

ICE Futures Europe (“the Exchange”)

Decision of the Delivery Panel (“the Panel”)

regarding a dispute in relation to the delivery of gasoil under the ICE Futures Europe Gasoil Futures Contract (“the Contract”) arising during the January 2010 delivery.

Delivery Month:	January 2010
ICE Clear Europe Selling Clearing Member:	Morgan Stanley & Co International Plc
Client:	N/A (Seller)
ICE Clear Europe Buying Clearing Member:	Newedge Group (UK Branch)
Client:	AOT Trading AG (Buyer)
Location:	Antwerp
Installation:	Oiltanking Stolthaven Antwerp NV
Delivery Range:	27 – 31 January 2010
Vessel(s):	Arnaud
No. of lots:	20 lots
Nature of dispute:	arrival of barge outside of agreed delivery range

We have received written submissions from the parties to the dispute. On the basis of those submissions there appears to be agreement on the basic facts. The Barge Arnaud was nominated by the Buyer to take delivery of 20 lots of gasoil (“Product”) under the Contract within the delivery range 27 – 31 January 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations (“the Regulations”). The nominated delivery day, was confirmed in accordance with the Regulations, as being 31 January 2010. The Barge Arnaud arrived to take up delivery of gasoil on 1 February 2010 which was outside of the agreed delivery range. The text of a “yahoo conversation” of 2 February, as submitted to the Panel, highlights that fact that the barge was discharging at “nafta b” on 1 February 2010 and would have completed the discharge at 16.00.

In the light of the non-performance by the Buyer of its obligations amicable settlement papers were sent to the Buyer and Seller by the Clearing House in accordance with Rule 1.17(a). Negotiations took place between the Buyer and the Seller during the amicable settlement period when the Seller offered the Buyer a price of USD\$5.00 per metric tonne above the settlement price in respect of the Product, as calculated by the Seller based on the Seller’s analysis of the market price at the time. This offer was rejected by the Buyer. The Buyer claimed that it appeared to the Buyer to be “not a reasonable nor amicable” solution for a 16 hour delay for a delivery of 2,000 metric tonnes out of an overall delivery between the parties of 80,000 metric tonnes, and was further “disproportionate”. No counter-offer made by the Buyer that has been submitted to the Delivery Panel. The Buyer confirmed that it would [refer the matter to go to the Delivery Committee. Accordingly, no amicable settlement of the dispute was achieved by the parties.

The dispute was referred to the Exchange by the Clearing House in accordance with Rule I.17. The Exchange then referred the matter to the Delivery Committee in accordance with Rule I.17. A Delivery Panel was convened in accordance with its

powers under I.18(c) since the dispute was deemed by the Exchange to require urgent resolution.

It is accepted by the parties that the Buyer had failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(iii) and the relevant procedures in Section K of the Regulations by arriving outside of the agreed delivery range.

Further, the Delivery Panel has determined that that the Buyer has failed to perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(iii) and the relevant procedures in Section K of the Regulations by arriving outside of the agreed delivery range.

The parties have not provided any information in relation to the level of damages which would be appropriate in the context of this dispute. The Seller's proposal, in the context of the amicable settlement discussions, was for a price of USD\$5.00 above the settlement price which would have amounted to a payment of USD\$10,000 in respect of the Product, was rejected by the Buyer.

It is the Panel's view that damages should be the difference between the contract price and the market price at the time of the Buyer's failure to perform

The Panel has considered the submissions of the parties and information supplied by the Exchange and has concluded that:-

- (i) the ICE Futures Europe Gasoil Futures Contract price, the invoiced price, for the January 2010 contract on expiry on 12 January 2010 was USD\$657.00/tonne*;
- (ii) the market price on 1 February 2010, the date on which delivery failed to occur, was USD\$584.5/tonne⁺.

Accordingly, in exercising its power under Rule I.18 (i)(ii), the Panel directs that a contract under the terms of which the Buyer would sell 20 lots of Product to the Seller at a price of USD\$584.5/tonne be invoiced back against an invoice in respect of the disputed delivery (for the sale of 20 lots at USD\$657.00), to produce a net invoiced back price of USD\$72.50/tonne for the 20 lots which are the subject of this dispute, amounting to a payment of USD\$145,000.

We have not dealt with the issue of payment of the Exchanges' costs pursuant to Rule 1.18(I)(iii). These costs to date amount to £1,250.00 in respect of fees and expenses of the Chairman. We would ask the parties to provide within 3 business days any submissions they want to make as to who should be responsible for payment of these sums or any part of them. We will then issue a direction concerning payment of these sums.

* ICE Futures Europe settlement price on 12 January 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.