

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

Nasdaq's Response

EXECUTIVE SUMMARY

Nasdaq welcomes the opportunity to contribute to ESMA's work on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments. In particular, Nasdaq wants to stress the importance of taking adequate policy and regulatory decisions with respect to market data services in order to foster orderly functioning of financial markets in general (and lit markets specifically) as well as the protection of investors and the attractiveness of public financial markets for companies.

The main aspects Nasdaq wants to highlight regarding market data are the following:

- **Market data prices are reasonable and have been stable:**

The fee charged by Nasdaq to retail investors for accessing Nordic Equity & Fixed Income Level 1 (which includes single best bid/ask price and volume, individual trades including off book and OTC, indicative and firm uncrossing price and volume, real time and end of day statistics, index values and components) is 1 € per month.

The fee charged by Nasdaq to professional market participants for accessing Nordic Equity Level 1 (which includes single best bid/ask price and volume, real time and end of day statistics and Nordic index values and components) is 32 € per month.

A report from March 2019 by Oxera shows that the fees charged for market data by exchanges and the revenues that exchanges derive from market data have remained stable over time. Moreover, market data costs represent a minimal part of the costs of brokers and fund managers as well as for investors. For most exchanges, market data fee increases have been small (e.g. for Level 1 and Level 2 data, less than 1.5% per year in real terms). The costs to end-investors are small—aggregate market data revenues were approximately €245m in 2018, which represents 0.003% of total assets under management.

- **Incentives to produce high-quality data and support the functioning of lit markets are needed:** Policy decisions have to ensure that operators of lit markets have incentives to continue to produce high-quality data and operate lit markets in line with the Capital Markets Union (CMU) initiative.
- **Transfer of return on investment made by lit markets on high-quality data to market users is a flawed policy decision:** Mandatory contributions that do not fairly remunerate data sources, like exchanges, will result in transferring legitimate returns on investment made by operators of venues to market data users and act as a disincentive to investments in the production of high-quality data. This will consequently undermine lit price-forming venues, favouring a dealer market which will run counter to the CMU initiative and the financing of the economy through public markets. An EU Consolidated Tape (CT) that ignores the continuous investments made by exchanges in the production of high-quality market data will reinforce the trend towards darker markets.

- **Nasdaq supports the creation of an end of day post-trade tape of record:** if correctly calibrated, such a tape could provide additional transparency allowing firms to check trade executions for off-trading venue transactions to the benefit and protection of investors.
- **A tape should not be a substitute for adequate market structure:** Policy makers and regulators need to implement the G20 mandate on making financial markets more transparent to avoid a repeat of the 2008 financial crisis. Regulators should, as a matter of priority, have the willingness and necessary means to enforce measures adopted under MIFID II aiming at moving financial transactions to lit markets. More generally, the EU should streamline its market structure in order to ensure retail investors are not easily abused by execution mechanisms where conflicts of interest are difficult to monitor. These shortcomings cannot be solved by a consolidated tape but do need to be addressed if the EU is serious about building a CMU for companies and investors.

DETAILED REPLY

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.

From the outset, we want to note that by targeting market data in general, this question is too broad and will fail to inform policy decisions about regulated market data in a useful way. This question should have been more specific and targeted at regulated market data i.e. pre and post-trade data. As is common in the public debate around market data, replies will mix many different fees and products that have nothing to do with regulated market data which may lead to incorrect, inadequate and misleading information resulting in flawed policy decisions.

We also note that ESMA has done the same in questionnaires submitted to exchanges assuming that all exchanges offer the same services and have the same customer base. In particular, limited consideration was given to other parties in the value chain that provide services around market data produced by exchanges, and that are paid for by market participants. Nasdaq would like to highlight the need for any analysis to consider market participants spending in detail i.e. a clear view of the products and services that are paid for by market participants and the provider that is being remunerated. Unless this is done properly, policy decisions run a high risk of being inappropriate and further disturbing the proper functioning of markets.

As far as regulated market data is concerned, prices have remained stable since the application of MIFID II/ MIFIR. Financial intermediaries, members of Nasdaq markets, obtain data for free for the purpose of trading on Nasdaq markets. This was the case before MIFID II and has continued after. Firms that are members of the exchanges we run may also pay for market data with respect to other use cases. Firms that are not members of our exchanges also have to pay for market data. Fees charged by Nasdaq are set on a reasonable commercial basis, in line with Nasdaq's published cost methodology.

We also would like to point to findings of the economic analysis of price formation and market data services carried out by Oxera, entitled "The design of equity trading markets in Europe", and published in March 2019, which demonstrate that aggregated market data revenues of stock exchanges that are members of FESE (which include Nasdaq) amounted to approximately €245m in 2018 and increased in recent years by around only 1% per year in real terms.

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

We believe that prices and revenues have remained stable for the last few years.

Q3: 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)?

MiFID II/MiFIR regulatory requirements on disaggregation have forced Nasdaq and other trading venues to create many new data sets that have been priced on a cost-plus basis (i.e. cost plus a reasonable margin). Disaggregating products has created costs for us

in order to produce them. Despite insisting that there was demand for disaggregated products from sellside firms during the MIFID II negotiations, so far there have been no clients for these products. The regulatory requirements on disaggregation, as we voiced during the MIFID II negotiations, have only added costs and no benefit to the industry so far. It is also important to note that the disaggregation requirements resulted in an increase in the number of data products – a fact that the buy-side now holds against the exchanges, arguing that price lists and product offerings post MIFID II are more complex. Cost and benefit analysis of measures have to be pursued by the Commission and ESMA before imposing such requirements. We want to avoid that the same happens with the request for a consolidated tape that could ultimately not respond to a compelling use case and therefore again create costs for the industry overall and no benefit.

Although not a new fee, the business decision of financial intermediaries to explore new businesses, such as operating an SI business, has made them liable to pay market data fees for displaying exchange market data to their clients or for other commercial purposes. Since the introduction of MiFID II, there has been a surge in SI activity with currently 212 SIs registered, up from very few prior to MIFID II. This new business represents more than 16% of the total market share in the Nordics. Most SIs simply copy the market data feed of exchanges and display it to their customers and then execute orders of clients on the prices produced by exchanges. In that case, where SIs simply copy the Nasdaq price, they are liable to pay a “display” fee. Where SIs use Nasdaq’s data to form their own prices, they are liable to pay a “derived” fee. In any event, it is reasonable that they pay for the market data they consume. SIs indeed charge their clients (by earning on the spread or charging execution commission or both) for executing orders on prices that are formed by exchanges thanks to systems and technology that exchanges invest in. There cannot be a situation where SIs free ride on the significant investments made by exchanges in the production of high-quality market data, i.e., a situation whereby exchanges are expected to transfer the return on their investment to banks and brokers that want to have a more profitable SI activity and do not pass on savings they make to investors. It would be unreasonable to ask exchanges to subsidize the SI execution business by providing market data at a discounted price or for free such that SIs would have an unfair competitive advantage in execution services.

Another trend, which can explain the increase in market data expenditure relating to data services, is the passivisation of investment products like ETFs. Note that this is not expenditure relating to pre- and post-trade market data but rather index data and other similar non-regulated data.

The creation of the market data services provided by APAs and ARMs under MIFID II has resulted in new fees for market participants. We note that services developed by APAs resulted in a significant reduction of on-exchange reporting which had a negative impact on the quality and consistency of publication of market data and meant that such trade reports were no longer consolidated in market data vendors feeds. This also meant that expenditure of market participants towards exchanges for on-exchange reports decreased or was eliminated.

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)? Please explain and provide evidence.

As indicated in the reply to question 3 above, disaggregation requirements have resulted in market data policies being perceived as more complex. It has increased the number of data products offered, allegedly making the price list more difficult to read. We note however, that Nasdaq has dedicated account managers that help customers to understand Nasdaq’s market data products and ensure that they are purchasing the right products. The regulatory requirement imposing disaggregation, which was supposed to benefit the industry, has done the opposite. It only adds costs, given that there are no users for these products.

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.

Yes. We agree with ESMA’s assessment in this respect, including the fact that SIs do not comply with the requirements on RCB, which is included in the text of the consultation but not reflected in the question asked. SIs should be encouraged to comply with the requirement to make available the information with respect to RCB provisions.

With respect to Nasdaq, we have produced a detailed cost methodology and posted this information on our website. We believe we comply fully with the regulatory requirements.

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.

Regarding the quality of RCB information, ESMA seems to consider it problematic that users cannot compare information across trading venues and APAs. However, the test on RCB pertains to specific products and needs to be understood in relation to those specific products, not other products. As a consequence, regulatory guidelines trying to force artificial comparison between products of various data sources, be they trading venues, APAs or SIs, would be a mistake. Forcing all data sources to have comparable products and pricing policies is negating the possibility of offering different and innovative products. A policy decision of this nature will serve to deter innovation and the use of new technologies which we understand European policy makers are in fact heavily promoting in the context of the CMU.

Regarding the obligation to provide market data on a non-discriminatory basis, Nasdaq considers that its categorization of clients is appropriate. Although data sources may have common clients and comparable products, in reality there can be important differences, for example based on customer demand. Consequently, we stress the need to recognize that various data sources can have different products and client bases, which results in different categorisation. Again, a one-size-fits-all approach in respect to client categorization with imposed categories, terminology and standardized templates, would be inappropriate.

Regarding the information on how prices are set, ESMA indicates that allocating joint costs to the revenues generated by the provision of market data and other services provided is not fully in line with the requirement to provide market data on the basis of costs. We disagree. Art. 7.2 of CDR 2017/567 states “The cost of producing and disseminating market data may include an appropriate share of joint costs for other services provided by market operators or investment firms operating a trading venue or by systematic internalisers.” It is therefore possible to allocate joint costs incurred for other services provided to market data revenues and other services revenues and we do not see why this has to be further specified. Market data is the outcome of a dynamic price formation process, and is a joint product with trade execution – i.e. it is not possible to generate one without the other, and most activities undertaken by a regulated market deliver both trading and price formation. Price formation and trade execution generate pre- and post-trade data, which after processing create market data. It is not possible to provide price forming transaction services without creating market data.

We want to note that we incur costs for running regulated markets that our competitors on trade execution do not incur or incur to a much lesser extent. MTFs, for instance, do not have the heavy technology investment that we have to allow for price formation, backup systems, trading and issuer surveillance, rule setting and compliance by members, etc. They merely take our prices, execute transactions on them and charge commissions to clients. This is even more the case for SIs that make none of the investment mentioned above.

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.

We do not agree with ESMA in this respect, especially on comparability of RCB information, please see our comments in the reply to question 6 for more details.

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.

First, we consider that the price we charge for market data is reasonable for the reasons explained in the reply to question 1. Indeed, we believe that trade execution services are subject to a high level of competition as suggested by the market share increase of MTFs and SIs. In addition, our customers include large and sophisticated international financial institutions with substantial market power. As a result, the threat of otherwise losing business to MTFs, SIs or other regulated markets forces us to price our services reasonably and according to market price. In addition, Nasdaq benchmarks its prices against the prices charged by other venues.

Second, if regulation were to impose a revenue cap on market data or an LRIC+ model, this would act as a disincentive for regulated market operators to invest and innovate in the market data business of producing high-quality data products. Additionally, it would most probably make regulated markets less attractive over time and would favour the development of a dealers market, and the disappearance of lit price forming markets. With Brexit on the horizon, it would be difficult to understand why the EU would reshape its financial markets into a dealers market in contradiction of the G20 conclusions on the need for more transparent markets. This would equally be in contradiction to the CMU initiative which needs appropriate market infrastructures and lit price forming markets if it wants to finance the economy through public markets and transform savers into investors.

Finally, market data is generally bought through intermediaries such as market data vendors which enrich regulated market data with additional content or additional products and fix a price for their services as they see fit, given they are not in the scope of MIFID II/MIFIR. Regulated markets have no control on such prices whereas data users tend to consider that what they pay to data vendors is mostly due to data fees set by regulated markets. This is not the case. Equally, regulated markets have no control over the fees charged by the sellside to investors which includes market data services. ESMA and policy makers need to face reality and acknowledge that if only a part of the value chain is strictly regulated with measures like caps on revenues or LRIC+, they will severely hurt lit markets and others in the value chain will pocket the savings, whereas the end investor will continue to pay exactly the same price, if not more. This is what we have seen with trading commission charges, which have been drastically reduced at the regulated market level but which have never been passed on to investors. Sell side firms argue that they had more costs due to fragmented markets.

For all these reasons, we consider that the RCB approach is appropriate and delivers competitively priced market data, whereas a revenue cap or an LRIC+ model should be avoided in order to keep lit price-forming regulated markets in business. If ESMA and the Commission decide to impose a revenue cap or a LRIC+ model nevertheless, we argue that in order to deliver any result on the price of data paid by end-users, a revenue cap or a LRIC+ model should also be imposed on all parties in the value chain, including data vendors' fees and sellside firms' trading commissions.

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?

As indicated in the reply to question 8 above, we do not consider that a revenue cap model will be useful.

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

Nasdaq's disaggregated products are less expensive separately than the combined products. It appears, however, that customers of data are only interested in combined products. This is the reason why Nasdaq and other trading venues have offered such packages in the first place. If there had been a commercial demand for narrower products, we would have provided such products. For instance, most customers are interested in both pre- and post-trade data and the forced unbundling has not resulted in clients taking the separate products.

Moreover, as explained above for market data prices in general, it is important to recognize that to produce lower costs for end users, reduced prices from disaggregation need to be passed on through the whole market data distribution/value chain, which will not happen unless the whole value chain is in the scope of the regulation this includes data vendors and sellside firms.

Forced disaggregation has increased costs for the industry without benefit because these products are not used.

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

We have historically offered combined products because that is what most customers want. If there had been commercial demand for unbundled products, we would have offered them irrespective of a regulatory requirement.

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

Nasdaq complies with the requirements to make data available free of charge 15 minutes after publication.

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.

The requirement that data is retrievable for a period of 24 hours, introduced in Q&A 10, is not useful and not practical. We understand that ESMA wants to ensure that data is accessible for a sufficient time so that it can be used. For post-trade data, we believe that 24 hours is disproportionate, and it would be better to limit the availability of data for the current day. 24-hour data is historical data and therefore can be charged for as provided in Q&A 9b.

Further editing Q&A 10 to limit the availability of data to the “whole trading day” would ensure that the inconsistencies between Q&A 9 and Q&A 10 are definitively addressed, and in doing so guarantee smooth and homogenous implementation of the Q&A across the industry. Indeed, uncertainty surrounding Q&A 10 has inevitably resulted in difficulties regarding the implementation of the Q&A by trading venues.

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?

Yes. Nasdaq agrees that in view of the burdensome regulatory framework imposed on CT providers (CTP) and the fact that non-regulated entities such as data vendors already provide similar products, there is no business case for a CTP.

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.

Yes. It is important to recognize that the reason why data vendors do not yet provide a consolidated view of the entire market is due to the lack of quality of post-trade data for SIs and OTC transactions. Transactions concluded on regulated markets and MTFs are already available in data vendor feeds. A CTP would face exactly the same problem and would not be able to provide a CT covering transactions from the entire market. A CT that would only cover regulated markets and MTFs would add no value and would have to be in competition with data vendors, which already have extensive experience and established business in this field.

Consequently, a precondition to any CT is an improvement of the quality of data originating from SIs and OTC transactions.

Moreover, if diversity of reporting and publication mechanisms is considered as a main factor for the decrease in quality of market data, it could be envisaged that the reporting and publication of all OTC transactions, including SI transactions, be mandated to one (or at least fewer) central point(s) publishing such transaction reports. This would entail a thorough review of the existing MiFID II transaction reporting and publication rules but it could address recurring complaints in respect to transparency. London-based firms complain about a lack of data and market transparency compared to the pre-MiFID times, where in fact in London all transactions were reported to a central point also able to surveil and discipline the market, i.e., the Exchange. Since MiFID, and even with the

MIFID II adjustments, the transparency of the market has never been as good as when all transactions between members of the Exchange were reported to the exchange for publication.

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

A strong use case and mandatory consumption would be necessary for the EU to launch a tender to appoint a single commercial CTP. Based on interactions with clients and buy-side firms in particular, we understand that an end-of-day post-trade consolidated tape of record providing high-quality data would best suit the needs of market users. Such a tape would allow the fostering of transparency by allowing the control of executions, and thereby identify trading mechanisms that offer best execution on a consistent basis.

Moreover, an end-of-day tape would allow the consolidation of transaction data concluded at the same time - data that is currently published at different times. The differences in publication time are due to the fact that the requirement to publish as close to real-time as technically possible is not applied consistently. The various execution mechanisms do not transmit transaction data for publication with the same speed and the various publication mechanisms do not publish such information with the same speed either. Exchanges for instance, do not have to transmit to a third party and publish transaction data immediately, whereas this is not the case with SIs which publish through APAs with different standards. An end-of-day tape would move towards solving this important issue, cleansing and therefore ensuring high-quality data irrespective of the significant differences between the various publication and execution mechanisms.

In any instance, it is absolutely key that the CT envisaged by the regulators and policy makers provide for a compelling use case. If this is not so, the CT will be artificial and will increase costs for the industry, especially if consumption is mandated.

Q17: 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.

As explained in the reply to question 16, the notion of real-time publication for post-trade data is not consistent across publication mechanisms. It is available from trading venues, but not necessarily from other publication mechanisms, or at least not with the same speed. But the main issue remains that data for SIs and OTC transactions are of poor quality and lack consistency. It is not because of the cost of data that only part of the transactions are covered, it is because of the lack of quality at source of SIs and OTC transaction data. APAs cannot remedy the lack of quality of data transmitted by investment firms. This is why, as a precondition to any 100% tape, improvement of the quality and consistency of data has to be the priority. This should include the obligation for all trading mechanisms to apply the MMT (Market Model Typology) already applied by regulated markets and MTFs. This would mean that regulators would have to enforce such an obligation strictly.

With respect to quality and consistency of transaction data, we would like to note that on-exchange trade reporting has reduced significantly with the introduction of APAs and the MIFID II framework. This has meant that the data is not currently consolidated as was previously the case.

Q18: 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.

Nasdaq agrees that trading venue post-trade data is made available in a timely manner in line with the requirements set out in MiFID II/MiFIR and in the level 2 provisions. This is not necessarily the case for transaction data emanating from SIs and OTC, which creates issues for consolidating and having a full view of the entire market.

Q19: 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?

The main problem is the lack of application of regulatory requirements by investment firms, including late reporting of transactions. This is hugely detrimental to investors. To carry out their mission of protecting investors, regulators should strictly enforce the transparency requirements and impose adequate sanctions. APAs cannot correct erroneous reporting done at source by investment firms. The different data standards used by trading venues is not an issue however. This is proven by the fact that data vendors currently consolidate trading venues and provide high-quality services. A harmonization of such standards would be very costly and would deter innovation by imposing a one-size-fits-all solution –which would be detrimental to the competitiveness of European financial markets.

Q20: 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?

The lack of data quality in transaction reports of SIs and OTC transactions is the main problem preventing consolidation of data. It is where ESMA needs to focus their efforts. National regulators need to strictly enforce the transparency requirements of investment firms.

Q21: What are the risks of not having a CTP and the benefits of having one?

For us, the main issue to be addressed is the tape itself before looking at the CTP. Only if there is a useful tape can there be a CTP. If a compelling use case for a CT can be identified, such as an end of day post-trade tape of record allowing for control of execution, the CT can be beneficial to the industry and Nasdaq would support such a project. If, on the contrary, the use case is artificial and consumption of the CT is mandatory to ensure that the operator generates revenues, this will be a cost without benefit to the industry and should not be pursued. Another aspect is the cost that would result in a badly calibrated CT, for instance a CT that would consume technology aimed at real-time, but would not deliver on the promise of real-time due to the high number of data sources to be consolidated, which creates unavoidable latency. It is better not to have a CT than to impose an inefficient and useless one.

Q22: 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.

As data quality is the main issue preventing consolidation from happening today, Nasdaq believes that data quality should be obtained by strict enforcement of regulatory standards on the part of the regulators and subject to sanctions in case of non-compliance. A mere industry-led initiative will not achieve the required level of quality swiftly, and more importantly would not ensure the necessary protection of investors, which regulators should already be actively defending. ESMA guidance would also not be enough given the seriousness of the issue. As explained in reply to question 19, we do not believe that a uniform standard should be imposed.

Q23: 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?

No further comment.

Q24: Do you agree that the mandatory contribution from trading venues and APAs to a CTP would favour the establishment of CT?

Mandatory contribution would probably help the establishment of a CT. Nonetheless, it is important to ensure that data sources are fairly remunerated for the data they contribute to the CT. Otherwise, mandatory contribution will create a disincentive to invest in the production of high-quality data, undermining lit price forming venues, and favouring a dealer market which would run counter to the CMU initiative and the financing of the economy through public markets.

Q25: 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.

We do not have a strong view on the choice between (i) and (ii), which appear to be complementary rather than alternatives. What is important for us is that among all alternatives, data sources are fairly remunerated for the data they contribute to the CT. Otherwise, there will be a disincentive to invest in the production of high-quality data by lit price forming venues to the detriment of investors and company financing.

Q26: 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.

The mandatory consumption would surely favour the establishment of a CT but, once again, only if the use case of the CT is compelling. If the use case is artificial and mandatory consumption is imposed, the CT will only add costs for the industry and not provide benefits. Mandatory consumption could also lead to inefficiencies for firms that have business needs for a complete European CT, which raises the issue of uneven allocation of costs for the CT to industry participants.

Q27: Would mandatory consumption impact other rules in MiFID II and if yes, how?

The main impact of mandatory consumption is cost. Depending on the use case, this could increase market data costs for user firms without benefit. This would make European markets less attractive and competitive, contrary to the aims of both MiFID II and the Capital Markets Union initiative.

Q28: 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.

Given that consolidated data of trading venues is already available, the CT should indeed be comprehensive and cover all execution mechanisms. This is important in terms of covering both trading on venues as well as SI and OTC trades, particularly given the growth of trading by SIs since the introduction of MiFID II. Having a complete 100% view of the market – including SIs and OTC – would be critical to ensuring that investors can assess execution quality in a comprehensive manner. It would be irrelevant to establish a CT with limited coverage where SIs and OTCs are exempt from contributing as this would perpetuate current data quality and consistency issues and in turn lead to the underlying rationale for a tape being deprived of practical significance. Some market participants are already trying to avoid the tape by building in a distinction between addressable and non-addressable liquidity in the forthcoming arrangements. All transactions should be on the tape with the correct flagging; this is the only way to achieve real transparency to the benefit of investors and companies. Distinctions on addressable and non-addressable liquidity will create a loophole reducing transparency and policy makers should not allow for that to happen.

Q29: 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.

Nasdaq does not agree with the ESMA preferred model of a real-time CT. An end of day post-trade tape of record is what makes the most sense. It would, in particular, provide information necessary to check on executions. A real time tape would be very costly without providing actual benefits given latency issues in consolidating hundreds of data sources. It would mean cost without benefits, like the requirements on disaggregation and we would like to avoid a repeat of that undesirable outcome.

Q30: Are there any measures (either technical or regulatory) that can be taken in order to mitigate the latency impacts?

Even with the best technology, the aggregation of several hundred data sources will always create latency. It is an illusion to believe that technology will solve the issue as we sometimes hear in uninformed statements. The data centres of the different data sources are for the most part in different locations across Europe, and the data users have their data centres in different locations again. This means that not only will the aggregation process itself create significant latency, data users will also experience further latency getting the data back to their own data centre.

Q31: 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?

Yes, we believe that there should only be one CTP, so there is a unique reference point.

Q32: Should the contract duration of an appointed CTP be limited? If yes, to how many years?

Yes, there should be a possibility to change the CTP. It should likely be between 3 to 5 years. Changing a CT is very cumbersome and would require ample lead time.

Q33: 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?

It is not possible to provide a figure at this stage; the price will depend on the use case(s) of the tape and the number of users.

Q34: Would you agree with the above-mentioned model for the CT to charge for the provision of consolidated data and redistribute part of the revenues to contributing entities? If not please explain.

What is key is to ensure that data sources are fairly remunerated for the data they contribute to the CT. Otherwise, mandatory contribution will act as a disincentive to invest in the production of high-quality data, undermining lit price forming venues, favouring a dealer market which will run counter to the CMU initiative and the financing of the economy through public markets.

Q35: 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?

It is difficult to reply to this question, given that it will depend on the terms under which the UK will leave the EU, i.e. whether there is a deal or not. In case of a no deal scenario, we expect that the EU CT can only require consolidation of EU 27 transaction data, which will be of limited use. Moreover, it will probably be very difficult to ensure consistency of EU and UK data over time, and therefore consolidation between EU27 and UK data will be challenging, even if this would be desired by the industry. The main issue we foresee is there not being a level playing field. If the EU 27 trading venues and APAs are obligated to contribute to a CT and UK trading venues and APAs are not, it will create an unlevel playing field to the detriment of EU 27 trading venues and APAs, as the former will not have restrictions on the selling of their data but EU27 counterparts will.

Q36: In your view, how would an EU27 CT impact the level playing field between the EU27 and the UK? Please explain.

As indicated in the reply to question 35 above, if the EU 27 trading venues and APAs are obligated to contribute to a CT and UK trading venues and APAs are not, it will create an unlevel playing field to the detriment of EU 27 trading venues and APAs, as the former will not have restrictions on the selling of their data whereas EU27 counterparts will.

Other:

On page 35 of the consultation document, we note that ESMA attributes only 1% market share of the European market to Nasdaq. This reference is incorrect.

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