



Our ref: 61634

Level 27, 135 King Street
Sydney NSW 2000
GPO Box 3648
Sydney NSW 2001
tel: (02) 9230 9133
www.accc.gov.au

Your ref: ACMA2020/161-24
Contact officer: [REDACTED]
Contact phone: [REDACTED]

14 July 2021

James Cameron
Authority Member
Australian Communications and Media Authority
PO Box 78
BELCONNEN ACT 2616

Dear James

Re: Request for advice under section 60(13A) of the *Radiocommunications Act 1992*

I refer to your letter dated 30 June 2021 requesting advice from the Australian Competition and Consumer Commission's (ACCC) on competition issues associated with the Australian Communications and Media Authority's (ACMA) 850/900 MHz band spectrum licence auction. Thank you for the opportunity to comment.

As noted in your letter, the Minister for Communications, Cyber Safety and the Arts requested the ACCC's advice on the same matter on 27 October 2020. After a public consultation process, the ACCC provided its advice to the Minister on 5 March 2021.¹

In our advice, we identified the key competition issue arising from this allocation to be Optus' lack of sub 1GHz spectrum compared to the other mobile network operators (MNOs). The ACCC recommended that:

- an allocation limit should be imposed for the 850/900 MHz allocation, such that no person or specified group of persons could hold more than 40 per cent, or 80 MHz, of all sub-1 GHz band spectrum available for use as a result of the 850/900 MHz allocation,
- there are no grounds to guarantee spectrum for Telstra in the 850/900 MHz allocation for the purpose of supporting continuity of service. We considered that the recommended allocation limit would provide a reasonable opportunity for Optus and TPG to acquire spectrum in the 900 MHz band in the absence of any spectrum guarantee.

I note that the amendments to the *Radiocommunications Act 1992* commenced on 17 June 2021. While the Minister is expected to make a direction regarding allocation limits for this auction, subsection 60(13A) requires the ACMA to consult with the ACCC on whether the

¹ ACCC, *Allocation limits advice for the 850/900 MHz spectrum allocation*, March 2021, available at: <https://www.accc.gov.au/regulated-infrastructure/communications/mobile-services/spectrum-competition-limits/request-for-advice-850-900-mhz-spectrum>.

ACMA's allocation procedures should impose spectrum allocations and if so, the nature of those limits.

I note your advice that the ACMA is considering an amended approach to some product designs for the 850/900 MHz allocation following comments from stakeholders. Of most relevance to the operation of any allocation limits is the possible disaggregation of both the 850 MHz expansion band and the 900 MHz band into a metropolitan area and a regional area. This differs from the previous proposed approach of using a single national area for the 900 MHz band.

As you are aware, the ACCC's recommended limit of 40 per cent, or 80 MHz, across the sub-1 GHz bands is based on the scenario that a single national licenced area be adopted for the 900 MHz band. Under this limit, Telstra would be restricted to acquiring one national lot in the 900 MHz band. The recommended limit would not prevent Telstra or TPG from acquiring additional sub-1 GHz band in the 850/900 MHz allocation and, importantly, would provide Optus with a reasonable opportunity to acquire the spectrum it needs in order to compete effectively in the mobiles market.

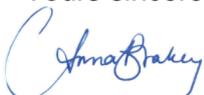
If the 900 MHz band is disaggregated into a metropolitan area and a regional area, the potential allocation outcomes envisaged under the ACCC's recommended limit would likely change. Depending on how the allocation limit is determined to operate, Telstra may be able to acquire one additional lot in the metropolitan area in the 900 MHz band. This would reduce the amount of spectrum that Optus could reasonably expect to acquire in the metropolitan area in the 900 MHz band.

We identified a risk in our advice to the Minister that, if Optus did not acquire more sub 1 GHz spectrum, it may not be able to roll out 5G technology widely and efficiently across Australia and expand capacity on its 4G network. This would impact competition in the mobiles market. We consider that the changes to the product design could heighten this risk as under the recommended limit of 40 per cent, Optus may not have a reasonable opportunity to acquire what it needs, at least in the metropolitan area, in order to compete effectively in the mobiles market.

Consistent with the advice we provided to the Minister, we consider that the key competition issue arising from this allocation is Optus's lack of sub-1 GHz band spectrum compared with the other MNOs, and the allocation limit should provide Optus with a reasonable opportunity to acquire what it needs to compete effectively in the mobiles market. The ACMA may wish to have regard to our comments on the implication of changes to the product design to the recommended limit, in making its decisions on the allocation procedures for the 850/900 MHz allocation. For completeness, we enclose a copy of our advice to the Minister.

If you wish to discuss the matter, please contact [REDACTED]
[REDACTED]
[REDACTED]

Yours sincerely



Anna Brakey
Commissioner
Australian Competition and Consumer Commission