

Friday, 17 May 2024

Dr Alex Robson  
Deputy Chair  
Productivity Commission  
[ncp@pc.gov.au](mailto:ncp@pc.gov.au)

Dear Dr Robson,

**Submission: National Competition Policy Analysis**

Sympli welcomes the inquiry and the opportunity to make a submission to the National Competition Policy Analysis. Sympli is supportive of the Productivity Commissions efforts in assessing the options available to the Commonwealth, state and territory governments in improving competition in the Australian market.

Sympli provides this submission from the context of our experience as a second entrant Electronic Lodgment Network Operator (**ELNO**) in the electronic conveyancing (**eConveyancing**) market.

**eConveyancing Market - Background**

eConveyancing allows lawyers, conveyancers, and financial institutions to interact and transact together online and replaces the paper and manual processes previously required to conduct property transactions.

In 2008, the Council of Australian Governments laid the foundations to create a national electronic conveyancing solution, known as an Electronic Lodgment Network (**ELN**). In 2012, the National E-Conveyancing Development Ltd (now Property Exchange Australia Ltd or **PEXA**) was launched with significant investment from governments and the banks.

In 2018, PEXA was privatised and now has monopoly control over the \$250m eConveyancing market across the country, with over 99% market share of eConveyancing transactions. Sympli was launched in 2018 to bring competition, innovation and choice to the Australian market.

As it stands, the competing network operators do not 'interoperate' in that all buyers, sellers and banks must use the same network operator to interact with each other. In combination with the mandate of eConveyancing prior to competition, this has required all customers to join PEXA to participate in conveyancing transactions.

Key stakeholders such as the Australian Competition and Consumers Commission (**ACCC**), Law Council of Australia, Australian Banking Association, and the NSW Productivity Commission have

called for urgent reforms to drive competition in the eConveyancing market. These stakeholders shared the view that a requirement for network operators to interoperate would drive innovation, better services and lower fees.

In 2021, all states and territories, with support from the Commonwealth Government, agreed to make changes through national legislation to encourage market competition through 'interoperability'. In 2022, NSW Parliament passed amendments which included a requirement for network operators to interoperate as a crucial part of the model legislation for the national regime.

The requirement for network operators to interoperate has been settled and enshrined in legislation, with strong consensus from all major stakeholders. The risk now is that further delays in reform will mean that the benefits of competition, including lower prices and better services, will not be achieved.

### **Impact of Interoperability and Competition in the Australian eConveyancing Market**

Interoperability between ELNOs is required for the level of competition in the eConveyancing market to improve. Without interoperability, any potential new market players will struggle to enter the market, with the network effect forming a significant barrier to entry. As the current regulatory model for Australian eConveyancing largely relies upon voluntary participation on the part of ELNOs for interoperability to occur, the market requires further regulator intervention and accountability for ELNOs who do not meet the requirements of the reform.

Sympli would welcome any inquiry into the eConveyancing market, as without further regulatory intervention with increased accountability, property transactions will continue to be dominated by the incumbent monopoly, with consumers continuing to be deprived of the benefits of competition. Additionally, the reliance on a single service provider to facilitate all property sales in Australia is a clear risk, which can be solved with the success of new entrant ELNOs in the market. The National Competition Policy Analysis is well placed to assess the current state of competition in eConveyancing and provide recommendations on how to achieve better outcomes in the market.

### **Metrics demonstrating successful competition in the market**

In evaluating the success of competition through interoperability in eConveyancing, there are two high level indicators to measure:

1. Reduction of market concentration; and
2. Competition benefits flowing to consumers.

### *Reduction of Market Concentration*

As outlined earlier, the eConveyancing market is currently dominated by the incumbent monopoly provider. This market concentration is a product of the network effects enjoyed by PEXA as a first mover in the market, exacerbated by the mandating of eConveyancing across most jurisdictions in Australia prior to effective competition existing in the market.

Given the nature of PEXA coming into existence initially through government and later privatisation, there are a number of factors related to market concentration where the market and/or regulatory structure has not been established to appropriately regulate the market in a way that fosters competition. Primarily, this has resulted in an asymmetry of information held by PEXA, shown most prominently in the following ways:

1. Ownership of the National Electronic Conveyancing Data Standards – PEXA currently owns and curates the data standards on behalf of the Registrars in each jurisdiction. Sympli is required to licence these data standards from PEXA, and is not granted access to the full set of specifications;
2. National real-time view of property transactions – PEXA is the only entity that has a national real-time view of property transactions, with limited controls on how this data can be used to constrain their competitive advantage.

These unfair competitive advantages, related to PEXA's high market concentration, can be alleviated with the successful implementation of interoperability and therefore competition.

For interoperability and therefore competition to be considered successful, there must be a material reduction in market concentration held by the incumbent provider. This change in market concentration can also be measurable by reference to the number of interoperable transactions that are recorded (i.e. transactions with participants acting on two or more ELNOs).

Whilst a reduction in market concentration can be measured between existing ELNOs across the market, a further indicator of the success of interoperability in fostering competition in eConveyancing is evidence of new entrants entering the market. Having interoperability established in the market will provide confidence to potential new market entrants by minimising the impact of any network effects relied upon by existing ELNOs.

### *Competition Benefits*

As with any increase in competition, the success of the interoperability reform should result in several benefits to consumers in both the short and long term. These include:

1. reduction of prices (for example, Sympli's fees are lower than the incumbent monopoly's pricing);
2. increased innovation (such as new product features which may result in measurable time savings for consumers, driving an increase in productivity);
3. redundancy through multiple service providers (i.e. no longer at risk of a single point of failure); and
4. better service.

Each of these benefits are quantitatively measurable, as follows:

1. Pricing – analysis of fees charged by ELNOs on a per-transaction basis;
2. Innovation – average time spent by practitioners and financial institutions to complete a conveyancing transaction; and
3. Service – average time spent on and success rate in resolving customer issues.

By studying these metrics over time and particularly once interoperability between ELNOs has been established, the Productivity Commission can effectively measure the benefits of competition in eConveyancing. This approach can also be implemented across other industries that are experiencing a progression from a monopolised market state to that of multiple service providers, with these metrics being easily understandable and analysed by the broader community, allowing consumers to make better, more informed decisions.

### **Next Steps**

Sympli again thanks the Productivity Commission for the opportunity to contribute to this inquiry and would welcome further discussion into our unique experience in entering a monopolised market. If you have any questions about our submission, please contact myself or James Adler.

Yours sincerely,

**Joanne Tseng**  
Chief Legal & Governance Officer  
Sympli Australia Pty Ltd