

# Expert statement in support of application for merger authorisation

RE: TELSTRA CORPORATION LIMITED AND TPG TELECOM LIMITED ARRANGEMENT FOR THE SHARING OF ACTIVE INFRASTRUCTURE AND SPECTRUM IN REGIONAL AUSTRALIA (APPLICATION)

## Expert statement

**Statement of:** Michael Robert Strople

**Address:** [REDACTED] ON, Canada, L6M0H7

**Date:** 30 October 2022

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**A EXPERIENCE AND BACKGROUND**

- 1 I am the principal consultant at MPOINT Consulting Inc. I am employed as the President and Chief Executive Officer of a North American telecommunications service provider and have previously acted as the Chief Technology Officer (**CTO**) of a Canadian telecommunications service provider offering both wireless and wireline services.
- 2 I have experience working across wireless networks in the course of a career spanning over 25 years, with a particular focus on network infrastructure suppliers and network operators of wireless and wireline networks. My experience includes seven years working as Vice President of Technology (**VP Technology**) and CTO at Manitoba Telecom Services Inc. (**MTS**) during the period from 2005 until 2013. In that role, I had responsibility across MTS' operating division in Manitoba (where MTS was the incumbent regional fixed and mobile operator) as well as the rest of Canada (where MTS' national division was a competitive wireline carrier).
- 3 MTS was acquired by BC EInc (**Bell**) in 2017 and changed its name to Bell MTS. I was not with MTS when this occurred.
- 4 In my role as VP Technology and CTO of MTS, in 2009, I personally led the development, negotiation and implementation of a Multi-Operator Core Network (**MOCN**) network sharing arrangement between MTS and Rogers Communications Inc. (**Rogers**) (the **MTS Rogers MOCN Agreement**). The MTS Rogers MOCN Agreement was the first MOCN network sharing arrangement in Canada. I am aware that, since that time, there have been other network sharing arrangements, beyond roaming, established by other Canadian wireless operators.
- 5 Attached to this statement and marked **Annexure MS-1** is a shortform curriculum vitae setting out more details of my relevant commercial and academic qualifications and experience.
- 6 I have been engaged by Telstra Corporation Limited's (**Telstra**) solicitors, Gilbert + Tobin, to provide a statement in relation to the application by Telstra and TPG Telecom Limited (**TPG**) to the Australian Competition and Consumer Commission (**ACCC**) for merger authorisation under section 88(5) of the *Competition and Consumer Act 2010* (Cth) (**CCA**). The application relates to authorisation by the ACCC of spectrum sharing arrangements that form part of a wider set of agreements that, taken together, establish Multi-Operator Core Network (**MOCN**) arrangements as between Telstra and TPG in certain regional areas of Australia (the **Proposed Transaction**).
- 7 My letter of engagement and instructions from Gilbert + Tobin are provided at **Annexure MS-2**. I have been provided with a copy of the Federal Court's Harmonised Expert Witness Code of Conduct (the **Code**). I acknowledge that:
  - (a) I have read and understood the Code and agree to be bound by it; and

(b) where I express opinions in this statement, they are based wholly or substantially upon my specialised knowledge and experience.

8 In the course of preparing this statement, I have also been provided with and have read the Statement of Preliminary Views (**SOPV**) published by the ACCC on 30 September 2022

9 I provide this statement to:

(a) describe my first-hand, practical knowledge of MOCN based network sharing, drawn from my involvement leading negotiations in 2009 to establish a MOCN arrangement in Canada between regional mobile operator, MTS, and a national wireless operator, Rogers, and in my subsequent experience operating the shared network over several years as VP Technology and CTO of MTS until 2013

(b) based on publicly available information regarding the geographic and demographic features of Australia and the SOPV, explain similarities in the associated network infrastructure investment challenges facing wireless operators in both Canada and Australia. In particular, I address my understanding of similarities in the investment challenges that faced MTS and those that are referred to in the SOPV as facing TPG, which may make the Canadian experience with MOCNs potentially helpful for the ACCC when testing several of the concerns raised in the SOPV; and

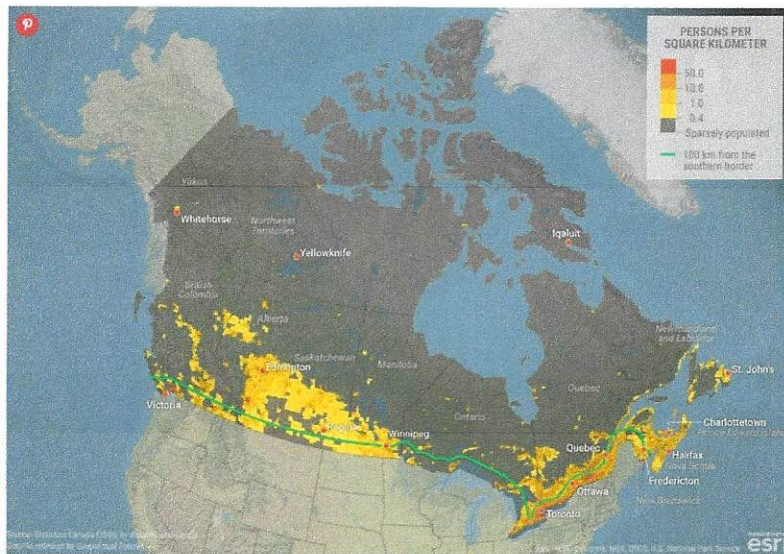
(c) describe why, based on my first-hand experience, MOCN based network sharing is fundamentally different to roaming or wholesale (Mobile Virtual Network Operator or **MVNO**) relationships – which means that, in my experience, MOCNs (including the MTS Rogers MOCN) have proven a very effective means for operators in Canada to efficiently share their radio access network (**RAN**) coverage in areas where it may not be commercially attractive to do so, while enhancing competition.

## **B RELEVANCE OF THE CANADIAN MOCN EXPERIENCE FOR AUSTRALIA**

10 The SOPV expresses a preliminary view that there is *“limited utility in drawing comparisons with network sharing arrangements in other jurisdictions. This is because Australia has a relatively unique geographic environment, with low population density outside metropolitan areas but with a high degree of urbanisation.”* (at paragraph 4.21)

11 Australia and Canada share a number of similar geographic and demographic features that are relevant to a wireless operator when considering the economics of network deployment and network sharing. For example, based on publicly available information:

- (a) Canada has a total population of approximately 39 million,<sup>1</sup> which compares with Australia's total population of approximately 26 million.<sup>2</sup>
- (b) Canada is roughly the same size as Australia, if in fact slightly larger – Australia is approximately 8 million km<sup>2</sup>,<sup>3</sup> while Canada is approximately 10 million km<sup>2</sup>.<sup>4</sup>
- (c) Because of their low populations, but very large geographic size, both Canada and Australia share low population densities (Australia's is approximately 3 persons/km<sup>25</sup> and Canada has a density of approximately 4 persons/km<sup>2</sup>).<sup>6</sup>
- (d) Both also have a relatively high level of urbanisation, with Canada's population largely confined to urban areas located along the southern border (which Canada shares with the United States) as shown in the map below. Other parts of Canada, particularly northern Canada, are very isolated and thinly populated.



Source: Geopolitical Futures ([geopoliticalfutures.com/population-density-of-canada/](http://geopoliticalfutures.com/population-density-of-canada/))

<sup>1</sup> Statistics Canada: <https://www150.statcan.gc.ca/n1/daily-quotidien/220928/dq220928b-eng.htm?indid=4098-1&indgeo=0>

<sup>2</sup> Australian Bureau of Statistics: <https://www.abs.gov.au/AUSSTATS/abs%40.nsf/Web%2BPages/Population%2BClock?opendocument=&ref=HPKI>

<sup>3</sup> Geoscience Australia: <https://www.ga.gov.au/scientific-topics/national-location-information/dimensions/area-of-australia-states-and-territories>

<sup>4</sup> Statistics Canada: <https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-can-eng.cfm?Lang=Eng&GK=CAN&GC=01&TOPIC=1>

<sup>5</sup> Australian Bureau of Statistics: <https://www.abs.gov.au/statistics/people/population/regional-population/latest-release#:~:text=Australia's%20population%20density%20at%20June.31%2C100%20people%20per%20sq%20km>

<sup>6</sup> Statistics Canada: <https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-can-eng.cfm?Lang=Eng&GK=CAN&GC=01&TOPIC=1>

- 12 The reason why these geographic and demographic features of Australia and Canada are relevant to a wireless operator is because of the economics associated with deploying mobile network infrastructure in less populated areas. The cost of rolling out sites and backhaul to regional areas in Canada is very high and, given the low population, any revenues associated with the use in those areas is limited – which means that such investment can often become uneconomic. This was the challenge that faced Rogers and MTS when considering how to extend coverage to regional areas in the province of Manitoba, in Canada, and which formed the basis for our MOCN arrangement. Based on the SOPV (see paragraph 3.26), I understand that this challenge of commercial deployment of infrastructure in regional areas is also a driver for TPG in relation to the MOCN proposed with Telstra, which is limited to a ‘Regional Coverage Zone’ covering 17% of the Australian population (SOPV, paragraph 1.3).
- 13 Given the geographic challenges created by Canada’s size and low population density (outside metropolitan areas), network sharing has been adopted as a means for wireless operators to share access to infrastructure in areas where it may not be economically viable for them both to deploy individually, or where it would take both of them much longer to do so. This also allows more efficient capital investment in other areas, such as metropolitan areas, as well as in network and service development and innovation. At the same time, MOCN arrangements (discussed below at paragraphs [39] to [43]), by their nature, preserve the independence of each party’s core network and services and therefore create strong incentives for them to invest and innovate in their networks and services in order to compete. This compares with roaming arrangements (which are now mandated in Canada) and which involve less service independence. I discuss these issues in more detail below at paragraphs [38] to [45] of my statement.

### **C MANITOBA AND THE NETWORK INVESTMENT CHALLENGE IN REGIONAL CANADA**

- 14 The Canadian mobile market has evolved differently to Australia and in a way that may help to explain why Canada has longer and more varied experience with different types of network sharing arrangements, such as MOCNs.
- 15 Unlike Australia, the Canadian consumer telecommunications market was not established with a single incumbent operator. Instead, similar to the United States, the wireline market was operated by a series of regional monopoly providers (referred to as incumbent local exchange carriers or **ILECs**) offering traditional phone service up to and through the 1980s. In urban areas you’d also find cable TV operators. Competition in wireline services (including long distance, local phone, and eventually internet services) began in the 1990s. Over the period since the 1990s, there has been substantial consolidation of the regional ILECs and cable operators.
- 16 The competitive wireless market in Canada was established by the grant of two sets of wireless licences in the late 1980s. One licence block was issued to the ILECs in their respective

provincial territories and one national licence was issued to the company that is now Rogers. New entrant wireless providers also emerged and were encouraged during and since the 1990s, but many of these have been consolidated into larger players.

- 17 Over time, the Canadian mobile market evolved and now comprises:
  - (a) three national wireless operators (Bell, Rogers and Telus Corporation (**Telus**)), which collectively serve over 85% of wireless subscribers. Each of these three national operators has infrastructure across metropolitan areas, but they have relied to some degree on network sharing and/or roaming to cover more lightly-populated regional areas or areas out of their traditional operating footprint;
  - (b) SaskTel (which is the sole remaining provincial ILEC, operating in the Canadian province of Saskatchewan);
  - (c) Regional Cable TV operators that have acquired wireless licences as new entrants; and
  - (d) MVNO operators.
- 18 MTS was the ILEC in the Canadian province of Manitoba. At the time that MTS entered into the MTS Rogers MOCN Agreement in 2009, the relevant MTS entity (MTS Allstream Inc) had retail mobile market share in Manitoba of approximately 60% and Rogers had approximately 26% market share.<sup>7</sup>
- 19 MTS was the largest provider of telecommunications services in Manitoba in 2009 and prior to its acquisition by Bell in 2017.
- 20 The province of Manitoba has a very mixed geography. It has a total population of approximately 1.4 million people,<sup>8</sup> but more than half of those (~750,000) live in the capital, Winnipeg (in fact, Manitoba is the province with the highest proportion of people living in a single city).<sup>9</sup> Outside of the capital, the next largest city is Brandon (~50,000 people) and all other towns have less than 20,000 people. Most of Manitoba's inhabited areas are in the south.
- 21 Like many other parts of Canada, the geography is also highly varied – ranging from river catchments and mountains through to the isolated, sub-arctic frontier in the north of the province.

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<sup>7</sup> The Globe and Mail, *Rogers, MTS join forces*, 29 July 2009: <https://www.theglobeandmail.com/report-on-business/rogers-mts-join-forces/article4280639/#:~:text=Rogers%20had%20about%2026%20per.per%20cent%20of%20the%20market>

<sup>8</sup> Statistics Canada: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1710000901>

<sup>9</sup> Statistics Canada: <https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/details/page.cfm?Lang=E&GENDERlist=1&STATISTIClist=1&HEADERlist=0&DGUIDlist=2021A00054611040&SearchText=winnipeg>

- 22 This geography and varied population density raise real commercial challenges for any wireless operator when looking at how to justify the cost of deploying mobile infrastructure in less populated areas. At a high level, the main challenges that I encountered as VP Technology and CTO involved providing coverage and acceptable network performance:
- (a) In urban areas – our network deployment tended to be constrained by having sufficient spectrum and access to sufficient real estate for installing towers and RAN equipment to provide the bandwidth and capacity needed to deliver a high-quality service. Typically, each ILEC, Bell, Telus and Rogers had their own infrastructure in urban and sub urban areas. In many cases the other of the three large wireless operators would also have urban, suburban or highway infrastructure in Manitoba.
  - (b) In remote and regional areas – the challenges generally related to access to backhaul and RAN equipment costs associated with providing coverage, particularly given the low revenues generated from use of services in these areas. Even sparsely populated or seasonal areas still demand coverage and service quality to support community or public safety requirements, and this can often extend beyond what is economic or profitable for a wireless operator to supply.
- 23 As I have referred to already at paragraphs [11] to [13], there are many parts of Canada where it is not commercially viable to install more than one RAN given the low population and high costs considering the available revenues alone. In some cases, subscribers that visit an area infrequently (such as holiday hot spots) can also demand investment in coverage and services in areas that are not supported by “in territory” revenues (i.e. revenue derived from calls and other network use within the territory only).
- 24 Given that many of the ILECs, like MTS, have existing wireline infrastructure assets in regional areas and the national wireless operators do not, this provided a commercial basis for regional ILECs like MTS to negotiate network sharing arrangements with the major wireless operators that benefit them both. For the national operators, such as Rogers, Bell and Telus, a MOCN provides a means to extend their network into less populated parts of provincial Canada and, for the regional ILECs, it offers a commercial opportunity to negotiate with the national operators to achieve national coverage and scale advantages, including improved access to and pricing for international roaming (given the relationships that the major national mobile operators have with other international telcos).
- 25 The concept of active network sharing, in the form of a MOCN, has been part of Canada’s wireless landscape for over a decade since it was first introduced in 2009. Based on my experience negotiating a MOCN on behalf of MTS, and from my observation of other Canadian MOCNs, I have formed the view that they are a form of commercial arrangement that is most successful in circumstances where each party has something of value to offer in terms of their

network, such as the location of network infrastructure (RAN or backhaul), spectrum holdings or coverage expansion options.

26 While I have not read the MOCN agreements contemplated in the Proposed Transaction, it appears from the description provided in the SOPV (see paragraphs 1.1 – 1.5) that the MOCN network sharing arrangement that has been agreed between Telstra and TPG involves a similarly synergistic deal in which Telstra gains the benefit of some of TPG's spectrum (enabling Telstra to improve the quality of its service in regional areas), while TPG obtains an immediate improvement in its network coverage in regional areas (the area referred to in the SOPV as the Regional Coverage Zone). This also appears to be occurring in the context of 5G rollouts by each of the Australian wireless operators, which are placing additional capital investment and rollout demands on them.

27 When MTS commenced negotiating the MOCN with Rogers in 2009:

- (a) As the provincial ILEC, MTS had the biggest and best coverage within Manitoba, but had no facilities-based coverage in the rest of Canada and, given its scale as a regional player, MTS was at a disadvantage when negotiating international roaming. In this case, I understand that Telstra has better coverage than TPG in the Regional Coverage Area. However, TPG holds spectrum that would be of value to Telstra, particularly in relation to its services in regional areas.
- (b) Rogers had a strong national wireless network footprint but did not have coverage in rural Manitoba. In Manitoba, Rogers was being held back by this lack of rural coverage which was commercially challenging given the required investment in backhaul, and to a lesser extent RAN deployment in small, lightly populated regional areas. This meant that Rogers had largely been limited to providing services in urban and metropolitan areas in Manitoba and along some of the major highways. I understand that TPG similarly faces limitations on its commercial ability to extend its own infrastructure within the Regional Coverage Zone and the SOPV states that it is unlikely to do so (see paragraphs 5.11 – 5.12).
- (c) At the time, MTS faced a generational technology upgrade from a Code Division Multiple Access (**CDMA**) based network to a Global System for Mobile Communications (**GSMA**) network. This represented a substantial capital investment and the need for a national roaming partner with compatible technology and revised international roaming agreements for both inbound and outbound traffic. In the case of the proposed transaction, I understand that the MOCN is being implemented at the same time as each of the Australian wireless operators are upgrading and rolling out 5G services, and that TPG intends to use the MOCN to extend its 5G network into the Regional Coverage Zone (SOPV, paragraph 1.3).



## **D MTS ROGERS MOCN**

### **Commercial objectives and terms**

- 28 The commercial drivers referred to in paragraph [23] to [27] provided the commercial context within which I identified the benefits of, and negotiated, the MTS Rogers MOCN Agreement with Rogers.
- 29 The MTS Rogers MOCN Agreement was not an obvious outcome for MTS management at the time. Rogers and MTS were not otherwise partnered (i.e. we did not have any roaming or other wholesale agreement with Rogers). Rogers and MTS undertook broad discussions to identify if some mutually beneficial arrangement could be reached that involved active network sharing. A number of alternatives were explored before serious consideration was given to MOCN. I understood the selection of MOCN at the time to be the first commercial implementation of a MOCN anywhere in the world, and certainly the first in Canada, and so we were required to solve novel technology challenges in addition to the commercial framework.
- 30 A very small team of about a half dozen, that I led on behalf of MTS, negotiated and constructed the framework agreement with Rogers. I then led, on behalf of MTS, a much larger group of 30-40 people from both MTS and Rogers to work through the specifics of the arrangement including the joint operating agreements. In parallel, inside and outside counsel were engaged to draft the comprehensive agreement.
- 31 After several months of negotiations, in or around July of 2009, MTS and Rogers reached agreement on a MOCN based network sharing agreement. The MOCN based network sharing deal included the following key features:
- (a) a multi-year term to ensure stability of investment and appropriate returns;
  - (b) a “shared cost” model for operations and investments in which each party contributed both expertise, and operating and capital costs to ensure network quality and to provide for costs to be allocated based on resource consumption;
  - (c) a comprehensive governance framework, based on network KPIs for the shared network which drove investment decisions in relation to the shared infrastructure and associated cost allocation. The engineering teams from each company were responsible for administering the implementation of the agreement and provided periodic reports to a joint council comprising management from each company; and
  - (d) dispute handling mechanisms.
- 32 MOCN deals can take different forms. I note that at paragraph 4.22 of the SOPV, the ACCC expresses a preliminary view that:

*Further, the Proposed Transaction is not what is ordinarily considered a MOCN agreement, and it departs from a traditional MOCN agreement in a number of fundamental respects, including that the Proposed Transaction:*

- *is not a joint venture, and does not involve joint operation of the radio access network;*
- *does not utilise a shared investment model; and*
- *involves the payment of fees, including on a usage basis.*

33 In my experience, I do not consider that there is any “traditional” form of commercial terms for a MOCN network sharing agreement. MOCN is a RAN sharing technology, the specification for which does not presuppose or require any particular form of commercial framework. I certainly did not view any of the three elements referred to by the ACCC in the reference above as being essential to how we negotiated and operated the MTS Rogers MOCN. For example, our MOCN was not a joint venture either, but that didn’t meaningfully affect how we operated or the benefits that the MOCN offered to MTS and Rogers in terms of their networks.

34 For the reasons I give above at paragraphs [25] to [27], I have found that the commercial form of a MOCN network sharing agreement reflects the individual drivers and incentives of the parties and these are typically unique to each MOCN. This is in contrast with roaming arrangements, which based on my experience at MTS with a number of roaming agreements (referred to at paragraph [40] below), tend to be more standardized and often reflect the position of the wireless operator that is supplying roaming services.

35 The MOCN between MTS and Rogers shared some, but not all, of the three features identified by the ACCC above, including:

- (a) Like Telstra and TPG, MTS did not set up the MOCN as a joint venture because there was no merging of network assets between MTS and Rogers – the MTS Rogers MOCN Agreement provided for an extensive joint operating agreement where both MTS and Rogers were able to maintain their ownership and control of their input assets.
- (b) There was sharing of operating costs and a shared investment model. In relation to operating costs, MTS and Rogers agreed to a cost splitting formula based on consumption of various resources (for example, the usage of various elements of the RAN). Although investment was shared between the parties, there was no limitation on each network operator seeking to augment aspects of the network where the other party did not agree to share the cost of doing so.
- (c) Fees were payable for resources necessary for the operation of the shared network.

- 36 Overall, the deal made good sense and proved successful. It provided an immediate means for MTS to access national coverage and international roaming, while providing Rogers a much greater provincial footprint in Manitoba. At the same time, it reduced the capital cost for MTS of undertaking a critical High Speed Packet Access (**HSPA**) network upgrade due to the heterogenous nature of a combined network across both dense and sparsely populated areas. Each entity, but particularly MTS, could also benefit from economies of scale associated with a range of network hardware and software and on international roaming rates.
- 37 After it was formed, the MOCN arrangement continued to provide flexibility and supported ongoing network investment and development. For example, the MTS Rogers MOCN Agreement supported a network upgrade in 2013, with the deployment of 4G Long Term Evolution (**LTE**) technology. The extension of the HSPA agreement meant that MTS and Rogers shared the costs of deploying and operating 4G LTE technology in Manitoba.<sup>10</sup>

#### **E DIFFERENCES BETWEEN A MOCN AND OTHER TYPES OF WHOLESALE OR ROAMING AGREEMENT**

- 38 When the MTS Rogers MOCN Agreement was reached in 2009, it represented a very different type of wholesale arrangement to the other types of commercial arrangement that had been used in mobile markets in Canada up to that point, notably roaming relationships.
- 39 A MOCN is fundamentally a network and infrastructure agreement. It allows for joint use while each party can still exercise substantial control and service independence. A roaming agreement or other wholesale arrangement, such as an MVNO agreement, involve acquiring carriage services on another network. They are very different paradigms.
- 40 Throughout my time at MTS, the company had a number of roaming agreements in place both before and after the MTS Rogers MOCN Agreement. These covered both domestic and international roaming. While the network organization was involved in the technical operation of these roaming arrangements, the commercial terms governing roaming were typically negotiated and managed by the marketing and commercial teams. This reflected an internal MTS view that a roaming agreement was basically a form of wholesale service that we acquired in order to be able to improve our marketing claims and the scope of our offering around coverage. The wholesale terms in a roaming agreement therefore directly shaped and defined the commercial services, plan structures and offers that we could offer our customers.
- 41 The MTS Rogers MOCN Agreement was different. At MTS, the MOCN network arrangement was solely the responsibility of the network division because it was seen as a form of network augmentation and investment. Service independence was important. While Rogers was sharing

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<sup>10</sup> Cision, *MTS enhances wireless service through extended network sharing agreement with Rogers*, 13 June 2013: <https://www.newswire.ca/news-releases/mts-enhances-wireless-service-through-extended-network-sharing-agreement-with-rogers-512576951.html>

access to and using regional MTS infrastructure, this did not limit or restrict independent service and product development by both of us.

- 42 The MOCN also provided a means for MTS and Rogers to share the cost of common network infrastructure, and especially in relation to the HSPA upgrade, in areas where it was not viable for us both to duplicate backhaul or sites, while maintaining entirely separate and independent core networks. This approach to sharing infrastructure in those areas where it was less viable to duplicate enabled us both to deliver more infrastructure more quickly in regional areas and make capital available for each of us to separately invest in urban areas as well as generally in service and product innovation and development – which were pursued independently.
- 43 Throughout my time at MTS following implementation of the MOCN with Rogers, MTS continued to develop and compete strongly around differentiated products, plan structures, and services with Rogers and other wireless operators. There was certainly no reduction in MTS' ability to continue to differentiate its services, in fact because of the shared use of backhaul or RAN equipment MTS was able to devote more resources to service enhancements.
- 44 For these reasons, to the extent that a comparison is being made between the state of competition under a MOCN arrangement and a roaming agreement (which appears to be the case in the SOPV, when comparing the MOCN with a potential roaming deal with Optus (see paragraph 5.19)), my experience in Canada is that a MOCN is a preferable competitive outcome for customers in terms of the independence of operators and differentiation of services in regional areas over a roaming arrangement.
- 45 In the specific case of MTS in 2009, the MTS Rogers MOCN Agreement, combined with the shift to GSM technology, enabled MTS to offer its customers better coverage outside of Manitoba in both the rest of Canada and internationally via a national roaming arrangement with Rogers and a partnership with Rogers (who led on negotiating international roaming arrangements). While a MOCN arrangement would have been technically possible outside Manitoba, MTS had no infrastructure contribution to make nationally and so a roaming agreement was the more appropriate commercial solution. Another reason why a MOCN was not appropriate on a national scale was because of the casual and infrequent traffic that MTS was likely to have outside of Manitoba. This meant that a more efficient and cost-effective approach for MTS to service its customers on a infrequent and casual basis was through a roaming agreement with Rogers.

#### **F MOCNs AS A FORM OF FACILITIES-BASED COMPETITION**

- 46 From my reading of the SOPV, it appears that some attention is being given by the ACCC to whether a MOCN between Telstra and TPG could result in a reduction in “infrastructure-based competition”. It appears, from some comments in the SOPV, that a MOCN might be being viewed as some kind of *alternative* to infrastructure-based competition (see paragraph 5.41).

- 47 I agree with the SOPV that an important dimension of competition in any wireless market involves wireless operators working out the best and most efficient way to invest in their own networks and facilities, to deliver the best services and coverage for customers. In Canada, we refer to this objective as “facilities-based competition” and it has also been a focus of Canadian regulators over several decades in both wireless and wireline markets.
- 48 Roaming or MVNO relationships are services-based (i.e. the competitive services that an operator can provide are dictated by the wholesale service supplied by a roaming partner or wholesale MVNO supplier).
- 49 However, for the reasons I give earlier in my statement, MOCNs can be used to enhance facilities-based competition particularly in sparsely populated areas, or where full network build out is unlikely or uneconomic. As discussed above at paragraphs [38] to [45], under the MTS Rogers MOCN Agreement, both Rogers and MTS retained full and independent control of their own core network and therefore both operators also retained full and independent control of their own product roadmaps, service definition and customer billing and management platforms.
- 50 In some ways, I see an analogy between MOCN arrangements in the wireless market and other types of facilities-based products that have been used in the past in wireline markets to give access to the “last mile” of connectivity. Regulators recognised that it wasn’t viable for multiple wireline networks to be built linking every home, so solutions such as Local Loop Unbundling (LLU) were used to facilitate access to network infrastructure by competitors. In Canada, and I understand other countries like Australia, LLU was seen as a form of facilities based competition because it meant operators invested in their own infrastructure where it was commercially viable to do so up to the “last mile” and then had a network-based form of connectivity to the “last mile” that mean they continued to use their own core network and develop and sell their own products over that network. To the extent that you consider the wireless RAN equivalent to the “last mile” of the wireline network, MOCN enables a similar sharing of the “last mile” in regional areas to former facilities-based products, but in a wireless context.
- 51 Fundamentally, I view a MOCN as an enabler of facilities-based competition because it enables wireless operators to invest in infrastructure – including spectrum – more efficiently (and therefore achieve better coverage and quality, more quickly and at lower cost) – while retaining core network independence and service differentiation.
- 52 The SOPV seems to accept that TPG will never undertake a full national network rollout, at least in any meaningful timeframe. If this is the case, then based on my experience in a similar Canadian context, a MOCN provides a viable alternative that would permit TPG to operate as an independent and competitive wireless operator with expanded coverage. Based on my experience with a number of different roaming arrangements, I consider a roaming agreement

could be used by TPG to achieve equivalent coverage claims, but would offer less network and service independence compared with the MOCN solution.

Signed by **Michael Robert Strople**



Signature of Michael Strople

Date: 30 October 2022

**Annexure MS-1 – Curriculum Vitae of Michael Strople**

## Michael Strople

January 2016-  
present

**Zayo Group** (January 2016- present)  
**President & CEO – Allstream**  
**Managing Director Zayo Canada**  
**Prior: President - Zayo Enterprise Networks**

### **Allstream (President & CEO)**

Responsible for all aspects of Allstream reporting to Allstream's Board of Directors. Allstream is \$300M (US Annual Revenue) Telecommunication provider servicing 25,000 customers in the US and Canada.

As **Managing Director for Zayo Canada** responsible for Zayo's operation in Canada and oversight of all Zayo Business units operating in Canada. Led the integration of Allstream (acquired by Zayo in January 2016) into Zayo Group.

### **Zayo Enterprise Networks (President)**

Responsible for all aspects of the Zayo Enterprise Networks global business unit (US\$500M annual revenues) including product development, operations, network and information technology, marketing, finance and human resources. Responsible for Zayo's subsidiary Allstream (US\$500M annual revenues) delivering voice service and data services to business customers in North America.

January 2016

October 2005- **Allstream** (April 2013- January 2016)  
**President – Allstream** (January 2014 -January 2016)  
**Chief Operating Officer – Allstream** (April 2013 - January 2013)  
Toronto, Ontario

Accountable for all aspects of day-to-day operations at Allstream including sales, marketing, customer operations, network and information technology. Transform the \$650M organization to deliver positive free cash flow.

**MTS Allstream** (October 2005- April 2013)  
**Chief Technology Officer / VP Technology**  
Toronto, Ontario / Winnipeg, Manitoba

Accountable for all aspects of Network for MTS Allstream; Architecture, Design, Planning, Engineering, Deployment, Carrier Relations, Network Operations and IT Security. Manage annual budget of ~C\$500M. Transformed networks including 4G wireless, VoIP, IPTV, DWDM. Negotiated and implemented revolutionary network sharing agreement. Defined and executed the separation of MTS Allstream into MTS Inc. and Allstream Inc..

June 2003-  
Ongoing

**MPOINT Consulting**  
Consultant  
Oakville, Ontario

Provide technical consulting services to large communication equipment providers and operators. Consulting services ranging from advice through detailed technical design covering: network architecture & design, technology selection, network & service migration, product introduction, network planning & provisioning, network operations and quality management.



June 2003	<b>Nortel Networks – Global Operations</b> Director of Customer Operations Director of Project Management Senior Manager - Network Engineering Senior Operations Manager Manager Engineering & Installation Technology R&D Engineer
May 1994	

### **Board Memberships**

2006 - 2011	University of Toronto, Master of Engineering in Telecommunications Advisory Board Member Executive Development Program
2009 - 2013	TR Tech Board of Directors Chair Governance Committee (2010-2011) Chair Technology Advisory Council (2011-2013)
2013 - 2020	MEF Board of Directors (mef.net) Chairman of MEF (January 2014-July 2020)
2014 -2018	LCBO (Liquor Control Board of Ontario) (lcbo.com) Audit Committee, Human Resources Committee
2020 - Present	Allstream Business Inc, Allstream Business LLC (allstream.com)
2022 – Present	telMAX (telmax.com)

### **Education/Professional Designations**

June 2002	<b>Project Management Professional</b> , Project Management Institute
February 1999	<b>Canadian Securities Course</b> , Canadian Securities Institute
October 1996	<b>Professional Engineer</b> , Professional Engineers of Ontario
May 1994	<b>B.A.Sc.</b> University of Waterloo, Honours Electrical Engineering (Co-op) Option in Management Science

**Annexure MS-2 – Letter of engagement and instructions**

Partner  
Contact

Simon Muys  
James Johnson  
T [REDACTED]  
SJM:JZJ:1049539

Our ref



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**27 October 2022**

By email: [REDACTED]

Mr Michael Strople  
[REDACTED]  
[REDACTED]

Ontario L6M-0H7  
Canada

[REDACTED]  
Dear Mr Strople

**Letter of Instructions - Application to the Australian Competition and Consumer Commission for Merger Authorisation**

- 1 Gilbert + Tobin acts for Telstra Corporation Limited (**Telstra**).
- 2 We are instructed to seek your expert opinion, in the form of a written statement, in connection with the Application to the Australian Competition and Consumer Commission (**ACCC**) for Merger Authorisation (**Authorisation Application**).
- 3 This letter records the terms of your retainer and provides you with some background and high-level information relevant to your retainer.

**Background**

- 4 On 21 February 2022, Telstra and TPG Telecom Limited (**TPG**) entered into three interrelated commercial agreements, being:
  - a. The MOCN Service Agreement dated 17 February 2022;
  - b. Spectrum Authorisation Agreement (MOCN Area) dated 17 February 2022; and
  - c. Mobile Site Transition Agreement dated 17 February 2022.

(the **Proposed Transaction**)

- 5 The Proposed Transaction provides for a Multi-Operator Core Network (**MOCN**) commercial arrangement, pursuant to which Telstra will supply TPG with MOCN 4G and 5G services within a defined coverage zone across regional and fringe urban areas. The defined coverage area is a ring covering 81.4% - 98.8% of the Australian population, or approximately 1.5 million square kilometres (**17% Regional Coverage Zone**).
- 6 To support the shared use of the MOCN in the 17% Regional Coverage Zone, TPG will authorise certain spectrum it currently owns and is unutilised or underutilised to Telstra in the 17% Regional Coverage Zone, to be pooled with Telstra's spectrum and made available to both parties. Telstra will also be authorised to use certain spectrum beyond the 17% Regional

Coverage Zone (i.e. in areas beyond 98.8% of the Australian population). The initial term of the MOCN Agreement is 10 years and TPG has two options to extend the agreement by 5 years.

- 7 Pursuant to s 68(1) of the *Radiocommunications Act 1992* (Cth), TPG's grant of authorisation to Telstra to use its spectrum is deemed to be an acquisition within the meaning of s 50 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) and capable of merger authorisation under Part VII.
- 8 Telstra and TPG have sought ACCC authorisation for aspects of the Proposed Transaction deemed to enliven the operation of s 50 and Part VII of the CCA.
- 9 The ACCC may grant authorisation if it is satisfied that either:
  - (a) the Proposed Transaction would not have the effect, or would not be likely to have the effect, of substantially lessening competition; or
  - (b) the Proposed Transaction would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the Proposed Transaction.
- 10 On 30 September 2022, the ACCC published its Statement of Preliminary Views (**SOPV**) in connection with the Authorisation Application.
- 11 The ACCC, amongst other things, is now seeking submissions on the relevance of overseas network sharing arrangements, and whether these arrangements are comparable with the Proposed Transaction.<sup>1</sup> A copy of the SOPV has been provided to you, and you may rely upon it in preparing your statement.

## Instructions

- 12 We request that you provide a signed expert witness statement setting out:
  - (a) Your qualifications and experience, including in respect of the assessment, negotiation and implementation of MOCN arrangements and associated commercial agreements.
  - (b) Based on your experience:
    - (i) any response you have to the views expressed in the SOPV, including at paragraphs 4.20 - 4.23
    - (ii) information or experience that you consider may assist the ACCC in response to Question 3 on page 20 of the SOPV; and
    - (iii) any other comments regarding the experience of MOCNs in Canada in respect of competition between wireless operators, including as compared to other types of wholesale access.

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<sup>1</sup> ACCC, Statement of Preliminary Views: Telstra Corporation Limited and TPG Telecom Limited Application for merger authorisation MA1000021, 30 September 2022, paragraphs [4.20] - [4.23]: <https://www.accc.gov.au/system/files/public-registers/documents/ACCC%E2%80%99s%20Statement%20of%20Preliminary%20Views%20-%2030.09.22%20-%20PR%20-%20MA1000021%20Telstra%20TPG.pdf>

**Your role as an independent expert**

- 13 We ask that you prepare your report in accordance with the requirements of the Federal Court's Harmonised Expert Witness Code of Conduct (**Code**). A copy of the Code is enclosed at Annexure A to this letter.
- 14 As an independent expert, it is also important that you are free from any actual or possible conflict of interest. This includes ensuring that you have no connection with any other party which would prevent you from preparing your analysis in an objective and independent manner.
- 15 We confirm our understanding that you have no conflicts of interest in this matter. Please inform us immediately if you do become aware of a conflict or potential conflict.

**Confidentiality**

- 16 You must not disclose or discuss any of our correspondence or instructions, or any of your work products, with any third parties. This duty of confidentiality will continue beyond the conclusion of your instructions.
- 17 Please ensure that you keep all documents (including electronic documents) relating to these instructions confidential and separate from your other files.
- 18 All communications in relation to this matter, whether verbal or written, should be directed to Gilbert + Tobin.

We are grateful for your assistance in acting as an expert in relation to this matter.

Yours faithfully  
**Gilbert + Tobin**



**Simon Muys**  
Partner



**Andrew Low**  
Partner



**Geoff Petersen**  
Special Counsel



## ANNEXURE A

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# AUSTRALIAN FEDERAL COURT HARMONISED EXPERT WITNESS CODE OF CONDUCT

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## Application of Code

- 19 This Code of Conduct applies to any expert witness engaged or appointed:
- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
  - (b) to give opinion evidence in proceedings or proposed proceedings.
- 

## General duties to the Court

- 20 An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.
- 

## Content of report

- 21 Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
- (a) the name and address of the expert;
  - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
  - (c) the qualifications of the expert to prepare the report;
  - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
  - (e) the reasons for and any literature or other materials utilised in support of such opinion;
  - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
  - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
  - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;

- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
- (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

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## Supplementary report following change of opinion

- 22 Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
- 23 In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

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## Duty to comply with the Court's directions

- 24 If directed to do so by the Court, an expert witness shall:
  - (a) confer with any other expert witness;
  - (b) provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
  - (c) abide in a timely way by any direction of the Court.

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## Conference of Experts

- 25 Each expert witness shall:
  - (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
  - (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.