

***Case No COMP/M.3511 -  
WIENER BÖRSE ET AL.  
/ BUDAPEST STOCK  
EXCHANGE /  
BUDAPEST  
COMMODITY  
EXCHANGE / KELER /  
JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 22/03/2005

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M. 3511 – Wiener Börse et al./Budapest Stock Exchange/Budapest Commodity Exchange/KELER/JV Notification of 12/02/2005 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

1. On 15/02/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Wiener Börse AG (“WBAG”, Austria), Oesterreichische Kontrollbank Aktiengesellschaft (“OeKB”, Austria), Raiffeisen Zentralbank Österreich AG (“RZB”, Austria), Erste Bank der oesterreichischen Sparkassen AG (“Erste”, Austria) and HVB Bank Hungary Rt (“HVBH”, Hungary) belonging to the HVB Group (Germany), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertakings Budapesti Értéktőzsde Rt. (Budapest Stock Exchange, “BSE”, Hungary), Budapesti Árutőzsde Rt. (Budapest Commodity Exchange, “BCE”, Hungary) and Központi Elszámolóház és Értéktár Rt. (“KELER”, Hungary).

#### **I. THE PARTIES**

2. **WBAG** is the Vienna (Austria) stock exchange and general commodity exchange.
3. **OeKB** provides specific capital market services and is the Austrian Central Securities Depository.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

4. **RZB, Erste and HVBH** are banks active in banking and financial services in Austria and Hungary.
5. **BSE** operates as the stock exchange in Budapest (Hungary) with a turnover of approximately 6.1 million Euro in 2003. The major current shareholders of BSE are: WBAG (14.00%), OeKB (11.0%), RZB (6.375%), Erste (12.219%) and HVBH (25.203%) which own together 68.797% in BSE.
6. **BCE** operates the commodities exchange in Budapest (Hungary) with a turnover of approximately 0.2 million Euro in 2003. The HVB Group has a share of 7% in BCE, the other notifying parties (WBAG, OeKB, RZB and Erste) do not own shares in BCE. Other major shareholders of BCE are Ánit Gazdasági és Bef. Tanácsadó Kft. (22.875%), Cottstown International Ltd. (22.875%), Nagy Henriett (22.875%), K&H Bank (5.1371%) and OTP Bank Rt. (5.5783%).
7. **KELER** is the Hungarian Central Clearing House and Depository with a turnover of approximately 17.2 million Euro in 2003. The shares in KELER are owned by BSE (26.67%), BCE (20%), and the National Bank of Hungary (53.33%). None of these undertakings has sole or joint control over KELER.

## II. THE OPERATION

8. With the notified transaction WBAG, OEKB, RZB, Erste and HVBH intend to acquire joint control of BSE, BCE and KELER.

## III. THE CONCENTRATION

### *Joint Control of BSE*

9. On 19 May 2004 the notifying parties have acquired together 50.25% of the shares of BSE by way of purchase of shares. Prior to this transaction only HVBH (12.75%) and Erste (5.8% through a Hungarian subsidiary) held some stake in BSE. On 17 May 2004 the notifying parties had concluded a Syndicate Agreement which was designed to ensure the joint exercise of the voting rights in BSE (WBAG: 20.3%, OeKB 15.7%, RZB 9.3%, Erste 17.8%, HVBH 36.6%). According to this agreement strategic decisions can only be adopted by a majority of 80%. The Syndicate Agreement is subject to the necessary regulatory approval (i.e. a clearance decision by the Commission under the ECMR).

### *Joint Control of BCE*

10. Pursuant to the acquisition of joint control of the parties in BSE, the parties intend to acquire through BSE joint control of BCE by way of purchase of shares (75.625%).

### *Joint Control of KELER*

11. As a result of the acquisition of joint control in BSE and BCE the parties will own combined 46.67% of the shares in KELER, the remainder being owned by the National Bank of Hungary (53.33%). Since there is a quorum of 60% for strategic business decisions, the parties (through BSE and BCE) and the National Bank of Hungary will have joint control over KELER.

#### IV. COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> (HVB Group: 24,813 million Euro; WBAG: 19.8 million Euro; OeKB: 807.6 million Euro; RZB: 6,892.3 million Euro, Erste: 8,746.1 million Euro) . Each of HVB Group, OeKB, RZB and Erste have a Community-wide turnover in excess of EUR 250 million, but HVB Group does not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

#### V. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

13. Based on the parties' assessment and the Commission's previous decisions, the Commission's market investigation addressed the following markets:
  1. market for securities listing and trading services,
  2. market for intermediary services;
  3. market for regulated clearing and settlement services;
  4. market for central depository services;
  5. market for intermediary depository/custody services.

##### A. The relevant product markets

###### *(1) Market for securities listing and trading services*

14. The parties consider a market for providing the service of a regulated trading platform in the form of an exchange for trading Hungarian stock/equities, bonds and related derivatives (futures and options). The parties suggest that the product market should include the trading of Hungarian securities and other financial products irrespective whether processed on a stock exchange or over the counter ("OTC"). OTC-trading means trading in an unregulated way, via an Electronic Communications Network (ECN), Alternative Trading System (ATS) or other bilateral means including voice dealing.
15. The market investigation gave indications for different trading structures for equities/shares and bonds. From an issuer's and from a trader's point of view listing/trading on BSE and trading on OTC seem to be hardly substitutable.
16. More than 90% of trading in Hungarian share/equities was done on BSE whereas more than 90% of trading in Hungarian bonds was done OTC. Furthermore, the market investigation revealed that only 0-10% of the customers trading in shares/equities and almost 0% of the customers trading in bonds would change from BSE to OTC, if prices for trading were raised by 5-10%. It should be mentioned that this was mainly explained with the currently low fees charged at BSE. Issuers confirmed that a small but significant price increase for listing (initial fee and annual fee) would not lead to less listing on BSE.
17. However, the exact product market definition can be left open, since the concentration does not raise competition concerns under any alternative product market definition.

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

## ***(2) Market for intermediary services***

18. This product market consists of the services the banks and other investment service providers offer to their customers with regard to trading in securities.
19. The parties submit that despite the difference in respect of the legal form of the transaction the trading activity of brokers (trading in securities in their customers' name and on their behalf) and dealers (trading in their own name and for their own benefit) are the same. Furthermore they submit that intermediary services with regard to trading on a regulated trading platform and OTC are interchangeable.
20. The exact product market definition may be left open, since the concentration does not raise competition concerns under any alternative product market definition.

## ***(3) Market for regulated clearing and settlement services***

21. The Commission has in a previous decision under Article 82 (Case 38.096 - Clearstream) considered that clearing, settlement and safekeeping (custody) can be performed by Clearing Houses/CCPs and CSDs or by intermediaries (such as banks). However, each institution may only perform the "primary" clearing and settlement for the securities actually deposited in its final custody. In the present case, as securities issued under Hungarian law for trading on BSE are deposited with KELER (referred to as the *issuer CSD*), only KELER can conduct the primary clearing and settlement related to these securities. Furthermore, KELER is currently the only institution in Hungary authorised to provide these services which are subject to regulation.
22. The parties suggest a market for clearing house services, which includes (a) the central clearing of exchange transactions, (b) operating the settlement system, (c) settlement of securities OTC transactions, (d) CCP central counterparty functions and maintaining a guarantee system for stock exchange settlements, (e), exchange cash account management for the stock exchange settlement.
23. The market investigation confirmed that it is highly unlikely that KELER would be replaced as the Hungarian regulated clearing and settlement services provider in the next 3-5 years. Overall there would be hardly any transactions (proprietary and third party) which would change from KELER to another CSD if prices for clearing securities in KELER were raised by 5-10%.
24. The exact product market definition may be left open, since the concentration does not give rise to competition concerns under any alternative product market definition.

## ***(4) Market for central depositary services***

25. A market for central depositary services ("CSD") would consist of (a) maintaining the central securities database, (b) issuing securities codes, (c) creating, retiring, and keeping records of dematerialized securities, (d) issuing written instruments for the offering of domestic securities on foreign markets, (e) issuing written instruments for the offering of foreign securities on the domestic market. The exact definition of the product market may be left open, since the concentration does not give rise to competition problems under any alternative market definition.

### ***(5) Market for intermediary depositary/custody services***

26. The parties suggest a market for depositary/custody services which includes: (1) Custody (and Subcustody) services to institutional investors and issuers; (2) Securities lending and borrowing; (3) Registrar and additional services to issuers; (4) Cross border custody services.
27. The parties submit that these “sub-services” do not constitute separate services but only parts of one single service, because customers usually purchase those services which they need in a package from the same provider. The exact delineation of the product market can remain open, since it has no impact on the competition analysis.

## **B. The relevant geographic markets**

### ***(1) Market for securities listing and trading services***

28. The parties submit that attempts of exchanges to attract issuers to list securities are not geographically limited. Nevertheless, the parties contend that for many companies – except the truly international ones – the domestic exchange is the “natural place” for their securities to be listed and traded, which would mean that markets are national. The market investigation showed clear indications that the market for securities listing and trading services is still national in scope.
29. Most issuers said that the country of domicile is more important as a criterion than trading fees with regard to listing equities/shares on a certain stock exchange and that the situation would not change in the next 3-5 years. However, it was also mentioned that in the medium term the relevance of country of domicile will decrease and other factors, like strength of local institutional investor base, trading fees and regulatory environment will gain in relevance. It was confirmed that all Hungarian companies are primary listed at BSE. The Hungarian issuers did not mention alternatives for primary listing except in one case (Vienna). Furthermore, the issuers would not change their primary listing on BSE to a stock exchange in another country, if prices for issuing shares on BSE were raised for 5-10%. Moreover, the market investigation confirmed that dual/secondary listing is not interchangeable with primary listing. It was mentioned that the purpose of dual/secondary trading is to attract additional liquidity.
30. With regard to trading the market investigation revealed that the market costs for trading of shares of Hungarian companies on secondary markets (e.g. Warsaw, London, New York) are much higher than on the primary market in Hungary because the secondary markets are illiquid and not transparent. Therefore a small but significant price increase on the primary market would not have a significant effect on trading on secondary markets.
31. However, the exact geographic market definition may be left open, since the concentration does not raise competition concerns under any alternative market definition.

### ***(2) Market for intermediary services***

32. The parties submit that following Hungary’s accession to the European Union, Hungarian investment service providers are entitled not only to accept customers from abroad but also to actively provide their services abroad. Furthermore

Hungarian service providers have been able to trade at another exchange, namely at Xetra, pursuant to an agreement between BSE and Deutsche Börse AG. However, the parties contend that such trade is of minor importance and only counts for 1.85% of the BSE turnover on Hungarian equities (from 08/2003 – 06/2004). Moreover the parties are not aware of non-Hungarian investment service providers actively offering their services in Hungary.

33. It was confirmed by the market investigation, that currently there are no foreign investment service providers. However, it was partly mentioned that the situation is likely going to change within the next 3-5 years. It was submitted that BSE is offering a remote membership for foreign investment service providers since 1 May, 2004 and if the trading volume at BSE keeps increasing it may attract foreign investment service providers. Hence, there could be a tendency to a market for intermediary services which is wider than national. The exact scope of the geographic market may be left open, since the concentration does not raise competition problems under any alternative market definition.

***(3) – (5) Market for regulated clearing and settlement services, market for central depository services and market for intermediary depository/custody services***

34. The parties' information is based on national markets for clearing and settlement services since KELER is the clearing house for BSE and BCE and its activities are exclusively linked to trading in Hungarian securities and/or trading by Hungarian investment service providers. However, the geographic market definition may be left open since the transaction would have even less impact on competition if the geographic market was wider than national.
35. Since the central depository services are performed exclusively by KELER as the Hungarian CSD designated by the HFSA (Hungarian Financial Supervisory Authority) the parties contend that the market for central depository services is national. Article 336 (1) of the Hungarian Capital Markets Act foresees only one company to perform the central depository services. However, the geographic market definition may be left open since the transaction would have even less impact on competition if the geographic market was wider than national.
36. The parties submit that intermediary depository/custody services are connected to trading in securities and the geographic market is national. However, the geographic market definition may be left open since the transaction would have even less impact on competition if the geographic market was wider than national.

## **VI. COMPETITION ASSESSMENT**

### **A. Horizontal Effects**

37. Horizontal effects are either non-existent or minimal. They could only occur on the market for securities listing and trading services (or submarkets), in which both the parties (WBAG) and the target BSE are active. There would be no overlap if the market for securities listing and trading services (or submarkets) was national. If the market was wider than national the combined market share (WBAG and BSE) would be less than 1% either on a global or a European wide basis.

### **B. Vertical Effects**

38. Pursuant to the transaction the parties do not only own the trading platform BSE but they (HVBH, RZB's and Erste's subsidiaries) are also trading on this platform. Furthermore they will have joint control of KELER, which currently has a monopoly for the post-trading services of clearing and settlement for transactions on BSE.

*(1) Market for securities listing and trading services*

39. The current fees for trading at BSE are considered to be relatively low compared to other stock exchanges. It will be in the interest of the parties to keep trading fees low, in order to increase turnover and new listings. It should be mentioned that BSE is a stock exchange with a trading volume which is rather small on the basis of an EEA or worldwide market with market shares of far below 1% respectively. Although most Hungarian companies regard their country of domicile as the primary place of listing, there is a tendency that other factors as e.g. trading fees and statutory conditions become more important in the future. This development is likely to increase competition between stock exchanges in different countries. Also, HFSA reported to the Commission that no relevant price increase occurred during the past years.
40. The operation of the Hungarian exchanges is regulated by the Capital Markets Act and is supervised by the HFSA. Pursuant to Article 317 of the Capital Markets Act, *"the rules of the exchanges must comply with the requirements of non-discrimination between issuers and traders, respectively"*. Further, in the same Article, the Capital Markets Act provides that *"the rules of the exchanges must ensure that the exchange activities, trading and the information thereon be transparent and controllable in the general interest of the market, thereby creating the same position of and the non-discrimination between the participants of trading, as well as the objective market protection of investors"*. The compliance with the above non-discrimination provision is ensured by the HFSA. Almost all of the users of the Hungarian exchanges confirmed that the HFSA would be a safeguard against abusive behaviour (i.e. in the form of discriminatory or excessive pricing) by the owners of the trading platform BSE. According to market participants, HFSA is well placed to intervene promptly if illegal acts are experienced on the financial markets.
41. Some service providers mentioned also that costs for fees paid to BSE, BCE and KELER account for only 10-15% of the total costs (other direct and indirect) of providing intermediary services.
42. Finally it was brought up that since the BSE has been established, the market players were the owners of the platform and that situation did not lead to a situation of vertical foreclosure by raising rival's costs. The investigation confirmed that the merging companies would not have incentives to raise the costs of their rivals in trading, since their main activities would not be performed in relation with trading. In addition, any vertical foreclosure strategy by BSE's owners would risk to undermine further the position of an already marginal exchange.
43. With regard to BCE, which had a turnover of only approximately 0.2 million Euro in 2003, it has been argued by market participants that the concentration has a rather positive effect on trading in commodities.



*(2) Market for regulated clearing and settlement services*

44. The current fees for clearing and settlement services of KELER are not exceptional compared to services which are offered by other providers of clearing and settlement services.
45. BSE is a stock exchange with a trading volume which is rather small on the basis of an EEA or worldwide market with market shares of far below 1% respectively. There is at least a long term tendency towards competition between capital markets in Europe (see trading above). Due to such competition, KELER would not be in a position to increase its prices either. An increase in KELER's prices would have the same effect as an increase in BSE prices, i.e. the whole Hungarian capital market would become more costly, and therefore less attractive for investors.
46. Furthermore, the relation of fees paid for trading, clearing and settlement services of Hungarian shares in relation to the total costs for providing intermediary services seems to be rather low (10-15%).
47. The prices set by KELER are transparent and subject to the approval of HFSA. Even though the merging parties might be more inclined to raise rivals' cost in clearing and settlement services distributing the higher profits in compensation of the raised cost margins, it should be noted that approximately ½ of the profits will go to the National Bank of Hungary ("NBH") having joint control over KELER. In addition the profits will be shared unevenly between the parties due to the uneven distribution of their shares in BSE.
48. Moreover, NBH also guarantees the parties cannot abuse their shareholding rights to the detriment of their competitors. According to Hungarian law, one of the basic roles of the NBH is to ensure the stability of the financial system and to develop securities clearing and settlement systems and to monitor these systems to ensure their efficient and sound operation.
49. Finally, pursuant to the Capital Markets Act, clearing houses must operate in accordance with their rules, which in turn are subject to the approval of the HFSA. Such rules must expressly prevent any discrimination between customers according to Article 345 (4) of the Capital Markets Act. Safeguarding these principals HFSA has supervisory role over the activities of all financial organizations and individuals falling under the scope of Capital Markets Act, while NBH has oversight control over KELER. Through its legal entitlements (eg. on-site inspections; daily, monthly, quarterly and yearly reports sent by KELER to HFSA; possibility to revoke KELER's license together with the president of NBH) HFSA is seen as a safeguard against abusive behaviour by most market participants. In addition, if BSE's owners decided to engage in such behaviour, they would risk to undermine further the position of an already today marginal market that accounts for less than 1% of European trading volume.

*(3) Market for central depository services and market for intermediary depository/custody services*

50. Based on the grounds presented before, the possibility to raise rivals' costs can be excluded for these markets too.

### **C. Risk of Coordination**

51. The transaction would not lead to a coordination of the competitive behaviour of HVBH, RZB and Erste in the sense of Art. 2(4) of the ECMR. Although HVBH, RZB, Erste and OeKB are active in the Hungarian intermediary services market (or submarkets) and the Hungarian market for depositary/custody services, coordination is highly unlikely due to the structure of the markets concerned.
52. On the intermediary services market the market shares are 19% (Erste), 11% (HVBH) and 4% (RZB) for the segment trading on BSE and 27% (Erste), 23% (HVBH), 7% (RZB) and less than 1% (OeKB) for the segment trading OTC. There are numerous (more than 30) other market players and some of them have market shares above 5%. Furthermore the intermediary services market is expected to move towards a market which is wider than national.
53. On the Hungarian market for depositary/custody services the combined market share of the parties (HVBH 14%; Erste 5%; RZB 4%; OeKB less than 1%) and KELER (7%) is less than 30%.
54. Furthermore, the relative size of the proposed JV is small, far less than 1 % relative to the size of the activities retained by these companies in Hungary.
55. Therefore the incentive to coordinate their competitive behaviour in other markets than the markets of the joint venture will not change as a consequence of the proposed operation.

### **VII. CONCLUSION**

56. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

signed

Neelie KROES

Member of the Commission