



LYNHAM NETWORKS PTY LTD

ACN 602 258 337

431 Glen Huntly Road

Elsternwick VIC 3185

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## **Lynham Networks**

***Submission for:***

**Superfast broadband network class  
exemption and deemed functional  
separation undertaking - consultation  
paper**



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**Jeremy Rich (CEO)**

**Lynham Networks Pty Ltd**

July 16, 2020

**ACCC**

Dear Sir/Madam,

Lynham Networks is a privately owned telecommunications provider based in Melbourne, Victoria. We have a fast growing business delivering connectivity to retail and wholesale customers on our own private network. As such, we have significant interest in the recently communicated consultation paper regarding Superfast broadband network class exemption and deemed functional separation undertakings.

Lynham Networks is writing to ACCC to provide input to the consultation process, and is pleased to provide insights from a small telecommunications provider for ACCC consideration.

We have reviewed the Consultation Paper available at the following URL: [https://consultation.accc.gov.au/regulated-infrastructure/superfast-broadband-consultation-paper/supporting\\_documents/Class%20exemption%20and%20deemed%20functional%20separation%20undertaking%20%20consultation%20paper.pdf](https://consultation.accc.gov.au/regulated-infrastructure/superfast-broadband-consultation-paper/supporting_documents/Class%20exemption%20and%20deemed%20functional%20separation%20undertaking%20%20consultation%20paper.pdf)

We have responded to each of the questions that this paper raises in the following pages.

Question Number	Question	Lynham Networks Response
1	Should the ACCC specify a class of persons other than for the maximum number of residential customers being supplied with fixed line services?	No, we do not believe that the ACCC should specify in a manner different to that which has been proposed.
2	Would you favour an exemption instrument that allowed for an automatic extension of the 2,000 services to any maximum threshold of fixed line carriage services subsequently determined by the Minister under regulation?	Yes. We agree this would stimulate market growth, growth of competition in the segment and produce a better outcome for customer's LTIE. However, given the demands from customers for ultra fast broadband, we believe that the baseline number of 2,000 services is out of date and should be lifted higher to represent the reality of the current market.
3	For the purposes of the above, do you consider that the LTIE would be promoted by a class exemption at the maximum threshold of 12,000 residential fixed line carriage services that can be specified by regulation?	Yes. 12,000 sounds a sensible number, one that allows businesses to scale revenue and footprint, build systems and processes and at this stage of growth be positioned for a more formal transition to a deemed undertaking. 12,000 also creates room for multiple exemptions to potentially be applied, providing a granular growth path between 2,000 and 12,000.
4	If you operate a superfast broadband network, please provide the number of residential customers being supplied with superfast broadband local access services and the total number you reasonably forecast to supply within the next 5 years (this information can be supplied on a commercial-in-confidence basis if desired).	Commercial In Confidence
5	Should the ACCC specify a designated carriage service (other than a Layer 2 Bitstream Service) for the ongoing conditions and limitations of the exemption? If, yes, would the services covered by the LBAS and/or SBAS declarations make a suitable designated carriage service?	Yes. The existing LBAS and SBAS definitions have proven themselves to be a reliable baseline for wholesale services. These definitions are in place, well understood by industry and it makes sense to continue their use.

6	Should the ACCC specify any other conditions and limitations of the exemption?	No
7	Would competition in the markets for the supply of wholesale and retail superfast broadband services to residential customers be promoted by the draft class exemption instrument?	Yes. This exemption instrument will promote vigorous customer competition and innovation, help right size compliance requirements and allow businesses to grow at the micro scale of being a service provider without being burdened by unnecessary costs.
8	Could this be aided by any further conditions or limitations on the exemption?	No. We don't advocate further conditions or limitations on the exemption. Further limitations are likely to have no effect other than to create unwarranted confusion and stifle competition in this segment.
9	What substitute services should the ACCC consider as part of its assessment?	We have no opinion on this matter.
10	Would competition continue to be promoted if the exemption threshold were allowed to rise to 12,000 services in line with any subsequent regulation made by the Minister?	Yes. Competition will be promoted as businesses would be willing to grow beyond the 2,000 mark with surety on their medium term financial viability and with a clear roadmap for later compliance requirements.
11	Do you agree that implementing a class exemption will have no impact on achieving any-to-any connectivity?	Yes.
12	Will the draft class exemption instrument promote the economically efficient use of, and economically efficient investment in, infrastructure?	Yes in principle, however we believe that the cap is set too low. 2,000 subscribers is not significant enough to warrant such a separation undertaking and the cost of compliance would be far too high for a business in this stage of its maturity.
13	Would this continue to be the case if the exemption threshold were allowed to rise to 12,000 services in line with any subsequent regulation made by the Minister?	Yes. As smaller players become larger they attract RSPs to their platform. Smaller players can drive revenue from their capital investment as a vertically integrated player and evolve over time.

14	Are there any other matters not captured under the LTIE test that the ACCC should take into account in deciding to make an exemption?	We have no opinion on this matter.
15	Would the above proposed separation requirements present any major practical difficulties or costs for your business?	Not immediately, but these separation requirements will likely present difficulties in our medium term future. This impact could be ameliorated by creating bands of customer sizes to create a more granular application of different exemption types and separation undertakings
16	Would the allocation of the above activities to the wholesale and retail business units be suitable for your business?	Yes. Office space costs would go up and cost to service both business units would be more than today. Additionally, overnight our business would become less efficient in terms of headcount and personnel
17	If not, what would be a more suitable allocation of activities between wholesale and retail business units for your business?	N/A
18	Would the allocation of personnel between wholesale and retail business units proposed above be suitable for your business? Please provide details	Yes. The allocation of personnel between retail and wholesale looks workable, however it will create some double up on roles which will have a short term financial impact to the business.
19	If not, what would be a more suitable allocation of personnel between wholesale and retail business units?	N/A
20	Are the proposed information sharing restrictions and training obligations reasonable?	Yes. We believe that the information sharing obligations are reasonable. However training related to obligations around the undertaking is very vague and open for interpretation. ACCC should provide an online learning engine that telcos can subscribe to in order to train personnel about their obligations and allows for annual or biannual refreshers on this content.
21	Would your business have any difficulties introducing the proposed incentive structures?	No. Such changes would only lead to short term organisational chart changes as we separate the various roles and responsibilities into their retail / wholesale equivalents.

22	What degree of separation of IT systems and applications would be feasible for your business?	In the immediate term, separation of systems would be a costly and non desired endeavour, requiring the unpicking of CRM and financial systems into discrete systems. Role based access controls exist in these platforms to segment data and who has access to this data. We believe that an appropriately secured system with robust role based access control could be a step along this separation journey.
23	Would you object to all provisions being treated as fundamental provisions? If so, which ones wouldn't you wish to see included and why?	Yes. We would believe that a progressive approach to implementation should be undertaken allowing for a more fine grain compliance occurring at various stages of a business's growth trajectory. This could be achieved by multiple exemptions applicable to different bands of customer sizes. As a business scales, more provisions would become mandatory until a fully separated business is reached at scale.
24	Is there any other information provided to a retail business unit by other carriers or CSPs that you consider would be appropriate to share or not share with a wholesale business unit?	Yes, we believe coverage maps and plans should be able to be shared in this manner, however we believe that diluting beyond this level is not in the interests of the industry, consumers or competition.
25	Do you have views on the timing and content of compliance plans and compliance reports to be provided pursuant to the undertaking	Yes. Compliance plans need to be aligned to the amount of provisions a telco is being subjected to and should be linked to the size and scale of the operation / subscribers. Compliance regimes can become onerous on smaller organisations and will impact business growth and viability

26	How and at what levels should the ACCC specify classes for the purpose of the deemed undertaking(s)? In answering this question we request that superfast network operators provide us with the total number of residential superfast broadband local access lines you currently have in place and the total number you reasonably forecast to have in place within the next 5 years (this information can be supplied on a commercial-in-confidence basis if desired).	While we do not believe we will be impacted by immediate proposed undertaking changes, we believe that perhaps the right lens to view the class types is perhaps being viewed backwards. Rather than look at subscriber numbers in isolation, the ACCC could potentially work backwards, identifying the larger carriers of sufficient size and scale who could be the most damaging to market competition if not fully separated. Such organisations are likely to be best positioned to implement a customised undertaking. What is number of customers that puts organisations above this line?
27	Should the ACCC make a single deemed undertaking that should apply for corporations from one class or a number of undertakings that apply to a number of specified classes?	No. We believe that a number of undertakings should be created that apply to a number of specified classes. This will provide the requisite granularity that should be enabled to right size compliance needs against organisational size and reach.
28	To the extent the ACCC has discretion under the legislation, what provisions should apply or not apply for particular classes of corporations?	We have nothing to add to what has gone before. In our belief, granular, reasoned implementation of undertakings should be established with the burden on smaller providers being proportional to their size.
29	Do you think the ACCC's proposed treatment of the non-discrimination provisions is reasonable?	Yes. We believe the proposed treatment of non-discrimination provisions is fair and reasonable.

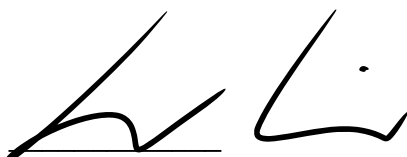
At Lynham Networks, we recognise that the deemed functional separation undertaking changes proposed in this paper are, on the whole, a positive advance for competition in this rapidly growing industry segment. However we believe that there still exists opportunity to improve upon the proposed changes.

Specifically:

- Create more undertakings which apply to differing specified classes to create a more granular means of applying more undertakings as businesses scale beyond particular pre-defined thresholds
- Lift the floor on the threshold from 2,000 retail subscribers to a number which better represents the cost of achieving such an undertaking in a growing business. One that allows businesses to scale revenue and footprint, build systems and processes and at this stage of growth be positioned for a more formal transition to a deemed undertaking. Lifting the floor of the threshold also creates room for multiple exemptions to potentially be applied, providing a granular growth path between say 2,000 and 12,000 retail subscribers and beyond.
- Provide more detailed guidance regarding the training requirements and ongoing education needs for personnel to meet separation undertaking responsibilities and look to create an industry common tool in an online learning engine that telcos can subscribe to in order to train personnel about their obligations and allows for annual or biannual refreshers on this content.

If you have any questions, please do not hesitate to contact us.

Jeremy Rich (CEO)

A handwritten signature in black ink, appearing to read 'J Rich', with a horizontal line underneath the first part of the signature.