

3. Third plea in law, alleging a manifest error of assessment in that the Commission refused to accept a rate of 7 % as the discount rate for the exceptional flat-rate contribution.

Action brought on 12 April 2012 — Deutsche Börse v Commission

(Case T-175/12)

(2012/C 174/42)

Language of the case: English

Parties

Applicant: Deutsche Börse AG (Frankfurt am Main, Germany) (represented by: C. Zschocke, J. Beninca and T. Schwarze, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission Decision COMP/M.6166 Deutsche Börse/NYSE Euronext of 1 February 2012; and

— Order the defendant to pay the costs of this application.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging that the defendant failed to properly assess the horizontal competitive constraints to which the parties are subject to, alleging that the Commission's consideration of over-the-counter ('OTC') derivatives trading and its claim that the constraints the parties supposedly exercise on each other's exchange fees was vitiated by errors of law and assessment. In addition, the Commission's claim that the parties constrain each other through innovation competition is manifestly incorrect and its analysis of competition among trading platforms was not based on cogent and consistent evidence. Furthermore, the Commission failed to properly consider the demand-side constraints because it failed to analyze and assess the crucial role of the parties' customers among which are the main participants of OTC trading, and to carry out any quantitative analysis.

2. Second plea in law, alleging that the defendant's assessment of the parties' efficiencies claims was vitiated by manifest errors and not supported by cogent and consistent evidence.

The Commission inaccurately accepted only some of the efficiencies as verifiable, merger-specific and likely to directly benefit customers, and incorrectly claimed that they were insufficient to counteract the competitive effects of the merger. In relation to its evaluation of both collateral savings and liquidity benefits, the Commission violated the parties' right to be heard by relying on evidence and arguments introduced after the oral hearing on which the parties were not given opportunity to comment. The Commission's 'claw back' theory and its assessment of the merger-specificity of collateral savings were based on new theories and requirements that are not supported by the Commission's Horizontal Merger Guidelines ⁽¹⁾.

3. Third plea in law, alleging that the defendant failed to properly assess the remedies offered by the parties. The rejection of the commitment concerning the full divestiture of NYX' (the applicant and NYSE Euronext) overlapping single equity derivatives business, including the divestiture of NYX' BClear facility, was based on incorrect evidence. The alleged 'symbiotic relationship' between single equity and equity index derivatives does not exist, contradicts the Commission's own market definition analysis, and was raised in violation of the parties' right of defence. The Commission's rejection of the software licensing commitment is vitiated by error and contradicts its conclusions regarding technology competition.

⁽¹⁾ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2004 C 31, p. 5)

Action brought on 16 April 2012 — Bank Tejarat v Council

(Case T-176/12)

(2012/C 174/43)

Language of the case: English

Parties

Applicant: Bank Tejarat (Tehran, Iran) (represented by: S. Zaiwalla, P. Reddy, and F. Zaiwalla, Solicitors, D. Wyatt, QC and R. Blakeley, Barrister)

Defendant: Council of the European Union