[redacted]

14th June 2022

Mr Bruce Mikkelsen
General Manager
Merger Investigations
GPO Box 3131
CANBERRA ACT 2601

Via email mergerauthorisations@accc.gov.au

Dear Mr Mikkelsen,

Re:MA1000021 Telstra TPG Spectrum proposed merger

[redacted]

Executive Summary:

- In portions of the regional coverage area (i.e., only the larger regional centres) this proposed merger can lead to an increase in consumer benefit.
- Within all other parts of the regional coverage zone, it will entrench Telstra's market dominance.
- The proposed merger will not result in any material extension of the national mobile footprint (meaning, the aggregated footprint of all mobile providers).
- The proposed merger will disincentivise mobile providers who would otherwise extend the national mobile footprint.

Whilst there are certain aspects of the proposal that will result in enhanced competition between three MNOs (mainly large major regional towns), we do not believe that this the proposed merger will drive much needed competition or coverage enhancement outcomes in the Regional Coverage Zone, nor outside it where Telstra retains its monopoly areas, with access to additional spectrum for the sole use of its direct customers.

Following the proposed merger, TPG will be positioned as an MNVO on the Telstra Network, rather than an MNO in its own right. That is true despite the fact that TPG would contribute some surplus spectrum to the proposed merger. Following the next round of spectrum auctions in 2028, when TPG will have no interest in bidding, it will certainly be no more than "just another MVNO".

The Regional Coverage Zone is described as a zone similar to the footprint of the Telstra Wholesale MNVO network. Unlike its largest competitor, Optus, which allows its wholesale MNVO customers to access the full extent of its network, this footprint is significantly different to that which Telstra offers its direct customers and appears to be designed to discourage Telstra direct customers moving to its MNVO operators.

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It is widely known that Telstra has significantly higher market share the "deeper" one goes into regional Australia, often being the monopoly network. Telstra claims that one of the benefits of this proposed merger, is the "congestion relief" its customers will receive with the ability to access greater spectrum contributed by TPG. A proposed merger that benefits one parties customers greater than another's from day one and that has caveats restricting one parties contribution to a pooled resource by withholding access to latest technologies, should raise significant competition concerns. TPG is surrendering its carrier spectrum in exchange for becoming a "second class citizen" on <u>part</u> of Telstra's network.

[redacted] highlights some points below that should be addressed when considering approving the proposed merger as tabled by Telstra-TPG

- The proposed merger is of far greater immediate benefit to Telstra
    - Considering the extent of the Regional Coverage Zone and the current non-existent TPG network, any additional spectrum will primarily address Telstra customers ahead of TPG
    - Telstra claim to have sites experiencing "congestion" and this proposed merger will resolve these issues.
    - Telstra will have a 5G "First mover advantage" that allows Telstra to secure existing and acquire new customers ahead of TPG who must wait 6 months to gain access to 5G. The application cites on many occasions that the proposed merger is equitable, but it appears 5G is not part of that equality.
    - TPG and Telstra have never been "natural" competitors, especially outside metropolitan markets where eroding Telstra market share will take almost as long as the first term of the contract

- Telstra had a competition cap placed upon it during the last Low Band Spectrum Auction
    - The proposed merger allows Telstra to further increase its access to scarce low band spectrum
    - Telstra acquired their "competition cap" of 850MHz at this auction with spectrum available from 2024.
    - Telstra will have ability to implement TPGs contributed 10MHz of 700MHz & 5 MHz of 850MHz low band spectrum outside of the agreed Regional Coverage Zone for the sole benefit of only Telstra direct customers
    - The low band spectrum being contributed by TPG under proposed merger will be re-auctioned in 2028, just 6 years into a 10+5+5 the proposed merger term.
        - Telstra market power and large profits will likely put this spectrum at a value considerably higher than new entrants into regional market could afford

- TPG is decommissioning over 600 sites
    - Whilst there is no doubt TPGs regional network is inferior to that of its two competitors, decommissioning/consolidating will
        - Result in TPG being beholden to either competitor when the proposed merger contract term ends.
        - Drive less competition in infrastructure competition
        - Has potential to drive up costs to co-locate on AmpliTel towers by other MNOs/Active Neutral Host RAN providers

- The proposed merger doesn't add any new coverage into regional Australia i.e. the national footprint, whatsoever.
    - The proposed merger doesn't speak to greater resiliency of the network within the Regional Coverage Zone including enhanced restoration of facilities.

[redacted] believes that the proposed merger should not be approved to include any of the low band 700MHz spectrum. Telstra's recent acquisition of additional low band spectrum at recent auction, and its capacity to address poor performance of its mobile network within its annual operating profits of close to $2B need to be heavily considered.

Evidence is required that justifies current and projected TPG customer traffic demands will require the use of this 700MHz spectrum within the proposed merger.

Access to low band 700MHz spectrum should only be made to organisations that wish to drive outcomes in regional Australia that extends the national footprint to address blackspots, and which are open to all service providers to truly drive choice, competition and enhanced services and resiliency.

[redacted]

Yours Sincerely,

[redacted]