

TELSTRA CORPORATION LIMITED

Response to ACCC consultation paper - Superfast broadband network class exemption and deemed functional separation undertaking

17 July 2020

Introduction and Summary

Telstra is pleased to provide the Australian Competition and Consumer Commission (**ACCC**) with our response to the ACCC's consultation on the superfast broadband network class exemption (**exemption**) and deemed functional separation undertaking (**deemed undertaking**).

We do not have any comments on the aspects of the ACCC's consultation relating to the exemption.

Our response to the ACCC's consultation questions regarding the deemed undertaking is set out in the Appendix to this response. To a large extent, this response is informed by our experience of complying with the obligations set out in Telstra's Structural Separation Undertaking.

In summary, there are a few aspects of the ACCC's proposal where we recommend the ACCC considers further the potential costs and benefits, before including obligations in the deemed undertaking additional to those legislatively mandated. This is because the inclusion of obligations that are perceived to be unduly onerous could dissuade smaller operators from electing to adopt the deemed undertaking, limiting the effectiveness of this option in reducing the compliance costs of functional separation as intended.

This is particularly the case in relation to:

- maintaining separate branding and physically separate office space;
- ensuring workers who perform duties for the wholesale business are different from those who perform duties for the entity's retail business unit;
- ensuring managers of both units have the same level of seniority within the organisation and that remuneration related to business performance is related only to performance of the business unit in which personnel are based; and
- operating physically separate IT systems and applications for operational support systems (OSS), business systems, communications systems and accounts for the entity's wholesale and retail business units.

At least initially, we would also not recommend an overly complex approach to specifying the classes of corporations to whom an undertaking can apply. For example, we do not necessarily think it is warranted to specify multiple classes to which different deemed undertaking terms would apply. We agree with the ACCC that defining the class of operator based on the number of residential superfast access lines it provides is an appropriate way to proceed.

The ACCC has recently estimated that the total number of premises serviced with superfast broadband services by non-NBN carriers in new developments is around 400,000. This contrasts with over 11 million premises able to connect to the NBN, with over 7 million already connected.¹ In order to reduce regulatory complexity, we recommend the deemed undertaking terms are designed so that they would be suitable for adoption by any current non-NBN superfast network operator. On this basis, defining the class of operator based on the maximum number of residential superfast access lines it provides as being 500,000 may be an appropriate threshold.

¹ <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/lbas-sbas-declarations-inquiry-2020/discussion-paper> (pp 19-20)



APPENDIX: Response to ACCC Questions

No.	Question	Telstra response
Class exemption		
1 - 14		Telstra has no comments on this part of the ACCC's consultation.
Deemed standard functional separation undertaking		
The nature of separation of the retail and wholesale business units		
15	Would the above proposed separation requirements present any major practical difficulties or costs for your business?	Based on Telstra's experience, the costs associated with maintaining separate branding (e.g. on vehicles and uniforms) and physically separate office space (e.g. separate floors in a building) can be material. Given the deemed undertaking provisions are intended to reduce the compliance costs of functional separation for smaller providers, we suggest careful consideration is given as to the potential costs and benefits of imposing such requirements, noting that if a disproportionate burden is anticipated by smaller providers, this may disincentivise usage of the deemed undertaking option.
The activities that are to be included in the wholesale and retail business units		
16	Would the allocation of the above activities to the wholesale and retail business units be suitable for your business?	Prima facie, we consider the proposed allocation of activities between the retail and wholesale business units set out in section 4.2.2 of the consultation to be appropriate.
17	If not, what would be a more suitable allocation of activities between wholesale and retail business units for your business?	N/A
The degree to which personnel may or may not be shared between the wholesale and retail business units		
18	Would the allocation of personnel between wholesale and retail business units proposed above be suitable for your business? Please provide details.	We note the requirement to ensure that the workers who perform duties for the wholesale business are different from those who perform duties for the person's retail business unit is not one of the fundamental legislative requirements that must be included in a deemed undertaking. The potential smaller scale of the employee and management base of smaller providers may make compliance with such requirements impractical for smaller operators. Considering the increasing adoption of more agile business practices within the industry, such requirements could also result in comparative staffing inefficiencies for providers forced to use more traditional organisational structures and practices to comply with the separation requirements. Telstra would therefore caution against the inclusion of rigid personnel and management separation requirements in the deemed undertaking terms.



No.	Question	Telstra response
19	If not, what would be a more suitable allocation of personnel between wholesale and retail business units?	One alternative might be to allow operators who elect to be bound by the terms of the deemed undertaking to specify individually details regarding the extent to which they will ensure the workers who perform duties for the wholesale and retail business units will be separate.
20	Are the proposed information sharing restrictions and training obligations reasonable?	Prima facie, we consider it appropriate for the deemed undertaking terms to require the adoption of protocols in relation to the sharing of information in order to ensure compliance with the fundamental legislative requirements in this regard, and also to require appropriate training be provided to staff about their undertaking obligations.
Incentive structures for the wholesale and retail business units		
21	Would your business have any difficulties introducing the proposed incentive structures?	Depending on the nature and scale of entities looking to make use of the deemed undertaking option, we recommend the ACCC considers whether it could prove to be practically unworkable to ensure managers of both units have the same level of seniority within the organisation (e.g. where the retail business is presently of a much smaller scale than the operator's wholesale business, or vice versa) and/or to ensure remuneration related to business performance is related only to performance of the business unit in which personnel are based (e.g. where the overall scale of the operator's business is still very small). The establishment of entirely separate business planning and investment approval processes may similarly prove too burdensome and/or unworkable to an extent that this could potentially disincentivise use of the deemed undertaking option.
To what extent the undertaking specifies separate systems and accounts		
22	What degree of separation of IT systems and applications would be feasible for your business?	Based on our experience, Telstra considers it very unlikely to be feasible for entities to operate physically separate IT systems and applications for their operational support systems (OSS), business systems, communications systems and accounts for their wholesale and retail business units.
Whether other provisions should be considered fundamental provisions		
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?	We would caution against this approach, on the basis that the imposition of unduly rigid or onerous deemed undertaking terms is likely to materially reduce the potential attractiveness of this option for smaller operators in terms of reducing their compliance costs. Instead, we recommend entities are given flexibility to specify on an individual basis the extent to which they will ensure separate systems and accounts; and use the same customer interface for dealings between its wholesale business unit and wholesale customers as it uses for dealings between its wholesale and retail business units.



No.	Question	Telstra response
What information obtained by the retail business unit from other carriers or carriage service providers can be shared with, or accessed by the wholesale business unit		
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?	We do not believe there should be any restriction on the sharing of information which is publicly available. Potentially, aggregated information which is not specific to an individual carrier or CSP should also be able to be shared.
Further Provisions		
25	Do you have views on the timing and content of compliance plans and compliance reports to be provided pursuant to the undertaking?	Prima facie, we consider it would be appropriate to require the initial compliance plan to be provided within 3 months of the election to adopt the deemed undertaking and to provide annual compliance reports thereafter. The suggested types of information to be included in the annual reports also seem to be generally appropriate.
Classes		
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).	<p>At least initially, we would not recommend an overly complex approach to specifying the classes of corporations to whom an undertaking can apply. We therefore recommend the deemed undertaking terms are designed so that they would be suitable for adoption by any current non-NBN superfast network operator.</p> <p>We agree with the ACCC that defining the class of operator based on the number of residential superfast access lines it provides is an appropriate way to proceed.</p> <p>The ACCC has recently estimated the total number of premises serviced with superfast broadband services by non-NBN carriers in new developments is around 400,000. This contrasts with over 11 million premises able to connect to the NBN, with over 7 million already connected.²</p> <p>On this basis, defining the class of operator based on the maximum number of residential superfast access lines it provides as being 500,000 may be an appropriate threshold.</p>
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?	To avoid complexity and maximise the potential utility of this option, we recommend the ACCC makes a single deemed undertaking suitable for adoption by for all corporations from one class (as further defined per our response to question 26 above).
28	To the extent the ACCC has discretion under the legislation, what provisions should apply or not apply for particular classes of corporations?	We do not consider the provisions should differ for different classes of corporations.

² <https://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/lbas-sbas-declarations-inquiry-2020/discussion-paper> (pp 19-20)



No.	Question	Telstra response
Non-discrimination requirements		
29	Do you think the ACCC's proposed treatment of the non-discrimination provisions is reasonable?	Prima facie, we agree the ACCC's suggested approach is reasonable.