

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

File Number: ACT 1 of 2022

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

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

REGISTRAR

Dated: 10/03/2023 12:16 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.



Australian Government Solicitor
Level 34, 600 Bourke Street Melbourne VIC 3000
GPO Box 2853 Melbourne VIC 3001
T 03 9242 1222
www.ags.gov.au

Our ref. 22002404

10 March 2023

Andrew Low and Simon Muys
Gilbert + Tobin
Level 35, Tower 2, International
Towers
200 Barangaroo Ave
SYDNEY NSW 2000

via email: alow@gtlaw.com.au;
smuys@gtlaw.com.au

Linda Evans and Christine Wong
Herbert Smith Freehills
Level 34, ANZ Tower
161 Castlereagh Street
SYDNEY NSW 2000

via email: linda.evans@hsf.com
christine.wong@hsf.com

Richard Flitcroft, Jodi Gray and
Andrew Korbel
Corrs Chambers Westgarth
Level 37, Quay Quarter Tower
50 Bridge Street
SYDNEY NSW 2000

via email: jodi.gray@corrs.com.au;
richard.flitcroft@corrs.com.au;
andrew.korbel@corrs.com.au

CC: Haydn Flack
MinterEllison
Level 40, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

via email:
haydn.flack@minterellison.com

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

Dear Colleagues

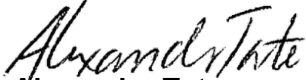
**Applications by Telstra Corporation Limited and TPG Telecom Limited –
ACT 1 of 2022 – Correction to Table 5 of ACCC’s Reasons for Determination**

1. This letter relates to the **Joint Application** filed by **Telstra Corporation Limited** and **TPG Telecom Limited** (the **Applicants**) and dated 24 February 2023.
2. The ACCC has just become aware that some items in Table 5 and paragraph 9.131(d) in the Reasons for Determination dated 21 December 2022 require correction.
3. To assist the Tribunal and parties, we have prepared a revised Table 5 and corrected the relevant part of paragraph 9.131(d). Annexed to this letter is a copy of Table 5 and the relevant part of paragraph 9.131(d) as they appear in the Reasons (Annexure 1), and a version incorporating the corrections (Annexure 2). The annexures to this letter are provided on an external counsel only basis pursuant to the Confidentiality Regime in the directions dated 24 January 2023 as they contain information confidentiality to each of TPG and Optus.
4. Annexure 2 identifies the source material for each figure in the table, all of which is in the material already provided to the parties and the Tribunal. We also note that the title of row 3 has been adjusted to more accurately reflect the figures within.

CONFIDENTIAL – RESTRICTION ON PUBLICATION CLAIMED

5. A copy of this letter will also be filed with the Registry of the Australian Competition Tribunal, and provided to the chambers of Acting President O'Bryan J.

Yours sincerely



Alexander Tate

A/g Senior Executive Lawyer

T 07 336 05782

Alex.Tate@ags.gov.au

CONFIDENTIAL – RESTRICTION ON PUBLICATION CLAIMED

ANNEXURE 1

Original Table 5: Estimates of Optus’ cost of network investment and number of subscribers lost if it did not make the investment

Green rows/text are subject to a confidentiality claim by TPG. Blue rows/text are subject to a confidentiality claim by Optus.

Variable	Dr Padilla	Optus – Match TPG under the Proposed Transaction	Optus – maintain [REDACTED] business case investment
Additional Network Cost	[REDACTED]	[REDACTED]	[REDACTED]
Subscribers lost if Optus doesn’t invest	[REDACTED]	[REDACTED]	[REDACTED]
Lost margin on subscribers following investment	[REDACTED]	[REDACTED]	[REDACTED]
Implied NPV of investment	[REDACTED]	[REDACTED]	[REDACTED]

Source: Expert report of Jorge Padilla (Compass Lexecon), Annexure E to Applicants’ submission in response to Statement of Preliminary Views, 2 November 2022; STO.5001.0023.0054.

9.131 ...

(d) ... If Dr Padilla’s model is adjusted for this discount rate, and all else being equal, the ACCC estimates that the net present value of Optus’ return on investing in a regional 5G network would fall significantly, by [REDACTED].

CONFIDENTIAL – RESTRICTION ON PUBLICATION CLAIMED

ANNEXURE 2

Corrected Table 5: Estimates of Optus’ cost of network investment and number of subscribers lost if it did not make the investment (changes highlighted)

Green rows/text are subject to a confidentiality claim by TPG. Blue rows/text are subject to a confidentiality claim by Optus.

Variable	Dr Padilla ¹	Optus – Match TPG under the Proposed Transaction ²	Optus – maintain business case investment ²
Additional network cost (NPV)	[REDACTED]	[REDACTED]	[REDACTED]
Subscribers lost if Optus doesn’t invest	[REDACTED]	[REDACTED]	[REDACTED]
Lost margin on subscribers from not investing (NPV)	[REDACTED]	[REDACTED]	[REDACTED]
Implied NPV of investment ¹²	[REDACTED]	[REDACTED]	[REDACTED]

Source: Expert report of Jorge Padilla (Compass Lexecon), Annexure E to Applicant’s submission in response to Statement of Preliminary Views, 2 November 2022 [71760.005.022.1898 – row 382 of index]; STO.5001.0023.0054/71760.006.019.0873 – row 545 of index.

Notes:

- 1: Padilla estimates are expressed in NPV terms, discounted at a real [REDACTED].
- 2: Optus estimates are expressed in NPV terms, [REDACTED].
- 3: Figure from 71760.005.022.1898 – row 382 of index, at paras 5.28 and 5.37.
- 4: Figure derived from STO.5001.0023.0054/71760.006.019.0873 – row 545 of the index [REDACTED].
- 5: Figure derived from STO.5001.0023.0054/71760.006.019.0873 – row 545 of the index [REDACTED].
- 6: Figure from 71760.005.022.1898 – row 382 of index, at Table 8. [REDACTED].
- 7: Figure derived from STO.5001.0023.0054/71760.006.019.0873 – row 545 of the index - [REDACTED].
- 8: Figure derived from STO.5001.0023.0054/71760.006.019.0873 – row 545 of the index [REDACTED].
- 9: Figure from 71760.005.022.1898 – row 382 of index, at Table 8. See figure in row titled “PV”.
- 10: Figure derived from STO.5001.0023.0054/71760.006.019.0873 – row 545 of the index, [REDACTED].
- 11: Figure derived from STO.5001.0023.0054/71760.006.019.0873 – row 545 of the index, [REDACTED].
- 12: “Implied NPV of investment” = “Lost margin on subscribers from not investing (NPV)” minus “Additional network cost (NPV)”.

9.131 [Changes underlined] ...

(d) ... If Dr Padilla’s model is adjusted for this discount rate, and all else being equal, the ACCC estimates that the net present value of Optus’ return on investing in a regional 5G network would fall significantly, by [REDACTED].¹

Notes:

- 1: The revised figures reflect the discount rate of [REDACTED].