# 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

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| 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 |

REGISTRAR

Dated: 26/07/2023 6:18 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

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| File No: | ACT 1 of 2022 |
| Re: | Applications by Telstra Corporation Limited and TPG Telecom Limited for review of the determination of the Australian Competition and Consumer Commission dated the 21st day of December 2022 (file no. MA1000021) |
| Applicants: | Telstra Corporation Limited and TPG Telecom Limited |

**AMENDED SUBMISSIONS IN SUPPORT OF REQUEST FOR CONFIDENTIALITY DIRECTIONS ON BEHALF OF TPG TELECOM LIMITED**

**26 July 2023**

1       TPG Telecom Limited (**TPG**) provides these short submissions in support of its request that the Australian Competition Tribunal give directions under s 106(2)(b) of the *Competition and Consumer Act 2010* (Cth) prohibiting the publication of certain information contained in *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2 dated 21 June 2023 (the **Reasons**), except to the Australian Competition and Consumer Commission (**ACCC**), its staff and any other person assisting the ACCC, the parties' legal advisors, and as applicable, the confidentiality claimant.  These submissions replace the submissions filed with the Tribunal by TPG on 12 July 2023.

2       TPG requests that those parts of the Reasons which contain information:

(a)     confidential to TPG (referred to as **TPG Confidential Information**);

(b)     confidential to both TPG and Singtel Optus Pty Ltd (**Optus**) (referred to as **TPG and Optus Joint Confidential Information**);

(c)     confidential to both TPG and Telstra Corporation Limited (**Telstra**) (referred to as **TPG and Telstra Joint Confidential Information**); and

(d)     confidential to multiple parties (including TPG)

be the subject of a non-publication order. The relevant information over which confidentiality is claimed, and the reasons for each claim, are extracted in **Annexure A**.

3       Annexure A indicates the information over which confidentiality is claimed using highlighted text as follows:

(a)     green highlight denotes TPG Confidential Information;

(b)     orange highlight denotes TPG and Optus Joint Confidential Information;

(c)     red highlight denotes TPG and Telstra Joint Confidential Information; and

(d)     pink highlight denotes information that is derived from the ACCC's or Tribunal's analysis of multiple parties' confidential information and therefore should not be disclosed to any person apart from the ACCC and the parties' legal advisors. TPG states only the reason for its claim of confidentiality regarding this information in Annexure A.

4       Diagrams, graphs and figures over which confidentiality is claimed are identified in Annexure A using coloured boxes with green lined boxes denoting TPG Confidential Information and pink lined boxes denoting information that is confidential to multiple parties.

5       The information over which TPG claims confidentiality falls into one or more of the following categories:

**TPG-only information**

- **Category 1 – TPG's assessment of the Proposed Transaction**: information comprising TPG's views and assessment of the Proposed Transaction, including TPG's commercial rationale for entering the Proposed Transaction, board paper analyses, and reports and modelling from TPG's consultants on the business case for the Proposed Transaction. Disclosure of this information would reveal competitively and commercially sensitive information, which may confer a competitive advantage on other market participants (including in any future negotiations TPG is party to) and prejudice TPG's competitive position in the marketplace.

- **Category 2 – TPG's assessment of Optus relationship**: information comprising TPG's views and assessment of its relationship, agreements and discussions with Optus, including the eJV, █████████████████████████████ and Optus' likely approach to any future discussions. Disclosure of this information would reveal competitively and commercially sensitive information, which may confer a competitive advantage on other market participants

(including in any future negotiations TPG is party to) and prejudice TPG's competitive position in the marketplace.

- **Category 3 – TPG's competitively sensitive data:** information comprising data concerning TPG's business, including market share data, customer churn data, customer location data, build cost estimates, Huawei equipment replacement cost estimates and expert calculations. This data is competitively and commercially sensitive to TPG and is used to inform strategic business decisions. The information has current and ongoing relevance to competition between TPG, Optus, Telstra and other parties in relevant markets. The disclosure of this information would prejudice TPG as granular details of its business performance and network costs would be known and could be utilised by competitors and other market participants to undermine TPG's competitive position in the marketplace and/or retail or wholesale competition.

- **Category 4 – TPG's commercial and competitive strategies**: information comprising TPG's future network, marketing and pricing plans (with and without the Proposed Transaction), commercial strategies, and consumer analysis is commercially and competitively sensitive and confidential. Disclosure of this information would prejudice TPG as it may allow competitors and other market participants to use this information to TPG's commercial and competitive detriment. It could also be utilised by competitors to distort competitive market dynamics.

**Jointly confidential information**

- **Category 5 – TPG's and Optus' commercial arrangements**: information relating to TPG's and Optus' commercial arrangements (such as the eJV and 3G roaming arrangement), including the terms, duration and scope of those arrangements. This information is confidential, commercially and competitively sensitive ▮▮▮▮▮▮▮▮▮▮▮▮ ▮▮▮▮▮▮. Disclosure of this information would prejudice TPG and/or Optus by allowing competitors and other market participants to use this information to TPG's and/or Optus' commercial and competitive detriment.

- **Category 6 – Transaction Agreements and commercial negotiations**: information relating to the Spectrum Authorisation Agreement, Mobile Site Transition Agreement and MOCN Service Agreement (together referred to as the **Transaction Agreements**) and the surrounding negotiations between TPG and Telstra that preceded the entry into the Transaction Agreements. ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ The pricing structure, terms or commercial arrangements under the Transaction Agreements (and the negotiations that preceded those terms) are commercially and competitively sensitive and would prejudice TPG and Telstra if publicly disclosed. Although the Tribunal has determined not to authorise the Proposed Conduct, at the date of this submission TPG has not decided whether it may wish to seek judicial review of the Tribunal's determination or to take any further action with respect to the Proposed Transaction. Further, disclosure of the terms of the Proposed Transaction may prejudice TPG in any future negotiations between TPG and Optus, or other third parties, in the event that the Proposed Transaction is not completed (for example, by revealing terms or positions that a potential counterparty would know TPG had accepted in the past).

**ANNEXURE A**

| # | Para | Extract of confidential information | Basis for claim (category number(s)) |
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