

Project Manager
ICE/Trayport Remittal Inquiry
Competition and Markets Authority (CMA)
Victoria House
37 Southampton Row
London WC1B 4AD

By e-mail

10 May 2017

Dear Sir/ Madam

EFET views on the New Agreement Remittal in the light of CMA provisional findings published on 25 April

The Competition Appeal Tribunal (CAT), in its ruling of 6 March 2017, remitted to the CMA the question of whether Intercontinental Exchange (ICE) should be required to terminate the New Agreement entered into between Trayport and ICE post-merger. On 25th April the CMA published its provisional findings regarding the Remittal. This letter sets out EFET views on the matter following the publication of the CMA provisional findings.

EFET, representing over 110 energy trading companies, is not in a position to judge whether the New Agreement was concluded on an arm's length basis or not.

We realise that if the New Agreement would be at arm's length, a greater number of ICE products would be displayed on Joule/ Trading Gateway. This would offer advantages to market participants, including aggregation of market liquidity, increased competition between platforms and streamlined connectivity to ICE products.

In view of the foregoing, EFET supports the implementation of a replacement agreement between ICE and Trayport similar to the New Agreement, subject to following provisos:

A replacement agreement should only be implemented to the extent that the CMA can become satisfied that it will operate at arm's length and that it does not confer any material advantage on ICE, when compared to other trading venue customers of Trayport, in the period leading up to divestment.

Thus, if the CMA will allow such a replacement agreement to be negotiated and implemented, the CMA should satisfy itself that:

- ICE has first given a binding undertaking that it will withdraw its appeal against the CAT ruling regarding divestment;
- The negotiation and implementation process does not detract from the willingness of ICE to divest Trayport promptly in accordance with the CAT ruling;

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- ICE does not put itself in a position to determine or influence the choice of purchaser of Trayport according to the attitude of a purchaser to the continuation and terms of the replacement agreement;
- The negotiation and implementation are carried out under the supervision of a trustee, specially appointed by the CMA;
- The ultimately selected purchaser of Trayport has not received any inducement, extraneous to the terms of the contract governing the acquisition, to keep the replacement agreement in force nor maintain any particular terms of it and is not otherwise connected with ICE in a manner which might lead it to treat the replacement agreement in any manner incompatible with its arm's length status.

The role of the trustee should include duties to:

- Guarantee the arm's length nature of the replacement agreement;
Ensure that the replacement agreement confers no material advantage on ICE, when compared to other trading venue customers of Trayport,
- Specify that the replacement agreement provides the new owner of Trayport with the right to terminate the agreement without penalty upon completion of its acquisition upon serving notice of 30 calendar days;
- Specify that the replacement agreement will have a fixed duration of twelve months;
- that if at the end of this term Trayport has already been divested, then the replacement agreement may continue in force until such time as the new owner serves notice;
- that if, however, Trayport has not been divested by then, the replacement agreement will terminate automatically.
- That the whole divestiture process is executed within the foreseen deadline and no prolongation of such deadline can be granted.

Yours faithfully,

For and on behalf of EFET

J. van Aken
Secretary General