



Review of the pricing framework for electronic conveyancing services in NSW

Submission of Sympli to IPART in response to the Draft Report published on 20 August 2019

1 October 2019

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1 Summary

Sympli Australia Pty Ltd (**Sympli**) welcomes the opportunity to respond to the Draft Report published by IPART in its review of the pricing regulatory framework for electronic conveyancing services in NSW.

In summary, Sympli agrees with IPART's findings that:

- competition can drive innovation, lower costs and improve service quality, and interoperability has significant potential to improve competition in the e-Conveyancing market;
- the additional costs of interoperability to the ELNO market as a whole are small and are outweighed by the benefits of interoperability;
- the best option for implementing interoperability would be for the two existing ELNOs (Sympli and PEXA) to build a direct connection between each other and for new entrant ELNOs to have the flexibility to use existing ELNO infrastructure or build their own infrastructure and direct connections with other ELNOs; and
- it would be preferable for interoperability to be implemented on a national basis by ARNECC.

Further, Sympli submits that if all ELNOs are to be subject to price regulation (as is currently the case), then IPART's recommendation of ELNO price caps set at PEXA's current prices is an appropriate form of price control.

Sympli sets out its position in more detail below.

2 Competition between ELNOs

In its Draft Report, IPART states that:

- Effective competition can drive innovation, lower costs and improve service quality.
- Competition in the e-Conveyancing market, facilitated by interoperability, would:
 - foster entry of more efficient or innovative ELNOs and put pressure on existing ELNOs to be more efficient or innovative, ensuring the e-Conveyancing market delivers improvements to all participants; and
 - improve the e-Conveyancing market's resilience to prolonged system outages or market exit of an ELNO or infrastructure provider.
- Competition in e-Conveyancing should therefore be allowed to develop, in both the wholesale and retail segments of the market.
- Competition is currently hampered by ELNO's inability to interoperate with each other, and interoperability has significant potential to improve competition in the ELNO market.

Sympli agrees with these statements and considers that interoperability is essential to allowing consumer choice, enabling effective competition between ELNOs and ensuring that consumers obtain the full benefits of ELNO competition.

3 Interoperability between ELNOs

3.1 The benefits of interoperability outweigh the cost

We understand that in preparing its Draft Report, IPART:

- assessed the state of the e-Conveyancing market in NSW, including the current and potential future level of competition between ELNOs; and
- conducted economic analysis of the costs of interoperability, including different interoperability models.

As a result of that analysis, IPART concludes in its the Draft Report that the additional costs of interoperability to the ELNO market as a whole are small and are outweighed by the benefits of interoperability. In particular, IPART finds that the costs of any interoperability model are predominately due to additional capital expenditure, and that these costs are outweighed by savings on operating expenditures that would be incurred in the absence of interoperability (ie, if multi-homing was required).

Sympli agrees with these conclusions and submits that the case for implementing interoperability between ELNOs is clear and compelling.

3.2 Choice of interoperability model

IPART notes that the choice of interoperability model should take into account the current state of the e-Conveyancing market (in which there are already two ELNOs) as well as the potential future development of the market.

In that context, IPART concludes that the best option for implementing interoperability is:

- for the two existing ELNOs (Sympli and PEXA) to build a direct connection between each other; and
- for new entrant ELNOs to have the flexibility to choose between using existing ELNO infrastructure or building their own infrastructure and establishing direct connections with other ELNOs.

IPART states that this option is likely to be the most cost-efficient way to achieve interoperability in the short term, while maximising the potential for competition and innovation in the market. IPART compares this to the interoperability model of building a full central hub or having a single 'infrastructure ELNO', which it finds would not be efficient – given there are already two ELNOs in the market with capacity to lodge and settle transactions.

Sympli agrees with these findings and supports IPART's recommendations that regulation should require direct connection between Sympli and PEXA as soon as possible to promote competition (Draft Recommendation 4).

3.3 Implementation of interoperability model

Sympli agrees with IPART that it is preferable for interoperability to be implemented on a national basis by ARNECC. Sympli is not aware of any reason why the direct connection model of interoperability and any supporting regulations would need to be fundamentally varied between states or territories. In other words, a technical and regulatory model that is designed for one state should be equally applicable in other states.

Further, Sympli is not aware of any material changes for banks, land registries or state revenue offices required to implement interoperability using the 'lodging ELNO' model contemplated by industry and referred to in the IPART Draft Report. Relevant to this are the observations made in the Final Report of the Independent Chair of the Interoperability Working Groups, being that:

- the lodging ELNO will perform substantially the same functions and uses the same processes as it would when undertaking lodgment and settlement for a transaction conducted solely on its own ELN – except that it is transmitting instructions to financial institutions for subscribers of the non-Lodging ELNO;
- it is useful to think about interoperability as the 'sharing of instrument preparation', but once all subscribers are ready to settle, the lodgment and settlement process is no more complicated than in a single-ELNO market – since that process is only conducted by one ELNO; and
- interoperability is therefore not incrementally much more complex than having two competing and separate ELNOs.¹

3.4 A cost-reflective transfer price for interoperable transactions

IPART notes that under its recommended option for interoperability:

- each ELNO in an interoperable transaction would bear some of the costs of that transaction; however
- the ELNO responsible for lodgment (or third party fees) would bear more costs, and therefore this model should require a cost-reflective transfer fee between ELNOs to ensure those costs are shared between the lodging and non-lodging ELNO.

IPART notes that this transfer fee would not represent an additional charge to subscribers, nor would it represent the price a retail ELNO would pay to access the financial settlement and title lodgment infrastructure of another ELNO.

IPART then goes on to calculate an illustrative transfer price, based on certain assumptions and its economic analysis of the costs faced by a benchmark efficient ELNO. That calculation assumes the lodging ELNO incurs the capital costs and paid all pass-through fees, and indicates that in a four-party transaction, the non-lodging ELNO would pay a transfer price to the lodging ELNO of \$12.96, comprising \$0.56 for capital costs and \$12.40 in pass-through fees (and excluding the cost of interoperability insurance).

¹ R Nicholls, Independent Chair of the Interoperability Working Groups, *Interoperability between ELNOs – Final Report*, 25 July 2019

Sympli agrees with IPART that there should be a cost-reflective transfer price for interoperable transactions between ELNOs with wholesale connections, and that this price would not represent an additional charge to subscribers. The illustrative transfer price in the Draft Report demonstrates that such prices can be calculated, and that interoperability can be achieved on a fair and efficient basis.

4 ELNO pricing regulation

4.1 Recommendation that maximum ELNO prices be set at PEXA's current prices

In its Issues Paper, IPART asked for views on the appropriate form of ELNO pricing regulation, and whether new entrants should be exempt from such regulation. In response, Sympli noted in its submission that:

- the risks faced by new entrant ELNOs are substantially higher than those faced by the dominant incumbent, which benefits from substantial network effects; and accordingly
- any regulatory framework should exempt new entrants from restrictive pricing regulation, which might otherwise act as a barrier to new entry and restrict innovation.²

Having considered the matter, IPART found in its Draft Report that there is no compelling evidence to move away from the existing price regulatory framework (involving CPI minus X price caps), and recommended that maximum prices for *all* ELNOs be set at PEXA's current (real) prices from 1 July 2020 and indexed to CPI annually for two years (before being reviewed again).

In response, Sympli submits that if all ELNOs are to be subject to price regulation (as is currently the case), then IPART's recommendation of ELNO price caps set at PEXA's current prices is an appropriate form of price control. Sympli agrees with IPART that:

- IPART's recommended pricing framework could be adopted nationally (Draft Finding 9); and
- ELNOs should not be required to offer nationally consistent pricing but may choose to do so on a commercial basis (Draft Recommendation 12).

Sympli does not otherwise propose to comment on IPART or its cost consultant AECOM's methodology or building block calculations of the costs of a benchmark efficient ELNO.

4.2 Clarification of the existing pricing regulatory framework for ELNOs

IPART's Draft Report recommends that maximum prices for all ELNOs be set at PEXA's current (real) prices from 1 July 2020. Further, the Draft Report appears to assume that this recommendation is consistent with the current price regulatory framework for ELNOs in NSW – however, that is not the case.

Rather, the current pricing regulatory framework in NSW allows ELNOs to be subject to bespoke maximum prices, based on the Pricing Table published by each ELNO. This arises from clauses 5.4.2 and 5.4.3 of the NSW Operating Requirements, which provide that:

5.4.2 If the ELNO charges ELNO Service Fees, the ELNO must:

- (a) for each year commencing on 1 July, prepare and publish on its website its Pricing Table; and
- (b) not charge a fee greater than the amount specified in the published Pricing Table.

² Sympli, *Submission to IPART in response to the Issues Paper released March 2019*, 13 May 2019

5.4.3 From 1 July 2019 to 30 June 2022, the ELNO may increase the ELNO Service Fees as listed in its Pricing Table, once every year on 1 July, provided that the percentage increase in the revised ELNO Service Fees does not exceed the percentage increase in the CPI for the immediately preceding March quarter when compared with the CPI for the March quarter of the previous year.

As a result, the maximum prices applying to Sympli are set by reference to its pricing schedule,³ which are different to the maximum prices applying to PEXA set by reference to its pricing schedule.⁴

IPART's Final Report should clarify that, to the extent IPART recommends that maximum prices for all ELNOs be set at PEXA's current prices, this would require a change in the ELNO Operating Requirements to ensure that all ELNOs are subject to the same maximum prices.

5 NSW LRS pricing regulation

Sympli does not propose to comment in detail on IPART's findings regarding pricing regulation of NSW LRS services, except to:

- note IPART's findings that:
 - NSW LRS should be able to absorb the cost of any incremental investment in technology to permit connection by multiple ELNOs; and
 - NSW LRS should not be entitled to charge an additional fee for upgrading its system to connect to multiple ELNOs, since the regulatory framework has always allowed the entry of new ELNOs, and therefore NSW can recover these costs through existing LSS fees and
- confirm that, in any case, Sympli has been entitled to connect its systems to those of NSW LRS and to commence operations.

6 Revenue NSW pricing regulation

Sympli does not propose to comment in detail on IPART's findings regarding pricing regulation of Revenue NSW services, except to agree with IPART that any prices charged by Revenue NSW should apply consistently to all ELNOs to ensure competitive neutrality and a level playing field.

³ See here: <https://www.sympli.com.au/pricing/>

⁴ See here: <https://www.pexa.com.au/pricing>