



Public Competition Assessment

22 December 2015

TPG Telecom Limited – proposed acquisition of iiNet Limited

Purpose

1. This Public Competition Assessment outlines reasons for the decision by the Australian Competition and Consumer Commission (**ACCC**) not to oppose TPG Telecom Limited's (**TPG**) proposed acquisition of iiNet Limited (**iiNet**) (the **proposed acquisition**).
2. ACCC public competition assessments aim to provide the public with a better understanding of our analysis of various markets and competition issues. We generally issue a public competition assessment for transactions when:
 - an acquisition is opposed
 - an acquisition is subject to enforceable undertakings
 - the parties to the acquisition seek such disclosure, or
 - an acquisition is not opposed but raises important issues that the ACCC considers should be made public.
3. This Public Competition Assessment has been issued because the acquisition raises important issues that the ACCC considers should be made public.
4. The ACCC considers each matter on a case-by-case basis. While some transactions may involve the same or related markets, the analysis and decision outlined in one assessment will not necessarily reflect the ACCC's view about other transactions.
5. Public competition assessments outline the ACCC's principal reasons for forming views on a proposed acquisition at the time the decision was made. As such, public competition assessments may not definitively identify and explain all issues that the ACCC considers arise from an acquisition.
6. Further, the ACCC's decisions generally involve consideration of confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, public competition assessments do not contain any confidential information nor identify its sources.

The ACCC's decision

7. Section 50 of the *Competition and Consumer Act 2010* (the **Act**) is the relevant provision for the ACCC's assessment. Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
8. On 20 August 2015, the ACCC announced its decision not to oppose the proposed acquisition. The ACCC decided that the proposed acquisition would be unlikely to have the effect of substantially lessening competition in contravention of section 50. The ACCC considered the competitive effects of the proposed acquisition in the following markets:
 - the market for the retail supply of fixed broadband services in Australia
 - the market for the wholesale supply of transmission services in Australia.
9. The ACCC considered that the merged entity would remain constrained by other major suppliers – Telstra, Optus and M2.
10. Further details regarding the ACCC's reasoning are provided below.

The parties

The acquirer: TPG

11. TPG is a supplier of telecommunications services, including:
 - fixed and mobile broadband services, using its own and other parties' infrastructure, including asymmetric digital subscriber line 2+ (**ADSL2+**), very high bit-rate digital subscriber line 2 (**VDSL2**) and fibre
 - 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.
12. TPG supplies telecommunications services to residential, business and government customers. TPG, through its subsidiaries, also provides wholesale transmission services to other telecommunications service providers. Its subsidiaries with substantial wholesale transmission networks are AAPT and Pipe Networks.
13. TPG's retail brands include Soul, Chariot and TPG. TPG is estimated to be the fourth largest supplier of retail fixed broadband services by number of subscribers in Australia.
14. Immediately before the proposed acquisition, TPG owned 6.25 per cent of the shares in iiNet. TPG is listed on the Australian Securities Exchange (ASX:TPM).

The target: iiNet

15. iiNet supplies telecommunications services, including:
 - broadband services (both fixed and mobile) using its own and other parties' infrastructure, including ADSL2+, VDSL2, hybrid fibre coaxial (HFC) cable and fibre
 - 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.
16. iiNet services a range of customers, including residential, business and government customers. iiNet's retail brands include Adam Internet, Westnet, Internode and TransACT.
17. iiNet is estimated to be the second largest supplier of retail fixed broadband services by number of subscribers in Australia.
18. iiNet is listed on the Australian Securities Exchange (ASX:IIN).

Other industry participants

Telstra

19. Telstra Corporation Limited (**Telstra**) is the major wholesale and retail supplier of telecommunications services in Australia, including fixed broadband services. 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 subscription television provider Foxtel. Telstra is the largest supplier of retail fixed broadband services by number of subscribers in Australia.

Optus

20. Owned by the Singtel Group, Singtel Optus Pty Ltd (**Optus**) is a national supplier 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 supplies wholesale transmission services. Optus is estimated to be the third largest supplier of retail fixed broadband services by number of subscribers in Australia.

M2 Telecommunications Group

21. 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 services by number of subscribers in Australia.

Nextgen

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

NBN Co

23. On 7 April 2009, the Australian Government announced its intention to establish the National Broadband Network Corporation Ltd (**NBN Co**) to build and operate a wholesale-only, open-access national broadband network (**NBN**).
24. The Australian Government's objective since 2014 is for NBN Co to deploy 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

25. There are also a number of smaller retail service providers, which generally operate by reselling services from wholesale service providers. These include Exetel, AusBBS and SkyMesh.

The proposed acquisition

26. TPG proposes to acquire, by scheme of arrangement, 100 per cent of the fully-diluted share capital in iiNet that it did not already own.

Review timeline

27. The following table outlines the timeline of key events in this matter.

Date	Event
2 April 2015	ACCC commenced review under the Merger Process Guidelines.
23 April 2015	ACCC requested further information from the merger parties.
30 April 2015	Closing date for submissions from interested parties.
8 May 2015	Former proposed decision date of 4 June 2015 delayed to give the merger parties more time to respond to the ACCC's information request.
11 May 2015	ACCC received further information from the merger parties.
11 June 2015	ACCC published a Statement of Issues outlining preliminary competition concerns.
2 July 2015	Closing date for submissions relating to Statement of Issues.
8 July 2015	ACCC requested further information from the merger parties.

Date	Event
24 July 2015	ACCC received further information from the merger parties.
20 August 2015	ACCC announced it would not oppose the acquisition.

Market inquiries

28. The ACCC conducted extensive market inquiries with a range of industry participants, including consumers, consumer representatives and competing internet service providers. On 14 July 2015, the ACCC held a market inquiries forum, which provided consumers and other interested parties the opportunity to express their views on the proposed acquisition directly to the ACCC.
29. The ACCC also examined internal company documents and data obtained from the merger parties.

Statement of Issues

30. The ACCC published a Statement of Issues on 11 June 2015. In the Statement of Issues the ACCC expressed the preliminary view that the proposed acquisition may lead to a substantial lessening of competition in the market for the supply of retail fixed broadband services in Australia. In this context, the ACCC was considering whether the proposed acquisition would be likely to result in higher prices and/or degradation of the non-price offers available in the market. In the Statement of Issues, the ACCC considered the competitive constraints from other existing suppliers and the potential for these to be sufficient to prevent any substantial lessening of competition.
31. The ACCC also expressed the preliminary view that the proposed acquisition was unlikely to result in a substantial lessening of competition in other markets relating to the supply of fixed broadband services, including in the market for the supply of wholesale transmission services.

Future with and without the proposed acquisition

32. Section 50 of the Act prohibits 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 likely effects of the acquisition by comparing the likely future competitive environment 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. In this matter, the ACCC assessed the acquisition against a future without the acquisition in which competition remains broadly as it currently stands (the status quo).

Industry background

Regulatory framework

33. The supply of telecommunications services in Australia is regulated by Parts XIB and XIC of the Act. Part XIB contains industry-specific prohibitions, including

against anti-competitive conduct in the telecommunications industry, which are based on the general prohibitions in Part IV of the Act.

34. 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.
35. 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

36. In Australia, fixed broadband services are supplied 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).
37. ADSL2+ is currently the dominant technology for the supply of residential fixed broadband in Australia.
38. 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 a 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.
39. Fixed broadband services in Australia are also supplied over HFC networks. Telstra and Optus currently operate the two largest HFC networks. Telstra's network covers parts of Brisbane, Melbourne, Sydney, Adelaide, Perth and the Gold Coast while Optus' network covers parts of Brisbane, Melbourne and Sydney. 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

40. Wholesale transmission services (often referred to in the industry as backhaul) are wholesale services that carry large volumes of voice, data and video traffic, often over long distances. They are used by retail suppliers to carry the combined traffic of many separate services, and by large corporate customers with high volumes of traffic.

41. Wholesale transmission services are an important input into the ability of service providers to supply 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 a local access network such as Telstra's copper network or the NBN.
42. 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.
43. Retail service providers either use their own transmission network infrastructure for their transmission requirements or purchase transmission services from wholesale transmission suppliers.
44. 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

45. As indicated above, NBN Co is deploying the NBN infrastructure throughout Australia using a variety of technologies. NBN Co is only permitted to supply wholesale telecommunications services.
46. The ACCC regulates NBN Co 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.

Areas of overlap

47. TPG and iiNet overlap in the supply of:
 - fixed services (voice and broadband)
 - mobile services (voice and broadband)
 - subscription television services over the internet
 - combinations of the above as part of broader offers or bundled packages.

Fixed services

48. The main overlap between TPG and iiNet is for the supply of retail fixed broadband services, including bundled offers. This was the main focus of the ACCC's review and is discussed further in the sections on market definition (starting at paragraph 55), and competition assessment (starting at paragraph 73).
49. Both TPG and iiNet have a relatively small presence in the supply of retail fixed voice services. Telstra remains the largest supplier of retail fixed voice services, with a share of 61 per cent as of June 2014. After the acquisition, TPG would

have a 12 per cent share, which would place it approximately equal with Optus as the next largest supplier.¹

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.² 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. The major telecommunications service providers and some other suppliers offer subscription television services over the internet (internet protocol television – IPTV). During 2014 and 2015 there have been a number of changes in the supply of subscription television services. In particular, the entry of Netflix, and a number of other on-demand content streaming services, has intensified competition between online content services.
52. While certain retail 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.

Bundled offers

53. The services identified above may be offered as part of a bundle or independently. For instance, many telecommunications providers offer fixed voice and fixed broadband services together in a bundle, or separately. As discussed below, the ACCC has defined fixed broadband as a separate product market. The ACCC was satisfied that any concerns relating to the supply of fixed broadband would also highlight concerns in other areas of overlap, to the extent relevant.

Conclusion on areas of overlap

54. Given the relatively limited presence of the merger parties and/or the existence of a number of competitors in the supply of voice services (fixed and mobile), mobile broadband and subscription television, the ACCC decided that the proposed acquisition was not likely to raise significant concerns in relation to these areas of overlap. Therefore, these are not considered further in this Public Competition Assessment.

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

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

Market definition

55. Market definition is a tool to identify the boundaries of competitive conduct between the merger parties and their rivals. Market definition is purposive, and it depends on the specific facts and circumstances of a merger. In this case, the ACCC assessed the competitive effects of the proposed acquisition in the context of:
- the market for the retail supply of fixed broadband services in Australia
 - the market for the wholesale supply of transmission services in Australia.
56. These markets are consistent with those outlined in the Statement of Issues.

Retail supply of fixed broadband services

Product dimension of the market

57. 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.
58. Fixed broadband can be delivered over a number of network technologies including copper, HFC and fibre. From a functional or consumer perspective, the services supplied over these different technologies all support similar downstream applications.

Fixed line versus mobile

59. Mobile network operators and mobile service resellers also offer customers access to the internet, which may be received by mobile devices such as mobile phones, tablets, laptops or USB attachments (e.g. dongles). These products may be offered as part of a bundle with other telecommunications services.
60. The ACCC did not consider mobile broadband to be in the same market as fixed broadband in assessing this acquisition. From a functional or consumer perspective, the degree of substitutability between mobile and fixed broadband depends on the particular downstream application, consumer preferences and usage patterns.
61. The ACCC found that there are different characteristics between mobile and fixed broadband, including price, data allowances and usage limitations. These differences are demonstrated by the fact that 93 per cent of data downloaded by Australian consumers is through a fixed broadband connection.³
62. There is a general trend towards greater use of mobile data. However, if there were a small but significant (5-10 per cent) increase in the price of fixed broadband, the ACCC considered it unlikely that enough customers would switch to mobile broadband for these services to be viewed as sufficiently close substitutes. This is because of the functional differences between the two services. Moreover, where mobile broadband is priced significantly above fixed broadband, it seems unlikely that enough switching would occur. The ACCC

³ ACCC, *Telecommunications competitive safeguards for 2013-14*, February 2015, p. 17.

therefore assessed the proposed acquisition on the basis of a market for the supply of fixed broadband, excluding mobile broadband.

63. For the purpose of assessing the proposed acquisition, the ACCC considered that the fixed broadband market included broadband services provided over different fixed line technologies such as copper and fibre.

Geographic dimension of the market

64. As discussed earlier, market definition is purposive, and it depends on the specific facts and circumstances of a merger. In this respect it is relevant that both TPG and iiNet provide on-net services in the majority of states and territories. In addition, they both also provide off-net services, including through Telstra's wholesale ADSL product, which is available in metropolitan, regional and some rural areas.
65. From a consumer perspective, the ACCC noted that those residential end-users that require fixed line services at their premises 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.
66. 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 noted that business customers often have premises in multiple geographic locations.
67. In this case, both the merger parties compete on a national basis. Therefore, the ACCC considered it was appropriate to analyse the competitive effects of the proposed acquisition in the national market for the supply of retail fixed broadband services. The ACCC noted that within this market, suppliers have different geographic strengths and varying degrees of overlap.

Wholesale supply of transmission services

68. Consistent with its preliminary view in the Statement of Issues, the ACCC considered that for the purposes of this review it was relevant to assess competition for the wholesale supply of transmission services in Australia.
69. 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.
70. 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.
71. The ACCC noted that the concerns raised by some interested parties in respect of wholesale transmission were in the context of competition between national wholesale providers of transmission services. However, the ACCC also noted

that concerns may be more pronounced on routes where there is less competition.

Functional levels of the supply chain

72. The ACCC noted that there are different functional levels of the supply chain in the telecommunications industry. Some parties are vertically integrated in both wholesale and retail (at least to some extent), while others are not. The ACCC considered that the competition analysis in this matter was best conducted with reference to separate but related markets (as detailed above), with each market comprising a different stage of the supply chain.

Competition analysis

Horizontal effects in the retail fixed broadband market

73. The ACCC considered whether the acquisition of iiNet as an independent competitor would be likely to lead to a substantial lessening of competition in the market for the supply of retail fixed broadband services. The ACCC examined the potential for a loss of competitive tension in respect of prices, innovation and/or quality of service in this market.

Market concentration

74. Prior to the proposed acquisition there were five major suppliers of fixed broadband services – Telstra, Optus, iiNet, TPG and M2. The proposed acquisition would reduce the number of major suppliers from five to four.
75. As shown in Table 1, following the proposed acquisition, the merged entity would be the second largest supplier of fixed broadband with a market share of 27 per cent based on the number of subscribers. Telstra would remain the largest provider, supplying 41 per cent of the market.

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

Service provider	Retail share (per cent) for fixed broadband (DSL and cable)	
	Without proposed acquisition	With proposed acquisition
Telstra	41	41
iiNet	15	-
Optus	14	14
TPG	12	27
M2	8	8
Other	10	10
Total	100	100

Source: Based on ACCC, *Telecommunications competitive safeguards for 2013-14*, February 2015, page 23, and other information available to the ACCC.

76. After the proposed acquisition, the combined share of the four largest firms in this market would be around 90 per cent. The ACCC's views on competition in the market, given this level of concentration, are set out below.

Closeness of competition between broadband suppliers

77. TPG and iiNet are two of five major broadband suppliers who all compete with each other, but often with a particular focus on certain aspects by differentiating their offers.
78. TPG has a particular focus on price. It competes more closely with other low price broadband suppliers, such as M2 with its budget Dodo brand, while iiNet has a particular focus on service and competes closely with other perceived premium brands such as Telstra and Optus. That said, there was evidence available to the ACCC of broadband suppliers seeking to change their offers over time in targeting rivals or niches in the market.
79. Information available to the ACCC also suggested that customers make trade-offs between the differentiated offers available. Submissions from interested parties discussed customers switching from TPG to iiNet in search of a higher level of customer service, or switching from iiNet to TPG for a low cost option. Similarly, there was evidence of customers switching between TPG, iiNet and other providers to access the price and service combination that best meets their needs.

Threat of entry or expansion

80. In considering the issue of entry or expansion, the ACCC made the following observations based on information obtained during the review:
- A feature of the fixed broadband market over a number of years has been consolidation through acquisition, with no large-scale new entry or significant organic growth.
 - Existing suppliers enjoy advantages over new entrants, including economies of scale, economies of scope and established brands which present barriers to entry for new entrants. Smaller suppliers wishing to expand face similar barriers.
 - Access to wholesale infrastructure on competitive terms is an important component of being able to compete effectively at the retail level. The transition to the NBN offers some prospect of new entry because a wholesale-only network operator better enables retail service providers to compete on their merits against Telstra and each other. In contrast, in the pre-NBN environment many retail service providers rely on access to Telstra's network to compete against Telstra in downstream retail markets.
 - The deployment of the NBN is expected to increase the volume of traffic that will be carried on wholesale transmission networks, which is likely to promote use of and investment in these networks. This may assist competition in the retail supply of fixed broadband services. New entrants on a small scale can provide additional consumer choice even if they do not reach the mass market.

- There are already a number of small players that provide varying degrees of constraint, and there are reports of possible new entrants such as Woolworths, Coles and MyRepublic.
- However, the barriers to entry or expansion mentioned above limit the prospect of large-scale new entry or expansion that would constrain TPG and/or the other major suppliers of fixed broadband in the foreseeable future.

81. The ACCC did not consider that the threat of new entry, or expansion by existing small players, was sufficient in its own right to constrain the merged entity. However, given that it considered there were sufficient constraints posed by other existing major broadband suppliers, the ACCC did not consider it necessary to rely on the threat of entry or expansion as a key constraint.

Removal of a vigorous and effective competitor

82. The ACCC had regard to the competitive influence of iiNet in the relevant market. The ACCC found that although iiNet is a vigorous and effective competitor, the acquisition would not fundamentally alter the incentives of other market participants, including the merged firm, to innovate or act as disruptors in the market.

83. iiNet's competitive influence is particularly strong on product innovation and customer service. For example, iiNet was the first to offer naked ADSL. It also has a strong reputation amongst consumers for delivering high standards of customer service.

84. iiNet also competes on price but there are other major competitors who deliver particularly strong price-based competition such as M2, with its Dodo brand, and TPG. Telstra also competes on price through its relatively new Belong brand. The ACCC considered whether TPG and other providers would retain an incentive to engage in vigorous price and non-price based competition. This is discussed below.

Competition from other broadband suppliers and constraint on TPG after the proposed acquisition

85. The ACCC considered the extent of competitive constraints imposed by other suppliers in the relevant market and whether TPG would have an incentive to increase prices or downgrade iiNet's differentiated offer following the proposed acquisition. The ACCC received mixed views from interested parties regarding these constraints.

86. Some interested parties considered that TPG would continue to be constrained after the acquisition, given existing competition in the market and the continued 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.

87. Other interested parties were 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 high standard of customer service) after the acquisition.

88. Much of the value of the proposed acquisition for TPG appeared to be in the opportunity to acquire and supply iiNet's large customer base. These customers in general were attracted to iiNet by its particular combination of price and service. TPG would only have an incentive to degrade this offer if it could be confident that substantial numbers of customers would not be lost to other competitors.
89. During the course of the review, the ACCC examined diversion ratios that applied to the merger parties and customer switching behaviour. The internal company documents of the merger parties provided insight into how TPG and iiNet formulated their offers and, in particular, which other suppliers each saw as a competitive threat.
90. This information indicated that the merged entity would continue to be competitively constrained by the other major broadband suppliers, Telstra, Optus and M2. In the event that TPG sought to materially decrease service levels or raise prices post-acquisition, it would risk substantial losses of customers to rival suppliers of fixed broadband services that would be likely to make any such action unprofitable.
91. The ACCC's inquiries also revealed that small competitors can be disruptive on certain aspects of the competitive process such as service, but are limited in geographic reach and do not enjoy the same economies of scale and scope as large incumbents.
92. Given large incumbents have a national presence and are in a better position to bundle fixed broadband services with other services, the ACCC placed more weight on them as being capable of constraining the merged entity.

Conclusion: retail fixed broadband market

93. The ACCC concluded that:
 - TPG and iiNet are competitors in the national market for the retail supply of fixed broadband services. The proposed acquisition would eliminate competition between them – leading to a lessening of competition in the relevant market.
 - However, the merged entity would remain constrained by other major suppliers – Telstra, Optus and M2.
 - In this context, if TPG downgraded service standards or increased prices after the proposed acquisition, it would be likely to lose substantial numbers of customers to the other major suppliers such that any such actions would be likely to be unprofitable.
 - Therefore the ACCC concluded that, while the proposed acquisition would lessen competition, it was not likely to lead to a substantial lessening of competition in the retail fixed broadband market.
94. Notwithstanding its decision not to oppose the proposed acquisition, the ACCC noted the growing consolidation in what will now become a relatively concentrated broadband market. Any future proposed merger between two of the remaining four large suppliers of retail fixed broadband services will face very close scrutiny.

Vertical effects in the wholesale transmission market

95. The ACCC considered the vertical effects of the acquisition in the market for the supply of wholesale transmission services.
96. Of the five largest suppliers of retail broadband, 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. These include their vertically integrated rivals (Telstra, Optus and TPG) and other non-integrated transmission suppliers such as Nextgen.
97. During the ACCC's review, some parties raised concern that iiNet would no longer acquire wholesale transmission services from suppliers other than TPG and this would threaten the commercial viability of non-vertically integrated wholesale transmission providers.
98. Some parties also expressed concern that this would have consequences for competition in downstream markets, with retail broadband suppliers being forced to rely on their vertically integrated competitors for wholesale transmission services.
99. On the basis of the information available, the ACCC concluded that the acquisition would be unlikely to result in a substantial lessening of competition in the wholesale transmission market or any other market.
100. The ACCC considered that a number of purchasers (and suppliers) of wholesale transmission services would remain, even if iiNet reduced its demand from non-vertically integrated transmission suppliers following the proposed acquisition.
101. Given that most of the major transmission suppliers are vertically integrated, non-integrated suppliers are important to competition in wholesale transmission. They help facilitate retail competition, including by lowering barriers to retail entry and expansion. Accordingly, the ACCC would be concerned about any future acquisition by one of the large four retail service providers that would remove an important independent supplier.

Conclusion

102. Based on the above analysis, the ACCC concluded that the acquisition of iiNet by TPG would not be likely to have the effect of substantially lessening competition in any market.