



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
MERGER PROCEDURE**

Decision on the implementation of the commitments -
Purchaser approval
Date: 22/02/2022



EUROPEAN COMMISSION

Brussels, 22.2.2022
C(2022) 1241 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 FactSet as purchaser of the CUSIP Divestment Business
following your reasoned submission of 31 December 2021 and the Trustee’s
opinion of 14 February 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)

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

acquires sole control of IHS Markit Ltd. (“IHSM”, UK) (“the Transaction”) compatible with the internal market following modification by S&P and IHSM, 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 CUSIP Commitments, the Parties commit to divest the CUSIP Divestment Business, which consist of CUSIP Global Services (“CGS”), part of S&P Global Market Intelligence (“SPGMI”). CGS is the business which performs CUSIP issuance and data licensing on behalf of the American Bankers Association (“ABA”, US). The ABA owns the CUSIP system (including all intellectual property rights therein). The relationship between CGS and the ABA has been governed by the agreement (being an exclusive license) entered into in 1968 and subsequently extended and amended over the years (“the ABA agreement”). Most recently [...].
- (4) On 24 December 2021, S&P and FactSet Research Systems Inc. (“FactSet”, US) entered into an Asset Purchase Agreement (the “APA”), pursuant to which S&P agreed to sell and transfer the CUSIP Divestment Business to FactSet. The APA, alongside the relevant ancillary documents, including the Transition Services Agreement, was submitted to the Commission on 31 December 2021. Since the signing, the Parties made a number of minor changes to the APA via the amendment document dated 11 February 2022. The APA, alongside the amendment and the ancillary documents, is hereinafter referred to as the “Transaction Agreement”.
- (5) By a reasoned submission of 31 December 2021, S&P proposed FactSet for approval by the Commission as the purchaser of the CUSIP Divestment Business.
- (6) In its opinion of 14 February 2022 (the “Reasoned Opinion”), pursuant to paragraph 27 of the CUSIP Commitments, Monitoring Trustee Partners, acting as monitoring trustee (the “Trustee”), concludes that:
 - (a) FactSet fulfils the criteria of the purchaser requirements as set out in Section D of the CUSIP Commitments (the “Purchaser Criteria”); and
 - (b) on the basis of the Transaction Agreement, the CUSIP Divestment Business would be sold in a manner consistent with the CUSIP Commitments.

2. ASSESSMENT OF THE PROPOSAL

- (7) According to paragraphs 16 and 17 of the CUSIP Commitments, in its assessment of the Transaction Agreement, the Commission has to verify:
 - (a) That the purchaser fulfils the Purchaser Criteria; and

² The OPIS/CMM Commitments and the LCD/LLI Commitments are not further discussed in this decision, and will be addressed in separate purchaser approval decisions.

- (b) That the CUSIP Divestment Business is being sold in a manner consistent with the CUSIP Commitments including their objective to bring about a lasting structural change in the market.

2.1. Assessment of the Purchaser Criteria

- (8) FactSet, founded in 1978 and headquartered in Norwalk, Connecticut, is a financial data and analytics company, which provides integrated financial information and analytical applications to the investment community in the Americas, EMEA and Asia Pacific. The company delivers insight and information through workflow solutions of research, analytics and trading, content and technology solutions, and wealth. It serves portfolio managers, investment banks, asset managers, wealth advisors, corporate clients, and other financial services entities.
- (9) As set out in paragraph 16 of the CUSIP 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 CUSIP Divestment Business as a viable and active competitive force in competition with the Parties and other competitors, including a proven track record in the financial data space.
 - iii. The acquisition of the CUSIP Divestment Business 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 CUSIP Divestment Business.
 - iv. ABA should have consented to the transfer to the Purchaser of its agreement with S&P on equivalent terms and conditions to those effective before the entry into force of the Amendment no.3 (dated 27 September 2021).
 - v. The Loan Syndications and Trading Association (“LSTA”, US) shall have consented to the transfer or assignment of the existing agreement between itself and CGS to the Purchaser.
- (10) The following paragraphs in turn provide an assessment of each of the five Purchaser Criteria listed above.

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

2.1.1. Independence from the Parties

- (11) According to paragraph 16(a) of the CUSIP 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.
- (12) First, the Parties and FactSet are publicly listed on the New York Stock Exchange. S&P and IHSM do not hold directly or indirectly any shares in FactSet (and *vice versa*). While two institutional investors are shareholders of both the Parties and FactSet, with shares greater than 5%, the Trustee's review revealed that these common shareholders are companies active mostly in passive equity asset management that typically have no incentive to allocate any resources to affect the corporate strategy of the companies they invest in.⁴ 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. Further, the top 5 shareholders of S&P, IHSM and FactSet are: for S&P - Vanguard (8.4%), Blackrock (7.3%), Capital Research and Management (6.6%), State Street (4.5%), T. Rowe Price (2.9%); for IHSM - Vanguard (9.8%), Blackrock (6.8%), State Street (3.9%), CPP Investments (3.7%), Wellington (3.1%); and for FactSet - Blackrock (10.8%), Vanguard (9.7%), Baron Capital (7.0%), Loomis (6.2%), Wells Fargo (4.4%). Thus, FactSet only has two out of its top five shareholders in common with S&P and/or IHSM.
- (13) Second, none of the members of the board of directors of S&P and/or IHSM is active as a member of the board of directors of FactSet or vice versa.⁵
- (14) Third, the Parties and FactSet have a number of ordinary course of business commercial relationships (with each purchasing from and selling certain financial data and analytics products to the other). In relation to these, the Trustee's review has shown that (i) they can be considered standard practice in the financial data industry; and (ii) are immaterial to the overall activities of all parties involved, presenting less than [...] of each the Parties' and FactSet's total revenues or expenses.⁶
- (15) Fourth, in accordance with the Commitments, S&P will offer certain transitional services to FactSet. The services are being provided at cost. In case FactSet would require additional services to those agreed at the outset, FactSet can request additional services if and when deemed required for a period of [...] after Closing. Transitional services, however, have a pre-defined termination date [summary of confidential contractual arrangements between FactSet and S&P]FactSet. Depending on the nature of the service being provided, the longest termination date is 12 months after Closing; this term, however, can be extended upon approval of the European Commission. The Trustee therefore considers that the transitional services do not impede the independence of FactSet from S&P.⁷

⁴ Reasoned Opinion, Section 4.2.3.

⁵ Reasoned Opinion, Section 4.2.2.

⁶ Reasoned Opinion, Section 4.3.1.

⁷ Reasoned Opinion, Section 4.4.

- (16) In light of the above, and in line with the Reasoned Opinion,⁸ the Commission concludes that FactSet is independent of and unconnected to the Parties and their Affiliated Undertakings.

2.1.2. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

2.1.2.1. Financial resources

- (17) According to paragraph 16(b) of the CUSIP Commitments, the Purchaser shall have the financial resources to maintain and develop the CUSIP Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. In this respect, the Commission notes the following.

- (18) FactSet has a market capitalisation of EUR 17.3 billion (as at 7 December 2021) and is profitable with good financial performance over the past three years. In FY 2021, it generated revenues of EUR 1.33 billion (an increase of 6.5% compared to the previous year). On an EBITDA level, FactSet shows an average margin of approximately [...] during the last three years. The analysis of FactSet's financial documentation shows a capability to generate significant positive operating cash flows and additional loan capacity if needed.⁹

- (19) In view of the foregoing, the Commission concludes, in line with the Monitoring Trustee,¹⁰ that FactSet has sufficient financial resources to develop the CUSIP Divestment Business going forward.

2.1.2.2. Proven expertise, including a proven track record in the financial data space

- (20) According to paragraph 16(b) of the CUSIP Commitments, the Purchaser shall have the proven expertise, and the incentive, to maintain and develop the CUSIP Divestment Business as a viable and active competitive force in competition with the Parties and other competitors, including a proven track record in the financial data space.

- (21) First, the Commission considers, in line with the Reasoned Opinion,¹¹ that FactSet has proven relevant expertise as a global provider of financial data. In particular, FactSet (i) operates technical infrastructure that supports workflow applications, analytical applications, off-platform APIs and data feeds consumed by over 160,000 users daily from over 6,400 clients geographically dispersed throughout the world and (ii) serves clients from the largest global commercial and investments banks, major asset owners and managers, mutual fund complexes and wealth advisory organizations. As per FactSet, on a year-over-year basis, the retention rate of its clients is over [...].

- (22) Second, with respect to the CUSIP Divestment Business, as a redistributor of CGS products and services, FactSet has expertise in all of the technologies utilized by the underlying architecture of the CUSIP Divestment Business. Therefore, the

⁸ Reasoned Opinion, Section 4.5.

⁹ Reasoned Opinion, Section 6.2.

¹⁰ Reasoned Opinion, Section 6.2.

¹¹ Reasoned Opinion, Section 6.3.2.

above-mentioned structure makes the platform of the CUSIP Divestment Business compatible with FactSet's existing architecture.

- (23) In view of the foregoing, the Commission concludes, in line with the Reasoned Opinion,¹² that FactSet has sufficient proven expertise to develop the CUSIP Divestment Business going forward, including a proven track record in the financial data space.

2.1.2.3. Incentives to maintain and develop the business

- (24) As per paragraph 16(b) of the Commitments, the Proposed Purchaser shall have the incentive to maintain and develop the CUSIP Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
- (25) In this respect, the Reasoned Opinion demonstrates that FactSet is a strategic buyer, who intends to maintain strong and further expand the reach of the CUSIP Divestment Business as well as use the CUSIP Divestment Business' reputation to enhance its existing businesses. FactSet explained to the Trustee that it intends to grow the CUSIP Divestment Business [...]. FactSet explains that it has an incentive to do so also due to the fact that the revenues of the CUSIP Divestment Business will account for [...] of FactSet's total revenues.
- (26) Based on the information above, and in line with the Reasoned Opinion, the Commission considers that FactSet has the incentives to maintain and develop the CUSIP Divestment Business.

2.1.2.4. Conclusion

- (27) Based on the above considerations, and in line with the Reasoned Opinion,¹³ the Commission concludes that the Purchaser fulfils the criteria of having the financial resources, proven expertise and incentive to maintain and develop the CUSIP Divestment Business as a viable and active competitive force in competition with the Parties and other competitors, including a proven track record in the financial data space.

2.1.3. *Absence of prima facie competition concerns*

- (28) According to paragraph 16(c) of the CUSIP Commitments, the acquisition of the CUSIP Divestment Business 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 CUSIP Divestment Business.
- (29) First, according to the information available to the Commission, FactSet is not active in the provision of CUSIPs, or any other products in the broader market for security identifiers. Therefore, the acquisition of the CUSIP Divestment Business by FactSet does not lead to any horizontal overlaps and no prima facie competition concerns in this respect.

¹² Reasoned Opinion, Section 6.3.3.

¹³ Reasoned Opinion, Section 6.4.

- (30) Second, certain vertical relationships exist between the CUSIP Divestment Business and the Parties, whereby FactSet licenses CUSIP data for use in some of its products.¹⁴ However, the Commission notes, in accordance with the Trustee's review,¹⁵ that the market share of FactSet in any potentially adjacent or vertically related markets is below 30%.¹⁶ Therefore, any vertical relationships arising from the acquisition of the CUSIP Divestment Business by FactSet are unlikely to create prima facie competition concerns.
- (31) Finally, the acquisition of the CUSIP Divestment Business does not require any governmental / 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 January 4, 2022 and for which the waiting period under the HSR Act has expired on February 3, 2022 with no action from the US DoJ.¹⁷
- (32) In light of the above, and in line with the Reasoned Opinion,¹⁸ the Commission considers that the acquisition of the CUSIP Divestment Business by the Purchaser 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.

2.1.4. Consent of ABA

- (33) According to paragraph 16(d) of the CUSIP Commitments, the ABA should have consented to the transfer to the Purchaser of its agreement with S&P on equivalent terms and conditions to those effective before the entry into force of the Amendment no.3 (dated 27 September 2021).
- (34) In this respect, the Commission notes that ABA expressed its consent for the transfer of the ABA agreement with S&P and novated said ABA agreement, as evidenced by the ABA novation agreement signed by S&P, FactSet and ABA, dated December 24, 2021.
- (35) Based on the information above, and in line with the Reasoned Opinion,¹⁹ the Commission considers that FactSet has received the consent of ABA.

2.1.5. Consent of LSTA

- (36) According to paragraph 16(e) of the CUSIP Commitments, the LSTA shall have consented to the transfer or assignment of the existing agreement between itself and CGS to the Purchaser.
- (37) In this respect, the Commission notes that LSTA expressed its consent for the transfer or assignment of the existing agreement between LSTA and CGS, as evidenced by the consent letter signed by S&P and LSTA, dated December 20, 2021.

¹⁴ In particular, [...].

¹⁵ Reasoned Opinion, Section 6.5.2.

¹⁶ FactSet confirmed to the Trustee that its market share in any potentially adjacent or vertically related market in which the CUSIP Divestment Business is active is well below 30%, with the maximum estimated market share being [5-10%].

¹⁷ Reasoned Opinion, Section 6.5.3.

¹⁸ Reasoned Opinion, Section 6.5.4.

¹⁹ Reasoned Opinion, Section 6.6.

- (38) Based on the information above, and in line with the Reasoned Opinion,²⁰ the Commission considers that FactSet has received the consent of LSTA.

2.1.6. Conclusion

- (39) In view of the foregoing, the Commission concludes that FactSet meets the Purchaser Criteria as set out in paragraph 16 of the CUSIP Commitments.

2.2. The CUSIP Divestment Business is being sold in a manner consistent with the Commitments

- (40) According to paragraph 17 of the CUSIP Commitments, in its assessment of the Transaction Agreement, the Commission has to verify that the CUSIP Divestment Business is being sold in a manner consistent with the CUSIP Commitments including their objective to bring about a lasting structural change in the market.

- (41) The Commission considers that, in line with the Trustee's detailed comparison between the Transaction Agreement and the Commitments,²¹ there are no deviations between the Commitments and the Transaction Agreement. Further, the Trustee discussed this matter with FactSet and confirms that FactSet is fully satisfied with the manner the Commitments are reflected in the Transaction Agreement.

- (42) Further, the Commission notes that S&P and FactSet have agreed that S&P will cover liabilities arising from any antitrust proceeding relating to the ownership, operation or conduct of the CUSIP Divestment Business prior to the closing of the sale.

- (43) In any case, and for completeness, the Transaction Agreement contains a clause (section 9.13) stating that if there is any conflict between the terms of any transaction document and the requirements of the Commitments as determined by the Commission, S&P and FactSet agree to comply with the Commitments.²²

- (44) Based on the information above, and in line with the Reasoned Opinion,²³ the Commission considers that the CUSIP Divestment Business is being sold in a manner consistent with the CUSIP Commitments including their objective to bring about a lasting structural change in the market.

3. CONCLUSION

- (45) On the basis of the above assessment, the Commission approves FactSet as a suitable purchaser for the above-mentioned reasons.

- (46) On the basis of the Transaction Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the CUSIP Commitments.

²⁰ Reasoned Opinion, Section 6.7.

²¹ Reasoned Opinion, Section 5.4.2.

²² Reasoned Opinion, Section 5.4.4.

²³ Reasoned Opinion, Section 5.4.4.

- (47) This decision only constitutes approval of the proposed purchaser identified herein and of the Transaction Agreement. This decision does not constitute a confirmation that the Parties have complied with their Commitments.
- (48) This decision is based on paragraph 17 of the Commitments attached to the Commission Decision of 22 October 2021.

For the Commission

(Signed)
Olivier GUERSENT
Director-General