

**NOTICE OF LODGMENT**  
**AUSTRALIAN COMPETITION TRIBUNAL**

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**Lodgment and Details**

Document Lodged: Letter

File Number: ACT 1 of 2022

File Title: APPLICATIONS BY TELSTRA CORPORATION LIMITED AND  
TPG TELECOM LIMITED

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 24/03/2023 4:24 PM

**Important information**

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



Our ref. 22002404

20 March 2023

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Dear Registry

**Applications by Telstra Corporation Limited and TPG Telecom Limited –  
ACT 1 of 2022 – Direction 2 of Directions made 17 March 2023**

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1. This letter relates to Direction 2 of the Directions made by the Australian Competition Tribunal on 17 March 2023. That direction requires the ACCC furnish to the Tribunal a copy of the **Model** used by the ACCC to undertake the modelling referred to at [9.132] and [9.133] of the Reasons for Merger Authorisation Determination MA1000021.
2. A copy of the Model is **enclosed** with this letter.
3. The Model was created by Frontier Economics Pty Ltd for the ACCC. The Model allowed the ACCC to test the sensitivities of Dr Padilla's and Optus' results to changes in the underlying assumptions, including by replacing Dr Padilla's assumptions with assumptions made by Optus in its own modelling. When Dr Padilla's assumptions from his second report are used, the Model produces the same results as Dr Padilla's model.<sup>1</sup>
4. The Model in its initial setting shows the assumptions and results of Dr Padilla's modelling. This includes, for example, the following assumptions and results:
  - a. Additional Network Cost – the assumption of **[Confidential to TPG]** [REDACTED]<sup>2</sup> is shown in cell E74.
  - b. Regional market share – the assumption of **[Confidential to Optus]** [REDACTED] is indicated by the figure [REDACTED] in cell S3. (The market share figures in cells B2:F6, based on Optus' modelling, are not applied when cell S3 is set to the value in cell S7 [REDACTED].)

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<sup>1</sup> The Second Padilla Report is at row 382 of the Index (71760.005.022.1898). The Padilla Model is at row 382A of the Updated Index of Documents filed with the Tribunal on 10 March 2023 (the **Index**) (71760.005.025.0087).

<sup>2</sup> Second Padilla Report, Row 382 of the Index (71760.005.022.1898), [5.28] (.1925), [5.37] (.1927).

<sup>3</sup> Second Padilla Report, Row 382 of the Index (71760.005.022.1898), [5.33] (.1926).

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- c. Margin – the assumption of 65% gross margin per service in operation (SIO)<sup>4</sup> is shown at cell D21.
  - d. Discount rate – the assumption of 2.51% real discount rate<sup>5</sup> is shown at cell C26.
  - e. The resulting NPV of Optus' investment [Confidential to TPG] [REDACTED] is shown at cell J9.
5. The changes to the assumptions described at [9.132] of the ACCC's Reasons were made by taking the following steps:
    - a. Regional market share – First, Optus' market share assumptions at B2:F6 were varied by adjusting the regional market share figure [Confidential to Optus] [REDACTED] (cell E4) from Optus' figure of [REDACTED] to the figure of [REDACTED] tested by the ACCC. The market share figures then produced the modified SIOs figure of [REDACTED] in cell S6. Second, this updated figure was selected via the selector in cell S3, to replace the [Confidential to TPG] [REDACTED] figure in cell S7 which comes from Dr Padilla's report.
    - b. Margin – The gross margin per SIO (cell D21) was changed to [Confidential to Optus] [REDACTED].
    - c. Discount rate – The discount rate used for calculating NPV (cell C26) was changed to [Confidential to Optus] [REDACTED].
  6. Once these changes to the assumptions are made, the resulting NPV (cell J9) changes from [Confidential to TPG] [REDACTED] to [Confidential to Optus] [REDACTED]. This is the figure referred at [9.133] in the ACCC's Reasons.
  7. The Model also includes the following additional static tables, used for reference:
    - a. 'Base results' (cells H12:L23). This summarises the results produced by the Model when using the assumptions in Dr Padilla's second report.
    - b. 'Table 8' (cells R26:U45) is taken from Dr Padilla's second report.<sup>7</sup>
    - c. 'Table 7.3' and 'Table 7.5' (cells N5:Q23). These are taken from the first AlixPartners Report provided by Optus.<sup>8</sup>
  8. The ACCC notes the following matters:

<sup>4</sup> Second Padilla Report, Row 382 of the Index (71760.005.022.1898), fn 39 (.1917), [5.32] (.1926).

<sup>5</sup> Second Padilla Report, Row 382 of the Index (71760.005.022.1898), [5.33] (.1926), Table 8 on p 30 (.1927).

<sup>6</sup> Statement of Benjamin White (for Optus), 19 October 2022, Row 482 of the Index (71760.006.019.0001), [164] (.0060).

<sup>7</sup> Second Padilla Report, Row 382 of the Index (71760.005.022.1898), p 30 (.1927).

<sup>8</sup> First AlixPartners Report, Row 623 of the Index (71760.006.020.0402), pp 50 (.0454) and 51 (.0455).

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- a. The Model contains confidential Optus and TPG material and the ACCC submits that it should not be published.
  - b. The ACCC's Reasons in relation to the modelling conducted by Dr Padilla and Optus should be read in conjunction with the corrected version of Table 5 at [9.130] of the ACCC's Reasons (and a corresponding correction to paragraph [9.131]) that was filed and served on 10 March 2023. These corrections do not affect the calculations in [9.132] and [9.133].
  - c. Frontier were engaged by AGS for the ACCC in order to assist in relation to the Applicants' application for merger authorisation. By complying with the Tribunal's direction to produce the Model, the ACCC does not waive any claim for legal professional privilege over communications with Frontier.
  - d. The ACCC has not copied the parties to the review on this communication to the Tribunal, as it understands that the Tribunal wishes to view the Model before deciding whether to make the Model available to the parties, and on what terms.
9. Finally, the ACCC is available to assist the Tribunal in relation to any queries it may have in relation to the Model.

Yours sincerely



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