



Submission by AAPT Limited (19 October 2012)

in response to

**ACCC Open Letter, seeking submissions on congestion on
ADSL networks, dated 5 September 2012**

PUBLIC VERSION



Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to participate in the Australian Competition and Consumer Commission (**ACCC**) public inquiry into the making of a final access determination for the wholesale ADSL service (**Inquiry**). This submission specifically responds to the ACCC's open letter seeking submissions on congestion, dated 5 September 2012 (**Congestion Letter**).
2. As stated in the Congestion Letter, the ACCC is seeking submissions on the *“relevance of congestion in setting terms and conditions of access to the declared wholesale ADSL service”*. Accordingly, the scope of this submission is limited to providing AAPT's views to assist the Commission in determining this preliminary issue. While Telstra's submission to the Inquiry made on 24 August 2012 (**Telstra Submission**) raises other secondary issues, AAPT does not intend to address any of those issues in this submission.
3. As set out in further detail below, it is AAPT's view that the matter of congestion on ADSL networks is not relevant to the Inquiry. Should the Commission be minded to determine that congestion is relevant, AAPT would expect that it and other stakeholders will have a further opportunity to submit on that conclusion and the secondary issues raised in the Telstra Submission before the Commission reaches a final decision.

There is no congestion problem

4. AAPT submits that there is no congestion problem to be addressed in setting the terms and conditions of access to the declared W-ADSL. Indeed, AAPT is at a loss to understand what problem Telstra's proposal to impose a congestion charge is intended to address.



5. The concept and existence of network congestion and scarcity of bandwidth at peak times is nothing new. It has always existed and is a feature of the internet, a service which is provided over a shared network on a “best efforts” basis. It is true that ADSL networks (like any communications network) are susceptible to capacity issues. These are well-known and already managed and addressed by service providers who are incentivised to do so in order to maintain an acceptable level of customer experience or risk losing market share. There is nothing special about the ADSL network that requires a new or differentiated approach to current practices for dealing with network congestion.
6. Even if there were indeed a congestion issue as Telstra proposes, AAPT does not understand why Telstra is only raising it now, at this late stage of the Inquiry.

Network congestion already managed and priced

7. As set out above, AAPT acknowledges that congestion on the ADSL network can occur. Such network congestion can cause lag or latency issues that appear at some times of the day or on some days, but not others. This can manifest as a lowering of the customer experience in the form of:
 - slow speeds and packet loss in uploads and downloads; and
 - glitches and packet loss while using applications like gaming audio/video streaming.
8. Any measurement of congestion will always involve an arbitrary exercise of drawing a line at the point where scarcity of bandwidth will unacceptably impact end-users’ experience. Where that line is drawn can be different depending on various factors, including customer expectation (which would in turn depend on the class of customer). Accordingly, service providers may choose to manage congestion differently. However, when congestion ultimately becomes unacceptable, then infrastructure investments should be made to provide extra capacity and pricing can be adjusted to reflect this.



Conclusion

13. For the reasons set out above, AAPT submits that congestion is not relevant to setting the terms and conditions for access to the W-ADSL declared service.