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20 December 2023

Hon Jihab Dibb

By email:

Dear Minister,

I write to seek your support for a rethink on the current approach to competition reform in e-conveyancing.

As you know, the banks have raised serious concerns about the impacts of the proposed approach. Further to the comments from Hon. Anna Bligh at the ministerial forum, last week at an ARNECC forum, the ABA representative advised that 30% of financial settlements could fail unless there is a changed approach. This would clearly be catastrophically disruptive to Australia's property markets and financial system.

The current approach is also raising new critical concerns for PEXA. We have been advised that ARNECC has decided that the mandatory scope of interoperability matches their understanding of PEXA's full offering. This includes not just the functions required to complete a conveyancing transaction, but also extensive additional features developed by our experts to enhance our customers' productivity. These additional capabilities represent intellectual property belonging to our shareholders, in part acquired from the NSW Government when PEXA was privatised. To fulfill our legal duties to shareholders, with great regret we have no choice but to engage external lawyers to help protect our shareholders' assets. A copy of their correspondence to ARNECC is attached.

The regulator appears to hold a mistaken view that it would be possible for our features to continue to operate based on a simple mandate requiring exchange of specified data fields with our competitor. However, neither we, the banks, nor our competitor share this view. To maintain our current features would require us to provide our competitor with so much detail about their operation that they could be easily replicated without compensation.

We offer an alternate path forward

I have attached a proposal for an alternative approach that we have also provided to ARNECC officials. We believe that this alternative would overcome both of the significant concerns raised by the ABA, commence competition more quickly and generate real benefits for consumers.

The current approach has assumed a binary choice between two extreme market structure positions – regulating the entire industry as a natural monopoly; or attempting to provide end-to-end competition which has turned out to be much more costly, risky and time-consuming to implement than was expected. In fact, even ARNECC's (in our view unrealistic) currently scheduled date for a fully functional interoperable system is further off today (at least 2 years away) than when jurisdictions committed to interoperability reform in Sept 2020, expecting an operable system within 15 months.

The current reform is also misdirected in the sense that it is not focussed on the areas within our industry where there are material opportunities for productivity enhancement. The creation of PEXA has greatly reduced most of the manual costs in the conveyancing and related lending processes and delivers ongoing productivity savings of over \$240m per annum to industry. The best areas for further productivity enhancement are in enabling better integration between the different systems used by industry participants to enable ever greater automation and cost savings. These could digitally connect home buyers, sellers, lenders, brokers, lawyers, conveyancers, agents, advertisers, removalists, utilities etc, making it much easier for anyone to find, finance, buy or sell property.

We recognise that you and your colleagues are not responsible for earlier decisions that led to the current situation, and we want to help you adapt course in the light of new and clearer information. We are offering a safer and sounder incremental approach to competition reform. Our recommendation is modelled on the successful approach used in Europe to incrementally expose telecommunication infrastructure to new competition, starting with the areas of lowest risk and which are most attractive to new entrants. This process enables competition to be extended until the limits of risk tolerance or market interest are reached. This has proven to be an objectively successful approach, in contrast to the high-risk and high-cost 'big-bang' that is currently being pursued.

We request an opportunity to meet with you in the new year to seek your support for a change in direction that will benefit all stakeholders.

Sincerely

Glenn King
Group Managing Director and CEO

cc ARNECC Ministers: