



Record of oral submission to the ACCC

Matter name:	Telstra / TPG merger authorisation		
ACCC parties:	MIB: Sophie Mitchell (SM), Janet Li (JL) CE: Jaime Martin (JM), Naomi Lizak MEAD Legal: Andrew Gun (AG)		
Other parties:	Pivotel <ul style="list-style-type: none">• Peter Bolger• Gary Bhomer		
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Please see attached slide deck prepared by Pivotel which further discusses Pivotel's submission on the proposed Telstra/TPG merger authorisation.

Overview of Pivotel business

- Pivotel has been around for the past 20 years and is both an MNO and MVNO.
- Pivotel has a divided business operation and focuses on building professional networks (such as building private networks for mining) and providing public networks for regional communities.
- For example, Pivotel owns and operates the network which provides communication services to enterprises such as Alcoa mining in Western Australia. Pivotel also owns and operates networks which are marketed to individual communities, such as in Wickepin and Mt Barker in Western Australia. These networks were 50% co-funded by the WA DPIRD.
- Pivotel has recently finished building a mobile site at the Katanning Research Facility.
- Some Pivotel initiatives are not government funded, rather Pivotel engages in these ventures to benefit its end consumers. These projects are fully funded by Pivotel and its customers.
- Originally, Pivotel's focus was on satellite as a reseller and value added service provider (e.g. Tracertrak), and has since progressed to fixed wireless and mobility. Pivotel now offers a range of services including fixed wireless and mobility, satellite communications, Internet of Things, and on-net and off-net voice and SMS messaging.

- Pivotel runs a full mobile network. It is integrated with all MNO carriers and has inter-carrier arrangements in place whereby Pivotel enables customers to send traffic through its network to other carriers such as Telstra.
- Pivotel differentiated itself in its commitment to successfully provide 4G community networks. Pivotel has built coverage outside Mt Barker, which was an area with virtually no coverage. For this initiative, the local community worked with Pivotel to build this network.
- As both an MNO and MVNO, Pivotel is a customer and competitor to other providers like Telstra, TPG, Optus, NBN Co, Field Solutions Group, Swoop and Superloop.
- Pivotel wants to acquire spectrum and was a participant in the recent 850 / 900 MHz auction. Pivotel bid [REDACTED] for 10MHz of spectrum in the last auction. However, Telstra got its maximum 10MHz and TPG got the balance.
- Pivotel's market is focussed on regional and remote Australia, particularly as satellite services are vital in the regional market. As regional Australia is Pivotel's focal market, Pivotel wants to extend mobile and fixed wireless coverage in the underserved areas. However, the unsuccessful outcome in the latest auction has raised costs for Pivotel, as Pivotel will now have to build much more infrastructure. It would have been easier for Pivotel to extend coverage if it had been able to acquire and access low band spectrum.
- Pivotel has access to mid band spectrum via apparatus licencing, which is predominantly 2.1GHz.

- [REDACTED]

Pivotel's investment plans

- Pivotel has ongoing plans to build networks in communities that have very poor coverage using both 4G and 5G infrastructure.
 - In the slide deck provided, the areas highlighted in yellow are an example of the areas that Pivotel has current investment plans in WA. Pivotel is also building networks in other states with current plans for new networks in NSW and VIC where Pivotel was successful in securing grant funding under RCP2 and relevant state-based programs.
- Pivotel wants to provide coverage for the agriculture industry and help provide coverage for farmers, such as by providing extended coverage in Wickepin.
- Pivotel's sites are typically built with solar infrastructure and are usually microwave linked but may also be satellite linked. The new low Earth orbit (LEO) satellites will help provide high quality and lower cost connectivity.
- One of the drawbacks of end users using the Pivotel network is that they need to use a Pivotel SIM to access the Pivotel network and another SIM (usually Telstra in the regions) to access their national mobile carriers' network. Hence end users need to use a dual sim handset and change carriers as they move between different networks. Dual sims are needed as a customer will have a Pivotel SIM card, but once they leave the Pivotel community network, they lose coverage and connectivity. These customers then need to use their second sim to connect with other providers, mainly Telstra.

- Pivotal intends to introduce eSIM services by 2023. With this service, a customer could take an eSIM from Pivotal and a physical SIM from Telstra (or vice versa). It will improve Pivotal's services if a community customer knows that they can continue to use Pivotal when they leave the community which can be enabled via a wholesale access arrangement. Pivotal's product offering needs to be sufficiently compelling so customers can take up its services.
- Pivotal has developed an application for talk and text (PATT) which is a downloadable App which works across any data bearer (eg Pivotal network, Telstra / Optus / TPG network, WiFi anywhere etc) however requires the end user to take on a new (Pivotal) mobile number which is another barrier to adoption.
- Pivotal would like to develop a national service using its own network and another national providers network, ideally as a heavy MVNO, so that customers can subscribe to Pivotal for their retail service and have a seamless national mobile service which can be managed in Pivotal's core network.



- Pivotal community networks are not built near Telstra or other providers networks and generally where only NBN satellite is available. Where a Pivotal community is very remote, it stands on its own. However, where the community is near, for example, Telstra coverage, then ideally Pivotal wants its customers to have access to another provider's network via a suitable wholesale access agreement.
- It is practically impossible for smaller operators to access low band spectrum due to historical and current licencing approaches. Low band spectrum is essential in providing regional coverage due to its better propagation characteristics. Mid band spectrum that Pivotal currently uses requires three times the amount of infrastructure compared to using low band spectrum. If the transaction is approved, there will be one major provider, Telstra, holding and controlling the majority of spectrum in regional Australia (65-70%) with Optus holding the remainder with no clear means of access for newer entrants with innovative and competitive solutions such as Pivotal.

Impacts of the proposed transaction

- Pivotal is concerned that the proposed agreement may curtail investment in regional Australia (by Optus and smaller MNOs). Telstra will be provided a greater access to spectrum (as much as 75% of available spectrum in some spectrum bands), and competitors won't be able to match Telstra. This will entrench its dominance and drive customers to Telstra. This shift in customer acquisition will increase the marginal operational costs for Optus.
- The only pressure that Telstra is under to expand in coverage is from Optus. If Optus ceases to continue to expand its network, Telstra will not be incentivised to expand further.
- Customers generally care about performance, but in regional areas performance is secondary to coverage. Telstra's improved footprint will increase its dominance, widen the gap between Telstra and the other MNOs and harm smaller players such as Pivotal.
- As an MNO and MVNO, Pivotal has to offer some level of differentiation, and so it competes on price to overcome the fact that Telstra has such a strong brand. This will be harder if the transaction proceeds.

- It is difficult for MVNOs to deal with Telstra. MVNOs do not get access to the full Telstra network so their customers do not get the same quality of service as Telstra customers. Telstra also puts a cap on 4G and 5G download speeds. This results in Telstra maintaining a vastly superior service and dominant position in regional, rural and remote Australia.
- Pivotal does not consider TPG to be a strong regional competitor today, and though it's footprint may grow as a result of the transaction, TPG is not a realistic alternative for their end-users or MVNOs, as they will still have access to an inferior wholesale network and their costs will increase with additional usage, which is a disincentive to acquire end users in regional areas outside of TPG's metro based footprint. TPG will also be constrained in providing new service offerings as radio access network (RAN) upgrades will require Telstra's approval.
- Pivotal argues that this is a metropolitan play for TPG. TPG will become a stronger metropolitan player and the transaction will help TPG grow this position. TPG will be targeting metropolitan customers that value sporadic regional coverage and usage.
- Pivotal considers TPG has no incentive to invest beyond the 17% coverage zone if the deal goes ahead.
- Pivotal believes Telstra will get a competitive advantage from being able to launch 5G and other new technologies in regional areas first as Telstra has a 6 month lead time prior to providing TPG access.

Public detriments

- Pivotal does not believe this transaction will incentivise Telstra to further enhance its coverage footprint.
- Telstra is likely to reduce its investments in the longer term given its additional spectrum and coverage advantage.
- It will be much more difficult to compete with Telstra if this transaction goes through, as other MNOs cannot deliver the raw speed that Telstra will be able to provide given its superior amount of spectrum.
- TPG will not be competitive with Telstra on price or coverage (beyond the regional coverage area). TPG will be technically subservient.
- Pivotal considers that if the transaction proceeds, Telstra will be placed in a near monopoly position in regional Australia as Optus and smaller MNOs will be disincentivised from investing.
- In the long-term, the short-term efficiencies will unwind, and consumers will pay more for service in regional Australia.

Fixed wireless services

- In the regional market there are a few providers in addition to NBN, such as Superloop, CRISP Wireless and Swoop. TPG has a presence in the larger, more populous regional areas, but TPG does not invest beyond that. TPG is not a significant investor in the 17% Regional Coverage Zone.
- 4G and 5G means that you can use open technology to provide fixed wireless broadband and Telstra has a big advantage in its infrastructure and spectrum holdings.
- Pivotal notes there are restrictions in the agreement whereby TPG cannot offer a fixed wireless service.

- The proposed agreement will restrict TPG's ability to provide direct Fixed Wireless services to end users in regional areas and further limit competition.

Future without the proposed transaction

- Pivotal considers there is a market for spectrum beyond the national incumbent mobile operators. Pivotal, FSG and other potential new entrants are willing to invest to acquire spectrum.
- If the transaction is not approved, Optus will continue to invest in regional coverage and Telstra will also continue upgrading its network. TPG was never going to invest substantially in regional areas, so if the merger is not approved competition between Optus and Telstra will continue.
- Competition from Optus and smaller MNOs for regional customers is likely to increase.

Remedies

- Pivotal suggests the following conditions could mitigate the risk of a substantial lessening of competition:

Divestment of certain parcels of low band spectrum

- Without conditions, if this transaction proceeds Telstra will likely control the majority of regional spectrum for the next 20 years.
- Access to low band (< 1 GHz) spectrum is essential for new entrants (as it is much more difficult to compete with only mid band spectrum access). The proposed transaction would entrench Telstra's dominance, but if part of that low band spectrum is released back to the market it would help increase competition.
- That low band spectrum is licenced for 20 years, and other parties have no means of accessing it. Telstra and Optus control all of the low band spectrum. Competitors and alternative providers have no realistic means of accessing this critical spectrum.

MOCN sharing for larger MNOs such as Optus / Domestic roaming access in regional Australia for smaller MNOs;

- Pivotal recognises the ACCC's prior concerns regarding the impact of regulated roaming on infrastructure-based competition. However, this proposed transaction will significantly reduce the likelihood of infrastructure investment.
- TPG cannot offer RAN sharing (which supports others' ability to differentiate) until Telstra decides to roll it out.

MVNO access to Telstra's full retail network on reasonable terms and conditions.

- These types of mergers with conditions have happened in the past in other countries, such as in Denmark. Regulators overseas have imposed requirements on network operators to share their infrastructure with MVNOs on reasonable terms and conditions.
- Relative to other markets, the Australian MVNO market is very constrained. It is very difficult to differentiate other than by brand and price, and price and product is very well managed by the MNOs through their wholesale construct. Heavy MVNOs have been rejected by Australian MNOs yet are common in other markets. Heavy MVNOs have more control over the service proposition and are more able to differentiate themselves as they own and operate the core network, accessing only the RAN from the host MNO.

- Open-RAN solutions facilitated by neutral host or open access providers are likely to become a viable solution for parts of regional Australia.

Pivotel's response to Applicants' further submissions

- Telstra argued Pivotel misread s 50 of the CCA. Pivotel believes that the proposed transaction is likely to substantially lessen competition when the number one and number three competitors are effectively merging. This meets the hurdle of s 50.
- Pivotel remains of the view that this transaction is about a merger of regional networks, and so must consider the consequences in the regional market.
- Pivotel understands the non-discrimination obligations imposed on Telstra. While TPG will benefit from access to RAN changes by Telstra, TPG will require Telstra's approval for any upgrades or investments in the RAN. This asymmetry may impair service differentiation by TPG and means that TPG is unlikely to be competing in the regional markets in a substantial way.
- There is no assurance that TPG will not increase prices in response to an increase in TPG's cost per user. This transaction is likely to result in further price increases in the metro market following on from recent price increases by the MNOs.
- Regional domestic roaming with Telstra's network would greatly benefit smaller operators such as Pivotel. Pivotel builds regional community networks, and it would add great value if its customers could access the neighbouring networks with a single subscription.
- Nothing in the proposed agreement suggests that TPG will increase the level of competition in the regional markets. The transaction does not specify how coverage will be expanded.
- The applicants argued that Optus has the same MHz of spectrum as Telstra. There is greater efficiency with more spectrum, but Telstra is already in the dominant position. Consequently, more customers will migrate to Telstra, so we will only see an increase in market share for Telstra at the risk of reducing competition.



Presentation to the
ACCC re Pivotel
submissions on
merger
authorisation

17.08.22

pivotel.

Topics for Discussion

1. Pivotel – who we are and what we do
2. Broader impacts of spectrum merger
3. Why merger could substantially lessen competition
4. Remedies may address competition concerns
5. Response to Applicants' further submissions

Pivotel – who we are and what we do

- An established mobile network operator (MNO), satellite operator, and mobile virtual network operator (MVNO) including on the Telstra network.
- Operates fixed, mobile and satellite telecommunications networks.
- Provides a range of services and equipment including satellite voice and data, fixed wireless and mobility, IoT, and on-net and off-net voice and SMS messaging.
- A proven innovator with a genuine focus on providing communications for regional and remote Australia using satellite services and terrestrial 4G networks.
- Successful under the Regional Connectivity Program (Rnd 2) in applications to build new community networks in Victoria and NSW (18 new 4G base stations), building on prior wins in Rnd 1 and under the WA Gov't DPIRD programs.
- Proven willingness to invest in spectrum and network resources with 25 4G base stations currently in service and a further 23 4G/5G base stations in planning or construction.
- A customer of, and competitor to, Telstra, TPG and NBN Co, and a competitor to Optus, Field Solutions Group, Swoop and Superloop.

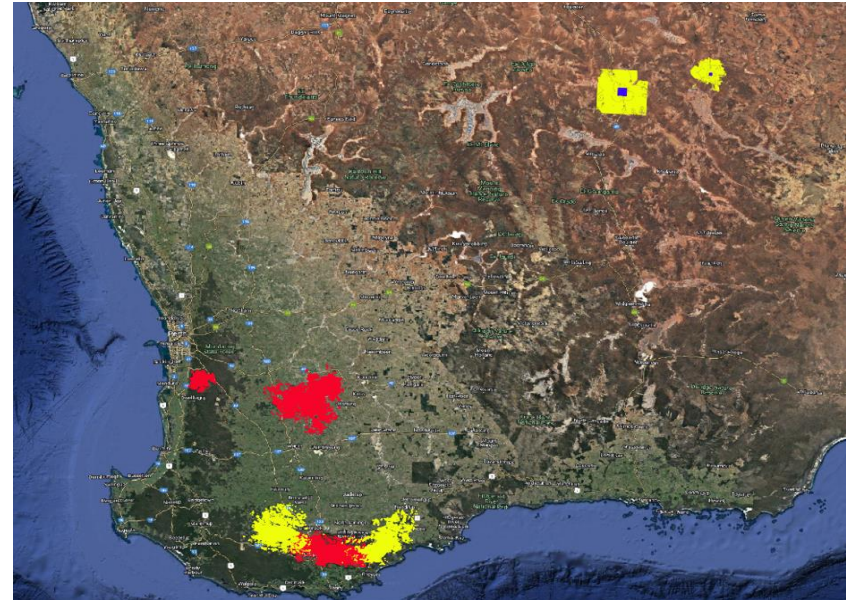
ecoSphere® – Pivotel's 4G/5G Land Networks Serving Regional Australia



Professional

Dedicated private networks for mining and other enterprises

Pivotel owns and operates the network and provides communications services to the enterprise e.g. Alcoa mine in WA, Katanning Research Facility



Regional/Community

Public network consisting of multiple base stations covering a substantial area

Pivotel owns and operates the network and markets to individual community members e.g. Wickiepin and Mt Barker in WA

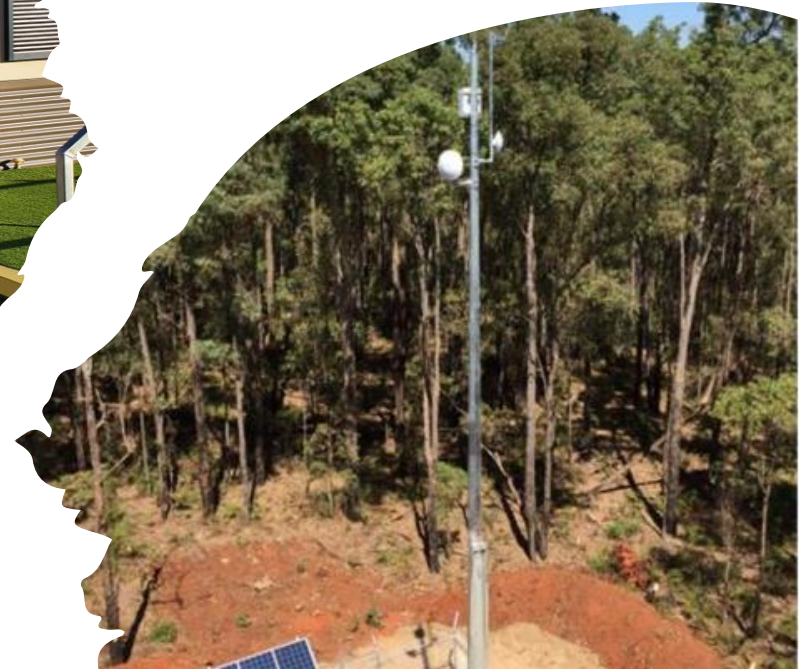
ecoSphere® - Digitally connected at home and on the property

- 5G and mmWave fixed wireless broadband for the home
- 4G mobile data, voice and messaging service across the entire property
- Bearer independent voice and messaging applications with associated mobile number (application able to work on any 4G network as an over-the-top MVNO service)
- eSIM as second service in 2023
- High bandwidth connectivity for real time data and connectivity to devices such as security cameras, drones
- Long-range, narrowband connectivity to IoT sensors and controls
- Low latency connections to local servers and the outside world
- Satellite backhaul capable with low latency LEO support in 2023



ecoSphere® -Professional Public/Private LTE

- Bespoke coverage designs
- High speed 4G/5G/WiFi site wide connectivity
- Wide area IOT
- High bandwidth camp sites, mining operations, agriculture
- Terrestrial or satellite transmission links



Broader impacts of spectrum merger

- Telstra/TPG merger authorisation may curtail investment in regional Australia (by Optus and smaller MNOs) while entrenching Telstra's dominance in regional areas.
- Harm to competition can be mitigated through behavioural remedies to promote competition at retail layer (including by smaller MNOs) such as:
 - MOCN sharing for larger MNOs such as Optus;
 - Domestic roaming access in regional Australia for smaller MNO's;
 - Divestment of low band spectrum holdings;
 - MVNO access to Telstra's full retail network on reasonable terms and conditions (similar to remedies imposed by NRAs in Europe).
- Without appropriate remedies merger will adversely impact consumers at the retail layer (less competition on price and non-price terms and conditions).
- Imposing conditions will generally allow merger parties and end-users to benefit from efficiencies while ensuring benefits of increased competition.
- Ongoing risks for 5G competition emphasized by Telstra's recent conduct in relation to 5G sites (see [here](#)).

Why merger could substantially lessen competition

- Without conditions, this merger is likely to substantially lessen competition (SLC).
- Any public benefits will not outweigh the SLC.
- Entrenches Telstra's market power, particularly in regional Australia:
 - Telstra will have access to as much as 75% of available spectrum in some key spectrum bands;
 - Telstra's retail footprint will remain greater than its wholesale footprint (and thus TPG and Telstra MVNO's footprint);
 - Enables Telstra to do more with less (i.e. additional spectrum means less need for infrastructure).
- Disincentivises small MNOs and Optus from investing in rural and regional Australia.
- TPG footprint may grow but still not a realistic alternative for end-users or MVNOs as net costs increase and lack of control over RAN upgrades.
- Significant sections of the applicants' submission are redacted, including the proposed counter-factual, making it difficult for interested parties to comment.
- Telstra/TPG argue that Commission not required to define affected markets – this is not acceptable for a transaction of this scale and scope.
- Commission should consider narrower geographic markets (e.g. regional or rural markets for mobile services) since spectrum pooling/MOCN sharing limited to regional coverage area.

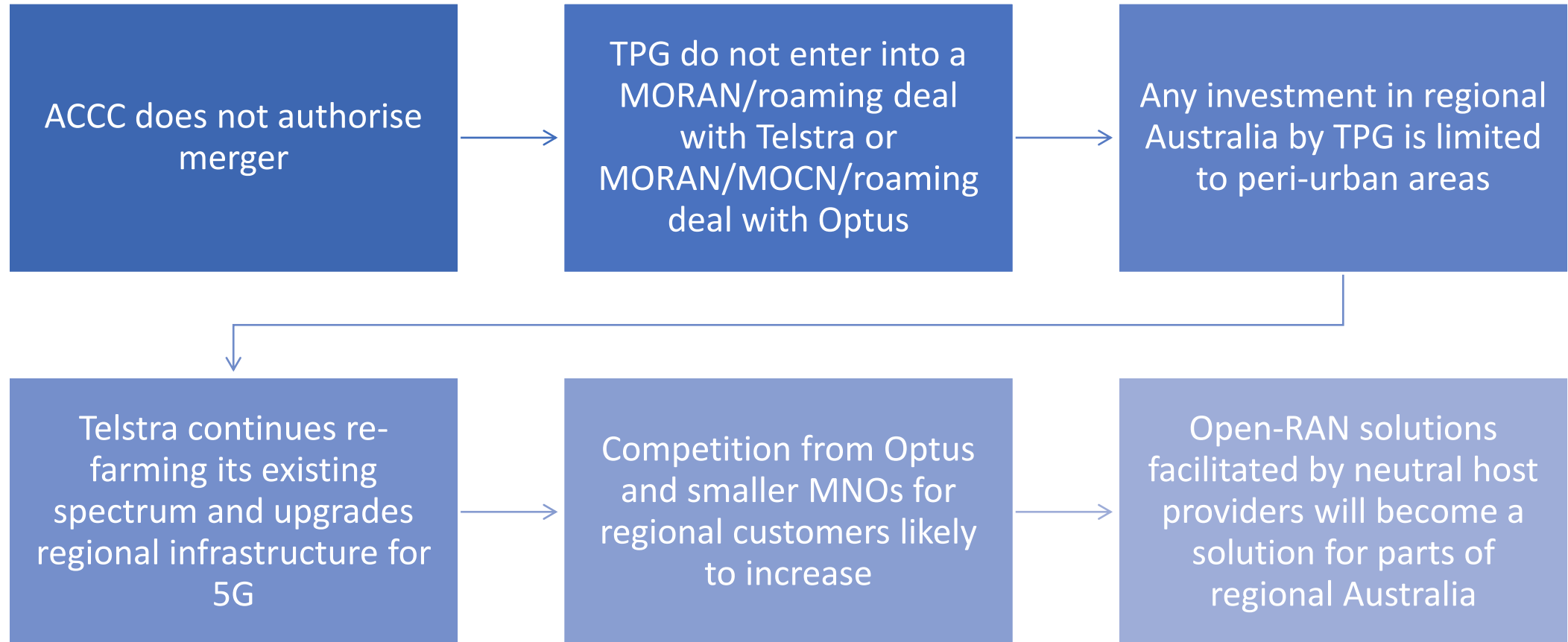
Why Merger will SLC

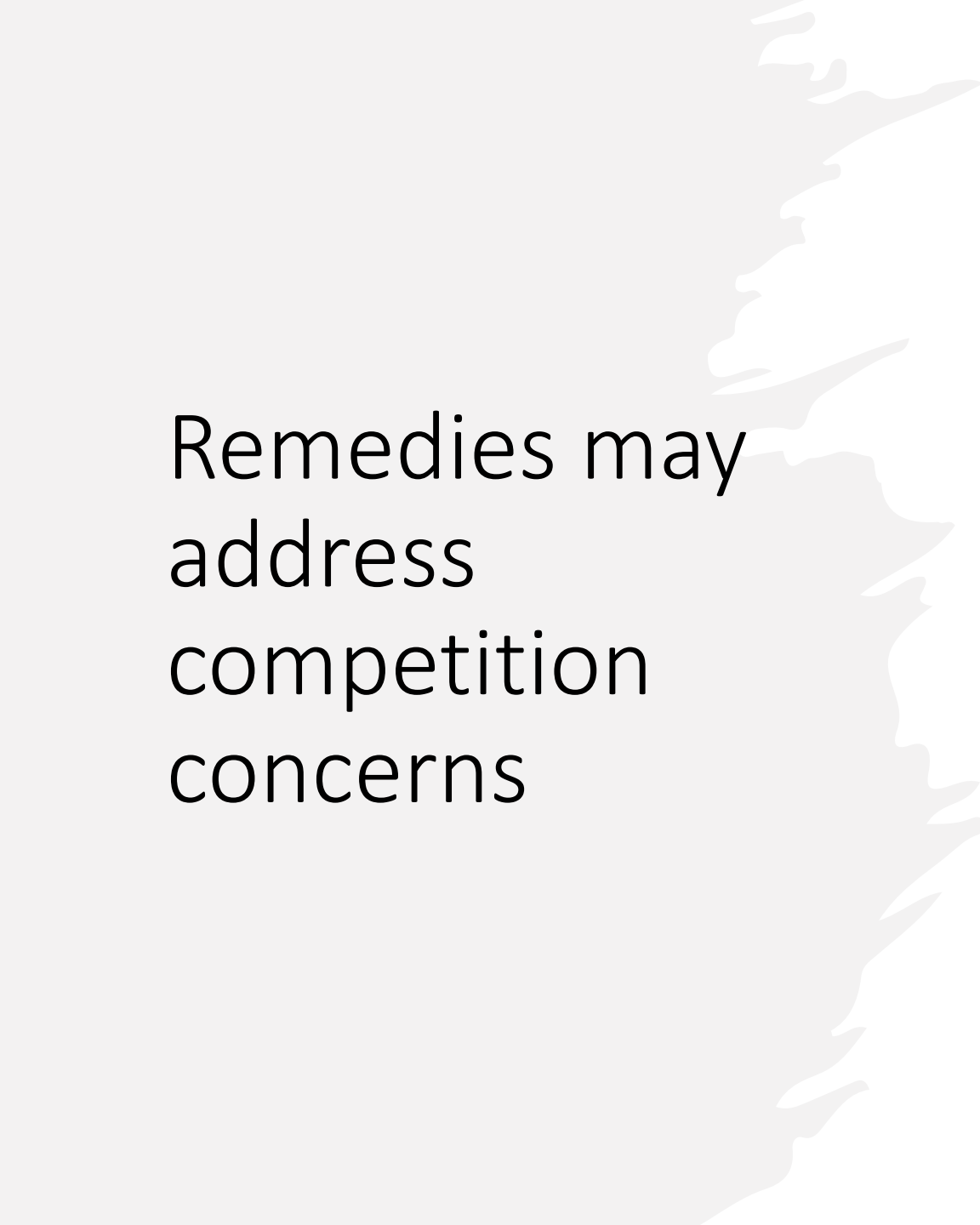
- Gives Telstra privileged access to spectrum (including in remote parts of Australia that will not be available to TPG) and more revenue streams with little investment required (decreasing Telstra's costs per user/per byte).
- Difficult for TPG to compete on price regionally due to increased marginal costs (even with larger network).
- TPG constrained in providing new service offerings (approval from Telstra required for RAN upgrades/investments).
- Reduced incentive for Optus and small MNOs to invest regionally, and impact on ability and incentive of Optus/small MNOs to compete.
- Overall impact is to entrench Telstra's dominance at the expense of other operators.
- Telstra/TPG understate the likely effect on competition and the public detriments.

Public Detriments Outweigh Benefits

Claimed Public Benefits	Public Detriments
TPG claims that it will be better able to service communities than it does at present.	TPG not competitive with Telstra on price or coverage (beyond the regional coverage area). TPG will be technically subservient.
Economic efficiencies achieved by the pooled access to spectrum (benefiting Telstra).	Telstra placed in a near monopoly position in regional Australia – less investment by Optus, small MNOs or potential neutral host providers.
However, significant risk that efficiency benefits will be enjoyed by Telstra and not passed on to end-users due to SLC.	In long-term, short-term efficiencies unwound and consumers pay more for service in regional Australia.

Future without spectrum merger





Remedies may address competition concerns

- The significant risk of an SLC can be mitigated by structural and behavioural remedies including:
 - MOCN sharing for larger MNOs such as Optus;
 - Domestic roaming access in regional Australia for smaller MNO's;
 - Divestment of certain parcels of low band spectrum;
 - MVNO access to Telstra's full retail network on reasonable terms and conditions (Telstra refuses to make its full retail network available to wholesale customers).
- If authorised without conditions, Telstra will likely control majority regional spectrum for next 20 years with no means of access for innovative niche providers such as Pivotel and Field Solutions Group.
- Access to low band (< 1GHz) spectrum is essential for new entrants. Telstra/TPG merger results in Telstra gaining access to 65-70% of low-band spectrum following pooling of its spectrum assets with TPG's – allowing Telstra to effectively circumvent spectrum limits imposed prior to 850/900MHz auction (45%). ACCC had proposed 40%.

Remedies may address competition concerns

- Pivotal recognises ACCC's prior concerns re impact of regulated roaming on infrastructure-based competition. However, this merger significantly reduces the likelihood of infrastructure investment.
- ACCC should also require divestment of low band spectrum (min 2 * 10 MHz) for Area Wide Apparatus licences to deliver targeted digital connectivity as part of any authorisation.
- Regulators overseas have imposed requirements on network operators to share their infrastructure with MVNOs on reasonable terms and conditions, including as part of granting authorisation for RAN sharing arrangements (e.g. the NRA in Denmark imposed conditions on MNOs, Telia and Telenor).
- The DCC identified 6 (six) issues which gave rise to anti-competitive concerns. Five of these issues were solved by commitments offered by the parties.

One such commitment was that the parties will accept all requests from wholesale customers to buy mobile telephony and mobile broadband on market terms and conditions. This would likely enable equivalent coverage to that of the MOCN participants.

- Open-RAN solutions facilitated by neutral host or open access providers are likely to become a viable solution for parts of regional Australia.

Response to Applicants' further submissions

1. Pivotel understands the legal standard under s 50 of the CCA. There is no requirement that a competitor be prevented from competing in a market as Telstra suggests. In a market with three major players, the impact of a merger between 1 and 3 on the incentives of 2 (and any smaller participants) is clearly relevant to whether there is an SLC.
2. Pivotel remains of the view that the Commission should *consider* narrower geographic markets (e.g. regional or rural markets for mobile services) given that the proposed transaction is focused on regional spectrum and infrastructure holdings.
3. Pivotel understands the non-discrimination obligations imposed on Telstra. While TPG will benefit from access to RAN changes by Telstra, TPG will require Telstra approval for any upgrades or investments in the RAN. This asymmetry may impair service differentiation by TPG.
4. There is no assurance provided that TPG will not increase prices in response to an increase in TPG's cost per user. The Applicants merely state that TPG has not "considered" this possibility and has no "current" intention to do so.
5. Pivotel's proposed conditions recognise the commercial reality of the wholesale market. Pivotel rejects Telstra's assertion that regional domestic roaming will only benefit MNO's with a "significant metropolitan network". It would clearly benefit smaller operators such as Pivotel that build regional community networks.

Response to Applicants' further submissions

- Telstra argues that the ACCC should have greater regard for submissions from customers and dealers on the ground but conveniently overlooks the fact that the submissions are from *its* customers and dealers.

Pivotel's experience is different: rural customers have a genuine desire for innovative niche providers and targeted solutions. Particularly as Australian MVNOs now offer little or no service differentiation.

- Telstra state that MVNO's do not have their own core or RAN networks. This is not the norm in other jurisdictions.

It is also common to see MVNO's with greater access to the technology stack. Thick-level MVNO's promote meaningful competition and can differentiate their service offerings. MNO's in Australia have resisted this with MVNO's effectively being resellers only.

- None of the pro-merger submissions contain any analysis of *how* the deal will improve competition (or even be competition-neutral) and are limited to superficial statements of support.
- Pivotel acknowledges Telstra's intent to make new features in the RAN available to TPG *once they have been rolled out by Telstra*. However, that is not the same as two independent network operators competing to develop new services. The latter could lead to TPG deploying new RAN capabilities *earlier than* Telstra.

Going Forward

- Pivotel appreciates the detailed consideration being given by the ACCC to this transaction.
- It remains happy to work with the Commission around the detail of any proposed remedies.