



Our ref: MA1000021

Contact officer: Jaime Martin and Tim Byrne
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22 June 2022

Telstra Corporation Limited
Andrew Low
Special Counsel

TPG Telecom Limited
Jodi Grey
Partner, Corrs Chambers Westgarth

Via email: [REDACTED]

Dear Andrew and Jodi

Re: Telstra TPG Merger authorisation application (MA1000021)

We refer to prior correspondence regarding a proposal for limited disclosure to Optus of certain information in the application lodged by Telstra and TPG (**Applicants**) on 23 May 2022, being information that is currently redacted in the public version of the application, as well as our discussion on 16 June 2022.

The ACCC understands the Applicants and Optus have now reached agreement for Optus to access certain information in the application, subject to a confidentiality protocol agreed between the parties on 17 June 2022.

As previously stated in our letter of 8 June 2022, the ACCC supports limited disclosure of certain information in the application to Optus because it expects that informed submissions from Optus will likely be important to the ACCC's assessment of the application, and these submissions may materially inform the ACCC's assessment of the proposed arrangements between the Applicants in the Australian context.

Following our discussion on 16 June 2022, we understand that, while the Applicants do not agree to disclosing the agreements in their entirety, the Applicants will provide Optus with some additional detail that is contained in the Application in relation to the terms of the commercial agreements. The ACCC considers that it is particularly important that the following information be included in the additional detail to be disclosed to Optus pursuant to the confidentiality protocol:

- a. paragraphs [116(b)-(c)], [118], [128(b)] [130(b)] and [136] of the Application
- b. under the MOCN Services Agreement:

- i. [REDACTED]
 - ii. [REDACTED] the Transition-Out Period, [REDACTED]
 - iii. [REDACTED]
 - iv. [REDACTED]
- c. under the Spectrum Authorisation Agreement:
- i. [REDACTED]
 - ii. the provision that where the MOCN Services Agreement is terminated, then the Spectrum Authorisation Agreement can be terminated (but does not necessarily terminate) by Telstra at any time by written notice, or by TPG [REDACTED]
- d. under the Mobile Sites Transition Agreement, that where the MOCN Services Agreement is terminated, TPG can request re-installation of its equipment and resumption of occupancy of any TPG mobile sites that have transferred to Telstra: cl 4.7

The ACCC supports limited disclosure of this additional detail because the ACCC considers it would benefit from the views of Optus external representatives in relation to the operation and effect of the commercial framework of the proposed transaction for the purposes of assessing the application. In particular, the ACCC expects to be assisted by submissions from Optus as to the nature of the commercial terms that have been agreed between the Applicants, and the extent to which limitations imposed under the agreements impact TPG's ability to remain a viable and effective competitor. The above information should be disclosed in sufficient detail and context to reasonably ensure these elements can be addressed in detail by Optus in its submissions.

If the Applicants and Optus cannot reach agreement in respect of disclosure of this additional detail, please provide reasons to the ACCC.

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

The ACCC otherwise notes the concerns raised by the Applicants in respect of the 'other information' described in sub-paragraph 1.5(b) of the Applicants' letter to Optus of 14 June 2022, and does not presently propose further disclosure beyond that outlined above.

We propose placing a version of this correspondence on the public register. Please advise by 24 June 2022 whether the Applicants have any concerns in this regard,

including identifying any of the information in items (b), (c) and (d) above that the Applicants consider should be redacted from the public register version.

If you wish to discuss this letter, please contact Jaime Martin (03 9290 1477 or at jaime.martin@acc.gov), Tim Byrne (03 9658 6440 or at tim.byrne@acc.gov.au), or Andrew Gun (03 9290 1853 or at andrew.gun@acc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'BM', with a long horizontal flourish extending to the right.

Bruce Mikkelsen
Acting General Manager
Merger Investigation Branch