



Our ref: MA1000021  
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14 October 2022

Telstra Corporation Limited  
Andrew Low  
Partner, Gilbert+Tobin

TPG Telecom Limited  
Jodi Grey  
Partner, Corrs Chambers Westgarth

Cc: Simon Murys

By email: [REDACTED]

Dear Andrew, Simon and Jodi

**Re: Telstra TPG merger authorisation application (MA1000021) – Confidentiality Protocol**

We refer to our previous correspondence regarding the confidentiality protocol agreed between the parties on 17 July 2022 (referred to as the Confidentiality Protocol) to enable limited disclosure to Optus of confidential information that Telstra and TPG (the Applicants) provide to the ACCC in relation to the ACCC's consideration of the merger authorisation application.

We have been advised by Optus that it has received the following documents from the Applicants pursuant to the Confidentiality Protocol, but that those documents still contain extensive redactions (including the versions shared on an external counsel only basis):

- On 4 October 2022, the Applicants' Tranche 2 Response dated 28 July 2022 (external counsel only).
- On 4 October 2022, the Ihaia Link Economics Report dated 28 July 2022 (Protocol version).
- On 30 September 2022, the following materials from TPG:
  - Statement of Inaki Berroeta dated 15 August 2022 (Protocol version and external counsel only version).
  - Expert Report of Dr Padilla dated 26 July 2022 (Protocol version and external counsel only version).
  - TPG counterfactual submission (Confidential Annexure E) dated 1 August 2022 (Protocol version and external counsel only version).
- On 29 September 2022, copies of the following statements:
  - Statement of Bart-Jan Sweers dated 12 August 2022 (external counsel only version).
  - Statement of Christopher Meissner dated 12 August 2022 (Protocol version).
  - Statement of Michael Ackland dated 15 August 2022 (Protocol version and external counsel only version).

Optus has also indicated that the Applicants have not agreed to disclose to it any of the confidential material contained in the statements of Andrew Penn dated 12 August 2022 and Nicolaos Katinakis dated 15 August 2022, or the Aetha Report dated 27 July 2022.

As stated in our previous correspondence, the ACCC supports the disclosure of confidential information to Optus because it expects it will likely be important to the ACCC's assessment of the application to have informed submissions from Optus, as these may materially inform the ACCC's assessment of the proposed arrangements between the Applicants in the Australian context.

The ACCC's expectation was that the Applicants would reach agreement with Optus in relation to the disclosure of confidential information within a timeframe that allows Optus to make a timely contribution to the ACCC's review. However, we are concerned that the parties' ongoing disputes about confidentiality is frustrating the ACCC's ability to conduct its assessment expeditiously.

We suggest that the Applicants consider providing the redacted information to Optus on an external counsel only basis so that Optus' advisers can make their own assessment of whether a response to the redacted information is necessary for it to make meaningful submissions to the ACCC.

If the Applicants are able to reach an agreement with Optus regarding appropriate disclosure of the documents referred to above, please let us know by **5pm ADST on 18 October 2022**.

Alternatively, the ACCC will need to conduct its own assessment, in which case, we will require the Applicants to provide to the ACCC:

- a) reasons for maintaining the redactions in the relevant documents (including documents provided on an external counsel basis)
- b) reasons the Applicants have not agreed to disclose any confidential information in the statements of Mr Penn and Mr Katinakis, and the Aetha Report; and
- c) a copy of the relevant documents highlighting the information that has been redacted in the version provided to Optus.

We would require this information by **5pm ADST on 18 October 2022**.

The ACCC reserves its position with respect to considering whether it is reasonable and appropriate for it to make disclosure pursuant to section 89(7) of the *Competition and Consumer Act 2010*.

We propose placing a version of this correspondence on the public register. Please advise by **5:00pm ADST on 17 October 2022** whether the Applicants have any concerns in this regard.

If you wish to discuss any aspect of this letter, please contact Jaime Martin on (03) 9290 1477 or at [jaime.martin@accc.gov.au](mailto:jaime.martin@accc.gov.au).

Yours sincerely



Daniel McCracken-Hewson  
General Manager  
Merger Investigations