By e-mail only DACSI 11-1121

To: European Commission
Directorate-General for Competition
Merger Registry

e-mail address: COMP-MERGER-REGISTRY@ec.europa.eu

Amsterdam, 17 July 2011

Dear Sir/Madam,

Re: **Observations on the proposed merger between NYSE Euronext and Deutsche Börse (COMP/M.6166)**

On 29 June 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which the undertakings NYSE Euronext ("NYX", US) and Deutsche Börse ("DB", Germany) (together, the "Parties") enter into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation.

The Directorate General for Competition of the European Commission has invited interested third parties to submit their observations with regard to the proposed Merger. We are grateful for this opportunity to contribute to the Directorate's assessment.

DACSI is the principle association in The Netherlands of users of financial market infrastructures. As such, DACSI represents some of the most significant customers of the Parties in The Netherlands.

Our observations are structured as follows:

1. our relationship to the Parties
2. derivatives trading and clearing
3. cash trading and post-trading
4. mitigation of adverse effects

1 Our relationship to the Parties

DACSI is the principle association in The Netherlands of users of financial market infrastructures. As such, DACSI represents some of the most significant customers of the Parties in The Netherlands.

* The Dutch Advisory Committee Securities Industry is the principal, not for profit association in The Netherlands for firms active in the securities industry. The Association represents the interests of its members on all aspects of their securities and securities related business - both domestic and international - and positions the Dutch view to the market infrastructures service providers and regulatory authorities in The Netherlands and the European Union.

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Our members are related to the Parties in their roles as brokers, custodian banks, clearing members, traders for own account, and they serve both retail and wholesale customers. As the incumbent exchange in NL is part of the NYSE Euronext group, the relationships with NYX are predominant and to a large extent driven by tradition. Together, our members use the full range of services offered by DB and NYX.

This document does not contain any business secrets.

2 Derivatives trading and clearing

On the two derivatives exchanges of the Parties, many types of derivatives contracts are traded. In this document we focus on Single-stock equity derivatives and Equity Index derivatives. Our members execute trades of these types on both venues, depending on various circumstances.

In general, the decision where to execute a derivatives trade, would strongly depend on fees, system performance (including latency), introduction of new products, clearing arrangements, etc.) , in comparison to service/possibilities offered to clients, execution policy (MiFID) and actual practical possibilities to be connected for retail business (large transactions numbers).

However, in most instances, in particular when futures and options are engaged, the order will just be traded where the specified instrument is available.

2.1 The existing competitive environment

Each Single-stock equity options and Equity Index futures and options is typically available on one venue only. In our opinion, this is a result of strong barriers to entry.

There are two key requirements that a new entrant would have to meet in order to present a *realistic* and economically viable alternative to an incumbent derivatives exchange in Europe or globally.

In order to enter successfully, a new entrant would need to be able to list (popular) derivative products on its trading platform, which would entail either obtaining a licence to use an existing benchmark or creating a new benchmark. This constitutes a significant barrier to entry. History shows that the incumbent exchanges have been unwilling to grant index licenses to their competitors to enable them to establish competing products on competing trading platforms.

In addition, a new entrant would need to offer a clearing service to customers enabling them to offset margin payments from their existing transactions. At present, DB and NYX do not allow derivatives traded on other exchanges to be cleared through their ‘own’ resp. exclusive CCP. DACSI considers that this creates an impediment to competition at the trading level: without access to a single central margin pool, new entrants such as MTFs launching competing products may not offer an economically viable alternative to customers if they cannot achieve efficiencies in their post-trade costs by offsetting their margin payments. Customers are therefore denied the ability to achieve margin netting benefits in respect of similar products.

Conversely, DB does not allow its customers who trade derivatives on Eurex to choose where those transactions will be cleared, and similarly, NYX does not allow customers who trade on its exchanges to choose where those transactions will be cleared. This limits competition at the clearing level, and denies potential margin netting benefits to DB or NYX customers who are also customers of other exchanges.

In theory, a competitor to one of the existing vertical models could start his own vertical silo, offering both trading and clearing. This is not likely to occur; such an initiative should still cope with the two main entry barriers in the trading space, and when the existing structures to not cooperate in terms of fungibility (see above – barriers to clearing), users of the new competitor would still face the inability to offset positions and/or margins with those with regard of the existing structures.

A merger between Parties would – in our view – not relax the barriers to entry, but rather strengthen them in their defensive position. Under a Merger, we do not expect better possibilities to overcome said barriers, unless additional measures are taken.

2.2 Effects of the proposed merger

We are concerned that, if the Merger were to take place, no effective alternatives to the merged derivatives business of DB and NYX would exist in the EEA, that the merged business would have an extremely dominant market share, and that the merged business would be largely unconstrained by the threat of effective new entry in respect of exchange-traded derivatives in the EEA.

We are also concerned that DB has the potential opportunity to take advantage of a very strong market position created by its 'vertical silo' (for example, its ownership and control of both trading and clearing services) by applying restrictive practices in relation to its licensing, pricing and rebate structures. The Merger would result in even higher barriers for new entrants.

Concretely, we would expect trading fees and other conditions deteriorating because of diminished competition. The efficiency gains from the proposed merger, as pointed out largely by the Parties, are rather an argument for their shareholders to agree with the proposal, but the merged entity would hardly have incentives to translate (part of) the efficiency gains into lower fees. Recent experience with the cash trading venues has shown that fee reductions tend to be triggered by competitors' pricing policy rather than by cost developments.

3 Cash trading and post-trading

The circumstances of competition between trading venues for cash products differ largely according to the classes of securities traded.

MTFs are a competitive alternative to regulated exchanges, but only to the extent that they facilitate trading in the same equities. We note that MTFs limit their offerings to blue-chips. Trading in mid- and small cap equities is (still) the monopolistic territory of the incumbent exchanges. The importance of trading blue-chips highly dominates the volumes of equity trading in general. However, trading/investing in blue-chips is not a substitute for trading/investing in mid- and small caps, because their risk and return profiles are not strongly correlated. Hence, these markets should be regarded as distinct: for small and mid caps there is no viable substitute for the existing regulated markets.

3.1 Blue chip trading

Competition between exchanges and MTFs for cash trading is currently significant. We have no particular concerns that the competitive forces between providers would diminish significantly as an effect of the Merger. Under current (technical, regulatory) conditions, we expect competition to remain effective. However, we note that the proposition made by trading venues to users is often not mere trading, but in many cases includes clearing services that 'come with' that venue. From that perspective, we have concerns about the dominant position of the Parties with regard to post-trade services, in particular clearing (see 3.3).

3.2 Small and mid-cap trading

This market segment is typically dominated by the traditional national exchanges. In the absence of competition, trading fees in this segment were raised (at least relative to fees for blue chips) in the recent years. This has been defended by the argument that this segment should not be (cross-)subsidised by the top segment; whatever the validity of this argument, the result has been monopolistic markets lacking downward pressure on prices.

Under the Merger, this situation could hardly deteriorate, but we underline the conflicting interests of the profit driven exchanges and the free access to the capital markets for small and mid-cap companies.

3.3 Post-trading

As far as alternatives do exist, the decision to execute a trade on a given trading venue is impacted by (the costs of) the clearing services necessary to complete the trade. For wholesale trades, the choice will i.a. depend on possibilities to consolidate margin payments. For retail business, the choice is usually made on a macro level: the most attractive combination of trading and clearing conditions will dominate the decision which "trading+clearing" venue is chosen Given large transaction numbers with modest (average) amounts, it is often efficient to use one venue, even when alternatives exist.

When combining their organisations, the Parties are likely to offer one clearing service. Maintaining only one connection for clearing instead of – currently – two would imply operational and cost benefits for certain users. However, for users now serving their retail customers through one channel – viz. NYSE Euronext and LCH.Clearnet SA – the migration to another one would also incur material initial costs. Such a migration would only be beneficial to users if the Parties pass on a fair share of the cost savings derived from integration of clearing to end users.

DACSI envisages no stronger incentives of the parties to provide or allow for third party access to the same clearing facility which they use, after the Merger. Parties would have even less incentive than at present to permit transactions executed on the exchanges operated by the Parties to be cleared on an alternative CCP or to agree to interoperability between CCPs: the merged business could simply require all such transactions to be cleared through its own clearing entity, notably Eurex Clearing.

DACSI's concerns with regard to operational and cost effects, and to the limited possibilities for new entrants, would need mitigating measures and/or requirements, should the Merger become effective.

4 Mitigation of adverse effects

Summarising, we think that the adverse effects for users of the Parties' exchanges would at least be mitigated by strong requirements in terms of governance and market conduct:

- A well-defined governance structure, organised at the various levels of the holding company, i.e. with separate structures for trading, for clearing, for settlement/custody;
- A fair and transparent access policy for the admission as a participant of trading, clearing and/or settlement services;
- A fair choice for participants to use one or more of these unbundled services;
- Adequate controls avoiding unfair cross-subsidising;
- The creation of fungibility between (future and option) contracts of competing trading venues, enabling the off-setting of positions and margins;
- Interoperability arrangements making these choices possible in practice.

We thank the Commission for the opportunity to submit our observations and request that our suggestions are taken into consideration in the assessment of the proposed Merger.

Kind regards,

Dutch Advisory Committee Securities Industry
(DACSI)

Henk Bruggeman, managing director