COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

SELECT COMMITTEE ON FINANCIAL TECHNOLOGY AND REGULATORY TECHNOLOGY

(Public)

THURSDAY, 27 FEBRUARY 2020

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SENATE

SELECT COMMITTEE ON FINANCIAL TECHNOLOGY AND REGULATORY TECHNOLOGY

Thursday, 27 February 2020

Members in attendance: Senators Bragg, McDonald, Scarr, Marielle Smith, Walsh.
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PRICE, Mr John, Commissioner, Australian Securities and Investments Commission ................................................................. 1
CHAIR (Senator Bragg): I declare open this public hearing of the Senate Select Committee on Financial Technology and Regulatory Technology. This is a public hearing and a Hansard transcript of the proceedings is being made. We are also streaming audio of the hearing live on the web at aph.gov.au. I welcome everyone here today. Before the committee starts taking evidence, I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee. Such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

While the committee prefers all evidence to be given in public under the Senate's resolutions, witnesses have the right to request to be heard in private session. If you would like any of your evidence to be heard in camera, please let the committee know. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. As noted previously, such a request may be made at any time. I remind people to turn their phones off or put them on silent.

I now welcome officers from ASIC. Thank you for your time. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Do you have an opening statement?

Mr Price: A very brief opening statement, if that is okay?

CHAIR: Please proceed.

Mr Price: On behalf of ASIC, we would like to thank the select committee for the opportunity to attend this afternoon. ASIC welcomes this inquiry into the fintech and regtech sectors and looks forward to fielding questions shortly.

I'd like to start by saying that ASIC is committed to encouraging financial innovation that has the potential to benefit consumers as well as support the fair and efficient operation of financial markets in Australia. New and enhanced technologies, combined with increased computing capabilities, are enabling the development of new products and services that meet the needs of financial consumers and market participants more efficiently and cost effectively. These advances have the potential to enhance financial inclusion, bridge financing gaps, and develop financial capabilities. This potential was a significant driver for engagement in the industry and it was one of the reasons ASIC established its Innovation Hub in March 2015. The hub's purpose is to provide informal assistance to up-and-coming fintechs and regtechs, helping them navigate through Australia's regulatory framework without compromising investor and financial consumer trust and confidence. In doing so, the hub streamlines ASIC's engagement with fintech and regtech sectors and removes red tape where possible. For example, fintech businesses that receive informal assistance prior to submitting an application for licensing approval receive their decision on average 20 per cent to 30 per cent faster than if they hadn't received our assistance.

In mid-2016 we extended the remit of our Innovation Hub to include regtech providers. We believe the regtech sector equally has enormous potential to help organisations build a culture of compliance, identify learning opportunities and save time and money related to regulatory matters. It should be noted that in some cases regtech has already been making a valuable contribution in promoting regulatory compliance across consumer and market integrity outcomes. ASIC continues to gain an understanding of those use cases through our own series of regtech initiatives, with special funding from the government for financial years 2018-19 and 2019-20. These initiatives were designed to facilitate problem solving, networking, and exploring the latest developments within the sector. I want to conclude our statements there, and we look forward to the select committee's questions.

CHAIR: Thank you very much. I want to start with the question of competition in the Australian financial sector. Can you run through for me what your mandate is in relation to competition?

Mr Price: Our mandate in relation to competition was changed recently. The government passed some changes to our constituent legislation in October 2018. We now have an explicit mandate to consider competition...
matters that affect the performance of our functions and the exercise of our powers. Really it's about looking at the performance of our functions, the exercise of our powers and considering what impact they will have on competition in the financial system.

**CHAIR:** What does that mean in practice? What is ASIC doing to drive competition in this jurisdiction?

**Mr Price:** It's fair to say that the explanatory memorandum to the regulations or the law changes that the government passed provide some additional direction about the aspects of competition that we can have regard to. So, we think about things like will the exercise of our powers or performing our functions create a barrier to entry? Will it create regulatory advantages? Will it improve consumers' ability to exert demand-side competitive pressure? Will particular regulation have a disproportionate impact on smaller entities? When we consider these issues of competition in the performance of our function and the exercise of our powers, it's important to remember that those powers and functions are broad. This sort of requirement to think about competition issues may apply to functions such as when granting, varying or cancelling certain types of licence, when we ban people from conducting certain activities, when we make instruments—legislative instruments as well—that modify the law, when we register and deregister companies and schemes, when we accept enforceable undertakings, and so on.

In response to your question, though, about how do we embed that at an operational level, and how do we monitor that, there is some specific internal guidance that we have provided to our staff in relation to these changes that the government put forward in October 2018. In addition to that, through a number of decision-making processes and structures at ASIC, there are mandatory questions that staff have to answer along the lines of, how will this decision, how will this exercise of our function, impact on competition? As well as guidance to staff, it's hardwired into important decision-making processes in the organisation.

**CHAIR:** It's internal?

**Mr Price:** It is internal; that's correct.

**CHAIR:** How does it manifest itself externally? What sort of reporting would you provide on, let's say, concentration in a particular market like retail banking?

**Mr Price:** I will come back to the research piece in a minute. As to the point about how would there be transparency about those decision making—when we make important regulatory decisions, typically we are required legally to provide the reasons why we do that. If competition forms part of the reasons for us making the decision, that would then be recorded as part of the letter that goes back to the particular applicant.

**CHAIR:** Is that across different spectrums? For example, if you were considering how to respond to developments in a market such as in the case of buy now, pay later schemes, would you consider whether, if we do something adverse to buy now, pay later schemes, that would diminish that sector's capacity to compete with credit cards? Does it cross spectrums?

**Mr Price:** Yes, it does. To go to your question, in the policymaking process, for example, one of the questions that we ask our staff to address is, what will be the impacts on competition that would flow from the decision that you're asking the relevant person to make? It would be similar in terms of various other committees as well. As I said, it is embedded in the internal processes that ASIC has to make a decision. You raised the question of what I would call more market analytical work in relation to competition issues more broadly.

**CHAIR:** A lot of the innovation happens in the market and you have to respond to it. I'm interested in how you respond to these developments. It's less of a theoretical question.

**Mr Price:** I want to make sure I'm answering your question. I think what you mentioned as part of your question was whether we do market studies and those sorts of things in relation to banking products and so forth. Am I correct?

**CHAIR:** I'm trying to understand how you see your role as a regulator. My view is that we should be doing everything we can to improve competition in this jurisdiction, because clearly the banking royal commission showed that there was a need for more competition. I'm conscious that there's a big focus in the financial sector on remediation and on responding to those recommendations, but I'm also conscious there's been a huge amount of testimony and evidence put to this committee that in particular the large four banks are often working quite hard to slow down competition which develops in this market, and often not through conventional regulatory means. Therefore, your role and how you respond to things, such as the development of buy now, pay later, is critical. Does that make sense?

**Mr Price:** It does. That's very helpful. I might ask Mr Hughes to comment particularly in relation to some of the matters you mentioned. Our role is really to carry out our functions and powers that are set out under the
Mr Price: We focus on competition and how someone looking in would say, 'I observe competition in...'. When performing our functions and powers what the government has decided is that we should be able to take into account competition factors.

Mr Hughes: I think the legislative reform that took place in 2018 was deliberately crafted in a way to make sure that the consideration of competition was something that we took into account when making regulatory decisions or exercising regulatory powers. As Mr Price said, it is not our role to promote competition in the market. That was a government policy decision. That's the first point I'd make.

Therefore, that means when you come to something like buy now, pay later, where we do not exercise what I would call a gatekeeper role or a front-fence role, because we do not license buy now, pay later operators, the consideration of competition must be such that, if we undertake some consumer protection action, if we were to observe a consumer harm, then we would give consideration to the impact of our decision or regulatory action.

Perhaps I can use another example in a situation where we do exercise that power at the front end. As to consumer credit insurance, we identified, for instance, that consumer credit insurance in relation to credit cards was particularly poor, had poor claims ratios for consumers and very low payout rates. As a result of the actions that we've taken and the improvements that we've suggested to offerors of that particular financial product, I believe that all but one product issuer is left in the market now. One might speculate that the impact of ASIC's action has been to take away competition in relation to consumer credit insurance in the consumer credit card market, but that was because we were exercising our powers for consumer protection reasons, as the primary driver of our action, not for competition enhancement reasons.

CHAIR: I understand. I am going to share the call, but I wanted to follow up on that briefly. Hopefully, you can give me a short answer. You don't take into account market competition across-the-board when you make these judgements; is that right?

Mr Price: We are able to take into account market competition across-the-board, but we take into account—

CHAIR: So, you do or you don't?

Mr Price: We do, but it's as part of exercising our other functions and powers. We are not the competition regulator per se, but competition issues can be a relevant factor in important decisions we make and important functions we carry out. That's the way it works.

CHAIR: Therefore, when the Council of Financial Regulators meets, who discusses competition at those meetings?

Mr Price: ASIC has a competition part of its mandate, as does APRA, and Treasury obviously deals with policy in relation to the financial system across-the-board. The Reserve Bank also has an interest in competition matters as well.

Senator MARIELLE SMITH: One of the things that we've heard through some of the evidence of fintechs and regtechs is that Australia's regulatory space needs to be better streamlined and that particularly in the area of financial services and consumer protection there's duplication. Are you able to respond to those concerns?

Mr Price: I might ask Mr Adams to talk about what we're doing to help deal with some of those concerns. I would note that Australia's regulatory framework has a number of regulators with a number of different mandates, and that means that sometimes we do focus on issues with slightly different lenses. Mr Adams, did you want to talk about how we try to streamline things through the Innovation Hub?

Mr Adams: Through the work of the Innovation Hub we've established a network of the regulators through the committee we've got, the Digital Finance Advisory Panel. Many of the regulators you've probably heard about through the evidence you've received are all members of that. We have a network of contacts. It is routine for us to refer entities to another regulator. We often say to a fintech, if they come in seeking informal assistance, 'Don't worry if you don't know which regulator to go to. We will connect you to the right regulator.' That's often been the case with AUSTRAC. We also will meet together with an entity, if that makes sense, depending on the subject matter of what they are wanting to do. The other forms of working together include attending meet-ups with the fintech sector and the regtech sector, where all of those regulators often attend, present and we take questions together. Those are all ways of trying seamlessly to bring us together to reduce some of the issues around coordination.

Mr Price: Perhaps I can give you a concrete example of how different mandates of regulators can drive difference focuses. I understand why for someone looking in they would say, 'Why are we dealing with two
regulators, not one?" I will take the example of authorised deposit-taking institutions—banks, as the community would commonly refer to them. APRA regulates banks from a financial stability point of view. They're interested in the prudential soundness of banks and making sure that depositors are looked after. ASIC, on the other hand, looks at banking regulation from the focus of, are customers being looked after and are investors adequately informed? As you can see, we have coextensive duties and mandates in respect of the regulation of banks, but they are complementary in some ways, and we try to coordinate to minimise red tape as much as we can.

Senator MARIELLE SMITH: We heard some evidence from a fintech called Tic:Toc at one of our recent hearings—and I think they've presented this information to you as well—around the benchmark figure not providing positive confirmation of what a customer's income and expenses are. They say that benchmarks such as a household expenditure measure are not an acceptable substitute for proper expense verification, which gets to this broader issue that we've been talking about in our hearings around screen scraping. Tic:Toc further asserts that an analysis of its customer base proves that the household expenditure measure undervalued actual spending by more than five times in some circumstances. Is this something you have a view on and do you believe there's a need to update Australia's responsible lending laws to better reflect these types of developments and innovations?

Mr Gough: That is one of the issues we considered when we reviewed our regulatory guidance for responsible lending last year. We've been clear in issuing a revised piece of guidance in December last year that we see a role for benchmarks, but we see that role as very much being a tool to test the plausibility of inquiries that have been made about actual expenses rather than replacing inquiries about actual expenses. I think ASIC's position on the use of benchmarks and the value of benchmarks is clear and well understood by industry.

Mr Hughes: To your second point, whether ASIC believes the legislation should be amended to address this issue—our position on Regulatory Guidance 209 was issued in only December, and our view is that the legislation does not require amendment and adequately addresses the government's policy approach. I'd also let the committee know that on 17 February I wrote to all of the parties who submitted to our public hearings and process for revising RG 209 and invited them to contact me and meet with me personally if they have any issues with the application of our guidance. I have not heard from Tic:Toc.

Senator MARIELLE SMITH: I'm short of time and trying to get through a lot of content. As to buy now, pay later—these services have come together to propose a voluntary code to govern their industry. Do you have a view as to whether this type of regulation would be a sufficient layer of regulation or do you think regulation through the National Credit Act should be considered?

Mr Hughes: I might start and then I will ask Mr Gough to augment. The question as to whether buy now, pay later operators should be subject to legislation under the act is a question for government policy. The Senate committee in 2018 that considered this issue, as I understand it, recommended that the government consider the issue for future regulation of those operators and invite ASIC to advise the government on that issue. We have issued a report. At this stage we haven't finalised our views to government and we haven't completed that report.

Senator MARIELLE SMITH: The expectation is that the report will be available—

Mr Hughes: We expect that the report will be concluded in the course of the next two to three months.

Senator MARIELLE SMITH: On the issue of interchange fees, the Australian Financial Industry Association spoke of confusion in relation to these fees. They noted that ASIC's stated position is that buy now, pay later providers must ensure merchants do not pass fees on to customers, but on the other hand they note also that the RBA is looking to allow merchants to pass on the cost of accepting different payment methods to customers. Are you able to provide any further clarity on this issue?

Mr Price: Mr Gough can correct me if I'm wrong, but I think that the regulation of interchange fees is a matter for the Reserve Bank rather than ASIC.

Mr Gough: That's right.

Senator MARIELLE SMITH: As to your product intervention power—this is one of the areas where we received evidence that the existence of this power has the capacity to stifle innovation. Do you have a response to these concerns?

Mr Price: I think it's important to remember that the product intervention power can only be used where ASIC properly forms the view that there is significant consumer detriment. If your question is whether in acting to prevent significant consumer detriment could there be an impact on regulation, I would say the answer is, yes, but it's being done to prevent significant consumer detriment.

Senator MARIELLE SMITH: It would be your view that, if the product intervention power is effectively stifling innovation, it's because that innovation has a detrimental impact to the customer?
Mr Price: I think all regulation has an impact on innovation, if you think about it holistically. Regulation generally exists because it has broader aims in terms of improving environmental outcomes, consumer outcomes and competition outcomes. I think the matter for legislators and parliament is to balance the costs that come from regulation against those benefits.

Mr Hughes: The power itself is only 11 months old and was enacted by this parliament following recommendations by a number of reviewing bodies. It has been formally utilised once in the course of that 11 months. We are, and we have been, consulting in relation to its utilisation on a couple of other instances, but we have not formed a decision. We are aware of the criticisms that you refer to. They relate to a matter which has not been decided, and we can't comment further while that matter is under decision.

Senator MARIELLE SMITH: A range of witnesses has provided evidence to the inquiry around the regulatory sandbox. I'm talking particularly here about regtechs and block chains who would like to access the sandbox or have suggested that there might be an alternative sandbox for them to access. Do you have a view on this? Do you see potential scope for regtechs and block chains to participate in something like this?

Mr Price: There might be a little bit of confusion here. Generally speaking, the products that are produced from regtech and the use of block chain as a technology are not things that are regulated by ASIC. Block chain itself, the technology, is not regulated by ASIC. You can put things around it so it might come within our regulatory remit. It is similar with regtech. regtech is about building tools to help people comply with the law. That's not something we directly regulate.

Mr Adams: The sandbox concept really is around allowing financial service providers to test their activities without necessarily needing a licence. The sandbox has been raised as a term in the context of regtech. As Commissioner Price just said, a regtech firm would not need an exemption for trialling something. What we've been open to as part of our regtech process is as follows. We have been open to be observers of trials. Through the initiatives we've held we've invited regtech firms to come and present their applications to a wider audience. We see those as ways and means of trying to illustrate the benefits. There are ideas about whether additional data sets/other forms of initiatives could be considered. They are on our list for potential candidates in the future.

CHAIR: Do you want to add something else?

Mr Price: To summarise, we definitely want to promote regtech, but typically we would not license it. Someone who is building a regtech tool would not need a licence. If they don't need a licence, then it's hard to see, when people talk of a sandbox, what they're actually talking about. There may be a bit of confusion.

Senator SCARR: I have three areas I want to ask some questions on. Firstly, as to the product intervention power, I'm alive to the fact that you might have ongoing consideration of and decision making occurring in relation to a number of matters. I don't want to delve into those particular matters. I'd like to keep it theoretical and practical to the extent I can. You've noted you're across some of the submissions made to the committee. That should assist the process. Consultation paper 313 was issued in relation to the product intervention power. What's the current status with respect to that consultation process?

Mr Price: CP 313 was about the use of our product intervention power generally, from memory. We released documents for consultation last year. The date for making submissions to that consultation has closed. We have not yet issued our final regulatory guidance in respect of that consultation, but I would expect that that will be done in the not-too-distant future. I'd be hoping that it's done by the end of this financial year, but it might just carry over.

Senator SCARR: From my perspective, I know particular actions that have been taken. Again, I don't want to delve into the particulars of those. Those actions were taken before the general regulatory guide had been issued, but I do note that the particular actions and consultation papers issued noted that the regulatory guide was in process. That was specifically noted. I acknowledge that. However, it's still the case that actions are being taken before the general guidelines are being issued. I note that, under what will happen next, consultation paper 313 proposed that stage 3, the issue of the regulatory guidance, would be in September 2019. Is there any particular cause for the delay?

Mr Hughes: I might commence our answers on this one. Thank you for the question. It is a very interesting issue for us. Because the power itself is new, we're obviously treading very cautiously. We were very mindful of the fact that we issued our first order in relation to a model of short-term credit prior to finalising the broader guidance. The reason for doing so was that we had identified, in our view—and I stress it's ASIC's view—that there was such significant consumer detriment that we needed to act quickly and we undertook a consultation process, an extensive one, prior to the making of the order in relation to the Cigno matter. For shorthand reasons, I'll refer to it as Cigno. That enabled not just the affected parties that were operating that particular short-term
credit model to make submissions but others as well. It is on the record that the only people who opposed the making of such an order were those who operated the model. We felt that that was an adequate consultation process to go through. To emphasise that affected parties have the opportunity to challenge our decisions, we are being challenged on that matter and that matter is currently before the courts. Therefore, I won't say any more about that.

Senator SCARR: I wouldn't ask you to.

Mr Hughes: Thank you. In relation to the other issues, while the broader consultation piece has been underway about the use of the power more generally, we have undertaken a similar exercise to consult specifically on the question: should we exercise the power and do we have the evidence of significant consumer harm that the statute requires? In relation to the second matter, which is the matter that people appearing before this committee have commented on, as I mentioned to Senator Smith before, no decision has been made while we're considering that consultation.

Senator SCARR: I certainly don't want to delve into the matter that's being challenged. In terms of the general process, I've had a look at the specific consultation papers that were issued. I don't want to go into the detail. I just want to keep it theoretical. I acknowledge the amount of effort and work that's actually put in the paper before it's issued. What occurred to me, though, was that, if you're a business operating in this space, and this consultation paper is issued with respect to the particular exercise of a product intervention power, that is going to be a material event with respect to your business, if that intervention is going to challenge your business model. Even though consultation has been sought, the initiation of the process itself could cause, potentially, theoretically, damage or harm to a commercial enterprise that's the subject of this process. What sort of consultation would occur or what interaction do you envisage in the future—let's keep it prospective—prior to your taking the step of actually issuing a consultation paper? Would there be interaction with players in the particular space prior to issuing the consultation paper to at least give them an opportunity perhaps to have informal discussions or some discussion or interaction with the regulator before they come to work and find that a consultation paper has been issued?

Mr Hughes: It's a difficult question to answer, because each of these instances will depend on their own circumstances. In relation to the Cigno matter, my understanding is that, prior to an order being made, there was notice given to the operator so they had time to consider the impact on their business. Of course, an order can only be made prospectively. It does not affect existing business. That's my understanding. It's a little difficult to answer given that we've only utilised the power once.

Senator SCARR: For example, some of the consultation papers involve voluminous work. Obviously it takes a lot of time to prepare the consultation paper. Obviously, the regulator, ASIC, has people working on this area, obtaining evidence, collecting evidence, formulating views. They're impressive documents. They are then issued and then, on the timing that I saw from the consultation papers, the respondent, if you like, or those who are affected have only five or six weeks to respond. There could be very good reasons in a particular case why there's a limit period given the consumer detriment issue. I understand that. Given the material impact on the business itself, particularly if it's in the listed market and it comes to the market's attention that the consultation paper has been issued and judgments are being made by potential investors, how do you balance the exercise of the power with the legitimate rights of a business to be consulted in a proportionate or reasonable manner in this space?

Mr Price: It is a balance. In the exercise of all of our powers and functions we are very cognisant of issues around natural justice. We often have extensive discussions with our chief legal officer about those issues. I concur with Mr Hughes that it is actually very difficult to map out a precise process, because the nature of the activities that may—and I stress the word 'may'—be the subject of a product intervention order will vary greatly. I think to try to build a template process, if you will, potentially may disadvantage and cause very significant detriment to a large number of consumers. While being cognisant of our obligations in respect of natural justice and while we need to follow the legislated procedure to issue these orders that parliament has passed, I think it is very difficult to set out in detail a templated process.

Mr Hughes: You've identified well the tension and the balance that we have to strike in exercising those powers. In the Cigno matter it would not have come as any surprise to the operators that we had concerns and that we were investigating. Of course, if the entity is listed, then it has its own continuous disclosure obligations that it has to meet. It has to make a decision for itself as to whether that should be disclosed to the market or not.

Mr Price: In some cases some of these businesses operate on a global scale, and international regulators have often exercised similar powers.
Senator SCARR: Thank you for the submission, which I read. You provided very useful quantitative data in relation to interaction with parties or players, if you like, in the fintech and regtech space. That's very helpful and obviously there is a lot of interaction going on, which is to ASIC's credit. Do you do any work in terms of assessing the nature of that interaction and whether or not the stakeholders are happy with the particular interaction so you can make assessments as to whether or not you have to adjust?

Mr Price: That's a really great question. I might ask Mr Adams to talk to what we've done there.

Mr Adams: We ask for feedback as well. There are a couple of ways we do this. We have set up the Digital Finance Advisory Panel, which I mentioned earlier. That has representatives from the fintech and regtech sectors on it. Every year we ask them about how we're operating under the Innovation Hub, including the provision of informal assistance. We've generally obtained positive responses about our interaction. Nevertheless, there is no doubt there will always be an expectation gap depending on what kind of entity it is. Some entities, in terms of their understanding of ASIC's provision of informal assistance, may have a different expectation about what that means. I think we've tried to explain that pretty quickly. Nevertheless, there may be some entities that go away disappointed with what we've tried to do for them.

Senator SCARR: I think you answered the question very well.

Senator WALSH: I understood from some of the submissions that the product intervention power, which you've explained very well in terms of balancing consumer protections and so on, has caused some concern. For example, a new company might spend multiple millions of dollars developing a product only to find out quite late in the piece that ASIC is not going to approve the product going to market. Do you think that is the case? There was a submission that a negative assurance approach such as that taken by AUSTRAC might be effective such that if people are about to spend lots and lots of money and you know that their product is not going to be compliant you would be obliged to tell them earlier in the piece.

Mr Price: I would probably make three comments. Firstly, I'd reiterate that the product intervention power, under legislation passed by this parliament, can only be utilised when ASIC properly forms the view that there is significant consumer detriment to retail clients. I would hope that, when people are developing their products, they would appreciate whether or not their product is causing significant consumer detriment to retail clients.

Secondly, if there were any doubts or concerns about how ASIC might view a business model, I would strongly encourage the entity to come to our Innovation Hub. That's why we've set it up. We can't provide legal advice, but we can provide the benefit of substantial regulatory experience to indicate what might be some pitfalls or questions that might arise in particular business models. As I said in my opening statement, our Innovation Hub has been operating since March 2015. I think it has been very successful in bringing together the regulator and people with fintech businesses at an early stage to try and avoid any surprises on both sides further down the track. Please engage with the Innovation Hub. That's my plea there.

Thirdly, we have actually spoken to AUSTRAC about what they do in terms of their models. They've indicated to us that they don't provide negative assurance. I think there is some degree of misunderstanding about guidance that AUSTRAC might be providing.

Mr Adams: I think negative assurance is raised in the context of regtech business models rather than fintech business models. I know there is interest in, 'Why can't you say to us that what we're doing here is not going to result in a compliant business model?' for entities to rely on. Similar to what Commissioner Price said, what we've said we're open to doing is observing and making comments, but our ability to endorse, both on a positive or a negative basis, is not something that we're prepared to do. I understand from my dealings with AUSTRAC that that is exactly the approach they take too.

Senator WALSH: Can you perhaps just explain a bit further for the benefit of the ordinary person in the street or somebody who is interested in entering this space why it is that you can't give the hard no when you're dealing with people in the Innovation Hub, for example?

Mr Price: Again, subject to the comments from my colleagues, I think there are three considerations to think about there. There is a question of, firstly, to the extent that venturing a view entails forming a legal opinion a regulator can have its view on how the law applies, but it is certainly not determinative. The body that determines legal rights or obligations is the court, not the regulator. It's the court ultimately.

Secondly, often with innovative business models they morph fairly quickly. There is always, I suppose, a risk—and I'd put it no higher than that—that a regulator provides a view on a particular set of circumstances that, as it transpires, is not the full set of circumstances and changes in some way. That can result in unfortunate surprises for both parties. That's something to be avoided. Generally speaking, I'd make an observation that it is...
less usual for government bodies to endorse business models for reasons of moral hazard, which is a concept that's often written about in economics texts and so forth. Those are three thoughts that I have.

**Mr Hughes:** The concept of product approval is something that regulators around the world have grappled with. It is something that ASIC used to grapple with in terms of companies going to the market to raise capital and being asked to approve a fundraising document. Regulators globally have moved away from that for the reasons that Mr Price just mentioned. It's right that this committee is interested, I think, in product intervention, because this marks something of a crossroads in regulatory development. We have traditionally relied on disclosure, on buyer beware and consumers educating themselves as to risks around services and products. We've also relied on reactive regulations such as prosecution or civil actions after the event has occurred. The reason product intervention is so exciting, if you like, and newsworthy—it has only been adopted in a few countries around the World, in the UK, Europe and North America—is that it enables the regulator to get ahead of the curve where it satisfies the legal test of significant consumer detriment and prevents future harm from occurring. But we absolutely recognise the concerns of the committee and some of the submitters that it requires us to make a balancing judgement.

**CHAIR:** I want to take you back to the issues of competition, but not in relation to ASIC's internal organisation or mandate. This committee has been inundated from submitters about the competitive dynamics in this market. Many have felt that competition is being restrained through various actions of especially the larger banks. I want to read some of the testimony we heard last week in Sydney from the CEO of a bank called 86 400: I would argue that the loudest voices on this, in terms of anti-screen scraping, are those who have the most to lose from it—that is, the big banks—because they don't want customers to see their data.

And further:

One of the major banks writes every day, every week, to anyone who screen scrapes and says, 'Hey, this is dangerous.'

Given that a whole bunch of the major banks are invested in screen scraping and deploy screen scraping within their own organisation—it's more commonly known as digital data capture—what is ASIC's view on what is going on here? You watch the market closely. What is happening here?

**Mr Gough:** We are watching the market very closely. I think one of the things we're looking to do is assess the level of risk. We've said, and I think regulators consistently have said to consumers: 'Be careful with your passcodes. Don't share them with other parties.' We've been watching the extent to which consumers are being asked to moderate their behaviour to take advantage of these kinds of services, and particularly looking for evidence of consumer loss. Most importantly, we have not to date—

**CHAIR:** I just want to stop you there. I guess I'm asking: why would organisations that practise a particular practice in their own organisation be saying publicly or writing letters to other people's consumers—or it could be common consumers or common clients—that say: 'Hey, this is bad'?

**Mr Price:** I think we'd be speculating as to why some of those letters might go out at best.

**CHAIR:** That's a perfectly fine answer. That's a short answer too. I want to follow up on screen scraping or digital data capture. Are you aware of a review conducted by Mr Scott Farrell into open banking? Are you aware of that?

**Mr Hughes:** Yes.

**CHAIR:** That reported in December 2017. In his report Mr Farrell stated:

Open Banking should not prohibit or endorse 'screenscraping', but should aim to make this practice redundant by facilitating a more efficient data transfer mechanism.

I like brevity. Mr Farrell has kindly submitted a two-page submission to this inquiry that also makes the point that this is the same issue that was considered by the Canadians and they have come to the same position, which effectively is that there is no case to do anything drastic while open banking is being developed. What is your view?

**Mr Gough:** We're not planning to do anything drastic either. Our revised RG 209 acknowledges that screen scraping and digital data capture can provide access to information to be utilised as part of a responsible lending assessment process. We're otherwise watching, but we haven't seen a need to act to date. It's also a live question as we review the ePayments Code.

**Mr Hughes:** We've written to the committee this afternoon to advise that we're prepared to disclose the response we gave to our last meeting whereby we've outlined the timetable for the code. Screen scraping and what we say about screen scraping is something that we will look at in the next iteration of the code consultation in July.
CHAIR: The question before the committee is: is there any consumer detriment happening now in market?

Mr Hughes: To answer your question directly, there's no evidence of which we're aware of any consumer loss from screen scraping.

CHAIR: That's very helpful. Turning to the ePayments Code, do you expect to deal with digital data capture in a more explicit way in the iteration of the ePayments Code?

Mr Hughes: I don't want to be unhelpful, having just been helpful in the last question. Let me start by saying that it depends. It depends on what the submitters to the next round of consultations say. We would like to be more helpful. I would be surprised if we move away from the warning that both we, the ACCC, the ATO and other agencies give about the risks of sharing passcodes with third parties, but we will reiterate that at the moment it is not something that the code prohibits.

CHAIR: I want to conclude my questions on the already somewhat traversed subject of buy now, pay later. You have a report imminent; is that right?

Mr Hughes: I think I indicated to the deputy chair, within the next two to three months.

CHAIR: Given that you won't tell us what's in that report, do you have a view on the code that's been put out and whether it should be made mandatory? This is the industry code that the deputy chair asked about before.

Mr Gough: We're in a slightly difficult position. We have a longstanding piece of regulatory guidance about what we consider a code needs to do in order for it to be approved by ASIC. Given that buy now, pay later sits outside of the licensing regime, we are not able to approve this code even if we were requested to do so.

CHAIR: It may be outside the licensing regime, but a lot of people have made what I would describe as activism points about the buy now, pay later sector, saying that it is so-called unregulated. Under this intervention power that you have now, nothing is effectively unregulated?

Mr Hughes: The operators are not licensed and so they are not subject to what I'd call gatekeeper thresholds. They're not licensed by any form of legislation. They are—

CHAIR: Who?

Mr Hughes: The operators. They are not licensed. Nobody issues them with a licence.

CHAIR: Some are, some aren't in terms of credit licences, but they all have to have financial service licences?

Mr Hughes: No. None of them holds a licence.

Mr Price: Some of the buy now, pay later providers offer different types of products and some may need a licence. But for strict buy now, pay later they do not, because they are not characterised as credit for the purposes of the National Consumer Credit Protection Act, and they do not require an AFSL.

Mr Hughes: They are subject to the consumer protection provisions of the ASIC Act.

CHAIR: Therefore, you could deploy the intervention power?

Mr Hughes: Yes.

CHAIR: It's not true to say that things are unregulated in this market?

Mr Hughes: I don't think we've ever made that accusation.

CHAIR: I'm not saying you did. Many accusations have been made in the course of this review.

Mr Gough: To be clear, yes, they are regulated by the consumer protection provisions in the ASIC Act. They are not regulated in the same way as other traditional credit products that have the additional credit act obligations that apply to them.

CHAIR: You've been very helpful with your testimony. I just want to summarise my understanding of our earlier suggestion about competition. My sense of that interaction we had is that you don't form a view on competition or concentration in particular markets and report that publicly or report that to a Council of Financial Regulators style of process for that to be considered by the executive, for example, do you?

Mr Price: Perhaps I could put it this way. We don't have the same role in looking at competition as the ACCC does. Where we are able to take into account competition is where it relates to the performance of our functions or the exercise of our powers. To articulate it in a legal sense, when we exercise our functions and powers, we are required under administrative law to take into account relevant considerations, disregard irrelevant considerations and so on. Competition is a relevant consideration under the legislation that parliament passed in October of 2018, but what we do not do is promote competition for competition's sake. What we look to do is assess how competition could drive markets, even efficient markets, or help protect consumers or improve the lot of consumers, and review competition from that lens. Does that help?
CHAIR: It does. My last question was totally unrelated, but I wrote it down so I wouldn't forget it. Are you planning a follow-up of the credit card review from 2018?

Mr Gough: Yes, we're certainly planning some further work and speaking to credit card issuers.

CHAIR: What does 'planning some further work' mean? Are you doing another report?

Mr Gough: We haven't decided whether that work would result in a report. We're talking to some credit card issuers about experimenting with some different approaches to how they communicate with their customers.

CHAIR: I think that would be very relevant. There is clearly a lot of public discussion about the comparisons between these buy now, pay later products and credit cards and what could be better or worse depending on what type of consumer you are.

Mr Hughes: In fairness to Mr Gough, he and his colleagues are putting together a range of business plan initiatives for the commission to consider at the moment. He may not be able to make a commitment as to whether we will or we won't, what the scope of that review will be and in what timeframe it will take place, because it's not something the commission has considered yet as part of its strategic planning process.

Senator MARIELLE SMITH: I want to come back to buy now, pay later. It's a broad question. You've seen the evidence we received in Sydney and over the last few weeks at this inquiry around buy now, pay later. Like so many things, in this inquiry there are two highly contested points of view. One is that these services just present terrible consumer risk and terrible consumer outcomes, and another line of evidence that suggests there is no evidence of this and that in many ways these services offer something better for consumers than traditional lines of credit. I appreciate there was another committee report that looked into this and there is other work being undertaken, but can you share with me any view you have or any evidence you have seen of how we might navigate these two divergent views?

Mr Gough: One of the things we've done as part of our follow-up review from report 600 is look not just at data from the buy now, pay later providers themselves, but try to examine other data that is available that gives us a different and possibly deeper insight into the consumer experience. Not necessarily causative; in some cases it might just point to correlation. These are the types of matters that we plan to report on in the report that Commissioner Hughes has suggested will be out in the next two to three months.

Senator MARIELLE SMITH: Is there nothing more that you can share with me here?

Mr Gough: I think the data from the buy now, pay later providers themselves is not that different from what we found in the first review. I guess it's a question for government or others as to whether what we did report last time is a cause for concern or not.

CHAIR: Thank you very much for your time.
COOPER, Mr Bruce, General Manager, Consumer Data Right, Australian Competition and Consumer Commission

FRANKLIN, Mr Paul, Executive General Manager, Consumer Data Right, Australian Competition and Consumer Commission

[17:29]

CHAIR: I now welcome officers from the ACCC. Thank you for your time. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Please proceed with your opening statement.

Mr Franklin: We thank the committee for the opportunity to appear today. The consumer data right is a significant economic reform that will benefit Australian consumers and businesses, encourage competition and foster growth of an innovative data industry for Australia. The consumer data right will be rolled out economy-wide on a sector-by-sector basis, commencing with banking.

At the outset, we would like to acknowledge the important collaborative effort involved in delivering that consumer data right. In particular, we would like to emphasise the substantial contribution of the initial data recipients, many of them fintechs, some of which have provided evidence to the committee during recent hearings. The willingness of those companies to be involved at their own cost and effort has supported the work of the ACCC and the major banks to build and implement the consumer data right.

I'd also like to acknowledge the substantial amount of work undertaken by each of the big four banks, particularly recently in the testingconsting of that ecosystem, which goes beyond their regulatory obligation. We'd also like to acknowledge the joint collaborative implementation effort of the Data Standards Board and the Office of the Information Commissioner, our consumer data right co-regulators, and the Treasury.

I would like to provide an update on our current state of progress. Following the rules for the consumer data right taking effect on 6 February, subsidiary requirements have now been put in place. The Office of the Australian Information Commissioner has published its privacy guidelines, and the data standards body has made version 1.2 of their standards, which are now binding. We are presently testing that the technology is robust and secure.

The consumer data right is now due to launch with simple accounts from 1 July for major banks and more complex products such as home loans and joint accounts by 1 November. Right now, as the committee would expect, we are very much focused on launching on that 1 July date. Non-major banks will follow in 2021.

Two prerequisites for the launch are that the initial group of data recipients are accredited and that the necessary technology is in place and has been tested to ensure it's robust and secure. In relation to accreditation of the data recipients, the ACCC conducted an expression of interest in September last year, for which there was strong interest, and 10 initial data recipients were selected. While two have withdrawn, we're working very closely with the remaining eight data recipients to ensure as many as possible are able to satisfy the accreditation criteria. We are currently hopeful that the majority will be able to be accredited for launch.

In relation to technology, IT builds are required by the ACCC, each of the major banks and each of the data recipients. The ACCC is building the register and accreditation platform, which is the crucial infrastructure to ensure that the data is only shared with accredited participants in a secure and safe manner. The banks and fintechs are building their own APIs to share and receive data. As lead regulator, the ACCC has overall responsibility for the delivery of a trusted and secure ecosystem, and is undertaking a significant testing and assurance program to ensure that at launch the systems operate as intended, deliver the expected functionality and that they're safe and secure.

We are on track to launch the production version of the register and accreditation platform in April, and testing of the ecosystem is progressing well. We are confident that the four major banks will be ready for launch on 1 July and that the majority of the selected data recipients will be able to launch propositions for their intended customers.

It's always been the ACCC's intention to expand and grow the CDR over time. We are actively working on reducing barriers to entry, to increase the consumer data rights uptake and success, while maintaining adequate security of the ecosystem. As part of this, we're considering appropriate measures to permit the use of intermediaries, the introduction of lower tiers of accreditation where appropriate, expanding the use of outsourced service provider rules, and disclosure of consumer data right data to non-accredited third parties where appropriate. In all of these matters the consumer data right legislation requires us to consider a number of
priorities, including the interests of consumers and promoting competition and data-driven innovation, and the privacy and confidentiality of consumer information.

Underlying our approach to development of version 1 of the rules is the confidence that the CDR ecosystem can be expanded through following a successful launch, and that it is easier to relax controls over time than to tighten them. A project of the scale and complexity of the consumer data right is always going to present challenges. We're working hard with our government colleagues and industry and we're on track to meet the 1 July and 1 November launch dates. We're happy to answer any questions the committee may have.

Senator MARIELLE SMITH: Various fintechs have called for right access to be included in the CDR. What's your view on that?

Mr Franklin: Firstly, we're aware that Scott Farrell has been commissioned to undertake a review of right access. We've met so far with Scott Farrell and have a number of conversations scheduled with him in the future. I think it is a sensible development. In the initial review that Scott Farrell did a couple of years ago, he outlined the reasons it was appropriate to do read access first. Our focus is very much on developing that ecosystem. There are some obvious benefits from right access, which will be the subject of Scott Farrell's report.

Senator MARIELLE SMITH: Do you have a view on, if it were to be included, how easy it would be to implement this? Is it going to take a similar amount of time as we are looking at with read access or will it be a shorter process because you have overcome hurdles?

Mr Franklin: Certainly we would expect that the capability that's being developed for read access is able to be extended. I'm also aware that the terms of reference for the second Farrell review asked him to consider the functionality that is being built by New Payments Platform Australia Limited. That functionality was encouraged by both the ACCC and the Reserve Bank in a review last year of NPP functionality and access. I should disclose that I'm relatively new to the ACCC. Prior to joining the ACCC in January, I worked for many years in major banks with a focus on payments. I have a strong interest in how the functionality of NPP, for example, and other payments industry schemes fit together with right access.

Senator MARIELLE SMITH: I think you covered this in your opening statement, but I just wanted to clarify it. The ACCC has called for feedback from industry participants on an accreditation model for data aggregators within the CDR. Can you confirm where you're up to with that investigation?

Mr Franklin: That's correct. We did seek feedback on the role of intermediaries. Our focus for now is very much on making sure that for 1 July we have the major banks and the initial data recipients ready. We are working towards a subsequent set of rules, which would take effect after 1 July at some date to be determined, that would be able to expand the potential opportunities for intermediaries and outsourcing service providers to operate in a number of different ways. We're also hearing from time to time from a number of interested parties about the services they either intend to provide or would like to provide. I think it's fair to say that there is strong interest and a willing market with participants who want to engage in the consumer data right. Our job is to facilitate that. Is there anything you wanted to add?

Mr Cooper: The time for submissions on that consultation has closed. At that time we'd received 40 submissions. We're working through those. Our intention is hopefully by the end of March to be in a position to make a recommendation as to how to proceed in that area.

Senator MARIELLE SMITH: I want to bring you to the question of foreign exchange pricing. We heard from a fintech called Airwallex about foreign exchange and some of their concerns around competition in the foreign exchange product market. I understand you had an inquiry into foreign exchange pricing. It's a question more broadly around whether you believe every enterprise offering this product should be required to display foreign exchange and international payment pricing transparently in their product. We've heard some of the evidence that there's a lack of competition, because others have it buried well within their product disclosure statements or other methods as opposed to transparently. Can you comment on that?

Mr Cooper: You may be aware that the ACCC has a financial services unit and that—

Senator MARIELLE SMITH: If you would prefer to take that on notice, I'm happy for you to do that. Don't feel like you have to provide a response if—

Mr Cooper: I would be happy to take that on notice.

Senator MARIELLE SMITH: Open banking is another area where we've had a lot of concern within the fintech industry about delays. Do you have a view on why these delays have occurred? Are you expecting open banking to run smoothly? From July we understand some of the issues are being resolved, but what's your perspective?
Mr Franklin: As I mentioned in the opening statement, it's not surprising; this is a large and complex project. I'm relatively new to the ACCC. From my perspective coming into the organisation, I think the revised launch date of 1 July was necessary. There is certainly an issue that the resources available to the data recipients are very much smaller than the resources available to the major banks. That can be a difficult thing. There's a lot of work to be done. Our job is to make sure that the system works reliably and securely to protect consumer data. I think the revised dates were necessary. As I said, we are confident that we're on track to meet the launch of 1 July.

Senator MARIELLE SMITH: There's a lot of suspicion in the industry as to the delays and a lot of concerns raised. I just wanted to clarify that.

CHAIR: Were you here for the testimony from ASIC?

Mr Cooper: The last part of it, yes.

CHAIR: The broad thrust of my questioning went to who is doing the work on competitive dynamics in this financial sector. It's the biggest or second biggest part of the economy. Their answer was that they don't do that. Do you do that?

Mr Franklin: The ACCC has a division that is focused on the financial sector.

CHAIR: Do you think it is a concentrated banking sector?

Mr Cooper: We are not from that area of financial services.

CHAIR: This is about open banking. You have to surely know something about it?

Mr Cooper: I'm happy to have a go at that. As part of the submission that we made recently to the Productivity Commission review, which included looking at the four pillars policy—

CHAIR: What do you think of the four pillars policy?

Mr Cooper: The ACCC didn't have a view at that time about the four pillars policy.

CHAIR: The ACCC doesn't have a view on four pillars?

Mr Cooper: The ACCC thinks there's a complicated connection between the prudential regulation and competition. We recommended that the PC look at it. We refrained at that time from making a recommendation about it.

CHAIR: I feel like everyone is restrained in this space. It's very hard to get straight answers. Do you have a view on how concentrated the banking market is in this country?

Mr Cooper: As part of our submission to the Productivity Commission, we did note that the banking markets were characterised by oligopolies and that large banks could influence products, prices and other terms and conditions in the market. Our general view about oligopolies is where there are fringe or second banks that can challenge the prices and service decisions of the major banks, and that is significantly better. That was the basis on which we made the submission. There was some oligopoly power in the market; that's right.

Mr Franklin: It's well known that the major banks have relationships with the vast majority of Australian consumers—something in the order of 80 per cent—and that the open banking and consumer data right innovation was specifically designed to ensure that the data held by the major players is able to be accessed by consumers through other companies if they choose to facilitate better competition.

CHAIR: That's why we're doing open banking. The reason I'm probing this with you is that this committee has heard quite shocking evidence from various quarters about the lengths some have gone to to protect market share. The whole consumer benefit of fintech is to provide people with more choice. If there was an oligopoly that was trying to stop the innovation, that would be bad for consumers. That's why I'm asking you about that. It sounds like your answer is that you are of the view that there is an oligopoly; that is not a particularly amazing thought. Now I'm going to ask you about conduct. At the hearings in Sydney last week the CEO of 86 400, which is a neobank, stated:

I would argue that the loudest voices on this, in terms of anti-screen scraping, are those who have the most to lose from it—that is, the big banks—because they don't want customers to see their data.

And further:

One of the major banks writes every day, every week, to anyone who screen scrapes and says, 'Hey, this is dangerous.'

Meanwhile, of course, I have a list of 23 different screen-scrapping products that the large banks use. Xinja, which is another bank, stated:

Xinja is operating in a market with an entrenched oligopoly—not only in terms of market share but also in the ownership and influence of Australia’s major banks in significant payments infrastructure such as the NPP, BPAY and EFTPOS.
I'm more interested in your response to the 86 400 allegations and inference that there is anticompetitive conduct happening in the form of major banks trying to quell competition.

Mr Franklin: We have discussed this issue with a number of other regulators.
CHAIR: At Council of Financial Regulators or somewhere else?
Mr Franklin: In more informal conversations. I think it's fair to say that screen scraping has inherent risks, even though there's no demonstrable consumer detriment being observed in the market. Our role in consumer data right is to make sure that a better, safer alternative is available. The reality in the market is that screen scraping exists and it's convenient, and many consumers choose to go against the advice that they've received from their banks not to share their passwords, largely because of the convenience that it presents. I guess we're in a difficult situation that it's not a great solution but it might be the best available.
CHAIR: I've already asked the consumer regulator, ASIC, about their view and they've given a view on it. I'm more interested in your view about the anticompetitive allegations. I'm a large bank. I use screen scraping in my own business, but I'm saying to these start-ups they shouldn't be doing it.
Mr Franklin: I guess there are potentially conflicting views. The question is: is the bank doing something they've been asked to do for many years, which is to continually remind their customers about security of their credentials, or are they overstepping a boundary?
CHAIR: What's your view on that?
Mr Cooper: We're coming from the consumer data right angle, which I know is not going to help you answer that particular question, but I will answer your question. We could talk quite well about how screen scraping is going to apply with the consumer data right—
CHAIR: How can one organisation do something in their own place and say that a smaller organisation can't? You've already got, in your own words, an oligopoly.
Mr Cooper: I would say that we at the ACCC are aware of those concerns.
CHAIR: If you don't know, you can take it on notice.
Mr Cooper: I'm aware that there have not been complaints that are currently under investigation on this issue at the ACCC.
CHAIR: There are complaints?
Mr Cooper: There aren't.
CHAIR: There are no complaints?
Mr Cooper: There are no current—
CHAIR: Has the ACCC written about this issue to any of the majors?
Mr Cooper: I would need to take that on notice. This is the conduct kind of inquiries—
CHAIR: If you could take that on notice, I'd be grateful. In terms of the consumer data right, the policy of our government is to widen CDR to other industries. What would be useful for this committee to produce for it to be widened to industries like superannuation? What would you like us to do? How could we help you do that? Take it on notice, if you like.
Mr Franklin: One of the roles of the ACCC in relation to the consumer data right is to do studies of other industries that could be open. We could take a request to consider superannuation. We're happy to do that.
CHAIR: Lastly, have you seen the submissions to this inquiry that have talked about having a separate licence for intermediaries? Illion, formerly Dun & Bradstreet, has put to the committee that there should be a separate licence for intermediaries. Is that something that you think is a good idea?
Mr Franklin: We are currently looking at the rules for intermediaries. Our view is that there is a very important role for intermediaries to play in making the consumer data right successful—that is, making it easy to get the data and host the data. There are essentially three requirements that we have of a prospective data recipient, that is, to be a fit and proper person, to hold adequate insurance. The most expensive one is around the data security, which essentially requires secure data centres and IT audits. The role that we see an intermediary plays is being able to do some of that work on behalf of the company that has a business proposition, so that it's easy for someone to operate a small business. We're looking at how that can be facilitated as easily as possible.
CHAIR: I just want to make sure I understand this right. So, you've not received any submissions or correspondence from neobanks, or new banks, complaining about the conduct of larger banks?
Mr Cooper: We're aware from media reports rather than complaints.
CHAIR: You haven't received any?
Mr Cooper: Not as far as I'm aware.
Mr Franklin: We would have to check our records.
CHAIR: Maybe you should take that on notice.
Senator WALSH: At the risk of reigniting this discussion about CDR and screen scraping, do you have any role or remit in relation to making recommendations to anyone about whether screen scraping should continue or should be allowed to continue after CDR is up and running and operating at the same level as screen scraping?
Mr Cooper: No formal role, but we are working very closely with Treasury. As Mr Franklin has indicated, we will be working closely also with Scott Farrell. Our view on it is that at present screen scraping provides data that will not initially be available through CDR, for instance, in relation to banks not initially covered or some products that won't initially be covered. It also is used to facilitate some services that would use what would be referred to as right access, and that obviously won't be in place initially. In those circumstances, to outlaw screen scraping too early, before CDR had had an opportunity to mature and pick up those additional products and banks, would be disruptive I think both to consumers and to the industry.
Senator WALSH: Do you foresee a time when CDR will be able to match the functions of screen scraping and would your view be that screen scraping should not be allowed at that point?
Mr Cooper: I think it's not for me to have a personal view on that. I'm certainly no expert on how screen scraping works. Our view is that CDR should be able to provide a service that is preferable. For instance, businesses will get data in a known format as of right in a secure way and consumers won't need to take the risk of passing on their passwords. It should be able to outcompete, would be the way I would put that.
Mr Franklin: Screen scraping will be more secure. We intend for it to be more trusted by consumers. It does need to be comprehensive and available to all banking customers. One thing we have recently consulted on with the non-major banks is the timeframe for implementation for the non-major banks, with the desire to make CDR fully available to all banking customers as soon as possible.
Senator WALSH: Finally, I know you're very focused on getting up and running in July, but do you have a view on what in one or two years time the uptake may be in terms of data recipients and what it might look like, starting with your initial eight? Do you have a sense of what it might look like in a couple of years time in terms of uptake and also do you have a sense of what the average accreditation time might be at that point?
Mr Franklin: We don't have a specific target. However, we have seen evidence of very strong demand from prospective data recipients and also a number of authorised deposit-taking institutions that are very keen to make their data available as quickly as possible. I would say by the end of 2021 we would like substantially all consumers in Australia to have their banking data available, and we would like to have a vibrant selection of data recipients available. One thing we are building as part of our technology suite is a conformance test suite to automate the testing process. We intend to make it much easier for prospective data recipients to go through the accreditation and testing process. If we can facilitate the use of outsourcing providers and intermediaries, automate the testing, then the path from application through to go-live should be shorter and much less expensive.
Senator McDONALD: I'm following with interest the level playing field or otherwise between the big four banks and the COBA institutions. What I'm trying to understand is, given there is not a level playing field between the banks and those other institutions in terms of regulation and legislation from the ACCC and ASIC, how could I have confidence that you're going to bring online regulation and legislation that's going to make it competitive for these new banks?
Mr Franklin: There's a number of factors there. The first is that, in terms of access to the consumer data right, all authorised deposit-taking institutions have an automatic right to accreditation as data recipients.
Senator McDONALD: So, new banks won't be taking deposits; they're lending?
Mr Franklin: If they're an authorised deposit-taking institution, which is a question for APRA, they will have an automatic right to be accredited as a data recipient. Any data they want to collect from the rest of the banking industry they have a right to collect.
Senator McDONALD: Let's assume that they won't be an authorised deposit taker?
Mr Franklin: Is this for non-fintechs?
Senator McDONALD: No, for fintechs.
Mr Franklin: For fintechs who are not banks, as I said earlier, there are essentially three requirements to pass. Do they have adequate insurance? Are they fit and proper persons? Can they demonstrate that they have a secure
environment for the data? Then they need to pass some practical tests that they can actually collect the data. Provided any organisation meets those requirements—and we will be publishing accreditation guidelines—any organisation is able to participate in the consumer data right.

**Mr Cooper:** It is right to say that an ADI will have an easier path through to become accredited in that they won't need to have the same level of audit of their IT security-type obligations, and that is a recognition not of treating them in a different way or a less favourable way but that there's a benefit in having as many people acting as data recipients in the ecosystem as possible, and that ADIs already have significant licensing obligations from APRA around, for instance, IT obligations. Requiring them to demonstrate that to us in addition to what they do already for having their banking licence would just be double handling and adding an additional cost to business.

**Senator McDONALD:** I appreciate that for the existing operators, but I'm trying to make the point that the way you ask different banking institutions to manage risk provides additional cost that is only able to be borne by the larger end of the market, and so the smaller end, like the COBA banks, struggle with that. I'm concerned that these new neobanks and other institutions who aren't taking deposits—who are lenders—are not going to have the same gateways that the larger institutions do. How am I going to feel confident that the regulation you're going to put in place will make it easy and reasonable for you to access the market?

**Mr Franklin:** For the COBA banks—and that extends to effectively all building societies and credit unions—that right of automatic accreditation is available. They don't need to demonstrate again to us that they meet data security standards, because they're already prudentially supervised by APRA. As for the non-ADI fintechs, our desire is to make sure that there is a ready supply of commercial intermediaries and outsourced providers who can allow them to cheaply access the consumer data right. Or if they choose to build their own data centre, I believe the cost of accreditation is somewhere in the range of $50,000 to $70,000, as has been reported to us. We understand that is a significant expense, but that's why we're looking at the role of intermediaries to help reduce that expense.

**Senator SCARR:** I like to put to witnesses what other witnesses have said about them.

**Senator MARIELLE SMITH:** It's your party trick.

**Senator SCARR:** It's my party trick, as the deputy chair said. I don't know if you've had an opportunity to read the submission from FinTech Australia?

**Mr Cooper:** I've gone through a summary of it, yes.

**Senator SCARR:** I want to quote to you from their submission and give you an opportunity to respond. On page 70 of their submission they state:

> There is an inherent risk aversion amongst Australian regulators which inhibits growth and innovation in the sector. Regulators such as the ACCC are heavily focused on consumer protection and less on their mandate for competition. The current view amongst members is that regulators are paralysed by the prospect of consumers suffering a loss. However, as one of our members put it: 'if you always need to be licenced and regulated in the same way as a bank or insurance company how are you ever going to create a new regime?'

I want to give you an opportunity to give your response to that submission.

**Mr Franklin:** I guess that's an opinion from the author. Our role is to make sure that the consumer data right is safe, to balance the objectives that the parliament has set for us, which is consumer protection/privacy. While balancing those objectives, consumer data right is fundamentally about creating a competitive environment by freeing up the data that's currently held by banks and making it available to fintechs. That's our purpose in the consumer data right, to make sure that that's effective. Our success will be measured by the extent to which there is a vibrant market for apps and services that are appealing to and trusted by consumers.

**Senator SCARR:** Mr Cooper?

**Mr Cooper:** I think our journey through this has demonstrated the difficulty of balancing competing interests the whole time and in a number of ways, and innovation verses security—and consumer protection—is absolutely one of the hardest ones to manage. It is something that we mentioned in the opening statement about the importance of starting CDR with a trusted regime. We feel that if we launch with something that isn't trusted, that is insecure and that people don't understand, it will take a very long time to recover. We want to get it right first. Unapologetically, we've been very clear with industry that we weren't including intermediaries initially for a number of reasons, including complexity and testing, and that we would expand it over time. We believe it's easier, as we've mentioned before, to expand and liberalise over time rather than trying to claw back something where we have gone too far. It is a matter of time. We're very conscious of the need to allow for more flexible operations, as FinTech Australia would clearly want.
Mr Franklin: We have a number of workshops set up with FinTech Australia in the coming weeks to hear from them directly about what we can do to help them.

Senator SCARR: That is excellent.

CHAIR: I wanted to know what sort of preparation you had done for today. Did you read the Hansard from last week in Sydney?

Mr Cooper: I read most of it. I couldn't say I read every single word but, yes.

CHAIR: Have you looked at the submissions from the banks, Xinja and 86 400?

Mr Cooper: Yes.

CHAIR: This strikes me as curious. Why would all these new neobanks spend all this time and resource coming to this inquiry, giving public testimony, writing voluminous submissions and then not engaging with you at all?

Mr Cooper: We have been engaging with them and vice versa. 86 400 is one of our testing partners. They're in meetings with us every week.

CHAIR: You said before there'd been no correspondence on these issues?

Mr Cooper: No, what I said was I was unaware of any complaint that we had received, a formal complaint, that would be investigated through our normal enforcement processes.

CHAIR: Just so we get it right, because it's important for you as well that we get the record right, you're saying that there have been no complaints made by any of these neobanks about anticompetitive behaviour in this jurisdiction?

Mr Cooper: In relation to correspondence from major banks warning their customers not to do screen scraping; that was the question.

CHAIR: Yes, I wanted to clarify this. I thought it was curious. Will you take it on notice, just to make sure?

Mr Franklin: We will verify that.

CHAIR: Will you write back to us?

Mr Cooper: Absolutely.

CHAIR: Thank you for your time.

Committee adjourned at 18:11