***Submission by TPG Telecom Limited***
*to*
***Australian Competition and Consumer Commission***

***Communications Sector Market Study***

TPG makes the following comments concerning elements of the Draft Communications Sector Market Study.

**Messaging services market** – (is regulating SMS termination still necessary) as part of MTAS regulation

TPG considers that the mobile market is competitive. TPG believes that where a market is functioning properly, regulation should be removed. TPG agrees that consumers' use of OTT messaging services has diminished the need for ongoing SMS regulation.

**NBN Pricing** – ACCC will give time to allow NBN and RSPs to discuss pricing and see of changes to SAU (i.e. regulate NBN pricing) or if some other regulatory response is warranted

TPG remains of the view that there is a mismatch between consumer expectations on the price they are willing to pay for broadband services and the requirements the NBN has under its business case. As a result, TPG considers that the resolution of appropriate NBN pricing has challenges. TPG considers that the CVC cost is very high and should be lowered. However, it is important that the pricing not be structured in such a way that competition is stymied. As it is, there are very few ways for RSPs to differentiate on NBN products.

**Cost recovery by NBN** – consider whether NBN should have more flexibility to recover costs through means other than pricing e.g. through direct budget arrangements, debt relief measures or asset revaluation

As stated above and in other submissions, TPG considers that the business case for NBN is very challenging, relying as it does on consumers being willing to pay more for broadband services than they are currently paying. Ultimately, consumers of telecommunications services or taxpayers more widely will bear the cost of the NBN, which was always going to be the position, though certainly more under a more widespread FTTP business model.

TPG submits however that this industry has been pushed and prodded from all sorts of interventions, so much so that the natural economics of the industry are becoming unrecognisable. Many consumers are being forced to take a product that they didn't necessarily want in the first place. Prices and products are being determined by reference to political decision making and a business case that is built with Government capital, rather than generally more efficient private capital.

TPG considers that more political/regulatory decision making is likely to compound this structural inefficiency to the industry, further distorting investment decisions that would, in the usual economic environment, be made by private capital.

Given the current position, it seems to TPG that the NBN should be allowed to finish its rollout as quickly as possible. Governments should accept whatever the financial outcome is for that, take the financial hit (as we expect will be necessary) and the NBN should compete with private capital so that the industry can return, as quickly as possible, to a more rational economic circumstance. We consider this will take quite a long time.

**NBN service standards** – will examine whether allocation of responsibility for service faults is appropriate and whether regulation of NBN's service level is necessary

The NBN migration is massive. It has been seen over and over in the telecommunications industry that new developments bring challenges for consumers and providers. This was the case when the dial up industry was in its infancy with busy signals and congested networks, when ADSL came on and consumers complained about speeds, the billshock when smart phones became available and in many other similar examples. In each case, the complaints were loud.

Suppliers were not happy with those difficulties and were motivated to resolve the difficulties. But regulators also brought controls into play.

For the most part, the regulatory responses were, in TPG's view, of limited value and have created ongoing challenges for the industry as it seeks to comply with layers and layers of regulations that made and continue to make competition challenging. For example, the CSG is a regulation which remains in place but, given technological developments and new products, is largely impossible to comply with. As a result, TPG and other providers must seek waivers, creating regulatory burden and cost that consumers are required to bear.

TPG does consider that the NBN is causing significant problems for consumers, with missed appointments being common and, most likely, congestion existing within the NBN network. However, neither of these things is surprising and TPG does not consider that bringing new regulations in will help the NBN to improve outcomes.

However, NBN as a monopoly operator with seemingly unlimited resources has an agreement with RSPs that is unwieldy in size and constantly being changed by the NBN. RSPs have very little ability negotiate terms. A simple process for claiming credits for breaches of SLA would be welcomed.

**RKR for wholesale aggregation services** – will seek industry information and input about whether to monitor supply of wholesale aggregation services to determine competitiveness and whether regulation is required. If found to be non-competitive, NBN Co should consider provision of transitional (wholesale aggregation) products or pricing measures to facilitate the entry of smaller or niche service providers.

TPG does not support NBN competing in the market for wholesale aggregation. The more the NBN creeps into markets, the less natural the economics of the industry.

**NBN POIs** – examine the supply of transmission services to NBN Points of Interconnection (POIs) as part of the DTCS declaration and FAD

TPG believes that the market for transmission services to NBN POIs is competitive and significant private capital has been invested into that transmission, for which investors are entitled to a return. Whilst TPG does not oppose investigations into the competitiveness of this market, it is important that distortions not be introduced which are likely to have further impacts on the willingness of private capital to make investments in the industry.

| |
|---|
| **Dark Fibre Services RKR** – consult with industry about whether RKR is needed to monitor supply of dark fibre services and whether regulation is needed |

Dark fibre competes with DTCS. The reason that the market for dark fibre exists at all is because the economic decisions made by Telstra and Optus not to offer dark fibre allowed TPG and Vocus and other companies to find a niche to compete. This is a good example of the way an economy should function. The imposition of regulation which mandated dark fibre would have stymied the investment case for TPG and Vocus. That same logic applies now – business cases for the building of competitive infrastructure should not be diminished by the imposition of regulation.

TPG strongly opposes any suggestion that dark fibre should be regulated, given the competitive environment for easily substitutable products.

The fact that dark fibre may not be available to all NBN POIs is not a basis to determine that dark fibre should be declared or otherwise regulated. Any carrier has the ability to build dark fibre and any person requiring transmission can acquire it from a number of different suppliers.

| |
|---|
| **Big 4 Peering** – wants Telstra TPG Optus and Verizon (TTOV) to publish on their website detailed criteria and any other relevant policies on which peering requests from other networks are assessed. ACCC will consider whether downstream markets are competitive (esp supply of services to corporate customers) |

Peering has been the source of complaint to the ACCC for many years, including in the past by TPG companies. The ACCC has determined that it would stay out of that issue for many years and, indeed, the market has sorted itself out with peering arrangements now existing between parties with substantially similar network scales. Peering fabrics have been established to enable much traffic to be passed between willing RSPs cheaply, thereby reducing the IP transit requirements. The market for IP Transit is competitive with prices trending downwards. So TPG considers that peering is now largely a non-issue.

However, TPG does not oppose any regulation that may require all CSPs that seek interconnection arrangements to publish criteria under which they will agree to peer.

| |
|---|
| **TCP Code Review** – assess whether Critical Information Summary (CIS) obligations are being met and how it can be addressed |

TPG considers that the CIS obligations under the TCP Code have had minimal beneficial impact. The CIS pages of the TPG Website are viewed relatively infrequently. TPG believes that more often than not consumers make their purchasing decisions relying on recommendations of friends or discussions with supplier representatives.

| |
|---|
| **Retaining emails and email portability** – reviews existing options for consumers to retain email account and costs involved and consider whether to introduce an email portability regime |

TPG considers that email portability is likely to produce considerable additional cost for minimal benefit and therefore believes that this should be a very low order issue for the ACCC.

**Regulation of NBN** – regulation should not constrain competition with the NBN. NBN Co needs greater pricing and technology flexibility to respond to market developments (e.g. increasing substitution to wireless technologies).

TPG strongly agrees that private capital should be free to compete with the NBN on an unconstrained basis. It also agrees that if the NBN was itself a private company with private capital efficiencies (and burdens), it should be free to compete without restriction.

The difficulty however is that the NBN does not have private capital considerations. Decisions are being made for political reasons. NBN is protected by regulation. As a result, NBN has a distorting impact on the market and it should be constrained from intervening in markets that are or can be serviced by private companies. That is in the best interests of consumers since private companies will be prepared to compete without fearing that the value of their investments will be diminished by a government entity with different financial motives (for example, a low or negative return on invested capital).

**Open access to dense small cell infrastructure assets** – will consult on whether to assess the merits of open access to dense small cell infrastructure assets (which may display natural monopoly characteristics).

At this stage, the small cell business is nascent. The ACCC should allow the market to develop without stepping in.

However, some suppliers may attempt to lock up critical infrastructure, such as light poles, so TPG does consider the ACCC should keep a watching brief on it.

Open access to actual network equipment should not be mandated. Competition at an infrastructure level should be encouraged.

**Spectrum allocation and management** – strongly recommends that the radiocommunications regime explicitly recognise and do more to promote competition in relevant markets.

TPG strongly supports better regulation to facilitate competition for mobile and wireless services. Spectrum is a monumental barrier to entry and it is critical that the ACCC and the ACMA ensure that operators with an incentive and ability to limit or hamper competition are not permitted to do so.

**Regional Broadband Scheme (RBS)** – greater substitution across technologies brings into question the suitability of the RBS charge to be imposed on NBN equivalent services as a mechanism to fund non commercial NBN services

ACCC would prefer there is direct budget funding (rather than an extension of the RBS charge to other types of services) as it would be the least distortionary alternative and not serve as a means of protecting the NBN from network competition

TPG considers that the NBN business case is very challenging. The introduction of a tax on competitive infrastructure, particularly limited to fixed line competitive infrastructure, is not sensible and will not save the NBN business case. The RBS will almost certainly create further incentive for fixed wireless competition for the NBN.

So TPG considers that the RBS is poor policy and does not allow for how the market for services will change over time. TPG agrees that social outcomes should be paid for out of general budget funds rather than distorting the market by favouring one current technology type over other technology types.