

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

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

Lodgment and Details

Document Lodged:	Submissions
File Number:	ACT 1 of 2022
File Title:	APPLICATIONS BY TELSTRA CORPORATION LIMITED AND TPG TELECOM LIMITED
Registry:	VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



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

REGISTRAR

Dated: 12/07/2023 5:24 PM

Important information

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



COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2022

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

Applicants: Telstra Corporation Limited and TPG Telecom Limited

SUBMISSIONS ON BEHALF OF SINGTEL OPTUS PTY LIMITED

A. DIRECTIONS AND THE POWERS OF THE TRIBUNAL

1. These submissions are filed on behalf of Singtel Optus Pty Ltd (**Optus**) in accordance with paragraph 3(b) of the directions made by the Tribunal on 21 June 2023. They are made in support of Optus's confidentiality claims as identified in the highlighted copy of the Tribunal's reasons that was jointly filed by the parties on 12 July 2023 (**Proposed Confidential Reasons**). Optus's confidentiality claims are shaded in blue in the Proposed Confidential Reasons. Confidentiality claims are also made in relation to information which is confidential to both Optus and TPG. Those are shaded in orange in the Proposed Confidential Reasons.
2. The *Competition and Consumer Act 2010* (Cth) empowers the Tribunal, where it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter, to give directions prohibiting or restricting the publication of evidence given before the Tribunal, or of matters contained in documents filed or lodged with the Registrar, received in evidence by the Tribunal or placed in the records of the Tribunal: s 106(2). That power may be exercised by a presidential member of the Tribunal: s 103(2).
3. Optus submits that the passages shaded blue and orange in the Proposed Confidentiality Reasons should be redacted in the version of the reasons that is published on the basis that those passages contain information which is confidential and commercially sensitive to Optus.

B. BASIS FOR OPTUS'S CONFIDENTIALITY CLAIMS

4. The Tribunal's reasons extract and refer to evidence and internal documents given to the Tribunal which contain information that is confidential and commercially sensitive to Optus and, in some cases, to Optus's parent, Singapore Telecommunications Ltd (**Singtel**). It is well-established that the potential disclosure of information that is not otherwise in the public domain, and is commercially sensitive to a party, may form a sufficient basis for orders that prohibit or restrict the publication of certain material.¹
5. The Tribunal's reasons extract passages and refer to information contained in Optus's evidence and documents which is commercially sensitive to Optus and Singtel, and which, if disclosed, could cause competitive harm to Optus. Disclosure of that information may advantage Optus's rivals, Telstra and TPG.
6. Information that is commercially sensitive to Optus (or to both Optus and TPG) that has been shaded in the Proposed Confidential Reasons generally addresses the following matters which are sensitive to Optus:
 - a. Optus's internal data and analysis regarding market share, data traffic, and rates of customer churn.
 - b. Confidential information regarding existing network sharing arrangements between Optus and TPG.
 - c. Confidential Optus financial information, including details of Optus's contribution to Singtel, EBIT and ROIC. These figures are relevant to Optus's commercial strategies and its investment decisions.

¹ *Clark v Digital Wallet Pty Ltd* [2020] FCA 877 at [21] (Abraham J) citing *Hogan v Australian Crime Commission* (2010) 240 CLR 651 at [38]-[39]; *Rinehart v Welker* (2011) 93 NSWLR 311 at [37] and *Australian Competition and Consumer Commission v Air New Zealand Ltd (No 3)* [2012] FCA 1430 at [35].

- d. Optus's strategy, including financial analysis, deliberations, investment decisions and timelines in relation to its roll out of 5G, both with and without the Proposed Transaction. This includes details of Optus's internal modelling and analysis of the expected impact of the Proposed Transaction, and response options that were considered by Optus executives in response to the Proposed Transaction.
 - e. The effect of the Telecommunications Sector Security Reforms Administrative Guidelines (TSSR) on Optus, including the financial impact of TSSR and the extent to which Optus sites are impacted.
 - f. Details of Optus's engagement with third parties, including Optus's strategy in the context of commercial negotiations and Optus's perception of the incentives of other parties to the negotiations.
 - g. Technical matters regarding the operation of Optus's mobile network, including as to spectrum usage.
7. The information that has been shaded is confidential and is commercially and competitively sensitive to Optus. The information either concerns or is relevant to rivalrous conduct between Optus and other market participants. If disclosed, this information may advantage Telstra and TPG and thereby prejudice Optus.

Date: 12 July 2023