



EUROPEAN COMMISSION  
Competition DG

## ***CASE AT.39654 – Reuters Instrument Codes***

(Only the English text is authentic)

### **ANTITRUST PROCEDURE Council Regulation (EC) 1/2003**

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Article 9 Regulation (EC) 1/2003

Date: 20/12/2012

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Brussels, 20.12.2012  
C(2012) 9635 final

*PUBLIC VERSION*

**COMMISSION DECISION**

**of 20.12.2012**

**addressed to:**

**Thomson Reuters Corporation and Reuters Limited**

**relating to a proceeding under Article 102 of the Treaty on the Functioning of the  
European Union and Article 54 of the EEA Agreement**

**Case COMP/39.654 – Reuters Instrument Codes (RICs)**

(Only the English text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty<sup>1</sup>, in particular Article 9(1) thereof,

Having regard to the Commission decision of 30 October 2009 to initiate proceedings in this case,

Having expressed concerns in the Preliminary Assessment of 19 September 2011,

Having given interested third parties the opportunity to submit their observations pursuant to Article 27(4) of Regulation (EC) No 1/2003 on the commitments offered to meet those concerns<sup>2</sup>,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer in this case<sup>3</sup>,

Whereas:

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<sup>1</sup> OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when and where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

<sup>2</sup> OJ C 364, 14.12.2011, p. 21 and OJ C 204, 12.07.2012, p. 44.

<sup>3</sup> The final report of the Hearing Officer of 29 November 2012.

## **1. INTRODUCTION**

- (1) This Decision is addressed to Thomson Reuters Corporation and Reuters Limited (“Thomson Reuters”).
- (2) On 19 September 2011 the Commission adopted a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003. According to the preliminary assessment, Thomson Reuters is dominant in the worldwide market for consolidated real-time datafeeds. Thomson Reuters may have abused its dominant position by imposing certain restrictions as regards the use of Reuters Instrument Codes (“RICs”).
- (3) Thomson Reuters prohibits its customers from using RICs to retrieve data from consolidated real-time datafeeds of other providers and prevents third parties from creating and maintaining mapping tables incorporating RICs that would allow the systems of Thomson Reuters’ customers to interoperate with consolidated real-time datafeeds of other providers. The Commission has reached the preliminary conclusion that these practices create substantial barriers to switching datafeed providers and constitute an abuse of a dominant position under Article 102 of the Treaty and Article 54 of the EEA Agreement.
- (4) Thomson Reuters disagrees with the Commission’s preliminary assessment, but has nevertheless offered commitments pursuant to Article 9(1) of Regulation (EC) No 1/2003 to address the Commission’s competition concerns. The present Decision will make those commitments binding on Thomson Reuters.

## **2. THOMSON REUTERS**

- (5) Thomson Reuters Corporation is a news agency and a provider of business and financial information.<sup>4</sup> Its headquarters are in New York (United States)<sup>5</sup> and its registered office is located in Ontario (Canada).<sup>6</sup>
- (6) Reuters Limited is a wholly owned indirect subsidiary of Thomson Reuters Corporation, with its registered office at The Thomson Reuters Building, 30 South Colonnade, Canary Wharf, London E14 5EP, United Kingdom.
- (7) Thomson Reuters compiles and distributes financial market data, such as currency rates and indicative or tradable prices for commodities and financial instruments for example equities, corporate and government bonds and derivatives. The main purchasers of financial market data are operators in the financial services industry, such as banks, hedge funds and asset managers. They use it, among other things, to make investment decisions, to provide financial advice and to monitor and validate transactions.
- (8) The latest financial market data can be made available to customers continuously and almost immediately through consolidated real-time datafeeds. Thomson Reuters

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<sup>4</sup> Thomson Reuter Annual Report 2009, p.2.

<sup>5</sup> 3 Times Square, New York, NY 10036, United States.

<sup>6</sup> 333 Bay Street, Suite 400, Toronto, Ontario M5H 2R2, Canada.

currently commercialises its consolidated real-time datafeeds through the Reuters Real-time Service (“RT Service”), Global Datafeed Licences<sup>7</sup> and a number of licences that remain from the Thomson Reuters 2000 or 3000 service. These are collectively referred to as the “TR Consolidated Real-Time Datafeed Service” in the commitments.

### 3. PROCEDURE

- (9) On 3 September 2007, the Commission received a notification of a proposed concentration by which Woodbridge Company Limited (the Thomson Corporation family holding company) acquired sole control in the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>8</sup> of the Reuters Group PLC (“Reuters”).<sup>9</sup>
- (10) During the merger proceedings, competitors and customers of Reuters raised concerns about the strong position of Reuters in real-time market datafeeds. They pointed out that Reuters claims intellectual property rights over RICs and argued that this could bring about lock-in effects for their customers and a barrier to entry for their competitors. The Commission acknowledged the potential concerns regarding RICs, but concluded that these concerns were not merger-specific.<sup>10</sup>
- (11) On 19 February 2008, the Commission declared the notified operation compatible with the common market and the EEA Agreement, subject to conditions, under Article 8(2) of Regulation (EC) No 139/2004.
- (12) On 30 October 2009, the Commission initiated of its own motion proceedings against Thomson Reuters pursuant to Article 11(6) of Regulation (EC) No 1/2003 and Article 2(1) of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty.<sup>11</sup>
- (13) Between June 2009 and February 2012, the Commission issued numerous requests for information under Article 18(1) of Regulation (EC) No 1/2003 to customers and competitors of Thomson Reuters, as well as to providers of direct datafeed technology. The Commission also sent various requests for information to Thomson Reuters.
- (14) On 19 September 2011, the Commission issued a Preliminary Assessment to Thomson Reuters pursuant to Article 9(1) of Regulation (EC) No 1/2003. According to the Preliminary Assessment, Thomson Reuters was dominant in the world-wide market for consolidated real-time datafeeds and Thomson Reuters’ restrictive licensing practices as regards the use of RICs were in breach of Article 102 of the

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<sup>7</sup> Bespoke licences granted by Thomson Reuters in some circumstances to certain customers for consumption of real-time market data from its Consolidated Real-Time Datafeed in internal applications covered by such a licence, and which may include Desktop-based Applications. Such a licence is separate and distinct from a global Packaged Desktop Service licence.

<sup>8</sup> OJ L 24, 29.01.2004, p. 1.

<sup>9</sup> Case No. COMP/M.4726 – *Thomson Corporation/Reuters Group* of 19 February 2008.

<sup>10</sup> *Thomson Corporation/Reuters Group*, paragraphs 127-133.

<sup>11</sup> OJ L 123, 27.04.2004, p. 18.

Treaty and Article 54 of the EEA Agreement. The Preliminary Assessment was notified to Thomson Reuters by letter of 20 September 2011.

- (15) On 8 November 2011, Thomson Reuters, while disagreeing with the Commission's findings in the Preliminary Assessment, submitted a proposal for commitments to the Commission ("the Initial Commitments"). Under the terms of the Initial Commitments, Thomson Reuters would, among other things:
- allow customers of its RT Service, for a monthly licence fee, to conclude an Extended RIC Licence ("ERL") giving them the right to use RICs to retrieve real-time financial data from Thomson Reuters' competitors for the purpose of switching some or all of their server-based applications to alternative consolidated real-time datafeed providers;
  - provide the information necessary to enable customers to cross-reference RICs to the financial identifiers ("symbology") of other datafeed providers;
  - allow its customers to contract with third party developers to develop switching tools.
- (16) On 14 December 2011 the Commission published a notice inviting interested parties to submit their observations on the Initial Commitments pursuant to Article 27(4) of Regulation (EC) No 1/2003 ("the First Market Test Notice").<sup>12</sup>
- (17) Thirty-five interested parties submitted observations in which they argued that the Initial Commitments were unsatisfactory. Their main concerns related to the scope of the licencing agreement and the level of the monthly licence fee. They seriously called into question the effectiveness of the Initial Commitments.
- (18) On 7 March 2012, the Commission informed Thomson Reuters of the observations received from interested third parties following the publication of the the First Market Test Notice.
- (19) On 27 June 2012, Thomson Reuters submitted a revised proposal for commitments ("the Revised Commitments"). The Revised Commitments differed from the Initial Commitments in several respects. The main changes introduced were the following:
- the level of the fee for the Extended RIC License ("ERL") was reduced;
  - the fee structure for the ERL was no longer linked to any existing rebates for Thomson Reuters' consolidated real-time datafeed, was less complex and more transparent;
  - the ERL could be used worldwide by customers with genuine business operations in the EEA;
  - the ERL also covered RICs of single source over-the-counter ("OTC") instruments subject to the consent of the relevant contributor (unless Thomson Reuters is the sole provider of the OTC-data at the time of the switch);

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<sup>12</sup> Commission Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case COMP/39.654 — Reuters Instrument Codes (RICs) OJ C 364 of 14.12.2011, p. 21.

- the ERL covered human interfaces to server-based applications (at no additional cost);
  - in addition to the initial 5 year period during which the ERL is available for subscription, an option was introduced for customers to extend the subscription period for a nominal fee by a further 2 years;
  - a separate license would be made available for third party developers to enable them to develop and maintain switching tools for sale to customers to facilitate customer switching.
- (20) On 12 July 2012, the Commission published a notice inviting interested parties to submit their observations on the Revised Commitments pursuant to Article 27(4) of Regulation No 1/2003 (“the Second Market Test Notice”).<sup>13</sup>
- (21) In the light of the responses to the Second Market Test Notice, Thomson Reuters amended its Revised Commitments; on 7 November 2012 Thomson Reuters offered the commitments that are made binding by this Decision (“the Proposed Commitments”).
- (22) On 26 November 2012, the Advisory Committee on Restrictive Practices and Dominant Positions was consulted.
- (23) On 29 November 2012, the Hearing Officer issued his final report.

#### **4. PRELIMINARY ASSESSMENT**

##### **4.1. Background**

- (24) A real-time datafeed is a virtual pipeline that supplies continually updated market information. Real-time datafeeds can be used in applications developed by banks and financial institutions, for example to allow for electronic or algorithmic trading.
- (25) Consolidated real-time datafeeds convey data from several sources (data originators) and typically cover different asset classes. Providers of consolidated real-time datafeeds provide their customers with data and with the technological infrastructure necessary to treat and disseminate the data. Thomson Reuters, and previously Reuters, has traditionally been the most important provider of consolidated real-time market datafeeds in the market.
- (26) To retrieve data concerning a particular financial instrument, a user or application must request the information from Thomson Reuters using the RIC assigned to that instrument. RICs are alphanumeric codes that identify securities and their trading locations. They have been created for the retrieval of content from Thomson Reuters’ financial information database, the Integrated Data Network (“IDN”). Thomson Reuters claims intellectual property rights over RICs, in particular copyrights and database rights.

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<sup>13</sup> Communication from the Commission published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case COMP/39.654 — Reuters Instrument Codes (RICs) OJ C 204 of 12.07.2012, p. 44.



- (27) Customers receiving consolidated real-time datafeeds from Thomson Reuters must adhere to the Thomson Reuters Business Principles (“the Business Principles”). These principles set out, amongst other things, the usage rights with respect to RICs. Thomson Reuters prohibits its customers from using RICs to retrieve data content from competing providers of real-time datafeeds.

## **4.2. Market definition**

### *4.2.1. Product market*

- (28) The Commission has reached the preliminary conclusion that the relevant product market is the market for consolidated real-time datafeeds.

- (29) First, consolidated real-time datafeeds and direct real-time datafeeds compete only marginally. Consolidated real-time datafeeds have a higher latency (they are slower) than direct real-time datafeeds and are normally used for different purposes. Moreover, replacing a consolidated real-time datafeed by an aggregate of direct real-time datafeeds is technically very complex and not economically viable for customers of real-time datafeeds. Furthermore, the data coverage of consolidated real-time datafeeds and direct real-time datafeeds does not fully overlap; certain data is only available through consolidated real-time datafeeds (for example OTC data). Thus, consolidated real-time datafeeds and direct real-time datafeeds belong to different product markets.

- (30) Second, integrated desktop services do not compete with consolidated real-time datafeeds.<sup>14</sup> Although an integrated desktop service combined with a server Application Programme Interface ("API") licence can, in certain circumstances, technically replace a low-end consolidated real-time datafeed, it cannot replace a fully operational consolidated real-time datafeed. The substitutability, therefore, between consolidated real-time datafeeds and integrated desktop services combined with a server API licence is very limited. Thus, consolidated real-time datafeeds belong to a different product market than integrated desktop services and server API licences.

### *4.2.2. Geographic market*

- (31) The Commission has reached the preliminary conclusion that the market for consolidated real-time datafeeds is worldwide in scope.

- (32) Most providers of consolidated real-time datafeeds operate worldwide and generally supply their customers with consolidated real-time market data from many different geographic regions. Moreover, several customers of consolidated real-time datafeeds operate internationally and purchase datafeeds based on contracts that allow them to use those feeds in their worldwide operations so they can trade twenty four hours a day in different markets.

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<sup>14</sup> Case No COMP/M.4726-Thomson Corporation/Reuters Group from 19 February 2008 – Paragraphs 64 to 67.

### **4.3. Dominance**

- (33) The Commission considers that Thomson Reuters appears to be dominant in the worldwide market for consolidated real-time datafeeds, having regard to market shares, barriers to entry and expansion, and the lack of countervailing buying power.
- (34) The Commission estimates that Thomson Reuters' current market share exceeds [...]%, whilst the market shares of its closest competitors are over [...] times smaller.
- (35) The development of a consolidated datafeed requires a considerable amount of investment and resources as well as contractual relationships with exchanges and other data sources, to which Thomson Reuters sometimes has privileged access. Thus, entry barriers to the market for consolidated real-time datafeeds are high, even without considering the effects of the restrictions that Thomson Reuters imposes on its customers regarding the use of RICs.
- (36) Moreover, Thomson Reuters' position in the market for consolidated real-time datafeeds is not constrained by the bargaining strength of its customers. No customer represents such an important percentage of demand that it enjoys a substantial countervailing buyer power. In any event, partly as a result of the restrictions that Thomson Reuters imposes on its customers regarding the use of RICs, it is extremely difficult to switch from Thomson Reuters to another provider of consolidated real-time datafeeds.

### **4.4. Practices raising concerns**

- (37) The practices raising concerns are the following restrictions that Thomson Reuters imposes regarding the use of RICs:
- prohibiting its customers from using RICs to retrieve data from consolidated real-time datafeeds from other providers;
  - preventing third parties from creating and maintaining mapping tables incorporating RICs that would allow the systems of Thomson Reuters' customers to interoperate with consolidated real-time datafeeds from other providers.
- (38) According to the Commission's preliminary assessment, the practical effect of these restrictions is that customers of Thomson Reuters face insurmountable difficulties if they wish to switch provider.
- (39) Most of Thomson Reuters' customers rely heavily on RICs. For a long period of time, Thomson Reuters was the primary provider of real-time market data through consolidated datafeeds. As a result, Thomson Reuters' customers frequently embedded RICs in their IT systems.
- (40) In general, it is a complex and time-consuming exercise to switch from one provider of consolidated real-time datafeeds to another. Switching entails, among other things, the need to extract the market data in use, to verify the full functional coverage of the new provider, to set up the technological infrastructure for the new feed and to test the new feed. Customers that developed their internal systems and applications around the RIC symbology and that embedded RICs in their applications and

systems face an additional hurdle: they must recode their IT-systems to replace RICs with the symbology of the new provider, since they are not allowed to use RICs to retrieve data from consolidated real-time datafeeds of other providers. Moreover, they must retrain their staff to use the symbology of the new provider.

- (41) The information obtained in the market investigation indicated that the costs that can be attributed specifically to the conversion from RICs to the symbology of another provider are prohibitive and constitute a major part of the total switching costs. The costs and the technical difficulties involved in such a conversion deter customers from switching.
- (42) In order to avoid the costs and complexities of a conversion, customers would need to make use of a mapping table. Mapping is the process through which one set of identifiers is translated into a different set of identifiers. However, Thomson Reuters prevents its customers as well as third parties from creating and maintaining mapping tables incorporating RICs that would allow the systems of Thomson Reuters' customers to interoperate with consolidated real-time datafeeds of other providers.
- (43) The Commission takes the preliminary view that Thomson Reuters' conduct raises substantial barriers to switching datafeed providers, is liable to cause consumer harm and foreclose competition in the market for real-time consolidated datafeeds.
- (44) Moreover, in the Commission's preliminary view, the restrictions imposed by Thomson Reuters' as regards the use of RICs cannot be justified on grounds of intellectual property rights, the protection of Thomson Reuters' reputation, or technical risks linked to the use of RICs .
- (45) The Commission has accordingly reached the preliminary conclusion that Thomson Reuters' conduct constitutes an abuse of a dominant position under Article 102 of the Treaty and Article 54 of the EEA Agreement.

#### **4.5. Effect on trade between Member States**

- (46) The provision of consolidated real-time datafeeds is a cross-border economic activity and the relevant market is worldwide in scope. Moreover, Thomson Reuters' conduct affects customers throughout the EEA; and is thus capable of having an effect on trade between Member States.
- (47) Thomson Reuters has a very strong position in the relevant market; the effect on trade of Thomson Reuters' conduct is therefore appreciable.

### **5. PROPOSED COMMITMENTS**

- (48) Thomson Reuters disagrees with the Commission's Preliminary Assessment, but has nevertheless offered commitments pursuant to Article 9(1) of Regulation (EC) No 1/2003. The Proposed Commitments are set out in the Annex to this Decision. Their key features are summarised in Recitals 49 to 65.

## 5.1. The scope of the ERL

- (49) The Proposed Commitments consist of the offering of a licence (an ERL) to customers that, at the time of applying for the ERL, are subscribed to a TR Consolidated Real-Time Datafeed Service and will cover all applications licensed under the TR Consolidated Real-Time Datafeed Service. This includes server-based applications and associated downstream individual user applications (View Charge Interface) for the purpose of viewing, validating and manipulating distributed data. In the case of Global Datafeed Licences, the Proposed Commitments relate to all internal applications (including any desktop-based applications) licenced under such a Global Datafeed Licence. The Proposed Commitments do not cover the use of real-time market data licensed for individual use as part of a Thomson Reuters Packaged Desktop Service.<sup>15</sup>
- (50) The ERL gives customers the possibility to license additional RIC symbology usage rights for the purpose of switching providers of consolidated real-time datafeeds. This license allows them, for a monthly licence fee, to use RICs to retrieve real-time financial data from consolidated real-time datafeeds sourced from Thomson Reuters' competitors for the purpose of switching some or all of their server-based applications and desktop-based applications to alternative consolidated real-time datafeed providers.
- (51) In addition, under the Proposed Commitments, Thomson Reuters will provide ERL licensees with regular and timely updates of the relevant RICs including, where applicable, the necessary cross-referencing information linked to the RIC, for example: relevant trading venue, source, official code, currency or description. These updates will be made available with the same frequency as updates provided to Thomson Reuters' customers.
- (52) The Proposed Commitments apply to all RIC symbols directly associated with the price for an individual financial instrument or a value for index carried on TR Consolidated Real-Time Datafeed Service.
- (53) RICs related to instruments traded OTC for which Thomson Reuters sources the data from a single data originator that is identifiable by the RIC can be included in the scope of the ERL at the request of the licensee, subject to the consent of the relevant data originator.
- (54) RICs for which the content is available only from Thomson Reuters fall outside the scope of the ERL, except where the data originator has made that content available to the competing provider of consolidated real-time datafeeds to which the customer is switching.

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<sup>15</sup> Any commercial offering which entitles the customer to individual use of content including (without limitation) market data in addition to the use of an associated desktop software package (irrespective of whether the customer chooses to use some or all of the content of the Consolidated Real-Time Datafeed, or some or all of the desktop software package). Thomson Reuters licenses Packaged Desktop Services under separate commercial and usage restrictions from the TR Consolidated Real-Time Datafeed Services such as (i) 3000Xtra; (ii) Eikon; (iii) Trader; (iv) Station; (v) Thomson One along with their variants and associated licences; and (vi) remaining licences of the legacy Thomson Reuters 2000 or 3000 service to the extent not licensed on a substantially similar basis to the RT Service.

## **5.2. Eligible Customers**

- (55) The Proposed Commitments cover customers that will switch away from Thomson Reuters consolidated real-time datafeeds to an alternative consolidated real-time datafeed (full switch); and customers that will subscribe to a third party consolidated real-time datafeed in addition to the TR Consolidated Real-Time Datafeed Service without switching away from the latter (partial switch). The ERL does not affect any usage rights in relation to RICs that customers enjoy under their current contractual relationship with Thomson Reuters.
- (56) Thomson Reuters commits not to discriminate against customers that make a partial switch as regards the terms on which the TR Consolidated Real-Time Datafeed Service is supplied. Thomson Reuters undertakes to continue to make available to those customers the same consolidated real-time datafeed service on the applicable terms of the existing contract, for a period of at least 12 months from the signing of the ERL.
- (57) Customers will not be obliged to subscribe or to continue to subscribe to any Thomson Reuters data or other services after subscribing to the ERL.

## **5.3. Duration of the commitments**

- (58) The ERL will be available for subscription to Thomson Reuters' customers for a period of 5 years from the Commencement Date.<sup>16</sup>
- (59) Instead of subscribing to the ERL within the initial 5 year period, a customer may purchase, for USD 150 per month, an option to subscribe to the ERL. This option can be exercised within 2 years after the initial 5 year period. Thus, under the Proposed Commitments, Thomson Reuters' customers will essentially have a 7 year period in which to subscribe to the ERL. Upon subscription, the ERL is granted to customers in perpetuity, subject to payment of the relevant fee.

## **5.4. Geographical scope of the commitments**

- (60) The proposed licence can be used worldwide provided that the customer has genuine business operations in the EEA.

## **5.5. ERL Licence fees**

- (61) The monthly ERL licence fees that Thomson Reuters intends to charge are incremental and depend on the number of RIC symbols a client wishes to licence to retrieve data from a competitor. For the first 50 000 RICs the fee will be USD 0.01 per RIC per month. The fee per RIC will then decrease the more RICs a customer wishes to license.<sup>17</sup> The fee schedule will also contain a minimum monthly fee of USD 750.

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<sup>16</sup> The date which is no longer than six months from the date on which Thomson Reuters is notified of the European Commission's final Decision under Article 9 of Council Regulation (EC) No 1/2003.

<sup>17</sup> Between 50001 and 500000 RICs the fee per RIC will be USD 0.005; between 500001 and 3000000 RICs will be USD 0.002 and above 3000001 it will be USD 0.001. Fees are subject to escalation in line with general inflation.

- (62) The fees cover the additional usage rights in the RIC symbology and the costs of the service to be provided by Thomson Reuters to its licensees. According to Thomson Reuters, the fee level amounts to a very small proportion of the Thomson Reuters' consolidated real-time datafeed price for the same scope of licensed RICs and usage. The ERL fee schedule is set out in detail in Annex III to the Proposed Commitments.

## **5.6. Third-party developers**

- (63) The Proposed Commitments allow third party developers to develop and maintain a switching tool, that is to say mapping tables. Subject to a monthly license fee, third party developers can use and keep RICs in the switching tools they develop.
- (64) The third party developer rights are set out in a separate license which is included in Annex II to the Proposed Commitments. Third party developers have to pay the same fees as customers, but their monthly fees are limited to USD 3750 and the license is subject to a minimum monthly fee of USD 250. Third party developers may obtain support from alternative vendors of consolidated real-time datafeeds in mapping to that vendor's symbology and may engage in information sharing (with the exclusion of RICs) and close cooperation in relation to the design, build, maintenance, selling and advertising of the switching tool.
- (65) Eligible third party developers exclude any vendor, re-seller or re-distributor of market data that requires symbology for identification and navigation as well as any developer that is directly or indirectly controlling, controlled by or under common control with such a vendor, re-seller or re-distributor of market data.

## **6. COMMISSION NOTICE PURSUANT TO ARTICLE 27(4)**

- (66) In response to the First Market Test Notice, the Commission received 35 responses from interested third parties. Following receipt of the comments, Thomson Reuters substantially revised its Initial Commitments to address the shortcomings identified by market participants and submitted the Revised Commitments (see Recitals 17 to 19).
- (67) The Commission received 27 responses to the Second Market Test Notice. Respondents criticised a number of aspects of the Revised Commitments. These issues are discussed in Sections 6.1 to 6.7.

### **6.1. Complexity of the Revised Commitments – introduction of a Monitoring Trustee**

- (68) Many respondents complained about the complexity of the Revised Commitments and attached licences, which would give rise to uncertainty as regards their interpretation and ultimately might undermine the Revised Commitments' efficiency and effectiveness.
- (69) In the light of these complaints, the Commission recognised that the complexity of the Revised Commitments and the attached licences was liable to hamper the effectiveness and the monitoring of those commitments. The Commission considered that the introduction of a Monitoring Trustee would be a proportionate and adequate response to respondents' concerns.

- (70) Under the Proposed Commitments, Thomson Reuters will appoint, subject to approval by the Commission, a Monitoring Trustee to monitor Thomson Reuters' compliance with the Proposed Commitments, for a period of seven years from the Commencement Date.
- (71) The Monitoring Trustee will do the following:
- provide the Commission with a written report within 3 months of the Commencement Date, and every 6 months after, on Thomson Reuters' compliance with the Proposed Commitments;
  - report to the Commission on an ad-hoc basis if she concludes that Thomson Reuters is failing to comply with the Proposed Commitments;
  - reply to questions from the Commission;
  - propose to the Commission such measures as the Monitoring Trustee considers necessary to ensure Thomson Reuters' compliance with the Proposed Commitments;
  - report on the outcome of the dispute resolution procedure set out in the Annex IV to the Proposed Commitments.
- (72) The Monitoring Trustee shall be independent of Thomson Reuters and its competitors. Thomson Reuters shall provide the Monitoring Trustee with all cooperation, assistance and information required and shall pay the costs associated with the Monitoring Trustee.

## **6.2. Limitation of ERL for usage in server-based applications**

- (73) A number of respondents argued that the Revised Commitments should also cover the use of RICs in desktop-based applications (in addition to server-based applications), in particular desktop-based applications that are not part of integrated desktop products such as Thomson Reuters' 3000extra. The respondents argued that distinguishing between server-based applications and desktop-based applications is unjustified, since both applications *receive information from* consolidated real-time datafeeds. Also, customers indicated that it would be difficult to ascertain which application is server-based and which is desktop-based.
- (74) In the light of these remarks, Thomson Reuters offered to remove the distinction between server-based applications and desktop-based applications. The Proposed Commitments accordingly cover desktop-based applications for individual use in addition to server-based applications for enterprise use. The Proposed Commitments will cover all desktop and server-based applications covered by Global Datafeed Licences.
- (75) However, other desktop-based applications that are *currently offered within* Thomson Reuters' desktop licenses for individual usage remain outside the scope of the Proposed Commitments.
- (76) Thomson Reuters offers many desktop-based applications together with integrated desktop products within Packaged Desktop Service licences. It appears impossible to

draw a clear distinction between such desktop-based applications and the integrated desktop products. Consolidated real-time data sold through integrated desktop products such as Thomson Reuters' 3000Xtra, however, does not belong to the same product market as consolidated real-time datafeeds (see Recital 30). Therefore, it would be inappropriate to extend the scope of the remedies to desktop-based applications other than those covered by Global Datafeed Licenses.

### **6.3. No access to RICs for competing market data vendors**

- (77) Some respondents considered that competing market data vendors should receive access to RICs, since they would be in the best position to provide mapping services and technical assistance. This would also create the possibility for a solution whereby customers would only have to deal with one counterparty (preferably the alternative vendor), instead of two.
- (78) The Commission considers that granting access to RICs to Thomson Reuters' competitors would go beyond what is necessary to remedy the competition concerns.
- (79) In any event, under the Proposed Commitments, third party developers will be allowed to provide competing market data vendors with descriptive reference data related to RICs (although not the RICs themselves) when the third party developers have themselves been unable to successfully complete mapping. This exchange of information will allow the competing market data vendors to map their own symbology for the same reference data in a way that permits the third party developers to undertake accurate and efficient mapping.
- (80) In addition, several examples of increased cooperation between third-party developers and alternative market data vendors have been included in the Proposed Commitments. In particular, cooperation in relation to the design, build, maintenance, selling and advertising of the mapping services, as well as for the provision of after sales support is now expressly allowed.

### **6.4. Thomson Reuters' quality of service**

- (81) Certain respondents were of the opinion that Thomson Reuters should guarantee the quality, the comprehensiveness and the timely provision of RICs updates and cross reference data identifying the financial instruments in question.
- (82) In the light of these comments, Thomson Reuters committed to provide the same level of service regarding the provision of RICs updates and cross-referencing data to ERL licensees as to the users of its consolidated real-time datafeeds.
- (83) Under the Proposed Commitments, Thomson Reuters will also make reasonable efforts to assist third-party developers and customers in the resolution of data queries in respect of the cross-referencing information provided by Thomson Reuters insofar as required to develop and maintain an effective switching tool, where this is within Thomson Reuters' reasonable control. The Monitoring Trustee will report to the Commission on his views regarding whether Thomson Reuters used reasonable efforts in assisting the third party developers and customers to resolve these data queries in a timely and effective manner.



## **6.5. Exclusion of switching to direct feeds**

- (84) Many market participants requested that under the ERL customers should also be allowed to use RICs to retrieve data from direct real-time datafeeds. Currently, customers cannot use RICs to retrieve data from direct real-time datafeeds, but many would like to do so to complement their purchase of consolidated real-time datafeeds. Certain respondents were in favour of an extension of the commitments to allow switching to direct real-time datafeeds, that is to say switching to datafeeds that are not sold by a data vendor that aggregates feeds but by the data originator itself, for example an exchange.
- (85) The Commission considers that these requests go beyond the competition concerns identified in the Preliminary Assessment. As noted in Section 4.2.1, direct feeds are not substitutable with consolidated real-time datafeeds and appear to form part of a separate product market in which Thomson Reuters is not necessarily dominant.

## **6.6. Extension of the commitments to other data**

- (86) A number of respondents questioned the limitation of the ERL to retrieval of real-time pricing data. They argued that the ERL should also cover other types of data, such as reference data or end of day data.
- (87) The Commission considers that such an extension of coverage would go beyond the competition concerns identified in the Preliminary Assessment. RICs are frequently used by market participants in relation to data outside the definition of the relevant market in the present case and in areas in which there is currently no evidence that Thomson Reuters is the dominant provider.
- (88) One respondent argued that financial news is carried within Thomson Reuters' consolidated real-time datafeeds and therefore should be covered by the commitments. However, financial news is not distributed as part of the Thomson Reuters Consolidated Real-time Service, but under licences for integrated desktop products, which are outside the scope of this Decision.

## **6.7. RICs' additional usage rights for a monthly fee**

- (89) Certain market respondents argued that RICs are not protected by intellectual property rights and requested that RICs should be made available to all market participants for all usage scenarios free of charge or at a very low fee.
- (90) The Commission does not take a view on whether RICs are protected by intellectual property rights. To address the competition concerns identified in the Preliminary Assessment, it is not necessary that RICs are made universally available free of charge. The fees charged for the use of RICs must be set at a level that makes switching effective and economically viable. The Commission takes the view that the level of the fees set out in the Proposed Commitments is adequate from that perspective.

## **6.8. Conclusion**

- (91) The commitments proposed by Thomson Reuters address the concerns expressed in the Preliminary Assessment adequately.

## **7. PROPORTIONALITY**

### **7.1. Principles**

(92) The principle of proportionality requires that the measures adopted by institutions of the Union must be suitable and not exceed what is appropriate and necessary for attaining the objective pursued.<sup>18</sup>

(93) In the context of Article 9 of Regulation No 1/2003, application of the principle of proportionality entails, first, that the commitments in question address the concerns expressed by the Commission in its Preliminary Assessment and, second, that the undertakings concerned have not offered less onerous commitments that also address those concerns adequately.<sup>19</sup> When carrying out that assessment, the Commission must take into consideration the interests of third parties.<sup>20</sup>

### **7.2. Application in the present case**

(94) This Decision makes binding the Proposed Commitments offered by Thomson Reuters on 7 November 2012, having been revised in the light of the responses to the Second Market Test Notice. These commitments address the concerns identified by the Commission in its Preliminary Assessment.

(95) Thomson Reuters has not offered less onerous commitments in response to the Preliminary Assessment that also address the Commission's concerns adequately. In particular, the Initial Commitments offered by Thomson Reuters on 8 November 2011 would not have addressed the Commission's concerns adequately and effectively.

(96) The Commission has taken into consideration the interests of third parties, including those of the interested third parties that have responded to the notices published on 14 December 2011 and 12 July 2012 pursuant to Article 27(4) of Regulation (EC) No 1/2003.

(97) This Decision accordingly complies with the principle of proportionality.

## **8. CONCLUSION**

(98) This Decision makes the Proposed Commitments, offered on 7 November 2012 by Thomson Reuters, binding upon it in accordance with Article 9(1) of Regulation (EC) No 1/2003.

(99) The Commission does not conclude whether or not there has been or still is an infringement. The Commission's assessment of whether the commitments offered are sufficient to meet its concerns is based on its Preliminary Assessment, representing the preliminary view of the Commission based on the underlying

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<sup>18</sup> See for instance, Case T-260/94 *Air Inter v. Commission* [1997] ECR II-997, paragraph 144 and Case T-65/98 *Van den Bergh Foods v. Commission* [2003] ECR II-4653, paragraph 201.

<sup>19</sup> Case C-441/07 P *Commission v Alrosa*, [2010] ECR I-5949, paragraph 41.

<sup>20</sup> Case C-441/07 P *Commission v Alrosa*, [2010] ECR I-5949, paragraph 41.

investigation and analysis, and the observations received from third parties following the publication of a notice pursuant to Article 27(4) of Regulation (EC) No 1/2003.

- (100) In the light of the Commitments offered, the Commission considers that there are no longer grounds for action on its part and, without prejudice to Article 9(2) of Regulation (EC) No 1/2003, the proceedings in this case should therefore be brought to an end.

HAS ADOPTED THIS DECISION:

*Article 1*

The Commitments set out in the Annex shall be binding on Thomson Reuters for a period of seven years following the commencement date on which Thomson Reuters starts making the Extended RIC Licence and the Third Party Developer Licence available to its customers and third party developers. The commencement date shall be no later than six months from the date on which Thomson Reuters is notified of this Decision.

*Article 2*

It is hereby concluded that there are no longer grounds for action by the Commission and the proceedings in this case should therefore be brought to an end.

*Article 3*

This Decision is addressed to:

Thomson Reuters Corporation (3 Times Square, New York, NY 10036, United States).

Reuters Limited (The Thomson Reuters Building, 30 South Colonnade, Canary Wharf, London E14 5EP, United Kingdom).

Done at Brussels, 20.12.2012

*For the Commission*

*Joaquin Almunia  
Vice-President*