



FINANCIAL REGULATION DISCUSSION PAPER SERIES

Privatising Public Information: The Sale of the ASIC Business Registers

FRDP 2015 – 05

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The Federal Government has commenced the tender process for sale of the Business Registers currently operated by ASIC. The model of future operations implied in the call for registration of interest looks to involve the private operator relying on revenue from sale of information and products based on the information in the register, with Government continuing to set and receive the fees charged to companies and others required to lodge information. An alternative model would involve the operator setting and receiving fees from those required to lodge information, and making collected information available free of charge to users. Either model (or variants in between) requires regulatory oversight of fees and charges because of the monopoly position of the operator. Maximising social benefits from the creation and use of information seems more consistent with the alternative model (or some variant thereof), but this may not maximise government revenue from the sale process. It is important that the distinction between the registry sale (and fees/taxes charged to those required to register) and the current investigation of a funding model for ASIC based on levies on regulated entities (rather than government budget allocation) be made clear. They are not interrelated, and the fees involved in each are based on quite different justifications.

Following a scoping study (which is unfortunately not publicly available) the Federal Government has decided to pursue the part privatisation of the Business Registers business currently operated by ASIC. It is a “part privatisation” because the government will retain ownership of the data put into those registers by companies and others required by law to do so. The implied model also appears to envisage the Government receiving the fees (actually taxes collected on its behalf by the operator) paid by those required to provide data. Unless there is some sharing of that tax revenue, the private operator will rely on revenue from providing access to the information to customers.

The incentives for the private operator under this model will be to maximise revenue from user charges for access to the data and/or use of analytical tools developed to facilitate data analysis. The registration of interest document identifies revenue opportunities to include expansion of search products, new data sets and products, expansion into adjacent areas. While there is merit in enabling better use of this compulsorily acquired data, charges for access and services can be expected to reduce use of this public good with consequent social costs.

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There is an alternative part-privatisation model which, arguably, has greater social benefits albeit at the likely cost of less government revenue raised from the sale process. But before examining that alternative, it is appropriate to review the current ASIC-provided model.

There are a number of registries operated by ASIC, with the companies and business names being the major ones with information of around 2 million entities collected in each. Other registries include those for Financial Services Licensees, Credit Licensees, Auditors, Insolvency Practitioners. Total “administrative income” collected on behalf of the Government by ASIC was \$994 million in 2013-4 of which registry fee income was \$673 million comprising \$616 million collections from those required to provide information, and \$61 million from search fees and from information brokers (who on-sell services based on that information). There were over 70 million free searches and 4.5 million paid searches. ASIC’s operational budget for its supervisory and regulatory activities is separate to this source of government income. Its financing comes from the Federal Government budget (ie taxpayers generally), although there is currently ongoing examination of an alternative funding model based on levies on regulated industries.

It is clear that the income from fees for use of information is currently the minor part of the overall revenue stream. Of course, information brokers may generate significant revenue from the products and services they have developed using information from the registries. This immediately highlights one of the potential problems with the proposed model which implies expansion into areas competing with those information brokers. The monopoly position of the private registry operator will require some form of access pricing or other regulation to ensure fair access to the information from other competitors.

What is the alternative model? Rather than the private operator’s revenue stream coming from sales of information and associated products, it could instead be the recipient of (some part of) the fees paid by those required to provide information to the database. Clearly there would need to be some form of regulation of those fees, and ensuring that a “fair” pricing regime would operate post sale would be critical in maximising government sale revenue. Access to the data by users would be free of charge.

The benefit of this model is that public information compulsorily acquired by the registry would be available free of charge and thus used more effectively – provided that the quality of the technology provided to facilitate use was appropriate. Here, the distinction between data acquisition and management, provision of access and interface arrangements, and provision of related analytical tools and other services as part of the value chain becomes relevant. The proposed model may provide greater incentives to quality regarding the access and interface arrangements, since fee revenue will be affected by that. But under the alternative model, other information vendors will have incentives to develop such parts of the value chain, as occurs currently under ASIC’s operation

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of the registers. Provided that the quality of the data, speed of data transmission, etc are the same under both models, it is not clear which model provides better incentives in this regard.

Obviously there is a range of alternative models between the two extremes outlined above. How should they be judged? Government revenue is one consideration – but it should not be prioritised over the potential for improved use of compulsorily acquired public data. The obvious analogy is with the decision some years ago to move away from user-pays to free access to data collected by the Australian Bureau of Statistics. (In a number of overseas jurisdictions there are considerable developments in making publicly available, free of charge, the huge amounts of data collected by government, recognising the social and economic benefits which can be gained from private sector use (including by researchers) of this data. Effects on cost efficiency and incentives of the model chosen on the private operator are also clearly relevant. Ease of regulatory oversight of the private monopoly operator is also important.

Part-privatisation of the registries clearly fits with the ideology of the current government. Bringing government revenue forward and avoiding the potentially large IT costs associated with improvements to the registries also has appeal in a time of budget stress. Many would argue that the private sector has stronger incentives to innovate and improve efficiency than a government operated business. But at this stage of the process, it is difficult to see how the business model and associated regulation should be best designed to ensure an improvement over continued public sector operation. It is unfortunate, in this regard, that there is no publicly available cost-benefit analysis which would justify the decision to adopt a particular form of part-privatised model. And the biggest risk is that optimum use of the public good of information collected in the registries could be compromised under the apparently currently favoured model.

Another risk is that public perceptions may confuse fees charged to entities required to provide information and be registered in one of the registries, and possible industry levies on entities supervised and regulated by ASIC to fund its supervisory activities. They are very separate matters. Compulsory registration and provision of information, it could be argued, is required of various entities because they have obtained, and benefit from, receiving various licenses or being able to adopt particular legal forms (such as limited liability). Registry fees reflect that private benefit while the registry information enables potential counterparties to assess risks and benefits of engaging with those entities. In contrast, the supervisory activities of ASIC involve public good benefits by limiting or preventing unacceptable and inappropriate actions of some subset of regulated entities and thus improving public confidence and market efficiency – to the benefit of the entire regulated sector. Ensuring that the registry sale process and registry fees charged to industry is kept distinct in the public mind from funding of ASIC is important to ensure productive policy debate and outcomes on both fronts.



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This FRDP was prepared by Professor Kevin Davis, Research Director of the Australian Centre for Financial Studies, who was also a member of the Financial System (Murray) Inquiry.

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