

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 March 2010 delivery.

Delivery Month:	March 2010
ICE Clear Europe Selling Clearing Member:	BNP Paribas
Client:	AIC (Seller)
ICE Clear Europe Buying Clearing Member:	BNP Paribas
Client:	Frisol International Trading BV (Buyer)
Location:	Amsterdam
Installation:	Eurotank Amsterdam BV
Delivery Range:	27 – 31 March 2010
Vessel(s):	Kotank 3
No. of lots:	21 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 the basic facts appear to be as follows: the Barge Kotank 3 was nominated by the Buyer to take delivery of 21 lots of gasoil (“Product”) under the Contract within the delivery range 27 – 31 March 2010, as agreed between the parties in accordance with the ICE Futures Europe Regulations (“the Regulations”). The nominated delivery day, was confirmed by the Buyer to the Seller on 25 March 2010 in accordance with the Regulations, as being 30 March 2010.

By email at 13.46 on 31 March 2010 from [Name], at Frisol International Trading BV, on behalf of the Buyer, it was confirmed to the Seller that the Barge Kotank 3 was expected to arrive later that day to load. By the same email it was asked whether this would be acceptable to the Seller. It was also asked in the same email whether, as an alternative solution, the barge Eemstroom might be loaded as a “replacement for Kotank 3”. Again, it was asked whether this would be acceptable to the Seller. In response, [Name] at AIC, on behalf of the Seller, by email at 13.25 on 31 March 2010 confirmed that the “nomination and loading of Kotank 3 will be handled in accordance with ICE Regulations”.

The parties both separately confirm in their submissions that the Barge Kotank 3 did not arrive on 31 March 2010, and therefore did not arrive within the agreed delivery range. This fact is confirmed in the submission, on behalf of the Seller, of Norbert Marqueyrol of AIC submitted to the Delivery Panel by email on 4 June 2010 at 11.56, and further and in the written submission dated 3 June 2010, on behalf of the Buyer, submitted to the Delivery Panel by email on 3 June 2010 at 15.38.

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) at 19.11 on 1 April 2010, with the amicable settlement period due to end on 6 April 2010. Negotiations took place between the Buyer and the Seller both before and during the amicable settlement period which are detailed in

the written submissions. An amicable settlement of the dispute was not 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 did not perform its obligations to take up the Product in accordance with its obligations under Rule J.12(a)(ii) and the relevant procedures in Section K of the Regulations by arriving outside of the agreed delivery range.

The written submission on behalf of the Buyer submitted to the Delivery Panel by email on 3 June 2010 at 15.38, requests that the Delivery Panel directs that:

- i. the Seller should have accepted the Buyer's offer to provide a replacement barge for the loading of Product;
- ii. the ADP as proposed on behalf of the Seller was unreasonable;
- iii. the ADP as proposed on behalf of the Buyer was reasonable;
- iv. the Seller delivers the relevant Product to the Buyer at the March settlement price of USD 664.75 on a date to be advised by the Delivery Panel.

The Seller's written submission requests that the Delivery Panel:

- i. acknowledges the failure by the Buyer to take delivery of 21 lots;
- ii. acknowledges the termination of the contract under which the 21 lots were to be delivered; and,
- iii. order the Buyer to pay the Seller's costs.

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)(ii) and the relevant procedures in Section K of the Regulations in the context of this particular dispute by arriving outside of the agreed delivery range.

In relation to the Buyer's request regarding the replacement barge, the Delivery Panel notes the Buyer's obligations under Rule K.7.(b) in relation to the alteration of a particular in relation to a nomination or a substitution of a new nomination. The Delivery Panel notes that it is clear that the Buyer's attempt to substitute the barge Eemstroom in these circumstances did not comply with the relevant obligations.

It is the Panel's view that in a dispute of this nature involving a failure to perform by a party that damages is the appropriate remedy and that such damages should be calculated as 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 March 2010 contract on expiry on 11 March 2010 was USD\$664.75 /tonne*;
- (ii) the market price on 1 April 2010, the first date subsequent to the date on which delivery failed to occur for which a price is available, was USD\$698/tonne⁺.

It is clear from an analysis of the prices referenced in (i) and (ii) above that no loss would have arisen for the Seller and that therefore no award of damages is required. Therefore, the Panel sees no reason to exercise any of its power under Rule I.18 (i)(i) or (ii).

The Delivery Panel has not dealt with the issue of payment of the Exchange's costs pursuant to Rule 1.18(I)(iii). The Delivery Panel 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. The Delivery Panel will then issue a direction concerning payment of these sums.

* ICE Futures Europe settlement price on 11 March 2010;

⁺ Platts Gasoil 0.1% FOB ARA Barges.