



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Myport functional separation undertaking

Consultation paper

June 2023

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List of abbreviations, acronyms and references

ACCC	Australian Competition and Consumer Commission
CCA	<i>Competition and Consumer Act 2010</i>
Gigafy	Myport Pty Ltd trading as Gigafy
LTIE	Long-term Interests of End-users
NBN	National Broadband Network
RSP	Retail Service Provider

1. Overview

On 13 June 2023, Myport Pty Ltd (ABN 32 121 129 280) trading as Gigafy submitted a standard functional separation undertaking to the ACCC in accordance with section 151A of the *Telecommunications Act 1997* (Telecommunications Act).

Gigafy's proposed undertaking would apply to all local access lines that it controls supplying superfast carriage services wholly or principally to residential customers.

The ACCC is required to undertake public consultation for no less than 15 business days before deciding whether to accept or reject a functional separation undertaking. The ACCC must take all reasonable steps to decide whether to accept an undertaking within three months. The ACCC's decision must consider whether the undertaking promotes the long-term interests of end-users and such other matters the ACCC considers relevant.

The ACCC seeks comments from interested parties on Gigafy's proposed undertaking. We welcome comments on any aspect of the undertaking.

This consultation paper provides relevant background information together with an overview of the undertaking, the legislative framework for ACCC assessment of standard functional separation undertakings and details on how to make a submission. A copy of Gigafy's proposed standard functional separation undertaking and supporting submission are provided on the [ACCC's website](#).

2. Introduction

2.1. Background

Carrier separation rules

Subject to some limited exceptions, the Telecommunications Act requires fixed-line networks used to supply superfast carriage services to residential customers to be operated on a wholesale-only basis if those networks came into existence, or became capable of supplying superfast carriage services after being altered or upgraded, on or after 1 January 2011. Carriers operating these networks are restricted to supplying wholesale services to other carriers or service providers and are not permitted to supply retail services to end-users.

On 25 May 2020, the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* received Royal Assent and introduced amendments to the Telecommunications Act that permit superfast fixed-line network operators serving residential customers to be exempt from the wholesale-only requirements subject to the ACCC's acceptance of a functional separation undertaking. This provides greater commercial flexibility for non-NBN superfast network operators, which in turn should promote infrastructure-based competition.

There are two types of functional separation undertakings that can be submitted to the ACCC, a standard functional separation undertaking¹ given by a single corporation and a joint functional separation undertaking² given by two or more corporations.

¹ Section 151A of the Telecommunications Act.

² Section 151C of the Telecommunications Act.

The Telecommunications Act provides that a functional separation undertaking applies to all of the carriers' local access lines serving residential customers.³ This includes new and existing lines, as well as previously exempt lines such as those built before 1 January 2011 or subject to a ministerial exemption.

The ACCC has published [explanatory material relating to the carrier separation rules](#) in Part 8 of the Telecommunications Act. The guidance is intended to assist industry in understanding the superfast network separation obligations and how the ACCC will consider whether network operators have complied with them.

2.2. Timetable for this consultation

The ACCC requests written submissions on Gigafy's proposed standard functional separation undertaking by no later than **Wednesday 12 July 2023**.

After considering submissions from interested parties, the ACCC proposes to publish its decision on whether to accept Gigafy's proposed undertaking in late July 2023.

2.3. Making a submission

The ACCC encourages industry participants, other stakeholders and the public more generally to consider and make submissions on Gigafy's proposed standard functional separation undertaking and related issues raised in this consultation paper.

We have provided questions in the paper to guide responses, but stakeholders should feel free to respond on any matter of concern.

To foster an informed and consultative process, all submissions will be considered as public submissions and will be posted on the ACCC's website. Interested parties wishing to submit commercial-in-confidence material to the ACCC should submit both a public and a commercial-in-confidence version of their submission. The public version of the submission should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or 'c-i-c'.

The ACCC expects that claims for commercial-in-confidence status of information by parties will be limited in nature in order to allow the widest possible participation in the public inquiry.

Please provide a supporting submission that specifically substantiates the confidentiality claim for each item of information over which confidentiality is claimed. Confidentiality claims need to detail why the information is competitively sensitive or otherwise confidential, and why disclosure of the information would be likely to cause significant harm to the person to whom the information is confidential. 'Blanket' claims of confidentiality will not be accepted. The ACCC will notify parties of any additional information required to assess a confidentiality claim.

The [ACCC-AER information policy: the collection, use and disclosure of information](#) sets out the general policy of the ACCC and the Australian Energy Regulator (AER) on the collection, use and disclosure of information.

The ACCC prefers to receive submissions in electronic form, either in PDF or Microsoft Word format which allows the submission text to be searched.

Submissions should be emailed to telcoseparationrules@acc.gov.au.

³ Subsection 142C(3) Note 1 (also for pre-designated commencement date networks subsection 143(3) Note 1). See also *Telecommunications Legislation Amendment (Consumer and Competition) Bill 2019, Explanatory Memorandum*, p. 7.

3. Functional separation undertaking

3.1. Legislative requirements

Pursuant to section 151A of the Telecommunications Act, a standard functional separation undertaking must:

- comply with the requirements set out in subsection 151A(2)
- be in [a form approved in writing by the ACCC](#) and accompanied by such information as is reasonably likely to assist the ACCC to decide whether to accept or reject the undertaking⁴
- specify the expiry time of the undertaking which must not be more than 10 years after the undertaking comes into force⁵
- state that the provisions listed at paragraph 151A(9)(a) are fundamental provisions⁶
- provide that the person subject to the undertaking will prepare a compliance plan setting out the actions it will take to ensure compliance with the undertaking⁷
- provide that the person subject to the undertaking will give the ACCC periodic reports that relate to its compliance with the undertaking.⁸

An assessment of Gigafy's proposed undertaking against the legislative requirements is set out in the checklist at **Appendix A**.

Our assessment indicates that Gigafy's proposed undertaking satisfies the requirements set out in subsection 151A(2) of the Telecommunications Act.

Gigafy's proposed undertaking is in a form approved by the ACCC and is accompanied by a supporting submission, which we encourage interested parties to have regard to when making a submission.

Gigafy has specified that its proposed undertaking will expire 5 years from the date the undertaking comes into force (which is the day after the ACCC accepts the undertaking).

As noted in Appendix A, Gigafy has identified all of the fundamental provisions required by the Telecommunications Act in its proposed undertaking. A breach of a fundamental provision may be grounds for the ACCC to revoke a standard functional separation undertaking.⁹ However, the ACCC may also revoke an undertaking on the grounds of an unsatisfactory compliance record relating to any breaches of the undertaking that occurred when it was in force.¹⁰

Gigafy must comply with the non-discrimination obligations in sections 151ZF and 151ZG of the Telecommunications Act, a contravention of which is also grounds for revocation of an undertaking.¹¹

⁴ Subsection 151A(4) of the Telecommunications Act.

⁵ Subsection 151A(5) of the Telecommunications Act.

⁶ The undertaking may specify that one or more other provisions are fundamental provisions – Paragraph 151A(9)(b) of the Telecommunications Act.

⁷ Subsection 151A(11) of the Telecommunications Act.

⁸ Subsection 151A(10) of the Telecommunications Act.

⁹ Subparagraph 151W(1)(b)(i) of the Telecommunications Act.

¹⁰ An unsatisfactory compliance record is defined in section 142BC and the ACCC's revocation power is set out in subsection 151W(2) of the Telecommunications Act for standard functional separation undertakings.

¹¹ Subparagraph 151W(1)(b)(ii) of the Telecommunications Act for standard functional separation undertakings.

In its proposed undertaking, Gigafy commits to providing a compliance plan and annual compliance reports to the ACCC in accordance with subsections 151A(10) and (11) of the Telecommunications Act.

3.2. Customised undertaking provisions

The legislative provisions provide scope for customisation in certain aspects of a standard functional separation undertaking. For instance, paragraphs 151A(2)(d) and (e) of the Telecommunications Act require a standard functional separation undertaking to specify the extent to which various organisational separation and IT systems separation obligations will be met. Additional commitments outside the legislative provisions may also be included in a functional separation undertaking. The customised elements of Gigafy's proposed undertaking are summarised below. The ACCC seeks feedback on the appropriateness of these measures. Capitalised terms under section 3.2 are defined in clause 1 of Gigafy's proposed undertaking.

3.2.1. Commencement and duration of the undertaking

Under clause 3, several key provisions of Gigafy's proposed undertaking will not come into effect until 12 months after the undertaking is accepted by the ACCC. Gigafy's supporting submission states the 12-month lead-in period (the Transition Period) is necessary for Gigafy to develop and implement the requirements under the undertaking, given the size of its business.

Gigafy commits to producing a detailed outline of its phased implementation of the undertaking and to meet quarterly with the ACCC during the Transition Period to discuss the progress of the implementation strategy. Gigafy also commits to providing wholesale and non-discriminatory access from the date that the ACCC accepts the undertaking (the Effective Date) to all sites where Gigafy is the Statutory Infrastructure Provider and to sites that came into existence after the amendments to Part 8 of the Telecommunications Act took effect on 25 August 2020. These sites are listed at Appendix A to Gigafy's proposed undertaking.

Under clause 4, Gigafy's undertaking will expire 5 years after the Effective Date, unless varied or revoked. The Telecommunications Act permits a standard functional separation undertaking to be in force for a maximum of 10 years.¹²

Clause 5 states that if a Regulatory Event occurs, Gigafy will meet with the ACCC to discuss the implications of the Regulatory Event and may request the ACCC to revoke its undertaking or it may propose amendments to its undertaking or propose a new undertaking.¹³ In this regard, the ACCC notes that the Telecommunications Act requires the ACCC to revoke a standard functional separation undertaking if it receives written notice from the person that gave the undertaking requesting revocation.¹⁴ The Telecommunications Act also includes provisions for varying a standard functional separation undertaking.¹⁵

3.2.2. The nature of separation of the retail and wholesale business units

Under clause 9, Gigafy commits to operating the Gigafy Retail and Gigafy Wholesale business units under separate brands. Gigafy Wholesale will operate under the existing

¹² Subsection 151A(8) of the Telecommunications Act.

¹³ Regulatory Event is defined in clause 1.1(12) of Gigafy's undertaking as any statute or statutory instrument that repeals Part 8 of the Telecommunications Act or amends the requirements for a functional separation undertaking.

¹⁴ Subsection 151W(3) of the Telecommunications Act.

¹⁵ Section 151K of the Telecommunications Act.

Gigafy brand and Gigafy Retail will operate under a brand that will be distinct from the Gigafy Wholesale brand and not include the word 'Gigafy' or any variation of it.

Gigafy undertakes in clause 11.1 that staff engaged by Gigafy Retail and Gigafy Wholesale will be separated via premises (or parts of premises) that are physically separated but the staff are not required to be located in separate buildings. This commitment aligns with the ACCC's [Telecommunications \(Deemed Functional Separation Undertaking\) Determination 2020](#), which allows a corporation's wholesale and retail business units to be physically separated but located in the same offices.

An exception to clause 11.1 is made for authorised meetings between staff of the business units provided that the visiting staff member is accompanied to the extent practicable while in parts of the premises of the other business unit.

Clause 15 provides that Gigafy may conduct corporate group events such as companywide staff briefings, social functions, and other team events attended by staff from each of the business units to encourage a team culture. Gigafy undertakes to ensure that no Protected Information is shared or disclosed at any group events.

3.2.3. The activities that are to be performed by the wholesale and retail business units

Gigafy's commitments in relation to wholesale and retail activities are set out in clause 8 of the undertaking.

8.1 Gigafy Retail will undertake the following Retail Activities:

- (1) marketing, sale and supply of local access line services to retail customers and prospective retail customers;*
- (2) supply of other value-added services to retail customers;*
- (3) taking of service orders from retail customers for activation and provisioning;*
- (4) processing and implementing requests to amend or disconnect services from retail customers;*
- (5) billing of retail customers;*
- (6) setting of retail prices and non-price terms and conditions; and*
- (7) responding to network and service escalations from retail customers.*

8.2 Gigafy Wholesale will undertake the following Wholesale Activities:

- (1) marketing, sale and supply of local access line services to wholesale customers and prospective wholesale customers;*
- (2) receipt of orders from wholesale customers, service activation and provisioning;*
- (3) billing of wholesale customers;*
- (4) processing and implementing requests to connect or disconnect services from wholesale customers;*
- (5) processing and implementing requests to amend services or churn services in accordance with relevant industry codes;*

- (6) setting of wholesale prices, non-price terms and conditions, and promotions;*
- (7) responding to network, systems and service escalations from Gigafy Retail and wholesale customers;*
- (8) processing and implementing requests for local number portability;*
- (9) technical network infrastructure planning, design, implementation and support services; and*
- (10) line fault detection, handling and rectification.*

Gigafy undertakes that Gigafy Retail will not perform Wholesale Activities and Gigafy Wholesale will not perform Retail Activities.

3.2.4. The extent to which personnel may or may not be shared between the wholesale and retail business units

The Telecommunications Act requires a standard functional separation undertaking to provide that, to the extent specified in the undertaking, the workers who perform their duties for the wholesale business unit are different from the workers who perform their duties for the retail business unit.¹⁶

Per clause 10.1, Gigafy undertakes to ensure that workers who perform their duties for Gigafy Wholesale are different from the workers who perform their duties for Gigafy Retail.

However, Gigafy specifies an exception to these commitments in clause 7.3, which provides that Gigafy Retail and Gigafy Wholesale will receive Shared Corporate Services, or the benefit of Shared Corporate Services, subject to the restrictions in clause 20.4, discussed below. Notwithstanding this exception, Gigafy commits to ensuring that the staff of each business unit will not be subject to direction from the senior management of the other business unit.

Gigafy's Shared Corporate Services, as defined in clause 1.1(14), will support the general functions of Gigafy such as finance, human resources, marketing communications and legal among others. Shared Corporate Services also include corporate governance and senior executive leadership (including by directors and senior executives).

In clause 20.4(1), Gigafy undertakes that staff providing Shared Corporate Services must not divulge any Protected Information to Gigafy Retail or Gigafy Wholesale, as applicable, in the course of providing services. All Shared Corporate Services staff will also be subject to information sharing protocols and relevant training to help ensure that information is not shared between Gigafy Retail and Gigafy Wholesale.

Clause 12 specifies that staff may only transfer between Gigafy Retail and Gigafy Wholesale if the transfer is appropriately documented and the staff member has been made aware of their obligations under the undertaking, including through training conducted in accordance with the undertaking.

¹⁶ Paragraph 151A(2)(d) of the Telecommunications Act.

3.2.5. Incentive structures

Pursuant to clause 13.1, Gigafy may implement incentive remuneration structures based in whole or part on the overall performance of Gigafy. Subject to this clause, Gigafy will not implement any incentive remuneration structures for staff of Gigafy Wholesale which directly reflect or are determined by the performance of Gigafy Retail, and vice versa.

3.2.6. The extent to which the undertaking specifies separate systems and accounts

Clause 16 specifies the extent to which Gigafy undertakes to maintain separate systems and accounts, as required by paragraph 151A(2)(e) of the Telecommunications Act. Gigafy Wholesale and Gigafy Retail will maintain separate operational support, business support and communications systems to the extent that these systems can practicably be separated. Where it is not possible to provide separate systems, Gigafy commits to establish and maintain user access management restrictions (including information barriers) underpinned by information sharing protocols to prevent the sharing of information between Gigafy Retail and Gigafy Wholesale. However, Gigafy will not maintain separate accounts. It submits that separation of accounts is an overly burdensome requirement given Gigafy's relatively small size and the fact that it will remain a single legal entity. Subsection 151A(3) of the Telecommunications Act permits parties to standard functional separation undertakings to specify that they will not maintain separate accounts.

3.2.7. Information sharing commitments

Gigafy's commitments regarding information sharing in clauses 20.1 and 20.2 are consistent with the relevant legislative provisions¹⁷ and the ACCC's [Permitted Information Sharing for Standard Functional Separation Undertakings Determination](#), respectively.

Clause 20.3 outlines the steps that Gigafy Retail and Gigafy Wholesale will take to prevent the sharing of information between each other. This includes locating staff in physically separate areas (but not separate buildings), providing staff with relevant training and maintaining separate systems as discussed in subsections 3.2.2, 3.2.4 and 3.2.6 of this consultation paper respectively. Gigafy will also implement internal information sharing protocols that reflect the prohibitions in its undertaking on the sharing of information.

Gigafy's information sharing restrictions will apply to Shared Corporate Services in accordance with clause 20.4 of the undertaking, as discussed in subsection 3.2.4 of this consultation paper.

¹⁷ Paragraphs 151A(2)(h) – (k) of the Telecommunications Act.

3.2.8. Compliance commitments

Gigafy will provide the ACCC with a compliance plan and periodic compliance reports. Specifically, pursuant to clauses 22 and 23, Gigafy undertakes:

- to provide the ACCC with a draft Compliance Plan within 30 Business Days after the Effective Date and a copy of its Compliance Plan within three months of the Effective Date
- to outline in its Compliance Plan Gigafy's implementation of the commitments which take effect from the Implementation Date
- to meet quarterly with the ACCC during the Transition Period to discuss its progress towards implementing steps necessary to ensure Gigafy will comply with all of the commitments in the undertaking on and from the Implementation Date
- to provide the ACCC with any variations to the Compliance Plan within 10 Business Days of implementing the variation
- to prepare and provide Compliance Reports on an annual basis within 30 days of the end of each Financial Year in a form approved by the ACCC
- to provide all reasonable assistance and respond to any reasonable request the ACCC makes for the purposes of any audits the ACCC undertakes to verify compliance with the undertaking.

In addition, clause 24 provides that Gigafy will ensure that all staff whose duties could result in them being engaged in conduct that may contravene the undertaking and Gigafy's obligations under Part 8 of the Telecommunications Act undertake yearly practical compliance training and maintain written records of this training.

Q1. Do the customised provisions in Gigafy's undertaking raise any material concerns?

3.3. Long-term interests of end-users

In deciding whether to accept a standard functional separation undertaking, the ACCC must have regard to whether the undertaking promotes the long-term interests of end-users (LTIE) of carriage services or of services supplied by means of carriage services.¹⁸ This must be determined in the same manner as it is for the purposes of Part XIC of the *Competition and Consumer Act 2010* (CCA).¹⁹ Accordingly, the ACCC must consider the extent to which the undertaking is likely to result in the achievement of the following three objectives:²⁰

- promoting competition in markets for listed services (which includes carriage services and services supplied by means of carriage services)
- achieving any-to-any connectivity in relation to carriage services that involve communication between end-users, and
- encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which listed services are supplied, and any other infrastructure by which such services are, or are likely to become, capable of being supplied.

Gigafy submits in section 1 of its supporting submission that the undertaking fulfils these objectives and therefore promotes the LTIE.

¹⁸ Paragraph 151J(2)(a) of the Telecommunications Act.

¹⁹ Section 142BA of the Telecommunications Act.

²⁰ Subsection 152AB(2) of the CCA.

The ACCC's preliminary view is that accepting Gigafy's undertaking is likely to promote the LTIE, subject to Gigafy adhering to the statutory non-discrimination obligations and each of the commitments in its undertaking.

Promoting competition

When assessing the effect or likely effect on competition, the ACCC may undertake a 'with or without test'. The ACCC has compared the likely state of competition 'with' Gigafy's proposed undertaking in force to the likely state of competition 'without' accepting Gigafy's proposed undertaking, to assist with determining whether the undertaking would promote competition.

If the ACCC accepts the proposed undertaking, this will provide less costly separation obligations (compared to structural separation) and greater regulatory certainty for Gigafy, which will allow it to offer better prices and services in wholesale and retail markets. In the absence of the proposed undertaking, the ACCC expects Gigafy to be restricted from expanding its networks and competing for infrastructure builds.

The ACCC's preliminary view is that Gigafy's proposed undertaking is likely to promote competition through increasing the number of RSPs providing retail services on its networks. This will ultimately promote competition at an RSP level and provide end-users with a greater choice of RSPs on Gigafy's superfast broadband networks to select from.

Achieving any-to-any connectivity

The ACCC's preliminary view is that Gigafy's proposed undertaking would not have any bearing on the ability to achieve any-to-any connectivity. This is consistent with the ACCC's previous consideration of the deemed functional separation undertaking.

Encouraging economically efficient use of and investment in infrastructure

In determining whether Gigafy's proposed undertaking is likely to promote the LTIE, the ACCC must have regard to whether a decision to accept the proposed undertaking will encourage the economically efficient use of, and the economically efficient investment in, infrastructure.

The ACCC's preliminary assessment is that accepting the proposed undertaking is likely to encourage the economically efficient use of and investment in infrastructure.

The incentives for Gigafy to invest in its infrastructure will be supported by the regulatory certainty the undertaking provides throughout its duration. Functional separation will also provide Gigafy with greater certainty that the infrastructure it invests in can be used to supply its own retail services.

Greater competition in both infrastructure and retail markets will give Gigafy and its downstream RSPs increased incentive to provide quality services at an efficient cost. The ACCC's preliminary view is that the undertaking is therefore likely to improve productive and allocative efficiency.

Q2. Is Gigafy's undertaking likely to promote the long-term interests of end-users?

3.4. Other Comments

Q3. Do you have any other comments on the undertaking not covered by previous questions?

Appendix A – Checklist

Reference in the Telecommunications Act	Requirement	Relevant clause in Gigafy's undertaking
151A(2)(a)	<p><i>The undertaking must provide that the person will maintain:</i></p> <p><i>(i) a single wholesale business unit; and</i></p> <p><i>(ii) a single retail business unit.</i></p> <p>Subsection 151A(9) requires this to be a fundamental provision.</p>	<p>7.1</p> <p>Fundamental provision per clause 25.</p>
151A(2)(b)	<p><i>The undertaking must provide that the person will maintain arm's length functional separation between:</i></p> <p><i>(i) the person's wholesale business unit; and</i></p> <p><i>(ii) the person's retail business unit.</i></p> <p>Subsection 151A(9) requires this to be a fundamental provision.</p>	<p>7.2</p> <p>Fundamental provision per clause 25.</p>
151A(2)(c)	<p><i>The undertaking must provide that the person will ensure that:</i></p> <p><i>(i) the terms and conditions relating to price or a method of ascertaining price; and</i></p> <p><i>(ii) other terms and conditions;</i></p> <p><i>on which the person's wholesale business unit supplies local access line services to the person's retail business unit are documented.</i></p> <p>Subsection 151A(9) requires this to be a fundamental provision.</p>	<p>17.1</p> <p>Fundamental provision per clause 25.</p>
151A(2)(d)	<p><i>The undertaking must provide that the person will, to the extent specified in the undertaking, ensure that the workers who perform their duties for the person's wholesale business unit are different from the workers who perform their duties for the person's retail business unit.</i></p>	<p>10.1</p>

<p>151A(2)(e)</p>	<p><i>The undertaking must provide that the person will, to the extent specified in the undertaking, ensure that there are separate:</i></p> <ul style="list-style-type: none"> <i>(i) operational support systems; and</i> <i>(ii) business systems; and</i> <i>(iii) communications systems; and</i> <i>(iv) accounts;</i> <p><i>for:</i></p> <ul style="list-style-type: none"> <i>(v) the person's wholesale business unit; and</i> <i>(vi) the person's retail business unit.</i> <p>Under subsection 151A(3), an extent specified under paragraph (2)(e) may be a nil extent.</p>	<p>16.1</p>
<p>151A(2)(f)</p>	<p><i>The undertaking must provide that the person will publish on the person's website:</i></p> <ul style="list-style-type: none"> <i>(i) the terms and conditions relating to price or a method of ascertaining price; and</i> <i>(ii) other terms and conditions;</i> <p><i>on which the person's wholesale business unit offers to supply local access line services to the following:</i></p> <ul style="list-style-type: none"> <i>(iii) the person's retail business unit;</i> <i>(iv) the person's wholesale customers or prospective wholesale customers.</i> <p>Subsection 151A(9) requires this to be a fundamental provision.</p>	<p>18.1</p> <p>Fundamental provision per clause 25.</p>

151A(2)(g)	<p><i>The undertaking must provide that the person will:</i></p> <p><i>(i) if requested to do so by a wholesale customer or prospective wholesale customer, supply a local access line service to the wholesale customer or prospective wholesale customer; and</i></p> <p><i>(ii) do so on the terms and conditions that were published on the person’s website at the time when the request was made.</i></p> <p>Subsection 151A(9) requires this to be a fundamental provision.</p>	<p>19.1</p> <p>Fundamental provision per clause 25.</p>
151A(2)(h)	<p><i>The undertaking must provide that the person will ensure that information provided to the person’s wholesale business unit by the person’s wholesale customers is not disclosed to the person’s retail business unit.</i></p> <p>Subsection 151A(9) requires this to be a fundamental provision.</p>	<p>20.1(1)</p> <p>Fundamental provision per clause 25.</p>
151A(2)(i)	<p><i>The undertaking must provide that the person will ensure that the person’s retail business unit does not obtain, access or use information provided to the person’s wholesale business unit by the person’s wholesale customers.</i></p> <p>Subsection 151A(9) requires this to be a fundamental provision.</p>	<p>20.1(2)</p> <p>Fundamental provision per clause 25.</p>
151A(2)(j)	<p><i>The undertaking must provide that the person will ensure that information provided to the person’s retail business unit by a carrier or carriage service provider (other than information of a kind specified in a determination under subsection (13)) is not disclosed to the person’s wholesale business unit.</i></p> <p>Subsection 151A(9) requires this to be a fundamental provision.</p> <p>Subsection 151A(13) permits the ACCC to determine one or more kinds of information for the purposes of subsections 151A(2)(j) and (k). Determination available here.</p>	<p>20.1(3)</p> <p>Fundamental provision per clause 25.</p>
151A(2)(k)	<p><i>The undertaking must provide that the person will ensure that the person’s wholesale business unit does not obtain, access or use information provided to the person’s retail business unit by a carrier or carriage service provider (other than information of a kind specified in a determination under subsection (13)).</i></p> <p>Subsection 151A(9) requires this to be a fundamental provision.</p> <p>Subsection 151A(13) permits the ACCC to determine one or more kinds of information for the purposes of subsections 151A(2)(j) and (k). Determination available here.</p>	<p>20.1(4)</p> <p>Fundamental provision per clause 25.</p>

151A(2)(l)	<p><i>The undertaking must provide that the person will use the same customer interface for dealings between:</i></p> <p><i>(i) the person's wholesale business unit; and</i></p> <p><i>(ii) the person's wholesale customers;</i></p> <p><i>as the person uses for dealings between:</i></p> <p><i>(iii) the person's wholesale business unit; and</i></p> <p><i>(iv) the person's retail business unit.</i></p> <p>Section 142A defines a customer interface as an interface for the purposes of ordering, provisioning, billing, service activation and fault rectification in relation to the supply of local access line services.</p>	21.1
151A(2)(m)	<p><i>The undertaking must contain such other provisions (if any) as are specified in a determination under subsection (14).</i></p>	N/A
151A(2)(n)	<p><i>The undertaking must not contain a provision of a kind specified in a determination under subsection (15).</i></p>	N/A
151A(5), (6) and (8)	<p><i>(5) The undertaking must specify the expiry time of the undertaking.</i></p> <p><i>(6) The expiry time of the undertaking may be described by reference to the end of a period beginning when the undertaking comes into force.</i></p> <p><i>(8) The expiry time of the undertaking must not be more than 10 years after the undertaking comes into force.</i></p>	4
151A(9)	<p><i>The undertaking:</i></p> <p><i>(a) must state that the provisions of the undertaking covered by paragraphs (2)(a), (b), (c), (f), (g), (h), (i), (j) and (k) are fundamental provisions; and</i></p> <p><i>(b) may state that one or more other provisions of the undertaking are fundamental provisions.</i></p>	25
151A(10)	<p><i>The undertaking must provide that the person will give the ACCC periodic reports (to be known as compliance reports) that:</i></p> <p><i>(a) relate to the person's compliance with the undertaking; and</i></p> <p><i>(b) are in a form approved in writing by the ACCC.</i></p>	23

151A(11)	<p><i>The undertaking must provide that the person will:</i></p> <p><i>(a) prepare a plan (to be known as a compliance plan) setting out the actions to be taken by the person for the purpose of ensuring that the person complies with the undertaking; and</i></p> <p><i>(b) give the ACCC:</i></p> <p><i>(i) a copy of the compliance plan; and</i></p> <p><i>(ii) a copy of any variation of the compliance plan.</i></p>	22
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