



**Parliamentary Joint Committee on Corporations and Financial Services - Oversight of ASIC,
the Takeovers Panel and the Corporations Legislation - Response to Question on Notice**

Hearing Date: 27 June 2023
Response Date: 28 July 2023
Question Reference: Page 51

Question:

Mr Hawke: Can you be specific—you might want to take this on notice—about the ways in which the original replacement program design deliberately precluded or limited competition and competitive behaviour in the market?

Response:

Cboe considers that the original replacement program design deliberately precluded or limited competition and competitive behaviour in the market in many ways, including:

1. *Attempting to capture the entire post-trade ecosystem*

CHESS Replacement involved a deliberate attempt by ASX to use its monopoly in clearing and settlement, leveraging CHESS' central role in providing post-trade services, to capture, and hold captive, the entire post-trade ecosystem.

This is evidenced in ASX's 2018 Consultation Paper, *CHESS Replacement: New Scope and Implementation Plan*, which included a dedicated chapter on new features for CHESS Replacement that opened with the following statement¹:

"This chapter sets out the changes that will be delivered in connection with the new system through approximately 50 new business requirements and the decommissioning of a handful of redundant CHESS functionality."

The effect of these new business requirements would have been a total reconfiguration of post-trade ecosystem, centralising roles and functions that were provided by competitive commercial service providers with ASX.

Most notably, this impacted share registries, with ASX proposing multiple changes that would replicate existing share registry functionalities or force share registries to provide ASX with data relating to issuers and/or shareholders. For example, share registries would have been required to provide ASX with a copy of the issuer sponsored sub-register each day, so that ASX could centrally manage securityholder reference number enquiries.

¹ Page 15, [CHESS Replacement: New Scope and Implementation Plan](#), ASX, 2018



As noted in various critical submissions to the ASX consultation and other reporting, this was widely seen as an attempt to displace registries so that ASX could perform these functions themselves.

2. *Seeking to become the 'golden source' of truth*

Related to the sub-register example above, the original replacement proposals would have resulted in the centralisation of shareholder and beneficial owner data and reference data on ASX's systems. The notion that CHES replacement would provide a 'golden source' of truth featured prominently in early ASX pitches². However, ASX consistently failed to adequately explain the purposes for which it will hold this data, the controls that would be applied to it, the costs to access it, who would be allowed to access it and for what purposes, and how ASX would ensure that access requests would be considered in a fair and transparent manner.

By centralising and controlling access to post-trade data, the ability for other parties to provide post-trade services that compete with ASX would have been entirely at ASX's discretion.

3. *Refusing to provide equal access*

A key selling point of the DLT based solution was that customers could choose to interact with CHES via nodes, rather than by traditional messaging. Nodes were promised to allow deeper integration with CHES, including allowing users to develop applications that could interact with CHES. ASX stated that this would provide *the opportunity for innovation*³.

ASX also stated that⁴ it had:

- committed, through its Code of Practice for Cash Equities Clearing and Settlement, to provide access to its clearing and settlement infrastructure on transparent and non-discriminatory terms; and
- indicated that there would be no technical limits (or barriers to entry) for other service providers wishing to connect to the CHES replacement system.

Despite this, in a meeting on 15 June 2018, ASX confirmed to Cboe (then Chi-X) that Cboe would not be allowed to have access to a node. ASX also refused to:

- provide reasons for this decision;
- explain the process by which this decision was made; or
- provide any opportunity for appeal or reconsideration of this decision.

This was a clear demonstration that the innovation and competition promised by CHES Replacement would only occur on ASX's terms.

² See for example slide 33 of [CHES Replacement Project Webinar 2](#) or section 6 of CHES Replacement: New Scope and Implementation Plan

³ Page 60, CHES Replacement: New Scope and Implementation Plan

⁴ Page 21, [Response to Consultation Feedback: CHES Replacement: New Scope and Implementation Plan](#), ASX, 2018



4. *Refusing to support interoperability*

Interoperability arrangements are links between two or more clearing houses (CCPs) that involve a cross-system execution of transactions. They allow clearing members of one CCP to centrally clear trades carried out with members of another CCP, without needing to be a member of the second CCP⁵.

As set out in CoFR policy statements⁶, interoperability arrangements between cash equity CCPs, prior to a competing CCP commencing operations, are a necessary condition to support competition. Despite this, the original CHES replacement program design did not have any regard for ensuring there could be interoperability with any future clearing facility.

As a result, had CHES Replacement been implemented as originally proposed, the lack of interoperability support would have acted as another significant barrier to competition emerging, due to the costs to the competitor and broader industry in making the necessary adjustments to support interoperability, immediately after having expended significant costs connecting to CHES.

We understand that ASX has now subsequently included interoperability in the scope for the new CHES replacement project following Cboe raising the query through the Technical Committee.

5. *Maintaining existing barriers to competition*

The original CHES Replacement program design would have also maintained existing barriers to competition, such as Cboe being required to use ASX issuer administration services for Cboe listed and quoted products. We have provided further information about the existing barriers to competition in our response to Question on Notice 6.

⁵ Page 4, [CCP Interoperability arrangements](#), European Systemic Risk Board, 2019.

⁶ Page 8, [Minimum Conditions for Safe and Effective Competition in Cash Equity Clearing in Australia](#), Council of Financial Regulators, 2017.