ASSOCIATION FRANÇAISE DES MARCHÉS FINANCIERS

FINANCIAL MARKET PROFESSIONALS

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# ESMA 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

## AMAFI contribution

**Association française des marchés financiers (AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

AMAFI welcomes ESMA's consultation paper on the development in prices for pre- and post- trade data and on the consolidated tape for equity instruments (hereafter the CP).

Indeed, the increasingly cost of market data has been a big concern for investment firms, not only since the entry into force of MiFID II/MiFIR but since the implementation of MiFID I ten years ago.

To prepare its answer, AMAFI has liaised with COSSIOM (Comité chargé des Services et Systèmes d'Informations destinés aux Opérateurs de Marchés - Market Data Information Systems and Services Committee for Market Operators). Cossiom Members are Market Data Managers, Experts, IT and Sourcing Managers from investment banks, asset managers, security services and other financial institutions.

## EXECUTIVE SUMMARY

### 1. Cost of pre-and post-trade data.

#### a. Analysis of MiFID II/MiFIR provisions for markets data

MIF 2 contains provisions aiming at improving the quality and availability of market data and **reducing** the costs for market participants. In order to reduce costs MIF2 requires trading venues to make pre-trade and post-trade data available separately and to make them available on a reasonable commercial basis (RCB). In addition, 15 minutes after publication, market data must be freely available.

Market participants believe that so far **MiFID II has not yet delivered on its objective** to lower the prices of market data. The main reasons are listed below:

- Unit prices of market data have not decreased and in some cases have continued to rise in a small proportion.

- Trading venues have added several items to their pricing lists in order to provide data separately and have transformed existing licenses. For instance, many trading venues have introduced new market data fees to cover usage of their data by Systematic Internalisers or other Trading Venues.
- Market data agreements proposed by trading venues are becoming more complex and difficult to understand and to comply with. This translated into a significant increase in resources required to monitor the use of market data.
- Audit procedures imposed are also increasingly costly.
- Trading venues are not encouraged to lower their prices because each trading venue, notably each Regulated Market, provides indispensable datasets that cannot be replaced.

Therefore, market participants face increased costs for the acquisition and management of data and the compliance to complex auditing procedures.

Most Trading Venues acknowledge that the revenue they make from market data services is at least stable or has just increased by low single digit percent every year. This paradoxical effect can be explained by the fact that most investment firms have implemented significant optimisation programs with a view to reduce their overall costs of market data. Those programs have led to a huge decrease of the number of front office users having access to real time market data from trading venues.

All in all, it appears that, in order to maintain the same level of revenues, trading venues tend to compensate the decrease in the number of users by increasing the costs for each client, which constitutes a **vicious circle for all market participants**.

The table below gives some examples of public information related to market data revenues of the main trading venues in the EU together with the number of users.

- According to Deutsche Borse Group Q4 and FY/2018 Preliminary Results, data subscriptions (number of users) went down 18% between Q4/17 and Q4/18 when related revenue remained stable over the same period.

- According to BME financial reports, BME revenue on Market Data & VAS increased from 59 M€ in 2016 to 66.7 M€ in 2018 i.e +13.1% over a period of 2 years.

- According to LSEG Financial reports, London Stock Exchange Group (including Borsa Italia) real time market data revenue increased +14% in a period of 3 years between 2015 (82.2 M£) and 2018 (94 M£) whereas number of accesses decreased by -16% over the same period of time (from 207k to 174k).

It must also be noted that ESMA’s regulatory power only applies to regulated entities. Yet, the market structure and value chain in which market data is produced and consumed are complex and do not only rely on trading venues but also on **data vendors** which are not regulated for this type of activities. Across the market data supply chain, trading venues are frequently not “the last mile” of data distribution since a considerable proportion of users obtain data through data redistributors and intermediaries. As an illustration, Euronext is not in control of fees billed to end-users in respect of the consumption of 74% of their market data as these are billed directly by data redistributors and intermediaries. Changes in prices faced by end-users are therefore not only due to trading venues, since data redistributors mark-ups and/or additional fees on trading venue market data.

In assessing developments in fees for pre- and post-trade transparency data in light of the review of the RCB provisions, it is important that appropriate consideration be given to the share and relative weight of market data costs between those arising from trading venues and those coming from the rest of the market data supply chain.

One initiative that would assist the market greatly in understanding the composition of the cost of data could be the imposition of a transparency obligation on data redistributors in respect of their own fee schemes.

### b. AMAFI's Proposals

AMAFI considers that the RCB concept has proved so far hard to monitor for the industry and for the authorities alike. Still, at that stage, AMAFI is not in favour of the adoption of intrusive approaches such as Long Run Incremental Cost + model or a revenue cap.

We believe that the objective should be to make the transparency requirements more efficient, so that transparency can be used to enforce the RCB obligation. It requires that:

- The pricing lists published by trading venues become easily comparable.
- The pricing lists published by trading venues for access to market data are easily comparable. It supposes that the fee schedules provided by the trading venues for their core business on market data are harmonised and simplified
- Market data agreements are drastically simplified and are valid for a sufficient period of time (at least one year) in order for data users to avoid deploying unnecessary resources.
- Audit procedures are simplified and harmonised.
- High level definitions (information/market data, derived data/other original created work/etcetera, display use, non-display use…) are harmonised.

AMAFI believes that it first belongs to trading venues, in relation with market participants, to put in place a set of best practices to achieve the objectives mentioned above.

Would it not be the case within a reasonable time period, AMAFI considers that ESMA should impose measures ensuring actual comparability and harmonisation of practices.

## 2. Consolidated tape for equity

In the equity space, AMAFI considers that the main issue in terms of the effectiveness of market transparency is the decrease of market data costs. There is no clear rationale and use case for a post trade CT given that data vendors cover around 90%-95% of EU equities trading.

## AMAFI'S RESPONSE

### Overall developments

**Q1: 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.**

Given that the entry into force of MiFID II/MiFIR is quite recent (January 2018), an accurate assessment of the evolution of the prices of market data since the regulatory framework came into force should look at the trend of the prices before the application of MiFID II/MiFIR. That being said, AMAFI considers that MiFID II objective to reduce the costs of market data (pre and post trade data) has not been reached.

On one side, most investment firms have implemented significant optimisation programs in order to reduce their overall costs of market data. In particular, those programs have led to a huge decrease of the number of front office users having access to real time market data from trading venues.

On the other side, it must be noted that market data revenues for trading venues have, for some of them, remained stable and for others increased over the former years. The table below, provided by COSSIOM give some examples of public information related to market data revenues of the main trading venues in the EU together with the number of users.

COSSIOM findings

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|---|
| - According to Deutsche Borse Group Q4 and FY/2018 Preliminary Results, data subscriptions (number of users) went down 18% between Q4/17 and Q4/18 when related revenue remained stable over the same period of time.<br><br>According to Deutsche Borse financial reports, Deutsche Borse revenue on Data increased from 145.3 M€ in 2013 to 170.4 M€ in 2018 i.e +17.3% over a period of 5 years.<br><br>- According to BME financial reports, BME revenue on Market Data & VAS increased from 59 M€ in 2016 to 66.7 M€ in 2018 i.e +13.1% over a period of 2 years.<br><br>- According to LSEG Financial reports, London Stock Exchange Group (including Borsa Italia) real time market data revenue increased +14% in a period of 3 years between 2015 (82.2 M£) and 2018 (94 M£) whereas number of accesses decreased by -16% over the same period of time (from 207k to 174k). |

This illustrates the fact that for trading members, the cost of per user pre and post trade data has significantly increased over the past years.

**Q2: If you are of the view that prices have increased, what are the underlying reasons for this development?**

The main underlying reason for this development is that there is, in many cases notably each Regulated Market, provides indispensable datasets that cannot be replaced.

The information provided by the market data made available by the exchanges is key to the securities dealers who are willing to trade instruments that are listed in these trading venues. The market for market data is not competitive and relies on quasi unique providers for every real time dataset. This dominant position is reinforced by the simple fact that these venues gather significant volumes and liquidity fractions on some equity instruments. For the sake of complying with the MiFID II best execution obligation, securities dealers need to buy real time access to data from the main exchanges they are interested in.

**Q3: Following the application of MiFIDII/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)?**

New fees have applied to some market data services. As it was the case for the prices, the number of items in the pricing lists has been increasing through the years, going from 56 items on the Nasdaq Nordic Ltd fee schedule in 2006 to 150 in 2018 according to Copenhagen Economics. The London Stock Exchange and Euronext show similar trends in their fee schedule. Perhaps the most notable example since the introduction of MiFID II/MiFIR is the introduction by many trading venues of additional fees for conducting SI activity, applying to all the securities dealers that fall under the mandatory SI regime introduced by MiFID II.

**Q4: 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)?**

Other practices are related to the complex data policies and auditing procedures. The licensing agreements signed by users who subscribe to these services are usually long, dense, and can be unilaterally changed by the trading venue on a 90 days' notice. Part of the complexity of these agreements is the auditing procedures where the users have to prove that their use of the data was strictly compliant with the agreement, and thus prove that none of the employees not registered as users of the data had access to it. Otherwise the securities dealer would have to pay for more users than what was agreed on.

## The application of the provisions to provide market data on a reasonable commercial basis

**Q5: 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.**

Most trading venues comply with the transparency requirements linked to the RCB provisions. However, the methodology for determining the costs is usually too incomplete and the licensing agreements too complicated. As for the requirement to charge on a per user basis, the trading venues complied with it to a certain extent, as it remains difficult in practice to benefit from it, because of the complex reporting specifically put in place in order for the trading venue to do the netting across the different market data vendors that provide the data. The service is then charged for depending on the number of vendors the user got access to, making an actual single user pay multiple times for the same service.

**Q6: 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.**

As mentioned above, the methodology for determining the costs is not thoroughly explained by most of the trading venues. Some of them do not even disclose any form of calculation, and only announce that they have a model for cost allocation on their websites. This lack of transparency regarding the costs and the margin applied by the trading venues and APAs makes it difficult to challenge the price levels of the market data services, and their compliance with the MiFID II RCB requirements. The cost calculation methodology should be more detailed and harmonised across the Union for market data users to be able to compare between trading venues, and for trading venues to be held accountable for the compliance with the RCB requirements.

**Q7: 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.**

Supervisory guidance could be an appropriate tool to improve the usability and comparability of the RCB if it gives enough detail about the templates than can be used by Trading venues in their licensing agreements and the specific information that should be disclosed in the cost allocation methodology. Although it can be restrictive for Trading venues, it is important that any initiative aiming at enhancing the usability and comparability of this information suggests a realistic simplification of the licensing agreements.

**Q8: 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**.

AMAFI considers that the RCB concept has proved so far hard to monitor for the industry and for the authorities alike. Still, at that stage, AMAFI is not in favour of the adoption of intrusive approaches such as Long Run Incremental Cost + model or a revenue cap.

We believe that the objective should be to make the transparency requirements more efficient, so that transparency can be used to enforce the RCB obligation. It requires that:

- The pricing lists published by trading venues become easily comparable.
- The pricing lists published by trading venues for access to market data are easily comparable. It supposes that the fee schedules provided by the trading venues for their core business on market data are harmonised and simplified
- Market data agreements are drastically simplified and are valid for a sufficient period of time (at least one year) in order for data users to avoid deploying unnecessary resources.
- Audit procedures are simplified and harmonised.
- High level definitions (information/market data, derived data/other original created work/etcetera, display use, non-display use…) are harmonised.

AMAFI believes that it first belongs to trading venues, in relation with market participants, to put in place a set of best practices to achieve the objectives mentioned above.

Would it not be the case within a reasonable time period, AMAFI considers that ESMA should impose measures ensuring actual comparability and harmonisation of practices.

**Q9: 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?**

No, such a model would make the market data services depend on the volumes of trading and execution services, which would lead to large variations of the revenue limit depending on the trading venue and would distort competition.

## The application of the provisions to provide data on a disaggregated basis

**Q10: Did data disaggregation result in lower costs for market data for data users? If not, please explain why?**

Data disaggregation did not result in lower costs because it relies on the distribution by market data vendors of the disaggregated data proposed by the trading venues, which those vendors do not necessarily do, since they are not subject to any regulation, and have no obligation nor interest in disseminating disaggregated data, since bundled packages can be sold at a higher price to users who have no business in buying the whole package but who will if it contains the datasets they are interested in. Market data vendors are out of the scope of RCB principles and MiFID II requirements in general and are therefore an important player in the market who is not captured by regulation. The data vendors' profit maximising behaviour is totally normal considering the current regulatory framework, but it represents a problem for the rest of the supply chain of the market data, who are all captured by MiFID II and must comply with RCB principles and transparency obligations. It is therefore important that data vendors be captured by MiFID II in the same way data reporting services are.

**Q11: Why has there been only little demand in disaggregated data?**

There has been little demand in disaggregated data between pre- and post-trade data is not relevant to most data users, who want to monitor both pre-trade and post-trade data when they're trading a financial instrument. However, the separation that is needed by market data users is more that of level 1 and level 2 data. Being able to only purchase the Best Bid and Offer in post-trade data can contribute to lowering the cost of data, as many users will not need to purchase level 2 post-trade data. The disaggregation mentioned in MiFID II talks about separating pre-trade and post-trade data, which is not the biggest problem when it comes to bundling services in market data. Some trading venues still impose Level 2 packages on post-trade data, leaving no choice for many users who only need level 1 products to conduct their business.

## The application of the provisions to make available data free of charge 15 minutes after publication

**Q12: 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**

AMAFI indeed noted that a significant number of trading venues does not currently make 15 minutes delayed data free of charge as it is shown in the examples below.

- **London Metal Exchange (LME) charges for end users for pre and post delayed data directly but also via vendors such as Refinitiv/Reuters or Bloomberg. LME seems to explain that free of charge delayed data under MIFID II are aggregated with data not covered by MIFID II and that market data vendors do not redistribute the LME free of charge only delayed data package.**
- **London Stock Exchange (LSE including Borsa Italiana) charges for delayed data licenses (many different kinds of delayed data licenses). Is this MIFID II compliant?**
- Idem for Luxembourg Stock Exchanges.

**Q13: 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.**

AMAFI has no specific input on this matter

**Q14: 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?**

The current regulatory framework and the competition by non-regulated entities are some of the main factors that make it unattractive to operate an equity CT.

**Q15: 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.**

The main problem preventing the foundation of a European equity CT is the business model of the CTP that would need to be figured out in the presence of the same trading venues currently providing market data services.

**Q16: Please explain what CTP would best meet the needs of users and the market?**

AMAFI considers that the main issue is the decrease of market data costs. There is no rationale and use case for a post trade CT given that data vendors cover around 90%-95% of EU equities trading.

**Q17 to Q36 :**
**AMAFI has no specific input to add regarding questions Q17 to Q36.**