



TPG joint functional separation undertaking

Consultation paper

November 2021

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List of abbreviations and acronyms

ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
CCA	<i>Competition and Consumer Act 2010</i>
CLCs	<i>Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014</i>
EBITDA	Earnings before interest, taxes, depreciation, and amortisation
FTTB	Fibre to the Basement
HFC	Hybrid Fibre-Coaxial
LTIE	Long-term Interests of End-users
NBN	National Broadband Network
RSP	Retail Service Provider
TLA Act	<i>Telecommunications Legislation Amendment (Competition and Consumer) Act 2020</i>
TPG	TPG Telecom Limited
VDSL	Very-high-bit-rate Digital Subscriber Line

1. Overview

On 8 November 2021, TPG submitted a joint functional separation undertaking to the ACCC on behalf of itself and various subsidiaries in accordance with section 151C of the *Telecommunications Act 1997* (Telecommunications Act).

TPG's proposed undertaking would apply to all local access lines that it controls supplying superfast carriage services wholly or principally to residential customers. This includes TPG's FTTB networks, which it currently operates on a functionally separated basis pursuant to the *Carrier Licence Conditions (Networks Supplying Superfast Carriage Services to Residential Customers) Declaration 2014* (CLCs), and its TransACT networks, which are currently exempt from the wholesale-only obligations in Part 8 of the Telecommunications Act.

If the ACCC accepts TPG's undertaking, TPG would have greater flexibility to expand its fixed-line network footprint and compete in wholesale and retail markets for the supply of superfast broadband services to residential customers.

The ACCC is required to undertake public consultation for no less than 15 business days before deciding whether to accept or reject a functional separation undertaking. The ACCC's decision must consider whether the undertaking promotes the long-term interests of end-users and such other matters the ACCC considers relevant.

The ACCC seeks comments from interested stakeholders on TPG's undertaking. We welcome comments on any aspect of the undertaking.

This consultation paper provides relevant background information together with an overview of the undertaking, the legislative framework for ACCC assessment of joint functional separation undertakings and details on how to make a submission. A copy of TPG's joint functional separation undertaking and supporting submission are provided on the [ACCC's website](#).

2. Introduction

2.1. Background

Carrier separation rules

Subject to some limited exceptions, the Telecommunications Act requires fixed-line networks used to supply superfast carriage services to residential customers to be operated on a wholesale-only basis if those networks came into existence, or became capable of supplying superfast carriage services after being altered or upgraded, on or after 1 January 2011. Carriers operating these networks are restricted to supplying wholesale services to other carriers or service providers and are not permitted to supply retail services to end users.

On 25 May 2020, the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* (TLA Act) received the Royal Assent and introduced amendments to the Telecommunications Act that permit superfast fixed-line network operators serving residential customers to be exempt from the wholesale-only requirements subject to the ACCC's acceptance of a functional separation undertaking. This provides greater commercial flexibility for non-NBN superfast network operators, which in turn should promote infrastructure-based competition.

There are two types of functional separation undertakings that can be submitted to the ACCC, a standard functional separation undertaking given by a single corporation and a joint functional separation undertaking given by two or more corporations.

The Telecommunications Act provides that a functional separation undertaking applies to all of the carriers' local access lines serving residential customers.¹ This includes new and existing lines, as well as previously exempt lines such as those built before 1 January 2011 or subject to a ministerial exemption. TPG's FTTB and TransACT networks are currently subject to such exemptions.

TPG's FTTB networks

In September 2013, TPG announced plans to extend existing fibre networks that it owned in Adelaide, Brisbane, Melbourne, Perth and Sydney. At the time, the legislation permitted existing superfast networks to be extended by up to one kilometre. The networks had previously been used to serve business customers. TPG proposed to connect apartment buildings by running fibre pairs from TPG's fibre cables into the building's communications room and installing additional network equipment so that building residents could use in-building copper cabling to acquire a carriage service to their premises. This network configuration is referred to as Fibre to the Basement (FTTB).

In September 2014, the ACCC confirmed that the wholesale-only obligations did not apply to TPG's proposed FTTB networks. The ACCC reached its decision after confirming that TPG's networks were already capable of supplying superfast carriage services before 1 January 2011, and that TPG had not extended these networks by more than one kilometre.²

Subsequent to the ACCC's decision, the then Minister for Communications made the CLCs which apply to networks that supply superfast carriage services to residential customers but which are not subject to Part 8 of the Telecommunications Act. This includes TPG's FTTB networks. The CLCs require operators of these networks to establish structurally or functionally separate wholesale and retail business units. Pursuant to the CLCs, TPG operates the wholesale company FTTB Wholesale Pty Ltd and its retail businesses on a functionally separate basis and provides open access to a wholesale service upon reasonable request by another carrier or carriage service provider.

The CLCs will no longer apply to TPG's FTTB networks if the ACCC accepts TPG's functional separation undertaking.³

TPG's TransACT networks

Prior to the commencement of the TLA Act, the Minister was able to exempt specified networks and local access lines from the wholesale-only requirements by written instrument.⁴ In April 2012, the then Minister granted three exemptions to TransACT, two of which remain in force:

- the *Telecommunications (Network Exemption—TransACT Upgraded VDSL Networks) Instrument 2012*, and
- the *Telecommunications (Network Exemption—TransACT Very Small Scale Networks) Instrument 2012*

¹ Subsection 142C(3) Note 1 (also for pre-designated commencement date networks subsection 143(3) Note 1). See also *Telecommunications Legislation Amendment (Consumer and Competition) Bill 2019, Explanatory Memorandum*, p. 7.

² [ACCC not to take action to block TPG's Fibre to the Basement network rollout](#) – 11 September 2014.

³ CLCs – Paragraph 5(1)(c).

⁴ Subsections 144(1) and (2) of the Telecommunications Act for exemption power. Subsection (7) for limitation of power.

TPG has owned and operated the TransACT networks since acquiring iiNet in 2015, which acquired TransACT in 2011.

The TransACT exemptions do not impose functional separation requirements like the CLCs do. TPG is required to provide open wholesale access to these networks, except for its Very Small Scale HFC Networks in Victoria, and comply with reporting obligations to the ACCC and ACMA.

In May 2020, the Minister consulted on a proposal to extend the TransACT exemptions which were both due to expire on 1 July 2020. While the ACCC observed that there was limited competition on the networks, it supported the extension in recognition that the NBN is available in most, if not all, of the footprint of the networks. This provides end-users with a choice in both network and retail service provider. The ACCC also considered that TPG's intention to lodge a functional separation undertaking provided an opportunity to further examine and address any competition concerns.⁵

The Minister for Communications decided to grant extensions to both exemptions until the earlier of:

- the day after a functional separation undertaking relating to the TransACT networks accepted by the ACCC first comes into force, or
- 25 May 2022, which is the second anniversary of the day on which the TLA Act received the Royal Assent.

Further information about TPG's FTTB and TransACT networks is included in Annexure A of TPG's supporting submission.

2.2. Timetable for this consultation

The ACCC requests written submissions on TPG's joint functional separation undertaking by no later than **Friday 17 December 2021**.

After considering submissions from interested parties, the ACCC proposes to publish its decision on whether to accept TPG's undertaking in early February 2022.

2.3. Making a submission

The ACCC encourages industry participants, other stakeholders and the public more generally to consider and make submissions on TPG's joint functional separation undertaking and related issues raised in this consultation paper.

We have provided questions in 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.

⁵ [ACCC letter to the Hon Paul Fletcher, Minister for Communications re exemption extensions](#) – 2 June 2020 – p. 2.

The ACCC has published a [guideline](#)⁶ explaining the process that parties should follow when submitting confidential information to communications inquiries by the ACCC. The [ACCC-AER information policy: the collection, use and disclosure of information](#) also sets out the general policy of the ACCC and the Australian Energy Regulator (AER) on the collection, use and disclosure of information. Both policies are available on the ACCC website.

The ACCC prefers 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@accc.gov.au.

Alternatively, to reduce the costs and complexity of engagement, we have provided a web form to allow a short submission to be made in response to the consultation paper without the need to construct a full written submission. This form is available on the ACCC's [Consultation Hub](#).

⁶ ACCC, *Confidentiality Guideline for submitting confidential material to ACCC communications inquiries*, April 2014.

3. Functional separation undertaking

3.1. Legislative requirements

Pursuant to section 151C of the Telecommunications Act, a joint functional separation undertaking must:

- comply with the requirements of paragraphs 151C(2)(a) – (s)
- be in a form approved in writing by the ACCC and accompanied by such information as is reasonably likely to assist the ACCC to decide whether to accept or reject the undertaking
- specify the expiry time of the undertaking which must not be more than 10 years after the undertaking comes into force
- state that the provisions listed at paragraph 151C(9)(a) are fundamental provisions⁷
- provide that the wholesalers and retailers subject to the undertaking will give the ACCC periodic reports that relate to their compliance with the undertaking
- provide that the wholesalers and retailers subject to the undertaking will prepare compliance plans setting out the actions each will take to ensure compliance with the undertaking.

TPG's undertaking is in a form approved by the ACCC and is accompanied by a supporting submission, which we encourage interested parties to have regard to when making a submission.

An assessment of TPG's undertaking against the legislative requirements is set out in the checklist at **Appendix A**. TPG has included a comparison of its proposed undertaking against the requirements in section 151C of the Telecommunications Act at Annexure B of its supporting submission.

As noted in Appendix A, TPG has identified all of the fundamental provisions required by the Telecommunications Act in its undertaking. A breach of a fundamental provision may be grounds for the ACCC to revoke a joint functional separation undertaking.⁸ However, the ACCC may also revoke an undertaking on the grounds of an unsatisfactory compliance record in regards to any breaches of the undertaking that occurred when it was in force.⁹

If the ACCC accepts TPG's undertaking, TPG must comply with the non-discrimination obligations in sections 151ZF and 151ZG of the Telecommunications Act, a contravention of which is also grounds for revocation of the undertaking.¹⁰

⁷ The undertaking may specify that one or more other provisions are fundamental provisions – Paragraph 151C(9)(b) of the Telecommunications Act.

⁸ Paragraph 151W(6)(i) of the Telecommunications Act.

⁹ An unsatisfactory compliance record is defined in section 142BC and the ACCC's revocation power is set out in subsection 151W(7) of the Telecommunications Act for joint functional separation undertakings.

¹⁰ Paragraph 151W(6)(ii) of the Telecommunications Act for joint functional separation undertakings.

3.2. Customised undertaking provisions in detail

The legislative provisions provide scope for customisation in certain aspects of a joint functional separation undertaking. For instance, paragraphs 151C(2)(d), (e), (f), (g) and (j) of the Telecommunications Act require a joint functional separation undertaking to specify the extent to which various organisational separation and IT systems separation obligations will be met. Additional commitments outside the legislative provisions may also be included in a functional separation undertaking. Section 3.2 of this consultation paper summarises the customised elements of TPG's proposed undertaking and seeks feedback on the appropriateness of these measures. Capitalised terms under section 3.2 are defined in clause 1 of TPG's undertaking.

3.2.1. Duration of the undertaking

Under clause 3, TPG's undertaking will come into force on the earlier of the date that is 6 months after it is accepted by the ACCC and the date on which the TransACT exemptions expire, being 25 May 2022. Under clause 4, TPG's undertaking will expire 5 years after the date that it comes into force, unless varied or revoked. The Telecommunications Act permits a joint functional separation undertaking to be in force for a maximum of 10 years.¹¹

Clause 5 states that TPG may revoke or vary its undertaking if a Regulatory Event occurs.¹² In this regard, the ACCC notes that the Telecommunications Act requires the ACCC to revoke a joint functional separation undertaking if it receives written notice from the persons that gave the undertaking requesting revocation.¹³ The Telecommunications Act also includes provisions for varying a joint functional separation undertaking. The ACCC is required to consult on a variation to an undertaking that is in force before deciding whether to accept or reject the variation.¹⁴

3.2.2. Parties to the undertaking and identification of TPG Retailers, TPG Wholesalers and the Sub-wholesaler

Clause 6 of TPG's undertaking identifies TPG Internet, iiNet, Internode, Westnet and Adam Internet as TPG Retailers and FTTB Wholesale as a TPG Wholesaler. TPG may notify the ACCC in writing from time to time that any other TPG Group company is a TPG Retailer or TPG Wholesaler.

Clause 6 also identifies AAPT as the Sub-wholesaler, which is a TPG Wholesaler subject to clause 2.3. Per clause 9.3, AAPT will acquire wholesale services from FTTB Wholesale and supply those wholesale services to wholesale customers either on a standalone basis or in combination with other services or value added services. AAPT would have similar functions to FTTB Wholesale but would operate at a different level of the wholesale supply chain within the TPG Group. Per clause 20.2, AAPT will only supply local access line services on lines controlled by the TPG Group to wholesale customers once it has notified the ACCC of its intention to do so and published its wholesale terms and conditions on its website. Upon meeting these requirements, AAPT will become a TPG Wholesaler for the purposes of the undertaking and subject to all of the relevant obligations. In its supporting submission, TPG states that, as is currently the case, it is TPG's current intention that TPG Retailers will continue to acquire local access line services from FTTB Wholesale (rather than AAPT) after the undertaking is in force.

¹¹ Subsection 151C(8) of the Telecommunications Act.

¹² Regulatory Event is defined in clause 1.1(9) of TPG's undertaking as any statute or statutory instrument that repeals Part 8 of the Telecommunications Act or amends the requirements for a joint functional separation undertaking.

¹³ Subsection 151W(8) of the Telecommunications Act.

¹⁴ Sections 151Q and 151U of the Telecommunications Act

Clause 1.1(7) of TPG's undertaking also identifies Pipe Networks Pty Limited, TransACT Capital Communications Pty Ltd and TransACT Victoria Communications Pty Limited as Network Entities. Pursuant to clause 10, these Network Entities will supply the use of network infrastructure to FTTB Wholesale and not supply services directly to TPG Retailers, the Sub-wholesaler and any wholesale customers. TPG has also undertaken to prevent the Network Entities from divulging Protected Information and network rollout information to TPG Retailers, unless the latter is readily ascertainable from the public domain.

3.2.3. The nature of separation of the retail and wholesale business units

Under clause 11, TPG commits TPG Retailers and TPG Wholesalers to operating their businesses under separate brands. A TPG Retailer will not use a brand or trademark in its business if that brand or trademark is used by a TPG Wholesaler in its business and vice versa.

TPG undertakes in clause 14 that staff engaged by TPG Retailers and TPG Wholesalers will be located in premises that are physically separate from staff of the other business unit. TPG will implement security measures that prevent a staff member of one business unit from gaining access to the premises where staff of the other business unit are located. An exception is made for authorised meetings between staff of the business units provided that the visiting staff member is accompanied while in the premises of the other business unit.

Clause 18 provides that TPG may conduct open group events such as companywide staff briefings, social functions, and other team events attended by staff from each of the business units to encourage a team culture. TPG undertakes to ensure that no Protected Information is shared or disclosed at any group events.

3.2.4. The activities that are to be performed by the wholesale and retail business units

TPG's commitments in relation to wholesale and retail activities are set out in clause 9 of the undertaking.

9.1 TPG Retailers will undertake the following Retail Activities:

- (1) marketing, sale and supply of local access line services to retail customers and prospective retail customers;*
- (2) supply of other value-added services to retail customers;*
- (3) taking of service orders from retail customers for activation and provisioning;*
- (4) processing and implementing requests to amend or disconnect services from retail customers;*
- (5) processing and implementing requests for local number portability;*
- (6) billing of retail customers;*
- (7) setting of retail prices and non-price terms and conditions; and*
- (8) responding to network and service escalations from retail customers.*

9.2 TPG Wholesalers will undertake the following Wholesale Activities:

- (1) marketing, sale and supply of local access line services to wholesale customers and prospective wholesale customers;*
- (2) receipt of orders from wholesale customers, service activation and provisioning;*
- (3) billing of wholesale customers;*
- (4) processing and implementing requests to connect or disconnect services from wholesale customers;*
- (5) processing and implementing requests to amend services or churn services in accordance with relevant industry codes;*
- (6) setting of wholesale prices, non-price terms and conditions, and promotions;*
- (7) responding to network, systems and service escalations from TPG Retailers and wholesale customers; and*
- (8) in respect of the Sub-wholesaler only, the activities set out in clause 9.3 (Sub-wholesaler Activities). (Discussed in subsection 3.2.2 of this consultation paper).*

Each TPG Retailer undertakes not to perform Wholesale Activities and each TPG Wholesaler undertakes not to perform Retail Activities.

3.2.5. The extent to which personnel may or may not be shared between the wholesale and retail business units

The Telecommunications Act requires a joint functional separation undertaking to provide that both wholesalers and retailers will, to the extent specified in the undertaking, ensure that their workers perform their duties exclusively for them and not the other business unit.¹⁵ Similar provisions apply to ensure that workers engaged by persons other than a wholesaler or retailer and performing duties for that business unit are different from those performing duties for the other business unit.¹⁶

Per clause 12, TPG undertakes that TPG Wholesalers and TPG Retailers will each engage separate and independent staff that will not perform duties for one another. TPG also undertakes that staff performing duties for either a TPG Retailer or Wholesaler and engaged by persons other than a TPG Retailer or TPG Wholesaler will be different from each other.

TPG specifies an exception to these commitments for its Shared Corporate Services and Network Engineering Services in clause 8.2. Per clause 17, the employing entity for Shared Corporate Services and Network Engineering Services staff may be TPG or another member of the TPG Group that is not a TPG Wholesaler or TPG Retailer.

TPG's Shared Corporate Services, as defined in clause 1.1(12), will support the general functions of the TPG Group such as finance, human resources, marketing communications and legal among others. TPG's Network Engineering Services function is defined as "technical network infrastructure planning, design, implementation and support services" in clause 1.1(5) of the undertaking. Clause 22.4(2) requires staff working for this function to deal with requests for assistance from TPG Retailers and wholesale customers through the relevant interface operated by the TPG Wholesaler and with the same level of diligence and speed.

¹⁵ Paragraphs 151C(2)(d) and (e) of the Telecommunications Act.

¹⁶ Paragraphs 151C(2)(f) and (g) of the Telecommunications Act.

In clause 22.4(1) TPG undertakes that staff providing either Shared Corporate Services or Network Engineering Services must not divulge any Protected Information to a TPG Retailer or TPG Wholesaler. All shared staff will also be subject to information sharing protocols and relevant training to help ensure that Protected Information is not shared between TPG Wholesalers and TPG Retailers. Clause 22.4(3) prevents Network Engineering Services staff from sharing network rollout information with TPG Retailers unless that information is readily ascertainable from the public domain.

Clause 13 specifies TPG Retailers and TPG Wholesalers will have separate directors and that staff in each business unit will not be subject to senior management direction of the other. Clause 15 specifies that staff may only transfer between a TPG Retailer and TPG Wholesaler if the transfer is appropriately documented and the staff member has been made aware of their obligations under the undertaking.

3.2.6. Incentive structures

Pursuant to clause 16.1, TPG may implement incentive remuneration structures based in whole or part on the overall performance of the TPG Group. Subject to this clause, TPG will not implement any incentive remuneration structures for staff of TPG Wholesalers, which directly reflects or is determined by the performance of the TPG Retailers, and vice versa.

3.2.7. The extent to which the undertaking specifies separate systems and accounts

Clause 19 specifies the extent to which TPG undertakes to maintain separate systems and accounts, as required by paragraph 151C(2)(j) of the Telecommunications Act. TPG Retailers and TPG Wholesalers will maintain separate operational support, business support and communications system where separation is practical. Where it is not possible to provide separate systems, user access management restrictions (including information barriers) underpinned by information sharing protocols will be put in place to prevent the sharing of Protected Information between TPG Retailers and TPG Wholesalers. TPG also undertakes that TPG Wholesalers and TPG Retailers will prepare and maintain separate management accounts to an EBITDA level.

3.2.8. Information sharing commitments

TPG's commitments regarding information sharing in clauses 22.1 and 22.2 are consistent with the relevant legislative provisions¹⁷ and the ACCC's [Permitted Information Sharing for Joint Functional Separation Undertakings Determination](#), respectively.

Clause 22.3 outlines the steps that TPG Retailers and TPG Wholesalers will take to prevent the sharing of information between each other. This includes locating staff in separate premises, providing staff with relevant training and maintaining separate systems as discussed in subsections 3.2.3, 3.2.5 and 3.2.7 of this consultation paper, respectively. TPG will also implement internal information sharing protocols that underpin the prohibitions in its undertaking on the sharing of Protected Information.

TPG's information sharing restrictions will apply to Shared Corporate Services and Network Engineering Services, as discussed in subsection 3.2.5 of this consultation paper. TPG has also undertaken to prevent the Network Entities from divulging Protected Information and network rollout information to TPG Retailers, as noted in subsection 3.2.2 of this consultation paper.

¹⁷ Paragraphs 151C(m) – (p) of the Telecommunications Act.

3.2.9. Compliance commitments

TPG Wholesalers and TPG Retailers will provide the ACCC with compliance plans and periodic compliance reports. Specifically, pursuant to clauses 25 and 26, TPG undertakes:

- to provide the ACCC with draft copies of each of the Compliance Plans 20 Business Days prior to the undertaking coming into force
- to provide the ACCC with final copies of each of the Compliance Plans within three months of the date that the undertaking comes into force
- to provide the ACCC with any variations to the Compliance Plans within 10 Business Days of implementing the variation
- to prepare and provide each of the Compliance Reports on an annual basis on or before 31 July each year in a form approved by the ACCC
- to include in each Compliance Report to the year ending 30 June:
 - the total number of residential superfast local access lines that are supplied by the relevant TPG Retailer or TPG Wholesaler (as applicable)
 - details of the TPG Retailer's or TPG Wholesaler's (as applicable) compliance with the undertaking
 - details of the TPG Retailer's or TPG Wholesaler's (as applicable) compliance with sections 151ZF and 151ZG of the Telecommunications Act (regarding non-discrimination)
 - any known instances of non-compliance, the reasons the relevant TPG Retailer or TPG Wholesaler has not complied and actions taken or being taken to rectify or address such non-compliance, and
 - any complaints received from wholesale customers in relation to the relevant TPG Retailer's or TPG Wholesaler's compliance with the undertaking and actions taken in response.
- to provide all reasonable assistance and respond to any reasonable request the ACCC makes for the purposes of any audits the ACCC undertakes to verify compliance with the undertaking.

Furthermore, clause 24 specifies that TPG will ensure that all staff whose duties could result in them being at material risk of contravening the undertaking and TPG's obligations under Part 8 of the Telecommunications Act undertake yearly practical compliance training.

Q1. Do the customised provisions in TPG's undertaking raise any material concerns?
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3.3. Long-term interests of end-users

In deciding whether to accept a joint functional separation undertaking, the ACCC must have regard to whether the undertaking promotes the long-term interests of end-users (LTIE) of carriage services or of services supplied by means of carriage services.¹⁸ This must be determined in the same manner as it is for the purposes of Part XIC of the *Competition and Consumer Act 2010* (CCA).¹⁹ Accordingly, the ACCC must consider the extent to which the undertaking is likely to result in the achievement of the following three objectives:²⁰

- promoting competition in markets for listed services (which includes carriage services and services supplied by means of carriage services)
- achieving any-to-any connectivity in relation to carriage services that involve communication between end-users, and
- encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which listed services are supplied, and any other infrastructure by which such services are, or are likely to become, capable of being supplied.

TPG contends in section 5 of its supporting submission that the undertaking fulfils these objectives and therefore promotes the LTIE.

The ACCC's preliminary view is that accepting TPG's undertaking is likely to promote the LTIE, subject to TPG adhering to the statutory non-discrimination obligations and each of the commitments in its undertaking.

Promoting competition

When assessing the effect or likely effect on competition, the ACCC may undertake a 'with or without test'. The ACCC has compared the likely state of competition 'with' TPG's undertaking in force to the likely state of competition 'without' accepting TPG's undertaking, to assist with determining whether the undertaking would promote competition.

If the ACCC accepts the undertaking, TPG will be able to integrate and grow its various wholesale networks to create an enhanced wholesale offering for access seekers under consistent regulatory obligations. In the absence of the undertaking, we expect TPG to be restricted from expanding its network and competing for infrastructure builds.

The ACCC's preliminary view is that an integrated network is likely to be simpler and more cost effective for downstream RSPs to connect to, relative to individually connecting to each of TPG's wholesale networks under the current regime. Consequently, TPG's undertaking is likely to reduce barriers to entry for RSPs seeking to supply services over TPG's superfast broadband networks. If the ACCC accepts the undertaking, TPG must offer wholesale access to RSPs on a non-discriminatory basis over all local access lines that it controls supplying superfast carriage services to residential customers.²¹

The ACCC's preliminary view is that TPG's undertaking is likely to promote competition through increasing the number of RSPs providing retail services on its networks. Further, the current TransACT exemptions do not require TPG to provide wholesale access to its Very Small Scale HFC Networks in Victoria and, if accepted, TPG's joint functional separation undertaking would introduce wholesale access to these networks for the first time. This will

¹⁸ Paragraph 151J(2)(a) of the Telecommunications Act.

¹⁹ Section 142BA of the Telecommunications Act.

²⁰ Subsection 152AB(2) of the CCA.

²¹ Sections 151ZF and 151ZG of the Telecommunications Act.

ultimately promote competition at an RSP level and provide end users with a greater choice of RSPs on TPG's superfast broadband networks to select from.

If the ACCC accepts TPG's undertaking, TPG would have greater flexibility to expand its network footprint and compete in wholesale and retail markets for the supply of superfast broadband services to residential customers. Importantly, the undertaking would also apply to any new superfast fixed-line broadband network infrastructure that TPG deploys.

In comparison, the ministerial exemptions limit extensions of the TransACT networks to areas specified in the instruments. Further restrictions also apply, including which networks may be extended and the number of residential customers the extensions may serve.²²

Similarly, restrictions apply to TPG extending its FTTB networks, which were previously only exempt from the wholesale-only requirements to the extent that no point of the extension was located more than one kilometre from a point of the network as it stood immediately before 1 January 2011. This limited TPG's ability to expand its FTTB networks and still operate them under the functional separation arrangements of the CLCs. Now, pursuant to the TLA Act, the CLCs cease to apply if TPG alters, upgrades or extends its FTTB networks meaning TPG would be required to operate these networks on a wholesale-only basis.²³

The ACCC considers that accepting TPG's undertaking is likely to promote infrastructure-based competition as it will enable TPG to extend its network footprint and compete for infrastructure builds in new developments. Consolidating TPG's networks under the undertaking is likely to make TPG a more robust competitor to NBN Co where its networks have been overbuilt.

If the ACCC rejects TPG's undertaking, TPG would be required to operate the two TransACT networks on a wholesale-only basis under Part 8 of the Telecommunications Act once the ministerial exemptions expire on 25 May 2022. TPG has previously contended that this would require it to transfer end-users to another RSP, terminate end-user services or divest the networks.²⁴

Achieving any-to-any connectivity

The ACCC's preliminary view is that TPG's undertaking would not have any bearing on the ability to achieve any-to-any connectivity. This is consistent with the ACCC's previous consideration of the deemed functional separation undertaking.

Encouraging economically efficient use of and investment in infrastructure

In determining whether TPG's undertaking is likely to promote the LTIE, the ACCC must have regard to whether a decision to accept the undertaking will encourage the economically efficient use of, and the economically efficient investment in, infrastructure.

The ACCC's preliminary assessment is that accepting the undertaking is likely to encourage the economically efficient use of and investment in infrastructure. The undertaking will enable TPG to integrate its superfast broadband networks under one regulatory regime, reducing its compliance costs, and removing duplicated resources caused by separately operating the networks, thereby improving productive efficiency.

²² Further restrictions: Exempt VDSL Networks must have existed on 31 December 2010 prior to upgrades or alterations after that date which enabled superfast carriage services to be supplied. Very Small Scale Networks must be entirely located within a real estate development project and connect to no more than 100 premises.

²³ CLCs – Paragraph 5(1)(b).

²⁴ [*TPG letter to the Hon Paul Fletcher, Minister for Communications – Extension of TransACT Network Exemption Instruments*](#) – 17 March 2020 – p. 3.

As discussed above, TPG's current wholesale-only exemptions limit its ability to upgrade and extend its networks while maintaining its ability to supply retail services. If accepted, the undertaking would enable TPG to supply retail services on a functionally separate basis and continue to do so after upgrading or extending its networks. This is likely to incentivise TPG to invest in upgrading and extending its infrastructure and promote dynamic efficiency.

The incentives for TPG to invest in its infrastructure will be supported by the regulatory certainty the undertaking provides throughout its duration. Functional separation will also provide TPG with greater certainty that the infrastructure it invests in can be used to supply its own retail services.

Greater competition in both infrastructure and retail markets will give TPG and its downstream RSPs increased incentive to provide quality services at an efficient cost. The ACCC's preliminary view is that the undertaking is therefore likely to improve productive and allocative efficiency.

Q2. Will TPG's undertaking promote the LTIE?

3.4. Other Comments

Q3. Do you have any other comments on the undertaking not covered by previous questions?

Appendix A – Checklist

Reference in the Telecommunications Act	Requirement	Relevant clause in TPG's undertaking
151C(2)(a)	<p><i>The undertaking must identify:</i></p> <p><i>(i) one or more (but not all) of those persons as the wholesaler or wholesalers for the purposes of the undertaking; and</i></p> <p><i>(ii) the remaining person or persons as the retailer or retailers for the purposes of the undertaking</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p>	<p>6</p> <p>Fundamental provision per clause 27.</p>
151C(2)(b)	<p><i>The undertaking must provide that a wholesaler will not supply a local access line service to a person unless the person is a wholesale customer.</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p>	<p>7.1</p> <p>Fundamental provision per clause 27.</p>
151C(2)(c)	<p><i>The undertaking must provide that a retailer will not supply a local access line service to a person unless the person is a retail customer.</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p>	<p>7.2</p> <p>Fundamental provision per clause 27.</p>
151C(2)(d)	<p><i>The undertaking must provide that a wholesaler will, to the extent specified in the undertaking, ensure that the wholesaler's workers will perform their duties exclusively for the wholesaler.</i></p>	<p>12.3(1)</p>
151C(2)(e)	<p><i>The undertaking must provide that a retailer will, to the extent specified in the undertaking, ensure that the retailer's workers will perform their duties exclusively for the retailer.</i></p>	<p>12.4(1)</p>

151C(2)(f)	<p><i>The undertaking must provide that a wholesaler will, to the extent specified in the undertaking, ensure that the workers who:</i></p> <p><i>(i) are engaged by persons other than the wholesaler; and</i></p> <p><i>(ii) perform duties for the wholesaler;</i></p> <p><i>are different from the workers who:</i></p> <p><i>(iii) are engaged by persons other than the wholesaler; and</i></p> <p><i>(iv) perform duties for a retailer.</i></p>	8.2 & 12.3(2)
151C(2)(g)	<p><i>The undertaking must provide that a retailer will, to the extent specified in the undertaking, ensure that the workers who:</i></p> <p><i>(i) are engaged by persons other than the retailer; and</i></p> <p><i>(ii) perform duties for the retailer;</i></p> <p><i>are different from the workers who:</i></p> <p><i>(iii) are engaged by persons other than the retailer; and</i></p> <p><i>(iv) perform duties for a wholesaler.</i></p>	8.2 & 12.4(2)
151C(2)(h)	<p><i>The undertaking must provide that a wholesaler will ensure that no director of the wholesaler is a director of a retailer.</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p>	<p>13.4</p> <p>Fundamental provision per clause 27.</p>
151C(2)(i)	<p><i>The undertaking must provide that a retailer will ensure that no director of the retailer is a director of a wholesaler.</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p>	<p>13.5</p> <p>Fundamental provision per clause 27.</p>

151C(2)(j)	<p><i>The undertaking must provide that:</i></p> <p><i>(i) the wholesaler or wholesalers; and</i></p> <p><i>(ii) the retailer or retailers;</i></p> <p><i>will, to the extent specified in the undertaking, have separate:</i></p> <p><i>(iii) operational support systems; and</i></p> <p><i>(iv) business systems; and</i></p> <p><i>(v) communications systems; and</i></p> <p><i>(vi) accounts.</i></p>	19
151C(2)(k)	<p><i>The undertaking must provide that a wholesaler will publish on the wholesaler's website:</i></p> <p><i>(i) the terms and conditions relating to price or a method of ascertaining price; and</i></p> <p><i>(ii) other terms and conditions;</i></p> <p><i>on which the wholesaler offers to supply local access line services to the following:</i></p> <p><i>(iii) a retailer;</i></p> <p><i>(iv) its wholesale customers or prospective wholesale customers.</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p>	<p>20</p> <p>Fundamental provision per clause 27.</p>
151C(2)(l)	<p><i>The undertaking must provide that a wholesaler will:</i></p> <p><i>(i) if requested to do so by a wholesale customer or prospective wholesale customer, supply a local access line service to the wholesale customer or prospective wholesale customer; and</i></p> <p><i>(ii) do so on the terms and conditions that were published on the wholesaler's website at the time when the request was made.</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p>	<p>21</p> <p>Fundamental provision per clause 27.</p>

151C(2)(m)	<p><i>The undertaking must provide that a wholesaler will ensure that information provided by its wholesale customers (other than the retailer or retailers) is not disclosed to any of the retailers.</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p>	<p>22.1(1)</p> <p>Fundamental provision per clause 27.</p>
151C(2)(n)	<p><i>The undertaking must provide that a retailer will ensure that it does not obtain, access or use information provided to any of the wholesalers by the wholesaler's wholesale customers.</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p>	<p>22.1(2)</p> <p>Fundamental provision per clause 27.</p>
151C(2)(o)	<p><i>The undertaking must provide that a retailer will ensure that information provided to the retailer by a carrier or carriage service provider, other than:</i></p> <p><i>(i) information provided by a wholesaler; or</i></p> <p><i>(ii) information of a kind specified in a determination under subsection (15);</i></p> <p><i>is not disclosed to any of the wholesalers.</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p> <p>Subsection 151C(15) permits the ACCC to determine one or more kinds of information for the purposes of subsections 151C(2)(o) and (p). Determination available here.</p>	<p>22.1(3)</p> <p>Fundamental provision per clause 27.</p>
151C(2)(p)	<p><i>The undertaking must provide that a wholesaler will ensure that it does not obtain, access or use information provided to any of the retailers by a carrier or carriage service provider, other than:</i></p> <p><i>(i) information provided by a wholesaler; or</i></p> <p><i>(ii) information of a kind specified in a determination under subsection (15).</i></p> <p>Subsection 151C(9) requires this to be a fundamental provision.</p> <p>Subsection 151C(15) permits the ACCC to determine one or more kinds of information for the purposes of subsections 151C(2)(o) and (p). Determination available here.</p>	<p>22.1(4)</p> <p>Fundamental provision per clause 27.</p>

151C(2)(q)	<p><i>The undertaking must provide that a wholesaler will use the same customer interface for dealings between:</i></p> <p><i>(i) the wholesaler; and</i></p> <p><i>(ii) the wholesaler's wholesale customers (other than the retailer or retailers);</i></p> <p><i>as the wholesaler uses for dealings between:</i></p> <p><i>(iii) the wholesaler; and</i></p> <p><i>(iv) a retailer.</i></p> <p>Section 142A defines a customer interface as an interface for the purposes of ordering, provisioning, billing, service activation and fault rectification in relation to the supply of local access line services.</p>	23
151C(2)(r)	<i>The undertaking must contain such other provisions (if any) as are specified in a determination under subsection (16).</i>	N/A
151C(2)(s)	<i>The undertaking must not contain a provision of a kind specified in a determination under subsection (17).</i>	N/A
151C(5), (6) and (8)	<p><i>(5) The undertaking must specify the expiry time of the undertaking.</i></p> <p><i>(6) The expiry time of the undertaking may be described by reference to the end of a period beginning when the undertaking comes into force.</i></p> <p><i>(8) The expiry time of the undertaking must not be more than 10 years after the undertaking comes into force.</i></p>	4
151C(9)	<p><i>The undertaking:</i></p> <p><i>(a) must state that the provisions of the undertaking covered by paragraphs (2)(a), (b), (c), (h), (i), (k), (l), (m), (n), (o) and (p) are fundamental provisions; and</i></p> <p><i>(b) may state that one or more other provisions of the undertaking are fundamental provisions.</i></p>	27
151C(10)	<p><i>The undertaking must provide that a wholesaler will give the ACCC periodic reports (to be known as compliance reports) that:</i></p> <p><i>(a) relate to the wholesaler's compliance with the undertaking; and</i></p> <p><i>(b) are in a form approved in writing by the ACCC.</i></p>	26

151C(11)	<p><i>The undertaking must provide that a retailer will give the ACCC periodic reports (to be known as compliance reports) that:</i></p> <p><i>(a) relate to the retailer's compliance with the undertaking; and</i></p> <p><i>(b) are in a form approved in writing by the ACCC.</i></p>	26
151C(12)	<p><i>The undertaking must provide that a wholesaler will:</i></p> <p><i>(a) prepare a plan (to be known as a compliance plan) setting out the actions to be taken by the wholesaler for the purpose of ensuring that the wholesaler complies with the undertaking; and</i></p> <p><i>(b) give the ACCC:</i></p> <p><i>(i) a copy of the compliance plan; and</i></p> <p><i>(ii) a copy of any variation of the compliance plan.</i></p>	25
151C(13)	<p><i>The undertaking must provide that a retailer will:</i></p> <p><i>(a) prepare a plan (to be known as a compliance plan) setting out the actions to be taken by the retailer for the purpose of ensuring that the retailer complies with the undertaking; and</i></p> <p><i>(b) give the ACCC:</i></p> <p><i>(i) a copy of the compliance plan; and</i></p> <p><i>(ii) a copy of any variation of the compliance plan</i></p>	25