

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission
given for the purposes of section 87B

by

TPG Internet Pty Ltd ACN 068 383 737

Person giving the undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by TPG Internet Pty Ltd ACN 068 383 737 (TPG) of 65 Waterloo Road, North Ryde, 2113, in the State of New South Wales for the purposes of section 87B of the *Competition and Consumer Act 2010* (Act).
2. TPG, among other services offered to consumers, is a supplier of retail fixed-line broadband plans supplied over the National Broadband Network (NBN). TPG supplies NBN broadband services under the 'TPG' brand (NBN broadband services).

Background

TPG's Internet services

3. Since 1 September 2015, TPG has promoted and offered to consumers NBN broadband services, using fibre to the node (FTTN) and fibre to the building (FTTB) technology. Consumers can select from a range of NBN broadband plans offered by TPG with different maximum internet speeds. The maximum speeds offered by TPG reflected the wholesale access speed tiers that it purchases from NBN Co Limited (NBN Co).
4. Broadband services using FTTN and FTTB technologies can be subject to performance limitations to such an extent that consumers are unable to achieve the maximum speeds of the NBN Co wholesale access speed tiers.
5. NBN Co made performance information available to TPG in relation to services supplied over FTTN and FTTB technologies after those services have been connected. TPG did not independently test the performance of its consumers' individual connections.
6. TPG promoted and offered NBN FTTN and FTTB broadband plans on the basis of providing internet speeds up to the following download and upload speeds, based on the wholesale access speed tiers offered by NBN Co:
 - a. 100 megabits per second (Mbps) download and 40 Mbps upload (100/40 Plan);
 - b. 50 Mbps download and 20 Mbps upload (50/20 Plan);
 - c. 25 Mbps download and 5 Mbps upload (25/5 Plan); and
 - d. 12 Mbps download and 1 Mbps upload (12/1 Plan),
(collectively, the Speed Plans).
7. TPG marketed:
 - the 12/1 Plan as the "Standard Speed" plan, which costs consumers \$59.99 per month (\$69.99 including Voice, which is the ability to make unlimited telephone calls to standard national and local numbers and 100 international minutes);
 - until 13 December 2017, the 25/5 Plan as the "Boost Speed" plan, which cost consumers \$69.99 per month (\$79.99 including Voice);
 - from 13 December 2017, the 50/20 Plan as the "Fast" plan, which costs consumers \$69.99 per month;
 - until 13 December 2017, the 100/40 Plan as the "Superfast" plan, which cost consumers \$99.99 per month and included Voice; and
 - from 13 December 2017, the 100/40 Plan as the "Superfast" plan, which costs consumers \$89.99 per month.
8. ~~TPG did not offer the 50/20 Plan until 13 December 2017. For the purposes of this undertaking, the price of the 50/20 Plan between 1 September 2015 and 12 December 2017 is taken to be \$89.99.~~

Maximum Attainable Speeds

9. The highest internet speed that could be delivered to each consumer given the technical capabilities of their NBN connection is defined for the purposes of this undertaking as the Maximum Attainable Speed. Maximum Attainable Speeds are measured by NBN Co and were generally made available to TPG within two weeks of activation of a Speed Plan. Consumers' Maximum Attainable Speeds cannot be measured prior to a consumer connecting to the NBN.
10. Maximum Attainable Speeds are affected by many factors including the length and quality of copper wiring from the consumer's premises to the node (for FTTN) or basement (for FTTB), electrical interference, and the quality and layout of cabling and copper wiring in the consumer's premises.
11. The speeds the consumer receives may be limited by the Speed Plan they have chosen. For example, a consumer who is on a 100/40 Plan and whose Maximum Attainable Speed is 65 Mbps will only receive internet speeds up to 65 Mbps download. If that same consumer is on a 50/20 Plan, they will receive internet speeds up to 50 Mbps download because their Speed Plan caps their speed even though their NBN connection can support higher speeds.

Conduct of concern

12. Between 1 September 2015 and 30 June 2017, TPG promoted the Speed Plans (excluding the 50/20 Plan) online, on television, in newspapers and on radio. TPG's promotion of Speed Plans in direct mail (electronic and physical) and on the TPG website included statements such as "Popular for families. Up to 25Mbps" and "Seriously Fast Internet. Up to 100Mbps" which represented to consumers that their NBN connections could deliver speeds up to the maximum speed of their Speed Plan.
13. Between 1 September 2015 and 30 June 2017, TPG sold 97,137 Speed Plans to residential and small business consumers using the NBN's FTTN or FTTB technology.
14. 7,984 of those 97,137 consumers (8%) could not obtain internet speeds up to the maximum speed of their Speed Plan because the consumer's NBN connection was not capable of delivering it. For the purposes of this undertaking, residential and small business consumers who, within the first two weeks of data being available to TPG for each consumer, had a Maximum Attainable Speed lower than the maximum speed of their Speed Plan are defined as Affected Consumers.
15. Table 1 below shows:
 - a. the number of TPG consumers on each Speed Plan who were connected using NBN FTTN technology between 1 September 2015 and 30 June 2017;
 - b. the number and percentage (%) of consumers on each Speed Plan whose NBN connection had a Maximum Attainable Speed less than the maximum speed of their Speed Plan; and
 - c. of the total in 15(b), the number and percentage (%) of consumers on each Speed Plan whose NBN connection had a Maximum Attainable Speed less than the maximum speed of lower Speed Plans.

Table 1: Maximum Attainable Speeds of TPG's FTTN consumers between 1 September 2015 and 30 June 2017

| Speed Plan | Number of consumers on Speed Plan | Number and percentage (%) of consumers on each Speed Plan with Maximum Attainable Speeds less than: | | | |
|-------------|-----------------------------------|---|-------------------------------------|------------------------------------|------------------------------------|
| | | 100 Mbps download and 40 Mbps upload | 50 Mbps download and 20 Mbps upload | 25 Mbps download and 5 Mbps upload | 12 Mbps download and 1 Mbps upload |
| 100/40 Plan | 12,074 | 7,509 (62%) | 2088 (17%) | 144 (1%) | 1 (<1%) |
| 25/5 Plan | 25,969 | | | 411 (2%) | 12 (<1%) |
| 12/1 Plan | 46,052 | | | | 17 (<1%) |

16. Table 2 below shows:

- a. the number of TPG consumers on each Speed Plan that were connected using NBN FTTB technology between 1 September 2015 and 30 June 2017;
- b. the number and percentage (%) of consumers on each Speed Plan whose NBN connection had a Maximum Attainable Speed less than the maximum speed of their Speed Plan; and

- c. of the total in 16(b) the number and percentage (%) of consumers on each Speed Plan whose NBN connection had a Maximum Attainable Speed less than the maximum speed of lower Speed Plans.

Table 2: Maximum Attainable Speeds of TPG's FTTB consumers between 1 September 2015 and 30 June 2017

| Speed Plan | Number of consumers on Speed Plan | Number and percentage of consumers on each Speed Plan who have Maximum Attainable Speeds less than: | | | |
|-------------|-----------------------------------|---|-------------------------------------|------------------------------------|------------------------------------|
| | | 100 Mbps download and 40 Mbps upload | 50 Mbps download and 20 Mbps upload | 25 Mbps download and 5 Mbps upload | 12 Mbps download and 1 Mbps upload |
| 100/40 Plan | 1,019 | 42 (4%) | 3 (<1%) | 0 | 0 |
| 25/5 Plan | 2,991 | | | 4 (<1%) | 1 (<1%) |
| 12/1 Plan | 9,032 | | | | 1 (<1%) |

Actions by TPG

17. In July 2017 and since November 2017, TPG sent emails to Affected Consumers who had a Maximum Attainable Speed below 80% of the speeds advertised in their Speed Plan and invited them to move to a lower speed plan.
18. The ACCC does not consider this remediation to be sufficient.

Australian Consumer Law

19. The Australian Consumer Law (ACL) is contained in Schedule 2 to the Act.
20. Section 18 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.
21. Section 29(1)(b) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services make a false or misleading representation that services are of a particular standard, quality, value or grade.
22. Section 29(1)(g) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits.

Admissions

23. By the conduct described above, from 1 September 2015 to 30 June 2017, in the promotion of each Speed Plan, TPG represented to consumers that TPG was capable of delivering internet services up to the maximum speeds of each Speed Plan when this was not the case.
24. TPG admits that the conduct described above is likely to have contravened sections 18, 29(1)(b) and 29(1)(g) of the ACL.

Commencement of this undertaking

25. This undertaking comes into effect when:
- this undertaking is executed by TPG; and
 - this undertaking so executed is accepted by the ACCC (the commencement date).
26. Upon the commencement date, TPG undertakes to assume the obligations set out in Attachment A for the purposes of section 87B of the Act.
27. This undertaking ceases to have effect after a period of three years from 1 February 2018.

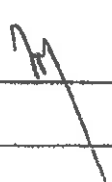

Acknowledgments

28. TPG acknowledges that:

- a. the ACCC will make this undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- b. the ACCC may, from time to time, make public reference to this undertaking, including in news media statements and in ACCC publications;
- c. the ACCC may make public reference to the information contained in the report provided by TPG as set out in Attachment A of this undertaking in the section titled 'Undertaking as to reporting', including in news media statements and in ACCC publications; and
- d. this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an undertaking

Executed by TPG Internet Pty Ltd ACN 068 383 737 pursuant to section 127(1) of the *Corporations Act 2001* by:

| | |
|---|--|
|  |  |
| Signature of director | Signature of a director/company secretary |
| DAVID TEOH | STEPHEN BANFIELD |
| Name of director (print) | Name of director/company secretary (print) |
| 19/12/17 | 19/12/17 |
| Date | Date |

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

20/12/17

Date

and signed on behalf of the Commission:



Chairman

20/12/17

Date

Attachment A – undertakings for the purposes of section 87B of the Act

1. Each of the undertakings contained in paragraphs 2 and 3 of this Attachment are subject to paragraph 4 below.

Undertaking as to remediation for current Affected Consumers

2. TPG undertakes that, for each Affected Consumer who entered into a Speed Plan between 1 September 2015 and 31 January 2018, and to whom, as at the date TPG sends the email or letter set out in paragraphs (a)(i) and (b)(i) below, TPG continued to provide a Speed Plan:
 - a. for each Affected Consumer who entered into a 25/5 Plan, 50/20 Plan or 100/40 Plan, TPG will:
 - i. by no later than 2 March 2018, send an email or, where TPG does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed and sets out remediation options for the consumer; and
 - ii. in accordance with the remediation option selected by the consumer:
 - A. allow the consumer to remain on their current Speed Plan with no refund;
 - B. move the consumer to a lower Speed Plan of their choice and provide a refund as set out in Attachment B; or
 - C. allow the consumer to exit the contract (and any associated bundle) without incurring any associated exit costs under their contract and receive a refund as set out in Attachment B; and
 - b. for each Affected Consumer who entered into a 12/1 Plan, TPG will:
 - i. by no later than 2 March 2018, send an email or, where TPG does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed and sets out remediation options for the consumer; and
 - ii. in accordance with the remediation option selected by the consumer, allow the consumer to:
 - A. remain on their current Speed Plan with no refund; or
 - B. exit the contract (and any associated bundle) without incurring any associated exit costs under their contract with no refund.

Undertaking as to remediation for former Affected Consumers

3. TPG undertakes that, for each Affected Consumer who entered into a Speed Plan on or after 1 September 2015 but to whom, as at the date TPG sends the email or letter set out in paragraph (a)(i) and (b)(i) below, TPG no longer provided a Speed Plan:
 - a. for each Affected Consumer who entered into a 25/5 Plan, 50/20 Plan or 100/40 Plan, TPG will:
 - i. by no later than 2 March 2018, send an email or, where TPG does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed;
 - ii. where the consumer elects, refund any termination fee the consumer paid when exiting their contract; and
 - iii. where the consumer elects, provide a refund as set out in Attachment B; and
 - b. for each Affected Consumer who entered into a 12/1 Plan, TPG will:
 - i. by no later than 2 March 2018, send an email or, where TPG does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed; and
 - ii. where the consumer elects, refund any termination fee the consumer paid when exiting their contract.

Undertaking as to previously remediated Affected Consumers on TPG Speed Plans

4. TPG undertakes that, for each Affected Consumer to whom TPG had, in July 2017 and since November 2017:

- a. offered each of the following options:
 - i. moving to a lower Speed Plan; and
 - ii. remaining on their current Speed Plan,

TPG will:

- b. for consumers who moved to a lower Speed Plan:
 - i. by no later than 2 March 2018, send an email or, where TPG does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed and sets out remediation options for the consumer; and
 - ii. in accordance with the remediation option selected by the consumer:
 - A. provide the consumer with a refund as set out in Attachment B; or
 - B. allow the consumer to exit the contract (and any associated bundle) without incurring any associated exit costs under their contract and provide a refund as set out in Attachment B;
- c. for consumers on a 25/5 Plan or 100/40 Plan who chose to remain on their current Speed Plan:
 - i. by no later than 2 March 2018, send an email or, where TPG does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed and sets out remediation options for the consumer; and
 - ii. in accordance with the remediation option selected by the consumer:
 - A. allow the consumer to remain on their current Speed Plan with no refund;
 - B. move the consumer to a lower TPG Speed Plan and provide a refund as set out in Attachment B; or
 - C. allow the consumer to exit the contract (and any associated bundle) without incurring any associated exit costs under their contract and provide a refund as set out in Attachment B; and
- d. for consumers on a 12/1 Plan:
 - i. by no later than 2 March 2018, send an email or, where TPG does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed and sets out remediation options for the consumer; and
 - ii. in accordance with the remediation option selected by the consumer:
 - A. allow the consumer to remain on their current Speed Plan with no refund;
 - B. allow the consumer to exit the contract (and any associated bundle) without incurring any associated exit costs under their contract.

Undertaking as to future consumers

- 5. TPG undertakes that for a period of three years from 1 February 2018 it will not, in trade or commerce, represent that it can or will provide consumers with FTTN or FTTB connections with download and upload speeds at the maximum speeds specified in the consumer's Speed Plan unless it also carries out the steps in paragraph 6 below.
- 6. Subject to paragraph 5, TPG undertakes for the purposes of section 87B of the Act that for a period of three years from 1 February 2018 it will:
 - a. within the first four weeks of data being available to TPG for each consumer's Maximum Attainable Speed, check each TPG consumer's Maximum Attainable Speed. If the Maximum Attainable Speed is below the advertised maximum speed of the consumer's Speed Plan, TPG will:

- i. notify the consumer of their Maximum Attainable Speed; and
- ii. provide the consumer with the options to:
 - A. remain on their current Speed Plan with no refund;
 - B. exit the contract (and any associated bundle) without cost and provide a refund to the consumer as set out in Attachment B; and
 - C. move to a lower Speed Plan of their choice and provide a refund to the consumer as set out in Attachment B.

Notification

7. TPG undertakes that it will, within 20 business days of the commencement date, publish or cause to be published on its website for a period of 90 consecutive days a notice in the form of Attachment C to this undertaking, which will be accessible to Affected Consumers via a link contained in a corrective notice in the top third of the:

- a. TPG home page at: <https://www.tpg.com.au/>;
- b. TPG NBN web page at: <https://www.tpg.com.au/nbn/>; and
- c. TPG small business NBN web page at: <https://www.tpg.com.au/nbn-business-fttn>.

8. The corrective notice displayed on the web pages indicated at paragraph 7 and accessible to Affected Consumers will:

a. include the words:

'Did you purchase a TPG NBN plan on or after 1 September 2015? You may be entitled to a partial refund or be able exit your contract without cost.

TPG is providing remedies to consumers who purchased NBN internet plans where their fibre to the node (FTTN) or fibre to the building (FTTB) connection was not capable of delivering the speeds promised. We acknowledge that, by doing so, we likely breached the Australian Consumer Law.

TPG will be contacting affected consumers by 2 March 2018 to offer options including a refund, moving to a lower speed plan or exiting their contract.

Click here [insert hyperlink to notice in the form of Attachment C] for more information, or contact us on [number].';

- b. be bordered by a black box;
- c. not be displayed as a "pop-up" or "pop-under" window;
- d. be crawlable (i.e. its contents may be indexed by a search engine); and
- e. be prominent in size.

Undertaking as to amendments to correspondence and contacting Affected Consumers

9. TPG undertakes that it will only vary the content of Attachment C to this undertaking with the prior written consent of the ACCC.

10. If TPG does not receive a response from a current Affected Consumer to the communications set out in paragraph 2, TPG will call or SMS the current Affected Consumer in order to provide the information contained in those communications.

Undertaking as to reporting

11. Between 30 April 2018 and 4 May 2018, TPG will provide a report to the ACCC setting out:

- a. the number of current Affected Consumers for each Speed Plan falling within paragraph 2 above and for each of these categories of Affected Consumers:
 - i. the number of Affected Consumers that chose each remedy option set out in paragraph 2 above; and
 - ii. the total amount of refunds provided;
- ~~b. the number of former Affected Consumers for each Speed Plan falling within paragraph 3 above and for each of these categories of Affected Consumers:~~

- i. the number of Affected Consumers that chose each remedy option set out in paragraph 3 above; and
 - ii. the total amount of refunds provided; and
 - c. The number of previously remediated Affected Consumers for each Speed Plan falling within paragraph 4 above and for each of these categories of Affected Consumers:
 - i. The number of Affected Consumers that chose each remedy option set out in paragraphs 4(b)(ii) and 4(c)(ii) and 4(d)(ii) above.

Attachment B - compensation for Affected Consumers

1. Where a consumer elects to receive a refund, TPG undertakes to provide refunds in accordance with Table A and Table B below.
2. Where an Affected Consumer accepts an offer of a refund from TPG, the refund amount is to be determined by reference to the amount the consumer paid for their Speed Plan and the amount the consumer would have paid at the time they entered into their Speed Plan for the fastest Speed Plan which would have allowed them to receive the maximum speed of their Speed Plan.

Bundles

3. The refund structure in Table A and Table B below applies to both Speed Plans and bundles.
4. A bundle is a package of products and/or services the consumer purchases from TPG that includes a Speed Plan (for example, a bundle of a Speed Plan and a TPG home phone plan).

Form of refunds

5. TPG undertakes to offer the refunds as either a direct payment or a credit, at the consumer's discretion.

Table A: Compensation for Affected Consumers who entered into a Speed Plan between 1 September 2015 and 12 December 2017

| Consumer's Speed Plan | Consumer's refund based on Maximum Attainable Speed (MAS) | | |
|-----------------------|---|-------------------|----------------|
| | MAS <100/40 and =>50/20 | MAS <50/20 =>25/5 | MAS <25/5 |
| TPG 100/40 Plan | \$10 per month | \$20 per month | \$30 per month |
| TPG 25/5 Plan | | | \$10 per month |
| TPG 12/1 Plan | No refunds applicable to TPG 12/1 Plan | | |

Table B: Compensation for Affected Consumers who enter into a Speed Plan on or after 13 December 2017

| Consumer's Speed Plan | Consumer's refund based on Maximum Attainable Speed (MAS) | | |
|-----------------------|---|-------------------|-----------------|
| | MAS <100/40 and =>50/20 | MAS <50/20 =>25/5 | MAS <25/5 |
| TPG 100/40 Plan | \$20 per month. | \$30 per month | \$30 per month |
| TPG 50/20 Plan | | \$10 per month | \$10 per month. |
| TPG 12/1 Plan | No refunds applicable to TPG 12/1 Plan | | |

Attachment C – corrective notice

Maximum NBN Speeds – Refund Offer for TPG customers

Since 1 September 2015, TPG has promoted and offered NBN internet plans using the NBN's fibre to the node (FTTN) and fibre to the building (FTTB) technology to consumers with the choice to select from a range of internet speeds.

TPG promoted NBN internet plans to consumers by highlighting the maximum speeds available to consumers on each Speed Plan. The maximum speeds promoted by TPG reflected the maximum speeds of the wholesale internet services that it purchased from NBN Co Limited.

TPG offered the 12/1 Plan as a "Standard Plan", the 25/5 Plan as a "Boost" and the 100/40 Plan as "Superfast". Consumers paid \$10 more per month for the "Boost" plan and at least \$20 more per month for the "Superfast" plan.

TPG consumers' maximum speeds

Generally, within two weeks of activation of a consumer's NBN speed plan, NBN makes available to TPG the maximum speed measurement the consumer can achieve. TPG has reviewed the information made available by NBN and discovered it could not provide many of its consumers with internet speeds up to the maximum speed of their speed plan because the consumer's NBN connection was not capable of delivering it.

TPG accepts that this conduct was likely to have contravened the Australian Consumer Law, because NBN speed plans were promoted as delivering certain speeds where consumers could not receive those speeds. In response to concerns raised by the ACCC, TPG has provided a court enforceable undertaking to the ACCC that it will not engage in similar conduct in the future.

Remedies available to affected TPG customers

Affected consumers may have the following options available to them:

- remain on their current plan with no refund
- move plans and receive a refund for the extra charges paid
- exit their plan without cost and receive a refund for the extra charges paid.

Former TPG consumers may also be eligible to receive a refund.

If you are an affected consumer, TPG will contact you by email or post by 2 March 2018. If you would like further information, please contact us on [number].