



Submission by TPG Telecom Limited
to
Australian Competition and Consumer Commission

Broadband Speeds

There are a number of factors that affect an end user's perception of "speed", including the type of technology used, backhaul capacity, end user hardware and connection method, source of content, distance to exchange, weather, interference, quality of the connection (cable, copper wires). Many of these, as noted in ACCC's Information Paper¹ dated July 2011, are beyond the control of RSPs.

Consumers are, in many instances, not aware of the extent of those issues and often will not understand that local issues, such as underlying computer and network resource consumption that may or may not be known (e.g., virus traffic or unknown download traffic), and third party issues such as congestion at, or a poor quality of, data source, can be affecting their perception. They are prompted to make a complaint because their experience is that "the internet is slow".

These factors limit a RSP's ability to provide representations of actual broadband speed that is likely to be attainable by consumers at their premises.

Whilst it is true one of the issues that may cause slow speed is congestion that is tolerated by an RSP, whether intentionally or unintentionally, there is no need to take regulatory steps to solve a minor problem that competition and existing regulatory settings already render *de minimis*.

Past ACCC guidelines in relation to broadband speed claims have led to greater confusion, leaving RSPs with no option but to be vague in the way in which they communicate their product offerings to consumers. TPG submits that there is a good case to take an alternative approach to managing the perceived issue of "broadband slow speed".

Why do we say that regulation is not necessary?

1. There are millions of ADSL connections in operation and over a million NBN connections. The ACCC paper records the number of TIO complaints about broadband speed. For Quarter 3 in 2016, in which the highest number of complaints is recorded, there were 2,159 complaints. If there are even as few as 5 million connections, that represents a complaint rate of less than 0.05%. This is not a problem that is of such scale that it requires any regulatory intervention.
2. The telecommunications market is highly contested. All RSPs recognise that consumer experience is a big driver for sales and churn. Word of mouth is a critical tool in the sales arsenal. Poor customer experience will quickly lead to a reduction in customer referral and new sales. The standard Net Promoter Score question is whether or not the consumer would recommend the service to their friends. This measure is used because RSPs (and

¹ HFC and Optical Fibre Broadband "Speed" Claims and the *Competition and Consumer Act 2010: An ACCC information Paper July 2011*.

other businesses) recognise the importance of those recommendations for sales. Similarly, and perhaps more importantly, poor customer experience leads to higher churn. A quick review of any of the presentations given by listed carriage service providers will show that churn is a measured metric which RSPs seek to reduce.

3. The current regulatory environment is such that that a consumer who is dissatisfied with his or her experience will generally be able to secure a termination of his or her service without significant penalty. The TIO fees, which the RSP must pay, are structured so as to create an incentive for the RSP to resolve a complaint, including by letting consumers out of their contracts.
4. The NBN does not necessarily create a more certain outcome in relation to speeds than the ADSL network. There will still be a range of factors that can affect the user experience, including the scaling of the NBN itself, something which is outside the control of the RSP and is yet another element that affects consumer perceptions. However, this is perhaps unimportant. All the major RSPs are offering NBN on a no fixed term contract basis. If the experience is poor, consumers will be able to try another provider.
5. NBN is new. It is new for RSPs. It is new for the NBN Co and it is new for consumers. Capacity management systems and business models are still being refined. It is possible that some issues are arising because of this novelty. Before jumping to a regulatory response, time should be allowed to pass to see if issues persist.
6. This is not an industry where consumers are operating in an information vacuum. There is a wealth of information about telecommunications providers that exists in social media and online forums. As a consequence, consumers should be understood as relatively well informed about the performance of RSPs. If they are not, then education should be the focus rather than regulatory intervention.

What should the ACCC do?

7. Current guidelines about broadband speed claims should be revoked for the following reasons:
 - a. Consumers need to understand the key features of a product that is being advertised. In the ADSL2+ environment, it was relatively easy because advertising a specific speed was not necessary. However, in an NBN environment where the access connection speeds are set by the NBN and are clearly delineated, it is difficult to do anything other than to advertise by reference to the access connection speed. The current guidelines simply create confusion for RSPs seeking to communicate the key elements of their products and for consumers seeking to do an accurate comparison.
 - b. It is possible for RSPs to advertise a product by reference to an access connection speed. By contrast, it is impossible for RSPs in a national market to be able to identify with any certainty, the likely throughput speed. This impossibility arises mostly because of things outside the RSP's control, including the local conditions.
8. TPG believes that consumers are now reasonably well-conditioned to understand the difference between "connection speed" and "throughput" or "download speed". The ACCC should accept and endorse an RSP communicating an access connection speed but, to the extent that the ACCC believes that better information should be available, the ACCC should

undertake its own education campaign about what an “access connection speed” is and should give guidelines or, if necessary, require RSPs to publish an information page explaining the difference between access connection speed and throughput speed. If necessary, the ACCC could work with Comms Alliance to put such a requirement into the TCP Code.

Other comments

9. Where TPG has control of the underlying DSLAM network equipment, it is able to provide consumers with a good idea of the likely access connection speed a consumer would obtain and publish that information on a map by reference to the consumer’s address. See www.tpg.com.au/maps. It is not possible to adapt that tool to meaningfully show throughput speeds at locations. So there is no real ability to provide meaningful data to consumers about expected throughput speeds.
10. The ACCC should leave the management of networks to the operators of those networks. There should be scope for competitors to offer a range of products and services. Management of network services may be a factor in such product differentiation. It is not necessary to mandate the provision of information about how the networks are managed or how traffic is prioritised. The state of competition is such that where consumers do not believe that they are getting good value for their service, they are able to switch to an alternative provider.
11. As has been submitted above, there are mechanisms that create opportunities for consumers to exit unsatisfactory contracts. However, the ACCC should not be mandating any kind of automatic right to exit a contract for a complaint about speed. TPG believes the long term interests of end users are better served by a more balanced approach that includes incentive to drive investment in upgrading infrastructure, not just focused on the re-selling of services. This approach for consumers to exit contracts without penalty allocates the risk for poor performance on to RSPs and leave RSPs vulnerable to factors that are not in the RSPs control, for example where the variation in performance is due to the quality of the lines connecting the consumer’s premises or to end user equipment. Further, with many no lock-in contract options available to consumers, this is not necessary.
12. As submitted above, it would not be right to impose regulated redress in relation to speed issues, given the limited control that RSPs have over the performance (impacted by many factors as highlighted above). Other consumer needs, such as affordability, should not be sidelined by the focus only on speeds. We believe consumers are better served by having a choice of a range of residential-grade products available at a range of price points. For consumers who need high performance, there are options for consumers to buy higher performance service and pay for SLAs. This should be left to allow competitors to innovate if they believe it is in their interests to do so because they will achieve a higher number of sales or improved margins.