Department of Justice

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JUSTICE DEPARTMENT REQUIRES DEUTSCHE BÖRSE TO DIVEST ITS INTEREST IN DIRECT EDGE IN ORDER TO MERGE WITH NYSE EURONEXT

Divestiture Resolves Antitrust Concerns and Preserves Competition Between Stock Exchanges in the United States

WASHINGTON – The Department of Justice announced today that it will require Deutsche Börse AG to direct its subsidiary International Securities Exchange Holdings Inc. (ISE) to sell its 31.5 percent stake in Direct Edge Holdings LLC and agree to other restrictions in order for Deutsche Börse to proceed with its planned $9 billion merger with NYSE Euronext, one of the two largest and most prestigious stock exchange operators in the United States. Direct Edge is the fourth largest stock exchange operator in the country. The department said that the transaction, as originally proposed, would have substantially lessened competition for displayed equities trading services, listing services for exchange-traded products, including exchange-traded funds, and real-time proprietary equity data products in the United States.

The department's Antitrust Division filed a civil antitrust lawsuit today in U.S. District Court in Washington, D.C., to block the proposed acquisition. At the same time, the division filed a proposed settlement that, if approved by the court, would resolve the lawsuit and the department's competitive concerns. In addition to the required divestiture of the ownership stake in Direct Edge held by Deutsche Börse's subsidiary, the proposed settlement prohibits immediately NYSE and Deutsche Börse from participating in the governance or business of Direct Edge.

"Without the divestiture and other restrictions obtained by the Justice Department, a combined NYSE and Deutsche Börse entity could influence the actions of Direct Edge, and thereby lessen the zeal of an aggressive and innovative exchange competitor," said Sharis A. Pozen, Acting Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "The remedy ensures that participants in the markets for U.S. equities exchange products and services will continue to receive the full benefits of robust competition in the form of competitive prices and increased innovation."

According to court documents, Deutsche Börse's subsidiary, ISE, owns 31.5 percent of Direct Edge and has significant governance rights, including certain key voting and special veto rights and the right to appoint three members to Direct Edge's board of managers, and one member to each of the corporate boards of Direct Edge's two exchanges.

Under the terms of the proposed settlement, Deutsche Börse's subsidiary, ISE, will divest its interest in Direct Edge within two years. NYSE and Deutsche Börse are also required to provide a written plan, prior to closing their transaction, explaining the steps they will take to remove any Deutsche Börse affiliate from governance of Direct Edge until the divestiture occurs. Within two calendar days of closing the transaction, any Deutsche Börse-affiliated officer, director, manager, employee, affiliate or agent must resign from the board of all Direct Edge entities.

The merging parties are also prohibited from suggesting or nominating any candidate for election to the board of any Direct Edge entities or having any officer, director, manager, employee or agent serve as an officer, director, manager or employee with or for any Direct Edge entities. Under the proposed settlement's terms, the merging parties cannot vote, exert or attempt to exert any influence, or even participate in nonpublic Direct Edge meetings or receive any nonpublic information from Direct Edge, except to the extent necessary to fulfill the requirements of the proposed settlement or financial reporting obligations. The merging parties must also continue to provide certain contractual services to Direct Edge, subject to a firewall.

The divestiture of the interest in Direct Edge and related restrictions resolve the department's concerns about the merger's effects on the markets for U.S. equities exchange products and services. The department's Antitrust Division and the European Commission communicated extensively throughout the course of their respective investigations, with frequent contact between the investigative staffs, aided by waivers provided by the merging parties.

"The open dialogue between the Antitrust Division and the European Commission was very effective and allowed each agency to conduct its respective investigation while mindful of ongoing work and developments in the other jurisdiction," said Acting Assistant Attorney General Pozen.

Deutsche Börse is organized under the laws of the Federal Republic of Germany with its principal place of business located in Eschborn, Germany. Deutsche Börse, through a series of subsidiaries, owns ISE, a Delaware corporation with its principal place of business in New York which holds a 31.5 percent equity interest in Direct Edge Holdings LLC.

NYSE is a publicly traded Delaware corporation with its principal place of business located in New York. NYSE was created by the merger between NYSE Group Inc. and Euronext N.V. in 2007. In the United States, it operates the New York Stock Exchange, NYSE Arca and NYSE Amex. NYSE also generates revenue from a wide variety of exchange-related businesses, including securities listings, trading, data licensing and technology licensing. In 2010, NYSE earned more than $3 billion in total revenues from sales within the United States.

Direct Edge Holdings LLC, which is not a party to the United States's lawsuit, is a Delaware limited liability company with its principal place of business in Jersey City, New Jersey. Direct Edge is the fourth largest stock exchange operator in the United States and owns the leading EDGA and EDGX electronic stock exchanges.

As required by the Tunney Act, the proposed settlement, along with the department's competitive impact statement, will be published in the *Federal Register*. Any person may submit written comments concerning the proposed settlement during a 60-day comment period to James Tierney, Chief, Networks and Technology Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 7100, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the court may enter the final judgment upon a finding that it serves the public interest.

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