17 July 2020

Ed Seymour and Stephen Farago
ACCC
**By email: ed.seymour@accc.gov.au; stephen.farago@accc.gov.au.**

Dear Mr Seymour and Mr Farago

**Consultation on Superfast broadband network class exemption and deemed functional separation undertaking**

Aussie Broadband welcomes the opportunity to be involved in this consultation. We will shortly commence installation of a fixed line network and the outcome of the ACCC's review will be increasingly relevant to our future business.

Our primary concern is that the low SIO threshold for applicability of the class exemption and the significant costs of adhering to the proposed strict levels of functional separation across a broad range of business functions will result in emerging fixed line network operators being effectively priced out of the market by high operational costs and as such being unable to compete in retail markets or to afford to sell retail services to residential customers.

## 1. The class exemption

It is our view that a maximum number of 12,000 residential customers, let alone 2000 customers, is too small for a fixed line network operator to be profitable. However, we understand that these limits are imposed by statute and the ACCC has no ability to increase the thresholds of the class exemption. Clearly, the higher SIO number is preferable to the lower number and will assist small and emerging carriers to compete for share in the markets for wholesale and retail faxed line broadband. This is in the LTIE as it provides retail end-users of telecommunications services with access to diverse services and by adding facility based competitive tension will encourage service providers to be more competitive in the price and service level of their products. We submit that the 2000 threshold should automatically increase upon a higher number being set in Ministerial regulations.

We do not consider that the class exemption should be subject to additional rules such as geographic limitations that could narrow its application.

We consider that SBAS/LBAS is an appropriate characterisation of a designated broadband service.

We do not consider that other conditions should be imposed on carriers under the exemption.

We consider that the low SIO threshold for applicability of the class exemption will impede competition. Any carrier approaching the threshold will be reluctant to expand as it will be required to either divest its retail business or undergo functional separation, which is expensive and as such potentially financially unviable for small operations. It is our view that a carrier would require at least 50,000 retail residential customers on its own network to afford to operate functionally separated wholesale and retail arms. We base this on the cost of implementing the deemed functional separation against the profit per residential customer. The potential costs of functional separation are outlined below.

We consider that the intention of s.143 of the Telecommunications Act is to provide a class exemption where the SIO threshold is based on the number of fixed line residential customers on local access lines that the particular carrier controls and is not intended to include the number of customers to which the carrier provides a service as a RSP on local access lines controlled by an non-associated carrier. For example, calculation of the 2000 or 12,000 customers should not include the customers that Aussie Broadband provides a service to via the NBN. This is not made clear in the proposed drafting of the class exemption instrument. We propose the following amendment to column 1 of the instrument.

> Persons who are not members of an associated group where the supply of fixed line carriage services <u>on local access lines controlled by the person or its associated group</u> is to no more than 2000 residential customers <u>or such higher number specified in the regulations</u>

A similar amendment can be made to the next row in column 1 regarding members of associated groups.

## 2. Deemed standard functional separation undertaking

The ACCC proposes a strict level of separation between wholesale and retail divisions, including:

- separate branding
- separate office space
- limited access to the other unit
- demarcation of each unit's business activities
- separate staff and management
- incentive and remuneration structures
- separate IT systems for operational support, business, communications and accounts.

The ACCC has asked for submissions on:

- Whether the proposed separation requirements present major difficulties or costs and are appropriate.
- Which of its proposed provisions should be regarded as fundamental, which if breached would be grounds for the ACCC to revoke an undertaking.
- Whether there is any information that the retail unit should be able to share with the wholesale unit.
- Whether there should be different deemed undertakings based on a carrier's size.

Aussie Broadband considers that the proposed separation requirements present significant costs that will be a major difficulty for smaller providers, therefore, we consider there should be different deemed undertakings based on a carrier's size.

## 3. Costs of functional separation

Our estimate of the costs that we would incur to implement functional separation includes at a minimum the following upfront and ongoing costs:

- An extra $1.5 million per annum in additional staffing cost

- One-off and ongoing costs associated with duplicating IT systems and rebranding of:

    - $150k rebranding assuming that we could continue to use a shared graphic design unit for ongoing work
    - $1.2 million once-off plus ongoing subscription costs of $50k per annum for separate IT systems for operational support, business, communications and accounts. This is based on the cost of our current systems, which would need to be duplicated.

- To maintain a separate office would involve an initial extra cost of approximately $625,000 and ongoing extra costs of approximately $560,000 per annum. We would be required to maintain a separate Network Operations Centre between the divisions as well as a separate office for operational staff. Our cost estimates are based on a 1000sqm office and 20 staff, with the estimated costs being:

    - $400k per annum lease with a $400k bond (12 months commercial rent bond)
    - $160k per annum outgoings
    - $60k office furniture
    - $60k computer equipment
    - $25k cabling
    - $30k network equipment
    - $20 Webex
    - $15k security
    - $25k signage

These costs are significant and would be a strong disincentive for smaller providers like us to offer any services to residential customers from our own network. This reduces our ability to use our network efficiently and reduces customer choice, which is contrary to the LTIE, especially for example when residential customers are on are lower performing NBN services but are unable to obtain access to super-fast fibre going past their doorstep because of regulatory rather than technical impediments.

## 4. Suggestion – tiered undertakings

We consider that a carrier would require at least 50,000 retail residential customers on its own network to be able to afford to operate functionally separated wholesale and retail arms in a manner that would comply with the ACCC's proposed deemed standard functional separation undertaking. It will be extremely difficult for a small carrier to grow from the 12,000 SIOs under a class exemption to having 50,000 SIOs. We therefore suggest that the ACCC provide two levels of undertaking:

- a less onerous undertaking that applies to carriers with less than 50,000 residential customers on its own network; and
- an undertaking that applies to carriers with 50,000 or more residential customers on its own network. This undertaking could be in the form currently proposed by the ACCC.

**5. Small carrier deemed standard functional separation undertaking**

We understand that any undertaking accepted by the ACCC and proposed as a deemed standard undertaking must comply with Division 2B of Part 8 of the Telecommunications Act and in particular, the requirements of s.151A. We do, however, consider that there is scope for some flexibility, which allows the ACCC to implement a less onerous undertaking for small carriers, i.e. carriers with less than 50,000 residential customers on their own network.

This could include:

- Retail and wholesale divisions can share staff who have a role that does not involve a conflict between operating separate retail and wholesale business units. This includes staff that do not have access to confidential information that is relevant to the operations of either business unit. For example, it would include such roles as non-sales front of house, accounts, human resources, graphic design, public relations, secretarial, marketing and IT.

- Allowing the two divisions to use shared bathroom and lunch facilities. This would allow smaller providers to partition off areas in existing offices rather than be required to lease a whole new building.

- Allowing some shared IT systems with staff undertakings not to use them to share information. For Aussie Broadband this would include its company communication platform Slack. The undertaking's focus would be on separating only the systems that contain customer data to ensure that it is not shared between the divisions.

- Allowing a single Network Operations Centre to operate as a "provider" to both divisions, rather than having to be structurally separated in itself. Appropriate rules could be implemented and enforced, for example to ensure that there is no preference given to the retail division over provisioning and fault rectification requests from RSPs.

We thank the ACCC for considering our requests and we are very happy to provide more information or work with the ACCC to explore how a deemed standard undertaking can be appropriately drafted to account for smaller providers.

Yours sincerely

Phillip Britt
Managing Director

Aussie Broadband
3 Electra Ave, Morwell VIC 3840