

Terms of reference and conduct of the inquiry

Terms of reference

1. On 29 March 2005 the OFT sent to the CC the following references:
 1. Whereas in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the 'Act') to make a reference to the Competition Commission (the 'Commission') in relation to an anticipated merger the Office of Fair Trading (the 'OFT') believes that it is or may be the case that—
 - (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation in that:
 - (i) enterprises carried on by or under the control of Deutsche Börse AG will cease to be distinct from enterprises carried on by or under the control of the London Stock Exchange plc (the 'LSE'); and
 - (ii) the value of the turnover in the United Kingdom of the enterprises carried on by or under the control of the LSE exceeds £70 million; and
 - (b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, including the market for the provision of on-exchange trading services for equities in the United Kingdom.
 2. Now, therefore, the OFT, in exercise of its duty under section 33 of the Act, hereby refers to the Commission, for investigation and report within a period ending on 12 September 2005, the following questions in accordance with section 36 of the Act—
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

- (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
3. In relation to the question whether a relevant merger situation will be created, the Commission shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if they find that the other is satisfied.

Vincent Smith
Director, Competition Enforcement Division, Office of Fair Trading
29 March 2005

1. Whereas in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the 'Act') to make a reference to the Competition Commission (the 'Commission') in relation to an anticipated merger the Office of Fair Trading (the 'OFT') believes that it is or may be the case that—
- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation in that:
- (i) enterprises carried on by or under the control of Euronext N.V. will cease to be distinct from enterprises carried on by or under the control of the London Stock Exchange plc (the 'LSE'); and
 - (ii) the value of the turnover in the United Kingdom of the enterprises carried on by or under the control of the LSE exceeds £70 million; and
- (b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, including the market for the provision of on-exchange trading services for equities in the United Kingdom.
2. Now therefore the OFT in exercise of its duty under section 33 of the Act, hereby refers to the Commission, for investigation and report within a period ending on 12 September 2005, the following questions in accordance with section 36 of the Act—

- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
- (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
3. In relation to the question whether a relevant merger situation will be created, the Commission shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if they find that the other is satisfied.

Vincent Smith
Director, Competition Enforcement Division, Office of Fair Trading
29 March 2005

Conduct of inquiry to provisional findings

2. Notices inviting interested parties to submit evidence to the CC were placed in the *Financial Times* (World Edition). We also posted an invitation to express views to us on the CC web site.¹
3. We sought and received written evidence from exchanges, ATs, trading firms, other customers, suppliers, trade associations, regulators, government departments and others. We also liaised with the Bundeskartellamt (which was conducting its own investigation into the proposed DBAG/LSE merger) and officials of the European Commission.
4. Oral evidence was received during 14 hearings with selected third parties, including a joint hearing with members of LIBA and a joint hearing with members of the Association of Private Client Investment Managers. A collation of key arguments and views of third parties can be found on our web site, together with non-sensitive versions of written submissions that we received from third parties.

¹www.competition-commission.org.uk.

5. We received written evidence from LSE, DBAG and Euronext. Non-sensitive versions of the LSE, DBAG and Euronext main submissions can be found on our web site. In addition, the companies each attended two separate hearings. Members of the Group, accompanied by staff, visited the exchanges and/or offices of DBAG in Frankfurt, Euronext in Paris and LSE in London.

6. In the course of our inquiry we sent to LSE, DBAG and Euronext a number of working papers (or extracts) and published an industry background paper on our web site. We also sent to the parties, and published on our web site at the relevant time: a Statement of Issues, a Notice of provisional findings and our provisional findings report.