



OPINION

of the ADVISORY COMMITTEE ON MERGERS

given at its meeting of 13th March 2017

regarding a draft decision relating to

CASE COMP/ M.7995 DEUTSCHE BÖRSE / LONDON STOCK EXCHANGE

Rapporteur: ROMANIA

Operation

1. The Advisory Committee (12 Member States) agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(a) of the Council Regulation No 139/2004 (the "Merger Regulation").

Union Dimension

2. The Advisory Committee (12 Member States) agrees with the Commission that the notified operation has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

Product Market

3. The Advisory Committee agrees with the Commission's definitions of the relevant product markets as stated in the draft decision for the purpose of assessing the present operation, related to:
 - a. Bonds and the segmentation thereof (12 Member States);
 - b. Repurchasing agreements ("repos") and the segmentation thereof (12 Member States);
 - c. Settlement and custody and the segmentation thereof (12 Member States);
 - d. Collateral management services (CMS), the possible segmentation and the fact that CMS do not form part of the same market as other post-trading services (12 Member States);
 - e. Derivatives and the segmentation thereof (11 Member States). A minority of Member States (1 Member State) abstains.

Geographic Market

4. The Advisory Committee (12 Member States) agrees with the Commission's definitions of the relevant geographic markets as stated in the draft decision.

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5. In particular, the Advisory Committee (12 Member States) agrees with the Commission's conclusions that for the purpose of assessing the present operation:
 - a. The relevant market for CCP clearing of bonds and ATS traded and CCP cleared repo is EEA-wide in scope.
 - b. The exact geographic scope of the market for settlement, custody services provided by ICSDs and large custodians in relation to fixed income securities, collateral management services and derivatives can be left open.

Competitive Assessment

6. The Advisory Committee agrees with the Commission's assessment that the notified operation leads to a significant impediment to effective competition in the following markets:
 - a. The market for clearing of bonds (12 Member States);
 - b. The market for ATS traded and CCP cleared non-triparty repos, or alternatively, for the clearing of ATS traded repos (12 Member States);
 - c. The market for trading and clearing of ATS traded and CCP cleared triparty repos (12 Member States);
 - d. The market for settlement and custody services in relation to fixed income provided by ICSDs and large custodians (12 Member States);
 - e. The market for collateral management (12 Member States);
 - f. The market for trading and clearing of single stock equity derivatives based on Belgian, French, or Dutch underlyings or alternatively any EEA underlying (11 Member States). A minority of Member States (1 Member State) abstains.

Commitments

7. The Advisory Committee (10 Member States) agrees with the Commission that the final commitments offered by the Notifying Parties on 27 February 2017 resolve competition issues in the market for trading and clearing of single stock equity derivatives. A minority of Member States (1 Member State) disagrees. A minority of Member States (1 Member State) abstains.
8. The Advisory Committee (11 Member States) agrees with the Commission's analysis of the Commitments of 27 February 2017 and in particular that these commitments, submitted on day 80 of the procedure, do not fulfil the legal standard for late commitments and would not unambiguously and fully resolve competition concerns identified in the markets for ATS traded and CCP cleared triparty and non-triparty repos and clearing of bonds where the transaction leads to *de facto* monopolies. A minority of Member States (1 Member State) abstains.

Compatibility with Internal Market

9. The Advisory Committee (11 Member States) agrees with the Commission's view that the notified concentration should be declared incompatible with the internal market and the EEA Agreement in accordance with Articles 2(3) and 8(3) of the Merger Regulation and Article 57 of the EEA Agreement. A minority of Member States (1 Member State) abstains.
10. The Advisory Committee (10 Member States) agrees that the competitive assessment as regards clearing of OTC interest rate derivatives, trading and clearing of exchange traded interest rate derivatives, trading and clearing of Italian based single stock equity derivatives and integrated clearing services should be left open in the final decision. A minority of Member States (2 Member States) abstains.