Wholesale Data Market Study

Responses to Terms of Reference

29 February 2024

Table of Contents

[redacted]

Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Submitted via email: wholesaledatamarketstudy@fca.org.uk

30 March 2023

Dear Sir/Madam,

RE: MS23/1: Wholesale Data Market Study: Benchmarks, Credit Ratings Data and Market Data Vendors

[redacted] welcomes the opportunity to provide comments on the issues set out in the Financial Conduct Authority's (FCA) Wholesale Data Market Study Terms of Reference (the "Market Study")[2].

[redacted] appreciates the FCA's work on the topic of market data and its willingness to consider enhancements to the existing regulatory framework. Market data provided by trading venues and data providers plays a central role in the functioning of the financial system and the move to a more digital economy. It supports healthy markets by allowing better price formation, advances the interests of end-investors by allowing their agents to make better informed trading decisions and underpins effective regulatory oversight by enabling market participants to discharge regulatory reporting obligations.

However, the current regulatory framework has led to a situation in which market data vendors

[redacted]

[redacted]

[redacted]

[redacted]

and trading venues are charging unreasonable prices for market data. The costs of obtaining data for both equities and non-equities markets have increased significantly since the implementation of the Markets in Financial Instruments Directive (MiFID) II, far outstripping both inflation and the input costs attached to creating the data. By way of example, one member firm shares that total fees for ratings have increased at a rate of approximately 15% over the past couple of years (2020 – 2021) and that exchange-derived fees have followed similar percentages. They note that for the [redacted] derived data, fees have increased by 18% from 2019 to 2021 - not aligned with the Consumer Price Index.

[redacted] believes that fundamental changes are required to the regulatory framework for market data. [redacted] invest on behalf of pension plans, university endowments, charitable organisations, family offices and qualified individuals, among other entities, and engage in a range of investment strategies for which access to market data is essential. Without it, firms would be unable to satisfy client investment needs or fulfil their regulatory obligations. Addressing issues related to market data costs, including the establishment of real-time consolidated tapes for all asset classes, is a vital step in creating a more transparent and accessible trading environment for institutional and retail investors. Greater access to market data and information plays an important role in expanding market liquidity, narrowing bid-ask spreads and promoting competition among investment managers. It is also essential to fostering the growth of the digital economy and positioning the UK as a leader when it comes to innovation in financial services and the broader economy.

[redacted] supports the FCA's proposed themes for its Market Study analysis: (i) barriers to entry and expansion; (ii) network effects; (iii) vertical integration; (iv) suppliers' commercial practices; (v) behaviour of data users; and (vi) incentives for innovation. Issues under themes (iv) and (v) are of particular concern [redacted] and we have provided detailed comments on these in an annex to this letter.

In summary, [redacted] highlight that:

- Trading venues rely on **flexible interpretations of regulations** relating to the requirement to provide market data on a 'reasonable commercial basis' (RCB) to justify pricing data based on the value of the data to individual market participants rather than the cost of producing data;
- Firms feel **compelled to pay higher market data fees** to meet their fiduciary, legal and regulatory obligations and implement certain investment strategies;
- Data **licensing agreements are detailed and onerous**, with customers charged different prices and subject to different contract terms for similar services;
- Firms are **obligated to purchase new products**, often made by unbundling existing data offerings and/or bundling 'new' products, in order to continue receiving the same level of data;
- Firms are increasingly subject to **invasive and costly market data usage audits**;

[redacted]

- Firms have **no choice but to purchase market data** (often from a variety of trading venues and data providers); and

- Increased **market data costs constitute a barrier to entry** for investment managers.

We would be happy to discuss any aspect of this letter with you.

Yours sincerely,

[redacted]

[redacted]

ANNEX

Suppliers' Commercial Practices

a. 'Reasonable Commercial Basis' (RCB)

MiFID II requires trading venues to provide market data on a 'reasonable commercial basis'. However, the definition of 'reasonable' is contentious and trading venues (typically for-profit institutions) use flexible interpretations of regulations relating to RCB criteria to justify practices such as tying the price of market data to the 'value' of the data to individual market participants.

Trading venues have an interest in generating the highest sustainable profits possible and have both the means to explore or exceed the upper limits of what constitutes a 'reasonable' price while providing clients with poor – potentially meaningless – disclosures about how they meet the RCB requirement. Provisions relating to the RCB requirement are interpreted by trading venues as a justification to base market data fees on the profit that investment managers derive from their use.

With the objective of MiFID II to lower data costs, the price of market data should be based on the cost of creating and disseminating data and not on an intangible factor like the 'value' of the data to individual market participants. This leads to overly generous assumptions on the part of trading venues and data providers on the value of their data and is extremely harmful to the functioning of the market. Users should not be constrained in how they use a product which is, ultimately, derived from their own trading activities rather than any work on the part of trading venues. We would also flag that firms do not always derive a profit from market data - it is often used for risk management purposes and compliance with regulations.

The RCB framework in respect of data provision should be strengthened as a matter of priority to include (i) greater emphasis on enforcing the existing framework, which already limits what trading venues can charge for data relative to the cost of compiling and publishing that data; (ii) more stringent requirements on the form and content of RCB disclosures, given the lack of comparability in approach at present; and (iii) a more assertive supervisory stance vis-à-vis trading venues when it comes to their pricing schedules for market data.

b. Complex Licensing and Pricing Terms

Data licensing agreements have become too complex with subscribers asked to pay for data on the basis of individual use cases as well as for each individual user. Trading venues are requiring market participants to provide information on how market data is intended to be used (for example, whether it is for P&L systems, risk systems, pre-trade or post-trade analytics or financial models). This information is irrelevant to trading venues and presents an obstacle to obtaining market data. To the extent that market participants are only using the data for internal purposes, (i.e., not selling it to third parties) they should

[redacted]

not be required to provide this information. As set out earlier, data fees should be tied to the cost of producing the data and not on a use-case basis.

In place of per user/per use-case licensing, some firms support entity/enterprise-level licensing – that is, having one licence with a data provider for use throughout the firm. This tends to be preferred by larger firms as it enables users to fully realise the value of market data within their organisation by eliminating the possibility of additional fees or reporting requirements being incurred for new use cases defined by market data providers. However, we would caution that firms should not be prohibited by entity/enterprise licensing for small use cases or where there are only a small number of users. Firms note that data vendors are taking a more aggressive approach to multi-entity licences and insisting on individual licences for different geographical locations. As a result, where users are in different locations, firms are forced to pay multiple site-wide licences which further increases costs.

The fact that trading data from individual venues is unique and non-substitutable has allowed data licensing agreements to become increasingly detailed and onerous. Trading venues have been able to increase proprietary and consolidated market data fees by changing the terms of licensing agreements, creating new categories of fees and redefining and re-categorising fees. Customers are charged different prices and subject to different contract terms for similar services, with the terms of reference from larger data providers generally non-negotiable and produced to favour the vendors. Fees related to market data licensing may include access fees, site fees, distribution fees, display fees, delayed data fees, non-display fees and fees for creating and storing derived data/work. In this context, almost any central application consuming real-time market data such as profit and loss calculation, risk management and portfolio valuation is likely to be captured as a non-display application and therefore attract higher fee levels. We believe that the increased focus by venues on non-display applications of data is an unfair and conceptually flawed approach that stifles innovation and overlooks the fact that market data is ultimately a by-product of participants' trading activities. Also, we do not believe that 'created works' or 'derived data' licences, which is based on use of trading venue data to create new data (through mathematical or other manipulations or processes, for example), meet the RCB provision since trading venues do not have any production costs associated with a market participant's created works/derived data uses. We would also note that a lack of transparency for customers to determine correct netting mechanisms has resulted in duplicated licensing and, therefore, duplicate payments.

We believe that the FCA should consider how to address such complexity and rationalise data licensing agreements – by, for example, requiring standardised contract terms and universal standards.

c. <u>Bundled Market Data Services</u>

Trading venues and data providers are 'unbundling' market data into multiple distinct products and charging significantly higher prices for the sum of the old product. Higher prices are justified by 'bundling' portions of the old products with newer products or

[redacted]

services that firms may not necessarily want or need.

We believe that the practice is unreasonable. It provides venues with greater market data revenues while forcing firms to buy new products to access the same data that they were already using, adding undue costs to investment managers. Firms are forced to allocate capital to products that they do not want, limiting the resources that they can devote to matters such as risk management, investment due diligence and investor relations. The additional products are also subject to their own array of fees and usage agreements which further increases the complexity of fee schedules. Firms are made to expend more resources on ensuring that they comply with usage agreements for bundled products that they do not want. Firms also note that as more acquisitions occur within the market, larger vendors are offering packaged options only instead of enabling access to specific data.

d. <u>Data Usage Audits</u>

Trading venues and data providers are increasingly conducting 'data usage' audits to ensure that firms strictly adhere to the complex terms attached to the market data that they purchase. These audits are often aggressive and burdensome, with the intent of trying to 'catch' firms straying from the exact letter of their usage agreements and extract greater market data revenue from market participants.

It is not uncommon for licensees to have incorrect understandings of market data licence agreements due to divergence in licensing practices and vagueness in terms. Individual venues and data providers also often have their own interpretation of common terms in data usage agreements, drastically increasing the difficulty of firms complying with those agreements. Such differences in the interpretation of market data licensing contracts allow auditors to cite unauthorised data usage easily and charge fees retroactively along with monthly interest fees (at sometimes non-market rates) on retroactive payments. The burden of proof is placed on firms to prove that they have acted in accordance with their usage agreements and [redacted] can find themselves paying steep fines for unintentional technical violations, with penalties exceeding any revenue lost on the part of the market data provider. Firms can be left with no recourse for unfair findings and punitive fees as they risk exchanges disconnecting market data feeds and jeopardising their business.

As a result, [redacted] spend an increasing amount of money not just on acquiring market data but on abiding by the strictures that come with it. Firms are forced to dedicate an increasing number of resources to parsing fee schedules, ensuring that access to data is strictly controlled and responding to invasive data usage audits. Many firms are forced to hire full-time staff or consultants to manage the intricacies of their data usage agreements: the agreements are often so complex that they require specialised and rare - therefore expensive - knowledge to interpret them. Firms are also often compelled to purchase new software specifically to deal with their market data and abide by their data usage agreements. Again, such software is highly expensive.

Further to this, the audit process is seen as poor with unreasonable access terms, heavy

[redacted]

documentation and little to no feedback. Access is requested at any time without customer approval, notice and any limits on the data that can be accessed. Meanwhile, the data that is sought for audits is mostly that which auditors already hold or have access to through their own systems.

Behaviour of Data Users

e. Limited Choice and Switching

Investment managers have no choice but to purchase market data (often from a variety of trading venues and data providers).

Over time, market data has become more important to [redacted]' activities. In part, this reflects the reality that access to accurate, timely data concerning the price and timing of trades, as well as bids and offers, is vital to the successful implementation of any investment strategy. In addition, since the passage of MiFID II, various regulatory requirements have essentially required firms to increase their consumption of data and ability to process that data. These include requirements relating to the monitoring of execution quality; regulatory reporting requirements; rules on inducements; asset valuation requirements; and data security, risk management and business continuity requirements (such as maintenance of redundant feeds and archives). This need for data is amplified by the fragmentation of trading activity across multiple venues, each with their own data products. In short, [redacted] often have no choice but to purchase market data.

Under the current structure, there are limited sources for market data —particularly real-time data. Investment managers either obtain raw market data directly from the trading venues capturing it (by virtue of the trading activities of those investment managers and other market participants) or indirectly from data vendors. This gives trading venues the ability to dictate how data can be accessed and how much it will cost, while also creating significant reliance on the intermediation services of data providers. As firms need market data, they have little choice but to sign the market data licensing contracts and accept all terms as they stand.

Firms usually have no choice but to purchase market data from (several) trading venues and market data vendors. Firms require certain market data from the trading venues that they use - trading venues which hold natural monopolies over the market data that they produce. For instance, if a security is only listed on the [redacted] a firm would have no choice but to use market data from the [redacted] (purchased either directly from the [redacted] or through a data provider) in order to execute their trades. Once those trades are completed, the firm would need [redacted] market data to fulfil its duty to monitor best execution, as well as other regulatory requirements. As firms typically need to trade across different venues, they will have multiple 'must-have' trading venues and 'must-have' sets of market data, further increasing their costs and the requirements by which they abide.

[redacted]

f. Barriers to Entry

Increased market data costs constitute a barrier to entry for investment managers of all sizes and limit choice for end-investors.

Market data fee increases are having a material impact on some firms by causing those firms to modify their strategies and limit the markets that they access in order to reduce costs from proprietary market data fees. Firms considering a new hedge fund launch might also be dissuaded by the set-up costs associated with market data access which do not scale by assets under management. This is particularly true for small to mid-size firms as market data fees represent a larger share of these firms' operating costs and challenge them to compete with larger firms.

Through dominant market power, trading venues are pricing out many market participants. This is leading to fewer independent decision-makers, as market participants either stop trading or choose to access a market through a broker's execution algorithm, which increases the risk of herd behavior as more market participants execute their trades on the basis of similar trading parameters.

[redacted]

Financial Conduct Authority
By email: wholesaledatamarketstudy@fca.org.uk

30 March 2023

Dear Sirs

Stakeholder Response to MS23/1.2 Wholesale Data Market Study

We write as a stakeholder with a keen interest in supporting competition within the wholesale data market.

Background

[redacted]

- [redacted]
- [redacted]
- [redacted]

[redacted]

We welcome the opportunity to provide feedback on the FCA's recently launched Wholesale Data Market Study as a smaller player within the market data ecosystem.

Theme 1 - Barriers to Entry and Expansion

In our view the wholesale market data industry is highly concentrated with several large players dominating.

While alternative trading platforms [redacted] produce alternative sources of data in competition with dominant trading venues, the intermediaries that distribute data do not invest in establishing the necessary connectivity and the mapping and processing of alternative data sources.

We agree the complexities of switching are also a factor, making it harder for new commercial relationships to be established. Such complexities include new connectivity and integration of data into established systems for processing.

Larger incumbent data vendors distributors that offer a suite of data from one source have a significant advantage as when new data sets are required by customers, they will revert to their

[redacted]

existing vendor and their suite rather than explore alternative sources as should be the case in a competitive market.

The cost for newcomers to integrate into the necessary infrastructure and the capabilities are costly, without immediate guarantee of a customer base, which means only very well capitalised companies can consider joining the market.

Theme 2 - Network Effects

No comment.

Theme 3 - Vertical Integration

There are a significant number of vertically integrated businesses in the market data space, especially across business where they depend on market data for their own trading activities. This may hinder competition in the marketplace if there is a mismatch in data in vs out in terms of cost or business activities. Many businesses rely on the input of other market data and with the increases in fees may hinder these business activities. The vertically integrated firms (who often maintain data prices beyond the levels of fair and reasonable) can inhibit the expansion of smaller competitors if they have a significant portion of the market and where there are no other options to receive the data.

Theme 4 - Supplier's Commercial Practices

1. <u>Leading exchange's practices on the distribution terms of news announcements</u>
   [redacted] has experienced commercial practices by the main market news provider in the UK (part of the main UK equities exchange group) that directly harm competition among market news data providers and unfairly take advantage of the specific news provider dominant position and have previously written to the FCA on this topic (see appendix I).

2. <u>Monopolistic tactics in pricing by the UK's main equities exchange</u>
   UK's dominant equities exchange applies excessive non display licensing fees that have little or no correlation to the cost of producing the respective market data. These monopolistic data practices significantly restrict competition from non-display venues such as [redacted].

3. <u>Multimedia finance platforms / redistributors [redacted] lack of complete data</u>
   Despite extensive appeal and effort over a period of more than two years, a key distributor of data, [redacted] has not undertaken the necessary work to ensure that the primary market data [redacted] make available (at nominal cost and in competition to other primary markets) is processed correctly, resulting in inaccurate data on retail platforms and website [redacted].

4. [redacted] <u>terms for offering market data to</u> [redacted]

At [redacted] we offer all the market standard market data licences e.g. real time, delayed distribution, either directly or via third parties and non-display use (offered as disaggregated per user or market). Our terms and conditions are clear, balanced and flexible.

We believe the [redacted] fee schedule is as transparent, concise, comprehensive and short as possible compared to the lengthy fees schedules by other leading exchanges on the market. A barrier to simpler and fairer terms for the market data offering in the market is absence of harmonisation across organisations of their data offering. This is often and predominantly reflected in the terminology used, which is sometimes different in fee schedules and licences (e.g. non display use can mean different usage by customers across exchanges or the fee structures are so particular to the specific exchange organisation that cannot be comparable). So standardised terminology, at least in fee schedules, is a concept the FCA might want to further explore.

Theme 5 – Behaviour of Data Users

[redacted] allows termination of all our market data licences upon 90 days' notice. Our market data users spans large investment banks (for data use either by their investment arm or asset management division), UK and overseas hedge funds, asset and investment managers, global financial data and technology solutions providers and financial and administration services providers. [redacted] data users use our market data sets to complete the data they receive from other sources mainly the [redacted] and other exchanges or data vendors. In line with FCA's observations we also observe that, more generally, users do not tend to switch or terminate licences, even if taken on burdensome terms as their needs for data from specific providers (e.g. the dominant equities exchange) is inflexible.

Theme 6 – Incentives for Innovation

We believe the introduction of a consolidated market data tape for equities would bring several benefits to capital markets. A consolidated view of trade data would provide a level playing field for consumers, who would benefit from improved availability of price and liquidity. Other benefits would include:

- Improved efficiency. Where customers could subscribe to one data feed rather than multiple to get a picture of market activity across the differing exchanges. This would benefit not only with cost implications but also any complexities to access.
- Increased transparency: easier for consumers to gain a fairer picture of the marketplace and hence make better trading decisions.
- Fairer and increased competition: decrease the monopoly that the larger exchanges have over smaller participants. Not only providing fairness but the opportunity for more innovation in the future.
- Compliance with regulation: As set out in MiFID II there should be access to market data on a consolidated basis.

The fundamental principle of fair and transparent markets can only be achieved with a golden source of real-time post-trade consolidated data.

As is the case today, not having a CT means that transparency is only available to those privileged institutions that have both the technical and financial capacity to consolidate themselves. This, in our opinion, is NOT a level playing field.

Improved post trade transparency will deliver significant benefits to best execution, risk management, compliance monitoring and reconciliation. A reasonably priced CT will enhance the objective of a more integrated UK market, particularly for the retail segment.
We agree with the review comments that 'reasonable commercial basis' (RCB) has not succeeded in facilitating data access, and there is inconsistency between the comparability, usability, and quality of published information.

A real-time post-trade consolidated tape of record would reduce cost, time, and burden to the market, improve transparency and, if calibrated in the correct way could be used to incentivise lit market trading.

We would caution against the implementation of a pre-trade consolidated tape in the first instance pending further review of potential risks. The difficulties of potential arbitrage between pre trade consolidated tapes and direct feeds have been well documented in the US and would also incur significant technical and regulatory obstacles in Europe.

If the FCA would like to discuss our response further, we would welcome further engagement.

Yours sincerely

[redacted]

Appendix

[redacted]

[redacted]
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

10th January 2022

Dear [redacted]

[redacted]

[redacted]

[redacted]

Wholesale Data Team, Competition and Economics Division
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

30 March 2023

MS23/1: Wholesale data market study: benchmarks, credit ratings data and market data vendors

Dear FCA Wholesale Data Team,

[redacted] welcomes the publication of the FCA recent market study into the supply of benchmarks, credit ratings data and market data vendor services, and strongly supports the FCA continued and extensive work on how data and advanced analytics are being accessed and used, the value offered to market participants and whether data are being competitively sold and priced. In particular, we welcome the thorough process by which the FCA will be reviewing the six cross-cutting themes: 1) barriers to entry 2) network effects 3) vertical integration 4) suppliers' commercial practices 5) behaviour of data users, and 6) incentives for innovation. [redacted] Specifically, our [redacted] are very focused on benchmarks which have implications for FX as well as IBOR benchmarks. Our securitisation, high yield and credit trading divisions are very focused on credit ratings data, and our equities, government bond and credit divisions are very focused on market trading data.

In recent years, [redacted] has actively contributed to the debate on market data quality and costs, providing feedback to consultation documents and producing own research. [redacted]

We do not have specific recommendations at this stage of your market study. However, we would like to take this opportunity to briefly reinforce our key messages around the importance of wholesale market data quality:

- **Policy making should be data-driven** and based on evidence provided by rigorous data analysis. Equally, market participants should be able to use and compare market data.

[redacted]

- **Strong and reliable data quality and availability enable robust and well-informed decision-making processes**, which is a pre-condition to well-functioning wholesale financial markets.

- [redacted] considers that the **rising cost of market data** represents a material challenge to the effective functioning of wholesale markets. This is also due to **increasing restrictions around usage rights within license terms** (for example, based on corporate entity, business divisions, named users, location and/or usage type), **resulting in members being required to pay multiple times over the previously accepted rate for the same data.**

- **There needs to be sufficient competition** to keep the prices for data efficient for all types of users, which our members feel is a key issue for ongoing competitiveness of UK markets vs other jurisdictions. As indicated above, [redacted] has produced publications on the high costs of both equities and fixed income market data, which include data which may be useful to the FCA in your study.

- We are working closely with FCA Markets Policy colleagues to support the **development of well-constructed consolidated tapes**, which we believe will also help improve the quality of market data, reduce its costs and decrease the complexity relating to market data licences.

[redacted] remains committed to working with policymakers and the industry to improve market standards in this crucial area.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Wholesale Data Market Study Team
Financial Conduct Authority

BY EMAIL ONLY
To: WholesaleDataMarketStudy@fca.org.uk

30 March 2023

Dear All,

FCA Wholesale Data Market Study – [redacted] comments on terms of reference

This letter contains [redacted] comments on the Financial Conduct Authority's ("**FCA**") Terms of Reference ("**ToR**") for the Wholesale Data Market Study (the "**Study**"). We welcome the opportunity to work constructively with the FCA on the Study.

As we have noted in previous submissions to the FCA, we view the FCA's work on the Trade Data Review as inextricably linked to the Study and we welcome the publication of the final Report (the "**Report**") concurrently to the ToR. The Report suggests in numerous instances[2] that the FCA may have incomplete information in response to a wide range of qualitative and quantitative factors assessed during the Trade Data Review. In this context, it seems potentially self-limiting to launch the Study with a substantially different focus (and most notably absent any focus on equities venues) while material issues identified by the FCA in the Trade Data Review do not appear to have been fully explored and warrant further scrutiny.

In this letter, we do not comment on each issue set out in the ToR in this letter comprehensively, but instead build on some of the issues identified in the Report, and in particular where it seems that more work could be done to complete the FCA's analysis.

In light of the statutory timelines under which the Study is being conducted (and using the FCA's statutory information-gathering powers), we consider the most effective focus of the Study would be to build on the findings of the Report and resolve some of the unanswered issues in the Report.

ToR scope

The Market Study Notice and the ToR group the wholesale data market participants in scope of the Study together (i.e. credit ratings agencies, benchmarks administrators, and market data vendors), but it would be helpful if the FCA could be clearer as to which of its six themes relate to specific market

[redacted]

[redacted] [redacted]

participants, or, if all six apply in a cross-cutting manner, further explanation/illustration as to how the issues are relevant to distinct (sets of) market participants.

Furthermore, there is also a general lack of precision in the Study's launch documents – for example, the scope of [redacted], do not align between the ToR and the Market Study Notice respectively. [redacted] has consistently advocated in favour of a functional definition of [redacted] in scope of the ToR [redacted]. To preserve a level playing field, any such market participants should be considered as offering [redacted] and thus be in scope of the Study. This is particularly relevant to some equities exchanges, who (as identified in the Report) generate significant revenue from [redacted]

Maintaining this level playing field through a clear scope is important to allowing the FCA to achieve the objectives of the Market Study and to be able to effectively address issues identified in the Report.

Additionally, as outlined above, it would be helpful to understand how the FCA intends to use the Study to resolve the gaps in the Report. This additional transparency would allow participants in the Study to better focus their attention and would likely lead to a more efficient process for the FCA and parties involved.

The rest of this letter details further specific comments on areas of the Report, which we think merit further examination within the Study.

There is limited scope for competition in equities data markets where some products are considered as 'must haves'

The Report found that equities data markets are concentrated and that there is limited competition between venues in these asset classes. It is often the case that one venue will stand out as larger in a particular asset class and traders have little incentive to switch away from that venue due to its significant levels of liquidity and trading volume. In contrast, fixed income markets are much more fragmented, given the volume of off-venue trading. The Report also notes that no one fixed income platform has a substantially larger market share across all fixed income venue trading (Report, 2.25).

Core equity exchange data is unique and, as the sole source gatekeepers or central marketplace for their data, often exchanges' data is a 'must-have' to perform activities across the investment process, and the main source of information for the asset class. Given investors' need for core equity exchange data, the exchanges enjoy a customer base whose demand is inelastic.

On this basis, we therefore agree with the findings of the Report that venues and exchanges have significant market power, given there is limited choice over which data provider to use, which can inevitably lead to limited competitive pressure and inevitably high prices.

For this reason and to ensure that the FCA can develop a holistic view across the value chain, we reiterate our previous comments that the FCA should also consider and take into account the originators of data (in particular 'must have' venues). Without this additional context, the Study risks capturing an incomplete picture of the value chain.

[redacted] [redacted]

Complexity, pricing behaviour and opacity of licensing exacerbates these issues

The FCA sets out in the ToR that it intends to explore whether burdensome contractual terms are resulting in high fees, with a particular focus on complex fee structures. The FCA has also said in the ToR that it intends to explore whether price discrimination is harming competition and distorting the supply chain, and whether lack of transparency around complex, non-standard licences is making it harder to switch and potentially weakening competition (ToR, 3.18).

We agree with the FCA's attention on these issues and consider there are a number of concerns associated with the proliferation, complexity and transparency of trade data, as identified in the Report.

In our experience, a key factor contributing to increased user expenditure on trade data is the **proliferation** of new licences by venues in a manner that results in the payment of additional fees to continue accessing and using data, as recognised by the FCA in its Report (Report, 2.55-2.56). We do not object to the development of new licences where these support distinct use case or innovations. However, it is common to see new licences being introduced (often at a higher cost) in situations where there are no meaningful changes in the underlying trade data product. Similarly, we are also aware of instances where third parties will introduce new fees and / or charging models under the pretense of launching a new product, when in practice they are only repackaging existing data. This approach can lead to firms charging extra fees without any corresponding consumer benefit and can often mean that users are charged multiple times for the same market data.

More generally, the **complexity** of licensing process is exacerbated by: (a) the need for users to hold multiple licences for the same data, based on different use cases; and (b) the fact that terms and conditions are not based on a consistent language across venues which makes things more complicated (for example, terms such as 'display' or 'non-display' have specific meanings depending on the venue) (Report, 2.56, 2.73 and 2.76).

In terms of supplier behaviour by data generators more widely, we have also seen:

- trade data providers demanding **increased transparency into customer usage**, for example requiring pre-approval and/or reporting of access, to delayed data by end customers;
- overly complex core exchange market data policies, burdensome audits, and technical connection requirements are often used to limit access to the data by keeping prices artificially high; and
- trade data providers, benchmark administrators and credit rating agencies imposing or attempting to impose **strict restrictions on vendors** in relation to downstream products. A few examples of recent requests are set out in the table below:

Type of restrictions or requests	Data generator	Impact / potential impact
Pre-approval or veto rights over aspects of any new proposed downstream product, distribution channel and customer relationship.	Trade data providers / exchanges credit ratings agencies	This practice in our experience can significantly delay the introduction of new and innovative products as exchanges and credit rating agencies lack incentives to

[redacted] [redacted]

		expeditiously approve downstream uses of their data and products.
Claiming intellectual property ownership rights over the entirety of derived financial instruments and products created by third parties or common clients that are derived from an index and/or or other inputs).	Benchmark administrators	This practice often leads to lengthy negotiation processes, especially because it can involve third parties that are also contributing data. Ultimately, it can significantly delay the introduction of new and innovative products.
Charging for the use of the data even as an "indirect" input (i.e. use of the data as a derived product of the primary derived product).	Trade data providers / exchanges	This can lead to additional costs where we are paying "twice" for the same data – once for the original derived product and again for the product that uses the derived product as an input, regardless of how abstracted it is from the original input.

Linked to the above, we also believe that pricing behaviour and disclosures around pricing may be undermining the effectiveness of the market. The Report notes that a lack of price transparency – for instance, fee schedules which are difficult to compare – make it challenging for users of trade data to make choices between different data sources effectively (Report, 2.30 and 2.75). [redacted] has previously expressed similar concerns about the difficulties that complex fee schedules pose for [redacted]

[redacted] also shares the FCA's concerns that the requirements that trade data be provided on a reasonable commercial basis do not appear to be a significant constraint on pricing for all market participants (Report, 1.10).

The Report indicates that some of its conclusions in this area may have been impacted by insufficient time or information from respondents and that as a result the FCA was not able to fully explore these issues in the context of the trade data review. We would encourage the FCA to continue its work on these issues as part of its Study.

We therefore welcome the FCA's attention on these important issues and believe that greater transparency and simplicity in this area could help markets work more efficiently.

Yours sincerely,

[redacted]

[redacted]
3 April 2023

[redacted] comments on the FCA Wholesale Market Study

[redacted]

Specifically with respect to the FCA request for stakeholders' views on (i) the issues set out in the terms of reference and (ii) whether FCA should make a market investigation reference to the Competition and Markets Authority (CMA) about one or more of these markets, [redacted] takes the following positions:

(I) The Terms of Reference

[redacted] believes the FCA Terms of Reference are very well written, and the six themes will serve as an excellent structure for the market data study. As representatives of the buy-side and therefore data users, we would be interested in explicit instructions as to how [redacted] can support the FCA on the market data study.

(II) Market Investigation References to CMA

For the 3 markets identified in the market data study (1. Benchmarks, 2. Credit Rating Agencies, 3. Wholesale market data vendors), [redacted] has the following opinion:

1. **Benchmarks**. [redacted] supports that a market investigation reference should be made to the CMA. Three benchmark providers [redacted] have achieved a dominant market position. So much so that the data has become 'must have' data for [redacted] to serve their investors. [redacted] has made nine recommendations below, including but not limited to that regulation requires the market data fees from benchmark providers be publicly published and that fees are charged on a reasonable commercial basis.
2. **Credit Rating Agencies**. [redacted] supports that a market investigation reference should be made to the CMA. Three credit ratings agencies [redacted] have achieved a dominant market position. So much so that the data has become 'must have' data for [redacted] to serve their investors. [redacted] has made nine recommendations below, including but not limited to that regulation

---

[redacted]

requires the market data fees from credit rating agencies to be publicly published and that fees are charged on a reasonable commercial basis.

3. **Wholesale Market Data Vendors.** [redacted] supports that a market investigation reference should be made to the CMA. Market data vendors such as [redacted] bundle some essential content and functionality into their commercial products. [redacted] has made nine recommendations below, including but not limited to ensure that competition encourages efficiency in the financial markets some of the more essential content and functionality offered by Market Data Vendors should be made available in unbundled form and that the policies and fees for essential Market Data Vendor content and functionality should be fair and reasonable.

[redacted] requests to be considered a formal respondent to the FCA Request for Information going forward. The FCA RFI provides [redacted] an opportunity to provide more detailed answers with examples to feed into the market data studies into 1. Benchmarks, 2. Credit Rating Agencies, 3. Wholesale market data vendors and market investigation references to the CMA beyond our more general remarks below.

General Remarks

[redacted] have long held concerns regarding the ever-increasing cost and complexity of wholesale data markets. All members face high and rising prices to acquire data that is critical to their business. The main drivers of this development are the following:

- How market data are packaged, with a de facto obligation to purchase new data products that have come onto the market; and
- Licencing agreements and policies that are subject to variation and regular changes. Vendors will often separate use cases and impose separate licence charges for each. These drivers have led to rising complexity which in turn has also increased costs. These costs have impacted market participants' ability to access data, acting as a barrier to entry for smaller and newer firms, and ultimately impacting the returns of the end client: the individual saver and investor.

In order to improve the functioning of the market, we make nine recommendations, including that:

- Data fees be tied to costs, with cost increases based on a reasonable profit margin, or demonstrable growth in operating expenses (excluding contracting and audit costs).
- Regulators should consider how to rationalise licencing agreements – by, for example, requiring standardised contract terms and standards.
- Regulators should also consider how to encourage achieve greater pricing transparency, through public availability of pricing lists or models.
- An option for 'enterprise' licencing of market data (i. e. having one licence with a data provider for use throughout the firm) be introduced.

Finally, we note that the relatively short time window for response to this study has led to these comments being by necessity quite high level. We urge the FCA to continue to gather views, both formally and informally, from all stakeholders, and if necessary, extend the timeline for the review to allow for stakeholders to gather and analyse sufficient data and provide a response that is suitably detailed.

We would welcome the opportunity to discuss further with the FCA any of the issues we raise in our response.

Exchange market data

We are concerned by the FCA's suggestion that immediate WMR measures will focus on the CT and the data services provided by vendors, index- and benchmark producers as well as CRAs – but not on the trading data provided by the listing venues/exchanges. We as data users believe that is of utmost importance to include trading data and the exchanges in any envisaged measures package as market data are also the raw material for other data products, in particular analytics, benchmarks and indices provided by the exchanges or the data vendors. Also exchanges market data sales practices often are the starting point for the understanding of other data sources/providers and data vendors pricing and licence structures.

Exchanges provide market data based on their own contracts. There are five different kinds of market data defined by frequency and type. They range from the most expensive real-time, delayed, end of day or closing prices to the more recent categories of historic and derived market data. According to consultant BTC data, the amount of revenue that exchanges receive from data and information services globally has risen from US$1 billion in 2005 to over $6 billion in 2019. Four years later, the figure is very likely much higher. A consultant [redacted] study in 2019 estimated that their data business operating margin to be as high as 76 %.

In terms of transparency of pricing and licences, exchanges are at least less opaque than other non-regulated data sources or data vendors. In Europe, market data providers like trading venues are regulated through MiFID/MiFIR and therefore 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, their market data contracts (with both price and licence policies) are available to the public. However, the data pricing/licencing conditions are not transparent enough to the users such as fund management companies [redacted]. They may therefore not easily be assessed or compared with the licencing terms of other data vendors/exchanges. A data vendor study of 185 stock and derivatives exchanges around the globe shows that 86 (46 %) had end of day policies and 81 (44 %) historical data ones. 26 of these stock exchanges also have separate licences to redistribute the data in place. Even though, according to MIFID, end of day or delayed data over 15 minutes should not be charged for by the exchanges, the study also found 15 cases of European exchanges charging for this data.

Data user rights and obligations are, however, not fixed by regulation but by the contracts from the individual exchanges. These contracts lack uniformity and clarity as most recently shown by a joint study of both buy-side and sell-side associations on the adherence of the various European exchanges to the ESMA promulgated market data guidelines under Art 13 MiFIR**.** The FCA itself also acknowledged in this respect: '*Our Feedback Statement highlighted concerns about complexity and transparency of contracts across all three markets … (of trade data).'*

Exchanges, like most data sources, usually claim that their licences are based not only on contract but also on copyright law. As a general principle there is no copyright in numbers, such as prices, as numbers do not fulfil the required creativity to support IP rights under the Berne convention. Recognising this difficulty, exchanges, and other data sources, [redacted], often make acceptance of their ownership of the copyright a mandatory part of the contract with [redacted]. They bind the other party contractually to accept their non-existent copyright. In the context of [redacted] this behaviour is now the subject of a class action in the USA. The defendants have conceded in court that they have no copyright in [redacted].

Coming to licence content, typical clauses in exchange as well as other data sources and data vendor contracts include reporting and restrictions on use clauses, an audit clause and an end user agreement requirement for the (institutional) investors in the funds of [redacted]. Each exchange and trading venue has its own pricing and licence policies with different taxonomy and terminology. There is no harmonisation and the ability of [redacted] to compare products and services is severely hampered. Also comparing prices even within one exchange or trading venue is extremely difficult as pricelists usually do not allow for multiyear price comparisons. Even if pricelists for several years can be manually compared, analysis is hampered by the lack of uniform taxonomy and terminology in terms of products and services and the trend to expand 'slice and dice' licencing policies even more to cover each use case with a separate licence. For example, exchanges now split the use of market data within the trading department into separate licences for the trading function and the trading risk management function. Then there is a third licence for use of market data in general risk management. Agreements are filled with clauses where a discount in one area is offset by additional costs in another. For example, the trading venue may reduce the fee for the data but adds in additional overheads on distribution, reporting and usage.

This lack of standardisation of contracts and the opaqueness and often lack of clear definitions means that both the data users as well as their data vendors need a lot of market data experts and legal staff to interpret and insure adherence to the terms and conditions of each contract. At the same time, exchange audits have become aggressive and time-consuming, occupying excessive amounts of management time. These efforts add to the data users' overall cost, sometimes much more than the revenue spent on the corresponding market data feed. On the data vendor side, the multiple licence structures of exchanges and other data sources effectively create massive barriers to entry for new data vendors wanting to enter this market.

Furthermore, today major data vendors [redacted] are owned by exchanges which effectively converts the exchange into a data vendor as shown clearly by example comparing the revenues by business segment of [redacted]:

[redacted]

These acquisitions are not viewed favourably by the buy-side because other vendors must report their clients and details of what data they consume to the exchange and its data vendor, which is restricting competition even further. Therefore, not only the [redacted] but also its smaller vendors suffer from the exchanges' commercial behaviour.

Other Wholesale Data Markets

Inaction by the regulators, supervisory and competition authorities is a contributing factor not only in the raise of exchange data monopolies but also in the rise of oligopolies in the credit ratings, indices, benchmarks, as well as the data vendors analytics and research space. This anti-competitive trend in recent years associated the costs associated with accessing market data have increased globally. This has been primarily driven by:

Greater *de facto* or regulatory requirements for new data product usage, for example because of:

- Regulatory demand resulting from AIFMD, UCITS, BMR, CRAR, MIFIR and ESG related reporting obligations,
- Data requirements from investor demand, particularly where there is a lack of widely available data such as in the alternative investments a, but also in the fixed income space, and
- A growing commercial interest for ESG data.

As described above, **licencing agreements and policies** are subject to variation and regular changes. Vendors will often separate use cases and impose separate licence charges for each, the so-called 'slicing and dicing'. In practice this often results in investment managers paying multiple times for the same data. Examples include:

- Derived data rights.
- Access to and retention of historical data. [redacted] wanting to switch providers will have to continue to pay a fee to their former provider for necessary historical data, which both increases costs and discourages competition.
- Location-based licencing which is to be discouraged as more and more employees work at least partially away from the office.
- Rising complexity also plays a significant role in increasing costs for investors:
    - Data licencing agreements are often too complex, with subscribers asked to pay for data based on both individual use cases and for each individual user.
    - Firms also often bear the cost of complex audits of their licences, imposed by data providers through ex-post fees. These audits can be lengthy, difficult to work through, require significant resource, and may in some instances take years to complete.
    - Firms receiving market data also face significant complexity in managing ongoing variation in their licencing agreements, incurring operation costs and risks.

We also note that **pricing models** change frequently, and there is often little transparency as to how these pricing models operate. Although data providers often state that they are working based on a price list, these pricing lists are not visible to data users other than in case of MIFD regulated trading venues. This makes price comparison and reduction nearly impossible, as well as to anticipate any future cost increase from one year to another in the provision of a given service by data sources/providers.

Finally, on this point the lack of price lists makes it difficult to determine whether the requirement not to discriminate between data users is being met. Evidence suggests that there is indeed huge discrimination in the prices charged to different buy-side firms using the same data set within the same data source/provider or data vendor.

To this end a study by [redacted] found that the largest variation and incon-sistencies occur within data sources standard index products and their licencing agreements:

[redacted]

- Across three large index providers, the prices paid by [redacted] for similar developed market index products range within one provider from 770 %, 315 %, and 1300 % for providers 1, 2, and 3, respectively.
- Across three large credit ratings vendors, the prices for essentially the same data service range from 200 %, 314 %, and 226 % for providers 1, 2, and 3, respectively.
- In the reference data 'Classifications' subcategory, the prices range from 290 % and 1075 % for providers 1 and 2, respectively.
- Within the data vendor space in the analytics solutions subcategory 'Terminals' the prices range from 150 %, 250 %, and 0 %, across three different global providers. This is the only case where the study identified one vendor which charged the same prices to all its [redacted] and therefore had a 0 % range.

Another area of concern is the practice of market data sources/providers as well as the data vendors usually denying liability for the accuracy, completeness, and timeliness of delivery. This puts the risk of their errors onto the data user. This often results in [redacted] needing to put substantial resources in place to verify the data at their own expense. Together with the never ending, unjustified cost increases the market data providers charge, this adds significant cost burden to the [redacted] and potentially the end customer in the way of higher charges.

These issues are exacerbated by increasing **consolidation of data providers and dominance by a small number of players**, resulting in oligopolistic or even monopolistic scenarios where investors find it difficult or even impossible to move their business to a competitor. For both benchmark providers and credit rating agencies, there are a relatively small number of large market players, and investment mandates will often require investment managers to use these dominant providers. This allows providers to raise prices significantly with little possibility for [redacted] to move their business to a competitor. Increasingly, the [redacted] are also seeing this trend now spreading to the area of ESG Data, where the largest, global, data providers are taking over smaller, specialised, providers as shown in NCA (AFM/AMF) and EU studies on the subject.

All this greatly increases the costs required for data users to get a full view of all market activity. It is especially a barrier to entry for smaller and newer firms and is ultimately reducing the returns of the end client: the individual saver, pensioner, and investor.

However, the rising costs are not associated with an improvement in data quality, or an increase in costs incurred by the data provider. Instead, data providers are often seen to be simply charging more for the same level of service.

Recommendations

To improve the functioning of the market we believe (UK) supervisory and regulatory agencies should focus on tackling the issues with costs and licencing practices ideally through regulatory intervention. With the overall goal of reducing complexity and ensuring costs are reasonable and sustainable, [redacted] recommends:

1. Increase data cost supervision

- The (UK) supervisory authorities should be empowered to ensure that the fees charged by data sources/providers to their clients for the provision of data the use of which is directly or indirectly required in regulation meet certain criteria, and they should take an explicit approach of examining fees relative to revenue or costs.
- Regulators should also examine the structure of data pricing agreements to consider how rules could support greater standardisation in terms of definitions and other terminology or practices employed in those agreements.
- Regulators should engage in more detailed and coherent development setting up of new regulation and subsequent enforcement actions of existing cost regulation.
- Supervisory authorities should enforce non-discrimination rules to avoid the charging of unjustified pricing and licence differences on the same class of data users.

2. Impose a cost-based licencing mechanism

Any benchmark, credit rating, market and ESG data licence costs should in principle be based only on the incremental/marginal cost of providing and distributing a given data service plus a reasonable profits margin.

More specifically:

- Providers should be required in principle to set fees for basic, regulatory required data usage services based on the cost recovery principle.
- In the context of a principally cost recovery-based pricing of regulatory required data, the sources and the market distributors may be allowed to charge a reasonable (inflation adjustment based) profit margin for the provision of data feeds.
- Introduce an option for ’enterprise’ licencing of market data (i. e. having one licence with a data provider for use throughout the firm) be introduced. This would enable users to fully realise the value of market data within their organisation by eliminating the possibility of additional fees or reporting requirements being incurred for new use cases defined by market data providers. We note that such ‘enterprise’ licencing is often already used in markets with strong competition, and its absence elsewhere therefore suggests a market structural issue.

3. Impose transparency on costs and prices

To reduce disputes related to licence fees, supervisory authorities and users should have access to meaningful written information which enables the reader to recalculate the actual costs based on the applicable pricing methods.

[redacted]

- This should include cost calculation methods as well as the guidelines on the allocation of fixed and variable costs, including the costs of third parties and the costs of the provision and distribution of benchmark data offerings.
- Secondly, the adherence to the cost recovery principle should be explained in writing by the vendor and be approved by the statutory auditor of the data source or data vendor company.
- Thirdly, the data provider or vendor should regularly publish transparent price lists on all data products and services. This would allow meaningful price comparison with previous periods. Off the run price lists should remain available on the data provider and vendor websites.
- Fourthly, on basic, regulatory required data, pricing based on the value generated with such data by oligopolistic and monopolistic data sources/providers and data vendors should be prohibited, e.g., when the [redacted] is construing blended credit rating values or blended index benchmarks. Specifically claiming rights on derived data usage needs to be actively discouraged.

4. Impose best practices on high impact data licences

Certain high-impact data licence practices which have significant negative consequences for end clients and financial markets should be subject to stricter controls:

- Data cut-offs before a binding court or arbitration decision in data licence disputes should be prohibited in financial markets laws, at least in situations in which the data cut-off would harm the stability of financial services firms, markets and/or end user clients.
- New sector-specific rules should ensure that regulated data providers (BMR, CRAR, MIFIR, ESG) are not permitted to escape their regulatory obligations through outsourcing of business to unregulated (group) companies.

5. Clear responsibility for errors

There is a pressing need to hold data sources/providers and their vendors responsible for any data errors. For example, it is pertinent to recognise now how integral financial indices impact the implementation of investment management strategies – especially for index-tracking ones (like ETFs) – and how critical index quality is to their success for investors. Asset managers should not be held accountable for errors they have not provoked, nor can control.

6. Keep data unbundling

The user side of market data should only pay for data they are interested in rather than being forced to buy additional services. Data providers should always inform customers that the purchase of e. g. the benchmark is available separately from the purchase of additional data (for example licence for constituents). Continuing this example, benchmark data providers should not condition the purchase of individual benchmarks to the purchase of a broader range of benchmarks (in which there may be little interest). Similarly, double licences should be avoided when the same benchmark data is used as a single benchmark or in combination with another benchmark.

7. Support the use of historical data

The historical data should remain available for regulatory/audit purposes, without time constraint. Historical data are often not available beyond a certain number of years which may not match statutory retention periods.

8. Impose transparency obligations

Data users have concerns about the inventiveness of data sources/providers and their data vendors in creating new use cases or categories of licence. Due to a lack of standardisation for licence concepts, fund management companies do not have the ability to compare the licence models across different providers and vendors. More transparency, such as harmonised templates and standardisation of the definitions of key terms and concepts used in licence data agreements, would be helpful to better understand the criteria for such use cases and avoid paying several times over for the same data.

9. Create public data utilities for market, index, ratings and ESG data

The user side of the data market is inelastic, as indices, ratings, prices and certain ESG data need to be used in the investment process. For example, the creation of an easy-to-use public data utility website service with terms and conditions allowing the databasing and use of minimum benchmark data would help to offset the risk of oligopolistic pricing by data sources/providers. In this context, in parallel to the existing European Ratings Platform operated by ESMA, the envisaged ESAP and consolidated tapes for share, ETF, bond, and derivative prices, also benchmark data as possible should be collected by the public sector and made available via public databases (Open Data). This data should be free of charge and licences to promote new data applications in the financial sector.

Dear FCA Wholesale Data Market Study Team,

We appreciate the opportunity to participate in the FCA's market study on the supply of benchmarks, credit rating data, and market data vendor services. As part of our commitment to transparency and cooperation, we provide a detailed overview of the data sources and practices at the [redacted].

[redacted]

These services include:

- **Cash management:** [redacted] offers cash management services to help businesses manage their daily cash flow needs. These services include liquidity management, payment processing, and account reconciliation.
- **Trade finance:** [redacted] trade finance services to facilitate international trade transactions. These services include letters of credit, export financing, and import financing.
- **Foreign exchange:** [redacted] services to help businesses manage their foreign currency exposure. These services include foreign currency trading, hedging strategies, and currency conversion.
- **Securities services:** [redacted] securities services, including custody, settlement, and clearing of securities transactions, as well as safekeeping and asset servicing for businesses' investment portfolios.
- **Corporate lending:** [redacted] corporate lending services to finance businesses for various purposes, such as working capital, capital expenditures, and mergers and acquisitions.

Credit Rating Data:

a. [redacted]: We use [redacted] for sovereign ratings and other credit rating products. We have licensing arrangements with the [redacted]. We access this data through the [redacted] and use it on an Ad-hoc basis.

b. [redacted]: We use [redacted] entities and debt instruments. We have licensing arrangements from [redacted]. We access this data through the [redacted] and use it ad hoc.

c. [redacted] We use [redacted] for credit ratings of [redacted] entities and debt instruments. We have licensing arrangements with the [redacted]. We access this data through the [redacted] and use it ad hoc.

Market Data Vendor Services:

a. [redacted] **Terminal:** We utilise the [redacted] Terminal for various data and services, including accessing CRA data from [redacted]. We use the terminal daily.

b. [redacted]: We utilise [redacted] for various data and services, including FX rates Our licensing arrangement is locally via a branch contract, and we use the platform on a daily basis to obtain FX rates.

c. Broker for Bonds: For bond transactions, we engage a broker to source and provide relevant data, such as pricing, market activity, and other relevant information. This allows us to make informed decisions when dealing with bond investments.
d. Internal System: We use our internal system to store, process, and analyse CRA data sourced from [redacted]. The system interacts with these data sources by collecting the Rates and Market information daily.

We hope that the information provided above helps the FCA better understand our engagement with wholesale data markets and market data vendors. Please let us know if you require further information or clarification on any of the points raised in this response.

We believe that addressing the concerns and improving competition in the wholesale data markets is crucial to ensuring well-functioning financial markets and promoting economic growth.

As the [redacted] we have experience in using and providing wholesale data services in the UK market. Our insights and experiences may contribute to a better understanding of the current state of the market and its competitive dynamics.

We want to highlight the following points for your consideration:

- Barriers to entry: In our experience, some barriers to entry in the wholesale data market include high capital and technological requirements, extensive regulatory compliance, and difficulty establishing credibility and trust with clients. It is essential to assess the impact of these barriers on new entrants, especially for international branches like ours, and explore possible measures to lower these barriers and promote market competition.

- Network effects: We have observed that network effects are present in the wholesale data market, with well-established firms having a competitive advantage due to their extensive user base and data offerings. Investigating these network effects and their implications on market competition, particularly for smaller or international players, would be valuable.

- Vertical integration: Vertical integration has the potential to impact competition, and it is crucial to assess how it affects firms participating in multiple segments of the value chain. As an international branch, we rely on data from various sources, and understanding the implications of vertical integration on competition would be beneficial.

- Suppliers' commercial practices: We have encountered some challenges in navigating the commercial practices of wholesale data suppliers, including burdensome contractual conditions, price discrimination, and opaque licensing terms. A thorough examination of these practices and their impact on data users would be advantageous for promoting a competitive and transparent market.

- The behaviour of data users: We believe that understanding the role played by data users in these markets is essential. Factors affecting users' ability and strength in negotiating with data suppliers should be considered to ensure a more balanced and competitive market environment.

- **Incentives for Innovation:** We encourage the FCA to examine the incentives for innovation in the wholesale data market and any barriers that might exist for further or faster-paced innovation. This would help promote a dynamic market environment that benefits all stakeholders, including international branches like ours.

We appreciate the opportunity to share our views and experiences with the FCA as part of this market study. Please do not hesitate to reach out if you require further information or clarification on the points raised in this representation.

Kind Regards,

[redacted]

[redacted]

[redacted]

To:
FCA, Financial Conduct Authority
wholesaledatamarketstudy@fca.org.uk

[redacted] 30th of March 2023,

Object: Contribution to the Wholesale Data Market Study (MS23/1.2)

Sirs, Madams,

[redacted]

[redacted] are Market Data Managers, Experts, IT and Sourcing Managers from corporate and investment financial institutions, asset managers, private banking, retail banking, security services and other financial institutions operating across regions including UK.

As such, [redacted] is pleased to contribute the FCA consultation on the Wholesale Data Market (ref. MS23/1.2) on Benchmarks and Indices from the major Index Providers.

[redacted] remain available for any further sharing on those issues.

Yours faithfully,

[redacted]

[redacted]

Wholesale Data Market Study:
The case of benchmarks and indices

[redacted] are observing a continuous increase in the costs of accessing benchmark data as well as unfair pricing and commercial practices (e.g. regular increases, parallel price increases bundling of services, lack of transparency of pricing) that may reflect an increased exercise of market power by the three dominant benchmark providers that account for more than two thirds of the index industry market share.

Indices and Benchmarks are indispensable to markets' as they provide comparability to investors and play an important role for an increased market transparency, facilitated diversification, facilitated risk management and simplified performance measurement.

Throughout the years these index companies acquired great market power and can unilaterally set conditions, since [redacted] usually cannot easily operate without the dominant benchmarks from their products without jeopardizing their own business due to investors pressure.

Each of the main index vendor has its own relevant market

Each of the major index providers has its own relevant market and consequently, by design, holds a dominant position on its own market. This dominant position is built by the fact that index providers typically have strong brand recognition and, as such, appear to have established themselves as inescapable.

New index providers struggle to compete due to the cost of switching for benchmark users. Switching providers is not a credible option as each of the major benchmark providers seems to hold a dominant position resulting from a strong brand recognition. Some of their indices are so established and known that they cannot be substituted. A full replacement of a major index vendor by another one is then not possible.

Where a partial displacement could have been possible, it is rendered economically not viable by aggressive bundling practices from established index vendors that reduce any financial benefits users could gain from rationalizing usage, as where a single index is needed users are often compelled to but a package. This budling practice strengthens the entry barrier for potential new entrants and confirms the dominant position of major players.

Some contractual arrangements such as long notice periods or exit fees could, and the technical requirements involved in the need to adapt business practices to different inputs discourage users from switching. And the unbalanced contractual clauses make it harder to engage in any meaningful displacement projects.

Double digit price increases

These providers have used their dominant position to introduce significant double digits price increases for their products, without any additional value for banks and asset managers. In addition to some strong price reviews, they change pricing policies by introducing new fees related to ad hoc services.

Unfortunately, [redacted] showing extreme levels of inconsistency with some market data consumers paying up to 26 times more than others for comparable use cases.

Permanent change in the pricing policies, artificially increase costs with no additional value

Multiple licensing fees may apply for the same data if used for internal analysis, client reporting and regulatory purposes. Our users also notice that when a new commercial policy is introduced by one of the major providers, other providers usually follow suit with similar policies that inflate the final costs for users. Without any fundamental change in the usage of [redacted] the number of license categories continuously increased in the last decade.

Index providers seem to have reengineered their licensing models to cover each step along the whole value chain of an asset manager or a bank. The data license practice ranges from internal applications support to external regulatory reporting as well as ETF production and brand licenses. Benchmark administrators also charge market participants (e.g., asset managers) for separate “created works”, “manipulated data” or “derived data”. Sometimes arguing of regulation changes to impose additional licensing categories.

Existing license agreements which were previously priced only for one user 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 and differentiated between the circumstances of the use of the same data.
The licensing cost is steadily rising and as mentioned repeated at each step of the value chain: it is ultimately passed on to the final investor.

Increased complexity of pricing models

Benchmarks and index providers today impose several dozens of different licenses to the clients. And do not have a transparent price and cost policy for the different and complex license models. Further adding to licensing complexity, there is no standardization as to how to license concepts are defined (e.g. location, user … basic concepts can have different range of definitions). There also appears to be increasing complexity of data policies and price policies, which makes it harder for investors to compare the cost of different index services. Due to a lack of standardization for license concepts users cannot compare the license models across different index providers.

Impacts on innovation

This distortion of competition harms innovation on the index and benchmark data markets themselves as guaranteed revenues and guaranteed growth for index vendors are not a great incentive for new ideas and innovations.

This distortion of competition also reduces the ability of financial institutions and investors to innovate as well when using those benchmark and index data services as those data and issuance licenses are getting extremely expensive. Consequently, banks and investors have no other choice but to limit use of such information when serving their own clients.

Possible ways forward

Given the established importance of index providers and the role they should play in the good functioning of financial markets, it is in our view important that regulatory steps are implemented to mitigate the adverse impacts the practices mentioned above can have on the market.

Indeed, the increasing cost of indices could lead users to cut back on their use of indices market data by limiting the number of employees having access. Overall limited access to view market data for investors, both retail and institutional. This makes the investment decisions of investors less informed and in general hamper the intentions to increase financial market transparency.

In our view, the following steps could be considered to reestablish a good functioning market for benchmark market data:

- The “FRAND” principle could be extended to all benchmarks.
- Impose a cost-based licensing system: benchmark data fees could be based on the marginal cost of providing and distributing indices, plus a reasonable profits margin.
- Enforce cost transparency: Introduce clear, simple, and comparable price list, with transparent methodology.
- Strengthen regulatory oversight, to make sure the dominant indices providers don’t abuse their position, and commercial practices remain acceptable.
- Ensure that all users are provided access on a fair, reasonable, transparent, and non-discriminatory basis.

* * * * * * *

[redacted]

To: **FCA, Financial Conduct Authority**
wholesaledatamarketstudy@fca.org.uk

[redacted] 28th of March 2023,

Object: Contribution to the Wholesale Data Market Study (MS23/1.2)

Sirs, Madams,

[redacted]

[redacted] are Market Data Managers, Experts, IT and Sourcing Managers from corporate and investment financial institutions, asset managers, private banking, retail banking, security services and other financial institutions operating across regions including UK.

As such, [redacted] is pleased to contribute the FCA consultation on the Wholesale Data Market (ref. MS23/1.2) on credit rating data feeds and credit research services from the tree major credit rating agencies.

[redacted] remains available for any further sharing on those issues.

Yours faithfully,

[redacted]

[redacted]

Wholesale Data Market Study:
The case of data and research from Credit Rating Agencies

[redacted] are observing a continuous increase in the costs of accessing these services as well as pricing and commercial practices (e.g. regular increases, parallel price increases bundling of services, lack of transparency of pricing) that may reflect an increased exercise of market power by the three dominant credit rating agencies in their data and service offerings.

[redacted] analyzed the competitive situation surrounding the conditions of access to credit rating data feeds and credit research from the major credit rating agencies.

Key findings

Rating activities function as two-sided platforms for issuers and investors

Financial rating agencies function as two-sided platforms that facilitate investors' access to a network of issuers (issuers) and issuers to a community of investors (investors). The historical activity of rating agencies is to assess the creditworthiness of issuers. This assessment results in the publication of ratings used by investors in their investment decisions ***(pure rating side)***. This activity is often regulated.

Rating provides information about the risk profile of the issues and/or issuers and thus helps to ensure that issuers have a market for their debt issues with investors. In return, it enables these investors to have reliable information on the risk profile of the issues and to include such information in their investment strategy, for their own account or that of their clients. It also allows regulated players such as banks to size their own funds to comply with prudential rules.

Rating agencies also distribute and market products and services resulting from their rating activities through unregulated independent entities ***(services side)***. The rating agencies market access to their rating data via a structured data stream. Unlike individual rating information, which can be accessed free of charge on the rating agencies' website, rating data are structured in such a way that they can be directly integrated into the financial players' systems and thus feed many applications in real time and automatically.

For financial intermediaries and some investors who consume large amounts of rating data, rating data *services* are a natural extension and, in fact, inseparable from their "consumption" of *pure* rating information. The main financial players therefore naturally subscribe to these rating data services.

Rating activities have a number of characteristics that support a highly concentrated market structure

Rating agencies facilitate investors' access to a community of issuers and to the many investment opportunities created by their debt. Similarly, they provide issuers with access to a community of investors from which their securities can be invested. The more important a community is on one side of their business (e.g. issuers, i.e. the point of life of issuers using their services), the more attractive the agencies are to the agents on the other side (e.g. financial institutions and investors who will use the rating data of these agencies and subscribe to their rating data service).

Thus, they are able to benefit from important network effects, which naturally tend to strengthen the position of the best-established agencies on the market.

These network effects are further reinforced by reputation effects when rating agencies have an established position. Specifically, ratings are experience-based products, the quality of which – that is, the appropriateness of an issuer's default risk assessment or of an issue – is known only retrospectively and can only be assessed on the basis of a broad rating history. Consequently, a reputation for quality built over time is a determining factor in the use of a particular agency by an issuer to rate an issue and in the systematic use of such agency's rating results by investors and other financial actors.

These characteristics of the credit rating system have an impact on the entry and development of alternative agencies to the three main agencies. These barriers are further reinforced by the existence of economies of scale, significant migration costs for users and regulatory requirements governing the activities of financial institutions using these data.

The three main credit rating agencies – [redacted]

These agencies have a very significant competitive advantage in the rating market and the (inseparable) rating data market, as they collect and consolidate a wide range of ratings data and have expertise, which enables them to have a much richer overall offer than alternative rating agencies. The ratings published by each of the three main rating agencies constitute a market standard and a regulatory reference.

The main rating agencies are thus in a position to leverage this competitive advantage to distort competition to their advantage.

Each of the three main agencies has its own relevant market

The main issue is to assess whether the rating agencies form part of the same overall relevant market for rating services or whether there could be a relevant market per agency. From the issuers' point of view, there could, in theory, be a degree of substitutability between the offers of different rating agencies, since they relate to rating services that are of the same nature and based on similar production methods, which use the same type of information from issuers. However, in practice, most issuers retain two or more rating agencies. The consequence of this market practice is that the ratings of the three main rating agencies cannot be considered as completely substitutable on the rating market. On the contrary, for certain issuers or certain issues, these ratings are complementary.

Moreover, in theory, there may be direct competition between rating agencies for issuers that could only take on the services of one or two rating agencies. However, in practice, the commercial principle of non-discrimination between issuers limits competition on prices and therefore reduces the incentives for agencies to generate or to compete on additional ratings. Thus, an exercise of market power by one agency will not necessarily be accompanied by a particular tariff effort by another agency to receive that transmitter.

From the point of view of investors, financial institutions and their use of rating information, the offers of the three main rating agencies are not (fully) substitutable, but complementary for all or part of their needs. The offer of the three main rating agencies is not completely redundant, as some issuers decide to switch to a single rating agency. Credit rating agencies have specific reputation according to the sector or product under consideration so that market participants, especially banks, are led to choose the rating of one of the three main agencies on that basis. These agency-specific powers naturally limit substitutability between them.

This observation is not called into question by the existence of overlaps and redundancies in the content of the offers of the three main rating agencies, as financial actors use and may be compelled by the regulatory obligation to use the ratings of the three main agencies for some of their activities. This is particularly the case for risk management and compliance, asset management (Asset management) and/or credit advisory activities.

Based on the above, a relevant market is to be defined at the level of each rating agency. Each credit rating agency enjoys a dominant position on its own relevant market for credit rating data and related credit research services.

The three main rating agencies could leverage their dominant position to distort competition.

Alternative agencies are not in a position to compete with the three main agencies for total demand from investors and financial intermediaries. In theory, alternative agencies could be in a position to compete with the three main agencies for some of the needs of financial players and intermediaries such as banks. In practice, however, they are unable to do so given the intrinsic characteristics of the market and the positions of the main rating agencies, which are reinforced by aggressive practices resulting in market foreclosure.

Specifically, on the unregulated side of services to financial institutions, the three main rating agencies practice some bundling of services that could be considered as abusive. The lack of commercial transparency (no prices list shared with clients), the lack of modularity of offers and the forced bundling of services within global licensing agreements prevent investors from selecting data purchases from the different agencies according to their real needs and encourage them to concentrate these purchases from the main agencies.

As a result, alternative rating agencies are not able to develop on the *service side*, which in turn limits their adoption by issuers, despite a regulatory framework favorable to their development on the issuer side. Locking the services market also deprives alternative credit rating agencies of an important source of revenue that could potentially finance a strategy of entering the rating market based on aggressive commercial policy.

The price dynamics of the three main rating agencies seem to confirm the exercise of possible market power.

The three main rating agencies could leverage their own dominant position to impose significant annual price increases for their services, averaging around 5%, and sometimes exceeding 100% when contracts are renewed every two to three years. These price increases are not directly related to the cost developments borne by the agencies but could better reflect the banks' propensity to pay.

The evolution of the prices charged by the three main rating agencies is likely to reflect the low competitive constraints faced by these agencies and the competitive advantage they enjoy vis-à-vis their competitors. They also help to limit the economic development space of these competitors.

This distortion of competition harms innovation on the credit rating data markets themselves as guaranteed revenues and guaranteed growth are not a great incentive for new ideas and innovations. This distortion of competition also reduces the ability of financial institutions and investors to innovate as well when using those credit rating data services as those data licenses are getting extremely expensive. Consequently, banks and investors have no other choice but to limit use of such information when serving their own clients.

* * * * * * * * *

[redacted]

March 30, 2023 *via Electronic Mail (WholesaleDataMarketStudy@fca.org.uk)*

Mr. Sheldon Mills – Executive Director, Consumers and Competition
Ms. Sarah Pritchard – Executive Director, Markets
[redacted]

Financial Conduct Authority
12 Endeavour Square, London E20 1JN

Re: Wholesale data market study: benchmarks, credit ratings data and market data vendors (MS23/1)[1]

Dear Director Mills, Director Pritchard, [redacted],

On behalf of [redacted] I am pleased to provide the U.K. Financial Conduct Authority (FCA) with our comments on the MS23/1 Market Study concerning the competition in the provision of benchmarks, credit ratings data and Market Data Vendor (MDV) services. We applaud the FCA for a holistic review of issues and potential competition concerns in the wholesale data landscape, which are critical for innovators like us. [redacted] We aspire to serve the global markets and welcome opportunities in the UK and other areas.

Reference to [redacted] the FCA (FS22/1), we believe the UK or British Commonwealth Countries are better off differentiating from the US Decentralized Competing Model (DCM)[3] and the EU Capital Markets Union (CMU)[4]. The value proposition will both compete against and complement the EU and the US for a new equilibrium in growing the overall pie and countering the rise of China's capital markets[5]. For that, we applaud the FCA for taking the stand to deviate from the US DCM in consideration of a consolidated tape.

Meanwhile, we understand this Market Study emphasized these 6 themes of wholesale market data: (1) Barriers to Entry and Expansion; (2) Network Effects; (3) Vertical Integration; (4) Suppliers' Commercial Practices; (5) Behaviour of Data Users; (6) Incentives for innovation. Here our thoughts and recommendations:

Context of the problem:

Competing to be More Equal in Animal Farm where Rights and Obligations are NOT Aligned

As the FCA illustrated in diagram on 2.2 of FS23/1, there are interesting dynamics among different constituents in provision of benchmarks and indices, Credit Rating Agency (CRA) data, market and reference data. Some of these data providers are owned by or affiliated with Exchanges, Bulge Brackets, and other elites. New entrances struggled to challenge the top providers before they are merged away or burn out. In turn, the large becomes larger in scale with broadened scope and networks. Reinforcing a paradigm that serves the elites well, but undermines the others and/or is shortsighted which tends to overlook sustainable growth opportunities.

[redacted]

[redacted]

[redacted]

Consider composing a trade strategy or developing a financial product, like making music. The difference in the end product (i.e. money or financial assets versus songs or other "contents") should not preclude algorithm developers, traders and their respective financial institutions from having their composition and production works be recognized as copyrighted materials. Therefore, **who owns the data**, **what gets paid** and **who gets what** are at the core of all these market data, reference data, benchmark indices, and CRA data issues. The clear delineation of rights to control the "**use**" and "**distribution**" of copyright work requires a mechanism to confer appropriate rights upon creators. These rights include but are not limited to:

a. **Reproduce** and make copies of the original work;
b. Prepare **derivative works** based on the original work;
c. **Distribute** copyrighted work to the public;
d. **Perform** copyrighted work publicly;
e. **Disclose** the copyright work publicly.

Thankfully, if we heed the lesson learnt, there is no need for the Capital Markets to go through what has taken the music sector several decades to straighten out most if not all arguments about: who are the "publishers" versus "distributors" of data ("contents") (or sometimes a publisher can also be, or own, or affiliate with a "streaming platform"), their **relevant rights, obligations, and corresponding liabilities** if there is any. Please see Appendix 1.

1. Barriers to entry and expansion

Whether there are market features, behaviours or practices that support or create structural or strategic barriers to entry and expansion.

The industry craving for evermore data and the race to have the fastest speed have caused infrastructure costs to increase exponentially for both data suppliers and buyers. Very often we hear data vault and cloud vendors promoting the "more data the better". Telecom companies would say that you need the fastest proprietary feed to preserve competitive edge, regardless if it means upgrade from 40G to 100G, 400G, 800G, or even 1.6T speed.[6] However, we doubt if any of these myths truly deliver any economic benefits to our capital markets. Somehow, we wonder if our trading community has become subservient to these infrastructure providers overtime.[7]

Please do not get us wrong, we are NOT trying to defy technological advancements. We believe using time-lock encryption[8] (TLE) for a secured and synchronized starting line in data distribution plus corresponding measures and regulatory policies would save the industry from unnecessary wastage of infrastructure investment.

[redacted]

Regardless of aggregation distance/ location differential issues in Europe or the US, it does not matter if anyone using Microwave or Hollow-Core-Fiber Cable[9] for Low Latency data transmission, TLE is able to protect data from being decrypted prematurely in accordance to an atomic clock. Rest assured this is not another speed bump. Pre-Trade consolidated tape is possible. Indeed TLE has been adopted in other industries to promote fairness. Other use cases of TLE include CRA data and economic news announcements.

[redacted]

[redacted]

Collocation[10] ≠ Latency Equalization (LEQ)[11] ≠ Market Data Available SECURELY in Synchronized Time[8]

It is a shame that even the online gaming industry uses LEQ, while electronified markets[12] adopt a lower standard. Without putting the right parameters to bound performance, the "*same manner same method*" provision in the [redacted] Market Data Infrastructure Rule (MDIR) it is merely a "standard price list". We applaud the FCA for taking the stand to deviate from the US DCM in consideration of a consolidated tape.

According to a comment regarding Exchange connectivity fees during [redacted], the HFT was "*paying nearly US$1.2 million* [GBP 0.98 million] *a year for a 328-feet cable that cost US$88* [GBP 71.7] *at Amazon*". Using the cost base of a small US stock exchange[14] as basis for a consolidated tape cost estimation, it cited that their annual market data infrastructure cost is US$1,791,403; plus, physical connectivity for primary and secondary access layers, data center space, power, physical security, administrative access, monitoring of US$795,448; plus, we estimate software and hardware depreciation of US$400,000, equipment maintenance, information security, clock synch and compliance costs of US$680,000. Yet, there are the subscriptions to other exchanges' data feeds, redistribution fee, connectivity, co-location and ticker plant, that is about US$3.52 million. These add up to a total of US$7.3 million or GBP 5.98 million.

Barriers of entry are extremely high. **Aside from the huge initial investment and on-going cost, a new participant has to consider the competitive landscape whether the market can afford another vendor with enough subscriptions to survive, or cannibalize the weakest player.** For non-display market data vendors, we are aware that:

[redacted]

Therefore, **the hurdle before a MDV new entrance can hit the ground running is gathering a consortium of financial institutions willing** to commit and financially back the venture for **X** number of years.

For Indices Benchmark and CRA data, it is a regulated space where a license is required to operate. Shaking up the licensing process to encourage new participants is not going to displace the leading players. There are network effects, vertical integration and suppliers' practices issues; please see points 2, 3, and 4 for an elaborated discussion.

[redacted]

[redacted]

2. Network effects

If barriers to entry for new suppliers or barriers to switching for users are high, the likelihood of displacing a leading supplier may become low. This can result in market power and low incentives for incumbent providers to compete on price, quality and innovation.

Network effects can be both positive and negative. Externality can stem from either the production or consumption of a good or service. Positive externalities are desirable because there is a positive gain on both the private level and social level. Sadly, many network effects we face today are negative – i.e., social costs outweigh the private costs.

We agree with the observations by the FCA about "two-sided markets" and its pros and cons. Externality attributed to their success, whilst reinforced clients' **lock-in to oligopoly networks** that goes against the social interest. We came across this research[15], entitled "*Two-sided Markets, Pricing, and Network Effects*" that studied the pricing and the complex interactions between different platform's users, multi-homing, price discrimination, and social spillovers. Yet, we do not think price control intervention is conducive to an appropriate regulatory response to the dilemma.

We can comprehend why certain activist groups are attempting to lobby for using the existing advisory rules as a quick way in tightening the oversight of benchmark indices and CRA firms in view of the 2008 and other financial crisis, such as the digital asset crash. The controversy of whether "*certain information providers may or may not be acting as investment advisers*"[16] has stirred up much debate in the US. [redacted]

If we picture the 'index providers', benchmark or 'model portfolio providers', pricing services or CRA as either 'Algo Publishing' (artists) or 'DJ Mixing Engineers' (aggregate and push upstream), it is not hard to see that their "derivative works" may or may not have significant difference from the original "songs" or trade strategies. If the [redacted] proposal is adopted, it would implies that these CRAs, Benchmark Indices firms are not artistic enough to "create" original "contents" that uniquely different from others. Hence, they cannot be held liable for the "contents" that they did not create, unless these firms knowingly are in cahoots with those engaged in manipulation, greenwashing of ESG securities, or other misbehaviours.

So, in respecting the professionalism of CRA, benchmark indices firms, their **higher pay must accompany higher responsibilities to the society**. This justifies their earning of 45% instead of the 5% copyright royalty under our hypothetic model in Appendix 1, which rate setting is objectively based on 4-Part Test[17] and Free Market rather than regulatory price control. Grouping them under "algo publishing/ index benchmark" category better reflects how they would become **liable if their conduct might result in conflicts of interest, market chaos, or manipulation scandals**.

Another **alternative regulatory approach** is to break them down, mandating them to "**split**".[18] Spinoff a portion of their business is fair because it relies on market mechanisms to determine a settlement price for rights that players may willingly give up. However, turning a blind eye is easy, because I'll be gone and you'll be gone (IBG/ YBG). It is lucrative through the "revolving door".[19] Policy makers may not have the guts to make such bold moves.

[redacted]

[redacted]

3. Vertical integration

Potential concerns about vertical integration … causing competitive distortions at different points of the supply chain, for example through the inability of competing firms to access necessary data inputs or bundling of data services with other products and services … also assess the bargaining power … will evaluate how these relationships affect the way firms compete with one another.

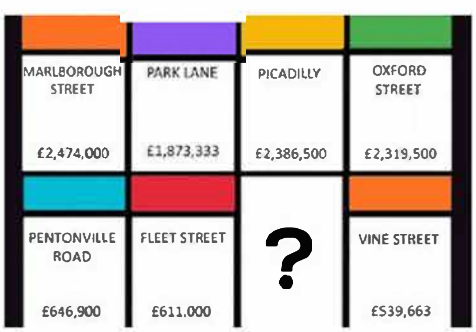
Consolidated tape is not cheap by any means. Although the amount of data and trade messages keep growing every year, MDVs are in fact consolidating both [redacted]

If a self-aggregator or consolidated tape provider adding an 'Order Entry' component of about US$1.6 million or GBP 1.31 million per annum with necessary switches, servers, software license, some personnel cost plus a little extra, it can start matching trades for additional revenue. Therefore, it makes sense commercially for MDVs to vertically integrate and become a trading venue, or liquidity sourcing, outsourced execution vendor for a broader economy of scope than a pure play data redistributor.

Given one size does not fit all, these data vendors, inward looking OMS/ bulletin boards, transaction cost analyzers, liquidity sourcing, outsourced execution vendors, ATSs/ MTFs, SDPs, bilateral trading or other communication protocol systems[20] does serve to fabricate the fragmented markets. However, they also become layers of intermediary costs causing the U-shaped value chain smile curve[21] to turn into an upside down "frown".

Vertical integration along the value chain, with combinations of trading venues, benchmark administrators, MDVs and ratings providers being part of the same corporate group is nothing new. The motive could simply be trading venues face competition globally. It allows these large conglomerates to bundle their products and achieve a better economy of scale and scope in operations. However, if one may recall the time when copyrights are not enforced for MP3 music, plagiarized copies were everywhere exploiting the rights of the original content creators. Letting "streaming platforms" divide the cake by selectively paying rebates and other perks to the elites hurts the other "content" creators.

Integrated conglomerates use their position in one part of the value chain to cause competitive distortions in another part. We will discuss various commercial practices of suppliers in point 4, where they booster bargaining power and limiting alternatives for data buyers. In short, dominant players' practices exacerbate the problem with barriers to entry or expansion, while reducing competition.



Using an analogy from the game Monopoly, players would keep capturing all of the spaces of the same color to grow their vertically integrated conglomerates. Partially, it is the game rules that aid or encourages their becoming **Oligopoly** until there is one player left. Scooping up "same color" spaces in essence is "herding" a vast amount of data exclusively available only at one conglomerate. Over time, each conglomerate builds houses on their own turf to rent seek. Different conglomerates become echo-chambers to broadcast a subset version of the whole truth. Hence, their products are complementary rather than competing with each other.

Ending up with nobody seeing the big picture, unless a buyer subscribes to all oligopoly data providers.

[redacted]

[redacted]

4. Commercial practices of suppliers

Concerns about complexity and transparency of contracts across all three markets within scope … examine suppliers' licensing practices to assess.

Please refer to the Exchanges' publicly disclosed price lists[22] for other products or services related to market data. In general, there are the following types of charges by Exchanges or other Regulated Data Providers (RDPs):

- Access Fee (general and per user/ month)
- Professional User Fee (Per User $/ month)
- Non-Professional User Fee (Per User $/ month) absorbed by Broker-Dealers
- Non-Display Fee (by different categories $/ month)
- Redistribution Fee: $/ month
- Multiple Data Feed Fee, Digital Media Enterprise Fee: $/ month and/or Enterprise Fee: $/ month … etc.

… plus a whole host of "not hidden" but often oversighted costs of upgrading and downgrading to ensure lock-in, and constant changes in market data licensing fees, audits by market data vendors and/or exchanges, and broker-dealers internally incurred costs for data aggregation, integration with trading algorithms/ other systems, re-piping, testing, etc. [redacted]

The FCA does not need to spend time diving into the complex, granular license contracts or opaque fees, [redacted] already unveiled that one could be paying 2,632% more than other firms for the same market data. [redacted] merely standardize, automate a machine-readable way of describing data licenses. It will not solve the 'who owns the data' question. Do not fall for the familiarity of quote and trade revenues that the large exchange groups may want to stick to their pursuit of 'SIP Accounting 101'[26]. Measurement of social costs is an **economic problem rather than a technical accounting or lack of transparency matter** [redacted]

The [redacted] about "*market data is made available on a 'reasonable commercial basis'*" may be difficult to determine from a pure cost basis accounting perspective. Adding a preceding condition of "subject to competitive forces" may help. Keep in mind that rights' entitlements must accompany corresponding obligations and/or potential liabilities to be fair, so the mechanism to confer rights should embrace the concept of equivalent exchange. For that, "4-Part Test"[17] deems an agreeable principle universally – (1) willing seller willing buyer standard; (2) same parties test; (3) statutory license ["effective competition"] test; and (4) same rights test.

[redacted] dominated the MDV space.[29] If any existing MDVs can spread their fixed cost across a larger base of consumers (in benefiting the industry to strike for a "fairer and non-discriminatory" outcomes), it would have succeeded a long time ago. **Maximize life of aged technologies beyond 10 years' amortization period** is in existing MDVs' best self-interest.

[redacted]

[redacted]

Another tactic is **inflicting damage on others or ecosystem degradation**. For example, uncontracted marginal value of the adverse effect turning into a nuisance affecting the general public that does not have a direct stake in the public market equity trading - such as foreign/private markets, OTC, Options, futures, derivatives trades, and academia.

As mentioned in point 3, selectively paying rebates and other perks to the elites is a form of **price discrimination**. Also, integrated conglomerates scooping up smaller firms and rivals reinforced their **oligopoly** power.

Nevertheless, there is a race to **lure firms** into **higher dependency** on more data versus provision of better analytics. **Either way, vendors profit** from it regardless of their clients receiving more noise, or **clients buying** ever more tools to handle and/or **analyze** these data.

Existing players may buy-in to the US DCM because they have almost no incremental cost to become Competing Consolidators (CCs). Their revenue upside depends on how hard [redacted] industry beat up the Exchanges on their behalf. [redacted]

The hype about heightening of "governance" and disclosure to regulate data suppliers' practices would FAIL. [redacted]

It is not wrong for vendors to bundle products and gain efficiency through improving economies of scale and/or scope. However, acts to dampen competition, or create barriers to entry or expansion, price discrimination, and inflicting unnecessary social cost burdens on others are a detriment to the healthy development of markets and the economy.

Breakthroughs require fresh **innovations** from someone new to challenge the Oligopoly. Market reform should allocate most rewards and provide a reasonable return for those who are able to innovate, contribute to reduce unknowns[34], and grow the number of diversified market participants [redacted]. If there is insufficient incentives, reformers may hesitate to invest, or use "FREE" alternatives to overcome switching cost [redacted] to accelerate client acquisition while cover their expense through other means.

[redacted]

[redacted] [redacted]

5. Behaviour of data users

Investigate how data users' behaviour affects the competitive dynamics in wholesale data markets … will assess if there is evidence of users switching and the extent to which they can negotiate important factors (such as the price and quality of what they get) with benchmark administrators, credit ratings data suppliers and market data vendors

Given suppliers product bundling and two-sided markets as mentioned earlier, modern systems are intertwined, re-piping requires thorough testing of all interfaces. Clients usually have a hard time justifying the half-million to a million US dollar (GBP 0.41-0.82 million) cost for the switch and related tests. **Reliability is usually prioritized over novelty** because adverse consequences for system failure are costly.

Procurement rather believes larger vendors that have **wider shoulders to bear the blame if anything may go wrong** with the switch, than spend time with a smaller innovator to carry out a seamless implementation. [redacted]

Can customers identify their own needs – certainly they can but often are **not willing**. Why go through the hustle bustle to review all the fine print on countless licensing agreements and worry that another department(s) may be impacted by changing a small item in one area. Those who actually carry out the implementation tasks in operations often get squeezed in budget and time. In turn, that nurtures the behaviour of **"do less" for "less chance of mistakes"**.

Comparing products across suppliers to determine which would "best" meet their needs is much harder than those naïve who falsely believe that better transparency would address structural market problems. We are not sure the reliance on "fire and replace the execution vendor" approach to hold market makers' feet to the fire as being effective. [redacted] requirements would definitely fail to objectively discern if there may or may not be conflicts or other misbehaviours.[37]

There are **too many nuances** for dynamic price shopping [redacted]. It is a burden that the [redacted] themselves would struggle to perform, but they push it on the broker-dealers. Individual effort by the broker-dealer is not sufficient to take on this industrywide market structure challenge. Blindly trusting those well-articulated policies and procedures, another downfall like the 2008 Société Générale US$ 7.2 billion loss[38] would happen again.

Customers do not need to better assess the Broker-Dealers' potential conflicts, the Policy Makers do**.** The public relies on market regulators to assure that they are not scammed in open market. Heightened disclosure in the **beautified name of "improve transparency" may indeed be bad policies for an uneven playing field**. Malicious targeting or selective enforcement only benefits the middlemen, big law and consulting firms.

Nevertheless, **demand for wholesale data is inelastic**. Data providers may bid up the price and selectively give the most favorable terms and/or exclusive access of certain information to the elites. Buyers have little to no bargaining power to negotiate with the big oligopoly echo-chambers [redacted]. [redacted] was a buy-side attempt to increase their bargaining power. It did not last long before it merged with [redacted] on the sell-side.[redacted] So, **if you cannot win them over, join or be subservient to them**.

[redacted]

[redacted]

[redacted]

Not every investor or portfolio managers would requires low-latency equity market data but choosing to trade in the fixed income markets one is also faced with the harsh realities of dealing with the big 3 CRAs. To comply with investment mandates, one must obtain licensing data from all 3 suppliers in order to get the full near-universal coverage of debt instrument ratings (i.e. products are complementary rather than compete with each other).

This is like the warring states period[40] [redacted]. Without a consistent copyright licensing mechanism[41] which aligns and addresses the economic viability of a constituent to exploit its economy of scope and/or economy of scale, there is NO harmonization of the different market centers.

6. Incentives for innovation

Concerns over a low level of meaningful innovation from users of CRAs and MDVs … will look at the incentives that exist for innovation by firms in each of the markets in scope and what barriers might exist to further or faster-paced innovation … also consider emerging and potential future trends and developments that could affect how competition in these markets works.

The prior mentioned 5 themes affirmed that the established wholesale data vendors or the integrated conglomerates are unlikely to lose customers to their competitors. Their manner in usage of technologies, product delivery, and pricing methodologies are questionable. The way their products or platforms are designed may gear toward addictiveness rather than captivating. In our opinion, 'rent seeking' cannot, and should not, be equated to the true essence of "innovations" – i.e., **unlocks new values.**[42]

Although established vendors do invest in new products to broaden their economy of scope and up keep with policy trends to offer, for example ESG services. However, we agree with the FCA that benchmark administrators need improvements in ESG benchmarks.[43]

Competing on hardware components/ connectivity subscriptions that anyone can go buy and replicate is indeed substitutable or is a commodity product that adds little to no value. Policy makers should encourage innovations using proprietary tech. Patents and intellectual properties deserve proper respect. Instead of requiring innovators to unveil their secret sauce in a well-articulated disclosure, benchmark tests would reflect its true performance.

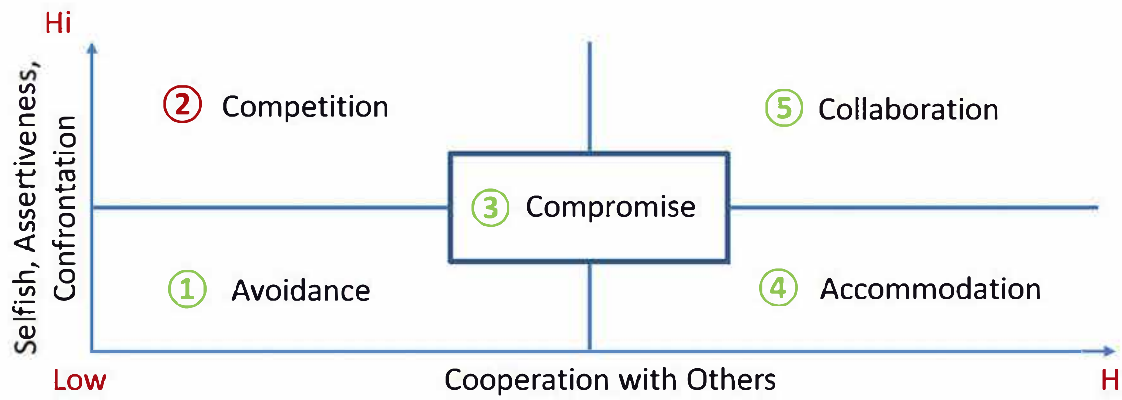
[redacted] the secret of how innovation happens involve these 4Bs:

i. Be dissatisfied with the status quo
ii. Boils down the empirical into workable clues
iii. Brings in the non-conventional thoughts
iv. Bridges the invention with market reality

Inspirations come from all walks of life; cross referencing, mind mapping, etc. The more diverse the richer the analogies one can draw to solve the puzzle. Yet, reality can be humbling as well as pushes one to consider possible evolutions (see diagram on the next page regarding paths towards competition and other directions).

[redacted]

[redacted]



Sufficient "incentives" are needed to innovate, improve quality, improve efficiency or share the benefit of efficiencies with customers in the form of lower prices. Monetary incentive is one thing, favorable environment is indeed more critical. The table below describes the "should" and "should not" about Wholesale Data reform:

It is about	It is NOT about
divergence between private and social costs[45]	forcefully taking something away from the Exchanges
ownership rights, usage rights, exclusivity (IP), term limits, transferrable/ alienable rights, conflicts of interest, etc.	adding bureaucratic processes
discourage inflicting damage on others (ecosystem degradation), and rewarding provision of public goods	whether HFTs are good or bad, pros/ cons of passive vs active management, favoring new/ old venues
evaluating one state of resource allocation with another, ensure core data evolves alongside broader ecosystem	continuous arguments, litigation fights, or other wastes of economic resources
grow the overall pie, avoid further "frowning" of the smile curve, + innovation to spur new economic opportunities	destructive behaviors against rivalries, who occupies more voting seats or dictate the agendas/ info access
striking covenants with constituents across tiers	private party among elites
enforcing covenants without constant policing by regulators, equality between "Haves" and "Haves Not"	distrust among constituents, calling the regulator to baby sit every dispute

Often, innovators' requests are NOT about asking for special treatment. If policy makers can just do their job to address issues across the prior mentioned 5 themes, all will be happy competing in a fair, reasonable, and non-discriminative (FRNAD) environment. Unfortunately, we seldom see successful antitrust cases. No or delayed enforcement hurt both the innovators and general public.

Gains in market efficiency will only be achieved by Pareto improvement[46] (someone better off without anybody worst off or win-win for all). As mentioned in point 2, social costs should not outweigh the private costs. Healthy markets need both farmers and hunters. Variety helps reach a wider audience, reduce unknowns, [34] and grow the overall pie. It is better to have some level of order protection[47] [redacted] [redacted] or disclosure[36] rules. [redacted]

[redacted]

[redacted]

[redacted]

Other Remarks and Conclusions

When all data is important, then no data is useful. When every nanosecond is counted, then no market is observable. **Accessing wholesale data** does not mean everyone would require full depth-of-book data. Making all 'streamers'[48] the same is detriment to the variety factor of the 4Vs (the other 3Vs are: volume, velocity, and veracity), because it undermines the different roles they play and the frienemy dynamics they have in fabricating the fragmented markets. **Using wholesale data** does not mean paying for a gigantic data vault or cloud. Lining up all the data in perfect exactitude and measuring vectors graphically have over/ under-fitting problems and would consume too many computing resources. Instead, one should focus on the hierarchy of data rather than overemphasize on data structure.

Giving away vast amounts of information to free riders (e.g., activists, MEME stock insurgents, and foreign adversaries) increases vulnerabilities. These free riders have no skin in the game while they use market modeling for mischief. Increasing MEME events and other irrational exuberance is detrimental to rational price discovery (i.e. worsen the veracity outcomes). Policy and market incentives should direct creative efforts to decipher "outliers".

Today's market is too fast and things dynamically change, a **good decision made now and pursued aggressively is substantially better than a perfect decision made too late**. Golden source of data is too costly and may never be achieved. So, let's analyze data at its source with RTAP and minimize data-in-motion[49]. To solve the surveillance challenges identified by the IOSCO[50] and prevent Flash Crash[51], we suggest leveraging the crowd to discover the unknown unknowns.[34]
98% → 99.9% incremental improvement is better than 85% → 90% because it is 95% error reductions vs just 33%
Discovery of unknowns[34] and timely warning of irregularities make the market safer.

All 6 themes about wholesale market data: (1) Barriers to Entry and Expansion; (2) Network Effects; (3) Vertical Integration; (4) Suppliers' Commercial Practices; (5) Behaviour of Data Users; (6) Incentives for innovation, indicate structural issues. Better transparency would NOT address the problems. The market will not fix itself.[52] The obligation to provide wholesale data on a non-discriminatory basis will not happen unless the regulator provides the appropriate nudging.

Rather than attempt to price control or inadvertently calibrate the wrong prescriptions, the FCA should **go ahead to make a market investigation** reference to the Competition and Markets Authority (CMA) about all 3 wholesale data markets (market data, benchmarks indices, and CRA data services), as well as consider principle-based rules, like the **4-Part Test**[17] that uplifts the "willing seller willing buyer standard".

We look forward to the FCA and CMA completing the market study with concrete actions by 1 September 2023 and seeing the report by 1 March 2024. Feel free to contact us with any questions. We look forward to engaging in any discussions and/or opportunities where our expertise might be helpful.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

Picture the broker-dealers, and their algo developers/ traders as "record labels/ publishers", and "featured composers/ artists" in the music industry. "Streaming platforms" (trade venues, market centers) are exploiting on trading firms' worry that their trade algorithms or strategies may get exposed. Instead of paying for the use of others' intellectual property (trade strategies, order flows), 'streamers' can rent seek on market data and connectivity. Such phenomenon is like the coin collecting jukebox operators prior to the 70s.

We argue that for-profit exchanges / integrated conglomerates are operating a "Jukebox model" to extract rent, hurting all, but mostly the smaller players. Policy makers should consider Market Makers (MM), Alternative Trading Systems (ATSs)/ Multilateral Trading Facilities (MTFs), single dealer platforms (SDPs), and Exchanges as different streaming platforms in order to have the right focus. Letting these "streamers" divide the cake in "Animal Farm"[53] by selectively paying rebates and other perks to the elites hurts the other "content" creators.

[redacted], *"Algorithms have come to rule our World"*. Many are using algo wheels. Reverse engineering to unveil others' trade secrets is inevitable. When risk cannot be fully mitigated, it is better to protect it via active monitoring. Tech advancement overcame the challenges in preserving the confidentiality of trade strategies through appropriate obfuscation, while rights to claim ownership of data by broker-dealers can be asserted.

Reckoning the above, it is possible to crossover apply the music sector's copyright licensing mechanism[41] to our Capital Markets. As illustrated in our diagram on page 12, order flows would be like "songs" streaming on different platforms. Broker-dealers would earn "performance royalty" on top of their trading revenue, whereas "performance royalty" in today's term would be equivalent to access fee rebates or PFOF, except the incentives being standardized and available to all "content" creators.

Using the prevailing rates in the music industry as a hypothetical case study, and assuming algo developers and traders play the role of "featured artists" for their respective broker-dealers or "publishers", 50% of performance royalty is allocated to the "publishers", 45% is allocated to the "featured artists", and 5% is allocated to the non-featured supporting team. Next, the agency trading, retail brokerage, order routers or other non-algorithm market participants to some extents are functioned like the "non-featured" musicians or "DJ mixing engineers"[54], which they typically earn the 5% in the music industry, and the remaining 95% would be a "pass through" payment to the original "content" creators. Unless the "**derivative work**" of a "DJ mixing engineer" is able to avert the original "song" or trade strategy into another new "song" (such as Exchange Traded Products, benchmarks and indices), their "remix" deems to be a "reproduction" or a "covered" song where they are compensated at 5% rather than the higher bracket of a "featured artist" at 45%.

In the case of agency trading, retail brokerage, order routers or other non-algorithm market participants, they function like the "DJ mixing engineers", where aggregating order flow upstream would record trade/ order sequence into songs daily. Their efforts as supporting team in songs production should get compensated with appropriate 'pass through'. If we picture the 'index providers', benchmark or 'model portfolio providers', pricing services or CRA as either 'Algo Publishing' (artists) or 'DJ Mixing Engineers' (aggregate and push upstream), it is not hard to see that their "derivative works"

[redacted]

[redacted]

[redacted]

may or may not have significant difference from the original "songs" or trade strategies. So, the deterministic factor is whether these CRAs, Benchmark Indices firms are artistic enough to "create" original "contents" that uniquely different from the underlying securities and the rivalries.

If not, they may be treated like the advisors or aggregators to earn the 5%, while they would NOT be held liable for the "contents" that they did not create, unless these firms knowingly are in cahoots with those engaged in manipulation, greenwashing of ESG securities, or other misbehaviours.

If yes, they command respect for their professionalism and they justified their earning of 45% instead of the 5% copyright royalty under our hypothetic model. Higher pay must accompany higher responsibilities to the society. Grouping them under "algo publishing/ index benchmark" category better reflects how they would become liable if their conducts might result in conflicts of interest, market chaos, or manipulation scandals.

Copyright Licensing Mechanism[41] is NOT a drastic change. It simply asks trading platforms to pay a wider range of broker-dealers, featured traders, algo developers in royalties if they shall choose to carry a broader "catalog" of whose order flows be streamed on their platform. This levels the playing field or "harmonizes" different trading platforms. Royalty rate setting is market driven. Calibration to mimic payoff behaviors like today is possible, so there will be a seamless transition to a new equilibrium.

Using Disney+ as an analogy for an established Bulge Bracket that also owns an ATS; they have their own Disney, Pixar, Marvel, Star Wars, and National Geographic contents for interactive streaming. Using Showtime as another analogy, they are a competitive interactive streaming platform. Their crafted niche is different compared to Disney+. Equity securities that are not NMS stocks, corporate bonds, or municipal securities may just need specialized streaming platform(s) like Showtime.

For a third analogy, there are the "non-interactive" platforms such as online radios or cable TVs, which we refer to them as the "Exchanges". In contrast to Disney+ and Showtime which are interactive, they serve the broadest audience while not having a "catalog". They may pay a substantial portion of all royalties, yet they represent the biggest liquidity pool in all markets. Participants would not see "cyberpunk" or any "obscene, indecent and profane" content given these non-interactive platforms are intensely regulated. Their contents include "timeless classics" rather than new first run blockbusters; they continue to be profitable.

Viacom CBS does have MTV, Comedy Central, Paramount Network and other interactive platforms under their group. This crossover of "non-interactive" with interactive" approach, or the earlier mentioned analogies have illustrated that existing vested interests, other encumbrances, and new entrants can all flourish under our recommendations. Viewers (investors) get more choices and better content.

Our suggested 'sound library'[55] would accelerate algo development lifecycle and foster creative discovery of unknown unknowns, [34] which can be anybody's game and make the market safer. Give average investors a fighting chance, and empower the next-gen to participate with fair-play TLE.[8] Our recommendations would grow the overall pie (see the next page), achieve Pareto improvement[46] for market efficient gain, and provide tremendous values for a sustainable development of our industry and the economy.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] Feedback on UK FCA Wholesale Market Data Review

[redacted] would like to take the opportunity of the publication of the Trade Data Review Findings and the launch of the Wholesale Market Data Review to offer a few insights on each of these workstreams. [redacted] are important users of both UK trading venue data [redacted] and aggregated data [redacted]. We are very appreciative of the work that the FCA has undertaken in this area, and we support the objectives of this exercise, namely to ensure the well-functioning of the market for wholesale data which in turn underpins competitiveness and depth of capital markets. We tend to view this initiative as a flagship to inspire other jurisdictions where many of the issues around market structure and conditions for access to data are similar.

It is fair to say then that our interest in the work of the FCA stems from our status as users of the data, but also in the potential for the FCA work to inform other policy reviews taking place in other jurisdictions, and the possibility of founding a new global approach in addressing some of these market failures.

We have a few observations to share:

Trade Data Review Findings

The survey and its findings very much corresponded to our experience as data users especially on the issues identified around pricing of trade data, limited choice and switching, and complex pricing and licensing. We were less convinced about the next steps that flowed from these findings.

Consolidated Tape is named as one area of further work. As European stakeholders who have gone through a long negotiation on a consolidated tape proposal for Europe under MiFIR, we are all too aware of the pitfalls. Firstly, a consolidated tape (CT) is unlikely to compete directly with the proprietary feeds of the exchanges. The Equities CTP will invariably be slower and not fulfill all the use-cases of an asset manager. As such, a CT cannot be viewed as a substitute for either the Exchanges' feeds or those of the major data vendors. The issues around pricing and complexity of pricing and licensing, will therefore remain and will need to be addressed independently of the emergence of a CT.

A second concern arises around the proposed methodology for reviewing the provision of credit rating, benchmark and indices, and wholesale data (the proposed Terms of Reference for the WMR). The interdependence of these data types on the raw input data (i.e Exchange data) is not sufficiently drawn out. It is not clear how these markets can be assessed for

[redacted]

competition, well-functioning and efficiency if the key factor driving cost (raw data) is not captured in the value chain.

Wholesale Market DataReview

We believe that the WMR has identified the right themes to explore in this second study, with the caveat that a major element is missing given that the ' Conditions for Access to Raw Data' is not examined (see point above). Perhaps ' Conditions for Access to Raw Data' should be considered as an additional theme to precede Theme 1 ' Barriers to Entry'. We strongly support and see merit in the remainder of the Themes, in particular Themes 1, 3,4 and 5.

Furthermore, on the topic of benchmark data, [redacted] shares the concerns raised in the FCA study related to unnecessarily complex and opaque contracts and the barriers to switching between benchmarks. We also note the regular price increases that do not correspond to increases in costs or improvements in service quality

In summary, we would like to reiterate the key issues we encounter when accessing market data & benchmark data (issues we have long advocated on), to the extent that they can help inform the WMR study and its related themes:

- Given that the market structure for market data and benchmark data is not a competitive one, and is one where substitutes are not readily available, it is imperative that price is tied to costs, and that data providers are able to establish a connection between **price and cost of production,** where fees are a reflection of the cost incurred in producing the data and a reasonable margin. Similarly any future price increases should be justified on the basis of a cost benchmark, i.e where operating expenses have experienced a demonstrable increase.

- Price transparency and eligibility of policies- data policies should be easy to access and comprehend. This would also enable users to calculate costs based on existing pricing models, and to predict price increases. Standardised contract terms would help in this regards.

- Licensing agreements could be usefully simplified to enable data users not to face multiple charges for receiving the same data through multiple feeds (a form of netting). In addition, the 'slicing and dicing' practices that have proliferated in the market need to be reigned in to prevent data providers from charging for infinite types of use-cases.

    - Data licencing agreements are often too complex, with subscribers asked to pay for data based on both individual use cases and for each individual user.
    - Firms also often bear the cost of complex audits of their licences, imposed by data providers through ex-post fees. These audits can be lengthy, difficult to work through, require significant resource, and may in some instances take years to complete.
    - Firms receiving market data also face significant complexity in managing ongoing variation in their licencing agreements, incurring operation costs and risks.

[redacted]

- Support the use of historical data - The historical data should remain available for regulatory/audit purposes, without time constraint. His-torical data are often not available beyond a certain number of years which may not match statutory re-tention periods.

- Clear liability on data providers- Inaccurate, incomplete or late data can impact the implementation of investment management strategies, especially for products that track indices. Data providers should be held accountable for errors in the data that they provide.
-
- Keep data unbundling: the user side of market data should only pay for data they are interested in rather than being forced to buy additional services. Data providers should always inform customers that the purchase of e. g. the benchmark is available separately from the purchase of additional data

[redacted]

[redacted]

[redacted]

Response to Financial Conduct Authority Wholesale Market Data Study – March 2023

[redacted]

We welcomed the opportunity to take part in the FCA Accessing and using wholesale data - Call for Input consultation in 2021 and now welcome the opportunity to provide input into this Wholesale Data Markets Study.

The markets in which [redacted] operate are dominated by four main data vendors; namely [redacted] Three of these are owned by a stock exchange, and [redacted] dominates the Fixed Income market. We all deal in static/delayed data. All four main data vendors have tremendous hold on the market as follows:

1. Cost to client of switching data vendor (see further details in Theme 1A and 1B below):
    a. [redacted] will not give access to [redacted]
    b. All four data vendors generally require that the user expunges data on termination of their contract.
2. Anti-competitive behaviour:
    a. [redacted].
    b. The practice of certain data vendors [redacted] trying to levy licence fees on data for which they don't hold the copyright. This also affects [redacted] and has prevented other vendors from emerging due to high licence costs.
    c. The practice of integrated data vendors bundling services together (see Theme 3 below).

[redacted]

In response to the issues currently being explored under the scope of the Wholesale Market Data Study, [redacted] have the following input:

Theme 1 – Barriers to entry

A) Data has to be deleted or expunged when users/subscribers cancel. This is a barrier to entry since any replacement supplier would need to provide at least 20 years' history. It is not possible for small vendors like [redacted] to recreate the historic data set which may have been provided by a large data vendor. Access to historic data is important for clients, if [redacted] can't provide this historic data this disincentivises a potential client from switching from a large data vendor to a smaller data vendor like [redacted]. Clients often have to keep data since this is used for back testing and they need to be able to back test sufficiently far back to take account of different market conditions.

See attached legal opinion prepared by [redacted] which provides further background and details relating to this issue.

B) [redacted] do not permit customers to use [redacted] to match symbology from other data providers. This would be required if a client wished to stop using [redacted] and use another data provider. Thus, it is extremely difficult for companies to change data vendor as they will need to match securities. If they have been using [redacted] as the main identifier of securities it is almost impossible to change data vendor without having to spend a vast amount of money. This is a huge barrier to customers who want to switch providers.

C) Move SEDOL to a third party to remove competitive advantage of [redacted] Currently [redacted] is obliged on an annual basis to inform [redacted] which [redacted] clients take SEDOLs and provide full contact details of those clients, as well as the number of SEDOLs that they take. This effectively would be giving a large section of [redacted] client list to [redacted] a major competitor. Client names and contact details are extremely sensitive. [redacted] demand these lists in order to bill their clients who received data via [redacted] as a main competitor of [redacted] and other data vendors, could then exploit their competitors' client lists to facilitate their own sales. We do not believe Chinese walls "exist and are effective".

Theme 3: Vertical integration

Unlike our competitors, [redacted] are not a provider of Real Time data. we are purely a market data provider so there is no vertical integration in our company. We do not provide other services such as trading, regulatory reporting, and administering benchmarks. We believe this places us at a considerable disadvantage as such services are often bundled in together with data provision and we have definitely lost business because of this.

This puts us at a competitive disadvantage when another supplier bundles-in static data or Corporate Actions data for free along with Real Time data. A classic example of this was when [redacted] with a leading data provider for Real Time data and they gave them Corporate Actions data for free. Consequently, [redacted] lost the contract to provide them with Corporate Actions data. This deal was confirmed to [redacted] by [redacted]

[redacted] This is a barrier to a small provider who can't provide the total package.

Yours sincerely,

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

7

[redacted]

[redacted]

[redacted]

[redacted] Representations to the FCA Wholesale Data Market Study (MS23/1.2)

30 March 2023

Introduction

[redacted] welcome the opportunity to provide representations to the FCA's Market Study on wholesale data. [redacted]. As market makers and liquidity providers, [redacted] contribute to efficient, resilient, and trusted secondary markets that serve the investment and risk management needs of end-investors and corporates throughout Europe, including the UK. [redacted]

We are encouraged by the FCA's continuing efforts to investigate and understand the market for wholesale data. Wholesale data is a core input into the fundamental operations of trading firms and essential to their ability to function. Over past years, [redacted] have observed that prices for wholesale data have continued to increase and commercial practices in this area have become more complex and opaque, despite the objectives of MiFID II/MiFIR to bring down market data costs and subject them to greater transparency.

Consumers of market data have long held concerns about practices in this market and have not seen any discernable improvements despite periodic regulatory attention, including ESMA's 2019 ESMA MiFID II/MiFIR review report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments (ESMA70-156-1065). We welcome the FCA's ongoing work in this area and note the Findings Report in relation to its Trade Data Review published earlier this month. However, it is our strongly held view that more needs to be done.

Summary

Our representations focus on benchmarks as this is the area of the Market Study of most relevance to [redacted]. Some of our comments contained herein were reflected in our response to the FCA's Call for Input on Accessing and Using Wholesale Data dated 7 January 2021[1] but we reiterate those of relevance here and provide updated data where possible, given the time available.

A common characteristic of commercial practices across benchmarks, credit ratings data and market data vendors is a lack of transparency in pricing. The basis on which prices are set, how these may

[redacted]

relate to the cost of providing the data and how they compare to those charged to other consumers are not clear.

[redacted] would strongly recommend that suppliers of this data be required to comply with the regulatory requirements applicable to trading venues in respect of trading data, in particular:

a) The requirement to publicly disclose fee schedules; and
b) Be subject to Reasonable Commercial Basis measures applicable to trade data providers under MiFIR. In general, [redacted] believe the Reasonable Commercial Basis requirements need to be sufficiently supervised, audited and enforced by regulatory bodies, across wholesale data markets. It is not evident that this is currently the case.

Benchmarks

Description of how [redacted] use benchmark data

[redacted] use a multitude of benchmarks provided by index providers in their normal course of business. As market makers and liquidity providers on secondary markets, [redacted] provide liquidity in a wide range of instruments and, for any instrument that is based on an underlying index, there is a requirement for [redacted] to be licensed with that benchmark provider in order to be able to correctly price that instrument. This range of instruments includes passive index-tracked ETFs (Equity/Fixed Income/Commodity), stock index futures, stock index options, ETF options, volatility index futures and volatility index options. [redacted] have agreements with administrators of both pure index providers and exchanges [redacted]. The majority of these licensing agreements have been in place for over 5 years with [redacted] demand for newly created indices driven by regulated markets listing new instruments based on those indices.

Access to this data is fundamental to [redacted] liquidity provision and risk management activities in these instruments. All benchmarks are a 'must-have' where [redacted] want to market-make or trade products related to that index. There are no alternatives to this data with the exception of just not trading the products related to that index. For example in order to trade any ETFs, Options or Futures based on the DAX index, [redacted] need to know the current constituents of that index. This is not possible without a license directly [redacted].

Theme 1: Barriers to entry

The market for benchmark data is dominated by [redacted]. There is also little or no competition in this space. Significant volumes are traded in the financial instruments referencing benchmarks provided by these dominant players. As PTFs whose activity is in liquid products, [redacted] consumption of benchmark data from dominant market providers is essential in order to trade liquid markets.

The big three providers are so dominant and entrenched that any smaller providers trying to offer competition are unable to do so. [redacted] and [redacted] are two firms attempting to enter this market. They can replicate some of the major benchmarks to within >95% of compatibility but it needs to be closer to 99.8% before being a real alternative to the incumbent which is not possible given the incumbents protect their IP to prevent this. We also note that incomplete replication of major benchmarks leads to product fragmentation, for example in ETFs, which is a significant flaw in the market structure and leads to higher prices and greater complexity for consumers wishing to invest via these products.

Theme 2: Network effects

In fixed income markets, [redacted] parses fixed income prices that are sent to users via the [redacted] and derives it as an input into their [redacted] which provides a comprehensive feed used for pricing fixed income products globally. Due to the widespread use of [redacted] amongst market participants, [redacted] has access to more information than competitors which contributes to the value of [redacted]

In terms of network effects, [redacted] has become the standard in the industry and as a consequence [redacted] have observed that [redacted] have raised prices dramatically. By way of example, access to [redacted] data for fixed income (T&Cs, corporate actions, business entity) will amount to [redacted], which is approximately [redacted] than competitors. This poses a significant barrier to trading firms wishing to enter fixed income markets due to the extremely high cost overheads for an essential input required to participate in these markets. We note the market dynamic around how [redacted] derives its value is also relevant to Theme 3: Vertical Integration. The fact that [redacted] has also emerged as the market standard for valuation of fixed income instruments also makes it difficult for new entrants to challenge [redacted] dominance in this area.

Theme 3: Vertical integration

There has been considerable consolidation in recent years, particularly amongst trading venues and data vendors with [redacted] acquisition of [redacted] being a standout example. The concern with this is that where an exchange, a benchmark provider and a market data vendor are all part of the same group, we will see a situation where certain basic data is made available to the market as a whole but other "enhanced" data is only available to subscribers through that firm's own products.

We note that there is inconsistency between the messages given to consumers around increasing price levels and commercial drivers such as increased complexity and a higher cost base on the one hand (which consumers are unable to verify due to an overall lack of transparency, discussed below), and those provided in investor relations presentations relating to commercial benefits and potential business synergies associated with the acquisition of new lines of business contributing to vertical silos, on the other hand. [redacted]

Theme 4: Suppliers' commercial practices

1. Issues with pricing

[redacted] find that generally benchmark data providers' pricing arrangements are opaque and complex. Prices have increased significantly over past years with no evident change to the quality or nature of the product. We set out below some observations regarding pricing arrangements. We note there is some overlap between the commercial practices outlined below and those with respect to the market for trade data.

a) Lack of transparency

The pricing terms established by benchmark providers are not easy to understand or compare as there is a lack of transparency in that price lists are not readily available. They are not provided on vendor websites, for instance. Also, the rationale behind the high costs or price increases are not fully understood by consumers as no background information, such as explanation of an increase in costs, is provided to support pricing.

In terms of the data product, daily files are provided that can be download online, over a file transfer portal (FTP) or other portal which details the:

- index name
- index constituents
- constituent weightings
- constituent currencies and shares
- index divisor

With each index provider, the addition/removal of indices from packages is a manual process conducted through the account manager. No portals exist to see what indices are available in a client's current package. In some cases like [redacted] it's not clear what indices are included in what package, and [redacted] must e-mail an account manager each time they are interested in a new index to find if it has been added to a package they are already paying for or not.

Typically, the process of obtaining a quote from any of the benchmark providers involves contacting the account manager to explain the requirements and what the consumer will want to use the data for. The account manager will then come back with a quote for the data requested based on the use case(s) outlined. It is not possible to simply go to the provider's website and calculate the likely cost to obtain access to an index or package. Quotes for new packages are slow to turn around and in the case of [redacted] almost never quoted over e-mail as they prefer telephone. Upon verbal acceptance they will then draw up a PDF document which eventually shows the official quote.

It is not possible to prove different charges are levied to different customers due to bespoke pricing arrangements and there's no real way to prove that they charge different customers different prices for the same data based on how much they think that customer would be willing or able to pay. However, the lack of transparency leads to the suspicion that this is the case. [redacted] have had examples of account managers asking the value of their Assets Under Management which would lead to the conclusion that this is a factor in their pricing quotes.

It would currently be very difficult to identify if benchmark administrators were charging different amounts or imposing different contract terms, to different customers for similar services, given the lack of transparency with regards to price and as users are contractually unable to share details of pricing arrangements they are subject to and consequently are unable to compare those collectively with other firms in order to determine whether different customers are being charged different prices. That being said, [redacted] have no knowledge of different clients within the same class being charged a different amount.

In [redacted] opinion, greater transparency is needed around pricing and to these ends we recommend the FCA make a finding that the provision of the data on a Reasonable Commercial Basis under Article 37 of MiFIR should be extended to all suppliers of wholesale data.

We also note that the license terms in place with vendors typically contain very restrictive confidentiality provisions which inhibit the ability of licensees to share the terms of those licenses or prices set thereunder with regulators, peers and/or trade associations seeking to review, analyse or provide feedback on commercial practices. This underscores the lack of transparency in pricing.

b) Sudden Price Increases

[redacted] announced a price increase of 12.5 times the cost for their daily Index data. This was negotiated down (with the help of other clients who also questioned the increase) to 7.33 times the cost but also included with a reduction in service from provision of the data to 3 client sites to 2 sites for that price. [redacted] would appreciate more time to investigate whether additional sudden price increases have occurred more recently. The risk of future similar price increases is of concern to [redacted] give the market dynamics that allow these to occur have not changed since 2017. Whilst the Reasonable Commercial Basis requirements under MiFIR were introduced in 2018, [redacted] do not believe these have made a material difference to pricing practices in wholesale data markets.

c) Annual Price Increases

All Index Providers increase the costs of their index packages from between 3% and 6% per annum which is automatically applied to recurring annual invoices. This is not the norm with other data vendors. For the three year period 2020-2023, [redacted] has observed annual price increases of between 3% and 15% across the three major providers with an overall increase of 28% over that period. This figure has been adjusted to exclude new demand (e.g., charges based purely on user numbers which fluctuate over time) and variable costs (for example, additional one-off data charges).

d) Regional pricing

The majority of index data vendors used by [redacted] with the exception of [redacted] and [redacted], do not allow for a global agreements[2]. Instead, although the same data is provided to all sites/regions (Europe, US and Asia), the index providers charge per consumer site/region. This is an example of a practice common amongst data providers which involves layering additional fees for different types of access to the same fundamental product. [redacted] see no commercial need for an additional fee to be charged for access in different regions as this doesn't increase the cost to the data provider of supplying the product. The data provider supplies a single FTP to the consumer, regardless of the number of regions in which personnel of the consumer firm will access the data. The technology behind this delivery mechanism is very basic and has not changed over time, despite substantial increases in costs charged for access to this data. Any operational or technical work needed to facilitate additional regional access such as permissioning or IT connectivity is done by the consumer and the consumer provides a usage or access list to the data provider. This list is typically verified by the data provider during an audit.

e) No real-time pricing included

Paying for an index composition package does not include real-time pricing. This is extra and is usually delivered via [redacted] There is also an extra fee to use this pricing data in an automated application.

f) Manipulated data charges

Additional fees apply to index providers such as [redacted] who will charge extra to use the data in an 'automated application' and to be able to manipulate and derive the data. Manipulated data charges

[redacted]

appear to have been introduced to enable data providers to capitalize on the non-display fees captured by associated exchanges where a benchmark data provider is in the same group. Given the number of constituents in each index it becomes nearly impossible to avoid manipulated data charges. For example, to calculate the value of the [redacted] taking into account corporate actions and rebalances, consumers need to apply a rules-based system, typically an automated application, to do this accurately thus incurring a manipulated data charge. It's necessary to be able to manipulate the raw data provided in order to derive utility from it on an ongoing basis as raw constituent data must be manipulated to derive the real time value of an index which is needed when e.g., pricing a product which references that index. The definition of manipulated data set by the relevant benchmark data provider is extremely broad which forces nearly all customers into paying this additional fee. These fees can be substantial, often adding 30%+ on top of the original quoted fee.

g) Additional charges for different uses of the same data

[redacted] observe that data providers will often apply multiple additional charges for using the same data in different ways or receiving it via different channels. For example, the standard format is to receive the data from the index providers via a daily file. However, if an [redacted] wanted to get the same data via [redacted] there will be an extra charge. In the case of [redacted] this is the cost of the entire package again.

Another example of this layering practice is in relation to duplicative charges for access by entities in the same group as the original licensor. Index providers often charge double for the same data to be used by a different legal entity in the same corporate group as the original contracting party acquiring the data. For example, where a UK entity enters into a license to obtain access to [redacted], if an EU affiliate of that entity wishes to also access that very same data it may have to pay the full fee again.

The practices described above regarding manipulated data charges and regional pricing are also examples of layering charges.

2. Licensing

Licensing terms are easy to understand and comply with, although, it is worth noting that contracts are tied to lengthy terms and conditions. Licensing agreements include a number of confidentiality clauses that further inhibit transparency with regards to pricing as users are not permitted to discuss or disclose pricing terms. This price opacity is detrimental to the industry as it undermines index data users' confidence that pricing is handled in a consistent, fair and non-discriminatory manner.

3. Bundling

The main index providers [redacted] and [redacted] offer their services in "packages" so consumers must buy an entire package even if only interested in a small number of indices in that package. It is not possible to opt-in/out of certain indices in order to reduce costs. Theoretically, if a data user wanted to just have [redacted] and [redacted] they cannot buy that data from [redacted], they have to buy two separate packages, one for [redacted] and one for [redacted] both of which contain hundreds of indices that may not relevant to the users requirements but because they are included in the package they are factored into the pricing.

In addition bundling of services means that if there was an alternative cheaper option for a benchmark it makes no sense to switch to that provider because the consumer is still having to pay the original provider for the other benchmarks in their package (i.e. if a benchmark administrator comes up with an alternative to the [redacted] there's no financial benefit to switching to that alternative if consumers of benchmark data still have to pay [redacted] the same amount to use other indices in that package).

[redacted] is one of the few index providers that allow clients to pick and choose what indices they would like to receive instead of forcing clients to choose a more expensive package.

4. Historical Data

Index providers [redacted] also charge for storing historic data requiring clients to purchase a 'history' license. Some [redacted] have been forced to purchase a 'history' license even after having the data for 5+ years. Although users of the index data will have paid for the data upfront they are contractually required to delete any stored data held after a specified period of time unless they enter into a 'history' license.

It must also be noted that all of these pricing changes have occurred without any change in the data provided. [redacted] are very concerned that this is because of a monopolistic approach the index providers are taking with the prices increased because users cannot do without the data rather than there being any increase in underlying costs to provide the data (see our comments above regarding additional charges for different uses of the same data).

[redacted] have also reported experiencing forced migrations from legacy index packages to newer packages at significantly higher costs. While index providers typically pitch these forced migrations as opportunities to receive significantly more data, [redacted] consider that the additional data provided typically is of low value and would not justify the cost increases. With no opportunity to opt-out, [redacted] have in such cases no choice other than to absorb the costs.

In addition, [redacted] have experienced this monopolistic approach being used to advantage intra-group with one regulated derivatives market, for example, currently stating that they are unable to lower trading fees because of high index provider costs when the index provider is part of the same corporate group.

Higher index data charges inhibit [redacted] ability to tighten spreads and this results in increased trading costs for end investors. In a worst-case scenario, this could be a barrier to entry preventing [redacted] from market making instruments as these fixed costs make it inefficient to do so.

Theme 5: Behaviour of data users

As mentioned above under Theme 1, the difficulty of replicating incumbent indices to a high enough compatibility makes it hard for data users to substitute one provider with another.

There is no potential to compare and switch between benchmark providers. These providers essentially operate in a monopolistic manner, similar to primary market data providers. As mentioned above, although 'lookalike' indices have been created by newer index providers attempting to bring competition to this marketplace, these cannot currently exactly mirror the legacy benchmarks due to intellectual property considerations although exact replication would be theoretically possible from a technical perspective subject to mitigating related operational challenges. [redacted]

Credit Ratings Data

Theme 4: Supplier's Commercial practices

Broadly speaking the same lack of transparency exists with respect to pricing of credit ratings data as with benchmark data. [redacted] have observed that the cost of credit ratings data has increased significantly since the 2008 financial crisis because firms now have a requirement to use multiple agencies to avoid being reliant on a single rating. As the three largest providers are so dominant and offer by far the widest coverage, most firms end up having to use at least two of them, often all three and sometimes supplement that with data from smaller niche rating agencies. This led to all three Credit Ratings Agencies [redacted] increasing their prices substantially as they are aware their clients have no alternatives.

Generally, [redacted] find pricing of credit ratings data to be opaque across the industry. Outside of the dominant three/four providers, [redacted] have not found many viable alternative suppliers which limits opportunities for comparison and switching and further entrenches the dominant position of these providers. These providers charge extremely high fees (e.g., 50% additional charge) for consuming the same ratings data via an additional provider delivery channel [redacted], as discussed above with respect to benchmark data.

Market Data Vendors

In the opinion of [redacted], the commercial model for a [redacted] is transparent. They may be expensive, but [redacted] charge all customers the same price. In addition, there are other options in the market that are cheaper. [redacted] experience the list price of some of some competitor firms is for a "basic" version of the equivalent terminal, they often charge extra for add-on features that are included in the base price of a [redacted] so the cost of an alternative can escalate towards similar levels as a [redacted] depending on the individual user's requirements.

Where [redacted] and some of the other vendors do have a lack of transparency in their commercial practices is in the area of providing data such as end of day files, reference and static data files, and other back-office data files. Historically [redacted] had a smaller number of files than they do now, and it was more straightforward to manage this and they had publicly available price lists for this. In recent years they have increased the number of files/sources and as the complexity and number of files increased, they stopped publishing a price list.

[redacted] observe a similar state of affairs regarding [redacted]. [redacted] want to know what a consumer requires and what it will be used for before quoting a price. Consumers have no transparency on how [redacted] arrive at that number (e.g., if a consumer want 20 fields for 100 instruments how does that compare to 10 fields for 100 instruments?). This lack of transparency means it's very difficult to estimate how much it's going to cost to source data for any new requirements, and potentially means that the data vendor is charging clients based on how much they can pay rather than objective criteria, such as cost plus.

[redacted] are not aware of market data vendors charging different amounts or imposing different contract terms to different customers for similar services, subject to comments above regarding potential price discrimination. Market data vendors do differentiate between classes of client/user such as banks, market making and other trading firms. There is no direct evidence of different clients within the same class being charged a different amount for the same service. However, as mentioned above, it would currently be difficult to identify such a difference, were it to exist, given the lack of transparency with regards to price.

There are obvious benefits to having a full-service provider like [redacted] as a "one stop shop" for many data requirements. For example, users don't have to switch between platforms if they can use a single terminal and having the same symbology across the board is likely a benefit too. The danger is that when a single vendor is too big then users will have issues switching to a smaller competitor offering better prices and/or more innovative products.

In addition, the internal costs of switching providers are a significant deterrent. If a data user wanted to switch from using mostly [redacted] to mostly [redacted] for example that would most likely require the data user to rewrite their trading/risk management apps, reformat processes, file formats would probably change, symbology would likely change and so on. This would be a multi-year project to make all necessary changes in a controlled manner, so the data user would likely at some point need two sets of infrastructure running in parallel. The cost of migration compared to any potential savings would be a major barrier for any organisation which only increases when talking about smaller firms or new market entrants who don't have the significant economies of scale in place to ameliorate the costs of switching.

Conclusions

Similar to the market for wholesale trade data, the markets for benchmarks data and credit ratings data are dominated by a handful of suppliers whose pricing practices are opaque and licensing practices are restrictive and designed to extract maximum value from consumers' use of a single product across various business lines, legal entities or use cases. Market dynamics make it extremely difficult for new entrants to gain a foothold, not least of all because it is very challenging and expensive for consumers to switch providers even if this may be commercially beneficial to them on a product-by-product basis.

[redacted] would strongly recommend that the FCA propose that the same legislative standards regarding price parameters and transparency applicable to providers of wholesale trade data also apply to providers of benchmark and credit ratings data.

Regarding wholesale trade data, we note the Findings Report on the FCA's Trade Data Review published at the same time as the Market Study. As with the markets subject of the Market Study, issues with the structure and practices prevalent in this market are persistent and continue to be more pronounced over time. Despite it being several years since the implementation of the enhanced transparency requirements provided under MiFID II/MiFiR and ongoing regulatory attention (including ESMA's 2019 ESMA MiFID II/MiFIR review report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments (ESMA70-156-1065)), [redacted] have seen little to no improvement in the competitive dynamics of these markets from the perspective of consumers. Nor do [redacted] believe that development of UK (and/or EU) Consolidated Tapes will have any material ameliorative effects on the market for wholesale data. Accordingly, we would strongly recommend that the FCA make a market investigation reference to the CMA in respect of wholesale trade data. Irrespective of whether current market dynamics are a product of non-compliance with regulatory requirements or of those regulatory requirements proving inadequate at improving competitive dynamics within this market, the fact remains that consumers are paying more year-on-year for a product that does not materially change over time but is nevertheless a fundamental requirement to market participation. If more aggressive action is not taken, end consumers of financial products will continue to bear the cost of a market lacking in competitive efficiencies.

BY EMAIL 30th March 2023

To: wholesaledatamarketstudy@fca.org.uk

s. 131 Enterprise Act Referral Notice/ Wholesale Market Data Study ToR

[redacted]

[redacted] wishes both to fully participate in the consultation and to provide as much assistance to FCA as it can whilst at the same time avoiding unnecessary legal risk to itself.

[redacted] has corresponded with and met FCA on a number of occasions to discuss many of the issues raised in the Wholesale Market Data Study and refers FCA to those discussions and submissions, rather than repeating them.

[redacted] response to FCA's current consultation will focus on FCA's Theme 4, "Suppliers Commercial Practices" and particularly to the issues of tying and bundling, whilst also referring to Theme 2, "Network Effects".

[redacted] discussions with many consumers of wholesale data, provided to date by incumbent commodity markets price reporting agencies, [redacted], previously known as [redacted]. The incumbents provide both physical and financial markets data. In our discussions, many of those consumers have made clear to [redacted] trade and pricing data, research and reporting by the incumbents is part of the incumbents' standard commercial practice [redacted].

As an example, [redacted] draws FCA's attention to the linked section of [redacted], specifically promoting the availability of bundled products and of different pricing tiers available to different types of consumer (e.g. according to each consumer's size). Whilst [redacted] website implies that packages may be tailored to each consumer's needs and that there is great attendant flexibility, [redacted]

[redacted]

[redacted]

[redacted] does not have a similar section of [redacted] to refer FCA to but notes that in [redacted] discussions with market participants those participants consistently refer to the similar practice [redacted].

The effects of these practices appear to [redacted] to significantly impact competition in the market for commodity indices pricing data provision. The practices act as an inefficiency on consumers, whose data costs are unnecessarily and in many instances very materially increased as a result. Further, the practices act as a barrier to entry to new price assessors [redacted]

[redacted] also asks FCA to consider its Theme 2 in this regard, particularly whether network effects operate as a result of the [redacted] trading platform, participation in and trade data from which is key to many market participants. The central importance of the [redacted] in certain energy markets pricing places many market participants in a vicious circle of increased dependence on [redacted] for that data as more and more participants contribute to and participate in the [redacted]

Given the above and in particular [redacted] considers there are significant competition issues to investigate and therefore strongly urges FCA to make a market investigation reference to the Competition and Markets Authority under section 131 of the Enterprise Act.

Thank you for considering our representations.

[redacted]

[redacted] response to MS 23/1.

[redacted]

Our viewpoint focuses on market data as described in item 4.d. in notice MS 23/1.1.

[redacted] fully supports the position in MS ToR 23/1.2 that (specifically from the perspective of the institutional "Buy-side" community) the lack of competition may be impacting the access and use of wholesale data to the detriment of end consumers.

As a pre-revenue start-up we have limited resources to provide an expansive response to MS 23/1 but would like to flag the following, which we would be happy to discuss further.

-

We have proven that it is possible to create a relevant data network for a relatively modest end cost.

At least from the perspective of the Buy-Side community, the level of data needed (by their own analysis) in order to be valuable is a much-limited data-set versus proposed or existing regulatory reporting.

-

We believe that the Buy-Side are a key creator of market data, and there is an opportunity to provide greater clarity around this market structure dynamic (including existing legal positions on data and copyright law).

-

[redacted] We have over [redacted] Buy-side clients onboarded to our network and are aiming to continue to steadily grow in an organic fashion.

-

[redacted]

[redacted]

[redacted].

[redacted]

[redacted] welcomes FCA's willingness to engage with industry and the opportunity to provide evidence for this Market Study.

[redacted]

Index Providers Play a Critical Role in the Efficient Functioning of the Capital Markets

Index providers contribute to the well-functioning of capital markets by providing information on market developments and investment performance. Indices allow the development of a varied set of investment products, which in turn inform benchmark administrators' relationship with the broader financial services industry.

The market ecosystem is comprised of three essential pillars – market makers, benchmark administrators, and product providers. History has proven that the market is safest for investors when these three pillars remain independent, thereby reducing potential conflicts of interest.

Index providers increase overall market transparency, provide tools for asset managers to create low-cost investable products and are a source of innovation across asset classes. To meet increasingly complex investor needs and provide a value-add service to investors, index providers are continuously investing in technology to provide better and more robust solutions for investors.

[redacted] Is Marked by Strong and Increasing Competition, Low Barriers to Entry, and Low Switching Costs

There is strong competition among the hundreds of index providers globally. Competition comes both from independent index providers and from asset managers and banks that create their own indices. The ESMA administrator register shows 82 benchmark administrators, and the FCA's administrator register shows 46 benchmark administrators in the UK. These figures have grown and will undoubtedly increase when third country index providers[1] are required to be on the registries. They include both established players with proven track records and an ever-increasing number of new entrants that continually bring innovation and cost-effective new indices to the market. Barriers to entry are low; switching costs are low; and suitable substitute indices are widely available and can be calculated relatively easily by competitive index providers.

This competition benefits not only the index providers' direct customers, such as asset and fund managers. Even more importantly, it benefits the individual and institutional investors who purchase financial products based on the indices. By facilitating lower cost index-based investing, index providers have helped to reduce the cost of both active and passive investing significantly, and further enhanced competition between active and passive managers – especially important in a sphere traditionally dominated by the active managers.

Indexing Has Dramatically Lowered the Cost of Investing While Broadening Its Scope and Accessibility

[1] https://register.fca.org.uk/BenchmarksRegister/s/

[redacted]

Based on an estimate of direct and indirect costs by the Center for Economic Development study published in 2019, indexation saves investors $40-$50 billion per year.[2] Moreover, research from the Investment Company Institute shows that in 2021, expense ratios of index equity ETFs were 0.16 percent (down from 0.34 percent in 2009). Expense ratios of index bond ETFs, down from a peak of 0.26 percent in 2013, fell to 0.12 percent in 2021. » In 2021, average expense ratios for index equity ETFs declined 2 basis points from 2020 to 0.16 percent. Average index bond ETF expense ratios declined 1 basis point to 0.12 percent in 2021.[3] ICI Global concludes that "the average expense ratio of equity mutual funds has declined as a result of growth in index fund investing".[4]

Indices have helped democratise finance by enabling and expanding end investors' access to regions, markets, and asset classes – including recent trends in ESG investing. Such coverage requires index providers to invest in new data, new research, and new geographic regions. Index-based products enable all types of investors to diversify across asset classes more easily, such as commodities, foreign exchange rates, credit and emerging market securities, and fixed-income strategies. These asset classes traditionally were only available in over-the-counter markets, but now are readily accessible through index-based ETFs that provide end investors with the protections and efficiency of exchange-traded markets. By bringing these markets onto exchanges, investors have benefitted from the regulatory certainty and investor protections from regulated marketplaces.

Indices have also provided investment advisers with a transparent tool to help achieve their investment policy objectives. This helps investors gain insight into the investment process and enhances the accountability of asset managers.

Indexers Costs Are Heavily Influenced by the Need to Innovate and Comply with Ever-Increasing Regulatory Demands and their Pricing Disciplined by Sophisticated Customers

The FCA correctly points out that the cost of the service the industry provides can rise due to innovations that lead to higher quality products that are worth more to customers (for example, innovation in improving methodologies and developing ESG-related benchmarks). The FCA also correctly recognizes that it is important that the pricing of benchmarks support a sustainable benchmark business and reflect the investments providers make in innovation.

The customers of [redacted] are sophisticated. They include asset managers, wealth managers, custodians, banks, asset owners, and others. These organisations usually conduct extensive and detailed due diligence on their providers, including index providers, and have the ability to choose one provider over another, or even to create their own indices. This customer discretion is a key driver in maintaining the competitive market amongst index providers. The requirements of customers, including the means of delivery through robust technology, systems, and platforms also results in costs which must be borne by [redacted].

It is vital for the industry that index providers be able to offer prices for their products correlated to the value they bring to their clients. It is also the case that, where there is regulatory uncertainty (for instance, around the nature and substance of the UK green taxonomy and forthcoming SDR requirements), there is considerable additional work that the industry has to undertake. This itself generates additional costs for the customer, on top of the additional costs incurred by becoming a regulated industry in recent years.

[2] CED, *The Financial Index Industry*, June 2019, p. 15

[3] https://www.ici.org/system/files/2022-03/per28-02_2.pdf

[4] Ibid. p. 5.

[redacted]

A final note. Combining the market studies for credit rating agencies, market data vendors and benchmark/index providers into one study means that many of the data requests do not reflect the specificities of the benchmark/index market, and that the inclusion of information on ESG benchmarks was not highlighted in the FCA's initial notice of the market study. In addition, it would have been beneficial for the industry to have had a longer response time to formulate a response to complex and sometimes novel arguments made.

Please find below further comments under each of the six areas being examined.

Barriers to entry *[whether barriers exist to new firms becoming wholesale data suppliers and growing to compete effectively with existing firms in the market]*

Barriers to entry remain low, as evidenced by the many new entrants challenging existing providers. While technological developments and innovation do add to the cost, they also enable new providers to launch new products and scale up quickly. Moreover, the market is truly global, with providers competing on this basis.

The FCA's administrator register shows 46 benchmark administrators in the UK, a figure that will increase as third country providers are added. These include both large and small providers. We note that while many index providers offer indices across various asset classes, they also face competition from more specialist providers focusing on specific areas of the market. New entry is common and new providers are able to compete both in general and in the specific areas of the market based on their expertise. This is evidenced by the presence of small as well as large providers in the UK market.

Network effects – *[whether, in these markets, the value of these products to a user grows with the number of other users and, if so, the effect these have on actual and potential competition (thus, benchmarks may be more valuable to users if they are widely adopted by other users, where high levels of usage could result in high levels of liquidity, lowering the cost of trading)].*

The index offering is driven by client demand. The decision to choose which index to use requires significant due diligence and may be made by different members in the value chain. For example, some sophisticated customers tell their advisor what indices they want to use. Other customers will defer to their asset managers' view about which benchmark best fits their investment strategy and style.

It is natural for a sophisticated market participant, choosing from a wide number of producers and products available, to look at what other market participants are purchasing and use this as one factor affecting its decision. In this context, the brand value of an index provider in a certain asset class or geography can also be a factor. At the same time, there is increasing customisation, whereby index providers are requested by current or prospective clients to provide custom indices that reflect specific investment portfolio needs. In such instances, the user value does not necessarily grow with the number of users but is generated through offering products that meet users' specific investment needs.

Moreover, index-based products help improve the overall liquidity of financial markets. High levels of usage of a specific benchmark could indeed increase levels of liquidity and lower the cost of

[redacted]

trading, which benefits investors. But as long as there is healthy competition, this increased liquidity will have beneficial effects to the end user and indeed the wider market, helping democratise finance and increase the pool of available investors. The benefit of liquidity and lower transaction costs may be of more importance to the investor than choosing a similar index.

Vertical integration *[the likely effect on competition of some firms participating in multiple segments of the value chain, for example firms who are data generators as well as data vendors]*

The complexity and sophistication of [redacted] and its customers does mean that many of the customers of [redacted] have the ability to create their own indices. This not only helps drive value and create more competition, it also speeds up innovation, given that the value of the industry's products is being tested more rather than less rigorously in the marketplace. It is [redacted] view that if an index provider is a part of a larger financial services firm, the index provider should be independent in order to address conflicts of interest.

Suppliers' commercial practices *[whether there are commercial practices that are causing harm to data users, looking at licenses and contracts and examining whether these contractual terms could be enabling suppliers to charge high prices or make it difficult for wholesale data users to switch data suppliers, along the lines of concerns received around market practices]*

[redacted]

Index providers must be able to set prices for their products directly correlated to the value they bring to their clients. And their highly-sophisticated customers must have the freedom to seek the best contracts for their firms and interests. Issues such as error risk mitigation, data licensing mechanisms, and the treatment of historical data can be set contractually, in order for all the parties involved to be protected and have clear accountability. Liability assurance can generally be determined and priced in during the contractual negotiation phase. Any potential conflicts which may arise around contractual conditions or disputes can be dealt with via applicable contract law.

Evidence that the market is working efficiently can be found in ESMA's report on cost and performance of retail investment products. The report shows that the fees charged for UCITS ETFs to investors have remained relatively stable in the recent past. The index licensing fees usually represent only 5-10% of this cost, depending on the segment of the market. It is also important to distinguish between the (percentual) index licensing fee charged to the asset manager, and (absolute) fees resulting from growth in revenues for both the asset manager and the index provider as a result of increasing Assets Under Management (AUM) in an index tracking fund. If the index licencing fee is fixed regardless of AUM, the asset manager takes all the benefits when AUM grows, and in the scenario where a growth in revenues brings more profit to both parties, the asset manager will retain the vast amount of the profit stemming from the increase in the size of its fund.

Concerning the accountability of the sector, the UK and EU Benchmark Regulation, among other applicable financial services regulations including the UK and EU Market Abuse Regulations and the IOSCO Principles for Financial Benchmarks, together with commercial law and established market best practices, set a transparent framework for [redacted]. Aside from sector-specific regulation, index providers must also comply with general securities legislation and more specific regional requirements placed on their clients. As previously mentioned, index providers are mostly global in nature and run their businesses that way which means they follow regulations globally not just on a country-by-country basis. Moreover, index transparency is accomplished by, amongst other things, the fact that index providers publish their index methodologies on their websites.

Behaviour of data users *[whether the role played by data users in these markets affects the outcomes observed in these markets, whether data users can switch suppliers, and what the factors are that affect their ability and strength in negotiating with data suppliers]*

As we have noted before, data users are sophisticated customers with a range of sizes and needs, with the ability to easily switch from one provider to another, or even create their own indices.

Index providers do not compete on price alone. They compete on innovation, constantly creating new indices and index categories focusing on new investor needs, markets, and strategies. Index providers also customize their indices at the customers' request. They compete on customer service, data quality, methodologies, operational dependability, time to market, and research quality. Index provision is a reputational business, and that index users value this aspect highly by requiring that index providers exceed market standards in order to win new mandates.

Substitute indices can be calculated relatively easily by competitive index providers. This supply of index providers and choice of indices means that users have the freedom to choose from a range of providers and that choice is exercised by market participants.

Index customers can easily and cheaply switch provider if there is a better fit or offer, and history has shown funds do switch benchmarks based on both lower prices and better fits for how they manage their portfolios. This includes asset managers substituting their own internally created indices for third-party indices. There are several actors involved in the decision which benchmark to use. The decision may be made by the asset manager as well as by the ultimate investor. Customers make use of their buying power and encourage competition by requesting proposals when introducing new products and they are ready to decide against the current provider if alternative providers offer better conditions.

Incentives for innovation – *[examining the incentives that exist for innovation by firms in each of the markets in scope, what barriers might exist for further or faster-paced innovation, including IP rights, and what the emerging and potential future trends and developments affecting competition in these markets might be]*

Innovation is at the heart of competitiveness in [redacted]. Given the low barriers to entry and low switching costs, technological innovation is a primary way for firms – including new entrants – to compete against each other and offer the products best suited for their customers' needs. Indeed, new trends such as self-indexing, direct indexing and customisation will foster even more competition within the marketplace.

To keep bringing innovation to financial markets, along with the abovementioned benefits to end investors, the intellectual property of index providers has to be preserved. There is already a high degree of transparency in the industry – for instance, through the fact that index providers publish their index methodologies on their websites – but any undermining of intellectual property rights would remove an important incentive for innovation.

[redacted]

[redacted] Comments on FCA Wholesale Market Study

About the [redacted]

[redacted]

Executive summary

The [redacted] have long held concerns regarding the ever-increasing cost and complexity of wholesale data markets. From the largest global asset managers to the smallest firms, [redacted] have faced high and rising prices to acquire data that is critical to their business. Key drivers of this have included:

- Greater requirements for data usage, with de facto requirements to purchase new data products that have come onto the market; and
- Licensing agreements and policies that are subject to variation and regular changes. Vendors will often separate use cases and impose separate licence charges for each.

These drivers have led to rising complexity which in turn has also increased costs. These costs have impacted market participants' ability to access data, acting as a barrier to entry for smaller and newer firms, and ultimately impacting the returns of the end client: the individual saver and investor.

In order to improve the functioning of the market, we recommend that:

- Data fees be tied to costs, with cost increases based on a reasonable profit margin, or demonstrable growth in operating expenses (excluding contracting and audit costs).
- Regulators should consider how to rationalize licensing agreements – by, for example, requiring standardized contract terms and standards.
- Regulators should also consider how to achieve greater pricing transparency, through public availability of pricing lists or models.
- An option for 'enterprise' licencing of market data (ie having one licence with a data provider for use throughout the firm) be introduced.
- The [redacted] strongly encourage the FCA to explore concerns regarding market data providers disclaiming liability for accuracy, completeness, and timeliness of delivery, and to consider whether this would amount to an unfair contract term for a paid data provision service.

[redacted]

[redacted]

Finally, we note that the relatively short time window for response to this study has led to these comments being by necessity quite high level. We would urge the FCA to continue to gather views, both formally and informally, from all stakeholders, and if necessary extend the timeline for the review to allow for stakeholders to gather and analyse sufficient data and provide a response that is suitably detailed.

We would welcome the opportunity to discuss further with the FCA any of the issues we raise in our response.

[redacted] Comments

Issues in the Wholesale Data Markets

In recent years the costs associated with accessing market data have increased globally. This has been primarily driven by:

- Greater requirements for data usage, with *de facto* requirements to purchase new data products that have come onto the market, for example as a result of:
    - A growing requirement for ESG data;
    - Data requirements associated with mandates for new clients, particularly where there is a lack of widely available data elsewhere such as in the fixed income space; and
    - Regulatory changes.
- Licensing agreements and policies that are subject to variation and regular changes. Vendors will often separate use cases and impose separate licence charges for each. In practice this often results in investment managers paying multiple times for the same data. Examples include:
    - Derived data rights;
    - Access to and retention of historical data. Investment managers looking to move to another provider will have to continue to pay a fee to their former provider for necessary historical data, which both increases costs and discourages competition;
    - Research and advisory use; and
    - Location-based licensing (which has become increasingly antiquated and onerous as more and more employees work at least partially from home).

Rising complexity also plays a significant role in increasing costs for investors.

- Data licensing agreements are often too complex, with subscribers asked to pay for data on the basis of both individual use cases, and for each individual user.
- Firms also often bear the cost of complex audits of their licenses imposed by data providers. These audits can be lengthy, difficult to work through, require significant resource, and may in some instances take years to complete.
- Firms receiving market data also face significant complexity in managing ongoing variation in their licensing agreements, incurring operation costs and risks.

There issues are exacerbated by increasing consolidation of data providers and dominance by a small number of players, resulting in a monopolistic scenario where investors find it difficult to move their business to a competitor. For both benchmark providers and credit ratings agencies in particular, there are a relatively small number of large market players, and investment mandates will often require investment managers to use particular providers. This allows these providers to raise prices significantly with little recourse available to investment managers to move their business elsewhere. Increasingly, [redacted]

[redacted]

[redacted] are also seeing this trend now spreading to the area of ESG data, where the largest, global data providers are taking over smaller, specialised, providers.

All this has had the effect of greatly increasing the costs required for market participants to access a comprehensive view of market activity, acting as a barrier to entry for smaller and newer firms and ultimately impacting the returns of the end client: the individual saver and investor.

It is not at all clear to [redacted] that these rising costs are associated with an improvement in data quality, or an increase in costs incurred by the data provider. Instead data providers are often seen to be simply charging more for the same level of service.

We also note that pricing models change frequently, with vendors frequently making changes to usage and licensing rules at each new renewal (for example by switching between unlimited usage per licence to per user pricing), driving up fees over time. There is often little transparency as to how these pricing models operate. In many cases, data providers will state that they are working from a strict pricing list which makes price reduction impossible, but more often than not these pricing lists are not visible to data users. These opaque models lead to highly variable commercial outcomes, make price comparison impossible, and make it difficult to determine whether the requirement to treat customers fairly is being met, as well as to anticipate any future cost increase from one year to another in the provision of a given service by data providers.

Finally, we note with concern the practice of market data providers disclaiming liability for the accuracy, completeness, and/or timeliness of delivery. This puts the risk of their errors onto the consumer, setting an unfair responsibility on investment managers as users of such data. Given that investment managers are paying for this data, the onus should be on data providers to ensure that the data is reliable and useable. As this is not the case currently, this often results in data consumers building teams and functions to verify the data at their own expense. Coupled with the persistent, unjustified cost increases the market data providers levy, this adds significant cost and time burden to the consuming company and potentially the end customer in the way of higher charges.

Recommendations
To improve the functioning of the market we believe regulators should focus on tackling these existing issues with costs and licensing practices. It is the [redacted] view these issues are ideally dealt with through regulatory intervention. With the overall goal of reducing complexity and ensuring costs are reasonable and sustainable, [redacted] in particular recommends that:

- Data fees be tied to costs, with cost increases based on a reasonable profit margin, or demonstrable growth in operating expenses (excluding contracting and audit costs). This is key [redacted]. Costs of data have increased precipitously in recent years with little-to-no correlating increase in costs for providers. We would urge the FCA, as part of their analysis, to ask vendors to provide details on their revenues compared to costs in recent years, and to consider the impact this disparity has had on investment management firms and, ultimately, their end clients.
- In order to tackle overall costs by reducing complexity, regulators should consider how to rationalize licensing agreements – by, for example, requiring standardised

[redacted]

contract terms and standards, although it is important that this is not also accompanied by higher fees and worse terms.

- Regulators should also consider how to achieve greater pricing transparency, through public availability of pricing lists or models.
- An option for ‘enterprise’ licencing of market data (ie having one licence with a data provider for use throughout the firm) be introduced. This would enable users to fully realise the value of market data within their organisation by eliminating the possibility of additional fees or reporting requirements being incurred for new use cases defined by market data providers. As enterprise use does not necessarily lead to increased costs for the data provider, an enterprise model should still adhere to the concept that fees are in line with costs plus a reasonable margin.
- [redacted] strongly encourage the FCA to explore concerns regarding market data providers disclaiming liability for accuracy, completeness, and timeliness of delivery, and to consider whether this would amount to an unfair contract term for a paid data provision service.

[redacted]

28th March 2023

To whom it may concern,

Re: wholesale data market study with the publication of the terms of reference and market study notice.

[redacted] is responding to the FCA request for stakeholders' views on (i) the issues set out in the terms of reference and (ii) whether we should make a market investigation reference to the Competition and Markets Authority (CMA) about one or more of these markets.

(I) The Terms of Reference

[redacted] believes the FCA Terms of Reference are very well written and the six themes will serve as an excellent structure for the market data study. [redacted] would request that the FCA provide explicit instructions as to how [redacted] can engage with the FCA on the market data study.

(II) Market Investigation References to CMA

For the 3 markets identified in the market data study (1. Benchmarks 2. Credit Rating Agencies 3. Wholesale market data vendors), [redacted] has the following opinion:

1. **Benchmarks.** [redacted] believes a market investigation reference should be made to the CMA. Three benchmark providers: [redacted] have achieved a dominant market position. So much so that the data has become must have data for [redacted] in order to serve their clients, the investors. [redacted] would request that regulation requires the market data fees from benchmark providers be publicly published and that fees are charged on a reasonable commercial basis.

2. **Credit Rating Agencies.** [redacted] believes a market investigation reference should be made to the CMA. Three credit ratings agencies: [redacted]. have achieved a dominant market position. So much so that the data has become must have data for [redacted] in order to serve their clients, the investors. [redacted] would request that regulation requires the market data fees from credit rating agencies to be publicly published and that fees are charged on a reasonable commercial basis.

[redacted]

[redacted]

3. **Wholesale Market Data Vendors.** [redacted] believes a market investigation reference should be made to the CMA. Market Data Vendors bundle some essential content and functionality into their commercial products. To ensure that competition encourages efficiency in the financial markets some of the more essential content and functionality offered by Market Data Vendors should be made available in unbundled form. The policies and fees for essential Market Data Vendor content and functionality should be fair and reasonable.

[redacted] requests to be a formal respondee to the FCA Request for Information. The FCA RFI provides [redacted] an opportunity to provide more detailed answers with examples to feed into the market data studies into 1. Benchmarks 2. Credit Rating Agencies 3. Wholesale market data vendors and market investigation references to the CMA. An extension to the 30th March 2023 deadline would be required without the opportunity to respond via the FCA RFI.

[redacted]

Yours sincerely,

[redacted]

[redacted]

[redacted] [redacted] [redacted]

[redacted]

[redacted]
30 March 2023

FCA Wholesale Data Market Study Terms of Reference

Response from [redacted]

1. Introduction

1.1 Thank you for the opportunity to respond to the Terms of Reference to the FCA's Wholesale Data Market Study (the ***ToR***).

1.2 This document sets out the [redacted] response to the ToR. Please note that [redacted] has confined its comments to those parts of the ToR that are most relevant and significant to its business. The absence of comment from [redacted] on other sections of the ToR does not necessarily mean it agrees with all the content of those sections.

2. Wholesale Data Value Chain

2.1 In the ToR, the FCA acknowledges that market data vendors (***MDVs***) *"play a key role in the distribution of wholesale data"*.[1] However, it neglects to fully and accurately explain an MDV's function in the value chain. In particular, the current descriptions provided by the FCA in the ToR suggest that the FCA views MDVs as a pure "distributor" of data.[2] This is not correct. The role that MDVs play and the way in which they add value for users is fundamental to understanding the market in which MDVs operate.

2.2 To assist the FCA, [redacted] has provided an alternative diagram of the value chain in the **Appendix** that illustrates the role that MDVs play in the value chain. This diagram shows that the role of MDVs is fundamentally twofold:

(a) **Compilation of data.** MDVs compile and process data before supplying the data downstream – i.e. MDVs do not license data to simply "distribute" it onwards to users. The compilation process involves various steps, including the aggregation, processing (e.g. cleaning, formatting etc.) or enrichment of the raw data (to produce consolidated content sets, or where the data has been further manipulated or analysed, derived content and/or analytics). A core part of this is also the normalisation of the data and application of a common data model, which converts data into a standardised format, allowing mapping and searching across datasets, expanding the use cases to which customers put the data. These processes are highly complex and involve significant work. They also greatly enhance the value of the data for customers as compared to direct delivery of raw datasets.

(b) **Delivery of data.** MDVs then package these products with additional functionality and/or workflow tools to create comprehensive solutions that fulfil the requirements of certain user segments (e.g., desktop products for investment managers). Delivery mechanisms and appropriate packages are based on extensive knowledge of customer needs built up through research and engagement with customers. Continual innovation aims to improve ease of use and respond to evolving customer needs. Wholesale market data can be delivered via real-time and non-real-time datafeeds, as well as

[1] [redacted]

[2] [redacted]

through desktops. The mode of delivery of the data ultimately comes down to end-user choice.

2.3 The FCA must recognise and take full account of the value added by MDVs for their customers, both at the compilation and delivery stages, as an essential foundation for its analysis.

3. [redacted] contracts and pricing reflect user demand

3.1 The ToR indicates that the FCA will consider potential issues relating to a data supplier's commercial practices. These include:

(a) whether barriers to switching arise from other actions by suppliers, for example, where users may be subject to long contracts, exclusivity requirements or termination fees;[3]

(b) whether burdensome contractual terms imposed by data suppliers result in non-optional fees e.g. overly complex or opaque fees;[4] and

(c) whether there is a lack of transparency and whether this prevents users from comparing product offerings, prices or terms and conditions.[5]

3.2 The FCA also indicates that it will consider how value-based pricing may harm specific types of users or create competitive distortions.[6]

3.3 Specifically, while [redacted] does not disagree that it may be appropriate for the FCA to consider these questions, it is critical that the study also considers how contracting practices and structures benefit users and are designed to reflect the reality of a fast-moving market. [redacted] does not consider that its contracts or pricing model give rise to any of the FCA's potential concerns described above. Across its wholesale market data business (i.e., covering indices and supply of trade data and other data), the terms of [redacted] contracts with users are reasonable and reflect user demand. In particular:

(a) [redacted]

(b) [redacted] The FCA should take account of the significant (possibly unintended) consequences of a shift to a less sophisticated and less tailored model.

[redacted]

(c) [redacted] It is important that the FCA carefully considers whether a shift to a less tailored model would actually benefit customers given the unintended consequences it would be likely to have.

(d) [redacted] A less tailored model may benefit a few customers, but would be, [redacted] significantly unfair for others.

3.4 It is also critical that the FCA approaches the question of value-based pricing in a balanced way. We have not seen anything to dispute the assertion that [redacted] customers derive significant value from this data [redacted]. This approach to pricing allows [redacted] to serve (economically) a wide range of customers, offering them a choice that meets their differing needs.

4. Tying and Bundling

4.1 The ToR notes that tying "must-have" wholesale data products with other products may result in unwanted costs for users. In addition, the ToR states that suppliers may prevent new or potential competitors from gaining customers in specific segments of the market by tying or bundling their must-have products with products whose provision may be more susceptible to challenge by competitors.[7] The FCA should not assume that tying and bundling is a universal feature of the market, or indeed, that the availability of bundled offerings is anything other than a reflection of user demand.

4.2 [redacted] practices cannot give rise to any of the potential concerns in relation to tying and bundling that the FCA raises in its ToR – rather, [redacted] simply seeks to respond to customer demand. In particular:

(a) [redacted]

(b) [redacted]

[redacted]

[redacted]

4.3 The FCA should take into account the benefits to customers of this approach, both in terms of meeting customer demand based on different use cases and also in relation to cost. A packaged solution offers customers direct savings by purchasing a package compared to negotiating directly with a large number of different providers. It may also be considerably more efficient for the customer in terms of being able to access a broader range of data that meets their individual needs, with reduced delivery and management costs.

5. <u>Vertical Integration</u>

5.1 The ToR suggests that vertical integration is widespread across the industry with trading venues, benchmark administrators, market data vendors and ratings providers all being part of the same corporate group.[8] The ToR also notes the FCA's concern that this could be causing competitive distortions across the supply chain, for example through the inability of competing firms to access necessary data inputs or bundling of data services with other products and services.[9]

5.2 The FCA must not approach the issue with pre-conceptions either as to the benefit or disbenefits of vertical integration, or as to the business strategy choices that individual firms have made.

5.3 [redacted]

(a) [redacted]

(b) [redacted]

(c) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(d) [redacted]

6. Offering a broad range of products on a single platform does not create barriers to entry or network effects

6.1 The ToR states that the FCA will explore whether there are market features, behaviours or practices that support or create **structural or strategic barriers to entry and expansion**. In particular, the ToR notes that the FCA will investigate whether barriers to entry arise due to suppliers distributing data through platforms that offer access to data alongside other complementary products and services. The document notes that complementary, interoperable products and services can increase user value from a platform but may require competitors to compete on multiple fronts by offering a similarly broad range of products and services.[12]

6.2 The evidence shows that users commonly source their data from different providers depending on their specific business needs. For example, large users with many different business divisions, each with different requirements source many different types of wholesale data from both larger *and* more specialist providers to meet the needs of each business division. It is therefore not necessary for smaller providers to offer a broad range of different complementary, interoperable products in order to meet individualised user demand.

6.3 In addition, the FCA notes that the markets for the supply of wholesale data may have characteristics of **network effects** due to:

(a) the fact that the value of products or services in the markets within scope of the market study increase if they are widely adopted;[13] and

(b) the two-sided nature of the markets. In particular, the FCA notes that MDV users are likely to value the ability to access a wide range of data sources on a single platform.[14]

6.4 In general, the more widely indices and some other types of data are adopted, the more valuable it generally is for the end user (as explained at paragraph 5.3(c) above). [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

6.5 However, the FCA should not assume that these characteristics apply to all MDVs and data providers in the market as a whole. Different providers have different business and operational models which should be assessed on an individual basis.

6.6 In addition, it is not the case that simply offering a wide range of different data sources on a single platform gives rise to network effects. As noted above, users source their data from different providers on an individualised basis, depending on their specific business needs regardless of whether the data is sourced from a large market data vendor or a smaller one.

7. Incentives for Innovation

7.1 The ToR indicates that the FCA will consider the incentives that exist for innovation by firms in each of the markets in scope and what barriers might exist to faster-paced innovation.[15] To assist the FCA with this assessment, [redacted] explains below the reasons why it considers that there are significant incentives to innovate in the markets in scope of the market study. It is critical that the FCA takes full account of these incentives in its assessment of this issue and approaches this question in a balanced way. In addition, the FCA should ensure that any intervention it may contemplate would not reduce or distort incentives to innovate.

7.2 The primary driver of [redacted] incentives to innovate is its users. [redacted] is under continuous pressure from its customers (very many of whom are the world's largest financial institutions) to innovate and improve its products across its market data business. [redacted]

7.3 In addition, due to the exponential rate of technological developments and growth of data, [redacted] must continue to invest in its ability to ingest, validate, process, store, supply and maintain this data to ensure it does not fall behind its competitors.

7.4 [redacted]

(a) [redacted]

(b) [redacted]

[redacted]

[redacted]

(c) [redacted]

8. FCA objectives

8.1 The FCA notes the international nature of these markets in the ToR. [redacted] agrees and considers that it is important that the FCA carefully evaluates whether any potential outcomes from the market study may lead to a distortive effect on the competitive position of UK providers relative to their global counterparts. The FCA should take into account its forthcoming objective to facilitate the international competitiveness of the UK economy and ensure that any outcomes do not undermine the attractiveness of the UK for investors and financial markets users.

9. Conclusion

9.1 We welcome the opportunity to comment on the ToR. We would also welcome continued dialogue with the FCA and would be very happy to discuss any of the points raised in this response.

Appendix

[redacted]

[redacted]

[redacted]

wholesaledatamarketstudy@fca.org.uk

[redacted]

[redacted] 30 March 2023

Re: Financial Conduct Authority - Wholesale Data Market Study Terms of Reference

Dear Sir/Madam:

[redacted]

In the UK, our clients include some of the most prominent players in the financial industry. As an index provider, we aggregate financial information into index calculations to give investors a benchmark to assess their performance or to select diversified trading instruments linked to these indices by financial product providers. From our clients' perspectives, it is paramount that the index is, at all times, accurate. In order to achieve such accuracy, the index must be calculated and maintained using reliable, accurate and accessible market data.

We welcome the market study and the opportunity to share our observations and views on some of the themes addressed in the Terms of Reference.

THEME 1: BARRIERS TO ENTRY AND EXPANSION

Although the requirement exists in the EU that market data is to be made available on a reasonable commercial basis, we have come to the conclusion that this has not prevented an increase in prices for market data over the past years. Unit prices of market data for our use cases (index calculation, non-display usage) have increased significantly since the application of the relevant EU regulations (MiFID II/MiFIR).

In particular, exchanges with their dominant market position in many cases, have been handed a de facto local monopoly, as all market participants generally procure data from the most liquid market places. Therefore, the price elasticity of

[redacted]

[redacted]

demand is very low and exchanges have noticed that they can enforce higher fees with market data consumers and thereby ultimately with institutional and retail investors.

Generally speaking, the exchanges have great market power and can set one-sided conditions, since an index provider [redacted] is dependent on such data and any disruption would severely impact our business as we could not calculate the indices we provide to our clients anymore. We ourselves have experienced the case that a market data provider used rough practices to renegotiate price levels for an existing contract by terminating the existing market data contract and later offering a contract extension at a multiple of the previous price. This exploits the absolute dependency of the market data consumer on an uninterrupted supply of market data. In addition, it is important to keep in mind that price increases for market data will also have an impact on the users of the indices, as they need the levels for the pricing of the financial instruments linked to the indices. In addition, retail investors in financial instruments will be affected by higher prices for market data, as such additional costs will be reflected in the pricing of the financial instruments.

Prices for market data should be determined based on transparent and enforceable parameters. Even in markets where market data is to be made available on a "reasonable commercial basis" (RCB), such as the EU, we observe that current trends by the UK-based exchanges, fail to fall within such parameters.

THEME 3: VERTICAL INTEGRATION

In recent years, we have witnessed a wave of mergers among leading exchanges. While the idea may have been that such mergers could result in increased efficiency, our experience, especially in our dealings with exchanges with a dominant position in their domestic market, has unfortunately been one where increased market power has resulted in higher fees with no significant efficiency gains. As such, we welcome further regulation in this area. It is our strong belief that the consolidation of exchanges will result in significant market concentration and impose detrimental effects (such as increased data prices, limited competition due to barriers for entry for many potential market participants, etc.) on the economy.

What's more, some of the main global index providers are subsidiaries of stock exchanges. In financial terms, the situation of integrated index providers (i.e., subsidiaries of stock exchanges) differs significantly from the situation of independent index providers. Whereas the cost of market data is merely a group internal transaction for integrated index providers, independent providers ultimately have to pass on market data costs to customers or exit the market. As costs for market data may constitute a significant proportion of the total costs borne by independent index providers, any change in price can be expected to have a significant impact on their ability to compete, especially with integrated index providers. Conflicts of interests arise where exchanges are vertically integrated and have business lines that compete with their customers: they have incentives to tilt the fee structure and delivery formats to favor their connected businesses. Adequate controls for identifying and preventing conflicts of interests should be in place.

Additionally, in order to avoid the dominance of larger, wealthier players that may create higher barriers of entry and hinder competition, the pricing of data services should be fair and adequately reflect the effort of its creation. Controls may be considered within arms-length transactions to ensure that no integrated participants may have advantages over smaller players. For example, measures could be put in place to ensure that if an exchange requires index providers to purchase licenses with them in order to use their data, the index unit of the exchange is also required to have the same

[redacted]

[redacted]

license and hence face the same costs as external index providers for the access and use of the same data. The same should be in place for partnerships – ensuring equal treatment for the use of the same data.

CONCLUSION

Exchanges play a vital role in collecting and managing market data, which is intrinsic to their core functions where associated costs are paid for by market participants. As such, for a well-functioning economy, it is paramount that such market data is offered in line with fair competition principles such as fair pricing and fair terms and conditions for its users. Currently, we are witnessing a momentum of fee increases from all major stock exchanges (in some cases, as a result of increased vertical integration) – these increases, in our opinion, are unjustified, unfair and will ultimately, in the long run, result in less liquidity and weaker competition in the market.

[redacted]

[redacted]

[redacted]

Sent by e-mail: wholesaledatamarketstudy@fca.org.uk

March 30, 2023

Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

Dear Sir/Madam,

WHOLESALE DATA MARKET STUDY

We would like to thank the FCA for its Wholesale Data Market Study and we appreciate the opportunity to provide feedback.

About [redacted]

[redacted]

Background

As the FCA and the industry is aware, the fees for benchmarks, indices, market data and related connectivity ("Market Data") have risen significantly despite the innovations and efficiencies in technology that have otherwise reduced an array of costs in the financial services sector. In addition, the complexity of the licensing permissions for Market Data continues to increase. As an asset manager, it is important for us to speak out on this topic because Market Data's regulatory framework, high fees, and onerous licensing terms and conditions have implications for our end investors and consumers. If the market structure issues are resolved in a way that results in appropriately calibrated fees for Market Data, we would have additional financial resources to deploy for the benefit of supporting the investment objectives of our clients and fund investors. In addition, when brokers incur high Market Data fees, it makes it harder for us to negotiate lower commission levels on behalf of our clients. As high Market Data fees reduce brokers' profit margins, it also hinders their ability to devote resources to technology, innovation, and other services that can enhance the trade execution quality received by our clients and funds when we transact with these brokers. Below, we focus on Theme 4 (Commercial practices of suppliers) and Theme 1(Barriers to entry and expansion).

Theme 4: Commercial Practices of Suppliers

Complex Licensing and Pricing

Over the years, most Market Data suppliers have structured their licensing permissions such that a firm's purchase of the same data is often charged separate fees by the provider multiple times. This creates significant complexity understanding licensing permissions and results in higher costs both from a fee and

[redacted]

[redacted]

[redacted]

operational perspective. The typical ways in which this is structured depending on the supplier model is as follows:

1. ***Means of Receipt of Data.*** Separate fees are charged for all ways in which the same data is received (e.g., through a terminal, through an Application Programming Interface (API), per each device that a user has access to). This has created challenges during the pandemic and as companies moved to hybrid working.
2. ***Manner of Use.*** Separate fees are charged for each use case of the same data (e.g., separate fees for viewing, storing, downloading, reporting, analysing, redistributing internally and externally, or creating derived data). External re-distribution to clients is often very expensive and comes with restrictions such as only being able to distribute a small portion of the data.
3. ***Consumption by Multiple Locations and/or Teams.*** Separate fees are charged for the same data by location. This can be per region, per jurisdiction or per named office or even per floor or per type of team and/or function. This has proved problematic when we have one user in a jurisdiction and are expected to pay the same license fee for one user as we do for two hundred users. We have also experienced a more expensive license fee for two users due to the fact that the users were in different internal teams as opposed to a cheaper fee if they are in the same team.
4. ***Treatment of Multiple Legal Entities within Same Purchaser Organisation.*** Separate fees are charged per legal entity. To illustrate the harmful effects of this practice through an example, when we moved some investment personnel into a new legal entity within our organisation for strategic reasons in 2022, the number of people accessing the data remained static across the organisation but a number of Market Data suppliers expected us to pay significant additional fees and in one case suggested doubling our existing cost to access the same data.
5. ***Use of Historical Data***. Separate fees are charged for historical data when we have already paid a license fee to receive that data during the same period.
6. ***Layering of Fees for Exchange Data.*** Separate fees are charged for real-time data and historical data in respect of exchange data. There is typically a charge for each internal application which consumes the same exchange data as well as a charge for each display use and each non-display use.

We understand from Market Data suppliers that all clients of suppliers are charged the same fees but we are unable to verify if this is the case since there is limited transparency on fees. We also find that it is prohibitively expensive to license Market Data for one year, so the only viable option is to agree a fixed longer-term license of three to five years. We are typically unable to negotiate any price caps on future increases from Market Data suppliers regardless of whether we negotiate a one-year deal or multi-year deal. The inability to negotiate price caps makes budgeting more challenging and results in significant price increases from Market Data suppliers. We have been subject to a number of significant price increases recently from ratings and index Market Data suppliers (ranging from a 10 per cent to 50 per cent fee increase versus the previous fee arrangement). We have been told these increases bring us in line with the pricing our peers are being charged. However, since there is no rate card or price transparency we cannot verify if this is accurate.

The lack of transparency in the current market structure allows for the practice of “bundling” with Market Data suppliers aggregating multiple datasets and analytic services into a single product with minimal flexibility. The aggregated services and datasets often aren’t considered to be equally valuable, which means we pay for services we do not require. [redacted]

We are also not able to use the data in optimal fashion due to providers’ complex licensing models and the lack of flexibility within those models. For example, in the Environmental, social and governance (ESG) space some suppliers have even more prohibitive criteria on how their data can be used and restrict the sharing internally or externally of [redacted] proprietary model outputs where the supplier’s raw data is only one input of many into the model. This can prove challenging as we want the ability to discuss and share our data

[redacted]

[redacted]

analysis with end investors. The varying complexity of the licensing models (with a myriad of different restrictions relevant to each different data set) creates additional monitoring and compliance costs.

We would therefore welcome a review of the Wholesale Data Market focusing on greater price transparency and reducing license complexity such that companies can meaningfully compare products and challenge fees.

Theme 1: Barriers to entry and expansion

As an asset manager, Market Data is critical to enabling [redacted] to serve our clients and we often need to purchase data from a specific supplier or have a limited choice of suppliers. Therefore, we would welcome a review of the market structure and barriers to entry. Wee find that the barriers and hurdles to switch from one supplier to another mean that in practice it is extremely difficult to switch suppliers. This is for a variety of reasons but the most challenging barrier to switching suppliers is the fact that many suppliers require us to delete historical data we have paid for if we no longer use their services. However, we require this data for analysis and to demonstrate performance over time. We also face challenges switching suppliers because the data supplied by the Market Data suppliers is heavily integrated into our entire investment process from financial valuation by investment analysts through to operational and control functions and each supplier has their own methodologies, data formats, security identifiers and APIs. This is further compounded by the issue of "bundling" (discussed above) which makes it more commercially attractive to choose benchmarks, for example, from an existing incumbent supplier. The complexity is exacerbated by some data platforms and aggregators not supporting certain benchmark providers on their platforms which requires us to purchase that data separately and upload it manually, resulting in on-boarding times of up to three months for a new benchmark. Moving to a new Market Data supplier can therefore be a costly and time intensive process and in some cases is not possible due to historical data requirements. As a result of limited choice and ability to switch suppliers, buyers of Market Data are in a weak negotiating position vis à vis Market Data suppliers and are not able to negotiate balanced fees and terms and conditions in the way we are able to with other suppliers of goods and services.

We are therefore paying high fees for data and services which are supplied on an "as-is" basis. This means that typically we have no contractual guarantees and no financial or legal recourse to the Market Data supplier if they provide inaccurate or incorrect data, do not provide the data on time, or the service fails.

Considering the critical importance of Market Data to our industry as well as the increasing requirements for ESG data, we would welcome an overall review of the market structure for Market Data. Enhancing the functioning and competitiveness of the Market Data ecosystem would benefit asset managers as well as their clients and end investors.

Yours sincerely,

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Wholesale Data Market Study

Sent to: wholesaledatamarketstudy@fca.org.uk

[redacted]

Executive Summary

[redacted] welcome the Financial Conduct Authority's (FCA) continued focus on 'Accessing and using wholesale data', and we are grateful for the opportunity to contribute to the latest Market Study on benchmarks, credit rating data, and market data vendor services.

Ensuring robust, equitable and proportionate regulation for data in wholesale markets is a matter of principal importance for our members. We believe that strengthening this fundamental pillar of capital markets is key to the success of wider ongoing reforms to the UK's regulatory regime.

In this response, we have set out our high-level views on the issues outlined in the terms of reference (ToR) of the Market Study. The pricing practices and complex licensing terms of the data markets covered within this study have been and continue to be an area of ongoing concern for our members, who have observed adverse impacts on market participants' ability to access high quality data on reasonable terms and at reasonable prices, the development of barriers to entry for smaller and innovative firms, and ultimately worsening outcomes for end consumers. We therefore believe that it is important for the FCA to promptly address the issues identified in these markets through changes to the UK's regulatory framework where appropriate.

As an outcome-based and data-led regulator, it is imperative that decisions made by the FCA are based on appropriate information and that the relevant market participants are provided with a fair opportunity to share their considered views. However, please note that the tight timeframe in which we have been required to submit this response has restricted our ability to formulate more detailed feedback on the important matters set out within the ToR. We would encourage the FCA to continue to engage openly and productively with [redacted] and other market participants during its review process, so as to ensure further detailed views and insights can be shared and reflected as this important initiative progresses.

[redacted]

[redacted] **Comments**

Theme 1: Barriers to entry

[redacted] are of the view that new providers could potentially find it quite challenging to enter the three markets covered within the Market Study and the following non-exhaustive list operate as barriers to entry: -

- Non recoverable investment costs in infrastructure, commercial relationships, or building a customer base
- Economies of scale where large incumbent providers benefit from lower average costs or greater negotiating power as a result of their large user base or breadth of data products and services
- Barriers to switching on either the users' (brand loyalty, reputation, complementary interoperable products) or suppliers' side (long contracts)
- Network effects

Whilst all the above factors act as barriers to entry, from a user perspective, barriers to switching and network effects are perceived as stronger barriers compared to the others. In relation to benchmarks, whilst there are other alternative providers (e.g., ESG benchmarks), users tend to gravitate towards certain globally established benchmarks due to the latter's dominant market position.

Theme 2: Network effects

The globally established benchmarks that are widely recognised as the industry standard are embedded in the financial ecosystem and end users are reluctant to accept alternative benchmarks due to lack of familiarity and the costs and resources required to switch. A new provider would need to reach a certain level to gain critical mass and be an effective competitor to existing providers. In practice this is difficult to achieve for the reasons above and when certain new providers start to become established, large providers tend to acquire them.

In addition to the above, despite new legislation such as the Digital Operational Resilience Act (DORA), users may be drawn towards larger suppliers of data (e.g., data vendors) as they are considered to be more resilient and therefore more reliable. Any consequences of an operational failure of a large supplier would be experienced by all/ majority of users together. On the other hand, users may be reluctant to use suppliers with a limited number of users due to the fear of having to suffer isolated outages. Moreover, the supervisory expectations placed on regulated firms by regulators regarding outsourcing and third-party risk management may also result in regulated firms choosing more established data providers with more robust operational resilience. These providers invariably have a stronger market position as opposed to new entrants who do not have the same track record regarding their operational resilience.

Theme 3: Vertical integration

Whilst in theory vertical integration could be beneficial to end consumers resulting in higher quality products at lower prices, this rarely happens. In practice, exclusive rights over data act as a barrier for new entrants to offer competing products.

Further, in some instances, actions of firms in one part of the value chain could impact competition in another part. For example, we have seen instances where actions such as restrictive terms of certain benchmark providers hinder their clients' ability to use services offered by other providers unless and until such clients could demonstrate, to the satisfaction of their current benchmark providers, that the latter are incapable of providing such other services. These practices result in negative outcomes for end consumers.

Theme 4: Suppliers' commercial practices

Our members are of the view that complex and non-transparent licensing conditions can prevent users from comparing product offerings, prices, and terms and conditions on a like-for-like basis. This results in increased costs and barriers to switching and weakens competition.

Moreover, our members find that lack of transparency relating to terms and conditions could in certain instances restrict the users' ability to hold the data providers accountable to agreed service level standards (SLAs).

Data vendors often have different use cases for data and charge different prices for each use resulting in users having to pay multiple times for the same data. Examples include derived data rights, separate charges for historical data, research, and advisory use.

Access to historical data is important for firms including for their trading strategies, post trade analytics and risk management functions. This leaves users with no other option but to either continue with the existing providers or pay again for already purchased historical data in the event they decide to switch to a new supplier.

Furthermore, users can lose rights over derived data if they terminate their subscription to an existing supplier of data which would further limit their ability to switch.

Most data providers (e.g., data vendors) impose restrictions on downstream use of derived data, even in instances where the vendors' data cannot be extracted or reverse engineered. Such practices restrict the ability of clients to incorporate this data in products they manufacture. This reduces innovation and competition.

Certain large and more established benchmark providers reserve their contractual right to change their methodology at short notice without giving adequate time for users to update their internal systems and processes.

Generally, our members found higher prices from tying and bundling to be particularly prevalent for credit rating data.

Theme 5: Behaviour of data users

We believe that underlying customer preferences, partly driven by brand recognition, could drive demand for products of certain data providers.

We believe that most of the products and services offered by data providers of the three markets within the scope of the Market Study are not one hundred percent substitutable. This is partly a result of, for example, intellectual property (IP) rights which could restrict the ability of different providers to offer exactly the same product. Users then must subscribe to multiple suppliers to gather a holistic and exhaustive view of the data.

Theme 6: Incentives for innovation

Our members generally find that new and innovative providers of data are more flexible in their approach to meeting customer requests. However, there is a perception that larger and more established providers are better placed to provide higher quality products and services although it is not clear that this is actually the case in practice.

Furthermore, smaller fintech providers, who do offer new innovative products, tend to be acquired by larger and more established data providers.

For some time, our members have seen an increasing trend where data providers impose new charges on existing use of data, which is difficult to justify in situations where such providers do not incur any additional costs.

In terms of future trends, our members believe that it is likely that data providers may start charging additional fees, or restricting use, if their clients use artificial intelligence in the course of their use of data. This could result in negative outcomes for users and their end consumers.

In theory, IP rights should encourage innovation, by protecting the rights of the innovator and rewarding the effort that has been invested by the innovator. However, in practice, the larger and more established providers of data tend to assert IP rights in relation to derived data. This can therefore hinder innovation.

[redacted]

30 March 2023

Financial Conduct Authority
12 Endeavour Square
London E20 1JN
United Kingdom

By email: wholesaledatamarketstudy@fca.org.uk

[redacted] Comments on the Financial Conduct Authority Wholesale Data Market Study Terms of Reference (MS23/1.2)

[redacted] welcomes the opportunity to provide comments on the Financial Conduct Authority ("FCA") Terms of Reference ("ToR") relating to its Wholesale Data Market Study (the "Market Study"). We also look forward to participating more broadly in the Market Study and engaging with the FCA in further detail on the issues raised in the ToR.

[redacted] ur indexes are used by a variety of institutional clients, including asset managers, asset owners, banks, insurance companies and wealth managers. We do not offer index products and services to retail investors, do not provide credit rating data and we are not a market data vendor. [redacted], in certain circumstances, a customer of market data vendors.

[redacted] is an authorised benchmark administrator,[1] regulated by the FCA[2] and voluntarily adheres to the International Organisation of Securities Commissions Principles for Financial Benchmarks ("IOSCO Principles").[3] [redacted] has a long history of defining and applying sound practices in its index product lines, including strong governance and controls over methodologies and processes.

We understand the purpose of the Market Study is to enable the FCA to develop an in-depth understanding of whether a market is working well. To accomplish this, the FCA

[redacted]

[redacted]

will seek information and evidence from multiple stakeholders about how these markets work and the implications for direct users. Organised around six themes, the ToR serve as a useful analytical framework for the Market Study.

There are a number of contextual points that the FCA should bear in mind as it carries out its work in relation to the Market Study:

- **One of the main drivers for any increase in revenue of benchmark administrators is the rapid growth in popularity of passive investment.** Over the last decade, assets under management in passive funds have increased significantly. This growth in passive investment has been very positive for end investors, lowering management fees and reducing transaction costs (because certain costs of doing research and analysis are avoided) and increasing transparency and accountability in the investment process. This trend has also opened up availability for investors of a wider pool of products and international markets, including more niche segments, which would previously have been inaccessible. The growth in an increasingly attractive passive investment sector has had a positive knock-on effect on how actively managed funds compete, forcing them to lower management fees and improve products in order to remain competitive. Investors have been the beneficiaries of these developments.

- **The benchmark industry is global.** [redacted] welcomes the FCA's acknowledgment of the global nature of these markets. UK fund managers purchase indices from a range of global providers. Although the locations of the constituent companies of an index matter to investors, the location of the index provider is of less significance. In fact, index providers leverage global infrastructure, staff, IT and other resources to provide their benchmarks. It will be important for the FCA to take this into account in the Market Study when it analyses the information it requests from benchmark providers and to not lose sight of broader competitive market dynamics.

- **Fees should be considered in the context of the entire value chain.** It is critical that the FCA consider fees charged by benchmark administrators in context of the entire value chain, where those benchmark fees represent a very small part of total fees paid by asset managers and where the innovations from index providers have resulted in lower cost and greater variety of investments available to retail and institutional investors.

- **Potential concerns remain unclear.** [redacted] looks forward to cooperating with the FCA and providing responses to the FCA's specific questions and requests for information. It will clearly be important for the FCA to articulate in more detail which of its potential concerns relate to which wholesale data segment (benchmarks, credit rating data, market data vendors). At the moment, this is not always clear from the ToR.

In an effort to provide constructive feedback on the ToR, in the attached Annex we set out our observations related to each of the themes, as well as suggestions regarding how the FCA might approach its analysis in connection with these themes and the broader Market Study.

[redacted]

[redacted]

[redacted]

[redacted]

ANNEX

[redacted] Comments on the FCA's 6 Themes

Theme 1: Barriers to entry and expansion

The FCA has put forward a number of putative barriers to entry but does not provide any further clarity on which it sees as relevant to benchmarks, nor does it specify how it will assess the impact of each of these barriers.

For example, the FCA has referred to the existence of investment costs and economies of scale as a potential barrier to entry. While there may be fixed costs associated with index provision, the FCA has not explained how it will determine whether they are impeding effective competition.

Moreover, when considering the effect of upfront investment costs, the FCA's analysis must also take into account the fact that the fixed costs incurred by providers like [redacted] are often incurred as the result of investments (with uncertain payoffs) into innovative products and services (e.g., new thematic indices).

The ToR also refers to switching barriers as a potential barrier to entry. While there are examples of customers switching between [redacted] and its competitors, indices are distinguishable from disposable consumer retail goods (groceries, retail, consumables), where preferences change and consumers may exhibit regular switching behaviour. Here, asset owners and asset managers make long-term decisions regarding index selection. In this regard, focusing on switching rates in isolation will significantly underestimate the intensity of competition in the sector. The fact that a manager does not switch benchmarks frequently does not mean that there is a barrier to switching, but rather highlights the long-term nature of the decision and may reflect the manager's satisfaction with the product and related client service.

In fact, the limited barriers to entry in the index market are evidenced by the number of index providers globally,[4] as well as examples of new providers successfully entering the market and competing with established players. [redacted] Similarly, some customers have entered the market via self-indexing. Self-indexing refers to the trend of financial product providers bringing the design of the index (that their ETFs or Structured Products will track) in-house. In many cases, the product provider will then outsource the calculation of such an index to a third-party provider. Examples of self-indexers include fund managers operating families of self-indexed ETFs and banks' Quantitative Investment Solutions desks.

[redacted]

The FCA should be aware that compliance with the UK Benchmark Regulation introduces significant cost to authorised and registered benchmark administrators and new entrants and small firms in particular. The annual fee payable to the FCA is significant and on-going supervisory requests for information and engagement have material cost implications for supervised entities.

Theme 2: Network effects

The FCA has referred to the potential existence of network effects surrounding benchmarks, but it is unclear how the FCA sees network effects as applying to indices. For example, the FCA has suggested that benchmarks may be more valuable to users if they are widely adopted by other users, where high levels of usage could result in high levels of liquidity, lowering the cost of trading. Here, it should be noted that an index is not a financial product and therefore does not have any liquidity of its own. Instead, an index is simply a tool that helps users to aggregate large amounts of price and other information and provides a way to measure the performance of a particular segment of a financial market. The FCA has also indicated that markets characterised by network effects can become concentrated over time with reduced incentives for incumbent providers to compete on price, quality, and innovation. In fact, benchmark providers do compete on range of factors including, for example, fees, innovation, quality, accuracy, reliability, and client service.

[redacted] looks forward to responding on these points if the FCA is able provide further clarity on how it sees network effects applying to benchmarks.

Theme 3: Vertical integration

[redacted] is not active in the other levels of the value chain subject to the FCA's market study, only providing products and services at the benchmark administrator level of the industry.

The ToR suggests that the FCA's potential concerns with regard to vertical integration relate principally to market data vendors.

The FCA is correct that some firms are vertically integrated along the wholesale data value chain. [redacted] agrees with the FCA that, in certain circumstances, vertical integration can improve firms' efficiency by unlocking synergies and lowering costs at certain stages of the value chain, and so benefit end consumers. However, it can also raise concerns where the vertically integrated firm provides necessary data inputs to its non-vertically integrated rivals on terms which make it harder for those rivals to compete.

Theme 4: Commercial practices of suppliers

[redacted] understands the FCA will be looking at concerns which have been raised about the perceived complexity of licensing contracts and a lack of transparency in relation to the terms and conditions in those contracts. The FCA indicates that it has identified these concerns across "all three markets within scope". Although accepting that a data licence addresses a range of legal provisions typical of commercial documents involving intellectual property, [redacted] does not consider that its licensing practices are overly complex or lacking in transparency. As noted above, [redacted] does not offer index products and services to retail investors. Its clients, which are sophisticated and well-resourced financial services companies, are able to understand our licence offerings and compare them with others.

The ToR indicates that the FCA's assessment of the impact of licensing practices will be supported by an analysis of suppliers' corresponding financial performance. There are clearly many factors that will affect firms' financial performance and any such analysis will be complex and is unlikely to be determinative. As such, the FCA will need to be cautious about drawing conclusions from such an analysis on the competitive impact of licensing practices.

The FCA also indicates that it would have concerns if complexity and lack of transparency hide switching costs, making it harder for users to exit contractual relationships if the costs of doing so are higher than expected. As stated above, whilst the FCA needs to be cautious about focusing in isolation on switching rates in this industry, [redacted] does not consider that its licensing conditions make switching harder: the majority of [redacted] contracts are short term (1 year in length) and do not contain exit fees.

Theme 5: Behaviour of data users

We support the FCA's efforts to consider the various preferences of different users consuming index data. Here, it is critical that the FCA has a good understanding of the commercial value derived by each type of user. For example, the role of an index in fund management is not just as yardstick to report performance against in regulatory disclosures. Fund managers and end-investors can use an index to understand in more detail the factors that drive a fund's performance, thus deriving considerable commercial value. In this case the fund manager may wish to consume more detailed data than is required by regulation. Other users may derive more value from a license to less detailed data.

It is also important that any subsequent analysis by the FCA takes account of the wide range of factors that index providers compete on, including fees, innovation, quality, accuracy, reliability, and client service.

As recognised by the FCA, clients in the benchmark sector are predominantly sophisticated financial institutions (e.g., banks and asset managers). These users are often able to leverage their size to negotiate with index providers. The ability of some fund managers to either move to a competitor or self-index has also provided a credible threat of switching and has increased customer bargaining power when negotiating with index providers such as [redacted]

Consequently, when assessing the impact on data users and end-investors, the FCA must place the fees of index providers in the context of the longer value chain. Indeed, indices are just one component of overall annual management fees charged by funds.[5]

Theme 6: Incentives for innovation

Benchmark administrators face considerable pressure to innovate and maintain and improve the quality and variety of their indices. That pressure comes from market trends, client demand, other existing benchmark administrators, new entrants, and a wider set of companies using different models of index calculation. As a result, [redacted] and its competitors are constantly striving and investing to innovate and improve their products, whether that be in the shape of new indices, new service innovations and/or improved quality, service, and support tools. A steady increase in the number and type of indexes and in improved service delivery is the direct result of growing demand by investors for new and different products to match their varied investment objectives.

[redacted]

Financial Conduct Authority
12 Endeavour Square
London
E20 1JNOn

27 March 2023

Subject matter: Wholesale Data Market Study – reaction to the Terms of Reference

Dear Sirs and Madams,

Based on the Terms of References and Notice of the Wholesale Data Market Study, published by the Financial Conduct Authority, we would hereby like to share our experience on the issue set out in these Terms - *Theme 4: Commercial practices of suppliers* and bring to your attention commercial practices of our two wholesale data suppliers, that we find abusive.

In both cases, our company (hereinafter "**we**" or "**us**") would like to share that our suppliers' practices showed signs of the abuse of the dominant market position and their behavior was far from being pro-customer or ethical.

1. Data provider AAA (hereinafter "**AAA**")

   We and **AAA** have had a long-term successful business relationship ([redacted]) based on mutual trust and good faith in the other's performance. However, recent developments, and the way in which We were treated by AAA, challenge the values on which our cooperation has been based, as well as the professionalism and reputation of AAA altogether.

   Until [redacted], We enjoyed great flexibility in being able to subscribe for various services provided by AAA according to our business needs, and the fees for those services were always competitive and reasonable and were set transparently per user.

   After this time being this situation dramatically changed. We found ourselves – as We reached the expiry of some of the provided services – being pressured into subscribing to [redacted]; at the same time, the fees that We were offered for renewal suddenly spiked to unreasonable levels (up to 700% of the fees that we were originally charged). We learned about this very late, when AAA notified Us in [redacted] of the model change; the increased fee levels were then notified to Us even later, [redacted] ([redacted]).

   There was no timely consultation process (3-6 months prior) regarding the package changes. This left Us with none or very little time to look at or even attempt to secure alternate providers.

The logic of the fees set did not make sense: there was no transparent price list, and nor there was any clear communication from the AAA side.

We are a low-maintenance company, so a per-user fee model is far more appropriate for our operations. [redacted]. A distinction was completely lost on the AAA sales staff. AAA seemingly did not fully comprehend our small size and the nature of our business, nor was there a willingness to understand that our [redacted] could not be impacted when another [redacted] decides to cancel a subscription. Certainly, the services that AAA offered Us were far from being tailored to our requirements. For example, [redacted].

In the end, after conducting a [redacted] while trying to get a fair price for what We needed, We got the reduction We wanted. However, it did not reflect and recompensate the effort We had to put into achieving the reduction.

One more issue happened when negotiating an [redacted]. Incomprehensibly, there was no flexibility given by AAA when We tried to remove [redacted] from the main contract [redacted]. They increased the cost so finally it was cheaper for [redacted] to pay for data for other teams.

After a long negotiation, AAA agreed to decrease the price for the main contract, but they inserted a clause saying that We agreed to renew [redacted] after the expiring period in 6 months. The quote [redacted] was very high – and basically the same amount as the cost reduction of the main contract.

Practices that forced Us to take up services that We did not need and did not use, only to avoid unreasonable fees, are abusive and unfair. Imposing such features on Us so close to the expiry date that We have no other option but to submit to is not, to say the least, professional nor ethical.

2. Data Provider BBB (hereinafter "**BBB**")

In respect of suppliers' commercial practices, We have a similar experience with **BBB.**
In our eyes, their practices can also be interpreted as an abuse of dominant market position.

BBB supplies Us with the wholesale data and information necessary for our trading activities. Every year, We subscribe to the package of data for the following year, by signing the Order Form and related Terms and Conditions (T&C).

In the past, We agreed on an adjusted setup, that was compliant with our internal policies and preferences when concluding a data supply contract without autorenewals, including a data sharing clause within our company, IP rights set-up, etc.

[redacted]

[redacted]

12 Endeavour Square London E20 1JN
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk