

5th February 2021



Director
Telecommunications Competition
Department of Infrastructure, Transport, Regional Development and Communications
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Via email: infrastructureandaccess@infrastructure.gov.au

Re: Exemptions for controllers of superfast fixed-line networks from separation requirements

ACCAN thanks the Department of Infrastructure, Transport, Regional Development and Communications for the opportunity to contribute to its consultation on whether the Australian Competition and Consumer Commission (ACCC) should have the power to allow certain high-speed fixed line networks to offer both wholesale and retail services.

ACCAN recommends that regulation should not allow the ACCC to increase the class exemption limit to 12,000 residential services until appropriate safeguards have been established. Appropriate safeguards include having the Minister set suitable wholesale service standards where the network provider is the Statutory Infrastructure Provider (SIP) and reviewing the Superfast Broadband Access Service (SBAS) and Local Bitstream Access Service (LBAS) Final Access Determination (FAD), so as to provide price regulation on all newly built networks. ACCAN considers these safeguards will mitigate the potential consumer harm and risk posed by vertically integrated monopolies by ensuring minimum standards in terms of quality and price.

ACCAN understands that the purpose of increasing the exemption limit is to encourage network operators to enter the market, increasing infrastructure competition. An increased choice of networks can benefit consumers where networks compete on price and quality in order to attract customers. However, in assessing whether the class exemption limit will promote competition, it is important to note that infrastructure competition will not be possible in many areas due to low population density and high costs. The ACCC has recognised that *'economic and technical barriers to entry generally prevent multiple fixed line network providers from operating in the same service area and competing at a wholesale level'*.¹

By increasing the class exemption limit, more providers are likely to enter the market. When this occurs in areas where providers face no competition, for example in newly developed greenfield sites, there is a risk of localised fixed line infrastructure monopolies emerging. Infrastructure owners in this position will have the market power and incentives to maximise their profits by charging prices in

¹ ACCC, 2020. *Superfast Broadband Access Service and Local Bitstream Access Service declaration inquiry Draft Decision*. Pg.5

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excess of competitive market rates as well as providing low wholesale service standards. Residents being served by these networks will have no choice of wholesaler and are likely to face very limited choices of retail provider as well. Given this risk, there is a need for sufficient regulation to be put in place prior to the exemption limit being expanded to ensure consumers are not harmed through networks extracting monopoly rents.

Price considerations

As the consultation paper noted, the ACCC, in creating the exemption instrument, put forward the view that competition will continue to be safeguarded by the SBAS and LBAS declarations and determinations. However, the current SBAS and LBAS declarations and associated FAD are to expire in July 2021 and there is no guarantee as of yet, that the declaration nor the FAD will continue.²

If the services are declared and the FAD is to be extended, there is no assurance that it will provide price regulation for smaller networks, noting that the current FAD contains an exemption for certain SBAS networks (networks built before 2011 that serve up to 12,000 residential premises). If this exemption is extended to LBAS networks (networks built after 2011), it would allow newly built small networks the ability to charge whatever price they want. This is a real possibility given that the ACCC has proposed that the LBAS declaration is to be revoked.³ This will then give the ACCC the power to exempt LBAS networks from the obligations in the FAD, similar to the exemptions provided to SBAS networks.

Without having the assurances of price regulation on these networks, ACCAN recommends not extending the class exemption limit to networks larger than 2,000 residential services. Doing so would create a risk of vertically integrated networks, with the ability to charge monopolistic prices for an essential service.

Service standards

Through encouraging new entrants into the market, increasing the class exemption limit to 12,000 customers creates the risk of poor wholesale service quality for retailers and end users. We hear anecdotally of the frustration felt by consumers due to a lack of consumer safeguards. ACCAN agrees with the consultation paper that concerns about service quality could be mitigated by the new Statutory Infrastructure Provider (SIP) obligations.

Wholesale service standards in terms of appointment keeping, fault rectification, performance and connections are required, as some consumers are currently being let down by their wholesale providers. The following complaints were among the top 10 issues reported to the TIO in 2019-2020 in regard to internet services; delay establishing a service (8,265 complaints), intermittent service or dropouts (6,875 complaints), slow data speeds (6,852 complaints), no phone or internet service (6,803

² Noting that at the time of writing, the declaration is in its draft stage.

³ Ibid.

complaints) and missed appointment (2,474 complaints).⁴ The complaints to the TIO in relation to these issues may be remedied by creating sufficient standards for networks to follow.

The Department of Infrastructure, Transport, Regional Development and Communications has begun a consultation on draft standards, rules and benchmarks for SIPs. Setting appropriate wholesale service standards prior to increasing the class exemption limit would mitigate the significant risk to consumers regarding the quality of service as well as provide a more certain regulatory framework for potential network operators.

Summary

ACCAN recommends that the Department only increases the class exemption limit to 12,000 once the Minister has set appropriate rules, standards and benchmarks for SIPs, and there is guaranteed price regulation on all networks, regardless of size. This would ensure that anyone being served by a SIP receives a minimum standard in terms of price and quality regardless of who the network operator is. Given that broadband is an essential service, it should be regulated appropriately.

Thank you for the opportunity to provide feedback, should you wish to discuss this further, please do not hesitate to contact me.

Yours sincerely,

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⁴ TIO, 2020, *Annual Report 2019-2020*.