



Friday, 7 March 2025

Senate Standing Committee on Economics

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PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee,

**Submission to the Inquiry: Micro-competition opportunities in the Australian economy
in relation to e-conveyancing**

1. Sympli Australia Pty Ltd (**Sympli**) is an Electronic Lodgment Network Operator (**ELNO**) which launched in 2018 to offer choice and competition in the e-settlement industry by providing an alternative to the existing market leader, Property Exchange Australia Limited (**PEXA**).
2. Sympli's goal is to make e-settlements more efficient, reliable, and secure for lawyers, conveyancers and financial institutions.
3. Sympli is grateful for the opportunity to provide a submission to the Senate Standing Committee's (**Committee**) inquiry into Micro-competition opportunities in the Australian economy in relation to e-conveyancing (**Inquiry**).
4. Sympli welcomes the Inquiry and focuses its submission on a number of issues which will be dealt with in the following order:
 - a. The eConveyancing market structure does not currently benefit consumers;
 - b. The main barrier to competition is a lack of ELNO interoperability;
 - c. Further delay puts competition at risk and will lead to negative outcomes for consumers and the Australian economy;
 - d. There are greater roles for Commonwealth Regulators in eConveyancing;
 - e. Other opportunities to increase competition in the eConveyancing market; and
 - f. Conclusion and Recommendations.
5. These issues will provide the Committee with greater context around eConveyancing and the market issues faced by key industry stakeholders.

eConveyancing market structure does not currently benefit consumers

6. The eConveyancing market is one of the least competitive markets in Australia given it is dominated by a monopoly provider which has captured and maintained approximately 99% of the Australian eConveyancing market, with no real competition. This monopoly entity is PEXA.
7. PEXA was established as an Electronic Lodgment Network Operator (**ELNO**) in 2013 with ownership from both government and private entities, was fully privatised in 2019 and listed on the ASX in 2021. At the time of privatisation, PEXA did not face any genuine competition other than from traditional paper conveyancing practices which have since been phased out. PEXA also benefited from the mandating of eConveyancing across Australia by successive State Governments, prior to competitors being established in the market.
8. The PEXA monopoly means that currently there is no downward pressure on fees for consumers, no incentive to provide innovation or customer service, no choice for industry and a single point of failure which presents a major risk to the Australian economy. Annually, PEXA settles more than \$800bn worth of property and has seen annual volumes of 4 million transactions with almost no competition.¹
9. As the only ELNO at the time of mandating, PEXA now benefits from network effects created and supported by the circumstances of its establishment and the design of the eConveyancing market to the detriment of Australian consumers and the broader economy. These market conditions have made it difficult for other ELNOs to enter into the eConveyancing market and attempt to compete against PEXA.
10. Under the current market conditions, consumers of eConveyancing services are required to use the same ELN to complete a transaction. Consumers are required to deal with PEXA on a take-it-or-leave-it basis and have no option with regard to pricing or dealing with service performance issues and outages and the ever-present risk of a single point of failure. Without efficient and effective competition in the eConveyancing market, consumers (many being small businesses) and the broader economy will continue to suffer the detrimental effects of being forced to use an expensive and subpar platform due to the conduct of the incumbent monopoly and the flawed market structure.

The main barrier to competition is a lack of ELNO interoperability

11. As it stands, the competing network operators do not 'interoperate', so all buyers, sellers and banks must use the same operator to interact with each other in a property transaction. In combination with mandating of eConveyancing prior to competition, this has required all consumers to join and conduct effectively all multi-party transactions on PEXA.

¹ House of Representatives Standing Committee on Economics, Parliament of Australia, *Inquiry into Promoting Economic Dynamism, Competition and Business Formation* (Committee Hansard, 31 August 2023) 20.

12. To implement effective competition in the eConveyancing market and for parties to be able to use different ELNs to be able to complete an eConveyancing transaction, reforms have been underway since 2018 to create interoperability between ELNOs. This reform has been led by ARNECC (the Australian Registrars National Electronic Conveyancing Council, which consists of the Registrars of each state and territory jurisdiction) and supported by key industry stakeholders.
13. In 2018 and 2019, the NSW Registrar-General worked with stakeholders to review different market structures that would benefit the eConveyancing industry by introducing sustainable competition without increasing risk or degrading performance or user experience. Upon thorough review and analysis by industry stakeholders and experts, the interoperability model was deemed to be the only model which could deliver the benefits industry required without various negative implications. Through analysis and review as part of the *Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law (IGA Review)*, it was determined that a wholesale/retail model would not result in efficient and effective competition.²
14. In 2021, all Australian jurisdictions, with support from the Commonwealth Government, agreed to make changes through national legislation to encourage eConveyancing market competition through interoperability. In 2022, New South Wales Parliament passed legislation which requires ELNOs to interoperate, which will apply nationally through the uniform law regime. This was supported by New South Wales legislation in November 2022 conferring on the Registrar General additional enforcement powers, including financial penalties, with emphasis placed on regulatory breaches relating to interoperability.
15. In January 2024, ARNECC mandated a deadline to require ELNOs to be ready for full interoperability for key documents by 31 December 2025. ELNOs would be required to build, design and test for full interoperability by a mandated date, with New South Wales and Queensland being the first States to implement these competition reforms.
16. Following a concerted disinformation campaign by PEXA to the major banks indicating that their services would degrade under interoperability, ARNECC decided to pause the interoperability program in June 2024. This led to ARNECC conducting a further review announced in February 2025, resulting in a further round of reviews due for completion by mid-2025.
17. During this time PEXA has consistently undermined the competition reform, most notably claiming ownership of intellectual property rights relating to the scope of items required for interoperability to be developed and adopted by legal practitioners and financial institutions. This has left the program unable to ensure that ELNOs will provide equivalent service to its subscribers in both interoperable and non-interoperable transactions. This is a key issue for subscribers, and particularly financial institutions,

² Dench McClean Carlson, *Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law*, 18 December 2019 106,
<https://www.arnecc.gov.au/wp-content/uploads/2021/08/iga-review-final-report-1.pdf>.

who will not accept an interoperability program that results in degradation of their current service.

18. It was widely reported that PEXA sent legal letters to the major banks and to ARNECC by the then commercial officer, Les Vance.³ These letters allegedly claimed intellectual property ownership of industry workflows and processes that predate eConveyancing. PEXA also sent letters to the eConveyancing regulator, ARNECC, and the New South Wales Government warning that if the incumbent were made to participate in the interoperability reform, "... *PEXA will need to take steps to protect its right.*"⁴ It is unclear as to the extent and type of intellectual property ownership that PEXA is asserting.
19. It can be reasonably inferred that PEXA's intellectual property right claims are not *bona fide* but are instead anti-competitive tactics to delay the reform and provide an excuse for their lack of participation in the program. As PEXA's practices and processes are not novel and merely reflect existing conveyancing processes, the information required to be shared to design interoperability is unlikely to fall within the bounds of confidential information. As a large and sophisticated organisation, PEXA would be well aware of the risks of making claims over specific types of intellectual property and have instead exploited this regulatory and legislative gap, which has successfully allowed them to circumvent their regulatory obligations and threaten not only the major banks but their own regulator.
20. In attempts to undermine interoperability reforms, PEXA, while publicly claiming that it actively supports competition in eConveyancing, has employed various tactics being salient examples of anti-competitive conduct, which include:
 - a. refusing to cooperate with requests and directions from regulators including withdrawing from working groups;
 - b. making broad and unsubstantiated claims over intellectual property relating to conveyancing activities;
 - c. threatening legal action against the regulator, Government other market stakeholders and customers to dissuade them from dealing with competitors;
 - d. attempting to prevent other market stakeholders from sharing information with competitors or potential competitors;
 - e. delaying in or refusing to share information required for competitors to interoperate with the entity.
21. Due to PEXA's network effect, the implementation of interoperability is crucial to the industry and the broader Australian economy. Efficient and effective competition will

³ <https://www.smh.com.au/business/companies/the-bank-threat-that-shook-up-australia-s-800b-property-monopoly-20240724-p5jw9h.html>.

⁴ <https://www.afr.com/companies/financial-services/legal-threats-and-accc-assessment-rock-pexa-sympli-stoush-20241120-p5ks1h#:~:text=PEXA%2C%20the%20Commonwealth%20Bank%2Dbacked,grab%20at%20its%20intellectual%20property>.

not occur in the Australian eConveyancing market without interoperability and will mean that Governments will be left with a largely unregulated monopoly in the economy.

Further delay puts competition in eConveyancing at risk and will lead to negative outcomes for consumers, industry and the Australian economy

22. Interoperability between ELNOs has been cited by experts as crucial to having efficient and effective competition in the eConveyancing market.⁵ However further delays put competition at risk and will lead to negative outcomes for consumers, industry and the Australian economy.
23. As ELNOs are commercial entities, they will require enough market share to sustainably run a business. With the current market structure and absence of interoperability, it is impossible for any ELNO other than the incumbent monopoly to earn enough revenue to be able to sustainably operate in the eConveyancing market and compete. Without a change in the market structure and introduction of interoperability, PEXA's network effects prevent any other ELNO from competing. It is unlikely in the event that Sympli fails that another competitor will enter this market.
24. Currently there is no downward pressure on PEXA to provide lower fees to home buyers and seller. PEXA have consistently raised their fees by CPI each year despite drops in operating expenditure. This is coupled by the PEXA monopoly recording increasing amounts of revenue each year, with a 25% increase in FY25 H1.⁶ It is apparent that without the presence of the interoperability reform on the (now delayed) horizon, PEXA would be effectively unregulated and enjoy the freedom to charge the prices they wish and affecting property transactions nationwide.
25. Interoperability and therefore competition will lead to a downward pressure on transaction fees for consumers and deliver benefits to the economy. Previous cost-benefit analysis commissioned by the New South Wales Government has shown that net productivity benefit of competition will be \$83.6m over 10 year in New South Wales alone. Analysis has shown that competition can lead to fee savings of \$20m nationally per year (based on FY23 PEXA revenue, applying a discount to reflect Sympli FY24 fees). This comes to approximately \$66 per transaction which is the same level of benefit seen in the transition from paper to eConveyancing.
26. Given the network effects that the PEXA monopoly enjoys, for many consumers there is no choice but to use PEXA for their transactions. For more than 90,000 solicitors⁷ and 7,000 conveyancers⁸ Australia wide, many of which are female-led small businesses, they will significantly benefit from greater competition in the eConveyancing market, giving them greater value, more choice and drive innovation in

⁵ Dench McClean Carlson (n 2) 106.

⁶ [https://www.pexa-group.com/investor-centre/asx-announcements/FY25 Half Year Results Announcement](https://www.pexa-group.com/investor-centre/asx-announcements/FY25%20Half%20Year%20Results%20Announcement) 1.

⁷ <https://www.lawsociety.com.au/sites/default/files/2023-05/2022%20National%20Profile%20of%20Solicitors%20-%20Final.pdf>.

⁸ <https://www.jobsandskills.gov.au/data/occupation-and-industry-profiles/occupations/599111-conveyancers>.

this sector saving them time and money. Currently, they are subject to a single monopoly provider.

27. A lack of competition will not only mean that benefits will not flow to consumers and industry, but there is a significant single point of failure risk with the current PEXA monopoly market structure. PEXA settles more than \$800bn worth of property and processes more than 4 million transactions each year with no backup provider.
28. PEXA's exchange has also been the subject of ongoing issues. Contrary to PEXA's claim that its exchange has 100% system uptime,⁹ reports in the media indicate that there have been at least a dozen outages since at least the start of 2025.¹⁰ This is supported by PEXA's status / incident history webpage which indicates that multiple outages occur every month.¹¹ Given this high incident rate there is a likelihood of a major outage as was seen in 2021 and there are questions around how this performance metric is reported and assessed by ARNECC itself.¹²
29. Competition in this market will deliver resilience to the network by incentivising new entrants to build a separate set of infrastructure, as Sympli has done. Currently, if PEXA was to sustain a major outage there is no clear backup option, exacerbated by the fact that the paper conveyancing has been phased out in most States and Territories and that financial institutions only use the PEXA network for transfer transactions. The cost of not having competition in this market is a significant one that could feasibly cause the Australian property market to fail and cause thousands of consumers and practitioners to lose millions of dollars.

There are greater roles for Commonwealth Regulators in eConveyancing – ACCC, APRA, ASIC, RBA and Commonwealth Treasury

30. To deal with some of the broader issues that require Commonwealth oversight, Commonwealth Regulators are uniquely placed to be able to solve for various issues, including that of bank participation and those oft quoted as being financial settlement.
31. State and Territory Governments have actively sought Commonwealth expertise and resourcing to help them tackle some of these issues including the participation of the major banks. Sympli understands that the States and Territories have contacted the Federal Sympli understands that contacted the Treasurer, Dr Jim Chalmers MP, noting the need for additional involvement at the federal level, however we are unaware of any additional progress on this item.
32. The Commonwealth Government, through its relevant ministers, has the power to direct the ACCC to investigate the PEXA monopoly under Part VIIA of the *Competition and Consumer Act 2010* (Cth).¹³ Whilst it has been reported that the ACCC are in the process of assessing complaints against PEXA, the ACCC have reiterated that their

⁹ <https://www.pexa-group.com/investor-centre/asx-announcements/> 11.

¹⁰ <https://www.bankingday.com/pexa-in-a-pickle>.

¹¹ <https://status.pexa.com.au/history>.

¹² <https://www.afr.com/street-talk/pexa-in-operating-hiccup-on-float-eve-20210630-p585pz>.

¹³ *Competition and Consumer Act 2010* (Cth) s 95ZH.

assessments are not “... *an in-depth investigation at this stage*”.¹⁴ The consistent message from the ACCC is that ARNECC is the regulator, despite a clear call from ARNECC for help.

33. With ARNECC being threatened by an entity they are supposed to regulate and the ACCC not explicitly investigating the issue, it is unclear how these regulatory issues will be resolved in a manner and with enough urgency for the market to be competitive without political leadership from the Commonwealth Government.
34. Sympli has previously met with the ACCC and shared information with them regarding the conduct of PEXA in preventing competition from occurring in the eConveyancing market.

APRA

35. APRA should have an interest in PEXA's conduct and its effect on the banks and the consequent risks. With CPS 230 requirements coming into effect on 1 July 2025, there is little time for APRA to ensure that the major banks are able to mitigate the effects of a potential failure of a single point of failure. With settlements classified as critical operations under Prudential Standard CPS 230 Operational Risk Management¹⁵ there is a real risk that settlements will be significantly impacted if the banks' current only eConveyancing service provider, PEXA, finds its services impacted. APRA must ensure that the banks participate in the interoperability reform. Otherwise, it is inevitable that all parties to a property transaction will be at a significant risk of settlement failure due to a single point of failure. The solution is the interoperability reform.
36. Sympli has previously been in contact with APRA and has detailed the risks the major banks face as a result of a failed or degraded interoperability program and how these risks can be dealt with through existing APRA powers. APRA provided Sympli with a statement setting out that they will not be getting involved at this stage.
37. Sympli has previously shared information with APRA regarding the risks of a single point of failure in eConveyancing not being addressed.

ASIC

38. ASIC should have a vested interest in the interoperability reform and the risk it may impose on financial products and licensing schemes. Specifically, the interoperability reform may impact the use of statutory trust accounts and licensing schemes such as the AFSL exemptions held by Sympli and PEXA which are regulated by ASIC.
39. If ASIC does not ensure that the reform adequately includes and addresses these issues in the interoperability scope, then it risks the incorrect operation of various types of financial products with wide ranging implications. Accordingly, if the workspace

¹⁴ Ibid.

¹⁵ APRA, *Prudential Standard CPS 230 Operational Risk Management* (at July 2025) [36].

preparation process of the eConveyancing workflow is not sufficiently supported by the interoperability reform, ELNOs may not be able to rely on an AFSL exemption and may not be operating within their exemption terms. As a result, consumers will face a heightened risk of fraudulent or incorrect payments due to the lack of validation and verification of payment information.

40. Sympli has previously presented and provided materials to ASIC relevant to the above. In response, ASIC stated that it would consider the information provided by Sympli.

RBA

41. The RBA has the capacity and remit to provide oversight of the complete end-to-end eConveyancing workflow with respect to financial settlement. To ensure that financial settlement is not compromised, the RBA should provide guidance to and advise ARNECC on what is needed to be included in the interoperability program scope. This will ensure that workflows are not impacted. The RBA are already involved in eConveyancing with respect to the RITS batch settlements used to facilitate financial settlement in an eConveyancing transaction.
42. The RBA is engaged with the problems in eConveyancing and has a desire to assist further. The RBA holds the view that they require more specific engagement in resolving specific issues by way of an ARNECC request or a ministerial direction. The RBA has told Sympli that it believes that there needs to be practical steps taken to progress the interoperability reform.
43. Sympli has previously met and shared information with RBA regarding the risks of a impacted workflows in eConveyancing not being addressed.

Commonwealth Treasury

44. The Commonwealth Treasury has the capability to provide appropriate resourcing to be ensure progress of the interoperability reform. Treasury is able to provide resourcing to the states through the National Productivity Fund so that the states have the requisite resourcing to ensure the success of interoperability.

Other opportunities to increase competition in the eConveyancing market

45. Whilst interoperability is the key pathway to increasing competition in the eConveyancing market, this is not by itself a sole solution to correcting the market structure and enabling other potential competitors to successfully enter the market.
46. As identified in the IGA Review, there are additional barriers to competition succeeding in the eConveyancing market, in particular with respect to the ability for customers to switch to their ELNO of choice.
47. Specifically, two barriers to customer switching that can be improved are:
 - a. the digital certificate regime; and

- b. the verification of identity process.

Digital certificates

- 48. Currently, ELNOs are allowed to issue closed digital certificates to their subscribers, meaning that the digital certificates can only be used on their network. PEXA has implemented this approach, meaning that any subscribers that have purchased a PEXA digital certificate would need to obtain a new digital certificate to use on Sympli, which includes a fee and a time-consuming onboarding process. Sympli currently provides open digital certificates to our subscribers, meaning they can be used on any ELNO.
- 49. Due to the issues surrounding mandating described above, the vast majority of the market currently has a PEXA digital certificate, which presents yet another barrier to switching to a new ELNO such as Sympli. There is the opportunity through regulation to require ELNOs to open their digital certificates to be able to be used on all ELNOs, however this position has not been adopted to date by ARNECC.

Verification of identity process

- 50. The current ARNECC Model Operating Requirements (**MOR**) requires that ELNOs perform face-to-face verification of identity checks, which is an administrative burden on both new entrant ELNOs and subscribers who are looking to switch to a new ELNO. This process, outlined in Schedule 7 of the MOR,¹⁶ requires a representative from the ELNO to meet in person with the subscriber who wants to sign up to the platform. We have received significant feedback directly from potential subscribers that this is a key barrier to considering switching ELNOs.
- 51. Whilst Sympli acknowledges that verification of identity is a critical part of the eConveyancing process, the view that this must be performed in-person to be secure is incorrect. As seen in the recent developments in the federal digital identity space, there are a range of digital solutions that operate at least as (if not more) securely and reliably as a face-to-face regime. These solutions could be implemented by ARNECC as an alternative to the current face-to-face requirements. Federal agencies could engage with ARNECC to recommend a solution and demonstrate how it can be used safely and securely.

Conclusion and Recommendations

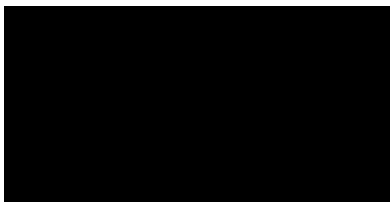
- 52. It is clear that ARNECC needs assistance to hold the PEXA monopoly to account. The uncertain regulatory framework has resulted in a market structure which threatens the integrity of land title registers and property transactions nationwide. Without swift and urgent Commonwealth Government intervention, competition in eConveyancing may

¹⁶ ARNECC, *Model Operating Requirements Version 7.1* (at February 2025) Schedule 7.

never be achieved, with wide-ranging detrimental implications for the Australian property industry and the broader economy.

53. To this effect we recommend the following is considered by the Committee in its recommendations:
- a. The Commonwealth Government to direct the ACCC to investigate the PEXA monopoly for misuse of market power and to consider providing ACCC resourcing into ARNECC to assist enforcement of related issues;
 - b. Commonwealth regulators to provide support required by States to deliver interoperability / Commonwealth expertise & resources to ARNECC such that they can better regulate a monopoly market – this includes resourcing from ASIC, APRA, ACCC and or the Reserve Bank of Australia; and
 - c. APRA and ASIC to proactively work with the banking industry on the potential risk of a single point of failure that a monopoly presents the financial system.
54. We thank the Committee for the opportunity to provide this submission and welcome any further discussion on delivering this critical reform for consumers, industry and the broader Australian economy.

Yours sincerely,



Philip Joyce,
Chief Executive Officer
Sympli Australia Pty Ltd

Attached for reference:

- **Economic dynamism submission**
 - https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Economicdynamism/Report/Chapter_10_-_Interoperability
- **NSW Productivity Commission report**
 - <https://www.productivity.nsw.gov.au/sites/default/files/2024-06/20240628-econveyancing-market-study.pdf>
- **ACCC 2019 Market Study**
 - <https://www.accc.gov.au/system/files/Letter%20to%20ARNECC%20Chair%20and%20state%20and%20territory%20policy%20agencies%20-%20December%202019.pdf>
- **IPART 2023 Review**
 - https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Final-report-Interoperability-pricing-for-Electronic-Lodgment-Network-Operators-June-2023.PDF