

# MIFID II: ESMA ISSUES LATEST DOUBLE VOLUME CAP DATA

Today's updates include DVC data and calculations for the period of 1 June 2017 to 31 May 2018 as well as updates to already published DVC periods.

The number of new breaches is 70 equities for the 8% cap, applicable to all trading venues, and 37 equities for the 4% cap, that applies to individual trading venues. Trading under the waivers for all new instruments in breach of the DVC thresholds should be suspended from 11 July 2018 to 11 January 2019. The instruments for which caps already existed from previous periods will continue to be suspended.

In addition, ESMA highlights that some trading venues in the meantime have submitted corrected data that affects past DVC publications. For a limited number of 13 instruments, this means that previously identified breaches of the 8% and 4% caps prove to be incorrect. For these instruments, the suspensions of trading under the waivers should be lifted.

As of 6 July, there is a total of 1,024 instruments suspended.

## **Background**

MiFID II introduced the DVC to limit the amount of dark trading in equities allowed under the reference price waiver and the negotiated transaction waiver. The DVC is calculated per instrument (ISIN) based on the rolling average of trading in that instrument over the last 12 months.

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## Weekly schedule of President Donald Tusk

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## Main topics and media events 9 – 22 July 2018

Overview of the main subjects to be discussed at meetings of the Council of the EU over the next two weeks.

### **Economic and Financial Affairs Council, Friday 13 July 2018**

The Council will discuss the VAT reverse charge mechanism, VAT applying to e-publications, follow up on the June European Council, exchange views on the Austrian's presidency work programme and approve the terms of reference for the G20 meeting of 21-22 July.

### **Foreign Affairs Council, Monday 16 July 2018**

Foreign ministers will discuss North Korea, Libya, and the Eastern Partnership.

### **Agriculture and Fisheries Council, Monday 16 July 2018**

The Council will be informed about the Austrian presidency work programme and will have an exchange of views on the post 2020 CAP reform.

### **EU-CELAC ministerial meeting, Monday 16 and Tuesday 17 July 2018**

Ministers of foreign affairs from the EU and from the Community of Latin American and Caribbean States (CELAC) will meet on 16-17 July in Brussels. **"Building bridges and strengthening our partnership to face global challenges"** is the theme of the meeting. At the end of the meeting, EU and CELAC ministers are expected to adopt a declaration.

### **General Affairs Council (Art. 50), Friday 20 July 2018**

EU27 ministers will take stock of the state of play of Brexit negotiations.

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# Joint EU-Japan statement following the first EU-Japan policy dialogue in education, culture and sport

On 6 July 2018, Tibor **Navracsics**, European Commissioner for Education, Culture, Youth and Sport, and Yoshimasa Hayashi, Japan Minister of Education, Culture, Sports, Science and Technology (MEXT), met in Budapest to officially launch the EU-Japan Policy dialogue on Education, Culture and Sport.

In the field of **education**, both leaders confirmed the importance of promoting international cooperation in higher education. Erasmus+ was highlighted as a flagship programme, offering an excellent tool to promote international mobility and allow students to develop essential transversal skills, while contributing to enhancing the relevance and quality of education.

Modernisation of education, skills development and the role of teachers in the transition towards its “Society 5.0” were presented by Minister Hayashi, leading to a discussion on the role that education should play, including in ensuring social inclusion.

With regard to **culture**, Commissioner Navracsics and Minister Hayashi recognised the possibility of pursuing cooperation between the EU and Japan in this field and looked forward to further discussions.

**Sport** offers an interesting opportunity for peer-learning, particularly with regard to measures to preserve the integrity of sport and to promote mutual understanding. The topic is high on the agenda of both parties, in view of the upcoming Olympic and Paralympic Games in Tokyo 2020 and Paris 2024.

The meeting was also the occasion for Commissioner Navracsics and Minister Hayashi to launch two new Japan-EU joint initiatives:

1. **A joint call for proposals** to co-finance consortia of excellent European and Japanese universities to develop highly integrated master programmes and provide scholarships for talented students from Europe and Japan to study abroad. The joint call will be published in the framework of the EU Erasmus Mundus Joint Master Degree action and the Japan Inter-University Exchange Project (IUEP).
2. **A short-term staff-exchange programme** for EU and MEXT officials to promote peer-learning and boost cooperation.

Both initiatives emphasise the importance of people to people contacts within the EU-Japan relations, especially within the framework of the Japan-EU Strategic Partnership Agreement (SPA) which is expected to be signed in the near future.

It was decided to continue to have the policy dialogue and that Japan will host the next meeting.

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## Mergers: Commission approves the proposed acquisition of Abertis by ACS and Atlantia

Atlantia and Abertis manage and operate toll motorways. ACS is mostly active in the construction of infrastructure, although it also operates infrastructure concessions. All three companies are also active in services ancillary to the operation of toll motorways. Such ancillary services include, for example, the provision of electronic toll services together with the distribution of on-board units and the provision of intelligent transport systems.

### **Commission's investigation**

The Commission's investigation focussed in particular on the impact of the proposed transaction on the market for toll motorway concessions in the European Economic Area, in particular in Italy, where the activities of Atlantia and Abertis overlap, and in Spain, where the activities of ACS and Abertis overlap.

The Commission found that the proposed transaction would raise no competition concerns on these markets due, in particular, to the fact that the three companies are not the closest competitors to each other and to the presence of other significant competitors on the market. In addition, the market in question is a highly regulated bidding market.

Additionally, the investigation looked at the effects of the transaction on a number of other markets ancillary to the operation of toll motorways, namely:

- the provision of electronic toll services together with the distribution of on-board units where the activities of Atlantia and Abertis overlap;
- the provision of equipment and services for intelligent transport systems, where the activities of Atlantia and Abertis overlap;
- construction of infrastructure, where the activities of ACS, in particular through its subsidiary Hochtief, and Atlantia overlap;
- the provision of food services, given that Atlantia's largest shareholder Edizione is also the majority shareholder of food services provider Autogrill and that Abertis owns a 50% stake in Areamed, also a food services provider.

For all of these markets, the Commission found that no competition concerns would arise. This is because the transaction does not significantly increase the three companies' presence in any Member State and a number of strong competitors will remain on the markets. In addition, the Commission found that it is unlikely that ACS, Atlantia and Abertis will restrict rivals' access to their products, services or customers.

Therefore, the Commission concluded that the proposed acquisition would not endanger competition in any of the markets concerned.

## **Companies and products**

**Abertis**, based in Spain, operates toll motorways and telecommunications infrastructure. With regard to the management of toll motorway in the EU, Abertis is mainly active in Spain, France and, to a lesser extent in Italy and in the UK.

**ACS**, based in Spain, is the ultimate parent company of a group active in construction, industrial services and other services, where the construction activities are by far the largest. ACS also operates motorway concessions through its subsidiaries Hochtief and Iridium. **Hochtief**, based in Germany, is solely controlled by ACS and is active on the construction market in the Asia Pacific, the Middle East, the United States and Canada, as well as in Europe (in the Czech Republic, Germany, Greece, the Netherlands, Poland and the UK).

**Atlantia**, based in Italy, is a holding company mainly active in the toll motorway concessions and airport infrastructure sectors. With regard to toll motorway management in the EU, Atlantia is active in Italy and, more marginally, in Poland. In addition, Atlantia operates electronic toll services, through Telepass, and is active in the provision of intelligent transport systems. Atlantia's main shareholder is Edizione, which is notably active in concession food services via Autogrill.

## **Related transactions**

In October 2017, the Commission approved without conditions the [proposed acquisition of Abertis by Atlantia](#) (case [M.8536](#)) and in February 2018 it approved without conditions a competing [proposal by Hochtief to acquire Abertis](#) (case [M.8694](#)).

Subsequently, ACS together with Hochtief and Atlantia, entered into an investment agreement by which they modified their respective acquisition projects over Abertis and decided to proceed instead with a joint investment in Abertis.

## **Merger control rules and procedures**

The transaction was notified on 1 June 2018.

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the [Merger Regulation](#)) and to prevent concentrations that would significantly impede competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

More information will be available on the [competition](#) website, in the Commission's [public case register](#) under the case number [M.8894](#).