

Information in support of Joint Functional Separation Undertaking

given jointly by TPG Telecom Limited and various subsidiaries to the Australian Competition and Consumer Commission under section 151C of the *Telecommunications Act 1997* (Cth).

PUBLIC VERSION

Confidentiality

In this submission, **yellow shading** indicates information that is confidential and commercially sensitive to TPG Telecom Limited (**TPG**) and which has been redacted and marked as [c-i-c] in this public version of the submission.

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1 Executive Summary

- 1.1 TPG Telecom Limited (**TPG**) welcomes the opportunity to make this submission on behalf of itself and its relevant subsidiaries in support of their proposed Joint Functional Separation Undertaking (**FSU**) submitted under section 151C(1) of the *Telecommunications Act 1997* (Cth) (**Act**).
- 1.2 The FSU provides that TPG's retail and wholesale fixed line businesses will operate on a functionally separated basis in compliance with the requirements of Part 8 of the Act. A joint written undertaking is required given that TPG has multiple relevant subsidiaries within its corporate group, although each of the entities giving the undertaking are Related Bodies Corporate to TPG.
- 1.3 The purpose of this submission is to provide such further information as is reasonably likely to assist the ACCC to decide whether to accept or reject the FSU as contemplated by section 151C(4)(b) of the Act. TPG submits that the FSU promotes the long-term interests of end-users (**LTIE**) as required by section 151J(2)(a) of the Act.
- 1.4 Importantly, TPG has operated a functionally separated business pursuant to the requirements of the *Carrier Licence Conditions (Networks Supplying Superfast Carriage Services to Residential Customers) Declaration 2014* (**CLC**). The key objective of this FSU is to replace the legacy CLC requirements with the updated requirements of the functional separation regime set out in Part 8 of the Act, which would provide TPG with greater flexibility to compete in wholesale and retail markets in the LTIE.
- 1.5 A further objective of this FSU is to provide a commercial and regulatory framework within which TPG can build a viable and competitive wholesale business.
- 1.6 TPG has also made the decision that for efficiency and simplicity, TransACT Capital Communications Pty Ltd and TransACT Victoria Communications Pty Limited (together, **TransACT**) will not directly sell any wholesale or retail services using the TransACT networks infrastructure once the FSU is in force. Instead, TransACT will function as a so called "Network Entity", as Pipe Networks Pty Limited (**Pipe Networks**) does today. By the time the FSU comes into effect, TransACT and Pipe Networks (together, the **Network Entities**) will together supply the use of network infrastructure to TPG's wholesale entity, FTTB Wholesale Pty Ltd (**FTTB Wholesale**). The supply by the Network Entities has been expressly designated under the FSU as "Network Infrastructure Services". FTTB Wholesale will in turn supply wholesale services to TPG Retailers and other wholesale customers. There is a 6-month lead time built into the FSU to ensure that TPG has sufficient time to transition the Network Entities into their new respective roles in compliance with the FSU and Part 8 of the Act.
- 1.7 The role of the Network Entities is expressly codified in the FSU to give the ACCC necessary comfort that the status of TransACT and Pipe Networks will be limited to supplying network services to TPG Wholesalers. The Network Entities are also party to the FSU and the FSU is expressed to require compliance by Related Bodies Corporate of TPG that are not parties to the FSU. Finally, for the avoidance of any doubt, there is an express requirement in the FSU that the Network Entities will not supply wholesale services directly to TPG Retailers, the Sub-wholesaler and any wholesale customer.
- 1.8 We note that the proposed FSU is technology neutral (consistent with the intent of the regulatory regime) and the scope of the obligations is not limited to premises that use particular physical infrastructure (e.g. FTTB/FTTN/FTTP) or technology (e.g. HFC/VDSL). To achieve alignment with the ACCC's requirements and interpretation of section 151C of the Act, TPG has incorporated aspects of the following two key documents:
- (1) the ACCC's Deemed Functional Separation Undertaking published on 15 October 2020 (**Deemed Undertaking**); and
 - (2) Uniti Group's Functional Separation Undertaking, which was accepted by the ACCC on 21 October 2020 (**Uniti Undertaking**).

- 1.9 In this way, TPG submits that most of the provisions of this FSU should be consistent with drafting that the ACCC has already accepted as reasonable and appropriate in an FSU and that meets the requirements of section 151J of the Act.
- 1.10 However, TPG is a unique business and hence has been required to adopt some bespoke and more sophisticated solutions to reflect TPG's different and more complex circumstances. We note that the Uniti Undertaking also contained some bespoke features that were directed at their respective circumstances and which have required modification when applied to TPG's circumstances.
- 1.11 Consistent with the policy intent of the FSU regime, TPG has sought to reduce separation costs where another solution could more effectively achieve the policy intent of the functional separation regime. By doing so, TPG has sought to maximise the efficient use of infrastructure in the LTIE. This has also resulted in some bespoke arrangements as identified in this submission.
- 1.12 To assist the ACCC's analysis, this submission includes the following annexures:
- (1) **Annexure A**, which contains important historical context;
 - (2) **Annexure B**, which contains a table that has two purposes:
 - (a) a checklist confirming that the FSU meets each of the statutory requirements of section 151C of the Act; and
 - (b) a comparison of the FSU against the provisions of the Uniti Undertaking and the Deemed Undertaking that were accepted by the ACCC;
 - (3) **Annexure C**, which contains [c-i-c]; and
 - (4) **Annexure D**, which contains [c-i-c].
- 1.13 As the ACCC will be aware, TPG continues to challenge policy and legislation that place competitors to NBN Co (**NBN**) at a significant competitive and regulatory disadvantage, including the superfast network rules in Part 8 of the Act. TPG does not make any comments on the appropriateness of the regime in this submission, but has reserved the right to withdraw the FSU if TPG is no longer required to have an FSU at some point in the future, as TPG hopes will ultimately become the case.
- 1.14 As the ACCC will also be aware, TPG is a strong supporter of the long overdue relaxation of the superfast network rules (including the CLC). TPG's historic ability to effectively compete as an infrastructure player has been, and will continue to be, severely constrained by the substantial complexities and barriers to genuine and effective competition created by the superfast network rules and associated instruments.
- 1.15 [c-i-c]
- 1.16 TPG is happy to further meet with the ACCC to discuss any aspects of the FSU or this submission.
- 1.17 Unless otherwise stated, defined terms in this submission have the same meaning as in the FSU.

2 Previous functional separation undertakings accepted by the ACCC

- 2.1 TPG submits that the proposed FSU complies with each of the legislative obligations in section 151C of the Act. TPG has provided a checklist for the benefit of the ACCC in **Annexure B**.
- 2.2 To ensure alignment with the ACCC's requirements and interpretation of section 151C of the Act, TPG has incorporated aspects of two key documents in drafting the FSU:
- (1) the ACCC's Deemed Functional Separation Undertaking published on 15 October 2020 (**Deemed Undertaking**); and
 - (2) Uniti Group's Functional Separation Undertaking, which was accepted by the ACCC on 21 October 2020 (**Uniti Undertaking**). The Uniti Undertaking is structured into 4 parts (Interpretation, Scope and application, Functional Separation, and Compliance and Reporting). TPG has not adopted the same structure but, where appropriate, has used similar drafting to ensure that it complies with the legislative obligations.
- 2.3 In this way, TPG submits that most of the provisions of this FSU should be consistent with drafting that the ACCC has already accepted as reasonable and appropriate in an FSU and that meets the requirements of section 151J of the Act.
- 2.4 However, TPG is a unique business and hence has been required to adopt some bespoke solutions to reflect TPG's different circumstances. The Deemed Undertaking and the Uniti Undertaking also contained features that were directed at their respective circumstances and which have required modification when applied to TPG's circumstances.
- 2.5 Specifically, TPG has sought to reduce separation costs where such costs are disproportionate to the potential benefits of functional separation and where another solution could more effectively achieve the policy intent of the functional separation regime. This has resulted in some bespoke solutions as identified in this submission.
- 2.6 TPG submits that these solutions should not raise any material concerns. However, TPG has provided greater detail on these solutions in this submission to provide the ACCC with confidence that no material issues arise and that the solutions are in the LTIE.

3 Application of the FSU

- 3.1 Consistent with the statutory requirements, notwithstanding anything else in the FSU, the obligations in the FSU apply to the relevant entities that are giving the FSU only to the extent that it concerns the supply of local access line services using a local access line that is controlled by TPG and which is used or proposed to be used (or forms part of a network that is used or proposed to be used) to supply superfast carriage services wholly or principally to residential customers, or prospective residential customers, in Australia.
- 3.2 The TPG retail entities are:
- (1) TPG Internet Pty Ltd;
 - (2) iiNet Limited;
 - (3) Internode Pty Ltd;
 - (4) Westnet Pty Ltd;
 - (5) Adam Internet Pty Ltd; and
 - (6) any other TPG Group company (other than a TPG Wholesaler) notified by TPG to the ACCC in writing from time to time,

(collectively referred to as the **TPG Retailers**).

3.3 The TPG wholesale entities are:

- (1) FTTB Wholesale Pty Ltd (**FTTB Wholesale**);
- (2) AAPT Limited (**AAPT** or **Sub-wholesaler**) (only when TPG notifies the ACCC of its intention to start supplying wholesale services as explained in more detail below); and
- (3) any other TPG Group company (other than a TPG Retailer) notified by TPG to the ACCC in writing from time to time,

(collectively referred to as the **TPG Wholesalers**).

3.4 The FSU contains a mechanism for TPG to notify the ACCC of any other company that will act as a TPG Wholesaler or TPG Retailer (as applicable) in the future. This mechanism is included as TPG may in the future include additional wholesale/retail entities within the scope of the FSU. Relatedly, there is a mechanism in the FSU for AAPT to be included as a Sub-wholesaler at a future date (discussed at 3.7 below). As is currently the case, it is TPG's current intention that TPG Retailers will continue to acquire local access line services from FTTB Wholesale (rather than AAPT) after the Undertaking is in force.

3.5 TPG proposes it, together with the TPG Retailers, TPG Wholesalers and Network Entities, will all be signatories to the FSU, but given that these entities are Related Bodies Corporate of TPG, the primary responsibility for compliance will sit with TPG for and on behalf of its subsidiaries.

3.6 The TPG corporate structure designed to implement the FSU requirements is as follows:

- (1) FTTB Wholesale is the wholesale entity for the TPG Group;
- (2) the Network Entities (namely, Pipe Networks and TransACT) will supply the use of network infrastructure (defined as "Network Infrastructure Services") to FTTB Wholesale; and
- (3) FTTB Wholesale will in turn supply TPG Retailers as well as third party wholesalers with local access line services and other ancillary wholesale services including network planning, billing and responding to network service complaints.

3.7 The FSU also provides a mechanism by which AAPT can be "activated" under the FSU as a Sub-wholesaler (and subject to TPG Wholesaler obligations) at a future date provided that TPG:

- (1) gives the ACCC advance notice of its intention for the Sub-wholesaler to start supplying local access line services to wholesale customers; and
- (2) publishes on its website the Sub-wholesaler's terms and conditions relating to price or method of ascertaining price and other terms and conditions.

Subject to these requirements and once activated under the FSU, FTTB Wholesale will supply wholesale services to AAPT, which may in turn supply to wholesale customers.

3.8 AAPT will have similar functions as FTTB Wholesale but may partly or fully operate at a different level of the wholesale supply chain within the TPG Group. In this way, AAPT functions as a sub-wholesaler, but is subject to all the same obligations as a TPG Wholesaler (the definition of TPG Wholesaler in the FSU includes Sub-wholesaler (subject to the notification requirement being satisfied) and therefore all obligations on the TPG Wholesaler apply equally to the Sub-wholesaler).

3.9 The rationale for this structure is that:

- (1) AAPT has an established presence in the market and currently holds a number of customer contracts with aggregators and RSPs. There are therefore compelling reasons to maintain and leverage this position rather than impose unnecessary costs and complexity on wholesale customers; and
- (2) AAPT already provides sub-wholesale services (e.g. on the NBN network through its “National Wholesale Broadband” offering).

3.10 [c-i-c].

4 Overview of key terms in the proposed FSU

An overview of the key provisions in the proposed FSU is provided below.

Please refer to **Annexure B** for a checklist detailing how the FSU complies with each provision in section 151C of the Act as well as a comparative analysis against the Unit Undertaking and the Deemed Undertaking.

4.1 Effective Date

The FSU is intended to come into effect on the earlier of a) the date that is six months after it is accepted by the ACCC, and b) the date on which the TransACT Exemptions cease to apply to TPG (under clause 2(b) of each of the TransACT Exemptions).

The reason for including this lead time is that there are a number of complexities involved in functionally separating a large business such as TPG, including (for example):

- (1) securing scarce IT resources with which to assess, modify, build or purchase additional IT systems, services and licences;
- (2) transitioning employees to new systems;
- (3) ensuring that the Network Entities comply with the obligation to provide Network Infrastructure Services to FTTB Wholesale only; and
- (4) providing appropriate staff training to ensure TPG complies with its obligations under the FSU.

TPG submits that a six month lead time is a reasonable period within which TPG can ensure it complies with its obligations.

TPG notes that it will also be taking steps to implement the requirements of the FSU while the ACCC is considering the FSU. Therefore, the actual lead time is six months plus the time period between the date of this submission and the ACCC accepting the FSU.

4.2 Expiry date

The FSU will expire in 5 years from the date that it comes into force unless otherwise varied or revoked. The duration of the FSU is reasonable considering the evolving nature of technological developments which may necessitate amendments to TPG’s obligations under the FSU.

TPG also notes that most commercial agreements involving the supply of local access services run for a period of 3-5 years, hence adopting the same timeframe for the FSU grants TPG and the ACCC the flexibility to revisit the FSU at an appropriate time.

4.3 Revocation or amendment of the Undertaking

TPG reserves the right to revoke the FSU:

- (1) at any time prior to the FSU coming into force; and

- (2) in the event of a Regulatory Event (as defined in the FSU).

A Regulatory Event includes a statute or statutory instrument, which repeals Part 8 of the Act or amends the requirements for a joint functional separation undertaking under the Act.

The revocation rights are practically necessary given any repeal or amendment to the legislation may require that TPG reevaluate or adapt its obligations under the FSU.

To provide the ACCC with greater comfort in relation to revocation, TPG has undertaken to meet with the ACCC to discuss the implications of the Regulatory Event and, if revocation occurs, to indicate to the ACCC why the FSU is no longer required, appropriate or necessary. TPG will also meet with the ACCC to discuss any proposed amendments to the Undertaking, or a replacement Undertaking, to address the Regulatory Event. In such circumstances, TPG would be responsible for ensuring compliance with the amended regulatory regime as it applied at that time.

4.4 **Functional separation between wholesale and retail businesses**

The proposed FSU contains practical measures to ensure compliance with legislative obligations and achieving the policy intent of the functional separation regime while recognising the complexity of TPG's business. The key components of functional separation are discussed below.

(1) ***Separation of retail and wholesale activities between TPG Retailer and TPG Wholesaler/Sub-wholesaler***

Retail and wholesale activities are defined broadly in the FSU and have been based on similar definitions used in the Deemed Undertaking (with necessary differences to reflect the nuances of the TPG business). Importantly, the supply of local access line services to retail and wholesale customers and/or TPG Retailers are separate activities under the FSU. TPG Retailers and TPG Wholesalers are individually responsible for setting price and non-price terms and conditions.

The FSU provides that the TPG Retailers will be responsible for "processing and implementing requests to amend or disconnect services from retail customers".

The FSU provides that processing and implementing requests for local number portability (**LNP**) are a Retail Activity. The FSU includes this as a retail activity whereas it is a wholesale activity in the Deemed Undertaking. The reason for including LNP as a Retail Activity in the FSU is that FTTB Wholesale's product does not include telephony and, as such, a TPG Wholesaler cannot have the responsibility for LNP. Wholesale customers may include a telephony component in their offering, but in these circumstances they will be providing the service themselves or will obtain it from another wholesaler.

TPG Wholesalers will be responsible for "processing and implementing requests to connect or disconnect services from wholesale customers". TPG Wholesalers will also be responsible for "processing and implementing requests to amend services or churn services in accordance with relevant industry codes". This is the same obligation as that included in the Uniti Undertaking accepted by the ACCC.

(2) ***Separate branding***

The FSU provides that TPG Retailers and TPG Wholesalers will each operate their respective businesses under separate brands, noting that a TPG Retailer may use the brand of another TPG Retailer and vice versa for TPG Wholesalers. TPG's intention is to retain the existing retail brands. **[c-i-c]**.

Separate branding is not strictly a requirement under s151C of the Act. Nevertheless, TPG considers that the requirement will help achieve the objectives of functional separation and is in line with the Deemed Undertaking and the Uniti Undertaking.

(3) **Employment arrangements**

Subject to certain exceptions for Shared Corporate Services and Network Engineering Services, the FSU provides that TPG Retailers and TPG Wholesalers will each engage separate and independent staff. These employees and personnel must perform their duties exclusively for either the TPG Retailers or TPG Wholesalers. This applies equally to staff providing services to TPG Wholesalers or TPG Retailers (as applicable) that are not engaged by the respective wholesale or retail entity (e.g. third party contractors).

Furthermore, to ensure an appropriate level of segregation, retail and wholesale staff will:

- (a) not be subject to incentive remuneration structures that directly reflect or are determined by the performance of TPG Wholesalers (for retail staff) or TPG Retailers (for wholesale staff);
- (b) be subject to separate senior management direction and leadership;
- (c) be located in premises (or part thereof) that are physically separated from one another (e.g. through access control restrictions); and
- (d) be subject to a rigorous information sharing protocols to ensure Protected Information is not divulged between TPG Retailers and TPG Wholesalers **([c-i-c])**.

The FSU also provides that the employing entity for staff engaged by TPG Wholesalers and TPG Retailers may be TPG or another member of the TPG Group, provided that a TPG Wholesaler will not employ the staff of a TPG Retailer (and vice versa). It is important for TPG to fulfil the role of employing entity for the following reasons:

(a) [c-i-c].

(b) [c-i-c].

(c) [c-i-c].

(4) **Shared Corporate Services and Network Engineering Services**

The FSU lists Shared Corporate Services which will be offered centrally to both TPG Retailers and TPG Wholesalers. The Shared Corporate Services in the FSU include:

- (a) finance, accounting and treasury;
- (b) human resources;
- (c) legal, regulatory and media/public relations;
- (d) marketing communications;
- (e) internal IT support services;
- (f) board support and corporate strategy;
- (g) procurement and facilities management; and
- (h) any other services that are ancillary or related to the services described above.

In addition, the FSU includes Network Engineering Services, which will also be shared between the TPG Wholesalers and TPG Retailers. This includes technical network infrastructure planning, design, implementation and support services.

The provision of shared services is implicitly recognised in section 151C(2)(d)-(e) of the Act, which provides for separate and independent staff '*to the extent specified in the undertaking*'. Furthermore, the concept of Shared Corporate Services is recognised in the Deemed Undertaking.

Shared Corporate Services and Network Engineering Services, as defined in the FSU, are necessary to give effect to the policy intent of delivering appropriate separation but also mitigating unnecessary costs of separation. In this regard, the sharing of these resources is necessary because:

- (a) The nature of the services are such that access restrictions (including information barriers), information sharing protocols (as provided for in the FSU) can be put in place to ensure that the services are performed with appropriate segregation between TPG Wholesalers and TPG Retailers. This will ensure that the relevant staff either do not have access to and/or do not divulge confidential and commercially sensitive information between TPG Wholesalers and TPG Retailers.
- (b) To guard against any perverse incentives which could be created through the sharing of these staff, TPG will implement robust training of relevant staff to ensure that they comply with the policy intent of the functional separation regime as well as TPG's non-discrimination obligations in Part 8 of the Act.

(c) [c-i-c].

(5) **Separation of TPG systems**

The FSU provides that TPG Wholesalers and TPG Retailers will have separate operational support systems, business systems and communications systems, to the extent that these systems can be practically separated. Where it is not possible to provide separate systems, user access management restrictions (including information barriers) underpinned by information sharing protocols will be put in place to prevent the sharing of Protected Information between TPG Retailers and TPG Wholesalers.

This approach is consistent with section 151C(2)(j) of the Act (as well as predecessor provisions in the CLC), which provides that separate systems are required to the '*extent specified in the undertaking*'. Therefore, it is not mandatory that TPG adopts completely separate systems, but rather that a level of separation be adopted that is reasonable and in line with the policy intent of the functional separation regime.

To comply with this requirement, TPG has taken a robust approach and will:

(a) [c-i-c]

- (b) Put in place access restrictions (including information barriers) in respect of shared billing and communication systems (email and internal messenger applications) to prevent dissemination of Protected Information regarding TPG Wholesalers and TPG Retailers. The practical consequences of putting these measures in place is that shared systems will be separated from staff of the TPG Wholesaler and TPG Retailer.

(6) **Separate accounts**

The FSU provides that the TPG Wholesalers and TPG Retailers will prepare and maintain separate management accounts, to an EBITDA level. It is submitted that

accounts prepared in this way would be sufficient for the ACCC to audit for regulatory compliance. Furthermore, accounting separation of this nature is similar to the approach adopted in the Unit Undertaking.

(7) **Restrictions on sharing of information**

The FSU implements information sharing obligations, and specifically:

- (a) contains undertakings regarding the sharing of information, which is in line with the requirements in section 151C of the Act. The Unit Undertaking utilises similar wording, except that the FSU limits these undertakings to Protected Information (unlike the Unit Undertaking which applies to any information). TPG submits that this is a reasonable limitation given the broad definition of Protected Information, which covers confidential and commercially sensitive information of TPG Wholesalers and TPG Retailers and accordingly complies with the policy intent of the legislation;
- (b) implements the following steps to prevent the sharing of information between TPG Wholesalers and TPG Retailers:
 - (i) maintaining separate systems (except to the extent that systems need to be shared, as discussed at 4.4);
 - (ii) locating staff in physically separate premises;
 - (iii) implementing information sharing protocols ([c-i-c]); and
 - (iv) providing staff training that will be directed at preventing any behaviours that would seek to take advantage of any perverse incentives created by operating a vertically integrated wholesale business;
- (c) places restrictions on staff providing Shared Corporate Services and Network Engineering Services, including:
 - (i) staff are not permitted to divulge Protected Information to a TPG Retailer or TPG Wholesaler in the course of providing services;
 - (ii) staff will be subject to information sharing protocols and will receive training;
- (d) places restrictions on staff providing Network Engineering Services to deal with requests for assistance by TPG Retailers and wholesale customers through the relevant customer interface operated by the TPG Wholesaler and with the same level of diligence and speed;
- (e) places restrictions on staff providing Network Engineering Services from disclosing information regarding planned or actual network rollout activities by the Network Entities to TPG Retailers and wholesale customers (unless that information is readily ascertainable from the public domain).
- (f) sets out information categories which are permitted to be shared. The wording used is similar to that of the Unit Undertaking (at Part C, clause 6.1). The FSU expressly provides that TPG Retailers are permitted to:
 - (i) share information between themselves; and
 - (ii) share information with a TPG Wholesaler for the purpose of acquiring services from the TPG Wholesaler.

4.5 Wholesale customer interfaces

Under the FSU, each TPG Wholesaler must use the same customer interface for dealings between the TPG Wholesaler and its respective wholesale customers (other than the TPG Retailers), as the TPG Wholesaler uses for the same dealings between the TPG Wholesaler and a TPG Retailer.

A TPG Wholesaler is permitted to use different customer interfaces for different products and services and/or a TPG Wholesaler may use a different customer interface (or multiple customer interfaces if there are different products and services) to another TPG Wholesaler. If a TPG Wholesaler uses more than one customer interface, the TPG Wholesaler must ensure that the aforementioned requirement (regarding the use of the same customer interface for wholesale customers and TPG Retailers for the same dealings) is met.

We consider these obligations are consistent with, and permitted by, the Act and ensures that each customer interface does not discriminate in favour of TPG Retailers.

4.6 On-going compliance and training requirements

TPG Retailers and TPG Wholesalers are required to submit to the ACCC annual Compliance Reports, and TPG is required to prepare and submit Compliance Plans to the ACCC specifying how the TPG entities will comply with the FSU. TPG will provide the ACCC with draft Compliance Plans 20 Business Days prior to the FSU coming into effect and will submit the final Compliance Plans to the ACCC within 3 months of the FSU coming into force. Furthermore, TPG and the TPG Retailers and TPG Wholesalers are required to undertake compliance training to ensure that relevant staff comply with the FSU.

5 The FSU is in the Long-term Interests of End-users

The proposed FSU is in the LTIE as required under section 152AB of the CCA, read with section 151J of the Act.

TPG notes that the question of whether the FSU promotes the LTIE is determined in the same manner as it is determined for the purposes of Part XIC of the CCA. Accordingly, the ACCC must have regard to the extent to which the FSU is likely to result in the achievement of the following three objectives:

- (1) promoting competition in markets for listed services;
- (2) achieving any-to-any connectivity in relation to carriage services that involve communication between end-users; and
- (3) encouraging the economically efficient use of, and the economically efficient investment in, infrastructure.

TPG provides further comments below on the first and third of these requirements, noting that the fulfilment of both of these requirements necessarily also achieves any-to-any connectivity by enabling TPG to deploy infrastructure to a faster and greater extent.

5.2 Promoting competition in fixed telecommunication markets

As the ACCC will be aware, a fundamental analytical tool that is used when considering whether a particular regulatory action will promote the LTIE is the “with and without test” in relevant telecommunications markets.

Relevant markets

TPG has adopted the market definition used by the ACCC in its decision for the *Superfast Broadband Access Service and Local Bitstream Access Service declaration inquiry, July 2021 (SBAS and LBAS Decision)*. Although it does not reach a concluded view on the

geographic dimension of the relevant markets, the ACCC considers markets for superfast broadband services supplied over fixed-line superfast broadband networks to:

- (1) retail customers on a national basis (retail market for superfast broadband services); and
- (2) wholesale customers on a national basis (wholesale market for superfast broadband services).

Assessment of the impact of the FSU on competition

The proposed FSU balances the need to preserve competition in retail and wholesale markets for superfast broadband services and imposes an appropriate level of segregation between the activities of TPG Wholesalers and TPG Retailers.

- (1) Impact on wholesale markets for superfast broadband services

Firstly, the FSU includes necessary provisions to share corporate services, network engineering services and IT systems. The sharing of these services and systems is critical to ensuring that TPG is able to compete in the wholesale market for superfast network services. Specifically:

- (a) Without provision in the FSU for sharing of corporate services and certain operational and communication systems, TPG would need significant capital and operating expenditure to fund duplicate staff and software systems. The increased costs under the counterfactual would severely constrain TPG's ability to invest in infrastructure, introduce innovative service offerings and generally drive dynamic competition in the market.
- (b) TPG lacks the size and scale of the dominant fixed network operator in the wholesale market for superfast broadband services [c-i-c].
- (c) With the provisions in the FSU allowing for shared services and systems, TPG is able to ensure that capital and operating expenditure is available for technology and infrastructure projects, new products and features and upgrades whilst still complying with legislative requirements and the policy intent behind the functional separation regime. This is achieved through the obligation to preserve Protected Information between the TPG Wholesalers and TPG Retailers and adopting information sharing protocols that impose strict obligations on staff and systems that straddle the wholesale and retail businesses. In addition to this, the FSU provides for training to ensure that staff are made aware of their obligations under the FSU and how to practically comply with the FSU. Training will be provided by legal practitioners and directed at preventing any behaviours that would seek to take advantage of any perverse incentives created by operating a vertically integrated wholesale business.

Secondly, TPG notes that, [c-i-c], TPG is now effectively constrained by competition from NBN in any event. This market context is important as, irrespective of the provisions in the FSU, TPG has a strong commercial imperative to maximise wholesale supply and to ensure that wholesale services are supplied to wholesale customers on commercially attractive terms. In the absence of TPG supplying wholesale services, the wholesale customers would simply acquire/continue to acquire wholesale services from NBN.

- (2) Impact on retail markets for superfast broadband services

By adhering to the statutory obligations of s151C of the Act, the FSU ensures that retail service providers are able to acquire superfast broadband services from TPG on reasonable terms that have been deemed by government to appropriately safeguard end-user interests. The increased uptake of TPG's wholesale services

has flow-on effects in retail markets, such as by increasing choice for end-users and overall promotes competition and the LTIE.

5.3 Encouraging economically efficient use of and investment in infrastructure

The proposed FSU encourages the economically efficient use of and investment in infrastructure for the following reasons:

- (1) *Legitimate interests of TPG:* As discussed above, the sharing of systems and services is critical in managing TPG's operating and capital expenditures and preserving TPG's legitimate interests in relation to reducing its separation costs.
- (2) *Incentivises future investment.* Preserving TPG's legitimate interests has the flow on effect of incentivising future investment in critical infrastructure and technology which will ultimately drive dynamic competition. The proposed FSU achieves this by reducing overall costs and frees up significant capital expenditure.

Annexure A: Historical Context

1 Overview

TPG provides detail below on the historical application of functional separation requirements applied to TPG.

In April 2011, the Commonwealth Parliament enacted Parts 7 and 8 of the Act, which are colloquially known as the 'NBN level playing field provisions', or the 'anti-cherry picking provisions':

- (1) The NBN level playing field provisions at that time prohibited network operators from using new networks to supply superfast carriage services to residential or small business customers, or upgrading or altering networks that were in existence as at 1 January 2011 to make them capable of supplying those services, unless they supplied on a wholesale basis only and are subject to open access obligations.
- (2) A superfast carriage service was defined as a service capable of ordinarily operating at a 'download speed' of 25 megabits per second. The level playing field provisions were first introduced into Parliament around 1 January 2011.

Where a network was subject to the NBN level playing field provisions, the network operator would be subject to similar regulation as the NBN in terms of being required to operate on a wholesale only and open access basis (i.e. operating on a 'level playing field' with NBN).

However, some exemptions did apply:

- (1) Networks that were capable of supplying superfast carriage services to residential or small business customers as at 1 January 2011 were still able to be used for that purpose without triggering the NBN level playing field provisions.
- (2) These networks could also be extended and have additional buildings connected to them, provided that no point on the extended network is more than 1 kilometre from the network as it stood as at 1 January 2011, known colloquially as the '1km exception'.
- (3) Aspects of TransACT's local access network (now operated by TPG) in the ACT and regional Victoria were exempt by Ministerial declaration (please refer to section 4 of Annexure A below for further detail).

2 TPG network build within the 1km exception

In September 2013, TPG announced plans to extend existing fibre networks that it owned in Adelaide, Brisbane, Melbourne, Perth and Sydney, and that it would connect to large apartment buildings.

The buildings were to be connected by running fibre pairs from TPG's fibre cables into the building's communications room. In the communications room, TPG would install additional network equipment so that building residents can use in-building copper cabling to acquire a carriage service to their premises. This network configuration is referred to as 'fibre-to-the-basement' or 'FTTB'. TPG intended to supply very high bit rate digital subscriber line (**VDSL**) services to residents of the building who wish to switch over to the TPG network.

In announcing the plan, TPG's stated intention was for its VDSL services to be potentially available at 500,000 premises. TPG confirmed to the ACCC at the time that all points of the network would be within one kilometre of the network footprint as it stood on 1 January 2011. The ACCC indicated it would monitor TPG's compliance with this footprint boundary.

In April 2014, the ACCC received a complaint that TPG's plans would breach the level playing field provisions. The principal concern expressed in the complaint was that TPG's pre-existing fibre networks were not capable of supplying superfast carriage services to residential or small business customers as at 1 January 2011. As a consequence, the complainant alleged that TPG was, by proceeding with its current plan, or in combination with other investments made after 1 January 2011, seeking to make those networks capable of supplying superfast carriage services to those customers without complying with the level playing field provisions.

On 11 September 2014, the ACCC announced that it had completed its investigation into that complaint. The ACCC stated that it did not intend to take any action to prevent TPG implementing its plans, having concluded that TPG's planned rollout is permitted under the Act. The ACCC reached this decision based on information and evidence that TPG's networks were capable of supplying superfast carriage services to small business or residential customers as at 1 January 2011, and confirmation that TPG is not extending the footprint of these networks by more than one kilometre.

On the same day as the ACCC's announcement, the Minister for Communications (then the Hon Malcolm Turnbull) announced that he would consult on a new carrier licence condition declaration relating to superfast networks. The ACCC had indicated it would conduct a declaration inquiry into whether a superfast broadband access service like the type to be provided by TPG over FTTB should be the subject of access regulation. However, the Minister was concerned that this declaration inquiry would take over a year to occur (and the ACCC subsequently declared the SBAS on 29 July 2016).

The Minister made the *Carrier Licence Conditions (Networks Supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (Cth) (CLC)* on 12 December 2014. The purpose of the CLC is to ensure that carriers who own or operate telecommunications networks that are technically capable of being used to supply superfast carriage services to residential customers provide wholesale access to FTTB network infrastructure and do not discriminate in favour of their own retail operations at the expense of competitors.

The Explanatory Statement to the CLC from the time provides further detail regarding the different options and the perceived regulatory impacts.

Importantly, pursuant to the CLC, TPG was required to implement functional separation of that part of its network that had been built within the 1km exception. TPG subsequently did so.

3 TPG's existing functional separation pursuant to the CLC

TPG has operated pursuant to the CLC since it became effective on 1 January 2015.

Among other things, the CLC required TPG to operate on a functionally separate basis. The functional separation requirements under the CLC are consistent with those required under section 151C of the Act. Indeed, the CLC was the predecessor regime to section 151C and TPG assumes that the drafting of section 151C was intended to replicate the requirements of the CLC, but with updates to reflect the evolution of government policy over the subsequent 6 years.

Accordingly, TPG's FTTB network has already largely achieved the functional separation requirements of section 151C because TPG has been the subject of the requirements of the CLC.

One of the key objectives of the FSU from TPG's perspective is to now replace the legacy CLC requirements with the updated requirements of the functional separation regime set out in Part 8 of the Act, which would provide TPG with greater flexibility to compete in wholesale and retail markets in the LTIE.

4 The Network Entities

TransACT and Pipe Networks will function as Network Entities in the TPG Group, supplying the use of network infrastructure to FTTB Wholesale, which will function as the TPG Wholesaler and be subject to obligations under the FSU. Pipe Networks will supply the use of FTTB network infrastructure to FTTB Wholesale network whilst TransACT will supply the use of the TransACT network infrastructure to FTTB Wholesale. The role of the Network Entities has been expressly carved out in the FSU to provide the ACCC with comfort around the role of TransACT and Pipe Networks going forward. Additionally, the Network Entities are parties to the FSU.

(1) ***Historical context to the TransACT and Pipe Networks business***

TransACT is a carrier and was previously owned by Actew Corporation. TransACT was launched in 1996 in Canberra and later extended its services to Victoria. In 2011, TransACT was acquired by iiNet. Subsequently, iiNet (and TransACT as its subsidiary) was acquired by TPG in 2015.

TransACT provides broadband services in the ACT and Victoria using a range of technologies. TransACT has historically provided internet services providers with wholesale broadband, ethernet, dark fibre, protected wholesale IP bandwidth and backhaul services via its aggregation Wholesale Interconnection Services (WIS) service. Pipe Networks was acquired by TPG in 2010. It operates as a telecommunications carrier with fibre networks across Brisbane, Sydney, Melbourne, Perth and Adelaide. Pipe Networks has historically provided wholesale services to internet service providers.

By the time the FSU comes into effect, neither TransACT nor Pipe Networks will provide wholesale services and will only act as a Network Entities for and on behalf of the TPG Group. The FSU includes a 6 month lead time before becoming operational, so as to allow TPG the time to make the necessary changes to its internal processes and network in order to comply fully with this requirement.

(2) ***Expiry of TransACT exemptions for legacy networks***

TPG is currently the subject of two relevant exemptions to the superfast network rules as set out in:

- (1) *Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012 (Cth)* (as amended); and
- (2) *Telecommunications (Network Exemption—TransACT Very Small Scale Networks) Instrument 2012 (Cth)* (as amended),

(the **TransACT Exemptions**).

These instruments apply to parts of TPG's business in the ACT and regional Victoria that are part of the TransACT network.

The TransACT Exemptions were first granted in April 2012 under section 141A(1) and section 144(1) of the Act. Those provisions conferred power on the Minister to exempt:

- (1) specified local access networks from the wholesale Layer 2 bitstream requirements of section 141 of the Act; and
- (2) specified superfast carriage networks from the wholesale only requirements of section 143 of the Act.

The *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020 (Cth)* (**TLA Act**) repealed Part 7 of the Act, which contained sections 141A and 141. However, the TLA Act provides for existing exemption instruments and their associated conditions granted under section 141A(1) of the Act to continue to have effect as if they had been made under section 144(1).

On 17 March 2020, TPG requested the Minister for Communications, Cyber Safety and the Arts extend the cessation dates for the TransACT Exemptions. At the time, the TransACT Exemptions were due to expire on a 'designated date', being 1 July 2020.

TPG sought to extend the expiry date of the exemptions to the earliest of:

- (1) the day after a functional separation undertaking or deemed standard functional separation undertaking relating to local access lines forming part of the relevant TPG networks first comes into force for the purposes of Part 8 of the Act;
- (2) the day two years after the TLA Act receives the Royal Assent; and
- (3) 30 June 2023.

In considering TPG's request for extension, the Department of Communications undertook a public consultation process and received only one submission, from the NBN. NBN did not agree with the proposal to include 30 June 2023 in the cessation date. NBN stated:

"It is nbn's clear preference that any extension granted to the Exemptions is targeted and justified so that Government policy can be fully implemented. Ensuring that timely and appropriate settings are in place for the end of the Exemptions or the granting of an appropriate form of functional separation will allow the fulfilment of the long-standing Government policy. It has been clear Government policy since the Exemptions were first granted in 2012, that TPG Telecom would have to comply with the regulatory framework by either being allowed to operate in a functionally separated manner or operating on a wholesale only basis and as such an additional three years should not be required to prepare for the event."

The Minister also received advice from the ACCC and the ACMA. The ACMA noted there was no technical regulation considerations preventing extension. The ACCC commented that:

"While the ACCC's assessment is that there is limited competition on the networks that TPG is seeking extensions for, we have fewer concerns than in relation to Telstra's networks, largely on the grounds that the NBN is available in most, if not all, of the footprint of the TPG networks. This provides end-users with choice in network and retail service provider. We note that TPG has indicated that it will lodge a functional separation undertaking for these networks with the ACCC when these provisions come into force in late August 2020. This will give the ACCC the opportunity to further examine and address any competition concerns."

"On this basis, the ACCC does not oppose these exemptions being extended until the earlier of the day after functional separation arrangements are settled for these networks or two years after the Telecommunications Legislation Amendment (Competition and Consumer) Act 2020 receives the Royal Assent."

The TransACT Exemptions were amended on 22 June 2020 to give effect to the extensions of the cessation date. The Minister did not include the backstop of 30 June 2023 in extending the TransACT Exemptions, relevantly because in the intervening period the TLA Act had received Royal Assent and therefore the 30 June 2023 date was not required.

Therefore, the TransACT Exemptions now expire on the earlier of:

- (1) the day after the FSU accepted by the ACCC comes into force; or
- (2) 25 May 2022 (being 2 years after the TLA Act received royal assent).

In anticipation of the expiry of the TransACT Exemptions, TPG is restructuring its business such that TransACT itself will no longer offer wholesale services. Once the FSU is

accepted by the ACCC and in effect, TransACT will only supply the use of its network infrastructure to FTTB Wholesale (this is expressly provided for in the FSU).

Annexure B: Comparison of proposed FSU against s151C of the Telecommunications Act, Uniti Undertaking and Deemed Undertaking

Theme	s151C subsection	S151C requirement	FSU compliance with s151C	Relevant clause FSU	Comparison with Uniti Undertaking	Comparison with Deemed Undertaking
Identification of retail/wholesale businesses	(2)(a)	<i>The undertaking must identify:</i> <i>(i) one or more (but not all) of those persons as the wholesaler or wholesalers for the purposes of the undertaking; and</i> <i>(ii) the remaining person or persons as the retailer or retailers for the purposes of the undertaking.</i>	The FSU defines the entities within the TPG Group that will operate as TPG Wholesalers and TPG Retailers and includes a mechanism to notify the ACCC of additional wholesalers/retailers. The FSU also includes the concept of a Sub-wholesaler, being AAPT which will be added to the FSU at a future point in time (see paragraph 3.7 above).	Cl. 6	Uniti Undertaking adopts a similar approach for compliance with section 151C(2)(a), including a mechanism to notify additional retailers/wholesalers which may be acquired by Uniti in the future. The Uniti Undertaking identifies the Uniti retailers and wholesalers at clause 5.1, Part B.	Corporations that give notice to the ACCC (under clause 6 of the Deemed Undertaking) to be bound by the Deemed Undertaking are required to maintain single wholesale and retail business units (clause 7 of the Deemed Undertaking).
Obligation to not supply	(2)(b)	<i>The undertaking must provide that a wholesaler will not supply a local access line service to a person unless the person is a wholesale customer.</i>	The FSU provides a general obligation on TPG Wholesalers and TPG Retailers not to supply local access line services to a person unless they are a wholesale or retail customer (as applicable). The drafting complies with section 151C(2)(b) and (c). The definition of 'wholesale customer' and 'retail customer' is the same as the definition contained in the Act - this is expressly provided for at clause 1.2 of the FSU.	Cl. 7.1 Cl. 7.2	The TPG FSU is in line with the drafting of the Uniti Undertaking (Part C, Cl. 1.5(a)(ii) and (b)(ii)).	Not applicable – there is no analogous provision in the Deemed Undertaking.
	(2)(c)	<i>The undertaking must provide that a retailer will not supply a local access line service to a person unless the person is a retail customer.</i>				
Separate staff and personnel	(2)(d)	<i>The undertaking must provide that a wholesaler will, to the extent specified in the undertaking, ensure that the wholesaler's workers will perform their duties exclusively for the wholesaler.</i>	The FSU provides that, except for Shared Corporate Services and Network Engineering Services, TPG Wholesalers/TPG Retailers will engage separate and independent staff who will perform their duties exclusively for the TPG Wholesalers/TPG Retailers. This includes staff that are not engaged directly by a TPG Wholesaler/TPG Retailer but provide services to a TPG Wholesaler/TPG Retailer. The drafting of the relevant clauses in the FSU complies with section 151C(2)(d) to (g) of the Act and is therefore compliant. It is necessary to carve out Shared Corporate Services and Network Engineering Services and this is permissible under section 151C. The reason for allowing for Shared Corporate Services and Network Engineering Services is that it would be impractical, inefficient and not in the long term interests of end-users to duplicate these services. The FSU addresses potential issues that could arise by having shared staff, by imposing strict information sharing requirements as well as training. Please refer to sections 4.4(4) and 5 of the submission for more detail. To further give effect to the legislative obligations, the FSU includes the following ancillary provisions: <ul style="list-style-type: none"> Retail and wholesale staff will not be subject to incentive remuneration structures that directly reflect or are determined by the performance of wholesale 	Cl. 12 Ancillary clauses: Cl. 13, 14, 15, 16, and 24	The FSU adopts similar approach as the Uniti Undertaking in respect of separate staff (see Part C, Cl 2.1 read with clause 1.2(a)(ii)). Similarly the Uniti Undertaking also includes: <ul style="list-style-type: none"> the concept of 'Shared Corporate Services' and staff supplying these services are required to adhere to information sharing restrictions (Part C, cl 1.2(b)). Although we note that the definition of Shared Corporate Services differs in the Uniti Undertaking; similar ancillary provisions to further give effect to the legislative obligations, noting that there are differences in these clauses to account for nuances of the Uniti business (see Part C, Cl 2.2, 2.3, 2.4, and 2.5). 	The Deemed Undertaking imposes a similarly worded obligation to ensure that staff of the wholesale and retail business units are different (Cl 7(4)). To achieve this, the Deemed Undertaking sets out 4 requirements at clause 7(4): <ul style="list-style-type: none"> measures to ensure that workers of the wholesale business is not subject to the management direction of another business unit; implementation of training for workers to ensure compliance with the Deemed Undertaking; allowing for the use of shared workers who carry out "corporate service functions including finance, human resources management, legal, information technology, marketing and other ancillary services across the corporation's wholesale and retail business units", subject to measures to ensure workers do not divulge protected information; and
	(2)(e)	<i>The undertaking must provide that a retailer will, to the extent specified in the undertaking, ensure that the retailer's workers will perform their duties exclusively for the retailer.</i>				
	(2)(f)	<i>The undertaking must provide that a wholesaler will, to the extent specified in the undertaking, ensure that the workers who:</i> <i>(i) are engaged by persons other than the wholesaler; and</i> <i>(ii) perform duties for the wholesaler;</i> <i>are different from the workers who:</i> <i>(iii) are engaged by persons other than the wholesaler; and</i> <i>(iv) perform duties for a retailer.</i>				

Theme	s151C subsection	S151C requirement	FSU compliance with s151C	Relevant clause FSU	Comparison with Uniti Undertaking	Comparison with Deemed Undertaking
	(2)(g)	<p>The undertaking must provide that a retailer will, to the extent specified in the undertaking, ensure that the workers who:</p> <p>(i) are engaged by persons other than the retailer; and</p> <p>(ii) perform duties for the retailer;</p> <p>are different from the workers who:</p> <p>(iii) are engaged by persons other than the retailer; and</p> <p>(iv) perform duties for a wholesaler.</p>	<p>entities (for retail staff) or retailers (for wholesale staff) (cl 16);</p> <ul style="list-style-type: none"> obligations to ensure that the TPG Retailers and TPG Wholesalers are subject to separate senior leadership direction (cl 13); requiring staff transferred between business units to be made aware of FSU obligations (cl 15); physical separation of staff locations (cl 14); and training of staff to ensure compliance with the FSU (cl 24). 			<ul style="list-style-type: none"> allowing for transfers of workers, subject to them being made aware of the obligations under the Deemed Undertaking and the transfers being clearly documented.
Separate directors	(2)(h)	The undertaking must provide that a wholesaler will ensure that no director of the wholesaler is a director of a retailer.	The FSU adopts the same language as the legislation and is fully compliant on this basis.	Cl 13.4 and 13.5	Similar wording is used in the Uniti Undertaking (Part C, Cl 3)	Not applicable - there is no analogous provision in the Deemed Undertaking as this is not a requirement under s151A of the Act.
	(2)(i)	The undertaking must provide that a retailer will ensure that no director of the retailer is a director of a wholesaler.				
<p>Separate Systems and accounts</p> <p>Please refer to 4.4(5) of the submission for further details.</p>	(2)(j)	<p>The undertaking must provide that:</p> <p>(i) the wholesaler or wholesalers; and</p> <p>(ii) the retailer or retailers;</p> <p>will, to the extent specified in the undertaking, have separate:</p> <p>(iii) operational support systems; and</p> <p>(iv) business systems; and</p> <p>(v) communications systems; and</p> <p>(vi) accounts.</p>	<p>The FSU provides for separate systems (operational support, business and communications systems). To the extent that certain systems are not separate, access restrictions (including information barriers) and information sharing protocols will be established and maintained to prevent the sharing of Protected Information.</p> <p>The FSU further provides for separate management accounts for TPG Retailers and TPG Wholesalers to an EBITDA level.</p> <p>Please refer to sections 4.4(5) and 5 of the submission for details of the systems that are duplicated versus shared across the TPG Wholesalers and TPG Retailers and the rationale for TPG's approach.</p>	Cl. 19 Ancillary provision: Cl 22	There are differences in the approach adopted by Uniti in terms of the extent to which the undertakings provide for separate systems (see Part C, Cl 4). The differences in the FSU are necessary in the context of the TPG business.	<p>The Deemed Undertaking requires corporations to ensure that there are access restrictions in place in respect of operational, business and communications systems to prevent the sharing of protected information (Cl 7.(5)). Protected information means:</p> <ul style="list-style-type: none"> Confidential or commercially sensitive information relating to a wholesale customer (other than the retail business unit), or a customer of a wholesale customer, and which the wholesale business unit obtains for the purpose of, or in the course of, supplying services to that wholesale customer; Confidential or commercially sensitive information, other than that of a kind referred to in section 9 [of the Deemed Undertaking], which the retail business unit obtains from a carrier or a carriage service provider (other than the wholesale business unit) for the purpose of, or in the course of, acquiring services from that carrier or carriage service provider; or

Theme	s151C subsection	S151C requirement	FSU compliance with s151C	Relevant clause FSU	Comparison with Uniti Undertaking	Comparison with Deemed Undertaking
						<ul style="list-style-type: none"> Information of a kind referred to in subsections 7(8), 7(9), 7(10) and 7(11).
Publication of terms and conditions and obligations to supply	(2)(k)	<p>The undertaking must provide that a wholesaler will publish on the wholesaler's website:</p> <p>(i) the terms and conditions relating to price or a method of ascertaining price; and</p> <p>(ii) other terms and conditions;</p> <p>on which the wholesaler offers to supply local access line services to the following:</p> <p>(iii) a retailer;</p> <p>(iv) its wholesale customers or prospective wholesale customers.</p>	The FSU provides for the publication of the relevant terms and conditions required by s151C(2)(k).	Cl. 20	The Uniti Undertaking also requires compliance with the publication obligation under s151C(2)(k) (see Part C, Cl 5.2(a)(i)).	The Deemed Undertaking uses similar wording at Cl 7(6).
	(2)(l)	<p>The undertaking must provide that a wholesaler will:</p> <p>(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</p> <p>(ii) do so on the terms and conditions that were published on the wholesaler's website at the time when the request was made.</p>	The FSU complies with this obligation.	Cl. 21	Similar wording to the Uniti Undertaking is used, which also adopts the approach of following the wording in the legislation (see Part C, Cl 5.2(a)(ii))	The Deemed Undertaking uses similar wording as adopted in the FSU and Uniti Undertaking (Cl 7(7)).
Information sharing restrictions	(2)(m)	The undertaking must provide that a wholesaler will ensure that information provided by its wholesale customers (other than the retailer or retailers) is not disclosed to any of the retailers.	The FSU complies with this obligation.	Cl. 22	The Uniti Undertaking contains undertakings with respect to the disclosure of information at Part C, Cl 6.3. The TPG FSU has built in additional safeguards around staff providing Shared Corporate Services and Network Engineering Services and included other changes necessary to take into account nuances of the TPG business.	The Deemed Undertaking contains similar obligations at Cl. 7(8).
	(2)(n)	The undertaking must provide that a retailer will ensure that it does not obtain, access or use information provided to any of the wholesalers by the wholesaler's wholesale customers.				
	(2)(o)	The undertaking must provide that a retailer will ensure that information	The FSU complies with this obligation. In addition, the FSU provides steps to prevent the sharing of Protected Information.	Cl. 22		The Deemed Undertaking contains similarly worded obligations (clauses 7(10) and 7(11)),

Theme	s151C subsection	S151C requirement	FSU compliance with s151C	Relevant clause FSU	Comparison with Uniti Undertaking	Comparison with Deemed Undertaking
		<p>provided to the retailer by a carrier or carriage service provider, other than:</p> <p>(i) information provided by a wholesaler; or</p> <p>(ii) information of a kind specified in a determination under subsection (15)¹;</p> <p>is not disclosed to any of the wholesalers.</p>				with a separate definition of 'information of a kind', as required by the determination made under s151A of the Act The TPG FSU has adopted a different approach to comply with information sharing obligations necessary to take into account nuances of the TPG business
	(2)(p)	<p>The undertaking must provide that a wholesaler will ensure that it does not obtain, access or use information provided to any of the retailers by a carrier or carriage service provider, other than:</p> <p>(i) information provided by a wholesaler; or</p> <p>(ii) information of a kind specified in a determination under subsection (15).</p>		Cl. 22		
Wholesale customer interface	(2)(q)	<p>The undertaking must provide that a wholesaler will use the same customer interface for dealings between:</p> <p>(i) the wholesaler; and</p> <p>(ii) the wholesaler's wholesale customers (other than the retailer or retailers);</p> <p>as the wholesaler uses for dealings between:</p> <p>(iii) the wholesaler; and</p> <p>(iv) a retailer.</p>	<p>Clause 23.1 of the FSU provides that each TPG Wholesaler undertakes to use the same customer interface for dealings between the TPG Wholesaler and its respective wholesale customers (other than the TPG Retailers), as the TPG Wholesaler uses for the same dealings between the TPG Wholesaler and a TPG Retailer. This mirrors the requirements of the Act.</p> <p>The FSU permits a TPG Wholesaler to use different customer interfaces for different products and services, and/or to use different customer interface(s) to another TPG Wholesaler. Clause 23.3 of the FSU provides that if a TPG Wholesaler uses more than one customer interface, the TPG Wholesaler must ensure that the requirements of clause 23.1 are met for each customer interface.</p>	Cl. 23	<p>The Uniti Undertaking addresses this requirement at Part C, Cl 7.</p> <p>The Uniti Undertaking requires that <u>each</u> wholesaler use a single portal, which goes beyond the requirements of the Act.</p> <p>TPG has more complex customer interfaces than Uniti partly because TPG is a business that has evolved from the aggregation of numerous previous businesses each with different IT systems and processes. TPG is in the process of rationalising its IT systems to move towards simpler customer interfaces over time, but is in a different starting position to Uniti given TPG's different historic circumstances.</p>	<p>The Deemed Undertaking requires that corporations use the same customer interface for dealings between the corporations wholesale business unit and its wholesale customers as the corporation uses for dealings between the wholesale business unit and the retail business unit. TPG's approach is consistent with the approach of the Deemed Undertaking, which is consistent with the requirements of the Act.</p>
NA	(2)(r)	The undertaking must contain such other provisions (if any) as are specified in a determination under subsection (16).	NA	NA	NA	NA
	(2)(s)	The undertaking must not contain a provision of a kind specified in a determination under subsection (17).	NA	NA	NA	NA

¹ The relevant determination is the *Telecommunications (Permitted Information Sharing for Joint Functional Separation Undertakings) Determination 2020*.

Theme	s151C subsection	S151C requirement	FSU compliance with s151C	Relevant clause FSU	Comparison with Uniti Undertaking	Comparison with Deemed Undertaking
Expiration of Undertaking	(5), (6) and (8)	<p><i>The undertaking must specify the expiry time of the undertaking.</i></p> <p><i>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>The expiry time of the undertaking must not be more than 10 years after the undertaking comes into force.</i></p>	<p>The FSU provides that the undertaking will expire on the date that is 5 years after the date it comes into force, unless varied or revoked. The duration of the FSU is reasonable considering the evolving nature of technological developments which may necessitate amendments to TPG's obligations under the FSU.</p> <p>TPG also notes that most commercial agreements involving the supply of local access services run for a period of 3-5 years, hence adopting the same timeframe for the FSU grants TPG and the ACCC the flexibility to revisit the FSU at an appropriate time.</p>	Cl. 4	The Uniti Undertaking provides for expiration in 10 years (Part B, Cl 3). For the reasons mentioned to the left, TPG considers 5 years to be reasonable.	Not applicable- the Deemed Undertaking does not contain an expiry date.
Fundamental provisions	(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), (h), (i), (k), (l), (m), (n), (o) and (p) 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>	The FSU fully complies with this provision by cross referring to the relevant fundamental provision in the FSU against the legislative obligation.	Cl. 27	The Uniti Undertaking has different fundamental provisions to TPG's FSU. TPG has sought to comply with subsection 151C(9) and has elected not to include any additional fundamental provisions.	Not applicable- The Deemed Undertaking has separate fundamental provisions prescribed under s151A.
Compliance	(10)	<p><i>The undertaking must provide that a wholesaler will give the ACCC periodic reports (to be known as compliance reports) that:</i></p> <p><i>(a) relate to the wholesaler's compliance with the undertaking; and</i></p> <p><i>(b) are in a form approved in writing by the ACCC.</i></p>	The FSU provides that TPG Wholesalers and TPG Retailers will provide Compliance Reports to the ACCC on or before 31 July each year. This date was chosen as it aligns with the Deemed Undertaking. The FSU further sets out the content which must be included in the Compliance Reports up to the year ending 30 June.	Cl. 26.1	<p>The Uniti Undertaking differs in relation to the time period for submission of the reports to the ACCC (to be submitted within 30 days of each anniversary of the first Compliance Plan) (Part D, Cl.4(a)(b)).</p> <p>The TPG FSU adopts similar drafting to the Uniti Undertaking in respect to the information required to be contained in the reports.</p>	The Deemed Undertaking requires that a corporation submit reports to the ACCC annually on 31 July and sets out the information to be contained in the report (Cl. 7(14)).
	(11)	<p><i>The undertaking must provide that a retailer will give the ACCC periodic reports (to be known as compliance reports) that:</i></p> <p><i>(a) relate to the retailer's compliance with the undertaking; and</i></p> <p><i>(b) are in a form approved in writing by the ACCC.</i></p>				
	(12)	<p><i>The undertaking must provide that a wholesaler will:</i></p> <p><i>(a) prepare a plan (to be known as a compliance plan) setting out the actions</i></p>	The FSU fully complies with this obligation and adopts similar language used in the subsection. In addition, there is a requirement for TPG to provide the ACCC with draft Compliance Plans 20 business days prior to the FSU coming into effect.	Cl.25	The TPG FSU is similar to the Uniti Undertaking at Part D, Cl.3. One notable difference is that TPG has allowed 10 business days for itself to give the ACCC a copy of any variation to the compliance plan.	

Theme	s151C subsection	S151C requirement	FSU compliance with s151C	Relevant clause FSU	Comparison with Uniti Undertaking	Comparison with Deemed Undertaking
		<p><i>to be taken by the wholesaler for the purpose of ensuring that the wholesaler 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>			<p>This is required for TPG internal processes. In addition, there is a requirement for TPG to provide the ACCC with draft Compliance Plans 20 business days prior to the FSU coming into effect.</p>	
	(13)	<p><i>The undertaking must provide that a retailer 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 retailer for the purpose of ensuring that the retailer 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>	<p>The FSU fully complies with this obligation and adopts similar language used in the legislation. In addition, there is a requirement for TPG to provide the ACCC with draft Compliance Plans 20 business days prior to the FSU coming into effect.</p>		<p>The TPG FSU is similar to the Uniti Undertaking at Part D, Cl.3. The difference is that TPG has allowed 10 business days for itself to give the ACCC a copy of any variation to the compliance plan. This is required for TPG internal processes. In addition, there is a requirement for TPG to provide the ACCC with draft Compliance Plans 20 business days prior to the FSU coming into effect.</p>	

Annexure C: [C-I-C]

Annexure D: [C-I-C]