

TPG request for variation to the Telecommunications (Network Exemption–TransACT Upgraded VDSL Networks) Instrument 2012 and the Telecommunications (Network Exemption–TransACT Very Small Scale Networks) Instrument 2012

Summary of Request

On 17 December 2021, TPG Telecom requested the Minister for Communications, Urban Infrastructure, Cities and the Arts extend exemptions from the carrier separation requirements granted to TransACT Capital Communications Pty Limited and TransACT Victoria Communications Pty Limited (together, **TransACT**).

The relevant Ministerial instruments are the *Telecommunications (Network Exemption – TransACT Upgraded VDSL Networks) Instrument 2012 (Cth)* and the *Telecommunications (Network Exemption – TransACT Very Small Scale Networks) Instrument 2012 (Cth)*.

These exemptions currently expire on:

- a) the day immediately after a functional separation undertaking or a deemed standard functional separation undertaking relating to local access lines forming part of a network as defined in each of the exemptions first comes into force for the purposes of Part 8 of the *Telecommunications Act 1997*; and
- b) the second anniversary of the day on which the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* received the Royal Assent (being 25 May 2022).

On 8 November 2021, TPG Telecom submitted a functional separation undertaking to the ACCC on behalf of itself and various subsidiaries in accordance with section 151C of the *Telecommunications Act 1997*. TPG Telecom has requested the extension be granted to allow sufficient time for TPG Telecom (and its related companies) to continue to obtain the benefit of the extensions during the time that their proposed functional separation undertaking is being assessed by the ACCC.

The extension also provides TPG Telecom with additional time to ensure it is fully compliant with its obligations before the functional separation undertaking comes into force. The extension of the exemptions will also enable TPG Telecom to obtain the benefit of a six-month lead time following acceptance of the undertaking by the ACCC before it is in force, as proposed in the functional separation undertaking that is being assessed by the ACCC.

Intended effect of the amendment instruments

Two exemption instrument amendments have been drafted for public consultation in response to TPG Telecom's request. The changes will extend the cessation date to the new date of 25 May 2023 (12 months from the original cessation date). The amended instruments continues to preserve the trigger that the instruments cease when a single or joint functional separation comes into force.

This approach facilitates the Functional Separation Undertaking (FSU) process. The intention is to support this process while also making sure that the exemption falls away within an acceptable timeframe. The amendment is intended to lead to an orderly transition and produce minimum disruption to end-users.

Other amendments are intended to tidy up the amendment instruments to remove references to the now repealed Part 7 obligation under former s141 (and the related exemption power under s141A(1)). In the event that the instruments are amended and the cessation date extended, these changes will remove ambiguity in the instruments relating to Part 7.