



# New wholesale and retail rules

June 2020

The Government has established new separation rules for high speed broadband networks to improve commercial opportunities and bolster fairer competition.

Since 1 January 2011, new high speed broadband networks have been required to be wholesale-only. The Government has amended the rules to allow network operators to be functionally separated, which means they can have separate wholesale and retail businesses, subject to approval by the Australian Competition and Consumer Commission. The new rules will create new commercial and competitive opportunities for industry.

## A more effective baseline

From 26 August 2020, new networks will still need to be wholesale-only. A loophole that allowed some network operators to roll out substantial networks that were not subject to the rules will be closed. NBN Co Limited will remain as a wholesale only carrier and Telstra, as a key market operator, will remain subject to strict obligations to separate its wholesale and retail operations.

## Greater retail opportunities

Networks servicing small businesses will no longer need to be wholesale-only.

Network operators will be able to give the Australian Competition and Consumer Commission (ACCC) an undertaking to operate both a wholesale and retail business. The network provider must commit to key elements, including having separate retail and wholesale business units, and keeping confidential information supplied by wholesale customers secure.

Where a network operator seeks to operate a retail business, it must include all of its high speed networks in the undertaking, not just those built after 26 August 2020 when the legislation takes effect. Functional separation undertakings can be tailored for each business. In considering an undertaking, the ACCC will consider whether it promotes the long-term interests of end-users. The ACCC will also be able to make model undertakings that networks can sign up to.

The ACCC will be able to make class exemption for very small networks with fewer than 2,000 residential customers (and up to 12,000 customers if new regulations are made). The ACCC will have more flexible and effective enforcement powers. Where a network operator has breached a key element of the undertaking, or has a history of non-compliance, the ACCC will be able to revoke the undertaking. In this case, a network operator will have 12 months to achieve compliance with the wholesale-only rules.

## Clearer wholesale supply

All high speed broadband networks will need to supply wholesale services, even if they have retail operations. The rules will change so that wholesale services must be supplied on a non-discriminatory basis. Mandatory requirements to supply a specific 'Layer 2' service will be replaced by the existing Superfast Broadband Access Service rules established by the ACCC in 2017.