

Wednesday, 29 March 2023

Courtney Barry  
Principal Analyst  
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By email: [REDACTED]

Dear Courtney,

**RE: Draft Report on Interoperability pricing for Electronic Lodgment Network Operators**

- 1 Thank you for the opportunity to provide a submission on IPART's Draft Report on Interoperability pricing for Electronic Lodgment Network Operators (**Draft Report**).
- 2 As Sympli has noted in our previous submissions, and is set out in the terms of reference for the Review of interoperability pricing for Electronic Lodgment Network Operators (the **Review**), it is critical that the outcome of the Review supports and enables competition in the eConveyancing market. Whilst Sympli has provided further detailed commentary below on the specific outcomes of the Draft Report, Sympli considers that the draft decisions support the successful implementation of interoperability as a reform that brings effective competition to the market.
- 3 Sympli notes that in the workshop held on 21 March 2023, some stakeholders questioned IPART's use of existing methodologies that have been established in earlier reviews conducted by IPART in the eConveyancing market. Sympli considers that the existing methodologies are sound, noting that IPART has refreshed their analysis with updated data provided by ELNOs and other sources. The use of these methodologies enables IPART to efficiently complete the Review, and the review period set out in the Draft Report allows these outcomes to be updated with future data points. This submission will go into further detail below on some of these specific methodologies, however in summary Sympli supports the methodologies used by IPART in the Review and is confident that these processes are suitable for IPART to reach its decision to be set out in the final report.

**RELNO Fee**

- 4 As noted in previous submissions, Sympli strongly maintains that a RELNO Fee should not be payable for each transaction, as is considered in the Draft Report.

- 5 However, if IPART considers that a RELNO Fee for every transaction should be applied, it is appropriate that this should only be calculated by reference to the operational costs incurred by the RELNO and avoided by the PELNO, and calculated on a per-subscriber basis (as reflected in the Draft Report).
- 6 Further, it is appropriate that the only component that should be considered in the RELNO Fee is the support cost component.
- 7 Sympli does not consider that there is sufficient information to determine that there will be a material cost avoided by the PELNO but incurred by the RELNO relating to error handling and transactional support. Without a fully defined set of interoperable data standards, it is unclear the extent to which error handling will be handled through automated responses, and therefore to determine the resource intensity required to perform the RELNO role as compared to the PELNO role. However, if IPART assumes that this material cost will exist, the use of Revenue NSW costs as a proxy to estimate support costs is appropriate.
- 8 Sympli acknowledges that there may be some support issues that arise that would not be captured by this proxy (for example, where issues arise with land registry connections), however, also notes that it is likely that refinance transactions will form a large part of interoperability transactions (particularly in the initial 2-year review period). These are typically far less complex transactions that are unlikely to encounter substantial issues, which would reduce the support cost in many transactions. As such, Sympli is comfortable with IPART's estimation of support costs.

### **Default RELNO Surcharge**

- 9 Sympli agrees that a Default RELNO Surcharge is appropriate where a designated RELNO is unable to fulfil its role due to having insufficient infrastructure in place. However, Sympli disagrees that the recouping of capital costs is an appropriate way to calculate this fee, as we have outlined in earlier submissions.
- 10 Sympli disagrees that the Default RELNO Surcharge acts as an incentive for ELNOs to invest in infrastructure to develop the capability to perform the RELNO role. There are several other factors that acts as stronger incentives, as set out below:

#### *Model Operating Requirements (MOR)*

- 11 Sympli notes the following definition of ELNO System as set out in the MOR:
- 12 ***“ELNO System*** means the ELNO's systems for facilitating the preparation of Electronic Workspace Documents relevant to a Conveyancing Transaction, the financial settlement of a

*Conveyancing Transaction (if any) and the presentation for Lodgment of electronic Registry Instruments or other electronic Documents at a Land Registry, and includes the ELN.”*

- 13 Additionally, MOR 10.8 requires that “no electronic Registry Instrument or other electronic Document forming part of a Settlement Transaction is presented to the Registrar for Lodgment unless the financial settlement is irrevocable.” Therefore, ELNOs cannot offer single-ELN transfer capability without infrastructure for financial settlement, either internally or outsourced.
- 14 This is critical, given that the vast majority of available revenue in eConveyancing is captured through transfers. For example, in 1H23, over 76% of PEXA Exchange’s revenue came from transfers.<sup>1</sup> It is clear that transfer capability is a key requirement to be a sustainable ELNO, and given the requirements set out in the MOR, this is not possible without financial settlement capability. This incentive is far greater than the existence of a Default RELNO Surcharge, and it is therefore incorrect to assume that a Default RELNO Surcharge will change the behaviour of existing ELNOs. Further, given the likelihood of interoperability to be a phased roll-out, current market forces are unlikely to enable a new entrant to build a sustainable ELN that utilises interoperability infrastructure to avoid building its own capabilities within the review period. The data collected during the review period will assist IPART in determining whether ELNOs are avoiding investment in infrastructure as a result of interoperability.

#### *AusPayNet Industry Payments Code (the **Code**)*

- 15 Whilst the Code remains under development, there are likely to be a number of requirements set out in the Code (which ELNOs must comply with under the ECNL and MOR) that require ELNOs to have certain functionality in order to participate in the eConveyancing market. This will supplement the incentives and requirements set out in the MOR as set out above.

#### *Calculation of Default RELNO Surcharge*

- 16 Whilst Sympli disagrees with the Default RELNO Surcharge being based on capital expenditure, in the event that IPART considers it to be appropriate, the methodology used by IPART to calculate the capital components, including their conclusions drawn from AECOM advice and the calculation of the WACC, is appropriate.

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<sup>1</sup> <https://investors.pexa.com.au/DownloadFile.axd?file=/Report/ComNews/20230223/02635005.pdf> p 21.

- 17 Sympli considers that it is appropriate for IPART to apply its standard WACC approach to calculate the WACC. Further, Sympli considers that an equity beta of 1 is a reasonable assumption for an immature market such as eConveyancing.
- 18 Sympli also considers that AECOM have appropriately calculated the capital expenditure of a benchmark efficient ELNO, considering the limitation that “There would be opportunities for each ELNO to add value by adding functionality that differentiates it in the market, but as these functions are not required to deliver the core ELNO service we have not included an allowance for the development of additional features or functionality beyond that required for the core service.”<sup>2</sup> Whilst both PEXA and Sympli had additional features and functionality that has contributed to a significantly higher capital expenditure, Sympli considers that the figures that IPART has used in their calculation is appropriate.
- 19 Sympli further notes that the capital component has increased from \$4m to \$4.8m, with the amount included in the Default RELNO Surcharge (\$2.90) is materially higher than what was included in an illustrative transfer price in 2019 (\$1.12<sup>3</sup>). This is reflective of AECOM updating its figures to reflect the current market environment.
- 20 Sympli disagrees with the inclusion of web hosting in the calculation of a Default RELNO Surcharge. We acknowledge the inclusion of lodgment and settlement infrastructure in the calculation of capital expenditure, noting that a RELNO switch may occur as a result of insufficient capability in these areas. However, it is not currently contemplated that having sufficient bandwidth or web hosting capability would cause a RELNO switch; instead, insufficient capacity may cause an ELNO to breach its service level obligations under the MOR.

#### *Impact of Interoperability Costs on ELNO Service Fees*

- 21 During the Workshop, some stakeholders expressed sentiments that if the costs to build interoperability are not recoverable through Interoperability Fees, ELNO Service Fees will need to increase in order to cover costs. In Sympli’s view, this is incorrect and should not impact IPART’s decision on Interoperability Fees.
- 22 It is clear that competition in the eConveyancing market will place downward pressure on prices. Not only is this evident given the price to consumers offered by Sympli in comparison to PEXA, but this has also occurred in other industries. For example, when Chi-X entered the stock exchange market, ASX reduced their transaction fees significantly.<sup>4</sup> In addition,

<sup>2</sup> <https://www.ipart.nsw.gov.au/sites/default/files/documents/consultant-report-aecom-estimating-costs-of-electronic-conveyancing-services-in-nsw-november-2019.pdf> p 10.

<sup>3</sup> <https://www.ipart.nsw.gov.au/sites/default/files/documents/final-report-review-of-pricing-framework-for-electronic-conveyancing-services-in-nsw-november-2019.pdf> Table 4.2.

<sup>4</sup> [https://www.asx.com.au/documents/investor-relations/20100603\\_asx\\_fees\\_and\\_rebates.pdf](https://www.asx.com.au/documents/investor-relations/20100603_asx_fees_and_rebates.pdf).

Telstra's average prices fell dramatically between June 1995 and June 1999 as a result of the introduction of competition to the market, despite the introduction of interoperability in the industry.<sup>5</sup>

- 23 Independent of ELNO Service Fees, competition is likely to delivery efficiency benefits to subscribers in the market. For many subscribers, improvements in efficiency (for example, spending less time on the ELN platform) are at least as important as efficiency in costs when choosing an ELN. Time-saving measures through better ELN products will invariably result in cost-saving for end users of the platform, regardless of ELNO Service Fees.

### **Review Period**

- 24 Given the limited data available to IPART in terms of market adoption of interoperability, transaction types and volumes, and costs incurred by a RELNO in an interoperable conveyancing transaction, Sympli agrees that a review period of 2 years is appropriate. However, to ensure that appropriate data is collected in order to conduct a valuable review of pricing, Sympli considers that this 2-year period should commence once Day 2 interoperability is launched in at least one jurisdiction.

### **Conclusion**

- 25 Sympli thanks IPART for its diligent efforts in conducting this Review. As stated in our previous submissions, Sympli considers that, in principle:
- A. There should be no RELNO Fee; and
  - B. The Default RELNO Surcharge should be calculated by reference to operating costs on a per-transaction basis.
- 26 However, Sympli acknowledges that IPART, in its Draft Report, has determined that a RELNO Fee is appropriate, and that the Default RELNO Surcharge should be calculated by reference to capital expenditure. Whilst noting our comments on these aspects above, Sympli considers that IPART's proposed pricing will enable competition through interoperability to succeed, with a defined period in which to conduct a further review with sufficient data captured from the launch of interoperability.

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<sup>5</sup> <https://www.accc.gov.au/system/files/Infrastructure%20industries%20-%20telecommunications.pdf> p 15.

Yours sincerely,



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