

Friday, 3 June 2022

Julia Williams
Principal Analyst
IPART

Online Submission

Dear Julia,

RE: Interoperability pricing for ELNOs

Thank you for the opportunity to provide feedback on the draft Terms of Reference (**ToR**) for IPART's recently-announced review of pricing and the regulatory framework for interoperable eConveyancing transactions between ELNOs.

IPART's 2019 review found that, although competition is emerging, the lack of interoperability between Electronic Lodgment Network Operators (**ELNOs**) is constraining the development of a competitive eConveyancing market.

More than two years has passed since that review, and despite all jurisdictions supporting interoperability, impediments to interoperability continue to hamstring new market entrants and prevent effective competition in the eConveyancing market. That market has developed in ways that were not fully anticipated and, as the Australian Competition and Consumer Commission (**ACCC**) has identified, this has led to the incumbent having a near-monopoly in the provision of eConveyancing services. This issue has been exacerbated by further competition issues relating to customer switching, digital certificates and lack of access to residual document specifications. The timely resolution of the issue of interoperability pricing is critical to allow for a path forward to effective competition in the face of these barriers.

IPART's review into interoperability pricing for ELNOs represents an opportunity to shape the foundations of this emerging market, and develop contemporary regulatory settings to support competition and enhanced outcomes for consumers.

Feedback on ToR

Broadly, Sympli considers the 'tasks' defined in the draft ToR are well-defined and appropriate, particularly dealing with the fundamental question of whether any interoperability fee should be applicable in the first instance. However, in investigating and making recommendations in relation to the pricing and regulation of interoperability, the

draft ToR should include, and make a primary focus, the promotion of competition as an explicit objective and factor to be considered.

Currently, the draft ToR lacks specific acknowledgement of the fundamental role of interoperability in supporting true competition within eConveyancing. In undertaking its assessment and making recommendations, and in accordance with IPART's ability to investigate matters of competition under section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992*, the ToR should require IPART to expressly consider whether and how fees are likely to support the realisation of a workably competitive market, and the ability for new entrant ELNOs such as Sympli to provide a compelling service offering. We also note that IPART considers the issue of competition when setting prices in other markets, such as the setting of water prices in rural and regional NSW. Given that the purpose of interoperability is to support and promote competition, and the economic benefits of competition on the eConveyancing market, any interoperability pricing framework needs to support this goal.

Although timeframes are referenced in the context of considering additional ELNOs potentially entering the market over the next one to five years, IPART should explicitly consider the cost of delays in establishing appropriate competition-enhancing interoperability arrangements. We consider that rapid interventions may be needed, otherwise the incumbent's market advantage will become even more entrenched and difficult for any new entrant, including Sympli, to challenge. To some degree this could be addressed by the phasing of future reforms.

The draft ToR could address and accommodate these considerations by including the following additional factors to consider (to be included in addition to and above the existing considerations set out in the ToR):

- a) *Impacts on and risks to the development of a workably competitive market for electronic conveyancing services; and*
- b) *Phasing, timing and sequencing of pricing and regulatory arrangements to support (a).*

Additionally, and to ensure that stakeholders provide clear and consistent information to support IPART's review, there would be merit in IPART clarifying some of the particular terminology in the draft ToR. This includes:

- what 'commercial flexibility requirements' for ELNOs is referring to (current draft ToR clause (a))

- how 'costs' are defined, and specifically whether this includes previously incurred (sunk) costs (current draft ToR (b)), and
- what market 'symmetry' is referring to (current draft ToR (c)).

Next Steps

Sympli looks forward to further continuing dialogue with IPART on the above points, and providing further information and substantive submission as part of IPART's review. We would welcome a further discussion on these points at a time suitable to IPART.

Yours sincerely,



Joanne Tseng

Chief Legal and Governance Officer

