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| Response Form to the Consultation Paper |
| MiFID II/MiFIR review report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **06 September 2019.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_MDA\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_MDA\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_MDA\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Position limits and position management in commodities derivatives”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to users of market data and trading venues, but responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors.

**General information about respondent**

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| --- | --- |
| Name of the company / organisation | Bundesverband der Wertpapierfirmen e.V. (bwf) |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | Germany |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_MDA\_1>

[bwf comment] The Bundesverband der Wertpapierfirmen e.V. (bwf) is a trade association representing the common professional interests of securities trading firms, market specialists at the securities exchanges and various other investment firms throughout Germany. In this capacity, we expressly welcome the possibility to comment on ESMA’s Consultation Paper - MiFID II/MiFIR review report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments.

The question of appropriate and fair pricing of market data has been subject to a controversial debate for decades, not only in Europe but globally.

In this context, we would like at least to mention that, the discussion basically begins with the fundamental, legally and economically relevant question: "Whose data is it?” Here, it needs to be remembered that price-data/market-data does not arise from the activities of the trading venue, which later sells it, but from the actions and interaction of market participants which are active on a particular venue. While the added value contribution of market participants in generating market data is more than obvious, they are – in most of the cases – not economically compensated for their significant contribution to the production function but ironically might find them self in a situation where they are even “buying back” there own price-data as part of the datastream they purchase from a trading venue or another data-vendor.

Another important structural feature of the market for market data lies in the circumstance that market data providers are "natural monopolists". In other words, data streams from one trading venue cannot be substituted by streams from other venues, even when they refer to prices in the same security. Accordingly, while trading venues compete very intensively to attract liquidity, there is no efficient price competition in the field of market data. Furthermore, the market for second level distribution of market data by vendors and aggregators can be described as oligopolistic since it has been globaly dominated for a long time by a very small number of large suppliers.

These structural problems on the supply side are now exacerbated by the fact that the supply of market data provided as described by "natural" monopolists” - a circumstance which in itself deserves increased regulatory attention - meets an economically speaking, highly "inelastic" and therefore price-insensitive demand, whereby the lack of price sensitivity to a substantial extent derives from regulatory requirements. In other words, the demand for market data is extremely price-inelastic, not only because of the economic value represented by the data but also because data needs to be purchased by banks and investment firms in order to be legally complient, in particular with respect to MiFID II / MiFIR provisions or for trade monitoring obligations in order to prevent or to dedect market abuse according to MAR.

Furthermore, there is another aspect which illustrates the impact of regulation itself on the structural challenges in the market for market data: One of the core objectives of MiFID I was to increase competition among trading venues by breaking up hitherto existing national monopolies on the trading side by abolishing the so called “concentration rule” and allowing “multilateral trading facilities” and “systematic internalisers” (MiFID II added the “organized trading facilities”) to compete with “regulated markets” in form of the established exchanges.

As desirable as the reduction in trading costs resulting from competition between the old and new trading venues may have been from an investor's point of view, the fragmentation described above also led to the creation of a large number of new "natural" monopolies as providers of market data and consequently the market data consumers have been confronted with a much wider, more cost-intensive data universe.

From an economic point of view, it is understandable that trading venues attempt to offset the eroding margins generated from trading fees due to increased competition by additional revenues generated by the sale (or "licensing") of market data. Furthermore, the provision of trading infrastructure and the supply of market data generated by trading are obviously coupled products. Here, it should also be borne in mind that the better a venue succeeds in attracting trading volume – not least by foregoing margins on the trading side - the more valuable its own market data becomes as reference prices. Therefore, the provision of trading infrastructure and the “production” of market data cannot be seen in isolation, neither from an economic nor from a regulatory perspective.

In summary it becomes obvious that the market for market data, not only but in particular in Europe, is characterized by a strong inbalance in market power, enabling monopolistic and oligopolistic rent-seeking in particular by large trading venues and data-vendors. It is therefore not surprising that the costs for market data represent a considerable and over time strongly increased cost block for banks and investment firms alike. In principle, the problem became already apparent at the time of the discussion of MiFID II. Unfortunately, the political will was obviously lacking at this time to seek an effective and adequate solution (which would take due account of the interests of all parties involved) for the market-structural problems described. The lack of – or at least the very limited – regulatory intervention with respect to a fair pricing of market-data seems to be astonishing in so far as price regulation in the light of apparent structural market inbalances are a well accepted an practiced policy instrument in various segments of the Economy (e.g. telecommunication, airport and harbour fees or electricity grids, to give only a few examples) but in the area of financial markets - which are otherwise one of the highest regulated economic segments - one hesitates so far to adequately address an obvious problem. We therefore hope that this new attempt might lead to a more substantial regulatory change compared to the rather cosmetic amendments to the market-data related provisions which were implemented with MiFID II / MiFIR.

<ESMA\_COMMENT\_MDA\_1>

**Questions**

1. : Have prices of market data increased or decreased since the application of MiFID II/MiFIR? Please provide quantitative evidence to support your answer and specify whether you are referring to equity and/or non-equity instruments.

<ESMA\_QUESTION\_MDA\_1>

[bwf comment] Based on feedback received from our members, the costs for market data has increast significantly even before the implementation of MiFID II / MiFIR. In the field of equity instruments, some firms report an increase of more than 50 percent over the past five years with a further accelerated price hike during the last two years. In this context, it must be noted that the collection and presentation of more detailed “quantitative evidence” is de facto prohibited by non disclosure clauses which are often part of data licensing agreements in particular in contracts with second level vendors and aggregators. We are of the opinion that such non-disclosure clauses hinder the intended transparency in the market for market-data, the non-discriminatory dissemination of such data and also impede the “costs and charges” disclosure provisions under MiFID II and therefore should be interdicted by law.

While the price development for market data is a pressing problem for investment firms and banks, we regret that regulators did not decide for more regulatory intervention in the course of the discussion of MiFID II / MiFIR. However, while MiFID II / MiFIR have not effectively improved the the structural problems in the market for market data, our impression is that the direct impact of MiFID II / MiFIR on the further exacerbation of the problem seems to be limited. In this context, it should be at least noted that MiFID II / MiFIR with its significantly expanded reporting and documentary obligations became a strong cost driver for securities reference data which is not in the focus of this consultation but has a significant impact on the overall profitability of investment firms and the securities business of banks.

<ESMA\_QUESTION\_MDA\_1>

1. : If you are of the view that prices have increased, what are the underlying reasons for this development?

<ESMA\_QUESTION\_MDA\_2>

[bwf comment] While changing license models and the tendency to charge different fees for different usages of sometimes the same data (e.g. pricing of display- vs. non-display data) might have an impact on price development, it remains difficult to quantify its impact. Our impression is further that the cost burden for data from large and dominant trading venues is much more substantial than data from smaller or regional venues. While also small venues are “natural monopolists” for their data, the general demand for such data might be too low to effectively exercise monopolistic power. <ESMA\_QUESTION\_MDA\_2>

1. : Following the application of MiFID II/MiFIR, are there any market data services for which new fees have been introduced (i.e. either data services that were free of charge until the application of MiFID II or any new types of market data services)?

<ESMA\_QUESTION\_MDA\_3>

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<ESMA\_QUESTION\_MDA\_3>

1. : Do you observe other practices that may directly or indirectly impact the price for market data (e.g. complex market data policies, use of non-disclosure agreements)? Please explain and provide evidence.

<ESMA\_QUESTION\_MDA\_4>

[bwf comment] According to feedback from member firms, the increasing complexity market data licencing agreement itself has become a severe problem due to the resulting legal uncertainty with respect to different utilization of data.

Members report that data licencing agreements, in particular with second level vendors and aggregators become more and overly detailed and complicated. One effect might be that he more complex an agreement becomes, the more difficult it becomes to substitute it by an offer from a different vendor. Since the administrative costs to handle a contract also increase with its complexity there is a tendency, in particular for smaller investment firms, to minimise the number of suppliers. However, also for larger firms, “switching costs” might increase with the level of complexity of data licensing agreements. Therefore, we have the impression that the vendor driven increasing complexity of data licencing agreements may further inhibit competition among vendors and aggregators.

<ESMA\_QUESTION\_MDA\_4>

1. : Do you agree that trading venues/APAs/SIs comply with the requirement of making available the information with respect to the RCB provisions? If not, please explain which information is missing in your view and for what type of entity.

<ESMA\_QUESTION\_MDA\_5>

[bwf comment] First of all, we would like to emphatically state that “RCB”, from our point of view, is a failed concept and to a significant extent part of the problem.

The reason is simple: The vast majority of todays trading venues are “for-profit” enterprises, often in form of a listed company. Like with every other commercial firm, their shareholders expect the management to maximize profit and shareholder value. They are limited in doing so only by their competitors. A mechanism which has worked very effectively from an investors point of view, resulting in declining revenues from trading fees over the past years. It is not surprising that trading venues try to push their revenues from other services to compensate the margin-pressure on the trading side. Since – as ESMA states itself – for market data “competitive pressure on prices for trading venues is low” (cf. CP para. 19), market data became an important alternative source of revenue in particular for larger venues.

In other words, in a highly competitive environment for trading venue as a whole, it is completely unrealistic and “alien to the system” to expect an effective self-moderation which shall be obtained by the term RCB. There is simply no objective, let alone mandatory and effectively enforceable criterion what “reasonable” in this context should mean. Once again, in a market economy it is not the task of a for-profit enterprise to limit its revenues but a result of competition or – where competition might be ineffective in particular because of inbalanced market structures – a result of sufficiently clear and generally binding regulatory intervention. – the RCB, very obviously, does not fulfill these criterions (cf. also CP para. 74.).

Therefore, it cannot surprise that the information presented in order to demonstrate the compliance with RCB provisions appears regularly not very convincing and rather leave the impression of tokenism. The explanatory texts often use rather generic and formulations or simply quote the legal provision while the presented calculations usualy remain opaque and are ultimately unverifiable for the reader. Therefore, we fully agree with ESMA’s observation that “the information is not presented in a consistent way and it is difficult to compare the information across entities” (cf. CP para. 65) and further “that the way most trading venues and APAs comply with this provision does not enable users to fully understand how the price for market data is set and does not allow to compare the information disclosed” (cf. CP para. 67.).

<ESMA\_QUESTION\_MDA\_5>

1. : Do you share ESMA’s assessment on the quality of the RCB information disclosed by trading venues, APAs and SIs? If there are areas in which you disagree with ESMA’s assessment, please explain.

<ESMA\_QUESTION\_MDA\_6>

[bwf comment] We strongly support the idea of additional “supervisory guidance to ensure a consistent presentation and a use of standardised terminology and publication format (cf. CP para. 66). However, even a more meaningful and comparable set of information would not solve the basic problem that a clear, mandatory and enforceable quantitative definition what a “reasonable” margin shall be, is missing (cf. CP para. 74.).

Guidance should be provided in particular in form of a standardized template which specifies the content and level of detail of the calculation of cost blocks and corresponding revenues in the course of generating and dissemination of market data.

<ESMA\_QUESTION\_MDA\_6>

1. : Do you agree that the usability and comparability of the RCB information disclosed could be improved by issuing supervisory guidance? If yes, please specify in which areas you would consider further guidance most useful, including possible solutions to improve the usability and comparability of the information.

<ESMA\_QUESTION\_MDA\_7>

[bwf comment] We hope that t

he mandatory usage of a standardized template which we proposed in our answer to question 6 would improve the comparability of the information provided. <ESMA\_QUESTION\_MDA\_7>

1. : Do you think that the current RCB approach (transparency plus) can deliver on the objective to reduce the price of market data or should it be replaced by an alternative approach such as a revenue cap or LRIC+ model? Please justify your position and provide examples of possible alternatives.

<ESMA\_QUESTION\_MDA\_8>

[bwf comment] As we have already stated in our answer to question 5, we are of the opinion – and empirical evidence supports this view – that the RCB approach is generally unsuitable to solve the problem of a market imbalance caused by a monopolistic/oligopolistic supply-side combined with price-inelastic demand, caused not only by economic factors but by regulation itself. Furthermore, the changes, in particular in form of additional disclosure requirements, introduced with MiFID II/MiFIR have led to rather symbolic efforts in praxis which best can be described by “tokenism”. - Therefore, we emphatically support ESMA’s consideration “that the transparency plus approach for implementing the RCB concept is not delivering” and that “more intrusive measures should be reconsidered” (cf. CP para. 71.).

Trading venues are not to blame that they are natural monopolies with respect to the market data generated on these venues. It is also understandable that in the light of eroding margins generated by trading fees, trading venues are trying to maximize revenues generated from market data. However, as we have already highlighted in our introductory remarks, like in any other important economic sector, monopolistic and/or oligopolistic structures call for increased regulatory attention and intervention where deemed neccessary. In particular, in situations of (natural) monopolies and comparable concentration of market power, price regulation in one form or the other is the norm, not the exeption. Furthermore, the intention of price regulation is not to render the suppliers business model uneconomical – in fact price regulated economic sectors can be still very profitable – but to implement a fair and appropriate pice-level which avoides undue monopolistic rent-seeking by striking a balance between the conflicting interests of all stakeholders.

Among the two main approaches of possible price regulation discussed in the CP “revenue share limitation” and “limiting data charges by reference to costs” (cf. CP para. 70.) we would clearly prefer the latter since the revenue share limitation approach faces a number of practical difficulties. One very obvious problem is that the revenue share generated from market data will directly be influenced by changes in other revenue components, in particular trading fees. Trading fees might be further decline, in particular as a result of competition from the increasing number of systematic internalizers (“Sis”) which traditional trading venues like exchanges are facing. Since the main source of revenue for Sis is the spread from internalisation, they might be able to offer “0” trading fees, which then will be compensated by revenues from market making. Furthermore, the overall composition of revenues generated by trading venues might be very different, depending on the level of integration. In particular, a vertically integrated “silo” which offers not only trading but also clearing and settlement services, can hardly be compared to an entity which offers trading only.

Therefore, we think that limiting data charges in one way or the other by reference to costs would be a more promising approach. The proposed methodologies, LRIC+ vs. revenue cap both seem to us principally suitable to determine appropriate and fair levels of pricing. Long run incremental cost (LRIC) as well as (usually index based) revenue cap models are both well established instruments from the price regulatory toolbox and have been applied in other industries for decades (e.g. in the fields of utilities and telecommunication). However, due to the specifics of market data generation as a by-product of providing trading infrastructure, the determination of relevant costs for producing and disseminating market data as well as the determination of an appropriate margin are far from trival and would require further in depth conceptional work. To identify the right methodological approach might also depend on the question whether a mandatory CT will be implemented and if so, how it shall be governed.

Therefore, before “getting lost” in methodological discussions, we think that I is important to establish in the first place a strong political consensus which reflects the clear will to implement an alternative approach which substantially differs from the current unsuitable approach and which will contain a strong element of efficient price regulation.

When developing suitable pricing models and general charging principles in accordance with the principles of fairness and appropriateness, particular attention should be paid to the early and continuous institutionalized involvement of end users (for example in the form of a "user committee") on the one hand and a far-reaching obligation on the part of data providers to present detailed and auditable information about the creation and composition of costs on the other.

Another, from our point of view very important aspect, which has not been sufficiently discussed yet, results from the inhomogenous structure of trading venues which have very different sizes and profiles. While all trading venues are in principle natural monopolies with respect to the market data they produce, many smaller trading places do not have the market power to unduly influence the pricing of data. In fact, the problems arise rather with the large trading venues which are the most liquid markets for the instruments they trade.

And there is another important consideration in this context: Setting up a mechanism for price regulation in itself is associated with one off as well as continuous costs which will not develop linear with the amount of data sold. In other words, like most forms of regulation, the implementation of a price regulation mechanism involes a certain problem of fix costs degression - costs which very obviously can be easier absorb (and priced in) by larger venues. At the same time, it is likely that also for smaller venues, the dependency on generating revenues from market data might further increase as a result of continuing pressure on margins generated from trading fees as a result of increased competition by SIs and other factors.

Therefore, while we consider the implementation of an appropriate system of price control in the field of market data to be desirable and necessary, it would be a clearly unintended consequence if this would lead to a further enervation of the competitiveness of smaller trading venues. We therefore strongly advocate that any scheme of price regulation for market data should also contain an element of proportionality which protects smaller venues from implementation and operational costs which would be clearly disproportionate. Furthermore, since smaller venues with their limited market power are normally not responsible for the observed strong price increases. We think that a very simple but effective measure to shield smaller venues from disproportional costs would be the implementation of a relevance-threshold. In other words, trading venues should only be subject to active price regulation, if the revenue from supplying market data exceeds a certain, to be defined, threshold. Since the relevance of revenues from disseminating of market data is likely to increase also for smaller venues, we think that an absolute relevance-threshold would be more practical and appropriate than a relative one.

Finally, in order to illustrate that price regulation is a common and widely accepted policy instrument in many segments of the economy with asynchrony market struktures, we would like to present a short, non-exhaustive overview of examples for sector-specific price regulation of charges and fees in the EU:

|  |  |  |
| --- | --- | --- |
| **Sector** | **Regulatory principles for control of charges / fees** | **Regulatory framework** |
| Airport Charges | The charges are regulated in accordance with appropriate, objective, transparent and non-discriminatory criteria. In particular, it is necessary to ensure that:  - the services and infrastructure for consideration are clearly defined,  - the calculation of charges is cost-related,  - there is an appropriate relationship between the level of the charges set by the airport operator and the amount of the likely actual costs. | Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges |
| Groundhandling Charges | The amount of the charges for the use of the airport facilities shall be determined on the basis of appropriate, objective, transparent and non-discriminatory criteria and in particular may contribute to the self-financing of the airport. | Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports |
| Air Navigation Fees | The principle of non-discriminatory and transparent user fees applies.  The fees are to be determined on a cost basis, including a reasonable return on the investment capital. There must be no mismatch between the fee and the service provided (equivalence principle).  The route navigation fees are regulated by a performance system for air navigation services and network functions by the European Commission. | Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)and Implementing Regulation 391/2013 |
| Electricity Network Usage Charges | The network access charges must be appropriate, non-discriminatory and transparent.  The charges are calculated on the basis of the costs of operational management, which must correspond to those of an efficient and structurally comparable network operator.  Incentives should be given for efficient service provision and an appropriate return on capital employed. | Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC |
| Railway Infrastructure Charges | A rail operator must ensure that the application of the charging system results in equivalent and non-discriminatory charges for different railway undertakings.  A rail operator is obliged to allow authorized users access to railway facilities at reasonable, transparent and non-discriminatory charges.  The charging system must provide incentives to railway undertakings and rail operators to minimize disruption and improve the performance of the rail network through performance-based components. | Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification |
| Regulation of Access to Telecommunications Networks | Operators of public telecommunications networks with significant market power may be required to grant other operators non-discriminatory access to their networks.  Access agreements must be based on objective standards, be traceable, grant equal access and be in line with the requirements of equal opportunities and equity. | Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) |

<ESMA\_QUESTION\_MDA\_8>

1. : Do you consider that a revenue cap model as presented above might be a feasible approach to reduce the cost of market data? Which elements would be key for successfully implementing such a model?

<ESMA\_QUESTION\_MDA\_9>

[bwf comment] As mentioned in our answer to question 8, a revenue cap model is a well established instrument in price regulation. It is usually discussed as an alternative to price cap models. However, further qualified analysis, based on more information, in particular on the cost function of the market data production would be needed to be able to decide whether a revenue cap model should be the preferred methodology in the regulation of market data pricing.

<ESMA\_QUESTION\_MDA\_9>

1. : Did data disaggregation result in lower costs for market data for data users? If not, please explain why?

<ESMA\_QUESTION\_MDA\_10>

[bwf comment] According to observation from bwf member firms, data disaggregation provisions did not have any measurable impact on the overall costs to be anticipated for market data supply.

<ESMA\_QUESTION\_MDA\_10>

1. : Why has there been only little demand in disaggregated data?

<ESMA\_QUESTION\_MDA\_11>

[bwf comment] In particular for smaller and midsize firms, the additional technical and administrative costs resulting from a fragmentation of data supply in different packages from different providers often outweights potential cost advantages resulting from disaggregation. Furthermore, price advantages offered for disaggregated data are often marginal an appear rather symbolic in nature.

<ESMA\_QUESTION\_MDA\_11>

1. : Do trading venues and APAs comply with the requirement to make available data free of charge 15 minutes after publication? If not, please explain in which areas you have identified deficiencies

<ESMA\_QUESTION\_MDA\_12>

[bwf comment] With respect to the obligation of trading venues to make market data available free of charge 15 minutes after publication, ESMA correctly emphasizes that “MiFIR does not distinguish between different types of users” and that it was not the intend of the legislator to do so (cf. CP para. 98). Based on our member’s experience, in most cases, the data is not presented and accessible in a user-friendly way and hardly suitable for professional use. The result is very often that firms pay to vendors/aggregators for data which, according to legislative intent, should be freely available.

<ESMA\_QUESTION\_MDA\_12>

1. : Do you consider it necessary to provide further supervisory guidance in this area (for instance by reviewing Q&As 9 and/or 10) Please justify your position and explain in which area further guidance may be needed? Please differentiate between pre- and post-trade data.

<ESMA\_QUESTION\_MDA\_13>

[bwf comment] Yes, we think that additional supervisory guidance is urgently needed in order to effectively implement the legislative intent. In particular, the data should be available 15 minutes after publication free of charge in a standardized, easy accessable, machine-readable format which can be used for display and non-display applications. This should apply to (historic) pre- as well as post-trade data which can be used e.g. for market abuse surveillance purposes, to name one possible application only.

In our view, the legislator wanted to strike a balance in the discussion whether market data should be regarded as a private or a public good. The compromise was, it should be private and economically usable – under the RCB-constrain – for the first 15 minutes and to become a public good afterwards. However, as stated above, very often, this seems not to have been the guiding idea in the way the provision was implemented.

<ESMA\_QUESTION\_MDA\_13>

1. : Do you agree that the identified reasons, in particular the regulatory framework and competition by non-regulated entities, make it unattractive to operate an equity CT?

<ESMA\_QUESTION\_MDA\_14>

[bwf comment] It is clear that the choosen approach of one or more CTs to be established on a voluntary basis under the framework stipulated by MiFID II/MiFIR has not met the expectations, most likely because the risk-reward assesments of potential CTPs might not have justified the anticipated investment.

Furthermore, from the point of view of well established data vendors and aggregators with often highly profitable distribution channels, it would clearly have some cannibalizing effect to their existing business models if they would decide to become an CTP.

We also have the impression that trading venues are not too enthusiastic about the idea and prefer to keep control over the marketing of allegedly “their” data to the highest extend possible.

Also from a users’ perspective, a considerable degree of indecisiveness with respect to the potential benefits of a CT in relation to the unclear economic costs resulting from its possible implementation remains. In particular, concerns have been expressed that the establishment of a CT run by a commercial entity cold lead to a further concentration process in a market (for market data aggregation) which is already strongly characterized by oligopolistic attributes. These concerns are further aggravated by the fact that the pricing for CT data shall be based on the RCB criterion (cf. CP para 109.) which hast already proven that it is clearly unsuitable and insufficient with respect to the intention to provide users with market data at moderate and appropriate prices.

<ESMA\_QUESTION\_MDA\_14>

1. : Do you consider that further elements hinder the establishment of an equity CT? If yes, please explain which elements are missing and why they matter.

<ESMA\_QUESTION\_MDA\_15>

[bwf comment] Please see our answer to question 14.

<ESMA\_QUESTION\_MDA\_15>

1. : Please explain what CTP would best meet the needs of users and the market?

<ESMA\_QUESTION\_MDA\_16>

[bwf comment] Before discussing any technological or governance related design features which we would consider preferential in case of the implementation of a CT and the selection of a certain type of CTP, it should be remembered that a CT is not an aim in itself and even more important, there would be neither an automatism nor any form of guarantee that the implementation of a CT would solve any of the proplems (in particular with respect to pricing and data quality) currently observed in the market for market data and discussed in this CP. Even more, we see a certain risk that the implementation of a CT would put the CTP de facto in a situation of a “super monopolist” which would further complicate the attempt to solve the existing deficiencies with respect to fair pricing and data quality.

In the light of these general considerations, we are very sceptical that a commercial “for-profit” entity which is only bound by the – as we have experienced – insufficient RCB-creterion, would provide for a desireable structural change. Therefore, we would clearly favour a CT to be provided as a utility which would become a single source, centralized database of raw data. Such an entity could be legally owned and governed by ESMA or alternatively by a governance panel where all stakeholders are appropriately represented. However, the operations of such an entity could be outsourced to a commercial company on the basis of a public procurement with regular retendering.

We are further of the opinion that the CTP of a utility like CT should de facto fulfil the function of a centralized licensing and collecting company, which would collect and distribute data at prices following a fair and homogenious pricing scheme and in reverse distribute the revenues (minus the operational costs agreed in the public procurement process) to the suppliers. Very obviously, such a structure would also require the mandatory contribution from trading venues and APAs to the CTP (cf. CP Q24.).

Fair pricing of market data on different levels of aggregation would be one task of such a CTP, ensuring data quality and harmonisation of standards would be another. In both cases, we consider the continuous institutionalized involvement of all stakeholder (suppliers and users alike), e.g. in form of committees with appropriate co-decision powers in the standard setting and price determination processes, an essential element of a sound governance structure for such a CTP. Aside from a faire revenue distribution scheme which takes into account the amount and quality of data provided as well as the value of the containing information (e.g. regulated markets vs. MTFs and Sis, order-book vs. non order book data etc. – cf. CP para 73), the development and implementation of standardized formats and interfaces for collection and distribution would be key. In terms of latency, the data should be as close as real time as technically possibly at reasonable costs.

However, we are not yet convinced that the implementation of a CT for equities is the most promising way forward. Therefore, any decision on this subject should be only made after alternative options of a more stricter regulatory approach on price regulation have been evaluated in a non biased form. Furthermore, we are aware that our preferred concept of a “CT as a utility” would require significant changes to the existing legal framework.

Finaly, it should be emphasized again that in case a CT will be implemented, due attention needs to be given to the aspect of proportionality and it should be avoided that smaller venues will be confronted with excessive administrative burdens as a result of contributing data and participating in the CT’s pricing scheme.

<ESMA\_QUESTION\_MDA\_16>

1. : Do you agree that real-time post-trade data is available from both trading venues and APAs as well as data vendors and that the data is currently not covering 100% of the market, i.e. including all equity trading venues in the EU and all APAs reporting transactions in equity instruments? If not, please explain.

<ESMA\_QUESTION\_MDA\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MDA\_17>

1. : Do you agree that post-trade data is provided on a timely basis and meets the requirements set out in MiFID II/MiFIR and in the level 2 provisions? If not, please explain.

<ESMA\_QUESTION\_MDA\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MDA\_18>

1. : Do you agree with the issues on the content of data and the use different data standards identified or do you consider that important issues are missing and/or not correctly presented?

<ESMA\_QUESTION\_MDA\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MDA\_19>

1. : Do you agree that the observed deficiencies make it challenging to consolidate data in a real-time data feed? If yes, how could those deficiencies best be tackled in your view?

<ESMA\_QUESTION\_MDA\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MDA\_20>

1. : What are the risks of not having a CTP and the benefits of having one?

<ESMA\_QUESTION\_MDA\_21>

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<ESMA\_QUESTION\_MDA\_21>

1. : Would you be supportive of an industry-led initiative to further improve data quality and the use of harmonised standards or would you prefer ESMA guidance? Please explain.

<ESMA\_QUESTION\_MDA\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MDA\_22>

1. : In addition to the standardisation of the reporting and format, as described before, did you identify any further relevant data quality issue to be considered for the successful establishment of CTPs?

<ESMA\_QUESTION\_MDA\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MDA\_23>

1. : Do you agree that the mandatory contribution from trading venues and APAs to a CTP would favour the establishment of CT?

<ESMA\_QUESTION\_MDA\_24>

[bwf comment] Our impression is that without a mandatory contribution – which immediately implies the question at which costs these data should be submitted and also in which format and under which technological conditions (in particular latency) such data should be submitted by trading venues and APAs – the structural inbalance in the market would remain and suppliers would have very low motivation, if any, to participate in a CT on a voluntary basis. Furthermore, only mandatory contribution could insure a desirable 100% coverage. – Please see also our answer on Q16 on a preferable governance structure for a CTP.

<ESMA\_QUESTION\_MDA\_24>

1. : Do you have preferences between the option of (i) requiring trading venues and APAs to contribute data to the CT, or, in alternative (ii) setting forth criteria to determine the price that CTPs should pay to TVs and APAs for the data? If so, please explain why.

<ESMA\_QUESTION\_MDA\_25>

[bwf comment] Please refer to our answer to Q24 and to Q16. In our view, a mandatory contribution regime clearly requires an enforcebale and fair set of creteria to determine the prices CTPs should pay to trading venues and APAs for the data. Furthermore, if the CTP would be unable to determine the prices, trading venues and APAs would be enabled to ask for prices at a prohibitive level in order to de facto undermine the CT and to maintain their monopolistic advantages.

<ESMA\_QUESTION\_MDA\_25>

1. : Do you agree that the mandatory consumption could favour the establishment of a CT? If not, please explain your concerns associated with the mandatory consumption.

<ESMA\_QUESTION\_MDA\_26>

[bwf comment] The question of mandatory consumption is directly linked the the question if trading venues and APAs should be allowed to compete with the CTP. If competition is denied, the consumption of CT data becomes de facto mandatory simply because for users, there will be no other source.

In this context, the reference to the situation in the US (cf. CP para. 173.) where the consumption of CT data is indeed mandatory cannot provide sufficiently helpful guidance simply because the CT in the United States – as the CP itself describes in detail – fulfils a completely different and much wider regulatory function within the “national best bid offer” regime (cf. CP para. 164.).

One point of concern is that if the consumption of CT data would become mandatory, the CTP would become a “super monopolist” without competition and with very limited incentives for costefficient operation.

Furthermore, if consumption of CT data would become mandatory, either as a direct provision or indirectly by limiting or prohibiting competition, appropriate price regulation necessarily would have to be implemented on both sides, with respect to the revenues payed to the data providers as well as with respect to the prices to be paid by the consumers.

However, as we have argued in our answer to Q 31, the practical problems which might arise from the alternative approach of mandatary contribution plus competition among data suppliers and the CTP might make a de facto mandatory consumption by limited or prohibited competition between trading venues and APAs with the CTP look preferable.

<ESMA\_QUESTION\_MDA\_26>

1. : Would mandatory consumption impact other rules in MiFID II and if yes, how?

<ESMA\_QUESTION\_MDA\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MDA\_27>

1. : Do you consider it necessary that the CT covers all trading venues and APAs and the whole scope of equity instruments or would you be supportive of limiting the coverage of the CT? Please provide reasons for your preference and explain your preferred approach.

<ESMA\_QUESTION\_MDA\_28>

[bwf comment] We think that one possible benefit of a CT would be that it provides market participants with a “golden source” and a “one stop shopping opportunity” which would simplify the required technical infrastructure and interfaces for market data consumers. Accordingly, a coverage of as close to 100% as possible (which would be feasible under a mamdatory contribution scheme) is highly desirable.

However, the CTP could and should still offer the opportunity tho sell disaggregated data sets (with prices proportionate to the data sources covered) which suit the different needs of data consumers with different business models.

<ESMA\_QUESTION\_MDA\_28>

1. : Do you agree with ESMA’s preferred model of real-time CT? If you consider that, on the contrary, the delayed or tape of record CT are preferable, please indicate the reasons of your preference.

<ESMA\_QUESTION\_MDA\_29>

[bwf comment] We agree with ESAM in principle that the disseminating should be as close as real time as technologically possible as long as it is justifiable in terms of costs. As ESMA correctly states, “real time publication of consolidated data inevitably entails latency” (cf. CP para. 183.). The attempt to reduce this latency to a minimum will technologically only be possible at overproportional increasing costs. Therefore it will be needed to strike the right balance between the level of still acceptable latency and costs to be anticipated.

<ESMA\_QUESTION\_MDA\_29>

1. : Are there any measures (either technical or regulatory) that can be taken in order to mitigate the latency impacts?

<ESMA\_QUESTION\_MDA\_30>

[bwf comment] The user- and stakeholdercommittees which we have proposed as a key design element of the CTP governance structure (cf. our answer to Q 16) should be involved on an ongoing basis to define the appropriate level of latency and, if necessary, to adjust it according to future technological progress.

<ESMA\_QUESTION\_MDA\_30>

1. : Do you agree that the CT should be operated on an exclusive basis? To what extent should other entities (e.g. APA or data vendors) be allowed to compete with the CTP?

<ESMA\_QUESTION\_MDA\_31>

[bwf comment] The question whether there should be competition between the CTP and trading venues and APAs is – in many aspects – a question difficult to be answered.

If mandatory contribution to the CT would be – as we have suggested– combined with some form of price regulation (cf. our answer to Q 16) there could be an incentive to impede the attractiveness of the CT either on a technological (accuracy, latency, etc) or economical level by offering data at a slightly lower price which might render the CT unattractive to a significant number of data consumers. Furthermore, competing with the CT by offering prices slightly below those charged by the CTP could be still more profitable for a trading venue or APA since the amount of revenues redistributed by the CTP to the data suppliers would be calculated after deducting the costs for running the CT.

The ability to compete with the CT would also make the question how the CT should compensate data providers in an appropriate and fair scheme more complex and difficult. Furthermore, since the RCB+ approach very obviously could not convince in practice, another question to be answered would be, based on which pricing mechanism should trading venues and APAs be allowed to compete with the CT.

In the light of these considerations on various potential difficulties arising from possible competition between a CT and trading venues and APAs, we are more sympathetic with the idea that competition (for the type of data the CT is providing) should be avoided and a centralized, non-profit utility style CTP (possibly with a for profit operator) should become a licensing and collecting company for all trading venues and APAs which controls prices based on cost coverage plus an appropriate margin and hereby strikes the balance between the economic interests of the data suppliers and consumers. As mentioned before, in order to do so, a well designed governance structure and further in dept analysis of appropriate pricing models which take into account the specifics of producing and dissmanteling market data would be paramount (cf. our answer to Q 16).

<ESMA\_QUESTION\_MDA\_31>

1. : Should the contract duration of an appointed CTP be limited? If yes, to how many years?

<ESMA\_QUESTION\_MDA\_32>

[bwf comment] As mentioned already in our answer to question 16 the the CTP should be mandated on the basis of a public procurement with regular retendering. However, without the calculation of a business case, it is hard to define an appropriate contract duration.

<ESMA\_QUESTION\_MDA\_32>

1. : Please indicate what would be, in your view and on the basis of your experience with TVs and data vendors, a fair monthly or annual fee to be charged by a CTP for the real-time consolidation per user?

<ESMA\_QUESTION\_MDA\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MDA\_33>

1. : Would you agree with the abovementioned model for the CT to charge for the provision of consolidated date and redistribute part of the revenues to contributing entities? If not please explain.

<ESMA\_QUESTION\_MDA\_34>

[bwf comment] As already mentionend in our answers to question 16 and 31 we would support – if implemented – a non for profit utility style CTP (possibly with a for profit operator) which should become a licensing and collecting company for all trading venues and APAs which controls prices based on cost coverage plus an appropriate margin and thereby strikes the balance between the economic interests of the data suppliers and consumers.

In this setup, redistributing the revenues (after expenses for operating the CT) to the data providers would be a core function of the CTP which which would be mirrored by setting the prices which the CTP is willing to pay for the mandatory contributers. Prices paid to contributers shall be based on a methodology still to be agreed (the CP – independently from the CT discussion – mentiones revenue cap or LRIC+ based pricing models as possible options and there are other methodologies from the price regulatory toolbox which could be considered).

In general, the pricing model should make the costs and production function transparent and shall enable the supplier to cover its costs and earn a margin which was agreed in the negotiation process with the CTP and the stakeholder committees represented as a part of the CTP’s governance structure. Depending on the complexity of the approach chosen, there could be various margins applied, depending on the type and quality of data provided as well as the value of the containing information (e.g. regulated markets vs. MTFs and SIs, order-book vs. non order book data etc. – cf. CP para 73).

One aspect which also should be given attention when discussing the pricing and redistribution function of a poetential future CTP lies in the fact that market data pricing can also be a marketing instrument. Today, a trading venue can reduce the price for market data or even decide to dismantle its data for free, hoping to attract more liquidity by doing so. It is unclear if and how such a competition among venues could be maintained in a mandatory CT environment. However, it should be analysied if some form of competition via pricedifferentiation could be integrated in the CTP’s pricing and redistribution scheme, e.g. the trading venue could be able to advise the CTP to dismantle the disaggregated data of this venue at a lower price as the price regulation methodology applied by the CTP would suggest (and the redistribution to this venue would be reduced accordingly of course).

Finally and once again, since under a mandatory contribution regime, large and small trading venues and APAs would contribute to the CT, an element of proportionality which protects smaller venues from a competitive disadvantage resulting from disproportionate administrative costs stipulated by the CTP’s pricing scheme should be implemented.

<ESMA\_QUESTION\_MDA\_34>

1. : How would Brexit impact the establishment of a CT? Would an EU27 CTP consolidating only EU27 transactions be of added value or would a CT that lacks UK data not be perceived as attractive?

<ESMA\_QUESTION\_MDA\_35>

[bwf comment] The withdrawl of the United Kingdom from the European Union might have a severe negative effect on the economic rationale of a CT. Since the collection and aggregation of market data from a large number of sources inevitably adds an additional cost layer to the dissmanteling of market data, the answer to the question whether the positive effect from standardisation and the single point of shopping from a “golden source” would outweight the additional costs will depend on economies of scale and will be very much a fix cost degression excersize. Therefore exluding the by far largest securities market within the current EU from the list of participants (on the supply as well as on the demand side) could in last consequence put the feasibility and the rationale of a CT in question.

Therefore, as already mentioned in our answer to question 16 the possible implementation of a CT should be evaluated from a non biased point of vew as one option among others to address the structural problems in the market for market data and should only be pursued if the analysis results in a demonstrable cost benefit advantage for a CT based approach compared to other policy options.

<ESMA\_QUESTION\_MDA\_35>

1. : In your view, how would an EU27 CT impact the level playing field between the EU27 and the UK? Please explain.

<ESMA\_QUESTION\_MDA\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MDA\_36>