Review of Regulatory Arrangements for the National Broadband Network

Regulatory Issues Framing Paper

Submission by TPG Telecom Limited (TPG)

to

Panel conducting a Cost-Benefit Analysis and Review of Regulatory Arrangements for the National Broadband Network (Vertigan Review Panel)

TPG Position Statement

1. Telecommunications policy in Australia and around the world has been focused on ensuring that dominant providers (usually former government owned monopolies) are required to give access to bottleneck infrastructure on fair terms to competitors that do not have the same advantages.

2. Telstra is that dominant provider in Australia.

3. Structural separation of Telstra was, and remains, a desirable outcome. Regulatory arguments by Telstra and the length of time taken to reach conclusions impacted competition and adversely affected the interests of end users.

4. The establishment of NBNCo will have the effect of progressively creating the structural separation of fixed line network from Telstra. To that extent, the creation of the NBNCo is desirable. However, TPG is very concerned that the Australian economy will pay a very high price to achieve the goal of structural separation. As a government funded and owned entity, the NBNCo is never likely to be run as efficiently as a private enterprise.

5. Infrastructure based competition delivers the best outcome to end users.

6. The NBN was not intended to be a fixed line monopoly and it should not be a fixed line monopoly. Carriers (other than Telstra) who had invested many hundreds of millions of dollars building “superfast” networks prior to 2011 were, and should remain, permitted to make use of those networks to compete with the NBN and other broadband providers. The Government expressly wrote that right into law (Parts 7 and 8 of the Telecommunications Act).

7. Infrastructure based competitors investing their own capital and who are working within the confines of Parts 7 and 8 (in this document, referred to as “**Extension Fixed Line Competitors**”) will bring speedy and positive outcomes for end users.

8. There should be no requirement to regulate Extension Fixed Line Competitors for the following reasons:

    a. Most of the places where Extension Fixed Line Competitors (including TPG and AAPT) would extend their networks will already be covered by competitive infrastructure such as other GPON fibre providers and HFC;

   b. Superfast speeds are also currently available using 4G wireless technology and future developments on wireless technology; and

   c. NBNCo has the ability to become an additional competitor if it is deemed necessary.

9. However, if there is a bottleneck and a competitor believes that it should be given access to the network facilities of an Extension Fixed Line Competitor, there is a current mechanism in the Competition and Consumer Act which could operate to consider and, if necessary, permit that to occur. If reasonable competitive outcomes are not achieved, those provisions could be made more robust.

10. TPG does fear that the economics of the NBNCo are and will continue to be strained and considers that the Panel's working assumption of "operation on a commercial basis" may be unrealistic and should be revisited. But it does not believe that they are threatened significantly by Extension Fixed Line Competitors. In the case of the TPG FTTB build, TPG anticipates reaching a potential 500,000 premises. Many of those premises will be entrenched HFC customers, due to their requirement for Foxtel Television. Of the remaining addressable market, TPG might reasonably only expect to be successful in securing a percentage of the customers. The number of households who will obtain TPG FTTB will be insignificant compared to the number of households to be targeted by NBNCo.

11. By contrast, the NBNCo business case is threated by Telstra. The reason for this is that Telstra has been placed in a significantly advantaged position in the communications future of the country:

    a. Telstra has not been asked to divest itself of its massive backhaul infrastructure;
    b. Telstra has not been required yet to divest itself of its interest in Foxtel or the HFC;
    c. Telstra has a vast network of towers and other high sites from which to deliver services. This admittedly occurred following private investment but Telstra was advantaged in its investment by:
        i. its ability to use the extraordinary profits that it had generated by reason of its position as the dominant fixed line carrier in the Australian market; and
        ii. the customer base that it had based on its entrenched market position as the incumbent;
    d. Telstra is being paid billions of dollars under the copper divestment arrangements with the Government;
    e. These billions of dollars, together with Telstra's backhaul and towers and massive amounts of spectrum will enable Telstra to deliver 4G, 5G and future wireless technologies to the vast majority of households in Australia.

12. Wireless technology is progressing rapidly and TPG believes that these developments should be considered again in connection with decisions being made relating to NBNCo. Today, in Australia the average download speed over 4G is 25Mbps (Comms Day 12 March 2014 reporting OpenSignal's state of LTE report). The future will bring other technologies that will make huge bandwidth available wirelessly. Speeds will only increase as technology improves and more spectrum is made available and they will be provided cheaply, most likely significantly more cheaply than will be available to end users using NBNCo fixed line (noting that the price of NBNCo

fixed line services will be inflated by CVC Costs and the other inefficient costs that TPG believes are the inevitable consequence of the NBNCo's structure).

13. Telstra has seen, and taken, the opportunity that these developments present. The business case of the NBNCo will inevitably be threatened by Telstra's wireless products.

14. However, technological developments in wireless can also present an opportunity for NBNCo to collapse its costs of supply to regional Australia. The majority of NBNCo costs will be consumed trying to service users in regional Australia. The government might look closely at policies to consider increasing the percentage of households that will be serviced with wireless broadband. TPG believes that the immediate requirements of the majority of households in regional Australia would be more than adequately serviced by existing wireless technologies and that rapid advancement in such technologies will meet future requirements.

15. The primary inhibitor to telecommunications services in regional Australia remains the high cost of backhaul. This could be resolved by government funded construction together with the specialist release of the remaining 700mhz spectrum to the NBNCo for use in the bush. Whilst not technically equivalent to services that may be available in the city, TPG believes that good service would be available. It would be preferable if delivery of service be achieved by the private sector. Public/private partnerships, Government anchor tenant arrangements, and direct subsidy are all methodologies that should be considered.

RESPONSES TO SPECIFIC QUESTIONS

1. TPG believes that the current structural model for the industry is acceptable. However, if the Panel is considering taking steps to increase or alter regulation in a way that would limit the capacity of Extension Fixed Line Competitors to compete (which would be presumably done because the panel considered it was necessary to protect the NBNCo business case), the Panel should also look at ensuring that competitors are able to obtain access to the networks of dominant providers in the wireless broadband market (e.g., by way of declaration or some other regulation).

2. As indicated above, TPG believes that the panel should revisit the assumption that the NBNCo will be operated "on a commercial basis". TPG would not otherwise be able to suggest priorities.

3. NBNCo should remain wholesale only. TPG holds the view that, other than Telstra who would have both the network capacity and capital to continue its domination of the retail market, other providers should be permitted to compete at a retail level, but remain subject to having services declared should the ACCC consider that necessary. TPG consider that, if Telstra's structural separation is based on NBNCo paying Telstra progressively to disconnect customers from Telstra's legacy fixed-line networks, then the following assumptions and policy objectives must continue to apply (such that Telstra should not be permitted to become an Extended Fixed Line Competitor):

- for some period, Telstra must exclusively use the NBNCo as the fixed line connection to premises in the NBN fibre footprint
- other than in limited, interim circumstances, Telstra must not build or operate Passive Optical Network infrastructure as the fixed line connection to premises for some period.

4. Regulations should exist to fetter industry participants with extraordinary market power. They should apply across the industry, including to NBNCo.

5. Given its practically unfettered access to capital and its capacity to request and obtain legislative amendment (for example as was done for the Low Impact Facilities Determination), NBNCo is inherently advantaged competitively. TPG is unable to suggest a method by which such advantage could be overcome. Government policy should reasonably apply to direct NBNCo resources to areas where competitive advantage does not present issues.

6. TPG does not consider that additional regulations or limitations should be necessary on other fixed line providers. Those fixed line providers are likely to be operating in markets that have competitive infrastructure. As discussed, this will most likely produce outcomes that are in the best interests of consumers.

7. NBNCo's remit should be to provide services in locations where industry participants are not providing end users with a satisfactory outcome (perhaps as measured by the standards described in the working assumptions). The "adequately served" concept should remain in place.

8. TPG considers that Part XIC processes should be enough to achieve satisfactory outcomes in respect of areas being serviced by fixed line competitors other than the NBNCo.

9. TPG considers that the question is unnecessary. Extension Fixed Line Competitors are likely to be operating in markets that have competitive infrastructure. As discussed, this will most likely produce outcomes that are in the best interests of consumers. TPG would strongly disagree with any proposal under which an Extension Fixed Line Competitor should be required to construct more network than it was willing to complete (i.e., service all premises in a particular area) unless these are funded or subsidised by the government or the NBNCo.

10. As indicated above, TPG considers that the provision of services to regional Australia with the increased use of wireless broadband and remaining spectrum may be possible on a commercial basis. However, to the extent that this is not possible, the social objective could be achieved by industry wide levy similar to the USO, but on the basis that all industry participants, both carriers and carriage service providers, and potentially other over-the-top content providers who rely on networks to provide services are required to contribute. Alternatively, subsidy from general budget expenditure such as the broadband guarantee or similar arrangements could be considered. The currently proposed cross-subsidy model will tend to entrench inefficiencies in the important economic drivers of the Australian economy, being the major population centres.

11. See response to 10.

12 – 13. TPG has no comments on these questions.

TPG Telecom Limited
Phone 02 8220 6000
Contact: Tony Moffatt