

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)

(notified under document C(2012) 4873)

(Text with EEA relevance)

(2012/C 204/08)

1. INTRODUCTION

1. According to Article 9 of Council Regulation (EC) No 1/2003 of 16 December 2002 ⁽¹⁾ the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. SUMMARY OF THE CASE

2. On 19 September 2011 the Commission adopted a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003. The assessment related to the sector for financial information services, more particularly the market for consolidated real-time datafeeds ⁽²⁾. It was addressed to Thomson Reuters Corporation and companies under its direct or indirect control, including Reuters Limited (Thomson Reuters). The Commission has concerns that some of Thomson Reuters restrictive licensing practices with respect to Reuters Instrument Codes (RICs) may amount to an infringement of Article 102 TFEU ⁽³⁾. Proceedings against Thomson Reuters had been opened on 30 October 2009.

3. According to the preliminary assessment:

- (a) Thomson Reuters is dominant in the worldwide market for consolidated real-time datafeeds ⁽⁴⁾.
- (b) Thomson Reuters may have abused its dominant position by imposing on its customers restrictions as regards the use of RICs. Thomson Reuters (a) prohibits its customers from using RICs to retrieve data from consolidated real-time datafeeds from other providers and (b) 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 from other providers ⁽⁵⁾.
- (c) These restrictions appear to create substantial barriers to switching. Thomson Reuters customers use RICs widely in their applications and the staff that operates these applications has become acquainted with the RICs symbology. Due to the restrictions put in place by Thomson Reuters, where RICs have become embedded in applications, switching providers involves the removal of

⁽¹⁾ 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, respectively, 102 of the TFEU. The two sets of provisions are in substance identical. For the purposes of this notice references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82 of the EC Treaty when applicable.

⁽²⁾ This case specifically concerns consolidated real-time datafeeds and does not concern real-time data conveyed via desktop products or via direct feeds. Furthermore, the competition concerns are limited to real-time market data excluding reference data and end-of-day data services.

⁽³⁾ According to Thomson Reuters, RICs are alphanumeric codes that are the retrieval mechanism created and provided by Thomson Reuters to its customers as an integral part of their Thomson Reuters financial information services to identify, navigate and retrieve a structured set of related data items from Thomson Reuters' real-time data collections and distribution network (IDN Integrated Data Network).

⁽⁴⁾ The market investigation showed that direct feeds provided to customers directly by exchanges or MTFs form part of a separate product market.

⁽⁵⁾ Thomson Reuters has stated that it does not prevent its customers of consolidated real-time datafeeds to cross-reference RICs with the symbology of other providers, as long as the resulting database or mapping table is not used to retrieve data from another provider. In other words, Thomson Reuters does not prohibit the creation of mapping tables as such, but it opposes the direct and indirect use of RICs to retrieve real-time data from other providers.

RICs and the recoding of those applications to replace RICs with an alternative symbology. This is an arduous and often excessively costly undertaking. The Commission's preliminary view is that Thomson Reuters has, in effect, locked in its existing consolidated real-time datafeed customers who have embedded RICs in their applications. As a result, other consolidated real-time datafeed providers are not able to compete effectively with Thomson Reuters' on the market for consolidated real-time datafeeds.

4. A first market test in relation to the initial Commitment proposal offered by Thomson Reuters was launched on 14 December 2011 ⁽¹⁾. Market participants were invited to submit comments until 25 January 2012. Following the comments received on this first market test, Thomson Reuters has substantially revised its commitment proposal to address the shortcomings identified by market participants relating to the Commission's competition concerns.
5. The revised commitments differ from the previous commitments in several respects. The main changes are the following:
 - (a) the level of the fee for the Extended RIC License ('ERL') is reduced;
 - (b) the fee structure for the ERL is no longer linked to any existing rebates for Thomson Reuters' consolidated real-time datafeed, is less complex and more transparent;
 - (c) the ERL can be used worldwide by customers with genuine business operations in the EEA ⁽²⁾;
 - (d) the ERL covers RICs of single source 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);
 - (e) the ERL covers human interfaces to server-based applications (at no additional cost);
 - (f) in addition to the initial five year period during which the ERL is available for subscription, there is an option for a customer to extend the subscription window for a nominal fee by a further two years; and
 - (g) a separate license will be available for third party developers to enable them to develop and maintain switching tools for sale to customers to facilitate customer switching.

3. THE MAIN CONTENT OF THE REVISED COMMITMENTS

6. Thomson Reuters does not agree with the Commission's preliminary assessment. It has nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003 in order to meet the Commission's competition concerns. The commitments offered by Thomson Reuters (the 'Commitments') are briefly summarised below. A non-confidential version of the Commitments is published in full in English on the website of the Commission's Directorate-General for Competition at:

http://ec.europa.eu/competition/index_en.html

7. The Commitments consist in offering a licence to Thomson Reuters existing and future RT Service ⁽³⁾ customers (an ERL) which grants them an option to license additional RIC symbology usage rights for the purpose of switching providers of consolidated real-time datafeeds. This license allows them, against

⁽¹⁾ OJ C 364, 14.12.2011, p. 21.

⁽²⁾ For the purposes of the commitments, the EEA includes also Switzerland.

⁽³⁾ Thomson Reuters commercialises its consolidated real-time market datafeed offer for enterprise-wide usage under the name Thomson Reuters Real-time Service ('RT Service' — previously known as Reuters Datascope Real-Time Service, i.e. RDRT) for consumption in server-based applications. For the purposes of the scope of the Commitments, the definition of the RT Service has been extended to cover all other Thomson Reuters real-time data licenses which license data for enterprise wide usage in server-based applications. Human operators will also be able to continue to use RICs in software user interfaces associated with server-based applications to access, view and validate data from another vendor's consolidated real-time datafeed to facilitate switching at no additional costs. Applications which are currently fed under Thomson Reuters' desktop licenses for individual usage (and not for enterprise wide usage) are outside the scope of the proposed Commitments.

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 to alternative consolidated real-time datafeed providers. In addition, Thomson Reuters would provide ERL licensees with regular and timely updates of the relevant RICs including, where applicable, the necessary information linked to the RIC (i.e. relevant trading venue, source, official code, currency and/or description). The ERL does not affect any usage rights in relation to RICs which customers already enjoy under their current contractual relationship with Thomson Reuters.

8. The Commitments cover (i) customers that will partially and/or fully switch away from Thomson Reuters consolidated real-time datafeeds to an alternative consolidated real-time datafeed; and (ii) customers that will subscribe to a third party consolidated real-time datafeed in addition to Thomson Reuters RT service without switching away from the latter (for example, as a back-up solution in the case of emergency outages or to enable the testing of the functionalities and reliability of new consolidated real-time datafeeds).
9. In the case of a partial switch, Thomson Reuters commits not to discriminate against its customers switching to other consolidated real-time datafeed supplier(s) as regards the terms on which the Thomson Reuters RT Service is supplied. Customers that use the ERL to fully switch away from Thomson Reuters are not required to subscribe to any other license or service offered by Thomson Reuters.
10. The ERL will be available for subscription by customers for a period of five years. In addition, customers who have not subscribed to the ERL within this initial five year period can purchase an option to subscribe to the ERL for a USD 150 per month administrative fee. This option needs to be exercised within two years after the initial five year subscription period (therefore providing customers with the ability to subscribe to the ERL within a seven year window). Upon subscription, the extended license is granted to customers in perpetuity, subject to payment of the relevant fee.
11. The remedy would apply to all RIC symbols directly associated with the price for an individual financial instrument or a value for index carried on Thomson Reuters RT service, hence inter alia (i) data from exchanges and Multilateral Trading Facilities (MTFs); and (ii) OTC traded instruments that are not listed on exchanges or MTFs. RICs related to instruments traded OTC for which Thomson Reuters sources the data from a single contributor who is identifiable by the RIC ('single source RICs') are included at the request of customers, subject to consent of the relevant data contributor. RICs for which the content is only available from Thomson Reuters are excluded as long as the content is not made available by the data contributor to the competing provider of consolidated real-time datafeeds to which the customer is switching.
12. Thomson Reuters will furthermore provide the information necessary to facilitate the ability of customers to cross-reference RICs to the symbology of other providers in a timely fashion.
13. The proposed licence can be used worldwide in server-based applications provided that the customer has genuine business operations in the EEA.
14. 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 a customer will have to pay USD 0,01 per RIC per month. The fee to be paid per RIC will then decrease the more RICs a customer wishes to license⁽¹⁾. The fee schedule also contains a minimum monthly fee of USD 750.

⁽¹⁾ Between 50 001 and 500 000 RICs the fee per RIC will be USD 0,005; between 500 001 and 3 000 000 RICs it will be USD 0,002 and above 3 000 001 it will be USD 0,001. Fees are subject to escalation in line with general inflation.

15. 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 customers under the Commitments. 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. For details on the ERL fee schedule please consult the non-confidential version of the Commitments as published on the website of the Directorate-General for Competition (Annex III).
16. The Commitments also allow third party developers to develop and maintain a switching tool (i.e. mapping tables) on behalf of customers. Eligible third party developers (excluding any market data vendor) can use and keep RICs in the switching tools they develop for a variety of customers against the payment of a monthly license fee.
17. The third party developer rights described above are included in a separate third party developer license which is attached to the proposed Commitments as Annex II. Third party developers have to pay the same fees as customers, but their monthly fees are capped at USD 3 750 and the license is subject to a minimum monthly fee of only 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 joint advertising to prospective customers.

4. INVITATION TO MAKE COMMENTS

18. The Commission intends, subject to market testing, to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring the revised Commitments summarised above and published on the Internet, on the website of the Directorate-General for Competition, to be binding. If there are substantial changes to the Commitments a new market test will be launched.
19. In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the Commitments.
20. Comments should preferably be reasoned and should set out the relevant facts. If you identify a problem with any part of the proposed Commitments, please suggest a possible solution.
21. The time-limit to submit observations expires four weeks after the date of publication of this Notice. Interested parties are asked to submit a non-confidential version of their comments, in which business secrets and other confidential passages are deleted and are replaced as required by a non-confidential summary or by the words 'business secret' or 'confidential'.
22. Observations can be sent to the Commission under reference number 'Case COMP/39.654 — RICs' either by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax (+32 22950128) or by post, to the following address:

European Commission
Directorate-General for Competition
Antitrust Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
