

**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, appearing to be "M U", is written below the seal.

REGISTRAR

Dated: 27/07/2023 2:57 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 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

**SUBMISSIONS IN SUPPORT OF REQUEST FOR CONFIDENTIALITY DIRECTIONS ON BEHALF OF TELSTRA CORPORATION LIMITED**

## IN THE AUSTRALIAN COMPETITION TRIBUNAL

### TELSTRA CORPORATION LIMITED

### APPLICATIONS BY TELSTRA CORPORATION LIMITED AND TPG TELECOM LIMITED

#### REQUEST FOR CONFIDENTIALITY DIRECTIONS

- 1 Telstra Corporation Limited (**Telstra**) provides these short submissions in support of its request that the Australian Competition Tribunal (**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.
- 2 Telstra requests that those parts of the Reasons which contain information confidential to Telstra (referred to as **Telstra Confidential Information**), confidential to both Telstra and TPG Telecom Limited (**TPG**) (together referred to as the **Applicants**) (referred to as **Telstra and TPG Joint Confidential Information**) or confidential to multiple parties (including Telstra), be the subject of a non-publication order. The relevant information over which confidentiality is claimed, and the basis for each claim, are described in **Annexure A**.
- 3 Annexure A indicates the information over which confidentiality is claimed using coloured text as follows:
  - (a) **purple text** denotes Telstra Confidential Information;
  - (b) **red text** denotes Telstra and TPG joint Confidential Information; and
  - (c) **pink text** denotes information that is derived from the ACCC's or Tribunal's analysis of the multiple parties' confidential information and therefore should not be disclosed to any person apart from the ACCC and the parties' legal advisors.
- 4 Where text from the Reasons is included in Annexure A and is not in **purple**, **red** or **pink** text, this text appears for context only and no claim of confidentiality is made over that text. The shaded version of the Reasons provided to the Tribunal also contains each of the confidentiality claims identified in Annexure A. The shading in the Reasons has been applied using the same colour coding (as set out above in paragraph 3).
- 5 Diagrams, graphs and figures over which confidentiality is claimed are identified in Annexure A using coloured boxes with **purple** lined boxes denoting Telstra Confidential Information and **pink** lined boxes denoting information that is confidential to multiple parties.
- 6 The information over which Telstra claims confidentiality falls into one or other of the following categories:

- (a) **Transaction Agreements and commercial negotiations:** the claims for confidentiality in this category relate 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. [REDACTED]

[REDACTED].<sup>1</sup> The pricing structure, terms and commercial arrangements under the Transaction Agreements (and the negotiations that preceded these terms) remain commercially and competitively sensitive and could prejudice Telstra and TPG if they were to be publicly disclosed. This is because, notwithstanding the Tribunal's determination to affirm the ACCC's decision not to authorise the Proposed Conduct, the period of time for filing an application for judicial review of the Tribunal's determination has not expired, so there remains the possibility that the merger authorisation sought is ultimately granted and the Proposed Transaction implemented.

The Telstra-TPG MOCN was the first occasion on which significant active sharing arrangements have been negotiated in the Australian market, but [REDACTED]. For example, Federal and State Governments are pursuing active sharing between mobile network operators and with other parties as an option or a requirement of government funded mobile infrastructure projects. As Telstra is the main provider of network infrastructure in regional and rural Australia, Telstra is likely to be a participant in these government funded programs.

As the Tribunal's Reasons contemplated, Telstra could be involved in commercially negotiated active sharing arrangements with other mobile network operators in the future.

Telstra is concerned that the disclosure of the Transaction Agreements or information about their terms may prejudice Telstra's participation in future negotiations.

[REDACTED]

- (b) **Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale:** information comprising Telstra's internal assessment of the Proposed Transaction including analysis of:
- (i) Telstra's incentives and the likely commercial effects of the Proposed Transaction;
  - (ii) financial and business case modelling of the Proposed Transaction;
  - (iii) assessment of the impacts of the MOCN on Telstra's business; and
  - (iv) Telstra's internal consideration of the Proposed Transaction's structure and terms.

Disclosure of this information would reveal competitively and commercially sensitive information underpinning Telstra's approach to the Proposed Transaction, including

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<sup>1</sup> MOCN Service Agreement, cl 13 (HB 1/11/279), Mobile Site Transition Agreement, cl 9 (HB 1/11/647); Spectrum Authorisation Agreement, cl 12 (HB 1/11/682).

Telstra's perceptions of competition and competitive strategies, which may confer a competitive advantage on other market participants and prejudice Telstra's competitive position in the marketplace, including in relation to any future active sharing arrangements which are commercially negotiated or form part of the terms of or a response to government funded programs for infrastructure in regional and rural areas.

- (c) **Telstra's commercial and competitive strategies:** information comprising Telstra's strategic and commercial objectives, competitive incentives in the relevant markets, analysis of its competitors' positions, pricing and forward-looking business plans. The disclosure of this information would prejudice Telstra as it may allow competitors and other market participants to obtain insight into commercially and competitively sensitive information regarding Telstra's forward-looking objectives, market assessments and strategies. This information could be used by competitors and other market participants to Telstra's commercial and competitive detriment. It could also be utilised by competitors to distort competitive market dynamics.
- (d) **Market research commissioned by Telstra to inform its commercial strategy:** information comprising market research and analysis undertaken by external consultants to assist Telstra in formulating its commercial strategies. The disclosure of this information would reveal confidential data and analysis commissioned by Telstra that underpins its ongoing and future commercial strategies. The disclosure of this information would prejudice Telstra and could be utilised by competitors and other market participants to Telstra's commercial and competitive detriment. Further, those competitors could use that material without having to undertake their own investment in market research, thereby giving them a competitive advantage.
- (e) **Competitively sensitive customer and market data:** information comprising the following types of data concerning Telstra's business: market share data, customer churn data, customer location data, pricing, site numbers and SIO data. This data includes both quantitative data (for example, references to figures) and qualitative analysis of that data. This data is competitively and commercially sensitive to Telstra. The information has ongoing and future relevance to competition between Telstra, Optus, TPG and other market participants in relevant markets. The disclosure of this information would prejudice Telstra and could be utilised by competitors and other market participants to Telstra's commercial and competitive detriment.
- (f) **Competitively sensitive site and region congestion data:** information in the nature of site and region specific congestion data. This data includes both quantitative data (for example, references to figures) and qualitative analysis of that data. This data is competitively and commercially sensitive to Telstra, and is used by Telstra to monitor the performance of its network and as an input to its network investment decisions. The information has ongoing and future relevance to competition between Telstra, Optus, TPG and other parties in relevant markets. The disclosure of this information would prejudice Telstra as granular details of the performance of its network would be known, and could be utilised by competitors and other market participants to undermine retail and wholesale competition.

- 7 Telstra has made every effort to seek to narrow its claims for non-publication directions where possible, having regard to the Tribunal's comments made during the handing down of its determination on 21 June 2023. However, given that the parties' external legal advisors have been prohibited from providing the Reasons to their instructors until further order of the Tribunal, Telstra's inhouse counsel has been unable to review the Reasons (or the extracts identified in Annexure A over which Telstra claims confidentiality) for the purpose of providing

instructions on its confidentiality claims. Accordingly, if the Tribunal were to direct that a version of the Reasons that has been redacted for the confidential information of other parties be made available to Telstra, it is anticipated that Telstra would be able to reconsider its confidentiality claims with a view to further narrowing them. It also would be appropriate to provide the parties with 7 days (or any other time the Tribunal considers appropriate) to file any further copy of the Reasons with shading to indicate such narrowed confidentiality claims and any revised short submissions addressing the basis for those claims of confidentiality.

12 July 2023











#	Para	Extract of Confidential Information	Basis for claim
		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	
17	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(b)</b></p> <p>Telstra’s internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p> <p><b>Category 6(c)</b></p> <p>Telstra’s commercial and competitive strategies</p>
18	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(a)</b></p> <p>Transaction Agreements and commercial negotiations</p>
19	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(e)</b></p> <p>Competitively sensitive customer and market data</p>

#	Para	Extract of Confidential Information	Basis for claim
		<p>[REDACTED]</p>	
20	[REDACTED]	<p>[REDACTED]</p>	<p><b>Category 6(a)</b></p> <p>Transaction Agreements and commercial negotiations</p>
21	[REDACTED]	<p>[REDACTED]</p>	<p>This information, when read in context with the disclosed text of the footnote, discloses the Telstra Board's [REDACTED] [REDACTED] and is confidential and competitively sensitive.</p> <p><b>Category 6(b)</b></p> <p>Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p>
22	[REDACTED]	<p>[REDACTED]</p>	<p><b>Category 6(b)</b></p>





#	Para	Extract of Confidential Information	Basis for claim
		<ul style="list-style-type: none"> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> </ul>	Competitively sensitive customer and market data
26	■	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(e)</b></p> <p>Competitively sensitive customer and market data</p>
27	■	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(c)</b></p> <p>Telstra’s commercial and competitive strategies</p> <p><b>Category 6(d)</b></p> <p>Market research commissioned by Telstra to inform its commercial strategy</p> <p><b>Category 6(e)</b></p>







#	Para	Extract of Confidential Information	Basis for claim
		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Competitively sensitive customer and market data</p>
33	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(b)</b></p> <p>Telstra’s internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p>
34	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>This information, when read in context with the surrounding paragraph text, discloses the Telstra Board’s [REDACTED] and is confidential and competitively sensitive.</p> <p><b>Category 6(b)</b></p> <p>Telstra’s internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p>
35	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(b)</b></p> <p>Telstra’s internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p>
36	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(e)</b></p>

#	Para	Extract of Confidential Information	Basis for claim
		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	Competitively sensitive customer and market data
37	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(e)</b></p> <p>Competitively sensitive customer and market data</p>
38	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(e)</b></p> <p>Competitively sensitive customer and market data</p>
39	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>Category 6(b)</b></p> <p>Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p> <p><b>Category 6(e)</b></p> <p>Competitively sensitive customer and market data</p>
40	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p>	<b>Category 6(e)</b>

#	Para	Extract of Confidential Information	Basis for claim
		<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>Competitively sensitive customer and market data</p>
41	[Redacted]	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>The text marked pink is confidential to multiple parties [Redacted].</p> <p>The information marked in pink, when read in context with the preceding text in the paragraph, discloses the Telstra Board's [Redacted] [Redacted] is commercially and competitively sensitive.</p> <p><b>Category 6(c)</b></p> <p>Telstra's commercial and competitive strategies</p> <p><b>Category 6(e)</b></p>







#	Para	Extract of Confidential Information	Basis for claim
		<p>[Redacted]</p>	
50	[Redacted]	<p>[Redacted]</p>	<p><b>Category 6(a)</b></p> <p>Transaction Agreements and commercial negotiations</p>
51	[Redacted]	<p>[Redacted]</p>	<p><b>Category 6(b)</b></p> <p>Telstra’s internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p>
52	[Redacted]	<p>[Redacted]</p>	<p><b>Category 6(a)</b></p> <p>Transaction Agreements and commercial negotiations</p> <p><b>Category 6(b)</b></p> <p>Telstra’s internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p> <p><b>Category 6(c)</b></p>















#	Para	Extract of Confidential Information	Basis for claim
		<p>[Redacted]</p>	
71	[Redacted]	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <ul style="list-style-type: none"> <li>▪ [Redacted]</li> <li>▪ [Redacted]</li> <li>▪ [Redacted]</li> </ul>	<p><b>Category 6(b)</b></p> <p>Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p> <p><b>Category 6(f)</b></p> <p>Competitively sensitive site and region congestion data</p>
72	[Redacted]	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p><b>Category 6(b)</b></p> <p>Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p>

#	Para	Extract of Confidential Information	Basis for claim
73	█	<p>[Redacted text block]</p>	<p><b>Category 6(e)</b></p> <p>Competitively sensitive customer and market data</p>
74	█	<p>[Redacted text block]</p>	<p><b>Category 6(f)</b></p> <p>Competitively sensitive site and region congestion data</p>
75	█	<p>[Redacted text block]</p>	<p><b>Category 6(b)</b></p> <p>Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p>



#	Para	Extract of Confidential Information	Basis for claim
		<p>[REDACTED]</p>	
76	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p><b>Category 6(b)</b></p> <p>Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p> <p><b>Category 6(c)</b></p> <p>Telstra's commercial and competitive strategies</p>
77	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p><b>Category 6(b)</b></p> <p>Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p>
78	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p><b>Category 6(b)</b></p>







#	Para	Extract of Confidential Information	Basis for claim
		<p>[Redacted text]</p>	Transaction Agreements and commercial negotiations
88	[Redacted]	<p>[Redacted text]</p>	<b>Category 6(e)</b> Competitively sensitive customer and market data

#	Para	Extract of Confidential Information	Basis for claim
89	█	<p>[Redacted text block for row 89]</p>	<p><b>Category 6(b)</b></p> <p>Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p> <p><b>Category 6(f)</b></p> <p>Competitively sensitive site and region congestion data</p>
90	█	<p>[Redacted text block for row 90]</p>	<p><b>Category 6(a)</b></p> <p>Transaction Agreements and commercial negotiations</p>

#	Para	Extract of Confidential Information	Basis for claim
91	█	<p>[Redacted text]</p>	<p><b>Category 6(a)</b></p> <p>Transaction Agreements and commercial negotiations</p> <p><b>Category 6(b)</b></p> <p>Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p>
92	█	<p>[Redacted text]</p>	<p><b>Category 6(b)</b></p> <p>Telstra's internal assessment of the Proposed Transaction including competitive effects and its commercial/strategic rationale</p>
93	█	<p>[Redacted text]</p>	<p><b>Category 6(b)</b></p>

