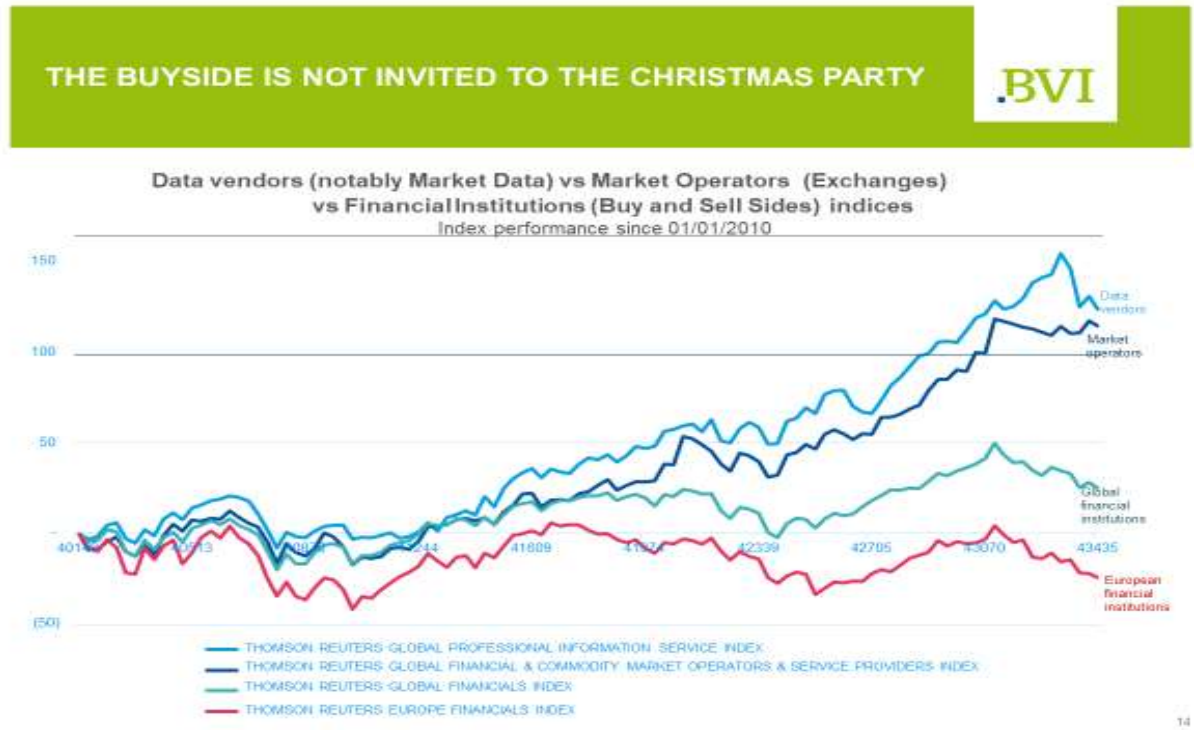
Frankfurt am Main,
6 January 2021

BVI comments to the FCA Call For Input on Accessing and Using Wholesale Data

BVI[1] welcomes the opportunity to present its views on the FCA Call for Input on Accessing and Using Wholesale Data. We strongly support the FCA initiative and welcome future regulatory action to monitor and control the increase of cost in financial data (including market-, benchmark- and rating data). Backed by supervisory laws and regulations monopolies and dominant players in this space (for instance, regulated markets ("exchanges"), benchmark (index) administrators, credit rating agencies) jeopardize the functioning of the financial services industry by adding layer upon layer of data licenses on users, especially in the Asset Management industry. We argue for changes to applicable supervisory laws that are needed to:

- Close gaps between existing legislations;
- achieve a coherent regulation of financial market data cost in MiFID, Benchmarks (BMR) and Credit Ratings (CRA) regulations; and
- impose cost and cost transparency rules across the different data providers.

The Thomson Reuters indices for data vendors and exchanges show a much better performance than financial services both globally and in Europe which results from the data providers grip on the market.



[1]BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 114 members manage assets more than 3.6 trillion euros for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

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We would like to make the following specific comments:

1. Trading Data

Q3.1: What type of trading data do you use/obtain directly from trading venues and APAs, and how do you use trading data?

Generally, our members use real time prices in the trading- and portfolio management unit to secure good trading outcomes on behalf of the investment funds (UCITS/AIFs). The main type of trading data used during order execution (on a pre- and intra-trade basis) is real-time level 1 and level 2 exchange data. This provides the Buy-Side trading desks and the portfolio manager with real-time information on current market prices and, in the case of equities, the number of shares available at all levels of the central limit order book.

Furthermore, the Buy-Side trading desks and the portfolio management unit also use a broader set of market data feeds which include real-time news, economic calendar events, sell-side ratings changes, index data, and so on. Such additional usage of (enhanced) data is typically consumed via third-party data vendors (e.g. Bloomberg or Refinitiv) which aggregate multiple data feeds into a single location.

Moreover, historical trading data is used within analytics and research teams on a post-trade basis to perform transaction cost analysis (TCA) on the executed trades to improve the performance in the future, as well as other forms of analysis around market liquidity, volatility, and any changes in market dynamics which are relevant to the trading desk.

For our members, it is impossible to carry out trading without access to real time data on every major exchange for each asset class they are trading in each time zone. Consequently, the exchanges are fully aware of this and charge significant amounts for their live data streams and their responding data licenses as they are in a monopoly position. This applies especially in case of so-called Non-Display real time data feeds which are targeted at consumption by computers, e.g. in so-called algo-trading situations. Especially realtime data feeds are - because of the speed and amount of data involved - not really made for human consumption (Display License).

Investment fund management companies are obliged to use market data in order to meet their regulatory obligations, e.g. best execution, Transaction Cost Analysis (TCA), performance reporting among many others. These regulatory obligations reinforce the monopoly of market data sources, especially the primary exchanges (regulated markets, RM) which because of their listing capability solely have the capability to set trading prices for the listed stock. Other trading venues, such as MTFs, do not have the capability to list stock and therefore are often limited to trading at the reference price, which is derived from the RM price. There is no competition between RMs and other trading venues in terms of market data distribution. Furthermore, market data distributors (MDD, data vendors, such as Bloomberg and Refinitiv) which consolidate the dozens (in Germany) or even hundreds (globally) of trading venue market data (price) services into one manageable feed also charge excessive prices and data licenses which by far exceed the amounts paid to RMs.

Q3.2: Are you content with the price, quality, provision, coverage, speed and depth of trading data (or other data sold by trading venues or APAs)? If you are not satisfied with any of these elements, please explain why not and the impact this has on your business.

Our members are unsatisfied with the high price and data license cost of market data. The prices and consistently above-inflation fee increases are difficult to justify as they do not reflect the true cost of supplying that data.

In a practical sense, this adds costs to our members' businesses both directly via the fee increases themselves, as well as indirectly in the form of increasingly complex monitoring of market data. Trading data fees are increased aggressively by the monopolistic exchanges and market data (distributor) vendors because they are aware that there is no other source for the data, and market participants are required to consume the data to satisfy best execution and reporting requirements. Real-time data is essential for the Buy-Side trading desks and the portfolio manager to be able to verify the prevailing fair market price of a security at the point of execution, and therefore ensure best execution is being achieved on behalf of the regulated investment funds (UCITS/AIF).

Delayed market data is also essential for the purposes listed above so, in an economic sense, the demand for market data is almost perfectly price inelastic. In addition, real-time exchange data can only be acquired directly from the exchanges themselves, which means the market for this data takes the form of a natural monopoly. For the avoidance of any doubt, the root cause of this issue is not with the best execution regulations themselves, but rather with the pricing policies of trading data providers who have an understanding that most market participants have almost no commercial choice over whether to consume this data. We witness considerable increase in non-display data use and correspondingly in price for real-time data feeds since the introduction of MiFID II. As an example, please see the attached overview on selected price increases at Deutsche Börse (*source: European IPUG*):

Trading Venue	Category of Fee	Name of Product (Jul17 -> Jul19)	Real time / Delayed	Pre MIFID II July 2017 fee (per month, EUR)	Post MIFID II July 2019 fee (per month, EUR)	Change (EUR)	% Change	EU CPI Jul17->Jul19
Deutsche Boerse	Distribution	Xetra Ultra	Real time	3500,64	3675	174	5%	1,60%
Deutsche Boerse	Distribution	Stoxx Indices	Real time	686,4	1100	414	60%	1,60%
Deutsche Boerse	Distribution	Eurex Ultra	Real time	1200	1575	375	31%	1,60%
Deutsche Boerse	Non Display	Xetra Ultra Internal -> Xetra Ultra Tier 1 (inc Tier 2, Tier 3, Tier 4)	Real time	1750,32	5350	3600	206%	1,60%
Deutsche Boerse	Non Display	Stoxx Indices Internal -> Stoxx Indices Tier 1 (inc Tier 2, Tier 3, Tier 4)	Real time	343,2	1025	682	199%	1,60%
Deutsche Boerse	Non Display	Eurex Ultra Internal -> Eurex Ultra Tier 1 (inc Tier 2, Tier 3, Tier 4)	Real time	520	3210	2690	517%	1,60%

An example of the continuous license expansion is that since the beginning of the Covid19 crisis, Bloomberg is considering to charge additional fees for separate location licenses as staff is using the market data at home instead of in the offices. Such an attempt to monetise the pandemic in such a fashion should be extremely concerning for the FCA.

As a consequence, we support increased regulatory oversight and greater competition among data providers and exchanges as this would most likely constrain any annual fee increases and ensure those increases more accurately reflect the costs borne when supplying data to market participants.

Q3.3: Do you consider any trading venues or APAs set of trading data a 'must have' for your business purposes? If so, please explain why. For example, is it linked to a liquidity threshold in the relevant financial instrument and/or to best execution requirements considerations?

In large part, all trading data which is currently used by our members is a "must have" for business purposes.

Buy Side traders and portfolio manager have a responsibility to achieve best execution which requires not only access to real-time level 1 and level 2 exchange data, as well as access to real-time news feeds which detail market events, the economic calendar, sell-side ratings changes, and so on. Access to these sources of data allows traders to first evaluate the impact of any market-moving news in real-time, and then determine how to respond to achieve best execution.

Because of best execution regulation, Buy-Side traders should have access to data feeds from all from all exchanges where a specific security can be traded. If this is not the case, traders would effectively be transacting "blind" with no knowledge of whether the prices received via their trading systems were in-line with best execution requirements.

For example, when trading a UK equity, a data feed of real-time level 1 and level 2 data from the London Stock Exchange is absolutely essential to ensure best execution is being achieved. However, since UK equities can also be traded on other venues such as MTFs, this means firms also require a real-time data feed from those venues as well. As explained above, however, the RM prices are of special importance for trading as there is no competition between RMs and other trading venues in terms of primary listing trading data distribution, For a global asset manager with investments in countries around the world, they are required to consume real-time data feeds from all primary exchanges, as well as all secondary venues on which those securities can be traded.

Q3.4: For each data set you use, how have the trading fees, trading data costs and quality evolved over the last 5 years? What impact has this had on your business and your clients?

Tthe prices for market data have increased significantly since the introduction of MiFID II over the last five years, as explained above. Such significant price increases create a chilling effect for new businesses and products. It increases barriers to entry for new competitors and makes it harder for smaller Asset Managers to survive as their fixed costs increase.

Our members have witnessed a general trend of exchanges introducing additional fees or changing agreements to increase market data costs and license practise in excess of the regulated level 1 and level 2 user fees. There was even a petition a few years ago by the local brokerage community to the

European Parliament to prohibit the Portugal stock exchange to excessively raise prices to a level which seemed to put the retail brokers out of business. In London, CBOE BATS introduced a few years ago UK equities indices as an alternative to LSE FTSE (100) index family at the request of the local retail brokerage community which claimed not be able to continue to afford the very high LSE market and indices data. After price hikes on the Spanish exchange for market data used by competing MTF and SIs last year, at least one very large broker in London stopped trading these stocks.

As a final example, exchanges have defined each instance of an application displaying real-time data as a fee liable service which means a trader with access to Bloomberg, Factset, and several other real-time MDD services on the same computer will be charged separately for each feed, even though the data received in each instance is identical. Historically, exchanges charged fees only once per user, but now MISU (multi-instance single user) agreements are rare.

Similarly, market data (MDD)vendors now offer increasingly “enterprise pricing” licenses only. The vendors’ justification for this strategy is because they believe data is being freely shared between different users and departments within the firm.

Therefore, they believe the costs should be applied to all employees. Previously, firms were able to purchase market data for a certain number of users and were only charged fees based on the data consumed. However, following the move to vendors offering enterprise pricing only, firms are now effectively charged significantly more on a per user basis because the number of employees accessing the data has approximately remained constant while the cost of the data licenses has increased.

Over the previous five years, the data received from exchanges and data vendors has generally remained consistent, although there has been no improvement in the quality or informational content of the data. Due to technological developments, the unit cost of producing a standardised product (such as exchange data) normally decreases over time, and those cost savings are often passed on to the relevant market participants. Also the cost of the telecommunication channels needed to pass the data to users are in a downward trend during the same period.

Given that fact that exchange data has not changed over the past five years, but technology has enabled data to be stored and transmitted far more easily than ever before, we strongly question how exchanges and data vendors can justify such large annual fee increases.

Q3.5: How easy are trading data pricing/licensing terms to understand and comply with? What, if any, do you find to be complex or restrictive and what impact does this have on your business?

According to MIFID/MiFIR EU regulated market data providers, including trading venues, ar required to make publicly available their market data price lists as well as certain information on the cost of production of such market data. Usually, also the market data contracts with both price and license policies) are available to the public. However, the data pricing/licensing conditions are not transparent enough to the public (e.g. fund management companies) and can therefore not easily assessed or compared with other licensing terms of data vendors/exchanges.

Each and every exchange and trading venue has its own pricing and license policies with different taxonomy and terminology. There is no harmonization and the ability to compare products and services is severly hampered. Also comparing prices even within one exchange or trading venue is extremely

hampered as pricelists do not offer multiyear price comparisons. If pricelists for several years can be compared manually by members, analysis is hampered by the lack taxonomy and terminology in terms of products and services and the trend to expand (slice and dice) licensing policies even more to cover each use case with a separate license. For example, one exchange now splits the use of market data within the trading department into separate licenses for trading proper and the trading risk management function. Obviously, there is a third license for use of market data in general risk management.

Therefore, we strongly need more transparency and consistency in charging and license structure. Agreements are riddled with clauses where a discount in one area is offset by additional costs in another. For example, the supplier offers a reduced fee for the data but adds in additional overheads on distribution, reporting and usage.

Also Audits on contracts have become so aggressive and time consuming that our members have put extensive and seemingly excessive measures in place to ensure compliance and avoid any audits. Audit by trading venues is perceived by our members as a third revenue generation source besides pricing and license policies.

Fund management companies have introduced a number of measures in an effort to ensure they adhere to contractual obligations. These can take the form of dedicated market data management software, supplier framework programs, introducing rolling “spot checks” on data usage and annual training & awareness programs, which all staff must complete. Whilst these measures do not preclude the possibility of being audited, continuous engagement with exchanges/data vendors and raising awareness of our framework does reduce the likelihood.

Our members consider that they are expending an inappropriate level of resource to demonstrate compliance - to the letter - for a relatively simple supplier contract. When rolling contracts are renewed, many include ‘no audit’ clauses. The threat of such audits is used to prop up significant increases in prices.

Monitoring data within our members is challenging, but it is made more difficult by the exchanges’ ability to retroactively audit data usage over the past three to five years, with the exact time period dependent on the specific exchange. At the same time audit rights are not reciprocal and e.g. overpaid fees paid by the buyside firm may usually only clawed back for a very short time, e.g. 90 days.

Our members do not know exactly which characteristics of usage may be requested during any future data audits. Therefore, our members are required to keep very detailed logs across all applications which use trading data so they can ensure compliance with the terms of the agreement.
Some of the items monitored include how many users are accessing the data, how many individual securities and attributes are being requested each day, and whether the data is being accessed on a delayed or real-time basis. While our members have principally teams and processes in place to monitor data usage and work with data vendors, keeping logs and tracking users is complex, time-consuming, and technologically challenging.

Such excessive monitoring requirements, driven by exchanges and market data vendors, is not in the sense of the market data users (e.g. fund management companies). We strongly encourage the FCA to question, whether it is a valuable or appropriate use of resources to so minutely monitor the use of trading data. All of which is driven by data vendors behaviour so they can continue to rapidly increase their prices for the same product.

In addition to the complexity of monitoring data usage, over the past five years we have also observed an increase in the frequency of data audits requested by the exchanges and data vendors. This means our continued usage of market data incurs not only the direct cost of market data fees increasing each year, but also the indirect costs of continually assigning more resources for data monitoring purposes.

The Buy Side is engaged in a dialogue with some exchanges to institute a more permanent dialogue between the firms and the data source to insure early on detection of areas of under or over-licensing (business review) and thereby reduce the need for formal audits. However, usually exchanges include contractual requirements in their license policies which require the user to indicate all market data use cases in so-called data usage declarations (DuD) or statements of use (SoU) prior to receiving an offer.

Such DuD or SoU is very extensive in terms of requested information and a number of questions, e.g. on ETF, index, MTF or SI activities, and corresponding revenues of the user, are clearly aimed at getting information on the competition of the market data provider. Such questions would not be answered in an arms-length provider situation, and clearly show the monopolistic power of primary listing exchanges. Being part of the contract DuD/SoU are anti-competitive tools to the generation of audit revenues, especially from those buyside users which do not understand in full the price and licence policies of the exchanges.

Q3.6: Are you aware of trading venues or APAs charging different amounts to different customers for similar services? Please give specific examples and explain how these practices affect your ability to compete in the markets you operate in.

In general terms it cannot be understood why stock exchanges charge for the same Non-Display data feed different prices depending on the use case, i.e. trading as SI/MTF or producing indices. These license types are clearly basing pricing on the perceived value created by the user of the market data. This kind of pricing is not based primarily on the cost of production of market data as required by MiFID reasonable commercial basis (RCB) pricing requirements.

Competition law prevents firms from exchanging pricing information with each other on individual services. As such it is generally not possible for our members to definitively confirm that this practice is occurring. However, in discussions with our members, it has become crystal clear that there is a lack of menu pricing and data vendors very often charge on an individual use case basis. As each firm is different it is likely that there is a lack of consistency in pricing for similar data streams across the industry.

We strongly encourage the FCA to do market-based work on this issue. Using its regulatory powers to supersede competition law, it can draw a full picture of how data is being priced across not just the sell side but the whole industry.

Q3.7: Please explain when you are charged for the use of delayed data.

Many of our members have highlighted to us that the regulatory requirement to provide delayed data for free after 15 minutes is very often not being met by data sources and suppliers. Where data is provided it is often not in a machine-readable format and is therefore of little or no use.

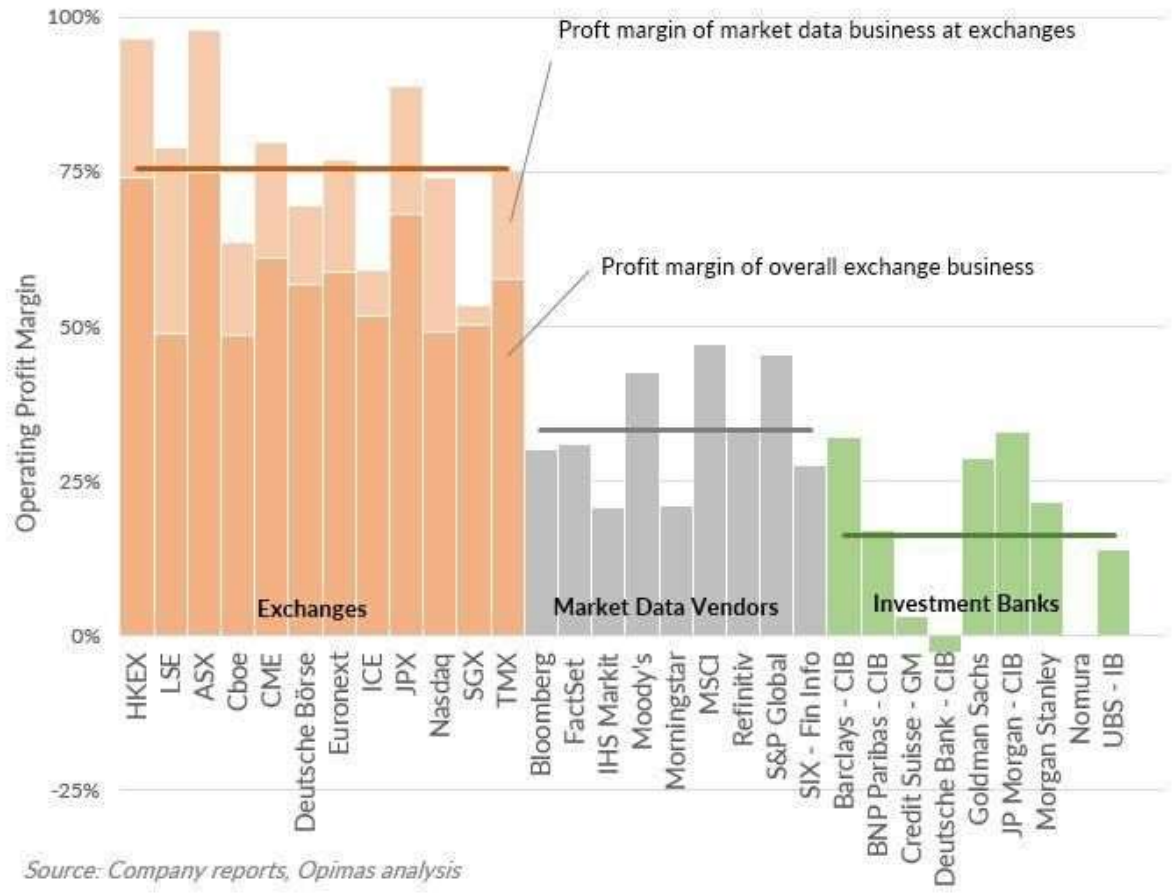
Exchanges usually charge for delayed data in the form of either end-of-day (EoD) or historical data licenses after a certain period has passed. EoD license may apply e.g.at 23:59h of the trading day. Most recently historical data licenses are also used in areas, such as derivatives, where the historical data used to be for free. The US CME introduced such licenses recently which met violent opposition in the market:

https://mondovisione.com/media-and-resources/news/edi-challenges-new-cme-fees-as-anti-competitive-and-illegal?disablemobileredirect=true

https://www.forbes.com/sites/tomgroenfeldt/2020/12/18/regulators-continue-reviews-of-market-data-pricing-little-action/?sh=3403630e3e7b

Q3.8: To what extent do you think ESMA's suggested improvements to the RCB requirement will adequately constrain trading data pricing (see 3.23)? Are there other ways to ensure trading data prices are competitive?

We do not think the Reasonable Commercial Basis (RCB) provisions in MiFID are effective. The graph below clearly shows that major listing venues / exchanges enjoy a 75% operating profit margin on market data, which is indicative of a concentrated market without competition, and certainly does not evidence cost based RCB pricing. As outlined above we would like to see the FCA take a GDPR approach to firm's data, assigning ownership of the data to the firm initiating the trade not the venue the trade is executed on. This would resolve the monopoly issues within the market for acquiring wholesale data.



Source: Company reports, Opimas analysis

Based on the outcome of ESMA's most recent consultation (December 2019), most market data users still do not believe the RCB requirements have met their intended objectives because the published transparency information is inconsistent between market data providers, and the guidelines are not enforced by the relevant national competent authorities.

In response to the recent consultation paper, ESMA acknowledged the need to act and have now suggested issuing further supervisory guidance which will standardise the publication format of how fees are calculated, contain more robust definitions of key terminology, and provide increased clarity around concepts such as per-user fees. At this time, ESMA believes it would be premature to end the transparency plus approach so will continue to monitor the behaviour of market data providers following the publication of the future supervisory guidance, but will potentially reconsider moving to a price regulation approach (such as LRIC+) if the situation does not improve.

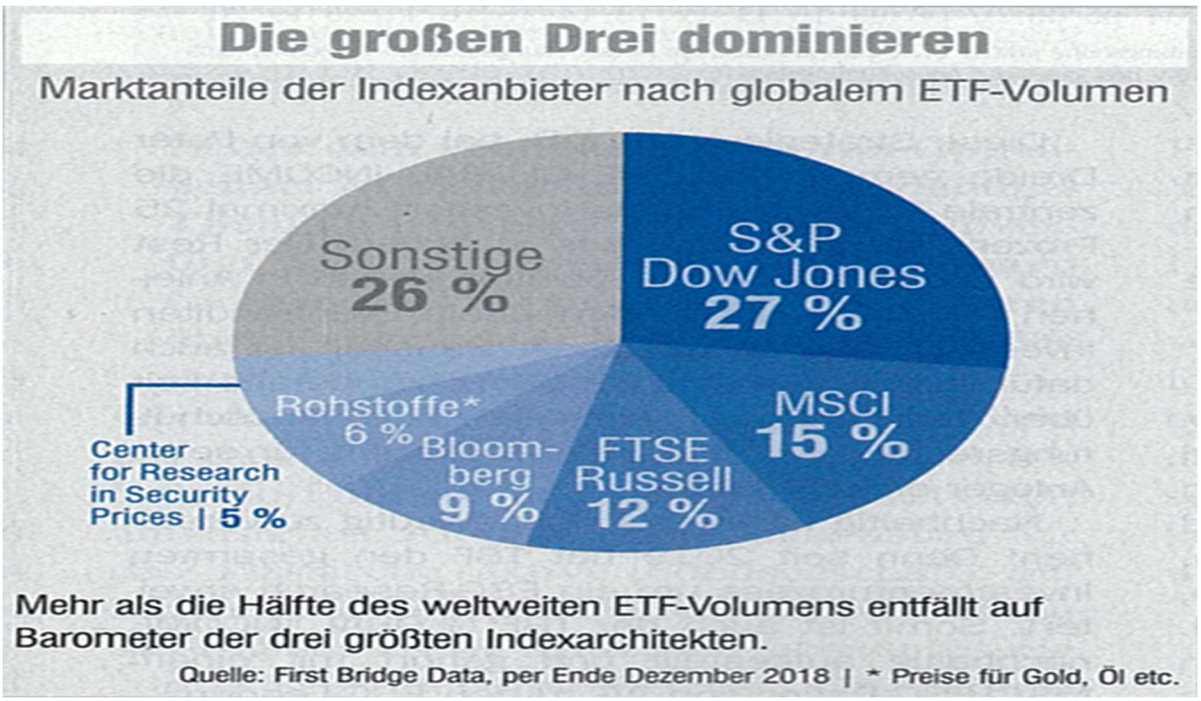
Specifically, a first look at the draft Guidelines (DGL) proposed by ESMA seems to indicate that all of those recommendations – while not solving the RCB issue in itself – go in the right direction and should be supported. Overall, the GL should increase competition, especially between primary exchanges (listing monopolies) and other trading venues (MTF, SI), and value added data service competitors such as index providers. While we would welcome increased transparency around the rationale behind market data fee increases, market data providers have previously proven too willing to introduce additional fees which are designed to obfuscate any clear comparisons between annual costs for core datasets, while also increasing the total revenue generated via the provision of market data.

2. Benchmarks

Q3.14: Which type of benchmarks do you use in your business? How many benchmarks do you use, and how many administrators have you had agreements with, over the last 5 years?

Financial benchmark data can be broadly defined as encompassing the reference/static data and flow data to perform the necessary functions in front office (e.g. research, trading), middle office (e.g. compliance, reporting) and back office (e.g. clearing, settlement, valuation, NAV calculation) within the asset management industry. Benchmark administrators under BMR and other entities may provide benchmark data (fixing, index) and their components (prices, values, composition, weightings).

The fund industry represents an important group of benchmark users, either in the case of index funds and exchange traded funds (ETFs) – where benchmarks are used as a target for index tracking funds – or in the case of the evaluation of an active manager's performance – where the fund performance is measured against a selected index or a set of indices, or to set performance fees. During the last two decades, the importance of certain benchmarks to investors is growing. It has been witnessed the growth in passive investing and investors increasingly choosing passive index-tracked instruments, investment funds and exchange-traded funds (ETFs).



Legend: The graph shows that more than half of global ETF volumes replicate S&P Dow Jones, MSCI or FTSE Russell and Bloomberg indices (end of 2018).

Investment managers and banks use both public and customized indices and benchmarks provided by benchmark providers which follow their own methodology in respect of use of real transactions, tradable prices, quotes and offered rates. Panel submissions and estimates are usually used only used if no real transaction data are available. Our members have concluded benchmark license agreements with all relevant benchmark administrators and distributor vendors.

Investment funds have not contributed to the manipulation of (systemically important) financial indices (e.g. Libor, Euribor). Fund management companies do not provide input data for the calculating of (systemically important) benchmarks. Asset managers are mainly users of benchmarks/market indices. Fund management companies do not have access or the ability to influence the process of creating (systemically important) benchmarks (BM) or financial indices provided by index providers. Asset managers are not able to manipulate these benchmarks, even if they can be used to measure the performance of an investment fund.

Q3.15: Are you content with the price and quality of the benchmarks you use? If you are not satisfied with any of these elements, please explain why not and the impact this has on your business.

Please see our response to Q3.18.

Q3.16: Do you consider any benchmarks a 'must have' for your business purposes? What factors do you consider in this assessment?

Please see our answer to Q3.14. Benchmark data is a "must have" for the asset management industry for different business purposes.

Q3.17: How have prices and quality evolved over the last 5 years across the types of benchmarks you use? What impact has this had on your use of benchmarks, on your business and your clients?

We agree with FCA's findings in the WSCR (See section 4, pp.39 - 43) and the AMMS (See section 7, pp.44 - 46) that competition is not working well in the provision of indices and benchmarks, harm is being caused by both regular above inflation price increase as well as complex licensing terms resulting in higher charges (slicing and dicing).

Over the past years our members have observed significant increase of costs related to the use of indices, especially the access to the underlying data. Over the last couple of years our members have witnessed double digit price increases directly by benchmark administrators and through the making available of the data by market data distributors (MDD). These lead to very high stock market returns for major index provider shareholders at the expense of the wider industry.

Major parts of benchmark data are originated and provided by EU regulated benchmark administrators (or affiliated group companies) such as prices, values, composition, weightings and traded data.

Benchmark data is often procured not directly from data providers but from MDDs who collect, catalogue and distribute them. One point to note is that MDDs - such as Bloomberg, Refinitiv, Rimes, or Six Financial are not regulated as financial services providers under the Benchmark Regulation (BMR).

In practice, the use of benchmark data has considerably changed and increased over the past decades largely driven by regulation and automation along the whole value chain of asset management industry. There is now more benchmark data to consume and the use of them has changed with the drive towards technical process improvement compared to the nineties when users largely consumed financial market data on screen ("display") and downloaded "locally" into individual user's applications.

However, the screen based "pair of eyes" use of data is receding due to the massive growth of data sources to process and the speed of data delivered to the fund management companies has drastically increased as it now mainly used in programmatic (Non Display Usage) processes in the IT systems throughout the value chain of asset management. Data sources, benchmark administrators and market data distributors have reacted to the growth in data usage by developing since 2006 new data strategies.

In this context our members have experienced the following trends:

- A significant increase in prices: Index providers have introduced a significant price increase for their products which are clearly above the inflation rate without any additional value for Asset Managers.
- A general increase in the workload of the administration of license agreements: Due to the growth of data usage index providers have refined their licensing models and cover now each step along the whole value chain of an Asset Manager. The data license practice ranges from internal applications support to external regulatory reporting as well as ETF production and brand licenses. Benchmark administrators also do not hesitate to charge market participants (e.g. Buy-Side) for separate "created works", "manipulated data" or "derived data" licenses based on use of trading venue, ratings or

index data to create (e.g. through mathematical or other manipulations or processes) new data points.

For example, benchmarks providers, such as FTSE-Russell, also called historically “index sponsors” today impose in excess of 50 different licenses to leverage their profits from the Buy Side community. Index providers do not have a transparent price and cost policy for the different and complex license models.

Further adding to the licenses complexity, there is no standardization of how license concepts are defined (Taxonomy). There is also an intentional purpose to increase the complexity in the diversification of the type and variety of data policies and price policies to allow for each index sponsor unique selling point (USP) and make it harder for investors to compare the cost of different index services in the index license manager (ILM) contract management tool.

Due to a lack of standardization for license concepts fund management companies do not have the possibility to compare the license models across different index providers.

- „Slicing and Dicing“ of license models: Existing licenses are (further) split along the whole value chain of an Asset Manager. Existing license agreements which were previously priced only for one Asset Manager are now often licensed several times for several companies (custodian, outsourced asset manager, investor). Licensing models have become more fragmented which means that the rights of use of data are more restrictive differentiating between the circumstances of the use of the same data. For example, multiple licensing fees may apply for the same data if used for internal analysis, client reporting and also regulatory purposes. Therefore, the increase of prices along the whole value chain in the fund industry goes on. This will also be the case for climate-related or other sustainable investments (ESG) benchmarks which the Buy-Side needs also to take into consideration with the increased focus on sustainability in asset management

- Stringent audit procedures: Audit procedures are conducted on the benchmark users to review the adoption and correct application of indices and benchmarks, but often with the aim of generating additional fee income only.

Currently, the BMR (Article 22, Recital 38) requires only the administrators of critical benchmarks, such as the major IBORs, to take adequate steps to ensure that licenses of, and information on, benchmarks are provided on a fair, reasonable, transparent and non-discriminatory basis to all users.

For the reasons outlined above, we strongly encourage the EU and UK institutions to extend the BMR rule and to take the following proposals into consideration to address the cost issue:

- Price lists: similar to MiFID, benchmark administrators should be required to publish annual price lists of all products/services allowing also for multiyear comparisons and easy identification of product /service changes.
- Cost disclosure: similar to MiFID, BMR should provide for basic pricing rules for products and services stating that prices/revenues under BMR need to have a reasonable relationship with the cost of production. Therefore, benchmark administrators need to publish in-depth cost disclosures allowing to compare the cost of (all) data products with their revenues/price development and to allow for cost-based pricing of benchmark data.

- At minimum, index data production cost based pricing rules should be envisaged for basic "raw" index data including the respective index levels, prices, constituents and weightings, similar to what is currently already required from exchanges under MiFID rules, BMR administrators proprietary value added index data and research services will continue to be the main revenue stream for the providers in addition to any index name usage license fees (ETF, index funds) going forward, and will co-exist with the envisaged cost based pricing of the basic index data offer.
- Prohibition of certain license practices: in particular, the (early) termination of data licenses by benchmark administrators in case of pricing policy or data policy changes should be prohibited until an arbitration tribunal or a regular court has adjudicated on the legality of the required changes.

Q3.18: Are benchmark administrators' pricing/licensing terms established by benchmark administrators easy to understand and comply with? What terms, if any, do you find to be overly complex or restrictive and what impact does this have on your business?

Please see our answer to question Q3.17. The cost for acquiring benchmarks is based on firms' individual use cases, there is no menu pricing. There is a general lack of transparency to acquire benchmarks. Over time there has been both excessive aggregation and division of licenses to create additional costs for firms to use the same data.

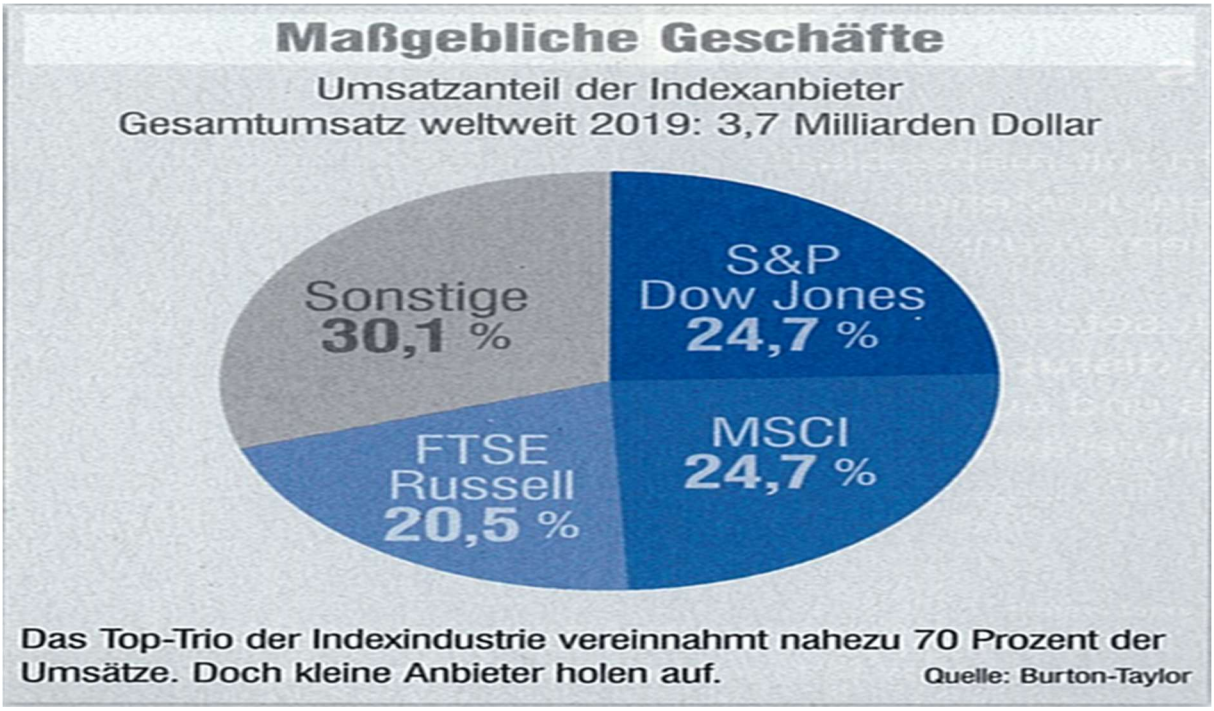
Bundling of other index products or services that are not part of the core offering is an issue our members have raised to us. Some indices are critical and irreplaceable to the business and so our members have little or no negotiating power when it comes to license renewal. For example, a few years ago, STOXX required extension of the licenses to include their global indices while most Buy Side users only had interest in the STOXX Europe indices. Especially on needed indices, there have been extensive unjustified pricing increases over the past five years without any improvement in the service provided.

Q3.19: Are you aware of benchmark administrators charging different amounts or imposing different contract terms, to different customers for similar services? Please give specific examples and explain the impact on your ability to compete in the markets you operate in.

Please see our answer to question Q3.17. The FCA can draw its own conclusion from the lack of transparency pricing for acquiring such benchmarks. There is huge asymmetric information in the market for benchmark data. Whilst data and benchmark providers have complete visibility on what everyone is paying, each individual firm is precluded by competition law and confidentiality clauses from having any information about what their peer firms are paying. As such there is no way for firms to judge whether they are paying a fair rate or whether a price hike is simply a tactic by the data provider to raise prices.

Q3.20: How easy is it to compare and switch between benchmark providers? Please provide details on the benchmarks considered when choosing and possible hurdles affecting your ability to compare, choose and switch.

Please see our answer to question Q3.17. There are a small number of established benchmark providers that have brand awareness among end users. There is an oligopoly consisting of MSCI, S&P and FTSERussell in the equity index space. FTSE Russell, Bloomberg and S&P/IHS-Markit hold the three top spots in fixed income revenues (2019) based on BT consulting figures.



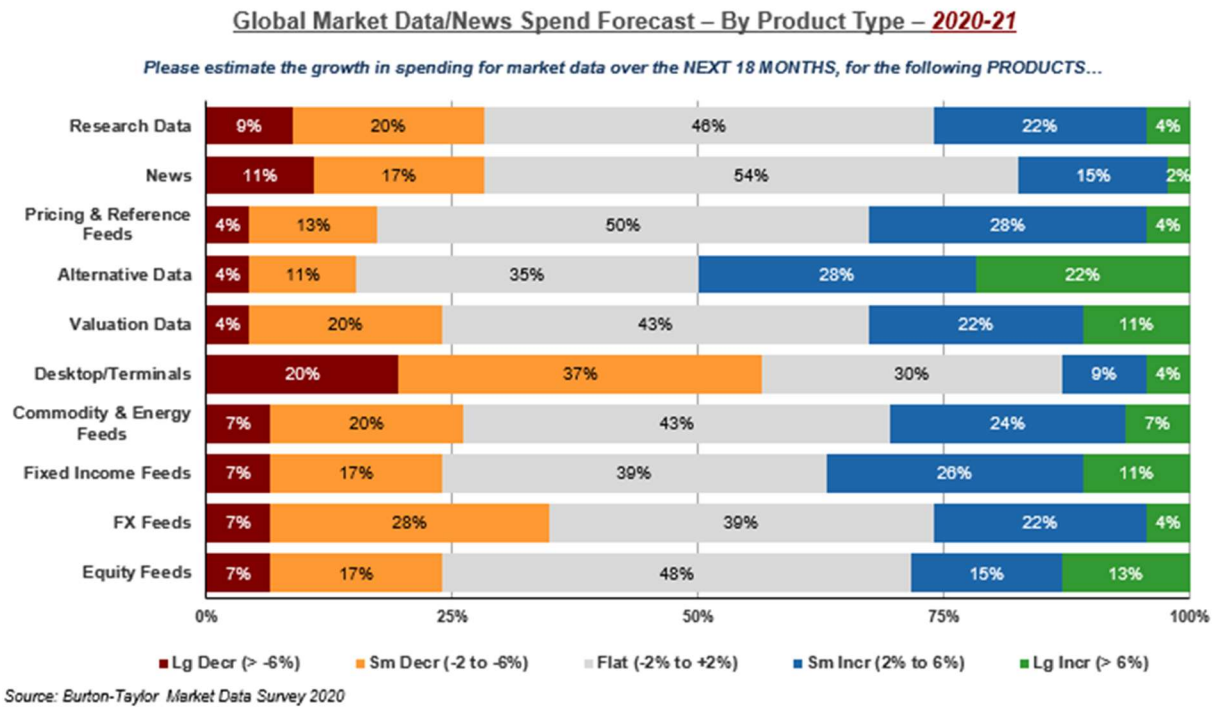
Legend: The above graph shows that the trio of S&P DowJones, MSCI and FTSE Russell accounts for nearly 70 percent of global index revenue turn-over of 3.7bn USD in 2019.

Whilst alternatives are available it is not realistically possible for our members to move away from this small number of benchmark providers and be commercially successful. This would require a large section of the industry to act in a coordinated fashion, which would be very challenging from a competition law perspective.

3. Market Data Vendor Services

Q3.28: Which market data vendor services do you use in your business and how has this evolved over the last 5 years?

A general market data vendor services spending forecast is given below:



Source: Burton-Taylor Market Data Survey 2020

Please see our comments as given above. Our members use a broad range of market data vendor services which can be classified to the data used:

- **Market data** (prices and trade data) by regulated trading venues and APAs according to MiFID/MiFIR
- **Benchmark data** (fixings, index) by benchmark administrators according to BMR
- **Credit ratings data** (ratings, derived ratings, Credit Quality Steps CQS) according to CRAR
- **Reference/static data,** especially entity and instrument identifiers like LEI, UPI, ISIN, MIC, CFI.

One point to note is that market data providers (e.g. services) – such as Bloomberg, Moodys, Refinitiv or Six Financial – are not regulated as financial service providers in the EU. Such providers are only subject to general company, contract and data law. Supervisory laws, however, applicable to banks and asset manager are not applicable to data vendors.

Q3.29: Are you satisfied with the price, quality and level of innovation of market data vendors' offerings? If you are not satisfied with any of these elements, please explain why not and the impact this has on your business.

The strong position of MD (re)vendors such as Bloomberg, Refinitiv (Market data distributors - MDD) which control 2/3 or more of total global market data revenues, need at least NOT be reinforced by regulation. Their pricing should be limited to charging an at cost plus reasonable margin for the technical passing through of the MD providers feeds to the customer base. Also it needs to be insured that MD providers under MIFID and MDD as unregulated data providers offer the same MIFID product as directly provided by the MD provider. Apparently, in practice MDD offer RM real-time feeds with variations from the original (e.g. in case of Deutsche Börse vs. Refinitiv). RMs insist that vendors change the feeds on their side only and that MMDs are not hindered by contract to provide the original RM data feed.

Also special consideration needs to be given to data licenses by regulated MD providers under MIFID for value added products provided by MDDs (eg. indices, analytics) because statutory IP rights do not exist for simple data such as RM prices or similar MD.

Also the European database regulation is of limited help for EU based data sources (RM and other the market data providers (TVs, CTP, APAs, Sis) as the legal protections of the regulation are limited to the level of the first user of an EU database. Database rights prevent (in relation to of the whole or of a substantial part of the EU database) the extraction of data (permanent or temporary transfer) or the reutilisation of data (– making available, renting, selling etc, but it does not prevent the “consultation” of data (see Innoweb BV decision of the ECJ (C-202/12)). However, the maker of a database may not prevent a lawful user of the database from extracting and/or re-utilizing insubstantial parts of its contents for any purposes whatsoever. Any contractual provision to the contrary is “null and void” - therefore limited use of parts of a RM database /feed should always be possible. Second level users (e.g. MDD clients) of already published MD data sources/providers should therefore not be required to take out license request from monopolistic or oligopolistic primary exchange (RMs) their APA and CTP providers. In the case of monopolistic/oligopolistic data sources the license taken out by a MDD with the MD provider should cover all clients of the MDD. No passing through of licenses by contract should be allowed.

In respect to benchmark data, we refer to our comments as given above.

Our members are investment fund management companies and investment firms providing management services to regulated and supervised collective investment undertakings such as UCITS or AIF under the European UCITS Directive 2009/65/EC or the AIFM Directive 2011/61/EU. They use ratings and ancillary services provided by Credit Rating Agencies (CRAs) and their data entities within the group. As users of these products, member firms are interested in a well-functioning credit rating market in which improved transparency of ratings data both on ESMA’s ERP as well as CRA websites will help to counterbalance their inferior bargaining position towards the oligopolistic credit rating agencies, namely Fitch. Moody’s and S&P.

Aided by regulation which is encouraging the use of credit ratings, such as CRR for banks and Solvency 2 for insurance companies, it is nearly impossible for regulated and supervised credit rating data users such asset managers under UCITS, AIFMD, and MIFID or their clients, namely banks, insurance companies and pension vehicles (IORPs) to escape the triple impact of recurring price increases (Pice Policy), new data license types aiming to capture all use credit rating use cases along the whole value chain of asset management („slicing and dicing“ within the Data Policy) and increased data license management, compliance and audit efforts and costs (Data License Management).

Taken together these three effects lead to double digit annual price and cost increases. Insofar the user side of the credit ratings data market is inelastic, as ratings need to be used based on client or regulatory requirements. An easy to use ERP/CRA website offer with terms and conditions allowing the databasing of and use of minimum credit ratings data along the value chain of asset management would help to offset the oligopolistic pricing seen with the three large CRAs.

Moody's, along with S&P Global and Fitch, has an effective monopoly over the sector. The listed rating agencies in the U.S. (Moody' and S&P) have enjoyed an enormous bull market since the Global Financial Crisis ended a decade ago. Their stocks have all moved significantly higher as their business models have adapted to a world that is moving towards greater analytical capabilities for investors using real-time data, in addition to the core ratings business, backed by the ability to generate oligopoly rents in their field of activity (for a comparison of Moody's and S&P, please see: https://www.suredividend.com/credit-rating-agency-stocks/.

No wonder that backed by high oligopoly revenues Moody's stock gained a staggering 69.5% in 2019 alone and another 15.7% during the first half of 2020: (https://www.fool.com/investing/2020/01/13/why-moodys-gained-695-in-2019.aspx; https://www.fool.com/investing/2020/07/10/why-shares-of-moodys-rose-157-in-the-first-half-of.aspx).

The three main CRAs have been able to enforce excessive fee increases of between 5 and 25 percent p.a. for credit rating information needed by both asset managers, insurers and brokers.

Such price increases are not always direct but do come indifferent forms and formats. For example, for an insurer which has licenced ratings data and other CRA products or services (bundled agreements) it is almost impossible to terminate the additional product licences and retain only the rating data feed.

The CRAs will protect their revenue base by asking the same prior fees for the ratings data alone. As firms are forced to use ratings data, the CRA will have the upper hand in any price negotiation.

Given the current CRA market structure and business practices, we strongly believe that the commercial issues surrounding CRA data licencing practices need to be firmly addressed through regulatory intervention by the EU Commission. ESMA on its own lacks the necessary regulatory powers to efficiently protect rating data users from the oligopolistic CRA behaviour.

Therefore, it is next to impossible for regulated and supervised credit ratings data users such as insurers under Solvency II or asset managers under UCITS, AIFMD and MIFID to escape the triple impact of

- recurring massive price increases,
- new data licence types aiming to capture all credit rating use cases along the value chain
- and increased data licence management and compliance and audit efforts.

Given the current CRA market structure and business practices, we strongly believe that the commercial issues surrounding CRA data licencing practices need to be firmly addressed through regulatory intervention by the EU Commission. ESMA and FCA on its own – in spite of its good efforts over the past years – is lacking the necessary regulatory powers to efficiently protect rating data users from the oligopolistic CRA behaviour.
We therefore recommend to introduce MiFID-like data user protection features into the CRAR in terms of pricelist and cost of data production disclosure as well as cost-based pricing requirements on CRA

ancillary (da-ta) services. What is more, revising the CRA III is necessary to clarify that all CRA (data) subsidiaries also fall into the scope of the CRAR.

A strict and transparent cost regulation of rating information services that are not marketed by the regulated analytical units of the CRA groups is needed to stop inacceptable market practices by the non-regulated entities of CRA groups. Furthermore, ESMA's regulatory and supervisory powers should be strengthened to improve the usability and acceptance of the European Rating Platform (ERP) and the CRAs (regulatory) websites by

- allowing for access to and download/data feed of rating data in standardised, structured, machine readable formats also through data vendors,
- securing licence and fee free internal and external use of rating data for direct as well as indirect reporting, including asset manager-to-investor for regulatory reporting purposes on assets held for such investors,
- disallowing "derived data" licenses on services which are based on CRA website or ERP data. A case at hand is the calculation of the CQS score for insurer holdings based on ERP rating information in the context of Solvency II.

Q3.30: How have prices and quality evolved over the last 5 years across the types of market data vendor services you use? What impact has this had on your use of data, on your business and your clients?

Please see our comments as given above.

Q3.31: Are you aware of market data vendors charging different amounts or imposing different contract terms on different customers for similar services? As a user are you, or have you been, at a competitive disadvantage

Please see our comments as given above.

Q3.32: Are there any products and/or services that you needed/ tried to purchase from market data vendors on a standalone basis, but were not able to? What impact does purchasing a bundle have on your business?

Please see our comments as given above.

Q3.33: How do you choose market data vendors? Do you use more than one, and if so why? How easy is it to compare the content and price of alterative packages before choosing which data package to use? How easy is it to switch providers?

Please see our comments as given above.

4. Wider uses of data and advanced analytics in wholesale markets

Q4.1: How are firms operating in wholesale markets using alternative data and advanced analytics, and for which particular activities or markets? How might this change in the future?

The use of financial market data has considerably changed and increased over the past decades, largely driven by automation along the whole value chain of asset management and regulation. There is now more data to consume, and usage changed with the drive towards technical process improvement from the `90s, where much of the financial market data was largely consumed by users (display) and downloaded locally into individual user applications. From the traditional inconsistent information access depending on the asset via the dealers and executing brokers, there was limited use of data feeds from trading venues or market data distributors to support automated trading applications.

Today, however, the screen-based pair of eye use of data is receding due to the massive growth of data sources to process, and the speed of data delivered to the buy-side has drastically increased as it is now mainly used in electronically programmed (non-display usage) processes throughout the value chain of asset management, where computers talk directly to each other with the help of such data. Data-driven decisions are playing an increasing role in the investment process, with portfolio construction and execution becoming more data-driven and integrated. This has been a consistent theme across listed products like equities for years, and there is an increased adoption in other asset classes. The growth and importance of data doesn't come without challenges, complexity increases, and the need to continuously evaluate new data's contribution to alpha and the investment process. We know is the amount of data available isn't decreasing, The key to turning these ingredients into investment results, however, is to analyse the context and time horizon where a particular data set can add value and then to construct a befitting investment process from portfolio construction to execution.

Active investment strategies need to have a clear idea about how they are finding and exploiting market inefficiencies, and then have an investment strategy and portfolio construction process, fuelled by data. Before the emergence of quantitative investing, a typical process might have involved trying to estimate the fair value of a business based on discounted future cash flows and therefore dependent on estimates of revenues and costs into the future. Quantitative techniques boiled down the problem to smaller number of variables of interest, building on theoretical and empirical research but did not typically include "alternative data," but also replicated to some extent the process of evaluating what the balance is between the price of a business and its future discounted cash flows using a variety of proxies.

A critical element for both styles is the estimation of future earnings and sell-side and buy-side analysts therefore both become avid consumers of data that incrementally improve near term forecasting power and the prevalence of new alternative and alternative data is an important part of this. It is important to understand that the implication might be an investment process that attempts to profit from the small changes in earnings estimates incrementally implied by the arrival of new data. However, the longer-term value of companies is mostly a reflection of the longer-term cash flows which are really hard to forecast and not all alternative data is particularly helpful in this regard. The more important data points might be the strength of the company in R&D, its ability to retain key creative talent by embedding the right culture, etc. together with many other factors like intellectual property rights that are not so easily captured with traditional data.

Many members are proponents of process, technology and data-driven execution. Trading and portfolio managers increasingly work closely across asset classes and underlying the investment process is Transaction Cost Analysis (TCA). Execution Management Systems (EMS) is more and more the

software utilized by traders for connectivity, aggregating data, displaying analytics and creating rules-based automation. Data-driven approaches aren't limited to listed shares, bonds and derivatives as they are expanding to other assets classes as transparency, data and trading protocols evolve.

Like other asset classes, we are seeing data bring portfolio construction and execution more tightly integrated to build portfolios more efficiently and take advantage of liquidity opportunities real-time, more and more asset managers are bringing trading data upstream into the credit portfolio construction process. We expect data-driven decisions will move portfolio construction and execution more closely aligned across asset classes. As the investment process evolves, execution strategy will become more dynamic and will consider portfolio characteristics and historical behaviour.

Q4.2: How much has your firm allocated to investments in data and advanced analytics over the next three years?

We have no comments.

Q4.3: What are the potential benefits for firms and investors of the development of data and advanced analytics, now and in the future, and for which particular activities or markets? Please provide examples and where possible explain how the benefits are passed on to investors. How do you assess these benefits against the potential risks associated with the use of data and advanced analytics?

We have no comments.

Q4.4: How have business models changed in light of developments in the use and value of data, and how might they change in the future? What affect might this in turn have on different financial markets?

Please see our comments to Q4.1.

5. Access to data and advanced analytics

Q4.5: What barriers make it difficult for firms to access data or access the technology necessary for analysing data, and how might this change in the future?

Please see our general comments as given above.

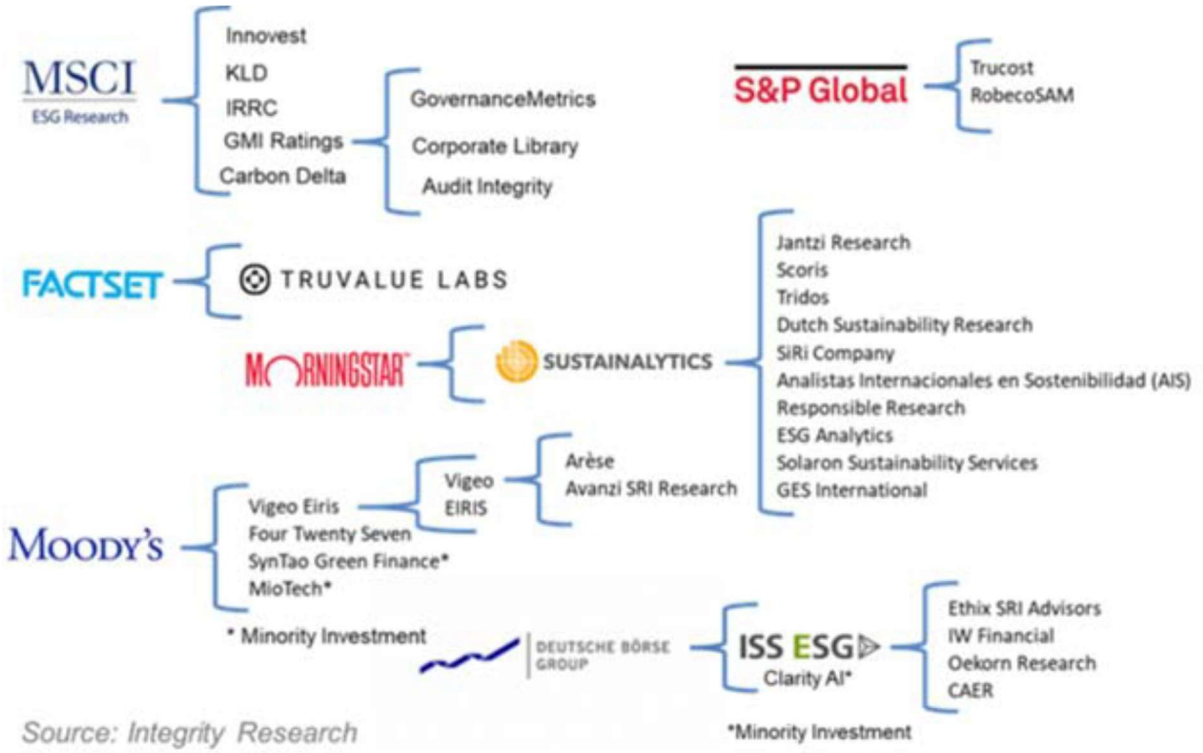
Q4.6: With reference to paragraph 4.25, do you agree there are situations where the use of data could lead to unfair advantages in wholesale markets which could:
pose potential barriers to competition well; or harm market integrity.

Please see our comments as given above.

Q4.7: What factors do you consider are relevant in assessing whether the use of data may create unfair advantages in wholesale markets? For example, if the data are only available to one or

a handful of firms or if some market participants are not able to secure sufficient financing to access data.

Please see firstly our comments as given above. On the new sector of ESG data please see our observations below.



As the above graph shows the concentration in the ESG /sustainable investment space has increased over the past few years and nearly all relevant data providers are now part of larger exchange, index- and rating agency groups. We therefore fear that the price and license policies of such data providers as described above will soon or later apply to their ESG data offerings too, leading to high cost which will ultimately hamper the development of sustainable investments.

6. Impact of concentrated markets

Q4.8: How concentrated is the supply of data, or technology required to analyse data, to wholesale market participants? Please explain how this differs by data type and technology type and the impact on your business.

Please see our comments as given above.

Q4.9: Do you consider that the wider use of algorithmic solutions in wholesale markets could give risk to new types of market abuse or collusive behaviour? If you currently use these solutions, do you have any processes in place to manage these potential risks?

Please see our comments as given above.

Q4.10: Are there any potential control or governance issues associated with these data that you currently use or think will be used in the future? Please provide examples and explain your reasoning.

Please see our comments as given above in respect to the audit practises for licensed data.

Q4.11: For wholesale market participants that make use of advanced analytics, how does senior management ensure that it has sufficient understanding of how these algorithms, as an example of one tool, work in order to ensure that they are complying with their regulatory and competition law obligations?

We have no comments.

Q4.12a: Are there any potential ethical implications as a result of the use of new forms of data and advanced analytics in wholesale markets? Please give specific examples.

We have no comments.

Q4.12b: What steps do you take to make sure that the data you use have been sourced legally and ethically?

Please see our comments as given above. Our members have to adhere to stringent audit terms laid down by the data vendors.

Q4.13: What challenges or risks (for example, in relation to market stability) are associated with the increased use of technology by wholesale market participants? For example, could this lead to the increased risk of herding like behaviours or excessive risk taking?

There is increasing use of algorithms in trading, primarily within the equity landscape but this is rippling out slowly to other asset classes. The result of this is that the speed of trading has increased exponentially. It's important that firms understand and monitor any algorithms they are using to avoid any herding and market stability type issues. The industry is fully aware of this.

Q4.14: What specific aspects of the regulatory regime unduly limit the way firms can use data and advanced analytics? How do these limit the benefits of data being realised by firms or consumers?

Please see our comments as given above.