



## Record of oral submission to the ACCC

Matter name:	Telstra/TPG proposed spectrum sharing		
ACCC parties:	<b>Merger Investigations:</b> Eado Varon, Caylie McDonald <b>Competition Exemptions:</b> Soo Sian Koh		
Other parties:	Macquarie Telecom • Matthew O'Rourke, Policy Director		
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The ACCC met with Macquarie Telecom to discuss its written submission in relation to the Telstra/TPG merger authorisation application. The following issues were discussed.

### Introduction

1. Macquarie Telecom is a Mobile Network Virtual Operator (**MVNO**) primarily servicing medium sized enterprises and corporates.
2. Macquarie Telecom noted different business customers will prioritise different network characteristics depending on their particular requirements or preferences, and those requirements and preferences may also differ across the business; for example, a business executive that travels frequently may prioritise coverage whereas others in the same business may prioritise other aspects, such as technical features, billing or costs. This mix will influence the selection of which Mobile Network Operator (**MNO**) / MVNO an enterprise customer will choose to go with.
3. Macquarie Telecom is a wholesale MVNO customer of Optus, having switched from Telstra approximately 18 months ago. Prior to that Macquarie Telecom had non-exclusive arrangements with all 3 MNOs. Macquarie Telecom's decision to move from Telstra to Optus was technology based. Key factors included access to 5G, more fundamental capabilities (e.g. voice over LTE or voice over wifi), and to e-sims.
4. Macquarie Telecom noted that any transition by an MVNO from one wholesale MNO to another is disruptive and has the potential to result in some initial level of customer loss.

### Wholesale market

5. Macquarie Telecom considers that it remains to be seen how the proposed transaction between Telstra and TPG will impact the wholesale market. Macquarie

Telecom noted that some parties made statements during the TPG/Vodafone merger that are yet to come to fruition. For that reason, Macquarie Telecom submits that any commitments made by TPG or Telstra regarding the future in the wholesale market under the proposed transaction should be formalised as undertakings if the ACCC's decision is to rely on them.

6. Macquarie Telecom noted that fixed and variable charges, and TPG's 6-month delay in access to 5G sites may start to flow through as higher costs to wholesale customers (both national wholesale or geographic specific pricing). If certain costs are limited to regional areas, it would deter wholesale customers from viewing TPG as a viable alternative and taking up TPG's offering under the proposed transaction.
7. Macquarie Telecom considers that MVNOs are subject to wholesale pricing pressure from the MNOs. MVNOs are very focused on keeping their cost base down. The combination of both a fixed and variable wholesale charge on TPG may deter TPG from competing on price in the regional sub-market.
8. Macquarie Telecom also considers denial of access and discriminatory contract terms are feasible in the wholesale market. There may be wholesale offers that allow resale, but the offers may lack different capabilities, such as voice over Wi-Fi. This is especially important with 5G given its additional capabilities.
9. In relation to whether TPG's wholesale offering would be more attractive under the proposed transaction. Macquarie Telecom noted that:
  - a. Based on its experience, changing MNO providers can be difficult and would require serious consideration. There is usually a cost associated with moving MNOs.
  - b. Macquarie Telecom would need to assess the terms of any offer relative to others and what barriers were in place regarding access to all capabilities.
  - c. The reputation of TPG amongst some business customers is still recovering the 'Vodafail' incident.
10. Macquarie Telecom considers that if the proposed transaction goes ahead, the power imbalance in MNO/MVNO negotiations will continue to be noticeable, and negotiations will likely be more concentrated and more challenging. It is important for Macquarie Telecom's contract negotiating power to be able to come to the table with credible, wholesale offers in order to be offered a competitive deal, particularly if there are pricing issues or limitations in technology offerings between MNOs.

### **Infrastructure competition**

11. Macquarie Telecom submits that a major issue is the reduction in the number of infrastructure competitors under the proposed transaction, and considers that:
  - a. The wholesale market is driven by those who have their own networks.
  - b. Under the proposed transaction, TPG is effectively exiting the infrastructure market, at least in the regional area, and Optus' incentives to build out in that area will be negatively impacted.
  - c. Optus' incentive to build out into regional areas is diminished by the perception of Telstra being entrenched in those areas. Macquarie Telecom does not see an incentive for Optus to build out into regional areas and those surrounding under the proposed transaction.
  - d. Given these points, Telstra will control the only infrastructure that's left and its incentive to improve its infrastructure will diminish under the proposed transaction.

## **Spectrum and neutral hosts**

12. Macquarie Telecom considers that if the proposed transaction goes ahead, Telstra's access to spectrum will be more valuable (given TPG is also shutting down infrastructure sites) and not reflected in the price paid back to the public owners under auctions. This may be an allocative efficiency issue. The proposed transaction is likely contingent on TPG including spectrum in the deal.
13. Macquarie Telecom considers:
  - a. Neutral host networks are moving towards active sharing. In Australia, it's been passive sharing previously. The nature of 5G incentivises neutral host networks to become involved in active sharing.
  - b. As neutral host networks are active wholesalers, and do not try to make returns in the retail space, they rely on winning wholesale contracts. The neutral host model is very appealing to MVNOs as it avoids the problems inherent in negotiating access with a vertically integrated supplier and downstream competitor.
  - c. If the proposed transaction does not go ahead, TPG is unlikely to have an incentive to build out its network in the regional and surrounding areas. If TPG does not intend to use its spectrum, it could dispose of it, and its tower assets, to a neutral host network which would be transformative for that operator and the wholesale market more generally.
  - d. Further, under the proposed transaction, there is a loss of TPG as a potential anchor client of tower companies: if TPG is not buying capacity from a tower company it would impact business planning assumptions.
  - e. Neutral host networks' incentives to enter in the regional zone and areas adjacent to it will therefore be negatively impacted by the proposed transaction.

## **Retail customer switching**

14. Macquarie Telecom considers that, on the one hand, TPG will have the ability to promote and neutralise some of the distinction between its network and Telstra's, potentially becoming a more competitive MNO under the proposed transaction. On the other hand, Macquarie Telecom does not think many customers would switch MNOs as a result of the proposed transaction, and Telstra would continue to have a first-mover advantage in offering 5G.
15. Macquarie Telecom noted that the growth of e-sim cards (available for phones and wearables) will make it easier for customers to switch providers. However Australian e-sim technology is restricted by the 3 mobile networks, so there is uncertainty regarding when e-sim technology will be fully available.