FINANCIAL CONDUCT AUTHORITY

Wholesale Data Market Study Terms of Reference

MS23/1.2

March 2023

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Chapter 1

Summary

Introduction

1.1 Wholesale financial markets rely on data to function effectively and efficiently. Wholesale data is used to identify investment opportunities, execute trades of financial assets, make investment decisions, evaluate the financial positions of firms and meet regulatory obligations. If wholesale data markets are working well, capital markets will function efficiently, and well-informed decisions will be taken on where and how to invest. Efficient allocation of capital is essential to economic growth.

1.2 Markets in which firms compete to provide good quality wholesale data will also make the UK an attractive place to do business for a wide range of financial service providers, and so can improve the UK's international competitiveness. In our Business Plan for 2022/23 we set out a strategic aim to strengthen the UK's position in global wholesale markets and our commitment to promoting competition and positive change. Well-functioning wholesale data markets will play a central role in achieving these.

1.3 However, over the years, a number of concerns have been raised about how well these markets function and how effective competition is for wholesale data. In particular, following our Call for Input (CFI) on access and use of wholesale data, we published a Feedback Statement in January 2022 which highlighted concerns that competition may not be working well. Given the extensive and varied use of wholesale data, including its importance in enabling investment activities and decisions, the potential harm to end consumers if these markets are not working well is very large. While most direct users of wholesale data are firms, they use this data as part of the investment process. Wholesale data therefore affects many consumers through its impact on investment decisions and costs of investment products.

1.4 This Terms of Reference marks the launch of the FCA's market study on wholesale data. It sets out the scope of the market study, the key issues we will explore and the process for doing so. The market study will focus on competition in the provision of benchmarks, credit ratings data and market data vendor services. Benchmarks are widely used in financial markets, typically as a reference for index tracking funds and to evaluate an asset manager's performance. Credit ratings assess the riskiness of a wide range of debt products. Market data vendors are a key player in the distribution of wholesale data, including benchmarks and credit ratings data.

1.5 As with all our market studies, we will use evidence and analysis to understand whether and, if so, what concerns exist in these markets. If we find that one or more of the markets within the study are not working well, we will consider whether and how we might improve competition. We have a range of powers and tools to do this. Given the international nature of these markets, we may also consider whether a more international approach to tackling this harm might be appropriate.

1.6 This market study is part of our wider portfolio of work on wholesale data. This includes our trade data review. We have published the findings of our trade data review alongside this Terms of Reference, including proposed next steps. Our information gathering as part of the market study will take account of data collected for the trade data review and consider how the review's findings may affect the markets covered in this study. We will also consult on proposals to promote the emergence of consolidated tape providers (CTPs) for trade data in mid-2023. CTPs would bring together data on prices and trades in an asset class taking place across different trading venues. This could change the dynamics of the supply of trade data. We will consider how any CTPs might affect the products and services covered by the market study.

Why are we doing this market study?

1.7 As outlined above, market studies enable the FCA to develop an in-depth understanding of whether a market is working well and, if not, why. We will gather information and evidence from stakeholders who create, distribute and use wholesale data about how these markets work and the implications for direct users and end consumers.

1.8 Our Feedback Statement outlined concerns we heard from benchmark users in response to the CFI about unnecessarily complex and opaque contracts and barriers to switching between benchmarks, leading to price increases that did not correspond to increases in costs or improvements in service quality.

1.9 The Feedback Statement also set out concerns of CFI respondents relating to market data vendors and credit rating agencies (CRAs). Users highlighted various practices that could indicate that these markets are not working well. These included bundling of core services with other data services, making it difficult for users to switch; restrictive terms around data usage; high barriers to market entry; high charges for users when renewing their contracts; and a low level of meaningful innovation in the market.

1.10 Many of the concerns raised by respondents to the CFI about the markets for wholesale data within scope of the market study have been highlighted in other jurisdictions. For example, the European Securities and Markets Authority (ESMA) set out in an Opinion paper the options it saw for addressing some similar findings about credit ratings data following responses to its Call for Evidence on this.

Scope of the market study

1.11 The market study will look at the markets for:

- the provision of benchmarks across several asset classes – equities, fixed income, commodities, foreign exchange and interest rates
- the licensing and distribution of credit ratings data by credit ratings agencies and their affiliates, and
- the distribution of wholesale data by market data vendors.

1.12 This study is relevant for a range of parties, including:

- current and potential suppliers of benchmarks and indices, credit ratings and credit ratings data, and wholesale data aggregation and distribution services
- users of these types of data and services, and related products
- end consumers, whose retail investment products are affected by the efficiency of the financial markets that rely on wholesale data.

1.13 The supply and demand of wholesale data are global in nature. UK suppliers of wholesale data frequently supply to firms throughout the world. Similarly, UK users of wholesale data may source that data from suppliers both in the UK and overseas. The market study will focus on the supply of the specified data services to UK users of wholesale data. Ultimately the supply of wholesale data impacts on UK consumers through their purchase of investment products and services.

Issues we will explore

1.14 For each of the markets in scope, we will examine how firms compete with one another to win and retain customers. We will consider the implications of these market dynamics on the structure of the markets and on price, quality of data and service and on innovation. Our analysis of each market will include 6 cross-cutting themes:

- Theme 1: Barriers to entry – we will examine whether barriers exist to new firms becoming wholesale data suppliers and growing to compete effectively with existing firms in the market. Where we identify such barriers, we will assess the causes and whether they are resulting in harm to wholesale data users.
- Theme 2: Network effects – network effects mean that the value of a particular product or service to a user grows with the number of other users of that product or service. We will examine whether there is evidence that network effects exist in these markets and, if so, the effect these have on actual and potential competition.
- Theme 3: Vertical integration – we will consider the likely effect on competition of some firms participating in multiple segments of the value chain, for example firms who are data generators as well as data vendors.

- Theme 4: Suppliers' commercial practices – we will consider whether there are commercial practices that are causing harm to data users. We will examine the licences that suppliers of wholesale data within scope offer and the contractual terms upon which they make data available to users. We will consider whether these contractual terms could be enabling suppliers to charge high prices or make it difficult for wholesale data users to switch data suppliers. In particular, we will explore issues including burdensome contractual conditions, price discrimination, opaque licensing terms, tying and bundling and availability of free alternatives where relevant.
- Theme 5: Behaviour of data users – we will examine the role played by data users in these markets, including whether and how they affect the outcomes observed in these markets. We will consider whether data users can switch suppliers, and factors that affect their ability and strength in negotiating with data suppliers.
- Theme 6: Incentives for innovation – we will look at the incentives that exist for innovation by firms in each of the markets in scope, and what barriers might exist for further or faster-paced innovation. This will include considering the role played by intellectual property rights in these markets. We will also consider emerging and potential future trends and developments that could affect how competition in these markets works.

1.15 The evidence we receive on the importance of a particular theme in each market within scope will determine the depth of our analysis of that theme, and we will prioritise our analysis accordingly during the market study.

Potential outcomes of the market study

1.16 A market study can lead to a range of outcomes. If we find that competition is not working well, we may consider several options to address this. These may include:

- making rules
- publishing guidance
- proposing greater industry self-regulation
- introducing firm-specific remedies or taking enforcement action under the Financial Services and Markets Act (FSMA) or the Competition Act 1998
- removing rules that create disproportionate barriers to entry, expansion or innovation
- referring one or more features of the market to the CMA for further investigation (ie making a market investigation reference (MIR)) or accepting Undertakings in Lieu of making an MIR
- making recommendations to government or another authority to change regulations or take further action, such as extending our regulatory perimeter.

1.17 We are preparing to begin implementing changes as part of the Future Regulatory Framework review. This will bring a large amount of retained EU law on financial services into the direct responsibility of the FCA. As we transfer this legislation, we will have the ability to make changes to it. If we find evidence of harm in one or more markets under study that will be effectively remedied by changes to the aspects of the regulatory framework contained within this legislation, we will likely do so as part of this process.

1.18 We may decide to take no further action following the market study. This could be because we do not identify any harm that needs to be addressed or concerns that can be proportionately addressed by regulatory intervention. Or it may be because we consider that concerns are likely to be addressed by upcoming legislative measures or action by the relevant firms. Where we identify problems that are best addressed by other authorities, in the UK or internationally, we will work collaboratively with them to ensure the best outcomes for consumers.

Next steps

1.19 We are conducting this market study using the FCA's competition powers under the Enterprise Act. This means we face certain statutory milestones. In line with these, we will publish:

- notice of our proposed decision on whether to make an MIR to the CMA about one or more of the markets within the market study, within 6 months of publishing the Market Study Notice ie by 1 September 2023, and
- a market study report, setting out our findings and the action (if any) we propose to take, within 12 months ie by 1 March 2024.

1.20 We will engage directly with a range of stakeholders in each market from the outset. However, we invite all stakeholders to share their views on the issues set out in this Terms of Reference, including supporting evidence where relevant. Please provide any such representations in writing to wholesaledatamarketstudy@fca.org.uk no later than 30 March 2023.

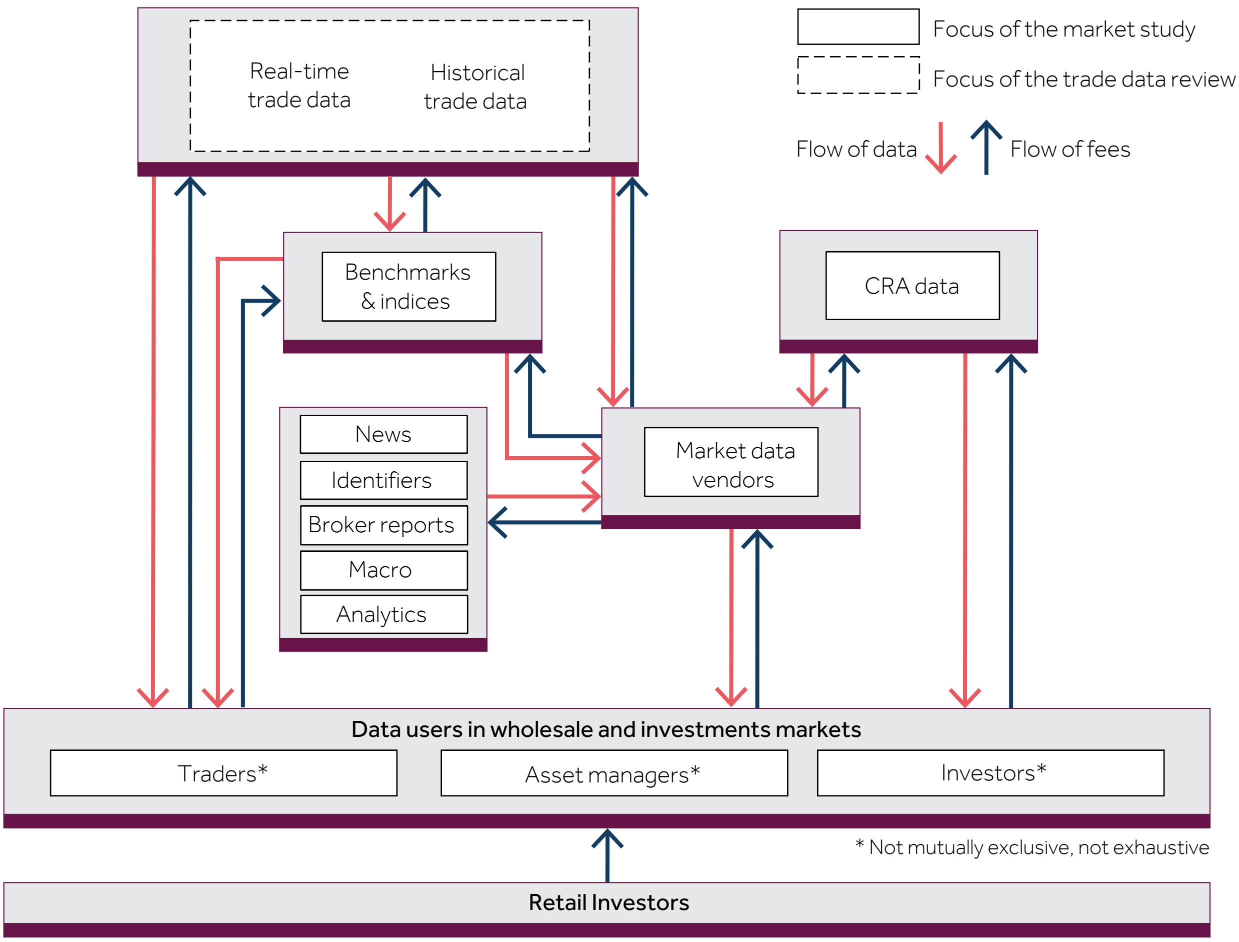
Chapter 2

Background to the markets and activities in scope

2.1 This section outlines the background to this market study and the parts of wholesale data that the study will focus on. Section 3 sets out the issues we will explore in the market study and Section 4 outlines the next steps.

Overview of wholesale data

2.2 Firms in wholesale financial markets can source data – for example, trade data, indices (which may be used as benchmarks) and CRA data – directly from the entities that generate it or indirectly through market data vendors. It can be sourced on a stand-alone basis or as part of a data service alongside other content. Some data used in wholesale financial markets is dependent on other sources of wholesale data. For example, trade data is a key input for the production and updating of indices. Figure 1 below shows how wholesale data is provided to users.



2.3 Our market study will cover benchmarks, credit ratings data and market data vendor services. Our trade data review focused on the functioning of the market for trade data.

Benchmarks

2.4 Our focus in this study is on competition in the supply of benchmarks within the scope of the UK Benchmarks Regulation (UK BMR). In order to understand those markets, we need to understand the extent to which indices that fall outside the BMR exert a competitive constraint on benchmarks.

Overview of the market

2.5 An index is a figure that is publicly available and is regularly determined, either by applying a formula or other calculation, or by making an assessment based on the value of one or more underlying assets or prices. Indices are widely used to monitor the movement of capital markets by a range of market participants. Indices often have a set of focus areas, which can be based on asset classes (eg equities, bonds), geography (eg UK, North American), industry (eg oil and gas, green energy) or theme (eg Environmental, Social and Governance (ESG), small businesses).

2.6 An index becomes a benchmark where it is used within the scope of the UK BMR, specifically:

- to determine the amount payable under a financial instrument or financial contract or the value of a financial instrument
- to measure the performance of an investment fund for the purpose of:
  - tracking the return
  - defining the asset allocation or a portfolio, or
  - computing the performance fees

2.7 Other uses of indices such as internal risk management by financial services firms are outside of the scope of the UK BMR.

2.8 Together, major index providers FTSE Russell, S&P Dow Jones and MSCI made up about 70% of the global index market based on revenues in 2019 and these firms each play a significant role in the UK benchmarks market, based on feedback from industry participants. As of February 2023, the UK Benchmarks Register lists 34 UK benchmarks administrators and 10 third country administrators.

Activities in scope

2.9 We will look at benchmarks across several asset classes, including equities, fixed income, commodities, foreign exchange and interest rates.

2.10 To form an accurate view of competition, we will also consider business activities of suppliers related to indices that fall outside of the scope of the UK BMR.

2.11 LIBOR is not included within the scope of the market study as it is undergoing a wind-down process.

Credit ratings data

Overview of the market

2.12 A credit rating is an opinion about the probability that a financial instrument or organisation is able or likely to pay back debt in full and on time. Credit ratings are typically created by regulated CRAs for debt-issuing organisations such as governments, corporations and investment banks. Credit ratings are critical to issuers for attracting investors and helping secure lower interest payments for their debt. Financial institutions, particularly investment firms, use credit ratings to assess risk and compare different issuances when making investment and lending decisions. Ratings may also establish the range of potential investments for a given investment portfolio, to meet regulatory reporting obligations and to calculate capital requirements.

2.13 CRAs publish individual credit ratings for free online, together with an explanation of how ratings have been calculated and the factors relevant to the calculation. However, there are practical limitations on how these free individual ratings can be used and aggregated. This is because they are published across many separate webpages, with CFI respondents raising concerns about the quality and usability of this information. This means it is common for financial institutions to pay for services to access and license ratings in aggregate, known as credit ratings data. Larger CRAs and their affiliates typically license and distribute credit ratings data on a subscription basis, commonly as a data feed of all live and historical credit ratings data.

2.14 Subscription services providing credit ratings data are commonly used for regulatory purposes. For example, investment firms are required to hold credit ratings on securities they purchase. There are also many uses of credit ratings data for non-regulatory purposes, for example, investment strategy, risk assessments or market research. Users of credit ratings data include banks, asset managers, insurance firms and investment firms. Some CRAs also sell additional services alongside credit ratings data, including news, analytics, market forecasts, estimates of economic trends and pricing. As credit ratings data services are not directly covered by the CRA Regulation (CRAR), they may be licensed by unregulated affiliates.

2.15 In November 2022 we published our first Market Share Report for UK registered credit rating agencies, using revenue data from the end of 2021. These market shares relate to regulated credit ratings activities and ancillary services, and do not necessarily include revenue from data subscription services. Three CRAs (S&P Global Ratings UK Limited, Moody's Investors Service Limited and Fitch Ratings Ltd) represent 92% of the total UK market. Six firms hold the remaining 8%, based on turnover figures reported by each CRA. Market shares of the 3 largest CRAs in the UK are similar to the shares of these firms observed in other jurisdictions such as the United States and European Union.

2.16 Separately to data subscription services, CRAs operate different business models for the provision of individual credit ratings. Under the *sell-side* or *issuer-pays* model, credit ratings are paid for by the entities seeking ratings for their companies or financial instruments. Under the *buy-side* or *investor-pays* model, credit ratings are paid for by investors seeking an assessment of the creditworthiness of a particular firm or debt product. Our Market Share Report for UK registered credit rating agencies suggests nearly all UK-registered CRAs currently use an issuer-pays model.

Activities in scope

2.17 This study will predominantly focus on CRA data subscription services provided by CRAs and their affiliates. This includes any services available to UK clients, of which a key component is credit ratings data including live data feeds. Due to the global nature of CRAs, we will assess both UK-based and international data subscription providers that provide data to UK customers. We will also explore the extent to which freely available credit ratings data provides a viable alternative to subscription or paid for data. We will explore how far other services, such as research, news, analytics or ESG insights are typically purchased alongside subscriptions of credit ratings data, and their influence on price.

2.18 To understand the market for credit ratings data, we will also look at the provision of credit ratings services to issuers. The extent and nature of services that generate credit ratings will influence the coverage of any CRA database available within a subscription service. This includes investigating the role of ratings produced without payment or involvement from issuers, known as "unsolicited ratings", in allowing competitors to build up rival subscription services with competing coverages.

Market data vendors

Overview of the market

2.19 Market data vendors provide desktop or web-based products through which users can access a wide variety of wholesale data, such as trade data, index data and credit ratings data, and other content such as news, analytics and research. Large global firms such as Bloomberg and Refinitiv and other smaller firms license wholesale data from data generators and distribute it to users, sometimes aggregating different sources and types of data and combining it with self-generated content.

2.20 Market data vendors play a key role in the distribution of wholesale data. For example, suppliers of credit ratings data have told us that a significant proportion of data is accessed by users through market data vendors. Benchmark administrators and users also highlighted the importance of market data vendors in the benchmarks supply chain.

Activities in scope

2.21 The market study will focus on business activities of market data vendors related to the redistribution of wholesale data, which includes trade data, index data, credit rating data, reference data, pricing and valuation data. We will focus on firms that license these types of wholesale data from data generators (which may also include entities within the same group as the market data vendor) and then distribute this data to users.

2.22 We will not focus on other types of information that market data vendors provide, such as news, research and analytics. However, we will consider these product lines to the extent that they are needed to assess competitive dynamics between market data vendors as part of their redistribution activities.

Relevant regulatory and policy developments

2.23 The market study and any potential remedies will operate in the context of the wider policy and regulatory landscape. Relevant developments are:

- The Financial Services and Markets Bill. Under this, the Government aims to tailor financial services regulation to UK markets following EU exit to bolster the competitiveness of the UK as a global financial centre and deliver better outcomes for consumers and businesses. This Bill includes a new secondary objective for the FCA to enhance the international competitiveness of the UK economy and its growth in the medium to long term. The Bill also implements the outcomes of the Future Regulatory Framework (FRF) Review, including the transfer of legislative powers for financial services previously contained in EU law to the FCA. This is set out in HM Treasury's recent policy statement.
- Relevant international policy developments, including International Organization of Securities Commissions (IOSCO) work on different components of wholesale data, the European Securities and Markets Authority's work on CRAs and the consideration by the United States' Securities and Exchange Commission of rules for the provision of indices.

2.24 Annex 1 sets out the wider regulatory context for benchmarks, CRAs and credit ratings data and for market data vendors.

Chapter 3

Issues we will explore

3.1 For each of the markets in scope, our overall aim is to examine how firms within each market compete with one another to win and retain customers. We will consider the implications of these market dynamics on the structure of the markets and on price, quality of data and service and on innovation.

3.2 Our analysis will take a holistic view of the wholesale data landscape, reflecting what appear to be significant overlaps in products and services, suppliers and users, and importantly, similar potential competition concerns across different wholesale data markets.

3.3 We will analyse each market based on 6 cross-cutting themes which capture the issues we will investigate. We explain in the following sub-sections what each theme is, what the potential issues are under that theme that we will include in our investigation and how these might cause harm.

3.4 These themes will provide structure for our analysis. The depth of analysis we will conduct on a theme will be different in each market, reflecting what the evidence shows about its importance in that market. Similarly, the themes and issues below should not be seen as a complete list of what we will consider as part of the market study. Ultimately our analysis and conclusions will be driven by the evidence we find.

The themes for our planned analysis are set out below:

Theme 1: Barriers to entry and expansion

3.5 Our CFI identified barriers to entry and expansion as a potential concern across all three markets in scope of the market study. If it is difficult for new or small firms to attract customers in a market, this can lead to a lack of competitive pressure on existing firms in the market and limit customers from accessing products or services that better meet their needs or meet these needs at a lower price.

3.6 We will evaluate evidence of market structure changes over time and whether the markets in scope are susceptible to challenge from new or smaller market players. We will investigate whether there are market features, behaviours or practices that support or create structural or strategic barriers to entry and expansion, including:

- Investment costs in infrastructure, commercial relationships or building a customer base where some of these costs may not be recoverable or transferable.
- Economies of scale and scope, where large incumbent providers may benefit from lower average costs as a result of their large user base or the breadth of data, products and services they offer. Larger suppliers may also have greater negotiating power with input data providers compared to potential entrants.
- Barriers to switching. These could be on the user side, where customers place a high value on incumbents' reputations or track records or demonstrate a high level of brand loyalty. Alternatively, they could be a result of competitive dynamics. For example, suppliers may distribute data through platforms that offer access to data alongside other complementary products and services. Complementary, interoperable products and services can increase user value from a platform but may require competitors to compete on multiple fronts by offering a similarly broad range of products and services. Barriers to switching may also arise from actions by suppliers, for example, where users may be subject to long contracts, exclusivity requirements or termination fees.
- Network effects in wholesale markets, discussed further below, which may create barriers to entry for new suppliers, as users prefer incumbents who have reached a certain scale.
- Regulation, in particular whether regulatory requirements for suppliers and users act as barriers to entry for potential suppliers.

3.7 Where these are present, we will consider the extent to which they may be affecting potential entry or expansion of existing firms.

Theme 2: Network effects

3.8 Network effects exist when the value of a particular product or service to a user grows with the number of other users of that product or service. Network effects in wholesale data markets could mean that users would benefit from sourcing data via larger suppliers. For example, benchmarks may be more valuable to users if they are widely adopted by other users, where high levels of usage could result in high levels of liquidity, lowering the cost of trading.

3.9 Both CRAs and their affiliates and MDVs operate in markets which appear to have characteristics of two-sided markets. Firms operating two-sided platforms typically have commercial relationships with two distinct but related customer groups. Two-sided platforms are often characterised by network effects, where the value of the product to customers on one side of the platform depends on the volume of users either on the same side of the market (direct network effect) or on the other side (indirect, or cross-platform network effect). Network effects may operate in one direction across a platform or in both directions.

3.10 Two-sided markets also have prices that may not closely reflect their costs on each side of the market. For example, CRAs and their affiliates can have two distinct customer groups, investors and debt issuers. Each customer group can generate a network effect for the other group (ie more issuers using a particular CRA makes its credit ratings data services more valuable to investors, and vice versa), and this may affect how a CRA chooses its pricing structures. MDV users are likely to value the ability to access a wide range of data sources on a single platform, as well as the benefits from many other data users also using the platform, for example increasing the value of messaging services. In both cases, big user bases provide access to large potential markets for suppliers and comprehensive data access is attractive to data buyers.

3.11 Markets characterised by network effects can become concentrated over time as users converge on one or a small number of suppliers. A concentrated market can reflect the benefits to consumers from a particularly innovative product or service, or the efficiency of a limited number of providers in certain circumstances. However, if barriers to entry for new suppliers or barriers to switching for users are high, the likelihood of displacing a leading supplier may become low. This can result in market power and low incentives for incumbent providers to compete on price, quality and innovation.

3.12 We will assess to what extent network effects exist in the markets in scope and how they affect competition where relevant.

Theme 3: Vertical integration

3.13 Vertical integration is present where one or more firms participate in multiple segments of the value chain, for example firms who are data generators as well as data vendors. This market feature can emerge either through firms expanding their business activities into further segments of the value chain or through acquisition of firms already present in another part of the value chain.

3.14 We are aware of significant levels of vertical integration along the wholesale data value chain, with combinations of trading venues, benchmark administrators, market data vendors and ratings providers being part of the same corporate group. Our Feedback Statement highlighted potential concerns about vertical integration relating to market data vendors in particular. These included the possibility that vertical integration of vendors could be causing competitive distortions at different points of the supply chain, for example through the inability of competing firms to access necessary data inputs or bundling of data services with other products and services.

3.15 Vertical integration can be beneficial to end consumers as it can improve efficiency. It may however also limit effective competition, choice and further increase barriers to entry or expansion, particularly if a firm (or firms) are able to use their position in one part of the value chain to affect competition in another part. We will consider the extent of vertical integration in each market within scope and the impact that vertical integration in these markets may have on competition. We will also assess the bargaining power of firms at points in the distribution chain, and we will evaluate how these relationships affect the way firms compete with one another.

Theme 4: Commercial practices of suppliers

3.16 Wholesale data is licensed to users via contracts that are often individually negotiated, can be quite complex and granular, and may include a wide range of products and services under the same contract. To access data through a market data vendor, users need to license the vendor's platform and may also require licences with the data generators for use of their data. Our Feedback Statement highlighted concerns about complexity and transparency of contracts across all three markets within scope.

3.17 We will examine suppliers' licensing practices to assess, for example:

- Why they engage in these practices.
- Whether practices observed could dampen competition.
- If these practices could lead to negative outcomes on prices, quality or innovation.
- Whether and how practices are influenced by existing regulation.

3.18 We will look at potential issues including:

- Burdensome contractual terms resulting in high fees. We will look at wholesale data suppliers' contractual terms to assess whether there are any significant inefficiencies, and whether this reflects weak competition and results in excessive charges for users. This may be done through, for example, fee structures that are complex or that result in increased fees under many different or likely conditions. Where complex or opaque fees exist, they are likely to result in increased costs of compliance monitoring. Our assessment of the impact of licensing practices will be supported by an analysis of suppliers' corresponding financial performance.
- Price discrimination. Wholesale data suppliers may be able to generate higher revenues by charging different users different prices based on users' willingness to pay. They could do this for example by setting fees based on the firm type or use case of different data users, negotiating contracts with users on an individual basis and offering user-specific discounts. Depending on the quality of data available, we will look at whether licensing practices of suppliers enable price discrimination in the markets in scope and, if so, what effect this has on competition and consumer outcomes. Value-based pricing may be efficient in some cases, where it could result in more customers participating in the market. However, it may harm specific types of users and could create competitive distortions at different points of the supply chain.
- Lack of transparency. In addition to enabling price discrimination, complex, non-standard and non-transparent licence conditions may prevent users from comparing product offerings, prices or terms and conditions, resulting in increased costs of switching and potentially weakened competition.
- Tying and bundling. Tying is the practice of making a product or service available for purchase only alongside one or more other products. Bundling means making a product available as part of a bundle of multiple products or services at a discount on the sum of standalone product prices. Tying 'must-have' wholesale data products with other products may result in unwanted costs for users. Suppliers may also prevent new or potential competitors from gaining customers in specific segments of the market by tying or bundling their must-have products with products whose provision may be more susceptible to challenge by competitors.

- Role of free alternatives. In the case of CRAs in particular, under current regulations, public credit ratings created under the issuer-pays model must be made freely available on the websites of both individual CRAs and the FCA. Respondents to the CFI highlighted how publicly available data is not currently optimised for commercial use. The reasons for this include poor formatting, inconsistently available metrics, login requirements, download limitations, accuracy concerns, and that the data is not available in a machine readable or API format. Additionally, respondents flagged how licences were required regardless of commercial uses of the data. This means that in most scenarios, free alternatives may not be a substitute for paid services and could have limited impact on pricing or quality of subscription services. We will explore the extent to which free credit ratings are a substitute for paid for subscription services.

Theme 5: Behaviour of data users

3.19 Suppliers of wholesale data included in this market study provide data and services to a range of users that need this data to perform their business activities. This includes asset managers, banks and other financial services firms. The extent to which these customers can identify their own needs, compare products across suppliers to determine which would best meet their needs and negotiate with suppliers are important factors in determining market outcomes. We will investigate how data users' behaviour affects the competitive dynamics in wholesale data markets. User behaviour may be driven by factors including:

- User preferences and needs, where these may be based on what they use data for, how they respond to price changes or their data and service requirements eg whether they need real-time data or global data coverage.
- Consumer preferences, ie where customers of wholesale data users demand use of certain data.
- Costs of switching supplier eg costs of changing or replacing systems and hardware.
- Users' ability and strength to negotiate with data suppliers or take steps to increase their bargaining power.

3.20 In the case of CRAs, for example, many investment firms may require near-universal coverage of debt instrument ratings for their investment strategies and to comply with investment mandates. This can only be met by licensing data from each of the big three CRAs, who together cover an overwhelming majority of international issuances. This means that, instead of directly competing with one another, subscription services from these providers may instead be seen as complementary services as users are required to use multiple CRAs.

3.21 We will assess if there is evidence of users switching and the extent to which they can negotiate important factors (such as the price and quality of what they get) with benchmark administrators, credit ratings data suppliers and market data vendors.

Theme 6: Incentives for innovation

3.22 Challenger firms are an important source of competitive pressure for established businesses and new ideas and innovation. This will be beneficial for outcomes in the long run. If established firms in a market are unlikely to lose customers to their competitors, they may lack incentives to innovate, maintain or improve quality, improve efficiency or share the benefit of efficiencies with customers in the form of lower prices. Where barriers to entry exist, challenger firms may be discouraged from entering new markets, potentially harming innovation and competition. Our Feedback Statement highlighted concerns over a low level of meaningful innovation from users of CRAs and MDVs.

3.23 For benchmarks and indices, our Feedback Statement highlighted that the market may not be working well because of barriers to switching and high contract complexity. These factors can lead to poor outcomes in the form of higher prices. However, we also acknowledged that prices can rise due to innovations that lead to higher quality products that are worth more to customers (for example, innovation in improving methodologies and developing ESG-related benchmarks).

3.24 The Feedback Statement acknowledged benchmark administrators' view that it is important that the pricing of benchmarks supports a sustainable benchmark business and reflects the investments providers make in innovation. When markets are working well they should create incentives so that innovations that users value are compensated and encouraged.

3.25 We will look at the incentives that exist for innovation by firms in each of the markets in scope and what barriers might exist to further or faster-paced innovation. Our work will include considering what if any role is played by intellectual property rights in these markets. We will also consider emerging and potential future trends and developments that could affect how competition in these markets works.

Chapter 4

Next Steps

4.1 We will gather information to assess whether the markets in scope are working well based on the cross-cutting themes set out in this Terms of Reference. We have identified a broad range of relevant stakeholders, including suppliers of benchmarks, indices and CRA data, market data vendors and users of these services and data. We will issue information requests to a representative sample of suppliers and users as well as engage with interested parties. We will also evaluate existing publicly available information and research. We will conduct quantitative and qualitative analysis based on data we collect.

4.2 We also encourage stakeholders who do not hear directly from us to provide views and evidence on the issues highlighted in this Terms of Reference.

4.3 We are conducting the market study using our Enterprise Act powers, which requires that we meet statutory deadlines. First, we must publish our proposed decision on whether to make a market investigation reference (MIR) to the CMA for 1 or more or the markets in the market study, and begin consulting where appropriate, within 6 months of publication of the Market Study Notice which we have published alongside this Terms of Reference. Second, we must also publish a market study report setting out our findings and any action we propose to take within 12 months of publishing a Market Study Notice.

4.4 We invite all stakeholders to share their views, in particular on the issues set out in this Terms of Reference including supporting evidence where relevant. Please provide any such representations in writing to wholesaledatamarketstudy@fca.org.uk no later than 30 March.

4.5 We will make all responses to formal consultation available for public inspection unless the respondent requests otherwise and we accept its request. We recognise that in some cases parties may wish to submit information or evidence to us that they consider to be confidential or sensitive. Therefore, when providing responses, please indicate the following alongside the submission:

- the interest or organisation that you represent, where appropriate
- whether you are providing any material that you consider to be confidential and explain why this is the case, and
- where the submission contains confidential material, please provide separately a non-confidential version that is suitable for publication

4.6 We will add relevant updates to our wholesale data webpage.

Annex 1

Regulatory landscape

Benchmarks

1. In 2020 the EU Benchmarks Regulation (BMR) was onshored into UK law (UK BMR) following the post-Brexit transition period. The BMR builds on the IOSCO principles for financial benchmarks for ensuring benchmarks are robust and reliable. The BMR addresses, among other things, conflicts of interest and governance, and controls for reducing the risk of manipulation of benchmarks. The UK BMR governs the:

- provision of benchmarks by UK benchmark administrators
- contribution of input data to a UK benchmark
- use of a benchmark by a UK supervised entity

2. Under the UK BMR, the FCA is responsible for the authorisation and registration of UK benchmark administrators as well as recognition of third country administrators. The FCA also permits the endorsement of third country benchmark and Treasury may deem other jurisdictions as equivalent. The FCA holds enforcement powers and supervisory oversight of benchmark administrators, users, and contributors within the UK.

3. In terms of obligations on different market participants:

- **Benchmark administrators:** Benchmark administrators that are authorised to operate in the UK must comply with requirements to uphold benchmark integrity and transparency through appropriate governance, controls and reporting requirements.
- **Benchmark contributors:** Supervised entities which contribute input data to a benchmark are subject to governance and control requirements set out in the UK BMR and must follow the administrator's code of conduct.
- **Benchmark users:** Supervised entities that are users of benchmarks in the UK are required to produce and maintain robust action plans for if a benchmark materially changes or ceases to be provided. Under UK BMR, supervised users must also only use benchmarks provided by an authorised benchmark administrator listed on the UK Benchmarks Register. This register contains a public record of:
  - all benchmark administrators that are authorised, registered or recognised in the UK or that benefit from an equivalence decision that has been adopted by the UK
  - certain benchmarks that are provided by non-UK benchmark administrators (or other supervised entities) for use in the UK.

4. All routes to approval for use of third country benchmarks – equivalence or recognition for administrators, and endorsement for individual benchmarks based outside the UK – require administrators to be compliant with standards equivalent to the UK BMR.

5. Following UK withdrawal from the EU, administrators based in the UK were removed from the European Securities and Markets Authority (ESMA) benchmarks register and added to the newly created UK Benchmarks Register. UK benchmark administrators originally included in the ESMA register qualify as third country administrators in the EU and EU benchmark administrators qualify as third country administrators in the UK. UK benchmark administrators currently benefit from a similar transitional period in the EU. This is set to expire at the end of 2023, though there is a live consultation to extend this transitional period to the end of 2025.

Credit ratings agencies

6. In December 2020 the EU Credit Rating Agencies Regulation was onshored into UK law (UK CRAR) following the Brexit transition period. The UK CRAR alongside the 2019 Securitisation Regulations (Exit SI), the Commission Delegated Regulations and provisions in FSMA creates the regulatory regime for CRAs in the UK. The regulatory framework seeks to enhance the integrity, transparency, good governance and independence of credit rating activities.

7. Under the CRA regulatory framework, the FCA holds enforcement powers and supervisory oversight over CRAs operating in the UK. The FCA also permits the registration of CRAs and the certification of third country CRAs to provide credit rating services in the UK. In particular:

- **Credit rating agencies (CRAs):** CRAs must comply with requirements relating to their independence and avoidance of conflicts of interest, their methodologies and disclosures. Firms seeking to issue credit ratings in the UK for regulatory purposes must either be registered or certified by the FCA or provide credit ratings which have been endorsed.
- **Users of credit rating services:** Financial institutions, firms, central banks and governments may use credit ratings in the calculation of their capital requirements and for assessing risks in investment activity. Under the CRA regulatory framework, firms which use credit ratings for regulatory purposes in the UK must use ratings from a regulated entity. Activity out of scope of the UK CRA regulatory framework includes fee-based subscriptions for credit ratings data in other formats than the individual ratings information, ancillary services such as market forecasts and pricing analysis and private ratings (ie not distributed other than to the issuer). As CRAs expand these product offerings, this may introduce conflicts of interest. The FCA requires firms to demonstrate that they have considered and are actively managing potential risks.

Market data vendors

8. The activity of formatting, aggregating and distributing data to end users by market data vendors is largely unregulated. However, many users of market data vendors' services use these services to inform their decisions in relation to regulated activities.

Annex 2

Abbreviations in this document

Abbreviation	Description
BMR	UK Benchmarks Regulation
CFI	Call for Input
CMA	Competition and Markets Authority
CRA	Credit rating agency
CRAR	CRA Regulation
CTP	Consolidated tape provider
ESG	Environmental, Social and Governance
FRF	Future Regulatory Framework
FSMA	Financial Services and Markets Act 2000 (FSMA)
IOSCO	International Organization of Securities Commissions
MDV	Market data vendor
MIR	Market investigation reference
FRF	Future Regulatory Framework

Annex 3
Glossary

Glossary of terms used in this document

Benchmark	An index used within the scope of the Benchmarks Regulation, i.e. where: • it is used to determine the amount payable under a financial instrument or financial contract, or the value of a financial instrument • it is used to measure the performance of an investment fund for the purpose of: – tracking the return of the index – defining the asset allocation of a portfolio, or – computing the performance fees of a portfolio
Credit ratings	Opinion on the creditworthiness of an issuer or security, issued by CRAs.
Credit ratings data	Datasets including credit ratings and related information, that may be supplied by CRAs (or their affiliates) or through market data vendors.
Index	The BMR defines an index as a figure that is published or made publicly available and is regularly determined, either entirely or partially by applying a formula or other method of calculation, or by an assessment; and on the basis of the value of one or more underlying assets or prices (including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys).
Market Data Vendor	An entity that provides desktop or web-based products with content from third parties. It may also provide content owned or developed by themselves.
Pricing and valuation data	End of day equity pricing or pricing for illiquid/non-transparent securities such as fixed income or derivative instruments.
Reference data	Static data by which financial instruments and entities can be referenced and categorised, including the terms and security identifiers (e.g., instrument classification, sale information), end-of-day pricing, the terms of the security (such as dividends, interest rate and maturity on a bond), and any upcoming corporate actions (such as stock splits or proxy votes) related to the security. Examples: entity and instrument identifiers like LEI, UPI, ISIN, MIC, CFI.

Trade data	Trade data means the data trading venues, systematic internalisers (SIs) and approved publication arrangements (APAs) have to make public for the purpose of the pre-trade and post-trade transparency regime. Therefore, trade data includes the details set out in MiFID RTS 1 and MiFID RTS 2.
Wholesale Data	Information (including, but not limited to, quantitative values and measurements in structured formats) generated, distributed and used by market participants in wholesale financial markets, such as: • Trade data • Pricing and valuation data • Reference data • Credit ratings data • Benchmarks and indices • Other products such as news, company information, research, analytics.

Pub ref: 007959

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