



Confidential Restriction on Publication Claimed in Part

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# **Application to the Australian Competition and Consumer Commission for Merger Authorisation**

Telstra Corporation Limited and TPG  
Telecom Limited arrangement for the  
sharing of active infrastructure and  
spectrum in regional Australia

Submission in response to Statement of Preliminary  
Views and Interested Parties

1 November 2022

**PUBLIC VERSION**

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Annexure	Document	Publication Restriction
Annexure A	Expert statement of Michael Strople dated 30 October 2022	None
Annexure B	Expert statement of Bruce Rodin dated 27 October 2022	None
Annexure C	Statement of Nicolaos Katinakis dated November 2022	Part
Annexure D	Statement of Bart-Jan Sweers dated November 2022	Part
Annexure E	Expert report of Compass Lexecon (Dr Jorge Padilla) dated November 2022	Part
Annexure F	TPG Annexure (Counterfactual Submission) dated November 2022	Part
Annexure G	Statement of Yago Lopez dated November 2022	Part
Annexure H	Statement of Giovanni Chiarelli dated November 2022	Part
Annexure I	Statement from Kieren Cooney dated November 2022	Part

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## Executive summary

Telstra Corporation Limited (**Telstra**) and TPG Telecom Limited (**TPG**) (**Applicants**) provide this submission in response to the ACCC's Statement of Preliminary Views (**SOPV**) dated 30 September 2022 with respect to the application for authorisation (**Application**) of the use of spectrum pursuant to the agreements relating to the proposed Telstra and TPG Multi-Operator Core Network (**Telstra-TPG MOCN**) (**proposed transaction**). It also includes responses to interested party submissions available as at 26 October 2022 (a further tranche response will be provided to submissions subsequently made available). Defined terms have the same meaning as used in the Application unless otherwise specified.

The Applicants have provided this response to the key questions raised in the SOPV and by interested parties. To the extent a matter is not responded to, it should not be taken that it is agreed.

### A. KEY ISSUES UNDER CONSIDERATION

The SOPV grapples with the task of balancing the short term, immediate and verifiable competitive and consumer benefits, against potential longer term and speculative investment and price risks – namely:

- concerns raised – principally by Optus – that by strengthening the position of TPG, the authorisation will result in Optus losing revenue and having a reduced capacity to invest over the longer term, or to the same extent, in its own regional and rural network; and
- to the extent that the transaction allows TPG to improve its coverage and service quality for customers, this may be reflected in higher prices in absolute terms (although the ACCC acknowledges that it has not reached a concluded view on any quality-adjusted price effects).

The ACCC further seeks to test in the SOPV the extent to which the competitive benefits identified might be delivered in the future without raising risks to the competitive position of Optus, based on an assumed combination of direct network investment by TPG in regional areas, some form of (unidentified) alternative spectrum deal and an alternative roaming or network sharing arrangement with Optus.

In this response, the Applicants provide further evidence focusing on those specific areas identified by the ACCC in the SOPV.

### B. EVIDENCE AS TO WHAT THE PROPOSED TRANSACTION DOES

The evidence is clear and incontrovertible as to the benefits the proposed transaction will actually deliver to consumers, businesses and regional communities and competition overall:

- **The proposed transaction enables for the first time Australian retail and wholesale mobile markets to move from two to three independent mobile network operators, each with extensive national coverage.** This is in circumstances where all parties (including the ACCC) agree that three full, national rollouts undertaken independently by each of the MNOs will not occur.

- **In this context, the MOCN creates the next best infrastructure alternative.** It is a form of facilities-based competition<sup>1</sup> where TPG will augment its network with shared use of Telstra's regional RAN. MOCNs operate fundamentally differently and have different competitive outcomes to wholesale service-based relationships, such as roaming or wholesale MVNO relationships. As Mr Bruce Rodin (former Vice President of Networks for Bell Canada) states:<sup>2</sup>

"the capacity of a MOCN to enable parties to develop and innovate and to differentiate their network and services (including competing around quality parameters such as speed, latency, jitter etc) is a key reason that they have been popular in Canada – and have been adopted instead of roaming"

Mr Michael Strople, former Vice President – Technology and Chief Technology Officer of Manitoba Telecom Services Inc states:<sup>3</sup>

"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 arrangements, such as an MVNO agreement, involve acquiring carriage services on another network. They are very different paradigms."

- **The ability and incentive for TPG to continue to invest and innovate is enhanced (not diminished) by the proposed transaction.**
  - With the proposed transaction, TPG will continue to invest in, and innovate within, its core network across Australia. It will also continue investing in and operating its RAN in the region covering up to ~81.4% of the population. This is because the MOCN provides a network augmentation (through active sharing of Telstra's regional RAN within the MOCN area) allowing TPG to extend the reach of such service innovation and differentiation to customers across a significantly expanded national network, improving returns on investment in infrastructure and services.
  - By avoiding inefficient duplication of regional sites, TPG will also have greater capacity to invest within its existing metropolitan footprint improving its service quality, including densification of its 5G network and services. This in turn would incentivise network investment from Telstra and Optus as a competitive response.
  - With the proposed transaction, TPG's case for investment on the MOCN network boundary will also be enhanced because access to a network in an adjacent catchment increases the return on investment in the primary one. Currently, TPG could not economically make investments in isolated catchments on the regional boundary.
- **The proposed transaction delivers a substantially enhanced competitive market structure and associated benefits as compared to any counterfactual considered by the ACCC.**
  - While the ACCC canvasses incentives for TPG to rollout further network from its existing base of 749 mobile sites in the 17% Regional Coverage Zone, Optus itself accepts that it is only economically feasible to have two

<sup>1</sup> As defined by the ACCC, quasi-facilities based competition is 'where firms provide a range of services using a combination of their own infrastructure and access to wholesale/network services provided through another party's network': A Strategic Review of Fixed Network Services, ACCC Position Paper, at para 2.1. MOCN, or the sharing of common active network, is the mobile equivalent of this quasi facilities-based competition.

<sup>2</sup> Bruce Rodin, Supporting Statement, Annexure B, at para 36.

<sup>3</sup> The first Canadian operator to enter a MOCN arrangement with Rogers Inc in 2009. See Michael Strople, Supporting Statement, Annexure A, at para 39.

MNOs in most of the 17% Regional Coverage Zone and any rollout by TPG would be incremental. As indicated previously, [Confidential to TPG]

A small incremental rollout by TPG in the 17% Regional Coverage Zone (which, even if it were to be supplemented with some kind of roaming or other arrangement as set out in the SOPV<sup>4</sup>) would leave TPG in the position it is in today in respect of regional coverage, and provide TPG with materially less capacity to compete and differentiate than it would be able to do with a MOCN.

- To the extent that any proposed counterfactual involved a roaming-based alternative with Optus, [Public text: - noting that there is no guarantee that TPG and Optus could negotiate such a roaming arrangement] [Confidential to TPG]

A roaming-based alternative also involves TPG having substantially less scope than a MOCN to operate independently and to differentiate and compete with Telstra and Optus across product and service dimensions such as quality and speed. The MOCN therefore offers the Australian market network differentiation and competition across a national footprint – and a roaming-based counterfactual delivers, on any realistic view, substantially less infrastructure-based competition.

- Any alternative MOCN or similar network sharing arrangement involving Optus would be substantially less commercially attractive to TPG than the proposed transaction ] [Confidential to TPG] First, there is less complementary spectrum between TPG and Optus and fewer sites able to be made available to TPG by Optus (such that the coverage TPG would be able to offer under the arrangement would be inferior to the coverage it can offer with proposed transaction).<sup>6</sup> Second, the removal of Telstra as a potential competing provider of infrastructure access would leave Optus as the monopoly provider of such access in its commercial engagement with TPG. As Optus has evidenced, it has clear incentives to maintain its economic capacity and coverage differentiation with TPG – accordingly any such deal will only be struck on terms that preserve Optus' market position.
- Finally, there is no commercially realistic prospect of an alternative deal for TPG involving Telstra.<sup>7</sup>

- **The proposed transaction reflects increased competition from Telstra to supply the third MNO, TPG, with wholesale network access services in the**

<sup>4</sup> Which the Applicants do not accept, see section 2.1.

<sup>5</sup> [Confidential to TPG]

<sup>6</sup> Application, at section 3.2.

<sup>7</sup> Application, at section 3.1.

17% Regional Coverage Zone (where previously Optus was the only alternative). This was a prospect raised and welcomed by the ACCC at the time of the Domestic Mobile Roaming Declaration Inquiry.<sup>8</sup>

• **The proposed transaction delivers real and appreciable public benefits through the following** consistent with the SOPV:

- improvements in TPG's greater network coverage and therefore increased choice of MNOs for customers who require coverage in regional Australia;<sup>9</sup>
- TPG's ability to offer an improved product to customers who value better regional network coverage will enable it to better compete for customers it currently does not service – making it a stronger competitor to Optus and Telstra and increase price-based competition at least in the short term;<sup>10</sup>
- will immediately improve TPG's network coverage making it a more viable and attractive supplier of wholesale mobile services to MVNOs;<sup>11</sup>
- improved network quality by Telstra from access to additional spectrum, in turn improving Telstra and TPG's quality of service to customers;<sup>12</sup>
- the realisation of cost efficiencies through shared use of infrastructure and more efficient use of spectrum;<sup>13</sup> and
- environmental benefits.<sup>14</sup>

• **Regional community stakeholders acknowledge that they stand to enjoy the immediate benefits of improved service delivery and choice.** For example, Queensland Farmers Federation submits:<sup>15</sup>

“that the immediate benefits that would come from this proposal going ahead, outweigh speculation of future risks which are at this point largely unknown. **Without significant improvements in connectivity in the short and medium term, the future economic and social viability of regional, remote and rural communities will be held back and current blocks to technology uptake in agricultural sector will continue.** The agricultural sector and regional Queensland need immediate improvements to connectivity to continue its trajectory to a digitally enabled industry.” (emphasis added)

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<sup>8</sup> ACCC, [Domestic mobile roaming declaration inquiry - Final Report](#) (October 2017), at pp 22-23, 89-90. See also ACCC submission to the RTIRC at p 8 ‘if active infrastructure sharing is limited to deployments in areas where there is otherwise no commercial incentive to provide services, it is reasonable to assume that the benefit of such arrangement is likely to far outweigh any competition risk.’

<sup>9</sup> SOPV, at para 6.23. The proposed transaction results in an immediate increase of TPG's geographic network coverage by around 1 million square kilometres providing connectivity for TPG's more than 5 million customers when travelling in regional Australia, resulting in the ability to connect with others or locate important information in urgent or emergency situations when travelling around Australia.

<sup>10</sup> SOPV, at para 5.37.

<sup>11</sup> SOPV, at para 5.65.

<sup>12</sup> SOPV, at para 6.23.

<sup>13</sup> SOPV, at paras 6.39-6.43.


<sup>14</sup> SOPV, at para 6.51.

<sup>15</sup> [Submission by Queensland Farmers' Federation](#).



### C. EVIDENCE AS TO WHAT THE PROPOSED TRANSACTION DOES NOT DO

The evidence before the ACCC establishes that the proposed transaction does not give rise to any material adverse impact on competition or public detriment. Such adverse effects are unlikely, speculative, distant, and/or marginal, at most:

- **Optus substantially overstates the implications of this deal on its capacity to invest.**
  - Optus has an existing extensive network in the 17% Regional Coverage Zone. Optus already makes public coverage claims in relation to its mobile network of around 98.5% of the Australian population, covering almost all of the 17% Regional Coverage Zone.
  - The ACCC cannot soundly accept from the available evidence that the proposed transaction, which is limited to 17% of the population and has a relatively modest financial value (given the overall size of the market and the capital values of both Optus and Telstra<sup>16</sup>), would be likely to have any meaningful impact upon the capacity or ability of Optus to continue to invest in its network nationally. Consistent with this, [Confidential to TPG]  

  - In fact, Optus has said that the combination of the proposed transaction with broader telecommunication security reforms (which are wholly independent of the proposed transaction) merely “*makes Optus’ business case very tricky*” and “*would require Optus to spend more money to develop technology to effectively compete*”.<sup>18</sup> That Optus can invest, but has to invest more and work harder to compete, should be seen as a positive outcome for competition.
- **Optus will remain highly incentivised to continue to invest in its network, including in regional and rural areas, and has a demonstrated capacity to do so.**
  - Investment is driven by competition in metropolitan areas and peri-urban regions where ~81.4% of the population reside, and all MNOs are driven to invest in future technologies to meet the additional demand and competitive pressure. As the SOPV acknowledges, Optus will continue to face strong incentives to invest in its mobile network across metro and regional Australia irrespective of the MOCN. In fact, this incentive is evidenced by Optus recently securing early access to 900MHz licenses at 545 sites across every State and Territory (except Northern Territory), with the stated intention of investing in 4G and 5G in regional areas.<sup>19</sup>

<sup>16</sup> Being [Confidential to Telstra] of Telstra’s \$44.37 billion market capitalisation and SingTel’s AUD\$45.44 billion market capitalisation as at 14 October 2022 [Confidential to Telstra]

<sup>17</sup> [Confidential to TPG]

<sup>18</sup> Optus, [Record of oral submission to the ACCC dated 27 September 2022](#), at page 3.

<sup>19</sup> See Optus Media Release, 8 December 2021 at <https://www.optus.com.au/about/media-centre/media-releases/2021/12/optus-acquisition-of-new-900-spectrum>: “The 900 MHz spectrum... carries mobile signals further than higher bands, so fewer base stations are needed to service a broad area. It is critical to providing wide signal coverage for 4G and 5G technologies. This characteristic is particularly important in regional areas as it lowers the infrastructure investment required to service customers over a wide area... **This spectrum means we can offer a significant uplift of 5G coverage nation-wide, to even more Australians**”.

- Optus has demonstrated a capacity to make targeted investments that have proven to be successful to date in disrupting consumer perceptions of Telstra's superior coverage in regional areas.
- Any counterfactual where Optus enters into a roaming and/or network sharing arrangement with TPG ([Confidential to TPG] ██████████), would likely impact Optus' investment incentives in a similar manner in which it claims the proposed transaction would. This is because if this arrangement enhanced TPG as a competitor against Optus, any wholesale revenues derived by Optus from TPG would be diminished (or lost) by a potential gain in market share by TPG from improved services. By Optus' logic, the corresponding loss of market share and revenue would reduce its capacity to invest. Therefore, in any counterfactual in which Optus and TPG sought to reach an agreement on roaming or network sharing, Optus would be incentivised to seek to: impose higher prices on TPG above the value of the arrangement to TPG; limiting the extent of coverage and the technology generation available to TPG so it is competitively inferior; and to limit TPG's investment in regional areas (given that such investment would reduce roaming traffic onto Optus' network). [Confidential to TPG] ██████████
- The retail and wholesale mobile markets are highly dynamic – future technologies mean that all MNOs must continue to invest to keep up with rising demand for data and ensure the best technologies are used to meet that demand. As set out at paragraphs to , telecommunications technology and markets are highly dynamic, and increasingly intense in terms of technological innovation. Emerging technologies such as LEOSats will provide new opportunities for competition between all MNOs (and new entrants). There is no potential for the proposed transaction to result in longer term detriment for infrastructure-based competition. For example, all three MNOs will likely face competition from some satellite providers (during the term of the Agreements) and could partner with other satellite providers to eliminate the terrestrial coverage discrepancy. As the Minister for Communications, the Hon Michelle Rowland MP recently stated:<sup>20</sup>

“There is also significant innovation happening in the area of Low Earth Orbit (LEO) Satellites. These rapid developments are bringing choice and a step change in broadband capability to businesses and households in regional and rural Australia. LEO satellites are also now being used to support text messaging on mobile devices. This is why I've asked my Department to commence work on the establishment of a Low Earth Orbit working group to help inform Government about how this emerging capability might play a role in future telecommunications policy.”
- **There is no basis to find that the proposed transaction would reduce price-based competition from TPG** in the medium or long term either due to Telstra's wholesale revenue from TPG, or based on improvements in TPG's product quality:
  - TPG has incentives to compete on value following the proposed transaction, as its business case rests on it obtaining significantly more customers.
  - To the extent that TPG's cost base rises with the proposed transaction, its customer base and associated revenue will increase as a result of an increase in customers gained through its improved competitiveness and coverage (otherwise it makes no commercial sense for TPG do this deal). TPG's modelling indicates that the increase to the marginal cost per user as

<sup>20</sup> The Hon Michelle Rowland MP, 2022 Charles Todd Oration, 21 October 2022 at <https://minister.infrastructure.gov.au/rowland/speech/2022-charles-todd-oration>.



- Increased competition in the national MVNO market arising from the proposed transaction will mean that a range of price points continue to be available in the national retail mobile market. As Telstra has previously demonstrated, perceptions of network coverage do not play a particularly significant role in MVNO pricing<sup>27</sup> and there is therefore little to suggest that retail prices at the lower end of the market will be impacted at all, or at least materially, by the proposed transaction. To the contrary, increased retail competition at lower price points, through the increased availability of TPG's MVNO services to customers in regional and rural areas, may be expected to exert downward pressure on retail prices in these segments.

- **The proposed transaction does not materially change Telstra's investment incentives.** Telstra benefits incrementally with the capacity to improve service quality for customers through pooled access to spectrum and more efficient utilisation of assets.<sup>28</sup> Telstra will continue to have incentives post transaction, including in order to invest in its network to meet increasing customer demand for data as well as fulfil its commitment to regional Australia to improve services. Telstra will also have incentives to compete in order to maintain customers

[Confidential to Telstra] [REDACTED]

[REDACTED]

- **The proposed transaction is not a choice between a MOCN, on the one hand, and infrastructure-based competition on the other.** The SOPV fails to adequately take into account the manner in which MOCN technology is used by operators as a form of efficient network augmentation delivering network independence and differentiation. The MOCN is not, as the SOPV implies, distinct from infrastructure-based competition.<sup>30</sup> Rather, the proposed transaction would give effect to a structural improvement in the Australian retail mobile market by delivering immediate, facilities-based network differentiation and competition to ~98.8% of the Australian population by a third MNO. The SOPV accepts that this will, and cannot, occur without network sharing.

#### D. THE EVIDENCE OVERWHELMINGLY SUPPORTS AUTHORISATION

Having regard to the above, the impact of the proposed transaction is clearly asymmetric for market participants:

- **The benefits to consumers, businesses and regional communities are real, immediate and substantial.** Regional communities obtain the benefit of increased choice of MNOs with regional coverage, enhanced competition both at the infrastructure and retail level, and better service quality from Telstra and TPG.

<sup>27</sup> Application, at paras 232-234.

<sup>28</sup> The extent to which this occurs is uncertain (given it depends on the number of TPG customers that share this spectrum and the data consumption of those subscribers). Access to spectrum will assist, but not remove the need to continue investing in capacity expansion and densification. While Telstra obtains wholesale payments from the transaction, these are marginal compared to the loss of revenue from losing a retail customer (and hence market share) – therefore there are continued strong incentives to compete.

<sup>29</sup> [Confidential to Telstra] [REDACTED]

<sup>30</sup> See SOPV at para 5.15 which assumes that ownership of one's own active infrastructure gives a greater ability to innovate and differentiate service offerings; and para 5.19 equating network sharing agreements with a roaming agreement.

The benefits that flow from this are substantial, and significantly greater than any realistic counterfactual.

- The benefit to TPG and its customers are substantial. TPG and its customers stand to gain substantially and immediately from the deal – which enables TPG, for the first time, to offer a national footprint and with a service standard competitive with Telstra and Optus' mobile networks.
- Any benefits to Telstra are incremental with a capacity to improve service quality for customers through improved access to spectrum and efficient utilisation of assets.<sup>31</sup> [Confidential to Telstra] [REDACTED]
- Any adverse effect on Optus is unlikely, speculative, or marginal, at most. Consistent with this, [Confidential to TPG] [REDACTED]

In essence Optus is asking the ACCC to accept that enhanced competition (from TPG and to a lesser extent Telstra) is actually negative for competition because Optus is more challenged in its ability to derive revenues due to this competition from TPG. The Applicants reject this as a basis for any finding of a substantial lessening of competition or public detriment.

#### E. ANY REMAINING UNCERTAINTY IS REMOVED BY THE DRAFT S87B UNDERTAKINGS

It would be detrimental to competition and the public interest for the ACCC to forego the opportunity for the immediate benefits of the proposed transaction out of concern for speculative longer term concerns. Nonetheless, the Applicants acknowledge that the task of assessing long term, speculative but potentially significant structural effects can be difficult. The SOPV states:<sup>33</sup>

“The ACCC is also considering how much weight to give to short-term competitive effects which are more readily predictable, as against long-term effects which are more difficult to predict with specificity but have the potential to affect the relevant markets more substantially if they eventuate.”

To that end, without amendment or change to the terms of the relevant agreements or the application for authorisation:

- The Applicants have submitted a draft section 87B undertaking to the ACCC which would have the effect of requiring the Applicants to cease giving effect to the proposed transaction (save for certain transition out provisions) if the proposed transaction is not re-authorised within 8 years from the date that this merger authorisation takes effect (the **Joint Undertaking**). If the ACCC (or Competition Tribunal) did not re-authorise the proposed transaction at that time, the Applicants would be required to take steps to terminate and unwind the deal as soon as

<sup>31</sup> The extent to which this occurs is uncertain (given it depends on the number of TPG customers that share this spectrum and the data consumption of those subscribers). Access to spectrum will assist, but not remove the need to continue investing in capacity expansion and densification. While Telstra obtains wholesale payments from the transaction, these are marginal compared to the loss of revenue from losing a retail customer (and hence market share) – therefore there are continued strong incentives to compete.

<sup>32</sup> [Confidential to TPG] [REDACTED]

<sup>33</sup> SOPV, at para 5.32.

reasonably practicable and within no more than 3 years, in accordance with the contractual exit process.

- TPG has submitted a further draft section 87B undertaking to the effect that it will retain a selection of 300 of its mobile sites in the 17% Regional Coverage Zone (**Sites Undertaking**).<sup>34</sup> The sites that TPG will have retained by the time that the ACCC (or Tribunal) makes a decision under the Joint Undertaking is in addition to the up to 169 sites which would revert to TPG upon termination of the Agreement, and together means that TPG will retain around 60% of its 749 sites in the 17% Regional Coverage Zone.

The ACCC could obtain the benefit of the s87B undertaking by authorising the proposed transaction subject to a condition that the Applicants give and comply with a s87B undertakings in the form of the drafts provided.<sup>35</sup>

With the s 87B undertakings in force:

- The ACCC has assurance that the immediate structural competitive and consumer benefits of the proposed transaction are not lost for consumers, businesses and regional communities.
- At the same time, the ACCC holds a 'circuit breaker' ability to ensure that any of the longer-term (and speculative) concerns raised by Optus do not eventuate.

In considering this proposal, the parties note that there is no credible basis for finding that the kind of speculative investment or price impacts claimed by Optus might emerge in the short to medium term and become "entrenched" during this period.

The evidence demonstrates that:

- any investment retreat by Optus (which is highly unlikely to occur at all) or pricing effects would certainly not take place within this timeframe or become irreversible; and
- TPG's ability to compete in the longer term would not be impaired by the MOCN even if it was not re-authorised by the ACCC, and such concerns have been further addressed by the Sites Undertaking. To the contrary, TPG will be *better placed* as a competitor in 8-10 years, because of the opportunity that the MOCN provides for it to grow its customer base by attracting customers who value regional coverage. When it chooses to exit (or is required to exit if not reauthorised), it will have the benefit of both the retained sites, new technology and access to a competitive national market for towers and site sharing to establish new ones.

## Conclusion

The proposed transaction provides an opportunity for TPG to become a true competitor with extensive regional coverage for the first time. TPG will augment its current network infrastructure where ~81.4% of the population reside with the shared RAN infrastructure in the 17% Regional Coverage Zone. Unlike roaming or other service-based arrangements, the MOCN leaves TPG fully independent to innovate and compete with Telstra and Optus across all dimensions of product, speed, quality and customer service.

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<sup>34</sup> These sites will be retained over a period of up to 8 years by TPG committing not to terminate the leases and licences by which it accesses the sites on which its RAN equipment is situated. [Confidential to TPG] of those sites have a remaining duration of at least 8 years which would correspond with the date by which the ACCC or Tribunal will have made a decision under the Joint Undertaking.

<sup>35</sup> CCA, s 88(4).

The resulting consumer benefits in terms of enhanced competition, particularly in regional areas, are obvious and would be immediate.

There is also no credible counterfactual that delivers this or any materially similar benefit.

To the extent that the SOPV identifies any price or investment concerns that are sought to be weighed against this benefit – they require acceptance of an argument that, over the long-term, the most competitive outcome for Australia involves entrenching a structural duopoly in regional areas in order to protect Optus from facing increased national competitive pressure from TPG. Essentially, Optus argues it can only continue to justify investment in its regional network if it does not face the threat of increased competition. This perverse – and irrational – argument cannot justify restricting TPG to less coverage and poorer network quality than Telstra and Optus.

Nonetheless, to the extent that any such concerns regarding the long-term effects of the proposed transaction on infrastructure investment or pricing effects are being weighed by the ACCC, these have been comprehensively addressed by the proposed section 87B undertakings offered by the parties.

### **Response to ACCC's questions and interested parties**

**Attachment A** sets out the Applicants' response to each of the ACCC's questions set out in the SOPV.

**Attachments B** and **C** set out the Applicants' response to the interested party submissions.

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# 1 Proposed transaction delivers immediate and significant benefits to consumers, businesses and regional communities

- 1 The Applicants welcome and support the ACCC's preliminary views that the proposed transaction delivers real and immediate benefits to customers. These benefits include increased consumer choice, service quality improvements, cost efficiencies and environmental benefits.
- 2 This section addresses the ACCC's questions in the SOPV regarding the nature, materiality and duration of these public benefits.

## 1.1 Increased choice of MNOs for customers who require coverage in regional Australia

- 3 The ACCC correctly observes that there will be immediate improvements in TPG's service offering.<sup>36</sup> There will be an immediate and significant expansion of TPG's network coverage, leading to increased choice of MNOs for customers who require coverage in regional Australia.
- 4 The evidence that has been submitted to the ACCC demonstrates the materiality of benefits that will flow from increased consumer choice. TPG modelling indicates that there will be significant customer switching as consumers who require regional coverage face greater choice.<sup>37</sup> This demonstrates the value that customers are expected to place on increased choice.
- 5 This is reinforced by numerous submissions from interested parties. ACCAN's submission notes that increased choice would be a very welcome development for those living in regional areas, and for those travelling from metropolitan areas to the regions.<sup>38</sup> Connected Farm submits that the MOCN arrangement will not only introduce competition to the population of regional Australia, but also allow users from more urban areas who travel to regional areas to choose an alternative – *"increasing domestic tourism means that more consumers are faced with a dominant network when travelling in the regions so these users will also benefit from a MOCN arrangement."*<sup>39</sup> This sentiment is echoed in the submissions of numerous regional community organisations such as the Gippsland Regional Executive Forum, the Committee for Gippsland, Bendigo Business Council, and various regional councils. Further submissions have reinforced the value of additional choice for regional communities, as Mr Mark Renegar and Mr Matthew McCauley state:

*"I moved my phone service to Vodafone (TPG) in an attempt to save money and found the coverage in remote areas to be inadequate for my needs with far too many black spots. I was more often without coverage than with...the proposed network sharing agreement will in my view dramatically increase competition in regional Australia and for the first time ever give Australians in regional areas the option of another carrier."<sup>40</sup>*

*"I live 2km from the centre of Yeppoon but the mobile download speeds are typically less than 1mbps and upload speeds barely register on Speedtest. Even when sitting in the town centre they are woefully slow. **My only other choice is to change to Optus who have some serious security issues... Regional Australia deserves to have better choice with good quality services.** Having common infrastructure to cover the vast areas we*

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<sup>36</sup> SOPV, at para 6.23.

<sup>37</sup> Application, at paras 286 and 287.

<sup>38</sup> [Submission by ACCAN](#), at page 3.

<sup>39</sup> [Submission by Connected Farms](#), at page 1.

<sup>40</sup> [Submission by Mark Renegar](#).



*operate may prevent access to ultracheap services, but **these are of little use if they do not provide the quality required to perform even basic tasks.** I fully support the spectrum sharing proposal between TPG and Telstra and believe it will give choice of providers with high quality services at a reasonable cost<sup>41</sup> (emphasis added)*

- 6 The ACCC has asked to what extent this benefit will endure over the proposed term of the arrangements.<sup>42</sup> The Applicants consider that this consumer choice benefit will be both immediate and enduring and this has been the consistent experience of MOCNs in Canada – discussed below.<sup>43</sup> The expansion of TPG’s network coverage will endure for so long as TPG has access to the MOCN.

## 1.2 Globally, MOCNs are a well-understood and are a proven form of network augmentation that deliver improved competition and more efficient investment

- 7 There has been significant international experience with MOCNs, their operation in practice, and their effect on competition and investment in other markets. Despite this, a preliminary view is expressed in the SOPV that overseas experience is of “limited utility” for two reasons:
- (a) Australia has a “*relatively unique geographic environment*” comprising low population density outside metropolitan areas, but with a high degree of urbanisation.
  - (b) The proposed transaction is said to be not “*what is ordinarily considered a MOCN agreement*” in that it departs from that the SOPV describes as “traditional” elements of a MOCN, notably the proposed transaction:
    - (i) is not a joint venture;
    - (ii) does not utilise a shared investment model; and
    - (iii) involves the payment of fees, including on a usage basis.
- 8 These preliminary findings are neither accurate nor a valid basis to not having proper and specific regard to the overseas experience as evidence of the practical commercial operation of MOCNs.
- 9 A MOCN is simply a sharing of the ‘last mile’ of technology through relatively unsophisticated ‘antennas’ – it inherently provides each MOCN party with a high degree of autonomy and independence in product differentiation, product innovation and customer management through their service core. The common experience that can be taken from the overseas MOCNs is that, regardless of the differences in the ‘commercial wrapping’ around the MOCN, the MOCN parties can and do treat the MOCN as if it is their own network. In particular, the Canadian experience – where MOCNs have been a common feature of network deployment across different operators for over a decade – is valuable evidence in this regard.
- 10 **First**, as to geography, Canada is a close analogue – sharing precisely the low population density, but the high level of urbanisation referred to by the ACCC. The economic challenge of deployment in regional Canada is one of the key reasons that MOCNs have been used so extensively – to address precisely the same challenge facing TPG in the Australian context.

<sup>41</sup> [Submission by Matthew McCauley](#).

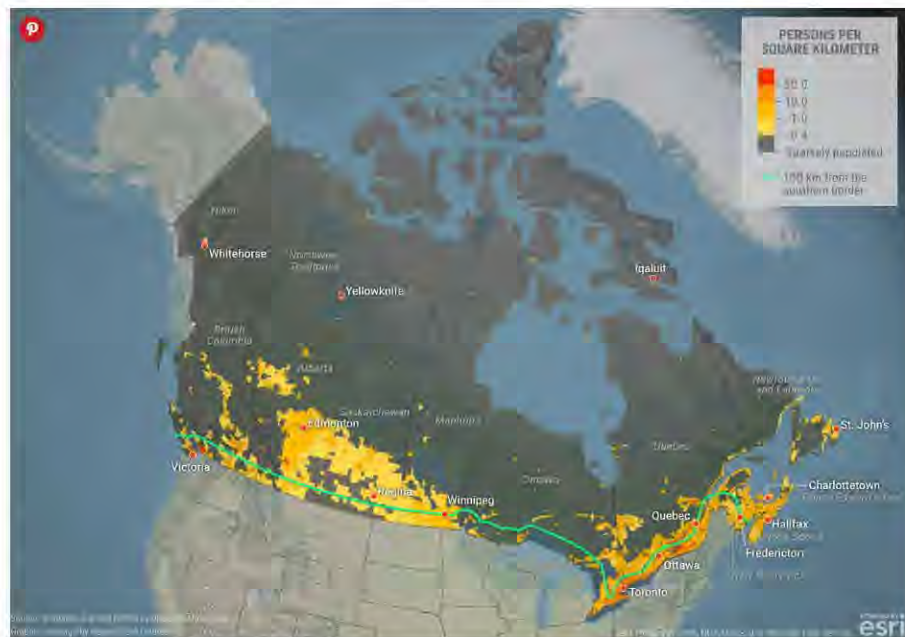
<sup>42</sup> SOPV, question 14(g).

<sup>43</sup> Michael Strople, Supporting Statement, Annexure A, at paras 36 to 37.

11 Mr Strople, former VP Networks and CTO of MTS (the incumbent wireless operator in Manitoba), explains the relevance of Canadian experience:<sup>44</sup>

“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, which compares with Australia’s total population of approximately 26 million.
- (b) Canada is roughly the same size as Australia, if in fact slightly larger – Australia is approximately 8 million km<sup>2</sup>, while Canada is approximately 10 million km<sup>2</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>2</sup> and Canada has a density of approximately 4 persons/km<sup>2</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/))

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...

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,

<sup>44</sup> Michael Strople, Supporting Statement, Annexure A, at paras 11 to 13.

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."

12 **Second**, as to the commercial terms of the proposed transaction, both Mr Strople and Mr Rodin give evidence that there is no standard or "traditional" form of commercial terms for a MOCN agreement. The commercial framework for MOCNs vary extensively. Mr Rodin gives evidence of his direct experience negotiating and operating three different MOCNs (all of which are still in place) between Bell and Telus (in respect of 50% of Canada), SaskTel (for regional areas in the province of Saskatchewan) and Rogers/MTS (for regional areas in the province of Manitoba). In relation to the 'fundamental' commercial features referred to in the SOPV and contrary to the preliminary view expressed:

- (a) None of the three MOCNs were operated as a joint venture.
- (b) Investment principles varied between each of them – and in the case of the MOCN with SaskTel, investment was undertaken solely by SaskTel.
- (c) Various fee structures applied, including usage-based charges.

13 A comparison of the three MOCNs and their different commercial terms is set out in Annexure BR-2 to Mr Rodin's statement. Mr Rodin concludes:<sup>45</sup>

"In my experience with each of Bell's MOCN arrangements, the features of each MOCN that proved important were not the commercial structures, but the way in which in each case Bell and its MOCN partners shared certain central technical or network characteristics. Specifically, MOCNs enabled Bell to obtain the coverage and capital cost benefits of using another operator's RAN (and potentially backhaul or spectrum), whilst maintaining independent control of our own services and products. Essentially, each MOCN offered Bell (and our partners) an ability to extend our networks, without being required to directly fund duplicate sites and infrastructure"

14 Mr Rodin continues by identifying the key and common elements to every MOCN as being:<sup>46</sup>

- RAN sites (and backhaul) are shared, but core networks remain separate and independent;
- each participant to the MOCN retains control over the technical features of the products and services it supplies, including in the MOCN area; and
- MOCNs deliver lower capital costs – allowing improved coverage for lower cost and facilitating earlier and faster upgrades in technology.

15 Bell Canada has a MOCN with Telus that is substantially more extensive than is being proposed between Telstra and TPG. The Bell/Telus MOCN effectively covers 100% of the Canadian population – with each party contributing RAN infrastructure covering 50% population. Mr Rodin says in this regard:<sup>47</sup>

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<sup>45</sup> Bruce Rodin, Supporting Statement, Annexure B, at para 30.

<sup>46</sup> Bruce Rodin, Supporting Statement, Annexure B, at para 31.

<sup>47</sup> Bruce Rodin, Supporting Statement, Annexure B, at para 31(b).

"... while both Telus and Bell both have the same network coverage under their MOCN, they continue to compete strongly around product innovation and service quality (i.e. minimising jitter, latency etc) – because these are defined, developed and implemented within their core networks. These service features are able to be controlled under a MOCN because of the independent core network that each MNO retains, which facilitates product and service differentiation. While I was VP Networks, an important part of my role was leading this kind of product innovation and development and our ability to do this was not meaningfully limited or constrained by the reliance on use of the Telus RAN under our MOCN in respect of 50% of the Canadian population."

16 Indeed, Bell's work on speed and product differentiation (which can be implemented nationally using the MOCN) allows Bell to make a "Fastest Network" claim against all other Canadian operators, including its various MOCN partners.<sup>48</sup>

17 Mr Strople provides similar evidence, saying:<sup>49</sup>

"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.

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.

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 MNO 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.

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

<sup>48</sup> Bruce Rodin, Supporting Statement, Annexure B, at para 33.

<sup>49</sup> Michael Strople, Supporting Statement, Annexure A, at para 33 to 37.

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.

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.”

- 18 Mr Strople observes 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.<sup>50</sup>
- 19 Evidence from Canada is highly relevant to the current circumstances. The statements of Mr Rodin and Mr Strople, included with this submission, demonstrate the long term competitive benefits that have been derived in that market from the various MOCNs that are in place, many of which have operated now for over a decade.

### 1.3 TPG’s ability to offer an improved product to customers

- 20 The ACCC has invited further information on whether the proposed transaction would impact on TPG’s ability to differentiate its service offering.<sup>51</sup>
- 21 Alongside the immediate improvements in its network coverage, TPG’s increased scope to innovate and differentiate its services under the MOCN arrangement is one of the key benefits of the proposed transaction. In effect, the MOCN arrangement allows TPG to operate as a quasi-facilities based competitor in the 17% Regional Coverage Zone, without the need for it to roll out its own access network in this area. Much of the benefit that TPG would derive from having its own access network – including the ability to innovate and differentiate its services through use of its own core network – is delivered under the MOCN arrangement.
- 22 The ACCC has defined quasi-facilities based competition as being “*where firms provide a range of services using a combination of their own infrastructure and access to wholesale/network services provided through another party’s network*”<sup>52</sup>. The ACCC consistently pairs quasi-facilities based competition with full facilities-based competition in contrast with, and as a preference over, services-based competition.
- 23 This is explained in the Application with reference to specific aspects of the proposed transaction and technical elements of the MOCN design.<sup>53</sup>
- 24 Further evidence is provided with this submission, including the statement of Mr Rodin, providing evidence of his first-hand experience with MOCN arrangements. Mr Rodin explains that,<sup>54</sup>

“I understand the SOPV to be implying that the level of differentiation or competition that can be delivered through a MOCN is materially less than could be achieved through an operator’s use of their own network infrastructure. In that sense, the ACCC appears to find that TPG will be substantially less able to compete on various attributes if it uses Telstra’s RAN through a MOCN, rather than having its own sites and infrastructure. In this regard, I

<sup>50</sup> Michael Strople, Supporting Statement, Annexure A, at para 50.

<sup>51</sup> SOPV, question 14(e).

<sup>52</sup> ACCC, [A strategic review of the regulation of fixed network services, ACCC Position Paper](#) (June 2006), at para 2.1.

<sup>53</sup> In particular, Application, at paras 217 – 222.

<sup>54</sup> Bruce Rodin, Supporting Statement, Annexure B, at paras 35 and 36.

understand from Part 3 of the SOPV, that the ACCC sees the following elements of competition as “driven by ongoing investments in infrastructure” (paragraph 3.7 and again at paragraphs 5.41 and 5.42)

- (a) geographic coverage;
- (b) network quality;
- (c) price;
- (d) plan inclusions (and bundles); and
- (e) speeds attainable by customers.

In my experience, a MOCN allows a wireless operator to continue to compete independently on all of the above, except coverage. “Based on my involvement in the three MOCN arrangements above, the capacity of a MOCN to enable parties to develop and innovate and to differentiate their network and services (including competing around quality parameters such as speed, latency, jitter etc) is a key reason that they have been popular in Canada – and have been adopted instead of roaming. To the extent that it avoids capex being spent on duplicative infrastructure, it allows investment in increased densification, services and other elements of competition. The experience of Bell during my time as VP Networks, and after over a decade of MOCN relationships, has been continued and strong competition, rivalry and innovation by wireless operators, including those that are MOCN partners.”

- 25 Mr Strople makes a similar observation in relation to the MOCN between MTS and Rogers:<sup>55</sup>

“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.”

- 26 Mr Strople explains that his Canadian experience is that roaming agreements were typically negotiated by the marketing or commercial teams within wireless operators because they were seen as largely limited to allowing larger coverage-based marketing claims to be made. However, when negotiating the MOCN agreement with Rogers, only the Networks group was involved – because the deal was viewed as a network investment and augmentation, not merely a ‘coverage claims’ play (at [39]):

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

- 27 The evidence of Mr Penn similarly indicates the likely benefit of TPG’s increased ability to differentiate its services, in terms of its competitiveness. [Confidential to Telstra] [REDACTED]

<sup>55</sup> Michael Strople, Supporting Statement, Annexure A, at para 43.

<sup>56</sup> [Confidential to Telstra] [REDACTED]

- 28 This benefit is expected to endure over the proposed term of the arrangements.
- 29 These benefits could not be realised in a counterfactual in which TPG continues to rely on roaming. The ability of TPG to deliver service improvements and innovation through use of its core network is a key feature of the MOCN arrangement which factually distinguishes it from roaming. It is for this reason that the MOCN arrangement should be seen as facilitating quasi-facilities-based competition – a form of competition that is superior to that facilitated by roaming.
- 30 Mr Giovanni Chiarelli (Chief Technology Officer, TPG) explains the benefits of a MOCN compared with roaming or when operating as an MVNO:<sup>57</sup>
- (a) A significantly improved customer experience because it eliminates the frequent call failures that occur in roaming as a customer moves between their retail provider's network onto the roaming network.
  - (b) The ability for a MOCN to support 'standalone' 5G services (which are not supported with roaming) – these services provide the opportunity to support more advanced 5G use cases than NSA 5G (where a 5G RAN is operating with a 4G core network).
  - (c) The ability to provide products to customers which rely on real time controls of data usage, and will be able to provide real time promotions to customers based on their usage which is simply not possible under a roaming arrangement because TPG cannot monitor and control the usage in that arrangement.
- 31 Mr Chiarelli also explains how, under a MOCN arrangement, TPG can control its own product and plan development and offer new plans and products to the market in a manner which will better allow for it to compete through product differentiation than is the case with roaming:<sup>58</sup>
- (a) In a MOCN:
    - (i) product plans (e.g. plans with different data inclusions) and new products (e.g. voice over 5G) are built and controlled in the mobile core network of a party; and
    - (ii) the parties' mobile core networks in a MOCN arrangement continue to be controlled by each party independently.
  - (b) Roaming is instead delivered by also using the mobile core network of the host in addition to a MNO's own mobile core network. As roaming is delivered using the core network of the roaming provider, the functional capability of a TPG service in the roaming area is limited by the limitations in the roaming provider's core network and the service description set by the roaming provider (including quality levels and prioritisation).
  - (c) The control each party has over its own mobile core network means that in the MOCN arrangement with Telstra, TPG has greater freedom to develop new products and bring these to market quickly – as the mobile core network of Telstra does not need to be configured (nor does TPG need Telstra's consent to develop a new product).

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<sup>57</sup> Giovanni Chiarelli, Witness Statement, Annexure H.

<sup>58</sup> Giovanni Chiarelli, Witness Statement, Annexure H.

- (d) The building of new products is easier in a MOCN arrangement. For example, the development of low latency services can be achieved in a MOCN arrangement with Telstra through requesting a new MOCN connection (i.e. the network-to-network interfaces) from Telstra that is closer to the target customers. This does not require a major re-architecture of the MOCN provider's network (as would be the case in a roaming arrangement) because TPG's network is in full control of the location of the rest of the systems that provide the new low latency service.

32 Mr Rodin also explains that a key rationale for Bell in entering into a MOCN arrangement with SaskTel for access to SaskTel's network in Saskatchewan was to move Bell from reliance on roaming to a MOCN arrangement so that it could "own" the delivery of services through use of its own network.<sup>59</sup>

33 The Applicants submit that the SOPV has not taken into account that a MOCN can be a form of facilities-based competition,<sup>60</sup> which potentially leads into the following errors:

- (a) undervaluing the competitive benefits for infrastructure-based competition of the proposed transaction in the 17% Regional Coverage Zone;
- (b) failure to adequately address what an Optus-TPG commercial deal might look like (should there be any real chance of it being successfully negotiated [Confidential to TPG] [REDACTED]) as compared to the proposed transaction potentially conflating network sharing and roaming in a vague description of what Optus might offer; and
- (c) a potential risk that the ACCC may in effect trade off an incremental extension of a TPG build in the 17% Regional Coverage Zone against potentially poorer competitive outcomes than the proposed transaction in most of the 17% Regional Coverage Zone which will only be served by two networks.

#### 1.4 Improvements to TPG's network coverage making it a more viable and attractive supplier of wholesale mobile services to MVNOs

34 The ACCC observes that TPG's improved network coverage will make it a more viable and attractive supplier of wholesale mobile services to MVNOs.<sup>61</sup>

35 This is consistent with the evidence that has been submitted by TPG:

- (a) [Confidential to TPG] [REDACTED]  
[REDACTED] The expert report of Dr Padilla of Compass Lexecon notes that TPG's limited coverage has impacted TPG's ability to compete to supply MVNOs.<sup>62</sup>

- (b) [Confidential to TPG] [REDACTED]  
[REDACTED]

<sup>59</sup> Bruce Rodin, Supporting Statement, Annexure B, at para 23.

<sup>60</sup> SOPV, at para 5.41.

<sup>61</sup> SOPV, at para 5.66.

<sup>62</sup> Compass Lexecon report, at paras 3.30 and 3.31.



[REDACTED]

36 These facts undermine submissions made by Commpete that the proposed transaction may limit MVNOs' choice of wholesaler and that submission should not be given any weight. It is clear that the proposed transaction increases retailers' choice of MNO providers of regional mobile coverage. **[Confidential to TPG]** [REDACTED]

[REDACTED]

37 The expansion of TPG's coverage will also allow MVNOs using the TPG network to expand their competitive footprint. This has been identified by several interested parties as a further benefit of the proposed transaction and **[Confidential to TPG]** [REDACTED]

[REDACTED]

38 Similar to the coverage-related benefits discussed above, this will be an enduring benefit of the proposed transaction.

#### 1.5 Improving Telstra's quality of service

39 The ACCC notes that Telstra will be able to immediately improve the quality of its services through the pooling of spectrum (once incorporated).<sup>64</sup>

40 This is indeed an important benefit of the proposed transaction, as demonstrated by the evidence before the ACCC, including:

- (a) Mr Penn's statement, which emphasises the importance of spectrum to improve services and the efficient use of spectrum in avoiding capital costs (such as physical infrastructure), particularly in regional areas.<sup>65</sup>
- (b) Mr Sweers discusses the role of additional spectrum to help reduce congestion in Telstra's network, resulting in service improvements.<sup>66</sup>
- (c) Mr Meissner similarly states that under the proposed transaction, Telstra could expect to address congestion issues, and improve the depth and quality of its services across the coverage area.<sup>67</sup>

41 The evidence also demonstrates the extent of congestion issues currently impacting Telstra's network in regional areas.<sup>68</sup> Telstra customers in regional and remote areas are around **[Confidential to Telstra]** [REDACTED] more likely to suffer from congestion than customers in the major metropolitan and larger regional cities. Moreover the source of this congestion is mostly in the RAN – meaning that it can only be addressed through additional spectrum or network densification.

42 In other words, absent the proposed transaction (and unless additional spectrum otherwise becomes available), *the only other way* that Telstra can address congestion

<sup>63</sup> [Submission by Kogan Mobile](#); [Submission by National Australia Bank](#).

<sup>64</sup> SOPV, at para 6.23.

<sup>65</sup> Andrew Penn, Witness Statement, at paras 43, 47 and 57-59.

<sup>66</sup> Bart Sweers, Witness Statement, at paras 23 and 24.

<sup>67</sup> Chris Meissner, Witness Statement, at paras 66 and 67.

<sup>68</sup> Application, at paras 261 and 262.

issues and improve service quality is further network densification (which is challenging to justify economically in low population density areas and has additional constraints due to the requirement for third party support from land holders and development approval).<sup>69</sup> The Applicants consider that pooling of TPG's currently under-utilised spectrum is a significantly more efficient and economically viable solution to these congestion issues than network densification – from the perspective of regional communities and the public interest more generally.

- 43 The ACCC has sought further information on the steps and timeframe for Telstra to address congestion issues in the 17% Regional Coverage Zone, if the proposed transaction proceeds. Specifically, the ACCC has asked:<sup>70</sup>
- (a) what steps Telstra would need to take to relieve congestion if it obtains access to the pooled spectrum; and
  - (b) the timeline under which Telstra customers would expect to see congestion relief.
- 44 Telstra anticipates that these benefits will be delivered almost immediately once fully implemented. Apart from deploying some new radios, relatively speaking there is little additional investment or work required for the pooled spectrum to deliver additional network capacity and reduce congestion, and this can be done relatively quickly, as compared to densification of the network.

## 1.6 Cost efficiencies through shared use of infrastructure

- 45 The ACCC's preliminary view is that there are likely to be some cost efficiencies realised through shared use of infrastructure and more efficient use of spectrum.<sup>71</sup>
- 46 The expert evidence before the ACCC demonstrates that these economic efficiency gains are likely to be significant. In particular the expert report of Ms Ihaia demonstrates that:
- (a) The proposed transaction will allow Telstra to realise capital efficiencies through increased efficient utilisation of existing sites.<sup>72</sup> Ms Ihaia estimates productive efficiencies of [Confidential Telstra] over a 9-year period, based on reducing the number of new Telstra sites (including the capital costs associated with building sites, installing RAN and backhaul equipment), operating and maintenance costs, and asset renewal costs.<sup>73</sup>
  - (b) Productive efficiencies for TPG include avoiding costs associated with upgrading the ~749 existing sites. Ms Ihaia estimates the NPV of these efficiencies at between [Confidential TPG] over a 10-year period.<sup>74</sup>
- 47 This is consistent with evidence from overseas MOCN arrangements.<sup>75</sup> These arrangements typically deliver material cost savings through more efficient utilisation of RAN infrastructure.<sup>76</sup>

<sup>69</sup> See Application at page 9, fn 8: '*Densification is not an economic solution in areas of low population density as it has a significantly greater cost and time to build than use of additional spectrum*'. For further details on costs, see Application, at para 21.

<sup>70</sup> SOPV, questions 14(c)- (d).

<sup>71</sup> SOPV, at paras 6.39-6.43.

<sup>72</sup> Application, at paras 20-22.

<sup>73</sup> Ihaia report, at paras 9(b)-9(c), 120(b)-120(c) and 148-151.

<sup>74</sup> Ihaia report, at paras 9(f), 120(f), 158-161.

<sup>75</sup> Bruce Rodin, Supporting Statement, Annexure B, at paras 30 and 31(c).

<sup>76</sup> Application, at paras 316-320.

- 48 For example, Mr Strople notes that the MOCN between MTS and Rogers reduced the capital cost for MTS of undertaking a critical High Speed Packet Access (**HSPA**) network upgrade. Additionally, the MOCN 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.<sup>77</sup>
- 49 The SOPV seeks information on “where any cost savings are likely to flow”.<sup>78</sup> Given the highly competitive nature of the national retail mobile services market, the benefit of any cost efficiencies will ultimately flow through to consumers. Where efficiency gains can be realised through more efficient utilisation of infrastructure, this will free up capital to invest in other service improvements, which will ultimately benefit consumers.
- 50 Consistent with the ACCC’s previous analysis, the supply of retail mobile services is highly competitive.<sup>79</sup> In a market that is highly competitive, it can be reasonably assumed that increased cost efficiencies and overall increased competition will likely lead to substantial benefit to consumers.<sup>80</sup>
- 51 Ms Ihaia notes that the above benefits in paragraph 46(a) associated with reduced Telstra network densification would only arise under the spectrum pooling arrangement, and would not be realised in any of the counterfactual scenarios. The TPG efficiencies would only arise under a MOCN arrangement, and would not be realised if TPG were to continue with roaming arrangements in the 17% Regional Coverage Zone.
- 52 As Ms Ihaia demonstrates, by far the largest efficiency gains will be realised by TPG – the expected TPG cost efficiencies are around 3 – 4 times those expected to be realised by Telstra. This implies that TPG will have the greatest opportunity to invest in service quality improvements to enhance its competitive position.
- 53 These efficiency gains will dwarf any costs associated with implementing the proposed MOCN arrangement. Telstra estimates its implementation costs to be in the order of **[Confidential to Telstra]**

## 1.7 Environmental benefits

- 54 The ACCC acknowledges that environmental benefits may be realised through the proposed transaction, but seeks further information regarding the likely magnitude of these benefits.<sup>82</sup> It is acknowledged that by reducing site duplication, RAN sharing will reduce the strain on electricity network infrastructure and reduce carbon emissions, as well as deliver visual amenity benefits (visual pollution is cited as a source of community concern). However the ACCC states that “*it is not clear how significant [these benefits] will be*”.
- 55 Telstra has provided evidence specifically in relation to the benefits of reduced energy use and carbon emissions. As noted in the SOPV, Ms Ihaia has estimated the magnitude of this benefit, in terms of reduced carbon emissions. This includes reducing energy use for TPG sites that will be decommissioned and new sites that TPG would otherwise need to build in the coverage zone absent the proposed transaction.<sup>83</sup>

<sup>77</sup> Michael Strople, Supporting Statement, Annexure A, at paras 36 and 37.

<sup>78</sup> SOPV, question 15(a).

<sup>79</sup> ACCC, [Communications market report 2020-21](#) (December 2021), at pages 34 and 35.

<sup>80</sup> Application by Tabcorp Holdings Limited [2017] ACompT 1, [283].

<sup>81</sup> **[Confidential to Telstra]**

<sup>82</sup> SOPV, at para 6.51.

<sup>83</sup> Ihaia report, at paras 9(g), 120(g), 162 and 163.

- 56 The benefits of improved visual amenity (i.e. reduced need for network densification) are more difficult to quantify. However the importance of this to regional communities should not be discounted simply because a monetary value cannot be attributed to it. Telstra's experience is that this is an issue of great importance to regional communities. The proposed transaction will deliver a real and tangible benefit to these communities by reducing the need for inefficient duplication of RAN infrastructure.

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## 2 Counterfactual

### 2.1 In any counterfactual, Optus would become a monopoly supplier to TPG of mobile network access services in regional Australia

- 57 The counterfactual requires an assessment on a forward-looking basis as to the likely future without the proposed transaction (i.e., if the proposed transaction were not authorised).<sup>84</sup>
- 58 The ACCC's preliminary view is that there is a 'real commercial likelihood' that TPG and Optus will enter into either a network sharing or roaming arrangement with each other as they would have commercial incentives to do so.<sup>85</sup> The ACCC is also considering the likely nature of an arrangement between TPG and Optus.
- 59 **[Public text]** [However, there is no guarantee that TPG and Optus could successfully negotiate a roaming or network sharing arrangement for regional areas]. **[Confidential to TPG]**  
[REDACTED]
- To the extent that any wholesale arrangement could be successfully negotiated, this would inevitably be a roaming arrangement for at least three to five years given the lack of synergies between the parties' spectrum and RAN equipment as was explained in TPG's response to the ACCC's information request of 14 September 2022.
- 60 Further, to the extent that any wholesale arrangement could be successfully negotiated by Optus and TPG, the ACCC must also consider that in the counterfactual, Telstra would no longer be capable of participating in network access competition in the 17% Regional Coverage Zone through MOCN Services. If Optus' contention were to be accepted, Telstra would not be able to offer any network arrangement to TPG that covers the scope of regional Australia that the proposed transaction offers. The ACCC would in effect preserve the existing Optus monopoly for supply of such access to TPG and rule out the potential for quasi facilities-based competition from Telstra. This would substantially lessen competition at the network level as compared to the factual.
- ### 2.2 In any counterfactual agreement between TPG/Optus, Optus' stated incentives is to preserve its revenue and market share (in order to preserve its investment case)
- 61 If the proposed transaction was not authorised, and the ACCC were to seek to analyse a potential agreement between TPG and Optus, it must do so on the basis that the following prevailing facts:
- (a) As noted above, Optus would be aware that Telstra is no longer able to compete with Optus to supply TPG with network mobile infrastructure access, and Optus is the only other MNO with sufficient network infrastructure in the 17% Regional Coverage Zone to supply those services to TPG. In effect, Optus would be a

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<sup>84</sup> *Australian Gas Light Company v Australian Competition and Consumer Commission and Others* (2003) 137 FCR 317, at paras 9, 324, 352-353 and 417-418 (French J).

<sup>85</sup> SOPV, at para 5.19.

monopoly provider of such network access to TPG and there would be no competitive constraint on its offer to TPG.

- (b) In circumstances where Optus is a sole option and supplier of network access in the 17% Regional Coverage Zone, it is likely to exert significant countervailing power and have the capacity to exercise unilateral effects against TPG.
- (c) In terms of its incentives in any commercial arrangement:
  - (i) Optus' submission has clearly stated that it is concerned that the proposed transaction would result in Optus losing market share and revenue given it will lag both Telstra and TPG on 5G coverage and have an inferior quality of service.<sup>86</sup> Optus has also accepted its incentives are to [Confidential to Optus] [REDACTED] Optus' expert, HoustonKemp, has noted the value of Optus maintaining a differential to TPG in terms of coverage.<sup>87</sup> Accordingly, Optus does not have incentives to offer TPG an arrangement that would meaningfully undermine Optus' coverage advantage and quality of service as compared to TPG (in order to retain customers). To do so would similarly undermine its investment case.
  - (ii) Optus has incentives to derive as much commercial value and rent from TPG as possible in circumstances where it is aware TPG has no other alternative to Optus. This is because a full build scenario by TPG is unlikely, and Telstra is constrained in its ability to offer the proposed transaction or a variation of it. In deriving commercial value, Optus can expect to materially increase TPG's cost base, reduce the payments to TPG (including the payment for spectrum it does not need or cannot easily use), or take on any TPG sites.
  - (iii) As there are incentives to maximise commercial value for Optus, to the commercial cost of TPG, any counterfactual would likely involve either higher prices from TPG or poorer quality services for TPG. Optus is likely in any counterfactual to have incentives to seek to: (a) impose prices on TPG that were well above the value of the arrangement to TPG; and (b) ensure that TPG was in a far inferior competitive position by limiting the extent of coverage and the technology generation available to TPG, and limiting the ability of TPG to market its full coverage. It is also likely that, to increase its revenue under any such arrangement, Optus would seek to limit TPG's investment in regional areas (given that such investment would reduce roaming traffic onto Optus' network). [Confidential to TPG] [REDACTED]

62 Accordingly, the ACCC should not accept that benefits of TPG's improved competitive offering could be materially realised under the various counterfactual scenarios.<sup>88</sup> The counterfactual, under the theory of harm being analysed by the ACCC, by definition is one which seeks to preserve Optus' revenue opportunity.

## 2.3 TPG's counterfactual

See Annexure F.

<sup>86</sup> [Optus Submission](#), at para 7.60.

<sup>87</sup> [Houston Kemp Report prepared for Optus](#), at para 81.

<sup>88</sup> SOPV, at para 6.24.

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### 3 No potential for material detriment to infrastructure-based competition

#### 3.1 Overview

- 63 The SOPV has sought feedback on the impact of the proposed transaction on MNOs' mobile infrastructure incentives – and the consequent impact on competition. In particular:
- (a) the extent to which Optus' capacity to invest in regional Australia will be lessened by the proposed transaction;
  - (b) the extent to which Optus may lessen its level of infrastructure investment in regional Australia as a result; and
  - (c) whether this might, in turn, lead to a lessening of competition in relevant markets.<sup>89</sup>
- 64 The SOPV notes Optus' contention is that its capacity to invest will be negatively impacted by the proposed transaction due to increased competition from TPG following its better network coverage, potentially resulting in a loss of retail customers and wholesale customers.<sup>90</sup> This contention is fundamentally unsound to accept:
- (a) The protection of corporations from more competition (thereby preserving one competitor's economic capacity to compete) has never been a basis for the SLC standard.
  - (b) Optus can and is expected to improve its capacity to invest through its competitive response (on price, marketing, or additional investments) to the proposed transaction. Its revenue is currently and will continue to be primarily driven by winning customers in metropolitan areas, as opposed to the small proportion of the population covered by the proposed transaction. Furthermore, Optus' overall economic capacity to invest will be primarily determined by a range of factors independent of (and more significant than) the proposed transaction including its owners and their investment priorities.<sup>91</sup>
  - (c) Optus will continue to invest in mobile infrastructure in regional Australia to address demand, grow market share and leverage its existing network. To the extent the proposed transaction impacts its capacity to do so as compared to any counterfactual (which is highly unlikely), it would only be in certain parts of the 17% Regional Coverage Zone, which cannot be said to have any material consequences nationally – and where Optus' strategic targeted investments in regional Australia have proven to date to be an effective means of competing.
  - (d) TPG's capacity and incentives to invest will be enhanced under the proposed transaction as compared to any counterfactual. This is implicit in its entering into the proposed transaction, which it saw as competitively the best outcome for its business. The proposed transaction allows TPG to participate in facilities-based infrastructure competition in the 17% Regional Coverage Zone to a materially

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<sup>89</sup> SOPV, at para 5.60.

<sup>90</sup> SOPV, at paras 5.52 and 5.53 – Optus has submitted that the loss of revenue is due to TPG having better network coverage, and loss of customers at the wholesale level.

<sup>91</sup> Optus is currently majority owned by Singtel, a Singaporean state-owned enterprise. It has significant diversified businesses internationally and capacity to invest.

enhanced degree compared with the *status quo* or to any counterfactual involving its own rollout of a limited number of sites or a roaming transaction.

- (e) Telstra will also continue to have strong incentives to continue investment in regional and rural Australia – including due to the external forces described above, but also to compete effectively in metropolitan areas through maintaining a superior network coverage in remote areas between 98.8%-99.5% population coverage (which is not part of the proposed transaction).

### 3.2 The proposed transaction cannot be soundly analysed on the basis that it may negatively impact Optus' revenue and hence capacity to invest

65 As set out in the SOPV, Optus' contention that its capacity to invest will be reduced following the proposed transaction is based on:

- (a) A less attractive network coverage compared to TPG, such that it is no longer able to attract retail customers and hence revenue to invest in regional coverage profitably;<sup>92</sup> and
- (b) Optus might lose wholesale customers to Telstra and TPG due to the improvement of Telstra and TPG competitively, resulting in a relative weakening of Optus' position as a wholesale competitor.<sup>93</sup>

66 In essence, Optus is seeking the ACCC to accept that enhanced competition (from TPG and to a more limited extent Telstra) is actually negative for competition because Optus is more challenged in its ability to derive revenues due to this increased competition (particularly from TPG).

67 There is an inherent inconsistency in the idea that increased competition will undermine competition, and Optus' contention that it would not respond to increased competition by competing harder on the basis of price, quality and investment should not be accepted.

68 **First**, Optus' contention would be a perverse outcome for competition which is concerned primarily with the process and broader rivalrous conduct, not the protection of individual competitors.<sup>94</sup> One would expect that the process of competition would ensure that any potential for revenue loss by a competitor would result in a corrective market response. The rational response by Optus to the competitive challenge of the Telstra-TPG MOCN would be to step-up its competitive response – i.e. accelerate its investment in the 17% Regional Coverage Zone. As Telstra's expert, Richard Feasey, says:<sup>95</sup>

"...it would not be my expectation that the Optus management, faced with a transaction which resulted in TPG becoming a closer competitor to Optus, would thereby conclude that the appropriate or profit maximising response would be to reduce the level of investment they planned to make in their network. I would think it more likely that if TPG were to 'leapfrog' Optus in terms of network coverage and quality in the Regional Coverage Zone as a result of the transaction then this would prompt Optus to redouble, rather than reduce, its own efforts to improve the quality of its network in the Regional Coverage Zone.....The dominant incentive for mobile operators will invariably be to seek to narrow differences between themselves and the leader."

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<sup>92</sup> SOPV, at para 5.52.

<sup>93</sup> SOPV, at para 5.53.

<sup>94</sup> *ACCC v Cement Australia* [2013] FCA 909, at para 3013: '*The effect, and its substantiality or otherwise, is measured as an effect upon the process of competition not individual competitors*'.

<sup>95</sup> Richard Feasey, Supplementary Report, at paras 90 and 91.

69 TPG's expert, Dr Padilla, says:<sup>96</sup>

"I consider that, by expanding TPG's coverage, the proposed transaction will increase the competitive pressure on Optus to make additional quality-enhancing investments. The proposed transaction would give TPG greater coverage than Optus' current coverage but Optus would retain advantages in other quality parameters as set out in Table 2. Conceptually, I would expect that there are some investments which are marginally unprofitable for Optus to make now which would become profitable in response to the proposed transaction because it would increase the risk of Optus losing customers to TPG if it does not invest more.

...

My expectation that the proposed transaction will lead Optus to invest more is consistent with the economics literature...in which neck-and-neck competition and increased product substitutability increase firms' incentives to invest to seek to attract customers from rivals."

70 In a Second Expert Report (**Annexure E**), Dr Padilla assesses the likely costs to Optus of investing in regional areas (with the proposed transaction) compared with the cost to Optus of not investing and of losing customers who value good coverage and quality. Dr Padilla's analysis shows that the likely costs to Optus of upgrading part or all of its network in the 17% Regional Coverage Zone to 5G is lower than the potential cost it faces if it does not invest in regional Australia such that Optus would be likely to continue to upgrade its network under the proposed transaction.<sup>97</sup>

71 The notion that network operators should be compensated for (or protected against) the risk of losing revenue opportunities due to increase competition has been rejected by the ACCC in other contexts.<sup>98</sup> As SingTel and Optus have admitted, the proposed transaction (amongst other factors independent of the proposed transaction such as security reforms) would only make "*Optus' business case very tricky*" and would "*require Optus to spend more money to develop technology to effectively compete*".<sup>99</sup> Optus is not saying it would become a 'failing' or 'flailing' firm, the contention is that it makes things 'more difficult' – and, even then, this needs to be considered in the context of a number of other factors independent of the proposed transaction that have led to this including the security reforms. That competition would result in Optus needing to develop more technology to effectively compete would seem to be a positive outcome for consumers.

72 **Second**, any impact on its economic capacity to invest in regional Australia arising from the proposed transaction will be primarily determined by Optus' competitive response. As the SOPV recognises, MNOs compete across a number of dimensions to *win customers* including on price, inclusions, data allowances, devices and bundles of call and text services.<sup>100</sup> This is related to the differentiation between the mobile services (in terms of network coverage, speed, technology and density of investments).

<sup>96</sup> Dr Jorge Padilla, Expert Report, at paras 5.49 and 5.52.

<sup>97</sup> Dr Jorge Padilla, Report on behalf of TPG issues raised in the ACCC's statement of preliminary views on proposed Telstra/TPG agreement (**Second Expert Report**).

<sup>98</sup> In the context of telecommunications access regulation, the ACCC has expressly rejected the notion that network operators should be compensated for (or protected against) the risk of losing revenue opportunities due to increased competition. Under the telecommunications access regime – which seeks to promote the long-term interests of end-users through the promotion of competition – a network operator may recover the "direct costs" of providing access to a competitor: CCA, s 152AB, s 152BCA(1)(d). However the ACCC takes the view that an allowance for "direct costs" does not include compensation for any loss of profit that occurs as a result of increased competition: ACCC, [Public inquiry into final access determinations for fixed line services: Final Decision](#), (October 2015), at page 236.

<sup>99</sup> ACCC, [Record of oral submission by Optus/Singtel to the ACCC](#), 27 September 2022, at page 3.

<sup>100</sup> SOPV, at para 3.1.



73 Any impact on Optus' current differentiation on network coverage with TPG arising from the proposed transaction would rationally lead a competitor to either compete more vigorously to invest in infrastructure to maintain that differentiation (as set out in the expert reports of Mr Feasey and Dr Padilla<sup>101</sup>), or compete on other dimensions such as price (therefore driving volumes and increased revenue). Doing so will enable it to win customers, earn additional revenue, and hence enhance its capacity to invest. Optus significantly overstates its loss of capacity to invest.

74 This is evidenced by [Confidential to TPG] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

75 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

<sup>101</sup> Richard Feasey, Supplementary Report, at paras 90 and 91; and Dr Jorge Padilla, Expert Report, at paras 5.49 and 5.52.

<sup>102</sup> [Confidential to TPG] [REDACTED]

<sup>103</sup> [Confidential to TPG] [REDACTED]

[REDACTED]

76

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

77 A reduction of [Confidential to TPG] [REDACTED] cannot reasonably be considered to materially affect Optus' investment incentives – particularly as that loss of share will occur over time rather than immediately.

78 Optus will have strong incentives to take steps to improve its competitive position including to reduce prices to compete with TPG and Telstra in the factual in order to preserve its revenues and hence capacity to invest. The proposed transaction will not result in a reduction in quality-adjusted prices in the national market for retail mobile services.

79 Optus has also not clearly explained why TPG's enhanced coverage under the proposed transaction, which Optus contends is akin to an MVNO's coverage,<sup>104</sup> would make any material difference in its capacity to invest when a number of MVNOs (including Telstra MVNOs) have had equivalent coverage to that which will be afforded to TPG under the proposed transaction. The presence of these MVNOs has not been observed to have materially impacted Optus' incentives to invest in the past.

80 **Third**, Optus' complaint arises in circumstances where Optus *already had an opportunity* to compete with Telstra to provide wholesale network services to TPG and was unsuccessful. [Confidential to TPG] [REDACTED]

[REDACTED] Optus cannot now seriously contend that the outcome of Telstra's successful offer (in the context of a competitive process) is anti-competitive and seek the ACCC to exercise its discretion in its favour. Doing so is equivalent to Optus seeking to prevent and hinder Telstra from participating in competition for supply of wholesale network access services to the third MNO TPG, resulting in a monopoly by Optus of such supply – and in turn favouring Optus over TPG. In fact, SingTel and Optus' true complaint is that it takes issue with TPG's ability to "sidestep" the costs of the Government's Security Guidance with the proposed transaction when it cannot do the same. Optus' complaint is inherently self-serving.<sup>105</sup>

<sup>104</sup> CEPA, Competition impacts of the proposed Telstra-TPG network and spectrum sharing agreements: Report for Optus, (CEPA Report), at para 77.

<sup>105</sup> ACCC, Record of oral submission by Optus/Singtel to the ACCC, 27 September 2022, at page 3.

81 **Fourth**, a contention regarding the negative impact on Optus' economic capacity to invest (from increased competition) – leading to reduced investments from Optus – must be seriously tested:

- (a) An assessment of Optus' economic capacity to invest must account for its entire business, meaning it will primarily be driven by a range of factors not related to, and irrespective to, the proposed transaction in any counterfactual, including their overall business. Singtel (a foreign, majority state-owned enterprise of the Singaporean Government)<sup>106</sup> has recently reported rising underlying net profit, from S\$554 million in FY21<sup>107</sup> to S\$1.6 billion in the third quarter of FY22 after factoring in gains from Optus' disposal of its 70% stake in ATN.<sup>108</sup> In its announcement of that transaction, Optus stated:<sup>109</sup>

"The transaction, involving Australia's largest independent tower company and comprising 2,312 mobile network towers and rooftop sites, values ATN at approximately AU\$2.3 billion, representing FY21 pro-forma EV/EBITDA transaction multiple of 38x, or 28x following completion of the build-to-suit (BTS) program, reflecting the high quality of the assets and tenancy arrangements.

Under the terms of the deal, Optus will have continued access to the sites through a long-term lease agreement with ATN. Optus will be the anchor tenant for 565 new BTS sites to be built over the next three years forming an integral part of Optus' 5G network.

Kelly Bayer Rosmarin, Optus CEO, notes the transaction unlocks significant value for the organisation:

The sale of these assets positions Optus well for the future as it provides capital to support core business growth while importantly allowing us to maintain the competitive advantage of our network's active elements which continue to top independent reports on speed and quality of our network."

- (b) Most recently, Optus has also reported adding 273,000 new mobile subscribers and delivering a strong uplift in mobile ARPU of 8.1% for FY22.<sup>110</sup> These factors suggest that Optus will have the continued capacity to invest.
- (c) MNOs' rollout plans are also under constant review and adjustment to take account of external factors, including unexpected competitive strategies from their competitors. Not every posited deceleration in rollout in response to a competitor's actions is because a competitor has engaged in conduct that is anti-competitive. Just as credibly, other future changes could just as easily result in Optus accelerating its 5G rollout plans. For example, there have been reports that Singtel may be considering selling or listing Optus. New owners or a fresh injection of capital may decide to drive the Optus 5G rollout harder. As Optus states, **[Confidential to Optus]** [REDACTED] Optus' decision to redirect investment

<sup>106</sup> See Singtel, [Share information](#).

<sup>107</sup> Singtel, [Management discussion and analysis of financial condition for the second half and financial year ended 31 March 2020](#), 31 March 2021, at page 1.

<sup>108</sup> Singtel, [Business update for the 3<sup>rd</sup> quarter and 9 months ended 31 Dec 2021](#), 15 February 2022, at page 2.

<sup>109</sup> See <https://www.optus.com.au/about/media-centre/media-releases/2021/10/optus-announces-sale-of-towers-to-australiansuper>

<sup>110</sup> Optus, [Optus delivers growth in a challenging year](#), 27 May 2022, at page 1.

<sup>111</sup> **[Confidential to Optus]** [REDACTED]

into more profitable ventures is not an acceptable basis for not authorising the proposed transaction.

- (d) Even if the proposed transaction does not proceed, in any counterfactual, it is equally likely that Optus may in fact consider it more commercially profitable to not invest in regional Australia given its stated challenges as compared to its other global investment opportunities and priorities. Optus has not proved or committed that any improvement in its underlying revenue in any counterfactual would necessarily lead to increased investment in regional Australia as compared to the factual.

### 3.3 Optus will have continued significant ability and incentives to invest in mobile infrastructure with or without the proposed transaction

***Optus has an existing extensive network in the 17% Regional Coverage Zone with a demonstrated capacity to compete through targeted investments***

82 The starting point in considering any impact on Optus investment incentives of the proposed transaction must be the extent of the current Optus infrastructure in the 17% Regional Coverage Zone and its competitiveness with the Telstra network. The evidence is that Optus has an extensive existing network in the 17% Regional Coverage Zone and has in recent years made targeted strategic investments without significantly expanding its 98.5% population coverage. In any counterfactual, its investment would continue to be strategically targeted in terms of expansion of coverage from this base. However, Optus' strategic targeted investment has a demonstrable capacity to be an effective means of competing with Telstra.

83 As the SOPV notes, Optus has approximately 2,600 sites and Telstra has approximately 3,700 sites in the 17% Regional Coverage Zone. Table 2 sets out Telstra's estimate of Optus build based on the ACMA public filings by Optus. Telstra believes that Optus is currently in the process of commissioning another 330 sites in Inner Regional Australia and Outer Regional Australia, most of which are likely to be within the 17% Regional Coverage Zone.

**Table 2: Optus planned greenfield sites based on the ACMA public filings<sup>112</sup>**

Region	Optus greenfield sites by state							Total	Population		
	NSW	VIC	WA	QLD	SA	TAS	ACT		% of sites in each zone	Count	% of population
Inner Regional Australia	74	46	29	9	5	8	2	173	14%	4,608,023	18%
Outer Regional Australia	29	9	21	18	7	30		114	10%	2,066,689	8%
Remote Australia	5	1	14	11	8	4		43	4%	200,789	1%
<b>Grand total</b>	<b>108</b>	<b>56</b>	<b>64</b>	<b>38</b>	<b>20</b>	<b>42</b>	<b>2</b>	<b>330</b>			

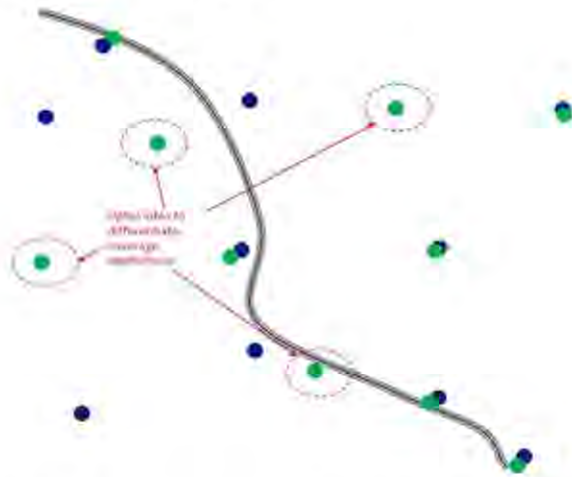
<sup>112</sup> Greenfield sites planned but not completed based on Radio Frequency National Site Archive (RFNSA) records as at the end of August 2021 and excluding records from 2019 and older.

84 It is also important to look beneath the headline comparison of aggregate number of Optus vs Telstra sites in the 17% Regional Coverage Zone to fully appreciate the competitiveness of the Optus deployment strategy, which focuses on challenging consumer perceptions of Telstra's coverage superiority with strategic builds. In the Domestic Roaming Final Report, the ACCC observed of the Optus network investment strategy in regional and rural Australia:<sup>113</sup>

"Optus submitted that its investments in regional areas are focused on improving the quality of its network... **This clearly shows Optus believes it is possible for it to gain customers from Telstra in regional areas by improving the quality of its network, without necessarily having to match Telstra's geographic coverage.**" (emphasis added)

85 In the 5 years since, Optus has vigorously pursued that deployment strategy. This has involved Optus building equivalent or better coverage than Telstra in regional towns and their immediate environs and along trafficked rural roads and, on top of that, building sites at locations without Telstra coverage or with weaker Telstra coverage. As illustrated in the simplified example in **Figure 2**, Optus will 'pair' an Optus site with the main Telstra sites but locate other sites where Telstra does not have a site:

**Figure 2: Optus site positioning**



86 Optus' evident strategy is that, without having to fully match Telstra coverage, it can 'disrupt' consumer perceptions of superior Telstra coverage, or at least establish in consumers' minds that Optus coverage is 'good enough' when consumers are weighing other factors such as price and customer service. By eroding consumer perceptions of superior Telstra coverage, Optus can gain customers who experience Optus coverage which they perceive to be equivalent or superior to Telstra coverage in regional and rural areas.

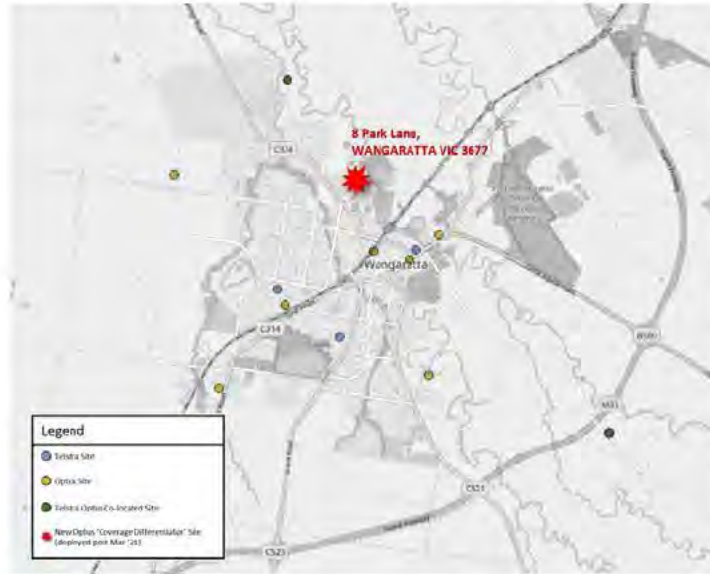
87 The following case examples illustrate how the competing deployment of Telstra and Optus infrastructure currently plays out in many areas across the 17% Regional Coverage Zone (other examples are at Attachment D). The Optus 'coverage differentiator' sites (marked with a red star) are sites which are more than 0.5 km from an existing Telstra site, which Telstra uses as a measure of a site which Optus has deployed to provide superior network quality in an area with more limited Telstra coverage.

88 The direct impact of this strategy is illustrated by churn data for customers who reside in areas where Optus has deployed 'coverage differentiator' sites, given that while these customers may roam more widely, their general perceptions of Telstra vs Optus coverage

<sup>113</sup> ACCC, [Domestic mobile roaming declaration inquiry - Final Report](#) (October 2017), at page 46.

will be shaped by the coverage in areas where they mainly live and work.<sup>114</sup> For each area, Telstra also sets out churn data from the Telstra network to the Optus network and vice versa.<sup>115</sup> Broadly, this shows that Optus wins as many customers from Telstra as it loses to Telstra, indicating Telstra and Optus are 'evenly matched' in competition for marginal customers.

**Figure 3: Optus 'coverage differentiator' site at Wangaratta, Victoria**



**Table 3. Port outs in surrounding postcodes – Wangaratta, Victoria [Confidential to Telstra]**

	Telstra ports to Optus		Telstra ports to TPG		Total
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

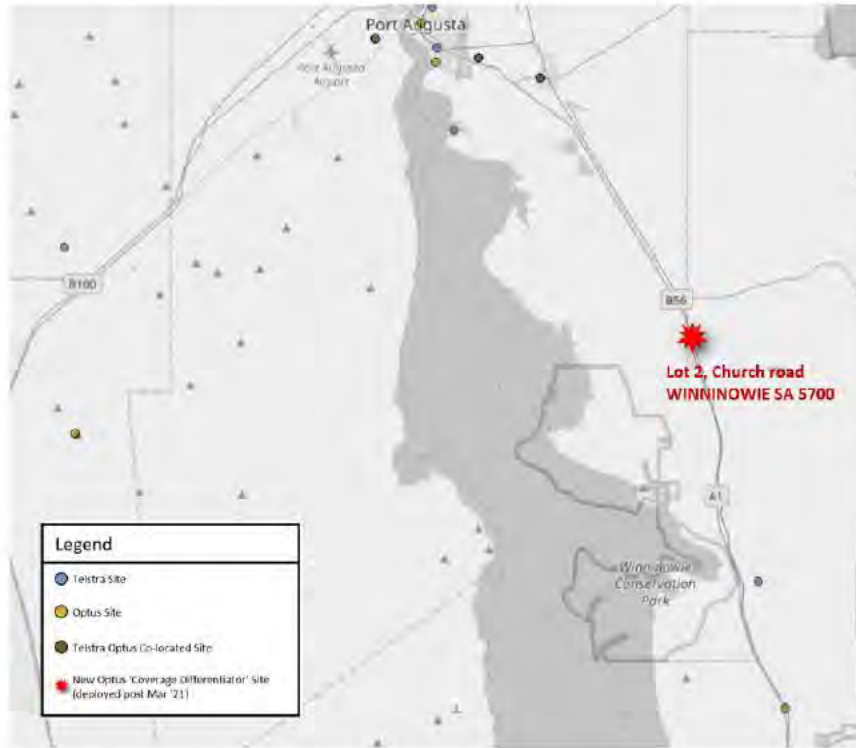
**Table 4. Port ins in surrounding postcodes – Wangaratta, Victoria [Confidential to Telstra]**

	Optus ports to Telstra		TPG ports to Telstra		Total
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

<sup>114</sup> Note, there is a broader impact of this strategy which is to undermine overall perceptions nationally (through word of mouth or occasional experiences) leading to national churn. Such churn is more difficult to quantify.

<sup>115</sup> The churn data is by postcodes within or including the depicted geographic area in which Telstra and Optus network is deployed. There is not necessarily an exact alignment between postcodes and the depicted network footprints.

**Figure 4: Optus 'coverage differentiator' site at Port Augusta, South Australia**



**Table 5. Port outs in surrounding postcodes – Port Augusta, South Australia**  
**[Confidential to Telstra]**

	Telstra ports to Optus		Telstra ports to TPG		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Table 6. Port ins in surrounding postcodes – Port Augusta, South Australia**  
**[Confidential to Telstra]**

	Optus ports to Telstra		TPG ports to Telstra		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

- 89 The strategic value which Optus places in this ‘coverage differentiator’ strategy is illustrated by **Table 7**. In the last 18 months across the 17% Regional Coverage Zone, Optus has deployed at least 82 ‘coverage differentiator’ sites. Another 130 are planned by Optus, which is nearly half of the Optus planned sites in Inner Regional Australia and Outer Regional Australia.

**Table 7: Deployed and planned Optus ‘coverage differentiator’ sites in the 17% Regional Coverage Zone**

State	Deployed sites <sup>116</sup>	Planned sites <sup>117</sup>
NSW	18	43
VIC	20	13
WA	8	24
QLD	9	21
SA	15	9
TAS	12	20
Total	82	130

***Optus will continue to have strong investment incentives post transaction***

- 90 The Applicants agree with the SOPV that if the proposed transaction proceeds, Optus will still have incentives to invest in the 17% Regional Coverage Zone.<sup>118</sup> The Applicants note that such incentives will remain strong and should not be considered to be in any way less compared to any counterfactual.
- 91 First, investment in regional and rural areas is principally driven by competition in the metropolitan (and peri-urban) regions, which account for over 80% of customers and where the three MNOs have their own networks. As the SOPV notes, ‘*coverage in regional and rural areas is valued not only by consumer who live and work in those areas, but also by metropolitan consumers*’.<sup>119</sup>
- 92 The importance of ensuring metropolitan customers have coverage in regional and rural areas is illustrated in part by the number of Telstra SIOs which utilise the Telstra network in the 17% Regional Coverage Zone.<sup>120</sup> Telstra estimates that although [Confidential to Telstra] of its SIOs appear to be primarily homed in the 17% Regional Coverage Zone, [Confidential to Telstra] of Telstra SIOs used the Telstra network in the 17% Regional Coverage Zone in the three months June to August 2022.
- 93 While Telstra may have a higher proportion of customers who value and use regional and rural coverage, Telstra anticipates that similarly a high proportion of Optus customers will use Optus regional and rural coverage on a regular or semi-regular basis. Optus has invested heavily in its 5G network in metropolitan areas, and the SOPV recognises that

<sup>116</sup> Sites deployed after March 2021, as at 26 September 2022.

<sup>117</sup> Sites planned after March 2019, as at 26 September 2022.

<sup>118</sup> SOPV, at para 5.60.

<sup>119</sup> SOPV, at para 3.14.

<sup>120</sup> This Telstra use data and the equivalent Optus data is probably an underestimate of the importance of regional and rural coverage to many metropolitan customers as there will be metropolitan customers who do not regularly visit regional and rural areas, but who still value good quality coverage outside metropolitan areas ‘just in case’ they need to travel outside their usually areas of primary usage.



Optus has the most sites in metropolitan areas.<sup>121</sup> Optus will have strong incentives to leverage that investment and maintain its competitive position in metropolitan areas by ensuring that its metropolitan customers travelling into the 17% Regional Coverage Zone have access to good network quality and, as more 5G handsets and 5G-specific applications come online, access to Optus 5G services which are available in metropolitan areas.

- 94 Second, given the rapid and escalating rates of data usage by subscribers, failure to continue to invest in network capacity and quality will result in rapid decline in network quality. As the Aetha modelling shows, Optus (and Telstra) must continue to invest in capacity in their networks in the 17% Regional Coverage Zone just to 'stand still'.<sup>122</sup>
- 95 The magnitude of the impact of reducing investment in network capacity is illustrated by Telstra modelling of a site in the Telstra network in the 17% Regional Coverage Zone. As depicted in **Figure 5**, in this illustrative example the cell site starts out as single omni directional cell, and as data usage cumulatively builds, the network speeds realised by users drops away rapidly. To address this, Telstra implements the next phase of investment, involving a 'sectorisation', which essentially splits the cell site so that the traffic is now split over three cells instead of the original one cell. The cycle of timing investment to avoid service degradation starts over.<sup>123</sup> As the demand begins again to build to a level which impacts service quality, the next phase of investment is to add additional spectrum bands. If investment in the subsequent stages was not undertaken, Telstra would have ended up in a position of offering a service of such poor quality that it would be regarded by consumers as unacceptable, if not non-functioning, compared to the services offered by competitors which have continued to invest in their networks.

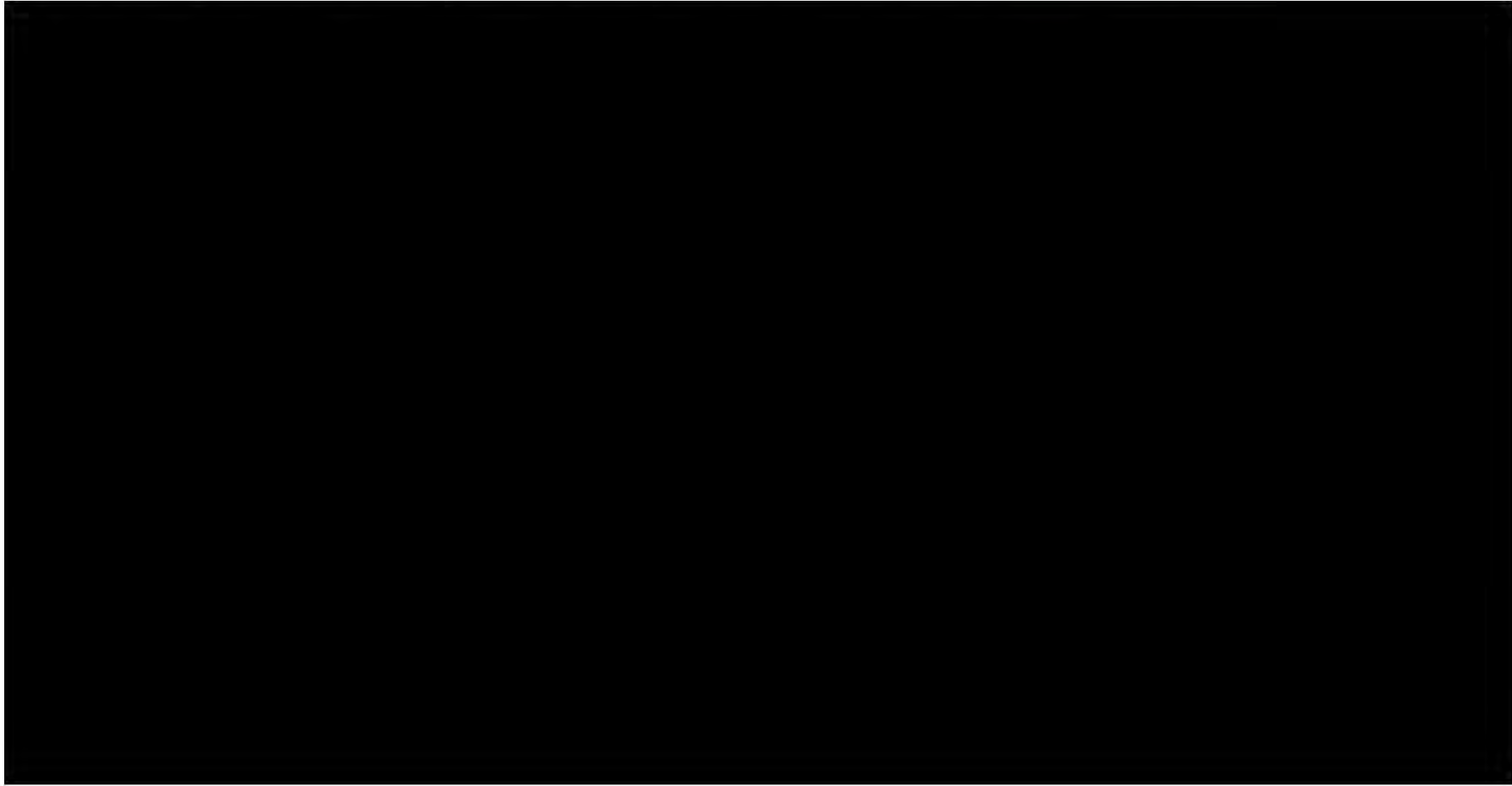
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<sup>121</sup> SOPV, at para 3.17.

<sup>122</sup> See Aetha Report, at page 39.

<sup>123</sup> For simplification in the diagram, the traffic is only shown for one of the sectors going forward, hence the demand was less than the original cell pre-sectorisation as the other 2 sectors carried the additional load.

Figure 5: Ongoing investment required to maintain service quality with increasing demand<sup>124</sup> [Confidential to Telstra]



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<sup>124</sup> The vertical axis shows Mbps for demand.

96 This case study may well prove to be an underestimate of the magnitude of this incentive on MNOs to continue to invest in network capacity. In a recent paper, the UK communications regulator, Ofcom considered three scenarios for growth in mobile data in the UK:<sup>125</sup>

- (a) Low growth: 25% increase per year to 2030, 20% increase per year from 2030 – 2035;
- (b) Medium growth: 40% sustained increase per year to 2035; and
- (c) High growth: 55% increase per year to 2030, 60% increase per year from 2030 – 2035. See Figure 14, extracted below.

Figure 14: Illustration of data traffic growth over time in our low, medium and high scenarios



Note: multiples are relative to 2021 monthly mobile data traffic (571 PB); Y-axis is logarithmic, starting at 500 PB, some figures rounded. 2035 bars shaded to indicate significant uncertainty.

97 Third, given this need to continue to invest in existing network, there will be incentives for MNOs to move to the next generation of technology that is available rather than to continue making substantial investments in the prior technology generations, as follows:

- (a) as every new generation of technology is a ‘re-set’ on the competitive landscape, MNOs have an opportunity to contend for network quality claims;
- (b) the new generation of technology will bring new revenue opportunities through the new services which it can support;
- (c) the new generation of technology will be much more capable of handling data intensive services. Ericsson explains the advantages of 5G over 4G as follows:<sup>126</sup>

“There is a limit to how much information radio waves can carry depending on frequency band. If we reach that limit, for someone to get better speed, someone else’s need to decrease. 5G adds more capacity, more “space” to use, which means that there’s more room for everyone and that their devices get higher data speeds...

Previous mobile network generations, like 4G, can sometimes have difficulty handling many devices in the same location. Some of us have experienced this when trying to use our phones during crowded sports events or concerts. 5G solves this issue by

<sup>125</sup> Ofcom, [Mobile networks and spectrum – Meeting future demand for mobile data, Discussion Paper](#) (February 2022), at page 27, Figure 14.

<sup>126</sup> See Ericsson, ‘5G v 4G’: <https://www.ericsson.com/en/5g/5g-vs-4g>

intelligently transmitting to each device, with high precision – which enables it to handle as much as 1 million devices per square kilometer.”

- (d) the device manufacturers will accelerate the release and promotion of handsets and other devices for the next generation of technology. The growing sophistication of these devices has a compounding effect with the proliferation of third-party or over the top services which exploit the enhanced capabilities of the next generation of technology; and
  - (e) as mobile standards are globalised and driven in large part by the equipment vendors, they have incentives to shift their manufacturing and support services to the next generation of technology once it is developed. As global standards create a global market, vendors are quickly able to build critical mass in the new technologies, shifting the 'gravity' of the industry on the supply side, with the shift now to 5G well underway.
- 98 While individual MNOs may move to the next generation of technology at a different pace compared to competitors, or at different paces within its own national network, the forces driving upgrades to the next generation of mobile technology are larger than each MNO and are inexorable.
- 99 Fourth, as stated in Telstra's response to the RFI dated 21 September 2022, under Optus' commercial agreement with ATN, Optus may be committed to retaining current sites in the 17% Regional Coverage Area. It would be a costly decision to withdraw from using these sites or not committing to an upgrade cycle on these sites.
- 100 Fifth, a cost-benefit analysis of the customers and profit margins Optus may gain from investing versus the customers and profits it would lose from not investing is relevant to Optus' investment decision.
- (a) The cost of not investing for Optus is likely to be large as illustrated in Dr Padilla's Second Expert Report. If a sizeable gap develops between the network quality of Optus and TPG, customers would be much more likely to switch to TPG and Optus may have to price at a discount to TPG.
  - (b) On the other hand, Optus is well-positioned to maintain high quality levels: it has similar 5G speeds to Telstra; a network of sites providing 98.3% 4G population coverage; more spectrum per subscriber in rural areas; and high levels of investment.<sup>127</sup>
- 101 This is more than economic theory. Optus has a proven pathway to a successful strategy of incremental investment in the 17% Regional Coverage Zone to respond to the proposed transaction. As outlined above, Optus has evidenced through actual examples and experience how a relatively modest incremental network investment in 'coverage differentiator' sites can work competitively. Optus can:
- (a) continue to deploy this strategy to 'disrupt' consumer perceptions of superior coverage of Telstra and TPG retail services on the Telstra-TPG MOCN, as it currently is doing in relation to Telstra retail services; and/or
  - (b) expand or re-focus this strategy to maintain its market ranking ahead of TPG as the second MNO (by coverage) by building in areas where TPG does not have coverage on the MOCN.

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<sup>127</sup> See for example, OpenSignal, Mobile Network Experience Report (Australia), October 2022: <https://www.opensignal.com/reports/2022/10/australia/mobile-network-experience>.

- 102 Optus also has already invested in the primary building blocks of a 5G network in 17% Regional Coverage Zone. Optus has paid \$1.476 billion for 900 MHz spectrum which it would use for 5G in the 17% Regional Coverage Zone.<sup>128</sup> Most of the current Optus sites and backhaul can be re-purposed for 5G. Optus also has worked with vendors such as Ericsson to adopt world leading technologies which enable quicker and more cost effective upgrading of 4G sites to 5G.<sup>129</sup> As at 25 October 2022, Optus has also already secured “early access” 900 MHz licences at 545 sites across every State and Territory except NT in order to deploy wide-area 5G coverage.
- 103 The Applicants are concerned the SOPV underestimates the baseline investment level below which Optus investment is unlikely to fall, and therefore overstates the potential competitive impact of the accelerate vs decelerate issue.

### 3.4 TPG’s capacity and incentives to invest without the proposed transaction

- 104 The SOPV expresses a concern “*about the effect on competition in the long term of the removal of TPG as a potential infrastructure investor in regional and remote areas of Australia.*”<sup>130</sup> In response:
- (a) As noted above in **section 1.2**, the proposed transaction is an enhancement of TPG as an infrastructure investor in regional Australia through quasi facilities-based competition. This enhances TPG’s current very small regional network (where it operates only 9-10% of all sites in the 17% Regional Coverage Zone) and presence which equates to a **[Confidential to TPG]** share of supply in the 17% Regional Coverage Zone. However, the proposed transaction will materially increase TPG’s quality and coverage in regional areas.
  - (b) The SOPV appears to proceed on an assumption that by building its own sites and infrastructure in the 17% Regional Coverage Zone, TPG would be placed in a materially preferable position to using Telstra sites under the MOCN arrangement. This is not the case. In practice, there is limited operational difference in terms of control, independence and competition between TPG using its own infrastructure and doing so using active network sharing under the MOCN with Telstra. This is described in detail in **section 1.2** above.
  - (c) In essence, the Telstra RAN augments and extends TPG’s own network. As noted by Mr Rodin, in his experience, a MOCN arrangement offers each operator an ability to extend their network, without being required to directly fund duplicate sites and infrastructure.<sup>131</sup>
  - (d) Even if it is accepted that TPG would have the ability and incentives to engage in infrastructure rollout in the 17% Regional Coverage Zone, the SOPV acknowledges that “*there is no real commercial likelihood that TPG would undertake a full scale build in the future without the proposed transaction.*”<sup>132</sup> Instead, the SOPV posits that TPG would undertake a “*targeted build ...for example to cover regional growth or holiday areas or to address congestion issues as they arise.*”<sup>133</sup> As TPG does not have an existing network of Optus’ scale and scope off which to build, TPG’s targeted investment **[Confidential to TPG]**

<sup>128</sup> See Optus, ‘[Optus acquisition of new 900 MHz spectrum lays the foundation for strong national competition in the mobile market](#)’ (Media release, 8 December 2021).

<sup>129</sup> See Ericsson, ‘[Optus and Ericsson deliver triple-band radio unit 4G/5G technology innovation](#)’ (Media release, 8 February 2022).

<sup>130</sup> SOPV, at para 5.51.

<sup>131</sup> Bruce Rodin, Supporting Statement, Annexure B, at para 30.

<sup>132</sup> SOPV, at para 5.12.

<sup>133</sup> SOPV, at para 5.14.

would look very different to the targeted strategy which Optus could pursue in response to the proposed transaction.

- (e) It follows that in the Targeted Build Counterfactual most of the 17% Regional Coverage Zone will only ever be served by two terrestrial mobile networks with TPG's [Confidential to TPG] share of supply in regional areas unlikely to materially change and TPG would continue to lose metropolitan customers who value regional coverage to Telstra and Optus.

105 The SOPV states that "there is a real commercial likelihood that TPG and Optus would enter into either a network sharing and/or a roaming agreement in the future without the proposed transaction."<sup>134</sup> In response:

- (a) The SOPV does not engage with this issue and fails to acknowledge the difficulties in assessing what the Optus-TPG commercial deal might look like, how the competitive and consumer outcomes might compare to the proposed transaction in the detail, and what the impact of any difference might be on consumers living and working in most of the 17% Regional Coverage Zone where there are only two networks. This indicates the speculative nature of the exercise of seeking to predict if Optus and TPG would be able to successfully negotiate a wholesale agreement in the counterfactual and what this would entail. Optus' expert, CEPA, itself stated in its report of 22 June 2021:<sup>135</sup>

"The appropriate counterfactual for the proposed transactions is the pre-proposed transaction conditions of competition. Any alternative joint-venture or NSA **should be ignored as speculative ...**" (Emphasis added).

- (b) In particular, the SOPV does not engage with the fact that:

- (i) TPG's ability to compete in most of the 17% Regional Coverage Zone will depend on the wholesale services TPG secures from Optus, which are likely to be limited to [Confidential to TPG] and
- (ii) the competitive outcomes for consumers who live and work in most of the 17% Regional Coverage Zone largely will depend on what the Optus wholesale services will enable compared to what the MOCN will enable. As set out in the Counterfactual Submission, a 4G roaming arrangement with Optus is a far inferior competitive option to the proposed transaction for consumers.

- (c) [Public text] [In any event, there is no guarantee that TPG and Optus could successfully negotiate a roaming or network sharing arrangement for regional areas, even after active sharing became feasible] [Confidential to TPG]

<sup>134</sup> SOPV, at para 5.19.

<sup>135</sup> [CEPA Report](#), page 7.

- (d) This submission has already highlighted (above at **section 1.2**) the difficulty with conflating network sharing and roaming. Roaming is a form of service-based arrangement that significantly reduces the competitive independence of the roaming operator (in this case TPG). Concerns about continued infrastructure-based competition will not be resolved with a preference of a roaming arrangement over a MOCN. It is generally entered into by an operator to allow it to make improved coverage claims, and little more. A MOCN, by contrast, is a form of *network augmentation* that preserves network independence, separate control of each operator's product roadmap, innovation and competition. In Canada, the existence of mandatory roaming has not prevented the establishment of a large number of MOCNs because they deliver different things.<sup>136</sup>

106 The SOPV appears to suggest that a less favourable commercial deal with Optus than the proposed transaction, such as for roaming, may be a preferable outcome:

"The ACCC considers that TPG would likely have more incentive to invest in infrastructure the less it shares Optus' network. On this basis, TPG would likely have more incentive to invest in its own infrastructure in the Regional Coverage Zone under a roaming agreement (for example, to minimise roaming costs), than under a MORAN or MOCN agreement, although incentives to invest would depend on the cost terms of any agreement."<sup>137</sup>

107 In response:

- (a) It should be noted that should the ACCC be minded to give weight to impacts on Optus' capacity to invest with the proposed transaction, it should similarly acknowledge TPG's reduced capacity to invest in the counterfactuals expressed. That is, TPG having less of a network under any arrangement with Optus reduces its competitiveness and capacity to invest (both in terms of its ability to win customers with a more limited coverage deal, and the increased costs associated with any such roaming deal) – despite the ACCC's preliminary view that the desire to have a network may be greater in this scenario.
- (b) The facts do not bear out the SOPV's view of TPG's incentives if the deal with Optus is for roaming. TPG has had a roaming deal with Optus for some years, and as TPG has submitted that roaming deal is unfavourable and restrictive (see Annexure F). Despite this, as Table 8 shows, over the last 5 years only 12 of TPG's new sites have been in Remote or Very Remote Australia (representing less than 1% of its new sites), only 78 of its new sites have been in Outer Regional (representing 5% of its new sites), and only 161 of its new sites have been in Inner Regional (representing only 10% of its new sites). It is clear that roaming in regional areas did not encourage significant investment by TPG in those areas.

**Table 8: New TPG sites since 2017**<sup>138</sup>

Region	New TPG site builds by state							Region totals	% of sites	Population	
	NSW	VIC	QLD	WA	SA	TAS	ACT			Count	%
Major Cities of Australia	579	331	166	85	72		17	1250	83.3%	18,571,710	72%

<sup>136</sup> Michael Stropole, Supporting Statement, Annexure A, paras 45 to 46; Bruce Rodin, Supporting Statement, Annexure B, paras 32 to 37.

<sup>137</sup> SOPV, at para 5.22.

<sup>138</sup> Based on RFNSA records for sites that have become active since 2017.

Inner Regional Australia	65	47	24	7	6	12		161	10.7%	4,608,023	18%
Outer Regional Australia	36	7	18	3	1	13		78	5.2%	2,066,689	8%
Remote Australia	2		3	4		2		11	0.7%	290,931	1%
Very Remote Australia				1				1	0.1%	200,789	1%
<b>Grand total</b>	<b>682</b>	<b>385</b>	<b>211</b>	<b>100</b>	<b>79</b>	<b>27</b>	<b>17</b>	<b>1501</b>		<b>25,738,142</b>	

- (c) The SOPV's view that roaming could produce a better outcome than facilities-based competition through the MOCN would also necessarily involve a trade-off between different customer groups. Favouring a counterfactual where there is a more limited roaming arrangement between TPG and Optus, together with some incremental build by TPG (potentially in its effort to mitigate a poor wholesale service from Optus), would sacrifice the improved coverage and connectivity consumers who live and work in the 17% Regional Coverage Zone would achieve under the proposed transaction. This risks elevating the preference for infrastructure competition above the best competitive outcomes for consumers.

108 The SOPV states that “[b]y maintaining ownership of all of its active infrastructure, TPG would have a greater ability to innovate and independently differentiate its service offerings in the provision of both retail and wholesale mobile services.”<sup>139</sup> The ACCC notes it is concerned that the proposed transaction TPG is “effectively removing itself as an infrastructure-based competitor in the regional areas”.<sup>140</sup> These concerns should not arise as:

- (a) in most of the 17% Regional Coverage Zone it is only feasible to have two networks, such that it cannot credibly be seen as TPG withdrawing from infrastructure-based competition in regional areas. The current TPG network infrastructure provides coverage to 96% of the population only (and provides only 95% 4G coverage), and its regional coverage is patchy. It represents only 15%<sup>141</sup> of its mobile sites on a national basis despite the 17% Regional Coverage Zone spanning a significant geographic region, and requires a substantial upgrade to be competitive in the future, including to replace equipment to align with national security requirements;
- (b) the limited extent of the current TPG network in the 17% Regional Coverage Zone reflects, as TPG has previously submitted, the substantial hurdles TPG faces, as the ‘third-in’ MNO, deploying additional network infrastructure outside metropolitan areas given the challenging economics of infrastructure in most of regional and rural Australia and with TPG’s own capital and competitive constraints (see further discussion below in relation to the counterfactual);
- (c) the concern overlooks that the MOCN provides TPG with the capacity to compete as a facilities-based competitor across the 17% Regional Coverage Zone, in most of which it is only feasible to deploy two networks. What is absent from the analysis is the fact that the proposed transaction can permit TPG to compete in these two network areas substantially as if the MOCN was its own network as

<sup>139</sup> SOPV, at para 5.15.

<sup>140</sup> SOPV, para 5.49.


<sup>141</sup> That is 749 sites of TPG’s current 4,938 sites (excluding small cells or in building coverage solutions).



compared to any potential commercial deal between Optus and TPG for roaming;  
and

- (d) the concern overstates the extent to which TPG currently participates in full facilities-based competition in the 17% Regional Coverage Zone and its future capacity and incentives to expand its current network coverage.

### 3.5 Telstra will continue to have incentives to invest in regional and rural areas with the proposed transaction

- 109 The SOPV expresses concern that if Optus reduces its investment in regional and rural areas that, in turn, this will reduce Telstra's incentives to invest because Telstra will be facing less intense competition.
- 110 Telstra's investment in regional and rural Australia is driven by the same incentives and external forces described above that will incentivise Optus to invest in regional and rural Australia. These include the intense competition in metropolitan areas for customers who value regional and rural coverage, the continuing need to invest in network capacity to keep up with escalating data usage, and the global standards and handset trends. Compared to Optus, Telstra may be even more driven by these incentives, as Telstra's strategy is to base its competitive advantages on superior network coverage, technology leadership and improving customer experience.
- 111 To the extent the ACCC considers that it is the competitive threat from Optus that drives Telstra investment decisions, it is not competition between Telstra and Optus in the 17% Regional Coverage Zone which will primarily determine Telstra's investment in the 17% Regional Coverage Zone. Telstra will face intense competition in metropolitan areas from Optus, where most customers live and work. This intense competition in metropolitan areas, if anything, sharpens Telstra's reliance on maintaining customer perceptions of its superior network coverage, including by continuing to build in the 17% Regional Coverage Zone. By way of illustration, Telstra's T25 goals which include achieving 95% population coverage for 5G was announced prior to Optus commencing any 5G coverage in regional Australia.<sup>142</sup>
- 112 The Domestic Mobile Roaming Declaration Inquiry recognised that "*an MNO's coverage in regional Australia influences demand for its services in metropolitan areas.*"<sup>143</sup> As Telstra's competitive advantage is primarily customer perceptions of its superior network coverage, Telstra is more likely to be adversely impacted by a degradation in its service quality in the 17% Regional Coverage Zone. As modelled in the Aetha report, even with access to the pooled Telstra-TPG spectrum, Telstra will have to build at twice the rate of Optus just to keep up with growth in data usage and maintain network quality.
- 113 Additionally, given Telstra's history and its prominence, Telstra faces pressure from Government and other stakeholders over its commitment to regional and rural Australia. Responding positively to these stakeholders by continuing to invest and innovate in service delivery in regional and rural areas is an important motivator in Telstra decision making, as it was in the proposed transaction.
- 114 As an example of this pressure, **[Confidential to Telstra]** 

<sup>142</sup> Telstra, [Introducing T25: our plan for growth and enhanced customer experiences](#) (Media release, 16 October 2021).

<sup>143</sup> ACCC, [Domestic mobile roaming declaration inquiry - Final Report](#) (October 2017), at page 13.

[REDACTED]

**3.6 No SLC arising from any impact on Optus' capacity to invest in regional mobile infrastructure**

***Key facts not in dispute***

115 Any assessment of potential impacts of the proposed transaction on infrastructure-based competition must be assessed in light of the facts below:

(a) MNOs face challenging economics in deploying terrestrial mobile network infrastructure in regional and rural areas, including across much of the 17% Regional Coverage Zone. As the SOPV states:

"Due to lower expected returns on network investment in regional and remote areas versus metropolitan areas, the commercial incentives to deploy network infrastructure in these areas are typically lower than in metropolitan areas... As the frontier of mobile coverage moves to increasingly sparsely populated areas, such programs may need to contribute a greater proportion of the costs of new sites."

(b) Both Telstra and Optus already have deployed substantial networks in the 17% Regional Coverage Zone. MNOs have approached or are approaching the point identified by the SOPV where additional coverage in the 17% Regional Coverage Zone is not feasible by relying on market forces alone.

(c) While the existing Optus network in the 17% Regional Coverage Zone has slightly less geographic coverage than the Telstra network, the strategic way in which Optus has deployed its sites means Optus is highly competitive with Telstra in the 17% Regional Coverage Zone.

(d) The proposed transaction does not materially increase any geographic coverage advantage which Telstra has over Optus in the 17% Regional Coverage Zone.

(e) As Optus itself agrees, it is only economically feasible to have two infrastructure-based networks in most the 17% Regional Coverage Zone.

116 When viewed through this frame, a realistic 'baseline' against which to assess the potential impacts of the proposed transaction on infrastructure-based competition would recognise that:

(a) in the factual, future investment by Optus in the 17% Regional Coverage Zone turns on Optus' incentives to upgrade the existing substantial network in which it has already invested, with the possibility of only limited, targeted investment in new sites by Optus;

(b) in the Targeted Build Counterfactual, any targeted build by TPG in the absence of the proposed transaction would only cover a limited portion of the 17% Regional Coverage Zone, and the expansion in facilities-based competition between the three MNOs will be, at best, incremental; and

(c) similarly in a roaming-based counterfactual, any targeted build by TPG in the absence of the proposed transaction would also only cover a limited portion of the

<sup>144</sup> [Confidential to Telstra] [REDACTED]

17% Regional Coverage Zone, and the expansion in facilities-based competition between the three MNOs will again be, at best, incremental.

***Even if Optus were to decelerate its investment in mobile infrastructure in regional Australia (which the Applicants do not accept) this would not give rise to a SLC***

- 117 Even if, contrary to the Applicants' views, the ACCC considers that Optus will decelerate its investment in the Regional Coverage Zone if the proposed transaction proceeds, the Applicants submit that this would not rise to the level of a SLC.
- 118 Any impact must be assessed in the national markets.<sup>145</sup> At its highest, any adverse impact on Optus investment incentives will be a partial impact on its network that concerns a small proportion of its population coverage in Australia (i.e., 17%), which is unlikely to have a material impact on larger national markets where competition is primarily driven by the metropolitan areas.
- 119 The ACCC needs to be clearer about what any reduced investment incentive would look like.
- (a) If the ACCC's concern is that Optus will decelerate investment in network quality of its existing network, it seems highly unlikely that Optus would consciously decide to allow service quality to fall below the level required to keep up with the growth in data usage because of the impacts on its competitive position in metropolitan areas.
- (b) If the ACCC's concern is Optus' investment in 5G in the 17% Regional Coverage Zone, the Applicants note prior to the proposed transaction, Optus was already engaged in an incremental rollout of its 5G network over an extended period. While the pace of the rollout may be slower than Optus would otherwise wish or had originally planned, Optus must have believed that over this extended rollout period Optus would still be competitive with Telstra in a market environment where it had a 5G metro offering supported by a 4G regional offering compared to Telstra's more extensive national 5G offering. [Confidential to Optus - external counsel only]
- 120 The competitiveness of Optus and Telstra across different technologies in the 17% Regional Coverage Zone should not be surprising for two reasons.
- 121 First, Optus has invested heavily in its 5G network in metropolitan areas which drives competitive dynamics nationally. Optus has some advantages in its 5G deployment in metropolitan areas, including unique access to the 2300 MHz spectrum.
- 122 Second, Optus' competitive positioning in the market already places less emphasis on network-based factors than Telstra. Figure 6 compares the positioning of the Telstra and Optus brands across their national customer bases:

<sup>145</sup> ACCC, [Domestic mobile roaming declaration inquiry - Final Report](#) (October 2017), section 4.1.2 - mobile networks must be analysed as national markets as they involve customers travelling nationally.

<sup>146</sup> [Confidential to Optus - external counsel only]

Figure 6: Brand levers for Telstra and Optus customers<sup>147</sup> [Confidential to Telstra]



123 This difference in competitive propositions between Telstra and Optus also can be seen in regional areas. Optus regional and rural area customers value Optus more highly than Telstra across a range of factors, even though Telstra offers a better coverage than Optus. [Confidential to Telstra]

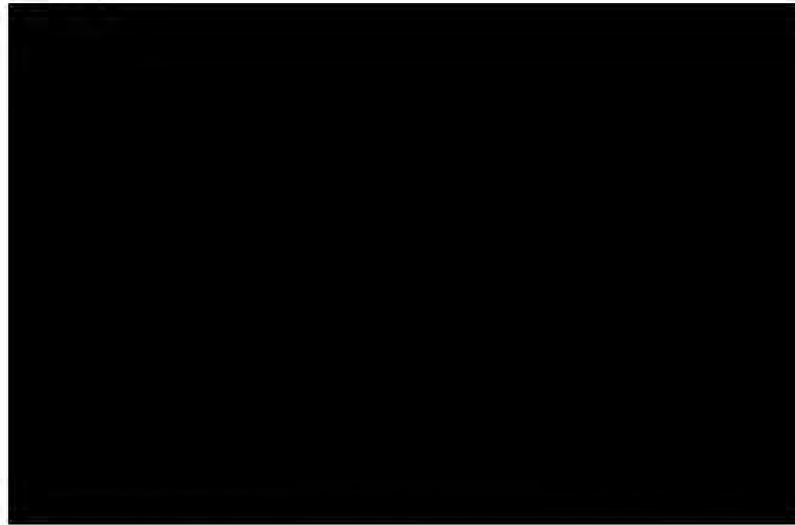
[Redacted text block]

Figure 7: Regional customer value premium - post-paid [Confidential to Telstra]



<sup>147</sup> Application, Annexure S, at page 39.

**Figure 8: Regional customer value premium – prepaid [Confidential to Telstra]**



- 124 MNOs' rollout plans are under constant review and adjustment to take account of external factors, including unexpected competitive strategies from their competitors. Not every posited deceleration in rollout in response to a competitor's actions can be seen as the result of anti-competitive behaviour. Just as credibly, other future changes could just as easily result in Optus accelerating its 5G rollout plans. For example, there have been reports that Singtel may be considering selling or listing Optus. New owners or a fresh injection of capital may decide to drive the Optus 5G rollout harder.
- 125 Also as noted above, Optus has been working with vendors to develop and deploy new technologies which allow 4G sites to more cost effectively upgrade to 5G, and any deceleration in the near term needs to be weighed with an enhanced ability of Optus to 'catch up' as a result of continuing technology innovation and falling equipment costs.
- 126 Lastly, the SOPV fails to take account of other future technologies and entrants. While these may be at an early stage of deployment, the ACCC is considering the long-term impacts on infrastructure-based investment and these developments are an essential part of the long term factual matrix.
- 127 As Telstra set out in its response of 21 September 2022 to ACCC questions, telecommunications technology and markets are highly dynamic, and increasingly intense in terms of technological innovation. Many of these technological innovations are specifically developed to address the long-standing challenge of coverage in regional and remote areas. The developments can be expected to open up pathways and opportunities for new forms of network competition between all MNOs (and new entrants) by reducing costs, creating new options for meeting the coverage gap in regional and rural Australia, and reducing reliance on old forms of network technology.
- 128 In particular, LEOSats provide opportunities for lower cost backhaul to terrestrial mobile sites and direct LEOSats to handset connectivity is also being developed. For example, Optus announced on 15 September 2022 that it had signed a Memorandum of Understanding (**MoU**) with AST Space Mobile<sup>148</sup> to collaborate and test direct satellite to mobile technologies. AST is currently working with major US MNOs to use LEOSats to address mobile back spots.

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<sup>148</sup> CommsDay, Issue 6489, 16 September 2022: '*Optus signs MoU with AST SpaceMobile to test satellite-to-mobile direct services*'.

- 129 On 21 October 2022, the Minister for the Department of Communications spoke about the “significant innovation happening in the area of Low Earth Orbit (LEO) Satellites” stating that: “These rapid developments are bringing choice and a step change in broadband capability to businesses and households in regional and rural Australia. LEO satellites are also now being used to support text messaging on mobile devices.” As a result, the Minister has requested the Department to commence work on establishing a LEO working group to “help inform Government about how this emerging capability might play a role in future telecommunication.”<sup>149</sup>
- 130 All three MNOs will likely face competition from some satellite providers (during the term of the Agreements) as well as have the opportunity to partner with other satellite providers to eliminate the terrestrial coverage discrepancy
- 131 TPG also provided information in relation to future technological developments in its response to the ACCC’s information request of 14 September 2022. In his statement Mr Chiarelli provides an overview of developments in relation to LEOSat services, based on his engagement with Luke Ibbetson, who is the Head of Group Research and Development within Vodafone Group, and is a director of AST SpaceMobile Inc (AST), a company listed on the NASDAQ. As Mr Chiarelli states, it is very likely that, in ten years, LEOSat services will provide an option for TPG to provide network connection (without involvement of other MNOs) in the 17% Regional Coverage Zone. The current RTIRC review recognised that there has been a marked, step change in the technological and competitive options for service delivery in regional and rural areas with “emerging technologies like Low Earth Orbit (LEO) satellites, Low Power Wide Area Networks (LP-WAN) and 5G cellular technology...likely to play a larger role in the Australian telecommunications landscape.”<sup>150</sup>

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## 4 No negative impacts on price-based competition

### 4.1 Overview

- 132 The ACCC makes a number of observations in the SOPV about the impact of the proposed transaction on price-based competition, including that the proposed transaction may:
- (a) immediately, improve the quality of service of TPG and Telstra’s offering, change TPG’s cost structure and generate wholesale revenue for Telstra;<sup>151</sup>
  - (b) in the medium and longer term, have the potential to change the investment incentives (and consequently the relative quality of service offerings) of the different MNOs;<sup>152</sup>
  - (c) reduce price-based competition, because:<sup>153</sup>
    - (i) TPG would potentially have a higher cost to serve than it would in the counterfactual, which would likely result in higher prices for its mobile services; and

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<sup>149</sup> The Hon Michelle Rowland MP, 2022 Charles Todd Oration, 21 October 2022: <https://minister.infrastructure.gov.au/rowland/speech/2022-charles-todd-oration>

<sup>150</sup> Regional Telecommunications Review, [2021 Regional Telecommunications Review - A step change in demand](#) (December 2021), at page 8.

<sup>151</sup> SOPV, at para 5.35.

<sup>152</sup> SOPV, at para 5.35.

<sup>153</sup> SOPV, at para 5.38.

- (ii) Telstra would receive wholesale payments from TPG, reducing the cost that Telstra would otherwise incur from losing customers to TPG, which could reduce Telstra's incentive to compete with TPG.

133 The ACCC observes that the exact nature and extent of these impacts is uncertain,<sup>154</sup> and dependent on the counterfactual that the proposed transaction is assessed against.<sup>155</sup> The ACCC also observes that the effect of the proposed transaction on the quality adjusted price is unknown.<sup>156</sup>

#### 4.2 TPG will not be incentivised to increase prices

134 TPG's business case for the proposed transaction is to obtain a significant number of new customers (and retain a greater proportion of its existing customers by reducing churn) by offering higher quality mobile services to current and future customers rather than seeking to extract higher value from its customers through price increases.

135 As explained by Mr Kieren Cooney (Group Executive, Consumer at TPG),<sup>157</sup> TPG engaged [Confidential to TPG] ██████████ to assess the proposed transaction against other potential deal constructs that would allow TPG to improve its regional mobile service coverage. In its model, [Confidential to TPG] ██████████ assumed that even with the increased network coverage under the proposed transaction "TPG would maintain its current average revenue per unit (ARPU)". On this basis, the model demonstrated that the proposed transaction could lead to TPG gaining an additional approximately [Confidential to TPG] ██████████ customers over 10 years across Australia.

136 TPG is now in the stage of planning how it will achieve the projected growth of approximately [Confidential to TPG] ██████████ customers and, as explained by Mr Cooney in his statement:<sup>158</sup>

- (a) He does not believe there will be any need to increase prices as a result of entering into the proposed transaction.
- (b) The proposed transaction will improve TPG's coverage which will make TPG a stronger competitor in respect of regions it has to date had little presence which will in turn grow its customer base. As this will directly translate into revenue and profit growth, the need to increase pricing to provide for revenue will be lessened. In short, the simplest avenue for revenue growth for TPG from the proposed transaction is through an increased customer base.

137 TPG recognises that to retain customers and win new customers who value regional coverage it needs to be able to compete on value with Telstra and Optus (both of whom have higher brand recognition for regional services) – particularly given that Telstra will retain its coverage advantage and TPG will only have a small coverage advantage to Optus.

138 In addition, TPG estimates that the increase in marginal cost per user with the proposed transaction is only [Confidential to TPG] ██████████ per month (with Dr Padilla estimating the cost per user to be even lower)<sup>159</sup> which is a very small proportion of TPG's overall

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<sup>154</sup> SOPV, at paras 5.36 and 5.40.

<sup>155</sup> SOPV, at para 5.39.

<sup>156</sup> SOPV, at para 5.40.

<sup>157</sup> Kieren Cooney, Witness Statement, Annexure I.

<sup>158</sup> Kieren Cooney, Witness Statement, Annexure I.

<sup>159</sup> Dr Jorge Padilla, Second Expert Report, Annexure E.

costs and not sufficiently material to incentivise it to increase pricing at the risk of losing new customers.

- 139 In addition, the marketing and distribution costs that TPG will incur to market its new regional coverage and sell its services across a broader geographic base are not expected to increase its current marketing spend to such an extent to have any material effect on its cost base. TPG is currently in the process of developing the marketing and distribution plans that TPG will put into place to achieve the modelled growth of approximately [Confidential to TPG] customers. These plans will make use of existing distribution channels and TPG anticipates expanding its network of retail stores in regional areas which (based on past experience) is capable of being done relatively quickly and inexpensively.<sup>160</sup>

#### **4.3 The transaction will result in an immediate reduction in TPG's quality-adjusted price and an associated improvement in price-based competition**

- 140 The ACCC's preliminary observations correctly highlight as an important consideration the impact that changes in quality of TPG's service will have on price-based competition.<sup>161</sup> This is because (all else being equal):

- (a) improvements in the quality of service offered by one supplier place downward pressure on the prices charged by other suppliers; and
- (b) an improvement in service quality is equivalent to a reduction in quality-adjusted price and so a quality improvement by one supplier involves a direct improvement in price competition.

- 141 It is uncontested that the proposed transaction will quickly improve TPG's service quality, bringing its network coverage and quality closer to that of the other MNOs.<sup>162</sup> An improvement in quality that is not accompanied by a material increase in marginal cost (relative to the counterfactual) will result in a reduction in quality adjusted prices.<sup>163</sup>

- 142 The ACCC raises a concern that the proposed transaction will increase TPG's costs of providing services, meaning that the impact of the transaction on TPG's quality adjusted price might be more ambiguous.<sup>164</sup> The view that TPG's higher costs would result in higher prices fails to take into account that TPG may make additional revenue without increasing its prices by having a superior product offering and increased market share, offsetting any increased costs. In any event, Dr Padilla has assessed the relative changes in TPG's incremental costs and service quality from the proposed transaction (relative to the status quo).<sup>165</sup> Dr Padilla concludes that the anticipated increase in the value of service quality is much higher than the small increase in incremental cost and, as such, the proposed transaction will result in a significant reduction in quality-adjusted prices relative to the status quo.<sup>166</sup>

- 143 Further, the SOPV does not appear to compare TPG's cost structure with its costs in any of the relevant counterfactuals. Each of the counterfactuals contemplated by the ACCC (including where TPG undertakes a full or targeted network build and/or enters into an alternate agreement with Optus) involve TPG incurring additional costs relative to the

<sup>160</sup> Kieren Cooney, Witness Statement, Annexure I.

<sup>161</sup> E.g. SOPV, at paras 5.35 and 5.40.

<sup>162</sup> SOPV, at para 5.65.

<sup>163</sup> Dr Jorge Padilla, Second Expert Report, Annexure E, at para 6.12.

<sup>164</sup> SOPV, at para 5.40.

<sup>165</sup> Dr Jorge Padilla, Second Expert Report, Annexure E, at para 3.25 – 3.30.

<sup>166</sup> Dr Jorge Padilla, Second Expert Report, Annexure E, at para 3.28 – 3.29.



status quo. Analysis conducted by Dr Padilla shows that the proposed transaction would result in:<sup>167</sup>

- (a) significantly lower variable cost for TPG in providing data in the Regional Coverage Zone than under a counterfactual of a targeted build and roaming (being the counterfactual that the ACCC assesses as a real chance in the SOPV);
- (b) similar costs initially for TPG in acquiring additional subscribers as under the counterfactual of a targeted build and roaming, but would result in lower costs over time than under that counterfactual as average data usage per subscriber grows; and
- (c) lower costs for TPG than under a MOCN with Optus, particularly if TPG were to be able to offer broadly equivalent services under any MOCN deal with Optus and if the ACCC prevented the proposed transaction, thereby improving Optus's negotiating position in relation to any hypothetical future MOCN or MORAN arrangement.

144 Put simply, under the counterfactual considered to be a real commercial likelihood in the SOPV, TPG's incremental costs are similar or higher *for a substantially inferior product*.

145 Price-sensitive consumers who place a lower value on quality will still gain the benefit of TPG's improved service quality and lower quality-adjusted prices. In particular:

- (a) TPG's improved service quality and lower quality-adjusted prices will place additional competitive pressure on other MNOs and lead to greater price-based competition among all MNOs for all types of customers;
- (b) TPG will continue to offer lower priced and lower value mobile services (i.e., plans with fewer inclusions and features) through its sub-brands including TPG, iiNet, Kogan, Lebara and Felix while those brands still provide customers with the expanded regional coverage from the proposed transaction; and
- (c) the increased coverage that the proposed transaction will provide TPG will allow TPG to act as a substantially more viable partner for MVNOs, which will in turn have a meaningful impact on supply to price-conscious consumers as this market segment is commonly targeted by MVNOs.

146 In any event, the deal does not prevent TPG from offering these services, as these products are configured as part of their core network.

#### **4.4 There is no meaningful likelihood of adverse impacts on price-based competition**

147 As shown by Dr Padilla's analysis, the proposed transaction will significantly reduce TPG's quality-adjusted prices which will in turn place downward pressure on Telstra and Optus' prices.<sup>168</sup>

148 The proposed transaction is only likely to have a negative impact on price-based competition if one or more of the following outcomes arise:

- (a) the transaction leads Optus to withdraw or substantially scale back its network investment in regional Australia, leading to longer term reductions in network-

<sup>167</sup> Dr Jorge Padilla, Second Expert Report, Annexure E, at para 3.42.

<sup>168</sup> Dr Jorge Padilla, Second Expert Report, Annexure E, , Annexure E.

based competition and, ultimately, the potential for lower pricing pressure – as outlined in section 3.3, this is unlikely to occur;

- (b) the transaction leads to such a large increase in TPG’s marginal costs that it is, effectively, hobbled as a competitor (and there is no corresponding revenue derived from new customers who value the additional coverage) – it is implausible this will occur because **[Confidential to the Parties]** [REDACTED]. In any event (and as set out above), the increase to TPG’s monthly cost per user from the proposed transaction relative to the *status quo* of operating and upgrading its current sites in the 17% Regional Coverage Zone is very small (**[Confidential to TPG]** [REDACTED], Dr Padilla’s analysis shows that TPG’s marginal costs will be similar or lower under the proposed transaction than under an alternative counterfactual of a targeted build and roaming arrangement with Optus based on an assumed set of commercial terms which **[Confidential to TPG]** [REDACTED]; or
- (c) if the wholesale payments that Telstra receives from TPG under the proposed transaction means that it expects it would be profitable for it to raise retail prices (or otherwise degrade its retail service offering) with the expectation that any losses it experiences at the retail level will be compensated by increased wholesale revenue.

149 It is implausible to consider that the effect in paragraph 148(c) is a commercially likely outcome of the proposed transaction. Telstra earns vastly more incremental revenue and profit from servicing a retail customer than it could ever expect to earn from a TPG wholesale customer. By way of reference:

- (a) Telstra’s publicly reported monthly ARPU for the half-year ending June 2022 was \$48.74 for post-paid and \$25.22 for prepaid mobile customers.<sup>169</sup>
- (b) Under the proposed transaction, Telstra receives variable charges of **[Confidential to the Parties]** [REDACTED] **[Confidential to TPG]** [REDACTED]. This figure is equivalent to the anticipated wholesale revenue that Telstra would receive and is significantly lower than Telstra’s monthly retail ARPU.
- (c) A loss of **[Confidential to Telstra]** [REDACTED] Telstra has significant incentives to compete to maintain customers.

<sup>169</sup> Telstra, Full Year Results FY22, Supporting material – Financial Tables. Available at: <https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf-g/FY22-Financial-Tables.xlsx>.

<sup>170</sup> Dr Jorge Padilla, Second Expert Report, Annexure E.

<sup>171</sup> **[Confidential to Telstra]** [REDACTED] SIOs based on 2022 Annual Report, being 20.8 million mobile retail SIOs.

150 In addition, even if Telstra were to hypothetically raise retail prices or degrade service quality post transaction, Telstra would have no certainty that any retail customers it loses would be picked up by TPG. Optus currently has a national share of retail mobile services that is more than double that of TPG's,<sup>172</sup> so Telstra would rationally expect to lose 2 customers to Optus for every 1 that it loses to TPG. [Confidential to Telstra]

151 Taking these factors into account, there is no commercial likelihood that the wholesale payments Telstra receives from TPG would have any impact on Telstra's decisions about retail pricing or other competitive factors.

152 Dr Padilla has undertaken modelling to assess the impact of TPG's wholesale payments to Telstra on Telstra's profit maximising price (as reflected by ARPU). He concludes that the impact of this effect is to change Telstra's profit maximising price post-transaction from [Confidential to TPG] (if the impact of the payments are not taken into account) to [Confidential to TPG] (if the impact of the payments are taken into account), a difference of just 0.5%.<sup>173</sup> Further, in both cases, Telstra's calculated profit-maximising price is lower following the proposed transaction due to the downward pressure placed on its prices by the increased pressure from TPG's lower quality-adjusted prices.

#### 4.5 Mobile price competition occurs on a national basis and is unlikely to be affected by the proposed transaction (concerned with only 17% of the population)

153 The concerns expressed in the SOPV around the potential for the proposed transaction to result in increased prices of the ACCC appear to overstate the likely implications on national retail mobile prices of a deal that affects only 17% population coverage.

154 As the ACCC has previously recognised in the Domestic Mobile Roaming Declaration Inquiry, prices for mobile services are set on a national basis and largely based on competition for customers living and working in metro areas.<sup>174</sup>

'The ACCC also found that consumers who value geographic coverage in the Telstra-only areas have limited choices. However, **uniform national pricing means that they also benefit from competition in the national mobile services market.** They also have access to Telstra's network through its services under the brand Boost which is a cheaper alternative to Telstra'. (emphasis added)

155 While regional coverage may play a role in attracting and retaining some of these customers, it is certainly not a primary – or Telstra submits not even a particularly material – driver of national mobile pricing.<sup>175</sup>

'... the ACCC considers it is uncontentious that given Telstra's larger geographic coverage, it has a competitive advantage over its competitors in competing for consumers who value or require larger geographic coverage. However, **this in itself does not necessarily mean that Telstra's higher prices and market share are predominantly due to its larger geographic coverage.**' (emphasis added)

<sup>172</sup> Application, at para 170 and Table 6.

<sup>173</sup> Dr Jorge Padilla, Second Expert Report, Annexure E, at para 4.22.

<sup>174</sup> ACCC, [Domestic mobile roaming declaration inquiry - Final Report](#) (October 2017), at page 20.

<sup>175</sup> ACCC, [Domestic mobile roaming declaration inquiry - Final Report](#) (October 2017), at page 9.

- 156 Furthermore, increased competition in the national MVNO market arising from the proposed transaction will mean that a range of price points continue to be available in the national retail mobile market. As Telstra has previously demonstrated in its Application,<sup>176</sup> perceptions of network coverage do not play a particularly significant role in MVNO pricing and there is therefore little to suggest that retail prices at the lower end of the market will be impacted at all, or at least materially, by the proposed transaction. The Optus and Telstra MVNOs currently provide more rural coverage than TPG and its MVNOs, yet Optus and Telstra MVNOs are offering plans which are price competitive with the cheapest plans of TPG and its MVNOs. To the contrary, increased retail competition at lower price points, through the increased attractiveness of TPG as a MVNO partner and the availability of TPG's MVNO services to customers in regional and rural areas, may be expected to exert downward pressure on retail prices in these segments.

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## 5 Response to other issues raised

### 5.1 No public detriments arising from concentration of spectrum holdings

- 157 The proposed transaction will not result in any loss of competitive tension in primary or secondary markets for the acquisition of radiofrequency spectrum licences.<sup>177</sup>

#### *Primary market*

- 158 Acquisition of spectrum licences in the primary market is governed by the Australian Communications and Media Authority (**ACMA**). Under s 60 of the Radiocommunications Act, the ACMA must determine procedures for allocation of spectrum licences in the primary market. These determinations are made with the objective of promoting the long-term public interest derived from the use of the spectrum.
- 159 As part of determining primary market allocation procedures, the ACMA may (and often does) impose rules aimed at ensuring competitive tension. In particular, the ACMA (or historically the Minister) may (based on advice from the ACCC) impose limits on parts of the spectrum that may be used by any one person or a specified person.<sup>178</sup> The Minister may give written directions to the ACMA in relation to the exercise of the power to determine procedures imposing an allocation limit.
- 160 Where limits are imposed, the ACMA (or the Minister in a direction to the ACMA) will design these in a way that ensures that all operators have an opportunity to acquire sufficient spectrum to compete effectively in downstream markets – thus ensuring competitive tension in the primary market for allocation of this spectrum. For example, in issuing a direction for allocation limits in the 26 GHz band, the Minister noted:<sup>179</sup>

“Allocation limits of 1 GHz will mitigate the risk of monopolisation or very asymmetric spectrum holdings that could result from an allocation without limits. Significantly asymmetric spectrum holdings between operators could potentially dampen future competition in the national retail mobile services market, the national fixed broadband services market, and/or the private wireless enterprise market. Allocation limits of 1 GHz will give all operators an opportunity to acquire sufficient spectrum to compete effectively in these markets.”

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<sup>176</sup> Application, at paras 232-234.

<sup>177</sup> SOPV, at paras 5.67 – 5.73.

<sup>178</sup> *Radiocommunications Act 1992* (Cth), s 60(5).

<sup>179</sup> Explanatory Statement: Radiocommunications (Spectrum Licence Limits—26 GHz Band) Direction 2020, issued by the Authority of the Minister for Communications, Cyber Safety and the Arts.

- 161 The ACMA's submission makes clear that the process for determining primary market procedures is a careful and deliberative one. The ACMA also makes clear that, in determining any future procedures for primary market allocation, it would take into account the proposed transaction and design procedures in a way that ensures any allocation limits operate effectively. The ACMA states:<sup>180</sup>

"When spectrum licensing is used, there is a lengthy process for allocating the spectrum. Relatively early in this process, well before we know the identity of the interested parties, we consult on the proposed auction format, as auction design is a function of the spectrum being offered, likely use cases, as well likely participants. A general level of interest may be ascertained from the multiple rounds of consultation across the planning and implementation stages, but there is generally no commitment to participate in the auction until the auction bids are made, nor is participation in an auction process contingent on participation in the preceding consultation processes.

The main impact of the existence and nature an agreement such as the MOCN Agreement on our processes is in assessing issues relevant to potential allocation limits. Such agreements, that provide for rights to use spectrum, may be matters the ACMA has regard to when considering the imposition of allocation limits. Moreover, where such an agreement exists, the ACMA would carefully consider the nature of any commercial arrangements operating in the market to ensure the legislative instruments giving effect to any allocation limits operate effectively. The ACMA has discretion within the framework of the Act to draft such instruments as appropriate. The Minister may also direct the ACMA in relation to determining allocation limits."

- 162 This legal framework for ensuring competitive tension in the primary market will not change. Following the proposed transaction, the ACMA will continue to regulate acquisition in the primary market in a way that maintains competitive tension and avoids any adverse impact on downstream markets.

### **Secondary market**

- 163 Competitive tension in the secondary market is ultimately driven by demand for spectrum, which in turn is driven by overall demand for mobile services (i.e. traffic) using this spectrum. This overall demand will not reduce as a result of the proposed transaction – and may in fact increase as stronger competition drives innovation in service improvements and faster uptake of new technologies. Rather than reducing network traffic, there will simply be a shifting of some of this traffic between networks, with a relatively small amount of TPG traffic in the 17% Regional Coverage Zone shifting from the TPG and Optus networks to the MOCN. Since overall traffic demand will not reduce, there will be no loss of competitive tension in secondary markets.
- 164 The SOPV raises the possibility that the proposed transaction may result in a lessening of competition due to a reduction in TPG's incentives to acquire spectrum as well as Optus' investment incentives to roll out its regional 5G network.<sup>181</sup>
- 165 The issue of Optus' investment incentives is addressed in section 3 above. For reasons set out in that section, there will be no diminution of Optus' incentives to invest. If anything, increased competitive tension brought about by the proposed transaction may be expected to *increase* incentives for further investment in network upgrades and service improvements. There can therefore be no reduction in Optus' incentives to acquire spectrum.

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<sup>180</sup> [Submission by ACMA](#), at paras 55 and 56.

<sup>181</sup> SOPV, at para 5.67.

166 In general, TPG's incentives in the foreseeable future are unlikely to be impacted by the proposed transaction, given the proposed transaction's limited application to the 17% Regional Coverage Zone where TPG has a limited regional network footprint and small customer base. [Confidential to TPG] [REDACTED]

167 In any event, as noted above, a mere shifting of a small amount of TPG traffic from the TPG and Optus networks in the 17% Regional Coverage Zone onto the MOCN will not alter the total demand for spectrum that is driven by that traffic. There will therefore be no reduction in competitive tension in markets for acquisition of spectrum as a result of the proposed transaction.

## 5.2 Response to SOPV questions

168 Attachment A below provides a full response to other questions raised by the SOPV.

## 5.3 Response to interested parties

169 Attachment B and C provides a response to the interested party submissions.

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# 6 Addressing any long-term uncertainty regarding competitive effects

170 For the reasons set out above, the Applicants do not accept that the long-term concerns expressed in the SOPV relating to a potential loss of infrastructure-based competition are likely to arise. The evidence establishes that the proposed transaction will be a long-term enhancement in infrastructure-based competition.

171 Nonetheless, mindful of the ACCC's preliminary views and the difficulties in specifying these long-term hypothetical harms, the Applicants have submitted the following s 87B undertakings:

- (a) **Joint undertaking:** The Applicants have submitted a draft section 87B undertaking to the ACCC which would have the effect of requiring the Applicants to cease giving effect to the proposed transaction (save for certain transition out provisions) if the proposed transaction is not re-authorised within 8 years from the date that this merger authorisation takes effect. If the ACCC (or Tribunal) did not re-authorise the proposed transaction at that time, the Applicants would be required to take steps to terminate and unwind the deal as soon as reasonably practicable and within no more than 3 years, in accordance with the contractual exit process; and
- (b) **Site undertaking:** TPG has submitted a further draft section 87B undertaking to the effect that it will retain a selection of 300 of its mobile sites in the 17% Regional Coverage Zone.<sup>182</sup> The sites that TPG will have retained by the time that the ACCC (or Tribunal) makes a decision under the Joint Undertaking is in addition to the up to 169 sites which would revert to TPG upon termination of the Agreement,

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<sup>182</sup> These sites will be retained over a period of up to 8 years by TPG committing not to terminate the leases and licences by which it accesses the sites on which its RAN equipment is situated. [Confidential to TPG] [REDACTED] of those sites have a remaining duration of at least 8 years which would correspond with the date by which the ACCC or Tribunal will have made a decision under the Joint Undertaking.

and together means that TPG will retain around 60% of its 749 sites in the 17% Regional Coverage Zone.

- 172 The s87B undertakings above do not involve any amendment or change to the terms or operation of the relevant agreements or the application for authorisation.
- 173 The ACCC could obtain the benefit of the s87B undertaking by authorising the proposed transaction subject to a condition that the Applicants give and comply with a s87B undertaking in the form of the draft provided.<sup>183</sup>
- 174 The Applicants submit that the s87B undertakings provide the ACCC with an assurance that the immediate competitive and consumer benefits of the proposed transaction are not lost, whilst enabling it to ensure that the longer-term (albeit speculative) concerns raised by Optus do not eventuate.

#### **6.1 Implication of the commitment to seek ACCC review 8 years from the date the merger authorisation takes effect**

- 175 The Joint Undertaking provides the ACCC (not the Applicants) with a mechanism to revisit and reassess the benefits and competitive effects of the proposed transaction at an earlier point.
- 176 More specifically, this would have the following practical effects:
- (a) First, over a period of eight years, the ACCC will be able to practically assess the impact, if any, on the investment activities of each of the MNOs and test the submissions made by Optus regarding its future capacity to continue to invest.
  - (b) Second, an 8-11 year period (allowing for the transition out) in which to rebuild the TPG network and/or find alternatives, broadly aligns with the currently anticipated timeframe for the introduction of 6G technology (which is likely to be rolled out by 2032). This allows the ACCC to consider and assess as part of its review of the authorisation the implications of the MOCN and active sharing between Telstra and TPG on the ability and incentive of TPG to invest in 6G and/or the implications more generally on the competitive structure of the market in that regard.
  - (c) Third, emerging technologies and innovations (such as LEOSats) are likely to have progressed to a stage where they have created opportunities for new forms of network competition between all MNOs and new entrants. The ACCC could assess the impacts of such technologies and potential entrants on infrastructure-based investment.
  - (d) Fourth, the ACCC could at the eight year juncture assess any longer term price implications associated with the MOCN, including forming an informed and evidence-based view of the quality-adjusted level of prices in the market as well as the impact on national price points of the incremental improvement in regional coverage for TPG associated with the MOCN.
- 177 The Applicants consider that an authorisation with such a condition allows the ACCC to achieve for the consumers, businesses, and regional communities the immediate and certain competitive and consumer benefits of the transaction, whilst introducing scope for it to consider and, if necessary, revisit the authorisation in the event that any material competitive detriment emerges over the short to medium term.

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<sup>183</sup> CCA s 88(4).

## 6.2 No potential for concerns in relation to TPG's ability to re-enter the market after the expiry or termination of the Agreements

178 The SOPV expresses a concern "about the effect on competition in the long term of the removal of TPG as a potential infrastructure investor in regional and remote areas of Australia"<sup>184</sup> stating at paragraphs 5.47 to 5.49 that:

"By decommissioning tower infrastructure in regional areas, the ACCC is concerned that the threat of future network expansion by TPG in the Regional Coverage Zone will be diminished; and that it will be in a weaker position to re-negotiate when seeking to renew contract terms with Telstra in the future. Interested parties, including Pivotel, also raised concerns regarding TPG's competitive position and presence after decommissioning its sites in the Regional Coverage Zone.

As a consequence, the ACCC expects TPG will become heavily reliant on access to Telstra's network in regional areas in the longer term and will discontinue investment in the Regional Coverage Zone for the foreseeable future.

To the extent investment decisions by TPG elicit competitive responses by Optus and Telstra, any benefits from such responses would be unlikely to arise in a future with the Proposed Transaction."

179 TPG does not consider that the ACCC's concerns are warranted.

180 In accordance with the s87B undertaking proposed above, should the ACCC choose not to reauthorise the proposed transaction in eight years, TPG would have a 36 month transition out period to re-establish itself in the 17% Regional Coverage Zone.

181 A period of 36 months is more than ample time for TPG to re-establish 749 sites plus an additional [Confidential to TPG] [REDACTED] sites in the 17% Regional Coverage Zone (i.e. to match the sites it would have in a Targeted Build Counterfactual) if it chose to do so over other available options. In fact, given that TPG would have a materially enhanced customer base at this time, it will have the business case to rollout many more sites than this, and a period of 36 months would allow for this to occur. In this regard, TPG notes the following.

- (a) No greenfield build is required to establish TPG mobile sites in the 17% Regional Coverage Zone, as all of TPG's active equipment in this region is located on third party towers, poles or rooftops. Therefore, to re-establish mobile sites in this region, TPG will merely need to obtain access to third party towers (or poles or rooftops) and install its 6G equipment at those sites. The process of doing this is not dissimilar to what it would need to do in any counterfactual to replace its end-of-life Huawei equipment with non-Huawei 5G equipment. In effect, it would merely be deferring this process to a later generation of technology (at a later date).
- (b) Obtaining access to third party infrastructure will be a relatively straightforward exercise in eight years from the date that an initial authorisation takes effect. In relation to the up to 169 sites transferred to Telstra under the Agreements, Telstra is required under the Agreements to assist TPG back onto these sites at the expiration or termination of the Agreements. Accessing other sites will also be a relatively straightforward process for the following reasons:

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<sup>184</sup> SOPV, at para 5.51.



- (i) TPG already has in place long-term master access agreements with most of the large tower companies and can easily obtain access to sites under these agreements; and
- (ii) in eight years, tower companies will be highly incentivised to offer TPG access to sites on competitive terms to increase the utilisation of their site portfolio, particularly given that:
  - (A) there have been a string of recent investments in tower companies by new owners (reducing the extent of vertical integration in the industry) and these companies will be incentivised to provide access to obtain a return on their investment;
  - (B) the provision of tower access is highly competitive, with a number of large players competing to provide access, and a large number of sites now available across Australia (including in the 17% Regional Coverage Zone), which provide MNOs with much more choice in respect of site access than was historically the case; and
  - (C) MNOs are the main customers of mobile towers and may co-locate on the same towers. Of the 586 TPG sites which will not be transferred to Telstra under the proposed transaction, 78% are co-located on third party infrastructure with another MNO. As such, it is highly likely that TPG would be easily able to obtain access to the many sites currently available across the 17% Regional Coverage Zone (plus the many more sites that will likely exist in 8 years).

These factors are enhanced by the reforms to the *Telecommunications Act 1997* that expand the facilities access regime to include tower affiliated companies of mobile carriers.

- (c) Once TPG obtains access to third party infrastructure, it estimates that it could rollout around [Confidential to TPG] active 6G sites per annum in regional Australia (if not more). In 2022, TPG rolled out over 1,000 5G sites in the 0-80% region which involved it having to replace its Huawei active equipment with new Nokia 4G and 5G equipment. TPG does not expect the rollout of 6G in regional areas in future to take longer than this and, in fact, may be shorter, given that a future 6G rollout in regional areas would occur using its own contractors (rather than, as has been the case in the 0-80% region, [Confidential to TPG]). Even if such a rollout rate was slower in regional areas (for example, 800 sites per year), TPG could rollout 2,400 sites over a 36 month period (equating with the Transition-Out Period). If TPG decided to undertake a regional site roll out, the coverage provided by those sites could be augmented with other available technologies (such as LEOSats) and/or wholesale arrangements.
- (d) In relation to the costs of rolling out sites should the Agreements be terminated, TPG notes that:
  - (i) without the proposed transaction, TPG would need to bear the costs of undertaking a full swap out of the Huawei equipment across its current 749 sites (to replace it with non-Huawei 5G equipment) and rollout an additional [Confidential to TPG] sites in a Targeted Build Counterfactual. With the proposed transaction, TPG would essentially defer incurring those costs to such time as it needs to rollout 6G should the proposed transaction not be re-authorised or—if re-authorised—TPG chose not to renew the Agreements; and

- (ii) with the proposed transaction, TPG will have significantly more customers in eight years than under any counterfactual such that the costs of any 6G rollout could be spread over a broader customer base (reducing the cost per customer involved in such a rollout) which would also enhance its business case for rolling out materially more than [Confidential to TPG] sites at this point in time.

- 182 In addition to the feasibility of rolling out more sites than TPG would be able to do in any counterfactual should the proposed transaction not be re-authorised (or should TPG have chosen not to renew the Agreements), TPG will likely have available to it a vast array of new options available to it in 8 years to augment its coverage. For example, LEOSats already provide opportunities for lower cost backhaul to terrestrial mobile sites and direct LEOSats to handset connectivity is being developed, which will likely be a more accessible means of extending coverage in 8 years' time. Active neutral hosting is also developing as a new means of providing coverage with tower companies showing a preparedness to transition to neutral hosting models which will increase the options available to retailers seeking to offer mobile services across regional Australia at a lower cost. These options are not mutually exclusive.
- 183 Nonetheless, given the comments made in the SOPV regarding TPG decommissioning sites in the 17% Regional Coverage Zone, TPG has offered the Sites Undertaking to the ACCC which commits it to refrain from terminating any licence or lease (Licence) pursuant to which it is granted access to one or more of a select 300 mobile sites in the 17% Regional Coverage Zone.
- 184 In respect of the Licences that TPG commits not to terminate, a small proportion [Confidential to TPG] are subject to Licences less than 8 years such that these Licences may expire before any decision by the ACCC (or Tribunal) pursuant to the Joint Undertaking. However, even if these Licences were not renewed, TPG will retain 46% of the sites not transferred to Telstra by the date at which the ACCC (or Tribunal) makes its decision. Taking this into account in conjunction with the up to 169 sites to be transferred to Telstra under the proposed transaction (noting Telstra's obligation to assist TPG back onto these sites), TPG will have access to around 60% of its current sites in the 17% Regional Coverage Zone at the time the ACCC re-assesses the proposed transaction under the Joint Undertaking.
- 185 The sites which TPG would retain have been carefully selected to ensure it does not bear unnecessary costs which would materially affect its business case. The vast majority of the 300 sites [Confidential to TPG] are subject to [Confidential to TPG] year Licences to [Confidential to TPG] with [Confidential to TPG] a further [Confidential to TPG] sites are subject to Licences with more than 10 years' tenure remaining and a further [Confidential to TPG] sites are subject to Licences with more than eight years' tenure remaining. The remaining [Confidential to TPG] sites either have Licences with more than 5 years' tenure remaining or are low cost sites. The 300 sites are also well positioned across Australia which will assist with re-entry, should the ACCC choose not to re-authorise the proposed transaction.
- 186 The sites intended to be decommissioned have been selected because they are not of strategic value to TPG or are not capable of being terminated in a short timeframe. TPG is also positioned at the bottom of more than [Confidential to TPG] of the sites that would be decommissioned such that it would not be giving up any valuable position on the tower through its decision to decommission those sites. Many of these sites are

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<sup>185</sup> [Confidential to TPG]

also not in optimal locations because of the lack of choice available at the time of entering into the site lease or licence. As way of example: **[Confidential to TPG]**

(a)



(b)



187 Retaining these sites would have a materially adverse impact on TPG's business case for the proposed transaction with immaterial strategic benefit. If TPG were to roll out 6G in the 17% Regional Coverage Zone upon termination of the Agreements (or should the Agreements not be re-authorised by the ACCC), it would not choose to do so using a large number of the sites to be decommissioned. Given the far greater choice of third party sites available now (and in the future), TPG would be in a better position to choose sites that are in a better location and/or have other structural capacity and height advantages, so as to provide better coverage across the 17% Regional Coverage Area.

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## 7 Conclusion

188 How to improve coverage in regional and rural Australia has bedevilled Australian communications policy for a long time. As the ACCC said in its RTIRC submission, "[t]he key issues confronting regional areas are well recognised. Previous RTIRC reviews have identified these issues, and suggested solutions that have seen incremental improvements" and that "innovative solutions" are called for.<sup>186</sup>

189 While not a complete answer, the proposed transaction:

- (a) represents a market-delivered innovative solution;
- (b) extends a form of facilities-based competition beyond what would otherwise be achieved; and
- (c) leaves facilities-based competition in place as the prevailing competitive dynamic in the national markets.

190 The SOPV itself accepts that the most commercially realistic alternative is:

- (a) uncertain, delayed and patchy investment by TPG in its own infrastructure (which would not be likely to materially improve TPG's independence or network flexibility in comparison with the MOCN, in any event); and
- (b) coupled, at some point, with the prospect of a form of service-based coverage through a possible commercial roaming agreement with Optus, which would offer TPG substantially less network-based independence, innovation and competition. The terms of this deal are likely to be poor, given that Optus would have become the only remaining wholesale provider of network access in the market.

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<sup>186</sup> ACCC, [Submission to Regional Telecommunications Review 2021](#) (September 2021), at page 2.

- 191 The ACCC itself has acknowledged the potential for a market-driven solution to emerge with the advent of new technology and innovations, stating that *"it is possible that with changing technology and innovations there will be less costly solutions to provide wider geographic coverage in the future"* <sup>187</sup> and that competition between the three MNOs *"should provide sufficient conditions for competitive wholesale roaming services to be provided such that TPG could obtain a commercial roaming solution."*<sup>188</sup> The proposed transaction is in fact the market-driven commercial solution the ACCC envisaged at the time of the Domestic Mobile Roaming Declaration Inquiry.
- 192 As the ACCC has acknowledged, we are at or approaching the outer boundaries of full facilities-based competition. A decision to not authorise the proposed transaction trades away and risks the immediate benefits of quasi-facilities-based competition:
- (a) based on a fear of the long-term effect on Optus of TPG emerging as a national, network-based competitor (and the potential for this to reduce Optus' future revenues and capacity to invest);
  - (b) for a hypothetical concern that Optus may decelerate its network investment in areas where only two networks are feasible and significant investment has already taken place;
  - (c) where the concern of a reduction in investment in the 17% Regional Coverage Zone by Optus are counterintuitive to a rational competitive response from Optus; and
  - (d) where those impacts are unlikely to substantially lessen competition in the national market and where that competitor has both tested incremental deployment strategies and emerging technology options to address the competitive challenge.

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<sup>187</sup> ACCC, [Domestic mobile roaming declaration inquiry – Final report](#), (October 2017), at page 50.

<sup>188</sup> ACCC, [Domestic mobile roaming declaration inquiry – Final report](#), (October 2017), at page 76.

## Attachment A Response to SOPV questions

### Questions for interested parties regarding the state of competition between MNOs

- 1 The ACCC seeks any views and submissions on its discussion of the factors affecting competition between mobile network operators in Australia, including:
  - (a) the importance of each factor (e.g. price, geographic coverage, network reliability, speed) on competition between MNOs;
  - (b) whether MNOs' network investments (including in expanding coverage or densification of sites, and the acquisition of spectrum) have been influenced by investments by their competitors, and if so, the extent to which they have been;
  - (c) the extent to which an MNO's geographic coverage in regional areas influences its overall success in acquiring and maintaining customers in metropolitan and regional areas;
  - (d) the importance of MNOs being able to supply 5G in metropolitan and regional areas in acquiring and maintaining customers, and alternatively, the significance of the competitive detriment to an MNO if it was to not supply 5G;
  - (e) the degree to which MVNOs competitively constrain MNOs.

#### Question 1(a)

MNOs compete across a range of dimensions including price, geographic coverage, network reliability and speed. It is difficult to say which factor is more important than others as this may vary between MNOs and their respective competitive strategies (e.g., less coverage may require stronger competition on other features). For Telstra, [Confidential to Telstra]

For TPG, [Confidential to TPG]

#### Question 1(b)

Telstra has invested significantly in its network, including in regional Australia.

<sup>189</sup> [Confidential to Telstra]

<sup>190</sup> Application, at para 200.

As discussed in section 3.5 above, there are a range of reasons driving Telstra's investment decisions. This includes:

- Features of the mobile telecommunications industry that require constant investment in order to meet rising demand (and therefore maintain acceptable service quality) as well as a constant need to seek and invest in new technologies to keep pace. These pressures will rise independent of competitor investments.
- Telstra has made significant commitments to investment in mobile infrastructure to regional Australia irrespective of the proposed transaction. For example, as set out in Telstra's RTIRC submission,<sup>191</sup> Telstra has made the following commitments specifically focussed on regional Australia:

- expanding the 5G network to cover 95% of the population and 80% of all mobile network traffic being on 5G by 2025;
- \$200 million co-investment funds over four years to further extend regional coverage through partnering with Commonwealth, State and Local Governments and local communities. This investment will support Telstra's commitments under the T25 strategy, including expanding 4G/5G coverage in regional Australia by at least 100,000km.<sup>192</sup>

This investment follows \$150 million invested in FY22 to improve regional network customer experience, including through upgrading over 180 3G only sites, augmenting capacity at selected 4G sites with high traffic and further 4G site optimisations to better balance 3G/4G traffic and address localised customer demand;

- \$75 million directed toward enhancing connectivity in regional Australia and enacting RTIRC recommendations;
- expanding the 4G network to provide coverage to those who can currently only access the 3G network;
- trialling 4G fixed wireless technology and introducing a satellite service in FY23 in order to deliver better coverage, redundancy and quality;
- continuing its battery life cycle replacement program that prioritises locations of increased natural disaster risk;
- \$5 million to targeted investment programs to address fixed line issues in areas of challenging performance due to ageing infrastructure in order to improve network quality and customer experience; and
- contributing \$24 million to delivering 72 projects under Round 1 of the Commonwealth Government's Regional Connectivity Program.

[Confidential to Telstra]

<sup>191</sup>Telstra, [Submission to Regional Telecommunications Review 2018](#), at page 8.

<sup>192</sup> Telstra, [Introducing T25: our plan for growth and enhanced customer experiences](#) (Media release, 16 October 2021).

<sup>193</sup> [Confidential to Telstra]

[REDACTED]

Telstra also refers to Confidential Annexure AP-02 of the statement of Andrew Richard Penn (12 August 2022). The annexure is the “*Regional Australia update*” personally prepared by Mr Penn, and sets out Telstra’s position, including:

- [Confidential to Telstra] [REDACTED]
- \$75 million will be directed toward enhancing connectivity in regional Australia, which will be guided by the recommendations of the RTIRC 2021 Review.

### Question 1(c)

Geographic coverage is an important factor in attracting:

- the portion of metropolitan customers who value regional coverage (e.g. residents who travel in and out of adjacent areas for work or to visit friends and family, as well as residents of metropolitan areas who travel to remote work sites, regional tourism destinations, and the homes of family and friends in regional and rural areas);
- customers that reside in regional areas; and
- enterprise and government customers. [Confidential to TPG] [REDACTED]

This question is also addressed as part of TPG’s commercial rationale in section 2.5 of the Application.<sup>195</sup>

*As the SOPV notes, ‘coverage in regional and rural areas is valued not only by consumer who live and work in those areas, but also by metropolitan consumers. In many cases, consumers place value on remote coverage in areas they may not travel to frequently or at all’.*<sup>196</sup>

The proposed transaction will enable TPG to improve customer perceptions of its mobile network coverage and compete for customers in regional areas.<sup>197</sup> The importance of geographic coverage to its consumer and enterprise customers has previously been addressed in the Application, the statement of Mr Berroeta and the expert report of Dr Padilla.<sup>198</sup>

### Question 1(d)

<sup>194</sup> See Confidential Annexure D.1.7 of the Application [Confidential to Telstra] [REDACTED]

<sup>195</sup> Application, at para 28.

<sup>196</sup> SOPV, at para 3.14.

<sup>197</sup> Application, at para 235(a).

<sup>198</sup> Application, at paras 200 and 206; Statement of Mr Berroeta, paras [44]-[49]; Dr Jorge Padilla, Expert Report, paras [3.16]-[3.39].

This question is addressed in section 3.5 above and Telstra's response to the RFI dated 21 September 2022. As previously submitted, it is critically important to invest in future generations of technologies in order to avoid a 'Vodafail' situation. 'Vodafail' is an illustration of the risk an MNO can face by 'sitting on' older mobile technologies in particular areas (e.g., regional and rural areas) while upgrading to newer generations of technology in other areas (e.g., metropolitan areas). When Vodafone customers started to experience network performance problems on the Vodafone network, perceptions very quickly began to change and Vodafone experienced a loss of 554,000 customers in FY11 alone.<sup>199</sup> Hutchison Telecommunications Australia experienced a 9% decrease in its share (50%) of Vodafone's total revenue from June 2011 to June 2012.<sup>200</sup>

#### Question 1(e)

MVNOs are an important feature of the competitive landscape in Australia and have been instrumental in driving price and non-price competition to the benefit of customers.

Table 6 of the Application shows that MVNOs account for approximately [Confidential to Telstra] of the national market for the supply of retail mobile services. As outlined in section 9.3 paragraph 210 of the Application, [Confidential to Telstra]

The Applicants submit that the proposed transaction will increase competition in respect of the supply of wholesale services to MVNOs because TPG will be better able to compete with Telstra and Optus to attract and win MVNOs.<sup>201</sup>

#### Questions for interested parties regarding key elements of the proposed transaction

- 2 The ACCC seeks any views and submissions whether the elements of the proposed transaction, if authorised, are likely to impact the way in which MNOs compete, including the impact of:
  - (a) the non-discrimination provisions under the MOCN Service Agreement on TPG;
  - (b) the carve-outs to the non-discrimination provisions under the MOCN Service Agreement on TPG;
  - (c) Telstra gaining access to TPG's spectrum holdings under the Spectrum Authorisation Agreement.

The basic characteristic of a MOCN arrangement is that the participating MNOs share the RAN but retain their independent core networks. The core networks define and control the services on the network, meaning that each MNO retains the ability to define and control the services that it offers despite sharing the RAN with another MNO (see section 6.2(B) of the Application). The proposed transaction enhances TPG's ability to compete

<sup>199</sup> See Hutchison Telecommunications (Australia) Limited [Half Yearly Results Presentation](#) (23 July 2012), at page 6 – 2H11 customer base vs 2H10 customer base.

<sup>200</sup> See Hutchison Telecommunications (Australia) Limited [Half Year Results Presentation](#) (23 July 2012), at page 9.

<sup>201</sup> Application, section 9.3, at para 209; Response to Optus, at para 28.



with Optus and Telstra by immediately increasing its network coverage while retaining TPG's autonomy to define and control the services it offers in the 17% Regional Coverage Zone.

The MOCN Services technology is carrier-agnostic. As described in section 6.2(B) of the Application, the sharing of the RAN through a MOCN is inherently non-discriminatory. The RAN prioritises traffic according to the agreed traffic classes (i.e. the type of traffic), and does not factor in the PLMN (i.e. the MNO the traffic belongs to).

### **Question 2(a)**

The non-discrimination provisions enhance TPG's ability to compete with Telstra and Optus by offering a contractual protection against Telstra favouring its traffic over the shared RAN. TPG also has powers under the MOCN Agreement to audit Telstra's compliance with these non-discrimination obligations (see section 7.4(B) of the Application).

The non-discriminatory provisions are addressed in detail in section 7.4 of the Application and pages 18-21 of the Response to Optus. Telstra and TPG have considered they are robust and enable TPG to independently compete with access to the same network. TPG would not have entered into the proposed transaction if it considered that it gave Telstra too much control to restrict TPG's network performance over the MOCN.

TPG considers the non-discrimination obligation to be a more effective means of ensuring that Telstra provides TPG and its customers with a consistently high quality of service (**QoS**) than individual service levels. As explained by Mr Chiarelli:<sup>202</sup>

- A non-discrimination obligation amounts to a strict "like for like" commitment. So, for example, if Telstra is aiming for and providing 99.8% uptime (i.e. 0.2% outages) for its customers then TPG's customers will benefit from the same experience. TPG's customers will receive a high QoS under the MOCN because Telstra will be incentivised to ensure that it continues to be perceived by its own customers as the leading MNO on coverage and quality. Telstra is highly unlikely to provide an inferior QoS to TPG's customers when the effect of doing so would be that Telstra's own customers will suffer equally.
- The inclusion of an SLA in the MOCN Agreement would be less likely to be effective in achieving a high QoS for TPG's customers than a non-discrimination obligation. That is because the thresholds specified in an SLA are usually set at a quality level which will ensure the host can always meet them, and at a level much lower than what the host would be aiming to achieve for its own customers.

### **Question 2(b)**

The carve-outs account for a very small proportion of traffic. This will not materially affect the remaining traffic that is subject to the non-discrimination obligations described above. The carve-outs will not have a material impact on TPG's ability to compete with Optus or Telstra with the proposed transaction. This question is further addressed in section 6.2(B) of the Application and paragraphs 32-33 of our Response to Optus.

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<sup>202</sup> Giovanni Chiarelli, Witness Statement, Annexure H.

## Question 2(c)

We refer to section 9.5 of the Application which outlines the impact of Telstra gaining access to TPG's spectrum holdings.

We note that the spectrum is pooled between Telstra and TPG, and both have access to the pool.<sup>203</sup> As the Applicants are equally entitled to the pool, there are continuing incentives to compete to win customers in order to maximise utility of this shared resource.

The proposed transaction enhances TPG's ability to utilise unused spectrum and reduces congestion in Telstra's network for its customers. It does not alter Optus' ability to access spectrum to compete.<sup>204</sup> The Applicants submit that the spectrum pooling is pro-competitive because it improves the efficient use of spectrum resources, and provides TPG with the means to compete with Telstra and Optus in the 17% Regional Coverage Zone.<sup>205</sup> We refer to the Aetha Report, which concludes that the Optus and MOCN networks have a broadly similar capability to serve growing traffic levels, with Optus having a slight advantage over the MOCN.

### Questions for interested parties regarding international experience

- 3 The ACCC invites information and submissions on whether and how the experience of overseas network sharing arrangements is relevant to the proposed transaction. The ACCC particularly invites any overseas examples of network sharing arrangements (now or in the past) that are comparable to the agreements under the proposed transaction, and information on the efficiencies achieved and the impact on competition.

This question is answered in section 3.5 above.

The legal question of the competitive effects of any particular arrangement will be specific to the facts in any jurisdiction and the nature of the arrangements. However, the key importance of references to existing uses of MOCN network sharing arrangements overseas is to, as a matter of the fact matrix, illustrate how RAN sharing from a technology perspective works in practice and its capabilities in terms of the separation of the core (given this is the first arrangement of its kind in Australia). In Canada, the MOCN has been used to enhance facilities-based competition, particularly in sparsely populated areas, or where full network build out is unlikely or uneconomic.<sup>206</sup> As Mr Rodin notes, all MOCNs enable operators to obtain the coverage and capital cost benefits of using another operator's RAN (and potentially backhaul or spectrum), whilst maintaining independent control of their services and products.<sup>207</sup>

To this extent the ACCC should have regard to examples overseas, as well as the statements of Mr Rodin and Mr Strople. They illustrate the driving force behind MOCN network sharing arrangements, how these arrangements (through the separation of the core and RAN) have allowed continued and independent competition – and how they do so in ways that are not possible as compared to other arrangements such as roaming. In particular the experiences of Mr Rodin and Mr Strople describe how MOCN arrangements have been used in Canada for more than a decade, and that the Canadian market

<sup>203</sup> Application, at para 241.

<sup>204</sup> Application, at para 243.

<sup>205</sup> Response to interested party submissions (Tranche 1) Response, at page 2.

<sup>206</sup> Michael Strople, Supporting Statement, Annexure A, at para 47.

<sup>207</sup> Bruce Rodin, Supporting Statement, Annexure B, at para 30.

continues to observe strong competition between MNOs (including MNOs in a MOCN arrangement).<sup>208</sup> MTS has retained full and independent control of its own core network, and therefore also full and independent control of its own product roadmap, service definition and customer billing and management.<sup>209</sup>

This is particularly relevant to the ACCC's consideration of any counterfactual involving a roaming arrangement between TPG and Optus, as such arrangement by their nature have more limited opportunities for competitive differentiation.

**Questions for interested parties regarding the future with and without the proposed transaction**

- 4 The ACCC invites views on each of the above counterfactuals, including about:
- (a) the commercial likelihood of each counterfactual;
  - (b) the ability and incentives of each MNO to invest in regional infrastructure in each counterfactual;
  - (c) the utilisation of spectrum by each MNO, including TPG's ability and/or incentive to monetise any unused spectrum, and which entities (including neutral host providers) would be likely to purchase or lease such spectrum;
  - (d) technical factors relating to spectrum holdings and network infrastructure that may impact the type of agreement that can be entered into between TPG and Optus in the future without the proposed transaction and the likely timing of any such agreement;
  - (e) TPG's ability to innovate and differentiate its product and service offering under each counterfactual.

This question is answered in **section 2** above.

The Applicants consider that in any counterfactual, Optus would become a monopoly supplier of mobile network access services to TPG in regional Australia and in any counterfactual agreement between TPG and Optus, Optus' incentive will be to preserve its revenue and market share.

**Questions for interested parties regarding the appropriate timeframe**

- 5 The ACCC invites views on the appropriate timeframe over which competitive effects are likely to arise as a result of the proposed transaction.
- 6 The ACCC invites comments on the weight which should be given to short-term and to long-term competitive effects of the proposed transaction.

<sup>208</sup> Bruce Rodin, Supporting Statement, Annexure B, at paras 35 and 36.

<sup>209</sup> Michael Strople, Supporting Statement, Annexure A, at para 46.

It is well established that assessments as to whether there is a 'real chance' that contracts, arrangements or understandings (**CAUs**) will substantially lessen competition<sup>210</sup> must have regard to the available evidence on a forward-looking basis. An evaluative judgement is required to be made that any SLC is 'commercially relevant or meaningful' and not just 'a mere possibility'.<sup>211</sup> This assessment of whether the proposed transaction is likely to SLC occurs against the counterfactual.

Though the time period to be applied in the assessment against a counterfactual is not fixed and will depend on the specific facts of the merger or CAU, it is accepted that the relevant facts and market conditions to be considered are those that are present today and can be reasonably predicted:<sup>212</sup>

"However, the true focus in these proceedings, as one part of the analysis, should be on the question of whether there is a likelihood, possibility or real chance (whatever phrase is adopted) that TPG will in the future (**relevantly the next five years**) roll-out a retail mobile network **in the circumstances that can reasonably and sensibly be predicted** based upon the evidence before the Court" (emphasis added)

In the context of the proposed transaction and mobile markets, assessing the likely effects on competition over a period of 20 years based on this being the potential term of the Agreements is a highly speculative exercise, particularly given the dynamic nature of the telecommunications industry – 20 years ago, 3G was yet to be switched on, consumers did not watch videos on mobile phones and the iPhone was still 5 years away. As set out in this submission, there are significant developments which will likely materially change the mobile market over the medium to long term, including the evolution of LEOSat technology and the use of active neutral hosting solutions which will further increase competition in mobile markets.

Market conditions and competitive landscapes are more capable of precise observation in the shorter term rather than the longer term. In the longer term, the competitive process should be expected to deliver efficient outcomes. Consequently, the assessment of the counterfactual will naturally require more prominence be given to the competitive effects of the proposed transaction more readily observable as these can be more reasonably predicted.

The courts have also recognised that what is a possibility today does not become more probable as time goes on,<sup>213</sup> emphasising the importance that assessments are undertaken having regard to real chances and real possibilities.<sup>214</sup>

The transaction is clearly pro-competitive in the foreseeable future delivering substantial immediate benefits for competition. Without the proposed transaction, over the next three to five years, consumers will be left with only two effective regional MNOs and only one choice of 5G provider in much of regional Australia. Even if the ACCC adopts a longer time frame against which to consider the proposed transaction, these benefits will continue to endure and, given the reasons set out in **section 3** of this submission, the

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<sup>210</sup> *Australian Competition and Consumer Commission v Pacific National Pty Ltd* [2020] FCAFC 77, at para 1277 (Beach J) and *Australian Competition and Consumer Commission v Metcash Trading Limited* [2011] FCAFC 151, at paras 227-229 and 341-342 (Yates J).

<sup>211</sup> See *Vodafone Hutchison Australia Pty Limited v Australian Competition and Consumer Commission* [2020] FCA 117, at para 68.

<sup>212</sup> See *Vodafone Hutchison Australia Pty Limited v Australian Competition and Consumer Commission* [2020] FCA 117, at para 13 and 231. In this case, the relevant facts and market conditions were considered across five years from the time of the proposed transaction.

<sup>213</sup> See *ACCC v NSW Ports Operations Hold Co Pty Ltd* [2021] FCA 720, at para 1599.

<sup>214</sup> See *ACCC v NSW Ports Operations Hold Co Pty Ltd* [2021] FCA 720, at para 1595.

MNOs will each be incentivised and have the capacity to continue to invest in their networks across Australia.

**Questions for interested parties regarding price-based competition**

- 7 ACCC invites views on the impact of the proposed transaction on price competition, including:
- (a) whether TPG would have the ability and incentive to raise prices under the proposed transaction;
  - (b) whether Telstra would have the ability and incentive to raise prices under the proposed transaction;
  - (c) the impact on Optus' pricing decisions if the proposed transaction improves Telstra's quality of service;
  - (d) the impact of the fees payable by both Telstra (for spectrum use) and TPG under the proposed transaction.

This question is answered in **section 4** above.

The Applicants submit that there is no commercial likelihood that price-based competition will be adversely affected as a result of the proposed transaction.

**Questions for interested parties regarding the impact on infrastructure competition**

- 8 The ACCC invites views on the impact of the proposed transaction on the MNOs' mobile infrastructure investment incentives and how changes to their incentives might impact competition, including:
- (a) the impact of the proposed transaction on TPG's incentive to invest in regional and remote areas of Australia;
  - (b) the impact of the proposed transaction on Optus' ability and incentive to invest in regional and remote areas of Australia;
  - (c) the impact Optus reducing its investment in regional Australia would have on Telstra's incentives to invest in regional and remote areas of Australia; and
  - (d) the timeframe over which the impact on these investment incentives is likely to be felt.

This question is answered in **section 3** above.

The Applicants submit that there is no potential for a material detriment to infrastructure-based competition as a result of the proposed transaction.

**Questions for interested parties regarding the impact on wholesale mobile competition**

- 9 The ACCC invites views from MVNOs on the impact of the proposed transaction on competition for the supply of wholesale services.

This question is answered in **section 4.5** above. We also refer to section 9.3(B) of the Application on TPG's enhanced ability to compete at the wholesale level with the proposed transaction.

The proposed transaction provides TPG with greater ability to compete to win and retain retail and wholesale mobile customers.<sup>215</sup> The wholesale market is competitive and will become more so as a result of the proposed transaction because there will be three MNOs offering competitive nationwide coverage (see section 4.1 of the **Tranche 1 Response**).<sup>216</sup>

**Section 3** above describes the potential in the long-term for TPG to constrain Telstra in terms of the supply of wholesale mobile services due to weaker investment by Optus in regional mobile infrastructure.

**Questions for interested parties regarding spectrum**

- 10 The ACCC invites views on the impact of the proposed transaction on markets for the acquisition of spectrum licences, including about the impact on TPG's and Optus' incentives to acquire spectrum licences covering regional areas of Australia.

This question is answered in **section 5.1** above, section 4.3 of the Tranche 1 Response and paragraph 60 of the Response to Optus.

As previously submitted, given increasing demand on mobile networks, there will continue to be strong incentives to acquire spectrum licences covering regional Australia in the future.

We also refer to ACMA's letter to the ACCC dated 25 July 2022. As the ACMA notes:

- The ACMA's processes for bringing spectrum to the market have a long lead time and are engaged extensively in international for a that consider band harmonisation. These processes inform the development of technology standards that underpin affordable communications technologies.<sup>217</sup>
- Relatively early in any process for allocating spectrum, the ACMA consults on the proposed auction format. It may also design its process and allocations having regard to the proposed transaction to ensure it is effective and efficient.<sup>218</sup>
- The ACMA states '*As a general proposition, the ACMA sees increasing demand for spectrum to deliver increased capacity and data rates for a variety of use cases*

<sup>215</sup> Application, at para 198.

<sup>216</sup> Tranche 1 Response.

<sup>217</sup> [Submission by ACMA](#), at para 52.

<sup>218</sup> [Submission by ACMA](#), at paras 56 and 57.

*including wireless broadband, localised area wireless broadband and fixed wireless broadband...* The proposed transaction will not impact these broader incentives to acquire spectrum.<sup>219</sup>

In general, TPG's incentives in the foreseeable future are unlikely to be impacted by the proposed transaction, given the proposed transaction's limited application to the 17% Regional Coverage Zone where TPG has a limited regional network footprint and small customer base. **[Confidential to TPG]**



**Questions for interested parties regarding tower infrastructure**

11 The ACCC invites views on the impact of the proposed transaction on the acquisition of mobile network infrastructure services.

The proposed transaction will not result in a reduction in demand for mobile network infrastructure services. As set out in section 8.6 of the Response to Optus:

- TPG will continue to be a customer for passive access services in the 0-81.4% population coverage area, which is substantially larger than the 17% Regional Coverage Area. In fact, TPG is likely to increase its customer base as a result of the proposed transaction, as it is more likely to deploy additional sites in the 0-81.4% population coverage area using third party tower infrastructure; and
- Optus is unlikely to remove its sunk network investment in the 17% Regional Coverage Zone, and will therefore continue to pay the recurrent co-location charges for sites (presumably owned by ATN). The sites will also continue to be available for other Applicants to co-locate. The Applicants also consider it to be improbable, for reasons set out in section 3 above, that Optus will cease to upgrade existing sites or cease building new sites in the 17% Regional Coverage Zone.

The proposed transaction is an active sharing arrangement based on the Applicants' strategic and commercial considerations and is limited to infrastructure-sharing in the 17% Regional Coverage Zone. Beyond the 17% Regional Coverage Zone, MNOs will continue to make decisions about what form of infrastructure sharing is most appropriate in different parts of the country, for which demand remains.

Furthermore, the proposed transaction will not reduce TPG's demand for mobile network infrastructure services. As set out in 9.3(A) of the Application, at the conclusion of the MOCN arrangement, TPG could roll out new equipment using the latest generation of technology which will involve obtaining further access to third party infrastructure.

**Questions for interested parties regarding fixed wireless services and enterprise mobility services**

12 The ACCC invites views and further information on:

<sup>219</sup> [Submission by ACMA](#), at para 58.

- (a) the impact of the proposed transaction on the supply of fixed wireless access services, including the impact on TPG's short- and long-term ability and incentives to offer fixed wireless access services in the Regional Coverage Zone;
- (b) the impact of the proposed transaction on the supply of enterprise mobility services, including the impact on TPG of the exclusion of Telstra enterprise customers and customers with 'special services' from the non-discrimination obligations under the proposed transaction.

### Question 12(a)

Within the spectrum sharing arrangement, TPG and Telstra will independently introduce the FWA product constructs (i.e. speed and data inclusions). As the number of fixed wireless access SIOs that the spectrum volume can support is dependent on these product constructs, it is difficult to be precise as to the estimated number of FWA services that Telstra and TPG will be able to offer. It is therefore difficult to precisely identify the number of FWA services that Telstra or TPG could support as a result of the proposed transaction.

However, it is clear that the proposed transaction will provide a much stronger case for TPG to offer fixed wireless services in regional areas as it will enable new competition into the retail broadband services market across Australia, including in regional areas.<sup>220</sup> This is because the proposed transaction offers TPG access to an arrangement which does not present service quality limitations.

TPG has provided further information in relation to FWA services in its responses to the ACCC's information request of 14 September 2022.

### Question 12(b)

This question is addressed in paragraphs 28-35 of the Response to Optus.

The proposed transaction will better enable TPG to compete to win enterprise and government customers than under any potential counterfactual.<sup>221</sup>

The exclusion of enterprise customers means an exclusion of 'enterprise-grade' services. Enterprise customers supplied with retail-grade services are not excluded.<sup>222</sup>

The number of retail-grade 'special services' that are excluded are very small and are excluded because Telstra has requirements around these Telstra special services.<sup>223</sup>

### Questions for interested parties on public benefits

- 13 The ACCC invites views and any further information in relation to any additional public benefits likely to result from the proposed transaction.

<sup>220</sup> Application, at para 290, and Response to Optus, at para 197.

<sup>221</sup> Response to Optus, at para 35c.

<sup>222</sup> Response to Optus, at para 32.

<sup>223</sup> Response to Optus, at para 33.



This question is answered in **section 1** above. We also refer to section 10 of the Application.

As previously outlined, the proposed transaction will deliver substantial benefits to the public, principally in rural and regional communities but also to consumers residing outside these areas who travel to regional communities through.<sup>224</sup>

- improved connectivity and service quality;
- enhanced innovation;
- reduced network costs;
- increased impact of Government funding for infrastructure deployment in regional and rural areas; and
- environmental benefits from reduced need for physical infrastructure deployment and lower energy requirements.

In addition, the proposed transaction will support and enhance uptake of digital technology in the agricultural sector and the development of the renewable sector in regional areas. As set out in a submission from Alun Davies, government investment in the renewable energy sector will be largely based in regional and rural parts of Australia, and improved connectivity will be a key component in supporting development of this sector.<sup>225</sup> In an oral submission to the ACCC, the Alliance of Western Councils has pointed to public benefits in supporting the increase in agricultural production expected over the next few years.<sup>226</sup> This is echoed by several interested parties' submissions, as outlined in section 2 of the Tranche 1 Response. The improved capacity from the pooled spectrum will better support more data intensive and video-based agtech applications, such as remote-controlled farm machinery and IoT services (such as connected water pumps, soil moisture probes and cattle monitors).

**Questions for interested parties on network improvements, innovation and increased consumer choice**

- 14 The ACCC invites views and further information on:
- (a) whether there is congestion on the Telstra network, and if so, the nature and extent;
  - (b) to the extent congestion is an issue, the ways outside of the proposed transaction in which could Telstra address congestion;
  - (c) what steps Telstra would need to take to relieve any congestion in the Regional Coverage Zone if it obtains access to the pooled spectrum under the proposed transaction;
  - (d) the timeline under which Telstra customers within the Regional Coverage Zone would expect to see congestion relief if Telstra

<sup>224</sup> Application, at para 244.

<sup>225</sup> [Submission by Alun Davies](#), at page 2.

<sup>226</sup> [Record of oral submission to the ACCC, Alliance of Western Councils](#), at page 2.

obtains access to the pooled spectrum under the proposed transaction;

- (e) whether the proposed transaction, if it proceeds, would impact on TPG's ability to differentiate its service offering;
- (f) the extent to which network improvements, innovation and consumer choice could be enhanced (to the same or some extent) in each of the counterfactuals set out above in section 5;
- (g) the extent to which these public benefits are likely to endure for the proposed length of the arrangements, which in the ACCC's preliminary view is likely to be 20 years.

Question 14(a) is addressed in section 10.1(C) of the Application.

Telstra regularly monitors congestion on its network. A key measure of congestion used by Telstra is the extent to which broadband speeds at a particular site drop below critical benchmarks.<sup>227</sup> Telstra's monitoring of network congestion indicates much greater congestion issues for customers in rural and regional areas, compared to metropolitan areas.<sup>228</sup> Customers in the regional and remote areas are around [Confidential to Telstra] more likely to suffer from congestion than customers in the major metropolitan and larger regional cities.<sup>229</sup>

Question 14(b) is addressed in section 10.1(C) of the Application.

Without the proposed transaction, Telstra can address congestion in two ways: "densification" of the network using Telstra's existing spectrum holdings or using a large pool of spectrum across the existing physical infrastructure.<sup>230</sup> Densification requires significant capital investment which is often not cost effective for regional and rural areas.<sup>231</sup> An example of this is set out at **Figure 5** above.

By pooling spectrum under the MOCN, the proposed transaction will provide Telstra with more access to low band spectrum and increase the capacity of the network to service regional and rural areas,<sup>232</sup> and will reduce network congestion in the short term.<sup>233</sup>

Question 14(c) is addressed in section 10.1(C) of the Application.

In response to question 14(d), pooling spectrum will reduce network congestion in the short term.<sup>234</sup> As outlined in section 10.1(C) and Figure 15 of the Application, in a scenario without the MOCN, the number of Telstra sites in regional and rural Australia facing material congestions is forecast to increase by [Confidential to Telstra] over the next 16 months, [Confidential to Telstra] currently to [Confidential to Telstra] 4G sites by mid-2023.<sup>235</sup> With the MOCN, congestion is

<sup>227</sup> Application, at para 259.

<sup>228</sup> Application, at para 260.

<sup>229</sup> Application, at para 261.

<sup>230</sup> Application, at para 264.

<sup>231</sup> Application, at para 265.

<sup>232</sup> Application, at para 268.

<sup>233</sup> Application, at para 269.

<sup>234</sup> Application, at para 269.

<sup>235</sup> Application, at para 269.

forecast to increase at a lower rate, rising to around [Confidential to Telstra] 4G sites by mid-2023.<sup>236</sup>

In response to question 14(e), as described in detail in section 6 of the Application, both TPG and Telstra will continue to operate their own mobile core networks where the key service-differentiation functionality resides, and as a result, each of the Applicants will have a high degree of autonomy to differentiate products and services.<sup>237</sup>

In response to question 14(f), as set out in section 10.2(B) of the Application, customers in regional and rural Australia effectively face a choice between two MNOs: Telstra and Optus.<sup>238</sup> The proposed transaction will increase consumer choice in the 17% Regional Coverage Zone in several ways, including by materially increasing TPG's coverage.<sup>239</sup> By providing better coverage as a result of the proposed transaction, TPG will better be able to compete with Telstra and can minimise the loss of customers to Telstra as a result of coverage issues.<sup>240</sup>

In response to question 14(g), the proposed transaction's contribution to congestion relief will persist for the term of the proposed transaction. Benefits of network improvements, innovation and consumer choice will also persist for the term of the proposed transaction.

**Questions for interested parties on reduced network costs and more efficient utilisation of infrastructure**

15 The ACCC invites views and further information on:

- (a) the magnitude of the cost savings likely to be achieved from consolidating infrastructure under the proposed transaction, and where any costs savings are likely to flow;
- (b) the extent to which reduced network costs or more efficient utilisation of infrastructure could be enhanced (to the same or some extent) in each of the counterfactuals set out above in section 5;
- (c) what initial and ongoing costs Telstra and TPG are likely to incur under the proposed transaction to achieve this consolidation.

This question is addressed in section 1.5 above.

Further, in response to question 15(a), we refer to Table 1 of the Application which shows Telstra's average cost for investing in new sites. As outlined in section 10.3 of the Application, the proposed transaction will significantly reduce the cost to TPG expanding its network.<sup>241</sup> Additionally, the proposed transaction effectively reduces the average cost to Telstra of serving rural and regional areas, by increasing utilisation of its RAN infrastructure and sharing the cost of its infrastructure with TPG.<sup>242</sup>

In response to question 15(b), as outlined in section 10.3 of the Application with reference to Mr Feasey's expert report, the sharing or pooling of spectrum can improve the

<sup>236</sup> Application, at para 269.

<sup>237</sup> Application, at para 111.

<sup>238</sup> Application, at para 281.

<sup>239</sup> Application, at para 284.

<sup>240</sup> Application, at para 287.

<sup>241</sup> Application, at para 321a.

<sup>242</sup> Application, at para 321b.

utilisation of assets which might otherwise remain underexploited.<sup>243</sup> This is particularly so if an operator with significant spectrum holdings lacks network assets in a particular geographic area and so has little or no demand for network capacity in that area, whilst another operator in the same area is capacity constrained.<sup>244</sup>

Question 15(c) is addressed in Confidential Annexure D.1.7 to the Application, at page 4.

**Questions for interested parties about environmental benefits**

- 16 The ACCC invites further views and information about whether environmental benefits are likely to flow from the proposed transaction and their magnitude, compared to the different counterfactual scenarios (discussed in section 5).

This question is addressed in **section 1.7** above.

RAN sharing in regional and rural areas is expected to deliver environmental benefits, including reduced energy usage and improved visual amenity as a result of reduced need for site duplication.<sup>245</sup> As set out in section 10.5 of the Application, Telstra estimates that the average energy usage for a typical mobile site is around 25MWh per annum.<sup>246</sup> However, by reducing site duplication, RAN sharing will reduce the strain on electricity network infrastructure in regional and rural areas, and reduce carbon emissions.<sup>247</sup>

More efficient utilisation of existing RAN infrastructure is also likely to reduce “visual pollution” from mobile towers and other RAN infrastructure.<sup>248</sup> Concerns about “visual pollution” from having antennae in suburban streets has previously been raised by local communities in responses to 2G and 3G, and is a matter which continues to be material and at least materially important to regional communities. Benefits which reduce community concern in this regard and generally provide environmental benefits should not be underestimated.

**Questions for interested parties on public detriments**

- 17 The ACCC invites views and any further information in relation to any additional public detriments likely to result from the proposed transaction.

This question is addressed in section 10 of the Application.

As previously submitted, the proposed transaction will not lead to any material public detriment and will deliver substantial benefits to the public, principally in rural and regional communities but also to consumers residing outside these areas who travel to regional communities.<sup>249</sup>

The Applicants set out their views in relation to the concentration of spectrum holdings in section 5.1 above.

<sup>243</sup> Application, at para 296.

<sup>244</sup> Application, at para 296.

<sup>245</sup> Application, at para 329.

<sup>246</sup> Application, at para 329.

<sup>247</sup> Application, at para 329.

<sup>248</sup> Application, at para 340.

<sup>249</sup> Application, at para 244.

**Questions for interested parties on the effects of spectrum concentration on long-term industry structure**

- 18 The ACCC invites views and further information about the possible impacts of the proposed transaction, particularly as a result of the pooling of spectrum holdings, on the long-term structure of the industry.

This question is answered in **section 5.1** above.

The Applicants submit that there will be no loss of competition as a result of the pooling of spectrum holdings under the proposed transaction. This is because the legal framework for ensuring competitive tension, and ACMA's role as regulator, will remain the same, and any shift of traffic onto the MOCN will not alter the demand for spectrum.

**Questions for interested parties on network diversity**

- 19 The ACCC invites views and any further information in relation to any reduced network diversity likely to result from the proposed transaction.

This question is addressed in section 4.4, Table 7 of the Tranche 1 Response.

As previously outlined, the proposed transaction is not likely to result in a material reduction in network diversity. In the case of diversity during emergencies or natural disasters, retaining a TPG site will not assist with mains or back-up power to a separate Telstra site, and customers of one network are not ordinarily provided with a mobile service from the network of another MNO in a disaster. In fact both TPG and Telstra sites may be taken out by the same disaster (as they are nearby to each other).

**Questions for interested parties on employment impacts**

- 20 The ACCC invites views and any further information in relation to any employment impacts likely to result from the proposed transaction.

As set out in section 3 above and in section 5.4 of the Response to Optus, Optus has sunk investment in its regional network that it is unlikely to roll back or cease investing in. Existing Optus dealers have established stores to support this regional network, and the proposed transaction will not have the effect of immediately reversing this.

The Applicants consider that with increased competitive pressure, Optus will be incentivised to differentiate itself in the 17% Regional Coverage Zone on other factors such as price and customer service. In circumstances where Telstra research indicates that Optus customers have reported valuing the quality of customer service provided, as set out in Figure 6 above, its existing stores in the 17% Regional Coverage Zone will continue to play an important role in winning customers.

We refer to section 4.2 of the Tranche 1 Response. The Applicants consider that the proposed transaction will provide TPG with incentives to expand and compete vigorously in the 17% Regional Coverage Zone, requiring the opening of some retail stores to support customers. The likely increase and expansion of the TPG retail footprint due to its enhanced services with the proposed transaction is likely to materially outweigh any (though unlikely) reduction in employment from a hypothetical reduction in revenue by Optus due to increased competition.

We also refer to our response to question 13 above. Public benefits such as improving connectivity and increasing uptake of agtech to support agriculture also have the potential to provide employment opportunities in regional and rural areas.

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## Attachment B Response to interested party submissions

- 1 The Applicants refer to the interested party submissions in response to the ACCC's SOPV uploaded as at 26 October 2022.<sup>250</sup> Unless otherwise specified, defined terms have the same meaning as set out in the Application.

### Response to submissions in support of the Application

- 2 Consistent with the market feedback received by the ACCC published as at 26 October 2022, the vast majority of the submissions in response to the ACCC's SOPV (35 out of 40) strongly endorse the proposed transaction.
- 3 This overwhelming support is indicative of the significant benefit and value that an additional, viable mobile carrier option would present to consumers, businesses and communities in rural and regional areas and should not be underestimated.
- 4 Most of the submissions received are from consumers, businesses and organisations that are based in rural and regional Australia, and therefore represent the lived experience of Australians with connectivity and mobile telecommunications networks in the 17% Regional Coverage Zone. These are the consumers, businesses and organisations who would directly benefit from a MOCN or continue to be disadvantaged if the proposed transaction does not occur. The interested parties express a desire for digital connectedness, acknowledging that the proposed transaction delivers this. For example, the Committee for Gippsland notes that *"there will be broad ranging benefits to regional and rural Australia, including Gippsland, of enhanced service quality to Telstra customers, improved TPG service and additional choice. It is understood that it is unlikely telecommunications competitors will withdraw from regional and rural Australia if the Telstra-TPG MOCN proceeds"*.<sup>251</sup>
- 5 The submissions in support of the Application identify the same two clear benefits arising from the proposed transaction that have been raised in earlier interested party submissions to the ACCC:
  - (a) **Improved choice:** a common theme expressed across the submissions is that there is only one viable option for mobile phone coverage in rural and regional areas – customers want the value of a third choice in regional Australia: *"My only other choice is to change to Optus who have some serious security issues... Regional Australia deserves to have better choice with good quality services"*.<sup>252</sup> The fervency with which interested parties are advocating for the proposed transaction demonstrates the extent of their need for true, genuine choice and an alternative service provider in regional areas. Consumers believe that the proposed transaction is the quickest and most certain way, and perhaps the only way, that competition can be introduced into their communities.<sup>253</sup> They consider that the proposed transaction will *"level the playing field, for the first time ever allowing some real competition in rural areas that have been non-existent in the past"*.<sup>254</sup>
  - (b) **Improved service quality and coverage:** the importance of better-quality coverage in rural and regional areas from a business, safety and productivity

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<sup>250</sup> Published on or after 30 September 2022.

<sup>251</sup> [Submission by Committee of Gippsland, at page 2.](#)

<sup>252</sup> [Submission by Mr McCauley.](#)

<sup>253</sup> [Submission by WAFarmers.](#)

<sup>254</sup> [Submission by IMZI Pty Ltd.](#)

perspective was also highlighted across the submissions.<sup>255</sup> A number of submissions referred to the safety risk which currently exists with no or patchy coverage in certain areas, and which would be mitigated by reliable mobile phone coverage.<sup>256</sup> Consumers feel that the proposed transaction “*provides consumers and businesses with a real choice rather than a choice to save money but sacrifice reliability and safety*”.<sup>257</sup> Adequate connectivity is necessary for industries in rural and regional areas – such as agriculture – to be able to make productivity, efficiency and business improvements in the future. Consumers submit that “*without significant improvements in connectivity in the short and medium term, the future economic and social viability of regional, remote and rural communities will be held back and current blocks to technology uptake in the agricultural sector will continue*”.<sup>258</sup>

- 6 It is also evident that consumers are seeking a real and immediate solution and are strongly opposed to foregoing an additional provider and quality coverage in their communities, for the sake of what may occur in a long-term hypothetical scenario. Consumers recognise that “*immediate benefits would come from the proposed transaction, outweighing the speculation of future risks*”.<sup>259</sup> The Alliance of Western Councils, which covers almost the entirety of the 17% Regional Coverage Zone, states that “*it is unfathomable to us to think that progress is delayed due to what may happen in ten years. If that is the case, then why would we take any progressive steps knowing that in ten years the circumstances of almost everything will have changed*”.

### **Response to submissions neutral to or opposing the Application**

- 7 A number of submissions in response to the ACCC’s SOPV (5 out of 40) are neutral towards or oppose the proposed transaction.
- 8 One of these submissions suggests alternative models for achieving extended mobile coverage. These alternatives do not form a part of any counterfactual to the proposed transaction and are therefore irrelevant to the analysis.
- 9 Another submission, submitted by an individual, is based upon a fundamental misunderstanding of the proposed transaction, including its mischaracterisation as a roaming agreement. The Applicants have addressed the distinction of the MOCN from a roaming agreement and do not propose to make any submissions in response to this individual market participant.
- 10 Further submissions were made by Pivotal and Commpete. These submissions suffer from the same deficiencies as their previous submissions. As noted by the Applicants in the Tranche 1 Response, these submissions are inherently self-serving, divorced from the facts and lack any evidentiary substantiation. Pivotal and Commpete seek to have the ACCC impose conditions without supporting evidence and which give rise to related competition issues.
- 11 The Applicants’ responses to the other arguments made by Pivotal and Commpete are set out in Table 9 below.

### **Table 9 Applicants’ response to issues raised by Pivotal and Commpete**

<sup>255</sup> [Submission by AGForce Queensland Farmers Limited](#)– “*Telecommunication services are vitally important for community, safety, to support business development, enhance children’s education and maintain social connections*”.

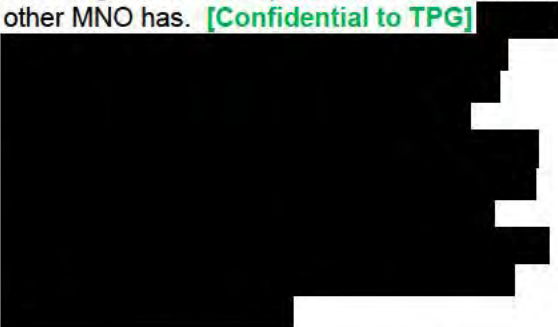
<sup>256</sup> [Submission by Warwick Bowen](#), [Submission by Sophie Browne](#).

<sup>257</sup> [Submission by Vodafone Business Centre Perth](#).

<sup>258</sup> [Submission by Queensland Farmers Federation](#).

<sup>259</sup> [Submission by Queensland Farmers Federation](#).



No	Issue raised	Applicants' response
1	Pivotel and Commpete repeatedly make bald assertions of Telstra's dominance in wholesale and retail markets for mobile services.	<p>Pivotel and Commpete provide no supporting evidence or material for these claims.</p> <p>The Applicants have provided significant evidence that retail mobile markets are highly competitive.<sup>260</sup> This is consistent with the ACCC's findings in the Mobile Roaming Declaration Inquiry.<sup>261</sup></p>
2	<p>Pivotel and Commpete seek to impose conditions to the authorisation that in effect advance their own commercial positions.</p> <p>For example:</p> <p>a) <i>"imposing an obligation on Telstra to provide high quality wholesale access to the whole of the Telstra mobile network on reasonable terms to any party which requires such access. Such mandated access would need to be made available to both MVNOs and mobile network operators seeking to roam onto the Telstra network and would need to provide sufficient functionality to enable wholesale customers to differentiate their product offerings and offer innovative solutions to their customers (i.e. 'thick' MVNO services)."</i><sup>262</sup></p> <p>b) <i>"...the divestment of competitively significant amounts of spectrum"</i> <sup>263</sup></p>	<p>As previously submitted by the Applicants in the Tranche 1 Response:</p> <p>a) The ACCC's Mobile Roaming Declaration Inquiry determined not to declare domestic mobile roaming services. The wholesale market will be more competitive than mandated roaming because the proposed Telstra-TPG MOCN will allow TPG to offer wholesale services to MVNOs across its entire ~98.8% population coverage area, whereas regional domestic roaming is only useful to an MNO that has a significant metropolitan network which no other MNO has. <b>[Confidential to TPG]</b> </p> <p>b) Low band spectrum is the most useful spectrum in achieving improved coverage across the 17% Regional Coverage Zone. There is no competition case for divestiture, as has previously been submitted by the Applicants,<sup>264</sup> as Optus has a relative per customer spectrum advantage over the pooled spectrum on the MOCN.</p>
3	Pivotel seeks to characterise TPG as a 'thick-MVNO' within the 17% Regional Coverage Zone. It states that there are three main reasons that TPG effectively joins the ranks of MVNOs – <i>"MVNOs in Australia are thin MVNOs and little more than branded resellers of the MNOs"</i>	<p>This is factually incorrect. It fundamentally mischaracterises the operation of the proposed transaction and misunderstands the concept of the MOCN.</p> <p>The Applicants have provided significant evidence of what a MOCN is and how it operates in the Application,<sup>266</sup> Response to Optus at section 2.4,</p>

<sup>260</sup> See Application, at page 72.

<sup>261</sup> Mobile Roaming Declaration Inquiry at p 55.

<sup>262</sup> [Submission by Commpete](#), at page 2.

<sup>263</sup> [Submission by Pivotel](#), at para 2.3.

<sup>264</sup> See Application, at para 241.

<sup>266</sup> See Application, at section 6.

	<p>services; MVNOs operating on the Telstra network are prohibited from accessing Telstra's full retail network and are subject to reduced speed limits; and 'thin' MVNOs provide limited scope for innovation and genuine product differentiation, limiting competition largely to price. TPG will be in a similar position to other MVNOs on the Telstra network if this transaction proceeds given it will also be unable to access the full Telstra retail network"<sup>265</sup></p>	<p>and sections 1.2 and 1.3 above. Also see the Statement of Mr Chiarelli (Annexure H).</p> <p>The MOCN will facilitate rich competition between the MNOs, enabling TPG to innovate and differentiate its services to a degree that it is currently unable to. Mr Rodin found that MNOs under MOCNs have been able to develop and differentiate their network and services (including competing around speed, latency, jitter etc).<sup>267</sup></p>
3	<p>"It is unlikely that the transaction would result in TPG becoming a more effective competitor in regional Australia as, to do so, it would need to substantially invest in its regional distribution and marketing. This investment would be in addition to the incremental charges it will need to pay Telstra for the use of its network in regional and remote areas."<sup>268</sup></p>	<p>The Applicants address this issue with significant evidence in the Response to Optus at section 2.4 and in section 4.2 above.</p>
6	<p>"...the dominant operator [will have] the overwhelming majority of low-band spectrum in the 17% Regional Coverage Area...it will likely have a long-term detrimental effect on competition..."</p> <p>"...the consolidation of spectrum in the hands of Telstra will inhibit the ability and incentive for smaller MNOs and neutral hosts to access spectrum for the purposes of initiatives designed with rural and regional Australians in mind."<sup>269</sup></p>	<p>The proposed transaction is not "consolidating" spectrum "in the hands of Telstra". It is pooling TPG's currently underutilised spectrum with Telstra's spectrum, such that <i>both</i> parties can access the full pool to provide their services. As TPG's customer base grows as a result of the proposed transaction its use of the pooled spectrum will grow in parallel – as noted in this submission, TPG anticipates <b>[Confidential to TPG]</b> [REDACTED]</p> <p>As explained above in section 5.1, the ACMA is responsible for the regulation of acquisition of spectrum, and will continue to regulate acquisition of spectrum in a way that maintains competitive tension. The ACMA ensures that all operators have an opportunity to acquire sufficient spectrum, and the proposed transaction will not alter the ACMA's role.</p> <p>The Applicants have also previously noted that Optus has sufficient spectrum to compete against Telstra and TPG, including sufficient spectrum to</p>

<sup>265</sup> [Submission by Pivotel](#), at para 3.5.

<sup>267</sup> Bruce Rodin, Supporting Statement, Annexure B, at paras 35 and 36.

<sup>268</sup> [Submission by Pivotel](#), at para 2.5.

<sup>269</sup> [Submission by Pivotel](#), at paras 2.10 and 11.8.

		<p>meet continued growth in data consumption by users and also to grow its market share.<sup>270</sup> This issue has also been comprehensively addressed by the expert report of Aetha.</p> <p>Furthermore, Commpete's submission is inconsistent. It cannot argue that an adverse outcome of the proposed transaction is that TPG would have less incentives to participate in future spectrum auctions, while at the same time arguing that Commpete participants need regional spectrum.</p>
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- 12 Singtel and Optus submit that Telstra will gain a significant cost advantage resulting from the proposed transaction, which will entrench its scale and efficiency.<sup>271</sup> They also expressed concern with Telstra's acquisition of additional spectrum. The Applicants have previously addressed this mischaracterisation of the spectrum pooling arrangement as an 'acquisition' and do not propose to make further submissions on this point.<sup>272</sup>
- 13 In response to Singtel and Optus' submission that "*TPG will not have full control of its own pricing and offerings*", and that "*Telstra will be in control of TPG's future roadmap*",<sup>273</sup> the Applicants refer to their previous submissions as to how a MOCN operates, including section 3.4 above and comments by the experts Mr Strople and Mr Rodin.
- 14 A more complete response to Optus' submissions will be provided to the ACCC in due course.

<sup>270</sup> See Tranche 1 Response at section 4.5.

<sup>271</sup> [Submission by Singtel and Optus.](#)

<sup>272</sup> See Tranche 1 Response at section 1.3.

<sup>273</sup> [Submission by Singtel and Optus.](#)

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## Attachment C Response to Further CEPA report for Optus

- 1 This annexure responds to the expert report prepared by Dr Chris Doyle of CEPA dated 26 September 2022 (**Further CEPA Report**).
- 2 Much of the Further CEPA Report is devoted to explaining economic efficiency principles. CEPA points out that economic efficiency has several dimensions, and that a particular transaction may impact these different dimensions of efficiency in different ways.
- 3 Importantly, CEPA acknowledges that the proposed transaction has clear productive efficiency benefits.<sup>274</sup>
- 4 CEPA's main concern is that this productive efficiency benefit may be outweighed by a loss of allocative and dynamic efficiency. However, there are five principal problems with CEPA's analysis in this regard:
  - (a) *First*, CEPA appears to hinge its conclusions on a comparison of the proposed transaction with a preferred outcome which involves spectrum pooling between TPG and Optus. At the outset, for the reasons provided in TPG's Counterfactual Submission, a MOCN between TPG and Optus is not feasible for five years due to a lack of synergies between the parties' spectrum and equipment. In addition, **[Public text: there is no guarantee of TPG] [Confidential to TPG]** and Optus being able to successfully agree on the commercial terms of any MOCN in the foreseeable future. It is also worth noting that CEPA's reliance on the TPG / Optus spectrum pooling counterfactual directly contradicts the position it took in its first report, where it stated that the relevant counterfactual was the status quo and "*any alternative joint-venture or NSA should be ignored as speculative*".<sup>275</sup>
  - (b) *Second*, CEPA focuses on identifying the optimal allocation and use of TPG's spectrum holdings. Based on its unrealistic comparison with an alternative Optus / TPG spectrum pooling arrangement, CEPA considers that the alternative arrangement "*would result in a more symmetric spectrum allocation*" and therefore a "*better outcome*".<sup>276</sup> However, even if spectrum pooling between TPG and Optus were the appropriate counterfactual (which it is not, as noted above), and even if CEPA's comparison of the proposed transaction with this counterfactual were accurate, the mere fact that an alternative transaction could deliver a "*better outcome*" is not relevant. CEPA's analysis does not demonstrate that the proposed transaction would be likely to result in a SLC, nor does it diminish the clear public benefits.
  - (c) *Third*, there is very little independent analysis by CEPA of the alleged allocative and dynamic efficiency costs of the proposed transaction compared to this counterfactual. Instead, CEPA largely relies on submission material provided by Optus as part of its instructions, which is flawed in numerous respects (refer to discussion below). There is almost no independent analysis to support CEPA's key conclusions that "*Telstra will have increased market power*" and that there will be "*less infrastructure investment by Optus in the 17% Regional Coverage Zone*".<sup>277</sup>

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<sup>274</sup> [Further CEPA Report](#), at section 6.4.

<sup>275</sup> [CEPA Report](#), at page 7.

<sup>276</sup> [Further CEPA Report for Optus](#), at para 20.

<sup>277</sup> [Further CEPA Report for Optus](#), at para 138.

- (d) *Fourth*, to the extent that there is any independent analysis by CEPA, it is highly simplistic. CEPA characterises the proposed transaction as a ‘3 to 2’ or a ‘partial merger’, which is evidently not the case.<sup>278</sup> At the same time, CEPA fails to recognise that its preferred (and unrealistic) counterfactual (a TPG / Optus MOCN) could equally be described as a ‘3 to 2’ resulting in a similar loss of dynamic and allocative efficiency that it asserts would occur with the proposed transaction.

[Confidential to TPG]

- (e) *Fifth*, there is no attempt by CEPA to weigh up the clear productive efficiency gains against the dynamic efficiency losses claimed by CEPA / Optus. CEPA concludes that “*diminution in competition in both the short- and long-term would result in an adverse impact on economic efficiency and outweigh other public benefits*”.<sup>279</sup> However there is neither any clear identification of the adverse competition impacts referred in this conclusion, nor any analysis to suggest that these would be so significant as to outweigh the unarguable benefits of the proposed transaction.

#### **Optus material relied on by CEPA**

- 5 The Further CEPA Report relies on a large amount of material from Optus, contained in Annexures A and B of the instructions letter provided by MinterEllison to Dr Doyle on 23 September 2022. This includes:
- (a) Optus’ view of relevant measures of spectrum holdings;
  - (b) Optus’ view that Telstra is “already dominant” in its regional spectrum holdings (and that this “dominant” position will be strengthened);
  - (c) Optus’ opinion on what Telstra could do with its existing spectrum holdings; and
  - (d) Optus’ view of what it could potentially do under an alternative Optus / TPG spectrum pooling arrangement.
- 6 This material is largely in the nature of an Optus submission, reflecting Optus’ view of the world. However, CEPA has adopted these submissions uncritically, and relied upon them in forming key conclusions.<sup>280</sup>
- 7 The Applicants do not intend to respond to all of this Optus submission material. Parts of it repeat or duplicate Optus’ submission of 27 June 2022. Other parts (such as Optus’ opinion on Telstra’s network engineering practices) are of little or no relevance to the ACCC’s assessment.
- 8 However, in this section the Applicants address some key points in the Optus submission material that was given to Dr Doyle.

#### ***Impact of the proposed transaction on Telstra’s spectrum holdings***

- 9 Optus claims that Telstra’s spectrum holdings will increase.<sup>281</sup>
- 10 In fact, there will be no increase to either Telstra or TPG’s mid-band or low-band holdings. The operation of the Spectrum Agreement under the proposed transaction

<sup>278</sup> [Further CEPA Report for Optus](#), at paras 136 and 162; [CEPA Report](#), at page 7.

<sup>279</sup> [Further CEPA Report](#), at para 176.

<sup>280</sup> For example: [Further CEPA Report](#), at paras 145 and 146.

<sup>281</sup> For example: [Further CEPA Report](#), Annexure A, at para 5.1.

provides that there is no change in the ownership of spectrum, only a pooling of spectrum (authorised access) to facilitate operation of the MOCN. The pooled spectrum will be utilised by Telstra and TPG on a non-discriminatory basis so that spectrum use will depend on the relative competitive success by Telstra or TPG in the market.

### **Optus spectrum holding comparisons**

- 11 Paragraphs 5.8 and 5.9<sup>282</sup> of Annexure A to Dr Doyle's instructions include information relating to comparative spectrum holdings by population.
- 12 This characterisation of spectrum holdings by reference to relative bandwidth per population does not accurately reflect the capacity of Telstra or Optus to provide services, nor does it reflect the end-user experience (which is impacted by the number of other users present on a site, rather than population). The key problem with this metric is that it does not account for the interrelation between spectrum holdings and the number of *subscribers*. A metric based on spectrum holdings divided by services in operation more accurately represents a network's capacity to deliver mobile services.
- 13 The comparison of spectrum holding per population also appears to include a mobile infrastructure factor, although this is not explained. To the extent that an infrastructure factor is included, this will distort any analysis of the impact of the proposed transaction, since it would indicate an 'advantage' for Telstra purely because it has invested in more mobile sites. Therefore, if this metric were to be used to determine which MNOs should have access to additional spectrum, it would effectively penalise MNOs who invest in new mobile sites, and reward those who do not. This is an absurd position to take, as it would create a disincentive for MNOs to invest in network infrastructure.
- 14 Slide 6<sup>283</sup> of Annexure 3 also refers to Telstra's alleged spectrum advantage in the 17% Regional Coverage Zone, based on a different measure (Optus' preferred methodology of a spectrum per site per subscriber comparison). In its June submission to the ACCC,<sup>284</sup> Optus had relied on this measure to claim that Telstra has more spectrum per subscriber than Optus.
- 15 This methodology and statement by Optus was corrected in the Response to Optus<sup>285</sup> which confirms that Optus has a spectrum advantage in the 17% Regional Coverage Zone based on bandwidth per SIO.<sup>286</sup>

### **Peak speed comparisons**

- 16 Paragraphs 6.3 and 6.4<sup>287</sup> of Annexure A to Dr Doyle's instructions includes information relating to the downlink and uplink peak data rates for the 17% Regional Coverage Zone.

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<sup>282</sup> [Further CEPA Report](#), Annexure A: Assumptions, at paras 5.8 to 5.9 (note Figures 6 and 7 are also relied upon by Optus at Annexure 3 Optus "Telstra-TPG MOCN Spectrum analysis", slide 6).

<sup>283</sup> [Further CEPA Report](#), Annexure 3, at slide 6.

<sup>284</sup> [Submission by Optus](#), at paras 5.44 to 5.49.

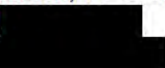
<sup>285</sup> Response to Optus, at paras 61-70.

<sup>286</sup> See Aetha Report, Figures 3-10 explain a number of other discrepancies and issues with the Optus calculation

<sup>287</sup> [Further CEPA Report](#), Annexure A: Assumptions, at paras 6.3 to 6.4. Note: Footnote 8 states 'Source for Figures 11 and 12 and 6: 4G peak data rate: Long Term Evolution In Bullets, 2nd Edition, 2012, Chris Johnson; 5G peak data rate: 5G Technology 3GPP New Radio, 2020, Harri Holma, Antti Toskala, Takehiro Nakamura. Assumptions adopted by Optus for Figures 5 and 6 are: (1) Radio technology: In 5-10 years, all mid-bands will be on 5G. The low-band running on 4G currently, e.g. Telstra and Optus 700MHz, and TPG 850Mhz, will not be ~farmed until 4G technology is phased out, estimated post-2030, and (2) spectrum holdings post-July 2024 are used in these calculations. All spectrum pooled across 2x5MHz 700MHz band, which will likely be retained by TPG to provide managed private networks to enterprise in the regional area.'

- 17 Optus has previously made submissions in relation to the claimed impact of the proposed transaction on peak data rates. These submissions are addressed in the Response to Optus at section 4.4.
- 18 As previously explained, average or typical speed rates are usually seen as more important by customers. Peak speeds – which can only rarely be encountered in perfect radio conditions with few (or no) concurrent users – are of limited relevance to the typical user experience. Indeed, it is generally recognized that references to ‘maximum’ or ‘peak’ speeds (at least in customer-facing marketing materials) have the potential to mislead, since achieved speeds will depend on a range of network and non-network factors. It is for this reason that the ACCC discourages use of ‘maximum’ speed claims in advertising, without equally prominent explanation of typical speeds.<sup>288</sup>
- 19 Typical speeds experienced by mobile customers are inherently variable, and are not just affected by network dimensioning and capability, but by a raft of customer end factors such as device capability, where the user is located with respect to the base, whether indoors and outdoors, number of concurrent users, etc. As noted in the Response to Optus, it is for this reason that MNOs typically do not advertise a single speed, but instead advertise a range of typical speeds.<sup>289</sup>
- 20 Regarding the specific claims made in the instructions given to Dr Doyle:
- (a) The calculations relied on for the purposes of estimating the peak data rate do not use the correct scaling factors. The data contained in Figures 12 and 13 do not consider the introduction of more recent technical standards.<sup>290</sup>
- (b) Slide 4<sup>291</sup> of Annexure 3 sets out Optus’ analysis relating to peak speed rates, and Telstra’s alleged advantage resulting from spectrum pooling under the proposed transaction. This analysis appears to be based on various assumptions regarding the relationship between network capacity and achievable peak speed rates. Telstra considers that at least some of these assumptions are not reasonable, including the apparent assumption that network peak speeds will scale on the network’s aggregate maximum spectrum holdings. Since devices will generally not support multiple low band (sub 1GHz) bands for simultaneous carrier aggregation, the maximum holdings available for a single technology in a single sub 1GHz band will determine the peak speed available from all 1GHz holdings. This is particularly true in regional areas where higher frequency bands are not practical.

### **Potential Optus / TPG spectrum pooling**

- 21 At paragraphs 6.5 and 6.7 of Annexure A to Dr Doyle’s instructions, Optus claim that it and TPG have contiguous spectrum in two bands, and therefore it would be more efficient to use this spectrum in the 17% Regional Coverage Zone.<sup>292</sup>
- 22 However, the data contained at Figure 14 illustrates that Telstra and TPG in fact have more contiguous spectrum in the 2100MHz substitutable band. In addition, TPG and Optus’ 700 MHz spectrum is not contiguous. **[Confidential to TPG]** 

<sup>288</sup> ACCC, *Broadband Speed Claims: Industry Guidance*, October 2020.

<sup>289</sup> Response to Optus, section 4.4.

<sup>290</sup> Specifically 1024 QAM with NR Rel17 or LTE Rel 15. The sources referred to at footnote 8 of Annexure A: Assumptions predate the introduction of these standards.

<sup>291</sup> [Further CEPA Report](#), Annexure 3, at slide 4 (this data is also contained in Annexure A: Assumptions, at paras 5.6 to 5.7 of Figures 4 and 5).

<sup>292</sup> [Further CEPA Report](#), Annexure A: Assumptions, at paras 7.3 and 7.5 (note, this data is also referred to at Annexure 3 Optus “Telstra-TPG MOCN Spectrum analysis”, slide 14).



- 23 Slide 8 of Annexure 3<sup>293</sup> similarly sets out information with respect to the pooling of Optus and TPG spectrum in the 17% Regional Coverage Zone. Telstra considers that this data is likely to mislead as TPG and Optus' regional spectrum holdings are generally non-contiguous (the 700 MHz band would be particularly problematic for an Optus/TPG alternative)<sup>294</sup>, and therefore, not capable of effectively being combined without significant capital expenditure.
- 24 As noted above, these contentions also ignore that TPG considers that a MOCN with Optus would not be possible for at least five years, such that any claimed efficiencies in spectrum pooling are hypothetical until such time.

***Telstra's use of its existing spectrum***

- 25 In slide 14 of Annexure 3,<sup>295</sup> Optus alleges that Telstra has under-utilised its low and mid-band spectrum in the 17% Regional Coverage Zone.
- 26 Telstra considers that Optus is not well placed to comment on Telstra's decisions regarding network engineering and utilization of spectrum. Moreover, even if Optus' claims regarding Telstra's operating practices were correct, this would seem to be of little relevance to the ACCC's assessment.
- 27 Nonetheless, Telstra responds to some of the key Optus claims below.
- 28 In response to Optus' claim that Telstra has '87% of its regional sites (3,750) still running on WCDMA technology on 850MHz with very low spectral efficiency', Telstra notes that this relates to Telstra's commitment to retain 3G coverage in regional areas until June 2024, at which point 3G will be closed. The fact is Telstra recognised that using 850 MHz spectrum for 3G was becoming increasingly inefficient and this was one of the key reasons it announced in 2019 that 3G would be closed in 2024 and that this spectrum would instead be used for 5G. This illustrates Telstra's commitment and ongoing focus in using all its spectrum bands efficiently. For Optus to attempt turn this around as a point of criticism is illogical and irrelevant.
- 29 Further, and as shown in Figure 9, Telstra is in fact optimizing its use of 850MHz spectrum across its regional sites.

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<sup>293</sup> [Further CEPA Report](#), Annexure 3, at slide 8.

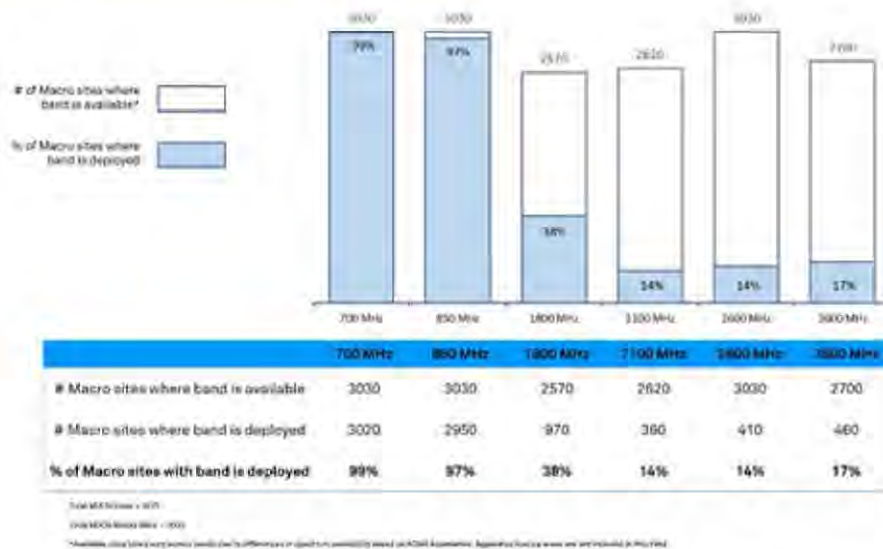
<sup>294</sup> This is the case in most spectrum bands, with the exception of 1800 MHz (where TPG's spectrum is not part of the proposed transaction) and 3600 MHz.

<sup>295</sup> [Further CEPA Report](#), Annexure 3, at slide 14.



**Figure 9. Telstra's spectrum deployment in the 17% Regional Coverage Zone – August 2022 data**

## Spectrum Deployment - Telstra



- 30 Slides 16 <sup>296</sup> states that Telstra has limited its deployment of 1800MHz in the 17% Regional Coverage Zone, and more specifically, that Telstra has under-utilized its spectrum in this band. Telstra notes that not all of its 1800MHz spectrum is deployed for a number of reasons, which may include a lack of network need in some locations, or transmission, site limits or other constraints.
- 31 In particular, Telstra notes that its 1800MHz spectrum holdings are not national<sup>297</sup>, and this statement made by Optus is likely to mislead as Telstra has a higher proportion of remote regional sites which utilize a number of bands, including the 1800MHz. Deploying the 1800MHz band with other bands to provide optimal coverage and capacity means that the proportion of each band per site will need to be managed having regard to the needs of each site, and therefore, it is entirely appropriate for 1800MHz to be deployed in a way that achieves the highest spectral efficiency.
- 32 The same issues apply in the 2100 MHz band, since Telstra's holdings in this band are also not national.
- 33 In any event, TPG's 1800 MHz spectrum is not part of the proposed transaction and not part of the proposed spectrum pool. It would therefore seem to be irrelevant how Telstra is using its 1800MHz holdings.
- 34 Slide 17 relates to measuring the distance of Telstra's macro sites to population centres within SA1 areas. This data has been used to infer that mid-band spectrum (i.e., 1800 and 2100MHz) spectrum may be effective out to 14.5kms, and 2600MHz provides capacity for customers within 6.6km from a macro site. However, it is unclear what the Optus chart on the right-hand side of slide 17 is showing – one possible interpretation is that it is simply showing a distribution of customers on sites where mid-band spectrum is deployed (in which case it is showing nothing about actual use of that mid-band

<sup>296</sup> [Further CEPA Report](#), Annexure 3, at slides 16 and 17.

<sup>297</sup> Telstra's 1800 MHz spectrum licence covers 97.8% of national population, but only about 20% of the national land area.

spectrum). The apparently arbitrary selection of distance ranges for the horizontal axis labels also makes it difficult to draw any meaningful conclusions.

35 Telstra's experience on its own network contradicts any suggestion that mid-band spectrum may be effective out to 14.5kms. As the charts below indicate, mid-band spectrum, particularly in the 2600MHz band, has more limited capacity capability with increasing distance. Telstra's analysis shows:

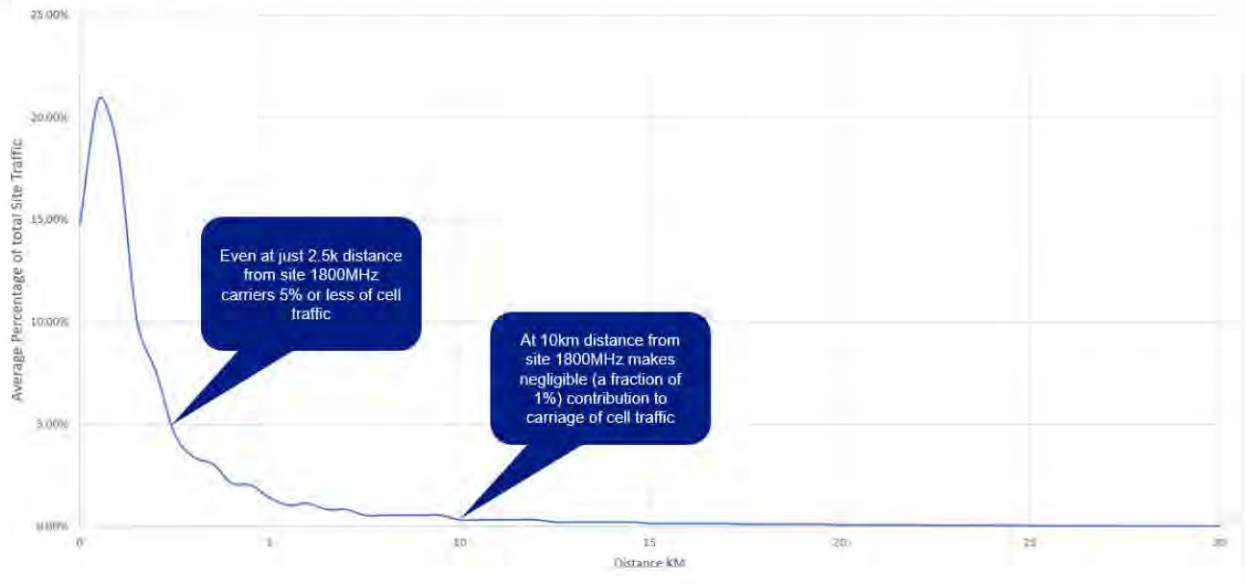
(a) For 1800MHz

- (i) at just 2.5km from a site this band only carries 5% or less of cell traffic; and
- (ii) by 10km this band's contribution is negligible (<1%).

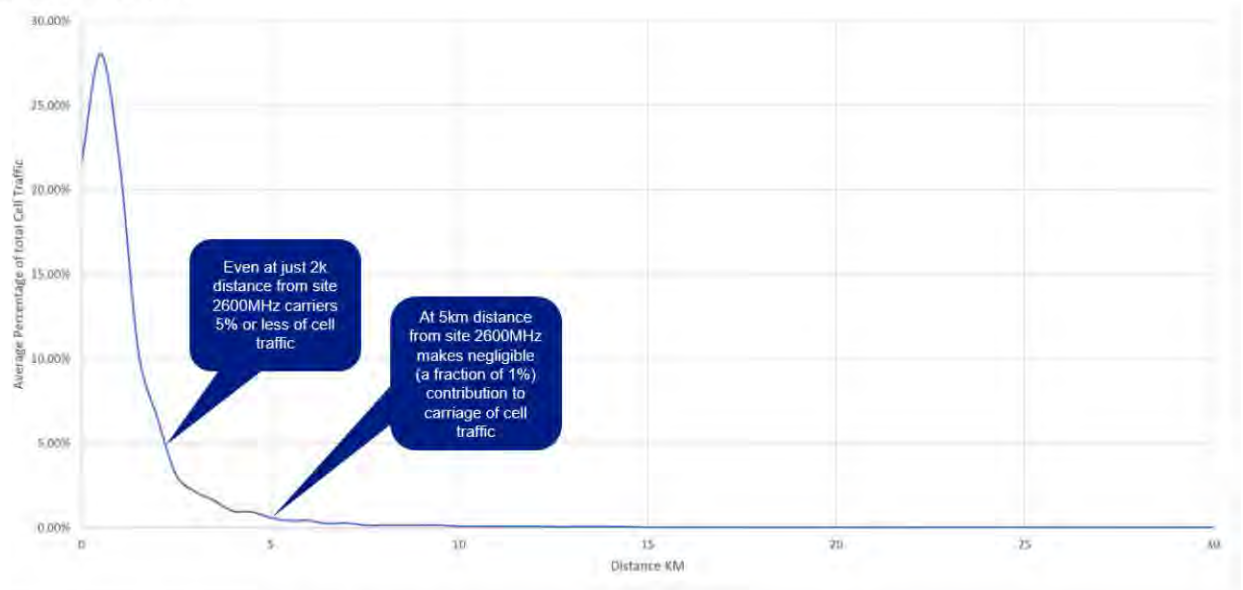
(b) For 2600MHz

- (i) at just 2km from a site this band only carries 5% or less of cell traffic; and
- (ii) by just 5km this band's contribution is negligible (<1%).

**Figure 10: Proportion of cell traffic on 1800MHz over distance (all cells with 1800MHz deployed in MOCN zone)**



**Figure 11: Proportion of cell traffic on 2600MHz over distance (all cells with 2600MHz deployed in MOCN zone)**



- 36 Telstra also notes that Optus has relied on the centroid of SA1s as representing “population centres”, in its analysis on slide 17. However, SA1 centroids only reflect the geographic centre of the area as defined by the ABS, and not necessarily any population centre, and therefore, the data represented in slide 17 does not correctly present information about where population centres are located in relation to Telstra’s sites.

## Attachment D Examples of Optus 'coverage differentiator' sites

### 1 New South Wales

#### (a) South East NSW

Figure 12: Optus 'coverage differentiator' sites in South East NSW

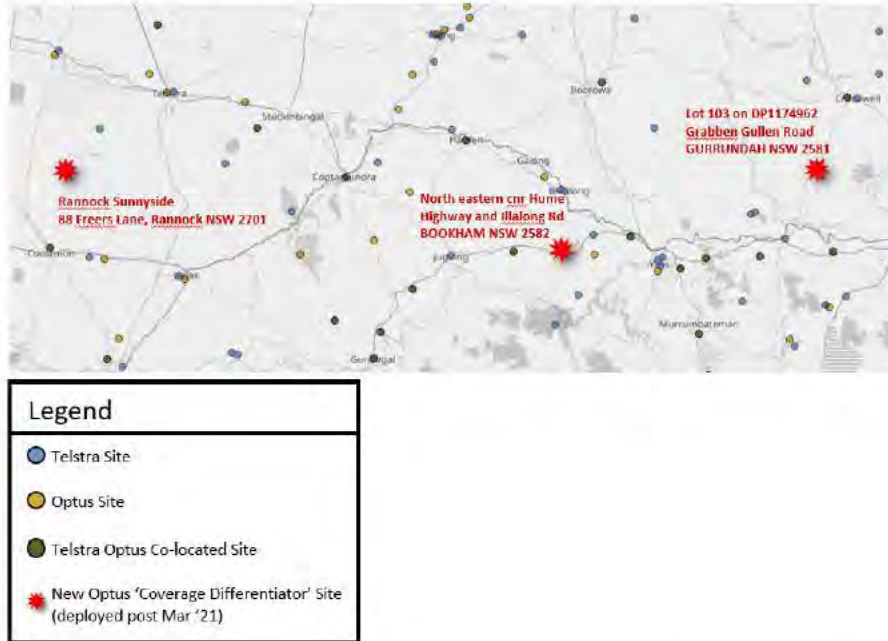


Table 10: Port outs in surrounding postcodes – South East NSW [Confidential to Telstra]

	Telstra ports to Optus		Telstra ports to TPG		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 11: Port ins in surrounding postcodes – South East NSW [Confidential to Telstra]

	Optus ports to Telstra		TPG ports to Telstra		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(b) Muswellbrook and Aberdeen, NSW

Figure 13: Optus 'coverage differentiator' sites at Muswellbrook and Aberdeen, NSW

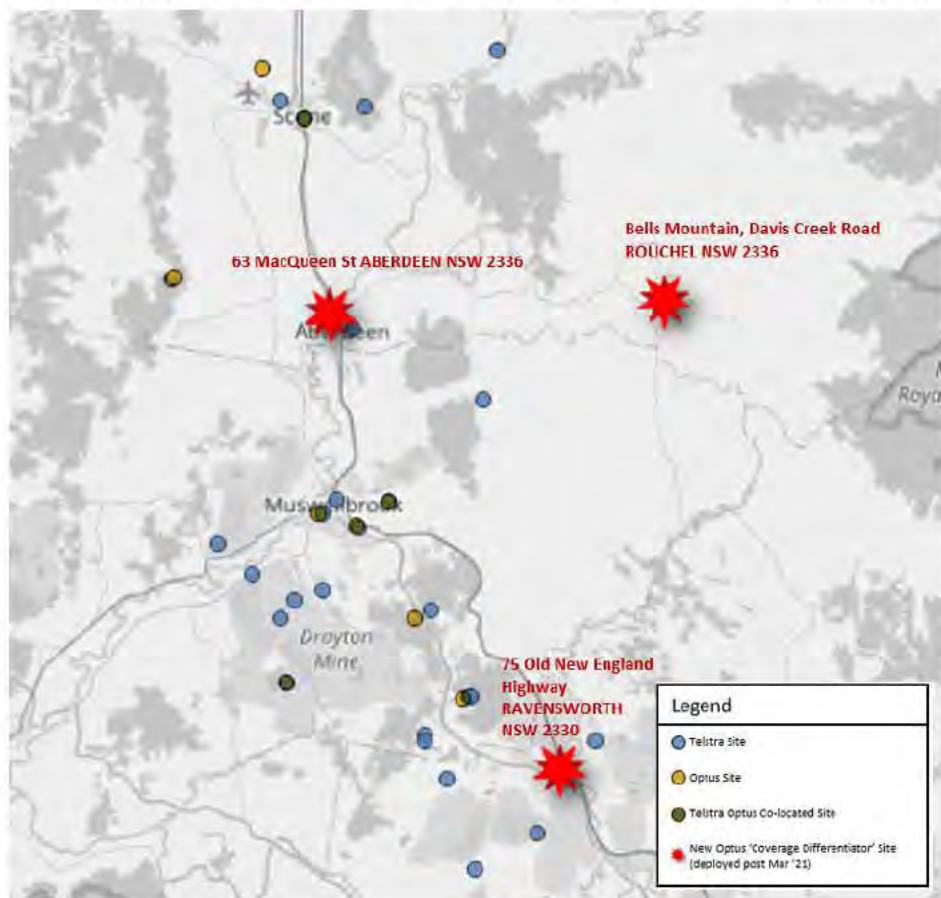


Table 12: Port outs in surrounding postcodes – Muswellbrook and Aberdeen, NSW  
[Confidential to Telstra]

	Telstra ports to Optus		Telstra ports to TPG		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 13: Port ins in surrounding postcodes – Muswellbrook and Aberdeen, NSW [Confidential to Telstra]

	Optus ports to Telstra		TPG ports to Telstra		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(c) Coffs Harbour, NSW

Figure 14: Optus 'coverage differentiator' sites at Coffs Harbour, NSW

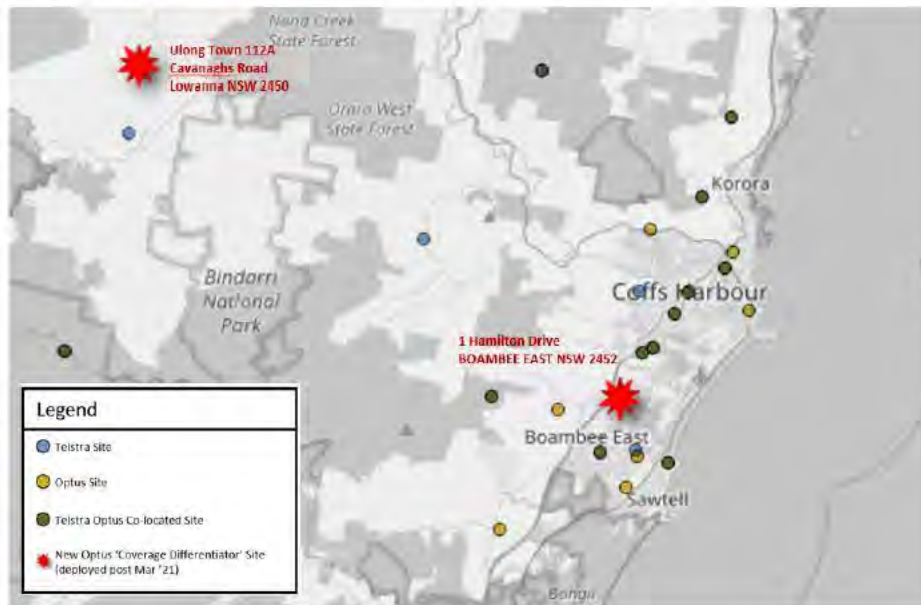


Table 14: Port outs in surrounding postcodes – Coffs Harbour, NSW [Confidential to Telstra]

	Telstra ports to Optus		Telstra ports to TPG		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 15: Port ins in surrounding postcodes – Coffs Harbour, NSW [Confidential to Telstra]

	Optus ports to Telstra		TPG ports to Telstra		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

2 Victoria

(a) Warrnambool and Allansford, Victoria

Figure 15: Optus 'coverage differentiator' site at Warrnambool and Allansford, Victoria

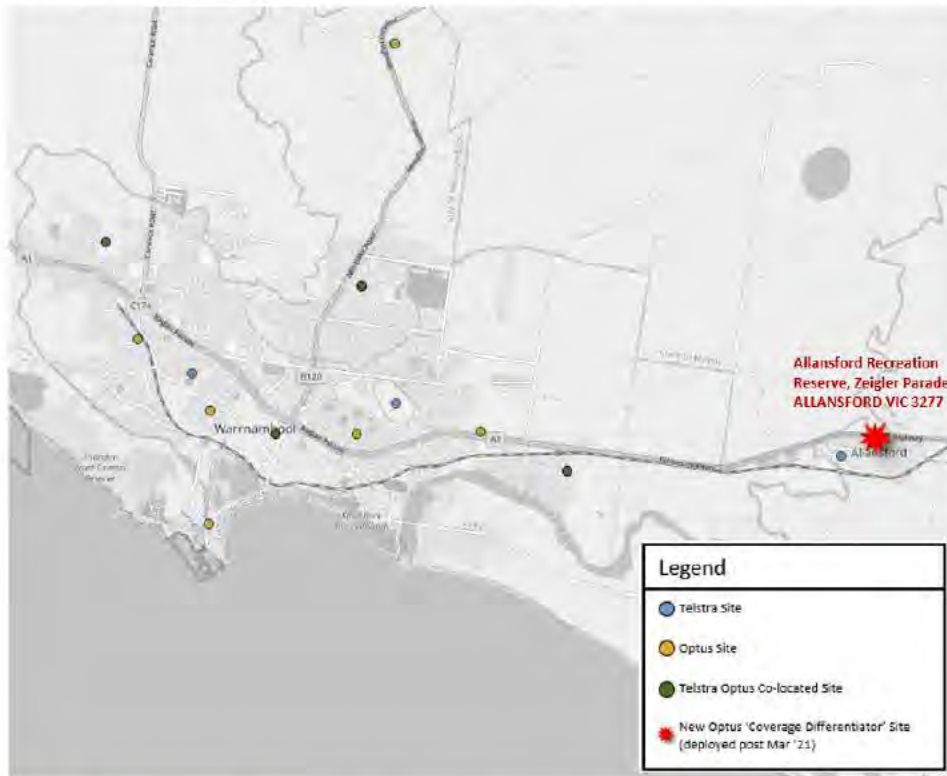


Table 16: Port outs in surrounding postcodes – Warrnambool and Allansford, Victoria [Confidential to Telstra]

	Telstra ports to Optus		Telstra ports to TPG		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

████	██	████	█	████	█
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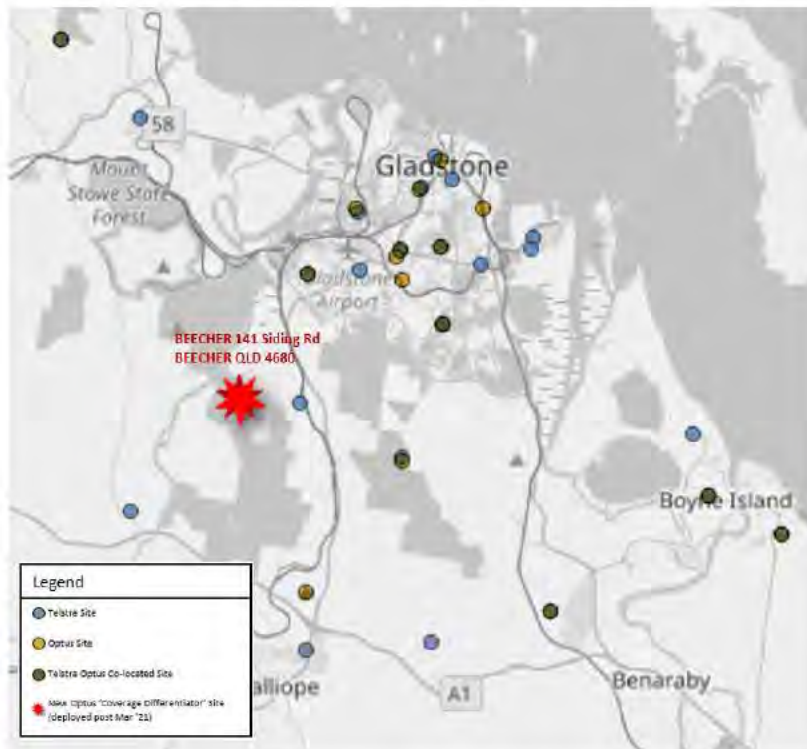
**Table 17: Port ins in surrounding postcodes – Warrnambool and Allansford, Victoria**  
 [Confidential to Telstra]

	Optus ports to Telstra		TPG ports to Telstra		Total
████	██	████	██	████	████
██	█	████	█	████	██
██	██	████	█	████	██
██	█	████	█	████	██
██	██	████	█	████	██

**3 Queensland**

**(a) Gladstone, Queensland**

**Figure 16: Optus 'coverage differentiator' site at Gladstone, Queensland**



**Table 18: Port outs in surrounding postcodes – Gladstone, Queensland** [Confidential to Telstra]

	Telstra ports to Optus		Telstra ports to TPG		Total
████	██	████	██	████	██



████	████	████	████	████	████
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Table 19: Port ins in surrounding postcodes – Gladstone, Queensland [Confidential to Telstra]

	Optus ports to Telstra		TPG ports to Telstra		Total
████	████	████	████	████	████
████	████	████	████	████	████

(b) Kingaroy, Queensland

Figure 17: Optus ‘coverage differentiator’ site at Kingaroy, Queensland

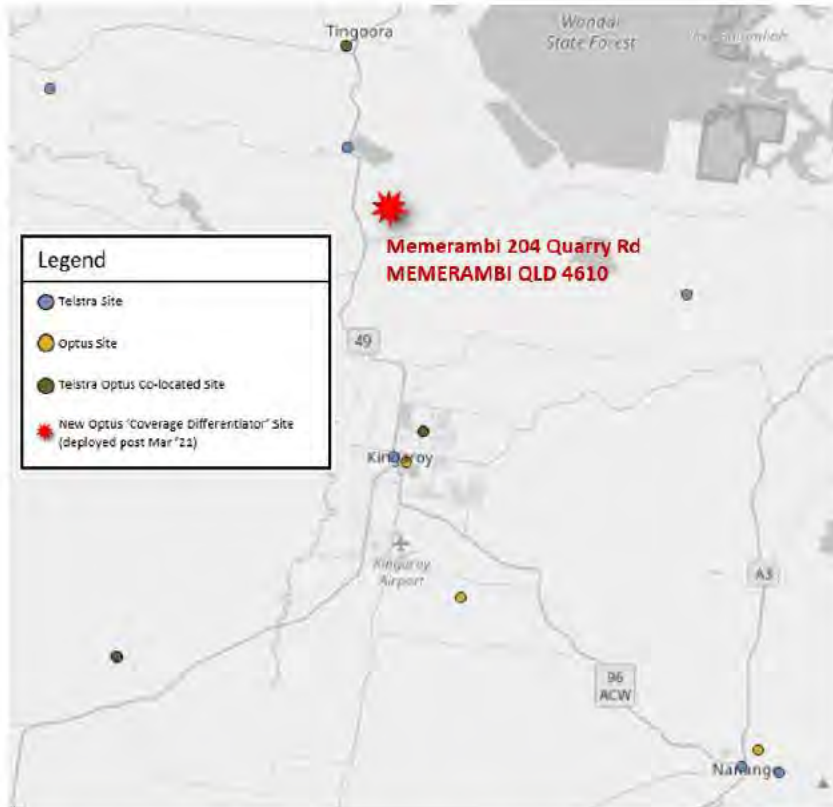


Table 20: Port outs in surrounding postcodes – Kingaroy, Queensland [Confidential to Telstra]

	Telstra ports to Optus		Telstra ports to TPG		Total
████	████	████	████	████	████
████	████	████	████	████	████
████	████	████	████	████	████
████	████	████	████	████	████

Table 21: Port ins in surrounding postcodes – Kingaroy, Queensland [Confidential to Telstra]

	Optus ports to Telstra		TPG ports to Telstra		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

4 Western Australia

(a) Busselton and Yallingup, WA

Figure 18: Optus ‘coverage differentiator’ sites at Busselton and Yallingup, WA

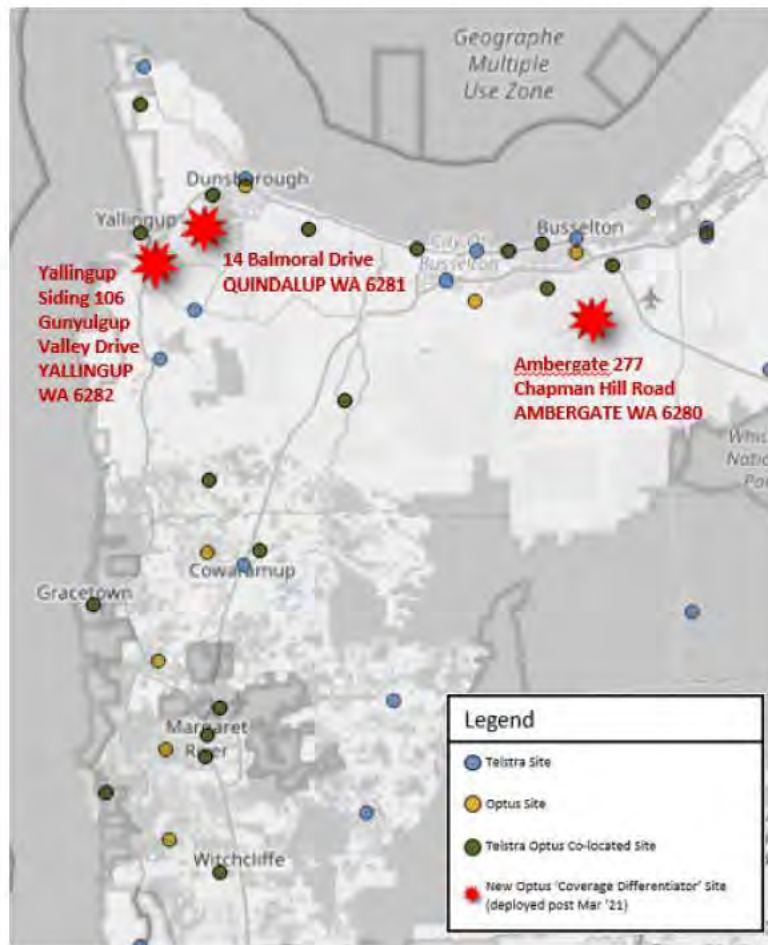


Table 22: Port outs in surrounding postcodes – Busselton and Yallingup, WA [Confidential to Telstra]

	Telstra ports to Optus		Telstra ports to TPG		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Table 23: Port ins in surrounding postcodes – Busselton and Yallingup, WA [Confidential to Telstra]**

	Optus ports to Telstra	TPG ports to Telstra	Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(b) Boddington, WA

Figure 19: Optus 'coverage differentiator' sites at Boddington, WA

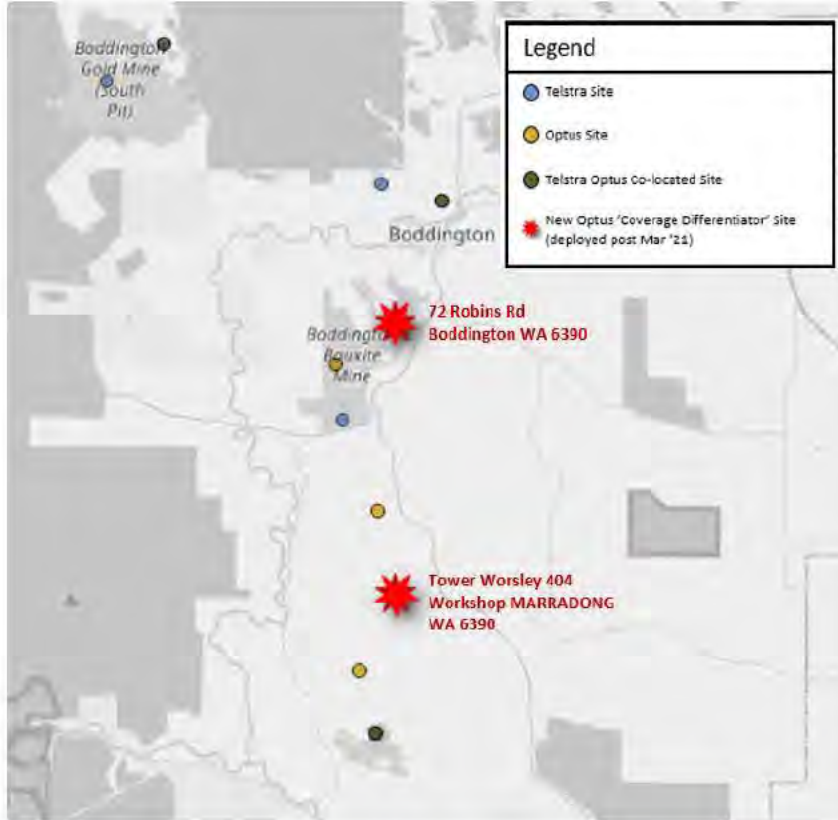


Table 24: Port outs in surrounding postcodes – Boddington, WA [Confidential to Telstra]

	Telstra ports to Optus		Telstra ports to TPG		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 25: Port ins in surrounding postcodes – Boddington, WA [Confidential to Telstra]

	Optus ports to Telstra		TPG ports to Telstra		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

5 South Australia

(a) Kangaroo Island, SA

Figure 20: Optus 'coverage differentiator' site at Kangaroo Island, SA

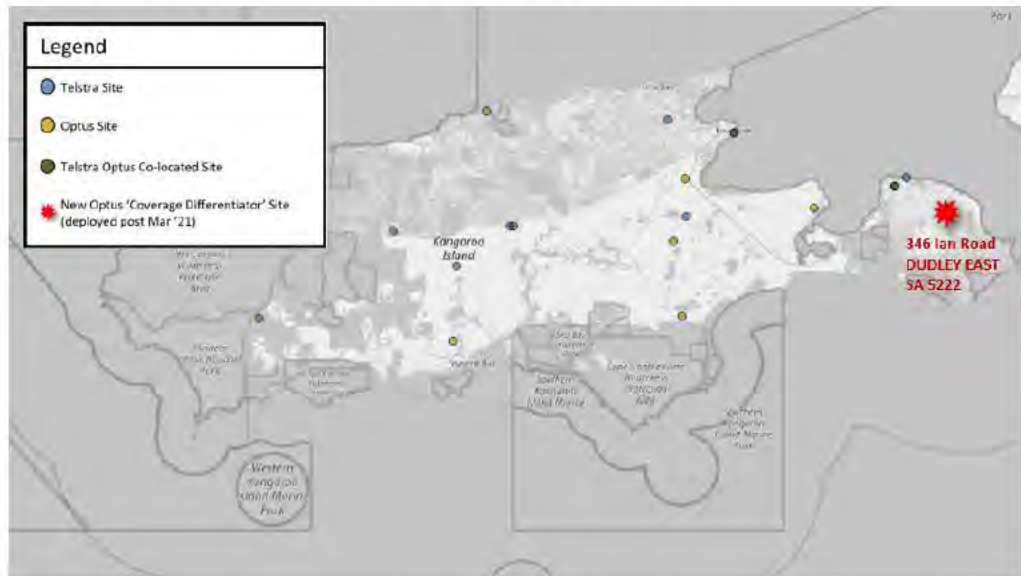


Table 26: Port outs in surrounding postcodes – Kangaroo Island, SA [Confidential to Telstra]

	Telstra ports to Optus		Telstra ports to TPG		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 27: Port ins in surrounding postcodes – Kangaroo Island, SA [Confidential to Telstra]

	Optus ports to Telstra		TPG ports to Telstra		Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(b) Wellington, SA

Figure 21: Optus 'coverage differentiator' site at Wellington, SA

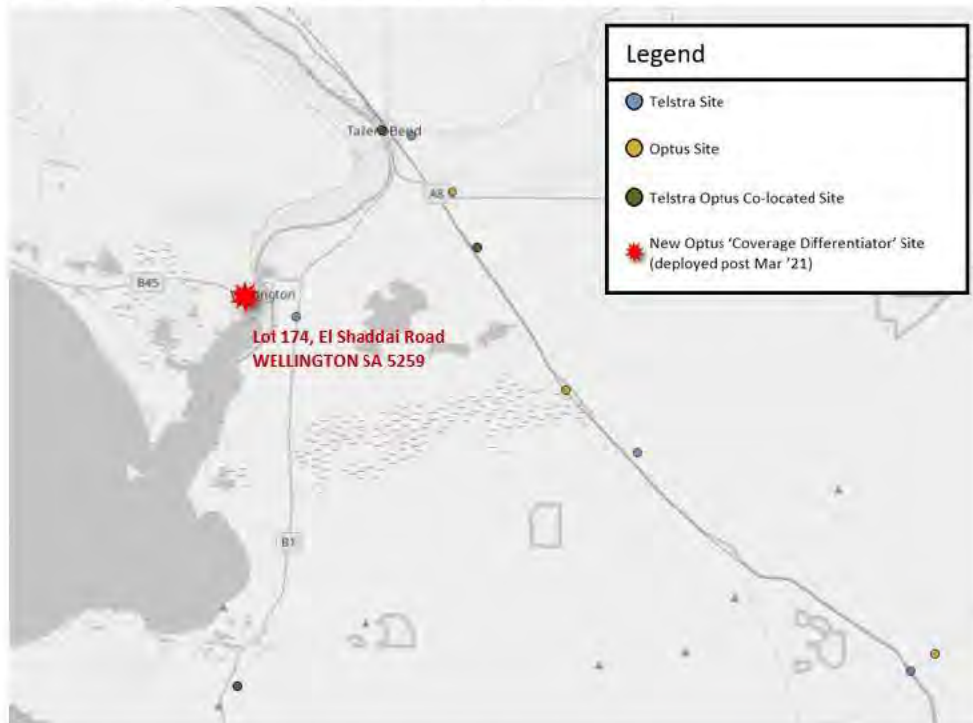


Table 28: Port outs in surrounding postcodes – Wellington, SA [Confidential to Telstra]

	Telstra ports to Optus		Telstra ports to TPG		Total
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

Table 29: Port ins in surrounding postcodes – Wellington, SA [Confidential to Telstra]

	Optus ports to Telstra		TPG ports to Telstra		Total
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]