

Public version

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Communications Compliance Section
Infrastructure Regulation Division
Australian Competition and Consumer Commission

By email: CommunicationsComplianceSection@acc.gov.au

Dear Sir/Madam,

ACCC Consultation on revising the Broadband Speeds Claims – Industry Guidance

Thank you for providing TPG Telecom Limited (**TPG Telecom**) the opportunity to respond to the ACCC's paper titled "*Consultation on revising the Broadband Speeds Claims – Industry Guidance*" (January 2022) (**Consultation Paper**).

Upload speeds information

The ACCC is considering updating the Guidance to clearly state that Retail Service Providers (**RSPs**) should provide typical busy period upload speeds information in their broadband marketing for services provided over both fixed line and fixed wireless access networks.

The ACCC is considering this change in the broader context of:

- (a) an industry shift away from expressly stating upload speeds in broadband offerings;
- (b) NBN Co introducing wholesale products differentiated by upload speeds (e.g. 100/40 Mbps and 100/20 Mbps products); and
- (c) the increased importance of upload speeds to consumers engaging in more home-based work and study.

TPG Telecom believes it is important to provide consumers with clear, up-to-date, accurate and complete information regarding broadband services. This is essential to ensure that consumers have access to the right information to be able to compare services and make informed choices about the broadband products they acquire. However, TPG Telecom considers there is a cost/benefit balance to be struck between the impact of additional regulatory burdens and the benefits that this would provide consumers.

In that regard, the ACCC's proposal must be considered against consumer preferences and the value consumers place on upload speeds when making purchasing decisions. While there are some variants of download speed tiers that have different upload speed combinations (e.g. the nbn 100/40 Mbps and nbn 100//20 Mbps products), TPG Telecom observes that customers primarily select their NBN product on the basis of two key features: (a) retail prices (including any promotional offers) and (b) download speeds. This is supported by the ACCC's *Communications market report 2020-21*, where upload speeds were not a feature that the ACCC factored into its feature-adjusted hedonic pricing analysis of NBN services.

TPG Telecom notes that the Consultation Paper does not specify what the ACCC considers would fall within the scope of 'marketing materials'. TPG Telecom has strong reservations regarding any regulatory guidance that would compel TPG Telecom to expand the already lengthy list of messages and figures that must be

communicated to consumers in marketing materials, in accordance with existing regulatory requirements.

By way of example, an advertisement for the nbn 100 Mbps broadband product sold by iiNet (a TPG Telecom brand) already states:

- **Product name:** short title of the product name, e.g. 'nbn 25', 'nbn 50', 'nbn 100' or 'nbn Home Fast'.
- **Price:** The price includes any promotional offers, in addition to the price that would apply at the end of the promotional period, e.g. \$89.99 per month for the first 12 months; then \$99.99 per month. The total minimum cost would also be stated, e.g. minimum cost of \$89.99.
- **Download speeds:** The typical evening speed for downloads, together with the busy hours that are measured for the typical evening speeds, e.g. 90 Mbps Typical Evening Speed (subject to change and measured 7pm-11pm).
- **Data limits:** Although the majority of NBN plans now include unlimited data, a statement to this effect is included, e.g. 'Limitless Data'.

The above example does not include any promotions for over-the-top services or bundled offers that may be available to consumers and any applicable terms and conditions that must be disclosed.¹

TPG Telecom believes that adding typical busy period upload speeds will only serve to further overcomplicate the already overloaded messaging presented to consumers in marketing materials related to NBN products. It would particularly be difficult to convey all these messages in smaller form digital and print advertising materials. For this reason, TPG Telecom does not support any revision of the Guidance which would impose a blanket requirement or obligation on TPG Telecom to publish typical busy period upload speeds information in all marketing materials, including advertisements in digital, print and audio-visual mediums, and webpages containing specific NBN plan information.

While it is unclear to TPG Telecom the consumer detriment that the ACCC is seeking to address from this proposed revision to the Guidance, if the ACCC considers typical busy period upload speeds information for NBN products should be communicated to consumers, TPG Telecom believes it would be more appropriate to include such information in Critical Information Summaries or the NBN Key Facts Sheet. This means upload speeds information would be available to consumers that wish to access it, without the imposition of additional regulatory obligations that would result in marketing materials that contain an overwhelming number of consumer messages.

TPG Telecom would welcome the opportunity to work with Communications Alliance or the ACMA to update the *Telecommunications (NBN Consumer Information) Industry Standard 2018* or *C628:2019 Telecommunications Consumer Protections Code* as applicable to give effect to changes to Critical Information Summaries or the NBN Key Facts Sheet in relation to upload speeds information for NBN services.

Fixed wireless broadband services

TPG Telecom does not support any obligation or requirement on providers to publish typical evening upload speed information for fixed wireless services on emerging services such as 5G home broadband. The concerns







¹ For example, an iiNet advertisement includes relevant terms and conditions such as: (a) FTTB/FTTC/FTTN speeds to be confirmed when activated; (b) New Development Fee may apply; (c) 4G back-up is subject to mobile coverage availability. Limited to 12/1Mbps. Terms and conditions apply for 4G backup; (d) Offer available to new customers only; (e) selected areas only; and (f) modem fee may apply.

regarding the relevance of upload speeds information in marketing materials as described above also apply equally to fixed wireless services.

Separately, the ACCC is also proposing to amend the Guidance section on ‘Services utilising fixed wireless technology’ to provide further assistance to RSPs on the best practice for disclosing to consumers the factors known, or ought reasonably to be known, that would affect the download or upload speeds received by an end-user.

TPG Telecom notes that consumers already receive clear information about relevant issues affecting the performance of their fixed wireless service, beyond that which is required by the Guidance. For example, the webpage for the iiNet Home Wireless Broadband product includes the following detailed consumer information (see screenshot below).²

Factors that may affect your Home Wireless Broadband connection speed and connectivity

<p> Coverage Predicted and actual coverage may vary due to the nature of radio based mobile networks and other factors at any specific location, such as distance from the network base station, building materials, and geographic features (hills, buildings and trees etc.).</p>	<p> Number of connected devices When too many devices share the same bandwidth (e.g. 3+ users streaming HD content), data flow may become limited and result in slower speeds across each user or device.</p>
<p> Quality and capability of hardware This can include modems, WiFi routers and Ethernet or phone cables.</p>	<p> Network Congestion Speeds may slow when the network is experiencing periods of high usage that cause congestion. During periods of network congestion, we may de-prioritise your Home Wireless speeds. This could mean that during periods of congestion some data traffic will receive less priority over other traffic on the network, and you may experience slower Home Wireless speeds as a result.</p>
<p> WiFi signal interference Learn how to improve your home or office's WiFi signal.</p>	<p> Which content is being accessed There may be insufficient server capacity or other issues affecting a specific website or online game.</p>

In this context, it is unclear why it is necessary for the Guidance to be revised to potentially detail prescriptive requirements in relation to information about factors affecting fixed wireless services when providers, such as TPG Telecom, are acting in accordance with broader regulatory obligations and disclosing this information to consumers. The Consultation Paper does not provide any further specifics regarding any industry related issues in the promotion of fixed wireless services that would necessitate or support improved transparency measures through revisions in the Guidance.

We look forward to further engaging with the ACCC regarding the specific nature of any proposed revisions to the Guidance regarding fixed wireless services.

If you have any questions in relation to this response, please feel free to contact us.

Yours sincerely
TPG Telecom Limited

² As further examples, information on the Vodafone 4G Home Internet Plans is also available through a pop-up window when consumers select “Find more about speeds on this plan”; see <https://www.vodafone.com.au/home-internet/4g>. Information on the Vodafone 5G Home Internet Plans is also available through a pop-up window when consumers select “speed of 100Mbps” or “Max 5G Speed”; see <https://www.vodafone.com.au/home-internet/5g>.

Attachment: ACCC Questions for comment

ACCC question	TPG Telecom comment
1) How does the busy period for upload speeds affect the service quality experienced by end-users, including on higher speed services?	[c-i-c]
2) Are there any significant barriers to RSPs providing typical busy period upload speed information for: a) fixed-line broadband services, b) fixed wireless broadband services?	Please see body of TPG Telecom submission.
3) What four-hour period in a 24 hour period is the busy period for upload speeds for: a) fixed-line broadband services, b) fixed wireless broadband services?	[c-i-c]
4) How many services should constitute a sample for testing upload speeds, noting that the Guidance currently suggests 75 services for download speeds.	<p>If the ACCC considers it is in the consumer interest for RSPs to disclose typical busy period upload speed information, then a sample size of 75 services is sufficient for NBN products.</p> <p>We note that a larger sample size may be appropriate for fixed wireless services given the variability in results is greater between end-users than with NBN services and this is often driven by factors on the customer side (e.g. modem location).</p>
5) What constraints on a line or cell affect upload speeds in a way that deteriorates service quality experienced by an end-user?	Please see body of TPG Telecom submission.
6) What additional amendments to the Guidance would assist RSPs to provide upload speed information about their fixed line and fixed wireless services to consumers?	Not applicable.
7) How are the following attributes, other than speeds, noticeably different to consumers on fixed line and fixed wireless broadband services, and between fixed wireless technologies? What other attributes are relevant? a) availability and drop-outs b) latency.	Please see body of TPG Telecom submission regarding factors that affect fixed wireless speeds.
8) How are the following factors likely to influence how a fixed wireless broadband service will operate in practice? What other factors are relevant?	TPG Telecom considers the primary factors are (a) the location/geography of the consumer's residence and (b) factors that might affect WiFi signal interference (e.g. the position of the

<ul style="list-style-type: none"> a) frequency band used b) distance and unobstructed line of sight to base station c) fixed wireless access network cell congestion d) sources of interference e) weather f) location- specific factors g) use of external antenna h) professional or self-installation i) number of concurrent users j) placement and quality of Wi-fi modem. 	<p>modem/hardware in the consumer’s residence).</p> <p>The factors identified by the ACCC may influence how fixed wireless broadband services operate in practice to varying degrees. Please see the body of TPG Telecom’s submission regarding information provided to consumers by iiNet, as an example. To ensure consumer information is simple and easy to understand, iiNet focusses on the primary factors that affect speed and connectivity.</p>
<p>9) Are there any significant barriers to RSPs disclosing to consumers any of the factors above that may affect the speeds receive in fixed wireless broadband services?</p>	<p>Not applicable. TPG Telecom already discloses information regarding factors that may affect a consumer’s home wireless broadband connection speed and connectivity.</p>
<p>10) Are there applications that are less well supported by fixed wireless broadband services on different fixed wireless access networks? If so, in what way?</p>	<p>TPG Telecom does not have sufficient information to comment on the fixed wireless access networks of other providers and their capabilities.</p>
<p>11) To what extent do RSPs offer standalone plans on alternative fixed wireless access networks?</p>	<p>TPG Telecom offers standalone plans on 4G and 5G fixed wireless access networks.</p>
<p>12) What additional amendments to the Guidance would assist RSPs to disclose to consumers factors that may affect the speeds, download and upload, they would expect to receive on fixed wireless broadband services?</p>	<p>Not applicable.</p>