

## PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

### EUROPEAN COMMISSION

#### Notice 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(2011) 9391)

(Text with EEA relevance)

(2011/C 364/09)

#### 1. INTRODUCTION

(1) According to Article 9 of Council Regulation (EC) No 1/2003 of 16 December 2002<sup>(1)</sup>, 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.

infringement of Article 102 of the TFEU<sup>(3)</sup>. Proceedings against Thomson Reuters were opened on 30 October 2009.

(3) According to the preliminary assessment, Thomson Reuters is dominant in the worldwide market for consolidated real-time datafeeds.

(4) 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<sup>(4)</sup>.

#### 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<sup>(2)</sup>. It was addressed to Thomson Reuters Corporation and companies under its direct or indirect control, including Thomson Reuters Limited ('Thomson Reuters'). The Commission has concerns that some of Thomson Reuters' licensing practices with respect to Reuters Instrument Codes (RICs) may amount to an

(5) These restrictions appear to create substantial barriers to switching. Thomson Reuters' customers use RICs widely in their server-based applications and the staff that operates these applications has become acquainted with the RICs

<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, 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.

<sup>(2)</sup> This case specifically concerns consolidated real-time datafeeds and does not concern real-time data conveyed via desktop products.

<sup>(3)</sup> 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).

<sup>(4)</sup> 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.

symbology. Due to the restrictions put in place by Thomson Reuters, where RICs have become embedded in server-based applications, switching providers involves the removal of 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.

### 3. THE MAIN CONTENT OF THE OFFERED 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, 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 Directorate-General for Competition at: [http://ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html)
- (7) The Commitments consist in offering a licence to Thomson Reuters' existing and future RT Service<sup>(1)</sup> customers (an Extended RIC Licence or 'ERL'<sup>(2)</sup>), which grants them additional RIC symbology usage rights. This would allow them, against 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 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).
- (8) The Commitments cover: (i) customers that will partially and/or fully switch away from Thomson Reuters' consolidated real-time datafeeds to an alternative
- (9) The extended RIC symbology licence will be granted in perpetuity and will be made available through the Commitments for a period of five years. Thus, a customer can obtain the extended RIC symbology licence from Thomson Reuters within a five-year window, but will then be able to continue using this licence without any limitation in time, subject to payment of the relevant fee and compliance with the other terms of the licence.
- (10) The remedy would apply to all RIC symbols directly associated with the price for an individual financial instrument or a value for an index carried on Thomson Reuters' RT Service, hence inter alia to: (i) data from exchanges and multilateral trading facilities (MTFs); and (ii) most OTC-traded instruments that are not listed on exchanges or MTFs<sup>(4)</sup>. Only 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 excluded<sup>(5)</sup>.
- (11) Thomson Reuters will furthermore provide the information necessary to facilitate the ability of customers to cross-reference RICs to the symbology of other providers. The Commitments would also allow customers to turn to third party developers to develop switching tools to facilitate switching, and to authorise these third party developers to use the software they have developed for multiple clients where each of the clients has subscribed to the ERL. The third parties would however acquire no rights in the RIC symbology itself.

<sup>(1)</sup> Thomson Reuters commercialises its consolidated real-time market datafeed offer 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.

<sup>(2)</sup> See Annex II to the Commitments.

<sup>(3)</sup> See clause 6.4.2 of the Commitments.

<sup>(4)</sup> According to Thomson Reuters, composite RICs representing a single aggregated price from all validated contributors which identify financial instruments (aggregated contributed RICs) represent over 95 % of global liquidity and are included in the scope of the commitment.

<sup>(5)</sup> According to Thomson Reuters, instruments traded OTC for which Thomson Reuters sources the data from a single source account for less than 5 % of global liquidity.

- (12) There are other types of licences that are already granted by Thomson Reuters under commercial terms and which are not included in the ERL. For example, the development of switching tools requires a development right licence from Thomson Reuters. Secondly, Thomson Reuters grants a transaction processing licence to customers wishing to use RICs as identifiers within straight through processing. This concerns for example redistribution of RICs to other parties by Thomson Reuters' customers. Thomson Reuters commits not to discriminate against either its customers switching to other consolidated real-time datafeed supplier(s) on the terms of such other licences or third parties developing software or technology that facilitates ERL licensees to switch <sup>(1)</sup>.
- (13) Geographically, the proposed licence is in principle limited to applications of clients which serve EEA-based business. However, applications that serve businesses elsewhere are also included if 'reasonably required' to give effect to switching for the benefit of the client's EEA-based business <sup>(2)</sup>. Thomson Reuters has provided a set of examples of cases in which this condition is deemed to be fulfilled. The examples are integrated in the Commitments as Annex IV.
- (14) The monthly ERL licence fees that Thomson Reuters intends to charge mirror the structure of the commercial terms relating to the data it currently delivers for use in server-based applications <sup>(3)</sup>. The fees are based on the number of RIC symbols a client wishes to licence to retrieve data from a competitor in a given business activity. 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 small proportion of the Thomson Reuters' consolidated real-time datafeed price for the same scope of licensed RICs and usage. The fee schedule also contains a minimum monthly fee of USD 750. 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 I).
- (16) 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.
- (17) In addition, the Commission asks interested parties in particular to give their views on the following questions regarding the switching away by a customer of a server-based application from the Thomson Reuters' RT Service to an alternative provider of consolidated real-time datafeeds:
- (a) Does the level of fees — including the minimum fee — permit a decrease in symbology-related switching costs that is sufficient to make it viable for Thomson Reuters' customers to switch to an alternative provider if they should wish to do so? Please provide us with estimates of the following:
- (i) the ERL fees your company would need to pay in case of switching partially and/or totally away from Thomson Reuters' consolidated real-time datafeed;
- (ii) the proportion the ERL fees would represent of the initial consolidated real-time datafeed fee (in each case after applicable discounts) that your company is currently paying to Thomson Reuters: (i) 1-3 %; (ii) 4-6 %; (iii) 7-9 %; or (iv) above 10 %; and
- (iii) the fee category that would apply to your company per month for each business activity (see the fee schedule at Annex I to the Commitments).
- (b) Do you consider that regular updates of the RICs are an essential part of the ERL licence that is needed by your company to facilitate switching of consolidated real-time datafeed providers?
- (c) Do you consider that the limitation of the ERL to switching of only server-based applications (not specifically covering any use by their human operators) is sufficient to remedy the RIC-related concerns expressed by the Commission above?

#### 4. INVITATION TO MAKE COMMENTS

- (15) The Commission intends, subject to market testing, to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring the 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.

<sup>(1)</sup> See clauses 6.4 and 6.5 of the Commitments.

<sup>(2)</sup> EEA under the Commitments includes Switzerland.

<sup>(3)</sup> I.e. consolidated real-time datafeed under the RT Service.

- (d) The geographic scope of the Commitments is limited to server-based applications that serve business in the EEA. They include server-based applications that serve business elsewhere if 'reasonably required'. Do you consider that this is sufficient to allow EEA-based business to benefit from the Commitments and to switch provider if they wished to do so? If not, please explain why the proposed geographic scope would hamper your ability to switch provider for your EEA-based business. Please list, if applicable, further examples, in addition to those provided by Thomson Reuters in Annex IV.
- (e) According to Thomson Reuters, the RICs covered by the remedy account for 95 % of global liquidity. Thomson Reuters states that it is neither necessary nor workable to include OTC RICs that uniquely identify an individual contributor and its price within the scope of the remedy. Do you agree that this is sufficient for an effective remedy?
- (f) Please provide information on possible third parties who have the capacity and/or commercial incentive to develop switching tools to facilitate customer switching. Please also estimate, if possible, the expected magnitude of costs for customers of such a service.
- (g) Do you consider the non-discrimination provisions in the Commitments by Thomson Reuters in relation to other licences (see paragraphs 8 and 12 above) sufficient and appropriate: (i) for customers that wish to switch to another provider; and (ii) for third party developers aspiring to facilitate switching?
- (18) Answers and 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.
- (19) The time limit to submit observations expires six weeks after the date of publication of this Notice. Interested parties are asked to submit a non-confidential version of their comments, in which commercial secrets and other confidential passages are deleted and are replaced as required by a non-confidential summary or by the words 'commercial secrets' or 'confidential'.
- (20) 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:

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