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## TELSTRA CORPORATION LIMITED

Submission to the Australian Competition and Consumer Commission

Telstra Corporate Restructure: Minor variations to certain Record Keeping Rules, the Fixed Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services

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## CONTENTS

<b>EXECUTIVE SUMMARY</b>	<b>3</b>
<b>01 Background to Telstra's Corporate Restructure</b>	<b>4</b>
1.1. Rationale and timeline	4
1.2. The new structure	4
<b>02 Need for change</b>	<b>7</b>
2.1. Need for change – Telstra Limited	7
2.2. The ACCC's proposed changes to the FADs and IAD	7
<b>03 Timing and compliance</b>	<b>8</b>
3.1. Timing	8
3.2. Compliance	8



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## EXECUTIVE SUMMARY

Telstra refers to the Australian Competition and Consumer Commission's (**ACCC's**) consultation paper of November 2022 "*Telstra corporate restructure: Minor variations to certain Record Keeping Rules, the Final Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services*" (**the Consultation Paper**). Telstra welcomes the Consultation Paper.

Telstra's restructure has required a review and reconsideration of the entities to which its Record Keeping Rules (**RKRs**), the Final Access Determinations for Fixed Lines Services (**FADs**) and the Interim Access Determination for Superfast Broadband Access Services (**IAD**) are applied.

Telstra supports the proposed changes outlined by the ACCC in the Consultation Paper.

This submission will provide:

- for background, a short description of Telstra's restructure (**the Corporate Restructure**) including where its main assets and businesses are to be located and an update on the procedural steps to achieve the restructure;
- an explanation of the resulting need to change the relevant corporate entity to which the RKR, FADs and IAD will apply (the re-pointing) and Telstra's rationale for its support of the ACCC's recommendations on re-pointing; and
- our commitment on timing and our continued commitment to achieve compliance as a newly restructured group.



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## 01 Background to Telstra's Corporate Restructure

### 1.1. Rationale and timeline

On 23 August 2022 Telstra wrote to its shareholders proposing a corporate restructure as an important next step in Telstra's drive to increase the transparency of our infrastructure assets and to improve management focus on our infrastructure and customer businesses, and consequently provide more flexibility to create additional value for our shareholders.

The Corporate Restructure is a legal re-organisation of the Telstra Group.

It was approved by Telstra's shareholders on 11 October 2022 and the NSW Supreme Court's Orders implementing the restructure became effective on 20 October 2022. The Corporate Restructure is due to be completed on 1 January 2023.

### 1.2. The new structure

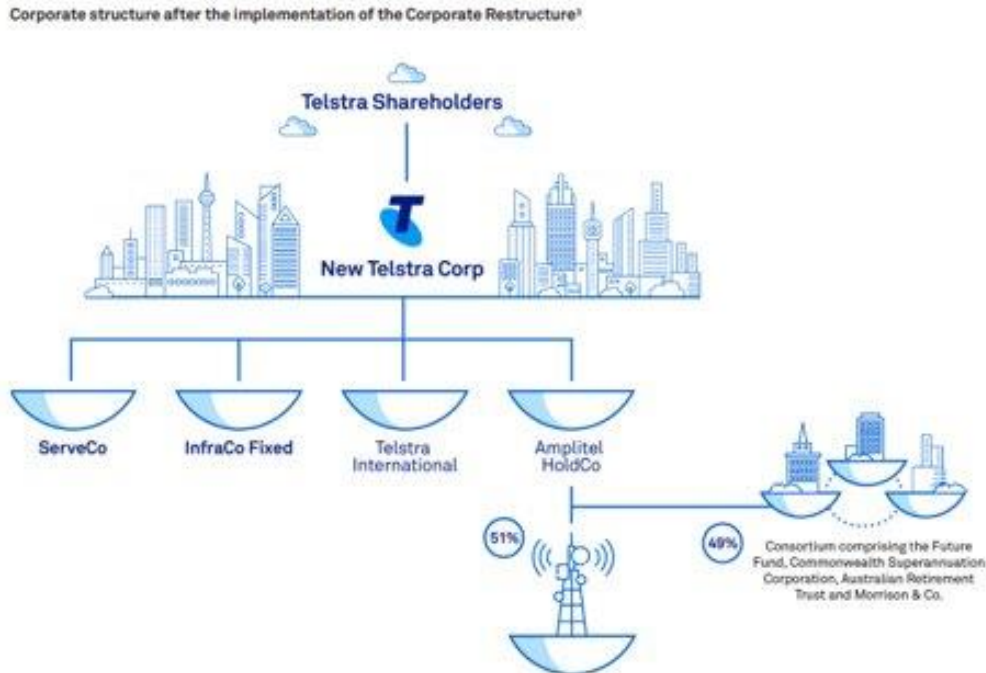
Under the Corporate Restructure, a new structure will be established, with Telstra Group Limited (**New Telstra Corp**) as the head entity of the Telstra Group.

Four key subsidiaries will sit under New Telstra Corp:

- **Telstra Limited / ServeCo** – which will own and operate the ServeCo Business (see below);
- **Telstra Corporation Limited / InfraCo Fixed** – which will own and operate the InfraCo Fixed Business (see below);
- **Amplitel** – which owns and operates the Amplitel Business (see below). The Telstra Group's 51% interest in Amplitel is held by Amplitel HoldCo (see diagram below); and
- **Telstra International** – which will own and operate the International Businesses (see below).

A high level view of the new structure following the Corporate Restructure is set out in Figure 1 below.

**Figure 1: Corporate structure after the implementation of the Corporate Restructure**



3. Simplified structure diagram illustrating the key entities only. The Telstra International Steps are intended to occur gradually following the Top Hat Implementation Date, but remain subject to relevant approvals and engagement with appropriate stakeholders.

The **Serve Co Business** is Telstra Group's current active services business, including:

- the retail business of providing fixed, data, mobility, wireless, entertainment and ancillary services and products to retail, government and enterprise customers;
  - the active Telstra wholesale business;
  - the Telstra health business, the Telstra energy business and the Telstra Purple business;
- but excluding:
- the InfraCo Fixed Business;
  - the International Businesses; and
  - the Amplitel Business.

The **InfraCo Fixed Business** is the passive infrastructure business currently undertaken by Telstra's "InfraCo" business unit that comprises:

- the nbn services business;
- the business of designing, constructing, operating, maintaining, relocating and rationalising or decommissioning:
  - passive fibre networks; and
  - ducts, pits, poles, tunnels, certain fixed network sites and structures (including data centres); and
- the ownership of infrastructure assets, including the Telstra Group's copper and HFC networks, but excludes the Amplitel Business and the International Business.



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The **Amplitel Business** is the separate business undertaken by Amplitel of providing access to passive tower assets owned or operated by Amplitel.

The **International Business** is Telstra Group's business of providing international services using the international assets including Digicel's business in the South Pacific.



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## 02 Need for change

### 2.1. Need for change – Telstra Limited

As is outlined above, the Corporate Restructure changes the nature of the historic primary Telstra entity, Telstra Corporation Limited. Telstra Corporation Limited changes from being the top entity of the Telstra corporate group to being a subsidiary entity and an entity that no longer holds the main retail and active wholesale businesses of Telstra, this will instead be Telstra Limited.

The FADs, IAD and RKR are instruments that are relevant to the retail and active wholesale businesses of Telstra and therefore the main entity to which the FADs, IAD and RKR are to be repointed should be Telstra Limited after 1 January 2023 (with the exception of the Audit of Telecommunications Infrastructure Assets RKR where the assets of Telstra Corporation Limited / InfraCo Fixed will be relevant to the RKR in addition to those of Telstra Limited).

Without such repointing, the FADs, IAD and RKR would apply to corporate entities that would not be carrying out the underlying functions and holding the underlying assets to which the obligations relate (with the exception of the Audit of Telecommunications Infrastructure Assets RKR where the assets of Telstra Corporation Limited / InfraCo Fixed will be relevant to the RKR in addition to those of Telstra Limited). This would not meet the objectives of those instruments and would create confused reporting and enforcement lines.

With the repointing, there will be continuity of information/data from Telstra Corporation Limited to Telstra Limited to enable continued time series reporting to be created across the two entities.

### 2.2. The ACCC's proposed changes to the FADs and IAD

We note that for the FADs and IAD, the ACCC has introduced the definition of **Demerged Telstra Company** which has the meaning given by section 581J of the *Telecommunications Act 1997* and **Telstra Provider** which means a demerged Telstra Company that is required to comply with any or all of the standard access obligations as defined in the *Competition and Consumer Act 2010* in respect of the relevant declared service.

Section 581J of the *Telecommunications Act 1997* defines **Demerged Telstra Company**, as each of the following companies:

- (a) Telstra Group Limited (ACN 650 620 303), as the company exists from time to time (even if its name is later changed);
- (b) Telstra Infraco Limited (ACN 051 775 556), as the company exists from time to time (even if its name is later changed);
- (c) Amplitel Pty Ltd (ACN 648 133 073), as the company exists from time to time (even if its name is later changed);
- (d) Telstra Limited (ACN 086 174 781), as the company exists from time to time (even if its name is later changed).

From 1 January 2023, for the FADs and IAD, the entity supplying the underlying wholesale services will be Telstra Limited. The broadened definition would enable the underlying wholesale services to be supplied at declared rates **if** the access determinations applied to them.

There are minor consequential changes in the FADs and IAD which Telstra does not dispute.



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## 03 Timing and compliance

### 3.1. Timing

The NSW Supreme Court has approved Telstra's scheme to implement the corporate restructure on 1 January 2023. Telstra will not be making application to the court to change this date. As such, Schedules 2 and 3 of the *Telstra Corporation and Other Legislation Amendment Act 2021* will come into effect on 1 January 2023. We therefore recommend that the ACCC makes its proposed changes to come into effect on 1 January 2023.

### 3.2. Compliance

As with all its regulatory obligations, the Telstra group is committed to compliance with the FADs, IAD and RKR in the newly restructured group post 1 January 2023.