



TPG SUBMISSION ON TELSTRA'S STRUCTURAL SEPARATION UNDERTAKING

A. Overarching Equivalence Commitment:

TPG considers that the Overarching Equivalence Commitment contained in the revised draft SSU will not serve to achieve an outcome that wholesale customers will be placed in a position that they are able to compete with Telstra retail.

The effect of section 9 of the SSU is that the pricing that Telstra will supply Regulated Services to wholesale customers will be equivalent to the Comparable Retail Services Telstra itself provides.

The definition of Comparable Retail Services lists out very specific comparators.

For example, Telstra Megalink 2mbps is the Comparable Retail Service for Domestic Transmission. So Telstra's promise in Clause 9 appears to be that Telstra will sell Domestic Transmission to TPG for the equivalent price that Telstra charges its retail customers for Telstra Megalink 2mbps. It is not clear if Telstra will sell TPG 100Mbps of Domestic Transmission for the same price as the Telstra Megalink 2Mbps service but that appears to be the simple reading of section 9.

Similarly, the commitment is to sell WLR for a price which is the same as the retail price for line rental.

Other services have similarly limited comparators, the effect of which is to significantly reduce the effectiveness of the equivalence commitment in respect of its most important feature - price.

Clearly, that outcome is not the outcome that the SSU is designed to require. The outcome that the SSU should be requiring is that the effective price Telstra charges itself for the various components of retail services is the price that it charges its wholesale customers so that Telstra retail and each wholesale customer is in a position to compete with equivalent underlying costs bases for the regulated services.

That outcome is expressly excluded by Telstra in the lengthy list of exclusions contained in section 9(b), in particular the stipulation that nothing in section 9 will require Telstra to implement Transfer Pricing which is pricing as between Telstra business units.

In relation to the equivalence commitment for technical and operational quality and operational systems, again, the comparators are very specific. Domestic Transmission is limited to the 2mbps Megalink service. TPG and other wholesalers would normally require Domestic Transmission with significantly greater bandwidths than this and using Ethernet as the underlying technology. For other services however, TPG accepts that the equivalence commitment on the non-price terms is probably acceptable.

B. Enforcement of Commitments

TPG considers that the Telstra's requirements of wholesale customers as drafted in the SSU will continue to promote the delaying and gaming tactics that have been prevalent for the past years. TPG submits that it should not be a requirement for a wholesale customer to report a commitment breach to Telstra. Telstra should itself be monitoring its own performance. This creates a positive incentive for Telstra to ensure that it maintains systems that will cause it to comply with its own commitments rather than to traverse a fine line in the hope that neither the ACCC nor a wholesale competitor pulls them up on a compliance issue.

C. Wholesale DSL

TPG considers it essential that the ACCC conclude its decision on whether or not the Wholesale DSL service is to be declared or not before accepting the SSU. The SSU only covers Regulated Services. Telstra has previously shown itself to be unwilling to act with equivalence unless services are regulated. The subject of Domestic Internet Peering has been one which has caused persistent aggravation in the industry over many years. The SSU will not resolve that issue since "peering" is not a Regulated Service.

TPG considers that Telstra is breaching the equivalence requirement even with the pricing proposed by Telstra in its supporting submission.