

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

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Lodgment and Details

Document Lodged: Concise Statement of Facts Issues and Contentions

File Number: ACT 1 of 2022

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

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 28/02/2023 6:39 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

CONCISE STATEMENT OF FACTS, ISSUES AND CONTENTIONS OF SINGTEL OPTUS PTY LIMITED

The document contains confidential information which is indicated as follows:
[Confidential to Telstra] [.....] for Telstra Corporation Limited and its related bodies corporate
[Confidential to TPG] [.....] for TPG Telecom Limited and its related bodies corporate
[Confidential to the Applicants] [.....] for Telstra Corporation Limited and its related bodies corporate and TPG Telecom Limited and its related bodies corporate
[Confidential to Optus] [...] for Singtel Optus Pty Limited and its related bodies corporate
[Confidential to TPG and Optus] [...] for TPG Telecom Limited and its related bodies corporate and for Singtel Optus Pty Limited and its related bodies corporate

Note: Unless the context requires otherwise, Optus adopts the defined terms used in the concise statements of facts, issues and contentions dated 13 February 2023 of Telstra and TPG (**Telstra CS** and **TPG CS**), but does not admit any factual assertions contained in, or in any way implied by, any such defined term.

A. KEY FACTS RELEVANT TO THE APPLICATION

1. Optus's responses to the facts alleged in Telstra CS and TPG CS are contained in the **Appendix**.
2. In addition, the following further facts are relevant to the determination of the application (paragraph references are to the ACCC's Determination).

Telstra has market power and a dominant position

3. Telstra has market power in the retail supply of mobile services, which is especially noticeable in regional and rural areas [9.80]. Telstra is the dominant provider of regional mobile services [9.311]. It is also dominant in both fixed and mobile services to corporate and government sectors [9.359].
4. Telstra's dominance is partly a function of substantial spectrum holdings in regional areas [9.289], [9.301], [9.309]. Telstra has also been the greatest beneficiary of government funding under the Mobile Black Spots Program, [Confidential to Optus] [REDACTED] [REDACTED] [6.90]-[6.91]. Telstra maintains a significant lead in the number of mobile sites nationwide and in regional areas [6.75]. It is likely to have a material cost advantage in rolling out its 5G network due to its statutory monopoly legacy, sites, spectrum and fibre network, and choice of RAN vendor [6.32], [6.34], [6.48].
5. The relative positions of the 3 MNOs, with Telstra having greatest market share, has remained since the introduction of competition. Changes in market share occur during transitions between technology generations and tend to drive churn towards first-movers (early adopters and high-value customers). With 4G and 5G, this has largely benefitted Telstra, which has a considerable lead in the deployment of 5G [6.97]-[6.101].

Telstra's investment strategy is reactive to Optus

6. Telstra's investment strategy is largely reactive to Optus's investment [6.20], [6.92], [9.97], [9.118]-[9.120]. [Confidential to Telstra] [REDACTED] [REDACTED] [6.105], [9.74]. Optus's investment decisions are a substantial competitive threat to Telstra [9.143].

Optus' 5G investment

7. Optus has historically been a critical source of competition to Telstra, [Confidential to Optus] [REDACTED] and thus has delivered competitive intensity in infrastructure investment [9.118]-[9.120].
8. In the absence of the Proposed Conduct, that competition is likely to include [Confidential to Optus] [REDACTED] [REDACTED] [REDACTED]

Some features of the Proposed Transaction

9. Contrary to Telstra CS [30(a)] and TPG CS [5], [Confidential to TPG and Optus] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] On the other hand, Telstra stood to gain entrenchment of its market power and dominant position. [Confidential to TPG and Optus] [REDACTED]
[REDACTED]

10. The Initial Term of the MOCN Service Agreement is 10 years (cl 1), but may be extended at TPG's option for a further 10 years (cl 15.1). [Confidential to the Applicants] [REDACTED]
[REDACTED]
[REDACTED] [Confidential to Telstra] [REDACTED]
[REDACTED]

11. [REDACTED]
[REDACTED]
[REDACTED]

B. ISSUES

12. Optus does not dispute that issues broadly along the lines of the issues in paragraphs 31 – 34 of Telstra's SC may arise. The following additional issues are also relevant:

- (a) What is the nature of, and any constraints on, the competition that TPG would offer with the benefit of the Proposed Transaction, including in the 17% Regional Coverage Zone?
- (b) If, as a result of the Proposed Conduct, Optus is likely to curtail its investment, including in the 17% Regional Coverage Zone, what impact is that likely to have in any market for the acquisition of spectrum in respect of the 17% Regional Coverage Zone, or in any other upstream or downstream market?
- (c) In relation to effect or likely effect of the Proposed Conduct ([33]), an additional issue is the timeframe over which the competitive impact of the Proposed Conduct needs to be assessed.

C. CONTENTIONS

Relevant markets

13. Optus agrees that the **Wholesale Mobile Market** and **Retail Mobile Market** identified in Telstra CS [35(a)] and [35(b)] respectively are relevant markets.

14. Competitive effects in the Wholesale Mobile Market need to be assessed having regard to the different supply and demand features exhibited in regional and rural areas as compared to metropolitan areas. Whilst the competitors are national and customers who live in a variety

of locations can utilise services in a particular area (i.e. by travelling to that area), and thus in one sense supply and demand are national, the extent of services in a specific area is of particular importance to persons who live or work in that area. Thus, for example, the coverage and quality of service in the 17% Regional Coverage Zone is of particular importance to the subset of Australians who live and work in that area, and it is relevant for the purposes of the present proceedings to focus on the extent of competition in the provision of services to that area. For a person who lives or works in the 17% Regional Coverage Zone, services supplied outside that zone are not substitutable for services supplied in that zone. For people who live and work outside the 17% Regional Coverage Zone, the importance of coverage within that zone varies.

15. Other relevant markets are:
 - (a) regional markets for the acquisition of spectrum;
 - (b) a national market for the supply of mobile services to enterprise and government customers; and
 - (c) upstream and downstream markets to the mobile markets. If the likely effect of the Proposed Conduct is to reduce infrastructure competition in the 17% Regional Coverage Zone, then this is likely to affect upstream markets such as regional markets for the supply of services to install mobile infrastructure, or to maintain mobile infrastructure, and is also likely to affect downstream markets for the supply of a variety of services using fixed wireless and mobile technology.

Framework for economic analysis and relevant timeframe

16. Competition in the supply of retail mobile services and wholesale mobile services is dependent upon underlying mobile network infrastructure, in particular, the spectrum to which MNOs have access, which dictates the coverage, speed and network performance that MNOs can offer consumers.
17. Investment in network infrastructure enables MNOs to compete on price and multiple dimensions of quality. The impact on competition with respect to mobile network infrastructure is therefore the starting point for assessing the effect of the Proposed Conduct on competition in relevant markets, including competition on price and quality.
18. Competition is therefore also dependent on the cost of network infrastructure. The supply of retail mobile services and wholesale mobile services in Australia are characterised by economies of scale, particularly in the 17% Regional Coverage Zone. The rollout of 5G mobile network infrastructure in the 17% Regional Coverage Zone involves high fixed costs and there are considerable economies of scale.
19. Economies of scale and dynamic competition in network investment interact. The impact of economies of scale on unit costs tends to be greater for a smaller operator than for a larger operator which already has substantial market share. Equally, where competitive intensity is

higher in a market, the extent to which cost efficiencies are passed through into investment (and customer prices) is also generally higher. Economies of scale therefore take on greater significance in the context of dynamic infrastructure-based competition.

- 20. The competitive effects of the Proposed Conduct need to be considered over the long run and taking into account both static and dynamic competition considerations.
- 21. The Proposed Transaction has a 20-year timeframe (see above at [9]). The proposed section 87B undertakings, seeking to permit termination after 8 years, do not shorten the relevant timeframe for assessment, because the competitive harms in issue will occur within that timeframe, but will be enduring once they have occurred.

Counterfactual

Optus and TPG continue to invest

- 22. In a future without the Proposed Conduct:
 - (a) **[Confidential to Optus]** [REDACTED]
 - (b) [REDACTED]
 - (c) Optus's plan is to use its investment in 5G technology to compete for customers, and to attract customers from Telstra and TPG.
 - (d) Optus's investment would apply competitive pressure to Telstra and spur Telstra to increase its own investment in 5G technology.
- 23. In the future without the Proposed Conduct, TPG is likely to invest, including in 5G technology. In the 17% Regional Coverage Zone, that investment is likely to be materially smaller than Optus.
- 24. These matters are a *further* counterfactual, in addition to an Optus/TPG network sharing agreement.

Optus-TPG network sharing agreement

- 25. In a future without the Proposed Conduct, there is at least a real commercial likelihood that Optus and TPG would enter into a network sharing agreement in respect of 4G and 5G services including in the 17% Regional Coverage Zone.

26. [Confidential to Telstra] [REDACTED]
[REDACTED]
[REDACTED]

27. [Confidential to TPG and Optus] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

28. [Confidential to Optus] [REDACTED]
[REDACTED]
[REDACTED]

29. **A deal would be rational for both Optus and TPG:** An active sharing agreement between Optus and TPG would deliver substantial benefits to both Optus and TPG:

- (a) Optus and TPG gain subscribers at the expense of Telstra, [Confidential to Optus] [REDACTED] and both improve scale and reduce unit costs, including costs that would be borne by both as a result of the Security Guidance.
- (b) This enables Optus to generate a higher return on its investment and close the coverage gap to Telstra by building and deploying more sites, where sharing can take place.
- (c) Pooling of Optus and TPG spectrum is efficient and will enable higher speeds and better network performance for both Optus and TPG, thus allowing stronger competition with Telstra.
- (d) Access to TPG's low band spectrum will allow Optus to provide wider 5G coverage per site and thus allow Optus to rapidly expand its 5G coverage footprint.
- (e) Access to additional mid band 5G spectrum through potential spectrum pooling would enable Optus to deploy and sell fixed wireless access services.
- (f) [Confidential to Optus] [REDACTED]
[REDACTED]
- (g) TPG would have access to a 4G network [Confidential to Optus] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (h) An agreement would thus produce a material surplus that would rationally be shared by Optus and TPG.

(i) Contrary to Telstra CS [40(b)] and TPG CS [12(f)], Optus assessed **[Confidential to Optus]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

30. **[Confidential to TPG and Optus]** [REDACTED] now asserted by TPG (in a forensic litigation context) will be surmountable given that a deal to share the surplus and compete with Telstra is economically rational. Further, Optus's bargaining position in negotiations with TPG is constrained by **[Confidential to Optus]** [REDACTED]
[REDACTED] the possibility of TPG monetising its valuable spectrum holdings otherwise than by a deal with Optus [10.155]-[10.156]. **[Confidential to TPG]** [REDACTED]
[REDACTED]

31. **[Confidential to TPG and Optus]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

32. **[Confidential to Optus and TPG]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[Confidential to TPG]** [REDACTED]
[REDACTED]

33. **[Confidential to Optus]** [REDACTED]
[REDACTED]

(a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
(c) [REDACTED]

34. Contrary to Telstra CS [38], in a future without the Proposed Conduct, competition in the relevant markets would not remain *status quo* but would rather be likely to improve.

Competitive effects in National Wholesale and Retail Mobile Markets

35. In a future with the Proposed Conduct, Telstra's competitive position in the mobile markets will be significantly strengthened, and other competitors will perceive that it is more difficult to compete against Telstra. In this regard:

- (a) Telstra will obtain additional spectrum, which could enable it to increase the quality and coverage of its services, both in the 17% Regional Coverage Zone and in locations more remote than the 17% Regional Coverage Zone, and to do so at lower cost (because the capacity and coverage of existing sites can be upgraded, which is cheaper than having to construct new sites), conferring a significant spectrum advantage and significant service advantage over Optus;
- (b) Telstra will obtain additional revenue from TPG, [Confidential to Telstra] [REDACTED]
[REDACTED]
[REDACTED];
- (c) Telstra will obtain additional sites from TPG, enabling it easily to increase the quality and coverage of its services in areas that would be within range of those sites.

36. In a future with the Proposed Conduct, Optus's ability to compete against Telstra will be reduced, and Optus will perceive this. In this regard:

- (a) Optus repeats the matters in the previous paragraph.
- (b) The Proposed Transaction would result in TPG and Telstra obtaining customers at the expense of Optus. [Confidential to Optus] [REDACTED]
[REDACTED]
[REDACTED]
particularly for people who live or work in the 17% Regional Coverage Zone, but also more generally for people who care about extent of coverage. Telstra would also be able to improve its own coverage and quality of service at a lower cost.

37. Further, in a future with the Proposed Conduct:

- (a) There will be no network sharing deal between Optus and TPG in the 17% Regional Coverage Zone and thus weaker competitive constraint from both Optus and TPG than in the counterfactual with such a deal.

(b) There will be no TPG Targeted Build and TPG will not otherwise be a strong source of infrastructure competition in regional and rural areas. TPG is unlikely to make infrastructure investments in the 17% Regional Coverage Zone and will decommission sites that are not transferred to Telstra [9.110]. TPG will lose autonomy over aspects of its network and will have limited to no ability to differentiate itself based on geographic coverage, quality of network, the timing of technology upgrades, and its RAN investment strategy [9.114]. TPG will be dependent upon Telstra’s infrastructure investments and this will persist at potential “exit” points from the Proposed Transaction, making such exit unlikely and commercially unrealistic [7.50] – [7.51].

(c) [Confidential to Telstra] [REDACTED]
[REDACTED]

38. Further, in a future with the Proposed Conduct, Optus would reconsider its 5G investment strategy [Confidential to Optus] [REDACTED]
[REDACTED]:

(a) Optus faces significant disincentives to invest in regional mobile infrastructure given the compounding impacts of the Security Guidance, [Confidential to Optus] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) Optus will lose market share to TPG and Telstra in regional areas [Confidential to Optus] [REDACTED]

(c) [REDACTED]
[REDACTED]

(d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(e) [REDACTED]
[REDACTED]

(f) Contrary to Telstra CS [42], Optus’s assessment is not contrived. [Confidential to Optus] [REDACTED]
[REDACTED]
[REDACTED]

(g) The effect of the Proposed Conduct on Optus’s incentives to invest is a function of Telstra’s increased dominance and ability to defeat Optus’s investments,

[Confidential to Optus] [REDACTED]
[REDACTED]

39. Contrary to Telstra CS [46], a reduction in Optus’s future 5G investment in the 17% Regional Coverage Zone is not merely harm to a competitor. It is harm to competition. Optus currently competes with Telstra in a way that TPG will not if the Proposed Transaction takes place. TPG will not be engaging in significant infrastructure competition with Telstra in regional areas. TPG will be dependent upon Telstra for the provision of the sites and coverage and much of the network quality through which TPG’s services will be provided. TPG’s services will not drive Telstra to invest in a 5G rollout, or a subsequent 6G rollout. In the world with the Proposed Transaction, the competitive pressure that motivates Telstra to invest in network infrastructure would be removed and Telstra would have substantially diminished incentives to invest in network infrastructure in the 17% Regional Coverage Zone. Telstra is likely to reduce the scale of its 5G rollout in the 17% Regional Coverage Area (and in remoter parts of Australia), and may defer or reduce any subsequent investments in technology in those areas (including the construction of a 6G network).
40. Contrary to Telstra CS [49(b)], the “transition away from infrastructure-dependent competition” towards TPG simply using Telstra infrastructure to supply services is not a “dynamic and efficient innovation that is welfare enhancing”, but is a reduction in competition, including a reduction in a form of competition that is essential to permit ongoing quality of service and ongoing developments in technology. If the only relevant competition is from TPG utilising Telstra’s network then there is a very material reduction in the incentive for Telstra to invest in that network: to roll out new technology (such as 5G and 6G), to expand coverage, to enhance quality, or even to maintain the existing level of service.
41. **Telstra’s incentives to invest in technology leadership diminished:** In future technology cycles, [Confidential to Optus] [REDACTED]
[REDACTED] This will further diminish Telstra’s incentives to invest in its mobile and fixed networks to achieve technology leadership, [Confidential to Telstra] [REDACTED]
[REDACTED] [Confidential to Optus] [REDACTED]
[REDACTED]
42. **Spectrum as a barrier to entry or expansion:** Spectrum is a critical input into the supply of wholesale and retail mobile services. It enables an MNO to achieve coverage, density and capacity and to avoid alternative investments in densifying or upgrading network sites. The Proposed Conduct will enhance Telstra’s already relatively large spectrum holdings and entrench Telstra’s position by reducing the opportunity for others to compete with it [9.103]. The Proposed Conduct removes TPG’s spectrum from the market, where TPG would likely monetise it and induce demand for the spectrum [9.296].

43. There is little if any evidence that Telstra is likely to experience material network congestion in the 17% Regional Coverage Zone. [Confidential to Telstra] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
44. **Scale advantage as a barrier to entry or expansion:** The Proposed Transaction, by increasing utilization of Telstra’s network in the 17% Regional Coverage Zone with TPG subscribers, will allow greater amortization of network improvement costs and reduce Telstra’s average costs of providing services. This will raise strategic barriers to entry or expansion by reason of the large sunk costs for rivals attempting to build competitive network infrastructure [9.104].
45. **Price competition reduced:** [Confidential to Optus] [REDACTED]
[REDACTED] where 5G coverage is important to retail price, will lead in the medium to longer-term to substantially reduced price/quality competition in retail and wholesale mobile services. Telstra will receive wholesale payments from TPG which will lessen the incentive for Telstra to compete for TPG customers on price and quality.
46. **Coordinated effects:** The Proposed Conduct will reduce the product and service differentiation between Telstra and TPG and allow them to more easily monitor and retaliate against deviations from mutually beneficial behaviour [9.231]. It will facilitate a degree of information sharing and require regular meetings between Telstra and TPG personnel [9.234], [9.236].
47. The competitive harms arise in the future with the Proposed Conduct, as compared with the future without, either on an Optus-TPG Deal counterfactual or a TPG Targeted Build counterfactual.

Competitive effects in market for acquisition of spectrum

48. The contention in [42] above underpins a distinct effect in the market for the acquisition of spectrum. The Proposed Conduct results in a concentration of control by Telstra of TPG’s substantial spectrum holdings that would otherwise be monetised by TPG. The Proposed Conduct will have the effect of lessening demand for spectrum. [Confidential to Optus]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Public benefits and detriments

49. The public benefits asserted by Telstra and TPG will either not arise, are not meaningful or would not result in cost savings that would be passed through to consumers, or would arise in any event under an Optus/TPG deal counterfactual.
50. Conversely, the Proposed Conduct will occasion substantial public detriments that outweigh any public benefits:
 - (a) competitive harms as addressed above;
 - (b) reduced network diversity and resilience in regional areas and for emergencies and disasters; and
 - (c) higher spectrum concentration impacting long-term industry structure.

Section 87B Undertakings or Tribunal conditions

51. There are threshold problems with the section 87B Undertakings as to their proper interpretation and their enforceability [11.25]-[11.46].
52. Even if those threshold issues could be addressed, the section 87B Undertakings do not deal with the competitive detriments arising from the Proposed Conduct. The competitive harms in question will occur early and will be enduring once they occur [11.19]-[11.24]. Telstra and TPG cannot satisfy the Tribunal that the harms could be “reversed” simply by termination of the Relevant Agreements after 8 years. By that time, the position of both Optus and TPG will have deteriorated, and be embedded in the market structure.
53. Optus otherwise joins issue with the Telstra CS and the TPG CS.

APPENDIX

This Appendix contains Optus’s response to the facts alleged in the Telstra CS (**Section A**) and the TPG CS (**Section B**).

A. RESPONSE TO FACTS IN TELSTRA’S CONCISE STATEMENT

1. Optus admits paragraph 1.
2. Optus admits paragraph 2.
3. Optus admits paragraph 3.
4. Optus notes paragraph 4.
5. Optus notes paragraph 5 and refers to Section B below.
6. Optus admits paragraph 6.
7. Optus admits paragraph 7 and says further that spectrum is critical to improving service outcomes and, all other things being equal, an MNO with higher quantities of spectrum will be able to offer greater capacity and speeds than an MNO with lower quantities of spectrum.
8. Optus admits paragraph 8.
9. In relation to paragraph 9, Optus’ coverage is not as widespread as Telstra’s coverage, but Optus otherwise admits paragraph 9.
10. Optus admits paragraph 10.

11. Optus does not know and therefore cannot admit paragraph 11.
12. Optus admits paragraph 12.
13. In response to paragraph 13, Optus admits that TPG's more limited coverage and service quality in the 17% Regional Coverage Zone has impacted on TPG's competition against Telstra and Optus, particularly for customers living or working in that zone, although TPG has competed on price. Optus says that:
 - (a) TPG does not face any greater level of structural deficit than does Optus;
 - (b) TPG's position is a function of investment decisions which it has made;
 - (c) in 2020, TPG announced plans to accelerate its 5G rollout, [Confidential to Optus] [REDACTED] and
 - (d) otherwise denies the paragraph.
14. Optus denies paragraph 14, repeats the matters in paragraph 13 above, and says further that, in determining its rollout strategy, [Confidential to Optus] [REDACTED] [REDACTED]
15. Optus admits paragraph 15 and says further that dynamic competition, between MNOs, with respect to mobile network infrastructure, involving one MNO investing in network infrastructure and the other MNO responding to this competitive challenge with its own investment, is particularly important given the fast technological developments in mobile telecommunications.
16. Optus admits paragraph 16.
17. Optus admits paragraph 17 and says further:
 - (a) [Confidential to Optus] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 - (b) [REDACTED] [REDACTED] [REDACTED]
 - (c) [REDACTED] [REDACTED] [REDACTED]
 - (d) [REDACTED] [REDACTED]
18. Optus admits paragraph 18.
19. Optus admits paragraph 19.

20. Optus admits paragraph 20 and says further that mid-band spectrum can be utilised to achieve coverage and capacity in regional networks and that Telstra is not fully utilising its current mid band spectrum holdings in the 17% Regional Coverage Zone.

21. Optus admits paragraph 21.

22. Optus does not know and therefore cannot admit the statements about TPG's discussions with Telstra in paragraph 22, and says further that, [Confidential to TPG and Optus]

[Redacted]

23. Optus does not know and therefore cannot admit paragraph 23.

24. Optus denies paragraph 24 and says that, [Confidential to TPG and Optus]

[Redacted]

(a) [Redacted]

(b) [Redacted]

(c) [Confidential to Optus] [Redacted] [Confidential to TPG and Optus] [Redacted] and

(d) [Confidential to Optus] [Redacted]

25. Optus denies paragraph 25 and says further that it [Confidential to TPG and Optus]

[Redacted]

26. Optus admits paragraph 26.

27. Optus admits paragraph 27, and says further that the MOCN Agreement contains provisions which:

(a) involve TPG making [Confidential to the Applicants] [Redacted] wholesale payments to Telstra, calculated by reference to [Confidential to the Applicants] [Redacted];

(b) [Confidential to the Applicants] [Redacted]

- (c) restrict TPG's access to 5G at a particular site in the 17% Regional Coverage Zone until 6 months after the site was activated for 5G;
- (d) limit the extent of Telstra's non-discrimination obligations; and
- (e) **[Confidential to the Applicants]** [REDACTED]
[REDACTED]
[REDACTED]

28. Optus admits paragraph 28 of Telstra's Statement and says further that:

- (a) **[Confidential to Telstra]** [REDACTED]
[REDACTED]; and
- (b) spectrum licences are commonly renewed without any auction or other contestable process being undertaken.

29. Optus admits paragraph 29.

30. Optus denies paragraph 30 and refers to its contentions in the main body of this Concise Statement.

B. RESPONSE TO FACTS IN TPG'S CONCISE STATEMENT

4. In response to paragraph 4 of TPG's Statement, Optus says that the 3G Roaming Agreement provides TPG roaming on the Optus network **[Confidential to TPG and Optus]** [REDACTED] [REDACTED] population coverage and, further:

- (a) admits sub-para (a), and says further that the 3G Roaming Agreement permits TPG to use data, **[Confidential to TPG and Optus]** [REDACTED]
[REDACTED];
- (b) as to sub-para (b), admits that the data fee charged is **[Confidential to TPG and Optus]** [REDACTED] and otherwise does not know and cannot admit the sub-paragraph;
- (c) as to sub-para (c), does not know and cannot admit whether providing data services to TPG customers in the 17% Regional Coverage Zone is **[Confidential to TPG]** [REDACTED] **[Confidential to TPG and Optus]** [REDACTED]
[REDACTED];
- (d) admits sub-para (d);
- (e) admits sub-para (e); and
- (f) says that Optus has **[Confidential to TPG and Optus]** [REDACTED]
[REDACTED] and will refer to the terms of the roaming agreement for its full meaning and effect.

5. Optus denies paragraph 5.

6. In response to paragraph 6, Optus:

