



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# Uniti Group Limited Proposed variation to Joint Functional Separation Undertaking

Consultation Paper

April 2024

## Introduction

On 25 August 2020, the *Telecommunications Act 1997* was amended to introduce the carrier separation rules. Subject to some limited exceptions, certain fixed-line networks used to supply superfast carriage services to residential customers are required to be operated on a wholesale-only basis. Network operators may seek to be exempt from the wholesale-only requirement by giving the ACCC a functional separation undertaking. If accepted by the ACCC, the undertaking allows the network operator to operate both wholesale and retail businesses, but at arms-length from each other and subject to certain requirements. This includes a requirement for operators to offer wholesale access on non-discriminatory terms.

On 21 October 2020, the ACCC accepted a joint functional separation undertaking from Uniti Group Limited (Uniti) under section 151C of the *Telecommunications Act* (the current undertaking). A copy of the current undertaking is available on the [ACCC's website](#).

On 21 April 2024, Uniti gave the ACCC a proposed variation to the current undertaking (the proposed variation), pursuant to section 151Q of the *Telecommunications Act*. Uniti also provided a submission supporting the proposed variation. The proposed variation includes enhanced transparency measures and stronger commitments to separation between its retail and wholesale businesses, consistent with similar measures in the standard functional separation undertaking that the ACCC accepted from [Myport Pty Ltd, trading as Gigafy](#), and the [Telecommunications \(Deemed Functional Separation Undertaking\) Determination 2020](#). An overview of the most substantial proposed amendments is provided below.

The ACCC is required to undertake public consultation on a proposed variation to a joint functional separation for no less than 15 business days before deciding whether to accept or reject the proposed variation.<sup>1</sup> The ACCC must take all reasonable steps to decide whether to accept a proposed variation within three months after receiving the variation.<sup>2</sup>

In deciding whether to accept the variation, the ACCC must have regard to whether the variation promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services, any matters specified in a determination made by the Minister for this purpose and such other matters (if any) the ACCC considers relevant.<sup>3</sup>

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

This consultation paper provides relevant background information together with an overview of the most substantial proposed amendments to the current undertaking and details on how to make a submission. A copy of the proposed variation and Uniti's supporting submission are available on the [ACCC's website](#).

## Timetable for this consultation

The ACCC requests written submissions on the proposed variation by no later than **Friday 17 May 2024**.

After considering submissions from interested parties, the ACCC proposes to publish its decision on whether to accept the proposed variation in early June 2024.

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<sup>1</sup> Section 151U of the *Telecommunications Act*.

<sup>2</sup> Section 151T(5) of the *Telecommunications Act*.

<sup>3</sup> Section 151V(2) of the *Telecommunications Act*. We note that there is currently no determination in force for the purposes of paragraph(2)(b).

## Making a submission

The ACCC encourages industry participants, other stakeholders and the public more generally to consider and make submissions on the proposed variation and related issues raised in this consultation paper.

We have provided questions at the end of 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. Reasons should be provided in support of any claim and the identified information must be genuinely of a confidential nature and not otherwise publicly available.

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 requests 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](mailto:telcoseparationrules@acc.gov.au).

## Overview of substantial amendments

The most substantial amendments of the proposed variation relate to:

- changes to the specified wholesalers and retailers
- enhanced transparency and greater commitments to separation between the wholesalers and retailers, and
- extending obligations to outsourced service providers.

### ***Changes to the specified wholesalers and retailers***

Under the current undertaking, Uniti's Wholesale & Infrastructure business unit comprises LBNCo Holdings Pty Ltd and its subsidiaries, and OPENetworks Pty Ltd. Uniti's Consumer & Business Enablement business unit comprises FuzeNet Pty Ltd and its subsidiaries, and Uniti Wireless Pty Ltd.

Under the proposed variation, the "Wholesale & Infrastructure business unit" will become the "Uniti Wholesale BU" and will include as the wholesalers:

- Opticomm Pty Ltd
- LBN Co Pty Ltd
- Service Elements Pty Ltd
- OPENetworks Pty Ltd and
- Capital Fibre Pty Ltd.

The “Consumer and Business Enablement business unit” will become “Uniti Retail BU” and Uniti Retail Pty Ltd will be the only retailer.

The proposed variation makes clear that Uniti will seek a variation to the undertaking if it intends to add any wholesalers or retailers to the undertaking, in accordance with section 151Q of the Telecommunications Act.

The proposed variation also clarifies the role of Uniti Group Limited (i.e. acting as agent for and on behalf of the wholesalers and retailers), and makes clearer the entities responsible for each of the specific commitments in the undertaking.

### ***Enhanced transparency and stronger commitments to separation of wholesalers and retailers***

Consistent with Gigafy’s Standard Functional Separation Undertaking and the Deemed Functional Separation Undertaking, the proposed variation includes the following enhanced transparency measures and commitments, requiring Uniti to:

- document pricing in a way that facilitates comparison between the price terms that Uniti wholesalers provide services to Uniti retailers and the price terms that Uniti retailers provide services to retail customers
- update the pricing documentation each time Uniti changes its wholesale or retail prices, including any short- or long-term discounts or offers
- update published wholesale price terms each time there is any change to the price related terms and conditions or other terms and conditions that Uniti wholesalers offer either to Uniti retailers or other wholesale customers
- promptly notify all wholesale customers of the updated wholesale terms
- ensure that the customer interface provides the same functionality and access to the same set of local access lines for all of their wholesale customers, including the Uniti retailers
- enable the ACCC to direct Uniti to make changes to its Compliance Plan, and
- include copies of its pricing documentation and published terms and conditions in its annual compliance reports.

### ***Extending obligations to outsourced service providers***

The proposed variation makes clear that Uniti remains fully responsible for compliance with the obligations in the undertaking, even where it has outsourced functions to a third party. The proposed variation also extends the restrictions on the sharing of information between retailers and wholesalers to include the sharing of information to any third parties that Uniti has outsourced retailer or wholesaler functions to.

## Questions

Q1. Does the proposed variation satisfy the legislative requirements in subsection 151Q(4) of the Telecommunications Act?

Q2. Does the proposed variation promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services?

Q3. Do you have any concerns or comments about the specified wholesalers and retailers under the proposed variation?

Q4. Do you have any other concerns or comments about the proposed variation?