK based customers;

- (c) the CMA should take action for the purpose of remedying, mitigating or preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC; and
  - (d) the full divestiture of Trayport by ICE would be an effective and proportionate remedy to the SLC and any adverse effects which have resulted from, or may be expected to result from, the SLC.
5. ICE made an application to the Competition Appeal Tribunal pursuant to section 120 of the Act against the Report on 11 November 2016 and on 17 November ICE made an application to the Competition Appeal Tribunal pursuant to section 120 of the Act against the direction issued by the CMA on 10 November 2016. The Final Order, while commencing on the day it is made, is drafted such that the time period to comply with both the Effective Divestiture and termination of the New Agreements will not start to run until the day following the date on which proceedings in the Competition Appeal Tribunal are finally determined.
  6. On 30 November 2016, in accordance with [section 90](#) of, and paragraph 2(1)(a) of [Schedule 10](#) to, the Act, the CMA published a notice and consultation on the proposed Final Order to remedy, mitigate or prevent the SLC and any resulting customer detriment, as specified in the Report, and invited written representations from any interested person or persons by 30 December 2016.
  7. The CMA received three responses to its notice of 30 November 2016 and has considered carefully all representations it has received. In light of those representations the CMA has made some modifications to the proposed Final Order it consulted on. The CMA considers that the modifications are not material in any respect and has decided, in accordance with paragraph 5 of Schedule 10 to the Act, that the Final Order, as modified, does not require any further consultation.
  8. The CMA now gives notice of the making of its Final Order, 'Intercontinental Exchange, Inc. and Trayport Merger Inquiry Order 2017'. The Order is made in accordance with section 41 and in exercise of the powers conferred by sections 84, 86 and 87 of and Schedule 8 to the Act. It is made for the purpose of remedying the SLC and any adverse effects resulting from it, as specified in the Report.
  9. The Final Order will come into force on 5 January 2017.
  10. The Final Order may be varied or revoked by the CMA under section 84(3) of the Act.

11. This Notice and a non-confidential version of the Final Order will be published on the CMA website, alongside an Explanatory Note which provides an explanation of how the Final Order is expected to operate. The CMA has excluded from the non-confidential version of the Final Order information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

*(Signed)* SIMON POLITO

*Group Chair*

5 January 2017