



5 June 2020

Director

Telecommunications Competition

Department of Infrastructure, Transport, Regional Development and Communications

Via email: InfrastructureAndAccess@communications.gov.au

Consultation on TPG Telecom's request for extensions to Ministerial exemptions for its Canberra and Victorian networks

NBN Co Limited (**nbn**) welcomes the opportunity to provide its views on TPG Telecom's request for extension of the Ministerial exemptions for its Canberra and Victorian fibre networks (the TransACT Network). In 2012, TPG Telecom was granted exemptions from Parts 7 and 8 of the *Telecommunications Act 1997* in relation to the TransACT Networks (the Exemptions). These Exemptions meant TPG did not have to provide a Layer 2 bitstream service on a wholesale only basis over the TransACT Networks until the expiry of the Exemptions (currently 1 July 2020) or until an appropriate form of functional separation was in place.

The Minister is now consulting on whether to extend the expiry date of the Exemption until the earlier 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 *Telecommunications Act 1997*.
2. the day two years after the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* receives the Royal Assent (25 May 2022); and
3. 30 June 2023.

nbn considers it is reasonable for TPG Telecom to be granted a short extension to allow the Australian Competition and Consumer Commission (ACCC) to determine whether functional separation is appropriate for the TransACT Networks and for them to determine what form that functional separation might take. As such we support the first limb of the exemption request above.

However, we do not think that there is a need for both the second and third limbs of the Exemption request detailed above. A two-year period from Royal Assent of the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* should be sufficient for the ACCC to either accept or reject a request for functional separation and any operational or transitional work required as a result of this assessment.



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.

This is especially so as while the Exemption is in place and before any appropriate assessment about possible functional separations, the TPG Telecom's TransACT Networks are in a unique position of being the only networks that are:

- horizontally integrated across mobiles and fixed; plus
- able to own, operate and sell retail services over a fixed line network.

On this basis, the regulatory regime applies asymmetrically in favour of TPG Telecom and it is important that timely certainty is granted to the industry about how the TransACT Networks will be considered in this regulatory framework going forward.

Given this, **nbn** is of the view that the Exemptions should only be extended until the earlier of either options (1) or (2) above.

Finally, we note that as the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* has now received Royal Assent any reliance on, or references to, Part 7 of the *Telecommunications Act* should be removed from the Exemptions as they have now been repealed.

If you have any questions in relation to the above, or if you require additional information please contact Sarah Alderson at sarahalderson@nbnco.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Crichton', is positioned above the typed name.

Jennifer Crichton
EGM, Head of Regulatory
NBN Co