

Enforceable Undertaking

Given to the Australian Communications and Media Authority by TPG Internet Pty Ltd (ACN 068 383 737) under section 572B of the *Telecommunications Act 1997* (Cth)

1 Person/s giving the Undertaking

- 1.1 This Undertaking is given to the Australian Communications and Media Authority (**ACMA**) by TPG Internet Pty Ltd ACN 068 383 737 (**TPG Internet**) of Level 1, 177 Pacific Highway North Sydney NSW 2060 under section 572B of the *Telecommunications Act 1997* (Cth) (the **Act**).

2 Background

- 2.1 The ACMA is responsible for monitoring and enforcing compliance by carriage service providers (**CSPs**) with their obligations under the Act.
- 2.2 TPG Internet supplies internet, landline and mobile services to consumers and is a CSP as defined in section 87 of the Act.
- 2.3 As a CSP that supplies internet services to consumers using NBN ethernet products, TPG Internet is a NBN CSP as defined in the *Telecommunications Service Provider (NBN Service Migration) Determination 2018* (Cth) (the **Determination**) and is required to comply with the Determination in accordance with subsection 101(1) of the Act.
- 2.4 Subsection 14(2) of the Determination imposes an obligation on NBN CSPs to, as soon as practicable and in any event within 20 working days after a next-generation NBN broadband service becomes operational:
- (a) confirm the maximum attainable speed (**MAS**) of the service identified in the line capability data relating to the service; or
 - (b) perform, or arrange for the performance of, line capability testing in relation to the service.
- 2.5 Under subsection 14(3) of the Determination, if line capability data or line capability testing indicates that the part of the network unique to the consumer is not capable of providing the applicable speed, then the NBN CSP must, as soon as practicable, and in any event within 5 working days, advise the consumer:
- (a) of the MAS of the part of the network unique to the consumer;
 - (b) if there is a lower speed tier plan offered by the NBN CSP, that they may, at no cost, move to a lower speed tier plan at a lower price that reflects the MAS; and
 - (c) that they are free to exit the consumer contract which the NBN CSP has entered into with the consumer, without cost.
- 2.6 Under subsection 15(1) of the Determination, an NBN CSP must not charge a consumer for an NBN service unless:
- (a) the service is operational; and
 - (b) in relation to a next-generation NBN broadband service, either:
 - (i) the MAS identified in the line capability data or the line capability testing indicates that the part of the network unique to the consumer is capable of providing the applicable speed; or

- (ii) 10 working days have passed since the NBN CSP advised the consumer of the matters set out in subsection 14(3) and the consumer has not requested that the NBN CSP provide an available remedy.

3 Relevant Conduct

- 3.1 TPG Internet has endeavoured to put in place automated systems for the purpose of ensuring compliance with its obligations under subsections 14(3) and 15(1) of the Determination. It has become apparent in the course of recent investigations, however, that those systems have not always functioned as intended.
- 3.2 Between 21 September 2018 and 1 April 2021 (the **Relevant Period**), TPG Internet's automated systems:
 - (a) failed to provide a notification as required under paragraph 14(3)(a) of the Determination (**MAS notification**) to 2,659 new customers on FTTN NBN50 plans and 1,119 new customers on FTTN NBN100 plans; and
 - (b) failed to provide a notification as required under paragraphs 14(3)(b) and (c) of the Determination (**Remedies offer**) to 2,992 new customers on FTTN NBN50 plans and 1,464 new customers on FTTN NBN100 plans.
- 3.3 In light of the matters identified in paragraph 3.2, TPG Internet understands there were 4,456 instances where new TPG Internet customers were charged for their FTTN NBN50 or NBN100 service during the Relevant Period in circumstances where they should have been, but were not, provided with a MAS notification or Remedies offer.
- 3.4 The ACMA has considered the information that TPG Internet provided concerning the matters outlined in paragraph 3.2 and has formed the view that TPG Internet may not have complied with subsections 14(3) and 15(1) of the Determination.
- 3.5 TPG Internet acknowledges that the conduct described above is likely to have contravened subsections 14(3) and 15(1) of the Determination. In recognition of the importance of compliance with the Determination, TPG Internet offers this Undertaking to the ACMA.

4 Reasons for failures to provide MAS notifications and Remedies offers

- 4.1 TPG Internet has identified the following two key reasons for the shortfalls in providing MAS notifications and Remedies offers in accordance with the Determination during the Relevant Period:
 - (a) In cases where NBN Co first published valid MAS data more than 30 days after activation of the consumer's NBN service, this information was not captured by TPG Internet's automated email system. In such instances, no MAS notification or Remedies offer was sent to the relevant consumer.
 - (b) There was a technical issue with TPG Internet's IT systems which prevented some MAS notifications and Remedies offers from being sent.

5 Remediation undertaken by TPG Internet

- 5.1 TPG Internet has, prior to offering this Undertaking, put in place the following improvements to its automated systems to ensure compliance with the Determination:
 - (a) Updated TPG Internet's systems such that the automated checking and comparing of MAS data provided by NBN Co against the customer's speed plan is conducted for up to six months after line activation, rather than for only 30 days after line activation. This change has been in effect since 1 April 2021 and will ensure that any delay in the

availability of MAS data from NBN Co would not prevent MAS notifications and Remedies offers from being sent.

- (b) Implemented changes to TPG Internet's systems to double the daily outgoing email cap to 2,000 in order to minimise delays caused by outgoing email queues. Those changes have been in effect since 31 March 2021.
- (c) Implemented a monthly manual audit of all NBN FTTB/N/C connect orders to ensure that MAS notifications have been sent and remedies offered to affected consumers. The audit provides additional safeguards against system glitches and technical issues. This change has been in effect since March 2021.

5.2 TPG Internet has, prior to offering this Undertaking, implemented a remediation program and all affected customers identified in paragraphs 3.2 and 3.3 above who did not originally receive MAS notifications and/or Remedies offers have now received them. TPG Internet's remediation program included customers who, during the Relevant Period, had a MAS lower than the advertised maximum speed of their TPG Internet plan. In general terms:

- (a) For affected customers who did not receive a MAS notification when their plan was activated, TPG Internet has notified those customers of their MAS via email.
- (b) For affected customers who did not receive a Remedies offer in relation to their plan and who are current TPG Internet customers, TPG Internet has offered those customers the options of:
 - (i) changing to a lower speed plan of their choice (if one is available) and receiving a refund;
 - (ii) exiting their current plan (and any associated bundle) without cost and receiving a refund; or
 - (iii) remaining on their current plan with no refund.
- (c) For affected customers who did not receive a Remedies offer in relation to their plan and who are former TPG Internet customers, TPG Internet has offered those customers:
 - (i) a refund; and
 - (ii) (if applicable) reimbursement of any termination fee the customer paid when exiting their contract.

6 Undertakings

6.1 Under section 572B of the Act, TPG Internet undertakes to carry out the actions specified below within the timeframes specified.

Implementing effective systems, processes and practices

6.2 TPG Internet undertakes to implement and maintain effective systems, processes and practices for ensuring compliance with subsections 14(3) and 15(1) of the Determination.

6.3 For the purpose of complying with, and to the extent necessary to comply with subsections 14(3) and 15(1) of the Determination, until 24 months after the Commencement Date, these systems, processes and practices will include systems, processes and practices to ensure that notifications provided under subsection 14(3) are provided within the timeframes required by subsection 14(3).

Governance processes

6.4 TPG Internet undertakes to implement and maintain processes to ensure that any material changes to systems relied on to ensure compliance with subsections 14(3) or 15(1) of the

Determination are reviewed and signed off by relevant internal TPG Internet stakeholders before being implemented, which must include an executive.

Independent audit

- 6.5 TPG Internet undertakes to appoint, in accordance with paragraph 6.6, a qualified and independent person (the ***Independent Auditor***) to audit and report in writing on:
- (a) the extent to which the systems, processes and practices described in paragraphs 6.2 to 6.4 are effective in achieving compliance with subsections 14(3) and 15(1) of the Determination;
 - (b) recommendations as to the improvements or maintenance of those systems, processes and practices directed towards ensuring TPG Internet's compliance with subsections 14(3) and 15(1) of the Determination; and
 - (c) the implementation of TPG Internet's remediation program referred to in paragraph 5.2.
- 6.6 By no later than four weeks from the Commencement Date, TPG Internet undertakes to seek written approval from the ACMA to:
- (a) appoint a nominated person to be the Independent Auditor; and
 - (b) endorse the terms of reference for the audit.
- 6.7 If the ACMA refuses to approve the person for such appointment, or endorse the terms of reference, TPG Internet undertakes to repeat this process within five business days of receiving the ACMA's refusal, until it obtains the ACMA's written approval.
- 6.8 Within five business days after the ACMA has given its approval, TPG Internet undertakes to appoint the person to be the Independent Auditor at its own cost.
- 6.9 TPG Internet undertakes to require that the Independent Auditor's written report referred to in paragraph 6.5 be completed by no later than three months from the appointment of the Independent Auditor.
- 6.10 TPG Internet undertakes to prepare a written response to any recommendations in the audit report referred to in paragraph 6.5 and implement all reasonable recommendations. Where it regards any recommendation in the audit report as unreasonable, it undertakes to record the reasons for its view in the written response.
- 6.11 TPG Internet undertakes to provide a copy of the audit report referred to in paragraph 6.5, and the written response referred to in paragraph 6.10, to the ACMA by no later than four weeks from the receipt of the audit report from the Independent Auditor.
- 6.12 By the end of each month, starting from the month after the audit report and response have been provided to the ACMA, TPG Internet undertakes to provide to the ACMA a written progress report on implementation of the reasonable recommendations referred to in paragraph 6.10 until such time as the reports demonstrate all reasonable recommendations have been fully implemented.

7 Term of the Undertaking

- 7.1 This Undertaking commences when:
- (a) it has been executed by TPG Internet; and
 - (b) so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to TPG Internet (***Commencement Date***).

- 7.2 This Undertaking ceases to have effect 24 months after the Commencement Date, unless:
- (a) The ACMA gives written notice to TPG Internet cancelling this Undertaking in accordance with subsection 572B(4) of the Act, in which case this Undertaking ceases to have effect on the day that written notice of the cancellation is given to TPG Internet; or
 - (b) The ACMA earlier consents to the withdrawal of this Undertaking in accordance with subsections 572B(3) of the Act, in which case this Undertaking ceases to have effect on the day that written notice of the consent is given to TPG Internet.

8 Variation of the Undertaking

- 8.1 This Undertaking may be varied in accordance with subsection 572B(3) of the Act, in which case this Undertaking will have the effect as varied on the day that written notice of the consent to vary this Undertaking is given to TPG Internet by the ACMA.
- 8.2 Any variation to a timeframe or approval required or permitted to be given by the ACMA under this Undertaking must be in writing and may be given or made by an ACMA Authority member or by any ACMA staff member who is a member of the Senior Executive Service.

9 Acknowledgements

- 9.1 TPG Internet acknowledges that:
- (a) The ACMA will make this Undertaking publicly available including by publishing it on the ACMA's website.
 - (b) The ACMA may, from time to time, make public comment about this Undertaking and its terms which includes issuing a media release upon its execution by the ACMA.
 - (c) The ACMA may, from time to time, publicly report on compliance with this Undertaking.

Executed in accordance with section 127 of the
Corporations Act 2001 by TPG Internet Pty
Limited ACN 068 383 737

DocuSigned by:

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Director Signature
Inaki Berroeta

Print Name

DocuSigned by:

833FC176C7024EB...

Director/Secretary Signature
Trent Czinner

Print Name

Accepted by the Australian Communications
and Media Authority under section 572B of the
Telecommunications Act 1997 (Cth)


Nerida O'Loughlin (Jan 17, 2022 10:43 GMT+11)

Member Signature
Nerida O'Loughlin

Print Name
17/01/2022

Date


C Rainsford (Jan 17, 2022 11:19 GMT+11)

Member/General Manager Signature
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