



15 September 2020

Ed Seymour
Director
Communications Competition
Australian Competition & Consumer Commission

Copy to: Stephen Farago

Dear Ed

nbn submission on ACCC's Consultation on Superfast broadband network draft deemed functional separation undertaking

nbn welcomes the opportunity to comment on the ACCC's Consultation Paper 'Superfast broadband network draft deemed functional separation undertaking' (**draft deemed undertaking**).

The ACCC is proposing that the draft deemed undertaking can be used by those corporations with between 2,000 and 50,000 residential superfast local access lines. **nbn** agrees that the use of a single undertaking is appropriate. However, it is important to ensure that any undertaking strikes the right balance to achieve appropriate functional separation for the wide range of organisations that may choose to adopt it.

Our primary comment on the draft deemed undertaking relates to the 'activities that are to be included in the wholesale and retail business units'. Although the draft deemed undertaking proposes to designate the activities that should be undertaken by either the wholesale or retail business units, it lacks the nuanced detail about how those business units may discuss and interact in relation to fulfilling those activities.

In order to prevent the retail business unit from gaining preferential treatment or benefiting from easier access to/communication with the wholesale business unit, those interactions should be structured to level the playing field and support the policy intent of the functional separation requirements.

This may include requirements such as:

- where retail business units take service orders from retail customers, they are required to lodge those service orders with the wholesale unit using the same service portal/established method that other retail providers use; and
- whenever the retail business unit is required to escalate complaints or trouble tickets to the wholesale business unit, they utilise the same helpdesk/complaints management system as other retail providers with appropriate measures to prevent the wholesale unit from prioritising/preferencing tickets from their own retail arm.

The draft deemed undertaking also proposes a distinction between basic and more complex network and service complaints from retail customers, allowing the retail business unit to handle the former and the wholesale business unit to handle the latter. In **nbn's** view, this distinction is not clear enough and the information sharing



that would be required between the wholesale business unit and the retail business unit to handle the basic complex network and service complaints should not be allowed under an effective functional separation arrangement. We also think that this distinction ignores the practical differences between a complaint about the network and a complaint about the service.

As such, **nbn** recommends that the drafting is amended so that *all* network complaints are handled by the wholesale business units, but provides for some flexibility for the retail business unit to handle the more basic service complaints that do not require any information sharing with the wholesale business unit in order to effectively respond to and handle the complaint. These should reflect the types of complaints that other retail providers would also typically resolve themselves without reference to the wholesale business unit for assistance.

This approach would mirror how **nbn**, as a wholesale only organisation, handles complaints. As a wholesale only organisation with no retail function, there are many service complaints where **nbn** will not necessarily know what information is passed to the end user via the retailer or how they resolved the complaint. However, it is likely that the retailer will flow network related complaints to **nbn**. If the draft deemed undertaking was amended so that all network complaints were handled by the wholesale business unit, a consistent industry wide approach would be established.

The draft deemed undertaking also permits retail input on network planning, provided it is made available to all RSPs on non-discriminatory terms. Despite ensuring that the inputs are made available on a non-discriminatory basis, **nbn** considers that allowing retail input into network planning provides a level of flexibility that carries the risk that the retail interests will be benefitted as the wholesale business units have incentives to put their own retail units needs above those of other corporations when undertaking this network planning. As a wholesale only business, **nbn** does not have the benefit of this flexibility and in order to create a level playing field we do not think it is appropriate to include in the draft deemed undertaking.

If the ACCC is not minded to delete this amendment, **nbn** considers that the provisions should be more defined. The current drafting of the draft deemed undertaking is not sufficiently clear that any input should only be an information flow from the retail business unit to the wholesale unit and that there should be no two-way flow of information between the wholesale and the retail business units on network planning. If this is not made clear, then there is a distinct opportunity for the retail unit to take advantage of this two way flow to benefit the retail arm of the corporation.

nbn would be happy to address any questions you might have. Please contact Sarah Alderson at SarahAlderson@nbnco.com.au to discuss.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Crichton', written in a cursive style.

Jennifer Crichton
Executive General Manager, Head of Regulatory