Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

15 September 2016*

(Competition — Abuse of a dominant position — Worldwide market for consolidated real-time datafeeds — Decision making the commitments offered by the dominant undertaking binding — Article 9 of Regulation (EC) No 1/2003)

In Case T-76/14,

Morningstar, Inc., established in Chicago, Illinois (United States of America), represented by S. Kinsella, K. Daly, P. Harrison, Solicitors, and M. Abenhaïm, lawyer,

applicant,

v

European Commission, represented by F. Castilla Contreras, A. Dawes and F. Ronkes Agerbeek, acting as Agents,

defendant,

supported by

Thomson Reuters Corp., established in Toronto (Canada),

and

Reuters Ltd, established in London (United Kingdom),

represented by A. Nourry, G. Olsen and C. Ghosh, Solicitors,

interveners,

APPLICATION under Article 263 TFEU seeking annulment of Commission Decision C(2012) 9635 final of 20 December 2012 relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement (Case COMP/D2/39.654 — Reuters Instrument Codes (RICs)),

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias, President, M. Kancheva and C. Wetter (Rapporteur), Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written procedure and further to the hearing on 3 March 2016,

* Language of the case: English.

gives the following

Judgment

Background to the dispute

1 On 30 October 2009, the Commission of the European Communities decided to open proceedings against Thomson Reuters Corporation and companies under its direct or indirect control, including Reuters Limited ('TR'), for alleged abuse of a dominant position in the worldwide market for consolidated real-time datafeeds.

2 On 19 September 2011, the Commission adopted a preliminary assessment, pursuant to Article 9(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1), which it notified to TR on 20 September 2011.

3 According to the preliminary assessment, TR occupies a dominant position in the worldwide market for consolidated real-time datafeeds. It may have abused its dominant position by imposing certain restrictions regarding the use of Reuters Instrument Codes ('RICs'). RICs are short, alphanumerical codes developed by TR that identify securities and their trading locations.

4 TR prohibits its customers from using RICs to retrieve data from the consolidated real-time datafeeds of other providers and prevents third parties and competing providers from developing and maintaining mapping tables incorporating RICs that would allow its customers' systems to interoperate with the consolidated real-time datafeeds of other providers. In its preliminary assessment, the Commission reached the conclusion that those practices created substantial barriers to switching datafeed providers and constituted abuse of a dominant position within the meaning of Article 102 TFEU and Article 54 of the Agreement on the European Economic Area (EEA).

5 On 8 November 2011, pursuant to Article 9(1) of Regulation No 1/2003, TR submitted to the Commission a commitments proposal designed to address the concerns raised by the latter in its preliminary assessment.

6 In that commitments proposal, TR proposed, inter alia:

— to allow its customers to enter into an extended licence agreement concerning RICs ('ERL'). The ERL allows the customer, upon payment of a monthly licence fee, to use RICs to retrieve real-time data from the consolidated real-time datafeeds of competing providers and, in this way, to change one or more of their applications;

— to provide the information necessary to allow its customers to establish mapping between the RICs and the coding systems of competing providers in order to switch provider.

7 On 14 December 2011, the Commission published a notice in the *Official Journal of the European Union* in accordance with Article 27(4) of Regulation No 1/2003, summarising the case and the commitments, and invited interested third parties to submit observations on TR's proposal.

8 On 7 March 2012, the Commission informed TR of the observations which it had received from interested third parties, following the publication of the market test notice.

9 On 27 June 2012, in response to the observations received, TR submitted a revised commitments proposal. The main changes were as follows:

— the level of the fee for the ERL was reduced;

— the fee structure for the ERL was no longer linked to any existing rebates for consolidated real-time datafeeds of TR. It was also made less complex and more transparent;

— the ERL could be used worldwide by customers with genuine business operations in the European Economic Area (EEA);

— the ERL covered RICs of single source over-the-counter instruments, subject to the consent of the relevant contributor (unless TR is the sole provider of the over-the-counter data at the time of the switch);

— the ERL covered human interfaces to server-based applications (at no additional cost);

— in addition to the initial five-year period during which the ERL was available for subscription, there was an option for customers to extend the subscription window for a nominal fee by a further two years;

— the provision of a separate supplementary licence, in the present case a licence aimed at third-party developers ('TPDL'), to enable them to develop mapping tables which allow TR's customers easily to switch providers.

10 On 12 July 2012, the Commission launched a second market test and published the amended commitments, pursuant to Article 27(4) of Regulation No 1/2003.

11 On 25 September 2012, the Commission informed TR of the observations which it had received from interested third parties, following the publication of the second market test notice.

12 On 7 November 2012, TR provided a third set of commitments ('final commitments') which contain the following provisions:

— the clause in paragraph 7.1 of the final commitments contains a revised definition of the term 'third-party developer' which allows third-party developers to enter into agreements with other consolidated real-time datafeed providers for the development of mapping tables, allowing TR's customers to switch provider;

— third-party developers are allowed not only to 'develop' mapping tables but also to 'maintain and update' them (clause in paragraph 1.8 of the TPDL);

— the TPDL annexed to the final commitments no longer contains the clause in paragraph 3.5 of the TPDL annexed to the revised commitments. That clause contained the provisions under which a third-party developer could not 'represent that using Eligible RICs to retrieve third-party data [would be] practical or feasible in all circumstances or that it [could] give rise to issues of data integrity or other functionality issues';

— the clauses in paragraph 3.2.8 of the final commitments and paragraph 1.3(c) of the TDPL authorise third-party developers and other consolidated real-time datafeed providers to cooperate in the development, maintenance, and marketing of mapping tables;

— the clause in paragraph 3.2.9 of the final commitments and those in paragraphs 1.3(d) and 1.4 of the TPDL increase the level of information that third-party developers and other consolidated real-time datafeed providers may exchange. It follows from this that third-party developers may provide other consolidated real-time datafeed providers with descriptive reference data relating to RICs (but not the RICs themselves) in situations where the third-party developer has not been able to perform the mapping of a competing real-time datafeed provider's coding system.

13 TR's final commitments also provide, in Annex V, for the appointment of an independent trustee responsible for monitoring them. The role of the trustee is to monitor compliance with those commitments and to make a report to the Commission on a regular basis and, where appropriate, to propose to the Commission measures to be taken in order to ensure compliance with those commitments, as well as to report the results of the dispute resolution procedure provided for in Annex IV to the final commitments.

14 The Commission took the view that those commitments were sufficient to address the competition concerns identified. Accordingly, on 20 December 2012, it adopted, pursuant to Article 9(1) of Regulation No 1/2003, the decision relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement (Case COMP/D2/39.654 — Reuters Instrument Codes (RICs)) (OJ 2013 C 326, p. 4; 'the contested decision'), a summary of which was published in the *Official Journal of the European Union*, making binding the commitments proposed by TR. In that decision the Commission also found that, in view of the commitments, it no longer had grounds for action.

Procedure and forms of order sought

15 By application lodged at the Court Registry on 4 February 2014, the applicant, Morningstar, Inc., brought the present action.

16 On 16 May 2014, the Commission filed its defence.

17 The reply was lodged at the Court Registry on 5 August 2014.

18 By a measure of organisation of procedure of 27 August 2014, the Court (Eighth Chamber) requested the Commission to submit the preliminary assessment, in a non-confidential version, which it had undertaken pursuant to Article 9(1) of Regulation No 1/2003 in the present case. The Commission complied with that request within the prescribed period.

19 The rejoinder was lodged at the Court Registry on 16 October 2014.

20 By order of 21 October 2014, the President of the Eighth Chamber of the Court granted TR's application to intervene, lodged at the Court Registry on 22 May 2014.

21 On 2 January 2015, TR lodged its statement in intervention.

22 The observations of the main parties on TR's statement in intervention were received at the Court Registry within the prescribed period.

23 Acting on a proposal from the Judge-Rapporteur, the Court (Eighth Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure under Article 89(3)(d) of its Rules of Procedure, asked the Commission to lodge the responses received from market participants, in their non-confidential versions, to the market tests published in the *Official Journal of the European Union* on 14 December 2011 and 12 July 2012. The Commission complied with that request within the prescribed period.

24 At the hearing on 3 March 2016, the parties presented oral arguments and replied to oral questions put by the Court.

25 The applicant claims that the Court should:

— declare the action admissible;

— annul the contested decision in its entirety, or in so far as it relates to real-time datafeed providers, or in so far as it relates to the applicant;

— grant such other relief as the Court considers appropriate; and

— order the Commission to pay the costs.

26 The Commission and the intervener contend that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Admissibility

27 The applicant submits that it has standing to bring the present action as the contested decision concerns it directly and individually, within the meaning of the fourth paragraph of Article 263 TFEU. It was directly affected by the contested decision, which reduces the scope for it to contract with TR regarding RICs, in so far as that decision explicitly excludes competing consolidated real-time datafeed providers from the scope of the relevant licences. As regards individual concern, it claims that it was actively involved in the administrative procedure that led to the adoption of the contested decision. Furthermore, it was part of a closed and identifiable group of persons that participated in the administrative procedure. Moreover, the contested decision authorises a business conduct of its main competitor, thereby affecting its position on the relevant market.

28 The Commission disputes the applicant's arguments and contends, without formally raising an objection of inadmissibility within the meaning of Article 130(1) of the Rules of Procedure, that the action is inadmissible.

29 It should be borne in mind that the fourth paragraph of Article 263 TFEU allows a person other than the person to whom the act is addressed to institute proceedings for annulment of that act if that act is of individual and direct concern to him.

30 According to the case-law, the question of whether an applicant has *locus standi* is to be assessed by reference to the effects that the contested act has on its legal situation in so far as that applicant is, first, directly concerned by the contested act, in that the direct concern requires that the measure at issue must directly affect the legal situation and that the act must leave no discretion to the addressees of that measure who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from the EU rules alone without the application of other intermediate rules (judgments of 5 May 1998, *Glencore Grain* v *Commission*, C-404/96 P, EU:C:1998:196, paragraph 42, and of 24 March 1994, *Air France* v *Commission*, T-3/93, EU:T:1994:36, paragraph 80), and, second, individually concerned by that act in that it affects the applicant by reason of certain attributes particular to him or by reason of circumstances in which he is differentiated from all other persons and by virtue of those factors the decision distinguishes him individually just as in the case of the person addressed (see, to that effect, judgment of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, at p. 107).

31 In the present case, in accordance with Article 9(1) of Regulation No 1/2003, the contested decision makes TR's final commitments of 7 November 2012 binding. The Commission examined the effects of the restrictions imposed by TR as regards the RICs and concluded that those restrictions were detrimental to competition, in that they hindered TR's customers from switching provider and, as a result, reduced the ability of competitors to enter the market or to compete on the basis of the merits of their services. The final commitments, which seek to facilitate the switch of TR's customers to competing consolidated real-time datafeed providers, explicitly exclude those competing providers from being eligible to enter into either an ERL agreement or a TPDL agreement. In so far as it limits the possibility for the applicant to conclude such contracts, the contested decision directly affects its legal situation.

32 As regards the question of whether the applicant is individually concerned, it must be recalled that it requested meetings with the Commission in its letters of 5 March and 16 June 2010. Following those requests, a first meeting was organised for 27 July 2010. Subsequently, at the request of both the Commission and the applicant, other meetings and telephone conversations took place between 2010 and 2012. Similarly, following a request by the Commission of 18 April 2012, the applicant produced a non-confidential version of the minutes of the telephone conversations and meetings in question. The applicant also responded and provided its observations in relation to the commitments proposed by TR, through telephone conversations, meetings, emails and responses to the Commission's formal requests for information.

33 Furthermore, even though the applicant's name does not explicitly feature in the contested decision, it is clear from the administrative procedure which resulted in that decision that the Commission took into account the observations made by the applicant.

34 It should be noted that the applicant participated actively in the procedure not only on its own initiative but also at the invitation of the Commission, which, in particular, requested it to submit its observations on various aspects of the market as well as on the proposed commitments, and outside the framework of the market tests in accordance with Article 27(4) of Regulation No 1/2003, to which the applicant also contributed. It follows that the applicant participated actively in the procedure. Although mere participation in the procedure is, admittedly, insufficient on its own to establish that the contested decision is of individual concern to the applicant, the fact nevertheless remains that its active participation in the administrative procedure is a factor taken into account in the case-law relating to matters of competition, including in the more specific area of commitments under Article 9 of Regulation No 1/2003, to establish, in conjunction with other specific circumstances, whether its action is admissible (see, to that effect and by analogy, judgments of 28 January 1986, *Cofaz and Others* v *Commission*, 169/84, EU:C:1986:42, paragraphs 24 and 25; of 31 March 1998, *France and Others* v *Commission ('Kali & Salz')*, C-68/94 and C-30/95, EU:C:1998:148, paragraphs 54 to 56; and of 3 April 2003, *BaByliss* v *Commission*, T-114/02, EU:T:2003:100, paragraph 95).

35 In that regard, such a specific circumstance is constituted, in the present case, by the manner in which the applicant's position on the market at issue is affected. It is apparent from the case file before the Court that the applicant operates, like TR, in the consolidated real-time datafeed market, a market which is characterised by a limited number of competitors and in which TR occupies a dominant position. It can be inferred that restrictive measures on the part of TR, as the dominant undertaking, such as those forming the subject matter of the Commission's preliminary assessment, are liable to have significant negative effects on the applicant's business.

36 It follows from all of the foregoing that the applicant is also individually concerned. Consequently, the present action is admissible.

Substance

37 In support of the action, the applicant relies on four pleas in law:

— the first plea alleges a manifest error of assessment in that the Commission accepted commitments which did not address the competition concerns about which it had notified TR in its preliminary assessment;

— the second plea alleges a breach of Article 9(1) of Regulation No 1/2003 in that the Commission, by accepting commitments which were not such as to address the competition concerns, acted beyond the scope of the powers available to it under that article and therefore acted *ultra vires*;

— the third plea alleges a breach of the principle of proportionality;

— the fourth plea alleges an infringement of the obligation to state reasons in so far as the Commission failed to explain how the final commitments addressed the competition concerns which had been identified.

38 As a preliminary point, it should be borne in mind that it follows from Article 9 of Regulation No 1/2003 that the Commission may, in cases where it intends to adopt a decision requiring that an infringement be brought to an end, make the commitments offered by the undertakings concerned binding, where they address the competition concerns expressed by the Commission in its preliminary assessment.

39 The mechanism introduced by Article 9 of Regulation No 1/2003 seeks to ensure that the competition rules in force in the European Union are applied effectively, by means of the adoption of decisions making commitments proposed by the parties and considered appropriate by the Commission binding, in order to provide a more rapid solution to the competition problems identified by the Commission, instead of proceeding by making a formal finding of an infringement. More particularly, Article 9 of that regulation is based on considerations of procedural economy and enables undertakings to participate fully in the procedure by putting forward the solutions which appear to them to be the most appropriate and capable of addressing the Commission's concerns (judgment of 29 June 2010, *Commission* v *Alrosa*, C-441/07 P, EU:C:2010:377, paragraph 35).

40 In that context, as regards the acceptance or rejection of the commitments, the Commission enjoys a wide discretion (judgment of 29 June 2010, *Commission* v *Alrosa*, C-441/07 P, EU:C:2010:377, paragraph 94).

41 Furthermore, it should be noted that, in so far as the Commission is called upon to carry out an analysis that requires numerous economic factors to be taken into account, such as a forward-looking analysis in order to assess the adequacy of the commitments offered by the undertaking concerned, it also enjoys a degree of discretion in this which the Court must take into account when carrying out its review. It follows that, in the exercise of their restricted review of such complex economic situations, the EU Courts cannot substitute their own economic assessment for that of the Commission (judgments of 29 June 2010, *Commission* v *Alrosa*, C-441/07 P, EU:C:2010:377, paragraph 67, and of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 46).

42 However, as the Court has repeatedly held in the context of areas giving rise to complex economic assessments, such as competition law, the discretion enjoyed by the Commission does not mean that the EU Courts must refrain from reviewing the EU institutions' interpretation of information of an economic nature (judgments of 15 February 2005, *Commission* v *Tetra Laval*, C-12/03 P, EU:C:2005:87, paragraph 39; of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 145; and of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 46). According to the principles established by that case-law, the EU Courts

must, in particular, not only establish whether the evidence relied on is factually accurate, reliable and consistent, but also review whether that evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (see judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 46 and the case-law cited; of 11 December 2013, *Cisco Systems and Messagenet* v *Commission*, T-79/12, EU:T:2013:635, paragraph 50 and the case-law cited; and of 13 May 2015, *Niki Luftfahrt* v *Commission*, T-162/10, EU:T:2015:283, paragraph 86 and the case-law cited).

43 Moreover, it is also clear from the case-law that, even though decisions made under Articles 7 and 9 of Regulation No 1/2003 are subject to the principle of proportionality, the application of that principle nonetheless differs according to which of those provisions is concerned.

44 Those provisions in fact pursue different objectives. Article 9 of Regulation No 1/2003 aims to address the concerns that the Commission may have raised during its preliminary assessment, while Article 7 of that regulation aims to put an end to the infringement that has been found to exist (judgment of 29 June 2010, *Commission* v *Alrosa*, C-441/07 P, EU:C:2010:377, paragraph 46).

45 It follows that, as regards the proportionality of the commitments, the test which the Commission must use in proceedings under Article 9 of Regulation No 1/2003 lies in whether the commitments are 'sufficient' and can respond 'adequately' to the concerns, by taking account of the circumstances of the case, that is to say the seriousness of the concerns, their extent and the interests of third parties (judgment of 29 June 2010, *Commission* v *Alrosa*, C-441/07 P, EU:C:2010:377, paragraphs 41 and 61).

46 It follows from all of the foregoing that the review by the EU Courts is limited to establishing whether the Commission's assessment is manifestly wrong, by applying the principles recalled in paragraphs 40 to 45 above.

First plea in law, alleging a manifest error of assessment

47 In the context of the first plea, the applicant submits that the final commitments do not have the effect of either terminating or significantly limiting the identified abuse, and that they also do not address the concerns raised. The contested decision is therefore, in the applicant's view, vitiated by a manifest error of assessment.

48 The applicant observes that both the definition of 'eligible customer' and that of 'third-party developers' contained, respectively, in the ERL and the TPDL, exclude competing providers. In addition, under the commitments, competing consolidated real-time datafeed providers cannot themselves handle RICs on behalf of eligible licensees. Thus, companies which, like the applicant, have the capacity, knowledge and incentive needed to offer a competing service are directly excluded from doing so. With regard to the terms of the licence agreement at issue, it envisages granting licences only to customers who can use RICs to build, on their own, or through third-party developers, the means to avail of a service that could compete with TR's offering.

49 In that regard, firstly, the applicant takes the view that consolidated real-time datafeed providers are incapable of providing an effective change of service provider to TR's customers because, by excluding them from the ERL and TPDL licence terms, they cannot offer a fully integrated competing service. Secondly, the likelihood of third parties developing mapping tables is theoretical and extremely remote. Thirdly, the entire burden and cost of switching provider fall upon TR's customers, even though it is manifestly unlikely that they will switch provider due to the cost and complexity entailed in such a switch, the modification of their systems and the additional negotiations with third parties that the modification would entail, the nature of the market for consolidated real-time datafeeds, and the cost and complexity related to using a third party's mapping table. Fourthly, TR's customers are

unlikely to work with a conversion tool developed by a third party, rather than a competitor, since these tools require a high degree of speed and reliability. The reliance on a third party would in fact be a risk for the integrity and accuracy of the code mapping. Furthermore, possible collaboration with a third-party developer in the design of a mapping table would be ineffective, given the impossibility of exchanging the required information regarding RICs. Fifthly, the reason why competing consolidated real-time datafeed providers cannot offer a comparable service is also connected to the fact that 'chain RICs' (a method of accessing a group of instruments by using a single identifier) are excluded from the licences offered by TR, while banks and financial institutions need access to chain RICs since they are one of the key methods of accessing data. As a result of the fact that, in accordance with the commitments, only the most basic data are available, it would be impossible for an alternative provider to rebuild or map to these chains without being able to access the underlying data. Finally, the applicant submits that, to its knowledge, none of TR's customers have used a competing consolidated real-time datafeed provider. In a situation where a large number of companies seek to obtain and use the licences, there would be proof of that fact on the market. However, according to the applicant, this is not the case, and for that reason it reiterates, as already indicated during the administrative procedure, that such transitions to another provider are very unlikely.

50 In the first place, the Commission submits that an ERL, authorising TR's customers to use RICs to retrieve data in the datafeeds of other providers without being obliged to rewrite their applications, is sufficient to address the concerns relating to the restrictions on the use of RICs when switching provider. Second, it takes the view that a TPDL which authorises third-party developers to develop and maintain mapping tables between RICs and the coding systems of other providers is also sufficient to respond to the concerns relating to the restrictions on the use of RICs to develop such tables. The Commission emphasises, by way of example, various terms and conditions contained respectively in the ERL and TPDL that seek to facilitate switching provider. In that context, it notes that an ERL is granted globally to an eligible customer if it undertakes genuine business operations within the EEA, that an ERL is granted in perpetuity on condition that it has been requested during the five years following the commencement date by the eligible customer, that the eligible customer can increase or decrease the eligible number of RICs at any time as required by its business operations, and that TR will provide eligible customers with regular updates of the eligible RICs, as well as with the cross-referencing information required to identify uniquely the underlying real-time market data.

51 Finally, the Commission submits that none of the arguments raised by the applicant alters the conclusion that the final commitments are sufficient to address the applicant's concerns.

52 The Commission argues, in this regard, that a competitor can establish a partnership with a third-party developer to offer TR's customers a personalised and fully integrated service for switching provider; that, since the IT architecture of each of TR's customers is generally specific to it, it is inevitable that each customer will carry out rebuilding work and thus incur some costs if it decides to switch consolidated real-time datafeed provider; that TR's major customers are global financial institutions with the expertise and the financial means necessary to switch providers if they consider that it is in their commercial interest; that cooperation between consolidated real-time datafeed providers and third-party developers could lead to economies of scale; that there is no reason to believe that the mapping tables developed by third-party developers would not be reliable, or would be slower, when compared to using TR's service, and that the allegations relating to chain RICs are set out for the first time in the reply and are not based upon matters of law or fact which have arisen during the administrative procedure and the proceeding before the Court; and that they therefore must be rejected as inadmissible since, in any event, they are unfounded. Finally, the Commission notes that, since the ERL and TPDL were only introduced on 20 June 2013 and switching provider is a long and complex process, it is unsurprising that there have not yet been many switches during the introductory period of these licences, on the one hand, and the lodging of the application, on the other.

53 First, as regards the admissibility of the argument relating to chain RICs and the argument relating to the limitations in the descriptive data provided for each RIC, it must be recalled that it is clear from the provisions of Article 44(1)(c), in conjunction with Article 48(2), of the Rules of Procedure of the General Court of 2 May 1991, that the application initiating proceedings must state the subject matter of the proceedings and contain a summary of the pleas in law, and that the introduction of new pleas in law in the course of proceedings is not permitted unless those pleas are based on matters of law or fact which came to light in the course of the procedure.

54 However, according to settled case-law, a plea which may be regarded as amplifying a previously made plea, whether directly or by implication, in the original application, and which is closely connected to it, must be declared admissible (judgments of 19 September 2000, *Dürbeck* v *Commission*, T-252/97, EU:T:2000:210, paragraph 39, and of 30 September 2003, *Cableuropa and Others* v *Commission*, T-346/02 and T-347/02, EU:T:2003:256, paragraph 111).

55 In the present case, it should be noted that, contrary to the Commission's submission, that plea is an amplification of the first plea, as set out in the application, namely the plea alleging a manifest error of assessment of the final commitments. It should be recalled, in that regard, that the application contains lengthy arguments on the inappropriateness of the final commitments. Consequently, the argument in the reply calling into question the adequacy of the final commitments to address the Commission's concerns due to the gaps in those commitments, such as those connected to the lack of a rule relating to chain RICs, is admissible.

56 Next, with regard to the substance of the first plea, as has already been pointed out in paragraph 41 above, and taking into account the discretion enjoyed by the Commission when assessing the appropriateness of the proposed commitments, the role of the Court is limited to establishing that the Commission has not committed a manifest error of assessment. More precisely, its role, in the context of that judicial review, is to determine whether a balance has been struck between the concerns raised by the Commission in its preliminary assessment and the commitments proposed by TR, which must, once again, address those concerns in an adequate manner.

57 Additionally, the review of the lawfulness of the decision making those commitments binding must be assessed in the light of the Commission's concerns and not of the demands put forward by competitors in relation to the content of those commitments.

58 Consequently, the appropriate test to be applied in relation to the Commission's concerns, as expressed in its preliminary assessment, is to determine whether the commitments are sufficient to address adequately those concerns, which seek, in the present case, to make it easier for customers to switch provider.

59 Furthermore, the fact that those concerns could be addressed by including TR's competitors in the licence terms, as the applicant suggests, does not establish in itself that the contested decision is vitiated by a manifest error of assessment. The fact that other commitments could also have been accepted, or might even have been more favourable to competition, cannot justify annulment of the contested decision, in so far as the Commission was reasonably entitled to conclude that the commitments set out in the contested decision served to dispel the concerns which had been identified in the preliminary assessment.

60 It must be recalled that the contested decision implements a set of commitments proposed by TR, the activities of which gave rise to competition concerns, and that, in essence, the applicant takes the view that the Commission committed a manifest error of assessment by making commitments binding which fail adequately to address those concerns.

61 The applicant's claim that competitors are incapable of providing an effective change of service provider on the ground that they cannot offer a fully integrated competing service due to their being excluded from the licence terms at issue must be rejected.

62 It should be borne in mind that the concerns raised by the Commission related to the restrictions imposed on TR's customers and the prevention of third parties from establishing mapping between different codes, thus creating substantial barriers to switching provider. The commitments accepted by the Commission therefore focus, essentially, on the opportunities available to customers to switch provider, either on their own or by collaborating with a third-party developer. In that sense, the Commission took the view that the competition concerns could be resolved by requiring behavioural remedies not vis-à-vis its competitors, but rather vis-à-vis its customers and third parties. That finding, that the commitments are proposed in the first instance to customers and third-party developers, is supported by the possibilities offered to third-party developers to collaborate and mutually to assist each other in the development of mapping tables on the basis of the licences proposed by TR. TR's customers may also opt for third-party developers who have entered into partnerships with competing providers, those partnerships consisting of a cooperation relating to the design, production, maintenance, advertising and aftersales services of mapping tables. Various options are therefore open to TR's customers for the purpose of switching providers, whether they are internal or external to their infrastructure.

63 Thus, by accepting those commitments, the Commission took the view that, in order to address the concerns that it had raised, it was not necessary to include TR's competitors in the licence terms. Furthermore, as is clear from the contested decision, the Commission found that granting TR's competitors access to RICs would go beyond what was necessary to address its concerns. With regard to the findings of the Court set out in paragraph 62 above, the Commission did not commit a manifest error of assessment in that regard.

64 The arguments that the likelihood of a third-party developer designing mapping tables is remote and theoretical — mapping tables which, according to the applicant, would not offer the reliability and speed required given that they were designed by third parties — must also be rejected.

65 Although it is unnecessary to recall the different solutions available to third-party developers in the development of mapping tables, which increase the likelihood of such a design, it may be held, with regard to the alleged lack of reliability and speed of those mapping tables, that the applicant does not present any specific arguments in relation to those assertions. For that reason, those arguments may be rejected at this point.

66 Moreover, in the event that a customer might require a guarantee as to reliability, a third-party developer and a competing provider could agree to provide that guarantee to that customer, a possibility which has not been excluded by the commitments, in accordance with the clause in paragraph 1.3(c)(iii) of the TPDL. To that extent, it is entirely possible to address the potential misgivings of a customer who will be reassured by a prospective switch of provider. Furthermore, apart from the fact that TR's customers can enter into an ERL agreement in order to switch consolidated real-time datafeed provider in relation to all of their applications, they may opt, for a period of at least 12 months, for a partial switch. Such a partial switch may allow a customer to assess the reliability of a competing data source by using applications which use TR's data source and other applications which use a competing data source in parallel, a possibility which facilitates a switch of provider for the customer.

67 Similarly, the argument that the entire burden and cost of switching provider would be borne by TR's customers cannot be accepted. It must be recalled that the Commission's concerns essentially related to the restrictions imposed on TR's customers in the use of RICs. Those restrictions prohibited them from retrieving data from the feeds of competing providers by using RIC codes, and even by means of mapping tables. Due to the integration of RIC codes into customers' IT applications, a rewriting of

those applications was necessary when those customers wished to switch provider, that switch of provider de facto leading to, under the restrictions imposed by TR, a modification of the symbol system used. That process of modifying applications is considered, according to customers, to be long and costly. It is clear from the market tests carried out by the Commission, the findings of which were included in the preliminary assessment, that the main part of the costs of switching relates to the conversion of the codes. Those costs are at times difficult to quantify, in particular due to the fact that the IT architecture of each customer is specific to that customer. However, the Commission indicated in its preliminary assessment that, for customers who have carried out an extensive assessment of the costs of switching, those costs were considered to be prohibitive and could discourage customers from switching provider. In response to those concerns, TR therefore offered its customers, as well as third-party developers, the possibility to set up mapping tables between the RIC codes and the symbol system used by the new provider, in such a way that a modification of the applications would no longer be necessary. Those commitments therefore represent a genuine improvement for TR's customers, who no longer face prohibitive costs for the ability to switch provider, in the absence of the need extensively to modify IT applications. Although the creation of a mapping table by the customer, whether internally or by a third-party developer, is also likely to lead to costs, it should be recalled that the commitments do not seek a total elimination of the costs, but seek rather to make switching of providers more accessible with reasonable costs.

68 Furthermore, it must be stated that a modification of IT systems and applications is liable, in any event, to lead to costs which must be borne by the customer, especially in view of the particularities of each customer's own IT architecture. Additionally, those customers are normally global institutions or companies and are likely to have the financial wherewithal to meet such costs.

69 It is also important to state, as the Commission did, that the collaborations between consolidated real-time datafeed providers and third-party developers may lead to economies of scale. Those economies are such as to lower the costs of switching provider, which might represent an additional incentive for customers, including small-sized customers, to switch provider.

70 Finally, the arguments linked to the lack of data relating to chain RICs and to the limitations on the descriptive data provided for each RIC preventing competing providers from offering an equivalent service are also unfounded. First, it should be noted in that regard that it appears that, throughout the administrative procedure, neither the applicant nor any other third party appeared to express any concerns as regards the exclusion of particular chain RICs from the scope of the licences offered by TR. The only chain RICs about which concerns were expressed during the administrative procedure were the indices and, in accordance with the clause in paragraph 2.8 of the final commitments and in paragraph 1.6 of the ERL, TR is required to provide data relating to indices. Second, it is clear from the case file that the reason why the data provided by TR may, in certain cases, not indicate the mnemonic designation attributed by the Stock Exchange is that that code is not the only sure way to identify an instrument upstream from its source. Relatively simple financial instruments, such as values listed on the Stock Exchange, may be identified through the trading platform concerned, the currency or the official code, or through the trading platform concerned, the currency and their description. TR is required to provide that information to ERL holders in accordance with the clause in paragraph 2.12 of the final commitments. The same is true for more complex financial instruments, such as those traded over-the-counter, for which TR is required to provide the mnemonic code assigned by the Stock Exchange if it is the only way of uniquely identifying them.

71 Furthermore, apart from a dispute settlement procedure, referred to in paragraph 13 above, in which the trustee responsible for monitoring the commitments plays a particular role, the clause in paragraph 6(f) of Annex V to the final commitments expressly provides that that trustee will assist in resolving any disagreements concerning data queries in respect of the cross-referencing information provided by TR. Thus, if the mnemonic code assigned by the Stock Exchange is essentially the only way of uniquely identifying the underlying real-time market data, the trustee responsible for monitoring will be able to inform TR to that effect.

72 In conclusion, the question of whether the commitments proposed by TR have been correctly assessed, in the contested decision, as being capable of resolving the Commission's concerns must be answered in the affirmative. The plea that the decision is vitiated by a manifest error of assessment must therefore be rejected.

73 Moreover, as regards the applicant's claim that, up to the present, no switch of provider has taken place, this therefore being an indication that the commitments are not effective, it must be noted that the Commission's assessment, as is the case with respect to merger control proceedings, is a prospective assessment. It is called upon to make a decision which is a forecast and which leads it to assess how the market will behave once the commitments have been implemented. As has already been stated, the Commission did not commit a manifest error when it took the view that the final commitments are appropriate to address the concerns raised. Regardless of the answer to the question whether the final commitments have, in the meantime, produced a concrete effect on the market concerned, it cannot change the fact that, at the point in time at which the contested decision was adopted, they were in themselves sufficient to remove the competition concerns which had been identified.

74 In that regard, it must be noted that the final commitments as accepted by the Commission facilitate a switch of provider if that is desired by one of TR's customers. However, that facility does not imply that a customer must necessarily switch provider if that customer is satisfied, for example, with the services and conditions offered by TR.

75 It follows from the foregoing that the first plea must be rejected.

The second plea in law, alleging infringement of Article 9(1) of Regulation No 1/2003

76 The applicant acknowledges that Article 9 of Regulation No 1/2003 authorises the Commission to accept commitments where they address the concerns which it has raised. However, the Commission is not, it argues, authorised to accept commitments which manifestly do not resolve — or appreciably reduce — the concerns raised. By accepting commitments which manifestly do not resolve the concerns raised, the Commission, in the applicant's view, acted beyond the scope of the powers conferred on it under Article 9 of that regulation and therefore acted *ultra vires*.

77 The Commission and the intervener contend that this plea should be rejected.

78 As has already been noted in paragraph 40 above, the Commission enjoys a wide discretion in the assessment of the commitments. In proceedings under Article 9 of Regulation No 1/2003, as follows from recital 13 of that regulation, the Commission is not required to make a finding of the infringement at issue, its task being confined to examining, and possibly accepting, the commitments offered by the undertakings concerned in the light of the concerns which it identified in its preliminary assessment and having regard to the aims pursued. It is for the Commission, in the exercise of its discretion, to accept the commitments, after verifying whether they address the concerns raised. In that regard, it has already been held that the Commission did not commit any manifest error in its assessment concerning the adequacy of the commitments at issue, with the result that the argument that, by accepting those commitments, it exceeded its powers and, on that basis, acted *ultra vires*, must be rejected. The rejection of the first plea also results in the rejection of the second plea.

The third plea in law, alleging an infringement of the principle of proportionality

79 The applicant argues that the contested decision infringes the principle of proportionality given that, first, the Commission accepted inappropriate commitments and, second, it did not take account of third-party interests.

80 Referring to the judgment of 11 July 2007, *Alrosa* v *Commission* (T-170/06, EU:T:2007:220), and to the judgment, delivered on appeal, of 29 June 2010, *Commission* v *Alrosa* (C-441/07 P, EU:C:2010:377), the applicant submits that the obligation to respect the principle of proportionality when the Commission decides to accept binding commitments offered pursuant to Article 9(1) of Regulation No 1/2003 implies that the measure which it adopts must be appropriate and necessary for achieving the objective pursued. By accepting inappropriate commitments, it submits, the Commission therefore infringed this principle.

81 The principle of proportionality was, in its view, also infringed by the fact that the Commission disregarded the predictable and predicted ineffectiveness of the commitments, notwithstanding the concerns expressed by third parties, as has already been explained in connection with the first plea.

82 The Commission and the intervener contend that this plea should be rejected.

83 It must be stated that it follows from the reply to the first two pleas that the third plea must also be rejected.

84 The principle of proportionality requires that the measures adopted by EU institutions must not exceed what is appropriate and necessary to attain the objective pursued. When there is a choice between several appropriate measures, the least onerous measure must be used (judgments of 17 May 1984, *Denkavit Nederland*, 15/83, EU:C:1984:183, paragraph 25, and of 11 July 1989, *Schräder HS Kraftfutter*, 265/87, EU:C:1989:303, paragraph 21).

85 The principle of proportionality, as a general principle of EU law, is nonetheless a criterion for the lawfulness of any act of the institutions of the European Union. That being so, in the examination of acts of the Commission, the questions always arise, first, of the precise extent and limits of the obligations which flow from the observance of that principle and, second, of the limits of judicial review (see, to that effect, judgment of 29 June 2010, *Commission* v *Alrosa*, C-441/07 P, EU:C:2010:377, paragraphs 36 and 37).

86 As is clear from the case-law cited above, application of the principle of proportionality by the Commission in the context of Article 9 of Regulation No 1/2003 is confined to verifying, first, that the commitments in question address the concerns which it expressed to the undertakings concerned and, second, that the latter have not offered less onerous commitments that also address those concerns adequately.

87 Likewise, judicial review relates solely to whether the Commission's assessment is manifestly erroneous.

88 Thus, in the context of the first plea, it has already been observed that the Commission did not commit a manifest error of assessment in finding that the final commitments proposed by TR were appropriate to address the concerns identified by the Commission in its preliminary assessment.

89 Moreover, if undertakings offer commitments on the basis of Article 9 of Regulation No 1/2003 which go beyond that which the Commission itself could have imposed on them in a decision that it adopted in accordance with Article 7 of that regulation following a thorough review, the Commission can accept those commitments and make them binding. However, it is not entitled to require them under Article 9 of Regulation No 1/2003.

90 It follows that the third plea in law must be rejected.

The fourth plea in law, alleging a breach of the obligation to state reasons

91 The applicant submits that the contested decision does not explain how the final commitments adequately address the competition concerns expressed to TR in the preliminary assessment, in so far as those commitments do not authorise competing real-time datafeed providers to enter into a TPDL contract.

92 The applicant states that it repeatedly pointed out to the Commission, during the procedure leading to the contested decision, that excluding competitors from the licences envisaged in the commitments would render those commitments ineffective. In paragraph 6.3 of the contested decision, the Commission notes that such concerns had been raised, but it does not explain the reasons why those criticisms were not taken into consideration.

93 The Commission and the intervener take issue with the applicant's arguments.

94 It should be noted that, according to the applicant, the contested decision's statement of reasons does not make it possible for it to understand the grounds on which the Commission found that the exclusion of competitors from the scope of the commitments did not call into question the adequacy of those commitments.

95 According to settled case-law, the statement of reasons required under Article 296 TFEU must be appropriate to the measure in question and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent EU Court to carry out its review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and all the legal rules governing the matter in question (see judgments of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 63 and the case-law cited, and of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraphs 166 and 178 and the case-law cited).

96 The Commission is not obliged to adopt a position on all the arguments relied on by the parties concerned; it is sufficient if it sets out the facts and the legal considerations having decisive importance in the context of the decision. In particular, it is not required to define its position on matters which are manifestly irrelevant or insignificant or plainly of secondary importance (judgments of 15 June 2005, *Corsica Ferries France* v *Commission*, T-349/03, EU:T:2005:221, paragraph 64, and of 16 June 2011, *Air liquide* v *Commission*, T-185/06, EU:T:2011:275, paragraph 64).

97 In relation to decisions making commitments taken pursuant to Article 9 of Regulation No 1/2003 binding, the Commission fulfils its obligation to state reasons by setting out the elements of fact and law which led it to conclude that the commitments offered addressed adequately the competition concerns which it had identified in such a way that it was no longer necessary for it to act.

98 In the present case, recitals 48 to 90 (paragraphs 5.1 to 6.7) of the contested decision deal with the commitments proposed by TR and with the reactions of third parties to those commitments.

99 It follows from this that the Commission explained, first, the reasons why the commitments addressed the concerns raised and, second, by addressing observations made by third parties, why the issues raised in those observations went beyond the competition concerns set out in the preliminary assessment (recitals 77, 84, 86 and 89 of the contested decision). As regards more specifically the

complaint made by the applicant, it must be stated that recital 77 of the contested decision referred to the fact that a number of third parties believed that competitors should have access to RICs since they would be in the best position to provide mapping tables and technical assistance. It is clear from recital 78 of the contested decision that the Commission considered that granting TR's competitors access to RICs would go beyond what was necessary to remedy the competition concerns. In recital 79 of the contested decision, the Commission added that, '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' and that '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'.

100 It follows from the foregoing that the Commission fulfilled its obligation to state reasons by setting out, clearly and unequivocally, the factual elements and legal considerations which led it to conclude that the commitments were sufficient to address the competition concerns which had been raised. Since those details enable the Court to review effectively the Commission's exercise of its discretion in the contested decision, it must be concluded that the contested decision is sufficiently reasoned in that regard.

101 It may be added that, although the Commission is required to provide reasons for the decision which it adopts, it is not obliged to explain why it refrained from adopting a different decision (see, to that effect, the case-law cited in paragraphs 95 and 96).

102 Moreover, in so far as the applicant's arguments may be understood as seeking to criticise the appropriateness of the final commitments, it must be recalled that such a question does not go to the issue of infringement of essential procedural requirements, capable of rendering the contested decision unlawful, but to that of the soundness of the Commission's assessment of the commitments offered in order to address its competition concerns (see, to that effect, judgment of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 67), an issue which has already been addressed in the context of the first, second and third pleas of the present action.

103 It follows that the fourth plea in law must be rejected and, consequently, the action dismissed in its entirety.

Costs

104 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

105 Since the applicant has been unsuccessful, and since the Commission and the intervener have applied for costs, the applicant must be ordered to pay the costs.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. Dismisses the action;

2. Orders Morningstar, Inc. to pay the costs.

Gratsias Kancheva Wetter

Delivered in open court in Luxembourg on 15 September 2016.

[Signatures]