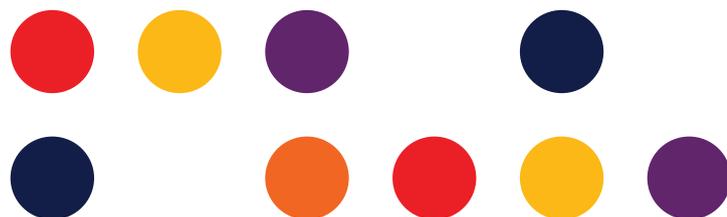


# **Superfast Broadband Access Service and Local Bitstream Access Service declaration inquiry - discussion paper**

## ACCC

September 2020

Public submission



Public

## Summary

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TPG Telecom Ltd (**TPG**) welcomes the opportunity to make this submission to the ACCC's discussion paper on the Superfast Broadband Access Service (**SBAS**) and Local Bitstream Access Service (**LBAS**) declaration inquiry (**Discussion Paper**).

TPG considers that continued declaration of the SBAS and LBAS is no longer necessary or appropriate and is not in the long-term interests of end users (**LTIE**) as required by Part XIC. The statutory criteria for the declaration of SBAS and LBAS are no longer met and the statutory provision requiring the ACCC to declare LBAS has now been repealed.

NBN Co Limited (**NBN Co**) has substantial market power in the wholesale market for superfast broadband services. The SBAS and LBAS declarations are not directed at NBN Co, but are directed at smaller competitors to NBN Co that do not have NBN Co's market power and, indeed, are the only current and/or likely future source of competition to NBN Co in that market.

The superfast network rules (of which the SBAS and LBAS declarations are an integral part) were ostensibly justified on the basis that they created a 'level playing field' for the NBN. However, a desire to apply 'equivalent regulation' failed to recognise that NBN Co has a near-monopoly over the supply of certain wholesale services and hence greater regulation of the NBN is entirely justifiable and indeed necessary from a competition policy perspective. Conversely, imposing the same heavy regulation on smaller entities such as TPG has a perverse impact which should concern the ACCC as it reduces the ability of those smaller entities to effectively compete with the NBN to reduce the market power of NBN Co.

TPG considers that the existing declarations of SBAS and LBAS no longer have any material benefit to competition. [c-i-c]

The take-up of wholesale services from smaller providers as a consequence of the declarations has been trivial and is likely to diminish, not increase, in the face of NBN Co's extensive over-build. If the declarations were removed, the reduced regulatory burden is more likely to encourage greater market entry and promote greater competition.

TPG notes a key conclusion of the '*Independent Cost-Benefit Analysis of Broadband and Review of Regulation Report*' in August 2014 as follows (page 11):

*"Regardless of whether and when a move to disaggregating NBN Co occurs, the regulatory structure should be adjusted to better support competition. Statutory obstacles to market entry and other barriers to competition should be eliminated or at least reduced, while still ensuring regulation can deal promptly and effectively with any anti-competitive behaviour. Introducing greater flexibility into the regulatory*

*arrangements, including through the removal of blanket prohibitions that affect infrastructure competitors, would enable greater timeliness, innovation and responsiveness in supply and encourage more efficient practices to be adopted.”*

And (at page 17):

*“However, given the advantages NBN Co enjoys, the panel believes that the most realistic chance for any significant long-term competition to develop is to allow existing and future infrastructure to compete and to serve as a platform for cost-effective expansion. In contrast, under the current policy approach, NBN Co would be a geographically ubiquitous supplier of network services that controlled all the major access networks capable of being used for high-speed broadband, whose costs by then will be sunk”*

As the ACCC will be aware, TPG has sought to compete in the wholesale market for the supply of superfast broadband services. However, TPG’s ability to effectively compete against NBN Co has been impeded by the costs and restrictions imposed by the current regulatory framework, including through the LBAS and SBAS declarations. TPG has faced a regulatory structure that was intended to protect NBN Co from competition, rather than promote competition with the NBN. Now that the NBN rollout is nearing completion, TPG considers that the practical benefit of the LBAS and SBAS declarations to consumers is minimal. However, the compliance burden imposed on companies such as TPG should not be under-estimated and the economic cost of continuing to artificially insulate NBN Co from competition is high.

[c-i-c]

Against this background, TPG believes that continued declaration of the LBAS/SBAS does not promote the efficient use of infrastructure, does not promote investment, and does not promote competition in the relevant markets as required by Part XIC. Rather, the opposite is true. Each of these matters would be promoted if the declarations were removed and NBN competitors were deregulated to enable them to better compete with the NBN.

However, if the ACCC decides that it is appropriate to continue to declare the SBAS/LBAS, then TPG considers changes to the service description are not necessary.

## Response to the ACCC's discussion paper questions

Discussion Paper Question	TPG response
<p><b>Q1.</b> Do you consider that the LBAS service description as declared in 2012 remains current and appropriate? Please explain the reasons for your view.</p> <p><b>Q2.</b> Do you consider that the SBAS service description as declared in 2016 remains current and appropriate? Please explain the reasons for your view.</p> <p><b>Q3.</b> Should the LBAS and SBAS service descriptions be combined under a single declaration instrument?</p>	<p>As discussed above, TPG considers declaration of the LBAS and SBAS is no longer necessary or appropriate. The criteria for declaration are not met under Part XIC.</p> <p>However, if the ACCC considers it appropriate to continue to declare the LBAS and SBAS, TPG is of the view that changes to the service descriptions as previously declared are <u>not</u> required.</p>
<p><b>Q4.</b> Do you consider that Telstra's fibre networks in South Brisbane and Velocity estates should continue to be exempt from the requirement to provide a Layer 2 bitstream service?</p>	<p>TPG does not express any view on the exemption granted to Telstra's fibre networks in South Brisbane and Velocity estates.</p>
<p><b>Q5.</b> How has the NBN affected network competition in high-speed broadband services markets?</p>	<p>NBN Co provides effective and extensive competition to non-NBN wholesale networks currently covered by the LBAS and SBAS declarations.</p> <p>[c-i-c]</p>
<p><b>Q6.</b> What is the extent of competition at the wholesale level of the superfast broadband services market, and what is the risk of competition not developing in the future?</p> <p><b>Q7.</b> Have the LBAS and SBAS declarations affected competition in the retail market for non-NBN superfast broadband services?</p> <p><b>Q8.</b> Are there geographic areas where competition at the wholesale or</p>	<p>TPG considers that regulation of superfast broadband networks has not resulted in significant use by access seekers. There are only a few retail service providers currently supplying services to end-users over non-NBN networks, particularly when compared with the number of retail services providers who supply services over the NBN.</p> <p>The ACCC should recognise that the LBAS and SBAS declarations have not stimulated competition in the wholesale and retail markets. The declarations</p>

<p>retail levels is considered to be effective, if so where are these areas and why is competition considered effective?</p> <p><b>Q9.</b> Are there any particular barriers to entry impacting competition in the wholesale or retail markets for superfast broadband services?</p>	<p>were part of a misguided government policy to insulate the NBN from competition by increasing the costs of potential NBN competitors, thereby impeding competition in those geographic areas where the NBN was exposed to potential competition.</p> <p>If the ACCC wishes to promote competition, it should remove the declaration of the LBAS and SBAS, in order to lower regulatory barriers which prevent non-NBN providers from competing with NBN Co in the wholesale market.</p>
<p><b>Q10.</b> Are there any capacity or availability constraints which might limit the ability of fixed and mobile wireless technologies to provide large numbers of end-users with a high-speed broadband service comparable to a fixed line service?</p> <p><b>Q11.</b> Are wireless broadband services (offered over mobile broadband, fixed wireless or satellite) substitutes for fixed line broadband services and if so, to what extent?</p>	<p>TPG considers that wireless broadband services (including mobile broadband, fixed wireless and satellite) are not wholly substitutable for fixed line services.</p>
<p><b>Q12.</b> Has the Industry Code alleviated competition concerns in the supply of VDSL services to buildings and should these services continue to be subject to the LBAS/SBAS declarations?</p>	<p>TPG does not express any view in relation to the Next-generation Broadband Systems Deployment in Customer Cable Industry Code developed by Communications Alliance.</p>
<p><b>Q13.</b> Do proposed legislative changes regarding the regulation and supply of superfast broadband services enhance or diminish the need for declaration of the LBAS and/or SBAS?</p>	<p>TPG is a strong supporter of the reforms to the superfast network rules, which will increase the ability of providers to compete with NBN Co.</p> <p>The ACCC's removal of declaration of the LBAS and SBAS would be consistent with the relaxation of the superfast network rules, which in turn aligns with the current policy changes aimed at fostering competition in superfast broadband services.</p>
<p><b>Q14.</b> Do you consider that continued declaration of the: a) LBAS b) SBAS will promote competition and the economically efficient use of infrastructure? Please explain the reasons for your view.</p>	<p>As discussed above, TPG does <u>not</u> agree that continued declaration of the LBAS and SBAS will promote competition, nor will this promote investment, nor will this promote the economically efficient use of infrastructure. Rather, TPG considers that these declarations impede the evolution of effective</p>

	competitors to the NBN, impede efficiency, retard investment, retard competition and ultimately harm the LTIE.
<b>Q15.</b> Are the markets identified in the 2016 declaration decision still relevant for the SBAS? Are the identified markets also relevant for the LBAS?	TPG considers the relevant markets for the purposes of the LBAS and SBAS declarations should continue to be wholesale and retail markets for superfast broadband services of normally 25 Mbps or more with monthly download limits of at least 50Gb.
<b>Q16.</b> If the ACCC were to continue the LBAS and/or SBAS declarations: a) Should the service description cover the services nationally, or be limited in geographic scope? b) Will carrier-specific exemptions promote the LTIE?	TPG considers that the ACCC should adopt a national market definition for the wholesale and retail supply of superfast broadband services.  The carrier specific exemptions currently in place, including those granted to TransACT (a subsidiary of TPG) promote the LTIE.
<b>Q17.</b> What is an appropriate duration for potential LBAS and SBAS declarations? Please explain the reasons for your view.	If the ACCC deems it necessary to continue declaring the LBAS and SBAS, TPG considers a shorter term of three years is appropriate to recognise that the telecommunications industry is in the process of significant change, including due to the completion of the NBN, deployment of 5G networks and reforms to the superfast broadband rules. These changes are acknowledged by the ACCC in its Discussion Paper and a shorter declaration period will enable the ACCC to revisit the declaration at the appropriate juncture.