

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

S&P GLOBAL INC.,

and

IHS MARKIT LTD.,

Defendants.

ASSET PRESERVATION AND HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated by and among the undersigned parties, subject to approval and entry of this Order by the Court, as follows.

I. DEFINITIONS

As used in this Asset Preservation and Hold Separate Stipulation and Order (“Stipulation and Order”):

A. “Data License” means the Data License Agreement between Oil Price Information Service, LLC, and GasBuddy/Open Store, LLC, dated January 5, 2016.

B. “Divestiture Business” means (1) IHSM’s Oil Price Information Service (“OPIS”) business, including the business known as PetrochemWire and OPIS’s 15% stake in PRIMA

Regulated Markets Limited and 25% stake in a2i systems A/S, and (2) IHSM's Coals, Metals, and Mining ("CMM") business.

C. "Divestiture Assets" means all of S&P's and IHSM's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, (1) owned by the Divestiture Business, or (2) primarily related to or used in connection with, or necessary to the operation of, the Divestiture Business (with the United States, in its sole discretion, to resolve any disagreement regarding which property and assets, tangible and intangible, are Divestiture Assets), including:

1. Lease agreements for offices located at: (a) 2099 Gaither Road, Rockville, MD 20850; (b) 3349 Highway 139, Wall Township, NJ 07719; and (c) 1295 Bandana Boulevard North, Saint Paul, MN 55018;
2. all other real property, including fee simple interests and real property leasehold interests and renewal rights thereto, and improvements to real property, together with all buildings, facilities, and other structures;
3. all tangible personal property, including fixed assets, office equipment and furniture, computer hardware, and supplies;
4. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and all outstanding offers or solicitations to enter into a similar arrangement;
5. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations, and all pending applications or renewals;

6. all records and data, including (a) customer lists, accounts, sales, and credits records, (b) manuals and technical information that S&P and IHSM provide to their own employees, customers, suppliers, agents, or licensees, and (c) records and research data concerning historic and current research and development activities;

7. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

8. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) design tools and simulation capabilities, (d) computer software and related documentation, know-how, trade secrets, quality assurance and control procedures, and (e) rights in internet web sites and internet domain names.

D. “Divestiture Date” means the date on which the Divestiture Assets are divested to News Corp. pursuant to the proposed Final Judgment.

E. “GasBuddy” means GasBuddy, LLC, a Delaware limited liability company with its headquarters in Boston, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “IHSM” means Defendant IHS Markit Ltd., a Bermuda corporation with its headquarters in London, United Kingdom, its successors and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. “Including” means including, but not limited to.

H. “Relevant Personnel” means all full-time, part-time, or contract employees of IHSM, wherever located, who work in OPIS or CMM, or whose job responsibilities relate primarily to the operation or management of the Divestiture Business, at any time between November 30, 2020, and the Divestiture Date. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Relevant Personnel.

I. “News Corp.” means News Corporation, a Delaware corporation with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

J. “OPIS LLC” means Oil Price Information Services, LLC, a Maryland limited liability company with its headquarters in Rockville, Maryland, its successors and assigns, and their directors, officers, managers, agents, and employees.

K. “S&P” means Defendant S&P Global Inc., a New York corporation with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions,

groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

L. “Transaction” means the proposed merger between S&P and IHSM.

II. OBJECTIVES

A. The proposed Final Judgment filed in this case is meant to (1) ensure S&P’s and IHSM’s prompt divestiture of the Divestiture Assets for the purpose of establishing a viable, ongoing competitor in the provision of commodity price assessments and related news and analysis in order to remedy the anticompetitive effects that the United States alleges would otherwise result from the merger of IHSM and S&P; and (2) eliminate the exclusivity and non-compete provisions in the Data License, which the United States alleges are anticompetitive. Under the proposed Final Judgment, News Corp. would acquire the Divestiture Assets, which include the Data License, from S&P and IHSM. The United States has determined, for the purposes of this settlement, that News Corp. is an acceptable purchaser of the Divestiture Assets.

B. Central to the relief provided by the proposed Final Judgment related to the Data License is the requirement that the acquirer of the Data License, OPIS LLC, an affiliate of News Corp., must not enter into, enforce, renew, or extend the term of any: (1) exclusive licenses for the provision to S&P and IHSM of GasBuddy’s data or U.S. retail gas price data of any other third-party provider or (2) non-compete provisions relating to GasBuddy’s data or U.S. retail gas price data of any other third-party provider. Relief cannot be effectively accomplished without OPIS LLC’s participation, and OPIS LLC has agreed to be bound as a party-defendant to the proposed Final Judgment. OPIS LLC shares an interest in the resolution of this litigation and

shares common issues of law and fact with S&P and IHSM such that joinder is proper under Rule 20(a) of the Federal Rules of Civil Procedure.

C. This Stipulation and Order ensures that, prior to divestiture, the Divestiture Assets remain independent, economically viable, competitive, and saleable; that S&P and IHSM will preserve and maintain the Divestiture Assets; and that the level of competition that existed between S&P and IHSM prior to the Transaction is maintained during the pendency of the required divestiture of the Divestiture Assets.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over the parties to it. Pursuant to Section VI of this Stipulation and Order filed simultaneously with the proposed Final Judgment, OPIS LLC has consented to this Court's exercise of specific personal jurisdiction over it in this matter solely for the purposes of settlement and for the entry and enforcement of the proposed Final Judgment. Venue for this action is proper in the United States District Court for the District of Columbia. S&P, IHSM, and OPIS LLC waive service of summons of the Complaint.

IV. CONSUMMATION OF THE TRANSACTION

S&P and IHSM will not consummate the Transaction before the Court has signed this Stipulation and Order.

V. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The proposed Final Judgment filed with this Stipulation and Order, or any amended proposed Final Judgment agreed upon in writing by the United States and S&P, IHSM, and OPIS LLC, may be filed with and entered by the Court as the Final Judgment, upon the motion of the

United States or upon the Court's own motion, after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or any other proceeding, as long as the United States has not withdrawn its consent. The United States may withdraw its consent at any time before the entry of the Final Judgment by serving notice on S&P, IHSM, and OPIS LLC. and by filing that notice with the Court.

B. From the date of the signing of this Stipulation and Order by S&P, IHSM, and OPIS LLC until the Final Judgment is entered by the Court, or until expiration of time for all appeals of any ruling declining entry of the proposed Final Judgment, S&P, IHSM, and OPIS LLC will comply with all of the terms and provisions of the proposed Final Judgment.

C. From the date on which the Court enters this Stipulation and Order, the United States will have the full rights and enforcement powers set forth in the proposed Final Judgment as if the proposed Final Judgment were in full force and effect as a final order of the Court, and Section XIV of the proposed Final Judgment will also apply to violations of this Stipulation and Order.

D. S&P and IHSM agree to arrange, at their expense, publication of the newspaper notice required by the APPA, which will be drafted by the United States in its sole discretion. The publication must be arranged as quickly as possible and, in any event, no later than three business days after S&P's and IHSM's receipt of (1) the text of the notice from the United States and (2) the identity of the newspaper or newspapers within which the publication must be made. S&P and IHSM must promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged for each newspaper identified and (2) the certification of the publication prepared by the newspaper or newspapers within which the notice was published.

E. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the United States and S&P, IHSM, and OPIS LLC and filed with the Court.

F. S&P, IHSM, and OPIS LLC represent that the divestiture ordered by the proposed Final Judgment can and will be made and that the actions required by this Stipulation and Order and the proposed Final Judgment will be performed. S&P, IHSM, and OPIS LLC will not later raise a claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any provision of the proposed Final Judgment or this Stipulation and Order.

VI. JOINDER OF OPIS LLC AS A DEFENDANT

It is hereby stipulated and agreed by and between the United States and S&P, IHSM, and OPIS LLC that, upon approval and entry by the Court, OPIS LLC be added as a defendant in this action for purposes of settlement and for entry and enforcement of the proposed Final Judgment.

VII. ASSET PRESERVATION AND HOLD SEPARATE

From the date of the signing of this Stipulation and Order by S&P, IHSM, and OPIS LLC and until the divestiture required by the proposed Final Judgment has been accomplished:

A. S&P and IHSM must take all actions necessary to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the Divestiture Assets including by (1) operating the Divestiture Assets in the ordinary course of business and consistent with past practices and (2) providing sufficient working capital and lines and sources of credit.

B. S&P and IHSM must use all reasonable efforts to maintain and increase the sales and revenues of the services provided by the Divestiture Assets and must maintain at 2021 levels

or previously approved levels for 2022, whichever are higher, all promotional, advertising, sales, technical assistance, customer support and service, marketing, research and development, and merchandising support for the Divestiture Assets.

C. S&P and IHSM must use all reasonable efforts to maintain and preserve existing relationships with customers, suppliers, governmental authorities, vendors, landlords, creditors, agents, and all others having business relationships relating to the Divestiture Assets.

D. S&P and IHSM must maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, or other records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets.

E. S&P and IHSM must maintain the working conditions, staffing levels, and work force training and expertise of all Relevant Personnel. Relevant Personnel must not be transferred or reassigned except to News Corp. or via transfer bids initiated by employees pursuant to S&P's and IHSM's regular, established job posting policy. S&P and IHSM must provide the United States with 10 calendar days' notice of the transfer of Relevant Personnel, and, upon objection by the United States to such transfer, Relevant Personnel may not be transferred or reassigned. S&P and IHSM must use all reasonable efforts, including by providing financial incentives, to encourage Relevant Personnel to continue in the positions held as of the date of the signing of this Stipulation and Order by S&P and IHSM, and financial incentives may not be structured so as to disincentivize employees from accepting employment with News Corp.

F. S&P and IHSM must maintain all licenses, permits, approvals, authorizations, and certifications related to or necessary for the operation of the Divestiture Assets and must operate the Divestiture Assets in compliance with all regulatory obligations and requirements.

G. S&P and IHSM must take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and level of sales, with the same level of quality, functionality, access, and customer support, and must, consistent with past practices, maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

H. Except as approved by the United States in accordance with the terms of the proposed Final Judgment, S&P and IHSM must not remove, sell, lease, assign, transfer, pledge, encumber, or otherwise dispose of any of the Divestiture Assets.

K. S&P and IHSM must take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

L. S&P and IHSM must hold management, sales, and operations of the Divestiture Assets entirely separate, distinct, and apart from S&P's and IHSM's other operations. S&P and IHSM must not coordinate the production, marketing, or terms of sale of any products produced or sold by the Divestiture Assets with the production, marketing, or terms of sale of any other products produced or sold by S&P and IHSM.

M. S&P and IHSM must appoint, subject to approval of the United States in its sole discretion, a person or persons to oversee the Divestiture Assets. Such person or persons will be responsible for S&P's and IHSM's compliance with this Section VII, for managing the sales and operations of the Divestiture Assets separately from S&P's and IHSM's other operations and for

ensuring the preservation of the Divestiture Assets for the duration of this Stipulation and Order. In the event any such person is unable to perform his or her duties, S&P and IHSM must appoint, subject to the approval of the United States in its sole discretion, a replacement within 10 business days. Should S&P and IHSM fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

N. Within 20 calendar days after the entry of this Stipulation and Order, S&P and IHSM will inform the United States of the steps S&P and IHSM have taken to comply with this Stipulation and Order.

VIII. DURATION OF OBLIGATIONS

S&P's and IHSM's obligations under Section VII of this Stipulation and Order will expire upon the completion of the divestiture required by the proposed Final Judgment or unless otherwise ordered by the Court. In the event that (1) the United States has withdrawn its consent, as provided in Paragraph V.A. of this Stipulation and Order; (2) the United States voluntarily dismisses the Complaint in this matter; or (3) the Court declines to enter the proposed Final Judgment, the time has expired for all appeals of any ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, S&P, IHSM, and OPIS LLC are released from all further obligations under this Stipulation and Order, and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

Dated: November 12, 2021

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

/s/ Travis R. Chapman
TRAVIS R. CHAPMAN
United States Department of Justice
Antitrust Division
Technology and Digital Platforms Section
450 Fifth St. NW, Suite 7100
Washington DC 20530
Telephone: 202-353-9006
Email: travis.chapman@usdoj.gov

FOR DEFENDANT
S&P GLOBAL, INC.:

/s/ Franco Castelli
FRANCO CASTELLI
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Telephone: 212-403-1355
Email: fcastelli@wlrk.com

FOR DEFENDANT
IHS MARKIT LTD.:

/s/ Howard Shelanski
HOWARD SHELANSKI (DC Bar No. 452476)
Davis Polk & Wardwell LLP
901 15th Street NW
Washington, DC 20005
Telephone: 202-962-7060
Email: howard.shelanski@davispolk.com

FOR OIL PRICE INFORMATION
SERVICES, LLC:

/s/ Kristen Limarzi
KRISTEN LIMARZI (DC Bar No. 485011)
Gibson Dunn & Crutcher LLP
1050 Connecticut Avenue NW
Washington, DC 20036
Telephone: 202-887-3518
Email: klimarzi@gibsondunn.com

ORDER

IT IS SO ORDERED by the Court, this _____ day of _____, _____.

United States District Judge