

Reply form: MiFIR Review

Technical Standards related to Consolidated Tape Providers and DRSPs, and assessment criteria for the CTP selection procedure

Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **28 August 2024**.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA_QUESTION_CP2_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP2_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP2_ABCD.

- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and heading '[Data protection](#)'.

1. General information about respondent

Name of the company / organisation	Deutsche Boerse Group (DBG)
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

2. Questions

Section 3 – RTS on input and output data of CTPs:

Q1: Do you agree with grounding the assessment framework of the quality of transmission protocols on the identified categories of technical criteria?

<ESMA_QUESTION_CP2_1>

DBG agrees with the assessment framework in general. Performance, reliability and security are indispensable for the provision of a Consolidated Tape if it shall serve market data users well. However, these criteria may compete with each other, and may even contradict each other, hence focus is necessary.

DBG does not fully agree with certain details in Annex I, Table 1-4 of the draft RTS on input and output data for the CTPs. As regards the minimum requirements, the legal text remains unclear in the context of the concrete application of the requirements and would benefit from clarification.

Firstly, it is unclear if the requirements affect a new **common protocol (compatibility)** only, or as well existing ones (see Article 22a(5) MiFIR). Any requirements addressed to mandatory data providers applying a new protocol and/or format might be a challenge taking into account the time frame given by regulators being rather short. Design, implementation and testing a new data feed as well with the CTP – or even multiple CTP's - needs time while state-of-the-art commercial data feeds are available.

According to Article 22a(5) MiFIR, the CTP may choose from existing transmission protocols provided to users. However, existing transmission protocols are rarely based on open protocols. While an open protocol may be sensible in respect for the CTP outbound data contribution to data users, we do not consider it important for data contribution to the CTP, though. ESMA's requirements should hence be aligned accordingly, i.e., as regards Annex I, Table 4, deleting the open solution for existing data feeds under Article 22a(5) MiFIR. Please see as well our comments to Q7.

In order to set thresholds for **performance features** such as latency and connection setup time, both ends of the line used for transmission (i.e. start and end points) must be defined more precisely than in the current proposal.

In addition, the proposal by ESMA as regards the **static time requirements** is much stricter than the “guarantees” trading venues are providing in their SLAs on their proprietary real-time feeds, we consider this to be challenging at least, and of course in the context of potential penalties resulting from “late deliveries” to the CTP. Hence, the KPIs (key performance indicators) defined in such SLA’s, already available by trading venues today, could be used for the CTP alternatively. On a more general note in this context, rather than defining static time requirements, such as 100ms for latency, DBG strongly proposes to introduce time requirements within confidence intervals (such as 95% or 98%), as confidence intervals represent an industry standard and are applied as well in Service Level Agreements. This takes note to the fact that data transmission is a complex set-up with potential network or other issues to be expected during data transmission. Alternatively, and possibly the best option in this particular case, such latency thresholds confidence intervals could be derived from the empirical distribution based on the data from the test runs with the CTP, instead of defining a static number today.

Error detection for input data at the CTP should be done where necessary, i.e. checks of format, fields, completeness, timeliness, as the input data is verified already by data providers, i.e. APAs and trading venues. Technical checks should be implemented in the transport layer, where possible. No additional verification as regards the data content itself should be necessary anymore. Hence, Article 10 (5)(a) and (b) of the draft RTS on input and output data of CTPs seems to mirror the requirements addressed to the APAs. However, these checks must be done by the APAs, as trading venues will have to take care of their data quality as well. An additional layer at CTP level for sector, segment and liquidity checks will not only be unnecessary but add additional complexity to error correction processes, which will have to take place at the data distributors themselves. Instead, we recommend that the alert messages which are being send by APAs predominantly in case of potentially erroneous information are being passed on by the CTP to data users as well. Hence, as regards Article 10 (5) (a) and (b) of the draft RTS should be deleted. On a similar note, we would not consider Article 10 (9) of the draft RTS to be relevant for the CTP.

Given the non-confidential nature of market data, DBG deems **encryption not as being necessary**. Besides being unnecessary, encryption would have an adverse impact on other criteria such as latency. Dedicated leased lines can ensure authenticity and integrity of the data without such trade-offs and thus provide physical security. **Non-repudiation is not required** as a separate criterion either, as it is merely another aspect of authenticity, and thus is also ensured on a leased line.

Finally, regarding the **compatibility features**, we do not consider an open solution necessary for the data contribution to the CTP, given the limited number of interfaces between the CTP and the data contributors, compared to the output side of the CTP.

More generally, **it should be clarified if the minimum requirements proposed by ESMA are targeted at a new common protocol**, or as well at existing ones by data providers (see Article 22a(5) MiFIR). Article 22a(5) MiFIR also states that the CTP may choose from existing feeds available in the market. It should be considered that most of the existing feeds used in the industry are not based on open standard protocols. Introducing new data feeds would take time, especially, in case data providers would have to deliver data to multiple CTPs for the different asset classes, such as the Bond CTP and the Equity CTP. In the interest of operational stability, the introduction of new technologies must not be rushed.

Finally, once the CTP has connected to (existing) protocols and formats, we strongly suggest that the CTP does not change the set-up / protocol during the complete tender phase. This could be disruptive, while it would be costly for all, including the CTP to adapt shortly after implementation.<ESMA_QUESTION_CP2_1>

Q2: Do you believe that additional categories of technical criteria should be considered for the definition of minimum requirements of the quality of transmission protocols?

<ESMA_QUESTION_CP2_2>

No, DBG considers that all relevant categories have been covered by ESMA.<ESMA_QUESTION_CP2_2>

Q3: Do you agree with the proposal of introducing a single set of requirements across the three asset classes (equity, bonds, derivatives), or do you believe that different requirements should be tailored for each asset class?

<ESMA_QUESTION_CP2_3>

To reduce the implementation effort for all data providers involved and increase the reliability of the technical solution, DBG welcomes the proposal to introduce a single set of requirements for several asset classes and to use the same data formats and transmission protocols for all asset classes alike, which is common practice by trading venues already today. While this would be appreciated by trading venues being active in shares, ETFs and bonds alike, it may well be that there may be different requirements in the context of OTC derivatives. Hence, our strong proposal for a single set of requirements would only refer to shares, ETFs and bonds.<ESMA_QUESTION_CP2_3>

Q4: Do you consider that the proposed minimum requirements for the technical criteria related to performance are technically feasible, coherent with the objective of high-quality data transmission to the CTP and in line with international standards? Please elaborate your response.

<ESMA_QUESTION_CP2_4>

DBG sees the need for adaptations of ESMA's proposal. Performance requirements depend very much on a more concrete definition of requirements, e.g., amount of data to be delivered, the way latency is measured between clearly defined distances, as well as quality of connection and distance between data centres. Performance requirements are not feasible either for each single message. There may be operating situations where impacts may occur (e.g., failing processes along the distribution chain, issues anywhere in the network, issues at the CTP even). In this context it is important to note, that a guarantee to send all messages within a strict 100ms will not work. However, for a large number of messages a sensible time request will work. In a nutshell: the proposed requirements by ESMA in their current form are not suitable.

ESMA's proposal requests an absolute adherence to strict latency requirements of 50ms and 100ms, while remaining unclear at best as regards between which components, or entities, of the data transmission these requirements will have to be fulfilled. It is important to take note that there are exogenous factors to a delay which cannot be attributed to the data sources, such as network issues, or unavailability of the receiving party (CT). It may as well be the case that there are short-term technical issues at the data provider. Hence, for a realistic outcome it is important to work with confidence intervals. DBG regards a latency of <100ms or even <50ms as not feasible on a 100% confidence level while generally it may be reasonable.

To our knowledge, established proprietary feeds in the industry typically provide for a longer time period for latency and Service Levels usually are accompanied by a confidence level below 100%.

Hence, we propose to either set the confidence level at 95% at maximum or increase the threshold for the latency. Managing the numerous cases of non-fulfilment of unrealistically low thresholds would place a burden on the CTP as well.

As indicated above, ESMA's proposal remains unclear on other latency related topics, too. It would be sensible, in our view, to define in more detail the way latency is being measured, i.e., which are the start and end points of the measurement as suggested by ESMA. In Annex I, Table 1 of the draft RTS on input and output data of the CTPs ESMA requires that the latency should remain below 100ms, while start and end points are not explained further and hence requirements remain blurred.

When adapting start and end point accordingly, we again strongly recommend to introduce confidence levels as well, while aligning the latency requirements to the upper limits of the state-of-the-art commercial data feeds (i.e., align them) of the data providers and not below, which indeed would be unrealistic. In context with the revenue sharing mechanism (once three messages are incorrect or delayed any revenue share is being stopped) this requirement would be even highly unproportionate while not being effective either.

Furthermore, we strongly recommend determining the thresholds for performance (specifically for the criteria of latency, throughput, connection setup time) based on empirical values, e.g. by determination through test runs. In addition, we propose to measure latency from data contributor

outbound (after conversion of fields to the appropriate format) to CTP inbound, in order to obtain a common understanding of latency.

Finally, as raised above, we recommend using confidence intervals (such as 95% or 98%) when defining thresholds, as this is standard practice in the industry. The confidence intervals could be determined from the empirical distributions obtained in the test runs and should allow for a buffer for exceptional cases such as network issues.

On another note, we strongly recommend to not differentiate between pre- and post-trade data. Both, pre- and post-trade data are being send via the same data feed, delivering at same speed. Hence, we strongly recommend to adapt the requirements accordingly, while not going beyond 100ms in any case.<ESMA_QUESTION_CP2_4>

Q5: Do you consider that the proposed minimum requirements for the technical criteria related to reliability are technically feasible, coherent with the objective of high-quality data transmission to the CTP and in line with international standards? Please elaborate your response.

<ESMA_QUESTION_CP2_5>

DBG considers the intended error-detection and error-correction to be extremely challenging in a real-time environment and it may not even be feasible taking note of the vast amount of data to be expected at the CTP. Depending on the location where the error occurs, it can often not be detected and localised immediately, thus impeding the impact analysis and the correction of the error. Consolidating the whole EU market across a double or even triple digit number of data sources, will make it next to impossible to continue receiving, storing, and processing thousands of messages per second while trying to detect and correct an error. Instead, it may be more sensible to transmit data redundantly to the CTP which may have to compare data in a best-of-2 or best-of-4 way (2 processes via 2 dedicated networks) and reconnect and recover data if differences are detected. In essence the CTP will have to operate the same way as a market data vendor today.

Detection and correction mechanisms should be integrated as much as possible in the transport layer, using standard mechanisms of the protocols, such as TCP. TCP ensures that no data packages get lost during transmission undetected.

Moreover, quality assurance should be limited to a necessary minimum, as the data provided by trading venues is already checked and represents a high-quality level.

DBG also regards it sensible to alert market data users about unclear data quality using flags.

Finally, ESMA should as well consider potential error situations at the data sources. This will obviously also impact latency values because there are classes of errors which cannot be detected immediately. Think of questions like: "is the remote process not responding, because it is dead or because the processor, RAM, or network are saturated?" or: "Is this a short-term effect or does

the situation persist?" These are extremely difficult questions to answer locally in a distributed system.<ESMA_QUESTION_CP2_5>

Q6: Do you consider that the proposed minimum requirements for the technical criteria related to security are technically feasible, coherent with the objective of high-quality data transmission to the CTP, and in line with international standards and other EU regulatory frameworks on information security (e.g. DORA)? Please elaborate your response.

<ESMA_QUESTION_CP2_6>

DBG considers the minimum requirements for the technical criteria related to security as technically feasible in general. However, we regard market data as generally non-confidential data, which does not require encryption.

This is supported by the fact that market data has to be made available to be public under the MiFID II/MiFIR transparency requirements.

Encryption would significantly slow down the input data for the CT without the advantages to justify such a measure. It would also make it more difficult to comply with other criteria such as performance.

Alternatively, the use of dedicated leased lines as a means of physical security for the transmission of market data, which are generally not accessible by unauthorised persons, can provide a high level of protection with regard to the integrity and authenticity of market data without the trade-off against other criteria. This also constitutes an established standard in the market data industry.

Finally, we are convinced that non-repudiation is not required as a security criterion, as it is merely another aspect of authenticity, thus it is also ensured on a leased line.<ESMA_QUESTION_CP2_6>

Q7: Do you consider that the proposed minimum requirements for the technical criteria related to compatibility are technically feasible, coherent with the objective of high-quality data transmission to the CTP and in line with international standards? Please elaborate your response.

<ESMA_QUESTION_CP2_7>

DBG generally agrees with the ESMA proposal as regards compatibility, with two exemptions.

First, given the involved high data volume, we recommend using a binary data format instead of a text-based one. Human readability is not at all necessary for the CT input, but rather for certain CT data users. In binary messages, information for fixed size data fields can be encoded implicitly by the id. This allows processing the message in blocks and hence would accelerate data transfer. Text-based protocols have to be interpreted at character level, i.e., "letter by letter" and will hence

be slower. On top the data volume to be transmitted will be higher in case of a text-based format and increase the processing time as well at the CTP.

Second, in case the CTP may choose amongst the types of transmission protocols which the data contributors offer to other users (Article 22a(5) MiFIR) the request for an open protocol will not be suitable taking into account that the majority of data providers uses neither of the proposed protocols, nor an open protocol. The data feeds as operated by exchanges such as Deutsche Börse, are developed as-state-of-the art, and often in a proprietary format. Feed handlers for these feeds have already been developed and could be adjusted for the CTP. There are hence, two possibilities: 1. ESMA's minimum requirements overall only apply to the CTP outbound data distribution, or 2. The minimum requirements are adapted to facilitate the usage of existing data protocols and formats (and as used by market data vendors), which could result in two different minimum requirements.

DBG recommends adapting the minimum requirements for data providers in a way enabling the usage of existing state-of-the-art data feeds applied by data providers as of today and as a precondition in order to enable Article 22a(5) MiFIR.<ESMA_QUESTION_CP2_7>

Q8: Do you agree with the proposed definition of “transmission of data as close to real time as technically possible”? If not, please explain.

<ESMA_QUESTION_CP2_8>

DBG considers ESMA's proposals to be generally feasible.

However, we caution against the strictness of above definition, as set out below. Given the complexity of applied technology used for the distribution of data and the risk of unexpected incidents such as network issues, it is not possible for data providers to guarantee that 100% of the data is delivered in time.

DBG considers the proposed definitions for pre- and post-trade data to be very ambitious. Since pre-trade data represents the largest proportion of the data feeds (often 95% pre-trade to 5% post-trade data) and therefore usually presents greater challenges in terms of latency for transmission we find it questionable how trading venues should be able to send those data more swiftly than post-trade data. Usually, both set of data are send via the same feed and line and in the same latency.

As ESMA acknowledged, latency may depend at least partly on different factors like the contributor's processing at the data source (e.g., OTC data reported via an APA) plus its geographical distance from the CTP data centre. In this regard, the varying technical capabilities of potential data contributors are an important factor to be considered. Ambitious minimum transmission requirements may deter smaller market operators from participating in the mechanism if enormous investments in IT infrastructure would be required to meet the respective 50ms and 100ms fix thresholds proposed by ESMA, particularly for smaller exchanges. Overall, an incomplete set of data providers would reduce the value to CTP intends to provide to data users.

If the definition of “transmission of data as close to real time as technically possible” is adapted in order to meet the above challenges, which would be preferred by DBG, time limits for both pre-trade and post-trade data alike could be set at a similar level as the KPI for feeds currently in use in the industry. This information could be obtained from Service Levels specified for commercial services of trading venues and APAs. However, this is subject to the condition that the start and end points for measuring latency are clarified and comparable. Alternatively, it could be sensible to determine the thresholds empirically before the start of the CTP during a test phase. A confidence level based on the empirical distribution could be added to the threshold.

While we acknowledge that ESMA’s mandate covers only the “real-time” transmission of data-by-data providers and not its dissemination by the CTP, we would like to stress the importance of allowing sufficient time for the CTP to properly sequence incoming best bids and ask prices. The CTP should wait for the slowest contributor before sequencing the data and deriving the EBBO. This would help avoid introducing systemic errors when aggregating caused by geographically induced latency lags and finally improve the overall data quality of the CTP. Not requiring the sequencing/sorting of messages according to the timestamp would convey a fallacious representation of the BBO reality across European markets since: (i) the quality of the data will be highly dependent on the latency variability introduced by the network and geographical distances; (ii) it will provide a view of the EBBO as perceived from the location of the CTP data centres; and (iii) it will create an unfair competitive advantage for data contributors located closer to the CTP data centres, as their BBO will reach the CTP first, with a greater chance of setting the EBBO.

Furthermore, we fully concur with ESMA that the publication delay of the EBBO makes the CTP unsuitable for trading (point 44). We would appreciate it if this could be explicitly stated in the RTS and measures were set to ensure that the prohibition on using the EBBO.<ESMA_QUESTION_CP2_8>

Q9: Should ESMA consider specific rules for real-time transmission of transactions subject to deferred publication?

<ESMA_QUESTION_CP2_9>

DBG wants to point out that Data sources are responsible for the delay of market data in line with regulation and when the deferral option is being chosen over real-time publication. Any data finally released / published by the legal entity in question should finally be send in real-time like any other core and regulatory market data as well.<ESMA_QUESTION_CP2_9>

Q10: Do you agree with the baseline proposal of adopting JSON as standards and format of data to be transmitted to the CTPs, or do you prefer alternative proposals? Please justify your answer and, if needed, provide additional advantages and disadvantages related to each proposal.

<ESMA_QUESTION_CP2_10>

JSON is not considered by DBG as a suitable data format for the provision of real-time data, as it contains too much overhead, and being a non-binary format. Binary formats are indeed recommended for the transfer of real-time market data as well given the bandwidth and latency issues with non-binary formats. Indeed, the two main advantages of JSON, human-readability and ISO 20022 compliance are not essential for the submission to the CTP as the CTP may easily transfer the binary format into other formats, if and when needed. Instead, for low latency data transmission, the focus should be on the performance criteria. Finally, JSON is not widely used for real-time market data dissemination in the industry, mainly due to the above issues.

DBG, however, recommends to make use of data formats and protocols established in the market data industry for many years, especially during the first tender phase, in order to enable a timely implementation. In contrast, the development of a specific data format for data contribution would require an implementation time of 12-18 months according to a rough estimate. However, this depends on the complexity of the specification.<ESMA_QUESTION_CP2_10>

Q11: Do you believe that the proposed standards and formats (baseline and any alternatives) are coherent with other CTP requirements (transmission protocols, real-time transmission and presentation of output data)? Please justify your answer.

<ESMA_QUESTION_CP2_11>

Please see DBG's response to question Q10.<ESMA_QUESTION_CP2_11>

Q12: Do you find more suitable to prescribe one single format across the 3 CTPs (equity, derivatives, bonds) or to prescribe distinct formats according for different asset classes?

<ESMA_QUESTION_CP2_12>

For similar reasons as stated in our answer to Q3, namely to reduce the implementation and operational effort for all data providers involved and at the same time increase the reliability of the technical solution, we support using one single data format across the 3 CTPs.

Given the tight schedule for implementation, DBG would welcome it if existing formats and protocols and data formats could be leveraged for the submission of market data to the CTP for the duration of the first tender phase. Besides reducing the cost and effort for implementation, this would also possibly allow to get the CT up and running earlier and shorten the time period until data can be distributed to the customers.<ESMA_QUESTION_CP2_12>

Q13: Do you support the proposals on core and regulatory data? In particular, are there other relevant fields to be added to the regulatory data? Furthermore, would you propose

the inclusion of supplementary fields for input core market data beyond those intended for dissemination by the CTP?

<ESMA_QUESTION_CP2_13>

DBG supports the proposals on core and regulatory data in the current scope, which we regard generally as comprehensive and sufficient.

However, DBG sees merit in adding selected further data fields for APA data to the input data: alert flags, in case of unclear data quality of a transaction, cancel, amend, on a similar note. As regards CTP output data, we consider the additional input data by APAs to be relevant, as well as the timestamps for data reception and data dissemination by the CTP should be added compared to what has been defined on L1. This is important to inform the market about unclear data quality of OTC data while not holding back any information. As trading venues apply market surveillance and provide market data based on hard-coded systems and strict rules, there are no similar data fields in the case of exchange data to be expected.

In the context of regulatory data we would like to add the following comments:

- DBG does not consider that regulatory data should be specified within RTS 1 or RTS 2, and that these RTS should remain distinct from the RTS defining CTP input and output data – this will support clearer and more easy to implement regulation with less cross-referencing for implementing parties.

While we agree with ESMA that regulatory data should be distributed according to market and ISIN, we do not agree, however, with the inclusion of the data fields (in the context of time) as defined under #1 and #2 of Table 1 of the consultation paper. All status messages are being disseminated once they occur.

<ESMA_QUESTION_CP2_13>

Q14: Do you support the proposal of machine-readable and human-readable formats outlined in this section?

<ESMA_QUESTION_CP2_14>

DBG considers such vast requirements of multiple formats towards the CTP may initially be unnecessary taking into account the rather very short time span between now and when the first CTP should start operations, both as regards fixed income as well equities. As long as the CTP provides data in a binary format as well as in a GUI for retail use predominantly, we are convinced that this would already enable most data users to use the data provided by the CTP as needed.<ESMA_QUESTION_CP2_14>

Q15: Do you agree with the proposal of data quality measures and enforcement standards for input data?

<ESMA_QUESTION_CP2_15>

Data provided by Regulated Markets such as DBG RMs is reliable and trustworthy, due to several reasons: highly standardised state-of-the art implementation of technical validation, clearly coded trading rules and standardised market models, resulting in standardised data sets. Any data submitted to data users is already highly standardised and reliable.

In case of OTC data, the APA aims to ensure data quality before sending it to data users, respectively the CTP. Neither the APA nor the CTP are in the position, finally, to validate the correctness of the data content submitted by IFs to the APA.

Therefore, DBG proposes to limit the checks for data contributions to the CTP to the checks on technical level especially, such as completeness, structure and format, and finally timeliness of the data submission. If possible, checks should be performed on the transport layer of the protocol. This would, for example in case of the TCP protocol, ensure that no network packages are being lost during the transmission of data to the CTP. Other checks, such as those for timeliness and data format adherence, cannot be performed within the transport layer and must be ensured in a higher protocol layer.

Furthermore, when considering the very high data volume involved in the transmission of market data, a correction mechanism, which would require an additional line capable to transmit information on errors, would be disproportionate. It would place a significant and unproportionate burden both on the CTP and data contributors, as very substantial resources would have to be provided to manage the potential error correction, whereas the effect of these efforts would most likely be minimal.

Regarding the timeliness criteria, we encourage ESMA to not apply a too strict requirement, as there is a risk of too many false positives, i.e. cases of non-compliance, which cannot be attributed to the data contributors' fault but may be caused by exogenous factors such as network issues. These false positives would be a burden for the CTP as regards processing capacity, as they have to be dealt with by the CTP. We kindly ask ESMA to also refer to DBG's response to Q8, concerning the definition of "transmission of data as close to real time as technically possible".<ESMA_QUESTION_CP2_15>

Q16: Do you agree with the proposal of data quality measures for output data?

<ESMA_QUESTION_CP2_16>

Generally, DBG supports the proposal outlined in Article 10 (1), (2), (3), (7) and (10) of the draft RTS on input and output data of CTPs.

Regarding Article 10 (5) of the draft RTS, as stated before, DBG is convinced that the CT is not in the position to determine which data is erroneous, and besides that it is also not necessary to do so, given the quality measures already in place at trading venues and APAs.

Therefore, the CT should also generally not change the data received from the data contributors.

Regarding Article 10 (6) of the draft RTS, DBG would recommend in variation from the proposal by ESMA, that the CTP publishes the data which is perceived as erroneous, but marked using an alert flag.

In line with our response to Q32, the timeliness criteria check according to Article 10(8) of the draft RTS on input and output data of CTPs should not be applied in a strict manner which would strain the CTP.<ESMA_QUESTION_CP2_16>

Section 4 – RTS on the revenue distribution scheme of CTPs:

Q17: On the basis of the issue presented in the above paragraph, what do you think is the right approach to identify a trading venue and group? How could a trading venue and a group be identified? How should the links with investment firms be determined?

<ESMA_QUESTION_CP2_17>

DBG recommends to generally identify a trading venue using its operating MIC, and where applicable the segment MIC. Growth markets, i.e. may only be identified by a segment MIC, which would be relevant to know for the revenue redistribution.<ESMA_QUESTION_CP2_17>

Q18: Do you agree with the above assessment? If not, please explain.

<ESMA_QUESTION_CP2_18>

DBG refers to the Federation of European Securities Exchanges (FESE) position, which we share as lined out below.

It is crucial to clearly define what operations are eligible under the concept of ‘initial admission to trading’ to duly recognise the operations that primary markets undertake to finance the EU economy, aligning with the objectives of the MiFIR Level 1 text. We hence suggest that ESMA includes a new Article under the RTS on the revenue distribution scheme specifying the elements described below.

FESE strongly recommends that the following operations be considered as eligible:

- IPOs, private placements and direct listings: These should all be initiated by an issuer request and have a new ISIN available as criteria.

- M&A (including mergers, reverse mergers), spin-offs, and business combinations (de-spacing): These should have a new ISIN available, as no issuer request is available for such corporate actions in RTS 23.
- Cross-listings and dual listings: These should all be initiated by an issuer request and have a new ISIN available. We wish to note that the new 'venue of first admission to trading' field in RTS 23 should not exclude these operations. Cross-listings and dual-listings constitute valuable operations of primary markets for capital-raising and increased liquidity and transparency in EU markets.
- Capital increases: An issuer's request would be necessary as a criterion, which would require an additional field in ESMA RTS 23 for identification; there is no new ISIN. The subsequent capital increases following the listing play a central role in financing the real economy, with raised capital volumes often surpassing those from the initial listing, these operations are therefore fully aligned with the objectives of the Level 1 text.

Two additional overarching conditions shall also apply to all of the above:

- The sole 'admission to trading' operations undertaken by secondary trading venues should be excluded. These operations solely entail importing companies previously admitted to other markets onto their trading systems. Consequently, these operations are purely technical and do not contribute to the financing of these corporations.
- Only volumes traded/reported in the EU should qualify for revenue share (i.e. no UK/US trading to be included).

It is DBGs understanding that ESMA would use the proposed field "Venue of admission" in RTS 23 to count all initial admissions to trading. It is of course essential that this information is provided to the CTP but also that the field is defined adequately and consistently with the requirement specific to RTS 1 on the identification of the most relevant market in terms of liquidity for new listings. Please refer to our response to Q66 on amendments to RTS 23 on this topic.<ESMA_QUESTION_CP2_18>

Q19: For the identification of the venue of first admission to trading, do you prefer option (A) use of FIRDS, option (B) the CTP collects the relevant information itself? Please explain and provide any alternative option you consider more appropriate.

<ESMA_QUESTION_CP2_19>

DBG supports option (A) use of FIRDS for the identification of the venue of first admission to trading.

We recommend that the relevant fields to identify the venue of first admission to trading and the eligible operations are included in the data referential reports made to ESMA under RTS 23, where not yet available. Subsequently, these flags should be incorporated into the FIRDS for the CTP to

effectively identify them. This would streamline the process, leveraging an existing procedure like the FIRDS rather than implementing a new one from scratch.

Please read our response to Q18 above, as well as to Q66 and Q68 of the parallel ESMA consultation paper on the amendments to RTS 23, for further details.

Regarding the identification of the venue of first admission to trading, we wish to reiterate the importance of clarifying in the RTS that the new field proposed in RTS 23 does not exclude cross-listings and dual-listings from qualifying for this criterion, as long as they are requested by the issuer and have a new ISIN. Cross-listings and dual-listings constitute valuable operations of primary markets for capital-raising and increased liquidity and transparency in EU markets, aligning with Level 1 objectives.

<ESMA_QUESTION_CP2_19>

Q20: Do you agree that a flag indicating that the transaction was subject to an LIS waiver should be information to be sent to (but not published by) the CTP? If not, please explain.

<ESMA_QUESTION_CP2_20>

Yes, DBG agrees with ESMA the information should be transmitted or retrieved by the CTP via adequate flagging in post-trade transaction reports. However, in contrast to ESMA's view we see merit in distributing this flag as well via the CTP and for enhanced transparency for data users and in order to provide sufficient granularity on liquidity across European markets.<ESMA_QUESTION_CP2_20>

Q21: Could the determination of the pre-trade volume be done differently by the CTP (e.g. proxy this volume with the pre-trade data received) but at the same time sufficiently accurately? If yes, please explain.

<ESMA_QUESTION_CP2_21>

Yes, we propose that the flag under RTS 1 should be further detailed and include a dedicated flag for transactions that have been subject to the LIS waiver. There is no reason to not publish this flag: the existence of the exemption from pre-trade transparency requirements under the LIS waiver already protects the corresponding orders from having a market impact, and transactions executed under this waiver can also benefit from deferred publication. In parallel, market participants should have the means to monitor the type of trading activity occurring on EU markets, including via the accurate identification of pre-trade transparency waivers used.<ESMA_QUESTION_CP2_21>

Q22: Do you agree that the methodology to distribute the revenues should require the conversion of the values into percentages? If not, please explain.

<ESMA_QUESTION_CP2_22>

Yes, DBG agrees with ESMA's proposal.<ESMA_QUESTION_CP2_22>

Q23: Do you agree with the transactions to include and exclude for the determination of the volume for criteria #1 and #2? If not, please explain.

<ESMA_QUESTION_CP2_23>

DBG does not fully agree with the transactions to include and exclude for the determination the volume for criteria #1 and #2 and as lined out further below.

We agree with Article 4(b) of the RTS regarding the criteria to exclude from the pre-trade transparent trading volume, i.e. transactions flagged as PRIC, RFPT, NLIQ, OILQ and NTLIS (in addition to NPFT and CONT). Only transactions that "have been included on a trading system that provides pre-trade transparency" should be counted, with exclusions also covering all transactions executed under RP, NT, and LIS waivers. This distinction is essential to appropriately recognise and reward those venues that contribute to price formation through pre-trade transparency.

In addition, we consider that the below should also be excluded from criterion 3 computation, in contrast to ESMA's proposal:

- BENC and PORT transactions, as these are not pre-trade transparent.
- SIZE and ILQD transactions, as these are not executed on a trading venue.
- TNCP and RPRI transactions (not mentioned in the CP but for the avoidance of doubt), as these are not executed on a venue.

<ESMA_QUESTION_CP2_23>

Q24: What would be your view on the frequency of redistribution? Which issues do you foresee in the redistribution process? How could those issues be solved? Please explain.

<ESMA_QUESTION_CP2_24>

DBG would like to promote a balanced approach. While we understand that an annual redistribution would benefit the CTP as regards reduced accounting efforts, some data providers are dependant as well on data revenues for funding their business, with is especially the case as regards smaller venues. In this light and even below industry standards, which are working with monthly payments and an annual final closing, we would like to promote a quarterly redistribution instead plus an annual final closing of the account per data distributor. In case on an open suspension, the CTP should set up a provision with the amount affected by the suspension and potential inter-

est rates. If the suspension is being resolved the amount may be shared with the initially suspended party. In case the suspension is being confirmed the amount should be added to the revenue share pool for the next year. Overall, the frequency of redistribution should not impact remuneration suspension per se, while we consider, that suspensions should be released immediately once the investigation has been settled.<ESMA_QUESTION_CP2_24>

Q25: Do you agree with the proposed timeline for the update of the list of data contributors and the identified issues? How could the issues be solved? Please explain.

<ESMA_QUESTION_CP2_25>

DBG would prefer an annual update instead of an update every 5 years.<ESMA_QUESTION_CP2_25>

Q26: What would be your view on the issues for the first year of operations of the CTP? How could those issues be solved? Please explain.

<ESMA_QUESTION_CP2_26>

DBG considers the timeline and the missing clarity at this point in time being the biggest challenge, especially for those data providers, which will have to deliver into several CTPs shortly one after the other, likely with new format/protocols, parallel testing across multiple CTPs, and new processes amongst others. In order to ensure an efficient transposition of MiFIR into practice, it is of essence, to have clear and stable requirements as soon as possible, and with a focus on the necessary rather than anything else. Besides the implementation and the testing of the methods foreseen for error corrections will be challenging. Therefore, we would advise allowing sufficient time during the first year to carry out all these technical tasks. This will enable both the industry and the CTP to ensure connectivity and data testing with the numerous data contributors work smoothly and effectively, in order to avoid connectivity problems, errors and bad data that could ultimately undermine the CT's reputation in this first year of operation. We would be very surprised to see any large market data vendor trying to connect to so many data sources all at once within such a tight timeline.<ESMA_QUESTION_CP2_26>

Q27: Do you agree with ESMA preferred proposal to set the weights of the revenue redistribution scheme to 4.5, 4.0 and 1.5 for the small trading venue criterion, the young instruments criterion and the transparent instruments criterion, respectively? If not, please explain.

<ESMA_QUESTION_CP2_27>

DBG agrees with ESMA's preferred proposal E, setting the weights of the revenue redistribution scheme to 4.5, 4.0 and 1.5 for the small trading venue criterion, the young instruments criterion

and the transparent instruments criterion. This should encourage small trading venues to opt-in on beneficial terms, while rewarding all listing venues for their initial admissions to trading on their primary markets, and for their price formation process.

It seems important that in case additional trading venues would opt-in over time, that there should be the possibility for the CTP to adapt its pricing accordingly and in order to account for the additional data content enhancing the value of the CT, while allowing for a fair increase of the shared revenue pool. In this context we would like to point out that for the whole economic model to function effectively, a dedicated RCB framework for the CT should be further defined.

DBG further, would like to propose a review of the weights after an initial period of 12 or 18 months after the start of the Consolidated Tape. In order to avoid a disruption regarding the share (percentage) of revenues of the data contributors, the weights should be calibrated, the impact of the weights assessed, and the resulting revenue distribution be compared to the revenue distribution for market data before the introduction of the CTP. This calibration can be achieved using a model which considers the sensitivities of the revenues for the different data contributors to changes of the weights. After the initial period of 12 or 18 months, there should be enough data to build such a model.<ESMA_QUESTION_CP2_27>

Q28: Would you consider appropriate that the weight (percentages) sum to 10 (100%)? If not, please explain and provide your alternative proposal for the weights (percentages).

<ESMA_QUESTION_CP2_28>

Yes. However, as stated before, DBG would like to recommend reviewing the weights after an initial period of 12 or 18 months. In order to avoid a disruption regarding the share (percentage) of revenues of the data contributors, the weights should be calibrated, the impact of the weights assessed, and the resulting revenue distribution be compared to the revenue distribution for market data before the introduction of the CTP.<ESMA_QUESTION_CP2_28>

Q29: Do you agree with the proposed (i) frequency of the determination of the weights (ii) timing of determination of the weights (iii) timing of application of the weights? If not, please explain.

<ESMA_QUESTION_CP2_29>

DBG generally agrees with ESMA's consideration, however, we would like to propose a change to a slightly more ambitious model at least from the second year onwards. Especially, smaller venues are depending on regular income from market data and obtaining a revenue share annually only, may make a decision to join the CTP more difficult, with a direct impact on the quality of comprehensiveness. But as well medium and larger data providers do need transparency at least, and hence the provision of quarterly accounting updates would be necessary.<ESMA_QUESTION_CP2_29>

Q30: Do you agree with the proposed text? Have you identified any missing points or issues?

<ESMA_QUESTION_CP2_30>

DBG appreciates ESMA's proposed RTS on the revenue distribution scheme of CTPs, while we would like to inform about some of our concerns and to add a few additional proposals.

DBG misses clarifications in the context of any potential value-add services provided by the CTP. We are missing clarifications, that the CTP must redistribute to data providers a fair share of the revenues generated from licensing data to data vendors and any other data users, including the CTP's own separate legal entity, when using CTP data for offering any other services and including value-added services. Data providers should be eligible for a fair revenue share from the CTP's value-added services. In case the CTP had no separate legal entity using the data received through mandatory contribution, the data providers original fee schedule should apply to any usage of such data by the CTP. If not taken into account, competition issues may evolve. Finally, as L1 does not prohibit such developments, to the disadvantage of the EU markets, we would call on ESMA to implement a thorough assessment of the planned value-add services avoiding any anti-competitive set-up from the beginning. Furthermore, we strongly recommend that the provision of value-added services should not be regarded positively in the ESMA selection process, to the contrary. Indeed, as a minimum requirement, such applicant should provide for the highest standards of a conflict-of-interest compliance possible, including Chinese Walls and the application of arms-length principles. In this context we would like to refer as well to our comments made to Q 47 and Q 49.

DBG promotes that a dedicated RCB framework is being applied for the CTP. The current regulation falls short on defining the revenue pool for data contributors in the first place, starting at the redistribution of the same instead. This way, the regulation falls short of ensuring that the agreed model on L1 will result any meaningful application. In consequence, this may introduce significant risks for regulated markets, especially the smaller ones, who consequently may choose to not join the CTP in fear of risking their necessary funding. Hence, ESMA should consider implementing a safeguard to ensure that L1 will be transposed accordingly. Concretely, one approach could be to clarify that the costs to be taken into consideration by the CTP in the RCB will include a portion of the underlying costs incurred by data providers for the production and transmission of core market data and regulatory data and linked to the revenues generated by the CTP. Allocating a defined proportion of the data contributors' costs annually to that of the CTP, while bearing in mind that the CT is unlikely to capture full user demand from day one and that the shift from feeds to CT usage is likely to be progressive. Thus, it could make sense to define various progressive ratios of data providers' costs starting at a relatively low percentage for year 1, which would be gradually increased in year 2 and again in year 3. This method could provide for a more balanced approach overall that will also enable a successful launch and uptake of the CT. Such

an approach would, in our view, constitute a balanced framework for the time being, and should be reviewed annually for a fair treatment of all entities involved.

As regards the link to the RCB model in the context of costs, we would like to propose that the revenue shared with eligible data providers should be considered (variable) costs for the CTP, finally. Besides costs, as well the margin may be special in the context of CTPs. As they should ideally have no other existing business to benchmark against, we recommend that the CTP may benchmark against the relevant sector they consider themselves in.

We would as well see a value in differentiating the definition of “data providers” and “core data providers” or just “CTPs”, as the current definition does not differentiate sufficiently the very different businesses of such entities.

Finally, we would like to note that unless the set-up of the CTP considers as well a fair treatment of mandatory and transparent data providers, transparency in the long-term may falter in the EU with unintended consequences investors.<ESMA_QUESTION_CP2_30>

Q31: Do you agree with ESMA’s proposal on the criteria for a potential suspension of re-distribution in case of serious and repeated breach by the CTP? If not, which alternative or/and additional criteria would you consider relevant?

<ESMA_QUESTION_CP2_31>

DBG does not agree with ESMA’s proposal in this context, as we deem it to be much too strict.

Article 27h (8)(c) MiFIR requires ESMA to define criteria of serious and repeated breaches of data contribution by the data provider. We believe that especially the strict timeliness criteria defined by ESMA in Article 7 (2)(a) of the draft RTS may be overcritical creating an unnecessary burden on all, the CTP as well as the data providers. Taking note of our comments under Q1 which shows the challenges of data submission in practice, 3 consecutive messages slightly later “than expected” by the CTP could lead to a data revenue sharing suspension without any fault of the data contributor in the first place. As elaborated before, many factors which cannot be influenced by the data contributors can cause delays.

Furthermore, especially, in case ESMA would request additional checks, besides timeliness and technical checks, these will have to be defined and implemented by the CTP. An overly cautious approach may provide for too many false positives, i.e. indicating data quality event, when there is none, but with a significant impact on the data provider finally.

There is an undeniable risk that the CTP would be overstrained by too many “false positive” “serious breach alerts”, in cases which are happening regularly in praxis, and where the data contributor is very often not even the primary cause of a delay. Still, the CTP would have to examine these cases, which would bind many resources in operations.

Taking note of our comments to Q1 which shows the challenges of data submission in practice, three consecutive messages slightly later “than expected” by the CTP could lead to a data revenue

sharing suspension without any fault of the data contributor in the first place. As elaborated before, many factors, which cannot be influenced by the data contributors can cause potential delays.

In our view, the best approach to overcome these challenges would be to adapt the definition of "as close to real time as possible" to empirical values which reflect the different factors resulting in latency. A test run could be performed to determine realistic thresholds. The result of the test run would be an empirical distribution of delays under live conditions. Based on the empirical distribution, statistics such as expected value, variance and confidence intervals for the delay can be estimated. The influence of the location of the data provider on the delay can also be examined. Alternatively, thresholds could be adapted to a level similar to KPIs from established SLAs.

Furthermore, taking note of the above, DBG would propose that ESMA considers the inclusion of a more suitable definition of a serious breach as proposed in Article 7 (2) of the draft RTS:

- A significant breach by the data provider must be:
 - Clearly evidenced by the CTP to the data provider to enable the data provider to conduct a targeted and effective analysis of the potential issue at hand. Efforts need to be taken on both sides.
 - Clearly under the data provider's control and responsibility and not under the control of a third party, such as the network provider or the CTP itself.
- Potential technical outages at the data provider that affect the data provider's proprietary systems and/or data feeds should not be considered as breaches. If data would be available after such a technical outage, that data could be re-delivered to the CTP once the systems are operationally again and in the position to do so.
- A significant breach may occur in case the data delivery by data providers corresponds to:
 - Late data submissions for **more than 6 consecutive working days**;
 - Incomplete data submissions for **more than 6 consecutive working days**; or
 - **Incorrect format of the data submissions compared to the feed specifications** originally agreed upon by the parties.
- The end of the breach should be reassessed on a weekly basis to avoid excessively penalising data contributors for a short-term breach in the requirements.

Furthermore, DBG would appreciate if ESMA could define minimum criteria in the process for suspension, respectively as regards the necessary process beforehand.

The following process should be applied at least before any revenue suspension: application of the definition of serious breaches as proposed above, timely notification of the affected data provider by the CTP including necessary information, followed by communication regarding the elements that need improvement, leading to the implementation of corrections if within a specified timeframe, if necessary.

Especially in the early stages of the CTP's starting and operations, a mutual approach and dialogue will be indispensable in order to adequately account for the initial difficulties and their effective corrections. DBG could see a benefit for a role for ESMA, in case of any disputes amongst the parties once and if needed, which could be included into Article 8 of the draft RTS. We see a benefit to expand this process to any data provider with potentially critical data deliveries, independently from the revenue distribution scheme.<ESMA_QUESTION_CP2_31>

Q32: Do you agree with ESMA's proposal on the procedure for the suspension and the resumption of redistribution? If not, which alternative approach would you consider suitable?

<ESMA_QUESTION_CP2_32>

DBG regards the criteria for a breach as proposed in Article 7 (2) of the draft RTS as overly strict. It would also place a burden on the CTP, as the proposed definition of a breach would lead to a very large number of breaches. Please revert our answer to Q31.<ESMA_QUESTION_CP2_32>

Q33: Do you agree with ESMA's proposal on the timing of the procedure for the suspension and the resumption of redistribution? If not, which alternative approach would you consider suitable?

<ESMA_QUESTION_CP2_33>

Please see DBG's comment under Q 31.<ESMA_QUESTION_CP2_33>

Q34: Do you agree with ESMA's proposal regarding a one-week timeframe for data contributors to furnish evidence of non-breaches? If you disagree, could you suggest an alternative approach that you find appropriate?

<ESMA_QUESTION_CP2_34>

No, DBG does not agree with ESMA's proposal.

Instead of the data provider to provide evidence that no breach happened for the CTP to re-assess its decision both parties should have a dialogue in order to solve the issue at hand effectively and professionally. Instead of a one-week timeframe we would like to suggest a three- week time frame instead. Please, also see the comments in Q31.<ESMA_QUESTION_CP2_34>

Q35: Do you agree with ESMA's expectation on the notification to be made by the CTP to the competent authority of the data contributor once a suspension has been triggered?

<ESMA_QUESTION_CP2_35>

Yes, DBG partially agrees with ESMA's expectation on the notification to be made by the CTP to the competent authority of the data contributor once a suspension has been triggered, and that Article 22a(8) MiFIR is sufficient in this respect. However, as noted in our answer to Q 31, in case of different views by the parties or any potential disputes we would see merit to include ESMA into the process finally, and before any notification to the competent authority of the data provider.<ESMA_QUESTION_CP2_35>

Q36: Do you agree with ESMA's proposal on the approach to the retained revenue? In your view, which rate should apply to compound the interest on retained revenue?

<ESMA_QUESTION_CP2_36>

DBG considers ESMA's proposal as lined out in point 159. as rather challenging as it unduly defers the revenue share of a data provider by another full year, even in case of a positive outcome of the suspension process for the data provider.

This indeed may be critical due to several reasons: a) in case of a positive outcome for the data provider, he may not have access to his earned revenue share over two consecutive years. For a fact, this may fend off small exchanges to apply for voluntary contribution to the CTP in the first place, as especially small exchanges may run into a funding problem. And b) the CTP would incur additional costs for interest payments accumulating over a year. Both scenarios are not sensible in our view.

In case ESMA wanted to hold on to their initial proposal under point 159., we consider that the next steps as lined out in point 160. would be necessary at least. In case it was confirmed and agreed between the parties, that the data provider indeed had committed repeated and serious breaches, we agree that his share should be redistributed to the other data providers equally.

However, in case the data provider turns out to have not been in a serious breach, the outstanding full amount including compounded interests should be transferred to him with undue delay and outside the annual process.<ESMA_QUESTION_CP2_36>

Section 5 – RTS on the synchronisation of business clocks

Q37: Do you agree with the proposed approach on synchronisation to reference time? If not, please explain.

<ESMA_QUESTION_CP2_37>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP2_37>

Q38: Do you support a timestamp granularity of 0.1 microseconds for operators of trading venues whose gateway-to-gateway latency is smaller than 1 millisecond? If not, please explain. Would you argue for an even smaller granularity? If yes, please explain.

<ESMA_QUESTION_CP2_38>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP2_38>

Q39: Do you support the proposed approach on the level of accuracy for trading venue members, participants or users? If not, please explain.

<ESMA_QUESTION_CP2_39>
Yes, DBG has no objection to the proposal from ESMA to adjust the level of accuracy for timestamps depending on the technology used by some market participants and to maintain the alignment of the timestamp granularity for participants using high frequency trading techniques and for operators of trading venues with short gateway-to-gateway latency.<ESMA_QUESTION_CP2_39>

Q40: Do you agree with the proposed approach on traceability to UTC? If not, please explain.

<ESMA_QUESTION_CP2_40>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP2_40>

Q41: Do you agree with the proposed accuracy levels for APAs, SIs, DPEs and CTPs? If not, please explain.

<ESMA_QUESTION_CP2_41>
No DBG does not entirely agree with the proposal from ESMA. Firstly, yes, DBG shares ESMA's view that accuracy levels for SIs, DPEs, APAs and CTPs should be determined in relation to their role in the provision and dissemination of data to and on the consolidated tape. Requirements should as a consequence be aligned for all contributors to the CT and we would consider that APAs shall indeed be under the same requirements as trading venues and that SIs and DPEs should align where technology permits and provide the same accuracy as trading venues with short gateway-to-gateway latency (see our response to Q42). In order for the CTP to provide relevant information and to avoid biases due to delays in reporting, contributors to the CTPs should tend to align on the highest granularity and any divergence should be flagged to the users of the CT.

Secondly, DBG disagrees with the proposal from ESMA to subject all DPEs to the minimum requirement of 1 millisecond for both granularity and maximum divergence. Indeed, it is very likely that besides the investment firms having adopted the status of SI for reporting purposes only, many investment firms which have SI trading activity will separate in the future their trading activity within their SI and the reporting within the DPE. In the latter case, the investment firm would be able to achieve better accuracy and granularity for their SI and their DPE activities. Hence, we would encourage ESMA to include DPEs in the short gateway-to-gateway latency box when the investment firm also conducts SI activities (see also our response to Q42).<ESMA_QUESTION_CP2_41>

Q42: Do you think that more stringent requirements should be set for SIs compared to DPEs considering they have pre-trade transparency obligations? If not, please explain.

<ESMA_QUESTION_CP2_42>

Yes, DBG indeed considers like ESMA that following the principle that ‘same rules should apply to the same activities’, the requirements for SIs should be more stringent and align with operators of trading venues, especially if the level of accuracy for the latter is brought down from 1 millisecond to 0.1 microseconds. MiFID II considers regulated markets, MTFs, OTFs and systematic internalisers as execution venues. In the case of shares, market participants can trade equally on a trading venue or a systematic internaliser following the share trading obligation (Article 23, MiFIR). As a consequence, we would consider that the level of accuracy shall be aligned to 0.1 microseconds, if adopted, to operators of trading venues and SIs (as well as high frequency traders) for short gateway-to-gateway latency.

The table provided by ESMA on page 78 of the consultation paper would be amended as follows, consistently with our response to Q41 and assuming the level of accuracy is of 0.1 microseconds for selected trading venues:

For SI with gateway-to-gateway latency less than one millisecond and DPEs set up by an investment firm with SI gateway-to-gateway latency less than one millisecond – 100 microseconds maximum divergence from UTC – 0.1 microseconds or better granularity of timestamp.

For DPE and SI with gateway-to-gateway latency higher than one millisecond – 1 millisecond or better maximum divergence from UTC – 1 millisecond or better granularity of timestamp.<ESMA_QUESTION_CP2_42>

Section 6 – RTS/ITS on the authorisation and organisational requirements for DRSPs

Q43: Do you agree with the approach proposed by ESMA?

<ESMA_QUESTION_CP2_43>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP2_43>

Q44: Do you agree to include new authorisation provisions on ownership structure and internal controls for APAs and ARMs?

<ESMA_QUESTION_CP2_44>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP2_44>

Q45: Do you have any further comments or suggestions on the draft RTS? Please elaborate your answer.

<ESMA_QUESTION_CP2_45>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP2_45>

Q46: Do you agree with the approach proposed by ESMA?

<ESMA_QUESTION_CP2_46>

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<ESMA_QUESTION_CP2_46>

Q47: Do you foresee specific conflicts of interests that may arise between (i) CTP and data contributors and (ii) CTP and clients and users?

<ESMA_QUESTION_CP2_47>

Yes, DBG foresees even potentially significant conflicts of interests may arise unless outright avoided, or at least well managed and regulated. Conflict of interests may evolve especially in cases when the CTP is offering other services besides consolidated data only. This can be the case a) if the CTP is authorised and operated under an existing authorisation (of a data user and/or a data contributor business), but as well b) in case of no existing authorisation, i.e. being a market data vendor, and/or offering value-adding services. Conflicts of interests may evolve due to the use of contributed data either internally (horizontal competition) or for enhancing or creating value-add products and services (competition in downstream markets). Overall, in any of those cases the outcome potentially may lead to anticompetitive effects.

Therefore, DBG wants to precede with what ESMA should bear in mind when altering the draft RTS to avoid potential conflicts of interests:

- The CTP should preferably not offer **any value-added service** (see under 1.).
- The CTP should preferably operate as a **separate legal entity, avoiding any conflict of interests** (see under 2.).
- In case **value-added services would be allowed and/or the CTP would not be operated by a separate legal entity** (in contrast to our recommendations above) we consider it necessary that ESMA defines minimum requirements to be adopted by the CTP (see under 3.). **Strict supervision of the adherence to EU competition law is a must as anticompetitive effects may occur**; both as regards horizontal as well as downstream markets in our view. Furthermore, strict governance requirements will need to be implemented, such as **arms-length-principle** besides others.

1. No value-added services

DBG wants to allude that the CTP should **not be able to offer value-added services**, as they could significantly amplify potential conflicts of interests between the different tasks involved. In addition, the CTP would gain a major competitive advantage over every other market participant and service provider, particularly regarding data users, data firms, market data vendors and others that will not receive “subsidised data” (mandatory contributions) by data providers while competing with the CTP for the same business. This new advantageous position of the CTP is especially significant if the CTP could use its unique position to provide the market with “other services” that add value to the mandatorily received data, which could collide with a possible breach of European competition law.

DBG acknowledges that this is not what ESMA intentions were when drafting the proposed RTS. We appreciate ESMA’s comment in Recital 3 of the draft RTS on the authorisation of CTPs that an entity providing “*other services*” could affect the independence and give rise to conflicts of interests. This continues to be acknowledged by ESMA in Recital 5 of the draft RTS on the authorisation of CTPs, as pointed out that those conflicts of interest “*may arise when the CTP is engaged in other activities such as acting as a market operator, investment firm or trade repository*”. However, it seems to us that the provisions considered by ESMA are not far reaching enough to ensure a level playing field in the EU.

In consequence, ESMA should preferably not allow the entity operating the CTP to offer any value-added services. Hence, DBG proposes the following amendments to **Article 3 (1)(d) of the draft RTS on authorisation of CTPs**:

Preferred Option 1 on amending Article 3 (1)(d) draft RTS on authorisation of CTPs

“A CTP *should not offer any services or products based on mandatorily contributed market data (value-added services). For any other already offered offering services or*

products the CTP already is authorised for, the CTP ~~other than reporting services~~ shall describe ~~all of them these services~~ in the organisational chart **together with the policies and measures taken for the avoidance of conflicts of interests.**”

This strict approach is necessary, as explained, due to the CTP’s unique position in the market, the risks in the context with EU competition law and hence the need for acceptance in the market. Additionally, this would be in line with the consultation paper of the Financial Conduct Authority (FCA) (see [CP23/33: Consultation on Payments to data providers and forms for Data Reporting Services Providers including Policy Statement for the framework for UK consolidated tape \(CP23/15\) \(fca.org.uk\)](#)). The FCA renounced from their first draft on UKs bond consolidated tape being able to provide value-added services due to the feedback received. **According to the FCA many responses expressed strong concerns about the CTP using its privileged position in the market to gain a dominant position in the provision of value-added services.** In response to that the FCA changed the draft to that effect that the legal entity operating the CTP will not be able to offer value-added services. Furthermore, **the FCA stated that if value-added services are provided it needs to be through a separate legal entity of the CTP and based on the arms-length-principle.**

2. The need to operate as a separate legal entity

Conflicts of interest are especially critical in our view in the case of an authorisation of a data user is being extended to the CTP. The possibility of such a combined setting was introduced in Article 59 (2) MiFID II (old version) and then later adopted in Article 27b (1)(2) MiFIR (without any amendments in this regard by Regulation (EU) 2024/791). Therefore, the extension of an existing authorisation to the CTP was part of the former Data Reporting Service Provider (DRSP) regime. This past regime directed at CTPs (APAs and ARMs), however, was based on significantly different pre-conditions in the first place. Comparing the former DRSP-regime with the current CTP set-up, one will acknowledge the clear differences: formerly unconditional decision of an authorised entity to resume the role of a CTP as any other interested party could do as well (vs. a tender for a unique entity today), while obtaining data from (all) data providers under the same contractual terms and conditions as any other market data vendor or CTP at that time (vs. a mandatory and free of charge data contribution to the CTP by data providers today) guaranteeing a level playing field at least in downstream markets. Whilst this former set-up would already have largely avoided competition issues in downstream markets (as conditions for CTP providers were the same as for any other data aggregator as well), it still could have introduced conflict of interests on a horizontal level (especially with peers active in the same originally authorised profession as the newly authorized CTP). Such conflicts of interests would have evolved as the market data obtained under the CTP authorisation (for consolidation and publication) could have been used theoretically as well for the authorised entity’s own services and products, such as dark trading, or other. Indeed, in order to not act anticompetitively to other peers in the market in the same profession, the entity in question should have paid for the data obtained as any other market participant as well in case used for own services. Obviously, such set-ups are conflicted with interests, which need to either

be avoided from the start or at least be mitigated with a strict Governance suitable to the severity of the potential conflicts in question. In consequence, DBG strongly recommends ESMA to establish Governance rules which ensure the highest level of trust as regards fair competition and fair treatment of all stakeholders.

3. Measures to mitigate occurring conflicts

Since **there is not one governance structure that is applicable for each and every business alike** (see further insights in Ruben Lee, Running the World's Markets, 2011, Chapter Eight, Efficient Governance Structure, P. 248 ff.) ESMA should take this into consideration when drafting the Governance requirements for the CTPs to come, and suitable to the set-up of the CTP in question. ESMA should closely monitor the explained major change of DRSP models as well the changed conditions and act accordingly regarding the unique need of a **suitable governance structure (see further details in our answer to Q51) which especially includes rules to prevent conflicts of interests as well as potential infringements with EU competition law.**

To mitigate the potential conflicts of interests as well as the risks of negatively affecting EU competition law that would arise if the CTP would be able to exploit its unique market position it is necessary that first and foremost ESMA implements the suggestions made above and **prohibits value-added services** at least within the same legal entity and/or requires the operating CTP being a separated legal entity. **If ESMA decides against it and allows value-added services, the following safeguards should apply:**

- Every applicant for authorisation for CTP can only offer **value-added services through a legally separated entity**. This should be added to the requirement in Article 3 (1)(d) RTS on authorisation of CTPs to outline any other services they intend to offer. **The applicant should clearly describe why the offering will not be anticompetitive to horizontal, up-stream or to downstream markets, plus the planned mitigating internal processes for the competitive issues arising.** There should be a **clear and public procedure as well in case of planned value-added services.**

Therefore, at least, if value-added services should be permitted, ESMA should clearly point out that the applicant needs to outline any intended value-added services in the application process for authorisation. In that case, DBG urges ESMA to amend **Article 3 (1)(d) of the draft RTS on authorisation of CTPs** as follows:

Option 2 on amending Article 3 (1)(d) draft RTS on authorisation of CTPs

*“A CTP offering services other than **the provision of a consolidated tape, reporting services especially services or products based on mandatorily contributed market data (value-added services)** shall describe those services in the organisational chart **together with the policies and measures taken for the avoidance of conflicts of interests.**”*

- **While assessing the selection criteria ESMA should give preference to the applicant that does not intend to offer value-added services in the first place.** Consequently, any intentions to offer value-added services need to be clearly outlined in the application process for authorisation.
- **Revenues that the CTP, or its separated legal entity will gain by offering value-added services, must continue to be part of a revenue sharing with data providers.** Otherwise, the already explained competitive advantage through mandatory data contributions will be increased.

Furthermore, to mitigate the potential risks the European market might face in the case of a CTP offering additional services, DBG suggests establishing a CTP-structure that is based on the **arms-length-principle**. This **principle is considered an international guideline regarding international transfer pricing standards** (see further examples: OECD (2022), *“The Arm's Length Principle”*, in OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, OECD Publishing, Paris). Consequently, it should apply to the CTP in case any other services are offered when disseminating the CTP-data or in case of an already authorised legal entity using the CTP-data internally. **Otherwise, DGB sees the possibility of conflicting interests, for example when the CTP may be contracting at more favourable conditions with its own affiliates / fellow subsidiaries or even (if the suggestions above is not recognised by ESMA) within one entity.** From a competition law perspective applying the arms-length-principle equally within the market is an absolutely necessary condition for the European CTP. In addition, the CTP should apply to the principles of “Chinese walls” between the CTP business and other relevant business areas of the entity that has been selected as CTP (also see Recital 5 of the draft RTS on the authorisation of CTPs). These proposals should be considered necessary to supplement the new wording proposal of Article 3 (1)(d) of the draft RTS on authorisation if CTPs [see both Options on the proposed amendment].

The proposed provision in Article 3 (1)(b), (d) of the draft RTS on authorisation of CTPs do not properly mitigate the predictable risk to the market. To establish a system to ensure segregation between the CTP and any other activity performed by the firm and the need for the CTP to describe those other services other than data reporting services in the organizational chart is in our view not sufficient at all in relation to the privileged position the authorized CTP will have.

To summarize:

If ESMA intends to allow value-added services offered by the CTP, maybe even within the same legal entity as an already existing authorised entity, and/or the CTP would not be operated by a separated legal entity, minimum requirements must be established. **Strict supervision of the adherence to EU competition law is a must as anticompetitive effects may occur;** both as regards horizontal as well as downstream markets in our view. Furthermore, strict governance requirements will need to be implemented, such as **arms-length-principle and building “Chinese Walls”** and further principles to avoid conflicts of interests. Any **value-add services must**

be due to the CTP revenue share obligation. Services and products provided under existing authorizations should continue their existing commercial contracts with data providers.

With the suggestions (under 1. and 2.) to **establish a separate legal entity for the CTP, which is not allowed to offer value-added services, the CTP would not even give the impression of a conflict of interest, and hence it would be the most sensible solution at hand.**<ESMA_QUESTION_CP2_47>

Q48: What other elements, if any, should be included in the RTS on authorisation of CTPs?

<ESMA_QUESTION_CP2_48>

DBG considers it to be of great significance that besides finding the right definition for the relevant groups receiving data free of charge by the CTP (see details in our answer to Q50 below) it is equally important to define clear conditions for the users to benefit from the tape data free of charge. We take note that ESMA wants to leave this for the CTP to decide but **considering the potential impact unclarity in this respect may leave as regard the market as well as competition issues**, DBG suggests the following clarification while defining the said groups.

Retail investors, academics, and civil society organisations should fulfil the following requirements when obtaining CT data for free:

- They should proof their belonging to the defined group.
- They should make the intention clear to use the requested data solely in the capacity as part of said defined group.
- There should be no onward-dissemination of the received data into the market or other market participants (especially not real-time data).

Otherwise, the intention of Article 27h (1)(b) MiFIR would be counteracted and the risk of other market participants to gain access to the CTP-data free of charge and without being part of the defined groups would arise. This could lead to unintended consequences for the CTP, affect its ability to recover cost and may even lead to fewer applicants for the authorisation in consequence. Data dissemination, free of charge, without reasonable safeguards by the CTP would have a negative impact on the competitive and commercial viability of the CTP and would put the cost recovery of the CTP at risk. These considerations are comparable to those which have led to the exemption of the CTP from the obligation to provide delayed data free of charge, see Recital 33 of MiFIR.

Due to the importance of said requirements for receiving data from the CTP free of charge there should be a (light) contract between the CTP and the receiving party. This is a common practice in international markets, even when receiving data free of charge, to maintain a balanced basis with clear provisions for both parties, such as clear rights and duties (i.e. no onwards-dissemination).

In consequence, DBG suggests adding the following provisions to the **Article 14 of the draft RTS of authorisation of CTPs**:

“To provide access according to Article 27h (1)(b) of Regulation (EU) No. 600/2014 free of charge the selected CTP applicant shall provide clear contractual terms to retail investors, academics, civil society organisations, including:

- a. Proof of entitlement the requesting party has to offer by providing evidence of belonging to either retail investors, academics or civil society organisations;*
- b. Declaration of intent by the requesting party on how the data will be used;*
- c. Measures to prevent onward-dissemination and*
- d. Measures in case of breaches.”*

<ESMA_QUESTION_CP2_48>

Q49: What other elements, if any, should be included in the RTS on authorisation of CTPs?

<ESMA_QUESTION_CP2_49>

DBG proposes that ESMA requires from the selected applicant seeking for authorisation to outline and provide ESMA with their licensing models. These should especially include the usage right for the end clients of the CTP. In consequence DBG wants to propose the following addition to **Article 10 of the draft RTS on authorisation of CTPs**:

- “2. The applicant shall provide ESMA with detailed information on their licensing models, including the intended usage rights for clients of the CTP and the agreement between data providers and the CTP regarding the data transmitted by the data providers for the purpose of the CTP providing a consolidated tape.*
- 3. In case of value-added services a fair remuneration of data contributors shall be ensured.”*

DBG wants to use this opportunity to point out as well some formalities that ESMA could amend in the proposed draft of the RTS on authorisation for CTPS:

- Article 5(1)(d) draft RTS on authorisation of CTPs should clarify which “state” is the relevant and which factors ESMA considers to be crucial (e.g. nationality / residency of the individual / relevant times in cases of relocations). Furthermore, DBG suggests referring to “states” and not “member states”, as this could otherwise be interpreted that only individuals with a European nationality or residency are requested to include a criminal record in the application process.

Article 2(1)(d) draft RTS refers to a paragraph 2 although the Article consists of only one paragraph. DBG assumes that ESMA meant to refer to Article 2(1)(c) of the draft RTS and proposes to amend the citation accordingly.<ESMA_QUESTION_CP2_49>

Section 7 – Criteria to assess CTP applicants

Q50: How would you define retail investors, academics and civil society organisations for the purpose of the CTP?

<ESMA_QUESTION_CP2_50>

DBG would like to point out that real-time market data is costly to produce especially in a good and reliable quality while being an elusive good as well, which once produced may be shared relatively easily across and beyond users. While the regulator on L1 MiFIR has excluded the 15 minutes delayed data distribution by the CTP in order to protect the CTP's ability to fund itself. Even more so, should regulators now ensure, that those who receive core market data for free, do not onward disseminate nor use the data for commercial purposes other than self-investing or research and within closed user groups.

In line with the above and as well with our answer provided to Q48, DBG would like to reiterate that firstly, the one requesting data free of charge by the CTP needs to belong to said group and they intend to only use the data in this specific capacity. Furthermore, ESMA and the CTP must make sure that there is no further onward dissemination of the received data as this could significantly weaken the viability of the CTP, ESMA should clarify this in the RTS, and the CTP should contractually determine this requirement. Otherwise, the intention of Article 27h (1)(b) MiFIR would be counteracted.

For defining retail investors, academics, and civil society organisations for the purpose of the CTP DBG proposes the following:

- Regarding “Retail Investors” DBG promotes (additionally) a definition in differentiation to a professional investor (compare Article 4 para 1 (10) and (11) MiFID II, Annex II for professional and private client). In consequence, DBG suggests the following definition:
“Retail Investors” means a private person who invests their own money, typically on their own behalf and in a non-institutional capacity and in contrast to a professional investor.
- Academics in this specific area should be defined as scholars that intend to use the Licensed Information (CTP-data) for scientific purposes only. Their research area should clearly link to market data and the European market infrastructure. For the unique purpose of the CTP academics should not be part of an institutional and for-profit research, they should not consult market participants – this would clearly contradict the intention of Article 27h (1)(b) MiFIR and the goal to strengthen transparency in the market for investors. Otherwise, the CTP would – in clear breach of competition law – financially support or even subsidise market participants who make use of these services labelled as solely research. In this specific context academics should not receive the data free of charge and should invoice its clients for receiving the data by the CTP. Therefore, DBG suggests the following definition:

“Academics” means a scholar with research area regarding market data and the European market infrastructure. An Academic requesting data by the CTP intends to use the data for scientific purposes only and not on behalf of an industry or market participant.”

- Civil society organisations should be defined as non-profit organisations with an organisational structure whose members serve the general interest through a democratic process, and which plays the role of mediator between public authorities and citizens. Examples are social partners, NGOs or grassroots organisations. Furthermore, in this specific context it is crucial that additionally the definition of said organisations should exclude Associations or Federations with the purpose to represent industry interests. Otherwise, DBG sees a clear breach of the intention of Article 27h (1)(b) MiFIR European competition law. Consequently, DBG suggests the following definition:

“Civil society organisations” means a non-profit organisation with dedication in general interest, without being an Association or Federation representing industry interests. A Civil society organisation requesting data by the CTP intends to use the data for their own internal purposes and not on behalf of an industry or market participant.”

Furthermore, we refer to our answer given in Q48, where we elaborate on the necessity to put requirements into place to ensure that the legislative will is implemented. Due to its importance, we reiterate the proposed addition to Article 14 draft RTS on authorisation of CTPs:

“To provide access according to Article 27h (1)(b) of Regulation (EU) No. 600/2014 free of charge the selected applicant should provide clear contractual terms to retail investors, academics, civil society organisations, including:

- a. Proof of entitlement the requesting party has to offer by providing evidence of belonging to either retail investors, academics or civil society organisations;*
- b. Declaration of intent by the requesting party on how the data will be used;*
- c. Measures to prevent onward-dissemination and*
- d. Measures in case of breaches.”*

For reasoning, please see our answer in Q48.<ESMA_QUESTION_CP2_50>

Q51: What are in your view the most important elements that should be taken into account when defining the governance structure of the CTP?

<ESMA_QUESTION_CP2_51>

DBG wants to highlight that by establishing a suitable governance structure for the CTP one must consider the unique position the legal entity acting as the CTP will gain, since there is not one governance structure that is appropriate for every market infrastructure institution alike (see further insights in Ruben Lee, *Running the World’s Markets*, 2011, Chapter Eight, Efficient Governance

Structure, P. 248 ff.). As explained in DBG's answer to Q47 this means that the former defined provisions for DRSPs are unsuitable for application to the CTP due to the changed circumstances as lined out above.

While it goes without saying that the organisational requirements and CTP governance, both closely linked, must be adequate, neutral, and fair at all times, the most important elements for establishing a suitable governance structure for the CTP in our view are:

- Ideally, the CTP should be managed by an independent legal entity for the CTP purpose only, there should preferably be no additional authorisation for CTP under an existing authorised company, as explained in DBG's answer in Q47.
- Ideally, the CTP shall not offer value-added services or other services.
- Every additional service the firm acting as CTP intends to offer must be through a separate legal entity and in compliance with the arms-length-principle, while being disclosed during the tender process.

Standalone elements that are universally applicable and highly recommended in the context of the CTP in general:

- Ensure clear allocation and definition of responsibilities within the management of the company operating the CTP. This includes a regular assessment of the fit-and-proper principles.
- Establish a robust compliance and conflict of interest regime (see DBG's answer to Q54) and risk management and ensure that the CTP adheres to all relevant regulations and industry standards (including the already mentioned arms-length-principle).
- Establish a governance structure with effective information barriers to supervise the access to the received data (Chinese Walls) and maintain policies and procedures to ensure the accuracy, security and confidentiality of data managed by the CTP.
- Consequently, establish an inspection procedure to ensure that only the defined groups of retail investors, academics and civil society organisation will receive the CTP data free of charge and that they will not disseminate the received data to others.
- Install clear responsibilities within the CTP, especially a Chief Technology Officer (CTO) to ensure robust and secure technology infrastructure.
- Install an advisory committee (see DBG's answer to Q52) and maintain stakeholder engagement.
- Establish internal and external audits to ensure compliance with the regulatory framework and implement ongoing training to employees.

Furthermore, there are many other criteria for a strong governance structure for CTPs, like providing comprehensive information on their operations and organisational charts, as well as their governance policies and the independence of their governing bodies. The CTP should also be

responsible for outsourced tasks and implement adequate controls and processes to ensure smooth operations on an ongoing basis. Most of these points ESMA already found proper provisions in the draft RTS on authorisation of CTPs.<ESMA_QUESTION_CP2_51>

Q52: Should the CTP include representation of other stakeholders within their governance structure?

<ESMA_QUESTION_CP2_52>

Yes, DBG fully supports this proposal of a stakeholder representation to the CTP, that can ensure a well-balanced representation of different stakeholder groups of the CTP. The stakeholder representation is especially important as the CTP will not operate in a competitive environment since the CTP will gain a unique position in the European market, especially due to mandatory data contributions (see also Ruben Lee, *Running the World's Markets*, 2011, P. 300).

The stakeholder group or committee should be composed of representatives of data users, buy and sell side, data contributors, data vendors, and as well as academia and retail investor groups. The committee should be able to talk about all topics CTP related and advise the CTP on relevant matters. It would be advisable to maintain a strong European background of the representatives, since the CTPs will have a strong effect on the European financial markets, especially.<ESMA_QUESTION_CP2_52>

Q53: Do you agree with the proposed approach on the assessment of necessity of joint application?

<ESMA_QUESTION_CP2_53>

No, DBG does not agree to the proposed approach in its full extend. We understand the requirement to assess the joint application in terms of technical and logistical capacities as this is crucial for the success of the CTP. But it is our understanding of Article 27da(2)(n) MiFIR that the requirement to assess the necessity of a joint application is solely constricted to the terms of technical and logistical capacities. This is a reasonable provision, at it is one of the main requirements to act as CTP. But the given explanations by ESMA in the Consultation Paper (No. 254 ff.) paint a stricter picture, which is in our view not intended by Article 27da(2)(n) MiFIR. It seems that ESMA intends to make a joint application harder just due to the fact that it is jointly. This would interfere – in addition to the legislative will as put in Article 27 MiFIR – with the entrepreneurial freedom of legal entities in the EU.

Furthermore, in our opinion, there is no sufficiently good justification for this restriction apparent. As the CTP and its success is part of the European ambition to build a Capital Markets Union (CMU), we see merit in a strong European basis of the CTP with professionals from different Member States that can provide a national understanding of domestic rules. Therefore, we see a benefit in a joint application as long as all legitimate requirements are met.

Finally, on a side note: as the desired CMU is not achieved yet, it is worth noting that there are still diverging understandings/standards across EU member states, such as classifications of asset classes or regulatory interpretations.<ESMA_QUESTION_CP2_53>

Q54: Which minimum requirements on identifying and addressing potential conflicts of interest would you consider relevant?

<ESMA_QUESTION_CP2_54>

As established in DBG's answers to Q47 and Q51 we explained the necessary provisions to mitigate potential conflicts of interests, which we consider most relevant. As described in our previous answers in this context one must bear in mind the advantageous position the CTP in Europe will gain with receiving "subsidised data" by data providers. Therefore, identifying and addressing potential conflicts of interests is crucial to ensure market integrity and investor confidence in the European Union and to avoid anticompetitive outcomes.

Having said that, we want to highlight that conflict of interests can arise in every entity, being under a joint application or not as lined out by use in our answer to Q47 in full detail. Therefore, these safeguards should apply to every applicant seeking operating a CTP in the European Union. As explained in DBG's answer in Q47 ESMA should establish the necessity that the CTP is run by an own (separate) legal entity to ensure the independence from other businesses. Additionally, to further strengthen the independence of the CTP and to avoid conflicts of interest the CTP should not offer value-added services (see DBG's answer to Q47 and the otherwise severe implication to competition law).

Article 7 of the draft RTS on authorisation of CTPs already contains many requirements for establishing robust arrangements for identifying and addressing conflicts of interests. Therefore, we want to limit our proposal to what ESMA should additionally consider by amending **Article 7 of the draft RTS on authorisation of CTPs** as follows (for reasoning please see our answers provided in Q47 and Q51):

"Article 7

Conflicts of interest

1. [...]

b. identified conflicts of interest shall be reported to ESMA promptly;

~~b.~~ ***c. the separation of duties and business functions within the CTP including:***

[...]

~~e. d.~~ a description of the remuneration policy for the members of the management body and senior management;

~~e. e.~~ the rules regarding the acceptance of money, gifts or favours by staff of the CTP and its management body, **and the implementation of ongoing trainings.**

f. if other services are added to the operation of the consolidated tape:

i. they shall be provided by a separated legal entity;

ii. they shall adhere to the arm's-length-principle;

iii. pricing models must be transparent.

2. The adherence to provisions laid down in paragraph 1 shall be subject to regular compliance reviews conducted by ESMA."

Furthermore, we want to highlight that due to the unique position of the CTP and the importance of implementing robust conflict-of-interest principles they should be subject to internal controls. Therefore, DBG proposes the following amendments to **Article 6 (1) second sentence of the draft RTS on authorisation of CTPs:**

*"This shall include information regarding its compliance function, risk assessment, **conflict-of-interest policies**, internal control mechanisms and arrangements of its internal audit function."*<ESMA_QUESTION_CP2_54>

Q55: To score the applicants on their development expenditure and operating costs, ESMA intends to look at the costs the applicant will need to cover on an annual basis. Do you agree with this approach? If not, which alternative approach would you deem more appropriate?

<ESMA_QUESTION_CP2_55>

DBG appreciates ESMA's considerations but cannot not fully agree. When selecting a CTP, the focus should be on selecting the best suitable package overall to deliver the CT for the CMU.

The total expenditure and ongoing costs for operating the CTP are strongly and directly linked to the overall quality of the CTP operations. Reliable data provision is the key criterion for the success to deliver a successful CT. A robust technical setup is necessary, as well as regulatory requirements (e.g., DORA), data volumes to process, and additional requirements for the provision of data by the CTP. All of this needs to be sufficiently funded. Finally, only a well-constructed CTP will be able to provide reliable services to the CMU. We therefore strongly recommend that these essential elements – a), c) e), l) - encompassed by different 'selection' and 'award' criteria, are

taken into account to put criterion (g) into perspective in the second phase of the competitive procedure.

In context of the operating costs, we noted that Article 27da(2) MiFIR does not mention the 'revenue share for contributors', but we would encourage ESMA to examine and factor in related provisions when selecting the CTP provider. This becomes even more critical in the potential event of a race to the bottom in the level of fees among CT bidders, which could lead to insufficient funding for the CT operator and no revenue allocation to data contributors, worsening their already significant revenue loss. Therefore, it is essential to consider the amount of revenue available for the revenue-sharing scheme after deducting operating costs and a reasonable margin. Insufficient revenue for these purposes should be considered a drawback for any bid. To ensure a sufficient and fair revenue share, we propose integrating revenue distribution as a key component of the costs.<ESMA_QUESTION_CP2_55>

Q56: The simplicity of the fee structure and licensing models can be scored by taking into account the number of tiers, fee types and licensing models. Does this accurately reflect simplicity? If not, would you propose a different approach to assess simplicity? Please elaborate.

<ESMA_QUESTION_CP2_56>

DBG strongly cautions against prioritising the criterion listed in Article 27da(2)(h) MiFIR as a decisive 'award' factor, which could finally lead to a race to the bottom with the risk of the CTP being underfunded for the tasks applicable and the great responsibility coming along with it. We would be particularly concerned if the actual 'level of fees' were considered a decisive element within this criterion. We do hope that ESMA's proposed two-fold assessment will prevent such a scenario.

The revenues generated, based on costs and considering the fees charged by the CTP to data users, should ensure sufficient funds for the state-of-the-art operation of the CT. It should be noted that a group of data users will already have free access to data (Article 27h(1)(b) MiFIR) and hence will not contribute to cost recovery. The CTP must have the capability to make necessary investments for reliable operations and long-term success of the CT and to the ultimate benefit of its customers and the CMU. Additionally, expenditures are likely to rise in the coming years due to increased capacity needs and other factors. Data volumes are constantly increasing and so are costs to increase capacities. In this respect, we consider it necessary that CTPs should be able to adapt fees, once costs are increasing or, in case new data sources would be added to the CT.

Setting fees too low could prevent fair compensation of data contributors in the first place, exacerbating their already significant revenue losses and jeopardising the businesses of smaller markets that depend on their revenues from the trading of market data. This becomes even more critical in the potential event of a race to the bottom in the level of fees among CT bidders, which

could lead to insufficient funding for the CT operator and no revenue allocation to data contributors, worsening their already significant revenue loss. Therefore, it is essential to consider the amount of revenue available for the revenue-sharing scheme after deducting operating costs and a reasonable margin. Insufficient revenue for these purposes should be considered a drawback for any bid. To ensure a sufficient revenue share, we propose integrating revenue distribution as a key component of the cost.

Article 52(15)(e) MiFIR indicates that the CTP may have to provide core data in both consolidated and unconsolidated formats, which contradicts the original purpose of offering pan-EU consolidated data. Generally, core data should only be available in consolidated form to ensure adequate funding. To prevent unfair competition and negative impacts, any unconsolidated core data (e.g., per-venue unconsolidated data, which could directly substitute proprietary exchange data) should be priced by the CTP according to each venue's price list. Revenue generated from such unconsolidated data should be allocated solely to the affected venue, minus a certain share for the CTP.<ESMA_QUESTION_CP2_56>

Q57: The approach proposed for the assessment of the ability of CTP applicants to process data is grounded on the assessment of the technological infrastructure in ensuring scalability, low-latency, accuracy and security throughout the data lifecycle. Do you agree with this approach, or would you consider additional elements to be assessed?

<ESMA_QUESTION_CP2_57>

DBG agrees with ESMA's understanding that the criterion listed in Article 27da(2)(c) MiFIR is instrumental in assessing the suitability of applicants' technological infrastructure to comply with the requirements for data reception, consolidation, and dissemination. We note ESMA's suggestion to evaluate this criterion on the 'ability to process data' more holistically and consider it an 'award' rather than a 'selection' or 'exclusion' criterion. In our view, this is a core criterion; without which there will be no tape, and it would deserve to be considered an 'exclusion' criterion.

In any case, we hope this criterion will be given sufficient weight in the second phase of the competitive procedure. For the success of the CT project, a primary strength of the selected CTPs must lie in their technical setup and skilful handling as well as processing of large amounts of data for consolidation and dissemination, while consistently adhering to the highest industry standards.<ESMA_QUESTION_CP2_57>

Q58: Which is the minimum speed of dissemination you would consider appropriate for the CTP? Please distinguish between asset classes (and for the case of the equity CTP, between pre- and post-trade date).

<ESMA_QUESTION_CP2_58>

DBG fully agrees with ESMA on the significance of assessing this criterion in conjunction with data quality considerations. Overall, we do find it difficult to define any minimum speed requirements already upfront in a very granular level. The latency requirement applied within MiFIR/MiFID II applied until now, was significantly less strict, while the set-up in which it was required was significantly less complex. Such a requirement may not be achievable and certainly not 100% of the time. Please also see our comments to Q1 and Q8. As pointed out there, latency and relevant confidence intervals could be derived from the empirical distribution based on data from test runs with the CTP once it has started testing with data providers. Until then, the KPIs already available from trading venues for their commercial feeds could be used if needed.

For the equity CTP, it will be important to allow sufficient time for the CTP to properly sequence incoming best bids and ask prices. In particular, the CTP should wait for the slowest contributor before sequencing the data and deriving the EBBO. Any indication from the applicants that this will be the approach followed should receive greater weight. This would help avoid misinformation caused by latency lags and improve the overall data quality of the CTP.<ESMA_QUESTION_CP2_58>

Q59: The proposed approach to data quality would reward additional commitments and measures that CTP applicants intend to put in place. Do you agree with this approach ? What additional commitments and measures would you consider appropriate?

<ESMA_QUESTION_CP2_59>

DBG considers that no further requirements may be needed. ESMA's proposal seems comprehensive and fit for purpose in our view. In line with the special focus of the CTP on the provision of qualitative and trustworthy data (please see as well our comments in this respect to Q1 and Q15) we would see value if ESMA would put additional emphasis on the provision of properly sequenced data, especially in the case of the EBBO, in order to avoid systematic flaws in the provision of the EBBO.<ESMA_QUESTION_CP2_59>

Q60: The proposed approach to modern interface and connectivity is grounded on the assessment of the interface technology in terms of reliability, scalability, low latency and security. Do you agree with this approach, or would you consider additional elements to be assessed?

<ESMA_QUESTION_CP2_60>

DBG supports ESMA's categorisation of the criterion listed in Article 27da(2)(j) MiFIR as a 'selection' criterion. The technologies selected by the CTP for data provision must be robust enough for efficient data processing and flexible enough to cater to the needs of data consumers, including both professional and non-professional users.<ESMA_QUESTION_CP2_60>

Q61: Do you agree with the proposed approach to record keeping, based on the provision of document supporting intended compliance?

<ESMA_QUESTION_CP2_61>

Yes, DBG agrees with ESMA in this respect.<ESMA_QUESTION_CP2_61>

Q62: The proposed approach to resilience, business continuity and cyber risks is grounded in assessing mandatory DORA requirements applicable to CTPs as a first step (selection criterion), to then reward additional commitments and measures CTPs applicants intended to put in place to mitigate and address outages and cyber-risk . Do you agree with this approach? What additional commitments and measures would you consider appropriate?

<ESMA_QUESTION_CP2_62>

DBG would like to object that if the assessment of the resilience criterion set out in conjunction with point (a) of Article 27da(2) MiFIR is based on qualitative criteria, there is a risk of reduced comparability between the applicants. As a quantitative criterion regarding resilience is also difficult to implement in a way which allows comparability, it is recommended to limit the approach regarding operational resilience to the mandatory requirements arising from DORA.<ESMA_QUESTION_CP2_62>

Q63: Do you agree with the use of the Power Utilisation Effectiveness (PUE) as the metric to assess the energy consumption of the CTP? If not, which alternative approach would you favour?

<ESMA_QUESTION_CP2_63>

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<ESMA_QUESTION_CP2_63>

Annex II – Cost Benefit Analysis:

Q64: What costs do you expect in order to comply with the proposed minimum requirements for the quality of transmission protocols? What benefits do you expect? Please indicate to what role (data contributor, CTP, or CT user) your response refers.

<ESMA_QUESTION_CP2_64>

As explained in our answer to Q1, DBG considers that not all minimum requirements as lined out by ESMA would need to be implemented. Some of them even are opposing to each other. DBG will have to contribute to two different CTPs within a rather very short time frame, while high quality standards need to be applied for the design, development and testing of such feeds in case new

formats and protocols would have to be developed. These efforts would have to be doubled – most likely introducing significant capacity constraints - unless Article 22a 5) MiFIR would be applicable to start with and DBG could use their existing solution for data provision to the CTPs.

Taking note of the short time frame given by regulation, we would propose to start with existing formats/protocols and to not change formats/ protocols during the full tender period of a CTP at least. If ESMA does not consider this feasible, we strongly recommend omitting certain minimum requirements, such as the need for an open protocol and for non-repudiation. Both of these requirements could hinder the provision of data when it is requested. Indeed, we would recommend that the minimum requirements as provided by ESMA should ideally not be applied to existing data feeds (most of them which will be state-of-the-art anyways) but ensuring that no data provider drops out of the data contribution at the start.

We understand that there may be normalisation requirements necessary at the side of the CTP, however, we consider this to be quicker, than if data providers would need time to provide new formats/ protocols and the CTP would have to integrate them, compared to the CTP taking existing feeds, widely used in the industry already.

Furthermore, we are of the opinion that any cost-benefit analysis should take into account both the direct costs associated with the requirements and the indirect costs for the industry related to the CT, which will be a direct competitor to the data contributors who will transmit their data for free. This data will not only directly compete with the data providers own products, leading to funding problems at least for small and medium trading venues at some time. As it seemingly remains unclear how the data revenue share to be shared with trading venues shall be derived, there is a risk, that there will be little incentive to consider this at all. We consider this to be highly concerning.

At the same time, however, it is fully unclear, if any of the lower data fees expected (from a subsidized CTP), will finally be passed on to data users, since approx. 60% of data usage still takes place via intermediators not falling under this regulation.

Hence, we strongly encourage ESMA to closely monitor the full costs and benefits associated with the CT in order to implement remedies where necessary, also in conjunction with the review of the RCB framework applicable to both data contributors and the CTP.<ESMA_QUESTION_CP2_64>

Q65: What costs do you expect in order to comply with the proposed data format for input and output data? What benefits do you expect? Please indicate to what role (data contributor, CTP, CT user) your response refers.

<ESMA_QUESTION_CP2_65>

DBG can only provide some high-level costs taking note of the still unclear situation. As regards the proposed solutions we would consider that IT development costs per new data format would approx. cost EUR 1 mn (times two in case different for two different CTPs). This would not include the internal testings and neither the external ones, nor the lines necessary to do so, or the new

processes to be set up between the CTP and the exchange. Costs for this could add a further EUR 700 k to 1 mn. We would assume that similar costs may as well apply for smaller venues alike, which would not be proportionate in our view.

Hence, we urge ESMA to not request data providers to apply new data formats/protocols but to stay with the solution in line with Article 22a 5. that the CTP chooses from existing solutions offered by data providers.<ESMA_QUESTION_CP2_65>

Q66: Do you expect the benefits from the proposed real time data transmission requirement for input data to outweigh the operational costs borne by data contributors?

<ESMA_QUESTION_CP2_66>

DBG is aware that on several occasions, EU COM has officially declared that the CTP is not supposed to be used for trading purposes. We do agree with this view.

Hence, we need to question the very strict requirements by ESMA in the context of latency especially, which is now well below the service levels (SLAs) trading venues even provide for their proprietary data feeds, and this for a good reason. Moving beyond these SLAs is considered by DBAG as to be unproportionate and highly burdening, with currently unclear impact on the data business. We would urge ESMA to at least dismiss any latency difference as regard pre- vs post-trade data, and to introduce confidence intervals. As regards the relevant latencies to be defined between the CTP and the data contributors we would strongly recommend to define requirements during the testing with the CTPs.

Taking note of the above, we recommend that ESMA will remain proportionate as regards their requirements for the latency and does not go beyond what data providers already today would “guarantee” for the state-of-the art proprietary commercial data feeds.<ESMA_QUESTION_CP2_66>

Q67: Do you think that the input and output data fields strike a balance between reporting burden for data contributors/CTPs and benefits for CT users?

<ESMA_QUESTION_CP2_67>

In relation to the equity CTP, it is essential that only the first bid and offer is requested as outlined in L1, and as clarified in point 285 of the ESMA CP. In the final stages of the MiFIR review process the co-legislators have agreed to an anonymised real-time pre-trade EBBO (top of book) and the priority should now be on ensuring that this clear political will is translated into action and delivered in reality. At this early stage, calls to increase the amount of pre-trade information included in the tape are detrimental to the success of the CT, which will require a lot of dedication and adaptation efforts from all sides of the industry already in its currently defined format.

We would as well like to note, that we do not support a direct link between RTS 1 and RTS 2 with the data input requirements for the CTP. First of all, there are regulatory data which are only to be provided to the CTP, and secondly, in order to allow for an easier implementation in the industry, the RTS for input and output data of the CTP should remain completely separate. This general request is heard more and more within the industry by now.<ESMA_QUESTION_CP2_67>

Q68: Do you think that the proposed data quality requirements are sufficient to achieve the CT's objectives without generating excessive compliance burdens? Please explain.

<ESMA_QUESTION_CP2_68>

DBG considers that ESMA's quality requirements should be adapted as lined out in more detail in our answer to Q1. Besides, we deem it highly relevant that ESMA does not try to copy the role of an APA to the role of a CTP, as both roles are quite distinctive. Instead of improving data quality, it would be mixing the rights and regulatory duties of the affected entities within this data chain, with the risk of not only introducing further unnecessary costs, but as well create chaos as regards Hence, as regards Article 10 (5) (a) and (b) of the draft RTS should be deleted. On a similar note, we would not consider Article 10 (9) of the draft RTS to be relevant for the CTP.<ESMA_QUESTION_CP2_68>

Q69: Which costs do you expect to implement the revenue distribution scheme? Please differentiate between one-off and on-going costs, between fixed and variable costs as well as between direct and indirect costs.

<ESMA_QUESTION_CP2_69>

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<ESMA_QUESTION_CP2_69>

Q70: Which costs do you expect to implement the suspension and the resumption of the revenue distribution scheme? Please differentiate between one-off and on-going costs, between fixed and variable costs as well as between direct and indirect costs.

<ESMA_QUESTION_CP2_70>

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<ESMA_QUESTION_CP2_70>