



EUROPEAN  
COMMISSION

Brussels, 20.7.2016  
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**COMMISSION DECISION**

**of 20.7.2016**

**addressed to:  
Markit Limited  
Markit Group Holdings Limited  
Markit Indices Limited  
Markit North America, Inc and  
Markit Group Limited**

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the  
European Union and Article 53 of the EEA Agreement**

**Case AT.39745 - CDS Information Market**

(Only the English text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty<sup>1</sup>, in particular Article 9(1) thereof,

Having regard to the Commission decision of 20 April 2011 to initiate proceedings in this case,

Having expressed its concerns in the Statement of Objections of 1 July 2013,

Having given interested third parties the opportunity to submit their observations pursuant to Article 27(4) of Regulation (EC) No 1/2003 on the commitments offered to meet those concerns,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer,

Whereas:

## **1. SUBJECT MATTER**

- (1) This Decision is addressed to Markit Limited, Markit Group Holdings Limited, Markit Indices Limited, Markit North America, Inc. and Markit Group Limited (together 'Markit').
- (2) It concerns the market for **unfunded credit derivatives**, in particular, credit default swaps ('CDS'), and decisions taken by Markit in its capacity as an association of

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<sup>1</sup> OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union.

undertakings in relation to the licensing of the CDX and iTraxx indices ('indices') for trading credit default swaps on exchanges.

- (3) In a Statement of Objections of 1 July 2013, addressed to 13 investment banks active in the CDS market ('the CDS dealers'), Markit and ISDA, the Commission came to the provisional conclusion that an agreement/concerted practice entered into by the 13 CDS dealers addressed in the Statement of Objections, together with the implementing decisions of the associations of undertakings Markit and ISDA, constituted a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The Commission reached the preliminary conclusion that the **object and effect** of that single and continuous infringement was to foreclose exchanges from the market for exchange-traded unfunded credit derivatives from 2006 to 2009 and, thereby, to delay and prevent the emergence of that new market. According to the Statement of Objections, the decisions of the associations of undertakings Markit and ISDA to refuse to license the requested inputs for exchange trading also constituted infringements of Article 101 of the Treaty and Article 53 of the EEA Agreement in their own right.
- (4) With regard to Markit, the Statement of Objections examined specifically whether, in 2008, Markit refused to grant a licence for the CDX and iTraxx indices to CMDX, a joint venture between the Chicago Mercantile Exchange ('CME') and the hedge fund Citadel, for the purpose of exchange trading of credit default swaps. The Commission came to the preliminary conclusion that, following instructions from the CDS dealers in Markit's advisory committees, Markit had refused to grant a licence to the joint venture for exchange trading or for trading on any platform which uses a central limit order book and limited the licence to trades materially similar to bilateral over-the-counter ('OTC') trades.
- (5) The Statement of Objections raised the preliminary competition concern that Markit's decision to exclude exchange trading from the index license for CME and Citadel may qualify as a decision of an association of undertakings which restricted competition pursuant to Article 101 of the Treaty. The Statement of Objections also reached the preliminary conclusion that Markit's licensing behaviour may have prevented or delayed the emergence of all-to-all exchange trading of unfunded credit derivatives in 2009 to the detriment of investors who remained constrained to trading credit derivatives OTC.
- (6) On 4 December 2015 the Commission decided to partially close antitrust proceedings against the CDS dealers involved in the investigation while keeping the investigation open against Markit and ISDA.<sup>2</sup>
- (7) In April 2016 Markit and ISDA separately offered commitments under Article 9(1) of Regulation (EC) No 1/2003 to address the Commission's preliminary competition concerns as set out in the Statement of Objections. Following a public market test in April 2016<sup>3</sup>, **Markit submitted amended commitments in June 2016**. This Decision makes the amended commitments offered by Markit in June 2016 legally binding on Markit. A separate decision makes the commitments offered by ISDA legally binding on ISDA.

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<sup>2</sup> Commission press release MEX/15/6254 of 4 December 2015.

<sup>3</sup> OJ C 153, 29.4.2016, p. 10.

## **2. THE UNDERTAKING CONCERNED**

- (8) Markit is a financial information and services company. Its worldwide turnover was USD 1.1 billion in 2015.<sup>4</sup> Markit provides data on credit derivatives and other asset classes, valuations, indices and identifiers, trade processing and website hosting. Markit collects and monetises CDS data from major investment banks who buy and sell CDS as intermediaries between investors. Dealers in particular send their end-of-day CDS data to Markit, which calculates averages and establishes composite end-of-day prices. Markit owns and manages the most important CDS benchmark indices, CDX and iTraxx, having acquired them from the CDS dealers in 2007.
- (9) Markit was created in 2001 and initially co-owned by Toronto-Dominion Bank and its management. In 2002 the CDS dealers acquired a majority of shares in Markit which they held until 2014. On 24 June 2014, Markit completed an initial public offering (IPO) which reduced the aggregate share of the major owner banks. With the IPO, Markit Limited became the holding company of Markit Group Holdings Limited, the former holding company. On 21 March 2016 Markit announced a merger with information provider IHS Inc.

## **3. PROCEDURAL STEPS UNDER REGULATION (EC) NO 1/2003**

- (10) On 20 April 2011 the Commission opened proceedings with a view to adopting a decision under Chapter III of Regulation (EC) No 1/2003.
- (11) On 1 July 2013, the Commission adopted a Statement of Objections setting out the Commission's preliminary competition concerns. The Statement of Objections constitutes a preliminary assessment for the purposes of Article 9(1) of Regulation (EC) No 1/2003. By letter of 2 July 2013, the Commission notified that preliminary assessment to Markit.
- (12) On 21 January 2014, Markit submitted its reply to the Statement of Objections. On 12 May 2014 Markit was heard in an oral hearing.
- (13) On 21 April 2016, Markit submitted commitments ('the Initial Commitments') to the Commission in response to the competition concerns raised in the Statement of Objections.
- (14) On 29 April 2016 a notice was published in the *Official Journal of the European Union* pursuant to Article 27(4) of Regulation (EC) No 1/2003 ("the Article 27(4) Notice"), summarising the case and the Initial Commitments and inviting interested third parties to give their observations on those commitments within one month following publication.
- (15) On 2 June 2016 the Commission informed Markit of the observations received from interested third parties following the publication of the notice. On 6 June 2016 Markit submitted an amended proposal for commitments ('the Amended Commitments').
- (16) In June 2016 the Advisory Committee on Restrictive Practices and Dominant Positions was consulted.

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<sup>4</sup> Source: Markit 2015 Annual Report.

## **4. PRELIMINARY ASSESSMENT**

### **4.1. Background**

#### *4.1.1. Derivatives and credit default swaps*

- (17) Derivative contracts are initially traded OTC when they are bespoke and illiquid. In an OTC market, derivative contracts are negotiated privately and bilaterally between buyers and sellers without public price or volume reporting of individual transactions. The lack of liquidity and transparency requires intermediation between supply and demand, as otherwise search and information costs would be prohibitive. Those intermediation services are provided by large investment banks ('dealers', 'sell-side'), which promise to be a buyer to every seller and a seller to every buyer ('market making'). The revenues from market making are the difference between buy and sell price, the 'bid-ask spread'. Dealers are distinct from the numerous 'buy-side' investors, which include hedge funds, mutual funds, pension funds, insurers and end-users such as corporations or municipalities.
- (18) A credit default swap ('CDS') is a financial contract. A CDS purchaser pays a periodic fee expressed as a contract coupon ('spread', quoted in basis points of the amount insured) to a seller, in return for a contingent payment in the event that the corporate or sovereign debtor of a debt obligation specified in the contract defaults. CDS spreads increase if financial markets perceive a greater risk of default and thus become a pricing reference. There is no obligation for the protection buyer to have an insured interest, that is to say, he does not have to own a note deliverable on the contract. These characteristics facilitated the evolution of the use of CDS from insurance-like hedging to investing. Hedging protects against the risk of the value of the debt instruments decreasing due to the debt issuer's default or declining credit quality. Investing makes it possible to trade without a parallel investment in the underlying debt instrument and to express a view on the future change in the debt issuer's credit quality, yielding a profit if the view is correct. CDS indices transfer credit risk more efficiently than single CDS, but when traded OTC share the latter's characteristics. They are standardised contracts and reference a fixed number of debtors with shared characteristics which are changed ('rolled') regularly.
- (19) Over time, OTC-traded derivatives that are traded regularly and in larger volumes become standardised. Investors then also become interested in trading such derivatives on exchange where they can be traded at lower cost, as bid-ask spreads are compressed due to competition and all-to-all trading through a Central Limit Order Book ('CLOB'). The migration of more liquid OTC trades to CLOB trading on-exchange, where trades are centrally cleared by the clearing house of the exchange, increases market stability and benefits investors by reducing counterparty risk<sup>5</sup> and trading costs. Exchange trading of credit derivatives is also open to investors whose statutes oblige them to trade on regulated markets, only.

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<sup>5</sup> 'Counterparty risk' is the risk that the other party of a contract will not fulfil its contractual obligations. Due to the duration of CDS contracts, counterparty risk is significant. 'Clearing' of derivatives is a process after trading. The trading partners register a trade with a 'Central Clearing Party' (CCP or 'clearing house') which enters the transaction and becomes the buyer to the seller and the seller to the buyer. The CCP guarantees the performance of the derivative contract in case of buyer or seller default. Clearing significantly reduces systemic risks inherent to derivatives trading as it replaces opaque bilateral counterparty risks with a centralised and transparent system of risk control. Contrary to OTC trading, where uncleared trading is still commonplace, every trade on an exchange is centrally cleared.

#### 4.1.2. *Markit as CDS service provider*

- (20) Specialised information service providers operate in the market for unfunded credit derivatives, supplying financial information to traders or risk or portfolio managers in financial institutions active in that market. In particular, the service providers act as data vendors, collecting raw data such as indicative or end-of day prices from buy-side or sell-side firms, processing it and re-selling it to market participants.
- (21) Markit is one important service provider of this kind, like, for instance, Bloomberg or Fitch. Initially, Markit's core activities related to CDS products, such as end-of-day pricing data and a reference entity database. It later expanded into management of the most important CDS benchmark indices, CDX and iTraxx, which Markit purchased from the CDS dealers, and ultimately into a broader range of asset classes and business activities.
- (22) For extended periods, Markit had close ties with the CDS dealers, in particular with regard to the CDS index licence business. The CDS dealers sold the iTraxx and CDX indices to Markit in 2007 and, until 2014, held a majority of shares in Markit, a majority of seats in Markit's Board of Directors. CDS dealers are in particular also members of Markit's three index advisory committees.

#### 4.1.3. *Markit's role in licensing CDS indices*

- (23) Markit is the owner of the two most widely used CDS benchmark index families, iTraxx and CDX. The underlying debt instruments of the main indices are corporate bonds, with 125 equally-weighted European names in the main iTraxx and 125 equally-weighted North American names in the main CDX. They are the most liquid type of CDS contracts traded OTC.
- (24) In 2008 Citadel and CME wanted to launch CDS exchange trading through a joint venture (CMDX). Citadel and CME approached Markit for a licence for the iTraxx and CDX indices for a platform to clear and trade CDS, initially OTC and eventually all-to-all (including through a CLOB). The Statement of Objections reached the preliminary conclusion that Markit had refused to license the iTraxx and CDX Indices for purposes other than a request for quote ('RFQ') trading platform and for clearing. According to the Statement of Objections, Markit explicitly excluded trading on an exchange or on any platform which uses a CLOB from the scope of its licence after consulting CDS dealers on the index advisory boards.
- (25) Markit also claims rights to the 'Final Price' of the International Swaps and Derivatives Association (ISDA). The residual value of a defaulted bond is determined through credit event auctions and expressed as a percentage of its face value. This so-called 'Final Price' is used industry-wide to price a bond and related CDS derivatives in the event of a default. On several occasions exchanges have requested a licence to use ISDA's Final Price for pricing exchange-traded credit derivatives after a credit event in order to replicate the financial impact of defaults in their products. However, ISDA's Final Price is published on the website of the auction administrator, Markit, only subject to a Use Agreement that explicitly prohibits the use of ISDA's Final Price for exchange trading. The terms of the Use Agreement were determined by ISDA in 2007 and continue to apply on the website managed by Markit. ISDA has given a commitment to license the 'Final Price' on FRAND terms and conditions to trading venues for all-to-all exchange trading of credit derivatives. Markit has given a commitment to remove the relevant restrictions from the website ([www.creditfixings.com](http://www.creditfixings.com)) which is under Markit's control.

## 4.2. Relevant markets

### 4.2.1. Product market

- (26) In the Statement of Objections, the Commission reached the preliminary conclusion that there is a **market for unfunded credit derivatives** that are traded OTC and a potential market for exchange-traded unfunded credit derivatives.
- (27) The Commission also reached the preliminary conclusion that there is no demand-side substitutability for OTC-traded unfunded credit derivatives from underlying non-derivative debt instruments such as bonds, loans or mortgage-backed securities, as CDS allow for the separation of credit risk from interest rate risk, can be traded more easily and have lower transaction costs. Nor can CDS be substituted by other classes of derivatives such as interest rates, equity or commodity derivatives, as their risks are not interchangeable with credit risks.
- (28) In *Deutsche Börse/NYSE Euronext* the Commission held that exchange- and OTC-traded derivatives form separate markets in the absence of short-term substitution, but noted a one-off long-term move from OTC to exchanges when contracts become more liquid, without competitive constraints on the exchange.<sup>6</sup> Within this one-way substitutability, exchange-traded CDS may become substitutes to standardised OTC-traded CDS.
- (29) The Commission also reached the preliminary conclusion that there is no supply-side substitutability for OTC unfunded credit derivatives because of entry barriers. For OTC those barriers are, in particular, different risk profiles, extensive balance sheet and documentation requirements and the need for access to a very large amount of price data. For exchanges, the barriers consist in clearing, making entry with an alternative trading and clearing platform very difficult in view of the inefficiencies of maintaining margins at two clearing houses in respect of the same or similar products and the difficulties in competing with existing liquidity pools, in particular where an existing clearing house is vertically integrated. Such entry is more likely where access to an existing clearing house is granted, but even then entry will be difficult and may not exercise sufficient competitive constraint on the existing exchange.

### 4.2.2. Geographic market

- (30) The Commission reached the preliminary conclusion in the Statement of Objections that each of the relevant product markets, OTC-traded unfunded credit derivatives and exchange-traded unfunded credit derivatives, is **world-wide in scope**.

## 4.3. Practices raising concerns

- (31) The Commission took the preliminary view that Markit may have infringed Article 101 of the Treaty and Article 53 of the EEA agreement by **refusing to license the CDX and iTraxx indices for exchange trading and that the refusal may have effects until today**. The preliminary assessment also considered Markit to be an association of undertakings because decision making on index licensing occurred at the relevant time through the collective structures of advisory committees, an institutionalised form of cooperation between CDS dealers who shared common interests to keep CDS trading in the OTC trading environment. The Statement of Objections also noted that Markit acted as a tool of the CDS dealers and followed their advice even

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<sup>6</sup> Case M.6166 *Deutsche Börse/NYSE*, paragraph 308, upheld in case T-175/12 *Deutsche Börse*, EU:T:2015:148, paragraph 106.



when that advice was contrary to Markit's own commercial interests, that is to say, to maximise revenues from index licensing.

- (32) According to the preliminary assessment, despite the request from CME and Citadel to use the index license for all forms of trading including for exchange trading with a CLOB, Markit limited the licence to Request-For-Quote ('RFQ') trading and to trades materially similar to OTC trades, and to clearing.
- (33) The Statement of Objections expressed the preliminary concern that the refusal may have restricted competition in the potential new market for exchange trading of unfunded credit derivatives to the detriment of investors and, indirectly, their customers.
- (34) **With regard to the effect of the alleged behaviour**, no real, concrete alternatives to the requested indices were available to kick-start exchange trading of credit derivatives in a viable manner, as liquidity in credit derivatives remains highly concentrated in the two CDX and iTraxx index families. In the absence of a license permitting CLOB trading, it was legally impossible for a trading platform to offer exchange traded contracts that reference the CDX or iTraxx indices. As Markit's CDX and iTraxx indices are by far the most liquid CDS indices, the refusal may have effectively foreclosed CME and Citadel from accessing the potential market for exchange trading of unfunded credit derivatives. The preliminary assessment took the view that that refusal may have harmed investors because the emergence of a viable exchange trading platform for unfunded credit derivatives could have significantly reduced the cost of credit derivatives trading, inter alia by increasing price competition, increasing transparency of offers, and firm bids and increasing the number of users who all trade with one another anonymously. Moreover, according to the Statement of Objections, credit derivatives would have become available for new classes of investors which are obliged by statute to trade on regulated markets, only.

#### **4.4. Effect on trade between Member States**

- (35) The Court of Justice of the European Union has consistently held that, in order to find that an agreement or a practice may affect trade between Member States and Contracting Parties to the EEA Agreement, it must be possible to foresee with a sufficient degree of probability, on the basis of a set of objective factors of law or fact, that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States. While Article 101(1) of the Treaty does not require that infringements have actually affected trade between Member States, it requires that it be established that the agreements are capable of having that effect.<sup>7</sup>
- (36) CDS trading is a global business and transactions of unfunded credit derivatives are regularly cross-border EU Member States / Contracting Parties to the EEA Agreement. Customers located in one country buy credit protection through a CDS dealer located in another country and the seller of credit protection may be located in yet another country. The Commission's preliminary view in the Statement of Objections was therefore that the described conduct had an appreciable effect on trade between Member States within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

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<sup>7</sup> Case C-306/96 *Javico*, EU:C:1998:173, paragraphs 15, 16 and 17; Case C-238/05 *Asnef-Equifax*, EU:C:2006:734, paragraph 43.

## **5. PROPOSED COMMITMENTS**

- (37) In order to meet the Commission's concerns as expressed in the Statement of Objections, Markit offered the Amended Commitments on 6 June 2016 (see recitals 38 to 44).

### **5.1. Licensing commitment**

- (38) In respect of requests to licence Markit's iTraxx or CDX indices for new exchange-traded financial products, including, but not limited to swaps, futures and options products, Markit has given a commitment to act and grant licences in a fair, reasonable and non-discriminatory ('FRAND') manner. The commitment applies to all requests for a licence to create or trade exchange-traded financial products on a trading venue<sup>8</sup> in the European Economic Area or in another country in which Markit does business. If the parties fail to reach agreement within a negotiation period of three months (extendable to six months), FRAND terms and conditions will be determined by third party arbitration or, if arbitration fails, by a court.
- (39) In respect of existing licences which directly or indirectly exclude the use of the iTraxx or CDX indices for exchange trading, Markit has given a commitment to amend such licences or to offer a new licence on FRAND terms and conditions, at the request of the licensee. Where an existing licence to create exchange traded financial products based on an index contains an exclusivity period and granting a licence pursuant to Markit's commitments would be inconsistent with the terms of that exclusivity, the FRAND licensing commitment will apply in respect of that index following the expiry of any mandatory period of exclusivity.
- (40) Without prejudice to its intellectual property and revenue rights, Markit has given a further commitment to remove any clause that directly or indirectly excludes the use of the Final Price for exchange trading from the Use Agreement on the [www.creditfixings.com](http://www.creditfixings.com) website. Where ISDA has granted a Final Price licence for use in an exchange-traded product, Markit will not require a further licence for the Final Price for such a use or charge royalties or other licence fees in respect of the Final Price in addition to those charged by ISDA.

### **5.2. Governance commitment**

- (41) Markit has given a commitment to implement and maintain revised terms of reference for the CDS Index Advisory Committees which cover the CDX and IMC committees, their successors and any other such similar Markit CDS index advisory (sub) committee which Markit consults in relation to the operation and maintenance of the indices. Any discussions at meetings of those committees must be limited to technical, operational and administrative advice relating to the CDX or iTraxx indices. The discussions must not include licensing decisions and terms of licences, commercial aspects, the merits of new exchange traded financial products or the merits of any new exchange or similar platform relating to the CDX or iTraxx indices. Meetings must be minuted and audio-recorded and copies of the minutes retained for a period of five years and made available to the Monitoring Trustee.

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<sup>8</sup> A regulated market, a multilateral trading facility or an organised trading facility, as defined in point 24 of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ( OJ L 173, 12.6.2014, p. 349–496).

- (42) Markit has given a further commitment that membership of the committees will rotate and be extended to 25 entities, of which up to 15 will not be large CDS dealers.

### **5.3. Monitoring Trustee**

- (43) Markit will appoint a Monitoring Trustee to monitor Markit's compliance with the Amended Commitments. Before appointment, the Commission will approve or reject the proposed Trustee. In case of rejection, Markit must propose new candidates.

### **5.4. Duration of Amended Commitments and Review Clause**

- (44) All licensing and governance commitments will be binding for ten years or for so long as Markit owns and controls the indices, whichever period is shorter. Pursuant to Article 9(2) of Regulation (EC) No 1/2003, Markit may request the Commission to review the commitments in case of material changes of the facts on which this Decision is based. In particular, if Markit demonstrates after five years that there has been a material change in any of the facts, the Commission will review those facts and decide whether to reopen proceedings.

## **6. ARTICLE 27(4) NOTICE**

- (45) In response to the publication of the Article 27(4) Notice on 29 April 2016, the Commission received two responses from interested third parties.
- (46) The respondents did not question the general aim of the Initial Commitments nor their effectiveness to address the preliminary competition concerns. One respondent did make linguistic suggestions to clarify the meaning of certain elements in relation to the eligibility of certain market participants in Markit's advisory boards.
- (47) On 6 June 2016, in response to the comments received pursuant to the Article 27(4) Notice, Markit slightly amended its proposed commitments that clarified which entities other than CDS dealers are eligible for membership of the index advisory committees (the Amended Commitments).
- (48) The limited observations received did not identify new competition concerns and contained no points such as to make the Commission reconsider the concerns it expressed in the Statement of Objections with regard to Markit. In view of the results of the market test, the Commission maintains the position that it took in the Article 27(4) Notice, namely that the commitments are adequate to meet the competition concerns expressed in the Statement of Objections.

## **7. PROPORTIONALITY OF THE AMENDED COMMITMENTS**

### **7.1. Principles**

- (49) The principle of proportionality requires that the measures adopted by institutions of the Union must be suitable and not exceed what is appropriate and necessary for attaining the objective pursued.<sup>9</sup>
- (50) In the context of Article 9 of Regulation (EC) No 1/2003, application of the principle of proportionality entails, first, that the commitments in question address the concerns expressed by the Commission in its preliminary assessment and, second,

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<sup>9</sup> See for instance, Case T-260/94 *Air Inter v. Commission*, EU:T:1994:265, paragraph 144 and Case T-65/98 *Van den Bergh Foods v. Commission*, EU:T:2003:281, paragraph 201.

that the undertakings concerned have not offered less onerous commitments that also address those concerns adequately.<sup>10</sup> When carrying out that assessment, the Commission must take into consideration the interests of third parties.<sup>11</sup>

## **7.2. Application in this case**

- (51) The Amended Commitments, as set out in Section 5 of this Decision, are sufficient to address the concerns identified by the Commission in its Statement of Objections and summarised in Section 4 of this Decision. In this respect, the Commission evaluates the Amended Commitments as a whole rather than only their constituent individual elements.
- (52) The Amended Commitments ensure that Markit will not refuse licences for exchange trading on the basis of its ownership of the iTraxx and CDX indices with regard to any potential licensee willing to enter into a licence agreement on FRAND terms and conditions. The Amended Commitments further ensure that large CDS dealers with vested interests cannot exercise influence over Markit with regard to individual licensing decisions. Markit also submitted commitments with regard to the Final Price to support the effectiveness of commitments which ISDA submitted at the same time as Markit to address the Commission's preliminary concerns in the Statement of Objections, which was addressed both to Markit and ISDA. As auction administrator, Markit factually controls the publication of the Final Price and the website which contains ISDA's restrictive Use Agreement.
- (53) Moreover, Markit has not offered less onerous commitments in response to the Statement of Objections that would also address the Commission's concerns adequately. The need to ensure increased deterrence through the imposition of fines has been removed by the submission of the Amended Commitments which will be made legally binding and enforceable through this Decision. This effectively removes the risk of recidivism and has positive effects on the market structure and consumers in the Union.
- (54) The Commission has taken into consideration the interests of third parties, including those of the interested third parties that responded to the Article 27(4) Notice.
- (55) This Decision accordingly complies with the principle of proportionality.

## **8. CONCLUSION**

- (56) By adopting a decision pursuant to Article 9(1) of Regulation (EC) No 1/2003, the Commission makes commitments, offered by the undertakings concerned to meet the Commission's concerns expressed in its preliminary assessment, binding upon them. Recital 13 of the Preamble to the Regulation (EC) No 1/2003 states that such a decision should not conclude whether or not there has been or still is an infringement.
- (57) The Commission's assessment of whether the Amended Commitments offered by Markit are sufficient to meet its concerns with regard to Markit expressed in the Statement of Objections represents the view of the Commission based on the underlying investigation and analysis, and the observations received following the publication of the Article 27(4) Notice.

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<sup>10</sup> Case C-441/07 P *Commission v Alrosa*, EU:C:2010:377, paragraph 41.

<sup>11</sup> Case C-441/07 P, paragraph 41.

- (58) In the light of the Amended Commitments offered by Markit, the Commission considers that there are no longer grounds for action on its part and, without prejudice to Article 9(2) of Regulation (EC) No 1/2003, the proceedings in this case with regard to Markit should therefore be brought to an end.
- (59) The Commission retains full discretion to investigate and open proceedings under Article 101 of the Treaty and Article 53 of the EEA Agreement as regards practices that are not the subject matter of this Decision,

HAS ADOPTED THIS DECISION:

*Article 1*

The Amended Commitments in the Annex shall be binding on Markit Limited, Markit Group Holdings Limited, Markit Indices Limited, Markit North America, Inc and Markit Group Limited for a period of 10 years from the date of adoption of this Decision.

*Article 2*

There are no longer grounds for action in this case as regards Markit Limited, Markit Group Holdings Limited, Markit Indices Limited, Markit North America, Inc and Markit Group Limited. The proceedings in respect of Markit are therefore brought to an end.

*Article 3*

This Decision is addressed to:

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Done at Brussels, 20.7.2016

*For the Commission*  
*Margrethe VESTAGER*  
*Member of the Commission*

**CERTIFIED COPY**  
For the Secretary-General,

**Jordi AYET PUIGARNAU**  
Director of the Registry  
**EUROPEAN COMMISSION**