



Solutions to Market Structure Issues in connection with the EC consultation on MiFIDII/MiFIR Review – A Position Paper

This paper is a part of Finance Denmark's response to the European Commission public consultation on the review of the MiFIDII/MiFIR regulatory framework with deadline 18 May 2020 and provides concrete solutions to Q9, Q24 and Q27:

- Needed legal changes to ensure reasonable costs and conditions for market data (Q9)
- How to ensure SIs are acting as a bilateral execution venues (Q24)
- How to improve the quality of the lit order books (Q27)

Needed legal changes to ensure reasonable costs and conditions for market data (Q9)

Finance Denmark has observed a continuous increase in market data costs contrary to the requirements in MiFIDII/MiFIR, which we have documented at several occasions.¹ The ESMA final report confirms this development and suggests a number of clever steps², which Finance Denmark fully supports. If these steps do not efficiently handle the market data problems within a reasonable period of time, additional steps must be taken (as the buy- and sell side in Europe agrees upon).³

Finance Denmark fully agrees and supports ESMA's conclusions in their final report and the proposed measures for a first step to solve the problems (as described in the EC consultation page 14 and 15).

Finance Denmark urges that the proposal to add a mandate to the Level 1 text empowering ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information includes power to standardize definitions, terms and audit procedures. Inspiration can be found in Appendix A in Finance Denmark's response to the ESMA consultation; https://finansdanmark.dk/media/40034/response_to_esma_consultation_on_the_development_in_prices_for_pre_and_post-trade_data_and_on_the_consolidated_tape_for_equity_instruments_final_0-finance-denmark.pdf.

However, if this task does not work within a reasonable period of time, additional steps must be taken as also highlighted by both buy- and sell side in EU (EFSA and EFAMA). See https://efsa-securities.eu/wp-content/uploads/2020/02/200207_EFSA_Joint-Statement-on-Market-Data-Costs.pdf and <https://www.efama.org/Pages/Submitted%20after%202018-03-12T16%2022%2007/Reasonable-Market-Data-Costs-Benefits-the-Real-Economy.aspx>

These additional steps could be as suggested by Finance Denmark; A Revenue Cap based on LRIC+, cf. our response to the ESMA consultation on market data.

¹ See e.g. <https://finansdanmark.dk/boersmaeglerforening-danmark/medlemmer/publikationer/> and https://finansdanmark.dk/media/40034/response_to_esma_consultation_on_the_development_in_prices_for_pre_and_post-trade_data_and_on_the_consolidated_tape_for_equity_instruments_final_0-finance-denmark.pdf

² https://www.esma.europa.eu/sites/default/files/library/mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf

³ <https://www.efama.org/Pages/Submitted%20after%202018-03-12T16%2022%2007/Reasonable-Market-Data-Costs-Benefits-the-Real-Economy.aspx> and https://efsa-securities.eu/wp-content/uploads/2020/02/200207_EFSA_Joint-Statement-on-Market-Data-Costs.pdf

**FINANCE
DENMARK**

Memo

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Contact Helle Søby Thygesen

As for the concrete changes to level 1 and 2, Finance Denmark agrees with ESMA and supports:

- To add a mandate in the level 1 text empowering ESMA to develop draft Technical Standards specifying the content, format and terminology of the RCB information as described in MiFIR, art. 13
- To amend the level 1 texts regarding access and publication of market data, stating in a coherent and consistent form that RCB entails that market data is to be priced based on costs of producing and disseminating the market data plus a reasonable mark-up.
- To amend art. 4 of MFIDII and art. 2 of MiFIR by adding definitions of market data.
- To specify in detail in the level 2 rules the principles behind a cost calculation of producing and disseminating market data, preferably using a Long Run Incremental Cost (LRIC+) model.

Finance Denmark further suggests in this exercise to delete art. 7(2) (in Delegated Regulation 2017/567 and art. 85(2) in Delegated Regulation 2017/565) The current wording of art. 7(2) and art. 85(2) allows the incumbent exchanges and APAs to rely on their market position to set prices for market data in a way, which are not based on their costs of producing and disseminating the market data. Trading venues and APAs must be allowed to earn a reasonable margin. However, they must not be allowed to subsidize other business activities through their market data revenue.

- To
- To add a new control mechanism in the level 1 text by introducing a requirement for trading venues, APAs, SIs and CTPs to report their actual costs for producing and disseminating market data directly to NCAs and/or ESMA.

In this context, Finance Denmark refers to the "Guideline to a cost benchmark" prepared by Copenhagen Economics⁴, which includes concrete examples and figures from IEX – the first exchange in the world to estimate the costs of producing and disseminating market data.⁵

- To add requirements in Delegated Regulation 2017/567, art. 8 and Delegated Regulation, art. 86, for market data to be provided on a non-discriminatory, standardised basis, ensuring uniform definitions, pricelists and usage policies across all trading venues in the Union. Such requirements would increase the transparency and enable comparison across trading venues.
- Finance Denmark is of the opinion that art. 11 in Delegated Regulation 2017/565 (and art. 89 in Delegated Regulation 2017/567) has not been properly enforced and hence suggests that transparency obligation should be extended to include reporting those information directly to the NCAs and/or ESMA in combination with disclosing it to the market. It should also be required that the disclosure must be clear, visible, transparent and easy accessible (as opposed to "10 clicks away"). Furthermore, historical price lists and market data policies must be available (at least for the past 5 years). If LRIC+ model is introduced a significant simplification will be the outcome. As for art. 11.2 (d) it should be specified

⁴ <https://www.copenhageneconomics.com/publications/publication/a-guideline-to-a-cost-benchmark-of-market-data-how-to-obtain-reasonable-prices-of-market-data>

⁵ <https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf>



more clearly, what is to be understood with market data revenue in order to ensure comparability, e.g. through reference to the market data definitions on level 1. Finally, regarding art. 11.2 (e), the CE proposed cost benchmark should serve as the basis for this information. The information should be published with figures in order to make it comparable.

- To delete art. 86(2) of Delegated Regulation 2017/565 and 8 (2) of Delegated Regulation allowing for trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the market data represents to users. Finance Denmark also suggests to delete art. 86(1) of Delegated Regulation 2017/565.

The concrete proposal are as follows:

Present text	Proposed text
<p><i>n.a</i></p>	<p>MiFIR, art. 2 (48) – definition of market data (new)</p> <p>“Market Data” means pre-trade and post-trade data generated as a by-product from the primary function of trading venues operating a multilateral system as defined in Article 4(1)(19) of Directive 2014/65/EU and data published by APA’s in accordance with the requirements set forth in Article 64 of Directive 2014/65/EU.</p> <p>MiFIR, Article (2)(49) – definition of pre-trade data (new)</p> <p>“Pre-trade data” means current bid and offer prices and the depth of trading interest advertised through a trading venues multilateral system. It includes actionable indications of interest and the identification of the financial instrument (ISIN, etc.)</p> <p>MiFIR, Article (2)(50) – definition of post-trade data (new)</p> <p>“post-trade data” means the price, volume and time of transactions executed through a trading venues multilateral system. It includes the identification of the financial instrument (ISIN, etc.).</p>
<p><i>Justification</i></p> <p><i>Market data is a by-product from the trading activity taking place on a marketplace as the fundamental function of exchanges is to match buyers and sellers of securities at a price that balances supply and demand through transparent rules and processes. The sale of market data is a related but separate by-product of that primary function. Trading of securities generates data, which is published as a data feed. The European Commission has defined market data as information products consisting of the current pricing or historical performance of particular assets, other data, and news (Case No. COMP/M.6166, Deutsche Börse/ NYSE Euronext, para. 136). Competition authorities consider market data as an ancillary market to the market for trading (Office of Fair Trading (2011), Anticipated acquisition by BATS Trading Limited of Chi-X Europe Limited).</i></p> <p><i>Raw market data is a mere register of the activity of the market participants, without further processing. The raw data can be processed into, for example, indices and other measures, which is called value-added data. The scope of the market concerned includes data from all types of financial instruments.</i></p>	



Present text	Proposed text
<p><i>MiFIR, Article 13</i></p> <p>Obligation to make pre-trade and post-trade data available on a reasonable commercial basis</p> <ol style="list-style-type: none"> 1. Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public on a reasonable commercial basis and ensure non-discriminatory access to the information. Such information shall be made available free of charge 15 minutes after publication. 2. The Commission shall adopt delegated acts in accordance with Article 50 clarifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1. 	<p><i>MiFIR, Article 13</i></p> <p>Obligation to make market data available on a reasonable commercial basis</p> <ol style="list-style-type: none"> 1. Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public on a reasonable commercial basis and ensure non-discriminatory access to the information. Such information shall be made available free of charge 15 minutes after publication. 2. Providing market data on a reasonable commercial basis means that the pricing of market data must be based on the cost of producing and disseminating the market data. The price of market data may include a reasonable margin using a cost-based approach. 3. The Commission shall adopt delegated acts in accordance with Article 50 clarifying what constitutes a cost-based approach including the determination of a cost benchmark which defines the costs of producing and disseminating market data. reasonable commercial basis to make information public as referred to in paragraph 1.

Justification

As already specified in Delegated Regulation 2017/567, art. 7-11 and Delegated Regulation, art. 84-89, there is a requirement to base the price of market data on costs. However, the exact content of the cost-based approach is missing and would, if the requirement still is at level 2, be a level 3 guideline which is not legally binding. By lifting the cost-based approach to level 1 and the more detailed understanding at level 2, the requirements will become legally binding. For detailed explanation of a cost-based approach including proposals to create a cost benchmark, please see Copenhagen Economics studies as well as IEX study; <https://www.copenhageneconomics.com/publications/publication/a-guideline-to-a-cost-benchmark-of-market-data-how-to-obtain-reasonable-prices-of-market-data>, <https://www.copenhageneconomics.com/publications/publication/pricing-of-market-data> and <https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf>

Present text	Proposed text
<p><i>Delegated Regulation 2017/567, recitals 4-8</i></p> <p>(4)</p> <p>In order to ensure that market data is provided on a reasonable commercial basis in a uniform manner in the Union, this Regulation specifies the conditions that market operators and investment firms operating trading venues and systematic internalisers must fulfil. These conditions are based on the objective to ensure that the obligation</p>	<p><i>Delegated Regulation 2017/567, recitals 4-8</i></p> <p>(4)</p> <p>In order to ensure that market data is provided on a cost-based approach reasonable commercial basis in a uniform manner in the Union, this Regulation specifies the conditions that market operators and investment firms operating trading venues and systematic internalisers must fulfil. These conditions are based on the objective to ensure that the obligation</p>



<p>to provide market data on a reasonable commercial basis is sufficiently clear to allow for an effective and uniform application whilst taking into account different operating models and costs structures of market operators and investment firms operating a trading venue and systematic internalisers.</p> <p>(5)</p> <p>To ensure that fees for market data are set at a reasonable level, the fulfilment of the obligation to provide market data on a reasonable commercial basis requires that fees be based on a reasonable relationship to the cost of producing and disseminating that data. Therefore, without prejudice to the application of competition rules, data providers should determine their fees on the basis of their costs whilst being allowed to obtain a reasonable margin based on factors such as the operating profit margin, the return on costs, the return on operating assets and the return on capital. Where data providers incur joint costs for data provision and the provision of other services, costs of market data provision may include an appropriate share of joint costs arising from any other relevant service provided. Since specifying exact costs is complex, cost allocation and cost apportionment methodologies should be specified instead, leaving the specification of those costs to the discretion of market data providers whilst having regard to the objective of ensuring that fees for market data are set at a reasonable level in the Union.</p> <p>(6)</p> <p>Market data should be provided on a non-discriminatory basis, which requires that the same price and other terms and conditions should be offered to all customers who are in the same category according to published objective criteria.</p> <p>(7)</p> <p>To allow data users to obtain market data without having to buy other services, market data should be offered unbundled from other services. To avoid data users being charged more than once for the same market data when buying data sets from trading venues and from other market data distributors, market data should be offered on a per user basis unless doing so would be disproportionate considering the cost of such way of offering that data in respect of the scale and the scope of the market data provided by the market operator or the investment firm operating a trading venue or the systematic internaliser.</p>	<p>to provide market data on a cost-based approach reasonable commercial basis is sufficiently clear to allow for an effective and uniform application whilst taking into account different operating models and costs structures of market operators and investment firms operating a trading venue and systematic internalisers.</p> <p>(5)</p> <p>To ensure that fees for market data are set at a reasonable level, the fulfilment of the obligation to provide market data on a cost-based approach reasonable commercial basis requires that fees be based on a reasonable relationship to the cost of producing and disseminating that data. Therefore, without prejudice to the application of competition rules, data providers should determine their fees on the basis of their costs whilst being allowed to obtain a reasonable margin based on factors such as the operating profit margin, the return on costs, the return on operating assets and the return on capital. Where data providers incur joint costs for data provision and the provision of other services, costs of market data provision may include an appropriate share of joint costs arising from any other relevant service provided. The Since specifying of the exact costs is complex, which is why the cost allocation and cost apportionment methodologies should be specified by using a cost benchmark, leaving the specification of those costs to the discretion of market data providers whilst having regard to the objective of ensuring that fees for market data are set at a reasonable, cost-based level in the Union.</p> <p>(6)</p> <p>Market data should be provided on a non-discriminatory, standardised basis, ensuring uniform definitions, pricelists and usage policies across all trading venues in the Union and which requires that the same price and other terms and conditions should be offered to all customers who are in the same category according to published objective criteria.</p> <p>(7)</p> <p>To allow data users to obtain market data without having to buy other services, market data should be offered unbundled from other services. To avoid data users being charged more than once for the same market data when buying data sets from trading venues and from other market data distributors,</p>
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<p>(8)</p> <p>In order to allow for data users and competent authorities to effectively assess whether market data is provided on a reasonable commercial basis, it is necessary that the essential conditions for its provision are disclosed to the public. Data providers should therefore disclose information about their fees and the content of the market data, as well as the cost accounting methodologies used to determine their costs without having to disclose their actual costs.</p>	<p>market operators and investment firms operating a trading venue and systematic internalisers shall put arrangements in place to ensure that each individual use of market data is charged only once. market data should be offered on a per user basis unless doing so would be disproportionate considering the cost of such way of offering that data in respect of the scale and the scope of the market data provided by the market operator or the investment firm operating a trading venue or the systematic internaliser.</p> <p>(8)</p> <p>In order to allow for data users and competent authorities to effectively assess whether market data is provided on a cost-based approach reasonable commercial basis, it is necessary that the essential conditions for its provision are disclosed to the public. Data providers should therefore disclose information about their fees, revenues and the content of the market data, as well as the relation to the cost benchmark accounting methodologies used to determine their costs without having to disclose their actual costs.</p>
<p style="text-align: center;"><i>Justification</i></p> <p><i>The recitals are changed to reflect the introduction of a cost-based approach in level 1. Additionally, and to ensure more standardized terms and conditions, it is added that trading venues definitions, pricelists and usage policies must be standardized in a uniform way across the union in order to avoid hidden cost increases and prevent unnecessary red tapes through the use of unclear definitions and/or unreasonable usage policies.</i></p>	

Present text	Proposed text
<p><i>Delegated Regulation 2017/567</i> Art. 6 to art. 11</p> <p>Article 6 Obligation to provide market data on a reasonable commercial basis (Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)</p> <p>1. For the purposes of making market data containing the information set out in Articles 3, 4, 6 to 11, 15 and 18 of Regulation (EU) No 600/2014 available to the public on a reasonable commercial basis, market operators and investment firms operating a trading venue and systematic internalisers shall, in accordance with Articles 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014, comply with the obligations set out in Articles 7 to 11 of this Regulation.</p>	<p><i>Delegated Regulation 2017/567</i> Art. 6 to art. 11</p> <p>Article 6 Obligation to provide market data on a reasonable commercial basis (Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)</p> <p>1. For the purposes of making market data containing the information set out in Articles 3, 4, 6 to 11, 15 and 18 of Regulation (EU) No 600/2014 available to the public on a cost-based approach reasonable commercial basis, market operators and investment firms operating a trading venue and systematic internalisers shall, in accordance with Articles 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014,</p>



2. Articles 7, 8(2), 9, 10(2) and 11 shall not apply to market operators or investment firms operating trading venues or to systematic internalisers that make market data available to the public free of charge.

Article 7

Obligation to provide market data on the basis of cost (Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

1. The price of market data shall be based on the cost of producing and disseminating such data and may include a reasonable margin.

2. The cost of producing and disseminating market data may include an appropriate share of joint costs for other services provided by market operators or investment firms operating a trading venue or by systematic internalisers.

Article 8

Obligation to provide market data on a non-discriminatory basis (Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

1. Market operators and investment firms operating a trading venue and systematic internalisers shall make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.

2. Any differentials in prices charged to different categories of customers shall be proportionate to the value which the market data represents to those customers, taking into account:

(a) the scope and scale of the market data including the number of financial instruments covered and their trading volume;

(b) the use made by the customer of the market data, including whether it is used for the customer's own trading activities, for resale or for data aggregation.

3. For the purposes of paragraph 1, market operators and investment firms operating a trading venue and systematic internalisers shall have scalable capacities in place to ensure that customers obtain timely access to market data at all times on a non-discriminatory basis.

Article 9)

Obligations in relation to per user fees (Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

comply with the obligations set out in Articles 7 to 11 of this Regulation.

2. Articles 7, 8(2), 9, 10(2) and 11 shall not apply to market operators or investment firms operating trading venues or to systematic internalisers that make market data available to the public free of charge.

Article 7

Obligation to provide market data on the basis of cost (Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

1. The price of market data shall be based on the cost of producing and disseminating such data and may include a reasonable margin (**cost-based approach**).

'2. **The cost-based approach must reflect a cost benchmark specifying what is understood by the cost of producing and disseminating market data. Such benchmark is called Long Run Incremental Cost Benchmark (LRIC+).**

~~The cost of producing and disseminating market data may include an appropriate share of joint costs for other services provided by market operators or investment firms operating a trading venue or by systematic internalisers.~~

Article 8

Obligation to provide market data on a non-discriminatory and standardized basis (Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)

1. Market operators and investment firms operating a trading venue and systematic internalisers shall make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.

2. **Market data should be provided on a standardised basis, ensuring uniform definitions, pricelists and usage policies across all trading venues in the Union** ~~Any differentials in prices charged to different categories of customers shall be proportionate to the value which the market data represents to those customers, taking into account:~~



1. Market operators and investment firms operating a trading venue and systematic internalisers shall charge for the use of market data according to the use made by the individual end-users of the market data ('per user basis'). Market operators and investment firms operating a trading venue and systematic internalisers shall put arrangements in place to ensure that each individual use of market data is charged only once.

1. By way of derogation from paragraph 1, market operators and investment firms operating a trading venue and systematic internalisers may decide not to make market data available on a per user basis where to charge on a per user basis is disproportionate to the cost of making that data available, having regard to the scale and scope of the data.

3. Market operators and investment firms operating a trading venue and systematic internalisers shall provide grounds for the refusal to make market data available on a per user basis and shall publish those grounds on their webpage.

Article 10

**Obligation to keep data unbundled and to disaggregate market data
(Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)**

1. Market operators and investment firms operating a trading venue and systematic internalisers shall make market data available without being bundled with other services.
2. Prices for market data shall be charged on the basis of the level of market data disaggregation provided for in Article 12(1) of Regulation (EU) No 600/2014.

Article 11)

**Transparency obligation
(Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)**

1. Market operators and investment firms operating a trading venue and systematic internalisers shall disclose the price and other terms and conditions for the provision of the market data in a manner which is easily accessible to the public.
2. The disclosure shall include the following:
(a) current price lists, including:
— fees per display user;
— non-display fees;
— discount policies;
— fees associated with licence conditions;

~~(a) the scope and scale of the market data including the number of financial instruments covered and their trading volume;~~

~~(b) the use made by the customer of the market data, including whether it is used for the customer's own trading activities, for resale or for data aggregation.~~

~~3. For the purposes of paragraph 1, market operators and investment firms operating a trading venue and systematic internalisers shall have scalable capacities in place to ensure that customers obtain timely access to market data at all times on a non-discriminatory basis.~~

Article 9

**Obligations in relation to per user fees
(Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)**

1. Market operators and investment firms operating a trading venue and systematic internalisers shall charge for the use of market data according to the use made by the individual end-users of the market data ('per user basis'). Market operators and investment firms operating a trading venue and systematic internalisers shall put arrangements in place to ensure that each individual use of market data is charged only once.

2. By way of derogation from paragraph 1, market operators and investment firms operating a trading venue and systematic internalisers may decide not to make market data available on a per user basis where to charge on a per user basis is disproportionate to the cost of making that data available, having regard to the scale and scope of the data.

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Article 10

**Obligation to keep data unbundled and to disaggregate market data
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- fees for pre-trade and for post-trade market data;
- fees for other subsets of information, including those required in accordance with Commission Delegated Regulation (EU) 2017/572 [\(5\)](#);

other contractual terms and conditions regarding the current price list;

(b) advance disclosure with a minimum of 90 days' notice of future price changes;

(c) information on the content of the market data including:

- (i) the number of instruments covered;
- (ii) the total turnover of instruments covered;
- (iii) pre-trade and post-trade market data ratio;
- (iv) information on any data provided in addition to market data;
- (v) the date of the last licence fee adaption for market data provided;

(d) revenue obtained from making market data available and the proportion of that revenue compared to the total revenue of the market operator and investment firm operating a trading venue or systematic internalisers;

(e) information on how the price was set, including the cost accounting methodologies used and the specific principles according to which direct and variable joint costs are allocated and fixed joint costs are apportioned, between the production and dissemination of market data and other services provided by market operators and investment firms operating a trading venue or systematic internalisers.

2. Prices for market data shall be charged on the basis of the level of market data disaggregation provided for in Article 12(1) of Regulation (EU) No 600/2014.

Article 11

**Transparency obligation
(Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)**

1. Market operators and investment firms operating a trading venue and systematic internalisers shall disclose the price and other terms and conditions for the provision of the market data in a manner which is easily accessible to the public.

2. The disclosure shall include the following:

(a) current price lists **and price lists at least from the past 5 years**, including:

- fees per display user;
- non-display fees;
- discount policies;
- fees associated with licence conditions;
- fees for pre-trade and for post-trade market data;
- fees for other subsets of information, including those required in accordance with Commission Delegated Regulation (EU) 2017/572 (5);

1. other contractual terms and conditions regarding the current price list;

(b) advance disclosure with a minimum of 90 days' notice of future price changes;

(c) information on the content of the market data including:

- (i) the number of instruments covered;
- (ii) the total turnover of instruments covered;
- (iii) pre-trade and post-trade market data ratio;
- (iv) information on any data provided in addition to market data;
- (v) the date of the last licence fee adaption for market data provided;

(d) revenue obtained from making market data available and the proportion of that revenue compared to the total revenue of the market operator and investment firm operating a trading venue or systematic internalisers;

(e) information on how the price was set, including the **relation to the cost benchmark accounting methodologies**—used and the specific principles according to which direct and variable joint costs are allocated and fixed joint costs are apportioned, between the production and dissemination of market



	data and other services provided by market operators and investment firms operating a trading venue or systematic internalisers.
<p style="text-align: center;"><i>Justification</i></p> <p>The articles are changed to reflect the introduction of a cost-based approach in level 1, which is specified by the cost benchmark based on Long Run Incremental Costs (LRIC+), cf. Copenhagen Economics studies as well as IEX study; https://www.copenhageneconomics.com/publications/publication/a-guideline-to-a-cost-benchmark-of-market-data-how-to-obtain-reasonable-prices-of-market-data, https://www.copenhageneconomics.com/publications/publication/pricing-of-market-data and https://iex-trading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf. Additionally, and to ensure more standardized terms and conditions, it added that trading venues definitions, pricelists and usage policies must be standardized in a uniform way across the union in order to avoid hidden cost increases by using unclear definitions or unreasonable usage policies. Inspiration can be found in Appendix A in Finance Denmark's response to the ESMA consultation; https://www.esma.europa.eu/press-news/consultations/mifid-iimifir-review-report-development-in-prices-pre-and-post-trade-data#TODO</p>	

Present text	Proposed text
<p>Delegated Regulation 2017/565) Art. 84 to art. 89 Article 84 Obligation to provide market data on a reasonable commercial basis (Article 64(1) and 65(1) of Directive 2014/65/EU)</p> <p>1. For the purposes of making market data containing the information set out in Articles 6, 20 and 21 of Regulation (EU) No 600/2014 available to the public on a reasonable commercial basis in accordance with Articles 64(1) and 65(1) of Directive 2014/65/EU, approved publication arrangements (APAs) and consolidated tape providers (CTPs) shall comply with the obligations set out in Articles 85 to 89.</p> <p>2. Articles 85, 86(2), 87, 88(2) and 89 shall not apply to</p> <p>APAs or CTPs that make market data available to the public free of charge.</p> <p>Article 85 Provision of market data on the basis of cost (Article 64(1) and 65(1) of Directive 2014/65/EU)</p> <p>1. The price of market data shall be based on the cost of producing and disseminating such data and may include a reasonable margin.</p> <p>2. The costs of producing and disseminating market data may include an appropriate share of joint costs for other service provided by APAs and CTPs.</p> <p>Article 86 Obligation to provide market data on a non-discriminatory basis</p>	<p>Article 84 Obligation to provide market data on a reasonable commercial basis (Article 64(1) and 65(1) of Directive 2014/65/EU)</p> <p>1. For the purposes of making market data containing the information set out in Articles 6, 20 and 21 of Regulation (EU) No 600/2014 available to the public on a cost-based approach reasonable commercial basis in accordance with Articles 64(1) and 65(1) of Directive 2014/65/EU, approved publication arrangements (APAs) and consolidated tape providers (CTPs) shall comply with the obligations set out in Articles 85 to 89.</p> <p>2. Articles 85, 86(2), 87, 88(2) and 89 shall not apply to</p> <p>APAs or CTPs that make market data available to the public free of charge.</p> <p>Article 85 Provision of market data on the basis of cost (Article 64(1) and 65(1) of Directive 2014/65/EU)</p> <p>1. The price of market data shall be based on the cost of producing and disseminating such data and may include a reasonable margin (cost-based approach).</p> <p>2. The cost-based approach must reflect a cost benchmark specifying what is understood by the cost of producing and disseminating market data. Such benchmark is called Long Run Incremental Cost Benchmark (LRIC+).</p>



(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. APAs and CTPs shall make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.
2. Any differentials in prices charged to different categories of customers shall be proportionate to the value which the market data represent to those customers, taking into account:
 - (a) the scope and scale of the market data including the number of financial instruments covered and trading volume;
 - (b) the use made by the customer of the market data, including whether it is used for the customer's own trading activities, for resale or for data aggregation.
3. For the purposes of paragraph 1, APAs and CTPs shall have scalable capacities in place to ensure that customers can obtain timely access to market data at all times on a non-discriminatory basis.

Article 87

Per user fees

(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. APAs and CTPs shall charge for the use of market data on the basis of the use made by individual end-users of the market data ('per user basis'). APAs and CTPs shall have arrangements in place to ensure that each individual use of market data is charged only once.
2. By way of derogation from paragraph 1, APAs and CTPs may decide not to make market data available on a per user basis where to charge on a per user basis is disproportionate to the cost of making market data available, having regard to the scale and scope of the market data.
3. APAs or CTPs shall provide grounds for the refusal to make market data available on a per user basis and shall publish those grounds on their webpage.

Article 88

Unbundling and disaggregating market data

(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. APAs and CTPs shall make market data available without being bundled with other services.
2. Prices for market data shall be charged on the basis of the level of market data disaggregation provided for in Article 12(1) of Regulation (EU) No 600/2014 as further specified in Articles of Commission Delegated Regulation (EU) 2017/572 [\[27\]](#).

Article 89

Transparency obligation

(Article 64(1) and 65(1) of Directive 2014/65/EU)

2. ~~The costs of producing and disseminating market data may include an appropriate share of joint costs for other service provided by APAs and CTPs.~~

Article 86

Obligation to provide market data on a non-discriminatory basis

(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. APAs and CTPs shall make market data available at the same price and on the same terms and conditions to all customers ~~falling within the same category in accordance with published objective criteria.~~
2. Any differentials in prices charged to different categories of customers shall be proportionate to the value which the market data represent to those customers, taking into account:
 - (a) the scope and scale of the market data including the number of financial instruments covered and trading volume;
 - (b) the use made by the customer of the market data, including whether it is used for the customer's own trading activities, for resale or for data aggregation.
3. For the purposes of paragraph 1, APAs and CTPs shall have scalable capacities in place to ensure that customers can obtain timely access to market data at all times on a non-discriminatory basis.

Article 87

Per-User fees

(Article 64(1) and 65(1) of Directive 2014/65/EU)

1. ~~APAs and CTPs shall charge for the use of market data on the basis of the use made by individual end-users of the market data ('per user basis'). APAs and CTPs shall have arrangements in place to ensure that each individual use of market data is charged only once.~~
2. ~~By way of derogation from paragraph 1, APAs and CTPs may decide not to make market data available on a per user basis where to charge on a per user basis is disproportionate to the cost of making market data available, having regard to the scale and scope of the market data.~~
3. ~~APAs or CTPs shall provide grounds for the refusal to make market data available on a per user basis and shall publish those grounds on their webpage.~~

Article 88

Unbundling and disaggregating market data

(Article 64(1) and 65(1) of Directive 2014/65/EU)



<p>1. APAs and CTPs 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.</p> <p>2. The disclosure shall include the following:</p> <p>(a) current price lists, including the following information:</p> <ul style="list-style-type: none"> (i) fees per display user; (ii) non-display fees; (iii) discount policies; (iv) fees associated with licence conditions; (v) fees for pre-trade and for post-trade market data; (vi) fees for other subsets of information, including those required in accordance with the regulatory technical standards pursuant to Article 12(2) of Regulation (EU) No 600/2014; (vii) other contractual terms and conditions; <p>(b) advance disclosure with a minimum of 90 days' notice of future price changes;</p> <p>(c) information on the content of the market data including the following information:</p> <ul style="list-style-type: none"> (i) the number of instruments covered; (ii) the total turnover of instruments covered; (iii) pre-trade and post-trade market data ratio; (iv) information on any data provided in addition to market data; (v) the date of the last licence fee adaption for market data provided; <p>(d) revenue obtained from making market data available and the proportion of that revenue compared to total revenue of the APA or CTP;</p> <p>(e) information on how the price was set, including the cost accounting methodologies used and information about the specific principles according to which direct and variable joint costs are allocated and fixed joint costs are apportioned, between the production and dissemination of market data and other services provided by APAs and CTPs.</p>	<p>1. APAs and CTPs shall make market data available without being bundled with other services.</p> <p>2. Prices for market data shall be charged on the basis of the level of market data disaggregation provided for in Article 12(1) of Regulation (EU) No 600/2014 as further specified in Articles of Commission Delegated Regulation (EU) 2017/572 [27].</p> <p>Article 89 Transparency obligation (Article 64(1) and 65(1) of Directive 2014/65/EU)</p> <p>1. APAs and CTPs 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.</p> <p>2. The disclosure shall include the following:</p> <p>(a) Current price lists and price lists at least for the past 5 years, including the following information:</p> <ul style="list-style-type: none"> (i) fees per display user; (ii) non-display fees; (iii) discount policies; (iv) fees associated with licence conditions; (v) fees for pre-trade and for post-trade market data; (vi) fees for other subsets of information, including those required in accordance with the regulatory technical standards pursuant to Article 12(2) of Regulation (EU) No 600/2014; (vii) other contractual terms and conditions; (b) advance disclosure with a minimum of 90 days' notice of future price changes; <p>(c) information on the content of the market data including the following information:</p> <ul style="list-style-type: none"> (i) the number of instruments covered; (ii) the total turnover of instruments covered; (iii) pre-trade and post-trade market data ratio; (iv) information on any data provided in addition to market data; (v) the date of the last licence fee adaption for market data provided; <p>(d) revenue obtained from making market data available and the proportion of that revenue compared to total revenue of the APA or CTP;</p> <p>(e) information on how the price was set, including the relation to the cost benchmark accounting methodologies used and information about the specific principles according to which direct and variable joint costs are allocated and fixed joint costs are apportioned, between the production and dissemination of market data and other services provided by APAs and CTPs.</p>
<p>Justification</p>	



The articles are changed to reflect the introduction of a cost-based approach in level 1, which is specified by the cost benchmark based on Long Run Incremental Costs (LRIC+), cf. Copenhagen Economics studies as well as IEX study; <https://www.copenhageneconomics.com/publications/publication/a-guideline-to-a-cost-benchmark-of-market-data-how-to-obtain-reasonable-prices-of-market-data>, <https://www.copenhageneconomics.com/publications/publication/pricing-of-market-data> and <https://iex-trading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf>. Additionally, and to ensure more standardized terms and conditions, it added that trading venues definitions, pricelists and usage policies must be standardized in a uniform way across the union in order to avoid hidden cost increases by using unclear definitions or unreasonable usage policies. Inspiration can be found in Appendix A in Finance Denmark's response to the ESMA consultation; <https://www.esma.europa.eu/press-news/consultations/mifid-ii-review-report-development-in-prices-pre-and-post-trade-data#TODO>

How to ensure SIs are acting as a bilateral execution venue (Q24)

SIs provide clients with more efficient execution, more choices and at lower costs than trading venues.

For retail clients, SIs can provide immediate execution at a known price. For wholesale clients – such as pension funds - SIs can minimize market impact when executing larger orders, which trading venues in general are unable to support. This is not at least due to the in general poor quality of the trading venues' order books with low volume and undue interference from non-genuine "liquidity-providers" which is a consequence of e.g. inappropriate incentive schemes and insufficient tick sizes.

For all clients there is a wish to minimize costs and maximise return. There is no reason in punishing investors by forcing them to accept higher costs due to lower execution quality. This is not proper investor protection. Additionally, eliminating SIs as eligible execution places will diminish investor choice and increase costs for end-users which are also not in line with MiFIDII/MiFIR.

Rather, Finance Denmark suggests enhancing the description of the SI activity in order to eliminate any doubts of what proper SI activity is. This should be implemented on level 1 or 2 instead of Q&As as is the case today. Finance Denmark suggests such strengthening is formulated in line with the proposal:

- According to MiFIDII, article 4(1)(20), a systematic internaliser is an investment firm which, on an organised, frequent systematic and substantial basis deals on own account when executing orders outside a trading venue without operating a multilateral system.
- This is further explained in recital 17 in MiFIDII as well as recital 19 of delegated regulation 565/2017 which states that a systematic internaliser should not be allowed to bring together third party buying and selling interests in functionally the same way as a trading venue. A systematic internaliser should not consist of an internal matching system which executes client orders on a multilateral basis. An internal matching system in



this context is a system for matching client orders which results in the investment firm undertaking matched principal transactions on a regular and not occasional basis.

- Under the present regime systematic internalisers in shares are obliged to provide firm quotes in sizes of minimum 10 % of SMS. However, beyond that, they are vital to ensuring liquidity to the market because they normally stand ready to execute orders OTC above 10 % of SMS (and as specified in our response to Q13 in the recent ESMA consultation on transparency for equities etc.⁶, we are willing to increase this to 50 %).

Like all investment firms systematic internalisers are required to act in the best interests of their customers (best execution) and one way to do that is by being an alternative to the trading venues, in particular in trading sizes below Large In Scale.

Part of being a systematic internaliser and acting in the best interest of the customers is to bring together trading interests when this can be done without establishing a system resembling the functioning of a trading venue. Key to defining this role is to define what constitutes "an internal matching system". Trading venues have automated systems which assure that multiple trading interests can interact and be combined without human intervention. Thus, this should not be allowed when acting as a systematic internaliser. This would include automated systems which defer the trading so that the buying and selling interests are not combined directly and simultaneously, but where a very short latency is added.

What should continue to be allowed is the manual handling where the systematic internaliser finds an opposite trading interest and combines a buy and a sell order. Such processes should not be seen as "a system" (nor as an "internal matching system") since the processes are not automated and since by nature, they will always be ad hoc.

This situation will occur if for instance an investment firm is approached by a customer that wants to sell shares. To act in the best interests of the customer the systematic internaliser shall decide whether to route the order to a trading venue, whether to buy the shares to its inventory or whether to try to find a suitable buyer. Trying to find a buyer in such a situation via a manual process does not resemble the way a trading venue functions in the trading of shares and it cannot be defined as meeting the definition of multilateral trading, nor will there be any rules that govern such matching of opposite trading interests. The clients do not face each other and have no access to a system where they can see each other orders.

How to improve the quality of the lit order books **(Q27)**

Finance Denmark is of the opinion that steps should be taken to incentivize lit trading as there is a common interest in supporting trading venues' ability to sup-

⁶ <https://www.esma.europa.eu/press-news/consultations/consultation-mifid-ii-mifir-review-report-transparency-regime-equity-and>



port the order flow and to offer execution also for larger orders with minimal market impact. However, the trading venues' ability to facilitate this is reduced and the development is self-perpetuating: As the market players algorithms increasingly deselect venues with low execution quality, the ability for these venues to support good execution quality decreases even further.

Finance Denmark believes that the quality of the trading venues' order books has decreased considerably since the application of MiFID I in 2007. This is e.g. due to the fragmentation and the trading venues' unhealthy approaches to attract liquidity from each other. For example, the usage of maker-taker fee attracts only shortsighted liquidity which disappears in times of distress (RTS 10), the lack of requirements of limiting the order/trade ratio in RTS 9 makes it inexpensive to flood the orderbook with non-genuine orders and the "one-size-fits-all" tick size table in MiFIDII/MiFIR (RTS 11) has resulted in too low tick sizes in some markets and too high tick sizes in other markets.

For RTS 9 it should be considered to limit order/trade ratios centrally, for RTS 10 it should be considered to revisit which type of fee structures that supports healthy orderbooks. For RTS 11, Finance Denmark proposes to revise this, so that shares in the EU face tick sizes which support liquidity and volume for large orders on all EU trading venues and increase the execution quality to the benefit of investors. The following changes should be reflected:

- Turnover velocity (turnover/free float market capitalisation) is a better proxy for liquidity than an average number of trades.
- Behavioral consequences/dynamics should be taken more frequently into account, i.e. by updating the appropriate tick size quarterly, instead of yearly.
- Each venue (most liquid market/the incumbent exchange) should be able to determine the relevant tick size based on a tick size table with i.e. 3 options. The tick size must be respected by all (in particular relevant if the proposed new tick size table is two dimensional like the FESE tables or if creating options for the most liquid market is not doable).

Tick sizes are defined as the lowest price increment in securities and an obvious conclusion is that lower tick sizes imply lower costs. This is, from an isolated perspective, true.

However, when tick sizes are reduced below a certain level, the incentive for traders to quote is also reduced causing decreasing depth in the order book. While the change in tick size might improve the liquidity for small size orders, institutional traders are worse off. They must bear an increase in trading costs following the decline in depth throughout the entire order book (direct market impact). Another market impact is the so-called adverse selection which measure the probability and the level of a price move after a trade. To our knowledge, this cost is rarely, if ever, taken into consideration even though the likelihood of adverse selection has increased considerably for shares which have faced lower tick sizes.

To compensate, larger orders will increasingly be executed outside the lit order books in case tick sizes are too low or too high. Additionally, larger orders may also be sliced into smaller orders, which increases the overall execution costs.



This development is exactly what has been observed with the increasing usage of dark trading, SI trading and execution in the (closing) auctions.

Finance Denmark's members assess that challenges with market impact are becoming significant for orders exceeding EUR 100.000. For orders in small cap and even mid cap – the size is smaller.

Academic research supports to a large extent these considerations. Please see e.g. Kou, Huang & Chen (2010), Bourghelle & Declerck (2002), Yet, Goldstein & Kavajecz (2000), Lau & McInish (1995), Harris (1994), Darlay, Outkin, Palte og Gao (2001).

During MiFID1 – we faced an actual "tick size war" between trading platforms which reduced tick sizes to attract (low quality) liquidity from each other. This led to an industry-led creation of the so-called FESE tick size tables to harmonise the tick size regime across Europe. One of the good things about these tables was that these took various degrees of liquidity in each share into account in a much better way than the present "one-size-fits-all" regime in RTS 11.

Actually, the AMF study based on Euronext⁷ data apparently supports this approach. Looking at page 4 and 5 in the study, it illustrates a significant change – and mostly an increase - in tick sizes on Euronext compared to the previous FESE tables. With this in mind, the changed RTS 1 which introduced tick size validation of SI quotes up to Standard Market Size, was as far as we know mainly based on a study on Euronext data. Apparently, this study revealed a significant increase in SI trading at sub-tick below SMS as clients requested price improvement.

With this new information in mind, Finance Denmark believes that the reason for the increase in SI trading at sub-tick could be due to the tick size increase at Euronext compared to the FESE tables. Finance Denmark recommends that this study from Euronext should be replicated for other exchanges as well, since we believe the conclusions will substantiate our claim. We suggest not only an analysis of direct market impact when executing larger orders (for instance from EUR 100.000 and up), but also to include the effects of the adverse selection as this part is has apparently not been taken into account in any of the recent studies of the changed tick size tables.

⁷ http://www.amf-france.org/en_US/Publications/Lettres-et-cahiers/Risques-et-tendances/Archives?docId=workspace%3A%2F%2FspacesStore%2F4ee6cbf6-c425-4537-ab74-ef249b9d316d

