

# AntitrustConnect Blog

## Deutsche Börse and NYSE Euronext Blame “Narrow” Market Definition for EC’s Objection to Combination

Jeffrey May (Wolters Kluwer) · Wednesday, February 1st, 2012

Despite a U.S. Department of Justice decision to clear the deal, the European Commission (EC) today blocked the proposed merger of NYSE Euronext and Deutsche Börse. The EC determined that the combination would have resulted in a quasi-monopoly in the area of European financial derivatives traded globally on exchanges. The two exchanges control more than 90% of global trade in these products, according to the EC.

In light of the EC decision, NYSE and Deutsche Börse said that they were in discussions to terminate their merger agreement.

“The merger between Deutsche Börse and NYSE Euronext would have led to a near-monopoly in European financial derivatives worldwide,” said Joaquín Almunia, Commission Vice President in charge of competition policy, in an [EC statement](#) announcing the decision. “These markets are at the heart of the financial system and it is crucial for the whole European economy that they remain competitive. We tried to find a solution, but the remedies offered fell far short of resolving the concerns.”

The EC analyzed the effects of the proposed merger on the markets for European financial derivatives (European interest rate, single stock equity and equity index derivatives) traded on exchanges. The EC acknowledged that derivatives can be traded either on exchanges—exchange-traded derivatives (ETDs)—or over-the-counter (OTC). However, its investigation showed that ETDs and OTCs are generally not considered as substitutes by customers, since they use them for different purposes and in different circumstances.

Both NYSE Euronext and Deutsche Börse took issue with the EC’s market definition.

NYSE Euronext Chairman Jan-Michiël Hessels said in a [statement](#) that the decision was “based on a fundamentally different understanding of the derivatives market.”

“The EU Commission’s decision is based on an unrealistically narrow definition of the market that does no justice to the global nature of competition in the market for derivatives,” according to a [statement](#) of the Executive Board of Deutsche Börse. “The over-the-counter (OTC) derivatives market, the major part of the market as a whole, is completely precluded. We therefore regard the decision as wrong. What’s more, it is inconsistent and runs counter to the aim of extending financial market regulation to the OTC derivatives market which the Commission is

simultaneously pursuing. In its decision, the European Commission also takes a contrary stand to the assessment of the derivatives market arrived at in the USA back in 2007. There, the two Chicago exchanges CME and CBOT were allowed to merge to form the largest globally operating derivatives exchange.”

The U.S. Department of Justice Antitrust Division in June 2007 [closed](#) its investigation into the proposed acquisition of CBOT Holdings Inc. by Chicago Mercantile Exchange Holdings Inc. (CME) after concluding that the transaction was not likely to reduce competition substantially. The Antitrust Division cleared the transaction without conditions.

In evaluating the NYSE Euronext/Deutsche Börse transaction, the U.S. Justice Department’s December 2011 [complaint](#) identified three relevant markets in which competition would have been impacted by the transaction:

1. displayed equity trading services;
2. listing services for exchange-traded products (ETPs), including exchange-traded funds; and
3. real-time proprietary equity data products in the United States.

The Justice Department noted that the competitive dynamics for each of the three markets was distinctly different outside the United States.

With the abandonment of the transaction, the U.S. complaint was most likely be voluntarily dismissed. A [proposed final judgment](#) resolving the U.S. antitrust concerns had not yet been approved by the federal court in Washington, D.C. It had been awaiting public comment and a determination that the consent decree would be in the public interest, pursuant to the Antitrust Procedures and Penalties Act.

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