

Friday, 11 November 2022

Julia Williams  
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IPART

*Online Submission*

Dear Julia,

**RE: Interoperability pricing for Electronic Lodgment Network Operators**

- 1 Thank you for the opportunity to provide our view on the matters raised in Issues Paper 2 on Interoperability Pricing for Electronic Lodgment Network Operators (**Issues Paper 2**).
- 2 Sympli's position on the questions raised in Issues Paper 2 is set out below.
- 3 Fundamentally, if any interoperability fee is:
  - a) applicable too often;
  - b) set too high; or
  - c) all of the above,

competition in the eConveyancing market will be unviable for Sympli and any future potential ELNOs wishing to enter the market. This outcome is contrary to the principle of competition as outlined in the Terms of Reference.

- 4 Sympli's primary concern is the consideration of capital costs as forming part of the Default RELNO Surcharge. As outlined in detail in Sympli's submission to Issues Paper 1, capital costs represent a significant barrier to entry for new entrant ELNOs, and any fee structure which requires ELNOs to both invest in their own infrastructure and subsidise existing ELNOs simultaneously will ultimately result in adverse outcomes for the market, through either:
  - a) new entrant ELNOs being unwilling to enter the market due to the high costs of entry;
  - b) new entrant ELNOs being unable to compete on price due to higher operating costs;and/or

- c) new entrant ELNOs choosing not to invest in infrastructure, removing any opportunity for resiliency and redundancy for consumers.
- 5 Sympli's position is that the only interoperability fee that should be charged is a Default RELNO Surcharge arising in the situations described in Issues Paper 2, however should only recover operating costs as set out below and should not recover capital costs as proposed by IPART.
- 6 The success of interoperability is critical to the existence of competition in the eConveyancing market. Sympli hopes that the detail set out below assists IPART in determining an appropriate fee structure that will allow interoperability, and therefore competition, to thrive.

### **Prescribed prices vs pricing methodology (Question 1)**

- 7 As outlined in Sympli's submission to Issues Paper 1, Sympli considers that a pricing methodology approach would be more appropriate than a prescribed price. Our reasons are set out in detail in our previous submission, noting that this approach has the key advantages of:
- a) removing the burden on regulators to determine the price; and
  - b) allowing for flexibility for this price to change where costs increase or decrease, without requiring regulator review.
- 8 Prescribing prices also requires that a number of key assumptions be made about the future of the eConveyancing market, such as market share and transaction volumes. This approach was adopted in the 2019 IPART Review when calculating a transfer price for interoperability. Looking retrospectively at these assumptions, we can see that many of these assumptions have ultimately turned out to be highly inaccurate, such as the number of ELNOs in market, and the time taken to gain market share.
- 9 If pricing for interoperability is prescribed in a similar way, there is further risk that these assumptions are inaccurate and result in an inappropriate pricing framework. Using a pricing methodology based on actual ELNO costs would avoid this.

### **Responsible ELNO Fees and Default RELNO Surcharge (Questions 2-6, 12)**

- 10 Sympli's position is that the only interoperability fee should be the Default RELNO Surcharge, which recovers a share of the marginal costs an ELNO incurs from fulfilling its

role as the RELNO, where those costs are avoided by the PELNOs as a result of not having the relevant infrastructure.

- 11 Sympli does not believe that a Responsible ELNO Fee should apply to all interoperable transactions. The role of Responsible ELNO is dictated according to a hierarchy of roles as set out in Sympli's response to Issues Paper 1, and a Responsible ELNO Fee would mean that the ELNO that captures the majority market share of financial institutions will also be the ELNO receiving a Responsible ELNO Fee. This would result in the Responsible ELNO benefitting twice; once from receiving the revenue from Incoming Mortgagee participants, and again through the Responsible ELNO Fee.
- 12 Sympli agrees that a Default RELNO Surcharge should apply when an ELNO cannot fulfill its role as the designated Responsible ELNO, however we disagree that a share of the capital costs should be recovered through this fee. The Default RELNO Surcharge should recover the operating costs outlined below.

#### *Operating Costs*

- 13 Sympli's position is that the cost of completing financial settlement is the only material operating cost associated with the Responsible ELNO role that is avoided by the Participating ELNO. All ELNOs will continue to conduct various support activities with their subscribers regardless of their role in the transaction, and these costs will be borne across both Responsible and Participating ELNOs in a transaction.
- 14 In estimating the costs, a Responsible ELNO incurs from completing financial settlement on behalf of Participating ELNOs, it is important to note that Sympli and PEXA have approached financial settlement in different ways, with Sympli adopting an outsourced model and PEXA an insourced model. Sympli has provided IPART with the financial settlement costs that we currently incur on a per-transaction basis, as charged by our third-party provider.
- 15 Sympli's previous submission also considered that insurance may be considered a component of interoperability fees. However, after further investigation and discussion with the relevant insurance providers, we note that this cost will be incurred by an ELNO with respect to their own subscriber, regardless of whether or not they are acting as a Responsible ELNO for a transaction. Therefore, this cost should not be included in the calculation of any interoperability fees.
- 16 The implementation of a pricing methodology instead of prescribed pricing as referenced above would remove the need for estimation of operational financial settlement costs to

occur, and simply require IPART to define the costs that are recoverable through an interoperability fee.

### *Capital Costs*

- 17 As outlined in our previous submission, any capital cost recovery applying to a Default RELNO Surcharge will unfairly disadvantage new market entrants and further distort the market for eConveyancing services. The incumbent monopoly will rarely (if ever) be required to pay a Default RELNO Surcharge, given they have completed all required payment connections and lodgment functionality.
- 18 If IPART determines that capital costs of development financial settlement and lodgment infrastructure is appropriate, Sympli believes that this should be limited to the specific lack of infrastructure that has caused the RELNO switch. For example, if an interoperable refinance transaction in NSW required a RELNO switch because one party is a financial institution to which Sympli does not have a connection, the capital cost sharing should not include lodgment infrastructure for that transaction. This is because Sympli has the lodgment infrastructure in place to support this transaction and should not be required to pay for this infrastructure twice.
- 19 Practically, this could be addressed by having three levels of Default RELNO Surcharge:
  - a) where the default RELNO has neither lodgment nor financial settlement infrastructure for the transaction;
  - b) where the default RELNO has lodgment infrastructure but no financial settlement infrastructure for the transaction; and
  - c) where the default RELNO has financial settlement infrastructure but no lodgment infrastructure for the transaction.
- 20 Sympli acknowledges that data may not be readily available to determine this split, however we will assist wherever possible to provide inputs to IPART to determine an appropriate apportionment of capital costs, if IPART considers that this is required.
- 21 Ultimately, it is not financially viable to require new market entrants to both invest in building their own lodgment and settlement infrastructure and repay existing ELNOs for infrastructure that they have already built.
- 22 Additionally, as stated in our previous submission, a Default RELNO Surcharge will not incentivise ELNOs to build infrastructure. Payment connections with financial institutions are

necessary for ELNOs to be able to participate in all transactions, both interoperable and single-ELN. This incentive is far stronger than the ability to avoid a Default RELNO Surcharge.

- 23 Finally, Sympli reiterates our position that the requirement to develop baseline infrastructure as an ELNO is mandatory under the Model Operating Requirements (**MOR**). With the recent passage of legislation in NSW to enforce compliance with the MOR<sup>1</sup>, the Registrar is further empowered to ensure that ELNOs meet this level of infrastructure. We understand that similar national enforcement regimes are under development and will be introduced to provide all jurisdictions with comparable enforcement powers.

#### **Cost recovery for interoperability (Question 7)**

- 24 Sympli agrees that the costs to develop and maintain interoperability should be recovered through ELNO Service Fees, in accordance with the approach set out in Issues Paper 2. These categories of costs are consistent with the costs currently recovered through ELNO Service Fees and are costs that are incurred by all ELNOs.

#### **Time period for reviewing costs and recommending charges (Questions 8, 13)**

- 25 Sympli agrees that 4 years is the appropriate time frame to review efficient operating and capital costs associated with interoperability. Sympli's forecasts broadly align with this time period, and any longer periods are likely to result in highly inaccurate data.
- 26 Sympli also agrees that, given the current market structure and pace of market development, recommending charges for 2 years is appropriate. A shorter time period would likely not provide sufficient data for an accurate review, and a longer time period may result in inappropriate fees being charged by ELNOs where market conditions and/or costs have materially shifted.

#### **Proposed approach for estimating efficient costs (Question 9)**

- 27 Sympli agrees in principle with IPART's proposed approach. However, we note that there are a range of factors that should be considered that may reduce efficient operating and capital costs in the near future:

##### *Standardisation*

- 28 The industry is currently working through a process through AusPayNet to develop a level of standardisation for payment connections, with a focus on new entrant ELNOs and financial

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<sup>1</sup> [Electronic Conveyancing Enforcement Bill 2022 \(NSW\)](#)

institutions that are connecting with ELNOs for the first time. For both ELNOs and financial institutions, a large part of the cost is developing payment connections, which are not currently standardised across ELNOs or financial institutions. With standardised payment connections in place, this will reduce the capital costs required to build payment connections for a benchmark efficient ELNO. These standards are planned to be in place for mid-2023, and therefore should be considered as part of the IPART review.

#### *Efficiencies in development*

- 29 Currently, Sympli and PEXA are making changes to their core platform in order to accommodate interoperability. Conversely, new entrant ELNOS that enter the market after interoperability has been established will be able to build their platform alongside interoperability, minimising any potential re-work that may be required. This efficiency gained by minimising re-work that is incurred by the existing ELNOs will likely result in lower capital costs for a benchmark efficient ELNO.

#### *New technologies for financial settlement*

- 30 Due to the requirement to ensure delivery versus payment in financial settlement, both Sympli and PEXA have established their financial settlement capabilities utilising specific arrangements for conveyancing transactions within the Reserve Bank Information and Transfer System (RITS). With the development of new payment technologies, such as the New Payments Platform (NPP), it is possible that alternative, cheaper, financial settlement technologies may be utilised in the future to perform financial settlement. IPART should consider the impact that these technologies may have on the capital costs of a benchmark efficient ELNO.
- 31 If IPART considers that a prescribed price based on a benchmark efficient ELNO is the appropriate outcome, these factors should be taken into consideration when estimating the cost factors relevant to any interoperability fees.

#### **Estimation of margins (Question 10)**

- 32 Sympli considers that a margin should not be included when calculating any fees relating to interoperability. As described above, the role of an interoperability fee should be to recover costs that a PELNO has avoided because they did not have sufficient infrastructure to act as a RELNO for a transaction where they were allocated to perform that role. The inclusion of a margin in this calculation results in an asymmetrical outcome, where incumbent ELNOs will

be making profits on top of core infrastructure they were required to build to exist in a single-ELN environment.

- 33 If IPART considers that a margin must be included in any interoperability fee calculations, Sympli notes that mortgage banks are imperfect proxies given the debt and equity funding of the current ELNOs in market. However, we do not have a suggestion for a more correct estimation approach.

#### **Forecasting transaction volumes (Question 11)**

- 34 Sympli agrees that the most appropriate way to forecast future eConveyancing transaction volumes is to obtain data from land registry offices, and to seek information from ELNOs. We note that land registry offices hold a large amount of granular data that is critical to ensure that forecast transaction volumes are as accurate as possible, with respect to the different types of transactions and what documents are included.
- 35 We note that changing property market conditions impact on the types and volumes of transactions that take place across ELNOs. For example, the most recent PEXA Mortgage Insights Report for the September 2022 Quarter shows a steep increase in refinance transactions, and decrease in new loans, compared to the previous quarter.<sup>2</sup> This changing mix of transaction types is likely to impact the operational costs incurred by ELNOs.

#### **Indexation of Fees (Question 14)**

- 36 Sympli agrees that indexing the RELNO Fee by CPI for the second year is appropriate, given that these costs operate on a per-transaction basis and are likely to be impacted by inflation.
- 37 Conversely, if there is a capital cost component as part of the Default RELNO Surcharge, Sympli disagrees that CPI should be applied for the second year of the regulatory period. This is on the basis that for both existing ELNOs, these capital costs have largely been incurred. Further, as described above, there are several factors that may decrease capital costs into the future for existing ELNOs and for new entrant ELNOs, therefore it is unnecessary to apply CPI to any capital components.

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<sup>2</sup> PEXA Mortgage Insights Report for the September 2022 Quarter, [https://www.pexa.com.au/staticly-media/2022/11/PEXA-Mortgage-Insights-Report\\_FY\\_2022\\_September\\_V4-sm-1667512973.pdf](https://www.pexa.com.au/staticly-media/2022/11/PEXA-Mortgage-Insights-Report_FY_2022_September_V4-sm-1667512973.pdf), pp 4-6.

### **Amendments to the Model Operating Requirements (Question 15)**

38 Sympli considers that IPART has appropriately identified the relevant matters that should be implemented through amendments to the MOR. Matters regarding pricing to subscribers should be included in the relevant section on pricing policy and/or the relevant guidance notes.

### **Practical arrangements for payment of interoperable transaction fees (Question 16)**

39 It is appropriate for these practical arrangements to be negotiated through Interoperability Agreements. Draft v7.1 of the MOR provides that ELNOs must include any necessary process for the timely and effective payment of Land Registry Fees in the Interoperability Agreement; Sympli considers that the payment arrangements of any interoperable transaction fees would be agreed in a similar manner. There are also sufficient dispute resolution mechanisms in the draft MOR if ELNOs are unable to agree on an appropriate process.

### **Next steps**

40 Sympli appreciates IPART's continued efforts in conducting this review. The development of an appropriate fee structure to support interoperability is a critical factor in the success of competition in eConveyancing.

41 We look forward to providing IPART with any further information required to ensure better outcomes for financial institutions, practitioners, conveyancers and their clients.

Yours sincerely,

A black rectangular box redacting the signature of Joanne Tseng.

**Joanne Tseng**

Chief Legal and Governance Officer  
Sympli Australia Pty Ltd