

# **SUBMISSION TO THE PRODUCTIVITY COMMISSION'S STUDY INTO COAG'S REFORMS FROM THE INFORMATION BROKERS & LAW STATIONERS ASSOCIATION (IBLSA)**

## **1. BACKGROUND**

### **1.1 ABOUT IBLSA**

IBLSA membership consists of companies which have a long commercial history of providing online access to various government databases for online delivery of search results to their predominantly professional account customer clientele as well as to one-off credit card clients

The databases our members provide client access to include: ASIC; all State Offices of Fair Trading (or their equivalents); the Titles Offices of all States and Territories; REVS; the State Revenue Offices of QLD, NSW and VIC; and Sydney Water.

IBLSA member's clients include: Government and semi-Government entities; the Legal industry (virtually every law firm in Australia will source online searches via a broker); commercial enterprises (from BHP to the local real estate agent); and, the general public.

IBLSA has made submissions to the AGCNCO regarding the future plans of Australian Securities Investments Commission (ASIC) and the Personal Property Securities Register (PPSR):-

- ASIC submission was made on 15<sup>th</sup> April, 2011
- PPSR submission was made on 23rd August, 2011

### **1.2 THE BASIS OF IBLSA'S COMPLAINTS TO THE AGCNCO**

The basis of IBSA's concerns with the plans of both ASIC and PPSR are founded on the principles of 'Competitive Neutrality' as outlined in the "National Competition Policy Agreements" (NCPA).

We have no concern with ASIC and PPSR offering a 'direct' online service for 'one-off' requirements. Our concerns are specifically with the plans of both authorities to offer 'direct' web access to any customer for searching and purchasing multiple extracts from their databases at the same price that those services are available to IBLSA Members who have in effect, historically and very successfully, operated as their wholesale distributors.

In the view of IBLSA, the plans of ASIC and the PPSR are identical in principle and pose a significant threat to all broker businesses which have, in good faith and over many years, invested heavily in technology to support the efficient delivery of products made available by ASIC and many of the various authorities which will make up the PPSR.

## **2. THE CURRENT SITUATION WITH ASIC**

### **2.1 ASIC's ESTABLISHED BROKER NETWORK**

There are currently 15 brokers with ASIC licenses, 8 of which are members of IBLSA:-

- Access Business Information
- Australian Business Research
- Citec Confirm (IBLSA member)
- Creditor Watch Express
- Dun & Bradstreet (IBLSA member)
- eSearch
- Financial Review
- Hazlett Information Services (IBLSA member)
- Leap Searching (IBLSA member)
- National Data Centre (IBLSA member through GlobalX)
- Quicksearch
- Reckon Shelco Data Services
- SAI Global Property (IBLSA member)
- Tri-Search (IBLSA member)
- Veda Advantage (IBLSA member)

Note: Broker amalgamations over recent years have resulted in a reduction in IBLSA membership.

To obtain an ASIC license, individual broker organisations were required to make formal and comprehensively detailed submissions to ASIC, with no certainty of approval. ASIC procedure required applicants to submit a full business plan, with clear evidence of technical capability and financial standing.

Originally, there were formally executed distributor agreements in place. The most recent agreements expired in January 2008 and a new agreement has been promised by ASIC ever since, but has not been forthcoming.

ASIC accredited brokers have, for the past 15 years, been the exclusive distributors of the following products:-

- Company Extracts
- Charges Extracts
- Relational Company Extracts
- DocImages
- Personal Name Extracts
- Search of the Professional Register
- Search of the Banned & Disqualified Persons Register

Over this time, ASIC has maintained two distribution channels for these products:-

- (a) Over-the-counter at ASIC offices – documents provided in hard copy form only, and
- (b) Online, through a network of appointed brokers.

The broker online channel has operated extremely successfully since the mid-1990s and is responsible for distribution of approximately 98% of the above products annually.

Most searches are initiated and delivered through each broker's individually developed interface utilising credit accounts offered by most brokers. However, companies and individuals who begin their search by browsing on the ASIC web site and who want to order any of the above products online, are directed to a list of brokers to contact for this service.

Over the years, our members have invested heavily in technology. An accurate figure is not known, however it is estimated that collectively, broker investments in systems to support their ASIC links alone would be in the tens of millions of dollars. This excludes all the administrative and operational staff costs in maintaining all aspects of delivering an online service, eg, Help Desk, Accounts, technical requirements.

Distribution of ASIC information forms one of the core activities of our members' businesses.

ASIC's fee are regulated by Treasury. For example:-

- A 'Current Company Extract' carries a fee of \$9.00.
- A 'Current & Historical Company Extract' carries a fee of \$17.00

Brokers 'buy' at the regulated fee level and apply a service fee for online delivery to clients, generally in the range of \$5.00 to \$6.00.

ASIC 'sell' those same documents over-the-counter for the same regulated fee, PLUS a handling charge of \$3.00.

## 2.2 BROKERS HAVE BEEN CHARACTERISED AS 'KEY STAKEHOLDERS' BY ASIC

ASIC correspondence to its broker network has on many occasions indicated the importance of brokers to ASIC's operations, always characterised as 'key stakeholders'.

ASIC annual reports show the overwhelming dominance of the online broker network as ASIC's primary distribution channel for Company Extracts and the other products listed above.

As a percentage of the total ASIC output, the broker share of total volume has been:

1996/1997 - 84%

1999/2000 - 93.9%

2007/2008 - 98.9% of a total 3,981,343 searches for a market value in excess of \$19 million.

## 2.3 ASIC INTENDS TO LAUNCH A 'DIRECT TO THE MARKET' ONLINE SERVICE

In late 2009, ASIC first foreshadowed their intention to develop a 'direct to the public' online service for all products to date distributed by its broker network. As a result, IBLSA requested a meeting with ASIC representatives. This meeting took place on 10<sup>th</sup> February, 2010 at the offices of Dunn & Bradstreet, in Sydney.

At that meeting, ASIC's advised that one of their priorities for 2010, in line with a 'whole of government' approach, is to make more information available online to the general public.

Ms Bell also advised that ASIC anticipates that a 'basic' ASIC direct search service will satisfy the needs of those individuals & businesses requiring 'one-off' searches, with credit card payment.

In response, IBLSA members raised the following issues:-

- I. Although ASIC's intention might be that their online service is directed to 'one-offs' and 'mums and dads', broker experience suggests that some larger users (who would traditionally be regarded as a broker client) will avail themselves of this service, either on a one by one basis, or could even develop a program to enable multiple usage, thus bypassing the broker network.
- II. It was put to ASIC that Whilst IBLSA members do not object in principle to ASIC selling direct, our members believe there is a need to continue a price differential for the broker and the ASIC-direct client, ie, retail / wholesale pricing or, the application of a service fee by ASIC on each search (comparable to the current 'over-the-counter' charge, and as exists with other government databases), in order to maintain a 'level playing field'. In addition, it was

suggested that ASIC will need to cover the additional costs associated with supporting a direct channel, especially the inevitable requirement to provide a 'Helpdesk'.

Whilst ASIC agreed that a further meeting should be held in about 6 months time, nothing further was heard from ASIC until an email on Friday 8<sup>th</sup> April 2011 advising that the new interface is likely to be launched around August, 2011.

One of our members replied, asking for the planned charges. ASIC responded on 11<sup>th</sup> April...

***"We will be sending an Information Pack to you early May which will include details of the products we are offering on-line, relevant fees, sample screens from our new service, etc. We will be charging the search fees mandated by the Corporations Fees Regulations, e.g. \$9.00 for a current company extract, \$17.00 for a current/historical company extract. Full details will be included in the information pack. We will also be holding a demonstration of the new service - which is expected to be held in late May at this stage."***

#### 2.4 ASIC CONFIRMS 'DIRECT' PRICING AND A 'NO LIMIT' SHOPPING BASKET

At various presentations of the new ASIC web platform since May 2011, ASIC has confirmed the above advice, ie, that it is ASIC's intention to sell the above products direct to online customers at the regulated fee with no additional service fee or handling charge.

In addition, the attendees were advised that the ASIC direct online client will have 'no limit' on the number of searches that can be added to the 'shopping basket' order on a single credit card transaction. This alone indicates that ASIC's direct service is not intended to appeal just to the general public and one-off business users. The 'no limit' shopping basket is clearly directed at the 'professional' market, hitherto the province of their own accredited broker network.

IBLSA members have no doubt that, if ASIC are able to proceed with this development, the broker businesses will be decimated overnight. The devastating effect on broker businesses can only be averted if ASIC apply a service fee on their 'direct' service comparable to that charged by brokers, or alternatively, offer their product range to the Brokers at a discounted (wholesale) price.

#### 2.5 AGCNCO RESPONSE TO IBLSA'S SUBMISSION ON ASIC

AGCNCO advised that IBLSA's "complaint over ASIC's pricing of its new supply of company extracts falls outside the purview of the AGCNCO".

In retrospect, it would seem that the AGCNCO is unable to apply the IBLA submission solely to the document distribution channel segment of ASIC's operation.

The online distribution channel is all that IBLA members have historically provided to ASIC and it is solely this that IBLA members wish to continue to provide, albeit on a commercially competitive basis to ASIC's own direct service.

### **3. THE CURRENT SITUATION WITH PPSR**

#### **3.1 IBLA MEMBERS CURRENTLY ACCESS SEVERAL DATABASES MIGRATING TO PPSR**

The PPSR is a new national authority which will bring together various state and Commonwealth Government registries for certain personal property securities. It sits within the control of the Attorney General's Department, as does ASIC and its charges are regulated, as are ASIC's.

Many of the registries which will migrate to the PPSR are already accessed by brokers, eg, REVS, ASIC Company Charges, NSW Security Interest of Goods Register and have been accessed by IBLA members for the past 15 or more years.

IBLA was verbally informed by PPSR representatives that access to PPSR information will be made available to Brokers, other professionals and the general public at the same regulated price. IBLA strongly expressed their concern at this intention.

#### **3.2 THE IMPORTANCE TO BROKERS OF ACCESS TO THE PPSR**

Whilst personal property security information is not sought as frequently as say title information, or company extracts, our members consider the information to be an extremely important part of our total product offering to the professional market segment. Our members also believe that demand for PPSR searches is likely to increase in the future as personal information will become more readily accessible when it is aggregated under a single national authority.

IBLA has had several meetings with representatives of the Attorney General's department during the development of the PPSR. As the current primary channel of distribution for several of the various registries migrating to the PPSR, our position was conveyed to the AG's representatives at every opportunity. And the justification for either a wholesale price to brokers as current licensees, or the imposition of a PPSR competitive handling fee for their direct customers was also emphasised.

### 3.3 BROKERS CHARGES & MARKET VALUE OF EXISTING SECURITIES REGISTERS

Brokers service fees typically vary from approximately a low of \$4.00 to \$6.00 and broker pricing is highly competitive. As mentioned above, we believe the PPSR should either: (a) set a commercially competitive handling fee for its services, or (b) allow brokers a discounted 'wholesale price' of a similar level, to enable fair competition to what has for several years been a service almost exclusively provided by IBLSA members.

We are not able to form a completely accurate picture of this market because it is difficult to extract the many individual search types from our various authority records. However it is generally believed that these searches would account for possibly up to 5% of the typical broker / law stationer business. This would translate to an industry turnover in the order of \$12 million p.a.

### 3.4 BROKERS REQUIRE DEDICATED LINKS TO THE PPSR

All Brokers have, over the past 15 years, made considerable investments in the tens of millions of dollars in the technical infrastructure required to connect to all the government databases we currently access. We are willing and able to create direct links to the PPSR. All Brokers will require search access, and some will also want to develop access for online registration of interests.

### 3.5 AGCNCO RESPONSE TO IBLSA'S SUBMISSION ON PPSR

IBLSA made a submission to the AGCNCO that PPSR should apply a commercially comparable service charge, or wholesale discount to its direct online clients to establish a level playing field with brokers.

As with ASIC, IBLSA does not object to the PPSR offering direct access to the general public or other parties.

Again, the AGCNCO response to IBLSA's submission was that IBLSA's "complaint over the potential pricing of the PPSR falls outside the purview of the AGCNCO".

However, IBLSA remains of the view that for the PPSR to proceed with their plan to offer a uniform price to 'all and sundry' without adding a service charge to the regulatory fee, demonstrates contempt for a broker network which has a long history of servicing professional users of such information and presents all brokers with a significant threat to their businesses.

### 3.6 IMPORTANT LATE DEVELOPMENT – PPSR OFFERS 'COMMERCIAL TERMS'

It has recently come to IBLSA's attention that the PPSR (through ITSA) are marketing availability of commercial 30 day credit accounts to approved applicants. This clearly earmarks the PPSR as a 'commercial operation' and demands that any assessment of it be made from that viewpoint.

Relevant links from the PPSR web site are:-

- <http://www.itsa.gov.au/dir228/itsaweb.nsf/docindex/About%20Us-%3EPublications-%3ECredit%20Application%20Form?OpenDocument>
- <http://www.ppsr.gov.au/NewsRoom/News/Pages/News.aspx#Dec2011accountsetup>

It is also believed that PPSR or ITSA employed 'Account Managers' are now actively promoting the PPSR Services to law firms and other likely clients. In addition, one of our members' clients based in Brisbane, has suggested that the PPSR representative has been encouraging that they submit an account application as soon as possible whilst the application window remains open. We note that the ability to submit an application only closes temporarily in January. This demonstrates use by PPSR representatives of very 'hard-nosed and aggressive commercial sales tactics'.

#### **4. IBLSA's OVERALL OBJECTIVES WITH REGARD TO ASIC & PPSR**

The objectives of IBLSA's members are to:

- a) preserve long-held core segments of our businesses which are crucial in terms of the range of services we provide to our professional clients,
- b) protect the substantial investment in technology made by our members over many years,
- c) protect two vitally important sources of revenue to our members.

IBLSA contends that plans of both ASIC and PPSR to go direct to clients at the same price they offer to the broker channel, which now represents over 98% of their business, are highly likely to lessen innovation and competition in the long run. If allowed to proceed as indicated, ASIC and the PPSR will effectively undercut commercial enterprise. A healthy broker / wholesaler market is necessary to ensure a continuation of innovation and competition in the marketplace.

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