



Interoperability pricing for Electronic
Lodgement Network Operators

Public Hearing Transcript

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Tribunal Members

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The Independent Pricing and Regulatory Tribunal

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Acknowledgment of Country

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders, past, present, and emerging.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

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1 ELNO interoperability costs and fees

1.1 Introduction

Mr Strate: Good morning everyone let's make a start. Welcome to today's public hearing, it's great to see so many of you with us today. My name's Ben Strate, I'm the General Counsel at the Independent Pricing and Regulatory Tribunal (IPART). I'll be managing today's public hearing, so I'll start with just a few housekeeping notes.

First of all, if you could please keep your microphone muted when you're not speaking, just to avoid feedback and background noise but on the other hand please keep your camera on if you can, it just helps us all to connect with one another. Please as well, if you could show your name and if you're here on behalf of an organisation your organisation and your Zoom name. If you need some help to do that there are instructions in the chat box.

To make sure we have an accurate record of the discussions today the hearing is being recorded to YouTube. It won't be made publicly available until a few days after the event. We'll also be transcribing the public hearing, so we'll have a copy of the transcript and a link to the YouTube video on our website in a few days and with this being a public hearing the media and others present today are free to publish and refer to what's said during the event.

Now in a moment, IPART Tribunal Member, Deborah Cope will provide a welcome and an introduction to our review. Before that, here's a very brief overview of today's agenda. We'll have 2 discussions today, the first we'll be focused on ELNOs' interoperability costs and fees and at around 12 pm, we'll start the second discussion which will be on form of price regulation. I'll now hand over to Deborah for a welcome and introduction.

1.2 Welcome

Ms Cope: Thank you Ben. As Ben said, my name's Deborah Cope I'm a member of the Independent Pricing and Regulatory Tribunal. With me today is the Chair of the Tribunal, Carmel Donnelly and we're assisted by members of the IPART Secretariat Jennifer Vincent, Julia Williams, Courtney Barry, Julie Soai and Fiona Towers.

IPART acknowledges the traditional owners of the land and waters on which we are all joining this public hearing today. We pay our respects to Elders, past, present, and emerging and we acknowledge the ongoing connection that Aboriginal people have to the land and recognise Aboriginal people as its original custodians. We would also like to acknowledge any Aboriginal or Torres Strait Island people here today.

I'd like to open by saying that we very much welcome and value your input to this review and appreciate your time in participating in the hearing today. It's great to have so many people and we're looking forward to a productive and interesting public hearing.

For some background, the Australian Registrars National Electronic Conveyancing Council, ARNECC for short, has established a model of interoperable e-Conveyancing transactions. The model involves a Responsible ELNO and Participating ELNOs completing a transaction by directly communicating with each other. There are no other interoperability models being developed or pursued.

The NSW Parliament has enacted the changes to the Electronic Conveyancing National Law, which will apply in all States and Territories in Australia. These changes support the implementation of interoperability between ELNOs.

At ARNECC's request, the NSW Minister for Customer Service and Digital has asked IPART to investigate price regulation for interoperable transactions.

We will conduct our review in 2 stages. In the first stage, we've published our first Issues Paper as the start of that first stage and we discuss: whether a responsible ELNO should charge fees to Participating ELNOs, how such fees should be passed on to subscribers, and different forms of regulation for interoperability service fees. We will consider feedback from stakeholders on the issues in today's public hearing and in written submissions before we communicate back our position.

In the second stage, we'll publish another Issues Paper and that will explore in the detail of our preferred form of regulation. We'll then publish a Draft Report and a Final Report. During our review we welcome feedback from stakeholders on both the Issues Papers and the Draft Report. Feedback on the first Issues Paper is due by the 12th of August.

In this public hearing, we want to hear stakeholder's views on the questions we are answering in the first stage of our review: should Responsible ELNOs charge fees to Participating ELNOs in interoperable transactions? Should these fees be recovered from subscribers? What form of regulation would be most appropriate for interoperability service fees?

We also invite stakeholders to raise any issues that we've missed so far in our investigation of price regulation for interoperable transactions, and to ask us questions. Thank you for joining the public hearing. I'll now hand back to Ben to introduce the first discussion.

ELNO interoperability costs and fees

Mr Strate: Thank you Deborah. Our first discussion is focused on ELNOs' interoperability costs and fees. The aims of this discussion are summarised on this slide. First, to identify the categories of cost incurred by ELNOs, particularly costs associated with interoperable transactions. We also aim to identify who incurs them, and whether there's any differences in costs between jurisdictions. Next, we're aiming to establish whether there should be interoperability fees and how interoperability costs should be recovered. And finally, we'll consider in this discussion how to share the Lodgement Support Service fee in an interoperable transaction.

We'll begin this first discussion with a presentation from IPART, that'll be followed by presentations from PEXA and Sympli. We'll then open the discussion to all attendees. We'll also take questions at the end of the presentations, but if you've got questions that come up during the presentations then please feel free to type them in the chat box as we go. I'd now like to invite Julia Williams from the IPART Secretariat to present on ELNO interoperability costs and fees.

1.3 IPART presentation

Ms Williams: Thank you Ben. There are 2 ELNOs approved to operate in most Australian jurisdictions - PEXA and Sympli. PEXA currently has over 99% of the eConveyancing market. Each ELNO currently incurs costs and risks in establishing and maintaining its Electronic Lodgement Network and performing single-ELNO transactions for subscribers.

With interoperability, ELNOs will have additional costs and risks in establishing and maintaining interoperability with other networks. They will also have different costs and risks performing interoperable transactions, depending on whether they are the Responsible ELNO or a Participating ELNO.

We looked at the costs of establishing and maintaining an Electronic Lodgement Network in our 2019 review of eConveyancing services. We identified that they included the cost of software development, IT assets, labour costs, operating costs, and pass-through costs.

In our Issues Paper for this review, we have proposed that ELNOs should recover these costs directly from their own subscribers. We're interested in stakeholder views on this proposal.

The additional costs of establishing and maintaining interoperability with other Electronic Lodgement Networks will include additional capital and operating costs, costs arising from a potential increase in customer support, and insurance for any risks arising from interoperability.

In our Issues Paper, we have proposed that ELNOs should also recover these costs directly from their own subscribers. We're interested in stakeholder views on this proposal.

In an interoperable transaction, the Responsible ELNO will have different costs and risks from Participating ELNOs. We've identified that these costs and risks may include lodgement gap insurance, lodgement fees paid to the relevant Land Registry, the cost of authority calls for the Land Registry and Revenue Office, managing 'lodgement case level' errors, financial settlement fees, and the cost of post-settlement communications with Participating ELNOs, banks and the Land Registry.

We propose that a fee charged by a Responsible ELNO to Participating ELNOs in an interoperable transaction should recover these costs. We're interested in stakeholder views on whether we've missed any categories of cost that a Responsible ELNO should recover from Participating ELNOs and whether there are any differences in costs across jurisdictions.

We've also identified that the Lodgement Support Service fee, charged by a Land Registry to open the digital workspace, may be incurred by a Participating ELNO or the Responsible ELNO and we have proposed that it should be shared equally between all parties in an interoperable transaction.

In the current market, one ELNO - PEXA is more likely to be the Responsible ELNO, incurring additional costs and risks in an interoperable transaction than Participating ELNOs. If each ELNO is equally likely to be the Responsible ELNO, these costs would net to zero and there would be no need for a fee to recover the additional costs. However, as this is not likely in the initial stages of interoperability, we think it would be reasonable for the Responsible ELNO to recover its additional costs.

The Issues Paper outlines our preliminary view that subscribers should pay no more for an interoperable transaction than a single-ELNO transaction. This may mean that subscriber fees are not directly cost-reflective. However, we think this is worthwhile to achieve the long-term benefits of competition. We're interested in stakeholder views on whether there are any other approaches to recovering the cost of interoperability from subscribers that we should consider.

We've also acknowledged in the Issues Paper that introducing a Responsible ELNO fee may involve reallocating ELNO costs, with implications for subscriber fees generally. ELNOs may need to rebalance their prices for different types of transactions as they may no longer be cost-reflective.

In our 2019 review of ELNOs' pricing regulatory framework, we recommended a fresh review after 2 years to take account of market development and any changes to costs.

1.4 PEXA presentation

Mr Strate: Thanks, Julia, for that presentation. I'd now like to invite Simon Smith, the Chief Operating Officer from PEXA to comment on the topic of ELNO interoperability costs and fees.

Mr Smith: Thank you very much Ben and thank you to you and the Tribunal for the opportunity to speak today and we would first just like to acknowledge IPART's continuing contribution to development of eConveyancing, which is as we know a great Australian success story. And we've always gone up the most that what we're here to do is to deliver secure reliable and affordable transactions in what is now Australia's largest asset class, and also to support the many social benefits of home ownership.

And as far as the service we're duty-bound and committed to a fully digital complete eConveyancing system for all transaction types in all jurisdictions and we know that this system is already generating large and ongoing savings and efficiencies for governments, lenders, practitioners, and their customers. So, at the outset we'd like to commend 2 key points that you've already covered a little bit, and which were in your paper.

First is the recognition of the ongoing asymmetries between Responsible and Participating ELNOs both due to the structural differences in their roles and the differences in market share which are large now, but which we expect to remain dynamic.

And we also wanted to just commend secondly your observation that establishing and maintaining interoperability does increase the total costs of the whole system, at least in the short run, and that these costs should be shared across the ecosystem, on the basis that the benefits are intended to be systemic. So, there's 2 things that we we'd like to acknowledge.

But before going further I'd like to suggest 2 additional fundamental features of the market that we would ask IPART to take into account. Firstly, the majority of ELNOs costs are fixed and these costs have to be funded every year if we want a sustainable service. The marginal costs of additional transactions are typically much lower and play a smaller role.

And the second additional point is the small size of the Australian ELNO market. It is small even by comparison with adjacent property service markets, and total revenues are capped and closely tied to property transaction volumes, which of course vary significantly over the property cycle.

So, we have a highly specialised niche industry with a capped, but not floored, total available revenue and a high proportion of fixed costs and we suggest that IPART's deliberations must take these 2 factors into account in order to create the framework for a sustainable essential service.

So, as you've requested in this first section, we'll be covering our views on how IPART might think about the fees charged by the Responsible to Participating ELNOs and we believe this is a much more complex issue than the material we will cover in the second section. So, I do have a few points to make now, but less to say in the second session.

The Issues Paper is primarily focused on marginal costs and how to measure them and before commenting on the composition of these relevant costs, we suggest it is vital to also consider the market implications of dynamics of potential fee regimes, and the incentives these will create for efficient spending on fixed costs.

So, whatever the fees are, they have the potential to have highly significant impacts on future services. If the fees are too low, that is they don't allow for the recovery of fixed costs of creating and sustaining back-end settlement lodgement capability, the new entrants will not be incentivised to build these capabilities. The price signals would encourage them to simply pursue the role of Participating ELNO. In effect, this would create a wholesale retail market structure but the retailers that is participating ELNOs would get free or heavily subsidised access to the wholesale layout, and not have to pay for its fixed costs. Such an approach we believe would be out of step with access price models commonly utilised in other industries. It would also create substantial risks of system under investment, stalled innovation and quite possibly a less secure and reliable ecosystem over time.

Conversely, if the fees are set too high, this may result in perverse incentives for all ELNOs to become preoccupied with being the Responsible ELNO. Perversely, this could result in ELNOs initially over investing in back-end infrastructure, at the expense of under-investing in the delivery of high-quality funding services for practitioners.

And also potentially later, ELNOs may under-invest overall because they compete away the disproportionately high revenue earned by the Responsible ELNO, by seeking to become the preferred provider of financial institutions.

And the reason this matters is because under the rules of the ARNECC model the choice of Responsible ELNO is only available to the purchaser's lender, or the purchaser's practitioner, if there's no finance in the transaction. So, practitioners representing buyers, or their lenders are not able to choose the Responsible ELNO, so they cannot directly influence service quality.

And thirdly, so even if the fees are neither too high, nor too low, like Goldilocks porridge, there is a significant risk to address, and this is, and you've signalled this, that if the inter-ELNO fees are not closely tied to the cost of different services, you know that is some transaction fees are under-priced compared to costs and some are over, then new entrant ELNOs are likely to cherry pick only the profitable transactions and jurisdictions. Leading to under investment in the back-end system for some transaction types and in smaller jurisdictions.

Now to date, fees have been the same across Australia with the implicit cross subsidies for smaller jurisdictions and the large number of low-volume transactions. So, that's why these fees matter. It's not really a cost recovery exercise. So, in the light of these dynamics we'd like to respond to the questions in your Issues Paper about the kinds of costs incurred by the Responsible ELNOs that should be reflected in the fees charged to Participating ELNOs and we've identified 4 categories to consider.

Firstly, the marginal cost of executing the Responsible ELNO role. Secondly, the costs of establishing and maintaining interoperability, third the costs of the universal service obligation to provide electronic capability for all transaction types across all jurisdictions, and fourthly the costs of creating the conveyancing ecosystem itself.

So, firstly on marginal costs we largely agree with IPART's discussion of these costs of executing the Responsible ELNO role and we'll provide more detailed information on the nature and quantum of these costs in our written submission.

And we also largely agree with IPART's discussion of the additional costs of establishing and maintaining interoperability, and it's been your preliminary view that these should be passed on to subscribers. Again, we'll provide more detailed feedback on the nature of these costs in our written submission. At this point however, we would like to signal that these costs may be much larger than was estimated when AECOM did work for IPART back in 2019.

Of course, the views at that time were based on the prevailing underdeveloped conceptual model only, and we now know much more. We've had lived experience over the last 3 years and what we've found is that building interoperable capability has proven much more complex than envisaged.

Just for example, I think early on it was thought we'd only need 10 and certainly less than 20 APIs to exchange data, to enable a transaction to occur. We now know that more than 85 will be required. It was first thought those APIs could be developed in a 3-month sprint, we're now 18 months down the track and they're still not yet complete. And also wanted to mention that the additional cost of interoperability will include a new levy to be applied by ARNECC to fund a new government company being established to be the data steward for looking after data after that responsibility is transferred from PEXA to this new government-owned company.

So that's the first 2 costs that we believe need to be considered and the third relates to the universal service obligation. So, under the ARNECC model all ELNOs are required over time, importantly, to replicate full capabilities for all transactions in all jurisdictions. However, this would take even the most well-funded and energetic ELNO many years to achieve, and there are importantly no systematic consequences should the ELNO take an extremely long time to develop those capabilities.

About 95% of all volumes come from the top 12 transaction types, while there are hundreds of variations of other low-volume transactions required to address every transaction type offered under the legislation in each jurisdiction. And it's only this small number of high-volume transactions and in the large states that generate the returns needed to pay for the whole system.

It's of critical importance to the nation that all transactions are provided electronically. Registries, banks, and practitioners want and expect full electronic service and they all operate much more efficiently and more safely than if they would, if they needed to continue part of their work on paper.

So, clearly if IPART does not address these cost dynamics, the scene will be set for new entrants to cherry pick the profitable transactions to delay or ignore the rest and to survive incumbents will have no choice but to respond by allowing unprofitable services to degrade through under investment.

Now interoperability exposes these cross subsidies potentially leading to a market structure in which no ELNO could afford to build and support the infrastructure required for low volume transaction types, or to operate in jurisdictions when the transaction volume is low.

Consequently, our strong view is that IPART needs to consider how inter-ELNO fees and or other fee arrangements can create incentives for ongoing investment in building and maintaining comprehensive electronic conveyancing capabilities.

Now some options for that could be changing subscriber fees to be more cost reflective, which potentially implies large increases in prices for small jurisdictions or low volume transactions. Or perhaps a specific universal surplus obligation payments to one or more ELNOs in return for building and maintaining functionality that is not otherwise economic. Or perhaps inter-ELNO fees that enable recovery of some or all of the fixed costs of building the functionality, which would reduce the incentives for cherry picking.

A key point here is that IPART must surely include some recovery of fixed costs in the fee from Participant to Responsible ELNO. And I would note that if IPART considers the mechanisms for recovering costs of universal service obligations are beyond the scope of this inquiry, we would ask that IPART should explicitly state this lest its work being misinterpreted as a conclusion that such recovery is inappropriate.

The fourth and final category of cost that is required to establish and maintain interoperability is the cost to create the eConveyancing ecosystem itself. This cost should be included in a category of inter-ELNO service fee in our view, that only applies when the founding ELNO is PEXA. That is, when PEXA is the Responsible ELNO.

This cost to create the eConveyancing system includes the one-time costs of being the first mover, building, pioneering the processes and relationships across institutions and jurisdictions needed to transform paper conveyancing.

These costs include establishing know-how about how conveyancing works in each jurisdiction and the different rules and approaches that are required and how to enable eConveyancing including development of new methods of financial settlement. It also includes designing and building the IT systems and connections as you acknowledged and gaining the cooperation of key stakeholders. This looking backwards we can assume that this was a sure thing, and that it was easy whereas neither is true.

Financial institutions, State Revenue Officers, Registry Operators, the Reserve Bank, the ATO etc, all needed to be enlisted to work in very different ways, as did the thousands of conveyancing practitioners across the country, without whose profound changes in work would have meant that eConveyancing could not have been viable.

No one participant could experience the benefits of going digital without the others also doing and making the transition. And PEXA has borne extensive costs to enable this transition for more than a decade.

The intangible value of PEXA's contribution to transforming paper conveyancing was crystallised and recognised publicly when State Government's sold their interests in PEXA in 2018 to the private sector, at that time valuing PEXA at \$1.6 billion and the majority of this value would have been attributed by the market to the first mover role of transforming paper conveyancing and the subsequent expectation of a right of return on invested capital.

At the time of sale, it was known conveyancing was potentially competitive, but importantly it is only now that interoperability is being mandated and interoperability essentially allows new entrants to avoid all those costs of market establishment, by plugging into the network of participants and technology that was funded by PEXA's initial investors.

So, PEXA has spent over 10 years creating the eConveyancing ecosystem and the job is not yet done and yet more investment is still needed to extend into the smaller jurisdictions. But PEXA's investment in the system is not yet cash positive. The total revenues PEXA has collected are still less than its total expenditure to date, even before accounting for any return on capital invested, and particularly considering the very considerable risk of setting up the system.

So, taking a long-term view, IPART should recognise the costs PEXA incurred in creating the eConveyancing ecosystem itself. Failing to do so would undermine private sector confidence in future investment in eConveyancing, which as discussed is essential. And more broadly it would impact confidence on future private investment in assets sold by governments.

In 2019 your inquiry found that eConveyancing pricing was sufficient relative to the costs of constructing an efficient ELNO. However, this conclusion may not remain valid giving some material changes in context.

IPART examined a regime then without interoperability in which PEXA would have had a substantial market share for many years to recover the costs of transforming paper conveyancing. In an interoperable regime, PEXA's market share is likely to fall more quickly than IPART had previously assumed, and PEXA therefore will have less time to recover its upfront costs.

Consequently, IPART should consider mechanisms for PEXA to recover the one-off costs of setting up the eConveyancing system in an interoperable world. One such mechanism would be a class of fee from Participating to Responsible ELNOs that only applies if the founding ELNO is the Responsible ELNO. In some ways this would be the equivalent to an access fee for use of established infrastructure in other industries.

I'd also like to ask that if IPART considers that mechanisms for recovery of the one-off costs for creating eConveyancing is considered beyond scope of the inquiry, we would ask you to explicitly state this to be so, lest any absence, lest it being misinterpreted as concluding that such recovery is inappropriate. We will look forward very much to elaborating on the points that I've made in our written submission and participating in the discussion thank you very much for the opportunity.

1.5 Sympli presentation

Mr Strate: Thank you Simon. Just a reminder that if you do have questions as you go, we will get to those in a few moments so please enter them into the chat box. But first I'll invite Joanne Tseng the Chief Legal and Governance Officer from Sympli to comment on the topic of ELNO interoperability costs and fees.

Ms Tseng: Thanks Ben. Good morning, all. We really appreciate the opportunity to address this forum today. We do have a few slides that should hopefully help keep me on track in terms of what we're planning to talk about today. So, if I could just get you to go to the next slide thank you.

What we thought would be useful clarifying to you all this morning is just a number of points on the interoperability model and certainly sort of factors that affect its design which we consider relevant to the determination of interoperability fees.

As sort of both Julia and also Simon has mentioned, you know the roles in terms of the Responsible ELNO and the Participating ELNOs are quite important in the context of an interoperability transaction.

What we did want to emphasise is that the model is being designed on the basis that all ELNOs are required to support the role of the Responsible ELNO and that is sort of particularly the activities to lodge and settle a transaction.

In terms of the allocation of the Responsible ELNO, it is sort of as has been previously mentioned, designated by the Responsible Subscriber, and as Simon said earlier, you know that is generally the incoming mortgagee or the purchaser's representative.

But again, just want to emphasise that the allocations sort of given that it is sort of either sort of one of those 2 parties, doesn't sort of allows for new entrants like Sympli to have sort of a reasonable chance of becoming a Responsible ELNO, just given it is needed in the context of that designation.

Now in that sense, in terms of an ELNOs requirement to establish their infrastructure. The model operating requirements certainly require sort of both Sympli and PEXA to provide a network that lodges with the respective Land Registry that is subject to any necessary financial settlement, that relates to that transaction.

We wanted to sort of confirm to this broader audience that you know Sympli as part of these establishment requirements, we have established our own infrastructure through the connections to sort of all of the Land Registries that currently provide eConveyancing, Revenue Officers and certainly the payment connections to the 4 major banks, with our intention with more payment connections to follow.

As a result, conflating sort of ELNO establishment costs, with sort of the interoperability model we think is somewhat not intended to be in the scope of interoperability, and that interoperability should not and is not a way for ELNOs to avoid these establishment costs.

We still need infrastructure to support our own subscribers, however outside of interoperability there certainly are pathways that exist that obviously haven't been utilised to date, but they certainly exist for new entrants to come to commercial agreements with existing ELNOs and or their infrastructure providers to support their network.

And one example of this is providing that payments infrastructure to new entrants. This is an important market distinction, but certainly we consider this separate to interoperability and certainly should not be sort of conflated in the interoperability fee discussion.

May just move to the next slide please. Again, in the context of interoperability fees, you know fundamentally interoperability is designed to bring the benefits of competition to the market. I mean as such the fees need to support the achievement of that objective and you know that's certainly been reinforced by IPART in the terms of reference.

We consider that to require ELNOs to further subsidise other ELNOs for the capital and or fixed costs of infrastructure will really force an outcome that creates further barriers of entry to new entrants, including penalising Sympli in this case. This is sort of particularly relevant in the context as the market has evolved in ELNOs being subsidised for their establishment cost through government initiatives.

As such an interoperability fee we consider should only be payable where a designated response for ELNOs, so that ELNO that has been designated by the relevant incoming mortgagee and or the purchaser's representative, should only be payable in that context where that designated ELNO cannot perform the role of Responsible ELNO, due to insufficient functionality and or system outage etc.

Under this scenario we consider that the interoperability fee should essentially be premised on those costs that that designated Responsible ELNO has otherwise avoided by that Responsible ELNO role being performed by another ELNO. And this relates back to some of the slides, one of the slides that Julia mentioned, in terms of the example being sort of settlement transaction fees and or lodgement fees etc.

And just to the next slide please which will just be a quick summary. So, just to recap we can see that the interoperability fee structure really must be established to support the objective of competition. A fee structure that subsidises the capital, land, or fixed costs of established ELNOs will just result in creating additional barriers of entry and as such the interoperability fee should only be appropriate for circumstances where a designated Responsible ELNO cannot perform that role.

That is all we were we were wanting to cover just in this first section. There are some points there in relation to the regulated pricing approach, but we'll look forward to addressing those in the next the next session. Thanks Ben.

1.6 Stakeholder discussion

Mr Strate: Thank you Joanne. I'd now like to open discussion to the floor. I encourage everyone to share your views and ask questions. If you have a question or comment, please type it into the or let us know in the chat box in Zoom or you can raise your hand using that function in zoom as well and we'll keep an eye out for that. So when you ask your question, please as well say your name and the organisation that you're from. We have a question first of all from Philip.

Mr Argy: Yeah, thanks Ben. Philip Argy from Law Council. I'm just trying to get a handle on what seems to be a difference of opinion between Sympli and PEXA as to what's a capital cost of provisioning an interoperability ready infrastructure and what's an outgoing. In other words, an actual expense, like a fee that's uniquely incurred by the Responsible ELNO. And it seems to me there's a little bit of a meshing of the two and they need to be clearly separated.

I mean as was indicated in your introductory material, the capital costs of provisioning to be the Responsible ELNO if called upon is common to all ELNOs because they're all required to provision that, so that should, under your tentative suggestion be recovered from subscribers as part of the fee.

But I'm curious as to why a transaction specific outgoing should not then be recovered from the parties to that transaction, in the same way for example PEXA charges fees to vendor and purchaser and they're recovered out of the settlement sum, and it's included in the settlement calculation.

If there's some different fee incurred in an interoperable transaction compared to an intra-ELNO transaction, single ELNO transaction, then that should be shared between the parties. I'm not clear why there's any suggestion there should be an inter-ELNO fee that's the bit that I'm curious about. So, I think I'm just really seeking clarification of what elements of cost everybody's talking about so there's no confusion, thanks.

Mr Strate: Perhaps I could first invite a response from the Tribunal and then if Simon or Joanne would like to add anything.

Ms Cope: I was wondering whether one of the team could sort of explain our understanding of it and then others if they've got a different view could put that view because that might be a useful way for testing our current thinking.

Ms Vincent: Thanks Deborah. I think answering that question is pretty key to what we will find through this review and you're correct that PEXA and Sympli have both proposed different interpretations of what costs should be included in that between ELNO fee and I think as a general statement of where the Tribunal's preliminary thinking is that was in our Issues Paper, we think in general yes, where that capacity is required as part of the role of being an ELNO then there's not an argument for that to be recovered through an interoperable, between the ELNOs in an interoperable transaction.

And that the costs you've talked about where they're costs that are incurred as part of the transaction that the inter-ELNO fee is a way of sharing those costs, but I think that the distinction isn't necessarily as clear-cut as that and that's where the discussion is coming through today.

So I think we are interested to hear from PEXA and Sympli and they put their views in terms of where those costs could include capital costs, and the example given which I think is in common to what PEXA and Sympli both said, is a situation where the business rules would indicate that a particular ELNO should be the Responsible ELNO, but because of a lack of back-end connections that ELNO is not in fact equipped to be the Responsible ELNO and so there will be a default to a different ELNO as the Responsible ELNO.

And in that case clearly the ELNO that should have been the Responsible ELNO is unable to do that because they haven't incurred the capital costs themselves, and the argument is that in that case, the capital costs of the default Responsible ELNO should be able to be recovered from the Participating ELNO, but very interested to hear any further elaboration from PEXA or Sympli about those costs.

Mr Smith: Do you want to go first Joanne, or should I. Thank you very much, thank you. So, Philip I think I probably wasn't very clear, but we think there are 4 categories of costs and we're suggesting that IPART needs to go through and form a view on each one of those four categories as to what the right approach is, whether it should be included in an interoperable fee or not. So, remember they were the sort of marginal costs on the day of running the transaction, as the Responsible ELNO.

We think it's a real question as Jennifer suggested about the costs of making interoperability available, because clearly you know no disrespect, I mean PEXA hasn't finished, sorry, there certainly is a large additional cost and it's a different cost for each ELNO, it's different for the one that's been built to meet the needs of the regulatory framework that's prevailed, and it's different for the newcomer arriving on the scene.

And then there are the other costs which relate to the universal service obligation because it's the interoperability is the trigger essentially, it's going to burst the dam on consistent pricing across the country and for different transaction types, and so that has to be considered in the process. I mean, we're not saying, no disrespect to us meaning was that PEXA hasn't yet finished building the network across the whole country. We're still, we've only just started in the ACT to provide the service. There's still Tasmania, the Northern Territory do not yet have the service that all has to be still done and we know it's a really big job for Sympli as well to build out the functionality across the country, it will take many years, I have no doubt, and the prices need to give the right signals, to make sure that there aren't incentives for free riding or delay.

And then finally I think when I made the point about return on capital for establishing the ecosystem. I'm not just talking about, there is a very real intangible asset that has been created by PEXA's investors working with lawyers, conveyancers, banks, and the institutions, all of those organisations have made significant savings, and they continue to enjoy all of those.

But this change in the regulatory framework means that the investors, PEXA, so governments who then onsold their investment, will not have the same opportunity to recover those costs. In a way they've kind of built the motorway, and now there's lots of people want to use it. And it's important that for the sake of sending the signals about further investment here in eConveyancing, and also more broadly, that the opportunity to recover those costs is provided. And I know that not everyone will agree with us, but I'm just saying I think those 4 elements of costs need to be considered separately and dealt with in the you know the best way.

Mr Argy: I don't know if I can ask by way of a supplementary question, but that's just made it a bit more fuzzy for me I'm afraid. I mean it seems to me, there's an overhead in being an approved ELNO and that is, you have to provision an infrastructure to be the ELNO in an interoperable environment and there's no question that an interoperable environment requires a little bit more than it has to date, but that is the cost of being an ELNO. And so that just might result in higher fees across the board from ELNOs to subscribers, I get that.

What I'm trying to identify is when you talk about the marginal cost of being the Responsible ELNO in a given transaction, what is that, if it's not an out-of-pocket expense. That's the bit that I'm missing, that I don't really understand.

Ms Cope: Sorry Simon. Can I just sort of add to that? This is Deborah here. Is the issue around, because there is an obligation to be interoperable, but an expectation that that will take time for people. So there will be people operating in the market who would be moving towards that but not necessarily there yet, and they may then be involved in a transaction that is an interoperable transaction, or are you seeing that as a problem that's not the transition problem for new entrant ELNOs and it's a broader problem?

Mr Smith: I think I agree with both problems Deborah. It's definitely the case that PEXA is not 100% finished investing in the network and Sympli is at a much earlier stage in investing in the network. And given the scale of the challenge in the regulatory framework, there are no financial penalties or specific consequences if it takes a very, very long time.

And so, what we say is that the fees will send a strong signal as to the pace at which duplication or triplication of infrastructure should occur. And a very low fee for being Responsible ELNO will reduce it as a priority. The incentive would all be there for new entrants to say well I'll get to all of that eventually, but just for the next few years what I'd like to do is just cherry pick the high profit segments of the market, and I'll leave all the rest for others.

By way of responding to Philip, we will develop more information in our detailed written submission about those marginal costs, but it is already clear that on average an interoperable transaction involves more activity for assisting customers to complete the transaction. I think there has been a view that customers won't even notice, but our experience is you know we have a very active call centre, that's working every single day helping practitioners find their way through how things are going to work, things will be more complicated, there will be more hand holding that needs to be done on each day, for each transaction, there's just no doubt about it.

Ms Tseng: Ben, can I just?

Mr Strate: Yes, go ahead Joanne.

Ms Tseng: Can I take a couple of minutes to try and address some of Philip's questions just from Sympli's perspective. I think sort of we're very clear from in the context of the fees should be transactional, to be related and certainly payable only in the event that the designated Responsible ELNO cannot perform the role. And Philip, just to clarify we currently see these as the actual costs of performing the settlement for that particular transaction, as well as potential lodgement costs.

I think just from the perspective of starting to bundle sort of capital costs into this equation does in some contexts go against the objective of competition in that it fundamentally penalises the new entrants in pretty much forking out twice for the capital costs into infrastructure, and you know the real outcome is that it will sort of penalise sort of Sympli and other prospective new entrants in what they need to sort of, what costs go into them and establishing their ELNOs.

But if I could just clarify just one point in terms of the allocation of RELNO/PELNO sort of type roles in a transaction and Simon I don't know if you've done some investigation into this, but we're certainly, from Sympli's perspective understanding that you know we are the fair way behind PEXA in terms of having market share, and the ability from day one to have a large proportion of the Responsible ELNO roles.

A company like ours cannot be viable relying solely on performing a PELNO role. And we're sort of doing, we'll provide more information in terms of our submission, but certainly if the assumption is that a new entrant will rely on the infrastructure of any sort of incumbent or established ELNO and be able to be commercially viable in just performing a Participating ELNO role just really isn't sort of a realistic outcome I guess and I just wanted to raise that so, that was it Ben, thank you.

Mr Strate: Thanks Joanne and thanks Simon. Did you want to add something further?

Mr Smith: Firstly, just apologise because our neighbours have got a guy with a chainsaw working so I hope that's not disturbing you. I think further to what Joanne said I think it is pretty interesting to think about the distribution of, if you think about a transfer with 2 lenders involved.

Under PEXA's current pricing there's a fee paid by the 2 banks who are involved, and by the representatives of the purchaser and the seller. Now if there was a zero fee between ELNOs, it is possible that for example, if let's say Sympli was the responsible, let's say PEXA was the Responsible ELNO in that, acting for the incoming mortgagee.

The fee would be I think about 50 bucks, that PEXA would earn, and if another ELNO was representing the buyer, the seller, and the seller's bank, then they would be getting \$240, that's roughly three, two forty, more than \$300 for that transaction. So, I think in the most extreme case you might you could have a situation where one ELNO was providing all the infrastructure and earning 5-10% of the revenue for the transaction, and the other or others who were performing a much simpler role of as the Participating ELNO, will be getting all the rest of the revenue. So, I think you can just see that the potential for misalignment between service provision and revenue is very large, and it's introduced through the interoperability framework. So, we just think that that really does need very careful consideration.

Mr Strate: Thanks Simon. Carmel?

Ms Donnelly: Thanks Ben and thanks everyone for your questions and contributions so far. I thought I might just pick up on the scenario that you described there Simon and more generally let you know that it would be very helpful for the Tribunal in considering this question to understand what kinds of scenarios our recommended approach would need to be robust for. And so, I do want to just, we've taken a note of that one Simon but particularly invite the different stakeholders, all stakeholders really in your submission to us if you think there are particular scenarios that we need to be alert to, that whatever model we recommend, we would need to be able to cater to, that would be extremely helpful. So, thanks for that Simon but also an invitation to everybody.

Mr Strate: Thanks Carmel, thanks Philip for asking that question to get the discussion going. Are there any other questions or comments from anyone in attendance? Deborah, go ahead.

Ms Cope: I had one for Simon. Early in your discussion you talked about the issue of high fixed costs and limits on the size of the market and you said IPART needs to take this into account and then you went on to talk about the different types of capital costs, was there anything in addition you thought was the implications of those 2 characteristics of the market in addition to what you talked about later, that you think is important for us to consider in this review.

Mr Smith: Yeah, thanks Deborah. Yeah, I think it goes to the question Carmel raised. I think what it's sort of on us, is to describe a range of scenarios that could result in one or either ELNOs or any ELNOs not recovering sufficient costs to provide a stable service across its range of obligations.

And what I was, I guess what I was getting at was that if we think the only about the marginal cost, if that's quite small then, but there's a very large change in market share. Then for example, it would mean that there wouldn't be enough money in the system for the full provision of service across the country, that's what I was getting at. And thank you for the invitation. We will develop a range of scenarios that you can use to test your thinking against.

Ms Cope: Thank you, that would be really useful.

Mr Strate: Jennifer?

Ms Vincent: Thanks Ben. Yes, I just had a question about the scenario and other similar scenarios, I guess in terms of the implications of that. Does that not actually expose the fact that prices to the different types of subscriber might actually not be cost reflective. And while that wasn't evident in a single ELNO transaction because the single ELNO you know incurs all the costs and gets all the revenue from the different parties. Once the transaction becomes interoperable and you've got different ELNOs getting different parts of the revenue as well as incurring different parts of the costs. Is that potentially saying that those prices to subscribers should be rebalanced rather than expecting the interoperable transaction fee to correct any misalignment between costs and revenue.

Mr Smith: Thanks Jennifer. Yes, I think it's a well, I think your observation that there is a lot of implicit cross subsidisation already in place is correct. There's no doubt, as I mentioned that nearly all the revenue in the total market comes from the top 12 transactions, and from the larger jurisdictions, and there's no doubt that the very large array of low volume transactions are cross subsidised using that revenue.

So, cost reflective pricing would mean significant increases in the price of low value transactions and probably transactions in smaller jurisdictions. And that you know it's been the goal to have a single national system, and, on that basis, you know to get everyone on board PEXA has been offering the same fee around the country for each transaction type. With interoperability, as you've said, all of that gets exposed because there are different incentives for people to offer it.

So, for example, I think, so the pricing that Sympli has indicated that it intends to offer is a much larger discount for banks, than it is for practitioner side of the fee, much like a halving of the fee for banks, whereas a small reduction for the practitioner's side. But that's just the start, like once this gets going, then it'll have to be different pricing across each jurisdiction. And then and whether it can be dealt with in some way through the inter-ELNO fee. We hope it might be able to is that simplest for all, but if you think it can't then we'd ask you to say this is another issue that needs to be looked, at because it will mean we'll need to increase prices on some things in order to cope with price falls in others.

Mr Strate: Are there any further comments on that point, and if not are there any other questions or comments either from those in attendance or from the Tribunal? Well, if there's nothing further, thank you everyone for your questions of that discussion. Been really useful for us to hear your views of course if there's anything you'd like to discuss with IPART, that hasn't already been discussed today, there'll be contact details put up at the end of the public hearing. so, we'll now move on to the second discussion.

Form of price regulation

In this second discussion we'll explore different forms of price regulation. IPART will give a presentation, followed by Sympli and PEXA. We'll then open the discussion to all attendees in the hearing. We'll also be taking questions at the end of the presentations just as last time, but again feel free to type. Oh, excuse me, I've just noticed something going to the chat. Philip, is that is that something you'd like to discuss before we move on, or can we hold it to the end?

Mr Argy: I just I wanted to put it in while I thought of it. It's trying to be a little more lucid than I was orally about what I remain concerned about.

Mr Strate: Okay sure well perhaps we can proceed with this topic and if we have time in the discussion at the end, we'll come back to that point. So, I'd now like to invite Courtney Barry from IPART Secretariat to give a presentation on forms of regulation.

1.7 IPART presentation

Ms Barry: Thank you Ben. Setting ELNO interoperable transaction fees involves first deciding on a form of regulation, which is a method to establish fees, and then adjust fees over time.

The terms of reference ask us to consider 2 forms of regulation. The first being negotiate-arbitrate regulation, where parties negotiate on price and non-price terms and conditions of service. If negotiations fail, an independent party can be called on to resolve the dispute.

The second is direct price control which involves determining either a regulated method for ELNOs to set their own interoperable transaction fees, or a regulated price or revenue level.

Negotiate-arbitrate regulation involves parties negotiating with each other to determine the price and non-price terms and conditions of service. It also involves establishing pricing principles to guide price negotiations. These principles aim to support greater competition and efficiency in the eConveyancing market, while ensuring that Responsible ELNOs can generate enough revenue to cover their efficient costs.

There are 3 forms of negotiate-arbitrate regulation that could be applied to setting ELNO interoperable transaction fees. The first is the standard negotiate-arbitrate model, where parties negotiate with each other, and any disputes can be resolved through arbitration.

The second is the negotiated settlements model, where negotiations may be facilitated by a regulator. Once an agreement or negotiated settlement is reached, it is approved by the regulator.

The third is the negotiate-arbitrate model with regulator approved reference tariffs. In this case the regulator would approve reference tariffs for interoperable transactions on an ex-ante basis and these would then guide the negotiations. If negotiations fail, the regulator can give effect to the reference tariff.

There are several benefits and limitations to the negotiate-arbitrate form of regulation.

In determining whether it is the most appropriate form of regulation, certain market conditions should be met. Generally, it works well when there is roughly equal market power between negotiating parties. If there is unequal market power or bargaining power, smaller service providers may be deterred by costly negotiation or arbitration processes, and so they might decide to exit or not enter the market, which would harm competition in the long term.

Negotiate-arbitrate can reduce regulatory and compliance costs compared to direct price control, but it may become more costly as the number of negotiating parties increases.

There are some potential solutions to overcome these limitations. For example, information disclosure requirements could be used to reduce any imbalances in bargaining power and regulator-approved reference tariffs can provide guidance for negotiations.

A credible threat of stronger regulation would encourage ELNOs to negotiate a reasonable outcome, and this is important because ELNOs would likely weigh up the cost of stronger regulation against the benefits of not reaching commercial agreement.

As an alternative to the negotiate-arbitrate model, the terms of reference ask us to consider whether a regulated method or price level should apply to setting ELNO interoperable transaction fees. If so, what that method or level should be for 2023-24 and how prices should be adjusted in the future, and how they should also be reviewed in the future.

Determining a method for ELNOs to set their own interoperable transaction fees may reduce regulatory burden and it may also provide ELNOs with flexibility to update their prices if their costs change. However, there may be other costs of ensuring that ELNOs comply with the pricing method.

Setting a regulated price would require analysing the costs of interoperability, and there are many ways we could assess these costs.

We would also need to decide on the form of control, that is, whether to set controls on revenue, average prices, individual maximum prices, and how to structure these prices. When deciding on this price structure, we would consider things like cost drivers, impacts on incentives and any impacts on innovation. We would also look at the future number of interoperable transactions and consider how to update prices annually and the frequency of future price reviews.

Negotiate-arbitrate regulation may be less effective in markets where there is a lack of information to inform negotiations, or where those negotiations could be prohibitively expensive, or where the threat of stronger regulation is not sufficient. In these situations, direct price control may be preferred.

Some factors we will consider when deciding on which form of regulation is most appropriate include whether there are any barriers to market entry, the level of market power held by businesses, whether there are substitute services available, whether there is enough access to information, and if all parties have access to that information and the benefits and limitations of each form of regulation, including the risk of regulatory error, administrative costs, and impacts on incentives.

Mr Strate: Thank you Courtney for that presentation. I'd now like to invite Joanne from Sympli to provide comments on forms of price regulation.

1.8 Sympli presentation

Ms Tseng: Thanks Ben. We have a very short and sweet one pager, just in the next slide please that we would like to just address. I think just fundamentally, I don't think there's any dispute in terms of time is of the essence in the context of bringing competition to market and certainly the indication of interoperability being realised in NSW and Queensland in mid-2023.

As such given the current market power that's enjoyed by PEXA, and that power imbalance from a negotiation perspective and we certainly don't consider that the negotiate/arbitrate model is appropriate to achieve an effective outcome to deliver interoperability meaningfully and effectively by mid-2023.

In addition to that, we have seen the impact of disengagement sort of by stakeholders in delaying the progress of interoperability and coupled with the lack of credible incentives that are applicable across the board to all ELNOs. As an example, the lack of an appropriate enforcement regime.

Just again, sort of reinforces that the ability for both the ELNOs to achieve an outcome under a negotiated-arbitrate model is extremely limited. As such, just given that the current market structure we consider a regulated direct pricing approach, obviously sort of which can be progressively phased, alluding to what Julia was talking about in terms of the review could be effectively executed and certainly reviewed as the market matures from a competition perspective.

And really just you know Sympli is sort of obviously focused on achieving a timely outcome. It doesn't just benefit the ELNOs, it certainly benefits industry and users, in terms of bringing the benefits of competition to market. That was it Ben, thank you.

Mr Strate: Thank you Joanne. Now I'll invite Simon from PEXA to comment on forms of price regulation.

1.9 PEXA presentation

Mr Smith: Thanks very much. We also have a fairly simple presentation on this point, and we agree with, well I agree with what Joanne suggested as the best way forward. We think that a regulated price control method will be the best in the circumstances, in many, for the reasons that Joanne and the Discussion Paper have laid out, and the reasons why we say that are as follows.

Firstly, that this is a matter that has public interest implications. It's not merely a matter of resolving a disagreement between 2 competitors. If there was, we think that IPART's experience in the eConveyancing market means it's more likely to make a high-quality decision, than arbitration might.

Clearly this is an area of challenging economic regulation. It does not have clear precedence. There are complex market dynamics and public interesting outcomes that have to be incorporated.

We think IPART's expertise more broadly in market regulation will enable it to make high-quality decisions in these processes because as I've mentioned earlier these decisions will have flow on consequences for how the market structure, the conduct of participants and their performance will turn out. So, it's very important as well.

We also think IPART is better than an arbitrator, because there's so many public interest outcomes in all of this that need to be taken into account. Now some might say that there's one advantage of an arbitrator might be its independence from government. But we take comfort from the fact of IPART's statutory independence and its record as an independent decision maker.

We also think that IPART would have a valuable role to play because it can provide some continuity into this work. As Joanne's mentioned, things will change as the market evolves, decisions will need to be reviewed, and starting from scratch with a new arbitrator would be very inefficient for all concerned in our view.

So, we think IPART being there to provide continuity as the market evolves would be in everybody's best interests. So, our clear view is the same as Joanne's. We think a direct price regulation model is the best way to resolve these outcomes, and we'll put more specifics in our written submission, so that's all for me on this one.

1.10 Stakeholder discussion

Mr Strate: Thank you Simon. Once again, I'll open up discussion to the floor. Again, please I encourage you to share your views and ask any questions you might have. Our first question or comment is from Deborah, would you like to go ahead?

Ms Cope: Thank you very much for those presentations, that's been really, really useful. I have 2 questions resulting from that. One is often negotiate-arbitrate models work well when you've got more than just price that's important to the 2 parties that there is a service quality element to it or managing ongoing investment or something. Are there any of those issues that need to be considered do you think in this price to address that. So, is it just price that's at stake here, or are there other things that would need to be considered in that relationship between the 2 ELNOs?

And my second one is to note that IPART does have an arbitration power in its Act, and we do have an arbitration role in other negotiate-arbitrate models. Now I'm not saying that we would necessarily, given this is a national one, we would necessarily be it, but I don't think it's necessarily a commercial arbitrator who would be responsible for the arbitration.

Ms Tseng: Deborah, if I could just have a go at perhaps addressing in particular the first point. Certainly, you're very correct in terms of pricing isn't the only issue that the ELNOs need to resolve for interoperability sort of bilaterally. So, there is a requirement for us to resolve operational and legal issues that is supported in the respective changes in the model operating requirements and then they relate to sort of I guess any sort of interconnection sort of type of arrangements that you would ordinarily see with integrated parties.

So, under that regime it is contemplated that there is an arbitration process but sort of we consider that more appropriate given that sort of as you said like, that they are more commercial issues that that perhaps involve a different skill set.

Mr Strate: Simon, did you want to add anything?

Mr Smith: Yes, thanks. Just to agree, yes so there is, the legislation does require there to be an agreement between the ELNOs as to the administration and delivery of interoperability and so we'll work together to flesh out all aspects of all of that, but I don't think they're matters that you would sort of be trading off on price about.

I think they are a separate suite of matters that we can work through to resolve. I think the price is the hardest one, because you can see the gap between Joanne's presentation and my own you know, we're just approaching this from very different ends of the spectrum, which would in our view make a negotiate approach just not productive, and we'd rather have IPART's expertise applied to work through the issues systematically and make a decision.

And I'm not familiar with the IPART's arbitration model, but I would emphasise I think there is value for example today you'll see the range of stakeholders who have an interest in this, and so I think a regulatory process that exposes the considerations and allows for input is very valuable from a public policy perspective.

Mr Strate: Thanks Joanne and Simon. Deborah, did you have?

Ms Cope: No, I had no follow-up on that one.

Mr Strate: Thank you. Are there are any other questions or comments, Philip?

Mr Argy: I don't want to overstay my welcome, and talking all the time, but look we agree it should be regulated, but I think once IPART can get to the bottom of what the elements of cost are, whether they're truly capital infrastructure provisioning costs, or whether they're transaction specific out-of-pockets, it should be able to form a view about what the regulated recoupment regime should be.

So, if it's an infrastructure provisioning capital cost that all ELNOs are required by ARNECC to spend, then there is no difference and it's not dependent on who performs the Responsible ELNO role in any given transaction. That's actually a red herring as I was trying to convey in my chat post, because if they're both required to provision, to be ready, willing, and able to perform that role in every interoperable transaction, they both incur the same cost.

Where you've got the hypothetical Simon mentioned, that a new entrant has for example is missing a connection to one of the banks, that's a party to an interoperable transaction, that's a special circumstance and I agree in that situation, you can't let the new entrant free ride on PEXA having the connection that the new entrant doesn't have, that's a special case that can be provided for, whether entitled to effectively get a wholesale price for the utilisation of that connection or you know until the incoming incumbent doesn't have has its own connection.

That was the point of having the Enterprise Service Bus (ESB) by the way that ARNECC envisages because every ELNO should only have to connect to the Enterprise Service Bus, and it will have all the connections to everybody, so that there's only one effectively link between an ELNO and the Enterprise Service Bus, which is the hub to which everything else connects so, that's an issue as well but.

And then on the transaction specific out-of-pocket cost, as you often see in many contracts, it's at cost and there may be some legitimate you know surcharge of, I don't know cost plus 5% to cover the cost of paying the fee as it were, which only the Responsible ELNO incurs. If there is such an out-of-pocket expense that's attributable to interoperability, as distinct from just the same transaction non-interoperable.

So, I'm hoping that was reasonably clear, but I mean but once IPART has looked at what those costs are, it should be either set a fee, it's not, it shouldn't need to be a different fee for every transaction or something that varies over time if the costs change the formula should accommodate that set margin, or whatever it is that IPART thinks is fair, thanks Ben.

Mr Strate: Thanks Philip. Is there any response to that comment? Thank you. Are there any further questions or comments? Deborah?

Ms Cope: I think there was one from Morri in the chat, and I was wondering if it would be useful to clarify what the point was?

Mr Morri: Yeah, happy with that. There was a mention of the enterprise service bus or the ESB providing one connection for all participants, but the proposal with the ESB had no recommendation on payments. Payments were outside the ESB, so it still meant that any ELNO had to connect to financial institutions directly for payments.

Ms Cope: Okay thank you. If I may Ben. I also had a question for those that are in the public hearing who are potentially the clients and customers of the ELNOs, and I think we've got the Australian Institute of Conveyancers here and my question was from your point of view, what's important for us to consider in this inquiry, what things do you think are most critical for us to take account, when we're trying to weigh up the views that we're hearing today.

Mr Tyler: Yeah, thanks Deborah. It's Chris Tyler here from the Australian Institute of Conveyancers NSW. I think one of the things is especially when we're talking about pricing and charging is we talk about charging the subscribers. I think it should be reflected by IPART, the subscriber passes that on to the public, to the consumer to their client, so any charges that are passed on to the subscriber will be passed on to the client. They're not an amorphous group it's, they will seek to recover that cost.

Ms Cope: Completely understood, yes.

Mr Strate: Thanks Chris. Is there anyone else who'd like to respond to Deborah's question?

Mr Harvey: Yes, look Richard Harvey from the Law Society. Yeah, thanks Deborah. Look I think we support the statements from IPART about that basically there should be no greater cost to subscriber for an interoperable transaction, than there is for a standalone transaction. I mean other than that, I think clearly, all of the things that are being discussed between PEXA and Sympli and that which will leave to you to discuss, but I think and just backing up what Chris Tyler just said, it just should be there should be no difference in the fee.

Mr Strate: Thanks Richard. Anyone else? Okay.

Ms Cope: Well maybe just to follow on Ben. Simon in his comment on the difference between price regulation versus negotiate-arbitrate model sort of suggested that there are a lot more stakeholders that would like to have input into what those prices are, than is potentially possible through a negotiate-arbitrate model. Now they can have different levels of openness as well, but then again, I'm interested of the views of the customers and how much would you like to be consulted in the development of those prices, or do you think that a different model would meet your needs?

Ms Blannin-Ferguson: Can I say something, it's Ann Blennin-Ferguson. I'm an actual conveyancer in the market here in Sydney. The cost to the client, as Chris has previously said is passed on to the mums and dads of NSW in our instance. Sometimes, but not very often, they will ask us what is that fee, and why is it set at that price. That's what we need to be able to say to our clients, it's x number of dollars like PEXA at the moment is \$123.97 for a standard settlement. People do want to know, what are we paying for, who benefits from that, what's the profit margin?

We don't want to say well, you know you're in an interoperable situation now, it's not just PEXA that we're settling with, therefore the fee is now you know whatever it is, if it's more than that. And sometimes you'll ask, they'll ask you know, do I have a choice in this, is this an area that I have to pay, or is it that it's a choice that one of us has made to go this way? So being able to communicate the makeup of that fee would be important.

Ms Cope: So, something that's relatively simple to explain and transparent.

Blannin-Ferguson: Yes, yes, yes.

Mr Strate: Thanks Ann.

Ms Tseng: Sorry, could I just sort of perhaps draw sort of Deborah, the mutual requirement under the model operating requirements in that the ELNOs need to provide and set their pricing according to a published pricing policy. So, that would incorporate I guess, the mechanics in terms of sort of how the ELNOs will sort of determine whether it's cost reflective pricing or cost pass-through etc that we envisage would also need to be uplifted from an interoperability perspective as well, to provide that transparency.

Mr Strate: Thanks Joanne. Kathy?

Ms Constan: Hello, Kathy Constan from LodgeX Legal. Our business provides e-settlement services, which is a valuable contribution for people or entities that for whatever reason don't want to be a direct subscriber to an ELNO. Where there is the pricing that could have a flow on ramification for a business such as ours, which might not be aligned or where we're completely independent, so we're not necessarily aligned to a broader organisation such as you know InfoTrack or whatever. We might be precluded from various access, say due to their platform.

So, in that instance, different pricing might then impact for other players who are in the ecosystem of eConveyancing, and I think those considerations also need to be considered by IPART in trying to set some sort of a model, that has a level playing field, not only for end user subscribers, but also others that are providing services in that system, which services are necessary and form a vital part of that ecosystem.

Ms Cope: Thank you, Kathy.

Mr Strate: Thanks Kathy. Are there any further responses to Deborah's question on the input that customers would like to have in the price setting process? Or are there any other questions? Kathy, you've still got your hand up, I'm not sure if that's a follow-up question or still the same hand, thank you. Alright, final call, any further questions, or comments, okay. So, if not then thank you everyone for your participation in the discussions today, they've been really helpful for us. I'll now hand over to Tribunal Member Deborah Cope for some closing remarks.

1.11 Closing remarks

Mr Strate: Deborah, are you there?

Ms Towers: You're on mute Deborah.

Ms Cope: Sorry, I'm on mute, had to be somebody. Thank you, Ben, and on behalf of IPART, I'd like to thank you all very much for your participation in today's public hearing and it's been very helpful to hear your views and thoughts. A transcript and a link to the recording of today's hearing will be available on our website in a few days.

In terms of the next steps to this review, we will consider everything that everybody has said today and also any additional feedback that you give to us to the Issues Paper through submissions, which are due on the 12th of August, and we'll consider all the feedback we receive and prepare a second Issues Paper which will be published in October.

I would like to, if you'd like to talk to anybody in IPART about the ELNO interoperability pricing review you're most welcome to contact Julia Williams, her contact details are on the slide and we hope today has also been as useful for you, because it has been extremely useful for us, so thank you very much for your participation we really appreciate your time.

Mr Smith: Thanks very much.