

Public register version

29 April 2022

Ellie Dwyer and Gemma Smith
Competition Exemptions
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email: exemptions@accc.gov.au

Dear Ms Dwyer and Ms Smith,

RE: AA1000607– Telstra Corporation Limited, Telstra Limited and NBN Co Limited – submission

Thank you for the opportunity to respond to the ACCC's public consultation regarding the application for authorisation from Telstra Corporation Limited, Telstra Limited and NBN Co Limited (together, the **Applicants**).

TPG Telecom has not received a copy of the Definitive Agreements and we do not have a complete view of the existing arrangements between the Applicants.

As our understanding of the Definitive Agreements is currently limited to information available in public summaries and media releases, it is difficult to comment on the validity of the arguments made by the Applicants regarding the public benefits and detriments of the authorisation application.

From the information available, it appears the Amending Agreement seeks to impose additional restraints beyond what already exists within the Definitive Agreements. We assume this is why the Applicants have sought authorisation from the ACCC, despite the introduction of section 577BA(10C) of the *Telecommunications Act 1997*, following the passage of the *Telstra Corporation and Other Legislation Amendment Act 2021*.

Accordingly, we ask that the ACCC test the additional constraints agreed between NBN Co and Telstra, to ensure no competition issues arise and there are clear public benefits.

For example, it is unclear why it is in the public interest for NBN Co to compel ServeCo to bind future parties to the restraints in the Definitive Agreements without the competitive effect of this arrangement being independently tested by the ACCC, presumably at the point in time when the specific facts of any such transfer are known.

TPG Telecom is concerned the scope of authorisation sought by the Applicants is broad and the application goes beyond that which is reasonable and necessary in the circumstances.

For example, we note authorisation is being sought in respect of the related entities of each Applicant, whether those entities exist or are related entities at the time of the application.¹ The Applicants argue this is required because of the extended meaning of “party” in section 45AC of the *Competition and Consumer Act 2010*.

We do not support the grant of authorisation to future hypothetical and unknown related entities of the Applicants.

The provisions contained within the Definitive Agreements impose significant competitive restraints, which in some instances would otherwise clearly amount to serious cartel conduct. We believe any future restructure of Telstra’s or NBN Co’s business that in any way alters the rights and obligations arising from the Definitive Agreements should rightly be tested by the ACCC at the appropriate time in the future, including to ensure novel structures are not being introduced to circumvent regulatory obligations.

If authorisation is granted to all future related entities, even if they do not currently exist, it would enable Telstra to restructure ServeCo or InfraCo Fixed and sell part of the shares or assets to an unknown third party. Said unknown third party may then also be subject to the rights and obligations under the Definitive Agreements, without prior ACCC review.

[Redacted]

We do not believe it is reasonable for the ACCC to grant authorisation for certain conduct “*for as long as they remain on foot*”, as requested by the Applicants.

There are no exceptional circumstances which warrant the ACCC granting authorisation for an infinite amount of time. If it is unknown when a right or obligation will cease, it would be reasonable for the ACCC to limit the authorisation to a specific period and consider re-authorisation of the conduct at the appropriate time in the future.

Should you have any questions on any of these matters, please feel free to contact Stephanie Phan, Industry Strategy Manager TPG Telecom, at [Redacted].

Yours sincerely,

[Redacted Signature]
James Rickards
General Manager – External Affairs
TPG Telecom Limited

¹ See paragraph 2.2 of the authorisation application.