

Applicants' response to interested party submissions

The Applicants are aware of two submissions by interested parties which have been published on the authorisations register¹. The Applicants' response to these submissions is below.

Unless otherwise indicated, all capitalised terms have the same meaning as in the Application.

1 ACCAN submission

- 1.1 The Applicants welcome the support of the Australian Communications Consumer Action Network (**ACCAN**) in its submission dated 27 April 2022, with which the Applicants fully agree, and which notes that ACCAN does not oppose the Parties engaging in the Proposed Conduct.

2 TPG Telecom submission

- 2.1 TPG Telecom's (**TPG**) submission dated 29 April 2022 raises concerns with some aspects of the Application, each of which has already been addressed by the Applicants in their Application and supporting submission (**Submission**) dated 31 March 2022.
- 2.2 However, to assist the Commission and by way of summary:

(a) **The term of authorisation sought:**

As explained in the Submission,² the term of authorisation sought is commensurate with the term of the current Definitive Agreements and the existing legislative authorisation under section 577BA of the Telco Act.

The Commission is not legislatively required to impose a time limit on authorisations,³ and its Authorisation Guidelines 2019 expressly contemplate the granting of authorisations without one. The Definitive Agreements are long term agreements and are essential to the implementation of Government policy for reform of the telecommunications industry.⁴ In this context, it is appropriate for the term of authorisation to mirror the term of the relevant provisions of the Definitive Agreements, rather than being limited to a specific initial authorisation period and subject to reauthorisation (as suggested by TPG).

(b) **Authorisation of related entities of the Applicants:**

The reasons for extending the authorisation to related entities of the Applicants are explained in the Application⁵ and Submission⁶. Authorisation for related entities is also appropriate in circumstances where there are exemptions to the cartel and other prohibitions in Part IV of the CCA for arrangements between related bodies corporate.

Any further alterations to the rights and obligations arising from the Definitive Agreements beyond those reflected in the Amending Agreement and which may raise competition

¹ See <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/telstra-corporation-limited-nbn-co-and-ors>.

² See in particular paras 5.1 to 5.4.

³ It *may* do so under section 91(1) of the CCA.

⁴ See section 8 of the Submission.

⁵ See in particular paras 2.2 to 2.4.

⁶ See in particular paras 1.3 to 1.7, 2.13 to 2.16.

concerns (including as a result of any future restructure of an Applicant's business) can be tested by the Commission at the appropriate time.

(c) **Imposition of additional restraints beyond those already in the Definitive Agreements**

As explained in the Submission,⁷ the Amending Agreement is not intended to create any new restrictions on competition, nor to expand the scope (or duration) of existing restrictions as a matter of substance, but rather to maintain the status quo, while addressing legitimate commercial issues arising from the addition of a new party.

The context for the new requirement that ServeCo ensure that any acquirer of its business enters into an agreement with NBN Co to ensure that the same competitive restraints continue to apply to the acquirer of that business has been comprehensively set out in the Submission, including why it does not, as a matter of substance, expand the scope of previously agreed (and authorised) restrictions under the Definitive Agreements or create any additional competitive constraint above those which already exists.⁸

As explained there, authorisation is *not* being sought for any future transaction involving ServeCo. Any sale of ServeCo or its business would be subject to competition law requirements, including (if necessary) a separate authorisation or merger clearance at that time. The current authorisation sought is purely in relation to the Parties agreeing now that a feature of any future transaction involving the sale of the whole or substantially the whole of ServeCo's business will be the continuation of the business protection obligations owed to NBN Co, subject to all necessary competition law approvals at the time.⁹

The Applicants therefore reject TPG's suggestion that the purpose of the Amending Agreement is to impose additional restraints beyond what already exists within the Definitive Agreements. They also reject TPG's assumption that this is why ACCC authorisation is being sought despite the introduction of the New Authorisation Provision. This matter has also already been addressed in the Submission.¹⁰

3 Further assistance

- 3.1 The Applicants hope this response will be of assistance to the Commission. Should the Commission wish to discuss any of the above matters further, or require any further information, the Applicants can be contacted via the details at section 2 of the Application.

⁷ See in particular para 1.4. See also para 1.11 of the Application.

⁸ See in particular paras 7.5 to 7.13 and 9.4.

⁹ See in particular paras 7.11 to 7.13.

¹⁰ See in particular paras 1.3 to 1.7, 2.13 to 2.16 and 3.8 to 3.17.