

Il Direttore Generale

Rome, January 31, 2005

Dear Mr. Demarigny,

I detail below some short comments by Assonime on the Consultation Paper "Market Abuse Directive – Level 3 – Preliminary CESR guidance and information on the common operation of the Directive". We welcome this open consultation, carried out in accordance with the recommendations of the Lamfalussy Report.

Our observations deal with the CESR approach to the accepted market practices.

The Consultation document proposes a list of practices "that CESR members would consider market manipulation".

We have reservations on the wisdom of providing such a list of forbidden behaviours. The initial Directive proposal (May 2001) contained such a list, which however was subsequently deleted on the ground that not all those behaviours could necessarily be considered as market manipulation; in some cases they could just represent a signal but no proof. Accordingly, the level 2 Directive (2003/124/EC) itself (Art. 4) offers some indications on what should be considered a signal of an ongoing market manipulation.

That is why in our view the wording of par. 4.10 appears too strict, since it cannot be deemed always true that "the following guidance gives examples of types of practice which, in the view of CESR members, would contravene the prohibition on market manipulation as defined by the Directive". Similar practices "may" at best signal a violation of the directive.

In particular, one of the manipulative examples (par. 4.14) deals with the "failure properly to disclose a price sensitive piece of information which should be disclosed". But a failure in disclosing could be perfectly legitimate according to article 6 of the Directive which allows the issuer to delay disclosure in

particular circumstances. Moreover, a failure in disclosing may be considered as a violation of issuers obligations and not necessarily a market manipulation according to article 1 of the Directive.

Furthermore, CESR indicates as another example of market manipulation the “creation of a floor in price patterns” which “needs to be distinguished from legitimate trading in shares as part of buy-back programmes or the stabilization of financial instruments”.

This distinction must be clarified in order to avoid that legitimate behaviours by market participants may be classified as manipulative.

For example, in many regulated markets there are liquidity providers (like specialists or market makers) whose behaviour is perfectly legal and approved by competent authorities, even if in some cases it could lead to a floor in price patterns. In some countries like Italy, liquidity providing on behalf of a listed issuer is legitimate under certain circumstances. Indeed, Consob Recommendation 92005334/1992 states that “operations directed at stabilising prices can contribute to improve market liquidity and favour the regular course of trading”. Therefore it seems to us that such practice should be recognised as an accepted market practice in the CESR document.

Thanking you for your kind attention, We remain at your disposal for any further clarification on the matters above.

Sincerely

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