



# News Release

32/05

05 May 2005

## CC INQUIRY INTO LONDON STOCK EXCHANGE MERGERS

### Statement of issues

The Competition Commission (CC) has today published an issues statement as part of its inquiry into the anticipated acquisition by Deutsche Börse AG (DBAG) or Euronext NV (Euronext) of London Stock Exchange plc (LSE).

The issues statement is part of the CC's process of gathering information, views and evidence and identifies clearly for all interested parties the specific questions and areas the inquiry will be examining. These will form the basis of hearings with LSE, DBAG and Euronext.

The full issues statement is attached to this release and raises issues for the proposed mergers concerning:

- (a) market definition;
- (b) the counterfactual—what would be likely to happen in the absence of either of the proposed mergers;
- (c) assessment of the competitive effects of either of the proposed mergers; and
- (d) customer benefits that might arise as a result of either of the proposed mergers.

The proposed mergers were referred by the Office of Fair Trading (OFT) on 29 March 2005 and the CC is seeking to establish whether they may be expected to result in a substantial lessening of competition within the UK market or markets for on-exchange trading services for equities, clearing services for equities trades, or any other market or markets such as listing, settlement or information services.

If the CC finds that either of the proposed mergers may be expected to result in a substantial lessening of competition, it will consider whether, and if so what, remedies might be appropriate and will issue a remedies statement at a later date. The CC is required to publish its final report by 12 September 2005.

The CC has yet to reach any conclusions, and will not do so until it has discussed these issues with LSE, DBAG, Euronext and others. The purpose of making the statement of issues public is to inform all interested parties and give them an opportunity to make

submissions or offer evidence to the CC. Information about the reference is available on the CC web site at:

<http://www.competition-commission.org.uk/inquiries/ref2005/lse/index.htm>

Anyone wishing to comment on any of the issues set out below, or on any other competition issue arising out of either proposed merger, is requested to do so by 20 May 2005 in writing to:

Alan Shearman  
Secretary to the LSE mergers inquiry  
Competition Commission  
Victoria House  
Southampton Row  
LONDON  
WC1B 4AD

Or email: [alan.shearman@competition-commission.gsi.gov.uk](mailto:alan.shearman@competition-commission.gsi.gov.uk).

The CC will continue to gather evidence in this inquiry and currently intends to publish its provisional findings in early July as set out in the administrative timetable on the CC web site.

#### **Notes for editors**

1. The Enterprise Act 2002 empowers the OFT to refer to the CC completed or proposed mergers for investigation and report which create or enhance a 25 per cent share of supply in the UK (or a substantial part thereof) or where the UK turnover associated with the enterprise being acquired is over £70 million (see OFT Press Release PN 06/04).
2. The LSE inquiry group (the Group) consists of five members of the CC: Paul Geroski (Group Chairman), Jayne Almond, Alan Gregory, Barbara Mills and Jeremy Seddon.
3. The CC has a 24-week period in which it is required to publish its report, which may be extended by no more than eight weeks if it considers that there are special reasons why the report cannot be published within that period.
4. Further information on the CC and its procedures, including its policy on the provision of information and the disclosure of evidence, can be obtained from its web site at [www.competition-commission.org.uk](http://www.competition-commission.org.uk).
5. Enquiries should be directed to Francis Royle on 020 7271 0242 (email [francis.royle@competition-commission.gsi.gov.uk](mailto:francis.royle@competition-commission.gsi.gov.uk)) or Rory Taylor on 020 7271 0398 (email [rory.taylor@competition-commission.gsi.gov.uk](mailto:rory.taylor@competition-commission.gsi.gov.uk)).

The issues that the CC intends to consider are:

## **Market definition**

The Group would like to explore the appropriate definition of the economic markets affected by the proposed mergers (the 'relevant markets'), in particular:

- (a) whether there is a distinct product market relating to listing of securities on an exchange, or whether this should be regarded as part of a wider market for the raising of capital;
- (b) whether on-exchange trading services should be regarded as a separate product market, or whether some or all off-exchange trading services such as:
  - (i) Alternative Trading Systems (for example, Electronic Communication Networks);
  - (ii) Bilateral (Over the Counter) trading; and/or
  - (iii) Internalized trading;form part of the same product market;
- (c) whether clearing and settlement services (post-trade services) should each be regarded as separate product markets, and if so, which functions (eg netting) should be included within each, or whether there is a single market for post-trade services;
- (d) whether trading and post-trade services should each be regarded as separate product markets, or whether there is a single product market for trading and post-trade services;
- (e) whether there are other services (eg information services) which should be regarded as separate product markets;
- (f) for any or all of (a) to (e), whether there are separate product markets or market segments for:
  - (i) equities, fixed income products and/or derivatives, or for any other class of security;
  - (ii) any particular groups of customers; or
  - (iii) any other area.
- (g) for any or all of (a) to (e), whether the relevant geographic market is the UK, Europe or wider.

## **The counterfactual**

The Group would like to explore what would be likely to occur in the absence of either of the proposed mergers (the counterfactual), in particular:

- (a) whether, if the proposed merger with DBAG did not go ahead, the most likely alternative would be for LSE to merge with Euronext;

- (b) whether, if the proposed merger with Euronext did not go ahead, the most likely alternative would be for LSE to merge with DBAG;
- (c) whether, if neither of the proposed mergers went ahead, LSE would enter into alternative consolidation arrangements, and, if so, what these might be; or
- (d) whether, if neither of the proposed mergers went ahead, LSE would be most likely to remain independent.

### **Assessment of the competitive effects of the proposed merger**

Against this background, the Group would like to explore the competitive effects of the proposed mergers within each of the relevant markets identified. In particular:

#### ***Underlying factors***

- (a) whether there are identifiable trends in the relevant markets, including:
  - (i) the impact of regulatory changes at the national or European level (including the Markets in Financial Instruments Directive (2004/39/EC) (MiFID));
  - (ii) national/regional consolidation (both in Europe and the USA);
  - (iii) new technology (for example, smart order routing);
  - (iv) development of new products; and/or
  - (v) changes in the importance of 'home bias' (which makes the national exchange or exchanges the obvious choice for listing);

which might significantly affect competition in the relevant markets in the UK in the foreseeable future;

- (b) whether, and if so how, the different business models currently in place for trading and post-trade services (ie horizontal national/pan-regional models vs vertical national models) affect competition in the relevant markets;
- (c) whether, and if so to what extent, particular regulatory regimes currently affect the degree to which exchanges compete with each other and other trading platforms;
- (d) whether, and if so to what extent, the governance structure, rules, or other features of a particular exchange affect competition in the relevant markets;

#### ***Competitive effects***

- (e) whether, and if so to what extent, LSE, DBAG and Euronext have competed with each other historically, currently compete, or are likely to compete in the future in the provision of listing, trading, post-trade, or other services;
- (f) whether, and if so to what extent, LSE, DBAG and Euronext have faced in the past, currently face, or will face actual and/or potential competition from other exchanges or other suppliers of listing, trading, post-trade, or other services;
- (g) whether, and if so to what extent, LSE, DBAG and Euronext have been constrained in the past, are currently constrained, or will be constrained in the future by Alternative Trading Systems, and/or internalized and bilateral (Over the Counter) trading, and

whether this differs for different customer groups (for example, large and small traders);

- (h) the relative importance, both now and in the future, of listing fees in determining customers' choice of listing venue;
- (i) the relative importance, both now and in the future, of explicit costs (trading and post-trading fees), implicit costs (in particular the bid-ask spreads), and any relevant taxes in determining customers' decisions to switch between exchanges or to trade off-exchange;
- (j) the interdependency, both now and in the future, of explicit costs (trading and post-trading fees and any relevant taxes), implicit costs (in particular the bid-ask spreads) and any relevant taxes;
- (k) whether there are multi-market pricing or service provision strategies which give an owner of multiple exchanges a competitive advantage over single exchanges or other entities;
- (l) whether there are significant barriers to entry or to expansion in any of the relevant markets. In particular, the Group would like to understand:
  - (i) the recent experiences of actual entry into the Dutch, UK, other European or US markets;
  - (ii) the relevance of the national regulatory regimes;
  - (iii) the relevance of structure and ownership of post-trade services in determining ease of entry at the trading level;
  - (iv) the importance or otherwise of large customers in encouraging entry; and
  - (v) the likelihood of future potential entry in the UK and the identity of the current most credible entrants;
- (m) whether either of the proposed mergers may be expected to create or increase the ability unilaterally to increase market power in any of the relevant markets, and lead to a rise in prices, a reduction in choice or quality of service, or a reduction in innovation, and, if so, which customers would be affected and in what ways;
- (n) whether any changes in the structure and ownership of trading and post-trade services could have an adverse effect on:
  - (i) the terms and conditions of provision of trading and post-trade services; and
  - (ii) the ease of entry at the trading level;and, if so, which customers would be affected and in what ways;
- (o) whether either of the proposed mergers may be expected to create or increase the likelihood of coordination between exchanges, leading to a rise in prices, a reduction in choice or quality of services, or a reduction in innovation, and, if so, which customers would be affected and in what ways;

### ***Offsetting factors***

- (p) whether any potential lessening of competition might be offset by the buyer power of large customers; and

### ***Substantial lessening of competition***

- (q) whether, taking account of all of the above, either of the proposed mergers may be expected to result overall in a substantial lessening of competition in any of the relevant markets in the UK.

### **Relevant customer benefits**

The Group would like to explore whether any relevant customer benefits might be expected to arise as a result of either of the proposed mergers, and if so what these benefits are likely to be and which customers they would benefit. Customer benefits are benefits to customers at any point in the value chain and are not limited to benefits to end consumers.

### **Possible remedies**

Should the Group conclude that either of the proposed mergers may be expected to result overall in a substantial lessening of competition, it will consider whether, and if so what, remedies might be appropriate, and will issue a further statement at a later date.