



Press and Information

General Court of the European Union  
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Judgment in Case T-175/12  
Deutsche Börse AG v Commission

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## **The General Court confirms the Commission's decision prohibiting the proposed merger between Deutsche Börse and NYSE Euronext**

Deutsche Börse and NYSE Euronext are companies which are active in the financial markets sector. On 29 June 2011, they notified the Commission of a proposed merger which involved the creation of a company incorporated under Netherlands law of the name HoldCo. HoldCo was to acquire, by way of a public tender offer, all of the outstanding shares issued by Deutsche Börse, in exchange for its own shares. Following the closure of the offer, a newly-formed company, incorporated under United States law and wholly owned by HoldCo, was to merge with NYSE Euronext, which was to become a wholly-owned subsidiary of HoldCo.

By decision of 1 February 2012<sup>1</sup> the Commission declared the merger incompatible with the internal market.<sup>2</sup> In its decision, the Commission analysed the effects of the proposed merger on the markets for certain European exchange-traded derivative financial instruments (in particular European interest rate, single equity derivatives and equity index derivatives). It concluded that the merger was likely to lead to a significant impediment to effective competition by creating a dominant or near-monopoly position. According to the Commission, the merger would have led to a single vertical structure, conducting the trading and clearing of more than 90% of the global transactions of European exchange-traded derivatives. Deutsche Börse brought an action before the General Court seeking annulment of that decision.

**By today's judgment, the General Court rejects all the pleas put forward by Deutsche Börse.**

In particular, the General Court considers, first, that none of the arguments put forward by Deutsche Börse can call into question the Commission's conclusions on the definition of the relevant market. According to the General Court, the Commission did not make errors of law or assessment in considering that exchange-traded derivatives (ETDs) and over-the-counter derivatives (OTC derivatives) belonged to separate markets.

Secondly, the General Court rejects Deutsche Börse's arguments relating to the efficiency gains which the merger could have brought and to the commitments made by the companies for the purpose of counteracting the significant restrictions of effective competition.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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<sup>1</sup> Decision C(2012) 440 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).

<sup>2</sup> In accordance with Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1).

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*Unofficial document for media use, not binding on the General Court.*

*For reasons linked to the consultation of the parties as regards the confidential nature of some of the information in the judgment, the publication on the CURIA website of the full text of the public version of that judgment will be slightly delayed.*

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*Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106*