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Dear Sir

NBN POI CONSULTATION

TPG Telecom Limited is a significant industry participant in both the provision of retail voice, broadband and IPTV services (through its subsidiaries TPG Internet Pty Ltd, Chariot Pty Limited, Soul Communications Pty Limited and Soul Pattinson Telecommunications Pty Ltd) and the supply of fibre based transmission services (through its subsidiary Pipe Networks Pty Ltd). We have invested many hundreds of millions of dollars over several years in establishing physical infrastructure to compete in the retail and wholesale telecommunications markets.

As such, TPG Telecom has a major interest in the future of the telecommunications industry as it is affected by the establishment and operation of the National Broadband Network.

Summary

- Australia will pay a heavy price in order to achieve the “uniform national wholesale price” – the price will be the obliteration of a vibrant infrastructure based competitive market for the provision of fixed line access.
- As a current participant in that fixed line market, TPG cannot support an NBN POI policy that removes the competitive impetus for that market. Both the Composite Proposal and the High Consolidation Proposal as currently framed by the NBN Co will have that effect.
- TPG believes that competition is better than monopoly, even if the monopoly is not motivated (as said today) by profit. As such, we believe that Australia should not sacrifice its active competitive market (as far as is possible with the current market dominance of Telstra) for a uniform national wholesale price. The “digital divide” should be resolved by alternative methods.
- The already constructed backhaul to existing exchanges from which competitive LSS/ULL services are supplied should not be stranded. There are currently about 500 of those exchanges. These are the natural POIs. More may come on if the pricing for the NBN local access element (referred to in the discussion papers as “AVC”) encourages additional backhaul construction.

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General Comments

1. The key points of differentiation between carriage service providers in today's telecommunications market are:
 - a. Price; and
 - b. Quantity (i.e., the number of phone calls that can be made or gigabytes delivered).
2. Infrastructure, and especially backhaul transmission has been a significant cost component in delivering telecommunications services. Owning (or at the very least controlling) backhaul transmission has enabled each carriage service provider to differentiate itself on both price and quantity.
3. The NBN Co's objective (as set by the Federal Government) is a uniform national wholesale price. The purpose of this objective is to provide consumers in regional areas the same price and service as those in the cities. NBN Co seems to believe that the way to achieve this is to permit interconnection only at the edge of national broadband network. RSPs would be permitted to connect deeper into the network but the price paid will be the same as interconnecting at the edge. The effect of this is that no RSP will want to connect deep into the network – there is no commercial benefit to do so. This means that there will be no market for backhaul. The price for backhaul will be same for all providers and it will be paid to the NBN and obscured within NBNs proposed product model.
4. We understand why the NBN Co has come to this view:
 - a. If all RSPs have the same input cost, the price for services will be largely uniform.
 - b. If the price for backhaul transmission is competitive, the economic outcome should be (in the absence of government subsidy) that consumers in areas serviced by competitive backhaul transmission providers will obtain a cheaper price than consumers who are not.
5. If the price for backhaul transmission is effectively fixed so that the uniform national wholesale price can be achieved, the retail competitive marketplace will obviously be affected. Given the characteristics of fibre, technical service quality (e.g., latency and packet loss) is likely to be uniform for all RSPs for the access virtual circuits and therefore is unlikely to be a point of differentiation. If the backhaul transmission is the same for all competitors, there will be no differentiation points in the physical delivery of service. The areas of differentiation for RSPs left will be:
 - a. Price, but *only* to the extent able to do so due to lower overhead or lower peering, domestic and international IP costs or telephony; or
 - b. Content or applications that are exclusively or dominantly controlled by the RSP.
6. Accordingly, if there is to be a “national level competitive playing field for retail services”, it makes more sense that a more concentrated number of POIs be used. Indeed, the rational economic decision is that there would be only 2 POIs (one in Sydney and one in Perth) which are currently (or ought to be) the prime delivery points for international connectivity.
7. However, the impact of this concentration of POIs is that there will effectively be no significant competitive market for the provision of access services because the opportunities for differentiation would have been removed. The currently vibrant competitive market for the delivery of fixed line access will have been decimated by the NBN Co. And once the NBN Co has established itself as the only fixed line infrastructure, it can reasonably be expected that the price for access charged by NBN will increase. Monopolies always do this, even those that are motivated by good ideology. Regulation is rarely, if ever, an effective deterrent. Competition is the only reason for price to come down or for quality of service to improve. It is the driver of technological innovation and improved business processes. Lack of competition is likely to lead to higher costs in the long run and a lethargic approach to the development of new services.

8. The NBN Co suggests that there should be a “composite” range of POIs, meaning a handful in Brisbane, Sydney, Melbourne, Adelaide, and Perth and a number of other POIs in 195 other locations. One would think that the intention of these extra 195 POIs is that the owners of competitive backhaul in those 195 locations will be able to make use of that infrastructure so as to provide a better service at a cheaper price. But this is not the case. The price charged for interconnecting at the 195 POIs will be exactly the same as interconnecting at the Aggregation POIs. Why would any RSP make the economic decision to pay the cost of backhaul into a Composite POI when one could buy the Aggregation POI at no extra cost? There may be very minor technical benefits but none which would justify either (a) the purchase of separate backhaul from another supplier or (b) the capital and operating costs of constructing and maintaining separate backhaul. It will very likely not happen.
9. So this then leads TPG to the conclusion that *if* the desire is to maintain a vibrant competitive fixed line access provider market, backhaul must be one of the ways in which RSPs are able to differentiate themselves. That means that the cost of interconnecting at an Aggregation POI *must* be higher than the cost of interconnecting at a Composite POI (or indeed at an FSA) and the differential must be set at a level which will secure for the constructors or owners of alternative backhaul services a reasonable rate of return on their investment. However, the outcome of this is that high density city based FSAs should receive a better price than the regional FSAs and this will probably continue the perceived “digital divide”.
10. If the desire is to achieve the same price for connectivity services for all Australians (which we expect would result in the sacrifice of the vibrant competitive fixed line access provider market), the NBN Co should logically only permit one POI and it should be in Sydney which has the best access to international connectivity. This would ensure that all RSPs have the same input costs and therefore ensure that retail pricing is consistent regardless of location. However, the impact of would be that all existing competitive backhaul infrastructure (including inter-capital) will be wasted and the NBN Co or Federal Government should compensate the businesses who made investments in that infrastructure for the loss of the earnings that they expected to generate from those investments. TPG opposes the wasting of existing competitive backhaul infrastructure.
11. We think that it is timely that the ACCC and NBN Co are examining the question of the NBN POIs. We think it is a critical issue and should promote analysis of the implications of the NBN as it is currently proposed. Whilst the objectives of the NBN appear desirable on their face, the competitive implications are, for the reasons set out above, serious.
12. The best outcome for consumers usually comes when consumers themselves make rational economic decisions based on their own requirements. TPG believes that, when the time is right, households will demand GPON fibre and businesses like TPG will make commercially rational decisions to supply it to those consumers at no cost to the taxpayer. Those who want it, will pay for it. Those who don’t, won’t be obliged to pay for it through their tax dollars. In time, the cost will come down such that even those who initially didn’t think they had a need for it, will be able to afford it and then they will acquire it. This has been seen several times in the competitive telecommunications industry. From phones to faxes. From faxes to dial access. From dial access to DSL1. From DSL1 to DSL2. From Analogue mobile to 3G mobile. These investments and changes have occurred based on economic rationality or, where economic reasons alone have not been enough, with the benefit of taxpayer subsidy.
13. However, even if we are wrong about the likelihood of fibre becoming a standard delivery mechanism and taxpayer investment is required, the sensible thing to do is to retain the value of the billions of dollars of fibre network already constructed without taxpayer subsidy. This would simply entail making the POIs at the approximately 500 exchanges where competitive LSS/ULL services are being supplied (i.e., by access providers in addition to Telstra). Carriers and carriage service providers are in those exchanges competing to supply the best service at the best price. There is competitive backhaul available in most of them.

14. We accept that the implication of our view is that some aspect of “digital divide” will remain and uniform national wholesale pricing will be an objective not achieved in the near future. However, in such areas, the divide could be minimised by taxpayer subsidy. If competitive backhaul infrastructure is constructed (as is already occurring with the blackspots program) the competition should improve the supply of service in the regional centres. If the backhaul existed, alternative access infrastructure would be rational for many towns.

In response to the specific questions raised:

Effect on Relevant Markets

1. If the price for interconnect at an Aggregation POI is the same as a Composite POI, we believe that the backhaul transmission market will be obliterated as soon as a cutover to NBN occurs. This assumes that the copper will be entirely replaced. If there is to be a price differential, the backhaul transmission market will be immediately governed by the difference between the cost of access at an Aggregation POI and at the Composite POI.
2. If there is no price differential between interconnect at a Composite POI and interconnect at an Aggregation POI, we expect that significant amounts of our fibre assets will become of greatly reduced value and TPG will be forced to reconsider whether it is worth continuing to maintain those fibre assets once the NBN is in operation. We also believe that if such a decision was made, the only reasonable position for the Government to take is to compensate us for the loss in earnings that we would suffer.
3. As a backhaul transmission provider, we believe we lead competition in locations where we have constructed fibre network and that the state of those markets is relatively efficient. Inter-capital transmission markets are similarly very efficient and benefit from there being a number of providers. In other locations, the market is very inefficient. Telstra dominates regional backhaul transmission and prices its services at inflated prices.
4. The installation of NBN fibre on a relatively ubiquitous basis may have the effect of devaluing already constructed fibre assets. The fact that the NBN will have control of taxpayer funded infrastructure that can easily be used for wireless, mobile and other network requirements, means that it is possible that it would make commercially irrational decisions on pricing. Whilst this may be a positive thing for mobile and other providers, we see negative implications for the market for backhaul transmission.
5. Please see our General comments concerning this question.
6. We consider that it is unlikely that a Layer 3 wholesale sector will be established under the NBN, particularly if the cost to access the NBN will be uniform for all parties. There will be insufficient room between NBN price and Retail Price for a wholesale market to develop.

Location of POIs on the NBN and provision of related Services

7. For the reasons stated in our general comments, we believe that the decision on the preferred number and location of POIs depends on the preferred outcome, of which we see two scenarios:
 - a. Maintain the Digital Divide = Increase the number of POIs and price the interconnect differently for the Aggregation POIs.
 - b. Secure Nationally Equivalent Pricing = Decrease the number of POIs to two or three but reduce competition for backhaul transmission and probably also for retail service provision since rates of return will be reduced.

TPG’s preference is that POIs should be established at the 500 or so exchanges where competitive LSS/ULL infrastructure exists. POIs for other exchanges should be brought back to capital cities or any other point along that path at which an RSP may seek to interconnect at its own expense.
8. Please see general comments.
9. If a low-medium consolidation approach is adopted for NBNC’s POI location, we believe that the proximity to independent backhaul provision should be the primary consideration. Proximity to backhaul that is owned or controlled by a vertically integrated provider such as Telstra may not be helpful unless there was also an alternative independent provider likely to

offer a competitive backhaul transmission service or adequate regulation to ensure reasonable price competition for the backhaul service.

10. If the composite model is accepted, TPG believes that NBN Co should supply backhaul between the Aggregation POIs and the Composite POIs at prices which will enable the constructors or owners of alternative backhaul services a reasonable rate of return on their investment. We imagine that it may be difficult to determine what this price should be but this process would seem to be something with which the ACCC has experience.
11. If NBN Co supplies backhaul, TPG believes that this should be on either Ethernet or Dark Fibre at the election of the RSP.

Timing and Business Rules for Interconnection under Composite Approach

12. We are not clear about the “Business Rules” that the NBN propose for interconnecting at the Composite POIs. In our general comments, we indicated that there are competing parameters at play. If there is to be a viable access provider competitive market, there must be a means of differentiation and one of the ways in securing that differentiation is better backhaul transmission. If that is the environment sought, the business rules should be such that any RSP should be able to interconnect at the distributed POIs at any time they wish and they should be at a cost advantage if they do so.
13. We do not have any comment about the process to co-ordinate the addition of interconnection at the disaggregated POIs.

Changes to the Initial POIs

14. The principal factor that should trigger a review of the location of initial POIs in our view is the existence of new infrastructure that may result in the more efficient delivery of services to consumers. Examples of this might include the development of more significant international bandwidth out of Perth, Adelaide, Darwin or Brisbane. Better backhaul transmission out of Tasmania might be such a factor. More competitively available backhaul might also be a spur to create new POIs.
15. The establishment of new POIs should only be done when all participants in the market are given equal and simultaneous access to the details of the new POIs. This should ensure that no one provider is advantaged over other providers.

Layer 1 Unbundling

16. Layer 1 unbundling may be needed for corporate, government and other large customers. Close proximity to the FSAs will be essential for this to market to develop.

Uniform National Wholesale Pricing

17. For the reasons set out in the general comments, we believe that the location of POIs and the pricing for access to those POIs is a critical determinant for whether or not there will be an effective uniform national wholesale price. It seems to TPG that the only realistic way to ensure that the “digital divide” is removed is to have access provided at a small number of POIs located close to the handoff points for international network. This is not an acceptable outcome to TPG for the reasons previously stated.
18. The NBNCo proposes that UNWP should be treated as occurring when Access Seekers face the same total wholesale cost from any premises to a designated state capital city point of presence. We point out that if the POIs are to be mandated in the 5 capital cities nominated, the cost for RSPs to supply to consumers outside Sydney will be greater than the cost to supply in Sydney. The reason is that each RSP must secure backhaul transmission to international content, most of which is accessed through cables that land in Sydney. There is a risk therefore that some RSPs will be motivated to sell services to people only in Sydney and therefore “cherry-pick” the consumers for whom they have the lowest cost of supply. As previously commented, if there is to be completely equivalent pricing across the entire network, the only way for that to be available is if there is one or two POIs in Sydney.
19. See comments above.
20. See comments above.

Wireless Services

21. We do not see any commercial or technical reason why the number or location of POIs for wireless and satellite services should be any different than for the fixed line services.

Other

22. We have reviewed the NBN Co's assessment of the fibre assets in Australia and are not able to agree with it. The one comment we would specifically make is that the existence of fibre assets does not mean that a reasonable contestable market will exist. It relies on the fibre being owned by a business which is commercially motivated to wholesale it, as opposed to simply retaining it for its own commercial benefit.

Thank you for considering our submission.

Yours faithfully

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