FINANCIAL CONDUCT AUTHORITY

Wholesale Data Market Study

Responses to the Update Report

29 February 2024

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[redacted]

[redacted] Response to FCA's Market Study MS23/1.4

FCA's Update Report on Wholesale Data Market Study

September 2023

[redacted]

[redacted] welcomes the FCA's Wholesale Data Market Study - Update Report on its further investigations into competition in the provision of benchmarks, credit ratings data, and market data vendor (MDV) services.

[redacted] notes the FCA's proposed and provisional decision to not refer any of the three markets to the Competition and Markets Authority (CMA) for a Market Investigation Reference (MIR), and **supports the FCA's** intention to continue to conduct analysis on the nature and scale of harm and potential remedies as the study progresses.

As outlined in our letter to the FCA, dated 30 March 2023, [redacted] continues to strongly support the FCA's continued and extensive work evaluating how data and advanced analytics are being accessed, used, the value to market participants, and particularly how competitively data within the three markets is sold and priced.

[redacted] notes the six themes in which the FCA has evaluated competition within the three markets: 1) barriers to entry; 2) network effects; 3) vertical integration; 4) suppliers' commercial practices; 5) behaviour of data users; and 6) incentives for innovation.

As a [redacted], [redacted] actively utilise market data for a wide variety of primary and secondary markets purposes. Many of the FCA's findings that certain features in the three markets may prevent, restrict or distort competition are consistent with [redacted] concerns as expressed in our previous analysis[1].

We do not have specific recommendations at this stage but reaffirm our concerns in relation to:

1. **High market concentration: competition is required to ensure data is priced fairly and efficiently**. We note the FCA's finding that, whereas high start-up costs are not insurmountable to overcome, recent entrants have not been able to achieve the growth necessary to acquire significant market share. Certain data providers are extremely embedded in the UK and global financial ecosystem, and further concentration from mergers and consolidations have exacerbated their market power. We also reiterate the previous findings from the FCA study on Trade Data and our concerns with the significant market share exchanges hold as data providers, particularly as most users are forced to buy trading data to satisfy their investor protection obligations (best execution), while others need to obtain 'must have' data from exchanges to remain competitive themselves.

[redacted]

[redacted]

[redacted]

2. **Restrictions around usage rights within license terms**: long standing practices within licensing and data-use agreements and non-transparent pricing have contributed to the **rising cost of data, which is one of the most significant challenges facing the effective functioning of wholesale markets.** Users can often be required to pay multiple times for the same data, or pay a rate much higher than previously for the same data, and with no improvement to quality or access. Increased costs eventually have a detrimental impact on end investors.

[redacted] considers the FCA's next stage a crucial part of the wholesale market data investigation and welcomes the **refined data-driven analysis** into commercial practices, pricing practices, product/services packaging, brand awareness, and 'must-have' benchmarks to determine the extent of the impact these features have on market power and data costs.

In addition, [redacted] supports the development of a well-constructed consolidated tape and provided a detailed [redacted] to the FCA CP 23/15 on this topic. We maintain this will contribute to improve the quality of market data, reduce its costs, and decrease the complexity relating to market data licenses.

[redacted] remains committed to working with policy makers to improve market standards and maintain well-functioning markets.

[redacted]

[redacted]

[redacted]

[redacted]

MS23/1.4
FCA's Wholesale Data Market Study Update Report

Comments by [redacted]

September 29, 2023

[redacted]

I. SUMMARY

1. We welcome the opportunity to comment on the FCA's Update Report on the Wholesale Data Market Study of August 2023 (the "**Report**").

2. Our comments may be summarised as follows:

   a. We agree with the FCA's provisional decision not to make a market investigation reference for credit rating agencies ("**CRAs**"), market data vendors ("**MDVs**"), and benchmarks.

   b. We also agree with many of the emerging concerns that the FCA has identified. Specifically, we agree that:

      i. The CRA sector is characterised by:

         1. High degrees of concentration[1] and an inability to switch given the need to source more than one rating,[2]

         2. Vertical integration that benefits CRAs and CRA's affiliates,[3]

         3. Complex, non-standard, and non-transparent pricing, which can, and likely does, result in (price) discrimination,[4] and

         4. The imposition of excessive additional costs that are not correlated with the delivery of incremental value.[5]

      ii. The top 3 index providers command the vast majority of flows and revenues across the benchmarks sector thanks to the "must-have" nature of their leading equity indices.[6] They enjoy persistent market power and regularly deploy defensive commercial strategies, such as:

         1. Exploiting market positions through complex, non-standard, and non-transparent pricing that can result in

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[1] s. 3.105 of the Report

[2] s. 3.106 of the Report

[3] s. 3.110 of the Report

[4] s. 3.113-3.116 of the Report

[5] s. 3.110, 3.117-118, and 3.119 of the Report

[6] s. 3.29-3.31 of the Report.

price discrimination / prices that are higher than the competitive level, [7] and

2. Foreclosing access to input data necessary for the creation of benchmarks.[8]

iii. The MDV sector exhibits:

1. High levels of multi-homing, in particular because certain MDVs are often unable to access certain "must have" data sources (on fair terms) and/or because rivals often enter/expand on an asset class by asset class basis,[9]

2. Switching and/or frequent and careful consideration of switching (notwithstanding the high levels of multi-homing) [10]

a. (We also agree that factors (1) and (2) mean that any direct or indirect network effects are not a source of concern.[11])

3. Discriminatory pricing (or, alternatively, restricted access) *to* MDVs by suppliers who are vertically integrated data generators and data vendors, [12]

4. Complex and non-transparent pricing by *some* MDVs (but not all),[13] and

5. High levels of innovation. [14]

3. One theme is common to all three sectors: ***complex, non-transparent, and non-standard pricing/commercialisation terms.*** We agree that this merits additional investigation and scrutiny by the FCA across all three sectors.

4. Other concerns identified are not pervasive across the three focus sectors. For

[7] s. 3.59 of the Report

[8] s. 3.56 of the Report

[9] s. 3.131-134 of the Report

[10] s. 3.135-137 of the Report

[11] s. 3.146 of the Report

[12] s. 3.148 of the Report

[13] s. 3.154-156 of the Report

[14] s. 3.150 of the Report

example, we note the calls *by some* to unbundle some MDV services from others on the basis that the bundling is ostensibly designed to prevent entry by challenger firms.

5. We have limited visibility into when, how, and why competitors bundle services. But, for the reasons set out in paragraphs 21 and 22 below, we do not think calls to "unbundle" services would be well grounded in the event they were directed [redacted].

6. [redacted]

7. Users continue to enjoy substantial benefits from an [redacted]. From the demand side, the integration creates valuable efficiencies, enhanced productivity, and increased ease of use. [redacted]

8. [redacted]

9. The [redacted] has thus democratized access not only to data but to functions and tools that enable investors to understand data.

10. [redacted]

[redacted]. This is not proportionate or appropriate, particularly given that no significant adverse effect on competition caused by bundling has been identified in relation to [redacted] commercial practices.[15]

II. COMMENTS ON EMERGING THEMES IN CREDIT RATING AGENCIES

11. The core theme of the FCA's CRA findings in the Report is that the top 3 CRAs engage in complex, non-standard, and non-transparent pricing, which can and likely does result in price discrimination and other poor outcomes for consumers.[16] We agree with, and endorse, those observations. And we agree that the complex and non-transparent pricing behaviours are facilitated by high degrees of concentration[17] *and* an inability to switch.[18]

12. We agree that the FCA should focus its attention on the terms under which credit ratings are licensed to [redacted] users. And we would ask the FCA to consider in particular:

    a. Whether the price increases (and pricing structures) advanced by some CRAs in the prior 5 years [redacted] are merited in circumstances where there has been (a) no change in the scope of the license or services provided, (b) no out-of-the-ordinary course change in the CRA's costs, and (c) no significant investment in innovation or R&D that needs to be recouped.

    b. Whether CRAs are "favouring" or otherwise discriminating (for the purposes of competition law) [redacted] (and whether any safeguards allegedly deployed to address that concern are robust or otherwise susceptible to easy circumvention). We would recommend that the FCA also consider non-price factors [redacted] in its analysis.

    c. Whether there is any reasonable basis for charging consumers who independently source credit ratings from CRAs an additional amount for accessing those same CRAs through an [redacted]

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15 s. 4.30 of the Report

16 s. 3.113-3.116 of the Report

17 s. 3.105 of the Report

18 s. 3.106 of the Report

d. Whether there is any reasonable basis to limit the customers to whom MDVs may distribute credit ratings on a desktop (as some CRAs request/require).

e. Whether CRAs should be required to charge on a "reasonable commercial basis" (as in trade data).[19]

13. We welcome the opportunity to engage with the FCA on the question of whether MDVs are able to constrain CRA behaviour (in terms of access, choice, and pricing of credit ratings[20]). [redacted]

III. COMMENTS ON EMERGING THEMES IN BENCHMARKS

14. We agree with many of the concerns identified by the FCA in connection with the top 3 benchmark firms. The majority of the revenue generated in the index sector is received by the traditional equity indices providers, where there is significant concentration among the top 3 firms identified by the FCA (FTSE Russell, MSCI, and S&P). Each of these firms maintains durable market power, despite efforts by challengers [redacted] to enter and expand.

15. The owners of the "must have" equity indices enjoy persistent and durable market power and often defend that position (or positions in vertically related sectors) by:

a. Exploiting market positions through complex, non-standard, and non-transparent licensing terms that can result in price discrimination / prices higher than the competitive level, [21] and

b. Foreclosing access to the input data necessary for the creation of benchmarks,[22] further entrenching the market position of the incumbent provider.[23]

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19 See ESMA Guidelines on the MiFiD II/MIFIR obligations on market data available here

20 s. 3.119 of the Report

21 s. 3.59 of the Report

22 s. 3.56 of the Report

23 S.3.57 of the Report.

16. We welcome and encourage the FCA's attention to the practices of the top 3 benchmark firms (and vertically integrated input providers) in the next stage of the market study.

IV. COMMENTS ON EMERGING THEMES IN MARKET DATA VENDORS

17. We agree with many of the FCA's observations across the diverse types of MDVs addressed. In particular, we agree that (i) customers typically multi-home[24] and/or frequently switch/ meaningfully consider switching,[25] (ii) many individuals find value in the provision by MDVs of integrated solutions that address multiple types of needs,[26] and (iii) MDVs are highly innovative.[27]

18. We recognise the FCA's sentiment that the licensing terms offered by *certain* MDVs are complex and non-transparent.[28] We assume that this relates to MDVs who tend to offer products and services on an *"a la carte"* or non-integrated basis. That fragmentation facilitates price discrimination and causes razor thin differentiation in use cases (and thus risks duplicative and increased transaction costs).

19. [redacted] We thus agree that the FCA should scrutinise commercialisation models that are complex and non-transparent, particularly where they appear to result in supra-competitive pricing and/or are not correlated with the delivery of additional value.

20. We also agree that the FCA should examine whether vertically integrated MDVs (especially MDVs integrated into exchanges) are engaging in behaviour that reduces or eliminates competition among MDVs. [redacted]

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[24] s. 3.131-134 of the Report

[25] s. 3.135-137 of the Report

[26] s. 3.135 of the Report

[27] s. 3.150 of the Report

[28] s. 3.154-156 of the Report

[29] [redacted]

[redacted]

21. We note the proposal in the Report to examine whether the bundling of services into an MDV adversely impacts challenger firms.[30] Although the Report finds that there is value in the efficiency offered by integrated services that address multiple needs through a single MDV,[31] the Report motivates consideration of unbundling on the basis that packaged products may be used strategically to deter entry or to generate artificial barriers to entry.[32] Such strategic use does not apply to [redacted] for at least the following reasons:

    a. *First*, we do not integrate products [redacted] to deter entry or create entry barriers. [redacted]

    b. *Second*, integration [redacted] is done specifically to produce *tremendous* value for users. It improves efficiency, productivity, and ease of use for customers, as the FCA expressly recognises.[33] In particular, [redacted] provides unprecedented value to the buyside, including small investors, as well as to the sellside and corporations. [redacted]

    c. *Third*, [redacted] has developed and expanded in an organic fashion based on client demand. [redacted]

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30 s. 3.157 of the Report

31 s. 3.153 of the Report

32 s. 3.153 of the Report

33 s. 3.153 of the Report

[redacted] Rather, it would introduce significant duplication and higher costs which would lead to higher prices for users.

d. *Fourth*, [redacted] has not deterred successful entry in practice. As the FCA notes, there are at least 7 MDVs active in the UK with scale, market relevance, and credible core services.[34] [redacted] There are also several examples of successful entry in relation to services or products offered by [redacted]

e. *Fifth*, [redacted], create ever more innovative offerings (as the FCA recognises), and offer more products and services at lower prices.

f. *Sixth*, [redacted] allows customers to reduce search and transaction costs (which would accrue and be significant if customers were forced to buy services separately).

22. [redacted]

[34] s. 3.122 of the Report

23. We make no statement as to whether these observations [redacted] apply to any forms of bundling in which third parties may engage.

V. OTHER OBSERVATIONS (IDENTIFIERS)

24. The overarching theme contained in the Report is that the licensing behaviour of firms with persistent market power is complex, non-transparent, and discriminatory. Although this is raised in the context of CRAs, benchmarks, and certain MDVs, it is also a patent feature of the licensing practices relating to an integral and related category of wholesale data: **identifiers**.

25. [redacted] is now the exclusive administrator of [redacted] numbers, the monopoly identifiers for financial instruments [redacted] licensing of [redacted] identifiers *ensures that no competitive identifiers may develop*, as it precludes the sharing of [redacted] identifiers with any firm that does not also have a license to [redacted] identifiers. In other terms, a licensee of [redacted] may not trade and identify a financial instrument with another firm unless that firm is also a [redacted] licensee. This removes any incentive on firms to license a competitive identifier, as it will simply be wasted cost. [redacted]

26. The result is that all trading firms license [redacted] and all competitive identifiers have been and remain foreclosed.[35] [redacted]

27. Any assessment of licensing complexity and unjustified costs in wholesale data is incomplete unless it considers licensing practices related to financial identifiers [redacted]

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35 [redacted]

36 [redacted]

[redacted] We note that the FCA has received complaints about identifiers in the past.[37]

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We thank you for your kind consideration of our comments and stand ready to respond to any question or request for clarification.

[37] See Feedback Statement of January 2022, paragraph 3.72 (here) ("*On the other hand, start-up vendors argued that there are low levels of substitutability, sustaining the dominance of a few big players, which they considered was driven by … more established vendors not giving access to identifier codes needed to map across data to different providers.*")

[redacted]

[redacted] [redacted]

[redacted] Response to the FCA Provisional Market Investigation Reference Notice

[redacted] gladly takes the opportunity to present its views on the FCA provisional Market Investigation Reference Notice study. [redacted] studied with great interest the FCA update report to its Whole-sale Data Market Study along with a provisional market investigation reference decision (MIR).

[redacted] Even though UK is not the home market for [redacted] we find it relevant to respond to the provisional MIR as [redacted] are active in the UK market, and because the UK financial markets are very important for many stakeholders, including the buyside. We also respond to your excellent efforts because important UK based data sources, including trading venues, such as [redacted] as well as important data vendors, such as [redacted] are used by [redacted]. However, this situation and the problems are not exclusive for UK – they are global by nature as confirmed in the update report. Therefore, we respectfully submit our views on your notice as we did previously on the study which gives hope to the data user community which today is under pressure by excessive market data fees and overcomplex licences.

Regulatory protection for data users who are often required by laws and regulations to use certain data is either not existing (CRAR, BMR) or not effective (Art 13 MiFIR). On the other hand, also to date the competition authorities are reluctant to bring cases against market data sources and vendors. With this in mind, we do not support the provisional decision not to make a reference under section 131 of the Act in relation to wholesale data and (i) the pro-vision of benchmarks, (ii) the licencing and distribution of credit ratings data, and (iii) the distribution of wholesale data by market data vendors.

The documentation and data at hand and in the various FCA reports underlines that there is enough evidence supporting abuse of dominant position including, but not limited to complex, non-standard and non-licencing terms, selling products in

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[redacted]

[redacted]

packages, unreasonable termination requirements, liability clauses, price discrimination and limited (if at all) possibilities to switch providers. Please see our response to the Whole-sale Data Market Study for a detailed description of the market data ecosystem and the remedies to improve the situation. We also note that the Update Report states that these issues have also been identified by a number of other market participants, and we would welcome further action from the FCA to address them.

We especially support requests that in the case of 'must have' data (the use of which is directly or indirectly required by regulation such as data from regulated trading venues, benchmark providers, credit rating agencies and numbering agencies), the FCA imposes new rules so that fees and related policies are publicly disclosed. If fees are discriminatory (i.e., different consumers pay different fees based on a criterion), then the reason for the discrimination should also be published. As soon as there is sufficient transparency on fees and related policies, the FCA will be able to conduct future studies to assess whether fees are fair and reasonable as well as whether the overall revenue collected by 'must have' market data vendors is changing in response to a change in demand or a change in fees and related policies.

To the extent that credit rating agencies (CRA) are required to publish ratings data for free under Article 13 of the UK Credit Rating Agencies Regulation (CRAR) and its EU equivalent, we note that [redacted] do not utilise these free data sources, instead licencing data from CRA affiliates or via vendors. This was due in part to the perceived quality of data from free sources, the cost of manually acquiring it, and uncertainty about the terms of use in absence of a licence agreement with CRA data affiliates. We welcome that the FCA wants to fully understand why free credit ratings data is not being utilised in the marketplace. In this respect would be very happy to share our experience with the EU ERP ratings data platform.

While we encourage you to take competition law actions, we at the same time also support a holistic approach to regulation as described in chapter 4 of the update report. We also agree because of the global nature of various forms of data that a global approach is required on the side. Finally, many data providers are not even in any regulatory scope – such as vendors. This must be addressed also by policy makers. However, we hope for global actions within a reasonable period if the UK is willing to take the lead now.

We await with interest the FCA's final report on its findings on competition in wholesale data markets and would be happy to discuss further with the FCA any of the issues we raised in this reply.

[redacted]

MS23/1: Wholesale data market study: benchmarks, credit ratings data and market data vendors

[redacted] response to the FCA's Updated Report

Introduction and summary

1. [redacted] welcomes the finding that there are *'reasonable grounds to suspect there are a number of features in the provision of MDV services that prevent, restrict or distort competition in the UK'*[1] in the FCA's Updated Wholesale Data Market Study Report ("**Updated Report**"). In particular, [redacted] is supportive of the FCA exercising its existing powers, including those under the Competition Act 1998 ("**CA98**"), to remedy the potential harms as this could lead to timely, targeted and holistic resolutions for the market which would ultimately benefit UK customers.

2. This response sets out [redacted] views on the features the FCA has identified as problematic in the supply of MDV services and a high-level summary of the potential remedies that the FCA can impose to address these distortions. [redacted] would welcome further engagement with the FCA on any aspect of our submission and to input into the remedies consultation.

3. In summary, [redacted]

   - supports the FCA's findings that [redacted] enjoys entrenched market power due to the high switching cost and network effects in the supply of the MDV services market;

   - is concerned with [redacted] commercial practices which it considers significantly impede effective competition in the UK;

   - is concerned in particular that [redacted] has engaged in, and is continuing to engage in, the tying and bundling of services that had previously been segregated or could in principle be offered on a standalone basis without objective justification. Indeed, [redacted] considers that this tying and bundling creates dependencies, increases migration costs and prevents free choice and competition;

   - notes that [redacted] has exercised its audit rights in the past few years and imposed arbitrary non-pricing licence terms that led to a significant increase in the price [redacted] pays for access to the same data set;

   - supports the FCA taking further analysis of commercial practices (including tying, bundling, pricing and non-licensing terms) to develop appropriate remedies to address these issues to ensure effective competition in the supply of MDV services market in the UK.

Potential competition concerns in the MDV services market

4. The FCA's finding in the Updated Report that barriers to entry are high and that there is a concentration of market power in the incumbent MDVs, in particular [redacted] and [redacted], which is further reinforced by network effects and high switching costs[2] is consistent with [redacted] submission of 4 May 2023 in response to the Terms of Reference ("**Initial Submission**").[3]

[redacted]

[redacted]

5. [redacted] agrees with the FCA that continued analysis into the MDV services market landscape and of firms' different business models is needed.[4] [redacted] The lack of competition has also led to a softening of prices such that other MDVs have been able to follow [redacted] price hikes to the detriment of users.[5]

High start-up cost

6. [redacted] agrees with the FCA's finding[6] that very high start-up costs required to distribute wholesale data enhance barriers to entry, resulting in limited entry by smaller vendor firms. Though [redacted] notes that the FCA also found that the barriers to entry and high start-up costs are not '*insurmountable*', it is nevertheless telling that '*no entrant has yet overcome the barriers to growth that would enable them to achieve significant market share*' and is able to credibly compete against [redacted] and [redacted]. This is also illustrated by the failure of [redacted] to challenge [redacted] despite support from major investment banks.[7]

Network effects

7. The high barriers to entry are further compounded by the direct and indirect network effects identified by the FCA.[8] Based on [redacted] experience,[9] [redacted] has started to harness valuable market data generated by [redacted] [redacted][10] to create an automated pricing quotation product. The quality of this product is directly correlated to [redacted] extensive user base and comprehensive access to different data sources. The high numbers of market makers on [redacted] platform affords it a wider market coverage than its competitors. This serves to reinforce [redacted] market power and contribute to the high barriers identified.[11]

8. [redacted] that network effects are a structural feature of the MDV market that, combined with the harmful commercial practices [redacted] as identified by the FCA through third party feedback, act to restrict competition in the market.

High switching cost

9. [redacted] fully supports the FCA's finding that the '*high degree of integration required between MDV systems and firms' internal infrastructure*'[12] is a barrier to switching. [redacted] given the high switching costs for moving to a new system, a lack of negotiation power and the regulatory requirement to keep historical data which are not freely portable.[13] As a result, even though

[redacted]

[redacted]

there are a small number of alternative MDVs on the market, their offerings are not fit for purpose for an institution [redacted].[14]

10. In addition, [redacted],[15] even if [redacted] was able to switch, the lack of effective competition in the MDV market means that there is a softening of price competition such that not only is Bloomberg able to arbitrarily and unilaterally raise prices, but other MDVs can also do so unchallenged.

Commercial practices

11. [redacted] strongly agrees with the FCA's findings that the MDVs have engaged in harmful commercial practices (for example, tying and bundling). We are fully supportive of the FCA's use of its existing CA98 powers to impose remedies to eliminate restrictions of competition in the supply of MDV services markets and, ultimately, to protect consumers.

12. [redacted] welcomes the FCA's finding that many market participants have urged the FCA to '*mandate the unbundling of certain products and services*'.[16] [redacted] (technically and commercially) tying and bundling its offerings to ringfence a 'closed system' of [redacted] 'must have' products.[17] This has clearly led to higher prices for users, even though [redacted] services have been either available individually in the past or are capable of being offered on a segregated basis.[18] Further examples of MDVs bundling proprietary data content with terminals were provided [redacted].

13. As discussed above, these practices have removed any incentive or ability for [redacted] to switch to other MDV providers given [redacted] would have to pay more to retain the 'must have' [redacted] products. This is a classic case of [redacted] leveraging market power in respect of its must have products to eradicate competition for other services by tying them together.

14. In addition, [redacted] has repeatedly refused customers' requests for a bespoke offering (e.g. by asset class and therefore a more limited data set), such as those offered by [redacted] and which are more cost effective (for example for mid and back-office functions).

Pricing

15. [redacted] is pleased to see that the FCA has taken into account points raised [redacted] that there has been unfair price increase and is investigating these price rises.[19] Given that [redacted] pricing is undifferentiated between customers and, [redacted], non-negotiable, [redacted] believes that only regulatory intervention can ensure fair and indiscriminatory pricing. [redacted] Clearly, the ability

[redacted]

[redacted]

by [redacted] to levy price hikes unchecked by market forces is further evidence of its market power.

16. In addition to price increases on the licence fees, [redacted] welcomes the FCA's focus on investigating MDVs charging users multiple times for access to the same dataset.[20] [redacted] is of the view that [redacted] has imposed unfair, complex and non-transparent licensing terms [redacted] to levy multiple charges for the same dataset, mainly through the requirement for additional new licences.[21] The increase to the prices [redacted] for MDV services is also a function of a lack of transparency of some licensing terms such as market data usage. The imposition of a monthly limit makes it impossible to judge whether [redacted] is imposing any hidden price rises.

17. The retention of historical data is a regulatory requirement for [redacted],[22] yet many MDVs [redacted] do not permit retention of historical data after termination of contract. This means that users often need to continue to retain the incumbent MDV to meet regulatory requirements.

18. These are clearly features that [redacted] considers the FCA should address, using its existing CA98 powers in order to promote effective competition and maintain market integrity to protect consumers. We would be happy to provide further information to assist the FCA in its investigation on these issues and to develop appropriate and effective remedies.

<u>Potential remedies</u>

19. [redacted] welcomes and is fully supportive of the potential remedies identified by the FCA[23] in the Updated Report, in particular:

- Establishing rules and supervision of MDVs to ensure quality of data and that products are licensed on a fair, reasonable and non-discriminatory basis.

- Unbundling essential contents and functions from commercial products, including offering the 'must haves' as standalone products. [redacted] This would also encourage more entry to the market. [redacted] also supports an asset class specific [redacted] so that users can purchase what they need (which could be fewer options for mid and back-office functions).

- Banning separate view-charge licences (i.e. requirement to pay an additional fee if a user does not already subscribe to a terminal licence). This would ensure that users would have the incentive and are able to easily switch to another MDV.

- Imposing a cost-based licensing mechanism where data licence costs are based on a marginal cost of producing and distributing data plus a marginal cost.

- Making pricing calculations and licence terms transparent to users and regulators. Compliance with these rules should be overseen by the FCA to ensure that the rationale for price increases and a requirement to pay for additional licences can be properly understood.

[redacted]

[redacted]

- Requiring MDVs to make historical data available without additional charge or time limit for regulatory and audit purposes. MDVs should be required to allow users to freely transfer historical data held on one MDV to another without charge or restriction.

- Requiring MDVs to use open standards and not proprietary standards both in its symbology and when providing or streaming data. Currently, a new interface would be required to process a competitors' data feed thus adding cost to switching.

28 September 2023

[redacted]

[redacted]

September 29, 2023

[redacted]

Financial Conduct Authority
12 Endeavour Square, London E20 1JN

Re: Wholesale data market study – Update Report (MS23/1.4)[1]

Dear [redacted]

On behalf of [redacted], I am pleased to provide the U.K. Financial Conduct Authority (FCA) with our comments on the MS23/1.4 Market Study concerning the emerging themes and issues with respect to (1) Benchmarks; (2) Credit rating data; and (3) Market Data Services.

We respect the FCA's provisional decision of *"not to refer any of the markets in scope of the study to the Competition and Markets Authority (CMA) at this stage"*, amid the FCA's believe *"there are reasonable grounds to suspect there are features of each of the relevant markets that prevent, restrict or distort competition in the UK"*. We think allowing market-wide diplomatic works to find the best possible solution to determine how the Consolidated Tape (CT) should be created and fund appropriately is substantially better than regulatory price control. Indeed, Market data, BestEx disclosure, access fee rebate, payment for order flow, and other market structure issues are all intertwined. The noumenon[2] of the Reg. NMS in the United States, or the so-called "venue-by-venue competition" around the world is indeed a brutal 'Warring States Period'[3].

The fixed income CT feed may be the low-hanging fruit to improve bond market functioning and liquidity, whereas, what constitutes as "real-time" for Equity is critical. We advocate using Time-Lock Encryption (TLE)[4] to make market data available securely in synchronized time. We think there are good lessons learnt from the success stories of different industries, such as the copyright licensing mechanism[5] in the music sector. It should serve as a base case to facilitate discussions. What Gets Paid and Who Gets What must be based on clear delineation of rights and obligations; it will help revitalize the industry value chain and grow the overall pie.

[redacted] meeting with various professionals. My meeting discussions centered around the CT/ market data reform. Thankfully, I have gained traction with several Buy-side trade associations, while getting the ear of some sell-side firms. The following are highlights of our key thoughts about wholesale data market reform:

1. The Exchanges and elites may persuade the industry to make compromises and turn to their favors in adopting a near real-time CT Provider "cloud" solution, when it is indeed unfair to latency disadvantaged market participants. It would not help to lower the cost of market data and connectivity. Everyone is and will continue to be

[redacted]

[redacted]

[redacted]

subservient to those cloud and telecom infrastructure vendors.[6] Policy makers should reject such inequitable plans that further fragmenting the markets.

2. On the 1st of September, the US SEC issued an order to the SROs asking for improve Governance of Market Data Plans citing *"heightened the inherent conflicts of interest ... maximizing the viability of the proprietary data products they sell."* [7] Research[8] has shown that Exchanges may optimally restrict access to price information by charging a high fee so that only a fraction of speculators buy their Proprietary Products.

   As long as the CT is NOT in competition with Proprietary Products, and/or the dominate Trading Venues and the Approved Publication Authorities (APAs) incur almost no incremental cost to become a CT Provider, they would not mind the CT acting as a "second line" product to generate additional profits for the Market Data Contributors under the revenue-sharing scheme.

3. Determining where the CT is going to locate is a significant issue. Requiring *"transmitting or releasing data no sooner than to a CT"* only describes one of the aspects of "fair and reasonable" and "not unreasonably discriminatory" principles of FRAND[9]. It omitted the fact that market data is highly valuable and requires proper SECURITY protection. Fortunately, aggregation distance/ location differential issues can be solved by TLE[4]. TLE is a method to encrypt data such that it can only be decrypted after a certain deadline has passed. The goal is to protect data from being decrypted prematurely. Rest assured that TLE is NOT another speedbump. Even online gaming industry is using TLE, it is a shame that our capital markets are behind.

4. The Exchanges' argument about "one side does not fit all and not everyone needs the fastest connectivity" is a half-truth. Although portfolio rebalancing and other non-high-frequency-trading activities may not use market data in millisecond/ nanosecond precision currently, latency arbitrage attributed to firms being "sniped" whenever they trade. Either they lose a few basis points each time, or they must rely on certain transaction cost analyzers (TCA), "liquidity sourcing", "outsource execution" services. These "bandages" are indeed added layers of cost to transact in the market.

5. How far should a more dynamic regime move away from a one-sized fit all approach without causing unnecessary complexities of the marketplace? Data driven to find the optimal break point is one thing, we are concerned about the practical implementation of such dynamic regime based on our experience in the US markets. Does that mean every broker-dealer would need an automated sweep like shopping for hotel/ air ticket at various travel sites to fulfill the BestEx responsibility? We are disappointed with the US SEC proposed market structure reform.[10] Some resourceful market participants can keep adding sophisticated market sweep or 'filters' to delineate sub and sub-sub market segments. However, it introduces latency when the sweep becomes more sophisticated. Smaller firms cannot bear such burdens, amid elites got super-tier rebates when others got nothing.

6. We at [redacted], and the industry collectively, should question what constitutes as a data licensing framework on a "reasonable commercial basis". Licensing frameworks "based on costs incurred to provide the data" only leads to endless arguments (see the different perspectives from IEX[11], NASDAQ[12], and others[13]). Market reform

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should be about the divergence between private and social costs[14]. Inequity cannot be measured by accounting costs.

7. Schwab's empirical evidence[15] proved that "Order routing revenue and price improvement are NOT zero-sum". The noumenon of rebate incentives serves as royalty payments for the use of others' copyrighted material. When one is not required to pay for the use of others' intellectual property, streamers would exploit the content creators with rent seeking behaviors and/or selectively paying rebates and other perks to the elites like George Orwell's 'Animal Farm'. We suggest learning from the Music industry's Copyright Licensing mechanism to address the question of 'who owns the data'.

8. Who owns the data? Should market participants be compensated, and how, when aggregators sell market data? While every market participant negotiates to be more equal for lower fees, higher rebates, more incentives, and other privileges, who dictates the outcome, how conflicts will be addressed, and what constitutes as unreasonable, unfair and/or discriminatory? When accessing the Values of Composing Trades to determine who gets what, has anyone forgotten that the traders and algorithm developers are indeed the composers deserving the most credit?

   We picture traders as performance artists, algorithm developers (including the risk control professionals) as musicians, composers, and sound engineers producing songs, and their respective financial institutions as record label companies. The music industry has gone through decades of reforms that helped them delineate copyright and royalty payments for fair use of musical works that benefit every constituent and grow the overall pie.[16]

9. Using the prevailing rates in the music industry as a hypothetical case study, and assuming algo developers and traders play the role of "featured artists" for their respective broker-dealers or "publishers", 50% of performance royalty is allocated to the "publishers", 45% is allocated to the "featured artists", and 5% is allocated to the non-featured supporting team.

   There are upsides for the Hunters type of firms (i.e., Performance Optimizers, Asset Gathering firms), if they can help reduce the number of unknown unknowns in the markets, creating better algorithms and more "hit songs" that deepen market liquidity. Equally, there will be opportunities for the Farmers type of firms (i.e., Asset Maximizers, Retails, Wealth Advisory) to grow their AUM and improve profitability (e.g., by off-loading some of the traders and algo developers' costs to be paid for by the royalty's system).

10. There will be upside for the traders and algo developers to earn more, if they are willing to do more than 12 to 20 "songs" a year and/or creating 1 or more "hit song(s)" that deepen market liquidity, identify trade irregularities, etc. (regardless of thinly traded securities or others). At the same time, entitlement of royalties must accompany the burden of potential liability if their trade activity is market manipulation and/or trading violations. Copyright Licensing mechanism provides excellent traceability (no more scapegoats) by aligning rights with obligations.

11. Agency trading, retail brokerage, order routers or other non-algorithm market participants to some extents are functioned like the "non-featured" musicians or "DJ mixing engineers", which they typically earn the 5% in the music industry, and the remaining 95% would be a "pass through" payment to the original "content" creators.

[redacted]

[redacted]

[redacted]

Unless the "derivative work" of a "DJ mixing engineer" is able to avert the original "song" or trade strategy into another new "song" (such as Exchange Traded Products, benchmarks and indices), their "remix" deems to be a "reproduction" or a "covered" song where they are compensated at 5% rather than the higher bracket of a "featured artist" at 45%.

A rule of thumb under this hypothetical model is: 5% performance royalty for each layer of data aggregation.

12. If we picture the 'index providers', benchmark or 'model portfolio providers', pricing services or Credit Rating Agency (CRA) as either 'Algo Publishing' (artists) or 'DJ Mixing Engineers' (aggregate and push upstream), it is not hard to see that their "derivative works" may or may not have significant difference from the original "songs" or trade strategies. So, the deterministic factor is whether these CRAs, Benchmark Indices firms are artistic enough to "create" original "contents" that uniquely different from the underlying securities and the rivalries.

    So, the setup would be like the SoundExchange as an administrator of performance rights royalties in the Music Industry, where YouTube, Spotify and other streaming platforms would run their system in the background to determine if the "content" being an original, a covered song, or a plagiarized counterfeit. The whole process of identifying potential infringement would run behind the scenes and NOT interfere the live streaming. A similar setup is recommended for our capital markets and this administrator can be a non-profit governed by the industry.

13. We argue that for-profit exchanges / integrated conglomerates are operating a "Jukebox model" to extract rent, hurting all, but mostly the smaller players. Policy makers should consider Market Makers (MM), Alternative Trading Systems (ATSs)/ Multilateral Trading Facilities (MTFs), single dealer platforms (SDPs), and Exchanges as different streaming platforms to have the right focus. Nevertheless, the Facebook case affirmed that data should be owned by "content creators" instead of the streaming platforms.

14. Think about what gives rise to arbitrage or pick off on price. Anyone would have done it if they did not have to bear the corresponding cost in using others' copyrighted materials. Bilateral or multilateral trading facilities have the upper hand in terms of nimbleness to maneuver around in crafting niches than public stock exchanges. So, the proper way to "harmonize" across market centers is:

    On-Exchange would be treated as non-interactive streaming platforms, versus off-Exchange will require to have 'catalog' to operate their interactive streaming platforms. By shining lights on the MTFs and systemic internalizers, it would be allowing a grant bargaining on which type of trading venues should have what capabilities in order to maximize overall reach and efficiency for the collective markets (just as music reaching a wider audience).

15. One may ask the question whether simple data (prices, rating, index values, reference data, etc.) would or would not be protected by copyright. Would fund companies need to assert their physical ownership of self-generated fund and trade data by restricting by contract the data vendor from reselling their own data before they send the data? *"Case at point would be fund data given today for free to Morningstar, except in Denmark where Morningstar is paying today the local industry owned Fund Connect platform for getting the DK fund data."* Again, per point 11, our hypothetical model suggests 5% performance royalty for each layer of data aggregation. Our suggested Copyright Licensing mechanism would work effectively to delineate the respective rights and obligations and harmonize jurisdiction differences based on an objective 4-part test[17], i.e., (1) willing seller willing buyer standard; (2) same parties' test; (3) "effective competition" test; and (4) same rights test.

[redacted]

[redacted]

[redacted]

16. It is noteworthy that those who play only a few single notes (e.g., 'do, 'ra', 'me') would not be entitled to copyright royalty. Those able to compose a full song (meaningful sequences of a series of notes) would be compensated. Music industry's rationale for not allowing anyone to claim copyright over a few single notes is that they do not want someone claiming exclusive right over, e.g., 'do, 'ra', 'me' and preclude the broader composers community to use these basic notes for creative works. Similar logic should apply to our capital markets. If someone is only able to play a few "music notes" (individual orders) rather than compose a complete "song" (trade algo), then it is our opinion that they deserve the appropriate investor protection. Regulators may then better draw the line in distinguishing between the "Professionals" versus the "non-Professionals" (retail, average investors).

    Professionals who are artistic enough to "create" original "contents" that uniquely different from the underlying securities and the rivalries should command our respect and justified their earning of 45% instead of the 5% copyright royalty under our hypothetic model. We will help democratize technologies, so more non-professionals can become professionals for a healthy mix of investors and sustainable development of the markets.

17. We believe algorithms have come to rule our world. Why not let Algo development to flourish by having a community 'sound library', where unused Algos would earn second profit while those who want to accelerate algo development can obtain licenses from others. Algos should not have a negative connotation as "speculative" (like options or indexes in the 70s). So, why not make this an essential tool for all market participants for price discovery, hedging risks, managing volatility, etc. Our suggested 'sound library' approach[18] would accelerate algo development lifecycle and foster creative discovery of unknown unknowns, which can be anybody's game. Shuffling with how the game is played presents new sources of economic opportunities and customer values.

18. Copyright Licensing Mechanism is NOT a drastic change. It simply asks trading platforms to pay a wider range of broker-dealers, featured traders, algo developers in royalties if they shall choose to carry a broader "catalog" of whose order flows be streamed on their platform. This levels the playing field or "harmonizes" different trading platforms without unnecessary government intervention. Royalty rate setting is market driven. Calibration to mimic payoff behaviors like today is possible, so there will be a seamless transition to a new equilibrium.

    By putting a value on quotes and trades composition, proper considerations will be given to eliminate conflict of interest, as well as ensuring efficiency in deployment of resources, rather than engaging in non-productive fights that destroy values.

19. Healthy markets need both farmers and hunters. Variety helps reach a wider audience, reduce unknowns, and drive new customer values. Give investors a fighting chance for new ways to do trade analytics with community library of trade patterns, it would encourage market participations. Pareto improvement is achieved when someone is better off without anybody worse off or win-win for all. What we need from the regulator are:

    - a no action letter in supporting the development of an industry-wide copyright licensing mechanism;
    - mandating the use of Time-Lock[4] and curb trading venues and APAs from circumventing security protection;
    - develop Pan-Europe and UK order protection rule, rather than the false hope of BestEx[19] or disclosure[20] rules;
    - consider (1) willing seller willing buyer standard; (2) same parties' test; (3) "effective competition" test; and (4) same rights test, i.e., the 4-part test[17] to promote FRAND and refrain from government price control.

[redacted]

[redacted]

[redacted]

[redacted]

20. Beyond creating a CT, a little extra cost would enable the development **of a de facto "Smart Order Router" for the** UK and Europe as a public utility that we think it would yield even higher benefits. Also, we recommend the UK to visualize the opportunities of forming strategic alliance with the British Commonwealth Countries (Canada and Australia), as well as Singapore. In doing so, it enables a true 24 hours a day global trading experience. It would differentiate from the US and EU models, where a new equilibrium would emerge among the Western developed markets to co**unter the rise of China's capital markets.**

We look forward to seeing the next FCA report by the 1st of March 2024. Meanwhile, feel free to contact us with any questions and please keep us posted where our expertise might be helpful.

Sincerely,

[redacted]

[redacted]

[redacted]

By email

[redacted]

Dear Sirs

Re FCA Wholesale Data Market Study Update Report

[redacted] welcomes the opportunity to comment on the FCA's Wholesale Data Market Study Update Report.

[redacted] broadly welcomes and agrees with many aspects of the Update Report.

Commodity price assessments are critical to the functioning of the wholesale traded markets. They provide a price reference against which all market participants manage their risk exposure and are used to determine settlement prices for relevant transactions between market participants. As such, vendors of commodity benchmarks need to be viewed as a fundamental part of the 'infrastructure' that is needed to ensure robust and effective markets.

To the extent the FCA can sufficiently resolve the issues it identifies and facilitate the conditions for supporting the evolution of sustainable effective competition then it may not be necessary for it to use its CA98 powers and/or refer the sector to the CMA. However, use of these powers should be retained as an option going forward – as the structure of the market today may undermine any behavioural remedies the FCA puts in place.

Whatever remedies are established it is important that the market for provision of commodity price assessments receives closer ongoing oversight by the FCA including whether an explicit licensing regime for provision of any commodity price assessments is needed.

Yours sincerely

[redacted]

[redacted]

[redacted]

Dear Market Data study team,

[redacted] have read with interest the initial FCA findings in the FCA Update Report on Wholesale Data Market Study

We welcome the continuing investigation but would like to further highlight vendor practices that do not put clients first.

Price increases:
In a very difficult fee market, where asset managers are suffering fee compression, [redacted] are seeing increase proposals of 30, 40 and even 50% for index and ratings data by some individual vendors. The vendors understand the reliance asset managers have on their data, particularly when used in regulatory and client reporting. [redacted] feel that this position is being leveraged to extract unfair increases from their clients, which in turn increases costs to our clients, including retail savers in the UK.

Additional licencing
One issue [redacted] would like to draw attention to is blending licencing on index. All major vendors are now pushing for blending licences and declarations where their indexes are used in a multi-vendor index blend. [redacted] have two issues with this:

a) Blends are usually created where no one vendor provide an accurate enough index, so an asset manager must create one.
b) The user will be subject to multiple licences. [redacted] would have to licence with every vendor for their underlying indexes (that is fair) but then pay a further fee to every vendor being used in the blend (this is unfair). For example, if [redacted] have a 5-vendor blend, we must pay 10 separate licence fees for one index - while the vendors do not provide any additional service. The costs are threatening business models and run the risk of increasing costs to end clients and thus are deeply concerning for [redacted]

Vendor responsibility to provide value and 'best-interest' service to their clients

As an asset manager governed by the FCA, [redacted] are required to show:
Integrity - act honestly with a high ethical standard with focus on deliberate acts and omissions
Skill, care, and diligence - always hold yourself to a high standard of care in relation to failures
Relationship with Regulator - full and honest if questioned and provide information
Fair treatment of customers - focus on customers and always treat them fairly. This means being clear and transparent and acting in their best interests.
Market Conduct - must observe proper standards of market conduct
Customer outcomes - act to deliver good outcomes for customers

[redacted] feel that this does not apply equally to the vendor that supply the data that asset managers need to service client funds. [redacted] is not 'put first' by vendors at times. We recently had one vendor explain that they have a responsibility to the shareholders (above clients) when discussing a service issue. [redacted] want market data vendors to be held to the same standards and rules relating to clients that [redacted] apply every day to our investors. The actions in the first 2 points show that this is not always the case. Market Data vendor costs will soon impact the viability of the asset management industry if not governed more closely.

To improve the functioning of the market, and in recognition of the market dominance of a relatively small number of players, we recommend that:

- Core/ 'must have' data, such as trading data, benchmarks, credit ratings and numbering agencies, the FCA imposes regulation to ensure transparent fees and related policies are publicly published. This way, we believe, the FCA will be able to conduct future studies to assess whether fees are fair and reasonable and whether the overall revenue received by core market data vendors is changing in response to a change in demand or a change in fees and related policies.
- Data fees be tied to costs, with cost increases based on a reasonable profit margin, or demonstrable growth in operating expenses (excluding contracting and audit costs).
- Regulators should consider how to rationalize licensing agreements – by, for example, requiring standardized contract terms and standards.
- An option for 'enterprise' licencing of market data (i.e. having one licence with a data provider for use throughout the firm) be introduced.
- Data providers should not charge again for data firms have already paid for in the event of terminating a particular service and displacing it with another.
- Index providers shouldn't be allowed to charge fees for blending indices with other 3rd party indices if firms already subscribe to these. It is unfair to pay again for the same index, considering vendors are not using any extra resources or incurring additional costs as blending is done in house.
- Removing limitations related to creating and using derived data.

We look forward to FCA's findings in the final report expected to be completed on 1st March 2024.

Regards,

[redacted]

[redacted]

[redacted]

[redacted]

Response to UK FCA's provisional Market Investigation Reference Notice

[redacted] has with great interest read the FCA update report to its Wholesale Data Market Study along with a provisional market investigation reference decision (MIR), which is open for comments by 29 September.

This follows the initial FCA Market Study and the Findings Report on accessing and using wholesale data which were published in March 2023 and sought to review how well wholesale data markets were functioning.

[redacted]

Even though UK is not the home market for [redacted] we find it relevant to respond to the provisional MIR as [redacted] which are very active in the UK market, the UK market is in general a very important market for most stakeholders and most of the relevant suppliers are represented/registered/listed in the UK.

Furthermore, the problems scheduled are not exclusive for UK – it is global by nature, which is also addressed in the update report on page 4, point 1.6: "*We have been engaging with regulators in other countries to see if they are facing similar competition issues and how they are tackling them. This engagement has highlighted similar concerns about market features such as lack of transparent pricing practices, excessive charging, bundling practices and complex licensing agreements.*"

Finally, [redacted] has been and is very active in the market data cost debate - both on a [redacted] European and Global perspective[2] . [redacted] has responded directly to previous consultations from UK FCA in relation to trade data, the Terms of Reference and indirectly to the FCA Wholesale Market Study.

That said, we find that the update report is, as the previous reports from the FCA Wholesale Market Data team, of high quality with data and content reflecting many of our concerns (also raised by the majority of the respondents). One exemption is the apparent reliance on Consolidated Tapes (CTs) as a mean to solve some of the harms as proprietary data is needed whether there are CTs or not.

With this in mind, we are concerned with the provisional decision **not** to make a reference under section 131 of the Act in relation to wholesale a data and (i) the provision of benchmarks (ii) the licensing and distribution of credit ratings data, and (iii) the distribution of wholesale data by market data vendors.

The documentation and data at hand and in the UK FCAs reports underlines that there are evidence supporting abuse of dominant position including but not limited to complex, non-standard and non-licensing terms, selling products in packages, unreasonable termination requirements, liability clauses, price discrimination and limited/if at all possibilities to switch provider.

We do recognize that a holistic approach as elaborated in chapter 4 is appealing and we agree – due to the global nature of various forms of data – a global approach is crucial. Additionally, some providers are not even in any regulatory scope – such as vendors. This must be addressed by policy makers. However, global actions which are efficient within a reasonable period is still to be seen.

We strongly encourage some jurisdictions to take the first step to set the scene for others to follow.

[redacted]

[redacted]

[redacted]

[redacted]

Financial Conduct Authority
12 Endeavour Square
London E20 1JN

[redacted]

29th September 2023

To whom it may concern,

RE: [redacted] response to the FCA's Update Report on its Wholesale Data Market Study

I am writing to you on behalf of [redacted].

We have read with interest the FCA's Update Report on its Wholesale Data Market Study and welcome the opportunity to respond.

As expressed in our previous response to the Wholesale Market Data Study, [redacted] have long held concerns regarding the ever-increasing cost and complexity of wholesale data markets, and while we understand that the FCA is still considering what actions, if any, to take out of a range of potential outcomes to take, we would like to reiterate those concerns.

From the largest global asset managers to the smallest firms, [redacted] have faced high and rising prices to acquire data that is critical to their business. Key drivers of this include:

- Greater requirements for data usage, with de facto requirements to purchase new data products that have come onto the market; and
- Licensing agreements and policies that are subject to variation and regular changes. Vendors will often separate use cases and impose separate licence charges for each.

[redacted]

These issues are further exacerbated by increasing consolidation of providers and dominance by a small number of players, resulting in a monopolistic scenario where investors find it difficult to move their business to a competitor. For both benchmark providers and credit ratings agencies in particular, there are a relatively small number of large market players, and investment mandates will often require investment managers to use particular providers. This allows these providers to raise prices significantly with little recourse available to investment managers to move their business elsewhere. Increasingly, [redacted] are also seeing this trend now spreading to the area of ESG data, where the largest, global data providers are taking over smaller, specialised, providers.

All this has had the effect of greatly increasing the costs required for market participants to access a comprehensive view of market activity, acting as a barrier to entry for smaller and newer firms and ultimately impacting the returns of the end client: the individual saver and investor.

It is not at all clear to [redacted] that these rising costs are associated with an improvement in data quality, or an increase in costs incurred by the data provider. Instead data providers are often seen to be simply charging more for the same level of service.

We also note that pricing models change frequently, with vendors frequently making changes to usage and licensing rules at each new renewal (for example by switching between unlimited usage per licence to per user pricing), driving up fees over time. There is often little transparency as to how these pricing models operate. In many cases, data providers will state that they are working from a strict pricing list which makes price reduction impossible, but more often than not these pricing lists are not visible to data users. These opaque models lead to highly variable commercial outcomes, make price comparison impossible, and make it difficult to determine whether the requirement to treat customers fairly is being met, as well as to anticipate any future cost increase from one year to another in the provision of a given service by data providers.

Finally, we note with concern the practice of providers disclaiming liability for the accuracy, completeness, and/or timeliness of delivery. This puts the risk of their errors onto the consumer, setting an unfair responsibility on investment managers as users of such data. Given that investment managers are paying for this data, the onus should be on data providers to ensure that the data is reliable and useable. As this is not the case currently, this often results in data consumers building teams and functions to verify the data at their own expense. Coupled with the persistent, unjustified cost increases the providers levy, this adds significant cost and time burden to the consuming company and potentially the end customer in the way of higher charges.

We note that the Update Report states that these issues have also been identified by a number of other market participants, and we would welcome further action from the FCA to address them.

In order to improve the functioning of the market, and in recognition of the market dominance of a relatively small number of players, we recommend that:

- Data fees be tied to costs, with cost increases based on a reasonable profit margin, or demonstrable growth in operating expenses (excluding contracting and audit costs).

[redacted]

- Regulators should consider how to rationalize licensing agreements – by, for example, requiring standardized contract terms and standards.
- Regulators should also consider how to achieve greater pricing transparency, through public availability of pricing lists or models.
- An option for 'enterprise' licencing of market data (ie having one licence with a data provider for use throughout the firm) be introduced.

We also welcome the statement that the FCA will further explore concerns regarding market data providers disclaiming liability for accuracy, completeness, and timeliness of delivery.

We await with interest the FCA's final report on its findings on competition in wholesale data markets, and would be happy to discuss further with the FCA any of the issues we have raised here.

Yours sincerely,

[redacted]

[redacted]

To: wholesaledatamarketstudy@fca.org.uk

In reference to: MIR notice and Market Study Update report

27th September 2023.

https://www.fca.org.uk/publications/market-studies/ms23-1-wholesale-data-market-study

Dear FCA Wholesale Market Study,

[redacted] very much appreciates the work the FCA has so far undertaken in relation to the Wholesale Data Market Study and the consideration of a Market Investigation Reference Notice. [redacted] feedback is as follows:

The key ask of the FCA from [redacted] is that where data is core, 'must have' data (such as data from regulated trading venues, benchmark providers, credit rating agencies and numbering agencies) the FCA imposes regulation to ensure fees and related policies and publicly published. Once the fees and related policies are publicly published the FCA will be able to conduct future studio assess whether fees are fair and reasonable. Once the fees and related policies are publicly published the FCA will be able to conduct future studies to assess whether the overall revenue received by core market data vendors is changing in response to a change in demand or a change in fees and related policies.

[redacted] notes paragraph 1.12 of the Market Data Study that states "*Market power might enable benchmark administrators to impose commercial practices that result in high costs for benchmark users and further weaken competitive pressures, such as complex, non-standard and non-transparent licensing terms, selling of products in packages, termination requirements and liability clauses.*"

[redacted] notes paragraph 3.59 that states "… *Price discrimination can have positive and negative effects on competition and access. We will use information from benchmark providers to assess how providers price discriminate across users, and whether this is likely to be harmful to users.*" [redacted] recognizes that non transparent fees and related policies do provide [redacted] with the opportunity for [redacted] to negotiate, however, [redacted] believes that in practice, over the medium and long term the negative impact on [redacted] is far higher than any short-term positive benefits. In practice, because the data is core, 'must have', different members having different fees is used by core market data providers to create inflationary peer comparison. It would be better, by far, if fees and related policies were publicly published. If fees are discriminatory (i.e., different consumers pay different fees based on a criteria) then the reason for the discrimination should be publicly published.

[redacted]

[redacted] [redacted] [redacted]

[redacted]

[redacted] are concerned that fees and related policies for core 'must have' market data (trading venues, credit rating agencies, benchmark providers and numbering agencies) are overly complex and opaque which leads to significant discrimination amongst consumers of the data. For example, if a benchmark provider charges for different 'types of use', surely it is reasonable for consumers to be expect that the benchmark provider publishes what the different 'types of use' actually are? If the FCA, working with regulatory counterparts in other jurisdictions, could put in place regulation that requires providers of core 'must have' data to publicly publish fees and policies that would be a good first step towards achieving less complex more reasonable fees and related policies and stimulate financial markets in the UK.

Fees and related policies should have some flexibility to cater for consumer firms of different sizes. It is true that one size does not fit all and [redacted] have expressed concern when policies are restrictive. However, consumers need confidence that the flexibility is proportionate and reasonable. In order to achieve that consumer confidence, fees and related policies need to be publicly published and readily understandable.

[redacted] notes paragraph 4.1.6 that states *"… While the outcomes of the market study focus on improving competition issues within the UK, we recognise the international nature of these markets. If appropriate remedies will require cooperation between international regulators to effectively tackle any harm we identify, we would be well placed to do this. The FCA benefits from established relationships with international counterparts. We also contribute to the work of standard-setting organisations to help shape and implement international standards*." [redacted] recognizes that data is delivered and received globally and therefore national regulation is limited. However, [redacted] would urge the FCA to find a way of imposing regulation that requires fees and related policies for core, 'must have' market data to be publicly published.

[redacted] notes paragraph 4.2.4 that states *"… FCA powers: As discussed in Appendix 1 Regulatory landscape, the FCA regulates CRAs under the UK Credit Rating Agencies Regulation (CRAR). If we identify the source of any harms as originating from UK regulated CRAs then the FCA may, potentially, be able to address them. However, credit ratings data services are provided by separate/affiliated entities of the CRAs and are, therefore, not currently regulated*." Is it possible for the FCA to extend the CRAR to explicitly require data fees and related policies to be publicly published? For example, EU Credit Rating Agencies Regulation states in Annex I INDEPENDENCE AND AVOIDANCE OF CONFLICTS OF INTEREST, Section B Operational Requirements Paragraph 4 "… A credit rating agency shall ensure that the provision of ancillary services does not present conflicts of interest with its credit rating activities and shall disclose in the final ratings reports any ancillary services provided for the rated entity or any related third party", presumably the provision of credit ratings data is an ancillary service and a meaningful disclosure would include the product name, the fee and the related policy.

[redacted]

[redacted] [redacted] [redacted]

[redacted]

[redacted] notes paragraph 1.15 "*CRAs are required to publish ratings data for free under Article 13 of the UK Credit Rating Agencies Regulation (CRAR), but this varies across other jurisdictions. Our survey of data users indicated many users did not utilise these free data sources, instead licensing data from CRA affiliates or via MDVs. This was due in part to the perceived quality of data from free sources, the cost of manually acquiring it, and uncertainty about the terms of use in absence of a licence agreement with CRA data affiliates.*" and paragraph 3.119 final bullet point "*We will further investigate free sources of credit ratings data, and in what circumstances this can be relied upon for both regulatory and commercial operations.*". [redacted] would like to work with FCA to fully understand why free credit ratings data is not being utilised.

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FCA Wholesale Market Study: Update Report

[redacted]

1. Introduction

1.1 Thank you for the opportunity to respond to the Financial Conduct Authority's (***FCA***) Wholesale Data Market Study Update Report published on 31 August 2023 (the ***Update Report***). This paper sets out the [redacted] response to the Update Report (the ***Response***) [redacted]

1.2 Please note that [redacted] has confined its comments to those parts of the Update Report that are most relevant and significant to its business. The absence of comment from [redacted] on other sections of the Update Report does not necessarily mean it agrees with the content of those sections.

2. Executive Summary

2.1 For the following reasons and as explained in further detail in sections 3 onwards [redacted] competition in the index/benchmark and MDV markets is functioning well. Any regulatory intervention, or shift away from existing commercial models would seriously endanger a market that is already focused on customer-responsive offerings with healthy levels of investment and innovation.

Benchmarks[1]

2.2 The FCA states that some benchmark administrators have market power as a result of: network effects; strong brand awareness, in particular at the level of end investors; barriers to entry due to input and start-up costs; and, vertical integration.[2] The FCA expresses concerns that this market power reduces incentives to compete on price, quality and innovation, and results in commercial practices that further reduce competitive pressure.[3] [redacted]

2.3 **Network effects in benchmarks markets arise due to brand value and reputation, and do not lead to poor outcomes for customers.** While it is not disputed that the more widely a benchmark is adopted, the more valuable it is for the end user, the market evidence shows that this is largely due to a benchmark's brand value and reputation. Index/benchmark providers *must* continue to invest in providing a reliable quality of service to maintain their brand reputation, or otherwise risk customers switching away or risk failing to attract the same customers to adopt its new index/benchmark offerings. [redacted] invests a significant amount in order to maintain its reputation for quality and to keep customers happy – [redacted]. In addition customers do switch index providers in practice, and LIBOR is not a representative example of any challenges users face when switching in a business-as-usual context. All of this evidence is not

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consistent with the idea that index providers [redacted] can "rest on their laurels" at the expense of customers and is instead indicative of customer focused outcomes and a high degree of competition. For further detail, see section 4 below.

2.4 [redacted]

2.5 **Innovation and customer heterogeneity are key market features that drive competition in benchmarks and shape commercial practices**. It is essential that the FCA closely considers the key market features that shape competition in the provision of benchmark services – innovation and customer heterogeneity – and the implications of these market features on commercial practices, rather than assuming that they are a symptom of lack of competition and a means through which index providers could exploit or enhance their market power. The FCA should carefully consider the serious and negative implications of a shift to standardise pricing or "unpackaging" of indices. This is explored in section 7 below, [redacted].

(a) **Licensing terms and pricing reflect market dynamics and are pro-competitive.** [redacted] As set out in more detail below [redacted] the FCA should carefully consider the practical implications of a shift to a less tailored model – while this may reduce prices for larger customers with broader use cases, it could result in substantial fee increases for smaller customers and customers with more limited use cases.

(b) **Licensing of benchmark products in packages respond to customer demand.** [redacted] sells indices / benchmarks as part of a series of associated indices, which reflects customer demand to access multiple related indices at the same time. As set out in further detail in section 8 below [redacted], the FCA should carefully consider the implications and additional complexity that forced "unbundling" series of associated indices would have on the complexity and resource required for negotiating index/benchmarks licences and pricing, as well as on the delivery of the individual indices/benchmarks in practice.

(c) [redacted] (See section 8 below).

(d) **Contractual clauses excluding liability are justified** given the asymmetric nature of the costs and liabilities associated with the provision of indices. [redacted] Imposing unlimited liability on the index provider would change the risk profile of the provision of indices, would have to be passed on to users and would limit the potential market-wide value that could be derived from them. [redacted] The commitment to quality that arises from effective competition is demonstrated by how, regardless of these contractual clauses, [redacted] invests significantly in ensuring quality, accuracy, completeness and timeliness of delivery of its data. (See section 8 below).

2.6 **Shifting to a less tailored model may harm competition in UK financial services and infrastructure markets**. A forced shift to a standardised pricing structure for UK users would result in smaller users (or users with fewer use cases) to pay higher fees, to the benefit of their larger established competitors, potentially harming competition in these downstream markets. This has the potential to reduce the competitiveness of UK financial services relative to international counterparts. Standardising pricing models for UK customers may also reduce index/benchmark providers' incentives to innovate, and making the UK a less attractive home for investment and business. The FCA must carefully consider the broader implications any regulatory intervention would have on the competitiveness of the UK financial markets as a whole. (See section 8 below).

*Market Data Vendors (**MDVs**)*

2.7 The FCA expresses concerns that well-established MDVs appear to have market power resulting from switching costs and other frictions in the switching process.[4] The FCA states that various network effects exist in regard to MDVs and that the presence of network effects can potentially generate harm if they result in an abuse of dominant position or in markets tipping.[5] As for benchmarks, it is critical that the FCA considers the further evidence provided [redacted] when further exploring these purported issues in the next stage of its market study.

2.8 [redacted] **does not benefit from direct or indirect network effects**. Contrary to the FCA's preliminary thinking, the evidence shows that <u>direct network effects</u> are not an inherent feature in the supply of wholesale market data by MDVs. [redacted] does not depend on the number of users it has. In addition, it is not appropriate to characterise [redacted] offering as an MDV as a two-sided market or platform benefitting from <u>indirect network effects.</u> In general, considering MDVs as platforms that solely bring together data generators and data users fundamentally misunderstands the role that MDVs play in the market. Instead, it is more appropriate to consider data provided by data generators as upstream inputs that MDVs procure for the purposes of developing products they sell to downstream customers, rather than two-sided platforms. (See section 11 below).

2.9 **Switching MDVs is not uncommon.** [redacted] faces constant competitive pressure due to customers' ability to switch away from its MDV business. Multi-homing by users of two or more MDVs is widespread and facilitates switching as customers can simply 'dial-up' or 'dial-down' consumption of data via a particular MDV, rather than facing a binary decision of whether or not to switch all their products/services from one provider to another at once. (See section 12 below).

2.10 [redacted]

2.11 **As for benchmarks, innovation and customer heterogeneity are key market features that drive competition and shape MDVs' commercial practices.** Specifically:

(a) **Desktop products are by their nature packages and respond to customer demand.** [redacted]

[redacted]

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[redacted]. The FCA should carefully consider the additional complexity that forced "unbundling" of MDV products would introduce for the complexity and resource required for negotiating licensing and pricing, as well as on the delivery of the data in practice. (For additional detail, see section 15 below [redacted]

(b) **As for benchmarks,** [redacted] **licensing practices reflect customer demand.** [redacted] The FCA should carefully consider the practical implications of a shift to a less tailored model. (For additional detail, see section 15 below and [redacted]).

2.12 For these reasons, and as described in further detail below, [redacted] considers that the markets for both indices/benchmarks and MDV businesses are working well for customers, with the provision of customer-responsive offerings and significant investment in innovation. The FCA should carefully consider the serious negative implications of any intervention on existing competitive dynamics. Further, [redacted] supports the FCA's provisional decision not to make a market investigation reference (***MIR***) to the UK Competition and Markets Authority (***CMA***) for either of the benchmarks or MDV markets.

A. Benchmarks

3. Trends, developments and future competitive dynamics

3.1 In its Update Report, the FCA recognises that demand for benchmarks and innovation are partly driven by recent trends in financial markets, with index providers creating indices tracking new markets to match investment trends. The recent trends the FCA identifies are: the growth of passive investment; an increasing demand for ESG-related investment products; and an increased demand for specialised and bespoke indices. The FCA states that it will further consider the role that these trends have had in shaping competitive dynamics and the likely future developments in the context of evaluating the relative weight of its competition concerns.[7]

3.2 These key trends align with the shifts in customer demand and market dynamics that [redacted] has observed (and, in common with its competitors, responded to) in recent years. [redacted], these pro-competitive trends have encouraged new entry into the benchmarks and indices markets as well as significant investments in new and existing benchmark and indices products[redacted] Specifically:

(a) Passive investments: the shift from active to passive management has driven growth in index-linked investment funds and asset managers are continuously seeking efficiency gains in terms of reducing index costs and adding value, e.g. through higher quality and innovation.[9] As a result, there has been growing new and diversified entry into the indices market such as research houses, fintech firms and academics. For example, in the last five years, [redacted] has seen fintech firms such as [redacted] entering the market leading with their technology; additionally, asset managers are also increasingly carrying out "self-indexing"

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including, [redacted].[10] [redacted] expects this trend to continue into the future.

(b) ESG: increasing interest from investors in sustainable index solutions across both equity and fixed income has led to the development of new and innovative solutions across the market (e.g. [redacted] all have developed their own ESG offerings).[11] [redacted][12] [redacted] expects the demand for ESG investment products to gather more interest as the trend for sustainable solutions increases in the future.

(c) Alternative investment strategies and bespoke indices: [redacted] also expects increasing demand for other alternative investments, such as Smart Beta and Digital Assets, to result in the emergence of further innovative and bespoke index solutions, including by "self-indexing".[13] [redacted] Examples of customisation include geographic exposure, sector, thematic activity, trading liquidity, dividend yield, style factor, ESG scores and duration.[14]

3.3 Keeping on top of these trends and developing high quality solutions in new and emerging market segments is critical for [redacted] to retain customers across all of its index offerings.

4. Network Effects, switching and brand recognition

4.1 The FCA states that benchmarks are more valuable to customers if they are widely adopted by other market participants. The Update Report suggests that this may result in markets tipping towards a specific benchmark, i.e., it becomes the standard choice once it has reached a certain level of adoption by the market.[15] The FCA intends to further investigate whether network effects are likely, on balance, to lead to poor outcomes for investors in different market segments, particularly due to difficulties in switching.[16]

4.2 The FCA further states that most firms who responded to its survey have not switched, or considered switching between benchmark providers in the past 5 years.[17] In addition, users perceive there to be a lack of suitable alternative index providers, and report that switching would involve costs.[18] Additionally, the FCA states that users' choice of benchmark administrator may be influenced by their own customer's strong preference for well-known brands, which discourages them from switching to alternative providers.[19]

Network effects in indices markets arise due to brand value and reputation

4.3 It is not disputed that the more widely an index is adopted, the more valuable it is for the end user. The market evidence shows that this is largely due to the brand value and reputation (deriving directly from the quality of product and service provided) that a widely adopted index or benchmark carries [redacted] For

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[redacted]

example, [redacted]

4.4 The same principle applies to the choice of benchmarks for use in financial instruments.[21] Similar to the asset manager's choice of performance benchmark described above, the choice of reference benchmark for the tradeable instrument is informed by that benchmark's utility and reputation (among other things). The higher the benchmark's utility and reputation, the more likely it is that the traded instrument will attract investors. An issuer of a product will take these considerations into account when choosing a benchmark to attract investors to its product.

Network effects do not result in poor outcomes for users

4.5 <u>To maintain their brand reputation (and ultimately their success as an index/benchmark provider), index/benchmark providers *must* continuously invest in providing a reliable quality of service.</u> If index/benchmark providers do not do so, users will switch away. Index users have a fiduciary duty to act in the best interests of their end-customers, meaning that they can, and will, switch away if an index/benchmark is no longer reliable, or best suits the end customer's needs. For example, if the [redacted] (e.g. due to persistent calculation failures etc.), then the asset manager would switch to an alternative, more reliable, benchmark provider.

4.6 As a result of the continued (necessary) drive to maintain brand reputation and due to users' ability to switch away from [redacted] index business (as well as other businesses), [redacted] is under constant pressure to offer a compelling price-to-quality ratio and invest in innovation in new and existing index products. [redacted]

4.7 <u>Switching is not uncommon in the industry</u> and customers have switched in the past when they were not satisfied with a provider's offering. In addition, users do not suffer from a lack of alternatives – the index industry is highly competitive with numerous firms competing in almost all categories of indices across asset classes, regions and sectors [redacted]

[redacted]

[redacted] [redacted]
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[redacted]

4.8 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

4.9 [redacted] key indices and benchmark customers are also key customers across its other business lines, product offerings and key target customers for new index/benchmark offerings:

[redacted]

[redacted]

4.10 These market outcomes are not consistent with the idea that index providers such [redacted] can "rest on their laurels" at the expense of customers. The degree of investment and innovation that takes place in indices and benchmarks is indicative of customer focused outcomes and a high degree of competition.

[redacted]

LIBOR is not a representative example of the difficulties with switching index provider

4.11 The Update Report cites LIBOR as an example of alleged challenges of switching index provider. This example is very atypical and was driven by its specific circumstances.[30]

4.12 As the FCA is aware, the international shift away from IBOR reference rates was prompted by the widespread manipulation of IBOR benchmarks, which came to light in 2012. Due to these unique circumstances, regulators wanted to bring about a clean break from these rates by the relevant cessation date(s). Carrying out this wholesale switch away from IBOR by the cessation date(s) required coordinated efforts by international regulators and market participants to implement changes over time, particularly due to the length of financial contracts that referenced IBOR as the underlying rate. For example, one challenge was that term loans, interest rate derivatives and many other financial transactions that incorporated IBOR as the underlying reference rate, had contract lengths of 10, 20, 30 years or more – meaning the contracts would significantly outlast IBOR as the reference rate.

4.13 This meant that market participants either had to:

(a) transition their ongoing contracts away from IBOR reference rates, entering into and concluding renegotiations with their trade counterparties prior to the relevant IBOR cessation date; or

(b) carry out significant and complex operational planning to apply the "fall back" rates to portfolios of contracts that would not be transitioned before the cessation date.

4.14 Illustrative of the market-wide magnitude of this task, approximately $223 trillion of legacy USD LIBOR exposures were outstanding as of the end of 2020[31] and in 2018, LIBOR underpinned $30 trillion in GBP markets alone.[32]

4.15 These difficulties and complexities associated with bringing about a complete worldwide switch away from IBOR are not representative of business-as-usual switching under normal market conditions. In a well-functioning market there is no need for all users to switch away from an index at the same time or in a short time frame (as in the IBOR example) for switching to provide a powerful competitive constraint on index/benchmark providers. Even the prospect of losing a proportion of users if they (fully or partially) switch to an alternative provider can act as a powerful competitive constraint. In many cases, switching opportunities arise frequently (e.g. for an equities benchmark used in shorter-term financial contracts, trackers for investment funds or purely as a basis for research and market analysis). However, even for long-term financial contracts, competition simply takes place at the point at which the contract is renewed or entered into and signed.

5. Barriers to Entry

5.1 While the FCA acknowledges the evidence that firms have entered the market in recent years, suggesting entry costs are "*not insurmountable*", the FCA expresses concerns that persistent levels of high concentration in the market indicate that there are barriers to expansion.[33] [redacted] encourages the FCA to fully consider the further evidence of entry and expansion [redacted] In addition to this, established competitors are continually looking for opportunities to expand the breadth of their product offering and drive competition in new markets segments. [redacted]

[redacted]

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[redacted]

6. [redacted]

6.1 [redacted]

6.2 [redacted]

[redacted]

[redacted]

(b) [redacted]

(c) [redacted]

(d) [redacted]

6.3 [redacted]

[redacted] [redacted]

[redacted] [redacted]

6.4 [redacted]

[redacted] [redacted]

[redacted]

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[redacted] [redacted]

[redacted] [redacted]

7. Other market features

7.1 In addition to the market features explored above, the FCA should also carefully consider other important market features that shape competition in the provision of index/benchmark services and the associated implications on commercial practices. [redacted]

7.2 In summary, it is essential that the FCA considers the following in the next phase of its analysis:

(a) Innovation and the dynamic nature of the markets for the provision of wholesale market data, which are characterised by high levels of investment in new and existing product developments to meet evolving customer needs. The level of investment in innovation in the benchmarks / indices market is itself indicative of a well-functioning and competitive marketplace.

(b) Heterogeneity of the customer base: [redacted]

8. [redacted] index/benchmark providers' commercial practices do not raise competition concerns

8.1 The FCA raises a number of putative concerns about index providers' commercial practices in its Update Report.[48] As explained above, it is critical that the FCA considers the role that the market features noted above play in shaping index providers' commercial practices, rather than assuming that they are a symptom of lack of competition and a means through which index/benchmark providers could exploit or enhance their market power. As such, any regulatory intervention to shift away from these commercial practices would seriously endanger a market structure that is already working well for customers, the provision of customer-responsive offerings and investment in innovation.

Licensing terms and pricing reflect market dynamics and are pro-competitive

8.2 The FCA raises possible concerns that licensing terms are complex, non-standard and non-transparent which may make it more difficult for users to compare the quality, charges contract terms and innovation

[redacted]

of alternative providers.[49] It is critical that the FCA takes a balanced approach to analysing this issue and consider how suppliers' practices reflect the reality of customer demand in a fast- moving market in the next phase of its study. [redacted]

8.3 [redacted]

8.4 The FCA should carefully consider the practical implications of a forced shift to a less tailored model – while this may reduce prices for larger customers with broader use cases, it could result in substantial fee increases for smaller customers and customers with more limited use cases. This would give a competitive advantage to large, established competitors in these downstream financial markets that index/benchmark providers serve by enabling them to spread these fixed costs across their total customer base (and benefitting from economies of scale), creating a barrier to entry and expansion for prospective and smaller competitors. An approach to regulation that applies a sledgehammer of apparent simplicity to the market would be inconsistent with the importance in this market of reflecting the heterogeneity of users, their needs and the returns they generate from use of indices and benchmarks.

8.5 These risks to competition in the downstream markets may be particularly acute from the perspective of the competitiveness of the UK financial services sector relative to its international counterparts if regulatory intervention limited the ability of index/benchmark (or MDV) providers to apply value-based pricing principles only to their UK-based customers or in respect of their customers' UK operations. Any regulatory intervention by the FCA in this area should therefore carefully consider these risks.

8.6 In addition, the FCA should also consider the impact that a shift to a less tailored model would have on index providers' incentives to innovate. Introducing a more simplistic model would risk making the UK a less attractive place for investment, innovation and business, due to the uncertainties that this new model would raise in terms of index providers' ability to recoup their investments. It could also result in global index providers limiting or reducing provision of products to the UK market, all to the detriment of users and end-investors located in the UK.

Licensing of benchmark products in packages respond to customer demand

8.7 The FCA sets out apparent concerns raised by users that they pay higher fees for products they do not need on top of "must have" benchmarks. The FCA also sets out apparent concerns that benchmark administrators may use their "must have" products to gain market share in niche markets.[50] [redacted], the FCA should not assume that providing products in this way is anything other than a reflection of user demand.

[redacted]

8.8 [redacted]

8.9 [redacted]

8.10 There are also efficiencies to offering individual indices/benchmarks as part of a family of related indices/benchmarks. Index/benchmark providers typically incur resource, maintenance and technology costs at the index/benchmark family level, which means that there would not be any material cost savings that could be passed on to customers through licensing indices/benchmarks on an individualised basis.

8.11 The FCA should carefully consider the implications and additional complexity, time and cost that forced "unbundling" series of associated indices/benchmarks would have on customers in terms of the additional negotiations they would need to have with providers for each requirement, as well as associated index licences and pricing – which are already, according to the FCA, perceived as "complex". In addition, the delivery and consumption of individual index/benchmark data as separate would be significantly more complex than it is today. The immaterial cost saving that might be gained by the forced "unbundling" of indices would not outweigh this additional complexity in licences, pricing, or administrative overheads associated with delivering and consuming indices on an individual level as standard.

[redacted]

8.12 The FCA states that users have raised concerns around practices that require users to remove all historic data, except for use for regulatory purposes, unless users enter into an additional licence. The FCA indicates concerns that this may indirectly increase switching costs for users who need access to historical data.[51] Some users have suggested that the FCA bans contractual clauses that require a user to delete or repurchase historical data if they intend to switch data provider.[52]

8.13 These termination requirements are common across licences for indices and benchmarks and [redacted]

8.14 [redacted]

[redacted]

[redacted]

[redacted]

8.15 [redacted]

8.16 This is inherent in the nature of licensing data/content and is not specific to this market. By way of example, if you take out a Netflix subscription, and subsequently end your membership, you do not get continued access to all the content that was on Netflix at the date you end your membership. Similarly, on Sky, you can license the right to view a movie for a limited time, but for a different price, you can license the right to view the movie in perpetuity.

8.17 [redacted]

Contractual clauses excluding liability are justified

8.18 The FCA states that clauses limiting or excluding liability of benchmark providers for accuracy, completeness and timeliness of delivery are common in licensing contracts.[53] Some users have expressed concerns about these practices and suggested to the FCA that it should regulate the provisions of a licence which allocate liability.[54] It is essential that the FCA closely considers the rationale behind the inclusion of these clauses in benchmark licences in the next stage of its market study.

8.19 At its broadest level, limiting liability is a common practice in all industries, from technology companies to professional services. This is largely driven by the fact that fees generated by a service rarely outweigh the risks and costs associated with providing that service. [redacted]

8.20 [redacted] Given the significant differential between the fees [redacted] charges for the provision of the benchmark and the AuM/value of product in which the benchmark is used, it is neither feasible nor sustainable for an index provider to manage liability on an impact basis. To impose effectively unlimited liability on the index provider would so change the risk profile of the provision of indices (in circumstances where there is no evidence beyond assertion that this is inhibiting usage of indices) that would necessarily lead to material cost increases for [redacted] index providers and would have to be passed on to customers, so limiting the potential market-wide value that could be derived from the indices. In addition, such cost increases would create material barriers to entry for new index providers with limited financial resources.

[redacted]

8.21 [redacted]

8.22 By way of illustrative example, end investors may have made investment decisions into financial instruments closely linked to the performance of the UK economy (e.g. UK equities or gilts), based on the Office of National Statistics' (**ONS**) figures for UK GDP in 2021. The ONS figures for 2021 have since been revised[55] which may have impacted (positively or negatively) investors' returns on their investments. It cannot, and should not, be the case that the ONS is required to bear responsibility for these investment decisions. [redacted].

8.23 [redacted]

8.24 [redacted]

[redacted]

[redacted]

8.25 As explained above, if customers were concerned about the accuracy or quality of [redacted] index/benchmark data, they could switch away to an alternative.

9. Impact on end investors

9.1 The FCA will consider whether allegedly high benchmark fees paid by benchmark users is likely to harm end investors.[58] [redacted]

9.2 [redacted]

[redacted]

[redacted]. All the product improvements, developments, increased value derived by customers and investments in operations and technology infrastructure all flow through to benefit end-customers. [redacted]

9.3 Any assessment of index pricing must also take account of the value derived by users, which has significantly increased over the past several years – driven at least in part by innovations [redacted]. Use of index data has changed significantly over the past ten years – for example, new use cases and the huge increase in passive investment – and the FCA should take account of the overall value now derived from the use of indices (and investment in those indices) when considering this issue.

B. MDVs

10. Apparent barriers to entry are surmountable

10.1 As with indices/benchmarks, the FCA recognises that barriers to entry for emerging MDVs are "*not insurmountable*".[59] The FCA acknowledges that in addition to new MDVs entering the market, a number of data generators are also expanding to act as competitors to MDVs, by either selling data directly through feeds or establishing themselves as vendors. However, the FCA states that no entrant has yet overcome the barriers to growth that would enable them to achieve significant market share.[60] [redacted]

11. Network effects

11.1 The FCA states that various network effects exist in regard to MDVs. First, it states that some users find value in the fact that many other market participants use the same vendor (i.e., direct network effects), which can act as a constraint to switching.[61] Second, it states that well-established vendors benefit from their large user base (i.e., indirect network effects where the number of participants on one side of the market (data generators) affects the value of participants on the other side (data users).[62]

11.2 The FCA further states that the presence of network effects can potentially generate harm if they result in an abuse of dominant position or in markets tipping. Given the switching behaviour and multi-sourcing of users, network effects may not be a source of concern in the wider MDV market. However, the FCA has noted that it will further consider any particular subsets of services that MDVs provide which offer incumbents relatively more influence and market power than others.[63]

[redacted] *does not benefit from direct network effects*

11.3 Contrary to the FCA's preliminary thinking, the evidence shows that direct network effects are not an inherent feature in the supply of wholesale market data by MDVs [redacted]. Specifically, [redacted] does not depend on the number of users it has. Put another way, data users are not generally interested in the preferences of other data users when choosing an MDV. Similarly, data generators are not interested in other data generators' preferences on which MDVs they choose to deliver their data. This is because the primary offerings of an MDV (desktops and datafeeds) provide data users with ready access to data, rather than helping data users to communicate or transact with other data users.

[redacted]

11.4 [redacted]

[redacted] also does not benefit from indirect network effects

11.5 In addition, it is not appropriate to characterise [redacted] offering as an MDV as a two-sided market or platform. In general, considering MDVs as platforms that solely bring together data generators and data users, fundamentally misunderstands the role that MDVs play in the market and the way in which they add value for data users. [redacted] the role that MDVs play is twofold:

(a) Compilation of data. MDVs compile and process data before supplying the data downstream. This involves various steps, including the aggregation, processing or enrichment of the raw data. These processes are highly complex and involve significant work. They also greatly enhance the value of the data for customers as compared to direct delivery of raw datasets.

(b) Delivery of data. MDVs then package these products with additional functionality and/or workflow tools to create comprehensive solutions that fulfil the requirements of certain user segments. Wholesale market data can be delivered via real-time and non-real-time datafeeds, as well as through desktops. The mode of delivery of the data ultimately comes down to end-user choice.

11.6 Further, MDVs typically pay data generators for the data they procure rather than vice versa, especially where there is an established pool of demand for the generator's data. For these reasons, it is more appropriate to consider data provided by data generators as upstream inputs that MDVs procure for the purposes of developing products they sell to downstream users, rather than two-sided platforms. [redacted]

In any event, multi-homing by customers prevents markets "tipping" in favour of an MDV

11.7 As the FCA states, given switching behaviour and multi-sourcing of users, network effects may not be a source of concern in the wider MDV market. [redacted] agrees with this conclusion [redacted].

12. Switching MDVs is not uncommon

12.1 The FCA raises concerns that switching data vendors can be costly for firms due to the level of integration required to embed MDV systems within firms' infrastructure, and the need to train staff.[66] The FCA plans to refine its analysis to account for certain examples of switching MDVs for different use

[redacted]

[redacted]

cases of MDVs.[67] [redacted]

12.2 In addition, [redacted] multi-homing by users of two or more MDVs for pricing and market data, benchmarks, company information and analytics is widespread, where users typically have anywhere between 3-7 providers and multiple point solutions. This common practice of multi-homing in the market enables switching as users can simply 'dial-up' or 'dial-down' consumption of a data via a particular MDV, rather than facing a binary decision of whether or not to switch all their products/services from one provider to another at once [redacted] [70] In addition, multi-homing reduces the risk of switching to new providers as it enables them to test out new service providers by moving a subset of MDV and/or index/benchmark services over to them, rather than having to switch all their services at once.

13. [redacted]

13.1 [redacted]

14. Innovation

14.1 In its Update Report, the FCA recognises a number of examples of innovation occurring in the MDVs market. [redacted] agrees that there are strong levels of investment and innovation in the market and continues to make significant investment in innovation and product development and improvement to retain and win new customers. [redacted]

15. [redacted]

15.1 [redacted] Any regulatory intervention to "unpackage" these products would introduce significant additional complexity [redacted]. In addition, moving to more standardised price model would benefit [redacted] larger users at the expense of smaller users who would pay higher fees as a result .

Providing packaged products responds to customer demand

[redacted]

15.2 The FCA raises concerns that packaged products may be used by MDVs to strategically deter entry of competitors and generate artificial barriers to switching.[72] When considering these practices on both a market-wide and firm-specific basis, the FCA should carefully consider the rationale behind [redacted] MDV's practices, [redacted]. In addition, it is critical that the FCA takes into account that [redacted] provision of "packaged" products are nothing other than a reflection of user demand. Specifically:

- [redacted]
- [redacted]
- [redacted]

15.3 While [redacted] offers a range of different MDV products, for the most part it markets and sells these separately, rather than grouping them together into a single package. Where they are packaged [redacted], this reflects customer choice and the underlying functionality / use case – which if deconstructed to a more granular level would fundamentally alter the purpose of a desktop, likely to detriment of customers.

15.4 For example, dividing a desktop into individual applications that work independently, but are interoperable would be extremely complex in terms of technology, administration, licensing and pricing for both users and [redacted] as well as on the delivery and consumption of the data. Unpackaging each function of a desktop would generate hundreds, if not thousands, of new product options and desktop variations. The FCA should carefully consider the additional complexity that forced "unbundling" of MDV products would have– which are already perceived by the FCA as being "complex".

15.5 [redacted]

Licensing terms and pricing reflect market dynamics and are pro-competitive

15.6 The FCA sets out concerns raised by users around a lack of transparency of some licensing terms offered by MDVs.[74] The FCA also states that complex and non-transparent licensing can be used by firms to price discriminate and extract higher fees from customers.[75] It is critical that the FCA adopts a balanced approach when analysing this issue further and consider how licensing practices reflect customer demand, rather than as a symptom of a lack of competition and a means through which MDVs

[redacted]

exploit and enhance their market power. [redacted]

15.7 The FCA also states that some users have raised broader concerns over the growing variety of charges for the same data supplied by MDVs.[76] [redacted]

16. Potential remedies

16.1 [redacted] that users have proposed a number of remedies to the FCA.[77] These include:

(a) Imposing a cost-based licensing mechanism where data licence costs should be based only on the marginal cost of providing and distributing the data service plus a reasonable profit margin. It was also suggested that the cost-based licensing calculation should be transparently available to users and regulators.

(b) Forced unbundling of data services and products so that users are not forced to buy products or services they do not need.

(c) Banning contractual clauses that require a user to delete or repurchase historical data if they intent to switch data provider.

(d) Consider regulation of imposing limitations of liability in data licences.

16.2 It is clear from what we have said in this Response, [redacted], that these remedies would seriously endanger a market structure that is already working well for customers, the provision of customer-responsive offerings and investment in innovation.

16.3 In particular, introducing a flat fee or cost-based licensing mechanism would introduce a material risk that smaller index users would pay more, or be unable to purchase indices entirely. This could have serious knock-on effects on the competitiveness of downstream markets[redacted] Unbundling data services and products, particularly for indices, would necessarily result in further complexity in user negotiations and licences, which are already perceived as “complex”.[79]

16.4 Further, banning contractual clauses that require users to delete or repurchase historic data, or limit liability of accuracy, completeness or timeliness of data would [redacted].

[redacted]

[redacted]

[redacted]

29 September 2023

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[redacted]

Introduction and summary

We reviewed the Wholesale Data Market Study Update Report (the Report) with interest and have set out [redacted] initial reaction to the Report and the FCA's proposed decision below. In summary:

- We agree with the provisional decision by the FCA not to make a market investigation reference to the Competition and Markets Authority (CMA) with respect to the sale of credit ratings data.
- To [redacted] view, competition is working well for users of credit ratings, and other risk, data. [redacted] remains under pressure from customers and competitors to innovate and to improve its product suite. [redacted] is confident that its credit rating data services represent excellent value to the businesses that use them.
- [redacted] credit rating data customers are highly-sophisticated commercial enterprises of varied size and structure, who put credit ratings data to a variety of commercial (and/or regulatory) uses.
- Credit ratings data represent a small part of the risk data used within (often large) financial enterprises' operations, as reflected in the FCA's estimation as to the value of credit ratings data services in the UK, which is much smaller than other data services studied by the FCA. The potential for UK consumer harm associated with the sale of credit ratings data is low.

We do not see a need for remedies in connection with credit rating data services. Nonetheless, [redacted] acknowledges that market participants have, in some instances/areas, expressed concerns to the FCA. We have been grateful for the FCA's constructive engagement with [redacted] during the market study to date, and would be pleased to engage with the FCA team to understand these concerns in more detail and consider whether there is anything [redacted] could reasonably do to improve customer outcomes.

1. FCA provisional views on market dynamics

We are pleased that the FCA has recognized that credit risk assessments include a wide range of inputs and services;[1] that there has been a shift towards a more diversified approach to assessing credit risk (away from credit ratings);[2] that users of credit ratings data can and do make use of a range of sources for that data;[3] that a significant proportion of financial enterprises do not use credit ratings data (presumably making use of other forms of risk data);[4] and many that *do* source credit ratings data from one CRA only.[5]

The FCA has taken a provisional view that there is a distinct market for credit rating data. However, it is not clear that this view follows from the market testing the FCA has performed. There appears to be evidence that a material proportion of financial institutions do not purchase credit rating data feeds at all: presumably these firms instead make use of other, substitute, forms of risk data – such as freely available credit data or other financial data – for their commercial purposes / internal risk analyses. We encourage the FCA to acknowledge that free credit ratings data and/or other forms of risk data are important competitive constraints to the sale of credit ratings data.

2. No consistent evidence of harm that would justify intervention

In any market, including those functioning well, users of products and services will have varying levels of satisfaction in relation to the provision of those products and services. In this case, respondents (numbering 55) who used credit ratings data in their operations gave consistently "*mixed"* responses in relation to the main areas of inquiry: transparency of pricing;[6] ability to negotiate;[7] and whether respondents felt they were getting good value out of credit ratings data services (where "*many users*" had no concern).[8] Only a very small number of respondents (four across all markets covered, including at least one respondent apparently not based in the UK)[9] were of the view that the markets should be referred to the CMA.

In sum, this mixed picture, with a large part of the customer base well-served by existing credit rating data services, does not provide clear and consistent evidence of harm that might serve to justify intervention by the FCA. Nonetheless, we consider below the areas of *potential* concern articulated in the Report.

a. Uncertainty around quality and usability of free ratings data

We were surprised to read that UK firms may not use free sources of credit ratings data due to factors such as limited coverage, perception of the ratings being potentially outdated and the data being poor

[redacted]

quality.[10] In terms of coverage, as the FCA has rightly identified, all public [redacted] ratings are made available at no cost on [redacted] and regulators' websites. Ratings are made available first on [redacted], and data submissions to regulators' (FCA's, ESMA's) platforms are regularly updated in line with regulatory requirements. As such, we are not convinced that these concerns are borne out in fact in the case of [redacted]

The FCA has noted that one barrier to the use of free data sources arises from uncertainty about the terms of use in the absence of a licence agreement with CRA data affiliates.[11] [redacted] amended the terms of use for its website to make plain that for those users wanting to use [redacted] credit ratings for regulatory reporting, this can be done, for free. We understood this had disposed of market concerns / confusion and would therefore be interested to understand in more detail the concerns raised with the FCA. This may be a question as to whether awareness of clarifications in [redacted] terms of use has yet fully filtered through to market participants (or, alternatively, whether concerns may be directed towards other CRAs).

We acknowledge that aggregating freely available data from CRA websites could be time and resource intensive and that there is a cost to integrating the data. Indeed, this demonstrates the value of the credit ratings data feed services offered by [redacted]

b. Vertical integration and barriers to entry and expansion

[redacted] agrees that market dynamics in respect of credit ratings *issuance* do not simply 'read-across' to the distribution of credit ratings data. Issuers of corporate and sovereign debt seek credit ratings for various purposes (including, as the FCA has identified to attract investment and to help secure better terms for their debt). Credit rating data are obtained by market participants for different purposes (e.g. risk modelling, informing investment and lending decisions). The distribution channels are also different. Issuers typically acquire credit ratings directly from a CRA (which may be engaged via an authorized intermediary), whereas credit ratings data may be distributed / redistributed through various channels (including, as the FCA has observed, financial news websites, Market Data Vendors (MDVs) etc.[12]). While there is inevitably *some* link between the issuance of credit ratings and the distribution of credit ratings data by a CRA affiliate, these are distinct lines of business, operating under different competitive dynamics. [redacted] in particular, faces strong competitive constraints in the form of other distributors of paid-for credit ratings data, *other* forms of risk and pricing data and freely available credit ratings.

c. Pricing structures and price transparency

The report indicates that some respondents considered pricing practices are not entirely transparent, while certain respondents were not clear how prices were set for credit ratings data.

We have explained the pricing model for [redacted] credit rating data feeds in previous responses to the FCA.[13] [redacted] regularly contracts with highly-sophisticated customers who have teams dedicated to the procurement of financial data – including amongst the '*asset managers and investment banks with*

[redacted]

[redacted]

[redacted]

[redacted]

international clients and global mandates' that the FCA suggest may experience '*constrained choice*'.[14] [redacted] customers are well-able to understand and engage in informed negotiation in relation to the different pricing structures [redacted] offers. If they are dissatisfied, they can simply choose not to take the product. There are many alternative means for customers to obtain credit (and other) risk information.

d. Fees

We are pleased that many users of credit ratings data had no concerns around the value of these services. This bears out [redacted] view that its credit ratings data services offer excellent value to customers.

3. Broader comments on the Report

a. Customer demand for data to satisfy commercial and regulatory purposes

As expressed above, we believe the market is working well for customers seeking credit risk information. When firms seek risk data to add value to their commercial offering – as is the case for the main part of [redacted] customer base for credit rating data feeds – there are multiple sources and forms of risk data available to them.

Some users may procure credit rating data for either internal or regulatory purposes. Our understanding is that where users require data exclusively for those purposes, [redacted] low-cost 'regulatory use' feed, or freely available ratings, satisfy that customer demand.

b. Size of credit ratings data market

We note with interest that the interim report indicates that UK sales of credit ratings data generate a comparatively small amount of revenue (up to £100m), both in absolute terms and in contrast to other areas being studied (£600m for benchmarks, more than £200m for trade data, and £3bn for MDVs).

c. Description of intra-group licensing arrangements

The FCA states at paragraph 1.14 that CRAs "give" their affiliate entities their credit rating data. We think this is potentially misleading and could usefully be clarified: in the case of [redacted] credit ratings data are licensed and paid for between separate business divisions.

4. Conclusion

Having reviewed the Report, [redacted] is of the view that there is limited harm evidenced and that the FCA need take no action in relation to credit ratings data services. Nonetheless, we look forward to continuing our engagement with the FCA. In particular, [redacted] is keen to understand in more detail the FCA's main areas of concern with a view to considering whether there is more [redacted] (and other market participants) might sensibly do to facilitate positive outcomes for users of credit ratings data.

[redacted]

We thank you for your consideration and look forward to further engagement with the FCA on this matter.

Yours faithfully,

[redacted]

[redacted]

[redacted]

29 September 2023

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[redacted] Comments on the Financial Conduct Authority on the Wholesale Data Market Study Market Investigation Reference Notice (MS23/1.3) and Update Report (MS23/1.4)

[redacted] welcomes the opportunity to provide comments on the Financial Conduct Authority ("FCA") Market Investigation Reference Notice (the "Reference Notice") and Update Report (the "Update Report") relating to its Wholesale Data Market Study (the "Market Study"). [redacted] has provided feedback on the Market Study[1] and we look forward to ongoing engagement with the FCA in its preparation of the final report.

[redacted] are used by a variety of institutional clients, including asset managers, asset owners, banks, insurance companies and wealth managers. We do not offer index products and services to retail investors, do not provide credit rating data and we are not a market data vendor. [redacted] is, in certain circumstances, a customer of market data vendors.

[redacted] understands from the Update Report that the FCA continues to review and analyse the information it received. The FCA's considered approach in deferring its conclusions and recommendations until this work is complete is welcomed, including its decision to not refer the benchmarks market to the Competition and Markets Authority (CMA) for a market investigation. As discussed in attached Annex I, the decision to not refer the benchmarks market to the CMA is well supported by the competitive nature of the benchmark industry and its continued responsiveness to evolving market needs.

[redacted]

However, [redacted] is surprised that after the supporting documentation that [redacted] provided to evidence the strong competitive environment for index providers, the FCA continues to hold the view in the “Emerging themes and issues” section of the Update Report that certain features of the market are likely to facilitate the creation of market power. As we explain in Annex I, we do not consider that the evidence supports a finding that benchmark administrators have market power. The “Emerging themes and issues” section also posits that this “market power” may be allowing benchmark administrators to impose commercial practices that result in high costs for benchmark users. The Update Report seems to base this broad assertion on perceived: (i) challenges related to switching of benchmarks; and; (ii) contractual constructions.

i) Switching

In many cases, the opportunity for users to switch benchmarks is readily available in the market and can be achieved at nominal cost, there are replicable indexes available in the market offered by multiple providers and there are no contractual constraints or other material barriers to doing so. It remains unclear what threshold the FCA is using to determine an appropriate level of ability to switch benchmarks. Indices are not like disposable consumer retail goods (groceries, retail, consumables), where preferences change and consumers may exhibit regular switching behaviour. Rather, users of indices generally take a long-term view regarding index selection (e.g., to be able to consistently assess the performance of a fund over time). This long-term view is a positive for financial market stability and we would urge the FCA to be cautious about assuming that “more switching is inherently good” without a clear economic benefit and which does not introduce financial instability into an otherwise well-functioning market. Simply focusing on switching rates in isolation will significantly underestimate the intensity of competition in the sector.

ii) Licensing

Benchmark customers are sophisticated and well-resourced financial services companies well-positioned to understand various licence offerings. [redacted] has provided samples of data licensing agreements to the FCA which are typical of licensing agreements used widely in the financial sector. There are no significant contractual restrictions on termination or other impediments to switching to an alternate provider or benchmark. The Update Report has still only provided very limited detail on the specifics of any potential concerns, and it remains unclear which elements of the contracts are at issue.

We would urge the FCA to ensure that any future analysis it undertakes reassess the market principles that:

- index investing has brought significant benefits to end investors and financial markets as a whole;

- an analysis of the features of the market identified by the FCA do not support a finding of benchmark providers having persistent market power;
- there are limited barriers to benchmark provision – the FCA's assertion regarding network effects and brand awareness as entry barriers are not borne out by the evidence;
- benchmark providers compete across multiple dimensions;
- benchmark providers' commercial practices are appropriate and do not limit switching; and
- quality and cost are key parameters of competition for benchmark providers.

Each of these points is described further in Annex I.

We would like to thank the FCA for its consideration of [redacted] submission. [redacted] looks forward to continuing to engage with the FCA for the remainder of the Market Study and in the preparation of its final report. [redacted]

Sincerely,

[redacted]

[redacted]

Annex I

1. Index investing has brought significant benefits to the market

The wide use of benchmarks has fueled a significant growth in passive investment. Over the last 10 years, assets under management (AUM) in passively managed funds tracking indices have increased significantly. The impact of the growth in passive investment has been very positive for end investors. As the work of the Market Study continues, it is critical for the FCA to consider the broader impact of index investing and how benchmarks contribute to its development:

- Lower management fees and lower transaction costs for investors: the cost of conducting extensive research and analysis is reduced which means lower costs for end-investors, including retail investors;
- Increased transparency: benchmark providers disclose their methodology so there is greater transparency for investors into funds and other products tracking an index;
- Increased exposure opportunities for investors: through benchmark innovation, investors have been able to build investment products to obtain exposure to additional markets, segments, strategies and themes (e.g., value and growth, sectors, factors, ESG, climate) captured by benchmarks, which would otherwise have been inaccessible in passive products. This allows a wider group of investors to benefit from more innovative and sophisticated investment strategies; and
- Increased competition: the low fees incurred by indexed/passive funds have also had an impact on how actively managed funds compete, forcing actively managed funds to lower management fees to remain competitive.

This level and range of benefits to investors would not have been possible without the proliferation of indexes. Estimates vary, but the direct savings from indexing for investors are in the range of $15-30 billion per annum.[2] Indirect benefits (such as competitive pressure forcing active managers to reduce their own fees) are estimated at around $40-50 billion per annum.[3]

2. Benchmark providers do not have persistent market power

The Update Report seems to suggest that, if benchmark providers have persistent market power, they have less incentive to compete on price, quality and innovation. The Update Report asks whether certain features of the market for benchmark providers are likely to facilitate the creation of persistent market power: network effects; brand

[redacted]

[redacted]

awareness; barriers to entry due to input and start-up costs; and vertical integration with input data providers.

[redacted] is confident that, with further analysis and engagement with [redacted] and other benchmark providers, the FCA will conclude that these market features either do not exist or do not in fact facilitate any persistent market power in relation to the provision of benchmarks.

Network effects do not represent a barrier to entry or expansion. Benchmark providers do not rely on "network effects" to compete in the market, but are instead increasingly competing with a wide range of entities and across a wider range of indexes. The Update Report indicates "the more a benchmark is used, the more it is valuable to users due to network effects, resulting in markets tipping to a specific benchmark that is unlikely to be displaced" and that "brand awareness at the end investor level may result in specific benchmarks becoming 'must-haves'" thereby reducing the ability to choose alternatives."[4] We understand this perspective reflects only preliminary Market Study analysis, and would urge further consideration of critical additional aspects of the benchmark competitive landscape such as quality of benchmarks and their ongoing administration.

For example, the Update Report refers to network effects arising when financial instruments that reference a main benchmark are widely traded, resulting in lower trading costs. However, this is only one of a multitude of use cases for benchmarks and indices (as shown in Figure 5 of the Update Report). For many of these use cases, network effects are not significant. Even when considering benchmarks used in financial instruments, it is not the case that liquidity confers market power on benchmark providers. As explained by [redacted] in our response to the FCA's Section 174 Notice, [redacted] asset-based fees (the primary way in which [redacted] charges customers who use indices in financial products) have fallen significantly over the last 5 years.

We are certain that further analysis of the market by the FCA will clarify that any potential network effects do not represent a barrier to entry in relation to the provision of benchmarks.

Strong brand awareness does not result in sub-optimal outcomes for users. Similarly, the Update Report states that asset managers' choice of benchmark is "largely driven by their own clients' strong preference for well-known benchmarks", further suggesting that this "may lead to sup-optimal outcomes for end investors where benchmark users have better knowledge about benchmarks' price and quality, but select the benchmark they use based on client preferences."[5] On the contrary, many end investors are large, sophisticated asset owners such as pension funds and endowments who conduct

[redacted]

detailed due diligence on their preferred choice of benchmark. In any event, we would encourage the FCA to further clarify why it believes end-investor influence over the choice of benchmark is leading to sup-optimal outcomes.

Increasing numbers of benchmarks providers suggest limited barriers to entry. The Update Report indicates that input costs can serve to enhance barriers to entry, yet the number of benchmark providers globally,[6] as well as examples of new providers successfully entering the market and competing with established players, suggests a different conclusion. For example, our competitors span a wide range of market participants, including:

- Independent benchmark providers [redacted]
- Platform providers [redacted]
- Vertically-integrated stock exchanges [redacted]
- Fintech companies [redacted] and
- Academic institutions [redacted]

The newer benchmark providers continue to make gains in the market. For example, since entering in 2007, [redacted] has won market share by offering index calculation services while also developing proprietary indices. There are also numerous examples of smaller benchmark providers successfully positioning themselves as market leaders in particular categories. Examples include [redacted] in UK small cap equities, and [redacted]. These are in addition to multiple local exchanges around the world that also provide leading benchmarks for their domestic markets.

Similarly, some customers have entered the market via self-indexing. Self-indexing refers to the trend of financial product providers bringing the design of the index (that their ETFs or Structured Products will track) in-house. In many cases, the product provider will then outsource the calculation of such an index to a third-party provider. Examples of self-indexers include fund managers operating families of self-indexed ETFs and banks' Quantitative Investment Solutions desks.

As the FCA rightly acknowledges in paragraph 3.55 of the Update Report, the number of new firms entering the market in recent years provides evidence that entry costs are not insurmountable. In fact, paragraph 3.21 of the Update Report notes that 10-15 providers have started administering benchmarks available in the UK within the last 5 years alone – that is against a total of 36 registered UK benchmarks administrators, 10 registered third-country firms administering benchmarks in the UK and some suppliers that are operating under the transitional provisions of the BMR – so a not insignificant

[redacted]

proportion. These trends do not suggest persistent market power, but instead indicate an expanding universe of suppliers and an increasingly competitive landscape for benchmark providers.

We welcome the FCA's further analysis of potential barriers to entry which we expect will confirm that barriers to entry in the benchmark space are limited and do not constrain competition.

Vertical integration. The Update Report also indicates that vertical integration of benchmark providers can serve to increase barriers to entry, although it provides little detail on the specifics of any potential concern. [redacted] is a benchmark provider only. It is not vertically integrated with any company active in the other levels of the value chain which are subject to the Market Study.

As such [redacted] does not consider that the features of the market identified by the FCA are in fact likely to facilitate the creation of persistent market power. [redacted] looks forward to continuing to address all of these questions with the FCA in the remainder of the Market Study.

3. Benchmark providers compete across multiple dimensions

Benchmark providers compete on numerous features include price, innovation, quality, accuracy, reliability, speed to market and client service. Indexes across asset classes are provided by many entities, with competition extending significantly beyond the largest benchmark providers. Buy- and sell-side clients are calculating their own indexes, asset owners are "insourcing" indexes, and traditional platform providers are offering indexes for the first time. Substitute indexes are readily available for the market to use as alternative benchmarks, and many can be calculated relatively easily by any competitor benchmark provider.

Meanwhile, new benchmarks have the potential to deliver substantial value to investors, including helping to support new and differentiated investment opportunities. The scope of innovation as a key factor of competition is highlighted by the increase in the number of indices calculated by [redacted] on a daily basis, from around 190,000 in 2016 to over 278,000 in 2022.

Benchmark administrators also face considerable pressure to innovate and maintain and improve the quality and variety of their indices. That pressure comes from market trends, client demand, and competition from other existing benchmark administrators, new entrants, and a wider set of companies using different models of index calculation. As a result, [redacted] and its competitors are constantly striving and investing to innovate and improve their products, whether that be in the shape of new indices, new service innovations and/or improved quality, service, and support tools. A steady increase in the number and type of indexes and in improved service delivery is the direct result of growing demand by investors for new and different products to match their varied investment objectives.

4. **Benchmark commercial practices are appropriate and do not limit switching**

[redacted] understands the FCA is evaluating concerns which have been raised about the perceived complexity of licensing contracts and a lack of transparency in relation to the related terms and conditions, including their impact on the ability for users to switch benchmarks.

Licence Agreements. We note that benchmark customers are sophisticated and well-resourced financial services companies well-positioned to understand various licence offerings. Our approach to contracting has remained consistent for more than 20 years. We take a modular approach to contracting and licensing of our subscription services. The customer signs up to a framework data licence agreement, which allows the data to be used internally and in connection with active management. Typically, a component of the licence fee is based on the number of locations and users. The higher the number of locations and users, the higher the level of fees, as with any subscription licence arrangement.

Other uses including creation of investment products such as funds or derivatives, public reporting, or research publication require additional documentation for the additional terms and conditions associated with these uses.

None of these documents are lengthy or complex. The base data licence agreement is only a few pages and is a basic commercial contract. The additional licences that build on the agreement are also straightforward and concise. In our experience, index licence agreements are among the simplest documents in comparison to other contracts in the financial services space. [redacted] periodically reviews the terms and conditions of its contracts to ensure they reflect current market practices, appropriately allocate risks and responsibilities and facilitate a positive client experience. We also recently introduced client-centric measures to enhance and simplify our licensing framework for index data (e.g., electronic contracting; simplified contracting processes for our clients interested in index data trials; and simplified the ability for affiliates of an [redacted] client to license our products and services).

We are confident that further analysis of the market will clarify that benchmark provider licensing practices are not overly complex but instead appropriate for benchmark customers and the services provided. To date, the points raised by the FCA have been of a general nature. [redacted] looks forward to engaging further with the FCA on this and to hearing and responding to any more specific concerns.

Barriers to switching. The Update Report also identifies termination requirements and access to historic data as practices that increase licensing complexity and result in barriers to switching. The vast majority of [redacted] contracts are only 1 year in length and we do not charge exit fees. If clients want access to historic data after switching away from an [redacted], they have various options. For example, a client may obtain a perpetual licence to comprehensive constituent-level and/or index-level historical data for a nominal fee. In addition, [redacted] provides daily and monthly historical index (performance/return) level data for thousands of its indexes for free on its website. As such, the historical data a switching customer would need to report for the old benchmark is available at relatively low cost and does not represent a barrier to a customer wanting to switch.

More generally, indices are not like disposable consumer retail goods (groceries, retail, consumables), where preferences change, and consumers may exhibit regular switching behaviour. Rather, users of indices generally take a long-term view regarding index selection (e.g., to be able to consistently assess the performance of a fund over time). Simply focusing on switching rates in isolation will significantly underestimate the intensity of competition in the sector. The fact that users' decisions regarding the choice of benchmarks tend to be long-term will also drive intense competition to attract users in the first place.

Quality is a key parameter of competition for benchmark providers. [redacted] aims to maintains the highest standards with regards to the quality of its data and methodology design, in addition to establishing robust governance and operational infrastructures, data quality controls and business continuity processes. [redacted] staff undertake extensive data quality assurance focused on data integrity, product generation and verification of the index calculations. Limitations of liability and disclaimers of accuracy in [redacted] data license agreements do not imply a lack of quality or responsibility. Rather, it is completely typical of data licenses and many other types of IP licenses across industries. [redacted] is continually making investments in the quality of its benchmarks in response to client demand and competitive pressure.

[redacted]

[redacted] response to the Financial Conduct Authority's ("FCA") Update Report on the Wholesale Data Market Study, MS23/1.4

[redacted]

<u>Introduction and summary</u>

[redacted] welcomes the opportunity to contribute further to the FCA's Wholesale Data Market Study, having initially provided our feedback in May 2023. In summary, we reiterate and wish to highlight the following points:

Summary
The overall themes around the submission are as follows:

1 – **Costs are high and increasing.** [redacted] has experienced ever-increasing cost and complexity of Market Data and has faced high and rising prices to acquire data that is critical to the business.

2 – **Contract terms are being tightened up with new use cases**. Contracts are subject to variation and regular changes and due to their dominant position vendors will often separate use cases and impose separate license charges for each resulting in increased cost.

3- **There is an increasing requirement for data within the Business**. Greater requirements for data usage, with *de facto* requirements to purchase new data products that have come onto the market, for example ESG data and data for regulatory changes.

4- **Post contractual terms are restricting the ability to move.** Post contractual terms around ongoing use of data and purging of data is increasing the costs of moving and restricting new entrants to the market.

In order to improve the functioning of the market, we recommend the following:

1 – **Standard contractual terms and use cases** – rationalize contractual terms and seek to remove disproportionate and unreasonable stipulations.

[redacted]

2 – Reasonable commercial terms and increases. Data fees should be tied to costs, with cost increases based on a reasonable profit margin, or demonstrable growth in operating expenses.

3- Greater pricing transparency. Pricing lists or models should be publicly available.

4- Standard post contractual terms for use of data. Post contractual use of data should cover for regulatory, compliance purposes without requiring a change of operations and systems. This should remove any need for a perpetual contract.

Responses to individual items of FCA's further competition analysis:

Benchmarks

Assess to what extent different features of the benchmarks market (network effects, brand awareness, entry costs and vertical integration) create persistent market power for certain benchmark administrators

There is market power to existing providers because:

- Entry costs are high for new benchmark provider entrants if their data is not readily available across all main data delivery platforms. How can new entrants improve/increase their brand awareness if it is not supported by the main platforms?
- Cost of changing provider is high if existing benchmark providers contracts do not allow for ongoing use for regulatory, compliance and audit purposes.
- Cost of changing provider is high as existing benchmark provider contracts have bundled prices and removing one benchmark wouldn't change the price model significantly enough.

Assess the extent that benchmark administrators' commercial practices harm users and reinforce market power

Post-contractual terms are restricting the ability to move: Post-contractual terms around ongoing use of data and purging of data is increasing the costs of moving and restricting new entrants to the market. This reinforces market power.

Consider in greater detail any relevant differences between asset classes or market segments

No additional comment.

Assess the impact of competition not working well for benchmarks on end investors

New benchmark entrants – with lower pricing models – are not easily accessible to end investors because their benchmarks are not all readily available on the main market data delivery platforms, unless already requested. This acts as a barrier to entry for smaller and newer firms, and ultimately impacts the returns of the end client: the individual saver and investor.

[redacted]

Market Data Vendors

Tying and bundling and practices: we will examine in more detail which types of products and services are being packaged to better understand the potential impact on challenger firms.

No additional comment

Complex and non-transparent pricing: we will review pricing practices of MDVs to better determine to what extent it hinders users from comparing MDV offerings and ultimately switching to better suited providers.

Regulators should consider how to achieve greater pricing transparency, through public availability of pricing lists or models. Contracts and prices are subject to variation and regular changes and there is a clear requirement for greater pricing transparency to enable comparison across MDV offerings and avoid sudden price hikes/introduction of hidden charges prior to contract renewals. Pricing lists or models should be publicly available and clear.

We will clarify the origination of pricing practices and to what extent users are being charged multiple times for the same data.

Contracts are subject to variation and regular change and due to their dominant position vendors will often separate use cases and impose separate license charges for each resulting in increased cost for the same data. For example, this could result in paying for the same data multiple times across an organisation/entity or paying an additional application charge for the same data to be used in different applications.

Vertical integration: we will investigate the extent to which vertically integrated vendors inhibit access to their rivals in other parts of the supply chain.

No additional comment

Other – **e.g. comments on proposed decision to not make a market investigation reference.**

We consider that it remains important that the dominance of some key players is investigated in order to understand and highlight the reasons for this dominance.

Dear Sirs,

We are grateful for the opportunity to comment on the Financial Conduct Authority's invitation Wholesale Data Market Study Update Report, and the wider themes considered in it. Our comments are made primarily from the perspective of our experience advising OTC derivatives end users on interest rate, FX and inflation derivatives.

We would be grateful for the source of comments below to be kept confidential.

1. Benchmarks

- The success of LIBOR as a single metric for pricing loans and derivatives was fundamental to the growth and success of both of these markets. Competition between benchmarks which serve essentially the same purposes is, therefore, undesirable and these are, and should be regulated as desirable natural monopolies. In particular, it is deeply undesirable for derivatives market liquidity to be split between benchmarks and doing so will almost certainly lead to dysfunctional markets and harm for end-users (witness Term SOFR and ESTR derivatives markets.)
- The consequences of a split market liquidity are not confined to derivatives in the index alone. Splitting derivatives market liquidity in an interest rate index has a knock-on impact on associated basis swap markets and cross-currency swap markets, which are inherently less liquid in the first place. There is a significant knock-on in additional costs for systems development etc.

2. Market Data

Market structure

- Market data provision is characterised by economies of scope, ie the incremental cost of adding additional data to a large platform is negligible, whereas the startup cost of establishing a new data service would most likely be prohibitive: effectively, market data gathering, processing and dissemination is a natural monopoly.
- It is widely publicised by [redacted] that it does not negotiate on pricing. We do not think that the reason for this is switching costs or friction: rather, for the majority of users there is no alternative product that offers equivalent scope. The viability of alternative products will depend on specifically what data is needed but only users with quite narrow data requirements will be able to switch outside the top 2 providers, and most many users will be confined to only one of the top 2 (noting that one or other is often preferred within specific markets.)

Criticality

- The significant implication of this for financial regulation is that if one of the top 2 were to cease to provide services for any reason, considerable harm would inevitably be caused to financial markets and their customers.

Data transparency and facilitation of market manipulation

- An issue that particularly concerns OTC derivative markets is market data transparency. Data contributors can elect whether their data feed is visible by default to all users or only users that they specifically permission. An end-user or their advisor dealing with a specific bank will most likely not be able to see that bank's data feed. This contributes to the ability of the bank to add additional profit at execution by claiming that the system price does not represent its own internal pricing, and also prevents the detection of front-running or market manipulation by end users, because they cannot see which prices are driving the system clearing price. Implementing a requirement for all data to be transparent to all users would clearly be beneficial to TCF and market abuse.

Product bundling

- The regulation of market data as a would additionally eliminate any potential issues around product bundling of quantitative analytics (QA) software with market data, which would otherwise potentially stifle competing QA system development and inhibit end users' ability to create redundancy in their systems.

Regards,

[redacted]

[redacted]

FCA Wholesale Data Market Study

[redacted] Response to the FCA's Update Report

29 September 2023

Introduction and Summary

1. On 31 August 2023 the FCA published an Update Report in relation to the Wholesale Data Market Study and invited responses from stakeholders. [redacted] welcomes the opportunity to respond to the Update Report and looks forward to further engagement with the FCA throughout the remainder of the Market Study.

2. This submission sets out [redacted] comments on the Update Report. [redacted] agrees with the FCA's proposed decision not to make a Market Investigation Reference. In this regard, [redacted] has several key overarching comments.

3. First, there is compelling evidence that the markets for benchmarks and credit ratings data are highly competitive and working well for customers. In particular, there is evidence of customers switching provider, low barriers to entry and expansion (with numerous recent examples of successful new entry having taken place), significant new innovation and sophisticated customers with strong buyer power.

4. Second, as identified in the Update Report, the market for MDV services is dominated by two large players, [redacted], which have long-established and entrenched market positions. Whilst new entry has taken place in this market, the challenge facing [redacted] and other smaller MDVs is being able to win a sufficient number of new customers to grow market share. As noted in the Update Report, "*no entrant has yet to overcome the barriers to growth that would enable them to achieve significant market share*".[1] To the extent that remedies are required, they should be targeted at addressing the stranglehold that these two large players have on this market.

5. Third, the Update Report acknowledges that the markets covered by the Market Study are all international markets.[2] Any intervention in markets that are international in scope and which have diverse features and characteristics as well as different competitive dynamics, will require careful cooperation between international regulators. In considering these markets and any possible interventions, it is important that the FCA has regard to its new statutory objective to facilitate the international competitiveness of the UK economy, so that any new regulation does not distort or disadvantage the UK in these international markets.[3]

6. Fourth, notwithstanding the significant amount of information provided by [redacted] and other stakeholders during the Market Study so far, the Update Report does not provide any substantive evidence or analysis to support the FCA's preliminary conclusions or to

[redacted]

[redacted]

demonstrate that customers are being harmed. To the extent that the FCA intends to carry out further analysis during the remainder of the Market Study, the FCA should publish this analysis in advance of the Final Report to give stakeholders an opportunity to comment. To the extent this work includes quantitative analysis, [redacted] would request the opportunity for its advisers to be given access to the underlying data in a data room.

7. [redacted]

8. The next section of this submission explains why [redacted] agrees with the FCA's proposed decision not to make a Market Investigation Reference. The subsequent sections set out [redacted] comments on the Update Report with respect to each of benchmarks, credit ratings data and MDVs.

[redacted]

[redacted]

No need for a Market Investigation Reference to the CMA

9. [redacted] agrees with the FCA's proposed decision not to make a Market Investigation Reference to the CMA for the following reasons.

10. First, the scale of the suspected competition concerns does not warrant a Market Investigation Reference. It is clear from the FCA's Update Report that the scale of any competition concerns is limited. In many instances, customers' comments are often merely "mixed" and in many cases customers did not raise any concerns at all.

11. Second, the markets involved in the Market Study are international in scope:

    (a) Any intervention in these markets, to the extent even required (which [redacted] does not believe to be the case), will need careful coordination between international regulators in order to ensure that competition is not distorted. The FCA is best placed to lead on this due to its knowledge of these markets, its standing on the international stage, and the relationships it has developed with regulators in other countries. In comparison, the CMA does not have such established relationships with financial services regulators in other countries and therefore is not well-placed to address any purported competition concerns that might be identified in these markets.

    (b) Given the time-limited nature of an appointed CMA panel and the market investigation process, any intervention that requires a prolonged period of international engagement with other sectoral regulators is unlikely to be a feasible outcome of a market investigation.

12. Third, as a sector regulator, the FCA is best placed to shape any potential remedies:

    (a) The markets involved in the Market Study are complex and any remedies will need careful consideration by a regulator that has an in-depth knowledge of those markets. As a specialist financial services regulator with a supervisory role over many of the participants in these markets, the FCA is best placed to oversee any potential remedies arising from the Market Study (to the extent that they are even necessary).

    (b) It is important that any intervention is considered on a holistic basis taking account of other related policy work (such as the FCA's proposals for a Consolidated Tape for bonds and potentially equities) and regulatory changes both in the UK (such as the impact of the UK Financial Services and Markets Act 2023) and relevant international developments, which can only be achieved by the specialist sector regulator.

[redacted]

Benchmarks

The Benchmark market is highly competitive

13. In the next stage of the Market Study the FCA plans to assess the extent to which different features of the benchmarks market create persistent market power for certain benchmark administrators. In this section, [redacted] addresses the market features identified in the Update Report and explains why the benchmark market is working well for UK customers.

14. The FCA's definition of the Benchmark market includes [redacted].[7] However, the Update Report focusses primarily on the supply of financial indices. [redacted] has previously explained that there are significant differences between financial indices/benchmarks and commodity price assessments and that accordingly it is not appropriate to consider them as part of the same market study.[8] This response therefore focusses on financial indices and the views expressed are primarily those of [redacted], but, where relevant, [redacted] has provided comments in relation to the supply of commodity price assessments.

The FCA has overstated the extent of concentration in the benchmark/index market

15. The Update Report claims that *"the supply of benchmarks is highly concentrated"*.[9] However, this is not consistent with [redacted] view of the benchmark market or even the FCA's own analysis.

16. The FCA is looking at the supply of benchmarks within the scope of the UK Benchmarks Regulation (UK BMR) but has considered a wider market for indices that falls outside the scope of the UK BMR. This is a wide definition that captures a broad range of indices including equity indices, fixed income indices, commodity price assessments, interest rate indices and foreign exchange indices.

17. It is clear that this market is highly fragmented. There are a large number of major providers including (in alphabetical order): [redacted].

18. This is consistent with the analysis set out in the Update Report, in particular:

    (a) the FCA notes that, as of August 2023, the UK Benchmarks Register lists 36 UK benchmark administrators and 10 third country administrators. Moreover, the register does not list administrators based outside the UK that are relying on the transitional provision to supply benchmarks to the UK (which includes [redacted] and [redacted]

    (b) the FCA collected data from 14 providers, including UK and third country domiciled benchmark administrators. Total UK revenues for these 14 providers was just over £450 million in 2022 out of a total estimated market size of £600 million. In other words, the

[redacted]

[redacted]

market is highly fragmented with significantly more than 14 providers in total and the 14 providers for which the FCA has data have a combined market share of 75%;[10] and

(c) the market share of the 14 providers in the FCA's sample has declined over time, i.e. the market has become more fragmented and competitive in the last five years. Figure 3 in the Update Report shows that the market share of the 14 providers in the sample accounted for 75% of total UK revenues in 2022, down from 81% of UK revenues in 2017.

19. [redacted] market position in this benchmark market is limited. [redacted] has an estimated marke share of around [redacted] (with UK revenues in 2022 of [redacted]

Narrower segments are also characterised by vigorous competition

20. The Update Report finds that *"the supply of benchmarks is highly concentrated, particularly in narrow subsets of the wider benchmark and index market"*, referencing the supply of UK funds and ETFs in Figure 4. [redacted] submits that [redacted] data shows that the ETF market is highly competitive, with a large number of providers and significant entry over the last 10 years.

21. Based on [redacted], as of June 2023, there are [redacted] ETF index providers which supply indices (which underlie ETFs) with positive AUM in the UK.[12] The number of index providers has more than doubled since the beginning of 2013 (when there were [redacted] index providers).[13] Some examples of new index providers which entered the ETF market over the last ten years are set out in Table 1 below. This evidence of entry is consistent with a highly competitive market.

Table 1: Examples of new index providers entering the market in the last ten years

Year	Name of new index providers
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

[redacted]

[redacted]

Year	Name of new index providers
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

[redacted]

22. New entrants have established their presence in the UK ETF market, gaining strong market positions in a variety of asset classes. [redacted]:

(a) [redacted] is currently the leading ETF index provider in the provision of multi-asset indices (in AUM terms), with [redacted] AUM in such indices; and

(b) [redacted] is currently the fourth index provider (out of 21) in the provision of ESG indices (in AUM terms), with [redacted] AUM in such indices.

There are no significant barriers to customer switching

23. The Update Report states that customer switching is limited and that there are a number of costs and barriers to switching. However, in [redacted] experience the switching process is straightforward and there is significant evidence of customer switching.

24. In relation to financial indices, [redacted] is aware of numerous examples of customers switching benchmark provider for an existing financial product, for example:

(a) according to a Financial Times article of 18 February 2021, data from TrackInsight which looked at 7,228 passive ETFs, shows that 11% of ETFs had changed the index they are benchmarked against in some way, and that on average those that did so made the change 5.6 years after they launched;[14]

(b) in response to Question 84 of the FCA's Benchmark RFI, [redacted] provided over 25 examples of customers switching to or from [redacted] As [redacted] does not systematically track customer switching this is unlikely to be a complete list; and

(c) it is possible to switch benchmarks for large funds with many customers. For example, in 2012 [redacted] changed the benchmarks of 22 domestic and international mutual funds and exchange traded funds, switching away from [redacted] in an effort to reduce costs. The change affected funds with over $500 billion of assets under management;

25. The FCA's own evidence on customer switching was mixed. For example:

(a) paragraph 3.42 of the Update Report notes that: *"Survey respondents had mixed views on the presence and importance of these barriers to switching"*; and

(b) paragraph 3.43 of the Update Report notes that: *"A minority of firms do not believe there are barriers to switching."*

[redacted]

[redacted]

26. Moreover, as explained in more detail below, many benchmark customers multi-home, i.e. customers source indices from multiple benchmark providers. This reduces the barriers to switching as the cost of switching between existing providers is low. For example, costs associated with integration or related to training staff should be minimal due to pre-existing contracts and methods for ingesting data from multiple sources.

27. It is also important to note that to the extent switching is limited in some circumstances, this does not provide evidence of a competition problem in the benchmark market, but may reflect the specific features and regulation of the investment fund market. The ultimate decision on whether to switch a benchmark that underpins an investment fund lies with the fund manager. Regulation and fund governance processes are designed to protect customers, but can also limit fund managers from switching benchmarks. This is particularly relevant for index-tracking investment products which are often designed to be held for the long term (e.g. as part of a pension portfolio), where fund managers need to notify investors of any changes to the underlying index in advance.

28. When assessing the extent of benchmark switching in relation to investment funds, it is also important to consider other indicators, in particular fund launches and closures. If a fund is performing poorly, rather than switch the benchmark that is tracked by that fund, a fund manager may choose to terminate the fund and set up a new fund tracking a different index. Fund launch and closure statistics support the position that ultimately it is the fund manager that controls and determines the objective of a fund, the choice of index, and whether to change the index or whether to close a fund altogether. A Financial Times article of 5 August 2023 noted that in the first seven months of 2023 there were 111 ETF closures in Europe almost cancelling out the 132 ETF launches.[15]

New entry is a market feature, and barriers to entry and expansion are low

29. The Update Report states that start-up costs, including the research costs of developing an index, the cost of obtaining data, and the cost of setting up appropriate systems can create barriers to entry and expansion.[16]

30. [redacted] considers that whilst there are start-up costs associated with developing a new financial index (either as a new entrant or an existing provider) these costs do not constitute a barrier to entry or expansion. The main inputs that suppliers require to enter and expand in the market are access to data and the technology necessary to calculate a given index, both of which are readily available:

(a) **Access to data**: For equity indices, data is generally available as access to public exchanges is typically regulated. For fixed-income indices, the underlying bonds and other relevant instruments are not traded on public markets so there is no equivalent access mechanism; however data is available from a number of third parties

[redacted]

[redacted]

[redacted], and a range of suppliers, including [redacted]

(b) **Access to technology**: Developing the technology to calculate a given index is straightforward, as a range of modern technology-driven index solution providers have entered the market such as [redacted] Entry can also be facilitated by outsourcing calculation and administration services. Indeed, collaboration with other suppliers is a feature of the market, providing a low cost and easy way for suppliers to offer a broader portfolio of indices, without having to invest, for example, in direct data access or calculation capabilities.

31. The numerous examples of recent successful entry provide clear evidence that entry barriers are low. Notable examples of successful entry in relation to financial indices include [redacted]

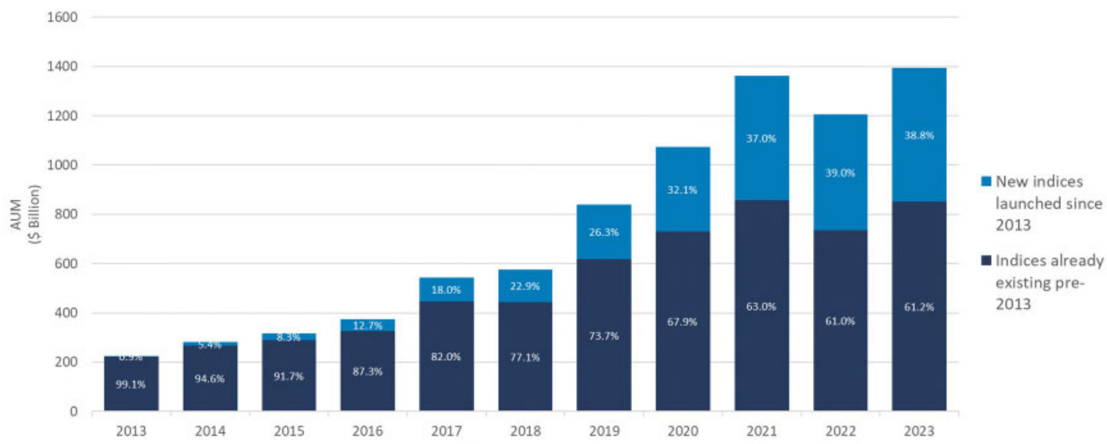
32. The FCA has also recognised there has been significant recent entry , noting that *"10-15 providers have started administering benchmarks available in the UK in the last 5 years"* with competition and new entry driving innovation and variation in business models (including self-indexers, boutique index providers, outsourcers and academic institutions).[19]

33. This ease of entry and expansion is also evidenced by the relative importance of new indices in terms of AUM. Based on [redacted], [redacted] new indices have been launched since 2013. These indices have gained a significant share of the overall ETF AUM in the UK over the last ten years. As shown in Figure 1 below, indices launched since 2013 account for [redacted] of the total UK ETF AUM as of June 2023, with significant growth over time. This evidence is not consistent with significant entry and/or expansion barriers and also demonstrates the high degree of innovation in the market.

[redacted]

[redacted]

[redacted]



[redacted]

[redacted] awareness does not lead to sub-optimal outcomes

34. The Update Report suggests that brand awareness could lead to sub-optimal outcomes for end investors. [redacted] considers that whilst brand can be an important driver of choice for some customers, it is not necessarily the main driver of choice and brand awareness is not leading to sub-optimal outcomes in the market. [20]

35. First, it is not the case that brand awareness represents an insurmountable barrier to switching or a barrier to entry and expansion. As set out above, there are numerous examples of both switching and entry over the last 10 years. New financial products based on indices are created frequently. This means that there is ample opportunity to facilitate entry and overcome any barriers related to brand awareness.

36. [redacted]

37. Third, it is possible for firms to minimise their reliance on established brands by:

(a) creating substitute indices that aim to replicate headline indices. For example, there are many alternatives for US large market-capitalisation indices, such as:

(i) [redacted]

[redacted]

[redacted]

(ii) [redacted]

(iii) [redacted]

[redacted]

(b) [redacted]

38. [redacted]

Fund manager	ESG		Global Equity		US Equity	
	No. of bench-marks	No. of index providers	No. of bench-marks	No. of index providers	No. of bench-marks	No. of index providers
[redacted]						

[redacted]

[redacted]

Customers can and do negotiate with benchmark providers

39. The Update Report states that most users *"have limited or no ability to negotiate with benchmark and index providers and many firms claim providers have a 'take it or leave it' approach to fees and terms and conditions"*.[22] [redacted] strongly disagrees with the suggestion that customers are unable to negotiate or that it operates a 'take it or leave it' approach. The majority of contracts are subject to commercial negotiation and customers often agree significant discounts:

(a) [redacted] IP customers are highly sophisticated with dedicated procurement and legal teams whose task is to review and negotiate contract pricing. Customers also often have bespoke requirements and/or use cases. Accordingly, each customer proposal is based on the outcome of bilateral discussions/negotiations between the customer and [redacted] customer relationship manager;

(b) in relation to the pricing of [redacted] data products, [redacted] sales team [redacted]

(c) as a general starting point in discussions with customers, [redacted]

Network effects are not applicable to most of the benchmark market

40. The Update Report refers to network effects as a key feature of the benchmark market, noting that: *"Benchmarks are more valuable to users if they are widely adopted by other market participants. This may result in markets tipping towards a specific benchmark"*.[24]

41. [redacted] recognises that whilst network effects may be relevant in relation to some uses of some benchmark products, overall the presence of network effects does not represent a barrier to entry and expansion (as is evidenced by the significant entry that is taking place). This is consistent with the FCA's view that the *"importance of network effects and impact on competition varies across different types and uses of benchmark products"*.[25]

42. As regards the uses of benchmarks and indices set out in Figure 5 of the Update Report, in [redacted] view, network effects are mainly applicable to the 'Financial Instruments and Contracts' category. Other uses of benchmarks and indices are less affected by network effects as the

[redacted]

[redacted]

value of the product does not depend on the number of users of that product. In this regard it is important to distinguish between brand effects which are relevant to other use cases (as addressed above) and network effects.

43. The limited importance of network effects in relation to other use cases is supported by the absence of any evidence of market tipping in relation to these use cases. For example, in relation to the use of benchmarks in investment funds, there is clear evidence of fund managers multi-homing in relation to specific asset classes. This is not consistent with the market tipping towards a specific benchmark.

44. Even in relation to the use of benchmarks in Financial Instruments and Contracts, the presence of network effects does not create market power or poor outcomes for investors for the following reasons:

(a) As markets evolve there is continual demand for new financial indices and commodity price assessments, and this creates a process of intense competition to become the benchmark (i.e. competition for the market). Such competition is frequently long-running and provides the opportunity for new providers to enter. In recent years a number of market trends have created demand for new benchmarks including demand for ESG financial indices.[26]

(b) Network effects can benefit consumers. For example, as noted at paragraph 3.50 of the Update Report, referencing the main benchmark can increase market liquidity resulting in lower trading costs compared to trading products linked to less popular benchmarks.

(c) Paragraph 3.49 of the Update Report notes that where benchmarks are used to determine the settlement price of a contract *"certain commodity price assessments, Forex and interest rate benchmarks tend to become the standard for specific uses"*. However, network effects are not insurmountable as benchmark displacement does happen. There are multiple instances of benchmarks being displaced. [redacted] These show that benchmarks must continue to innovate and offer a high quality product or face displacement.

Vertical integration is not an important feature of the benchmark market

45. The Update Report states that *"Benchmark administrators are increasingly part of groups that operate at multiple levels of the value chain … this is potentially harmful when vertically integrated firms provide inputs to other firms which compete across the value chain, if it results in barriers to entry or expansion and reduces choice"*.[27] Whilst [redacted] recognises that many benchmark administrators are part of vertically integrated groups, [redacted] does not see this as a key feature of the market.

[redacted]

[redacted]

46. First, a number of significant providers of financial indices are not vertically integrated and have been successful. For example, [redacted] is not vertically integrated (either upstream or downstream) but as noted in Figure 4 of the Update Report had a 27% share of AUM in UK funds and ETS in 2022. Accordingly, vertical integration cannot represent a barrier to entry or expansion.

47. Second, in relation to [redacted] specifically, the extent of any vertical integration is limited. In particular:

(a) [redacted] does not source the key data inputs for its equity indices from other [redacted] divisions. As noted above, data for equity indices is generally available, as access to public exchanges is typically regulated;

(b) distributing [redacted] data through other [redacted] divisions accounts for a [redacted]. Approximately [redacted] revenue is attributed to clients directly accessing data from [redacted] and [redacted] is attributed to customers accessing data via MDVs. For customers accessing data through MDVs [redacted] is attributable to [redacted] and

(c) [redacted]

Commercial practices and contractual terms reflect efficient risk sharing and customer needs

48. The Update Report identifies a number of commercial practices raised by benchmark users which the FCA feels may give rise to competition concerns. Each of these is addressed below.

Key licensing terms are bespoke to meet customer needs

49. At paragraph 3.59 of the Update Report the FCA has addressed licensing terms and identified two features of Benchmark pricing that may give rise to competition concerns: (i) that non-transparent pricing can make it harder for users to compare quality, charges, contract terms and innovation; and (ii) that price discrimination can have positive and negative effects on competition.

50. In relation to price transparency, it is important to distinguish between [redacted] IP licences and its data licences:

(a) for IP licences, [redacted]

[redacted]

[redacted]

[redacted] and

(b) for data licences, [redacted]

51. Setting prices [redacted]

Benchmark products are licensed in packages to meet customer demand

52. The Update Report refers to concerns that benchmark administrators are packaging benchmarks in bundles that require users to buy products they don't need on top of "must-have" benchmarks. In addition, the FCA is concerned that high demand for "must-have" benchmarks may be leveraged by benchmark administrators, creating barriers to entry and expansion.[29]

53. [redacted] submits that whilst packaging is a feature of the market, packages are designed to meet customer needs and not to exploit customers or foreclose rivals. The evidence of significant new entry taking place (as set out above) also shows that the packaging of benchmarks does not create barriers to entry.

54. It is important to note that not all benchmark products are licensed in packages. [redacted] IP licences [redacted] are typically licensed on a per-index basis, i.e. customers only pay for the benchmarks that they require.[30]

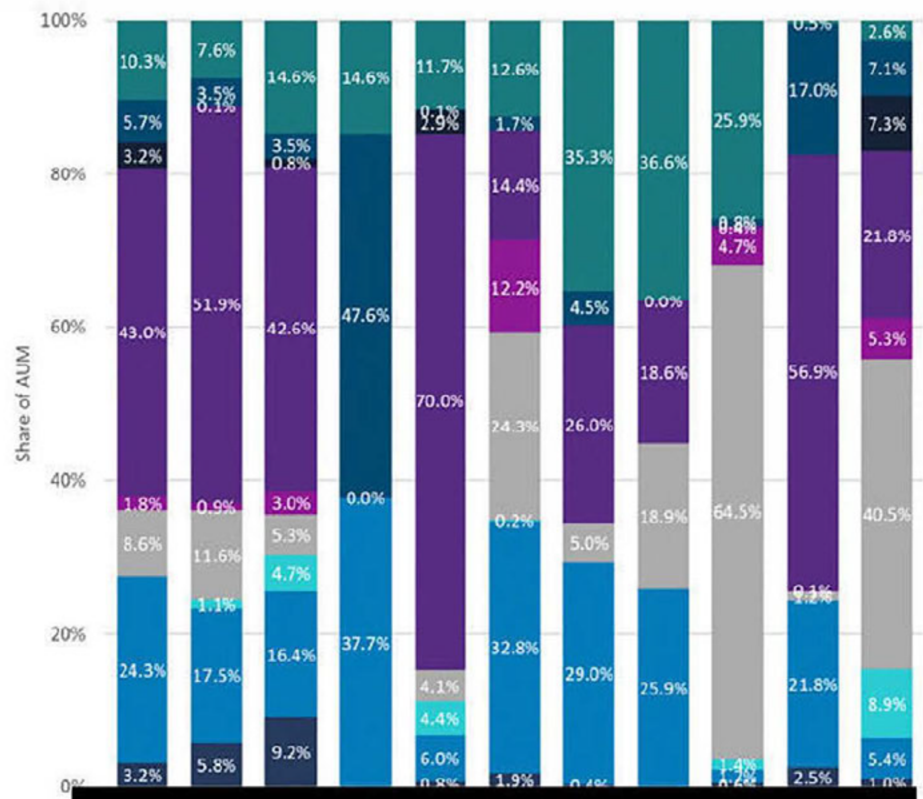
55. Unlike IP licences, data subscriptions are licensed as packages of benchmarks as customers typically require data on multiple benchmarks and it would not be practical or feasible to licence benchmark data on an individual basis [redacted]. [redacted] designs its data licence packages to meet customer demand with benchmarks included in packages that are part of the same family.

56. [redacted]

[redacted]

[redacted]

[redacted]



[redacted]

[redacted]

Contracts include termination requirements for legitimate reasons

57. The Update Report states that *"many users have flagged that suppliers impose the condition of removing all historical data, except for use for regulatory purposes, unless users enter into an additional licence"* and that this increases switching costs.[31]

58. [redacted] licenses the use of benchmark data for the duration of the contract. Contractual requirements to remove historical data are put in place to ensure that customers do not use data that they are no longer paying for beyond the end of the licence period. This type of contractual provision is standard practice (across all industries not just the Benchmark market) in order to ensure that customers no longer have the right to use licensed data for which they are no longer paying.

59. It is possible for customers to license historical data but terminate other parts of their agreement with [redacted] For example, a customer may have both an IP licence with [redacted] to create index-tracking investment products as well as a data subscription licence. If the customer chooses to switch the investment product to an alternative index, they can cancel

[redacted]

[redacted]

their IP licence but keep their data licence in order to maintain access to historical data. Customers can also subscribe to historical data only for a lower fee.

60. Moreover, termination requirement terms are clearly set out in the contract and the customer is aware of any termination requirements to delete historical data when they enter into the agreement.

Competition drives significant investment in quality

61. The Update Report suggests that clauses that limit or exclude liability of benchmark providers for accuracy, completeness and timeliness of delivery reduce the need to providers to compete on the quality of benchmarks.[32] [redacted] strongly disagrees that providers do not compete in terms of quality and considers that these clauses are a proportionate approach to allocating risk.

62. [redacted] has rigorous procedures in place to ensure the highest quality standards. For example:[33]

(a) all of [redacted] new index concepts undergo a rigorous process to ensure that they are analytically sound and have been reviewed and approved by relevant teams across [redacted] and

(b) [redacted] monitors the quality of its existing indices through a number of functions and committees including data quality assurance, technology quality assurance, and index methodology oversight.[34]

63. Competition between providers is a key driver in [redacted] decisions to continuously invest in improving the quality of its benchmarks. Reputation is a key feature of wholesale data markets and any providers that fail to maintain and invest in the quality of its products would rapidly lose customers.

64. [redacted] continually strives to improve the quality of its existing indices and new index designs. As part of this process [redacted] regularly assesses its IT infrastructure, applications, data sets, employee skill sets and competitor offerings to inform whether investment and improvements are necessary.

65. Examples of major investments [redacted] has made in order to improve the quality of its indices since 2017 include:

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

[redacted] [redacted]

66. Notwithstanding the above, clauses that limit or exclude liability of benchmark providers for accuracy, completeness and timeliness reflect a proportionate approach to allocating risk between providers and customers given the products supplied. In particular, many of [redacted] contracts are low value, for example:

(a) [redacted] data licences typically have a low annual fee based on internal use of the data with limited distribution rights; and

(b) [redacted] IP license fees are typically determined as a proportion of the assets under management or product notional and therefore can have very low fees when a product is first launched or if it is unsuccessful.

67. In this context, it would be disproportionate for [redacted] to accept full liability as it would not reflect the relative return each party to the contract receives. The current practice whereby benchmark providers significantly invest in improving and maintaining quality or risk losing customers represents a proportionate approach to allocating risk between providers and customers.

[redacted]

[redacted]

Credit ratings data

68. In its Update Report, the FCA states that it would welcome responses and evidence in relation to a number of areas of interest relating to the distribution of credit ratings data. In this section, [redacted] considers those areas of interest as well as providing its views more broadly on the description and assessment of the relevant credit ratings data markets.

69. Although the FCA has correctly identified that the provision of "credit ratings data services" within the "credit ratings data market" is distinct from the market for the provision of credit ratings services to issuers,[36] the FCA's analysis in many ways still conflates the two separate markets.

70. In particular, the FCA has clearly understated the extent of competition in the credit ratings data market. The Update Report notes that "*similar to the credit ratings services market, the credit ratings data market is highly concentrated amongst the data affiliates of the Big Three CRAs*"[37] and notes the "*Highly concentrated credit ratings data market through data affiliates to the Big Three CRAs. This is due to the market power of the Big Three in the issuer services market*".[38] This approach materially understates the extent of competition and the competitive threat posed by the wide range of firms (other than just CRA data affiliates), including MDVs, that are very active in the credit rating data distribution market.

71. The remainder of this section sets out the following key observations on the FCA's analysis on credit ratings data in its Update Report, namely:

(a) the FCA's analysis is based on an incomplete sample and underestimates the size of the market, in particular by failing to include MDVs in its assessment;

(b) the Update Report confirms that, consistent with [redacted] submissions, there is vigorous competition between ratings data providers and there are no material barriers to switching;

(c) barriers to entry and expansion are low in relation to the supply of credit ratings data;

(d) the vast majority of [redacted] customers gain physical access to credit ratings data through third parties (including MDVs);

(e) credit ratings are available for free and the free data is used by customers;

(f) [redacted] credit ratings data products provide significant value-added services and benefits;

(g) investors are increasingly less reliant on credit ratings and are establishing internal credit risk practices, which both impacts the demand for credit ratings data and means that ratings data providers are competing with providers of tools and solutions to enable customers to assess credit risk without relying on an external credit rating;

[redacted]

[redacted]

(h) [redacted] licensing and pricing policy is clear and transparent, with frequent negotiation with customers; and

(i) [redacted] pricing is competitive and is not characterised by excessive annual price increases.

72. In summary, [redacted] considers that the market for credit ratings data is working well for customers in the UK. [redacted] also notes that the credit ratings data market is global, with no requirement for suppliers to be physically located in a particular location to provide data to customers in the UK or any other jurisdiction. In assessing this market (as well as the others examined in this Market Study) the FCA needs to ensure that it has careful regard to the international dimensions and dynamics of this market.

The FCA's analysis is based on an incomplete sample and underestimates the size of the market

73. The FCA estimates the size of the UK credit ratings data market to be "*up to £100m*" and that the UK market "*represents approximately 10% of the global credit ratings data market*", implying a global market size of approximately £1bn. This estimate clearly understates the size of this market for the following reasons:

(a) [redacted]

(b) [redacted]

(c) The FCA recognises that "*a significant share of users access credit rating data services via MDVs*" (paragraph 3.92 of the Update Report) but has not included distribution via MDVs within its estimates of market concentration, or its analysis more generally. This is a critical omission. See further paragraphs 88 to 90 below.

[redacted]

[redacted]

74. Consistent with the observations above, the FCA's estimated market sizes are considerably smaller than those estimated by [redacted] In its 2020 [redacted] estimated that the global credit ratings distribution market has a value of approximately [redacted]

75. [redacted]

The Update Report confirms that there is extensive competition between ratings data providers and there are no material barriers to switching

76. Notwithstanding its overall observation that the credit ratings data market is highly concentrated, the evidence cited by the FCA in the Update Report in fact supports [redacted] view that the downstream market is highly competitive. For example, the FCA notes that:

(a) "*whilst the choice of credit ratings providers remains concentrated between the Big Three, competition in the distribution of credit ratings data appears stronger*";[45] and that

(b) there is a growing competitive threat from challenger firms: "*challenger CRAs are investing in developing their credit ratings data services and wider analytical offerings*".[46]

77. The FCA also recognises that there is competition between credit ratings data providers, including the affiliates of the Big Three. Indeed, the Update Report notes that "a *significant proportion of respondents to our survey only source credit ratings data from 1 CRA*".[47] This is consistent with [redacted] experience that there is significant competition for these customers between the wide range of other credit ratings data providers active in the market.

78. The evidence from the FCA's survey that a significant proportion of customers only source data from one provider also contradicts the conclusion in the Update Report that "*Buy side coverage typically requires credit ratings data from at least 2 of the Big Three*".[48] Whilst customers may choose to receive credit ratings from multiple agencies for commercial reasons, for example, to ensure complete coverage of the market (whether in terms of geographies, sectors or product types), or to ensure they have a diversity of opinions, there is no

[redacted]

[redacted]

statutory/regulatory requirement to do so. In fact, as noted by respondents to the FCA's survey, many customers choose to single source their data requirements.

79. Moreover, a single provider may supply data from a number of credit ratings agencies. For example, if a customer chooses to procure its credit ratings data from an MDV, such as [redacted] it may in fact take ratings data from a number of different providers via that same single source. Many of the packages offered by MDVs include ratings data.

80. In addition to other credit ratings data providers and MDVs, [redacted] also competes with non-ratings providers, such as suppliers of credit analytics services.[49] As explained further below, these providers offer a range of models, analytics and other data to facilitate the assessment of credit risk without reliance on an external rating.

81. As previously explained to the FCA, there are no material barriers to switching between credit ratings data providers. In particular, this reflects the following factors:

(a) [redacted] credit ratings data customers in the UK and globally are on [redacted] contracts;[50]

(b) [redacted] credit ratings data services are not bundled with [redacted] non-credit rating data products or with products of the other [redacted] and

(c) there are no underlying infrastructure changes required in relation to the desktop products [redacted]. In relation to data feeds [redacted], while some integration of a new supplier's feed would be required, this does not represent a material barrier to switching.

Barriers to entry and expansion are low

82. The FCA considers that an entrant in the data distribution market "*is likely to require an international presence in the issuer services market*" and that, in relation to the issuer services market, "*although there have been a few new entrants … they face significant barriers to entry and expansion including brand reputation, investor preference and regulatory barriers*".[52]

83. Accordingly, the FCA's assessment that there are barriers to entry in relation to the credit ratings data distribution market stems from its assessment of the credit rating issuer services market. This improperly conflates the two markets. The FCA has not identified any specific factors that indicate that barriers to entry are high in relation the distribution of credit ratings data.

84. In fact, as noted above, the credit ratings data distribution market is highly competitive and there is a wide range of competitors active in the issuer services market in addition to the data affiliates of the CRAs. Contrary to the FCA's assertion, barriers to entry are generally low in the provision of credit ratings data services. In particular:

[redacted]

[redacted]

(a) there are no legal or regulatory barriers; as the FCA observes, unlike the credit ratings issuer services market, credit ratings data services are not regulated;[53]

(b) entrants can license credit ratings data from CRAs, their data affiliates and third parties, or can access the data from the regulatory websites (such as the FCA's Public Ratings Database (PRD) and ESMA's European Ratings Platform (ERP)), with data also available from the websites of the CRAs; and

(c) new entrants do not need a wide product offering to enter the market (e.g. they can choose to focus on providing data for a specific industry or segment). In contrast, the affiliates of the larger CRAs who provide credit ratings data distribution are under commercial pressure to offer ratings data in respect of all classes of issuer/segment for all investor use cases.[54]

85. This is supported by evidence of entry into the market for the provision of credit rating data services including by:

(a) CRA data affiliates [redacted]

(b) suppliers of credit analytics services, which provide credit scores, models and related tools used to measure credit risk. In recent years, a number of new tech firms have entered this sector, [redacted]

(c) emerging players active in the adjacent structured finance and commercial real estate sectors, including [redacted]

86. As well as improperly conflating the credit ratings issuer services and data distribution markets, the FCA's conclusion in relation to barriers to entry resulting from the structure of the issuer services market fails to take into account the fact that, while [redacted] and [redacted] are part of the same corporate group, the two divisions are commercially and operationally distinct so that in effect the businesses are not vertically integrated. As previously explained, in respect of the separation between [redacted] and [redacted]

(a) there are firewalls in place between [redacted] and [redacted] in respect of customer data and contracts, and in respect of the commercial and analytical activities of [redacted] and [redacted]

(b) the [redacted] analytical and commercial teams and the [redacted] commercial team work entirely separately from each other, and occupy ringfenced areas in [redacted] office buildings;

(c) each of [redacted] and [redacted] has separate legal and compliance teams; and

[redacted]

[redacted]

(d) [redacted] and [redacted] apply a set of "*Rules for Commercial Engagement*" that mandate restrictions on client referrals between [redacted] and [redacted] commercial representatives and prevent the tying of the sale of each other's products.[58]

The vast majority of [redacted] customers access credit ratings data through third parties (including MDVs)

87. As noted above, the FCA recognises the role played by MDVs in the distribution of credit ratings but has not included distribution via MDVs within its estimates of market concentration, or its analysis more generally, despite noting that the FCA will continue to investigate "*the role of MDVs and their commercial relationships with CRAs*" as well as "*the influence MDVs have on access, choice and pricing*".[59]

88. [redacted] customers use a third party to receive the credit ratings data. [redacted] of these customers solely use a third party, with others choosing to receive the data both directly from [redacted] and from one or more third parties. [redacted] has entered into commercial redistribution agreements with [redacted] distribution partners as it seeks to ensure that it has the broadest coverage and distribution for its credit ratings data products.[60]

89. MDVs [redacted] are therefore crucial to the distribution of [redacted] credit ratings data products, as they facilitate access to a much larger customer base, with whom they hold the direct customer relationship. These MDVs are also able to provide a distinct offering to their customers (as compared to [redacted] as a result of their ability to provide:

(a) more advanced terminals and technology platforms and analytical tools, with the potential to provide customers with more convenient and flexible delivery mechanisms;

(b) additional insight and content by combining ratings data with the other content and data offered through their terminals and platforms; and

(c) better terms through their ability to leverage their strong buyer power into achieving more favourable terms for their customers (see further paragraph 119 below).

90. Many customers also want the choice and flexibility of taking credit ratings data products through multiple sources and platforms. [redacted] does not charge its [redacted] customers an additional fee in order to access its data through multiple platforms. In other words, if a customer has a direct subscription with [redacted] for [redacted] it can choose to receive the data directly from [redacted] or through an MDV such as [redacted] or [redacted] (or a combination thereof) without paying [redacted] an additional fee.

[redacted]

[redacted]

91. Generally, each MDV will enter into a direct agreement with [redacted] to enable it to distribute the credit ratings data to its clients. Where this agreement includes rights to distribute to the MDV's own clients on a revenue-earning basis, [redacted]

92. As a result, it is clear that MDVs have a very significant impact and influence on "*access, choice and pricing*" in relation to credit ratings data. Distribution via these MDVs provides a clear alternative for customers and, as noted above, is often the favoured method of sourcing credit ratings data.

93. Where [redacted] has a commercial agreement with the MDV, [redacted] generally does not also require end customers accessing its data via an intermediary to have a direct licence with [redacted] Where the rights granted by the MDV to its customers fall within the scope of the commercial agreement that the MDV has entered into with [redacted] [redacted] subscription agreements with MDVs permit MDVs to distribute data to their existing and prospective customers without those customers being required to enter into a direct licence with [redacted]

94. In these circumstances, the end customer only has a contract with the MDV (with the price and terms being negotiated between the MDV and its customer), and the MDV supplies that customer pursuant to the commercial arrangements it has agreed with [redacted]

95. There are limited exceptions in which a direct end-use agreement with [redacted] is required to access data through an MDV or other intermediary. [redacted]

Credit ratings are available for free and the free data is used by customers

96. As the FCA notes, credit ratings are publicly available for free, including on [redacted] website and via the regulators' websites (including the PRD and ERP). However, the Update Report states that "*there is limited evidence that firms use free sources of credit ratings data, even for*

[redacted]

[redacted]

regulatory purposes".[64] In [redacted] experience, however, the publication of free credit ratings has had a significant impact on competition and innovation in relation to the distribution of credit ratings data.

97. The data provided on these public websites contains all of the core data elements of a credit rating.[65] In addition to the ratings data, [redacted] website also includes:

(a) regulatory disclosures for each rating (including the methodology used, and details of the analysts responsible for the credit rating); and

(b) related research and insight for free, as well as providing search functionality to allow users to search within these insights.[66]

98. The terms of use[67] of the free credit ratings website allow users to

(a) use Non-Historical Ratings[68] on an ad hoc basis within the users' organisation in the ordinary course of securities disclosure activities and the drafting of transaction documents. Users may also publish selected individual Non-Historical Ratings on a non-commercial basis (i.e. for activities that do not seek any commercial benefit); and

(b) if end-users are directly compelled by applicable law or regulation, users may also:

(i) include credit ratings within a report required by law or regulation; and

(ii) deliver such report to the regulator or authority as identified by the law or regulation in order to meet the users' own reporting obligations.

99. The data used by [redacted] in relation to credit ratings data products is derived from precisely the same database as the data available from the free webpage – the ratings are therefore entirely consistent and the quality is exactly the same.

100. In order to ensure that [redacted] correctly meets its regulatory disclosure requirements, the credit ratings on [redacted] website are published and made available to the public <u>before</u> the credit ratings are sent to or published on [redacted] data platforms and products. [redacted] redistributors and data feed customers also receive the data very shortly after it is received by [redacted] (typically within 5-10 minutes depending on the volume of the data).[69]

101. Contrary to the FCA's findings that there is limited evidence of firms using these free sources, [redacted] experience is that these sources are used and valued. In relation to [redacted] own free webpage specifically, although [redacted] only tracks limited user information on those accessing

[redacted]

[redacted]

its website, the available data shows that there are regularly [redacted] page-views on its free ratings website every month (globally).[70] This number most likely materially understates the access and use of the free data as it does not include customers which also/alternatively access the data from the PRD or ERP.

102. It is also clear that certain users do rely on the free credit ratings rather than a paid subscription service.[71] For example:

(a) Certain users who only require credit ratings for purposes that fall within the free website Terms of Use will use the free ratings instead of a subscription service. By way of example, [redacted] understands that the free credit ratings are being used by entities such as: (i) insurance funds which only require the data to run internal compliance checks or internal risk management, or (ii) small banks located in territories in which [redacted] ratings coverage is lower and therefore who only need to follow a smaller number of issuers on [redacted] website.

(b) Although commercial use of the free credit ratings is not permitted under [redacted] Terms of Use, [redacted]

103. The availability of the free credit ratings on the [redacted] website also [redacted] There is therefore additional pressure on [redacted] (in addition to existing competition with other credit ratings data providers and distributors) to ensure that its products are providing real value to customers in terms of additional functionalities, usability, content and insights.

104. The availability of and rights in relation to the free data will significantly increase once the expected European Single Access Point (ESAP) becomes effective. ESAP is intended to be an EU-wide platform aimed at providing investors with seamless access to financial and sustainability-related information, including credit ratings data. Currently ESAP mandates that credit ratings information will be offered and updated on a regular cycle, free of charge to all,

[redacted]

[redacted]

and be capable of bulk downloading. [redacted] The introduction of the ESAP will further increase competition and innovation in the market for credit ratings data and will place further pressure on [redacted] in selling its credit ratings data products.

[redacted] credit ratings data products provide significant value-added services and benefits

105. The FCA recognises that credit ratings data providers offer a range of different products which include not only credit ratings data but also additional services.[72] Many customers who require credit ratings data for commercial purposes (rather than solely for internal or regulatory disclosure purposes) are sophisticated and specifically want and value the additional features offered by [redacted] credit ratings data products, and which have been incrementally added over recent years as part of [redacted] ongoing innovation and investment in its products and functionality.[73]

106. [redacted]

(a) [redacted]

(b) [redacted]

(c) [redacted]

Investors are increasingly less reliant on credit ratings and are establishing internal credit risk practices

107. As the FCA recognises, there has been a shift away from credit ratings in recent years as investors, encouraged by regulation, are increasingly adopting a more diversified approach to

[redacted]

[redacted]

risk.[75] This is inevitably weakening demand and strengthening competition for credit ratings data subscription products as investors look to alternative solutions.

108. One of the key issues raised by regulators and commentators following the global financial crisis has been overreliance (or ‘mechanistic reliance’) on credit ratings. Launched in 2009, the Basel III reforms included revisions to the standardised approach for credit risk including to reduce “*mechanistic reliance on credit ratings, by requiring banks to conduct sufficient due diligence, and by developing a sufficiently granular non-ratings-based approach for jurisdictions that cannot or do not wish to rely on external credit ratings*”.[76] In 2010, the Financial Standards Board drew up a number of principles to reduce reliance on credit ratings and to encourage market participants to establish stronger internal credit risk assessment practices and to use internal ratings based approaches.[77]

109. The CRA Regulation includes provisions aimed at addressing the risk of over-reliance on credit ratings. For example, Article 5a requires that firms “*shall make their own credit risk assessment and shall not solely or mechanistically rely on credit ratings for assessing the creditworthiness of an entity or financial instrument*”.[78]

110. In practice, there are a significant number of entities and securities that are un-rated, which means that firms have needed to develop and deploy additional tools to assess risk outside of the universe of rated entities and securities. As an illustration, [redacted] estimates that its credit ratings cover only [redacted] of all publicly listed companies on exchanges globally.[79] This inevitably means that firms have needed to develop and deploy additional tools to assess risk outside of the universe of rated entities and securities. There are therefore a range of providers and solutions which have developed to help firms measure credit risk without requiring a credit rating.

111. [redacted] [redacted] offer a suite of models, analytics and other data that help [redacted] client assess risk without relying on external credit ratings. Whilst these products contain analytical information and data that may use credit ratings, their components, financials and/or ratings criteria as an input, they do not themselves carry credit ratings data.

112. As noted above, in addition to the CRAs and their data affiliates and distributors, [redacted] credit ratings data competitors include suppliers of credit analytics services. These suppliers provide credit scores, models and related tools that are used to measure the credit risk of rated, unrated, public and private companies. Providers include [redacted] and [redacted] and [redacted], as well as a number of tech firms that entered this market in recent years, for example, [redacted] In addition to competing with [redacted], these sources are also increasingly

[redacted]

[redacted]

used as an alternative to credit ratings, and therefore compete directly with the traditional credit ratings data products [redacted] [redacted] expects the continued growth of fintech and AI to increase entry and competition in these markets.

113. Clients can also develop in house credit assessment models, which can complement or replace credit ratings data in assessing risk. [redacted] customers already purchase a variety of different data sets and products [redacted] to help build their own credit risk models.

[redacted] licensing and pricing policy is clear and transparent, with frequent negotiation with customers

114. [redacted]

115. This is consistent with the evidence provided by respondents to the FCA's survey, as set out in the Update Report. Although the FCA notes that "*respondents ... were unclear about how prices were set for credit ratings data*",[82] it is apparent from the report that the FCA received a "*mixed response*" and that some users "*reported having no issues*".[83]

116. [redacted]

117. Current and prospective customers are also able to request quotations on a variety of relevant scenarios and conditions (e.g. if an additional use case is required, an asset class is added or dropped, or the frequency of data delivery changes), which provides transparency on the likely price or price change that may apply based on their situation and needs.[84]

118. Determining pricing based on a wide number of relevant factors relating to the client and their required use case ensures that the customer pays for what they actually need, and in particular that smaller customers, or those with more limited use requirements, pay less. As the FCA

[redacted]

[redacted]

notes in the Update Report, "*price discrimination can be beneficial if it allows certain customers to buy services they could not otherwise afford*"[85].

119. [redacted] customers generally engage in negotiations in relation to price and price changes. This is reflected by the survey responses received by the FCA, which led the FCA to note that "*many users said that they were able to negotiate prices*".[86] Credit ratings data customers are often large companies which are sophisticated purchasers, including investment banks, investment managers, commercial banks, private equity firms and inductance companies. In most cases, these companies will have dedicated procurement and legal negotiating teams. These customers therefore have significant buyer power and consequently are able to secure favourable terms for their customers. The Update Report also acknowledges that a significant share of users access credit rating data services via the role of MDVs, and that "*buyers in this market are sophisticated users with procurement teams that review licenses regularly*".[87]

120. In addition, as noted above, [redacted] This means that, if customers do not like the terms or price on offer, they are free and able to switch to an alternative provider. Where customers choose to have multi-year contracts, this is because they value the certainty provided over a longer period of time of knowing, from the outset, the fees that will apply for the duration of the contract.

[redacted] pricing is competitive and is not characterised by excessive annual price increases

121. The Update Report notes that respondents had "*a mix of views about whether they were getting good value out of credit ratings data* services". Although "*some firms found licensing fees and annual price increases excessive … many users did not express any concerns around value*".[89]

122. [redacted] pricing is competitive, reflecting the significant competitive pressures it faces in the distribution of credit ratings data from a wide range of firms, and also the impact of the availability of free data.

123. [redacted] typically reviews [redacted]

124. This is reflected in the prices actually paid by customers. Analysis of the financial and transactional data provided by [redacted] to the FCA in response to its RFI shows that [redacted]

[redacted]

[redacted]

Market Data Vendors (MDVs)

The market is dominated by two large players

125. [redacted] is a challenger in the supply of MDV services in the UK. The market for MDV services is dominated by two large players, [redacted], which have long-established and entrenched market positions. This is recognised in the Update Report, which notes that [redacted] account for "*a large majority of the UK MDV revenue*"[91] and that "[redacted] *is and has been historically the largest MDV followed* [redacted]".[92] The Update Report also notes that [redacted] is one of "*other smaller*" MDVs.[93]

126. Based on a UK MDV market size of £3bn in 2022, as referred to in paragraph 3.122 of the Update Report, [redacted] has a market share of [redacted]

127. The market for MDVs is characterised by a wide range of providers, which includes a "*long tail of smaller specialised providers*".[95] There has also been a number of new entrants and alternative distribution models are emerging.[96] Whilst this suggests that barriers to entry are not unduly high, this is not the case in relation to barriers to expansion because (as discussed further below) it has been much more difficult for the smaller existing providers (including [redacted] to grow market share and destabilise the entrenched market positions of the two large players.

128. The entrenched position of [redacted] in particular allows it to engage in certain commercial practices, such as imposing its licensing models on data generators, including [redacted] which [redacted] believes can result in a sub-optimal outcome for users of that data, including reduced choice for end users.

129. Accordingly, to the extent that the FCA identifies competition concerns in this market, any remedies should be targeted at addressing the stranglehold that the two large players have on the market, so as to increase competition from [redacted] and the long tail of other challenger MDV providers. To include the smaller MDV providers within the scope of any potential remedies would impose a disproportionate cost on those providers and would be contrary to the FCA's stated aims.

Tying and bundling practices

130. The Update Report refers to bundling practices as one area in relation to which the FCA intends to carry out further work (to gain a better understanding of whether there are market-wide or firm-specific concerns). The Update Report explains that concerns with bundling include: (i) deterring the entry of competitors, (ii) generating artificial barriers to switching, or

[redacted]

[redacted]

(iii) facilitating *"price differentiat[ion]"* to the detriment of consumers.[97] [redacted] does not recognise these concerns in respect of its own offerings. To the extent that these concerns are relevant, they are more likely to arise in connection with the practices of the two large providers, [redacted], which offer the largest suite of products and have the most to lose from new entry/expansion and customer switching.

131. From a [redacted] perspective, [redacted] has specifically designed its [redacted] to help businesses acquire information in a user-friendly environment that includes data across multiple industry sectors. As recognised by the FCA, customers find value in a one-stop-shop solution and [redacted] hears this directly from its clients.[98] It mitigates the number of screens that they must run and automates the collation of information into unified solutions so that timely easily navigated presentations of useful analysis can be produced.

132. The packages available through [redacted] have been created to meet customer demand:

(a) The data made available through [redacted] is determined by the need to meet evolving customer demand (and the specific requirements of customers) as well as the overarching need to continually innovate in order to offer a differentiated and high-quality service that compares favourably with the offerings of competitors. Market participants are constantly seeking alternative data sets across a range of data categories in order to provide them with incremental advantages over their peers.

(b) Customer demand is the main driver that determines whether [redacted] makes additional data sets available via [redacted]

(c) Customers can choose the [redacted] that best meets their individual needs as well as from [redacted] additional add-on data products such as real time data and index data sets. [redacted]

(d) [redacted]

133. There is no evidence that the packaging of [redacted] represents a barrier to switching or constitutes a barrier to entry. [redacted] This reflects the high levels of competition

[redacted]

[redacted]

that [redacted] faces from the large established players as well as from a wide range of other providers.[101]

Barriers to entry are not insurmountable, but expansion is very difficult

134. [redacted] agrees with the Update Report that "*barriers to entry are not insurmountable*".[102] There are several smaller MDVs (including [redacted] and a long tail of smaller specialised providers that have been able to enter the market.[103] There are also a number of examples of successful new entry taking place [redacted], and customers are able to multi-home by subscribing to more than one MDV.[104]

135. The market entry has been supported by the recent pace of technological change, much of which has led to increasingly open online communications architecture. Potential competitors now have access to a range of software tools (including machine learning and other AI capabilities) that has significantly reduced the time and resource associated with cleaning, standardising and packaging data into a format that can be redistributed.[105]

136. The majority of the data offered [redacted] is also accessible through public sources, which can equally be collected by rivals to offer to customers in a structured/desktop format. For example, news sources contain relevant data and other fundamental data regarding US companies, such as ownership and transaction data as well as regulatory filings, are sourced from the Securities Exchange Commission.[106] There has been substantial growth in recent years in the availability of data that is offered to users for free via the internet which rivals can equally collect, process and offer to customers.[107]

137. [redacted]

138. The challenge facing [redacted] and other smaller MDVs is being able to win a sufficient number of new customers to grow market share and challenge the entrenched positions of [redacted]. As the Update Report correctly observes, "*no entrant has yet to overcome the barriers to growth that would enable them to achieve significant market share*".[108]

[redacted]

[redacted]

Complex and non-transparent pricing

139. The Update Report states that the FCA received "*mixed*" views as regards pricing practices of MDVs. In particular, "*several users*" raised concerns over the growing variety of charges for the same data, "*a few respondents*" have raised concerns about the lack of transparency of some licensing terms offered by MDVs (although "*many firms*" said that licences are clear), and "*many users*" raised concerns over rising prices.

140. [redacted] does not recognise these concerns in relation to its own products. From a [redacted] has specifically designed its [redacted] products and its pricing to meet customer needs:

(a) [redacted] approach to pricing is competitive and expands access/provision. [redacted] Given the [redacted] structure for MDVs, [redacted]er participation is efficiency enhancing as it allows fixed costs to be spread over a larger customer base.

(b) It is not the case that [redacted] existing pricing structures increase the search costs for customers in identifying new opportunities or the costs of switching supplier:

(i) customers of [redacted] are sophisticated data users, including large financial institutions, private equity houses and non-financial corporates, with dedicated procurement and legal departments. This is acknowledged in the Update Report: "*Most of the buyers in this market are sophisticated users with procurement teams that review licences regularly*";[110]

(ii) [redacted]

(iii) [redacted]

[redacted]

[redacted]

[redacted]

(iv) [redacted] Price increases for renewal terms needs to be communicated in advance, and customers can accordingly cancel in time without a termination fee.

(c) [redacted]

(d) Analysis of the financial and transactional data provided by [redacted] to the FCA shows that [redacted] This reflects the strong competition that [redacted] faces in the sale of its [redacted] from the large established players as well as from a wide range of other providers.

141. The concerns set out in the Update Report appear to be aimed at the largest MDVs [redacted]. In particular, the Update Report states that "*the majority of our demand-side respondents reported that they have little or no bargaining power when negotiating with* ***the largest vendors***" and "***well-established and large MDVs*** *appear to hold market power resulting from switching costs and other frictions in the switching process*"[114] [emphasis added]. It is clear that these concerns do not apply to [redacted] given its low market share and evidence of customers frequently negotiating on price (as explained above).

Customers paying multiple times for the same data

142. The Update Report states that the FCA will clarify (in its further work in the Market Study) "*to what extent users are being charged multiple times for the same data*".[115]

143. [redacted]

requirement in the market. Customers select MDV providers based on how well such data is collated, can be searched and/or navigated and how well they relate to the analytical tools they use to meet the clients' own unique workflow needs. The breadth and depth of the datasets considered to be the "baseline" offering by the MDVs and required by customers is rising continually.

(c) There are instances when customers acquire data directly from a third-party data provider but the same data can be accessed via [redacted] services.[116] For example, [redacted] are available via [redacted]. To get access to these datasets, [redacted] charges an access fee which customers pay irrespective of whether the customer has an existing licence [redacted] The access fee is, however, minimal and is necessary to cover [redacted] administrative costs of setting up the relevant entitlements.

(d) [redacted]

144. From a [redacted] perspective, the packages available through [redacted] have been specifically created to meet customer demand. In this regard, customers find value in a one-stop-shop solution (as acknowledged in the Update Report) and [redacted] hears this directly from its clients.

Vertical integration

145. The Update Report raises a further potential concern in relation to the impact of vertical integration; in particular, that some MDVs are not always granted access to certain data on fair terms by vertically integrated data generator-vendors. The Update Report states that the FCA will review this further in the remainder of the Market Study.

146. [redacted]

(a) [redacted]

(b)

(c)

[redacted]

(d) [redacted] does not have the ability or incentive to foreclose rivals through restricting rivals' access to data or charging higher prices to rival MDVs:

(i) [redacted] share of the UK MDV market is small, at approximately [redacted] (based on revenue from UK-based customers of £3bn, as set out in the Update Report, and [redacted] response to the financial template); and

(ii) a single data set's availability is generally not a key driver of customer MDV choice and therefore any foreclosure strategy would be unlikely to see customers switch to [redacted].

[redacted]

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FCA SUBMISSION RE **Theme 1: Barriers to Entry and Expansion.**

Background

[redacted]

The [redacted] which our benchmark provides to the wholesale market are that [redacted]

- Is created for trading purposes, not for valuation purposes
  accommodates a 20-minute window, rather than a 5minute window offered by other FX benchmark providers, reducing market impact and disruption by effectively dampening volatility in the FX market, witnessed every day, and especially at month and quarter ends
- Utilises a number of independent inputs of FX data to create the mid rates to provide transparency and reduce potential harm from a small data set.

The FX benchmark market is dominated by one firm, [redacted] who are owned by [redacted] They are a very well-established firm, and have become the default benchmark provider for the FX 4pm fixing.

The asset owner and asset manager communities typically use the [redacted] when rebalancing Equity and Bond portfolios on a daily, monthly, or quarterly basis, or when purchasing or selling an asset which is not in the base currency of the fund. The [redacted] benchmark was initially designed for the valuation of overseas portfolios and was never intended as a tradable benchmark, but is now used widely as described above, and its methodology can cause market impact, and market disruption, given the basis on which it is calculated.

[redacted] launched its benchmark in direct competition with [redacted] to provide choice for all market participants who need a 4pm FX benchmark to facilitate their FX business and an alternative that addressed some of the potential harm that we believe can stem from the benchmark composition methodology of the current providers.

Our strong view is that retail investors, by way of their participation in pension funds and other investment products, are shouldering the consequences of the low transparency surrounding FX execution by their lack of knowledge on the FX markets and their inability to effect change higher up the chain: this concerns us that Consumer Duty is not being addressed by others in the chain with the ability to effect change at the wholesale level.

Barriers to Entry and Access

We have spent 3 years promoting our product to UK asset managers, pension funds, and banks. We have continually come up against significant barriers to entry, based around a relative unawareness of the potential savings an alternative benchmark service might well provide as well as a lack of understanding of the mechanics of the FX market.

The barriers that we have faced are: -

- there is a lack of understanding on the part of the end investors. The chain of interested parties is long and starts with the asset owner, e.g. a pension fund, and the trustees, the asset manager, global custodians and finally banks. It is our experience that the pension funds and trustees have a minimal understanding of the FX market, whilst global custodians and banks have a more in-depth knowledge of the markets.

- an inertia by the banks and global custodians due to the substantial amounts of income from their pre-hedging activity, and therefore they are not prepared to offer a choice. In the opinion of [redacted] the pre-hedging revenues are a significant factor here as they tend to be much more substantial than the margin charged around the fixing price. These pre-hedging profits by banks and direct market participants are opaque and are not shared with asset owners who bear the brunt of the negative impact on them.

We have created our product to provide an alternative that addresses some of the issues associated with the current providers, and to enable the asset manager to meet their best execution requirements under the Global FX Code by having that choice. In our experience we do not see asset managers, global custodians and banks demonstrating that they are seeking best execution for their clients, the asset owners. Nor do we see asset owners asking the right questions of the market participants on this topic.

We would like to add to the comments in the report as follows:

4.9. We fully endorse the representations you have already received. We would be very willing to share specific examples to support the views which have already been submitted to you by other respondents. 4.13 and 4.14 We would welcome, if not a MIR, **a behavioural remedy** as suggested. The FX spot market has benefitted in many ways from the GCFX Global FX Code, and the self-regulation of the industry to avoid previous harm seen in 2014, and is an initiative we fully support. We do feel a strengthening of the message on adherence to the Code by the FCA to all market participants would assist in reminding the market of their duty of care to the end users in the chain – the individual UK investors and pensioners. Requirements of the Senior Manager Regime and Treating Customers Fairly regulations are also ways that behaviours could be changed.

4.19 We agree the high concentration for specific types and uses of benchmarks have been observed for the last 5 to 10 years. Our company [redacted] is the only challenger to one market dominant incumbent. We see potential client harm from having a non-competitive industry where we are a lower cost choice, providing significant savings to the end users, who are generally the pensioners themselves. This speaks to the point on commercial practices which may result in high costs.

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