Commissioner Margrethe Vestager
European Commission
DG COMP
Rue de la Loi 200
1049 Brussels

Brussels, 4 August 2016

Subject: Planned merger of the London Stock Exchange and Deutsche Börse AG.

Dear Ms Vestager,

The European Investors' Association ("European Investors") has learned about the contemplated merger between the London Stock Exchange ("LSE") and Deutsche Börse AG ("DB"). European Investors appreciates the increased scale and scope that can be achieved through mergers and acquisitions and the associated benefits for investors in terms of liquidity, price discovery and cost structure. However, in this particular case, due to the dominance that will be acquired by LSE/DB and the anticipated anti-competitive effects of the merger, European Investors is highly concerned about its implications and would like to share its concerns with you through this letter.

The important nascent Capital Markets Union ("CMU") initiative to boost investment and broaden companies' access to market financing can only succeed in the presence of a strong exchange and clearing services market with appropriate levels of competition. This is also the thinking behind many of the provisions laid down in MiFID (and its successor) as well as EMIR. These provisions aim to reinforce competition among trading platforms and central clearing parties ("CCPs").

The contemplated LSE/DB merger will in our view pose a direct threat to the CMU initiative, a key pillar of Juncker's Investment Plan. A trading powerhouse will emerge with a market cap of €26 billion, ten times that of Euronext, its closest competitor. The merger will create a position of 'super' dominance for LSE/DB on various markets such as:

- *Indices*: the merged entity would become the 'super' dominant provider of pan European benchmark indices. DB (with Eurostoxx 50 and Stoxx 600 indices) is number one and already dominant on this market. The merger will combine DB indices with those of LSE (FTSE/Russell indices), its only important rival at the moment. Consequently, LSE/DB will be able to determine the eligibility criteria of the indices on which a large number of financial instruments in Europe are based and which are key instruments for asset managers and drive their investment decisions. LSE/DB will also be able to dictate licence fees that are paid by entities that use these indices;

- *Exchange traded funds*: as a direct result of the merger LSE/DB will be the dominant listing and trading venue for exchange traded funds and account for >65% of all exchange traded funds in Europe. This already dominant position could increase even further even when only a small number of large ETF issuers would choose to change its listing venue from the smaller exchanges to LSE/DB;
- *Clearing*: the merger creates a 'super' dominant CCP (through a combination of LCH Clearnet, Eurex Clearing House and CC&C) that would clear 90% of all European exchange traded index option and index future derivatives and 75% of all European exchange traded stock option equity derivatives.

The merger of LSE/DB means that in several critical market segments we move from a situation where there is substantial competition among three major market players to a quasi-monopolistic one in which the merged entity is overly dominant. Therefore, the merger will result in a substantial lessening of effective competition and reduction of freedom of choice.

Its dominant position in indices and several other market areas would attract larger and international investors to LSE/DB at the expense of smaller exchanges. Driven by the need to reach investors major companies that are now listed at one of the smaller exchanges could therefore feel 'forced' to consider an additional listing at LSE/DB, fragmenting liquidity and driving it to the largest market (i.e. where most shares are bought and sold and where the price is set). The resulting decline in the scale and scope of smaller exchanges will undoubtedly have consequences for companies that are listed on these trading venues and for investors that trade on them. Trading volumes and liquidity will go down, causing higher transaction costs and bid-ask spreads to widen. All these developments will interact and strengthen each other and might leave smaller markets irreversibly marginalised.

European Investors is also concerned that smaller exchanges in continental Europe will diminish in relevance for SMEs and will no longer be able to continue to play a pivotal role in the financing of the real economy, as envisaged by the CMU initiative. SMEs that wish to attract local investors (who know the company and with whom they can communicate in their local language), would like to make use of the local expertise that trading venues and banks can provide, and want to be subject to local laws and regulations as well as supervision by local authorities, might relinquish their wish to obtain market financing. They will be left with bank financing while banks are actually pulling back as a result of the stringent capital requirements that have been introduced in recent years. This all undermines the envisioned positive effects of the CMU initiative.

Although LSE/DB will argue that their merger would benefit customers through greater liquidity, it is highly unlikely that this merger would directly yield these benefits for investors and companies. Historically, competition - rather than a merger of market leaders - has generated liquidity gains and freedom of choice. As a result of its dominant position LSE/DB will not only be able to effectively marginalize smaller markets but also dictate costs and fees (e.g. listing costs, trading fees, clearing margins...) that have to be paid by listed companies and by investors. In addition, LSE/DB will be able to steer all relevant eligibility criteria used for the design of important indices. Accordingly, the relevant

European Investors

question to investors is not whether the merger will create sufficient synergies, but whether there will be any incentive to pass the benefits along to investors and other market participants as would occur in a fully competitive market. Due to lack of scale and scope it will be nearly impossible for the smaller rivals to provide any meaningful counterbalance to the merged entity LSE/DB.

Last but certainly not least, the planned LSE/DB merger will pose a dichotomy from a regulatory perspective. The CMU is built around the concept of a harmonized European regulatory regime. There is however a real possibility that companies seeking a listing on LSE/DB will circumvent DB, thus avoiding important EU rules in areas where the UK regime seems more malleable. Such regulatory arbitrage is harmful to investors, and jeopardizes the level playing field that CMU is trying to promote. LSE/DB, on the one hand, and the European continental exchanges, on the other, will not compete on an equal footing. For instance the capital requirements for exchanges in continental Europe are significantly higher than the capital requirements will be for LSE/DB in London. This will reinforce the prevalent dominance that LSE/DB will be able to further widen purely on the basis of its market share and superior scale and scope.

In summary the merger swiftly creates a long lasting position of 'super' dominance for LSE/DB and therefore poses a direct threat to the freedom of choice for (future) listed companies and investors. It will also result in a weakening of legal protection for continental European market participants.

We therefore wish to urge the European Commission to take the aforementioned into consideration when investigating the planned merger. We are of course available to discuss these aspects in more detail if you so desire.

Yours sincerely,

Paul M. Koster
Chairman, European Investors' Association

Attachment: Information sheet on European Investors