



EUROPEAN COMMISSION
DG Competition

Case M.10108 – S&P GLOBAL / IHS MARKIT

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERCER PROCEDURE**

Decision on the implementation of the commitments -
Purchaser approval
Date: 24/05/2022



EUROPEAN COMMISSION

Brussels, 24.5.2022
C(2022) 3541 final

PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

S&P Global, Inc.
55 Water Street
New York, NY 10041
United States of America

IHS Markit Ltd.
4th Floor, Ropemaker Place
Ropemaker Street
London, EC2Y 9LY
England

Dear Sir or Madam,

**Subject: Case M.10108 – S&P Global/IHS Markit
Approval of Morningstar as purchaser of the LCD Divestment Business
following your letter of 7 April 2022 and the Trustee’s opinion of 16 May
2022**

1. FACTS AND PROCEDURE

- (1) By decision of 22 October 2021 (“the Decision”) based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation (EC) No 139/2004,¹ the Commission declared the operation by which S&P Global, Inc. (“S&P”, USA) acquired sole control of IHS Markit Ltd. (“IHSM”, UK) (“the Transaction”) compatible with the internal market following modification by S&P and IHSM,

¹ OJ L 24, 29.1.2004, p.1 (the “Merger Regulation”).

subject to conditions and obligations laid down in the commitments annexed to the Decision (“the Commitments”). S&P and IHSM are hereinafter collectively referred to as the “Parties”.

- (2) The Commitments consist of three components, that is the CUSIP Commitments, the LCD/LLI Commitments and the OPIS/CMM Commitments.²
- (3) Under the LCD/LLI Commitments (hereinafter referred to as the “LCD/LLI Commitments”), the Parties commit to divest the entirety of S&P’s business in the supply of:
 - (i) Leveraged loan market intelligence, namely its Leveraged Commentary and Data business (“LCD Business”), including the European Leveraged Loan Index, and the Leveraged Loan Index; as well as
 - (ii) The Leveraged Loan 100 Index family (the “LLI100 Business”).The LCD Business and the LLI100 Business are hereinafter together referred to as the “LCD Divestment Businesses”.
- (4) The main Transaction closed on 28 February 2022. Hereinafter, S&P therefore refers to S&P post-Transaction by which it acquired sole control over IHSM.
- (5) On 3 April 2022, S&P entered into an Asset Purchase Agreements (the “APA”), pursuant to which it agreed to sell and transfer the LCD Divestment Businesses to Morningstar, Inc. (“Morningstar”). The APA, alongside the relevant ancillary documents in agreed form, including the Transition Services Agreement, was submitted to the Commission on 7 April 2022. The APA, alongside the ancillary documents, is hereinafter referred to as the “Transaction Agreement”.
- (6) By a reasoned proposal on 7 April 2022, the Parties proposed Morningstar for approval by the Commission as the purchaser of the LCD Divestment Businesses.
- (7) In its opinion of 16 May 2022 (the “Reasoned Opinion”), pursuant to paragraph 26(h) of the LCD/LLI Commitments, Monitoring Trustee Partners, acting as monitoring trustee (the “Trustee”), concludes that:
 - (i) Morningstar fulfils the criteria of the purchaser requirements as set out in Section D of the LCD/LLI Commitments (the “Purchaser Criteria”); and
 - (ii) on the basis of the Transaction Agreement, the LCD Divestment Business would be sold in a manner consistent with the LCD/LLI Commitments.

2. ASSESSMENT OF THE PROPOSAL

- (8) According to paragraphs 15 and 16 of the LCD/LLI Commitments, in its assessment of the Transaction Agreement, the Commission has to verify:
 - (i) That the purchaser fulfils the Purchaser Criteria; and

² The CUSIP Commitments and the OPIS/CMM Commitments are not further discussed in this decision, as they have been addressed in separate Commission purchaser approval decisions both of 22 February 2022.

- (ii) That the LCD Divestment Businesses are being sold in a manner consistent with the LCD/LLI Commitments including their objective to bring about a lasting structural change in the market.

2.1. Assessment of the Purchaser Criteria

- (9) Morningstar is a Chicago-based investment research firm that compiles and analyses fund, stock, and general market data. It provides financial data and related services in North America, Europe, Australia, and Asia. Morningstar offers an extensive line of products and services for individual investors, financial advisors, asset managers and owners, retirement plan providers and sponsors, institutional investors and service providers in the debt and private capital markets. Morningstar generated approximately EUR 1.5 billion of revenues during the 12-month period ending 31 December 2021, with approximately 70% of its revenues generated in the US.
- (10) As set out in paragraph 15 of the LCD/LLI Commitments, in order to be approved by the Commission, the Purchaser³ must fulfil the following criteria:
 - (i) The Purchaser shall be independent of and unconnected to S&P and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
 - (ii) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the LCD Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors.
 - (iii) The Purchaser shall have obtained the consent of the Loan Syndications and Trading Association (“LSTA”) for the assignment or transfer of the existing partnership agreement with the LCD Divestment Businesses.
 - (iv) The acquisition of the LCD Divestment Businesses by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the LCD Divestment Businesses.
 - (v) The Purchaser shall have the relevant capabilities or access to the resources and infrastructure required for the calculation, administration and operation of an index business to operate successfully long-term.
- (11) The following paragraphs provide an assessment of each of the Purchaser Criteria listed above. Sections 2.1.1., 2.1.3., and 2.1.4. respectively provide an assessment of the Purchaser Criteria (i), (iii), and (iv) listed above, while Section 2.1.2. provides a joint assessment of the Purchaser Criteria listed under points (ii) and (v) above.

³ Capitalised terms in this decision will have the meaning as set out in the LCD/LLI Commitments, unless indicated otherwise.

2.1.1. *Independence from the Parties*

- (12) According to paragraph 15(a) of the LCD/LLI Commitments, the Purchaser shall be independent of and unconnected to S&P and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture). In this respect, the Commission notes the following.
- (13) First, S&P and Morningstar are publicly listed, S&P is listed on the New York Stock Exchange and Morningstar is listed on the Nasdaq Stock Market. S&P and Morningstar do not hold directly or indirectly any shares in each other. While a number of institutional investors are shareholders of both S&P and Morningstar, the Trustee's review revealed that these common shareholders (i) have modest individual shares in S&P and Morningstar, typically below 5% and in no instance exceeding 15%, and (ii) that one common shareholder that holds more than 5% of both S&P's and Morningstar's outstanding share is a company active mostly in passive equity asset management that typically has no incentive to allocate any resources to affect the corporate strategy of the companies it invests in. In addition, no shares of common shareholders confer any special rights and do not constitute a situation of control within the meaning of Article 3 of the Merger Regulation.
- (14) Second, none of the members of the board of directors of S&P is active as a member of the board of directors of Morningstar or vice versa.
- (15) Third, S&P and Morningstar have a number of ordinary course of business commercial relationships (with the two companies purchasing from and selling to each other certain products). In relation to these, the Trustee's review has shown that (i) they can be considered common practice in the financial data industry; and (ii) are immaterial to the overall activities of all parties involved, presenting less than [...] % of each S&P's and Morningstar's total revenues or expenses.
- (16) Fourth, in accordance with the LCD/LLI Commitments, S&P will offer certain transitional services to Morningstar. These agreements, however, have a pre-defined termination date in line with the LCD/LLI Commitments or will be terminated before that date once the services are no longer required by Morningstar. The Trustee therefore considers that the transitional services do not impede the independence of Morningstar from S&P (and vice versa).
- (17) In light of the above, and in line with the Reasoned Opinion,⁴ the Commission concludes that Morningstar is independent of and unconnected to S&P and its Affiliated Undertakings.

2.1.2. *Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor, including the relevant capabilities for the operation of an index business*

2.1.2.1. Financial resources

- (18) According to paragraph 15(b) of the LCD/LLI Commitments, the Purchaser shall have the financial resources to maintain and develop the LCD Divestment Businesses as viable and active competitive forces in competition with the Parties and other competitors. In this respect, the Commission notes the following.

⁴ Reasoned Opinion, Section 4.5.

- (19) Morningstar has a market value of over EUR 10.3 billion (as per 23 March 2022) and is profitable with good financial performance over the past three years. In FY 2021, it generated revenues of approximately EUR 1.5 billion (an increase of more than 22% compared to the previous year). On an EBITDA level, Morningstar shows an average margin of approximately 27.5% during the last three years, during which it demonstrates a continuously improved financial performance. The analysis of Morningstar's financial documentation shows a strong balance sheet with significant cash balances and additional loan capacity if needed.
- (20) In view of the foregoing, the Commission concludes, in line with the Reasoned Opinion,⁵ that Morningstar has sufficient financial resources to develop the LCD Divestment Businesses going forward.
- 2.1.2.2. Proven expertise, including the relevant capabilities for the operation of an index business
- (21) According to paragraph 15(b) of the LCD/LLI Commitments, the Purchaser shall have the proven expertise to maintain and develop the LCD Divestment Businesses as viable and active competitive force in competition with the Parties and other competitors. In addition, pursuant to paragraph 15(e) of the LCD/LLI Commitments, the Purchaser shall have the relevant capabilities or access to the resources and infrastructure required for the calculation, administration and operation of an index business to operate successfully long-term.⁶
- (22) First, the Commission considers, in line with the Reasoned Opinion,⁷ that Morningstar has proven relevant expertise as an established player in the global financial services sector. Morningstar has more than 20 years of experience in the index business with over 25,000 indexes being calculated, over 185 investment products linked to Morningstar indexes, EUR 126 billion in assets under management and EUR 406 billion benchmarked to Morningstar indexes. The Trustee further explains that Morningstar provides index solutions across all major asset classes and strategies, including fixed income, equity, multi-asset, alternatives, thematic, and sustainable. Importantly, Morningstar has significant proven expertise in operating both indices and news/research focussed businesses.
- (23) Second, specifically in relation to the relevant capabilities or access to the resources and infrastructure required for the calculation, administration and operation of an index business to operate successfully long-term, the Commission notes the following. Morningstar's wholly owned subsidiary Moorgate Benchmarks GmbH ("Moorgate") is registered by the Bundesanstalt für Finanzdienstleistungsaufsicht in Germany under article 34 of the EU Benchmark Regulation⁸ to carry on the regulated activity of administering a benchmark, and

⁵ Reasoned Opinion, Section 6.2.

⁶ Any potential purchaser that would currently be considered a third country benchmark administrator under EU-Regulation 2016/1011 of the European Parliament and of the Council of June 8, 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (the "EU Benchmark Regulation") would need to show credible plans to acquire equivalence or prior recognition following the end of relevant transition periods currently applicable, i.e. 31.12.2023. Given that Morningstar operates an EEA-based benchmark administrator, through its subsidiary Moorgate, it is not to be regarded a third country benchmark administrator under the EU Benchmark Regulation.

⁷ Reasoned Opinion, Section 6.3.2.

⁸ See footnote 6 above.

Morningstar would therefore not require any additional regulatory licensees to operate the LCD Business. Moorgate currently calculates more than 300 indices, distributing index values through several dissemination agents including Nasdaq and Börse Stuttgart GmbH. Moorgate provides governance and regulatory oversight services for certain of its clients. Additionally, it takes on index administration for certain other clients, which provides appropriate structures and policies to satisfy those clients' regulatory requirements.

- (24) In view of the foregoing, the Commission concludes, in line with the Reasoned Opinion,⁹ that Morningstar has sufficient proven expertise to develop the LCD Divestment Businesses going forward, including the relevant capabilities or access to the resources and infrastructure required for the calculation, administration and operation of an index business to operate successfully long-term.

2.1.2.3. Incentives to maintain and develop the business

- (25) As per paragraph 15(b) of the LCD/LLI Commitments, the Purchaser shall have the incentive to maintain and develop the LCD Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors.

- (26) In this respect, according to the Reasoned Opinion, Morningstar's business plan demonstrates that Morningstar is an industrial buyer, who intends to maintain the strong market position and further develop the LCD Divestment Businesses. Morningstar explains that LCD Divestment Businesses' news and market insights on the private debt/loan markets align with the capabilities of Morningstar in private equity markets, and anticipates that LCD Divestment Businesses' data and research would closely complement Morningstar's current offering. In this respect, Morningstar has the incentives to further expand the combined offering of Morningstar and the LCD Divestment Businesses and its penetration, which would contribute to Morningstar's broader strategic goals and open important new market opportunities.

- (27) Further, Morningstar's history of past acquisitions underlines its capacity and incentives to integrate acquired businesses successfully. Some of the relevant previous acquisitions include the acquisitions of DBRS,¹⁰ the fourth largest global credit rating agency, and of Pitchbook, a provider of data, research, and technology covering the private capital markets. In both those cases, Morningstar demonstrated the ability to develop and grow the acquired businesses.

- (28) Based on the information above, and in line with the Reasoned Opinion,¹¹ the Commission considers that Morningstar has the incentives to maintain and develop the LCD Divestment Businesses.

2.1.2.4. Conclusion

- (29) Based on the above considerations, and in line with the Reasoned Opinion,¹² the Commission concludes that Morningstar fulfils the criteria of having the financial resources, proven expertise and incentive to maintain and develop the LCD

⁹ Reasoned Opinion, Section 6.3.

¹⁰ Acquisition of Ratings Acquisitions Corp., the parent company for DBRS Limited (Canada), DBRS Inc. (US), DBRS Ratings Limited (UK) and DBRS Ratings GmbH (Germany).

¹¹ Reasoned Opinion, Section 6.4.

¹² Reasoned Opinion, Section 6.

Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors, as well as the relevant capabilities or access to the resources and infrastructure required for the calculation, administration and operation of an index business to operate successfully long-term.

2.1.3. *Consent of LSTA*

- (30) According to paragraph 15(c) of the LCD/LLI Commitments, the Purchaser shall have obtained the consent of the LSTA for the assignment or transfer of the existing agreement between itself and the LCD Divestment Businesses to the Purchaser.
- (31) In this respect, the Commission notes that LSTA expressed its consent for the assignment or the existing agreement between LSTA and the LCD Divestment Businesses to Morningstar, as evidenced by the consent letter signed by S&P and LSTA, dated 4 April 2022.
- (32) Based on the information above, and in line with the Reasoned Opinion,¹³ the Commission notes that Morningstar has received the consent of LSTA as required by the LCD/LLI Commitments.

2.1.4. *Absence of prima facie competition concerns*

- (33) According to paragraph 15(d) of the LCD/LLI Commitments, the acquisition of the LCD Divestment Businesses by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the LCD Divestment Businesses.
- (34) First, according to the information available to the Commission, Morningstar is not active in the provision of leveraged loan market intelligence or leveraged loan indices. With respect to other plausible relevant markets (the broader debt-related market intelligence market or fixed income indices market) in which the LCD Divestment Businesses are active, the Commission notes that Morningstar has only very limited activities in fixed income indices.¹⁴ Therefore, the acquisition of the LCD Divestment Businesses by Morningstar does not lead to any prima facie competition concerns in this respect.
- (35) Second, certain vertical relationships exist between the LCD Divestment Businesses and Morningstar, whereby Morningstar is active in certain markets that could be considered as vertically linked to those of the LCD Divestment Businesses.¹⁵ However, the Commission notes, in accordance with the Trustee's review,¹⁶ that in any potentially adjacent or vertically related markets (i) the market

¹³ Reasoned Opinion, Section 6.6.

¹⁴ Morningstar licenses US fixed income indices for the creation of funds and in the form of market data, but its position is small overall. The most important position is in the market of US SA long-term bonds indices for the creation of funds (level 3) where Morningstar has a market share of [10-20]% in 2020 according to data provided by the Parties, see Form CO, Annex A1. The Parties are not active in this specific market.

¹⁵ In particular, Morningstar has activities in desktop services (which include the distribution of indices), index calculation and administration services, and credit rating issuance.

¹⁶ Reasoned Opinion, Section 6.5.2.

share of Morningstar and the LCD Divestment Businesses is below 30%, and (ii) the links concern inputs that could not be considered as important inputs. Therefore, any vertical relationships arising from the acquisition of the LCD Divestment Businesses by Morningstar are unlikely to create prima facie competition concerns.

- (36) Finally, the acquisition of the LCD Divestment Business does not require regulatory licenses or merger control filings in the EEA or any other jurisdiction, apart from an approval process in the United States under the HSR Act, which was filed on 15 April 2022 and for which the waiting period under the HSR Act expired on 16 May 2022 with no action from the US DoJ. As Morningstar has already obtained all other necessary approvals, these are not expected to delay the implementation of the LCD/LLI Commitments.
- (37) In light of the above, and in line with the Reasoned Opinion,¹⁷ the Commission considers that the acquisition of the LCD Divestment Businesses by Morningstar is unlikely to create, in light of the information available to the Commission, prima facie competition concerns or give rise to a risk that the implementation of the Commitments will be delayed.

2.2. The LCD Divestment Businesses are being sold in a manner consistent with the LCD/LLI Commitments

- (38) According to paragraph 16 of the LCD/LLI Commitments, in its assessment of the Transaction Agreement, the Commission has to verify that the LCD Divestment Businesses are being sold in a manner consistent with the LCD/LLI Commitments including their objective to bring about a lasting structural change in the market.
- (39) The Trustee performed a detailed comparison between the Transaction Agreement and the LCD/LLI Commitments, and observed no deviations between the LCD/LLI Commitments and the Transaction Agreement. For completeness, the APA explicitly specifies that if there is any conflict between the terms of the Transaction Agreement and the requirements of the LCD/LLI Commitments, the Parties will comply with the LCD/LLI Commitments. In addition, the Trustee discussed this matter with Morningstar and confirms that Morningstar is fully satisfied with the manner the LCD/LLI Commitments are reflected in the Transaction Agreement.
- (40) Based on the information above, and in line with the Reasoned Opinion,¹⁸ the Commission considers that the LCD Divestment Businesses are being sold in a manner consistent with the LCD/LLI Commitments including their objective to bring about a lasting structural change in the market.

3. CONCLUSION

- (41) On the basis of the above assessment, the Commission approves Morningstar as a suitable purchaser for the above-mentioned reasons.
- (42) On the basis of the Transaction Agreement, the Commission further concludes that the LCD Divestment Business is being sold in a manner consistent with the LCD/LLI Commitments.

¹⁷ Reasoned Opinion, Section 6.5.

¹⁸ Reasoned Opinion, Section 5.4.

- (43) This decision only constitutes approval of the proposed purchaser identified herein and of the Transaction Agreement. This decision does not constitute a confirmation that Parties have complied with their Commitments.
- (44) This decision is based on paragraph 16 of the LCD/LLI Commitments attached to the Commission Decision of 22 October 2021.

For the Commission

(Signed)
Olivier GUERSENT
Director-General