



Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020

The Australian Competition and Consumer Commission makes this Determination under subsections 142BD(2), 143A(1) and 143A(2) of the *Telecommunications Act 1997*.

Dated: 21 August 2020

[signed]

Rodney Graham Sims
Chairman
Australian Competition and Consumer Commission

Australian Competition and Consumer Commission

1 Name

This is the *Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020*.

2 Commencement

This Determination commences on the later of:

- (a) the day after this instrument is registered on the Federal Register of Legislation; and
- (b) the day on which Schedule 2 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* commences.

Note 1: The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Note 2: Both of the events mentioned in paragraphs (a) and (b) must occur before this instrument commences.

3 Authority

This Determination is made under subsections 142BD(2), 143A(1) and 143A(2) of the *Telecommunications Act 1997*.

4 Definitions

In this Determination, unless the contrary intention appears:

Act means the *Telecommunications Act 1997*.

associated group has the same meaning as in subsection 143A(10) of the Act.

designated carriage service has the meaning given by section 142BD of the Act.

eligible service has the same meaning as in section 152AL of the *Competition and Consumer Act 2010*.

fixed-line carriage service has the meaning given by section 142A of the Act.

LBAS means a service defined under the service description in an annexure to any declaration made by the ACCC under subsection 152AL(3) of the *Competition and Consumer Act 2010* in respect of the Local Bitstream Access Service, as in force from time to time.

regulations mean any regulations made for the purpose of paragraphs 143A(1)(d)(ii) or 143A(1)(e)(ii) of the Act.

residential customer has a meaning affected by section 161 of the Act.

SBAS means a service defined under the service description in an annexure to any declaration made by the ACCC under subsection 152AL(3) of the *Competition and Consumer Act 2010* in respect of the Superfast Broadband Access Service, as in force from time to time.

Note 1: A number of terms used in this instrument are defined in the Act, including:

- ACCC;
- facility; and
- telecommunications network.

Note 2: Declarations made by the ACCC under subsection 152AL(3) of the *Competition and Consumer Act 2010* in respect of the Local Bitstream Access Service and the Superfast Broadband Access Service may be accessed free of charge from the ACCC's website at www.accc.gov.au.

5 References to other instruments

In this instrument, unless the contrary intention appears:

- (a) a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- (b) a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force or in existence from time to time.

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

Note 3: For paragraph (b), see subsection 589(2) of the Act.

6 Specification of designated carriage service

The SBAS and the LBAS are designated carriage services for the purposes of Part 8 of the Act.

7 Exemption

In circumstances where a person:

- (a) is not a member of an associated group and who supplies fixed-line carriage services to the higher of no more than:
 - (i) 2,000 residential customers; or
 - (ii) the number of residential customers (not exceeding 12,000) specified in regulations made for the purpose of subparagraph 143A(1)(d)(ii) of the Act, as in force from time to time; or
- (b) is a member of an associated group, and the members of that associated group, in aggregate, supply fixed-line carriage services to the higher of no more than:
 - (i) 2,000 residential customers; or
 - (ii) the number of residential customers (not exceeding 12,000) specified in regulations made for the purpose of subparagraph 143A(1)(e)(ii) of the Act, as in force from time to time;

and that person:

- (c) has, by written notice to the ACCC, elected to be bound by this Determination; and
- (d) has not, by written notice to the ACCC, cancelled the election;

the person is exempt from sections 142C or 143 of the Act, subject to the conditions and limitations set out in section 8.

8 Conditions and limitations

For the purpose of section 7, the conditions and limitations are:

- (a) the person must ensure that the LBAS and/or the SBAS is available for supply to wholesale customers, or prospective wholesale customers, of the person;
- (b) the person must not discriminate between the person's wholesale customers, or the person's prospective wholesale customers, in relation to the supply of the LBAS and/or the SBAS;
- (c) the person must not discriminate in favour of itself in relation to the supply of the LBAS and/or the SBAS;

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- (d) the person must not, in carrying on any of the following activities, discriminate between the person's wholesale customers or the person's prospective wholesale customers:
- (i) developing a new eligible service;
 - (ii) enhancing an eligible service;
 - (iii) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (iv) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (v) an activity that is preparatory to the supply of an eligible service;
 - (vi) an activity that is ancillary or incidental to the supply of an eligible service;
 - (vii) giving information to service providers about any of the above activities;
- (e) the person must not discriminate in favour of itself in relation to the carrying on of any of the following activities:
- (i) developing a new eligible service;
 - (ii) enhancing an eligible service;
 - (iii) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (iv) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
 - (v) an activity that is preparatory to the supply of an eligible service;
 - (vi) an activity that is ancillary or incidental to the supply of an eligible service;
 - (vii) giving information to service providers about any of the above activities;
- (f) if the person is not a member of an associated group, the person must notify the ACCC, in writing, within 30 days after 30 June each year, of the number of residential customers to whom the person supplied fixed-line carriage services as at 30 June of that year;
- (g) if the person is a member of an associated group, the person must notify the ACCC, in writing, within 30 days after 30 June each year, of the total number of residential customers to whom the members of that associated group supplied fixed-line carriage services as at 30 June of that year;
- (h) in the event that a person is not a member of an associated group and the person supplies fixed-line carriage services to a number of residential customers that exceeds the higher of the number of customers specified at subparagraphs 7(a)(i) and 7(a)(ii), the person must notify the ACCC, in writing, of that event within 14 days of that event occurring; and
- (i) in the event that a person is a member of an associated group and the members of that associated group, in aggregate, supply fixed-line carriage services to a number of residential customers that exceeds the higher of the number of customers specified at subparagraphs 7(b)(i) and 7(b)(ii), the person must notify the ACCC, in writing, of that event within 14 days of that event occurring.