

Public file

Mr Baethan Mullen
Acting General Manager, Adjudication
Australian Competition and Consumer
Commission
GPO Box 3131
CANBERRA ACT 2601

29 November 2016

Dear Mr Mullen

Applications for Authorisation A91548 and A91549 by ASFA - Response to Free Super Software Pty Ltd Submission

We act for ASFA and the Gateway Network Governance Body Ltd (**GNGB**) in respect of the applications noted above and we are instructed to respond on ASFA's behalf, as follows, to the submission lodged by Free Super Software Pty Ltd dated 11 November 2016 (**Submission**) and at the request of the ACCC as per the letter dated 21 November 2016 (ref 60580).

ASFA and GNGB do not accept the assertion that the terms of the new MoU may have the effect of restricting the ability for a Gateway Operator to provide services or to exchange data with or to a super fund or employer by way of direct messages. ASFA and GNGB's clear view is that the MoU is not intended to have this effect, and the MOU does not restrict activities outside the scope of the Superannuation Transaction Network (STN). ASFA and GNGB's intention is reflected in the operation of the MoU, which is restricted to Gateway Operators who are signatories to the MoU, and does not apply to bilateral arrangements made between recognised Gateway Operators and superannuation entities who are not signatories to the MoU.

ASFA and GNGB refer to the application and supporting submission of 29 July 2016, Section 6, which noted that

"nothing in the new MoU prevents or restricts Gateway Operators from competing for the business of providing data services to superannuation entities and funds, nor does it preclude employers and superannuation funds from establishing other arrangements outside the scope of the STN."

This remains the intent and practice of the proposed activity of the GNGB and the operation of the MoU, namely, that it applies solely to Gateway Operators as signatories to the MoU, and not to superannuation entities or employers.

Arrangements made between a Gateway Operator and other participants in the superannuation system who are not signatories to the MoU are not contractually governed by conditions included in the MoU.

The following comments relate specifically to the questions raised by your letter of 21 November 2016. The MoU provides in clause 6.2 that, subject to clause 6.2(b), Gateway Operators may only use the STN to exchange messages with persons who are also a recognised Gateway Operator and in accordance with the Gateway Standard.

Clause 6.2(a) of the MoU was developed to promote the efficacy and integrity of the STN by requiring that Gateway Operators commit to only use the STN to exchange Superannuation Transaction Messages with persons who were also subscribers to the MoU, in the interests of ensuring that all

transactions over the STN are in compliance with universally agreed standards, in order to ensure appropriate security, reliability and efficiency within the STN.

Clause 6.2(b) provides for specific exceptions that are currently known, including transactions with the ATO and the ATO Small Business Superannuation Clearing House (in clauses 6.2(b)(ii) and 6.2(b)(iii)). As a means of practical futureproofing, two other more generally expressed exceptions were also included:

- (1) the flexibility for GNGB to provide consent on a case-by-case basis, as incorporated as clause 6.2(b)(iv). This allows GNGB to provide consent, without having to amend the MoU, for particular use cases. This was seen as being of benefit to all parties; and
- (2) a savings clause in the form of clause 6.2(b)(i). The purpose of this clause was to avoid a Gateway Operator being held to be in breach of clause 6.2(a) if it exchanged messages with another Gateway Operator who was not a MoU signatory, where that exchange was undertaken on behalf of a superannuation entity and needed for that superannuation entity to comply with the *Superannuation Industry (Supervision) Act 1993 (Cth)*. In short, clause 6.2(b)(i) is designed to benefit Gateway Operators in saving them from being in breach of clause 6.2(a). It is not intended to (and on a plain reading, does not) overlay additional burdens or constraints on Gateway Operators not to exchange messages directly under bilateral arrangements.

With regards to the assertion made that clause 6.2(b)(i) restricts the services that a provider who is not a signatory to the MoU could provide to a superannuation entity, we observe that the provisions of clause 6.2(b)(i) do not apply to, and do not restrict, a provider who is not a signatory to the MoU from providing additional services to a superannuation fund or employer. The MoU does not extend to or have application to any such bilateral arrangements. It merely limits the Gateway Operator exchanges with the STN on behalf of that party to the universally agreed standards implemented by the MoU.

Should exchanges be required for contractual arrangements beyond what is allowed under clause 6.2(b)(i), then operation of clause 6.2(b)(iv) may be relied upon.

It is not anticipated that any such consent would be withheld unless the exchange would pose a risk to the STN.

To avoid any possible misunderstanding about clause 6.2(b)(i) and/or how it is intended to interoperate with clause 6.2(a), GNGB proposes to issue a guidance directive expressly clarifying the intent of clause 6.2(b)(i). The guidance will confirm that arrangements made between Gateway Operators and other participants who are not signatories to the MoU are not contractually governed by the MoU.

GNGB would also, to the extent required, use its consent powers under clause 6.2(b)(iv) to offer Gateway Operator participants a standing consent in terms consistent with that guidance to exchange messages directly under bilateral arrangements.

For completeness, such guidance will also note (as expressed in clause 6.2(c)) that such activities fall outside the administration of the STN and are at the relevant party's own risk and responsibility.

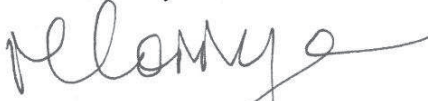
There are no claims for confidentiality in respect of this submission response and there is no objection to a copy being placed on the public register.

Mr Baethan Mullen, Australian Competition and Consumer Commission

29 November 2016

ASFA looks forward to hearing from you in due course and would be happy to meet with you to discuss any aspects of the submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael Corrigan", with a long horizontal flourish extending to the right.

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