



Mr Werner Langen
Member of the European Parliament
Rue Wiertz
1047 Brussels

3 October 2011

Dear Sir,

RE: CENTRAL COUNTERPARTY CLEARING AND EMIR

Forthcoming EU legislation will place a legal obligation upon EU firms participating in the derivatives market to become either direct or indirect users of trading and clearing market infrastructures.

In light of this, BUSINESSEUROPE believes that it is important that safeguards are in place to prohibit discriminatory practices and prevent incumbent market infrastructures blocking choice in clearing and trading. Otherwise, there is a risk that market participants are forced, either directly or indirectly, into legally mandated monopolies, especially when there is only one central counterparty.

Without access safeguards, forcing EU firms to use protected market infra-structures will increase costs arising from derivatives trading, impacting upon non-financial companies looking to sensibly manage the risks they face. It will also exacerbate the risk of market failure and a lack of competition in EU clearing by embedding monopolies which will increase costs and harm European businesses at this critical time.

The derivatives proposal (EMIR) rightly mandates very tough prudential standards for central counterparty clearing (CCP) but we believe that there should be no other regulatory or industry barriers to competition in clearing. The current provisions in EMIR on open access are very limited and likely to be ineffective. The clear advantages in critical mass, the tendency of central counterparty clearing to gravitate towards monopoly structure without clear pro-competition measures in place means that firm action needs to be taken now considering that any measures included in the revised Markets in Financial Instruments Directive (MiFID) are likely to come too late.


EMIR should therefore put in place measures that will allow market participants trading a product on exchange or 'over-the-counter' in the EU to agree to clear that product at any clearing house that is authorised in the EU to do so. This means EMIR should:

- Allow, subject to genuine operational and systemic risk safeguards:
 - (a) full freedom of access of trading venues and market participants to CCPs; and
 - (b) full freedom of access of CCPs to trading venue.
- Allow CCPs and trading venues to obtain relevant benchmark or index licences and relevant data on a non-discriminatory basis and at reasonable cost;
- Not permit CCPs and trading venues to use proprietary messaging standards to shut out competitor infrastructures;
- Require CCPs to treat economically identical products as fungible for margin offsets, regardless of the venue of execution;
- Mandate unbundling of trading and clearing charges, including separation of accounts.

In addition, interoperability between derivatives and CCPs subject to appropriate risk controls should also be allowed.

We hope that you share our concerns and recommendations and remain at your disposal should you wish to discuss this subject further.

Yours sincerely,

best regards


Philippe de Buck