|  |
| --- |
| 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**

|  |  |
| --- | --- |
| Name of the company / organisation | The Investment Association |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | UK |

**Introduction**

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

<ESMA\_COMMENT\_MDA\_1>

The Investment Association (The IA) champions asset management, supporting retail savers, investors and businesses. Our 250+ members manage EUR 8.5 trillion of assets and the asset management industry supports 100,000 jobs across Europe.

Our mission is to make investment better. Better for retail clients, so they achieve their financial goals. Better for companies, so they get the capital they need to grow. And better for the economy, so everyone prospers.

Whilst we recognise this consultation is addressing the development of prices for pre- and post-trade data and a possible post-trade consolidated tape for equity instruments, it is important to outline the broader context within which our members reply.

**Price of Market Data:**

The cost of market data (including index and other processed market data) has emerged as a key area of concern for our member firms both in terms of absolute cost, but also in the increasing number of licenses that slice and dice the permitted usage.

Our industry experience generally shows that greater transparency in this area is required. Without a transparent menu price list for individual data sets or collections of data, it is impossible for asset managers to manage spend with vendors.

This lack of transparency has been accompanied by an increased complexity and granularity of licensing requirements. Vendors have increasingly started charging for new licences that used to be free of charge, and for any custom indices. For example, fees are increased when firms utilise the same data across offices in more than one country; or firms are being asked to pay to receive data, then pay again for an additional license in order to be able to manipulate it in their own systems, then pay again if it is to be passed on to their clients. We even had members report how, on termination of the contract, they are being charged further for access to the data required for historic reporting across periods for which the license has already been paid for.

In addition, our members report aggressive negotiating behaviour by market data vendors in both contract negotiations and service delivery.

All of this runs contrary to the legislative aims of MiFID II[[1]](#footnote-2) which sought to achieve the availability of post trade information on a reasonable commercial basis. The result is ongoing annual significant price inflation for market data, the cost of which is ultimately borne by European retail investors.

We recognise that the regulatory regime rightly demands deeper and more analytical scrutiny of areas such as risk, leverage and liquidity and that in turn this has increased the number of uses to which market data is put to. However, a by-product of this justifiable intervention by regulators is that data vendors can charge more knowing that firms are obliged to buy it.

**Consolidated Tape:**

Ensuring equal and sufficient access for all types of investors – large and small - to market data is a key principle that underpins capital market development.

Market data integrity serves as the foundation for investor protection and public confidence in markets. A publicly available, aggregated view of the market is therefore a fundamental requirement in today’s global, fragmented and complex markets.

The IA is strongly supportive of the current review of how data on stocks and bonds are disseminated, which responds to widely-held concerns that trading information is currently too disjointed and expensive to help investors accurately measure trading costs and performance.

Furthermore, a consolidated tape is integral to delivering Capital Markets Union (CMU) since it would empower European retail investor to see the best trades and quotes, stimulating greater retail participation in European capital markets. Specifically, the consolidated tape strengthens the toolkit to achieve best execution under MiFID (but must not become the sole or principal measure of best execution), enabling all investors to better determine the best available price; it will additionally assist research and commentary by academics and journalists alike, which can increase overall confidence in capital markets.

The IA’s preference is for a single consolidated tape provider to be appointed and overseen by a European authority, such as ESMA, supported by an appropriately configured governance committee of users (and not merely trading venues or trading firms).

We also envisage the tape evolving to provide pre- and post-trade data across all asset classes in scope of MiFID.

This could be delivered in a three stage process:

* Data cleaning and standardisation.
* Real-time post trade consolidated tape for equities. Then phased-in across other asset classes including fixed income instruments. Undoubtedly any consolidated tape would have to be appropriately calibrated for each asset class to ensure there is not excessive disruption to liquidity. Fixed income for example would require a different approach to equities,as real time transparency would not be appropriate.
* Pre-trade European Best Bid and Offer (EBBO). Although less discussed than the tape of post trade information, the EBBO would be equally important to enhance market quality and to open up best execution to all investors, large and small.

We believe the consolidated tape could be delivered widely at low cost. This could be paid for by the execution process, where exchanges charge a nominal fee for the amount of trades that they receive. Value-add products based on the consolidated tape or direct feeds can be encouraged but should be sold at the same price regardless of user.

Our answers below expand on these views.

<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>

Since the application of MiFID II/MiFIR the prices of market data have continued to materially increase year on year.

In addition many data vendors have incorporated very strict Non-Disclosure Agreements (NDAs) in their contracts that prevent any transparent comparison with peers on pricing.

<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>

The key factor that has resulted in such significant price increases is that exchanges currently exist as an oligopoly. Initially, exchanges had the role of a public utility providing relevant market information to users at minimal or no cost. Exchanges then became for profit-entities, seeking to make significant income from the provision of market data.

Exchanges now operate as price makers. We question how exchanges set their fees policies with regards to market data provision. Fees are continuously increased, narrowing year on year the scope of data provided for a given fee. An asset management firm, even a large one, has no choice but to accept the new prices.

As described in the Copenhagen Economics (CE) reports (2013, 2014 and 2018), an incumbent exchange collects revenue from listing, trading, and market data. However, in 2007 trading was liberalised via MiFID I. But market data providers continued as oligopolies. The appearance of new trading venues created fragmentation in liquidity and an intensive competition to attract this liquidity. This led to a downward pressure on trading and listing fees. At the same time, in order to compensate for lower execution fees, trading venues have increased market data fees.

This process has been compounded by the price inelasticity of demand, as market data contains fundamental information indispensable for trading, best execution etc, demand does not decrease as price increases. Restrictive data usage rights are driving up the costs of market data as a result. Trading venues collect an increasing part of their revenue from market data and they cross-subsidize artificially low execution fee to attract liquidity, with high and oligopolistic market data fees.

If market data had been competitive in nature like trade execution, prices for market data would have decreased following the liberalization of the securities markets and the diminished value of each trading venue’s market data as a consequence of the reduced market share.

This has not been the case – on the contrary as documented in the Copenhagen Economics (CE) reports, prices have increased. This demonstrates the need for control of the market data pricing to replicate a competitive environment as the monopoly power of the trading venues in the market data space has put competitive market forces out of order.

<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>

Our members’ experience is that the introduction of MiFID II/MiFIR has enabled trading venues to implement additional fee structures (changes to Pricing Policy) specifically targeted at those investment firms who were mandated by the legislation to use the data for regulatory purposes.

These additive fees are applied through the application of more restrictive usage rights requiring organisations to accept duplicative fees for use of the same data in different use cases (changes to the Data Policy, for example: firms must pay one fee for use of the data for internal analysis, again for use as an MTF[[2]](#footnote-3) and again for regulatory purposes).

The resulting fee increases come about where the trading venue has incurred neither additional costs in relation to the production of the data nor provides any additional data or service. Most investment firms have not undergone any additional significant change in activity, other than complying with MiFID II; although that may be a principal cause of the fee increases since MiFID II has mandated many usages of data for which there are few competing suppliers.

Trading venues are applying new fees for data, license rights and/or services that were previously cheaper or not subject to a charge (e.g. rights to develop and distribute derived data using pricing data), without demonstrating how the costs have been incurred and translated in to the price.

Firms have attempted to push back on these increasingly duplicative fees with reference to their understanding of data providers’ obligation to price such market data on the basis of cost plus a reasonable margin. However, to date they have been unsuccessful in this push back and have not generally received any breakdowns related to the cost of providing the market data or justification for the increasingly complex fee structures.

Data providers should be required to disclose the costs involved in the production of market data. It is only through this disclosure that end-users and regulators will be able to ascertain whether the Reasonable Commercial Basis (RCB) principle is being adhered to.

<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>

Market data has, over time, become more important to firms’ activities. In part, this reflects the changing nature of the investment process and risk management. However, regulatory considerations are also an important driver for firms when it comes to the nature and scale of the data they consume.

**New regulatory requirements have required firms to increase their consumption of data and ability to process that data**, including: requirements relating to monitoring of execution quality; regulatory reporting requirements; rules on inducements; asset valuation requirements; and data security, risk management and business continuity requirements (such as maintenance of redundant feeds and archives). This need for data is amplified by competition between venues and the fragmentation of trading activity across multiple venues, each with its own data products.

Despite implementation of MiFID II and world-wide trends in declining costs of computing and data storage[[3]](#footnote-4), **many trading venues have continued to increase market data fees year-after-year**. This reflects a marked and on-going shift in the revenue model of trading venues, with market data now constituting a significant and increasing share of their income. This in turn has had a major impact on firms of all sizes in the investment management industry.

Given that data costs are not directly proportionate to the size of the assets that a firm manages, smaller firms in particular face a high barrier to entry and might in practice be prevented from accessing certain markets or implementing particular strategies as a result of data costs. This is true for both investment management firms and brokers, as fewer firms find it cost-effective to trade in certain ways or execute orders themselves because of the high cost of market data. As a result, due to the prohibitive costs associated with market data, investors rely on the execution algorithms and order execution services provided by a small number of brokers.

One way in which trading venues have been able to increase proprietary and consolidated market data fees is by changing the terms of licensing agreements, creating new categories of fees, redefining and recategorizing fees. **In the quest for greater market data revenue, exchanges have unbundled products and charged higher fees for the “new” products.**

Currently, fees related to market data licensing may include: access fees, site fees, distribution fees, display fees, delayed data fees, non-display fees and fees for creating and storing derived data/work. In this context, almost any central application consuming real-time market data such as profit and loss calculation, risk management and portfolio valuation is likely to be captured as a non-display application and therefore attract higher fee levels.

Further adding to the complexity, there is no standardization of how concepts are defined and interpreted by trading venues, nor of the procedures they adopt, which makes it harder for investors to compare the cost of different exchanges’ proprietary market data products.

At the same time, trading venues have in some cases **aggressively pursued audits of firms’ market data licenses, reviewing historical usage over several years**. Anecdotally, we found that it is not uncommon for licensees to have an incorrect understanding of the license agreements due to the divergence in licensing practices and vagueness in terms, and to be asked to pay fees retroactively along with monthly interest fees (at above-market rates).

Based on a small sample of IA members, we estimate firms spend an average of 30 business days of employee time in addressing and responding to a market data licensing audit.

**This situation has changed the commercial dynamic between trading venues as providers of data and investment managers as consumers of data**, making it challenging for investment managers to budget effectively for data consumption. Our members are also commercially disadvantaged when trading venues engage in what come across as market squeeze tactics, reducing competition in the index space by charging high market data fees to index providers outside the exchange group. As noted earlier, smaller firms are particularly disadvantaged given that data costs make up a larger share of their operating costs.

**In terms of the scale of the problem, we would highlight that it is wide-reaching**: it encompasses a broad set of product classes, including equities and exchange-traded derivatives (ETDs); it relates to venues operating in several different Member States; and it extends beyond regulated markets to Multilateral Trading Facilities (“MTFs”). In the case of futures markets, the challenges associated with market data are heightened by the concentration of liquidity at particular trading venues; while this is preferable from the point of view of being able to achieve best execution, it compounds the degree of power that trading venues have in respect of market data pricing.

We are concerned that **the market data licensing practices of trading venues may not be in compliance with the MiFIR requirements regarding the provision of data on a reasonable commercial basis**.[[4]](#footnote-5) Indeed, based on our members’ experiences with the lack of transparency with respect to market data costs, the complexity of data licenses and lack of comparability in terms of trading venues’ disclosures, we question whether venues are acting in compliance with the rules. We therefore welcome the fact that ESMA is looking at trading venues’ practices when it comes to the provision of market data.[[5]](#footnote-6)

In considering the potential role for the Level 3 process to address any identified shortcomings, we respectfully **encourage ESMA to coordinate formal supervisory review work** by the National Competent Authorities (NCAs) responsible for the supervision of the most significant trading venues in the EU. Where NCAs identify that trading venues’ approaches are not compliant with MiFIR provisions, we would encourage them to consider robust action to encourage a swift and meaningful change in behaviour.

We encourage ESMA to reconsider possible policy approaches to market data and whether **a more explicit approach of examining fees relative to revenue or costs** is now warranted. As trading venues are by nature monopolies in the provision of their own market data, we believe that to provide data on a reasonable commercial basis, market data fees should have some relation to the cost of the production of the data.

ESMA could also examine the structure of market data pricing agreements to consider how rules could support **greater standardisation in terms of definitions and other terminology** or practices employed in those agreements.

We would encourage ESMA to look broadly at **similar challenges that arise in respect of index licensing and use of credit ratings**, given that similar problems are evident in this space. Indeed, we welcome ESMA’s recent report[[6]](#footnote-7) on ratings data and the fact that ESMA is actively working to improve the transparency of activities of CRA-related data providers.[[7]](#footnote-8)

<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>

We disagree that trading venues/APAs/SIs comply with the requirement of making available the information with respect to the RCB provisions.

Firstly, the information disclosed by trading venues and APAs regarding market data fees often omits important elements, such as the pricing model to acquire market data.

Secondly, we consider that the information provided is insufficient and does not allow the comparison between calculation models. Furthermore, pricing of services is almost impossible, leading to the impossibility to verify the compliance with RCB obligations.

Regarding SIs, we agree with ESMA’s views that SI are providing more detailed data. However, we note that the current interpretation of “traded on a trading venue” significantly limits the amount of data required to be published for non-equities and we recommend recalibrating this going forward.

<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>

Yes, we agree that the quality of information is generally poor and non-comparable due to lack of figures and common understanding of what is meant by “costs”, “reasonable margin” and “reasonable share of joint costs”.

<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>

Yes we strongly agree that the usability and comparability of the RCB information could be improved with supervisory guidance. However, guidance alone will not be sufficient as it is not binding. We would welcome:

* Binding transparency and liability provisions
* Introduction of a cost benchmark
* Standardisation of definitions and audit procedures
* The introduction of a specific regulatory framework surrounding the market data providers, as was done for credit rating agencies.

<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>

The present transparency plus approach is insufficient to reduce market data prices to a reasonable level. It is our view that market data is subject to a market failure (due to the oligopoly status of market data suppliers).

<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>

The capping of revenues is not necessary, and would lead to excessive regulatory intervention in the market. We prefer the requirements set out in our answer to question 15, which is a more holistic Consolidated Tape solution:

* 1. All listed instruments and all venues and APAs are included in the CTP (The contributions from trading venues and APAs to a CTP are at present voluntary).
  2. Contribution of data from all market participants should be mandatory in order for the CTP to work. Also, at present the CTP would collect data from trading venues and APAs. This process should be reversed so that trading venues and APAs are required to send data to the CT).
  3. Both pre-trade and post-trade data should be included, though as a first priority this could be limited to post-trade if it made the project more manageable.
  4. There must be no preferential treatment of trading venues’ proprietary information
  5. There will need to a comprehensive set of definitions to ensure data can be cleansed and consolidated – consideration should be given to FIX's 2010 MMT: <http://www.fixtrading.org/mmt/>
  6. Regulations will need to be strict on performance specifications regarding “low latency” and “periods of delay”
  7. It follows a cost-based approach in the fee/reward structure (meaning the Copenhagen Economics approach stands) – both for CTP data as well as proprietary data
  8. The data contracts must be standardised and CTP data must be able to be used in all applications without additional licences and any limitations/restrictions.
  9. Non-commercial users should have access to delayed data free of charge – it is important that the ordinary investing public, journalists and academics can access what is needed to secure wide confidence in the capital markets.
  10. See question 16, as regards the business model and critically the governance requirements.

<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>

Our view is that data disaggregation has actually resulted in higher costs for market data consumers. Our members report that both the tactical disaggregation and packaging (bundling) of data (and services) is used to increase prices.

Firms have found that core data sets are increasingly broken down into smaller tranches in order to increase prices, by demanding additional licenses. At the other end of the scale, there are examples where core data sets are bundled with other more peripheral sets of data or services that firms do not wish to buy but they are compelled to take these additional data / services in order to get the core data they need.

<ESMA\_QUESTION\_MDA\_10>

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

<ESMA\_QUESTION\_MDA\_11>

Disaggregated market data is relatively more expensive than bundled market data. As long as this is the case, the demand will be limited. This is a problem for smaller data users. i.e. data users which only need a limited amount of market data but are forced by buy bundled market data. This limits the data use and harms transparency more generally.

<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>

In our members’ experiences the availability of free of charge 15 minute delayed data is often limited to very restrictive scenarios. For example the data may be free of charge only if consumed directly from the Approved Publication Arrangement (APA) or trading venue in a machine readable format and with explicit restrictions on usage rights including external use and the creation of resultant data.

More usable data products such as end of day delayed subscriptions are currently charged at a rate which we consider disproportionally high given our understanding of the (i) cost of providing the data, (ii) the delayed nature, (iii) the data quality (particularly in respect of APA data) and (iv) our members’ expected value gain.

Usage right restrictions (for example display use only) limit the value of the data to the ability to conduct some basic eyeball analysis and result in the value of this further reducing over time and varying on a market to market basis.

The obligation to provide this free of charge data is applied at the data provider level only and so data distributors or data aggregators who are unregulated may still apply charges to this data as they see fit. These charges may be applied in consideration the technology, distribution or administration fees which these vendors incur however we do not have visibility into the charging model.

<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>

Yes. We support the issuance of further level 3 guidance by ESMA. This will foster dialogue across the EU supervisors.

<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>

Yes

<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>

The current regulatory framework is not adequate to ensure a well-functioning Consolidated Tape which adds value and contributes to lower market data costs.

Particularly we are concerned that the current framework does not cover all instruments and it is only post-trade data.

Implementation of a consolidated tape as currently set out in its current proposed format will only add additional costs and exasperate the existing market data problems.

Below are some requirements that our members have put forward as pertinent and necessary for a consolidated tape to be functional and meaningful to the market:

* 1. All listed instruments and all venues and APAs are included in the CTP (The contributions from trading venues and APAs to a CTP are at present voluntary).
  2. Contribution of data from all market participants should be mandatory in order for the CTP to work. Also, at present the CTP would collect data from trading venues and APAs. This process should be reversed so that trading venues and APAs are required to send data to the CT).
  3. Both pre-trade and post-trade data should be included, though as a first priority this could be limited to post-trade if it made the project more manageable.
  4. There must be no preferential treatment of trading venues’ proprietary information
  5. There will need to a comprehensive set of definitions to ensure data can be cleansed and consolidated – consideration should be given to FIX's 2010 MMT: <http://www.fixtrading.org/mmt/>
  6. Regulations will need to be strict on performance specifications regarding “low latency” and “periods of delay”
  7. It follows a cost-based approach in the fee/reward structure (meaning the Copenhagen Economics approach stands) – both for CTP data as well as proprietary data
  8. The data contracts must be standardised and CTP data must be able to be used in all applications without additional licences and any limitations/restrictions.
  9. Non-commercial users should have access to delayed data free of charge – it is important that the ordinary investing public, journalists and academics can access what is needed to secure wide confidence in the capital markets.
  10. See question 16, as regards the business model and critically the governance requirements.

<ESMA\_QUESTION\_MDA\_15>

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

<ESMA\_QUESTION\_MDA\_16>

The most suitable CTP is a not-for-profit (utility) CTP run by a commercial business which is selected via a tender. A new tender should be launched periodically (every five years) in order to ensure viability of the CTP. The first provider should have a slightly longer tenure than five years since we believe they will need to address the greatest challenges and costs in designing, establishing and operationalising a consolidated tape.

A critical component of any successful CTP will be the governance model; there must be appropriate representation of a wider range of users and contributors to avoid discussions over charges being dominated by those who view the CTP as a revenue stream when the majority of users will experience it as a cost of investing. There should be specific representation for buyside (and sellside) users on the Board of the CTP.

It is important that the data provided through the tape is clear and consistent. If the data provided is clear and unambiguous any consumer of the data would be in a strong position to decide what data should be included in any internal post trade analysis.

The IA supports the adoption of the Market Model Typology (MMT) to support the creation of this consistent data set. The MMT is a free and open standard available to all firms, operated by [FIX](https://www.fixtrading.org/mmt/).

The MMT Initiative is a collaborative effort established by a broad range of industry participants (trading/reporting venues, data vendors and buy/sell side participants). The initiative is committed to achieving a practical and common solution for standards on post-trade data across all asset classes subject to MiFID II. The initiative aims to improve the consistency and comparability of data from different sources.

The consolidated tape is integral to delivering Capital Markets Union (CMU) since it would empower European retail investor to see the best trades and quotes, and with that stimulate greater retail participation in European capital markets. Specifically, the consolidated tape strengthens the toolkit to achieve best execution under MiFID and enables all investors to buy at the best price.

Any investor should be able to compare their own executions against most recent market activity and measure best execution – retail and institutional alike. To underscore investor confidence, and to bring about greater retail participation in European capital markets, investors must have the information about and access to liquidity which is currently dispersed across multiple competing trading venues in Europe. This is the primary benefit the consolidated tape would unlock.

<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>

Yes

<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>

Yes

<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>

Yes

<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>

Yes. Standardising data more (e.g. using the MMT typology consistently) and producing a guideline for publishing data would support firms in tackling these deficiencies.

<ESMA\_QUESTION\_MDA\_20>

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

<ESMA\_QUESTION\_MDA\_21>

The key risk of not having a CTP is that the current inefficiencies will continue. The benefit would be a considerable help to price formation by analysing what liquidity is addressable and non-addressable and by helping capital markets formation. For instance, when a trader decides whether to buy or sell a European stock, the difference in spread can be material if you compare the German line of a German stock on Bloomberg and the EU line, the theoretical composite line. However, the trader does not know the addressable liquidity within that EU line.

A consolidated tape would help investors see the true liquidity profile of stocks and also promote competition between venues.

<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>

The IA would welcome the application of the MMT to resolve this issue. We would support ESMA guidance to support and enhance the application of MMT across trading venues. This would ensure a level playing field between market participants in the building of both better data quality and the use of harmonised standards.

<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>

No

<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>

Yes, this is a prerequisite for a CTP to function effectively.

<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>

It should be a requirement to contribute and since the CTP is also cost based in its pricing policy (Delegated Regulation 2017/565, art. 84-89), revenue sharing could be relevant.

<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>

Perhaps but only in carefully considered areas and there is a real risk, especially in the pre-trade environment that it could operate to limit assessments of best execution if a link was made between mandatory comparison between the CTP price and actual execution price and best execution obligations. Any mandatory consumption must be clearly linked to it incentivising a behaviour that is already identified as good for a client or market efficiency. Mandatory consumption should not be seen as an end in itself.

<ESMA\_QUESTION\_MDA\_26>

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

<ESMA\_QUESTION\_MDA\_27>

As stated in q26, concerns are linked to MiFID rules such as best execution.

<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>

Our preference is that the CT covers all trading venues and APAs and the whole scope of equity instruments. We should even consider its extension to non-equities – subject to postponement of price disclosure in relation to block trades, not to harm the best execution of block trades (e.g. for Fixed Income block trades): this balanced approach was followed by the [TRACE](https://www.finra.org/industry/trace)[[8]](#footnote-9) system in the US.

<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>

Yes

<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>

Due to network latency, the only way to mitigate latency issues would be to introduce speed bumps. If doing so in a CTP, it must also be done for trading venues own data – proprietary data will be accessible faster and thereby more valuable and data consumers will still be forced to buy the same amount of data as today from trading venues etc.

<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>

Competition as such should not be feared; but if other entities sought to prioritise their own data, or delay the CTP data, or require their feed to be taken for some purposes – which they may have an incentive to do – then this must be addressed. But as such, we have not seen evidence that a monopoly supply is essential to make this work. And certainly pre-trade there may be a range of enriched offerings which should not be confused with the CT itself and not prohibited.

<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>

The contract duration should be limited to five years. As a public good utility, it should be financed by all participants, in order to ensure a level playing field among participants for getting access to the data – contrary to the US, where there is a two-tier system, creating inequality among market participants. However, as explained in q16, we believe that the first provider should have a longer tenure than five years since we believe they will need to address the greatest challenges and costs in designing, establishing and operationalising a consolidated tape.

<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>

On an industry level we feel that a consolidated tape could be paid for by the execution process, where exchanges charge a nominal fee for the amount of trades that they receive.

Alternatively TVs and data vendors could charge EUR 10 – EUR 20k per firm per year. As it would act as a utility-like system and taking into account the whole population of market participants this low fee for data users would still result in several million euros income. This estimate is based on an analysis by a limited number of IA member firms.

<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>

Yes, provided the cost-based approach with a reasonable mark-up is the basis for CTP as it should work on a utility approach.

<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>

An EU27 Consolidated Tape would add significant value. An EU27 Tape is likely to also precipitate a UK Tape which the IA would welcome.

A consolidated tape of trades would be transformative, with clear benefits for end-investors such as increasing transparency, strengthening best execution, whilst simultaneously improving competitiveness of European capital markets. This is consistent with the objectives of CMU. A consolidated tape without UK data, whilst sub-optimal, would still add value overall to European end-investors.

<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>

In the event of Brexit, an EU consolidated tape would unlock greater retail participation and enhance competitiveness of EU markets.

<ESMA\_QUESTION\_MDA\_36>

1. Markets in Financial Instruments Directive II (MiFID II). [↑](#footnote-ref-2)
2. Multi-Lateral Trading Facility (MTF) [↑](#footnote-ref-3)
3. See, for example, the US Consumer Price Index for Information Technology, Hardware and Services Chart, which shows a steady decline in costs over the last several years. Available online at <https://ycharts.com/indicators/us_consumer_price_index_information_technology_hardware_and_services_unadjusted>. [↑](#footnote-ref-4)
4. Article 13 of **Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR). Available online at:** <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=EN>. [↑](#footnote-ref-5)
5. ESMA Final Report Amendments to Commission Delegated Regulation (EU) 2017/587 (RTS 1), March 2018. Available online at <https://www.esma.europa.eu/sites/default/files/library/esma70-156-354_final_report_rts_1_amendment.pdf>. [↑](#footnote-ref-6)
6. ESMA Thematic Report on fees charged by Credit Rating Agencies (CRAs) and Trade Repositories (TRs), 11 January 2018, p.17 para. 61 et seq. Available online at: <https://www.esma.europa.eu/press-news/esma-news/esma-raises-concerns-fees-charged-cras-and-trade-repositories>. [↑](#footnote-ref-7)
7. Consultation Paper: Guidelines on the submission of periodic information to ESMA by Credit Rating Agencies – 2nd Edition, 19 July 2018 | ESMA 33-9-252, Q24. Available online at: <https://www.esma.europa.eu/sites/default/files/library/esma33-9-252_revised_guidelines_on_periodic_reporting.pdf>. [↑](#footnote-ref-8)
8. Trade Reporting and Compliance Engine (TRACE) [↑](#footnote-ref-9)