Reply form for the ESMA MiFID II/MiFIR Consultation Paper

QUESTION 141

Do you agree that the risks a systematic internaliser faces is similar to that of an liquidity provider? If not, how do they differ?

The key difference is that while the systematic internaliser is known to the counterparty, the liquidity provider can be, at least in principle, anonymous. The information content of a quote from a systematic internaliser will thus always be weakly greater than that of a liquidity provider, and the risks higher.

QUESTION 142

Do you agree that the sizes established for liquidity providers and systematic internalisers should be identical? If not, how should they differ?

Despite the difference in risks, we believe the sizes should be identical, since any differences would create room for arbitrage.

QUESTION 154

Would these disclosure requirements be a meaningful instrument to ensure that prices are on a reasonable commercial basis?

Yes - an ESMA requirement for all data vendors/distributors to make their pricing policy public will be very helpful.

QUESTION 155

Are there any other possible requirements in the context of transparency/disclosure to ensure a reasonable price level?

To make prices even more transparent, ESMA could set certain common rules to regulate the factors (#users, #recepient systems, real-time vs delayed data,..) which are allowed to impact an "ESMA certified" vendor's price.

QUESTION 156

To what extent do you think that comprehensive transparency requirements would be enough in terms of desired regulatory intervention?

It will have a significant impact. If it becomes a MiFID requirement only to use "ESMA certified" price vendors for transparency of trading and best execution, then every vendor would want to become certified. If furthermore a set of common pricing parameters is established, then it will become difficult for vendors to introduce hidden costs. The main driver for fair pricing must be competition, and transparency will facilitate competition on equal terms.

QUESTION 157

What are you views on controlling charges by fixing a limit on the share of revenue that market data services can represent?

We are critical as to whether this is a good approach in general. It may be applied to service partners who do not proclaim data distribution as their main business. We do however, for the sake of establishing sound competition in the data vendor market, see advantages in new businesses establishing with the purpose of collecting and distributing data. For such companies (and hence also for the consumers of market data), it could be counter productive if regulations existed to limit their business potential.

QUESTION 159

If the definition of "*reasonable commercial basis*" is to be based on costs, do you agree that LRIC+ is the most appropriate measure? If not what measure do you think should be used?

In a market where true competition does not exist, we agree that LRIC+ could be a sensible mechanism for preventing overcharging and misuse of monopoly/market dominance. The method allows for some cover of common costs in the prices for new services, hence rendering existing services more profitable for the vendor and thereby creating a potential for increased profitability for the vendor (which is - after all - the only reason why someone would consider launching a new service).

QUESTION 160

Do you agree that suppliers should be required to maintain a cost model as the basis of setting prices against LRIC+? If not how do you think the definition should be implemented?

We think this requirement is essential for the LRIC+ model to be viable. We see this as part of the transparency requirement, which we consider being the ultimate driver for efficient pricing of data and services.

QUESTION 161

Do you believe that if there are excessive prices in any of the other markets, the same definition of "*reasonable commercial basis*" would be appropriate, or that they should be treated differently? If the latter, what definition should be used?

Yes - we believe a common definition will be the best driver for transparency in different markets. We also believe service vendors who offer data for free should be subject to the same disclosure regulations (i.e. - if for nothing else - then publicly state that the data/information they offer is free of charge in respect of all ESMA "pricing factors" - cf Q155). It may raise some questions as to how other services then are priced from these vendors.

QUESTION 162

Within the options A, B and C, do you favour one of them, a combination of A+B or A+C or A+B+C? Please explain your reasons.

We favour a combination of A+C. Transparency and competition is the ultimate fertiliser for sound and fair pricing. In imperfect markets, option C seems the most practical.

QUESTION 163

What are your views on the costs of the different approaches?

If ESMA can lay out a practical framework based on some relative simple, but effective, parameters - then the cost impact of implementing A+C need not become overwhelming.

QUESTION 164

Is there some other approach you believe would be better? Why?

We feel that, as part of the transparency requirement, there must be rules also on transparency on how charges are applied through intermediaries like distributors and consolidators. It should e.g. be clear rules on how an exchange is allowed to charge/audit an institution for data consumption on data delivered through Bloomberg/Thomson Reuters or other distributors. It should likewise be strict obligations for the distributors to be clear up-front on other entities who are entitled to fees and audit access for data distributed through these channels.

QUESTION 165

Do you think that the offering of a 'per-user' pricing model designed to prevent multiple charging for the same information should be mandatory?

Yes - see also answer to Q163.

QUESTION 166

If yes, in which circumstances?

See answer to Q163.

QUESTION 167

Which would be your preferred option? Why?

We believe that Option 2 provides a more robust approach to identifying HFT market participants by focusing on relative metrics (median order duration) rather than the absolute metrics of Option 1 (direct proximity to matching engines, bandwidth, message frequency). As technology changes, we would expect some of these absolute metrics to change as well, which would necessitate a revisit if Option 1 is implemented. Option 2, in contrast, would always identify the market participants with the relatively shortest order duration. A further advantage of Option 2 is that it can be calculated by the trading venues without input from the participants.

QUESTION 168

Can you identify any other advantages or disadvantages of the options put forward?

A key consideration is that different strategies might have orders submitted under the same ID, as noted in 5.1.19. Depending on the mix of strategies being used, it is feasible that there are false positive HFT identifications. For example, we could envisage an 'aggressive' agency algorithm from an intermediary triggering the HFT identification. To the extent that being identified as a HFT incurs costs beyond the registration as a HFT, this might lead to a limit to agency algorithm innovation.

QUESTION 170

If you prefer Option 2, please advise ESMA whether for the calculation of the median daily lifetime of the orders of the member/participant, you would take into account only the orders sent for liquid instruments or all the activity in the trading venue.

In the interest of simplicity, we would recommend considering all activity in the trading venue. The question is whether the median order duration is calculated on a per-instrument basis or on a per-venue basis. If it is calculated on a per-instrument basis, we could envisage a scoring methodology which counts the proportion of instruments where the median duration of a participant is below the median duration of all participants