SHEARMAN & STERLING LLP

ICE/Trayport
Response to CMA's Provisional Findings on the Remittal Question

9 May 2017

NON-CONFIDENTIAL

Contents

Annexes

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Part A
Summary of the Parties' core propositions

Core proposition I: The New Agreement represents an excellent deal for Trayport – and end users

- The terms of the New Agreement (NA) are fair and consistent in comparison with Trayport's other venue customer agreements – as Trayport has maintained from the outset.
  - Kevin Heffron's witness statement para 16: "*ICE's terms are not preferential compared to other venue customers/ICE's competitors, as will have been evident to the CMA from its review of our venue/clearinghouse contracts.*"
- The NA contains nothing which confers a material advantage on ICE or restricts Trayport's ability to operate/develop its business and deal effectively with third parties (including ICE's competitors).
- Given Trayport's core aggregation function and the importance of ICE as a venue for trading EU utilities, the NA strengthens Trayport business – a position supported by evidence from Trayport and the CMA's own findings.
  - KH w/s para 6: "*We wanted to generate revenue and increase the number of markets aggregated on Trayport, which would make us more attractive to customers as a venue neutral aggregator.*"
  - Final Report para 7.117: "*Traders were consistent in citing aggregation and access to multiple venues as the key strength of the Trayport platform.*"
- Trayport benefits from ICE's acceptance of its normal commercial terms, i.e. with regard to payment of fees to Trayport and a certain length of commitment, and acceptance of Trayport as an important distribution channel.
- All of the end users (traders) who submitted evidence during the remittal which has been published by the CMA have stated that they benefit from enhanced distribution of ICE products and services.

Core proposition II: ICE is confident that a new owner of Trayport will want the NA to be implemented

- ICE is willing to engage with a prospective buyer of Trayport that approaches ICE with a view to reaching an agreement on the terms of ICE's enhanced connectivity to Trayport.
- ICE is happy to implement the NA as it is now and as part of the divestiture process, or to negotiate a 'new New Agreement' (should the buyer so choose).
- ICE is confident that any buyer of Trayport will want the agreement because it is good for both Trayport and its customers.
- To be clear, ICE's position is not driven by any concern that it would not be able to achieve the same or similar terms with a new owner of Trayport.
- To the contrary, ICE is motivated to defend the NA against the CMA's proposed termination order because, given the importance of the NA to its customers, ICE would like to implement it as soon as possible, rather than several months later and after the divestiture has completed.
- The only parties who benefit from the NA not being implemented as soon as possible are ICE's venue rivals.

Core proposition III: CMA's analysis is overly focused on the context in which the NA was entered into; and fails to analyse the NA itself

- PFs analysis has overly focused on the context in which the NA was entered into – and in particular whether it was concluded on an arm's-length basis – rather than the actual provisions and effect of the NA (which are more pertinent to the remittal question).
- PFs analysis of the arm's-length question is ultimately inconclusive – to be expected given the approach taken.
- CMA could and should have carried out an analysis of the NA – both on its terms and in comparison to Trayport's other key venue customer agreements.
  - All the materials needed to carry out such an assessment (including all of Trayport's venue customer contracts) have been available to the CMA, but it has chosen not to.
  - Contrast other recent merger reviews and market investigations where CMA carried out a contract analysis : Iron Mountain/Recall, Private Healthcare; Aggregates.
- Had the CMA done so, it would have been able to determine for itself whether the NA is in line with Trayport's other key venue customer contracts and whether it contains anything which confers a material advantage on ICE or restricts Trayport's ability to operate/develop its business and deal with third parties (including ICE's competitors).
- This analysis would have informed, and should be part of, an assessment of whether the existence of the NA could impact an effective divestiture process – and indeed whether its termination could have the same impact.

Core proposition IV: Analysis of the NA would have shown that it can be benchmarked; and that it is in line with other venue customer agreements

- ICE has commissioned an independent report by PwC which analyses the NA and compares it with Trayport's agreement with other key exchange/CCP customers.
  - See Annex 1.
- The PwC report shows that:
  1) It is feasible to carry out such an analysis (as is evident from sections 2 and 3).
  2) It is reasonable to conclude that the "*the terms of the New Agreement would not have been materially different had it been entered into by the Parties absent the merger*" (see sections 1.6 and 4.2 to 4.4).
     - "*both the contractual terms and the level of fees … are comparable with*" those offered to other key venue customers.
     - There is no exclusivity in favour of ICE.
     - [confidential]
     - There are no "*restrictions on Trayport's ability to operate/develop its business and deal effectively with third parties (including ICE's competitors) and/or provisions that confer a material advantage on ICE*".
  3) The NA will not impact an effective divestiture process (see sections 1.6 and 4.5 to 4.15).
     - Given Trayport's core aggregation function and the importance of ICE as a venue for trading EU utilities, the existence of the NA "*would be likely to contribute to a successful sale*" – and vice versa.

Core proposition V: Logical consequence of the counterfactual finding is that termination of the NA would itself impact an effective divestiture process

- As a logical consequence of the CMA's own finding on the counterfactual, i.e. that the NA is merger-specific, termination raises the prospect that the Parties could return to their prior position of limited cooperation.
  - Final Report para 6.29: "*We are of the view that while it is possible ICE and Trayport would have successfully entered into the New Agreement absent the Merger this is* ***not sufficiently certain in order to be included as part of the most likely counterfactual, particularly, in light of*** *there being no draft agreement, including no final agreement on the scope of ICE products to be listed on Trayport, and* ***the Parties' previous reluctance to cooperate*** *(the evidence available in the Parties' internal documents demonstrates strategic reasons for their lack of cooperation…*" (emphasis added)
- Buyer perception of the NA will be informed by the CMA's own analysis of the counterfactual.
  - The CMA cannot simply rely (e.g. at para 6.13 of the PFs) on submissions that it will be signed up by a new owner.
- The impact that termination would have on the Trayport business therefore amounts to more than merely lost revenues: it means that there is (according to the CMA's logic) no basis to assume that the NA will be successfully renegotiated.
- The CMA must therefore weigh the concrete risk of harm to an effective divestiture process against the more speculative assertions set out in the PFs that buyers will be deterred by the existence of the NA.

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Part B
Risks to an effective divestiture process

Risks to an effective divestiture process (I)

- PFs unnecessarily rely on speculation from commercially-motivated third parties as to the NA's actual provisions.
  - The fact that a number of third parties (in the main, ICE's venue rivals) "*perceive*" that the NA was not concluded on an arm's-length basis is not evidence that prospective buyers would not participate in a divestiture process.
- PFs approach does not reflect how M&A processes are actually run: it is not credible to suggest that a prospective buyer wouldn't participate simply because the NA exists.
  - PFs themselves acknowledge this is "*low likelihood*".
  - Indeed ICE's experience is the opposite – there is a great deal of interest in acquiring Trayport, and the CMA's Final Report (and CAT Judgment) have highlighted the existence of the NA.
- The PwC report (sections 4.5 to 4.13) confirms that potential concerns are easily addressed during the process.
  - Prospective buyers know they can expect to be given access to the NA at the appropriate time.
  - Buyers will also be able to perform due diligence (which may include an independently prepared Vendor Due Diligence report) and verify that the NA contains nothing problematic and/or which cannot be dealt with via an adjustment to the purchase price.
    - Supported by CAT Judgment: "*the incidence and scale of the any disadvantage to the new owner of Trayport will only be known once that owner has been identified and fully established the impact of the New Agreement*" (para 204).
- The only credible issue to address is whether the price and other key commercial terms are in line with those of other key venue customers – and the PwC report concludes that [confidential] (section 3.31).
- So there is no risk to an effective divestiture process. Ultimately, at most this is a price adjustment issue.

Risks to an effective divestiture process (II)

- If anything, terminating the NA could have a detrimental impact on the divestiture process.
- In principle, prospective buyers should want ICE to be part of the Trayport aggregation model as a normal paying venue customer.
- CMA has acknowledged that Trayport's long-term goal was for ICE to be within its aggregation model (Final Report para 6.24).
- Trayport is on the record that the NA is undoubtedly beneficial for its business and had been a long-term goal.
  - KH w/s para 13, 16-17: "*This contract was something that Trayport had been trying to achieve for many years… I believe this contract is a good deal for Trayport […] The new commercial arrangement is undoubtedly beneficial to Trayport as a standalone business.*"
- As a logical consequence of the CMA's own finding on the counterfactual, i.e. that the NA is merger-specific, termination raises the prospect that the Parties could return to their prior position of limited cooperation.
  - Buyer perception of the NA will be informed by the CMA's analysis of the counterfactual (Final Report para 6.29).
  - The CMA cannot simply rely (e.g. at para 6.13 of the PFs) on submissions that it will be signed up by a new owner.
- The impact that termination would have on the Trayport business therefore amounts to more than merely lost revenues: it means that there is (as a logical consequence of the CMA's findings) no basis to assume that the NA will be successfully renegotiated. The CMA must therefore weigh the concrete risk of harm to an effective divestiture against the more speculative assertions set out in the PFs that buyers will be deterred by the existence of the NA.

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Part C
Residual or legacy effects of ICE's acquisition of Trayport

Residual or legacy effects of ICE's acquisition of Trayport

- PFs identify three non-issues with respect to the "*residual or legacy effects*" of ICE's acquisition of Trayport, each of which can be discounted.
- The NA does not, by virtue of its duration, restrict Trayport's commercial freedom.
  - The PwC report concludes (section 2.8) that the NA's duration is "*not out of line with*" Trayport's agreements with other venue customers.
  - [confidential]
- As has been shown, there is no exclusivity in favour of ICE, [confidential] nor any other term which confers a material advantage on ICE (PwC report, sections 4.2 to 4.4).
- The CMA, having made clear that it would have no objection to new owner accepting the terms of the NA (see Final Report para 12.72; PFs, para 6.13), now speculates that there is a risk that Trayport will, as a result of the NA, be less incentivised to deal with ICE's rivals.
  - The PFs also refer to "*adverse effects resulting from the New Agreement*" (e.g. para 20 of summary and para 7.5) not just "*from the SLC*".
- This aspect of the inquiry goes beyond the scope of the remittal question and should be discounted.

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Part D
Cost of remedies and proportionality

Costs of remedies and proportionality

- As well being beneficial to Trayport, the NA is clearly also beneficial to ICE (and its customers).
  - Gordon Bennett's witness statement para 19: "*this agreement is beneficial to ICE by enabling additional ICE products and services to be available to customers, particularly those using OTC venues, through an alternative route.*"
- Evidence from end users (traders) who submitted comments during the remittal shows support for the commercial relationship being implemented by NA – and for this benefit to come without further delay (rather than after a divestiture process has completed).
  - Trading Company C: "*the greater the degree of aggregation offered through a service such as Trayport, the greater the potential benefits for liquidity and efficiency of trading*".
  - Trading Company B: "*from a business perspective, we would welcome if ICE was marketing its products directly on Trayport's trading platform: As a producer we rely on liquid markets for hedging purposes, but also need to manage our cost base*."
  - Trading Company 1: "*the CMA should permit it* [to] *be implemented, particularly as any divestment of Trayport could take time to implement.*"
  - RWEST: "*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 marker participants in facilitating the aggregation of market liquidity, increasing competition between platforms and streamlining connectivity to ICE products.*"

Delayed implementation of NA continues to cause distorted market outcomes – allowing EEX in particular to gain increasing traction (and share)

- CMA wrongly discounts the detrimental impact already being felt by the Parties and end users as a result of continued delay to the implementation of the NA.
- Continued delay to the NA's implementation reduces ICE's ability to compete on an equal footing with other trading venues / clearing houses in Europe (particularly exchanges – who are ICE's closest competitors, as Final Report confirms, e.g. para 7.85).
  - GB w/s para 21: "*the effect of this is to disadvantage ICE in favour of key competitors including CME, EEX and Powernext all of whom offer comparable products and services through Trayport*."
  - See Annex 2 for reports of [confidential]. ICE notes that EEX/ECC/EPEX headline fees are significantly higher than ICE's and that EEX converts around 90% of its fees for power derivatives to revenue (see Annex 3).
- It hampers ICE in its ability to launch new products and services (specific examples highlighted in Annex 4).
- It also means that customers are losing out: several trading participants and brokers have indicated to ICE that all (new) products for the IFEU and ICE Endex European utilities markets should be made available on TGW.
  - Including financially settled electricity futures, UK OCM gas spot contracts, Italian PSV gas futures and globalCoal Richards Bay coal futures.
- All of the above may in turn have a negative impact on the competitive landscape for wholesale markets for EU gas and power.

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Part E
Circumstances in which the New Agreement was entered into

Circumstances in which the NA was entered into

- Analysis in the PFs has overly focused on the context in which the NA was entered into, and in particular whether it was "*concluded on arm's-length terms*", rather than its actual provisions and effect.
- CMA claims that the answer to this question could be "*informative*" and "*has an impact on our assessment of the risks that the New Agreement poses to the effectiveness of the divestiture remedy*" (PFs, para 3.1).
- In fact, the CAT Judgment simply says that it is "***more likely** that remedial measures will be appropriate in respect of an agreement that is not on an arm's-length basis but such measures must still be explicitly justified by reference to the remediation, directly or indirectly, of the SLC*" (para 201) (emphasis added).
- The PFs analysis of the arm's-length issue is not robust for two main reasons:

1. It overly relies on speculative 'evidence' from commercially-motivated third parties (ICE's venue competitors) who "*perceive*" that the NA may not be arm's-length and may be anticompetitive. This is not relevant evidence for the purposes of the CMA's assessment and should be discounted. Furthermore, this reliance is unnecessary given the CMA's ability to conduct its own analysis.
2. It purports to identify "*a number of bespoke terms*" which allegedly make it "*impossible to judge*" whether the NA was "*concluded on an arm's-length basis*", leading to confused and inconclusive findings. By contrast, the PwC report demonstrates not only that it is feasible to analyse the NA but also to reach a reasonable conclusion that "*the terms of the New Agreement would not have been materially different had it been entered into by the Parties absent the merger*" (PwC report, section 1.6(a)).

"Arm's-length": third party evidence (I)

- The Parties invited the CMA to ask third parties to confirm what type of contractual provisions would be of concern to them, because the CMA indicated that it was unwilling to carry out its own assessment of the NA.
- The suggestion was intended to generate probative evidence from real-world market participants of the types of provisions which (if they were contained in the NA) would be of concern to those third parties, taking into account their individual business models – which the CMA could then check to see if they are contained in the NA or not. This would have been a reliable indicator / cross-check of the lack of real concerns.
- The CMA did not proactively elicit evidence of this nature, and accordingly much of the third party evidence is speculative and uninformed – and often driven by commercial self-interest on the part of ICE's venue rivals.
  - E.g. ICAP's comments are driven by a desired outcome whereby ICE markets are not available on Trayport as that would favour ICAP's trade execution service for EU utilities ("*should ICE succeed in capturing market share for execution on its platform, this would be at the cost of broker venues*"). Head-to-head competition between ICE and brokers, including ICAP, was acknowledged at para 7.88 of the Final Report.
- This said, it is noteworthy that, to the limited extent third parties have identified specific types of provisions of concern, <u>the NA contains none of these provisions</u>, as the PwC report confirms (see next slide).
- In fact, a significant proportion of the third party comments show that there is trader support for the NA to be implemented, in some cases qualified by <u>the CMA being able to satisfy itself that the NA is arm's-length</u>. Given that the PwC report confirms that it <u>is</u> reasonable to reach such a conclusion, the CMA should place more weight on this evidence rather than the negative views expressed by ICE's venue rivals.

"Arm's-length": third party evidence (II)

- ICAP refers to "*duration, termination provisions and pricing*". Exchange 1 refers to "*content and duration*".

➔PwC conclude that "*both the contractual terms and the level of fees in the New Agreement are comparable with*" other key venue customers' agreements with Trayport (section 1.6) .

- Party X identifies four features which it would find potentially problematic:
  - Ratings positions favouring ICE's markets.
  - Types of permitted IT collaboration.
  - Restrictions on Trayport's ability to distribute data.
  - Technical policies/requirements or the need to enter into other ICE documents.

➔ PwC conclude that ICE products are not given any material advantage; the technology elements are similar to those of other venues' agreements; the NA does not provide for the transfer of data rights to Trayport; and there is no reference to technical policies nor does it require additional agreements to be entered into provided that historic arrangements remain in place (section 4.3).

- Trading Company B refers to "*exclusivity that could prevent other platforms from entering and competing*".

➔ PwC conclude that the NA "*does not contain any exclusivity requirements*" (section 4.2) nor any othe*r restrictions on* "*Trayport's ability to operate and develop its business and deal effectively with third parties*" (section 1.6(c)).

"Bespoke" vs "arm's-length"

- PFs analysis suggests that if a contract contains "*a number of bilaterally negotiated terms*" (para 3.13) it is "*impossible to judge*" (para 3.17(b)) whether it was concluded on an arm's-length basis.
- Fundamentally, the fact that certain contractual terms may be negotiated individually with each customer does not make it impossible to reach a finding that an agreement was concluded on an arm's-length basis.
  - As noted, the PwC report demonstrates that it is possible not only to carry out the relevant analysis but also reach a conclusion that the NA was concluded on an arm's-length basis.
- The PFs then identify four specific aspects of the NA that third parties may find "*problematic*". These points do not withstand scrutiny and are addressed in the following slides.
- This is against the backdrop that the CMA's Final Report confirmed (at para 12.72) that CMA would be happy for a new owner to sign up to <u>exactly the same terms</u>.
- In reality, the CMA is basing its finding on a presumption that an agreement between parent and subsidiary cannot be at arm's-length, effectively ignoring detailed rebuttal evidence presented by the Parties.
- The PFs assessment of the arm's-length issue should therefore not have any bearing on the assessment of risks that the NA poses to effectiveness of the divestiture remedy.

Price

- No venue pays exactly the same price for the Trayport services that it takes.
- However, the fact that there isn't a 'one-size fits all' price does not mean that the NA can't be at arm's-length.
- A contract can have elements which are negotiated bilaterally with each customer and still be entered into on an arm's-length basis – in principle, this can apply equally to agreements between parent and subsidiary.
- The truth of this proposition can be easily verified: if Trayport's agreements with non-ICE venue customers also differ between themselves as to the price paid for the relevant Trayport services (as they do), then on the CMA's logic those agreements are also non-arm's-length – which cannot be the case.
- Accordingly, it follows that the fact that the price ICE pays for the Trayport services it takes under the NA is not identical to prices paid by other venue customers for the same services does not indicate that the NA was not concluded on an arm's-length basis.
- In fact, the PwC report confirms that it <u>is</u> reasonable to conclude that the terms of the NA (including as to the price paid by ICE for the Trayport services) "*would not have been materially different had it been entered into by the Parties absent the merger*" (PwC report, section 1.6).

Product scope (I)

- PFs represent data from Trayport regarding venue/contract availability in a way that portrays the NA as an 'outlier' compared to Trayport's agreements with other venue customers.
- However, as will have been evident from the data provided to the CMA, in some cases the contract scope is broader than the actual connectivity used by the venue in terms of the products which are made available for trading/clearing via Trayport.
- The specified product scope in the contract is mutually agreed between Trayport and the venue based on commercial and operation requirements at the time, and in general is normally driven by:
  - Limitations by Trayport [confidential].
  - Limitations by the venue [confidential].
    - [confidential] (see slide 25).
- Importantly, the contract does not <u>oblige</u> venues to make the specified contracts/products available. The venue is still in full control about what products are made available to view in Trayport and can then choose down to a specific firm or user what products customers can trade via Trayport.

Product scope (II)

- It has been demonstrated that product scope varies according to: 1) the scope of each venue's agreement with Trayport; and 2) which products each venue chooses to make available on Trayport.
- There is no 'standard' product coverage, as is evident from Trayport's market matrix (see Annex 5) showing products that are made available by its venue customers.
- It follows that the absence of an exact match in terms of product scope does not mean the NA is not arm's-length.
- Notably, there is significant overlap in product and service scope between ICE and the EEX group, with the same service offering [confidential] in terms of products made available on Trayport (see Annex 6).
- Under the NA, [confidential] products available would have an identical overlap where ICE and EEX either both or neither utilise the Trayport service ([confidential]% correlation). Of the [confidential] where there are differences:
  - [confidential] ICE does not list the corresponding contract.
  - [confidential] EEX does not list the corresponding contract.
  - [confidential].
  - The remaining contract set is [confidential] where EEX lists a contract but does not utilise any Trayport services.
  - Removing the [confidential] contracts where one party does not list a product means the correlation increases to [confidential] products ([confidential]%).
- Under the NA, ICE would not utilise a service which the EEX group does not also utilise and therefore there are no material differences in the services taken, i.e. ICE would still use Trayport's 'Additional Venues' service (i.e. bespoke connectivity) and add Trayport's 'Clearing Houses' offering – used by EPEX Spot and ECC respectively.

Product scope (III): oil

- Historically, there has not been significant customer demand for oil trading on Trayport.
  - Trayport is predominantly used for trading EU utilities – gas, power, emissions and coal.
  - Trayport is not particularly relevant for oil trading – as the Parties have explained to the CMA on multiple occasions (see Annex 7).
  - Oil consists of many different contracts and a sub-set of broker venues (mostly niche "light end" players) have requested the deployment of their pricing (in LPG/naphtha) through Trayport in a niche platform offering. This is the only oil segment where Trayport currently offers trading connectivity.
  - Whilst Trayport does explore growth opportunities in oil, no venue (exchange or broker) currently distributes pricing through Trayport in crude oil (WTI or Brent), the most liquid light end (gasoline), middle distillates (gasoil/jet fuel) or heavy (fuel oil) – which together account for the majority of tradable oil contracts.
  - The only CME and Nasdaq* oil products on Trayport are cleared contracts available via straight-through processing.
- The implications of this factual misunderstanding for the CMA's remittal inquiry is that <u>nothing untoward should be read into the exclusion of oil from the product scope of the NA</u>.
  - The fact that oil is outside the contractual scope of the NA is not evidence that it was concluded on a non-arm's-length basis, nor is it evidence that the NA is an 'outlier' compared to Trayport's other venue customer agreements: the Parties agreed pre-merger that it was outside the scope.
  - Oil's exclusion from the NA does not confer any particular advantage on ICE. In fact, PwC conclude that "*if anything the New Agreement is in fact advantageous to Trayport*" (1.6(b)).

*[confidential]

Method of data dissemination

- PFs present the method of data dissemination provided for in the NA as another purported example of how the NA is an ‘outlier’ compared to Trayport’s other venue customer agreements.
- In fact, the NA reflects the Parties’ agreement at the time to continue using the existing method of data dissemination, subject to planned upgrades/replacement solutions in the future.
- ICE market data has historically been disseminated to users via [confidential].
- Trayport was happy to enter into the NA on the basis that [confidential] would be used from the outset.
  - [confidential] (Email from Nick Langford to Gordon Bennett, 7 May 2015).
- Trayport is currently rolling out a change to the way it disseminates its venue customers' market data to a ‘multi-casting’ basis. This is part of its implementation of a Software as a Service (Saas) upgrade to its TGW front-end trading solution, named Joule Direct.
- Whilst the NA does not of itself provide for multi-casting, it envisages a possibility that multi-casting could be used in future (see [confidential], acknowledged in PFs, footnote 43), as was contemplated during the negotiations:
  - [confidential] (Email from Nick Langford to Gordon Bennett, 7 May 2015).
  - Upon migration to Joule Direct, there is additional work that will be necessary to main ICE connectivity under the ICE Link. Discussions are ongoing between ICE and Trayport in this regard.

Method of connectivity

- PFs present the method of connectivity to Trayport under the NA as another purported example of how the NA is an ‘outlier’ compared to Trayport’s other venue customer agreements.
- In fact, the method of connectivity under the NA simply reflects the Parties’ agreement at the time to continue using the existing infrastructure.
- As the CMA is aware, certain ICE markets have historically been made available for trading on Trayport’s TGW front-screen via bespoke connectivity called the ICE Link.
  - EPEX also has a similar ‘bespoke’ connectivity link – so the ICE Link is not unique in any event.
- There was no need for ICE to replace its existing connectivity method upon entering into the NA. However, as noted, the NA did contemplate a change in the infrastructure which is planned to be implemented by the end of 2017.

NA was concluded on an arm's-length basis (I)

- The Parties are on the record that the NA was negotiated and concluded on an arm's-length basis.
  - KH w/s para 12-13: "*The new negotiations were carried out on an arm's-length basis, just as they would have been if ICE was not the owner of Trayport*."
  - GB w/s para 12, 15-18: "*it was ICE's intention that a new agreement should be on arm's-length commercial terms so that the venue neutrality of Trayport would be preserved*."
- The manner in which it was negotiated evidences the arm's-length nature of the negotiations.
  - The core ICE team negotiating the substance of the contract was the normal team for negotiating third party connectivity in respect of these markets. A team from IFEU and ICE Endex, the ICE exchanges with activities relevant to Trayport, led the negotiations. The only involvement of the members of ICE senior management who were also involved in the CMA process was at the point of approval/signing. As such, the agreement was negotiated and concluded in the normal way.
- It took several further months to conclude the agreement, once discussions restarted, even after the scope / key commercial had been agreed in principle in May 2015, because of the need to finalise other important matters.
  - These included: ensuring that NA dovetailed with other existing agreements; completing the tax review/sign-off; deciding on the treatment of block futures and the impact on STP services within the connectivity agreement (see GB w/s para 15-18).
  - "*In my experience a period of this length is not unusual where a new agreement is overlaid on existing arrangements, where there some complex technical issues to resolve and where the counterparty has strong views on the 'boilerplate'*" (KH w/s para 14).
  - Other initiatives (e.g. ICE's launch of new power contracts in June 2015) were also important priorities.

NA was concluded on an arm's-length basis (II)

- If ICE had indeed "*saddled*" Trayport with onerous terms (ICAP), it would surely have made more sense to do so immediately upon closing and before the CMA had imposed onerous hold separate constraints.
  - If this had been ICE's intention, there would have been no negotiations: it would have been possible pre-IEO for ICE simply to deliver a draft contract to Trayport and require it to be signed.
  - Given the possibility of CMA scrutiny, it is more likely that ICE sought to implement a normal, arm's-length venue agreement with Trayport.
- There is a need for affiliates to enter into arm's-length agreements to avoid transfer pricing issues under international tax norms/rules.
- Further, the fact that [confidential] were added after the May 2015 emails should not be taken as evidence that the scope was not agreed. The reason for their inclusion at a later stage of the negotiations is straightforward:
  - Gordon Bennett was appointed as head of Utilities at ICE – not of [confidential]. His focus on joining was Utilities and therefore the original scope of early 2015 was Utilities focused.
  - In early 2016 GB was able to ascertain internally whether ICE would like [confidential] to be included (given expressions of customer interest ICE was receiving in relation to STP, particularly in [confidential]).
  - Given GB's background [confidential] at Marex Spectron, it was considered worthwhile having the option to distribute prices in these additional areas.

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Intercontinental Exchange (ICE)/Trayport

A review of the New Agreement

9 May 2017

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Contents

1. Introduction

1.1 This report has been prepared at the request of Shearman & Sterling LLP. Specifically, Shearman & Sterling instructed PricewaterhouseCoopers LLP ("**PwC**" or "**we**") to conduct an independent assessment of the following contractual agreements between Trayport Limited (Company number 02769279) whose registered address is at 7th Floor, 9 Appold Street, London EC2A 2AP ("**Trayport**") and Intercontinental Exchange Holdings, Inc. (Company number 3246189), whose registered address is at 5660 New Northside Drive NW, 3rd Floor, Atlanta, GA 30328 ("**ICE**"):

a. a Trayport Interface(s) Development and Support Agreement entered into between Trayport and ICE on 11th May 2016 (the **"IDSA**"); and

b. a Trade Registration Interface Development and Maintenance Agreement entered into between (i) Trayport, (ii) Intercontinental Exchange, Inc., (iii) ICE Endex Derivatives B.V., (iv) ICE Endex Gas B.V., and (v) ICE Endex Gas Spot Ltd. (the **"TRIDMA**"). The TRIDMA is undated but we understand that it was executed on about the same date as the IDSA.

1.2 The IDSA and TRIDMA are together referred to in this Report as the '**New Agreement**'. The New Agreement was entered into by ICE and Trayport (together "**the Parties**") on 11th December 2015. It relates to the display of additional IFEU and ICE Endex products on Trayport's Trading Gateway and Joule client screens and the provision of the Clearing Link to ICE Clear Europe for broker intermediated transactions.

1.3 As part of its 6 March 2017 judgement, the Competition Appeal Tribunal ("**CAT**") remitted the decision by the Competition and Markets Authority ("**CMA**") that the New Agreement should be terminated to the CMA for reconsideration. Specifically, in its judgement, the CAT concluded that the CMA should reconsider whether its decision to include termination of the New Agreement as part of the divestiture order was necessary for the purpose of remediating the substantial lessening of competition ("**SLC**") identified by the CMA through its investigation of the merger between ICE and Trayport.

1.4 We have been instructed by Shearman & Sterling to conduct an independent assessment of the New Agreement in order to provide our opinion on:

a. whether the terms of the New Agreement are comparable to the **contractual** terms of other agreements entered into by Trayport with third parties (exchanges and clearing houses), including ICE's competitors;

b. whether the **commercial** terms of the New Agreement are comparable to those included in other third parties' contracts; and

c. Whether the terms of the New Agreement involve any restrictions on Trayport's ability to operate and develop its business and deal effectively with third parties (including ICE's competitors).

The structure of the report

1.5 This report is organised as follows:

a. **Section 2** presents a brief description of what we consider to be the **key contractual terms** of the New Agreement, and summarises how those terms compare with the contractual arrangements between Trayport and the [confidential] which are set out in Appendix A ("**the Comparison Contracts**"). [Confidential].

[Confidential]

b. **Section 3** focuses on the commercial terms of the New Agreement, by comparing it with certain analogous Comparison Contracts. The New Agreement includes three distinct services that are provided by Trayport to ICE. The same combination of Trayport services has not been provided to any other party, and thus, in order to provide a meaningful comparison, we compare the commercial terms of each of these individually with analogous services provided within the Comparison Contracts. Where the service provided within the New Agreement, and the terms thereof, are identical to those provided to others within the Comparison Contracts, the commercial terms are compared directly. In cases where identical services have not been provided to any Other Party, we undertake a simulation exercise. In this exercise, we hold constant the pricing variables within the New Agreement, and use these to calculate what the fees would be under Comparison Contracts.

c. In **Section 4** we consider the impact of the New Agreement, specifically in relation to whether there are any provisions that might give ICE an advantage that impacts on Trayport's ability to operate and develop its business, and on the sale process and implications for vendor due diligence ("VDD").

Our conclusions

1.6 From our assessment of the New Agreement and Comparison Contracts, we conclude that both the contractual terms and the level of fees in the New Agreement are comparable with the Comparison Contracts analysed. More specifically:

a. It appears that the Comparison Contracts are, save for a couple of exceptions noted in this Report, contracts for the provision of similar services and on the basis of Trayport's standard terms. Whilst each contract has certain specifically negotiated provisions and the services can vary depending on the specific business and interests of the Other Party contracting with Trayport, our comparison did not identify any terms in the New Agreement which are materially outside the range of terms agreed with the Other Parties. In our view, it is reasonable to conclude that the terms of the New Agreement would not have been materially different had it been entered into by the Parties absent the merger.

b. The results of our simulation exercise based on transaction levels which have been used in the New Agreement and three contracts in operation between Trayport and Other Parties indicate that the commercial terms of the New Agreement, rather than being particularly favourable to ICE, are in fact comparable to those which Trayport offered to completely independent Other Parties. Furthermore, our assessment indicates that if anything the New Agreement is in fact advantageous to Trayport (as described later in this report) and therefore that its termination may result in a decrease of the value of Trayport, thereby hindering rather than helping the remediation of the SLC through the divestiture remedy.

c. We did not find any grounds for concluding that the terms of the New Agreement impact Trayport's ability to operate and develop its business and deal effectively with third parties (including ICE's competitors).

d. Through our consideration of the implications of the New Agreement on the sale process, we found that the New Agreement would be likely to contribute to a successful sale, by providing the certainty around the commercial arrangements between the two parties after divestment. Should the New Agreement be terminated, the impact on the sale process could be to change the view of the bidders for Trayport on the valuation of the business. Without the New Agreement, the purchaser will bear the risk that a contract cannot be subsequently agreed, or the terms are less favourable.

Caveats

1.7 The analysis of the Comparison Contracts which is set out in this Report does not constitute legal advice and should not be relied on as such.

1.8 We have relied on the documents provided to us by Trayport which are set out in Appendix B as being an up to date and complete record of the contractual relationship between Trayport and the Other Parties, save as expressly provided in Section 2.

1.9 Our assessment of whether or not certain provisions of the ICE Agreement are more favourable to ICE than the comparable provisions in the Comparison Contract are to the Other Party are based solely on the wording of the relevant provisions in the respective agreements.

2. *Comparison of Contractual Terms*

Selection of Contracts

2.1 The Comparison Contracts are the documents dated from 13 June 2003 to 11 April 2017 which are listed at Appendix B to this Report. We have been informed by Trayport that Appendix B is a complete list of all relevant contracts or contract variation documents currently in place between Trayport and the Other Parties up to and including **11 April 2017** that are within Trayport's possession, excluding any legacy agreements between ICE and Trayport pre-dating the New Agreement.

2.2 Accordingly, this Report does not deal with any contracts or contract variations entered into by Trayport and these parties which: (i) are dated after 11 April 2017; and/or (ii) are excluded from Appendix B.

2.3 The Comparison Contracts have been chosen on the basis that the Other Parties are exchanges and CCPs active in the European Utilities markets and are comparable to ICE according to the following criteria:

a. The size of the exchange/clearing house and its market coverage - contracts negotiated with clearing houses with narrow market coverage are not expected to compare favourably with those negotiated with large clearing houses due to the comparatively low transaction volumes a smaller clearing house would attract. Accordingly, the Comparison Contracts do not include contracts with smaller clearing houses and/or those with narrow market coverage.

b. The specific services offered - Trayport's service suite is varied, with each service having a specific fee structure, therefore we have chosen to limit our focus to parties that have received similar services to ICE, i.e. Clearing, Trade Capture and Execution Services.

c. We have only considered including Trayport's contracts with exchanges and CCPs on the basis that these are (as the CMA's Final Report found) the closest competitors to ICE. Accordingly, broker contracts have not been included, though one would assume that if there are no material differences between the New Agreement and the Comparison Contracts then there are unlikely to be material differences between the New Agreement and Trayport's broker contracts either.

Approach to Comparison

2.4 The contractual provisions of the Comparison Contracts which we consider to be relevant for conducting this comparison exercise are presented in Appendix A. Unless otherwise specified, any clause references used in Appendix A are references to clauses in the relevant Trayport agreement referred to in Appendix A, prior to any variation thereof. The provisions we have looked at include the term of the agreement, termination rights, the scope of services, support obligations, [confidential], payment terms, indemnities, warranties, liability and audit rights, and the other provisions that are described in the column headings in Appendix A. However, Appendix A only includes a selection of the contractual provisions contained in the Comparison Contracts. Accordingly, Appendix A does not present a comprehensive statement of all of the similarities between the provisions of the New Agreement and the provisions of the Comparison Contracts. In particular there are a number of boiler plate provisions which are identical between the New Agreement and the Comparison Contracts because these provisions appear in Trayport's standard terms which form the basis of these contracts.

2.5 Where practicable, we have presented the provisions of the Comparison Contracts on an exceptions basis, showing only where they materially differ from the New Agreement.

2.6 Appendix A does not include reference to the following documents because these documents appear to be relatively distinct from and dissimilar to the other Comparison Contracts that are generally based on a Trayport standard form of agreement, and as such it is difficult to make a like for like comparison of these contracts with the others. However we have taken account of, and made some references to these documents in the Key Observations section of this Report:

a. the TRIDMA (defined earlier in this report, which forms part of the New Agreement). The terms of this agreement are described in Appendix C to this Report; and

b. [confidential].

None of the Other Parties appear to have entered into such agreements with Trayport. Accordingly, neither the TRIDMA nor the [confidential] have been included in the analysis in Appendix A.

Key Observations

2.7 [Confidential].

Term

2.8 [Confidential].

[Confidential].

Termination

2.9 [Confidential].

Scope of Services

2.10 [Confidential].

Support

2.11 [Confidential].

Office Local Time

2.12 [Confidential].

[Confidential]

2.13 [Confidential].

Increase to Charges

2.14 [Confidential].

Interest on Late Payment

2.15 [Confidential].

Assignment

2.16 [Confidential].

Audit

2.17 [Confidential].

Payment Terms

2.18 [Confidential].

Intellectual Property

2.19 [Confidential].

Service Suspensions

2.20 [Confidential].

Indemnities

2.21 [Confidential].

Warranties

2.22 [Confidential].

Client Licence to Trayport

2.23 [Confidential].

Liability

2.24 [Confidential].

Conclusion

2.25 Whilst there are a small number of provisions in the New Agreement which appear to be more favourable to ICE than the comparable provisions in certain Comparison Contracts, these are not material. [Confidential]. Overall, therefore the terms of the New Agreement individually or as a whole are not materially more favourable to ICE than the terms of the Comparison Contracts.

3. Comparison of Commercial Terms

Introduction

3.1 We have conducted an assessment of the commercial terms contained in the New Agreement with a range of comparable contracts covering similar services. Whilst the principles that frame the commercial terms in each of the contracts reviewed are the same, it is to be expected that at a detailed level some of the terms may vary by exchange. For the most part any such differences can be explained by factors such as the size of the exchange, the number of contracts that are within the scope of the agreement and the nature of the services provided.

Contract Comparison

3.2 To assess whether the contractual agreement between ICE and Trayport is to the detriment of Trayport we have compared the commercial terms of these agreements where the services offered are similar. This assessment is based on an analysis of the potential revenues that could result from the contracts between Trayport and their exchange customers. As the pricing models for each service are not the same we have assessed each revenue stream on a service by service basis.

Market Coverage

3.3 For a comparison between the terms to be meaningful, the market coverage of the Comparison Contracts should be similar to the New Agreement. As the core business of Trayport is that of an aggregator it is in its interest to host as many contracts on its platform as possible, and therefore the size of exchange or clearer's offering, which may be defined by markets covered and market share, can have a significant impact on its negotiating position.

3.4 It has been noted that the New Agreement specifically excludes the ICE crude and refined oil product contracts. [Confidential].

3.5 Our review has focused on Trayport's contracts with parties that, like ICE, are active in EU utilities and, because of ICE's large size, we considered it appropriate to exclude exchanges that have a very limited offering as they are not truly comparable. The table below shows the markets covered by the largest institutions within the Comparison Contracts, which are the focus of our analysis. In the majority of cases there is significant overlap between the EU utilities markets covered by ICE and those included below.

[Confidential].

Service Provided

3.6 The New Agreement stipulates three distinct services to be provided to ICE, which carry with them distinct revenue streams. These are:

a. Clearing Services

b. Trade Capture

c. Execution Services

3.7 Each service is distinctive both in its nature and its corresponding pricing structure and we have therefore assessed services individually.

Clearing Services

3.8 [Confidential].

ICE

3.9 [Confidential]:

a. [Confidential].

b. [Confidential].

[Confidential]

3.10 [Confidential].

a. [Confidential].

b. [Confidential].

[Confidential]

3.11 [Confidential].

3.12 [Confidential].

Conclusion on Clearing Services

3.13 [Confidential].

Trade Capture

3.14 [Confidential].

3.15 [Confidential].

ICE (contract dated May 2016)

3.16 [Confidential].

[Confidential]

3.17 [Confidential].

Conclusion Trade Capture

3.18 [Confidential].

Execution Services

3.19 [Confidential].

3.20 [Confidential].

3.21 [Confidential]:

a. [Confidential].

b. [Confidential].

3.22 [Confidential].

3.23 [Confidential].

[Confidential].

3.24 [Confidential].

3.25 [Confidential].

3.26 [Confidential].

[Confidential].

[Confidential].

3.27 [Confidential].

[Confidential].

3.28 [Confidential].

3.29 [Confidential].

Conclusion Execution Services

3.30 [Confidential].

3.31 There is nothing in our analysis to suggest that the New Agreement is in any way materially favourable to ICE.

4. Impact of the New Agreement

4.1 In this section we consider the impact of the New Agreement on (i) Trayport's ability to operate and develop its business and deal effectively with third parties (including competitors of ICE) and (ii) the potential sale process (including the impact that termination of the New Agreement may be expected to have).

Impact of the New Agreement on Trayport's Ability to Operate and Develop its Business

4.2 We have considered whether the New Agreement contains any clauses that could impact Trayport's ability to operate and develop its business and deal effectively with third parties (including ICE's competitors):

a. [Confidential].

b. **Exclusivity**: Contracts which restrict either party's ability to sell to or purchase from third parties can raise competition concerns. The New Agreement does not contain any exclusivity requirements. [Confidential] there is nothing in the contract that prohibits or restricts the ability of Trayport to enter into such an agreement with other parties.

4.3 In addition, there do not appear to be any provisions in the New Agreement that should give ICE products any material advantage over the products of competing venues. The technology related elements of the New Agreement [confidential]. The New Agreement does not provide for the transfer to Trayport of rights relating to the collection, sharing or distribution of data. Finally, there is no reference in the New Agreement to technical policies, nor does it require Trayport to enter into subsequent agreements with ICE that could be subject to change as long as the other historic agreements between ICE and Trayport (which we understand were entered into a number of years ago, i.e. well before any acquisition of Trayport by ICE was in contemplation) remain in place and operational as currently.

4.4 Following our review of these three areas, we do not find any grounds for concluding that the New Agreement contains any restrictions on Trayport's ability to operate/develop its business and deal effectively with third parties (including ICE's competitors) and/or provisions that confer a material advantage on ICE.

Impact of the New Agreement on the Sale Process

4.5 As part of the sale process potential buyers who are willing to participate in a transparent process may require full visibility of the relationship between ICE and Trayport, particularly how this relationship will evolve post-acquisition. As well as requiring contractual visibility, potential buyers will also require clarity on whether ICE may be able to restrict the operation and development of the Trayport business post-acquisition. The CMA's Final Report and CAT's judgement give a potential purchaser a degree of insight into the origins and terms of the contract. It seems unlikely with this information that an experienced potential purchaser would not register interest and do some initial diligence, including raising any questions on the New Agreement early in the process.

4.6 A contract between ICE and Trayport is likely to contribute to a successful sale. It will provide the certainty around the commercial arrangements between the two parties after divestment. Without such a contract, the purchaser will bear the risk that a contract cannot be subsequently agreed (consistent with the CMA's own findings that the New Agreement was merger specific) or the terms are less favourable. Rather, a contract on commercially available terms provides that assurance that the purchaser can rely on business from ICE post-acquisition – which is all the more important given Trayport's role as an aggregator and ICE's importance as a venue for trading/clearing EU utilities.

Vendor Due Diligence

4.7 As a consequence of the importance of the contractual arrangements between ICE and Trayport, potential bidders would want to understand:

a. Why the contract was entered into - including the commercial rational;

b. Whether there are any legal, regulatory, tax or reputational issues around the contract; and

c. Whether some form of protection from the vendor could be offered through the Sale and Purchase Agreement (SPA) in relation any risks outlined in (b) above.

4.8 To address these likely questions (and other transaction related questions), ICE has the option of including a Vendor Due Diligence (VDD) exercise in the sale process. The VDD report would be "signed off" by the management of the Target Company (Trayport) as being factually accurate.

4.9 A VDD exercise is not uncommon and would, amongst other things, cover the context and background to the contract noted in point (a) above, and the regulatory & tax issues highlighted in (b). The VDD exercise would seek to identify any areas of the contract where Trayport is being disadvantaged.

4.10 At such an early stage in the process it would not be possible to address the potential wording in the SPA but bidders could begin to formulate their thinking should they conclude that specific provisions were necessary (to compensate for any contractual arrangements which are perceived to be disadvantageous).

4.11 The VDD team's work is performed with bidders' interests in mind, rather than the vendor's and hence the opinions and views in the VDD report will be expressed in way that bidders would expect. Bidders can access the final draft of the VDD on a hold harmless basis and the VDD team usually attends meetings with bidders to explain their work, findings and views. This is normally done without the vendor management team being present. The VDD team is not engaged to support the vendor management team through their interactions with buyers.

4.12 After a final bidder has been identified, the VDD team assumes duty of care to the final bidder and the VDD report will be addressed to the final bidder. Typically, the final bidder buyer may request additional top-up due diligence to be done. They may request the VDD team to do this work or they may appoint another team of their choice.

4.13 The question of transparency and the potential concerns faced by bidders can therefore be addressed through an independently prepared VDD report.

Consequences of Removal of the New Agreement

4.14 Alternatively, were the New Agreement to be terminated, the impact on the sale process could be to change the bidders for Trayport view on the valuation of the business. Based on our experience, we would expect that a bidder would assess whether it is likely that the discontinued revenue (and revenue stream) from this contract could be replaced on similar terms. If they assess this likelihood as low, they would likely lower future expected profitability levels and reduce the value paid.

4.15 Bidders are likely to be informed by the CMA's own findings on the relevant counterfactual, i.e. that the New Agreement was merger-specific. As a logical consequence of the CMA's own findings, it cannot be assumed that the New Agreement could be replaced on the same or similar terms given the prospect of the parties reverting to their former position of limited cooperation. As such termination of the New Agreement would itself seem to give rise to a concrete risk to an effective divestiture process.

Appendix A. - Detailed Analysis

[Confidential].

Appendix B. - List of Documents

[Confidential].

Appendix C. - Overview of the TRIDMA

[Confidential].

Term

[Confidential].

Charges

[Confidential].

Termination

[Confidential].

Variations

[Confidential].

Indemnities

[Confidential].

Liability

[Confidential].

Press Release

Financial year 2016: EEX Group sales exceed EUR 200 million for the first time

Earnings before tax increase by 76%

Leipzig, 26 April 2017 – In 2016, EEX Group successfully continued to grow its business by strengthening its core markets, increasing its geographic reach and expanding into new business fields. “As a result of our group-wide strategy, we were able to significantly increase our trading volumes in all markets and achieve new records in sales revenue and earnings before tax (EBT)”, confirms Peter Reitz, Chief Executive Officer of EEX.

In 2016, EEX Group sales revenue rose by 23% to EUR 234.2 million. Iris Weidinger, Chief Financial Officer of EEX, explains: “We achieved this result through organic growth in our existing markets. The power and gas markets, in particular, contributed to this record level with their significant growth rates.” In the past year, earnings before tax were EUR 87.6 million which is 76% higher than in the previous year (2015: EUR 49.7 million, after adjustment for special effects).

In 2016, the transaction revenue on the Power Derivatives Market rose by 45% to EUR 87.4 million (2015: EUR 60.4 million). Compared with the previous year, the trading volume in this market rose to 3,934 TWh (2015: 2.561 TWh). In this respect, EEX also significantly increased its market share from 31% to 37% in Germany, from 24% to 33% in France and from 49% to 63% in Italy. On the EPEX SPOT Power Spot Market, transaction revenue was EUR 67.6 million which is an increase of 6% compared to 2015’s record performance (2015: EUR 63.4 million).

In the natural gas segment, transaction revenue rose by 53% to EUR 33.6 million in 2016 (2015: EUR 22.1 million). A volume increase of 86% to 1,098 TWh on the Derivatives Market in particular, contributed to this result. On the Spot Market, trading volumes rose by 43% to 688 TWh. The integration of the Danish Gaspoint Nordic gas products and the Austrian products for the Central European Gas Hub (CEGH) significantly increased the importance of PEGAS, the central gas trading platform of EEX Group.

The Environmentals segment, which essentially comprises the emission allowance markets, grew by 56% to EUR 2.5 million (2015: EUR 1.6 million). This was supported, in particular, by growth on the secondary market for emission allowances. In this respect, EEX was able to increase its trading volumes by 192% to 310 million tonnes of CO_2 in 2016 (2015: 106 million tonnes CO_2).

In the Global Commodities segment, which includes the markets of Cleartrade Exchange (CLTX), EEX Group recorded transaction revenue of EUR 1.1 million in 2016. With significantly increased volumes in the CLTX markets for iron ore and fuel oil and initial trading transactions in the EEX freight contracts, EEX Group was able to achieve its first successes in this business segment. In 2016, the transaction revenue on the Agriculturals markets rose by 50% to EUR 0.3 million (2015: EUR 0.2 million). Furthermore, EEX achieved record volumes on the Dairy Derivatives Markets.

In 2016, the sales revenue in the Info Products segment was EUR 5.0 million which is 34% higher than in the previous year (2015: EUR 3.7 million). The reporting services with which EEX supports its customers in fulfilling regulatory reporting requirements, in particular, have gained in importance. Additional revenue amounted to EUR 36.5 million – compared with EUR 37.8 million in the previous year. This revenue includes, for example, annual fees, fixed fees for technical connections and market coupling as well as clearing for partner exchanges which are not fully consolidated within EEX Group.

With a view to the current financial year Peter Reitz states: “2017 will again be an interesting year for EEX Group. In the summer, we will migrate the Power Exchange Central Europe (PXE) power products to a common platform with our other power derivatives products. We have also set ourselves targets beyond Europe: Subject to the required regulatory approvals, we will acquire the US-American Nodal Exchange and, as a result, we will directly expand our offering with contracts for Northern America which is the biggest power derivatives market in the world. In summary, we will continue to pursue our aim of establishing ourselves as a global multi-commodity platform and, with Deutsche Börse, we have a strong partner to achieve this aim.”

EEX Group provides the central market platform for energy, energy-related and commodity products and enables access to a network of over 500 trading participants. The offering of the group comprises contracts for Energy, Environmentals, Freight, Metals and Agriculturals listed at the European Energy Exchange, EPEX SPOT, Powernext, Cleartrade Exchange, Power Exchange Central Europe (PXE) and Gaspoint Nordic. Clearing and settlement of transactions concluded or registered on the exchanges is provided by the central clearing house European Commodity Clearing. EEX Group is part of Deutsche Börse Group. For more information: www.eex.com

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PEGAS

Customer Information 2017-04-18

PEGAS Futures migration to T7 back-end in September 2017

Dear Trading Members,

We would like to inform you that Powernext back-end will switch from the Trayport Exchange Trading System (ETS) to the Deutsche Börse trading system T7 in the course of September 2017, pending regulatory approval. This change will only concern the Futures segments of PEGAS (Regulated Market and non-MTF), the Spot segment remaining listed on the Trayport back-end. Traders will still be able to use their existing Trayport front-end for all PEGAS products.

PEGAS Futures migration to T7 will ease the introduction of new products such as options, which will be launched soon after the back-end system change. It will facilitate the access to the gas market for some companies using various front-ends, bringing further liquidity to the PEGAS platform. It will also tighten the existing links between the PEGAS gas derivatives and the EEX power derivatives enabling them to be traded on the same platform.

This switch will be done at no additional cost for PEGAS members. Changes in terms of trading would be minimal as traders will still be able to use their existing Trayport front-end. Some technical set-ups related to the market segments on which you are active may be necessary. Please see below the different technical cases:

- Spot only members will not be affected by the switch to T7.
- Spot and Futures customers will be set-up by default on the Trayport front-end as it would enable them to display the two segments on the same screen:
    - For Trading Gateway users, all futures products would need to be correctly mapped with a new broker code. The instrument IDs would not change but members should ensure that their back-office systems are ready for this new code.
    - For Direct Screen users, you would be required to switch to the new Trayport Joule Direct screen. This is a simple software upgrade and you will be contacted in the next months.
- Futures only customers will have the possibility either to keep Trayport as a front-end or to choose any other Independent Software Vendor already accepted by EEX[1]. Members active

[1] The list can be find following this link : https://www.eex.com/en/access/independent-software-vendors

on both Spot and Futures could also choose to use an ISV but for the futures products only. You will receive an ad-hoc form in the month to come that you can complete in case you wish to deviate from the default set-up.

Please see the attached presentation on connectivity for further information.

We remain at your disposal for any questions you may have.

Yours sincerely,

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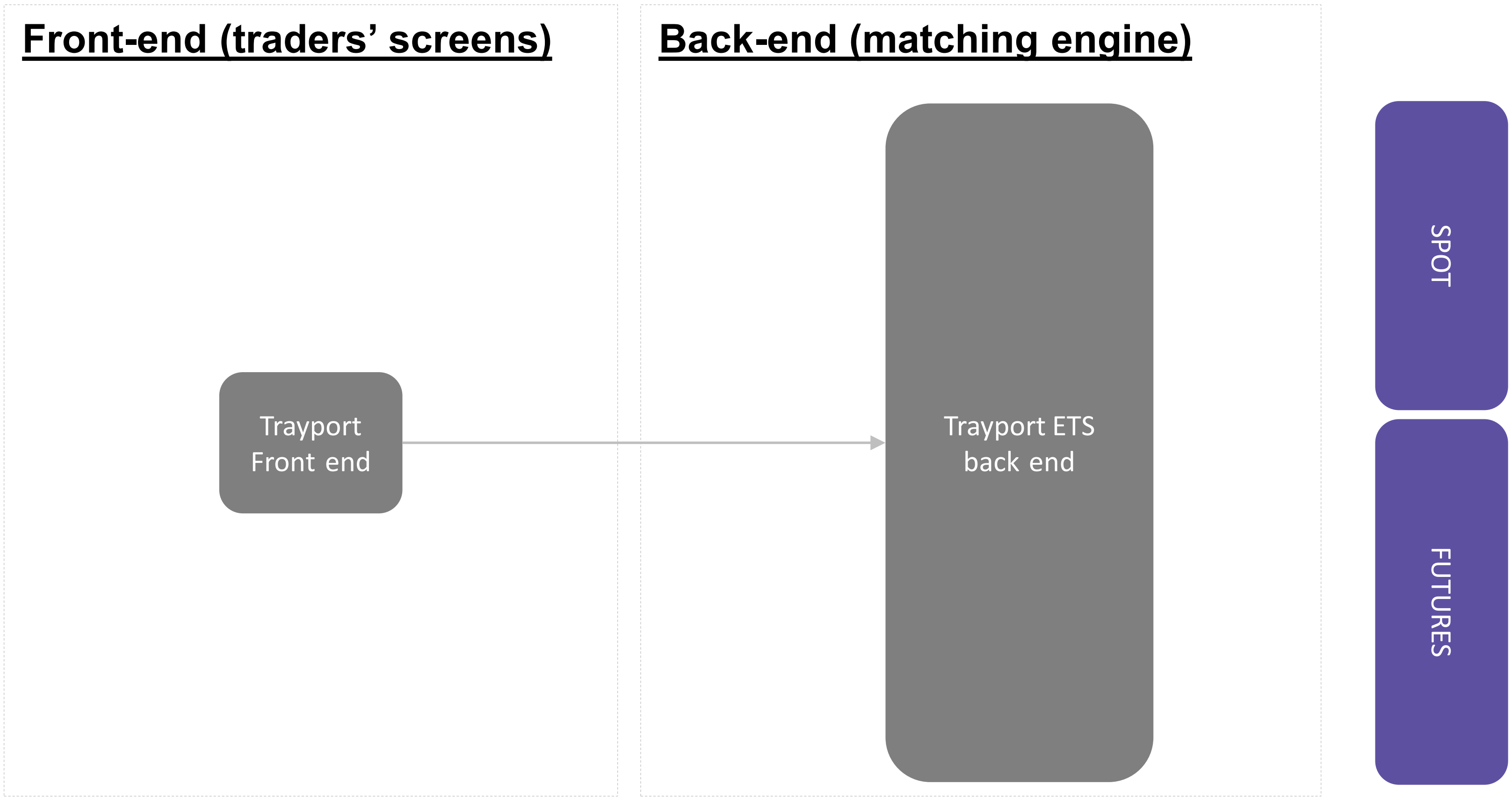
T7 connectivity

General Framework of PEGAS trading landscape today

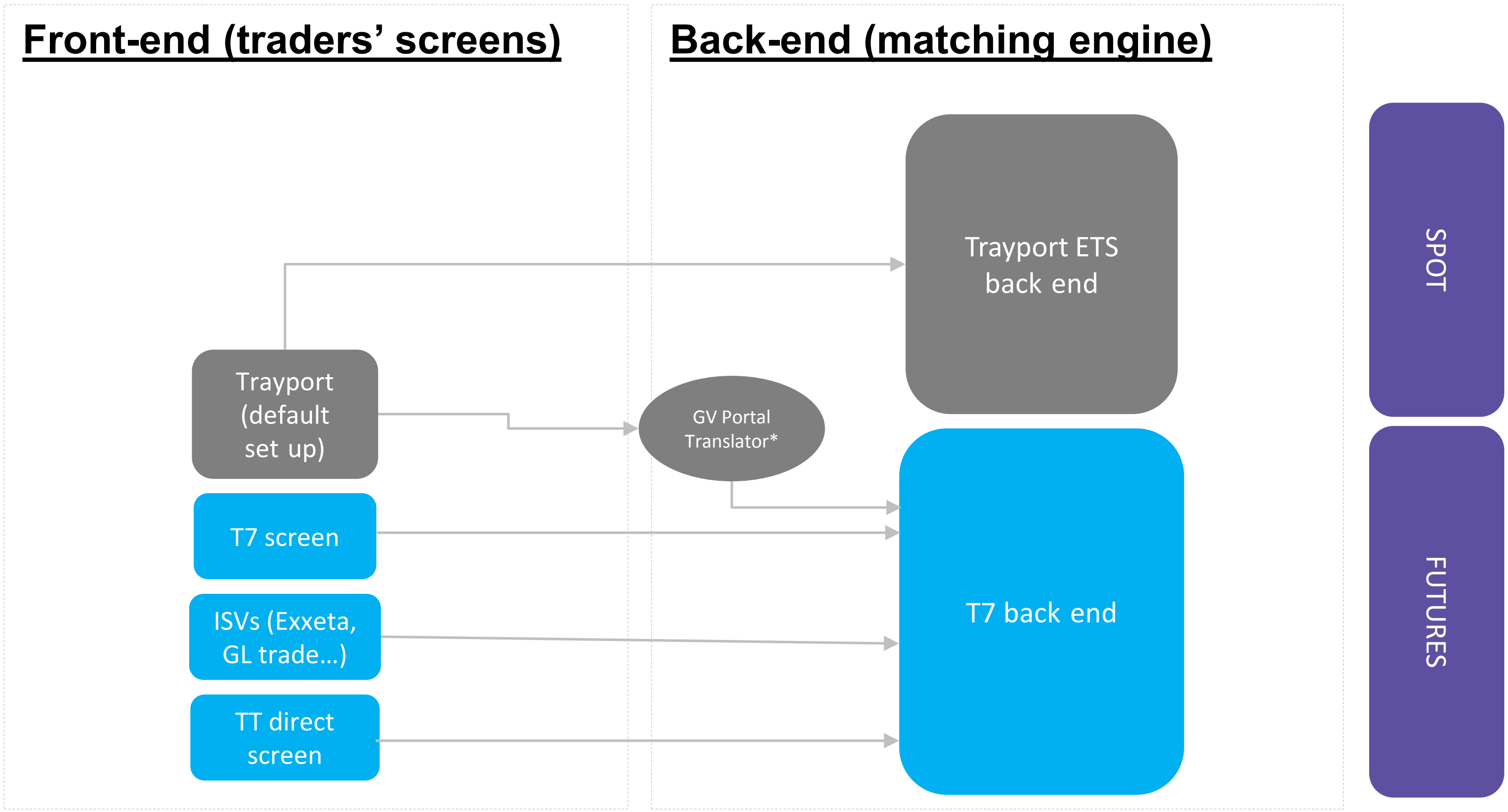


Today, as PEGAS is on a Trayport back-end, all traders need to be connected to a Trayport screen. Some ISVs can be connected to the Trayport front-end but not directly to the Trayport back-end.

PEGAS
Pan-European Gas Cooperation

ANNEX 2 - ICE/Trayport Response

General Framework of PEGAS trading landscape on September 2017



As of September 2017, the PEGAS futures back-end will switch to T7. Traders need to use Trayport to connect to the spot market of PEGAS and can still use Trayport for the futures part, especially to have all PEGAS products on the same screen. Other front-ends can be used to connect to PEGAS futures.

* Translates the T7 API into Trayport API

What would change for you?

- Spot only members
- Futures only members
- Spot & Futures members

Spot only members

- Nothing would change for you in terms of trading
  - Trading Gateway users: no changes
  - Direct Screen users: no changes required – you can stay on the GV 8 front-end.
- However, spot only traders connecting only via Direct Screen (with the GV 8 Front end) would not be able to see the futures prices until they switch to Joule Direct (gradually from September).

PEGAS
Pan-European Gas Cooperation

Futures only members

- You would be able either to keep the Trayport front-end or to switch to another front-end recognized by EEX Group. Per default, you would be set-up on the Trayport front-end.

- If you wish to stay on Trayport(1)
  - Either you are connected via Direct Screen
    - You need to switch to the Joule direct screen (replace the GV software by Joule). From June onwards, Powernext market operations will send your IT department a link to install the software.
    - Connectivity costs would remain the same as today
  - Or you are connected via Trading Gateway
    - For traders: no visible change (except the venue selection)
    - For trade capture: no change to the instruments ID but you need to change the broker code from PEGAS to EEX if you are using it in your back-office systems.
    - Connectivity costs would remain the same as today

- Other options of front-end would be available for trading futures:
    - T7 Direct screen
    - TT direct screen
    - Any other Independent Software Vendor recognized at EEX(2)

(1) You need to have the GV Portal translator between T7 and Trayport installed. For customers already accessing EEX markets with Trayport, this installation is done. For others, you will be contacted individually. The set-up is to be done on Trayport side.
(2) The list can be found following this link : https://www.eex.com/en/access/independent-software-vendors

PEGAS
Pan-European Gas Cooperation

Spot and Futures members

- Per default, you would be set-up on Trayport [1] so that you can still have access to both spot and futures with the same front-end:
  - Either you are connected via Direct Screen
    - You need to switch to Joule Direct for both spot and futures products (replace the GV software by Joule). From June onwards, Powernext market operations will send your IT department a link to install the software.
    - Connectivity costs would remain the same as today
  - Or you are connected via Trading Gateway
    - For traders: no visible change (except the venue selection)
    - For trade capture: no change to the instruments ID but you need to change the broker code if you are using it in your back-office systems.
    - Connectivity costs would remain the same as today

- Other options of front-end would be available for trading futures (but not for spot):
    - T7 direct screen
    - TT direct screen
    - Any other Independent Software Vendor recognized at EEX[2]

(1) You need to have the GV Portal translator between T7 and Trayport installed. For customers already accessing EEX markets with Trayport, this installation is done. For others, you will be contacted individually. The set-up is to be done on Trayport side.
(2) The list can be found following this link : https://www.eex.com/en/access/independent-software-vendors

PEGAS
Pan-European Gas Cooperation

CUSTOMER INFORMATION 2017-05-04

EEX to launch Central & Eastern European Power Futures in cooperation with the Power Exchange Central Europe (PXE)

Dear trading participants,

EEX will enhance its power derivatives offering by listing Central & Eastern European markets on its platform in cooperation with Prague based Power Exchange Central Europe (PXE) on **15th June 2017**. Currently, PXE offers power derivatives contracts for the Czech Republic, Hungary, Slovakia, Romania and Poland which will be migrated to EEX. The transfer of PXE products to the EEX T7 platform opens up new trading opportunities for both PXE and EEX members as they will gain access to the whole range of power derivatives products that is currently tradable on EEX and PXE. Furthermore, this step will open up Central and Eastern European products to traders currently not active in this region.

Product Setup

The new contracts will be set up in the T7 trading system for exchange trading and trade registration as listed below:

Short Code	Name	Settlement Method
FRPM	PXE Romanian Financial Power Peak Month	financially settled
FRPQ	PXE Romanian Financial Power Peak Quarter	financially settled
FRPY	PXE Romanian Financial Power Peak Year	financially settled
FXBM	PXE Czech Financial Power Base Month	financially settled
FXBQ	PXE Czech Financial Power Base Quarter	financially settled
FXBY	PXE Czech Financial Power Base Year	financially settled
FXPM	PXE Czech Financial Power Peak Month	financially settled
FXPQ	PXE Czech Financial Power Peak Quarter	financially settled
FXPY	PXE Czech Financial Power Peak Year	financially settled
F9BM	PXE Hungarian Financial Power Base Month	financially settled

F9BQ	PXE Hungarian Financial Power Base Quarter	financially settled
F9BY	PXE Hungarian Financial Power Base Year	financially settled
F9PM	PXE Hungarian Financial Power Peak Month	financially settled
F9PQ	PXE Hungarian Financial Power Peak Quarter	financially settled
F9PY	PXE Hungarian Financial Power Peak Year	financially settled
FYBM	PXE Slovakian Financial Power Base Month	financially settled
FYBQ	PXE Slovakian Financial Power Base Quarter	financially settled
FYBY	PXE Slovakian Financial Power Base Year	financially settled
FYPM	PXE Slovakian Financial Power Peak Month	financially settled
FYPQ	PXE Slovakian Financial Power Peak Quarter	financially settled
FYPY	PXE Slovakian Financial Power Peak Year	financially settled
FPBM	PXE Polish Financial Power Base Month	financially settled
FPBQ	PXE Polish Financial Power Base Quarter	financially settled
FPBY	PXE Polish Financial Power Base Year	financially settled
FPPM	PXE Polish Financial Power Peak Month	financially settled
FPPQ	PXE Polish Financial Power Peak Quarter	financially settled
FPPY	PXE Polish Financial Power Peak Year	financially settled
FSBM	PXE Slovakian Physical Power Base Month	physically settled*
FSBQ	PXE Slovakian Physical Power Base Quarter	physically settled*
FSBY	PXE Slovakian Physical Power Base Year	physically settled*

* offered for Trade Registration only

The current EEX trade registration product for Romanian Power Baseload (FHBM, FHBQ and FHBY) will be enabled for exchange trading on 15th June 2017 and renamed “PXE Romanian Financial Power Base Futures“

Further details including ISIN and WKN can be found in the EEX contract specifications available on EEX website via the following link:

https://www.eex.com/en/trading/rules-and-regulations/regulated-market

All contracts are settled against the Day Ahead Index specified in the EEX contract specification.

The technical setup, i.e. trading days and expiry is equivalent to existing EEX power futures contracts and can be found in the contract details file following the link: https://www.eex.com/en/trading/contract-details

Tradable Contracts

With the launch of these contracts in T7, the following maturities will be available for trading and clearing:

Contract	Number of tradable maturities
Base Month	7
Base Quarter	7
Bease Year	6
Peak Month	7
Peak Quarter	7
Peak Year	6

Mapping Rule

The mapping rules follow the already existing rules for other monthly, quarterly and yearly maturities.

For further information please have a look into our contract details file published on our website:

http://www.eex.com/en/trading/contract-details

Trading Hours

In line with other EEX products the new contracts are tradable during the regular trading hours from 8:00 am to 6:00 pm CET on the exchange. Trade registration services are available for the same time.

Product assignment

All EEX-only members admitted to trade financially settled power futures and prior approved by ECC will be automatically assigned for exchange trading and trade registration in the new PXE products. The PXE products will have a separate membership package. All membership fees will be waived until 31st December 2018 for new entrants to the PXE markets. For all other participants it is necessary to inform your clearing bank (General Clearing Member) about your intention to trade these products and to contact Member Readiness (memberreadiness@ecc.de).

Fees

The following fees will apply for exchange trading and trade registration:

	Fees
Transaction fees	0.015 €/MWh
Clearing fees	0.010 €/MWh for Czech & Slovakian Futures 0.005 €/MWh for Romanian, Hungarian & Polish Futures
Delivery fees	0.025 €/MWh for PXE Slovakian Physical Power Futures

Technical Access

The new products will be automatically integrated into the EEX screen in the usual manner and rolled out to our members. Customers trading via the Trayport® GlobalVision℠ Portal (Trading Gateway℠ User) should use Trayport's Goldmapping℠ Service or map the products manually, as well as updating the workbooks to have these new contracts on the screen.

Users of the Exxeta Energy Trader® (EET) can configure the new Futures on their GUI themselves. The trade registration through via the known strait through process channels can be done without adjustment.

Please do not hesitate to contact EEX Market Supervision by phone +49 341 2156 222 if you have any further questions.

Yours sincerely,

European Energy Exchange AG
Market Supervision
Telefon: +49 341 2156-222
Fax: +49 341 2156-229
E-Mail: trading@eex.com
www.eex.com

volume increase on German-Austrian power derivatives market

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EEX trading results for March 2017 – EEX: 42% volume increase on German-Austrian power derivatives market

Apr 3, 2017 EEX Press Release

In March 2017, the European Energy Exchange (EEX) reached a volume of 311.2 TWh on its power derivatives markets, representing a year-on-year increase of 22% (March 2016: 255.8 TWh).

In particular, power products for the German-Austrian market contributed to this result. At 250.5 TWh, volumes in this market increased by 42% (March 2016: 176.6 TWh). This includes 225.9 TWh from Phelix Futures and 24.6 TWh from Phelix Options.

The March volumes comprised also 158.7 TWh registered at EEX for clearing. Clearing and settlement of all transactions was executed by European Commodity Clearing (ECC).

Emission Allowances

On the EEX Market for emission allowances, a total volume of 117.5 million tonnes of CO_2 was traded in March which represents a year-on-year increase of 50% (March 2016: 78.4 million tonnes of CO_2). On the EUA secondary market, volumes have doubled to 33.6 million tonnes of CO_2 (March 2016: 15.7 million tonnes of CO_2). The primary market auctions contributed 83.5 million tonnes of CO_2 to the total volume.

Agricultural Products

Throughout March, a total of 5,906 contracts was traded in agricultural products at EEX which is an increase of 58% compared to the previous year (March 2016: 3,746 contracts). On the derivatives market for processing potatoes, the volume increased by 64% to 3,633 contracts (equal to 90,825 tonnes) while the derivatives market for dairy products increased by 48% to 2,273 contracts (equal to 11,365 tonnes). This includes 1,359 contracts (equal to 6,795 tonnes) from Butter Futures which is a new monthly record.

ANNEX 2 - ICE/Trayport Response

Global Commodities

In freight futures which are available for clearing via ECC, EEX recorded a volume of 3,840 contracts in March.

New Participants

In March, EEX admittd Linea Più S.p.A, Pavia (Italy), as a new trading participant. Furthermore, natGas Aktiengesellschaft, Potsdam (Germany), has extended its admission to trading on the power derivatives market. In total, 22 participants were admitted to trading of the new Floor Futures which EEX launched on 15 March this year.

The European Energy Exchange (EEX) is the leading energy exchange in Europe. It develops, operates and connects secure, liquid and transparent markets for energy and commodity products. At EEX, contracts on Power, Coal and Emission Allowances as well as Freight and Agricultural Products are traded or registered for clearing. Alongside EEX, EPEX SPOT, Powernext, Cleartrade Exchange (CLTX), Gaspoint Nordic and Power Exchange Central Europe (PXE) are also part of EEX Group. Clearing and settlement of trading transactions are provided by the clearing house European Commodity Clearing (ECC). EEX is part of Deutsche Börse Group. For more information: **www.eex.com**

EEX – Monthly Figures Report for March 2017

Volumes

ANNEX 2 - ICE/Trayport Response

Power Derivatives Market	Monthly volume MWh	Monthly volume – previous year MWh
Total	**311,209,861**	**255,754,867**
Phelix Futures	225,854,101	172,341,941
French Futures	20,395,829	34,044,459
Italian Futures	32,050,420	38,763,122
Spanish Futures	5,730,419	4,389,753
Further markets	2,061,162	1,439,592
Options on Phelix Futures	24,636,730	4,302,000
Further Option Markets	481,800	474,000

ANNEX 2 - ICE/Trayport Response

CO_2 Emissions Market	Monthly volume tonnes of CO_2	Monthly volume – previous year tonnes of CO_2
Total	**117,491,000**	**78,437,500**
EUA Spot Market - thereof: Primary Market Auctions - thereof: Secondary Market	91,752,000 83,503,000 8,249,000	69,013,000 62,062,000 6,951,000
EUAA Spot Market (Primary Market Auctions)	50,000	683,500
CER Spot Market Futures	348,000	2,000
EUA Futures	25,341,000	8,739,000

Agricultural Products	Monthly volume Number of contracts	Monthly volume – previous year Number of contracts
Total	**5,906**	**3,746**
Processing Potatoes	3,633	2,215
Dairy Products	2,273	1,531

ANNEX 2 - ICE/Trayport Response

Global Commodities	Monthly volume Number of contracts	Monthly volume – previous year Number of contracts
Freight Futures	3,840	-

Prices and Indices

	March 2017
Phelix Futures – Settlement Price for base load contract with delivery in 2018 (in €/MWh)	29.77
Phelix Futures – Settlement Price for peak load contract with delivery in 2018 (in €/MWh)	37.49
E-Carbix (in €/EUA)	5.09
Settlement Price on EUA Derivatives Market in Dec 2017 contract (min. / max.) in €/EUA	4.63 / 5.91

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increases volumes in power options and agricultural products

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EEX trading results for January 2017 - EEX increases volumes in power options and agricultural products

Feb 1, 2017 EEX Press Release

In January 2017, European Energy Exchange (EEX) reached a volume of 291.1 TWh on its power derivatives markets (January 2016: 332.4 TWh). At 658,271 MWh, volumes in the Dutch market have more than tripled compared to the previous year (January 2016: 160,302 MWh). In the Swiss power derivatives market, volumes increased by 37% to 707,826 MWh (January 2016: 515,380 MWh). Trading in power options increased by 28% to 16.0 TWh (January 2016: 12.5 TWh).

The January volumes comprised 152.3 TWh registered at EEX for clearing. Clearing and settlement of all transactions was executed by European Commodity Clearing (ECC).

Emission Allowances

On the EEX Market for emission allowances, a total volume of 80.1 million tonnes of CO_2 was traded in January (January 2016: 77.9 million tonnes of CO_2). In particular, the increase was driven by the primary market auctions with a total volume of 60.3 million tonnes of CO_2. In the new EUA options contracts which EEX launched in mid-October 2016, a volume of 250,000 tonnes of CO_2 was traded.

Agricultural Products

During the month, a total of 3,982 contracts was traded in agricultural products at EEX which means that the volume has increased by 21% compared to the previous year (January 2016: 3,282 contracts). In particular, the derivatives market for dairy products contributed to this development. Volumes in this market increased by 65% to 2,139 contracts (equal to 10,695 tonnes) compared to the previous year (January 2016: 1,293 contracts).

New Participants

In January, EEX admitted Oak Capital LLP, London, as new trading participant. Furthermore, Vendohm Ltd, London, has extended its admission to trading on the derivatives market for Emission Allowances.

The European Energy Exchange (EEX) is the leading energy exchange in Europe. It develops, operates and connects secure, liquid and transparent markets for energy and commodity products. At EEX, contracts on Power, Coal and Emission Allowances as well as Freight and Agricultural Products are traded or registered for clearing. Alongside EEX, EPEX SPOT, Powernext, Cleartrade Exchange (CLTX), Gaspoint Nordic and Power Exchange Central Europe (PXE) are also part of EEX Group. Clearing and settlement of trading transactions are provided by the clearing house European Commodity Clearing (ECC). EEX is part of Deutsche Börse Group. For more information: **www.eex.com**

EEX – Monthly Figures Report for January 2017

Volumes

ANNEX 2 - ICE/Trayport Response

Power Derivatives Market	Monthly volume MWh	Monthly volume – previous year MWh
Total	**291,102,378**	**332,403,605**
Phelix Futures	227,961,023	224,723,919
French Futures	16,830,222	44,380,200
Italian Futures	24,691,546	46,267,189
Spanish Futures	4,096,020	3,815,735
Further markets	1,536,567	694,402
Options on Phelix Futures	15,111,000	12,245,800
Further Option Markets	876,000	273,000
Cap Futures	0	3,360

ANNEX 2 - ICE/Trayport Response

CO_2 Emissions Market	Monthly volume tonnes of CO_2	Monthly volume – previous year tonnes of CO_2
Total	**80,066,500**	**77,910,500**
EUA Spot Market - thereof: Primary Market Auctions - thereof: Secondary Market	63,954,500 60,295,500 3,659,000	47,287,000 41,310,000 5,977,000
CER Spot Market	0	683,500
EUA Futures	15,862,000	29,940,000
EUA Options	250,000	-

Agricultural Products	Monthly volume Number of contracts	Monthly volume – previous year Number of contracts
Total	**3,982**	**3,282**
Processing Potatoes	1,843	1,985
Dairy Products	2,139	1,293
Lifestock & Meat	0	4

ANNEX 2 - ICE/Trayport Response

Global Commodities	Monthly volume Number of contracts	Monthly volume – previous year Number of contracts
Freight Futures	1,930	-

Prices and Indices

	January 2017
Phelix Futures – Settlement Price for base load contract with delivery in 2017 (in €/MWh)	30.10
Phelix Futures – Settlement Price for peak load contract with delivery in 2017 (in €/MWh)	38.16
E-Carbix (in €/EUA)	5.24
Settlement Price on EUA Derivatives Market in Dec 2016 contract (min, / max,) in €/EUA	4.71 / 6.15

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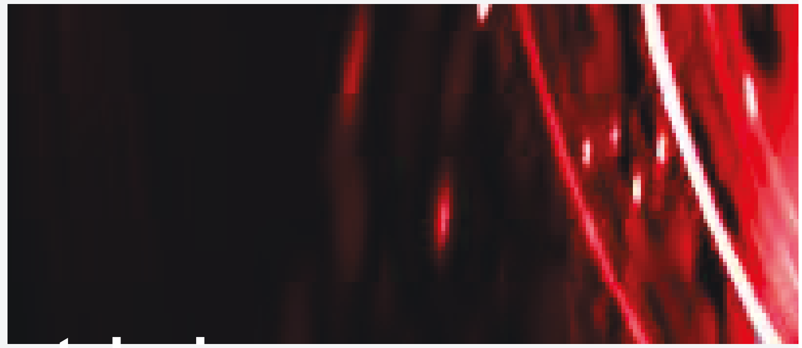

EEX acquires majority stake in PXE

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EEX acquires majority stake in PXE

Jan 20, 2016 EEX Press Release PDF

The European Energy Exchange (EEX) and POWER EXCHANGE CENTRAL EUROPE (PXE) have signed an agreement in Prague today, by which the parties will enter into a closer cooperation. In doing so, EEX will become the new majority shareholder, acquiring 66.67 % of PXE shares. This transaction will be settled in cash from EEX own resources and is expected to be closed by the end of the first quarter 2016, subject to approval by the competent authorities.

EEX Group provides the central market platform for energy and commodity products which includes contracts for Power, Natural Gas, Coal, Oil, Environmental Markets, Freight, Metals and Agricultural Markets listed at EEX, EPEX SPOT, Powernext, Cleartrade Exchange (CLTX) and Gaspoint Nordic. In addition, the clearing house European Commodity

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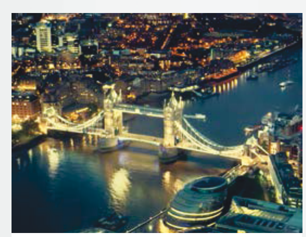

EEX Group News

Read all news of EEX Group's

Clearing (ECC) is part of the Group. Currently, EEX Group has more than 450 trading participants with offices in 13 locations worldwide.

As part of CEE Stock Exchange Group (CEESEG), PXE offers power derivatives products in the Czech Republic, Slovakia, Hungary, Poland and Romania. In addition to this, through their cooperation with CEGH Gas Exchange of Vienna Stock Exchange, it operates the Czech gas spot and derivatives market. PXE has been cooperating with EEX Group since 2012 via the Group's clearing house ECC, which provides clearing and settlement for the Prague-based exchange. PXE holds licenses as a commodity exchange from the Ministry of Industry and Trade and a regulated market license issued by the Czech National Bank and is supervised by both authorities.

By joining forces, both companies aim to further develop the power derivatives market in Central and Eastern Europe. Customers will benefit from the partnership as it complements the European product offering, increases the member base and improves trading opportunities.

Peter Reitz, CEO of EEX, says: "PXE is a key player in the Central and Eastern European markets. With PXE being part of EEX Group, we will be able to expand our existing product offering to these markets, adding additional members and improving cross-border trading for the participants, which contributes further to the integration of European markets."

David Kučera, Secretary general of PXE, adds: "We are looking forward to continuing our successful cooperation which we already had with ECC and shift it to the higher level. By having EEX as a strong corporate partner, we are able to provide our members with improved trading opportunities and synergies. Partnership with EEX is a clear sign that our ambition to

members. > more

create a strong regional platform is succeeding and teaming up with EEX makes our position within the region even stronger."

The European Energy Exchange (EEX) is the leading energy exchange in Europe. It develops, operates and connects secure, liquid and transparent markets for energy and commodity products. At EEX, contracts on Power, Coal and Emission Allowances as well as Freight and Agricultural Products are traded or registered for clearing. Alongside EEX, EPEX SPOT, Powernext, Cleartrade Exchange (CLTX), Gaspoint Nordic are also part of EEX Group. Clearing and settlement of trading transactions are provided by the clearing house European Commodity Clearing (ECC). EEX is a member of Group Deutsche Börse.

The POWER EXCHANGE CENTRAL EUROPE (PXE) established in July 2007, offers trading in Czech, Slovak, Hungarian, Polish and Romanian electricity and operates the CEGH Czech Gas Futures Market in cooperation with the Austrian Central European Gas Hub AG (CEGH). PXE also offers end consumers the opportunity to find the best electricity supplier by means of electronic auctions.

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Results

EEX - EUROPEAN ENERGY EXCHANGE AG

12/01/2016 | Press release | Distributed by Public on 12/01/2016 04:53

PEGAS: Austrian CEGH Exchange Products Successfully Launched

Powernext SA and the Austrian Central European Gas Hub AG (CEGH) have announced the successful migration of the CEGH Gas Exchange spot and futures contracts to the pan-European PEGAS platform operated under the Powernext rulebook. This represents the conclusion of the implementation phase of their cooperation as initially announced on 20th June 2016.

In the framework of the cooperation, all CEGH spot and futures products for the Austrian gas market, including the products used for the Austrian balancing market have been tradable on PEGAS since 08:00 CET today. Spread products with TTF, NCG, GASPOOL and PSV are also available, as well as Trade Registration services for PEGAS CEGH futures products.

Austrian balancing rules remain valid as part of the PEGAS offering. The operational aspect of the Virtual Trading Point (VTP) in Austria is not affected and remains the exclusive responsibility of CEGH AG.

The migration has involved the successful transfer of all 96 CEGH members to the Powernext membership which now totals 231 participants across 8 European markets.
The CEGH Gas Exchange team will continue to be the central point of contact for CEGH clients on PEGAS, whilst additionally contributing to the growth and development
of the PEGAS brand in Eastern Europe.

Gottfried Steiner, CEO of Central European Gas Hub AG, comments: 'We have successfully launched the PEGAS CEGH products today. Our customers will benefit greatly from this cooperation, especially due to the spread products we can now offer. The implementation of this cooperation will further increase liquidity in the Austrian markets.'

Egbert Laege, CEO of Powernext, adds: 'The addition of Austrian products strengthens PEGAS's position as the pan-European gas platform of choice. The joint development of the Austrian and Central and Eastern European gas markets is a priority for Powernext and we are glad to tackle it together with CEGH.'

Central European Gas Hub AG (CEGH) provides a gas trading platform for international gas companies in Austria and runs the CEGH OTC Market. The Gas Exchange products for the Austrian market are offered on the PEGAS platform in cooperation between CEGH and Powernext. Moreover, CEGH also offers the CEGH Czech Gas Exchange in cooperation with PXE. CEGH is the operator of the Virtual Trading Point (VTP) in Austria. CEGH is a subsidiary of OMV Gas & Power (65%), Wiener Boerse (20%) and Eustream (15%). In 2015, CEGH achieved a nominated volume of 478 TWh of natural gas at the CEGH-VTP.
For more information: **www.cegh.at**

Powernext is a regulated market operating under AMF supervision. Powernext manages the natural gas activities of the EEX Group under the PEGAS brand throughout Europe, and operates the National Registry for electricity guarantees of origin in France.
For more information: **www.powernext.com**

PEGAS is the central gas trading platform of EEX Group operated by Powernext. PEGAS provides its members with access to all products on one single platform and allows them to trade natural gas contracts in the Austrian, Belgian, Danish, Dutch, French, German, Italian and UK market areas. The product range of PEGAS covers spot and derivatives contracts for the major European gas hubs as well as trading in location spread products between these market areas. This setup enables market harmonisation and forms the preferred pan-European natural gas market.
For more information: **www.pegas-trading.com**

Originally, the guideline for capacity allocation and congestion management (CACM) was designed to facilitate a stronger cross-border co-operation between the respective transmission system operators, and in the form of a non-binding technology and operations guideline. In 2015, this guideline took effect and, essentially, pursues three aims:

- Promoting competition at all levels of the value chain and creating the necessary framework;
- Optimum use of transmission infrastructure;
- Ensuring security of supply.

For the exchanges, CACM is of great importance, in particular because it introduces a new concept: the "nominated electricity market operator" (NEMO). This helps to institutionalise the role of the exchanges in the context of market coupling—a role which has only been assumed as de-facto so far. In other words, it formulates and validates the roles and tasks in legal terms. The concrete rules themselves are also submitted to a review and developed further if required. As a result, new rules for the cooperation between NEMOs and transmission system operators are introduced and a system is created which also permits NEMOs to actively operate in other member states. In particular, in the future, exchanges will be regulated by national authorities in the context of CACM in the areas of activity it concerns. This will have a lasting influence on EPEX's relationship with regulators.

The concrete effects of the individual regulatory measures on the markets of EEX Group and on the activity of trading participants are explained in more detail in the "Risk and opportunities report".

BUSINESS DEVELOPMENT

OVERVIEW OF BUSINESS DEVELOPMENT IN 2016

Thanks to the successful development of all business areas, EEX Group was able to continue its expansion strategy in the 2016 financial year. In almost all areas of business, significant growth rates were generated as against 2015. In addition to the increase in trading volumes and market shares, growth was, in part, also due to the full-year effect of the APX integration as well as the expansion of the scope of the consolidation of EEX Group with the Prague-based power exchange PXE, the Danish gas exchange Gaspoint Nordic and PCG, a joint venture with the CEGH, that runs the Austrian gas market.

In 2016, the sales revenue figures for the individual business areas were as follows:

Sales revenue per business area

kEUR	2016	Share	2015	Change
Power Derivatives	87,206	37%	60,006	+45%
Power Spot	67,534	29%	63,393	+7%
Natural Gas	32,846	14%	21,132	+55%
Market Data Services	5,019	2%	3,745	+34%
Environmentals	2,479	1%	1,590	+56%
Clearing Services	1,727	1%	1,964	-12%[2]
Global Commodities	501	0%	1,157	-57%
Agriculturals	326	0%	217	+50%
Other revenues:				
Annual fees	14,152	6%	12,161	+16%
Technical connections	8,790	4%	7,926	+11%
Services to third parties	5,488	2%	4,306	+27%
Refunds of project costs	3,754	2%	4,960	-24%
Fix revenues from market-coupling	2,962	1%	4,055	-27%
Others	1,373	1%	3,811	-64%
Sales revenue	**234,158**	**100%**	**190,424**	**+23%**

[2] The decline in the business area of Clearing Services is due to the expansion of the scope of the consolidation of EEX Group and the associated transfer of the markets of PXE, Gaspoint Nordic und CEGH to the business areas of power spot, power derivatives and natural gas. The remaining business of clearing services increased in the 2016 financial year.

POWER DERIVATIVES

The Power Derivatives business area developed extremely positively in the 2016 financial year. Thanks to a growing overall market—e.g. on account of temporarily very high rates of volatility—combined with a growing market share, EEX Group achieved a new record in traded volumes. At the same time, diversification within individual products was promoted further. More than 27% of trading volumes in power derivatives (futures and options) were generated in products for market areas outside of Germany.

The Power Derivatives business experienced an extremely positive development throughout the 2016 financial year

Power Derivatives trading volumes

TWh	2016	2015	Change
Futures	3,708	2,469	+50%
Germany/Austria	2,665	1,747	+53%
Italy	481	396	+21%
France	454	299	+52%
Spain	72	22	+219%
Eastern Europe	17	<1	>+1,000%
Others	20	5	+316%
Options	212	68	+212%
Power Derivatives	**3,920**	**2,537**	**+55%**

Selected Power Derivatives market shares

%	2016	2015
Futures Germany/Austria	37	31
Futures Italy	63	49
Futures France	33	24
Power Derivatives (all)	30	24

In the past financial year, EEX Group again supported its growth through the introduction of new products. For example, further short-term products (day respectively week futures) for the market areas Italy, France, the Netherlands, Switzerland and the Nordic countries were introduced. As a result, EEX Group contributed to strengthening the liquidity of these market areas. Further, these product launches also pursue the strategic aim of expanding the product portfolio for all market areas and of completing the offering in European energy trading.

In response to the enduring challenges of the energy transition, EEX Group is constantly working on innovations, e.g. in the context of product development, in order to comply with the requirements of the market. For example, after the Intraday Cap Futures, with the Wind Power Futures a second specific "Energiewende" product was introduced in the autumn of 2016. By means of Wind Power Futures, market participants can hedge volume risks which arise from the fluctuating feed-in of wind power in a focused manner.

In addition, EEX Group further promoted the expansion of the power derivatives market. After the acquisition of the majority shareholding in PXE, products are now also offered in the market areas of the Czech Republic, Slovakia, Hungary and Poland for the first time. Furthermore, exchange trading in Romanian power futures is now also possible via PXE—in addition to the possibility of Trade Registration, which has existed for a longer period.

EEX Group faces unchanged and strong competition on the power derivatives market. More than one half of trading is still carried out via over-the-counter broker platforms, even though their market share has declined compared with the previous year. The remaining trading volume is distributed over several energy exchanges. Apart from EEX Group, these essentially consist of the global exchange operators NASDAQ OMX, CME and ICE as well as smaller national energy exchanges. In the competition among these exchanges, EEX Group was able to prevail and expand its leading position, in particular, with regard to its main competitor NASDAQ OMX. Despite new market entrants and, in part, aggressive pricing policies, the competitor exchanges were not able to fundamentally improve their market positions.

ANNEX 2 - ICE/Trayport Response

POWER SPOT

EEX Group was also able to increase its trading volumes within the Power Spot business area as against the previous year. This was supported by the full-year effect of the APX markets, which were integrated into EPEX as of 4 May 2015 (Day-ahead markets and Intraday markets in the Netherlands, Belgium and the United Kingdom). The German Day-ahead market recorded declines in volume. However, these were overcompensated for by the growth generated in the other market areas.

Trading volumes within the Power Spot business area have also increased compared to the previous year

Power Spot trading volumes

TWh	2016	2015	Change
Day-ahead markets	474	472	+0%
Germany	235	264	–11%
France	111	106	+4%
United Kingdom	44	34	+29%
Netherlands	35	28	+24%
Others	49	39	+27%
Intraday markets	62	53	+17%
Germany	39	37	+6%
United Kingdom	14	9	+48%
France	4	4	+9%
Netherlands	1	1	+56%
Others	4	3	+52%
Power Spot	**535**	**524**	**+2%**

Moreover, trading volumes have benefited from the transmission system operators' obligation to market quotas of power from renewable energies on a power exchange and from direct marketing. The obligation to market quotas was established in the context of the German Renewable Energies Law (EEG), which took effect in 2010, and is specified in more detail in the Ordinance on a Nationwide Equalisation Scheme (AusglMechV). Since 2010, the transmission system operators (TSO) have had to market EEG power which is subsidised with a fixed feed-in tariff on the exchange and, in return, receive a levy from the supply company in accordance with AusglMechV. In addition, the Power Spot business area benefitted from direct marketing, which was introduced in 2012. This permits the sale of EEG power outside the fixed feed-in tariff. There is no obligation to market power through an exchange. However, on account of the high liquidity for example, EEX Group was able to establish itself as a strong market platform in this respect.

Within the Power Spot business area, the Intraday markets continue to gain in importance even though volumes are still low in absolute terms when compared with the Day-ahead markets. This trend is primarily due to the growing importance of digitalisation and the fluctuating supply of renewable energies. This, in turn, results in an increased demand for short-term balancing options for balancing group managers.

In the 2016 financial year, the integration of APX into the EEX Group was further promoted. For example, the APX clearing business was taken over by ECC on 31 March 2016. The Intraday markets in the Netherlands and Belgium were migrated to EPEX systems in the fourth quarter; migration of the remaining APX markets is also envisaged.

In the context of further development of the Power Spot business area, the first auction for generation capacity certificates in France was carried out in 2016 and the coupling of the European power markets was expanded to the Austrian-Slovenian border. Furthermore, the Serbian Day-ahead market was launched successfully by SEEPEX, a joint venture between EPEX and the Serbian transmission system operator, Elektromreža Srbije (EMS). After the acquisition of the majority shareholding in PXE, EEX Group also launched tender services in the Czech Republic in 2016.

EEX Group directly competes with other spot exchanges within the power spot business area. In the United Kingdom, short-term trading in power is, in addition to EPEX, also offered by N2EX, a subsidiary of the second-biggest European power spot exchange, the Norwegian Nord Pool Spot. In 2016, N2EX had a market share of 63%, while EPEX's market share amounted to 37%. Nord Pool Spot is also active in the German market area where it offers Intraday products, and is currently admitted for all other relevant market areas of EEX Group. As a result of the further liberalisation of the market and regulatory changes (CACM), overall competition intensified and is expected to further intensify in the future.

NATURAL GAS

In 2016, the Natural Gas business area made a significant contribution to the growth of EEX Group and established itself as a second important revenue mainstay, in addition to the power markets. In almost all market areas, two-digit growth rates were achieved both on the spot and on the derivatives market. On the spot market, this growth was essentially based on gains in market share, while the overall market itself grew only slightly. However, on the derivatives market, the growth in trading volumes is essentially due to growth of the overall market, in addition to the growing market shares of EEX Group. On the French gas derivatives market alone, declining volumes were observed because of declining market share.

> The Natural Gas business area made a significant contribution to the growth of EEX Group in 2016

Natural Gas trading volumes

TWh	2016	2015	Change
Spot market	653	441	+48%
Germany	295	195	+51%
Netherlands	183	124	+47%
France	137	117	+17%
Others	38	5	+644%
Derivatives market	1,091	584	+87%
Netherlands	893	429	+108%
Germany	129	97	+33%
France	43	51	–15%
Others	26	8	+230%
Natural Gas	**1,744**	**1,025**	**+70%**

Selected Natural Gas market shares

%	2016	2015
Spot market Germany	36	29
Spot market Netherlands	25	18
Spot market France	75	67
Spot market (all)	26	18
Derivatives market Netherlands	4	2
Derivatives market Germany	6	5
Derivatives market France	10	13
Derivatives market (all)	3	1

In the 2016 financial year, the geographic growth of the gas markets of EEX Group was promoted by the acquisition of a majority shareholding in PXE and Gaspoint Nordic as well as the newly established joint venture PCG. As a result, products in the gas market areas in Denmark, Austria and the Czech Republic are now offered to EEX Group customers for trading, in addition to the products already offered in nine gas market areas in six countries in 2015. With the exception of the Czech products, all gas products can be traded via the PEGAS trading platform operated by Powernext.

In addition to geographical expansion, measures were taken to further improve the offering and, as a result, increase customer benefit within the existing product portfolio. For example, an action plan for the Dutch derivatives market, which further boosted liquidity in this market, was implemented at the beginning of the year. Among other measures, the fee for the physical settlement of futures was lowered, trading hours were extended and additional maturities were offered. In addition, new technical connection solutions were created and additional risk tools were introduced. Furthermore, various services were expanded in the German and French gas market areas.

The competitive environment on the European natural gas markets resembles that of the power derivatives markets: The main share of natural gas trading takes place off-exchange via brokerage platforms. The remainder of trading is distributed across EEX Group, the CME and ICE exchanges as well as smaller national energy exchanges. So far, NASDAQ OMX has been unable to generate trading volumes on EEX Group gas markets. While EEX Group is the exchange with the by far biggest trading volumes on the spot markets, ICE has the biggest market share in exchange trading on the derivatives markets. There is growth potential for EEX Group, in particular, because of the fact that the Dutch market area replaced the British market area as the biggest market in 2015. While the shrinking British market is dominated by ICE and brokers, EEX Group can benefit from growth and the shift of trading activities to the Dutch market.

FURTHER AREAS OF BUSINESS

Market Data Services

The essential task of the Market Data Services business area is to ensure the biggest possible reach of EEX Group market data and its products, to provide support in efficient pricing and market the data available within EEX Group.

The information product offering is used to market data which is generated in the course of trading activities within EEX Group. In addition to the pure sale of data products, this segment also aims to ensure the widest possible dissemination and highest possible visibility of trading products. In 2016, EEX Group was able to further increase revenue from information products compared with previous years.

Transparency services focus on the publication of insider information and fundamental data on the "Transparency in Energy Markets" platform in the context of the European Regulation on Wholesale Energy Markets Integrity and Transparency (REMIT). This offering is a central element for EEX Group in order to give every trading participant the possibility to publish insider information on the one hand and establish individual trading platforms as transparent market platforms on the other. In the 2016 financial year, the transparency data offering was expanded to include data on power generation and gas consumption in Italy. As a result, transparency data regarding eight European countries are now published. Furthermore, EEX Group has also offered its customers weather data in the form of actual and forecast temperatures since 2016.

The area of regulatory reporting brings together reporting services which are provided on the basis of various legal provisions. On the one hand, Trade Reporting according to the European Market Infrastructure Regulation (EMIR) is provided for various Clearing and Non-Clearing members of ECC; on the other hand, EEX Group, in its function as a "Registered Reporting Mechanism" reports order and trade data to ACER, the Agency for the Cooperation of Energy Regulators, on behalf of its market participants. After its launch in November

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EEX fees and revenues

EEX 2016	Sales Revenue (in €)	Trading Volumes (in MWh)	RPC (in €/MWh)	Rack Rate EEX (in €/MWh)	Rack Rate ICE (in €/MWh)
Power Derivatives	87,206,000	3,920,000,000	0.0111	0.0125	0.01
Power Spot	67,534,000	535,000,000	0.0631	0.04 - 0.07	-
Natural Gas*	32,846,000	1,744,000,000	0.0094	0.0150 - 0.0045	0.00375
* Spot + Derivatives					
** includes Primary Auctions, Spot and Derivatives					

Note: based on publicly available information.

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Examples of distorted market outcomes (I)

[confidential]

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Examples of distorted market outcomes (II)

[confidential]

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Examples of distorted market outcomes (III)

[confidential]

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Examples of distorted market outcomes (IV)

[confidential]

ANNEX 5 - ICE/Trayport Response

	Execution Venues	Power																				Natural Gas																Renewables	Emissions	Coal				Iron Ore	Freight		Oil*
		Belgian	Bulgarian	Czech	French	German	Greek	Dutch	Hungarian	Italian	Nordic	Polish	Portuguese	Romanian	Serbian	Slovak	Slovenian	Spanish	Swiss	Turkish	UK	NBP	Zee/ZTP	TTF	PEG	NCG/GASP	CEGH VTP	HVP	PSV	GTF	Czech	Spanish	Slovak	Storg Capacity	Polish	Romanian	LNG			API2/4	N. America	Asia Pacific	Physical		Dry	Wet	LPG & Naptha
Brokers	42 Financial			●		●			●			●				●	●							●		●	●				●		●														
	ARRACO Global Markets		●	●			●		●	●						●	●		●																												
	Atlantic Brokers																																							●							
	Aspen Oil Brokerage																																														●
	Balkaner																			●																											
	BGC Partners																			●																											
	CIMD	●			●	●		●	●	●			●				●	●	●		●								●			●															
	Clarksons																																											●			
	Evolution																																						●	●							
	GFI	●		●	●	●	●	●	●	●		●		●	●	●	●	●	●	●	●	●	●	●	●	●	●		●		●		●	●			●		●	●		●		●	●	●	
	Ginga Petroleum																																														●
	Global Coal																																							●		●	●				
	Global Ore																																											●			
	Griffin Markets	●		●	●	●		●	●	●		●				●	●	●	●		●	●	●	●	●	●	●		●	●	●	●							●	●		●					
	ICAP	●		●	●	●	●	●	●	●	●	●	●	●	●	●		●	●		●	●	●	●	●	●	●		●		●	●		●			●		●	●	●	●		●		●	
	Libra Fearnley																																														●
	Link Brokerage																			●																											
	MAKE																			●																											
	Marex Spectron	●	●	●	●	●	●	●	●	●	●	●		●		●	●	●	●		●	●	●	●	●	●	●		●		●			●					●	●	●	●		●		●	●
	Mysteel																																											●			
	Oil Brokerage																																													●	●
	OTC Europe																																														●
	OTCex																					●	●	●	●	●	●		●	●	●	●	●														
	SSY																																											●	●		
	Tavira																							●		●	●		●																		
	Tradition	●	●	●	●	●	●	●	●	●		●		●	●	●	●	●	●	●		●	●	●	●	●	●		●		●			●			●		●	●		●					
	Tullett Prebon	●		●	●	●	●	●	●	●	●		●		●			●	●		●	●	●	●	●	●	●		●			●		●			●		●	●		●					●
Trayport Exchange Trading System (ETS)	CEEGEX																											●																			
	Hungarian Power Exchange (HUPX)								●																																						
	Iberian Gas Hub																															●															
	IBEX		●																																												
	OMIP												●					●																													
	OPCOM													●																						●											
	PEGAS (incl CEGH and GPN)																					●	●	●	●	●	●		●	●																	
	PXE			●					●							●															●																
	WSE InfoEngine SA																																		●												
GV Portal	Borsa Italiana IDEX									●																																					
	EEX	●			●	●		●		●	●							●	●		●																	●	●	●							
	GME									●																																					
	NASDAQ OMX Commodities Europe					●		●			●										●																	●	●								
Additional Venues	EPEX Spot (APX Dutch and Belpex)	●			●	●		●											●																												
	ICE ENDEX	●						●															●	●		●			●																		
	ICE Futures Europe																				●	●																	●	●		●					
Clearing Houses	CME ClearPort				●	●				●								●				●		●		●	●		●										●	●	●	●		●	●	●	●
	ECC	●			●	●		●		●	●			●				●	●		●	●	●	●	●	●	●		●									●	●	●					●		
	MEFF																	●																													
	NASDAQ OMX				●	●					●																																		●	●	
	OMIClear												●					●																													
	SGX Asia Clear																																									●		●	●	●	●

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ANNEX 6 - ICE/Trayport Response

[redacted]

Trayport does not have a significant presence in oil (I)

ICE hearing 12 July 2016 (emphasis added)

- Page 22, line 7 and 8 (Mr Peniket): *"Trayport do not really have a significant presence. Trayport's presence is in the European Gas and Power and surrounding markets"*
- Page 23, line 18 (Mr Jackson): *"if you look at Trayport itself and its capabilities of oil today, there are not customers demanding the Trayport solution in oil today, so they really have a small presence."*

Trayport hearing 12 July 2016 (emphasis added)

- Page 45 line 15 (Ms Chambers): [confidential]
- Page 46 Line 8 (Mr Heffron): [confidential]
- Page 76 Line 16 (Mr Heffron): [confidential]

Trayport does not have a significant presence in oil (II)

Trayport Hearing 8 September 2016 (emphasis added)

- Page 116 line 6 (Mr Heffron): [confidential]

Phase II PFs Response (emphasis added)

- Slide 14: "<u>Trayport has no traction or network in oil trading</u>"
- Slide 30: "7.170 / 7.171: [confidential]. In para 47 of Appendix D, ICAP state that Trayport is an unattractive proposition for new software where Trayport does not already have traction and connectivity. This directly contradicts the PFs."