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*Online Submission*

Dear Julia,

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

Thank you for the opportunity to provide our view on the matters raised in the Issues Paper on Interoperability Pricing for Electronic Lodgment Network Operators (**Issues Paper**) through this submission, and at the public hearing held on 26 July (**Public Hearing**). The outcomes of IPART's review into this issue is crucial in ensuring the success of interoperability, and therefore a competitive market for ELNOs.

Sympli's position on the questions raised in the Issues Paper is set out below.

In summary, we support direct price control through a pricing methodology which allows Responsible ELNOs to recover their transactional costs only in circumstances where they are performing a role above and beyond what they are required to do in accordance with their defined role in a transaction. This proposal is set out in further detail below.

**Costs and risks for interoperability and the role of Responsible ELNO**

- 1 For ELNOs, the costs and risks for an interoperable transaction are fundamentally the same as a single-ELN transaction. The role of the Responsible ELNO is not materially different to the role of an ELNO in a single-ELN transaction, in that they are required to perform lodgement and settlement activities for a relevant transaction.
- 2 There is some variation in costs between jurisdictions for establishing an ELNO. Firstly, Lodgment Support Service Fees (**LSS Fees**) vary per jurisdiction and are set by regulation. Secondly, the cost to build document functionality and connect to third parties varies per jurisdiction for a number of factors, such as the complexity of documents and effort required by land registry operators. However, these costs are associated with the establishment of an ELN, and not with interoperable transactions, and therefore Sympli does not believe these should be considered as costs relating to interoperability.

**Interoperability Service Fees**

- 3 Sympli strongly supports IPART's acknowledgement of competition being a key consideration in determining whether or not a fee should be paid from Participating ELNOs to

the Responsible ELNO for an interoperable transaction (**Interoperability Service Fee**). Fundamentally, Sympli is concerned that the effect of any broad-based introduction of an Interoperability Service Fee would result in outcomes that would punish new entrant ELNOs to the market, and further entrench the market position of the incumbent.

*Goal of an Interoperability Service Fee*

- 4 Sympli understands that the goal of any fee payable from a Participating ELNO to a Responsible ELNO is to ensure that the introduction of interoperability will:
  - a. support competition; and
  - b. not result in perverse outcomes and incentives for either existing or new entrant ELNOs.
- 5 Specifically, Sympli believes that any Interoperability Service Fee should only be used to compensate a Responsible ELNO for specific transactional costs incurred for performing a role above and beyond what they are required to do in the ordinary course of fulfilling a role in a transaction. This submission goes into further detail on this in paragraphs 20 to 28 below.
- 6 It is not the purpose of an Interoperability Service Fee to achieve the following:
  - a. compensate ELNOs for establishment costs required to build an ELN or interoperability; or
  - b. resolve any current or future issues relating to the pricing of ELNO fees between an ELNO and a subscriber.
- 7 These purposes would be contrary to the objective of competition.
- 8 Additionally, Sympli notes that there is a common misconception that the development of interoperability allows new entrant ELNOs to “piggy-back” off existing ELNO infrastructure. This is not the case. As explored in further detail below, ELNOs are required to develop their own capability to meet eligibility requirements under the MOR. Pathways exist for new entrants to utilise existing ELNO infrastructure, however, this is separate to interoperability.
- 9 With respect to current ELNO pricing, and the impact that interoperability may have on this pricing structure, it was stated at the Public Hearing that ELNO fees are not necessarily cost-reflective, and include cross-subsidisation across different transaction types and subscribers.<sup>1</sup> We note that the MOR Guidance Notes set out that ELNO pricing should be cost reflective, and that cross-subsidies should be minimised and would need to be justified

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<sup>1</sup> Interoperability pricing for Electronic Lodgement Network Operators, [Public Hearing Transcript](#), Tuesday 26 July 2022, pp 6, 7, 15.

as being in the public interest.<sup>2</sup> Sympli acknowledges that this may mean ELNOs should take the opportunity of shifting market structures and interoperability to review their pricing and ensure it remains appropriate in the present market environment. Competition in eConveyancing presents an opportunity not only for innovation in service and functionality, but also on pricing. ELNOs should ensure that pricing is competitive and cost-reflective, in accordance with their obligations under the MOR.

#### *Baseline Infrastructure Costs*

- 10 Sympli notes that the MOR requires ELNOs to develop a base level of functionality<sup>3</sup> and performance<sup>4</sup> in order to firstly be approved as an ELNO, and subsequently to remain eligible to act as an ELNO.
- 11 As such, ELNOs are required to build a core level of infrastructure capability in order to enter the ELNO market. Sympli has demonstrated its ability to build this level of capability, and is progressing with building out this functionality in accordance with our business plan. Additionally, interoperability design requires all ELNOs to have infrastructure to support the role of Responsible ELNO – to lodge and settle.
- 12 An Interoperability Service Fee that results in a Responsible ELNO receiving a fee for every transaction would effectively result in the Participating ELNO having to pay twice for infrastructure that they are required by regulation to build; first in their own capital costs, then subsequently through the Interoperability Service Fee.
- 13 Sympli notes there were concerns raised at the Public Hearing that ARNECC did not have the appropriate mechanisms to enforce this baseline infrastructure requirement. We understand that there are several enforcement regimes being contemplated at both the State and ARNECC level to strengthen ARNECC's ability to ensure MOR compliance from ELNOs. Sympli supports these initiatives and believes that further enforcement mechanisms support the requirement from ELNOs to provide a base level of service.

#### *Allocation of Responsible ELNO*

- 14 The determination of who will act as a Responsible ELNO in any given transaction is set according to the ELNO that the Responsible Subscriber chooses to use for that transaction. With respect to the four main types of participants in a financial transaction, the Responsible Subscriber is designated based on the following hierarchy:
  - a. Incoming Mortgagee

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<sup>2</sup> ARNECC Model Operating Requirements Guidance Notes [Version 6.1](#), 5.3(e).

<sup>3</sup> ARNECC Model Operating Requirements [Version 6.1](#), 5.2.

<sup>4</sup> ARNECC Model Operating Requirements [Version 6.1](#), Schedule 2.

- b. Purchaser
- c. Vendor
- d. Discharging Mortgagee

15 For the purposes of this submission, we will refer to the Responsible ELNO allocated according to this hierarchy as the **Allocated RELNO**.

16 We note that interoperable transactions will almost exclusively consist of financial transactions. Nationally, these financial transactions consist of the following:

<b>Transaction Type</b>	<b>Allocated RELNO</b>
Refinance	Incoming Mortgagee
Transfer (no incoming mortgagee)	Purchaser
Transfer (no discharging mortgagee)	Incoming Mortgagee
Transfer	Incoming Mortgagee

17 Assuming that this remains consistent with the shift to interoperability, this means that the ELNO representing an Incoming Mortgagee will be the Allocated RELNO for a large majority of transactions.

18 The resulting outcome is that the ELNO that captures the majority market share of financial institutions will also be the ELNO receiving an Interoperability Service Fee if one is introduced. Similar to the infrastructure example set out above, this would result in the Responsible ELNO benefitting twice; once from receiving the revenue from Incoming Mortgagee participants, and again through the Interoperability Service Fee.

19 Therefore, Sympli believes that no Interoperability Service Fee should be payable, except in the circumstances set out below.

*Payment connections and impact on the designation of the Responsible ELNO role*

20 Although there is no regulatory mandate to require payment connections are established with all financial institutions, there are clear market incentives to require ELNOs to do so. Payment connections with financial institutions are critical for ELNOs to ensure that they are able to participate in all transactions, both interoperable and single-ELN. We note that Sympli has completed payment connections to the 4 major banks, with further connections to follow.

21 Without these payment connections, ELNOs are unable to offer a comparable and compelling ELN offering. This incentive drives ELNOs to complete payment connections, regardless of any outcome relating to Interoperability Service Fees.

- 22 Beyond the designation of the Responsible ELNO as set out in the hierarchy above, Sympli notes that where an ELNO (particularly a new entrant ELNO) has not invested in payment connections to all financial institutions involved in a transaction, they will be unable to fulfill the role of the Responsible ELNO. Where this occurs, the Interoperability Model designates that the role of the Responsible ELNO should be allocated to the ELNO who represents the next highest participant on the hierarchy, subject to their ability to complete lodgment and settlement for these transactions.
- 23 Sympli acknowledges that in this situation, an Interoperability Service Fee should be payable by the Participating ELNO to the Responsible ELNO. Given the requirement for capital investment by all ELNOs in establishing an underlying infrastructure as set out above, Sympli's strong position is that any Interoperability Service Fee should be set on a marginal basis for a transaction, and should consist only of the marginal costs that an ELNO has avoided by delegating the role of Responsible ELNO that they would have otherwise been required to perform. Any other form of Interoperability Service Fee would require new entrant ELNOs to pay twice for infrastructure and result in establishing additional barriers to entry. This just further entrenches the incumbent's network – contrary to the objective of interoperability.
- 24 Sympli agrees with the analysis of the AECOM Report in identifying the transactional costs associated with performing the role of Responsible ELNO,<sup>5</sup> noting that the LSS Fee is treated separately as discussed below. The remaining costs that are then relevant are the Financial Settlement Costs, and Title Insurance. We note that there may be adjustments to how Title Insurance operates in an interoperable context, and that this may result in Title Insurance being a recoverable cost in accordance with the framework set out below. However, for the purpose of this submission, we have not gone into further detail with respect to this cost.

*Proposed approach to calculate Interoperability Service Fee*

- 25 Sympli understands transactional costs, such as Financial Settlement Costs, are likely to differ substantially between incumbent and new entrant ELNOs, given the economies of scale and efficiencies developed over the course of a maturing platform. Based on this, PEXA's marginal Financial Settlement Costs for each transaction are likely to be lower than a new entrant ELNO's, including Sympli. Sympli therefore considers that where an ELNO takes over the role of Responsible ELNO due to a failure by the Allocated RELNO to have the appropriate capability lodge or settle the transaction, the Allocated RELNO would pay the new Responsible ELNO the costs they would have otherwise incurred to perform financial settlement.

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<sup>5</sup> AECOM Public Report, [Estimating costs of electronic conveyancing services in NSW](#), 16 November 2019, p 14.

- 26 This approach aligns ELNO incentives by rewarding capital investment; where ELNOs have completed payment connections to all financial institutions, they will rarely (if ever) be required to pay this fee. It also ensures that a new entrant ELNO who is the Allocated RELNO, who may not yet have completed all relevant payment connections, is not penalised for their entry into the market, and only incurs the costs they would otherwise have incurred if the transaction involved a financial institution to which they are connected.
- 27 Practically, this resulting framework will mean that Sympli will rarely (if ever) receive an Interoperability Service Fee from PEXA.
- 28 Whilst Sympli has not found any interoperable network services with a directly analogous structure to inform how Interoperability Service Fees should be determined, there are components of some network services that support our proposed approach. For example, fees set for wastewater network access are set in a way that ensures that a new entrant can compete only where it is at least as efficient as the incumbent. The pricing model we have proposed achieves this goal by having a differentiated pricing approach based on actual transactional costs.

#### *Founding ELNO Fees*

- 29 Sympli notes that PEXA has raised the concept of an additional fee paid in situations where they act as the Responsible ELNO, with respect to the “intangible value”<sup>6</sup> they have provided with respect to eConveyancing, and also for providing a base level of service to facilitate eConveyancing transactions, referring to the concept of a “universal service obligation”<sup>7</sup>. Sympli fundamentally disagrees with this proposal.
- 30 We note that there is nothing specific to PEXA that requires them to provide a universal level of service. Under the MOR, as set out earlier, there is a requirement on all ELNOs to develop a level of infrastructure and capability to support eConveyancing transactions in each jurisdiction. This is in contrast to the concept of a universal service obligation in the telecommunications industry, where Telstra is specifically required, to the exclusion of other telecommunications operators, to provide a universal level of service nationally, with an acknowledgement that this is below cost.
- 31 PEXA have enjoyed a monopoly since their inception, and have benefitted greatly from being the first mover and the mandating of eConveyancing in most jurisdictions prior to Sympli being in market. This means that Sympli and new entrant ELNOs face the challenge of obtaining subscribers already subscribed to PEXA, and the number of switching barriers that

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<sup>6</sup> Interoperability pricing for Electronic Lodgement Network Operators, [Public Hearing Transcript](#), Tuesday 26 July 2022, p 8.

<sup>7</sup> Interoperability pricing for Electronic Lodgement Network Operators, [Public Hearing Transcript](#), Tuesday 26 July 2022, pp 6, 7, 12.

are faced by this. If PEXA were also paid a premium for being the “founding ELNO”<sup>8</sup>, it would punish new entrant ELNOs and make competition unviable.

### **Interoperability cost recovery**

- 32 Sympli agrees with IPART’s proposal that the costs of interoperability should be recovered from all subscribers through existing ELNO fees. As ELNOs, the cost of connecting with third-party integrators (such as land registries, revenue offices and now with other ELNOs) is an underlying cost that is fundamental to the establishment of an ELNO.
- 33 We note that some stakeholders have previously suggested that government funding be provided to ELNOs for developing interoperability, given that it is fundamental to competition in the eConveyancing market.<sup>9</sup> Whilst Sympli does not think that this approach is necessary, we would certainly welcome any funding support that may be deemed to be appropriate.

### **LSS Fees**

- 34 Sympli notes that an LSS Fee is first incurred by the ELNO on which the workspace is created. At the point in time that the workspace is created, that ELNO is initially the Allocated RELNO. The Allocated RELNO may then change throughout the life of the workspace, as other participants enter the workspace, according to the hierarchy set out above. Once an LSS Fee has been incurred and information is received, this information is then shared with all other workspace participants through the interoperability APIs.
- 35 We further note that there are also circumstances in which further calls to the land registry are required in a workspace, which incur further LSS Fees. These LSS Fees may be incurred through any ELNO in the workspace, and again, this information is subsequently shared with all other workspace participants.
- 36 Sympli’s position is that the aggregate cost of the LSS Fees incurred in a transaction should be divided evenly depending on the number of roles represented by an ELNO in the transaction. For example, in a four party transfer, with PEXA and Sympli representing two subscribers each, LSS Fees would be split 50%-50%. If PEXA only represented one subscriber, they would be responsible for 25% of the LSS Fees.
- 37 The specific cost recovery mechanism as to how these costs are recovered can be agreed through the interoperability agreement between ELNOs. For example, ELNOs may agree to calculate net LSS Fees on a monthly basis and invoice each other accordingly. Sympli does

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<sup>8</sup> Interoperability pricing for Electronic Lodgement Network Operators, [Public Hearing Transcript](#), Tuesday 26 July 2022, pp 7-8.

<sup>9</sup> Technology Council of Australia, [Submission for the Electronic Conveyancing \(Adoption of National Law\) Amendment Bill 2022](#), March 2022.

not see this to be a contentious issue, and one that can be resolved in the negotiation framework for the interoperability agreement set out in draft v7.1 of the MOR.

### **Negotiate-arbitrate model**

- 38 As discussed in the Public Hearing, Symplici's position is that the current market power enjoyed by the incumbent does not support a negotiate-arbitrate model. There is clear incentive for the incumbent to delay interoperability through a protracted negotiation process, and therefore train their dominant market share in the interim.
- 39 PEXA has consistently held that a barrier to their commitment to interoperability is the uncertainty relating to the economic model, and that it could result in unsustainable outcomes. Symplici is concerned that this approach would cause PEXA to withdraw from industry development in the future, as they have done in the past, whilst the negotiation and arbitration process is underway, leading to further delays to interoperability and competition in the market.
- 40 Additionally, there is an inherent asymmetry of information, given the data that PEXA has obtained since its inception. Even with information disclosure requirements (which we do not believe to be appropriate in this setting), it is unlikely that Symplici would be in a position to assess whether proposed charges are reasonable.

### **Direct price control**

- 41 In order to implement the pricing approach outlined earlier, direct price control through a pricing methodology would be appropriate. This approach has several advantages:
- a. It removes the burden on regulators to determine the price, instead placing the responsibility on an ELNO to calculate their price according to their transactional costs;
  - b. It allows for flexibility where these costs increase or decrease without having to engage regulators to review a price; and
  - c. It rewards investment in infrastructure and provides incentive for ELNOs to drive down their costs, which can be reflected in lower prices to subscribers.
- 42 This approach would involve outlining the specific marginal costs that a Responsible ELNO (other than an Allocated RELNO) can charge a Participating ELNO, with ELNOs having the responsibility of publishing this fee as part of the Pricing Schedule required under the MOR. It is likely that there will need to be an amendment to the MOR made to allow ARNECC to require ELNOs to justify their pricing, and a process for adjusting the price where marginal costs may change.



**Next steps**

Sympli again thanks IPART for its diligence in conducting this review, and looks forward to providing IPART with further information as needed. An efficient Interoperability Service Fee is crucial to allowing competition in eConveyancing to thrive, leading to better outcomes for financial institutions, practitioners, conveyancers and their clients.

Yours sincerely,

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