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21 November 2022

By Email

Mr Bruce Mikkelsen
General Manager (A/g) Merger Investigations
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Mr Mikkelsen

Commpete: MA1000021 – Telstra TPG Spectrum Transaction – submission on section 87B undertakings offered

Introduction

Commpete – an industry alliance for competition in digital communications – (**Commpete**) welcomes this opportunity to make a submission to the Australian Competition and Consumer Commission (**ACCC**) about the proposed undertakings offered by Telstra Corporation Limited (**Telstra**) and TPG Telecom Limited (**TPG**) under section 87B of the *Competition and Consumer Act 2010* (Cth) that are intended to address issues raised by the ACCC in its Statement of Preliminary Views in relation to the application for authorisation of spectrum sharing between Telstra and TPG.

Undertakings offered

Two undertakings have been offered by Telstra and TPG:

- an undertaking (**Joint Undertaking**) under which Telstra and TPG commit to cease giving effect to the Agreements (as defined in the Joint Undertaking), except to the extent necessary to give effect to the Transition-Out Period, unless by 8 years from the date of the original authorisation:
 - Telstra and TPG have received a notice from the ACCC that it does not intend to intervene or prevent Telstra and TPG from continuing to give effect to the Agreements; or
 - the ACCC or the Australian Competition Tribunal has made a final determination to grant authorisation to Telstra and TPG to continue giving effect to the Agreements; and
- an undertaking (**Sites Undertaking**) under which TPG commits to refrain from:
 - terminating any licence or lease (**Licence**) pursuant to which it is granted access to one or more sites set out in Annexure A of the Sites Undertaking (**Retained Sites**); or

- taking any action that causes TPG to commit a breach of any Licence that would entitle the licensor or landlord of a Retained Site to terminate the Licence,

subject to certain exceptions.

Commpete comments on each undertaking in the following sections.

Joint Undertaking

Commpete does not consider that the Joint Undertaking addresses the competition concerns it has raised in relation to the proposed authorisation or those concerns that have been expressed by the ACCC in its Statement of Preliminary Views. Instead, the Joint Undertaking merely proposes for the competitive detriment to be assessed by the ACCC in six or seven years.

Commpete considers that the proposed authorisation is likely to cause significant short term competition detriments. Any investment effects in the short term are likely to have an impact over a longer time horizon. These short term competitive detriments are likely to have ongoing effects that will not be able to be resolved by a review occurring in six or seven years' time.

In particular, Commpete notes that the review contemplated by the Joint Undertaking is likely to occur after the 2028 spectrum auction. As described in Commpete's submission on the application for authorisation dated 21 June 2022 (**Original Submission**), Commpete considers that the term of the arrangement between Telstra and TPG is likely to discourage TPG from competing in the 2028 spectrum auction because it will have already committed to service its mobile customers under the Multi-Operator Core Network.

A review that occurs after the completion of the 2028 spectrum auction is unlikely to change these investment incentives for TPG. In Commpete's view, this demonstrates the potential for ongoing competitive harm from making any authorisation subject to review by the ACCC in six or seven years.

Sites Undertaking

Like Commpete's views on the Joint Undertaking, Commpete does not consider that the Sites Undertaking adequately addresses the concerns that it expressed in its Original Submission or those expressed by the ACCC in the Statement of Preliminary Views.

Commpete is concerned that TPG has stated that it has independently determined to decommission the 556 sites in the Regional Coverage Zone (TPG has 725 sites in the Regional Coverage Zone and has agreed to transfer 169 of these to Telstra subject to certain take back rights). The Sites Undertaking requires TPG to maintain access to one or more of 300 sites in the Regional Coverage Zone, but it does not prevent TPG from decommissioning them.

Commpete estimates that the costs of decommissioning and then re-commissioning a site is likely to be AU\$100,000 and AU\$350,000 respectively. This is significantly more expensive for TPG when compared with the likely operating expenditure from continuing to operate site, which TPG estimates to be AU\$25,000- AU\$35,000 per annum.

Commpete is therefore concerned that retaining the Licences required for these sites is unlikely to make any difference to TPG's decision-making in relation to them when it has access to the multi-operator core network proposed under the authorisation application. It will therefore have no impact on the assessment of competition with and without the authorisation. As stated in Commpete's Original Submission, Commpete considers that the authorisation, if granted, is likely to remove TPG as a future investor in the mobile network in the Regional Coverage Zone. The Sites Undertaking does nothing to change this view.

In any event, Commpete notes that the Retained Sites have not been specified publicly in the Sites Undertaking. Even if Commpete's concerns discussed above were resolved, it would not be possible



for Commpete to comment on the competitive impact of TPG retaining access to the Retained Sites without knowing what sites are proposed to be retained.

Conclusion

For the reasons stated above, Commpete does not consider that the Joint Undertaking and the Sites Undertaking resolve or ameliorate any of the competition detriments that Commpete considers are likely to arise from the proposed authorisation. In particular, the Joint Undertaking and the Site Undertaking do not ensure that mobile virtual network operators are given wholesale access to the mobile network of Telstra on fair terms, which Commpete considers to be essential to ensuring competition in the Australian mobile market.

Please contact Michelle Lim, Chair, Commpete by email at [REDACTED] if you would like to discuss this submission.

Yours faithfully

[REDACTED]

Michelle Lim
Chair