



Reports of Cases

Case T-76/14

Morningstar, Inc.
v
European Commission

(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)

Summary — Judgment of the General Court (Eighth Chamber), 15 September 2016

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Criteria for assessment — Decision of the Commission making binding the commitments proposed by an undertaking subject to a procedure for assessing abuse of a dominant position — Potential competitor undertaking risking significant negative effects by reason of those commitments and having actively participated in the administrative procedure — Admissibility*

(Art. 263, fourth para., TFEU; Council Regulation No 1/2003, Art. 9(1))

2. *Competition — Administrative procedure — Bringing infringements to an end — Commission's powers — Commitments — Margin of discretion — Observance of the principle of proportionality — Judicial review — Scope*

(Council Regulation No 1/2003, Art. 9)

3. *Judicial proceedings — Introduction of new pleas during the proceedings — Conditions — Amplification of an existing plea — Limits*

(Rules of Procedure of the General Court, Arts 44(1)(c), and 48(2))

4. *Competition — Administrative procedure — Bringing infringements to an end — Decision of the Commission making binding commitments entered into pursuant to Article 9 of Regulation No 1/2003 — No manifest error of assessment*

(Art. 102 TFEU; Council Regulation No 1/2003, Art. 9)

5. *Competition — Administrative procedure — Bringing infringements to an end — Decision of the Commission making binding commitments entered into pursuant to Article 9 of Regulation No 1/2003 — Obligation to state reasons — Scope — No infringement*

(Art. 296 TFEU; Council Regulation No 1/2003, Art. 9)

1. Whilst mere participation of an undertaking in the administrative procedure leading to the adoption of a decision rendering binding, pursuant to Article 9(1) of Regulation No 1/2003, the commitments proposed by another undertaking subject to a procedure for applying Article 102 TFEU and Article 54

of the Agreement on the European Economic Area is not in itself sufficient to establish that an applicant is individually concerned by the decision that renders those commitments binding, its active participation in the administrative procedure is nevertheless a factor taken into account in competition matters, 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. Such a specific circumstance may be constituted by the manner in which the applicant's position on the market at issue is affected. That is particularly the case where the applicant operates in a market characterised by a limited number of competitors on which the undertaking which made the said commitments occupies a dominant position. In such a case, restrictive measures on the part of the undertaking in a dominant position, 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.

(see paras 30, 31, 34, 35)

2. In the context of the mechanism introduced by Article 9 of Regulation No 1/2003, the Commission enjoys a wide discretion as regards the acceptance or rejection of the commitments which it proposes in order to alleviate the concerns as regards a potential abuse of a dominant position which it formulates in its preliminary assessment. 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.

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. Review by the EU Courts is limited to establishing whether the Commission's assessment is manifestly wrong, by applying the principles recalled.

Moreover, 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.

(see paras 40, 41, 45, 46, 56, 58, 59, 78, 84-88)

3. See the text of the decision.

(see paras 53, 54)

4. The Commission does not err in law by taking the view that its concerns as to the possible abuse of a dominant position may be resolved by requiring of an undertaking holding a dominant position on the worldwide market for consolidated real-time datafeeds behavioural remedies not vis-à-vis its competitors, but rather vis-à-vis its customers and third parties, in that various options are open to that undertaking's customers for the purpose of switching providers, whether they are internal or external to their infrastructure. By accepting those commitments, the Commission takes the view that, in order to address the concerns that it has raised, it is not necessary to include the competitors of the said undertaking in the terms of the licences proposed by the latter to customers and third-party developers.

As regards the burden and cost which the changes necessitated by the commitments imposed on the undertaking in a dominant position imply for customers, nor does the Commission err in law where those commitments permit, following an improved offer of the dominant undertaking towards its customers, a genuine improvement for the latter, who no longer face prohibitive costs for the ability to switch provider. The same applies to the Commission's finding that cooperation between consolidated real-time datafeed providers and third-party developers could lead to economies of scale, such as to lower the costs of switching provider, which might represent an additional incentive for customers, including small-sized customers, to switch provider.

(see paras 62, 63, 67, 69)

5. In relation to decisions making commitments taken pursuant to Article 9 of Regulation No 1/2003, designed to dispel the Commission's concerns as to a possible abuse of a dominant position, 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. 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 paras 97, 101)