From:

Sent: 23 May 2018 23:35

To: Financial Stability Board (FSB), Service <fsb@fsb.org>

Subject: Response to second consultation on UPI governance

Dear GUUG members,

Please find below my responses to this consultation.

Q1. Do you agree a public-private partnership model such as the one sketched above should be adopted for the UPI Governance Arrangements?

Yes.

I have some specific comments about the Industry Representation Group.

- The Industry Representation Group should potentially include representatives of any entity that has to pay (directly or indirectly) fees to use the UPI on the basis of "no taxation without representation". This could include entities that do not fall into the categories of "reporting entities, derivatives infrastructure providers, or market data providers".

- It may also be sensible to allow for representatives to be trade associations covering the various categories rather than necessarily limiting the members to be specific entities. This is likely to increase the degree to which the group is indeed representative of the industry. If full membership of the group by trade associations is felt to be inappropriate (although it is not clear to me why this should be so), then possibly the trade associations could have observer status.

- You should probably come to a view on whether an entity that has links to a UPI Service Provider or RDL Operator should be allowed on the group. It might be particularly invidious if one such entity was on the group but others were not (assuming a competitive environment between them).

Q2. Do you believe any governance functions in Annex 4 should be performed by a different body? If so, which ones and why?

I would not have split the roles of UPI Service Provider and RDL Operator as they seem to me to be (a) significantly linked (e.g. just consider the volume of information that will be constantly flowing between them: this tends to suggest that they shouldn't be performed by separate organisation), and (b) I would be concerned that there may not be a business case for the operators of one or other of these functions if they are separated.

Q3. How should any Governance Arrangements for the UPI System be funded?

The thoughts below are based on (a) seeking to be fair in allocating costs, in the sense of allocating costs to those who gain benefits, and (b) recognising that different parts of the governance arrangements will have different quantums of cost.

- The UIROC should either be funded by the Authorities that are its members or through a levy on the fees paid to generate or use the UPIs as (presumably) charged by the UPI Service Provider(s) and maybe the RDL Operator.

- On the assumption that the costs of the Industry Representation Group are low (e.g. attendance at meetings) I would propose that its members pay their own costs. If there are any central costs, then these could be funded either by the FSB or the UIROC.

- UPI Service Providers will presumably charge for the UPIs in various ways as discussed below.

- The RDL Operator should charge for use of its data in some way.

- On the assumption that the ISB role is performed by ISO, it should be funded in the normal way for such ISO bodies. Alternatively, the UIROC or FSB could fund it.

Q4. Do you consider the Governance Arrangements described in section 3 above are appropriate and adapted to provide oversight on fees and cost recovery?

My preference would be to have multiple competing UPI Service Providers in an open access model, i.e. in principle an entity needing a UPI should have a choice of which UPI Service Provider they use. In this situation, I would hope to rely on competitive pressures to keep costs reasonable and would therefore wish to minimise the amount of oversight required. This will also have the benefit of minimising the costs of the UIROC.

However, if there are insufficient UPI Service Providers to have full competition on price, mechanisms such as those proposed may be necessary.

Q5. Please provide any specific suggestions to promote adherence to the cost and open access criteria, including suggestions relating to escalation procedures, including complaint handling bodies and processes.

(no comment)

Q6. If you believe that start-up costs should be fully recovered by a UPI Service Provider, how should they be allocated between earlier- and later-arriving subscribers? For example, over how many years should the start-up costs be amortised?

In a functioning competitive model, it should not be necessary for the Authorities to specify “rules” in this area.

Q7. If revenues for a year have exceeded or fallen short of anticipated costs for that year, should the UPI Service Provider have a mechanism for rebating or recovering the excess, either during that year or at a later time?

In a functioning competitive model, it should not be necessary for the Authorities to specify “rules” in this area.

Q8. Do you believe that a UPI Service Provider should be allowed to cross-subsidise the provision of UPI Services with revenues from other business lines, either with regard to start-up costs or on an ongoing basis? Why or why not?

On the assumption that there are competing UPI Service Providers, then cross-subsidy runs the risk of distorting the competitive environment and, in particular, creating barriers to entry especially for late entrants. Therefore, there should be mechanisms and rules in place to monitor for and disallow cross-subsidy.

Having said that, we should recognise that these mechanisms and rules should not inhibit UPI Service Providers from achieving economies of scale where these do not distort competition. Therefore I would argue that these mechanisms and rules should not go to the extent of requiring separate legal entities, separate systems or separate operations from other activities performed by the same entity. (There may of course be a need for some logical separation for privacy reasons, but that is a separate matter).

I do not see a difference between start-up and ongoing costs in this argument.

Q9. Should a UPI Service Provider be permitted to provide value-added products and services (i.e., products and services that incorporate UPI data but are not required by the UPI Technical Guidance)?

Yes, on the assumption that there is a minimum set of products and services that they have to provide as a basis.

Q10. What is your evaluation of the risks of restrictive practices limiting open access, e.g. through the bundling of UPI Services with value-added services? How and by whom could such practices be prevented or restricted?

On the assumption that the costs associated with a UPI are small compared to the costs of related services (e.g. making a report of a transaction), I do not see that there would be a problem in, for example, providing a bundled service of generating a UPI and reporting a transaction using that UPI. This seems to me to be the most likely use case where bundling might have been an issue. If my assumption is wrong, then it might be necessary to consider how bundled services should be charged for, but preventing them is likely only to lead to extra costs for the industry.

Q11. Should a UPI Service Provider that engages in other business activity be required to “ring fence” its UPI functions? If so, what sort of corporate, legal, and/or accounting mechanisms would be necessary to effect such an arrangement?

As noted above under Q8, my belief is that privacy needs are paramount here. For example, it should not be possible for a UPI Service Provider, its owner(s) or any other entity to be able to make use of information derived from the creation or use of a UPI for any other purpose without the express permission of the entity that requested the creation or use of the UPI.

However, I do not see that any other form of separation is necessary (and it is likely to add to costs) apart from sufficient accounting separation to enable the cost-plus element to be analysed to the extent necessary.

Q12. Should ownership of any intellectual property created by a UPI Service Provider be assigned to a third party in order to maintain and ensure continuation of open access in the event that the provider were to become insolvent or subject to administration or voluntarily withdraw? If so, how should that third party be structured?

It is not clear to me that any particular intellectual property is created here (as against re-used, e.g. relating to specific underliers). If it is, then any intellectual property that is embedded in or directly derived from the UPI and which is created as part of the UPI (as against re-used) should probably be assigned to the UIROC (i.e. following the GLEIF model).

I would suggest that UPI Service Providers should have "living wills" to enable "their" UPIs to continue to be used and maintained (by another UPI Service Provider) should the original UPI Service Provider no longer be in a position to do so.

Q13. Should access to a vendor-proprietary identifier in the UPI Reference Data Library be limited to only those market participants who have a corresponding license agreement with the respective vendor? If so, how should that underlying asset or index be identified for non-licensees?

Probably.

Q14. Do you believe that wherever possible elements within the Reference Data Library should use established International Data Standards?

Yes. Without this stipulation, there is an increased risk that "duplicate" UPIs will be created.

Not enforcing standardisation also tends to increase costs associated with processing as translations will have to be maintained.

I agree that this should be on a "wherever possible" basis, hopefully avoiding creating a straightjacket. The approach also needs to be mindful of the fact that industry developments sometimes occur too fast for international standards to keep up, so some deviations from international standards may be required from time to time – this will have to be managed by the governance mechanism in as coherent a way as possible.

Q15. Do you agree that, for similar reasons as were traversed in the UTI Consultation, the ISO is the most appropriate body to undertake the functions of an International Standardisation Body for the UPI?

Yes.

Q16. Do you think it desirable that all elements in the UPI Reference Data Library be subject to ISO standards?

Only to the extent feasible. There may be elements required (now or in the future) that do not have appropriate standards at the time they are required for use within a UPI.

Q17. Do you agree with the FSB's preliminary conclusions about codelists and related topics in section 5.3 above?

Industry, vendor or infrastructure codelists should only be accepted where the relevant codelists and their meanings are published at least to the Authorities receiving reports to analyse. Otherwise the Authorities will not be able to interpret the information. Such publication should be in relatively standardised forms to aid automatic ingestion of the information and at zero cost to the Authorities provided they use it only for the purpose of analysing derivatives reports.

Q18. If you believe that the UPI data can and should be used for purposes other than solely regulatory reporting, describe in detail and provide specific examples of any such additional purposes.

(no comment)

Q19. Considering the pros and cons of each of the above-mentioned models (Single UPI Service Provider model or Competitive model), what would in your view be the most suitable? Please provide detailed reasoning.

I believe that the competitive model is preferable unless there is an overwhelming problem with it. My reasoning is as follows:

- I disagree with the statement in the consultation that the Governance Arrangements "would be more complex" because, as noted in responses to previous questions, some of the proposed governance (for example rules about cost recovery and pricing) that are clearly required if there is a single provider can either be eliminated or at least considerably simplified if there is genuine competition, as the competitive pressures should have the same effect.

- There are significant risks in having a single supplier, including (a) having a single point of failure, (b) selecting the "wrong" supplier, (c) the risk of anti-competitive behaviour. As an example of point (b), consider the start of derivatives reporting in the EU, where one of the TRs struggled to manage the take-on of customers. If this had been the sole TR, the situation would have been significantly worse, both because of the lack of alternatives and also because the volumes that they would have had to handle would have been significantly higher.

- Although the derivatives world is largely "global" it may be convenient for some entities to be able to use a UPI Service Provider that, for example, speaks their language. It is not the case that all staff working on derivatives throughout the world speak fluent English.

Of course, having multiple UPI Service Providers means that certain information has to be shared between them and also increases the risks of a product getting more than one UPI Code. But I think that these issues are manageable.

I do not see a need to arbitrarily separate UPI Service Providers, e.g. by asset class. In any case, we already know that some products do not fit straightforwardly into particular asset classes. An approach like this would significantly increase the risk of a product getting more than one UPI Code if different entities classified it under different asset classes.

Q20. Do you believe that there should be a single UPI Reference Data Library if multiple UPI Service Providers coexist in the UPI System? Why or why not?

I disagree with the assertion (section 6.3) that Authorities would find it difficult to get a complete set of UPI information if there was more than one UPI Service Provider or more than one UPI RDL.

- The experience of the LEI, where the GLEIF provides a single source of information, shows that this problem is easily managed with current technology.
- In addition, new technologies such as distributed ledgers, may provide better ways of achieving the same result in the future.

As noted in response to Q2, I think that the proposed separation between UPI RDL and UPI Service Provider is inefficient and unnecessary. Rather, I would allocate all the UPI RDL functions to the UPI Service Providers. Thus, if there are multiple UPI Service Providers, there would also be multiple UPI RDLs. I note that this appears to work in the analogous case of the LEI system.

Q21. What would be the value added in having competing UPI Service Providers if there was a single entity centrally managing the UPI Reference Data Library?

See answers to Q2 and Q20. I think that there would be a value decrement through separating these roles.

Q22. How could the applicable technical principles and governance criteria mentioned in section 6.1 be followed if there were multiple UPI Service Providers?

I do not see a particular problem here, noting that in the LEI system each LOU both allocates LEIs and manages reference data and there is a coordinating and publication role performed by the GLEIF. However, as far as I know, the GLEIF database is a copy of the LOUs' information and not the master set, and hence it is not the equivalent of the UPI RDL.

Regards,

John Tanner