

Annexure A – response to Optus SOPV submissions and statements

This annexure responds to each of the Optus submission (**Optus SOPV Response**) and materials filed with the ACCC in response to the SOPV, and made available to the Applicants on 28 October 2022. Defined terms have the same meaning as used in the Application and the **Applicants’ SOPV Response** dated 1 November 2022 unless otherwise specified.

The Applicants have put on substantial evidence with respect to each of Optus’ submissions and do not propose to repeat them in their entirety here. The Applicants assume the ACCC has considered this evidence closely. To the extent certain evidence is not repeated, given the limited time the Applicants’ have been afforded to respond to Optus’ contentions, it should not be assumed that this is the comprehensive response to each of the issues raised by Optus.

Furthermore, the Applicants note that the majority of Optus’ submissions are redacted, and in some cases, almost entire statements (e.g., Statement of Benjamin White). This has impacted the Applicants ability to meaningfully respond to the contentions against it.

#	Optus SOPV Response	Applicants’ response
1.	Optus submits that coverage is the most important factor to win and retain customers, ¹ including perceptions of coverage. In this respect, Optus notes that TPG has relied on roaming versus its own infrastructure investment in regional Australia.	<p>Coverage is an important feature of competition, and for this reason the proposed transaction is important for TPG to enhance its competitiveness. This has been dealt with extensively in the Application.²</p> <p>As set out in the Applicants’ SOPV Response, Optus has an existing extensive network in the 17% Regional Coverage Zone and has in recent years made targeted strategic investments without significantly expanding its 98.5% population coverage.³ As the ACCC observed in its Domestic Roaming Inquiry Final Report, Optus can gain customers from Telstra in regional areas by improving the quality of its network without necessarily having to match Telstra’s geographic coverage.⁴</p>
2.	Optus contends the proposed transaction materially increases Telstra’s existing scale advantages over Optus ⁵ in terms of lower opex and capex cost per GB of traffic. Optus contends Telstra will achieve an unassailable cost and spectrum advantage over Optus – and therefore	Much of Optus’ submissions regarding this contention are heavily redacted. Nonetheless, the Applicants have to date provided substantial evidence that there is no factual basis for the contention, and even if there was, it would not give rise to a substantial lessening of competition:

¹ [Optus SOPV Response](#), at paras 8-15

² Application, at section 2.5.

³ Applicants’ Response to SOPV, at section 3.3.

⁴ ACCC, Domestic Roaming Mobile Inquiry Final Report, at p 46 (**Domestic Roaming Inquiry Final Report**).

⁵ [Optus SOPV Response](#), at para 17, 63-64.

	<p>reduce Optus' incentives to make investments in its regional network.</p> <p>Optus seeks to support these propositions through the Report of Analysys Mason (see below).</p>	<ul style="list-style-type: none"> • There is no factual basis to consider that this proposed transaction will give Telstra an unassailable spectrum advantage over Optus. This has been addressed comprehensively including by the Applicants' First Response to Optus:⁶ <ul style="list-style-type: none"> – First, the spectrum is pooled and made available to both Telstra and TPG. Telstra's rights to the spectrum under the Spectrum Authorisation Agreement are limited for pooled use in the 17% Regional Coverage Zone – and both parties have equivalent rights to access the full pool of spectrum and opportunity to grow. – Second, the Aetha Report shows that Optus has substantial and sole access to a significant proportion of low-band spectrum relative to other MNOs, and has sufficient spectrum to both match the capacity of the Telstra-TPG MOCN to keep pace with anticipated growth rates in subscriber data consumption and win substantial market share from Telstra.⁷ – Third, the ACMA has conclusively addressed this issue noting that the ACMA develops the regulatory framework that establishes the coexistence of arrangements between spectrum uses and users and will take into account the potential arrangement as part of future allocations.⁸ Furthermore, the ACMA has conclusively addressed any misleading assertions that the proposed transaction circumvents its spectrum limits – <i>“The ability of licensees to initiate changes to how spectrum is used also provides flexibility to share spectrum. We note that the radiocommunications regulatory framework itself does not generally place restrictions on sharing communications infrastructure or assets. Each of these mechanisms enables the allocation and re-allocation of spectrum to support its efficient use and may result in changes to the uses of spectrum over time, and the spectrum holdings of individual licensees.”</i>⁹ This is precisely what is achieved through the proposed transaction (in circumstances where TPG's spectrum in regional areas is underutilised). • That there are scale advantages in mobile network deployment does not naturally follow that it removes incentives to invest: <ul style="list-style-type: none"> – First, the prospect of achieving scale should incentivise further investment and competitive activity. As Mr Feasey states, <i>“Smaller operators will often invest and incur short term losses in order to acquire customers and access economies of scale and</i>
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⁶ Applicants First Response to Optus at section 4.2.

⁷ Aetha Report, Figure 5-5.

⁸ [ACMA Tranche 1](#), at paras 52-57.

⁹ [ACMA Tranche 1](#), at paras 14-15.

		<p><i>positive returns in the longer term” and “the extent to which an operator will be willing to take risks with its capital will also depend upon the risks it faces of not investing”.</i>¹⁰</p> <ul style="list-style-type: none"> – Second, this proposition is inconsistent and has certainly not been the case today even given the <i>current</i> differences in scale that exist between Telstra, Optus and TPG. Each has evidenced an ability and incentive to invest to compete despite scale differences – there is just no evidence that this has deterred investment in the past.¹¹ – Third, as set out in the Applicants’ SOPV Response, the proposition that Optus’ capacity to compete is challenged by the proposed transaction should be rejected.¹² It is contrary to the evidence of each MNOs ability and incentives to date, counter to any accepted theory of competitive response, and divorced from the commercial reality of competition between MNOs (and their requirements to continue investing to compete). <ul style="list-style-type: none"> • Furthermore, as Mr Feasey points out in his Further Reply and as is the case with much of Optus’ evidence, the fundamental issue with this contention is that it is significantly exaggerated in its potential ‘negative’ effects on competition: <ul style="list-style-type: none"> – The proposed transaction relates to <i>part</i> of the national market in which less than a fifth of customers reside, where Telstra already has approximately 3,700 sites (and will acquire access to up to 169 sites), out of a national total of over 11,000 sites. – In a network sharing counterfactual (which the Applicants do not accept is the appropriate counterfactual), Optus may acquire access to a few hundred sites in an area where it has around 2,500 sites and where it has over 9,000 sites nationally. – Any benefits from access to the TPG spectrum will apply to less than a third of the sites in national networks – any reduction in average network costs nationally will also be correspondingly limited. • Significant evidence has also been provided on these points in the Applicants’ Response to Optus.¹³ The Applicants do not propose to repeat that evidence here.
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¹⁰ Annexure B, Further Reply from Richard Feasey, at para 30.

¹¹ Annexure B, Further Reply from Richard Feasey, at para 35.

¹² Applicants SOPV Response at section 3.

¹³ Applicants’ First Response to Optus at section 4.

3.	<p>ACCC should place greater weight on longer term effects, and these longer term effects arise from investment decisions made in the short term due to the transaction. This is because longer term competitive effects will arise from changes in investment incentives that occur in the short term. The proper time period is 20 years for assessment.¹⁴</p>	<p>The Applicants have put on a substantial response to this issue.¹⁵ In short, an assessment of the future necessarily involves an assessment, based on the evidence today, as to what can reasonably and sensibly be predicted. Market conditions and competitive landscapes will be more capable of precise observation in the shorter term rather than the longer term. In the longer term, the competitive process (which is expected to include significant technological innovation such as LEO Sat Direct-to-Handset technology which is being developed by Starlink and AST SpaceMobile) suggests alleged hypothetical harms arising in the longer term should be given little or no weight.</p> <p>As Mr Feasey notes, while some effects which continued to be of marginal significance in the assessment could be more significant if accumulated over time, he has seen no evidence in the proceeding that would mean this was “<i>anything more than speculation of a kind to which I think no weight should be attached</i>”.¹⁶</p>
4.	<p>Optus contends that in the counterfactual it would enter a network sharing arrangement with TPG and it would provide TPG with 5G for at least 5 years.</p>	<p>As a matter of fact, the counterfactual and likelihood of an Optus/TPG arrangement is substantively addressed in Annexure F to the Applicants’ SOPV Response. These facts establish that Optus’ contended counterfactual cannot reasonably be accepted.</p> <p>Furthermore, the Applicants have provided substantial evidence that the analysis of any counterfactual (without accepting their validity) contended by Optus would result in a materially less competitive outcome compared to the proposed transaction:</p> <ul style="list-style-type: none"> • As accepted by Optus in its SOPV Response, any arrangement it strikes with TPG “<i>is likely to be of less benefit to TPG than TPG’s arrangement with Telstra</i>”.¹⁷ As the Applicants submitted, Optus has clear incentives to preserve its revenue and market share in order to preserve its investment case if it is the only alternative provider of a wholesale roaming or network sharing arrangement to TPG (analysing it on a forward looking basis, assuming the proposed transaction was not authorised). • If the ACCC were to accept Optus’ contention, and on this basis refuse Authorisation, it would in effect remove Telstra as a potential competing provider of infrastructure access to TPG – leaving Optus as the monopoly provider of such access in its commercial engagement with TPG.

¹⁴ [Optus SOPV Response](#), at paras 21-25.

¹⁵ Applicants’ Response to SOPV, at pp 72-73.

¹⁶ Annexure B, Further Reply from Richard Feasey, at para 11.

¹⁷ [Optus SOPV Response](#), at para 51.

		<ul style="list-style-type: none"> Accordingly, any potential arrangement between Optus and TPG would result in poorer outcomes for TPG customers and competition overall.
5.	Optus contends that a deal between Optus and TPG would place greater competitive pressure on Telstra. ¹⁸	<p>This is incorrect and inconsistent with Optus' own contended facts. The proposed transaction will bring TPG closer to Telstra in terms of services than a subpar agreement between TPG and Optus.¹⁹ As Mr Feasey states, under the proposed transaction, TPG will be a materially closer competitor to Telstra as compared to an arrangement between TPG and Optus (as it will have access to a better network with more coverage than it would obtain under any arrangement with Optus).²⁰ Significant evidence has been provided, including expert opinion from Mr Rodin and Mr Strople, establishing the strong independent ability to compete through the use of MOCN technology (i.e., each party retaining their own independent core network).</p> <p>Optus has not disclosed any evidence that would suggest why TPG would be a closer competitor to Telstra as compared to today with some unspecified alternative arrangement.</p>
6.	Optus takes issue with the fact that it is suffering from the impacts of the Government's Huawei Ban, and while TPG was also similarly affected by the Huawei ban – Optus takes issue with the fact that proposed transaction “ <i>would allow TPG to sidestep these costs</i> ”. ²¹	<p>An individual competitor's business case prior to the proposed transaction cannot be the benchmark for competition. Competitors need (and are expected) to adjust their business case in response to unexpected moves by other competitors and general market conditions (including changes in technology innovations and Government regulations).</p> <p>As Mr Feasey notes, “<i>It is quite reasonable for the management of Optus to wish to reduce these [investment] risks. But it does not follow that the consequence of a higher risk environment in which to make investment decisions is that Optus will undertake less investment</i>”.²²</p>
7.	Optus appears to address its strategy in response to the proposed transaction. ²³	<p>These submissions are wholly redacted and should be given little or no weight absent any meaningful ability to address it. In any event the Applicants have put on significant evidence to address this contention – Optus will have continued significant ability and incentives to continue competing with the proposed transaction.²⁴ As noted by Dr Padilla's Further Report, the cost of not continuing to invest to compete will be greater than the cost of investing.</p>

¹⁸ [Optus SOPV Response](#), at paras 41, 49-50.

¹⁹ Even if Optus were to forego its competitive advantage and offer TPG with coverage over its entire 98.5% population coverage area (which is unlikely), it would be a weaker competitor to Optus and Telstra as compared to the proposed transaction which provides coverage of 98.8% of the population.

²⁰ Richard Feasey, Supplementary Report, at para 47.

²¹ ACCC, [Record of oral submission by Optus/Singtel to the ACCC](#), 27 September 2022, at para 10. [Optus SOPV Response](#), at para 67-69.

²² Annexure B, Further Reply from Richard Feasey, at para 31.

²³ [Optus SOPV Response](#), at section 5.3.

²⁴ Applicants' SOPV Response, at section 3.

		<p>In fact, the Statement of Mr Moon (CEO, Singtel) sets out Singtel’s capacity to invest includes underlying net profit of S\$1.92 billion.²⁵ Singtel has also stated that the returns and funds from the divestment of their tower assets “<i>will be reinvested in strategic projects such as our 5G infrastructure buildout that serves as the backbone of our business</i>”.²⁶ Furthermore, Optus’ announcement of its MoU with AST Space Mobile on 15 September 2022 to collaborate and test direct satellite to mobile technologies is indicative of the fact that Optus will continue to investigate ways of providing coverage for both broadband and Direct-to-Handset service across Australia in combination with its existing terrestrial investment.</p> <p>Optus is likely to remain committed to continuing to invest in its network, given it has demonstrated a capacity to compete using targeted investments. In fact, Singtel has reported its Australian consumer segment as “<i>continu[ing] to make significant progress in delivering its strategy</i>”, including with mobile service revenue growing by 6.7%, its postpaid consumer base growing by 2.9% and prepaid consumer base growing by 3.7% from 2021.²⁷</p>
8.	<p>If Optus reduces its investment in regional Australia as a result of the proposed transaction, Telstra will face less competitive pressure leading to a resulting substantial reduction in competition.</p>	<p>As set out in the Applicants’ SOPV Response:²⁸</p> <ul style="list-style-type: none"> • Optus has an existing extensive network in the 17% Regional Coverage Zone and makes public coverage claims of around 98.5%. The proposed transaction does not change this. • The ACCC cannot soundly accept that the proposed transaction, limited to 17% of the population only, would have any meaningful impact upon Optus’ capacity to invest in its network nationally. • Optus will continue to be driven to invest in its network in regional Australia and has a demonstrated capacity to do so. It continues to register early access sites for 900MHz licenses in the 17% Regional Coverage Zone (as at around 1 November 2022 this was around 594 sites nationally with at least 74 of those sites being in regional areas²⁹). • In the longer term, investment in coverage in regional Australia will be disrupted by new technologies such as LEOSats.

²⁵ Singtel Annual Report, at p 4.

²⁶ Singtel Annual Report, at p 6.

²⁷ Singtel Annual Report, at p 93.

²⁸ Applicants’ SOPV Response, at section 3.

²⁹ As defined by the 2100MHz metro/regional spectrum boundary.

<p>9.</p>	<p>Optus challenges Telstra’s evidence of its significant network congestion. It relies on propositions that Telstra is:³⁰</p> <ul style="list-style-type: none"> • underutilising its mid-band spectrum in regional areas; • will be able to increase its 4G/5G capacity by reallocating low band spectrum from 3G to 4G/5G either once it switches off its 3G network or progressively; • has not yet deployed additional spectrum it acquired at auction; and • could use other techniques such as twin-beam, sector splits, or m-MIMO. 	<p>This contention is remarkable, it seeks to suggest that Telstra has – in circumstances of challenged investment and increasing pressure to meet greater demand for data in regional Australia (which is incontrovertible on any objective measure) – intentionally sought to be inefficient, or that Optus can make decisions about network design in a more sophisticated way than Telstra.</p> <p>To support this submission, Optus points to certain aspects of Telstra’s network which, in its (different) opinion, “could be done better”. This submission by a competitor which suggests an outcome could be achieved differently should be rejected as inappropriate and/or not relevant to the assessment in respect of s 50 of the Act.³¹</p> <p>Nonetheless, this contention has substantially addressed by Telstra and the Applicants.³²</p> <p>With respect to the argument that Telstra is underutilising its mid-band spectrum in regional areas, the Applicants have put on significant evidence before the ACCC that suggestions from Optus as to how Telstra should make decisions regarding network engineering and utilisation of spectrum are misleading and irrelevant to the assessment:</p> <ul style="list-style-type: none"> • First, mid-band has more limited effectiveness over greater distances, and hence is of more limited utility in regional and rural areas compared to metro.³³ Optus significantly overstates the role of mid-band spectrum compared to low-band spectrum in supporting mobile services in regional and rural areas by: <ul style="list-style-type: none"> – Overstating the distance over which mid-band can be effective³⁴ Telstra’s experience on its own network contradicts any suggestion that mid-band spectrum may be effective out to 14.5km, with the amount of traffic carried on its 1800MHz and 2600MHz bands falling significantly to 5% or less just 2.5km away from a site.³⁵ – Misrepresenting how close Telstra’s sites are to population centres.³⁶ Optus does so by reference to distances to the central point of SA1s (which have nothing to do with population concentration and relate simply to ABS statistical areas) – which in turn misleads how close Telstra’s sites are to populations.
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³⁰ [Optus SOPV Response](#), at paras 87-93; Statement of Turner; Statement of Lambotharan.

³¹ *ACCC v Australian Medical Assn Western Australia Branch Inc* (2003) 199 ALR 423 at [328].

³² Applicants’ First Response to Optus at section 4.

³³ First Response to Optus at para 82-86; Applicants SOPV Response at pp 94-95.

³⁴ Statement of Turner at paras 93-106.

³⁵ Applicants’ SOPV Response at pp 94-95.

³⁶ Statement of Turner at paras 93-106.

		<ul style="list-style-type: none"> • Second, a comparison of the relative use of mid-band spectrum in the Telstra and Optus networks in the 17% Regional Coverage Zone is misleading including for the following reasons: <ul style="list-style-type: none"> – Telstra has a larger number and a larger proportion of its mobile cell sites located outside towns and villages and in more rural or remote locations than Optus in the 17% Regional Coverage Zone. Telstra has deployed mid-band 3.5GHz 5G spectrum at ~460 proposed MOCN sites while Optus have only deployed 3.5GHz to ~20 sites in the MOCN footprint. Optus would appear to accept that it is not useful to deploy mid-band spectrum on towers outside population centres, and therefore it would be expected that the percentage of Telstra towers on which mid-band has been deployed would be lower than is the case with Optus. – Comparisons between the proportion of Optus and Telstra’s sites in regional and rural areas that have mid-band enabled spectrum is not useful or meaningful in terms of understanding carrier design choice. This rather reflects the limited regional geographical availability of these bands for Telstra (noting it has more sites in regional and rural Australia than Optus). Telstra’s 1800MHz and 2100MHz spectrum holdings are not national.³⁷ – The pooling of TPG and Telstra mid-band spectrum will not change Telstra’s decision-making about where to deploy mid-band. <p>Third, Telstra has strong economic incentives to utilise spectrum as much as possible given the costs involved in acquiring such spectrum. Contrary to Optus’ argument, re-farming 3G spectrum will not solve Telstra’s congestion problem:</p> <ul style="list-style-type: none"> • The closure of the Telstra 3G network does not change the total amount of spectrum available to provide services to customers – spectrum which was being utilised for 3G is repurposed to 5G. • Telstra’s decision to announce the closure of its 3G network was to expedite the availability of 5G, including in regional and rural areas. Telstra was the first MNO to publicly announce a fixed date for the closure of its 3G network. Telstra has publicly stated that it is closing its 3G network so that it can re-farm spectrum for 5G. This is proactive and efficient spectrum management. • The Aetha modelling of the performance of the Telstra-TPG MOCN compared to the Optus network over a 5 year period takes into account the 850 MHz spectrum which will be re-farmed from 3G as part of the pooled spectrum available for the Telstra-TPG MOCN. Further, the
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³⁷ Telstra’s 1800MHz spectrum licence covers 97.8% of the national population, but only about 20% of the national land area.

		<p>modelling of the Telstra standalone network also assumes the refarmed spectrum will be available for Telstra's 4G and 5G services.</p> <p>The potential use of m-MIMO has been conclusively addressed by Telstra.³⁸ This suggestion is purely theoretical and contended in a commercial vacuum which is irrelevant to Telstra's actual operation of its business.</p> <p>Specific issues raised in the statements of Mr Turner and Mr Lambbotharan are addressed below.</p>
10.	<p>Optus contends that there will be a substantial reduction in price and quality competition in mobile services.³⁹</p>	<p>Much of Optus' submission on this point and in the related report of Mr Hunt are redacted. This significantly affects Telstra and TPG's ability to properly assess and respond to this material.</p> <p>As much as they can be understood given the redactions, Optus' argument in relation to price competition and Mr Hunt's opinions on the topic appear to rest on the following contentions:</p> <ul style="list-style-type: none"> • First, that the proposed transaction will result in Optus substantially reducing its network investment in regional and remote areas⁴⁰ – this contention is fundamentally unsound to accept, as analysed in more detail in the Applicants' SOPV Response;⁴¹ • Second, that it is possible that Optus would offer better commercial terms than Telstra to TPG in the counterfactual – Mr Hunt presents a highly theoretical analysis on this point⁴² which is inconsistent with Optus' submission in which it accepts that any speculative alternative deal Optus offers would take time and be subpar for TPG,⁴³ and is divorced from the reality of the market that TPG has for many years acquired roaming services from Optus but has now made the commercial decision to enter into a MOCN agreement with Telstra, having made the rational decision that this presents a better outcome than continuing to partner with Optus; and

³⁸ Applicants' First Response to Optus at section 4.4.

³⁹ [Optus SOPV Response](#), at para 86; Report of Mr Hunt at sections 9.3 and 9.4.

⁴⁰ It is not clear due to redactions, but it appears that the entirety of Mr Hunt's section 9.3 and a significant portion of section 9.3 rest on this assumption, including the contentions at:

- para 285, that there would be greater closeness of competition between Telstra, TPG and Optus in the counterfactual which appears to be based on a prior assumption that Optus' network would deteriorate in the factual due to a reduction in Optus' network investment;
- para 290, that the "short-term" impacts of the proposed transaction on retail price competition are ambiguous, due to the fact that "it is difficult to be definitive as to the precise impact on price competition" because this will "depend on the extent of network rollout by Optus and Telstra in the counterfactual (compared to under the proposed transaction)"; and
- para 294, that the proposed transaction will significantly reduce retail and wholesale competition in the "medium-term" due to reduced 5G investment by Optus.

⁴¹ Applicants' SOPV Response, at section 3

⁴² Report of Mr Hunt, at paras 296 – 297; the theoretical nature of this analysis is underscored by the fact that Mr Hunt acknowledges at fn 251 that he is "unable to take a view on whether TPG would be more likely to pay a higher variable charge to Optus in the counterfactual than it has agreed to pay Telstra".

⁴³ Delivering a less competitive outcome for its wholesale and retail customers.

		<ul style="list-style-type: none"> • Third, that even if Optus did offer worse commercial terms than Telstra to TPG in the counterfactual that this would be pro-competitive because this would fund additional network investment by Optus.⁴⁴ This contention is patently absurd. It amounts to a suggestion that it would be pro-competitive if the ACCC denied TPG’s ability to enter into a superior commercial arrangement with Telstra causing it to enter into a worse arrangement with Optus, despite the fact that this would consign TPG to being an inferior third competitor and deny consumers the benefit of competition from three strong MNOs. <p>Compass Lexecon has provided further and more sophisticated analysis of the likely impact of the proposed transaction on pricing competition in its second report. Compass Lexecon concludes that the proposed transaction would:</p> <ul style="list-style-type: none"> • significantly reduce TPG’s quality-adjusted prices; • result in a significantly lower variable cost for TPG in providing data in the 17% Regional Coverage Zone than under the counterfactual identified by the ACCC in the SOPV; • likely result in lower costs for TPG than under a network sharing arrangement with Optus; and • likely result in a significant reduction of Optus and Telstra’s prices driven by customers’ likely increased willingness to switch to TPG and the need for Telstra and Optus to compete with TPG’s lower quality-adjusted prices. <p>This evidence should be given more weight by the ACCC than speculative concerns raised by Optus. Optus’ concern rests almost entirely on a threat by it to slow down or abandon its investment in upgrading and maintaining infrastructure in response to an increased competitive threat arising from the proposed transaction. It is remarkable in circumstances where much of the investment in relevant infrastructure and underlying sites has already been made, including substantial investments in spectrum such as \$1.476bn in acquiring 900 MHz spectrum nationally.⁴⁵</p>
11.	Optus submits there is reduced network diversity for emergencies and disasters. This is because multiple independent networks support reliable access to regional telecommunication services, in	Optus has previously sought to claim that RAN sharing between Telstra and TPG would reduce network resilience, particularly in emergency situations. ⁴⁷ For reasons explained in the Applicants’ First Response to Optus (section 8.3), this claim is without merit.

⁴⁴ Report of Mr Hunt at para 295.

⁴⁵ Optus, ‘Optus acquisition of new 900 MHz spectrum lays the foundation for strong national competition in the mobile market’, 8 December 2021: <https://www.optus.com.au/about/media-centre/media-releases/2021/12/optus-acquisition-of-new-900-spectrum>.

⁴⁷ [Optus First Submission](#), at para 4.38.

	<p>particular during natural disasters or power outages.⁴⁶</p>	<p>The Optus SOPV Response and Mr Lambbotharan’s statement do not take Optus’ claims any further. Mr Lambbotharan simply asserts that having multiple physical networks “<i>provides significantly more resilience</i>”, because the physical locations of each MNO’s sites could be different, support staff could respond differently to outages, RAN / transmission equipment could be from different suppliers, and/or they could rely on different backhaul paths.⁴⁸ However this general statement from Mr Lambbotharan fails to engage with the specific facts relating to the TPG sites that are affected by the proposed transaction. As previously explained, these TPG sites are typically nearby to, and provide substantially similar coverage to, a Telstra site.⁴⁹ To the extent that a nearby Telstra site is impacted by a natural disaster or other exogenous event (e.g. a power failure), the relevant TPG site will be similarly impacted.</p> <p>In any event, such criticism, if accepted (which the Applicants consider lack factual basis), would similarly arise with Optus’ contended counterfactual of a network sharing arrangement between Optus and TPG.</p>
12.	Statement of Mr Turner	<p>Mr Turner’s statement contains a number of inaccurate, irrelevant and/or misleading statements. In the interests of focusing this response on relevant and material issues, the Applicants have not sought to correct all of these inaccurate, irrelevant and / or misleading statements. However the following key points should be noted:</p> <ul style="list-style-type: none"> • Mr Turner (consistent with Optus’ submissions and other evidence) seeks to ignore measures of network capacity which take into account the number of customers served by each network (e.g. measures referred to in Aetha’s analysis, including Hz / SIO measures). This is a major omission from the Turner / Optus analysis of spectrum and network capacity, since the capacity of shared network resources will critically depend on the number of customers sharing those resources. • Mr Turner claims that Telstra “<i>stands to gain more out of spectrum pooling</i>” because of its higher market share.⁵⁰ This claim ignores the fact that, under the proposed transaction, Telstra and TPG will have equal access to the pooled spectrum and the relative use of each MNO will depend on their customer base and usage profiles, and all else equal, more customers require more spectrum to deliver the same level of experience. It also ignores the fact that TPG’s competitive position will be significantly strengthened, allowing it to increase its market share (and therefore increase its use of the pooled spectrum). Indeed, many of Optus’ complaints

⁴⁶ [Optus SOPV Response](#), at paras 94-95. Statement of Mr Kanagaratnam at section 6, Mr Doyle’s report at para 3.1.7.

⁴⁸ Statement of Mr Lambbotharan at para 216.

⁴⁹ Applicants’ First Response to Optus, at para 180.

⁵⁰ Statement of Mr Turner at para 43.

		<p>about the proposed transaction assume that TPG will improve its competitive position and grow its market share, at least partly at Optus' expense.</p> <ul style="list-style-type: none"> Mr Turner's Table 2 omits part of Optus' spectrum holdings (2 x 5MHz in the 900MHz band), thereby understating Optus overall spectrum position. Mr Turner states that this block "<i>cannot be fully utilised until downshift occurs, which is currently mandated for 2028</i>".⁵¹ However it is entirely within Optus' power to facilitate the 850 MHz downshift as early as July 2024 should it choose to do this – Optus is not required to wait until 2028 to do this. The omission of this spectrum block from Mr Turner's analysis materially alters the inference he draws in paragraph 46 of his statement – if this block were to be included, Optus would have exclusive access to more than a third (35%) of total holdings, Telstra 10%, TPG 5% and the MOCN 50%. <p>Mr Turner's criticism of Aetha's modelling is also misplaced. Aetha has reviewed Mr Turner's criticisms and provided a response (Annexure C).</p> <p>Aetha explains that Mr Turner has fundamentally misunderstood Aetha's modelling and this misunderstanding underlies much of their criticism. Furthermore, much of Mr Turner's criticisms of Aetha's assumptions and methodologies do not make a material difference to the conclusions of Aetha's report – and with respect to the key differences, there can be no doubt that Aetha's approach is sound and reasonable.</p>
13.	Statement of Mr Lambotharan	<p>More than 60% of paragraphs in Mr Lambotharan's statement are redacted, and several pages are entirely redacted. It is therefore very difficult for the Applicants to understand or respond to the substance of this statement.</p> <p>The Applicants provide the following comments on those parts of the statement that are not redacted:</p> <ul style="list-style-type: none"> Mr Lambotharan focuses on a comparison of <i>absolute</i> spectrum holdings (and an effectively equivalent measure of "spectrum bandwidth per population"), ignoring the impact of customer numbers and traffic on each network. Mr Lambotharan claims that, <i>all other things being equal</i>, an MNO with higher quantities of spectrum will be able to offer greater capacity and speeds.⁵² However, in the case of regional mobile networks, all other things are not equal – the MOCN will be required to carry significantly more traffic than the Optus network, and Mr Lambotharan's analysis does not account for this.

⁵¹ Statement of Mr Turner, Table 2 and para 47.

⁵² Statement of Mr Lambotharan, at para 173ff.

		<ul style="list-style-type: none"> • Mr Lambotharan’s focus on “peak data rates” ignores the fact that customer experience is shaped by typical speeds, not theoretical peak speeds.⁵³ • Mr Lambotharan makes a number of claims regarding Telstra’s network engineering practices, including its current spectrum usage. These claims are of little relevance, but in any event have been addressed in the Applicants’ SOPV Response, Attachment C. • As noted above, Mr Lambotharan’s claims regarding the potential impact of the proposed transaction on network resilience are divorced from the facts relating to the TPG sites that will actually be affected.
<p>14.</p>	<p>Statement of Yuen Kuan Moon</p> <p>Telstra registered 3.5GHz in metro – sidestepped the auction rules. These are the difficulties Optus faces with its 5G</p>	<p>The vast majority (approximately 80%) of the statement of Mr Moon is redacted which significantly affects Telstra and TPG’s ability to properly assess and respond to this statement.</p> <p>In an unredacted part of his statement, Mr Moon makes reference to an investigation by the ACCC into Telstra’s registration of sites which Mr Moon contends had the effect of hindering Optus’ ability to gain early access to the 900 MHz spectrum it had obtained in late 2021.⁵⁴ The relevance of this reference is unclear.</p> <p>Mr Moon observes that Telstra provided a court enforceable undertaking in response to the ACCC’s inquiries approximately 6 months after its initial registration and that this undertaking will allow Optus to rollout 5G using the relevant spectrum.</p> <p>Mr Moon does not assert that the undertaking will be ineffective at addressing any concerns Optus may have had with Telstra’s registration or that any delay to Optus’ plans in the period before the undertaking was accepted caused Optus any commercial harm.</p>
<p>15.</p>	<p>Analysis Mason report</p> <p>Analysys Mason analyses unit costs in the 17% Regional Coverage Zone for each network operator under different traffic growth and market share scenarios. While most of the key results are redacted, it appears to show that the proposed transaction would lead to lower unit</p>	<p>Large parts of the Analysys Mason “results analysis” are redacted, which significantly affects Telstra and TPG’s ability to properly assess and respond to this analysis. In particular:</p> <ul style="list-style-type: none"> • Almost all of the Analysys Mason results are redacted, making it difficult for the Applicants to understand what (if any) conclusions might reasonably be drawn from the analysis. • Key assumptions relied on by Analysys Mason – e.g. regarding the decline in Optus’ market share in the base case sensitivity (section 2.2) – are also redacted.

⁵³ Statement of Mr Lambotharan, at para 173(b).

⁵⁴ Statement of Mr Moon at paras 24 - 25

	<p>costs for the MOCN, which in turn will create an ability to lower prices.</p>	<p>From the unredacted parts of the “<i>results analysis</i>”, it would appear that Analysis Mason’s principal concern is that the proposed transaction would lead to lower unit costs for the MOCN, “<i>which in turn will mean that Telstra will be able to lower prices</i>”.⁵⁵ The reduction in unit costs will, according to Analysis Mason, enhance Telstra’s ability to “<i>outcompete other operators on price</i>”.⁵⁶</p> <p>Even based on the limited parts of Analysys Mason’s report that have been disclosed, it is clear that this analysis is flawed. The central problem with the Analysys Mason analysis is that it appears to assume that Telstra’s national pricing for mobile services is driven by its unit costs in the 17% Regional Coverage Zone. This is of course not the case – national pricing will be determined by a range of demand-side and supply-side considerations.</p> <p>Even if Analysys Mason’s conclusions regarding the impact on Telstra’s unit costs are correct, it is not clear from the report why these cost efficiencies and potential ability to lower prices should be seen as a negative consequence of the proposed transaction.</p>
<p>16.</p>	<p>HoustonKemp report</p>	<p>Mr Feasey has prepared a report responding to HoustonKemp’s further arguments (Annexure B).</p> <p>Mr Feasey notes that:</p> <ul style="list-style-type: none"> • HoustonKemp now has no clear position on short term price effects of the proposed transaction, and the only point about which Houston Kemp seem certain is that Optus would reduce its investment in the factual relative to the counterfactual. However in coming to this view, HoustonKemp places significant weight on the fact that Optus’ management have said Optus would invest less – evidence which Mr Feasey has already addressed in his Supplementary Report. • In relation to Optus’ ability and incentive to invest in the factual compared to a counterfactual in which Optus shares its network with TPG, HoustonKemp’s logic is flawed. Given that HoustonKemp considers it is unclear whether Optus would invest more or less in the counterfactual, it cannot be certain about the effect on Optus’ investment of the proposed transaction. <p>More fundamentally, Mr Feasey disagrees with the central plank of HoustonKemp’s analysis – that Optus would have a reduced incentive to invest in the factual, due to different strategic forces exerted by TPG and Optus. Mr Feasey considers that, rather than these strategic forces being at odds or in</p>

⁵⁵ Analysys Mason results analysis, section 4.

⁵⁶ Analysys Mason results analysis, section 4.

		<p>opposition with each other, the incentive to catch up or narrow the gap with both TPG and with Telstra would incentivise Optus to invest.</p> <p>Mr Feasey has not changed his view on the likely competitive effects of the proposed transaction in light of the Further HoustonKemp Report.</p>
17.	<p>Alix Partners report</p>	<p>Mr Feasey has also responded to the Alix Partners Report (Annexure B).</p> <p>Mr Feasey considers that Alix Partners has greatly exaggerated the overall significance of the proposed transaction in terms of effects on competition in the relevant Australian mobile markets.</p> <p>Mr Feasey also disagrees with Alix Partners conclusions in relation to the key issue of contention between the experts – the likely impact of the proposed transaction on Optus’ ability and incentive to invest. Mr Feasey concludes:⁵⁷</p> <p><i>Overall, I continue to think that Optus is likely to have a greater incentive to invest in the factual to catch up with Telstra and TPG but, for the reasons just discussed, a marginally lesser ability to do so relative to a counterfactual involving network sharing with TPG. I therefore do not expect the impact of the transaction on Optus’ investment decisions, whether to invest somewhat more or somewhat less, to be material either way. This means no more than that an increase in retail competition will likely increase the risks associated with making sunk investments in networks for all operators and that investing in less competitive and less risky conditions will generally be preferred by the owners of firms and providers of capital. It does not follow, however, that there will be less investment undertaken in more competitive markets or more investment will be forthcoming in less competitive conditions. It therefore does not follow that Optus will decide to invest less if the transaction enables TPG to pose a significantly more effective competitive threat to Optus than it has done in the past or would do in a network sharing counterfactual.</i></p> <p><i>I therefore strongly disagree with the claim of AlixPartners and the other Optus experts that the evidence shows that the transaction will have a ‘materially negative impact on Optus’ 5G investments’. I have yet to see anything in the submissions from Optus or its experts that would persuade me of such a conclusion.</i></p>

⁵⁷ Annexure B, Further Reply from Richard Feasey, at paras 40-41.