



EUROPEAN COMMISSION
DG Competition

Case M.9564 – LSEG/REFINITIV BUSINESS

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval
Date: 26/2/2021



EUROPEAN COMMISSION

Brussels, 26.2.2021
C(2021) 1483 final

PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

London Stock Exchange Group Plc.
10 Paternoster Square
EC4M 7LS - London
United Kingdom

Dear Sir/Madam,

**Subject: Case M.9564 – LONDON STOCK EXCHANGE GROUP/ REFINITIV
BUSINESS
Approval of Euronext N.V. as purchaser of the Divestment Business following
your letter of 16.10.2020 and the Trustee's opinion of 22.02.2021**

1. FACTS AND PROCEDURE

- (1) By decision of 13 January 2021 (the "Decision") based on Article 8(2) of Council Regulation (EC) No 139/2004¹ and Article 57 of the EEA Agreement², the

¹ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision. For the purposes of this Decision, although the United Kingdom withdrew from the European Union as of 1 February 2020, according to Article 92 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7), the Commission continues to be competent to apply Union law as regards the United Kingdom for administrative procedures which were initiated before the end of the transition period.

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

Commission declared the operation by which London Stock Exchange Group Plc (“LSEG” or “the Notifying Party”, United Kingdom) acquires sole control of Refinitiv Business (“Refinitiv”, United States) by way of purchase of shares (the “LSEG/Refinitiv Transaction”)³ compatible with the internal market and the EEA Agreement, subject to conditions and obligations (the “Commitments”).⁴

- (2) The Commitments consist in a package of the following three sets of commitments:
 - a. The Borsa Italiana Commitments (Annex I to the Decision), whereby LSEG committed to divest all of its 99.9% share in Borsa Italiana S.p.A. (“Borsa Italiana”),⁵ (ii) all of its 99.9% share in Bit Market Services S.p.A. (“Bit Market”)⁶ and (iii) all of its 100% share in GATELab S.r.L. (“Gatelab”) ⁷ (all together referred to as the “Divestment Business”) to a suitable purchaser ;
 - b. The OTC IRD Commitments (Annex II to the Decision), whereby LSEG committed to offer its global OTC IRD clearing services, currently performed by LCH SwapClear, on an open access basis and to not engage in commercial strategies that would discriminate customers based on the source of their over-the-counter interest rate derivatives (OTC IRD) trade submitted to LSEG for clearing; and
 - c. The Information Services (IS) Commitments (Annex III to the Decision), whereby LSEG committed to provide access to the LSE Real-time Venue Data, FTSE Russell UK Equity Indices, and WM/R FX Benchmarks, to all existing and future downstream competitors.
- (3) This Decision concerns exclusively the Borsa Italiana Commitments.
- (4) With regard to the Borsa Italiana Commitments, the Divestment Business includes all assets and staff that contribute to the current operation of the Divestment Business, in particular:⁸
 - (a) all tangible and intangible assets (including intellectual property rights);

³ On 29 January 2021, the LSEG/Refinitiv Transaction was closed, as a consequence of which Refinitiv has become an affiliated undertaking of LSEG. As a result, throughout this Decision, the term “LSEG” will refer to the combined entity formed as a result of the LSEG/Refinitiv Transaction, combining LSEG and Refinitiv, and its affiliated undertakings.

⁴ The capitalised terms in this decision have the meaning as set out in the Decision and the Commitments attached thereto, unless indicated otherwise.

⁵ Borsa Italiana is the operator of the Italian Stock Exchange and a leading European financial markets and infrastructure provider. It controls (i) MTS S.p.A. (“MTS”), in which Borsa Italiana holds a 62.53% stake, which owns trading venues for all bonds and fixed income instruments, and a number of smaller fixed income retail venues (MOT, ExtraMOT and EuroTLX); (ii) Elite S.p.A. (“Elite”), an international business development and capital raising platform, in which Borsa Italiana holds a 75% stake, (iii) Cassa di Compensazione e Garanzia S.p.A. (“CC&G”), a leading central counterparty and provider of risk management services, which is fully owned by Borsa Italiana and (iv) Monte Titoli S.p.A. (“Monte Titoli”), the Italian-based Central Securities Depository , in which Borsa Italiana holds a 99.9% stake. LSEG Italia holds 99.9% of the shares in Borsa Italiana. As described in the Schedule of the Borsa Italiana Commitments, the remaining shares in Borsa Italiana are held by [...]. These legacy minority shareholders have no pre-emption rights or tag-along rights in relation to the proposed sale, nor do they have any involvement in the operation of the Borsa Italiana Group.

⁶ Bit Market does not own any subsidiary.

⁷ Gatelab fully owns Gatelab Limited.

⁸ Borsa Italiana Commitments, paragraph 5.

- (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
 - (d) all staff currently employed by or wholly or mainly assigned to the Divestment Business, including staff seconded to the Divestment Business and shared personnel.
- (5) In addition, the Divestment Business includes the benefit, for a transitional period of up to [...] (subject to possible extensions in respect of certain services at Euronext's request for up to [...] in total) after Closing (i.e. closing of the transfer of Borsa Italiana to a suitable purchaser) and on terms and conditions equivalent to those at present afforded to the Divestment Business, of current arrangements under which LSEG supplies services to the Divestment Business.
- (6) On 9 October 2020, LSEG and Euronext N.V. ("Euronext" or the "Proposed Purchaser", the Netherlands) entered into a definitive and binding sale and purchase agreement (the "SPA") of the entire issued share capital of London Stock Exchange Group Holdings Italia S.p.A. ("LSEG Italia"), which directly and exclusively owns the Divestment Business (the "Euronext/Borsa Italiana Transaction"). The SPA is in particular conditional on the Commission's approval of Euronext as suitable purchaser of the Divestment Business.
- (7) By reasoned proposal dated 16 October 2020 (the "Reasoned Proposal"), LSEG proposed Euronext for approval by the Commission as the Purchaser of the Divestment Business on the basis of the SPA.
- (8) On 22 February 2021, Alcis Advisers GmbH, as the appointed Monitoring Trustee (the "Trustee"), submitted a reasoned opinion as to the suitability and independence of Euronext as a Purchaser of the Divestment Business, the viability of the Divestment Business after its sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision pursuant to paragraph 22 (vi) of the Borsa Italiana Commitments (the "Reasoned Opinion"). In the Reasoned Opinion, the Trustee concluded that:
- a. Euronext fulfils the criteria as set out in paragraph 12 of the Borsa Italiana Commitments (the "Purchaser Criteria");
 - b. There are no indications that the Divestment Business would not be viable after the sale; and
 - c. On the basis of the SPA, the Divestment Business would be sold in a manner consistent with the Borsa Italiana Commitments.

2. ASSESSMENT OF THE PROPOSED PURCHASER

- (9) Euronext is a market operator of pan-European market infrastructure offering a diverse range of products and services and combining equity, fixed income securities and derivatives markets in Amsterdam, Brussels, Dublin, Lisbon, Oslo and Paris.⁹
- (10) Euronext was founded in 2000 by way of a merger of the exchanges in Amsterdam, Paris and Brussels. Euronext has since grown by developing services and acquiring additional exchanges and has, after being merged with the New York Stock Exchange (NYSE) from 2007 to 2014 as NYSE Euronext, been spun off to become a stand-alone European exchange. Since its initial public offering (IPO) in 2014, Euronext has expanded its European footprint and diversified its revenue streams by acquiring, inter alia, Fast-Match (now Euronext FX), a global FX spot market operator, in 2017; the Irish Stock Exchange in 2018 (now Euronext Dublin); as well as Oslo Børs VPS, the owner of the Norwegian stock exchange, in 2019.
- (11) In the Reasoned Opinion, the Trustee notes that Euronext relies on a model characterised by (i) a harmonized regulatory framework (across multiple jurisdictions), (ii) a single order book (except for Portugal), and (iii) a single electronic trading platform Optiq, which offers access to all markets through a single connection.
- (12) According to paragraph 12 of the Borsa Italiana Commitments, in order to be approved by the Commission, the purchaser has to fulfil the Purchaser Criteria, which the Commission assesses in further details in Section 2.1 below. In addition, in accordance with paragraph 13 of the Borsa Italiana Commitments, in its assessment, the Commission has to verify that the Divestment Business is being sold in a manner consistent with the Decision and the Borsa Italiana Commitments, including the latter's objective to bring about a lasting structural change in the market. This assessment is conducted in Section 2.2 below.

2.1. The Purchaser Criteria

- (13) As set out in paragraph 12 of the Borsa Italiana Commitments, the purchaser of the Divestment Business must fulfil the following criteria:
 - (a) The purchaser shall be independent of and unconnected to the Parties (i.e. LSEG and the Refinitiv business) and the Affiliated Undertakings¹⁰ (this being assessed having regard to the situation following the divestiture of the Divestment Business);
 - (b) The purchaser shall have the financial resources, proven expertise and incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors; and

⁹ In June 2020, Euronext placed a request to terminate its security exchange license in London.

¹⁰ As described in the Borsa Italiana Commitments, the Affiliated Undertakings refer to the undertakings controlled by LSEG and Refinitiv, whereby the notion of control pursuant to Article 3 of the Merger Regulation and in light of the Commission Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Consolidated Jurisdictional Notice").

- (c) The acquisition of the Divestment Businesses by the purchaser must, in light of the information available to the Commission, neither be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Borsa Italiana Commitments will be delayed. In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

2.1.1. *Independence from the Parties*

- (14) According to paragraph 12(a) of the Borsa Italiana Commitments, the Proposed Purchaser must be independent of and unconnected to the Parties and their Affiliated Undertakings. The Commission considers that Euronext meets this requirement for the following reasons.
- (15) *First*, with respect to the structural links between the Parties and Euronext, the Commission notes that the Notifying Party submits that Euronext is independent and has no connection to LSEG (including Refinitiv), other than a non-controlling minority shareholding in LCH S.A.,¹¹ and that neither Euronext nor any of its affiliates is economically dependent on either of the Parties.¹² LSEG further submits that (i) neither of the Parties nor any of their subsidiaries have direct or indirect ownership interests in Euronext or any of its affiliates, and that (ii) no director of either of the Parties or any of their subsidiaries is on the board of Euronext or any of its affiliates.¹³
- (16) The Commission considers that Euronext is independent from the Parties despite its 11.1% minority shareholding in LCH S.A. for the following reasons. Indeed, although its shareholding entitles Euronext to appoint one representative to the Board, to the Audit Committee and to the Risk Committee of LCH S.A., it does not confer joint control to Euronext over LCH S.A. within the meaning of Article 3 of the Merger Regulation. This is because Euronext has neither equality in voting rights or appointment to decision-making bodies, nor veto rights over decisions which are essential for the strategic commercial behaviour of LCH S.A. despite its right to appoint one representative to the Board, which take strategic commercial decisions, Euronext does not have the possibility to veto these strategic decisions in light of the fact that (i) LCH S.A.'s Board's decisions are taken by simple majority vote, except for certain topics ([...] services provided to Euronext) for which an enhanced (75% of non-conflicted directors) majority is required; and that (ii) LCH S.A.'s Board is composed of a minimum of 3 members, and a maximum of 18 members, while the number of the Board members is at the discretion of LCH Group.¹⁴ As Euronext will remain in a minority on the Board, it cannot veto decisions taken by simple majority. While Euronext could potentially veto decisions taken by enhanced majority if LCH

¹¹ LCH S.A. is the continental clearing house of LCH Group Holdings Ltd. ("LCH Group"). LCH S.A. offers clearing services for credit default swaps (CDS), repos and fixed income, commodities, cash equities, and equity derivatives. The LCH Group is a British clearing house group majority owned by LSEG. The majority of LCH S.A.'s shares (namely 88.9%) are owned by the LCH Group, while the remainder (namely 11.1%) are owned by Euronext.

¹² Reasoned Proposal, paragraph 7.

¹³ Reasoned Proposal, paragraph 7.

¹⁴ Pursuant to LCH S.A.'s Board's Terms of Reference, provided to the Trustee by Euronext, the Board is composed of a minimum of 3 and a maximum of 18 Directors. The Board of LCH S.A. currently has 12 Directors. See Reasoned Proposal, paragraph 92.

S.A.'s Board was composed of only 3 members, LCH Group could easily circumvent this veto by appointing more members to the Board, in its unfettered discretion, and has done so.

- (17) The Commission further notes that through direct and indirect shareholdings, Euronext holds a 5.1% share in Euroclear, in which LSEG holds 4.92%. Both Euronext and LSEG are represented at Euroclear's board of directors. However, given the stakes and rights of other shareholders, LSEG and Euronext cannot exercise control over Euroclear individually or jointly. Therefore, the Commission considers that this co-participation does not affect Euronext's ability and incentive to act as an independent player on the market.
- (18) In light of the foregoing, the Commission considers that Euronext is structurally independent from LSEG.
- (19) The Commission notes that the above conclusion is consistent with the views expressed by the Trustee in its Reasoned Opinion.¹⁵
- (20) Second, with respect to existing commercial relationships, the Commission firstly notes that LCH S.A. provides clearing services for cash and derivatives traded on certain of Euronext's markets.¹⁶ More specifically, (i) LCH S.A. provides central clearing counterparty ("CCP") clearing for the full scope of Euronext listed cash and derivative products under two separate agreements for the cash and derivatives markets, and (ii) Oslo Børs (owned by Euronext) relies on LCH Ltd. and LCH S.A. to provide CCP services for trades executed on Oslo Børs' cash markets.
- (21) The Trustee considers that the provision of clearing services by LCH S.A. to Euronext does not alter Euronext's independence vis-à-vis the Parties because these services are provided on an arm's length basis and would continue to be provided on such basis after the proposed Euronext/Borsa Italiana Transaction (namely along the terms of their long-term contract agreed in 2017).¹⁷
- (22) The Commission agrees with the Trustee's view and considers that the provision of clearing services by LCH S.A. to Euronext does not alter Euronext's independence vis-à-vis the Parties given that, *inter alia*, these existing commercial relationships are standard connectivity agreements for clearing purposes that are common practice in the industry, which have been concluded at arm's length.¹⁸ The Commission also notes that, for the sake of completeness, LSEG explained that subject to its contractual arrangements with LCH S.A., Euronext has the right to migrate its clearing business to another clearing house [...]. It follows that Euronext cannot be considered to be economically dependent on LSEG as a result of this existing commercial relationship between Euronext and LCH S.A.
- (23) Secondly, some of LSEG's subsidiaries are clients of Euronext's market data and indices business, with a total of approximately EUR [...] annually billed to LSEG for these services, as Euronext and FTSE have a [...] agreement on the licensing of the FTSE Eurofirst Index. In addition, Refinitiv, through its data aggregation

¹⁵ Reasoned Opinion, Section 4.3.

¹⁶ Reasoned Proposal, footnote 6.

¹⁷ Reasoned Opinion, Section 4.3.

¹⁸ The Notifying Party also submits that these relationships are not material for Euronext and LSEG. See Reasoned Proposal, Footnote 6.

business, is one of Euronext's major clients for data services. In 2019, Refinitiv was billed EUR [...] for Euronext market data and indices. Euronext is also a client of Refinitiv, with approx. EUR [...] annual charge, [...] coming from non-display data costs (EUR [...]).

- (24) The Trustee considers that these additional commercial links between LSEG and Euronext do not alter Euronext's independence *vis-à-vis* the Parties because the magnitude of the business relationship between Euronext and LSEG represents only a fraction of their respective and overall commercial activities. Moreover, the Trustee considers that in light of the harmonized and increasingly connected European financial markets, commercial links between market players are natural and could be expected from any experienced proposed purchaser.¹⁹ The Commission agrees with the Trustee's view for the reasons set out in the Reasoned Opinion and considers that these additional commercial links between the Parties and LSEG do not alter Euronext's independence *vis-à-vis* the Parties, especially because the scale of these commercial links is limited for LSEG and Euronext, and that such links can be expected from any experienced proposed purchaser that would meet the Purchaser Criteria.
- (25) In light of the foregoing and the information in its possession, the Commission considers that Euronext is commercially independent from LSEG.
- (26) Lastly, the Commission notes for the sake of completeness that Euronext will have access to transitional services (e.g. related to the separation of the Divestment Business from LSEG's IT systems and the complete orderly migration of the Divestment Business) provided by LSEG to the Divestment Business for a limited period of time following Closing.²⁰ The Commission considers that the provision of these transitional services by LSEG to the Divestment Business is not of a nature to impair Euronext's independence *vis-à-vis* LSEG given their temporary nature and because these services are necessary for maintaining the viability of the Divestment Business during its transfer to a suitable purchaser. Firstly, these services will only be provided to the Divestment Business for a limited duration of [...] at most (in case of extensions). Secondly, the provision of such services by LSEG to the Divestment Business is foreseen in the Borsa Italiana Commitments²¹ in order to ensure that the viability and competitiveness of the Divestment Business is maintained during the process of its transfer to a suitable purchaser, and its integration in a suitable purchaser's business organisation. The provision of such services would therefore equally apply to any suitable purchaser of the Divestment Business and does not alter Euronext's independence *vis-à-vis* LSEG. In addition, the Commission notes that Euronext's independence will be further safeguarded by the fact that, as required in the Borsa Italiana Commitments,²² strict firewall procedures will be adopted to ensure that any confidential or competitively sensitive information related to the Divestment Business, or arising with, or passed on to, anyone outside the operations of the entity required to offer the transitional services to the Divestment Business.

¹⁹ Reasoned Opinion, Section 4.3.

²⁰ The transfer of the legal title of the Divestment Business to Euronext.

²¹ Borsa Italiana Commitments, paragraph 6.

²² Borsa Italiana Commitments, paragraph 6.

- (27) In light of the foregoing and the information in its possession, the Commission considers that the provision of these transitional services by LSEG to the Divestment Business does not impair Euronext's independence vis-à-vis LSEG.
- (28) *To conclude*, in light of the foregoing, as well as of the Trustee's Reasoned Opinion and the information in its possession, the Commission concludes that Euronext fulfils the purchaser criterion of being independent of and unconnected to the Parties.
- (29) The Commission notes that this conclusion is in line with the approval decision issued by the Italian Ministry of Economy and Finance on 19 November 2020, which assessed, *inter alia*, the suitability and relevant expertise of Euronext as a purchaser for the Divestment Business.
- 2.1.2. *Financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competition force in competition with the Parties and other competitors*

2.1.2.1. Financial resources

- (30) According to paragraph 12(b) of the Borsa Italiana Commitments, the Proposed Purchaser must have the financial resources to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. The Commission considers that Euronext has the financial resources to acquire, maintain and develop the Divestment Business as a viable and active competitive force for the following reasons.
- (31) At the outset, the Commission notes that, based on the feedback provided by market participants during the Commission's market test of the Commitments offered by the Notifying Party (during the phase II investigation of case M.9564 – LSEG/Refinitiv), Euronext appears to be able to ensure the viability and competitiveness of the Divestment Business. The vast majority of market participants that responded to the Market Test indeed believed that the proposed sale of the Divestment Business to Euronext will ensure the viability and competitiveness of the Divestment Business. More specifically, 83% of trading venues, 57% of clearing houses, and 48% of customers that responded to the Market Test consider that the Divestment of Borsa Italiana to Euronext will not alter the viability and competitiveness of the Divestment Business.²³ As above, out of the 61 customers, 6 clearing houses, and 8 trading venues who responded, only one customer considers that the proposed divestment of Borsa Italiana does not ensure the viability and competitiveness of the Divestment Business.²⁴ By way of example, TP ICAP, a trading venue competitor, indicated that “*Maintaining the integrity of the divested assets and management structure provide sufficient guarantees of viability and competitiveness even in the new acquiring structure*”²⁵ and BME, another trading competitor mentioned that the purchaser “*will acquir[e] all EGB business of LSE (MTS, Monte Titoli, CC&G) and together they can continue as a viable competitor*”.²⁶ With regard to customers, for instance, BANCA SELLA HOLDING

²³ See Decision, paragraph 2805.

²⁴ Ibid. The Commission notes that the reasons put forward by this customer to justify its answer do not corroborate its statement and seems to refer to potential out-sourcing, which are not contemplated in the Borsa Italiana Divestment Commitments.

²⁵ See Decision, paragraph 2805.

²⁶ See Decision, paragraph 2805.

SPA mentioned that *“The perimeter subject to potential sale includes the assets necessary to guarantee competition between trading venues”*.²⁷ In addition, the respondents to the Market Test considered unanimously that Euronext is a suitable purchaser for the Divestment Business, which will be able to successfully maintain and develop the Divestment Business as a viable and active competitive force in competition with Tradeweb, Bloomberg, and other competitors.²⁸ More specifically, none of the 61 customers, 6 clearing houses, and 8 trading venues who responded consider that Euronext would not be a suitable purchaser, or would not be able to successfully maintain and develop the Divestment Business as a viable and active competitive force in competition with Tradeweb, Bloomberg, and other competitors.²⁹ By way of example, TP ICAP, a trading venue competitor, explained that Euronext is a suitable purchaser because *“Not only is Euronext one of the largest exchange conglomerates in the world but it was also the previous owner of the MTS group. The continuity of the management structure, the backing of the government-owned Italian CDP and the experience built over 25 years in the EGB market offer a degree of certainty for the future of the divested assets”*.³⁰ Similarly, with regard to customers, Aviva Group plc for instance stated: *“Given Euronext's current market share and history, they would appear to be a suitable purchaser for the divestment business and we have no concerns”*,³¹ and Citadel Group added: *“As one of the leading EU operators of exchanges and other trading venues across numerous asset classes, we believe that Euronext is a suitable purchaser for the Divestment Business, including Borsa Italiana and MTS. Euronext has a credible history of being a viable and competitive force as a trading venue operator”*.³²

- (32) As regards financial resources, Euronext is a publicly listed company with a market capitalisation of EUR 6 - 7 billion.³³ In 2020, Euronext achieved revenues of EUR 872 million, under a very profitable business model, with EBITDA margins of almost 60% and EBIT margins still above 50% for all of the past 7 fiscal years.³⁴ As noted in the Reasoned Opinion, Euronext's sources of revenues are diversified across the businesses, markets and client segments, and its business model has proven to be resilient to crises.³⁵ Furthermore, Euronext's financial documentation shows a strong balance sheet with a Net Debt/EBITDA of 1.2x.³⁶ As a result, the group's pre-Borsa Italiana debt facilities were rated “A-”, i.e. solid investment grade, by Standard & Poor's in October 2020.
- (33) The purchase price agreed between Euronext and LSEG for the sale of the Divestment Business is EUR 4.325 billion, in addition to interest on the purchase price since the locked-box date of 20 June 2020 of EUR [...] (assuming that Closing takes place on [...]). In addition, in the second quarter of 2021; approximately EUR

²⁷ See Decision, paragraph 2805.

²⁸ See Decision, paragraph 2806.

²⁹ See Decision, paragraph 2806.

³⁰ See Decision, paragraph 2806.

³¹ See Decision, paragraph 2806.

³² Question 2.1 of Questionnaire R1 to trading and clearing customers, response of Citadel Group, Doc ID 8364.

³³ Reasoned Opinion, paragraph 201.

³⁴ Reasoned Opinion, paragraph 200.

³⁵ Reasoned Opinion, paragraphs 65 and 201.

³⁶ Reasoned Opinion, paragraph 200.

[...].³⁷ The acquisition of the Divestment Business by Euronext will add about 50% to Euronext's current revenue and profits.³⁸

- (34) Euronext will finance the acquisition through a EUR [...] bridge loan facility (consisting of a EUR [...] bridge-to-equity facility and a EUR [...] bridge-to-bond facility).³⁹ [...]. This amount is sufficient to cover the payment of the EUR 4.325 billion purchase price at Closing plus the additional sums due. Euronext intends to repay both tranches of the bridge loan facility within [...] following the acquisition of the Divestment Business through a capital increase of Euronext (including the Divestment Business, which Euronext will have acquired by then) and a bond placement.⁴⁰ The capital increase will comprise a private placement of circa 8.4% of the shares of Euronext (including the Divestment Business, which Euronext will have acquired by then) in favour of the Italian financial institution CDP Equity S.p.A.⁴¹ (circa 7.3%), and Intesa SanPaolo S.p.A.⁴² (circa 1.3% post-dilution). Through that capital increase, [...]. The proceeds will be used to immediately repay part of the [...] facility.⁴³
- (35) In addition, Euronext intends to use [...] cash on hand available on 31 March 2021 to fund (i) the repayment of Borsa Italiana's EUR [...], (ii) the transaction costs in the order of EUR [...] as well as (iii) remaining purchase price elements, if not covered in full by the proceeds from the above-mentioned capital increase.
- (36) It results from the above that Euronext has already taken all steps to ensure that it will be able to meet its financial commitments in the context of the purchase of the Divestment Business.
- (37) The Commission notes that, while Euronext will see its net Debt/EBITDA ratio increase from 1.2x to 3.4x with the Euronext/Borsa Italiana Transaction, the Trustee submits that even a debt level of 3.4x is not endangering Euronext's financial stability when considering its solid revenues, EBITDA and cash generation.⁴⁴ Similarly, the Commission notes that while S&P as well as Euronext's analysts expect Euronext's post-Closing rating to be reduced by two notches to "BBB", the Trustee considers that a "BBB" rate is still an investment grade rating, and that losing investment grade would still be two further notches away.⁴⁵
- (38) In this regard, the Trustee further concludes that Euronext has developed a compelling refinancing plan ensuring that the group's post-merger debt burden will be manageable and that, as a result, it expects that neither Euronext nor the

³⁷ Reasoned Opinion, paragraph 208.

³⁸ Reasoned Opinion, paragraph 203.

³⁹ Reasoned Opinion, paragraphs 209 and seq.

⁴⁰ Reasoned Opinion, paragraph 215.

⁴¹ CDP Equity S.p.A. is a 100%-owned subsidiary of Cassa Depositi e Prestiti ("CDP"), which in turn is an Italian Government-owned entity, established in 2011 as the Italian strategic fund with the purpose of promoting Italy's economic development through targeted strategic investments in private and public companies.

⁴² Intesa Sanpaolo S.p.A is a leading Italian banking group.

⁴³ Reasoned Opinion, paragraph 216.

⁴⁴ Reasoned Opinion, Section 6.3, in particular paragraph 226.

⁴⁵ Reasoned Opinion, paragraph 19.

Divestment Business should face financial constraints to their operations and growth ambitions in the foreseeable future.⁴⁶

- (39) The Commission agrees with the Trustee's analysis and conclusions regarding Euronext's sufficient financial resources to consummate the acquisition of the Divestment Business. The Commission further considers, consistent with the Trustee's conclusion, that Euronext will also have financial resources to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors, as the debt burden imposed on the entity resulting from the purchase of the Divestment Business by Euronext will be manageable and the Divestment Business has a strong cash-generating profile.
- (40) In addition, the Commission notes that Euronext's detailed business plan for Borsa Italiana stand-alone and the merged group post-Closing depicts that the strategic rationale for the proposed Euronext/Borsa Italiana Transaction translates into significant synergy potential and enhanced value of the combined entity. The proposed Euronext/Borsa Italiana Transaction thus further strengthens Borsa Italiana's already compelling competitive position and adds to its viability as well as the viability of the merged group in the European market.
- (41) Following a detailed review of the Borsa Italiana business, Euronext foresees a [...] revenue growth per annum between 2019-2024. Between 2019 and 2024, (i) Capital markets are expected to grow at a [...] per annum; (ii) Post-trade activities (excluding CCP net interest incomes) are expected to grow by [...] on the back of volumes at CC&G and on the back of additional growth of Monte Titoli; (iii) Information services are expected to grow by [...] per annum [...]; (iv) Technology services are expected to grow by [...] per annum. In addition, stand-alone, adjusted EBITDA is expected to grow [...] CAGR between 2019 and 2024 before any synergies.
- (42) For the reasons listed above, and in light of the Trustee's Reasoned Opinion on the financial resources of Euronext, the Commission concludes that Euronext has the financial resources to acquire, maintain and develop the Divestment Business as a viable and active competitive force.

2.1.2.2. Proven Expertise

- (43) According to paragraph 12(b) of the Borsa Italiana Commitments, the Proposed Purchaser must have the proven expertise to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
- (44) *First*, Euronext is an established market operator of pan-European market infrastructure, formed 20 years ago, active in a diverse range of financial activities in the EEA and worldwide. Euronext operates six national regulated securities and derivatives markets, namely in Amsterdam, Brussels, Dublin, Lisbon, Oslo and Paris, and a regulated derivatives market in Bergen (Norway). Euronext is also engaged in non-regulated activities in 16 countries across the world. Euronext's area of expertise comprises listing, cash trading, derivatives trading, spot FX trading, power trading, investor services, advanced data services, post-trade and other

⁴⁶ Reasoned Opinion, Section 6.4.

technologies. As such, Euronext has the proven expertise to maintain and develop a financial market operator.

- (45) *Second*, Euronext has relevant experience in acquiring and integrating into its organisation similar businesses to the Divestment Business. As shown in its 2019 annual report, successfully executing its acquisitions is a key part of Euronext's strategic plan.⁴⁷ By way of recent example, Euronext has recently acquired the stock exchange of Oslo, Oslo Børs VPS, in 2019 and the Irish Stock Exchange in 2018. According to Euronext, Irish Stock Exchange's revenues grew by [...] in 2020, as compared to 2017.
- (46) Euronext has particular experience with connecting independent exchanges to its single trading platform. In its acquisitions, Euronext applies a set of principles, which will also apply to the Divestment Business. The primary principle consists in the integration of the acquired business within Euronext's federal model, so that it benefits from a harmonised regulatory framework, Euronext's single order book, as well as Euronext's single trading platform Optiq. Other principles include associating the acquired business to Euronext's governance with a view to attributing a role to the acquired company's group management and to the local ecosystem within the combined group and harmonizing insofar as practicable the various policies across the group.
- (47) By way of practical example, in March 2018, Euronext expanded its listing franchise, through the acquisition of the Irish Stock Exchange. As a result, the trading technology was migrated to Optiq, and core group functions were harmonized to support the overall integration process and achieve the expected synergies. Trading on Optiq went live on Irish markets in February 2019, and resulted in a [...] increase in order book activity in the first four months after the migration, and a [...] increase after 20 months. As a result, Irish Stock Exchange's revenues grew by [...] in 2020, as compared to 2017. From a governance point of view, Euronext established a new board of directors with Irish independent local directors. Senior members of the Irish Stock Exchange joined Euronext's senior leadership team. The CEO of the Irish Stock Exchange has joined the Managing Board of Euronext.
- (48) Similarly, in the second quarter of 2019, Euronext acquired the Norwegian exchange Oslo Børs VPS. The trading technology was migrated away from LSEG's Millennium IT systems to Optiq in 2020. Euronext established a new board of directors with Norwegian independent local directors. Senior members of Oslo Børs VPS joined Euronext's senior leadership team. The CEO of Oslo Børs has joined the Managing Board of Euronext. Euronext has indicated that following the migration of Oslo Børs VPS to Optiq which was completed in December 2020, it has [...].⁴⁸
- (49) Moreover, in its Reasoned Opinion, the Trustee considers that Euronext has built a track record of successful acquisitions and subsequent development of acquired companies, while furthering its geographical reach. The Trustee notes that not only has the geographical footprint of Euronext expanded, but that Euronext also diversified into new asset classes, with the acquisitions of FastMatch (now Euronext

⁴⁷ See https://www.euronext.com/sites/default/files/financial-event-doc/2020-04/EURONEXT_URD_EN_2019.pdf (lastly accessed on 25 February 2021), page 7.

⁴⁸ Reasoned Opinion, Section 7.3.

FX) in 2017, and of Nord Pool in 2019. The Trustee considers that from its past acquisitions, Euronext was able to demonstrate its ability to successfully integrate, develop and grow acquired businesses.⁴⁹

- (50) *Third*, Euronext has developed a detailed business plan, which was discussed with and received the support of the Italian Government.⁵⁰ As mentioned above in paragraph (34), according to the business plan, Euronext has agreed that CDP Equity S.p.A., and Intesa Sanpaolo S.p.A. will become long-term shareholders in Euronext and together with Borsa Italiana Group will have an important role in future governance of Euronext. As both CDP Equity S.p.A. and Intesa Sanpaolo S.p.A. are well established, reputable and robust Italian financial institutions, with an economic and political interest in the Divestment Business' long-term success, having them among Euronext's shareholders and as committed members of Euronext's governance will represent an asset and a guarantee of long-term stability for both Euronext and the Divestment Business.
- (51) Consistent with the above analysis, the Commission notes that, in its Reasoned Opinion, the Trustee considers that Euronext has engaged significant internal and external resources with execution capability demonstrated in previous acquisitions, to proceed with the integration process in a smooth and in a timely manner and to cope with unforeseen challenges along the way. The Trustee is of the view that Euronext has developed a comprehensive view of the Divestment Business' competitive position and based on that, has been able to present a compelling strategy to develop the Divestment Business going forward.⁵¹
- (52) The Commission also notes that the above assessment is in line with market feedback collected in the course of the remedies market test, where respondents unanimously considered Euronext to be "*a suitable purchaser for the Divestment Business, which will be able to successfully maintain and develop the Divestment Business as a viable and active competitive force*".⁵²
- (53) The Commission also notes that this conclusion is in line with the approval decision required under the MTS' by-law issued by the Italian Ministry of Economy and Finance on 19 November 2020, which assessed, *inter alia*, the suitability and relevant expertise of Euronext as a purchaser for the Divestment Business.⁵³
- (54) For the reasons listed above, and taking account of the Trustee's Reasoned Opinion, the Commission concludes that Euronext has the proven expertise to integrate and

⁴⁹ Reasoned Opinion, Section 5.5.

⁵⁰ As explained in Section 2.1.3.2 below, the Italian government had the right to approve or reject the acquisition of the Divestment Business under the so-called Golden Power foreign investment laws. The Golden Power filing was submitted on 19 October 2020, and Euronext received the approval from the Prime Minister's Office on 10 December 2020.

⁹ The acquisition of Borsa Italiana Group received the required clearance by the Italian Government on 10 December 2020.

⁵¹ Reasoned Opinion, Section 7.5.

⁵² Question 3 Questionnaire R1 to trading and clearing customers, Doc ID 8364; Question 3, Questionnaire R2 to trading competitors, Doc ID 8365; Question 3 of Questionnaire R3 to clearing competitors, Doc ID 8366.

⁵³ For the sake of completeness, the approval of the Italian Ministry of Economy and Finance is a regulatory approval required under the MTS's by-law, which is separate from the Golden Power of the Prime Minister's Office described in Section 2.1.3.2.

develop the Divestment Business as a viable and active competitive force in competition with the Parties and other market participants.

2.1.2.3. Incentives to maintain and develop the Divestment Business

- (55) According to paragraph 12(b) of the Borsa Italiana Commitments, the Proposed Purchaser must have the incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
- (56) *First*, the combination of Euronext and the Divestment Business is an opportunity for Euronext to expand further its geographical footprint. It also offers Euronext additional opportunities for business diversification and growth opportunities, including in terms of product innovation.
- (57) In this regard, the Commission notes that the Trustee considers that Borsa Italiana offers a perfect strategic fit for Euronext in further extending its federal model of European exchange operators and that acquiring Borsa Italiana represents a landmark transaction for Euronext – strategically, operationally, and financially.⁵⁴
- (58) *Second*, Euronext has shared with the Trustee and the Commission a very detailed integration plan, aimed at making the combined group a leading listing venue in Europe, a competitive venue for secondary markets in Europe, as well as a key venue for equity financing.⁵⁵ In line with Euronext's past integration practice, this integration plan includes dispositions aimed at leveraging Borsa Italiana's experience across Euronext, the migration of Borsa Italiana's trading technologies from LSEG's Millenium IT to Optiq and the promotion of CC&G's clearing expertise in the context of Euronext's long-held ambition to increase its capabilities in post-trade services.⁵⁶ As regards governance, Euronext plans to maintain Borsa Italiana's current functions, structure and relationships with the Italian ecosystem, while the CEO of the Borsa Italiana group would join the Managing Board of Euronext and the CEO of MTS would join the extended Managing Board. The integration plan also contains specific dispositions regarding support functions, control functions, operations and IT infrastructure (the latter pertaining, inter alia, to the migration of Borsa Italiana's trading technologies from LSEG's Millenium IT to Optiq).
- (59) Euronext has put into place a complete integration management team, in charge of implementing this integration plan.⁵⁷ All ten members of this team were involved in the recent acquisition of Oslo Børs VPS to build on proven expertise.
- (60) Under the assumptions that both Euronext and the Divestment Business will maintain their very profitable models, with EBIT margins above 50%, that the Divestment Business' business line will continue to grow at annual rates ranging from [...] (for Market data services) to [...] (for listing) from 2021 to 2024, that the costs will be contained at a [...] annual growth rate over the same period, and that several (conservatively-estimated) revenue synergies and cost-efficiencies are

⁵⁴ Reasoned Opinion, Section 7.5.

⁵⁵ Reasoned Opinion, Annex X.

⁵⁶ According to Euronext, [...].

⁵⁷ Reasoned Opinion, paragraphs 302 and seq.

attained, the integration plan foresees that both businesses continue to grow [...] from 2021 to 2024, with an average [...] annual revenue growth and an annual [...] adjusted EBITDA growth over the same period (before any synergies). As the acquisition of the Divestment Business is expected to add about 50% to Euronext's current revenue and profits, with the Divestment Business becoming Euronext group's largest revenue contributor, the integration of the Divestment Business is expected to play a key role in the future operations, strategy and governance of Euronext, such that Euronext has the incentive to ensure that the Divestment Business is successfully integrated in a timely manner and continues to operate competitively on the market.

- (61) Consistent with the above analysis, the Commission notes that, in the Trustee's view, Euronext has developed a comprehensive view of the Divestment Business' competitive position and based on that, has been able to present a compelling strategy to develop the Divestment Business going forward. In addition, the Trustee is of the opinion that Euronext's business plan for the Divestment Business is reasonable and attainable.⁵⁸

- (62) *Third*, the Commission notes that Euronext's proposal to acquire the Divestment Business followed a bidding process in the course of which other potential acquirers submitted offers. Euronext won the bid by offering to pay a substantial price above EUR 4.3 billion to LSEG in order to acquire the Divestment Business. Euronext consequently made financial arrangements to be able to pay this price, which will result, *inter alia*, in a degradation of its net Debt/EBITDA ratio, as well as a degradation of its debt rating (see Section 2.1.2.1 above). The Commission also notes, as did the Trustee,⁵⁹ that the operation will be partly self-financing, putting to contribution the significant cash-flows generated by Borsa Italiana. In particular, the payment obligation of EUR [...] – see paragraph (26) above) is expected to be “self-financing” through the cash generated by Borsa Italiana. In these circumstances, it appears that Euronext will have strong incentives to maintain and develop the Divestment Business, thus ensuring the success of this acquisition for which Euronext paid consequent substantial price and which is, in part, reliant on the revenues generated by the Divestment Business. The Commission nonetheless observes that this acquisition is not entirely self-financing, so that a substantial portion of the financing and the risks are borne by Euronext. As a consequence, the financing structure of the proposed Euronext/Borsa Italiana Transaction does not create any harmful incentive for Euronext not to further develop the Divestment Business.

- (63) The Commission notes that, consistent with the above analysis, the Trustee concludes in the Reasoned Opinion that the Divestment Business should, for the foreseeable future, continue to be a viable competitor on the market, and that post-Closing, Euronext has the incentives to maintain and grow the Divestment Business as a viable and active competitive force in the years to come.⁶⁰ The Commission also notes that this conclusion is also in line with the approval decision issued by the Italian Ministry of Economy and Finance on 19 November 2020, which assessed, *inter alia*, the suitability Euronext as a purchaser for the Divestment Business as well as Euronext's incentives to maintain and grow the Divestment Business.

⁵⁸ Reasoned Opinion, Section 7.5.

⁵⁹ Reasoned Opinion, Section 6.2.

⁶⁰ Reasoned Opinion, Section 7.5.

- (64) In light of the foregoing, on the basis of the information in its possession, and taking account of the Trustee's Reasoned Opinion, the Commission concludes that Euronext has the incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

2.1.3. *Absence of prima facie competition concerns and implementation risks*

- (65) According to paragraph 12(c) of the Borsa Italiana Commitments, the acquisition of the Divestment Business by the Purchaser must, in light of the information available to the Commission, neither be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

2.1.3.1. *Absence of prima facie competition concerns*

- (66) Euronext and the Divestment Business both operate exchanges and other trading platforms and are active in the provision of post-trade services. However, the Notifying Party submits that their respective activities are largely complementary.⁶¹ In particular, Borsa Italiana focuses on trading products with Italian underlying assets, while Euronext focuses on products with underlying assets specific to Belgium, France, Ireland, Portugal, the Netherlands and Norway.⁶²
- (67) The acquisition of the Divestment Business gives rise to horizontal overlaps with regard to the EEA-wide markets for the provision of (i) listing services, (ii) equity trading services (exchange traded products ("ETP") and company-issued stock), (iii) bonds trading services, (iv) derivatives trading services, (v) settlement and custody services, (vi) market data services, and (vii) corporate technology and investment services.⁶³
- (68) In addition, the acquisition of the Divestment Business will create or reinforce vertical links in relation to (i) listing (upstream) and trading (downstream) of bonds, (ii) listing (upstream) and trading (downstream) of equities, (iii) listing (upstream) and trading (downstream) of derivatives, (iv) trading (upstream) and clearing (downstream) of equities, (v) trading (upstream) and clearing (downstream) of derivatives, (vi) trading (upstream) and settlement and custody services (downstream) for all asset classes and (vii) the supply of proprietary market data (upstream) and the supply of non-proprietary market data (downstream).⁶⁴
- (69) In light of the foregoing, on the basis of the information in its possession, and consistent with the Trustee's Reasoned Opinion,⁶⁵ the Commission considers that the acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns.

⁶¹ Reasoned Proposal, paragraph 13.

⁶² Reasoned Proposal, paragraph 13.

⁶³ Reasoned Opinion, Section 8.1.

⁶⁴ Reasoned Opinion, Section 8.2.

⁶⁵ Reasoned Opinion, Section 8.3.

- (70) The Commission notes that to the extent that the markets considered are all at least EEA-wide (see further paragraph (72) below), this assessment is also in line with the view of the German Competition Authority (Bunderkartellamt), who gave merger clearance to the proposed acquisition of the Divestment Business by Euronext on 19 October 2020 (see paragraph (132) below). No other merger control clearances were required for the completion of the proposed Euronext/Borsa Italiana Transaction.

Horizontal overlap in the provision of listing services

- (71) Euronext and Borsa Italiana each provide listing services on their respective exchanges. The Commission has previously considered national markets for listings on the basis that the choice of listing venue is driven by national factors such as the location of the issuer's corporate headquarters, location of its investor base, language of the listing process, and familiarity with the local regulatory framework,⁶⁶ but ultimately left open whether a distinction by country of listing should be made.⁶⁷
- (72) In the present case, while the proposed Euronext/Borsa Italiana Transaction does not give rise to horizontal overlaps when considering national markets for the provision of listing services, the activities of Euronext and the Divestment Business do overlap when considering an EEA-wide market for listing services.
- (73) On a potential EEA-wide market for listing services, Euronext's and the Divestment Business' combined share remains limited and amounts to [10-20]% (with a small increment of [0-5]% the Divestment Business) for listed equities, and to [5-10]% (with a small increment of [0-5]% from the Divestment Business) for newly listed equities. The combined market share of Euronext and the Divestment is higher for listed bonds – it amounts to [30-40]% - but with a small increment of only [0-5]% from the Divestment Business. As a result, and confirmed by the Trustee,⁶⁸ no horizontally affected markets arise from the proposed Euronext/Borsa Italiana Transaction, with the exception of the listing of bonds, where the increment from the Divestment Business is minor.
- (74) With regard to the potential EEA-wide markets for the provision of listing services of listed equities, and for newly listed equities, the Commission considers that, given the limited combined market share of the parties, remaining far below the 20% threshold of horizontally affected markets, and the *de minimis* increment brought by the Divestment Business, not exceeding [0-5]%, the Euronext/Borsa Italiana Transaction is *prima facie* not likely to create competition concern in the potential markets.
- (75) With regard to the potential EEA-wide market for the provision of listing services for cash bonds, the Commission notes that, while the parties' combined market share exceeds by [10-20] percentage point the 20% thresholds for horizontally affected markets, the Euronext/Borsa Italiana Transaction is *prima facie* not likely to create competition concerns. Indeed, the change brought about by the Euronext/Borsa Italiana Transaction will remain limited given the small increment of the Divestment Business of only [0-5]% of the market. The increment from the Divestment Business is therefore low, and so does the HHI increment, which remains well below 150.

⁶⁶ See Case M.6166 *Deutsche Börse/NYSE Euronext*, Commission decision of February 1, 2012.

⁶⁷ See Case M.6166 *Deutsche Börse/NYSE Euronext*, Commission decision of February 1, 2012.

⁶⁸ Reasoned Opinion, Section 8.3.

According to the Horizontal Merger Guidelines, the Commission is unlikely to identify horizontal competition concerns in a merger with an HHI increment below 150.⁶⁹ The combined entity will continue to face constraints from competitors, in particular from the Luxembourg Stock Exchange and Deutsche Börse which hold market shares of respectively [30-40]% and [20-30]%.⁷⁰ The combined entity will also compete with additional players such as LSEG and Nasdaq Nordics and Baltics. For these reasons, and the evidence available on file, the Commission considers that the proposed Euronext/Borsa Italiana Transaction is not likely to raise competitive concerns, nor to cause significant change in the competitive landscape, regarding the provision of listing services for cash bonds.

- (76) In light of the foregoing and on the basis of the information in its possession, the Commission concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in the provision of listing services.

Horizontal overlap in the provision of trading services for cash equities

- (77) With respect to the potential markets where Euronext and the Divestment Business overlap for equities trading services, the Notifying Party submits that the combined market shares of Euronext and the Divestment Business remain moderate.⁷¹
- (78) First, with regard to the market shares of Euronext and the Divestment Business, for the provision of trading services for ETPs, Euronext's and the Divestment Business' combined EEA share by value remains limited and amounts to [5-10]% (with a [0-5]% increment from Euronext), but exceeds the 20% thresholds (and amounts to [30-40]%) in volume (number of trades), with a [10-20]% increment from Euronext. For the provision of trading services for company-issued stocks, Euronext's and the Divestment Business' combined EEA share by value amounts to [20-30]% (with a [0-5]% increment from the Divestment Business) and to [30-40]% in volume (number of trades) (with a [10-20]% increment from Euronext). In both cases, the difference between value and volume shares can be explained by the fact that both Borsa Italiana and Euronext mostly attract smaller trades.⁷² The Notifying Party submits that, consistent with industry reports such as of the Chicago Board Options exchange⁷³ and the World Federation of Exchange statistics, market shares in equities trading should be assessed by reference to the turnover value of the equities being traded.⁷⁴ In this regard, the Commission however notes that both value-based⁷⁵ and volume-based⁷⁶ market shares were assessed in the previous and LSEG/Refinitiv decisions.⁷⁷ However, Euronext's and the Divestment Business's combined market share would still remain (in volume terms) just above [30-40]%, very close to the second market player (Deutsche Börse, with a [20-30]% market share in volume

⁶⁹ Horizontal Merger Guidelines, paragraph 20 (except under special circumstances which are not present in this case).

⁷⁰ Reasoned Opinion, Table 1.

⁷¹ Reasoned Proposal, paragraph 15.

⁷² Reasoned Opinion, paragraph 337.

⁷³ The Chicago Board Options Exchange (or CBOE) is the largest U.S. options exchange.

⁷⁴ Reasoned Proposal, paragraph 15.

⁷⁵ Market shares based on the notional value traded.

⁷⁶ Market shares based on the number of trades.

⁷⁷ See Commission decision of 29 March 2017 in Case M.7995 – *Deutsche Börse/London Stock Exchange Group* and the Decision.

terms). The Commission also notes that even when considering the Euronext and the Divestment Business's combined market share in volume terms, they would still continue to face competition from a number of strong competitors, and the acquisition of the Divestment Business by Euronext will in fact result in a decrease of the concentration in the market (see paragraphs (79) and (80) below).

- (79) Second, the Commission notes that the combined entity would continue to face competitive constraints from a number of large-scale market players. In this regard, the Notifying Party submits that the Euronext/Borsa Italiana Transaction cannot give rise to competitive concerns in cash equities trading because the combined entity resulting from the purchase of the Divestment Business by Euronext will continue to face competition from established competitors such as Deutsche Börse, Bloomberg, and LSEG.
- (a) With regard to ETP trading in the EEA, the combined entity will face constraints from Deutsche Börse (whose share is circa [5-10]% in value and circa [20-30]% in volume) and LSEG (including Refinitiv and excluding the Divestment Business) (whose share is circa [20-30]% in value and [20-30]% in volume), as well as Bloomberg to a less direct extent (whose share is circa [20-30]% in value and [0-5]% in volume).⁷⁸
- (b) With regard to company-issued stock trading in the EEA, the combined entity will face constraints from Deutsche Börse, whose share is also circa [10-20]% in value and c. [20-30]% in volume, and LSEG (including Refinitiv and excluding the Divestment Business), whose share is circa [10-20]% in value and [20-30]% in volume.⁷⁹
- (80) Finally, the Commission notes that for both ETPs and company-issued stocks trading, the transfer of the Divestment Business from LSEG to Euronext will in fact result in a decrease in market concentration while shifting market shares from LSEG to Euronext as Euronext's market shares lie below the shares of LSEG (excluding the Divestment Business and Refinitiv). With regard to ETP trading services Euronext's EEA shares amount to [0-5]% by value and to [10-20]% by volume, while the share of LSEG (excluding the Divestment Business and Refinitiv) amount to [5-10]% by value and [10-20]% by volume. Similarly, with regard to the trading of company-issued stocks, the share of Euronext (incl. Oslo Børs and Irish Stock Exchange) amounts to [10-20]% by value and to [10-20]% by volume, and therefore lie clearly below the market shares of LSEG, Divestment Business and Refinitiv excluded (namely of [10-20]% by value and [20-30]% by volume).
- (81) As a result of the above, and as indicated by the Trustee in its Reasoned Opinion, while some horizontal overlaps resulting in affected markets have been identified in trading services for ETPs and trading services for company-issued equity, acquiring the Divestment Business is unlikely to place Euronext in a position to leverage its resulting presence in a non-competitive way, as it will be effectively constrained by rivals such as Deutsche Börse, Bloomberg and LSEG-Refinitiv. Indeed, and as the

⁷⁸ Reasoned Opinion, Table 3.

⁷⁹ Reasoned Opinion, Table 3.

Trustee also notes, the level of concentration will actually decrease, compared with the situation in which Borsa Italiana is owned by LSEG.⁸⁰

- (82) In light of the foregoing and on the basis of the information in its possession, the Commission concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in the provision of trading services for cash equities.

Horizontal overlap in the provision of trading services for cash bonds

- (83) The activities of Euronext and the Divestment Business horizontally overlap with regard to the provision of trading services for cash bonds. In this regard, the Notifying Party submits that, while Borsa Italiana, through MTS, is a leading provider of electronic fixed income trading in Europe with a market share of [20-30]% by average daily trading volume⁸¹ in the electronic trading of European Government Bonds (“EGBs”) (combination of [10-20]% market share of MTS BondVision and [5-10]% of MTS Cash), Euronext is a small player, whose activities are limited to debt instruments, and Euronext’s market share on any plausible fixed income product market is [0-5]%.⁸² Therefore, after the Euronext/Borsa Italiana Transaction, the presence of Borsa Italiana, through MTS, on the markets for electronic fixed income trading will continue facing the competition of its established current rivals, notably Tradeweb, but also Bloomberg, BrokerTec, Deutsche Börse and BGC/GFI.
- (84) As a result, the Trustee is of the opinion that no or limited horizontal overlaps have been identified in the markets (and/or their potential sub-segments) of trading services for cash bonds.⁸³
- (85) On the basis of the information in its possession, the Commission agrees with the Trustee’s opinion and notes that the market test of the remedies performed in the course of the investigation of the proposed acquisition of Refinitiv by LSEG revealed that the vast majority of market participants that responded to the market test in LSEG/Refinitiv believe that the proposed sale of the Divestment Business to Euronext under the Commitments resolves the horizontal competitive concerns raised by the LSEG/Refinitiv Transaction with respect to the provision of electronic trading services for EGBs. More specifically, 83% of trading venues, 57% of clearing houses, and 48% of customers considered that the sale of Borsa Italiana to Euronext will resolve the competitive concerns identified by the Commission in this market.⁸⁴

⁸⁰ Reasoned Opinion, Section 8.3.

⁸¹ See Section 4.3.1 of the Decision.

⁸² Reasoned Proposal, paragraph 15. The Commission notes that in the market share data provided by the Notifying Party in relation to the trading of cash bonds which the Commission used in its assessment (see Tables 3 and 4 of the Decision), Euronext doesn’t even appear among the exhaustive list of players active in the trading of either EGBs or non-government bonds. According to this data, Euronext’s market share would consequently be 0% in both segments.

⁸³ Reasoned Opinion, Section 8.3.

⁸⁴ Question 2 Questionnaire R1 to trading and clearing customers, Doc ID 8364; Question 2, Questionnaire R2 to trading competitors, Doc ID 8365; Question 2 of Questionnaire R3 to clearing competitors, Doc ID 8366.

- (86) In light of the foregoing and on the basis of the information in its possession, the Commission concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in the provision of trading services for cash bonds.

Horizontal overlap in the provision of trading services for financial derivatives

- (87) The activities of Euronext and the Divestment Business also horizontally overlap with regard to the provision of trading services for derivatives. The proposed acquisition of the Divestment Business gives rise to affected markets in the following potential sub-segments, where the increment brought about by the Euronext/Borsa Italiana Transaction remains however very limited. For single stock Exchange Traded Derivatives (“ETD”) with Italian underlying, Euronext’s and the Divestment Business’ combined shares by value amount to [50-60]%, but with a *de minimis* [0-5]% increment from Euronext, and to [50-60]% in volume, with a *de minimis* increment of [0-5]% from Euronext). For single stock options ETD, Euronext’s and the Divestment Business’ combined shares by value amount to [20-30]% (with a [0-5]% increment from the Divestment Business) and [20-30]% in volume (number of trades) (with a [0-5]% increment from Euronext).
- (88) As a result, the Trustee is of the opinion that (i) no or limited horizontal overlaps have been identified in the markets of trading services for ETD and the vast majority of sub-segments thereof (including single stock ETDs with Italian underlying, where the increment is minimal) and (ii) while more substantial horizontal overlaps resulting in affected markets have been identified in trading services for single-stock equity derivatives, acquiring the Divestment Business is unlikely to place Euronext in a position to leverage its resulting presence in a non-competitive way. The Trustee notes that with the exception of the market for trading services for single stock ETD, the level of concentration will actually decrease, compared with the situation in which Borsa Italiana is owned by LSEG.⁸⁵
- (89) In light of the foregoing and on the basis of the information in its possession, the Commission agrees with the Trustee’s opinion and notes that the increment brought by Euronext to the Divestment Business’s already strong position for the trading of single stock ETD with Italian underlying is minimal, with an HHI increment well below 150, and the increment brought by the Divestment Business to Euronext’s position in the trading of single-stock option ETD is small, with an HHI increment below 150 in value and slightly above 150 in volume, thus resulting in a modest combined market position, with combined market shares lower than 25% or only slightly above this figure. As such, these markets fall within the safe harbours of the Horizontal Merger Guidelines, according to which (i) the Commission is unlikely to identify horizontal competition concerns in a merger with an HHI increment below 150⁸⁶ and (ii) combined market shares below 25% may indicate that the concentration is not likely to impede effective competition.⁸⁷
- (90) In addition, the Commission notes that the combined entity will continue to face constraints from large market players. With regard to ETD single stock options

⁸⁵ Reasoned Opinion, Section 8.3.

⁸⁶ Horizontal Merger Guidelines, paragraph 20 (except under special circumstances which are not present in this case).

⁸⁷ Horizontal Merger Guidelines, paragraph 18.

trading, i.e. the plausible market where the increment brought about by the Euronext/Borsa Italiana Transaction is small but exceeds [0-5]%, the combined entity will compete with Eurex which has a market share of [60-70]% in value and [50-60]% in volume, as well as LSEG, ICE, Nasdaq, and BME.⁸⁸

- (91) In light of the foregoing and on the basis of the information in its possession, the Commission concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in the provision of trading services for financial derivatives.

Horizontal overlap in the provision of settlement and custody services

- (92) Euronext and Borsa Italiana provide settlement and custody services through their respective national Central Securities Depositories (“CSDs”). The Commission has previously determined that there is practically no competition between different national CSDs for the deposit and final custody or safekeeping of securities.⁸⁹ While the activities of Euronext and the Divestment Business do not overlap at national level, the Notifying Party submits that even in a potential EEA-wide market for settlement and custody services, Euronext’s and Borsa Italiana’s combined share would remain lower than [10-20]%.⁹⁰
- (93) As a result, the Trustee is of the opinion that no or limited horizontal overlaps have been identified in the market (and/or their potential sub-segments) of settlement and custody services.⁹¹
- (94) In light of the foregoing and on the basis of the information in its possession, the Commission agrees with the Trustee’s opinion, and concludes that given the limited market shares of the Divestment Business and Euronext on the only potential overlapping market, the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in settlement and custody services.

Horizontal overlap in the provision of market data services

- (95) Euronext and Borsa Italiana provide proprietary and non-proprietary data to market players.
- (96) Both parties license proprietary data generated on their respective trading platforms. The Notifying Party submits that absent substitutability of such data, the market data services of Euronext and of the Divestment Business do not compete and that hence, the combination of Euronext’s and Borsa Italiana’s proprietary market data services does not raise *prima facie* competition concerns.⁹²
- (97) As regards non-proprietary data (i.e., data not generated on a trading venue or that has been subject to further processing, such as data on macroeconomic variables such as GDP, unemployment, or inflation), the combined market share of Euronext and the Divestment Business would remain below [5-10]%.

⁸⁸ Reasoned Opinion, Table 5.

⁸⁹ See Case M.7995 – *Deutsche Börse / London Stock Exchange Group*, paragraph 500.

⁹⁰ Reasoned Proposal, paragraph 15.

⁹¹ Reasoned Opinion, Section 8.3.

⁹² Reasoned Proposal, paragraph 15.

- (98) In its Reasoned Opinion, the Trustee agrees with the Notifying Party that no or only limited horizontal overlaps have been identified in the markets (and/or their potential sub-segments) of market data services.⁹³
- (99) With regard to proprietary data generated on Euronext's and Borsa Italiana's respective trading platforms, the Commission notes that, in line with its assessment in the Decision,⁹⁴ each trading venue offers unique trading data sets that cannot be substituted by the trading data from other venues. As such, in the absence of overlap between the Euronext and the Divestment Business in the licensing of proprietary data, the Commission concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in these markets.
- (100) With regard to non-proprietary data, the Commission notes that the combined market share of the Euronext and the Divestment Business remains low (below [5-10]%), and that the combined entity will face constraints from a number of players such as, in particular, LSEG and Bloomberg.
- (101) In light of the foregoing and on the basis of the information in its possession, the Commission concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in data services markets.

Horizontal overlap in the provision of corporate technology and investment services

- (102) Both Euronext and the Divestment Business are active in the provision of corporate technology and investment services.⁹⁵ According to the Notifying Party, however, (i) each company's corporate and investor services activities is focused on its respective geographic markets and is derived from the products and other services that it provides and (ii) the focus of the companies' activities is different for technology services as Borsa Italiana provides (through its ELITE platform) a networking service connecting private companies with private investment, while Euronext provides communications tools and software solutions to manage clients' corporate governance and regulatory obligations.⁹⁶
- (103) In its Reasoned Opinion, the Trustee agrees that the focus of activities of Euronext and the Divestment Business for corporate technology and investment service differs for the reasons explained in paragraph (102) above. In addition, on a potential EEA-wide market for the provision of corporate technology and investment services, the combined market share of Euronext and the Divestment Business would remain below [5-10]%.⁹⁷
- (104) As a result, the Trustee is of the opinion that no or limited horizontal overlaps have been identified in the market (and/or their potential sub-segments) of corporate technology and investment services.⁹⁸

⁹³ Reasoned Opinion, Section 8.3.

⁹⁴ Decision, paragraphs 436 and seq.

⁹⁵ Reasoned Opinion, paragraph 380.

⁹⁶ Reasoned Proposal, paragraph 15.

⁹⁷ Reasoned Opinion, Section 8.1.3.

⁹⁸ Reasoned Opinion, Section 8.3.

- (105) In light of the foregoing and on the basis of the information in its possession, the Commission agrees with the Trustee's Reasoned Opinion, and concludes that given the limited combined shares of Euronext and the Divestment Business, and their complementary activities, the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in corporate technology and investment services.

Vertical link between listing (upstream) and trading (downstream) of bonds

- (106) The Divestment Business and Euronext both provide cash listing services and trading services on their respective exchanges. Vertical integration in these areas is therefore not merger-specific. A vertically affected market arises between the listing (upstream) and trading (downstream) of bonds, because Euronext's and the Divestment Business' combined EEA shares in the listing of bonds amount to [30-40]% (with a [0-5]% increment from the Divestment Business). At downstream level, Borsa Italiana, through MTS, has a market share of [20-30]% in the electronic trading of EGBs while Euronext is almost entirely absent from this segment. The market share for listing of bonds is just above the 30% threshold and does not confer Euronext the possibility to engage in potential input foreclosure strategies in the listing and trading markets for cash bonds, in particular in view of the fact that the combined entity would not have the ability to reduce access to the listed bonds for trading, and in any event the existence of other strong players upstream, such as the Luxembourg Stock Exchange (with a market share of [30-40]%) and Deutsche Börse (with a market share of [20-30]%).
- (107) As a result, the Trustee considers that the vertical relationship between Euronext's and the Divestment Business' activities in the listing (upstream) and trading (downstream) of bonds is not expected to raise foreclosure concerns.⁹⁹
- (108) The Commission agrees with the Trustee's opinion and notes that the proposed acquisition of the Divestment Business by Euronext would in fact result in a decrease in concentration at both upstream (listing) and downstream (trading) level, as the upstream market in listing share would go down from [30-40]% (LSEG + Borsa Italiana) to [30-40]% (Euronext + Borsa Italiana) and the downstream market shares would go down from [20-30]% (LSEG + Borsa Italiana) to [20-30]% (Euronext + Borsa Italiana). Finally, the Commission has previously deemed the vertical link between listing and trading to be no longer relevant, due to the fact that the MiFID abolished the concentration rule, which required that trading be undertaken only on the trading venue of the listing.¹⁰⁰

- (109) In light of the foregoing and on the basis of the information in its possession, the Commission concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in relation to the vertical link between listing (upstream) and trading (downstream) services for bonds.

Vertical link between listing (upstream) and trading (downstream) of equities

- (110) Borsa Italiana and Euronext both provide cash listing services and trading services on their respective exchanges. Vertical integration in these areas is therefore not

⁹⁹ Reasoned Opinion, Section 8.3.

¹⁰⁰ See Case M.6166 *Deutsche Börse/NYSE Euronext*, paragraph 54.

merger-specific. A vertically affected market arises between the listing (upstream) and trading (downstream) of equities, because Euronext's and the Divestment Business' combined EEA share in the trading of company-issued stocks amounts to [30-40]% in volume terms (number of trades) (with a [10-20]% increment from Euronext) (the combined value share being [20-30]% with a [0-5]% increment from the Divestment Business).

- (111) The Commission also notes that, even in volume terms, the combined share of the Euronext and the Divestment Business appears relatively moderate, and would likely not give Euronext the possibility to engage in potential customer foreclosure strategies in the listing and trading markets for cash equities, in particular in view of the fact that the combined entity would not have the ability to reduce access to the listed cash equities for trading, and in any event given the existence of other strong players upstream, such as Bloomberg (with a market share of [20-30]% in value and [0-5]% in volume) and Deutsche Börse (with a market share of [5-10]% in value and [20-30]% in volume). Moreover, in terms of value, the Commission observes that this vertical link is largely pre-existing, as the Divestment Business brings Euronext a market share increment of only [0-5]% upstream and [0-5]% downstream. The increment brought by the Euronext/Borsa Italiana Transaction to Euronext's upstream market share being very limited, the Commission considers that the incentives of Euronext will not change significantly as a result of the acquisition of the Divestment Business.
- (112) Finally, as explained above, the Commission has previously deemed the vertical link between listing and trading to be no longer relevant, in light of regulatory changes introduced in MiFID.¹⁰¹
- (113) In light of the foregoing and on the basis of the information in its possession, the Commission concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in relation to the vertical link between listing (upstream) and trading (downstream) services for equities.¹⁰²

Vertical link between listing (upstream) and trading (downstream) of derivatives

- (114) Borsa Italiana and Euronext both provide cash listing services and trading services on their respective exchanges. Vertical integration in these areas is therefore not merger-specific. A vertically affected market arises between the listing (upstream) and trading (downstream) of equities, because Euronext's and the Divestment Business' combined EEA shares in the trading of single-stock ETD with Italian underlying amount to [50-60]% (with a [0-5]% increment from Euronext) and [50-60]% in volume (number of trades) (with a [0-5]% increment from Euronext).
- (115) However, as explained above, the Commission has previously deemed the vertical link between listing and trading to be no longer relevant, in light of regulatory changes introduced in MiFID.¹⁰³

¹⁰¹ See Case M.6166 *Deutsche Börse/NYSE Euronext*, paragraph 54.

¹⁰² The Trustee's opinion is consistent with the Commission's conclusion that the proposed Euronext/Borsa Italiana Transaction does not give rise to *prima facie* competitive concerns in relation to the vertical link between listing (upstream) and trading (downstream) services for equities.

¹⁰³ See Case M.6166 *Deutsche Börse/NYSE Euronext*, paragraph 54.

- (116) In any event, the Commission also notes that the increment brought by the Euronext/Borsa Italiana Transaction to the Divestment Business's market share at both upstream and downstream level is very limited. As a result, the Commission considers that the incentives of the Divestment Business (as well as the general competitive situation) will not change significantly as a result of its acquisition by Euronext.
- (117) In light of the foregoing and on the basis of the information in its possession, the Commission concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in relation to the vertical link between listing (upstream) and trading (downstream) services for derivatives.¹⁰⁴

Vertical link between trading (upstream) and clearing (downstream) services for equities

- (118) Whilst Borsa Italiana has its own clearing house, CC&G S.p.A., Euronext does not provide clearing services. However, the Euronext/Borsa Italiana Transaction gives rise to a vertically affected link in this market because Euronext and the Divestment Business are active in the provision of trading services for company-issued stocks, with a combined EEA share amounting to [30-40]% in volume terms (number of trades) (with a [10-20]% increment from Euronext) (the combined value share being [20-30]% with a [0-5]% increment from the Divestment Business).
- (119) The Commission also notes that even in volume terms, the combined share of the Euronext and the Divestment Business appears relatively moderate, and would likely not give Euronext the possibility to engage in potential input foreclosure strategies in the trading and clearing markets for cash equities, in particular in view of the existence of other strong players upstream, such as LSEG/Refinitiv (with a market share of [10-20]% in value and [20-30]% in volume) and Deutsche Börse (with a market share of [10-20]% in value and [20-30]% in volume). Moreover, the Commission notes that the Euronext/Borsa Italiana Transaction will in fact result in a decrease in market concentration compared to the competitive landscape whereby LSEG (excluding Refinitiv) include(d) the Divestment Business. With regard to the trading of company-issued stocks, the share of Euronext (incl. Oslo Børs and Irish Stock Exchange) amounts to [10-20]% by value and to [10-20]% by volume, and therefore lies below the market shares of LSEG, Divestment Business and Refinitiv excluded (namely of [10-20]% by value and [20-30]% by volume).
- (120) In addition, as regards the downstream market, the Commission notes that all of CC&G's clearing volumes for equity securities are from trades executed on trading venues in Italy, and CC&G only has an overall [0-5]% market share in the clearing of cash equities in the EEA.¹⁰⁵ CC&G's market reach therefore appears entirely restricted to the Italian market. As a result, CC&G's market position downstream would not allow Euronext to capture the benefits of a potential input foreclosure scenario targeting CC&G's downstream competitors in countries other than Italy. This would severely limit the benefits that the combined entity would reap from an input foreclosure strategy, and considerably decrease Euronext's incentives to engage in such a strategy.

¹⁰⁴ The Trustee's Reasoned Opinion is consistent with the Commission's analysis and conclusion in respect of the vertical link between listing (upstream) and trading (downstream) of derivatives).

¹⁰⁵ Form CO, paragraphs A.102 and A.254.

- (121) In light of the foregoing, and on the basis of the information in its possession, the Commission concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in relation to the vertical link between trading (upstream) and clearing (downstream) services for equities.¹⁰⁶

Vertical link between trading (upstream) and clearing (downstream) services for derivatives

- (122) As mentioned above, while Borsa Italiana has its own clearing house, CC&G S.p.A., Euronext does not provide clearing services. However, the Euronext/Borsa Italiana Transaction gives rise to a vertically affected link in this market because Euronext's and the Divestment Business' combined EEA shares in the trading of single-stock ETD with Italian underlying amount to [50-60]% (with a [0-5]% increment from Euronext) and [50-60]% in volume (number of trades) (with a [0-5]% increment from Euronext). However, the link is largely pre-existing as Euronext brings an increment of only [0-5]% upstream, and it is not active at all downstream. As such, the proposed acquisition of the Divestment Business by Euronext does not change the market structure with respect to the vertical relationship between trading (upstream) and clearing (downstream) services for derivatives.
- (123) As a result, the Trustee considers that the vertical relationship between Euronext's and the Divestment Business' activities in the trading (upstream) and clearing (downstream) of derivatives is not expected to raise foreclosure concerns.¹⁰⁷
- (124) In light of the foregoing and on the basis of the information in its possession, the Commission agrees with the Trustee's opinion and concludes that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in relation to the vertical link between trading (upstream) and clearing (downstream) services for derivatives.

Vertical link between trading services (upstream) and settlement and custody services (downstream)

- (125) Borsa Italiana and Euronext both provide trading services and settlement and custody services. Vertical integration in these areas is therefore not merger-specific. In addition, while the combined market shares of Euronext and the Divestment Business in the trading of equities and derivatives are above the 30% threshold in certain sub-segments (see paragraphs (118) and (122) above), the Commission has previously held that primary settlement services are conducted by the national CSD of a given Member State, pursuant to national laws of the various Member States, for the securities issued in that particular Member State, and concluded that there are no meaningful vertical relationships between the trading activities performed in a given exchange and the primary settlement activities in a different country.¹⁰⁸
- (126) In light of the foregoing and on the basis of the information in its possession, the Commission considers that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in relation to the

¹⁰⁶ The Trustee's Reasoned Opinion is consistent with the Commission's conclusion that the proposed Euronext/Borsa Italiana Transaction does not give rise to *prima facie* competitive concerns in relation to the vertical link between trading (upstream) and clearing (downstream) services for equities.

¹⁰⁷ Reasoned Opinion, Section 8.3.

¹⁰⁸ See Case M.6166 *Deutsche Börse/NYSE Euronext*, paragraph 125.

vertical link between trading services (upstream) and settlement and custody services (downstream).¹⁰⁹

Vertical link between the supply of proprietary market data (upstream) and the supply of non-proprietary market data (downstream)

- (127) Both Euronext and the Divestment Business are active at both upstream and downstream level. They both benefit from a monopoly over the proprietary market data generated by their own venues, and their combined market share in the provision of non-proprietary market data (*i.e.* data on macroeconomic variables such as GDP, unemployment, or inflation) would remain below [5-10]% at EEA level. As a result, potential customer foreclosure concerns are unlikely to materialise for lack of ability.
- (128) As regards potential input foreclosure scenarios, the Commission notes that Euronext's and the Divestment Business do not have a meaningful product offering downstream, and in particular are not active in the provision of essential/real-time market data sets. This element, combined with Euronext's and the Divestment Business' at any rate very low market shares downstream would severely limit the benefits that the combined entity would reap from an input foreclosure strategy, and, as a result, potential input foreclosure scenarios appear equally unlikely, for lack of incentives.
- (129) In light of the foregoing and on the basis of the information in its possession, the Commission considers that the proposed acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns in relation to the vertical link between the supply of proprietary market data (upstream) and the supply of non-proprietary market data (downstream).¹¹⁰

Conclusion

- (130) For the reasons set out above, and on the basis of the information in its possession the Commission considers that the acquisition of the Divestment Business by Euronext is not likely to create *prima facie* competition concerns.

2.1.3.2. Absence of implementation risks

- (131) The Notifying Party explains that the acquisition of the Divestment Business by Euronext is subject to the following regulatory and shareholder approvals:¹¹¹
- (132) Merger control filings: the acquisition of the Divestment Business by Euronext required merger control clearance in Germany. On 19 October 2020, Euronext received a merger clearance decision by the German Competition Authority (Bundeskartellamt) that the Euronext/Borsa Italiana Transaction does not meet the conditions for prohibition pursuant to §36(1) of the German Act against Restraints of Competition.

¹⁰⁹ The Trustee's Reasoned Opinion is consistent with the Commission's conclusion (Reasoned Opinion, paragraph 398).

¹¹⁰ The Trustee's Reasoned Opinion is consistent with the Commission's conclusion (Reasoned Opinion, paragraph 403).

¹¹¹ Reasoned Proposal, paragraph 16.

- (133) Foreign investment approval by the Italian government: the acquisition of Borsa Italiana Group required clearance by the Italian Government under the so-called Golden Power foreign investment laws. Euronext received the approval from the Italian Prime Minister's Office on 10 December 2020.
- (134) CONSOB approval: the change in control of Borsa Italiana S.p.A. and Monte Titoli S.p.A. requires a prior clearance by Commissione Nazionale per le Società e la Borsa ("CONSOB"), in consultation with Bank of Italy. In both cases, Euronext made a pre-filing on [date] and submitted financial forecasts, as well as further information required in [date]. From formal notification onwards, the approval process is expected to take up to around three months.
- (135) The approval of CONSOB is equally required for outsourcing of "*critical operational functions necessary for business continuation*" by Borsa Italiana S.p.A., pursuant to Commission Delegated Regulation (EU) No 2017/584. The application was filed in the week of [date]. The approval is expected in the course of [date].
- (136) Finally, a pre-Closing notification to CONSOB is required by Monte Titoli S.p.A. and by Elite SIM S.p.A., a subsidiary of Elite, for the outsourcing of ancillary services pursuant to Regulation (EU) No. 909/2014 and Commission Delegated Regulation (EU) 2017/565, respectively. These entities will file these notifications once the Separation Framework Agreement ("SFA") between LSEG and the Divestment Business is finalised (expected in the course of [date]), with the same timeline as above.
- (137) Based on the feedback provided by market participants during the Commission's market test of the Commitments offered by the Notifying Party (during the phase II investigation of case M.9564 – LSEG/Refinitiv), CONSOB's approval is not expected to raise issues. Indeed, the respondents to the Market Test unanimously considered that there are no considerable obstacles for the transfer of the Divestment Business to Euronext, which could call into question whether LSEG will manage to transfer the Divestment Business to Euronext (e.g. regulatory approvals).¹¹²
- (138) Bank of Italy: the approval of the Bank of Italy is required in relation to (i) the change in control of MTS S.p.A., (ii) the change in control of Cassa Di Compensazione e Garanzia S.p.A. (CC&G), and (iii) the change in control of Elite SIM S.p.A.. Euronext made pre-filings for all three entities on [date], and submitted financial forecasts, as well as further information requested in [date].
- (139) In addition, a pre-Closing notification to Bank of Italy is required by MTS S.p.A and (in consultation with CONSOB) by CC&G, for the outsourcing of services pursuant to Commission Delegated Regulation (EU) 2017/584 and Regulation (EU) No. 648/2012 (the EMIR Regulation), respectively, as applicable under the SFA. These entities will file these notifications once the discussion of amendments to the SFA is finalized.
- (140) Based on the feedback provided by market participants during the Commission's market test of the Commitments offered by the Notifying Party (during the phase II investigation of case M.9564 – LSEG/Refinitiv), Bank of Italy's approval is not

¹¹² Decision, paragraph 2807 (in particular Question 4 Questionnaire R1 to trading and clearing customers, Doc ID 8364; Question 4, Questionnaire R2 to trading competitors, Doc ID 8365; Question 4 of Questionnaire R3 to clearing competitors, Doc ID 8366).

expected to raise issues. Indeed, the respondents to the Market Test unanimously considered that there are no considerable obstacles for the transfer of the Divestment Business to Euronext, which could call into question whether LSEG will manage to transfer the Divestment Business to Euronext (e.g. regulatory approvals).¹¹³

- (141) UK Financial Conduct Authority (“FCA”): the approval of the FCA is required in relation to (i) the change in control of EuroMTS Ltd, a subsidiary of MTS, and (ii) the change in control of Elite Club Deal Ltd., a subsidiary of Elite. In both cases, a filing was made on [date] for Euronext, existing reference shareholders and Banca Intesa Sanpaolo. A filing relating to CDP/CDPE was submitted on [date]. [...].
- (142) Autorité de Contrôle Prudentiel et de Résolution (“ACPR”): the approval of the ACPR is required in relation to the change in control of MTS France S.A.S., a subsidiary of MTS. Euronext made a pre-filing on [date], [...].
- (143) National Bank of Belgium: the approval of the National Bank of Belgium is required in relation to the transfer of a qualified holding in MTS Associated Markets S. A./N. V. (“MTS AM”), a subsidiary of MTS. Euronext placed a pre-filing on [date]. The National Bank of Belgium is expected to take a decision on or before [date].
- (144) US Financial Industry Regulatory Authority (“FINRA”): the approval of the FINRA is required in relation to the change in control of MTS Markets International Inc.. A filing was made on [date] by LSEG’s MTS Markets International Inc. FINRA informed the applicant, MTS Markets International Inc., that the filing is substantially complete and started the 180-day review period.
- (145) Based on the feedback provided by market participants during the Commission’s market test of the Commitments offered by the Notifying Party (during the phase II investigation of case M.9564 – LSEG/Refinitiv), FINRA’s approval is not expected to raise issues. Indeed, the respondents to the Market Test unanimously considered that there are no considerable obstacles for the transfer of the Divestment Business to Euronext, which could call into question whether LSEG will manage to transfer the Divestment Business to Euronext (e.g. regulatory approvals).¹¹⁴
- (146) Italian Ministry of Economy and Finance: the approval of Italy’s Ministry of Economy and Finance for the acquisition of MTS is required under MTS’ by-laws. Borsa Italiana S.p.A. sent the notification on [date]. This approval was granted on 19 November 2020.
- (147) Non-objection by Euronext’s College of Regulators: The approval of the authorities forming Euronext’s College of Regulators¹¹⁵ is required under Euronext’s by-laws. Euronext submitted its request on [date] and expects the approval, by way of non-objection, in [date].

¹¹³ Decision, paragraph 2807 (in particular Question 4 Questionnaire R1 to trading and clearing customers, Doc ID 8364; Question 4, Questionnaire R2 to trading competitors, Doc ID 8365; Question 4 of Questionnaire R3 to clearing competitors, Doc ID 8366).

¹¹⁴ Decision, paragraph 2807 (in particular Question 4 Questionnaire R1 to trading and clearing customers, Doc ID 8364; Question 4, Questionnaire R2 to trading competitors, Doc ID 8365; Question 4 of Questionnaire R3 to clearing competitors, Doc ID 8366).

¹¹⁵ Namely the Autoriteit Financiële Markten (“AFM”), the Autorité des Marchés Financiers (“AMF”), the FCA, the Financial Services and Markets Authority, the Portuguese Securities Market Commission (“CMVM”), the Central Bank of Ireland and Finanstilsynet. In addition, Euronext will recommend that CONSOB joins its College of Regulator after the acquisition of the Divestment Business.

- (148) Shareholders' approval: Euronext's shareholders approved the acquisition of the Divestment Business on 20 November 2020.
- (149) In addition, as a result of Euronext's 11.1% shareholding in LCH S.A., a subsidiary of LSEG, Euronext is considered to be a related party of LSEG under the UK Listing Rules. The acquisition of the Divestment Business therefore constitutes a related party transaction for LSEG and is conditional upon, amongst other things, the approval of LSEG's shareholders. This approval has been obtained, at a general meeting which took place on 3 November 2020.
- (150) Other approvals: as regards MTS specifically, the transfer of LSEG's indirect stake, via the Divestment Business, of [below 50]% in MTS Associated Markets is subject to: (i) [confidential information regarding MTS AM's by-laws]. Borsa Italiana expects to receive the formal confirmations in due time. In any event, LSEG submits that its minority non-controlling stake in MTS AM is not a material part of the Divestment Business (and will not be viewed as such by Euronext) and that the sale of LSEG's controlling stake in MTS will not be conditional on the approval under the transfer restrictions or non-exercise of the call option.¹¹⁶
- (151) The Notifying Party submits that Euronext's acquisition of the Divestment Business has the support of the Italian government, and that no issues or delays are expected for obtaining approval from the relevant financial regulators, or from the relevant shareholders.¹¹⁷ The Commission is not aware of any circumstances that would undermine the Notifying Party's opinion of the likelihood of the necessary outstanding approvals being obtained in short order.
- (152) The Trustee is of the opinion that LSEG and Euronext have already demonstrated their interest to act swiftly, also vis-à-vis the relevant regulatory authorities, and therefore the proposed acquisition of the Divestment Business by Euronext does not give a rise to a risk that the implementation of the Commitments will be delayed, in particular as the necessary regulatory and other approvals have either been obtained or are expected to be obtained in due time.¹¹⁸
- (153) In addition, the Commission notes that, based on the feedback provided by market participants during the Commission's market test of the Commitments offered by the Notifying Party (during the phase II investigation of case M.9564 – LSEG/Refinitiv), no other regulatory approval is expected to raise issues. Indeed, the respondents to the Market Test unanimously considered that there are no considerable obstacles for the transfer of the Divestment Business to Euronext, which could call into question whether LSEG will manage to transfer the Divestment Business to Euronext (e.g. regulatory approvals).¹¹⁹
- (154) For the reasons listed above, and in light of the Trustee's Reasoned Opinion, the Commission considers that the acquisition of the Divestment Business by Euronext

¹¹⁶ The SPA nonetheless mentions that LSEG shall use reasonable endeavours to procure that, prior to the Closing Date the shareholders of MTS AM waive their respective call option rights in respect of MTS's shares in MTS AM in connection to the proposed acquisition of the Divestment Business by Euronext.

¹¹⁷ Reasoned Proposal, paragraph 17.

¹¹⁸ Reasoned Opinion, paragraph 454.

¹¹⁹ Decision, paragraph 2807 (in particular Question 4 Questionnaire R1 to trading and clearing customers, Doc ID 8364; Question 4, Questionnaire R2 to trading competitors, Doc ID 8365; Question 4 of Questionnaire R3 to clearing competitors, Doc ID 8366).

is not likely to give rise to a risk that the implementation of the Commitments will be delayed.

2.1.4. Conclusion

- (155) In view of the above and the evidence available to it, the Commission considers that Euronext meets the Purchaser Criteria.

2.2. The Divestment Business is being sold in a manner consistent with the Borsa Italiana Commitments

- (156) The scope of the Divestment Business as described in the SPA comprises all entities LSEG committed to divest in the Commitments. The SPA and the SFA contain no deviations from the obligations set out in the Commitments.
- (157) With regard to the SPA, the Trustee considers in its Reasoned Opinion, that the SPA is deemed consistent with the contents and the purposes of the Commitments, considering, inter alia, that: (i) the SPA does not grant any harmful incentives to LSEG, neither through the purchase price, nor through the warranties and indemnities catalogue; (ii) there are no earn-out or other performance-related deferred purchase price elements; (iii) the conditions to Closing are limited and do not provide any detrimental incentives to Euronext or LSEG; (iv) the catalogue of withdrawal rights is in line with a standard M&A practice, while taking into account LSEG's acquisition of Refinitiv and the necessity for LSEG to obtain a purchaser approval decision from the Commission, so that there is only a theoretical risk that LSEG would walk away from the Euronext/Borsa Italiana Transaction; in turn (v) both LSEG and Euronext have strong incentives to move forward swiftly to a Closing of the proposed acquisition of the Divestment Business by Euronext; (vi) both LSEG and Euronext recognize that the Hold Separate Manager ("HSM") has all necessary commercial freedom to operate the Divestment Business within the ordinary course of business and independently from both LSEG and Euronext until Closing; and (vii) the information rights for Euronext before Closing and for LSEG after Closing are clearly defined.¹²⁰
- (158) As regards the SFA, in its Reasoned Opinion, the Trustee considers that the SFA is consistent with the contents and the purposes of the Commitments and ensures a continuous provision of the agreed services, allowing the Divestment Business to operate independently, while maintaining its standard operation and facilitating a smooth transfer of the Divestment Business to Euronext.¹²¹ In particular: (i) the scope and the duration of the services are consistent with the Commitments; (ii) the prices are fixed and in line with the past practice, as confirmed by the HSM; and (iii) the scope of services to be provided may be amended even after Closing, allowing for sufficient flexibility to the benefit of the Divestment Business's viability.
- (159) In its Reasoned Opinion, the Trustee concludes that the SPA and the SFA are compliant with the conditions and obligations set out in the Decision.¹²² In particular, the Trustee considers that the Divestment Business would be sold in a manner consistent with the Borsa Italiana Commitments.

¹²⁰ Reasoned Opinion, paragraph 561.

¹²¹ Reasoned Opinion, paragraphs 562 and seq.

¹²² Reasoned Opinion, paragraphs 558 and seq.

- (160) The Commission has reviewed the SPA and the SFA, and has taken account of the Trustee's Reasoned Opinion. On the basis of the information in its possession and, in particular, that set out above, the Commission concludes that the Divestment Business is being sold in a manner consistent with the Borsa Italiana Commitments.

3. CONCLUSION

- (161) On the basis of the above assessment, the Commission approves Euronext as a suitable purchaser of the Divestment Business.
- (162) On the basis of the proposed agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Borsa Italiana Commitments.
- (163) The present decision only constitutes approval of the Proposed Purchaser identified herein and of the SPA and SFA. The present decision does not constitute a confirmation that LSEG has complied with the Commitments.
- (164) The present decision is based on paragraph 13 of the Borsa Italiana Commitments attached to the Decision of 13 January 2021.

For the Commission

(Signed)
Olivier GUERSENT
Director-General