

Telecommunications (Network Exemption— TransACT Upgraded VDSL Networks) Instrument 2012 as amended

Compilation of Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012, as amended by:

- the Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks Instrument (Amendment No.1 of 2012); and
- the Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012 (Amendment No.1 of 2020).

Prepared by the Department of Infrastructure, Transport, Regional Development and Communications.

1. Name of Instrument

This Instrument is the *Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012*.

2. Cessation

This Instrument ceases on the earlier of:

- (a) the day immediately after:
 - (i) a functional separation undertaking; or
 - (ii) a deemed standard functional separation undertakingrelating to local access lines forming part of a TransACT Upgraded VDSL Network first comes into force for the purposes of Part 8 of the Act; and
- (b) the day that is the second anniversary of the day on which the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020 (Cth)* received the Royal Assent.

3. Definitions

In this Instrument:

Act means the *Telecommunications Act 1997*.

access seeker has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

declared service has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

deemed standard functional separation undertaking means a functional separation undertaking covered by a determination under subsection 151B(1) of the Act, as amended by Schedule 2 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020 (Cth)*.

designated day has the same meaning as in section 577A of the Act.

functional separation undertaking has the same meaning as in section 142A of the Act, as inserted by Schedule 2 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020 (Cth)*.

Layer 2 has the same meaning as in the Open System Interconnection (OSI) Reference Model for data exchange.

Layer 3 has the same meaning as in the Open System Interconnection (OSI) Reference Model for data exchange.

TransACT means TransACT Capital Communications Pty Ltd (ACN 093 966 888), a company incorporated in the Australian Capital Territory.

TransACT Upgraded VDSL Network means a very high speed digital subscriber line telecommunications network:

- (a) that is owned by TransACT; and
- (b) was in existence on 31 December 2010; and
- (c) which, as a result of an upgrade or alteration on or after 1 January 2011, became capable of being used to supply a superfast carriage service to residential or small business customers (a ***significant upgrade or alteration***); and
- (d) which comprises:
 - (i) a network located in the area designated as 'VDSL Cable' in the map at Schedule 1; and
 - (ii) those local access lines or parts of access lines located outside the areas specified in subparagraph (d)(i) necessary for the provision of carriage services to premises located within the areas specified in subparagraph (d)(i).

TransACT VDSL Layer 3 Wholesale Interconnection Service means a carriage service that:

- (a) is offered to be supplied on a wholesale basis; and
- (b) is supplied to internet service providers for connectivity to end customers; and
- (c) is supplied by means of a copper line; and

- (d) is offered as an aggregation service to support the aggregation of access services at the following maximum transmission speeds:
 - (i) download transmission speed of 60Mbps and upload transmission speed of 15Mbps;
- (e) is configured as a best effort or non-prioritised service; and
- (f) has connectivity made either:
 - (i) via Layer 3 interconnect with:
 - (A) Internet Protocol version 4 (**IPv4**) connectivity provided to end user sessions; and
 - (B) end-user sessions terminated in the TransACT network via Point to Point Protocol over Ethernet and supplied as IPv4 over Ethernet; or
 - (ii) via Layer 2 Tunnelling Protocol (**L2TP**) interconnect with:
 - (A) direct access to end user sessions via L2TP; and
 - (B) end-user sessions aggregated together in TransACT's network via static L2TP tunnels supplied over the Ethernet.

Note By virtue of paragraph 46(1)(b) of the *Acts Interpretation Act 1901*, expressions used in this Instrument that are also used in the Act have the same meaning as in the Act.

4. Exemptions

- (1) Subject to the condition set out in subclause (2), and pursuant to subsections 141 A(1) and 144(1) of the Act, each TransACT Upgraded VDSL Network is exempt from sections 141 and 143 of the Act.
- (2) The exemptions are subject to conditions that, if a TransACT VDSL Layer 3 Wholesale Interconnection Service is not a declared service:
 - (a) TransACT must offer and supply to access seekers, upon reasonable request, a TransACT VDSL Layer 3 Wholesale Interconnection Service over the TransACT Upgraded VDSL Network; and
 - (b) TransACT must:
 - (i) publish on the wholesale section of its website, the terms and conditions (price and non-price) on which it offers to supply the TransACT VDSL Layer 3 Wholesale Interconnection Service on a TransACT Upgraded VDSL Network (**TVL3WIS reference offer**); and
 - (ii) each time it enters into an agreement with an access seeker, where the terms and conditions are not the same as those set out in the TVL3WIS reference offer, provide the following information to the ACCC within 14 days of entering into the agreement:

- (A) the identity of the parties to the agreement; and
 - (B) the differences between the terms and conditions set out in the agreement and the terms and conditions set out in the TVWIS reference offer; and
- (iii) each time it implements a material change to either the TVL3WIS reference offer or the product definition of the TransACT VDSL Layer 3 Wholesale Interconnection Service, provide the following information to the ACCC within 14 days of implementing the change:
 - (A) the nature of the change; and
 - (B) the date the change took effect; and
- (c) TransACT must provide to the ACMA and ACCC:
 - (i) within 14 days of this Instrument coming into force, details of those TransACT VDSL networks that have undergone a significant upgrade or alteration between 1 January 2011 and the commencement of this Instrument; and
 - (ii) every three months after the commencement of this Instrument, details of each TransACT VDSL network that has undergone a significant upgrade or alteration during that three month period; and
 - (iii) within 14 days of receiving a request from either the ACCC or the ACMA, details of each TransACT VDSL network that has undergone a significant upgrade or alteration during the period specified in the request; and

Note See above definition of *TransACT Upgraded VDSL Network* (clause 3) for the meaning of 'significant upgrade or alteration'.

- (d) TransACT must publish on its website:
 - (i) details of all significant upgrades or alterations made to TransACT's VDSL networks between 1 January 2011 and the commencement of this Instrument, within 14 days of this Instrument coming into force; and
 - (ii) details of each TransACT VDSL network that undergoes a significant upgrade or alteration from 12 April 2012 onwards, within 14 days of the significant upgrade or alteration occurring.

Note 1 Paragraph 141A(4)(b) provides that an instrument made under subsection 141 A(1) may be subject to such conditions as are specified in the instrument.

Note 2 Paragraph 144(4)(b) provides that an instrument made under subsection 144(1) may be subject to such conditions as are specified in the instrument.

SCHEDULE 1 -TRANSACT UPGRADED VDSL NETWORK

