



28 March 2018

Anne Larkins
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By email: alarkins@dmcca.com.au

Dear Anne

Response to IGA Review Issues Paper

Sympli Australia Pty Ltd (**Sympli**) welcomes the opportunity to provide comment in relation to the Issues Paper on the Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law (**IGA**) dated 13 February 2019 (**Issues Paper**).

Sympli supports the independent review of the IGA (**IGA Review**), which is a key initiative to ensure the effectiveness and appropriateness of the regulatory framework governing the national electronic conveyancing market.

However, Sympli wishes to raise several serious concerns it has in relation to the preliminary findings of the IGA Review by Dench McClean Carlson (**DMC**). We have grouped our concerns into themes below.

In summary, we submit in relation to the Issues Paper:

1. Contrary to its required scope, DMC is at risk of failing to advise on the changes necessary to facilitate a competitive national electronic network operator (**ELNO**) market.
2. It is essential that DMC support, and recommend that ARNECC support, the current industry consultation on electronic lodgment network interoperability (**Interoperability**), as a critical input to the IGA Review.
3. DMC has failed to recognise that Interoperability offers substantial benefits to, and is well supported by, the industry.
4. DMC's position on competition and Interoperability is inconsistent with Australian market regulators, including ACCC.
5. The structure of the Issues Paper makes it difficult to comprehensively respond.
6. DMC's preliminary findings are based on factual inaccuracies.

1. Contrary to its required scope, DMC is at risk of failing to advise on the changes necessary to facilitate a competitive ELNO market

It is required under DMC's published scope that the IGA Review advises the IGA Ministers how to facilitate a competitive ELNO market¹. This is one of three key areas of scope that the DMC is required to address in the IGA Review.

From our review of the Issues Paper, we have concerns that DMC may not intend to fully address this requirement in its IGA Review. In particular:

- This area of scope has not been referenced in the Issues Paper, despite referencing the other two areas of scope.
- DMC effectively seeks to re-prosecute the question of ELNO competition despite the required scope of their review. We don't understand how this can be justified given the support for competition we have received from the industry and the feedback documented by DMC in its consultation notes. We are concerned that DMC's approach will divert its focus from the essential question of how to facilitate a competitive ELNO market.
- In re-prosecuting the question of ELNO competition, DMC's preliminary findings put a negative slant on competition and a positive slant on the state of the ELNO market under a single operator. We believe this is inconsistent with industry feedback (including their consultation notes). It is notable that DMC's preliminary findings do not outline any of the benefits of competition or any of the issues associated with a single provider in the market.

There is strong support in the industry for ELNO competition:

- ELNO competition is well supported by market participants, which is reflected in our market engagement and the consultation notes produced by DMC.
- ELNO competition is well supported by ARNECC, as evidenced by the required scope of the IGA Review and by the ACCC.
- The benefits of ELNO competition to market users and the Australian public are substantial and we believe self-evident. We have previously shared our views on the benefits of competition with ARNECC and DMC and would be willing to share these again.

Sympli considers that there are important regulatory changes that should be considered (some of which are currently being considered by ARNECC) to address challenges that Sympli has experienced as a new entrant. We have previously shared with DMC our experience of these challenges, which include:

- delays involved with, and costs involved in gaining access to the National Electronic Conveyancing Data Standards due to ARNECC's apparent lack of ownership in, and control over them. This is despite a key regulatory requirement for ELNOs to comply with such standards;
- difficulties arising from a regulatory model that is not suitable to sustainably maintain a market with a dominant incumbent ELNO. The model fails to adequately protect the market from a dominant incumbent and does not provide the Registrars with effective enforcement mechanisms to properly regulate a dominant incumbent; and
- anticipated challenges associated with a new entrant overcoming the structural bias for the market to gravitate towards the incumbent ELNO (known as the "network effect"), which may stifle competition and risks, over time, creating a single monopoly provider. This has been further

¹ As set out in the document titled Review Of The Intergovernmental Agreement For An Electronic Conveyancing National Law accessed at https://www.arnecc.gov.au/_data/assets/pdf_file/0016/1411027/IGA-Review-Scope.pdf on 18 March 2018

intensified by the mandatory use of electronic lodgment networks (**ELN**) in several ARNECC jurisdictions.

As discussed with ARNECC and DMC, we consider the most significant regulatory change required to facilitate competition is Interoperability. DMC's investigation of Interoperability has been discussed further in sections 2 and 3.

2. It is essential that DMC support, and recommend that ARNECC support, the current industry consultation on Interoperability, as a critical input to the IGA Review

The current national industry consultation process into Interoperability, being led by the NSW Office of the Registrar General (**Industry Consultation**), is critical to the IGA Review. The Industry Consultation is well-resourced, well-structured and involves all key industry participants at a national level. The fact that all industry participants have committed to take part in the Industry Consultation, reflects the importance of Interoperability to the industry.

DMC's Issues Paper does not provide a full and accurate representation of the analysis into Interoperability undertaken through the Industry Consultation. While we acknowledge that this could be due to the timing of release of the Issues Paper relative to the Industry Consultation's Directions Paper and industry forum, it underscores the importance of the Industry Consultation to the IGA Review.

The Industry Consultation deserves recognition by DMC as a critical input to its review. Furthermore, DMC should conclude that ARNECC members support the Industry Consultation (i.e. make it an ARNECC led industry consultation). This will ensure the best outcome for the IGA Review and the industry.

3. DMC has failed to recognise that Interoperability offers substantial benefits to, and is well supported by, the industry

There is extensive industry support for Interoperability, which has been identified and published through the Industry Consultation and DMC's consultation notes (acknowledging that there are still questions that need to be discussed and agreed between industry participants). DMC's preliminary findings do not accurately reflect the level of support for Interoperability.

Similarly, DMC's preliminary findings do not detail the significant benefits of Interoperability but rather take a somewhat negative slant on Interoperability. The benefits of Interoperability have previously been shared with DMC by Sympli and separately through the Industry Consultation. It is therefore unclear whether DMC has discounted these benefits in its assessment or will reflect the benefits in its next report.

Sympli makes the following additional comments in relation to DMC's investigation of Interoperability:

- DMC's preliminary findings infer that defining Interoperability is the responsibility of ELNOs. We disagree. Interoperability is an industry issue which needs to be addressed by ARNECC, both through the Industry Consultation and the IGA Review.
- It is inappropriate for DMC to treat a single ELN market as a counter-factual in assessing Interoperability. The argument for a competitive multi-ELNO market has been made and seems to be beyond debate. Moreover, Sympli has received its Category 2 approval from ARNECC and is currently operating as an ELNO. The question is now whether multiple ELNOs will operate separately from each other or operate in a connected ecosystem through Interoperability.
- The 'preliminary objectives' identified by DMC for assessing alternative ELNO market operating models (at 6.33) are incomplete, in that each model should be independently assessed against the additional objective of how well the model promotes effective competition and settlement efficiency.

- Sympli notes that Appendix II presents the 'multiple independent ELNs' model as having the advantage (relative to the 'Single ELN base case') of 'Competitive ELNO market motivates innovation'. This comment assumes that this the 'multiple independent ELNs' model would result in a competitive market in the long run, which is debatable. Further, in Appendix III, the 'multiple independent ELNs' model is made to look more favourable for consumers and the market than 'interoperable ELNs with direct connection' model. This again, demonstrates a failure to differentiate the models having regard to their relative effectiveness in promoting ELN competition and settlement efficiency. DMC appear to have assumed (rather than enquired whether) these alternate models are equally effective in facilitating competition and settlement efficiency.
- DMC should be careful in conflating questions in relation to Interoperability with general market issues. This would risk confusing the investigation into Interoperability and potentially delaying the delivery of benefits of Interoperability to the market.
- The Industry Consultation has not identified any model other than Interoperability which offers market participants the efficiency of only using the system they want to use and a level playing field to support ELN competition.

To assist DMC's review, Sympli has prepared Appendix 1 to this letter, which lists out every question from the Issues Paper raised in relation to Interoperability and how this issue is being addressed (including identifying any questions that do not directly relate to Interoperability).

4. DMC's position on competition and Interoperability is inconsistent with Australian market regulators, including ACCC

Sympli notes that the preliminary findings from DMC's Issues Paper are inconsistent with Australia's national competition regulator, ACCC. We would be surprised if DMC did not place significant weight on the views of ACCC.

Likewise, the support for Interoperability signalled by the Independent Pricing and Regulatory Tribunal (**IPART**) in its recent issues paper for the Review of the Pricing Framework for Electronic Conveyancing Services (**IPART Review**)² sits in stark contrast to the approach taken by DMC. Sympli submits that the IPART review will provide valuable comment and guidance for DMC and Sympli hopes that DMC will take IPART's recommendations into account as the basis for a coordinated national approach on questions such as the recovery of costs for Interoperability.

We acknowledge that the industry only received correspondence from the ACCC on 13 February 2019, and that the IPART Review issues paper was also released around the same time as the Issues Paper was released. However, in our knowledge, both regulators have had a pro-competition and pro-Interoperability stance for some time, so it is unclear whether DMC has discounted their views or will reflect these views in its next report.

Sympli supports the position of the ACCC and IPART that Interoperability is a potentially effective mechanism for ensuring the benefits of competition are realised in the ELN market.

5. The structure of DMC's Issues Paper makes it difficult to comprehensively respond

Sympli submits that the structure of the Issues Paper makes it difficult for a reader to respond. Further, it is hard to understand how DMC's investigations have led to its preliminary findings.

² Independent Pricing and Regulatory Tribunal, *Review of the Pricing Framework for Electronic Conveyancing Services in NSW*, Issues Paper, March 2018 available at <https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-section-12-publications-pricing-regulation-of-electronic-conveyancing-network-operations-in-nsw/issues-paper-electronic-conveyancing-services-in-nsw-march-2019.pdf>.

A more "issues based" paper (like the Directions Paper issued as part of Industry Consultation or IPART Review issues paper) enables a more structured response.

Sympli reserves its right to comment further on the Issues Paper and other materials prepared by DMC.

6. DMC's preliminary findings are based on factual inaccuracies

On pages 82 and 83 of the Issues Paper, DMC estimates that onboarding costs of connecting to Land Registries, Revenue Offices, Lenders, the RBA and other ELNOs is between \$20-200 million for a new entrant. As the only new entrant currently making these connections, we can advise that DMC's estimate is significantly overstated. Based on our experience to date, we estimate the cost of these connections will be below the bottom end of DMC's estimated range and that Sympli expects the costs of those connections will:

- reduce substantially for future entrants; and
- be largely subsidised by Sympli or accepted by the connection party based on the benefits offered by Sympli.

It is possible that other feedback that DMC has received in relation to these costs relate to more than the cost to connect payment systems (which is the only essential connection) for an ELNO.

In paragraph 5.64 of the Issues paper, DMC states that Sympli has not yet advised on its financial settlement protocol. On several occasions we have confirmed to DMC that we are targeting that Sympli's payments connections will be similar to the incumbent's. The RBA and the banks with which we are currently connecting have tended to adopt similar connection and messaging architecture.

In paragraphs 5.72 to 5.93 of the Issues paper, DMC suggests that the benefit of a competitive ELNO market is limited to price reductions. This is factually incorrect as DMC ignores the potential for efficiency through competition and innovation. Efficiency gains could be substantial (initial estimates are that using Sympli's platform may be 50% more efficient for users), and we suggest that PEXA is already improving its product in response to the threat of competition.

Please feel free to contact me on 0407 406 014 if you would like to discuss any of these matters further.

Yours sincerely



David Wills
Chief Executive Officer

Attachment