

Privatising the ASIC Registry Service?

Potential effects on information flows in consumer markets for financial services: the shared views of three journalists

A submission made in response to discussion points in Chapter 6 of the 2014 Financial System Inquiry's interim report from George Lekakis, Ian Rogers and Paddy Manning.

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Financial System Inquiry – submission from George Lekakis, Ian Rogers and Paddy Manning.

Dear Chairman and inquiry members,

This submission is a response to the discussion points relating to “disclosure” and “assessing the regulatory framework” in chapter 6 of the interim report.

Preamble:

Journalists perform an important role in the dissemination of information in open societies.

Recent scandals in the global banking sector and the local financial planning industry demonstrate that when regulators fail, aggrieved citizens often rely on journalists to investigate malpractice, predatory pricing and unethical conduct.

We would like to highlight an aspect of the financial system – the ASIC registry service - which constitutes an important resource in the work of finance journalists.

We believe our observations and proposals in relation to this service have broad relevance to most users of the ASIC registry.

Registry function of the Australian Securities and Investments Commission

Journalists rely on the ASIC documents database to cross-check information for time-sensitive and investigative news stories.

It is a vital resource that is most useful for verifying information relayed to journalists by sources.

ASIC deserves a measure of credit for operating this service.

Documents are processed in a timely manner and ASIC’s new online service has made automated document delivery available to more members of the public.

However, based on our experience, the cost of accessing documents through the Australian database makes it one of the most expensive registries to use in the world.

Some jurisdictions, such as New Zealand, do not charge fees for accessing registry documents.

Most US state governments also offer free public access to documents.

While a majority of foreign registries charge fees, their prices for document retrievals are dwarfed by Australian registry charges.

In the UK, the standard charges for buying documents is \$A1.81. (£ 1). However, many of the services that incur fees in Australia are free in the UK.

The Hong Kong registry's pricing is in line with the UK. Standard charges for most retrievals equate to \$A2.24 (\$HK 21) per document.

ASIC charges between \$A 9 and \$A 38 a document.

Australian pricing is an anomaly by world standards.

In the last decade, a new industry of information brokers has also leveraged the ASIC database and they now continue to charge even higher fees than ASIC's direct service.

Many journalists are compelled to subscribe to one of these brokers because not all types of documents can be bought directly from ASIC online.

Neither ASIC nor the information brokers have explained why Australian registry costs are so high. There is no transparency.

Australian pricing has not changed all that much in the last decade following improvements to automated document processing and delivery.

The benefits of recent efficiency improvements have not flowed to users of registry services.

ASIC's profit margin from performing its registry function can only be described as punitive.

ASIC has disclosed that it reaped revenue of \$680 million and incurred costs of \$142 million from the registry operation last year. That's a very fat earnings margin by any measure.

While the implications are profound for cash-strapped journalists and media companies, they are probably even greater for other businesses that use the service to fulfil reporting obligations.

Inflated pricing and proposed privatisation of the ASIC registry

Earlier this year the Federal Government earmarked the ASIC registry for privatisation.

We are concerned that the existing pricing arrangements for registry services have the potential to inflate sale valuations of the business.

If a sale were to proceed on ASIC's prevailing price schedule, a likely effect would be the retention of this punitive pricing that has been worn by Australian users for many years.

An acquirer would naturally seek to make a return on their invested capital, with the likelihood of even higher prices for provision of registry services.

This would, of course, be a woeful outcome for users.

The operating margins enjoyed by the ASIC registry are worthy of an investigation by the Australian Competition and Consumer Commission.

Privatisation would not necessarily improve integrity and reduce prices.

A privatisation raises the prospect of more hikes to the already unacceptable prices for information stored on the register.

In a society where most levels of government subscribe to Right to Information principles, the proposed sale of the ASIC registry presents risks.

We believe that retrieval costs should be kept to a minimum to ensure access is not determined by a user's financial resources. This principle underpins the operation of similar registers in most liberal jurisdictions. Australia should not be an exception.

Comments made in March by ASIC Commissioner Greg Tanzer to the parliamentary committee on corporations and financial services appear to indicate that the regulator is not alarmed by its reputation for slugging clients.

Moreover, the ASIC chairman, Greg Medcraft, now seems more interested in flogging the business than addressing access and price-gouging problems.

Mr Medcraft claimed in an interview with ABC television on 11 October 2013 that the registry is “efficient” and that it was essentially a “technology business”.

The chairman’s comments were disappointing.

For users, the registry is not a technology business.

Without the information, the technology would not exist.

In relation to Mr Medcraft’s claim of efficiency, we would suggest that ASIC has revealed itself a price rorter in the provision of document retrieval services.

An Alternative to Selling

We have highlighted problems and risks associated with privatising the business.

We also note that the first phase report of the National Commission of Audit did not recommend a sale of the registry. The Commission has recommended that responsibility for managing the operation be transferred to the Australian Tax Office.

An alternative might be to corporatise and separate the registry from ASIC. This appears to be standard global practice for operating corporate registries.

The registry could then be managed as a public enterprise on business principles with a stated mission to minimise the costs borne by users as exemplified in the UK and Hong Kong.

The UK Companies House business is self-funding and pays a small dividend each year to the British Government.

It also retains a portion of its surplus to fund audits and special programs to reduce the incidence of fraudulent reporting.

According to ASIC’s 2013 annual report, false reporting accounted for 9 per cent of reported misconduct cases in the year to the end of June last year. This was up from 5 per cent in 2012.

The registry’s service should be managed as a public service because its functions go beyond the storage, retrieval and distribution of documents.

Page 9 of the UK Companies House 2014 annual report underlines its pre-eminent function of maintaining the integrity of the register.

“The integrity of the Register is of fundamental value to the UK economy and the majority of companies supply accurate information. Companies House is making continuous improvements in this area with increased investment, which includes the creation of a dedicated unit to strengthen the focus on reducing fraud and errors.”

We would like the inquiry to consider whether a private owner of the nation's companies registry would have sufficient incentive to commit resources to attending to such integrity functions.

Thank you for receiving our submission.

**George Lekakis
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**31 July 2014
ENDS**