

**Public Submission  
of Connected Australia Pty Ltd (“Connected Aus”)  
in response to August 2020 ACCC consultation on  
Superfast Broadband Class Draft  
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.

**Responses to specific questions**

*Question 1*

2. Yes.

*Question 2*

3. Yes.

*Question 3*

4. Yes.

*Question 4*

5. Connected Aus agrees with the general tenor of the proposed information sharing restrictions.
6. However, it is submitted that the present drafting of the definition of “protected information” is (probably inadvertently) too broad. In particular, the definition should, in our submission, be confined to information that would, in the ordinary course of business, be kept confidential from competitors and is business information (that is, as distinct from information that is about the operation of corporate service functions common to both retail and wholesale business units). We make specific drafting suggestions in our response to Question 11, below.

*Question 5*

7. Functional separation of business units is necessary to meet the requirements of the legislation.
8. However, the need for functional separation does not, in our submission, extend to the *technical* management of retail and wholesale business units. To the contrary, sharing that technical management actually improves and enhances competitive behaviour. Thus, it is beneficial for a member of senior management to be responsible for the *technical* operations of both retail and wholesale business units, though not, of course, for the *business* performance of both units. Making one member of senior management responsible for the *technical* operations of both business units aids compliance with the competitive objectives of the deemed functional separation undertaking because it helps to ensure that appropriate technical controls are in place to ensure the protection of “protected information”. Accordingly, we are of the view that section 7(4)(a) of the draft deemed functional separation undertaking is unnecessary, as well as counter-productive and should be deleted.
9. Thus, Connected Aus remains of the view (set out in its response to the June 2020 ACCC Superfast Broadband Class Exemption and Deemed Functional Separation Undertaking consultation) 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.

*Question 6*

10. Connected Aus makes no submission.

*Question 7*

11. Subject to the specific matters raised specifically in this submission, no.

*Question 8*

12. Yes.

*Question 9*

13. Connected Aus makes no submission.

*Question 10*

14. Connected Aus makes no submission.

*Question 11 - Specific Drafting Comments on the draft deemed undertaking*

15. In section 4, the definition of "protected information" does not appear to achieve its intended purpose. It may be appropriate to amend it by the insertion of the word "*solely*" immediately after the word "relates" and the addition at the end of the definition of the words "*and is information of a kind that, in the case of the corporation's retail business unit, would not be disclosed to the wholesale business unit of another entity or that, in the case of the corporation's wholesale business unit, would not be disclosed to the retail business unit of another entity*". The problem arising from the application of the present definition is evident in the prospective operation of subsections 7(5)(e) and (f).
16. In subsection 6(a), the word "that", where first appearing, should be deleted. Its inclusion appears to be a typographical error.
17. In subsection 7(1)(b), the word "the" should be deleted where it appears immediately prior to the colon. If the ACCC considers it appropriate, it may be that the word "*the*" should be added at the commencement of subsections 7(1)(b)(ii), (iii), (v) and (vi).
18. In subsection 7(1)(b)(iv), the word "*of*" should appear immediately after the word "implementing".
19. In subsection 7(2)(a), the sub-paragraphs should be renumbered *(i)* and *(ii)*, respectively.
20. In subsection 7(2)(b), the comma should be deleted.
21. In subsection 7(4)(c), a proviso should be added at the end of the present paragraph in the following terms: "*that does not relate to or arise from the performance of any of those workers' corporate service functions*".

*Question 12*

22. Connected Aus has no other comments.



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