

**OPTUS**

Submission in response to ACCC  
Statement of Preliminary Views

Telstra and TPG application for  
merger authorisation for proposed  
spectrum sharing in regional  
Australia

Public Version

26 October 2022

# 1 EXECUTIVE SUMMARY

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1. This submission provides Optus' response to the matters raised in the ACCC's Statement of Preliminary Views dated 30 September 2022 (**SOPV**).
2. The focus of this submission is to review the additional evidence provided by Optus in the form of witness statements and expert evidence in September and October 2022. Optus does not, in this submission, repeat the matters raised in Optus' earlier submissions or expert reports.
3. In a scale business where Telstra already has a strong advantage over its main competitor, the Proposed Transaction will significantly strengthen Telstra giving it an unassailable position. The Proposed Transaction strengthens Telstra by:
  - (a) conferring additional spectrum such that Telstra has a clear spectrum advantage and can provide services that Optus cannot match, and permitting Telstra to rapidly improve its service and pull further away from Optus; and
  - (b) amortising the cost of network improvements and development over a larger number of customers, both additional Telstra customers and TPG customers (through payments to Telstra).

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]


7. [REDACTED]

## 2 OPTUS' EVIDENCE ON COMPETITIVE DYNAMICS BETWEEN MNOs (SOPV QUESTION 1)

### **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:
- the importance of each factor (e.g. price, geographic coverage, network reliability, speed) on competition between MNOs;
  - 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;
  - 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;
  - 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;
  - the degree to which MVNOs competitively constrain MNOs.

### **2.1 Coverage is the most important factor to win and retain customers**

8. Optus agrees with the ACCC's view that coverage is a key component in the attractiveness of mobile services: **SOPV paragraphs 3.11 to 3.15.**
9. In response to **SOPV Question 1(a)**, Optus' evidence is that coverage is one of the most important factors for winning and retaining customers, and more important than network speed, price and other factors that also feed into relative network performance.
- (a) **Ms Bayer Rosmarin's statement:** Explains that:
- Coverage is one of the most important factors for winning and retaining customers in both regional and metropolitan areas. Coverage is more important to customers than speed. In the current investment cycle, 5G technology is important as mobile customers' data usage is continually increasing, and consumers have rated availability of 5G as important to their decisions about networks. **[9(a)]**
  -  **[9(a), 10(a), 10(c), 11]**
- (b) **Mr White's statement at Section 2, 4G and 4H:** Explains that:
- Coverage in regional areas is important not only to customers living in regional and remote areas, but also many metropolitan-resident customers. **[18]**
  - Geographic coverage is a critical factor in determining market share of MNOs. Telstra and Optus are the only MNOs that have invested significantly to create a distinct network proposition in regional Australia, as TPG has primarily relied on roaming versus its own infrastructure investment. **[14(a)]**

- (iii) In the Australian market, customer share is strongly correlated to share of sites due to the geographically dispersed population and low number of operators. [15]
  - (iv) Perceptions of network coverage is also a very important aspect of competition for mobile customers. [16-17]
  - (v) [172(e)]
  - (vi) [180]
  - (c) **Mr Kanagaratnam's statement at Section 2A:** [23]
  - (d) **Mr Moon's statement at Section 2B:** Notes that coverage is a key aspect of winning and retaining customers in the mobile telecommunications sector. [20]
  - (e) **Mr O'Sullivan's statement at Section 2B:** [31(a), 36]
10. In response to **SOPV Question 1(c)**, Optus also agrees with the ACCC's view that Telstra's network having the widest geographic coverage provides an enduring competitive advantage and contributes to its high market shares in both metropolitan and regional areas: **SOPV paragraph 3.14 to 3.15**. This is indicated in the references to Ben White's statement cited in paragraph 9 above.
11. Optus' evidence shows that the network perceived as the "best network" can command a price premium. The second best and third best networks do not obtain that premium, and any premium as between them is materially smaller.
12. In addition to the points in paragraph 9 above, **Mr White's statement at Section 2** explains that: Compared to coverage, price is a second-order impact. This is because customers' willingness to pay is proportional to network performance. The fact that competition is not driven primarily by price is shown by the relative pricing premium between Telstra at the high end, Optus at the midpoint and TPG's heavy discounts, but with Telstra having the highest market share, Optus the next and TPG the smallest. [14(b)]
13. In response to **SOPV Question 1(d)**, [redacted]

14. [REDACTED]

15. Optus agrees with the ACCC's view that 5G is an increasingly critical focus of competition in order to win and retain metropolitan and regional customers (**SOPV paragraph 3.41**) and that first mover advantages in new technologies such as 5G can influence longer term market structure (**SOPV paragraph 3.48 – 3.49**).

## 2.2 Mobile network deployment is a capital-intensive business with scale economies

16. Optus' evidence shows that mobile network deployment, particularly in regional Australia and in relation to 5G networks, is highly capital intensive and subject to scale economies. Those scale economies are fundamental considerations in the commercial viability of any potential business case for network deployment in regional areas, and so in assessing likely future competition between MNOs.

(a) **Ms Bayer Rosmarin's statement:** Explains that MNOs are in an almost continuous cycle of infrastructure investment and upgrades. Maintaining scale is important to offsetting high capital costs of mobile network infrastructure.

[REDACTED]  
[9(b)]

(b) **Mr Kanagaratnam's statement at Section 2A:** Explains that mobile network scale economics is driven by two factors. First, if an operator has a larger customer base, they can generate more revenue and invest more capital. Secondly, if an operator has a larger customer base, the costs are lower on a cost per customer basis. [21]

(c) **Mr Moon's statement at Section 2B:** Explains that mobile telecommunications is a capital-intensive industry with frequent technology changes and an almost continuous cycle of infrastructure investment and upgrades. Scale provides significant advantages in this context. [17]

[REDACTED]

(d) **Mr Sullivan's statement at Section 2A:** [REDACTED]  
[REDACTED]  
[22]

(e) **Mr Hunt's report at Section 6:** Considers that mobile telecommunications markets are characterised by material economies of scale in regional and rural areas. In particular, it may be unprofitable for MNOs to roll out network infrastructure if they can only gain a limited share of customers/traffic and MNOs with lower market shares/traffic will face higher average unit costs for investment than the largest operator. [134, 138]

(f) **Analysys Mason scale model:** As described in Mr Hunt's report, the results of this analysis shows the following.

(i) [REDACTED]

(ii)

(iii)

[Mr Hunt's report at [167], [173];  
AnalysisMason report]

17. Telstra's materially superior scale economics (ie materially lower opex and capex cost per GB of traffic) as compared to Optus is a relevant consideration for Optus' commercial decision making about whether investment in a regional 5G network rollout is likely to be profitable (and the extent of any investment). The Proposed Transaction materially increases Telstra's existing scale advantage over Optus: see Section 5.1 below.

### 2.3 Telstra's incentives to invest have been driven by Optus

18. In response to **SOPV Question 1(b)**, Optus' evidence shows that Optus' investment in regional areas has driven (ie increased) Telstra's investment. The extent of competitive tension Optus provides to Telstra in regional areas is therefore a key determinate of competitive outcomes in network investments.

(a) **Ms Bayer Rosmarin's statement:**

[10(a), 34]

(b) **Mr Kanagaratnam's statement at Section 5C(ii):** Explains that Optus has made significant investment in regional Australia over the past five years (commencing in 2016) having deployed over 840 greenfield sites in the proposed Telstra-TPG regional coverage zone and made a significant number of 4G upgrades on existing sites.

As a result of Optus' investment and network improvement in regional areas, Telstra has increased its regional mobile infrastructure investment from 2017. [212-214]

(c) **Mr Kanagaratnam's statement at Section 2E:**

[69-71]

(d) **Mr O'Sullivan's statement:** In addition to [36] noted above, Mr O'Sullivan identifies two examples in fixed line services where Optus' network investments drove Telstra to increase investment regarding DSLAM infrastructure and in the context of the rollout of Optus' HFC network. [37-48]

19. The Applicants and their experts Mr Feasey and Mr Padilla agree with the proposition that Telstra's investment incentives are driven by Optus.<sup>1</sup>
20. In response to **SOPV Question 1(e)**, Optus agrees with the ACCC's view (at **SOPV paragraph 3.5**) that MVNOs do not apply significant competitive constraint on MNOs and

<sup>1</sup> Application, §192; Feasey 1, §70, 72 c, 81; Padilla [5.44(a)], [5.46(d)].



24. However, importantly, Optus' evidence shows that the longer-term competitive effects will arise from changes in investment incentives that will occur (and in investment decisions that are likely to be made) in the short term. Accordingly, the ACCC can be confident that the resulting medium and longer-term consequences for competition are likely to arise in the future: see Mr Hunt's report at [281, 291, 307].
25. The most important medium and longer-term competitive consequences of the Proposed Transaction result from the impact on Optus' investment incentives, and the resulting reduction in competitive pressure on Telstra: see Section 5 and 6 below.

## 4 OPTUS' EVIDENCE ON THE LIKELY COUNTERFACTUAL (SOPV QUESTION 4)

5.4. Submissions from the Applicants, Optus and their experts have proposed or considered four broad types of counterfactuals for TPG:

- TPG undertaking a full scale build in the Regional Coverage Zone;
- TPG undertaking a more targeted build in the Regional Coverage Zone;
- TPG entering into an arrangement with Optus; and
- TPG entering into a more limited alternative arrangement with Telstra.

5.5. For both Telstra and Optus, the counterfactuals proposed or considered are broadly the status quo, with each continuing its current investment strategy, or either MNO entering into an arrangement (or in the case of Telstra, a more limited alternative arrangement) with TPG.



[...]

### **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.

### 4.1 The most likely counterfactual is TPG entering into an arrangement with Optus

26. 
27. Optus agrees with the ACCC's view that Optus and TPG are likely to have commercial incentives to enter into such an arrangement (SOPV paragraph 5.19), and has provided evidence concerning each parties' commercial incentives.
28. 



[REDACTED]

29. Similarly, the ACCC should carefully test assertions by TPG in the context of recent information provided to the ACCC which address potential technical issues relevant to an active network sharing arrangement with Optus, including regarding the extent to which there is a lack of contiguity between Optus and TPG's spectrum. Optus strongly challenges the accuracy of this information. It is unclear why TPG has marked some of this content as confidential which limits a more comprehensive technical response by Optus.

[REDACTED]

30. Based on Optus' evidence reviewed below, the ACCC should conclude that there is at least a real commercial likelihood of Optus and TPG reaching agreement on such an arrangement in the counterfactual.

(a) **Ms Bayer Rosmarin's statement:** Ms Bayer Rosmarin considers that:

(i) [REDACTED] [48]

(ii) [REDACTED] [22, 48(b)]

(iii) [REDACTED] [23-4]

(iv) [REDACTED] [48(b)]

(v) [REDACTED] [25-6, 48(a)]

(vi) [REDACTED] [48(c)]

(b) **Mr White's statement at Section 3A and B:** [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]  
[37]

(c) **Mr White's statement at Sections 3C to 3G:** [REDACTED]

(i) [REDACTED] [113]

(ii) [REDACTED]  
[116]

(iii) [REDACTED]  
[118-119]

(ci) **Mr White's statement at Section 3H:** [REDACTED]

(i) [REDACTED] [120]

(ii) [REDACTED] [120(a)]

(iii) [REDACTED] [121]

(iv) [REDACTED]  
[123(a)]

(cii) **Mr White's statement at Section 5A to 5C:** [REDACTED]

(i) [REDACTED] [216]

(ii) [REDACTED] [198]

(iii) [REDACTED]

- [200, 208]
- (iv) [213]
- (v) [209, 219]
- (f) **Mr Kanagaratnam's statement at Section 4:** [150-158]
- (i)
- (ii)
- (iii)
- (iv)
- (v)
- [159]
- [157 and
- Exhibit LK-C1 at Tab 61]**
- (g) **Mr Moon's statement at Section 4:** [71]
- (h) **Mr Hunt's report at Section 8:** Considers that both Optus and TPG would have strong incentives to reach a network sharing agreement absent the Proposed Transaction and that such agreement is the most likely outcome absent the Proposed Transaction [234]. In circumstances where Optus and TPG would stand to gain customers (and profit) and achieve reduced unit costs, there would be a joint surplus created by the agreement and it would be rational for Optus and TPG to reach such an agreement to achieve that surplus. [243]
- (i) **Analysys Mason's 24 October 2022 report at Section 3:** shows that

[REDACTED]

**4.1.1 Any commercially realistic (and mutually beneficial) Optus/TPG arrangement would involve regional 5G for TPG**

31. Optus rejects the suggestion by the Applicants that any arrangement between TPG and Optus would not involve providing 5G to TPG for at least 5 years: see **Padilla Report** at paragraph 1.6 and Exhibit C (Assumptions) at paragraph 4.1; **TPG counterfactual submission** dated 1 August 2022 at paragraph 6.

32. [REDACTED]

(a) **Ms Bayer Rosmarin's statement:** [REDACTED] [48(b)]

(b) **Mr White's statement at Section 5:** Explains that:

(i) [REDACTED] [197, 215]

(ii) [REDACTED] [199] and

(iii) [REDACTED]

(c) **Mr Hunt's report at Section 8:** The benefits of a network sharing agreement to Optus and TPG in terms of significant economies of scale relate directly to a 5G rollout and Optus would have incentives to enter into such an agreement to offset the cost of upgrading its network to 5G. [240-241] The conclusions reached by Mr Hunt are supported by Analysys Mason's modelling, which are summarized in **Mr Hunt's report at [167]ff.**

33. Given the above, Optus considers that the applicant's submissions and lay evidence on the counterfactual, and the expert reports of Feasey and Padilla, proceed on a fundamentally incorrect and commercially unrealistic basis. The **supplementary report provided by Mr Greg Houston** identifies a further series of matters where there is insufficient evidence on which Feasey and Padilla can reliably reach the conclusions that they have.

34. [REDACTED]

- (a) **Ms Bayer Rosmarin's statement:** [REDACTED]  
[48(b)]
- (b) **Mr White's statement at Section 5D: Indicates that:**
  - (i) [REDACTED] [220]
  - (ii) [REDACTED] [222]
  - (iii) [REDACTED] [221]
- (c) **Mr Kanagaratnam's statement at Section 3 and 4: Explains that:**
  - (i) [REDACTED] [162]
  - (ii) [REDACTED] [124, 131-133, 156, 159, 161]

**4.1.2 TPG has the ability and financial capacity to pursue whichever sharing arrangement with Optus that it commercially prefers**

35. Optus' evidence shows that [REDACTED]

- (a) **Ms Bayer Rosmarin's statement: Details that:**
  - (i) [REDACTED] [48(b)]
  - (ii) [REDACTED] [48(e)]
  - (iii) [REDACTED] [50]

(iv) [REDACTED] [48(b)]

(b) **Mr White's statement at Section 3H:** Explains that:

(i) [REDACTED] [102-108]

(ii) [REDACTED] [120]

(iii) [REDACTED] [123]

(iv) [REDACTED] [124]

(v) [REDACTED] [45(c), 81, 83, 89]

(vi) [REDACTED] [7, 88]

(vii) [REDACTED] [105] [123(b)]

(c) **Mr White's statement at Section 5C:** Explains that:

(i) [REDACTED] [216]

(ii) [REDACTED] [217]

(d) **Mr Kanagaratnam's statement at Section 3:** Explains that:

(i) [REDACTED] [128-130]

(ii) [REDACTED]

[129-135]

36. [REDACTED]
37. Optus is not aware of any evidence that TPG is unable to provide sufficient funding for the form of sharing arrangement with Optus that it commercially prefers, or is otherwise capital constrained. That position is consistent with the significant funding that TPG has committed to the arrangement with Telstra.
38. In **SOPV Question 4(e)**, the ACCC has asked to what extent TPG would be technically able to differentiate if it entered into an agreement with Optus concerning regional 5G investment.
39. As the evidence reviewed above demonstrates, [REDACTED]
40. [REDACTED]
41. However, the key competitive impact the ACCC should consider is that an Optus/TPG agreement will mean that Optus (and also TPG) will put greater pressure on Telstra to invest, leading to better competitive outcomes in infrastructure-based and price-based competition.

4.1.3

42. Optus' evidence shows that [REDACTED]
- (a) **Mr White's statement** indicates that:
- (i) [REDACTED] [68]
- (ii) [REDACTED] [65]
- (b) **Mr Hunt's report at Section 8:** Noted that, in light of Optus' evidence that Optus and TPG considered a network sharing agreement would be more profitable than no agreement, it would follow that any effect of increased price competition was not expected to outweigh the benefits of such an agreement. In particular, Optus' view that the loss of some market share to TPG would be more than offset by reductions in costs is consistent with the existence of a joint surplus arising from a network sharing agreement. [240-241]

43. The ACCC should not conclude that [REDACTED]

**4.1.4** [REDACTED]

44. Optus's evidence shows that it has the technical ability to use TPG's spectrum [REDACTED]

(a) **Mr Kanagaratnam's statement at Section 5:** [REDACTED] [163-171]

(b) **Mr Turner's statement** similarly explains the advantage that Telstra would obtain by gaining access to TPG's spectrum ([65-76]) and, alternatively, the benefits that would be provided if Optus and TPG were to share spectrum holdings in regional areas ([78-84]). In particular, Mr Turner addresses the maximum uplink and downlink speeds that would result from shared Optus and TPG spectrum. [81-82]

45. Optus has also provided evidence about the potential alternative ways that TPG could otherwise monetise its spectrum holdings: see **Mr Kanagaratnam's statement at Section 7.**

46. The Applicants have suggested that there may be some technical barriers to a network sharing arrangement between Optus and TPG. That is contradicted by [REDACTED]

47. It is clear that Optus providing TPG with a 5G roaming agreement is readily technically achievable. Optus' evidence shows that a number of technical solutions are available for network sharing with TPG, including using TPG's spectrum.

(a) **Mr Kanagaratnam's statement at Section 3:** [REDACTED] [136-140]

(b) **Mr Kanagaratnam's statement at Section 4:** [REDACTED] [150-159]

(c) **Mr Turner's statement:** Indicates that while Optus would require additional radio equipment on its base stations to make use of additional TPG spectrum, Telstra will similarly require additional radio units on its mobile sites. [85]

(d) Optus does not consider there to be any technical issues that would prevent an active network sharing arrangement being entered into with TPG. [REDACTED]

**4.1.5 Optus would be likely to use more of TPG's existing sites than Telstra**

48. Telstra plans to use up to 169 of TPG's sites and is planning on shutting down approximately 700 TPG sites in the RCZ. [REDACTED]



- (a) **Mr Kanagaratnam's statement at Section 4:** [REDACTED] [161]

#### 4.2 Competitive implications of a TPG/Optus arrangement for infrastructure and price competition

- 49. Optus has provided the ACCC with evidence that an Optus/TPG arrangement would result in increased investment by Optus (relative to what would occur under the Proposed Transaction), and increased competitive pressure on Telstra to invest.
- 50. The sections above identify the benefits to Optus (and TPG) of a network sharing arrangement in terms of reducing Optus' (and TPG's) costs of regional network investments and that investment by Optus drives Telstra's investment incentives. That increased infrastructure competition would likely result in increased competition in wholesale and retail markets, including based on price.

- (a) **Mr White's statement at Section 3:** [REDACTED] [27]
  - (i) [REDACTED]
  - (ii) [REDACTED]
  - (iii) [REDACTED]
- (b) **Mr Kanagaratnam's statement at Section 4:** Concludes that an arrangement between TPG and Optus would make both Optus and TPG significantly stronger competitors to Telstra in regional areas. This will apply across multiple important network attributes; coverage, speed, and overall network quality and performance. [155]
- (c) **Mr Hunt's report at Section 9.2:** Explains the likely competitive effects of a network sharing arrangement on dynamic network competition, given the economic framework outlined in that report.
- (d) **Mr Hunt's report at Section 9.3 and 9.4:** Explains the likely competitive effects for wholesale and retail competition, as a result of the change in network competition resulting from an Optus/TPG arrangement, including the impact on price competition.

##### 4.2.1 ACCC should focus on the competitive outcome, not the benefit to TPG of an arrangement with Optus relative to its deal with Telstra

- 51. Optus accepts that any arrangement it would negotiate with TPG is likely to be of less benefit to TPG than TPG's arrangement with Telstra (which is in a sense obvious, given that TPG has preferred a transaction with Telstra). However, the ACCC must focus on the relative competitive outcome as between the factual and counterfactual, not the relative benefit to TPG.
- 52. Each of Optus and TPG will continue to face the incentive to compete strongly with Telstra through regional 5G network investments, to the extent it is profitable to make those investments. [REDACTED]

[REDACTED]

53. It is not necessary for the ACCC to form a view on the precise form of that agreement, or the relative sharing of those benefits as between the parties. See Mr Hunt's report at Section 8.4 and 8.5 (and [263] in particular).

#### 4.3 SOPV Question 4(a): TPG unlikely to undertake a more targeted build in the Regional Coverage Zone

54. Optus cannot entirely exclude the possibility of TPG undertaking a more targeted regional network build.

55. However, the evidence about Optus' and TPG's commercial incentives indicates that [REDACTED]

56. Even assuming a counterfactual where TPG conducts a more targeted regional build were to occur, the factual scenario under the Proposed Transaction remains a substantially less competitive outcome. That is because, in that counterfactual, the market would continue as is with two MNOs (Telstra and Optus) investing in regional areas and competing strongly, and the third MNO (TPG) making the decision to invest in regional areas as well (facing similar constraints and challenges to the number two MNO).

57. That position is aligned with the ACCC's view that TPG would have more incentive to invest in infrastructure under any agreement with Optus than under the Proposed Transaction: SOPV paragraph 5.22.

#### 4.4 SOPV Question 4(a): Potential counterfactuals that the ACCC should not consider

58. In Optus' view, the ACCC should not consider "TPG entering into a more limited alternative arrangement with Telstra" as a relevant counterfactual: SOPV paragraph 5.26.

59. [REDACTED] Optus agrees with the commercial logic supporting that conclusion, which was set out in Telstra's and TPG's joint submission:

[REDACTED]

60. Optus agrees that the ACCC should not consider "TPG undertaking a full scale build in the Regional Coverage Zone" as having a real commercial likelihood: SOPV paragraph 5.12. TPG itself rejects that counterfactual: Application (23 May 2022), [46] – [50]; TPG Submission on Counterfactual (1 August 2022), [45].

61. The corollary of TPG not undertaking a full scale 5G build in the Regional Coverage Zone is that two full-scale 5G networks compete head-to-head in the Regional Coverage Zone only in circumstances where Optus proceeds with a 5G regional rollout on a scale broadly equivalent to its pre-transaction plans.

## 5 OPTUS' EVIDENCE ON INFRASTRUCTURE-BASED COMPETITION IN THE FACTUAL (SOPV QUESTION 8)

### *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:
- the impact of the Proposed Transaction on TPG's incentive to invest in regional and remote areas of Australia;
  - the impact of the Proposed Transaction on Optus' ability and incentive to invest in regional and remote areas of Australia;
  - 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
  - the timeframe over which the impact on these investment incentives is likely to be felt.

62. Optus' evidence is that the Proposed Transaction will strongly incentivise Optus to reduce its infrastructure investments in regional Australia, for the reasons outlined below.

### 5.1 Telstra will achieve material benefits from the Proposed Transaction

63. Optus has provided extensive evidence that under the Proposed Transaction, Telstra will achieve even greater scale and network performance benefits from the use of TPG's spectrum, which will provide Telstra with an unassailable cost and spectrum advantage over Optus.

- (a) **Ms Bayer Rosmarin's statement:** [REDACTED]  
[43(b), 47(b)]
- (b) **Mr Kanagaratnam's statement at Section 6A:** Describes the significant capacity, speed and quality benefits to Telstra from gaining access to substantial additional low and mid band spectrum in regional areas. [REDACTED]
- (i) [REDACTED] [175]
- (ii) [REDACTED] [183]
- (c) **Mr Turner's statement:** Describes the considerable advantage that Telstra will achieve as a result of the Proposed Transaction [65]ff. This includes a capacity and speed advantage that customers on the Telstra network will enjoy, including peak downlink and uplink rates that would be achievable: [67]-[70]. Mr Turner also addresses the advantage that Telstra will receive in terms of 3.5GHz spectrum, which provides the necessary channel bandwidth to deliver high speeds and low latency which is essential to the delivery of 5G services: [73]. Mr Turner explains that in the absence of sufficient spectrum holdings, the only way to compete would be to build additional infrastructure which is time consuming and costly: [75].
- (d) **Mr Hunt's report at Section 6:** Explains the economic impact of scale, spectrum and network sharing economies for MNOs, and importance of the relative costs as

between Telstra and Optus for investment decision making and competitive outcomes.

- (e) **Analysys Mason:** The network cost model produced by Analysys Mason calculates that Optus' network cost per gigabyte to supply mobile customers in the Regional Coverage Zone is currently [REDACTED] Telstra's network cost and that the Proposed Transaction will further extend that cost differential by generating scale benefits with the result that [REDACTED]

64. The result of the above will be to materially increase the competitiveness of Telstra's mobile service offerings relative to Optus, which will reduce Optus' incentives to make regional network investments.

- (a) **Ms Bayer Rosmarin's statement:** [REDACTED]  
[33(b)]

- (b) **Mr White's statement:** Indicates that:
  - (i) [REDACTED]  
[136(a)]
  - (ii) [REDACTED]  
[137(a)]
  - (iii) [REDACTED]  
[137(b)]

## 5.2 Optus' 2020 business case for its regional 5G network rollout

65. Optus' commercial incentives and likely decision making in response to the Proposed Transaction should be understood in the context of [REDACTED]

66. [REDACTED]

- (a) **Ms Bayer Rosmarin's statement:** [REDACTED]

(i) [REDACTED] [6-8]

(ii) [REDACTED] [10(a)]

(iii) [REDACTED] [10(c)]

(iv) The Huawei Ban [REDACTED] – see paragraph 68(a).

[REDACTED] [11]

[REDACTED] [14-15]

[REDACTED] [15]

(b) **Mr White's statement at Section 4A to 4D:** [REDACTED] [142]

(c) **Mr Kanagaratnam's statement at Section 2D and 2E:** Describes the capex approval process [REDACTED]. Mr Kanagaratnam explains that:

(i) [REDACTED] [65]

(ii) [REDACTED] [58]

(iii) [REDACTED] [74, 80]

(iv) [REDACTED] [82, 85]

[REDACTED]

(d) **Mr Moon's statement at Section 3:** [REDACTED]

[REDACTED]

[28, 29, 47, 49]

### 5.2.1 Impact of Huawei Ban on any Optus business case for a regional 5G network

67. Telstra did not use Huawei equipment in its 4G network, and so its network deployment costs and plans were unaffected by the Huawei Ban. Through the Proposed Transaction, TPG will achieve a solution for the Huawei problem: **Ms Bayer Rosmarin's statement at [33(a)]; Mr O'Sullivan's statement at [53(a)]; Mr Moon's Statement at [28, 64].**

68. Relative to Telstra, Optus is at a further cost and time disadvantage in deploying 5G, due to the need for Optus to decommission Huawei 4G equipment prior to deploying 5G equipment. [REDACTED]

(a) **Ms Bayer Rosmarin's statement:** The Huawei Ban exacerbated the advantages that Telstra had over Optus for 5G deployment. The Huawei Ban made upgrading a site to 5G more expensive and time consuming for Optus than Telstra, and gave Telstra a material first mover advantage, and permanent cost advantage. [REDACTED]

[10(b)]

(b) **Mr Kanagaratnam's statement at Section 2B:** The Huawei Ban meant that:

(i) Optus' 5G rollout would require Optus to remove and replace Huawei 4G RAN equipment and transmission equipment; [34-35]

(ii) [REDACTED]

[37, 41]

(iii) TPG was also affected by the Huawei Ban, but Telstra was not (as Telstra does not use Huawei equipment for its 3G or 4G network); and [38]

(iv) in combination with other factors, the Huawei Ban has a significant negative impact on Optus' 5G rollout as compared to Telstra's, and customer perceptions of Optus' network as compared to Telstra's, resulting in potential market share loss. [39]

(c) **Mr White's statement:** Further explains that the Huawei Ban:

(i) [REDACTED]

[24]

(ii) [REDACTED] [117]

(d) **Mr Moon's statement at Section 2B:** [REDACTED] [22]

69. While the incremental Huawei cost and time applies to Optus in both the factual and counterfactual scenarios:
- those factors reduce the profitability of any business case for a contemplated regional 5G network build for Optus;
  - however, those costs would be shared to some extent (and therefore the negative impact on a business case reduced) in a counterfactual where Optus and TPG enter into a regional 5G network agreement: see Section 4.1 above.

### 5.3 Optus' least worst option strategy in response to the Proposed Transaction is [REDACTED]

70. Optus' least worst option in response to the Proposed Transaction is [REDACTED]

71. [REDACTED] see Ms Bayer Rosmarin's statement at [36].

72. [REDACTED]

(a) **Mr White's statement at Section 4:**

(i) [REDACTED] [146]

(ii) [REDACTED] [146]

(iii) [REDACTED] [169]

(iv) [REDACTED] [164], [168]

(v) [REDACTED]  
[172-173]

(vi) [REDACTED]  
[174]

(b) **Ms Bayer Rosmarin's statement:** Explains that:

(i) [REDACTED]  
[30]

(ii) [REDACTED]  
[32(b)]

(iii) [REDACTED]  
[33]

(iv) [REDACTED]  
[34]

(v) [REDACTED]  
[39-40]

(vi) [REDACTED]  
[43]

(c) **Mr Moon's statement at Section 6:**

(i) [REDACTED]



[REDACTED]  
[76]

(ii) [REDACTED]  
[76]

(d) **Mr Hunt's report at Section 7:** Mr Hunt considers in detail the economic considerations relevant to Optus' incentives whether to invest in the RCZ, and Optus' commercial analysis. [REDACTED]  
[221]

73. [REDACTED]

(a) **Ms Bayer Rosmarin's statement:** [REDACTED]  
[38]

(b) **Mr White's statement:** [REDACTED]  
[187]

74. [REDACTED] Mr White's statement explains that:

(a) [REDACTED]  
[192]

(b) [REDACTED]  
[192]

(c) [REDACTED]  
[192]

75. [REDACTED] see Mr White's statement at [192].

76. **Ms Bayer Rosmarin's statement** [REDACTED]  
[37]

77. **Mr White's statement** [REDACTED]  
[161-2, 192]

78. [REDACTED]

[REDACTED]

5.4

[REDACTED]

79.

Given the improvement in Telstra's network (above), [REDACTED]

80.

[REDACTED]

(a) **Ms Bayer Rosmarin's statement:** Explains that:

(i)

[REDACTED] [41]

(ii)

[REDACTED] [40]

(iii)

[REDACTED] [43]

(b) **Mr Moon' statement at Section 2C to 3:**

(i)

[REDACTED] [33(b), 38, 59]

(ii)

[REDACTED] [39-40]

(iii) [REDACTED]  
[41]

(iv) [REDACTED]  
[49, 60]

(v) [REDACTED]  
[27]

(c) **Mr Moon's statement at Section 4:**

(i) [REDACTED]  
[67]

(ii) [REDACTED]  
[35]

(d) **Mr O'Sullivan's statement:** Indicates that:

(i) [REDACTED]  
[21]

(ii) [REDACTED]  
[23]

(iii) [REDACTED]  
[24]

(iv) [REDACTED]  
[49]

(v) [REDACTED]  
[52]

(vi) [REDACTED]  
[54]

81. [REDACTED]

[REDACTED] Nor would Optus continue with its current planned rollout. At most, Optus might have some targeted investment in a limited number of areas.

## 5.5 Under that Optus strategy, Telstra will face materially less competitive pressure to invest in its regional 5G network

82. The result of the Proposed Transaction and [REDACTED] will be a reduction in competitive pressure on Telstra to invest and a resulting substantial reduction in competition, compared to the counterfactual.
83. Optus' view of the likely effects on investment competition are summarised below.
- (a) **Ms Bayer Rosmarin's statement at paragraph [47].**
  - (b) **Mr Kanagaratnam's statement at Section 6C and 8: Details:**
    - (i) [REDACTED]
    - (ii) [REDACTED]
  - (c) **Mr White's statement at Section 4E and 4H:** [REDACTED]
  - (d) **Mr Hunt's report at Section 9.2:** Explains the likely effect of the Proposed Transaction on the level of dynamic infrastructure competition, and in particular the reduced competitive threat of Optus on Telstra's investment incentives.
84. Optus' decisions in response to the Proposed Transaction will also have longer term impacts, which will [REDACTED]
- (a) **Ms Bayer Rosmarin's statement:** [REDACTED]  
[45(b)]
  - (b) **Mr Moon's statement at Section 6:** [REDACTED]  
[77]
85. It is not plausible that TPG would step in and provide the same competitive constraint on Telstra in respect of network investments, if Optus ceases or significantly reduces regional investment. As Ms Bayer Rosmarin explains at [47(b)]:
- [REDACTED]

## 6 OPTUS' EVIDENCE ON PRICE AND QUALITY-BASED COMPETITION IN THE FACTUAL (SOPV QUESTION 7)

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

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

86. Optus' evidence is that, at least in the medium to longer term, the Proposed Transaction is likely [REDACTED] to lead to a substantial reduction in price and quality competition in mobile services. In addition to the evidence described in Section 5 above:

- Ms Bayer Rosmarin's statement:** [REDACTED] [47(e)]
- Mr White's statement at Section 4B:** Indicates that:
  - [REDACTED] [150]
  - [REDACTED] [136-137]. [138]
  - [REDACTED] [170]
  - [REDACTED] [139]
- Mr Hunt's report at Section 9.3 and 9.4:** Explains the likely effect of the Proposed Transaction on the level of price and quality competition in retail and wholesale markets, and the reasons for his view that, at least in the medium term, there would be less retail and wholesale competition, including on price.

## 7 OPTUS' EVIDENCE ON PUBLIC BENEFITS AND DETRIMENTS (SOPV QUESTIONS 13 TO 20)

### 7.1 Public benefits and Telstra congestion

87. As described in the sections above:

- (a) [REDACTED]
- (b) In the counterfactual, TPG would have [REDACTED] and, in those circumstances, Telstra would face greater competitive pressure to engage in network improvements and innovation, leading to increased consumer choice.

88. Optus does not accept that the Applicants have provided credible evidence of significant Telstra network congestion.

89. To the extent the ACCC considers that there is congestion that would be alleviated in the short-term by Telstra's access to TPG's spectrum, the ACCC should discount it given that:

- (a) Telstra has the ability to address that congestion in other ways;
- (b) Telstra will only be forced to do so in the face of the genuine threat of effective competitive investment from Optus; and
- (c) relieving Telstra of that network congestion will only further disincentivise Optus from making regional 5G network investments, resulting in greater longer-term competitive detriment.

90. In Optus' view, given Telstra's market share and position, congestion on Telstra's network is an investment signal for others (Optus and TPG) that their regional 5G investments are more likely to capture Telstra's share and therefore be profitable. Any short-term allocative efficiency from relieving Telstra of its congestion is to the detriment of longer-term dynamic efficiency.

91. Optus evidence in support of the above includes the following.

- (a) **Mr Kanagaratnam's statement at Section 6B:** Mr Kanagaratnam explains that Telstra could use network capacity expansion techniques and existing spectrum assets to achieve additional network capacity and speed in other ways. Optus' view is that Telstra (i) is under-utilising its mid-band spectrum in regional areas as it has not deployed available spectrum to a significant proportion of sites, (ii) will be able to increase its 4G/5G capacity by reallocating low band spectrum from 3G to 4G/5G either once it switches off its 3G network or progressively in advance of that event, (iii) has not yet deployed additional spectrum which it acquired at auction in 2021; and (iv) could expand capacity on existing sites through techniques including twin-beam antennas, sector splits and the use of multiple transmitters and receivers in a single RAN site involving Massive Multiple-Input Multiple-Output technology.
- (b) **Mr Hunt's report at Section 2.1 and 9.5:** Explains that:
  - (i) any Telstra congestion is an important part of the competitive process, driving Telstra to improve its network. Telstra can likely address congestion issues at the lowest cost given its scale. Congestion provides

incentives to other operators – particularly Optus, which is Telstra's closest competitor – to invest in order to win customers from Telstra. [26]

- (ii) Dr Padilla's evidence that there is more congestion in regional areas than is in metro areas raises a question whether such this congestion is symptomatic of a lack of network competition in regional areas. [308]

92. Optus has also provided detailed technical evidence addressing a number of assertions made by the Applicants and the third party experts engaged by the Applicants. This is relevant to the commercial rationale for the Proposed Transaction, including claims about congestion. In particular, **Mr Turner's statement** addresses the following key matters.

- (a) The use of mid-band spectrum in rolling out 5G technology and the fact that mid-band spectrum can be utilized to achieve coverage and capacity in regional areas: **Section 6**. This evidence is provided in the context of claims by Telstra that addressing congestion and delivering improved services in additional locations are key commercial drivers for Telstra in pursuing the Proposed Transaction with TPG. In particular, Mr Turner's statement demonstrates that mid-band spectrum has far greater coverage propagation than the Applicants suggest ([92]); that propagation or coverage information provided by the Applicants is incorrect ([93]-[105]); and that Telstra could achieve greater capacity and coverage by deploying additional mid-band spectrum in regional areas which are currently underutilized ([107-112]).
- (b) Mr Turner also addresses in detail the deficiencies in the network dimensioning model which Aetha has prepared for Telstra. The Aetha model is intended to show the growth rates that can be sustained by the respective networks. In particular, the Aetha Report is used by the Applicants to suggest that in the RCZ Optus has (and will continue to have) sufficient spectrum assets in order to match the capacity of the Telstra-TPG MOCN and also to win substantial market share from Telstra.
- (c) Mr Turner's statement identifies a series of deficiencies in Aetha's model. This includes, in particular, issues with methods Aetha has used to compare respective spectrum holdings: [117-139]. Mr Turner also addresses issues with the model itself, including forecasting by Aetha that disproportionately inflates congestion issues for Telstra ([142-143]). The deficiencies in Aetha's capacity forecasting are made clear when compared to Optus' own greenfield build program: [160-169]

93. These sections of Mr Turner's statement address the assertion that access to TPG's spectrum will alleviate Telstra's congestion in the RCZ and consequently deliver a public benefit. In particular, Mr Turner's statement demonstrates that:

- (a) Assuming Telstra's network is or will in the near future experience congestion, Telstra has access to mid band spectrum in the RCZ that it is not currently using which could be utilized to achieve coverage and capacity in regional areas. That is, the benefit associated with alleviating any network congestion in the RCZ can be achieved without the Proposed Transaction and therefore is not unique.
- (b) The Aetha network dimensioning modelling relied on by Telstra to forecast Telstra's network congestion in the RCZ over a five year period cannot be relied upon. It significantly inflates Telstra's forecast network congestion. That raises questions about the extent to which Telstra's network is in fact capacity constrained (or will be in the near future).

## 7.2 Reduced network diversity for emergencies and disasters

94. Optus has provided evidence that the Proposed Transaction will result in reduced network diversity for emergencies and disasters, which is a material public detriment.

95. Multiple independent networks support reliable access to regional telecommunications services, in particular during natural disasters or power outages when certain network infrastructure may be out of operation.
- (a) **Mr Kanagaratnam's statement at Section 6:** Mr Kanagaratnam notes that multiple networks provide greater resilience including because there may be different physical locations, and different background transmission, for MNO sites which reduces the risk of an event impacting all sites and there may be different support staff to maintain the sites and respond to incidents.
- (b) **Mr Doyle's report dated 24 June 2022 at paragraph 3.1.7:** Notes that fewer independent mobile networks increase the risk that no alternate network operator exists when the host network operator is unavailable and comments that the Proposed Transaction may increase the number of "only Telstra" areas.

### 7.3 Other public benefits and detriments

96. Optus does not consider any other benefits, as described in the SPOV paragraphs 6.7 to 6.24, are likely to result from the Proposed Transaction.
97. The significant public detriments likely to result from the Proposed Transaction are as set out in Optus' initial submission and supported by witness statements and expert evidence.

## 8 OPTUS' VIEWS ON OTHER QUESTIONS RAISED IN THE SOPV

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### 8.1 SOPV Question 2: Relevance of key elements of Proposed Transaction including non-discrimination provisions

98. Optus reiterates that there are limitations and exceptions to the non-discrimination obligations and considers, in particular, that the 6 month delay in TPG access to new 5G sites confers a first-mover advantage on Telstra while the investment provisions ensure Telstra retains full control of when and where network investments are made: see **Optus' first submission at paragraphs 7.21(h) and (j)**.
99. Optus has not been provided with key commercial terms necessary to interrogate TPG's precise incentives to grow share and compete. To the extent that Telstra offered highly favourable terms to TPG, Optus expects that that is (at least in part) the result of Telstra valuing the likelihood that those terms would commercially benefit Telstra in the longer term, as a result of reduced competition from Optus in the form of regional 5G investment.

### 8.2 SOPV Question 3: Relevance of international analogies

100. Optus provided the ACCC with information concerning network sharing arrangements in other jurisdictions in its initial submissions: see **Optus' first submission at paragraphs 4.47-4.54; CEPA report dated 24 June 2022 at paragraphs 12-38**.
101. Optus considers that there are limited direct comparisons with network sharing arrangements in other jurisdictions, given the unique population density, geographic and commercial features of Australia, the market position of Telstra, and the Proposed Arrangements.
102. However, in assessing investment incentives, Optus considers that it is relevant to consider comparative ROIC, which is very low in Australia: see the evidence described above.



103. **Mr Kanagaratnam's statement** also notes that it is unusual internationally for network cooperation to involve the number one MNO: [242-245].

104. **Mr Moon's statement** refers to a network sharing arrangement in Singapore involving StarHub and M1. [REDACTED]

[72-73]

### 8.3 SOPV Question 10: Markets for the acquisition of spectrum licences

105. [REDACTED]