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[redacted]
[redacted] Financial Services Policy and International Affairs
European Commission
Rue de Spa 2
1000 Brussels
Belgium

21st October 2015

Dear [redacted],

My company, EuroABS Limited, has provided services to European ABS markets for 15 years and provides, *inter alia*, secure data hosting services for European ABS issuers and has become a market leading provider of such services to UK and European issuers¹. These hosting services are used by issuers to comply with regulations such as the Bank of England ('BoE') Sterling Monetary Framework ('SMF')² and United States Securities and Exchange Commission 17g5.

I have read the European Commission's (EC) paper on securitisation³ (the 'Paper') creating a European framework for Simple, Transparent and Standardised ('STS') securitisation released on 30th September this year with interest. I realise that this is a herculean task and I commend the EC on this work.

There is however a section of this Paper which has given me cause for concern relating to issues of competition in markets in which, as explained above, EuroABS operates and has a significant stake.

I would like to draw your attention to the second paragraph on page 15. The sentences causing us specific concern are the following (together the 'Announcement'):

1. "Originators, sponsors and SSPE's should make freely available the information to investors, via standardised templates, on a website that meets certain criteria such as control of data quality and business continuity." And
2. "In practice this could allow reporting of this information to a data repository such as the "European Datawarehouse", where much of this type of information is already collected for eligibility purposes in Eurosystem refinancing operations."

[redacted] Also see EuroABS website at <http://www.euroabs.com> for further information and services provided

² <http://www.bankofengland.co.uk/markets/Pages/money/eligiblecollateral.aspx>

³ http://ec.europa.eu/finance/securities/docs/securitisation/com-2015-472_en.pdf

At first glance I'm sure they appear to most as innocuous and I am confident that the concerns we feel as a consequence were not intended by those drafting the document. However we consider that in making these assertions the EC are essentially announcing:

- the pre-approval - at a point of maximum possible publicity⁴
- of a commercial business (European Datawarehouse GmbH ('EDW'))
- to be an *effectively* regulated business
- to supply regulatory required services (secure web hosting)
- that are as yet undefined.

To further explain the gravity of this situation from the perspective of EuroABS, EDW is a standard commercial company incorporated in Germany and for which the following statements (together the 'EDW Dominant Market Position'), EuroABS asserts, uniquely apply:

- EDW receives European ABS issuance loan level data (the 'Data') and make the Data available to the European Central Bank ('ECB') and National Central Banks ('NCBs') for the purpose of risk management in the EuroSystem (together the 'EDW Services')
- The Data are prepared and submitted to EDW by ABS issuers at ABS issuers' expense.
- In EDW's own words: EDW is a utility and the EDW Services are endorsed by the Eurosystem⁵
- In order to be allowed to submit these Data, ABS issuers must pay, per issue, fees of an initial €8,000 and an annual fee of €6,000⁶
- It is the EDW itself, with oversight from the ECB and NCBs, that set these and other fees i.e. there is no form of direct competitive market price discovery mechanism.

The following statements, EuroABS asserts, are also true and contribute to the EDW Dominant Market Position:

- Timely submission of the Data to EDW is a prerequisite to Eurosystem eligibility.
- Eurosystem eligibility is a desirable feature of any financial security for which investors will pay a significant premium over those that are not eligible, but would otherwise be comparable.
- EuroABS estimates that EDW receive revenues of approximately €5,744,000 annually to provide the EDW Services⁷.

EuroABS submit that, because of the EDW Dominant Market Position, to allow EDW to provide secure hosting services for STS would be a breach of EU antitrust laws and allow abuse of a dominant market position. Not only this, but also, the same, with the oversight and backing of the ECB **and** the promotion of the EC (as described in the above highlighted sections in the Paper).

EuroABS submits that, whilst it may be acceptable for the ECB to enter into an agreement with EDW (or any other party for that matter) to receive and then deliver the Data for the purposes of risk management of the Eurosystem, one of the main aims of the European Union Internal Market is the prohibition of restriction or distortion of competition. Article 101 TFEU

⁴ Following several years' worth of consultations from ESAs, European central banks and the EC, stakeholders involved in the European Securitisation Markets have been anticipating the Paper and most will have downloaded it and read it. Its ultimate implications for the efficiency and viability of securitisation as a funding tool for multi-trillion financial operations (particularly in mortgage and various consumer loan markets) and its importance to the European economy would be difficult to overstate.

⁵ Source: European Datawarehouse website

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⁷ EDW state that, as of September 2015, there are 736 active ABS transactions in their system. EuroABS catalogues all European ABS issuance. Last year EuroABS records that 166 transactions were issued by European entities in ABS categories acceptable to the ECB. $(736 \times €6,000) + (166 \times €8,000) = €5,744,000$ revenue per annum.

Web: <http://www.euroabs.com>

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Please understand that the last thing we at EuroABS want to do is to make trouble or to disrupt the rehabilitation of the European ABS Markets. However, we feel that this Announcement is:

- unfairly beneficial to EDW
- This unfairness is further compounded in view of the EDW Dominant Market Position if EDW were to enter these markets – which appears to be the intention
- And further that the timing of this announcement in the final draft of the Paper is particularly crucial as we know that many issuers looking to comply with these new regulatory requirements are now busy making arrangements to do so and selecting suppliers – not least as investors of outstanding issuance are requesting issuers to bring their existing issuance up to STS standards to prevent being on the wrong side of a two-tier market.

Please understand that we are aware (and as we have stated in previous correspondence with the EC) that this is a very difficult set of rules for the EC to draft and finalise. However, for me and my business partners this is our lives' work. To allow this situation to pass unchallenged would mean we would be competing directly with EDW in market conditions that are manifestly unfair in favour of EDW leading to the imminent decline and long term demise of our business. As such, we feel it is clear that we have no choice other than to object.

Further to this, EDW leverage off the EDW Dominant Market Position by building a database of the Data and sell it to those that are prepared to pay their fee as shown on their website. For businesses like EuroABS this is €125,000 per annum which represents a quarter to a third of our annual turnover and is clearly well beyond our reach.

To illustrate the point, if EuroABS were to compete with EDW to provide European ABS data services based on the ECB required data, we would be at an annual financial disadvantage of approximately €5,994,000.

EuroABS has an existing business processing loan level data for UK ABS issuance available under the Bank of England Market Notice. EuroABS would like to compete fairly with other businesses potentially including the EDW to provide similar services with the Data, but because of the EDW Dominant Market Position and the €125,000 per annum fee payable to EDW, this is not possible.

Whilst EuroABS accept the above points are something that are likely to be best brought up with the European Courts of Justice and/or DG Competition, they are, we believe, very important to mention here to provide perspective and context and in the hope that the EC can reconsider their position and to perhaps redraft the Paper accordingly.

EuroABS respectfully requests that the EC please consider the following:

1. EuroABS intend to be able to extend their current secure hosting services offered to issuers under Bank of England regulations to include secure hosting for STS both in the UK and the wider European Union and compete for such business with fair and equal opportunity. As such EuroABS respectfully request to apply for the necessary accreditation (as mentioned in the Paper) and for the process to be fair, transparent and (in view of the time sensitivity as described above and brought about by the Announcement and apparent pre-approval of EDW) fast-tracked.
2. Whilst EDW Dominant Market Positions or any other competition distorting practices persist, EuroABS request that any businesses engaged in such practices should not be allowed to abuse a dominant market position and unfairly participate in any potentially competitively distorted markets.
3. All STS standard regulatory required data and documentation (STS Data and Documentation) be made freely and publicly available at the responsibility of the issuer or, if this is for any reason, such as data protection, not possible, for STS Data and Documentation to be made freely available as widely as possible and to

include as a minimum all ABS market professional parties of all types (as per BoE Market Notice rules⁸). Such disclosure requirements would be consistent with the ruling from the European Court of Justice in the 'Timmel' case⁹ with regard to prospectus documentation. We consider that it is difficult to envisage STS requirements would be given a materially different status with regard to disclosure.

Whilst we do not agree with the chosen business model we do not object to the EDW in the context of its originally stated purpose as a utility to pass European ABS loan level data from issuers to the ECB for Eurosystem risk management.

It is our belief that this situation as described is a set of consequences that were not intended by those drafting the Paper. We would also like to point out that we strongly believe that requests 2 and 3 above are important for securing the long-term equality of access to the STS regulatory required data and documentation. Privileged access to information and, even more extreme, a single or small number of entities being able to charge significant fees to access the data (as is the current position with the Data and EDW) could mean that only a small number of large businesses will be able to access the STS data and process it. As the EC DG Competition web pages state, consumer choice and innovation¹⁰ is fundamental to the long-term health of markets. It is essential that free access to the raw data is available to promote innovation and the highest levels of independent scrutiny. We believe that fair, free and equal access and opportunity of this information is the only paradigm capable of providing the optimum solution to the transparency issue and will provide the best long-term service to these markets and the European public at large.

Please see enclosed with this letter:

- A short case study of the secure hosting arrangements made by UK issuers with regard to the BoE SMF regulatory requirements,
- A list of the applying issuers and the relevant Internet web addresses and
- A pdf representation of a presentation showing the services we provide to our issuer clients

Which we hope will be of some interest to you.

Finally, as already stated, we do not wish to make trouble for anyone, neither do we wish to slow down the rehabilitation of the European ABS Markets, we therefore would like to meet with the EC to discuss these matters to try to find solutions to these problems upon which all affected parties may agree.

If you are able to agree to a meeting, please let me know when would be suitable.

Yours sincerely

[Redacted signature]

[Redacted name]

⁸ See paragraph 32 on page 6 here: <http://www.bankofengland.co.uk/markets/Documents/marketnotice121002abs.pdf>

⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0359>

¹⁰ http://ec.europa.eu/competition/general/overview_en.html

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