

24 April 2024

To: ASX Limited and ASX Settlement P/L  
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## **Staged Implementation Approach and Implementation of Release 1 (Clearing Services)**

This is a personal, but not private, submission into the consultation process aimed at the manner, timing and what benefit may lay with a staged implementation to replace the current CHES system and functions. This is not a submission by or for the organisation(s) that employ me, so its tone and content are only my own personal thoughts, informed by my research and my experience.

ASX invites us “ *to consider the broader implications for your business* ” and “ *to share your insights from every role you play in relation to CHES, .... or in any other capacity* ”. This submission comes from that broader perspective.

My submission is educated by my experience before and after the first CHES Replacement process as an inquisitive, informed and long serving financial services professional in grass roots roles across:

- share registry – interacting with the needs of domestic and international investors, share registrars/transfer agents, issuers and participants over an extended period – pre- and post- CHES implementation;
- servicing all the user groups that built and acquired systems and built processes for the original CHES project in the 1990s;
- former operational roles in the middle offices of institutional and retail stockbroking firms and non-broker participants – post CHES implementation; and
- a long apprenticeship managing every aspect of the custodian’s service proposition to their domestic and international clients – pre-CHES implementation.

There have been many innovations and improvements to process trialed and delivered during my working life in the plumbing of financial services and I am proud to say I have had a hand in the design and execution of many of those advances that are enjoyed or used by participants, investors and issuers today.

To date ASX’s attempt to deliver CHES’s replacement has offered little prospect of broad-based process improvement and rhetoric about benefits to its users and investors.

A small pocket of benefit, or risk mitigation, may have come to a subset of the CHES user community from some standardisation of practice in boutique services aimed at some corporate actions and their election and subscription processes. In relation to these boutique services, the overall demand, discovery of cost and where benefit and propensity to pay a market driven price for an optional service has never been tested.

There has been no evidence of ASX's big, persistent 'will benefit issuers and investors' claim coming true nor evidence of widespread savings from the removal of multiple points of reconciliation of participants' holdings or positions ever coming true. ASX has even removed that 'will benefit' claim from all its material for the current iteration of CHES Replacement. Benefit has previously been a key test in the argument for maintaining ASX's monopoly on clearing and settlement in Australian cash equities markets.

Some of my submissions draw attention to matters outside the published scope of the subject consultation paper.

In particular:

- the prolonged period where little or no benefit of a modernised system with claimed improved features will present for Issuers and Investors;
- the lack of a published business case and no price range for transaction fees and charges by ASX Settlement for CHES services and by ASX Ltd for other necessary services. These are important inputs for participants' decisions about developing product that responds to what CHES Replacement might deliver;
- a consultation process for the systems build for CHES users that is not informed about the operating rules and its obligations and instead mostly focused on just the data flows;
- compulsory full width systems accreditation without a clear guide of CHES users' intended business implementation and a clouded basis for participants to making choices about their optional service offering beyond today's base and terms and conditions of use by their customers;
- what other markets have experienced transitioning settlement to T+1 in 1H24 (T+0.3 in reality when you realise what part of the day settlement occurs); and
- persistent broad brush pictures to describe ASX's project and its deliverables.

### **Extended gap between Release 1 and Release 2**

There does not appear to be a significant reduction in industry risk for CHES users from the planned staging over two releases. It appears a Big Bang event of large proportion earmarked for Release 2 is still planned.

Whilst the staging will certainly mitigate ASX's delivery risk, the retention of CHES EIS and a swap out of systems ASX employs to feed CHES, may only reduce the risk ASX faces if trade print volumes blow out and take CHES to its capacity limits again.

Both the extended gap between cessation of work on CHES Replacement in 2023 and now between Release 1 and Release 2 will estrange any skilled development, analysis and testing resources that remained in businesses. These skilled resources cannot be parked and left idle, or all be redeployed in support. Resources that were redeployed after ASX closed CHES Replacement down in 2023 will progressively be lost.

Business cases and budgets for deployment and acquisition of specialist resources will need to be renegotiated.

A transition to T+1 will not result in a uniform reengagement of business and technical resources across the CHES user community. Other than scheduled time compression on transaction types that are not managed by automated processes, the Issuer and share registry community are unlikely to need to redeploy or acquire many resources with current CHES and future CHES knowledge.

Over the period the community waits for 'Release 2' ASX will continue to generate significant revenue from CHES fees and charges and buffer its redevelopment reserves from amounts paid by the issuer community but with little prospect for issuers of anything more than status quo from a 30-year-old system and process and their imitations.

During the anticipated gap between 'Release 1', which sets up the capacity to transition to T+1 settlement and 'Release 2' the likely benefits of reduced risk margins and reduced capital outlay accrue primarily to stockbrokers <sup>1</sup> and ASX.

Leading up to target Release 1 date in **Q1 2026** and the years leading up to Release 2 Issuers will pay fees and charges that have no prospect of a balancing compensation from a better centralised system or functions that improve outcomes and modernise the experience for the Issuer or their Investors. This contradicts assurances made in August 2017 that "ASX will prioritise the interests of issuers and investors .. does highlight the emphasis ASX places on meeting the needs of those for whom the market exists"<sup>2</sup>. However, benefits should accrue following Release 1 and transition to T+1 to the stockbroker and settlement participant community and ASX itself will enjoy benefits.

Release 2 has so far only a tenuous set of proposals for settlement and subregister functions that has not been tested against a build priority educated by a business case. The list of formed up settlement and subregister functions may or may not meet the cost/benefit hurdles for their intended users and have not yet proved to be attractive or suitable service additions to all its intended target audience or their counterparts.

ASX suggests implementation of Release 1 using BaNCS, 'a new, modern and scalable CHES clearing system' will precede Release 2.

If BaNCS is proved to better handle the stretch case for trade side volume in the Australian market, there may be some remote benefits from avoiding CHES end of day delays, but nothing else for Issuers.

### BaNCS implementation in a comparable market

In June 2017 Tata Consulting and TMX announced BaNCS was to be implemented to replace legacy systems deployed in its equities and derivatives clearing and settlement services in the Canadian market. To date there has been no further announcement on progress or implementation of TMX's modernisation project.

TMX's 3 website still talks of beginning the modernization process and that "*... implementation effort will require a significant coordination of activities amongst TMX-CDS, its clearing and settlement participants, service providers and regulators*". It seems TMX's modernisation project is a very long and still incomplete project nearly seven years after its announcement. TMX's modernization project has been interrupted by the Canadian equities markets transitioning to T+1 in 2024.

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<sup>1</sup> US Depository Trust & Clearing Corporation (DTCC) estimating that removing one day's exposure to risk could translate into a 41% reduction in the volatility component of CCP margin requirements. [[https://securities.cib.bnpparibas/t1-settlement-ready/#\\_ftn1](https://securities.cib.bnpparibas/t1-settlement-ready/#_ftn1)].

In context Margin represents the majority of collateral held by the ASX CCPs: during the Assessment period the CCPs collectively held around \$6 billion in margin, relative to a total of \$900 million in pooled financial resources. [<https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/assessments/2016-2017/special-topic-on-ccp-margin-arrangements.html>]

<sup>2</sup> Peter Hiom, Deputy CEO ASX (cc Council of Financial Regulators) dd 25 August 2017.

<sup>3</sup> [<https://www.cds.ca/solutions/cds-key-initiatives/post-trade-modernization>] undated but current content

TMX's settlement process appears simpler than CHES's given the small number of names in a Canadian register and Canada's book entry client settlement inside the participants' omnibus accounts. Settlement of trade across the Australian AMOs for CHES participants and their sponsored clients requires much more active involvement by a broad range of participants.

Whilst BaNCS may already be in use in varying capacity by some CHES user it is not a universally adopted system in Australia and as Canada has experienced, not a process that has been implemented quickly.

Does the lack of public news about implementation and the benefits of TMX's implementation of BaNCS this long after its public announcement in 2017 cause ASX any concern? <sup>4</sup>

### **ASX's approach to its rules consultation and impact on other laws and regulation**

It is my belief that the voluminous 'consultation' across the three tranches of draft rules for the now abandoned CHES Replacement DLT system:

- was not well considered;
- did not receive enough participant or issuer attention;
- was delivered in a very difficult to digest manner; and
- was delivered at the wrong end of that project.

The majority of ASX's technical consultation on the transaction messages that were to carry business flows between user systems and CHES's replacement system was done via the ISO20022 Technical Committee between October 2017 and April 2020 in a rules vacuum without the benefit of notice or debate on the appropriate scheduled times and also participant and CHES user warranties and obligations.

Systems developers would not have had a clear understanding of any scheduled time requirements for any of the new system or clerical functions or information gathering required to manage end-to-end processes. Business users would have had no understanding of the constraints, warranties and obligations of changed and new services available via CHES Replacement, nor the amount of manual processes or changed processes planned to be implemented in systems to be supplied to them. ASX project staff were not even inclined to discuss their expectations of the rules settings during this important systems development stage.

Business users would not and did not all have effective input into the level of automation and/or exception reporting that they would need to rely on to ensure they met scheduled times or protected themselves against failing an obligation. When systems were being designed and built business users and systems designers were not able to assess the risk and reward, nor warranties and indemnities that were to be given when using new and changed CHES services planned for CHES Replacement.

Therefore, the consultation about prospective services and enabling transaction flows and its prospective attractiveness may not have been undertaken in an informed environment.

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<sup>4</sup> <https://www.tmx.com/resource/en/928> TMX Group Limited Reports Results for Fourth Quarter of 2023 (page 20) "significant delays in the post trade modernization project resulting from the industry implementation of T+1 settlement or for other reasons, which could lead to increased implementation costs and could negatively impact our operating results;"

ASX should have (must have) internal expectations of the scheduled times, and warranties and indemnities that are given by participants when using CHES services. For the new iteration of CHES Replacement ASX must at least communicate its expectations for ASX Settlement Operating Rules the new system and business users will operate under and communicate these facts and understanding of ASX's system design at the same time external systems design and prioritisation of new CHES function is being undertaken.

The draft ASX Settlement Operating Rules that were published for some new functions planned for 'Day 1' and 'Day 2' of CHES Replacement would have created significantly different obligations for Issuers and Participants in relation to:

- scheduled times for issuers and participants to act; and
- transacting with ISO20022 messages that the Issuer had to pay at least the share registry to produce, if not also pay ASX Settlement to transmit.

Whilst the abandonment of CHES Replacement in February 2023 interrupted the planning to implement a method to take up rights issue entitlements or apply for other capital raising events the foundation discussions with providers of payment facility functions identified the plan and form ASX had hard coded to use was going to be in direct opposition to the banking industry's plans for certain payment infrastructure (i.e. RTGS).

When ASX closed the previous CHES Replacement project, it sealed external access to all the vast set of Procedure Guideline documentation.

Given the planned uplift in status of the Procedure Guidelines, to an integral part of the planned new ASX Settlement Operating Rules, it is important ASX does not obscure the relationship between whatever transaction messaging it implements and two other layers of participant's and issuer's obligations.

### **ASX's lack of openness about the Agile Epics it has facing users**

In 2017-18 ASX made representation to the major share registry providers that its CHES Replacement project had documented something like 72 Epics in its Agile workplan for CHES Replacement.

ASX has never outlined the full scope of its internal plan, evolution of those many Epics, and rarely informed CHES users of the overall staging of ASX's plans that intersected with each segment of the CHES user community. The detail of the forward plan was rarely more than what might be exposed in the coming two months. Therefore, the arranging of CHES Users resources and the resources of their systems development partners and capacity to manage the demands of CHES Replacement consultation with business-as-usual demands was a lottery.

As an example ASX eventually outlined its internal expectations about simple and complex report delivery models to the share registry user community in the last and second last meetings of twenty four ISO20022 Technical Committee meetings held.

Report delivery is the transaction flow that is the:

- most significant by number;
- most frequent and widespread – every day and every issuer; and
- most important contact

the share registry/Issuer currently experiences with CHES by a very long margin.

The reporting model ASX chose was a radical departure from the current EIS model uses. It was clear by those last two ISO20022 Technical Committee meetings that the fatigue of the project was showing through in the missing detail and examination of user needs that had gone into presenting these important elements.

High volume essential report delivery by conventional CHES EIS message will continue through Release 1 and will continue in some form into Release 2.

The ASX hypothesis that the CHES DLT and real time access to information in the ledger would be the answer to all reporting needs was never an accurate claim for the issuer/share registry experience.

The known and anticipated interactions by and with participants and users must be appropriately timetabled and balanced across the project. There must be sufficient detail about when both consultation on needs and critical examination of the proposed methods will be called upon.

### **ASX business case and fees and charges estimates for existing services and new planned services**

ASX has never published an externally available business case for the abandoned CHES Replacement project. ASX still avoids the topic of CHES Replacement and its business case.

ASX has never published an externally available and educated estimate of transaction fees for any of; the existing clearing and settlement functions, existing subregister functions or new subregister functions proposed for 'Day 1' and 'Day 2' releases for the abandoned CHES Replacement project.

ASX has not yet published any educated estimate of or basis for transaction fees for any of the existing clearing and settlement functions that will transition to Release 1, and existing subregister functions or any new subregister functions for Release 2.

Appendix A lists the arguments ASX raised in 1998 to remove the not-for-profit clause in ASX Settlement's articles.<sup>5</sup> In that submission ASX estimated CHES's redevelopment (replacement or improvement or maintenance) would be required over a seven year cycle.

CHES was built and fees and charges set off a 1998 base of 200,000<sup>6</sup> holders (double the original 1992-95 design estimates of 100,000 holders) and a range of broker to broker trade of 8,000 to 30,000 daily trades. Many of the current fees and charges are still based on the original fees and charges pricing from 1994-96.

Between 1996 and 2024 CHES has never received a significant, broadly based and broadly used update to CHES functions for participants, issuers or investors. ASX has invested in capacity and modernisation of its resources to manage the significantly higher throughput of daily trade and settlement<sup>7</sup> numbers, albeit with a serious failure in March 2020.

It could be argued that ASX has banked the higher operational revenues from an increase in holders serviced and transaction volume in 2024 of:

- CHES HINs to 3.2 million active holders;

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<sup>5</sup> <https://www.accc.gov.au/system/files/public-registers/documents/D03%2B46590.pdf> [an estimate drawn from ASX FY 2023 results]

<sup>6</sup> <https://treasury.gov.au/sites/default/files/2019-03/Document-6-13.pdf>. s 1.6 page 1

<sup>7</sup> [https://www.asx.com.au/data/securities\\_lending\\_fail\\_rate\\_daily.pdf](https://www.asx.com.au/data/securities_lending_fail_rate_daily.pdf) listing the FY accumulation of scheduled settlement activity and <https://www.asx.com.au/about/market-statistics/trading-volumes#daily> listing rolling daily trade and monthly trade volumes.

- daily trades (circa 1.3m-1.6m daily); and
- settlement transactions (circa 100,000-120,000 daily)

and has not invested any material portion of the windfall in potential redevelopment reserves it has built up over most of the 30 year life of CHES.

ASX does not seem to have passed on the efficiency dividend to CHES's users that ASX would have experienced from a significant increase in the system's scale and revenue.

ASX has only belated started to consider and implement some modest modernisation of the investor experience of CHES after pressure from issuers and share registries reasoning against some of ASX's long standing monopoly functions.

An example of ASX's approach to growing fees it charges to issuers is the largest category of active messages used by issuers, across the 2,000+ listed companies, probably in the millions each year. Holding Adjustments and Securities Transformations are used by Issuers to update the holdings of investors in the CHES subregister in response to an issue or allocation of new shares; from a dividend reinvestment plan, rights issue, share purchase plan, distribution in specie, placements and initial public offer or reflect the results of a capital reconstruction<sup>8</sup>. These transactions have experienced a fee increase (before GST) of:

- +25% between 2008 and 2010
- +20% between 2010 and 2012; and
- another +~66% between 2012 and 2022 (at the cheapest current tiered rate charged).

The Holding Adjustment or Securities Transformation transaction flow that has not changed in form or complexity since 1994 but has significantly increased in volume since 1994, has not been subject to a public justification process in relation to the significant increase in the fees charged. These essential and irreplaceable services that must be obtained from CHES appear to be priced on what the market will bear not what the Issuer must take from CHES because the rules require it.

The consequences of every Holding Adjustment or Securities Transformation on a sponsored CHES holding is the production of a relatively dumb record in a CHES Holding Statement costing the issuer \$1.10 in 2012-2022 and since July 2022, \$0.50 per posted statement. This cost of Holding Statements to issuers is charged without regard to the requirement by ASX Listing Rules or the Corporations Act<sup>9</sup> to provide a much more detailed account of the reason and value exchanged in relation to the addition or reduction of securities in the investor's account or the significant change in how investors' interact with their service providers. If ASX still uses a seven year horizon for the replenishment of its reserves to rebuild or replace its systems, ASX must have had some expectations of the annual fees and charges and transaction take up required to rebuild its reserves. After many years of forming its plan for CHES services in a modern era ASX must understand the fees and charges it will need to levy CHES users.

ASX will have built an understanding of the range in key transactions delivered into and from CHES to establish at least a range transaction number and revenue outcomes for existing functions for CHES Replacement Release 1 and Release 2 and will have enough information from CHES Holding Adjustments and Securities Transformations to establish and its target audience(s) to estimate a transaction costs range for the envisaged and possible subregister services for Release 2.

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<sup>8</sup> EIS #425 Holding Adjustment and #421 Securities Transformation

<sup>9</sup> s1017(f)

During the ISO2022 Technical Committee meetings it was documented in meeting minutes that ASX was asked to supply details of the business case for CHES Replacement and would provide indicative transaction fees and charges for CHES Replacement. The only fees disclosure made by ASX during the original CHES Replacement project was for inconsequential access fees for their gateway (the front door) for transaction message delivery, never anything for the many millions of transaction messages used and delivered each year.

### **Additional revenue sources**

ASX has created new information services <sup>10</sup>, off the back of new mandatory corporate action announcement functions imposed on Issuers by ASX Listing Rules.

These new corporate action information service sold by ASX, and reinvestment plan record would be essential for many CHES users to take, or clerically remanufacture, to make CHES Replacement function for them.

The fees ASX published for the new corporate action information services was 60% more than the closest equivalent service <sup>11</sup> previously used by CHES users. The old information services will likely prove to be redundant for active interaction with CHES Replacement for the suite of active Release 2 corporate action election services. Most market participants out of necessity will be subscribers to the current corporate action information services sold by ASX. Most market and settlement participants will out of necessity have to subscribe to the new more expensive corporate action and reinvestment plan record information services sold by ASX.

### **Wasted redevelopment reserve**

ASX has derecognised its historical capitalised costs of CHES Replacement systems and associated work and wrote off \$251.9m after it acknowledged its failed investment in CHES Replacement. This significant write off is the almost the same amount as ASX reported for its FY23 Securities and Payments revenue (\$258.4m).

In 2023 ASX provided for up to \$70.0 million to eligible stakeholders to support participation for the successful progress and completion of the CHES replacement project. There was a \$15 million rebate pool available for clearing and settlement participants to be paid in August 2023 and a development incentive pool of up to \$55 million available for stakeholders that meet the eligibility criteria. In FY23 ASX incurred \$17.8 million pre-tax (\$12.5 million after tax) for the development incentive pool and accrued \$15.0 million pre-tax (\$10.5 million after tax) for the participant rebate.

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<sup>10</sup> Inspired by most potential CHES users' requirements expressed in the 2017 round of consultation for a 'golden source of truth' for corporate actions parameters. Ther service is ASX's ISO 20022 Real Time Corporate Actions service.

<sup>11</sup> ASX's ISO 20022 Real Time Corporate Actions service  
[https://asxonline.com/content/dam/asxonline/public/documents/schedule-of-fees/asx\\_015360.pdf](https://asxonline.com/content/dam/asxonline/public/documents/schedule-of-fees/asx_015360.pdf)  
comparison 03001065 Master List & Corporate Actions EOD Internal use – Enterprise Licence (\$5,990 )to  
03001071 Master List & Corporate Actions Intraday or Real-Time Internal use – Enterprise Licence (\$9,600)

These written off and provided amounts contrast with the full cost of ASX's original dream to finished product CHES development (1992-96) of \$34.65m funded from the reserves in the Securities Industry Development Account (SIDA).<sup>12</sup>

ASX delivered the original CHES project on time and on budget and was not required to compensate systems developers or participants for a delayed implementation.

### **Release 1 Industry Dress Rehearsals**

Do the Release 1 changes for AMOs and the full end to end activities impact regulators like ASIC's market surveillance responsibilities?

If so, those external agencies are not mentioned in Industry Dress Rehearsal narrative or critical readiness activities or attestation or preparation in to-be production environments.

### **Requirements gathering and consultation process is not designed broad based participation**

ASX controls the invitations to all its engagement forums; Business Committee, Technical Subcommittee, focus groups and working groups, apart from the payment providers who invite ASX into their own established industry consultation process.

Stakeholders who are outside the invitation process do not get access to contemporary reports or the active discussion on each proposal which is debated and decided upon in camera.

Though most focus group or working group discussion is conducted both in person and concurrently via modern video conferencing no focus group or working group discussion is transcribed or recorded for the benefit of those who were 'not in the room'. ASX has sole access to any recordings of discussion and which stakeholder interests are most actively put in the decision making. Important information about why a contrary proposition was raised for discussion and not adopted (why and why not) is only available to a small insider group, despite it being of interest to the understanding of all the CHES user community. The strength and relevance of consultation responses, like that being sought now, will be all the more relevant as a result.

In a similar vein the discards from ASX's internal consideration of options to take to CHES users do not seem to be tabled.

This approach contrasts with the open-door invitations to the connectivity and implementation forums managed by ASX for the first iteration of CHES Replacement. These open meetings were open to all comers and recordings of proceedings were also promptly posted and answers to questions of interest to the CHES users put to those forums were diligently published on public ASX website pages.

This current approach contrasts with the original CHES project's open-doors discussion of the active decisions made during 1993-1996. ASX staff worked with all individual potential participants and their service providers and actively participated in regular broad based user group meetings taking a program of education and requirements debate into the community. The stockbroking community was usually convened around each systems developers' regular user group process and non-brokers were usually convened around open and active state-based meetings. It was common for broker and non-broker meetings on subjects of common interest to be jointly managed in every mainland state.

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<sup>12</sup> <sup>12</sup> <https://treasury.gov.au/sites/default/files/2019-03/Document-6-13.pdf>. Appendix 1

**In conclusion**

My submission comes from a desire for CHES users, investors and ASX to get the best outcome from the significant investment of time, energy and funds put to the task of replacing a system and process that has so far put in 30 year of service, but everyone acknowledges is due for retirement.

I hope that I get to discuss the content I have raised hereabouts with the ASX team and do receive your direct written feedback.

Yours sincerely,

Stephen Dear

Applications for Authorisation

ASX Settlement and Transfer Corporation Pty Limited, Australian Stock Exchange Limited, and Australian Payments Clearing Association Limited in relation to the Clearing House Electronic Subregister System (CHESS) arrangements

Date: 5 August 1998<sup>13 14</sup>

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**Consequence of demutualisation of ASX on CHESS tariffs**

- 5.26. The key assumptions used in setting CHESS tariffs have been based on the need to cover costs and provide for a redevelopment reserve over a **seven** year market cycle. The estimates were based on an average of **9000** broker trades per day over seven years.
- 5.27. In their submission, the applicants state that **the existing CHESS tariffs still reflect these original assumptions and that the tariffs have been kept as low as possible** given the fluctuating nature of the securities industry.
- 5.28. While ASTC may be presently accumulating funds at a greater rate than originally anticipated, the applicants argue that whether this is excessive can not be determined until the end of the seven year period given the cyclical nature of the securities industry.
- 5.29. The applicants submit **that there is nothing in the concept of ASX and ASTC having the power to operate at a profit that should cause concern either to the Commission or participants in CHESS.**
- 5.30. The applicants also argue that concerns about a conflict between ASTC's shift to a for profit operation and the continuance of its regulatory responsibilities underestimates the commercial value of **ASTC's reputation for high market integrity and effective regulation and the responsibilities imposed on ASTC by the Corporations Law.**
- 5.31. Although **some of the services offered by ASTC are forced upon CHESS users, other services are optional.** The applicants submit that ASTC should be at liberty to set the tariffs for optional services at a level that reflects what the market will bear.
- 5.32. **In terms of the tariffs for services that participants are obliged to obtain from ASTC, the applicants claim that ASTC is constrained in its ability to charge high tariffs and earn disproportionately large profits, as a result of the global competition faced by ASX.**

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<sup>13</sup> <https://www.accc.gov.au/system/files/public-registers/documents/D03%2B46590.pdf>

<sup>14</sup> <https://www5.austlii.edu.au/au/journals/AUCCJ/1998/74.pdf>