

## REFERENCE RELATING TO THE ANTICIPATED ACQUISITION OF LONDON STOCK EXCHANGE PLC BY DEUTSCHE BÖRSE AG OR EURONEXT NV

### Notice of Possible Remedies under Rule 11 of the Competition Commission Rules of Procedure

#### Introduction

1. On 29 March 2005, the Office of Fair Trading (OFT), in exercise of its duty under section 33 of the Enterprise Act 2002 (the Act) made two references to the Competition Commission (CC). The references concerned the anticipated acquisition of London Stock Exchange plc (LSE) by Deutsche Börse AG (DBAG) or Euronext NV (Euronext).
2. In its provisional findings on the two references notified to DBAG, Euronext and LSE (the main parties) on 29 July 2005, the CC inquiry group (the Group) concluded provisionally that the anticipated acquisition of LSE by either DBAG or Euronext (the proposed mergers), if carried into effect, would result in the creation of a relevant merger situation; and that the creation of that situation might be expected to result in a substantial lessening of competition (SLC) within the market for the provision of on-book equities trading services within the UK, because of the ability and incentive of DBAG or Euronext to foreclose entry or expansion to other providers of trading services as a result of their ownership of or influence over clearing services.
3. This notice sets out the actions that the Group considers might be taken by the CC, including any recommendations it might make for action on the part of others, for the purpose of remedying the SLC identified in respect of each reference and any resulting adverse effects identified in the provisional findings, and invites comments on possible remedies (see note (i)). The remedy options for each of the proposed mergers are set out in turn.

#### Proposed acquisition of LSE by DBAG

4. The Group invites views on whether a package of remedies short of prohibition would be effective in addressing the SLC expected to result from an acquisition of LSE by DBAG. This package of remedies might include some or all of the following:
  - a requirement that DBAG divest itself of control of Eurex Clearing AG (Eurex Clearing). This might involve actual divestiture of its holding in Eurex Clearing and/or measures removing any operational control DBAG has over Eurex Clearing through changes to its corporate governance arrangements;
  - a requirement that Eurex Clearing not be used as the provider of clearing services to LSE;
  - a set of behavioural commitments from the merged entity to ensure that Eurex Clearing does not act in such a way as to deny potential competitors to LSE access to clearing services or otherwise place them at a competitive disadvantage. These commitments might involve:
    - an obligation to provide access to clearing services for other providers of on-book trading services on fair and reasonable terms;

- an obligation to provide access to clearing services for other providers of on-book trading services on terms no less favourable than those for provision of such services to LSE;
  - an obligation to facilitate full fungibility between the clearing of trades in UK equities executed on the order book of other exchanges and on the LSE order book;
  - preparation of separate Eurex Clearing accounts in such a way as to allow effective monitoring of compliance with such obligations;
  - the use of an independent adjudicator paid for by DBAG to monitor compliance and deal with disputes in relation to any of the above.
5. The Group has considered whether measures to secure the independence of LSE's board would, in themselves or as part of a wider package, be an effective remedy for the expected SLC in this case. However, the Group has reached the view that an independent LSE board would not be sufficient to remedy the expected SLC.
6. In considering whether a package of remedies including one or more of the measures outlined in paragraph 4 above would be likely to be effective in addressing the SLC and its adverse effects, the Group will take into account, inter alia:
- the complexity of the remedy and any consequent problems of monitoring compliance and enforcement; and
  - the duration of the remedy that would be necessary to ensure its effectiveness.
7. The Group also invites views on the prohibition of the proposed merger as an appropriate remedy for the expected SLC in this case.

### **Proposed acquisition of LSE by Euronext**

8. The Group invites views on whether a package of remedies short of prohibition would be effective in addressing the SLC expected to result from an acquisition of LSE by Euronext. This package of remedies might include some or all of:
- a requirement that Euronext divest itself of control of LCH.Clearnet Group Limited (LCH.Clearnet). This might involve actual divestiture of its holding in LCH.Clearnet and/or measures removing any operational control Euronext has over LCH.Clearnet through changes to its corporate governance arrangements;
  - a set of behavioural commitments from the merged entity to ensure that LCH.Clearnet does not act in such a way as to deny potential competitors to LSE access to clearing services or otherwise place them at a competitive disadvantage. The Group notes the restrictions on LCH.Clearnet's behaviour that stem from its Articles of Association and the LCH.Clearnet/Euronext Clearing Agreement. These restrictions notwithstanding, the Group is considering the use of behavioural commitments, which might involve:
    - an obligation to provide access to clearing services for other providers of on-book trading services on fair and reasonable terms;
    - an obligation to provide access to clearing services for other providers of on-book trading services on terms no less favourable than those for provision of such services to LSE;

- an obligation to facilitate full fungibility between the clearing of trades in UK equities executed on the order book of other exchanges and on the LSE order book;
  - separation of LCH.Clearent accounts in such a way as to allow effective monitoring of compliance with such obligations;
  - the use of an independent adjudicator paid for by Euronext to monitor compliance and deal with disputes in relation to any of the above.
9. The Group has considered whether measures to secure the independence of the LSE board would, in themselves or as part of a wider package, be an effective remedy for the expected SLC in this case. However, the Group currently considers that an independent LSE board would not be sufficient to remedy the expected SLC.
10. In considering whether a package of remedies including one or more of the measures outlined in paragraph 8 above would be likely to be effective in addressing the SLC and its adverse effects, the Group will take into account, inter alia:
- the complexity of the remedy and any consequent problems of monitoring compliance and enforcement; and
  - the duration of the remedy that would be necessary to ensure its effectiveness.
11. The Group also invites views on the prohibition of the proposed merger as an appropriate remedy for the expected SLC in this case.

## Criteria

12. In choosing appropriate remedial action, the Group will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC identified in respect of each reference, and any adverse effects resulting from it. When deciding on an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the Group considers equally effective, it will choose that which imposes the least cost or restriction.

## Relevant customer benefits

13. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the proposed mergers. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services.
14. The Group welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits.

## Next steps

15. The main parties are requested to provide any views in writing, including any practical alternative remedies they wish the Group to consider, by **18 August 2005** (see note (i)).

16. A copy of this notice will be posted on the CC's web site. Other interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the Group to consider, by **18 August 2005**.

Jeremy Seddon  
Group Chairman  
29 July 2005

### **Notes**

- (i) This notice of possible actions to remedy the SLC identified in respect of each reference and any resulting adverse effects is given having regard to the Group's provisional findings notified to the main parties on **29 July 2005**. The main parties have until **19 August 2005** to respond to those provisional findings. In the light of any responses by the main parties, or by other interested or affected third parties, the Group's findings may alter, in which case the Group may consider other possible remedies, if appropriate.