

Dear Mr Seymour and Mr Farago

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

Thank you for the opportunity to respond to this consultation.

Our primary concern is that the low customer number 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 create a hurdle that will result in emerging and small fixed line network operators being effectively priced out of the retail market by high operational costs and as such being unable to afford to sell retail services to residential customers on their own networks. We consider that this is contrary to the promotion of competition and detrimental to the long term interests of end users of telecommunications services that will benefit from access to a diverse range of infrastructure operators.

We submit that the 2000 SIO threshold for the small network class exemption should automatically increase upon a higher number being set in Ministerial regulations.

We consider that the ACCC's proposed functional separation requirements present significant costs that will be a major difficulty and deterrent for smaller providers to operate in both wholesale and retail markets. We submit that there should be different deemed undertakings based on a carrier's size.

It will be extremely difficult for a small carrier to grow from the 2000 or possibly 12,000 SIOs under a class exemption to a size that is sufficient to viably fund the cost of operating functionally separated wholesale and retail arms in a manner that would comply with the ACCC's proposed deemed standard functional separation undertaking. We therefore suggest that the ACCC provide two levels of deemed standard undertaking:

- a less onerous undertaking that applies to small carriers that do not fall within the small carrier class exemption but have less than a set threshold of residential customers on its own network (**small carrier functional separation undertaking**); and
- an undertaking that applies to carriers that have more than the set threshold of residential customers on their own network. This undertaking could be in the form currently proposed by the ACCC.

We submit that the small carrier functional separation undertaking should be drafted to incorporate sufficient operational flexibility to allow the small carrier to grow and compete but to also maintain sufficient demarcation between the wholesale and retail divisions to ensure that the carrier's retail division does not have a competitive advantage over the wholesale division's retail service providers.

Alex West

CEO



swoop.com.au