

Pivotel submission on the ACCC's Statement of Preliminary Views in relation to the application for merger authorisation from Telstra Corporation Ltd ("Telstra") and TPG Telecom Limited ("TPG")

1. INTRODUCTION

- 1.1 Pivotel welcomes the consideration that the ACCC has given this matter to date. It is without doubt one of the most significant transactions in Australia's communications sector for many years and is likely to have long term impacts on the delivery of communication services to Australians living in regional and remote areas.
- 1.2 Given the breadth of questions that ACCC has posed, Pivotel will not comment on all of the questions raised by the ACCC. Instead, Pivotel shall limit its submission to those questions that best reflect Pivotel's knowledge of and experience in the market.

2. EXECUTIVE SUMMARY

- 2.1 Pivotel remains of the view that, without acceptable remedies, the proposed transaction is likely to result in a substantial lessening of competition in markets for supply of mobile voice and broadband services. These effects will be most significant in regional and rural Australia. This is largely because the proposed transaction will entrench Telstra's dominance in wholesale and retail markets and increase barriers to entry for smaller MNOs.
- 2.2 It will also diminish infrastructure-based competition in regional Australia by effectively making TPG simply another MVNO with a footprint similar to other MVNO's on Telstra's network. The only real difference is that TPG will be a 'thick' MVNO where as almost all other MVNO's in Australia are "thin" MVNO's.
- 2.3 If the merger parties are prepared to offer remedies which address some of the anti-competitive effects of the transaction, it would enable some of the claimed efficiency benefits and other public benefits to be enjoyed by the parties and the public more generally. These remedies, such as, the making available of Telstra's full retail network to MVNO's prepared to invest in a core network and the divestment of competitively significant amounts of spectrum, would likely result in the proposed transaction having a net positive effect on mobile services markets throughout Australia. Without those remedies, any benefits from the transaction will largely be enjoyed by the merger parties themselves and limited to short-term gains by consumers in metropolitan areas.
- 2.4 Pivotel agrees with the Commission's preliminary view that this transaction needs to be viewed over the duration of the proposed term, namely 20 years. This reflects the long-term structural changes to the markets it would likely cause and the enduring nature of the spectrum licences. Pivotel queries whether even in the short term, the proposed transaction would enhance competition as, while TPG's (and potentially Telstra's) quality of service in the 17% coverage area would improve, TPG's costs would likely increase. However, if it does, any improvements will be enjoyed by customers in metropolitan areas and will come at the expense of those in regional and rural Australia.
- 2.5 It is unlikely that the transaction would result in TPG becoming a more effective competitor in regional Australia as, to do so, it would need to substantially invest in its regional distribution and marketing. This investment would be in addition to the incremental charges it will need to pay Telstra for the use of its network in regional and

remote areas. For these reasons, the proposed transaction may result in higher prices and less choice for price-sensitive customers.

- 2.6 In the long term, the proposed transaction will likely result in a substantial lessening of competition in both the retail and wholesale mobile markets as the existing MNOs' incentives to invest in rural and regional Australia would be distorted while innovative investment from neutral hosts and other innovators such as BAI, FSG and Pivotel would be less viable given Telstra's dominance. This would run contrary to Commonwealth and State initiatives which seek to promote open access and enhanced regional connectivity, initiatives which smaller MNOs' and neutral hosts have already demonstrated a willingness to invest in.
- 2.7 Any public benefits to the proposed transaction will be principally enjoyed by metropolitan and urban users. This is because in a 'future with' the transaction, TPG will not be inclined to invest in the 17% coverage area and is most likely to reallocate investment to the metropolitan area. Furthermore, metropolitan users that need to travel within the 17% coverage area may be more incentivised to acquire mobile services from TPG.
- 2.8 If the transaction proceeds in some form, then Pivotel considers that the adverse impacts on competition may be mitigated by making the full Telstra network available to wholesale customers by enabling other MVNO's (and not just TPG) to establish 'thick MVNO's as is common in other jurisdictions¹. This could be effected by Telstra giving undertakings to make available domestic roaming, MOCN or MORAN access to its RAN. This would enhance competition at the wholesale and retail layers and enable MVNOs to compete with MNOs' including on the basis of service differentiation.
- 2.9 If such a remedy was implemented, then Pivotel considers that it should occur as part of the ACCC authorisation of the transaction i.e. by way of a s.87B undertaking rather than via declaration. In this regard, Pivotel does not consider an access declaration of the kind proposed by competitors to be viable as it is likely to take too long to put in place.
- 2.10 Finally, the proposed transaction will result in the dominant operator having the overwhelming majority of low-band spectrum in the 17% Regional Coverage Area. While this may lead to short term service quality improvements for its customers, it will likely have a long-term detrimental effect on competition, thereby risking the loss of those improvements over time as Telstra's incentives to invest in its network are reduced.
- 2.11 Pivotel sets out below its submissions in response to the Commission's questions 1, 2, 3, 4, 5, 6, 8, 11, 15 and 18. Pivotel would welcome the opportunity to discuss its submissions and responses with the Commission, including in the event of any remedies being proposed by the merger parties.

3. THE STATE OF COMPETITION BETWEEN MNO'S (Question 1)

- 3.1 For customers in regional and remote Australia (including the 17% coverage area), coverage is the paramount consideration. Other factors identified by the ACCC including price, speed, and network capacity are only differentiators for regional customers once coverage is established. This point of differentiation supports a view that regional and rural Australia is in fact a separate market.

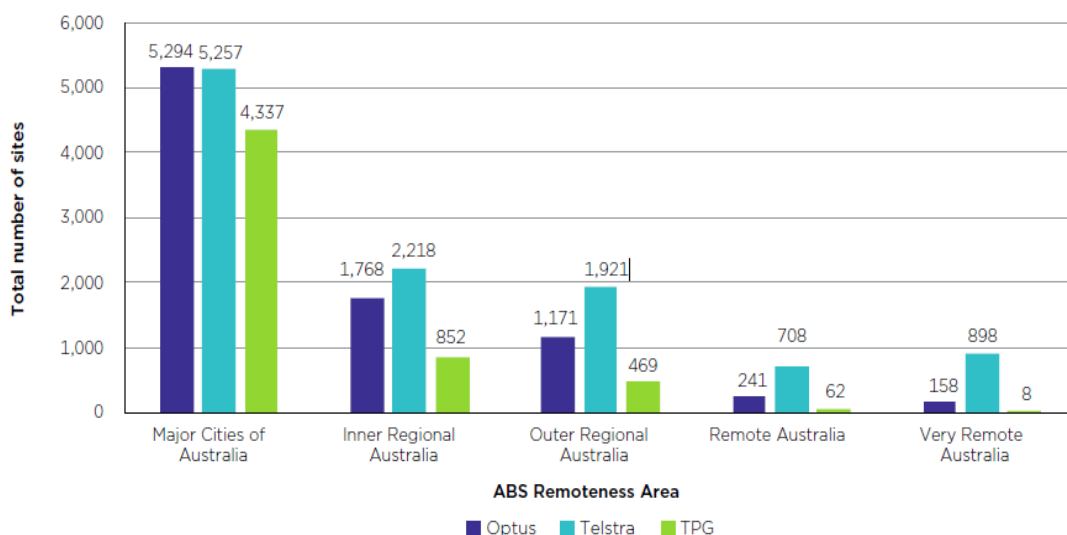
¹ Full MVNO's and enhanced infrastructure MVNO's are more commonplace in other developed markets e.g. UK, Netherlands, Scandinavia, Middle East and some Asian countries like Malaysia and Singapore to mention a few.

3.2 The ACCC has previously identified the significance of this factor, including in the Mobile Infrastructure Report 2022²:

Mobile coverage is an extremely important factor for consumers when deciding which mobile service to acquire. Mobile coverage is also an important point of differentiation between MNOs. Many consumers are willing to pay higher prices for greater levels of mobile coverage notably in regional and remote areas. For this reason, MNOs continue to compete on mobile coverage. An MNO can increase its network coverage by building more sites and/or by making use of low band radiofrequency spectrum. Increasing the geographic coverage of its network is one way in which an MNO can improve its network for end users.

3.3 At present, Telstra has a dominant position in the 17% regional coverage area owing in part to its monopoly in very remote Australia (i.e. that portion of Australia between 98.8% and 99.5% of the population). Coverage is also dependent on access to network infrastructure and spectrum. This is illustrated in the table below. Notwithstanding this, Optus has also undertaken substantial investment in its own regional network and provides a level of competitive constraint on Telstra TPG provides limited competition in regional and rural Australia and primarily focuses on metropolitan markets.³

Figure 4.1: Total number of sites by MNO & ABS Remoteness Area - 2022



3.4 As it stands, the key beneficiaries of the proposed transaction are likely to be TPG and Telstra and in the short term at least, their metropolitan customers. As identified in our initial submission, Pivotel agrees with Mr Feasey’s expert report to the extent that he suggests that up to a third of customers in the metropolitan coverage area will be influenced by coverage levels in the 17% regional coverage area.⁴ In addition, Pivotel sees merit in the ACCC’s view that TPG will be unlikely to invest in regional and rural Australia if the transaction proceeds due to the incremental costs of the MOCN proposal and level of investment required to establish a regional presence. As a consequence, TPG will be able to reallocate investment towards metropolitan areas.

3.5 At present, Pivotel does not consider that MVNO’s offer a competitive constraint on Telstra and the other major MNOs’. This position is unlikely to change in the event the

² ACCC Mobile Infrastructure Report 2022 p.21

³ ACCC Mobile Infrastructure Report 2022 Figure 4.1

⁴ Pivotel submission dated 16 June 2022 paragraph 4.1.4

proposed transaction proceeds and TPG effectively joins the ranks of MVNO's within the 17% regional coverage area. There are three main reasons for this: with one potential exception (Lycamobile), MVNO's in Australia are thin MVNO's and little more than branded resellers of the MNO's services⁵; MVNO's operating on the Telstra network are prohibited from accessing Telstra's full retail network and are subject to reduced speed limits; and 'thin MVNOs provide limited scope for innovation and genuine product differentiation, limiting competition largely to price. TPG will be in a similar position to other MVNO's on the Telstra network if this transaction proceeds given it will also be unable to access the full Telstra retail network (in addition to other constraints placed on it).

- 3.6 It is important to recognise the distinction between a 'light' and 'full' MVNO (also referred to as 'thin' or 'thick' MVNOs). A 'light' MVNO does not own network infrastructure itself and relies on the MNO to manage and operate the network over which the MVNO supplies services. In addition to reselling and rebranding an MNO's service, a 'light' MVNO is responsible for limited aspects of the service such as customer management. In contrast, a 'full' MVNO owns and operates some network infrastructure, such as a core network, and relies on an MNO for spectrum and the radio access network. Because of this, a full MVNO is more independent than a light MVNO and is well positioned to provide differentiated services to consumers.
- 3.7 The position in Australia differs from that in many other jurisdictions, where full or thick MVNO's provide more competition as they can benefit not only from an MNO's coverage but also as they have their own core networks. This is particularly common in Europe including in the UK, France and the Netherlands.
- 3.8 In a future in which the conditions are set for thick MVNO's to compete with national MNO's, Pivotel would envisage being able to develop a national service using its own network and that of another national provider so that customers can subscribe to Pivotel for their retail service and have a seamless national mobile service (provided over Pivotel's established core network). The success of such a service – which will likely promote competition - depends (in part) on Pivotel's ability to use another provider's network as a *heavy* or *full* MVNO. This is possible if the transaction proceeds with appropriate conditions to prevent a substantial lessening of competition. Whether it will be possible in one of the counterfactuals depends upon the willingness of MNO's' to provide access to their full retail network. To date, Telstra has not been prepared to do so for the MVNO's that operate on its network.

4. KEY ELEMENTS OF THE TRANSACTION (Question 2)

- 4.1 Pivotel has previously expressed the view that the proposed transaction will not establish TPG as a genuine competitor in the 17% Regional Coverage Area. This was based upon our view that TPG's cost base would increase, while its coverage offering would remain inferior to that offered by Telstra.
- 4.2 The carve-outs contained in the non-discrimination provisions are part of the reason for this and should not be overlooked by the ACCC. In particular, the fact that:
- Telstra enterprise customers will be excluded from the non-discrimination provisions;

⁵ Record of Oral submission to the ACCC pg.5

- TPG will not have access to 5G sites until 6 months after activation of the sites; and
- TPG's restricted access to fixed wireless.

These carve-outs raise concerns that TPG will not be a *bona fide* competitor within the 17% Regional Coverage Zone and hand Telstra a significant first mover advantage as rural and regional Australia migrates to 5G and within the next 5-10 years, 6G.

- 4.3 Telstra's access to the pooled spectrum and the uneven playing field which TPG and Optus will likely face is of particular concern. Not only does it mean that TPG is less likely to be able to avail itself of the spectrum, but it also seems likely that this will dissuade Optus from investing in rural and regional Australia. Simply put, Telstra will be too big to compete with.
- 4.4 As we have previously submitted, additional spectrum reduces the need for infrastructure investment as less cells are required to support the network⁶. In the factual, Telstra will have: i) increased spectrum; ii) more base stations; and iii) favourable contractual conditions as between itself and TPG. These favourable contractual conditions include exemptions to the non-discrimination provisions and a 6-month head start on upgraded 5G base-stations. In those circumstances, investment by Optus is likely to be focussed on trying to retain existing customers rather than actively growing its business and investing in regional and rural infrastructure. In the long term, this will have significant adverse consequences for the consumers of mobile communications services in rural and regional Australia. It will also be difficult to undo the adverse effects of the proposed transaction given TPG will close down much of its rural and regional infrastructure.
- 4.5 Pivotel considers that a market with robust competition between all MNOs' and full RAN access for MVNO's is ultimately in the best long-term interests of consumers.

5. INTERNATIONAL EXPERIENCE (Question 3)

- 5.1 Pivotel acknowledges the ACCC's initial views that the proposed transaction is not a traditional MOCN arrangement in that it does not involve a joint venture, shared investment and requires payment of usage fees by one of the parties. It also concurs with these views.
- 5.2 Pivotel is not aware of any MOCN arrangements abroad which are similar to what is proposed by Telstra. However, as set out above, the proposed transaction effectively reduces TPG to the status of a thick-MVNO within the 17% regional coverage area with competitive constraints as described above. While 'thick' MVNOs are well placed to exert a genuine competitive constraint (particularly where there are more than one), this should not come at the expense of the number of MNOs' in the market. By way of an aside, even though the objects provision of the CCA does not make explicit reference to the 'long term' interests of consumers' unlike the corresponding provisions in Part XIC, it does refer to the promotion of competition which necessitates a forward-looking view.
- 5.3 It is for these reasons that Pivotel considers remedies which would involve Telstra making available its network to other MVNO's to be of paramount importance.

6. THE FUTURE WITH AND WITHOUT THE TRANSACTION (Question 4)

- 6.1 The ACCC has identified four potential counterfactuals. These include:

⁶ Pivotel submission dated 16 June 2022 para 4.3.4

- TPG full-build in the 17% Regional Coverage area;
- TPG targeted build in the 17% Regional Coverage Area;
- TPG arrangement with Optus; and
- A more limited deal with Telstra.

6.2 Pivotel agrees with the ACCC that the counterfactuals that have a reasonable commercial likelihood are the targeted build or an arrangement with Optus. It considers that the prospect of a TPG full-build in the 17% Regional Coverage Area is remote.

A revised deal with Telstra

6.3 It is hard to consider a more limited deal with Telstra without first considering the potential remedies or undertakings that may be associated with the proposed transaction. While it is possible to see the benefits of a MORAN arrangement from TPG's perspective, Telstra is likely to be less interested in pursuing this given a MORAN sharing deal would not provide it with access to TPG's spectrum. Access to additional spectrum is likely to be a key driver for the proposed transaction from Telstra's perspective.

A deal with Optus

6.4 Pivotel acknowledges the ACCC's comments that TPG "would have more incentive to invest in infrastructure under any agreement with Optus than it would under the Proposed Transaction".⁷ While Pivotel is inclined to agree, Pivotel considers that any arrangement between Optus and TPG would be difficult to negotiate and would not occur in the short-term given the complexity of structuring such an arrangement on a technical, commercial and regulatory level.

6.5 If this counterfactual eventuates, Pivotel considers that Telstra would continue to compete in the 17% Regional Coverage Area particularly given the aim stated in its T25 Strategy to achieve 5G coverage for 95% of the population by 2025⁸.

TPG targeted-build

6.6 If the application for authorisation is denied, Pivotel considers that a targeted-build is the most likely option as this most closely reflects the status quo. Such an approach would likely be limited to inner-regional or peri-urban areas and may also involve a divestment of spectrum by TPG. In this counterfactual, both Optus and Telstra would be incentivised to continue to invest in regional and rural Australia as they provide competition to each other. TPG would continue to be free to innovate and to efficiently invest in the 17% regional coverage area. Commonwealth and State governments would also continue to have incentives to efficiently co-invest with MNOs' and neutral hosts on targeted builds to address gaps in network coverage in rural and remote Australia.

6.7 If the targeted-build counterfactual proceeds, Pivotel considers that Telstra may be a candidate to acquire excess spectrum from TPG in the short to mid-term. This is provided that issues surrounding spectrum limits that have been raised in other submissions can be resolved. Pivotel has also previously participated in spectrum auctions for targeted projects in regional Australia⁹. Pivotel considers that smaller players and neutral host providers such as Field Services Group and BAI may be

⁷ ACCC Statement of Preliminary Views para 5.22

⁸ Telstra T25 Strategy <https://exchange.telstra.com.au/introducing-t25-our-plan-for-growth-and-enhanced-customer-experiences/>

⁹ Pivotel submission dated 16 June 2022 paras 4.5.3 and 4.5.4

candidates to seek to procure or acquire on reassignment spectrum. Although the recent take-up of neutral host networks in Australia may make those acquisitions more likely to occur as the TPG spectrum falls due for re-auction.

- 6.8 The likelihood of investment and new entry by smaller MNOs' or neutral host providers is significantly diminished in the factual because of the chilling impact of Telstra's likely dominance. Pivotel considers that in considering counterfactuals and the impact on competition of the factual, the potential for new entrants or increased investment in infrastructure by smaller operators and neutral hosts should not be overlooked.

7. TIMEFRAMES (Questions 5-6)

- 7.1 Pivotel agrees with the ACCC that the appropriate timeframe for consideration of the proposed transaction is the full duration of the agreement i.e. 20 years.
- 7.2 As previously identified, in the short to mid-term, TPG's coverage in the 17% Regional Coverage Area will improve with benefits to flow to consumers within that coverage area likely through enhanced coverage as well as to metropolitan customers. These benefits will be offset by increases in costs as TPG will incur additional usage costs.
- 7.3 In the long-term, Pivotel contends that there will be a substantial lessening of competition because Optus will have less incentive to invest in regional and rural Australia as Telstra's dominance becomes further entrenched (as referred to above) and small operators and neutral operators will have less opportunity to enter the market. Telstra will have less incentive to compete on price given both its unassailable advantage on coverage and capacity and the likelihood that any revenue attributable to customers lost to TPG, albeit limited, would be partially offset by the wholesale revenues earned from the transaction.
- 7.4 The long-term effects of the proposed transaction should be given additional weight given the difficulty in unwinding it in circumstances where TPG has divested much of its physical infrastructure.
- 7.5 In addition, many of the State and Commonwealth regional connectivity programmes also adopt a long-term view and this should be reflected in weighing the competitive effects of the proposed transaction. For instance, many of the Commonwealth Regional Connectivity Program grant terms run through to 2030 and beyond.

8. IMPACT ON INFRASTRUCTURE COMPETITION (Question 8)

- 8.1 The ACCC invites views on the impact of the proposed transaction on MNOs' mobile infrastructure investment incentives.
- 8.2 Pivotel submits that it is also important to consider what the impact of the proposed transaction will be on neutral host providers and smaller MNOs' that may otherwise roll out infrastructure in regional and remote areas.
- 8.3 Increasingly, Commonwealth and State government regional connectivity initiatives are looking at active network sharing or neutral host solutions. For example, NSW has > \$300M allocated towards regional connectivity programs predicated on active sharing solutions. Similarly, the Commonwealth has identified \$400M and the State of Victoria has \$550M of grants available for capital expenditure in regional areas. Co-funding initiatives will be increasingly critical to facilitate infrastructure and active sharing solutions rollout in regional and rural communities.
- 8.4 Pivotel itself has a genuine focus on providing communications for regional and remote Australia and participating in government co-investment initiatives. For example, it has

constructed two community networks of approximately 600 km² each in Mt Barker and Wickepin with the help of grant funding from the West Australian Department of Primary Industries & Regional Development. It has also been successful under the Commonwealth Government's 'Regional Connectivity Program' (RCP2) in applications to build new community networks in Victoria's Wimmera / Mallee area (15 Greenfield 4G and 5G sites) and New South Wales north-west of Dubbo (3 Greenfield 4G and 5G sites). Pivotel has been forced to use mid-band spectrum for these sites as the low-band (< 1GHz) spectrum holdings are all held by incumbent MNOs' under long term (20 year) licensing arrangements. Pivotel's networks would be able to provide significantly better handheld mobile coverage if they had access to low band spectrum.

- 8.5 Pivotel is also actively involved in the Department of Regional New South Wales Active Sharing Partnership Mobile Connectivity program and is assessing further network build opportunities in NSW and other States and Territories. It has consistently advocated for Open Access networks and is willing to open-up its networks for shared use as a neutral host via Active RAN sharing aligned with recent and upcoming grant funding guidelines issued by State and Commonwealth programs.
- 8.6 Telstra has expressed a degree of antipathy towards neutral host and co-investment models predicated on active sharing with the exception of the proposed transaction. In Telstra's submission to the ACCC's Regional Mobile Infrastructure Inquiry, it stated:

Telstra believes the best outcomes for regional and remote communities are achieved by allowing MNOs the commercial freedom to choose the most suitable deployment and sharing arrangement on a case-by-case basis and by ensuring that MNOs have continued incentives to invest in regional networks and to continue to differentiate their mobile coverage and quality of service in regional areas.

Recently, we have seen interest in potential active sharing models emerging in Australia, including as they apply in the context of local co-investment programs. Any benefit active sharing may offer in this context is critically dependant on the specific model of active sharing being considered, as well as on the nature of the issues it is designed to address. Further, as explained in sections 4 and 6 of our response, decisions about whether the benefits outweigh the costs of a potential active sharing arrangement, and the optimal nature of the sharing arrangement between the parties involved, depend on considerations which are not best made by policy makers or regulators.¹⁰

- 8.7 In practice, of the three national MNOs, Telstra also has the lowest percentage of co-located sites across Australia by a considerable margin¹¹.
- 8.8 In the factual, Pivotel sees a real risk that the practical effect of Telstra's increased dominance will be that either Telstra is the only viable option for government funding and this subsidising of Telstra's capital expenditure will further entrench Telstra's monopoly in the 17% Regional Coverage Area. Other parties (whether Optus or neutral host providers) who have invested may find their assets stranded because they do not have sufficient access to configure networks to provide suitable coverage and quality of service. Pivotel considers that some of these concerns could be mitigated if Telstra/TPG opened up their network in the 17% Regional Coverage Area (and Telstra provided access in very remote Australia) to other 'thick' MVNO's. This would encourage competition and innovation as MVNO's would be incentivised to invest in building out their networks, while Telstra would still have the access to spectrum to alleviate their concerns over

¹⁰ Telstra's Submission to ACCC's Regional Mobile Infrastructure Inquiry p.29

¹¹ Mobile Infrastructure Report 2022 Table 4.5

congestion. Quality of service would remain a selling point for Telstra, while the potential co-funding would continue to support investment.

- 8.9 In a counterfactual where TPG engages in a targeted build, all parties will be able to compete to participate in government co-investment projects. Pivotel considers this is also more feasible in a counterfactual where Optus and TPG enter into a network sharing arrangement, although this will be impacted by the nature of the network sharing arrangement struck between those parties.

9. TOWER INFRASTRUCTURE (Question 11)

- 9.1 Pivotel considers that the proposed transaction will have adverse consequences for mobile network infrastructure investment in the 17% Regional Coverage Area and beyond. Entrenching Telstra's dominance in this area is, for the reasons set out in our initial submission and above, likely to discourage the level of investment from Optus that would otherwise have occurred.

- 9.2 In addition, the dominance of Telstra will discourage investment from smaller MNO's or neutral host providers. This is because there will be a real risk that smaller providers seeking to roll out community-based infrastructure projects to rural and remote communities will find the assets isolated and unable to connect to wider networks. This will make such initiatives less attractive to the communities they seek to serve and further consolidate Telstra's dominant position.

- 9.3 The ACCC has previously identified concerns about the anti-competitive effects of Telstra's registration of radiocommunications sites in low band spectrum areas interfering with Optus' plans to roll out its 5G network¹². While this occurred mainly in urban areas and was associated with early access to spectrum licences, the risk of site-hoarding is also a concern in peri-urban and regional areas with costs of mitigating interference falling on second operators. Given the significant advantages, Telstra will possess, this cost is most likely to fall on other operators and again provides a disincentive to investment,

10. [REDUCED NETWORK COSTS AND EFFICIENT UTILISATION OF INFRASTRUCTURE (Question 15)]

- 10.1 Pivotel submits that a counterfactual in which TPG undertakes a targeted build and smaller MNOs', and neutral hosts are incentivised to build out community-based networks is likely to better promote efficient use of infrastructure (including spectrum) than the factual, at least in the long term. Entities like Pivotel have previously made substantial bids for low-band spectrum and would be likely to continue to do so in this counterfactual¹³. In addition, Pivotel expects that, by the time TPG spectrum licences are set to expire (between 2028-2032), neutral host providers may *also* be well placed to tender for spectrum for their own projects.

- 10.2 The competitive effect of a counterfactual in which TPG enters into an agreement with Optus will depend on the depth of RAN sharing between those parties. An outcome where new entrants are incentivised to acquire spectrum and build local networks is likely to promote efficiency and particularly dynamic efficiency as it will lead to more choice and innovation. However, it seems likely that this counterfactual will still see more long-term investment by small MNOs and neutral host providers than the factual as it will 'even-up' the competitive dynamics between Telstra and the other MNOs rather

¹² [Telstra undertakes to address 5G competition concerns | ACCC](#)

¹³ [commercial-in-confidence begins]

[commercial-in-confidence ends]

than giving Telstra an even greater advantage over its competitors (both in terms of spectrum and network infrastructure).

11. EFFECT OF SPECTRUM CONCENTRATION ON LONG TERM INDUSTRY STRUCTURE (Question 18)

11.1 Given the potential duration of the proposed transaction (20 years), the terms of affected spectrum licenses and the shut-down of base stations by TPG which is hard to reverse, the ACCC is right to take a long-term view on the effects on the industry structure in the 17% Regional Coverage Area and move broadly.

11.2 Pivotel submits that the pooling of spectrum by the applicants, if the proposed transaction proceeds, will provide Telstra with an unassailable advantage in the provision of both wholesale and retail mobile services within the 17% Regional Coverage Area.

11.3 In regional and rural communities, low and mid-band spectrum is essential particularly for the roll-out of 5G connectivity. That will continue to be the case for 6G. As Optus illustrated in its submission¹⁴, Telstra will have access to significant portions of the available spectrum, as reflected in the tables below:

Low band spectrum <1GHz¹⁵

MNO	700MHz	850 MHz	900 MHz	Total
Optus	2 x 10MHz		2 x 20 MHz**	2 x 30 MHz
Telstra		2 x 10 MHz		2 x 10 MHz
TPG	2 x 5 MHz*			2 x 5 MHz*
Pooled	2 x 30 MHz	2 x 20 MHz		

*cannot be used for public mobile services **the lower 5MHz block in the 900 MHz cannot be fully utilised until downshift occurs.

Regional mid band holdings¹⁶

MNO	1800 MHz*	2100 MHz	2.6 GHz	3.5 GHz**
Optus	2 x 25 MHz	2 x 5 MHz	2 x 20 MHz	30-35 MHz***
Telstra	2 x 40 MHz	2 x 10 MHz	2 x 40 MHz	50-82.5 MHz
TPG	2 x 10 MHz	2 x 5 MHz		20-40 MHz
Pooled		2 x 15 MHz	2 x 40 MHz	90-125 MHz

*varies by regional area * 3.5GHz covers the 3400 – 3700 MHz range ***ex Regional WA (due to restrictions of use)

11.4 Vesting, this amount of spectrum in a single dominant player, namely Telstra runs contrary to the advice previously provided by the ACCC to the Minister for

¹⁴ Refer to paragraphs 5.13 and 5.19

¹⁵ Optus submission paragraph 5.13

¹⁶ Optus submission paragraph 5.19

Communications regarding optimal allocations of spectrum to promote competition in mobile services markets.

- 11.5 In 2018, the ACCC advised that spectrum limits be set for the 3.6GHz spectrum auction whereby no person or specified group of persons should be allowed to purchase an amount which would cause its aggregate holdings across the 3.4-3.7 GHz band to exceed 60MHz¹⁷. Ultimately, the Minister set a limit of 80 MHz in regional areas.¹⁸
- 11.6 In relation to low band spectrum, the ACCC previously proposed allocation limits of 40% of sub 1GHz spectrum, (which the Minister subsequently set at 45%).¹⁹ The pooling of spectrum will take Telstra significantly above both thresholds. Prior to the 850/900MHz spectrum auction, the ACCC had raised concerns that Optus' ability to compete was constrained by its relative lack of low-band spectrum²⁰, the proposed transaction will restore and entrench that.
- 11.7 Without remedies of the kind advocated by Pivotel²¹, this is likely to result in long term structural changes to mobile services markets given that spectrum is a scarce and increasingly valuable resource.
- 11.8 Ultimately, the consolidation of spectrum in the hands of Telstra will inhibit the ability and incentive for smaller MNOs and neutral hosts to access spectrum for the purposes of initiatives designed with rural and regional Australians in mind. This is because, it will either make bidding at auction unattractive given the regional dominance of Telstra and the efficiencies that come with additional spectrum, or it will decrease the likelihood of larger MNOs such as TPG (in its present form) making excess spectrum available on the secondary market.
- 11.9 This will shape the state of the market for the next 20 years and beyond.

¹⁷ ACCC Allocation limits advice for the 3.6GHz spectrum allocation section 4. The ACCC has also recently proposed spectrum limits for the in the wider 3.4 – 3.8GHz band such that a cross band limit of 140MHz be set. The pooled spectrum available to Telstra will already be close to the new limits proposed by the ACCC which is likely to distort the auction process.

¹⁸ Radiocommunications (Spectrum Licence Limits—3.6 GHz Band) Direction 2018 s.5(2)(c)(ii)

¹⁹ ACCC Allocation limits advice for the 850/900MHz spectrum allocation section 4

²⁰ ACCC Allocation limits advice for the 850/900MHz spectrum allocation section 3.2

²¹ Record of Oral Submission to the ACCC pg. 5 and Pivotel submission dated 16 June 2022 para 4.7