



COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2022

Re: Applications by Telstra Corporation Limited and TPG Telecom Limited for review of Australian Competition and Consumer Commission Merger Authorisation Determination MA1000021

Applicants: Telstra Corporation Limited and TPG Telecom Limited

DIRECTIONS

TRIBUNAL: Justice O'Bryan (Acting President)

DATE: 31 January 2023

WHERE MADE: Melbourne

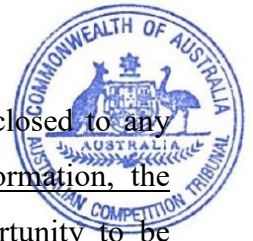
THE TRIBUNAL DIRECTS THAT:

Extended review period

1. For the purpose of s 102(1AD), the Tribunal determines that this matter cannot be dealt with properly within the initial period because of its complexity and therefore an extended period applies for the review consisting of the initial period and a further period of 90 days.

Confidentiality

2. Paragraphs 4(a) and 6 of the Confidentiality Regime set out in the directions of 24 January 2023 be varied as follows:
 - 4(a) the party proposing to provide access to its internal legal counsel must notify the other parties (as well as any non-party confidentiality claimant in respect of that person's confidential information) of the identity, title and role of the internal legal counsel to whom disclosure is proposed no less than 5 business days prior to any such person accessing Confidential Information and the specific Confidential Information that is to be disclosed;
 - 6 On 2 days' notice to the Commission, the Applicants and Optus, any Intervener has liberty to apply to the Tribunal for a direction seeking access to Confidential Information. The Applicants, Optus and the Commission will be provided with an



opportunity to be heard before the Confidential Information is disclosed to any Intervener. If access is sought to a non-party's Confidential Information, the non-party confidentiality claimant will be provided with an opportunity to be heard before that Confidential Information is disclosed.

3. On or before 6 February 2023, any non-party who, in connection with application MA1000021:
 - (a) made a written submission to the ACCC; or
 - (b) was an industry participant who participated in a meeting, discussion or conference with the ACCC which was recorded in writing, and claimed confidentiality in respect of any aspect of the submission, meeting, discussion or conference (non-party confidential information), and who has not consented to its confidential information being disclosed to the Applicants or Optus in accordance with the confidentiality regime (Confidentiality Regime) set out in the directions of 24 January 2023, (non-party confidentiality claimants) may apply to the Tribunal for further directions to be made with respect to its confidential information.
4. Any application made under direction 3 will be heard on 8 February 2023.
5. On or before 1 February 2023, the ACCC is to give written notice of directions 3 and 4 to all non-party confidentiality claimants.

Material before the ACCC

6. Directions 5(b) and 6 of the directions made on 24 January 2023 are varied in respect of non-party confidential information that has not been filed and served by the ACCC as at the date of these directions:
 - (a) if the non-party confidentiality claimant has informed the ACCC that it consents to its confidential information being disclosed to the Applicants or Optus in accordance with the Confidentiality Regime, the ACCC will file and serve on the Applicants and Optus confidential copies of the non-party confidential information on or before 1 February 2023;
 - (b) if the non-party confidentiality claimant has not informed the ACCC that it consents to its confidential information being disclosed to the Applicants or Optus in accordance with the Confidentiality Regime but does not make an application under direction 3, the ACCC will file and serve on the Applicants and Optus confidential copies of the non-party confidential information on or before 7 February 2023;



- (c) otherwise, the ACCC will file and serve on the Applicants and Optus confidential copies of the non-party confidential information immediately following, and subject to, the Tribunal's determination of any application made under direction 3.

Statement of facts and issues in contention

7. On or before 13 February 2023, the Applicants are each to file and serve a concise statement of facts, issues and contentions limited to 15 pages.
8. On or before 20 February 2023, Optus is to file and serve a concise statement of facts, issues and contentions limited to 15 pages.
9. On or before 27 February 2023, the ACCC is to file and serve a concise statement of facts, issues and contentions limited to 10 pages.

Applications under s 102(9)

10. Any application by a party for leave to give the Tribunal information, documents or evidence pursuant to s 102(9) of the CCA must be filed by 24 February 2023.

Facts that are not contested

11. On or before 3 March 2023, the parties are to confer and file a joint document identifying all findings on factual matters set out in the ACCC's reasons for determination that are not contested by the parties on the review.

Hearing

12. The proceeding be listed for hearing on an estimate of 5 to 7 days commencing on a date to be determined by the Tribunal.

Hearing Book

13. By no later than 30 days prior to the hearing, the Applicants are to serve a draft Hearing Book Index on the ACCC and Optus listing all documents proposed to be relied upon at the hearing.
14. By no later than 25 days prior to the hearing, the ACCC and Optus are to serve any proposed additions to the Hearing Book Index.
15. By no later than 21 days prior to the hearing, the Applicant must file and serve a copy of the Hearing Book in electronic form, which:
 - (a) is produced in a text-recognised PDF format;
 - (b) is paginated sequentially throughout;

- (c) is divided into separate folders of documents such that each folder comprises a single PDF file and the file name of each PDF file is the folder number; and
- (d) each folder (being a PDF file) contains electronic bookmarks to each document in that folder.

Submissions and authorities

- 16. By no later than 14 days prior to the hearing, the Applicants file and serve on the ACCC and Optus:
 - (a) a written outline of submissions of no more than 30 pages combined; and
 - (b) a list of authorities on which they intend to rely at the hearing.
- 17. By no later than 9 days prior to the hearing, Optus file and serve on the Applicants and the ACCC:
 - (a) a written outline of submissions of no more than 25 pages; and
 - (b) a list of authorities on which it intends to rely at the hearing.
- 18. By no later than 6 days prior to the hearing, the ACCC file and serve on the Applicants and Optus:
 - (a) a written outline of submissions of no more than 15 pages; and
 - (b) a list of authorities on which it intends to rely at the hearing.
- 19. By no later than 3 days prior to the hearing, the Applicants file and serve on the ACCC and Optus:
 - (a) a written outline of submissions in reply of no more than 10 pages combined; and
 - (b) a list of authorities on which they intend to rely at the hearing.

Bundle of authorities

- 20. Prior to the hearing, the parties file and serve an electronic joint bundle of authorities and legislation in text-recognised PDF format and which contains electronic bookmarks to each document in the bundle.

Other matters

- 21. The Applicants, Optus and the ACCC have liberty to apply for further directions.



[Handwritten signature]

REGISTRAR

Australian Competition Tribunal