
EURONEXT RESPONSE TO ESMA CONSULTATION PAPER ON GUIDELINES ON THE MIFID II/MIFIR OBLIGATIONS ON MARKET DATA – 11 JANUARY 2020

Introductory remarks

Euronext is supportive of ESMA in that it pursues the transparency plus approach with a view to seeking more comparability and transparency. That being said, it is important to tread carefully in this complex area since there is a fine line between requirements aimed at increasing transparency and requirements that unintentionally may be of a more intrusive nature and, as such, would be unwarranted given the lack of evidence justifying a more intrusive approach.

In general, Euronext believes that, overall, the cost of market data is reasonable. Economic analysis of the current market for market data services and market trading services provides no evidence of market failure. MiFID II/ MiFIR has resulted in some price adjustments, with price increases but also price decreases. The changes in European stock exchanges' securities market data revenues have, on average, been minimal. Aggregate securities market data revenues (of exchanges that are members of the Federation of European Securities Exchange (FESE)) amounted to approximately €245m in 2018 and increased in recent years by approximately (only) 1% per year in real terms¹. Thus, the overall cost of exchanges' securities market data for market participants remains stable.

On a pan-European basis, empirical analysis further shows that average increases in the individual fees for securities market data have been moderate overall (e.g. pre- and post-trade data Level 1 and Level 2 data, on average less than around 1.5% per year in real terms²; and non-display fees for pre- and post-trade Level 1 and Level 2 data on average less than around 4.5% in real terms).

Euronext welcomes the opportunity to share its knowledge and views on ESMA's draft guidelines supporting the transparency plus approach. Given the complex nature of the market structure and value chain in which market data is produced and consumed, it is challenging to assess the role, impact, and ultimate effect of regulation. MiFID II / MiFIR introduced rules on the provision and pricing of market data by Trading Venues, Approved Publication Arrangements (APAs) and CTPs. Trading Venues are, however, only a small part of a longer value chain which includes data redistributors and other intermediaries' data and analytics services. Indeed, it is estimated that the contribution of market data provided by European stock exchanges only represents around 15% of the total European spending on market data and analysis.³ More recent Oxera estimates, based on data from buy-side and sell-side firms, indicate that market data provided by European exchanges represents less than 0.5% of buy-side's and 10% of sell-side's total spending on European market data and analysis.

In addition to commenting on the proposed Guidelines, Euronext would like to encourage ESMA to allow for sufficient time for implementation of the Guidelines once finalised. The efforts required from Trading Venues, APAs, data vendors and end users to ensure compliance are significant. Parts of the Guidelines in their current form have the potential to significantly impact and disrupt market data contracts and/or business processes and cannot be reasonably implemented in a matter of just a few months.

¹ Oxera (2019), 'The design of equity trading markets in Europe', 21 March, p. 71

² Oxera (2019), 'The design of equity trading markets in Europe', 21 March, p.73

³ Oxera (2019), 'The design of equity trading markets in Europe', 21 March, Section 4.4

Question 1: What are your views on covering in the Guidelines also market data providers offering market data free of charge for the requirements not explicitly exempted in the Level 2 requirements?

Euronext agrees with ESMA's suggestion that the Guidelines should also cover market data providers offering market data free of charge for the requirements not explicitly exempted in the Level 2 requirements. This is because some of the Guidelines outlined by ESMA go beyond the issue of market data pricing and touch upon other aspects such as how the data is delivered and/or made available. As such, Euronext considers it necessary for the Guidelines to also cover market data providers that offer market data free of charge (for the requirements not explicitly exempted in the Level 2 requirements). This addition would clarify the scope of the requirements and to whom they apply. It would also contribute to levelling the regulatory playing field amongst market data providers.

Question 2: Do you agree with Guideline 1? If not, please justify.

Euronext agrees with Guideline 1 in principle, however we would like to underline the point that certain important parameters must be taken into account.

Firstly, whilst Euronext is willing to disclose relevant information in this area to the National Competent Authorities (NCAs) at their request and on a confidential basis, it would be inappropriate to require Euronext to publicly disclose sensitive and confidential business information. Such disclosure could potentially undermine competition among market data providers by giving them access to competitively sensitive information and thereby facilitating price alignment. Furthermore, making available such information to the public would not provide any material benefit to European capital markets, since exchanges are already effectively supervised by NCAs. It is for the relevant NCAs to scrutinize market data providers' compliance with MiFIR/MiFID II regulation.

Secondly, Euronext believes that it is unreasonable to prescribe how market data providers should allocate (joint) costs: this would go beyond the goal of improving transparency and ensuring that the market data fees charged by market data providers reflect the costs of producing and disseminating market data. The cost allocation and accounting methodologies used should remain at the discretion of market data providers.

Therefore, whilst Euronext agrees with Guideline 1 in principle, Euronext would strongly encourage ESMA to reconsider some of the drafting contained in Guideline 1, specifically removing the restriction on allocating joint costs according to the revenues generated by the different services and activities of their company. Allocating joint costs according to the revenues generated constitutes a common practice that is an efficient and economically sensible manner of allocating joint costs as well as an accepted practice from a competition law perspective.

Furthermore, Euronext fails to see how such a cost allocation method is contradictory to the obligation to set market data fees based on costs of producing and disseminating market data.

Euronext considers it a misconception that market data fees are equivalent to market data revenues. Market data revenues are the outcome of multiple variables which include, aside from market data fees, the number of clients, applicable units of count, or categories of use applicable to a diverse group of clients, and are different for each market data provider. Furthermore, even if joint costs are allocated based on the revenues generated for each joint product, the actual joint costs nevertheless remain at the basis of setting the market data fees.

Lastly, it is important for exchanges to retain the incentive and ability to invest in their regulated markets and to maintain a high-quality market data offering. Any further harmonization, especially when such harmonization would touch upon market data providers' ability to freely determine how to price market data on a reasonable commercial basis, could ultimately restrict competition between market data providers and have suboptimal effects for market participants in the long run. Whilst investors may enjoy a short-run reduction in operating costs, the improper reduction of data fees might undermine trading venues' incentives to invest in more efficient IT infrastructures. Were regulation to prevent them from

recouping investments, trading venues would have no choice but to limit R&D expenditures, which, in the long run, might harm customers through more volatile financial markets.

Euronext proposes changes to Guideline 1 as illustrated below (changes in bold green). Euronext also suggests some clarifications to ensure that the Guidelines are in line with accounting practices.

Proposed Changes to Guideline 1: Market data providers should have a clear and documented methodology for setting the price of market data. The methodology should remain up to date, and hence be reviewed on a regular basis, at least annually. Market data providers may need to adjust their methodology over time and account for changes in marginal costs. For example, if a market data provider allocates a portion of investments in IT infrastructure to the cost of production and dissemination of market data, the market data provider is expected to consider the amortisation of the investments when allocating these costs.

Market data providers should explain in their methodology whether a margin is included and how that margin has been determined.

The methodology should demonstrate how the price for market data is based on the costs for the production and dissemination of market data. The methodology should also identify the costs that are solely attributable to the production and dissemination of market data (i.e. direct costs) and the costs that are shared with other services (i.e. joint costs). Where relevant, further distinction should be made between variable costs and fixed costs for both direct and joint costs.

Direct costs should be understood as costs that are solely attributable to the production and dissemination of market data such as working hours of market data staff. Joint costs should be **understood as** costs that **are incurred for that cannot be solely attributed** the production and dissemination of market data **and shared with other services and activities** such as **joint (technical) infrastructures**, the lease of offices or salaries of administrative staff. Variable costs should be costs incurred for the production and the dissemination of one additional unit of market data and fixed costs should be costs that do not vary with the volume of market data produced and disseminated.

In order to ensure that the allocation of costs for producing and disseminating market data reflects the actual costs of producing and disseminating market data and ultimately the fees charged to customers, the methodology should include an appropriate justification on the costs included in the fees for market data. **For example, market data providers should not allocate joint costs according to the revenues generated by the different services and activities of their company because this practice is contradictory to the obligation to set market data fees (i.e. revenues of the market data business) based on costs of producing and disseminating market data.**

Question 3: Do you think ESMA should clarify other aspects of the accounting methodologies for setting up the fees of market data? If yes, please explain.

No, Euronext does not think that ESMA should clarify additional aspects of the accounting methodologies for setting up market data fees. The relevant Commission delegated regulations combined with the principles contained in ESMA's draft guidelines already offer a significant level of detail and should be sufficient to ensure the desired outcomes of increasing the usability and comparability of the information.

The current clarifications and further specifications that are included in ESMA's draft guidelines would help to further explain ESMA's expectations to market data providers. However, additional clarifications on further aspects would be unwarranted and could even inadvertently reduce competition between market data providers by reducing price differentiation. The combination of the appendix and Guidelines already provide the necessary clarifications.

Question 4: With regard to Guideline 2, do you think placing the burden of proof, with respect to non-compliance with the terms of the market data agreement, on data providers can address the issue? Please provide any other comments you may have on Guideline 2.

Though Euronext would welcome the introduction of best practices in respect of audits, Euronext would caution ESMA against placing the burden of proof on market data providers with respect to non-compliance with the terms of the market data agreement. Such a development is unworkable in practice. The audited entity should cooperate in good faith with the market data provider and be able to produce and provide to the market data provider all information required to prove compliance with the terms and conditions of the market data agreement as part of the audit procedure. This, in turn, should be clear, transparent, pre-defined and agreed by both parties. Indeed, in the absence of an audit process, there would be no way for market data providers to identify a breach should it occur. Involvement of data users in the audit process is necessary to ensure that all market data users are held to the same standard in terms of compliance with market data agreements.

Instead of placing the burden of proof on market data providers, Euronext believes that the introduction of clear best practices on conducting a proper audit would provide clarity to data users and avoid an increase in the final cost of data through overly onerous auditing practices.

Furthermore, Euronext would like to emphasize that audits do not exist to generate additional revenues. Rather, audits are meant to enhance compliance with agreed terms of the contract and identify and recover any unpaid fees. In this respect, the practice of audits contributes to the consistent and non-discriminatory application of market data fees and policies and therefore contributes to maintaining a level playing field amongst data users. Therefore, any guideline that (un)intentionally limits the ability of market data providers to properly audit their customers, including placing the burden of proof, with respect to non-compliance with the terms of the market data agreement, on market data providers, could harm the basic premise of MiFID II of making market data available on a non-discriminatory basis. Accordingly, Euronext considers that any such effort would undermine the goal that ESMA is seeking to achieve.

It is common practice for Euronext to simply recover any unpaid amounts when a breach is identified. Stipulating that reasonable administrative fees and/or interest rates may occur in the event of a breach, is a legitimate and necessary practice, the objective being to encourage clients to take every reasonable step towards ensuring full compliance with the market data agreement. Otherwise, there will be an incentive not to fully comply with the terms of the market data agreement. This would result in an unlevel playing field, since in such a scenario, a customer that tries to properly implement the market data agreement would be at a disadvantage to a customer that (un)intentionally breaches its market data agreement.

Furthermore, Euronext would like to emphasize that retroactivity is inherent to the audit process. Customers tend to emphasize to market data providers that they do not want to be audited too frequently. If retroactivity is limited too extensively, the only way to ensure a level playing field is by auditing market data users more frequently, which could unintentionally increase the (indirect) cost of market data. With the aim of finding a good balance between these two elements, following a client consultation, Euronext changed its audit policy in September 2017 to reduce retroactivity from 5 years to 3 years.

Euronext does understand the concerns of market data users in respect of unreasonable auditing practices, which Euronext believes constitute undesired incidents and not any structural abuse of audit rights by market data providers in general. Therefore, rather than restricting market data providers' ability to audit market data clients, clear best practices could be an alternative to ensure a reasonable audit process to be reasonable.

Euronext proposes changes to further clarify Guideline 2 as illustrated below (changes in bold green).

Proposed Changes to Guideline 2: In order to avoid that the final cost of data is increased through overly onerous auditing practices, market data providers should only impose penalties in consequence of an audit, where they can demonstrate that customers have not complied with the terms of the market data agreement. Customers will cooperate in good faith with the market data provider and produce and

provide to the market data provider all information required in accordance with the terms and conditions of the market data agreement as part of a clear, transparent and pre-defined audit procedure agreed upon by both parties. The level of penalties in case of non-compliance with the terms of the market data agreement should be based on the retroactive recovery of revenues, including a reasonable interest charge, which would have been generated in case of compliance with the license and a reasonable administrative fee.

Audits should only be aimed at identifying occurred breaches with market data agreements. Overly onerous practices that result in the generation of additional revenues on the basis of non-compliance or the inability by the customer to prove compliance with the terms and condition of the license should be excluded. For example, such practices would be excessive interest charging or extensive retroactivity.

Question 5: Do you consider that auditing practices may contribute to higher costs of market data? Please explain and provide practical examples of auditing practices that you consider problematic in this context. Such examples can be provided on a confidential basis via a separate submission to ESMA.

Euronext considers that any costs associated with audit practices to both market data providers and customers are inherent to the costs of producing and disseminating market data. Audits are an absolute necessity for market data providers to fulfil their MIFID II regulatory obligation to apply market data fees and policies on a non-discriminatory basis, maintaining the level playing field in European capital markets.

Not only are audits necessary to ensure compliance with market data agreements, but measuring and assessing data usage enables Euronext to put in place and maintain a fair and efficient model for providing data, which is an important tool to help market data providers ensure that they are providing a level playing field. Quantification and verification of market data usage, via a well-established audit process, helps to ensure that the model put in place is fair for all.

Audits are necessary to recover any underpaid fees, to encourage clients to take every step towards ensuring full compliance and to maintain a level playing field. It is therefore a reasonable and necessary process that should not be undermined. In practice, Euronext makes every effort to ensure that its auditing process is as straightforward and transparent for clients as possible. Therefore, in order to ensure each market data provider is reasonable and transparent, best practices for audits, such as those put forward by FESE, could address overly onerous audit activities and be an alternative to guide the audit process.

Question 6: Do you agree with Guideline 3? If not, please justify, by indicating which parts of the Guideline you do not agree with and the relevant reasons.

Euronext agrees that market data providers should describe in their market data policy the categories of customers and how the use of data is taken into consideration to set up the categories of customers, in line with Article 86 of Delegated Regulation (EU) No 2017/565 and Article 8 of Delegated Regulation (EU) No 2017/567. Euronext has in place a detailed fee schedule from which it is possible to identify different types of customers categories based on objective criteria and, first and foremost, how the use of data is taken into account.

Euronext charges different prices to different categories of customers where it is objectively reasonable to do so, for example based on customer type, such as a retail or professional user, and use cases where necessary. This is consistent with the Commission Delegated Regulation 2017/565. Exchanges make market data available at the same price to all customers falling within the same category in accordance with published objective criteria and any differentials in prices charged to different categories of customers are proportionate to the value which the market data represents to those customers' scope and scale of use.

Euronext's market data offerings cater to different types of customers as different investors employ market data in different ways, meaning that they are likely to value these data differently. In this context, it makes economic sense for a market data provider to sell various data packages – that are differentiated in terms of coverage, speed, depth or use – at different prices. Each data package would be designed for a specific

customer type and would be sold at a price that is related to the value that the customer in question attaches to the data.

The idea that a single price cannot be considered reasonable for all users, due to the wide range in the value users derive from market data services, is generally well established. Moreover, the current degree of differentiation is aligned with a well-functioning, efficient, and competitive market. In particular, value-based charging is fair and efficient, and leads to different charges across user groups and use types. This diversity and granularity is reflective of competitive commercial conditions. EU competition law⁴ and precedent⁵ also recognises that price differentiation is reflective of competition on the market. Undertakings are entitled to apply different commercial conditions to their customers (and dominant undertakings are potentially even required to do so if customers are differently situated).

For example, it is important to draw a distinction between professional investors and retail investors:

- Setting prices appropriately for retail investors enables their participation in capital markets and contributes to the general aim of developing retail market participation in the EU.
- Where technological advances have facilitated the development of new high-frequency trading strategies, this has increased the value of very low-latency trading data for some categories of user. At the same time, retail investors are not able to take full advantage of low-latency direct feeds.
- In a scenario where this objective categorisation is no longer made possible, there is a real concern that retail investors and small firms may, ultimately, indirectly find themselves financially bearing the market data needs of major international firms.

Euronext shares ESMA's assessment that the criteria used by market data providers to distinguish between different categories of customers should be based on objective and observable factors. Euronext would only suggest a minor modification, replacing 'easily verifiable' with 'verifiable', given the complexity which is inherent to market data usage. New use cases regularly arise in these markets and customers' use of the data tends to change faster than the ability of market data providers to change their market data policies to reflect these developments and ensure 'easy' verifiability. Furthermore, whether something is easy or not is subjective. In addition, as explained in our answer to Q7, and since in practice customers often do not fall into a single customer category, we would suggest replacing "the category they belong to" with "the categories they belong to".

Euronext has outlined the proposed changes to further clarify Guideline 3 below (changes in bold green).

Proposed Changes to Guideline 3: Market data providers should describe in their market data policy the categories of customers and how the use of data is taken into consideration to set up the categories of customers. The criteria used should be:

*(i) based on factual elements, **easily** verifiable and sufficiently general to pertain to more than one customer;*

*(ii) explained in such a manner that customers are enabled to understand the ~~category~~ **categories** they belong to.*

⁴ Article 102(c) TFEU states that it is abusive for a dominant company to apply "dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at competitive disadvantage" (emphasis added).

⁵ See for, example, Judgment in *Michelin v Commission*, Case 322/81, ECLI:EU:C:1983:313, para. 90 ("it has not been established that such differences in treatment between different dealers are due to the application of unequal criteria and that there are no legitimate commercial reasons capable of justifying them. It is not therefore possible to infer from such differences that Michelin NV discriminated against certain dealers"). See also Judgment in *AKZO Chemie v Commission*, Case C-62/86, ECLI:EU:C:1991:286, paras. 119-120 ("It should next be pointed out that there was no abusive policy of discrimination between the individual mills in the Allied group and the 'large independents', as these two categories of customers are not comparable"); and Judgment in *United Brands v Commission*, Case C-27/76, ECLI:EU:C:1978:22, para. 228 ("differences in transport costs, taxation, customs duties, the wages of the labour force, the conditions of marketing, the differences in the parity of currencies, the density of competition may eventually culminate in different retail selling price levels according to the Member States") and Judgment in *Clearstream v Commission*, Case T-301/04, ECLI:EU:T:2009:317, paras. 172 and 179.

Market data providers should explain the applicable fees and terms and conditions for each use. They should motivate any differentiation of fees and terms and conditions pertaining to each category of customers.

Question 7: Do you agree with the approach taken in Guideline 4? If not, please justify, also by providing arguments for the adoption of a different approach.

While Euronext agrees in principle with the aim stated by Guideline 4, that is to say simplify the application of market data providers' fees, Euronext strongly disagrees with the approach proposed to apply the relevant fees in a way that ensures the provision of the same data is charged only once by applying one customer category only. It is not possible to determine customer categories in an exhaustive and practicable fashion since every company/ business is different. Market data providers must be allowed to determine fee schedules on categories of usage as opposed to the category of customer. Indeed, in cases where a customer belongs to more than one customer category because the customer makes multiple uses of the data, it would not be appropriate to apply one customer category only since this negates the reality of how certain Tier 1 clients are structured, the breadth of services they provide and the extent of their data usage, which is heterogenous by nature and therefore cannot fall into a sole customer category.

There is a need to consider that every market data user has a different scale or scope of use of market data and that Guideline 4 in its current form would create unfair models that damage the ability of certain data users to compete, including small and medium sized market data customers and market data customers that operate in niche areas. In reality, some firms can be involved in a large variety of commercial activities. For example, a large investment bank could act as a proprietary trader, broker and index creator, another as a broker and trading platform etc. A guideline that does not fully take this into account runs the risk of providing certain players in capital markets with a broad range of activities through which they can recover their costs, and giving them an unfair advantage over others. It would also require the introduction of additional, more granular customer types further increasing complexity of exchange's models. There is also a concern that retail investors behind small retail brokers and smaller investment firms may, ultimately, indirectly bear the market data costs of major international investment banks.

Furthermore, different investors employ market data in different ways, meaning that they are likely to value these data differently. In this context, it makes economic sense for a market data provider to sell various data packages – that are differentiated in terms of coverage, speed, depth or use – at different prices. Each data package would be designed for a specific customer type and would be sold at a price that is related to the value that the customer in question attaches to the data. In summary, an approach which tailors the data offer to customers' diverse needs and large variety of commercial activities, would not only benefit stock exchanges, but would also be positive from a total welfare viewpoint, as more customers could be served. Ultimately, a pricing system in which customers pay for the cost of the data in proportion to the benefits received (i.e. the value of use) is economically efficient. Otherwise, if every customer were to bear the same costs, irrespective of the intensity of use, low-intensity users would be discouraged from purchasing market data (as the costs would be too high relative to the benefit they derive from the data).

Therefore, it is vital to recognize that market data providers' customers do not always fall into one customer category. In such cases, applying one customer category only would amount to an artificial and inaccurate construct that would lead to a highly unequitable outcome in the long run (to the benefit of Tier 1 companies, such as large investment firms, and to the detriment of smaller national or local companies). This would, in turn, prohibit exchanges from building a proportionate, and transparent commercial model that is fair to all.

Besides such an approach being impractical and potentially unfair towards certain customers, Euronext considers that ESMA's approach is too intrusive and limits the ability of exchanges to provide price formation to the benefit of the market as a whole and deviates too much from the transparency plus approach. Under this scenario, small trading venues also risk being severely undermined and would not be able to cover the costs of producing and disseminating market data. In addition to being too prescriptive, Guideline 4, as currently drafted, would harm diversity of capital markets and, in turn, market quality.

Fees charged by trading venues are publicly available and have not hindered competition, as can be seen from the number of competing venues that have emerged based on high-quality data provided by trading venues on a non-discriminatory basis. Therefore, Euronext urges ESMA to reflect on the undesirable and unintended consequences that such an approach would have and reframe this part of the Guidelines to focus on transparency, rather than a fee model for market data providers, through the introduction of harmonized definitions.

As set-out above, Euronext proposes the following changes to Guideline 4 (changes in bold green).

Proposed Changes to Guideline 4: Along with the description of the different customer categories, market data providers should clarify in their market data policy how fees are applied when a customer potentially belongs to more than one customer category because the customer makes different simultaneous uses of the data. ~~In such a case, market data providers should apply the relevant fees in a way that ensures the provision of same data is charged only once by applying one customer category only.~~

Question 8: Do you agree with Guideline 5? If not, please justify.

Euronext disagrees with Guideline 5 as it would extend non-discriminatory obligations to the technical arrangements of market data providers. Latency and connectivity, for example, vary depending on the market data user due to the high variety of market data needs. These practices do not give favorable treatment to some market data users. Furthermore, preventing differentiation of technical arrangements within customer groups would be disproportionate and remove a parameter of competition between market data providers. In addition, trading venues do not necessarily control the connectivity setup that network providers and data redistributors maintain for users. The vast majority of users source their data indirectly via such network providers and data redistributors. This is particularly the case for retail investors. Therefore, Euronext would encourage ESMA to remove Guideline 5 in its entirety.

Question 9: Do you think that ESMA should clarify other elements of the obligation to provide market data on a non-discriminatory basis? If yes, please explain.

The obligation to provide market data on a non-discriminatory basis is very clear and is in practice fulfilled by trading venues. It is in fact market data providers' provision of high-quality market data on a non-discriminatory basis that has allowed competing venues (MTFs and SIs) to emerge and operate commercially rewarding business models.

Euronext would stress the importance of continuing to allow differentiations to be made based on objective criteria taking into account the value market data represents to Tier 1 and Tier 2 firms in comparison to smaller local firms or retail investors. Indeed, trading venues should be entitled to differentiate between different categories of users where it is objectively reasonable to do so. This is consistent with Article 8 of Delegated Regulation (EU) No 2017/567. Trading venues, including Euronext, make market data available at the same price to all customers falling within the same category in accordance with published objective criteria and any differentials in prices charged to different categories of customers are proportionate to the value which the market data represents to those customers.

Question 10: Do you agree on the interpretation of the per user model provided by Guideline 6? If not, please justify and include in your answer any different interpretation you may have of the per user model and supporting grounds.

Euronext overall supports having a per user unit of count, thus charging per user rather than per device. However, while Euronext supports including this as a unit of count, Euronext would not support this being the exclusive unit of count for display use. The reason for this being that this model is appropriate for some, but not all, customers since the per user fee model comes with a certain amount of complexities, not only for the market data provider, but also for the customer. Usernames would have to be crosschecked across multiple platforms and providers, as they can often be generic and shared between users. There would have to be an onerous and regular process of reconciliation and a large burden would be put on

market data providers. This would constitute a complex system with a need to coordinate between data user, data vendors and data providers, something that is not in the interest of all data users. Instead market data providers should be able to offer a less intrusive alternative to customers and data users should be offered a choice. As such, Euronext believes that the Active user ID, whilst it should be clearly part of the offering, should not be the default.

As underlined by ESMA in the consultation paper, for the per user model to work, there must be the possibility for the customer to identify correctly the number of active users that have access to the data within the organization and report to the market data provider the exact number of active users. The per user model can be challenging for a market data provider to administer, but more importantly it can also be challenging from a customer perspective since it requires a lot of in-depth knowledge and proper technical controls around who within the given company uses their data and through which sources (e.g. directly from the market data provider or through a data vendor). Companies that opt for the per user fee model must be confident that they have the knowledge and structure required to be able to identify the users and communicate this to the exchange. This factor must be taken into account since this requirement may imply significant IT developments. As a result, it may be the case that this model is appropriate for some, but not all customers since the per user fee model comes with a certain amount of cost and complexities, not just for the market data provider but also for the customer.

Therefore, Euronext would emphasize that other units of count applied by market data providers for displayed data should be left to the discretion of data providers. Differences in unit of count derive from the diverging commercial practices that exist across trading venues. Rather than by prescribing the specific unit of count to be used, Euronext believes that the balance between effective harmonisation and the ability for market data providers to differentiate themselves and compete is better maintained by defining regularly used units of count. The availability of definitions for regularly used units of count would likely encourage and motivate market data providers to implement these, while still offering the ability for market data providers to differentiate themselves and their offering.

While Euronext fully supports ESMA's efforts to introduce some harmonised terms, we would like to emphasize that definitions lie at the basis of not just the contracts and commercial models, but also the operations, of market data providers. As such, definitions should be clear, feasible, and not disproportionately impact market data providers. Euronext is happy to provide input and share its expertise with ESMA at any stage of this process.

Euronext proposes to ESMA the following changes to Guideline 6 to clarify the above, as well as to remove any ambiguity as to what an Active User is (changes included in bold green).

Proposed Changes to Guideline 6: Market data providers should for display data **make available use** as a unit of count the "Active User-~~ID~~" that enables customers to pay according to the number of **Active Users** accessing the **market data**, ~~rather than not just~~ per device or data product. The per user model should enable customers to avoid multiple billing in the case market data has been sourced through multiple data products or subscriptions.

First, in respect of the definition of "Active User-ID", Euronext would propose amending the definition to "Active User" considering that an Active User could have more than one User-ID (especially where a customer would take the same data from multiple sources). Second, Euronext would propose to include 'natural person' instead of 'human user'. Natural person is a clear legal term used to define a human. Lastly, Euronext very much supports ESMA's definition including 'who can access the display data' as the ability to access the data is the most common method used by entitlement systems to track data usage and therefore this ensures the definition is in line with industry best practices and enables customers to prove compliance and market data providers to verify compliance with the market data agreement.

Proposed Changes to Annex II, ii Unit of Count, definition of Active User ID:

The Active User ~~ID~~ shall be **the ID associated to** each **human-user natural person** who can actively access the display data.

Question 11: Do you agree with Guideline 7? If not, please justify. In your opinion, are there any other additional conditions that need to be met by the customer in order to permit the application of the per user model or do you consider the conditions listed in Guideline 7 sufficient to this aim?

Please include in your answer the main obstacles you see in the adoption of the per user model, if any, and comments or suggestions you may have to encourage its application.

Overall Euronext supports eligibility criteria being limited to what is necessary to make the per-user model feasible. Market data providers need to assess the eligibility of customers for the per user model in order to confirm that it is a feasible model for the customer in question. This is not always a simple process for both market data providers and data users, but is necessary and ultimately helps customers to understand what is expected from them. Furthermore, it is necessary to ensure that the exchange in question is appropriately compensated.

The eligibility process presents a benefit to end users as it gives users an improved understanding of how the model works and is administered thus preventing them from unknowingly building up liability. The exchange and the user work on this together. Euronext has a clear policy and guidelines in place outlining the eligibility criteria and application process in the interests of transparency.

The Euronext process regarding the eligibility for the per user model requires only what is necessary to ensure that the customer in question can properly identify and administrate each user and each user's data access accurately, while also taking into account the value chain (the role played by data vendors and intermediaries) and their administrative process.

Euronext would underline the importance of ESMA taking into account the fact that the application of a per user model implicates the entire market data value chain, not just market data providers and customers. Data vendors and their (administrative) processes and systems play an important role in administering data usage and, therefore, also in the implementation of the per user model. This, combined with market data providers also having their own standard processes and systems for efficiency purposes, affects the eligibility criteria. Many different parties are involved (market data providers, customers, and all the customers' data vendors/providers) in the proper administration of the per user model for a single customer. Therefore, it is important to understand that, while market data providers strive to apply some level of flexibility when applying the eligibility criteria, in some cases market data providers cannot always be flexible without indirectly increasing the costs by requiring data vendors and exchanges to deviate from their currently efficient processes and/or systems. This leads to a situation where the costs of offering the model outweighs its benefits.

As such, Euronext proposes to take into the market data value chain as a whole in the eligibility conditions.

Euronext proposes changes to Guideline 7 (changes in bold green).

Proposed Changes to Guideline 7: Market data providers should ensure the conditions to be qualified as eligible for the per user model require only what is necessary to make the per user model feasible. In particular, eligibility conditions should mean i) the customer is able to identify correctly the number of active users who have access to the data within the organization, ~~and~~ ii) the customer reports to the market data provider the exact number of active users and (iii) the data providers of the customer (including data vendors) can facilitate (the administration of) the per user model in respect of such customer.

Question 12: Do you agree with Guideline 8? If not, please justify also by indicating what are the elements making the adoption of the per user model disproportionate and the reasons hampering their disclosure.

Overall Euronext supports the requirement for market data providers to disclose the reasons which make the adoption of the model disproportionate to the cost of making the data available further increasing transparency.

The per user model imposes significant administrative costs on trading venues offering. From the market data provider's perspective the per-user model increases the administrative burden due to the need to engage in an approval process to check customers eligibility and to monitor and net customer usage, which is reported directly to the venue and to the data vendors.

Therefore, although this is currently not the case for Euronext, some market data providers would not be in a position to offer the per user model to its customers for the reasons outlined above. For some small firms the investment required to implement and administer this model is too large. As such, it makes sense that the guidelines maintain the possibility for some market data providers to not offer the per user model, provided that this is done in a transparent way and is justified.

From this perspective, it is important to acknowledge that different models present different benefits and that the best model varies depending on the user. For this reason, alongside the per user model, Euronext also offers a user per source-based model and device-based model which do not require as much coordination between data vendors and are therefore much easier to administer for both the market data provider and customer.

Euronext does not propose any changes to Guideline 8, as we believe the Guideline is clear in its current form.

Question 13: Do you think ESMA should clarify other elements of the obligation to provide market data on a per user fees basis? If yes, please explain.

Euronext does not think that there is a need to clarify other elements of the obligation to provide market data on a per user basis. Overall, Euronext is aligned with ESMA's proposal to provide a single interpretation and guidance for the enforcement of the per user model. This would help align this notion with the reality of market data use and the market data value chain.

Question 14: Do you agree with Guideline 9? If not, please justify.

Overall, Euronext supports the requirements for market data providers to inform customers that the purchase of market data is available separately from additional services and does not propose any changes to Guideline 9, as we believe the Guideline is clear in its current form.

Euronext would however like to point out that there have been complaints from some market data users that market data policies have become too complex, more granular and difficult to understand, including by comparing the number of price list items. In such a context, it is important to note that the obligation to provide market data in disaggregated formats has inevitably contributed to increasing the complexity and granularity of market data fee grids and costs to maintain them. For example, disaggregation is required by asset class, country of issue, currency and trading mode on request by customers.

Furthermore, while trading venues have borne the costs of implementing these requirements, it is important to acknowledge that the unbundling rule is not appropriate for data vendor products since data vendors by nature offer additional enhanced services to their customers. In general data vendors will only offer unbundled data when it is demanded by their customers. The substantial investment made by trading venues to support data disaggregation is consequently of limited use for most market data users.

Against this background, Euronext would simply like to point out that while the requirements to provide pre-trade and post-trade data in a disaggregated fashion aim to reduce costs for market participants, market data providers have registered very little demand for disaggregated data. This splitting out of data packages by the criteria set out in the legislation drastically increases the number of data products to be offered by trading venues thus increasing both technical and administrative costs. In this context, while accessing selected data might become cheaper, the overall cost of producing and providing market data increases.

Question 15: Do you think ESMA should clarify other elements in relation to the obligation to keep data unbundled? If yes, please explain.

Euronext supports Guideline 9 overall in that it aims to provide clarifications regarding the obligation to keep data unbundled. That being said, and as outlined in the response to question 14, there is a need to take into account the broader market data value chain when evaluating the Guideline.

Question 16: Do you agree with Guideline 10 that market data providers should use a standardised publication format to publish the RCB information? If not, please justify.

Overall, Euronext supports the requirement for data providers to disclose information in the form of the standard template prescribed by ESMA. Such a template would foster standardization of data providers' publication of RCB information. Furthermore, Euronext does not propose any changes to Guideline 10, as the Guideline is believed to be sufficiently clear in its current form.

However, as outlined in Euronext's response to Question 17 relating to the standard publication format as set out in Annex I, Euronext does not agree with the requirement to provide disclosure by Operating MIC and would propose some changes to this.

Question 17: Do you agree with the standardised publication template set out in Annex I of the Guidelines and the accompanying instructions? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions?

Euronext agrees with the spirit of the standardized publication template set out in Annex I of the Guidelines and the accompanying instructions. However, as explained in our responses to question 2 and 3, Euronext does have concerns about the cost account methodology section.

Besides the cost account methodology section:

- Euronext agrees with the section on the price list and the idea of providing a hyperlink to the price list as well as a high-level summary of the fees offered.
- Euronext agrees with the advance disclosure and would emphasize that Euronext currently goes beyond the suggested minimum 90 days' advance disclosure as minimum notice of future price changes. Indeed, it is Euronext practice to give notice of such changes with a minimum of 120 days in advance based on feedback received from customers. This is just one example of how Euronext works together with its customers with an aim to ensure that its processes are transparent and understandable.
- Euronext also agrees with the format market data content information, the information on any data provided in addition to market data and the date of the last license fee adaption for market data provided.

While Euronext agrees in principle with the disclosure of the Total Market Data Revenues (EUR) and the Market Data Revenues as a proportion of the total Revenues (%), Euronext disagrees on the requirement to do so per operating MIC. Euronext underlines that including the total (market data) revenues per operating MIC could present challenges for Euronext who operates a single pool of liquidity across various jurisdictions. While Euronext operates under several operating MICs, Euronext's operations are to some extent centralized. Furthermore, within those operating MICs Euronext has some additional trading MICs. This is for example the case for the Euronext Paris markets where each segment has a distinct trading MIC alongside the Euronext Paris operating MIC. Against this backdrop, the operating MIC approach would mean that, in order to complete the template, Euronext would have to split the market data revenues across the different countries. Whilst this may in theory may seem simple, in practice many of the market data products Euronext provides encompass multiple markets and therefore multiple operating MICs. This would mean that in practice Euronext would encounter challenges to meaningfully allocate market data revenues per operating MIC as set out in the template. This approach does not fit with the Euronext model of providing a single pool of liquidity in Europe and this metric does not make sense for interconnected markets such as Euronext's. Euronext would therefore favour ESMA allowing market data providers to report total market data revenues and the market data revenues as a proportion of the total Revenues for Euronext as a whole.

Question 18: Do you agree with the proposed definitions in Guideline 11? In particular, do they capture all relevant market uses and market participants? If not, please explain.

Euronext generally agrees with the harmonization of certain contractual terminology as proposed in Guideline 11, however believes that some of the definitions proposed by ESMA are impractical, do not sufficiently take into account market data processes and policies and the evolving nature of this industry and as such are too restrictive. There is also concern that some of the proposed definitions could go somewhat beyond the transparency plus approach. Euronext supports the introduction of some standardized key terminology, but not necessarily the key terminology as proposed by ESMA. Euronext is currently looking at the practical implications of some of the proposed guidelines. Harmonization efforts require in-depth knowledge of market data and business contracts and must be assessed in terms of current industry practice, business rationale and benefits to the wider community. There is a need for guidelines in this area to be looked at in close consideration of market data policies and processes in order to be able to achieve the desired end outcome.

A general observation would be that the list of harmonised terms is surprisingly short and as such does not reflect the different aspects that one has to look at when dealing with market data policies and processes in practice. Oversimplification of harmonized terms could be a step in the wrong direction if they are simplified to an extent that they will be difficult to use. Definitions are strongly intertwined with the market data contracts and operations of market data providers. Furthermore, ensuring harmonized terms are as much as possible aligned with current industry practices, could significantly reduce the potential impact of guidelines on market data providers and customers alike. Against this backdrop, Euronext is well-placed to provide support to ESMA in fine-tuning these definitions. We provide, below, a number of suggested improvements for your consideration.

i. Customer

Euronext agrees in principle with the proposed definition of a customer as the natural and legal person who signs the market data agreement with the market data provider and is invoiced for the market data fees by the market data provider. Indeed, the Customer is not always a natural person, but can also be a legal entity.

ii. Unit of Count

Euronext supports having different units of count for display and non-display use, however we believe that the list that ESMA provides should be non-exhaustive. Prescribing specific units of count for display and non-display use would be impractical considering it would impact the operations of not just exchanges, but the entire market data value chain (e.g. data vendors, customers).

Though Euronext fully supports ESMA's efforts to introduce some harmonised terms, we would like to emphasize that definitions lie at the basis of not just the contracts and commercial models, but also the operations, of market data providers. As such, definitions should be clear, feasible, and not disproportionately impact market data providers. Euronext is happy to provide input and share its expertise with ESMA at any stage of this process.

Furthermore, Euronext would note that the approach proposed by ESMA in relation to the 'unit of counts' seems to deviate too much from the transparency plus approach. Euronext would emphasize that other units of count applied by market data providers for displayed data should be left to the discretion of data providers. Differences in unit of count derive from the diverging commercial practices that exist across trading venues. Any efforts that unintentionally prescribe how market data providers can charge market data fees seem to cross the fine line between requirements aimed at increasing transparency and requirements that unintentionally may be of a more intrusive nature.

Therefore, rather than prescribing the specific unit of count to be used, Euronext believes that the balance between effective harmonization and the ability for market data providers to differentiate themselves and compete is better maintained by defining frequently used units of count. This would constitute an important step towards harmonisation of approaches without the disruption that such an exhaustive list

would cause. Furthermore, the availability of definitions for regularly used units of count would likely encourage and motivate market data providers to implement these, while still offering the ability for market data providers to differentiate themselves and their offering.

That being said, Euronext would encourage ESMA to adopt the following definition for “Unit of Count”:

Unit of Count	A unit for the quantification, reporting, calculation and/or billing of fees for the use of Market Data as set-out in the market data agreement. Units of Count can, amongst others, be device-based, user-based, location-based or identification-based.
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Furthermore, Euronext agrees with ESMA defining “Active User” as this is a frequently used Unit of Count for display use. However, whilst Euronext supports including this as a unit of count, as explained in its response to Question 10, Euronext would not support this being the exclusive unit of count for display use.

Furthermore, as explained in Euronext’s response to Question 10, Euronext would propose amending the definition to “Active User” considering that an Active User could have more than one User-ID (especially where a customer would take the same data from multiple sources). Secondly, Euronext would propose to include ‘natural person’ instead of ‘human user’. Natural person is a clear legal term used to define a human. Lastly, Euronext very much supports ESMA’s definition including ‘who can access the display data’ as the ability to access the data is the most common method used by entitlement systems to track data usage and therefore this ensures that the definition is in line with industry best practices and enables customers to prove compliance and market data providers to verify compliance with the market data agreement. As such Euronext would encourage ESMA to adopt the following definition for “Active User”:

Active User	The Active user shall be each natural person who can actively access the display data.
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Euronext can agree with ESMA defining a server or device, as this can be a Unit of Count for Non-Display Use. However, whilst Euronext supports including this as a potential unit of count, as explained in its response to Question 10, Euronext would not support any exclusive unit of count for non-display use.

In case of non-display use, Euronext proposes to allow for segmentation of the non-display use of market data based on scope of use. i.e. specific fields of use. For example, market data providers can propose licences for proprietary trading, brokerage activities, etc. Furthermore, Euronext proposes to allow for segmentation of the non-display use of the market data based on scale. Both methodologies are in line with current industry practices and would therefore limit disruption to market data providers and customers alike. Were ESMA to be interested in defining some frequently used scopes of non-display use and/or units of count for non-display use, Euronext is happy to provide input and share its expertise with ESMA at any stage of this process.

iii. Professional Customer

Euronext would note that the definition of professional user is not in line with current exchange practices and definitions globally. Furthermore, the proposed definitions for professional and non-professional customers are broad, leaving margins of openness and uncertainty. The definition should contain sufficient objective elements such as the reference to enterprise size and financial holdings, to clearly distinguish non-professional users. Once again, Euronext would underline that oversimplification of harmonised terms could be a step in the wrong direction if they are simplified to an extent that they will be difficult to use.

That being said, Euronext supports ESMA adopting the following definition for “Professional Customer”:

Professional Customer	A natural person who is not a Non-Professional User.
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iv. Non-Professional Customer

Non-professional customer activities are by nature easier to define. The key defined term here should be what constitutes a non-professional. Therefore, Euronext’s view is that a professional customer should be defined in opposition to the non-professional customer (i.e. all customers that do not explicitly fall into the non-professional customer category are professional customers).

Euronext would urge ESMA to consider the definitions put forward by FESE. By in large, the FESE definitions are more workable and would lead to more consistent application as they have the added benefit of being more in line with the current practices of exchanges worldwide.

Lastly, although we understand the wish of the regulator to include researchers under non-professional users, many exchanges already offer data free of charge to educational facilities. As such, the definition of a non-professional user is not the appropriate place for the objective pursued by ESMA. Furthermore, although this is not detailed in the ESMA Consultation Paper, Euronext would underline that the notion of research should be limited to educational institutions and facilities only.

Euronext would suggest defining a Non-professional User as:

(i) a natural person (a) not accessing, publishing or distributing Information in the course of a trade, business, profession, or other economic activity and (b) not acting as a principal, officer, partner, employee or agent, neither of any business, nor on behalf of any other natural person;

(ii) an undertaking qualifying as a micro-sized enterprise as defined in [Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises](#) (2003/61/EC), (a) having a general commercial or industrial purpose, (b) holding financial instruments with an aggregate market value of less than EUR 500,000 or the equivalent thereof in another currency , and (c) not performing a regulated financial service or financial activity.

v. Display Data

Euronext considers that the definition for display put forward by FESE, “accessing, receiving, processing or consuming Market Data for the sole purpose of the visual display of Market Data for internal use”, is more appropriate than the definition as proposed by ESMA. This definition of FESE overall reflects current practices of market data providers worldwide. Deviating from global practices will increase complexity, rather than making market data policy simpler to understand.

vi. Non-Display Data

Euronext considers that the definition for non-display as proposed by FESE, “Accessing, receiving, processing or consuming Market Data for a purpose other than (i) its Display, or (ii) the Redistribution of Market Data” is more appropriate than the definition as proposed by ESMA. The definition of FESE overall reflects current practices of market providers worldwide. Deviating from global practices will increase complexity, rather than making market data policy simpler to understand.

vii. Market Data

Euronext agrees with the proposed definition of market data which encompasses the data trading venues, SIs, APAs, and CTPs have to make public. Market data includes the details set out in Annex I of RTS 1 and Annex I and Annex II of RTS 2.

viii. Derived Data

The proposed definition of derived data would significantly benefit from further clarifications. Whilst it does refer to the idea that it refers to data that cannot be used to materially replace or substitute the original data, Euronext regrets that it does not go far enough or take into account the fact that even if data

is not a direct substitute of the original data it could be used to create a substitute for the original data. For this reason, Euronext believes that the definition should also specify that it should not be possible to use the derived data to readily reverse engineer it and, in this way, be used to materially replace the original data.

In order to account for such situations, Euronext would suggest an alternative definition of derived data as proposed by ESMA. This definition overall reflects current practices of market data providers worldwide:

Derived data should mean any information or data which is derived in whole or in part from the Information and which:

- (i) cannot be readily reverse engineered to recreate the Information;
- (ii) cannot be used as a substitute or alternative source for the market data; or
- (iii) is not substantially similar to the Information.

Euronext strongly encourages ESMA to take the above suggested improvements on board prior to finalization of the guidelines.

ix. Real-time Data

Euronext believes that real-time data should be defined by ESMA as “Market Data that is available less than 15 minutes after the point in time where the Market Data was first disseminated by the Market Data Provider. If available, the delay period shall be determined by reference to the time/data stamp of the system concerned.” Euronext considers this definition to be unambiguous and overall reflective of current practices of market data providers worldwide.

x. Delayed Data

Euronext believes that delayed data should be defined by ESMA as “Market Data that is available 15 minutes or more after the time where the Information was first disseminated by the Market Data Provider, up and until midnight in the time zone of the Market Data Provider on the day the Market Data was first disseminated by the Market Data Provider. In case of 24-hour trading, Delayed Data is Information that is available 15 minutes or more after the time when the Market Data was first disseminated by the Market Data Provider. If available, the minute delay period shall be determined by reference to the time/data stamp of the system concerned.” Euronext considers this definition to be unambiguous and overall reflective of current practices of market data providers worldwide.

xi. Historical Data

Euronext would note that the definition provided for historical data designates After-Midnight Data. Therefore, rather than referring to historical data, Euronext would suggest referring to After Midnight Data, which is current industry practice, to not confuse market participants or introduce undue complexity. In the market data industry, the notion of historical data is often used to refer to specific, often file based, data products offered by market data providers, including data vendors. Furthermore, Euronext believes Historical Data (i.e. After Midnight Data) should be defined by ESMA as “Market Data that is available at the earliest after midnight in the time zone of the Market Data Provider on the day the Information was first disseminated by the Market Data Provider. In case of 24-hour trading, After Midnight Data is Market Data that is available 24 hours or more after the time when the Market Data was first disseminated by the Market Data Provider.” Euronext considers this definition to be unambiguous and overall reflective of current practices of market data providers worldwide.

Conclusion:

As outlined above, in general definitions can have a major impact on the operations of market data providers. With this in mind, we strongly believe that the FESE or venue led recommendations would be more effective than the current definitions proposed in these regulatory guidelines. There is a risk that this process be made more political than practical and it is important to ensure that the definitions will be workable for trading venues as harmonisations in this area, if they are not thoroughly thought through, can have significant impacts on market data processes, policies and contracts. By in large, the definitions put

forward by FESE are more workable and would lead to more consistent application as they have the added benefit of being more in line with the current practices of exchange worldwide.

Question 19: Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

We think there is an opportunity to pursue further standardization subject to exchange policies and the needs of customers. There may be more opportunities however the process of identifying and standardizing such terms should be decided in close consideration of market data processes and policies. Identifying the different non-display categories that exist could be one potential avenue for further harmonization to the benefit of the customer however any such list should be non-exhaustive.

Above all, Euronext would note that the key issue at this stage is to get the definitions that are to be defined right to avoid inherent ambiguity of certain definitions which would make it more difficult to achieve the desired outcome.

Euronext agrees that market data providers should have a clear and documented methodology for setting the price of market data. We also consider that the methodology should identify and disclose the costs that are solely attributable to the production and dissemination of market data (i.e. direct costs) and the costs that are shared with other services (i.e. joint costs). However, publishing an exhaustive list of all the types of costs included in the fees of market data, explanations around the determination of margins and margin differences, and especially allocation keys for joint costs, could go beyond the scope of the current “transparency plus” approach.

Euronext would take issue with any form of cost disclosures that would lead to the distribution of commercially sensitive information about costs and how prices have been determined to the public in general, and competitors specifically. Therefore, Euronext supports that market data providers are not required to disclose actual costs for producing or disseminating market data or the actual level of the margin, but instead the information provided on costs and margin enabling users to understand how the price for market data was set and compare the methodologies of different market data providers.

Question 20: Do you agree with Guideline 12? If not, please justify.

Euronext agrees that market data providers should have a clear and documented methodology for setting the price of market data. We also consider that the methodology should identify and disclose the costs that are solely attributable to the production and dissemination of market data (i.e. direct costs) and the costs that are shared with other services (i.e. joint costs). However, publishing an exhaustive list of all the types of costs included in the fees of market data, explanations around the determination of margins and margin differences, and especially allocation keys for joint costs, could go beyond the scope of the current “transparency plus” approach.

Euronext would take issue with any form of cost disclosures that would lead to the distribution of commercially sensitive information about costs and how prices have been determined to the public in general, and competitors specifically. Therefore, Euronext supports that market data providers are not required to disclose actual costs for producing or disseminating market data or the actual level of the margin, but instead the information provided on costs and margin enabling users to understand how the price for market data was set and compare the methodologies of different market data providers.

Question 21: Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

Euronext is supportive of ESMA in that it pursues the transparency plus approach with a view to seeking more comparability and transparency on market data costs. That being said, it is important to tread carefully in this area since there is a fine line between requirements aimed at increasing transparency and requirements that unintentionally may be of a more intrusive nature and as such are unwarranted given

the lack of evidence justifying a more intrusive approach. It is important to take care that guidelines in this area do not depart from the transparency plus approach. In this context, Euronext does not think that market data providers should disclose any other information regarding disclosure of costs.

Euronext is willing to provide information on how its cost bases or prices were set to their national regulators. However, Euronext would take issue with cost disclosures that would lead to the distribution of commercially and competitively sensitive information about costs and how prices have been determined to the public in general, and competitors specifically.

There is no reason to believe that stock exchanges' current practice is unreasonable, and, as such, asking them to disclose additional information around costs would be unjustified and unwarranted, and could raise competition law issues. Euronext makes every effort to have transparent market data policies, make all the necessary disclosures, and share relevant information with NCAs when requested.

Question 22: Do you agree with Guideline 13? If not, please justify.

Euronext supports market data providers being required to be explicit in the market data agreement with respect to the market data fees that can be applied retroactively, the terms and conditions of auditing (e.g. frequency) and how customers are expected to demonstrate their compliance with the market data agreement. In practice, Euronext is explicit with regards to the market data fees that can be applied retroactively. All Euronext fee schedules under MiFID II are publicly available on the Euronext website. Furthermore, the Euronext audit policy clearly explains the terms and conditions of Euronext's auditing procedure (e.g. frequency). It also provides information and records customers are expected to share with Euronext to demonstrate their compliance with the market data agreement.

Question 23: Which elements for post- and pre-trade data publication should be required? In particular, are flags a useful element of the publication? Should there be any differences between the different types of trading systems? Is the first best bid and offer sufficient for the purpose of delayed pre-trade data publication?

As a general remark, Euronext appreciates ESMA's effort to stabilize the guidelines in regard to making market data available for free to the public 15 minutes after publication. Clarifications are indeed necessary in this respect since unstable or contradicting Q&As do not facilitate the implementation of these requirements.

Trade flags are a useful element of publication in the case of post-trade data. However, it does not make sense to include this explicitly in Level 3 guidelines given that the flagging of trades is not currently harmonised. Trade flags would present value in a scenario where 100% of data sources use the same trade flag mechanism. This is not the case for the time being. Therefore, Euronext believes that trade flagging should be a separate discussion. Euronext does not believe that there should be differences between the different types of trading systems. Euronext would favour trade flagging being made a standard applicable to all, however this is currently not the case.

It has been challenging for venues to make pre-trade market data available free of charge 15 minutes after publication due to difficulties encountered from a technical and practical perspective. For example, some of the elements asked for regarding the publication of pre-trade delayed market data were not technically feasible (i.e. some files cannot be used by a normal computer).

Euronext agrees with guideline 14 in that it discharges reporting entities from publishing more than one current best bid and offer in the delayed data publication. As rightly pointed out by ESMA in this consultation paper, technical challenges in the publication of pre-trade data exist, which result from high volume of data at the order level, and limited value added for data users. Euronext would underline that first best bid and offer is sufficient for the purpose of delayed pre-trade data publication. It makes the pre-trade data publication useable, technically comprehensible, easier to implement, all the while giving users a good view of what the market looks like at a certain point in time.

Euronext believes that it is a good step to clarify that the delayed pre-trade data remain available only until the next price is available. This is manageable for all and is more useful for the average user than a full file service and would work better due to the nature of the data. Though Euronext is still doubtful as to whether this would be widely used by market participants, we believe it is a significant improvement compared to the existing guidelines and technically much more feasible to devise a solution that can be used by everybody.

There have been some concerns raised about the clarity of the current guidance which requires data to be published for at least 24 hours. ESMA therefore suggests clarifying that the data of the given trading day should be available until the end of the following trading day in case of post-trade data.

Euronext would note that this goes too far and penalizes those market data providers that have already implemented a solution to make data available for 24 hours with significant costs. This aspect would place additional costs and burden on market data providers whilst not adding significant value. Euronext therefore urges ESMA to reconsider this approach and instead clarify that the data should be made available for a 24-hour period.

Question 24: Which use cases of post- and pre-trade delayed data are relevant to you as a data user? What format of data provision is necessary for these use cases, and especially for pre-trade delayed data?

Euronext questions the interest in delayed data that data providers publish on their website. We have observed that a very limited number of users access this information and doubt the existence of a use case for this delayed data. In terms of format, Euronext considers that CSV files are an appropriate format for the provision of the post-trade data since they can be read by a lot of people using free of charge, open source software. For the pre-trade delayed data, Euronext believes that a snapshot display service would work better due to the nature of the data.

Question 25: Do you agree with the definitions of data-distribution and value-added services provided in Guideline 16? Please explain.

Euronext agrees with Guideline 16 in that it includes redistribution for a fee and value-added services such as derived data and indices which are sold as products for a fee. However, Euronext disagrees with the definitions of data redistribution and value-added services in Guideline 16 as those should not be the only situations where it appears justified that data providers can charge for their data provision. More concretely, Euronext disagrees with limiting the definitions of redistribution and value-added services to those activities where a product created on the basis of delayed data is sold for a fee. This definition would exclude, for example, commercial value-added services like advertising.

Euronext believes that guideline 16 does not reflect the full reality with respect to the commercialization of data. Technological giants and news websites, for example, can commercialise delayed market data by using it to attract users to their platforms. They derive revenues from advertisements viewed or by selling data to the users of their solutions. In reality, commercialisation of delayed data will not just occur through fees charged and is not limited to the aggregation of delayed data. Therefore, this guideline should capture any form of commercialisation of delayed data for external purposes and acknowledge that non-traditional models for the commercialisation of delayed data exist alongside more traditional models.

Euronext urges policymakers and regulators to acknowledge that important players are increasingly commercializing data in different ways as outlined above. There is a real need to acknowledge the different ways in which data today serves commercial purposes.

For this reason, Euronext calls on ESMA to embed the non-traditional ways in which certain actors commercialize data into any guidelines on delayed market data. Non-traditional models exist alongside the traditional modes of data use.

Question 26: Do you have any further comment or suggestion on the draft Guidelines? Please explain.

Euronext would underline that it is important to consider the draft guidelines, specifically the definitions, in the context of the practical implications they could have for the operations of regulated markets in the European Union.

Euronext is supportive of ESMA in that it pursues the transparency plus approach with a view to seeking more comparability and transparency however would note that some of the proposed guidelines do not sufficiently take into account market data processes and policies and the evolving nature of this industry.

The production and dissemination of market data is an intrinsic part of the operation of fair and orderly markets. As such, market data pricing cannot be considered or analysed in a vacuum since this would pose a threat to the price formation function of exchanges and as such to the wider CMU agenda.

Question 27: What level of resources (financial and other) would be required to implement and comply with the Guidelines and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

Although it is difficult to give a precise answer at this stage, the level of resources required to implement and comply with the guidelines in its current form would be of considerable impact on the cost of making market data available. That being said, the level of resources required would be significantly more manageable if Euronext's suggestions are incorporated into the guidelines. Euronext would be happy to provide ESMA with more information on the costs on a confidential basis, though it feels premature considering ESMA being in the initial stages of drafting the guidelines and some elements of the guidelines are still to be clarified.