

Project Manager  
ICE/Trayport Remittal Inquiry  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London WC1B 4AD  
By email  
20 April 2017

Dear Sir/Madam

### **RWE Supply & Trading Views on the New Agreement Remittal**

The Competition Appeal Tribunal (CAT), in its judgement of 6 March 2017, remitted to the CMA the question of whether Intercontinental Exchange should be required to unwind the agreement entered into between Trayport and ICE post-merger. This letter sets out RWE Supply & Trading's (RWEST's) views on the matter.

RWEST is not in a position to judge whether the New Agreement was concluded on an arm's length basis or whether the terms of the New Agreement could undermine competition both before and after Trayport's divestment. However, an agreement between ICE and Trayport which allowed a greater number of ICE products to be displayed on Joule/Trading Gateway could offer several advantages to market participants in facilitating the aggregation of market liquidity, increasing competition between platforms and streamlining connectivity to ICE products.

RWEST would therefore support the implementation (non-termination) of the New Agreement provided that the CMA can assure itself that the New Agreement operates at arm's length and that it does not confer any material advantage on ICE when compared to other venue customers in the period leading up to divestment.

If the CMA allows the New Agreement to be implemented, the CMA should also ensure that its presence does not prevent the effective divestment of Trayport or influence the choice of purchaser. This can be achieved by ensuring that the New Agreement provides the new owner with the unconditional right to terminate the agreement upon completion of their acquisition. The CMA would also need to ensure that ICE's sale process and the selection of a purchaser showed no preference to any party on the grounds that they would agree to or were more likely to maintain the New Agreement.

These conditions should be sufficient to ensure that ICE receives no undue advantage from the New Agreement and that Trayport's new owners have the opportunity to renegotiate their relationship with ICE if they find the terms of the New Agreement unsatisfactory.

Kind regards,

Paul Dawson  
Head of Regulatory Affairs, RWE Supply & Trading GmbH