WORLD FEDERATION OF EXCHANGES

Mr Steven Maijoor
Chair
ESMA
103 rue de Grenelle
75007 Paris
France

6 September 2019

Dear Mr Maijoor,

Re: Market Data and Consolidated Tape

We write to you with regards to the current ESMA consultation on market data pricing and the Consolidated Tape and warmly welcome the opportunity to comment.

The World Federation of Exchanges (WFE) is the global trade association for regulated exchanges and clearinghouses. We seek outcomes that support market transparency, consumer confidence and economic growth. We represent over 250 market infrastructures, spread across the Asia-Pacific region (~37%), EMEA (~43%) and the Americas (~21%). The nine exchange groups we represent with a presence in the EU operate over 40 cash equities trading venues, which accounted for 76% of average daily turnover in the region in 2018.[1]

With extensive experience in developing and enforcing high standards of conduct, WFE members support an orderly, secure, stable, fair and transparent environment for investors and for companies that raise capital within the EU and globally. Many of our members support not only their local economies but also compete for order flow from third country market participants.

While many others in the EU exchange industry will be responding to your consultation directly, we wish to add our perspective to complement these representations: viewing ESMA's proposals in the global context, we are concerned that they may give rise to a loss of competitiveness of EU stock markets. The EU is a leader in global financial regulatory policy, and we recognise not only the direct effects that EU action will have for our members active in this jurisdiction, but also the potential knock-on effects for other jurisdictions and debates under the aegis of global standard-setters. In this letter, we make the following points:

- Stock exchanges are characterised by non-discriminatory access and high standards of oversight, transparency, governance and disclosure.
- Market data is a joint product with trade execution, resulting from the overall activities of an exchange.
- The value of market data ought to be seen through the prism of the value it represents to those professionals and institutions who make commercial use of it.
- Price-setting by the official sector is an extreme policy tool that can only be justified in extraordinary circumstances characterised by a lack of competition or market failure which is not addressable by other means. EU authorities demonstrably have the tools necessary to consider and enforce RCB provisions of MiFID II. There is adequate competition and no evidence of market failure within the EU.
- The buy-side may be able to benefit from a consolidated tape of record which allows such institutions to easily examine the execution quality with a comprehensive overview of on- and off-venue liquidity. Such a consolidated tape in the EU should increase transparency, not merely reproduce what is already provided by data vendors.
- Exchanges must retain their ability to commercialise their data. To do otherwise would be draconian compared to other major markets and severely limit the ability of the EU exchanges and trading venues to innovate and compete on global markets.

[1] WFE calculations based on Fidessa data.

A global perspective on transparent markets

The perspective of the WFE is informed by the 65 jurisdictions in which our members operate across the world. While stock markets are fostering transparency and funding of economies, we observe a declining number of IPOs and listed companies across many major jurisdictions including France, Germany, the UK and US.[2] At the same time, emerging markets are enthusiastic about the opportunities stock exchanges offer in terms of capital formation, and we support these jurisdictions and market infrastructures in their efforts to bring greater amounts of capital-raising and liquidity to their markets.[3] Support for stock market financing is not limited to emerging markets; in 2012, the Obama Administration signed into law the JOBS Act, with an aim to "increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies."[4]

The ambition for greater levels of stock market financing is therefore evident across the globe; indeed, it has been well-articulated in the EU's vision for Capital Market Union. However, we are concerned that the proposals on market data pricing and the consolidated tape will harm, rather than support, these policy intentions. At a time with other jurisdictions are taking active steps to support stock market financing, the EU risks moving in the opposite direction.

The WFE is engaged with global and local discussions concerning market structure and business issues relevant to exchange groups across the globe, including the debates concerning the pricing and the provision of stock market data. In key respects, equity market structure is heterogeneous across jurisdictions and regions. These differences have arisen from the different economic structures, historical conditions, regulatory philosophies and business needs. As such, the European market structure is unique; we believe the policy framework for market data and consolidated tape should be reflective of this and tailored to European needs.

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The role of the exchange

Stock exchanges play a crucial role in serving European businesses (at the EU level and in individual Member States and regions), enabling enterprises to fund their growth, delivering price formation and risk transfer and ensuring the integrity of capital markets. In the first two quarters of 2019, €50.1 billion was raised on EU equity markets (€8.9 billion of that through IPOs),[5] at a time when credit terms and conditions for new loans to enterprises saw continuous tightening.[6] We are supportive of the ambition of the Capital Markets Union to deliver a healthier balance between capital markets funding and bank lending.

We believe it to be particularly important for stock exchanges to play their role at the centre of Capital Markets Union. Stock exchanges are characterised by non-discriminatory access and high standards of oversight, transparency, governance and disclosure. Intrinsic in the functioning of the stock exchange are their dynamic execution models which result in authoritative price formation and efficient liquidity pooling. The transparency offered by stock exchanges helps investors to execute their commercial strategies because of the quality and reliability of stock exchanges processes. Moreover, the liquidity that exchanges deliver make investment safer for investors and funding more economical for businesses.[7]

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[2] William Wright, What are stock exchanges and why should we care?, New Financial, June 2019.

[3] See: Investing in Emerging and Frontier Markets – An Investor Viewpoint, WFE and EBRD, January 2019; What attracts international investors to emerging markets?, WFE, December 2018; and, Enhancing Liquidity in Emerging Market Exchanges, WFE and Oliver Wyman, October 2016.

[4] Government Publishing Office, Public Law 112–106, April 2012.

[5] WFE calculation based on WFE and FESE data. The balance of €41bn represents secondary offerings.

[6] ECB, The euro area bank lending survey, July 2019.

[7] Small- and medium-sized enterprises and SME Exchanges, WFE and Milken Institute, July 2017.

Beyond the raising of capital and price formation, exchanges' commercial activities deliver positive externalities in terms of the public trust in markets' integrity, bolstered by the corporate governance and disclosure requirements incumbent uniquely on publicly listed firms.[8]

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The nature of market data

Exchange market data is a joint product with trade execution on exchange, resulting from the overall activities exchanges undertake to create a reliable, liquid and fair environment for their customers. Activities including listing, trading, price formation, liquidity incentivization and investments in a secure trading environment are means to enhance the quality and reliability of the stock exchange. Without the care and attention exchanges pay to these and other aspects of their business, exchange market data as we know it today would either not exist or not have the value it does to those who consume it. Exchanges are differentiated from other trading platforms in that they undertake this full value chain of activities, from primary markets listing to trade surveillance to investing in the incentives programmes that make the liquidity of their markets unparalleled. It is for these reasons that their market data is the most sought after.

Furthermore, the data created by exchanges is different to data on other sorts of platforms, as the Commission has described:

> *"[on a trading venue] the user does not play a central role in the creation of value for the entity making available a digital interface. Instead, the value lies with the capacity of such an entity to bring together buyers and sellers of financial products under specific and distinctive conditions which would not occur otherwise…"*[9]

The value of market data thus ought to be seen through the prism of the value it represents to those professionals and institutions who make commercial use of it. They are not obligated to consume this data but do so because of its quality, reliability and the commercial returns it can generate. Exchange data is broadly available at non-discriminatory terms, complies with regulation and reflects the most accurate pricing signals available. In addition, exchanges offer a variety of different market data products that users may choose to purchase, based on the value of a particular product to the user's particular business model.

Intermediaries pay for market data because it is valuable to the success of their trading strategies. In 2018, the top five banking groups trading on EU equity markets[10] (Goldman Sachs, UBS, JP Morgan, Bank of America Merrill Lynch and Morgan Stanley) reported revenues of €5.7 billion from their EMEA equity trading businesses;[11] this contrasts with market data revenues of €245 million from the major EU exchanges.[12] Rival trading venues also use exchange market data in order to compete with exchanges (without incurring many of the costs associated with running an exchange). For example, these venues use exchange market data to peg their execution prices to exchange prices, saving them from investing in price formation themselves.

At the same time, long-term retail investors and other interested stakeholders are able to access the market data, which is delivered by stock exchanges, with a 15-minute delay for free.

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[8] Market infrastructures and market integrity: A post-crisis journey and a vision for the future, WFE and Oliver Wyman, April 2018.
[9] European Commission, Proposal for a Council Directive on the Common System of a Digital Services Tax on Revenues Resulting from the Provision of Certain Digital Services, March 2018
[10] Tim Cave, Digging for Gold: Insights from MiFID II's RTS 28 Equity Reports, TabbFORUM, April 2019.
[11] WFE revenue calculations based on annual reports.
[12] Oxera, The design of equity trading markets in Europe, March 2019.

The policy framework – market data pricing

The EU put in place a comprehensive framework to govern the pricing of market data in MiFID II with a provision that data be sold on a 'reasonable commercial basis' (RCB). We regard this policy as having been successful and note that for most EU stock exchanges fee increases for market data have been small.[13] Meanwhile, EU stock exchanges have improved data content (e.g. introducing trade flags and enhanced timestamp granularity), lowered data dissemination latency and computer systems synchronised against an atomic clock.[14] Exchanges have accordingly substantially improved the quality and thus the value of their data for the investment community; these improvements do not come for free.

In addition to the RCB provisions, price restraint in the market for market data may be accounted for by how successive MiFID packages have introduced substantial competition into the market for equities trading. Less than 40% of equities trading takes place on the primary exchanges in each EU market.[15] Indeed, 51.8% of trading in equities in the EU takes place off regulated markets entirely (with 26.0% off-book, 22.1% through SIs and 3.7% in dark pools)[16]– though of course such trading does not result in the same valuable price formation. This situation has arisen despite the intentions of MiFID II to shift more activity onto lit markets and price forming venues.

We recognise that the consumers of market data—multinational banking groups and high-frequency traders in large part—would prefer regulatory price controls; however, the aforementioned dynamics make clear that there is no market failure. Price-setting by the official sector is an extreme policy tool that can only be justified in extraordinary circumstances characterised by a lack of competition which is not addressable by other means. EU national competent authorities demonstrably have the tools necessary to consider and enforce RCB provisions of MiFID II; we understand from our members that numerous data requests have been made to this end. If ESMA has concerns about the rigour of national implementation of these provisions, it has the tools necessary to address investigate and act. Indeed, we note that Level 3 guidance on RCB is contained in the ESMA Supervisory Convergence Work Programme for 2019.[17] Furthermore, DG-COMP has powers to examine these markets and we understand from press reports it is doing so. There is adequate competition and no evidence of market failure within the EU.

In light of all these powers, it strikes us as precipitous to introduce yet more measures – measures that fundamentally change the economics of the EU equity markets, giving rise to unknown ramifications for the business models of exchange groups and the market structure in general. Furthermore, as ESMA has noted in the consultation paper, the proposed withdrawal of the UK from the EU raises fundamental questions about the consequences of such actions in the context of an unknown resultant market structure and bilateral regulatory framework.

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[13] Ibid.

[14] It should also be noted that significant expense, particularly for smaller exchanges, has also gone into MiFIR provisions related to market data product disaggregation.

[15] Oxera, The design of equity trading markets in Europe, March 2019.

[16] WFE calculations based on Fidessa data.

[17] ESMA, Supervisory Convergence Work Programme, February 2019.

The policy framework – consolidated tape

In common with other jurisdictions, the EU provides a regulatory regime for data reporting service providers. This includes Approved Publication Arrangements (APAs) alongside Consolidated Tape Providers (CTPs)—though it is notable that the market data vendors (including terminal services) through which a large proportion of professional investors access market data are outside the regulatory perimeter. In some other jurisdictions, the consolidated tape has arisen because regulatory mandates demand that it be purchased by market participants. In the EU, market data vendors which aggregate data from a variety of venues serve the needs of many professional investors.

If a business case existed to develop a CTP (as provided for in legislation) in the EU, it would have emerged from an existing market data vendor or even a new entrant. However, it has not. We attribute this to the lack of a regulatory use case and poor data quality from non-exchange venues. A consolidated tape has a clearly defined utility in certain other jurisdictions, with regulatory obligations related to the underlying market structure (e.g. in the US, Reg NMS and best execution) defined in such a way, that the data contained in the tape has a role in meeting users' compliance obligation. In contrast, in the EU best execution rules, for example, take in factors beyond price--just one of many differences. These rules are the result of the specificities of EU market structure, which differs from the US in having a non-harmonised settlement process that means an attractive price for a financial instrument in a certain jurisdiction may become uneconomical as a trade if many intermediaries are necessary to conclude and settle it. Commercial incentives are furthermore in place for US exchanges to provide their data to the consolidator.

We nevertheless understand the policy objective of creating an entirely consolidated view of the fragmented trading environment engendered by MiFID II/MiFIR. Developing an integrated view of liquidity on EU markets, beyond what is provided by market data vendors, could conceivably have a use for market participants while serving a public policy objective. The means of achieving this ought to allow for stock exchanges to further compete with each other, alongside alternative venues, globally and locally, in a fair setting. Such a CTP in the EU should increase transparency rather than merely reproduce what is already provided by data vendors.

Some market data consumers have also endorsed the emergence of a consolidated tape, though sometimes for different reasons than EU authorities. The multinational banking groups and high-frequency traders involved in the debate see a CTP as a backdoor to realising their efforts to have more regulatory intervention in the setting of market data prices. We do not believe that shifting revenues and profits from exchanges to other intermediaries is a sound policy rationale for instituting a consolidated tape, particularly as such action would undermine stock exchanges' investment in delivering on their important and unique role. Rather a CTP should seek to address a legitimate public policy objective (and, in doing so, satisfy a cost/benefit analysis).

On the other hand, the buy-side may be able to benefit from a consolidated tape of record

which provides for an integrated view of EU markets and allows buy-side institutions to easily examine the execution quality with a comprehensive overview of on- and off-venue liquidity. This could furthermore offer an opportunity for investors to evaluate their positions and portfolios. We believe such a tape could be delivered in an accessible manner, without risking the competitiveness of EU exchanges. As alluded to, if a consolidated tape is mandated to come into effect in the EU, it ought to preserve a level-playing field by mandating the inclusion of data, regardless of the type of venue on which a trade takes place. Indeed, it is such off-exchange information that market participants would most like to see as information about transactions executed on exchanges can already be obtained easily through data vendors. Improvements to transparency will only be achieved by ensuring that quality data from all trading mechanisms is available (and that there will be consolidators for such data).

A real-time consolidated tape would be a far more technically complicated and expensive endeavour, and of doubtful use, as ESMA has acknowledged, saying "market data users in need of real-time data would continue to rely on the real-time data provided directly via trading venues and APAs." Therefore, a consolidated real-time tape would only generate sufficient revenue if it were mandated for purchase by one means or another. If pricing

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policies are deemed necessary for a real time post-trade tape which is mandated for purchase, they should take account not only of the prevailing economics of the exchanges' business (akin to the Canadian pass-through model), but also the additional costs of implementing the tape. Prices for market data are and should remain subject to market forces, allowing for competitive differentiation while being set by exchanges in a transparent manner. Care should be taken to ensure that smaller stock exchanges are appropriately compensated given the economics of implementing technology change and of running these markets, which are vital to local economies and the Capital Markets Union's success.

Above all, exchanges should retain their ability to commercialise their data. To do otherwise would be draconian compared to other major markets and severely limit the ability of the EU stock exchanges to innovate and compete on global markets.

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Next steps

The WFE welcomes the opportunity to contribute to the EU discussion alongside the global debate. Should we be able to furnish you with further information about our EU members' perspectives, or the facts on the ground in other jurisdictions, we would welcome the opportunity to do so. If a roundtable bringing together an interested cohort of our membership would be regarded as helpful in your deliberations, we would be pleased to organise this at a time and place convenient to you.

Best regards

Nandini Sukumar

Nandini Sukumar

Chief Executive Officer