



**Final Report of the Hearing Officer<sup>1</sup>**  
**Deutsche Börse / London Stock Exchange Group**  
**(Case M.7995)**

**I. Introduction**

1. On 24 August 2016, the European Commission (the "Commission") received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation<sup>2</sup>, by which Deutsche Börse AG ("DBAG"), and London Stock Exchange Group plc ("LSEG"), enter into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation (the "Transaction"). LSEG and DBAG will be referred to collectively as "the Parties".

**II. Procedure**

2. The Commission's first phase investigation raised serious doubts as to the compatibility of the Transaction with the internal market and the EEA Agreement. On 28 September 2016, the Commission initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation. The Parties submitted their response on 9 November 2016.

**Statement of Objections**

3. On 14 December 2016, the Commission adopted a Statement of Objections ("SO") in which it took the preliminary view that the Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2 of the Merger Regulation, notably in the following areas: trading and clearing of exchange traded interest rate derivatives; CCP clearing of OTC interest rate derivatives; single stock equity derivatives based on Italian underlyings; single stock equity derivatives where Eurex competes with Euronext; ATS traded and CCP cleared non-triparty repos; ATS traded and CCP cleared triparty repos; clearing of bonds; integrated clearing services. It would also lead to foreclosure of Eurex' rivals that depend on clearing services provided by LSEG; foreclosure of Clearstream's rivals, in particular Euroclear, in the markets for

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<sup>1</sup> Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ("Decision 2011/695/EU").

<sup>2</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

settlement and custody in relation to fixed income provided by ICSDs and global custodians and for collateral management.

4. The Parties were given until 12 January 2017 to reply to the SO. They submitted a joint reply on 13 January 2017<sup>3</sup>, and supplemented this on 24 January 2017. The Parties did not request a formal oral hearing.

#### **Access to the file**

5. The Parties received access to the file via encrypted CD-roms in December 2016, and in January 2017. They have continued receiving it on an ongoing basis since then.

#### **Interested third persons**

6. Upon their requests, I admitted Intercontinental Exchange, Euroclear SA/NV, Euronext N.V., European Central Counterparty N.V., European Investors' Association, Nasdaq, and Paris EUROPLACE (*Association loi 1901*), as interested third persons in the current proceedings.
7. All these interested third persons received a non-confidential summary of the SO, and were given the opportunity to make known their views in writing.

#### **Interested third person's request for access to a less redacted version of the SO**

8. After submitting its comments on the non-confidential version of the summary of the SO, [an interested third person] requested DG Competition that it be given access to a less redacted version of the SO. DG Competition rejected that request, and subsequently [the interested third person] brought a request to the Hearing Officer on 9 February 2017, asking that it be provided with a comprehensive version of the SO. [The interested third person] claimed that the version of the summary of the SO it had been given access to by DG Competition had not allowed it to respond in a comprehensive manner.
9. I analysed [the interested third person]'s request in accordance with Article 7(2)(d) of Decision 2011/695/EU. Whereas parties to the transaction have a direct interest in the outcome of the Commission's procedure, third persons have merely an indirect interest. The boundaries of the right to be heard are comprehensively established by Article 16 of the Merger Implementing Regulation – the Commission will inform them in writing of the nature and subject matter of the proceedings and set a time limit within which they may make known their comments.<sup>4</sup> As noted above, the Commission had exercised its discretion in determining how it informed [the interested third person] of the nature and subject matter of the procedure by providing a non-confidential summary of the SO. On reviewing that summary, I considered that the Commission had met the requirements set out in Article 16(1) of

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<sup>3</sup> On 6 January 2017 the Parties had submitted a preliminary response to the SO.

<sup>4</sup> Judgment in *Kaysersberg v Commission* (T-290/94, EU:T:1997:186, paragraphs 105-108).

the Merger Implementing Regulation. Accordingly, I rejected [the interested third person]'s request.

### **Letter of Facts**

10. On 26 January 2017 the Commission addressed to the Parties a letter of facts where it pointed out additional evidence in the Commission's file in support of the preliminary findings. The Parties submitted written comments to the letter of facts on 30 January 2017.

### **Commitments**

11. The Parties submitted a first set of commitments on 6 February 2017, which were revised by the Parties on 8 and 9 February 2017. The market test was launched on 9 February 2017. On 27 February 2017, the Parties formally submitted a final set of commitments (the "Final Commitments").

### **The draft decision**

12. After having heard the Parties, the Commission takes the view in the draft decision that the Transaction gives rise to significant impediments of effective competition, however in a more limited number of areas as compared to the SO. The Commission concludes that, in the light of, in particular, the late submission of the Final Commitments, their complexity, their shortcomings in terms of scope, effectiveness and suitability, as well as the difficulties relating to their effective monitoring and enforcement, the Final Commitments do not eliminate all the identified competition concerns, in particular in the markets for CCP clearing of bonds, for ATS traded and CCP cleared triparty repos, ATS traded and CCP cleared non-triparty, repos, as well as on the markets for settlement and custody services in relation to fixed income provided by ICSDs and large custodians and for collateral management, and are not comprehensive and effective in all respects. The Commission therefore concludes that the Transaction is incompatible with the internal market and the functioning of the EEA Agreement.
13. I have reviewed the draft decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views.

### **III. Conclusion**

14. Overall, I consider that the effective exercise of the procedural rights has been respected in this case.

Brussels, 15 March 2017

Joos STRAGIER