

1 August 2022

Telstra and TPG arrangement for the sharing of active infrastructure and spectrum in regional Australia

Confidential Annexure E: TPG counterfactual

Public version

1 Executive summary

1.1 Purpose of submission

1 This submission is provided by TPG to the ACCC on a confidential basis, as an annexure to the Applicants' response (**Applicant Response**) to Optus' submission to the ACCC dated 28 June 2021 (**Optus Submission**).

2 The purpose of this submission is to assist the ACCC's understanding of the likely counterfactual [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3 Capitalised terms in this submission have the same meaning as in the Application and the Applicant Response.

1.2 Likely counterfactual

4 TPG and Optus' positions are consistent insofar as both TPG and Optus contend that, absent the Proposed Transaction:

- TPG would continue to compete to supply mobile services in metropolitan areas and, to a limited extent, in the 17% Regional Coverage Zone.¹
- TPG is unlikely to expand its own network substantially across the 17% Regional Coverage Zone in the medium term.²
- TPG would likely consider alternative network sharing arrangements to expand its mobile coverage in regional areas.³

5 The Likely Counterfactual presented by TPG in the Application was [Public text: that TPG would need to consider alternative arrangements for expanding its coverage in regional areas, which could include, for example, entering into a 4G roaming arrangement with another MNO. It is likely that this MNO would be Optus] [REDACTED]

[REDACTED].

6 While TPG continues to be of the view that, without the Proposed Transaction, it would consider entering into a wholesale arrangement with Optus, [REDACTED]

¹ Optus Submission, para 6.25.

² Application, paras 47-50; Optus Submission, para 7.12: '... Optus accepts that it is not commercially realistic for three networks (or three 5G networks) to be deployed across all regional and rural areas of Australia... There is, however, scope for two networks...'.
³ Optus Submission, para 6.2(c): 'Optus accepts that, absent the Proposed Transaction, TPG would be likely to consider alternative network sharing arrangements to expand its mobile coverage in regional areas.'

[REDACTED]
[REDACTED]
[REDACTED] Further, to the extent that TPG and Optus were able to successfully negotiate a regional network sharing arrangement, this would likely be a 4G roaming arrangement for at least five years [Public text: (the **Roaming Counterfactual**) and not an active sharing arrangement. If an agreement could not be reached, TPG considers that the counterfactual would involve it undertaking a targeted build of a small number of sites in the 17% Regional Coverage Zone (the **Targeted Build Counterfactual**).] [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]

[REDACTED]

7 At this point in time, [REDACTED]
[REDACTED]
[REDACTED] TPG considers it more likely that the Targeted Build Counterfactual would arise were the Proposed Transaction not to proceed. However, to the extent the ACCC is minded to consider an alternative wholesale arrangement in the counterfactual (noting that the likelihood of this being successfully negotiated is speculative), this would only involve 4G roaming to potentially only [REDACTED] of the population.

8 [REDACTED]

9 This submission does not address the inconsistencies in the approach that Optus and its experts adopt in relation to the counterfactual. This is dealt with in Mr Richard Feasey's report in response to the Optus Submission dated 22 July 2022 (**Feasey Response**). While TPG considers this should be relevant to the weight that the ACCC places upon Optus and its experts' arguments, this submission is directed at setting out the relevant facts for the purposes of assisting the ACCC in assessing the likely counterfactual.

1.3 Likely effect on competition

10 Irrespective of which the counterfactual is adopted, no substantial lessening of competition can be said to arise as a result of the Proposed Transaction.

11 Under the Proposed Transaction, TPG will be better placed to be an effective and vigorous competitor to Telstra and Optus than under either a Roaming Counterfactual or a Targeted Build Counterfactual. Even if the counterfactual

4 [REDACTED]

involved an active network sharing arrangement with Optus in the short to medium term (which, for the reasons set out in the Application and this submission is not likely), the Proposed Transaction would not be likely to substantially lessen competition when compared with this scenario for the reasons set out in the Feasey report dated 20 May 2022 (**Feasey Report**) and the Feasey Response.

1.4 Confidentiality

12 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

13 [REDACTED]
[REDACTED]
[REDACTED]

2 The likely counterfactual

2.1 Overview

14 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

15 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

16

[REDACTED]

[REDACTED] TPG considers that the ACCC can be satisfied that, without the Proposed Transaction:

- TPG would consider seeking to negotiate a wholesale arrangement with Optus to extend TPG's coverage in the 80%+ coverage area; and
- if TPG is unable to reach a wholesale arrangement with Optus on acceptable commercial terms, it would undertake a targeted network build of [Public text: a small number of] [REDACTED] sites in the 80% - [REDACTED] coverage area over the next [REDACTED] (i.e., the Targeted Build Counterfactual).

17

[illegible]

5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 This section sets out:

[REDACTED]

[REDACTED]

- [Public text: that there is no guarantee that TPG and Optus could successfully negotiate a roaming arrangement for regional areas] [REDACTED]

- further information in relation to the Targeted Build Counterfactual.

2.2

[REDACTED]


19

[REDACTED]

A horizontal bar chart titled 'U.S. should take action to address climate change' showing the percentage of respondents who believe the U.S. should take action to address climate change. The chart is broken down by age group (18-29, 30-49, 50-69, 70+) and gender (Male, Female). The y-axis represents the percentage of respondents, with a label '20' at the 20% mark. The x-axis represents the percentage of respondents, ranging from 0% to 100%.

Age Group	Gender	Percentage of Respondents
18-29	Male	~95%
	Female	~95%
30-49	Male	~95%
	Female	~95%
50-69	Male	~90%
	Female	~90%
70+	Male	~25%
	Female	~25%
Total	Male	~95%
	Female	~95%

21



Category	Value (approximate)
1	100
2	95
3	98
4	97
5	94
6	93
7	96
8	95
9	90

22

Bar Index	Relative Length (approximate)
1	100%
2	95%
3	100%
4	95%
5	98%
6	98%
7	85%

23

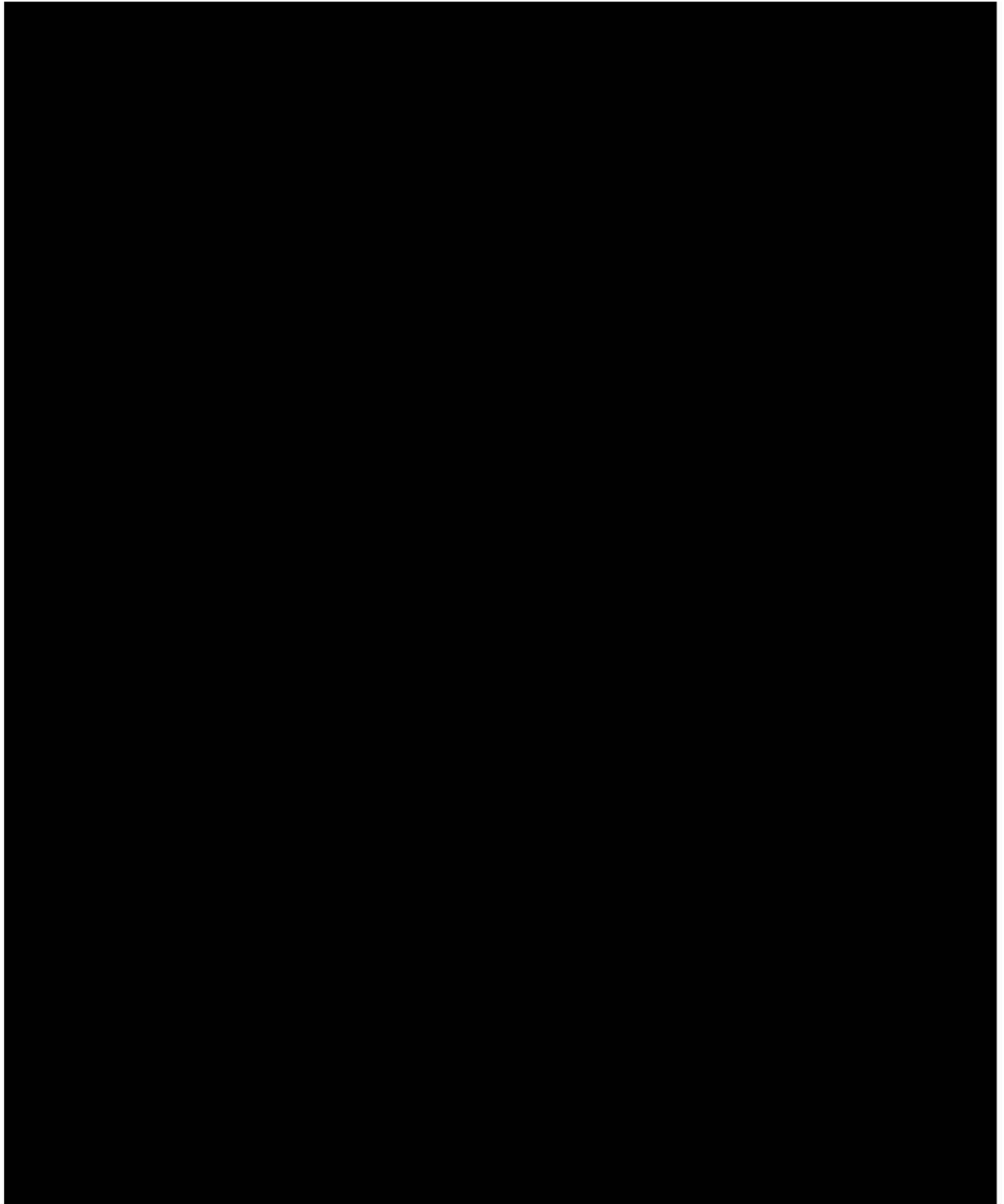
Category	Value (approximate)
1	85
2	15
3	95
4	75

[REDACTED]

[REDACTED]

[REDACTED]

7 [REDACTED]
8 [REDACTED]



24 In light of the above matters, assuming that a wholesale arrangement in regional areas could be agreed with Optus absent the Proposed Transaction, this would inevitably be a 4G roaming arrangement for at least five years [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

9 [REDACTED]
10 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A horizontal bar chart titled "Percentage of respondents who believe the U.S. should take action to address climate change." The chart displays data for four age groups (25-34, 35-44, 45-54, 55+) and two genders (Male, Female). The x-axis represents the percentage of respondents, ranging from 0 to 100. The y-axis lists the categories: 25-34, 35-44, 45-54, 55+, Male, and Female. Each category has two bars: a dark blue bar for "Yes" and a light blue bar for "No".

Category	Yes (%)	No (%)
25-34	95	5
35-44	98	2
45-54	98	2
55+	98	2
Male	95	5
Female	98	2

The chart displays the percentage of respondents for various categories across three groups: 29, 30, and 31. The categories are represented by black bars of varying lengths, with some categories having multiple bars. The chart is divided into three main sections corresponding to the groups 29, 30, and 31.

Group	Category	Percentage (%)
29	Category 1	~95
	Category 2	~95
	Category 3	~95
	Category 4	~95
	Category 5	~95
	Category 6	~95
	Category 7	~95
	Category 8	~95
	Category 9	~95
	Category 10	~95
30	Category 1	~95
	Category 2	~95
	Category 3	~95
	Category 4	~95
	Category 5	~95
	Category 6	~95
	Category 7	~95
	Category 8	~95
31	Category 1	~95
	Category 2	~95
	Category 3	~95
	Category 4	~95

Year	Number of Publications
12	100
13	40
14	45
15	65

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.4

[REDACTED] [Public text:
There is no guarantee that TPG and Optus could successfully negotiate a
roaming arrangement for regional areas]

31 If the Proposed Transaction does not proceed, TPG considers that: [Public
text: there is no guarantee that TPG and Optus could successfully negotiate a
roaming arrangement for regional areas.]

- [REDACTED]
- [REDACTED]

32 [REDACTED]

[REDACTED]

[REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

[REDACTED]

(a) [REDACTED]

33 [REDACTED]

[REDACTED]

34 [REDACTED]

(b) [REDACTED]

35 [REDACTED]

36 [REDACTED]

37 [REDACTED]

21 [REDACTED]

40

22
23

41

[REDACTED]

[REDACTED]

42 [REDACTED]

43 [REDACTED]

[REDACTED]

27 [REDACTED]
28 [REDACTED]

[REDACTED]

- (c) The roaming arrangement in a Roaming Counterfactual would be for 4G not 5G services and as stated by Compass Lexecon:²⁹

'Roaming revenues which are not earned on 5G volumes would not be expected to impact the expected returns to 5G investment. This suggests that the impact of a TPG/Optus agreement on Optus' quality may be more limited relative to the impact on Telstra's investment under the Proposed Transaction.'

2.5 Further information on the Targeted Build Counterfactual

- 44 In the event that the Proposed Transaction does not proceed and TPG and Optus cannot successfully negotiate an alternative agreement, the likely counterfactual would be the Targeted Build Counterfactual.

- 45 For the reasons set out at section 3.2(a) of the Application, there is no likelihood that TPG would rollout a network that would match or come close to matching Telstra or Optus in regional Australia. [REDACTED]

[REDACTED]

- 46 [REDACTED]

- 47 [REDACTED]

²⁹ Compass Lexecon, Competitive Assessment of the Proposed TPG/Telstra Sharing Agreement, 26 July 2022 (Compass Lexecon Report), para 6.23.

³⁰ [REDACTED]

48

[REDACTED]

3 No substantial lessening of competition

49

Ultimately, while TPG considers there is a real chance that the Targeted Build Counterfactual would arise were the Proposed Transaction not to proceed, it considers the ACCC need not reach a definitive view because – regardless of the counterfactual adopted – the Proposed Transaction is not likely to substantially lessen competition.

50

Whether compared with a Roaming or a Targeted Build Counterfactual, the Proposed Transaction will not be likely to substantially lessen competition – in fact it will increase competition. As stated by Compass Lexecon:³¹

'[T]he 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.'

51

In addition, even if the ACCC is inclined to compare the Proposed Transaction to an active network sharing arrangement with Optus [REDACTED] the Proposed Transaction will not be likely to substantially lessen competition for the reasons set out in the Feasey Report.

52

Substantial information on these points has been provided in the Application, the Applicant Response, the Applicant's response to third party submissions dated 6 July 2022 and the expert reports of Mr Feasey and Compass Lexecon. Accordingly, only a succinct summary of these points is provided below.

3.1 The Proposed Transaction will not lessen competition when compared with the Roaming Counterfactual

53

Assuming that, if the Proposed Transaction does not proceed, TPG and Optus could successfully negotiate a 4G roaming agreement, [REDACTED]

54

This would be a worse outcome for competition than in the factual, including for the following reasons.

- In the Roaming Counterfactual, TPG would not be able to offer 5G services in regional and rural Australia. [REDACTED]

³¹ Compass Lexecon Report, para 8.1.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This is a worse outcome for competition than the factual.

- In the Roaming Counterfactual, TPG would only be able to offer coverage to *at most* [REDACTED] of the population [REDACTED] – compared with 98.8% in the factual. This means that there would be fewer MNOs competing to provide services in the [REDACTED] areas and fewer MNOs able to [REDACTED] [REDACTED] This would lessen consumer choice more than in the factual – a worse outcome for competition and consumers.
- In the Roaming Counterfactual, TPG would have less ability to quickly and readily adapt to changing market conditions through new products and plans because of the limitations of roaming compared with a MOCN where it is able to control its own core network.
- In the Roaming Counterfactual, the variable costs to TPG would be higher and would place greater pressure on TPG to increase prices compared with the factual.³²

55 Other benefits of the factual related to FWA, IOT services and non-exclusivity would also be lost, each of which would be detrimental for competition.

56 This would be to the detriment of consumers, enterprises and wholesale customers all of which will benefit from greater choice of 5G providers in regional Australia sooner rather than later. If the Proposed Transaction proceeds, retail customers will also have the advantage of TPG MVNO's offering 5G services in regional areas [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3.2 The Proposed Transaction will not lessen competition when compared with the Targeted Build Counterfactual

57 The loss of competition is exacerbated in the Targeted Build Counterfactual.

58 In summary, in the Targeted Build Counterfactual, TPG would not be in a materially better position in regional Australia. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

59 In the Targeted Build Counterfactual, TPG will continue to be an ineffective competitor in regional Australia with a continuing share of supply of less than [REDACTED] in that region. [REDACTED]

³² Compass Lexecon Report, paras 6.7 – 6.8.

[REDACTED]

60 In addition, consumers and enterprise customers would lose the benefit of the downward pressure on pricing associated with the Proposed Transaction. As stated by Compass Lexecon:³⁴

'After the rollout of around 200 sites (over 10 years), TPG's level of coverage and network quality would still be substantially lower than the coverage and quality offered today by Telstra and Optus would also mean that it would not be as an effective competitor as under the Proposed Transaction. This would result in less pressure on Telstra and Optus to lower their quality-adjusted prices.'

4 Conclusion

61 It would be disappointing for Australian customers—consumers, enterprise and wholesale customers—if they were denied the opportunity of greater choice of providers in regional Australia and left with the longstanding duopoly in these regions.

62 Optus is a competitor who has much to gain through its opposition to Proposed Transaction including:

- protecting its existing market share from competition – [REDACTED]
[REDACTED];
- ensuring it is the second MNO able to offer 5G services in regional areas – the longer it delays the implementation of the Proposed Transaction, the shorter TPG's 5G head start to Optus in those areas (delay tactics are therefore not unexpected); and
- damaging the reputations of TPG and Telstra to Optus' advantage.

For these reasons, Optus' submissions ought to be treated with considerable care.

³³ Application, para 197.

³⁴ Compass Lexecon Report, para 6.61.

