

## **REMITTAL RELATING TO THE COMPLETED ACQUISITION BY INTERCONTINENTAL EXCHANGE, INC. OF TRAYPORT LIMITED**

### **Notice of provisional findings on remittal**

1. On 17 October 2016, the Competition and Markets Authority (CMA) published a report on the completed acquisition by Intercontinental Exchange, Inc. (ICE) of Trayport, Inc. and GFI TP Ltd., including their subsidiaries (together referred to as Trayport) (the Report).<sup>1</sup> A group of CMA panel members found that the transaction constituted a relevant merger situation, and concluded that it may be expected to result in a substantial lessening of competition (SLC) in the supply of trade execution services to energy traders and trade clearing services to energy traders in the European Economic Area, including to UK-based customers. ICE and Trayport are together referred to as the Parties.
2. The CMA's reasons for finding an SLC are set out in full in the Report.
3. The Report concluded that the acquisition had resulted, or may be expected to result, in an SLC in two markets, and that the only effective remedy would be the total divestiture of Trayport by ICE, which would include unwinding an agreement entered into by the Parties on 11 May 2016 and defined as the 'New Agreement' in paragraph 6.11 of the Report (the New Agreement).
4. On 11 November 2017, ICE made an application to the Competition Appeal Tribunal (CAT) pursuant to section 120 of the Enterprise Act 2002 (the Act) against the Report. On 17 November ICE made a further application to the CAT pursuant to section 120 of the Act against written directions which had been issued under the initial enforcement order requiring ICE and Trayport to cease and suspend the implementation of the New Agreement.
5. On 6 March 2017, the CAT handed down its judgment setting out its conclusion on each of the grounds of review.<sup>2</sup> The CAT found in favour of the CMA on four out of five of the grounds of appeal against the Report. However, the question of whether the Parties should be required to terminate the New

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<sup>1</sup> [A report on the completed acquisition by Intercontinental Exchange, Inc. of Trayport](#), dated 17 October 2016 (the Report)

<sup>2</sup> [Intercontinental Exchange, Inc. v Competition and Markets Authority and Nasdaq Stockholm AB \[2017\] CAT 6 \(the Judgment \[2017\] CAT 6\)](#).

Agreement (the New Agreement question) was remitted to the CMA for reconsideration.

### **Provisional findings**

6. On 10 March 2017 the CMA appointed a group of CMA panel members (the remittal group)<sup>3</sup> to consider this remittal.
7. The remittal group has provisionally decided that it is necessary for the Parties to terminate the New Agreement in order to ensure the effective remediation of the SLC identified in the Report. The remittal group's reasons are set out in full in the provisional findings report.
8. Anyone wishing to comment on the provisional findings is now invited to provide the remittal group with their reasons in writing as to why these provisional findings should not become final (or, as the case may be, should be varied).
9. These reasons should be received by the Project Manager on behalf of the remittal group no later than **5pm on Wednesday 10 May 2017**.
10. The remittal group will have regard to any such reasons in making its final decisions on the statutory questions and actions.

SIMON POLITO

*Group Chair*

25 April 2017

*Note:* A copy of this notice and the provisional findings report will be placed on the [CMA webpages](#) on 25 April 2017. The published version of the provisional findings report will not contain any information which the remittal group considers should be excluded from the report, having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

Comments should be made by email to [ice.trayport@cma.gsi.gov.uk](mailto:ice.trayport@cma.gsi.gov.uk) or in writing to:

Project Manager  
ICE/Trayport remittal  
Competition and Markets Authority  
Victoria House  
Southampton Row  
LONDON WC1B 4AD

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<sup>3</sup> See [CMA case page](#).