

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Letter to AGS for Further Particulars

File Number: ACT 1 of 2022

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

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 7/03/2023 9:01 AM

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.

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20 February 2023

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Dear Mr Tate

**Applications by Telstra Corporation Limited and TPG Telecom Limited – ACT 1 of 2022 –
Telstra’s Concise Statement of Facts, Issues and Contentions**

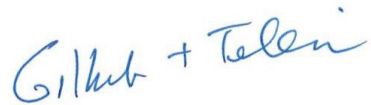
We refer to Telstra’s Concise Statement of Facts, Issues and Contentions (**SoFIC**) dated 13 February 2023 and to your letter of 16 February 2023 requesting further particulars in relation to paragraph 60 of the SoFIC.

In responding to your request, we make the following preliminary observations:

- (a) As observed by his Honour Justice O’Bryan at the initial case management hearing (T 3:15-20) all parties accept that the role of the Tribunal is to reach its own view as to the preferable outcome in this matter. The Tribunal is not required to undertake a review of the correctness of the ACCC determination itself or of its reasons.
- (b) Accordingly, the purpose of our client’s SoFIC is to set out the facts and contentions to be relied upon by Telstra and to which Telstra considers the Tribunal ought to have regard when substantively assessing the merger authorisation. It is not for Telstra to seek to anticipate or pre-empt in its SoFIC the facts and contentions that may be raised by Optus or the ACCC in relation to these matters in their own concise statements. It is therefore not the case that Telstra’s SoFIC will necessarily be sufficient to crystallise all issues in dispute.
- (c) While the matters in sub-paragraphs 60(a)-(c) were canvassed in the ACCC’s final determination, Telstra does not understand any of them to have been central to the ACCC’s ultimate finding.
- (d) Paragraph 60 does no more than confirm that the SoFIC does not, and is not intended to, involve a detailed critique of the reasons published by the ACCC. Where matters or findings of the ACCC set out in its reasons are not referred to in the SoFIC, the Tribunal should not understand, on that basis, that they were accepted by Telstra.

While Telstra therefore does not accept that it is necessary for it to do so for the purpose of its SoFIC, in the interests of assisting the parties to prepare their own SoFICs, we set out in the Annexure further particulars addressing the specific matters raised at sub-paragraphs 60(a)-(c) of Telstra's SoFIC.

Yours sincerely



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