
Information in Support of Revised Joint Functional Separation Undertaking

given by Uniti Group Limited to the Australian Competition and Consumer Commission under section 151Q(5)(a) of the *Telecommunications Act 1997*

The information in this document is provided to the ACCC in accordance with section 151Q(5)(a) of the Act, to assist the ACCC to decide whether to accept or reject the Revised Joint Functional Separation Undertaking (**Revised FSU**), which varies the existing FSU dated 2 September 2020 (**2020 FSU**).

1. Interpretation

1.1 Terms used in this document are as defined in the Revised FSU. For ease of reference, we note the following definitions:

- (a) **Uniti Group** means Uniti Group Limited, the Wholesalers, and the Retailers, and any other Related Bodies Corporate;
- (b) **Uniti Group Limited** means Uniti Group Limited (ACN 158 957 889) as agent for and on behalf of the Retailers and Wholesalers;
- (c) **Uniti Retail BU** means the retail business unit of Uniti Group, which comprises the Retailers;
- (d) **Uniti Wholesale BU** means the wholesale and infrastructure business unit of Uniti Group, which comprises the Wholesalers.

2. Executive summary

2.1 The Revised FSU is necessitated by various changed circumstances since the 2020 FSU, including in particular changes:

- (a) to the corporate structure and activities of entities within the Uniti Group;
- (b) to business practices within Uniti Group;
- (c) suggested by Uniti Group's practical experience of operating in accordance with the 2020 FSU; and
- (d) to ensure consistency with best practice as set out in various regulatory instruments, in particular certain new requirements of the ACCC's Deemed Functional Separation Undertaking Determination (**2024 Determination**).

3. Uniti Group submits that the Revised FSU promotes the long term interests of end users, by permitting Uniti Group to react flexibly to market changes and respond to industry developments in a manner that promotes competition. Further, the Revised FSU seeks to clarify the separation between the Uniti Retail BU and Uniti Wholesale BU in order to more clearly delineate between roles and responsibilities which will simplify compliance with regulatory obligations.

4. Uniti Group further notes that the proposed variations set out in the Revised FSU do not unsettle compliance of the Revised FSU with the requirements of section 151C(2) of the *Telecommunications Act 1997* (Cth) (**the Act**). The Revised FSU will continue to meet those requirements. For the avoidance of doubt, Uniti Group notes that the Revised FSU continues also to comply with section 151C(9) of the Act as the fundamental provisions continue to be included in the document.

5. Proposed amendments

5.1 Uniti Group has been, and will continue to be, functionally separated into separate wholesale and retail businesses in accordance with the requirements of Part 8 of the Telecommunications Act. It proposes to make a number of changes to the 2020 FSU reflecting, as set out above, changes to Uniti Group's corporate structure and business practices, and seeking to bring separation arrangements into line with newly introduced requirements applicable to other market participants under the 2024 Determination. These changes are summarised in the following paragraphs.

5.2 Uniti Group has been concerned particularly to make clear the proper extent of the application of the FSU so as to ensure its ability to comply and, importantly, to avoid unnecessary or unfair limits on its competitive commercial activities. The fundamental 'wholesale-only' requirement in

sections 142C and 143 of the Telecommunications Act applies only to particular lines and the Revised FSU matches that operation to the extent applicable – see, for example Part B, Clause 4.

Changes to the corporate structure

- 5.3 Changes to the Revised FSU are intended to update aspects of the company structure which have changed since the 2020 FSU (see Part B, Clause 5 which identifies the Retailers and Wholesalers) and simplify the description of those business units (see new definitions of 'Uniti Retail BU' and 'Uniti Wholesale BU'). Related changes are reflected in minor amendments throughout the Revised FSU, including where the new names and titles for executives of each business unit are noted.
- 5.4 Amendments to Part B, Clause 5.2 are intended to address concerns regarding the potential for automatic application of the FSU to newly acquired companies in the Uniti Group. In the ordinary course it may be that a member of the Uniti Group acquires a new business. The amendments to Part B, Clause 5.2 are intended to reflect that a formal variation of the FSU will be necessary before a new company can become a Retailer or Wholesaler under the Revised FSU. This aims to prevent a situation whereby a member of Uniti Group has acquired a new Wholesaler or Retailer and seeks to have that entity operate as a party to the Undertaking without having given the ACCC an opportunity to consider an application for variation of the FSU to apply explicitly to that new company.

Changes to business practices

- 5.5 Part C, Clause 1.4 sets out the activities of the Retailers and Wholesalers respectively within Uniti Group. These have changed slightly since the 2020 FSU and suggested amendments bring the Revised FSU into line with those business practices.
- 5.6 A proposed new Part C, Clause 8 deals with situations where:
- (a) Uniti Group Limited outsources provision of Shared Corporate Services; and/or
 - (b) A Wholesaler or Retailer outsources services related to Wholesale Activities or Retail Activities respectively,
- to a third party service provider.
- 5.7 Part C, Clause 8 makes it expressly clear that Uniti Group Limited and Wholesalers and Retailers remain responsible for obligations under the Revised FSU even if functions are outsourced. Further, Uniti Group proposes the amendments to Part C, Clause 6 to extend the obligations in relation to permitted sharing of information to situations described in Clause 8. The effect of this amendment is to ensure that permitted information sharing is possible in circumstances where Uniti Group Limited, the Retailers, or the Wholesalers engage a third party outsourced service provider.

Practical and operational changes arising out of Uniti Group's experience with the 2020 FSU

- 5.8 In the course of operating under and reviewing the 2020 FSU, it has been noted that the distinction between Uniti, Uniti Group, and Uniti Group Limited was complex and at times unclear. Uniti Group has assessed the operation of definitions in the 2020 FSU and suggested a number of changes to reflect appropriate operation. By way of example, the amendments to Part C follow Uniti Group's experience in implementing the 2020 FSU and seek to clarify the relevant roles and responsibilities of each party.
- 5.9 For the sake of clarity, Uniti Group has sought to simplify the definitions (as set out in Part A) and has undertaken a detailed review to ensure that the appropriate entity is referred to in each instance.
- 5.10 In addition, the impracticality of the requirement to separate Uniti Retail BU and Uniti Wholesale BU staff on the one hand, and the provision of shared corporate services on the other hand, have necessitated the changes proposed to Part C, Clause 2.3. These changes are practically necessary for clarity in respect of the provision of shared corporate services.

Consistency with best practice evidenced in other regulatory instruments

- 5.11 A number of amendments proposed in the Revised FSU have been influenced by extrinsic materials, including the 2024 Determination, the Permitted Information Sharing for Joint FSU

Determination, the *Telecommunications Act 1997* (Cth), and other functional separation undertakings approved by the ACCC.

5.12 In order to ensure compliance with regulatory guidance and currency with best practice, Uniti Group has closely considered Parts C and D of the 2020 FSU and proposes amendments which reflect these documents.

5.13 These amendments are as follows:

- (a) Part C, Clause 5.2 reflects amendment 7(3A) and 7(3B) of the 2024 Determination and Clause 17 of Myport Pty Ltd's standard functional separation understanding as accepted on 6 November 2023 (**Gigafy FSU**);
- (b) Part C, Clause 5.3 reflects amendments 7(6A)-7(6C) of the 2024 Determination and Clauses 18.2-18.4 of the Gigafy FSU;
- (c) Part C, Clause 6.1(c)-(d) reflects section 9(3) of the 2024 Determination, section 6 of the Permitted Information Sharing for Joint FSU Determination, and section 151C(2)(o) and (p) of the Telecommunications Act;
- (d) Part C, Clause 7(c) reflects amendment 7(12A) of the 2024 Determination and Clause 21.2 of the Gigafy FSU;
- (e) Part D, Clause 2(d) reflects Clause 24.2 of the Gigafy FSU;
- (f) Part D, Clause 3 reflects Clauses 22.4, 22.5, 22.6 of the Gigafy FSU; and
- (g) Part D, Clause 4 reflects amendment 7(14A) of the 2024 Determination and Clauses 23.3, 23.3-23.7 of the Gigafy FSU.

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