



Record of oral submission to the ACCC

Matter name:	Telstra's proposed supply of Multi-Operator Core Network (MOCN) services to TPG		
ACCC parties:	Commissioners: Liza Carver, Anna Brakey (in part) MIB: Dan McCracken-Hewson, Mandy Bendelstein, Mark Basile, Janet Li, Tim Byrne, Sophie Mitchell, Caylie McDonald Exemptions: Jaime Martin, Soo Sian Koh, Mobiles: Tara Morice, Deric Flores, Paul Dempster Legal: Andrew Gun AGS: Jacqui Bisas		
Other parties:	Commpete (and attending members) <ul style="list-style-type: none">Michelle Lim (Chair - Commpete)Matthew O'Rourke (Director – Commpete)Gary Bhomer (Government and Industry Liaison – Pivotel)Vin Mullins (Group Executive, Government, Partner & Networks– Field Solutions Group)Nicholas Demos (Country Head – Circles.Life Australia)Vaughan Baker (Group Director - Government and Corporate Relations - MyRepublic Ltd)Brendan Coady (Partner, Technology Sector – Maddocks)Richard Robinson (Special Counsel - Maddocks)		
Merger authorisation no.:	MA1000021		
Date:	2 September 2022		
Time:	9:30 am AEST		
Phone to <input type="checkbox"/>	Phone from <input type="checkbox"/>	Meeting <input type="checkbox"/>	Other <input checked="" type="checkbox"/>

Commpete requested a meeting with the ACCC to discuss its submission in relation to the Telstra / TPG merger authorisation application. The following issues were discussed.

Overview of Commpete

1. Commpete represents non-dominant telecommunications providers of retail and wholesale digital communications. Commpete aims to ensure that all technology platforms guarantee competition that will provide equal, timely and open access to consumers. Commpete was initially formed as the Competitive Carriers' Coalition Inc. in 2004. Many of Commpete's members (some present at the meeting) are competitors of one another. With that in mind, there may be some questions from the ACCC that will need to be taken on notice. Commpete is an industry alliance that forms consensus views on competition matters. Commpete is not just interested in short term consequences but also more strategic long-term repercussions. The use of mobile communications is not fixed to certain locations and Commpete believes the proposed transaction will further embed Telstra's control in the retail and wholesale markets.

Broad concerns

2. Commpete's major concerns are that that authorisation will give Telstra access to additional spectrum in a manner contrary to the design of previous spectrum auction processes, remove TPG as an actual or potential competitive provider of regional mobile services and increase Telstra's dominance in regional communications.

Telstra's access to additional spectrum, as a result of the proposed transaction, is in a manner contrary to the design of previous spectrum auction processes

3. The proposed transaction gives additional spectrum to Telstra in contravention of the spectrum auction rules. The rules were initially introduced to stop Telstra from gaining access to more spectrum. If this transaction were to go ahead, it would make the rules redundant. The MOCN arrangement should not be able to undo these rules. One of the consequences of this is that it discourages TPG from competing in the 2028 low bandwidth spectrum auction because it will have already committed to service its mobile customers under the MOCN. TPG's potential non-involvement in the 2028 auction will result in its likely removal as a Mobile Network Operator (MNO) in the 17% Regional Coverage Zone.

The proposed transaction will remove TPG as an actual or potential competitive provider of regional mobile services

4. This spectrum may be used to develop the MOCN as contemplated by the Application, by TPG in its own right or by a third party if it acquires the spectrum from TPG. TPG has spent significant funds acquiring this spectrum and it is likely to find a profitable use for it without the Application being authorised. In particular, Commpete observes that TPG could make that spectrum available to a third party developer (e.g. an owner of towers, which have recently been sold by each of Telstra, Optus and TPG so as to develop a neutral hosting solution as facilitated by the development of 5G technology) to deploy their own wholesale mobile network in those areas if TPG chose not to further develop its own network in competition with Telstra and Optus.

The proposed transaction will increase Telstra's dominance in regional communications

5. The proposed transaction seeks to further entrench Telstra's position by providing it with additional spectrum (some of which we note will be used exclusively by Telstra outside of the MOCN arrangement). This will make it more difficult for a third party (including new entrant neutral host network operators, and smaller and niche

alternative infrastructure providers) to obtain the spectrum necessary to develop a competing mobile services networks covering the same geographic area, exacerbating Telstra's already-dominant market position by extending their control over this scarce resource. It is unnecessary for Telstra's ongoing stated desire to develop its mobile network, and creates a market paradigm where select few suppliers fully control spectrum as a bottleneck, allowing them to avoid or disrupt direct competition. This is likely to reduce competition between wholesale providers of mobile services to the disadvantage of current and future MVNOs who rely on access to their services, and ultimately the benefits of greater competition for Australian consumers in regional areas.

Further concerns

6. Collectively, these competitive harms are likely to reduce wholesale competition between MNOs to supply wholesale access to MVNOs and discourage the development of alternative infrastructure by smaller and niche providers. This limited competition at the wholesale level reduces the bargaining power of MVNOs to secure access to the wholesale mobile services required for them to operate. Competition in the retail market is likely to be substantially lessened when this is combined with the lack of regulated wholesale access to MNO mobile networks. Telstra have made a 'thicker' MVNO available to TPG under this MOCN arrangement but there are still some restrictions.
7. Commpete considers that many of the public benefits claimed are theoretical and unquantified. In particular, many of these benefits stem from the reduction in the number of MNOs that operate, or may seek to operate in the future, in the 17% Regional Coverage Zone. If the ACCC decides to authorise the Application despite these concerns, Commpete considers that the competitive detriment may be lessened by a requirement on Telstra to make wholesale access to its mobile networks available to third parties on fair and non-discriminatory terms through a section 87B undertaking. Alternatively, the provision of fair and non-discriminatory wholesale access to the mobile networks of both Telstra and TPG—or indeed all MNOs—could be made by way of declaration under Part XIC of the CCA.

Comments about proposed transaction

Value of low band spectrum

8. A representative of Pivotel noted that low band spectrum has much better propagation characteristics, particularly in regional areas. Pivotel is a licenced MNO and looks to build networks where there is no other network coverage, in a neutral host environment. Pivotel is limited by the kind of spectrum it can access in covering farms, agricultural areas and remote communities. Pivotel can only access mid band spectrum. If Pivotel is unable to access low band spectrum, it will be unable to compete and provide the same level of service. In order to get similar coverage as low band spectrum, Pivotel would need to build three times the number of sites in regional areas with mid band spectrum. As a result of the proposed transaction, Telstra will have two thirds of the low band spectrum available in the market. It will be extremely difficult for new innovators or competitors to access the market. Telstra has such a dominant position in regional Australia. Access to low band spectrum is one issue, but not having access to Telstra's network even on a roaming basis is another.
9. A representative of Field Solutions Group commented that Telstra getting access to additional 10 MHz blocks of spectrum in the 17% regional coverage zone results in an immediate benefit over TPG in markets they have significant market share. Telstra also has access to MHz outside the 17% regional coverage zone for its exclusive use. It takes many years for a competitor to move into the regional market and

unsettle an incumbent. The 2028 low band spectrum auction is only 6 years away and Telstra customers will see an immediate benefit – one that would be very hard to “take away” if either entity were not successful at regaining this spectrum at the 2028 auction. 700 MHz spectrum band is only going to become more popular over time - .and likely to push its value well outside possible new entrants to market looking to boost competition.

Optus

10. Commpete considers there is a dominant mobile provider in Telstra and a challenger mobile provider in Optus. Optus wants to compete and serve regional Australia. Commpete serves non dominant telecommunications providers, including smaller, niche providers. Both Optus and Commpete are concerned about the proposed transaction.

Impact on neutral host arrangements

11. Commpete noted that the proposed transaction comes at a time where the neutral host market is just starting to emerge and develop in Australia. The settings are fragile and the proposed transaction could disrupt its progress, with long term detrimental impact. The ACCC should be aware of its infancy of implementation.
12. MyRepublic commented on the importance of MNO competition. MyRepublic is currently a retailer; it will become a provider of mobile services soon. It views Field Solutions Group and Pivotel as potential wholesale providers in the future. They can provide roaming deals where they don't have their own network in order to offer retailers nationwide access. MyRepublic has concerns the proposed transaction will limit choice of MNOs. It wants to ensure competition endures within the wholesale market.
13. MyRepublic also submitted that the infrastructure investment required to run MNOs is increasing. MNOs are beginning to divest their tower infrastructure worldwide. In markets where incumbents are voluntarily divesting their infrastructure, it should be viewed as a red flag. Infrastructure should be offered on an equivalent basis (at the same price) and with open access. It would be great if the telecommunications market could mirror the nbn, in that smaller competitors can take some market share from Telstra. MyRepublic considers that neutral hosts can play an important role structurally everywhere, not just in regional areas.

Loss of competitor in TPG

14. Commpete submitted that in the wholesale market it can see how TPG would be lost as potential competitor if the proposed transaction was authorised. TPG will not be building out infrastructure in regional areas and in adjoining areas, which is a loss of competitive constraint on the market. In the retail market, the 5G 6-month head start for Telstra means they obtain a clear first mover advantage. A ‘thick’ MVNO arrangement provides an MVNO with greater control over its product and pricing offers. A ‘thin’ MVNO arrangements results in an MVNO being required to operate within the guard rails of the MNO above it. TPG could be seen as a ‘thin MVNO’ of Telstra.
15. MyRepublic stated that MVNOs on Telstra have no product or service innovation, apart from the service layer they operate themselves. MyRepublic looks for the ability to design its own products, and to be able to price freely and move with the market. In its deals to date, it has that ability. In an ideal world, deals like the proposed arrangement should be available to everyone. In Australia, MVNOs do not operate their own RAN network. However, in other markets there are 5-6 operators (or ‘thick MVNOs’) that encourage more competition.

16. Pivotel submitted that TPG is not a competitor in regional Australia today. As a wholesaler, Telstra only wholesales a very limited part of its full network, which is similar in size to the Optus network. Telstra has 1 million square kilometres of additional network. Telstra also places constraints on its download and upload speeds. Telstra is a near monopoly in regional Australia. The proposed transaction will entrench Telstra as a dominant player even further. Both TPG and Optus provide access to fill the retail market footprint. The transaction will be better for a MVNO seeking access to TPG's network, it will make them a more viable competitor, but it will never be close enough to Telstra. If you are a regional customer, you have to go to Telstra by default. There is no choice.
17. Commpete submitted that if Telstra manages to increase its dominance, Telstra will control what MVNOs sell, how they sell and who they must sell to. For example, data inclusions today are dictated by who your downstream providers are. There is very limited ability for an MVNO to dictate. There are certain MVNOs that get access to some features, and some who only get access to others.

ACCC questions

18. The ACCC invited Commpete to provide further information to assist its consideration of the proposed transaction:
 - i) Commpete submits that the costs to build infrastructure for operators like Pivotel and Field Solutions Group given they do not have access to low band spectrum is greater. More specifically, up to three times more expensive. Can Commpete provide further detailed information to support this submission.
 - ii) If the proposed transaction does not go ahead, can Commpete provide further information about what TPG would likely do with their low band spectrum holdings.
 - iii) It appears that Commpete does not consider that TPG intends to build in regional areas. It also submits that TPG is likely to find a profitable use for its low band spectrum in the absence of the proposed transaction. Please provide further information and evidence to substantiate why Commpete holds this view.