Productivity Commission Inquiry into Data Availability and Use:

Submission by the Australian Securities and Investments Commission

August 2016

Contents

Overview

1 ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator.

2 ASIC's fundamental objective is to allow markets to allocate capital efficiently to fund the real economy and, in turn, economic growth. Markets cannot achieve their fundamental purpose in funding the real economy if investors, financial consumers and issuers do not have trust and confidence in them. Making sure Australians have this trust and confidence is at the heart of everything we do.

3 To support our fundamental objective, we have three strategic priorities:

(a) Priority 1: Investor and financial consumer trust and confidence

(b) Priority 2: Fair, orderly and transparent markets

(c) Priority 3: Efficient and accessible registration

4 Accordingly, we welcome the opportunity to make a submission to the Productivity Commission inquiry into data availability and use.

5 ASIC is committed to promoting open data, and supports the open government initiative to provide an easy way to find, access and reuse public datasets. ASIC currently has 12 datasets available for download from data.gov.au and provides a range of other datasets on its website.

6 ASIC's ability to achieve its regulatory objectives could be improved through increased data availability and by encouraging data to be provided in machine-readable formats. This includes data that ASIC already collects, data from other government agencies, and data from private sector parties.

7 Increasing consumers' access to data can help consumers better assess and manage risks, and help them to make better decisions. This includes both personal consumer data generated through consumer use of financial services, and data on the products and services that are consumed.

8 There is potential for choice engines (comparison websites and data aggregators) to supplement mandated disclosure and to help consumers make better financial decisions. Access to data can facilitate more meaningful comparisons, and thereby improve consumer outcomes.

9 There is uncertainty amongst consumers and industry about how liability provisions of the ePayments Code relating to account aggregators are to be interpreted. While ASIC has not yet formed a view about how the uncertainty regarding liability can or should be resolved, provided security concerns can be addressed, consumers should not be disadvantaged by their use of legitimate account aggregation services.

A ASIC's commitment to open data

Key points

ASIC is committed to promoting open data.

ASIC supports the open government initiative to provide an easy way to find, access and reuse public datasets from ASIC and currently has 12 datasets available for download from data.gov.au

The Government's Registry Separation Project aims to improve the way in which Registry data is captured, and enhance search functionality across registers to allow for better access to information.

10 ASIC is committed to promoting open data. Access to accurate and timely information is critical in business today. The information ASIC collects and shares helps those in business and the general public make confident and informed decisions.

11 ASIC acknowledges that there is also increasing demand from consumer groups for regulator data. Other groups with interest in ASIC data sets include journalists, academics, external dispute resolution (EDR) schemes, data aggregators and marketers.

12 ASIC supports the open government initiative to provide an easy way to find, access and reuse public datasets from ASIC. Data.gov.au lets ASIC distribute consolidated information, that was previously available via a subscription CD, in a more efficient and modern way.

13 Legislation prescribes the type of information ASIC is allowed to disclose to the public. ASIC currently has 12 datasets available for download from data.gov.au:

(a) Company Dataset

(b) Business Names Dataset

(c) Financial Advisers Dataset

(d) SMSF Auditor Dataset

(e) Credit Licensee Dataset

(f) Credit Representative Dataset

(g) AFS Licensee Dataset

(h) AFS Authorised Representative Dataset

(i) Registered Auditor Dataset

(j) Liquidator Dataset

(k) Banned and Disqualified Organisations Register

(l) Banned and Disqualified Persons Register

14 ASIC also publishes data on ASIC's MoneySmart website:

(a) Unclaimed money, with additional reports in Excel format available from the ASIC website.

(b) Financial Advisers Register (also available on data.gov.au)

(c) Companies you should not deal with

(d) Find a financial counsellor.

15 Other datasets ASIC provides on its website include the Enforceable undertakings (EU) register, Credit and ASIC Act infringements notices register and a register of public warning notices. ASIC also provides information through media releases and reports such as the ASIC enforcement outcomes reports.[1]

16 Some of these datasets, such as unclaimed money, are currently accessible through search. The unclaimed money database would be highly valued by the business sector. Publically releasing such datasets would allow third parties to develop tools and apps around this data, potentially facilitating more ways that the community can access the data. However, private operators may request a fee for unclaimed money search, while it is free on MoneySmart.

17 The functionality of ASIC registers that are already publically available could be improved by adding search capabilities, similar to the Financial Adviser Register search function available through MoneySmart.[2] Linking the datasets may make it possible for a single search to uncover matter details spread across multiple registers. For example, to locate any bannings or enforcement actions associated with an AFSL holder, a search of the AFSL holder could list items (EUs, licence conditions, etc.) and all Authorised Representatives associated with the AFSL that have been subject of ASIC enforcement action.

Chief Data Office

18 ASIC proposes to establish a Chief Data Office. The Office's mission will be will be to ensure appropriate governance over the collection, custodianship and usage of ASIC's data assets, including being responsible for ASIC's enterprise-wide data and information governance, control, policy development and effective utilisation.

[1] See: http://asic.gov.au/about-asic/asic-investigations-and-enforcement/asic-enforcement-outcomes/
[2] See: https://www.moneysmart.gov.au/investing/financial-advice/financial-advisers-register

19 The longer term vision for the Office will be to support ASIC in being a data-driven, forward-looking regulator and building capability in data analytics for its surveillance, investigation and enforcement activities.

Registry separation

20 The Registry Separation project is a Government initiative, whereby a competitive tender process has commenced to test the market on the capacity of a private operator to upgrade and operate the ASIC Registry. The Registry Tender process commenced in 2015 and is now in the Final Bid phase. This process is led by the Department of Finance with assistance of advisers.

21 The tender process objectives include but are not limited to:

(a) Enhancing the services, integrity, access to and collection of the Registry data for all users;

(b) Ensuring that the private sector operator has the operational and financial capabilities to invest in the development and maintenance of modern IT systems to operate the Registry; and

(c) Providing a regulatory and contractual framework that ensures appropriate governance, protections and access to registry data.

22 The Government believes that the involvement of the private sector has the potential to unlock significant value within the Registry and to deliver considerable benefits to the economy. The benefits to Registry users could include improved service levels, enhanced search functionality and an increased capacity to access and use the data. A new IT environment aims to facilitate an improvement in the way Registry data is captured, and enhanced searching functionality across registers will allow better access to information for ASIC and external parties. Interfaces between the Registry and external parties including lodgers, software developers, information brokers and government agencies will also be modernised

23 ASIC expects to have ongoing access to all Registry data required for regulatory purposes.

B Benefits and costs of making data more available

Key points

ASIC's ability to achieve its regulatory objectives could be improved through increased data availability.

Increasing consumers' access to data can help consumers better assess and manage risks, and help them to make better decisions. This includes both personal consumer data generated through consumer use of financial services, and data on the products and services that are consumed.

There is potential for choice engines (comparison websites and data aggregators) to supplement mandated disclosure and to help consumers make better financial decisions. Access to data can facilitate more meaningful comparisons.

Consumers should not be disadvantaged by their use of legitimate account aggregation services.

Increasing data availability

24 Increased data availability has the potential to benefit ASIC, consumers, business and many other groups. In the following sections, we explore those potential benefits and the costs associated with that access.

Availability to ASIC

25 Data analytics can play a critical role in identifying and mitigating conduct risk. ASIC is making investments to take advantage of emerging analytical techniques to better detect financial sector misconduct.

26 ASIC's ability to use these analytical techniques could be improved through increased data availability. This includes data that ASIC already collects, data from other government agencies, and data from private sector parties. This will increasingly be the case in the context of some of the law reform arising from the Financial System Inquiry, such as the development of product intervention powers and the comprehensive income product in retirement.

Financial reports

27 Of the data ASIC collects, not all is received in machine-readable format. For example, under the Standard Business Reporting (SBR) program, the

lodgement of financial reports in the machine-readable XBRL format is optional. This option is not used by many lodgers, thereby constraining ASIC's ability to systematically use financial report data in its regulatory activities.

28 A policy option would be to mandate the lodgement of digital financial reports. Digital financial reporting brings benefits to preparers and consumers (such as: regulators, analysts and investors) of financial reports in terms of data quality and timely reporting. Digital financial data will also improve the transparency of the capital market.

29 ASIC and the Standard Business Reporting program have committed to the XBRL financial reporting and have systems and facilities available for this purpose. Mandating will help realise the benefits of these systems.

30 An increasing number of countries have mandated digital financial reporting. XBRL is mandatory for financial statement submission to the Securities and Exchange Commission (SEC) in the United States[3] and for company tax returns in the United Kingdom. Digital lodgement has enabled Companies House to make financial data available for public free download.[4]

31 Consultations should be made to address matters such as the cost impacts on companies, the time-frame of mandating, and how financial data can be made available to public.

Inter-agency data sharing

32 The increased sharing of data across government agencies is also of benefit to ASIC. Data from agencies such as the Australian Prudential Regulation Authority (APRA) and the Australian Taxation Office (ATO) already form part of ASIC's monitoring activities, although there is scope to increase the breadth of data that is systematically shared and the ease of access to that data. The use of an agency as a single point of collection, with shared database access, could also be a model for consideration to reduce business reporting burden while also increasing the effectiveness of agencies requiring access to this data.

33 Some examples of data and information belonging to other agencies which ASIC would benefit from having rapid access to are bankruptcy records, travel movements, criminal history and warnings. Further, access to criminal convictions related to dishonesty in the form of a data feed from the courts would allow ASIC to remove directors from companies after they have been convicted and disqualified in court actions not initiated by ASIC.

[3] See: https://www.sec.gov/structureddata
[4] See: http://download.companieshouse.gov.uk/en_accountsdata.html

Access to private sector data

34 ASIC's access to data from the private sector varies across different financial markets or services. For example, ASIC has access to rich data on the activities of market participants from sources such as the Australian Securities Exchange. In contrast, data on activities in areas such as financial advice, payday lending and insurance are limited and are often obtained through ad hoc measures such as notice during surveillance activities. This means that ASIC does not know basic features of the regulated population, such as the amount of funds under advice, the number of payday loans being written, default rates or loss ratios.

35 This contrast arises in part because, when ASIC's powers relating to data collection in financial services were defined under the Corporation's Act, there was not an expectation that ASIC would obtain routine statistical data on the provision of financial services in the manner that APRA or the Australian Bureau of Statistics (ABS) collect data in their domains.

36 As there is no legislated obligation for financial services businesses to routinely report statistical data to ASIC, this information can only be gathered as required under notice. There is no source for much of this data other than the private entity itself. As such, ASIC is considering the need for regular data. Increased, routine availability of data on the activities of ASIC's regulated population could improve ASIC's ability to achieve its regulatory objectives. This would not only help ASIC, but if published in aggregate form may also contribute positively to industry.

37 ASIC does not have access to as much private sector data as our peer regulators overseas. As an example, the *United States Home Mortgage Disclosure Act* requires the maintenance and reporting of loan level mortgage data to the Consumer Financial Protection Bureau (CFPB).[5]

38 Similarly, the CFPB receives credit card data monthly, covering transactions, repayments, fees and charges, and delinquency (and therefore 'revolver' and 'transactor' rates). The CFPB database of credit card activity covers about 85 to 90 per cent of credit card industry balances in the United States. It does not include customer personal information. The database enables the CFPB to conduct sophisticated analytics of the credit card market, in addition to conducting biennial credit card market studies required under the *Credit Card Accountability Responsibility and Disclosure Act*.[6]

39 ASIC does not have access to data of this nature on a systematic basis. Any decision to increase access, however, will need to include consideration of

[5] See: https://www.ffiec.gov/hmda/
[6] Consumer Financial Protection Bureau, The Consumer Credit Card Market, December 2015. Available at: http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf

the benefits to ASIC, consumers, markets and the regulated population, and relative to the costs to industry.

40 Access to more general information on consumer spending could also be of value to ASIC. For instance, non-identifiable consumer spending data would allow ASIC to create tools and infographics to better engage consumers and personalise financial literacy messages.

Availability to consumers and markets

Consumer access

41 Increasing consumer access to data can help consumers better assess and manage risks, and help them to make better decisions. This includes both personal consumer data generated through consumer use of financial services, and data on the products and services that are consumed.

42 Accordingly, there is merit in making more data available to consumers, particularly where disclosure is failing to facilitate adequate choice and competition. This could be achieved by:

(a) Encouraging businesses to provide more data and information to investors and financial consumers to assist with decision making; and

(b) Where there is a failure to provide data and information required for informed decision making, mandating its provision.

43 There are already disclosure and information provision requirements associated with ASIC's legal framework, such as the requirements to provide:

(a) Information on financial services (such as Financial Services Guides, Statements of Advice, Product Disclosure Statements); and

(b) Personal consumer data (such as transaction records and annual statements).

44 Much of this information, however, does not contain a complete record of the relevant data (e.g. transaction records), or may be in an unstructured form that prevents consumers from fully benefiting from access (see below on account aggregators).

45 Further, there may be costs to consumers if the data are of poor quality and lead to incorrect decisions by either consumers or others who rely on the data. For example, errors in credit reporting have potential to cause consumer detriment.

International initiatives

The voluntary UK MiData project was launched in 2011 as part of a program to empower consumer decision-making. It aims to:

- Encourage private businesses to release personal data to consumers electronically;
- Make sure consumers can access their own data securely; and
- Encourage businesses to develop apps that help consumers make effective use of their data.

The initial effect of the program has been limited to date. The switching rate for personal accounts was 16 per cent higher in January 2015 than at the launch of the Current Account Switching Service in September 2013, but only 2 per cent higher than the November 2012 peak. Overall switching rates remain around 3 per cent.[7] Since then comparison services have been launched to enable customers to use their data to compare accounts[8] and the Competition & Markets Authority has proposed additional remedies to encourage customer engagement.[9]

The United States Smart Disclosure Policy is designed to help inform consumers to make better decisions and benefit from new products and services powered by data[10]. It has a number of components such as making open, machine-readable data the new default for government information and creating a Smart Disclosure Taskforce to investigate Information and Efficiency in Consumer Markets.

46 Some examples of data on financial services that might be of benefit to consumer purchasing decisions include the following:

(a) Average insurance claims processing times and/or claim payout rates, which could provide better assistance for decision making than long and complex disclosure documents for insurance products;

(b) The frequency of Managed Investment Scheme fund distributions;

(c) Financial product provider complaints data; and

(d) Natural disaster risk data specific to areas of residence.

47 Certain record keeping requirements associated with ASIC's legal framework are not attached to requirements to provide that data to either ASIC or customers. An example of this is 'know your customer' (KYC) requirements and the record keeping requirements associated with responsible lending legislation. To the extent the costs of collection are

[7] Financial Conduct Authority, 2015, *Making current account switching easier: The effectiveness of the Current Account Switch Service (CASS) and evidence on account number portability*, March 2016. Available at: https://www.fca.org.uk/static/documents/research/making-current-account-switching-easier.pdf
[8] For example, https://www.gov.uk/government/news/is-your-bank-giving-you-the-best-deal-find-out-using-new-online-comparison-tool
[9] Competitive & Markets Authority, 2016, *Retail banking market investigation: Provisional decision on remedies*, 17 May 2016. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523755/retail_banking_market_pdr.pdf
[10] See: https://www.data.gov/consumer/smart-disclosure-policy-resources

already incurred, areas such as this could provide an opportunity to increase customer access to personal data.

48 However, some consumers may not change their behaviour in response to the additional information. Factors that may influence whether the data changes behaviour, and whether that behaviour change is for the better, include:

(a) Whether the provider or comparator is trusted and trustworthy (e.g. not deliberately harnessing behavioural biases in ways that cause poor decisions, burying important features, providing unrepresentative or incomplete comparison lists, etc.);

(b) The timeliness of data provision (as with other, more traditional forms of disclosure); and

(c) Whether the ultimate communications using the data are designed in a consumer-centric manner (easy to find, navigate etc.).

49 There is also a need to strike a balance between improving access to data while maintaining the commercial incentive to collect and provide it in the first place.

50 Better data provision may also change customer behaviour beyond purchasing decisions. For example, in-car ‘black box’ devices that monitor driving behaviour, known as ‘telematics’, enable insurers to more accurately determine a driver’s premium. Drivers could benefit from this data as it can also help change their behaviour—for example, by adopting safer driving practices in order to obtain a cheaper premium.

51 Similarly, health data from fitness wristwatches could allow insurance companies to efficiently reprice health/life premiums on a rolling basis. Premiums are currently priced only at the policy outset. This may feedback into consumers adjusting their consumption/lifestyle behaviour to positively impact on their premiums.

52 There should be consideration of the policy implications of how service providers use personalised data in this manner, particularly where previously 'off the shelf' products' become more personalised and the scope for price discrimination based on features such as risk profile increases.

53 Two of the major areas where availability of data to consumers is important are for use in choice engines and account aggregators. These are discussed in the following two sections.

Choice Engines

54 Consumers are increasingly seeking web-based information and third-party reviews to inform their purchasing decisions and their reliance on these services is expected to increase over time.

55 There is potential for choice engines (comparison websites and data aggregators) to supplement mandated disclosure and to help consumers make better financial decisions. Access to data can facilitate more meaningful comparisons.

56 A number of choice engines already exist for financial services and products; however the provision of more and better data could enable these services to improve their offerings. The ability for choice engines to access personal data would enable them to make personalised recommendations based on both personal preferences inputted by consumers and revealed preferences drawn from past behaviour.

57 However, this could constitute a form of advice, and thus might require specific regulation. There is merit in evaluating the need to maintain a minimum standard of comparison services through specific regulation. Any such regulation could address the quality of comparison information and the management of conflicts that have the potential to affect the quality of comparison information. On this note, in 2015 the Australian Competition and Consumer Commission (ACCC) released a guide for comparator website operators and suppliers[11].

Access to personal information

58 The effective operation of such choice engines is dependent on consumers having access to personal data that businesses have collected about them in a useable format, such as being machine-readable. As noted in the Final Report of the Financial System Inquiry (FSI), "Little guidance is available on how personal information should be provided, including delivery method, timelines and standards for representing data[12]." It also notes that "consumers are unable to authorise trusted third parties to access their personal information directly from their service provider."

Access to private sector data

59 Another option for facilitating the provision of meaningful comparison information is to compel industry to provide data that would facilitate more sophisticated comparisons in a usable format. Mandated data could relate to product terms and price; however, it could also extend to important product features that could facilitate more powerful and useful comparisons. For example, issuers of insurance products could be required to provide data on the level of cover (e.g. high, medium and low), claims ratios, withdrawn claims, and complaint and EDR disputes data. Such data would be a more

[11] ACCC, 2015, *Comparator websites: A guide for comparator website operators and suppliers*, August 2015. Available at: https://www.accc.gov.au/system/files/CSBS%20-%20Comparator%20web%20sites%20project%20-%20Industry%20Guidance%20-%20final.pdf

[12] Commonwealth of Australia, 2014, *Financial System Inquiry: Final Report*, November 2014. Available at: http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf

direct and powerful indicator of the quality or value for money of a financial product or service than a detailed comparison of lengthy disclosure documents.

60 The development of standard definitions for product features could improve the quality of comparison information. Standard definitions help to ensure that the data supplied by financial product issuers to the operators of comparison websites are comparable. For example, the standard definitions developed for private health insurance products under the *Private Health Insurance Act 2007* are used as the basis for the Private Health Insurance Ombudsman comparison tool.[13]

International developments

61 Internationally, governments and regulators are increasingly considering ways to enhance consumer outcomes and drive competition by requiring product and service providers to make machine-readable data available to third parties, who may then be able to aggregate such data into useful choice engines. For example, in Norway, insurers (apart from life insurers) are required to disclose information, including price and claims information, on Finansportalen, a comparison website established by the Consumer Council of Norway. [14]

62 The FCA undertook a thematic review of price comparison websites for insurance, out of concern that they focus too much on price and brand. The FCA found that the websites did not always provide consumers with appropriate information.[15]

Account aggregators

63 A number of FinTech entities rely on access to consumers' banking and transaction data to provide information analytics services to consumers or to other commercial organisations ("account aggregators"). Examples include:

(a) Personal financial management tools, which give consumers a holistic and engaging view of their financial position and enable them to manage their finances more effectively (e.g. Money Brilliant, ANZ's Money Manager, Pocketbook, Mint, and QSuper's Money Map);

(b) Bank statement retrieval/scraping or income and expenses analytics services that help commercial organisations understand prospective clients (e.g. bankstatements.com.au, MOGObankconnect and Credit Sense); and

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[13] See: http://www.privatehealth.gov.au/dynamic/compare.aspx
[14] See: https://translate.google.com.au/translate?hl=en&sl=no&u=https://www.finansportalen.no/&prev=search
[15] FCA, 2014, *TR14/11 - Price comparison websites in the general insurance sector*, 16 July 2014. Available at: https://www.fca.org.uk/news/tr14-11-price-comparison-websites-in-the-general-insurance-sector

(c) Services that rely on access to consumers' banking account information to enable particular functionality, such as the mobile investment platform Acorns which 'rounds-up' consumer transactions to the nearest dollar and automatically invests the change.

64 Account aggregators access a consumer's bank account by requesting a consumer input their internet banking credentials (i.e. login and pass code). A number of providers use the underlying technology of Yodlee Inc to enable account aggregation or data scraping.

65 Some of these account aggregator services are actively endorsed by ADIs (for example, ANZ's MoneyManager, which uses the Yodlee technology). However, some ADIs warn their customers against inputting their internet banking credentials to use these services. Many ADIs have terms and conditions which require that consumers do not disclose banking pass codes.

Risks and benefits of account aggregation services

66 ASIC encourages the development of innovative tools that offer potential benefits to both industry and consumers, while maintaining important consumer protections.

67 Consumer access to their own financial data in an aggregated, easy to understand format offers benefits to consumers by helping them to manage their finances more effectively.

68 Account aggregator services are also attractive to lenders because they assist the lender to efficiently obtain reliable data about a prospective borrower's income and expenses and can assist the lender in meeting responsible lending obligations in the *National Consumer Credit Protections Act 2009*. Some lenders are required by law to consider a consumer's bank account statements for the preceding 90 days, before deciding to provide a loan.[16]

69 Account aggregation services are largely unregulated in Australia. Potential issues arising from the use of aggregation services include:

(a) Online security of consumers' personal information (i.e. passwords and transaction data), and potential data or financial loss;

(b) Privacy (e.g. who has access , how is it stored, what it will be used for);

(c) The risk that fraudulent imitation services might emerge; and

(d) Voluntary consumer disclosure of banking passwords may breach the pass code security requirements in clause 12 of the ePayments Code ("the Code"), which could make the consumer liable for any unauthorised transactions on their account stemming from such disclosure.

[16] s130(1A) National Credit Act and ASIC REP 426 *Payday lenders and the new small amount lending laws.*

70 ASIC only has direct regulatory scope in relation to (d), as ASIC administers and monitors compliance with the Code. However, these issues would be best addressed holistically by government.

The ePayments Code

71 The Code regulates consumer electronic payments, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking and BPAY. The Code is currently a voluntary code of conduct and has approximately 120 subscribers (including most Australian ADIs and other providers of electronic payment facilities). The Final Report of the Financial System Inquiry recommended that the Code be made mandatory. Government has supported this recommendation, and the process of mandating the Code will begin shortly.

72 Amongst other things, the Code sets the rules for determining who is liable for unauthorised transactions. Compliance with the Code is a required term of the contract between the subscriber and each account or facility holder.

Liability for unauthorised transactions

73 As a general rule, the Code protects consumers from loss arising from unauthorised electronic transactions. However, for this protection to be available, the Code requires that a consumer must not voluntarily disclose their pass code (which includes an internet banking password) to anyone.[17] Where a subscriber can prove on the balance of probability that a consumer has contributed to a loss through a breach of the pass code requirements, the consumer will be liable in full for the actual losses that occur before the loss is reported to the subscriber.[18] However, where a subscriber 'expressly or implicitly promotes, endorses or authorises use of the service', it is the subscriber, rather than the consumer who is liable for the loss. [19]

74 There is uncertainty amongst consumers and industry about how these provisions are to be interpreted – for example, what amounts to *disclosure*, or *implicitly promoting, endorsing or authorising* use of the services.

75 Some account aggregators are advising the public that a consumer's rights under the Code will not be adversely affected by the voluntary disclosure of their pass code.[20] ASIC has observed media commentary on the topic – for example, one report[21] suggested that, where a consumer's ADI uses Yodlee,

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[17] See: ePayments Code, Clause 12.
[18] Within some limitations expressed in the Code; ePayments Code, Clause 11
[19] See: ePayments Code, clause 12.9.
[20] http://blog.acornsau.com.au/post/138901114125/using-your-internet-banking-details-with-acorns
[21] Caitlin Fitzsimmons, "Can online banking customers share logins with fin-tech services? Yes, no, maybe", Sydney Morning Herald, 2 March 2016. Available at: http://www.smh.com.au/money/can-online-banking-customers-share-logins-with-fintech-services-yes-no-maybe-20160229-gn6fzm.html

the consumer has a reasonable argument that the ADI implicitly endorses Yodlee's service.

76 There is concern that this uncertainty could stifle innovation, and uptake and use of these technologies by ADIs and consumers. ASIC has had anecdotal reports that some ADIs are reluctant to use account aggregation products until the uncertainty is clarified.

77 The current uncertainty also means that it is difficult for agencies such as ASIC to provide effective consumer messaging about the 'safety' of account aggregators, including when, to whom, and in what circumstances it is appropriate to divulge pass codes.

78 It could be argued that the current state of play might not be conducive to fair competition in the aggregation market, for example:

(a) The Code does not hold customers liable for unauthorised transactions where an ADI permits customers to give their pass code to an account aggregator service offered by that ADI or an associated company.[22] This means that aggregators who are permitted to provide services to an ADI's customers may have an advantage over other aggregators.[23]

(b) Messaging about the need to keep pass codes confidential and the uncertainty regarding the operation of the Code might discourage consumers from sharing data with account aggregators. This might lead to ADIs maintaining exclusive control over ADI customers' data, possibly impeding new entrants.

79 The issue of liability under the Code will need to be considered as part of any process of making the Code mandatory. ASIC has not yet formed a view about how the uncertainty regarding liability can or should be resolved. However, providing any security concerns can be addressed, ASIC believes consumers should not be disadvantaged by their use of legitimate account aggregation services.

Potential open data regimes

80 Open data application programming interfaces (API) could enable account aggregators to link directly with bank IT systems and would not require a consumer to disclose their pass code. Improving access to data could be achieved by requiring ADIs to retain and provide where requested a consumer's transaction history and data in machine-readable form.

81 Mandating an 'open data API' regime could provide a standard under which customers permit an organisation to directly access their transaction account

[22] See: ePayments Code, clause 12.9.
[23] This would be the case even where those different account aggregation services are using the same underlying scraping technology.

data. ASIC is not in a position to provide an accurate estimate of the cost of such a regime for industry.

82 The UK has recently been exploring the development of an open API standard. The establishment of such as standard would effectively increase the ability of consumers to access data. The revised Payment Services Directive (PSD2), which the European Parliament adopted in October 2015, might also, to an extent, address the emergence of "third party providers", including what are referred to as "account information services" and "payment initiation services".

Trust and privacy

83 Much privacy regulation is based around consent. However, consent is often not informed or made in a meaningful way, such as where a box associated with a long list of terms conditions is asked to be ticked. Further, consumers effectively trade personal data for services every day. Most are unaware of the implications of that trade-off.

84 There would be benefit in measures that inject transparency into the consent process, and the on-selling and use of personal data. Consumers should be aware when their data is being used by businesses to track their spending habits and other activities. For example, there is benefit to consumers being aware of their credit report and what is recorded in it when they seek finance. Their awareness that data may be supplied to other lenders, which can create more information in lending, could prevent them from seeing unsolicited approaches as a breach of privacy.

Glossary

Term	Meaning in this document
ABS	Australian Bureau of Statistics
ADI	Authorised deposit-taking institution
ACCC	Australian Competition and Consumer Commission
AFSL	Australian Financial Services Licence
ANZ	Australia and New Zealand Banking Group
API	Application programming interface
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
ATO	Australian Taxation Office
EDR	External dispute resolution
ePayments Code ("the Code")	The Code regulates consumer electronic payments, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking and BPAY. The Code is currently a voluntary code of conduct.
EU	Enforceable undertaking
FCA	Financial Conduct Authority (UK)
FSI	Financial Systems Inquiry
KYC	Know Your Customer
MoneySmart	ASIC's website for consumers and investors (www.moneysmart.gov.au)
SBR	Standard Business Reporting
SEC	Securities and Exchange Commission (US)
XBRL	eXtensible Business Reporting Language