



Ms Melanie Brandis
Communications Group
Australian Competition and Consumer Commission
Email: melanie.brandis@acc.gov.au
sara.afaghi@acc.gov.au

PUBLIC VERSION

INQUIRY INTO DECLARATION OF WHOLESALE ADSL

TPG Telecom Limited believes that the Wholesale ADSL service should be declared. Telstra has repeatedly obtained advantage for itself over competitors like TPG both by pricing its wholesale services at a rate that made it extremely difficult for competitors to compete and by creating unnecessary business constraints around the supply of the service.

We respond to the ACCC's questions raised in the Discussion Paper.

1. What is the relevant market for the purpose of the Discussion Paper and the application of the LTIE

In TPG's view, the correct market for consideration is the market for broadband in non-metropolitan locations and metropolitan locations where Telstra has created a technical barrier to supply of competitive broadband services by the installation of pair gain or RIM systems. Those are the locations where end users are under-served and where the LTIE requires competitors be enabled with a fair and cost based wholesale DSL service. Those areas are distinct from the remaining market for broadband due to the distortions created by the cost of backhaul, population density and Telstra's own technical decisions.

2. Do you consider that Telstra's wholesale terms and conditions inhibit competition? If so, what have been the effects on the ability of access seekers to compete?

TPG acquires the wholesale ADSL service to compete in areas where TPG does not have its own infrastructure or where a customer's copper infrastructure can only be enabled by Telstra (eg. pair gain). TPG does consider that Telstra's terms and conditions of supply inhibit competition. In particular, Telstra requires that TPG acquires AGVC (or VLAN) long-hauled back to a capital city. Telstra does not permit TPG to use its own backhaul or a portion of its own network.

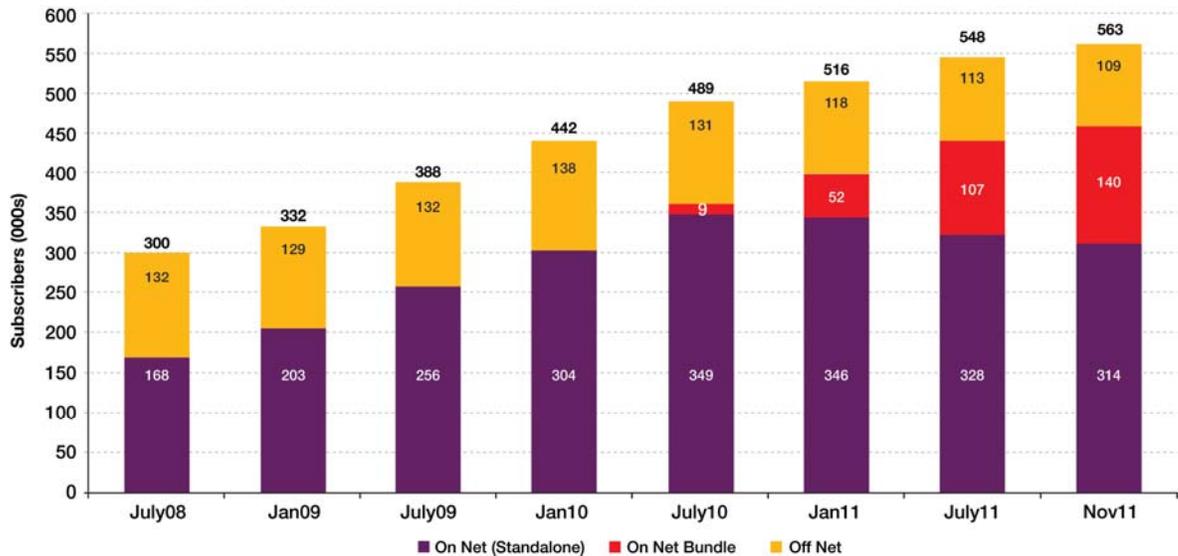
The price Telstra charges for backhaul does not appear to bear any correlation to actual cost. TPG pays \$58.66 per mbps for the VLAN (AGVC) for the offnet service. Based on TPG's own experience of constructing and maintaining fibre networks, it is likely that the per mbps price charged by Telstra significantly exceeds Telstra's actual cost of carriage.

The outcome of these factors is that TPG is not able to use one of its usual differentiators – high usage quotas – to compete in the market. End users in regional locations therefore are always worse off than TPG's metropolitan customers.

63-65 Waterloo Road
Macquarie Park NSW 2113
T: 02 8220 6000
F: 02 9252 7855
www.tpg.com.au
ABN: 46 093 058 069
TPG Telecom Limited

3. *Do access seekers have data to indicate the effect of Telstra's access terms on their ability to compete? Please indicate the relevant market shares of customers on-net and off-net?*

TPG has no data that directly shows the impact of Telstra's access terms on TPG's ability to compete. TPG can say that it is more successful in attracting customers in locations where it has its own infrastructure than it is in locations where it relies on the Wholesale DSL service. The following chart shows the TPG subscribers on-net to off-net. It is instructive to note that off net subscribers remained relatively constant until the period between July 2010 and January 2011. The price squeeze commenced during that period and we have continued to lose off-net customers since that time.



TPG also has access to fast churn loss reports. That information reveals that customers who left TPG went to Telstra on a significantly increased basis after the price squeeze commenced:

	Total Number of Customers Who Fast Churned (from TPG DSL and SSS)	Number that went to Telstra	Number that went to other providers	% to Telstra
	Column CIC	Column CIC	Column CIC	
Apr-10	CIC			35.04%
May-10				44.36%
Jun-10				49.01%
Jul-10				50.98%
Aug-10				59.45%
Sep-10				72.55%
Oct-10				69.47%

4. *Are there any instances whereby delays in the negotiation of revised wholesale DSL charges following Telstra's retail price changes have affected the ability of access seekers to compete? If so, please specify the duration and impact of the delays.*

When Telstra adjusted its wholesale pricing in the regions and TPG started losing customers to Telstra, TPG immediately sought revised pricing from Telstra. TPG had been arguing with Telstra for many years that the VLAN pricing was excessive. Telstra resisted that claim. At that

time, TPG was paying \$120 per mbps for VLAN pricing for ADSL2+ services and \$58.66 for ADSL1. It is clear that Telstra intended by this pricing to preclude TPG from reselling the ADSL2+ services using commercial structures to do so. Some months after Telstra revised its retail pricing of Broadband, Telstra adjusted made offers to TPG to reduce the VLAN charges for ADSL2+ to being the same as the pricing for ADSL1 (i.e. \$58.66). The retail price change occurred in, we believe, June 2010. The revised wholesale pricing came into effect in November 2010. By that time, a significant number of off-net customers had already churned to Telstra.

5. *Do you consider that Telstra's wholesale terms and conditions restrict the nature of service offerings? For example, the provision of large data quotas and retail products such as IPTV and multimedia content.*

They do restrict the nature of service offerings since the pricing for VLAN is prohibitive. Telstra also does not permit wholesale customers to access a multicast facility which could be used by TPG to supply IPTV.

6. *Are there any business cases that have been or could be frustrated as a result of the pricing of AGVC?*

In the metropolitan areas, TPG offers unlimited ADSL2+ and a selection of free IPTV channels and has done so since early 2010. TPG did try to offer Unlimited ADSL for off-net customers but it was unable to persist with that model due to the prohibitively high cost of VLAN.

7. *Are there instances where access seekers provide DSL services on more competitive terms if they use their own DSL network or where supply of wholesale ADSL is available from another provider? If so, please detail the differences.*

Yes, as previously identified.

8. *Could early termination charges discourage access seekers from providing services over alternative networks?*

The early termination charge (within 6 months of installation) for Wholesale ADSL is \$50. It does have an effect on decisions to migrate customers to other networks, including TPG's own network.

9. *Are there any instances of price discrimination between access seekers? If so, what is the basis for the price discrimination?*

TPG believes that there is price discrimination between access seekers. [CIC]CIC Material removed. [CIC]

10. *Are there any instances of price discrimination on access seekers that choose to use their own infrastructure or an alternative wholesale supplier to the incumbent?*

See answer to question 9.

11. *Do you consider that it is imperative to have a pre-existing subscriber base prior to the rollout of the NBN? If so, will an existing market share provide a material comparative advantage? If so, how?*

It is imperative to have a pre-existing subscriber base prior to the rollout of NBN. There will be fixed costs associated with supplying NBN services. Those fixed costs will either be spread over a small number of customers, in which case the CSP will need to charge a higher price per end user to cover the fixed costs, or over a large number of customers, in which case the price per end user could be less. The opportunity to compete aggressively on price (which will be the only

serious differentiation point given that the technology will be the same for all providers) will be taken away from those without large customer bases.

12. Are access seekers concerned about Telstra migrating its customers onto the NBN and contractually “locking in” customers by specifying a minimum term or imposing prohibitive switching fees?

Yes. TPG considers it highly likely that Telstra will use the \$11 billion which the NBNCo has contracted to pay to Telstra to market heavily to secure market share with customers on long term contracts. Telstra’s standard engagement model is a 24 month term.

13. Are there any other potential risks to competition that may arise in the transition to the NBN if wholesale ADSL is not regulated? If so, what are they?

It is informative to observe that the price squeeze Telstra has introduced predominantly affects competitors in the regions where competitors have no or limited capacity to compete. The NBN’s stated business case of ubiquitous nationwide service and price means that, post NBN, the costs of servicing retail customers in the metropolitan areas will be approximately the same as the cost of servicing regional customers. As a result, customers in non-metro areas are expected post NBN to be of similar value as those in the cities. TPG believes that Telstra’s strategy with the price squeeze is to secure increased market share in the regions which will have the result, post NBN, of increasing Telstra’s profits.

14. Has the NBN changed the strategic importance/value of expanding during the transitional period leading up to the NBN? Why or why not?

Please see response to question 11.

15. On the NBN, do you anticipate increased competition to take place on value-added retail services such as IPTV? Are access seekers considering deploying value-added services during the transition to NBN?

TPG believes that price will be the significant differentiator for NBN services. Content will be important but price will remain ever important. TPG is considering deploying content and other value added services in the transition period leading up to the NBN.

16. Does investment in value-added retail services such as IPTV require greater customer scale, and if so, to what extent would a declaration of wholesale ADSL offer opportunities to obtain this scale?

The creation of new services will always require capital, the return of which will be directly proportional to the number of customers who are immediately able to take up the service. The existence of existing customer scale reduces the risks associated with committing capital to new product initiatives.

17. Do you consider that declaration of wholesale ADSL will promote competition in the transition to the NBN? Why or why not?

TPG acknowledges that this is a difficult issue. In some instances, competition is not promoted by declaration. As an example, the recent decision by the ACCC to remove the exemption on certain exchange areas has had the result that TPG’s investment in voice infrastructure in those areas will yield less benefit to TPG than had those exemptions remained. As a result, the business case for increasing that voice infrastructure has become more difficult to justify.

However, in respect of Wholesale ADSL, TPG does consider that declaration will promote competition. Currently, it is unlikely that TPG would be able economically to justify the

installation of DSLAM infrastructure in the regional centres. If the pricing charged by Telstra for Wholesale DSL were related to cost and the service that could be acquired enabled other forms of differentiation, TPG would certainly widen its market offerings to those in the regional centres.

18. *If the ACCC were to declare a wholesale ADSL services, is it likely that access seekers continue to invest in DSLAMs where it is efficient to do so?*

TPG considers it unlikely that it will invest in DSLAM infrastructure in the regional centres. Telstra monopolises the backhaul market and the price payable for that backhaul makes the investment in DSLAM infrastructure in outlying areas uneconomic. If the declaration was in respect of non-metropolitan areas, TPG would not expect to change its metropolitan strategy of expanding DSLAM infrastructure to meet demand.

19. *Does investment in DSLAM infrastructure enhance the ability of access seekers to differentiate products, through increased functionality and service quality?*

Yes. IPTV and other value added services can only reliably be supplied using network facilities that TPG controls.

20. *Are significant opportunities for efficient investment in competing DSL networks – in terms of either expansion of the existing DSLAM footprint or increased investment in areas that have already attracted ULLS/LSS based competition? Is this likely to change over time?*

Yes. As the market becomes fully saturated and the NBN draws nearer, the business case for expansion of DSLAM infrastructure becomes very difficult, particularly given current backhaul pricing conditions. [CIC] CIC Material removed [CIC].

21. *What impact does the NBN have on incentives to invest in DSLAM infrastructure?*

Please see responses already made.

22. *Could declaration of wholesale ADSL promote efficient investment in infrastructure that will be used to interconnect on the NBN or provide value-added retail services?*

Depending on the service description, TPG considers this is possible. If the Service Description is for a Layer 2 DSL where the data is handed off either at a capital city or at some other point closer to the relevant exchange, CSPs may be encouraged to build out from existing core networks to locations that might become NBN POIs.

23. *If the ACCC declares a wholesale ADSL service:*

a. *What is an appropriate service description?*

TPG would be willing to discuss this with the ACCC.

b. *Should the service description cover wholesale ADSL services nationally, or be limited in geographic scope?*

As set out above, TPG considers that the service description should be limited to non-metropolitan areas and areas where RIM or Pair Gain systems have restricted the supply of competitive ADSL2+ services.

c. *What is the appropriate duration of the declaration?*

TPG considers that the period between now and completion of the NBN would be an appropriate duration.