



## Reports of Cases

### Judgment of the General Court (Third Chamber) of 9 March 2015 — Deutsche Börse v Commission

(Case T-175/12)

(Competition — Concentrations — Financial instruments sector — European derivatives market — Decision declaring the concentration incompatible with the internal market — Assessment of the effects of the transaction on competition — Efficiency gains — Commitments)

1. *Actions for annulment — Subject-matter — Decision based on several pillars of reasoning, each sufficient to justify the operative part — Decision on the control of concentration operations — Pleas expressly challenging only one pillar of reasoning — Whether effective — Conditions (Art. 263 TFEU; Council Regulation No 139/2004, Art. 2(3)) (see paras 46-48, 50, 52-57, 393, 394, 402-405)*
2. *Judicial proceedings — Application initiating proceedings — Formal requirements — Brief summary of the pleas in law on which the application is based (Statute of the Court of Justice, Arts 21, first para., and 53, first para.; Rules of Procedure of the General Court, Art. 44(1)(c)) (see para. 59)*
3. *Concentrations between undertakings — Assessment of compatibility with the internal market — Creation or reinforcement of a dominant position significantly hindering effective competition in the internal market — Examination by the Commission — Prospective analysis — Burden of proof — Onus on the Commission to produce convincing evidence (Council Regulation No 139/2004, Arts 2(3), and 8(3)) (see paras 61-63)*
4. *Concentrations between undertakings — Examination by the Commission — Commitments of the undertakings concerned capable of rendering the notified operation compatible with the internal market — Obligation on the Commission to examine the concentration as modified by the undertakings (Council Regulation No 139/2004, Arts 2(3), and 8(2) and (3)) (see paras 64, 378)*
5. *Concentrations between undertakings — Examination by the Commission — Economic assessments — Discretionary power of assessment — Judicial review — Limits (Council Regulation No 139/2004, Art. 2) (see paras 65-67)*



6. *Concentrations between undertakings — Examination by the Commission — Definition of the market in question — Criteria — Purchasing power constituting a pressure external to the market — Not included — Account taken as a factor likely to counter anti-competitive effects (Council Regulation No 139/2004, Art. 2; Commission Notice 2004/C 31/03) (see para. 126)*
7. *Concentrations between undertakings — Assessment of compatibility with the internal market — Criteria — Assessment as a whole — Assessment based on evidence — No obligation to prioritise the use of technical elements of proof — No obligation on the Commission to carry out quantitative analyses (Council Regulation No 139/2004, Art. 2) (see paras 132-134)*
8. *Concentrations between undertakings — Assessment of compatibility with the internal market — Creation or reinforcement of a dominant position significantly hindering effective competition in the internal market — Account taken of efficiency gains — Criteria — Cumulative requirements (Council Regulation No 139/2004, twenty-ninth recital; Commission Notice 2004/C 31/03, points 76 to 88) (see paras 236-239, 275, 357)*
9. *Concentrations between undertakings — Administrative procedure — Observance of the rights of the defence — Statement of objections — Provisional nature — No obligation on the Commission to explain in the final decision the differences between the latter and its provisional assessments (Council Regulation No 139/2004, Art. 18(3); Commission Regulation No 802/2004, Art. 13(2)) (see paras 247-251, 258, 344)*
10. *Concentrations between undertakings — Administrative procedure — Statement of objections — Necessary content — Observance of the rights of the defence — Relevance of the finding, subsequent to the communication of the statement of objections, of the existence of a competition problem omitted or insufficiently referred to therein (Council Regulation No 139/2004, Art. 18(3); Commission Regulation No 802/2004, Art. 13(2)) (see para. 252)*
11. *Concentrations between undertakings — Assessment of compatibility with the internal market — Creation or reinforcement of a dominant position significantly hindering effective competition in the internal market — Account taken of efficiency gains — Criteria — Verifiable character — Burden of proof — Obligation to produce information capable of being independently verified by a third party — No obligation to produce documents prior to the concentration (Council Regulation No 139/2004; Commission Notice 2004/C 31/03, points 86 and 87) (see paras 262, 275, 361-363, 372)*
12. *Concentrations between undertakings — Assessment of compatibility with the internal market — Creation or reinforcement of a dominant position significantly hindering effective competition in the internal market — Account taken of efficiency gains — Criteria — Advantage for consumers — Account taken of the possibility for the parties to a concentration to recover the efficiency gains — Admissibility (Council Regulation No 139/2004, twenty-ninth recital; Commission Notice 2004/C 31/03, points 79, 80 and 84) (see paras 267-269, 273, 276)*



13. *Concentrations between undertakings — Assessment of compatibility with the internal market — Creation or reinforcement of a dominant position significantly hindering effective competition in the internal market — Account taken of efficiency gains — Criteria — Specific to the concentration — Efficiency gains capable of being obtained by means of less anti-competitive alternatives — Exclusion (Council Regulation No 139/2004, twenty-ninth recital; Commission Notice 2004/C 31/03, point 85) (see paras 282, 285, 287)*
14. *Concentrations between undertakings — Administrative procedure — Statement of objections — Necessary content — Observance of the rights of the defence — Undertakings afforded the opportunity to make known their views on the facts, objections and circumstances alleged by the Commission — Sufficient indication having regard to the right to be heard — No obligation to communicate the detail of the analysis method to be used by the Commission (Council Regulation No 139/2004, Art. 18(3); Commission Regulation No 802/2004, Art. 13(2)) (see paras 309, 314)*
15. *Judicial proceedings — Application initiating proceedings — Formal requirements — Identification of the subject-matter of the dispute — Brief summary of the pleas in law on which the application is based — General reference to documents annexed to the application — Inadmissibility (Statute of the Court of Justice, Arts 21, first para., and 53, first para.; Rules of Procedure of the General Court, Art. 44(1)(c)) (see para. 354)*
16. *Judicial proceedings — Application initiating proceedings — Formal requirements — Brief summary of the pleas in law on which the application is based — Introduction of new pleas during the proceedings — Similar requirements for claims invoked in support of a plea — Grounds not set out in the application — Inadmissibility (Statute of the Court of Justice, Arts 21, first para., and 53, first para.; Rules of Procedure of the General Court, Art. 44(1)(c)) (see paras 399, 409)*
17. *Judicial proceedings — Measures of organisation of procedure — Request for production of documents — Discretion of the Courts of the Union (Rules of Procedure of the General Court, Art. 64(4)) (see para. 417)*

**Re:**

APPLICATION for annulment of Commission Decision C(2012) 440 final of 1 February 2012, declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement (Case No COMP/M.6166 — Deutsche Börse/NYSE Euronext).



## **Operative part**

The Court:

1. Dismisses the action;
2. Orders Deutsche Börse AG to bear its own costs and to pay those incurred by the European Commission and by Icap Securities Ltd.