



# Statement of Issues

11 June 2015

## TPG Telecom Limited – proposed acquisition of iiNet Limited

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### Purpose

1. This Statement of Issues aims to:
  - give the Australian Competition and Consumer Commission's (**ACCC**) preliminary views on competition issues arising from TPG's proposed acquisition of iiNet
  - identify areas of further inquiry
  - give all interested parties an opportunity to comment
  - Invite interested parties to submit information to assist us in our assessment of the issues.

### Overview of ACCC's preliminary views

2. The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010* (the **Act**). Section 50 prohibits acquisitions that substantially lessen competition in a market, or are likely to do so.
3. The ACCC has divided its preliminary views in this Statement of Issues into two categories, 'issues that may raise concerns' and 'issues unlikely to raise concerns'.

#### Issues that may raise concerns

- Horizontal effects in the market for supply of retail fixed broadband services.
4. iiNet is an important competitor in the market for supply of retail fixed broadband services, and has a particular focus on customer service. The ACCC's preliminary view is that the acquisition of iiNet may lead to a substantial lessening of competition, potentially resulting in higher prices and/or degradation of the non-price offers available in the market, including customer service. The

ACCC is considering these issues further, including the extent of constraints posed by other competitors.

### Issues unlikely to raise concerns

- Vertical effects in the market for supply of wholesale data transmission services.
5. The proposed acquisition is likely to increase the extent to which TPG is vertically integrated, but this would be unlikely to materially alter the level of competition in the market for the supply of wholesale data transmission (**wholesale transmission**) services or any other relevant market. iiNet currently acquires wholesale transmission services (also known as backhaul) from third parties. If the proposed acquisition proceeds, the merged entity would likely have an incentive to use its own wholesale transmission network. This would reduce iiNet's demand for wholesale transmission services from other third party transmission providers. The ACCC's preliminary view is that this would be unlikely to lead to a substantial lessening of competition in any relevant market.
- Horizontal effects in markets relating to the supply of retail fixed voice, mobile voice, mobile broadband and subscription television services.
6. Given the relatively limited presence of the merger parties in markets relating to the supply of these services, and the existence of a number of competitors, the ACCC's preliminary view is that the proposed acquisition is not likely to raise competition concerns for the supply of these services. However, the major telecommunications service providers typically offer bundling as a way of competing to attract customers. Therefore, concerns arising from the proposed acquisition in the market for the supply of retail fixed broadband services may be relevant to other markets.

### Making a submission

7. The ACCC is seeking submissions from interested parties, particularly on the following key issues:
- The likelihood of a substantial lessening of competition in the market for the supply of retail fixed broadband services.
  - The potential for the acquisition of iiNet by TPG, which is vertically integrated in wholesale transmission, to substantially lessen competition for the supply of wholesale transmission services.
8. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
9. Interested parties should provide submissions by no later than 5pm on 2 July 2015. Responses may be emailed to [TPG-iiNet-Merger@acc.gov.au](mailto:TPG-iiNet-Merger@acc.gov.au) with the title: TPG's proposed acquisition of iiNet.
10. The ACCC anticipates making a final decision on 20 August 2015. However, this timeline can change. To keep abreast of possible changes to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at [www.acc.gov.au/mergersregister](http://www.acc.gov.au/mergersregister).

## Confidentiality of submissions

11. The ACCC will not publish submissions regarding the proposed acquisition. The ACCC will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with section 155AAA of the Act. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information.

## About ACCC 'Statements of Issues'

12. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
13. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the parties to the proposed acquisition and other interested parties with the basis for making further submissions should they consider it necessary.

## Timeline

Date	Event
2 April 2015	ACCC commenced review under the Merger Process Guidelines
11 June 2015	ACCC publication of Statement of Issues
2 July 2015	Closing date for submissions relating to Statement of Issues
20 August 2015	Proposed date for announcement of ACCC's final decision

## The parties

### TPG

14. TPG provides telecommunications services, including:
  - retail fixed and mobile broadband services, using its own and other providers' technologies, including asymmetric digital subscriber line 2+ (**ADSL2+**), very high bit-rate digital subscriber line 2 (**VDSL2**) and fibre
  - retail fixed and mobile voice services, including fixed line, voice over internet protocol (**VOIP**) and subscriber identity module (**SIM**) only mobile plans

- subscription television services supplied over the internet
  - combinations of the above as part of bundled packages
  - wholesale transmission services.
15. TPG supplies telecommunications services to residential, business and government customers. TPG, through its subsidiaries, also provides wholesale transmission services to other telecommunications service providers.
16. TPG is listed on the Australian Securities Exchange (ASX:TPM). TPG subsidiaries include two companies with substantial wholesale transmission networks: AAPT and Pipe Networks. TPG already owns 6.25 per cent of iiNet. TPG's brands include Soul, Chariot and TPG.

#### *iiNet*

17. iiNet provides telecommunications services, including:
- retail fixed and mobile broadband services (using its own and other providers' technologies), including ADSL2+, VDSL2, hybrid fibre coaxial (HFC), cable and fibre
  - retail fixed and mobile voice services (including fixed line, VOIP and SIM only mobile plans)
  - subscription television services supplied over the internet
  - combinations of the above as part of bundled packages
  - some wholesale transmission services, but to a much lesser extent than TPG.
18. iiNet supplies services to a range of customers, including residential, business and government customers.
19. iiNet is listed on the Australian Securities Exchange (ASX:IIN). iiNet subsidiaries include the retail service providers Adam Internet, Westnet and Internode.

## **Other industry participants**

#### *Telstra*

20. Telstra is the major wholesale and retail supplier of telecommunications services, including fixed broadband services, in Australia. Telstra owns the near ubiquitous copper network used by retail service providers to supply fixed line telecommunication services. It also owns HFC networks in capital cities, a national mobile telecommunications network and 50 per cent of the subscription television provider, Foxtel. Telstra is the largest supplier of retail fixed broadband by number of subscribers in Australia.

### *Optus*

21. Owned by the Singtel Group, Optus is a national provider of wholesale and retail telecommunications services, including broadband services (fixed and mobile) and voice services (fixed and mobile). It owns a national mobile telecommunications network and HFC networks in Brisbane, Sydney and Melbourne. It also provides wholesale transmission services. Optus is estimated to be the third largest supplier of retail fixed broadband by number of subscribers in Australia.

### *M2 Telecommunications Group*

22. M2 Telecommunications Group (**M2**) is a national provider of retail and wholesale telecommunication services, including fixed broadband services. It operates through a number of subsidiaries. M2's brands include Dodo, Eftel, iPrimus and Commander. M2 is the fifth largest supplier of retail fixed broadband by number of subscribers in Australia.
23. On 27 April 2015, M2 made a rival bid for iiNet. On 6 May 2015, the iiNet board recommended TPG's counterbid for iiNet to its shareholders.

### *Nextgen*

24. Nextgen is a national telecommunications carrier which specialises in the provision of wholesale transmission services. It is one of the four major providers of wholesale transmission services, along with Telstra, Optus and TPG.

### *NBN Co*

25. On 7 April 2009, the Australian Government of that time announced that it intended to establish the National Broadband Network Corporation Ltd (**NBN Co**) to build and operate a wholesale only, open access national broadband network (**NBN**).
26. The current Australian Government's objective is for NBN Co to roll out the NBN network using a mix of fibre-to-the-premises, fibre-to-the-node, fibre-to-the-basement, HFC, wireless and satellite. The choice of technology will be made on an area-by-area basis.

### *Other retail service providers*

27. There are a number of smaller retail service providers which generally operate through reselling services from wholesale service providers.

## **Industry background**

### *Regulatory framework*

28. The provision of telecommunications services in Australia is regulated by, among other measures, Parts XIB and XIC of the Act. Part XIB contains industry specific prohibitions against anti-competitive conduct in the telecommunications industry, which are based on the general prohibitions in Part IV of the Act.
29. Part XIC establishes an industry specific regime for regulated access to carriage services that are considered important inputs for the supply of retail services.

The ACCC is able to declare services and regulate them by directly setting price and non-price terms relating to the supply of these services.

30. Under this framework, the ACCC regulates a number of essential inputs to the provision of retail fixed broadband services over both Telstra's copper network, and fibre networks including the NBN.

#### *Fixed broadband services*

31. In Australia, fixed broadband services are provided to residential and business customers using a range of fixed-line technologies, including ADSL2+ (provided over Telstra's copper network), VDSL2 (used in fibre-to-the-basement networks), cable services (provided predominantly over Telstra and Optus' HFC networks) and fibre services (provided over the NBN and other fibre networks).
32. ADSL2+ is currently the dominant technology for the provision of residential fixed broadband in Australia.
33. Competing providers of retail ADSL broadband services can supply these services in two ways:
  - Installing digital subscriber line access multiplexer (**DSLAM**) equipment in Telstra's exchange buildings and purchasing either an unconditioned local loop service or line sharing service from Telstra to deliver broadband over the copper line to the premises. Both of these services are regulated by the ACCC under Part XIC of the Act. Retail broadband providers refer to this approach as 'on-net' supply.
  - Purchasing a wholesale ADSL service from a DSLAM operator and on-selling this service to its retail customers. Telstra's supply of wholesale ADSL services is regulated by the ACCC under Part XIC of the Act. Retail broadband providers refer to this approach as 'off-net' supply.
34. Fixed broadband services in Australia are also provided over HFC networks. Telstra and Optus currently operate the two largest HFC networks. Optus' network covers parts of Brisbane, Melbourne and Sydney while Telstra's network covers parts of Brisbane, Melbourne, Sydney, Adelaide, Perth and the Gold Coast. TransACT (owned by iiNet) and Opticomm also operate smaller HFC networks in regional and suburban areas. Opticomm is the only HFC operator to offer wholesale services.

#### *Wholesale transmission services*

35. Wholesale transmission services are wholesale services that carry large volumes of voice, data and video traffic, often over long distances. They are used by telecommunications companies to carry the combined traffic of many separate services, and by large corporate customers with high volumes of traffic.
36. Wholesale transmission services are an important input into the ability of service providers to provide downstream retail and wholesale telecommunications services. These services enable service providers to carry data between their points of presence where their servers and routers are located, usually in a data centre in a capital city, to a point where they can connect with an access network such as Telstra's copper network or the NBN.

37. Wholesale transmission services are necessary to carry traffic between the 121 nationwide NBN points of interconnect and retail service providers own points of presence. The NBN will carry services between the end-user premises and its points of interconnect.
38. Retail service providers will either use their own transmission network infrastructure for their transmission requirements or purchase transmission services from wholesale transmission providers.
39. The domestic transmission capacity service is a declared service. The ACCC regulates this service only along specific geographic routes where there is insufficient competition—generally outside of major city centres and in regional areas.

#### *The National Broadband Network*

40. As indicated above, NBN Co is rolling out NBN infrastructure throughout Australia using a variety of technologies. NBN Co is only permitted to supply wholesale telecommunications services.
41. NBN Co is regulated by the ACCC through a special access undertaking, which specifies price and non-price terms and conditions relating to access to NBN Co's services provided over fibre, fixed wireless and satellite networks.

### **The proposed acquisition**

42. TPG first entered into a scheme implementation agreement with iiNet on 13 March 2015. Under the proposed acquisition, if shareholders approve the scheme, TPG would acquire 100 per cent of the fully-diluted share capital in iiNet that TPG does not already own.
43. Further details of the transaction can be found at <http://www.asx.com.au/asxpdf/20150506/pdf/42ycwwjg9v44yz.pdf>.

### **Future with and without the acquisition**

44. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the “without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
45. The ACCC’s preliminary view is that the likely competition effects of the proposed transaction are most appropriately assessed against a future in which competition remains broadly as it currently stands (the status quo).
46. As noted above, it is possible that in the absence of the proposed acquisition by TPG, another buyer (such as M2) would acquire iiNet. However, based on presently available information, the ACCC does not consider that any such alternative transaction is likely to alter its view as to the appropriate ‘future without’ against which to assess the proposed acquisition.

## Areas of overlap

47. TPG and iiNet overlap in the supply of:

- retail fixed broadband services
- retail fixed voice services
- mobile services, both voice and broadband
- subscription television services, including internet protocol television (IPTV).

### *Retail fixed broadband services*

48. The main overlap between TPG and iiNet is for the supply of retail fixed broadband services. This is the main focus of the ACCC's review and is discussed further in the section on market definition (starting at paragraph 54), and in the section on issues that may raise concerns (starting at paragraph 68).

### *Retail fixed voice services*

49. Both TPG and iiNet have a relatively small presence in the supply of retail fixed voice services. Telstra remains the dominant supplier of retail fixed voice services, with a share of 61 per cent as of June 2014. After the acquisition, TPG and iiNet would have a 12 per cent share, which would place it approximately equal with Optus as the next largest supplier.<sup>1</sup>

### *Mobile services*

50. The supply of mobile services (both voice and broadband) is characterised by infrastructure based competition between the three mobile network operators – Telstra, Optus and Vodafone. These three companies comprise 90 per cent of the retail supply of mobile handset services.<sup>2</sup> The remaining 10 per cent is supplied by around 50 mobile resellers, including TPG and iiNet who both acquire services from Optus.

### *Subscription television*

51. There have been a number of changes in the supply of subscription television services over the internet during the past 12 months. In particular, the entry of Netflix, and a number of other on-demand content streaming services, has intensified competition between online content services. While certain retailer service providers such as iiNet and Optus previously had exclusive wholesale agreements to provide Fetch TV (an IPTV service which includes a number of linear entertainment channels and movies on demand, as well as access to Netflix), Fetch TV has subsequently launched a retail IPTV service which is available to all consumers, regardless of their broadband provider.

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<sup>1</sup> ACCC, *Telecommunications competitive safeguards for 2013-14*, February 2015, p.22.

<sup>2</sup> ACCC, *Telecommunications competitive safeguards for 2013-14*, February 2015, p.30.



### *Conclusion on areas of overlap*

52. Given the relatively limited presence of the merger parties, and the existence of a number of competitors in the supply of retail fixed voice, mobile voice, mobile broadband and subscription television, the ACCC's preliminary view is that the proposed acquisition is not likely to raise significant concerns in relation to these areas of overlap.
53. Further discussion on issues concerning the supply of fixed broadband, and the supply of wholesale transmission services, is provided in the following sections.

## **Market definition**

54. On the basis of market inquiries to date, the ACCC's preliminary view is that the following product markets are particularly relevant in assessing the proposed acquisition:
  - the supply of retail fixed broadband services
  - the supply of wholesale transmission services.

### **Retail fixed broadband services**

55. A fixed broadband service is a high bandwidth carriage service that can be characterised as an 'always on' connection that generally involves the carriage of communications to residential or business premises.
56. Fixed broadband can be delivered over a number of technologies including HFC networks, copper networks or fibre networks. From a functional or consumer perspective, the services supplied over these different technologies all support similar downstream applications.
57. For the purpose of assessing the proposed acquisition, the ACCC considers that the relevant retail product market includes broadband services provided over different fixed line technology.
58. The ACCC is also not considering mobile broadband as part of this market in assessing this proposed acquisition as, from a functional or consumer perspective, the degree of substitutability between fixed and wireless broadband may depend on the particular downstream application. For example, mobile networks may not support data intensive applications such as video streaming as well as fixed line broadband services. There is also a substantial disparity in data allowances and per gigabyte pricing between mobile and fixed line broadband services.
59. The ACCC notes that retail fixed broadband plans comprise a range of data allowances and prices with varying levels of customer support. For the purposes of this review, the ACCC considers it likely that potential competitive constraints on the merged entity would come from the full range of service providers in terms of price and quality of service. The ACCC may consider a number of potential constraints that operate on particular segments of the market but will consider the overall competitive effect on the broad market.
60. The ACCC considers the appropriate geographic dimension of the market to be a national market. Market definition is a tool to identify and define the boundaries

of competitive conduct between the parties to the proposed acquisition. In this respect it is relevant that both TPG and iiNet both provide on-net services in the majority of states and territories. In addition, they both provide off-net services, including through Telstra's wholesale ADSL product, which is available on a nationwide basis.

61. From a consumer perspective, the ACCC notes that residential end-users require fixed line services at their premises and therefore can only substitute between products available in their area. There may be areas in which local competition is present and where retail service providers operating on a national basis may respond to competition on a local basis.
62. However, retail service providers with national brands generally compete nationally for end-users and adopt a national approach to setting prices and service levels. Additionally, the ACCC notes that business customers often have premises in multiple geographic locations.
63. Accordingly, the ACCC considers the competitive effects of the proposed acquisition should be assessed in a national market for the supply of retail fixed broadband services.

#### **Wholesale transmission services**

64. Wholesale transmission services are generally provided over optical fibre and are usually used in combination with local access network infrastructure to provide end-to-end telecommunications services.
65. Telstra is the only owner of a nationwide ubiquitous wholesale transmission network. Competition has emerged from other wholesale transmission service providers on particular geographic routes where it is economically efficient for those other service providers to invest in duplicate transmission infrastructure. As indicated earlier, the ACCC regulates wholesale transmission services only along specific geographic routes where there is insufficient competition.
66. The concerns discussed in this Statement of Issues relate to nationwide competition between providers of wholesale transmission services. However, it is recognised that any concerns may be more pronounced for routes with relatively less competition.
67. The ACCC considers that, for the purposes of this review, the appropriate market is a national market for the supply of wholesale transmission services.

The ACCC invites comments from market participants on its preliminary views about the definition of the relevant market(s). In particular market participants may wish to comment on whether:

- The national market for the supply of retail fixed broadband services, as identified above, is the appropriate definition for the market in which TPG and iiNet compete for fixed line broadband customers.
- The national market for the supply of wholesale transmission services, as identified above, is the appropriate definition for the market in which TPG and iiNet compete in the provision of wholesale transmission services.
- The proposed acquisition raises concerns in any other markets, such as markets relating to the supply of fixed and mobile voice services, or subscription television services.

## **Issues that may raise concerns: horizontal aggregation in the supply of retail fixed broadband services**

68. The ACCC is considering whether the acquisition of iiNet may lead to a substantial lessening of competition in the market for the supply of retail fixed broadband services, potentially resulting in higher prices and/or degradation of the non-price offers available in this market. However, a number of competitive constraints have been identified and the ACCC is considering whether these are sufficient to prevent any substantial lessening of competition.

### **Market concentration**

69. At present, there are five main suppliers of retail fixed broadband services – Telstra, Optus, iiNet, TPG and M2. In the event the proposed acquisition proceeds, the number of major players in this market would reduce from five to four. The ACCC considers that, as a general proposition, competition is stronger when the market contains more competitors.
70. The proposed acquisition would result in an aggregation which will make TPG the second largest supplier of retail fixed line broadband by number of subscribers. At present, TPG is the fourth largest supplier in this market.

**Table 1: Retail fixed broadband market shares as at June 2014**

<b>Service provider</b>	<b>Retail market share for fixed broadband (DSL and cable)</b>
Telstra	41%
iiNet	15%
Optus	14%
TPG	12%
Merged entity	27%
M2	8%
Other	10%
<b>Total</b>	<b>100%</b>

Source: Based on ACCC, *Telecommunications competitive safeguards for 2013-14*, February 2015, page 16, and other information available to the ACCC.

71. As shown in Table 1, Telstra would remain the largest supplier of retail fixed broadband services by retail market share, while the merged entity would be second largest, followed by Optus and then M2.
72. The market for the supply of retail fixed broadband services is already relatively concentrated. After the acquisition, the combined market share of the four largest firms would be 90 per cent, with the merged entity supplying 27 per cent of the relevant market.

#### **Closeness of competition between TPG and iiNet**

73. In the provision of retail fixed broadband, parties offer differentiated products in order to compete for market share. This differentiation is based on price, data allowances, terms and conditions (including separate off-peak and on-peak allowances) and customer service experience. The degree of rivalry between merger parties pre-merger can be an important factor in the analysis of mergers in differentiated product markets, such as retail fixed broadband. In general, the ACCC will consider the merger parties to exert more competitive constraint on each other where they are close competitors.
74. Market inquiries suggest that iiNet and TPG are seen to be close competitors, despite the two companies offering products that are differentiated. iiNet is perceived as having a focus on customer service as part of its strategy in attracting customers. Market inquiries suggest that TPG is more focused on price as part of a value-based product strategy.
75. A number of consumers noted in submissions to the ACCC that they had switched their service provider from TPG to iiNet because they value iiNet's perceived superior customer service. Similarly, some market participants also observed that low price and high service customers are not always distinct market segments and that many customers are prepared to substitute between low price and high service offers. To that end, a number of market participants

noted that iiNet has reduced its prices in recent times to be more price competitive with competitors such as TPG.

76. However, preliminary analysis of data (including customer switching data) by the ACCC indicates that while TPG and iiNet do compete closely with each other for customers, they are generally not each other's *closest* competitors.

#### **Removal of a vigorous and effective competitor with a differentiated offer**

77. Some parties have raised concerns that the removal of iiNet may lessen the incentive of TPG and the other competitors to compete, given they would no longer face the disruption and innovation offered by iiNet as a stand-alone entity.
78. The ACCC's market inquiries suggest that TPG and iiNet are vigorous and effective competitors in the supply of retail fixed broadband and provide innovative competition to each other and to other market participants.
79. Market inquiries suggest that iiNet has led a number of innovations (e.g. first to offer ADSL2+ and naked ADSL) and is said to provide an industry leading level of customer service. For example, inquiries have indicated that it offers access to skilled staff in 24-hour support call centres based in Australia, New Zealand and South Africa. iiNet has recorded market leading 'net promoter scores', a benchmark for customer satisfaction that is commonly used within the industry.
80. Beyond customer service, some market participants have also singled out iiNet among the largest five providers for its strong consumer advocacy in an evolving policy environment.
81. Consumers and some other interested parties are concerned that TPG will apply a strategy based on low prices and cost minimisation to iiNet leading to a degradation of iiNet's high level of customer service.
82. However, TPG has publicly indicated that it intends to keep iiNet as a separate brand. This suggests a dual brand strategy with:
- iiNet as a premium brand with a particular focus on customer service
  - TPG as a cost-conscious brand with a particular focus on price.
83. The ACCC is considering these issues further, including assessing the constraints that other competitors may pose on the merged entity (discussed below).

#### **Constraints from other suppliers, the threat of expansion or entry**

84. As part of its review, the ACCC is considering the extent of constraints that exist in the relevant market, and whether the merged entity would have an incentive to increase prices and/or reduce service levels in light of these constraints.
85. The ACCC has received mixed views regarding the competitive constraints that exist in the relevant market. Some interested parties consider that TPG would continue to be constrained after the acquisition, given the presence of other large suppliers of retail fixed broadband services and the threat that TPG would lose customers to those competitors if it increased prices or reduced service levels.

86. Other parties are concerned that TPG may not maintain, and other competitors would not have the ability and incentive to match or better, iiNet's offer, including its standard of customer service. Further, these parties submit that iiNet customers would be unlikely to switch to other competitors in the event of a price rise or reduction in service quality.
87. While some market feedback suggests that retail service providers need a large number of subscribers to achieve economies of scale in order to compete effectively, the ACCC observes that in addition to the large providers identified above, there remain a significant number of smaller participants providing differentiated competition. However, smaller providers may not have sufficient scale to be able to provide a strong competitive constraint on the larger players.
88. If constraints from other current suppliers are insufficient in their own right to prevent a substantial lessening of competition arising from the proposed acquisition, then it is relevant to consider what further constraint arises from the threat of new entry.
89. The ACCC observes that a feature of the retail broadband market over a number of years has been consolidation through acquisition, with no large scale new entry. However, the ACCC considers that the transition to the NBN offers some prospect of new entry because a wholesale-only network operator facilitates a more level playing field than a vertically integrated Telstra as both network operator and retail service provider.
90. The roll out of the NBN is also expected to increase the volume of traffic that will be carried on wholesale transmission networks, which is likely to promote investment in these networks. This may assist to facilitate increased competition in the retail supply of fixed line broadband services.

The ACCC invites comments from market participants on its preliminary views on the potential effect of the proposed acquisition on competition for the supply of retail fixed broadband services. Interested parties may wish to comment on the following:

- the extent to which iiNet is currently a close competitor to TPG
- the level of competitive constraint provided by Telstra, Optus, M2 and other market participants
- the extent to which customers of iiNet and TPG would switch to other providers if the merged firm sought to increase prices or degrade its non-price offer
- the likelihood of entry by fixed broadband service providers not present in the market and/or the likelihood of expansion from providers already present, both now and following the transition to the NBN
- the extent to which the loss of iiNet as an independent competitor is likely to reduce competitive tension in the market in respect of prices, innovation or quality of service.

## **Issue unlikely to raise concerns**

### **Vertical effects in the market for supply of wholesale transmission services**

91. The ACCC's preliminary view is that the proposed acquisition is unlikely to raise concerns that would result in a substantial lessening of competition in the market for the supply of wholesale transmission services.

92. Of the five largest suppliers of retail broadband (i.e. Telstra, Optus, TPG, iiNet and M2), iiNet and M2 are the only retailers without their own substantial wholesale transmission networks. They acquire most of their transmission services from third party suppliers.
93. Interested parties have raised concern that, after the acquisition, iiNet's customers' traffic may be carried over to TPG's own transmission networks (rather than using third party suppliers' networks to the same extent that iiNet does currently), thereby increasing the extent to which TPG is vertically integrated.
94. Any reduction in iiNet's demand for these services would in turn reduce the residual demand for wholesale transmission services supplied by non-integrated transmission service providers. Some parties have suggested that this could potentially make it too difficult for non-integrated wholesale transmission providers to reach sufficient economies of scale in order to compete effectively.
95. However, the material which the ACCC has reviewed to date does not support the contention that the removal of iiNet as an acquirer of wholesale transmission services would cause so substantial a disturbance to this market as to result in a substantial lessening of competition within this market or any other relevant market. In particular, while iiNet is an important purchaser of these services, there will remain a significant number of other purchasers (and suppliers) even if iiNet reduces its demand following the proposed acquisition. Further, the ACCC notes that non-integrated suppliers of wholesale transmission services will have a strong incentive to facilitate the entry and expansion of retail fixed broadband providers in order to ensure that they have a strong base of customers.

The ACCC invites comments from market participants in relation to the market for supply of wholesale transmission services. Interested parties may wish to comment on how the potential reduction of iiNet's demand for wholesale transmission services from non-integrated suppliers would alter the level of competition in this market or any other market.

### **Horizontal effects in other markets**

96. The ACCC's preliminary view is that the proposed acquisition is unlikely to result in a substantial lessening of competition in markets relating to the supply of fixed voice, mobile voice, mobile broadband or subscription television services.
97. However, the major telecommunication service providers typically offer bundling as a way of competing to attract customers. Therefore, while the ACCC is unlikely to have concerns about the effect of the proposed acquisition on the supply of these products in their own right, any concerns arising in the retail fixed broadband market may also affect competition in these markets.

### **ACCC's future steps**

98. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
99. As noted above, the ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions are to be received by the ACCC no later than 2 July 2015 and should be emailed to [TPG-iiNet-Merger@accc.gov.au](mailto:TPG-iiNet-Merger@accc.gov.au).

100. The ACCC intends to publicly announce its final view by 20 August 2015. However the anticipated timeline may change in line with the Merger Review Process Guidelines. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.