

**Public Submission  
of Connected Australia Pty Ltd (“Connected Aus”)  
in response to June 2020 ACCC consultation on  
Superfast Broadband Class Exemption and  
Deemed Functional Separation Undertaking**

By email to: [ed.seymour@accc.gov.au](mailto:ed.seymour@accc.gov.au)

1. Connected Aus is an industry participant. It makes this submission in that capacity.

**Summary**

2. Connected Aus generally agrees with the ACCC proposal that there should be a Superfast Broadband Class Exemption and an available standard form of Deemed Functional Separation Undertaking. However, Connected Aus considers that:
  - (a) The proposal to limit the class exemption to businesses that supply fixed line carriage services to up to 2,000 services will:
    - (i) exclude the vast majority of small businesses that will supply superfast broadband services;
    - (ii) substantially reduce the potential for small business to offer competitive pricing to end users for superfast broadband services; and
    - (iii) substantially limit the appetite for retail entities in the market to invest time and resources in onboarding with a small carrier, given that the class exemption will inhibit further growth beyond the 2,000 residential subscriber mark; and
  - (b) Further, Connected Aus considers that the identification of “wholesale” and “retail” markets is inapt. Rather, we consider that a more appropriate separation would be between markets for “technical” and “sales” services; and
  - (c) Connected Aus apprehends that the principal intent of “separation” both for human resources and IT systems applications is to prevent an unfair commercial advantage being afforded to the retail business unit. In particular, that means that customer contact data and support history of end-users who are not presently serviced by a specific retail business unit should not be shared with that retail business unit by the wholesale business unit. The same considerations do not, in our view, apply to information flow in the other direction. Consequently, it is our view that the technical staff of each wholesale business unit should have visibility of pertinent information for both retail and non-retail customers and that implementing such arrangements would be in the best long term interests of end users.
3. As appropriate, Connected Aus details its position below in response to the specific questions raised in the consultation paper.

## Responses to specific questions

### Question 1

4. No. Connected Aus considers that the proposed maximum threshold of 2,000 residential customers being supplied with fixed line services is already too low to encourage meaningful competition. Accordingly, Connected Aus sees no merit to imposing further restrictions to even lower numbers in particular areas. In short, further limits would not be in the long term interest of end users.

### Question 2

5. Yes. Connected Aus considers that the proposed maximum threshold of 2,000 residential customers being supplied with fixed line services is too low to encourage meaningful competition. Accordingly, Connected Aus considers that there is an urgent need for the Minister to increase the present maximum threshold by regulation. The part of the residential market serviced by Connected Aus includes residential apartment blocks. The proposed maximum threshold of 2,000 residential customers would, eg, be too readily reached by a business selling its services to a majority of residential customers in only a few such apartment blocks. An increase to the maximum threshold permitted to be specified by regulation would provide some, albeit limited, opportunity for smaller, emerging market participants to have the opportunity to develop and offer a viable and competitive business model in the long term interests of end users.
6. Connected Aus acknowledges that the maximum threshold presently permitted under the legislation is 12,000. In fact, having regard to efficiencies of scale, Connected Aus considers that an appropriate maximum threshold that would encourage adequate competition in the long term interests of end users would be in the range of 50,000 to 60,000 residential customers.

### Question 3

7. Yes – see paragraphs 5 and 6, above.

### Question 4

8. Connected Aus operates a superfast broadband network. **[c-i-c] [c-i-c]**

### Question 5

9. Connected Aus makes no submission.

### Question 6

10. No. The anti-competitive effect of additional conditions and limitations that would add to compliance costs would not be in the long term interest of end users.

### Question 7

11. A class exemption instrument has the potential to promote competition in relevant markets. Connected Aus repeats its comments in paragraphs 5 and 6, above, and paragraphs 19 to 21, below.

*Question 8*

12. No. The anti-competitive effect of additional conditions and limitations that would add to compliance costs would not be in the long term interest of end users.

*Question 9*

13. Connected Aus makes no submission.

*Question 10*

14. Yes. Connected Aus repeats its comments in paragraphs 5 and 6, above, and paragraphs 19 to 21, below.

*Question 11*

15. Yes. Connected Aus agrees that implementing a class exemption will have no impact on achieving any-to-any connectivity.

*Question 12*

16. A class exemption referable to an appropriately higher number of residential customers would promote the economically efficient use of, and economically efficient investment in, infrastructure. Connected Aus repeats its comments in paragraphs 5 and 6, above, and paragraphs 19 to 21, below.

*Question 13*

17. Yes. For the reasons outlined in paragraph 5 and 6, above, Connected Aus considers that there is an urgent need for the Minister to increase the present maximum threshold to the maximum permissible level (presently 12,000) by regulation.

*Question 14*

18. Connected Aus makes no submission.

*Question 15*

19. Connected Aus acknowledges that the pertinent legislation concerning joint functional separation undertakings requires a distinction to be drawn between wholesale business units, on the one hand, and retail business units, on the other hand. We consider that the distinction, as presently identified, will impose significant and unnecessary anti-competitive commercial burdens upon small enterprises. Further, to the extent that small enterprises were to attempt to comply with the proposed requirements, the widespread implementation of the necessary structural, infrastructural and human-resource separations proposed by the consultation paper would likely to lead to massive and purposeless duplication of functions and resources. For the reasons set out in paragraph 2(c), above, Connected Aus considers that two-way separation of technical human and infrastructure resources is inappropriate and unnecessary, will not advance the principal intent of "separation" and is thus not in the long term interests of end users. In addition to the inevitable lessening of market competition that would follow from implementing the proposal in its present form, Connected Aus is also concerned that potentially widespread duplication of functions and resources is likely to have a dysfunctional environmental impact.
20. In practice, for many smaller carriage service providers, the relevant markets are for technical services and for sales. Connected Aus submits that, to the extent permissible having regard to the requirements specified in the legislation, it would be desirable for the distinction between "wholesale" and "retail" business units to reflect that practical position, rather than a purely artificial distinction between markets. For a small enterprise, the vast bulk of the technical work is performed in that which the ACCC would likely take to be the "wholesale" business unit. Thus, the "sales" ("retail") unit typically only has a communication and referral role in relation to issues such as responding to network and service complaints from retail customers.

21. In that regard, separate branding of the business unit providing technical services from the business unit providing sales services is unhelpful and likely only to lead to confusion for end users. Otherwise, Connected Aus does not consider that the proposed separation requirements present any major practical difficulties or costs for its business.

*Question 16*

22. Connected Aus refers to and repeats paragraphs 19 to 21, above.

*Question 17*

23. Connected Aus refers to and repeats paragraphs 19 to 21, above. Further, Connected Aus considers that at least the following adjustments need to be made:

- (a) in the list of activities to be undertaken by the "wholesale business unit", add:
- (i) *"responding to all network and service complaints for the systems and applications for the retail business unit"; and*
  - (ii) *"responding to complex network and service complaints from retail customers"; and*
- (b) in the list of activities to be undertaken by the "retail business unit", the activity presently described as:

*"responding to network and service complaints from retail customers"*

should be limited to:

*"responding to basic network and service complaints from retail customers".*

*Question 18*

24. Subject to the comments in paragraphs 19 to 23, above, yes.

*Question 19*

25. Connected Aus makes no submission.

*Question 20*

26. Connected Aus refers to and repeats paragraph 2(c), above.

*Question 21*

27. No, subject to our comments above, Connected Aus would not have difficulties introducing the proposed incentive structures.

*Question 22*

28. Connected Aus considers that the same systems IT systems and applications should be able to be used subject to barriers being put in place that do not allow information held by each business unit to be accessed or shared between business units. Any requirement to operate separate IT systems or applications would undermine the intended competitive effect of the ACCC's proposal and thus would not be in the long term interests of end users.
29. Further detail can be made available upon request.

*Question 23*

30. Connected Aus considers that, whatever the final form of the deemed undertaking, all provisions contained in it should be fundamental provisions. There is little merit, in our submission, in setting up a form of undertaking only certain of the provisions of which, in practice, would require strict compliance.

*Question 24*

31. Connected Aus refers to and repeats paragraph 2(c), above.

*Question 25*

32. Connected Aus makes no submission.

*Question 26*

33. Connected Aus makes no submission.

*Question 27*

34. Connected Aus considers that there should be a single form of deemed undertaking. Further, we are of the view that it will be necessary to impose organisational scope limits on the availability of that single form of deemed undertaking in order to promote competition in the market at a level that will be in the long term interests of end users.

35. The suggested organisational scope limits should be specified at a level that will:

- (a) be a sufficiently high threshold to enable genuine and significant competition from smaller market participants; but
- (b) be at a low-enough point to ensure that a deemed undertaking is only available to enterprises of modest scope, so that larger enterprises are obliged to comply strictly with all legislative requirements.

36. Balancing those factors, Connected Aus considers that the deemed undertaking should be available only to organisations that neither:

- (a) have more than 20,000 active subscribers; nor
- (b) generate eligible carrier-revenue in excess of AUD\$5,000,000 per financial year.

37. In order to maintain the functional integrity of the limit, the deemed undertaking should cease to have effect for an organisation at any time that either of those limits is passed. Commensurately, of course, an organisation should be permitted to rely (whether for the first time or again) on the deemed undertaking if and when its number of active subscribers and eligible carrier-revenue each drop below the pertinent threshold.

*Question 28*

38. Connected Aus makes no submission.

*Question 29*

39. Connected Aus makes no submission.



Matt Maxwell | Chief Technology Officer

Connected Australia Pty Ltd

Mobile: 0408 678 591

Email: [matt.maxwell@connectedoz.com.au](mailto:matt.maxwell@connectedoz.com.au) | Web: [www.connectedoz.com.au](http://www.connectedoz.com.au)