COMPETITION AND CONSOLIDATION IN FINANCIAL MARKETS: THE NYSE-DEUTSCHE BOERSE MERGER

HEARING

BEFORE THE

SUBCOMMITTEE ON
INTELLECTUAL PROPERTY,
COMPETITION, AND THE INTERNET

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JUNE 13, 2011

Serial No. 112–42

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

66–885 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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COMPETITION AND CONSOLIDATION IN FINANCIAL MARKETS: THE NYSE-DEUTSCHE BOERSE MERGER

MONDAY, JUNE 13, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTELLECTUAL PROPERTY,
COMPETITION, AND THE INTERNET,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 4:04 p.m., in room 2141, Rayburn Office Building, the Honorable Bob Goodlatte (Chairman of the Subcommittee) presiding.

Present: Representatives Goodlatte, Coble, Chabot, Marino, Adams, Watt, Conyers, Deutch, and Nadler.

Staff present: (Majority) Holt Lackey, Counsel; Lindsay Hamilton, Clerk; and (Minority) Stephanie Moore, Subcommittee Chief Counsel.

Mr. GOODLATTE. Good afternoon. The Subcommittee will come to order.

I want to welcome you to today's hearing on "Competition and Consolidation in Financial Markets: The New York Stock Exchange-Deutsche Boerse Merger." I would especially like to welcome our witnesses and thank you for joining us today.I21I am joined today by my colleague from North Carolina, the distinguished Ranking Member of the Subcommittee, Melvin Watt, and I think we are expecting the Ranking Member of the full Committee, Mr. Conyers of Michigan.

In mid-February, the New York Stock Exchange Euronext and Germany's Deutsche Boerse announced a merger that would give Deutsche Boerse 60 percent ownership of the company that will own the New York Stock Exchange. Many Americans greeted the news that the big board of the New York Stock Exchange would merge under the umbrella of a foreign company with understandable apprehension. Would this merger harm competition in exchange markets and what does the merger say about the future of America's role in the international financial system?

This Subcommittee held a hearing on these issues on April 1 of this year because NASDAQ and the Intercontinental Exchange announced a competing offer for NYSE on the morning of the hearing. We were not able to take testimony from the merging parties at that time. Instead, we proceeded with a panel of two distinguished experts in exchange markets, Professor Larry Harris of the University of Southern California and Professor Mercer Bullard of the University of Mississippi.

Today, we continue and complete our hearing taking testimony from representatives of NYSE and Deutsche Boerse. This hearing provides an opportunity for the merging companies to respond to the issues and concerns that have been raised in the public discussion of this merger and in this Subcommittee's previous hearing.

As discussed at our previous hearing, there are horizontal elements to this merger in both the American and European markets. Deutsche Boerse's subsidiary, the International Securities Exchanges, is the largest shareholder in Direct Edge, the fourth largest securities exchange in America. The merger would combine Deutsche Boerse's share of this fourth largest exchange with America's largest securities exchange, the New York Stock Exchange.

The Committee wants to also ask whether this combination will threaten the robust competition in securities exchange markets that has reduced trading costs over the past 2 decades. We must also consider the possibility that the combination of the two companies' American equity options exchanges will give the new company market power over the traders or over the options clearing corporation. The merger will combine the third and fourth largest equity option exchanges in America, the New York Stock Exchange's AMEX and Arca exchanges with Deutsche Boerse's International Securities Exchange. Combined, the new entity will control three of the nine American-based equity options exchanges and a larger share of the American equity options market than any other company.

This hearing will examine whether these combinations threaten competition among American securities and options exchanges.

The merger will also combine the two largest derivatives exchanges in Europe, Deutsche Boerse's Eurex and NYSE's Liffe Exchanges. If American consumers will be harmed by anticompetitive effects from this combination, then this Committee and the Department of Justice must take notice.

This Committee and the Department of Justice should also consider the efficiencies that the merging parties hope to gain from this merger and how those efficiencies may enable them to compete more effectively.

Finally, the hearing will consider how the merger might affect the worrisome trend away from American companies offering their shares for public trading on America's stock exchanges. In the 1990's, the United States averaged 530 initial public offerings per year. In the 2000's, that average fell to 126 IPO's per year. This hearing will explore whether the merger of America's largest stock exchange, indeed, the world's largest stock exchange by trade volume, into a European company will affect competition in a way that speeds or slows these trends.

The United States, and New York City in particular, has been at the center of international finance for over a century. How will this merger affect America's ability to compete successfully in global financial markets in the next century?

The Department of Justice is currently reviewing this merger to address these very questions. The Department should conduct a thorough review, based on sound economic legal principles, and intervene if it determines that the merger will substantially lessen competition. Congress has an oversight responsibility to ensure that the Department of Justice conducts its merger reviews in a thorough, fair, and reasonably prompt fashion.

I look forward to today's hearing which raises fascinating and important questions about the future of vibrant and competitive financial markets in America.

And it is now my pleasure to yield to the Ranking Member of the Subcommittee, the gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Chairman, on the eve of the first hearing on this proposed merger, NASDAQ and Intercontinental Exchange, both publicly traded Delaware corporations, announced a joint bid to acquire the New York Stock Exchange. Because of that development, Chairman Goodlatte appropriately decided to release the two witnesses who appear before us today from presenting testimony at that hearing.

The Department of Justice conducted a review of that proposed NASDAQ merger and concluded that because the New York Stock Exchange and NASDAQ are the only competitors in several businesses that are essential to the success of our equity markets and the only providers of certain stock option services, consummation of that proposed merger would have effectively eviscerated all competition in those areas.

NASDAQ and ICE subsequently withdrew their bid.

Competition is a necessary and indispensable element of a vibrant and fair marketplace, one that fosters economic growth and protects consumers. But as I noted in our last hearing, I do not believe that we should put our fingers on the scales to tip the balance in favor of or against a proposed merger. The Department of Justice quickly and aggressively responded to the proposed NASDAQ bid to ensure that no anticompetitive effects were visited upon our markets.

By all accounts, the Department of Justice and the European authorities stand ready to aggressively evaluate whether the proposed merger of the New York Stock Exchange and Deutsche Boerse will create a monopoly in the derivatives market or result in any other antitrust violations. If so, I am confident that the proposed merger will be stopped.

I welcome the witnesses and thank them for returning.

And I yield back.

Mr. GOODLATTE. I thank the gentleman.

The Chair now is pleased to recognize the Ranking Member of the full Judiciary Committee, the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thanks, Chairman Goodlatte and Ranking Member Watt.

I agree with everything that you have said.

Now, we have experienced this question of mergers that create more difficulty than anything else. We have all heard of the "too big to fail" notion, and so we come here this afternoon to listen to the leaders of two huge businesses to have them explain to us why we don't have to worry about "too big to fail." As big as they are, they get bigger by coming together maybe.

Financial giants that were too big to fail pushed our Nation to the brink of an economic meltdown that we are still not out of, a recession that is still ongoing, causing pain and suffering to millions of Americans that didn't get a bailout, that didn't get TARP, that didn't receive a stimulus.

And here is another problem. The United States Supreme Court has not been particularly helpful with their *Citizens United* decision last year in which they have given corporations a blank check to use their money any way they want, as much of it, and without even revealing who gave it and who got it. And I am worried about that. You didn't cause that. But you are going to be good citizens and go along with the Federal courts, and I have no idea what you are going to do with the money publicly or privately. And as corporations in this country become larger and more consolidated and global, their influence is disproportionately large in the elections that are the base of an American democracy.

Now, over the last 15 years, 5,400 bank mergers occurred, including the mega-mergers. That is where you come in; where each buyer and seller had more than $10 billion in assets. Because of these mergers, the percentage of banking assets and deposits held by the 10 largest banks more than doubled, rising to 55 percent and 45 percent respectively.

So we come together this afternoon to consider another merger. As Mel Watt observed, the Obama administration opposed the NASDAQ-New York Stock Exchange merger. The Assistant Attorney General of Antitrust in the Department of Justice viewed the proposed union as a potential monopoly that would lead to higher prices, inferior service, and less innovation. The Justice Department found that the acquisition would have removed incentives for competitive pricing, high quality of service, and innovation in the listings, trading, and data services that these exchange operators provide to the investing public.

I have hopes that the current Administration will continue to review critically these mega-consolidations with the heightened scrutiny that they bring to this.

May I have an additional minute, Mr. Chairman?

Mr. GOODLATTE. Without objection, the gentleman is recognized for an additional minute

Mr. CONYERS. Thank you.

Unfortunately, the proposal for Deutsche Boerse to acquire New York Stock Exchange still stands, which is why we are here today.

My concern about this merger is the immense market capitalization that would result—I don't see any benefit for consumers. Maybe some of you can suggest some to me—and the stifling effect it could have on innovation and transparency.

A horizontal merger between New York Stock Exchange and the German company would, obviously, create the largest stock and derivative exchange in the world. The resulting market capitalization resulting from this merger would easily exceed $25 billion. Given the significant changes in the market from paper traded on the exchange floor to international electronic transactions, our analysis of this merger must consider the impact the transfer of financial instruments and the effect of such a transfer would have on our Nation's economy.

Since the Chairman is giving me the evil eye——

Mr. GOODLATTE. It is actually a very patient eye.

Mr. CONYERS. It is my choice to submit the rest of my statement. Thank you.

[The prepared statement of Mr. Conyers follows:]

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, Ranking Member, Committee on the Judiciary, and Member, Subcommittee on Intellectual Property, Competition, and the Internet

The effects of consolidation—particularly among the media, transportation and financial services industries—have long been of concern to me. When businesses consolidate ostensibly to increase efficiencies, they always result in job cuts, reduced worker benefits, and fewer choices for consumers.

I was very disappointed in the Bush Administration for failing to object to mergers that many observers believed had the potential to impose significant anti-competitive harm.

We experienced this firsthand with the creation of "Too Big to Fail" financial giants that with their collapse pushed our Nation to the brink of an economic meltdown, and a recession that is still causing pain and suffering to Americans.

Moreover, in the wake of the *Citizens United* decision (2010), the Supreme Court gave corporations a blank check to air an unlimited number of electioneering ads. As corporations become larger and more consolidated, their disproportionate influence in federal elections also grows.

More than 5,400 bank mergers occurred between 1990 and 2005. Those mergers included 74 "mega-mergers" where the buyer and seller each had more than $10 billion in assets.

Because of those mergers, the percentage of banking assets and deposits held by the ten largest banks more than doubled, rising to 55% and 45%, respectively.

We all know the rest of that story. So I am particularly troubled when I hear about more proposed mergers within this industry.

Accordingly, I was very pleased that the Obama Administration opposed the planned merger of NASDAQ and the New York Stock Exchange, which was proposed just a few hours before our last hearing on this issue last April.

Indeed, according to Assistant Attorney General Christine Varney of the Antitrust Division, the Justice Department viewed that proposed union as "a potential monopoly that would lead to higher prices, inferior service, and less innovation."

I agree with the Justice Department that the acquisition would have removed incentives for competitive pricing, high quality of service and innovation in the listings, trading and data services that these exchange operators provide to the investing public.

I hope that the current Administration will continue to review mega-consolidations with an appropriately heightened level of scrutiny.

Unfortunately, the proposal for Deutche Bourse to acquire the New York Stock Exchange (NYSE) still stands, which is why we are here today.

I am concerned about this merger is the immense market capitalization that would result, the harm that it will impose on consumers, and the job market, and the stifling effect it may have on innovation and transparency.

A horizontal merger between the New York Stock Exchange and the German company, Deutshe Boerse, would create the world's largest stock and derivative exchange.

The resulting market capitalization resulting from this merger **would exceed $25 billion**.

Given the significant changes in the market—from paper traded on the exchange floor, to international electronic transactions—our analysis of this proposed merger must consider the impact the transfer of financial instruments and the effect such a transfer would have on our Nation's economy.

It is absolutely critical that we maintain the competitiveness and vitality of American exchange markets. A mistake here could ruin the valuations of businesses around the world, undermining their ability to raise funds and operate.

This merger will affect not only how the stock markets function on a national basis, but also on an international basis.

These exchanges are very complex because they involve businesses with wide-reaching application in security exchanges, derivatives exchanges, option exchanges, listing services, data services and technology services.

This deal could affect the ability of small companies and start-up firms to access greatly needed capital.

Moreover, if this merger goes through, it could lead to another round of consolidation further concentrating the market.

Finally, it is my intention to invite progressive economists to review the impacts of this proposed merger. In particular, I plan to reach out to those individuals who prioritize the interests of Americans over those who simply favor conglomeration.

Mr. GOODLATTE. Well, the Chair appreciates that, and without objection, all other opening statements will be made a part of the record.

And we will now turn to our witnesses. Before I introduce our witnesses, as is the custom of this Committee, I would like to ask them to stand and be sworn.

[Witnesses sworn.]

Mr. GOODLATTE. Thank you and please be seated.

Our first witness is Larry Leibowitz, Chief Operating Officer of NYSE Euronext, the parent company of the New York Stock Exchange. Mr. Leibowitz has been with NYSE for 4 years in various roles, and before joining the NYSE, he held executive positions at UBS and Schwab. He has served on many industry boards and committees, among them the Market Structure Committee of the Security Industry and Financial Markets Association.

Our second witness testifying on behalf of Deutsche Boerse group is Gary Katz, President and Chief Executive Officer of the International Securities Exchange, an American equity options exchange controlled by Deutsche Boerse. Mr. Katz is also a member of Eurex, the derivatives arm of Deutsche Boerse and Direct Edge Holdings LLC which operates the Direct Edge securities exchange. His positions at the International Securities Exchange and Direct Edge make Mr. Katz the executive most intimately familiar with Deutsche Boerse's current American operations.

Each witness has written statements, which will be entered into the record in their entirety, and I ask that each witness summarize his or her testimony in 5 minutes. To help you stay within that time limit, there is a timing light on your table. When the light switches from green to yellow, you will have 1 minute to complete your testimony. When the light turns red, it signals that your time is up.

And we will start with Mr. Leibowitz. Welcome.

TESTIMONY OF LAWRENCE LEIBOWITZ, CHIEF OPERATING OFFICER, NYSE EURONEXT

Mr. LEIBOWITZ. Good afternoon, Chairman Goodlatte and Members of the Subcommittee. On behalf of our company and our shareholders, I would like to thank you for giving me the opportunity to testify today.

NYSE Euronext is the world's leading exchange group. For 219 years, we have been the home to the world's premier companies and, I humbly submit, a global symbol for trade, commerce, and free markets. We are committed to maintaining this iconic stature and that is why I am here today to talk about the future of our business.

We at NYSE Euronext appreciate the Subcommittee's interest in our proposed merger with Deutsche Boerse. We are grateful for the chance to talk to you about it today and answer any questions you may have, we believe it is critically important to our continued role as one of the world's foremost exchange groups.

We know what the New York Stock Exchange means to all of us as Americans. For more than 2 centuries, businesses have come to us to raise capital they need to expand their businesses, create jobs, and invest in new ideas. It is also a place where Americans can invest in great global companies, where retirement savings can grow and opportunity abounds. Indeed, the facade of the New York Stock Exchange is one of the most recognized emblems of American capitalism.

But in reality, the NYSE today is not the NYSE of nostalgic yesteryear. If we look back as recently as 2006, we were a not-for-profit member-owned business primarily focused on listing and trading large cap U.S. stocks. In just 5 short years, the exchange went public, expanded in size, scope and geography, through mergers with Euronext, Archipelago, the American Stock Exchange, and several technology companies, all while facing significantly increased competition brought on by major regulatory changes in Europe and the U.S. Like many American companies, we have met these challenges through innovating, diversifying, and globalizing because otherwise we would have been doomed to become a charming but irrelevant anachronism.

Today we are headquartered in New York and Paris. We operate 13 venues in six countries, derive 49 percent of our revenues from outside the United States, generate 33 percent of our revenues from derivatives trading rather than traditional equities businesses, and are a significant provider of sophisticated technology for clients.

Our proposed merger is simply a continued reflection of how we must adapt and change in order to remain a leader among exchanges, a fierce competitor that services the needs of its clients, and an advocate for transparency and fair play.

In the U.S. alone, there are currently 13 stock exchanges and over 30 so-called dark pools. In the options market, the U.S. competitive landscape is equally complex with nine options venues aggressively vying for business. As a result of this intense competition, trading fees for both equities and options have fallen substantially over the last 10 years while trading volumes have grown. Our merger will not impact this competitive dynamic in any way.

Today, domestic companies listing on the New York Stock Exchange represent $14.5 trillion of market capitalization, more than the next three biggest exchanges in the world combined. However, despite its historical positions in the listings market, NYSE Euronext itself has a market capitalization of only $9 billion and prior to the merger announcement ranked sixth among exchanges, significantly behind the Hong Kong Stock Exchange and CME Group, each more than double our size, and also behind others such as BM&F Bovespa in Brazil and the Intercontinental Exchange. This reflects the fact that derivatives, faster growing markets, and exchanges protected by regulation are higher margin businesses, but it also means that these larger players are better positioned for future consolidation as markets develop further in other regions.

With this merger, we will become a leader in the global derivatives market, which is particularly important now as regulators around the world seek enhanced transparency and risk management. Additionally, a more consolidated clearing and settlement infrastructure will make it easier for market participants to clear and settle trades across global markets, provide capital efficiencies for clients, and help to provide transparency and lessen systemic risk.

This transaction will also enhance the ability of our already global listings venue to attract issuers from emerging markets. Last year, NYSE ranked third in initial public offering proceeds. The other three of the top four exchanges were Chinese. The proposed new entity will bolster our ability to compete in Asia, Eastern Europe, South America, and other international markets. This will also allow us to continue our leadership in advocating for responsible corporate governance standards.

And finally, we believe the merger will be a catalyst for innovation, combining complementary market data and analytics, index, and technology services businesses. Clients will be able to connect to more markets globally in a more cost-efficient way.

With all this talk of change, I want to spend one moment to talk about what will remain the same.

We will continue to have one of our two headquarters in New York, and the CEO of the company will be based in New York. The management team will be evenly split between the two firms. We will continue to be a global company with a majority of the shareholder base in the United States. And furthermore, the New York Stock Exchange trading floor, the physical building, and the name on the facade will not change.

Finally, the combined companies' U.S. markets will continue to be subject to full U.S. regulatory supervision, as they are today.

This transaction represents the future of exchanges because, as I have described, this is an intensely competitive business, and markets will globalize with or without us. Today's markets and venues, some of whose regulatory obligations and transparency significantly lag behind ours, will continue to grow in strength and influence as the world becomes ever more connected and interdependent.

Thank you again for allowing me to appear today, and I am happy to answer questions you may have.

[The prepared statement of Mr. Leibowitz follows:]

Larry Leibowitz,

Chief Operating Officer

NYSE Euronext

June 13, 2011

Subcommittee on Intellectual Property, Competition and the Internet

Hearing: Competition and Consolidation in Financial Markets: The NYSE-Deutsche Boerse Merger

Testimony of Larry Leibowitz,

Chief Operating Officer

NYSE Euronext

June 13, 2011

INTRODUCTION

Good morning Chairman Goodlatte and Members of the Subcommittee.

My name is Larry Leibowitz. I am the Chief Operating Officer of NYSE Euronext. On behalf of our company and our shareholders, I would like to thank you for giving me the opportunity to testify today.

NYSE Euronext is a global leader among exchanges. For 219 years we have been home to the world's leading companies and, I humbly submit, a global symbol for trade, commerce and free markets. We are committed to maintaining this iconic status into the future – and that is why I am here today, to talk about the future of our business.

We at NYSE Euronext appreciate the Subcommittee's interest in our proposed merger with Deutsche Börse. We are grateful for the chance to speak with you and to answer any questions about this exciting merger, one that we believe is critically important to our continued role as one of the world's foremost exchanges.

THE NEW YORK STOCK EXCHANGE AND TODAY'S COMPETITIVE MARKETPLACE

We know what the New York Stock Exchange means to all of us as Americans. The trading floor is both a symbolic venue and an epicenter of international commerce. It is a place where, for nearly two centuries, businesses have come to raise the capital they need to invest in new ideas, new advancements and some of the greatest innovations of our times. It is also a place where Americans can invest in great global companies, where retirement savings can grow and opportunity abounds. Indeed, the façade of the New York Stock Exchange is one of the most recognized emblems of American capitalism.

But in reality, the New York Stock Exchange of today is not the New York Stock Exchange of nostalgic yesteryear. If we look back to 2006, the New York Stock Exchange was a not-for-profit, member owned business, primarily focused on listing and trading large cap US stocks. In just five short years, the Exchange went public and expanded in size, scope and geography – through mergers with Euronext, Archipelago, and several technology companies – all while facing significantly increased competition brought on by major regulatory change in the U.S. and Europe. Like many American companies, we have met these challenges through diversifying and globalizing – because otherwise we would have been doomed to become a charming but irrelevant anachronism.

Today, we are headquartered in New York and Paris, operate 13 venues[1] in six countries, derive 49% of our revenues from outside the United States, generate 33% of our revenues from derivatives trading rather than our traditional equities business, and are a significant provider of sophisticated technology for clients, many of whom do not necessarily trade on our markets.

Our proposed merger is simply a continued reflection of how we must adapt and change in order to remain a leader among exchanges, a fierce competitor that services the needs of its clients, and an advocate for transparency and fair play.

In the U.S. alone, there are currently 13 stock exchanges and over 30 so-called dark pools. In the options market, the U.S. competitive landscape is equally complex, with 9 options venues aggressively vying for business. As a result of this intense competition, trading fees for both equities and options have fallen substantially over the last ten years, while trading volumes have grown. Our merger will not impact this competitive dynamic in any way.

Today, domestic companies listing on the New York Stock Exchange represent $14.5 trillion of market capitalization,[2] more than the next three biggest exchanges in the world combined. However, despite its historical position in the listings market NYSE

[1] NYSE, NYSE Arca Equities, NYSE Arca Options, NYSE Amex Equities, NYSE Amex Options, NYSE Liffe, NYSE Liffe U.S., NYSE Blue, NYSE Alternext Equities, Euronext Paris, Euronext Brussels, Euronext Amsterdam and Euronext Lisbon.

[2] Market capitalization is a method of assessing the value of a company by multiplying the number of shares by the stock market price.

Euronext itself has a market capitalization of only $9 billion and prior to the merger announcement ranked 6th among exchanges – significantly behind the Hong Kong Exchange and the CME Group, which rank first and second at $23.1 billion and $19.9 billion, respectively, and also behind others such as BM&F Bovespa in Brazil, and the Intercontinental Exchange. This reflects the fact that derivatives, faster growing markets, and exchanges protected by regulation are higher margin businesses, but also means that these larger players are better positioned for future consolidation as markets develop further in other regions.

THE PROPOSED MERGER: GOOD FOR INVESTORS, CLIENTS AND THE U.S.

The merger between NYSE Euronext and Deutsche Börse will create the world's premier global exchange group, representing an evolution and the further globalization of capital formation and trading. Together, our companies will be –

- a world leader in derivatives and risk management;
- the largest capital-raising venue in the world;
- the most competitive and innovative exchange provider of technology services and information content; and
- a global pioneer in the international post-trade infrastructure and settlement.

Risk Management. Today, regulators around the world are seeking more transparency in the derivatives markets. The new entity will play a significant role in meeting this objective, since regulatory changes are compelling more derivatives transactions to move onto exchanges. At the same time, we will meet the growing needs of clients by expanding the range of available platforms and making it easier for market participants to recognize capital efficiencies.

Capital-Raising. This transaction also will enhance the ability of our already global listings venue to attract issuers from emerging markets. Last year, the New York Stock Exchange ranked third in initial public offering (IPO) proceeds. The other three of the top four exchanges were Chinese, followed by a significant drop-off to number five. The proposed new entity will bolster our ability to compete in Asia, Eastern Europe, South America and other international markets -- allowing the world to connect through our global network while maintaining New York as an epicenter of the capital formation process. This also will allow us to continue our extensive and longstanding efforts to bring together the foremost companies to put forth the most thoughtful and responsible corporate governance proposals.

Innovation. We believe the merger will be a catalyst for innovation, combining high-growth market data and analytics, index, and technology services businesses. Clients will be able to connect to more markets globally, in a more cost-efficient way.

Post-trade Services. A more consolidated clearing and settlement infrastructure will make it easier for market participants to fungibly clear and settle trades across global markets, helping to provide transparency and lessen systemic risk – important goals in the wake of the recent financial crisis.

Consequently, we believe that the proposed merger will strengthen the U.S. role as a leading capital market and bolster the nation's global competitiveness. As I've described, the New York Stock Exchange will be a cornerstone of a stronger organization, with unmatched product and geographic diversity.

With all this talk of change, I want to spend a moment on what will remain the same: We will continue to have one of our two headquarters in New York and the CEO of the company will remain in New York. The management team that oversees day-to-day operations will be evenly split between the two firms. We will continue to be a global company with a large U.S. shareholder base – in fact, a majority of the shareholders of the new company will be U.S.-based.[3] Furthermore, the New York Stock Exchange trading floor, the physical building and the name on the facade will not change.

Finally, the combined companies' U.S. markets will continue to be subject to full U.S. regulatory supervision, ensuring transparency to investors and other market participants.

[3] Based on shareholders of record on December 31, 2010.

We fervently believe that this transaction represents the future of exchanges – whether we do it today or someone else does it tomorrow. Because, as I've described, this is an intensely competitive industry. Today's markets and venues, some of whose regulatory obligations and transparency significantly lag behind ours, will continue to grow in strength and influence as the world becomes ever more connected and interdependent.

Thank you again for allowing me to appear today, and I am happy to answer any questions you may have.

Mr. GOODLATTE. Thank you, Mr. Leibowitz.

Mr. Katz, welcome.

TESTIMONY OF GARY KATZ, PRESIDENT AND CHIEF EXECUTIVE OFFICER, INTERNATIONAL SECURITIES EXCHANGE

Mr. KATZ. Thank you, Chairman Goodlatte, Ranking Member Watt, and Members of the Subcommittee. Thank you for the opportunity to testify before you today on behalf of Deutsche Boerse Group regarding the proposed merger between NYSE Euronext and Deutsche Boerse.

As President and CEO of the International Securities Exchange, also known as ISE, I would like to provide you first with some background about ISE and how I came to represent Deutsche Boerse here today.

I co-founded ISE in 1997, along with David Krell and two E*Trade executives. Our vision was to launch an all-electronic options market to introduce competition to the U.S. options industry. In founding ISE, we embraced change and looked to deliver a new model for options trading that would vastly alter the competitive landscape.

Following our launch, ISE grew rapidly, and in 2007, ISE was acquired by Eurex, the derivatives arm of Deutsche Boerse. With that transaction, we became part of a leading global exchange organization.

As President and CEO of ISE, I hold positions within the Deutsche Boerse governance structure as a member of the executive boards of Eurex and Eurex Clearing. Likewise, my ISE co-founder, David Krell, is a member of the supervisory board of Deutsche Boerse Group.

As an entrepreneur, there is always trepidation in giving up ownership of a business you have built from scratch. Of course, I had those feelings when Deutsche Boerse acquired ISE. However, I can assure that ISE's experience as part of Deutsche Boerse Group has been overwhelmingly positive.

Of importance to this Subcommittee, ISE continues to be a U.S. registered securities exchange regulated by the Securities and Exchange Commission, just as we have been since our registration 11 years ago. The SEC must approve any changes regarding new products, fees, exchange functionality, or market structure. Likewise, the membership requirements of our exchange remain the same. Only U.S.-registered broker-dealers are permitted to be ISE members.

Implementing a strategy that allows your business to grow and improve its competitive position is the best job security any management team can provide their employees. That belief was proven true with ISE and this merger provides the same opportunity for the respective employee teams. The synergies that ISE realized from our partnership with Deutsche Boerse only made us stronger.

For example, ISE and Deutsche Boerse jointly developed a new trading technology for ISE's options exchange. It will position us better for the ever-more competitive U.S. options industry.

Given the broader focus and diversity of NYSE Euronext, the benefits of the proposed combination are on a much larger scale. This merger will create an exchange group with a large domestic and international footprint, positioned to jointly expand into emerging markets and new asset classes and to implement a strategy that will allow our business to thrive. This will strengthen the competitive position of both New York and Frankfurt as financial centers, to the benefit of the U.S., European, and global capital markets.

The scale and scope of the combination of Deutsche Boerse and NYSE Euronext will enable each individual exchange to draw upon the resources of the parent company to deliver a more competitive offering to its customers. For example, we expect to maintain three U.S. options exchanges within the new group structure, providing a targeted value proposition to all of our clients. In the options industry, this intense competitive dynamic has resulted in the highest level of customer service, the greatest transparency, and the lowest commissions in its history.

This proposed combination creates a platform for continued growth, creates the world's premier global exchange group and an iconic venue for capital-raising and for the trading of equities and derivatives. Most importantly, our customers will benefit from the global scale, product innovation, operational and capital efficiencies that our combination will deliver. Simply put, the combination of Deutsche Boerse and NYSE Euronext offers a unique, short- and long-term set of benefits for all of our constituencies, shareholders, employees, regulators, and most importantly, our customers, both the retail and institutional investors.

Thank you for the opportunity to testify before you today, and I am happy to take your questions.

[The prepared statement of Mr. Katz follows:]

Gary Katz

President and CEO, International Securities Exchange

Executive Board Member, Eurex

June 13, 2011

Subcommittee on Intellectual Property, Competition and the Internet

Hearing: Competition and Consolidation in Financial Markets

Testimony of Gary Katz,

President and CEO, International Securities Exchange

June 13, 2011

Introduction

Good afternoon Chairman Goodlatte, Ranking Member Watt, and Members of the Subcommittee. Thank you for the opportunity to testify before you today on behalf of Deutsche Börse Group regarding the proposed merger between NYSE Euronext and Deutsche Börse.

My name is Gary Katz, and I am President and CEO of the International Securities Exchange, also known as ISE. I would like to first provide you with some background about ISE and how I came to represent Deutsche Börse here in front of the Committee today.

I co-founded ISE in 1997 along with David Krell, a long-time executive in the options industry, and two E*Trade executives. Our vision was to launch an all-electronic options exchange to introduce competition to the U.S. options industry. At that time, stock options were traded in an open-outcry environment with very little competition among the four existing floor-based options exchanges. The vast majority of options products were singly listed, meaning that different products were traded on different exchanges. Without competition, the industry was inefficient. Exchange fees remained very high, the quality of the markets was poor, and, as a result, many retail and institutional investors had a negative view of the options industry, and growth remained stagnant.

In founding ISE, we embraced change and looked to deliver a new model for options trading that would vastly alter the competitive landscape, encourage greater participation in the market, and engender efficiencies for all market participants.

After becoming the first new securities exchange approved by the Securities and Exchange Commission in 27 years, we launched our market, the first all-electronic options exchange in the U.S., on May 26, 2000. Following our launch, ISE grew very rapidly because of the value we delivered through electronic trading, our innovative new market structure and fee model, and our highly competitive, transparent markets.

In March 2005, ISE became the first U.S. securities exchange to complete a public offering. Then in December 2007, ISE was acquired by Eurex, the derivatives arm of Deutsche Börse, and with that transaction, we became part of a leading global exchange organization.

As President and CEO of ISE, I hold positions within the Deutsche Börse governance structure as a member of the Executive Boards of Eurex and Eurex Clearing. Likewise, my ISE co-founder David Krell, who is the non-executive Chairman of ISE's Board, serves as a member of the Supervisory Board of Deutsche Börse Group.

ISE Experience as Part of the Deutsche Börse Group Portfolio of Exchanges

As an entrepreneur, there is always trepidation in giving up ownership of the business you have built from scratch. Of course, I had those feelings when ISE became publicly traded and then again when Deutsche Börse acquired ISE.

I can assure you, however, that ISE's experience as part of the Deutsche Börse Group has been overwhelmingly positive. Having access to the global scale and resources of this world-class organization has better positioned our business for future growth in an increasingly competitive market environment.

At the same time, much about our business model has remained unchanged. ISE continues to be a U.S.-registered securities exchange. We are still regulated by the Securities and Exchange Commission just as we have been since our registration 11 years ago. The SEC must approve any changes or modifications to our exchange rules, just as they do with any other registered securities exchange in the U.S. In practice, this means that any changes regarding new products, fees, exchange functionality, or market structure must be filed with and approved by the SEC. Likewise, the membership requirements of our exchange remain the same: only U.S.-registered broker-dealers are permitted to be ISE members.

With respect to the day-to-day matters of running the ISE business, our integration with Deutsche Börse was a seamless process. In the exchange business, a seasoned and expert team is your most valuable asset, and implementing a strategy that allows your business to grow and improve its competitive position is the best job security a management team can offer to employees. That belief was proven true in ISE's integration with Deutsche Börse, and the Deutsche Börse merger with NYSE Euronext provides the same opportunity for the respective employee teams. In general, key business lines will remain in the present locations while gaining additional global growth potential. A significant portion of the cost synergies will be driven by rationalizing technology and market operations and, where appropriate, consolidating clearing services and risk management capabilities.

The revenue and expense synergies that ISE realized from our partnership with Deutsche Börse only made us stronger. For example, ISE has been able to draw on the vast technology resources at Deutsche Börse to jointly develop a completely new trading architecture for ISE's options exchange. In April of this year, we successfully launched the new platform, called Optimise™, and, as a result, we are well-positioned for continued growth in the ever more competitive U.S. options industry. As competition continues to intensify among U.S. exchanges, fee compression and declining profit margins are realities of our business. However, the scale and synergies offered through combinations such as the one between NYSE Euronext and Deutsche Börse create efficiencies that can offset some of this pressure and enable value to be delivered to both shareholders and customers.

Given the broader focus and diversity of NYSE Euronext, the benefits of the proposed combination with Deutsche Börse are on a much larger scale. This merger will create an exchange group with a large domestic and international footprint that will become a more important and formidable entity in the financial services industry's intensely competitive global exchange sector. Building on the strength of the combined entity, we will be strategically positioned to jointly expand into emerging markets and new asset classes and to implement a strategy that allows our business to thrive. This will strengthen the competitive position of both New York and Frankfurt as financial centers, to the benefit of the U.S., European and global capital markets.

Competition in the U.S. Options Industry

The options market is more competitive today than it ever has been. In the 10 years prior to ISE's launch announcement in 1997, industry growth was stagnant: average daily trading volume of equity options contracts grew only 3.4% on a compounded annual basis over that timeframe. Since ISE's launch and the injection of competition into the industry, the growth trajectory tells a very different story: average daily volume in the industry grew over 18% on a compounded annual basis from 2000 through 2010. In that timeframe, the number of exchanges grew from four to nine. There are no signs that competition in U.S. options will abate. In fact, a 10th exchange, the Miami International Stock Exchange, recently announced its intention to launch an options platform in 2012.

It is also important to note that there are already several examples in the industry of one exchange parent operating multiple options platforms, each with its own unique exchange license. Operating multiple exchanges under one roof enables the parent company to offer greater customer choice through different market models and pricing structures. For example, CBOE Holdings, Inc., owner of the largest U.S. options exchange by market share, operates both the Chicago Board Options Exchange and C2. NASDAQ OMX, the second largest, operates the NASDAQ OMX PHLX exchange as well as the NASDAQ Options Market (NOM). And, of course, NYSE Euronext operates both the NYSE Arca Options exchange and the NYSE Amex Options exchange.

The scale and scope of the combination of Deutsche Börse and NYSE Euronext will enable each individual exchange to draw upon the resources of the parent company to deliver a more competitive offering to customers. At the same time, we recognize that each of the three options venues – NYSE Arca Options, NYSE Amex Options, and ISE – provides a targeted value proposition to clients, and, as such, we expect to maintain three U.S. options exchanges within the new group structure. We will also seek to benefit customers by consolidating as much of the technology and market operations as possible in order to deliver maximum efficiencies for our clients.

In the options industry, this intense competitive dynamic has resulted in the highest levels of customer service, the greatest transparency, and the lowest commission rates in its history. Competition has helped "grow the pie" so that more than 16.7 million equity options contracts are traded across the industry on an average day, representing approximately 1.7 billion shares of underlying stock. This growth is phenomenal when compared to the average daily volume only eleven years ago of 2.7 million contracts.

This level of growth also supports a virtuous competitive cycle by attracting new entrants who continue to challenge the existing exchanges to deliver innovation to the marketplace.

Conclusion

The combination of NYSE Euronext and Deutsche Börse creates a platform for growth. It combines two of the most successful exchange groups to create the world's premier global exchange group and the largest and most iconic venue for capital raising and equities trading.

By bringing together two strong, innovative teams, the combination will strengthen market infrastructure and create a global platform for customers to access liquidity and manage financial and counterparty risk, thereby enhancing the stability and integrity of the global financial markets. The combined group will also have the financial flexibility to invest, grow, and innovate to meet the demands of the global marketplace and reinforce the future growth of the business within the U.S., Europe and globally.

We believe the combination of Deutsche Börse and NYSE Euronext will deliver significant benefits to market participants, strengthen the foundation of the capital markets both here in the U.S. and globally, and promote a global benchmark regulatory model while preserving national regulatory roles. The balanced governance structure of the combined group will preserve the franchises, expertise and talent of both Deutsche Börse and NYSE Euronext while strengthening New York, Frankfurt and our other key locations and financial centers. And most importantly, our customers will benefit from the global scale, product innovation and operational and capital efficiencies that our combination will deliver. Simply put, the combination of Deutsche Börse and NYSE Euronext offers unique short and long-term benefits for all of our constituencies – shareholders, employees, regulators, and, importantly, our customers, the retail and institutional investors.

Thank you for the opportunity to testify before you today. I am happy to take your questions.

Mr. GOODLATTE. Thank you, Mr. Katz.

And I will begin the questions, the first one directed to you, Mr. Leibowitz.

The expert testimony at the previous hearing suggested that derivatives are a more profitable line of business for exchanges than securities because derivative exchanges are vertically integrated and less competitive. Specifically, the firm that clears the derivatives also provides the exchange venue for trading those derivatives.

Do you agree that this so-called vertical silo model is the main reason that derivative exchanges make higher profits than securities or equity options exchanges? And if so, do derivative exchanges need to be made more competitive?

Mr. LEIBOWITZ. I think it is a really good question.

I think there are really two reasons why derivatives are more profitable. One is there are significant efficiencies in lower clearing costs from the vertical model and that helps drive better efficiency and more profitability. And then second of all, I think that the popularity of derivatives has grown far more than equities in terms of the growth to business. So there is more growth to the business which leads to more profits. And I think that that trend is due to continue for the foreseeable future. So between those two factors, I think that is why it is more profitable.

Mr. GOODLATTE. The number of U.S. stock listings has decreased by 40 percent since 1997 with about 3,700 fewer companies trading on U.S. exchanges than at the late 1990's peak. U.S. IPO's are down 71 percent from the 1990's. About 1 in 10 American companies that goes public now does so on a foreign exchange. Last year alone, 10 American companies went public abroad compared with only two American companies that went public abroad in the entire decade of the 1990's.

How will merging the New York Stock Exchange into a European entity affect these worrisome trends?

Mr. LEIBOWITZ. Sure. It is a great question. I think it concerns all of us as Americans, as it should.

First, I think to the delistings. I think many companies have delisted over the last 10 years. When you combine the Internet bubble and the financial crisis, that led to a lot of companies that either had come out too soon when they really weren't viable companies or companies that went through the crisis and couldn't weather it being delisted.

In terms of new listings, particularly American listings going abroad, I think there is really one main driver there, and that is they can't meet the listing standards in the United States. Either they don't want to comply with the governance standards that we have or other aspects that come with listing on a securities exchange in the United States, and they are opting for more lax standards other places. That is something that, obviously, we have to look at—the regulators need to make sure that we hold ourselves to a high standard, but some companies don't want to follow that. We have to decide at some point what is the right balance.

In addition, there have been some challenges in the United States with going public. In terms of the last 10 years it has been difficult for small companies, and small companies going public have faced challenges getting access to capital. They faced challenges with the costs of complying with regulations, whether it is Sarbanes-Oxley or corporate governance. And then when they come to market, the U.S. Research Settlement that was reached with the SEC has made it hard for them to get analysts to cover stocks if they are in the small and mid-cap stock range. And that is problematic for those companies. So they face a lot of challenges from beginning to going public, whereas some of those challenges aren't quite as hard when they get into foreign markets.

The last reason is one we are just going to have to face. Prada is thrown up as a big example of this and understanding they are not a U.S. company. Asia is having a huge surge in consumer demand, and a lot of companies going public where a lot of their demand is in Asia want to list on Asian exchanges because that is where they want to brand themselves. And that is all part of us competing on a world stage. Where other places are starting to gain prominence that they didn't have in the past, our response to that just has to be to compete harder.

Mr. GOODLATTE. Mr. Katz, in your testimony, you say that there was very little competition among the four floor-based equity options exchanges before you founded ISE in 1997. You credit ISE's launch as an all-electronic options exchange with bringing competition to the U.S. options industry. Should we be concerned that by merging ISE into the same corporate family with NYSE's Arca and AMEX exchanges, ISE will cease to operate as an independent, innovative maverick competitor?

Mr. KATZ. I don't think this Subcommittee should be concerned about a lack of competition in the options industry. Since ISE's launch becoming the fifth options exchange, an additional four exchanges started trading options, and there is even another one announced to begin trading in the first quarter of 2012. Many options exchanges have joined under one corporate umbrella, and there are a number of examples of that today, and it has not diminished the amount of competition in our industry. It has not diminished the product innovation in our industry, and I don't believe that this merger will affect the level of competition both in the U.S. and globally.

Mr. GOODLATTE. The Chicago Board of Options Exchange, the New York Stock Exchange, and NASDAQ all currently operate multiple options platforms, as you know. In your experience, do these equity options exchanges that are controlled by the same parent vigorously compete with their corporate siblings or is competition primarily between unrelated firms?

Getting back to my first question, if we combine some of the relationships, if you will, is the competition going to be diminished and less innovative?

Mr. KATZ. I think we would actually lose something if we combined these exchanges that are under one corporate umbrella into one marketplace. The reason that there are so many in existence——

Mr. GOODLATTE. Well, no one is advocating that. What we want to know is whether you are better off being separate competitors or competitors under the same corporate umbrella.

Mr. KATZ. They actually compete with themselves, and the reason that they are doing that is because each has a different market model. The way the SEC approves exchanges today, they are allowed to use one market model, one set of fees per exchange. And as a result, an exchange can actually compete with itself and compete vigorously to try to attract different segments of the marketplace to do business on their exchange. So I don't believe that they are just working in a complementary manner. They are actually competing to try to attract as many different clients to their business as possible.

Mr. GOODLATTE. Thank you.

My time has expired.

I now recognize the gentleman from North Carolina, Mr. Watt.

Mr. WATT. Mr. Chairman, I think I am going to wait and go last.

Mr. GOODLATTE. Then we will turn to the Ranking Member of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you for your testimony, gentlemen.

Would you agree to a follow-up inquiry that we may have, that the Committee may have with the Department of Justice about this proposed merger?

Mr. LEIBOWITZ. Certainly. We are already actively discussing this with the Department of Justice and are open to further conversation.

Mr. CONYERS. Well, okay, thank you.

What about you, Mr. Katz?

Mr. KATZ. We are in active dialogue with the Department of Justice, and they are reviewing all of the material that we have presented to them. And we would be pleased to have a follow-up review with this Committee if that becomes necessary.

Mr. CONYERS. Well, it will become necessary because we don't know what you are in deep discussion about. I mean, they don't come back and tell us what they are talking to you about. The only way we can find out is to get a report from them when they are finished and then to talk with you about it afterward.

How do you feel about the Securities and Exchange Commission coming before this Committee to give us their impressions of what the effects of such a merger might be on the markets in the United States and in the world?

Mr. KATZ. We would be very comfortable.

Mr. CONYERS. You are okay with it.

Mr. KATZ. Yes, with having the SEC come before this——

Mr. CONYERS. You are okay with it, Mr. Leibowitz?

Mr. LEIBOWITZ. With all due respect, you do need my permission to call the SEC in and you should, in all honesty, talk to as many people as you need to to feel comfortable with this.

Mr. CONYERS. Well, I wanted to be polite today and on my best manners. This is a pretty serious inquiry.

What about the United States Treasury? I don't have to ask you about whether we need to talk with them or not.

Mr. LEIBOWITZ. Sure. I think we are going to set a record for the number of regulatory agencies that we have to talk to as part of this merger. I think I have heard it is 47. And so each of them is going to have, including the Fed, the CFTC, the SEC——

Mr. CONYERS. Well, would you give me the list of the 44 that I haven't found out about yet?

Mr. LEIBOWITZ. Yes. Many of them are European.

Mr. CONYERS. Well, they are important too, aren't they?

I noticed a number of things about your testimonies. Outside of your closing sentence, Mr. Katz, you have told me a lot about your company and about the circumstances that the market works in. I am intrigued at your response to the Ranking Subcommittee Member that you can compete better internally than externally.

Mr. KATZ. Congressman, I don't think I ever used the word "better." But I do believe that——

Mr. CONYERS. Well, I will use the word "better." I think you can compete better if you are separated than if you are together.

Mr. KATZ. The amount of competition that has taken place in the options industry in various different ways, whether by exchanges that are independent, by exchanges that are public or private or under one corporate umbrella, has created one of the most competitive industries in the United States and it has resulted in a growth of volume. It has resulted in a better opportunity for the customers that are using our product, and that competition continues to grow unabated as a result of the mergers——

Mr. CONYERS. You are entitled to that view. I don't think bigger is always better, though.

Would you think with me about this consideration? If you were to merge, what would happen to all the others in the business? Wouldn't there be a requirement—wouldn't somebody else have to merge as well because you would be so much larger than anybody else in this country?

And I was impressed and sympathetic to your explanation, Mr. Leibowitz, of the relative smallness of your organization on a global scale.

Mr. LEIBOWITZ. I think the challenge is—and it seems counterintuitive—that you can't be right in the middle. You either have to be among the biggest or you have to be among the smallest. The smallest are efficient because they are typically late entrants into the market. They don't have the legacy nor the huge regulatory history. They just are unburdened by all of those things.

A perfect example is the BATS Exchange which just filed to go public recently. They have less than 200 employees in the whole company, and they compete very effectively against both of our organizations in U.S. options and U.S. stocks.

And then at the top end, you have the companies that have merged to achieve scale and also to provide a breadth of platforms. So they are not just focusing on one or two businesses.

The tough spot is to be in the middle because that means that you are neither one.

Mr. CONYERS. Well, you are in a tough place really. I can almost sympathize with you.

What do you think all the small people are going to do? You don't anticipate that there will be other mergers as a result of yours if you were fortunate enough to gain a merger.

Mr. LEIBOWITZ. Well, I can't speculate on what our competition would do. I think everyone——

Mr. CONYERS. Well, sure you do. You do that every day.

Mr. LEIBOWITZ. I think everyone in our space is constantly looking at the landscape and trying to decide what their vision for their company is and whether combinating or whether standing alone is the best for them in pursuing that path. There are some people that may look at this and say, gee, we should look for a partner. There are some people that say, boy, we don't agree with that strategy.

In fact, NASDAQ's strategy, their response, their attempt to take us over was saying we don't agree with the broad platform where you have to do derivatives and technology and equities. We think you should really be focusing on equities, a completely different philosophy to the business. And the beauty about our system is it allows each of us to determine what we think our vision is and what our platform should be, and we act accordingly.

Mr. GOODLATTE. I thank the gentleman.

The Chair recognizes the gentlewoman from Florida, Ms. Adams, for 5 minutes.

Ms. ADAMS. Thank you, Mr. Chairman.

Mr. Leibowitz, why is it that NYSE Euronext, which is the world's largest exchange by trading volume and market capitalization of listed companies, has a relatively small market capitalization? And then why does the Hong Kong Exchange, which is smaller than NYSE, have a market capitalization that is more than two and a half times NYSE?

Mr. LEIBOWITZ. Sure. It has to do with such things as being in areas that are growing much faster because the economy is growing faster and the markets are growing faster and being in instruments with more volume such as derivatives; and in the case of Hong Kong, being in a regime where the regulations protect them. If you remember, the U.S. regulatory structure allows relatively open competition with low barriers to entry. That means that the intense competition drives prices down and drives our market cap down as well.

So Hong Kong is in the best of all worlds. They are in a highly protected regime. They have a very rapidly growing product in a rapidly growing region, and they have some products that are protected in a vertical silo. So you add all of those together, and that is why.

Ms. ADAMS. NYSE has insisted that this deal is a merger of equals rather than a German company acquiring an American company. But Deutsche Boerse shareholders will control 60 percent of the shares of the new combined company. Doesn't this mean that Deutsche Boerse shareholders will effectively control the NYSE after the deal closes?

Mr. LEIBOWITZ. Sure. It is a really good question, and this is one that has gotten a lot of press.

It is important to note that Deutsche Boerse itself is 35 percent U.S. owned and only 18 percent German owned. And so when you put the combined entities together, actually the combined company is 55 to 60 percent U.S. owned by the common shareholders.

The distinction of merger vehicles is really a technical legal distinction and it really has to do with the way the companies are being brought together with a balanced management team and a relatively balanced equity base.

Ms. ADAMS. Mr. Katz, while there will still be eight equity options exchanges operating in the U.S. after the merger, those eight exchanges will be controlled by just four different corporate companies, corporate parents. Should we view this merger as moving the market from five to four equity option exchanges operating companies, and if so, what will be the competitive effect?

Mr. KATZ. Congresswoman, one of the beauties of the U.S. options industry is that you can create an exchange and take your exchange to the SEC for approval and then become a member of the Options Clearing Corporation so that your trades can be cleared. Already today there is an announced tenth exchange, the Miami International Stock Exchange, that is scheduled to launch in the first quarter of 2012.

This industry has been growing at double-digit rates for the last 15 years, and as a result, it is bringing in new competitors and new companies that want to provide a value-added service in the options industry. So I have never thought of this industry getting smaller. It continues to get larger. It gets larger as a result of the number of exchanges. It is also getting larger because the number of retail and institutional investors that are embracing this product, the options product, has continued to grow. And it is a result of the education. It is a result of the product development and the innovation at all of exchanges. And that is something that I expect to continue.

Ms. ADAMS. So the decrease over the past 15 years in the number of U.S. IPO's and the number of companies listed on American exchanges has coincided with an increase in exchange competition from electronic exchanges like Direct Edge. To what extent are the two phenomena related?

Mr. KATZ. I am sorry. I didn't understand your question.

Ms. ADAMS. The decrease over the past 15 years in the number of U.S. IPO's and the number of companies listed on American exchanges has coincided with an increase in exchange competition from electronic exchanges like Direct Edge. To what extent are the two phenomena related?

Mr. KATZ. I don't believe that there is any relationship between those two. Earlier Larry testified as to the cyclical and economic issues that are affecting the number of listings in the U.S. versus international listings, and I agree with that testimony. The number of exchanges in fact has created a larger opportunity for companies to trade in the U.S. and to trade at some of the lowest levels of costs that they have ever had as an opportunity. So I don't see a relationship between the two.

And I don't think that this merger will have any impact on the number of companies listing, but in fact quite the opposite. It will be a strong attracter to a company that wants to list with a global exchange and potentially have dual listings in New York and Frankfurt and more in London and Paris. And there is an opportunity on a global basis to create a level of competition that does not exist today.

Ms. ADAMS. Well, the Wall Street Journal has reported that in part to alleviate antitrust concerns, Deutsche Boerse may opt to dilute its share in the Direct Edge stock exchange by bringing in new bank investors. Is Deutsche Boerse still considering this strategy, and do you believe that such a divestiture is necessary to maintain robust competition after the merger?

Mr. KATZ. ISE owns 31.5 percent of Direct Edge. When you translate that based on their market share of how much equity volume they trade, that is a little less than 3 percent of the average daily volume in the equities market. We have shared this information with the Department of Justice, and they are reviewing all of the material that we have provided. It would be too soon to theorize as to what their potential response would be and what they would ask Deutsche Boerse to do with Direct Edge going forward.

Mr. GOODLATTE. I thank the gentlewoman.

The gentleman from Florida, Mr. Deutch, who I guess will disavow any affiliation with Deutsche Boerse, is now recognized.

Mr. DEUTCH. Thank you, Mr. Chairman. I was just thrilled to see that today's hearing is about anything having to do with "Deutch."

Mr. Leibowitz, if I may, if you could walk through, please, if you could address some of the questions that stem from your earlier comments. You acknowledge that the New York Stock Exchange has always stood as a global symbol for trade and commerce. I would like to explore that a little bit, particularly how that view of the New York Stock Exchange may or may not be altered after any merger like this.

First of all, if you could just walk through. I know you said there will be a building. Where will the headquarters be?

Mr. LEIBOWITZ. So the headquarters will be as it is now at 11 Wall Street, as well as in Frankfurt. We are currently dual-headquartered in Paris and New York. We will be, instead, headquartered in Frankfurt and New York.

Mr. DEUTCH. Could you just flesh out a little bit how those dual headquarters will function?

Mr. LEIBOWITZ. Sure. The CEO of our current company is Duncan Niederauer. He is going to be the CEO of the successor company and he will still be based in New York.

I am the chief operating officer of NYSE Euronext, and my main responsibility is for all of our equities markets around the world: NYSE, Paris, Amsterdam, Brussels, and Lisbon. I will continue to have those responsibilities plus the Frankfurt stock exchange, and I will also be based in New York.

The head of the global derivatives business will be the current head of Eurex, Andreas Preuss. He will be based in Frankfurt, as will the CFO of the combined company, Gregor Pottmeyer.

Mr. DEUTCH. And so when you add a second headquarters, what impact will that have on American jobs, if any?

Mr. LEIBOWITZ. We are actually moving the headquarters from Paris to Frankfurt. So that has no net effect on the U.S.

Mr. DEUTCH. So the merger should have no net effect on jobs in the United States.

Mr. LEIBOWITZ. Well, not in that way, no.

Mr. DEUTCH. In some other way?

Mr. LEIBOWITZ. Well, we are obviously looking at how to combine the companies. This is not a deal about cutting jobs. It is about creating value, and we think in the long run this is going to be good for America and American jobs.

Mr. DEUTCH. In the short run, in order to create that value, will there be jobs cut?

Mr. LEIBOWITZ. There will be some of both. If you look at what happened in the Euronext merger, at the same time that we were cutting jobs, we were also investing in new businesses. We created the NYSE Liffe U.S., which is a U.S. futures exchange. We bought the American Stock Exchange and increased the number of people who were doing AMEX options and so on. And we are going to continue to be making investments in our technology business at the same time. But remember, there is not a lot of overlap in the U.S. businesses—between Deutsche Boerse and NYSE Euronext. So I wouldn't expect many job losses.

Mr. DEUTCH. In the new company, how will voting control work?

Mr. LEIBOWITZ. Sure. This is a public company and this is common stock. So the combined company should have 55 to 60 percent U.S. shareholders, and we expect to have a large U.S. shareholder base because it is an important company for U.S. institutions.

Mr. DEUTCH. I am sorry. If you could walk through that again. You said you expect 55 to 60 percent U.S. shareholders, and then you went on to explain that you would expect that there would be a strong U.S. ownership.

Mr. LEIBOWITZ. I think it will continue that way because the exchange space—in particular, our stock has been highly followed by U.S. mutual funds, value stocks. And so I think that will continue. That is the base that is going to continue to hold the stock in the future. We are currently 85 percent U.S.-held. Deutsche Boerse is only 18 percent German-held. Actually, it is 35 percent U.S.-held. That one is more U.S.-held than any other shareholders. And the combined stock will start out 55 to 60. The chances are it will probably grow from there.

Mr. DEUTCH. And is a part of this proposed merger transaction retaining the name "New York Stock Exchange" in New York?

Mr. LEIBOWITZ. NYSE Euronext will be incorporated in Delaware just as it is today. It will have a supervisory board in the United States, and it will be under SEC regulation just as it is today.

Mr. DEUTCH. Will the name of the entity be the "New York Stock Exchange"?

Mr. LEIBOWITZ. The name of the holding company will not simply be the New York Stock Exchange, but will reflect the combination.

Mr. DEUTCH. Well, I am sorry.

Mr. LEIBOWITZ. To be honest, we don't know what the name is. We haven't made that determination. It is not like we have made it in secret. We honestly haven't spent our attention on it.

Mr. DEUTCH. You can't confirm now that after this merger, the New York Stock Exchange will continue to operate as the New York Stock Exchange?

Mr. LEIBOWITZ. No. I said the New York Stock Exchange will operate as the New York Stock Exchange.

Mr. DEUTCH. That is a condition of this merger that you are agreeing to, that it will forever continue to operate as the New York Stock Exchange?

Mr. LEIBOWITZ. Absolutely. The New York Stock Exchange will stay the New York Stock Exchange, just like the Frankfurt Stock Exchange will stay the Frankfurt Stock Exchange.

Mr. DEUTCH. Thank you. I appreciate it.

Thank you, Mr. Chairman.

Mr. GOODLATTE. I thank the gentleman.

The gentleman from Pennsylvania, Mr. Marino, is recognized for 5 minutes.

Mr. MARINO. Thank you, sir. I apologize for being late. I just came from another Committee meeting.

Mr. GOODLATTE. We are pleased to have you.

Mr. MARINO. Gentlemen, thank you for being here.

Mr. Leibowitz, I was not quite clear on your question by my colleague on the other side concerning jobs that may be lost in the United States. Do we have any indication on how many jobs may be lost in the United States and how many jobs may be gained outside of the United States? Can you give me a number please?

Mr. LEIBOWITZ. So I would expect that there will be more jobs lost outside the United States in the short run. There will be few jobs lost inside the United States, and then there will be growth of jobs in the United States and abroad as well.

Mr. MARINO. Could you just go into a little bit more detail on the growth for jobs in the United States and what period?

Mr. LEIBOWITZ. Yes. We are growing our technologies business. We had set a $1 billion revenue target a couple of years ago. We are about half of that now. That is a business we are investing in intensively. A lot of those jobs are in the United States. We are building a futures business in the United States. It is the main competitor to the CME. It is a very small business right now. We have high hopes for it. So two of our biggest growth businesses are in the United States, and we are going to continue to hire in those areas.

Mr. MARINO. And, Mr. Katz, do you have any comment concerning the lack of or growth of jobs?

Mr. KATZ. Well, I agree with Mr. Leibowitz that the prospects for growth as a result of this company are stronger and have a higher probability than the prospects of a loss of jobs. There are great opportunities to build businesses and innovate, and as we have an opportunity to join with NYSE Euronext, that will even further come to light and develop as we begin to make investments into those new businesses. So I believe that over time we will continue to grow the number of employees in the U.S. and that will be positive for the U.S. It will be specifically positive for New York where these businesses will be based.

Mr. MARINO. Mr. Katz and then, please, Mr. Leibowitz, if you would follow up. Do you see any negative impact in the United States on other industry, on other areas of job creation? Do you see any negative impact where this would create a loss of jobs in the United States outside your predicted growth?

Mr. KATZ. We have spent a great deal of time analyzing the combination of these two companies, and we believe that it is a win-win for a number of different constituencies. We believe that shareholders of this business will benefit from a stronger company. We believe that the investors, both retail and institutional, that trade stocks and derivatives on these platforms will benefit from these synergies. It will lower their cost of trading. It will lower the costs for broker-dealers to trade, and as a result, they will be able to invest their profits into growing the business.

And we believe this will be a benefit for the regulator that oversees all of these different exchanges, and we can work together with them to help grow this business and work together with the global regulators to harmonize some of the policies and rules and processes and it will help the regulators grow.

So we don't see the negative. We are very excited about the opportunity to move forward and put these two businesses together. We think that it is going to be extremely positive both for the U.S. and for Europe.

Mr. MARINO. Mr. Leibowitz, do you concur?

Mr. LEIBOWITZ. Yes, I think that was very well put. I think the thing to add—and this is largely the impact in Europe—is that we think putting these derivatives exchanges together will help free up capital that is badly needed by banks because of margin requirements. But in general, this should lower costs for our customers and that should get passed on to investors.

Mr. MARINO. I am going to ask you what an old mentor of mine did when I was in industry when I went to him with a great idea, at least what I thought as a great idea. I was able to sit down and state out logically the way you are very adequately doing here. But let's play devil's advocate for a moment. What is, if there is any, down side to this?

Mr. LEIBOWITZ. Honestly I have a hard time finding a down side, sir. I am not sure where I would find it. I think it is a very exciting opportunity.

Mr. MARINO. Mr. Katz, I am going to take a stab at this. Do you agree?

Mr. KATZ. Well, I agree. I would say that the down side is not allowing this to move forward, and that will weaken the U.S. It will weaken the financial centers in New York and in Frankfurt, and that will affect the employees. That will affect shareholders and that will affect the investors in the U.S. market far greater than anything else.

Mr. MARINO. Thank you very much, gentlemen.

I yield back.

Mr. GOODLATTE. I thank the gentleman.

The gentleman from New York, Mr. Nadler, is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. I appreciate your holding this second hearing and the witnesses coming back today and sharing their views.

Now, this topic we are discussing today, the role of the New York Stock Exchange plays in the national global economy and what a merger of this iconic exchange with a European exchange—means for these economies—is of particular significance for my district. As many of you know, I represent the financial center of our country which resides in lower Manhattan, and the long-term stability and ability for growth of these institutions is important for all of us but particularly for my district.

Mr. Leibowitz, in your testimony, you say that the New York Stock Exchange has continually had to meet challenges presented by other mergers and the creation of new exchanges through diversifying and globalizing because otherwise the NYSE would have been, as you say, doomed to become a charming but irrelevant anachronism. You go on to say that this merger with Deutsche Boerse is an extension of that process meeting challenges through diversifying and globalizing.

What does the future of the New York Stock Exchange look like without the merger with DB?

Mr. LEIBOWITZ. Well, I think that the business the New York Stock Exchange is in is the most competitive aspect of the securities exchange businesses, and it is more and more challenged. And I think to fortify it and gain more scale and gain more efficiency and help innovation, this merger is a strong fortifier. Without that, we would just face more competition, and it is harder and harder to maintain the floor and do the things that we do that keep our brand strong.

Mr. NADLER. You say it will be harder to maintain the floor. Can you guarantee the trading floor will remain open?

Mr. LEIBOWITZ. The trading floor is remaining open.

Mr. NADLER. But how long can you keep that guarantee for?

Mr. LEIBOWITZ. Well, I am in charge of it. So I am guaranteeing it.

Mr. NADLER. Let me ask you the following. A merger of this magnitude has ripple effects for the various players along the chains. What do you think this merger means for companies, small and large, looking for exchanges on which to take their businesses public? What does it mean for investors?

Mr. LEIBOWITZ. Sure.

Mr. NADLER. Do they have fewer options, more options?

Mr. LEIBOWITZ. No. I think the same number of options. We will be a stronger platform. We are an advocate. A lot of people think of us as the large cap stock exchange, but the reality is we have an awful lot of companies that are below $1 billion and below $500 million and even smaller. And we have really been an advocate for small and mid-sized companies because we think that they are the engines of job growth, and it is very important that we maintain a strong presence in Washington on their behalf and I think that is going to continue in the future.

Mr. NADLER. A strong presence in Washington? What do you mean by that?

Mr. LEIBOWITZ. In Washington, in terms of advocating on behalf of policies that help small businesses, whether it is with regulators such as the SEC, whether it is with Congress in terms of other laws, making it clear that the voice of small businesses gets heard.

Mr. NADLER. So you regard one of your roles is a lobbyist for small businesses.

Mr. LEIBOWITZ. Not a lobbyist. I think we are an honest broker, meaning we are not paid by anyone to do that. We are an advocate in certain aspects because I think when companies go public, they create more jobs than during any other point in their lifecycle. And if what we are trying to do is create jobs, we need companies to get to the point of being healthy enough to go public. That doesn't mean that companies should go public before they are ready just based on an idea and not a real business, but it means that we need to find ways to get companies public that really are deserving to be public because that is how they get the currency to hire more people, to grow, to innovate, and to continue to develop.

Mr. NADLER. 5 years ago, a company owned by the United Arab Emirates attempted to purchase the port operations at the Port of New York and New Jersey. At that time, a lot of elected officials, myself included, raised national security concerns about selling a critical port to a foreign entity. I understand the circumstances surrounding the proposed sale of NYSE to DB or the proposed merger, however you want to characterize it, are different, but the sentiment remains.

What are the consequences of selling a critical player in our national economy to a foreign country? How does this benefit us or potentially hurt us?

Mr. LEIBOWITZ. Sure, sure. First, it is a good opportunity to make the distinction between this and the Dubai port situation.

First, the Germans aren't buying anything—the German government. They are not involved. This is not a government situation. This is one public company to another, common shareholders. And as we said, there are more U.S. shareholders of Deutsche Boerse than any other nationality. So, first, there is no foreign government involvement.

Second, it is not a physical security point issue like a port.

But third, this still falls under the same U.S. regulators as it did before, whether it is tax law, whether it is security law, whether it is cybersecurity. All of those things are governed by U.S. law. And so this does not fall into the same domain.

Mr. NADLER. And you think that this would result in more trades being carried on in the United States as opposed to migrating to Europe?

Mr. LEIBOWITZ. I think it will make us stronger and in the long run probably allow us to retain more companies.

Mr. NADLER. Thank you.

My last question is a very simple question. It is a variant of a question that was asked before. Who could this Committee invite to give us a contrary view? In other words, we have two witnesses, both of whom are saying this is a wonderful thing. If we wanted to hear the other side, assuming there is another side, who could we invite who is responsible to give us the case against this? You said there is nobody really, but——

Mr. LEIBOWITZ. I am sure our competitors aren't thrilled.

Mr. NADLER. And that is the only suggestion you would have, the competitors.

Mr. KATZ. I think all businesses have competitors.

Mr. GOODLATTE. If the gentleman will yield. One of their competitors was offered an opportunity to testify and declined.

Mr. KATZ. If I could continue. The comments that have been made by the competitors and the largest ones that we deal with to date have all indicated that this will not change how they compete with us. They will compete vigorously with this combined entity. And so while given an opportunity to be invited before this Subcommittee to take a pot shot, I can imagine that they would. But they have publicly been on record saying that this will not change how they come in every day and try to compete to provide the best possible services to their customers to compete with the Deutsche Boerse Group and NYSE separately or together.

Mr. NADLER. But your competitors aside, there is no group, consumer group, public interest group, that you know of that might give us a contrary view? That is a high testimony. Thank you.

Mr. GOODLATTE. I thank the gentleman.

The gentleman from North Carolina, the Ranking Member, is recognized.

Mr. WATT. Thank you, Mr. Chairman.

I thank the witnesses.

And probably everybody else has sensed that my perspective on this may be a little bit different in the sense that I am not sure exactly what the role of our Judiciary Committee—are you all buzzing me back there? What am I doing wrong?

Anyway, it never has been quite clear to me what the role of this Committee on the Judiciary or Subcommittee should be in a merger of this kind. But I don't want to leave anybody with the impression that I think this merger shouldn't be thoroughly scrutinized. I just think that we passed the law. We know what the antitrust laws are. We know what the consumer protection laws are, and we have given that responsibility to somebody else.

So I am actually more concerned about the ability of the relevant regulators or Justice Department or whoever is going to scrutinize this—their ability to scrutinize it from the perspective that we want it scrutinized from. So let me ask a couple of questions along those lines.

We are always concerned about whether the Department of Justice, which is a legal entity, has the expertise to really understand the competition aspects of various businesses. What role does the Securities and Exchange Commission play with the Department of Justice in this evaluation? Mr. Leibowitz, whichever one of you feels like you are best equipped to answer that.

Mr. LEIBOWITZ. Sure. I will start and then maybe, Mr. Katz, you chime in here.

In this case, the SEC provides a consultative and advisory role, answering questions as to how the industry functions and what the SEC's role is in regulating the industry and how that would affect the resulting competition. So the DOJ leads the investigation, asks a lot of questions, gathers information——

Mr. WATT. And they are the ones that actually make the final decision about whether this is anticompetitive, antitrust implications, but they get the input from the Securities and Exchange Commission.

And you said that you were submitting a bunch of paperwork and answering a bunch of questions from various agencies, 30-40 you said in response to Mr. Conyers' question. Do any of those agencies do—what are you submitting to them and under what authority are they asking you for information?

Mr. LEIBOWITZ. Sure. Each of our regulators wants to make sure, particularly when there is cross-border or cross-country aspects going on, that their proper regulation is maintained. So, for example, there is the Anticompetition Authority in Europe. There is each of the country regulators for each of our exchanges in Europe because we have a Paris exchange, Brussels, Amsterdam, et cetera.

Mr. WATT. Okay, but I want to focus on the U.S. entities, the regulators within the United States. You mentioned CFTC, the SEC. You mentioned the Fed. Is the FTC involved?

Mr. LEIBOWITZ. Not to my knowledge.

Mr. WATT. What other agencies?

Mr. LEIBOWITZ. The CFIUS committee.

Mr. WATT. CFIUS?

Mr. LEIBOWITZ. We are voluntarily filing documents with CFIUS. We have already done that.

Mr. WATT. Anybody else that you can identify that you are submitting information to?

Mr. KATZ. I just didn't hear you say Justice Department.

Mr. WATT. Yes, well, we said DOJ at the outset. They are the big enchilada here. They make the final decision.

What I am not clear on is what these other agencies' role is. Let's just go one by one.

SEC, obviously, provides expertise to the Department of Justice, but do they have another role with reference specifically to the New York Stock Exchange? Are you submitting information to them and are they reviewing it and for what purposes are they reviewing it?

Mr. LEIBOWITZ. They work with the foreign regulators in Europe to make sure that the division of labor—there is an MOU between, for example, SEC and the College of Regulators even for our existing exchanges that has to do with rules for exchanging information when there are investigations that are cross-border because we have different exchanges and different companies listing in each place and cross-listing, for example. We have companies that are listed in both places and so on. So it has to do with the exchange of information and the way the rules are promulgated between the territories.

Mr. WATT. And if they found for some reason that this merger violated those exchanges, what would be their recourse or made it more difficult for them to police what they are involved in? What would be their recourse?

Mr. LEIBOWITZ. It is my understanding that they can compel us to enter into agreements that allow the right kinds of information sharing and regulatory oversight.

Mr. WATT. What about the CFTC? You mentioned them specifically. What would they be looking at? What would you submit to them to evaluate?

Mr. LEIBOWITZ. I think all they really want to do is make sure that this merger does not impact NYSE Liffe U.S. which is our futures exchange in the United States and that there are no ill effects of this in terms of the regulatory oversight.

Mr. WATT. And if they found that it did, what would be their recourse?

Mr. LEIBOWITZ. They would compel us to take the actions required that would give them satisfaction.

Mr. WATT. Such as?

Mr. LEIBOWITZ. Either information barriers or oversight boards or procedures that would make them feel that their interests were protected.

Mr. WATT. You mentioned the Fed, the Federal Reserve. What would you be submitting to the Federal Reserve and for what purpose?

Mr. LEIBOWITZ. So they have partial oversight interest over the clearinghouse, NYPC, which is a joint venture between us and DTCC. And again, they would just be making sure that there is nothing about this merger that would cause a problem for NYPC.

In the case of CFTC and the Fed, there is no reason to believe that there should be an impact, given that these are businesses that we are operating ourselves as they are. I think they will probably just validate that there is no change for them.

Mr. WATT. And would the Department of Justice have access to all of the information from the CFTC, the—well, you have already established they are consulting with the SEC. What about the Fed and CFIUS?

Mr. LEIBOWITZ. I am not familiar with how those information barriers work.

Mr. WATT. Sorry.

Mr. LEIBOWITZ. We voluntarily provide all that information to all of them.

Mr. WATT. Get us more information so that we understand exactly what kind of review this gets because in the final analysis, I mean, we can educate ourselves about it, but the primary role I think we have is there are gaps in the review and the regulatory framework for evaluating a merger of this kind, we need to know that so we can close those gaps. Maybe we can't close them for this particular transaction, but we need to know it.

I agree with Mr. Conyers. There will be people behind you. Probably why they don't want to testify is that they want to merge next, and they don't want to come and say this is a terrible thing for you to be merging because they don't want you to come and say it is going to be a terrible thing for them to be merging.

So this needs to be reviewed. I mean, it needs to be reviewed from a number of different perspectives, and we need confidence that the perspectives from which it is getting reviewed are thorough and comprehensive. We can't exercise that kind of control over the European regulators. You can lock up 80 percent of the derivatives market over there, and if they said it was okay, I mean, there is nothing we could do to the European regulators. And a lot of this stuff is off—the potential anticompetitive part of what is being reviewed, as I understand it, is offshore. Isn't that right?

Mr. LEIBOWITZ. That is correct.

Mr. WATT. Because it is in the derivatives market and whatever that other thing I mentioned in my opening statement. I got it here somewhere. I should know better than to try to talk about this without thinking through it more.

What about CFIUS? What are you giving to them and for what purpose? And under what circumstances would they have the authority to say this is a terrible thing?

Mr. LEIBOWITZ. Sure. Well, first, we voluntarily filed with CFIUS. It is not clear whether we would have been compelled to. We felt that in this case, given the high profile of our merger and some of the emotions it has raised up, that we should go through that process. We have met with the committee. We have answered their concerns and submitted significant amounts of information.

I think the focus is, obviously, on physical security, on regulatory just to make sure that it is all covered, but also on cyber and other areas of national security.

Mr. WATT. Thank you, Mr. Chairman. You have been generous with the time.

Mr. GOODLATTE. Well, I thank the gentleman. His line of inquiry has been very interesting. In fact, it prompts me to wonder whether after this is completed or some other merger or acquisition that has already taken place, whether we might find it helpful to call in the various regulatory agencies and question them about what they have already done as opposed to what is going on where they don't testify because they are in the middle of doing it. So I thank the gentleman.

I thank our witnesses for their very helpful testimony today.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask that the witnesses respond as promptly as they can so that their answers will be made a part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

And this hearing of the Intellectual Property, Competition, and the Internet Subcommittee is adjourned.

[Whereupon, at 5:24 p.m., the Subcommittee was adjourned.]