

CESR Level 3 preliminary guidance and information on the common operation of the Market Abuse Directive

Reply of Euronext

Euronext welcomes the opportunity given to comment on CESR's level 3 preliminary guidance on the Market Abuse Directive.

Euronext's reply to CESR's guidance focuses on the following issues:

- As concerns the Accepted Market Practices, we believe particular attention should be paid to easing the burden of market participants in justifying relevant conducts and assessing Accepted Market Practices on the basis of different market models
- With respect to the market manipulation, Euronext considers that further work should be done by CESR to identify the reasons leading to consider market practices as manipulative

I. Accepted Market Practices

2.6 'However, to benefit from the defence provided, in addition to the transaction/order to trade conforming with an accepted market practice, the person who entered into the transaction or issued the order to trade must establish that their reasons for so doing are legitimate'.

We understand that the framework Directive and Directive 2003/124/EC give signals of market manipulation and that Accepted Market Practices (AMPs) can be put forward to justify a certain course of action that would otherwise be considered as market manipulation. In addition, legitimate reasons for the conduct have to be established. In order to ensure that markets continue to function smoothly and ease as much as possible the burden of market participants in justifying relevant conducts, we propose to link AMPs and legitimate reasons. For instance, by establishing a system enabling a **presumption that** persons entering into transactions or issuing orders to trade in conformity with all the specificities of an AMP have conducted a legitimate action, unless the competent authority brings evidence to the contrary. This would imply that AMPs would have to be rather detailed and envisage cases where the practice is legitimate. The cases where the use of the AMP would be seen as legitimate should however be left open and flexible to be able to include legitimate reasons not foreseen currently. If, on the contrary, legitimate reasons have to be given by market participants in all instances, AMPs should be defined broadly.

2.9 '...initial assessment of AMPs that might ultimately be accepted in one or more jurisdictions'.

We understand that some market practices can differ because of particular situations (market model, tax or regulatory requirements) and that, therefore, AMPs cannot be accepted in all European jurisdictions at once.

However, in order to have AMPs as harmonised as possible, Euronext believes that it would be more efficient to describe market practices on the basis of and in relation to the **different market models** and elements that make them legitimate rather than by way of an analysis per country. What appears very important to us is the **context** (which is closely linked with legitimate reasons) since such context can be the same in different countries..

2.12 ‘...in most case considered, conduct of the practice in conformity with the rules of the relevant regulated market would be sufficient in itself to promote market integrity and therefore the question of giving the practice accepted market practice status would not arise’.

Euronext welcomes CESR’s approach.

II. Table for assessing AMPs

Euronext is of the opinion that factors provided by the Directive are not sufficient. As explained before we would favour a market practices assessment on the basis of the market model and we think CESR at Level 3 should try to specify even more the **factors** (like the reason why a market participant should be willing to use such practice in a specific way), which would take into account particular characteristics of the assessed practice. CESR should identify and explain the elements that will be key in deciding whether an action constitutes market abuse or not.

III. Market manipulation

With respect to the examples that are given in the CESR’s report, we consider that some of the practices described do not in themselves constitute market manipulation as defined in the MAD. We consider that this **list of non accepted market practices should be further specified** (e.g. course of action described under marking the close, creation of a floor in the price pattern, excessive bid-ask spreads, pump and dump can be acceptable in certain specific circumstances).

This list of examples constitutes a general description of particular practices which, in several cases, do not mention any of the **reasons leading to consider them as manipulating the market**. In our opinion, such reasons should be identified.

IV. Possible signals of suspected insider dealing or market manipulation transactions

We have reservation concerning the signals market participants should apply when assessing transactions or orders. We are not convinced this list is acceptable for markets participants, since as it stands it could undermine temporary market positions taken by them under certain circumstances and therefore be detrimental to the provisions of the overall liquidity.