FCA Consultation - CP23/33

UK Finance response

8 February 2024

UK Finance response to CP23/33

We welcome the opportunity to share our members' views on CP23/33 and we thank the FCA for the continued engagement both prior to and during this consultation. This response was produced with the advisory support of CMS Cameron McKenna Nabarro Olswang LLP.

Responses to questions in chapter 10

Q1: Do you think any of the three options are preferable to the approach suggested in CP23/15? If not, please explain your response.

No, our members strongly believe that trading venues (TVs) and approved publication arrangements (APAs) should be obliged to connect and provide data to the consolidated tape provider (CTP) without being compensated for doing so. Instead, our members support the original FCA proposal in CP23/15 that the CTP should not be required to contribute to data providers' connection cost recovery.

Our members take this view for the following reasons.

- **It will set an undesirable precedent regarding compensation for regulatory compliance:** as the FCA noted in CP23/15, equivalent recompense is not paid for connecting to an APA or an approved reporting mechanism (ARM) or to the FCA's Market Data Processor. Our members consider that providing compensation for regulatory compliance creates an undesirable precedent and should be avoided as a matter of principle. Hypothetically, if TVs and APAs are remunerated for connecting to a CTP to meet a regulatory obligation, then investment firms should also be remunerated for connecting to APAs, ARMs and Trade Repositories in fulfilling their own regulatory reporting obligations.

  In addition, investment firms are currently charged by APAs for publishing post trade transparency reports on their behalf. In the absence of any restrictions / prohibitions on the types of fees and charges that they may impose, there is a very real risk that APAs may introduce new service charges for investment firms relating (directly or indirectly) to any costs associated with the data providers setting up and maintaining a connection to the CTP, providing the data feed, and satisfying data quality standards. In this regard, the fact that the existing Article 89 of the UK version of the MiFID Org Regulation[1] will be repealed and replaced in MAR 9.2B.26R by a more simplified version (not expressly specifying the fees and information subject to disclosure) raises additional concerns over price transparency and the cost disclosure requirements applicable to data providers. On that basis, our members strongly believe that compensating data providers for their connection costs may result in double-recovery, which would mean any supposed rationale for imposing such costs on the CTP would disappear.

- **It will reduce the commercial viability of the CTP and may prevent bidders interested in providing a CTP service from coming forward:** imposing additional costs on a CTP could discourage applicants and/or make it less viable long term, as new data providers connect to the CTP. Our members consider that the overriding focus should be on ensuring

[1] Article 89 UK MIFID Org requires: *"1. APAs … shall disclose and make easily available to the public the price and other terms and conditions for the provision of the market data in a manner which is easily accessible. 2. The disclosure shall include the following: (a) current price lists, including the following information: (i) fees per display user; (ii) non-display fees; (iii) discount policies; (iv) fees associated with licence conditions; (v) fees for pre-trade and post-trade market data; (vi) fees for other subsets of information…"*. This is in contrast to MAR9.2B.26R(2) as set out in CP 23/33 which simply states: *"The disclosure must include the following: (a) current price lists and other contractual terms and conditions…"*.

that the regulation of the Consolidated Tape (CT) is calibrated so that providing it is commercially viable and attractive, it ensures bidders come forward and there is a competitive tender process. As noted more fully in our response to CP23/15, a CT should have a number of positive outcomes for the UK financial markets, including encouraging greater participation, aiding more efficient price formation, and encouraging competition for the provision of market data.

While UK Finance members do not consider that any of the proposed options are appropriate, in relation to the figure of £58,500 that has been put forward as a figure the CTP could be required to pay to each data provider that connects to it, members would note the following points. Sums of this nature should not be a significant cost for each TV or APA to absorb individually, in particular given they are usually part of bigger groups. On the other hand, cumulatively, this could be a substantial cost for a CTP since it will have to pay this amount to each data provider, and it is unlikely to be of the same size and scale as the data providers. This sum could increase in the future as and when new TVs and APAs enter the market. It would be difficult for a potential CTP to model such an increase in costs in advance given the unpredictability of potential new market entrants, making these total costs unknown at best and uncontrollable at worst. In fact, one of the objectives of having a CT is to increase competition in trade data markets, which could increase the number of data providers and accordingly, costs for the CTP. As noted above, we have concerns about the impact of this proposal on the commercial viability of the CTP.

- **It will impact the CT's ability to address issues identified in the FCA Trade Data Review 2023:** in the FCA's Trade Data Review published in March 2023, the FCA noted various issues with competition in trade data markets and CT was one of the steps identified to help address the concerns identified. Our members consider that requiring the CTP to compensate incumbent data providers will have the opposite effect. In addition to affecting the CTP's viability (as discussed above), the proposed payments may be passed on to end CT users, impacting the CTP's ability to provide data at a competitive price. This would in turn make the CT less attractive for end-users and potentially affect its take-up. Our members highlight that, as a result, data providers would not be encouraged to lower their prices and potential benefits of greater competition in trade data markets could be lost.

- **Standardised application programme interface (API):** our members understand that the CTP is likely to adopt an API that is in line with existing industry standards. This would therefore suggest that it would not be a costly exercise for data providers to adopt the standard API, as it would have existing internal expertise and resources to draw on. Our members note that if certain data providers do not have the latest technology to follow industry standards, it would not be fair to expect the CTP to bear the cost of connectivity. Furthermore, if data providers have undertaken work to connect to other third parties using the same or similar protocols, our members would expect this to reduce the costs of connecting to a CTP. Similarly, if the initial CTP is replaced by another CTP that uses the same standard API, the argument that data providers will incur significant connection costs for connecting to the successor CTP is further diminished.

Q2: If you think that payments should be made to data providers, do you support any of the options we have proposed for calculating the payments to be made? If not, please explain your alternative approach.

Our members do not think that payments should be made to data providers and, as such, do not support any of the options the FCA has proposed, for the reasons explained in response to Q1. Our members consider that the FCA should revert to the approach set out in CP23/15.

Q3: If you think that payments should be made to data providers, do you think that those payments should be conditioned on data quality? If so, please explain any suggestions you have for measuring data quality.

Please see our response to Q2. Our members also note that achieving data quality is a regulatory requirement and should not require financial incentivisation.

Q4: Do you think that in Option 1 we have set an appropriate level of payment?

Please see our response to Q2.

Q5: Do you think that in Option 2 there should be a requirement for external auditors to review the cost methodology and the costs? Do you have a view on the costs presented in the cost benefit analysis of this obligation?

Please see our response to Q2.

Q6: Do you have any comments on the level of X in Option 3, including views on how it should be set?

Please see our response to Q2.

Q7: If we proceed with Option 3, should we set an upper limit on the level of payments?

Please see our response to Q2.

Cost benefit analysis for payments to data providers

Q1: Do you have any comments on our cost benefit analysis of payments for data providers by the CTP?

UK Finance members do not agree with the cost benefit analysis (CBA). The CBA states that the main justification for introducing a mechanism for requiring the CTP to make payments to data providers linked to the data providers' costs of connection is to try and ensure that the connections that data providers make to the CTP, and the data provided, are more robust and of a higher quality standard than it would otherwise be. It is further stated that without payments for the costs of connection, data providers lack an incentive to invest in robust connections and high-quality data provision to the CTP, particularly given the implications that the introduction of a bond CT has for their current market data revenues.

We strongly disagree with the above reasoning as a justification for requiring a CTP to pay data providers for their connectivity costs. As mentioned above, establishing a connection to the CTP and provision of high-quality data to it are regulatory requirements that data providers will have to comply with, they should not be compensated or incentivised for complying with their regulatory obligations.

Both trading venues and APAs are FCA regulated entities and the FCA should use its supervisory tools to ensure that the data providers establish robust connections to the CTP and provide high quality data.

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