

Friday, 18 March 2022

The Hon. Mark Banasiak MLC

Committee Chair

Portfolio Committee No.4 – Customer Service and Natural Resources

NSW Legislative Council

By email: PortfolioCommittee4@parliament.nsw.gov.au

Dear Chair,

RE: PEXA statements relating to *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022*

Thank you for the opportunity to appear as a witness in support of the *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 (ECNL Bill)*.

Sympli would like to inform the Committee of a number of inaccuracies and misleading statements made by PEXA representatives whilst appearing as a witness at the public hearing on 17 March 2022. These statements relate to:

1. PEXA's withdrawal from industry progress;
2. the possibility of other forms of competition;
3. the interoperability timeline;
4. resiliency and redundancy achieved through interoperability; and
5. interoperability in the share trading market.

We believe that it is critical to correct these statements and bring this to the Committee's attention as it raises concerns about other claims made by PEXA with respect to the implementation of interoperability. There is a clear incentive for the monopoly to protect their profits, and to spread misinformation to delay interoperability and competition as long as possible.

Withdrawal from industry progress

Statement: PEXA has withdrawn from only "one stream" of interoperability work, being the "Operations Committee".

This is untrue. PEXA's withdrawal from all industry interoperability work has completely stalled the key technical and operational design work for interoperability. Stakeholders, including the financial institutions, are dependent on the deliverables from these streams being completed in order to be ready for interoperability. For clarity, PEXA has withdrawn from the following streams of work that have been established by ARNECC for the sole purpose to progress interoperability:

Stream	Date Withdrawn	Comment
Interoperability Operating Committee (IOC) - responsible for the technical design for interoperability.	15 November 2021	Sympli, and our external consultants LBH Partners, continued to attend bi-weekly IOC meetings with representatives from the land registries following PEXA's withdrawal. Due to the limited progress possible without PEXA, the IOC has not held regular meetings since 14 December 2021.
Interoperability Implementation Committee (IIC) - responsible for operational matters relating to interoperability.	15 November 2021	All other members continued to meet in PEXA's absence. Due to the limited progress possible without PEXA, the IIC has not held regular meetings since 17 January 2022.
Testing Working Group - established to co-ordinate test plans and testing for interoperability.	15 November 2021	At the time of the PEXA withdrawal, ELNOs were planning an integrated strategy for testing. A testing strategy for both ELNOs cannot be prepared by Sympli alone.
Interoperability Agreement Working Group - established to solve key issues relating to the agreement between ELNOs.	14 December 2021	PEXA were requested to present their position on risk and liability at the final meeting of this group on 14 December 2021. They did not attend this meeting, and the working group has now concluded.

Payments Working Group - established to identify technical and operational impact on financial institutions and subscribers.	N/A	The Payments Working Group was scheduled to commence in February, but is dependent on a briefing paper to be developed by IOC. IOC requires PEXA's input to complete this briefing paper, which was requested on 28 October 2021.
--	-----	---

Please find documentation attached at Appendix A evidencing PEXA's absence from these streams.

Statement: PEXA is "still working in the payment code space".

Whilst the industry payments code is related to interoperability, it is not a stream of interoperability work. It is a separate initiative established by Australian Payments Network Limited to establish an industry payments code for eConveyancing, as result of a regulatory review of the eConveyancing regulatory framework, and with the support of the Council of Financial Regulators.

The development of the industry payment code is not part of the implementation plan for interoperability, and therefore not part of the scope of interoperability.

Prohibiting other forms of competition

PEXA stated that "there is the prospect of other forms of innovation based on a retail model, but they've been ruled out by the legislation".

Currently, ELNOs are able to outsource their lodgment and settlement functions to other businesses, and therefore does not prohibit a potential ELNO from entering the market under a retail model. The ECNL Bill does not change this position.

Sympli currently uses outsourced infrastructure through ASX Financial Settlements Pty Limited to perform part of the settlement functionality for our platform. This engagement is non-exclusive and these services are therefore available to other ELNOs.

Model Operating Requirements (**MOR**) 4.5, 5.3(a) and 5.4 sets out the capabilities needed for ELNOs to be compliant, which in summary requires that an ELNO has sufficient technical resources to meet its obligations, including the ability to lodge electronic documents. There is no prohibition on this being outsourced. The Guidance Notes on MOR 5.3(a) specifically

contemplate outsourcing and sets out the level of responsibility an ELNO must maintain with its service providers.

Timeline

Statement: There are "121 working days" until interoperability begins.

This is incorrect. Symplici is unclear what date was used to calculate this period. The first two pilot refinance transactions are scheduled to take place on 14 September 2022. This is outlined in the implementation plan developed by the NSW Interoperability Program Manager (**Implementation Plan**), extracts of which are attached at Appendix B.

Interoperability will not be available to market until 30 June 2023, leaving sufficient time for the necessary actions for regulatory, technical and operational readiness.

Statement: "Zero weeks have been allowed for change management in industry."

The Implementation Plan sets out phases for the build, test and execution of interoperability. There is also substantial time allocated for engagement with financial institutions, including specific time allocated for updating and testing of their systems. Change management clearly forms part of these phases.

Statement: "There was a timeline that was developed from the bottom up by an industry working group – ourselves, Symplici, and the officials. That went up to the Ministerial Council and it had 30 weeks just lopped off it because it was too slow".

The NSW Interoperability Program Manager and ARNECC developed several iterations of a draft timeline for interoperability, including:

1. a draft plan presented to the IIC on 27 September 2021, which scheduled the interoperability to be rolled out in NSW commencing 8 April 2024 and concluding nationally by the end of 2024; and
2. an example timetable presented at the Ministerial Forum held on 18 October 2021, which scheduled the interoperability to be rolled out in the first jurisdiction commencing January 2024 and concluding nationally by the end of 2024.

Feedback was provided by ELNOs, the ACCC and peak industry bodies, in addition to a significant amount of feedback given to ARNECC by the broader industry on the timing of interoperability as part of the consultation process on version 7 of the MOR.

Subsequently, a joint Ministerial directions statement was released in October 2021, which set out the milestone dates for interoperability. This statement was endorsed by all relevant state, territory and federal ministers.

Resiliency and Redundancy

Statement: In an interoperability transaction with more than one ELNO, "if one of those ELNOs goes down, then that's the end of that transaction."

The IOC has not yet determined the business rules or processes for what happens in the event of an ELNO outage in an interoperability transaction. The interoperability model is designed such that all ELNOs in an interoperable transaction have access to all of the data for that transaction. This means that a solution can be developed to allow a transaction to be lodged and settled by any ELNO, which would add a layer of redundancy to the system that does not exist today.

Sympli has been involved in preliminary discussions with members of the IOC about the process of switching Responsible ELNOs, including in scenarios where an ELNO is unavailable. If PEXA re-engages with the IOC, this discussion can continue. Interoperability gives the industry a golden opportunity to build resilience and redundancy into eConveyancing, and avoid widespread outages such as the one experienced on 30 June 2021.

Interoperability in share trading

Statement: There is "no interoperability in the share market".

ASX and Cboe Australia (formerly known as Chi-X) currently interoperate and have had an agreement in place since October 2011. This interoperability is required by law. For example, rule 9.2.1 of the *ASIC Market Integrity Rules (Securities Markets)* 2017 requires that market operators share certain data feeds with each other.

Sympli understands that the ASX has shared their concerns about PEXA's statements directly with the Committee. Additionally, the ASX has provided Sympli with information relating to inaccuracies and misleading statements in PEXA's formal submission to the Committee. Please find this information attached at Appendix C.

Next steps

Sympli thanks the Chair and the Committee's time and efforts in considering the ECNL Bill and the benefits interoperability can bring to the eConveyancing market and the people of

New South Wales. Please let us know if Sympli can provide any further information or assistance for your review.

Yours sincerely,

Philip Joyce

Chief Executive Officer



Appendix C – ASX comments on PEXA submission

Pages	PEXA assertion	Comment
Appendix, 8	An e-conveyancing transaction is far more complicated than ASX trades.	<p>This statement is incorrect.</p> <p>Share trading is orders of magnitude more complicated than property settlement. Despite its name, PEXA is not an exchange. It does not run a central limit order book (CLOB), as ASX does for shares, to match property buyers and sellers at the best price. That task is left to real estate agents. PEXA is a virtual settlement room for already-contracted parties to conduct electronic property settlement.</p> <p>Share trading involves matching share sellers and buyers in price-time priority via a CLOB. Following the matching up of buyers and sellers, share trades are cleared and settled which includes recording the resulting changes in ownership on the share register. These post-trade processes involve the margining of net unsettled positions with the clearing house, and the coordination of once-per-day Delivery Versus Payment (DvP) settlement on a multilateral net basis among dozens of institutions.</p>
Appendix, 8	Unlike share trades that are settled days later (commonly referred to as a "T+2" arrangement), e-conveyancing transactions are settled in real-time, with ownership changes, releases of mortgage and new mortgage instruments	<p>This statement is incorrect.</p> <p>As noted above, PEXA is involved only in the settlement of property transactions. The setting of the price and the contractual arrangements for sale are conducted by the real estate agent and settlement typically occurs 6 weeks later (T + 6 weeks).</p>

	<p>lodged as part of settlement execution.</p>	<p>Share trades settle only two days after the setting of the price and contractual arrangements for sale (T+2 days).</p> <p>Similar to property transactions, when share trade settlement occurs, it happens via a process called DvP, noting that in share settlement there is a significant netting of delivery and payment obligations associated with all trades due for settlement, which adds a further layer of complexity.</p>
Appendix, 22	<p>Effective competition has emerged in the equities trading service industry without interoperability.</p> <p>Notwithstanding the fact that extensive work was carried out by numerous competent regulators over many years (including considering the implementation of interoperability), interoperability was not introduced in the Australian equities trading service industry as a means of improving competition.</p>	<p>This statement is incorrect.</p> <p>As noted in the attached ASX letter there has been interoperability between ASX and Cboe Australia (previously Chi-X) since 2011. An agreement to interoperate was agreed to between ASX and Chi-X <u>prior to</u> Chi-X's launch in 2011. Chi-X would not have been able to operate without this agreement and would not have been able to deliver the benefits of competition, which, as acknowledged in PEXA's submission, have included 'significantly lower prices' and 'improved product quality'.</p>
Appendix, 25	<p>The government undertook reforms to enable competition, by setting regulatory requirements and minimum conditions, but did not introduce</p>	<p>This statement is incorrect.</p> <p>As noted in the ASX letter to the Committee there has been interoperability between ASX and Cboe Australia (previously Chi-X) since 2011. An agreement to interoperate was agreed</p>

	<p>interoperability, and in 2011, Chi-X, the first competing trading venue entered the market. Chi-X has since achieved around 15% share of the market, despite no interoperability.</p>	<p>to between ASX and Chi-X <u>prior to</u> Chi-X's launch in 2011. Chi-X would not have been able to operate without this agreement and would not have been able to deliver the benefits of competition, which, as acknowledged in PEXA's submission, have included 'significantly lower prices' and 'improved product quality'.</p> <p>It should also be noted that European and Asian clearing and settlement facilities have been interoperating since the early 2000s. Examples of interoperable clearing and settlement facilities include:</p> <table><tr><th>Interoperating facilities</th><th>Year interoperability established</th></tr><tr><td>LCH Ltd – SIX x-clear AG</td><td>2003</td></tr><tr><td>LCH Ltd – SIX x-clear NB</td><td>2003</td></tr><tr><td>CC&G – LCH SA</td><td>2004</td></tr><tr><td>EuroCCP – SIX x-clear AG</td><td>2011</td></tr><tr><td>EuroCCP – LCH Ltd</td><td>2012</td></tr><tr><td>ChinaClear – HKSCC</td><td>2014</td></tr><tr><td>National Securities Clearing Corporation – Indian Clearing Corporation</td><td>2019</td></tr></table>	Interoperating facilities	Year interoperability established	LCH Ltd – SIX x-clear AG	2003	LCH Ltd – SIX x-clear NB	2003	CC&G – LCH SA	2004	EuroCCP – SIX x-clear AG	2011	EuroCCP – LCH Ltd	2012	ChinaClear – HKSCC	2014	National Securities Clearing Corporation – Indian Clearing Corporation	2019
Interoperating facilities	Year interoperability established																	
LCH Ltd – SIX x-clear AG	2003																	
LCH Ltd – SIX x-clear NB	2003																	
CC&G – LCH SA	2004																	
EuroCCP – SIX x-clear AG	2011																	
EuroCCP – LCH Ltd	2012																	
ChinaClear – HKSCC	2014																	
National Securities Clearing Corporation – Indian Clearing Corporation	2019																	