

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

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Lodgment and Details

Document Lodged: Application to Tribunal for Review

File Number: ACT 1 of 2022

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

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 23/12/2022 4:19 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.



FORM I

(subregulation 20(1))

APPLICATION TO TRIBUNAL FOR REVIEW

TPG TELECOM LIMITED APPLICATION FOR REVIEW OF AUSTRALIAN COMPETITION AND CONSUMER COMMISSION MERGER AUTHORISATION DETERMINATION MA1000021

- 1 TPG Telecom Limited (**TPG**) applies to the Australian Competition Tribunal (**Tribunal**) pursuant to s 101 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) for review of the determination of the Australian Competition and Consumer Commission (the **Commission**) dated the 21st day of December 2022 (Commission file no. MA1000021) to reject the application for merger authorisation referred to below (**Determination**).
- 2 On 23 May 2022, pursuant to s 88(1) of the CCA, TPG and Telstra Corporation Limited (**Telstra**) jointly applied for the merger authorisation to which the Determination relates (the **Application**).
- 3 The Application related to commercially negotiated agreements (the **proposed transaction**) between Telstra and TPG to establish a mobile services technology called a Multi-Operator Core Network (**MOCN**) in certain regional and urban fringe areas where TPG currently has no or limited coverage (comprising coverage for around 17% of the Australian population (**17% Regional Coverage Zone**)). The Relevant Agreements would operate for an initial period of 10 years,¹ with two options exercisable by TPG to extend for a further 5 years each.
- 4 The MOCN technology would allow Telstra and TPG to share Telstra's Radio Access Network (**RAN**). The RAN is a part of a mobile network that acts as an 'antenna' to send and receive signals. The RAN may be distinguished from the 'core' of a mobile network, which is the part of a mobile network that comprises the equipment and infrastructure principally used to manage calls and data, define service levels, and process customer-related information. A MOCN permits two mobile network operators to share the use of a common RAN, while still using their own independent core networks. In the case of the proposed transaction, the MOCN is limited to TPG sharing the use of Telstra's RAN within the 17% Regional Coverage Zone. The proposed transaction would also authorise Telstra to use certain spectrum owned by TPG together with Telstra's own spectrum in the 17% Regional Coverage Zone to support the shared use of Telstra's RAN on an equivalent basis in that location by both Telstra and TPG.²
- 5 The effect of the proposed transaction is that TPG will be able to offer its customers substantially improved coverage throughout the 17% Regional Coverage Zone, improving its coverage nationally, while maintaining independent control of its products, service quality, pricing and

¹ Or 8 years, if subject to the joint s 87B Undertaking in the form set out in Exhibit 68.

² See Application (Exhibit 1) at p 7. Telstra will also be authorised to use certain spectrum beyond the 17% Regional Coverage Zone (i.e., in very remote areas of the Australian population).

customer data (through an independent core network and IT systems). Telstra will receive a fee for sharing its RAN with TPG, and both parties will benefit from pooling certain spectrum in the 17% Regional Coverage Zone, which will support their combined traffic over the shared RAN and reduce congestion thereby improving quality of service.

- 6 The proposed transaction falls within the scope of merger authorisation only by virtue of s 68(1) of the *Radiocommunications Act 1992* (Cth) (**Radiocommunications Act**), which deems an authorisation to use spectrum to be an acquisition within the meaning of s 50 of the CCA and therefore capable of merger authorisation under Part VII. The Application is limited to seeking authorisation for the use of this pooled spectrum.
- 7 TPG is dissatisfied with the Determination in the following respects:
 - (a) The Commission incorrectly concluded that authorisation should not be granted on the basis that the Commission could not be satisfied that the deemed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition in relevant markets.
 - (b) The Commission incorrectly concluded that it could not be satisfied that the deemed acquisition would result, or would be likely to result, in a benefit to the public that would outweigh the detriment to the public that would result or be likely to result from the deemed acquisition.
 - (c) In the premises of (a) and (b), the Commission ought to have granted the application for merger authorisation.
- 8 The determination that TPG seeks from the Tribunal is as follows:
 - (a) that the Determination be set aside; and
 - (b) that unconditional merger authorisation be granted under s 88(1) of the CCA for the authorised use of spectrum as part of the MOCN, as contemplated by the Application; or
 - (c) in the alternative, that merger authorisation be granted under s 88(1) of the CCA for the authorised use of spectrum as part of the MOCN, as contemplated by the Application, on the condition(s) that:
 - (i) Telstra and TPG give, and comply with, a joint s 87B Undertaking in the form set out in Exhibit 68 that requires Telstra and TPG to terminate the relevant agreements, and to commence the transition out mechanisms under those agreements if, on the date that is 8 years after the date on which the merger authorisation comes into effect, the arrangements are not re-authorised (either by the Commission or the Tribunal); and

- (ii) TPG gives, and complies with, a separate s 87B Undertaking in the form set out in Exhibit 68, that requires it not to terminate the leases or licences in respect of 300 of its current mobile sites in the 17% Regional Coverage Zone for up to 8 years to support its transition out from the arrangements should the arrangements not be re-authorised in accordance with paragraph 8(c)0 above.

- 9 Particulars of the facts and contentions upon which TPG intends to rely in support of the application for review, and a statement of the issues as TPG sees them, are at **Attachment A**, including **Schedule 1**.
- 10 A list of certain documents submitted by Telstra and TPG to the Commission in connection with the Application on which they intend to rely is at **Attachment B**.
- 11 A list of certain evidence from interested parties submitted to the Commission in connection with the Application on which Telstra intends to rely is at **Attachment C**.
- 12 The s 155 examination transcripts of Iñaki Berroeta, Yago Lopez and Trent Czinner of TPG and Andrew Penn, Nicolaos Katinakis and Bart-Jan Sweers of Telstra are at **Attachment D**.
- 13 The address for service for the purpose of regulation 21 of the *Competition and Consumer Regulations 2010 (Cth)* is:

c/o Jodi Gray, Andrew Korbel and Richard Flitcroft
Corrs Chambers Westgarth
Level 37, Quay Quarter Tower, 50 Bridge Street, Sydney NSW 2000.

Dated this 23rd day of December 2022.

Signed by/on behalf of the applicant



.....
Jodi Gray

Solicitor for applicant

History

Form I amended by SR No 330 of 1995, reg 10.1 and 10.2, effective 6 November 1995; SR No 20 of 1996, reg 10.2, effective 31 January 1996; SR No 280 of 2010, Sch 1, effective 1 January 2011 (as amended by SR No 337 of 2010).

ATTACHMENT A

FACTS AND CONTENTIONS IN SUPPORT OF THE APPLICATION

Background

- 1 Mobile Network Operators (**MNOs**) own and operate their own mobile networks to supply wholesale and retail mobile services to customers enabling call, text and data on mobile devices.
- 2 The three major Australian MNOs, Telstra, Optus and TPG, each promote and supply retail and wholesale mobile services (voice and data) on a national basis – typically offering services and pricing structures that are the same nationally. Customers use mobile services while travelling across Australia. Mobile service markets have therefore been widely accepted to be national in scope.³
- 3 The extent of population coverage and the quality of mobile network services available using each MNO's network varies, depending on the extent to which an MNO has itself installed, or otherwise has access to, mobile network infrastructure in a particular area.⁴
- 4 Certain geographic and demographic features of Australia create challenges for MNOs to deploy network infrastructure that is sufficient to reliably service and offer mobile coverage to users across the entirety of the Australian population. Most of the population resides in relatively densely populated metropolitan areas, with approximately 81.4% of the population living in approximately 50,000 km² of mostly urban areas. By contrast:
 - (a) approximately 17% of the population resides in urban fringe and regional areas (the 81.4% to 98.8% area of population coverage) (**17% Regional Coverage Zone**) spanning approximately 1.5 million km²; and
 - (b) less than 1% of the population resides in a very remote 98.8% to 99.5% area of population coverage spanning approximately 1 million km² of land.
- 5 All three MNOs have their own networks with extensive coverage in metropolitan areas where 81.4% of the population reside. The low population density and significant land area within the 17% Regional Coverage Zone has meant that, to date, only Telstra and Optus have deployed extensive Radio Access Network (**RAN**) sites and other related infrastructure in the 17% Regional Coverage Zone. Telstra has installed and operates approximately 3,700 sites in this area, and Optus has installed and operates approximately 2,500 sites. Telstra also has additional coverage beyond the 17% Regional Coverage Zone in very remote areas. On this basis, Telstra claims

³ Application (Exhibit 1) at [170].

⁴ Application (Exhibit 1) at [71(a)-(c) and (e)].

that its mobile network has national coverage of approximately 99.5% of the population, and Optus claims to have national coverage of approximately 98.8% of the population.

6 TPG's network is significantly less developed in the 17% Regional Coverage Zone than the networks of either Telstra or Optus. TPG has approximately 749 sites offering coverage in the 17% Regional Coverage Zone. TPG's network only reaches approximately 96% of the population (with a significantly poorer network quality in the 81.4% to 96% population coverage areas as compared with Telstra and Optus).

7 It is unlikely that TPG will expand its own network infrastructure to provide coverage to substantially all of the 17% Regional Coverage Zone given the costs and diminishing returns of delivering mobile coverage to areas with low population density (in circumstances where TPG does not have a large existing customer base in these areas given its lack of coverage).⁵ The challenge of how to promote and offer its customers competitive mobile coverage in the 17% Regional Coverage Zone, without being required to roll out its own mobile network infrastructure, has bedevilled TPG since its entry in Australia.

8 To date, TPG has sought incrementally to extend its coverage through a sub-optimal wholesale 3G roaming arrangement with Optus (the **3G Roaming Agreement**). The 3G Roaming Agreement enables TPG to supply 3G mobile services to approximately [**Confidential to TPG**] ■■■■■% of the population by permitting TPG customers to roam on to, and use, the Optus 3G network. However, the 3G Roaming Agreement is limited to use of Optus' ageing 3G mobile network. This

(a) limits TPG's network coverage and services in roaming areas principally to voice services, as 3G provides insufficient data speeds for most current mobile applications;

(b) [**Confidential to TPG**] ■■■■■
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(c) [**Confidential to TPG**] ■■■■■
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⁵ Applicants' submission in response to the SOPV, Annexure F: TPG Counterfactual (Exhibit 64) at [3].
⁶ First Counterfactual Submission (Exhibit 48) at [38].
⁷ First Counterfactual Submission (Exhibit 48) at [40]; Statement of I Berroeta (Exhibit 57) at [33].

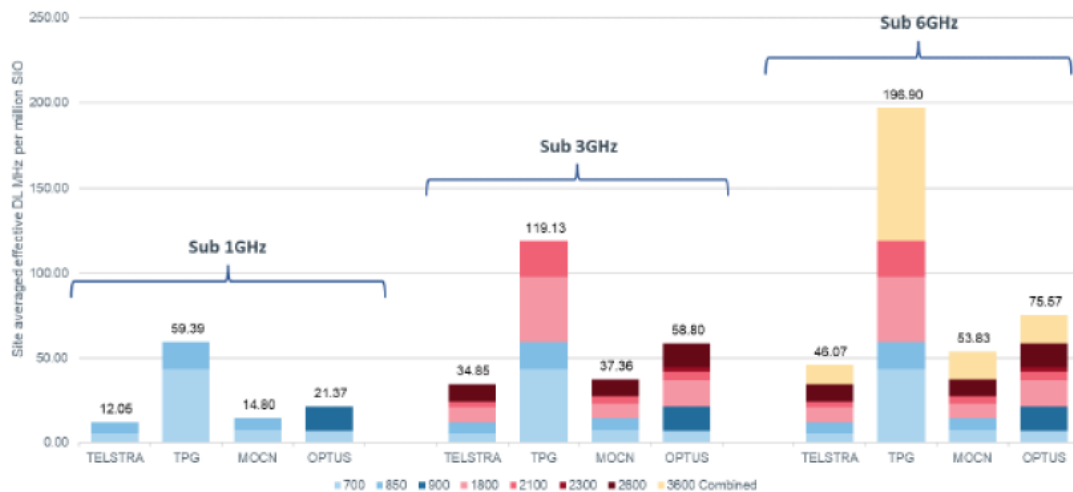
[REDACTED]

(d) [Confidential to TPG] [REDACTED]

9 The differences in national coverage and network quality in the 17% Regional Coverage Zone between TPG and the other MNOs have impeded TPG’s ability to compete effectively and closely against Telstra and Optus in relation to the national supply of wholesale and retail mobile services.¹⁰

10 Telstra confronts a different problem in the 17% Regional Coverage Zone. While it has deployed an extensive network of sites and other infrastructure in these regional and peri-urban areas, Telstra faces an escalating challenge of increased network congestion and the resulting effect this has on service quality. This is due to growth in both the number of customers living and working in those areas (especially post COVID-19) and the demand by all mobile customers, including in regional areas, for increased data and network speeds. In these areas, Telstra has less spectrum per customer than either Optus or TPG, which is the measure that determines the service quality, data speeds and coverage that can be offered to customers (see Figure 1).¹¹

Figure 1. Site-weighted average effective download spectrum per Service In Operation by operator



⁸ First Counterfactual Submission (Exhibit 48) at [41].

⁹ First Counterfactual Submission (Exhibit 48) at [6(d)]; Statement of I Berroeta (Exhibit 57) at [36].

¹⁰ Application (Exhibit 1) at [28].

¹¹ See Application (Exhibit 1) at [241(c)]; Submission in response to Optus (Exhibit 43) at [63] and [67] citing First Aetha Report (Exhibit 45) at p 22; and Statement of A Penn (Exhibit 52) at [45].

- 11 Telstra is concerned that customer and government perceptions of poor network or service quality in regional areas are both commercially and reputationally damaging given Telstra's significant investment in, and associated brand identification with, good and reliable national (and regional) coverage.¹²
- 12 In other countries, since at least the early 2000s, MNOs have responded to similar challenges through a number of forms of active infrastructure sharing.¹³ One such technology is a MOCN, in which MNOs connect their own independent core networks to shared RAN infrastructure. During the past decade or more, a significant number of MOCNs have been established in other countries to address (among other things) the challenging economics of mobile network deployment in thinly populated regional areas.
- 13 A MOCN differs fundamentally from other types of network arrangements, such as traditional wholesale roaming or wholesale "mobile virtual network operator" (**MVNO**) relationships. In other wholesale relationships, the wholesale customer is reliant upon, and acquires, wholesale mobile services that are commercially and technologically defined by the MNO that operates the underlying network.
- 14 By contrast, in a MOCN, the parties share only the use of the RAN and associated infrastructure, while retaining their own distinct and independent 'core' networks. This means that each party continues to operate as an independent mobile network, with separate and independent control over how products and service levels are defined and how customer information is handled and managed (all of which are defined and managed in the core network and not within the RAN). In Canada, where similar challenges of rural and regional mobile network coverage are present, one of the pioneers of MOCN technology, Mr Michael Strople, in evidence before the Commission and Tribunal describes the difference as follows:¹⁴

Roaming or MVNO relationships are services-based (i.e. the competitive services that an operator can provide are dictated by the wholesale services supplied by a roaming partner or wholesale MVNO supplier).

However, for the reasons I give earlier in my statement, MOCNs can be used to enhance facilities-based competition particularly in sparsely populated areas, or where full network build out is unlikely or uneconomic ... under the MTS Rogers MOCN Agreement, both Rogers and MTS retained full and independent control of their own core network and therefore both operators also retained full and independent control of their own product roadmaps, service definition and customer billing and management platforms.

¹² Statement of A Penn (Exhibit 52) at [19].

¹³ Statement of N Katinakis (Exhibit 56) at [16]-[19].

¹⁴ Statement of M Strople (Exhibit 59) at [48]-[49].

- 15 Telstra Group Executive, Networks and Technology, Mr Nicolaos (Nikos) Katinakis, has direct and extensive experience negotiating and implementing MOCNs, including in Canada, prior to joining Telstra in 2018. Based on this experience, Mr Katinakis identified the potential for a MOCN to be used to benefit both Telstra and TPG, as he explains:¹⁵

The most successful MOCNs involve an alignment of commercial interests where the parties to a MOCN have different but complementary needs. In relation to TPG and Telstra, I saw a real opportunity for both parties. TPG would benefit from accelerated access to more sites, and an extended network footprint (which they otherwise would not have the capital to achieve, or which would take significantly more time) and Telstra would benefit from access to additional spectrum as well as a way to monetise our substantial, early investment in 5G infrastructure.

- 16 TPG's Chief Technology Officer, Giovanni Chiarelli, has overseen the management and operation, and had a role in the negotiation and commencement of implementation, of MOCNs in South Africa, and the implementation of a rural Multi-Operator Radio Access Network (**MORAN**) in Romania, prior to joining TPG in January 2022. Based on this experience, Mr Chiarelli considers a MOCN as having important benefits to TPG that are not available under a roaming arrangement, including for instance:¹⁶

- (a) significantly improved customer service, including the elimination of frequent call failures as customers move between TPG's network onto the roaming network;
- (b) support for standalone 5G (which roaming does not support), which offers more advanced 5G use-cases than those available on non-standalone 5G; and
- (c) the ability for each MNO to build, control and differentiate its own products (such as via data caps and throttling and real time alerts to customers) by retaining independent control over their own core networks.

- 17 **[Confidential to Telstra]** [REDACTED]
[REDACTED]
[REDACTED]¹⁷

- 18 On 21 February 2022, Telstra and TPG entered into three related commercial agreements:

- (a) the MOCN Service Agreement dated 17 February 2022 (**MOCN Agreement**);

¹⁵ Statement of N Katinakis (Exhibit 56) at [29].

¹⁶ Statement of G Chiarelli (Exhibit 66) at [24]-[28].

¹⁷ Statement of A Penn (Exhibit 52) at [54].

- (b) a Spectrum Authorisation Agreement dated 17 February 2022 (**Spectrum Authorisation**);
and
- (c) a Mobile Site Transition Agreement dated 17 February 2022 (**Site Agreement**),

(together, the **Relevant Agreements**, which are the **proposed transaction**).¹⁸

19 Implementation of the Relevant Agreements is conditional on the receipt of merger authorisation for the proposed transaction either on an unconditional basis or subject to conditions which are in each party's reasonable opinion acceptable.¹⁹

20 Material elements of the Relevant Agreements are:

- (a) TPG will be permitted to share Telstra's RAN in the 17% Regional Coverage Zone and can use that shared RAN to supply its own 4G and 5G wholesale and retail mobile services in that area. TPG will pay Telstra for this shared use of the Telstra RAN;
- (b) Telstra will obtain authorised use of certain TPG spectrum (presently unused or underutilised) in order to pool it together with Telstra's own spectrum and make it available to both parties in the 17% Regional Coverage Zone to support the mobile traffic on that shared RAN infrastructure. Telstra will also be able to use certain spectrum beyond the 17% Regional Coverage Zone (i.e., very remote areas) where only it has infrastructure. Telstra will pay TPG for the authorised use of this spectrum; and
- (c) Telstra will acquire access to a small number of TPG sites in the 17% Regional Coverage Zone (up to 169), where Telstra does not currently have effective coverage, to enable the shared RAN to provide continued coverage for existing TPG customers in those areas.²⁰

21 The Relevant Agreements have an initial term of 10 years, following which there are two consecutive 5-year options to renew, exercisable at TPG's sole discretion.²¹

22 The Spectrum Authorisation referred to in paragraph 18(b) above is deemed by s 68A of the Radiocommunications Act to be an acquisition for the purposes of s 50 of the CCA. While it is a deemed acquisition, the proposed transaction is not in substance a merger or combination of two competitors and does not reduce or restrict the competitive independence of TPG. To the

¹⁸ Full descriptions of the Relevant Agreements are found in the Application (Exhibit 1) in section 7.

¹⁹ MOCN Agreement, clause 2.1(b).

²⁰ TPG will resolve its remaining ~556 mobile sites in the 17% Regional Coverage Zone, some of which it will retain for a period of time (~300 sites) and others which it will seek to exit.

²¹ Application (Exhibit 1) at fn 71.

contrary, the proposed transaction is a form of network augmentation,²² effected through active RAN sharing and spectrum pooling, that:

- (a) extends and improves the coverage and performance of TPG's own network and services within the 17% Regional Coverage Zone; and
- (b) through access to pooled spectrum, enables Telstra to reduce congestion and improve service quality for customers within the 17% Regional Coverage Zone.

23 The Spectrum Authorisation also enables TPG to monetise its underutilised and unused spectrum in regional areas.²³

24 The proposed transaction allows Telstra to better monetise its infrastructure assets and address network congestion in regional areas.²⁴ While Telstra will benefit from access to pooled spectrum, and wholesale payments from TPG, the proposed transaction gives rise to material commercial risks for Telstra. Most notably, the proposed transaction “*will almost certainly result in Telstra losing some retail market share to TPG (and MVNOs that use the TPG network)*”.²⁵ Accordingly, **[Confidential to Telstra]** [REDACTED]

Key facts in support of the grant of merger authorisation

25 Telstra and TPG applied for merger authorisation under s 88(1) of the CCA from the Commission on 23 May 2022. The key facts in support of the grant of merger authorisation are set out below (and the key supporting evidence relied upon before the Commission is listed at **Attachment B**).

26 The relevant markets to the Application include:²⁶

- (a) the national retail market for mobile services; and
- (b) the national wholesale mobile services market (to MVNOs and MNOs).

27 Merger authorisation should be granted, because the proposed transaction (including the Spectrum Authorisation) is not likely to result in a substantial lessening of competition in any relevant market. In particular:

²² Statement of M Strople (Exhibit 59) at [41].

²³ Application (Exhibit 1) at [36] and [240]; Statement of I Berroeta (Exhibit 57) at [62] and [70].

²⁴ Application (Exhibit 1) at [36], and [240].

²⁵ Statement of A Penn (Exhibit 52) at [60].

²⁶ Application (Exhibit 1) at section 8.

- (a) The proposed transaction does not involve any change in ownership, increased concentration in any market, or removal of TPG as an independent competitor in any relevant mobile services market in Australia.²⁷
- (b) The proposed transaction concerns a limited area of mobile network coverage where only 17% of the population resides, whereas the relevant markets are national in scope, and the product and pricing strategies of MNOs are nationally focused.
- (c) The proposed transaction is likely to have a positive effect on competition, including because it will:
 - (i) mean that, for the first time, there will be three, rather than two MNOs competing in the relevant markets with extensive coverage in the 17% Regional Coverage Zone;
 - (ii) enhance the competitiveness of the smallest MNO (TPG) by enabling it to offer a higher quality of service to customers who value coverage in the 17% Regional Coverage Zone;
 - (iii) increase choice at both a retail and wholesale level for customers including residential, small business and enterprise customers who either reside in the 17% Regional Coverage Zone, or who travel to or otherwise value that regional coverage;²⁸ and
 - (iv) place downward pressure on national pricing.²⁹
- (d) By enabling TPG to provide improved regional coverage to its wholesale MVNO customers, the proposed transaction will also likely increase the number of MVNOs promoting and supplying competitive retail services in the 17% Regional Coverage Zone.³⁰
- (e) The Relevant Agreements preserve TPG's ability to exit the Relevant Agreements after 10 years (or after any optional extensions) and provide a transition-out period of up to 36 months at TPG's election and the ability for TPG to explore alternatives during the term of the Relevant Agreements (including, for example, site builds and network sharing arrangements with other MNOs). In this way, the proposed transaction allows further direct competition between Telstra and Optus for the supply to TPG of infrastructure sharing

²⁷ Application (Exhibit 1) at [167] and [179].

²⁸ Application (Exhibit 1) at [183].

²⁹ Application (Exhibit 1) at [231]; Submission in response to Optus, Annexure E: TPG Confidential Annexure (Counterfactual) (Exhibit 48) at [54]; Submission in response to Optus (Exhibit 43) at [49]-[50]; First Padilla Report (Exhibit 47) at [6.7] and [6.8]; Second Padilla Report (Exhibit 63) at [3.48] and [4.25]; Third Padilla Report (Exhibit 75) at [3.12]; Statement of Mr Cooney (Exhibit 67) at [75].

³⁰ Application (Exhibit 1) at [208] and [209].

services within the 17% Regional Coverage Zone during the term of the Relevant Agreements and in the event TPG chooses to exit the Relevant Agreements after 10 years.³¹

28 By contrast, in the future **without** the proposed transaction:

- (a) No alternative or different infrastructure sharing deal is likely between Telstra and TPG, either now or in the foreseeable future.
- (b) Direct investment in a mobile network roll out by TPG within the 17% Regional Coverage Zone will not occur to any material extent. TPG would likely only have a small incremental roll out of its own mobile infrastructure in the 17% Regional Coverage Zone.³² The proposed transaction therefore is the next best infrastructure alternative for TPG which allows TPG to maintain competitive independence while augmenting the coverage of its mobile network through shared use of Telstra's regional RAN.³³
- (c) The prospect of any alternative wholesale arrangement (roaming or active network sharing) being agreed with Optus is very low and, if it occurred at all, it would likely be on terms substantially less commercially attractive to TPG than the proposed transaction, including because:
 - (i) there is a lack of spectrum and equipment synergies between TPG and Optus;³⁴
 - (ii) if the proposed transaction were not authorised, Optus would be the only available provider to TPG of shared network access and would be in a monopoly position in any negotiation;³⁵ and
 - (iii) Optus has a clear commercial incentive to maintain its superior regional coverage and technology differentiation vis-à-vis TPG and, absent any competition, to maximise any payments by TPG in exchange for network access or sharing in any alternative wholesale transaction.³⁶
- (d) If any wholesale arrangement were to be agreed with Optus (which is highly speculative), it would likely be limited to 4G roaming for the foreseeable future.³⁷ Such an arrangement would be worse for competition than the factual, as it would not provide TPG with access

³¹ Application (Exhibit 1) at [52]-[60]; Submission in response to Optus (Exhibit 43) at [139]; Applicants' letter to the ACCC dated 1 November 2022 (Exhibit 68) at p 4.

³² Application (Exhibit 1) at [47]-[51].

³³ Applicants' response to SOPV (Exhibit 58) at Executive Summary, pp 2-3.

³⁴ Application (Exhibit 1) at [54] and [55].

³⁵ Application (Exhibit 1) at [60].

³⁶ Applicants' response to SOPV (Exhibit 58) at Executive Summary, p 4 and [72] and [73].

³⁷ Application (Exhibit 1) at [47]-[51].

to 5G, would offer TPG less coverage and provide TPG with substantially less scope than a MOCN to operate independently and to differentiate its products and services to compete with Telstra and Optus.³⁸

29 The proposed transaction reflects the outcome of a competitive market, in which Telstra negotiated the terms of the Relevant Agreements having regard to the existence of Optus as a potential alternative provider to TPG of network access. The proposed transaction delivers a substantially enhanced competitive market structure and associated benefits as compared with any commercially realistic counterfactual.

30 As the independent expert report of Mr Richard Feasey states:³⁹

I do not think this conclusion [that the proposed transaction will not substantially lessen competition] should be unexpected or controversial. Both the object and effect of the agreement is to enable TPG and Telstra to compete more effectively with each other and with Optus by allowing Telstra to overcome its current and future capacity constraints and TPG to overcome its long-standing coverage limitations in the relevant area. Neither of these issues can be addressed by Telstra or TPG to anything like the same degree by any other means. In my view, the agreement will have no substantive adverse effect on Optus' incentive or ability to compete with TPG and Telstra in the post-transaction environment.

31 Similarly, the expert report of Dr Padilla states:⁴⁰

...the Proposed Transaction is likely to be pro-competitive with significant benefits to mobile users both relative to the current market and relative to an alternative agreement between TPG and Optus. In particular, I expect mobile users to benefit from TPG's improved coverage, the incentive for Telstra and Optus in particular to make additional quality-enhancing investment in response and from lower quality-adjusted prices across the market.

32 Further, merger authorisation should be granted because the proposed transaction gives rise to a number of substantial, verified public benefits, including:

- (a) Immediate improvements in TPG's mobile network coverage in the 17% Regional Coverage Zone, thus increasing choice for customers who require mobile coverage in regional Australia (as per paragraphs 6 to 9 and 20 above).

³⁸ Application (Exhibit 1) at [196]; Applicants' response to SOPV (Exhibit 58) at Executive Summary, p 4.

³⁹ First Feasey Report (Exhibit 34) at [8]. Mr Feasey has significant expertise in the telecommunications industry and presently acts as the Inquiry Chair at the UK Competition Markets Authority.

⁴⁰ First Padilla Report (Exhibit 47) at [8.1]. Mr Padilla has significant expertise in the telecommunications industry and presently acts as the Senior Managing Director and the head of Compass Lexecon EMEA.

- (b) TPG's ability to offer an improved product to customers who value better regional network coverage will enable it to better compete for customers it currently does not service; making it a stronger competitor to Optus and Telstra.⁴¹
- (c) The proposed transaction will immediately improve TPG's network coverage, making it a more viable and attractive supplier of wholesale mobile services to MVNOs, which will further increase retail competition including in relation to price.⁴²
- (d) By providing increased access to spectrum in the 17% Regional Coverage Zone, the proposed transaction will improve Telstra's network and service network quality for all customers in the 17% Regional Coverage Zone, and particularly in areas likely to be affected by congestion.⁴³
- (e) The realisation of cost efficiencies through shared use of infrastructure (including RAN sites) and more efficient use of spectrum, which would otherwise be likely to be under-utilised by TPG in the 17% Regional Coverage Zone.⁴⁴
- (f) Environmental benefits, including reduced energy usage and improved visual amenity, as a result of more efficient use of existing infrastructure and reduced site duplication.⁴⁵

33 The evidence that interested parties submitted to the Commission overwhelmingly supports and gives weight to the public benefits that the proposed transaction delivers, including for regional consumers and communities (see for example, the Queensland Farmers' Federation submitted to the Commission):⁴⁶

...that the immediate benefits that would come from this proposal going ahead, outweigh speculation of future risks which are at this point largely unknown. Without significant improvements in connectivity in the short and medium term, the future economic and social viability of regional, remote and rural communities will be held back and current blocks to technology uptake in agricultural sector will continue. The agricultural sector and regional Queensland need immediate improvements to connectivity to continue its trajectory to a digitally enabled industry.

ACCC decision

34 On 21 December 2022, the Commission determined not to grant merger authorisation on the grounds that it could not be satisfied that the proposed transaction would not substantially lessen

⁴¹ Application (Exhibit 1) at [201]-[203] and [229]-[231].

⁴² Applicants' response to SOPV (Exhibit 58) at [34]-[38].

⁴³ Application (Exhibit 1) at [268]-[271].

⁴⁴ Application (Exhibit 1) at p 10, [37] and [193]; First Feasey Report (Exhibit 34) at [12]; First Padilla Report (Exhibit 47) at [5.12]; Applicants' response to SOPV (Exhibit 58) at [46]-[53]; Statement of Mr Strople (Exhibit 59) at [51].

⁴⁵ Submission in response to Optus (Exhibit 43) at [166]; Ihaia Report (Exhibit 46) at [162] and [163].

⁴⁶ Submission by Queensland Farmers' Federation (Exhibit 184) at p 2.

competition, and that the public benefits arising from the proposed transaction would not outweigh the public detriment (**ACCC Decision**).

35 The decision to refuse to grant authorisation for the proposed transaction is based upon the following key findings:

- (a) The proposed transaction will make TPG a more effective competitor against both Telstra and Optus in the 17% Regional Coverage Zone. Among other things, the ACCC finds this likely to be reflected in improved coverage and service quality and lower quality-adjusted prices.⁴⁷
- (b) However, these benefits are described as “static” and short term, as the ACCC finds that they are likely to “dissipate” as the three MNOs compete less vigorously over time.⁴⁸ This reduced competition in the medium to long term is found to primarily be associated with a loss of “dynamic competition”.⁴⁹ The ACCC considers dynamic competition would be weakened over time by an expected lessening of investment in regional infrastructure by Optus and Telstra due to the following factors:⁵⁰
 - (i) Telstra having increased access to spectrum in the 17% Regional Coverage Zone, through its pooled use of spectrum in those areas with TPG. This is said to increase the likely costs of, and increase a barrier to entry for, rivals, and entrench Telstra’s market position.⁵¹ The ACCC finds that this will reduce the incentive for Telstra to invest in its own infrastructure in the future.
 - (ii) The proposed transaction improving the network coverage and service quality of TPG to a point that Optus states that it would be likely to “*slip to have the third best network coverage; and that it will no longer be able to attract customers and revenue to make further investments in additional regional coverage profitable*”.⁵² The ACCC largely accepts this submission.⁵³ The proposed transaction also removes any prospect of Optus entering into its own infrastructure sharing arrangement with TPG for at least the initial 10-year term of the Relevant Agreements.⁵⁴

⁴⁷ ACCC Decision at page ix and [9.216].

⁴⁸ ACCC Decision at page viii and [9.15] to [9.21] and [9.221].

⁴⁹ ACCC Decision at [9.22] to [9.23].

⁵⁰ ACCC Decision at [9.98].

⁵¹ ACCC Decision at [9.380].

⁵² ACCC Decision at [9.37].

⁵³ ACCC Decision at [9.137] and [9.138].

⁵⁴ ACCC Decision at [9.105].

- (c) The ACCC acknowledges that the proposed transaction is likely to give rise to a number of public benefits including in the form of improved service quality for both TPG and Telstra,⁵⁵ reduced costs,⁵⁶ more efficient use of spectrum⁵⁷ and that it would make TPG immediately a more effective competitor.⁵⁸ However, for the reasons summarised at paragraph 35(b), the ACCC finds that these benefits are either likely to dissipate over time or that they may, to a material extent, be achieved in a counterfactual that involved an alternative network sharing transaction with Optus.
- (d) The s 87B Undertakings proposed by Telstra and TPG are found by the ACCC to not address the primary concern, related to the loss of dynamic competition over the medium to long term, because the competitive impact will “*commence immediately on implementation ... and be enduring, irrespective of whether the proposed transaction is terminated after 8 years as contemplated by the Undertakings*”.⁵⁹

Key issues and contentions

36 TPG sets out below a non-exhaustive summary of key issues arising from the ACCC Decision:

- (a) Is the proposed transaction likely to result in a meaningful enhancement in competition through TPG becoming a more effective competitor in the relevant markets, including through its ability to offer higher quality mobile services and better coverage throughout the 17% Regional Coverage Zone?
- (b) If the proposed transaction meaningfully enhances competition as set out in 36(a) above, are the competitive and other public benefits of the proposed transaction ‘static’ and likely not to endure over the medium to long term, because of a loss of dynamic competition?⁶⁰ This issue raises the following sub-issues:
- (i) Is the proposed transaction likely to materially reduce Telstra’s incentive to invest in mobile network infrastructure (including in the 17% Regional Coverage Zone) in the future in a manner, or to an extent, that meaningfully reduces dynamic competition in relevant markets?
- (ii) Is the proposed transaction likely to materially reduce Optus’ ability and/or incentive to invest in mobile network infrastructure (including in the 17% Regional

⁵⁵ ACCC Decision at [10.74].

⁵⁶ ACCC Decision at [10.147].

⁵⁷ ACCC Decision at [9.291], [10.147]-[10.150].

⁵⁸ ACCC Decision at [10.86].

⁵⁹ ACCC Decision at [11.17].

⁶⁰ ACCC Decision at [9.380].

Coverage Zone) in the future in a manner, or to an extent, that meaningfully reduces dynamic competition in relevant markets?

- (iii) Is the proposed transaction likely to materially reduce TPG's ability and/or incentive to innovate in relation to its mobile network infrastructure (including in the 17% Regional Coverage Zone) in the future in a manner, or to an extent, that meaningfully reduces dynamic competition in relevant markets?
 - (c) In undertaking its assessment, in the future without the proposed transaction, is there a real commercial prospect that TPG and Optus will enter into a roaming and/or network sharing arrangement in the 17% Regional Coverage Zone, or is a TPG Targeted Build, a form of the *status quo*, the only realistic commercial possibility?
 - (d) Is the Tribunal satisfied, in all the circumstances, including by reference to (a) to (b) above, that the proposed transaction would not have the effect, or would not be likely to have the effect, of substantially lessening competition in relevant markets?
 - (e) Is the Tribunal satisfied, in all the circumstances, including by reference to (a) to (b) above, that the proposed transaction would result, or be likely to result, in a benefit to the public that outweighs the detriment to the public that would result, or be likely to result?
 - (f) To the extent that the Tribunal finds that it cannot be satisfied of the matters set out in (d) or (e) above, is the relevant concern addressed by the proposed s 87B Undertakings (Exhibit 68)?
- 37 There is also a potential procedural issue. Significant parts of the ACCC Decision are based on confidential evidence and submissions provided by Optus, much of which is largely redacted from the ACCC Decision. TPG has not been provided with Optus' confidential material, and therefore has not had an opportunity to review, respond to, or comment on it. It will be necessary for TPG to be provided with this confidential material promptly. Once TPG has had an opportunity to review this material, it may be necessary to amend or supplement the review application. It may mean that more than the initial 90-day period will be required for the review. It is also possible that the Tribunal will need to seek further information or evidence for the purpose of clarifying the content of the confidential material and its relevance to the review.

38 TPG's key contentions are as follows:

The counterfactual

39 ACCC correctly concluded that TPG is unlikely to invest directly to materially expand its network in the 17% Regional Coverage Zone, with or without the Proposed Transaction.⁶¹ Any material

⁶¹ ACCC Decision at [8.21].

expansion of the TPG network in the future in this zone would require the proposed transaction to proceed or, alternatively, a similar arrangement with Optus (which TPG contends is not a commercially realistic possibility).

- 40 TPG contends that the so called “TPG Targeted Build” counterfactual⁶² is the only commercially realistic counterfactual. This counterfactual does not involve any infrastructure sharing by TPG in the 17% Regional Coverage Zone, and therefore is essentially maintenance of the *status quo*. This would consign TPG to remaining a substantially less effective competitor to Telstra and Optus in the 17% Regional Coverage Zone over any relevant time period. In this counterfactual, competitive rivalry in offering mobile services in the 17% Regional Coverage Zone would remain only, or principally, between Telstra and Optus.⁶³
- 41 The ACCC wrongly concluded that, in the future without the proposed transaction, there is a realistic commercial possibility that TPG would enter into a roaming and/or network sharing arrangement with Optus that would deliver a significant proportion of the same competitive benefits to TPG associated with the proposed transaction, whilst protecting Optus’ future investment incentives.⁶⁴ This hypothesised counterfactual, and the assumptions made regarding its possible terms and impact on TPG and Optus, are based largely on assertions by Optus. The ACCC concedes that the form and terms of any such agreement cannot be predicted confidently.⁶⁵ Critically, TPG considers it would not occur. It is speculative and inconsistent with the evidence that was before the ACCC (see Exhibit 48, Exhibit 64 and Exhibit 76).
- 42 In any event, if an alternative transaction involving Optus were found to be a commercially realistic counterfactual, the future with the proposed transaction would remain meaningfully more competitive (and the efficiencies and other public benefits associated with the proposed transaction would be materially greater) than a future involving any such hypothetical Optus/TPG transaction, including for the following reasons.
- (a) As noted in paragraph 28(d) any such transaction would necessarily be limited to 4G wholesale roaming and neither active asset sharing nor access to 5G (or at least any such sharing or 5G access would be substantially delayed, relative to the proposed transaction).
 - (b) Second, there are significantly less spectrum synergies in any hypothetical Optus/TPG transaction.
 - (c) Third, in any counterfactual Optus would be in a monopoly position to supply TPG with mobile network access services in regional Australia. Optus’ stated incentives are to

⁶² ACCC Decision at [8.14]-[8.15].

⁶³ ACCC Decision at [8.15(c)].

⁶⁴ ACCC Decision at [8.21], [8.22], [8.26], [8.37] and [8.48].

⁶⁵ ACCC Decision at [8.21].

preserve its revenue and market share (in order to preserve its investment case) and any commercial arrangement with TPG in this counterfactual is likely to result in Optus providing less coverage, deriving more commercial value and rent from TPG, and maximising TPG's costs.⁶⁶

Further information regarding TPG's contentions as to the relevant counterfactual is contained in Schedule 1 to Attachment A.

Would the proposed transaction entrench the market position of Telstra and be likely to reduce Telstra's incentive to invest in network infrastructure?

43 The ACCC wrongly concluded that the proposed transaction is likely to enhance or "entrench" Telstra's market position in the 17% Regional Coverage Zone. TPG contends that:

- (a) It is wrong to characterise the proposed transaction as increasing concentration in spectrum holdings in a manner that raises the costs of Telstra's rivals or otherwise entrenches Telstra's market position.⁶⁷
 - (i) First, under the proposed transaction, the spectrum of the parties is *pooled* and used by both Telstra and TPG on an equivalent basis to service *both* of their respective mobile customers over the shared RAN.
 - (ii) Second, the ACCC Decision finds that currently Telstra's only meaningful rival in the 17% Regional Coverage Zone is Optus.⁶⁸ The pooling of spectrum between Telstra and TPG does not reduce the spectrum available to Optus in a way that meaningfully inhibits its ability to compete effectively or that raises its costs. In a world with the proposed transaction, Telstra's available spectrum per user remains significantly less than Optus in the 17% Regional Coverage Zone as illustrated in Figure 1 at paragraph 10. Optus retains spectrum holdings sufficient for it to continue to support more growth in customers on its network with less investment in densifying its network than Telstra.⁶⁹ The spectrum being pooled is also not located in a band that is able to be efficiently utilised by Optus.⁷⁰
 - (iii) Third, TPG holds spectrum that is underutilised or unused due to lack of infrastructure to deploy such spectrum and which puts it at a relative disadvantage to Telstra and Optus. The proposed transaction does not "lock up"⁷¹ spectrum, but

⁶⁶ Applicants Response to SOPV (Exhibit 58) at [61].

⁶⁷ ACCC Decision at [9.94].

⁶⁸ ACCC Decision at [9.143].

⁶⁹ Submission in response to Optus (Exhibit 43) at paras [72]-[75].

⁷⁰ Application at paras 55-56.

⁷¹ ACCC Decision at [9.290].

facilitates the use by TPG of its own spectrum to enable it to compete as an effective and close rival to both Telstra and Optus within the 17% Regional Coverage Zone and, thereby, the relevant national markets.

- (iv) Fourth, to the extent that the ACCC Decision purports to identify other potential acquirers of TPG spectrum,⁷² such hypothetical transactions are not commercially realistic and, in any event, involve speculative technologies or small participants or localised demand for spectrum that mean any such transactions would not be competitively meaningful in the national retail or wholesale mobile services markets.⁷³
- (b) Insofar as the proposed transaction would increase scale economies and reduce costs for Telstra and TPG,⁷⁴ this is a public benefit given competition⁷⁴ in the retail and wholesale mobile markets. Further, such cost benefits and scale efficiencies are not competitively meaningful in circumstances where the proposed transaction relates only to the areas in which 17% of the population reside and therefore they do not raise any strategic or other barrier to expansion by Optus in the relevant national markets. Any cost advantage of Telstra has not disincentivised Optus from investing in the past and Optus has already made significant investments resulting in substantial coverage in the 17% Regional Coverage Zone. The ACCC Decision does not explain or justify the basis on which it otherwise determines that the efficiencies associated with the proposed transaction may raise strategic barriers, or identify any rivals that would be likely to be relevantly affected.⁷⁵
- (c) It is incorrect to conclude that the proposed transaction would insulate Telstra from the competitive threat posed by a potential network sharing agreement between TPG and Optus⁷⁶ because in the future without the proposed transaction, there is no real commercial possibility that such an agreement would eventuate. TPG repeats its contentions at paragraphs 39 to 41 above. Further, in any event, the proposed transaction *protects* the prospect of future contestability in relation to infrastructure sharing by allowing TPG to exit the arrangement by not exercising options to extend the term (allowing TPG to test the market at each point). This contestability will not exist absent the proposed transaction.
- (d) The proposed transaction involves Telstra giving up access to a significant part of its network advantage in regional areas to its rival, TPG, and in so doing significantly *reduces*

⁷² ACCC Decision at [9.295]-[9.301].

⁷³ ACCC Decision at [9.295]-[9.301]; Applicants' submission in response to the SOPV, Annexure F: TPG Counterfactual (Exhibit 64) at [110].

⁷⁴ ACCC Decision at page vi and [9.104].

⁷⁵ ACCC Decision at [9.104].

⁷⁶ ACCC Decision at [9.105].

the barriers to entry faced by TPG in relation the 17% Regional Coverage Zone. Telstra's market position is not entrenched by the proposed transaction. To the contrary:

- (i) **[Confidential to TPG]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (ii) **[Confidential to Telstra]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

To the extent that any durable or structural change to the market is likely to arise from the proposed transaction, it is that barriers will be *reduced* for TPG and the number of effective MNO competitors in the 17% Regional Coverage Zone will increase from two to three.

44 It is also incorrect to conclude that the proposed transaction would be likely to materially reduce Telstra's incentive to invest in network infrastructure in the future.⁸¹ Telstra will continue to have strong incentives to invest in network infrastructure including due to:⁸²

- (a) intense competition in metropolitan areas where the majority of the population resides (between all MNOs who continue to maintain their own networks in this area) for customers who value coverage in metropolitan, regional and rural areas;
- (b) the continued need to invest in network capacity to keep up with escalating data usage; global standards and handset trends (which shift the need to invest more in next generations of technology);
- (c) and because Telstra's competitive strategy is based on its superior network coverage, technology leadership and improving customer experience; and

⁷⁷ Statement of K Cooney (Exhibit 67) at [58], and [75]-[77].
⁷⁸ Second Counterfactual Submission (Exhibit 64) at [94]-[98], and [103].
⁷⁹ Second Counterfactual Submission (Exhibit 64) at [103]-[107].
⁸⁰ Statement of A Penn (Exhibit 52) at [62].
⁸¹ See ACCC Decision at [9.108], [9.144], [9.147] – [9.148].
⁸² Applicants' response to SOPV (Exhibit 58) at [109]-[114].

- (d) sustained pressure from Government in relation to Telstra's commitment to regional and rural Australia to continue to invest and innovate in service delivery in those areas.

TPG's ability and incentive to innovate in relation to network infrastructure

- 45 The ACCC incorrectly characterises the competitive benefit associated with the proposed transaction as "static". By this, the ACCC implies that TPG will "*lose autonomy over aspects of its network*"⁸³ and TPG would have a "*greater ability to innovate and independently differentiate its service offerings*"⁸⁴ under the status quo (i.e. the Targeted Build counterfactual). This is incorrect. For the reasons set out above at paragraphs 14 to 24, the proposed transaction represents an innovative, commercial solution by Telstra and TPG that represents a significant and long-term investment by TPG in its regional coverage and network. This investment ensures that TPG will retain, over the term of the Relevant Agreements, a level of competitive independence, network coverage and service quality in the 17% Regional Coverage Zone that would not occur under any commercially realistic counterfactual.

Optus investment incentives

- 46 The ACCC incorrectly concludes that the proposed transaction is likely to materially reduce Optus' incentives to invest in network infrastructure in the future, or further or alternatively, wrongly concludes that Optus reducing its network investment and competitive intensity in the face of enhanced competition from TPG in the 17% Regional Coverage Zone would constitute a relevant lessening of competition.⁸⁵ TPG contends that:
- (a) The ACCC's finding that "*there is a real chance that Optus will not continue with its previously agreed 5G regional investment plan*"⁸⁶ is not due to any reduction in Telstra's average cost from RAN sharing or spectrum pooling,⁸⁷ or increase in barriers to entry or expansion, or impeding of Optus' ability to invest. Rather, this finding is expressly predicated (both by Optus⁸⁸ and the ACCC⁸⁹) on Optus losing its historic network coverage advantage over TPG in regional areas and the associated increase in competitiveness of TPG.
- (b) It is legally incorrect to conclude that Optus reducing its network investment in response to increased competition from TPG amounts to a "lessening of competition" within the meaning of CCA. The proposed transaction would not hinder, prevent, or impede the relevant competitive process in a way that would make it difficult for Optus to invest and

⁸³ ACCC Decision at [9.114].

⁸⁴ ACCC Decision at [9.114].

⁸⁵ ACCC Decision at [9.135]-[9.138], [9.142], and [9.152].

⁸⁶ ACCC Decision at [9.135].

⁸⁷ ACCC Decision at [9.136] and [9.137].

⁸⁸ ACCC Decision at [9.138]; SOPV, at [5.52] citing Optus submission, 27 June 2022 at [7.44] and [7.47].

⁸⁹ ACCC Decision at [9.138].

compete. The CCA does not protect competitors against increased competition or prohibit conduct on the basis that a rival competitor fails, or refuses, to compete in response to increased competition.

- (c) Further, it is unlikely as a matter of fact that Optus would reduce its network investment in regional Australia in response to the proposed transaction.
- (i) First, Optus has an existing significant network in the 17% Regional Coverage Zone (around 2,500 sites) and will have strong incentives to continue utilising this to compete against Telstra and TPG (as it has done to date as against Telstra and its MVNOs). It is not credible that Optus would exit.
 - (ii) Second, Optus has strong incentives to continue investing in the 17% Regional Coverage Zone in order to prevent network quality degradation for its customers, to ensure it does not lose customers in metropolitan areas who value this coverage, and to continue to be able to compete against Telstra and TPG on a national level.
 - (iii) Third, TPG reserves its position in relation to the analysis at ACCC Decision [9.126] – [9.133] until it has had the opportunity to review the redacted text and the underlying confidential material on which it is based.

Public benefits

47 There is evidence before the Tribunal of significant public benefits arising from the proposed transaction including more effective competition by TPG in the 17% Regional Coverage Zone,⁹⁰ reduced quality adjusted prices,⁹¹ improved service quality of Telstra and TPG,⁹² economies of scale and reduced costs,⁹³ and more efficient use of spectrum.⁹⁴ The ACCC correctly accepted the likely existence of these various benefits.

48 By contrast, in the future without the proposed transaction, there is no commercially realistic possibility that such public benefits would be achieved, or achieved to any similar extent. The ACCC therefore wrongly concluded that these benefits are not merger-specific, or partly not merger-specific, and Telstra repeats its contentions at paragraphs 39 to 40 above.

49 Further, for the reasons set out at paragraphs 39 to 46, the ACCC wrongly concluded that a reduction in investment by Optus over the long run, in the face of increased competition from TPG, will have the effect of reducing dynamic competition such that the benefits associated with the proposed transaction do not endure. To the contrary, the proposed transaction results in a

⁹⁰ ACCC Decision at [9.216(d)].

⁹¹ ACCC Decision at [9.216(b)].

⁹² ACCC Decision at [9.184], [9.201].

⁹³ ACCC Decision at [10.147].

⁹⁴ ACCC Decision at [9.291], [10.147]-[10.150].

durable improvement to the competitive structure of Australian wholesale and retail mobile markets, through enabling TPG to compete effectively and independently with Telstra and Optus as a third MNO in the 17% Regional Coverage Zone. It thereby ensures that the public benefits associated with the proposed transaction will be durable.

Section 87B Undertakings

- 50 If the Tribunal is not able to be satisfied of one or other of the matters in s 90(7) of the CCA in the absence of conditions, imposing a condition that Telstra and TPG give the s 87B Undertakings (Exhibit 68) they have proposed would be more than sufficient to resolve any potential competition concerns.
- 51 The effect of the s 87B Undertakings is to allow the proposed transaction to cease after 8 years, should the parties fail to obtain authorisation for the proposed transaction before that time. Until then, the s 87B Undertakings materially preserve TPG's position (in terms of sites in the 17% Regional Coverage Zone). It is unlikely that, if the proposed transaction lasts only 8 years, it would substantially lessen competition in national markets when it only affects the 17% Regional Coverage Zone.
- 52 To the extent that the ACCC Decision raises concerns regarding interpretation or enforceability of the proposed s 87B Undertakings, such concerns are either not well founded or can be readily addressed by the Tribunal, including in any formulation of conditions.

Other issues

- 53 The ACCC Decision contains a number of findings that are not supported by the evidence before the Commission and Tribunal, or which are otherwise incorrect, including related to:
- (a) the commercial terms and operation of the Relevant Agreements, including in relation to particular market segments; and
 - (b) the likelihood of any coordinated effects arising from the proposed transaction.

It may become necessary to address some or all of these matters in the review before the Tribunal, but TPG does not understand them to be central to the resolution of the key issues.

Glossary of key terms

Term	Description
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
Application	The Application to the ACCC for merger authorisation dated 23 May 2022 for the Proposed Transaction
CCA	<i>Competition and Consumer Act 2010</i> (Cth)
Congestion	<p>Telecommunications networks are designed to provide sufficient capacity to meet busy times of demand at a reasonable quality of service. Network congestion leads to service disruptions and degradation in network quality (including data speeds, successful call rates and other quality metrics). The source of congestion in Telstra's mobile network in the 17% Regional Coverage Zone is predominantly in the RAN (c.f. backhaul or core network elements).</p> <p>Measures of congestion will vary between MNOs. A key measure of congestion used by Telstra is the extent to which broadband speeds at a particular site drop below critical benchmarks. For 4G services, the speed benchmark used by Telstra is [Confidential to Telstra]. Below this level, customers will experience material degradation in the quality of their service. Where 4G speeds are below [Confidential to Telstra] during defined hours within a 4 week period, a site is identified as congested.⁹⁵</p>
Coverage	The geographic locations that a customer's mobile device is able to connect to a base station site in the mobile network (and therefore receive voice and data connectivity). Coverage can be measured either by geographic area or the proportion of the Australian population that the MNO can reach. ⁹⁶
Data speeds	<p>The time taken for data to travel to and from the customer.</p> <p>Typical speeds experienced by mobile customers are inherently variable and are affected by network dimensioning and capability as well as various customer end factors such as device capability, where the user is located with respect to the base station, whether indoors and outdoors and the number of concurrent users. As spectrum is a shared resource, the available bandwidth per user also impacts the data speeds which are achievable.⁹⁷</p>
MNO	Mobile Network Operator
Mobile core network	<p>The mobile core network is the central part of the mobile network, which connects to the RAN and interconnects with external networks (e.g. voice and internet).</p> <p>The core network is that part of the mobile network where key service-differentiation functionality resides, as well as the more sensitive functions occur including access control, authentication, voice and data routing, and billing.⁹⁸</p>

⁹⁵ Authorisation Application (Exhibit 1) at [259] and [262]; First Padilla Report (Exhibit 47) at [5.17].

⁹⁶ *Vodafone Hutchinson Australia Pty Ltd v Australian Competition and Consumer Commission* [2020] FCA 117 at [88]-[89].

⁹⁷ Submission in response to Optus (Exhibit 43) at [65] and [92]; Attachment C to Applicants' response to SOPV (Exhibit 58) at [20(b)]; Statement of Mr Rodin (Exhibit 60) at [17].

⁹⁸ Authorisation Application (Exhibit 1) at [11] and [93].

Mobile networks	<p>Mobile networks are made up of signal areas called cells. Cells join or overlap each other, forming a large coverage area, and allowing users to cross into different cells without losing connection. There are three key parts of a mobile network: the RAN, the transmission (or backhaul) network, and the core network.</p> <p>Mobile networks involve capital investment and fixed operating costs which represent a significant proportion of the total costs to be borne by the industry and its customers.⁹⁹</p>
MOCN	Multi-Operator Core Network. The defining characteristic of a MOCN is that multiple operator mobile cores connect to and utilise a shared RAN, while connecting multiple independent core networks. ¹⁰⁰
MOCN Agreement	MOCN Service Agreement dated 17 February 2022 between Telstra and TPG.
MVNO	Mobile Virtual Network Operator
Network quality and depth	<p>This includes factors such as voice quality, ability to establish a call, ability to maintain a call, data speed and latency (i.e., the time taken for data to travel to and from the customer). Lower network quality may, for example, manifest in slow download speeds, an inability to use certain mobile applications or poor voice quality or drop outs.</p> <p>A significant factor that is likely to dictate network quality and user experience on the ground is coverage depth, which is determined by the mobile site density in a given area. Network quality, in terms of depth of coverage, significantly drives market shares and is likely to be a key reason for consumers preferring Telstra’s services in regional areas.¹⁰¹</p>
proposed transaction	The transaction set out in the Relevant Agreements.
Radiocommunications Act	<i>Radiocommunications Act 1992</i> (Cth)
RAN	Radio Access Network. The RAN consists of base stations, towers and antennas. The RAN consists of cells serviced by one or more antennas which connect mobile devices to the core network. ¹⁰²
Relevant Agreement	A reference to, collectively, the MOCN Agreement, Site Agreement and Spectrum Authorisation Agreement.
Retail customers	These customers receive retail mobile services on a national basis, and are able to use their services in any part of Australia where the MNO from which they acquire the service has coverage. ¹⁰³
Roaming	Roaming services can be offered by one MNO to another. They are typically provided to overseas MNOs to support their customers temporarily travelling in Australia, but can also be supplied between

⁹⁹ Application (Exhibit 1) at [63] and [64(a)]; ACCC, *Domestic mobile roaming declaration inquiry, Final report*, October 2017 at p 8 <https://www.accc.gov.au/system/files/Mobile%20roaming%20declaration%20inquiry%20final%20report_0.pdf>.

¹⁰⁰ Application (Exhibit 1) at [101].

¹⁰¹ *Vodafone Hutchinson Australia Pty Ltd v Australian Competition and Consumer Commission* [2020] FCA 117 at 92; ACCC, *Domestic mobile roaming declaration inquiry, Final report*, October 2017 at p 55 <https://www.accc.gov.au/system/files/Mobile%20roaming%20declaration%20inquiry%20final%20report_0.pdf>.

¹⁰² Application (Exhibit 1) at [94] and Figure 3; Regional Telecommunications Independent Review Committee, *2021 Regional Telecommunications Review: A step change in demand*, 13 December 2021 at p 104 <<https://www.infrastructure.gov.au/sites/default/files/documents/2021-rtirc-report-a-step-change-in-demand.pdf>>.

¹⁰³ Application (Exhibit 1) at [170].

	<p>domestic MNOs so one MNO can expand their geographic coverage beyond their own mobile sites and infrastructure. Roaming essentially involves re-supply of the host MNO's own services.¹⁰⁴</p> <p>As roaming involves access to the RAN by means of the access provider's core network, the access seeker has no ability to differentiate itself and the services it offers as compared to the access provider. Second, the roaming network does not appear to the end user as part of TPG's network and may, for example, have calls and data sessions drop out when an access seeker's customers cross from the access seeker's own network to the roaming network. This is the case with the current TPG 3G roaming agreement with Optus. For these reasons, the proposed transaction will facilitate a richer form of retail competition by TPG.¹⁰⁵</p>
Site Agreement	The Mobile Site Transition Agreement dated 17 February 2022 between Telstra and TPG.
SOPV	The Statement of Preliminary Views published by the ACCC on 30 September 2022.
Spectrum (or mobile spectrum)	<p>Mobile transmissions (i.e., calls and data) are carried between mobile towers and end user devices using radio frequencies referred to as "spectrum". Spectrum is measured in megahertz (MHz) or gigahertz (GHz) bands (for example, 850MHz, 2100MHz and 3600MHz)). Access to spectrum enables mobile services as it is the radio frequency which carries mobile data over distances.</p> <p>Spectrum propagation characteristics differ between low, mid and high band spectrum – with low band spectrum essential for carrying mobile data over longer distances (tens of kilometres).¹⁰⁶</p> <p>In Australia, spectrum use is governed by the ACMA.</p>
Spectrum Authorisation Agreement	The Spectrum Authorisation Agreement – MOCN Area dated 17 February 2022 between the Telstra and TPG.
Telstra	Telstra Corporation Limited (recently restructured as Telstra Group Limited)
TPG	TPG Telecom Limited
Wholesale customers	These customers are provided access to an MNO's network on a wholesale basis, and can include MVNO's or other MNOs. MVNOs obtain wholesale mobile services so that they can supply retail mobile services to customers. MNOs obtain wholesale mobile services in order to provide retail mobile services to their customers in areas in which they do not have their own networks (i.e. roaming services). ¹⁰⁷
3G, 4G and 5G	There are different "generations" of mobile network technology, typically denoted by the "G" in 3G, 4G and 5G. There are currently service offerings on 3G, 4G and 5G networks in Australia. 3G is the oldest form of mobile technology in service in Australia, mainly used for voice (with limited data capability) and is currently being phased out by MNOs. 4G

¹⁰⁴ Application (Exhibit 1) at [71(f)].

¹⁰⁵ Application (Exhibit 1) at [196(b)]; ACCC, *Domestic mobile roaming declaration inquiry, Final report*, October 2017 <https://www.accc.gov.au/system/files/Mobile%20roaming%20declaration%20inquiry%20final%20report_0.pdf>.

¹⁰⁶ Application (Exhibit 1) at [71(b)-(c)].

¹⁰⁷ Application (Exhibit 1) at [172].

is the most common form of mobile network in Australia. 5G is the latest form of mobile technology, first made available mid-2019 in certain areas. 5G achieves faster speeds and lower latency than 4G and 3G, using high-frequency radio spectrum (the majority of 5G exists on the 3600MHz spectrum). 5G mobile networks currently cover around 75% of the Australian population.

5G is expected to support higher data speeds, ultra-low latency, much higher user density (i.e. for both handsets and machine/devices), and high quality services at high mobility.¹⁰⁸

17% Regional Coverage Zone

The areas in which the MOCN will operate, being certain regional and urban fringe areas, which comprise around 17% of the Australian population coverage. The 17% Regional Coverage Zone (in the 81.4% to 98.8% area of population coverage) spans around 1.5 million km² (or 32 times the area of land), with less than 1% of the population residing in the 98.8% to 99.5% area of population coverage (which spans 1 million km² of land).¹⁰⁹

¹⁰⁸ Authorisation Application (Exhibit 1) at [71(d)]; First Padilla Report (Exhibit 47) at [7.6(a)].

¹⁰⁹ Authorisation Application (Exhibit 1) at Executive Summary, p 8.

SCHEDULE 1 TO ATTACHMENT A

FURTHER FACTS AND CONTENTIONS REGARDING RELEVANT COUNTERFACTUAL

This schedule sets out, in summary form, TPG's key contentions regarding the relevant counterfactual and does not seek to identify, or respond to, errors in the ACCC Decision.

Scenario with a real commercial likelihood if Proposed Transaction does not proceed

- 1 Without the Proposed Transaction, there is a real commercial likelihood that TPG would undertake a targeted build of around [Confidential to TPG] [REDACTED] sites in the 17% Regional Coverage Zone, focussed on key regional centres and holiday destinations (**Targeted Build Counterfactual**).¹¹⁰
- 2 A Targeted Build Counterfactual would result in less competition in relevant markets than the Proposed Transaction. In the Targeted Build Counterfactual:
 - (a) [Confidential to TPG] [REDACTED]
[REDACTED] In fact, until the targeted build is complete, [Confidential to TPG] [REDACTED]
[REDACTED]
[REDACTED]¹¹¹ This means that TPG will continue to be an ineffective competitor for customers who value coverage in regional Australia with a continuing share of supply of less than [Confidential to TPG] [REDACTED] of customers residing in that region.¹¹²
 - (b) TPG would only be able to offer coverage to 96% of the population – compared with 98.8% in the factual. This means that there would be fewer MNOs competing to provide services in the 96%+ areas. This would lessen consumer choice compared with the factual – a worse outcome for competition and consumers.¹¹³
 - (c) TPG would not be able to offer 5G services in regional and rural Australia for the foreseeable future.¹¹⁴

¹¹⁰ First Counterfactual Submission (Exhibit 48) at [6(d)], [7], [45] and [47]; Second Counterfactual Submission (Exhibit 64) at [3] and [76]; First Padilla Report (Exhibit 47) para [5.36]; Statement of I Berroeta (Exhibit 57) at [67], [80(d)] and [86]; [TPG.400.020.5078] at slide 16.

¹¹¹ First Counterfactual Submission (Exhibit 48) at [6(d)] and [58]; Statement of I Berroeta (Exhibit 57) at [36]; Statement of Y Lopez (Exhibit 65) at [85(a)(ii)]; [TPG.410.050.6915].

¹¹² First Counterfactual Submission (Exhibit 48) at [59].

¹¹³ First Counterfactual Submission (Exhibit 48) at [54]; Statement of I Berroeta (Exhibit 57) at [81(a)].

¹¹⁴ Authorisation Application (Exhibit 1) at para [213]; First Counterfactual Submission (Exhibit 48) at [54].

- (d) Consumers, enterprise and government customers would lose the benefit of downward pressure on pricing associated with the Proposed Transaction.¹¹⁵

The Applicants have adduced ample evidence to show a Targeted Build Counterfactual would be likely to result in less competition in relevant markets than the Proposed Transaction.¹¹⁶

Scenarios without a real commercial likelihood of eventuating if Proposed Transaction does not proceed

3 If the Proposed Transaction does not proceed:

- (a) There is no real commercial likelihood that TPG would undertake a full scale build to match Optus or Telstra's coverage. The evidence is that TPG has no financial case to do so, particularly given that its existing customer base does not include any significant volume of customers with demand for coverage in the 17% Regional Coverage Zone.¹¹⁷
- (b) There is no real commercial likelihood that Telstra would enter into a network sharing arrangement with TPG that **[Confidential to TPG]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹¹⁸
- (c) There is no real commercial likelihood that TPG and Optus would enter into an active network sharing arrangement (MORAN or MOCN) covering regional areas in the foreseeable future. There is ample evidence in support of this.¹¹⁹ The reasons include:
 - i. Active network sharing between TPG and Optus in regional areas is not feasible for at least three to five years (with a MOCN not feasible for at least five years) because of:

¹¹⁵ First Padilla Report (Exhibit 47) at [6.61(b)].

¹¹⁶ First Counterfactual Submission (Exhibit 48) at [50] and [57]-[60]; Second Counterfactual Submission (Exhibit 64) at [83] and [100]; Statement of I Berroeta (Exhibit 57) at [86]-[87]; First Padilla Report (Exhibit 47) at [8.1].

¹¹⁷ Authorisation Application (Exhibit 1) at [47]-[50]; First Counterfactual Submission (Exhibit 48) at [4] and [45]; Second Counterfactual Submission (Exhibit 64) at [3]; Statement of I Berroeta (Exhibit 57) at [73(a)]; [TPG.400.020.5078] at slide 17.

¹¹⁸ First Counterfactual Submission (Exhibit 48) at [17(b)] and [33]; Second Counterfactual Submission (Exhibit 64) at [3].

¹¹⁹ See, for example, Authorisation Application (Exhibit 1) at [54]-[60]; First Counterfactual Submission (Exhibit 48) at section 2.2; Second Counterfactual Submission (Exhibit 64) at [7] and [12], section 3.2; Statement of I Berroeta (Exhibit 57) at [75]-[76] and [80(b)]; Statement of Y Lopez (Exhibit 65) at [85(a)(ii)].

- i. the lack of spectrum and equipment synergies between Optus and TPG, [Confidential to TPG] [redacted]; and
 - ii. [Confidential to TPG] [redacted]
[redacted]
[redacted]¹²⁰
-
- ii. However, even once active sharing becomes feasible, TPG and Optus are unlikely to (and it would be speculative to suggest that they will) be able to agree on a model for active sharing in the foreseeable future.¹²¹ [Confidential to TPG] [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

¹²⁰ Authorisation Application (Exhibit 1) at [54]-[60]; First Counterfactual Submission (Exhibit 48) at [6], [14]-[15], [17], [19], [21]-[24], [32], [42] and section 2.4; Second Counterfactual Submission (Exhibit 64) at [8]-[9], [14], [18], [19(b)], [25], [28]-[31], [33], [35], [47]-[51], [54], [64], [66], [73] and [77(a)]; Statement of I Berroeta (Exhibit 57) at [75]-[78]; Statement of Y Lopez (Exhibit 65) at [59]-[62], [67] and [70].

¹²¹ First Counterfactual Submission (Exhibit 48) at [6(b)], [31] and [51]; Second Counterfactual Submission (Exhibit 64) at [3], [7], [12], [66], [77(b)], [80] and section 3.3; Statement of I Berroeta (Exhibit 57) at [73(b)], [75] and [80(b)].

¹²² First Counterfactual Submission (Exhibit 48) at [14] and [20]; Second Counterfactual Submission (Exhibit 64) at [19]; Statement of I Berroeta (Exhibit 57) at [34(e)] and [74]; Statement of Y Lopez (Exhibit 65) at [37] and [108].

¹²³ First Counterfactual Submission (Exhibit 48) at [15], [17(a)], [24(a)], [32] and [42]; Second Counterfactual Submission (Exhibit 64) at [8], [18], [25]-[26], [47] and [48(b)-(c)]; Statement of Y Lopez (Exhibit 65) at [35].

¹²⁴ ACCC Decision at [8.70].

¹²⁵ First Counterfactual Submission (Exhibit 48) at [15], [17(a)] and [23]; Second Counterfactual Submission (Exhibit 64) at [19(b)], [43] and [48]; Statement of Y Lopez (Exhibit 65) at [85(a)(ii)].

¹²⁶ First Counterfactual Submission (Exhibit 48) at [6(a)], [17(a)] and [25]-[26]; Statement of I Berroeta (Exhibit 57) at [67] and [78]; Statement of Y Lopez (Exhibit 65) at [105].

[REDACTED]

- (d) TPG and Optus would be unlikely to enter into any further roaming arrangement in regional areas in the foreseeable future (and TPG will not renew the 3G Roaming Agreement when it expires in June 2023). There is ample evidence from TPG in support of this.¹²⁸

[Confidential to TPG] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- i. Optus [Confidential to TPG] [REDACTED] as a monopoly provider of wholesale network access in regional Australia placing less pressure on it [Confidential to TPG] [REDACTED]

¹²⁷ Second Counterfactual Submission (Exhibit 64) at [26] and [48]; Statement of I Berroeta (Exhibit 57) at [21]-[23], [34(a)]; Statement of Y Lopez (Exhibit 65) at [33(d)].

¹²⁸ First Counterfactual Submission (Exhibit 48) at [6], [17] and [31]; Second Counterfactual Submission (Exhibit 64) at [3], [7]-[12], [78] and section 3.4; Statement of I Berroeta (Exhibit 57) at [80(b)].

¹²⁹ First Counterfactual Submission (Exhibit 48) at [36]-[41]; Second Counterfactual Submission (Exhibit 64) at [8] and [78]; Statement of I Berroeta (Exhibit 57) at [33(d)] and [34].

¹³⁰ First Counterfactual Submission (Exhibit 48) at [6], [17(c)] and [27]-[29]; Second Counterfactual Submission (Exhibit 64) at [53]; Statement of I Berroeta (Exhibit 57) at [79] and [80(b)].

¹³¹ First Counterfactual Submission (Exhibit 48) at [26] and [28]; Second Counterfactual Submission (Exhibit 64) at [45], [54] and [57]; Statement of I Berroeta (Exhibit 57) at [78] and [79(c)].

¹³² First Counterfactual Submission (Exhibit 48) at [6(a)] and [28]; Second Counterfactual Submission (Exhibit 64) at [8] and [57]-[59].

¹³³ First Counterfactual Submission (Exhibit 48) at [6(a)], [26] and [28]; Second Counterfactual Submission (Exhibit 64) at [45]; Statement of I Berroeta (Exhibit 57) at [79(d)], [82]; Statement of Y Lopez (Exhibit 65) at [61(b)].

[REDACTED]
[REDACTED]¹³⁴

- ii. Optus will continue to be incentivised to maintain the *status quo* including its coverage and technology advantage over TPG in regional areas.¹³⁵
- iii. Optus will have no incentive to offer reasonable pricing terms given the wholesale revenue it can earn under a roaming arrangement. **[Confidential to TPG]** [REDACTED]
[REDACTED]¹³⁶

[Confidential to TPG] [REDACTED]
[REDACTED]¹³⁷

4 Even if Optus and TPG were able reach an agreement on the commercial terms of a regional wholesale arrangement in the foreseeable future (contrary to paragraph 3 above), any such arrangement would involve 4G roaming for the reasons set out in paragraphs 3(c) and (d) (**Roaming Counterfactual**).¹³⁸ A Roaming Counterfactual would be a worse outcome for competition than in the factual, including for the following reasons.

- (a) TPG would not be able to offer 5G services in regional and rural Australia. This would leave Telstra as the only provider of 5G services in these areas for at least **[Confidential to TPG]** [REDACTED] until Optus rolled out its regional 5G network to a sufficient degree. Further, Optus would be unlikely to become a material 5G competitor in this region until at least **[Confidential to TPG]** [REDACTED]. This would provide Telstra with a significant first move advantage.¹³⁹
- (b) TPG would only be able to offer coverage to **[Confidential to TPG]** [REDACTED] of the population – compared with 98.8% in the factual. This means that there would be fewer MNOs competing to provide services in the **[Confidential to TPG]** [REDACTED]
[REDACTED]. This would lessen consumer choice more than in the factual – a worse outcome for competition and consumers.

¹³⁴ Authorisation Application (Exhibit 1) at [60]; First Counterfactual Submission (Exhibit 48) at [6(b)], [17(b)-(c)] and [33]; Second Counterfactual Submission (Exhibit 64) at [51] and [60]; Statement of I Berroeta (Exhibit 57) at [80(a)].

¹³⁵ Second Counterfactual Submission (exhibit 64) at [8], [64] and [75]; Statement of Y Lopez (Exhibit 65) at [55].

¹³⁶ First Counterfactual Submission (Exhibit 48) at [36]-[41] and [43(b)]; Statement of I Berroeta (Exhibit 57) at [34].

¹³⁷ First Counterfactual Submission (Exhibit 48) at [6(b)], [17(b)-(c)], [31], [34] and [53]; Statement of I Berroeta (Exhibit 57) at [73(c)] and [80(a), (c)].

¹³⁸ First Counterfactual Submission (Exhibit 48) at [6]-[7], [24] and [32]; Second Counterfactual Submission (Exhibit 64) at [10] and [12]; Statement of I Berroeta (Exhibit 57) at [73(c)].

¹³⁹ Authorisation Application (Exhibit 1) at [213]; First Counterfactual Submission (Exhibit 48) at [54].

- (c) TPG would have less ability to adapt to changing market conditions through new products and plans because of the limitations of roaming compared with a MOCN.¹⁴⁰
- (d) TPG's variable costs would be higher and would place greater pressure on TPG to increase prices compared with the factual.¹⁴¹

¹⁴⁰ First Counterfactual Submission (Exhibit 48) at [54]; Statement of I Berroeta (Exhibit 57) at [81(c)].

¹⁴¹ First Counterfactual Submission (Exhibit 48) at [54]; Second Counterfactual Submission (Exhibit 64) at [86(c)]; First Padilla Report (Exhibit 47) at [6.7]-[6.8].

ATTACHMENT B

KEY DOCUMENTS SUBMITTED TO THE ACCC IN CONNECTION WITH THE APPLICATION

Identifier	Document	Confidentiality
Telstra and TPG submissions to the ACCC		
Exhibit 1	Application to the ACCC for Merger Authorisation – Telstra Corporation Limited and TPG Telecom Limited arrangement for the sharing of active infrastructure and spectrum in regional Australia (dated 23 May 2022) (Authorisation Application)	Part
Exhibit 2	Annexure A.1 – Telstra Company Structure Chart	Public
Exhibit 3	Annexure A.2 – TPG Company Structure Chart	Whole
Exhibit 4	Annexure B.1.1 – Telstra Organisation Chart	Part
Exhibit 5	Annexure B.1.2 – Telstra Key Personnel Contact Details	Whole
Exhibit 6	Annexure B.2.1 – TPG Organisation Chart	Whole
Exhibit 7	Annexure B.2.2 – TPG Key Personnel Contact Details	Whole
Exhibit 8	Annexure C – Transaction Documents – MOCN Agreement	Whole
Exhibit 9	Annexure D.1.1 – Telstra – Board Paper, 12 – 14 October 2021	Whole
Exhibit 10	Annexure D.1.2 – Telstra – Minutes – Board Meeting, 12 – 14 October 2021	Whole
Exhibit 11	Annexure D.1.3 – Telstra – Board Paper, 15 – 16 February 2022	Whole
Exhibit 12	Annexure D.1.4 – Telstra – Board Paper, 19 February 2022	Whole
Exhibit 13	Annexure D.1.5 – Telstra – Board Paper, 14 – 16 February 2022	Whole
Exhibit 14	Annexure D.1.6 – Telstra – Minutes – Board Meeting, 14 – 16 February 2022	Whole
Exhibit 15	Annexure D.1.7 – Telstra – Board Paper, 20 February 2022	Whole
Exhibit 16	Annexure D.1.8 – Telstra – Minutes – Board Meeting, 20 February 2022	Whole
Exhibit 17	Annexure D.2 – TPG Board Papers and Minutes	Whole
Exhibit 18	Annexure E.1 – Telstra Sales Revenues and Volumes	Whole
Exhibit 19	Annexure E.2 – TPG Sales Revenues and Volumes	Whole
Exhibit 20	Annexure F.1 – Telstra Top Customer Gross Revenue	Whole
Exhibit 21	Annexure F.2 – TPG Top Customer Gross Revenue	Whole
Exhibit 22	Annexure G.1 – Telstra Annual Report	Public
Exhibit 23	Annexure G.2 – TPG Annual Report and Audited Financial Statements	Public

Identifier	Document	Confidentiality
Exhibit 24	Annexure H.1 – Telstra Audited Financial Statements	Public
Exhibit 25	Annexure I.1 – Telstra Business Plan – FY22 Corporate Plan & FY23 - FY25 Outlook	Whole
Exhibit 26	Annexure I.2 – TPG 2021 Full-Year Results (including Business Plan)	Public
Exhibit 27	Annexure J.1 – Telstra Management Accounts	Whole
Exhibit 28	Annexure K – Actual or Potential Competitor Contact Details	Public
Exhibit 29	Annexure L.1 – Telstra Top Customer Contact Details	Whole
Exhibit 30	Annexure L.2 – TPG Top Customer Contact Details	Whole
Exhibit 31	Annexure M.1 – Telstra Top Supplier Contact Details	Whole
Exhibit 32	Annexure M.2 – TPG Top Supplier Contact Details	Whole
Exhibit 33	Annexure N – Trade or Industry Association Contact Details	Public
Exhibit 34	Annexure O – Expert report of Mr Richard Feasey dated 20 May 2022 (First Feasey Report)	Part
Exhibit 35	Annexure P – Undertaking not to proceed	Public
Exhibit 36	Annexure Q – Roy Morgan Single Source (Australia) July 2021 – December 2021 data	Whole
Exhibit 37	Annexure R – Telstra Indicative MOCN Suburb List (Subject to change)	Whole
Exhibit 38	Annexure S – Telstra Consumer Postpaid Conjoint 2021 Research Presentation (June 2021)	Whole
Exhibit 39	Annexure T – Telstra Q2 FY22 Strategic Regional Customer Insights, March 2022	Whole
Exhibit 40	Applicants' clarifying submission dated 25 May 2022	Public
Exhibit 41	Correction to Table 5 in Application dated 23 June 2022	Public
Exhibit 42	Submission in response to interested parties (Tranche 1) dated 6 July 2022	Part
Exhibit 43	Submission in response to Optus' interested party submission and ors (Tranche 2) dated 28 July 2022 (Submission in response to Optus)	Part
Exhibit 44	Annexure A – Supplementary report of Mr Richard Feasey dated 25 July 2022 (Second Feasey Report)	Public
Exhibit 45	Annexure B – Expert report of Aetha dated 27 July 2022 (First Aetha Report)	Part
Exhibit 46	Annexure C – Expert report of Ms Emma Ihaia dated 28 July 2022 (Ihaia Report)	Part
Exhibit 47	Annexure D – Expert report of Compass Lexecon dated 26 July 2022 (First Padilla Report)	Part

Identifier	Document	Confidentiality
Exhibit 48	Annexure E – TPG Confidential Annexure (Counterfactual)	Part
Exhibit 49	Annexure F – TPG Confidential Annexure (Coverage)	Whole
Exhibit 50	Applicants supplementary map of the 17% Regional Coverage Zone dated 1 September 2022	Public
Exhibit 51	TPG response to PLUS ES dated 28 September 2022	Part
Exhibit 52	Statement of Andrew Penn dated 12 August 2022	Part
Exhibit 53	Statement of Bart-Jan Sweers dated 12 August 2022	Part
Exhibit 54	Statement of Christopher Meissner dated 12 August 2022	Part
Exhibit 55	Statement of Michael Ackland dated 15 August 2022	Part
Exhibit 56	Statement of Nicolaos Katinakis dated 15 August 2022	Part
Exhibit 57	Statement of Iñaki Berroeta dated 15 August 2022	Part
Exhibit 58	Submission in response to Statement of Preliminary Views and Interested Parties dated 1 November 2022 (Applicants' response to SOPV)	Part
Exhibit 59	Annexure A – Expert statement of Michael Strople dated 30 October 2022	Public
Exhibit 60	Annexure B – Expert statement of Bruce Rodin dated 27 October 2022	Public
Exhibit 61	Annexure C – Statement of Nicolaos Katinakis dated 9 November 2022	Part
Exhibit 62	Annexure D – Statement of Bart-Jan Sweers dated 4 November 2022	Part
Exhibit 63	Annexure E – Expert report of Compass Lexecon (Dr Jorge Padilla) dated 2 November 2022 (Second Padilla Report)	Part
Exhibit 64	Annexure F – TPG Annexure (Counterfactual Submission) dated 8 November 2022	Part
Exhibit 65	Annexure G – Statement of Yago Lopez dated 8 November 2022	Part
Exhibit 66	Annexure H – Statement of Giovanni Chiarelli dated 8 November 2022	Part
Exhibit 67	Annexure I – Statement from Kieren Cooney dated 8 November 2022	Part
Exhibit 68	Letter to ACCC dated 1 November 2022 and Applicants' draft s 87B undertakings in response to SOPV	Part
Exhibit 69	Letter to ACCC confirming applicants have not entered into any other agreements dated 4 November 2022	Public
Exhibit 70	Letter to ACCC dated 6 November 2022 regarding ACCC extension	Public

Identifier	Document	Confidentiality
Exhibit 71	Letter to ACCC containing the Applicants' response to Optus' submissions in response to the ACCC's SOPV dated 11 November 2022	Public
Exhibit 72	Annexure A – Applicants Response to Optus' submissions	Public
Exhibit 73	Annexure B – Further Reply from Mr Feasey dated 10 November 2022	Public
Exhibit 74	Annexure C – Further Reply from Aetha dated 10 November 2022	Part
Exhibit 75	Annexure D – Further Reply from Dr Padilla dated 17 November 2022 (Third Padilla Report)	Part
Exhibit 76	TPG submission in response to Optus' submission on s 87B undertakings and AlixPartners' report dated 7 December 2022	Part
Exhibit 77	Submission to ACCC on TPG site locations in 17% Regional Coverage Zone dated 9 December 2022	Whole
Telstra and TPG responses to the ACCC's requests for information (RFIs)		
Exhibit 78	Telstra RFI response dated 17 May 2022 provided to ACCC in response to RFI received on 6 May 2022	Whole
Exhibit 79	Attachment A – Telstra's organisation charts	Whole
Exhibit 80	TPG RFI response dated 17 May 2022 provided to ACCC in response to RFI received on 6 May 2022	Whole
Exhibit 81	Annexure A – TPG response to information request of 6 May 2022	Whole
Exhibit 82	Attachment A – TPG's organisation chart	Whole
Exhibit 83	TPG RFI response dated 5 July 2022 provided to ACCC in response to RFI received on 14 June 2022	Whole
Exhibit 84	Annexure A – Response to Schedule 1 of RFI	Whole
Exhibit 85	Attachment 1 to Annexure A	Whole
Exhibit 86	Telstra RFI response dated 8 July 2022 provided to ACCC in response to RFI received on 24 June 2022	Whole
Exhibit 87	Attachment A to RFI response	Whole
Exhibit 88	Enclosure in response to RFI item 3	Whole
Exhibit 89	TPG RFI Response dated 22 July 2022 provided to the Commission in response to RFI dated 21 July 2022	Whole
Exhibit 90	Enclosure in response to RFI	Whole
Exhibit 91	Telstra RFI response dated 10 August 2022 provided to ACCC in response to RFI received on 2 August 2022	Whole
Exhibit 92	Attachment A to RFI response	Whole
Exhibit 93	Telstra RFI response dated 21 September 2022 provided to ACCC in response to RFI received on 14 September 2022	Part
Exhibit 94	TPG RFI response dated 23 September 2022 provided to ACCC in response to RFI received on 14 September 2022	Part

Identifier	Document	Confidentiality
Exhibit 95	Annexure A – TPG response to information request of 14 September 2022	Part
Exhibit 96	TPG RFI response dated 18 October 2022 provided to ACCC in response to RFI received on 30 September 2022	Part
Exhibit 97	Annexure A – Response to ACCC request for information	Part
Exhibit 98	Applicants' submission re MOCN arrangement dated 23 November 2022	Public
Exhibit 99	Annexure A – Response to ACCC's observations contained in Attachment A of its letter dated 18 November 2022	Part
Exhibit 100	Annexure B – TPG submission on why a MOCN joint venture between TPG and any other MNO is not likely in regional Australia dated 23 November 2022	Part

ATTACHMENT C

EVIDENCE FROM INTERESTED PARTIES SUBMITTED IN CONNECTION TO THE APPLICATION

Identifier	Document	Date
Interested party submissions in response to market inquiries		
Exhibit 101	Andrew Lloyd	1 June 2022
Exhibit 102	Jet Couriers and associated companies	1 June 2022
Exhibit 103	Sydney Catholic Schools	3 June 2022
Exhibit 104	GSM Communications	7 June 2022
Exhibit 105	Vodafone Business Centre Perth	7 June 2022
Exhibit 106	Challenger Services Group	7 June 2022
Exhibit 107	Fastserv Solutions Pty Ltd	7 June 2022
Exhibit 108	Clive Hawkins	7 June 2022
Exhibit 109	Haris Brkic	8 June 2022
Exhibit 110	Bellingen Shire Council	8 June 2022
Exhibit 111	Dylan James	8 June 2022
Exhibit 112	Bay Audio	8 June 2022
Exhibit 113	Movecom Pty Ltd	8 June 2022
Exhibit 114	Tech Mahindra Business Services	9 June 2022
Exhibit 115	Mike Yates	9 June 2022
Exhibit 116	Coonamble Shire Council	9 June 2022
Exhibit 117	Regional Development Australia Southern Inland	10 June 2022
Exhibit 118	Alliance of Western Councils	10 June 2022
Exhibit 119	Moree Plains Shire Council	10 June 2022
Exhibit 120	Kezia Purick MLA	10 June 2022
Exhibit 121	Corangamite Shire Council	10 June 2022
Exhibit 122	Central Darling Shire Council	10 June 2022
Exhibit 123	Be.Bendigo (Bendigo Business Council)	10 June 2022
Exhibit 124	Committee for Echuca Moama	10 June 2022
Exhibit 125	Regional Development Australia Riverina	10 June 2022
Exhibit 126	TasICT	10 June 2022
Exhibit 127	Food & Fibre Gippsland	11 June 2022
Exhibit 128	Gippsland Regional Executive Forum	13 June 2022
Exhibit 129	Kogan Mobile Operations Pty Ltd	13 June 2022
Exhibit 130	South West Development Commission	13 June 2022
Exhibit 131	Canberra Business Chamber	13 June 2022
Exhibit 132	Broken Hill City Council	14 June 2022
Exhibit 133	Victorian Chamber of Commerce and Industry	14 June 2022
Exhibit 134	Vodafone Business Centre Port Melbourne	14 June 2022
Exhibit 135	Jainish Pty Ltd	14 June 2022

Identifier	Document	Date
Exhibit 136	Bourke Shire Council	14 June 2022
Exhibit 137	Eurobodalla Shire Council	14 June 2022
Exhibit 138	Australian Trucking Association	14 June 2022
Exhibit 139	VBC Brisbane Pty Ltd	14 June 2022
Exhibit 140	Logicall Communications Pty Ltd	14 June 2022
Exhibit 141	Mo's Mobiles Pty Ltd	14 June 2022
Exhibit 142	Narrabri Shire Council	14 June 2022
Exhibit 143	DBCL Group	14 June 2022
Exhibit 144	Air Voice Telecom	14 June 2022
Exhibit 145	Teletronics Australia Pty Ltd	14 June 2022
Exhibit 146	VBP Pty Ltd	14 June 2022
Exhibit 147	National Australia Bank	14 June 2022
Exhibit 148	IMZI Pty Ltd	14 June 2022
Exhibit 149	Regional Development Australia Peel	14 June 2022
Exhibit 150	Mobile Icon	14 June 2022
Exhibit 151	Bunbury Geographe Economic Alliance	14 June 2022
Exhibit 152	Murray River Group of Councils	14 June 2022
Exhibit 153	Charles Sturt University	14 June 2022
Exhibit 154	Jonathan Hutchins	15 June 2022
Exhibit 155	Regional Development Australia (RDA) Pilbara	16 June 2022
Exhibit 156	Committee for Gippsland	17 June 2022
Exhibit 157	Yesbiz Wireless Pty Ltd	17 June 2022
Exhibit 158	Walkerville Ratepayers & Residents Association	17 June 2022
Exhibit 159	WAFarmers	20 June 2022
Exhibit 160	Trevor Long	28 June 2022
Exhibit 161	Alliance of Western Councils record of oral submission	9 August 2022
Exhibit 162	NSW Farmer's Federation record of oral submission	11 August 2022
Exhibit 163	Kogan record of oral submission	16 August 2022
Exhibit 164	Air Voice Telecom record of oral submission	5 September 2022
Interested party submissions in response to SOPV		
Exhibit 165	Phil Pain	30 September 2022
Exhibit 166	Vodafone Business Centre Perth	30 September 2022
Exhibit 167	Mark and Margaret Cruickshank	30 September 2022
Exhibit 168	Warwick Bowen	3 October 2022
Exhibit 169	Josh Geering	10 October 2022
Exhibit 170	Sophie Browne	10 October 2022

Identifier	Document	Date
Exhibit 171	Vodafone Business Centre West	11 October 2022
Exhibit 172	Justin Gehrke	11 October 2022
Exhibit 173	Peter Male	11 October 2022
Exhibit 174	Anonymous submission from an Australian business	11 October 2022
Exhibit 175	Craig Davies, Chair Alliance of Western Councils	12 October 2022
Exhibit 176	Jason Worthy	12 October 2022
Exhibit 177	Michael Jarvin	12 October 2022
Exhibit 178	Alun Davies	12 October 2022
Exhibit 179	Matt Skerrett	12 October 2022
Exhibit 180	Kogan Mobile Operations Pty Ltd	12 October 2022
Exhibit 181	WAFarmers	13 October 2022
Exhibit 182	Mo's Mobiles	13 October 2022
Exhibit 183	Vodafone Business Centre Sydney South	13 October 2022
Exhibit 184	Queensland Farmers Federation	13 October 2022
Exhibit 185	Connected Farms Pty Ltd	13 October 2022
Exhibit 186	YesBiz Wireless Pty Ltd	13 October 2022
Exhibit 187	AgForce Queensland Farmers Limited	14 October 2022
Exhibit 188	IMZI Pty Ltd	14 October 2022
Exhibit 189	Movecom Pty Ltd	14 October 2022
Exhibit 190	Matthew McCauley	14 October 2022
Exhibit 191	Wireless Solutions	14 October 2022
Exhibit 192	DBCL Group Pty Ltd	14 October 2022
Exhibit 193	Era Polymers	14 October 2022
Exhibit 194	Karl Shaw	14 October 2022
Exhibit 195	Jainish Pty Ltd	14 October 2022
Exhibit 196	Air Voice Telecom	14 October 2022
Exhibit 197	Mark Renegar	17 October 2022
Exhibit 198	Lloyd Lagman	17 October 2022
Exhibit 199	Committee for Gippsland	18 October 2022
Exhibit 200	Gareth McCaffrey	23 October 2022
Exhibit 201	Ben Parker	9 November 2022
Other submissions		
Exhibit 202	Submission by ACMA – response to ACCC request for information (Tranche 1 – Attachments A-B)	25 July 2022
Exhibit 203	Submission by ACMA – response to ACCC request for information (Tranche 1 – Attachment C)	25 July 2022



Identifier	Document	Date
Exhibit 204	Submission by ACMA (Tranche 2) – ACMA supplementary response to ACCC request for information	5 September 2022



ATTACHMENT D

SECTION 155(1)(C) EXAMINATION TRANSCRIPTS SUBMITTED IN CONNECTION TO THE APPLICATION

Telstra and TPG were recently provided a copy on the transcripts below on 21 December 2022 and are currently considering confidentiality claims. A copy of the transcripts will be provided by Telstra and TPG to the Tribunal in due course.

Identifier	Document	Date
Telstra employees		
Exhibit 205	Examination of Andrew Penn	31 August 2022
Exhibit 206	Examination of Nicolaos Katinakis	7 September 2022
Exhibit 207	Examination of Bart-Jan Sweers	23 September 2022
TPG employees		
Exhibit 208	Examination of Iñaki Berroeta	12 September 2022
Exhibit 209	Examination of Yago Lopez	8 September 2022
Exhibit 210	Examination of Trent Czinner	7 October 2022