



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2012)1988 final

Strasbourg, 14 February 2012

MINUTES

of the 1988th meeting of the Commission

held in Brussels

(Berlaymont)

on Wednesday 1 February 2012

(morning)

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Single sitting: Wednesday 1 February 2012 (morning)

The sitting opened at 9.08 with Mr BARROSO, President, in the chair.

Present:

Mr BARROSO	President
Baroness ASHTON	High Representative/ Vice-President
Ms REDING	Vice-President
Mr ALMUNIA	Vice-President
Mr KALLAS	Vice-President
Ms KROES	Vice-President
Mr TAJANI	Vice-President
Mr ŠEFČOVIČ	Vice-President
Mr REHN	Vice-President
Mr BARNIER	Member
Ms VASSILIOU	Member
Mr ŠEMETA	Member
Mr DE GUCHT	Member
Mr DALLI	Member
Mr LEWANDOWSKI	Member
Ms DAMANAKI	Member
Ms GEORGIEVA	Member
Mr OETTINGER	Member
Mr HAHN	Member
Ms HEDEGAARD	Member
Mr FÜLE	Member
Mr ANDOR	Member
Ms MALMSTRÖM	Member
Mr CIOLOŞ	Member

Absent:

Mr POTOČNIK	Member
Mr PIEBALGS	Member
Ms GEOGHEGAN-QUINN	Member

The following sat in to represent absent Members of the Commission:

Mr KARHUNEN	Adviser in Mr PIEBALGS's Office
Mr SUTHERLAND	A member of Ms GEOGHEGAN-QUINN's staff

The following also sat in:

Mr LAITENBERGER	Chef de cabinet to the PRESIDENT
Mr ROMERO REQUENA	Director-General, Legal Service
Mr DOENS	Head of the Commission Spokesperson Service
Ms AHRENKILDE HANSEN	Commission Spokeswoman
Ms VANNINI	Adviser in the PRESIDENT's Office
Mr MARTÍNEZ MONGAY	Chef de cabinet to Mr ALMUNIA
Mr ITALIANER	Director-General of DG Competition

Secretary: Ms DAY, Secretary-General, assisted by Mr GENISSON, Head of Unit in the Secretariat-General.

1. AGENDA

(OJ(2012)1988)

The Commission took note of that day's agenda.

2. COMMISSION DECISION CONCERNING A PROCEEDING UNDER ARTICLE 8(3) OF COUNCIL REGULATION (EC) 139/2004 ON THE CONTROL OF CONCENTRATIONS BETWEEN UNDERTAKINGS AND ARTICLE 57 OF THE EEA AGREEMENT (CASE COMP/M.6166 – DEUTSCHE BÖRSE / NYSE EURONEXT)

(C(2012)440 TO /5; RCC(2012)008)

The PRESIDENT asked Mr ALMUNIA to outline the decision that he was tabling for adoption.

Mr ALMUNIA explained the different stages followed during the investigation of this case, from the notification of the proposed merger on 29 June 2011 to the decision to prohibit the merger proposed that day, including a presentation of the various series of commitments given by the parties.

The two groups involved were among the leading stock-exchange operators in the world and, in particular, were the two largest exchanges for European financial derivatives, so their merger would produce a *de facto* quasi-monopoly in exchange activities and clearing of these products.

The only possible finding on the basis of his department's analysis of the definition of the relevant market was that the merger of the two groups would eliminate almost all competition and, moreover, would prevent the arrival of new entrants.

The claimed benefits were insufficient to offset the disadvantages of the disappearance of competition, and the commitments proposed by the two groups had been judged inadequate and not proportionate to the damage that would have been caused, so the only decision possible was a negative one.

The discussion that followed focused on the following points:

- the broad support for the decision proposed on the basis of the technical analysis by the Commission departments;
- the usefulness of discussing competition cases but also the interplay between the decisions taken in this field and the Commission's other policies;
- questions concerning the link between the proposed decision and the ongoing reform of the rules in the field of financial services, and in particular derivatives, and the advisability of the Commission taking account, when making its decision, of the future developments in financial services and the dynamics of the derivatives market, in particular with regard to the respective market shares of over-the-counter (OTC) and exchange-traded derivatives;
- the necessary ambition for the European financial industry and European industrial policy in general, the need to facilitate access by businesses to capital markets, and, to that end, the advisability of having a leading European exchange presence;
- questions concerning the definition of the relevant markets that was used;
- questions on whether it might be possible to extend the deadline for the decision;
- regrets that an external debate had been launched before the Commission's official decision had been taken and that internal information had obviously leaked out;
- the need to ensure consistency with the Commission's overall policy approach and hence to maintain healthy competition on European financial markets;
- the usefulness of a debate on European industrial policy, which should, however, be held in another context and in no way influence that day's decision.

Mr ALMUNIA was satisfied that it had been possible to discuss this case.

With regard to the procedural aspects, he explained that it was possible to extend the deadline for a decision only when the decision was intended to respond to the commitments proposed by the parties, which had already happened twice in relation to this case. He had met the executives from the two groups on many occasions; they had been fully informed of the only commitment that could dispel the concerns raised by the proposed merger, namely the sale of one of the two derivatives exchanges owned respectively by the two groups, a commitment that they had not wanted to give in the light of the merger's objectives.

With regard to the 'leaks' to the press and the question of their source, Mr ALMUNIA highlighted the very powerful lobbying campaign run by the two groups.

With regard to the link between the decision and the establishment of new rules on financial markets, and to the assessment of developments in the financial industry in the years ahead, Mr ALMUNIA referred to the objectives of standardisation and interoperability pursued by the new rules and stressed that the merger would increase even further the profitability of the activities of the groups concerned in such a context, but would not benefit the users of their platforms, who would be faced with a monopoly.

The PRESIDENT noted the very broad support in favour of the decision as proposed by Mr ALMUNIA. He also welcomed the discussion held that day and pointed out that a debate on a competition case was always possible and beneficial in terms of collegial ownership of the decision.

He highlighted the singular position of the Commission, which had to combine its role as the independent European competition authority, responsible for enforcing compliance with the rules of the treaty in this field, with that of a political body. He had looked into the case himself and had been able to verify that all the national competition authorities were in full agreement with the decision, for which the technical and legal justification was sound. He confirmed that in this context it was impossible to delay the decision from a legal perspective, since the parties had already availed themselves of all the time necessary to put forward their

commitments.

He concluded by calling for everyone to support the decision, for the sake of the Commission's credibility as an independent competition authority, which he noted was considered to be the best such authority in the world.

At the end of this discussion, the Commission:

- took note of the opinion of the Advisory Committee on Concentrations of 17 January in C(2012)440/3;
- took note of the final report of the Hearing Officer of 19 January in C(2012)440/4;
- adopted, in the authentic language (English), the decision in C(2012)440/5, declaring the notified operation to be incompatible with the common market and with the functioning of the agreement on the European Economic Area;
- decided to notify the decision in C(2012)440/5 to the companies concerned, together with the final report of the Hearing Officer and the opinion of the Advisory Committee;
- decided that the key parts of the decision, together with the Advisory Committee's opinion and the Hearing Officer's final report, would be published in the official languages of the Union in the *Official Journal of the European Union* (with business secrets and other confidential information removed);
- decided also to publish the decision on the internet (with business secrets and other confidential information removed).

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The Commission's other discussions on certain agenda items are recorded in the special minutes.

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The meeting closed at 10.25.