

Financial Systems Inquiry

And

Competition Policy Review Committee

(Initial submission reference number: CR132)

3rd July 2014

Further Comment

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My paper is critical of APRA, for instance:

- The apparent lack of any cost benefit analysis undertaken in respect to their regulation:
 - How much it is costing financial institutions,
 - Benefit achieved;
- The one size fits all approach;
- The anti-competitive effect of APRA and its roadblocks for new entrants;
- Its desire to be the world leader at the cost of Australian interests:
 - Small Financial Institutions,
 - Small business,
 - Business generally,
 - Regional sector;
- Its lack of supervision and accountability to anyone other than Treasury;
- The inability to effectively review their policies on risk and reward;
- The unwillingness of the financial institutions to talk publically about APRA making it a closed shop to everyone except Treasury giving rise to an inability of the banks to probe and debate their policies and actions in the public arena for fear of retribution.

APRA through its implementation of its risk policies has a huge influence on the shape and direction of our economy at least as much as The Reserve Bank and the Government. Huge assumptions are made about risk that may or may not be correct. APRA accountable to Treasury means there is little scope for the public and analysts to review and debate its policies.

What is becoming clear is that APRA wants to further isolate, ring fence itself and be less accountable – a Regulators dream! It is extraordinary that APRA should be seeking a power of veto to effect force the arbitration of differences with Treasury. These requests are worrying and strengthen my view that APRA mandate needs to be reviewed and supervised by a Board of competent independents like the Board that sits over the Reserve Bank.

In terms of the costs and effectiveness of regulation and the one size fits all approach, the attached articles about the U.S. are illuminating.

It is no answer for APRA to argue that banks need more capital because of the operational risk of selling financial products on commission. You can keep adding new dimensions or instances of risk by requiring more capital but don't you have to ask the question, will all the risks eventuate?

CBA Issues

One of my major criticisms of the banks, as compared with other sectors, is the lack of real concern for the welfare or interest of the Customers over its own financial interest. On a customer centric index, the banks in many of its departments would rank very low.

It is extraordinary that the CEO or other leaders in the CBA haven't interviewed some customers or a random sample group of some of the affected customers. Clearly if something like that happened, or indeed if the bank was in closer contact

with its customers, a very different picture and attitude would have emerged and a lot earlier. But does CBA truly care about its customer's interests?

Every business in one or more of its divisions or departments would at some stage have rogues who cause the kind of problems faced by CBA. It is too easy to lay the blame on the rogues when the fault is the underlying culture and values of the organization. The public will not ultimately wear it as will eventually happen with the leaders of News Ltd in the UK. To resist makes some determined to persist.

There is an inherent conflict between the bank reward systems involving commissions and customer interest. No amount of process or regulation protocol or process can eradicate this conflict. Courts when faced w this dilemma are more likely to find in favour of a customer than the banks.

In financial planning there are many more dimensions than simply selecting the product. There is tax, timing, size, assets, realization, borrowings, balance and a host of other issues. Software design to understand risk appetite is fine but this is simply not enough.

Clearly fee arrangements are better than commission arrangements if conflict is to be minimised. Temptation and greed is always a difficult to manage and regulate. Even fee arrangements are not perfect as we occasionally see with some of the fee professions – Law, Accounting, Medical etc. Fees by their nature are visible while commissions are hidden and the customer does not see the true cost.

Disclosure or product statements are well intentioned but do not achieve the result; they are not customer friendly. The reality is that the customer is at a huge information disadvantage to the bank. You could argue that if banks want to nurture the situation of trust, reliability and independence and their desire to be customer centric, then they should not be selling commission based products and certainly not their own.

Unconscionable Conduct

One of the problems with Trade Practices legislation is that it has to be quite general and difficulties lie in applying it to the different sectors. Obviously case law helps with this, but competition legislation designed for a specific sector could be more effective. This of course is not practical but it does raise the question as to whether the concept of unconscionable conduct can be developed more extensively as a buttress to existing legislation. Unconscionable conduct could be different for the various sectors.

You are no doubt receiving many submissions from advisors representing vested interests. You are entitled to know my interests. My CV is attached.

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