
DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 969

1 October 2021

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****LONDON STOCK EXCHANGE GROUP PLC****AND****THE REFINITIV BUSINESS****CASE NUMBER: 2020OCT0040**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the above-mentioned firms subject to conditions as set out below:

1. In terms of the proposed transaction, London Stock Exchange Group plc (LSEG) intends to acquire the whole business of Refinitiv Parent Limited (Refinitiv). Upon completion of the proposed transaction, LSEG will have sole control over the Refinitiv business.
2. The primary acquiring firm is LSEG, a company incorporated in accordance with the laws of England and Wales. LSEG is a public company and its shares are listed on the London Stock Exchange and is not controlled by any single shareholder. LSEG controls several firms but does not control any firms in South Africa, LSEG will be referred to as the (Acquiring Group).
3. The primary target firm is Refinitiv. Refinitiv is controlled by BCP York Holdings (Delaware) L.P.

Overlap

4. The Competition Commission ("Commission") assessed the activities of the merging parties and found that there is a horizontal overlap in the activities of the merging

parties as both merging parties are active in the provision of financial market data in South Africa.

5. Customers and competitors of the merging parties stated that the merging parties are not direct competitors in the provision of financial market data but rather operate in a vertical relationship. LSEG, which is active in the provision of stock exchange services, generates certain raw financial data which is supplied to third parties. Companies like Refinitiv package this raw data and on-sell it to various customers including banks. LSEG also supplies this data to end-users, but this is not provided in packaged form. The merging parties therefore supply various forms of financial market data globally, including in South Africa.
6. In addition to the horizontal overlap, the Commission also considered the vertical relationship that exists between the parties. As explained in more detail later, the Commission notes that LSEG and other index producers rely on foreign exchange benchmarks produced by Refinitiv. This is particularly the case with WM/Reuters London 4pm Closing Spot Rates (WM/R 4pm). The Commission has therefore also considered whether the merger is likely to result in the foreclosure of the merging parties' rival's post-merger.

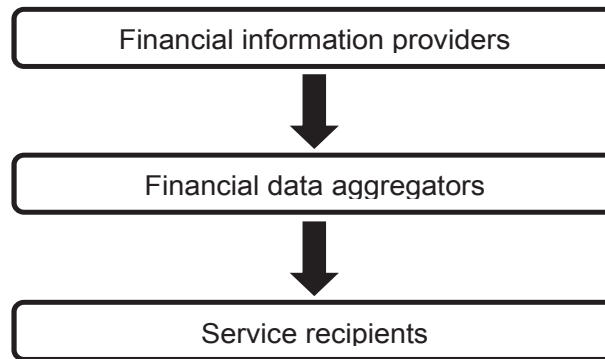
Market background

7. Before defining the relevant markets, it is important to understand the background of the financial market data industry. Financial information products include market data which consists of indicative or tradable prices for various types of financial instruments such as equities, corporate and government bonds, currency, and traded commodities. Financial professionals and organizations around the world involved in the trading of financial instruments use market data to make effective investment decisions as well as to provide advice, monitor and validate transactions after they are executed.
8. Financial information products may include real time information, decision support tools, historical and reference data, and news and analysis. Such information is designed to assist end-users to monitor the markets, reach investment decisions, manage investment risks, advise clients, etc. In the financial information industry, customers range from global and very large institutions including central banks, financial institutions, government offices and agencies, traders, and brokers operations, as well as hedge funds and private equity funds. These customers often consume a range of items within the markets for financial information products and tend to be sophisticated organizations. The financial market data value chain consists

of three key levels, namely the information providers, data aggregators and service recipients as depicted below

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Diagram 1: the financial market data value chain



Source: Commission's construction based on submissions from third parties.

10. **Information providers** generate source data. For example, LSEG generates data resulting from its operation of the London Stock Exchange. Neither the acquiring firm nor the target firm are active at this level in South Africa.
11. The financial **data aggregator** sources data from information providers, then processes, cleanses, re-packages and distributes the source data to service recipients. Examples of data aggregators include Refinitiv and Bloomberg.
12. Finally, the **Service recipients** receive and utilize the data distributed by data aggregators. The service recipient may process the source data for certain business outcomes such as investment decisions. In this case, the service recipients are financial institutions such as banks including ABSA, Nedbank, and FirstRand Bank. In some instance, the service recipients may receive market data directly from information providers.
13. Market data may also be collated into indices, which are information products that measure changes in the value or performance of a group of investment products.

Indices can be used as a source of information or as a benchmark against which to assess the performance of a given financial instrument.

14. LSEG sells indices relating to two asset classes to customers in South Africa, namely equities and fixed income.
15. In South Africa, Refinitiv is principally active with respect to FX benchmarks, and its overall business is limited in scale. 2019, Refinitiv benchmark and index products that were purchased by South African customers all comprise of FX rate products (its flagship product being the WM/R 4pm).

Market Definition

16. In defining the relevant market, the Commission relied on the European Commission (EC) and South African case precedent. In *the Deutsche Borse / NYSE Euronext*, the EC defined separate markets for indices based on the asset class. The EC's investigation found that there is no supply-side substitution due to the existence of Intellectual Property rights. While a new index can indeed be launched in competition with an existing index, the chance of such an index obtaining commercial success would depend inter alia on the existence (or likely existence) of a liquid market in futures and options on that index. The EC concluded that the relevant market is for market data and index licensing. It consisted of equity index licensing and other indices such as FX index licensing amongst others.
17. *In the LSEG/ Russell* matter, the UK's Competition and Markets Authority (CMA) found that indices can be segmented on the basis of several dimensions, including the asset classes of an index's constituents (e.g. equity or fixed income), as well as on the basis of specificities in the rules for selecting index constituents or assigning weights to them (e.g. equity indices can be separated between large, medium, small or micro capitalisation, or by specific industry, such as energy or agriculture) or on the geographies of the underlying securities.
18. In South Africa, in *King (Cayman) Holdings Limited /Financial & Risk Business of Thomson Reuters Corporation*, the Commission defined the relevant market to be the provision of financial market data broadly encompassing financial desktop services including data feeds, index licensing and economic data.
19. In this instant transaction, the Acquiring Group provides equity and fixed income indices while the target firm provides FX benchmarks. Therefore, if viewed narrowly at the individual asset class level, there is no overlap between the indices provided by

the merging parties to customers in South Africa. Customers of the merging parties stated that the merging parties are not close competitors as the acquiring firm provides index licensing for equity while the target firm focuses on FX benchmarks. Furthermore, competitors also indicated that the merging parties are not close competitors in the provision of financial market data in South Africa and that the merging parties are relatively smaller players in this market. The Commission notes that the merging parties are not close competitors as they provide financial data focusing on different underlying products.

20. Nonetheless, the Commission does not deviate from the approach adopted by the Tribunal which focused on the broad market for financial data while noting the presence of some differentiation.

Competitiveness analysis

21. In calculating market shares, the Commission relied on submissions from third parties such as customers and competitors and supplemented this with information from a previous Commission investigation into the same market conducted in 2018. The Commission found that the post-merger market share of the merged entity will be in the range of 10 - 20%, with an accretion of approximately 5 - 10%. The Commission found that the other market participants will be able to constrain the merged entity post-merger. The market shares are consistent with submissions received by the Commission from third parties.
22. Based on the above analysis, the Commission is of the view that the post-merger market shares of the merged entity are low and do not raise concerns. The Commission is further of the view that there are alternatives in the market that will be able to constrain the behaviour of the merged entity. Importantly, as discussed above, the Commission notes that the merging parties are not close competitors as they do not offer substitutable financial products. As a result, the Commission is of the view that it is unlikely that the proposed merger will lead to substantial prevention or lessening of competition in any relevant market.

Concerns raised by third parties and Vertical Analysis

23. The Commission received concerns from third parties regarding the possibility of the merging parties restricting access to several key input data, including data which is essential for index creation. In particular, a competitor was concerned about being foreclosed of access to WM/R 4pm which it uses to compute some of its own indices. A customer was also concerned about the merged entity no longer offering access to

its indices through third party data aggregators which would force customers to only use Refinitiv. The Commission considered these concerns below.

24. Refinitiv's, FX benchmarks, in particular, WM/R 4pm was introduced in 1994 to provide a standard set of currency benchmark rates so that portfolio valuations could be compared with each other, and their performance measured against benchmarks without having any differences caused by exchange rates. In 2014, the WM/R 4pm service was enhanced to include the WM/Reuters Tokyo Benchmark Service covering 24 currencies against JPY, USD, GBP, and EUR. In 2018, this was extended to cover 31 currencies. Certain users may view the WM/R 4pm as a valuable benchmark in the financial markets, with many transactions, derivatives and investment funds using this benchmark to determine the value of their foreign exchange positions.
25. It is understood that the majority of the main equity and bond index compilers use the WM/R 4pm in their calculations, and the original uses of the rates in portfolio valuations and performance measurement are still very relevant. However, other uses of the rates have developed and are becoming increasingly important. For example, many customers now use the rates as a benchmark for currencies in contracts of different kinds including the settlement of financial derivatives. Many banks will now provide a service to their customers whereby they will guarantee to trade certain currency pairs at, or with reference to, the WM/R 4pm which is useful for investment customers if they are making changes to a portfolio benchmarked against an index that uses the WM/R 4pm and seeks to minimize any reconciliation differences from foreign exchange. Corporate users will find that it is very useful to value currency holdings held globally at a common rate, and if necessary, swap or trade them at the same rate. Using WM/R 4pm in this way can avoid using expensive resources to check the market continually. Auditors accept the WM/R 4pm as independently calculated and administered.
26. The Commission engaged the merging parties regarding these concerns. The merging parties submitted that index providers have a strong commercial incentive to have their indices distributed widely due to strong network effects. Index providers are incentivised to distribute their index data through the largest possible number of channels; the more widely available an index is, the more likely it is that the index will be used as a benchmark for investment performance or in the construction of ETFs, passive index-linked funds, and structured products.
27. The merging parties further stated that a foreclosure strategy would reverse LSEG's successful and long-standing "open access" model. Its "open access" policy is a key

element of LSEG's commercial proposition as a trusted partner to the financial services industry. The merging parties submit that there are numerous examples of LSEG supplying products or services to customers who are also competitors in other areas. Further, the merging parties highlight that a number of Refinitiv's customers are important contributors of data and other inputs into Refinitiv's product offering and so they could retaliate by disrupting or cutting off access to such data.

28. Finally, the merging parties noted that the licensing of WM/R 4pm is subject to regulatory oversight through the UK's Financial Conduct Authority (FCA). The merging parties noted that they have made commitments to the FCA to take adequate steps to ensure that licences of, and information relating to, such benchmark are provided to all users on a fair, reasonable, transparent, and non-discriminatory (FRAND) basis.

Commission Proposed Remedies

29. Notwithstanding the above and given the concerns raised, the Commission informed the merging parties that the Commission remains concerned regarding the prospect that the merged entity may, post-merger, have the ability and incentive to restrict access to WM/R FX benchmarks to index licensing firms that compete with it in South Africa. The specific product in question is the WM/R 4pm which is an essential component to the financial products of a number of firms in the sector.
30. In this regard, the Commission invited the merging parties to propose suitable remedies to address the above concerns. The merging parties indicated that they are amenable to a non-discriminatory access condition with respect to WM/R 4pm. The condition is attached as **Annexure A**.

Public interest

31. The proposed transaction does not raise any public interest concerns.

Conclusion

32. In light of the above, the Commission approves the proposed transaction subject to conditions attached as **Annexure A**.

ANNEXURE A

LONDON STOCK EXCHANGE GROUP PLC**AND****THE REFINITIV BUSINESS****CASE NUMBER: 2020CT0040**

CONDITION

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings —

- 1.1 **"Acquiring Firm"** means London Stock Exchange Group plc;
- 1.2 **"Act"** means the Competition Act, No. 89 of 1998 (as amended);
- 1.3 **"Approval Date"** means the date referred to in the Commission's merger Clearance Certificate (Form CC15) in respect of the Transaction;
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.6 **"Condition"** means this condition;
- 1.7 **"Days"** mean any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

- 1.8 **"De Facto Failure"** means an excessive change in pricing terms or other change in commercial terms (including the introduction of new use cases) which amounts to a failure by the Merged Entity to supply WM/R FX Benchmarks to WM/R Customers.
- 1.9 **"Implementation Date"** means the date occurring after the Approval Date, on which the Transaction is implemented by the Parties;
- 1.10 **"Merged Entity"** means the entity that will result from the Transaction between the Parties;
- 1.11 **"Parties"** means the Acquiring Firm and Target Firm;
- 1.12 **"South Africa"** means the Republic of South Africa;
- 1.13 **"Target Firm"** means the Refinitiv business which, after the Implementation Date, shall be solely controlled by LSEG;
- 1.14 **"Transaction"** means the acquisition of control by the Acquiring Firm over the Target Firm, which constitutes an intermediate merger for the purposes of the Act;
- 1.15 **"Tribunal"** means the Competition Tribunal of South Africa;
- 1.16 **"WM/R Customers"** means all existing and future customers operating a business in South Africa that access or will in the future make a request to access WM/R FX Benchmarks contracted for in South Africa for index licensing purposes in South Africa;
- 1.17 **"WM/R FX Benchmarks"** means all existing WM/R FX benchmarks/rates offered by the Target Firm in South Africa as set out in the WM/R Methodology, their successor products and WM/R FX benchmarks/rates of a similar nature offered by the Merged Entity in the future;
- 1.18 **"WM/R Methodology"** means the WM/Reuters FX Benchmarks methodology guide as published on the Target Firm's website and updated from time to time.

2. RECORDAL

- 2.1 On 24 April 2020, the Parties initially notified the Transaction to the Commission.
- 2.2 During its initial investigation, the Commission found that the Transaction may raise competition concerns. In particular, the Commission noted that the Merged Entity may, post-Transaction, have the ability and incentive to restrict access to WM/R FX Benchmarks to index licensing firms that compete with it in South Africa.
- 2.3 In order to address this concern, the Commission proposed a condition of approval. The Parties, in a gesture of good faith, elected to file a Form CC6 and to re-file at an appropriate time to allow additional time to engage on a mutually agreeable condition.
- 2.4 The Parties re-filed the Transaction on 23 October 2020.
- 2.5 Following its new investigation, the Commission found that the same concern identified previously remains. In order to remedy this concern, the Commission has imposed the Condition in relation to the Merged Entity with regard to the provision of access to WM/R FX Benchmarks to WM/R Customers. The Parties have agreed to the Condition.

3. CONDITION TO THE APPROVAL OF THE TRANSACTION

- 3.1 The Acquiring Firm, as well as the Target Firm for the period between the Approval Date and Implementation Date and for 5 years after the Implementation Date, commits to make WM/R FX Benchmarks available to WM/R Customers. For the avoidance of doubt, this commitment includes an undertaking to ensure that the pricing terms that are applied to WM/R FX Benchmarks shall not be changed in such a way as to constitute a *De Facto* Failure to make WM/R FX Benchmarks available to WM/R Customers.
- 3.2 The Acquiring Firm, as well as the Target Firm for the period between the Approval Date and Implementation Date and for 5 years after the Implementation Date, commits:

3.2.1 not to reclassify or redefine WM/R FX Benchmarks in a manner that would undermine the efficacy of the Condition; and

3.2.2 to deal with WM/R Customers in relation to any future contracts regarding access to WM/R FX Benchmarks for index licensing purposes in good faith.

4. **MONITORING**

4.1 The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.

4.2 The Acquiring Firm shall inform all third-party WM/R Customers of the Merged Entity who already access WM/R FX Benchmarks for index licensing purposes as at the Implementation Date of the Condition in writing (email being sufficient), within one month of the Implementation Date. Any new third-party WM/R Customers of the Merged Entity must be informed in writing of the Condition within one month of becoming a customer of the Merged Entity. In addition, the Acquiring Firm must place, within one month of the Implementation Date, a non-confidential copy of the Condition on its South African accessible website.

4.3 Where applicable, the Acquiring Firm shall provide detailed and specific reasons to the Commission explaining why the Merged Entity refused to grant any WM/R Customers access to WM/R FX Benchmarks, including a description of the product or service requested by the relevant WM/R Customers.

4.4 The Commission is entitled to request any additional information or documentation from the Parties that the Commission considers relevant for the purposes of monitoring the Condition.

5. **DURATION**

5.1 The Condition shall remain valid for 5 (five) years from the Implementation Date.

6. **APPARENT BREACH**

6.1 Any complaint received by the Commission alleging a breach of the Condition shall be dealt with in terms of Rule 39 of the Commission Rules.

7. VARIATION

- 7.1 The Parties may at any time, on good cause shown, apply to the Commission for the Condition to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Condition, the Parties shall apply to the Tribunal, on good cause shown, for the Condition to be lifted, revised or amended.

8. GENERAL

- 8.1 All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298