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## **Antitrust: Commission opens formal proceedings against Standard & Poor's concerning securities identification numbers**

*The European Commission has decided to open formal proceedings with respect to Standard & Poor's (S&P) behaviour towards end users of International Securities Identification Numbers (ISINs), for possible breaches of the EC Treaty's rules on abuse of a dominant market position (Article 82). The Commission believes that S&P may abuse its monopoly position as the US national numbering agency by forcing financial institutions (such as banks and investment funds) to pay licensing fees for the use of US ISIN codes in their own databases.*

The initiation of proceedings against S&P originates from a complaint filed by several associations representing investors (financial institutions and asset managers).

The International Securities Identification Number (ISIN) is a standard developed by the International Organization for Standardization (ISO) to provide unique cross-border identification for securities (shares, bonds, etc.) issued throughout the world. ISINs are attributed by the National Numbering Agency (NNA) of the country of issuance.

S&P runs the CUSIP Service Bureau (CSB) – the US NNA – on behalf of the American Bankers Association (ABA). S&P/CSB is the only US ISIN issuer and the only operator to receive first-hand information from all US securities issuers. S&P/CSB includes the information gathered from securities issuers in a descriptive database ("the S&P ISIN database"), which is then licensed to information services providers such as Bloomberg, Reuters, etc.

It appears at this stage that US ISINs are the only universal or common identifier for US securities and that they are essential for the day-to-day business of financial institutions, including those located in the EU.

The alleged infringement consists of an abuse by S&P of its monopoly position by requesting licensing fees from financial institutions located in the EU for the use of US ISINs and certain descriptive elements attached to these numbers each time such an ISIN is used in order to access value-added financial information provided by information services providers. Allegedly financial institutions are obliged to pay for a service that they are not interested in and do not actually use, i.e. the S&P's ISIN database as such. Moreover, it is alleged that S&P forces its contractual partners, the information services providers, to cut off financial institutions from data feeds on US securities unless the latter enter into licensing agreements with S&P for the use of US ISINs.

The opening of proceedings does not imply that the Commission has conclusive proof of an infringement but merely means that the Commission will deal with the case as a matter of priority.

The company's rights of defence will be fully respected.

There is no strict deadline to complete inquiries into anticompetitive conduct. Their duration depends on a number of factors, including the complexity of each case, the extent to which the undertakings concerned co-operate with the Commission and the exercise of the rights of defence.

### **What is the legal base for the decision?**

The legal base of this procedural step is Article 11(6) of Council Regulation No 1/2003 and article 2(1) of Commission Regulation No 773/2004.

Article 11(6) of Regulation No 1/2003 provides that the initiation of proceedings relieves the competition authorities of the Member States of their authority to apply Articles 81 and 82 of the Treaty to the practices under investigation by the Commission. Moreover, Article 16(1) of the same Regulation provides that national courts must avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings that it has initiated.

Article 2 of Regulation No 773/2004 provides that the Commission can initiate proceedings with a view to adopting at a later stage a decision on substance according to Articles 7-10 of Regulation No 1/2003 at any point in time, but at the latest when issuing a statement of objections or a preliminary assessment notice in a settlement procedure. In the case at stake, the Commission has chosen to open proceedings before such further steps.

The Commission may also make public the initiation of proceedings in any appropriate way. Before doing so, it has to inform the parties concerned.