



Telecommunications (Deemed Functional Separation Undertaking) Determination 2020

The Australian Competition and Consumer Commission makes this Determination under subsections 151A(13) and 151B(1) of the *Telecommunications Act 1997*.

Dated: 15 October 2020

A handwritten signature in black ink, which appears to read 'Delia Ann Rickard'. The signature is written in a cursive style.

Delia Ann Rickard
Deputy Chair
Australian Competition and Consumer Commission

Australian Competition and Consumer Commission

1 Name

This is the *Telecommunications (Deemed Functional Separation Undertaking) Determination 2020*.

2 Commencement

This Determination commences at the start of the day after it is registered on the Federal Register of Legislation.

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

3 Authority

This Determination is made under subsections 151A(13) and 151B(1) of the *Telecommunications Act 1997*.

4 Definitions

In this Determination, unless the contrary intention appears:

Act means the *Telecommunications Act 1997*.

corporation has the meaning given by section 142A of the Act.

customer interface has the meaning given by section 142A of the Act.

fundamental provision has the meaning given by subsection 151A(9) of the Act.

local access line has the meaning given by section 158 of the Act.

local access line service has the meaning given by section 142A of the Act.

protected information means:

- (a) 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;
- (b) confidential or commercially sensitive information, other than that of a kind referred to in section 9, 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
- (c) information of the kind referred to in subsections 7(8), 7(9), 7(10) and 7(11).

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

retail business unit has the meaning given by section 142A of the Act.

retail customer has the meaning given by section 142A of the Act.

standard functional separation undertaking means an undertaking under section 151A of the Act.

superfast carriage service has the meaning given by section 142A of the Act.

wholesale business unit has the meaning given by section 142A of the Act.

wholesale customer has the meaning given by section 142A of the Act.

worker has the meaning given by section 142A of the Act.

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

- ACCC;
- carrier; and
- carriage service provider.

5 References to other instruments

In this Determination, unless the contrary intention appears:

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

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

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

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

6 Deemed standard functional separation undertaking

If:

- (a) a corporation supplies superfast carriage services to no more than 50,000 residential customers using local access lines where that corporation is in a position to exercise control of those local access lines;
- (b) that corporation has, by written notice given to the ACCC, elected to be bound by this Determination;
- (c) that corporation has not, by written notice given to the ACCC, cancelled the election mentioned in paragraph (b); and
- (d) the ACCC has not revoked the election mentioned in paragraph (b) under subsection 151B(7) of the Act;

the Act has effect as if the:

- (e) corporation had given a standard functional separation undertaking in the terms set out in section 7;
- (f) ACCC had accepted the undertaking; and
- (g) undertaking had come into force when the election mentioned in paragraph (b) was given to the ACCC.

Note: For when a person is in a position to exercise control of a line, see section 155A of the Act.

7 Terms of deemed standard functional separation undertaking

- (1) The corporation will maintain a single wholesale business unit and a single retail business unit, including by:
 - (a) having separate branding for its wholesale business unit and its retail business unit; and
 - (b) in supplying the retail business unit and its other wholesale customers, the wholesale business unit will undertake:

- (i) network planning functions with equal opportunity for, and consideration of, input from the retail business unit and its other wholesale customers;
 - (ii) the marketing, sale and supply of local access line services to its wholesale customers and prospective wholesale customers;
 - (iii) the receipt and processing of orders, service activation and provisioning;
 - (iv) processing and implementing requests to churn or for local number portability;
 - (v) line fault detection, handling and rectification;
 - (vi) the billing of wholesale customers;
 - (vii) the setting of wholesale prices and non-price terms and conditions;
 - (viii) responding to all network complaints from the retail business unit and its other wholesale customers; and
 - (ix) responding to all service complaints in respect of wholesale information technology systems and applications from the retail business unit and its other wholesale customers.
- (c) in supplying retail customers, the retail business unit will undertake:
- (i) the marketing, sale and supply of local access line services to retail customers and prospective retail customers;
 - (ii) the supply of value-added services to retail customers;
 - (iii) the taking of service orders from retail customers for activation and provisioning by the wholesale business unit;
 - (iv) the billing of retail customers;
 - (v) the setting of retail prices and non-price terms and conditions; and
 - (vi) responding to complaints from retail customers.
- (2) The corporation will maintain arm's length functional separation between the corporation's wholesale business unit and the corporation's retail business unit including by:
- (a) taking measures to ensure that there is physical separation of workers in the corporation's offices so that workers within the:
 - (i) retail business unit are unable to access, engage in, see or overhear the work being conducted in the corporation's wholesale business unit; and
 - (ii) wholesale business unit are unable to access, engage in, see or overhear the work being conducted in the corporation's retail business unit;
 - (b) ensuring that any remuneration of workers within the corporation's retail business unit and wholesale business unit that is related to the performance of the corporation is only related to the performance of the particular business unit within which an affected worker is based; and
 - (c) ensuring that the corporation's retail business unit and wholesale business unit undertake separate business planning and investment approval processes.
- (3) The corporation will ensure that:
- (a) the terms and conditions relating to price or a method of ascertaining price; and
 - (b) other terms and conditions;
- on which the corporation's wholesale business unit supplies local access line services to the corporation's retail business unit are documented.

- (4) The corporation will ensure that its workers who perform their duties for the corporation's wholesale business unit are different from the workers who perform their duties for the corporation's retail business unit, including by:
 - (a) the implementation of measures to ensure that workers from the corporation's wholesale business unit are only subject to management direction from within that business unit;
 - (b) the implementation and carrying out of training activities for all of the corporation's workers in respect of the corporation's obligations under this Determination;
 - (c) 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 the implementation of measures to ensure those workers do not divulge protected information between the corporation's wholesale and retail business units; and
 - (d) allowing workers to transfer between the corporation's retail and wholesale business units, subject to those workers being made aware of the corporation's obligations under this Determination and any such transfers being documented in writing.
 - (5) The corporation will ensure that there are access restrictions in place in respect of its:
 - (a) operational support systems;
 - (b) business systems,
 - (c) communications systems; and
 - (d) accounts;to prevent the sharing of protected information between the corporation's:
 - (e) retail business unit with the corporation's wholesale business unit; and
 - (f) wholesale business unit with the corporation's retail business unit.
 - (6) The corporation will publish on its website:
 - (a) the terms and conditions relating to price or a method of ascertaining price; and
 - (b) other terms and conditions;on which the corporation's wholesale business unit offers to supply local access line services to:
 - (c) the corporation's retail business unit; and
 - (d) the corporation's wholesale business customers or prospective wholesale business customers.
 - (7) The corporation will:
 - (a) 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
 - (b) do so on the terms and conditions that were published on the corporation's website at the time when the request was made.
 - (8) The corporation will ensure that information provided to the corporation's wholesale business unit by the corporation's wholesale customers is not disclosed to the corporation's retail business unit.
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- (9) The corporation will ensure that the corporation's retail business unit does not obtain, access or use information provided to the corporation's wholesale business unit by the corporation's wholesale customers;
- (10) The corporation will ensure that information provided to the corporation's retail business unit by a carrier or carriage service provider, other than information of a kind specified in section 9 of this Determination, is not disclosed to the corporation's wholesale business unit.
- (11) The corporation will ensure that the corporation's wholesale business unit does not obtain, access or use information, other than information of a kind specified in section 9 of this Determination, provided to the corporation's retail business unit by a carrier or carriage service provider.
- (12) The corporation will use the same customer interface for dealings between:
- (a) the corporation's wholesale business unit; and
 - (b) the corporation's wholesale customers;
- as the corporation uses for dealings between:
- (c) the corporation's wholesale business unit; and
 - (d) the corporation's retail business unit.

Note: For the avoidance of doubt, the corporation is required to use the same complaints escalation systems that form part of its customer interface for its wholesale customers and its retail business unit.

- (13) The corporation will comply with any relevant requirements specified in determinations made under subsections 151A(14) and 151A(15) of the Act.
- (14) The corporation will give the ACCC a written report, on or before 31 July each year, that sets out:
- (a) the total number of residential customers that the corporation supplies superfast carriage services to using local access lines where the corporation is in a position to exercise control of those local access lines, as at 30 June of that year;
 - (b) a statement of compliance in respect of the corporation's compliance or otherwise with each of subsections 7(1) to 7(13) of this Determination and, where applicable, sections 151ZF and 151ZG of the Act, for the year ended 30 June;
 - (c) the details of, including the reasons for, and the action taken to address, any instances of the corporation's non-compliance with subsections 7(1) to 7(13) of this Determination and sections 151ZF and 151ZG of the Act during the year ended 30 June;
 - (d) the details of any complaints the corporation received from its wholesale customers during the year ended 30 June that assert the corporation's non-compliance with any of subsections 7(1) to 7(13) of this Determination and sections 151ZF and 151ZG of the Act; and
 - (e) the details of any action taken by the corporation in response to a complaint of a kind mentioned in paragraph (d).
- (15) The corporation will:
- (a) within 3 months of giving an election under paragraph 6(b), prepare, and give the ACCC a copy of, a written plan setting out the actions to be taken by the corporation for the purpose of ensuring it complies with subsections 7(1) to 7(13); and

(b) within 7 days of making any variation to the plan mentioned in paragraph (a), give the ACCC a copy of any such variation.

(16) In the event that an undertaking was in force by operation of section 6, but the corporation to which the undertaking applied exceeds the customer threshold mentioned in paragraph 6(a), the corporation must notify the ACCC, in writing, of that event within 14 days of that event occurring.

8 Fundamental provisions

Subsections 7(1) to 7(12) are fundamental provisions.

9 Determination of kinds of information

Information that constitutes:

- (a) wholesale pricing;
- (b) other terms and conditions; and
- (c) network coverage information;

as offered by carriers and carriage service providers to a corporation's retail business unit for the purpose of enabling the corporation's retail business unit to obtain equivalent offers from its wholesale business unit, is determined, pursuant to subsection 151A(13) of the Act, to be specified information for the purpose of subsections 7(10) and 7(11).