

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

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

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

- (c) the CMA should take action for the purpose of remedying, mitigating or preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC; and
 - (d) the full divestiture of Trayport by ICE would be an effective and proportionate remedy to the SLC and any adverse effects which have resulted from, or may be expected to result from, the SLC.
- 5. ICE made an application to the Competition Appeal Tribunal (the CAT) pursuant to section 120 of the Act against the Report on 11 November 2016 and on 17 November ICE made an application to the Competition Appeal Tribunal pursuant to section 120 of the Act against the direction issued by the CMA on 10 November 2016.
- 6. The CMA published a notice on 30 November 2016 of its intention to make an order to remedy the adverse effects on competition that it had identified and invited written representations from any interested person or persons by 30 December 2016. The CMA published the order on 5 January 2017 (the January 2017 Order) giving effect to the findings in the Report. The January 2017 Order provided that the time period within which the obligations set out in Articles 2 and 10 had to be met would not start to run until the day following the date on which proceedings in the CAT were finally determined. The Initial Enforcement Order ceased to be in force on the date of the January 2017 Order in accordance with sections 72 and 79 of the Act.
- 7. On 6 March 2017, the CAT handed down its judgment setting out its conclusion on each of the grounds of review (the Judgment). The full divestiture of Trayport by ICE was upheld by the CAT as being an effective and proportionate remedy to the SLC. However, the question of whether ICE and Trayport should be required to terminate the New Agreement (as defined in the Report) was remitted to the CMA for reconsideration (the New Agreement question). In accordance with an order of the CAT dated 24 March 2017, the following parts of the January 2017 Order were quashed: (i) the words 'or the date for termination of the New Agreements specified in Article 10.1' as occurring twice at Article 6.1 of the January 2017 Order; and (ii) Article 10 of the January 2017 Order in its entirety.
- 8. The CMA's Report on the New Agreement question (the Remittal Report) was published on 7 July 2017. The CMA concluded that ICE and Trayport should be required to terminate the New Agreement.
- 9. The CMA is now making this order (the Order), which supersedes the January 2017 Order, to reflect the Judgment and the CMA's findings in the Remittal Report. The CMA considers that the modifications that are made to the

January 2017 Order by way of this Order are not material in any respect and has decided, in accordance with paragraph 5 of Schedule 10 to the Act, that the Order, as modified, does not require any further consultation.

10. The Order will come into force on 21 July 2017.
11. The Order may be varied or revoked by the CMA under section 84(3) of the Act.
12. This Notice and a non-confidential version of the Order will be published on the CMA website, alongside an Explanatory Note which provides an explanation of how the Order is expected to operate. The CMA has excluded from the non-confidential version of the Order information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

SIMON POLITO
Group Chair
21 July 2017