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EU competition issues in financial services

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Competition issues in financial services

- The application of EU competition law to capital markets is recent and cannot be understood in isolation from the creation of the single market in this area
- Financial Services Action Plan creates framework to facilitate the pan-European development of the financial sector
- Need to focus on efficient implementation and level playing field – role of competition
- Commission White Paper on Financial Services Policy 2005-2010
 - Dynamic consolidation
 - Removal of remaining barriers to cross-border consolidation
 - Implementation and enforcement of existing legislation
 - Convergence between regulators

Competition issues in financial services

- Consolidation of service providers
- Euronext
- UK inquiries relating to potential acquisition of LSE
 - Structural and behavioural remedies to ensure independence of LSE clearing provider

Competition issues in financial services

- Clearstream Banking
 - Breach of Article 82
 - Refusal to supply certain clearing and settlement services to Euroclear
 - Discriminatory pricing
 - Clearstream's behaviour had the effect of limiting cross-border trade in securities

Competition issues in financial services

- Cross-border clearing and settlement identified by EC Commission as one of the main sources of inefficiencies for the proper functioning of European capital markets
- Investors and market participants need access to clearing and settlement on a non-discriminatory basis to
 - Encourage trading in EU securities
 - Improve liquidity
 - Decrease the cost of capital
- Commission has published issues paper on 24 May 2006, inviting comments by 30 June 2006

Commission Issues Paper – Competition in EU securities trading and post-trading

- Competition is limited
 - Location of issue of a security almost automatically determines its trading location
 - Exchanges often designate how and by which institutions trades are to be cleared and settled
 - Exclusive arrangements between exchanges and clearing and settlement
 - Data available on cost is limited – general lack of transparency about calculation and allocation of costs

Competition issues paper (cont)

Barriers to competition in trading services:

- National rules requiring all trades relating to certain equities to be executed on a designated platform, national rules relating to reporting of off-exchange trades, conditions imposed on dealers
- Control over clearing and settlement services by incumbent exchanges; where CCPs are vertically integrated with the exchange they have no incentive to provide access to a new entrant
- Lack of transparency and difficulties in evaluating the actual cost of different services
- Lack of development in the EU of broker trading technology which would facilitate comparative trading decision

Competition issues paper (cont)

Barriers to competition in clearing services:

- Limitations in relation to the tendering process for appointing a CCP
- CCPs have a mutual interest in accepting the restrictions imposed on them by the incumbent exchanges
- Vertical integration between CCPs and the incumbent exchanges forecloses competition
- Delays in developing interoperability between CCPs

Competition issues paper (cont)

Barriers to competition in settlement services:

- Lack of development of interoperability standards
- Lack of price and cost transparency
- Possible foreclosure of agency settlement and custody by the development of Euroclear's Single Settlement Engine and by exclusive contracts between CCPs and settlement agents

Competition issues paper (cont)

Possible solutions suggested by the Commission:

- Restrictive clauses in agreements between CCPs and exchanges and between CCPs and providers of agency settlement services to be removed
- Transparency of pricing and of industry arrangements to be addressed
- Market or regulatory solutions to the issue of account unbundling, accounting transparency and lack of interoperability
- National rules and other State measures which limit entry to trading to be eliminated

DG Comp invites comments by 30 June 2006