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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.10108 – S&P Global/IHS Markit**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

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1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

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Dear Sir or Madam,

(1) On 3 September 2021, the European Commission received notification of a proposed concentration (the "Transaction") pursuant to Article 4 of the Merger Regulation by which S&P Global, Inc. ("S&P" or "the Notifying Party") acquires sole control of IHS Markit Ltd. ("IHSM").[3] S&P and IHSM are designated hereinafter as the "Parties".

1. THE PARTIES

(2) S&P supplies credit ratings, price assessments, analytics, and data to the capital and commodity markets worldwide. S&P is divided into four divisions: (i) S&P Global Ratings issuing credit ratings (ii) S&P Global Market Intelligence ("SPGMI"), which supplies company, industry & asset-level data and analytics and also credit ratings data; (iii) S&P Dow Jones Indices ("SPDJI")[4], which supplies financial indices focusing on equities indices; and (iv) S&P Global Platts ("Platts"), which supplies commodity price assessments as well as related market intelligence.

(3) IHSM delivers information, analytics and software/workflow solutions to customers in business, finance and government. IHSM has four core segments: (i) Financial Services – supplying financial information, solutions, and processing product offerings; (ii) Transportation – supplying automotive and maritime and trade product offerings; (iii) Resources – supplying upstream and downstream product offerings; and (iv) Consolidated Markets and Solutions – supplying product design, economics and country risk, and technology media and telecoms product offerings.

2. THE OPERATION

(4) On 30 November 2020, S&P and IHSM entered into a binding agreement to combine in an all-stock transaction. Under the terms of this agreement, IHSM will merge with a wholly-owned and solely controlled subsidiary of S&P. Upon completion of the Transaction, current S&P shareholders will own approximately

3 Publication in the Official Journal of the European Union No C 367, 13.09.2021, p. 8.

4 SPDJI is a joint venture with CME Group Inc. and CME Group Index Services LLC (together, "CME") in which S&P owns 73% of SPDJI and CME group owns 27%.

67.75% of the combined company on a fully diluted basis, while IHSM shareholders will own approximately 32.25%.

(5) As a result, the Transaction is an acquisition of sole control of IHSM by S&P pursuant to Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million[5] (S&P: EUR 6 524 million; IHSM: EUR 3 776 million in 2020). Each of them has a Union-wide turnover in excess of EUR 250 million (S&P: EUR […]; IHSM: EUR […] in 2020), but none of them achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. LEGAL FRAMEWORK

(7) Under Articles 2(2) and 2(3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(8) A merger giving rise to a significant impediment of effective competition may do so as a result of the creation or strengthening of a dominant position in the relevant markets. Moreover, mergers in oligopolistic markets involving the elimination of important constraints that the parties previously exerted on each other, together with a reduction of competitive pressure on the remaining competitors, may also result in a significant impediment to effective competition, even in the absence of dominance.[6]

(9) In fact, the Horizontal Merger Guidelines describe horizontal non-coordinated effects as follows: "A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market."[7]

(10) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from

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5 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

6 Horizontal Merger Guidelines, paragraph 25.

7 Horizontal Merger Guidelines, paragraph 24.

a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force.[8] That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[9]

(11) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, the entry of new competitors on the market, and efficiencies. A merger between companies which operate at different levels of the supply chain may significantly impede effective competition if such merger gives rise to foreclosure.[10] Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.[11] Such foreclosure may discourage entry or expansion of competitors or encourage their exit.[12]

(12) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.[13]

(13) Pursuant to the Non-Horizontal Merger Guidelines, input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[14]

(14) For input foreclosure to be a concern, the merged entity should have a significant degree of market power in the upstream market. Only when the merged entity has such a significant degree of market power, can it be expected that it will significantly influence the conditions of competition in the upstream market and thus, possibly, the prices and supply conditions in the downstream market.[15]

(15) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the

8 Horizontal Merger Guidelines, paragraphs 27 and following.
9 Horizontal Merger Guidelines, paragraph 26.
10 Non-Horizontal Merger Guidelines, paragraphs 17-18.
11 Non-Horizontal Merger Guidelines, paragraph 18.
12 Non-Horizontal Merger Guidelines, paragraph 29.
13 Non-Horizontal Merger Guidelines, paragraph 30.
14 Non-Horizontal Merger Guidelines, paragraph 31.
15 Non-Horizontal Merger Guidelines, paragraph 35.

incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[16]

(16) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market and because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete, which in turn, may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher prices on the downstream market.[17]

(17) For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.[18]

(18) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[19]

(19) Lastly, a concentration may also give rise to conglomerate effects. According to the Non-Horizontal Merger Guidelines, in most circumstances, conglomerate concentrations do not lead to any competition concerns.[20]

(20) However, foreclosure effects may arise when the combination may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market in particular by means of tying or bundling. The Non-Horizontal Merger Guidelines distinguish between bundling, which usually refers to the way products are offered and priced by the merged entity and tying, usually referring to situations where customers that purchase one good (the tying good) are required to also purchase another good (the tied good) from the same supplier. While tying and bundling have often no anticompetitive consequences, in certain circumstances such practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the merged entity allowing it to increase prices.[21]

(21) In assessing the likelihood of such conglomerate foreclosure effects, the Commission examines, whether the merged firm would have the ability and incentive to foreclose its rivals, and, whether such strategy would have a negative

16 Non-Horizontal Merger Guidelines, paragraph 32.
17 Non-Horizontal Merger Guidelines, paragraph 58.
18 Non-Horizontal Merger Guidelines, paragraph 61.
19 Non-Horizontal Merger Guidelines, paragraph 59.
20 Non-Horizontal Merger Guidelines, paragraph 92.
21 Non-Horizontal Merger Guidelines, paragraphs 91 and 93.

impact on prices and choice, and thus ultimately on competition.[22] In practice, these factors are often examined together as they are closely intertwined.

5. INTRODUCTION

(22) The Transaction relates to different types of markets which can be broadly categorized into (i) financial data[23] and software products and (ii) commodities data and analysis, leading to horizontal overlaps and non-horizontal relationships.

6. FINANCIAL DATA AND SOFTWARE PRODUCTS

6.1. Introduction

(23) Within financial data and software products, the Parties are active across a variety of products and value chains.

(24) S&P is primarily active as one of the top three global credit rating agencies (alongside Moody's and Fitch), providing ratings regarding the creditworthiness of corporate and financial assets. Credit ratings revenue accounted for […] of S&P's revenue in 2020. S&P also manages CUSIP[24] identifiers, which is an alphanumeric code that identifies financial securities for the purposes of facilitating the clearing and settlement of trades. The company is also active in the provision of financial indices, primarily of equity indices, via SPDJI, a joint venture with the CME Group.

(25) IHSM is a provider of financial indices, primarily of fixed income and CDS[25] indices. In addition, IHSM is also an important player throughout the fixed income value chain, offering pricing and reference data (for CDS, loan and bonds), issuance platforms, and other issuer solutions

(26) The Parties' activities relevant for the assessment of the Transaction include: credit ratings (S&P), company credit risk analytics (S&P), indices (both), identifiers (both) and cross-reference services (both), pricing and reference data (IHSM), desktop services (S&P), non-real time data feeds (S&P), fundamentals data (S&P), economic data (IHSM), sector classification schemes (S&P), leveraged loan market intelligence (S&P), stock selection and strategy tools (ISHM), issuer solutions (IHSM), investor event management solutions (ISHM), issuance platforms (IHSM), loan administration services (IHSM), digital design for financial services (IHSM), equities and regulatory reporting (IHSM), institutional holdings/investor data (IHSM), managed corporate actions data (IHSM), global securities financing data (IHSM), portfolio valuation tools (IHSM), commodity price assessments (both) and commodity market intelligence (both).

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22 Non-Horizontal Merger Guidelines, paragraphs 95 to 118.

23 Financial data products are products that deliver financial information to the end-customer. This data is sometimes the by-product of the trading or other activities of financial players. Often financial data has also undergone aggregation, processing or enrichment. Financial data can also be packaged with functionalities and workflow tools to create comprehensive solutions for the end-customer.

24 CUSIP stands for Committee on Uniform Securities Identification Procedures.

25 CDS stands for credit default swap.

6.2. Market definition

6.2.1. Credit ratings

6.2.1.1. Overview and Parties' activities

(27) Credit ratings are an opinion regarding "*the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories*".[26] Credit ratings of a company are issued by credit rating agencies like S&P based on a contract between the company requesting the rating (also known as "the issuer") and the credit rating agency. A company rating is generally updated once per year and the company and the credit rating agency normally have a long-term relationship. These credit ratings for companies are referred to as "non-transaction ratings". By contrast, credit ratings of a financial instrument are more ad hoc/one-off engagements, where a credit rating agency rates an individual issuance (e.g. a bond), and are referred to as "transaction ratings". Ratings can be made public or remain private. They can also be unsolicited (i.e. produced by the credit rating agency without a client request) as opposed to requested by an issuer.

(28) Credit ratings data, i.e. information about the credit rating values of companies rated by a credit rating agency are licensed and used by investors of any kind (individual and institutional, such as insurance companies, pension funds, or governments), investment banks and financial index providers to inform investment decisions or inclusion of a company/financial instrument in an index.

(29) S&P Global Ratings ("SPGR") is a credit rating agency, whose credit ratings data and related information products are licensed and distributed by S&P Global Market Intelligence ("SPGMI"). These products provide credit ratings data themselves (i.e. opinions on credit risk created by SPGR) and ratings-related research. S&P credit ratings data are also distributed by third party data vendors such as Bloomberg or Refinitiv.

(30) IHSM is active neither in the issuing of credit ratings nor in the distribution of credit ratings data.[27]

6.2.1.2. Relevant product market

(A) The Commission precedents

(31) The Commission has not previously assessed the relevant product market for the supply of credit ratings.

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[26] Article 3(1)(a) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, OJ L302, 17.11.2009, p.1 (the "CRA Regulation").

[27] IHSM provides credit assessment services, i.e. a valuation service for asset portfolios, bonds and private debt. These do not compete with credit ratings offered by rating agencies. Customers of IHSM are primarily financial institutions seeking the valuation of e.g. debt instruments not rated by a credit ratings agency or unrated counterparties (i.e. companies that do not have a credit rating established by a credit rating agency). These financial institutions use credit assessment services captively, alongside their own internal credit risk assessments of the same debt instruments or counterparties.

(B) The Notifying Party's view

(32) The Notifying Party considers credit rating issuance as a distinct product market from the distribution of credit ratings data, that would be downstream from credit rating issuance. This is mainly because suppliers and customers are not the same players for both activities. Credit ratings data is distributed by companies including e.g. Bloomberg, Refinitiv or FactSet who are themselves not credit rating agencies, to customers who are themselves not necessarily issuers.

(33) The Notifying Party considers that the markets for credit rating issuance should not be further sub-segmented by asset-class or geographical coverage, even though the lack of material demand-side substitutability may suggest separate markets for particular rating types.[28] S&P also does not consider as plausible separate markets within overall credit ratings issuance public versus private ratings and transaction-related versus non-transaction ratings.[29]

(34) Regarding the market of credit rating distribution, the Notifying Party does not consider it appropriate to separate markets based on the downstream use case[30] or based on the type of credit rating being distributed.[31]

(C) The Commission's assessment

(35) The Commission does not consider it appropriate to separate credit rating issuance and the distribution of credit ratings for the purposes of this case.

(36) The Commission acknowledges that credit rating issuance is an activity which occurs between the rating agency and the entity soliciting a credit rating on a case-by-case basis,[32] while credit ratings distribution occurs later on and usually entails the provision of credit ratings data in bulk to different users across the financial and public sectors. Moreover, in response to the CRA Regulation, the main credit rating agencies have created group structures separating the legal entities issuing credit ratings from those distributing credit ratings data.

(37) However, the distinction between the two activities appears largely artificial from a competition perspective, in particular for the assessment of the vertical relationships that arise as a result of the Transaction.

(38) First, the issuance of credit ratings and the distribution of credit ratings are more akin to two-sided market than separate markets. Competitive dynamics of the two activities currently do not appear to be markedly different. Indeed, the market position of a credit rating agency in terms of issuance has a direct translation into demand for its credit ratings data; similarly, the more widely used a credit rating agency's ratings data, the more attractive it is for entities who need to obtain a rating. The market investigation confirms this. One competing credit rating agency mentions for instance that "*in terms of licensing rating information, depending on the region and the asset class, investor customers look at the three CRAs and choose*

28 Form CO, Chapter on Vertical Relationships, paragraphs 3.2-3.3.

29 Form CO, Chapter on Vertical Relationships, paragraph 3.4.

30 Form CO, Chapter on Vertical Relationships, paragraph 3.54.

31 Form CO, Chapter on Vertical Relationships, paragraph 3.55.

32 With the exception of some unsolicited ratings, which are issued by credit ratings agencies independently from any specific request (or payment) from the relevant issuers.

the licenses to cover their needs".[33] Customers of credit ratings data active in downstream markets also cite credit rating agencies as the relevant suppliers for credit ratings, not intermediaries.[34]

(39) In addition, customers of credit ratings data, including those who purchase the data via third parties, typically require a license from the credit rating agency which issued the rating itself, as confirmed by the Parties themselves[35] and by respondents to the market investigation, for instance for the use of credit ratings in financial indices.[36]

(40) As a result, credit rating issuance and the use of credit ratings data are more akin to a two-sided market than they are to separate markets, as acknowledged by the relevant regulatory authority. As mentioned by the European Securities and Markets Authority ("ESMA"), "*the credit rating industry is a two-sided market […]. Issuers in this market prefer to use the CRAs that are recognised by the largest number of investors, and investors prefer to use those CRAs who can offer the greatest coverage of the issuers and instruments they want to invest in*".[37]

(41) Second, direct distribution of credit ratings data by credit rating agencies and indirect distribution by intermediaries do not appear to form part of the same market. While the Notifying Party argues that third party data vendors also compete in a credit ratings distribution market by distributing credit rating agencies' data, it is clear that this is not a direct and independent competition. Third party data vendors, which typically aggregate credit ratings and other datasets into their desktop solutions, can only continue to distribute this data if allowed to do so by credit rating agencies, and they would not be able to generate or obtain the data independently from the relevant credit rating agency(ies).[38]

(42) As for further segmentations of the credit ratings market by entity type, geography or rating type (based on the ESMA classification,[39] between public or private rating, between solicited and unsolicited ratings or between entity and transactions ratings), there appears to be supply-side substitutability across all three dimensions. The three main credit rating agencies in particular already provide ratings in all segments, being registered at ESMA and having the know-how to rate different entities and asset classes. In any case, additional costs to cover a new segment in which they are not active would be limited, given that there would be no new registration costs.

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33 See Minutes of a call with a competitor on 9 June 2021, 16:30 CET, paragraph 8.

34 See for instance replies to Questionnaire 4 for supplier of financial indices. Respondents nonetheless consider vendors such as Bloomberg and Refinitiv as important distribution channels for indices. See replies to question 25 of Questionnaire 4.

35 See S&P's official website "FAQs: Licensing S&P Global Ratings' Data" which reads that "*SPGMI charges license fees to Indirect End Users based upon that End User's particular Licensable Use Cases*".

36 Replies to question 35 of Questionnaire 4.

37 ESMA Thematic report on fees charged by Credit Rating Agencies and Trade Repositories, 11 January 2018, p. 9.

38 This is also the case when companies active in the issuance of credit ratings distribute the credit ratings of competitors. For instance, Fitch is licensed to distribute credit ratings from Moody's on its platform. See Minutes of a call with a competitor on 9 June 2021, 16:30 CET, paragraph 9.

39 ESMA assesses different categories of ratings separately, distinguishing between "Corporate: Non-Financial", "Corporate: Financial", "Corporate: Insurance", "Sovereign and Public Finance" and "Structured Finance"

Most smaller credit rating agencies active in Europe also provide ratings for different asset classes and types, although they often have a more limited coverage.[40]

(43) By contrast, demand-side substitutability is limited. Ratings are issued on a case-by-case basis to a particular entity or financial instrument, so they are not interchangeable, and as such, e.g. a credit rating for a sovereign is not substitutable with a credit rating for a bank. This is also valid for users of credit ratings data, since they often need to know the credit ratings of a certain entity/instrument or group of entities/instruments (e.g. all insurance companies). The types of credit ratings to which a customer needs access to may depend on their activity. For instance, providers of indices will typically require access to all types of credit ratings based on the ESMA classification.[41] However, a large majority of responding companies explained that they generally use the same credit rating agency(ies) for their entity-level and transaction-level ratings for efficiency reasons.[42] As such, the demand pattern by rating type does not appear to be markedly different between these two categories. Different rules can also apply to different type of ratings these under the CRA Regulation. For instance, the regulation imposes the rating of structured finance instruments by at least two credit ratings agencies.[43] The market investigation is not conclusive regarding the relevant categories. One competing credit rating agency broadly agrees with the ESMA categories and "*considers a segmentation of the rating market between corporate ratings, sovereign ratings, structured finance ratings and financial institution ratings to be appropriate*".[44]

(44) In addition, it is unclear whether a distinct market would exist for credit ratings offered by the three leading credit rating agencies (S&P, Moody's and Fitch), which are generally not considered substitutable with ratings from smaller providers. The market investigation is also inconclusive as to whether credit ratings from the three leading ratings agencies are substitutable with each other and/or with ratings from other agencies, or if they each form distinct markets. For instance, customers of financial indices consider that the identity of the credit rating agency is important in procuring the ratings, and indicate that while the top three agencies are all key providers, they are generally not viewed as substitutable with one another, in particular for transaction ratings.[45]

(45) It results from the above that, for the purposes of this decision, the segmentation between credit rating issuance and the distribution of credit ratings data does not appear relevant. The precise scope of the market for credit ratings, i.e. whether they are segmented by (i) type of credit ratings (based on the ESMA classification, between public or private rating, between solicited and unsolicited ratings or between entity and transactions ratings), and/or (ii) based on which credit rating agency issues the relevant rating (e.g. top 3 credit ratings or smaller rating ratings, or even between S&P, Moody's and Fitch ratings individually) can be left open, as it does not materially affect the Commission's assessment.

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40 See ESMA Report on CRA Market Share Calculation of 14 December 2020.

41 Replies to question 32 of Questionnaire 4.

42 Replies to question 6 of Questionnaire 10.

43 CRA Regulation, Article 8c.

44 Minutes of a call with a competitor on 19 August 2021, 16:30 CET, paragraph 12.

45 Replies to question 41 of Questionnaire 5 and question 9 of Questionnaire 10.

6.2.1.3. Relevant geographical market

(A) The Commission precedents

(46) The Commission has never defined the relevant geographical market for the supply of credit ratings so far.

(B) The Notifying Party's view

(47) According to the parties, the scope of the geographic market for credit ratings issuance could be drawn at EU level, given the relevant regulatory requirements and may actually be global to the extent that the regulatory requirements are considered surmountable from a supply and demand-side perspective.[46]

(48) On the other hand, the geographic market of the credit ratings distribution is global in scope.[47]

(C) The Commission's assessment

(49) Credit rating agencies, and in particular the three largest ones, are active globally. The market investigation also indicates that customers procure credit ratings globally. Most customers seeking credit ratings do procure rating services from credit rating agencies at a worldwide level.[48]

(50) However, there seems to be notable differences in terms of the type of ratings issued and the competitive dynamics across different regions globally, as noted in the Parties' internal documents.[49] The regulatory regime in the EEA, namely the CRA Regulation and the ESMA supervision, does imply specific requirements for credit ratings agencies issuing ratings, companies requesting ratings, and users of ratings data.

(51) For the purposes of this decision, whether markets for credit ratings are EEA-wide or global in scope can be left open, as it does not materially affect the Commission's assessment.

6.2.1.4. Conclusion

(52) For the purposes of this Decision, the Commission considers that credit rating issuance and the distribution of credit ratings data do not appear as distinct markets, and that a single market for the issuance and distribution of credit ratings by credit rating agencies can be found. Whether this market can be segmented by (i) type of credit ratings (based on the ESMA classification, between public or private rating, between solicited and unsolicited ratings or between entity and transactions ratings), and/or (ii) based on which credit rating agency issues the relevant rating (e.g. top 3 credit ratings or smaller rating ratings, or even between S&P, Moody's and Fitch ratings individually) can be left open.

46 Form CO, Chapter on Vertical Relationships, paragraph 3.9.

47 Form CO, Chapter on Vertical Relationships, paragraph 3.58.

48 Replies to question 8 of Questionnaire 10.

49 See EC_00000075, slide 5 or EC_00000075 slide 12.

(53) For the purposes of this Decision, the Commission considers that the market for credit ratings is EEA-wide or global.

6.2.2. Company credit risk analytics data

6.2.2.1. Overview and the Parties' activities

(54) S&P provides a product called the Credit Default Swaps Market Derived Signal Model ("CDS MDS"). CDS MDS uses CDS spreads to provide potential signals of changes in a company's credit risk. These signals are volatile due to the nature of the input and customers do not generally rely on these signals as a prediction of creditworthiness by themselves, i.e. they are not a substitute for credit ratings.

(55) IHSM is not active in offering products with a similar function, but IHSM is a provider of CDS pricing data, which is an input for CDS MDS.

6.2.2.2. Relevant product market

(A) The Commission precedents

(56) The Commission has not previously considered the product market of company credit risk analytics data. In other previous decisions, the Commission considered discrete data content sets as plausible separate markets, given that they are not substitutable from a demand side perspective.[50]

(B) The Notifying Party's view

(57) The Notifying Party considers that the market in which CDS MDS is active, could be referred to as the supply of company credit risk analytics data. Suppliers provide this kind of data covering a broad range of companies and using different inputs, but the Notifying Party does not consider it appropriate to segment the market based on the type of company that the data refers to.

(58) According to the Notifying Party, customers are unlikely to consider company credit risk analytics data to be substitutable with other data or market intelligence.

(C) The Commission's assessment

(59) The Commission understands that the plausible relevant market for company credit risk analytics data is differentiated with S&P itself offering several different kinds of products which could be grouped under this plausible market.[51] From a supply side perspective, it is reasonable to assume that apart from requiring different inputs for different products, the general resources and expertise required for company credit risk analytics are rather similar to those required for providing credit ratings. The Notifying Party stated that "this part of the business seeks to offer insights as to the creditworthiness of entities/issuers using methodology and models originally

50 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 44 and Commission decision of 20 July 2018 in Case M.8837, *Blackstone / Thomson Reuters F&R Business*, paragraph 17.

51 Credit Analytics, Credit Models, PD Model Fundamentals, PD Model Market Signals and RiskGauge Score, which are all products marketed by SPGMI's Credit Risk Solutions business, see Notifying Party's response to RFI 21, paragraph 5.4.

developed for credit ratings issuance by S&P Global Ratings."[52] Based on this, the market could be considered broader than company credit risk analytics and comprise credit ratings as well.

(60) However, from a demand side perspective, company credit risk analytics data are unlikely to be considered substitutable with credit ratings which serve different purposes, including being required by law in certain circumstances.

(61) Based on the above considerations and given that the market investigation provided no indication that the plausible market for company credit risk analytics data could be narrower or wider, the Commission considers the relevant product market to be the market for company credit risk analytics data.

6.2.2.3. Relevant geographic market

(A) The Commission precedents

(62) The Commission has not previously considered the geographic scope of a plausible company credit risk analytics data market. The Commission considered in a previous decision that markets for discrete financial data content sets are at least EEA-wide or global.[53]

(B) The Notifying Party's view

(63) The Notifying Party considers the relevant geographic market to be global as most providers are active globally and do not need to be physically situated in a particular location in order to provide data with respect to a particular company. Equally, customer demand is not driven by either customer or supplier location. In any event, the Notifying Party submits that it is not necessary to conclude on market definition as no plausible concerns arise on any basis.

(C) The Commission's assessment

(64) The Commission has found no evidence to depart from the decisional practice with respect to discrete data content sets and the Notifying Party's view. As such, the Commission concludes for the purposes of this case that the geographic scope of a plausible market for company credit risk analytics data is at least EEA-wide and likely global.

6.2.2.4. Conclusion

(65) For the purposes of this Decision, the Commission considers that company credit risk analytics data are a plausible separate market from credit ratings, and that this plausible market is at least EEA-wide or global.

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52 Notifying Party's response to RFI 21, paragraph 5.3.

53 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Groups*, paragraph 106.

6.2.3. Indices

6.2.3.1. Overview and the Parties' activities

(66) An index is a publicly available figure, regularly determined (i) by applying a formula or other method of calculation or making an assessment and (ii) on the basis of the value of one or more underlying assets or prices.[54] An index has a numerical value calculated from prices of the instruments at a particular point in time.

(67) Indices are created by the index providers who own the intellectual property rights of the index. However, index providers may cooperate with clients or competitors and collectively own the intellectual property rights of an index. Furthermore, the actual calculation and administration of an index can be out-sourced to a third party that is not the creator of the index or holder of the intellectual property rights.

(68) Fixed income indices are indices that track debt instruments such as government bonds, corporate bonds and bank loans, which provide a fixed stream of income to the holder of the instrument. S&P is active through SPDJI, in the supply of fixed income indices as a relatively small player except in certain segments.[55] IHSM owns the well-known iBoxx (investment grade and high yield corporate debt) index family.

(69) Equity indices are indices that track company shares. SPDJI's primary offering is its 'Headline Equity Indices', namely the S&P 500, S&P MidCap 400, S&P SmallCap 600, Completion/Total Market and the Dow Jones Industrial Average (DJIA). […]% […] of S&P's indices revenue comes from equity indices.[56] In 2017, IHSM started to provide equity indices after the purchase of Euromoney indices. ISHM's offering is limited to four primary sets of equity indices; EMIX Smaller European Companies Indices; EMIX World Indices; EMIX Global Mining Indices; and EMIX Global Gold, Mining and Energy Indices.[57]

(70) SPDJI also supplies Environmental, Social and Corporate Governance ("ESG") equity indices, which are a type of index reflecting a specific investment strategy (where the variable is ESG scores instead of e.g. company geography or capitalisation or revenue) offering investors exposure to companies according to their ESG profile in the context of country-specific and regional indices.

(71) CDS indices are indices tracking a basket of credit default swaps. They share some characteristics with fixed-income indices. IHSM through CDX in North America and iTraxx in Europe is active in the supply of CDS indices.[58] IHSM is the only provider offering CDS indices. SPDJI does not supply CDS indices.

(72) Multi-asset indices are indices that track a mixture of assets such as equity and fixed-income. Customers typically use these when they seek to diversify investment

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54 See Article 3(1)(1) of the Regulation (EU) 2016/2011 of the European Parliament and the Council of 8 June 2016, on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, OJ L 171, 29.6.2016.

55 Form CO, Chapter on Vertical Relationships, Annex D.3.

56 Form CO, Chapter on indices, paragraph 6.86.

57 Form CO, Chapter on indices, paragraph 6.35.

58 Form CO, Chapter on indices, paragraph 6.34.

products or benchmark diversified portfolios. Multi-asset indices measure cross-asset market performance.

(73) S&P is active in the supply of multi-asset indices sourcing indices from different index suppliers. IHSM does not supply multi-asset indices but provides indices as inputs to multi-asset indices providers.

(74) Alternative indices are indices that track alternative investments such as private equity and venture capital.

(75) Leveraged loan indices are a sub-category of fixed income indices that specifically track tradeable syndicated loans. S&P' calculates two leveraged loan indices as part of its Leveraged Commentary and Data market intelligence product ("LCD"): S&P European Leveraged Loan Index (the "ELLI") and the S&P/LSTA Leveraged Loan Index ("LLI"). IHSM is also active in the supply of leveraged loan indices through iBoxx.

(76) In addition to creating and licensing their own proprietary indices, indices suppliers may also supply calculation and administration services on a white-label basis to third parties to help them create and/or maintain their own proprietary indices. Suppliers therefore provide a range of services, depending on customers' needs, including daily maintenance and calculation of the index, application and treatment of corporate actions, index distribution, and the supply of constituent (calculated) data files to the customer. Some customers may also ask suppliers to perform the administration requirements of their proprietary indices, in addition to calculation. In practical terms, this means that the indices services supplier (administrator) will own the index methodology from an operational and index governance perspective but not from an IP perspective. The administrators will oversee the index methodology and any changes thereto etc., they will own the rulebooks, perform consultations, and essentially run the index as if they were the proprietary owner. Calculation and administration services are usually supplied as an add-on to index licensing activities.

(77) S&P is active in the supply of calculation and administration indices focusing mainly on equity indices. SPDJI is also active in the supply of custom index design services, where it provides consultancy services to customers that want to design their own proprietary index.[59] IHSM is active in the supply of calculation and administration services offering both equity and fixed-income services.[60]

6.2.3.2. Relevant product market

(A) The Commission precedents

(78) In *Deutsche Börse/NYSE Euronext*, the Commission considered index licensing to be a separate product market, which could be potentially sub-divided by index type.[61] In *Intercontinental Exchange/NYSE Euronext*, the Commission has also defined

59 Form CO, Chapter on indices, footnote 145.

60 Form CO, Chapter on indices, paragraph 176.

61 Commission decision of 1 February 2012 in Case M.6166 – *Deutsche Börse / NYSE Euronext*, paragraph 148

separate markets for indices based on the asset class of their constituents and on geography covered, national and regional.[62]

(79) Most recently, in *LSEG/ Refinitiv*,[63] the Commission concluded that segmentation based on asset class was appropriate, and found in particular separate relevant product markets exist for UK equity indices and for FX benchmarks. In addition, the Commission concluded that plausible separate markets exist for European equity indices, Global equity indices, fixed income indices, convertible bond indices, money market indices, gilt benchmarks, multi-asset indices, ESG indices, real-estate indices, commodities indices, FX indices, and interest rate benchmarks, but left the precise market definition of these open.

(80) Regarding equity indices, the Commission considered that separate relevant markets exist based on geographic coverage at least for UK equity indices, and plausible markets for European equity indices and Global equity indices.[64]

(81) Regarding fixed income indices, the Commission noted that there are some indications of further segmentation by type of instrument and/or geography.[65]

(82) Regarding CDS indices, the Commission has so far not assessed these in previous merger control decisions.

(83) The Commission also considered multi-asset indices to constitute a separate market from equity indices and fixed income indices, since they comprise securities across both asset classes.[66]

(84) The Commission noted that there are some indications of further segments of equity indices and fixed income indices, such as ESG indices and real estate indices. These types of indices provide customers with specific types of exposure based on company sector (real estate) or other company properties (ESG). [67]

(85) As regards benchmark administration and index calculation services, the Commission did not consider these activities to constitute separate product markets from the different asset-class indices but rather to be ancillary activities often performed by the same entities who design the indices.[68]

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62 Commission decision of 24 June 2013 in Case M.6873, *Intercontinental Exchange / NYSE Euronext*, paragraph 65.

63 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 452.

64 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 455

65 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 457

66 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 458

67 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 459

68 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 462

(B) The Notifying Party's view

(86) In the Notifying Party's view, financial indices can be sub-segmented (i) by asset class (e.g. equity vs fixed-income), (ii) by the geographical coverage of underlying securities (e.g. EU equities vs US equities) and/or (iii) by the specific rules for selecting index constituents or assigning weights to them (e.g. indices covering companies based on capitalisation or industry).[69]

(87) The Notifying Party notes that from a supply-side perspective, suppliers are able to switch between supplying different types of indices within asset classes, and also switch between asset classes. However, from a demand perspective, indices for different asset classes are not substitutable (e.g. an equity index is not substitutable for a fixed-income index). Similarly, indices for different geographies will not be substitutable where a customer wants to create or benchmark financial instruments covering a specific geography.

(88) The Notifying Party recognises that different customers have different uses for indices and this includes customers licensing indices to create / issue funds and investment products and those licensing indices as a form of market data (performance benchmarking). However, the Parties do not consider that it is appropriate to segment the market by customer use, as from a supply-side perspective the same index may be used for both uses.

(89) The Notifying Party also notes that in recent years suppliers have started supplying ESG indices. As with other types of equity and fixed income indices, ESG indices compete within their relevant asset classes (e.g. ESG equity indices do not compete with ESG fixed-income indices) and the Notifying Party submits that there is not a separate stand-alone product market for all ESG indices irrespective of asset class.[70]

(90) The Notifying Party considers that CDS indices are not substitutable from a demand perspective with indices tracking other securities and financial instruments i.e. they are not substitutable with equities, fixed-income debt, commodities indices etc.

(91) The Notifying Party finally considers that there is a single product market for index calculation and administration services separate from index licensing.

(92) The Notifying Party considers the creation of indices to be a separate market from the distribution of indices. In the Parties' view, the relevant product market for the distribution of indices might plausibly comprise, at its widest, the distribution of financial markets data overall, reflecting both the supply-side substitutability between the distribution of different financial datasets and the fact that many customers typically consume financial indices alongside other data.[71]

(C) The Commission's assessment

(93) First, in relation to equity indices, the majority of customers indicate that a further segmentation by region, sector or other attribute (e.g. small capitalization companies

69 Form CO, Chapter on indices, paragraph 6.63.

70 Form CO, Chapter on indices, paragraph 6.66.

71 Form CO, Chapter on Vertical Relationships, paragraph 4.61.

vs large capitalization companies) may be appropriate.[72] However, the Commission concludes that the question of further segmentation of equity indices can be left open for this case as no concerns arise regardless of the precise definition.

(94) Second, in relation to fixed income indices, the majority of customers find that segmentation by instrument type, i.e. bond vs loans vs CDS is appropriate, while they are divided regarding further segmentation by region, currency or other attributes including riskiness (high yield debt versus investment grade debt).[73] As such, the Commission finds separate markets exist at least for bond indices, leveraged loan indices and CDS indices.

(95) As regards index calculation and administration services, the market investigation indicates that they might constitute a separate market from index licensing, and that there are further relevant segments based on the index asset class (i.e. index calculation and administration for fixed income indices versus equity indices). There is some evidence that the top index suppliers for index calculation and administration services are not the same as the top index suppliers for index licensing; moreover, the supply of such services for fixed income and equity indices appears to require different capabilities and inputs and thus may point to separate segments.[74] However, index suppliers tend to provide index calculation and administration services to certain clients, along with their usual index licensing activities.[75]

6.2.3.3. Relevant geographical market

(A) The Commission precedents

(96) In *Deutsche Börse/NYSE Euronext*, the Commission considered whether the geographic scope of the market is national, EEA-wide or global. The precise geographic market definition was eventually left open.[76]

(97) In *LSEG/Refinitiv*,[77] the Commission considered the geographic scope of index licensing, and in particular of the markets of European equity indices, Global equity indices, fixed income indices, multi-asset indices, ESG indices and real-estate indices to be worldwide.

(B) The Notifying Party's view

(98) The Parties consider that the markets for the supply of financial indices are global in nature.[78]

(99) The Parties' also consider that the geographic market for index calculation and administration services is global.[79]

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72 Replies to question 20 of Questionnaire 5.

73 Replies to question 6 of Questionnaire 5.

74 Replies to question 11 of Questionnaire 4.

75 Replies to question 4 of Questionnaire 4.

76 Commission decision of 1 February 2012 in Case M.6166 – *Deutsche Börse / NYSE Euronext*, paragraph 149.

77 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 465.

78 Form CO, Chapter on indices, paragraph §6.72, dated 3 September 2021.

(C) The Commission's assessment

(100) The Commission has found no evidence to depart from the precedent and Notifying Party's view. Indeed, competitors and customers confirmed that the markets are global; customers compare offerings on a world-wide basis and competitors provide their offerings and set prices on a world-wide basis.[80]

6.2.3.4. Conclusion

(101) For the purposes of this decision, the Commission considers that relevant plausible global markets exist for the licensing of at least equity indices (potentially further segmented by region, sector or other attributes), bond indices (potentially further segmented by region, currency or riskiness), leveraged loan indices, multi-asset indices, commodities indices and ESG indices.

(102) For the purposes of this decision, the Commission considers that a plausible global market exists for index administration and calculation services, potentially segmented based on the underlying asset class (i.e. equity or fixed income).

6.2.4. Identifiers and cross-reference services

6.2.4.1. Overview and Parties' activities

(103) Identifiers used in the financial data and software product markets are often alphanumeric codes to identify entities, securities and loans, in order to record, transmit and exchange data about those entities/assets.

(104) A security identifier is an alphanumeric code that can be used to identify a specific security, with varying levels of uniqueness depending on the type of identifier.[81] Security identifiers may be considered a type of reference data as they are used to identify or retrieve certain information about a financial instrument.[82] S&P is active in security identifiers with CUSIP Global Services (CGS) which operates the CUSIP system under licence from the American Bankers Association (ABA). The ABA owns the underlying intellectual property of CUSIP. CUSIPs are unique nine-digit numbers assigned to securities (e.g. stocks, bonds) issued in the US, Canada and 53 other jurisdictions for which CGS is the substitute national numbering authority.

(105) Derivative identifiers which are relevant in this case are so called Reference Entity Data (RED) identifiers which are used for a specific type of derivative, namely CDS. A RED identifier is used in a CDS context to confirm the relationship between a reference entity and a reference obligation, each of which is assigned a unique (RED) code. IHSM and S&P are active in this market together, S&P as the owner of

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79 Form CO, Chapter on indices, paragraph §6.187, dated 3 September 2021.

80 Replies to questions 8-10 of Questionnaire 4 and questions 11 and 21 of Questionnaire 5.

81 For instance, some identifiers are unique at market-level, specifying the instrument and the particular exchange on which it is listed, while other identifiers are unique at country-level, specifying the instrument and the country in which it is listed but without distinguishing between exchanges within the country, see Commission decision of 13 January 2021 in case M.9564 – *London Stock Exchange Group / Refinitiv*, paragraph 467.

82 Commission decision of 13 January 2021 in Case M.9564 – *London Stock Exchange Group / Refinitiv*, paragraph 467.

the intellectual property rights to RED codes (which are based on CUSIPs) and IHSM based on a "[…]"[83] license.

(106) A loan is not a security and hence, loan identifiers are not technically security identifiers. They do, however, serve practically the same purpose, namely to enable recording, transmission and exchange of data on a particular asset, in this case, a loan. IHSM uses its proprietary loan identifiers called LoanX IDs (LXIDs) to track individual loans in their loan pricing and loan reference data products.[84] The LXID is an alphanumeric code and comprises also 10 data fields which include the key terms of the loan for identification purposes (e.g. issuer bank, loan type, maturity date etc.) which are also part of the wider loan reference data of a loan that includes ca. 100 data fields. S&P also owns loan identifiers, namely loan CUSIPs and LCD IDs (identifiers used in S&P's Loan Commentary and Data (LCD) product).

(107) Cross-reference services allow for the matching and cross-referencing of instruments, entities and/or industries that may be assigned multiple different identifiers across multiple datasets. Cross-reference services aim to provide a mapping service that allow customers to connect identifiers for the same entity, instrument or industry so that they can then access relevant underlying datasets and other information connected to each identifier in the knowledge that they are comparing/reviewing 'like-for-like' and corresponding data across multiple and disparate data sources.

(108) S&P is active in the provision of cross reference services. S&P creates its mapping of identifiers by sourcing identifiers from third parties such as RED identifiers and LXIDs from IHSM.

(109) IHSM also provides a cross-reference tool named Entity Link. Entity Link is a service launched by IHSM in 2020 to provide customers with corporate hierarchy information for issuers and for entities that trade in the corporate credit market. IHSM's product is a data feed-based solution focussed on cross-referencing in respect of its domains of activity, namely evaluated bonds, CDS and fixed income indices. IHSM also has a legacy cross-reference tool, Markit Maps.

6.2.4.2. Relevant product market – Loan identifiers

(A) The Commission precedents

(110) The Commission has not previously considered a separate product market for loan identifiers. However, a number of previous merger and antitrust decisions have considered identifiers used for financial instruments.

(111) In *Standard & Poor's*[85] the Commission considered security identifiers as serving different purposes from other financial information, and particularly being used to identify a security rather than to monitor the markets or evaluate an investment opportunity, and found their distribution distinct from the distribution of other financial information. In that case, the Commission considered the relevant market to

83 […].

84 LXIDs are also used in IHSM's loan portfolio software, Wall Street Office.

85 Commission decision of 15 November 2011 in Case COMP/39.592 - *Standard and Poor's*, paragraphs 19-21.

be the market for first-hand electronic distribution and licensing of US International Securities Identification Numbers (ISINs) (records and numbers) via data feeds.[86] US ISINs are based on CUSIPs[87], which are the security identifiers developed first for the domestic market in the US. In that decision, the Commission justified the limited substitutability between internal identifiers used by data vendors (such as Bloomberg Tickers and Reuters Instrument Codes (RICs)) and "standalone" identifiers such as ISINs with the more limited coverage of RICs and Bloomberg Tickers versus ISINs. In addition, the Commission highlighted that for some specific use cases, ISINs could not be replaced by RICs or Bloomberg Tickers, for example, inter-bank communications, asset and portfolio valuation, clearing and settlement, etc., and "in general all other legally and economically sensitive operations which require the highest degree of security and accuracy."[88]

(112) In *Thomson/Reuters*[89] the Commission considered security identifiers (referred to as "instrument codes" in that decision) separately in the competitive assessment, while not concluding definitively on a separate product market. The decision distinguished two types of security identifiers: (i) identifiers provided by data vendors like RICs for purposes of identification within the vendors' own systems and (ii) industry-wide codes provided on a stand-alone basis like Stock Exchange Daily Official List (SEDOLs), ISINs and Financial Instrument Global Identifier (FIGIs).

(113) In *LSEG/Refinitiv*[90], the Commission considered that the potential relevant markets are the market for all security identifiers, and potential individual product markets for each security identifier (e.g. SEDOLs, RICs, ISINs, CUSIPs, etc.).

(B) The Notifying Party's view

(114) Regarding IHSM's LXIDs, the Notifying Party argues that LXIDs are IHSM's internal identifiers used to track individual loans supporting IHSM's loan pricing and reference data services.

(115) In the Notifying Party's view, LXIDs cannot be considered independently from IHSM's loan pricing data or loan reference data, given that LXIDs are not sold on a standalone basis. Other competitors in loan pricing and reference data also offer their data with their own internal identifier. These loan identifiers are not substitutable, according to the Notifying Party, as they each are only used to identify records in the respective providers' loan pricing and reference data.

(116) By contrast, loan CUSIPs are standalone universal identifiers assigned to a deal and its underlying facilities in the US corporate loan market, in response to requests from issuers (i.e. entities issuing the debt) or associated participants in the issuance process (e.g. arranger banks), at the point that a loan is issued (or shortly after) that

86 Commission decision of 15 November 2011 in Case COMP/39.592 - *Standard and Poor's*, paragraph 12.

87 CUSIPs are the national identifiers on which the US ISINs are based by adding a country code and a control number.

88 Commission decision of 15 November 2011 in Case COMP/39.592 - *Standard and Poor's*, paragraphs 19.

89 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation/Reuters Group*, paragraph 71.

90 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group/Refinitiv Business*, paragraphs 473-475.

are not tied to or otherwise associated with any other product or service, according to the Notifying Party.[91]

(117) The Notifying Party submits that while the LXID and loan CUSIP are both loan identifiers in a broad sense, they each have particular characteristics that mean they are fundamentally different in terms of their features, their intended purpose and thus the way in which they can be and are used by customers.[92] As a result, the Notifying Party is of the view that a loan identifier market comprising both LXIDs and loan CUSIPs is not plausible.

(C) The Commission's assessment

(118) Some loan identifiers are generally sold together with loan pricing and reference data. This is in particular the case for LXIDs and LINs, which are usually commercialised together with IHSM's and Refinitiv's loan pricing and reference data respectively. On the other hand, other loan identifiers are sold on a standalone basis, such as S&P's loan CUSIPs and FIGIs (previously owned by Bloomberg). The question is whether loan identifiers that are usually sold together with loan pricing and reference data, such as LXIDs and LINs, are part of the market for loan identifiers, meaning that they would also compete with other identifiers commercialised on a stand-alone basis.

(119) The market investigation confirmed that certain loan identifiers, such as LXIDs, are generally sold as part of loan pricing and reference data, and that competition between providers in that space primarily takes place at the level of the supply of loan pricing and reference data overall, including loan identifiers.[93][94] More specifically, the majority of competitors offering loan identifiers answers that loan identifiers are part of the loan reference data offering.[95] This is supported by factual elements. For example, LXIDs consist in an alphanumeric code and are always supplied together with the key terms (10 data fields) of the loan (e.g. issuer bank, loan type, maturity date etc.). Those key terms are also part of loan reference data. All loan identifiers are supplied with key terms and are in that respect comparable.[96] In addition, the large majority of responding customers state that they need to receive loan pricing and reference data with a particular loan identifier.[97] However, while this indicates that LXIDs and some other loan identifiers are generally sold in a bundle with loan pricing and reference data, this does not mean that they are not also part of a separate loan identifier market, competing against *inter-alia* loan identifiers commercialised on a stand-alone basis. Several elements collected during the market investigation strongly suggest that LXIDs are part of a distinct market for loan identifiers.

(120) Market participants recognize the intrinsic link between the pricing and reference data and loan identifiers and it is conceivable that the value of a loan identifier is derived to a large extent by the universe of loans that can be identified, described

91 Form CO, Chapter on Market Intelligence, Annex B.34.a.
92 Form CO, Chapter on Market Intelligence, Annex B.34.a.
93 Replies to question 12 of Questionnaire 6.
94 Replies to question 7 of Questionnaire 7.
95 Replies to question 3.2 of Questionnaire 6.
96 Notifying Party's response to RFI 34, question 2.
97 Replies to questions 8 and 9 of Questionnaire 7.

and analysed with the help of the identifier. One competitor summarizes it like this: *"Identifiers intrinsically don't have value no matter how good they are. Anyone can gather a universe of data about loans and create their own identifiers. What makes the identifiers "valuable" – what separates something like an LXID from a LIN – is what comes with it? LXIDs bring LoanX pricing and LINs are used by Refinitiv. Though Refinitiv is an older product, LoanX's platform and delivery mechanism has allowed it to become more firmly embedded in the market. So, today, LXIDs are the market standard for identifiers not because of the identifier itself but because LoanX pricing is a critical need for participants. Furthermore,* ***it connects not just to pricing, but also the whole world of IHS Markit content including the suite of services offered by Wall Street Office****."* [98] [emphasis added]. This highlights, however, that LXIDs are used separately from IHSM's loan pricing and reference data, including by IHSM's other services in the loan space.

(121) The fact that an identifier derives a large part of its value from data that it refers to does not mean that it cannot be a separate product, in particular if competing identifiers exist that are not intrinsically linked to such data.

(122) First, the market investigation showed that companies active in the loan space have an interest to get a license for using LXIDs stand-alone. More specifically, a number of competitors in loan pricing and/or reference data, other downstream products, and identifiers stated that they have a standalone interest in LXIDs. One competitor and potential customer states: *"We have spoken with IHS only about loan identifiers, and IHS packages its LXID with reference data and/or pricing data."*[99] Another market participant states: *"[A potential customer] has previously sought to license LXID's from Markit to enable its downstream businesses to compete with Markit and to meet client needs. But Markit resisted those attempts. It did so by offering [the potential customer] a licensing price that was so high as to signal clear disinterest in reaching agreement (essentially a constructive refusal to supply)."*[100] A competitor states: *"The only data from IHSM that's a need-to-have is the LXIDs – the pricing data is a nice-to-have but there are viable substitutes."*[101] A further competitor explains: *"(…) customers have asked [competitor] if they could use LoanX IDs. 10 years ago [competitor] made an attempt to get a license for LoanX IDs, but it was very expensive. [Competitor] would consider licensing LoanX IDs if the terms were appropriate to satisfy its customers' needs."*[102] One competitor highlights: *"Without LoanX identifiers, a distributor cannot efficiently concord bank loan transactions or bank loan pricing, or further tie such content to its fundamentals and capital structure content sets."*[103] This also highlights the importance of loan identifiers, and LXIDs in particular, for downstream products, which are discussed separately in this decision (see Section 6.3.3.1).

(123) The above quotes point to the existence of a standalone demand for LXIDs.

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98 Reply to question 12.1 of Questionnaire 6.

99 Reply to question 12.1 of Questionnaire 6.

100 Reply to question 23.1 of Questionnaire 6, supplemented by separate email on 28 September 2021.

101 Reply to question 29.1 of Questionnaire 6.

102 Reply to question 41.1 of Questionnaire 6, supplemented by separate email on 29 September 2021.

103 Reply to question 33.1 of Questionnaire 6.

(124) Second, the market investigation suggests that competitors in the loan space are using loan identifiers such as LXIDs for specific use cases outside of IHSM's loan pricing and reference data. A competitor highlights the use cases of loan identifiers from a supply-side perspective: *"[Competitor] requires identifiers for two purposes: 1) for structuring data internally and mapping securities and loans to companies and 2) for providing the results of its analyses and data structuring to customers including identifiers that customers require/use."*[104] While it is conceivable that providers of loan pricing and reference data or analytics in that space can work for internal purposes with an in-house identifier, this is not clear for providing that data/analytics to customers, who have their own views on the identifier they require. Another competitor confirms this: *"[The competitors' market intelligence product] has unique [proprietary identifier of the competitor] to support our internal data mapping. We do provide them to clients and they are part of our data sets – but we also have to provide market standard identifiers (LXIDs, CUSIPs) to support broader market data mapping. We have to meet the market requirement – by providing what our clients use – we can't be competitive by relying upon our own identifiers."*[105]

(125) Third, while LXIDs are generally sold together with loan reference and pricing data, certain companies actually benefit from specific LXIDs display rights. The Commission analysed specifically IHSM's contracts with [Details of customer contracts] customers called "Alliance Partners" which are allowed to display LXIDs[106] and asset servicers[107] which also have display rights. The fact alone that IHSM has customers which are allowed to display LXIDs and others which are not, already indicates that LXIDs may be a separate product. These LXID display rights are in relation to loan pricing and reference data but also relating to other products which use loan pricing and reference data as an input[108], confirming that there are separate use cases for LXIDs, not directly related to interrogating IHSM's loan pricing and reference database. This already contradicts the Notifying Party's view that LXIDs are used solely for the purpose of identifying loans in IHSM's loan pricing and reference database.

(126) Analysing contracts of the Alliance Partners, the Commission observes the following: In the earlier contracts ([Details of customer contracts][109]) to which the Commission had access, LoanX IDs or LXIDs are not explicitly mentioned. In later contracts ([Details of customer contracts]), LXIDs are explicitly defined[110], [Details of customer contracts]".[111] These later contracts also introduce the concept of [Details of customer contracts]*"*[112] The explicit definition of LXIDs and the introduction of more restrictive licensing terms ([Details of customer contracts])

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104 Minutes of a call with a competitor on 21 September 2021, 18:00 CET.

105 Reply to question 3.2.1 of Questionnaire 6.

106 [Details of customer contracts].

107 Asset servicers are often subsidiaries of big banks who take care of the day-to-day activities required to benefit from the respective assets (loans in this case), such as collection and distribution of payments and reporting.

108 […].

109 Form CO, Chapter on Market Intelligence, Annex B.34d Schedules 01, 06.

110 [Details of customer contracts].

111 [Details of customer contracts].

112 […], Form CO, Chapter on Market Intelligence, Annex B.34d Schedule 02, Section 2. Definitions.

indicate that LXIDs seem to have developed a distinguishable value separate from loan pricing and reference data, even if not explicitly separately charged for.

(127) When comparing average fees charged to customers with display rights and without display rights, it is evident that LXID display rights have a commercial value that translates into higher average revenues from customers who contract for them: Asset servicers with display rights paid an average annual fee of [Parties' financial results] for loan pricing data and [Parties' financial results] for loan reference data in 2020.[113] Alliance Partners with display rights paid average annual fees of [Parties' financial results] for loan pricing data and [Parties' financial results] for loan reference data in 2020. Compared to that, customers without display rights paid average annual fees of [Parties' financial results] for loan pricing data and [Parties' financial results] for loan reference data in 2020.[114] This means that customers with LXID display rights paid on average [Parties' financial results][115] times as much for loan pricing data as customers without display rights, and more than [Parties' financial results] as much on average for loan reference data in 2020. While this difference may to some extent also be related to other factors influencing the amount of fees, such as number of users or scope of data provided, part of the higher fees are clearly related to the ability to display LXIDs. This is evident from the contract provisions mentioned above that include restrictions regarding the use of LXIDs specifically and separately from IHSM's loan pricing and reference data.

(128) In addition to the Alliance Partners, [Parties' financial results] asset servicing customers of IHSM have display rights of LXIDs. Together, revenues from the Alliance Partners and asset servicing customers make up [Parties' financial results] of revenues generated by IHSM's loan pricing and reference data in 2020.[116] In summary, a sizeable part of IHSM's loan pricing and reference data revenues seems to be generated by and based on the combined commercialization of IHSM's loan pricing, reference and identifier data, of which LXIDs are a distinguishable and separate part evidenced by the display rights of LXIDs.

(129) While it could in turn be argued that only a minority of IHSM's loan pricing and reference data customers (Alliance Partners and the asset servicing customers) seem to attach a separate value to LXIDs as evidenced by the request for display rights of LXIDs, it is evident that these customers provide products/services to other market participants which value and use LXIDs separately from interrogating IHSM's loan pricing and reference data as evidenced by their decision to purchase those products/services (e.g. [Customer's product]). Alliance Partners and asset servicing customers are more akin to re-distributors of IHSM's loan pricing and reference data, including LXIDs, rather than being final end-customers.

(130) Fourth, the market investigation showed that in practice, LXIDs are used by end-customers for specific use cases, outside of IHSM's loan pricing and reference data. When asked more specifically about how LXIDs are used in practice, half of the responding customers answer that "*LXIDs are used alongside IHSM loan pricing*

113 Notifying Party's response to RFI 31, Annex 16.

114 Notifying Party's response to RFI 30, question 1.

115 Among asset servicers, there are […] with significantly higher annual fees than others. Even when excluding those […] outliers, average fees for loan pricing data are still almost […] for customers with display rights compared to customers without display rights.

116 Notifying Party's response to RFI 31, Annex 16.

and/or reference data, but also have other use cases for which they are used on a standalone basis (unrelated to IHSM loan pricing and/or reference data)" or even that they are used predominantly on a standalone basis (unrelated to loan pricing and/or reference data).[117] Customers explain that there are a variety of use cases, which are not necessarily completely unrelated to loan pricing and reference data use, but require a loan identifier for communication purposes between market participants. One customer states: *"Loan identifiers used for MO & BO reces, FO used for pricing (...)"*[118], where MO & BO presumably indicates "middle office" and "back office", while "FO" stands for "front office". Front office is the part of a bank's business which is usually in charge of trading, while middle- and back-office deal with post-trade processing, accounting, reporting, etc.

(131) Another customer mentions: *"We have seen examples where we need to prove that we have an agreement with Market for LoanX identifiers to be enabled in a feed."*[119] This is possibly a result of IHSM's contracts with Alliance Partners and asset servicers, restricting redistribution of LXIDs to end-customers. A further customer mentions as standalone use case: "*Use to follow the life of loans when repurchased/repackaged."*[120] These statements suggest that use cases for LXIDs are broader than limited to being used exclusively in relation to interrogating IHSM's loan pricing and reference data.

(132) Half of the responding competitors are also of the view that LXIDs have other use cases for end-customers which are unrelated to identifying loans in loan pricing and reference databases.[121] One competitor mentions the following standalone use cases: "*Mapping of loans, reporting trades and investments, risk management reporting and monitoring, reporting related to trading, settlements and clearing."*[122] Another competitor states: *"Loan reference data has a lot of uses in both the buy side and sell side – any data related to identifying and quantifying deals in the market is intrinsically a product. (...)."*[123] Another competitor mentions that their proprietary loan identifier is *"used to manage and browse our loans database"* but also *"offered as part of various services that capture and expose loans and credit data."*[124] A competitor explains: *"LoanX identifiers are "must have" resources for CLO*[125] *trustees and other customers. They are used in periodic reporting to CLO trustees to the CLO tranche investor. And investors in turn use the identifiers to map and monitor the underlying loan holdings of their CLO investments. Asset managers can buy and sell the loans that comprise a CLO, so scrutiny of the asset composition is important. Managers seek to profit from discrepancies in the cost of loans and the ratings that apply to pools of such loans.(...)"* [126]

(133) Even the Notifying Party acknowledges that LXIDs have separate use cases by stating *"LXIDs are also used to identify loans which are processed using IHSM's*

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117 Replies to question 23 of Questionnaire 7.
118 Reply to question 10.1 of Questionnaire 7.
119 Reply to question 11.1 of Questionnaire 7.
120 Reply to question 23.1 of Questionnaire 7.
121 Replies to question 20 of Questionnaire 6.
122 Reply to question 20.1 of Questionnaire 6.
123 Reply to question 11.1 of Questionnaire 6.
124 Reply to question 3.2.1 of Questionnaire 6.
125 CLO stands for collateralized loan obligation, which is a securitization backed by loans.
126 Submission of a competitor dated 12 July 2021, paragraphs 11 and 12.

WSO or ClearPar settlement services (…)".[127] While LXIDs are not essential for this purpose, as loans can be cleared and settled without an LXID, *"Of the facilities processed in ClearPar [IHSM's loan settlement service] in 2020,* ***c. […] had an associated LXID****, c. […] had an associated CUSIP, and […] submitted FIGIs or LINs for use in respect of facilities processed on ClearPar (although it is possible that ClearPar customers use FIGIs or LINs for loans in other use cases)."*[128] [emphasis added]

(134) The Commission did not investigate in detail the way in which the different product features (i.e. the fact that LXIDs change over the life of a loan, while loan CUSIPs are issued once and do not change) affect market participants' use cases. However, given that IHSM provides customers with recommended update files which reconcile changing LXIDs and allow a customer to follow a loan over time to its initial LXID, the effective information available to customers in terms of substance does not seem to differ between LXIDs and other loan identifiers. In any case, no customer mentioned this difference in product features or its effects on the attractiveness of using one identifier versus the other. The only consistent quality criterion mentioned by customers throughout responses to the market investigation was the coverage of loan identifiers, i.e. the proportion of all loans covered by an identifier.

(135) Fifth, the market investigation showed that it is not uncommon for competitors to display other loan identifiers than their own. Half of the responding competitors state that they distribute third-party loan identifiers alongside their own products.[129] This indicates that loan identifiers more generally have a separate value for customers which is independent from the underlying data distributed by each provider.

(136) A European business association also highlights that identifiers, including loan identifiers, are separate products in their members' views: *"Financial market participants rely on identifiers (for a wide range of financial products) in order to be able to identify and process financial products accordingly, notably in a post-trade context (clearing and settlement). These identifiers are also used in relation to loans. The identifiers are notably relevant for access to access certain data (e.g. RED, CUSIP, LoanX…). These identifiers products are purchased for separate and specific purposes by [European business association] members, and should be considered and assessed as a separate market."*[130]

(137) In light of the above, the market investigation answers do suggest that LXIDs serve also other use cases than only for the internal organization of IHSM's loan pricing and reference data. Even for the narrower use case of receiving loan pricing and reference data, customers have strong views on which identifier they need to receive this data with (also confirmed by the fact that most providers supply third-party loan identifiers as part of their loan pricing and reference data), highlighting the separate value of loan identifiers.[131]

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127 Form CO, Chapter on Market Intelligence, Annex B.34a, footnote 1.
128 Form CO, Chapter on Market Intelligence, Annex B.34a, footnote 1.
129 Replies to question 3.3 of Questionnaire 6.
130 Submission of a European business association dated 22 September 2021.
131 Replies to questions 8.1 and 9.1 of Questionnaire 7.

(138) Finally, the market investigation revealed that LXIDs and other loan identifiers sold standalone such as loan CUSIPs compete against each other. From a supply-side perspective, the majority of competitors respond that LXIDs and loan CUSIPs are substitutes for specific use cases or for nearly all use cases.[132] One competitor explains: *"It's **not "specific use cases" really – but they are substitutes for the instruments for which there are CUSIPs**. But because LXIDs cover a significantly larger share of the market —particularly in the less transparent part of the loan market—they are more commonly used. (...)"*[133] [emphasis added] Several respondents echo that LXIDs have a broader coverage than loan CUSIPs. One competitor states: *"In our view they are complementary to each other."*[134]

(139) From a demand-side perspective, the majority of customers responds that LXIDs and loan CUSIPs are substitutes for specific use cases.[135]

(140) To the question "Would you consider that any other loan identifier offers a good alternative to LXIDs?" more than half of the informative competitors' responses was *"Yes, but no alternative as close as loan CUSIPs".* More than half of the informative customers' responses to this question are also the same.

(141) This indicates that LXIDs and other identifiers sold on a standalone basis such as S&P's loan CUSIPs are considered substitutable by competitors and customers, at least for certain use cases. While the market investigation does not provide exhaustive answers which are those specific use cases, for which the identifiers of the Parties are substitutable, one customer replies for example: *"(...), mapping across required."*[136] This indicates, together with comments on the coverage of the identifiers that customers and competitors are possibly trying to maximize their ability to process and compare loan data by mapping several identifiers and data. Another customer explains: *"These ID's are tied back to another database that tracks additional metrics on a given transaction."*[137]

(142) This use case is supported by several answers showing a certain level of complementarity in terms of geographic coverage of LXIDs and loan CUSIPs, e.g. one customer says: *"Identifier for EMEA loans is predominantly LXID but some have CUSIPs too. In the US it is almost exclusively CUSIP."*[138] Another customer states their view on LXIDs and loan CUSIPs like this: *"(...) EMEA – LoanIX dominant, US, Cusip dominant but overlap between the 2."*[139]

(143) The Commission also notes that there is apparently a lot of overlap between loan identifiers, at least in relation to the use of loan identifiers within IHSM's traded loan service WSO[140]: *"In relation to WSO Services customers (...), […] of loans by volume (and […] by value) had a LXID associated with them; […] of loans by*

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132 Replies to question 21 of Questionnaire 6.
133 Reply to question 21.1 of Questionnaire 6.
134 Reply to question 21.1 of Questionnaire 6.
135 Replies to question 24 of Questionnaire 7.
136 Reply to question 24.1 of Questionnaire 7.
137 Reply to question 30.1 of Questionnaire 7.
138 Reply to question 24.1 of Questionnaire 7.
139 Reply to question 10.1 of Questionnaire 7.
140 Which is also another use case which is not directly related to interrogating IHSM's loan pricing and reference database.

volume (and […] by value) had a LIN associated with them; (iii) […] of loans by volume (and […] by value) had a CUSIP associated with them; and […] of loans by volume (and […] by value) had a Bloomberg ID associated with them."[141] In the Commission's view, this indicates that while currently no single loan identifier offers a full coverage of the traded loan universe, different loan identifiers (including LXIDs and loan CUSIPs) are obviously substitutable for the use in IHSM's traded loan service WSO (which is a market leader in that space, […]).

(144) In addition, IHSM provides a loan mapping service which enables LXIDs to be linked to other loan identifiers including loan CUSIPs, FIGIs, LINs and other identifiers. The fact that IHSM provides a mapping service of its own loan identifiers to third party loan identifiers shows that there is a demand for loan identifiers more broadly which is not directly linked to the loan pricing and reference data of a specific provider. This is also supported by the fact that competitors provide their own loan pricing and reference data and loan market intelligence products including third party loan identifiers (see paragraph (135)). Furthermore, it seems that IHSM is currently the only provider of a mapping service covering all relevant loan identifiers.

(145) Comparing the reasoning in a previous Commission decision in respect of security identifiers, "internal identifiers" used by data vendors and "standalone identifiers" were not considered substitutable.[142] However, loans are not securities and the reasons why the two types of security identifiers were not considered substitutable do not seem to apply with respect to loan identifiers.

(146) Firstly, in terms of coverage, the Commission refers to coverage figures provided by the Notifying Party (see **Table 2**) which show that in contrast to security identifiers (where internal identifiers were considered to lack coverage compared to standalone identifiers), this would seem to be the opposite with respect to loan identifiers. As also confirmed by the market investigation, LXIDs have a much broader loan market coverage than for example loan CUSIPs.

(147) Secondly, for securities transactions and related reporting, legal requirements mandate the use of ISINs, making them an essential identifier for all entities wishing to trade, clear, settle and report on securities. However, similar legal requirements do not exist for loans.

(148) Thirdly, the distinction that ISINs are created upon request and proprietary identifiers upon discretion of the owner seems to have less relevance for loans. This is because of the current time lag between LXID and loan CUSIP creation (see Section 6.3.2.1), which leads in most cases to LXIDs (the "internal identifier") being available before loan CUSIPs (the "standalone identifier"). Furthermore, while LXIDs are indeed issued at the discretion of IHSM, it has been in IHSM's interest to create as many LXIDs as possible, i.e. covering as many loans as possible to increase coverage and relevance of IHSM's loan pricing and reference data and related identifiers. In terms of incentives to issue loan identifiers, there would hence not seem to be any significant difference between LXIDs and loan CUSIPs.

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141 Form CO, Chapter on Market Intelligence, Annex B.34a, footnote 1.

142 Commission decision of 15 November 2011 in Case COMP/39.592 - *Standard and Poor's*, paragraphs 19.

(D) Conclusion

(149) In summary, the above shows that LXIDs and identifiers sold on a stand-alone basis such as S&P's loan CUSIPs are considered substitutable for certain use cases from a demand-side perspective. Mapping services of loan identifiers further support the conclusion that a broader market of loan identifiers is plausible, where LXIDs and loan CUSIPs compete.

6.2.4.3. Relevant geographic market – Loan Identifiers

(A) The Commission precedents

(150) The Commission has not previously considered the geographic market for loan identifiers. However, a number of previous merger and antitrust decisions have considered related markets, in the sense that they considered identifiers used for financial instruments.

(151) In *Thomson/Reuters*[143] the Commission considered the geographic scope of content sets, including instrument codes, to be at least EEA-wide and probably global.

(152) In *Standard & Poor's*[144] the Commission recognised that while often national security identifiers only cover securities issued in the respective countries, in certain exceptions, the National Numbering Agency (NNA) responsible for issuing the security identifiers also attributes identifiers for certain internationally issued securities. Ultimately, the Commission considered the market to be global for the purposes of that decision, as US ISINs were used globally by market players.

(153) In *LSEG/Refinitiv*[145] the Commission admitted that while certain identifiers have more coverage of specific geographies, including CUSIPs covering North America, the geographic market would still be worldwide or at least EEA-wide in scope.

(B) The Notifying Party's view

(154) The Notifying Party considers that the relevant product market of loan pricing and reference data and loan identifiers (however defined) is global. This is because suppliers can be situated anywhere globally as input is obtained remotely and distributed digitally to customers in any location. The Notifying Party submits that customer demand is not driven by the customers' or suppliers' location, and indeed customers may desire loan pricing or loan reference data in respect of issuers or regions in which they are not physically present.

(C) The Commission's assessment

(155) The Commission asked market participants in its market investigation at which geographic level they offer and source loan pricing and/or reference data and/or loan identifiers.

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143 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 111.

144 Commission decision of 15 November 2011 in Case COMP/39.592 - *Standard and Poor's*, paragraph 22.

145 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group/Refinitiv*, paragraph 479

(156) The large majority of competitors replied that they offer data/identifiers at a worldwide level, a majority replied that their competitors are active and customers are located globally and half of the competitors said that prices are set at worldwide level.[146] No competitor specified any other relevant geographic scope of their product apart from global[147] or indicated that their response would differ depending on whether loan pricing or reference data were concerned.[148] The responses indicate that from a supply-side perspective, the geographic market of loan pricing data, loan reference data, and loan identifiers is considered global.

(157) The large majority of customers replied that they purchase loan pricing and reference data by comparing offers at a worldwide level.[149] The same large majority confirmed that the same suppliers are active at worldwide level.[150]

(D) Conclusion

(158) For the purposes of this decision, the Commission considers based on the above evidence and reasoning, that loan identifiers are a separate product from loan pricing and reference data and given the at least partial substitutability between LXIDs and S&P's loan CUSIPs, the relevant product market plausibly consists of loan identifiers more broadly. The Commission considers that this market is global in scope.

6.2.4.4. Relevant product market – CUSIP identifiers

(A) The Commission precedents

(159) The Commission has previously considered the market for security identifiers in three decisions: *Thomson/Reuters*[151], *LSEG/Refinitiv*[152] and concretely in respect of S&P's security identifier, CUSIP[153] also in *Standard & Poor's*[154].

(160) In *Thomson/Reuters*, the Commission did not conclude on a separate product market for security identifiers, but did consider them separately in the competitive assessment. Furthermore, the decision described identifiers like RICs used by data vendors for purposes of identification within the vendors' own systems and industry-wide codes provided on a stand-alone basis like SEDOLs, ISINs and FIGIs.[155]

(161) In *LSEG/Refinitiv*, the Commission considered that security identifiers constitute a relevant separate market from other financial information content sets.[156] In that

146 Replies to question 13 of Questionnaire 6.
147 Replies to question 13.1 of Questionnaire 6.
148 Replies to question 13.2 of Questionnaire 6.
149 Replies to question 12 and 13 of Questionnaire 7.
150 Replies to question 12 and 13 of Questionnaire 7.
151 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation/Reuters Group*.
152 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group/Refinitiv*
153 CUSIP stands for Committee on Uniform Security Identification Procedures.
154 Commission decision of 15 November 2011 in Case COMP/39.592 - *Standard and Poor's*.
155 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation/Reuters Group*, paragraph 70.
156 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group/Refinitiv*, paragraph 480.

decision, the Commission left open whether all security identifiers constitute a relevant market or whether each security identifier constitutes a separate market.

(162) In *Standard & Poor's* the Commission considered the market for first-hand electronic distribution and licensing of US International Securities Identification Numbers (ISINs) (records and numbers) via data feeds.[157] Bloomberg Tickers and Reuters Instrument Codes (RICs) as proprietary identifiers were not considered effective substitutes as their coverage is not the same as for ISINs, and their issuance is at the discretion of the system owner, whereas ISINs are issued by national numbering agencies (NNAs) at the request of issuers.[158]

(B) The Notifying Party's view

(163) The Notifying Party acknowledges the relevant product market of security identifiers as defined by the Commission in *Standard & Poor's*, and considers that the relevant market in this case is the first-hand supply of CUSIP identifiers along with related descriptive data via data feeds.[159]

(C) The Commission's assessment

(164) The Commission notes that CUSIPs were first conceived and introduced in 1968 for US-issued securities and before the ISIN Standard was developed (1978). In accordance with the ISIN Standard, ISINs build on pre-existing national numbers. This is why US-ISINs are based on CUSIPs, which existed before ISINs. They have been provided by S&P through its CUSIP Global Services Unit and on behalf of the ABA since 1968.

(165) CUSIP numbers consist of nine characters (including letters and numbers) that uniquely identify a company or issuer and the financial instrument. In 1989, a similar system to identify non-US securities (CUSIP International Numbering System or CINS) was introduced. CINS employ the same nine character identifier as CUSIP, but also contain a letter in the first position to signify the issuer's country or geographic region. CGS is the NNA for the USA and Canada, and currently the substitute NNA for 53 other jurisdictions.[160]

(166) CUSIPs were assigned over the years to more and more asset classes (e.g. in 1983 to Certificates of Deposit, in 1990 to commercial paper issues, in 2003 in the form of RED Codes, which are CUSIP-like identifiers, to credit default swaps, in 2004 to syndicated loans, in 2016 to physical precious metals).

(167) Automation in trading, clearing and settlement processes of securities as well as regulatory changes mandating the use of CUSIPs and ISINs in US- and EU-Legislation for settlement and reporting purposes have changed the importance and reliance of market participants on CUSIPs and ISINs. However, their fundamental purpose has not changed over the years and remains the unambiguous identification of securities (and other assets) in communication between market participants, including supervisory authorities, at the national level.

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157 Commission decision of 15 November 2011 in Case COMP/39.592, paragraph 12.

158 Commission decision of 15 November 2011 in Case COMP/39.592, paragraph 19.

159 Form CO, Chapter on Vertical Relationships, paragraph 4.7.

160 Substitute Numbering Agencies - Association of National Numbering Agencies (ANNA) (anna-web.org).

(168) From both a supply-side as well as demand-side perspective, there are effectively no substitutes to CUSIPs/CUSIP-based ISINs for securities issued in one of the jurisdictions for which CGS is the NNA,[161] i.e. there is only one entity who supplies CUSIPs/CUSIP-based ISINs first-hand which is S&P through its CGS Unit. Even if some customers mention SEDOLs[162], RICs and Bloomberg Codes/Tickers as potential alternatives, this applies only to non-US securities/securities not covered by CGS's NNA service or for specific environments, e.g. *"When using Refinitiv data feeds, the RIC code can be credible alternative (…)"*[163]

(169) One customer confirms this: *"For US/Canadian Securities there is only ONE source: CUSIP. Even if we use ISIN for US securities we require a license due to 'CUSIP embedded ISIN' topic. In both cases the CUSIP Service Bureau is the owner of the license."*[164] Hence, whoever wants/needs to trade and hold US-issued financial instruments or financial instruments issued in any other jurisdiction for which CGS is the substitute NNA requires access to CUSIPs/CUSIP-based ISINs and related descriptive data.

(170) Customers unanimously answered "No" when asked if they would likely switch security identifier provider in case of a small but significant increase (5-10%) in the licensing fees of CUSIPs.[165]

(171) Based on the market investigation the Commission considers that it has no reason to depart from previous decisions and the Notifying Party's view that the relevant market for the purposes of this decision is the issuance, distribution and licensing of CUSIP based-ISINs (records and numbers) via data feeds.

6.2.4.5. Relevant geographic market – CUSIP Identifiers

(A) The Commission precedents

(172) In its previous *Standard & Poor's* decision, the Commission considered the market for CUSIP identifiers to be global, given that CUSIPs are distributed and used by customers globally.[166]

(B) The Notifying Party's view

(173) In the Notifying Party's view, the geographic market for the first-hand supply of CUSIP identifiers is global in scope.[167]

(C) The Commission's assessment

(174) The Commission notes that the purpose of security identifiers like CUSIPs is to unambiguously identify securities in communication between market participants trading securities. In particular, institutional investors trade securities globally (i.e.

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161 Replies to question 48.1 of Questionnaire 5.
162 Stock Exchange Daily Official List codes, issued by the London Stock Exchange for UK securities.
163 Reply to question 48.1 of Questionnaire 5.
164 Reply to question 48.1 of Questionnaire 5.
165 Replies to question 42 of Questionnaire 7.
166 Commission decision of 15 November 2011 in Case COMP/39.592 - *Standard and Poor's*, paragraph 23.
167 Form CO, Chapter on Vertical Relationships, paragraph 4.7.

independent of their own location) and therefore require globally acknowledged security identifiers like CUSIPs. In addition, the market investigation provided no evidence that the Commission should depart from previous decisions and the Notifying Party's view. The Commission therefore considers that the market for CUSIP identifiers to be global.

(D) Conclusion

(175) For the purposes of this Decision, the Commission considers the issuance, distribution and licensing of CUSIPs/CUSIP-based-ISINs (records and numbers) via data feeds a separate market which is global in scope.

6.2.4.6. Relevant product market – RED Code identifiers

(176) […].[168] […].

(A) The Commission precedents

(177) The Commission has previously considered the market for RED Codes in its *IHSM/CME/JV* decision,[169] though did not conclude in that decision whether RED Codes form a distinct market or are part of a larger market comprising other identifiers such as ISINs paired with LEIs.

(178) In addition, the Commission has considered security identifiers, concretely CUSIP-based ISINs and SEDOLs, see Section 6.2.4.4. In those cases, the Commission has considered markets comprising all security identifiers, and plausible individual markets for each identifier.

(B) The Notifying Party's view

(179) Regarding RED identifiers, the Notifying Party considers that there are a range of alternative identifier systems available that could be used as a substitute for RED identifiers, including self-supply and the combined use of legal entity identifiers (LEIs) to identify entities and bond ISIN numbers to identify reference obligations. Therefore, a broader market comprising those alternatives could be considered, according to the Notifying Party. However, the Notifying Party acknowledges that a plausible narrow market only consisting of RED identifiers may exist but submits that no conclusion needs to be drawn regarding the product market as no concerns arise based on a narrower product market definition comprising only RED identifiers.

(C) The Commission's assessment

(180) The Commission notes that while RED Codes may in theory be substitutable with LEIs and ISINs, market participants may be reluctant to consider this as switching identifiers is not generally considered easy and quick. This is confirmed by a number of market participants who attribute a certain market power to IHSM with respect to RED Codes, for example: *"Both S&P and IHS Markit have significant market power in relation to market data. For S&P, it's their indexes and credit ratings, for Markit*

168 Form CO, Chapter on Vertical Relationships, paragraph 5.25.

169 Commission decision of 20 July 2021 in case M. 10158 – *IHS Markit / CME Group / JV*, paragraph 211.

it's their fixed income indexes and RED codes."[170] If RED Codes were easily substitutable, ISHM would likely not be considered to have market power with respect to them.

(181) From a supply-side perspective, RED Codes itself are not substitutable by any potential competitor, […].

(182) Based on the above and no indications in the responses to the market investigation that RED Codes are substitutable with one or more identifiers, the Commission considers the relevant market in this case to consists of RED Codes.

6.2.4.7. Relevant geographic market – RED Code Identifiers

(A) The Commission precedents

(183) The Commission has previously considered the geographic market for RED Codes or a plausible wider market comprising other identifiers that would be able to substitute RED Codes in its *IHSM/CME/JV* decision[171] as global.

(B) The Notifying Party's view

(184) The Notifying Party submits that the market for RED Codes is global in scope, given that IHSM distributes RED Codes globally.[172]

(C) The Commission's assessment

(185) The Commission received no responses to the market investigation suggesting that the geographic scope should be any other than in line with previous decisions and the Notifying Party's view, i.e. global. The Commission furthermore notes that RED Codes are used to support the trading, clearing and settlement of CDS, which is a global market. Based on these considerations, the Commission sees no reason to depart from its previous consideration that the market for RED Codes is global.

(D) Conclusion

(186) For the purposes of this Decision, the Commission considers that RED Codes form a separate market which is global in scope.

6.2.4.8. Relevant product market – Cross reference tools

(A) The Commission precedents

(187) The Commission has not previously considered a market for cross-reference services or tools.

(B) The Notifying Party's view

(188) The Notifying Party submits that cross-reference services will likely have a limited demand-side substitutability with other products or services given the specific

[170] Replies to questions 15.1 and 58.1 of Questionnaire 5.

[171] Commission decision of 20 July 2021 in case M. 10158 – *IHS Markit / CME Group / JV*, paragraph 215.

[172] Form CO, Chapter on Vertical Relationships, paragraph 5.28.

purpose they serve for customers, i.e. linking different datasets on entity, instrument and industry level. While there could be differentiation based on the focus of the respective cross-reference tool, e.g. IHSM's Entity Link being more focused on debt-related identifiers, and S&P's offering being broader, the Notifying Party does not consider it necessary to conclude on this, as no concerns arise.

(C) The Commission's assessment

(189) The Commission notes that customers may have a distinct view on which identifiers they need access to based on the underlying data they want to link, and hence identifier coverage is likely a very important feature of cross-reference tools. Respondents to the market investigation considered nevertheless that competition takes place at the level of cross-reference tools overall and no further segmentation is relevant.[173] Respondents to the market investigation found that S&P and IHSM are close competitors in the market for cross-reference tools, but along with other competitors.[174] This points to basically substitutable offerings.

(190) The market investigation otherwise did not provide any specific indications that the market for cross-reference tools could be narrower. The Commission therefore considers that the relevant product market for the purpose of this decision is the market for cross-reference tools.

6.2.4.9. Relevant geographic market – Cross reference tools

(A) The Commission precedents

(191) The Commission has not previously considered the geographic scope of the plausible market for cross-reference tools.

(B) The Notifying Party's view

(192) Regarding cross-reference tools, the Notifying Party considers that a market comprising the global supply of cross-reference services would be appropriate given that those services are supplied on a global basis. Equally, demand is not driven by location of either the customer or the supplier.[175]

(C) The Commission's assessment

(193) The Commission considers the plausible market for cross-reference tools to be global for the following reasons.

(194) First, identifiers and sector classification schemes, which are inputs to cross-reference tools, are global markets.

[173] Replies to question 35 of Questionnaire 7.
[174] Replies to question 40 of Questionnaire 7.
[175] Form CO, Chapter on Vertical relationships, paragraph 5.35.

(195) Second, respondents to the market investigation unanimously answered that they purchase cross-reference tools by comparing offers at worldwide level and that suppliers are active at this level.[176]

(D) Conclusion

(196) For the purposes of this Decision, the Commission considers that cross-reference tools are a separate market which is global in scope.

6.2.5. Pricing and reference data

6.2.5.1. Overview and Parties' activities

(197) Pricing and reference data can be related to different asset-classes: (i) corporate and sovereign bond pricing and reference data, (ii) municipal bond pricing and reference data, (iii) loan pricing and reference data (iv) securitized products pricing and reference data, and (v) CDS pricing and reference data.

(198) Pricing data can be based on actual transactions (i.e. price at which a certain asset was bought/sold), on quotes (i.e. firm offers to buy/sell a certain asset) or estimates or even extrapolations based on a small sample of those ("evaluated pricing"). Reference data contains terms and conditions of financial instruments which in certain asset classes, like loans, can change over time.

(199) Pricing and reference data can be supplied together or separately. Both pricing data and reference data can each be supplied as a 'standard' package (i.e. the customer gets a full basic dataset) or, depending on the customer's needs, as a bespoke file containing only certain data elements (e.g. focussing on a specific geography).

(200) Pricing and reference data is always supplied using one or several identifiers to unambiguously distinguish and identify the financial instruments the data refers to. The data is used by a variety of different customers, for example investors, banks, asset servicers, market intelligence providers and credit rating agencies.

(201) IHSM is active in pricing and reference data for several types of financial instruments, namely (i) loan pricing and reference data, (ii) bond pricing and reference data, and (iii) CDS pricing and reference data.

6.2.5.2. Relevant product market – Pricing and reference data

(A) The Commission precedents

(202) The Commission defined pricing and reference data in *LSEG/Refinitiv*, although in that case, the focus and overlap was in consolidated non real-time pricing and reference data, which was considered a separate market, different from the market of packaged solutions, such as desktop services.[177] In other previous decisions, the

[176] Replies to question 36 of Questionnaire 7.

[177] Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group/Refinitiv Business*, paragraph 518.

Commission considered discrete data content sets as plausible separate markets, given that they are not substitutable from a demand side perspective.[178]

(B) The Notifying Party's view

(203) The Notifying Party acknowledges that, despite some supply-side substitutability, pricing and reference data should be considered separate markets for different asset classes, due to limited demand-side substitutability.[179] Within asset classes, the Notifying Party submits that no further segmentation is relevant, e.g. into different kinds of bonds (corporate, municipal, sovereign and securitized products), as there is full supply-side substitutability and customers generally tend to demand the full range, though the segmentation may not be entirely irrelevant for customers.

(204) Considering whether pricing and reference data are in general part of the same market, the Notifying Party considers that there is at least some supply side substitutability in the sense that many providers are active in both, pricing and reference data and the customers tend to overlap to a large extent. From a demand side perspective, the Notifying Party considers pricing and reference data to be complementary. In any case, the Notifying Party considers that the Commission does not need to conclude on the exact market definition with respect to an overall pricing and reference data market (for different asset classes) or separate pricing data and reference data markets. The Notifying Party has nevertheless provided market share data based on the most narrow plausible market definition, namely for pricing and reference data separately for all three relevant asset classes (loans, bonds, CDS).

(205) The Notifying Party further considers that customers generally do not distinguish, other than in exceptional circumstances, between evaluated and composite/mark-to-market pricing. According to the Notifying Party, these are two different price calculating methodologies which may be used separately or in combination in relation to some instruments (e.g. bonds and CDS) to ensure accuracy and as full coverage as possible, in particular when observable pricing data is not as readily available or prevalent. The Notifying Party does not consider separate markets for evaluated and non-evaluated pricing plausible.[180]

(C) The Commission's assessment

(206) The Commission considers that the evidence from the market investigation supports the Notifying Party's view that pricing and reference data for different asset classes are separate markets. The responses to the market investigation even suggest that there is no supply side substitutability in the short term.[181] For example, no competitor considers it feasible that a provider of bond or CDS pricing data can start producing loan pricing data within a short time such as 6 months or less.[182] In fact, most respondents are either unable to estimate this or state that starting a pricing data service in a different asset class would take between 1 and 2 years and several

[178] Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 44 and Commission decision of 20 July 2018 in Case M.8837, *Blackstone/Thomson Reuters F&R Business*, paragraph 17.

[179] Form CO, Chapter on Vertical Relationships, paragraph 3.96.

[180] Notifying Party's response to RFI 30, question 5.

[181] Replies to questions 7-9 of Questionnaire 6.

[182] Replies to question 7 of Questionnaire 6.

million Euros of investment to get started.[183] One competitor estimates: *"It is our understanding that it would be difficult to begin producing loan pricing data in a short time. Loan markets are in many ways more illiquid than bond markets and ownership of loan data is not easily collected."*[184] Another respondent emphasizes that most customers value data history, so a successful entrant in the loan pricing data market would require several (4-5) years of data history before becoming a relevant competitor.[185] Furthermore, the respondent states: *"It is also worth noting that even once the product gets to the marketplace, the new offering would still need to concord to either LXIDs or CUSIP IDs (both controlled by the combined entity) and the cost of obtaining those IDs likely will increase significantly for a competitive product."*[186] In summary, entry into adjacent pricing and reference data markets seem to be difficult and from a demand-side perspective, pricing and reference data for different asset classes is not substitutable.

(207) With respect to the question whether pricing and reference data are part of the same market or separate markets, the evidence in the market investigation is mixed. The majority of responding customers purchase loan pricing and reference data separately, one third of the responding customers purchase loan pricing and reference data together, and a small minority purchases only loan pricing data.[187] [Parties' accounting policy].[188]

(208) From a supply side perspective, the data sources for loan pricing and reference data are different. Loan pricing data is sourced from actively trading dealer banks and brokers, while loan reference data is sourced from Information Memoranda prepared by the agent banks syndicating a loan. One competitor also notices that both kinds of data present very different challenges: *"It is important to delineate between pricing collection and reference data collection. While pricing data collection is much less complicated (and with much less data item collection) than reference data collection; obtaining pricing history is much more difficult than reference data historical collection. This is because there is document history available for about 60-65% of the loan facilities. The training and education component toward collecting the loan reference data is 5 times more difficult than collecting pricing data."*[189]

(209) The Commission notes that given that not all providers provide both types of data, customers do not always buy both types of data or if they do, they might buy them separately, the data sources are different and require different expertise in terms of database management, the evidence would tend to point rather in the direction of separate pricing and reference data markets.

(210) With respect to the specific asset classes (CDS, loans, bonds), a further sub-segmentation could be relevant for bonds depending on the type of issuer (sovereign, municipal, corporate, securitized). However, customers often purchase data on different kinds of bonds together and suppliers' products are comparable in the sense

183 Reply to question 7.1 of Questionnaire 6.
184 Reply to question 7.1 of Questionnaire 6.
185 Reply to question 7.1 of Questionnaire 6.
186 Reply to question 7.1 of Questionnaire 6.
187 Reply to question 5 of Questionnaire 7.
188 Notifying Party's response to RFI 15, question 2.
189 Reply to question 10.1 of Questionnaire 6.

that they cover all those sub-segments at a similar quality level.[190] On that basis, and given that no concerns arise with respect to any plausible sub-segment, the Commission considers that the exact product market definition with respect to bond pricing and/or reference data can be left open.

(211) The market investigation did not indicate that any narrower separate plausible markets may exist with respect to CDS pricing and/or reference data and loan pricing and/or reference data.

6.2.5.3. Relevant geographical market

(A) The Commission precedents

(212) The Commission considered in a previous decision that markets for discrete financial data content sets are at least EEA-wide or global.[191] In *LSEG/Refinitiv*, the Commission considered the related market of consolidated non real-time pricing and reference data to be worldwide in scope.[192]

(B) The Notifying Party's view

(213) The Notifying Party consider that the relevant geographical market is global since suppliers may provide either pricing or reference data wherever they are located. Moreover, input data can be obtained remotely from publicly available sources that can then be digitally distributed to customers in any location.[193] The Notifying Party considers this to apply to pricing and reference data for all asset classes relevant in this case, namely for loans, bonds and CDS.

(C) The Commission's assessment

(214) The Commission considers the market for pricing and reference data for loans, bonds and CDS to be global in scope for the following reasons.

(215) First, the majority of competitors responding to the market investigation state that their company offers loan pricing and/or reference data at worldwide level, that their competitors are active on a global level too and that customers are located across the world.[194] Some companies indicate that they set prices at a different level than global, but the Commission does not deem this a sufficiently important factor to consider the market narrower than global.

(216) Second, the large majority of customers purchase loan pricing and reference data by comparing offers worldwide, and consider the same suppliers are active worldwide.[195]

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[190] Form CO, Chapter on Vertical Relationships, paragraph 398 i).

[191] Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 106.

[192] Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv*, paragraph 518.

[193] Form CO, Chapter on Vertical Relationships, paragraphs 3.31 and 3.100.

[194] Replies to question 13 of Questionnaire 6.

[195] Replies to questions 12 and 13 of Questionnaire 7.

(217) Third, the market investigation did not provide any evidence that the geographic scope for pricing and reference data in bonds and CDS should be different from that for loans.

(D) Conclusion

(218) For the purposes of this Decision, the Commission considers that the following plausible separate relevant markets exist: i) loan pricing data, ii) loan reference data, iii) bond pricing data, iv) bond reference data, v) CDS pricing data, vi) CDS reference data. All those plausible markets are global.

6.2.6. Desktop services

6.2.6.1. Overview and Parties' activities

(219) Desktop services enable individual users to access content including real-time and non-real-time financial data, news and analytics spanning asset classes and geographies via a software container, or "front end". Desktop services deliver data for viewing by humans on a screen. In addition to displaying financial data for users, desktop services often include decision support tools,[196] workflow tools,[197] and instant messaging capabilities. Desktop services sometimes offer access to trading capabilities and venues. Desktop services can take the form of either a web-delivered solution available on any computer, or a physical 'desktop terminal'. Desktop services comprise comprehensive and fully integrated desktops (premium products), or more specific desktops with targeted content sets. In both cases, these can be referred to as "workstations" or "terminals". Various content and capabilities are licensed to end users for use either in or alongside integrated desktops (or on laptops or mobile devices) or separately.

(220) Desktop services cater to different customer needs. Such needs vary significantly, for example, between (i) on-trading floor customers (e.g. traders) who use desktop services to inform trading decisions in real-time and (ii) off-trading floor customers (e.g. asset managers) who use desktop services to provide advisory and investment services to institutional investors. While the basic desktop solution offered may be the same, its content can be tailored by customer segment.

(221) S&P supplies desktop services via SPGMI, such as its Market Intelligence platform (previously known as the Capital IQ platform). IHSM does not provide desktop services.

6.2.6.2. Relevant product market

(A) The Commission precedents

(222) In *Blackstone/Thomson Reuters F&R Business*[198], the Commission discussed a plausible market for desktop services, which would be separate from consolidated

[196] E.g. tools for risk analytics, portfolio analytics, market monitoring and idea generation applications.

[197] E.g. Microsoft Excel integration and innovative charting capabilities.

[198] Commission decision of 20 July 2018 in Case M.8837, *Blackstone / Thomson Reuters F&R Business*, paragraphs 12, 14.

real-time datafeeds ("CRTD"), non-real-time datafeeds ("NRTD"), and discrete content datasets. The relevant product market definition was eventually left open.

(223) In *LSEG/Refinitiv*[199], the Commission considered that the market for desktop services is a separate market. Moreover, The Commission considered that the market should not be further sub-segmented by asset class or customer type.

(B) The Notifying Party's view

(224) The Notifying Party considers the desktop services in relation to the distribution of financial data and indices in particular, arguing that the relevant product market might plausibly comprise, at its widest, the distribution of financial markets data overall, reflecting both the supply-side substitutability between the distribution of different financial datasets and the fact that many customers typically consume financial indices alongside other data. Such a market could be segmented by reference to aggregated desktop and datafeed offerings (consistent with Commission precedent on distribution channel). On a more narrow basis, the Notifying Party considers that a market comprising just the distribution of indices (again including segmented by desktop and datafeed) may also be plausible. The Notifying Party adds that there is no need to conclude on the precise scope of the product market due to the lack of concerns either way.

(C) The Commission's assessment

(225) The Commission does not consider it appropriate to consider desktop services only in conjunction with the distribution of financial data, whether indices or otherwise. Desktop services can be sold both together with other products (data sets or datafeeds), but the package chosen varies by customer so there is no predominant pairing that could constitute a market. Moreover, desktop services are also sold and purchased separately.[200] Content availability is only one factor among the top factors customers consider when selecting a desktop service; the others are the functionalities of the desktop, the user-friendliness, the messaging/community aspects and price.[201] As such, in line with precedents, the Commission considers desktop services to constitute a separate product market.

(226) As for further segmentation of desktop services, competitors indicate that competitive dynamics do differ to some extent based on the target user (e.g. investment banker, asset manager, trader, etc.).[202] However this question can be left open as no competition concerns arise regardless of further segmentation based on target user.

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199 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 415 – 418.

200 Replies to question 25 of Questionnaire 8.

201 Replies to question 8 of Questionnaire 9.

202 Replies to question 26 of Questionnaire 8.

6.2.6.3. Relevant geographical market

(A) The Commission precedents

(227) In *Blackstone/Thomson Reuters F&R Business*[203], the market investigation confirmed that the relevant geographic scope for desktop services is worldwide or at least EEAwide as both end-customers and competitors are active globally or at least regionally and the core offering remains the same throughout the world and/or the region.

(228) In *LSEG/Refinitiv*[204], the Commission considered that the geographic scope of the relevant market for desktop services is global.

(B) The Notifying Party's view

(229) The parties consider the market for desktop services to be global in scope.[205]

(C) The Commission's assessment

(230) The Commission has found no evidence to depart from the precedent and Notifying Party's view. Indeed, competitors and customers confirmed that the market is global, as competitors' offerings are available on a world-wide basis and prices are set at that level, and customers also compare offers on a world-wide level.[206]

6.2.6.4. Conclusion

(231) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for desktop services.

6.2.7. Non-real time datafeeds ("NRTDs")

6.2.7.1. Overview and Parties' activities

(232) Datafeeds, by contrast with desktop solution, deliver data in "raw" format, from which customers can build their own internal applications or portals.[207] The data feed provision market is composed of real-time data feeds and non-real time data feeds.

(233) A real-time datafeed is a virtual pipeline that supplies continually updated financial market information. Real-time data feeds can be used as inputs for applications developed by banks and financial institutions, for example to allow for electronic or automatized algorithmic trading. [208]

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[203] Commission decision of 20 July 2018 in Case M.8837, *Blackstone / Thomson Reuters F&R Business*, paragraph 19.

[204] Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 424.

[205] Notifying Party's response to RFI 24, Annex 3a, paragraph 4.62.

[206] Replies to question 32 of Questionnaire 8 and question 7 of Questionnaire 9.

[207] Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 26.

[208] Commission decision of 20 July 2018, Case M.8837, *Blackstone / Thomson Reuters F&R Business*, paragraph 23.

(234) There are two types of real-time datafeeds: consolidated and direct. Consolidated real-time data feeds ("CRTDs") require the aggregation of feeds from various sources including exchanges into a single source. The CRTD is then delivered to the end-customer. Direct real-time data feeds connect an individual exchange or other data source with the end-customer.

(235) Non-real-time data is general financial and economic information such as historical pricing and reference data, macroeconomic data, company data. It may be updated several times a day or daily, but it does not satisfy the real-time data requirements as continually updated financial market information. Non-real-time data is primarily used for research and advisory purposes. It is distributed in (i) non-real-time data feeds, as (ii) discrete content datasets or through (iii) desktop solutions. NRTDs often combine various types of financial and economic information aggregated from various sources into a single stream of data. NRTDs may include delayed trading data, which is being disseminated more than 15 minutes after its generation, and/or historical data from trading venues and index providers.

(236) S&P offers a NRTD product in the form of XpressFeed, which as a market share of approximately [5-10]% in the market.[209] IHSM has an index aggregator business, SOLA. SOLA is an index management tool that takes index data from multiple suppliers and 'normalises' them into a consolidated and standardised format for supply via a single datafeed. While it is not clear to what extent this specialized datafeed competes in the NRTD space, its market share would in any case be negligible at <[0-5]%.

6.2.7.2. Relevant product market

(A) The Commission precedents

(237) In *Blackstone/Thomson Reuters F&R Business*[210], the Commission discussed a plausible market for NRTDs, which would be separate from CRTDs, and discrete content datasets. The relevant product market definition was eventually left open.

(238) In *LSEG/Refinitiv*,[211] the Commission considered that NRTDs constitute a relevant market, which is separate from direct real-time datafeeds and CRTDs.[212]

(B) The Notifying Party's view

(239) The Notifying Party considers datafeeds in relation to the distribution of financial data and indices in particular, arguing that the relevant product market might plausibly comprise, at its widest, the distribution of financial markets data overall, reflecting both the supply-side substitutability between the distribution of different financial datasets and the fact that many customers typically consume financial indices alongside other data. Such a market could be segmented by reference to

[209] Form CO, Chapter on Vertical Relationships, Table 4.8.

[210] Commission decision of 20 July 2018 in Case M.8837, *Blackstone / Thomson Reuters F&R Business*, paragraphs 12, 14.

[211] Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 395

[212] Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 524

aggregated desktop and datafeed offerings (consistent with Commission precedent on distribution channel). On a more narrow basis, the Notifying Party considers that a market comprising just the distribution of indices (again including segmented by desktop and datafeed) may also be plausible. The Notifying Party adds that there is no need to conclude on the precise scope of the product market due to the lack of concerns either way.

(C) The Commission's assessment

(240) The Commission does not consider it appropriate to consider datafeeds only in conjunction with the distribution of financial indices, as they often combine various types of financial and economic information aggregated from various sources. The Commission's market investigation did not provide indications to depart from the precedent. As such, in line with precedents, the Commission considers NRTDs to constitute a separate product market.

6.2.7.3. Relevant geographical market

(A) The Commission precedents

(241) In *Reuters Instrument Codes*,[213] the Commission found that the relevant market for CRTDs is worldwide in scope.

(242) In *Thomson/Reuters*,[214] the Commission considered the geographic scope of relevant markets involving discrete financial data content datasets to be at least EEA-wide and probably global.

(243) In *LSEG/Refinitiv*, the Commission considered the market for NRTDs[215] to be worldwide in scope.

(B) The Notifying Party's view

(244) The Notifying Party considers the market for datafeeds to be global in scope.[216]

(C) The Commission's assessment

(245) The Commission has found no evidence to depart from the precedent and Notifying Party's view. As such, the geographic scope is considered to be global.

6.2.7.4. Conclusion

(246) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for NRTDs.

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[213] Commission decision of 20 December 2012 in Case AT.39654, *Reuters Instrument Codes*, paragraphs 28ff. See also Commission decision of 20 July 2018 in Case M.8837, *Blackstone / Thomson Reuters F&R Business*, paragraphs 23-25.

[214] Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 106.

[215] Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 529.

[216] Notifying Party's response to RFI 24, Annex 3a, paragraph 4.62.

6.2.8. Fundamentals data

6.2.8.1. Overview and Parties' activities

(247) Fundamentals data consists of granular metrics that represent the primary characteristics and financial data necessary to determine the stability and health of a given company such as financial, cash flow and fund flow statements. This information is typically taken from public sources, such as filings, other regulatory publications or other sources such as (transcripts of) earning calls, before being aggregated and cleansed by data providers. The information is used by customers for a wide range of use cases such as research, risk assessment and analytics purposes.

(248) Only S&P is active in the supply of fundamentals data.

6.2.8.2. Relevant product market

(A) The Commission precedents

(249) In *Thomson/Reuters*[217], the Commission identified a separate relevant product market for fundamentals data. In *LSEG/Refinitiv*[218], the Commission confirmed the market definition.

(B) The Notifying Party's view

(250) The Parties consider that an overall market for fundamentals data is a plausible market.[219]

(C) The Commission's assessment

(251) On the basis of the market investigation results and in light of its decisional practice, the Commission concludes that fundamentals data constitute a relevant market, for the following reasons. The market investigation does not provide any evidence that the relevant market definition for fundamentals data should depart from the Commission's decision in *Thomson /Reuters* and *LSEG/Refinitiv*. Data vendors submit that they offer fundamentals data both separately and in a package with other products/services.[220] The fact that there are commercial offers of both types of products from the same data vendor confirms that end-customers also purchase fundamentals data on a standalone basis. The Commission's market investigation did not provide indications that the relevant market for fundamentals data should be sub-segmented further.

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[217] Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 44.

[218] Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 415 – 418.

[219] Form CO on vertical relationships, paragraph 5.50.

[220] Replies to question 5 of Questionnaire 8.

6.2.8.3. Relevant geographical market

(A) The Commission precedents

(252) In *Thomson /Reuters*[221], the Commission considered the geographic scope of content sets, including fundamentals data, to be at least EEA-wide and probably global.

(253) In *LSEG/Refinitiv*[222], the Commission considered that the geographic scope of the relevant market for fundamentals data is worldwide or at least EEA-wide in scope.

(B) The Notifying Party's view

(254) The parties consider the market for fundamentals data to be global in scope.[223]

(C) The Commission's assessment

(255) The market investigation confirmed the Commission's decisional practice and the Notifying Party's view for this market. Indeed, competitors confirmed that the market is global, as competitors' offerings are available on a world-wide basis and prices are set at that level.[224]

6.2.8.4. Conclusion

(256) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for fundamentals data.

6.2.9. Economic data

6.2.9.1. Overview and Parties' activities

(257) Economic data is data describing the state of economies, generally at the country level. This data consists in interest rate information, GDP information and other macroeconomic data and can be historic (i.e. time series) or forecast data.

(258) IHSM supplies a range of economic data, including historic data and forecast data. These products have a wide range of end-uses, typically geared towards supporting strategic and tactical commercial decisions.

(259) S&P does not provide economic data, but is a customer of economic data, which is an input into credit ratings. Also, economic data is distributed via desktops and data feeds, and hence S&P distributes economic data.

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221 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 106.

222 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 424.

223 Form CO on vertical relationships, paragraph 5.51.

224 Replies to question 10 of Questionnaire 8.

6.2.9.2. Relevant product market

(A) The Commission precedents

(260) In *Thomson/Reuters*[225], the Commission identified a separate relevant product market for time series of economic data. In *LSEG/Refinitiv*[226], the Commission confirmed the market definition.

(B) The Notifying Party's view

(261) In the Parties' view, the relevant market might comprise the supply of economic data at its widest. However, reflecting the lack of clear supply or demand-side substitutability, the Parties consider potential separate markets for the supply of historic, or time series, economic data and forecast economic data.[227] From a supply-side perspective, while some providers of economic data provide both historic data and forecast data, many focus on one area, suggesting a potential lack of significant supply-side substitutability. In particular, the supply of forecast data requires particular capabilities and expertise that are not required of suppliers of historic data. From a demand-side perspective, while some customers may require both historic and forecast data, others will predominantly require only one type and are unlikely to consider the other as substitutable.

(C) The Commission's assessment

(262) On the basis of the evidence available to it and in light of its decisional practice, the Commission concludes for the purposes of this case that time series of economic data and forecast economic data constitute plausible relevant markets. The market investigation does not provide any evidence that the relevant market definition for time series of economic data should depart from the Commission's decision in *Thomson/Reuters* and *LSEG/Refinitiv*. In terms of supply-side substitutability, the Commission notes that in the top 5 suppliers each in time series of economic data and in forecast economic data, only 2 overlap. In terms of demand-side substitutability, while some customers may need both sets, the use cases of backward looking and forward looking data are different and therefore customers are not likely to consider them substitutable; forecast economic data may inform strategic thinking while time series of economic data may be inputs for modelling and/or backtesting. Nevertheless, the question of whether economic data should be segmented into forecast economic data and time series of economic data can be left open for the purposes of this case as no competition concerns arise regardless of the precise definition.

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225 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 44.

226 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 415 – 418.

227 Form CO on vertical relationships, paragraph 3.40.

6.2.9.3. Relevant geographical market

(A) The Commission precedents

(263) In *Thomson/Reuters*[228] and *LSEG/Refinitiv*[229], the Commission considered the geographic scope of time series of economic data, to be at least EEA-wide and probably global.

(B) The Notifying Party's view

(264) The parties consider the market for economic data to be global in scope since suppliers may provide either loan pricing or loan reference data wherever they are located. Moreover, input data can be obtained remotely from publicly available sources that can then be digitally distributed to customers in any location.[230]

(C) The Commission's assessment

(265) The Commission has found no evidence to depart from the decisional practice and the Notifying Party's view. The Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.9.4. Conclusion

(266) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for economic data, potentially segmented further as historic economic data and forecast economic data.

6.2.10. Sector classification schemes

6.2.10.1. Overview and Parties' activities

(267) Sector classification schemes, or industry taxonomies as they may be called, are systems for categorisation and comparison of companies according to their activities, industry and sector. Each scheme is composed of levels that increase the granularity of the categorisation – e.g. industry, sector or sub-sector level. A company is given an identifying code that determines its category in each level. Sector classification schemes are used in research, portfolio management, asset allocation and index creation.

(268) GICS is a taxonomy system for classifying companies globally into pre-determined sectors, industries and other groupings. It was developed jointly by MSCI and S&P, and is now distributed independently by both entities […].

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228 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 106.

229 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 852.

230 Form CO on vertical relationships, paragraph 3.41.

6.2.10.2. Relevant product market

(A) The Commission precedents

(269) In *LSEG/Refinitiv*[231], the Commission concluded that sector classification schemes constitute a separate relevant product market.

(B) The Notifying Party's view

(270) In the Notifying Party's view, the relevant market might comprise the supply of sector classification schemes, but that no conclusion need be drawn as no competition concerns arise on any basis.[232]

(C) The Commission's assessment

(271) On the basis of the evidence available to it and in light of its decisional practice, the Commission concludes for the purposes of this case that sector classification schemes constitute a separate relevant product market. The market investigation does not provide any evidence that the relevant market definition should depart from the Commission's decision in *LSEG/Refinitiv*. From a supply-side perspective, of the schemes available in the market, two are publicly available and all other schemes but one are available to license on a standalone basis.

6.2.10.3. Relevant geographical market

(A) The Commission precedents

(272) In *LSEG/Refinitiv*[233], the Commission considered the geographic scope of sector classification schemes to be global.

(B) The Notifying Party's view

(273) The parties consider the market for sector classification schemes to be global in scope.[234]

(C) The Commission's assessment

(274) The Commission has found no evidence to depart from the decisional practice and the Notifying Party's view. As such, the Commission concludes for the purposes of this case that the geographic scope of the sector classification schemes market is global.

6.2.10.4. Conclusion

(275) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for sector classification schemes.

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231 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 415 – 418.

232 Form CO on vertical relationships, paragraph 5.76.

233 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 490.

234 Form CO on vertical relationships, paragraph 5.76.

6.2.11. Leveraged loan market intelligence

6.2.11.1. Overview and Parties' activities

(276) Market intelligence concerns the supply of information, data, news, tools and analytics generally with respect to a particular sector of the economy, e.g. automotive market intelligence, which would provide data, news and analytics with respect to vehicle production, supply chains and sales.

(277) Both IHSM and S&P are active in market intelligence more broadly (including in commodities market intelligence, see Section 7.3.2), though only S&P is active in market intelligence related to financial markets, concretely debt markets. S&P provides leveraged loan market intelligence in the form of its Leveraged Commentary and Data (LCD) product. LCD is a subscription-based product providing news and research on the leveraged loan markets, including close to real-time news on latest developments, details on specific deals ("deal sheet data" incl. indicative pricing, credit ratings and arranger identities for a given loan) and aggregate market trends.

6.2.11.2. Relevant product market

(A) The Commission precedents

(278) The Commission previously considered the supply of (primarily financial) market intelligence products. In *Thomson/Reuters*, the Commission considered that individual content sets are not substitutable for one another since they respond to different and well defined needs of customers, are often traded separately, and can be considered on a standalone basis.[235] Within individual content sets, News was considered a relevant separate market.[236]

(279) The market for News in *LSEG/Refinitiv* was considered a separate product market and described as financial and business-related news content that provides investors with information to make investment decisions.[237] News were considered to possibly be comprehensive or limited to certain sectors, countries or asset classes. However, this further plausible segmentation of the News market was not further considered in those previous decisions.

(B) The Notifying Party's view

(280) The Notifying Party considers that from a supply-side perspective, barriers to entry in debt-related market intelligence is low and there are a number of companies active in this wider space that could quickly enter. However, the Notifying Party acknowledges that from a demand side perspective, more general or other specialized debt-related market intelligence may not be substitutable with leveraged loan market intelligence for customers and therefore agrees that the narrower market

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235 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 61.

236 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraphs 73 and 110.

237 Commission decision of 13 January 2021 in Case M.9564, *London Stock Exchange Group / Refinitiv Business*, paragraph 623.

for leveraged loan market intelligence may be considered a plausible market for the purposes of this case.[238]

(C) The Commission's assessment

(281) The Commission considers based on the answers it received to the market investigation, that leveraged loan market intelligence is a plausible separate market for the following reasons:

(282) First, competitors confirm the Notifying Party's view that while leveraged loan market intelligence is not isolated and entirely independent from other debt-related market intelligence, there is a sufficient distinction compared to other debt-related market intelligence to consider it a separate market.[239] One competitor summarizes it like this: *"Loan market intelligence feeds up into the broader debt markets – but loan investors are a segment of that who need a deeper dive into the niche driven, private world of loans."*[240]

(283) Second, customers are more split, but the majority believes that broader debt-related market intelligence and leveraged loan market intelligence are not interchangeable.[241] Customers mentioned the following products/providers as substitutable: Fitch's LevFin Insights and Capital Structure, S&P's LCD, Bloomberg, Debtwire, Reorg.[242] When asked which products or from which providers customers purchase leveraged loan market intelligence, several also indicate purchasing Refinitiv's LPC product. This broadly corresponds to the competitors submitted by the Notifying Party as competing within leveraged loan market intelligence with S&P.

(284) Third, the Commission notes that respondents to the market investigation rate the above mentioned providers as broadly similar in terms of their competitive strength.[243]

6.2.11.3. Relevant geographical market

(A) The Commission precedents

(285) The Commission's previous decisions considered market intelligence/news markets to be at least EEA-wide and probably global[244], or in a later decision global or at least EEA-wide.[245]

238 Form CO, Chapter on Vertical Relationships, paragraph 5.16.

239 Replies to questions 17 and 27.1 of Questionnaire 6.

240 Reply to question 27.1 of Questionnaire 6.

241 Replies to question 26 of Questionnaire 7.

242 Replies to question 26.1 of Questionnaire 7.

243 Replies to question 29 of Questionnaire 7.

244 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 106.

245 Commission decision of 13 January 2021 in Case M.9564 *London Stock Exchange Group / Refinitiv Business*, paragraph 637.

(B) The Notifying Party's view

(286) The Notifying Party considers the market for leveraged loan market intelligence to be global. The physical location of customers and providers is not important in terms of the decisions to whom providers of leveraged loan market intelligence offer their products and from whom customers buy.[246]

(C) The Commission's assessment

(287) The Commission considers based on the answers it received to the market investigation, that the leveraged loan market intelligence market is global for following reasons:

(288) First, the majority of providers offer their products worldwide and state that their competitors are active on a global level too.[247] While not all competitors set prices for their products at global level, the Commission does not consider this a sufficient element that would put into doubt the overall conclusion on the geographic level of this market.

(289) Second, the large majority of customers purchases leveraged loan market intelligence by comparing offers at global level and states that the same suppliers are active on a worldwide level.[248]

(290) Third, even though some providers may offer their products in separate packages targeting specific geographic areas (e.g. "EMEA", "Asia"), this does not mean that only customers located in those specific areas are interested or buying those products. It would seem that this is a way of categorizing the product and enabling customers to assemble a product specific for their needs.

6.2.11.4. Conclusion

(291) For the purposes of this Decision, the Commission considers that there is a separate relevant market for leveraged loan market intelligence and that this market is worldwide in scope.

6.2.12. Stock selection and strategy services

6.2.12.1. Overview and Parties' activities

(292) Stock selection and strategy services provide investment strategies, screens and signals, to assist in designing investment strategies and stock selections for investment managers, banks and others. These services are based on corporate, asset and industry-specific information and both Parties are active in this market. S&P is active with its product Alpha Factor Library and IHSM with its product Research Signals.

246 Notifying Party's response to RFI 24, Annex 3a, paragraph 5.17.

247 Replies to question 28 of Questionnaire 6.

248 Replies to question 27 of Questionnaire 7.

6.2.12.2. Relevant product market

(A) The Commission precedents

(293) The Commission has not considered the relevant product market for stock selection and strategy services in any previous decision.

(B) The Notifying Party's view

(294) The Parties considers that for present purposes a market for the supply of stock selection and strategy services could be considered as a distinct product market.[249] However, the Notifying Party also considers that from a supply-side perspective, the barriers to entry are likely to be relatively low such that providers of financial market intelligence (who will already have access to the necessary inputs to provide stock selection and strategy services, such as corporate, asset and industry-specific information) would be able to commence the supply of stock selection and strategy services quickly and easily. Similarly, from a demand-side perspective, there is likely to be a degree of substitutability with adjacent financial market intelligence, since customers can use such intelligence to construct their own stock selection and strategies.

(C) The Commission's assessment

(295) The market investigation provided no evidence putting into question the Notifying Party's view. However, the Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.12.3. Relevant geographical market

(A) The Commission precedents

(296) The Commission has not considered the relevant geographic market for stock selection and strategy services in any previous decision.

(B) The Notifying Party's view

(297) The Parties consider the market for the supply of selection stock and strategy services to be global in scope.[250]

(C) The Commission's assessment

(298) The market investigation has not presented any evidence putting into question the Notifying Party's view. However, the geographic scope can be left open as no competition concerns arise in any case.

[249] Notifying Party's response to RFI 24, Annex 3a; Form CO, Chapter on Vertical Relationships, paragraph 5.75.

[250] Notifying Party's response to RFI 24, Annex 3a; Form CO, Chapter on Vertical Relationships, paragraph 5.75.

6.2.12.4. Conclusion

(299) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for stock selection and strategy services.

6.2.13. Issuer solutions

6.2.13.1. Overview and Parties' activities

(300) IHSM's Issuer Solutions product, BD Corporate, is a customer relationship management (CRM) or investor relationships platform that helps customers prospect for new investors, prepare for roadshows, track current investors and their holdings, manage investor relations and report on the success of investor outreach efforts. BD Corporate is a multi-asset class platform.

6.2.13.2. Relevant product market

(A) The Commission precedents

(301) The Commission has not considered the relevant product market for issuer solutions in any previous decision.

(B) The Notifying Party's view

(302) In the Parties' view, the relevant product market for issuer solutions is the supply of CRM investor relationship platforms to issuers.[251]

(C) The Commission's assessment

(303) The market investigation provided no evidence putting into question the Notifying Party's view. However, the Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.13.3. Relevant geographical market

(A) The Commission precedents

(304) The Commission has not considered the relevant geographic market for issuer solutions in any previous decision.

(B) The Notifying Party's view

(305) The Parties consider the geographic market for the supply of issuer solutions to be global, as most providers are active globally and many customers use such platforms to manage global relationships.[252]

[251] Form CO on vertical relationships, paragraph 3.107.

[252] Form CO on Vertical Relationships, paragraph 3.108.

(C) The Commission's assessment

(306) The Commission has found no evidence putting into question the Notifying Party's view. However, the Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.13.4. Conclusion

(307) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for the supply of CRM investor relationship platforms to issuers.

6.2.14. Investor event management solutions

6.2.14.1. Overview and Parties' activities

(308) IHSM's Investor event management product, Iplanner, helps sell-side institutions manage roadshows and coordinate connectivity between corporates, industry experts and investors,.

6.2.14.2. Relevant product market

(A) The Commission's previous decisions

(309) The Commission has not considered the relevant product market for investor event management solutions in any previous decision.

(B) The Notifying Party's view

(310) In the Parties' view, the relevant product market is platforms and software designed to facilitate communication and connections in the marketplace between issuers, experts, and investors. IHSM's key competitors in this market include Cvent, Aventri, Dealogic, and MeetMax. However, it is not necessary to conclude on the precise product market definition, as irrespective of how the market is defined there are no competition concerns.[253]

(C) The Commission's assessment

(311) The market investigation provided no evidence that the Commission should depart from the Notifying Party's view. The Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.14.3. Relevant geographical market

(A) The Commission's previous decisions

(312) The Commission has not considered the relevant geographic market for investor event management solutions in any previous decision.

[253] Notifying Party's response to RFI 38, paragraph 3.3.

(B) The Notifying Party's view

(313) The Parties consider the geographic market for the supply of investor event management solutions to be global, as most providers are active globally and many customers use such solutions on a global basis.[254]

(C) The Commission's assessment

(314) The Commission has found no evidence to depart from the Notifying Party's view. The Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.14.4. Conclusion

(315) For the purposes of this Decision, the Commission considers that the relevant plausible market is the global market for investor event management solutions.

6.2.15. Issuance platforms

6.2.15.1. Overview and Parties' activities

(316) An issuance platform is a workflow tool used primarily by investment banks and investors in the issuance process of different assets, covering the stages of book-building and price discovery, when investors express their interest, through document management, to the actual issuance. Specifically, a municipal bond platform is a workflow tool specifically for US municipal bond issue, catering largely to US investors and underwriters; a fixed income book-building platform includes workflow tools that are used in the issuance of corporate (as opposed to municipal) fixed income assets, and an equity book-building platform includes workflow tools that are used in connection with the issuance of equities through IPOs.

(317) IHSM provides a municipal bond issuance platform, a corporate bond issuance platform and an equity issuance platform.[255] S&P is not active in issuance of workflow solutions.

6.2.15.2. Relevant product market

(A) The Commission precedents

(318) The Commission has not considered the relevant product market for issuance platforms in any previous decision.

(B) The Notifying Party's view

(319) The Notifying Party submits that there are separate product markets for issuance platforms for each of (i) corporate fixed income; (ii) municipal bonds; (iii) equities and (iv) syndicated loans. In particular, IHSM competes with a different competitor

254 Notifying Party's response to RFI 38, paragraph 3.4.

255 Paragraph 10.4 (C) of the response to RFI 12 received on 18 June 2021

set within each of these asset classes, and the issuance platforms each have different use cases and customers based on the asset class that they cater for.[256]

(C) The Commission's assessment

(320) Based on the evidence available to it, the Commission considers issuance platforms to be a product market separate from other platforms and financial workflow solutions. Customers purchase issuance platforms separately from other products/services, and most suppliers in this market are not active elsewhere.[257] There appears to be some self-supply by a few of the larger investment banks, but it does not appear to be a substitute to third-party issuance platforms for customers already using the latter.

(321) Customers indicate that they purchase issuance platforms separately for different asset classes, such as equities, corporate bonds and municipal bonds, as there is differentiation due to the specificities of the asset class and there are different teams at the customer entity dealing with different asset classes.[258] Indeed, apart from IHSM, other suppliers each compete in only one asset class. Further, there is some evidence that customers purchase parts of IHSM's issuance platforms selectively,[259] and not always as a package. Nevertheless, the Commission considers that the question of further segmentation of issuance platforms (by asset class and/or by different parts of the platform) can be left open for the purposes of this case, as no competition concerns arise regardless of further segmentation.

6.2.15.3. Relevant geographical market

(A) The Commission precedents

(322) The Commission has not considered the relevant geographic market for issuance platforms in any previous decision.

(B) The Notifying Party's view

(323) The Notifying Party submits that the geographic market definition is global for the issuance platforms in each asset class, with the exception of the market for municipal bond issuance platforms, which is US-wide as municipal bond issuance platforms are used exclusively in connection with the issuance of US municipal bonds. Otherwise, in corporate fixed income, equities and syndicated loans, these platforms are used for global issuances and customers are generally financial institutions that are active on a global scale.[260]

256 Notifying Party's response to RFI 30, paragraph 10.1.
257 Replies to question 17 of Questionnaire 9.
258 Replies to question 17 of Questionnaire 9.
259 Replies to question 18 of Questionnaire 9.
260 Notifying Party's response to RFI 30, paragraph 10.2.

(C) The Commission's assessment

(324) The Commission has found no evidence putting into question the Notifying Party's view. Indeed, customers confirmed that the market is global;[261] they compare offers at the world-wide level and suppliers are active at the world-wide level.

6.2.15.4. Conclusion

(325) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for issuance platforms, potentially segmented further by asset class and/or by different functional parts of the platform.

6.2.16. Loan administration solutions

6.2.16.1. Overview and Parties' activities

(326) IHSM's Wall Street Office product ("WSO") is one of a number of loan administration workflow tools available to managers of loan portfolios that are designed to reduce the burden of the manual processes that arise in respect of loan portfolio administration, and which are otherwise managed through the use of excel, databases, and in-house applications. Specifically, WSO provides a workflow tool for asset management, reporting, and CLO compliance throughout the loan lifecycle i.e. middle- and back- office operations (as opposed to any deal origination and syndication which may be conducted by the front office). Customers of WSO therefore include asset managers, agents and trustees, using the product to manage and report on their complex loan portfolios.[262] Participants can choose either to fulfil these solutions in-house or to outsource the provision of services to a third party. S&P is not active in loan administration solutions.

6.2.16.2. Relevant product market

(A) The Commission's previous decisions

(327) The Commission has not considered the relevant product market for loan administration solutions in any previous decision.

(B) The Notifying Party's view

(328) The Notifying Party submits that the appropriate frame of reference is loan administration solutions, comprising both software and services providers as well as self-supply, across all loan asset classes.[263]

(329) Regarding the potential segmentation between software and services, the Notifying Party notes that when customers choose to outsource the provision of loan administration solutions, there are two options available, depending on how much of their back- and middle-office administration they would like to keep in-house: (i) Some customers purchase software only (e.g. WSO Software), and provide their own services; and (ii) Some customers purchase combined software and services from a single provider (e.g. WSO Services). Where these customers choose WSO Services

[261] Replies to question 20 of Questionnaire 9.

[262] Paragraph 3.69*ff* of Annex 3a to the response to RFI 24 received on 10 September 2021.

[263] Paragraph 3.69*ff* of Annex 3a to the response to RFI 24 received on 10 September 2021.

to provide this solution, they will also receive the WSO software module. WSO Software customers make up approximately […] of all WSO customers and […] of WSO revenues; WSO Services customers (which, as noted above would also have WSO software as part of their solution) make up approximately […] of all WSO customers and […] of WSO revenues. Customers are increasingly […]. WSO Services faces competition from competing services providers, including (for the service element) those which may use WSO software. Similarly, its standalone software is constrained both by competing software providers and by other providers of a combined software and services solution. From a supply side perspective it is relatively easy for providers of loan administration software to expand into offering loan administration services, which essentially consists of the provision of people (in particular as in both cases the necessary data is procured and licensed by the client).

(330) Regarding the inclusion of self-supply in the market, the Notifying Party explains that self-supply of loan administration services exercises a significant constraint on its provision of both WSO Software and Services. A number of significant market participants self-supply loan administration solutions and many of the largest customers which currently choose to outsource loan administration services could similarly decide to take these services back in-house (whether using an in-house software solution, a third party software solution or Excel).

(331) Lastly, regarding possible segmentation by loan asset type, the Notifying Party adds that WSO and its competitors provide administration services for different types of loans, in particular private debt and liquid loans: (i) A loan is considered to be liquid when it is often traded and priced broadly by the market participants. A liquid loan is likely to have many lenders. (ii) A loan is considered to be private debt when it is agreed between two or very few parties/lenders, which results in illiquidity, lack of trading, and lack of pricing. Due to the nature of private debt, information about loan sizes, participants and offerings is less readily available. However, the Notifying Party submits that there is not a clear distinction between liquid and private loans; a loan could be issued between a few parties (rendering it private debt) but could subsequently gain liquidity if additional lenders are invited to participate. WSO and its main competitors are active across both private debt and liquid loans. Only minor alterations are required to software originally purposed for liquid loans to also serve private loans and there are no significant differences in competitive positions of providers as between private debt and liquid loans.

(C) The Commission's assessment

(332) Based on the evidence available to it, for the purposes of the present case, the Commission considers loan administration solutions to be a product market separate from other financial solutions. While one supplier considers loan administration solutions to be part of a wider "credits/alternatives" market, most consider them to be separate from other products. One competitor explains "*loan software/services for the bank debt market are <u>marketed</u> as a distinct set of solutions separate from other products/service*s" (emphasis added).

(333) Regarding segmentation between software and services, another supplier summarizes "*There are supplier[s] that offer both software and offer services. There are also some that only offer software and some only services. Customers can*

choose to buy software from several suppliers and services from several as well or can buy both from one."[264] Several other competitors state that traded loan software and traded loan services are two separate markets, "*though they are very much integrated and serve a common purpose*". Regarding self-supply, there is indication that some customers can outsource, for instance, software while continuing to self-supply services. Nevertheless, the Commission considers that the question of further segmentation (by software vs services or by loan asset type) and the inclusion or exclusion of self-supply can be left open for the purposes of this case, as no competition concerns arise regardless of further segmentation.

6.2.16.3. Relevant geographical market

(A) The Commission's previous decisions

(334) The Commission has not considered the relevant geographic market for loan administration solutions in any previous decision.

(B) The Notifying Party's view

(335) The Notifying Party submits that the appropriate geographic market is global, since most providers are active globally and many customers use loan administration solutions to manage their loans globally.[265]

(C) The Commission's assessment

(336) The Commission has found no evidence putting into question the Notifying Party's view. Indeed, competitors confirmed that the market is global;[266] they set prices at the world-wide level and suppliers are active at the world-wide level.

6.2.16.4. Conclusion

(337) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for loan administration services.

6.2.17. Digital design for financial services

6.2.17.1. Overview and Parties' activities

(338) IHSM's Markit Digital is a Software as a Service (SaaS) that offers solutions for the financial services industry to aggregate, normalise, enhance and display financial information via web services, websites and native mobile apps. These solutions fall into three categories: custom web/mobile development and hosting, UX (user experience)/UI (user interface) design, and digital advertising. Markit Digital provides these solutions in a way that can be easily integrated into clients' existing offerings.

[264] Replies to email "Request for information on Traded loan software/services" of 3 September 2021.
[265] Notifying Party's response to RFI 30, paragraph 10.2.
[266] Replies to email "Request for information on Traded loan software/services" of 3 September 2021.

6.2.17.2. Relevant product market

(A) The Commission precedents

(339) The Commission has not previously considered the relevant market for digital design for financial services.

(B) The Notifying Party's view

(340) The Notifying Party considers the product market to be the market for custom web/mobile development and hosting services given in particular the lack of demand-side substitutability with other products / services.[267]

(C) The Commission's assessment

(341) The market investigation provided no evidence putting into question the Notifying Party's view regarding the further segmentation of digital design for financial services. However, the Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.17.3. Relevant geographical market

(A) The Commission precedents

(342) The Commission has not previously considered the relevant market for digital design for financial services.

(B) The Notifying Party's view

(343) The Notifying Party considers the geographic market for digital design for financial services as global, on the basis that IHSM and its competitors offers these services to global customers without any differences based on their region, and IHSM's customers are active on global basis such that their demand is not driven by their own location or that of suppliers.[268]

(C) The Commission's assessment

(344) The market investigation provided no evidence putting into question the Notifying Party's view regarding the geographic scope of digital design for financial services. However, the Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.17.4. Conclusion

(345) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for digital design for financial services.

[267] Notifying Party's reply to RFI 24, Annex 3a, paragraph 5.92.
[268] Notifying Party's reply to RFI 24, Annex 3a, paragraph 5.92.

6.2.18. Equities and regulatory reporting (Dividend forecasting services)

6.2.18.1. Overview and Parties' activities

(346) IHSM's dividend forecasting service provides independent estimates of the amount and timing of dividend payments, allowing customers to better understand how companies are performing and what their projected dividends are. Dividend estimates for global securities are based on equity research, market announcements and unique quantitative insight, covering over 28,000 stocks. In addition to this research-based methodology, IHSM also applies advanced analytics and predictive modelling to predict company dividends.

6.2.18.2. Relevant product market

(A) The Commission precedents

(347) The Commission has not considered the relevant product market for equities and regulatory reporting (or dividend forecasting services specifically) in any previous decision.

(B) The Notifying Party's view

(348) The Notifying Party considers the relevant product market to be the market for dividend forecasting services given in particular the lack of obvious demand-side substitutability with other products / services.[269]

(C) The Commission's assessment

(349) The market investigation provided no evidence putting into question the Notifying Party's view. In any case, the Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.18.3. Relevant geographic market

(A) The Commission precedents

(350) The Commission has not considered the relevant geographic market for equities and regulatory reporting (or dividend forecasting services specifically) in any previous decision.

(B) The Notifying Party's view

(351) The Notifying Party considers the geographic scope of the market for dividend forecasting to be global, since IHSM provides forecasts for stocks on a global basis, suppliers more generally do not need to be physically situated in a particular location in order to provide these forecasting services.[270] Moreover, customer demand is driven by quality of service rather than customer or supplier location.

[269] Notifying Party's reply to RFI 24, Annex 3a; Form CO, Chapter on Vertical Relationships, paragraph 5.88.
[270] Notifying Party's reply to RFI 24, Annex 3a; Form CO, Chapter on Vertical Relationships, paragraph 5.88.

(C) The Commission's assessment

(352) The market investigation has not presented any evidence putting into question the Notifying Party's view. However, the geographic scope can be left open as no competition concerns arise in any case.

6.2.18.4. Conclusion

(353) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for equities and regulatory reporting.

6.2.19. Investor and administration services

6.2.19.1. Overview and Parties' activities

(354) IHSM's Investor and Administration services product, Profile Builder, is a tool for producing buy side investor profiles. Profile Builder provides insight into investors by incorporating global ownership data, contacts and biographical content from IHSM's BD (formerly Big Dough) database.

6.2.19.2. Relevant product market

(A) The Commission precedents

(355) The Commission has not previously considered the relevant product market for investor and administration services in any previous decision.

(B) The Notifying Party's view

(356) The Parties submit that the relevant product market for investor and administration services is the supply of tools for producing buy-side investor profiles. Segmentation by asset class would not be appropriate from a supply-side perspective, as both IHSM and its competitors provide such tools for both fixed income and equity investors (although demand-side substitutability may be more limited). However, it is not necessary to conclude on the precise product market definition, as irrespective of how the market is defined there is no risk of foreclosure for the reasons set out below.[271]

(C) The Commission's assessment

(357) The market investigation provided no evidence putting into question the Notifying Party's view. In any case the Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

[271] Notifying Party's reply to RFI 24, Annex 3a; Form CO, Chapter on Vertical Relationships, paragraph 3.110.

6.2.19.3. Relevant geographical market

(A) The Commission precedents

(358) The Commission has not specifically considered the relevant geographic market for investor and administration services in any previous decision.

(B) The Notifying Party's view

(359) The Parties consider that relevant geographic market for the supply of investor and administration services is global as most providers are active globally and investor and administration services utilise global data. [272]

(C) The Commission's assessment

(360) The market investigation has not presented any evidence putting into question the Notifying Party's view. However, the geographic scope can be left open as no competition concerns arise in any case.

6.2.19.4. Conclusion

(361) For the purposes of this Decision, the Commission considers that the relevant market is the supply of investor and administration services, which is global in scope.

6.2.20. Institutional holdings/investor data

6.2.20.1. Overview and Parties' activities

(362) IHSM's institutional holdings product, BD Advanced, provides sell-side customers with data and tools for prospecting and targeting buy-side institutions. BD Advanced incorporates cross-asset class data on potential clients' investment focusses, asset allocation and cross asset class holdings.

6.2.20.2. Relevant product market

(A) The Commission precedents

(363) In *Thomson/Reuters*, the Commission considered that individual content sets are not substitutable for one another since they respond to different and well defined needs of customers and are often traded separately, and can be considered on a standalone basis.[273]

(364) The Commission has not specifically considered the relevant product market for institutional holdings/investor data in any previous decision.

(B) The Notifying Party's view

(365) The Parties submit that the relevant product market for institutional holdings / investor data is the supply of data for prospecting and targeting buy-side institutions.

[272] Notifying Party's reply to RFI 24, Annex 3a; Form CO, Chapter on Vertical Relationships, paragraph 3.111.

[273] Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 61.

The market should not be segmented by asset class as BD Advanced is designed as a cross-asset solution covering equity, fixed income, derivatives and corporate issuer data, and competitor offerings are similarly asset-agnostic. However, it is not necessary to conclude on the precise product market definition, as irrespective of how the market is defined there is no risk of foreclosure for the reasons set out below.[274]

(C) The Commission's assessment

(366) The market investigation provided no evidence that the Commission should depart from the decisional practice regarding content sets, or putting into question the Notifying Party's view. In any case the Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.20.3. Relevant geographical market

(A) The Commission precedents

(367) In *Thomson/Reuters*[275], the Commission considered the geographic scope of content sets to be at least EEA-wide and probably global.

(368) The Commission has not specifically considered the relevant geographic market for institutional holdings/investor data in any previous decision.

(B) The Notifying Party's view

(369) The Parties consider that relevant geographic market for the supply of institutional holdings/investor data is global as most providers are active globally. [276]

(C) The Commission's assessment

(370) The market investigation has not presented any evidence to depart from the decisional practice regarding content sets, or putting into question the Notifying Party's view. However, the question of whether the scope is EEA-wide or global can be left open as no competition concerns arise in either case.

6.2.20.4. Conclusion

(371) For the purposes of this Decision, the Commission considers that the relevant market is the supply of institutional holdings/investor data, which is at least EEA-wide in scope.

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[274] Notifying Party's reply to RFI 24, Annex 3a; Form CO, Chapter on Vertical Relationships, paragraph 3.114.

[275] Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 106.

[276] Notifying Party's reply to RFI 24, Annex 3a; Form CO, Chapter on Vertical Relationships, paragraph 3.115.

6.2.21. Managed corporate actions data

6.2.21.1. Overview and Parties' activities

(372) Corporate actions are events that affect the securities of a given company, such as dividends, stock splits, M&A, disposals or spin-offs. IHSM is active in the supply of managed corporate actions data, which S&P uses as an input into its equity indices. S&P also provides CUSIPs as a (peripheral) input to managed corporate actions data.

6.2.21.2. Relevant product market

(A) The Commission precedents

(373) In *Thomson/Reuters*, the Commission considered that individual content sets are not substitutable for one another since they respond to different and well defined needs of customers and are often traded separately, and can be considered on a standalone basis.[277]

(374) The Commission has not specifically considered the relevant product market for managed corporate actions data in any previous decision.

(B) The Notifying Party's view

(375) The Parties consider that a market comprising the supply of managed corporate actions data alone is relevant even though from a supply-side perspective, many suppliers of other types of financial market intelligence (e.g. pricing and reference data, company fundamentals data) are in principle capable of supplying managed corporate actions data.[278]

(C) The Commission's assessment

(376) The market investigation provided no evidence that the Commission should depart from the decisional practice regarding individual content sets generally being separate markets; as such, considering the specific nature of the data in question and the limited demand-side substitutability, and in line with the Notifying Party's view, the Commission considers that managed corporate actions data is a plausible product market. The Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.21.3. Relevant geographical market

(A) The Commission precedents

(377) In *Thomson/Reuters*[279], the Commission considered the geographic scope of content sets to be at least EEA-wide and probably global.

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277 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 61.

278 Form CO, Chapter on Vertical Relationships, paragraph 4.52.

279 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 106.

(378) The Commission has not specifically considered the relevant geographic market for managed corporate actions data in any previous decision.

(B) The Notifying Party's view

(379) The Parties consider that the supply of managed corporate actions data takes place on a global basis.[280]

(C) The Commission's assessment

(380) The market investigation has not presented any evidence to depart from the decisional practice regarding content sets or putting into question the Notifying Party's view. However, the question of whether the markets are EEA-wide or global in scope can be left open as no competition concerns arise in either case.

6.2.21.4. Conclusion

(381) For the purposes of this Decision, the Commission considers that the relevant market is managed corporate actions data, which is at least EEA-wide in scope.

6.2.22. Global securities financing data

6.2.22.1. Overview and Parties' activities

(382) IHSM supplies global securities financing data, which comprises data tracking short-selling of securities and institutional fund activity. These data, which cover global securities in the lending programmes of institutional funds and details on securities transactions, help customers manage securities lending programmes, manage collateral, optimise trading performance and enhance investment decision making. IHSM uses equity indices as an input into this dataset

6.2.22.2. Relevant product market

(A) The Commission precedents

(383) In *Thomson/Reuters*, the Commission considered that individual content sets are not substitutable for one another since they respond to different and well defined needs of customers and are often traded separately, and can be considered on a standalone basis.[281]

(384) The Commission has not specifically considered the relevant product market for global securities financing data in any previous decision.

(B) The Notifying Party's view

(385) The Parties consider a market for the supply of global securities financing data to be a plausible market given the limited supply-side and demand-side substitutability.[282] From a demand-side perspective, customers are unlikely to consider that other forms

[280] Form CO, Chapter on Vertical Relationships, paragraph 4.53.

[281] Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 61.

[282] Form CO, Chapter on Vertical Relationships, paragraph 4.69.

of dataset are substitutable with global securities financing data, which fulfils a specific purpose and has specific requirements and inputs such as data relating to lending programmes and specific securities-related transactions. Similarly, from a supply-side perspective, while the input data required to construct a global securities financing dataset may be relatively accessible (IHSM, for example, sources the necessary data directly from industry practitioners such as brokers, custodians, asset managers and funds), the competitor set is specific to this particular activity, suggesting a lack of obvious supply-side substitutability with other activities.

(C) The Commission's assessment

(386) Based on the evidence available to it, the Commission considers global securities financing data to be a separate product market. Responding competitors[283] confirmed the Notifying Party's view, explaining that global securities financing data can be provided in conjunction with or separately from other offerings, while adding that there is some differentiation among the various products. The question of whether this gives rise to further segmentations of global securities financing data can be left open for the purposes of this case as no competition concerns arise regardless of the precise market definition.

6.2.22.3. Relevant geographical market

(A) The Commission precedents

(387) In *Thomson/Reuters*[284], the Commission considered the geographic scope of content sets to be at least EEA-wide and probably global.

(388) The Commission has not specifically considered the relevant geographic market for global securities financing data in any previous decision.

(B) The Notifying Party's view

(389) The Parties consider that the supply of global securities financing data takes place on a global basis.[285]

(C) The Commission's assessment

(390) The market investigation has not presented any evidence to depart from the decisional practice regarding content sets or putting into question the Notifying Party's view. However, the question of whether the markets are EEA-wide or global in scope can be left open as no competition concerns arise in either case.

6.2.22.4. Conclusion

(391) For the purposes of this Decision, the Commission considers that the relevant market is global securities financing data, which is at least EEA-wide in scope.

283 Replies to email "Request for information on global securities financing data" sent on 3rd September 2021.

284 Commission decision of 19 February 2008 in Case M.4726, Thomson/Reuters, paragraph 106.

285 Form CO, Chapter on Vertical Relationships, paragraph 4.70.

6.2.23. Portfolio valuation tools

(392) IHSM supplies portfolio valuation tools, which comprise post-trade valuations of a range of OTC derivatives and other financial products such as cash securities. These valuations are used by a range of customers, such as auditors, banks, corporates, fund administrators and custodians and fund managers to provide fair values for a range of liquid and illiquid securities.

6.2.23.1. Relevant product market

(A) The Commission precedents

(393) The Commission has not considered the relevant product market for portfolio valuation tools in any previous decision.

(B) The Notifying Party's view

(394) The Parties consider that a market for the supply of portfolio valuations overall may be appropriate given the lack of substitutability between portfolio valuation and other valuation services. Moreover, the Parties do not consider a sub-segmentation of the portfolio valuation market to be relevant since customers will typically hold a range of different products and will therefore require a range of valuations across product types; and, from a supply-side perspective, all major suppliers of portfolio valuations will typically offer multi-product valuations.[286]

(C) The Commission's assessment

(395) Based on the market investigation and the evidence available to it, the Commission considers that portfolio valuation tools are a separate market. Competitors confirm that they sell such tools both separately and in conjunction with other products.[287] The fact that there are commercial offers of both types of products from the same data vendor confirms that many end-customers prefer to purchase portfolio valuation tools on a standalone basis. There is evidence for a potential further segmentation by asset class, or the coverage of public assets vs private assets, as competitors confirm that such distinctions are important for customers when purchasing portfolio valuation tools.[288] However, the question of further segmentation can be left open as no competition concerns arise regardless of the precise market definition.

6.2.23.2. Relevant geographical market

(A) The Commission precedents

(396) The Commission has not considered the relevant geographic market for portfolio valuation tools in any previous decision.

[286] Notifying Party's response to RFI 24, Annex 3a, paragraph 4.75.

[287] Replies to question 18 of Questionnaire 8.

[288] Replies to question 16 of Questionnaire 8.

(B) The Notifying Party's view

(397) In the Parties' view, the market of portfolio valuation is global in scope.[289]

(C) The Commission's assessment

(398) The Commission has found no evidence putting into question the Notifying Party's view; competitors confirm that portfolio valuation tools are offered, and prices are set, on a world-wide basis.[290] In any case, the Commission does not need to conclude on the definition for the purposes of this case as no concerns arise regardless of the precise market definition.

6.2.23.3. Conclusion

(399) For the purposes of this Decision, the Commission considers that a relevant plausible global market exists for the supply of portfolio valuation tools, potentially further segmented by asset class, or the coverage of public assets vs private assets.

6.3. Competitive assessment

6.3.1. Affected markets with respect to financial data and infrastructure products

(400) The Transaction leads to the following horizontally affected markets in the area of financial data and infrastructure products:

a) Loan identifiers

b) Leveraged loan indices

c) Equity indices

d) Natural resources sector equity indices

e) US Corporate Bond indices

f) Index calculation and administration services

(401) In addition, the Transaction leads to vertically affected markets with respect to the markets listed in Table 1.

(402) The Commission also assesses potential conglomerate effects with respect to the combination of (i) the Parties' indices, (ii) IHSM's issuance platforms and S&P's desktops, (iii) S&P's credit ratings and IHSM's loan administration solutions, and (iv) S&P's credit ratings and IHSM's issuance platforms.[291]

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289 Notifying Party's response to RFI 24, Annex 3a, paragraph 4.76.

290 Replies to question 22 of Questionnaire 8.

291 Due to the nature of the products and services in the financial space, many of these markets could be considered neighbouring. In light of this, we only discuss those, which were flagged by market participants as potentially problematic.

Table 1: Vertically affected markets in relation to financial data and infrastructure products

Upstream market(s) (Party active)	**Downstream market(s) (Party active)**
Loan identifiers (both)	Leveraged loan market intelligence (S&P)
	Fundamentals data (S&P)
Loan pricing and reference data (IHSM)	Leveraged loan market intelligence (S&P)
	Leveraged loan indices (both)
	Company credit risk analytics (S&P)
	Credit ratings (S&P)
CDS pricing data (IHSM)	Company credit risk analytics (S&P)
Municipal bond pricing and reference data (IHSM)	Municipal bond indices (S&P)
RED Codes (IHSM)	Cross-reference tools (S&P; IHSM negligible)
CUSIP data (S&P)[292]	Fixed income indices (IHSM; S&P negligible)
	CDS indices (IHSM)
	Pricing and reference data (IHSM)
	Equities and regulatory reporting (IHSM)
	Issuer solutions (IHSM)
	Investor administration services (IHSM)
	Institutional holdings/investor data (IHSM; S&P negligible)
	Managed corporate actions (IHSM)

[292] In addition, a number of IHSM products offer access to CUSIP data using a similar bring your own data model. For example, IHSM's Markit digital is a Software as a Service (SaaS) that offers solutions for the financial services industry to aggregate, normalise, enhance and display financial information via web services, websites and native mobile apps. Subject to having a CUSIP license, the user can, for example, enter a CUSIP to find a specific instrument, and when the solution returns the product in the display, this will include the CUSIP and potentially other identifiers. Other IHSM products that use a bring your own data model with respect to CUSIPs include: Ipreo (issuance platforms), Iplanner (investor event management solutions). These are not discussed further in this Decision.

Upstream market(s) (Party active)	**Downstream market(s) (Party active)**
Credit ratings data (S&P)[293]	Fixed income indices (both Parties)
	CDS indices (IHSM)
	Pricing and reference data (IHSM)
	Economic data (IHSM)
	Issuer solutions (IHSM)
	Investor administration services (IHSM)
	Institutional holdings/investor data (IHSM)
	Investor event management solutions
Equity Indices (S&P; IHSM negligible)	Portfolio valuation services(IHSM)
	Global securities financing data (IHSM)
	Economic data (IHSM)
Fixed income indices (IHSM; S&P negligible)	Multi-asset indices (S&P)
Indices (both)	Desktop services (S&P)
	Non-real time datafeeds (S&P)
Index calculation / administration (both)	Indices (both)
Managed corporate actions (IHSM)	Equity indices (S&P; IHSM negligible)
Economic data (IHSM)	Credit ratings (S&P)
Sector classification schemes (S&P)	Economic data (IHSM)
	Stock selection and strategy services (both Parties)

293 Similarly to credit ratings, a number of IHSM products allow users to incorporate credit ratings data into such products. For example, Wall Street Office ("WSO") is IHSM's loan administration workflow tool for managers of loan portfolios, which reduces the burden of the manual processes that arise in respect of loan portfolio administration throughout the loan lifecycle. Subject to having a relevant license, WSO users can populate the WSO tool with credit ratings of the preferred supplier ("bring your own data" model). Given that it remains the user's responsibility to choose its data supplier and to obtain the relevant license, the Commission does not consider such links as giving rise to vertical relationships. Other IHSM products that use a "bring your own data" model with respect to credit ratings data include Ipreo (issuance platforms). These are therefore not discussed further in this Decision.

Upstream market(s) (Party active)	Downstream market(s) (Party active)
Digi	Digital design for financial services (IHSM)
	Trade analytics (both Parties)

6.3.2. Affected markets – horizontal overlaps

6.3.2.1. Loan identifiers

(403) The Commission assesses below whether the Transaction raises serious doubts with respect to its compatibility with the internal market by significantly impeding effective competition in the plausible global market of loan identifiers by creating or strengthening of a dominant position of IHSM's LXIDs.

(A) The Parties' activities

(404) As mentioned above, the Parties are both active in the market for loan identifiers: IHSM owns LoanX IDs (LXIDs) and S&P i) owns LCD IDs (an identifier assigned by SPGMI to loans covered by its Leveraged Commentary & Data (LCD) product which is not distributed outside the LCD product) and ii) administers loan CUSIPs based on a license from the American Bankers Association (ABA) and an agreement with the Loan Syndications and Trading Association (LSTA).

(405) The Parties were not able to provide market shares of the Parties and their competitors in the plausible global loan identifier market. However, the Parties provided the number of loans and corresponding coverage rate (i.e. the number of loans in IHSM's loan pricing and reference data bases covered by other loan identifiers compared to IHSM's own loan identifier LXID) in IHSM's loan reference data services (Table 2), IHSM's loan pricing and reference data services combined (Table 3), as well as loan identifiers in IHSM's loan pricing and reference data with respect to currently active loans (Table 4).

Table 2: Loan identifiers coverage in IHSM's loan reference data services

	LXID	LIN	CUSIP	ISIN	FIGI
Number of loans	[No. of loans]	[No. of loans]	[No. of loans]	[No. of loans]	[No. of loans]
Coverage rate	[coverage rate]%	[coverage rate]%	[coverage rate]%	[coverage rate]%	[coverage rate]%

Source: IHSM (Form CO, Chapter on Market Intelligence, Annex B34a, Appendix 2).

Table 3: Loan identifiers in IHSM's loan pricing and loan reference data sets

	LXID	LCD	CUSIP	ISIN	FIGI	LIN
Number of loans	[No. of loans]	[No. of loans]	[No. of loans]	[No. of loans]	[No. of loans]	[No. of loans]
Coverage rate	[coverage rate]%	[coverage rate]%	[coverage rate]%	[coverage rate]%	[coverage rate]%	[coverage rate]%

Source: IHSM (Notifying Party's response to RFI 31, Table 13.1).

Table 4: Loan identifiers coverage – loans currently priced by IHSM

	LXID	LCD	CUSIP	ISIN	FIGI	LIN
Number of loans	[No. of loans]	[No. of loans]	[No. of loans]	[No. of loans]	[No. of loans]	[No. of loans]
Coverage rate	[coverage rate]%	[coverage rate]%	[coverage rate]%	[coverage rate]%	[coverage rate]%	[coverage rate]%

Source: IHSM (Notifying Party's response to RFI 36, Table 5.1)

(406) Identifiers such as ISIN, FIGI and LIN are tracked in IHSM's loan reference data only, whereas, LCD IDs are tracked only in IHSM's loan pricing data, and loan CUSIPs and LXIDs are tracked in both.[294] This is because IHSM has a license from S&P to map LCD IDs and loan CUSIPs to IHSM's loan pricing data and make LCD IDs and loan CUSIPs available to common clients.[295] IHSM explains that there has been no demand to request licenses from other loan identifier owners in order to be able to distribute them with IHSM's loan pricing data.[296] However, this is different for loan reference data, as users may want to connect that data with third party loan pricing data from competitors.

(B) The Notifying Party's view

(407) The Notifying Party does not believe that LXIDs and loan CUSIPs exercise any constraint on each other, because both identifiers have different product features, use cases and customers.

(408) More specifically, the Notifying Party submits that S&P would have no ability to worsen (e.g. by increasing prices) LXID provision post-merger with a view to benefitting loan CUSIPs, since the attempt would undermine IHSM's core pricing and reference data product. LXIDs are fundamental to IHSM's loan pricing and reference data offering, so in order to raise prices for LXIDs, IHSM would have to raise prices for its loan pricing and reference data products, which would damage its business. In any case, according to the Notifying Party, worsening LXID provision would not lead to increased uptake of loan CUSIPs given that the two identifiers have different use cases, product features and customers (e.g. LXIDs changing as the loan terms change and loan CUSIPs being a static identifier).

(409) In addition the Notifying Party explains that such a strategy would benefit other loan pricing and reference data providers like Bloomberg and Refinitiv and lead to a more widespread adoption of their respective identifiers (FIGIs and LINs).

(410) With respect to a theoretical worsening of loan CUSIP supply to benefit LXIDs, the Notifying Party submits that the intellectual property underlying the CUSIP system belongs to the ABA. The Notifying Party is of the view that the ABA would object to any attempt to degrade or otherwise undermine the commercial proposition of loan CUSIPs. In addition, the Notifying Party explains that the ABA [summary of contractual arrangements between CGS and the rest of the S&P business] that S&P is unable to favour the wider S&P business.

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294 Notifying Party's response to RFI 31, paragraph 13.1.

295 Notifying Party's reply to RFI 34, question 4.

296 Notifying Party's response to RFI 35, paragraph 6.1.

(C) The Commission's assessment

Market power

(411) First, while the Commission has no market share information with respect to the plausible global loan identifier market, information provided by the Notifying Party regarding the coverage of their identifiers in the global loan market and the market investigation provided some information with respect to the Parties' position in that plausible market.

(412) The global loan market is characterized by limited transparency and public reporting, given that loan transactions are private. Hence, there is no public data source enabling a calculation of market shares. Given IHSM's market position in the loan pricing and reference data market, and IHSM's estimate that their loan pricing and reference data covers ca. […] of the global loan market (consisting of ca. […] loans in total[297]), at least a ranking of loan identifiers can be approximated from the coverage data in **Table 2** and **Table 3**. Based on the coverage data, LXIDs are the clear market leader in a plausible global market for loan identifiers, followed by LCD IDs and loan CUSIPs which have more or less the same coverage, but both in any case have only around 1/3 of the coverage of LXIDs. ISIN and FIGI coverage is slightly lower than LCD IDs' and loan CUSIPs', followed by LINs.

(413) The market investigation confirms this ranking broadly. For example, one competitor[298] states: *"**LoanX identifiers are "must have"** resources for CLO trustees and other customers.(…)"* [299] [emphasis added]

(414) Another competitor states: *"(…) LXIDs are the **market standard for identifiers** (…)."*[300] [emphasis added] A very limited number of respondents to the market investigation mention other identifiers, such as Bloomberg IDs, FIGIs, loan CUSIPs, LCD IDs and LINs, and practically always in the context of those identifiers providing a lower coverage. For example, one customer mentions: *"LXIDs are the **de-facto market standard identifier for loans**. It is the type of the identifier that other providers are most likely to be able to supply together with their own data. A runner up (at least in the European space) is Bloomberg with their Bloomberg IDs (both the proprietary ones but also the FIGIs)."*[emphasis added][301]

(415) As already mentioned in paragraph (119), the large majority of responding customers state that they need to receive loan pricing data with a particular loan identifier.[302] In the follow-up question, the identifier they require for this purpose is

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297 Notifying Party's response to RFI 21, question 30 and RFI 40, question 1. IHSM estimated the […] coverage based on the fact that […] of loans managed in its loan administration solutions product (WSO) do not have an LXID assigned.

298 Competitors answering the relevant questions to this section are active in loan identifiers, loan/bond/CDS pricing and/or reference data and leveraged loan market intelligence. Some of those competitors are also customers or potential customers in respect of loan identifiers and loan pricing and reference data.

299 Submission of a competitor dated 12 July 2021, paragraphs 11 and 12.

300 Reply to question 12.1 of Questionnaire 6.

301 Reply to question 23.1 of Questionnaire 7.

302 Replies to question 8 of Questionnaire 7.

overwhelmingly "LXIDs".[303] A clear majority says the same with respect to loan reference data.[304] .

(416) A competitor confirms this: *"[The competitors' market intelligence product] has unique [proprietary identifier of the competitor] to support our internal data mapping. We do provide them to clients and they are part of our data sets – but we also have to provide* ***market standard identifiers (LXIDs, CUSIPs)*** *to support broader market data mapping. We have to meet the market requirement – by providing what our clients use – we can't be competitive by relying upon our own identifiers."* [emphasis added][305]

(417) Customers answer similarly with respect to downstream products in which loan identifiers typically feature, such as leveraged loan market intelligence. A majority of customers state that it is important for them that leveraged loan market intelligence includes LXIDs and CUSIPs.[306]

(418) While the above statements and the coverage figures of the different loan identifiers allow no conclusion on exact market shares, the market investigation results support the conclusion that the Transaction effectively combines the number one and likely dominant provider with the second most important loan identifier provider. The other loan identifiers (FIGIs, LINs, LCD IDs) do not seem to pose any meaningful constraints currently and this is unlikely to change quickly given the characteristics of the market (see further down with respect to network effects, barriers to entry and switching).

Closeness of competition

(419) Second, the merging firms appear to be close competitors, as evidenced by responses with respect to both substitutability and closeness of the two identifiers.[307] As set out in paragraph (141), the majority of informative competitor responses say that LXIDs and loan CUSIPs are substitutes for specific use cases or for nearly all use cases.[308] One competitor explains: *"they [LXIDs and loan CUSIPs] are substitutes for the instruments for which there are CUSIPs. (...)"*[309] From a demand-side perspective, the majority of customers respond that LXIDs and loan CUSIPs are substitutes for specific use cases.[310]

(420) To the question "*Would you consider that any other loan identifier offers a good alternative to LXIDs?*" more than half of the informative competitors' responses and more than half of the informative customers' responses was *"Yes, but no alternative as close as loan CUSIPs".*[311][312] A competitor states: "*The only challengers to LoanX*

[303] Replies to question 8.1 of Questionnaire 7.
[304] Replies to question 9 of Questionnaire 7.
[305] Reply to question 3.2.1 of Questionnaire 6.
[306] Replies to question 32 of Questionnaire 7.
[307] Horizontal Merger Guidelines, paragraph 28.
[308] Replies to question 21 of Questionnaire 6.
[309] Reply to question 21.1 of Questionnaire 6.
[310] Replies to question 24 of Questionnaire 7.
[311] Replies to question 23 of Questionnaire 6.
[312] Replies to question 24.2 of Questionnaire 7.

identifiers today are CUSIPs, offered by S&P. However, they are currently only nascent competitors and not yet a scale rival."[313]

(421) The Commission notes that while none of the other loan identifiers seems to have a coverage that can rival IHSM's, it is also evident that the standalone loan CUSIPs of S&P have comparatively the highest coverage after LXIDs. The conclusion from those answers is that LXIDs and loan CUSIPs compete and the Parties' own statistics show that loan CUSIPs are the closest rival to LXIDs in the global loan identifier market, given that coverage seems to be the most important characteristic for customers of loan identifiers. LXIDs and loan CUSIPs are clearly the two loan identifiers with the widest coverage in the market.

Network effects

(422) Third, answers to the market investigation suggest that the loan identifier market is characterized by network effects.[314] Even if these do not seem to be as strong as in other identifier markets (see paragraph (423)below), it is still evident from the responses that both customers and competitors deem the use of specific loan identifiers (and the Parties' loan identifiers are consistently among the first mentioned) important, because many other market participants use them.[315]

(423) In securities markets with regulation on public reporting, International Securities Identification Numbers (ISINs) have been made obligatory to use in order to comply with reporting requirements. This has created strong incentives for market participants to use ISINs for other purposes as well. A similar obligation does not exist in the loan markets. One competitor states: *"The IHSM's LoanX IDs are widely used across the market but there is no single standard identifier system for leveraged loans. [Competitor] has its own identifier system called [identifier name] which [competitor] uses for its own purposes and therefore it can function without the LoanX IDs. Nevertheless, our customers have to do some extra work (because [competitor] does not uses LoanX IDs) (…)"*[316] Another competitor puts it like this: *"[The competitor's product] has unique [proprietary identifiers] to support our internal data mapping. We do provide them to clients and they are part of our data sets – but we also have to provide market standard identifiers (LXIDs, CUSIPs) to support broader market data mapping. We have to meet the market requirement – by providing what our clients use – we can't be competitive by relying upon our own identifiers."*[317]

(424) These quotes illustrate that while there may be no formal legal requirements or other external reason forcing market participants to use a specific loan identifier, certain loan identifiers, such as LXIDs and to a more limited extent loan CUSIPs, have developed into the default loan identifier option, based on which the market

313 Submission of a competitor dated 12 July 2021, paragraphs 11 and 12.

314 "Network effects are a special type of externality in which consumers' utility and/or firms' profits are directly affected by the number of consumers and/or producers using the same (or a compatible) technology." Shy, Oz (2011), A short survey of network economics, Review of Industrial Organization (2011) 38:119–149.

315 E.g. reply to question 41.1 of Questionnaire 6, supplemented by separate email on 29 September 2021; reply to question 3.2.1 of Questionnaire 6.

316 Reply to question 41.1 of Questionnaire 6, supplemented by separate email on 29 September 2021.

317 Reply to question 3.2.1 of Questionnaire 6.

communicates. This is likely also related to both identifiers being active already since the early 2000s (the first contract in relation to loan CUSIPs between S&P and the LSTA dates from 2002, and IHSM acquired LoanX in 2004).[318] As a result of having been active for a long time, both have developed a certain coverage of the global loan markets. In the case of IHSM's LXIDs, this is probably also a result of a series of acquisitions of loan-related assets[319] as well as organically grown products (LIBOR replacement data for loans, loan reference data, Market Entity Identifiers)[320], which have led to LXIDs becoming the standard identifier for customers using IHSM's loan-related products. Practically all of those products[321] seem to have market leading positions in their respective markets.[322]

(425) From the responses to the market investigation, many customers and competitors point to the aspect of "coverage" as a distinguishing feature and highlight that LXIDs and to a more limited extent loan CUSIPs, are deeply entrenched identifiers in the loan market. For example, *"Our understanding is that loan CUSIPs have more limited loan coverage than LXIDs."*[323] A competitor explains: *"(...) they* [LXIDs and loan CUSIPs] *are substitutes for the instruments for which there are CUSIPs. But because LXIDs cover a significantly larger share of the market — particularly in the less transparent part of the loan market—they are more commonly used."*[324] Another competitor explains that in order to offer a competitive loan-related product *"(...)* ***the existing identifiers (primarily LXIDs and CUSIPs) are already embedded in the market infrastructure****. Accordingly, you would need to license the identifiers which are already used in the market (LXIDs) (...)"*[emphasis added][325]

(426) A potential customer explains: *"In practice, this results in a manual search for the relevant loan based on reference data provided and allocate a FIGI to that loan, which is a labour-intensive exercise(...) CUSIPs are sometimes available to customers for USD loans depending on the portfolio data source, but CUSIP does not cover all USD loans, so some percentage of any given portfolio must still be manually mapped. For completeness, there is no third party service available for mapping LXIDs or other identifiers. [The potential customer] receives* ***frequent requests from its customers to be able to offer the LXIDs****."*[326] [emphasis added]

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318 Although LINs have possibly been around since the early 1990s, but Refinitiv's LPC loan pricing data services were launched in 1999, according to the Notifying Party.

319 Acquisitions of i) Vichara Technologies Inc (2003), CLO pricing data; ii) LoanX (2004), a global electronic trading platform for syndicated loans including loan pricing data and LXIDs; iii) International Index Company (2007), iBoxx (US Leveraged loan index); iv) JP Morgan FCS Corp including Wall Street Office (WSO) and Notice Manager (2008), traded loan software/services; v) ClearPar Distressed Loan Trade Settlement/Loan Settlement Custodian Services (2010); vi) DTCC Loan/SERV LLC (2016), now Markit Loan Reconciliation and vii) Ipreo including Debtdomain (2018)), see Notifying Party's response to RFI 35, question 4.

320 Notifying Party's response to RFI 35, question 4.

321 Loan Trade Settlement (Clearpar), Loan Reconciliation, Notice Manager, Custodian Services (Docs & Messaging), Debtdomain, WSO Software, WSO Services, Trade Closing Services. The only loan-related product which does not have a "#1" market position, but only "#3" is Agent Services.

322 IHSM internal document No. ASH000200, slide 8.

323 Reply to question 21.1 of Questionnaire 6.

324 Reply to question 21.1 of Questionnaire 6.

325 Reply to question 10.1 of Questionnaire 6.

326 Reply to question 23.1 of Questionnaire 6, supplemented by separate email on 28 September 2021.

(427) A potential customer explains that they have to engage in labour-intensive and costly manual mapping of alternative identifiers, since they do not have access to LXIDs: *"In practice, this results in a manual search for the relevant loan based on reference data provided and allocate a FIGI to that loan, which is a labour-intensive exercise(…)"*[327]. Another competitor also highlighted that customers have asked for a mapping to LXIDs, but the competitor has not been able to provide this, as the price quoted by IHSM for that input was considered too high by the competitor.[328]

(428) The quotes above also indicate that the current status of LXIDs is not one that can be easily and quickly challenged, based on the competitive dynamics in the loan data market, which shows signs of network effects. As a result, competition in the loan identifier markets is not particularly strong, but to the extent competition exists, it would seem to be taking place mainly between LXIDs and loan CUSIPs and to a weaker extent between LXIDs and other loan identifiers.

Switching

(429) Fourth, customers likely have limited possibilities of switching loan identifier supplier[329], because switching loan pricing data provider or loan reference data provider (which includes loan identifiers) is very resource intensive.[330] When asked, why switching loan reference data provider was not easy, one respondent commented: *"Main reference point/required identifier"*[331] Another respondent that is currently switching loan pricing data provider explains: *"We are in the middle of switching loan pricing data provider from another provider to IHSM. It will take us 18 months for the whole process."*[332]

(430) Switching loan identifier is not an option at all for many competitors in loan reference data or leveraged loan market intelligence, for example, because they depend on being able to communicate with their clients using market-standard identifiers (LXIDs or loan CUSIPs). In addition, while loan identifiers have a separate value, they derive their competitive strength from their coverage and the ability for customers to use and interpret loan data and related analytics, news, etc.

Countervailing buyer power

(431) Fifth, customers and competitors do not seem to have any significant countervailing buyer power.[333] The merged entity's position in the downstream markets for loan data, market intelligence and infrastructure products is not constrained by the bargaining strength of its customers. No customer represents such an important percentage of demand that it enjoys substantial countervailing buyer power. Countervailing buyer power of customers could also derive from customers who contribute data to IHSM's pricing and reference data service, such as banks. While

327 Reply to question 23.1 of Questionnaire 6, supplemented by separate email on 28 September 2021.
328 Reply to question 41.1 of Questionnaire 6, supplemented by separate email on 29 September 2021.
329 Horizontal Merger Guidelines, paragraph 31.
330 Replies to questions 20 and 21 of Questionnaire 7.
331 Reply to question 21.1 of Questionnaire 7.
332 Reply to question 22.1 of Questionnaire 7.
333 Horizontal Merger Guidelines, paragraph 64ff.

some of those banks such as [Customer banks] may be important contributors[334] to IHSM's loan pricing data, they are dependent on the Parties' products in a number of areas where little or no alternatives exist, such as CUSIPs, and including loan pricing data and loan identifiers.

(432) Equally, a large majority of competitors (who are in most cases also customers of the merged entity, including in relation to loan pricing and reference data and loan identifiers) in the broader pricing and reference data and market intelligence space do not consider that they provide any essential inputs to the merged entity that would award them any negotiating power.[335]

Barriers to entry

(433) Sixth, barriers to entry[336] seem to be very high with respect to offering loan identifiers. This is because a crucial factor for a successful loan identifier offering seems to be coverage, and coverage of the global loan market has historically only been achievable by either providing related data/products, such as loan pricing or reference data (LXIDs), or by building on the brand, reputation and infrastructure of an existing identifier business (loan CUSIPs). FIGIs were developed more recently (2009) and outside a significant identifier business, which shows in their comparatively low coverage of the loan market. Other loan identifiers like LCD IDs (only available in S&P's LCD product) or Refinitiv's LINs (only provided as part of Refinitiv's loan pricing and reference data) are in the market more in a function as potential competitors than actual competitors to LXIDs and loan CUSIPs, it seems. This highlights that even existing providers of loan identifiers face barriers to compete effectively due to the current market environment, where a market-leading loan identifier has developed and switching costs are high. It would likely require a significant investment to try and displace current loan identifiers or even gain some market share for a new entrant.

(434) Taking the loan pricing and reference data market as a proxy, respondents to the market investigation unanimously expressed that entering either those markets (which include loan identifiers) is very challenging and requires significant resources and time. One competitor explains how much it would cost a market participant that is already active in fixed income pricing data, to enter the loan pricing data space: *"[Competitor] believes it would take at least a year for a vendor that does supply bond and CDS prices to build the tools, establish the dealer relationships, create the databases, scale the operation, build the API's, and hire/source the collection and integration staff. First year estimate costs likely would be around 2.5 mm (based on previous experience). But even at that point, the product would not be fully adopted by the market until 4-5 years of pricing history is available – which would have to be collected and stored retrospectively, if even possible without purchasing from [the*

334 E.g. IHSM currently prices [number] loans on a daily basis, of which [number] are based on prices provided by [supplier's name] and [number] are based on prices provided by [supplier's name]. [supplier's name] and [supplier's name] rank at #5 and #11 respectively in respect of total contribution usage. Of these [number] loans, [supplier's name] is the sole contributor for [number] loans and [supplier's name] is the sole contributor for [number] (with [supplier's name] ranked #2 for unique coverage). Should [supplier's name] and [supplier's name] cease to provide their loan prices, IHSM would therefore lose coverage on [number] loans. See Notifying Party's response to RFI 32, question 8.

335 Replies to question 6 of Questionnaire 6.

336 Horizontal Merger Guidelines, paragraph 68ff.

main competitors] at exorbitant costs. Factoring that in, I would estimate the total go-to-market cost at around 10-12mm (over 4-5 years). It is also worth noting that even once the product gets to the marketplace, the ***new offering would still need to concord to either LXIDs or CUSIP IDs (both controlled by the combined entity) and the cost of obtaining those IDs likely will increase significantly for a competitive product****."*[337] [emphasis added] Another competitor states: *"It is our understanding that it would be difficult to begin producing loan pricing data in a short time.(...)."*[338]

(435) Another competitor estimates the following with respect to entering the loan pricing/reference data space: *"(...) To start from scratch (no platform, no loan reference data, no agreements with agent banks), such an endeavor would likely require 2 years at the bare minimum. Costs are in the multiple millions (to build the platforms, access the data, find a compelling reason for agent banks to do this). Furthermore, this misses the problem of identifiers: the existing identifiers (primarily LXIDs and CUSIPs) are already embedded in the market infrastructure. Accordingly, you would need to license the identifiers which are already used in the market (LXIDs) in order to build a competitive product with the provider of those identifiers (IHSM). (...)"*[339]

(436) A case demonstrating how difficult it is to successfully enter the loan identifier (and other identifier markets as well, given that FIGI can be used for many different asset classes) is FIGI. Launched by Bloomberg in 2009 (back then under the name Bloomberg Global Identifier), who had significant presence in loan reference data already, FIGIs have been comparatively unsuccessful in gaining market share in the loan identifier market. In conclusion, the Commission notes that entry in the loan identifier market seems to be difficult, and in fact even suppliers that have been active in the market for several years or in some cases decades have not managed to come close in terms of coverage to LXIDs.

Notifying Party's arguments with respect to difference between LXIDs and loan CUSIPs

(437) With respect to the Parties argument, that their identifiers are different products in terms of their features, use cases and customer bases, and hence do not compete or constrain each other, the Commission notes the following:

(438) In relation to the difference in <u>product features</u>, the Notifying Party emphasizes that LXIDs change over time, when properties of a loan change (e.g. refinancing) while loan CUSIPs are static, i.e. a loan keeps the same loan CUSIP irrespective of any changes in the properties of the loan.[340] Apart from one respondent mentioning this fact *("(...) Restatement/Amendment/Extension event rules differ across all ID providers."*[341]*)*, none of the responses to the market investigation suggested that this difference in the product features has any impact on loan identifiers' substitutability or whether they compete. The Commission also notes that even though LXIDs are updated and therefore several LXIDs may exist for the same original loan, IHSM provides customers with "recommended update files" that contain the whole history

337 Reply to question 7.1 of Questionnaire 7.
338 Reply to question 7.1 of Questionnaire 7.
339 Reply to question 10.1 of Questionnaire 7.
340 Form CO, Chapter on Market Intelligence, Annex B.34a.
341 Reply to question 22.1 of Questionnaire 6.

of LXIDs and hence allow linking the different LXIDs to the same loan. To the extent that other identifiers do not track changes in the loan properties, they could indeed be considered as having different product features. However, at least loan CUSIPs are in effect delivered including changes in the loan properties as well. The Notifying Party explains: *"As regards loan CUSIPs, these are accompanied by an underlying data file, published daily, containing principal attributes of syndicated loans with associated CUSIPs (...). Where the features contained in this database of summary loan attributes change (for example where the maturity date or facility type changes) then the relevant feature would be updated in the subsequent iteration of the daily data file (although there is not, unlike for LXIDs, any change history feature). Thus users of loan CUSIPs do not have the same visibility as customers of IHSM's loan reference data (including LXIDs) into changes to a given syndicated loan."*[342] The conclusion does not logically follow from the explanation of the way in which loan CUSIPs are delivered. In fact, loan CUSIPs seem to be updated in terms of content delivered alongside loan CUSIPs much in the same way as LXIDs. The only difference would seem to be that IHSM marks changes in the loan properties by issuing a new LXID (that is however relatable to previous LXIDs), as well as providing information about the feature that changed. Compared to that, loan CUSIPs stay the same but the loan properties information is updated just like with LXIDs on a daily basis. Any user of loan CUSIPs can therefore easily store those changes in their database, if they require this information, e.g. to create a times series of historical pricing or analytics. The only data field that seems to be different between key terms submitted with loan CUSIPs compared to LXIDs, is that LXIDs contain the relevant industry of the issuer[343], e.g. "healthcare" or "real estate"). This is clearly a data field that is unlikely to change frequently.

(439) As a result, it would seem that market participants effectively receive the same information with respect to changes in the loan properties with both identifiers. In any case, respondents to the market investigation did not raise this "discrepancy" between LXIDs and loan CUSIPs. The Commission therefore considers that this is not a meaningful difference in terms of product features between LXIDs and loan CUSIPs.

(440) In terms of commercialization, the Notifying Party claims that LXIDs and loan CUSIPs are distinct, because loan CUSIPs are commercialized standalone while LXIDs are not. The Commission has already analysed this question in Section 6.2.4.2, concluding that even though LXIDs may not be explicitly commercialized standalone, they do generate revenues for display rights which are much higher than "simple" access to IHSM's loan pricing and reference data (which includes LXIDs). Hence, a certain standalone commercial value is attributable to LXIDs. Apart from that, several market participants suggest that the bundling of LXIDs with loan pricing and reference data is a commercial choice of IHSM. The market investigation in any case showed standalone demand for LXIDs which is separate from the demand for an identifier to interrogate IHSM's loan pricing and reference data.

342 Notifying Party's response to RFI 31, question 17.

343 Notifying Party's response to RFI 36, paragraph 3.3.

(441) As additional evidence for the standalone value of the LXID brand, […][344], […]". The Notifying Party explains that the trademark symbol is typically used to denote unregistered trademark rights based on usage instead of formal registration.[345] The Commission therefore considers that even though the genesis of LXIDs and loan CUSIPs was different and as a result, loan CUSIPs are licensed separately while LXIDs are currently bundled with loan pricing and reference data, this is not sufficient to conclude that they do not compete or constrain each other.

(442) In terms of different customer profiles, the Notifying Party claims that the two identifiers have different customers. While LXIDs are primarily used by IHSM's customers of loan pricing and reference data, which are asset managers, asset servicers and banks, loan CUSIPs are used by banks, asset managers and information service providers.[346] The Commission notes, that two of three customer categories are the same. The third category that does not overlap are information services providers, which do not license IHSM's loan pricing and reference data, but only loan CUSIPs.

(443) This is not surprising, given that information services providers are among the main competitors of IHSM in loan pricing and reference data and hence do not require access to this data. Nevertheless, some of those competitors have in the past requested access to LXIDs and were quoted prices that are described by one as amounting to a *"(…) constructive refusal to supply (…)."*[347] This emphasizes once more IHSM's market power in loan identifiers.

(444) Customers who wish to have or offer a full overview of the loan market are likely to currently require several loan identifiers, especially if they do not have access to LXIDs (e.g. the main competitors in loan pricing and reference data). This is confirmed by several competitors stating that they commonly provide third-party loan identifiers with their products. IHSM itself also provides LCD IDs and loan CUSIPs with its loan pricing data to common customers (i.e. customers who have a license to see LCD IDs and loan CUSIPs from S&P), but states that *"IHSM does not need to distribute or display third party loan identifiers for the purpose of its loan pricing data service."*[348]

(445) In summary, while LXIDs and loan CUSIPs may not have exactly the same customer type, there is significant overlap at least from a loan CUSIP perspective, and in any case the results of the market investigation suggest that customers and competitors consider the two identifiers substitutable, at least for certain use cases.

(446) In terms of use cases, the Notifying Party argues that LXIDs are IHSM's internal identifier which is only provided as part of IHSM's loan pricing and reference data and only useful for interrogating this data. Given loan CUSIPs' standalone nature, the use cases of the two identifiers are not the same, claims the Notifying Party. However, the Notifying Party does admit that LXIDs are also used to identify loans which are processed using IHSM's WSO (a traded loan software/service) and its Clearpar loan settlement system.

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344 E.g. Contract between IHSM and S&P, dated 14 September 2015.

345 Notifying Party's response to RFI 30, question 3.

346 Form CO, Chapter on Market Intelligence, Annex B34.a.

347 Reply to question 23.1 of Questionnaire 6, supplemented by separate email on 28 September 2021.

348 Notifying Party's response to RFI 35, paragraph 6.1.

(447) The market investigation does not support the Notifying Party's view that LXIDs and loan CUSIPs differ substantially in terms of use cases. As set out above in the chapter on market definition (see Section 6.2.4.2), market participants use LXIDs (and other loan identifiers) for purposes other than interrogating loan pricing and reference data. The Notifying Party provides the following use cases for which loan CUSIPs are designed: *"(…) loan CUSIPs perform a number of functions including facilitating the settlement, clearing and matching of trades with respect to syndicated loans."*[349] In the market investigation, market participants answered with respect to what LXIDs are used for: *"Mapping of loans, reporting trades and investments, risk management reporting and monitoring, reporting related to trading, settlements and clearing."*[350] The use cases are similar, and in any case relate to trading and settlement of loans and processing related information (mapping, reporting). In addition, the majority of competitors and customers were of the opinion that LXIDs and loan CUSIPs are substitutes, at least for specific use cases, which include the above.

(448) The fact that issuers cannot apply for an LXID (contrary to a loan CUSIP) would also not seem to be an important distinction between loan identifiers and in particular not when comparing LXIDs and loan CUSIPs. This is because of loan CUSIPs' timing issue. A market participant explains: *"(…) the loan CUSIP has a timing issue (…). Re. timing, it is common market behaviour that agent banks first price a loan before reaching out to CGS to create a loan CUSIP. In some instances, the loan CUSIP might not be available for several days after syndication. This is why LXIDs are almost always available before loan CUSIPs.*"[351]

(449) In addition, a trade association explains that loan identifiers from different providers and particularly LXIDs and loan CUSIPs seem to compete for coverage, while trying to not contradict each other, as evidenced by *"[the] feedback relationship between the two identifiers that goes the other way, i.e. when a loan CUSIP is issued, the LXID methodology mirrors that of CUSIP, and will modify/withdraw/create a LXID where there is a discrepancy."*[352] The Notifying Party explains, that indeed LXIDs are created in response to other loan identifiers being issued and IHSM uses a variety of sources to ensure it captures as many new loans as possible.[353] However, LXIDs are not changed or withdrawn in response to other loan identifiers being modified, according to the Notifying Party.[354] The fact that LXIDs are at least created in response to other loan identifiers being issued shows that there is competition in the loan identifier market.

(450) One use case of loan identifiers is the unique identification of loans composing an index in index constituent files. For example, S&P distributes its US leveraged loan indices based on Refinitiv's loan pricing data, together with LINs, which are Refinitiv's internal loan identifiers. However, customers request to receive constituent level data together with other identifiers: *"(…) Of […] clients receiving LLI constituent files via SFTP, […] receive LXIDs, […] receive FIGIs, and […]*

349 Notifying Party's response to RFI 21, paragraph 21.2.
350 Reply to question 20.1 of Questionnaire 6.
351 Minutes of a call with a trade association, 27 September 2021, 17:00 CET.
352 Minutes of a call with a trade association, 27 September 2021, 17:00 CET.
353 Notifying Party's response to RFI 36, paragraph 2.1.
354 Notifying Party's response to RFI 36, paragraph 2.2.

receive CUSIPs (clients may receive multiple identifiers). (…).”[355] This demonstrates some substitutability of loan identifiers for this use case, including between LXIDs and loan CUSIPs.

(451) In this example, loan CUSIPs seem to be in higher demand than LXIDs. This is because loan CUSIPs have a higher coverage in the US loan market, while LXIDs have a higher coverage in the European loan market (while also having coverage of the US market). For example, while [...] of dollar-denominated loans that have an LXID also have a CUSIP, that percentage is just [...] for euro-denominated loans.[356]

(452) While this suggests a certain complementarity between LXIDs and loan CUSIPs in terms of geographies covered, the market for loan identifiers is clearly considered global and customers do not distinguish providers by location. The different geographic focus of both companies is likely due to their historic roots (IHS Markit being headquartered in the UK and S&P in the US).

Notifying Party’s arguments with respect to ability and incentives of the merged entity

(453) The Notifying Party further argues that the merged entity would have no ability or incentive to worsen LXID provision post-merger to benefit loan CUSIPs, or vice versa. With respect to worsening LXID provision the Notifying Party claims that worsening LXID supply would undermine its core loan pricing and reference data product and result in lost sales.

(454) The Commission does not consider it likely that the merged entity would lose sales of loan pricing and reference data if it increased prices for LXIDs, for example. This is mainly, because IHSM is a market leading provider with significant market power in both loan pricing and reference data[357] and loan identifiers. All those markets are characterized by high switching costs and high barriers to entry. The combination with the second most important loan identifier would likely strengthen the merged entity’s position not only in the loan identifier market, but also in the related loan pricing and reference data markets. This is because switching loan pricing and reference data provider is not only costly and takes a long time, but also, switching customers would then have to find a way to replace LXIDs. As some quotes above suggest, this is not impossible, but it is possibly resource-intensive (see quotes of competitors in paragraphs (434) and (435) above). In fact, all respondents to the market investigation that have switched loan pricing and reference data provider, switched to IHSM, not away.[358]

(455) The Commission also disagrees that the most likely result of increasing prices for LXIDs (or IHSM’s loan pricing and reference data generally) would be an increased adoption of Refinitiv’s loan pricing data and associated LINs. It is evident from the Parties’ own submission that Refinitiv’s loan pricing data covers a much lower share of the global loan market than IHSM’s loan pricing data. In addition, based on the

355 Form CO, Chapter on Vertical Relationships, footnote 121.

356 Notifying Party’s supplementary submission on LXIDs.

357 The Commission asked competitors for the revenues they generate with loan pricing and reference data (replies to question 4 of Questionnaire 6.). While the responses are all confidential, the Commission considers that IHSM’s market shares in both the global loan pricing and the loan reference data markets are much higher than estimated by IHSM.

358 Replies to question 22.1 of Questionnaire 7.

responses to the market investigation, LINs do not seem to be widely adopted or used outside Refinitiv's data (contrary to loan CUSIPs). Finally, LINs have a much lower coverage than both IHSM and loan CUSIPs.

(456) A similar reasoning applies with respect to the Notifying Party's argument that if the merged entity were to increase prices for LXIDs (if they were sold separately), customers would be more likely to switch to FIGI instead of loan CUSIPs. Given FIGIs lower acceptance in the loan identifier market, this is not credible.

(457) Apart from that, the Notifying Party argues that the merged entity would have no incentives to increase prices for LXIDs (or loan pricing and reference data more generally), [Details of contract with partner]. However, in a market where the [Details of contract with partner], the argument on the lack of incentives does not seem very credible.

(458) The Notifying Party further argues that the merged entity would have no incentive to increase prices or otherwise worsen the provision of loan CUSIPs to benefit LXIDs, because LXIDs are not a substitute for loan CUSIPs, [summary of confidential contractual arrangements concerning CUSIP's relationship to the rest of the S&P business]. The Commission considers none of those arguments convincing based on the results of the market investigation and other information available to it.

(459) First, the results of the market investigation have shown substitutability between LXIDs and loan CUSIPs from a customer perspective. In addition, the Commission outlined above, why product features, use cases and customers of the two loan identifiers are ultimately not materially different.

(460) Second, based on the current contract between the ABA and S&P on CUSIPs (which covers loan CUSIPs), the ABA's and S&P's interests with respect to increasing prices for loan CUSIPs are aligned [details of contract with partner]. It is therefore plausible that the ABA would not object to a price increase of loan CUSIPs provided it did not breach other clauses of the agreement.

(461) Third, while the CUSIP business may be [details of contract with partner][359]), [details of contract with partner].[360] In terms of actual practical ring-fencing arrangements, the Commission notes that there is [details of contract with partner]."[361]

(462) The Commission considers it likely that the Transaction will provide the merged entity with the ability and incentive to raise prices for one or both loan identifiers, given the market power that the combination of those two identifiers affords the merged entity. The market investigation supports the conclusions that a) LXIDs already have a very strong market position in the loan identifier market, b) the loan identifier market is characterized by network effects, high switching costs and high barriers to entry, leading to the competitive constraints on the market leader LXID to be limited already pre-Transaction, and c) loan CUSIPs seem to be the closest competitor to LXIDs. One competitor confirms with respect to the impact of the

359 Notifying Party's response to RFI 24, question 3.

360 As acknowledged by the Notifying Party in their response to RFI 24, question 2: *"[…]."*

361 Notifying Party's response to RFI 17, paragraph 37.1.

Transaction on the loan identifier market: *"(…) This would make the combined entity a dominant provider."*[362]

(463) A competitor sees the following impact as a result of combining the two loan identifiers: *"In addition, the merged entity will control both the primary and secondary identifier in the loan segment, the LXID and the CUSIP respectively (…). The merged entity will be in a unique position to offer customers a "one-stop-shop" for loan related products and services and will be incentivized to further entrench its position in the form of price based and non-price based conduct,(…) or by tying or bundling distinct loan products with the aim of foreclosing rivals. As a result, this will reduce competitors' incentives to invest in related loans businesses and will further reduce innovation in the area, thereby restricting customer choice."*[363]

(464) A customer summarizes the impact of the Transaction on the loan reference data market like this: *"reduction in competition, less choice, higher prices."*[364] Another customer states: *"(…) the price is most likely to increase and our bargaining power should decrease."*[365] One customer also expects *a "negative impact [but only] if this enables Markit/S&P or other providers to increase prices due to lower competition in the space."*[366]

(465) Overall, responses of competitors with respect to the impact of the Transaction on loan pricing data and loan identifier markets are unanimously negative (not counting uninformative responses).[367] The majority of responses from competitors is also negative with respect to the impact of the Transaction on loan reference data and loan identifiers markets.[368] Almost all of the companies categorized as competitors here are simultaneously also customers or potential customers of the Parties in respect of loan identifiers.

(D) Conclusion

(466) Based on the market investigation and other evidence available to the Commission, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the overlap between the Parties' activities in the plausible global market for loan identifiers by creating or strengthening a dominant position.

6.3.2.2. Indices

(467) Within financial indices, affected markets arise in relation to fixed income indices (but only for the segment of (i) leveraged loan indices and (ii) US corporate bonds),

362 Reply to question 41.1. of Questionnaire 6.
363 Reply to question 33.1 of Questionnaire 6, supplemented by separate email on 28 September 2021.
364 Reply to question 48.1 of Questionnaire 7.
365 Reply to question 47.1 of Questionnaire 7.
366 Reply to question 47.1 of Questionnaire 6.
367 Replies to question 34 and 41 of Questionnaire 6.
368 Replies to question 35 of Questionnaire 6.

and in equity indices, at the level of equity indices overall, as well as for natural resources sector equity.[369]

(A) Leveraged loan indices (horizontal overlap)

(468) The Commission assesses below whether the Transaction raises serious doubts with respect to its compatibility with the internal market by eliminating important competitive constraints in the plausible global market of leveraged loan indices, leading to the creation or strengthening of the merged entity's dominant position.

(A.i) The Parties' activities

(469) The Parties are both active in leveraged loan indices. S&P provides the European Leveraged Loan Index (ELLI) as part of its leveraged loan market intelligence product LCD and not standalone. The loan pricing data for the ELLI is sourced from IHSM. S&P also provides US leveraged loan indices (US LLI) which it licenses to customers for use in the construction of financial instruments or in the form of market data, to be used as a benchmark for active funds. The loan pricing data for the US LLI is sourced from [Name of customer].[370]

Table 5: Market shares in the global market for leveraged loan indices

Index Provider	**2020**	
	AUM €m	**%**
S&P Global	[confidential]	[90-100]%
IHS Markit	[confidential]	[0-5]%
Combined	[confidential]	***[90-100]%***
Credit Suisse	[confidential]	[0-5]%
Total market	[confidential]	**100,0%**

Source: Form CO, Chapter on Vertical Relationships, Annex D.6

[369] In the Form CO the Parties have distinguished between two distinct use cases for licensing financial indices: index licensing for the creation of funds ("M1") typically used by passive funds; and index licensing as a form of market data ("M2") typically used by active funds. The Parties consider that these are not separate markets. Moreover, the Parties consider that M2 are a much more limited proxy than M1, since index providers do not typically generate revenues from licensing indices as a form of market data. First, active fund managers (i.e. the use case of M2) may obtain index data from public sources without charge, rather than licensing it from the index provider. Second, in instances where fees are charged for index licensing as a form of market data, fees are typically flat, thus there is not always a direct correlation between these fees and the AUM of the fund. Third, index licensing as a form of market data has many other use cases (such as licensing to data distributors and internal analytics) which are not covered by data on actively managed funds. These share estimates are therefore provided but the Parties' views focus on the market share estimates for M1. Therefore, for the purposes of this Decision, the Commission has used M1 when determining affected markets, presenting market shares and performing competitive assessments, because they represent the commercialization of indices. Further, there are minimal overlapping segments based on M2 that do not overlap based on M1, and in any case during the market investigation no concerns were raised regarding these segments.

[370] Form Co, Chapter on Vertical Relationships, paragraph 4.26.

(A.ii) The Notifying Party's view

(470) The Notifying Party considers that the category in the Morningstar database ("Level 3"), based on which the Transaction will lead to a merger to monopoly is too narrow to represent a plausible market. According to the Notifying Party, there is supply-side substitutability among so-called floating rate debt indices and leveraged loan indices. The same competitors provide both indices, including Bloomberg, ICE, JP Morgan and Credit Suisse.

(471) Furthermore, on the demand-side, the Notifying Party deems that leveraged loan indices and other floating rate debt indices are substitutable for customers, though acknowledges that substitutability depends on the use case. The Notifying Party also suggest that price and quality are important factors which would lead customers to look for the many available alternatives if they were not satisfied.

(472) Even if the leveraged loan index market was considered to be a relevant market, the Notifying Party submit that each S&P and IHSM have only [Number of customers], which cannot represent a market of their own. Moreover, the Morningstar database does not capture OTC products (which is how leveraged loans are primarily traded), so a focus on funds only underrepresents the relevant competitor set, in the Notifying Party's view.

(473) In addition, barriers to entry are low, as relevant data is readily available from many suppliers and public sources. The Notifying Party therefore considers it easy for other fixed income index providers to provide leveraged loan indices.

(474) The Notifying Party claims that funds account for [0-5]% or less of the investible leveraged loan market, the majority of which is made up of bank holdings and institutional separate accounts, who do not require indices for the creation of funds, but only indices for the purposes of benchmarking. When considering the rest of the market Credit Suisse's and JP Morgan's position is much stronger, with [80-90]% and [20-30]% respectively, according to the Notifying Party.

(A.iii) The Commission's assessment

(475) The Commission considers that none of the Notifying Party's claims are supported by the results of the market investigation or additional submissions by the Parties.

(476) First, several respondents to the market investigation considered "Morningstar Level 3" the relevant level at which to choose indices, and no respondent replied "Level 1 or "Level 2" .[371] Several respondents also answered "It depends". One customer explains: *"Each level is relevant depending on the product category (e.g. for corporate High Yield the Level 3 is more relevant while for global products Level 1 is equally relevant)."*[372] Leveraged loans would tend to rather fall in the category "corporate high yield", i.e. according to this customers view, level 3 would be the relevant category for leveraged loan indices.

(477) A market participant with specific knowledge of the leveraged loan market is of the view that *"the Transaction combines the two predominant suppliers of loan indices,*

[371] Replies to question 7 of Questionnaire 5.

[372] Reply to question 7.1 of Questionnaire 5.

namely the US S&P LSTA leveraged loan index and the IHSM iboxx US loan index. *"*[373] The main reason why there are no relevant competitors in the market of providing leveraged loan indices for the creation of funds is that the Parties own the only IOSCO compliant loan indices globally. In the market participant's view, being IOSCO compliant is an important criterion for an index fund/ETF.[374] This is also evident from the relevant EU-Regulation, which effectively implements the IOSCO principles and requires compliance with IOSCO principles as a criterion to enable endorsement of benchmarks (i.e. indices used for the creation of financial instruments) provided from an administrator located in a third country.[375]

(478) According to this market participant, Credit Suisse does not compete directly with the Parties loan indices, even though it is the longest established loan index, for that very reason, i.e. that it is not IOSCO compliant. In addition to the IOSCO compliance, listed funds require specific high quality loan pricing data, so-called mark-to-market data. This data is based on actual trades of loans, whereas evaluation pricing is based on models. The market participants stressed that *"for mark-to-market loan pricing data, there are only two main suppliers: IHSM and Refinitiv."*[376]

(479) When asking competitors who are the top providers of leveraged loan indices, the majority answer "S&P" without mentioning others. Some respondents also mention IHSM and only one also mentions Credit Suisse.[377] This contradicts the Notifying Party's view that the other providers of leveraged loan indices (Credit Suisse and JP Morgan) compete closely with S&P and IHSM.

(480) According to the Notifying Party, leveraged loan index providers compete across different products for which those indices are used, i.e. funds/ETFs, OTC products (such as total return swaps), bank holdings and institutional separate accounts. The Commission notes that IHSM and S&P both do not commercialize their leveraged loan indices to providers using them in OTC products (which accounts according to the Parties for [90-100]% of the leveraged loan index market). The Notifying party claims this is because investment banks are much better placed to develop indices for use in OTC products (as they structure, issue and trade those products), than the Parties with their focus on more liquid assets.

(481) The Notifying Party argues that indices used for the creation of funds compete with indices used for the benchmarking of active investments, and states "*As regards the inputs required for selling OTC products as opposed to selling ETFs or mutual funds, in each based on leveraged loan indices, as far as the Parties are aware the same or very similar inputs are likely to be required*."[378] Based on the views of the main industry association in this area, it is however not the case, that "*the same or very similar inputs*" are used for funds/ETFs and OTC products. The Commission therefore considers that the competitive constraints, if any, posed by leveraged loan index providers licensing their indices for use in OTC products to leveraged loan index providers licensing their indices for use in funds/ETFs, seem to be minimal.

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373 Minutes of a call with a trade association on 27 September 2021, 17:00 CET.
374 Minutes of a call with a trade association on 27 September 2021, 17:00 CET.
375 Article 30, 2., a), EU-BMR.
376 Minutes of a call with a trade association on 27 September 2021, 17:00 CET.
377 Replies to question 24.3 of Questionnaire 4.
378 Notifying Party's response to RFI 32, question 7.

(482) Second, and reinforcing the above reasoning, for the majority of loan index (fund) customers it is important which loan pricing and reference data is used to calculate the loan indices they license.[379] When asked whether loan data of IHSM, ICE, Refinitiv and Bloomberg are substitutable, half the respondents replied "No", with the other half stating that it depended on the exact use. This highlights, that the substitutability for customers seems to be highly use case dependent and in any case, does not confirm the Notifying Party's view that leveraged loan indices are easily substitutable from a customer perspective.

(483) Third, with respect to barriers to entry, most index providers generally do not think they are able to enter the loan index market quickly. One potential competitor in this space explains: *"[Potential competitor] is currently considering various business cases for the fixed income index space, which may include leveraged loan indices. Access to the necessary data, expertise, and technology is already difficult due to opaqueness of the market."*[380] Another competitor states: *"[Competitor] has been trying for three or four years to enter the market of loan indices (including US Fund Bank Loan indices) and has so far not been successful."*[381]

(484) The competitor explains that the main loan index providers are also at the same time providers of the input data and considers that the prices quoted by existing loan index providers for their data amounts to *"a constructive refusal to supply this data."*[382] The competitor further explains that the data is not easy to source alternatively, i.e. directly from loan issuing banks *"as that would require significant investment (in terms of time and costs), essentially equivalent to establishing a new data vendor, as it would require connecting to a large number of issuers."*[383]

(485) Fourth, given that Credit Suisse and JP Morgan do not seem to pose significant competitive constraints on the Parties, it is of limited relevance that […]. In any case, given that IHSM is the market leader in loan pricing data, the threat to […] is not likely to amount to significant bargaining power.

(486) The Commission further considers that JP Morgan may not fully compete with IHSM, even when considering for the sake of argument, that leveraged loan indices licensed for the use of different financial instruments compete. […].[384] […].[385] […].[386] Given that this aspect cannot be assessed further, the Commission considers it at least uncertain that JP Morgan competes entirely independently from IHSM.

(487) Based on the above considerations, the Commission considers that the market investigation and other evidence available to it do not confirm the Notifying Party's views with respect to competitive dynamics in the leveraged loan index market. The Parties monopoly position Post-Transaction is further strengthened by IHSM being the market leading supplier of essential input, i.e. loan pricing data.

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379 Replies to question 45 of Questionnaire 5.

380 Reply to question 24.2 of Questionnaire 4.

381 Minutes of a call with a competitor on 30 April 2021, 16:00 CET.

382 Minutes of a call with a competitor on 30 April 2021, 16:00 CET.

383 Minutes of a call with a competitor on 30 April 2021, 16:00 CET.

384 […].

385 Notifying Party's Supplemental submission on leveraged loan indices, paragraph 3.4 (B).

386 Notifying Party's response to RFI 32, question 9.

(488) This is further confirmed by reactions from the market with respect to the impact of the Transaction on inputs required for leveraged loan indices. Several respondents expect a negative impact.[387] A European business association expresses the concerns like this: *"(...) Post-merger, the new entity will have a reduced incentive to bring new innovations to the market. The merger will reduce the number of market players able to compete for (...) leveraged loans indices, in addition to the general issue of the expansion of smaller firms and potential competitors being made more difficult."*[388]

(A.iv) Conclusion

(489) Based on the market investigation and other evidence available to the Commission, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the overlap between the Parties' activities in the plausible global market for leveraged loan indices by creating a dominant position.

(B) Other indices markets (horizontal overlap)

(490) The Commission assesses below whether the Transaction raises serious doubts with respect to its compatibility with the internal market by eliminating important competitive constraints in the plausible global markets for (i) all equity indices ([30-40]% combined market share, [0-5]% increment), (ii) natural resources sector equity indices ([40-50]%, with [0-5]% increment), and (ii) US Fund Corporate Bond indices ([30-40]% with [0-5]% increment), leading to the creation or strengthening of the merged entity's dominant position.

(B.i) The Parties' activities

(491) The Parties are both active in each of these index segments, and their market shares are presented in the table below.

Table 6: Global market shares in various indices markets (value, 2020)

Competitor	All equity	Natural resources sector equity	US Corporate Bond
S&P	[30-40]%	[40-50]%	[0-5]%
IHSM	[0-5]%	[0-5]%	[30-40]%
Combined	***[30-40]%***	***[40-50]%***	***[30-40]%***
Bloomberg	-	-	[40-50]%
ICE	-	[0-5]%	[10-20]%
Nasdaq	[0-5]%	[0-5]%	[5-10]%
FTSE Russell	[10-20]%	-	[0-5]%
MSCI	[10-20]%	[10-20]%	-
Morningstar	-	[10-20]%	-
Solactive	[0-5]%	[10-20]%	-

[387] Replies to question 64 of Questionnaire 4.

[388] Submission of a European business association dated 22 September 2021.

Competitor	All equity	Natural resources sector equity	US Corporate Bond
CRSP	[10-20]%	-	-
DAX	[0-5]%	-	-
Others	[10-20]%	[5-10]%	[0-5]%
Total market	*100% (EUR [...])*	*100% (EUR [...])*	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Indices, Annex A1.1)

(B.ii) The Notifying Party's view

(492) Regarding equity indices, the Notifying Party submits that the Parties do not meaningfully compete with one another as IHSM has virtually no presence in equity indices and therefore the Transaction will have a negligible impact on the market structure. Further, the Notifying Party argues that there is a crowded competitive landscape and a large number of strong actual and potential competitors will continue to constrain the merged entity post-Transaction. SPDJI's key competitors in this space are MSCI, FTSE Russell (LSEG/Refinitiv), CRSP, TOPIX, NASDAQ, Nikkei and DAX-STOXX/Qontigo (Deutsche Börse). Each of these competitors has a much larger share of equity index licensing that IHSM; and IHSM's equity indices offering is limited by the fact […], which limits the type of funds that it can provide services to. […].

(493) Regarding natural resources sector equity indices, the Notifying Party submits that this Level 2 category used by Morningstar aggregates funds using multiple different types of natural resources indices and also general equity indices such as the S&P 500 TR (which accounts for over [40-50]% of S&P's AUM in this category and does not select constituents based on participation in the natural resource industry). The Parties therefore consider it to be too broad to constitute a meaningful category of competing indices. They submit that SPDJI's closest competitor in this category is MSCI, with FTSE Russell (LSEG/Refinitiv), NYSE and MVIS also competing closely. Whereas, In any event, IHSM does not consider that the SPDJI indices compete with its EMIX mining indices. IHSM considers that its key competitors are MSCI and FTSE Russell (LSEG/Refinitiv), noting that IHSM's customer base for the EMIX family is small with the same funds benchmarking these indices since the 1990s. The Notifying Party adds that other equity indices suppliers could also easily start supplying mining indices and there are no material barriers to them doing so; they note it is easy to create an equity index tracking mining companies and data to do so is readily available from exchanges.

(494) Regarding US Corporate Bond indices, the Notifying Party submits that the Parties do not meaningfully compete with one another as S&P has virtually no presence and it brings a *de minimis* increment of [0-5]%, and a number of competitors remain, including Bloomberg which has a [40-50]% share.[389]

(B.iii) The Commission's assessment

(495) Based on the evidence available to it, the Commission finds that the Transaction is unlikely to give rise to competition concerns in the putative global markets for

389 Paragraph 7.1, response to RFI 39.

equity indices, natural resources sector equity indices and US Corporate Bond indices.

(496) *First*, IHSM's increment in equity indices and natural resources sector indices, and S&P's increment in US corporate bond indices are both virtually nil, at [0-5]%, with the delta in the HHI being less than 150[390]. Since S&P is a stronger provider equity indices but a small player for supplying such services for fixed income indices, while the reverse is true for IHSM, they are not currently close competitors. Indeed, IHSM is not named as S&P's closest competitor in these markets (or vice versa) by suppliers and customers.[391]

(497) *Second*, strong competitors remain in each of the segments; in equity indices FTSE Russell and MSCI have market shares above [10-20]%, with a long tail of smaller competitors with market shares still larger than IHSM's increment. In natural resources sector equity indices, MSCI, Morningstar and Solactive each have market shares of [10-20]% or above, again with a long tail of smaller competitors with market shares still larger than IHSM's increment. Similarly, in US Corporate Bond indices, Bloomberg is larger than the combined entity, ICE and Nasdaq have market shares above [5-10]%, and FTSE Russell has a market share larger than S&P's increment.

(498) *Third*, barriers to entry into specific segments such as natural resources sector equity or US corporate bond indices appear low for existing equity and fixed income index suppliers respectively. Therefore, any supplier active in index licensing but not currently active in the supply of calculation and administration services could enter, or if they are already active with a small share, could expand their supply without significant additional investment.

(499) *Finally*, the market investigation did not provide any indication that post-Transaction there would not remain enough competition in these segments. Indeed, no respondent raised concerns with regard to these segments. [392]

(B.iv) Conclusion

(500) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the putative global markets for equity indices, natural resources sector equity indices and US Corporate Bond indices.

6.3.2.3. Index calculation and administration services (horizontal overlap)

(A) The Parties' activities

(501) Each Party is active in the supply of calculation and administration services for (equity and fixed income) indices. **Table 7** below shows the market shares of S&P,

[390] As per paragraph 20 of the Horizontal Merger Guidelines, the Commission is unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1 000 and 2 000 and a delta below 250, or a merger with a post-merger HHI above 2 000 and a delta below 150, except where special circumstances apply. The MI did not indicate that any of the special circumstances mentioned apply.

[391] Replies to questions 15 and 17 of Questionnaire 4, and questions 14 and 23 of Questionnaire 5.

[392] Replies to questions 59, 64 of Questionnaire 4 and questions 56, 58 of Questionnaire 5.

IHSM and their main competitors in the putative global market(s) for index calculation and administration services (overall, equity and fixed income)[393] in 2020.

Table 7: Global market shares in index calculation and administration services (value, 2020)

Competitor	Overall	Equity	Fixed income
S&P	[20-30]%	[30-40]%	[0-5]%
IHSM	[5-10]%	[5-10]%	[10-20]%
Combined	***[30-40]%***	***[40-50]%***	***[20-30]%***
Solactive	[20-30]%	[20-30]%	[20-30]%
Bloomberg	[10-20]%	[0-5]%	[0-5]%
DAX	[5-10]%	[10-20]%	[0-5]%
FTSE Russell	[5-10]%	[5-10]%	[0-5]%
MSCI	[0-5]%	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%	[40-50]%
Total market	*100% (EUR […])*	*100% (EUR […])*	*100% (EUR […])*

Source: The Parties' best estimates (Form CO, Chapter on Indices, Table 6.18)

(B) The Notifying Party's view

(502) The Notifying Party submits that the Transaction is unlikely to give rise to competition concerns.[394] First, the supply of calculation and administration services is not a significant revenue driver for either Party. This is because it is a commoditised service, with low margins due to the strong competition between existing suppliers and the constraint of potential for new entrants. Indeed, SPDJI considers these services to be an add-on to its index licensing activities. Similarly, absent the Transaction, IHSM is not actively seeking to grow its index calculation and administration business, reflecting the lack of strategic focus on this area. The Transaction will not therefore lead to any loss of potential competition.

(503) Second, neither Party is strategically focused on competing with the other in this space. SPDJI generates the vast majority ([…]%) of its revenue through the supply of services to customers with equity indices, while IHSM's offering is more balanced between equity and fixed-income indices, and in 2020 it generated […]% of its calculation and administration revenue from equity indices services and […]% from fixed-income indices services. A large proportion of IHSM's equity offering is the supply of calculation services for equity baskets; this is a simple calculation offering and can be performed by any supplier. As with its own proprietary indices IHSM is not able to calculate equity indices in real-time and therefore does not currently compete against SPDJI for these customers.

(504) Third, the merged entity will be constrained by the wide range of actual and potential competing suppliers, including Solactive. The Parties' combined share has decreased between 2018 and 2020, from [30-40]% to [30-40]%. This is primarily due to the growth in other suppliers' market shares, including Solactive, which has increased

[393] Index calculation and administration services for indices other than equity indices and fixed income indices are not considered further, as they do not lead to affected vertical links.

[394] Form CO, Chapter on Indices, paragraphs 6.171*ff*.

from [20-30]% to [20-30]%. Bloomberg, DAX-STOXX/Qontigo (Deutsche Börse) and FTSE Russell (LSEG/Refinitiv) all have market shares exceeding [5-10]% and there is a large tail of smaller competitors who could easily expand their position. This tail of competitors includes large indices providers (e.g. MSCI, ICE) who are well positioned to provide these add-on services.

(505) Fourth, barriers to entry for the supply of calculation and administration services are very low. It is very easy for small start-ups to start supplying calculation and administration services, which is reflected by the successful growth of Solactive in recent years and the entry by suppliers such as Moorgate Benchmarks. Solactive's current estimated share of index calculation and administration services is [20-30]%. However, the Parties consider that this underrepresents Solactive's competitive impact. Indeed, Solactive provides a low-cost and flexible service, exerting significant pricing pressure on other suppliers and the Parties expect Solactive to continue to expand its share of the calculation and administration services market going forward. The Notifying Party adds that it is also very easy for suppliers active in index licensing to supply third parties with index calculation and administration services. No material investment is required to do so, as they will already have in-house calculation and administration services. Therefore any supplier active in index licensing is a potential entrant to the supply of calculation and administration services.

(C) The Commission's assessment

(506) Based on the evidence available to it, the Commission finds that the Transaction is unlikely to give rise to competition concerns in the putative global markets for index calculation and administration services, or for such services segmented by equity indices and fixed income indices.

(507) *First*, while S&P is a stronger provider of index calculation and administration services for equity indices, it is a small player for supplying such services for fixed income indices, while the reverse is true for IHSM. As such, S&P and IHSM are not currently close competitors. Indeed, IHSM is not named as S&P's closest competitor in these markets (or vice versa) by any responding suppliers, and only as the second closest competitor by one responding supplier.[395]

(508) *Second*, strong competitors remain in each of the segments; in the overall index calculation and administration services Solactive's market share ([20-30]%) is very close to that of S&P ([20-30]%), and has been increasing, and there are three other providers with market shares above [5-10]% ([10-20]%, [5-10]% and [5-10]%). In index calculation and administration services for equity indices, Solactive and DAX both have market shares well above that of IHSM's increment ([20-30]%, [10-20]% and [5-10]% respectively). Similarly, in index calculation and administration services for fixed income indices, Solactive is larger than the combined entity, and there is a long tail of smaller competitors.

(509) *Third*, barriers to entry or expansion appear low, as large index providers already have in-house calculation and administration services for their own indices. Therefore, any supplier active in index licensing but not currently active in the

[395] Replies to question 21 of Questionnaire 4.

supply of calculation and administration services could enter, or if they are already active with a small share, could expand their supply without significant additional investment. Calculation services include daily maintenance and calculation of the index, application and treatment of corporate actions, index distribution, and the supply of constituent (calculated) data files to the customer. Administration services include overseeing the index methodology and any changes thereto etc., i.e. owning the rulebooks and performing consultations for changes. A supplier with the requisite data, infrastructure and processes in place can enter or expand without a large incremental burden.

(510) *Finally*, while the combined market share in certain plausible segments is not low, the market investigation did not provide any indication that post-Transaction there would not remain enough competition in these segments. Indeed, the majority of responding index competitors and customers expect a neutral or positive impact on the index calculation and administration services markets.[396]

(D) Conclusion

(511) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the global market for index calculation and administration services, or any narrower plausible segment.

6.3.3. Affected markets – vertical relationships

6.3.3.1. Loan identifiers (upstream) – Leveraged loan market intelligence (downstream)

(512) The Commission assesses below whether the merged entity would have the ability and incentives to foreclose access to LXIDs to S&P's competitors in leveraged loan market intelligence as well as the likely impact of such foreclosure.

(A) The Parties' activities

(513) Upstream, both Parties are active in loan identifiers (see Section 6.3.2.1). There are no independent public sources with respect to market shares in the loan identifier market. However, the Commission considers that the market coverage of loan identifiers as compared by IHSM within its loan pricing and reference data would seem to be representative of the whole market based on the responses to the market investigation.

(514) Downstream, S&P is active in leveraged loan market intelligence with its Loan Commentary and Data (LCD) product. IHSM is not active in this market.

[396] Replies to question 60 of Questionnaire 4 and question 57 of Questionnaire 5.

Table 8: Market shares in the global leveraged loan market intelligence market (revenues)

	2020
Competitor	**Market share (%)**
S&P Global (LCD)	[20-30]%
IHSM	[0-5]%
Combined	***[20-30]%***
Fitch	[20-30]-[30-40]%
LPC (Refinitiv)	[20-30]%
Others (Reorg, Debtwire, etc.)	[10-20]-[30-40]%
Total market	***100% (EUR […])***

Source: The Parties' best estimates (Form CO, Chapter on Vertical Relationships, Table 5.2

(B) The Notifying Party's view

(515) The Notifying Party submits that there are several reasons why the merged entity would have no ability or incentives to foreclose access to LXIDs to rivals of LCD in the leveraged loan market intelligence market.

(516) First, the merged entity would lack the ability to foreclose because (a) LXID's are not a critical input as evidenced by LCD not commonly displaying LXIDs anywhere, and not having a license to use LXIDs in any part of its LCD product except in the indices provided as a part of LCD; (b) there are alternatives to LXIDs that rivals can use, in particular Refinitiv's LINs and in any case, rivals can compete without access to loan identifiers.

(517) Second, the merged entity would have no incentives to foreclose access to LXIDs since it would have to refuse access to its loan pricing and reference data which would reduce its profits and it would not be likely that the diversion downstream would make up for that loss. This is because rival products downstream are no perfect substitutes to LCD as the content of all products competing in that space is differentiated. Furthermore, rivals would also have access to other identifiers such as LINs and FIGIs and could replace lost access to LXIDs by switching loan identifiers. In addition, the Notifying Party sees significant retaliation risks from S&P's competitors which also supply the merged entity with numerous essential inputs, including for example [Competitor].

(518) Third, there would be no appreciable effect on competition downstream as leveraged loan market intelligence is very competitive and fragmented and a foreclosure of LXIDs would not have a significant detrimental effect on competition downstream.

(C) The Commission's assessment

(C.i) Input foreclosure

Ability

(519) All responding competitors in leveraged loan market intelligence consider loan pricing and reference data, including loan identifiers to be a very important input.[397] One competitor states: *"The only data from IHSM that's a need-to-have is the LXIDs – the pricing data is a nice-to-have but there are viable substitutes."*[398] Another competitor explains: *"Leveraged loan market participants will be interested in at least some reference data to understand the borrower and characteristics of the loan. Participants who transact in leveraged loans, or who are looking to derive certain types of credit metrics, will need access to loan pricing."*[399]

(520) In response to the question whether not having access to IHSM's data would degrade their product to an extent that customers would stop buying leveraged loan market intelligence of LCD's rivals, the majority of competitors answers *"It depends"*.[400] However, this is mainly driven by the fact that one competitor is currently in negotiations with IHSM with respect to LXIDs. Two other competitors or potential competitors have tried sourcing LXIDs previously but were quoted a price that was considered too high. One competitor explains: *"(…)customers have asked [competitor] if they could use LoanX IDs. 10 years ago [competitor] made an attempt to get a license for LoanX IDs, but it was very expensive. [Competitor] would consider licensing LoanX IDs if the terms were appropriate to satisfy its customers' needs."*[401] The high price quoted by IHSM for access to its LXIDs was likely in that case a result of the requesting company competing with IHSM in other downstream markets. The Commission notes, that this past behaviour clearly evidences the ability of the merged entity to foreclose access to LXIDs. The Transaction will increase those incentives and extend them to leveraged loan market intelligence, given the presence of S&P in the downstream market.

(521) The remaining competitors in leveraged loan market intelligence are using LXIDs and have contracts with IHSM. One competitor states: *"In order to link its information to the information in the form used by customers, as a practical matter, [competitor] must provide identifiers. For the loan market, although this includes LoanX IDs (LXIDs) and CUSIPs (US and Canada), LXIDs are the de facto identifier used."*[402]

(522) Customers confirm this view. The majority of customers considers receiving LXIDs and loan CUSIPs as part of their leveraged loan market intelligence as important.[403] This is because customers require loan identifiers in order to map information, analysis and news in LCD to their loan trading activities which include the monitoring of a portfolio of loans, loan settlement and cross-referencing to other

397 Replies to question 29 of Questionnaire 6.
398 Reply to question 29.1 of Questionnaire 6.
399 Reply to question 29.1 of Questionnaire 6.
400 Replies to question 30 of Questionnaire 6.
401 Reply to question 41.1 of Questionnaire 6, supplemented by email received on 29 September 2021.
402 Minutes of a call with a competitor on 9 June 2021, 16:30 CET, paragraph 30.
403 Replies to question 32 of Questionnaire 7.

information, and they consider LXIDs the market standard loan identifier, with loan CUSIPs being often referred to as the second best alternative.[404]

(523) Furthermore, S&P's LCD product also includes LXIDs in one part of the product, namely the European Leveraged Loan Index (ELLI) calculated as part of LCD. Some customers consider the ELLI a "very important" part of LCD.[405]

(524) Based on the responses to the market investigation, the Commission considers that loan identifiers and in particular LXIDs appear to be a critical input to leveraged loan market intelligence.

(525) The fact that leveraged loan market intelligence products are differentiated and cater to different customer demands does not change the importance of LXIDs as an input. One of the competitors downstream considers that the use of LXIDs contributes to the competitiveness of their product. The competitor is constrained in their choice of loan identifier by the input data received from another provider, which uses LXIDs: *"[Competitor] receives CLO data from a business partner with LXIDs and hence requires loan pricing data with LXIDs to be able to map end-of-day loan prices to its already existing database. [Competitor] is constricted by the business partner's choice of identifier for this input. [Competitor] considers its mapping of CLO data to companies to be an important product feature."*[406] This demonstrates again the network effects of loan identifiers, which benefit the market leading provider IHSM. With respect to the question whether other loan identifiers are effective substitutes for LXIDs, the Commission understands from the responses to the market investigation as well as from the coverage figures provided by the Notifying Party, that other loan identifiers do not offer the requisite coverage. Coverage of all loan identifiers competing with the Parties' loan identifiers is significantly lower. As set out in the chapter assessing the horizontal overlap in loan identifiers above, the competition between loan identifiers is already not very strong pre-Transaction. Furthermore, access to other identifiers is not a sufficient substitute for competitors, who are reacting to customer demands for LXIDs. A competitor states with respect to other loan identifiers: *"[Competitor] notes that Bloomberg and Refinitiv also provide loan identifiers but does not see those identifiers as an alternative to LXIDs or CUSIPs. According to [the competitor's] observations, loan information customers only primarily use LXIDs for content mapping, followed by CUSIPs. The usage of LXIDs includes mapping data sets internally as well as to external data feeds, supporting settlement and trading and secondary mark-to-market pricing."*[407] As a consequence, the Notifying Party's view that S&P's LCD rivals could easily substitute LXIDs with another loan identifier is already not credible for this reason. Furthermore, the only other loan identifier which is considered as a close substitute is S&P's loan CUSIP. With the addition of loan CUSIPs, the Transaction strengthens the already strong position upstream of IHSM in loan identifiers.

(526) The above assessment of the horizontal overlap in loan identifiers already showed that switching costs are high and that customers would unlikely change provider in case of partial price-based foreclosure of LXIDs.

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404 Replies to question 32.1 of Questionnaire 7.

405 Replies to question 31 of Questionnaire 7.

406 Minutes of a call with a competitor on 21 September 2021, 18:00 CET, paragraph 6.

407 Minutes of a call with a competitor on 9 June 2021, 16:30 CET, paragraph 32.

(527) In addition, S&P is currently a strong supplier of leveraged loan market intelligence, with the largest global market share, and could easily address demand of new customers from the foreclosed competitors.

(528) In summary, based on the evidence available to it, the Commission considers that the merged entity would have the ability to either partially or fully foreclose access to LXIDs to rival leveraged loan market intelligence providers.

Incentives

(529) The Notifying Party argues that the merged entity would have no incentives to foreclose access to LXIDs since it would have to refuse access to its loan pricing and reference data which would reduce its profits not only for LXIDs, and it would not be likely that the diversion downstream would make up for that loss.

(530) However, even taking into account the sales of loan pricing and reference data overall, sales of the upstream product to the downstream market's rivals of the merged entity are relatively low (less than USD […], i.e. ca. […]% of revenues). As a result, foreclosure would be profitable even with very low customer switching or customers adding LCD (below 1%)[408].

(531) In order to estimate the profits at risk of being lost if the merged entity forecloses its upstream product, the Commission considered the profit margin of loan pricing and reference data upstream (given that no separate revenues/margins are available for LXIDs, as IHSM currently does not commercialize them separately from its loan pricing and reference data). The EBITDA[409] margin of the pricing valuation and reference business segment of IHSM which includes LXIDs stood at […]% according to the Notifying Party.[410] Applied to the sales of loan pricing data to the downstream market of leveraged loan market intelligence providers of USD […] this results in profits potentially at risk of USD […].

(532) These sales of USD […] have been identified by the Notifying Party as total sales of loan pricing data, including LXIDs to the downstream market. However, USD […] thereof are sales to [Customers] who do not compete with S&P's LCD in the downstream market. A possible foreclosure of loan pricing data including LXIDs only to S&P's downstream competitors would therefore correspond to much fewer profits at risk upstream and would be even more profitable from a financial incentives perspective.

(533) The Commission compares profits lost upstream to the potential increase in profits downstream from additional sales of S&P's LCD. The downstream revenue of S&P amounted to USD […][411] The downstream EBITDA margin of the business segment covering S&P's leveraged loan market intelligence stood at […]% in 2020 according

[408] Based on revenues and profit margins provided and assuming a market share of IHSM upstream between […]% and […]%.

[409] Earnings before interest tax depreciation and amortization.

[410] Form CO, Chapter on Vertical Relationships. Annex D2.

[411] Form CO, Chapter on Vertical Relationships. Annex D3.

to the Notifying Party.[412] Therefore the operating profits downstream derived from the existing market share of S&P amounted to USD […].

(534) The profits which could be gained from a foreclosure strategy have to be assessed taking into account the existing market share of S&P downstream. The merged entity would only be able to increase its market share capturing customers that do not already purchase S&P's market intelligence products. To take account of this, the Commission reduced profits to be potentially gained by [20-30]% which is the current market share of S&P downstream according to the Notifying Party.[413]

(535) The proportion of the market purchasing loan pricing data, including LXIDs upstream and leveraged loan market intelligence downstream which is susceptible to switch or add S&P as a result of the foreclosure is indeed not 100%. It is corrected for the market participants which do not purchase loan pricing data, including LXIDs upstream and corrected for market participants which already purchase the S&P product downstream and would therefore not need to add an S&P downstream solution. The Commission considers for this purpose that between 35.8 and 57% of customers using loan pricing data including LXIDs upstream and leveraged loan market intelligence downstream are susceptible to switch or add S&P solutions downstream following a foreclosure. This figure is calculated by multiplying IHSM's market share upstream ([50-60]% when IHSM's market share in loan pricing data is considered, [80-90]% when IHSM's market share in LXIDs is considered) by [70-80]%[414], the combined market share of competitors of S&P downstream.

(536) Currently S&P derives an operating profit of around USD […] for each percentage point of market share downstream.[415] Therefore, the operating profits downstream of S&P could in theory increase by up to USD […], if S&P could capture the full […]% of the market which is susceptible to switch in the case of a foreclosure strategy.

(537) The Commission calculated the critical switching rates for which the operating profits lost upstream would be outweighed by operating profits gained downstream. As IHSM is not deriving large revenues upstream currently from LXIDs compared to the large revenues derived by S&P downstream, the switching rates sufficient to create incentives are […].[416] From a financial incentives perspective it would (conservatively taking into account the higher figure of upstream sales to the downstream market of USD […]) be sufficient that 3-5% of customers upstream add the S&P downstream product. More than 3% of respondents to the market investigation considered that they would add the S&P downstream product if LXIDs would no longer be provided to downstream competitors.[417]

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412 Form CO, Chapter on Vertical Relationships. Annex D2.

413 Form CO, Chapter on Vertical Relationships. Annex D3.

414 [90-100]% - [20-30]% (S&P's market share downstream).

415 USD […] million divided by the market share of [20-30]%.

416 Switching in this case can take the form of either switching fully from a competitors' downstream product to S&P's LCD, but equally can take the form of adding the S&P downstream product.

417 Replies to question 33 of Questionnaire 7.

(538) In the alternative, where a foreclosure strategy would only exclude direct downstream competitors of the S&P product from distributing and accessing loan pricing data including LXIDs, the critical switching rate would be below 1%. [418]

(539) As explained above, S&P is the market leader downstream with its LCD product which points to the attractiveness of this product for customers and potential to switch. The Notifying Party argues that rival products downstream are no perfect substitutes to LCD as the content of all products competing in that space is differentiated. However, as explained above in Section 6.2.11, all leveraged loan market intelligence products pertain to a single market and are substitutes at least to some extent. The differentiated nature of certain offerings appears also insufficient to dismiss the existence of incentives knowing that a switching of less than 1% of customers would already render the foreclosure strategy profitable.

(540) This increases incentives to foreclose, as the merged entity could be relatively certain that customers will not easily substitute LXIDs with another loan identifier.

(541) Past behaviour of IHSM vis-à-vis two downstream competitors in other markets using LXIDs as an input[419] also shows that IHSM had the ability and incentives to foreclose in the past, and effectively partially foreclosed access to LXIDs. Two competitors in a downstream market requested access to LXIDs in the past, but were quoted very high prices, amounting to, as one of them put it "a constructive refusal to supply". The downstream market concerned by this past behaviour is relatively concentrated, possibly also as a result of the foreclosure of an upstream product (LXIDs) that had developed network effects over time, and in which IHSM is the strongest supplier.

(542) Finally, as already mentioned above, the large majority of competitors in the broader pricing and reference data and market intelligence space do not consider that they provide any essential inputs to the merged entity that would award them any negotiating power.[420] The Notifying Party's argument that the merged entity will lack incentives due to retaliation risks from S&P's competitors therefore does not seem credible.

Impact

(543) Overall, responses of competitors with respect to the impact of the Transaction on loan pricing data and loan identifier markets are unanimously negative (not counting uninformative responses).[421] One competitor expresses its concerns in the following terms: *"[Competitor] is concerned that the merged entity might refuse access to LXIDs or offer them on worse terms post-transaction , e.g., unreasonable price increases, or refusal to allow a license for redistribution. [Competitor] estimates that following the merger, S&P could decide to apply similar terms as currently apply to CUSIP also to LXIDs (i.e. increase prices, e.g. by defining many different*

[418] This is where potential profits lost are considered only in respect of revenues generated by sales of loan pricing data including LXIDs to S&P's downstream competitors, i.e. excluding sales of USD […] to […].

[419] Reply to question 41.1 of Questionnaire 6, supplemented by email received on 29 September 2021 and Reply to question 23.1 of Questionnaire 6, supplemented by email received on 28 September 2021.

[420] Replies to question 6 of Questionnaire 6.

[421] Replies to question 34 and 41 of Questionnaire 6.

use cases, restrict use of LXIDs when re-distributing to end-customers who are not licensed directly by S&P).”[422]

(544) Customers’ views on the impact of the Transaction on the leveraged loan market intelligence market are also not positive, with several negative views .[423]

(545) Such foreclosure strategy could not only increase prices for end-customers, but also impact choice and innovation. Competitors highlight that access to LXIDs enable them to provide competitively promising products. One competitor explains: *“[Competitor] considers its mapping of CLO data to companies to be an important product feature.”*[424] and adds*: “[Competitor] requires identifiers for (...) for providing the results of its analyses and data structuring to customers including identifiers that customers require/use. (...) For loans, this would be predominantly LXIDs and to a lesser extent FIGIs and loan CUSIPs as their coverage is more limited.”* Another competitor states: *“In order to link its information to the information in the form used by customers, as a practical matter, [competitor] must provide identifiers. For the loan market, (...) this includes LoanX IDs (LXIDs) and CUSIPs (US and Canada).”*

(C.ii) Customer foreclosure

(546) Customer foreclosure in relation to those markets is not assessed in detail given that S&P’s market share downstream is [20-30]% which means that S&P would likely not have sufficient market power to effectively foreclose market access to LXIDs rivals upstream. Furthermore, loan identifiers are used in many different downstream products apart from leveraged loan market intelligence (e.g. loan pricing and reference data, leveraged loan indices, credit ratings, corporate fundamentals data and company credit risk analytics). In addition, no respondent to the market investigation expressed concerns with respect to possible customer foreclosure.

(D) Conclusion

(547) Based on the market investigation and other evidence available to the Commission, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the vertical relationship between the Parties’ activities in the plausible global market for loan identifiers (upstream) and the plausible global market for leveraged loan market intelligence (downstream) by providing the ability and incentives to fully or partially refuse access to loan identifiers to the merged entity’s rivals downstream. This would lead to rivals’ being at least partially foreclosed and competing less effectively against the leading player S&P, to the detriment of choice and quality for end-customers.

422 Minutes of a call with a competitor on 9 June 2021, 16:30 CET, paragraph 35.

423 Replies to question 49 of Questionnaire 7.

424 Minutes of a call with a competitor on 21 September 2021, 18:00 CET.

6.3.3.2. Loan identifiers (upstream) – Fundamentals data (downstream)

(548) The Commission assesses below whether the merged entity would have the ability and incentives to foreclose access to IHSM's loan identifiers to S&P's competitors in fundamentals data as well as the likely impact of such foreclosure.[425]

(A) The Parties' activities

(549) IHSM and S&P are both active upstream in loan identifiers, IHSM being the market leader and S&P the second most used loan identifier (see Section 6.3.2.1). S&P is active in fundamentals data standalone, as well as packaged with its desktop solutions.[426]

Table 9: Market shares in fundamentals data (2020)

Competitor	Market share (%)
S&P	[10-20]%
IHSM	-
Combined	***[10-20]%***
Refinitiv	[20-30]%
FactSet	[20-30]%
Bloomberg	[10-20]%
Moody's Bureau van Dijk	[5-10]%
Pitchbook	[5-10]%
Dun & Bradstreet	[5-10]%
Others	[5-10]%
Total	***100%***

Source: The Parties' best estimates (Form CO, Chapter on Vertical Relationships, Table 5.6)

(B) The Notifying Party's view

(550) In the Notifying Party's view there is no vertical link between loan identifiers upstream and fundamentals data downstream, as the Notifying Party does not acknowledge the existence of a separate loan identifier market. The Notifying Party's arguments therefore focus on loan reference data overall, for which the Notifying Party however also submits that there is no vertical link. At least S&P does not use loan reference data, including loan identifiers as an input in its creation of fundamentals data. According to the Notifying Party, fundamentals data may include data on total debt and leverage at company level, which is distinct from loan reference data, including loan identifiers (which provides detailed terms and conditions of particular debt obligations and not the company as a whole).[427] The Notifying Party submits that loan reference data and loan identifiers are better characterized as complementary to fundamentals data rather than a relevant input.

[425] Customer foreclosure in relation to those markets is not assessed in detail given that S&P's market share downstream is ca. [10-20]% which means that S&P would likely not have sufficient market power to effectively foreclose market access to IHSM's rivals upstream. Furthermore, loan reference data is used in many different downstream products apart from fundamentals data (e.g. leveraged loan market intelligence, leveraged loan indices, credit ratings). In addition, no respondent to the market investigation expressed concerns with respect to possible customer foreclosure.

[426] Form CO, Chapter on Vertical Relationships, Note under Table 5.6.

[427] Form CO, Chapter on Vertical Relationships, paragraph 5.54.

(551) In any case, the Notifying Party claims that the merged entity would have neither ability nor incentives to foreclose loan reference data, given a) its modest presence upstream, b) the low importance of the input for the downstream product, c) foreclosure would not be profitable as the merged entity would give up profits upstream with no realistic diversion of customers downstream, and d) downstream competitors are also important input providers to the merged entity and foreclosure would risk retaliation.

(C) The Commission's assessment

(552) Several downstream competitors responding to the market investigation do report that they use loan reference data and loan identifiers as an input to their company fundamentals data offering.[428] As noted in the above chapter on the horizontal overlap in loan identifiers, the Parties' position upstream is very strong and likely dominant even with IHSM's LXIDs only. The Commission therefore considers that the merged entity would in principle have the ability to foreclose access to LXIDs for competing fundamentals data providers. However, the Commission notes that on the downstream market, S&P is currently only the 3rd or 4th player, behind Refinitiv and FactSet, and of comparable size to Bloomberg, and hence may not have the ability to fully capture demand lost by competitors.

(553) A market participant expressed specific concerns in relation to LXIDs as an input: *"[Competitor] is concerned about a potential full foreclosure of LXID identifiers post-Transaction, which would prevent [competitor] from properly matching instruments with issuers, decreasing its content quality in the Fundamentals data market. For customers, the ability to link loan pricing and reference data with fundamentals and ratings data is particularly important, because it supports full company level capital structure and credit analysis."*[429] However, the competitor complaining about potential foreclosure of LXIDs does not expect the Transaction to have a negative impact on the fundamentals data market.[430] In addition, no other providers in the downstream market raised possible concerns. Other providers in the downstream market did not raise this concern and currently operate successfully. without LXIDs as an input, with a combined market share of [50-60]-[60-70]%. This points to LXIDs potentially not being essential in order to compete or the merged entity not having the ability to foreclosure the downstream market.

(554) With respect to incentives, the Commission notes that S&P's market share is relatively limited and hence the market share based on which the merged entity would benefit from a higher price level as a result of raising rivals' costs would be limited. Second, there are several competitors downstream, most of which operate their fundamentals data business while not having access to LXIDs or wishing to have access to LXIDs, including some with higher market shares than S&P.

(555) In terms of impact of possible foreclosure, several downstream competitors highlight that they currently do not source this input from IHSM and do not expect an impact of the transaction on their businesses or on competition.

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428 Replies to question 6 of Questionnaire 8.

429 Minutes of a call with a competitor on 25 June 2021, 14:00 CET.

430 Reply to question 12 of Questionnaire 8.

(556) From a customer perspective, views are mixed, with some customers considering it important to be able to match bank loan transactions/pricing with other fundamentals data, but others not.[431] Ultimately, as indicated above, the competitor complaining about potential foreclosure of LXIDs does not expect the Transaction to have a negative impact on the fundamentals data market.[432]

(D) Conclusion

(557) Based on the market investigation and other evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the vertical relationship between the Parties' activities in the plausible global market for loan identifiers (upstream) and the plausible global market for fundamentals data (downstream).

6.3.3.3. Loan pricing and reference data (upstream) – Leveraged loan market intelligence (downstream)

(558) The Commission assesses below whether the merged entity would have the ability and incentives to foreclose access to IHSM's loan pricing and reference data to S&P's competitors in leveraged loan market intelligence as well as the likely impact of such foreclosure.

(A) The Parties' activities

(559) Upstream IHSM is active in loan pricing data with a market share of ca. [50-60]% and loan reference[433] data with a market share of ca. [5-10]% (the market share in an overall market of loan pricing and reference data would be ca. [30-40]%). IHSM collects loan pricing data mainly from financial institutions trading in loans (market-making desks primarily but also information from the buy-side) in the form of so-called "dealer runs" (quotes provided by banks to their customers on the terms on which they are willing to buy or sell a loan, which are provided to IHSM electronically) and messages.[434] The data covers bid-offer pricing analytics and liquidity measures for over […] leveraged loan facilities globally, as well as some private or "club" loans.

(560) Downstream, S&P is in the leading provider of leveraged loan market intelligence with a market share of [20-30]% (see Section 6.3.3.1).

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431 Replies to question 11 of Questionnaire 9.

432 Reply to question 12 of Questionnaire 8.

433 Given IHSM's more limited position in loan reference data, the market would not be affected when considered in isolation upstream. However, given that the Commission has not concluded on whether loan pricing and reference data are separate markets or one market, the Commission will present the reasons for which it concludes that no concerns arise also in case a wider market was considered.

434 Form CO, Chapter on Vertical Relationships, paragraph 3.15.

Table 10: Market shares in loan pricing and reference data (2020)

	Loan pricing data	***Loan reference data***
Competitor	***Market share (%)***	
S&P Global	-	-
IHS Markit	[50-60]%	[5-10]%
Combined	***[50-60]%***	***[5-10]%***
Refinitiv	[20-30]%	[30-40]%
ICE	[10-20]%	-
Bloomberg	[10-20]%	[50-60]%
Best Credit Data	[0-5]%	
Advantage Data	[0-5]%	
Virtus LLC	-	[5-10]%
Other	-	[5-10]%
Total market	***100,0% (EUR […])***	***100% (EUR […])***

Source: The Parties' best estimates (Form CO, Chapter on Vertical Relationships, Table 3.3)

(B) The Notifying Party's view

(561) In the Notifying Party's view, IHSM's loan pricing data is not in itself an input into S&P's leveraged loan market intelligence product LCD, given that the loan pricing data is only used to calculate the ELLI index, which is distributed exclusively in the LCD product. According to the Notifying Party, the ELLI or the other US leveraged loan index that S&P calculates based on […] loan pricing data, and also commercializes separately, are not important components of the LCD product.

(562) The Notifying Party further submits that it does not have the ability to foreclose access to IHSM's loan pricing data given that loan pricing data is not an essential input and there are competing suppliers such as Refinitiv, Bloomberg, ICE, Advantage Data and Best Credit Data.

(563) There are also no incentives to foreclose, as the Notifying Party deems that the LCD product is not a full substitute for competitor products and hence, foreclosure would not give rise to meaningful diversion. Also, the Notifying Party believes that the merged entity would face significant retaliation risks if it attempted to foreclose loan pricing data, as for example downstream competitor […] also provides its […] products to S&P as an input which it could restrict access to.

(C) The Commission's assessment

(564) First, with respect to whether loan pricing and/or reference data is an essential input into leveraged loan market intelligence, respondents to the market investigation have

a different view on the importance. All competitors responding to the market investigation are of the view that loan pricing and/or reference data are an important input into leveraged loan market intelligence.[435] One competitor states: *"Loan pricing and reference data are key inputs for leveraged loan market intelligence, without which such market intelligence would have little / no content and therefore be of little value."*[436] However, another competitor states: *"The only data from IHSM that's a need-to-have is the LXIDs – the pricing data is a nice-to-have but there are viable substitutes."*[437] Another competitor explains: *"Participants who transact in leveraged loans, or who are looking to derive certain types of credit metrics, will need access to loan pricing."*[438] While that answer is not entirely clear with respect to whether loan pricing and reference data is a necessary input to leveraged loan market intelligence, it highlights that the need for this input may vary depending on the customer type.

(565) Competitors were generally of the view that several of the other loan pricing data providers (Refinitiv, Bloomberg, Solve Advisors) provide a loan pricing data product that is a credible alternative to IHSM's loan pricing data.[439] Best Credit Data and Advantage are not considered credible alternatives, while Solve Advisors, who are not figuring in the above market shares, was considered an alternative.[440] The same is true for most of the other loan reference data providers (Refinitiv, Bloomberg).[441]

(566) The Commission notes that even though loan pricing and reference data would seem to be considered an important input by most competitors in leveraged loan market intelligence, all competitors agree that sufficient alternative providers of loan pricing and reference data will remain on the market post-Transaction. No provider of leveraged loan market intelligence indicates that not having access to IHSM's loan pricing and reference data would degrade their product.[442]

(567) If a wider market upstream was considered, i.e. a market comprising both loan pricing and reference data, the Commission notes that IHSM's market share in the loan reference data market (ca. [5-10]%) is significantly smaller than in loan pricing data (ca. [50-60]%), so that IHSM's market share upstream would be lower (ca. [30-40]%) in a broader market. While the number of competitors able to provide both loan pricing and reference data is smaller (i.e. effectively limited to Bloomberg and Refinitiv), those two other competitors have significant market shares ([20-30]% and [20-30]% respectively in the broader market comprising both loan pricing and reference data), and are considered credible alternatives by market participants.

(568) Second, in terms of incentives, sales of the upstream product to downstream competitors are very low (just USD […]), and hence could speak rather in favour of incentives, given that the profit lost upstream would be very limited. Given that there are alternative providers the incentives to fully foreclose may be limited, as

435 Replies to question 29 of Questionnaire 6.
436 Reply to question 29.1 of Questionnaire 6, supplemented by separate email on 28 September 2021.
437 Reply to question 29.1 of Questionnaire 6.
438 Reply to question 29.1 of Questionnaire 6.
439 Replies to question 16 of Questionnaire 6.
440 Reply to question 16.1 of Questionnaire 6.
441 Replies to question 18 of Questionnaire 6.
442 Replies to question 30 of Questionnaire 6.

downstream competitors could not effectively be fully foreclosed by the merged entity. A partial foreclosure in the form of price increases could however be profitable given that less profit would be lost upstream and switching loan pricing data provider for downstream competitors is not fast and easy. In any case, there is no need to conclude on whether the merged entity would have incentives to foreclose downstream rivals, as the Parties have offered to divest S&P's leveraged loan market intelligence business to remedy the concerns raised in relation to the vertical link between loan identifiers upstream and leveraged loan market intelligence downstream, thus removing any possible incentive.

(569) The Commission also does not consider that the retaliation risk from […] in case of a foreclosure strategy in regard to loan pricing data is particularly strong, given that S&P is also active in […], including with much higher market share and coverage than […], and could in turn restrict access to its credit ratings.

(570) However, in any case, no competitor expressed concerns with respect to customers switching away from their leveraged loan market intelligence product, if they no longer had access to IHSM's loan pricing and/or reference data.[443] Based on the above responses to the market investigation, the Commission concludes that the merged entity would likely not have the ability or incentives to foreclose access to IHSM's loan pricing data post-Transaction, and that therefore, there is unlikely to be a significant impact of the Transaction on competition in those markets as a result of the Transaction.

(571) Customer foreclosure in relation to these markets is not assessed in detail given that S&P's market share downstream is [20-30]% which means that S&P would likely not have sufficient market power to effectively foreclose market access to IHSM's rivals upstream. Furthermore, loan pricing data is used in many different downstream products apart from leveraged loan market intelligence (e.g. leveraged loan indices, credit ratings and company credit risk analytics). In addition, no respondent to the market investigation expressed concerns with respect to possible customer foreclosure.

(D) Conclusion

(572) Based on the market investigation and other evidence available to the Commission, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the vertical relationship between the Parties' activities in the plausible global market for loan pricing and/or reference data (upstream) and the plausible global market for leveraged loan market intelligence (downstream).

6.3.3.4. Loan pricing and reference data (upstream) – Company credit risk analytics (downstream)

(573) The Commission assesses below whether the merged entity would have the ability and incentives to foreclose access to IHSM's loan pricing and reference data to S&P's competitors in company credit risk analytics as well as the likely impact of such foreclosure.

[443] Replies to question 30 of Questionnaire 6.

(A) The Parties' activities

(574) Upstream IHSM is active in loan pricing data with a market share of ca. [50-60]% (see chapter 6.3.3.3) and loan reference data with a market share of ca. [5-10]% (the market share in an overall market of loan pricing and reference data would be ca. [30-40]%). S&P is active downstream of loan pricing data in the supply of company credit risk analytics with its product CreditPro. CreditPro provides and is primarily used for aggregated historical data on ratings transitions. IHSM's loan pricing data is used as one of several inputs for CLO surveillance and also as input into defaults and recoveries used by S&P Global Ratings analysts. S&P views this data on defaults and recoveries as part of the market for the supply of company credit risk analytics data.[444]

Table 11: Market shares in company credit risk analytics (2020)

Competitor	Market share (%)
S&P	[0-5]%
ISHM	-
Combined	***[0-5]%***
Bloomberg	[5-10]%
Moody's	[20-30]%
Refinitiv	[5-10]%
Dun & Bradstreet	[40-50]%
Others	[10-20]%
Total	*100%*

Source: The Parties' best estimates (Form CO, Chapter on Vertical Relationships, Table 5.1)

(B) The Notifying Party's view

(575) The Notifying Party does not consider that IHSM has market power upstream in the market for loan pricing data, given the presence of several strong competitors. Furthermore, loan pricing data is one of several inputs into recovery rates, which is one of the many inputs/features of CreditPro.

(576) In terms of incentives, the Notifying Party argues that S&P's primary competitors are Refinitiv, Bloomberg and Moody's who supply important inputs to S&P across a range of product areas. A foreclosure of loan pricing data would therefore risk that competitors withhold access to their own products, weakening S&P's offering.

(C) The Commission's assessment

(577) IHSM's loan pricing data is only one of a number of non-critical inputs into S&P's distressed dashboard, a leveraged finance monitoring system used by S&P's rating analysts for assessing leveraged loans, which generates default and recovery rates, which are then in turn an input into S&P's CreditPro. Loan reference data is not used as an input for the downstream product. Given the limited importance of the input to the downstream product and the presence of several credible competitors upstream, some of which are also providers of loan pricing data (Bloomberg, Refinitiv), the Commission considers it unlikely that the merged entity would have the ability to

444 Form CO, Chapter on Vertical Relationships, paragraph 5.14.

foreclose loan pricing data to downstream competitors in company credit risk analytics.

(578) In terms of incentives, given the high margins of IHSM's loan pricing data upstream ([…]%)[445], giving up revenue upstream to potentially recoup revenues through increased margins or a higher market share downstream seems unlikely to be profitable. In particular, there are unlikely to be incentives for full foreclosure as this is unlikely to be effective, given the presence of other providers upstream that are considered credible alternatives. This is even more the case, given that the loan pricing data being used as an input in the downstream product is one of many inputs and it is unlikely to make a distinguishable difference for customers of the downstream product, from which upstream provider this data is sourced.

(579) Furthermore, the Commission notes that none of the respondents to the market investigation (including S&P's main competitors in the downstream market) expressed foreclosure concerns with respect to this vertical link.

(580) Customer foreclosure in relation to these markets is not assessed in detail given that S&P's market share downstream is less than [5-10]% which means that S&P would likely not have sufficient market power to effectively foreclose market access to IHSM's rivals upstream. Furthermore, loan pricing data is used in many different downstream products apart from company credit risk analytics (e.g. leveraged loan market intelligence, leveraged loan indices, credit ratings). In addition, no respondent to the market investigation expressed concerns with respect to possible customer foreclosure.

(D) Conclusion

(581) Based on the market investigation and other evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the vertical relationship between the Parties' activities in the plausible global market for loan pricing and/or reference data (upstream) and the plausible global market for company credit risk analytics (downstream).

6.3.3.5. Loan pricing and reference data (upstream) – Leveraged loan indices (downstream)

(A) The Parties' activities

(582) Upstream IHSM is active in loan pricing data with a market share of ca. [50-60]% (see chapter 6.3.3.3) and loan reference data with a market share of ca. [5-10]% (the market share in an overall market of loan pricing and reference data would be ca. [30-40]%). Downstream, S&P and IHSM are both active in leveraged loan indices, S&P with a market share of [90-100]% and IHSM with a market share of [0-5]% (see chapter 6.3.2.2).

[445] Margin data is only available at the level of pricing data overall ([…]% for pricing data in 2021 based on […]), see Notifying Party's response to RFI 19, Annex 1.

(B) The Notifying Party's view

(583) According to the Notifying Party, the merged entity would not have the ability to foreclose access to loan pricing data as access to IHSM's loan pricing data is not necessary to compete in the supply of leveraged loan indices. S&P itself does not source its loan pricing data from IHSM but from [Names of S&P's suppliers]. Apart from that, the Notifying Party submits that ICE and Bloomberg are credible alternative suppliers of this data.

(584) In terms of incentives, the Notifying Party notes that foreclosure would not result in customers diverting to S&P's leveraged loan indices as alternative loan pricing data input is available and leveraged loan indices are in any case substitutable with other indices tracking floating-rate fixed income securities (some leveraged loan indices benchmark against Bloomberg or ICE fixed income indices).

(C) The Commission's assessment

(585) In terms of possible input foreclosure, the Commission notes that in its assessment of the horizontal overlap in leveraged loan indices, some evidence pointed to IHSM being one of only two providers of the relevant loan pricing input data for leveraged loan indices. This is because index providers require the "highest quality" pricing data in the form of actual prices or quotes submitted when trading loans. A majority of index customers responded that it is important/relevant for them which loan pricing and reference data is used to calculate loan indices they license.[446] The respondents mention as possible suppliers mostly IHSM and Refinitiv[447], supporting the evidence cited above. When asked whether IHSM, ICE, Refinitiv and Bloomberg are substitutable in terms of the loan data they provide, most customers reply that this depends on the product for which that data is used.[448]

(586) In any case, the only downstream competitors are currently S&P and IHSM, so only potential competitors could be foreclosed.

(587) From a customer foreclosure perspective, the merged entity would have the ability to stop purchasing from upstream competitors of IHSM. However, the upstream competitors also sell their loan pricing and reference data to other customers and not only to providers of leveraged loan indices. The proportion of IHSM's total sales in the upstream loan pricing and reference data market to the downstream leveraged loan index market are [0-5]% and [20-30]% respectively.[449] Hence, a foreclosure of IHSM's upstream rivals is unlikely to have any impact on their ability to compete upstream.

(588) In any case, given the serious doubts raised in relation to the horizontal overlap in leveraged loan indices, for which the Notifying Party has offered S&P's downstream business as a commitment, see chapter 6.4.4, the Commission does not need to conclude its assessment on incentives and impact, as the divestment eliminates possible incentives (by removing the overlap resulting from the Transaction) and hence, no concerns can plausibly arise.

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446 Replies to question 45 of Questionnaire 5.

447 Replies to question 45.1 of Questionnaire 5.

448 Replies to question 45.2 of Questionnaire 5.

449 Form CO, Chapter on Vertical Relationships, Annex D2.

(D) Conclusion

(589) Based on the market investigation and other evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the vertical relationship between the Parties' activities in the plausible global market for loan pricing and/or reference data (upstream) and the plausible global market for leveraged loan indices (downstream).

6.3.3.6. Loan pricing and reference data (upstream) – Credit ratings (downstream)

(590) The Commission assesses below whether the merged entity would have the ability and incentives to foreclose access to IHSM's loan pricing and reference data to S&P's competitors in credit ratings as well as the likely impact of such foreclosure.

(A) The Parties' activities

(591) IHSM is active upstream in pricing (ca. [50-60]% market share) and reference (ca. [5-10]% market share) data for loans (ca. [30-40]% market share in an overall market of loan pricing and reference data). S&P is active downstream in credit ratings (ca. [40-50]%). With respect to loan pricing and reference data, please see market shares in Section 6.3.3.3.

Table 12: Market shares in credit ratings (value, 2020)

Competitor	Global	EU
S&P	[30-40]%	[40-50]%
IHSM	-	-
Combined	***[30-40]%***	***[40-50]%***
Moody's	[30-40]%	[30-40]%
Fitch	[10-20]%	[10-20]%
DBRS	[0-5]%	[0-5]%
Others	[5-10]%	[5-10]%
Total market	*100% (EUR [...])*	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Vertical Relationships, Table 3.1; Notifying Party's response to RFI 36)

(B) The Notifying Party's view

(592) In the Notifying Party's view, loan pricing and reference data is not a key input for rating agencies. S&P itself uses IHSM's loan pricing data for several ancillary internal analysis tools alongside many other inputs. The cost of loan pricing data as an input relative to revenues is very low. In addition, the Notifying Party submits that it would be unable to foreclose credit rating rivals, as most leveraged loans are rated by at least two rating agencies and alternative providers of loan data are in any case available. With respect to loan reference data, similar considerations apply. IHSM does not currently supply loan reference data to Moody's, which either means that the data is not essential or Moody's can procure it from somewhere else.

(593) In terms of incentives, the Notifying Party submits that it would have no incentives to foreclose rivals, as several strong competitors remain upstream, and in any case, it

would be unlikely that customers would divert their business because of this. Furthermore, the Notifying Party believes that its credit rating rivals provide it with important inputs and that it would risk retaliation if it were to foreclose access to loan pricing or reference data.

(C) The Commission's assessment

(594) The Commission's market investigation confirms the Notifying Party's views with respect to this link. Competitors do not consider IHSM's loan pricing data as particularly unique or indispensable as an input to their credit ratings. A competitor downstream explains: *"[Competitor] particularly does not use any IHSM data directly as input to its rating analysis. [Competitor] do use S&P's SNL product as an ancillary input but could, if needed, also produce those data by itself with some time."*[450] Several competitors remain upstream that are considered equally credible. Therefore, the Commission considers that the merged entity will have no ability to foreclose loan pricing and/or reference data to competitors of S&P in credit ratings.

(595) In terms of incentives, customers do not chose a credit rating agency based on the loan pricing and/or reference data they use.[451] Hence, a foreclosure of this data would (a) not have any significant effects on rival credit rating agencies and (b) not lead to diversion of customers because of the foreclosure.

(596) Finally, several competitors in credit ratings of different sizes are not concerned with respect to foreclosure of loan pricing or reference data.[452]

(597) The Commission's investigation indicates that the Transaction is also unlikely to give rise to customer foreclosure of loan pricing and reference data providers. As loan pricing and reference data are an input into a multitude of downstream products (in addition to being sold standalone to end customers), customer foreclosure concerns are unlikely to arise as a result of the Transaction.

(D) Conclusion

(598) Based on the market investigation and other evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the vertical relationship between the Parties' activities in the plausible global market for loan pricing and/or reference data (upstream) and the plausible global market for credit ratings (downstream).

6.3.3.7. CDS pricing data (upstream) - Company credit risk analytics (downstream)

(599) The Commission assesses below whether the merged entity would have the ability and incentives to foreclose access to IHSM's CDS pricing data to S&P's competitors in company credit risk analytics as well as the likely impact of such foreclosure.

450 Minutes of a call with a competitor on 19 August 2021, 15:30 CET.

451 Replies to question 8 of Questionnaire 10.

452 Minutes of a call with a competitor on 1 July 2021, 15:00 CET, Minutes of a call with a competitor on 9 June 2021, 16:30 CET, Minutes of a call with a competitor on 19 August 2021, 15:30 CET.

(A) The Parties' activities

(600) Upstream IHSM is active in CDS pricing data. Downstream S&P is active in the company credit risk analytics market with its product Credit Default Swaps Market Derived Signals (CDS MDS). This product is a model that uses CDS spreads (i.e. bid-ask data) to provide a potential signal of changes in a company's credit risk. S&P's market share in company credit risk analytics is below [5-10]% (please refer to Section 6.3.3.4).

Table 13: Market shares in CDS pricing data (2020)

	2020
Competitor	**Market share (%)**
S&P Global	-
IHSM	[60-70]%
Combined	***[60-70]%***
ICE	[20-30]%
Bloomberg	[5-10]%
Refinitiv	[5-10]%
Other (Datagrapple, OTCStreaming, EDI, etc.)	[5-10]%
Total market	***100% (EUR […])***

Source: IHSM and best estimates (Form CO, Chapter on Vertical Relationships, Table 3.13)

(B) The Notifying Party's view

(601) The Notifying Party considers that CDS pricing data is not an essential input into the downstream market of company credit risk analytics. This is because company credit risk analytics are a broad market comprising a range of differentiated products which are derived from a wide variety of inputs. Typically, S&P's CDS MDS is used alongside other products to assess credit risk, as it does not in itself provide a comprehensive view. Furthermore, the Notifying Party is of the view that IHSM does not have market power upstream in CDS pricing data, as there are a number of credible rivals, including [Names of S&P suppliers] from whom S&P sources its inputs for CDS MDS.

(602) In terms of incentives, the Notifying Party submits that foreclosing CDS pricing data would not necessarily result in meaningful diversion downstream given S&P's low share in this market and the availability of equivalent data sets from rivals upstream.

(603) Furthermore, and in relation to a specific related complaint, the Notifying Party's claims that the CDS standard rate curves are published and licenced for very specific use cases related to the ISDA standard model, and are not licenced as part of IHSM's

CDS pricing data.[453] In any case, S&P is not active upstream or downstream of the CDS standard rate curve.

(C) The Commission's assessment

(604) The Commission notes that a number of market participants believe that the Transaction will have a negative impact on the CDS pricing data market, but none of the respondents are competitors in company credit risk analytics.[454] Some of the respondents explain their negative views with a (not further specified) risk of bundling, but do not substantiate their views.[455] Apart from that, none of the respondents to the market investigation raised concerns in relation to CDS pricing as an input to company credit risk analytics. Respondents to the market investigation confirm the Notifying Party's view that there are a number of credible alternatives for IHSM's CDS pricing data.[456] The Commission therefore considers that the merged entity would not seem to have the ability to foreclose its CDS pricing data to downstream rivals of S&P.

(605) The Commission received one complaint with respect to possible input foreclosure in relation to CDS standard rate curves. One competitor claims that there is an input relationship between IHSM's standard rate curves and S&P's Credit Default Swaps Market Derived Signals (CDS MDS). The Notifying Party however confirms that S&P's product uses CDS pricing data as an input, but not the CDS standard rate curve.[457] Even if competing downstream products were to use the CDS standard rates curve as an input (of which IHSM is the only provider globally), the addition of a [5-10]% market share downstream does not appear likely to change incentives for the merged entity significantly. No other market participants expressed any concerns with respect to this link. The Commission further notes that the relevant competitor provides a number of inputs to the merged entity that would seem to award certain bargaining power.[458] Hence, the Transaction is unlikely to have an effect on competition in the company credit risk analytics market, be it as a result of the upstream link with CDS pricing data or the potential market for a CDS standard rate curve.

(606) Customer foreclosure in relation to these markets is not assessed in detail given that S&P's market share downstream is ca. [10-20]% which means that S&P would likely not have sufficient market power to effectively foreclose market access to IHSM's rivals upstream. Furthermore, CDS pricing data is used in many different downstream products apart from company credit risk analytics (e.g. leveraged loan market intelligence, leveraged loan indices, credit ratings). In addition, no respondent to the market investigation expressed concerns with respect to possible customer foreclosure.

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453 Notifying Party's response to RFI 21 question 5.
454 Replies to question 38 of Questionnaire 6.
455 Replies to question 38.1 of Questionnaire 6.
456 Replies to question 15 of Questionnaire 6.
457 Notifying Party's response to RFI 21, paragraph 5.6.
458 Notifying Party's response to RFI 10, Annex 10.

(D) Conclusion

(607) Based on the market investigation and other evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the vertical relationship between the Parties' activities in the plausible global market for CDS pricing data or the potential market of CDS standard rate curves (upstream) and the plausible global market for company credit risk analytics (downstream).

6.3.3.8. Municipal bond pricing and reference data (upstream) – Municipal bond indices (downstream)

(608) The Commission assesses below whether the merged entity would have the ability and incentives to foreclose access of IHSM's municipal bond pricing and reference data rivals to a sufficient customer base as well as the likely impact of such foreclosure. The Parties' activities

(609) IHSM is active in municipal bond reference data with a market share of ca. [0-5]%. IHSM has been unable to provide market share data or reliable estimates, but considers that the overall municipal bond reference data market likely has a size of ca. USD […], leading to a very small market share for IHSM with USD […] in revenues in 2020. Other competitors are ICE, Refinitiv/Mergent, Bloomberg, Bond view and Xignite. IHSM does not consider that its market shares in municipal bond reference data differ materially from its market shares in bond pricing data.

(610) S&P is active in providing a number of municipal bond indices.

Table 14: Market shares in municipal reference data (2020)

	2020
Competitor	**Market share (%)**
S&P Global	-
IHS Markit	[0-5]%
Combined	***[0-5]%***
ICE	N/A
Refinitiv / Mergent	N/A
Bloomberg	N/A
Bond view	N/A
Xignite	N/A
Total market	**100% (EUR […])**

Source: IHSM and best estimates of competitor market positions (Form CO, Chapter on Vertical Relationships, Table 4.1)

Table 15: Market shares in municipal bond indices (2020)

Index Provider	Market share (%)
S&P Global	[60-70]%
IHS Markit	
Combined	***[60-70]%***
BBgBarc	[20-30]%
ICE	[5-10]%

Index Provider	Market share (%)
Invesco	[0-5]%
S-Network	[0-5]%
Solactive	[0-5]%
Beta	[0-5]%
Total AUM/share	***100% (AuM EUR […])***

Source: Morningstar (Form CO, Chapter on Vertical Relationships, Table 4.2)

(A) The Notifying Party's view

(611) The Notifying Party submits that IHSM's market share is too limited to enable input foreclosure. Several strong suppliers remain post-Transaction and therefore the merged entity would not be able to foreclose this input to downstream rivals. The Notifying Party submits no views in respect of potential customer foreclosure.

(B) The Commission's assessment

(612) First, the Commission notes that while S&P's market share downstream is significant, index providers with a market share of [30-40]% remain on the market as customers of municipal bond reference data. Second, the proportion of overall demand of the upstream market accounted for by the total purchases in the downstream market is […]%.[459] This means that […]% of the upstream markets' sales are not sold to downstream competitors and hence cannot be foreclosed by them, including S&P. Based on this limited proportion of sales that could be foreclosed, and hence no effective foreclosure being possible, the merged entity is unlikely to profit from a foreclosure of upstream rivals.

(613) Therefore, foreclosing municipal bond reference data rivals' access to a sufficient customer base is unlikely to have an impact on competition in municipal bond reference data.

(614) Input foreclosure in relation to these markets is not assessed in more detail, as IHSM's market share upstream in municipal bond pricing and reference data is minimal ([0-5]%) and the merged entity will therefore lack the ability to foreclose downstream rivals of S&P. In terms of both ability and incentives, the main competitors in municipal bond indices (Bloomberg and ICE) are already providers of the same input data, with higher market shares, and hence difficult to effectively foreclose.

(C) Conclusion

(615) Based on the market investigation and other evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the vertical relationship between the Parties' activities in the plausible global market for municipal bond pricing and/or reference data (upstream) and the plausible global market for municipal bond indices (downstream).

[459] Form CO, Chapter on Vertical Relationships, Annex D2.

6.3.3.9. RED Codes (upstream) – Cross-reference tools (downstream)

(616) The Commission assesses below whether the merged entity would have the ability and incentives to foreclose access to IHSM's RED Codes to S&P's competitors in cross-reference tools as well as the likely impact of such foreclosure.[460]

(A) The Parties' activities

(617) Upstream IHSM is the only provider globally of RED Codes which uniquely identify CDS. S&P operates a cross-reference tool much like other competitors, albeit with a very long history which might be considered important by some market participants. IHSM also has a presence in cross-reference tools, but with a product that is more limited in its coverage in terms of asset classes covered, i.e. mainly covering identifiers relevant for debt capital markets, and only active since 2020.

Table 16: Market shares in the market for cross-reference tools (2020)

	2020
Competitor	**Market share (%)**
S&P	[10-20]%
IHSM	[0-5]%
Combined	***[10-20]%***
Bloomberg	[30-40]%
IDC (ICE)	[10-20]%
SIX	[10-20]%
Thomson Reuters	[10-20]%
Others (incl Bureau van Dijk)	[5-10]%
Total market	***100% (EUR […])***

Source: The Parties' best estimates (Form CO, Chapter on Vertical Relationships, Table 5.4)

(B) The Notifying Party's view

(618) The Notifying Party submits that IHSM does not supply RED Codes to all cross-reference tools providers. Furthermore, RED Codes are relevant only for CDS and hence a niche identifier that may not be relevant for a large number of customer of cross-reference tools. In addition, RED Codes are based on the CUSIP numbering system, the intellectual property of which is owned by the ABA. If the merged entity were to foreclose customers, the ABA would likely intervene.

(619) In relation to incentives, the Notifying Party claims that IHSM has every incentive to make RED Codes as widely available as possible which does not change as a result

[460] Customer foreclosure in relation to this vertical link does not need to be assessed given IHSM's market share of [90-100]% upstream, i.e. there are effectively no rivals to foreclose.

of the Transaction. IHSM already has the ability to restrict access to RED Codes, as it is already active downstream, and has never done so. Furthermore, according to the Notifying Party, the merged entity would face retaliation risks from downstream competitors who supply important inputs to the merged entity.

(C) The Commission's assessment

(620) First, the Commission notes that effectively the link between RED Codes and cross – reference tools is existing pre-Transaction given that IHSM is also active downstream. However, this presence in the market is recent and it could be argued that IHSM and S&P do not compete closely given S&P's much broader coverage and longer history (more than 20 years). Indeed, responses to the market investigation confirm that the cross-reference tools of S&P and IHSM are not considered to compete very closely.[461]

(621) Second, two competitors with a combined market share of ca. [20-30]% currently compete without access to RED Codes. This points to RED Codes not being very important for operating a successful cross-reference tool.

(622) Third, the Commission notes that customers do not consider switching cross-reference tool provider easy in terms of time and cost to invest.[462] Since RED Codes are only relevant for CDS (unlike other identifiers such as entity identifiers or security identifiers that have broader use cases) they are unlikely to be required by a large number of customers of cross-reference tools. Foreclosing access to competitors is therefore unlikely to lead to switching of a significant number of customers away from S&P's rivals. Therefore, any impact on competition in the market for cross-reference tools would likely be very limited, even in case of full foreclosure of competitors.

(623) This is confirmed by customers responding to the market investigation, all of which expect the impact of the Transaction on the market for cross-reference tools to be neutral or positive.[463]

(D) Conclusion

(624) Based on the market investigation and other evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the vertical relationship between the Parties' activities in the plausible global market for RED Codes (upstream) and the plausible global market for cross-reference tools (downstream).

6.3.3.10. CUSIPs (upstream) – Indices (downstream)

(A) The Parties' activities

(625) S&P manages and operates the CUSIP system on behalf of the American Bankers Association (the "ABA") which is the ultimate owner of all relevant intellectual

461 Replies to question 40 of Questionnaire 7.
462 Replies to question 39 of Questionnaire 7.
463 Replies to question 51 of Questionnaire 7.

property of the CUSIP system, including the various databases of CUSIPs and associated descriptive information about a given security and its issuer. S&P and the ABA have entered into a […] agreement governing the operation of the CUSIP system. As part of its arrangement with the ABA, S&P is mandated to operate the CUSIP business […] (CUSIP Global Services ("CGS")), [commercial agreement details].[464]

(626) CUSIP data is used as an input in equity indices, fixed income indices and CDS indices.[465] That said, identifiers (whether CUSIPs or otherwise) are not used to create fixed income or CDS indices themselves, but are instead used to identify and track securities within a given index, so that the relevant index can then be updated to reflect changes in its constituents. As such, they can be included in 'constituent files', i.e. detailed index data provided by index providers to their customers.

(627) S&P's market share upstream in CUSIP identifiers is 100%, as it is the only issuer of these identifiers. The Parties' market shares downstream in fixed income indices and CDS indices are provided below in **Table 17**.

Table 17: Market shares in indices by asset category (global, AuM, 2020)

Fixed income indices		CDS indices	
Competitor	**Market share**	**Competitor**	**Market share**
S&P	[0-5]%	S&P	-
IHSM	[5-10]%	IHSM	[90-100]%
Combined	***[5-10]%***	***Combined***	***[90-100]%***
Bloomberg	[70-80]%	-	-
ICE	[5-10]%	-	-
FTSE Russell	[0-5]%	-	-
JPM	[0-5]%	-	-
SIX	[0-5]%	-	-
Others	[0-5]%	Others	-

Source: The Parties' best estimates (Form CO, Chapter on Vertical Relationships, Annex D.6)

(B) The Notifying Party's view

(628) The Notifying Party submits that the Transaction does not raise concerns in particular because:[466]

(a) S&P would have no ability to foreclose access to CUSIP data to competing index providers because: (i) Under the terms of its arrangement with the ABA, [summary of contractual arrangements between CGS and the rest of the S&P business]. This is further reinforced by […]. The terms of CGS' relationship with other S&P businesses, as well as SPDJI's joint ownership,

464 Notifying Party's response to RFI 24, Annex 3a, paragraph 4.5.

465 S&P is mostly active in equity indices upstream, and IHSM's increment being very low ([0 – 5]%), the supply of equity indices into the downstream markets is a largely pre-existing link, and thus not considered further.

466 Form CO, Chapter on Vertical Relationships, paragraphs 3.103 and 3.117.

preclude S&P from hypothetically favouring SPDJI's indices operations. And (ii) S&P licenses CUSIPs on a FRAND basis and would suffer reputational and commercial damages reneging on this commitment. Moreover, the Notifying Party submits that in this case the ABA would almost certainly remove S&P's licence as the administrator of the CUSIP system, since the ABA has an interest in making CGS's data as broadly available, accessible and adopted in the financial industry as possible; any commercial practice that may restrict access to those identifiers would undermine their status as market standards, with a negative impact on the value of the ABA's intellectual property.

(b) S&P would also have no incentive to foreclose access to CUSIP data as, (i) There is already a vertical link with S&P's pre-existing indices business, but CGS has never restricted access to CUSIPs to support SPDJI's established equity indices business or to encourage the entry / expansion of the fixed income indices business. There is no reason why it should attempt to do so post-Transaction, in particular given the limited change downstream (the Transaction will have a negligible impact on S&P's equity indices business and the combined fixed income indices business [S&P revenue information] than S&P's existing equity indices business where, as above, S&P has never sought to foreclose access to CUSIP data). Indeed there is no plausible basis on which S&P would wish to do so given the potentially significant ramifications on its wider CUSIP business, as detailed above. And (ii) it would face retaliation risk from downstream indices competitors, in particular from companies like [names of S&P's suppliers], all of whom supply important inputs to S&P currently across a range of product areas.

(C) The Commission's assessment

(629) The Commission's investigation indicates that the Transaction is unlikely to give rise to input foreclosure.[467]

(630) *First*, the Commission notes that the governance of the CUSIPs and the oversight by the ABA provide a certain comfort that S&P would not be able to favour its own downstream businesses to the detriment of rivals. The ABA confirms that they focus on this aspect and have not observed such behaviour by S&P in the past; "*One of the most important factors that gives ABA confidence that CUSIPs are managed as agreed is that* [summary of contractual arrangements between CGS and the rest of the S&P business] *no S&P business receives preferential treatment relative to third parties…ABA considers that these restrictions have in the past been respected*."[468] In terms of the operational governance, the ABA confirms that it "*is in frequent contact with CGS, and regularly monitors all aspects of the agreement between ABA and CGS*." Lastly, the S&P would be deterred from anti-competitive behaviour in breach of its understanding with the ABA, since while the ABA "*has never in the past*

[467] Given that S&P is the only entity currently authorized to issue CUSIPs, there are no current or potential rivals upstream that could be foreclosed by customer foreclosure. Moreover CUSIPs and other identifiers have a large number of users and use cases outside of indices, including mandatory use in settlement in the US and as such it is not plausible that identifier providers could be foreclosed based on these downstream activities. Customer foreclosure with respect to CUSIPs upstream is thus not considered further.

[468] Minutes of call with ABA, 31 August 2021.

considered revoking the CUSIP license from S&P. …[it] *would not hesitate to ensure that the contract is respected and would take all appropriate steps to enforce its terms*."

(631) <u>*Second*</u>, and relatedly, the Commission notes that S&P has a public FRAND commitment, which, if effective, would deprive the company from the ability to engage in input foreclosure. CGS' statement on its website reads that *"CGS seeks to charge fair, reasonable and non-discriminatory license fees for providing the convenience and functionality of direct or indirect access to and benefit of CGS Data…"*.[469] However, this commitment results from a voluntary decision of S&P which the company could formally decide to overturn one way or another, even if it led to some reputational cost, as mentioned by the Notifying Party. In addition, there is no formal mechanism set up for customers to enforce this commitment. The extent to which the FRAND commitment is effective is uncertain, in particular in relation to the fairness of prices and licensing practices for CUSIPs. With regard to CUSIPs, one respondent replied "*We have not experienced massive price increases on this segment of data*"[470] while another respondent referred to the "*charging of high monopoly rents*" from CUSIPs and "*exploitative*" behaviour.[471] While, for the purposes of this decision, the Commission is unable to comment on the fair or excessive nature of CUSIP prices, this trend of continuous price increase may indicate that the FRAND commitment is partially ineffective. However, the Commission also notes that the "*ABA sometimes receives enquiries by their members on whether CGS could offer them discounts given their ABA membership, but ABA's response is always that all CGS's relationships are on an arm's length basis and no one can receive preferential treatment*. ***Other than that, the ABA does not receive many complaints from the market place (CGS needs to inform the ABA of any complaints it receives) relating to the FRAND basis of CUSIPs***" (emphasis added). Moreover, S&P's FRAND commitment could deter *de facto* total foreclosure strategies which would be more easily detectable, as they would amount to a refusal to supply.

(632) <u>*Third*</u>, the Commission notes that past behaviour speaks against ability and incentive for input foreclosure of CUSIPs; indeed, S&P is already active downstream of CUSIPs in several different markets, including equity indices, which are larger than the markets considered here. It would not be likely that the combined entity would have the ability or incentive post-Transaction to implement input foreclosure for smaller potential gains downstream.

(633) <u>*Fourth*</u>, and last, no respondent to the market investigation raised concerns in relation to the impact of the Transaction in any of these markets due to an input foreclosure of CUSIPs.[472]

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469 See S&P's statement on its licensing policy on its official website: https://www.cusip.com/services/license-fees.html#/CGSLicensingPoliciesFAQs (accessed on 15 October 2021).

470 Reply to question 42 of Questionnaire 6.

471 Replies to question 7 of Questionnaire R3.

472 For example, the large majority of competitors in financial indices stated that it would not be realistic for S&P to deny access to CUSIPs as an input to their indices post-Transaction. See replies to question 46 of Questionnaire 4.

(D) Conclusion

(634) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationships arising between CUSIPs (upstream) and indices downstream (regardless of the precise segmentation).

6.3.3.11. CUSIPs (upstream) – Other markets (downstream)

(A) The Parties' activities

(635) As described above, S&P manages and operates the CUSIP system on behalf of the ABA.

(636) IHSM uses CUSIP data as an input for various downstream products including[473]:

(a) Pricing and Reference data. CUSIP data is used as an input into certain of IHSM's pricing and reference datasets, namely loan pricing data, loan reference data, bond pricing data and bond reference data.

(b) Equities and regulatory reporting. IHSM's dividend forecasting service provides independent estimates of the amount and timing of dividend payments, allowing customers to understand better how companies are performing and what their projected dividends are. Dividend estimates for global securities are based on equity research, market announcements and unique quantitative insight, covering (as far as IHSM's service is concerned) over 28,000 stocks (for which CUSIP data is required to identify relevant stocks). In addition to this research-based methodology, IHSM also applies advanced analytics and predictive modelling to predict company dividends (which, again, may make use of CUSIP data).

(c) Managed corporate actions data.

(d) Issuer solutions. IHSM offers BD Corporate, a CRM investor relationship platform. CUSIPs are a component of the securities ownership data that IHSM distributes as part of BD Corporate.

(e) Investor and administration services. IHSM offers Profile Builder, a tool for producing buy side investor profiles, proving insight into investors by incorporating global ownership data, contacts and biographical content. CUSIPs are a component of the data that IHSM makes available as part of Profile Builder.

(f) Institutional holdings/investor data. IHSM uses CUSIP data as a component of the securities ownership data that it distributes as part of its offering.

(637) As S&P's market share in CUSIPs upstream is 100%, all of these markets are vertically affected.

(638) **Table 18** below shows the market shares of the Parties' and their main competitors in other markets downstream of CUSIPs in 2020:

[473] CUSIPs are also an input into cross-reference services; however, S&P is already active in this downstream market and IHSM's increment is very low, at [0-5]%. As such, this overlap is considered largely pre-existing and is not likely to be affected by the Transaction; it is not considered further in this Decision.

Table 18: Market shares in markets downstream from CUSIPs (global, value, 2020)

Loan pricing data		Bond pricing data		CDS pricing data	
Competitor	**Market share**	**Competitor**	**Market share**	**Competitor**	**Market share**
S&P	-	S&P	-	S&P	-
IHSM	[50-60]%	IHSM	[5-10]%	IHSM	[60-70]%
Combined	***[50-60]%***	***Combined***	***[5-10]%***	***Combined***	***[60-70]%***
Refinitiv	[20-30]%	ICE	[50-60]%	ICE	[20-30]%
ICE	[10-20]%	Bloomberg	[10-20]%	Bloomberg	[5-10]%
Bloomberg	[10-20]%	Refinitiv	[10-20]%	Refinitiv	[5-10]%
Others[474]	[0-5]%	Others[475]	[10-20]%	Others[476]	[5-10]%

Issuer solutions		Equities and regulatory reporting	
Competitor	**Market share**	**Competitor**	**Market share**
S&P	-	S&P	-
IHSM	[5-10]%	IHSM	[50-60]%
Combined	***[5-10]%***	***Combined***	***[50-60]%***
Nasdaq	≥5%	Bloomberg	[30-40]%
Q4	≥5%	Woodseer	[10-20]%
Orient Capital	≥5%	Refinitiv	[0-5]%
Others[477]	≤80%	Factset	[0-5]%

Investor and administration services		Managed corporate actions data		Institutional Holdings / Investor data	
Competitor	**Market share**	**Competitor**	**Market share**	**Competitor**	**Market share**
S&P	-	S&P	-	S&P	<7%
IHSM	[20-30]%	IHSM	[10-20]%	IHSM	<13%
Combined	***[20-30]%***	***Combined***	***[10-20]%***	***Combined***	***<20%***
Refinitiv	[40-50]%	Bloomberg	[20-30]%	Bloomberg	<50%
Factset	[30-40]%	ICE	[10-20]%	Refinitiv	<30%
Bloomberg	[10-20]%	SIX	[5-10]%	Factset	<20%
Others	N.A.	Others[478]	[40-50]%	Others[479]	N.A.

Source: Parties' best estimates (see Form CO, Chapter on Vertical Relationships, Annex D.6); Notifying Party's responses to RFI 36 and 38)

474 Includes Best Credit Data and Advantage Data.

475 Includes JPMorgan, SIX, Market Axess, and Exchange Data International.

476 Includes Datagrapple, OTCStreaming, and EDI.

477 Includes Bloomberg, Factset Irwin, and Ingage.

478 Includes Exchange Data International, Refinitiv, FIS, local providers and sourcing from Exchanges, Depositories, Agents.

479 Includes Nasdaq, Euronext, Morningstar, WhaleWisdom, MZ Group, Q4, Allvue Preqin, Pitchbook, MandateWire, FINSearches, and Brightscope.

(B) The Notifying Party's view

(639) The Notifying Party submits that the Transaction does not raise concerns in particular because:[480]

(a) S&P would have no ability to foreclose access to CUSIP data to downstream rivals because: (i) Under the terms of its arrangement with the ABA, [summary of contractual arrangements between CGS and the rest of the S&P business]. And (ii) S&P licenses CUSIPs on a FRAND basis and would suffer reputational and commercial damages reneging on this commitment. Moreover, the Notifying Party submits that in this case the ABA would almost certainly remove S&P's licence as the administrator of the CUSIP system, since the ABA has an interest in making CGS's data as broadly available, accessible and adopted in the financial industry as possible; any commercial practice that may restrict access to those identifiers would undermine their status as market standards, with a negative impact on the value of the ABA's intellectual property.

(b) S&P would also have no incentive to foreclose access to CUSIP data as, (i) There is already a vertical link with S&P's pre-existing business in several markets, but CGS has never restricted access to CUSIPs to support S&P's business or to encourage the entry / expansion of its own business. There is no reason why it should attempt to do so post-Transaction. Indeed, there is no plausible basis on which S&P would wish to do so given the potentially significant ramifications on its wider CUSIP business. And (ii) it would face retaliation risk from downstream competitors, in particular from companies like [names of S&P's suppliers], all of whom supply important inputs to S&P currently across a range of product areas.

(C) The Commission's assessment

(640) The Commission's investigation indicates that the Transaction is unlikely to give rise to input foreclosure.

(641) *First*, as explained above in paragraph (630) the Commission notes that the governance of the CUSIPs and the oversight by the ABA provide a certain comfort that S&P would not be able to favour its own downstream businesses to the detriment of rivals. The ABA confirms that they focus on this aspect and have not observed such behaviour by S&P in the past and S&P would be deterred from anti-competitive behaviour in breach of its understanding with the ABA.

(642) *Second*, and relatedly, the Commission notes that S&P has a public FRAND commitment, which, if effective, would deprive the company from the ability to engage in input foreclosure. While, for the purposes of this decision, the Commission is unable comment on the fair or excessive nature of CUSIP prices, S&P's FRAND commitment could deter *de facto* total foreclosure strategies which would be more easily detectable, as they would amount to a refusal to supply.

(643) *Third*, the Commission notes that past behaviour speaks against ability and incentive for input foreclosure of CUSIPs; indeed, S&P is already active downstream of

[480] Form CO, Chapter on Vertical Relationships, paragraphs 3.103 and 3.117.

CUSIPs in several different markets, including equity indices, which are larger than the markets considered here. It would not be likely that the combined entity would have the ability or incentive post-Transaction to implement input foreclosure for smaller potential gains downstream.

(644) *Fourth*, and last, no respondent to the market investigation raised concerns in relation to the impact of the Transaction in any of these markets due to an input foreclosure of CUSIPs.[481]

(D) Conclusion

(645) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationships arising between CUSIPs (upstream) and pricing and reference data, equities and regulatory reporting, issuer solutions, managed corporate actions data, institutional holdings/investor data, and investor and administration services downstream (regardless of the precise segmentation).

6.3.3.12. Credit ratings (upstream) – Indices (downstream)

(646) Indices providers select securities that qualify for inclusion in their indices using pre-determined and publicly available eligibility rules or factors that are included in the index methodology.

(647) One common factor for fixed income and CDS indices methodologies is a financial instrument's risk profile. Financial instruments, and in particular debt securities, can be considered "investment grade", i.e. low risk but generating a lower return, or "high yield", i.e. offering higher returns, but with more risks as they are linked to a higher probability of default. Credit ratings are a commonly accepted way to qualify instruments as investment grade or high yield. For instance, a security is typically considered "investment grade" if it is rated BBB- or higher by S&P or Fitch, and is considered "high yield" if it is rated BB+ or lower by S&P or Fitch.[482]

(648) As a result, index providers need to license data from credit ratings agencies to build indices that consider the credit rating of the relevant security, and by extension the risk profile of the index. The input of credit ratings is not only relevant at the stage of initially creating an index, but is also needed to maintain and calculate the index, and updating constituents (i.e. the financial instruments included in the index) based on updates to credit ratings.

(A) The Parties' activities

(649) S&P is active as a credit rating agency, issuing and distributing credit ratings and related data. S&P is also active in the downstream market for indices, in particular equity indices, but also fixed income indices to a more limited extent.

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[481] For example, the large majority competitors in loan, CDS and bond pricing and reference data stated that they were not concerned with respect to access to S&P's CUSIPs as an input post-Transaction. See replies to question 43 of Questionnaire 6.

[482] While Moody's uses different designations (respectively Baa3 or higher and Ba1 or lower), it covers the same distinction (between "investment grade" and "high yield" investments respectively).

(650) IHSM is not active in credit ratings. However, IHSM is active as a provider of indices, including fixed income indices, CDS indices, and (to a more limited extent) equity indices.

(651) Table 19 below shows the market shares of S&P and its main competitors in the global and EU markets for credit ratings in 2020.[483]

Table 19: Market shares in credit ratings (value, 2020)

Competitor	Global	EU
S&P	[30-40]%	[40-50]%
IHSM	-	-
Combined	***[30-40]%***	***[40-50]%***
Moody's	[30-40]%	[30-40]%
Fitch	[10-20]%	[10-20]%
DBRS	[0-5]%	[0-5]%
Others	[5-10]%	[5-10]%
Total market	*100% (EUR [...])*	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Vertical Relationships, Table 3.1; Notifying Party's response to RFI 36)

(652) Another proxy for market shares in credit ratings is coverage of specific instruments by credit rating agencies.

(653) Table 20 below shows the shares (in terms of coverage) of S&P and its main competitors in the markets for EU-issued credit ratings in 2020, based on the various rating categories identified by the ESMA.[484]

[483] Market shares refer to the share in credit rating issuance, as the distribution of credit ratings data is not an accurate proxy to assess the market power of credit ratings agencies, for the reasons laid out in Section 6.2.1.

[484] Percentage of the total number of instruments of the relevant category, based on ISINs, that have at least one rating assigned by one of the listed CRAs, for 2020, as of 9 November 2020 (4 November 2020 for sovereign and public finance). The distinctions between (i) entity and transaction ratings, (ii) public and private ratings as well as (iii) between solicited and unsolicited ratings do not have a material impact on the competitive assessment in the present. Only a small minority of credit ratings are unsolicited or private. Furthermore, unsolicited ratings are more typically offered by smaller rating agencies as opposed to one of the big three (including S&P).

Table 20: Market shares in EU-issued credit ratings (volume, 2020)

Competitor	Corporates (Non Financial)	Corporates (Financial ex Insurance)	Corporates (Insurance)	Sovereign and Public Finance	Structured Finance
S&P	[60-70]%	[40-50]%	[70-80]%	[50-60]%	[30-40]%
IHSM	-	-	-	-	-
Combined	***[60-70]%***	***[40-50]%***	***[70-80]%***	***[50-60]%***	***[30-40]%***
Moody's	[50-60]%	[60-70]%	[40-50]%	[30-40]%	[50-60]%
Fitch	[30-40]%	[30-40]%	[40-50]%	[30-40]%	[40-50]%
DBRS	[0-5]%	[0-5]%	N.A.	N.A.	[10-20]%
Scope	[20-30]%	[10-20]%	N.A.	[20-30]%	[0-5]%

Source: ESMA (see Form CO, Chapter on Vertical Relationships, Annex D.6)

(654) S&P's global coverage, based of ESMA categories would be as follows: Corporates [90-100]%, Financial Services [90-100]%, Sovereign and Public Finance [80-90]%, and Structured Finance [50-60]%.[485]

(655) The Parties' market shares in fixed income and CDS indices are provided below in Table 21.

Table 21: Market shares in indices by asset category (global, AuM, 2020)

Fixed income indices		CDS indices	
Competitor	**Market share**	**Competitor**	**Market share**
S&P	[0-5]%	S&P	-
IHSM	[5-10]%	IHSM	[90-100]%
Combined	***[5-10]%***	***Combined***	***[90-100]%***
Bloomberg	[70-80]%	-	-
ICE	[5-10]%	-	-
FTSE Russell	[0-5]%	-	-
JPM	[0-5]%	-	-
SIX	[0-5]%	-	-
Others	[0-5]%	Others	-

Source: The Parties' best estimates (Form CO, Chapter on Vertical Relationships, Annex D.6)

(B) The Notifying Party's view

(656) The Notifying Party submits that the Transaction does not raise concerns in particular because:[486]

(a) S&P would have no ability to foreclose access to credit ratings data to competing index providers because: (i) it licenses ratings on a fair, reasonable and non-discriminatory ("FRAND") basis, and (ii) credit ratings represent a small share of the costs for fixed income indices.

485 Notifying Party's response to RFI 36, paragraph 13.1.

486 Form CO, Chapter on Vertical Relationships, paragraph 3.68.

(b) S&P would also have no incentive to foreclose access to credit ratings data as (i) it would face retaliation risk, mainly from index providers such as [names of S&P's commercial partners] who are commercial partners of the Parties across multiple markets, (ii) [S&P's commercial strategy], and (iii) S&P is already active in the supply of financial indices, including fixed income indices, and never engaged in such foreclosure strategies.

(C) The Commission's assessment

(657) The Commission's investigation indicates that the Transaction is unlikely to give rise to input foreclosure.

(658) *First*, there are some limitations to the merged entity's ability to engage in an input foreclosure strategy.

(659) S&P's strong market presence in credit ratings, regardless of the precise market definition thereof indicates that the company may have a certain degree of market power upstream.

(660) It is true that S&P has a public FRAND commitment, which, if effective would deprive the company from the ability to engage in input foreclosure. SPGMI's statement on its licensing policy reads that *"SPGMI licenses S&P ratings on a fair, reasonable and non-discriminatory basis*".[487] However, this commitment results from a voluntary decision of S&P which the company could formally decide to overturn one way or another, even if it led to some reputational cost, as mentioned by the Notifying Party. In addition, there is no formal mechanism set up for customers to enforce this commitment. The extent to which the FRAND commitment is effective is uncertain, in particular in relation to the fairness of prices for credit ratings. A number of respondents to the market investigation raised concerns in relation to price increases of credit ratings.[488] Prices for credit ratings have indeed increased in recent years.[489] While, for the purposes of this decision, the Commission is unable to comment on the fair or excessive nature of credit rating prices, this trend of continuous price increase may indicate that the FRAND commitment is not effective. This is further confirmed by ESMA's monitoring of credit ratings, which questions fees charged by credit rating agencies where data licences are necessary to distribute credit ratings to subscribers, and recently called for the CRA Regulation to be amended to introduce further provisions to ensure that data licenses for credit ratings be granted on FRAND terms.[490] S&P's FRAND commitment could deter *de facto* total foreclosure strategies which would be more easily detectable, as they would amount to a refusal to supply, but is likely less effective in preventing partial foreclosure strategies.

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487 See S&P's statement on its licensing policy on its official website: https://www.spglobal.com/marketintelligence/en/documents/ratings_data_licensing_faq_july2019_final.pdf (accessed on 8 October 2021).

488 Replies to question 56 of Questionnaire Q5. One customer mentions for instance that they "*have experienced year on year price increase for services such as rating agencies (with little to no price transparency giving rise to material concerns that we are facing excessive prices). We have no line of sight whether this merger will continue/replicate that trend but the pricing trajectory in this area is something that is a concern*".

489 See Form CO, Chapter on Vertical Relationships, Annex. D.8c.

490 ESMA Opinion on improving access to and use of credit ratings in the European Union, 22 September 2021, p. 14.

(661) In addition, most suppliers of indices typically rely on at least two credit agencies, which limits the ability of S&P to engage in a foreclosure strategy. While among these, S&P is the prevalent one, followed by Moody's, other credit rating agencies Fitch and sometimes DBRS are also mentioned as possible alternatives.[491] The reason underpinning the choice of specific credit rating is primarily linked to the coverage offered by the agency.

(662) *Second*, the market investigation indicates that the merged entity would likely not have the incentive to engage in input foreclosure. A majority of respondents to the market investigation consider that it is not realistic that S&P only makes its credit ratings available (or available under better supply conditions, such as e.g. lower fees) to the merged entity's (fixed income) indices. This strategy would likely lead to a loss of credibility of S&P and reputational damage. One customer notes for instance that "*Technically they could, but […] that could create a tsunami on the market. It is critical that ratings are available to any index provider (especially Fixed-income)*", another one states that "*This is not a realistic scenario for us, because it is also business case for S&P to offer ratings to other providers / products*". Another customer of financial indices notes that "*S&P as a cornerstone, global provider will have to maintain impartiality for ratings provision*". An additional customer relatedly notes that "*the reliability of Credit Ratings is also linked on how they can be embedded and used within different financial products (i.e. indices). Constraining their availability will then limit significantly their reliability from a market perspective*".[492]

(663) This is particularly relevant in light of S&P's revenue split, which relies heavily on credit ratings. The company generated around USD 4 billion from issuance of credit ratings (and sales of related data) in 2020,[493] which represents more than half of the company's revenues for the year.

(664) In addition, as mentioned S&P is already active in the downstream market, in particular in fixed-income indices. However, the market share of S&P on the market for fixed-income indices has been steadily below [0-5]% (in terms of index licensing for the creation of funds) and below [0-5]% and [information on S&P market shares] (in terms of index licensing in the form of market data). The addition of IHSM is unlikely to considerably impact these incentives, as the Parties' market shares will remain below [10-20]%, far behind market leader Bloomberg.[494]

(665) The lack of incentives to favour its own downstream business seems supported by the way S&P has priced credit ratings for its downstream index business in 2019 and 2020. Curves of prices indicate that price increases are applied relatively homogeneously to indices providers. [S&P's commercial strategy].[495]

(666) In addition, the Non-Horizontal Merger Guidelines stipulate that "when the adoption of a specific course of conduct by the merged entity is an essential step in foreclosure, the Commission examines both the incentives to adopt such conduct and the factors liable to reduce, or even eliminate, those incentives, including the

491 Replies to questions 34 and 37 of Questionnaire Q4.
492 Replies to question 39 of Questionnaire Q4 and question 43 of Questionnaire Q5.
493 Form CO, Chapter on Vertical Relationships, Annexes D.4 and D.32.
494 Form CO, Chapter on Vertical Relationships, Annex. D.6.
495 Form CO, Chapter on Vertical Relationships, Annex. D.8c.

possibility that the conduct is unlawful. Conduct may be unlawful inter alia because of competition rules or sector-specific rules at the EU or national levels" (emphasis added).[496] While the CRA Regulation primarily applies to SPGR rather than SPGMI.[497] ESMA regularly reviews the industry's practices, publishes topical reports on the level of fees by credit rating agencies, relays concerns expressed by customers, and makes (non-binding) recommendations accordingly (even if credit rating agencies challenge ESMA's supervision of their ratings distribution[498]). Besides the specific regulatory framework applicable to credit rating agencies, and in particular the scrutiny of ESMA, any strategy aimed at foreclosing competitors in a downstream activity may give rise to additional public enforcement, in particular from competition authorities. Based on the Parties' submission and the results of the market investigation, S&P likely has a dominant position on the markets for credit ratings (even more so if ratings of S&P would represent a standalone market), and discriminatory pricing practices would open the company to enforcement actions. The extent to which S&P is concerned about regulatory (including antitrust) intervention in relation to its credit ratings activity is further confirmed in internal documents of the company.[499]

(667) *Third*, a foreclosure strategy would likely not have a material impact on competing indices providers, due to the barriers to switching index provider. Switching financial index provider is indeed not possible for customers in the short to medium term. This is largely due to end customer (i.e. the investor) requirements and/or the need for regulatory approvals, and applies to both fixed income and equity indices, according to a large majority of respondents. One customer indicates for instance that "*Many fixed income indices are considered as benchmarks meaning that have strong brand recognition, reputation and high visibility on the market. As such a fixed income benchmark with specific terms (currency, credit risk, liquidity, type...) cannot be substituted with another fixed income* [index]". Another customer indicates that "*Any change would be subject to investor consent and/or regulator approval*". A third customer confirms that "*In many cases benchmark changes require regulatory approval which takes time. Differences in calculation methodology also present challenges*".[500]

(668) *Lastly*, the extent to which any potential foreclosure theory would be merger-specific is questionable. S&P already offers financial indices including (to a small extent) fixed income indices, and IHSM's increment is overall limited.[501] In addition, in its

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496 Non-Horizontal Merger Guidelines, paragraph 46.

497 Article 6(2) of the CRA Regulation provides that "[…] *a credit rating agency shall comply with the requirements set out in Sections A and B of Annex I*", whereas Section B of Annex I (point 3c) provides that "*[a] credit rating agency shall ensure that fees charged to its clients for the provision of credit rating and ancillary services are not discriminatory and are based on actual costs*".

498 ESMA Thematic report on fees charged by Credit Rating Agencies and Trade Repositories, 11 January 2018, p. 9. Also see ESMA Opinion on improving access to and use of credit ratings in the European Union, 22 September 2021, p. 5. The three largest credit rating agencies, including S&P, dispute that ESMA has the ability to supervise activities not conducted by the legal entity issuing credit ratings.

499 See for instance commercial training materials, submitted as Form CO, Chapter on Vertical Relationships, Annex D.8a.

500 Replies to questions 9 and 25 of Questionnaire Q5.

501 It is irrelevant for these purposes whether CDS indices would form part of the wider fixed income indices market, as IHSM is the only provider of CDS indices globally.

licensing agreements with index providers, [S&P's contractual arrangements with its customers].[502]

(669) The Commission's investigation indicates that the Transaction is also unlikely to give rise to customer foreclosure. As credit ratings are an input into a multitude of downstream products (in addition to being sold standalone to end customers), and S&P also licenses credit ratings data from other credit rating agencies, such as Moody's and Fitch, customer foreclosure concerns are unlikely to arise as a result of the Transaction.

(D) Conclusion

(670) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationships arising between credit ratings (upstream) and indices (downstream).

6.3.3.13. Credit ratings (upstream) – Other markets (downstream)

(A) The Parties' activities

(671) S&P is active as a credit rating agency, issuing and distributing credit ratings and related data.

(672) IHSM uses credit ratings data as an input for various downstream products including:

(a) Pricing and reference data. IHSM uses credit ratings to create sector curves (i.e. a forecast view of pricing for the relevant instrument type), which form part of IHSM's loan pricing and reference data, and in particular its pricing data products (including CDS pricing data and bond pricing data).

(b) Issuer solutions. IHSM offers BD Corporate, a CRM investor relationship platform. Credit ratings are a component of the securities ownership data that IHSM distributes as part of BD Corporate.

(c) Economic data. IHSM uses credit ratings data alongside many other inputs to inform IHSM's economic analysis and forecasts.

(d) Investor event management solutions. IHSM offers BD Corporate, which also allows users to retrieve the profile of a specific security including characteristics such as market capitalisation, industry, location, and many other data points including potentially credit ratings.

(e) Investor and administration services. IHSM offers Profile Builder, a tool for producing buy side investor profiles, proving insight into investors by incorporating global ownership data, contacts and biographical content. Credit ratings are a component of the data that IHSM makes available as part of Profile Builder.

[502] Form CO, Chapter on Vertical Relationships, Annex D.8, footnote 7.

(f) Institutional holdings/investor data. IHSM uses credit ratings data as a component of the securities ownership data that IHSM distributes as part of its offering.

(673) As S&P's market share in credit ratings is above 30%, all of these markets are vertically affected. Table 22 below shows the market shares of the Parties' and their main competitors in the downstream markets in 2020:

Table 22: Market shares in markets downstream from credit ratings (global, value, 2020)

Loan pricing data		**Bond pricing data**		**CDS pricing data**	
Competitor	**Market share**	**Competitor**	**Market share**	**Competitor**	**Market share**
S&P	-	S&P	-	S&P	-
IHSM	[50-60]%	IHSM	[5-10]%	IHSM	[60-70]%
Combined	***[50-60]%***	***Combined***	***[5-10]%***	***Combined***	***[60-70]%***
Refinitiv	[20-30]%	ICE	[50-60]%	ICE	[20-30]%
ICE	[10-20]%	Bloomberg	[10-20]%	Bloomberg	[5-10]%
Bloomberg	[10-20]%	Refinitiv	[10-20]%	Refinitiv	[5-10]%
Others[503]	[0-5]%	Others[504]	[10-20]%	Others[505]	[5-10]%
Issuer solutions		**Economic data[506]**		**Investor event management solutions**	
Competitor	**Market share**	**Competitor**	**Market share**	**Competitor**	**Market share**
S&P	-	S&P	-	S&P	-
IHSM	[5-10]%	IHSM	[10-20]%	IHSM	[10-20]%
Combined	***[5-10]%***	***Combined***	***[10-20]%***	***Combined***	***[10-20]%***
Nasdaq	≥5%	Oxford Economics	[20-30]%	Cvent	[30-40]%
Q4	≥5%	Economist Intelligence Unit	[10-20]%	Aventri	[20-30]%
Orient Capital	≥5%	Moody's	[10-20]%	Dealogic	[10-20]%
Others[507]	≤80%	Others[508]	[30-40]%	Others[509]	[20-30]%

503 Includes Best Credit Data and Advantage Data.

504 Includes JPMorgan, SIX, Market Axess, and Exchange Data International.

505 Includes Datagrapple, OTCStreaming, and EDI.

506 Should economic data be broken down between forecast data and historic data, then IHSM's presence would be stronger in forecast economic data (around [10-20]% market share) for which credit ratings are used as an input and weaker in historic economic data (around [5-10]%).

507 Includes Bloomberg, Factset Irwin, and Ingage.

508 Includes Refinitiv, Factset, Fitch, Macrobond Financial, Haver Economics, and CEIC.

509 Includes MeetMax.

Investor and administration services		Institutional Holdings / Investor data	
Competitor	**Market share**	**Competitor**	**Market share**
S&P	-	S&P	<7%
IHSM	[20-30]%	IHSM	<13%
Combined	***[20-30]%***	***Combined***	***[20-30]%***
Refinitiv	[40-50]%	Bloomberg	<50%
Factset	[30-40]%	Refinitiv	<30%
Bloomberg	[10-20]%	Factset	<20%
Others	N.A.	Others[510]	N.A.

Source: Parties' best estimates (see Form CO, Chapter on Vertical Relationships, Annex D.6; Notifying Party's responses to RFI 36 and 38)

(B) The Notifying Party's view

(674) The Notifying Party submits that the Transaction does not raise concerns in particular because:[511]

(a) S&P would have no ability to foreclose access to credit ratings data to competing index providers because: (i) credit ratings are not a particularly important input or are only an indirect input, as a component of the data offered downstream, (ii) S&P licenses ratings in a delivery-agnostic fashion, and (iii) S&P licenses ratings on a FRAND basis and would suffer reputational and commercial damages reneging on this commitment.

(b) S&P would also have no incentive to foreclose access to credit ratings data as, (i) S&P's commercial interest is [S&P's commercial strategy], and (ii) it would face retaliation risk, in particular from companies like [names of S&P's suppliers] (active for instance in CDS pricing data) and [names of S&P's suppliers] who are commercial partners of the Parties across multiple markets.

(C) The Commission's assessment

(675) The Commission's investigation indicates that the Transaction is unlikely to give rise to input foreclosure.

(676) *First*, the considerations raised in Section 6.3.3.12 above in relation the lack of ability and incentives of S&P to engage in ability to foreclose due to its FRAND commitment, the regulatory scrutiny of credit rating agencies, and potential enforcement actions by public authorities, also apply *mutatis mutandis* to these markets.

(677) *Second*, the share of the costs which can be attributed to credit ratings out of the total costs of these markets is relatively low (i.e. consistently less than 5%, and in most

510 Includes Nasdaq, Euronext, Morningstar, WhaleWisdom, MZ Group, Q4, Allvue Preqin, Pitchbook, MandateWire, FINSearches, and Brightscope.

511 Form CO, Chapter on Vertical Relationships, paragraphs 3.103 and 3.117.

instances [IHSM's cost information]% for IHSM).[512] This in turn implies that even in case the merged entity would have the ability and incentive to engage in partial price-based input foreclosure, the impact of such strategy would be limited.

(678) *Third*, and lastly, no respondent to the market investigation raised concerns in relation to the impact of the Transaction in any of these markets.[513]

(679) The Commission's investigation indicates that the Transaction is also unlikely to give rise to customer foreclosure. As credit ratings are an input into a multitude of downstream products (in addition to being sold standalone to end customers), and S&P also licenses credit ratings data from other credit rating agencies, such as Moody's and Fitch, customer foreclosure concerns are unlikely to arise as a result of the Transaction.

(D) Conclusion

(680) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationships arising between credit ratings (upstream) including all plausible segments thereof based on either credit rating type or the relevant agency(ies) and (i) pricing and reference data (regardless of whether pricing and reference data are part of the same or separate markets for the different asset classes of loans, CDS and bonds), (ii) issuer solutions, (iii) economic data (regardless of the segmentation between historic or forecast economic data), (iv) investor event management solutions, (v) investor and administration services, and (vi) institutional holdings/investor data (all downstream).

6.3.3.14. Equity indices (upstream) – Portfolio valuation tools, Global securities financing data, Economic data (downstream)

(A) The Parties' activities

(681) As mentioned above, S&P is active upstream in equity indices, with market shares varying based on the precise segment being considered (from [30-40]% in overall equity indices up to 90% and above in certain narrow regional segments such as Australia and New Zealand equity indices). Downstream IHSM is active in portfolio valuation tools with a market share of [50-60]%, global securities financing data with a market share of [30-40]% and economic data ([10-20]% in overall economic data, [10-20]% in forecast economic data and [5-10]% in time series economic data).

(B) The Notifying Party's view

(682) The Notifying Party submits that it would not have the ability or incentive to foreclose competing downstream competitors in any of the mentioned markets. First,

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[512] Credit ratings represent respectively, the following share of total costs for the relevant downstream products offered by IHSM: […]% for CDS pricing data, […]% for loan pricing data, […]% for bond pricing data, […]% for (forecast) economic data, […]% for issuer solutions, […]% for investor event management solutions, […]% for administration services, , and […]% for institutional holdings and investor data. Form CO, Chapter on Vertical Relationships, Annex D.2.

[513] For example, the large majority of competitors in loan, CDS and bond pricing data stated that they were not concerned with respect to access to S&P's credit ratings as an input post-Transaction. See replies to question 42 of Questionnaire 6.

the Notifying Party submits that S&P has no upstream market power - its upstream position in the supply of equity indices as a form of market data is [20-30]%, with both MSCI ([40-50]%) and FTSE Russell ([20-30]%) having larger positions. Second, the Notifying Party argues that S&P already has a range of activities downstream of equity indices pre-Transaction, in respect of which it has not attempted to foreclose rivals, indicating a lack of incentive. Third, the Notifying Party adds that S&P would face a significant retaliation risk from both Bloomberg and ICE, competitors in portfolio valuations, were it to attempt to foreclose either of these suppliers.

(C) The Commission's assessment

(683) Based on the evidence available to it, the Commission finds that the Notifying Party would have no ability or incentive to foreclose downstream rivals by withholding access to S&P's equity indices. Equity indices are one of many inputs into the downstream markets, and responding competitors did not indicate that S&P's equity indices are an important input for their downstream products. In particular for portfolio valuation tools, it appears that competitors do not source equity indices from S&P directly.[514]

(684) The Commission also notes with regard to incentives that S&P is indeed already active downstream of equity indices in several markets other than those mentioned above, and continues to supply its equity indices to its competitors in those markets. In the vertical overlaps assessed here, the downstream markets are of much smaller size relative to the upstream market, and thus the Commission would not expect the apparent lack of incentive to be reversed.[515]

(685) Moreover, IHSM's main competitors downstream did not express concerns regarding a possible input foreclosure of S&P's equity indices as input into these downstream markets.[516] Responding competitors' expectations of the transaction's impact on the downstream markets are neutral.[517]

(686) Similarly, the Commission finds that the Notifying Party would have no ability to foreclose upstream rivals by refusing to purchase from them, as equity indices have multiple use cases, of which portfolio valuation tools, global securities financing data and economic data comprise a very small portion (<1%).[518] Moreover, for portfolio valuation tools and global securities financing data in particular, it is usually end customers who select which indices will be included in the downstream product/service they choose, and therefore the Notifying Party foreclosing competing upstream providers could lead to customer dissatisfaction without any relative benefit upstream.

(D) Conclusion

(687) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the

514 Replies to question 20 of Questionnaire 8.
515 Form CO, Chapter on Vertical Relationships, Annex D6.
516 For example, see minutes of call with a competitor on 8 June 2021.
517 Email to global securities financing data providers, replies to question 24 of Questionnaire 8.
518 Form CO, Chapter on Vertical Relationships, Annex D6.

vertical relationships arising between equity indices (upstream) and portfolio valuation tools, global securities financing data and economic data (downstream).

6.3.3.15. Fixed income indices (upstream) – Multi-asset indices (downstream)

(A) The Parties' activities

(688) As mentioned above, IHSM is active upstream in fixed income indices, with market shares varying based on the precise segment being considered (from [5-10]% in overall fixed income indices up to [90-100]% and above in certain narrow regional segments such as Asian Fixed Income). Downstream S&P is active in multi-asset indices, with a market share of [20-30]%. Different indices, including fixed income indices, can be used as an input to create multi-asset indices. [contractual arrangements and the Parties' business strategy].[519]

(B) The Notifying Party's view

(689) The Notifying Party submits that it would not have the ability to foreclose downstream multi-asset indices competitors, because IHSM has no market power, with strong competing suppliers, including Bloomberg and ICE. The Notifying Party further argues that IHSM cannot be an important supplier of fixed income indices as an input into multi-asset indices since [IHSM's contractual arrangements and relations with customers].

(C) The Commission's assessment

(690) Based on the evidence available to it, the Commission finds that the Notifying Party would have no ability to foreclose downstream rivals by withholding access to IHSM's fixed income indices. The fact that [IHSM's contractual arrangements and relations with customers], suggest that IHSM does not have market power for the upstream input. MSCI, FTSE Russell and Bloomberg are seen as stronger multi-asset providers than S&P.[520] While multi-asset indices are typically composed of equity indices and fixed income indices, responding competitors do not consider IHSM's fixed income indices as a must-have.[521] Indeed, although competitors indicate that the combed entity may be in a unique position to offer strong multi-asset indices, the majority do not expect a negative impact on the market for multi-asset indices.[522]

(691) Similarly, the Commission finds that the Notifying Party would have no ability to foreclose upstream rivals by refusing to purchase from them, as fixed income indices have multiple use cases, of which multi-asset indices comprise a very small portion (<1%), and S&P's market share downstream, [20-30]%, would not indicate sufficient market power to foreclose.[523]

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519 [IHSM's contractual arrangements and relations with customers]. Considering there is only one downstream provider (with a small market share < [0-5]%), and which concerns use outside of a license, the Commission does not consider it further in the context of potential foreclosure.

520 Replies to question 18 of questionnaire 4.

521 Replies to questions 28 and 55 of questionnaire 4.

522 Replies to questions 56 and 59 of questionnaire 4.

523 Form CO, Chapter on Vertical Relationships, Annex D6.

(D) Conclusion

(692) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationships arising between fixed income indices (upstream) and multi-asset indices (downstream).

6.3.3.16. Indices (upstream) – Desktop services, Non-real time datafeeds (downstream)

(A) The Parties' activities

(693) Both Parties are active upstream in various segments of index licensing.[524] IHSM is active in fixed income indices, with market shares varying (from [5-10]% in overall fixed income indices up to [90-100]% and above in certain narrow regional segments such as Asian Fixed Income), and in CDS indices with a market share of [90-100]%. Downstream S&P is active in desktop services, with a market share of [10-20]% and in NRTDs, with a market share of [5-10]%.

(694) Both Parties supply their indices both directly to customers and via third-party distributors' desktop services and non-real time datafeeds. For instance, S&P distributes its indices through a range of third party distributors, including major competitors such as Bloomberg, LSE/Refinitiv and FactSet. IHSM also distributes its own indices via a number of third parties including Bloomberg, Refinitiv, Deutsche Bourse and MSCI.

(695) S&P also distributes third party indices through its own desktop services and NRTDs.

(B) The Notifying Party's view

(696) The Notifying Party submits that it would not have the ability or incentive to foreclose competing downstream competitors. Regarding ability, first, the Notifying Party argues that S&P already has a significant equity indices franchise, which is much stronger and better-known than IHSM's fixed income franchise. The threat of withholding the S&P 500 is therefore far greater than withholding IHSM's iBoxx indices, and S&P does not engage in this pre-Transaction. Second, the Notifying Party submits that there are many alternative indices suppliers, such that the combined entity has no market power in the supply of indices. Regarding the few segments where the combined entity has higher market shares, the Notifying Party argues that it would not be able to foreclose downstream rivals on the basis of these minor markets. Third, the Notifying Party notes that SPDJI, [information on the Parties' current and future business strategy].[525]

(697) Regarding incentives, the Notifying Party first explains that both Parties rely on third party distributors of index data today (including competing index providers) such that any foreclosure strategy would be cutting off a key route to market. S&P derives a significant proportion of its data revenue ([information on the Parties' commercial strategy and revenues]) via third party distribution channels. Second, restricting

[524] S&P is mostly active in equity indices upstream, and IHSM's increment being low ([0-5]%), the supply of equity indices into the downstream markets is a largely pre-existing link, and thus not considered further.

[525] Notifying Party's response to RFI 12, paragraph 22.2.

distribution of indices could risk the status of (even) SPDJI's "headline" indices such as the S&P 500 because the wide availability of index data across a range of distributors is important to maintain the relevance and use of SPDJI's indices. Third, any restriction on the distribution of indices is likely to result in limited recapture by SPGMI. This is because there is significant differentiation between downstream products, particularly desktop services.

(C) The Commission's assessment

(698) Based on the evidence available to it, the Commission finds that the Notifying Party would have no ability or incentive to foreclose downstream rivals by withholding access to IHSM's fixed income or CDS indices[526]. *First*, currently, almost half of responding index customers receive IHSM's indices only through a direct feed, while the rest use both a direct feed and a third party data vendor.[527] Indeed, multi-sourcing of desktop services is already prevalent today and of the responding customers, few would switch to or add a desktop or datafeed from S&P in case of an input foreclosure; one customer explains that their desktop is "*used for numerous reasons other than* [for these indices]"; most would not be affected due to multi-sourcing or would take no switching/adding action in case of foreclosure.[528]

(699) *Second*, the fact that S&P currently supplies its equity indices to downstream competitors, and that both Parties earn significant revenues via third party distributors, indicate a lack of incentive for input foreclosure. Indeed, downstream competitors responded that it would not be realistic for this foreclosure to occur; one close competitor summarized it as "*commercially disadvantageous*".[529]

(700) Similarly, the Commission finds that the Notifying Party would have no ability or incentive to foreclose upstream rivals by refusing to purchase from them, as fixed income indices have multiple use cases and distribution channels (including direct distribution by index providers) and S&P's market share downstream is not high enough to suggest the ability to significantly harm upstream rivals.[530] Moreover, despite being active upstream in the supply of equity indices, S&P currently distributes third party indices on its downstream products. Lastly, no index provider competitors have expressed concerns about possible customer foreclosure of S&P's desktop services and NRTDs.[531]

(D) Conclusion

(701) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the

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526 The vertical link between CDS pricing data (upstream) and desktop services (downstream) is not assessed in detail as for similar reasons to those provided in this section, no serious doubts arise in respect of this link. CDS pricing data is not a critical input for the large majority of desktop users, much like CDS indices, and would not prompt them to switch if IHSM were to foreclose S&P's rivals downstream. Furthermore, given that CDS indices and pricing data are a minor part of the overall offering of a desktop service, the impact on the competitive dynamics in the downstream market of such foreclosure would likely be very limited.

527 Replies to question 36 of Questionnaire 5.

528 Replies to questions 33 to 37 of Questionnaire 5 and 13 of Questionnaire 9.

529 Replies to question 28 of Questionnaire 8.

530 Form CO, Chapter on Vertical Relationships, Annex D6.

531 Replies to question 38 of questionnaire 4.

vertical relationships arising between indices (upstream) and desktop services and NRTDs (downstream).

6.3.3.17. Index calculation and administration services (upstream) – Equity indices, Fixed income indices (downstream)

(A) The Parties' activities

(702) Each Party is active upstream in the supply of calculation and administration services for (equity and fixed income) indices. Their market shares are presented below.

Table 23: Global market shares in index calculation and administration services (value, 2020)

Competitor	Overall	Equity	Fixed income
S&P	[20-30]%	[30-40]%	[0-5]%
IHSM	[5-10]%	[5-10]%	[10-20]%
Combined	***[30-40]%***	***[40-50]%***	***[20-30]%***
Solactive	[20-30]%	[20-30]%	[20-30]%
Bloomberg	[10-20]%	[0-5]%	[0-5]%
DAX	[5-10]%	[10-20]%	[0-5]%
FTSE Russell	[5-10]%	[5-10]%	[0-5]%
MSCI	[0-5]%	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%	[40-50]%
Total market	*100% (EUR [...])*	*100% (EUR [...])*	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Indices, Table 6.18)

(703) Downstream S&P is mostly active in equity indices (with market shares varying from [30-40]% in overall equity indices up to [90-100]% and above in certain narrow regional segments such as Australia and New Zealand equity indices) and IHSM mostly in fixed income indices (with market shares varying from [5-10]% in overall fixed income indices up to [90-100]% and above in certain narrow regional segments such as Asian Fixed Income), although both Parties are active in the other market and thus this vertical relationship already exists for each Party absent the Transaction.

(B) The Notifying Party's view

(704) The Notifying Party submits that it would not have the ability to foreclose competing downstream indices competitors, because the Parties' main competitors, such as Bloomberg, Nasdaq, TOPIX, CRSP, DAX-STOXX/Qontigo (Deutsche Börse), FTSE Russell (LSEG/Refinitiv), JP Morgan, SIX, Nikkei, CSI and MSCI do not require third party calculation and administration services since they have extensive in-house capabilities in these areas. Further, for all other customers, S&P would equally not have the ability to foreclose since there are many alternative suppliers of index calculation and administration services, including Solactive (a low-cost supplier with a growing market share), DAX-STOXX, FTSE Russell (LSEG/Refinitiv), Bloomberg and MSCI, and barriers to entry are very low.

(705) The Notifying Party further submits that it would have no incentive to foreclose. First, in the counterfactual each party already supplies calculation and administration services in respect of both equity and fixed income indices, notwithstanding that S&P has a more material position in the supply of equity indices and IHSM in fixed income indices. S&P largely supplies calculation and administration services for equity indices ([S&P revenue information]% of revenues), in relation to which IHSM has virtually no presence. The Transaction will have very limited impact on the Parties' combined position in these downstream markets. Second, entities supplying indices that also require calculation and administration services are typically those wanting to create their own proprietary indices generally for use in-house, carrying their own brand and / or using their own intellectual property. Such customers include e.g. funds, banks and other segments that also make up the Parties' typical customer base for the supply of their indices i.e. they are not in direct competition with the Parties' index licensing activities. S&P would therefore have little incentive to foreclose such entities (who are also customers of the downstream market).

(C) The Commission's assessment

(706) Based on the evidence available to it, the Commission finds that the Notifying Party would have no ability or incentive to foreclose downstream rivals by withholding access to IHSM's fixed income indices. First, the Parties would not have the ability to foreclose downstream competitors, as the main competitors downstream in each of equity indices and fixed income indices themselves provide index calculation and administration services to third parties, indicating that they have the capabilities to perform these activities and would not be significantly harmed if the Parties withheld their services. Indeed, the types of customers to whom the Parties provide such services are self-indexing funds and banks, and thus are not close competitors of the Parties downstream.

(707) Second, the fact that both Parties currently supply index calculation and administration services despite their market presences downstream, and in particular S&P mostly supplies equity index calculation and administration services, indicate a lack of incentive for input foreclosure. Indeed, responding index competitors and customers did not express concerns about a possible input foreclosure of these services.[532]

(708) Similarly, the Commission finds that the Notifying Party would have no ability to foreclose upstream rivals by refusing to purchase from them, as neither currently purchases any index calculation and administration services from third parties because they use in-house capabilities.[533]

(D) Conclusion

(709) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationships arising between index calculation and administration services (upstream) and equity indices and fixed income indices (downstream).

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[532] Replies to question 60 of Questionnaire 4 and question 57 of Questionnaire 5.

[533] Form CO, Chapter on Vertical Relationships, Annex D6.

6.3.3.18. Managed corporate actions data (upstream) – Equity indices (downstream)

(A) The Parties' activities

(710) IHSM is active upstream in the supply of managed corporate actions data with a market share of [10-20]%. S&P uses this data as an input into its equity indices downstream. S&P's market share downstream varies depending on the segment considered, from [30-40]% for overall equity indices up to [90-100]% and above in certain narrow regional segments such as Australia and New Zealand equity indices. Corporate actions are events that affect the securities of a given company, such as dividends, stock splits, M&A, disposals or spin-offs. For the purposes of this particular vertical relationship, managed corporate actions data are therefore required to inform the constituents in baskets of equities making up a given index.

(B) The Notifying Party's view

(711) The Notifying Party submits that it would not have the ability to foreclose downstream equity indices competitors, because IHSM has no market power upstream with its low market share of [10-20]% and with strong competing suppliers, including Bloomberg and ICE. The Notifying Party further argues that IHSM already has a vertical relationship with its own (minimal) equity indices portfolio, yet has never attempted to foreclose access to competing indices suppliers.

(C) The Commission's assessment

(712) Based on the evidence available to it, the Commission finds that the Notifying Party would have no ability or incentive to foreclose downstream rivals by withholding access to IHSM's managed corporate actions data. IHSM's low market share upstream and the fact that there are several competing suppliers (two of which have higher market shares than IHSM; Bloomberg having [20-30]% and ICE [10-20]%) indicate a lack of market power for the upstream input. Moreover, S&P's main competitors downstream did not express concerns regarding a possible input foreclosure of IHSM's managed corporate actions data.[534]

(713) Similarly, the Commission finds that the Notifying Party would have no ability to foreclose upstream rivals by refusing to purchase from them, as managed corporate actions data has multiple use cases, of which equity indices comprise a very small portion (1%).[535] Moreover, S&P's market share downstream in equity indices, [30-40]%, would not indicate sufficient market power to foreclose; its higher market shares in narrower segments would not appear relevant as all equity indices together comprise 1% of demand for managed corporate actions data, and the narrower segments themselves comprise a small portion of equity indices. Lastly, competitors in the upstream market did not raise customer foreclosure concerns regarding this vertical overlap.

(D) Conclusion

(714) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the

[534] Minutes of a call with a competitor on 2 July 2021.

[535] Form CO, Chapter on Vertical Relationships, Annex D6.

vertical relationships arising between managed corporate actions data (upstream) and equity indices (downstream).

6.3.3.19. Economic data (upstream) – Credit ratings (downstream)

(A) The Parties' activities

(715) As mentioned above, IHSM is active upstream in economic data ([10-20]% in overall economic data, [10-20]% in forecast economic data and [5-10]% in time series economic data). Downstream S&P is active in credit ratings, with a market share by revenue of [30-40]%. Credit rating agencies such as S&P may use economic data as one of many inputs to inform their ratings decisions and for general research purposes.

(B) The Notifying Party's view

(716) The Notifying Party submits that it would not have the ability to foreclose competing downstream credit ratings competitors, because IHSM has a modest upstream share and therefore no market power, with many competing suppliers of economic data, including Moody's, Refinitiv, Fitch, FactSet, Haver Analytics, Oxford Economics and the Economist Intelligence Unit. S&P currently multi-sources its economic data requirements from a number of suppliers (indeed, purchases of economic data from [information on S&P's supply source]).

(C) The Commission's assessment

(717) Based on the evidence available to it, the Commission finds that the Notifying Party would have no ability to foreclose downstream rivals by withholding access to IHSM's economic data. IHSM's low market share and the fact that there are several competing suppliers indicate a lack of market power for the upstream input. Moreover, S&P's main competitors downstream indicated that they are not concerned by a possible input foreclosure.[536]

(718) Similarly, the Commission finds that the Notifying Party would have no ability to foreclose upstream rivals by refusing to purchase from them, as economic data has multiple use cases, of which credit ratings comprise a very small portion (<1%) and S&P's market share downstream, [30-40]%, would not indicate sufficient market power to foreclose.[537] Moreover, competitors in the upstream market did not raise customer foreclosure concerns regarding this vertical overlap.

(D) Conclusion

(719) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationships arising between economic data (upstream) and credit ratings (downstream).

536 Minutes of calls with competitors on 9 June 2021 and 1 July 2021.

537 Form CO, Chapter on Vertical Relationships, Annex D6.

6.3.3.20. Sector classification schemes (upstream) – Economic data, Trade analytics, Digital design for financial services, Stock selection and strategy services (downstream)

(A) The Parties' activities

(720) As mentioned above, S&P is active upstream with the product GICS. The Notifying Party is not able to provide estimated market shares for GICS or its competitors, but it does consider that GICS is likely to be market leader (as supplied by both S&P and MSCI), with its closest competitors being FTSE Russell's ICB, Bloomberg's BICS, FactSet's RBICS and Thomson Reuters TRBC (in descending order).

(721) Downstream, both Parties are active in trade analytics (S&P [5-10]%, IHSM [0-5]%, combined [10-20]%) and stock selection and strategy services (S&P [0-5]%, IHSM [0-5]%, combined [5-10]%). Only IHSM is active in economic data ([10-20]% in overall economic data, [10-20]% in forecast economic data and [5-10]% in time series economic data) and digital design for financial services ([10-20]% market share).

(B) The Notifying Party's view

(722) The Notifying Party submits that irrespective of the relevant downstream market, if S&P attempted to foreclose access to GICS, then MSCI would step in to fill the gap created by S&P's attempted foreclosure, since MSCI has no interest in assisting S&P to favour its own downstream operations (and it is not restricted in terms of its ability offer GICS to customers, including current customers of S&P). Thus, S&P has no market power in the supply of GICS since it always faces MSCI as an independent supplier, as well as competition from other alternative classification systems. [information on IHSM' suppliers] – any downstream competitor of S&P post-Transaction (as pre-Transaction) could do the same. In addition, the Notifying Party argues that GICS is one of many inputs, and not a particularly important one, into each of the downstream markets.

(C) The Commission's assessment

(723) Based on the evidence available to it, the Commission finds that the Notifying Party would have no ability or incentive to foreclose downstream rivals by withholding access to GICS. First, MSCI confirmed that it does supply GICS to users, including third party data vendors who compete with S&P in various markets. MSCI does not expect the Transaction to change its relationship with the Parties, including the arrangement governing GICS.[538] As such, if S&P were to deny or worsen access to GICS, MSCI would be able to supply GICS to the foreclosed customers, thus rendering the foreclosure strategy ineffective. Second, while GICS may be the market leader in sector classification schemes, there are several other schemes available in the market from large data vendors with wide customer bases, namely ICB of FTSE Russell, TRBC of Refinitiv, and Factset's RBICS. Therefore, customers foreclosed from GICS would also have alternative schemes to switch to, if they did not wish to obtain GICS from MSCI due to the revenue sharing agreement. Lastly, S&P is already active (with the larger presence) in two of the downstream markets and has not restricted competitors' access to GICS, indicating a lack of incentive for such a strategy. IHSM's increment in those two markets, and market

538 Minutes of call with MSCI.

share in the other two, are not likely to change such incentives, given they are quite low (at or below [10-20]%) and the markets themselves are of similar size in the case of economic data and much smaller in the case of digital design for financial services[539].

(D) Conclusion

(724) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationships arising between sector classification schemes (upstream) and economic data, trade analytics, digital design for financial services, and stock selection and strategy services downstream (regardless of the precise segmentation).

6.3.4. Affected markets – conglomerate effects

6.3.4.1. Conglomerate effects – indices markets

(A) The Parties' activities

(725) Both S&P and IHSM are active in the provision of equity and fixed income indices. S&P is also active in the provision of multi-asset indices whereas IHSM is also active in the provision of CDS indices.

(726) Table 24 below shows the market shares of the Parties' and their main competitors in equity indices, fixed income indices, CDS indices and multi asset indices.[540]

Table 24: Market shares in indices by asset category (global, AuM, 2020)

Fixed income indices		CDS indices		Multi-asset indices		Equity indices	
Competitor	**Market share**	**Competitor**	**Market share**	**Competitor**	**Market share**	**Competitor**	**Market share**
S&P	[0-5]%	S&P	-	S&P	[20-30]%	S&P	[30-40]%
IHSM	[5-10]%	IHSM	[90-100]%	IHSM	-	IHSM	[0-5]%
Combined	***[5-10]%***	***Combined***	***[90-100]%***	***Combined***	***[20-30]%***	***Combined***	***[30-40]%***
Bloomberg	[70-80]%	-	-	Morningstar	[10-20]%	MSCI	[10-20]%
ICE	[5-10]%	-	-	S-Network	[0-5]%	FTSE Russell	[10-20]%

539 Form CO, Chapter on Vertical Relationships, Annex D6.

540 For the purposes of assessing conglomerate effects of the Transaction in relation to indices, an assessment at the level of the underlying asset(s) covered (i.e. equity, fixed income, CDS or multi-asset indices) appears appropriate. Leveraging from narrower segments (i.e. individual indices categories) appear unlikely due to the much more limited scale of these segments. In any event, looking at individual indices categories would not materially impact the assessment.

Fixed income indices		CDS indices		Multi-asset indices		Equity indices	
Competitor	**Market share**	**Competitor**	**Market share**	**Competitor**	**Market share**	**Competitor**	**Market share**
FTSE Russell	[0-5]%	-	-	NASDAQ	[0-5]%	CRSP	[10-20]%
JPM	[0-5]%	-	-	FTSE Russell	[0-5]%	Nasdaq	[0-5]%
SIX	[0-5]%	-	-	Solactive	[0-5]%	TOPIX	[0-5]%
Others	[0-5]%	Others	-	Others	[40-50]%	Others	[10-20]%

Source: The Parties' best estimates (Form CO, Chapter on Vertical Relationships, Annex D.6)

(B) The Notifying Party's view

(727) The Notifying Party considers that the Transaction will not give rise to conglomerate effects in particular because: (i) the Transaction will not increase the Parties' market power, (ii) any foreclosure strategy would be inconsistent with pre-Transaction practices, (iii) leveraging strategies would not exclude rivals, (iv) customers are strategic and well informed.[541]

(C) The Commission's assessment

(728) First, it is unlikely that the merged entity would have the ability to engage in a foreclosure strategy by way of tying or bundling. S&P's market share only exceeds the 30% threshold by [0 – 10] percentage points, and as a result is unlikely to have a significant degree of market power in relation to equity indices. This is further confirmed by the fact that a majority of respondents to the market investigation do not expect it to have a negative impact in relation to fixed income indices, in spite of S&P's market leading position.[542] IHSM holds a monopoly over the CDS indices market. However, as the CDS market is much smaller than other indices markets (representing respectively around 0.002% and 0.02% of the total equity and fixed income indices markets in terms of assets under management), IHSM's position likely does not give it the ability to engage in foreclosure strategies by way of tying or bundling. The Transaction only has a very limited impact on the ability of the Parties to engage in such strategy, as only a very limited increment arises, and only in relation to fixed income indices, and to a much lesser extent equity indices.

(729) In addition, barriers to switching index provider are high. Switching provider is not easily feasible for customers, due in particular to investors' requirements and/or regulatory considerations, which apply to both fixed income and equity indices, according to a large majority of respondents.[543]

(730) Furthermore, a number of strong providers are active in each of the main indices segments. These include FTSE Russell, which is itself among the top 5 providers of equity, fixed income, and multi-asset indices, and offers must-have indices such as the FTSE 100 for UK equity. In fixed income indices, Bloomberg is by far the

[541] Form CO, Chapter on Conglomerate effects, paragraphs 4.71*ff*. The Notifying Party primarily considered conglomerate effects from leveraged loan indices and multi-asset indices into fixed income indices.

[542] Replies to questions 59.1 of Questionnaire Q4 and question 56.1 of Questionnaire Q5.

[543] Replies to questions 9 and 25 of Questionnaire Q5.

leading provider with a share estimated to be over [70-80]% in fixed income indices (for the creation of funds). Other competitors with a presence across asset categories include Nasdaq, MSCI, and Solactive, as confirmed by the Parties' internal documents.[544]

(731) Second, it is unlikely that the Parties would have an incentive to engage in such a strategy. Pre-Transaction, S&P already has a share exceeding 30% in equity indices, and a presence in fixed income indices, however S&P did not leverage its position in equity indices to increase its presence in fixed income. Similarly, IHSM holds a 100% market share in relation to CDS indices and have not leveraged this position to increase its holding in equity indices (or in fixed income indices), where its share remained stable and limited.

(732) Third and lastly, it is unlikely that such strategy would have an impact on prices and choice. Only few respondent to the market investigation specifically raised concerns in relation to a possible foreclosure strategy in the markets for indices as a result of tying or bundling of different indices by the combined entity, but these respondents do not indicate how the Transaction would specifically impact pre-existing ability and incentives of the Parties.[545] However, in particular due to the barriers to switching referred to above, it is unlikely that this theory of harm would materialise.

(D) Conclusion

(733) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the conglomerate relationships arising between different categories of indices.

6.3.4.2. Conglomerate effects – issuance platforms and desktop services

(A) The Parties' activities

(734) As mentioned above, S&P is active in desktop services with its product CapIQ. Its market share in 2019 is estimated at [10-20]%. IHSM is active in issuance platforms with its product Ipreo. Its market share is estimated at [50-60]% for corporate bond issuance platforms, [50-60]% for municipal bond issuance platforms and [30-40]% for equities issuance platforms. The Commission investigated possible conglomerate effects arising from the combination of CapIQ with Ipreo.

(B) The Notifying Party's view

(735) First, the Notifying Party argues[546] that it is not plausible that leveraging could exclude rivals in desktop services. There are examples of desktops that are currently

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544 See DOC_00000036.

545 Replies to questions 57-59 of Questionnaire Q4 and question 54-56 of Questionnaire Q5. One customer notes for instance that "*We are also concerned about potential bundling and/or tying arising from conglomerate effects, as the merged entity can leverage market power in a number of product markets, making it difficult for customers to buy only what they really need, given the "must-have" nature of certain inputs, such as IHSM Fixed Income indices (Iboxx, Itraxx), S&P DowJones Indices […]*". Another one that "*Depending on the sales strategy, the Transaction might have a negative impact on availability / pricing of indices; for instance, if S&P decided to start offering rather bundles of indices or packages compared to stand-alone solutions*".

546 Form CO, Chapter on Conglomerate effects, paragraphs 4.124*ff* and 4.175*ff*.

competing successfully at small scale. In desktops, Moody's and ICE both compete successfully with shares of around [0-5]% globally. The Parties consider that there are a large number of other desktop suppliers competing at even smaller scales, including SIX Financial, EMIS, CEIC, Dow Jones, Quick Financial, Alphasense, CoStar, RCA, Reonomy, Verisk Analytics and BamSEC. Moreover, the larger rivals could also retaliate by withdrawing their own data and information products from the S&P platforms, and use their own products[547] to match any tying or bundling strategies by the Parties.

(736) *Second*, according to the Parties, IHSM's customer base for issuance workflow solutions in particular consists to a large degree of large, sophisticated customers.[548] For each type of issuance workflow solutions, the top ten customers are nearly always comprised of the largest investment banks, including: [Banking customers]. These customers are therefore likely to be capable of resisting any leveraging strategies by the Parties, and also capable of retaliating against the Parties in this or other markets in response to any leveraging strategies including sponsoring entry.

(737) *Third*, the Notifying Party claims that the theory of harm is inconsistent with pre-merger outcomes as today IHSM does not engage in pure bundling, mixed bundling, contractual tying or technical tying of issuance workflow solutions with other products, despite already having some potentially related products outside of issuance workflow solutions, and S&P currently distributes a large range of its own data and information products through its desktops. For example, S&P's credit ratings products are distributed through several third parties including major aggregated desktop suppliers such as Bloomberg, FactSet, Refinitiv and ICE. This is inconsistent with the view that S&P is using its current portfolio of data and information products to leverage into distribution platforms. Furthermore, in some cases S&P pays a fee to third parties to distribute certain S&P products. [S&P's commercial strategy]. This makes business sense for SPGMI because SPGMI expects to derive revenues from sales of product licenses that are likely to result from these arrangements. There is no reason to believe that this will change post-Transaction.

(C) The Commission's assessment

(738) Based on the evidence available to it, the Commission finds that the Notifying Party would have no ability or incentive to foreclose desktop services rivals by leveraging the issuance platforms to benefit desktop services, i.e. bundling or tying CapIQ with Ipreo.

(739) *First*, the Commission notes that multi-sourcing of desktops is already prevalent, confirming some differentiation among different suppliers; indeed, all responding customers multi-source desktops and those using S&P often use alongside it at least

[547] The Notifying Party adds that Refinitiv, Bloomberg, Morningstar and FactSet all have extensive portfolios of own data and information products, and wide-ranging agreements to distribute third party products; Moody's has access to its own credit ratings issuance business to support its credit ratings data products; ICE can draw on data from its exchanges business to support its data products.

[548] The Notifying Party specifies that the top 10 fixed income issuance workflow solutions customers by revenues account for [IHSM's revenue information]% of IHSM's total fixed income issuance workflow solutions revenues. The top 10 equity issuance workflow solutions customers by revenues account for [IHSM's revenue information]% of IHSM's total equity issuance workflow solutions revenues. The top 10 municipal bond issuance workflow solutions customers by revenues account for [IHSM's revenue information]% of IHSM's total municipal bond issuance workflow solutions revenues.

two other suppliers.[549] In addition, no customer said that they would switch away from their current desktop provider to S&P's CapIQ in case of a bundling of the latter with Ipreo.[550] This indicates that the combined entity would not be able to foreclose rivals in this market via such a strategy, since no customers would stop using rivals' products as a result.

(740) *Second*, the Commission considers that the target customer group, i.e. the large investment banks using both desktop services and issuance platforms, would have a degree of buyer power to resist anticompetitive bundling, and the ability to sponsor entry/expansion in the relevant markets. For instance, Directbooks is a new entrant into the issuance platforms space, created in 2019 by a consortium of nine investment banks ([…]) "*to optimize the communications process and workflow for the primary issuance of securities*" and "*to alleviate the pain points and inefficiencies in the primary market process felt by both underwriters and investors*".[551] The founders expect it to grow over time, "*While DirectBooks will initially focus on Investment Grade transactions, its functionality should make it a platform of choice for other asset classes in the future"*.[552]

(741) Given the importance of buy-in by investment banks and the investors they serve in the usage of an issuance platform, it does not seem plausible that the combined entity would have the incentive to risk negative reactions from this customer group. Indeed, competitors indicate that customers would react negatively to forced bundling or tying of these two products; one competitor explains, "*Customers would be weary of discounting tactics early on post merger. Customers would fear of short-term discounts with longer-term significant price increases/rightsizing of costs… Customers want options and the ability to purchase the best products in the market.*"[553]

(742) *Third*, while responding competitors and customers consider that the Transaction will have a negative impact on the market for desktop services globally[554], the concerns are often not related to the possibility of bundling with issuance platforms, and are not borne out by the current and expected customer behaviour described above.

(D) Conclusion

(743) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to conglomerate effects arising between issuance platforms and desktop solutions.

549 Replies to question 6 of Questionnaire 9.
550 Replies to questions 25-26 of Questionnaire 9.
551 https://www.directbooks.com/history
552 https://www.directbooks.com/history
553 Replies to question 30 of Questionnaire 8.
554 Replies to questions 33 of Questionnaire 8 and 16 of Questionnaire 9.

6.3.4.3. Conglomerate effects – credit ratings and loan administration solutions

(A) The Parties activities

(744) As mentioned above, S&P is active in credit ratings issuance and distribution. Its market share in 2019 is estimated at [30-40]% at the global level and [40-50]% at the EU level.

(745) IHSM is active in loan administration solutions with WSO. Its market share is shown below in Table 25. The Notifying Party is not able to estimate the shares of each of the competitors. The Notifying Party is not able to estimate shares for software and solutions separately or for public vs private loans separately.

Table 25: Market shares in loan administration services (global, value, 2020)[555]

Loan administration solutions		**Loan administration solutions**		**Loan administration solutions (excl. self-supply)**	
Supplier	**Market share based on fees**	**Supplier**	**Market share based on AUM**	**Supplier**	**Market share based on AUM**
IHSM	[20-30]%	IHSM	[10-20]%	IHSM	[20-30]%
Self-supply (bank's in-house solutions)	[10-20]-[20-30]%	Self-supply	[10-20]-[20-30]%	Self-supply	-
Others[556]	[50-60]-[60-70]%	Others	[60-70]-[70-80]%	Others	[70-80]%

Source: Parties' best estimates (see Form CO, Chapter on Vertical Relationships, paragraph 3.86)

(746) The Commission investigated possible conglomerate effects arising from the combination of S&P's credit ratings with WSO, for instance by anticompetitive bundling of credit ratings and WSO, or by technical integration of WSO with S&P's credit ratings, to the exclusion of other credit ratings and/or other loan administration solutions.

(B) The Notifying Party's view

(747) First, the Notifying Party argues[557] that credit ratings are not critical data for most WSO customers; the primary data input to this tool relates to the characteristics of a given loan in a customer's portfolio (e.g., amortization schedules, principal and interest payments, currency, paid-in-kind (PIK) provisions, revolver specifics such as funded vs unfunded amounts, letter of credit provisions etc.).

(748) Second, the Notifying Party argues that S&P licenses its ratings on a publicly-stated FRAND basis, including to its competitors in a wide range of downstream markets. Thus, S&P's FRAND policy would prevent conditioning licence fees for credit ratings data on a customer's use (or otherwise) of WSO or restricting distribution of

555 The Notifying Party estimates IHSM's market share at the European level to be [10-20]%, or [10-20]% excluding self-supply.

556 Includes BNYM, State Street, Alter Domus, SS&C Globe Op, Allvue, Advent Geneva, Simcorp Dimension, Solvas, Efront, FIS, and others.

557 Notifying Party's response to RFI 24, Annex 3a, paragraph 3.91*ff*.

ratings by preventing rival loan administration services from populating credit ratings data for customers with the requisite licence. The Notifying Party submits that it would make no commercial sense for S&P to undermine the commercial FRAND policy post-Transaction, because doing so would risk damaging both S&P's wider reputation (both as a supplier of credit ratings data and more generally) and the value of its credit ratings business.

(749) Third, the Notifying Party claims that the use of ratings data in WSO is fundamentally contingent on S&P (and WSO's) common customers having the requisite licence for the use of that data. In any hypothetical attempt to foreclose WSO's competitors, S&P would also be denying these customers – many of whom will be large and sophisticated – the ability to use S&P's data in the way(s) that they wish to do. In particular, those significant customers are likely to be active across the loan lifecycle and the significant harm to the customer relationship and S&P reputation is likely to result in loss of credibility for S&P Global Ratings and a loss of credit ratings issuance revenue.

(C) The Commission's assessment

(750) Based on the evidence available to it, the Commission finds that the Notifying Party would have no ability or incentive to foreclose rivals by leveraging WSO to benefit S&P's credit ratings, or vice versa by bundling the products or technically tying them.

(751) *First*, regarding leveraging credit ratings data to favour WSO, the Commission notes that for the reasons explained in Section 6.3.3.12, S&P would be discouraged from favouring WSO in the provision of credit ratings data or would invite regulatory scrutiny in case it engaged in such behaviour. Loan administration solution competitors are divided on whether credit ratings are a key feature of their product, or not. Some do, saying it would be "*very problematic*" for customers if S&P no longer made its credit ratings data available to them in a seamless/automatic way post-Transaction, but they do not consider this realistic behaviour on the part of the combined entity. Others either do not carry credit ratings or do not consider them important for their products.[558]

(752) In addition, there is evidence that multi-sourcing is common in loan administration solutions. Suppliers comment; "*Yes, oftentimes clients will use multiple products and services to cover their data, reporting, and portfolio management needs. This can be broken out by front and middle office software or by specific business function. Clients do purchase from more than one supplier in this market",* "*Customers can choose to buy software from several suppliers and services from several as well"* and "*Our view would be that customers do typically multi-source this product / service*". Indeed, no customer indicated that they would stop using WSO competitors' products if S&P ratings were not available with those products.[559]

(753) *Second*, regarding leveraging WSO to favour S&P's credit ratings, the Commission first notes that the market shares (<30%) submitted by the Notifying Party do not

[558] Replies to "Request for information on Traded loan software/services" email on 3 September 2021.

[559] Replies to question 43 of Questionnaire 9.

appear to fully reflect WSO's market position. Indeed, in internal documents[560], WSO is referred to by IHSM as the market leader, with an estimated market share of [50-60]% in each of traded loan software and traded loan solutions. Two competitors are of the same view; one states "[IHSM is the]*Top loan data and loan portfolio management software. Largest number of customers"* and another adds, "*in the broader asset management market IHSM's WSO solution is generally considered to be the market leader*".[561]

(754) Nevertheless, there is evidence that customers often purchase credit ratings data (and other relevant loan data) separately and independently from loan administration solutions, and thus bundling would not be likely to have a significant effect; "*With respect to data, the customer would likely utilize multiple data vendors including mulitiple rating agencies, one or more loan pricing provider, and, potentially, market/asset data provider*." Moreover, given the prevalence of multi-sourcing, the Commission would expect there to be no significant impact on competing credit ratings suppliers, as there would be other loan administration solutions, which could integrate their ratings in a similar fashion to WSO and S&P's credit ratings.

(755) *Third,* responding competitors consider that the Transaction will have a neutral, or positive ("*assuming greater innovation and data quality*"), impact on the market for loan administration solutions[562]. Similarly, responding competitors do not expect the Transaction to have a negative impact on the market for credit ratings due to this overlap.[563] There were similarly no substantiated concerns from customers regarding this overlap.[564]

(D) Conclusion

(756) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to conglomerate effects arising between credit ratings and loan administration solutions.

6.3.4.4. Conglomerate effects – credit ratings and issuance platforms

(A) The Parties' activities

(757) As mentioned above, S&P is active in credit ratings issuance and distribution. Its market share in 2019 is estimated at [30-40]% at the global level and [40-50]% at the EU level.

(758) IHSM is active in issuance platforms with its product formerly called Ipreo. Credit ratings can only be used with corporate bond issuance platform, where IHSM's market share is estimated at [50-60]%, or with municipal bond issuance platforms where IHSM's market share is estimated at [30-40]%.

560 IHSM internal document No. ASH000200, slide 8.
561 Reply to "Request for information on Traded loan software/services" email on 3 September 2021.
562 Replies to "Request for information on Traded loan software/services" email on 3 September 2021.
563 Minutes of calls with competitors on 9 June 2021, 1 July 2021, 19 August 2021.
564 Replies to questions 45, 47 of Questionnaire 9.

(759) Various data relevant to the issuer and issuance are included in these platforms by the relevant banks working on the issuance. These inputs include credit ratings data. However, IHSM has no involvement in procuring these inputs. The Commission therefore investigated possible conglomerate effects arising from the combination of S&P's credit ratings with Ipreo.

(B) The Notifying Party's view

(760) First, the Notifying Party submits that post-Transaction no leveraging from credit ratings into IHSM products can plausibly arise for a number of reasons.[565] Firstly, S&P does not have the ability to leverage from credit ratings issuance or distribution as it faces several credible rivals; the Transaction will not increase the Parties' market power; such theory of harm is inconsistent with pre-merger outcomes; credit ratings and issuance platforms are not in practice purchased together; and customers are strategic and well-informed. Secondly, the Parties would have no incentive to foreclose rivals through leveraging from credit ratings as any attempt could prompt regulatory scrutiny; and because undermining S&P's FRAND principles would damage S&P's reputation.

(761) Second, the Notifying Party submits that post-Transaction no leveraging from IHSM's issuance platforms into S&P products can possibly arise for a number of reasons.[566] Firstly, IHSM does not have the ability to leverage from issuance platforms as the Transaction will not increase the Parties' market power; such theory of harm is inconsistent with pre-merger outcomes; credit ratings and issuance platforms are not in practice purchased together or in fixed proportions; it is not possible that leveraging could exclude rivals in credit ratings given that there are other uses of credit ratings; such attempt could prompt regulatory scrutiny; and customers are strategic and well-informed. Secondly, the Parties would have no incentive to foreclose rivals through leveraging from issuance platforms because foreclosure would likely be ineffective, which is demonstrated by the lack of current tying or bundling practices.

(C) The Commission's assessment

(762) Based on the evidence available to it, the Commission finds that the Notifying Party would have no ability or incentive to foreclose rivals by leveraging credit ratings to benefit IHSM's Ipreo, or vice versa by bundling the products or technically tying them.

(763) *First*, regarding leveraging credit ratings data to favour Ipreo, the Commission considers that the merger entity would not have the ability to foreclose rivals in issuance platforms by leveraging its position in credit ratings.

(764) The Commission notes that for the reasons explained in Section 6.3.3.12, S&P would be discouraged from favouring Ipreo in the provision of credit ratings data or would invite regulatory scrutiny in case it engaged in such behaviour.

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565 Form CO, Chapter on Conglomerate effects, paragraphs 4.46 ff.

566 Form CO, Chapter on Conglomerate effects, paragraphs 4.126 ff.

(765) Moreover, issuance platform customers do not consider credit ratings to be a key feature of their products.[567] Instead, the top factors that customers consider when deciding which issuance platform to purchase access to is access to the platforms used by other banks, functionality, stability and price.[568] The merged entity is therefore unlikely to have the ability to use its position in credit ratings to foreclose issuance platform competitors.

(766) In addition, virtually all customers multi-source issuance platform products, that is they use multiple issuance platforms across asset classes but also for the same asset class.[569] A competitor, for example, explains that: *"Clients of issuance workflow platforms (underwriters) tend to use multiple platforms to announce deals to the buy-side community."*[570] As a result, customers are likely to continue purchasing issuance platform products from other providers besides the merged entity, even if the merged entity were to bundle them with credit ratings.

(767) Even if customers for credit ratings and issuance platforms could be considered to overlap to a significant extent, these two products generally do not appear to be purchased together. A customer, for example, explains that *"These products / services are utilised by different teams."*[571]

(768) Finally, only one customer considers that the Transaction will have a negative impact on a potential market for issuance platform, but does not substantiate its view.[572]

(769) As the combined entity would have no ability to engage in a foreclosure strategy, it is not necessary to assess in detail the incentives of the combined entity or the overall impact of a potential foreclosure strategy of leveraging the merged entity's position in credit ratings on competition in the market for issuance platforms.

(770) *Second*, regarding leveraging Ipreo to favour S&P credit ratings, as explained above, the merged entity is unlikely to have the ability to engage in foreclosure as the two products are generally purchased independently.

(771) Moreover, as explained in Section 6.2.1above, customers tend to multi source credit ratings. As a result, customers are likely to continue purchasing credit ratings from other providers besides the merged entity, even if the merged entity were to bundle them with Ipreo.

(772) Finally, responding competitors do not expect the Transaction to have a negative impact on the market for credit ratings due to this overlap. As the combined entity would have no ability to engage, it is not necessary to assess in detail the incentives of the combined entity or the overall impact of a potential foreclosure strategy of leveraging the merged entity's position in issuance platforms on competition in the market for credit ratings.

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567 Replies to question 23 of Questionnaire 9.
568 Replies to question 23 of Questionnaire 9.
569 Replies to question 19 of Questionnaire 9.
570 Minutes of a call with a competitor on 7 June 2021.
571 Reply to question 28 of Questionnaire 9.
572 Replies to question 37 of Questionnaire 9.

(D) Conclusion

(773) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to conglomerate effects arising between credit ratings and issuance platforms.

6.4. Commitments

6.4.1. Framework for the assessment of the Commitments

(774) Where a concentration raises serious doubts as regards its compatibility with the internal market, the parties may undertake to modify the concentration to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the undertakings concerned, a notified concentration no longer raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation.

(775) As set out in the Commission's Remedies Notice,[573] the commitments have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.[574]

(776) In assessing whether commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments, with reference to the structure and particular characteristics of the market in which the transaction is likely to significantly impede effective competition, including the position of the parties and other participants on the market.[575]

(777) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time. Concerning the form of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the requisite standard. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its decision, that it will be possible to implement them, and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that the serious doubts are removed.[576] Divestiture commitments are normally the best way to eliminate competition concerns resulting both from horizontal and non-horizontal overlaps.

6.4.2. Proposed Commitments

(778) In order to render the concentration compatible with the internal market, the undertakings concerned have modified the notified concentration by entering into the following commitments in relation to the concerns identified with respect to

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[573] Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, the "Remedies Notice" (OJ C 267, 22.10.2008, p. 1-27).

[574] Remedies Notice, paragraph 9.

[575] Remedies Notice, paragraph 12.

[576] Remedies Notice, paragraph 10.

financial data and software markets, which are annexed to this decision and form an integral part thereof.

1. The CUSIP Commitments

2. The LCD/LLI Commitments

6.4.3. The CUSIP Commitments

(A) Initial Commitments

(779) In order to eliminate the Commission's concerns relating to the horizontal overlap between LXIDs and loan CUSIPs in the global loan identifier market, the Notifying Party offered to divest the Loan CUSIP Business ("the Loan CUSIP Commitments"). Considering the nature of this option, which consisted in a carve-out, and the limited size of the Loan CUSIP divestment business, the Notifying Party submitted alternative Commitments in case the Loan CUSIP Commitments remedy was not acceptable following a market test. These alternative Commitments consists in the divestment of the whole CUSIP Business ("the Initial CUSIP Commitments").

(780) The Loan CUSIP Commitments include a transfer of the rights to issue, disseminate and be compensated for loan CUSIPs from S&P to a purchaser, enacted by way of: (i) a modification of S&P's existing agreement with the ABA to reflect the fact that S&P will no longer have any rights or licences to issue loan CUSIPs or disseminate the database of loan CUSIPs; and (ii) a new agreement between the purchaser and the ABA, under which the ABA will appoint the purchaser as its agent to operate the Loan CUSIP Divestment Business, on behalf of the ABA, which consists of (a) issuing or assigning loan CUSIP identifiers to eligible financial instruments and their issuers, and (b) disseminating the commercial database of existing, historical and new loan CUSIP identifiers and related descriptive information that is maintained and updated on a real time basis.

(781) The Loan CUSIP Commitments also include, among others, the transfer of the following tangible and intangible assets to a suitable purchaser:

- The benefit of intellectual property rights (belonging to the ABA) related to loan CUSIPs;
- An assignment of the existing agreement between CGS and the Loan Syndications and Trading Association ("LSTA") regarding the issuance of loan CUSIPs;
- All other supplier and customer agreements and relationships (or, in the case of shared contracts, the portion of such contracts which relates to the Loan CUSIP Business) which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Loan CUSIP Business;
- In respect of any contracts used by the Loan CUSIP Business which are shared with the wider S&P group, the portion of those contracts which relates to the Loan CUSIP Business on terms and conditions equivalent to those at present afforded to the Loan CUSIP Business.
- Customer, and other records of the Loan CUSIP Business;

- The personnel necessary to maintain the viability and competitiveness of the Loan CUSIP Business;

- Benefit of the technology (e.g., data, databases and software) that is used in and necessary for the operation of the Loan CUSIP Business as of closing through one of the following mechanisms, at the option of the Purchaser:

  (a) Migrating the technology to the Purchaser;

  (b) Creating a logically separated, standalone and mirrored version of the technology and migrating it to the Purchaser; or

  (c) Where this is not possible, or otherwise at the option of the Purchaser, S&P shall offer to enter into a transitional arrangement.

- All licences, permits and authorisations issued by any governmental organisation for the benefit of the Loan CUSIP Business;

- All electronic books, records and files that are related to the Loan CUSIP Business;

- At the option of the Purchaser, the benefit of all transitional service arrangements, for up to 12 months, which are necessary to ensure the viability and competitiveness of the Loan CUSIP Business for a transitional period after divestiture, such as IT, HR and finance/payroll services; and

- Any other tangible and intangible assets that are primarily related to the Loan CUSIP Business, which contribute to the current operation or which are necessary to ensure the viability and competitiveness of the Loan CUSIP Business.

(782) The Notifying Party argued that the Loan CUSIP Commitments eliminate entirely any competition concerns relating to loan identifiers by removing the entire overlap between the Parties' activities in this market, as S&P would no longer be authorised to issue CUSIPs in the loan space, with the ABA instead appointing the Purchaser as the new provider to take over the operation and management of the loan CUSIP business.

(783) Nevertheless, the Parties have offered as an alternative to the Loan CUSIP Commitments and solely in the event that the Commission concludes that said commitments are insufficient following the results of the market test, to divest and transfer the entirety of S&P's CUSIP issuance and data licensing business, as carried out currently by CUSIP Global Services; these are the Initial CUSIP Commitments.

(784) The Initial CUSIP Commitments include:

(a) All tangible and intangible assets owned by S&P that are primarily related to the CUSIP Business which contribute to the current operation or which are necessary to ensure the viability and competitiveness of the CUSIP Business, including all customer, credit and other records, and all required software;

(b) A transfer of the rights to issue, disseminate and be compensated for CUSIP identifiers from S&P to the purchaser, enacted by way of:

– a modification of S&P's existing agreement with the ABA to reflect the fact that S&P will no longer have any rights or licences to issue CUSIP identifiers or disseminate the database of CUSIP identifiers; and

– a new agreement between the purchaser and the ABA, under which the ABA will appoint the purchaser to act as, on behalf of the ABA, (i) the sole issuer or assigner of CUSIP identifiers to eligible financial instruments and their issuers, and (ii) the sole disseminator of the commercial database of existing, historic and new CUSIP identifiers and related descriptive information that is maintained and updated on a real time basis;

– an assignment of the agreement between CGS and LSTA dated 13 June 2007 (the "LSTA Agreement");

– all other supplier and customer agreements and relationships which contribute to the current operation or are necessary to ensure the viability and competitiveness of the CUSIP Businesses;

– all personnel who contribute to the current operation of the CUSIP Business and who are necessary to ensure the viability and competitiveness of the CUSIP Business; and

– the benefit of all transitional service arrangements which are necessary to ensure the viability and competitiveness of the CUSIP Business for a transitional period after divestiture.

(785) The Notifying Party argued that the Initial CUSIP Commitments eliminate entirely any competition concerns relating to loan identifiers by removing the entire overlap between the Parties' activities in this market, as S&P would no longer be authorised to issue CUSIPs, including in the loan space, with the ABA instead appointing the Purchaser as the new provider to take over the entire CUSIP business.

(B) Market test

(786) The results of the market test of the Loan CUSIP Commitments showed that the Loan CUSIP Business is not a viable and competitive business on a standalone basis and indicated that there exist risks relating to the transfer of the business. Therefore, the Commission was not able to conclude that the Loan CUSIP Commitments would maintain effective competition.

(787) *First*, the vast majority of respondents do not consider the Loan CUSIP Business to be viable on a standalone basis; only one respondent responded otherwise, and based on their explanation their view was linked to the strength of CUSIPs' market position as security identifiers.[577] The remaining respondents replied "no" or "it depends", stating uncertainties around the sufficiency of the business' margins, scope and opportunities for growth. In particular, the vast majority of respondents do not consider it to be of sufficient scale to be viable.[578]

[577] Replies to question 10 of Questionnaire R3.

[578] Replies to question 10.2 of Questionnaire R3.

(788) For instance, one data vendor stated, "*If it is truly a standalone business, we do not believe it will be viable.*"[579] A user explained, "*From our understanding,* [loan] *CUSIPs do not produce a large enough income stream to sustain a business without another income producing service.*"[580] Another data vendor noted "*The service is very static and does not present many options to grow the business*."[581] A third data vendor surmised, "*If the margin is solid because revenues are strong due to strong coverage and reliable distribution, then it's viable. If the margin is weak because revenues as low and coverage is low, then it's not a business. This second scenario is the more likely of the two.*"[582] Indeed, the Commission notes based on the data submitted in the Form RM that the margins of the loan CUSIPs business appear relatively low at [S&P financial information]% EBIDTA for an identifier business, which normally is a low-cost business. [S&P commercial information][583].

(789) It is notable that several respondents consider the loan CUSIPs to be viable only as part of the wider CUSIPs business, i.e. that the wider business itself is seen as viable on a standalone basis. Indeed, the same data vendor added "*[…] It's hard to imagine how the economics work particularly without the bond CUSIP revenue*."[584] This was confirmed by another data vendor, "*Bond CUSIPs are required while loan CUSIPs are optional. It's hard to imagine that loan CUSIPs alone can generate sufficient revenue to cover the staff and infrastructure needed to manage that business.*"[585] Yet another data vendor expressed, "*We do not believe that the Loan CUSIP Divestment Business is of sufficient scale to be viable on a standalone basis. If the entire CUSIP platform were moved to be standalone, then we believe it would be viable on a standalone basis…*"[586]

(790) Second, several respondents cite the difficulty of disentangling from the overall CUSIP business, leading to implementation risks.[587] One data vendor summarizes, "*Due to the narrow scope of the divestment business and the technological challenges associated with "carving out" the loans CUSIPs from the remaining CGS business, it is unlikely that the Loan CUSIP Divestment Business will be viable standalone.*"[588]

(791) In particular, when asked about links and/or synergies (if any) between the Loan CUSIP Divestment Business and the wider CUSIP business, and potential consequences (if any) of a separation of the loan CUSIP business from the wider CUSIP business, respondents specified the process of requesting CUSIPs, administration of CUSIPs and distribution of CUSIP data to users as areas in which the Loan CUSIP business depends on the wider CUSIP business. On the process of requesting issuance of CUSIPs, one data vendor explained, "*We believe that the issuance of loan CUSIPs is more common when they accompany a bond. If arrangers/issuers have to go to two separate CUSIP "bureaus" for loans and bonds,*

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579 Replies to question 10.1 of Questionnaire R3.
580 Replies to question 10.2.1 of Questionnaire R3.
581 Replies to question 10.1 of Questionnaire R3.
582 Replies to question 10.1 of Questionnaire R3.
583 [Commercial arrangements between S&P, ABA and LSTA].
584 Replies to question 10.1 of Questionnaire R3.
585 Replies to question 10.2.1 of Questionnaire R3.
586 Replies to question 10.2.1 of Questionnaire R3.
587 See paragraph 24 of the Commission Notice on Remedies.
588 Replies to question 5.1 of Questionnaire R3.

it seems reasonable that the loan CUSIP would be harmed by that since bonds CUSIPs are required [while loan CUSIPs are not]."[589]

(792) On the administration of CUSIPs, another data vendor stated, "*There would also be significant challenges in carving out the Loan CUSIP administration from other CUSIPs offered by S&P (via Cusip Global Services ("CGS")) which may render the Loan CUSIP remedy ineffective. From a technical and practical perspective, we are not confident that the Loan CUSIP could be fully "divested" from the rest of S&P's existing CUSIP business and in a practical sense, there is likely to be strong coordination and ongoing working relationship between the purchaser and S&P to operate the loan CUSIP standard post divestment*."[590] A user confirmed, "*Loss of brand, reputation, etc. Loss of control in the process. I don't understand why you would separate them.*"[591]

(793) On the distribution of CUSIP data to users, a data vendor explained that today "*you can get all the identifiers delivered via one feed*".[592] Relatedly, a user remarked, "*Loan market participants may avoid the use of CUSIPs if the new provider is not well integrated into the participant's current processes and workflows…*"[593] A data vendor confirmed, "*The major link [between loan CUSIPs and the wider CUSIP business] is the ease of access for existing CUSIP customers. Loan CUSIPs are an easy and inexpensive add on to existing CUSIP services. In addition, technological and operational synergies for users is an important selling point… Potential disentanglement of the products may be complicated and lengthy and prevent a new purchaser from being able to successfully compete with the existing IHSM product.*"[594] Another user added, "*Investment managers and others do not view a particular asset class in a vacuum. Any investor would require information on the entire capital structure which could become more difficult if the Loan CUSIP business is divested.*"[595] It follows from the above comments that disentangling the loan CUSIPs would be very difficult and would have big associated implementation risks.

(794) Regarding whether the Loan CUSIP Divestment Business on a standalone basis is attractive for a purchaser from a business perspective, the majority of respondents observed that the Loan CUSIP Divestment Business on a standalone basis is not attractive for a purchaser from a business perspective. In addition to the comments relating to the viability of the wider CUSIP business cited in paragraph (789), when asked what additional assets would make it viable, one data vendor summarized "*We expect that the whole CUSIP platform would be the most attractive asset for a purchaser. Buying individual identifier types is likely not an attractive prospect for a purchaser, and would not be a successful standalone business…*"[596] Another data vendor confirmed, "*As it stands, the Loan CUSIP product is an inexpensive add-on to existing CUSIP services and financial viability of the product would likely require*

589 Replies to question 11 of Questionnaire R3.
590 Replies to question 3.1 of Questionnaire R3.
591 Replies to question 12 of Questionnaire R3.
592 Replies to question 11 of Questionnaire R3.
593 Replies to question 10.1 of Questionnaire R3.
594 Replies to question 11 of Questionnaire R3.
595 Replies to question 11 of Questionnaire R3.
596 Replies to question 20.2 of Questionnaire R3.

the same kind of infrastructure and pricing. As such, it is unlikely that it could be easily marketed as a separate, standalone service."[597]

(795) Regarding suitable purchasers, respondents were divided on whether trade associations would be suitable. This scepticism appears to come from the fact that an industry body may lack technical and data vending expertise and should in principle remain neutral/agnostic to products. On the other hand, respondents mostly agreed on data vendors being most suitable. Respondents insisted that data management experience is important. When asked about what resources, expertise and incentives are needed to maintain and develop the Loan CUSIPs Divestment Business successfully, one user expressed, "*Expertise in managing large data sets* [is needed]".[598] Data vendors stated, "*knowledge of how data is valued and managed in the markets*"[599] and "*Knowledge of market data, market usage and needs. Proven and robust technical infrastructure to provide the service*"[600].

(796) Respondents added that expertise in loan markets would be important to run the Loan CUSIPs business. However, it may be less critical for the overall CUSIPs business, given that CGS itself is ring-fenced from the rest of the S&P Group and its loan market intelligence / rating businesses.

(797) Based on the above, the Commission concluded that the Loan CUSIP Commitments do not remove the competition concerns identified, as the Loan CUSIP Business is not a viable and stand-alone business. The main shortcomings identified were the insufficient scale and low revenues of the Loan CUSIP business, as well as the difficulties to disentangle it from the CUSIP business.

(C) Final Commitments

(798) In order to take into account the results of the market test, the Parties submitted revised commitments on 18 October 2021 (the "Final CUSIP Commitments").

(799) The Final CUSIP Commitments differ from the Initial CUSIP Commitments on the following points:

– *Suitable purchaser criteria.* The Final CUSIP Commitments include additional criteria that the CUSIP Purchaser must fulfil. These stipulate that: (i) the CUSIP Purchaser shall have a proven track record in the financial data space; (ii) the ABA shall have consented to the transfer to the Purchaser of its agreement with S&P on equivalent terms and conditions to those effective before the entry into force of the Amendment no.3 (dated 27 September 2021); and (iii) the LSTA shall have consented to the transfer or assignment of the existing agreement between itself and CGS to the Purchaser.

Any contracts used by the CUSIP Divestment Business, which are shared with the wider S&P group. The Notifying Party added that S&P will cooperate with the Purchaser to establish an agency type or other similar arrangement to provide the Purchaser the claims, rights and benefits of those parts that relate to

[597] Replies to question 20.1 of Questionnaire R3.
[598] Replies to question 22.1 of Questionnaire R3.
[599] Replies to question 22.1 of Questionnaire R3.
[600] Replies to question 22.1 of Questionnaire R3.

the CUSIP Divestment Business "on terms and conditions equivalent to those at present afforded to S&P".

– *Any additional technology that is used in the CUSIP Divestment Business but shared with the wider S&P group.* The Notifying Party clarified that the CUSIP Purchaser will be able to choose between (a) Creating a logically separated, standalone and mirrored version of the technology that is used in the CUSIP Divestment Business and migrating it to the CUSIP Purchaser; or (b) Where this is not possible, or otherwise at the option of the CUSIP Purchaser, S&P shall offer to enter into a transitional arrangement.

(D) Commission's assessment

(800) The Commission concludes that the Final CUSIP Commitments are capable of eliminating the competition concerns entirely; they are comprehensive and effective from all points of view; they can be implemented effectively within a short period of time; and they are proportionate.

(801) *First*, the Commission concludes that the Final CUSIP Commitments are capable of eliminating the competition concerns entirely. The Commission raised concerns about the horizontal overlap between the Parties' activities in the loan identifiers market, i.e. IHSM's LXIDs combined with S&P's Loan CUSIPs. The divestment of the latter, i.e. the entire increment, completely eliminates the horizontal overlap. This is confirmed by the results of the market test as the majority of respondents expect that the divestment of Loan CUSIPs (as part of the wider CUSIP business) would resolve the competition concerns identified by the Commission.

(802) *Second*, the Commission considers that the proposed divestment of the CUSIP Business is capable of being implemented effectively within a short period of time given the clear-cut nature of this commitment, which is a structural remedy that includes a largely standalone business. While the Commission notes that the divestment is subject to consent from the ABA and the LSTA, the Final CUSIP Commitments require an up-front buyer to ensure that these conditions do not threaten effective competition by jeopardizing the implementation of the divestment.

(803) *Third*, unlike the Loan CUSIP Business, the (whole) CUSIP Business is a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern. Indeed, the turnover of the whole CUSIP Business is [S&P's revenue information], compared to [S&P's revenue information] of Loan CUSIP Business; thus the scale of the whole CUSIP Business is of a different order of magnitude than that of the Loan CUSIP Business.[601] This is supported by the results of the market test outlined in paragraphs 783ff. Specifically, respondents consider the loan CUSIPs to be viable only as part of the wider CUSIPs business, i.e. that the wider business itself is seen as viable on a standalone basis. CGS already operates as a largely standalone business within S&P Group, given its ring-fencing obligations to the ABA. The viability of the CUSIP Business will be preserved by the provision of transitional services by S&P to the purchaser, for a period of up to 12 months, on terms and conditions equivalent to

[601] Form RM, CGS Commitments.

those presently afforded to the CUSIP Business, as provided for by the Final CUSIP Commitments.

(804) *Additionally,* the Final CUSIP Commitments address the market feedback regarding the required expertise needed to maintain and develop the Loan CUSIP Divestment Business, and by extension the wider CUSIP Business. The CUSIP Purchaser will need to have a proven track record in the financial data space. The Commission considers this provision sufficient given that the CUSIP Business itself, operating independently within the S&P Group, already has specialised data management knowledge and experience.

(805) *Lastly,* the added provisions relating to contracts and technology currently shared with the wider S&P Group improve the viability of the CUSIP Divestment Business by ensuring that the Business continues to benefit from the same terms and conditions as it enjoys today, and that the CUSIP Purchaser (rather than the Notifying Party) is able to select the technology transfer that best suits its needs with respect to running the Divestment Business.

(806) In view of the elements discussed in this Section, the Commission concludes that the Final CUSIP Commitments are suitable to remove the competition concerns identified in Section 6.3.2.1with regards to the global provision of loan identifiers.

6.4.4. The LCD/LLI Commitments

(A) Initial Commitments

(807) In order to eliminate the Commission's concerns relating to the (i) vertical link between loan identifiers upstream and leveraged loan market intelligence downstream and (ii) the horizontal overlap in leveraged loan indices, the Notifying Party submitted a set of commitments under Article 6(2) of the Merger Regulation on 1 October 2020: (i) divestment of S&P's LCD Business ("LCD Commitment") and (ii) divestment of S&Ps leveraged loan 100 index family ("LLI100 Commitment", together the "Initial LCD/LLI Commitments").

(808) The Initial LCD/LLI Commitments include an asset sale of S&P's entire LCD Business (currently a part of SPGMI) as well as S&P's entire leveraged loan indices business comprising two indices which are part of the LCD product (the European leveraged loan index, ELLI and the leveraged loan index, LLI) as well as the LLI 100 index family which are commercialized separately by SPDJI (together the "LCD/LLI Divestment Businesses"), to one or separate purchasers.

(809) The Initial LCD/LLI Commitments also include, among others, the transfer of the following tangible and intangible assets to one or several purchasers:

- An assignment or transfer of the existing partnership agreement between the LCD Divestment Businesses and the Loan Syndications and Trading Association ("LSTA") as regards the LLI and LLI100;

- All supplier and customer agreements and relationships (or, in the case of shared contracts, the portion of such contracts which relates to the LCD Divestment Businesses);

- In respect of any contracts used by the LCD/LLI Divestment Businesses which are shared with the wider S&P group, the portion of those contracts which relates to the LCD/LLI Divestment Businesses on terms and conditions equivalent to those at present afforded to the LCD/LLI Divestment Businesses.

- Customer, and other records of the LCD/LLI Divestment Businesses;

- The personnel necessary to maintain the viability and competitiveness of the LCD/LLI Divestment Businesses;

- All intellectual property relating to LCD and the LL100, including licences, trademarks, copyright and other know-how that is currently used exclusively or primarily by the LCD Divestment Businesses, including the methodologies used to calculate the LL100;

- Technology (e.g., data, databases and software) that is used in and necessary for the operation of the LCD/LLI Divestment Businesses through one of the following mechanisms:

    - Migrating the technology to the Purchaser;

    - Creating a logically separated, standalone and mirrored version of the technology and migrating it to the Purchaser; or

    - Where this is not possible, or otherwise at the option of the Purchaser, S&P offers to enter into a transitional arrangement.

- All licences, permits and authorisations issued by any governmental organisation for the benefit of the LCD/LLI Divestment Businesses;

- All electronic books, records and files that are related to the LCD/LLI Divestment Businesses;

- All transitional service arrangements which are necessary to ensure the viability and competitiveness of the LCD/LLI Divestment Businesses for a transitional period after divestiture, such as IT, HR and finance/payroll services; and

- Any other tangible and intangible assets that are primarily related to the LCD/LLI Divestment Businesses.

(810) Furthermore, the Commitments included an upfront buyer provision. Finally, under the Initial LCD/LLI Commitments, the purchaser(s) should not meet any additional criteria besides those of the Commission's model text for divestiture commitments.

(811) The Notifying Party argued that the Initial LCD/LLI Commitments eliminate entirely any competition concerns relating to the horizontal overlap between the Parties' leveraged loan indices and the vertical link between loan identifiers and leveraged loan market intelligence by removing the entire overlap between the Parties' activities in those markets.

(A) Market test

(812) The Commission conducted a market test of the Initial LCD/LLI Commitments to assess whether they were sufficient and suitable to remedy the serious doubts identified in Section 6.3.3.1of this decision, and whether they were sufficient to ensure the viability and competitiveness of the LCD/LLI Divestment Business.

(813) First, the market feedback on whether the LCD/LLI Commitments remove the concerns was largely positive.[602] Some respondents highlighted that while the divestment of LCD would eliminate the incentives of the merged entity to foreclose competitors in the leveraged loan market intelligence market, LXIDs were nevertheless an essential input into other downstream products.

(814) Second, most respondents considered the LCD Business as viable standalone and as an attractive business.[603] With respect to the LLI100 Business, the feedback was more mixed and largely negative as regards viability standalone.[604] Several respondents mentioned, that the LLI100 Business would benefit from being purchased by a firm with existing activities in a related market and highlighted the existing links to the LCD business as a reason why a combined sale of both businesses could be preferable.[605] For example, one respondent stated: *"The integration between LLI and LCD may be necessary to make LLI a viable business."*[606] Another respondent explained: *"Certain elements of the LCD business predominantly the analytics are complementary to the LLI services. The index data without the LCD analytics would likely become an inferior service."*[607]

(815) For the LCD Business, the majority of respondents does not see material implementation risks for the business transfer.[608] In addition, the majority of the respondents consider that the personnel would seem to be sufficient to run the LCD Business as a standalone, viable and competitive business.[609] However, many respondents stated that they did not consider that the Commitments contained enough detail and certainty regarding essential data inputs and transitional service agreements.[610] The following assets were considered essential by many respondents: *"(...) long term access to LXIDs (and any other existing critical inputs, including pricing data, reference data, historical data, and credit ratings) (...)".*[611] *Another respondent added: "It will be important for the data contribution agreements to be transferred with the LCD Business."* [612] By contrast, access to LCD via S&P's CapIQ platform was not considered particularly important.[613]

(816) For the length of transitional service agreements that may be required in relation to the LCD Business, views differed between 12 and 24 months, with a majority in

602 Replies to questions 3 and 11 of Questionnaire R4.
603 Replies to questions 3 and 19 of Questionnaire R4.
604 Replies to question 12 of Questionnaire R4.
605 Replies to question 12.1 of Questionnaire R4.
606 Reply to question 12.1 of Questionnaire R4.
607 Reply to question 12.1 of Questionnaire R4.
608 Reply to question 4 of Questionnaire R4.
609 Reply to question 6 of Questionnaire R4.
610 Reply to question 7 of Questionnaire R4.
611 Reply to question 7.1 of Questionnaire R4.
612 Reply to question 4.1 of Questionnaire R4.
613 Replies to question 8 of Questionnaire R4.

favour of 24 months.[614] As an adequate non-solicitation period for S&P to respect vis-à-vis the LCD/LLI Divestment Businesses, views differed between 12 months and four years.[615]

(817) For the LLI100 Business, the majority of respondents considers that there are implementations risks.[616] One respondent explains what they consider as essential to mitigate those risks: *"(...) the continuation of supply of the critical inputs (such as pricing data, reference data, historical data, identifiers and credit ratings) on suitable terms will be crucial to the viability of the LLI100 Businesses and the successful implementation of the transfer."*[617] Several respondents also mention that implementation risks would be lower for the transfer of the LLI100 Business, if the purchaser *"had the necessary skills and expertise required to manage the transfer."*[618] For the LLI100 Business, many respondents stated that they do not consider […] FTE as sufficient.[619] The period for which transitional service agreements may be required by the purchaser was estimated between 12 months and three years by respondents.[620]

(818) In terms of additional purchaser criteria, respondents highlighted for both businesses that a purchaser that already had expertise and infrastructure to operate an index business would be more likely to succeed.[621] Several respondents mentioned that in particular the LLI100 Business would benefit from either a purchaser with a portfolio of adjacent activities and/or a combined sale with the LCD Business.[622] In respect of the LLI100 Business, one respondent highlights that a purchaser needs to be able to comply with relevant regulatory requirements, which are currently subject to transition periods: *"(...) the buyer will need to address UK and EU regulatory requirements relating to benchmarks administration. This is because the transition periods that are currently provided under UK and EU law for third country benchmark administrators are expected to expire (currently scheduled 31/12/2025 in the UK and 31/12/2023 in the EU). Once those transition periods expire, local authorisation or approved means of offering into the UK/EU would need to be arranged."*[623]

(B) Final LCD/LLI Commitments

(819) In order to take into account the results of the market test, the Parties submitted revised commitments on 15 October 2021 (the "Final LCD/LLI Commitments").

614 Replies to question 10 of Questionnaire R4.
615 Replies to questions 9 and 17 of Questionnaire R4.
616 Reply to question 13 of Questionnaire R4.
617 Reply to question 13.1 of Questionnaire R4.
618 Reply to question 13.1 of Questionnaire R4.
619 Reply to question 15 of Questionnaire R4.
620 Replies to question 18 of Questionnaire R4.
621 Replies to questions 21 and 22 of Questionnaire R4.
622 Replies to questions 12.2, 20 and 22 of Questionnaire R4.
623 Reply to question 11.1 of Questionnaire R4.

(820) The Final LCD/LLI Commitments differ from the Initial LCD/LLI Commitments on the following points:

- The final LCD/LLI Commitments do not include the option of selling both businesses to separate purchasers, but rather the sale as a package to one suitable purchaser;

- The upfront buyer provision was withdrawn as the Commission had not identified implementation risks that would have required such offer;

- Two additional purchaser criteria were added to take account of the market test feedback regarding a suitable purchasers' capabilities or access to such capabilities with respect to the calculation, administration and operation of an index business (including the need for companies that would be considered third country benchmark administrators to have credible plans to be able to comply with the EU-Benchmark Regulation[624] and ensure continued market access for the LLI100 indices in the EU) and the need to obtain the consent of the Loan Syndications and Trading Association (LSTA) to assign the current contract with S&P in respect of the LCD/LLI Businesses;

- The requirement to transfer or assign all contracts at terms and conditions currently afforded to the LCD/LLI Divestment Businesses;

- Additional detail and specification of relevant contracts to assign or transfer, such as contracts for the supply of credit ratings, identifiers, and contributor, customer and distribution contracts;

- Additional personnel at the option of the purchaser;

- Any intellectual property that is not exclusively or primarily used by the LCD/LLI Divestment Business and can therefore not be transferred will be licensed to the purchaser under a perpetual, sub-licensable and royalty-free licence.

- A specification was added that technology included the LCD platform and the LCDcomps.com website.

- A specification was added that transitional service agreements are provided for a duration of up to 24 months after divestiture and including services like index calculation, administration and governance;

- A specification that in particular all historical data of the LCD Business are transferred.

[624] Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, OJ L 171, 29.6.2016, p. 1.

(C) Commission's assessment

(821) The Commission concludes that the Final Commitments regarding the LCD/LLI Divestment Businesses are capable of eliminating the competition concerns entirely; they are comprehensive and effective from all points of view and they can be implemented effectively within a short period of time;

(822) The divestment of the LCD Business is intended to remedy the concerns in relation to the Parties' activities in loan identifiers upstream and leveraged loan market intelligence downstream. The Commission notes that the divestment of the downstream activities of the merged entity will eliminate the incentives to foreclose access to loan identifiers upstream.

(823) In addition, the Commission considers that the amendments described in paragraph (818) adequately address the concerns raised by market test respondents and the Commission in relation to the Initial LCD/LLI Commitments, in particular with respect to the input required to viably and competitively operate the two businesses. In particular, the situation with respect to access to LXIDs will stay the same compared to the situation pre-Transaction, i.e. the existing contracts will be assigned or transferred to the purchaser.

(824) The additional purchaser criteria will ensure that the purchaser will have access to the necessary expertise and capabilities to maintain and develop the LCD/LLI Divestment Businesses as a viable and active competitor.

(825) In view of the foregoing, the Commission concludes that the Final LCD/LLI Commitments would allow the purchaser to effectively and credibly compete in the leveraged loan market intelligence market.

(826) The divestment of the LLI100 Business is intended to remedy the concerns in relation to the Parties' activities in leveraged loan indices. The Parties have decided to offer the divestment of the larger Party, S&P, with a market share of [90-100]%, which also has a supply and distribution relationship with the LCD Business. This would support the conclusion, that the proposed final commitment to divest the LLI100 Business eliminates the horizontal overlap in leveraged loan indices entirely.

(827) The divestment of both the LCD and the LLI100 Business to a single purchaser addresses concerns raised in the market test with respect to the viability of the LLI100 Business standalone.

(828) The additional purchaser criteria will ensure that the purchaser will have access to the necessary expertise and capabilities to maintain and develop the LCD/LLI Divestment Businesses as a viable and active competitor. Furthermore, the option of additional personnel at the request of the purchaser addresses comments on the proposed transfer of just [Number of employees].

(829) In view of the foregoing, the Commission concludes that the Final LCD/LLI Commitments would allow the purchaser to effectively and credibly compete in the leveraged loan index market.

(830) For the reasons outlined above, the commitments entered into by the Parties are sufficient to eliminate the serious doubts as to the compatibility of the transaction

with the internal market in relation to the markets for leveraged loan market intelligence and leveraged loan indices.

7. COMMODITY PRICE ASSESSMENTS AND MARKET INTELLIGENCE

7.1. Introduction

(831) The Parties' activities in commodity data markets can broadly be grouped in commodity price assessments and commodity market intelligence.

(832) Price assessments provide a view of the prevailing market price for a specific commodity (such as crude oil, refined products, liquid natural gas, etc.). Price assessments are frequently, but not exclusively, used by market participants (such as commodity suppliers, traders and end-users) to calculate and settle contracts tied to market pricing in a transparent and predictable way. Other use cases of price assessments include using the price assessment as a price reference point for the price that a participant uses in their contract, or for general market analysis.

(833) The main providers of price assessments are the so-called price reporting agencies ("PRAs"), which are specialist suppliers of price assessments. PRAs also publish databases, analysis and real-time market news, and some are involved in related businesses, such as consultancy. The PRAs typically comply with the IOSCO Principles for assessments that are used for exchange-traded derivatives,[625] and generally follow the IOSCO Principles internally for all assessments (even if not all assessments undergo the formal IOSCO assurance review process).

(834) In addition, price assessments can also be provided by non-specialist providers, such as market intelligence providers, exchanges, brokers and other providers of news and data ("non-PRA providers").

(835) Both Parties operate PRAs, and are active in the provision of price assessments for a wide set of commodities and regions. In addition, IHSM also provides price assessments through some non-PRA businesses.

(836) Market intelligence, on the other hand, concerns the supply of any kind of information, tools and analytics relevant to a company's market.

7.2. Market definition

(837) The following sections provide a detailed product and geographic market definitions for price assessment and market intelligence products.

7.2.1. Commodity price assessments

7.2.1.1. Overview of the Parties' activities

(838) Both Parties operate PRAs and IHSM also provides price assessments through other non-PRA businesses. Both Parties are active in the provision of price assessments for a wide set of commodities and regions. S&P supplies price assessments through

[625] See Section 7.3.1.1.

its PRA S&P Platts ("Platts"). IHSM mainly provides price assessments through its PRAs OPIS, PetroChem Wire ("PCW", part of OPIS), and Coal, Metals and Mining ("CMM"). IHSM also provides price assessments through some non-PRA businesses, namely Oil, Midstream, Downstream and Chemical Consulting division Advisory Services ("OMDC"), Agribusiness and Point Logic.

(839) Price assessments can broadly be grouped based on the level of the supply chain that they cover. That is, they can be grouped into (i) spot price assessments (prices relating to bulk deals that happen at the top of the supply-chain), (ii) rack price assessments (prices relating to wholesale purchases made along the distribution system, i.e. downstream of spot) and (iii) retail price assessments (prices at the end of the supply chain). This segmentation, however, is only relevant for price assessments of commodities for which the underlying supply chain is split accordingly (e.g. oil).

(840) In addition, price assessments can be grouped based on the underlying commodity. In the ordinary course of business, Platts groups its price assessments according to the following five categories: (i) commodity group, (ii) assessment family, (iii) market, (iv) product and (v) geographic region. A commodity group constitutes broadly related commodities (e.g. agriculture, petrochemicals, or oil) and an assessment family more closely related commodities within a commodity group (e.g. polymers or olefins within petrochemicals). Market and product categories then add further granular information on a specific commodity/specification, and region includes information on the geographical location of the underlying commodity (at the level of global regions).

(841) Platts provides price assessments for the following commodity groups: agriculture, coal, LNG, metals, natural gas, oil, petrochemicals, power and shipping. In commodity groups for which a split into spot, rack and retail is relevant, Platts supplies spot price assessments only.[626]

(842) IHSM supplies price assessments through a number of entities active in various commodity groups: (i) OPIS in agriculture, LNG, oil, power, and shipping, (ii) PCW in petrochemicals, (iii) OMDC in petrochemicals, (iv) CMM in metals and coal, (v) Agribusiness in agriculture and (vi) Point Logic in natural gas. For commodities where the split along the supply chain is relevant, IHSM supplies rack, retail and spot price assessments.

7.2.1.2. Relevant product market

(A) The Commission precedents

(843) The Commission has not previously considered the relevant product market for the supply of price assessments.

[626] For completeness, Platts is active in the supply of rack/retail price assessments to a very limited extent, exclusively through a domestic Japanese rack price assessment, which does not overlap with IHSM's activities. In addition, Platts [Parties' product information], however Platts does not produce any of these rack price assessments.

(B) The Notifying Party's view

(844) The Notifying Party submits that the relevant product markets are likely at the level of the supply of spot price assessments for a commodity group. That is for the following reasons.

(845) The Notifying Party submits that each of spot, rack and retail price assessments constitutes different product markets.[627] First, spot, rack, and retail price assessments are not substitutable from a demand-side perspective as each of the three categories relates to different levels of the supply chain. Second, they are also not substitutable from a supply-side perspective because each of the three types of price assessment requires different market information as inputs into the price assessment, and the nature of the commodity markets at each level of the supply chain is not the same. Consequently, it is not the case that all suppliers can (or do) provide price assessments for all three categories. Given that the Parties overlap in spot price assessments only, the Notifying Party's views on further segmentation of the price assessments relates to spot price assessments only.

(846) With respect to further segmenting spot price assessments by the type of the underlying commodity, the Notifying Party submits that potential plausible relevant product markets could be defined at the level of spot price assessments for an individual commodity group.[628] While from a demand-side perspective, spot price assessments for different commodities/specification are neither substitutable nor readily substitutable, the Notifying Party considers that supply side substitutability within price assessments for the same commodity group is sufficiently high. In particular, a supplier of price assessments for a commodity within a given commodity group could straightforwardly start supplying price assessments for related commodities in that group because barriers to entry are low and price data to generate assessments is readily available from multiple sources. By way of example, price assessment providers can utilise for instance: (i) pre-existing relationships with market participants to aid price discovery (i.e. to get information on trades of a specific product); (ii) commercial relationships with customers that already purchase price assessments within the commodity group; (iii) staff knowledge of the commodity area; and (iv) the reputation they have already gained.[629]

(847) The Notifying Party considers that, aside from limited exceptions, it is not appropriate to segment price assessments according to the geographic region of the underlying commodity because the Parties and their competitors supply price assessments to customers as part of price assessment products or packages, and these do not necessarily correspond to specific locations or regions.[630] An exception to this are price assessments for natural gas. The Notifying Party considers that a segmentation of natural gas price assessments into price assessments for American natural gas and European natural gas is plausible as natural gas price assessments are local in nature.[631]

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627 Form CO, Chapter on price assessments, paragraph 1.119 and 1.120.
628 Notifying Party's response to RFI 24, paragraph 10.1.
629 Notifying Party's response to RFI 24, paragraph 10.1.
630 Notifying Party's response to RFI 18, paragraph 2.2.
631 Notifying Party's response to RFI 14, paragraph 22.4.

(848) The Notifying Party considers that in the present case, the precise product market definition should in any case be left open because the Transaction does not give rise to competition concerns under any plausible product market definition.[632]

(C) The Commission's assessment

(849) The results of the Commission's market investigation assessing all the above-mentioned plausible segmentations of the market for the supply of price assessments are as follows.

(850) First, the results of the market investigation confirm the Notifying Party's view that price assessments form a separate product market distinct from market intelligence products. Price assessments and broader market intelligence products are not substitutable from the users' perspective,[633] and require different set of skills and assets from the suppliers' perspective. Therefore, virtually all of the respondents consider that a firm active only in market intelligence would not be able to start producing price assessments in the short-term and with modest costs.[634]

(851) Second, with respect to the distinction based on the relevant level in the supply chain of the underlying commodity, the results of the market investigation are inconclusive. While from the demand side, a large majority of customers do not consider retail and / or rack prices as substitutable to spot price assessments[635], some supply-side substitutability appears to exist. Price assessment providers are split with respect to the difference in inputs required for the supply of spot, rack and retail price assessments, with around half of them considering that the inputs required are different.[636] The majority of providers, however, considers that if a firm is only active in the supply of price assessments at a certain level of the supply chain, it can switch to producing price assessments for other levels of the supply chain within a short time frame and at modest costs.[637]

(852) Third, the results of the market investigation are not straightforward with respect to the appropriate level of commodity segmentation, but suggest that the level of the commodity segmentation appropriate for defining the relevant market is either at the level of a commodity group or at the narrower level of the assessment family.

(853) On the demand side, customers' responses indicate a lack of substitutability even at the narrowest level of an individual commodity or specification.[638] For example, if a customer is looking for a price assessments in relation to a specific physical trade that they are making, for a specific commodity (e.g. crude oil) and specification (e.g. Platt's Dated Brent), those customers will not generally accept a price assessment for another commodity (for example, gas) or for the same commodity but with a difference specification (e.g. Gulf Coast Sur). Therefore, most of the customers consider that competition generally takes place at the level of an individual

632 Form CO, Chapter on price assessments, paragraph 1.30.
633 Replies to question 4 of Questionnaire 3.
634 Replies to question 6 and 7 of Questionnaire 1.
635 Replies to question 5 of Questionnaire 3.
636 Replies to questions 8 and 9 of Questionnaire 1.
637 Replies to question 10 of Questionnaire 1.
638 Replies to question 8 of Questionnaire 3.

commodity specification, but around a third of them indicate that this may also depend on an individual commodity.[639]

(854) On the supply side, the results of the market investigation indicate that there is substitutability at least within assessment families, or possibly across assessment families within the same commodity group. While providers of price assessments are split as to whether competition generally takes place at the level of the assessment family or at the level of an individual commodity/specification, they also suggest the relevant product market at the wider level. For example, a price assessment provider explains that *"PRAs generally have a presence in (or are absent from) whole commodity groups or assessment families"*.[640] The majority of providers consider that a firm active in one assessment family would generally be able to start producing price assessments for another assessment family within the same commodity group within a short time frame and at moderate cost.[641] The same does not apply across commodity groups. The majority of the providers consider that a firm active in one commodity group would either not be able to enter other commodity groups or could only enter commodity groups related to commodity groups in which they are currently active.[642]

(855) Fourth, the market investigation offers strong support for further segmenting the market based on the geographic location of the underlying commodity (e.g. between North American crude oil and Latin American crude oil). Virtually all of the providers consider that market conditions (in terms of e.g. inputs required, supply and demand dynamics or regulatory aspect) vary significantly depending on the geographic location of the assessed commodity. The majority of the customers also confirm that it would be appropriate to further consider separate product markets depending on the geographic location (region) of the assessed commodity.[643]

(856) In light of the above, we consider that spot, retail and rack price assessments may form separate product markets. Further, the relevant product market is either at the level of price assessments for individual commodity groups or price assessments for individual assessment families, and the market could in addition be segmented based on the geographic location of the assessed commodity ("assessment region").

(857) In any case, the precise product market definition can be left open because the Transaction, as modified, does not give rise to concerns under any plausible product market definition.

7.2.1.3. Relevant geographic market

(A) The Commission precedents

(858) The Commission has not previously considered the relevant geographic market for the supply of price assessments.

639 Replies to question 9 of Questionnaire 3.
640 Replies to question 15 of Questionnaire 1.
641 Replies to question 14 of Questionnaire 1.
642 Replies to question 13 of Questionnaire 1.
643 Replies to question 10 of Questionnaire 3.

(B) The Notifying Party's view

(859) The Notifying Party submits that the geographic market for price assessments is global.[644] The Notifying Party considers that on the supply-side, all that is required to create a price assessment is access to the relevant information on the commodity, which is easily transferable globally. On the demand-side, customers can (and do) also purchase from price assessment suppliers across the world, regardless of the customer or supplier location.

(C) The Commission's assessment

(860) The Commission's investigation indicates that the markets for the supply of price assessments are likely global in scope.

(861) From the supply side, all price assessment providers supply customers that are located globally and do not experience any material barriers to providing price assessments to customers located outside of the company's region.[645]

(862) From the demand side, most price assessments' customers consider that competition generally takes place at a regional level, but substantiate the views by pointing to the differences in the prices of the underlying commodities, rather than the differences in competitive landscape between different regions.[646] The large majority of the customers, however, do not experience any barriers when purchasing price assessments from providers located outside of their country or region.[647]

(863) For the reasons mentioned above, the Commission considers that, for the purposes of this decision, the markets for the supply of price assessments (including all plausible segments thereof) are global in scope.

7.2.2. Commodities market intelligence

7.2.2.1. Overview of the Parties' activities

(864) S&P supplies market intelligence primarily through SPGMI, but also to a limited extent through Platts. The market intelligence products that it supplies fall broadly into the following categories: industry specific data and analytics for various industries (including energy, metals and mining, petrochemicals etc.), trade and maritime data (including trade analytics data, vessel tracking and cargo tracking data), and ESG (e.g. ESG scores).[648]

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644 Form CO, Chapter on price assessments, paragraph 1.31.

645 Replies to question 20 and 21 of Questionnaire 1.

646 Replies to question 11 of Questionnaire 3. One customer, for example, adds: *"This depends very much on the specific commodity, e.g., power price assessments are on the national or even market area level (if more than one market area per country like in Sweden) whereas the API2 for coal is on the NWE regional level. Typically price assessments are relevant on the regional or national level."*

647 Replies to question 12 of Questionnaire 3.

648 No affected markets arise in relation to ESG, where the Parties' activities do not overlap and a multitude of other players are active both in the provision of ESG data (upstream, including e.g. Bloomberg, Moody's Refinitiv in addition to IHSM), as well as in ESG scores (downstream including e.g. MSCI and Sustainalytics). In addition, S&P supplies the following "financial" market intelligence products that are discussed under Financial data sections of this Decision: credit ratings research and data, company information, leveraged loan market intelligence, securities and other identifiers, and macroeconomic data.

(865) IHSM supplies the following groups of market intelligence products: automotive data, trade and maritime data (including trade analytics data, vessel tracking and cargo tracking data), energy industry data, chemicals data, agribusiness data, product design and TMT data.[649]

7.2.2.2. Relevant product market

(A) The Commission precedents

(866) The Commission previously considered the supply of (primarily financial) market intelligence products. In these cases, the Commission segmented the supply of market intelligence between real-time and non-real-time data. Within the supply of non-real-time data, the Commission considered an additional sub-segmentation by means of delivery (between desktop solutions and datafeeds).[650]

(867) In *Thomson / Reuters*, the Commission considered that individual content sets are not substitutable for one another since they respond to different and well-defined needs of customers and are often traded separately, and can be considered on a standalone basis.[651]

(B) The Notifying Party's view

(868) The Notifying Party segmented the supply of market intelligence by (i) real-time and non-real time data, and (ii) by reference to the individual content sets concerned.[652] In relation to the markets where the Parties' overlap or giving rise to vertical relationships, the individual content sets concerned include: (i) Commodity cargo tracking; (ii) Trade analytics; (iii) Freight rate forecasts; (iv) Upstream energy; (v) Downstream / midstream energy; (vi) Power; (vii) Agriculture; (viii) Petrochemicals; and (ix) Metals.[653]

(869) The Parties note that market intelligence products can also be split between distribution channels (i.e. between desktops and datafeeds), but argue that customers can and do switch between the different means of delivery when receiving market intelligence.[654]

(C) The Commission's assessment

(870) The results of the market investigation indicate that market intelligence form part of a distinct market, separate from the provision of price assessments. There is in particular limited supply-side substitutability, as providers of market intelligence products could not start offering price assessments within the short term, due to the

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649 In addition, IHSM supplies the following "financial" market intelligence products that are discussed under Financial data sections of this Decision: financial services data, economics and country risk and identifiers.

650 Commission decision of 20 July 2018 in Case M.8837 - *Blackstone / Thomson Reuters F&R Business*, paras. 10 and ff, and cases cited.

651 Commission decision of 19 February 2008 in Case M.4726, *Thomson Corporation / Reuters Group*, paragraph 61.

652 Form CO, Chapter on Market Intelligence, paragraph 6.54.

653 Form CO, Chapter on Vertical Relationships, paragraphs 5.39 and 5.40.

654 Form CO, Chapter on Market Intelligence, paragraph 6.55. Form CO, Chapter on Vertical Relationships, paragraph 5.1.

costs and time required, in particular to become IOSCO compliant and become trusted by the industry.[655]

(871) Regarding the split between market intelligence provide via desktop and datafeeds, the market investigation suggests that this distinction may not be relevant. The large majority of responding market intelligence suppliers provide their products both as a desktop solution and via datafeeds.[656] They are more split as to whether a supplier only active in the supply of datafeeds could switch to offering desktop market intelligence swiftly and for limited costs.[657] In addition, a majority of customers procure market intelligence as both desktop solution and via datafeeds.[658]

(872) The market investigation however supports further segmenting market intelligence between real-time and non-real time data. First, there is limited supply-side substitutability. The majority of market intelligence suppliers only provide non-real time data, with the remainder provide both non-real time and real-time data.[659] A large majority of suppliers of market intelligence consider that a firm active in non-real time cannot switch to producing real-time market intelligence within a short time frame and at modest costs[660]. Second, there is also limited demand side substitutability. Real-time data is necessary for time-sensitive activities such as trading on exchanges, whereas non-real time data is used to support longer term commercial decisions within companies (e.g. supply chain management, investment decisions or M&A activity). The majority of customers of the Parties' market intelligence products procure non-real time data whereas the rest (with the exception of one responding customer) procures both non-real time and real time data.[661]

(873) The results of the market investigation are more inconclusive as to the specific content set at which level competition takes place. Respondents are generally split as to whether competition takes place at the level of the sets identified by the parties, or at a narrower level, in particular at the level of the underlying commodity and/or the region of the underlying commodity. In particular:

(a) Regarding agriculture market intelligence, respondents are split as to whether competition takes place at the level of individual commodities (e.g. sugar market intelligence) or at a more granular level, for instance based on the location of the underlying commodity (e.g. European sugar market intelligence).[662]

(b) Regarding cargo tracking, a majority of respondents consider that competition takes place at a more granular level, for instance based on the underlying commodity (e.g. LNG cargo tracking).[663]

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655 Replies to question 6 of Questionnaire Q2.
656 Replies to question 10 of Questionnaire Q2.
657 Replies to question 12 of Questionnaire Q2.
658 Replies to question 66 of Questionnaire Q3.
659 Replies to question 7 of Q2.
660 Replies to question 9 of Q2.
661 Replies to question 65 of Q3.
662 Replies to questions 14.1 of Questionnaire Q2 and question 69.1 of Questionnaire Q3.
663 Replies to questions 14.2 of Questionnaire Q2 and question 69.2 of Questionnaire Q3.

(c) Regarding trade analytics, respondents are generally split as to whether competition takes place for trade analytics (or the wider maritime and trade level) or at a more granular level, for instance based on the region(s) covered (e.g. Europe trade analytics).[664]

(d) Regarding freight rates, most responding competitors and customers consider competition takes place at least at the level of freight rate forecasts or the wider maritime and trade market.[665]

(e) Regarding metals, respondents are split as to whether competition takes place at the level of individual commodities (e.g. steel market intelligence) or at a more granular level, for instance based on the location of the underlying commodity (e.g. European steel market intelligence).[666]

(f) Regarding upstream energy, a majority of respondents consider competition takes place at a more granular level than upstream energy (e.g. upstream oil market intelligence).[667] Similarly, regarding midstream and downstream energy, a majority of competitors and of the customers consider competition takes place at a more granular level such as midstream and downstream oil market intelligence).[668]

(g) Regarding petrochemicals, half of responding competitors consider competition takes place at a more granular level than commodities. One competing supplier of market intelligence notes for instance that "*Within petrochemicals, clients will in some cases require a single product analysis for a specific country, e.g. propylene in the United States*". However, a majority of customers consider competition takes place for commodities areas or the wide petrochemical level.[669]

(h) Regarding power, a majority of competitors consider competition takes place at a more granular level than the power market, while customers are split as it takes place for power (or the wider energy market intelligence market) or at a more granular level, potentially based on the underlying commodity (nuclear, renewables etc.) and/or the relevant region.[670]

(874) There is however, some material degree of supply-side substitutability across content sets, in particular for related commodities. The majority of responding suppliers indicate that they could switch production, in particular to related commodity areas (e.g. within the oil and gas value chain), potentially by hiring additional analysts.[671] One provider of market intelligence indicates for instance that "*Once you have the technology in place and the relevant customer base, an expansion of market intelligence to related commodities would seem plausible within 6 months by using the know-how and expertise of reporters and analysts*". Another provider states that

664 Replies to questions 14.3 of Questionnaire Q2 and question 69.3 of Questionnaire Q3.
665 Replies to questions 14.4 of Questionnaire Q2 and question 69.4 of Questionnaire Q3.
666 Replies to questions 14.5 of Questionnaire Q2 and question 69.5 of Questionnaire Q3.
667 Replies to questions 14.6 of Questionnaire Q2 and question 69.6 of Questionnaire Q3.
668 Replies to questions 14.7 of Questionnaire Q2 and question 69.7 of Questionnaire Q3.
669 Replies to questions 14.8 of Questionnaire Q2 and question 69.8 of Questionnaire Q3.
670 Replies to questions 14.9 of Questionnaire Q2 and question 69.9 of Questionnaire Q3.
671 Replies to question 13 of Q2.

"*[there] is a 'family resemblance' between most commodities (cycles and correlations), so a well trained analyst or price reporter can adapt to new markets within [a short] time frame*". A provider of market intelligence in the energy sector indicates "*some commodities are easier to provide intelligence for than others, commodities in the same value chain can be covered with relative ease e.g. covering LPG and moving to Naphtha is relatively easy and could be done due to similar and connected nature of the markets, but to move into ammonia would be more difficult. Related commodities are: Crude Oil, Natural Gas Liquids, Gas/LNG, Refined Products, Petrochemicals*".[672]

(875) This supply-side substitutability is further evidence by a large majority of customers who consider that suppliers of market intelligence products generally are able to adapt their offering in response to specific customer requests (for e.g. more in-depth analyses and/or coverage of additional commodities).[673] One customer notes for instance that "*suppliers usually ask the subscribers for feedback and incorporate it into their service if found to be useful*". Another one indicates that "*supplier are often happy to produce a bespoke analysis at extra cost*". A customer similarly states that "*it is possible for market intelligence providers to make specific in-depth studies, according to specific customer requests (for example, some years ago, we asked market intelligence providers to study future demand and supply trends for gasoline, in particular for the countries located in the Mediterranean Basin as well as for the US Atlantic Coast and LATAM)*". A customer in the petroleum value chain indicates that "*customers are usually able to access to specific more in-depth analysis and coverage of additional commodities on demand at an additional cost*".

(876) It results from the above that, for the purposes of this decision, markets for market intelligence products can be segmented between real-time and non-real-time data, and by the content set covered. The precise scope of individual content sets, i.e. whether they are defined at the levels identified by the Notifying Party (namely (i) commodity cargo tracking; (ii) trade analytics; (iii) freight rate forecasts; (iv) upstream energy; (v) downstream / midstream energy; (vi) power; (vii) agriculture; (viii) petrochemicals; and (ix) metals), or at a narrower level, based on the underlying individual commodity and/or region, can be left open, as it does not materially affect the Commission's assessment.

7.2.2.3. Relevant geographic market

(A) The Commission precedents

(877) In its previous decisional practice, the Commission considered markets for the supply of (primarily financial) market intelligence products as likely at least-EEA wide in scope.[674]

(B) The Notifying Party's view

(878) The Notifying Party considers markets for the supply of market intelligence to be global in nature, in particular as (i) from a supply side perspective, suppliers obtain

672 Replies to question 13.1 of Q2.

673 Replies to question 68 of Questionnaire Q3.

674 Commission decision of 20 July 2018 in Case M.8837 - *Blackstone / Thomson Reuters F&R Business*, paras. 19 and ff, and cases cited.

information from publicly available sources that can largely be collected virtually, and offer their products and services globally, (ii) from a demand side perspective, customers purchase market intelligence from suppliers regardless of their location.[675]

(C) The Commission's assessment

(879) The market investigation indicates that markets for market intelligence products are likely global in scope.

(880) From a supply-side, the overwhelming majority of market intelligence providers supply customers, which are located around the world. Correspondingly, from a demand-side perspective the large majority of customers procure market intelligence from suppliers located around the world.[676]

(881) In addition, the large majority of respondents to the market investigation indicate that there is no barrier to providing market intelligence products to customers located outside of the region where suppliers of market intelligence are established, and that pricing does not differ materially across regions.[677]

(882) For the reasons mentioned above, the Commission considers that, for the purposes of this decision, the markets for market intelligence products (including all plausible segments thereof) are global in scope.

7.3. Competitive assessment

7.3.1. Commodity price assessments

7.3.1.1. Competitive dynamics

(A) The Notifying Party's view

(883) The Notifying Party indicates that the role of the benchmark price assessment and its interaction with reference prices (see Sections (B.i) and (B.ii) below for discussion on benchmarks and reference prices) has critical implications for the nature of competition in price assessments.[678] Once a specific price assessment becomes the benchmark, displacement occurs very infrequently.[679] Nevertheless, the Notifying Party considers that benchmark providers remain constrained, both in terms of price and quality, because (i) there is always a possibility that the benchmark will be displaced if there are fundamental errors in the calculation of the benchmark or an erosion of confidence in the underlying methodology and (ii) the benchmark provider must act competitively in order to remain an attractive choice for future benchmarks.[680]

(884) Due to the entrenchment of the benchmark price, competition generally takes place (i) between price assessment providers competing to provide a reference price for a

675 Form CO, Chapter on Market Intelligence, paragraph 6.62.
676 Reply to questions 16 of Questionnaire Q2 and 72 of Questionnaire Q3.
677 Reply to questions 17 and 18 of Questionnaire Q2 and 71 of Questionnaire Q3.
678 Form CO, Chapter on Price assessments, paragraph 6.136.
679 Form CO, Chapter on Price assessments, paragraph 6.139.
680 Form CO, Chapter on Price assessments, paragraph 6.145.

particular commodity or (ii) when trying to establish a price assessment as the benchmark for a new or emerging commodity.[681] In these cases, the Notifying Party submits that a wide set of competitors who are seen as effective competitors to provide a reference price exist.[682]

(885) In view of the above, the Notifying Party considers that the appropriate competitor set for the purposes of market share calculations include a wide set of competitors, including PRA and non-PRA providers.

(886) Finally, the Notifying Party explains that there are no significant barriers to entry and expansion as a supplier of price assessments (as distinct from the supply of benchmark prices).[683]

(B) The Commission's assessment

(B.i) Benchmark prices, customer switching costs and network effects

(887) An important characteristic of the price assessment markets is the existence of the so-called "benchmark" prices. It is typically the case that a specific price assessment (or more rarely a combination of price assessments) becomes the market standard for a given commodity. When this occurs, the price assessment qualifies as the benchmark for that commodity.[684] This occurs through market acceptance and the price assessment becoming embedded in the market ecosystem, which happens in two ways:

(a) In relation to physical trades, over time private market participants coalesce around a specific price assessment that is then used as a reference point to settle, often long term, bilateral contracts (with price indexation clauses); and/or

(b) In relation to derivatives/future contracts, an exchange will specify a price assessment for use in its listed derivative contracts (typically based on what the market uses as the benchmark for physical trades).

(888) The existence of a benchmark price leads to very strong network effects, because, as a provider explains, *"it is extremely risky and burdensome for an individual player in the chain to switch benchmark, unless the entire supply chain switches"*.[685] The systemic relationship between related sectors and commodities further exacerbate the network effects that are not only present within a specific commodity but across groups of related commodities. The network effects become increasingly stronger and switching increasingly difficult once a benchmark is used not only for physical trading but is also referenced in financial derivatives.[686]

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681 Form CO, Chapter on Price assessments, paragraph 6.151.

682 Form CO, Chapter on Price assessments, Annex C.15.

683 Form CO, Chapter on Price assessments, paragraph 6.168 ff.

684 There are certain limited cases where customers may use a composite benchmark, which combines more than one price assessment, for example as a basket of two (or more) price assessments. There are also some limited markets where there is more than one benchmark in the sense that there is not a unique price assessment referenced in contracts.

685 Minutes of a call with a market participant on 11 March 2021.

686 Minutes of a call with a market participant on 11 March 2021.

(889) Therefore, the provider of the benchmark is well entrenched and it is extremely rare for a benchmark to be replaced by another price assessment. For example, in the overall price assessment market, the Notifying Party is up until now aware of only […] instances of displacement of a benchmark (held by either Party or a third party competitor) by a PRA (including the other Party) or an exchange.[687] The Notifying Party described three circumstances in which a benchmark may be displaced:

(a) "Like for like" displacement by an alternative price assessment for the same commodity/specification. This circumstance is extremely rare, and would generally happen only where there has been some form of perceived failure or loss of confidence in the calculation of an incumbent benchmark. A customer illustrates the rareness of such a displacement by providing an example of market participants being strongly dissatisfied with a major methodology change announce by a benchmark provider, but not considering switching away from the benchmark due to systemic relationships, long-term contracts and other network effects described above;[688]

(b) When underlying commodity market changes such that the incumbent benchmark is no longer relevant and is instead replaced by an alternative benchmark more reflective of the changed commodity supply landscape; or

(c) An exchange may change the specification for physical or futures/derivative contracts, such that the incumbent benchmark ceases to be relevant.

(B.ii) Nature of competition between benchmarks and reference prices

(890) Once a price assessment has been established as the benchmark, the role of other (non-benchmark) price assessments for the same commodity is to act as alternative reference prices. Reference prices may be used by market participants: (i) to provide further information or verification for the benchmark price that a market participant wishes to use; or (ii) where the market participant does not require a benchmark but simply wishes to use the price assessment, for example for market analysis.

(891) The majority of price assessment providers confirm that, despite the embeddedness nature of the benchmark, reference prices continue to constrain the provider of the benchmark in terms of price and quality.[689] One of the market participants, for example, explains, *"Investment by alternative PRAs to win over existing benchmarks nevertheless remains high because of the winner-takes-all nature of the market. Even though any PRA has a low probability of displacing a benchmark, the pay out of being successful is very high (ca. 50 mn USD equity value for certain benchmarks) and thus incentives to compete for an existing benchmark remain strong."*[690]

(892) The investigation confirms that it is particularly the closest credible alternative(s) to the benchmark (sometimes referred to as the "second look(s)"[691]) that is most likely

687 Form CO, Chapter on price assessments, Annex C.25.

688 Minutes of a call with a market participant on 11 March 2021.

689 Replies to question 30 of Questionnaire 1.

690 Minutes of a call with a market participant on 11 March 2021.

691 The market investigation results support the existence of a "second look" price, with the majority of providers suggesting that a second look price exists. However, some of them also explain that the concept is too simplified and its importance difficult to quantify. Replies to question 28 of Questionnaire 1.

to displace the benchmark and thus exerts the strongest constraint on the benchmark price. To illustrate, out of […] cases of displacement listed by the Notifying Party, in […] cases the benchmark was displayed by (one of) the second look price(s).[692]

(893) In addition, a price assessment provider explains that a market could also shift to the third option price assessment if its price assessments are perceived as particularly innovative and that therefore smaller players typically display more willingness to take risks when it comes to innovation, as opposed to incumbents.[693]

(894) In addition to a benchmark displacement, the competition between suppliers of price assessments takes place either (i) between price assessment providers competing to provide a reference price or (ii) when trying to establish a price assessment as the benchmark for a new or emerging commodity.

(895) The market investigation confirms that the provider of the benchmark and the providers of closest alternatives to the benchmark for a specific commodity are the strongest potential competitors in new or emerging commodities related to that commodity.[694]

(B.iii) Key competitive elements

(896) The main characteristics that distinguish price assessments include the provider's reputation, methodology, compliance with the relevant regulations (IOSCO Principles and EU BMR) and other regulation, and frequency of the price assessment.

(897) Reputation as a credible and independent supplier of price assessments is a pre-requisite to providing a benchmark or any competitive reference price. Both providers and customers consistently rank the provider's reputation as one of the most important characteristic of a price assessment.[695] A customer explains: *"It is inconceivable, for instance, that a major chemical producer would sign a long-term contract or make an investment decision in an existing market based on information from a PRA that had no substantial track record in a market, as these decisions are often valued in billions of dollars or more."*[696]

(898) Another important distinguishing feature of price assessment providers is methodology.[697] Typically, suppliers of commodity price assessments assess the going market price of a given commodity by obtaining data from market participants. This is done by obtaining transaction information directly from market participants, tracking bids/offers and transactions, and understanding prevailing market sentiment. Market participants study the methodology employed by a price assessment provider when deciding which price assessments to use. Platts, for example, uses three different methodologies to govern how its market reporters

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692 Form CO, Chapter on price assessments, Annex C.25.

693 Minutes of a call with a market participant on 17 March 2021.

694 Questionnaire 1 and 3: Price assessment providers that are ranked as the Top providers of benchmarks in a certain commodity group are consistently ranked the highest with respect to their ability to become benchmarks in new commodities related to that commodity group.

695 Replies to question 35 of Questionnaire 1 and question 5 of Questionnaire 3.

696 Reply to question 13 of Questionnaire 1.

697 Replies to question 35 of Questionnaire 1 and question 25 of Questionnaire 3.

gather and access data when producing price assessments: "Market on Close",[698] survey[699] and index[700]. OPIS, on the other hand, uses a different "all day trading" average methodology.[701]

(899) The Board of the International Organisation of Securities Commissions ("IOSCO") has established principles for oil price assessments that are referenced in derivative contracts subject to regulation by IOSCO members (the "IOSCO Principles").[702] While compliance with the IOSCO Principles is not mandatory for providers of price assessments, such compliance may be expected by market participants in relation to price assessments for certain commodities (including, but not limited to oil). To the Notifying Party's knowledge, all major suppliers of oil price assessment comply with IOSCO Principles and other major suppliers of (non-oil) price assessments comply with IOSCO Principles for assessments that are used for exchange-traded derivatives.[703] Moreover, certain providers of price assessments may follow the IOSCO Principles internally, but not undergo the formal IOSCO assurance review process. Both providers and customers rank compliance with IOSCO Principles as one of the most important characteristic of a price assessment.[704]

(900) Where a price assessment benchmark is regulated by the European Benchmarks Regulation ("EU BMR"),[705] the IOSCO Principles are effectively mandatory

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698 Market in close is a process in which bids, offers, and transactions are submitted by market participants to Platts editors through various media and published in real time throughout the day until the time of market close. Following close, Platts editors examine the data gathered throughout the day, conduct their analysis, and develop final price assessments that reflect a commodity's end-of-day value. Some MOC price assessments rely on eWindow data; eWindow is a data-entry and online communications tool, […], which assists with the collation of trading submissions and thereby facilitate the MOC price assessment process.

699 A survey involves Platts market specialists contacting buyers, sellers and brokers directly for relevant transaction information. Editorial judgment has an important role in the assessments created using this methodology, particularly in new markets and where data is not readily available, because editors are responsible for amalgamating the collected information so that it accurately reflects the market price.

700 Index involves complementing the information collected directly from market participants with trade data obtained from exchanges.

701 OPIS calculates this "all day trading" average by collecting market data, including trade data, throughout the day through various channels. In markets where transactional data is less comprehensive, OPIS price reporters use bid/ask ranges to set highs and lows in accordance with established methodologies. Highest bid and lowest offer may set the parameters of these ranges. In some cases, historically demonstrated mathematical formulae may be applied to calculate the differential value of an illiquid product relative to a more liquid product.

702 The IOSCO Principles recommend suppliers of oil price assessments to (i) formalise and make public any price assessment methodology, and make this subject to internal and external review and scrutiny; (ii) use reliable indicators of market values, free from distortion and representative of the relevant market; and (iii) ensure any methodology contains and describes all criteria and procedures used to develop the assessment, including the use of market data, the assessment time periods, the means for submissions and any assumptions or exclusions made.

703 Where a market participant's commodity price assessment benchmarks are regulated by the European Benchmarks Regulation ("EU BMR"), the IOSCO principles are effectively mandatory because they are mirrored in the EU BMR as it applies to commodity price assessments.

704 Replies to question 35 of Questionnaire 1 and question 25 of Questionnaire 3.

705 Regulation (EU) 2016/1011 applies, subject to certain exemptions and exclusions, to the provision, contribution of data to, and use of, indices (including commodity price assessment benchmarks) which are: (i) published or made accessible to the public, including indirectly as a result of the use of the index by one or more EU regulated financial services firms as a reference for a financial instrument it issues or to determine the amount payable under a financial instrument or financial contract; (ii) regularly determined (a) entirely or partially by the application of a formula or any other method of calculation, or by an assessment, and (b) on the basis of the value of one or more underlying assets or prices, including

because they are mirrored in the EU BMR as it applies to commodity price assessments.

(901) Finally, frequency of the price assessment is another characteristic that providers and customers consider as an important differentiating factor.[706] A provider explains: *"For a market price to be representative of the market it must reflect how the market operates. If a PRA were to publish a weekly price for a market that priced daily then the price would be irrelevant to its customers."*[707] The frequency of the price assessment may, however, be less important in case a price assessment is not used as a contract price, but for other use cases such as for market analysis or business planning.

(B.iv) Barriers to entry

(902) Contrary to the Notifying Party's claim, the market for the supply of price assessment is characterised by high barriers to entry,[708] in particular so for the supply of benchmark price assessments.[709] The following key entry requirement are difficult to overcome and require significant time and resources.

(903) Reputation as a credible supplier of price assessments is hard to establish, and requires a strong and long track-record of providing reliable and accurate price assessments. Provider explains, *"As vital as this reputation is, the required level of trust can take years to build."*[710] and *"PRAs take years to build their reputation, credibility and track-record."* [711] This is not true only for newly entering PRAs but also for existing PRAs entering new markets,[712] and may be even trickier for non-PRA providers: *"Other types of market participants have to demonstrate independence and credibility to be accepted by the market, outside of PRAs this would be difficult (but not impossible) to do."*[713] On the other hand, customers consider the reputation as a credible supplier as the most important characteristic of a new price assessment provider.[714]

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estimated prices, quotes and committed quotes, or other values or surveys; (iii) used within the European Union as a reference for the determination of amounts payable under a financial instrument (i.e. a wide range of financial instruments, including derivatives traded on a trading venue or via a systematic internaliser, and derivatives for which an admission to a trading venue has been requested) or financial contract (i.e. consumer and mortgage credit agreements), or the value of a financial instrument, or which measure the performance of an investment fund.

706 Replies to question 35 of Questionnaire 1 and question 25 of Questionnaire 3.

707 Reply to question 35 of Questionnaire 1.

708 The vast majority of both providers and customers consider the barriers to entry into the market for the provision of price assessments as either high or very high. Replies to question 91 of Questionnaire 1 and question 60 of Questionnaire 3.

709 Virtually all providers consider the barriers to entry into the market for the provision of benchmark price assessments as high or very high. Replies to question 90 of Questionnaire 3.

710 Reply to question 93 of Questionnaire 1. Other providers also explain that it takes years to build a track record.

711 Reply to question 12 of Questionnaire 1.

712 A provider explains: *"Even when an existing PRA enters a new market it understands it will take many years for it to build the necessary track record, reputation and history of its methodological approach being robust and credible. It is not unusual for a PRA to spend several years building its position before it is used by the market in any substantial way."* Reply to question 12 of Questionnaire 12.

713 Reply to question 35 of Questionnaire 1.

714 Replies to question 62 of Questionnaire 3.

(904) High customer switching costs and network effects. According to customers, the barriers to switching price assessment are high, particularly with respect to contract prices.[715] A customer explains: *"Contract price: switching to another provider is nearly impossible for a number of reasons including: (i) the availability of reliable and industry-proven alternative price assessments, (ii) the need for any change in benchmarks to be industry-wide to be effective (which raises the question of compliance with competition law); (iii) the need (let alone the feasibility) to revise systems configurations in order to integrate alternative price assessment providers; (iv) significant cost increases related to subscribing data provision contracts with multiple price assessment providers; and (v) the fact that any change in reference price assessments in future contracts (including term contracts and hedges) would be very difficult to implement and carries a material risk of price inconsistencies or errors in contractual pricing and price exposure."* As mentioned by this customer, due to network effects, any switching would need to occur at the level of the industry as a whole, which is according to the large majority of customers either difficult or extremely difficult to achieve.[716] Therefore: *"Benchmarks can be extremely "sticky" and once embedded in a market can be very difficult to dislodge as significant benchmark use is forward looking."*[717]

(905) Access to price data. In order to obtain price data, a new entrant requires extensive contacts with a broad spectrum of market participants (e.g. traders) in the relevant commodity and needs to persuade them to share the price data on a regular basis. It might be particularly difficult to do so in case the market participants does not use PRAs data, or if that market participant is already speaking with other PRAs.[718]

(906) Regulation. Financial regulations exist in the EU to govern the provision of commodity price assessments that have become benchmarks (EU BMR). In addition, where an assessment underpins a traded derivative contract, PRAs are generally expected by market participants and other stakeholders such as exchanges to demonstrate adherence to the IOSCO Principles through the assurance review process called for by those principles. Such adherence to the IOSCO Principles, which is reviewed by an external auditor annually, requires devoting resources to appropriate internal processes and controls.[719]

(907) As an additional entry barrier, a provider mentions the recruitment of reporters, capable of reporting on a relevant market. According to them, the pool of reporters that have the knowledge and capability to do this is relatively small, as such reporters do not only require a background in the commodity but also an ability to develop contacts and content for a completely new market.[720]

(908) The Notifying Party submits that there has been a number of new entrants in the market over the last ten years[721], but, of these, maximum four PRAs could be considered to provide a benchmark price assessments. The new entrants listed by the Notifying Party are mostly small and niche PRAs, which is reflected in the fact that

715 Replies to question 60 of Questionnaire 3.
716 Replies to question 61 of Questionnaire 3.
717 Provider's reply to question 90 of Questionnaire 1.
718 Reply to question 92 of Questionnaire 1.
719 Form CO, Chapter on Price assessments, paragraph 6.123.
720 Reply to question 92 of Questionnaire 1.
721 Form CO, Chapter on price assessments, Annex C.11.

the majority of customers are not aware of any new successful entrant in the last 5 years.[722]

(B.v) Competitive landscape

(909) Due to the characteristics of the market described above, the market for price assessments is a consolidated market with four big well-established PRAs. These include Platts, Argus, ICIS and OPIS, which are the main global providers active in the provision of benchmark price assessments for a broad range of energy (including oil, LNG, natural gas etc.), petrochemicals and other commodities. Other smaller PRAs exist, but these generally specialise in individual commodity groups or even narrower niche markets. A market participant explains that *"[even though] competition happens at a very narrow level of an individual market, […] the big four established PRAs (Platts, Argus, OPIS, ICIS) have a large advantage over smaller independent PRAs when competing for existing markets and entering new markets"*.[723]

(910) In the overall price assessment market, Platts is considered as the largest provider, followed by Argus, ICIS and OPIS.[724] Of the four, ICIS and OPIS are considered by customers as more innovative companies in the PRA space than Platts.[725] However, the exact positions of these PRAs differ across commodity groups, assessment families and geographies, with a typical market having space only for three active PRAs.[726]

(911) In addition to the PRAs, price assessments may also be provided by other ("non-PRA") providers, such as market intelligence providers, exchanges and brokers. According to the market investigation results, non-PRA providers generally do not seem to offer a credible alternative to price assessments provided by PRAs. The large majority of providers and customers do not consider that these offer a credible alternative to PRA price assessments.[727] However, a number of customers explain that price assessments provided by exchanges sometime do offer credible alternative and even act as benchmark prices, and that this is particularly the case for commodities with high exchange liquidity.[728]

(912) In this context, the Commission considers that market shares based on the competitor set including only PRAs offer the most appropriate first proxy for assessing relative market positions of players in this market. But, for commodity groups where market investigation indicates that other non-PRA players provide credible alternative to PRA price assessments, the competitive assessments takes such non-PRA providers' positions into account.

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722 Replies to question 63 of Questionnaire 3.

723 Minutes of a call with a market participant on 11 March 2021.

724 Minutes of a call with a market participant on 25 June 2021, and replies to questions 26 and 27 of Questionnaire 1 and question 23 of Questionnaire 3.

725 Minutes of a call with a market participant on 17 March 2021.

726 Reply to question 30 of Questionnaire 1.

727 Replies to question 11 of Questionnaire 1 and question 6 of Questionnaire 3.

728 Replies to question 11 of Questionnaire 1 and question 6 of Questionnaire 3.

7.3.1.2. Overview of the affected markets

(913) Given that the Parties only overlap in the supply of spot price assessments and that IHSM's activities in rack and retail price assessments [IHSM's revenue information],[729] our assessment focuses on spot price assessments only.

(914) The Parties' activities in spot price assessments give rise to horizontally affected markets in all of the overlapping commodity groups and/or plausible segmentations within these commodity groups: (i) agriculture (affected market in biofuels assessment family only), (ii) coal, (iii) LNG, (iv) metals, (v) natural gas, (vi) oil, (vii) petrochemicals, (viii) power, and (ix) shipping. The following sections provide competitive assessments for price assessments for each affected commodity group, and where relevant for affected narrower plausible product markets within the commodity group.[730]

7.3.1.3. Price assessments - Biofuels

(A) The Parties' activities

(915) The Transaction gives rise to an affected market in the global market for biofuel price assessments (and plausible narrower segments based on assessment regions). Biofuels are an assessment family within agriculture commodity group, where S&P is active through Platts, and IHSM through OPIS and Agribusiness.[731]

(B) The Notifying Party's view

(916) The Notifying Party submits that no competition concerns arise because IHSM is a particularly small player, and because in the majority of product categories in the EMEA where the Parties' overlap neither of them provides the benchmark.[732]

(C) The Commission's assessment

(917) For the reasons set out below, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the global market for biofuel price assessments. The serious doubts arise due to the overlap between the biofuel price assessments of S&P Platts and that of IHSM OPIS (and not IHSM Agribusiness).

(918) *First*, the Parties are strong providers of biofuel price assessments, likely among the largest three providers of biofuel price assessments globally. That is evident from the Parties' and the competitors' market shares, and confirmed by the market investigation results.

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729 Form CO, Chapter on Price assessments, paragraph 6.57.

730 That is, we consider plausible markets at the level of an assessment family and segmented by the geographical region of the underlying commodity. At an even narrower level of an individual commodity/specification, competitive dynamics lead to the emergence of a clear market leader (the benchmark provider) with a nearly monopolistic position in terms of its market share. Given the high supply-side substitutability between commodities within an assessment family, however, any analysis of such a narrow market, would be misleading.

731 No affected market arises at the level of commodity group agriculture or any other assessment family other than biofuels (including on any plausible narrower segments based on assessment regions).

732 From CO, Chapter on Price assessments, paragraph 6.202.

(919) Table 26 below shows the market shares of the Parties and their PRA competitors in the global market for biofuel price assessments in 2020.[733] The Parties have a significant combined market share of [50-60]% in this market, with a relatively high increment of [10-20]%-point added by IHSM. The majority of the share increment is contributed by IHSM OPIS ([10-20]%-point), with IHSM Agribusiness' share increment being minimal at [0-5]%-point.

Table 26: Market shares in price assessments, PRAs only, Assessment family: Biofuels, Global (2020)

Competitor	Market share
Platts	[40-50]%
IHSM (OPIS)	[10-20]%
IHSM (Agribusiness)	[0-5]%
Combined	***[50-60]%***
DTN (Telvent)	[20-30]%
Agribriefing	[5-10]%
OilWorld	[5-10]%
Argus	[0-5]%
ICIS	[0-5]%
Others	[5-10]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on price assessments, Annex C.27)

(920) The Notifying Party submits that biofuels in particular are a liquid commodity where exchanges could also be considered important competitors,[734] while a market participant explains that, on the contrary, smaller markets like biofuels lack the necessary liquidity.[735] In any case, even if the main exchanges providing biofuel price assessments (ICE and CME) are added to the competitor set, the Parties' combined market share remains high at [40-50]% with a share increment of [5-10]%-point.[736]

(921) The Parties' strong position in this market is further supported by the market investigation results. Virtually all competitors consider S&P as the market leader in this market, followed by Argus and IHSM.[737] In this respect, it appears that the market shares estimates provided underestimate the position of Argus (whom respondents consider as the second or third largest provider) and overestimate the position of DTN (whom none of the respondents mention as among the primary providers). No competitor listed IHSM Agribusiness as among the primary providers of biofuels price assessments.

(922) *Second*, the players able to offer credible biofuel price assessments appear to be limited to the Parties and Argus, and other providers do not appear to exert

[733] The Notifying Party confirms that the Parties' and main competitors' market shares in 2018 and 2019 would not materially differ from the 2020 shares.

[734] Notifying Party's response to RFI 29, paragraph 7.3.

[735] Reply to question 6 of Questionnaire 3.

[736] The Commission's calculations based on Form CO, Chapter on Price assessments, Annex C.27.

[737] Replies to question 45 of Questionnaire 1 and question 28 of Questionnaire 3.

significant competitive constraints on these three providers. This is observable in the overlap analysis provided by the Notifying Party and confirmed by the market investigation.[738]

(923) Even though the overlap analysis is limited to overlapping categories only (and thus does not provide a complete view of the biofuels market as a whole), it indicates that the majority of biofuel benchmark price assessments are provided either by Platts, IHSM OPIS or Argus. Out of the […] biofuel categories listed, Argus holds the benchmark in […] of these, Platts in […] and IHSM OPIS in […]. IHSM Agribusiness does not provide a benchmark in any of these categories.[739]

(924) The lack of credible providers of biofuels price assessments is also reflected in the customer's responses to the market investigation: *"There is only – if at all – low competition in the area of biofuels"*,[740] *"All biofuels contracts in Europe settle on Argus and Platts. We don't see other alternatives for this product"*,[741] and *"In case of biofuels there are only few supplier of market intelligence and/or price assessment"*.[742]

(925) *Third*, the Parties' appear to be at least among the top four potential price assessment providers of benchmarks for new markets that will emerge in relation to biofuels.

(926) Biofuels are a commodity related to both agriculture and oil, with competitors being split between whether biofuels are more closely related to agriculture or to oil.[743] Virtually all competitors consider that new markets related to agriculture and oil are likely to emerge in the next 5 years, and some specifically mention biofuels as an area where new market in which the opportunities for a benchmark are most likely to emerge.[744]

(927) The Parties rank among the top four price assessment providers with respect to their ability to become benchmarks in new markets related to both oil and agriculture.[745] The Parties' unique ability to approach new emerging benchmarks both from the perspective of agriculture and oil may therefore make them particularly strong competitors for new markets related to biofuels.

(928) *Fourth*, as discussed in Section 7.3.1.1., the price assessment market are characterised by high barriers to entry, strong network effects and high customer switching costs.

(929) *Finally*, a number of market participants raise biofuels as a specific price assessment market on which the Transaction will have a negative impact. For example, customers explain that: *"In case of biofuels, […] The transaction will further*

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738 The Notifying Party submits a detailed analysis of the most narrow price assessment categories where the Parties' price assessments overlap (the "overlap analysis"). For each overlapping price assessment category, the overlap analysis provides the information on the role of the Parties' and competitors' price assessments in this category.

739 Form CO, Chapter on Price assessments, AnnexC.14. [description of benchmark providers].

740 Reply to question 9 of Questionnaire 3.

741 Reply to question 22 of Questionnaire 3.

742 Reply to question 104 of Questionnaire 3.

743 Replies to question 17 of Questionnaire 1.

744 Replies to question 43 and 55 of Questionnaire 1.

745 Replies to question 44 and 55 of Questionnaire 1 and questions 28 and 38 of Questionnaire 3.

increase market concentration and thus reduce the rather limited options to have at least two independent market informaion sources even further"[746] and *"With respect to price assessments, the Transaction could specifically reduce the choice with respect to new / emerging markets (e.g. biofuels and low carbon), for which IHSM competes"*.[747] For the reasons laid out above, the Commission considers that these theories of harm are likely to materialise.

(930) In view of the above considerations, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to the global market for biofuel price assessments.[748]

7.3.1.4. Price assessments - Coal

(A) The Parties' activities

(931) The Transaction gives rise to an affected market in the global market for coal price assessments (and plausible narrower segments based on assessment families and/or assessment regions), where S&P is active through Platts, and IHSM through CMM, under the McCloskey brand.

(932) In addition, IHSM has a commercial collaboration with Argus to produce the Argus/McCloskey's Coal Price Index, which represents the average price of Argus and McCloskey's assessments, which is then used to produce the composite Average Price Indexes ("API") benchmark.

(B) The Notifying Party's view

(933) The Notifying Party submits that no plausible competition concerns arise for the following reasons. Platts is a small player, particularly in the EEA; the Parties' price assessments are differentiated and have different use cases; and the Parties only overlap in […] out of […] categories for the majority of which a wide competitor set exists.[749]

(C) The Commission's assessment

(934) For the reasons set out below, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the global market for coal price assessments.

(935) *First*, the global market for coal price assessment market is a highly consolidated market, with the Parties being two of the three main providers (alongside Argus) of credible coal price assessments. That is evident from the Parties' and competitors' market shares, the overlap analysis and confirmed by many market participants. The

746 Reply to question 104 of Questionnaire 3.

747 Minutes of a call with a market participant on 14 September 2021.

748 Given that the Transaction raises serious doubts with respect to the overlap between the Parties' activities in the global market for the provision of biofuel price assessments, we do not further discuss plausible segmentation of biofuel price assessments based on the underlying geographic location of the assessed commodity.

749 Form CO, Chapter on Price assessments, paragraph 6.205.

limited number of available alternative to the Parties' coal price assessments is further demonstrated by the Notifying Parties' overlap analysis.

(936) Table 27 below shows the market shares of the Parties and their PRA competitors in the global market for coal price assessments in 2020.[750] The Parties have a high combined market share of [40-50]% in this market, with a high increment of [20-30]%-point added by Platts. The other main provider with a significant market share is Argus with [30-40]% market share.

Table 27: Market shares in price assessments, PRAs only, Commodity group: Coal, Global (2020)

Competitor	Market share, global
Platts	[20-30]%
IHSM (CMM)	[20-30]%
Combined	***[40-50]%***
Argus	[30-40]%
Global Coal	[5-10]%
Euromoney (FastMarkets)	[5-10]%
FenWei	[5-10]%
Coalindo	[0-5]%
CRU	[0-5]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on price assessments, Annex C.27)

(937) The view that the Parties and Argus are the main three providers that no other provider is able to match is also recognized in IHSM's internal documents, [assessment of competitors in IHSM's internal documents].[751] The documents also suggest that, [assessments of competitors in IHSM and S&P's internal documents].[752]

(938) The concern that credible coal price assessments providers are limited to Platts, IHSM and Argus is shared among a number of market participants. A market participant explains that "*currently the price assessments for coal are only offered by a JV between IHS and Argus, with Platts being the only competitor*"[753] and a customer who is concerned about the impact of the Transaction on *"coal price assessments where IHSM's products are of the best quality with few alternatives (including S&P)"*.[754] Other customers states that: *"Market for the coal price assessment is very concentrated, with very few main players recognized by all market participants (namely Platts, Argus and IHS)"*[755] and *"We consider S&P*

[750] The Notifying Party confirms that the Parties' and main competitors' market shares in 2018 and 2019 would not materially differ from the 2020 shares.

[751] IHSM' internal document ASH000144.

[752] S&P's internal document DOC_00000880.

[753] Minutes of a call with a market participant on 11 March 2021.

[754] Minutes of a call with a customer on 20 April 2021.

[755] Reply to question 80 of Questionnaire 3.

Platts, Argus and IHSM as the most important players in the price assessment market."[756]

(939) Limited number of providers can also be observed in the Notifying Party's overlap analysis. In the very large majority of […] categories in which the Parties overlap, the benchmark is provided by either one of the Parties or Argus.[757] In the large majority of these […] categories, there is no or only one other provider of price assessment that could function as the benchmark price assessment. This is consistent with a customer's explanation that *"In exclusively physical contract markets, there are normally two (for instance in coal) […] reference price providers which compete."*[758]

(940) <u>*Second*</u>, providers other than the Parties and Argus do not appear to offer credible alternative price assessment or constrain the main three players to a significant extent. Other players that a few customers mention as among the top 5 largest providers of coal price assessment globally are Global Coal, FastMarkets and CRU.[759] However, as also evident from the market participants' views cited above, these companies do not appear to exert competitive constraint on the Parties. While the Notifying Party considers that FastMarkets would be able to provide a benchmark in some overlapping categories, it does not currently provide it in any of these. In addition, according to an overview of FastMarkets in S&P's internal documents, FastMarkets are not perceived by S&P as strong competitors in coal price assessments.[760] With respect to Global Coal and CRU, the Notifying Party itself recognizes these as competitors whose current prices would be less likely to function as a benchmark.[761]

(941) <u>*Third*</u>, in addition, it is unclear how much of a constraint Argus could exert on the Parties post-Transaction. A large proportion of benchmarks provided by Argus are not standalone Argus assessments, but rather the API price assessments that use IHSM's price assessments as an input.[762] While the Notifying Party submits that Argus would be a strong competitor even with their standalone price assessments, IHSM's price assessments appear to be an important component of Argus' offering and it is unclear to what extent IHSM or the merged entity post-Transaction would have the ability to degrade Argus' offering in this area. In addition, the agreement between Argus and IHSM [contractual arrangements].[763]

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[756] Reply to question 31 of Questionnaire 3.

[757] Form CO, Chapter on Price assessments, Annex C.14. Only in two categories the benchmark is not provided In one category, there is no benchmark in the market and in the other one, the benchmark is provided by Pace.

[758] Minutes of a call with a market participant on 11 March 2021.

[759] Replies to question 31 of Questionnaire 3.

[760] S&P's internal document DOC_000001131, slide 54: [assessment of competitors in S&P's internal documents]."

[761] From CO, Chapter on Price assessments, Annex C.14.

[762] Form CO, Chapter on Price assessments, Annex C.14. In 4 out of 6 categories in which Argus offers the benchmark price assessments, these is the API assessments.

[763] From CO, Chapter on Price assessments, paragraph 6.219.

(942) The fact that Platts is considered the clear market leader in metallurgical coal[764] and IHSM is stronger in thermal coal,[765] while in both cases only three main providers are active, means that the Transaction will further reinforce the Parties' strength in the overall coal price assessments market.

(943) *Fourth*, given that the Parties are two of only three main credible providers of coal price assessments they compete closely and often provide the closest credible alternative to one another. This is confirmed in the market investigation, as the majority of customers list the Parties as each other's second closest competitor, after Argus.[766]

(944) *Third*, there is no prospect of entry into the coal price assessment market. As discussed in Section 7.3.1.1., barriers to entry in the market for price assessments are high, network effects are strong and customer switching is very difficult. In addition, a customer explains that "*given the general structural decline in the coal market, it is hard to see many new players wanting to enter."*[767]

(945) *Fourth*, nevertheless, market participants who consider that new market related to coal may arise in the next 5 years, rank the Parties and Argus as the top three providers with respect to their ability to offer benchmarks in these markets.[768]

(946) *Finally*, the majority of responding competitors and customers expect the Transaction to have a negative impact on the global market for coal price assessments.[769] A number of them also raise concrete concerns that the Transaction will lead to a further reduction of competitors in an already highly consolidated market. A customer for example *"believes that the transaction could have anti-competitive effects in the medium to long-term by reducing the number of competitors in already concentrated markets (especially in coal and power). [The customer] believes that quality of the products could decrease or prices increase as a result of the transaction."*[770] Another one explains: *"currently the price assessments for coal are only offered by a JV between IHS and Argus, with Platts being the only competitor. The Transaction will therefore eliminate competition in coal price assessments."*[771]

(947) A customer also explains that they value a diversity of available price assessments and that the current market structure *"grants at least a minimum level diversification (in an already very concentrated market) in the price assessment".*[772] The Transaction would eliminate the required diversity of views.

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764 Platts' market share in the global market for metallurgical coal, PRAs only, 2020 was [30-40]%, with IHSM having [10-20]% and Argus [10-20]%. Strong position of Platts is reflected both in IHSM's and Platts' internal documents (e.g. DOC_00000892, ASH000143).

765 IHSM's market share in the global market for thermal coal, PRAs only, 2020 was [20-30]%, with Platts having [10-20]% and Argus [30-40]%.

766 Replies to question 32 of Questionnaire 3.

767 Reply to question 32 of Questionnaire 3.

768 Replies to question 50 and 51 of Questionnaire 1.

769 Replies to question 96 of Questionnaire 1 and question 106 of Questionnaire 3.

770 Minutes of a call with a customer on 20 April 2021.

771 Minutes of a call with a market participant on 11 March 2021.

772 Reply to question 31 of Questionnaire 3.

(948) For the reasons laid out above, the Commission considers that these theories of harm are likely to materialise.

(949) In view of the above considerations, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to the global market for coal price assessments.[773]

7.3.1.5. Price assessments - LNG

(A) The Parties' activities

(950) The Transaction gives rise to an affected market in the global market for LNG price assessments (and plausible narrower segments based on assessment families and/or assessment regions), where S&P is active through Platts and IHSM through OPIS.

(B) The Notifying Party's view

(951) The Notifying Party submits that no plausible competition concerns arise because IHSM is not a significant competitor, and the Parties overlap on a limited set of categories where a wide set of competitors is present.[774]

(C) The Commission's assessment

(952) The Commission's investigation indicates that the Transaction is unlikely to give rise to competition concerns in the global market for LNG price assessments.

(953) *First*, while Platts is a strong PRA provider of LNG price assessments, IHSM is a very small and unimportant player and the Transaction will therefore have virtually no impact on the structure of the global market for LNG price assessments. Indeed, IHSM provides only four LNG price assessments, [IHSM's revenue information].

(954) Table 28 below shows the market shares of the Parties and their PRA competitors in the global market for LNG price assessments in 2020.[775] The Parties' have a high combined market share of [50-60]% in this market, but with a very increment of [0-5]%-point added by IHSM.

[773] Given that the Transaction raises serious doubts with respect to the overlap between the Parties' activities in the global market for the provision of coal price assessments, we do not further discuss plausible segmentation of coal price assessment based on the assessment family or the underlying geographic location of the assessed commodity.

[774] Form CO, Chapter on Price assessments, paragraph 6.225.

[775] The Notifying Party confirms that the Parties' and main competitors' market shares in 2018 and 2019 would not materially differ from the 2020 shares.

Table 28: Market shares in price assessments, PRAs only, Commodity group: LNG, Global (2020)

Competitor	Market share
Platts	[50-60]%
IHSM (OPIS)	[0-5]%
Combined	***[50-60]%***
Argus	[20-30]%
ICIS	[10-20]%
SCI99	[5-10]%
RIM Intelligence	[0-5]%
Spark	[0-5]%
Energy Intelligence	[0-5]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on price assessments, Annex C.27)

(955) The fact that IHSM is a small and unimportant player is confirmed by the market investigation results. While some respondents list IHSM as the fourth largest provider of LNG price assessments, all substantiated responses suggest that IHSM is a small player.[776] A customer, for example, explains that "*Currently, Platts has a strong hold over global LNG assessments and IHS do not provide any relevant market price assessment*"[777] and a competitor that: "*S&P Platts, ARGUS, ICIS are the three main organisations providing LNG price assessments globally.*"[778]

(956) *Second*, many other providers of LNG price assessments compete more strongly and closely with Platts, the main ones being ICIS and Argus. Indeed, the majority of customer and competitors list Argus as the closest competitor, and ICIS as the second closest competitor to Platts.[779] Virtually no respondents consider IHSM as a close competitor to Platts.

(957) *Third*, with respect to newly emerging markets related to LNG, the market investigation confirms Platts, Argus and ICIS as best placed to provide benchmarks in these markets, while IHSM is not considered a strong potential competitor.[780]

(958) *Fourth,* while some competitors expect the Transaction to have a negative impact on the global market for LNG price assessments, most of the customers expect a neutral or even positive effect.[781]

(959) *Finally,* while IHSM's market share is higher in certain plausible narrower markets, the market investigation did not provide any indication that post-Transaction there would not remain enough competition in these segments.

776 Replies to question 57 of Questionnaire 1 and question 37 of Questionnaire 3.
777 Reply to question 106 of Questionnaire 3.
778 Reply to question 57 of Questionnaire 1.
779 Replies to question 58 of Questionnaire 1 and question 38 of Questionnaire 3.
780 Replies to question 60 of Questionnaire 1.
781 Replies to question 96 of Questionnaire 1 and question 106 of Questionnaire 3.

(960) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the global market for LNG price assessments.[782]

7.3.1.6. Price assessments - Metals

(A) The Parties' activities

(961) The Transaction gives rise to an affected market in the global market for metal price assessments in the Americas assessment region (and a narrower plausible segment for American iron ore price assessments). S&P provides metals price assessment through Platts and IHSM through CMM.

(B) The Notifying Party's view

(962) The Notifying Party submits that, based on market share calculations that include non-PRAs in the competitor set, no affected market arises in the commodity group metals or any narrower segment thereof.[783]

(963) The Notifying Party submits that no competition concerns arise because IHSM has a *de minimis* presence, and the Parties overlap in a limited number of categories where a wide set of competitors is present.[784]

(C) The Commission's assessment

(964) The Commission's investigation indicates that the Transaction is unlikely to give rise to competition concerns in relation to the global market for metal price assessments in the Americas assessment region (or any narrower segment).

(965) *First*, while Platts is one of the main providers of metal price assessments, IHSM is a very small and unimportant player. The Transaction will therefore have virtually no impact on the structure of the global markets for metal price assessments in the Americas assessment region.

(966) Table 29 below shows the market shares of the Parties and their PRA competitors in the global market for metal price assessments in the Americas assessment region in 2020.[785] The Parties' have a moderate combined market share of [20-30]% in this market, but with a *de minimis* increment of [0-5]%-point added by IHSM. The limited position of IHSM in this market is reflected in an HHI delta of [below 150].[786] Thus, the Transaction is unlikely to cause significant change in the competitive landscape of this market.

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782 The same conclusion would likely apply to all the plausible segments within the global market for LNG price assessments, but in any event, the proposed divestment removes the entirety of the overlap on all plausible segments.

783 Form CO, Chapter on Price assessments, paragraph 6.226.

784 From CO, Chapter on Price assessments, paragraph 6.227.

785 The Notifying Party confirms that the Parties' and main competitors' market shares in 2018 and 2019 would not materially differ from the 2020 shares.

786 Based on the Horizontal Merger Guidelines, paragraph 20, the Commission is unlikely to identify horizontal competition concerns in a merger concerning relevant markets with an HHI delta below 150,

Table 29: Market shares in price assessments, PRAs only, Commodity group: Metals, Assessment region: Americas, Global, 2020

Competitor	Market share
Platts	[20-30]%
IHSM (CMM)	[0-5]%
Combined	***[20-30]%***
Euromoney (FastMarkets)	[40-50]%
CRU	[10-20]%
Argus	[5-10]%
Steel Orbis	[0-5]%
Kallanish	[0-5]%
Others	[5-10]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on price assessments, Annex C.27)

(967) The fact that IHSM is a small and unimportant player is confirmed by the market investigation results, with virtually no respondents indicating IHSM as one of the top five primary suppliers of metal price assessments globally.[787] Consistent with the above, S&P in its internal documents does not benchmark its metal price assessments against IHSM.[788]

(968) *Second*, many other providers of metal price assessments compete more strongly and closely with Platts, with the main ones being FastMarkets and Argus. Indeed, the market investigation confirms that FastMarkets and Argus are the primary suppliers of metal price assessments globally, alongside Platts.[789] In addition, the market investigation respondents confirm FastMarkets and Argus as the closest competitors to both Platts and IHSM,[790] which is also reflected in S&P's internal documents.[791]

(969) *Third*, majority of market investigation respondents consider that the Transaction will have a neutral or positive impact on the market for metal price assessments globally. A competitor even states that *"IHS Markit is not active in the provision of metals price assessments so we don't envisage that this Transaction will change the position of the combined group."*[792]

(970) *Finally*, the market share of IHSM remains [0-5]% also under a narrower segment for iron ore price assessment in the Americas assessment region, and the market investigation did not provide any evidence that the above conclusions could differ at the level of the iron ore assessment family. The above conclusions therefore apply equally to both affected markets within the metals price assessments.

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subject to certain caveat factors. While IHSM is a recent entrant, it could not be considered an important innovator in metals price assessments.

787 Replies to question 61 of Questionnaire 1 and question 39 of Questionnaire 3.

788 S&P's internal documents e.g. DOC_00000880.

789 Replies to question 61 and 106 of Questionnaire 1 and question 39 of Questionnaire 3.

790 Replies to question 62 of Questionnaire 1 and question 40 of Questionnaire 3.

791 S&P's internal documents e.g. DOC_00000880.

792 Reply to question 94 of Questionnaire 1.

(971) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the global market for metals in the Americas assessment region or a narrower segment for iron ore price assessment in the American assessment region.

7.3.1.7. Price assessments - Natural Gas

(A) The Parties' activities

(972) The Transaction gives rise to an affected market in the global market for natural gas price assessments (and narrower plausible segments based on assessment families and/or the assessment regions), where S&P is active through Platts and IHSM through Point Logic.

(B) The Notifying Party's view

(973) The Notifying Party submits that no plausible competition concerns arise because Point Logic is a very small competitor for natural gas price assessments globally,[793] which primarily focuses on market intelligence products and does not provide any price assessment benchmarks. Point Logic is considered a competitor whose price assessments would be less likely to function as contract reference prices.[794]

(C) The Commission's assessment

(974) The Commission's investigation indicates that the Transaction is unlikely to give rise to competition concerns in relation to the global market for natural gas price assessments or any plausible narrower segments.

(975) *First*, Point Logic is not an important provider of natural gas price assessments. Point Logic is not a PRA, focuses mainly on market intelligence products and does not provide any benchmark price assessments. A customer, for example, explains that *"I do not believe Point Logic is really use[d] for price assessments, Argus & ICIS being the reference"*.[795] As discussed in Section 7.3.1.1., non-PRA providers are generally not perceived as offering credible alternatives to PRA price assessments.

(976) *Second*, even if we conservatively consider Point Logic as competing to a certain extent with PRAs in the market for natural gas price assessments, it would be a very small player in such a market and would not compete closely with Platts.

(977) Table 30 below shows the market shares of the Parties and their PRA competitors in the global market for natural gas price assessments in 2020.[796] The Parties' have a high combined market share of [50-60]% in this market, which largely reflects Platts' strong market position pre-Transaction, with a *de minimis* increment of [0-5]%-point added by IHSM.

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793 Point Logic revenue in 2020 was [IHSM's revenue information].

794 Form CO, Chapter on Price assessments, paragraph 6.229.

795 Reply to question 67 of Questionnaire 1.

796 The Notifying Party confirms that the Parties' and main competitors' market shares in 2018 and 2019 would not materially differ from the 2020 shares.

Table 30: Market shares in price assessments, PRAs and Point Logic only, Commodity group: Natural Gas, Global, 2020

Competitor	Market share
Platts	[50-60]%
IHSM (Point Logic)	[0-5]%
Combined	***[50-60]%***
ICIS	[20-30]%
Argus	[10-20]%
NGI	[0-5]%
SCI99	[0-5]%
Energy Intelligence	[0-5]%
Others	[0-5]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on price assessments, Annex C.27)

(978) The fact that IHSM is a small and unimportant player, which does not compete closely with Platts, is confirmed by the market investigation. Virtually no respondents consider IHSM as among the 5 primary suppliers of natural gas price assessments globally, and the majority confirm that IHSM cannot be considered a close competitor to Platts in the provision of natural gas price assessments or any specific assessment family within natural gas.[797] A competitor, for example, explains: *"S&P Platts and IHSM are both providing price assessments in gas and are hence competitors. Yet, IHSM is not providing price assessment that can be considered benchmarks so the area on which they compete is limited"*. [798]

(979) *Third*, many other providers of natural gas price assessments compete more strongly and closely with Platts, with the main ones being ICIS and Argus. Indeed, the market investigation confirms that, alongside Platts, ICIS and Argus are the primary suppliers of natural gas price assessments globally.[799] This is also evident from the overlap analysis, which confirms that IHSM does not provide any benchmark price assessments and that in the majority of categories where the Parties overlap, the benchmark is provided by either Platts or ICIS.[800]

(980) *Fourth*, natural gas is a commodity in which non-PRAs, particularly exchanges, appear to offer credible alternative price assessments that functions as benchmarks and compete with that of the PRA price assessments. A competitor, for example, explains that *"Exchanges can be considered as competitors on the main benchmarks (Henry Hub or TTF for instance) but have a less diverse portfolio as the assessment they produce are on the most liquid contracts. ICE is an important provider of benchmarks. CME is a key benchmark provider in the US but has no outreach in Europe."*[801] Exchanges can therefore also be considered as providers offering closer

797 Replies to question 66 and 67 of Questionnaire 1 and questions 42 and 53 of Questionnaire 3.
798 Reply to question 67 of Questionnaire 1.
799 Replies to question 65 of Questionnaire 1 and question 41 of Questionnaire 3.
800 Form CO, Chapter on Price assessments, Annex C.14.
801 Reply to question 65 of Questionnaire 1.

alternatives to Platts' price assessments than IHSM does, since they offer a number of benchmarks in the area of natural gas.

(981) *Fifth*, while the majority of competitors and about half of the respondents consider that the Transaction will have a negative impact on the market for the natural gas price assessments globally, none of the concerns are substantiated and these are generally contradicted by the respondents' other comments, as summarised above.

(982) *Finally*, the market share of IHSM remains [0-5]% under all narrower segments (based on assessment families or assessment regions), and the market investigation did not provide any evidence that the above conclusions would differ for any of the narrower segments. The above conclusions therefore apply equally to all affected markets within the global market for natural gas price assessments.

(983) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the global market for natural gas price assessments, or any narrower segment thereof.

7.3.1.8. Price assessments - Oil

(A) The Parties' activities

(984) The Transaction gives rise to an affected market in the global market for oil price assessments (and narrower plausible segments based on assessment families and/or assessment regions), where S&P is active through Platts and IHSM through OPIS.

(B) The Notifying Party's view

(985) The Notifying Party submits that no plausible competition concerns arise for either crude or refined oil products, the two relevant assessment families within the commodity group oil.[802] The Notifying Party argues that:

(a) In crude oil, IHSM has limited sales in the EEA and the Parties only overlap in one narrow category.[803]

(b) In refined oil, IHSM has limited sales in the EEA and where the Parties overlap there is a wide competitor present.[804]

(C) The Commission's assessment

(986) For the reasons set out below, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the global market for oil price assessments.

(987) *First*, Platts is the clear market leader in the supply of oil price assessments globally (with the exception of crude oil), and Argus and OPIS are the main (if not the only) credible challengers.

802 Form CO, Chapter on Price assessments, paragraph 6.234.
803 Form CO, Chapter on Price assessments, paragraph 6.235 ff.
804 Form CO, Chapter on Price assessments, paragraph 6.235 ff.

(988) Table 31 below shows the market shares of the Parties and their PRA competitors in the global market for oil price assessments in 2020.[805] The Parties have a high combined market share of [60-70]% in this market, with a moderate increment of [5-10]%-point added by OPIS. The other main provider with a significant market share is Argus with [20-30]%.

Table 31: Market shares in price assessments, PRAs only, Commodity group: Oil, Global, 2020

Competitor	Market share
Platts	[60-70]%
IHSM (OPIS)	[5-10]%
Combined	***[60-70]%***
Argus	[20-30]%
DTN (Telvent)	[0-5]%
ICIS	[0-5]%
RIM Intelligence Co.	[0-5]%
Energy Intelligence	[0-5]%
Others	[0-5]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on price assessments, Annex C.27)

(989) The Notifying Party submits that oil is a particularly liquid commodity where exchanges could also be considered important competitors.[806] In any case, even if exchanges are added to the competitor set, the Parties' combined market share remains high at [50-60]% with a share increment of [0-5]%-point.[807]

(990) Platts is the incumbent and the clear leader in the provision of oil price assessments globally (with the exception of crude oil), which is also confirmed by market participants' responses[808] and Platts' internal documents. For example, market participants explain that *"Platts is the biggest and reports on the majority of global oil markets"*,[809] that *"Platts holds the majority of benchmark prices in oil"*[810] and that *"Platts is the incumbent for all energy markets in the US except for crude oil, for which Argus is the incumbent".*[811] In Platts' internal documents the company describes itself as *[*description of business in internal documents].[812]

(991) With respect to the position of IHSM, the Parties' internal documents and the market investigation results, suggests that the market share presented underestimate the importance of IHSM. Instead, it appears that IHSM is, alongside Argus and Platts, a strong provider of oil price assessments.

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805 The Notifying Party confirms that the Parties' and their main competitors' market shares in 2018 and 2019 would not materially differ from the 2020 shares.

806 Notifying Party's response to RFI 29, paragraph 7.3.

807 The Commission's calculations based on Form CO, Chapter on Price assessments, Annex C.27.

808 Replies to questions 52 of Questionnaire 1 and 34 of Questionnaire 3. The other two providers also mentioned by a number of market participants are ICIS and ICE.

809 Minutes of a call with a customer on 18 February 2021.

810 Minutes of a call with a customer on 25 June 2021.

811 Minutes of a call with a customer on 11 March 2021.

812 E.g. DOC_00000875 and DOC_00000888.

(992) The market investigation confirms that Platts, Argus and IHSM are the main three suppliers of oil price assessments,[813] with a number of market participants describing them as the only providers of benchmark price assessments for oil. For example, a customer explains: *"Platts and OPIS are the only two providers of price benchmarks for energy commodities in the US, with the only exception being crude oil provided by Argus."*[814]

(993) *Second,* IHSM is therefore a close, potentially the closest, competitor to Platts, often providing the closest credible alternative to Platts' price assessments.

(994) The market investigation results indicate that the closest competitor to both IHSM and Platts is Argus. With respect to the second closest competitor to IHSM, the vast majority of the respondents indicate Platts. With respect to the second closest competitor to Platts, the responses are mixed between IHSM, ICE (which is not a PRA but is an exchange) and ICIS. ICE and ICIS are further discussed in paragraphs (993) to (996) below.

(995) However, in both Parties' internal documents it is evident that they consider each other as close competitors, and potentially the closest competitors in refined oil. Platts' internal documents list IHSM and Argus as the main competitors in refined oil, [description of competitors in internal documents].[815] While they also list IHSM as one of the main competitors in crude oil, [description of competitors in internal documents].[816] In IHSM's internal documents, IHSM states the following with respect to OPIS spot price assessments: [description of competitors in internal documents][817]

(996) *Third*, other providers whose price assessments the Notifying Party considers as being able to function as a benchmark, and which have been mentioned by some market participants as among primary suppliers of oil price assessments, do not appear to constrain the main three PRAs to a material extent. These mainly include exchanges (specifically ICE and CME), ICIS and other small PRAs (specifically General Index, Rim Intelligence and Energy Intelligence Group).

(997) Overall, none of these providers currently provides a benchmark in any of the categories where the Parties' overlap, with one exception, namely CME that provides one benchmark for financial derivatives in crude oil.[818]

(998) With respect to exchanges, the market investigation results confirm that these are generally not perceived as offering a credible alternative to PRA price assessments (see Section 7.3.1.1.). In addition, a large exchange active in the oil price assessment space itself confirms that they do not perceive themselves as competing with PRAs, explaining that *"[an exchange] does not consider itself to be a competitor to the PRAs as [the exchange's] real-time price data are not substitutes for PRAs' price assessments"*[819] and a customer explains that with respect to oil specifically *"other*

813 Replies to questions 52 of Questionnaire 1 and 34 of Questionnaire 3.
814 Minutes of a call with a customer on 11 March 2021.
815 S&P's internal document DOC_00000888.
816 S&P's internal document DOC_00000875.
817 IHSM's internal document ASH000105.
818 Form CO, Chapter on Price assessments, Annex C.14.
819 Minutes of a call with a market participant on 11 March 2021.

oil price assessment providers, like for example exchanges/trading venues are not real substitutes to PRAs".[820] This customer also explains that using a different price assessment for physical and financial/hedging transactions creates a risk, and therefore financial oil derivatives are mostly based on Platts.[821]

(999) While ICIS is one of the large PRAs, they are not strong in oil price assessments and therefore do not constrain the Parties in these markets. This is evidenced in a number of S&P's internal documents, in which [description of competitors in internal documents].[822]

(1000) With respect to other small PRAs, the investigation did not provide any evidence that these smaller PRAs exert a material constraint on the main three PRAs. With respect to General Index specifically, who is a relatively new entrant, a customer explains that while General Index offers more interesting contract terms and have a more modern interface/infrastructure, the customer is not able to purchase from them because the industry as whole is not switching.[823]

(1001) Therefore, the Transaction would eliminate one of the only two providers that are able to exert a material competitive constraint on the market leader Platts.

(1002) *Fourth,* while Argus is currently a strong provider, and a market leader in crude oil, the combination of the Parties' activities could lead to weakening of Argus' ability to compete (even in crude oil). That is because the Parties' could become a one-stop shop for all oil price and offer only a full package of all oil price assessments (as is currently the case for Platts), and because using different PRAs across the value chain (e.g. refined products and crude products) might create risks for customers, who would therefore prefer switching to the combined entity for all of its products.[824]

(1003) *Fifth,* already pre-Transaction customers explain that they have almost no bargaining power vis-à-vis Platts when negotiating oil price assessments. The addition of IHSM would further increase their dependency on the combined entity and reduce their negotiation power.[825]

(1004) *Sixth*, as discussed in Section 7.3.1.1., the price assessment markets are characterised by high barriers to entry, strong network effects and high customer switching costs. Platts' internal documents confirm that benchmark price assessments for oil are very well entrenched into the industry.

(1005) *Finally*, the majority of the competitors and customers expect the Transaction to have a negative impact on the global market for oil price assessments.[826] Many of them also raise concrete concerns that the Transaction will lead to a further reduction

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820 Minutes of a call with a customer on 18 February 2021.

821 Minutes of a call with a customer on 18 February 2021.

822 DOC_00000875.

823 Minutes of a call with a customer on 27 April 2021.

824 Minutes of a call with a customer on 18 February 2021, who explains: *"It is noteworthy that when one PRA is used as a benchmark at one point in the value chain (e.g. refined oil products), it creates a basis risk if a different PRA is used elsewhere (e.g. crude oil).*"

825 E.g. Minutes of a call with a customer on 18 February 2021 and 27 April 2021.

826 Replies to question 96 of Questionnaire 1 and question 106 of Questionnaire 3.

of competitors in an already highly consolidated market, leading to increased prices, less choice and less innovation. A customer for example *"There are only three options available in the market at present. Eliminating one will reduce the options for consumers. The transaction will also remove a level of innovation from the market that is critical in the current times."*[827]

(1006) For the reasons laid out above, the Commission considers that these theories of harm are likely to materialise.

(1007) In view of the above considerations, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to the global market for oil price assessments (including plausible segments thereof based on the relevant assessment families or regions).[828]

7.3.1.9. Price assessments - Petrochemicals

(A) The Parties' activities

(1008) The Transaction gives rise to an affected market in the global market for petrochemical price assessments (and narrower plausible segments based on assessment families and/or assessment regions), where S&P is active through Platts, and IHSM through PCW and OMDC.

(1009) PCW is a PRA that offers daily price assessments for petrochemicals (specifically aromatics and light olefins), plastics and PVC/pipe industries. PCW is a subsidiary of OPIS, but operates separately from OPIS with its own team of price reporters. In this section, mentions of OPIS therefore refer to PCW's activities.

(1010) OMDC, on the other hand, is not considered a PRA and only provides spot price assessments as part of their Market Advisory Service ("MAS") packages. MAS package typically includes a detailed monthly market analysis, supply/demand forecasts, and a mid-month or weekly market review (which includes spot price assessments that are not available to purchase as standalone).

(B) The Notifying Party's view

(1011) The Notifying Party submits that the Parties are generally not in competition for petrochemical price assessments because (i) Platts predominantly provides petrochemical price assessments for Asia and Europe, while IHSM focuses on North America, (ii) ICIS is the clear market leader and there are also other competitors present and (iii) in terms of the narrowest categories, the majority of the overlap is between Platts and OMDC, which the Parties consider do not compete (or at least not closely).[829]

827 Reply to question 104 of Questionnaire 3.

828 Given that the Transaction raises serious doubts with respect to the overlap between the Parties' activities in the global market for the provision of oil price assessments, we do not further discuss plausible segmentation of oil price assessment based on assessment families and/or assessment regions.

829 Form CO, Chapter on Price assessments, paragraph 6.239.

(C) The Commission's assessment

(1012) For the reasons set out below, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the global market for petrochemical price assessments. These serious doubts arise due to the overlap between the petrochemical price assessments of S&P Platts and that of IHSM PCW (and not IHSM OMDC).

(1013) *First*, Platts and PCW are strong providers of petrochemical price assessments, which are likely among the Top 4 PRAs active in this market according to the results of the market investigation. While ICIS is the clear market leader, Platts and PCW appear to be the second and third largest players in the market, followed by Argus.

(1014) Table 32 below shows the market shares of the Parties and their PRA competitors in the global market for petrochemical price assessments in 2020.[830] Given that PCW is considered a PRA, but OMDC is not, the shares are provided both on the basis of including and excluding OMDC from the competitor set.

(1015) The Parties' combined market share in the PRA only market is [20-30]%, with a small increment of [0-5]%-point added by PCW. The clear market leader is ICIS with a [40-50]% market share.

Table 32: Market shares in price assessments, Commodity group: Petrochemicals, Global, 2020

Competitor	Market share, PRAs only	Market share, PRAs and OMDC
Platts	[20-30]%	[20-30]%
IHSM (PCW)	[0-5]%	[0-5]%
IHSM (OMDC)	-	[10-20]%
Combined	***[20-30]%***	***[30-40]%***
ICIS	[40-50]%	[40-50]%
Chemorbis	[5-10]%	[5-10]%
SCI99	[5-10]%	[5-10]%
Argus	[5-10]%	[5-10]%
PU Daily	[0-5]%	[0-5]%
Others	[5-10]%	[0-5]%
Total market	*100% (EUR [...])*	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on price assessments, Annex C.27)
Note: OMDC's MAS revenues cannot be allocated between price assessments and market intelligence; for the purposes of the market share estimate, IHSM has assume that 50% of these revenues relate to price assessments, which is potentially an overestimate.

(1016) The Notifying Party submits that petrochemicals in particular are a liquid commodity where exchanges could also be considered important competitors.[831] In

[830] The Notifying Party confirms that the Parties' and main competitors' market shares in 2018 and 2019 would not materially differ from the 2020 shares.

[831] Notifying Party's response to RFI 29, paragraph 7.3.

any case, even if exchanges are added to the competitor set, the Parties' combined market share remains virtually unchanged.[832]

(1017) In any case, the market investigation and, to some extent, the Parties' internal documents indicate that the above market shares significantly underestimate PCW's position in the market and do not appropriately reflect the relative market positions of the players in this market. Instead, the evidence points towards ICIS being the clear market leader, with the other main players including Platts as #2, and PCW and Argus as #3 and #4.

(1018) A number of customers express the view that PCW is an important provider of petrochemical price assessments. For example, customers explains that *"OPIS holds the majority of benchmark prices in petrochemicals"*[833] and *"In petrochemicals price assessments, the main providers of benchmarks are IHSM (via its PetroChemWire division) and ICIS."*[834] In its internal documents, in relation to petrochemical price assessments, Platts refers to [description of competitors in internal documents].[835]

(1019) The fact that ICIS is the market leader, but other main providers include Platts, PCW and Argus is also reflected in Platts' internal documents. The competitive landscape in petrochemicals presented in Platts' internal documents is as follows. The main global PRA and analytics providers are Platts, ICIS, IHS Markit and Argus, [description of competitors in internal documents][836] [description of competitors in internal documents].[837]

(1020) Consistent with the above positions, the overlap analysis submitted by the Notifying Party shows that, in all narrow categories where Platts and PCW overlap, the benchmark prices are provided only by one of four main PRAs.[838]

(1021) The relative position of the four PRAs as presented in Platts' internal documents are confirmed by the market investigation. When asked about the primary providers of petrochemical price assessments, the very large majority of customers list (all or some of) the four providers mentioned, that is ICIS, Platts, IHSM and Argus.[839] Most customers consider ICIS as the largest primary supplier, followed by Platts and then PCW. Argus appears in the answers as the weakest of the four PRAs.

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832 If exchanges are added to the competitor set, the Parties combined market share (including OMDC) remains at [30-40]%. The Commission's calculations based on Form CO, Chapter on Price assessments, Annex C.27.

833 Minutes of a call with a customer on 25 June 2021.

834 Minutes of a call with a customer on 14 September 2021.

835 S&P's internal documents, DOC_00000883. [descriptions of competitors in internal documents]

836 The Notifying Party submits that the document does not distinguish between PCW and OMDC and was drafted generally and with no specific area of IHSM's business in mind. While the term "PRA" is in this context used loosely to refer to a price assessment provider (rather than its business model), Platts sees PCW and a PRA but not OMDC. The Notifying Party's response to RFI 37, paragraph 4.1.

837 S&P's internal documents, DOC_00000883.

838 Form CO, Chapter on Price assessments, Annex C.14.

839 Replies to question 45 of Questionnaire 3. Note that the question asked the respondents to consider OPIS (PCW) and OMDC separately. Given that a large majority of the respondents who identified the relevant IHSM entity referred to OPIS (PCW), we assume that responses listing IHSM also refer to PCW.

(1022) As to OMDC's position, virtually no customers consider OMDC as among the primary suppliers of petrochemical price assessments.[840] The majority of customers do not consider OMDC as a particularly strong or innovative competitor.[841]

(1023) <u>*Second*</u>, given their relative positions in the market, Platts and PCW therefore compete closely in this market. This is confirmed by customers, the majority of which list the two as among the three closest competitors to one another.[842] A customer, for examples, explains that *"On Commodity price assessment services (notably on Oil, Natural Gas, Petrochemicals...), IHSM OPIS and S&P Platts currently have services competing with each other."*[843] In its internal documents, [descriptions of competitors in internal documents].[844]

(1024) As to the closeness of competition between Platts and OMDC, these do not appear to be close competitors as (i) OMDC is not a PRA, but mainly a market intelligence provider, and (ii) OMDC's price assessments differ from Platts' price assessments in a number of important characteristics, meaning that they serve different use cases.

(1025) Firstly, as discussed in Section 7.3.1.1., non-PRA providers generally do not seem to offer a credible alternative to price assessments provided by PRAs. The market investigation responses confirm that competitors and customers perceive OMDC as a strong provider, but mainly of market intelligence (particularly price forecasts) rather than price assessments.[845] A competitor for example states: *"They [OMDC] are a competitor as they produce market intelligence reports which contain prices however we believe that they operate in a way that differs from PRAs (as they do not follow the IOSCO PRA Principles)"*[846]. One customer explains that OMD is *"mainly used as regards forecast price assessments"*[847], another one "*considers OMDC as provider of petrochemicals market intelligence and not standalone price assessments"*[848] and an additional one that *"OMDC is a Consulting enterprise addressing oil – midstream etc that can add market knowledge and be beneficial".*[849]

(1026) Secondly, the price assessments of OMDC and Platts differ on a number of key metrics, including (i) IOSCO Principles: OMDC's price assessments do not undergo

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840 Replies to question 45 of Questionnaire 3. Note that the question asked the respondents to consider OMDC separately, and only two out of 42 respondents mention OMDC among the top suppliers of petrochemical price assessment.

841 Replies to question 66 of Questionnaire 3.

842 Replies to question 47 of Questionnaire 3.

843 Reply to question 106 of Questionnaire 3.

844 S&P's internal documents, DOC_00000883.

845 While responses to one market investigation question suggest that Platts and OMDC could be considered as particularly close competitors (replies to question 55 of Questionnaire 3, where the majority of the customers indicate that IHSM (OMDC) is a particularly close competitor of S&P Platts in the provision of price assessments for petrochemicals or any specific assessment family/commodity within petrochemicals), the views of customers indicating that they are close competitors are less substantiated than those of respondents who do not consider them close. One customer, for example, explains: "*They definitely compete but I believe IHS stronger and more used for market intelligence than price assessment*" and another one: "*We would see OPIS and PCW as closer competitors*".

846 Reply to question 75 of Questionnaire 1.

847 Reply to question 49 of Questionnaire 3. Price forecasts are a form of market intelligence as opposed to price assessments as defined in this decision.

848 Minutes of a call with a customer on 26 August 2021.

849 Reply to question 9 of Questionnaire R2.

the IOSCO assurance review process, while Platts' assessments are IOSCO compliant,[850] and (ii) frequency: OMDC provides only weekly and monthly price assessments, while the majority of Platts' price assessments are daily. Both of these characteristics are considered as important differentiating factors of price assessments according to the market investigation (see Section 7.3.1.1.).

(1027) OMDC therefore does not provide benchmarks for products listed on exchanges, and according to the Notifying Party, most of its price assessments are used as reference prices for general business planning, budgeting, investment decisions etc. (rather than pricing contracts).[851] However, OMDC nevertheless provides a large number of price that serve as contract prices.[852]

(1028) The lack of close competition between OMDC and Platts is consistent with OMDC's internal documents in which OMDC does not benchmark against Platts.[853]

(1029) *Third*, with respect to other providers (mainly other small PRAs) whose price assessments the Notifying Party considers as being able to function as benchmarks, the market investigation did not provide any indication that these meaningfully constrain the four main PRAs in this market. This is supported by the fact that none of these providers currently provides a benchmark in any of the categories where the Parties overlap.

(1030) *Fourth*, market participants consider that new market related to petrochemicals may arise in the next 5 years. They consider ICIS and S&P as the providers with the strongest ability to offer benchmarks in these markets, with PCW ranked either as the third or the fourth provider in this respect.[854]

(1031) *Fifth*, the fact that the geographic focus of Platts and IHSM differ with the four main providers being the same across assessment regions, means that the Transaction will further reinforce the Parties' strength in the overall petrochemicals market (independently of the assessment region).

(1032) *Sixth*, as discussed in Section 7.3.1.1., the price assessment markets are characterised by high barriers to entry, strong network effects and high customer switching costs.

(1033) *Finally*, the majority of the competitors and around half of the customers, consider that the Transaction will have a negative impact on the global market for petrochemical price assessments and some raise concrete concerns.[855] Responses suggest that most of those who consider the Transaction to have a negative impact refer to the loss of competition between Platts and PCW. Customers for example explain that: *"On Commodity price assessment services (notably on Oil, Natural Gas, Petrochemicals...), IHSM OPIS and S&P Platts currently have services competing with each other. There is a risk that the Transaction deteriorates*

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850 While OMDC's price assessments are not IOSCO compliant, OMDC complies with a significant share of IOSCO Principles. In order to fully comply with the IOSCO Principles, [IHSM's commercial strategy]. The Notifying Party's response to RFI 28, paragraphs 7.1 ff.

851 Form CO, Chapter on Price assessments, paragraph 6.239.

852 Form CO, Chapter on Price assessments, Annex C.14.

853 IHSM's internal documents, ASH000178, ASH000183.

854 Replies to question 74 and 75 of Questionnaire 1 and question 48 of Questionnaire 3.

855 Replies to question 94 of Questionnaire 1 and question 106 of Questionnaire 3.

competition on those specific markets" or that *"We understand that the parties intend to divest IHSM's PetroChem Wire business, which will mitigate the negative impact of the transaction"*.[856]

(1034) For the reasons laid out above, the Commission considers that these theories of harm are likely to materialise.

(1035) In view of the above considerations, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement with respect to the overlap between the Parties' activities in the global market for the provision of petrochemical price assessments.[857]

7.3.1.10. Price assessments - Power

(A) The Parties' activities

(1036) The Transaction gives rise to an affected market in the global market for power price assessments (and plausible narrower segments based on assessments families and/or assessment regions). S&P provides power price assessment through Platts and IHSM through OPIS.

(B) The Notifying Party's view

(1037) The Notifying Party submits that, based on market share calculations that include non-PRAs in the competitor set, no affected market arises in the commodity group power.[858]

(1038) The Notifying Party submits that no plausible competition concerns arise because IHSM is a small player, and because the Parties' overlap only in the assessment family carbon credits, where Platts is a *de minimis* player.[859]

(C) The Commission's assessment

(1039) The Commission's investigation indicates that the Transaction is unlikely to give rise to competition concerns in relation to the global market for power price assessments or any plausible narrower segment.

(1040) *First*, while Platts appears to be a strong provider of power price assessments, IHSM is a very small and unimportant player.

(1041) The market investigation suggests that power is a commodity in which non-PRAs, specifically exchanges, offer credible price assessments and compete with PRAs. For example, a competitor explains: *"Because of the range of physical characteristics*

856 Replies to question 106 of Questionnaire 3.

857 Given that the Transaction raises serious doubts with respect to the overlap between the Parties' activities in the global market for the provision of petrochemical price assessments, we do not further discuss plausible segmentation of petrochemical price assessment based on the assessment family or the underlying geographic location of the assessed commodity.

858 Form CO, Chapter on Price assessments, paragraph 6.220.

859 From CO, Chapter on Price assessments, paragraph 6.221. Energy transition is an area within power, but does not constitute an assessment family.

found in most commodities markets physical trade rarely occurs on exchanges. Power is an exception to this and often grid operators use exchanges to balance their networks. As a result the main sources of data for physical power prices in most markets are exchanges."[860]

(1042) Table 33 below shows the market shares of the Parties and their PRA competitors, including and excluding exchanges from the competitor set, in the global market for power price assessments in 2020.[861] The Parties' have a relatively high combined market share of [50-60]% (in an only PRAs market) or [30-40]% (when exchanges are included in the competitor set), but with a minimal increment of [0-5]%-point or less added by IHSM.

Table 33: Market shares in price assessments, Commodity group: Power, Global, 2020

Competitor	Market share, PRAs only	Market share, PRAs and Exchanges
Platts	[50-60]%	[30-40]%
IHSM (OPIS)	[0-5]%	[0-5]%
Combined	***[50-60]%***	***[30-40]%***
Argus	[30-40]%	[20-30]%
ICE	-	[20-30]%
EEX	-	[10-20]%
Energy Intelligence	[0-5]%	[0-5]%
CME	-	[0-5]%
Others	-	[0-5]%
Total market	*100% (EUR [...])*	*100 % (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on price assessments, Annex C.27)

(1043) The fact that IHSM is a small and unimportant player is confirmed by the market investigation results, with virtually no respondents mentioning IHSM as one of the top five primary suppliers of power price assessments globally.[862] One competitor explains: *"OPIS (IHSM) is not considered as a key price source in the power market [...]."*[863]

(1044) <u>*Second*</u>, many other providers of power price assessments compete more strongly and closely with Platts, with the main ones being Argus, ICE and EEX. The market investigation shows that market participants consider Platts, Argus, ICE, and EEX as the primary suppliers of power price assessments,[864] with Argus as the closest competitor to Platts.[865]

860 Reply to question 80 of Questionnaire 1.

861 The Notifying Party confirms that the Parties' and main competitors' market shares in 2018 and 2019 would not materially differ from the 2020 shares.

862 Replies to question 86 of Questionnaire 1 and question 59 of Questionnaire 3.

863 Reply to question 80 of Questionnaire 1.

864 Replies to question 80 of Questionnaire 1 and question 56 of Questionnaire 3.

865 Replies to question 81 of Questionnaire 1 and question 82 of Questionnaire 3.

(1045) *Third,* with respect to the energy transition price assessments (the only area within power where the Parties overlap), virtually all market investigation respondents confirm that the Parties are not important providers of energy transition price assessments.[866] A competitor explains: "*There is a wide range of sources for price assessments in the power market, also when it comes to the energy transition. Very short-term price assessments (i.e. driven by renewable generation like wind or solar) are assessed as well by Argus and other price reporting agencies and also published by various energy exchanges (e.g. EEX, Intercontinental Exchange, Nasdaq etc).*"[867]

(1046) Specifically, the Parties overlap only in carbon credits (as assessment family within energy transition), where they overlap only on one narrow category, in which the Notifying Party considers four other providers whose price assessments serve or would be able to serve as benchmarks.[868]

(1047) *Fourth,* according to the market investigation, the Parties are not among the providers with the strongest ability to provide benchmarks in new emerging markets relating to power price assessments. Instead, the best placed players to do so appear to be ICE and EEX.[869] A competitor explains: *"ICE and EEX will both continue to play a leading role in providing price for new markets related to energy transition. As such, both will likely expand their scope in the power derivatives segment. Additionally, both will likely expand their scope in the carbon credits segment as well as the generation fuels segment (e.g. hydrogen)."*[870]

(1048) *Fifth,* a large majority of market investigation respondents consider that the Transaction will have a neutral impact on the market for power price assessments globally.[871] A competitor explains: *"Neutral impact expected given the wide variety of price publications from other providers (i.e. exchanges and other price reporting agencies)."*[872]

(1049) *Finally,* the market investigation did not provide any evidence that the above conclusions would differ for narrower segments based on the assessment regions.

(1050) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the global market for power.[873]

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866 Replies to question 82 of Questionnaire 1. Contrary to the views of one market participant who considered that the Parties compete fiercely in the energy transition markets. Minutes of a call with a market participant on 11 March 2021.

867 Reply to question 82 of Questionnaire 1.

868 Form CO, Chapter on Price Assessments, AnnexC.14.

869 Replies to question 84 of Questionnaire 1.

870 Reply to question 84 of Questionnaire 1.

871 Replies to question 96 of Questionnaire 1 and question 106 of Questionnaire 3.

872 Reply to question 96 of Questionnaire 1.

873 The same conclusion would likely apply to all the plausible segments within the global market for power price assessments, but in any event, the proposed divestment removes the entirety of the overlap on all the plausible segments.

7.3.1.11. Price assessments - Shipping

(A) The Parties' activities

(1051) The Transaction gives rise to an affected market in the global market for shipping price assessments (and narrower plausible segments based on assessment families and/or regions), where S&P is active through Platts and IHSM through OPIS.

(B) The Notifying Party's view

(1052) The Notifying Party submits that no plausible competition concerns arise because IHSM is a *de minimis* player, and the Parties overlap on a limited set of categories where a wide set of competitors is present.[874]

(C) The Commission's assessment

(1053) The Commission's investigation indicates that the Transaction is unlikely to give rise to competition concerns in relation to the global market for shipping price assessments or any plausible narrower segments.

(1054) *First*, while Platts is one of the main providers of shipping price assessments, IHSM is a very small and unimportant player and the Transaction will therefore have virtually no impact on the structure of the global shipping price assessments market.

(1055) Table 34 below shows the market shares of the Parties and their PRA competitors in the global market for shipping price assessments in 2020.[875] The Parties' have a high combined market share of [50-60]% in this market, but with a *de minimis* increment of [0-5]% point added by IHSM.[876]

Table 34: Market shares in price assessments, PRAs only, Commodity group: Shipping, Global, 2020

Competitor	Market share
Platts	[50-60]%
IHSM (OPIS)	[0-5]%
Combined	***[50-60]%***
Argus	[5-10]%
Baltic Exchange	[5-10]%
Worldscale	[5-10]%
ICIS	[5-10]%
Xeneta	[5-10]%
Others	[10-20]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on price assessments, Annex C.27)

874 Form CO, Chapter on Price assessments, paragraph 6.205.

875 The Notifying Party confirms that the Parties' and main competitors' market shares in 2018 and 2019 would not materially differ from the 2020 shares.

876 IHSM's global revenue from shipping price assessments in 2020 was [IHSM's revenue information].

(1056) The fact that IHSM is a small and unimportant player is confirmed by the market investigation results, with virtually no respondents mentioning IHSM as one of the top five suppliers of shipping price assessments globally.[877] Consistent with the above, S&P in its internal documents does not benchmark its shipping price assessments against IHSM.[878]

(1057) *Second*, many other providers of shipping price assessments compete more strongly and closely with Platts, with the main ones being Baltic Exchange and Argus.

(1058) Baltic Exchange is, alongside Platts, the main provider of shipping price assessments globally, according to the market investigation. Respondents consistently rank Baltic Exchange among the two largest providers of shipping price assessments.[879] The market investigation also indicates Baltic Exchange is the closest competitor to both Platts and OPIS in this market and Argus is the second closest.[880]

(1059) *Third*, shipping is a commodity for which non-PRAs, particularly brokers, appear to offer credible alternative price assessments and compete to a certain extent with that of the PRA price assessments. A number of customers mention Clarkson (a broker) and/or individual brokers among the primary suppliers of shipping price assessments.[881] A customer explains: "*there really are just 2 price assessment providers, with brokers providing more specific details on certain routes*."[882]

(1060) Consistent with the above, in the internal documents [descriptions of competitors in internal documents].[883]

(1061) *Fourth*, a large majority of market investigation respondents consider that the Transaction will have a neutral or positive impact on the market for shipping price assessments globally. A competitor explains: *"There are a number of sources of data for freight rates in the market therefore we don't believe there will be any significant impact on competition."*[884]

(1062) *Finally*, the market share of IHSM remains below [0-5]% under all plausible narrower segments (i.e. based on the assessment region), and the market investigation did not provide any evidence that the above conclusions would differ for any of the plausible narrower segments. The above conclusions therefore apply equally to all affected markets within the global market for shipping price assessments.

877 Replies to question 86 of Questionnaire 1 and question 59 of Questionnaire 3.
878 S&P's internal documents e.g. DOC_00000891.
879 Replies to question 80 of Questionnaire 1 and question 86 of Questionnaire 3.
880 Replies to question 86 of Questionnaire 1 and question 59 of Questionnaire 3.
881 Replies to question 58 of Questionnaire 3.
882 Reply to question 58 of Questionnaire 3.
883 S&P's internal documents e.g. DOC_00000891.
884 Reply to question 96 of Questionnaire 1.

(1063) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the global market for shipping price assessments.[885]

7.3.2. Commodities market intelligence

(1064) The Parties' activities overlap in the supply of market intelligence products in the following areas: (i) cargo tracking; (ii) trade analytics; (iii) freight rate forecasts; (iv) downstream and midstream energy; (v) power; (vi) agriculture (including sugar); (vii) petrochemicals; and (viii) metals.

(1065) Horizontally affected markets arise in relation to (i) trade analytics; (ii) downstream and midstream energy market intelligence; (iii) sugar market intelligence; and (iv) petrochemicals market intelligence.[886]

(1066) In addition, vertically affected markets also arise in relation to (i) upstream energy market intelligence (upstream), where only IHSM is active, and downstream and midstream energy market intelligence (downstream); and (ii) upstream energy market intelligence (upstream), and petrochemical market intelligence (downstream).

7.3.2.1. Market Intelligence – Trade analytics

(A) The Parties' activities

(1067) Trade analytics products allow users to track and analyse trade flows between ports, countries and continents. Trade analytics products provide data relating in particular to individual shipments (e.g. bill of lading, cargo weight, container information and product classifications), the companies involved, and relevant locations (e.g. country of origin / destination data, port of lading & unlading).

(1068) S&P is active in the supply of trade analytics through its Panjiva product, which provides trade data at the individual shipment level, including shipment data (e.g. bill of lading, cargo weight, container information and product classifications), and location data (e.g. country of origin/destination data, port of lading & unlading data). Panjiva also provides access to S&P and third party vendor intelligence on relevant company data.

(1069) IHSM is active in the supply of trade analytics through its product PIERS, which provides import and export data at the detailed bill-of-lading level. PIERS' primary offering is the US waterborne trade data set, which it keeps up to date through daily processing of the bills of lading that are filed with US customs.

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885 The same conclusion would likely apply to all the plausible segments within the global market for shipping price assessments, but in any event, the proposed divestment removes the entirety of the overlap on all the plausible segments.

886 As the other overlaps do not give rise to affected markets, regardless of their precise market definitions, they will not be discussed further. In addition, the Parties do not have visibility into the split between desktop and datafeed sales by their competitors in overlap markets but do not expect competitive dynamics to differ materially. There is no overlap between the Parties in relation to real-time data. Market shares in this section are provided for combined real-time and non-real time market intelligence. However, as competitors also mostly offer non-real-time, the Notifying Party does not expect the market shares to be materially different were only non-real-time market intelligence to be taken into account.

(1070) Table 35 below shows the market shares of the Parties and their competitors in the global trade analytics market in 2020.[887]

Table 35: Market shares in trade analytics (value, global, 2020)

Competitor	Market share
S&P (Panjiva)	[5-10]%
IHSM (PIERS)	[0-5]%
Combined	***[10-20]%***
Datamyne	[5-10]%
ImportGenius	[5-10]%
Veritrade	[0-5]%
Other supply chain insight/risk offerings[888]	[30-40]%
Consultancies with supply chain practices[889]	[10-20]%
Suppliers of supply chain relationships[890]	[10-20]%
Others	[5-10]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Market Intelligence, Annex B.28a)

(B) The Notifying Party's view

(1071) The Notifying Party submits that the Transaction does not raise concerns in particular because (i) the Parties' combined market position is modest and many other players remain active on the relevant market, (ii) the Parties have limited activities in the EEA, (iii) the Parties are not close competitors, in particular since there are key differences in the capabilities of PIERS and Panjiva, and (iv) barriers to entry are low.[891]

(C) The Commission's assessment

(1072) The Commission's investigation indicates that the Transaction is unlikely to give rise to competition concerns in relation to markets for trade analytics market intelligence.

(1073) First, the Transaction is unlikely to create or strengthen a dominant position of the merged entity, even if the market investigation indicates that the Notifying Party's estimates underestimate the Parties' combined market shares. The Parties' combined position appears underestimated because some providers mentioned by the Notifying

887 The Parties' market shares in 2018 and 2019 do not differ materially from their market shares in 2020, [description of market shares]. See Form CO, Chapter on Market Intelligence, Table 6.9.

888 Includes e.g. Tradelens, Altana, Interos, Prewave, Resilinc, Concirrus, Exiger and Source Intelligence.

889 Includes e.g. Accenture, E&Y, Deloitte, KPMG, PWC, CapGemini, Cognizant and McKinsey.

890 Includes e.g. FactSet's Revere, Bloomberg Supply Chain and IQ Banker.

891 Form CO, Chapter on Market Intelligence, paragraph 6.126.

Party as active on the market may not be viable competitors to trade analytics providers like the Parties.

(1074) The market investigation indicates in particular that consultancies are not effective competitors to trade analytics providers. Customers rely on consultancies for specific projects, but not as regular providers of trade data, which consultancies may be lacking. One customer states for instance that they "*call on these companies for studies concerning the strategy or management or organization of the company*". Another customer states that "*In case this is a one time study on a new market, this might be delivered by a consultancy. But for ongoing services, this seems to not be that well feasible*". One responding consultancy firm also indicated that "*While generally […] consultancies may not provide trade analytics products as a standalone offering, depending on the consultancy work, such consultancies may customize a form of deliverable to meet client trade analytics needs*".[892]

(1075) The market investigation is more mixed in terms of the competitive constraints exerted by providers of supply chain insight/risk products or providers of supply chain relationship products. A large majority of responding customers believe these are effective competitors, whereas competitors believe they are not. Only one provider of supply chain insight responded to the market investigation and indicated being indeed a suitable competitor to trade analytics providers.[893]

(1076) Internal documents of the Parties do mention providers of supply chain insight/risk products or providers of supply chain relationship products as part of the competitive landscape, however generally not as direct competitors. For instance, in an internal document of S&P, [descriptions of competitors in internal documents].[894] [descriptions of competitors in internal documents].[895]

(1077) On a conservative basis, excluding all these alternative providers, the Parties' combined market share remain below [40-50]%. When excluding consultancies and providers of supply chain insight or risk products, the Parties' and their main competitors' market shares would be as per Table 36 below:

892 Replies to questions 28 of Questionnaire Q2 and question 78 of Questionnaire Q3.

893 Replies to questions 27 of Questionnaire Q2 and question 77 of Questionnaire Q3.

894 [descriptions of competitors in internal documents].

895 See DOC_00001146.

Table 36: Market shares in trade analytics excluding non trade analytics specialists (value, global, 2020)

Competitor	Market share
S&P (Panjiva)	[20-30]%
IHSM (PIERS)	[10-20]%
Combined	***[30-40]%***
Datamyne	[20-30]%
ImportGenius	[10-20]%
Veritrade	[5-10]%
ExportGenius	[0-5]%
PentaTransaction	[0-5]%
Others	[10-20]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Market Intelligence, Annex B.28a)

(1078) Second, there will remain sufficient alternative players on the market post-Transaction. In particular, Datamyne and Import Genius, which are both strong competitors.[896] Smaller providers, including Veritrade, Export Genius and Penta Transactions, as well as others will also continue to exert a constraint on the Parties post Transaction. The relevance of these smaller players, and in particular Veritrade and Penta Transactions, as competitors to the Parties is confirmed by internal documents from the Parties [description of competitors in internal documents].[897]

(1079) Third, the market investigation confirms that barriers to entry to the trade analytics market are somehow limited. In particular, trade analytics products include data from shipping and customers authorities, which are typically publicly available. One competitor states for instance that "*data comes from public sources and the technological investment needed is relatively low*."[898] Even one competitor who expressed concerns about the Transaction in relation to the overlap between Panjiva and PIERS indicates that "*raw shipping transaction data is broadly available*".[899] Internal documents of the parties also refer to trade analytics as a "*commoditised market place*".[900]

(1080) The ease of entry is confirmed by the number of recent entrants in trade analytics. There are indeed many new entrants in the space, including FactSet, who entered the segment in 2018, and smaller players such as Import Key, Import Yeti or Trade Atlas, which entered since 2020.[901] In one internal document [descriptions of competitors in internal documents].[902]

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[896] Minutes of a call with a competitor on 13 April 2021, 16:00 CET, paragraph 4.
[897] See Notifying Party's response to RFI 32, annexes 1 to 6. [description of internal documents].
[898] Minutes of a call with a competitor on 13 April 2021, 16:00 CET, paragraph 11.
[899] Presentation by a competitor of 25 June 2021 at 14:00, slide 6.
[900] See ASH000076 and ASH000078, slide 20.
[901] Notifying Party's response to RFI 32, paragraphs 1.1 to 2.1 and related annexes.
[902] See DOC_00001146, slide 1.

(1081) Fourth, while the Parties appear as close competitors they are likely not each other's closest competitors. Internal documents from S&P [descriptions of competitors in internal documents].[903] [descriptions of competitors in internal documents].[904] [descriptions of competitors in internal documents].[905]

(1082) Fifth, no competitor considers either Panjiva or PIERS as a must-have product. The market investigation indicates that IHSM's PIERS is seen as a must-have by few customers (whereas Panjiva is not considered as a must-have by customers). These customers point out for instance the scope and level of detail of the data provided by PIERS, which is not provided by other trade analytics products.[906]

(1083) Sixth, PIERS' competitiveness appears to be declining. Internal documents of the Parties indicate that PIERS is likely not the most competitive solution, in particular due to its dated technology. For instance, an internal document of S&P indicates that [Quote from Parties' internal document].[907] IHSM internal documents also indicate that PIERS is not particularly competitive, stating that [Quote from Parties' internal document].[908] This is reflected in [Parties' market share] of PIERS over the recent years, which, on excluding non- trade analytics providers, [Parties' market share].[909]

(1084) A material number of respondents however expect the transaction to have a negative impact on the markets for trade analytics, as they believed it would in particular result in less choice and potential price increases.[910] For the reasons laid out above, the Commission considers that these theories of harm are unlikely to materialise. One competitor complains in particular of the combination of PIERS' historical and global coverage with S&P's ability to link entity and securities, however, this aspect in itself, if it were to materialise, may actually be procompetitive.[911]

(1085) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the global market for trade analytics, or any narrower segment thereof (i.e. based on the underlying region).

7.3.2.2. Market Intelligence – Downstream and midstream energy

(A) The Parties' activities

(1086) Downstream and midstream energy market intelligence relates to the provision of information, data and analytics relating to the processing and distribution of oil and gas, following its extraction. Downstream and midstream energy market intelligence

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903 See DOC_00001146, slide 3.

904 See DOC_00000597, slide 41. [descriptions of competitors in internal documents]

905 See ASH000076, slide 19 and ASH000078, slide 22.

906 Replies to questions 30 of Questionnaire Q2 and question 80 of Questionnaire Q3. One customer notes for instance that "*the export information and data search capabilities of the PIERS product is the reason we continue to use that product and have not found a similar product*". Another one that "*IHSM has more detailed data than any other providers we have enquired about. Detail data is down to the bill of lading level for all global trade in/out of the USA*".

907 DOC_00001146.

908 See ASH000078, slide 20.

909 Form CO, Chapter on Market Intelligence, Annex B.28a.

910 Replies to questions 57.2 of Questionnaire Q2 and question 108.2 of Questionnaire Q3.

911 Presentation by a competitor of 25 June 2021 at 14:00, slide 6.

covers the refining, transportation, marketing and trading of refined oil, natural gas and liquefied natural gas ("LNG").

(1087) S&P supplies downstream and midstream energy market intelligence products through Platts, primarily outside the EEA. S&P provides in particular analyses of crude and petroleum products, natural gas, LNG, and energy transition markets.

(1088) IHSM offers some market intelligence products, also primarily outside of the EEA, with a focus on the distribution, transportation, and refining of oil and natural gas, principally via Point Logic.

(1089) Table 37 below shows the market shares of the Parties and their competitors in the global market for midstream and downstream energy market intelligence in 2020.[912]

Table 37: Market shares - Downstream and midstream energy market intelligence (value, global, 2020)

Competitor	Market shares
S&P Platts	[10-20]%
IHSM	[10-20]%
Combined	***[20-30]%***
PCI Wood Mackenzie	[20-30]%
Refinitiv	[5-10]%
Bloomberg	[5-10]%
Argus	[0-5]%
IIR Energy	[0-5]%
Others[913]	[30-40]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Market Intelligence, Table 6.14)

(1090) The Parties' market share differ depending on the relevant energy commodity, as per Table 38 below:[914]

[912] The Parties' market shares in 2018 and 2019 do not differ materially from their market shares in 2020.

[913] Includes 30+ additional companies, including DTN, Kpler, and Energy Aspects.

[914] The Notifying Party indicates that the Parties' and their main competitors' market shares would not materially differ from the shares provided at aggregate level, should midstream and downstream energy market intelligence be further segmented by the location of the individual commodity. Notifying Party's response to RFI 29, paragraph 2.1.

Table 38: Market shares - Downstream and midstream energy market intelligence per commodity (value, global, 2020)

Competitor	Coal	LNG	Oil	Natural Gas
S&P Platts	[0-5]%	[5-10]%	[10-20]%	[10-20]%
IHSM	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	***[10-20]%***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Top 5 competitors[915]	PCI Wood Mackenzie Refinitiv CRU FenWei Bloomberg	PCI Wood Mackenzie Kpler Bloomberg SCI99 Energy Aspects	PCI Wood Mackenzie Refinitiv Bloomberg IIR Energy DTN (Televent)	PCI Wood Mackenzie Refinitiv MSCI Bloomberg Kpler

Source: The Parties' best estimates (Form CO, Chapter on Market Intelligence, Annex B.28a)

(1091) According to the Notifying Party, market shares would not differ materially based on the region of the underlying commodity (e.g. coal in Europe, coal in North America, or coal in Asia Pacific etc.).

(B) The Notifying Party's view

(1092) The Notifying Party submits that the Transaction does not raise concerns in particular because (i) the Parties' combined market position is modest, (ii) the Parties are not close competitors, (iii) a large number of strong (and closer) competitors remain on the market post-Transaction, and (iv) barriers to entry are low.[916]

(C) The Commission's assessment

(1093) The Commission's investigation indicates that the Transaction is unlikely to give rise to competition concerns in relation to markets for downstream and midstream energy market intelligence.

(1094) First, the Parties' market position is relatively limited in downstream and midstream energy market intelligence. At this level, the Parties' combined market share remains slightly below 25% globally, the threshold under which concentrations are presumed not to impede effective competition.[917] At the level of individual commodity, this threshold is only exceeded in relation to natural gas, where the Parties' combined market share slightly exceeds it by [0-5]% points.

(1095) Second, a number of significant competitors will remain on the market post-Transaction, including market leader PCI Wood Mackenzie, as well as both other global market intelligence providers, and specialized ones. In the area of natural gas in particular, where the market shares of the parties are slightly higher, a number of strong competitors remain including PCI Wood Mackenzie and other large providers

915 The Notifying Party is unable to provide more granular market shares for competitors based on the level of individual commodities.

916 Form CO, Chapter on Market Intelligence, paragraph 6.175.

917 Horizontal Merger Guidelines, paragraph 18.

such as Refinitiv, MSCI, Argus and Bloomberg, but also more specialized providers such as Kpler or DNV-GL.[918]

(1096) The viability of these competitors is further evidenced by the Parties' internal documents, which benchmark the Parties' offering against multiple competitors.[919] This is notably the case in terms of market intelligence in the area of natural gas, [description of market shares]%. For this commodity, at least PCI Wood Mackenzie, as well as smaller players including Pöyri (now AFRY), DNV-GL, and Rystad are perceived as offering a similar coverage of gas market intelligence (in terms of coverage of their respective data, insights, analytics and/or consulting offering). Other named competitors active in gas market intelligence include large players such as Refinitiv, Argus and ICIS.[920] Similarly, in areas other than natural gas, many competitors' offerings are perceived as strong by the Parties, including for instance: Argus, PCI Wood Mackenzie, ICIS and NGI/ICE in oil,[921] or Argus, Enerdata, CRU, SC Coal, and PCI Wood Mackenzie in coal.[922]

(1097) In addition, in the area of downstream and midstream energy, the results of the market investigation indicate that smaller firms may be viable competitive forces. One competitor notes for instance that "*one can be competitive in the supply of mid/downstream energy market intelligence with a team of around a dozen of experts*", citing for instance Energy Aspects as an example.[923] Similarly, respondents to the market investigation indicate procuring market intelligence products from a variety of competitors, including of smaller size. One respondent notes that "*every commodity and product class will have niche companies, of varying sizes, sophistication, market coverage and product catalogue*".[924]

(1098) Third, the extent to which S&P and IHSM would be close competitors is not clear. The Parties do not appear as each other's closest competitor, according to their customers and competitors. Respondents to the market investigation indeed more consistently mention PCI Wood Mackenzie as IHSM's closest competitor, whereas Argus is generally mentioned as the closest competitor to S&P.[925] These differences can be explained by the fact that both Argus and S&P are also active as the main PRAs in the energy value chain, but also by the time horizon covered by each of the Parties' market intelligence products. One customer explains for instance that "*Argus' products are based on short-term (1 - 3 years) views, which are more directly comparable with S&P; - IHSM are strong in providing products offering long-term (5 - 20 years) views […]; and - Woodmac are stronger in long-term views so not directly comparable with S&P*". Other providers of long term forecasts include for instance Refinitiv, Bloomberg, Energy Aspects, FGE, Global Data and Rystad.[926]

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[918] See Form CO, Annex B.28a, "Natural Gas" tab.
[919] See ASH000063, Notifying Party's response to RFI 8, Annex 12.1 and Annex 13.1.
[920] See ASH000063.
[921] See DOC_00001130.
[922] See ASH000063.
[923] Minutes of a call with a competitor on 10 June 2021, 11:00 CET.
[924] Reply to question 86 of Questionnaire Q3.
[925] Replies to question 36 of Questionnaire Q2 and question 84 of Questionnaire Q3.
[926] Notifying Party's response to RFI 28, Table 3.1.

(1099) Some internal documents of the Parties however indicate that the Parties are particularly close competitors, and potentially each other's closest competitor. For instance, one document from IHSM [descriptions of competitors in internal documents].[927]

(1100) However, other internal documents are not as conclusive. In particular, the (very limited) win/loss data available indicates that the Parties are not each other's closest competitors. [description of competitors in internal documents].[928]

(1101) Fourth, the Parties do not seemingly offer must have products in the area of midstream and downstream market intelligence. Only a minority of respondents to the market investigation indicate that IHSM (but not S&P) offers must-have products. One customer notes for instance that "*most IHSM products in downstream / midstream energy market intelligence are offered by Wood Mackenzie*".[929] A competitor similarly notes that "*[they] would imagine woodmac is capable of matching IHS and S&P offering*".[930]

(1102) Lastly, while a significant number of respondents mentioned expecting a negative impact of the Transaction on competition in relation to downstream and midstream energy markets, these concerns are generally not substantiated. Some respondents mention that the Transaction will lead to less choice among suppliers, however, as mentioned in paragraphs (1092) to (1094), a sufficient number of alternative suppliers will remain active on all the relevant markets post Transaction. One customer states that "*there are only a few companies providing market intelligence with respect to long-term forecasts*".[931] However, a significant number of additional competitors will remain on the market post Transaction, an important share of which also offering long-term forecasts, including PCI Wood Mackenzie, Refinitiv, Bloomberg, Energy Aspects, FGE, JBC and Rystad.[932] Concerns relating to the non-horizontal impact of the Transaction are further addressed in Section 7.3.3.

(1103) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the global market for midstream and downstream energy market intelligence, or any narrower segment thereof (i.e. based on the underlying commodity and/or region).

7.3.2.3. Market Intelligence – Petrochemicals

(A) The Parties' activities

(1104) Petrochemicals market intelligence consists particularly in the supply of data, analysis and insights in relation to products derived from crude oil, such as olefins (e.g. ethylene, propylene and their derivatives) and aromatics and their derivatives.

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927 See ASH000063, slide 2.

928 See Form CO, Annex B.8.

929 Reply to question 85.1 of Questionnaire Q3.

930 Reply to question 37.1 of Questionnaire Q2.

931 Replies to questions 57.5 of Questionnaire Q2 and question 108.5 of Questionnaire Q3.

932 Notifying Party's response to RFI 28, paragraphs 3.1 to 3.2.

(1105) S&P supplies petrochemicals market intelligence products through Platts, primarily outside the EEA. S&P provides in particular products relating to (i) ethylene and derivatives; (ii) propylene and derivatives; and (iii) aromatics and derivatives.

(1106) IHSM offers market intelligence products covering the full range of petrochemicals, including olefins and derivatives, plastics and polymers, inorganics, aromatics and fibres, and syngas chemicals.

(1107) Table 39 below shows the market shares of the Parties and their competitors in the global and EEA markets for petrochemical market intelligence in 2020.[933]

Table 39: Market shares - Petrochemicals market intelligence (value, 2020)

Competitor	Global
S&P Platts	[0-5]%
IHSM	[40-50]%
Combined	***[40-50]%***
ICIS	[5-10]%
Nexant	[5-10]%
SCI99	[5-10]%
PCI Wood Mackenzie	[5-10]%
Tecnon Orbichem	[5-10]%
Others[934]	[20-30]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Market Intelligence, Table 6.14)

(1108) The Parties' and their main competitors' market share differs depending on the relevant petrochemical commodities, as per Table 40 below:[935]

Table 40: Market shares - Petrochemicals market intelligence per commodity (value, global, 2020)

Competitor	Ethylene (and derivatives)	Propylene (and derivatives)	Aromatics (and derivatives)
S&P Platts	[0-5]%	[0-5]%	[0-5]%
IHSM	[30-40]%	[40-50]%	[50-60]%
Combined	***[40-50]%***	***[40-50]%***	***[50-60]%***
ICIS	[10-20]%	[10-20]%	[5-10]%
Nexant	[5-10]%	[5-10]%	[5-10]%
SCI99	[5-10]%	[5-10]%	[5-10]%

933 The Parties' market shares in 2018 and 2019 do not differ materially from their market shares in 2020.

934 Includes around 20 additional companies, including Argus, Townsend Solutions, and PU Daily.

935 The Notifying Party indicates that the Parties' and their main competitors' market shares would not materially differ from the shares provided at aggregate level, should petrochemical market intelligence be further segmented by individual commodity and/or location of the individual commodity. Notifying Party's response to RFI 29, paragraph 2.1.

Competitor	Ethylene (and derivatives)	Propylene (and derivatives)	Aromatics (and derivatives)
PCI Wood Mackenzie	[5-10]%	[0-5]%	[5-10]%
Technon OrbiChem	[5-10]%	[0-5]%	[5-10]%
Others	[20-30]%	[10-20]%	[10-20]%
Total market	*100% (EUR [...])*	*100% (EUR [...])*	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Market Intelligence, Annex B.28a)

(B) The Notifying Party's view

(1109) The Notifying Party submits that the Transaction does not raise concerns in particular because (i) Platts is only active in petrochemicals market intelligence to a limited extent, (ii) the Parties are not close competitors, (iii) a large number of competitors remain on the market post-Transaction, and (iv) barriers to entry are low.[936]

(C) The Commission's assessment

(1110) The Commission's investigation indicates that the Transaction is unlikely to give rise to competition concerns in relation to markets for petrochemicals market intelligence.

(1111) First, the Transaction would have a limited impact on the structure of competition for petrochemicals market intelligence. S&P is a marginal player in the provision of petrochemicals market intelligence products. S&P's market share is consistently [0-5]%, and usually [0-5]% on any plausible segment.

(1112) The limited impact of the Transaction on the market structure is also reflected in the HHI delta, which is far below 150, under which the Commission is unlikely to identify horizontal competition concerns, absent special circumstances.[937]

(1113) The market investigation confirms this perception of S&P as a smaller player. Respondents to the market investigation list IHSM, followed by ICIS, PCI Wood Mackenzie, Argus as top suppliers of petrochemicals market intelligence. S&P is listed as number five alongside Nexant by customers.[938] S&P does not offer must-have petrochemical market intelligence products, according to respondents to the market investigation.[939]

(1114) Second, many competitors will remain on the market post-Transaction. Most of these, including ICIS, Nexant, SCI99, PCI Wood Mackenzie, Technon OrbiChem, or Argus, have a stronger market present than S&P. In total, around 10 other players with a market share higher than the increment will remain active on the market, regardless of the segment concerned.

936 Form CO, Chapter on Market Intelligence, paragraph 6.275.
937 Horizontal Merger Guidelines, paragraph 20.
938 Replies to questions 57.5 of Questionnaire Q2 and question 108.5 of Questionnaire Q3.
939 Replies to questions 45 of Questionnaire Q2 and question 90 of Questionnaire Q3.

(1115) Third, the Parties do not appear to be each other's closest competitor. Respondents to the market investigation generally consider ICIS as the closest competitor to both S&P and IHSM. In addition, Argus is also mentioned as closer to S&P than IHSM is, whereas Nexant and PCI Wood Mackenzie are consider closer (or as close) to IHSM as S&P is.[940]

(1116) Lastly, while a significant number of respondents mentioned expecting a negative impact of the Transaction on competition in relation to petrochemical market intelligence, these concerns are generally not substantiated.[941]

(1117) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the global market for petrochemicals intelligence, or any narrower segment thereof (i.e. based on the underlying commodity and/or region).

7.3.2.4. Market Intelligence – Sugar

(A) The Parties' activities

(1118) Both Parties provides certain agricultural market intelligence products. The Parties' activities are highly differentiated and only give rise to an affected market in a plausible global market for market intelligence on sugar.

(1119) Table 41below shows the market shares of the Parties and their competitors in the global market for market intelligence on sugar in 2020.[942]

Table 41: Market shares in market intelligence on sugar (value, global, 2020)

Competitor	Market share
S&P Platts	[10-20]%
IHSM	[5-10]%
Combined	***[20-30]%***
Czarnikow	[30-40]%
Refinitiv	[5-10]%
LMC International	[5-10]%
Bloomberg	[5-10]%
Greenpool Commodities	[0-5]%
Others	[10-20]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Market Intelligence, Annex B.28a)

940 Replies to questions 44 of Questionnaire Q2 and question 89 of Questionnaire Q3.

941 Replies to questions 57.6 of Questionnaire Q2 and question 108.6 of Questionnaire Q3.

942 The Parties' market shares in 2018 and 2019 do not differ materially from their market shares in 2020. The Notifying Party indicates that the Parties' and their main competitors' market shares would not materially differ from the shares provided at aggregate level, should sugar market intelligence be further segmented by the relevant commodity location. Notifying Party's response to RFI 29, paragraph 2.1.

(B) The Notifying Party's view

(1120) The Notifying Party submits that the Transaction does not raise concerns in particular because (i) a wide range of competitors including market leader Czarnikow remain on the market, (ii) the Parties are not close competitors as S&P is focused on granular forecasts, whereas IHSM is largely backward-looking.[943]

(C) The Commission's assessment

(1121) The Commission's investigation indicates that the Transaction is unlikely to give rise to competition concerns in relation to markets for sugar market intelligence.

(1122) First, the Parties' market position is relatively limited in sugar market intelligence. The Parties' combined market share remains below 25% globally, the threshold under which concentrations are presumed not to impede effective competition.[944]

(1123) Second, many other players will remain on the market, including LMC International, Refinitiv and market leader Czarnikow, each with a market share exceeding the increment brought about by the Transaction.

(1124) Third, none of the Parties are perceived as offering must-have sugar market intelligence products by customers who responded to the market investigation.[945]

(1125) Finally, no respondent to the market investigation raised substantiated concerns in relation to sugar market intelligence.[946]

(1126) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the global market for sugar market intelligence, or any narrower segment thereof (i.e. based on the underlying region).

7.3.2.5. Market Intelligence – Vertical relationships between market intelligence products

(A) The Parties' activities

(1127) Upstream energy market intelligence focuses on the provision of information, data and analytics relating to the discovery and extraction of fossil fuels.

(1128) As mentioned in Sections 7.3.2.2. and 7.3.2.3., both S&P and IHSM are active in the supply of midstream and downstream market intelligence products and petrochemical market intelligence products, which could use upstream market intelligence as an input.

(1129) **Table 42** below shows the market shares of the Parties and their main competitors in the global market for upstream energy market intelligence in 2020.[947] The Parties'

943 Form CO, Chapter on Market Intelligence, paragraph 6.2.

944 Horizontal Merger Guidelines, paragraph 18.

945 Replies to questions 97 and 98 of Questionnaire Q3.

946 Replies to question 57.9 of Questionnaire Q2 and question 108.9 of Questionnaire Q3.

947 The Parties' market shares in 2018 and 2019 do not differ materially from their market shares in 2020. The Notifying Party indicates that IHSM's market shares sub-divided by commodity (e.g. oil or natural gas), or based on the commodity location, would not differ materially from the aggregate shares already provided. However, the Notifying Party considers that for North American upstream energy, Enverus'

and their main competitors' shares in the supply of midstream and downstream market intelligence and petrochemical market intelligence are shown in Sections 7.3.2.2. and 7.3.2.3.

Table 42: Market shares in market intelligence for upstream energy (value, global, 2020)

Competitor	Market share
S&P	-
IHSM	[30-40]%
Combined	***[30-40]%***
Enverus	[20-30]%
PCI Wood Mackenzie	[20-30]%
Others (including Rystad, Global Data, TGS etc.)	[10-20]%
Total market	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Market Intelligence, Annex B.28a)

(B) The Notifying Party's view

(1130) The Notifying Party submits that the Transaction does not raise concerns in particular because (i) IHSM data is not necessarily an input into downstream and midstream market intelligence, (ii) many other suppliers remain active on the upstream energy markets post Transaction, (iii) regarding petrochemical specifically, the merger-specificity is particularly limited due to the limited market presence of S&P downstream, and (iv) the merged entity would face retaliation risks from downstream competitors, including in particular Refinitiv or Bloomberg.[948]

(C) The Commission's assessment

(1131) Contrary to the Parties' claims, the Commission's market investigation confirms that upstream energy market intelligence product is an important input into downstream and midstream energy market intelligence, while the feedback is more mixed in relation to petrochemical market intelligence.[949]

(1132) However, the Commission's investigation indicates that the Transaction is unlikely to give rise to competition concerns in relation to these vertical relationships.

(1133) First, there is limited merger-specific impact of the Transaction. S&P is not active upstream, and IHSM is already active downstream in both midstream and downstream energy and petrochemical market intelligence. In addition, S&P is only active to a limited extent in petrochemical market intelligence, where its market share is consistently below [0-5]% regardless of segmentation. As a result, the Transaction is unlikely to have any impact on the ability or incentives of the merged entity to engage in any input foreclosure strategy, as access to the relevant inputs is

share would be around 10% points higher, while PCI Wood Mackenzie and others' share would be around 5% points lower each. Correspondingly, outside of North American upstream energy, Enverus' share would be around 20% points lower than at aggregate level, whereas PCI Wood Mackenzie's and others would be higher by around 15% and 5% points respectively.

948 Form CO, Chapter on Vertical Relationships, paragraph 5.45.

949 Replies to questions 39 and 47 of Questionnaire Q2.

unlikely to be "*hampered or eliminated as a result of the merger*" (emphasis added).[950]

(1134) Second, the merged entity would likely not have the ability to engage in input foreclosure. IHSM does not supply upstream energy market intelligence to any of the top five midstream and downstream energy market intelligence competitors (namely PCI Wood Mackenzie, Refinitiv, Bloomberg, Argus, and ICIS) or any of the top five petrochemicals market intelligence competitors (namely ICIS, Nexant, Argus, PCI Wood Mackenzie and Tecnon Orbichem).[951]

(1135) Third, the merged entity would also not be able to engage in customer foreclosure. The merged entity cannot be considered as an "*important customer*" of upstream energy market intelligence.[952] IHSM does not procure upstream energy market intelligence products from third parties. S&P procures less than [S&P revenue information] upstream energy market intelligence (representing less than [0-5]% of total demand for energy market intelligence globally) from [S&P's supplier]. In addition, upstream energy market intelligence products are only marginally sold to providers of midstream and downstream energy or petrochemical market intelligence (less than 0.1% of total sales of upstream energy market intelligence in each case).[953] These products are also sold directly to end customers, including surveyors, drilling companies, as well as other companies in the oil and gas value chain, including oil majors.

(1136) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationships arising between upstream energy market intelligence (upstream) and downstream and midstream energy or petrochemical market intelligence (downstream).

7.3.3. Commodities price assessment and market intelligence – non-horizontal relationships

(1137) In addition, the Parties' activities in commodity price assessments give rise to vertically affected markets for price assessments (upstream) and related market intelligence (downstream) for various commodity groups: agriculture (specifically biofuels), coal, LNG, freight rate forecasts, natural gas, oil, power and shipping.

(1138) Conglomerate relationships also arise between market intelligence products and price assessment for the same commodity groups as these are largely purchased by the same customers.[954]

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950 Non-Horizontal Merger Guidelines, paragraph 29.

951 Form CO, Chapter on Vertical Relationships, paragraph 5.44.

952 Non-Horizontal Merger Guidelines, paragraph 58.

953 Based on the Parties' own estimates using the Parties' purchases of upstream input for the downstream product. See Form CO, Chapter on Vertical Relationships, annex D.2.This proxy is likely imperfect due to IHSM's in-house supply of such products.

954 Replies to question 99 of Questionnaire Q3.

7.3.3.1. Commodity price assessment (upstream) - Market intelligence (downstream)

(A) The Parties' activities

(1139) Both Parties are active downstream of commodity price assessments in the supply of commodity market intelligence, which gives rise to affected markets for the following commodities:

(a) Agriculture (downstream of biofuel price assessments);

(b) Freight rate forecasts (downstream of shipping price assessments);

(c) Midstream / downstream energy (downstream of coal, LNG, natural gas and oil price assessments);

(d) Petrochemicals (downstream of oil and petrochemical price assessments);

(e) Power (downstream of power price assessments);

(f) Upstream energy (downstream of oil price assessments).

(1140) The market shares of the parties in price assessments are provided in Sections 7.3.1.3. to 7.3.1.11. The market shares of the parties in midstream and downstream energy are provided in Section 7.3.2.2., in petrochemical market intelligence in Section 7.3.2.3., and in upstream energy market intelligence in Section 7.3.2.5.

(1141) **Table 43** below shows the market shares of the Parties and their competitors in the global market for agriculture, power market intelligence, and freight rate forecasts in 2020.[955]

Table 43: Market shares in agriculture, power and freight rate forecasts market intelligence (Value, Global, 2020)

Agriculture		Power		Freight rate forecasts	
Competitor	**Market share**	**Competitor**	**Market share**	**Competitor**	**Market share**
S&P	[0-5]%	S&P	[10-20]%	S&P	[5-10]%
IHSM	[10-20]%	IHSM	[0-5]%	IHSM	[5-10]%
Combined	***[10-20]%***	***Combined***	***[10-20]%***	***Combined***	***[10-20]%***
DTN (Telvent)	[20-30]%	PCI Wood Mackenzie	[20-30]%	Clarksons	[40-50]%
Euromoney (FastMarkets)	[10-20]%	Bloomberg	[10-20]%	SSY (Simpson Spence Young)	[10-20]%
Kynetec	[5-10]%	Hitachi ABB	[5-10]%	Drewry	[10-20]%

[955] The Parties' market shares in 2018 and 2019 do not differ materially from their market shares in 2020.

Agriculture		Power		Freight rate forecasts	
Competitor	**Market share**	**Competitor**	**Market share**	**Competitor**	**Market share**
Refinitiv	[5-10]%	IIR	[0-5]%	Poten & Partners	[0-5]%
Agribriefing	[5-10]%	Global data	[0-5]%	AXS Marine	[0-5]%
Other	[30-40]%	Others	[40-50]%	Others	[5-10]%
Total market	*100% (EUR [...])*	*Total market*	*100% (EUR [...])*	*Total market*	*100% (EUR [...])*

Source: The Parties' best estimates (Form CO, Chapter on Market Intelligence, Annex B.28a)

(B) The Notifying Party's view

(1142) The Notifying Party submits that no plausible concerns as a result of the Transaction with respect to these vertical relationships. Firstly, there is no ability to restrict access to important inputs as there are many alternative suppliers of price assessments that can be used in commodity market intelligence.[956] Secondly, there is no incentive to engage in input foreclosure because any attempt would have no material effect on downstream competitors and because the Parties would face serious retaliation risks; as demonstrated by the lack of foreclosure pre-Transaction despite some existing vertical links.[957]

(C) The Commission's assessment

(1143) The Transaction is unlikely to give rise to competition concerns in the downstream markets for commodity market intelligence as a result of input foreclosure.

(1144) The combined entity would not have the ability to negatively affect the overall availability of price assessments as inputs for the downstream market.

(1145) The market investigation confirms that price assessments are frequently or at least occasionally used as an input into commodity market intelligence products.[958] However, competitors suggest that both benchmarks and reference prices can be used as an input into market intelligence products,[959] and suggest that suitable references prices do not need to be limited to PRA price assessments only: *"We note that in most markets, analysts will have access to a range of numbers they will consider using. This will include numbers from other PRAs, internally generated numbers, exchange generated numbers, numbers from regulatory bodies, NGOs and governments and numbers from brokers."*[960] In case a competitor set is extended to include non-PRA providers, no vertically-affected market would arise as the Parties' combined market share in commodity price assessments is expected to be below 30% under any plausible market definition.[961]

(1146) The view that the Parties' would not have the ability to restrict access to an important input is demonstrated by the fact that, already today, many of the Parties'

956 Annex 3a to RFI 24, Chapter on Vertical Relationships, paragraph 6.4(i).
957 Annex 3a to RFI 24, Chapter on Vertical Relationships, paragraph 6.4(ii).
958 Replies to question 38 of Questionnaire 1 and question 102 of Questionnaire 3.
959 Replies to question 39 of Questionnaire 1.
960 Reply to question 38 of Questionnaire 1.
961 Annex 3a to RFI 24, Chapter on Vertical Relationships, paragraph 6.4.

key downstream commodity market intelligence competitors do not purchase price assessments from the Parties.[962]

(1147) Therefore, many alternative price assessments would be available to the Parties' downstream rivals in commodity market intelligence, even if the combined entity decided to discontinue supply of its upstream inputs.

(1148) The market investigation also indicates that the combined entity is unlikely to have the incentive to foreclose access to price assessments to competing commodity-related market intelligence providers.

(1149) While most customers consider it important that market intelligence products rely on the benchmark price assessments,[963] the majority would not switch market intelligence provider in case they no longer used the benchmark price assessments and have not done so in the past.[964] As the combined entity would have no ability or incentive to foreclose its upstream commodity price assessments rivals, it is not necessary to assess in detail the overall impact of a potential input foreclosure strategy on competition.

(1150) The Transaction is also unlikely to give rise to competition concerns in the upstream markets for commodity price assessments as a result of customer foreclosure.

(1151) The combined entity is unlikely to have the ability to engage in customer foreclosure because it would not be an important customer for price assessments (under any plausible market definition).

(1152) Price assessments are sold into a far wider variety of markets, customer sets and use cases other than as an input into commodity market intelligence. This is illustrated by the minimal revenue that the Parties generate from selling price assessments to providers active in commodity market intelligence. For both Parties, sales to providers active in commodity market intelligence represent less than […]% of their total price assessments sales.[965]

(1153) Moreover, given that the Parties self supply price assessments to a certain extent, their demand for price assessments presents a very small proportion of the total demand for price assessments. For all the above-mentioned commodity groups, the

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962 Form CO, Chapter on Vertical relationships, Annex D.1b. For example, the following key downstream competitors do not purchase price assessments from the Parties: (i) [Names of the Parties' customers], competitors in agriculture market intelligence do not purchase biofuel price assessments, (ii) [Names of the Parties' customers], do not purchase shipping price assessments, (iii) with respect to midstream/downstream market intelligence provider, [Names of the Parties' customers] do not purchase coal price assessments; [Names of the Parties' customers] do not purchase LNG price assessments; [Names of the Parties' customers] do not purchase natural gas price assessments; [Names of the Parties' customers] do not purchase oil price assessments; (iv) [Names of the Parties' customers], competitors in petrochemical market intelligence do not purchase oil nor petrochemical price assessments, and (v) [Names of the Parties' customers], competitors in power market intelligence do not purchase power price assessments.

963 Reply to question 102 of Questionnaire 3.

964 Reply to question 103 of Questionnaire 3.

965 Annex 3a to RFI 24, Chapter on Vertical Relationships, paragraph 6.11.

Parties' purchases of the upstream price assessments represent [0-5]% or less of the total upstream market.[966]

(1154) As the combined entity would have no ability to engage, it is not necessary to assess in detail the incentives of the combined entity or the overall impact of a potential customer foreclosure strategy on competition.

(1155) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationships arising between price assessments (upstream) and market intelligence (downstream), regardless of the commodities concerned.

7.3.3.2. Conglomerate effects

(A) The Parties' activities

(1156) Both Parties are active in the supply of commodity price assessments and commodity market intelligence, which gives rise to the same affected markets as those listed in Section 7.3.3.1., as well as between upstream energy market intelligence (where only IHSM is active with a share above 30%) and midstream and downstream market intelligence.[967]

(1157) S&P is primarily active as a supplier of price assessment, whereas IHSM is primarily active in the supply of market intelligence.

(B) The Notifying Party's view

(1158) The Notifying Party submits that the Transaction does not raise concerns in particular because: (i) there is no major advantage to procuring price assessments alongside corresponding market intelligence products, (ii) the Parties lack market power in reference prices (iii) S&P does not undertake any form of tying between these products and IHSM does not generally either (with the exception of its CMM, OMDC, Point Logic and Agribusiness businesses which offers including both as part of the same products), (iv) the Transaction will not increase the Parties' market power in price assessments, (v) leveraging strategies would risk to affect the benchmark status of price assessments, (vi) strong rivals remain in market intelligence post Transaction, (vi) there is countervailing buyer power from customers.[968]

(C) The Commission's assessment

(1159) In the context of this conglomerate relationship, tying would occur through leveraging the Parties' position in price assessments markets into market intelligence markets. The market investigation results indicate indeed that the tying product

966 Form CO, Chapter on Vertical Relationships, Annex D.2.

967 Conglomerate relationships also arise across price assessments (i.e. relating to the potential bundling of price assessments across various commodity groups, assessment families and/or assessment regions). However, such relationship will not be impacted by the Transaction, as modified, and will thus not be discussed further. Conglomerate relationships also arise across market intelligence products, where an affected market arises between upstream energy market intelligence (where only IHSM is active with a share above 30%), and midstream and downstream market intelligence (where both Parties are active).

968 Form CO, Chapter on Conglomerate Relationships, paragraphs 3.1 and ff.

would likely be price assessments, and in particular Platts (S&P) price assessments which are considered by an important number of respondents to the market investigation as must-have products.[969] This is also confirmed by the market shares of the Parties in price assessments, which are much higher than corresponding shares in market intelligence.[970]

(1160) The Transaction is unlikely to give rise to competition concerns as a result of foreclosure due to the combination of the Parties' activities in price assessment and market intelligence.

(1161) First, it is uncertain that the combined entity will have the ability to engage in a strategy aimed at foreclosing rivals through tying and bundling as a result of the Transaction. While the merged entity will have a significant degree of market power in price assessments, the Transaction, as modified, will have no impact on the ability of the merged entity to engage in foreclosure strategy. Any such ability would be largely derived from Platts' dominant market position pre-Transaction.

(1162) In addition, all of the main other PRAs besides the Parties (including Argus and ICIS), are active in market intelligence, and could thus replicate bundling strategies, as they themselves also offer must-have price assessments (in particular benchmark) across commodities.

(1163) A large majority of customers multi-source market intelligence products, particularly for downstream and midstream energy market intelligence which is more closely related to the markets where Platts holds a particularly significant market power (e.g. price assessments for LNG, oil or natural gas), as confirmed by the results of the market investigation.[971] As a result, customers are likely to continue purchasing market intelligence products from other providers besides the merged entity.

(1164) Second, it is not clear to what extent the merged entity would have the incentives to engage in such strategy. S&P, which operates the leading PRA globally, is already active in market intelligence for commodities for which it offers various price references and benchmarks. The market share of S&Ps exceeds [50-60]% in price assessment for e.g. LNG, oil, or natural gas, yet its market share in midstream and downstream energy intelligence for the relevant commodities is respectively [5-10]%, [10-20]% and [10-20]%. To the extent the company would have an incentive to engage in an input foreclosure strategy by way of tying or bundling, it would likely have done so and increased its market share in market intelligence.

(1165) Relatedly, many customers/competitors are not aware of bundling across market intelligence and price assessments, and mostly purchase the two products on a standalone basis. One oil major (who are typically among customers procuring a wide scope of price assessments and market intelligence products) indicate that "*As far as [the company] is aware market intelligence and price assessments can be*

969 Replies to Questionnaire Q3.

970 See Sections 7.3.1. and 7.3.2.

971 Replies to question 82 of Questionnaire Q3.

purchased separately".[972] Similarly, one market intelligence competitor indicates that it is "*not aware of such bundling having taken place to date*".[973]

(1166) Third, bundling of price assessment and market intelligence product would likely not have a material impact on prices and choice. Quality appears to a key element for customers of market intelligence. Responding customers indicate that they would not switch to a customer should they perceive that the quality of data is inferior. One notes for instance that "*Switching would be totally dependent on the quality and quantity of the data provided by the other data provider*", another one that "*Ability to switch depends on whether there is a competing service that offers an equivalent (or better) service at a reasonable cost*". [974] As a result, rival providers of market intelligence (including those not offering price assessments) are unlikely to be foreclosed should the merged entity engage in tying or bundling. Customers may simply take the bundle and continue purchasing market intelligence from other providers offering content they consider of higher quality. One customer states that instance that they "*would continue to purchase market intelligence from providers other than Platts even if Platts would only offer its price assessments and market intelligence as a bundle. […] Wood Mackenzie has very valuable insight of the relevant markets*",[975] and another one that "*In case there will be another provider with better scope and insights, there is no hindrance to switching. However, it is more likely for [the company] to add instead of switch to enhance the quality of forecast*".[976]

(1167) Lastly, while a substantial number of respondents to the market investigation raised concerns in relation to the bundling or tying, these largely relate to the bundling of price assessments (in particular across commodity specifications or regions within the same commodity area). This practice already exists pre-Transaction. One customer notes for instance that "*bundling of price assessment into unnecessary big bundles require us already now to buy very expensive and big packages* [description of purchasing costs]. *From the around ~20k bundled series, we need around 4*".[977] In that respect the Transaction, as modified, will have little to no merger-specific impact, as the divestment of OPIS (including PCW) and CMM removes the overlap between the Parties.

(1168) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the conglomerate relationships arising within commodities price assessments and market intelligence.

7.4. The OPIS/CMM Commitments

7.4.1. Framework for the assessment of the Commitments

(1169) See Section 6.4.1. above.

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[972] Minutes of a call with a customer, 12 May 2021, 15:30 CET, paragraph 14.
[973] Minutes of a call with a competitor, 10 June 2021, 11:00 CET, paragraph 24.
[974] Replies to question 72 of Questionnaire Q3.
[975] Minutes of a call with a customer, 14 September 2021, 11:30 CET, paragraph 21.
[976] Replies to question 72 of Questionnaire Q3.
[977] Replies to question 105 of Questionnaire Q3.

7.4.2. Proposed Commitments

7.4.2.1. Initial OPIS/CMM Commitments

(1170) In order to render the concentration compatible with the internal market in relation to the global markets for coal, biofuel, oil and petrochemical price assessments, the Parties submitted a set of commitments under Article 6(2) of the Merger Regulation on 1 October 2020 ("the Initial OPIS/CMM Commitments").

(1171) Under the Initial OPIS/CMM Commitments, the Parties offered to divest a package of two standalone businesses currently situated within IHSM: CMM and OPIS", which includes PCW (together the OPIS/CMM Divested Business), to a single purchaser (the "OPIS/CMM Purchaser").

(1172) The Initial OPIS/CMM Commitments offered to divest OPIS/CMM Divested Business, comprising *inter alia* the transfer of the following assets to the OPIS/CMM Purchaser:

- IHSM's equity interest in the relevant legal entities;
- All supplier and customer contracts, leases, agreements, undertakings, and commitments exclusively entered into by or for the exclusive benefit of the OPIS/CMM Divestment Business;
- The portion of contracts relating to the OPIS/CMM Divestment Business (with respect to contracts shared with the wider IHSM group) on terms and conditions equivalent to the current ones;
- Customer and other records of the OPIS/CMM Divested Business;
- All personnel who contribute to the current operation of the OPIS/CMM Divestment Businesses and who are necessary to ensure the viability and competitiveness;
- The OPIS and OPIS-PetroChem Wire brands and other intellectual property rights owned by the OPIS/CMM Divestment Business or primarily related to it, including the relevant current and legacy trademarks;
- All technology (e.g. data, databases, and software) that is used and necessary for the operation of the OPIS/CMM Divestment Business and the know-how of the employees to be transferred; and
- All licences, permits and authorisations necessary for the lawful conduct of the activities of the OPIS/CMM Divestment Business.

(1173) In addition, under the Initial OPIS/CMM Commitment, the OPIS/CMM Divestment Business would benefit, at the option of the OPIS/CMM Purchaser, from arrangements under a short-term transition service agreements ("TSA") for the supply of a number of transitional services. The TSA covers services in the following categories: facilities (e.g. physical security), finance, payroll, human resources, information technology infrastructure and security, technology, including Amazon Web Services, CMM content support (support from IHSM's technology

platform), and ancillary commercial activities. The anticipated duration varies between 6 and 12 months depending on the service.

(1174) The TSA would not cover the third party benchmark administration services.[978] Instead, the Parties proposed to appoint a third-party benchmark administrator for the Initial OPIS/CMM Divested Business, which would on closing take on the regulatory function of benchmark administration for the OPIS/CMM Divested Business.

(1175) In addition, under the Initial OPIS/CMM Commitments, IHSM and the OPIS/CMM Purchaser would enter a Data License Agreement pursuant to which IHSM and the OPIS/CMM Purchaser would grant the other party a non-exclusive worldwide license to use specific data for the purposes for which such data was used pre-Transaction:

- From IHSM to the OPIS/CMM Divested Business, the relevant data would include maritime and trade, gas, LNG, power and renewables data. The term would vary from 12-24 months depending on the type of data;

- From the OPIS/CMM Divested Business to IHSM, the relevant data would include petrochemicals, oil, agriculture, coal and shipping data. The term would vary from 12-48 months depending on the type of data.

(1176) Finally, under the Initial OPIS/CMM Commitments, the OPIS/CMM Purchaser should not meet any additional criteria besides those of the Commission's model text for divestiture commitments.[979]

7.4.2.2. Market test

(1177) The Commission market tested the Initial OPIS/CMM Commitments to assess whether they were sufficient and suitable to remedy the serious doubts identified in Section 7.3.1. of this decision, and whether they were sufficient to ensure the viability and competitiveness of the OPIS/CMM Divested Business.

(1178) Overall, most respondents indicated that the OPIS/CMM Divested Businesses, as defined under the Initial OPIS/CMM Commitments, is a viable and competitive standalone business. In particular, the majority of the respondents consider that the transferred assets, personnel and the TSA are sufficient to run the OPIS/CMM Divested Business as a standalone, viable and competitive business,[980] and that the business as such is attractive.[981] The majority of the respondents also do not see any implementation risks associated with the transfer of the OPIS/CMM Divested

978 A proportion of the OPIS/CMM Divestment Business' commodity price assessments fall within scope of the EU BMR, and as such must be administered by a benchmark administrator. A benchmark administrator is an entity that is authorised or registered by the relevant regulatory authority. Currently, IHSM's benchmark administration is provided by IMBA, an entity within the IHSM group.

979 See https://ec.europa.eu/competition-policy/mergers/legislation/best-practices_en.

980 Replies to questions 7, 8, 9 and 10 of Questionnaire R1, and questions 6, 7 and 8 of Questionnaire R2.

981 Replies to question 16 of Questionnaire R1, and question 11 of Questionnaire R2. The majority of the respondents also do not consider that the Initial OPIS/CMM Commitments risk to have a negative impact on the benchmark status of the price assessments offered by OPIS and CMM (Replies to question 6 of Questionnaire R1, and question 5 of Questionnaire R2).

Business,[982] including with respect to the transfer of the relevant contracts.[983] The majority of the respondents also consider that the Initial OPIS/CMM Commitments would solve potential competition concerns arising from the Transaction with respect to the provision of biofuel, coal, oil and petrochemical price assessments.[984]

(1179) However, respondents to the market test also identified the following main shortcomings in relation to the Initial CMM/OPIS Commitments.

(1180) *First*, respondents suggest that a suitable purchaser would need to meet additional criteria to the ones included in the Initial OPIS/CMM Commitments. Specifically, the market test results suggest that the OPIS/CMM Purchaser (i) should not be a purely financial investor, (ii) should have a global presence, and (iii) should be independent from the underlying commodities assessed by the OPIS/CMM Divested Business.[985] With respect to the independence from the underlying commodities, a customer for examples explains: *"It is important to retain neutrality in the reporting of the market and that price assessments remain independent / decoupled from any linkage to energy / commodity supply companies. No conflict of interest should arise"*.[986]

(1181) *Second,* respondents perceive benchmark administration services as important or even critical for PRAs,[987] and the majority consider that outsourcing of these services to an external third party would negatively impact the viability and competitiveness of the OPIS/CMM Divestment Business. For example, a competitor explains: *"Separating these functions would substantially increase the costs and risks to the PRA and would not be viable."*[988] In addition, respondents are split as to whether a company that only offers benchmark administration services in relation to financial indices could easily offer the same services in relation to benchmarks offered by PRAs, and most of them explain that administration of financial benchmarks is significantly different to administration of price assessment benchmark.[989]

(1182) *Third,* the market test and the Commission's assessment indicate that the duration of the Data License Agreement included in the Initial OPIS/CMM Commitments (reaching up to 48 months) may be excessive. One competitor explains that *"We would have some concerns as to whether the extent of the ongoing mutual licensing of data between the divested business and the merging parties is such as to prevent the divested business from being truly independent and competing vigorously with the merging parties"*.[990]

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[982] Replies to question 5 of Questionnaire R1, and question 4 of Questionnaire R2.
[983] Replies to question 11 of Questionnaire R1, and question 10 of Questionnaire R2.
[984] Replies to question 4 of Questionnaire R1, and question 3 of Questionnaire R2.
[985] Replies to question 17 and 18 of Questionnaire R1, and questions 12 and 13 of Questionnaire R2.
[986] Reply to question 12 of Questionnaire R2.
[987] Replies to question 12 of Questionnaire R1.
[988] Reply to question 12 of Questionnaire R1.
[989] Replies to question 12 of Questionnaire R1.
[990] Reply to question 14 of Questionnaire R1.

7.4.2.3. Final OPIS/CMM Commitments

(1183) In order to take into account the results of the market test, the Parties submitted revised commitments on 15 October 2021 (the "Final OPIS/CMM Commitments").

(1184) The Final OPIS/CMM Commitments differ from the Initial OPIS/CMM Commitments on the following points:

- *Suitable purchaser criteria.* The Final OPIS/CMM Commitments include additional criteria that the OPIS/CMM Purchaser must fulfil. These stipulate that the OPIS/CMM Purchaser: (i) shall not be a purely financial investor; (ii) shall have a global presence; and (iii) shall not be a supplier of or not have material financial exposure to the price of underlying commodities assessed by the OPIS/CMM Divested Business.

- *Benchmark administration services*. The Notifying Party clarified that benchmark administration services would only be provided by a third party for a transitional basis until the OPIS/CMM Purchaser develops its own benchmark administrator. The Final OPIS/CMM Commitments expand the criteria that the Purchaser "shall have the financial resources, proven expertise and incentive to maintain and develop the [OPIS/CMM Divested Business] as viable and active competitive forces in competition with the Parties and other competitors" to include "the ability and incentives to develop its own benchmark administrator in-house".

  Data License Agreements. The Final OPIS/CMM Commitments provide for the term of the Data License Agreement with respect to the data flowing from the OPIS/CMM Divested Business to IHSM to vary from 12 – 24 months depending on the type of data. Under the Final OPIS/CMM Commitments, the term of these supply agreements can be extended by an additional 12 months, for a maximum total of 48 months, provided that, under the supervision of the Monitoring Trustee, IHSM demonstrates it made its best effort to replace the source of data obtained from the OPIS/CMM Divested Business in the shortest possible time frame, and that the OPIS/CMM Divested Business is compensated on market conditions.

7.4.3. Commission's assessment

(1185) The Final OPIS/CMM Commitments eliminate the competition concerns in the markets for biofuel, coal, oil and petrochemical price assessments where serious doubts were identified in Section 7.3.1. of this decision.

(1186) The Final OPIS/CMM Commitments remove the entire overlap of the Parties in the global markets for coal and oil price assessments (and all plausible narrower segments).[991]

(1187) With respect to the global markets for biofuel and petrochemical price assessments, a limited overlap will remain. Post-Divestment, the legacy IHSM will remain active in biofuel price assessments with its Agribusiness division. As further discussed in

[991] In addition, they remove the entire overlap in additional market where no serious doubts were identified, namely the markets for LNG, metals, power and shipping price assessments.

Section 7.3.1.3., IHSM Agribusiness has *de minimis* sales of biofuel price assessments and market share of [0-5]% (under any plausible market definition), adding to Platts', whereas the OPIS/CMM Divested Business has a market share of around [5-10]%. Given IHSM Agribusiness' limited market share, limited biofuel benchmarks provided by IHSM Agribusiness, and market investigation providing no indication that IHSM Agribusiness is among the primary suppliers of biofuel price assessments, we consider that serious doubts identified in Section 7.3.1.3. relate to the overlap between Platts and IHSM OPIS, and not Platts and IHSM Agribusiness.

(1188) Therefore, the Final OPIS/CMM Commitments eliminate competition concerns in biofuel price assessments. This is further supported by the market test, where no respondents considers that any competition concerns will remain post-Divestment with respect to biofuel price assessment markets.[992] Moreover, virtually no respondent indicated that Agribusiness could be considered as critical for the viability of the OPIS/CMM Divested Business.[993]

(1189) Post-Divestment, the legacy IHSM will also remain active in petrochemical price assessments with its OMDC division. IHSM OMDC has a market share of [10-20]%, whereas the OPIS/CMM Divested Business has a market share of around [0-5]%. Post-Divestment the Parties' combined market share would therefore remain moderate at [30-40]%.[994] However, as further discussed in Section 7.3.1.9.:

(a) OMDC is not a particularly strong provider of petrochemical price assessments;

(b) OMDC does not appear to compete closely with Platts, as it is not a PRA and its price assessments are only available as part of its market intelligence offering;

(c) Concerns raised by market participants with respect to the Parties' overlap in petrochemical price assessments (outlined in Section 7.3.1.9.) appear to largely relate to the overlap between Platts and PCW, and not Platts and OMDC. This is confirmed by the results of the market test. Virtually no respondent suggests that competition concerns would remain post-divestment due to OMDC not being divested.[995] A customer explicitly recognizes: *"The proposed divestment of IHSM's CMM, OPIS and PCW businesses [emphasis added] could addresses those concerns."*[996]; and

(1190) Therefore, the Commission considers that serious doubts identified in Section 7.3.1.9. relate to the overlap between Platts and PCW only, and not Platts and OMDC. The Final OPIS/CMM Commitments thus eliminate competition concerns in petrochemical price assessments. Moreover, virtually no respondent indicated that

992 Replies to question 4 of Questionnaire R1 and question 5 of Questionnaire R2.

993 Replies to question 10 of Questionnaire R1 and question 9 of Questionnaire R2.

994 OMDC's market share is likely overestimated as the Notifying Party estimated it assuming a 50-50 revenue split between market intelligence and price assessment, whereas OMDC is primarily a market intelligence provider. The market investigation did not provide any evidence that OMDC's position and competitive interaction with Platts would be different in any plausible narrower segments.

995 Replies to question 4 of Questionnaire R1 and question 5 of Questionnaire R2.

996 Reply to question 5 of Questionnaire R2.

OMDC could be considered as critical for the viability of the OPIS/CMM Divested Business.[997]

(1191) In addition, the Commission considers that the amendments described in Section 7.4.2.3. adequately address the concerns raised by market test respondents and the Commission in relation to the Initial OPIS/CMM Commitments.

(1192) The additional purchaser criteria will ensure that the OPIS/CMM Purchaser will have all the necessary expertise and incentive to maintain and develop the OPIS/CMM Divested Business as a viable and active competitor.

(1193) With respect to benchmark administration services specifically, the OPIS/CMM Purchaser will be able to use the third-party external administrator on a transitional basis only, and develop its own in-house benchmark administrator.

(1194) With respect to the data license agreements governing the flow of data from the OPIS/CMM Divested Business to IHSM, the Final OPIS/CMM Commitments ensure that the duration of such agreements is minimised as much as possible, and that the OPIS/CMM Divested Business is adequately remunerated for any services it will continue providing to IHSM. The Final OPIS/CMM Commitments, as amended, therefore protect the independence, viability and competitiveness of the OPIS/CMM Divested Business.

(1195) In view of the foregoing, the Commission concludes that the Final OPIS/CMM Commitments would allow the OPIS/CMM Purchaser to effectively and credibly compete in the markets for biofuel, coal, oil and petrochemical price assessments.

(1196) For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market in relation to the markets for biofuel, coal, oil and petrochemical price assessments.

8. CONDITIONS AND OBLIGATIONS

(1197) The commitments in Section B of each of the Final OPIS / CMM Commitments, the Final CUSIP Commitments and Final LCD/LLI Commitments annexed to this decision (including their respective Schedule) constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in each of the Final OPIS / CMM Commitments, the Final CUSIP Commitments and Final LCD/LLI Commitments constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

[997] Replies to question 10 of Questionnaire R1 and question 9 of Questionnaire R2.

9. CONCLUSION

(1198) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B (including the Schedule) of each of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

Case M. 10108 – S&P / IHSM

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), S&P Global Inc. ("**S&P**") and IHS Markit Ltd ("**IHSM**") (together, the "**Parties**") hereby enters into the following Commitments (the "**Commitments**") vis-à-vis the European Commission (the "**Commission**") with a view to rendering the acquisition by S&P of IHSM (the "**Concentration**") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "**Decision**"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "**Remedies Notice**").

SECTION A. DEFINITIONS

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "**Consolidated Jurisdictional Notice**").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Price Assessments Divestment Businesses as indicated in Section B, paragraph 7(i), 7(ii) and 7(iii) and described more in detail in the Schedule.

Closing: the transfer of the legal title to the Price Assessments Divestment Businesses to the Purchaser.

Closing Period: the period of […] from the approval of the Purchaser and the terms of sale by the Commission.

CMM: means IHSM's Coal, Metals and Mining group, set out in the Schedule, which the Parties commit to divest.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties and who has/have received from the Parties the exclusive Trustee Mandate to sell the Price Assessments Divestment Businesses to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] from the Effective Date.

Hold Separate Manager: the person appointed by the Parties for the Price Assessments Divestment Businesses to manage the day-to-day business under the supervision of the Monitoring Trustee.

IHSM: IHS Markit Ltd, incorporated under the laws of Bermuda with its registered office at 4th Floor, Ropemaker Place, 25 Ropemaker Street, London, England EC2Y 9LY.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Price Assessments Divestment Businesses, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

OPIS: means IHSM's Oil Price Information Services group, as set out in the Schedule, which the Parties commit to divest.

Parties: S&P and IHSM.

PCW: means IHSM's PetroChem Wire, which the Parties commit to divest.

Personnel: all staff currently employed by the Price Assessments Divestment Businesses, including staff seconded to the Price Assessments Divestment Businesses (if any), and a proportionate allocation of shared personnel as well as the additional personnel listed in the Schedule.

Price Assessments Divestment Businesses: the businesses as defined in Section B and in the Schedule which the Parties commit to divest.

Purchaser: the entity approved by the Commission as acquirer of the Price Assessments Divestment Businesses in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 18 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

S&P: S&P Global Inc. incorporated under the laws of New York, with its registered office at 55 Water Street, New York, NY 10041.

Schedule: the schedule to these Commitments describing more in detail the Price Assessments Divestment Businesses.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

SECTION B. THE COMMITMENT TO DIVEST AND THE PRICE ASSESSMENTS DIVESTMENT BUSINESSES

Commitment to divest

2. In order to maintain effective competition, the Parties commit to divest, or procure the divestiture of the Price Assessments Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 19 of these Commitments. To carry out the divestiture, the Parties commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Price Assessments Divestment Businesses within the First Divestiture Period. If the Parties have not entered into such an agreement at the end of the First Divestiture Period, the Parties shall grant the Divestiture Trustee an exclusive mandate to sell the Price Assessments Divestment Businesses in accordance with the procedure described in paragraph 31 in the Trustee Divestiture Period.

3. The proposed concentration shall not be implemented before the Parties or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Price Assessments Divestment Businesses and the Commission has approved the purchaser and the terms of sale in accordance with paragraph 19.

4. The Parties shall be deemed to have complied with this commitment if:

   (i) by the end of the Trustee Divestiture Period, the Parties or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 19; and

   (ii) the Closing of the sale of the Price Assessments Divestment Businesses to the Purchaser takes place within the Closing Period.

5. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Price Assessments Divestment Businesses, unless, following the submission of a reasoned request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 45 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Price Assessments Divestment Businesses is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Price Assessments Divestment Businesses

6. The Price Assessments Divestment Businesses consist of:

   (i) IHSM's CMM group;

   (ii) IHSM's OPIS business; and

(iii) IHSM's PCW business.

7. The legal and functional structure of the Price Assessments Divestment Businesses as operated to date is described in the Schedule. The Price Assessments Divestment Businesses, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Price Assessments Divestment Businesses, in particular:

(i) all tangible and intangible assets (including intellectual property rights);

(ii) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Price Assessments Divestment Businesses;

(iii) all contracts, leases, commitments and customer orders of the Price Assessments Divestment Businesses; all customer, credit and other records of the Price Assessments Divestment Businesses; and

(iv) the Personnel.

8. In addition, the Price Assessments Divestment Businesses include the benefit, for a transitional period of up to 12 months after Closing and on terms and conditions equivalent to those at present afforded to the Price Assessments Divestment Businesses, of all current arrangements under which IHSM or its Affiliated Undertakings supply products or services to the Price Assessments Divestment Businesses, as detailed in the Schedule, unless otherwise agreed with the Purchaser as described in detail in the Schedule. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the Price Assessments Divestment Businesses.

SECTION C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

9. From the Effective Date until Closing, the Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Price Assessments Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Price Assessments Divestment Businesses. In particular the Parties undertake:

(i) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Price Assessments Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Price Assessments Divestment Businesses;

(ii) to make available, or procure to make available, sufficient resources for the development of the Price Assessments Divestment Businesses, on the basis and continuation of the existing business plans;

(iii) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage

all Key Personnel to remain with the Price Assessments Divestment Businesses, and not to solicit or move any Personnel to the Parties' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Price Assessments Divestment Businesses, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

10. The Parties commit, from the Effective Date until Closing, to procure that the Price Assessments Divestment Businesses are kept separate from the business(es) that the Parties will be retaining and, after closing of the notified transaction to keep the Price Assessments Divestment Businesses separate from the business that the Parties are retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es) retained by the Parties have no involvement in the Price Assessments Divestment Businesses; (ii) the Key Personnel and Personnel of the Price Assessments Divestment Businesses have no involvement in any business retained by the Parties and do not report to any individual outside the Price Assessments Divestment Businesses.

11. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Price Assessments Divestment Businesses are managed as a distinct and saleable entity separate from the business(es) which the Parties are retaining. Immediately after the adoption of the Decision, the Parties shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Price Assessments Divestment Businesses independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 9(iii) of these Commitments. The Commission may, after having heard the Parties, require the Parties to replace the Hold Separate Manager.

12. To ensure that the Price Assessments Divestment Businesses are held and managed as a separate entity the Monitoring Trustee shall exercise the Parties' rights as shareholder in the legal entity or entities that constitute the Price Assessments Divestment Businesses (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, the Parties shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

13. The Parties shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Price Assessments Divestment Businesses and that any such Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by the Parties. This includes measures vis-à-vis the Parties' appointees on the supervisory board and/or board of directors of the Price Assessments Divestment Businesses. In particular, the participation of the Price Assessments Divestment Businesses in any central information technology network shall be severed to the extent possible, without compromising the viability of the Price Assessments Divestment Businesses. The Parties may obtain or keep information relating to the Price Assessments Divestment Businesses which is reasonably necessary for the divestiture of the Price Assessments Divestment Businesses or the disclosure of which to the Parties is required by law.

Non-solicitation clause

14. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Price Assessments Divestment Businesses for a period of 12 months after Closing.

Due diligence

15. In order to enable potential purchasers to carry out a reasonable due diligence of the Price Assessments Divestment Businesses, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

    (i) provide to potential purchasers sufficient information as regards the Price Assessments Divestment Businesses;

    (ii) provide to potential purchasers after the Effective Date, a version of the Commitments (including the Schedule and its annexes) without undue delay and no later than at the signing of a non-disclosure agreement by the potential purchaser, or at the opening of a data-room, whichever is earlier. Any redaction to the Commitments should be agreed in advance with the Commission; and

    (iii) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

16. The Parties shall submit written reports in English on potential purchasers of the Price Assessments Divestment Businesses and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Parties shall submit a list of all potential purchasers having expressed interest in acquiring the Price Assessments Divestment Businesses to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

17. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

SECTION D. THE PURCHASER

18. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

(i) The Purchaser shall be independent of and unconnected to the Parties and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

(ii) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Price Assessments Divestment Businesses as viable and active competitive forces in competition with the Parties and other competitors, including the ability and incentives to develop its own benchmark administrator in-house;

(iii) The acquisition of the Price Assessments Divestment Businesses by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Price Assessments Divestment Businesses.

(iv) The Purchaser shall not be a purely financial investor.

(v) The Purchaser shall have a global presence.

(vi) The Purchaser shall not be a supplier of nor have material financial exposure to the price of underlying commodities assessed by the Price Assessments Divestment Businesses.

19. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Price Assessments Divestment Businesses shall be conditional on the Commission's approval. When the Parties has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Price Assessments Divestment Businesses are being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Price Assessments Divestment Businesses are being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Price Assessments Divestment Businesses without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Price Assessments Divestment Businesses after the sale, taking account of the proposed purchaser.

SECTION E. TRUSTEE

I. Appointment procedure

20. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.

21. If the Parties have not entered into a binding sale and purchase agreement regarding the Price Assessments Divestment Businesses one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Parties at that time or thereafter, the Parties shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

22. The Trustee shall:

(i) at the time of appointment, be independent of the Parties and its Affiliated Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

23. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Price Assessments Divestment Businesses, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Parties

24. No later than two weeks after the Effective Date, the Parties shall submit the name or names of one or more natural or legal persons whom the Parties proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, the Parties shall submit a list of one or more persons whom the Parties propose to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 22 and shall include:

(i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(ii) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(iii) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

25. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

26. If all the proposed Trustees are rejected, the Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 20 and 25 of these Commitments.

Trustee nominated by the Commission

27. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

28. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Parties, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

29. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Price Assessments Divestment Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Price Assessments Divestment Businesses, and the keeping separate of the Price Assessments Divestment Businesses from the business retained by the Parties, in accordance with paragraphs 9 and 10 of these Commitments;

(b) supervise the management of the Price Assessments Divestment Businesses as distinct and saleable entities, in accordance with paragraph 11 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Price Assessments Divestment Businesses,

- in particular strive for the severing of the Price Assessments Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Price Assessments Divestment Businesses,

- make sure that any Confidential Information relating to the Price Assessments Divestment Businesses obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties and

- decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Price Assessments Divestment Businesses and the Parties or Affiliated Undertakings;

(iii) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Price Assessments Divestment Businesses, the holding separate of the Price Assessments Divestment Businesses and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Price Assessments Divestment Businesses and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending the Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the

operation and management of the Price Assessments Divestment Businesses as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 19 of these Commitments, submit to the Commission, sending the Parties a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Price Assessments Divestment Businesses after the Sale and as to whether the Price Assessments Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Price Assessments Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Price Assessments Divestment Businesses after the sale, taking account of the proposed purchaser;

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

30. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

31. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Price Assessments Divestment Businesses to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 18 and 19 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

32. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

III. Duties and obligations of the Parties

33. The Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' or the Price Assessments Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Price Assessments Divestment Businesses shall provide the Trustee upon request with copies of any document. The Parties and the Price Assessments Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

34. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that they may reasonably request on behalf of the management of the Price Assessments Divestment Businesses. This shall include all administrative support functions relating to the Price Assessments Divestment Businesses which are currently carried out at headquarters level. The Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Parties shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

35. The Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.

36. The Parties shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Parties for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

37. At the expense of the Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Parties' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Parties refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 36 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Parties during

the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

38. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

39. The Parties agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

40. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

41. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(i) the Commission may, after hearing the Trustee and the Parties, require the Parties to replace the Trustee; or

(ii) the Parties may, with the prior approval of the Commission, replace the Trustee.

42. If the Trustee is removed according to paragraph 41 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 20 to 27 of these Commitments.

43. Unless removed according to paragraph 41 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION F. THE REVIEW CLAUSE

44. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Parties or, in appropriate cases, on its own initiative. Where the Parties request an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

45. The Commission may further, in response to a reasoned request from the Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

SECTION G. ENTRY INTO FORCE

46. The Commitments shall take effect upon the date of adoption of the Decision.

[signed]

……..
duly authorised for and on behalf of
S&P Global Inc.

[signed]

……..
duly authorised for and on behalf of
IHS Markit Ltd

SCHEDULE

1. The Price Assessments Divestment Businesses consist of CMM, OPIS, and PCW. PCW is organisationally part of OPIS.

2. In accordance with paragraph 7 of these Commitments, the Price Assessments Divestment Businesses include, but are not limited to:

   (i) the following main tangible assets:

      (a) 100% of the equity interest in the following legal entities:

         (I) Oil Price Information Service, LLC;

         (II) Axxis Software, LLC; and

         (III) PetroChemWire LLC;

      (b) 100% of the equity interests currently held by IHSM in a2i systems A/S and Prima Regulated Markets Limited;

   (ii) the following main intangible assets:

      (a) all supplier and customer contracts, leases, agreements, undertakings, and commitments (or, in the case of shared contracts, the portion of such contracts which relates to the Price Assessments Divestment Businesses in the manner outlined in paragraph 2(ii)(b)) which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Price Assessments Divestment Businesses;[1]

      (b) in respect of the small number of contracts used by the Price Assessments Divestment Businesses which are shared with the wider IHSM group, the portion of those contracts which relates to the Price Assessments Divestment Businesses on terms and conditions equivalent to those at present afforded to the Price Assessments Divestment Businesses. If a shared contract cannot be partially assigned by its terms or otherwise, or cannot be amended, without approvals and such approvals cannot be obtained within a period agreed to between IHSM and the Purchaser, IHSM will cooperate with the Purchaser to establish an agency type or other similar arrangement to provide the Purchaser the claims, rights and benefits of those parts that relate to the Price Assessments Divestment Businesses;

      (c) customer, and other records of the Price Assessments Divestment Businesses, recognising that the Parties may retain a copy of such records to the extent that these relate to suppliers or customers not transferred to the Price Assessments Divestment Businesses or are required for legal

[1] For those contracts subject to change of control provisions or requiring consent before assignment, IHSM will use best efforts to obtain the consent of the relevant contracting parties to ensure the Purchaser receives the benefit of all rights and obligations under those contracts.

compliance purposes. Copies of records of the Price Assessments Divestment Businesses that are retained by the Parties for legal compliance purposes will be ring-fenced;

(d) in line with applicable employment laws, contractual provisions and other relevant legislation, all personnel who contribute to the current operation of the Price Assessments Divestment Businesses and who are necessary to ensure the viability and competitiveness of the Price Assessments Divestment Businesses (an indicative list is included in Appendix 1);

(e) the OPIS and OPIS-PetroChem Wire brands and intellectual property rights to the extent owned by or primarily related to the Price Assessments Divestment Businesses or necessary to ensure the viability and competitiveness of the Price Assessments Divestment Businesses, including registered and unregistered trademarks, domain names and social media identifiers;

(f) technology (e.g., data, databases, and software) that is (a) used in and necessary for the operation of the Price Assessments Divestment Businesses as of the closing or (b) the know-how of the employees to be transferred to the extent primarily related to the Price Assessments Divestment Businesses or necessary to ensure the viability and competitiveness of the Price Assessments Divestment Businesses;

(g) all licences, permits and authorisations necessary for lawful conduct or the viability and competitiveness of the Price Assessments Divestment Businesses and use of the transferred assets as presently conducted (to the extent transferrable);

(h) all electronic books, records and files that are related to the Price Assessments Divestment Businesses. To the extent any parts of such electronic books, records and files are not related to the Price Assessments Divestment Businesses, they may be redacted;

(i) claims, defences, rights of offset or counterclaim to the extent primarily related to the Price Assessments Divestment Businesses;

(j) arrangements under a Data License Agreement pursuant to which IHSM and the Purchaser will grant the other party a non-exclusive, worldwide license to use the specified data for the purposes for which such data was used as of the date of the sale and purchase agreement:

(I) From IHSM to the Price Assessments Divestment Businesses: Specified data includes [Commercial terms].

(II) From Price Assessments Divestment Businesses to IHSM: Specified data includes [Commercial terms].

(k) at the option of the Purchaser, arrangements under a short-term transition services agreement ("**TSA**") for the supply of the following transitional

services in Table 1.1 at cost, plus any applicable taxes that should be applied by the Parties, for the below anticipated duration:

Table 1.1
Functions covered by the TSA

Category	Description	Anticipated Duration
Facilities	[Commercial detail of transitional services to be provided]	≤ 6 months
Finance	[Commercial detail of transitional services to be provided]	≤ 3-6 months
Payroll	[Commercial detail of transitional services to be provided]	≤ 3-6 months
Human Resources	[Commercial detail of transitional services to be provided]	≤ 12 months
Information Technology Infrastructure & Security	[Commercial detail of transitional services to be provided]	≤ 12 months
Technology (PD&D), including Amazon Web Services (AWS)	[Commercial detail of transitional services to be provided]	≤ 12 months
	[Commercial detail of transitional services to be provided]	≤ 12 months
CMM Content Support	[Commercial detail of transitional services to be provided] [Commercial detail of transitional services to be provided]	≤ 12 months
Ancillary Commercial	[Commercial detail of transitional services to be provided]	≤ 12 months

(l) all certain other assets owned by IHSM and its subsidiaries that are primarily related to the Price Assessments Divestment Businesses which contribute to the current operation or which are necessary to ensure the viability and competitiveness of the Price Assessments Divestment Businesses

2.2 The Price Assessments Divestment Businesses shall not include:

(i) PointLogic LLC, a subsidiary of OPIS LLC;

(ii) books and records required to be retained pursuant to any law provided that the Purchaser shall on request receive a copy of the same. Books and records of the Price Assessments Divestment Businesses that are retained by the Parties for legal compliance purposes will be ring-fenced;

(iii) customer or supplier contracts, commitments, orders or volumes (or portions thereof) not solely or mainly related to the Price Assessments Divestment Businesses; and

(iv) any other asset or contract that is used primarily in respect of the Parties' retained business(es) and which is not necessary for the viability and competitiveness of the Price Assessments Divestment Businesses (although the portion of any asset or contract that is used by the Price Assessments Divestment Businesses will be included in the Price Assessments Divestment Businesses where this is possible).

3. If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is necessary for the continued viability and competitiveness of the Price Assessments Divestment Businesses, that asset or adequate substitute will be offered to potential purchasers.

APPENDIX 1

CMM personnel transferring

1. All CMM employees will transfer with the divested business.

Key Personnel

2. Below in Table 1.2 is a list of the leadership team that will transfer by function mapping, which are the Key Personnel for CMM

Table 1.2
CMM leadership team and function group

Individual	Role/Division	Function Mapping
[Personal data]	[Personal data]	**Leadership**
[Personal data]	[Personal data]	Journalism
[Personal data]	[Personal data]	Research & Analysis
[Personal data]	[Personal data]	Journalism
[Personal data]	[Personal data]	Research & Analysis
[Personal data]	[Personal data]	Journalism
[Personal data]	[Personal data]	Journalism
[Personal data]	[Personal data]	Journalism

Other Personnel

3. Table 1.3 below provides a breakdown of the employees that will transfer by function.[2]

Table 1.3
Breakdown by CMM Employees by Function

Function	Number of Employees
Corporate / Other	[0-5]
Journalism	[20-30]
Leadership	[0-5]
Product Management	[0-5]
Research and Analysis	[20-30]
Grand Total	**[50-60]**

2 Number of employees accurate as of 31 March 2021.

OPIS (including PCW) personnel transferring

1. All OPIS (including PCW) employees will transfer with the divested business.

Key Personnel

2. Below is a list of the leadership team that will transfer, including a breakdown of employees by function in Table 1.4, which are the Key Personnel for OPIS (including PCW). The named leadership team individuals identified below represent the senior management of the OPIS business that will be transferred with the Price Assessments Divestment Businesses.

3. The leadership team that will transfer is as follows:

(i) At the option of the purchaser, [Personal data]

(ii) Retail:

(a) [Personal data]

(b) [Personal data]

(c) [Personal data]

(d) [Personal data]

(ii) Rack:

(a) [Personal data]

(b) [Personal data]

(c) [Personal data]

(d) [Personal data]

(e) [Personal data]

(iii) Spot (including PCW):

(a) [Personal data]

(b) [Personal data]

(c) [Personal data]

(d) [Personal data]

(e) [Personal data]

(f) [Personal data]

(g) [Personal data]

(h) [Personal data]

(iv) Axxis:

(a) [Personal data]

(b) [Personal data]

(c) [Personal data]

(d) [Personal data]

(e) [Personal data].

Other Personnel

4. Table 1.4 below provides a breakdown of the OPIS (including PCW) employees that will transfer by function.[3]

Table 1.4
Breakdown of OPIS Employees by Function

	Axxis	Business Shared Services	Conferences	PCW	Rack	Retail	Spot	Grand Total
Client Services & Implementation	[5-10]					[0-5]		**[10-20]**
Corporate / Other						[0-5]		**[0-5]**
Customer Care	[5-10]	[20-30]				[5-10]		**[30-40]**
Data Science		[5-10]						**[5-10]**
Data Transformation						[0-5]		**[0-5]**
Enterprise Data & Data Governance					[5-10]	[20-30]		**[30-40]**

3 Number of employees accurate as of 31 March 2021.

	Axxis	Business Shared Services	Conferences	PCW	Rack	Retail	Spot	Grand Total
Finance (Order Management, AR)								[0-5]
IT Operations								[0-5]
Journalism								[60-70]
Leadership								[5-10]
Legal / Risk / Compliance								[0-5]
Product Design / Development								[100-150]
Product Management				[…]				[5-10]
Research and Analysis								[10-20]
Resourced Shared - Marketing								[0-5]
Resourced Shared - Netsuite								[0-5]
Sales (Field, Inside, AM, & Ops)								[30-40]
Grand Total	**[40-50]**	**[100-150]**	**[0-5]**	**[10-20]**	**[20-30]**	**[70-80]**	**[80-90]**	**[350-400]**

Case M.10108 – S&P Global Inc. / IHS Markit Ltd.

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), S&P Global Inc. ("**S&P**") (the "**Notifying Party**") hereby enters into the following Commitments (the "**Commitments**") vis-à-vis the European Commission (the "**Commission**") with a view to rendering the acquisition by S&P of sole control over IHS Markit ("**IHSM**") (the "**Concentration**") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by S&P and/or by the ultimate parents of S&P, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "**Consolidated Jurisdictional Notice**").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the LCD Divestment Businesses as indicated in Section B, paragraph 5 (a), (b) and (c) and described more in detail in the Schedule.

Closing: the transfer of the legal title to the LCD Divestment Businesses to the Purchaser.

Closing Period: the period of […] from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by S&P and who has/have received from S&P the exclusive Trustee Mandate to sell the LCD Divestment Businesses to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

EU-BMR: EU-Regulation 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or

to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014

First Divestiture Period: the period of […] from the Effective Date.

Hold Separate Manager: the person appointed by S&P to manage the day-to-day business of the LCD Divestment Businesses under the supervision of the Monitoring Trustee.

IHSM: IHS Markit Ltd., incorporated under the laws of Bermuda with its registered office at 4th Floor, Ropemaker Place, 25 Ropemaker Street, London, England EC2Y 9LY.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the LCD Divestment Businesses, as listed in the Schedule, including the Hold Separate Manager.

LCD Divestment Businesses: the businesses comprising the LCD Business and the LL100 Business as defined in Section B and in the Schedule, which S&P commits to divest.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by S&P, and who has/have the duty to monitor S&P's compliance with the conditions and obligations attached to the Decision.

Parties: S&P and IHSM.

Personnel: all staff currently contributing to the LCD Divestment Businesses, including staff seconded to the LCD Divestment Businesses (if any) and a proportionate allocation of shared personnel. An indicative list is provided in Appendix 1 to the Schedule.

Purchaser: one or more entities approved by the Commission as acquirer of the LCD Divestment Businesses (or, in the case of multiple purchasers, the LCD Business and, separately, the LL100 Business), in each case in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 15 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

S&P: S&P Global Inc. incorporated under the laws of New York, with its registered office at 55 Water Street, New York, NY 10041.

Schedule: the schedule to these Commitments describing more in detail the LCD Divestment Businesses.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

Section B. The commitment to divest and the LCD Divestment Businesses

Commitment to divest

1. In order to maintain effective competition, S&P commits to divest, or procure the divestiture of the LCD Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 16 of these Commitments. To carry out the divestiture, S&P commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the LCD Divestment Businesses within the First Divestiture Period. If S&P has not entered into such an agreement at the end of the First Divestiture Period, S&P shall grant the Divestiture Trustee an exclusive mandate to sell the LCD Divestment Businesses in accordance with the procedure described in paragraph 28 in the Trustee Divestiture Period.

2. S&P shall be deemed to have complied with this commitment if:

   a) by the end of the Trustee Divestiture Period, S&P or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 16; and

   b) the Closing of the sale of the LCD Divestment Businesses to the Purchaser takes place within the Closing Period.

3. In order to maintain the structural effect of the Commitments, S&P shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the LCD Divestment Businesses, unless, following the submission of a reasoned request from S&P showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 42 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the LCD Divestment Businesses is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the LCD Divestment Businesses

4. The LCD Divestment Businesses consist of the entirety of S&P's business in the supply of:

   a) Leveraged loan market intelligence, namely its Leveraged Commentary and Data business, including the European Leveraged Loan Index ("ELLI"), the Leveraged Loan Index ("LLI") (the "LCD Business"); and

   b) The Leveraged Loan 100 Index family (the "LLI100 Business").

   (the LCD Business and the LLI100 Divestment Business together the "**LCD Divestment Businesses**").

5. The legal and functional structure of the LCD Divestment Businesses as operated to date is described in the Schedule. The LCD Divestment Businesses, described in more detail in the Schedule, include all assets and staff that contribute to the current operation or are

necessary to ensure the viability and competitiveness of the LCD Divestment Businesses, in particular:

a) all tangible and intangible assets (including intellectual property rights);

b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the LCD Divestment Businesses;

c) all contracts, leases, commitments and customer orders of the LCD Divestment Businesses; all customer, credit and other records of the LCD Divestment Businesses; and

d) the Personnel (including Key Personnel).

6. In addition, the LCD Divestment Businesses include the benefit, for a transitional period of up to 24 months after Closing and on terms and conditions equivalent to those at present afforded to the LCD Divestment Businesses, of all current arrangements under which S&P or its Affiliated Undertakings supply products or services to the LCD Divestment Businesses, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the LCD Divestment Businesses.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

7. From the Effective Date until Closing, S&P shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the LCD Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the LCD Divestment Businesses. In particular S&P undertakes:

a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the LCD Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the LCD Divestment Businesses;

b) to make available, or procure to make available, sufficient resources for the development of the LCD Divestment Businesses, on the basis and continuation of the existing business plans;

c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the LCD Divestment Businesses, and not to solicit or move any Personnel to S&P's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the LCD Divestment Businesses, S&P shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. S&P must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The

replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

8. S&P commits, from the Effective Date until Closing, to procure that the LCD Divestment Businesses are kept separate from the businesses it will be retaining and, after closing of the notified transaction, to keep the LCD Divestment Business separate from the business that S&P is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by S&P have no involvement in the LCD Divestment Businesses; (ii) the Key Personnel and Personnel of the LCD Divestment Businesses have no involvement in any business retained by S&P and do not report to any individual outside the LCD Divestment Businesses.

9. Until Closing, S&P shall assist the Monitoring Trustee in ensuring that the LCD Divestment Businesses are managed as a distinct and saleable entity separate from the businesses which S&P is retaining. Immediately after the adoption of the Decision, S&P shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the LCD Divestment Businesses independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by S&P. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 7(c) of these Commitments. The Commission may, after having heard S&P, require S&P to replace the Hold Separate Manager.

Ring-fencing

10. S&P shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the LCD Divestment Businesses and that any such Confidential Information obtained by S&P before the Effective Date will be eliminated and not be used by S&P. In particular, the participation of the LCD Divestment Businesses in any central information technology network shall be severed to the extent possible, without compromising the viability of the LCD Divestment Businesses. S&P may obtain or keep information relating to the LCD Divestment Businesses which is reasonably necessary for the divestiture of the LCD Divestment Businesses or the disclosure of which to S&P is required by law.

Non-solicitation clause

11. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the LCD Divestment Businesses for a period of 24 months after Closing.

Due diligence

12. In order to enable potential purchasers to carry out a reasonable due diligence of the LCD Divestment Businesses, S&P shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

a) provide to potential purchasers sufficient information as regards the LCD Divestment Businesses;

b) provide to potential purchasers after the Effective Date, a version of the Commitments (including the Schedule and its Appendices) without undue delay and no later than at the signing of a non-disclosure agreement by the potential purchaser, or at the opening of a data-room, whichever is earlier. Any redaction to the Commitments should be agreed in advance with the Commission; and

c) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

13. S&P shall submit written reports in English on potential purchasers of the LCD Divestment Businesses and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). S&P shall submit a list of all potential purchasers having expressed interest in acquiring the LCD Divestment Businesses to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

14. S&P shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The purchaser

15. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

a) The Purchaser shall be independent of and unconnected to S&P and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the LCD Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors;

c) The Purchaser shall have obtained the consent of the Loan Syndications and Trading Association ("LSTA") for the assignment or transfer of the existing partnership agreement with the LCD Divestment Businesses;

d) The acquisition of the LCD Divestment Businesses by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the LCD Divestment Businesses.

e) The Purchaser shall have the relevant capabilities or access to the resources and infrastructure required for the calculation, administration and operation of an index business to operate successfully long-term.[1]

16. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the LCD Divestment Businesses shall be conditional on the Commission's approval. When S&P has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement, within one week to the Commission and the Monitoring Trustee. S&P must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the LCD Divestment Businesses are being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the LCD Divestment Businesses are being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the LCD Divestment Businesses without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the LCD Divestment Businesses after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

17. S&P shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. S&P commits not to close the Concentration before the appointment of a Monitoring Trustee.

18. If S&P has not entered into a binding sale and purchase agreement regarding the LCD Divestment Businesses one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by S&P at that time or thereafter, S&P shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

19. The Trustee shall:

(i) at the time of appointment, be independent of S&P and its Affiliated Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

20. The Trustee shall be remunerated by S&P in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the LCD

[1] Any potential purchaser that would currently be considered a third country benchmark administrator under EU-BMR would need to show credible plans to acquire equivalence or prior recognition following the end of relevant transition periods currently applicable, i.e. 31.12.2023.

Divestment Businesses, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by S&P

21. No later than two weeks after the Effective Date, S&P shall submit the name or names of one or more natural or legal persons whom S&P proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, S&P shall submit a list of one or more persons whom S&P proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 19 and shall include:

    a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

    b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

    c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

22. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, S&P shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, S&P shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by S&P

23. If all the proposed Trustees are rejected, S&P shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 17 and 22 of these Commitments.

Trustee nominated by the Commission

24. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom S&P shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

25. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or S&P, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

26. The Monitoring Trustee shall:

a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

b) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the LCD Divestment Businesses with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by S&P with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

a) monitor the preservation of the economic viability, marketability and competitiveness of the LCD Divestment Businesses, and the keeping separate of the LCD Divestment Businesses from the business retained by the Parties, in accordance with paragraphs 7 and 8 of these Commitments;

b) supervise the management of the LCD Divestment Businesses as a distinct and saleable entity, in accordance with paragraph 9 of these Commitments;

c) with respect to Confidential Information:

- determine all necessary measures to ensure that S&P does not after the Effective Date obtain any Confidential Information relating to the LCD Divestment Businesses,

- in particular strive for the severing of the LCD Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the LCD Divestment Businesses,

- make sure that any Confidential Information relating to the LCD Divestment Businesses obtained by S&P before the Effective Date is eliminated and will not be used by S&P and

- decide whether such information may be disclosed to or kept by S&P as the disclosure is reasonably necessary to allow S&P to carry out the divestiture or as the disclosure is required by law;

d) monitor the splitting of assets and the allocation of Personnel between the LCD Divestment Businesses and S&P or Affiliated Undertakings;

c) propose to S&P such measures as the Monitoring Trustee considers necessary to ensure S&P's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the LCD Divestment Businesses, the holding separate of the LCD Divestment Businesses and the non-disclosure of competitively sensitive information;

d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

   a) potential purchasers receive sufficient and correct information relating to the LCD Divestment Businesses and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

   b) potential purchasers are granted reasonable access to the Personnel;

e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

f) provide to the Commission, sending S&P a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the LCD Divestment Businesses as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

g) promptly report in writing to the Commission, sending S&P a non-confidential copy at the same time, if it concludes on reasonable grounds that S&P is failing to comply with these Commitments;

h) within one week after receipt of the documented proposal referred to in paragraph 16 of these Commitments, submit to the Commission, sending S&P a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the LCD Divestment Businesses after the Sale and as to whether the LCD Divestment Businesses is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the LCD Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the LCD Divestment Businesses after the sale, taking account of the proposed purchaser;

i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

27. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

28. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the LCD Divestment Businesses to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 15 and 16 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of S&P, subject to S&P's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

29. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to S&P.

III. Duties and obligations of the Parties

30. S&P shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of S&P's or the LCD Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and S&P and the LCD Divestment Businesses shall provide the Trustee upon request with copies of any document. S&P and the LCD Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

31. S&P shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the LCD Divestment Businesses. This shall include all administrative support functions relating to the LCD Divestment Businesses which are currently carried out at headquarters level. S&P shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. S&P shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

32. S&P shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture

Trustee, S&P shall cause the documents required for effecting the sale and the Closing to be duly executed.

33. S&P shall indemnify the Trustee and its employees and agents (each an "***Indemnified*** Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to S&P for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

34. At the expense of S&P, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to S&P's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should S&P refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard S&P. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 33 of these Commitments shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served S&P during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

35. S&P agrees that the Commission may share Confidential Information proprietary to S&P with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.

36. S&P agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

37. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. <u>Replacement, discharge and reappointment of the Trustee</u>

38. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and S&P, require S&P to replace the Trustee; or

(b) S&P may, with the prior approval of the Commission, replace the Trustee.

39. If the Trustee is removed according to paragraph 38 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 17-24 of these Commitments.

40. Unless removed according to paragraph 38 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

41. The Commission may extend the time periods foreseen in the Commitments in response to a request from S&P or, in appropriate cases, on its own initiative. Where S&P requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to S&P. Only in exceptional circumstances shall S&P be entitled to request an extension within the last month of any period.

42. The Commission may further, in response to a reasoned request from S&P showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to S&P. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

43. The Commitments shall take effect upon the date of adoption of the Decision.

[signed]

……
duly authorised for and on behalf of
S&P

SCHEDULE

1. The LCD Divestment Businesses comprises S&P's entire businesses in the supply of leveraged loan market intelligence and leveraged loan indices, namely:

   a) its Leveraged Commentary and Data business, including the European Leveraged Loan Index ("**ELLI**"), the Leveraged Loan Index ("**LLI**") (the "**LCD Business**"); and

   b) the Leveraged Loan 100 Index family (the "**LL100 Business**")

   Including in each case all required personnel, assets (including intellectual property rights) and support functions.

   The LCD Business is currently a part of S&P Global Market Intelligence ("**SPGMI**"). The LLI100 Business is currently owned and operated by S&P Dow Jones Indices ("**SPDJI**").

2. In accordance with paragraph 5 of these Commitments, the LCD Divestment Businesses include, but are not limited to:

   a) An assignment or transfer of the existing partnership agreement between the LCD Divestment Businesses and the Loan Syndications and Trading Association ("**LSTA**") as regards the LLI and LLI100 on terms and conditions equivalent in all material respects to those at present afforded to the LCD Divestment Businesses.

   b) An assignment or transfer of all supplier and customer agreements and relationships (or, in the case of shared contracts, the portion of such contracts which relates to the LCD Divestment Businesses in the manner outlined in paragraph 2c)) which contribute to the current operation or are necessary to ensure the viability and competitiveness of the LCD Divestment Businesses, including in particular: [2]

      a. [Commercial information];

      b. [Commercial information];

      c. [Commercial information];

      d. [Commercial information];

      e. [Commercial information];

      f. [Commercial information];

      g. [Commercial information];

      h. [Commercial information].

[2] For those contracts subject to change of control provisions or requiring consent before assignment, S&P will use best efforts to obtain the consent of the relevant contracting parties to ensure the Purchaser receives the benefit of all rights and obligations under those contracts on terms and conditions equivalent in all material respects to those at present afforded to the LCD Divestment Businesses.

c) In respect of any contracts used by the LCD Divestment Businesses which are shared with the wider S&P group, the portion of those contracts which relates to the LCD Divestment Businesses on terms and conditions equivalent to those at present afforded to the LCD Divestment Businesses.[3] If a shared contract cannot be partially assigned by its terms or otherwise, or cannot be amended, without approvals and such approvals cannot be obtained within a period agreed to between S&P and the Purchaser, S&P will cooperate with the Purchaser to establish an agency type or other similar arrangement to provide the Purchaser the claims, rights and benefits of those parts that relate to the LCD Divestment Businesses on terms and conditions equivalent in all material respects to those at present afforded to the LCD Divestment Businesses;

d) Customer and other records of the LCD Divestment Businesses, recognising that the Parties may retain a copy of such records to the extent that these relate to suppliers or customers not transferred to the LCD Divestment Businesses or are required for legal compliance purposes. Copies of records of the LCD Divestment Businesses that are retained by the Parties for legal compliance purposes will be ring-fenced;

e) In line with applicable employment laws, contractual provisions and other relevant legislation, the Key Personnel (as outlined in Appendix 1), all Personnel of the LCD Divestment Businesses as outlined in Appendix 1 (which includes a proportionate allocation of shared personnel) as well as, at the option of the Purchaser, additional Personnel reasonably required;

f) Transfer of all intellectual property relating to LCD and the LL100, including licences, trademarks, brands, copyright and other know-how, to the extent that it is currently used exclusively or primarily by the LCD Divestment Businesses, including the methodologies used to calculate the LL100 (any other intellectual property that is not exclusively or primarily used by the LCD Divestment Businesses, but is still necessary for their operation, shall be provided under perpetual, sub-licensable, royalty-free licence);

g) Technology (e.g., data, databases and software, including the standalone LCD platform and website LCDcomps.com) that is used in or necessary for the operation of the LCD Divestment Businesses as of closing, through one of the following mechanism, at the option of the Purchaser:

   a. Migrating the technology to the Purchaser;

   i. Creating a logically separated, standalone and mirrored version of the technology and migrating it to the Purchaser; or

[3] For those contracts subject to change of control provisions or requiring consent before assignment, S&P will use best efforts to obtain the consent of the relevant contracting parties to ensure the Purchaser receives the benefit of all rights and obligations under those contracts on terms and conditions equivalent in all material respects to those at present afforded to the LCD Divestment Businesses.

j. Where either sub-paragraph (a) or (b) above is not possible, or otherwise at the option of the Purchaser, S&P shall offer to enter into a transitional arrangement as outlined at paragraph 2(k).

h) All licences, permits and authorisations necessary for lawful conduct or the viability and competitiveness of the LCD Divestment Businesses and use of the transferred assets as presently conducted (to the extent transferrable);

i) All electronic books, records and files that are related to the LCD Divestment Businesses. To the extent any parts of such electronic books, records and files are not related to the LCD Divestment Businesses, they may be redacted;

j) Claims, defences, rights of offset or counterclaim to the extent primarily related to the LCD Divestment Businesses;

k) At the option of the Purchaser, the benefit of all transitional service arrangements which are necessary to ensure the viability and competitiveness of the LCD Divestment Businesses for a transitional period of up to 24 months after divestiture, including but not limited to IT, HR and finance/payroll services, arrangements to ensure that the purchaser obtains the benefit of (i) any retained platform capabilities or other infrastructure on which LCD is currently supplied to customers, (ii) index calculation and administration services, and (iii) index governance services; and

l) Any other tangible and intangible assets that are primarily related to the LCD Divestment Businesses which contribute to the current operation or which are necessary to ensure the viability and competitiveness of the LCD Divestment Businesses, including in particular historical data of the LCD Divestment Businesses.

3. The LCD Divestment Businesses shall not include:

a) Books and records required to be retained pursuant to any law provided that the Purchaser shall on request receive a copy of the same. Books and records of the LCD Divestment Businesses that are retained by S&P for legal compliance purposes will be ring-fenced; and

b) Any other asset or contract that is used primarily in respect of S&P's retained businesses and which is not necessary for the viability and competitiveness of the LCD Divestment Businesses (although the portion of any asset or contract that is used by the LCD Divestment Businesses will be included in the LCD Divestment Businesses where this is possible).

4. If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is necessary for the continued viability and competitiveness of the LCD Divestment Businesses, that asset or adequate substitute will be offered to potential purchasers.

APPENDIX 1

1. The following employees will transfer with the LCD Divestment Businesses.

Key Personnel

No.	Individual	Function
1.	[Personal data]	[Personal data]
2.	[Personal data]	[Personal data]
3.	[Personal data]	[Personal data]

Personnel

Function	Number that will transfer with LCD Divestment Businesses
LCD	
Insight (news / research)	[40-50] [Personal data]
Product management	[0-5]
Product specialists	[5-10]
Sales / relationship management / client support / marketing	[10-20] [Personal data] [Commercial information]
Technology	[5-10]
LL100	
Index Product Manager	[0-5]

Case M.10108 – S&P Global Inc. / IHS Markit Ltd.

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), S&P Global Inc. ("**S&P**") (the "**Notifying Party**") hereby enters into the following Commitments (the "**Commitments**") vis-à-vis the European Commission (the "**Commission**") with a view to rendering the acquisition by S&P of sole control over IHS Markit ("**IHSM**") (the "**Concentration**") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

   Affiliated Undertakings: undertakings controlled by S&P and/or by the ultimate parents of S&P, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "**Consolidated Jurisdictional Notice**").

   CUSIP Divestment Business: the business as defined in Section B and in the Schedule.

   Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the CUSIP Divestment Business as indicated in Section B, paragraph 6 a), b) and c) and described more in detail in the Schedule.

   Closing: the transfer of the legal title to the CUSIP Divestment Business to the Purchaser.

   Closing Period: the period of […] from the approval of the Purchaser and the terms of sale by the Commission.

   Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

   Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

   Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by S&P and who has/have received from S&P the exclusive Trustee Mandate to sell the CUSIP Divestment Business to a Purchaser at no minimum price.

   Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] from the Effective Date.

Hold Separate Manager: the person appointed by S&P for the CUSIP Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

IHSM: IHS Markit Ltd., incorporated under the laws of Bermuda with its registered office at 4th Floor, Ropemaker Place, 25 Ropemaker Street, London, England EC2Y 9LY.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the CUSIP Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by S&P, and who has/have the duty to monitor S&P's compliance with the conditions and obligations attached to the Decision.

Parties: S&P and IHSM.

Personnel: all staff currently employed by the CUSIP Divestment Business, including staff seconded to the CUSIP Divestment Business, and a proportionate allocation of shared personnel. An indicative list is provided in Appendix 1 to the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the CUSIP Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 16 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

S&P: S&P Global Inc. incorporated under the laws of New York, with its registered office at 55 Water Street, New York, NY 10041.

Schedule: the schedule to these Commitments describing more in detail the CUSIP Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

Section B. The commitment to divest the CUSIP Divestment Business

Commitment to divest

2. In order to maintain effective competition, S&P commits to divest, or procure the divestiture of the CUSIP Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale and/or other contractual arrangements approved by the Commission in accordance with the procedure described in paragraph 17 of these Commitments. To carry out the divestiture, S&P commits to find a purchaser and to enter into a final binding sale and purchase agreement and/or other contractual arrangements to effect the divestment of the CUSIP Divestment Business within the First

Divestiture Period. If S&P has not entered into such an agreement and/or other contractual arrangements at the end of the First Divestiture Period, S&P shall grant the Divestiture Trustee an exclusive mandate to sell the CUSIP Divestment Business in accordance with the procedure described in paragraph 29 in the Trustee Divestiture Period.

3. The proposed concentration shall not be implemented before S&P or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the CUSIP Divestment Business and the Commission has approved the purchaser and the terms of sale in accordance with paragraph 17.

4. S&P shall be deemed to have complied with this commitment if:

   a) by the end of the Trustee Divestiture Period:

      a) S&P or the Divestiture Trustee has entered into a final binding sale and purchase agreement and entered into arrangements to transfer the rights to issue, disseminate and be compensated for CUSIP identifiers from S&P to the Purchaser, enacted by way of a transfer of S&P's existing agreement with the ABA on equivalent terms and conditions to those effective before the entry into force of the Amendment no.3 (dated 27 September 2021) (the "**Transfer**"); and

      b) the Commission approves the proposed purchaser and the terms of sale and/or other contractual arrangements for the Transfer as being consistent with the Commitments in accordance with the procedure described in paragraph 17; and

   b) the Closing of the sale of the CUSIP Divestment Business to the Purchaser and the Transfer takes place within the Closing Period.

5. In order to maintain the structural effect of the Commitments, S&P shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the CUSIP Divestment Business, unless, following the submission of a reasoned request from S&P showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 43 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the CUSIP Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the CUSIP Divestment Business

6. The CUSIP Divestment Business consists of the entirety of S&P's business known as CUSIP Global Services, which includes operating the CUSIP issuance and data licensing business on behalf of the ABA. The legal and functional structure of the CUSIP Divestment Business as operated to date is described in the Schedule. The CUSIP Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the CUSIP Divestment Business, in particular:

   a) all tangible and intangible assets (including the benefit of intellectual property rights);

b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the CUSIP Divestment Business;

c) all contracts, leases, commitments and customer orders of the CUSIP Divestment Business;

d) all customer, credit and other records of the CUSIP Divestment Business; and

e) the Key Personnel.

7. In addition, the CUSIP Divestment Business includes the benefit, for a transitional period of up to 12 months after Closing and on terms and conditions equivalent to those at present afforded to the CUSIP Divestment Business, of all current arrangements under which S&P or its Affiliated Undertakings supply products or services to the CUSIP Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the CUSIP Divestment Business.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, S&P shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the CUSIP Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the CUSIP Divestment Business. In particular S&P undertakes:

a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the CUSIP Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the CUSIP Divestment Business;

b) to make available, or procure to make available, sufficient resources for the development of the CUSIP Divestment Business, on the basis and continuation of the existing business plans;

c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the CUSIP Divestment Business, and not to solicit or move any Personnel to S&P's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the CUSIP Divestment Business, S&P shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. S&P must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

d) to assist the ABA in providing to the Accredited Standards Committee X9 (ASC X9) any notice that is required under the Memorandum of Understanding between ABA and ASC X9 and any other actions required to maintain the status quo in terms of CUSIPs' accreditation by ASC X9.

Hold-separate obligations

9. S&P commits, from the Effective Date until Closing, to procure that the CUSIP Divestment Business is kept separate from the businesses it will be retaining and, after closing of the notified transaction, to keep the CUSIP Divestment Business separate from the business that S&P is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by S&P have no involvement in the CUSIP Divestment Business; (ii) the Key Personnel and Personnel of the CUSIP Divestment Business have no involvement in any business retained by S&P and do not report to any individual outside the CUSIP Divestment Business.

10. Until Closing, S&P shall assist the Monitoring Trustee in ensuring that the CUSIP Divestment Business is managed as a distinct and saleable entity separate from the businesses which S&P is retaining. Immediately after the adoption of the Decision, S&P shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the CUSIP Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by S&P. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph (1)(a)c) of these Commitments. The Commission may, after having heard S&P, require S&P to replace the Hold Separate Manager.

Ring-fencing

11. S&P shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the CUSIP Divestment Business and that any such Confidential Information obtained by S&P before the Effective Date will be eliminated and not be used by S&P. This includes measures vis-à-vis S&P's appointees on the supervisory board and/or board of directors of the CUSIP Divestment Business. In particular, the participation of the CUSIP Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the CUSIP Divestment Business. S&P may obtain or keep information relating to the CUSIP Divestment Business which is reasonably necessary for the divestiture of the CUSIP Divestment Business or the disclosure of which to S&P is required by law.

Non-solicitation clause

12. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the CUSIP Divestment Business for a period of 12 months after Closing.

Due diligence

13. In order to enable potential purchasers to carry out a reasonable due diligence of the CUSIP Divestment Business, S&P shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

    a) provide to potential purchasers sufficient information as regards the CUSIP Divestment Business;

    b) provide to potential purchasers after the Effective Date, a version of the Commitments (including the Schedule and its Annexes) without undue delay and no later than at the signing of a Non-Disclosure Agreement by the potential purchaser, or at the opening of a data-room, whichever is earlier. Any redaction to the Commitments should be agreed in advance with the Commission. The data-room should contain the arrangements between S&P and the ABA; and

    c) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

14. S&P shall submit written reports in English on potential purchasers of the CUSIP Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). S&P shall submit a list of all potential purchasers having expressed interest in acquiring the CUSIP Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

15. S&P shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

16. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

    a) The Purchaser shall be independent of and unconnected to the S&P and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

    b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the CUSIP Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. In particular, the Purchaser shall have a proven track record in the financial data space;

    c) The acquisition of the CUSIP Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be

expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the CUSIP Divestment Business.

d) ABA should have consented to the transfer to the Purchaser of its agreement with S&P on equivalent terms and conditions to those effective before the entry into force of the Amendment no.3 (dated 27 September 2021) ;

e) The LSTA shall have consented to the transfer or assignment of the existing agreement between itself and CGS to the Purchaser.

17. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the CUSIP Divestment Business and the contractual arrangements relating to the Transfer shall be conditional on the Commission's approval. When S&P has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. S&P must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the CUSIP Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the CUSIP Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the CUSIP Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the CUSIP Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

18. S&P shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. S&P commits not to close the Concentration before the appointment of a Monitoring Trustee.

19. If S&P has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by S&P at that time or thereafter, S&P shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

20. The Trustee shall:

(i) at the time of appointment, be independent of S&P and its Affiliated Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

21. The Trustee shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the CUSIP Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by S&P

22. No later than two weeks after the Effective Date, S&P shall submit the name or names of one or more natural or legal persons whom S&P proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, S&P shall submit a list of one or more persons whom S&P proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph (1)(a)i)20 and shall include:

    a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

    b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

    c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

23. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, S&P shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, S&P shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by S&P

24. If all the proposed Trustees are rejected, S&P shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs (1)(a)i)18 and (1)(a)i)23 of these Commitments.

Trustee nominated by the Commission

25. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom S&P shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

26. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or S&P, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

27. The Monitoring Trustee shall:

a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

b) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the CUSIP Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by S&P with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

a) monitor the preservation of the economic viability, marketability and competitiveness of the CUSIP Divestment Business, and the keeping separate of the CUSIP Divestment Business from the business retained by the Parties, in accordance with paragraphs (1)(a)i)8 and (1)(a)i)9 of these Commitments;

b) supervise the management of the CUSIP Divestment Business as a distinct and saleable entity, in accordance with paragraph (1)(a)i)10 of these Commitments;

c) with respect to Confidential Information:

- determine all necessary measures to ensure that S&P does not after the Effective Date obtain any Confidential Information relating to the CUSIP Divestment Business,

- in particular strive for the severing of the CUSIP Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the CUSIP Divestment Business,

- make sure that any Confidential Information relating to the CUSIP Divestment Business obtained by S&P before the Effective Date is eliminated and will not be used by S&P and

- decide whether such information may be disclosed to or kept by S&P as the disclosure is reasonably necessary to allow S&P to carry out the divestiture or as the disclosure is required by law;

d) monitor the splitting of assets and the allocation of Personnel between the CUSIP Divestment Business and S&P or Affiliated Undertakings;

c) propose to S&P such measures as the Monitoring Trustee considers necessary to ensure S&P's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the CUSIP Divestment Business, the holding separate of the CUSIP Divestment Business and the non-disclosure of competitively sensitive information;

d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

a) potential purchasers receive sufficient and correct information relating to the CUSIP Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

b) potential purchasers are granted reasonable access to the Personnel**;**

e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

f) provide to the Commission, sending S&P a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the CUSIP Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

g) promptly report in writing to the Commission, sending S&P a non-confidential copy at the same time, if it concludes on reasonable grounds that S&P is failing to comply with these Commitments;

h) within one week after receipt of the documented proposal referred to in paragraph (1)(a)i)17 of these Commitments, submit to the Commission, sending S&P a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the CUSIP Divestment Business after the Sale and as to whether the CUSIP Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the CUSIP Divestment Business without one or more Assets or not all of the Personnel affects the viability of the CUSIP Divestment Business after the sale, taking account of the proposed purchaser;

i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

28. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the *purpose* of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

29. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the CUSIP Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs (1)(a)i)16 and (1)(a)i)17 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of S&P, subject to S&P's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

30. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to S&P.

III. Duties and obligations of the Parties

31. S&P shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of S&P's or the CUSIP Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and S&P and the CUSIP Divestment Business shall provide the Trustee upon request with copies of any document. S&P and the CUSIP Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

32. S&P shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the CUSIP Divestment Business. This shall include all administrative support functions relating to the CUSIP Divestment Business which are currently carried out at headquarters level. S&P shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. S&P shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

33. S&P shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture

Trustee, S&P shall cause the documents required for effecting the sale and the Closing to be duly executed.

34. S&P shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to S&P for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

35. At the expense of S&P, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to S&P's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should S&P refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard S&P. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph (1)(a)i)34 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served S&P during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

36. S&P agrees that the Commission may share Confidential Information proprietary to S&P with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.

37. S&P agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

38. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. <u>Replacement, discharge and reappointment of the Trustee</u>

39. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

    (a) the Commission may, after hearing the Trustee and S&P, require S&P to replace the Trustee; or

    (b) S&P may, with the prior approval of the Commission, replace the Trustee.

40. If the Trustee is removed according to paragraph (1)(a)i)39 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs (1)(a)i)18-(1)(a)i)25 of these Commitments.

41. Unless removed according to paragraph (1)(a)i)39 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

42. The Commission may extend the time periods foreseen in the Commitments in response to a request from S&P or, in appropriate cases, on its own initiative. Where S&P requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to S&P. Only in exceptional circumstances shall S&P be entitled to request an extension within the last month of any period.

43. The Commission may further, in response to a reasoned request from S&P showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to S&P. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

44. The Commitments shall take effect upon the date of adoption of the Decision.

[signed]

……
duly authorised for and on behalf of
S&P Global Inc.

SCHEDULE

1. The CUSIP Divestment Business comprises the entirety of S&P's CUSIP issuance and data licensing business, as carried out currently by CUSIP Global Services ("**CGS**"), which S&P operates on behalf of the American Bankers Association ("**ABA**"). The ABA owns the CUSIP system (including all intellectual property rights therein).

2. In accordance with paragraph (1)(a)i)6 of these Commitments, the CUSIP Divestment Business includes, but is not limited to:

   a) A transfer of the rights to issue, disseminate and be compensated for CUSIP identifiers from S&P to the Purchaser, enacted by way of a transfer of S&P's existing agreement with the ABA on equivalent terms and conditions to the agreement between S&P and the ABA prior to the most recent amendment No. 3 (effective since 27 September 2021);

   b) An assignment of the existing agreement between CGS and the Loan Syndications and Trading Association ("**LSTA**") in relation to the loan CUSIP business, which sits within the CUSIP Divestment Business;

   c) All other supplier, customer and distribution agreements and relationships (or, in the case of shared contracts, the portion of such contracts which relates to the CUSIP Divestment Business in the manner outlined in paragraph 22.c)), to the extent that they contribute to the current operation or are necessary to ensure the viability and competitiveness of the CUSIP Divestment Business[1];

   d) In respect of any contracts used by the CUSIP Divestment Business which are shared with the wider S&P group, the portion of those contracts which relates to the CUSIP Divestment Business on terms and conditions equivalent to those at present afforded to the CUSIP Divestment Business. If a shared contract cannot be partially assigned by its terms or otherwise, or cannot be amended, without approvals and such approvals cannot be obtained within a period agreed to between S&P and the Purchaser, S&P will cooperate with the Purchaser to establish an agency type or other similar arrangement to provide the Purchaser the claims, rights and benefits of those parts that relate to the CUSIP Divestment Business on terms and conditions equivalent to those at present afforded to S&P;

   e) Customer and other records of the CUSIP Divestment Business, recognising that S&P may retain a copy of such records to the extent that these relate to suppliers or customers not transferred to the CUSIP Divestment Business or are required for legal compliance purposes. Copies of records of the CUSIP Divestment Business that are retained by the Parties for legal compliance purposes will be ring-fenced;

   f) In line with applicable employment laws, contractual provisions and other relevant legislation, the Key Personnel (as outlined in Appendix 1) and, in addition, at the

[1] For those contracts subject to change of control provisions or requiring consent before assignment, S&P will use best efforts to obtain the consent of the relevant contracting parties to ensure the Purchaser receives the benefit of all rights and obligations under those contracts.

option of the Purchaser, the CUSIP Divestment Business will include any of the Personnel;

g) Transfer of technology (e.g., data, databases and software), such as the CGS Identifier Portal, systems and databases for storing CGS-related data and any other technology that are primarily or exclusively used in or necessary for the operation of the CUSIP Divestment Business as of closing, through one of the following mechanisms, the choice of mechanism being at the option of the Purchaser:

   a) Migrating the technology to the Purchaser;

   b) Creating a logically separated, standalone and mirrored version of the technology and migrating it to the Purchaser; or

   c) Where either sub-paragraph (a) or (b) above is not possible, or otherwise at the option of the Purchaser, S&P shall offer to enter into a transitional arrangement as outlined at paragraph 2(l);

h) The benefit of any additional technology that is used in the CUSIP Divestment Business but shared with the wider S&P group (including S&P's customer relationship management and general billing system) through one of the following mechanisms, the choice of mechanism being at the option of the Purchaser:

   a) Creating a logically separated, standalone and mirrored version of the technology that is used in the CUSIP Divestment Business and migrating it to the Purchaser; or

   b) Where this is not possible, or otherwise at the option of the Purchaser, S&P shall offer to enter into a transitional arrangement as outlined at paragraph 2(l);

i) All licences, permits and authorisations necessary for lawful conduct or the viability and competitiveness of the CUSIP Divestment Business and use of the transferred assets as presently conducted (to the extent transferrable);

j) All electronic books, records and files that are related to the CUSIP Divestment Business. To the extent any parts of such electronic books, records and files are not related to the CUSIP Divestment Business, they may be redacted. S&P may retain a copy of such records to the extent that these relate to the business(es) retained by S&P or are required for legal compliance purposes. Copies of records of the CUSIP Divestment Business that are retained by the Parties for legal compliance purposes will be ring-fenced;

k) Claims, defences, rights of offset or counterclaim to the extent primarily related to the CUSIP Divestment Business;

l) At the option of the Purchaser, the benefit of all transitional service arrangements which are necessary to ensure the viability and competitiveness of the CUSIP Divestment Business for a transitional period after divestiture, such as IT, HR and finance/payroll services, which shall be provided by S&P at cost; and

m) Any other tangible and intangible assets that are primarily related to the CUSIP Divestment Business which contribute to the current operation or which are necessary to ensure the viability and competitiveness of the CUSIP Divestment Business.

3. The CUSIP Divestment Business shall not include:

a) Books and records required to be retained pursuant to any law provided that the Purchaser shall on request receive a copy of the same. Books and records of the CUSIP Divestment Business that are retained by S&P for legal compliance purposes will be ring-fenced;

b) Customer or supplier contracts, commitments, orders or volumes (or portions thereof) not solely or mainly related to the CUSIP Divestment Business; and

c) Any other asset or contract that is used primarily in respect of S&P's retained businesses and which is not necessary for the viability and competitiveness of the CUSIP Divestment Business (although the portion of any asset or contract that is used by the CUSIP Divestment Business will be included in the CUSIP Divestment Business where this is possible).

4. If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is necessary for the continued viability and competitiveness of the CUSIP Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

APPENDIX 1

The Key Personnel transferring with the CUSIP Divestment Business are outlined below

Key Personnel

Individual	Function
[Personal data]	[Personal data]
[Personal data]	[Personal data]
[Personal data]	[Personal data]
[Personal data]	[Personal data]
[Personal data]	[Personal data]
[Personal data]	[Personal data]

Personnel

Function	Number
Operations	[20-30]
Sales (including sales support and customer service / billing)	[20-30]
Technology	[10-20]
Data operations	[10-20]
Commercial (including global head, marketing and market / business development)	[5-10]
Product	[5-10]
Data governance and quality control	[5-10]
Licensing and compliance	[5-10]
Finance and reporting (including administrative assistance)	[0-5]