



Submission by TPG Telecom Limited (TPG)

to

Australian Competition and Consumer Commission (ACCC)

**Dark Fibre and NBN Wholesale Aggregation – Proposed Record Keeping Rules
Consultation Paper**

1. Dark Fibre is not bottleneck infrastructure. Any carrier can invest and construct their own dark fibre network should they choose to do so. There is no barrier to entry and many carriers have installed fibre on both small and more substantial scales. Alternatively, there is a declared service that is available for parties unwilling to invest in building their own dark fibre – DTCS. Regulatory intervention is not warranted in the dark fibre market. Accordingly, TPG does not support the introduction of yet further reporting requirements that will impose a regulatory burden that will do little to promote competition or the long term interest of end users (LTIE).
2. TPG sets out below its response to each question posed in the Consultation Paper.

Question 1 - Do you consider that there have been developments in the market for dark fibre since the ACCC market study in 2017-18 that have changed the competitive dynamics of the market?

TPG does not consider that there has been any change to the competitive dynamics of the market. Dark fibre continues to compete with DTCS and the reason that the market for dark fibre exists at all is because the economic decisions made by Telstra and Optus not to offer dark fibre allowed TPG and Vocus and other companies to find a niche to compete and is ultimately in the LTIE.

The imposition of regulation which mandated dark fibre would have stymied the investment case for TPG, Vocus and others. Indeed, if regulation of dark fibre were to be introduced, it will no doubt adversely impact TPG's decisions to make further investment.

The fact that dark fibre may not be available to all NBN POIs is not a basis to determine that dark fibre should be declared or otherwise regulated. Any carrier has the ability to build dark fibre and any person requiring transmission can acquire it from a number of different suppliers. Regulation would do little to encourage new dark fibre providers into the market. It would only act to thwart current providers' investment decisions.

Question 2 - Do you consider that there is a need for an RKR for dark fibre?

TPG opposes an RKR for dark fibre and certainly opposes the RKR as currently drafted by the ACCC. The proposed RKR for dark fibre is overly burdensome. TPG does not currently have systems in place to track the sale of dark fibre for the purposes of the proposed RKR and it would take significant work and resources to ensure that TPG would be in a position to provide quarterly reports about the supply and pricing of dark fibre on an 'access seeker by access seeker' basis. Even for Declared Services, industry does not need to provide quarterly reports containing such detailed information about pricing and supply of those services.

TPG urges the ACCC not to rush into imposing regulatory burden on current dark fibre providers in the form of an RKR. These current dark fibre providers (TPG included) are the very providers that contributed to the inception and competitiveness of this niche market in the first place. The burden of providing such frequent, information intensive report on such providers should not be underestimated. TPG has never behaved like a traditional incumbent provider. Its model is more aligned with a market disruptor that provides competitively priced services in response to demand.

In any case, an RKR for dark fibre should not require any more information than what is currently required under the Audit of Telecommunications Infrastructure Assets RKR, which is provided by industry on an annual basis (not quarterly).

Question 3 - Do you consider that the NNI Link product from NBN Co or other developments since the ACCC market study in 2017-18 have changed the competitive dynamics of the market for wholesale aggregation services?

While TPG does not support NBN competing in the market for wholesale aggregation (because the more the NBN creeps into markets with the benefit of capital on terms that would not be available to private entities, the less natural the economics of the industry), the introduction of the NNI Link product from NBN Co should act to lower the barrier to new entrants by removing the need for RSPs to make investments to connect to the 121 POIs. Consequently, this removes the need for the ACCC to consider any further consideration of regulating wholesale aggregation services.

Question 4 - Do you consider that there is a need for an RKR for NBN wholesale aggregation services?

TPG strongly opposes the an RKR for NBN wholesale aggregation services and certainly opposes the RKR as currently drafted by the ACCC.

Again, the proposed RKR is overly burdensome and TPG does not currently have systems in place to track the sale of NBN wholesale aggregation services for the purposes of the proposed RKR and it would take significant work and resources to ensure that TPG would be in a position to provide quarterly reports about the supply and pricing of wholesale aggregation services on an 'access seeker by access seeker' basis.

Given the introduction of the NNI Link product from NBN Co, the ACCC should continue to 'wait and see' how the market will be shaped before it seeks to impose regulatory burden on current providers of NBN wholesale aggregation services.

Question 5 - Are there any other service providers that should be considered for inclusion in the scope of the proposed RKRs (see Section 6.1)? Alternatively, should any listed above not be included?

For the reasons set out above, TPG strongly opposes the introduction of an RKR for either dark fibre or NBN wholesale aggregation services, in any form.

Question 6 - Is a submission due date of two months following the reporting period sufficient to collate and submit all necessary data items requested as part of the proposed RKRs? If not, please explain why.

For the reasons set out above, TPG strongly opposes the introduction of an RKR for either dark fibre or NBN wholesale aggregation services, in any form and the time period would not be sufficient.

Question 7 - Do you support the proposed quarterly reporting frequency until 30 June 2021 with the RKR being reviewed leading up to this date (following the completion of the NBN rollout)?

For the reasons set out above, TPG strongly opposes the introduction of an RKR for either dark fibre or NBN wholesale aggregation services, in any form. Certainly, quarterly reporting is not warranted and if an RKR were introduced, annual reporting would be more appropriate.

Question 8 - Do you consider the information proposed to be collected for dark fibre services would provide an appropriate insight into the market?

No. Please refer to TPG's response to Question 2 above.

Question 9 - Do you consider the information proposed to be collected for NBN wholesale aggregation services would provide an appropriate insight into the market?

No. Please refer to TPG's response to Questions 2 and 4 above.

Date: 2 April 2019