HOUSTONKEMP
Economists

Competitive effects of the proposed Telstra-TPG arrangement

Expert report of Greg Houston

28 June 2022

PUBLIC VERSION

Contact Us

Sydney
Level 40
161 Castlereagh Street
Sydney NSW 2000

Phone: +61 2 8880 4800

Disclaimer

Contents

Figures

1. Introduction

1. I have been asked to prepare this report by Minter Ellison to inform legal advice being provided to Singtel Optus Pty Ltd (Optus).

2. The subject of my report is an application by Telstra Corporation Limited (Telstra) and TPG Telecom Limited (TPG) to the Australian Competition and Consumer Commission (ACCC) for authorisation of a proposed set of arrangements between Telstra and TPG, as providers of mobile network services (the proposed Telstra/TPG arrangement).[1] Alongside Optus, Telstra and TPG are two of Australia's three mobile network operators (MNOs).[2]

3. The proposed Telstra/TPG arrangement involves three interrelated agreements that are collectively described as a multi-operator core network (MOCN) commercial arrangement. At a high level, the proposed Telstra/TPG arrangement provides for:[3]

   a. Telstra to own and operate a radio access network (RAN) within a defined coverage area[4] that incorporates Telstra's existing mobile sites and some of TPG's sites, with TPG deciding to decommission around 725 sites in the defined coverage area;[5]

   b. Telstra to supply access to the RAN within the defined coverage area to TPG, in exchange for usage and access fees; and

   c. TPG to provide Telstra access to some of its spectrum to use in both the defined coverage area and in remote areas in which Telstra is the only MNO.

4. The initial term of the proposed Telstra/TPG arrangement is ten years and TPG has two options to extend the agreement by five years.

1.1 Instructions

5. The application for authorisation is accompanied by an expert report of Mr Richard Feasey,[6] a United Kingdom-based economist, which assesses the competitive effects of the proposed Telstra/TPG arrangement.

6. Minter Ellison has asked me:[7]

   a. to explain the economic concepts that underpin how competition takes place in the relevant markets;

---

[1] Telstra/TPG, *Application to the Australian Competition and Consumer Commission for merger authorisation*, 23 May 2022.

[2] A mobile network operator (MNO) is a telecommunications company that operates its own mobile network, as opposed to a mobile virtual network operator (MVNO), which acquires mobile services on a wholesale basis from MNOs.

[3] Telstra/TPG, *Application to the Australian Competition and Consumer Commission for merger authorisation*, 23 May 2022, para 9.

[4] The defined coverage area comprises certain regional and urban fringe areas in which approximately 17 per cent of Australia's population resides. It does not include major metropolitan areas in which over 80 per cent of Australia's population resides or remote areas in which Telstra is the only MNO.

[5] TPG, *TPG Telecom regional network sharing agreement with Telstra*, ASX announcement, 21 February 2022, p 1.

[6] Richard Feasey, *Expert report on assessing the competitive effects of the Telstra/TPG Telecom regional MOCN agreement*, 20 May 2022 (Feasey report).

[7] Minter Ellison, *Instructions – Optus: Effect of Telstra/TPG network sharing arrangement*, 27 June 2022. I attach Minter Ellison's instructions to me at annexure A.

b. to explain the way in which the proposed Telstra/TPG arrangement can be expected to affect competition in the relevant markets; and

c. to identify the principal economic contentions made by Mr Feasey and comment on the extent of alignment and/or discrepancy between these and my own opinion in relation to the two questions above.

1.2 Summary of opinion

7. In my opinion, the material that I have reviewed, in combination with my analysis of the incentives of the relevant parties, demonstrates the proposed Telstra/TPG arrangement would have the effect, or would be likely to have the effect, of lessening competition in the retail and wholesale markets for mobile services in Australia. The lessening of competition can be expected to occur in both the near to medium and medium to long term.

8. The information presently available to me is not sufficient to be able to quantify the full extent or the likely magnitude of these effects. However, the breadth of the markets for retail and mobile services, the scale of the associated investments required to serve them and the magnitude of the anticipated effects on investment decisions by Optus alone, imply that the likely lessening of competition would be highly material.

1.3 Experience and qualifications

9. I am a founding Partner of the firm of expert economists, HoustonKemp. Over a period of more than thirty years I have accumulated substantial experience in the economic analysis of markets and the provision of expert advice and evidence in litigation, business strategy and policy contexts. I have developed that expertise in the course of advising corporations, regulators and governments on a wide range of competition, regulatory and financial economics matters.

10. My industry sector experience spans aviation, beverages, building products, car parking, cement, credit reporting, digital platforms, e-commerce, electricity and gas, employee remuneration, explosives, forest products, gambling, grains, healthcare, industrial gases, insurance, litigation funding, logistics, maritime services, medical waste, mining, office products, payments networks, office products, petroleum, ports, rail transport, retailing, scrap metal, securities markets, shipping, steel, stevedoring, telecommunications, thoroughbred racing, travel agency, waste processing and water.

11. I have filed expert reports and/or given evidence on numerous occasions before arbitrators, appeal panels, regulators, the Federal Court of Australia, the Tribunal, the Fair Work Commission, state Supreme Courts, the High Court of New Zealand and other judicial or adjudicatory bodies.

12. I hold a BSc (Hons) in Economics, a University of Canterbury post-graduate degree, which I was awarded with first class honours in 1983. I attach a copy of my curriculum vitae as annexure B.

13. I have been provided with a copy of the Federal Court's Harmonised Expert Witness Code of Conduct (the Code). I acknowledge that:

a. I have read and understood the Code and agree to be bound by them; and

b. my opinions set out here are based wholly or substantially upon my specialised knowledge.

14. In preparing my report, I have been assisted by my colleagues, Daniel Young and Luke Wainscoat. Notwithstanding this assistance, the opinions in this report are my own and I take full responsibility for them.

1.4 Report structure

15. I have structured my report as follows:

    a. in section two I set out a number of assumptions as to the facts that form the basis of the analysis in this report;

    b. in section three I describe the nature of competition that is relevant for assessing the effects of the proposed Telstra/TPG arrangement;

    c. in section four I provide and explain the basis for my opinion on the effects that the proposed Telstra/TPG arrangement will have on competition in the near to medium term;

    d. in section five I provide and explain the basis for my opinion on the effects that the proposed Telstra/TPG arrangement will have on competition in the medium to long term;

    e. in section six I provide a comparison of my assessment of these competitive effects with that of Mr Feasey; and

    f. section seven contains my declaration in accordance with the Code.

16. I provide a list of confidential documents to which I refer at annexure C.

2. Assumptions as to relevant facts

17. In addressing the questions posed to me, I have adopted various assumptions as the relevant facts, which align with those stated by Mr Feasey in his report. The purpose of adopting these assumptions is:

    a. to assist in identifying the relevant economic concepts that explain how competition takes place in the relevant markets and so how the outcomes of competition will be altered by the proposed Telstra/TPG arrangement; and

    b. to identify the essential distinctions in the economic propositions by which Mr Feasey and I conceptualise the economics of competition, and the outcomes of competition in the relevant markets.

18. The assumptions of fact that I adopt and which are consistent with statements in Mr Feasey's report are that:

    a. within the national retail mobile services market, in the 2021 financial year Telstra had 44 per cent market share, Optus had 31 per cent market share and TPG had 17 per cent market share;[8]

    b. within the national retail and wholesale mobile services markets, operators compete on the basis of prices that they charge to their customers;[9]

    c. within the relevant markets, operators compete on network coverage and quality, which in turn is determined by their network investment;[10]

    d. Telstra's network coverage is more extensive than Optus' or TPG's and is a source of competitive advantage to Telstra,[11] while Telstra has been quicker than either Optus or TPG to upgrade its network to 5G;[12]

    e. Optus is the closest competitor to Telstra for customers that value network coverage and performance in the defined coverage area, while Optus' investments in this area will drive Telstra's conduct;[13]

    f. the proposed Telstra/TPG arrangement would allow Telstra to serve its current and future customers in the defined coverage area and in remote areas at lower cost than it can achieve without access to TPG's spectrum;[14]

    g. the proposed Telstra/TPG arrangement would allow TPG to extend its coverage to incorporate all of the defined coverage area, of which Optus' network only serves part, in exchange for access and usage fees;[15]

---

[8] Feasey report, footnote 99, p 40.

[9] Feasey report, para 86.

[10] Feasey report, para 57.

[11] Feasey report, para 58.

[12] Feasey report, para 24.

[13] Feasey report, paras 65 and 70.

[14] Feasey report, para 19.

[15] Feasey report, para 23.

h. without the proposed Telstra/TPG arrangement, TPG would have strong incentives to pursue an alternative network arrangement rather than rely on its network in the defined coverage area;[16] and

i. without a network sharing arrangement, it is unlikely that TPG would be in a position to replicate the networks of Telstra or Optus within the defined coverage area.[17]

[16] Feasey report, para 49.

[17] Feasey report, para 45.

3. Nature of competition

19. In this section, I describe:

    a. the likely situation if the proposed Telstra/TPG arrangement does not take proceed, ie, the counterfactual; and

    b. the nature of competition in the relevant markets.

20. I examine the effects of the proposed Telstra/TPG arrangement on competition relative to the counterfactuals and taking account of the nature of competition in section 4 and 5.

3.1 Counterfactual scenarios

21. In my analysis of the competitive effects, I assess the proposed Telstra/TPG arrangement against two alternative scenarios, being that either:

    a. TPG would enter into some form of network sharing arrangement with Optus in relation to the provision of mobile services in urban fringe and regional areas (a potential Optus/TPG arrangement); or

    b. TPG would remain unaligned with either Telstra or Optus in relation to the provision of mobile services in urban fringe and regional areas (the status quo).

22. In my opinion, a potential Optus/TPG arrangement is a more likely outcome than the status quo, because – consistent with the assumption adopted by Mr Feasey – TPG has strong incentives to pursue an alternative network arrangement rather than rely principally on its own network in the defined coverage area. Notwithstanding, the inclusion of the status quo as a baseline against which to assess both the proposed Telstra/TPG arrangement and a potential Optus/TPG arrangement is helpful for the organisation of my analysis.

23. In contrast to Mr Feasey, I do not explicitly contemplate the competitive effects of TPG entering an alternative network sharing arrangement with Telstra, such as a mobile operator radio access network (MORAN) agreement.[18] I do not have access to material that would inform the likelihood, structure or implications of such an agreement.

3.2 Nature of competition in the relevant markets

24. Mr Feasey states that the relevant markets are:[19]

    a. the national retail mobile services market;

    b. the wholesale mobile services market; and

    c. the national retail fixed line broadband services market.

25. For the purpose of my report, I assume these markets have been appropriately defined, and focus on competition in the markets for retail and wholesale mobile services, which I refer to as the 'relevant

[18] Feasey report, para 114.

[19] Feasey report, para 27.

markets'. Notwithstanding, I note that the nature of the competitive effects I have identified may also have consequences for competition in other, related markets.

26. In conceptual, economic terms, the nature of competition in the relevant markets that is consistent with the assumed facts set out at section 2 can be described as taking place on a differentiated product basis. In practical terms, retail and wholesale mobile services are differentiated in respect of their quality, with one of the most important non-price attributes on which that differentiation occurs being network coverage and performance, which I refer to as network quality.

27. The dimensions on which competition in the relevant markets principally takes place are:

a. in the near to medium term, the price applying (or, more precisely, the price differential applying) in the face of differentiated network quality, which cannot be materially changed in this timeframe;[20] and

b. in the medium to long term, a choice of investment timing and level that determines network quality, and therefore the degree of differentiation relative to rivals.

28. Accordingly, the outcomes of the competitive process are:

a. determined principally by the circumstances and decisions (price, nature and timing of investment in network upgrades) of MNOs, since only MNOs can determine network coverage and performance;

b. not materially altered by the existence or number of mobile virtual network operators (MVNOs), since MVNOs:

i. in relation to price, may be constrained by the access fees paid to and pricing strategy adopted by the MNOs from which they acquire access; and

ii. in relation to network quality, have no ability to differentiate materially from the MNOs from which they acquire access.

29. Given the importance of MNOs to competition in the relevant markets, in the remainder of this report I focus primarily on the degree of competition between the three MNOs – being Telstra, Optus and TPG. In this regard, my focus is consistent with that of Mr Feasey, who provides an extended discussion of the effects of the proposed Telstra/TPG arrangement on competition between each of the MNOs but does not specifically identify the extent to which MVNOs contribute materially to competition in these markets.

30. In the remainder of this section, I describe the economic frameworks that best apply to the situation at hand, distinguishing between the short to medium term in section 4, and the medium to long term in section 5. The purpose of applying an economic framework is to draw insights from the field of economics to assist in understanding how competition works and, accordingly, the likely effects on competition that can be expected of the proposed Telstra/TPG arrangement.

31. An economic framework involves some simplifications of the real world, including by making various assumptions. This allows conclusions to be drawn from the framework. Notwithstanding the inevitability of needing to make simplifying assumptions, being explicit as to the framework applied enables the evaluation of the extent to which the framework is sufficiently close to reality, and thereby an assessment of whether the insights derived from the framework can reasonably be applied to the matter at hand.

[20] MNOs also compete to offer more or less inclusions in their plans, such as the amount of data and value of international calls included in a plan.

4. Near to medium term competition

32. In this section, I present:

    a. the appropriate economic framework to assess the effect of the proposed Telstra/TPG arrangement on competition in the near to medium term, based on the nature of competition and facts I have assumed; and

    b. my assessment of the likely competitive effects of the proposed Telstra/TPG arrangement in the near to medium term.

33. Over the near to medium term, I assume that competition takes place on price, in the face of differentiated network quality. Increased competition in the relevant markets would, other things being equal, be expected to lead to lower prices, which drives benefits for:

    a. existing consumers of retail and wholesale mobile services, who are able to purchase the same services at lower prices and can be expected to purchase a greater quantity or quality of retail mobile services; and

    b. new consumers of retail and wholesale mobile services, who purchase the services because of the lower prices.

34. In my opinion, the material that I have reviewed, in combination with my analysis of the incentives of the relevant parties, demonstrates the proposed Telstra/TPG arrangement would have the effect, or would be likely to have the effect, of lessening competition in the relevant markets over the near to medium term, as compared to the circumstances prevailing under a potential Optus/TPG arrangement.

35. In the remainder of this section I set out the basis for this opinion.

4.1 Economic framework for analysis

36. I assume that in the near to medium term, each MNO's network coverage and performance is largely invariant, in which case the main focus of competition between firms is on setting prices that maximise their profits in selling a differentiated product.

37. The appropriate economic framework to apply to competition of this form is a differentiated Bertrand model, which has the essential features that:[21]

    a. products are differentiated and the nature of the products is invariant; and

    b. firms compete on prices, which are set by reference to those of competitors, having regard to the nature and extent of product differentiation.

38. In my opinion, these are the key features of near to medium term competition in retail mobile services, and so the differentiated Bertrand model of competition is an appropriate framework to apply in this

[21] These are features of the most simple version of the Bertrand model with differentiated products. Other features in the simplest form of this model are that prices are determined independently and simultaneously, and firms sell directly to consumers on a take-it-or-leave-it basis,

case. It is the model of competition most often used in examining retail mergers with differentiated products,[22] and has also been applied to telecommunications mergers in Europe.[23]

39. An important insight of the differentiated Bertrand competitive framework is that competition is greatest and profits lowest when there is less differentiation between the firms in the market.[24] The reason is that under a Bertrand competition framework, a price reduction leads to two counteracting effects on a firm's profits, ie:

a. a greater volume of sales (increasing profits); and

b. a lower margin on every sale (reducing profits).

40. The first of these effects is greater when firms sell similar products, increasing the benefit of reducing prices. In the extreme, with two firms selling an identical product, a firm can capture the whole market by slightly undercutting a rival. On the other hand, few customers will switch from one provider to another following a change in their relative prices if the products provided are quite different.

41. Accordingly, the competitive effects of the proposed Telstra/TPG arrangement in the near to medium term should be assessed by reference to its implications for changes in the degree of differentiation between the services offered by the three MNOs.

4.2 Likely competitive effects

42. In the near to medium term, the proposed Telstra/TPG arrangement will involve (relative to the status quo):

a. better network quality within the defined coverage area for Telstra;

b. better network quality within the defined coverage area for TPG, which I assume will surpass that of Optus;[25] and

c. the same network quality for Optus.

43. I assume that the proposed Telstra/TPG arrangement would not affect network quality in other parts of Telstra's and TPG's networks, ie, in metropolitan areas.

44. By comparison, in the near to medium term, I assume that a potential Optus/TPG arrangement would involve (relative to the status quo):

a. the same network quality for Telstra;

b. better network quality within fringe urban and regional areas for TPG, but not to the point that it would surpass that of Optus; and

c. better network quality within fringe urban and regional areas for Optus.

[22] See: Parker, J and Majumdar, A, *UK merger control*, 2nd edition, Hart Publishing, Oxford, 2016, p 463.

[23] Motta has said that the common framework for the analysis of telecommunications mergers in Europe is the Bertrand model with differentiated products. See: European Commission, Motta, M, *Mobile mergers: what have we learned?*, November 2015, p 6.

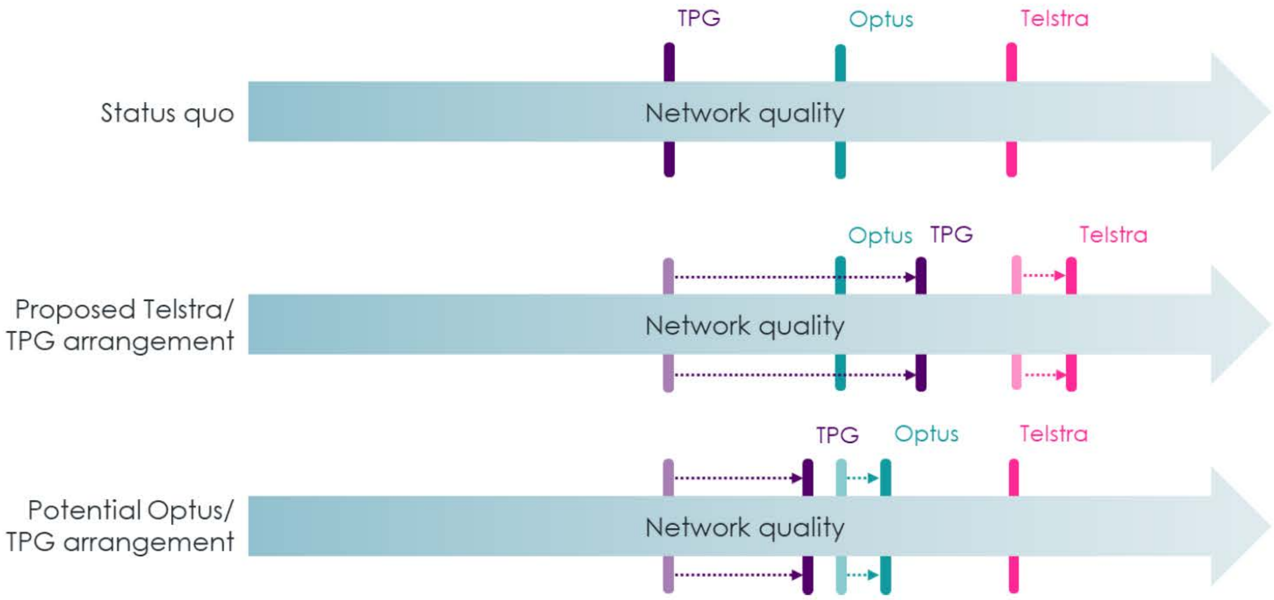
[24] The equilibrium profits of each firm in a differentiated Bertrand model fall as the degree of substitutability between products increases and tends to zero with perfect substitutability. Motta, M, *Competition policy: theory and practice*, Cambridge University Press, New York, 2009, p 569. See also: Gravelle, H and Rees, R, *Microeconomics*, 3rd edition, Prentice Hall, 2004, p 408.

[25] [redacted]

45. I assume that a potential Optus/TPG arrangement would not directly affect network quality in those parts of Optus' and TPG's networks that are not covered by the arrangement.

46. I illustrate these outcomes for network quality in figure 4.1 below.

Figure 4.1: Illustrative comparison of network quality between scenarios



Note: The outcomes and changes shown in the figure are illustrative only.

47. The proposed Telstra/TPG arrangement will provide Telstra a further advantage over its closest competitor, Optus. With access to some of TPG's spectrum in the defined coverage area and in remote areas of its network, Telstra will more effectively be able to deliver improved quality in its existing network, as compared with any counterfactual in which Telstra does not have access to TPG's spectrum.

48. By contrast, under a potential Optus/TPG arrangement, in which I assume Optus would have an increased ability to improve network quality in fringe urban and regional areas, Optus could become a closer constraint on Telstra.

49. These outcomes indicate that the closeness of competition between Telstra and Optus will reduce under the proposed Telstra/TPG agreement, as compared to a potential Optus/TPG arrangement. A reduction in the closeness of competition between Telstra and Optus would be expected to reduce the intensity of price competition on Optus from Telstra, and vice versa. Consistent with these outcomes, overall profitability in the market would be expected to increase, as will the extent of the price premium that Telstra can command, relative to Optus.

50. The proposed Telstra/TPG agreement will cause TPG's service to be more similar to that of Optus, due to TPG's improved network coverage and performance in the defined coverage area. The magnitude of this effect will turn on the extent to which the proposed Telstra/TPG arrangement involves a materially greater improvement in TPG's network quality than TPG would be able to achieve under a potential Optus/TPG arrangement.

51. Irrespective of its magnitude, this effect would be expected to increase the closeness of competition between TPG and Optus in the near to medium term, as compared with the counterfactual scenario. It

follows that TPG may be able to charge higher prices than Optus and they may set more similar price levels.

52. In the near to medium term, the aggregate effect on competition of the proposed Telstra/TPG agreement will depend upon the magnitude of the effects I describe above and the relative extent to which competition between Telstra and Optus, as opposed to competition between Optus and TPG, determines outcomes in the relevant services markets. Telstra and TPG are the least close competitors from the perspective of network coverage and performance and, accordingly, I assume that competition between them is of lesser relative importance.

53. Telstra and Optus collectively serve 75 per cent of customers in the national retail mobile services market, compared to 48 per cent served by Optus and TPG. Given this disparity in the absolute and relative market shares of Telstra and Optus, as compared with those of Optus and TPG, I assume that competition between Telstra and Optus is, in the near term, more important to outcomes in the relevant markets than competition between Optus and TPG.

54. In light of these considerations, in my opinion it is reasonable to conclude that near term competition in the relevant markets would be, or would likely to be, lessened as a result of the proposed Telstra/TPG arrangement.

5. Medium to long term competition

55. In this section, I present:

    a. the appropriate economic framework to assess the effect of the proposed Telstra/TPG arrangement on competition in the medium to long term, based on the nature of competition and facts I have assumed; and

    b. my assessment of the likely competitive effects of the proposed Telstra/TPG arrangement in the near to medium term.

56. Over the medium to long term, I assume that competition takes place on network quality, through the choice and timing of investment in network capabilities that allow MNOs to provide consumers with new or better mobile services that they value. For example, MNOs are competing on the timing, extent and quality of their investment in 5G networks.

57. Increased competition in the relevant markets would, other things being equal, be expected to lead to greater investment in the provision of new or better mobile services that consumers value, which drives benefits for:

    a. existing consumers of retail and wholesale mobile services, who enjoy the benefits of new or better mobile services; and

    b. new consumers of retail and wholesale mobile services, who purchase the services because of the benefits conferred by new or better mobile services.

58. In my opinion, the material that I have reviewed, in combination with my analysis of the incentives of the relevant parties, demonstrates the proposed Telstra/TPG arrangement would have the effect, or would be likely to have the effect, of lessening competition in the relevant markets over the medium to long term, as compared to the circumstances prevailing under a potential Optus/TPG arrangement.

59. In the remainder of this section, I set out the basis for this opinion.

5.1 Economic framework for analysis

60. I assume that MNOs select the level and timing of investment in network capabilities to achieve the network quality that maximises expected profits in the long run. Expected profits depend on the difference between the revenues that MNOs expect to earn from their investment, less the cost of that investment.

61. Firms are aware that their investment affects profits in the near to medium run, ie, investment that increases differentiation can raise profits. This has been recognised in the economic literature since 1982, at which time Shaked and Sutton found that firms will choose to produce differentiated products, and will earn positive profits as a result.[26]

62. Tirole subsequently simplified the model of Shaked and Sutton, setting out a framework in which firms:[27]

[26] Shaked, A and Sutton, J, *Relaxing price competition through product differentiation*, Review of Economic Studies, 1982, p 3. See also:

[27] Tirole, J, *The Theory of Industrial Organization*, MIT Press, Massachusetts, 1988, pp 296-7.

a. first, compete to choose a level of quality; and

b. second, compete by setting prices, holding quality fixed.

63. Under the assumptions adopted by Tirole, he finds that:[28]

> '[f]irms try to relax price competition through product differentiation'.[29]

64. This is sometimes called the 'strategic force',[30] which is the desire to reduce price competition, and encourages greater differentiation.

65. In practice, firms may not differentiate to the maximum extent because they also want to choose a quality level that matches consumer preferences – sometimes called the 'demand force'.[31] Moorthy described these forces in a different manner, saying that equilibrium product strategy reconciles two opposing forces:[32]

> One force draws it closer to its competitor: *Each* firm wants to go after the product position that is most favourable in terms of consumer preferences, manufacturing costs and competition with a substitute – the monopolist's best position. The other force moves it away from its competitor: If the firms were positioned too close to each other, then consumers would choose between them on the basis of price; that would create the incentive to compete on price, and the net result would be low profits for both firms.

66. Consistent with this, MNOs' selection of the level and timing of investment in their network capabilities is likely to depend primarily upon:

a. the strategic force, ie, the degree of competition, which is determined by the similarity in the network capabilities and performance of MNOs;

b. the demand force, ie, the demand for network capabilities and performance as reflected in the willingness of customers to pay for them; and

c. the cost of the investment and the availability of the funds required.

67. I assume that the nature of the demand force is the same as between the proposed Telstra/TPG arrangement and any counterfactual scenario. Accordingly, the medium to long term competitive effects of the proposed Telstra/TPG arrangement should be assessed by reference to:

a. the effect of changes to the strategic force, ie, the desire for differentiation, on the level and timing of investment in network capabilities that are valued by consumers; and

b. the effect of changes on the cost of the investment and the availability of the funds required.

68. In the analysis that follows, I set out my assessment of the likely medium to long term competitive effects by reference to these two considerations.

5.2 Likely competitive effects

69. I direct my analysis of the likely competitive effects on the timing, geographic extent and capabilities of investment in 5G services in urban fringe, regional and remote areas. This is the current focus of

[28] Vandenbosch, M B and Weinberg, C B, *Product and price competition in a two-dimensional vertical differentiation model*, Marketing Science, Vol. 14, No. 2, 1995, p 226.

[29] Tirole, J, *The Theory of Industrial Organization*, MIT Press, Massachusetts, 1988, p 297.

[30] Tirole, J, *The Theory of Industrial Organization*, MIT Press, Massachusetts, 1988, p 297.

[31] Vandenbosch, M B and Weinberg, C B, *Product and price competition in a two-dimensional vertical differentiation model*, Marketing Science, Vol. 14, No. 2, 1995, p 226.

[32] Moorthy, K S, *Product and price competition in a duopoly*, Marketing Science, Vol. 7, No. 2, Spring 1988, pp 143-144.

competition between MNOs in respect of network quality, for which the effect of the proposed Telstra/TPG arrangement, or of any of the counterfactual scenarios, is most direct.

5.2.1 Competitive effects on TPG's conduct

70. The proposed Telstra/TPG arrangement allows TPG to share Telstra's network within the defined coverage area. I assume that, through this access, TPG's customers will effectively enjoy network quality within the defined coverage area that is close to the network quality enjoyed by Telstra's customers – the principal exception being those time intervals and locations for which any upgrades made by Telstra will be available to its customers only.[33]

71. I assume that TPG's investment in the quality of its own network will not be materially affected by the proposed Telstra/TPG arrangement, as compared to a potential Optus/TPG arrangement. The economic reasoning underpinning this assumption is that:

    a. under the proposed Telstra/TPG arrangement, TPG is very unlikely to make investments in its own network quality within the defined coverage area, since it will not operate a public network in that area;[34] and

    b. under a potential Optus/TPG arrangement, TPG would be very unlikely to make investments in its own network quality in urban fringe and regional areas, because it will benefit from the use of Optus' network in these areas.

72. It follows from these assumptions that, under the proposed Telstra/TPG arrangement, TPG will cease to be an independent source of competitive constraint on either Telstra or Optus in relation to network quality within urban fringe and regional areas.

5.2.2 Competitive effects on Optus' conduct

73. In my opinion the proposed Telstra/TPG arrangement would, or would be likely to, lessen Optus' incentive and ability to invest in network quality, as compared with both the status quo and the circumstances applying under a potential Optus/TPG arrangement. I explain the basis for this opinion below.

74. In the status quo, Optus' strategic force reflects the balance of considerations arising from:

    a. a strategic force governing Optus' incentives to make investments in network quality that reflect its desire to maintain a quality that is distinct from (and so less than) that of Telstra, which has a higher network quality; and

    b. a strategic force governing Optus' incentives to make investments in network quality arising from its desire to maintain a quality that is distinct from (and so greater than) that of TPG, which has a lower network quality.

75. In the two sub-sections below, I assess the competitive effects on Optus' conduct of both the proposed Telstra/TPG arrangement and a potential Optus/TPG arrangement, both by reference to this status quo.

---

[33] Telstra/TPG, *Application to the Australian Competition and Consumer Commission for merger authorisation*, 23 May 2022, para 139.

[34] I understand that TPG will retain some spectrum in regional areas that will no be pooled as part of the proposed Telstra/TPG agreement, and could be used to provide managed private networks and other 5G services. See: Telstra/TPG, *Application to the Australian Competition and Consumer Commission for merger authorisation*, 23 May 2022, para 127.

Competitive effects of proposed Telstra/TPG arrangement

76. I assume that the proposed Telstra/TPG arrangement would:

    a. increase Telstra's network quality, thereby increasing the distinction between it and the network quality of Optus; and

    b. increase TPG's network quality, through its use of Telstra's network in the defined coverage area, such that it would surpass that of Optus.

77. The effect of the increase in Telstra's network quality, relative to that of Optus, is to weaken the strategic force exerted by Telstra on Optus, and vice versa, ie, in network quality terms they become more distant competitors. Since the effect of the strategic force presented by Telstra's level of network quality is for Optus to pursue a relatively lower level of network quality, the more distant nature of this strategic force would have the effect of increasing Optus' incentives to invest in network quality. Put another way, the increase in Telstra's network quality arising under the Telstra/TPG arrangement will encourage Optus to increase its investment, to reduce the otherwise widened, network quality differential.

78. Conversely, the effect of the increase in TPG's network quality (to surpass that of Optus), through its use of Telstra's network in the defined coverage area, is to change the direction of the strategic force otherwise exerted by TPG's customers on Optus, and vice versa. Further, in network quality terms, the service their respective customers receive becomes closer. Since the direction of the strategic force presented by the level of network quality experienced by TPG's customers has changed, this would have the effect of reducing Optus' incentives to invest in network quality. Put another way, the increase in network quality experienced by TPG's customers under the Telstra/TPG arrangement will encourage Optus to reduce its investment, to increase the now differently positioned network quality differential.

79. The direction of the influence on Optus' incentives to invest arising from the change in strategic force exerted on Optus by Telstra (through the increased superiority of its network) and TPG (through its customers being migrated to Telstra's network in the defined coverage area) are offsetting. However, the change in strategic force exerted by the migration of TPG's customers onto Telstra's network in the defined coverage area is likely to have the more pronounced impact on Optus' incentives to invest.

80. The latter change is crucial to Optus' incentives to make new investments in network quality because it places Optus in the position that:

    a. its network quality is lower than that available to customers of both Telstra and TPG; and

    b. makes TPG a much closer, yet also superior alternative to Optus than Telstra in relation to network quality.

81. In that position, if Optus was to invest in pursuit of network quality closer to the now more distant Telstra, Optus must overcome the likelihood that some of the strategic force benefits (in terms of additional customers to whom its enhanced quality offering would be attractive) will be lost to TPG, which is now also offering network quality that is relatively close to Telstra.

82. One practical implication of this effect might be that, with the proposed Telstra/TPG arrangement in place, Optus would find it profitable to:

    a. slow the rate of its investment in 5G services; and/or

    b. lessen the geographic extent its investment in 5G services; and/or

    c. reduce the capabilities of its investment in 5G services.

83. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Competitive effects of potential Optus/TPG arrangement

84. A potential Optus/TPG arrangement would place Optus similarly to the status quo, ie, as positioned in between Telstra and TPG in relation to its network quality. I assume that a potential Optus/TPG arrangement would:

   a. increase Optus' network quality and allow Optus to undertake investment in new and better mobile services at lower cost, with the extent of these effects depending upon the facts of the arrangement; and

   b. increase TPG's network quality but not to the same extent as under the proposed Telstra/TPG arrangements, such that Optus' network quality remains higher than TPG's.

85. It follows from these assumptions that Optus' ability and incentive to make investments in new and better network services would alter under the circumstance of an Optus/TPG arrangement.

86. Optus' ability to undertake investments in network quality would be higher under a potential Optus/TPG arrangement than under the status quo or under the proposed Telstra/TPG arrangement because:

   a. Optus would likely be able to share some costs of investing in network quality with TPG; and

   b. Optus may be able to earn some revenue from fees and charges applied to TPG's sharing of its network facilities in urban fringe and regional areas.

87. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

88. Optus' incentive to undertake new investment would change under a potential Optus/TPG arrangement. This reflects:

a. an upward strategic force exerted by TPG on Optus' investment in network quality, as compared with proposed Telstra/TPG arrangements in which TPG exerts a downward strategic force, such that, faced with a lower quality competitor in TPG, there would remain a benefit to Optus seeking to differentiate its network with respect to quality in the areas in which they did not share a network;

b. an increased downward strategic force exerted by Telstra on Optus' investment in network quality, as compared with the proposed Telstra/TPG arrangements; and

c. increased incentives for Optus to undertake investments in urban fringe and regional areas, because it is able to do so at lower cost than under the proposed Telstra/TPG arrangements.

89. The net effect of these arrangements will ultimately depend upon relevant facts that inform the strength of each of these effects. For present purposes, in contemplating the balance of these considerations:

a. I assume that the effect of TPG exerting an upward strategic force, rather than a downward strategic force, on Optus' investment would be potentially very significant;

such that

b. the combination of the effects described above under a potential Optus/TPG arrangement would likely be to increase Optus' incentives to invest in network quality, relative to either the proposed Telstra/TPG arrangement or the status quo.

90. [redacted]

5.2.3 Competitive effects on Telstra's conduct

91. The proposed Telstra/TPG arrangement would be likely to increase Telstra's ability to invest in network quality but the effect on its incentive to invest is unclear, as compared with the circumstances prevailing under a potential Optus/TPG arrangement. I explain the basis for this opinion below.

92. I assume that the proposed Telstra/TPG arrangement would:

a. increase Telstra's network quality, thereby widening the network quality differential between it and Optus; and

---

[redacted]

b. offer Telstra the ability to undertake investment in new and better mobile services in the defined coverage area and remote areas at lower cost than it could under either the status quo or a potential Optus/TPG arrangement.

93. To the extent that the proposed Telstra/TPG arrangement reduces Telstra's costs for investing in better network quality and provides a source of income through access fees and charges from TPG, this would increase Telstra's ability to make these incentives. There is no offsetting effect that would reduce its ability to invest in network quality.

94. However, increases in Telstra's network quality will reduce the incentive for it to invest in the medium to long term, relative to either the status quo or a potential Optus/TPG arrangement, because its enhanced quality advantage over Optus will reduce the strategic force driving Telstra to make investments that differentiate its network quality from that of Optus.

95. This effect is likely to be significant because Optus is Telstra's closest and most significant competitor. I agree with Mr Feasey that, compared to TPG, *'…Optus' network represents a much greater competitive constraint on Telstra in the relevant area.'*[42]

96. Acting to offset this incentive is the prospect that Telstra may be able to undertake investment at lower cost in the defined coverage area and remote areas, which would be expected to increase its ability and incentive to make such investments.

97. The application of 'in principle' economic reasoning is not able to discern the relative magnitude of these effects on Telstra's incentives, and there are insufficient facts available to me at this time to inform the balance of these considerations.

5.2.4 Combined effects on investment and competition

98. In assessing the relative effects of the proposed Telstra/TPG arrangement on the incentives of Telstra and Optus, respectively, to make investments that are expected to be of value to consumers, in my opinion it is likely that the negative effect on investment incentives for Optus will be the more important of the two, because:

a. the reduction in the incentive for Optus to invest under the proposed Telstra/TPG arrangement, as compared with the circumstances prevailing under a potential Optus/TPG arrangement, is clearer for Optus than it is for Telstra; and

b. the investment decisions of Optus play an important role in determining the investment decisions of Telstra, by way of competitive response, so that a reduction in Optus' incentive to invest would be expected to have long term consequences for Telstra's incentive to invest.

99. Given Telstra's scale and importance within the relevant markets, a lessening of the competitive constraint imposed by Optus on Telstra's network quality – with no prospect of any offsetting competitive constraint on Telstra's network quality being imposed by TPG – would be likely to have material consequences for competition.

100. Drawing on these considerations, in my opinion it is reasonable to conclude that medium to longer term competition in the retail and wholesale mobile services markets would be, or would likely be, lessened as a result of the proposed Telstra/TPG arrangement.

101. The nature of this lessening of competition would likely be realised across various geographic regions of the relevant markets. For example:

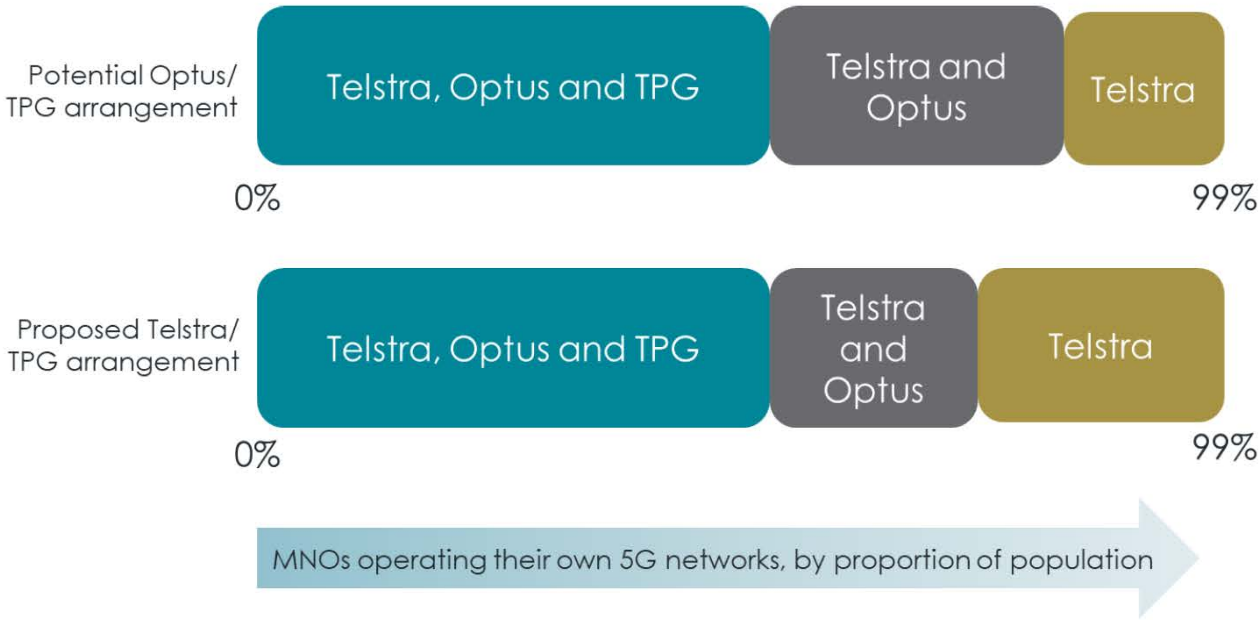
[42] Feasey report, para 115.

a. if Optus undertakes a significant investment in 5G in urban fringe and regional areas, as is likely under either a potential Optus/TPG arrangement or the status quo, then the proportion of Australians with a choice of network provider for the latest mobile technology can be expected to be similar for 5G as it is for 4G; but

b. if Optus undertakes a more limited investment in 5G in urban fringe and regional areas, as is likely under the proposed Telstra/TPG arrangement, then the proportion of Australians with a choice of network provider for the latest mobile technology can be expected to be lower for 5G than it is for 4G.

102. I show these combined effects on the likely outcomes for 5G investment in Australia pictorially, in figure 5.1 below.

Figure 5.1: Likely outcome for 5G investment in Australia



Note: The outcomes and changes shown in the figure are illustrative only.

6. Comparison with Mr Feasey's report

103. Mr Feasey has prepared a report on behalf of Telstra that assesses the competitive effects of the proposed Telstra/TPG agreement.

104. In this section I:

  a. describe Mr Feasey's conclusion and his main reasoning; and

  b. explain why I draw different conclusions to Mr Feasey, as regards:

    i. near to medium term competition; and

    ii. medium to long term competition.

6.1 Mr Feasey's reasoning

105. Mr Feasey concludes that the proposed Telstra/TPG arrangement would not have the effect, or would not be likely to have the effect, of giving rise to a substantial lessening of competition, in any relevant markets because:[43]

  a. Telstra's incentive to invest in its network is not affected by TPG ceasing to operate or develop a network of its own since:[44]

    i. TPG would also cease to operate a network under the counterfactual; and

    ii. the very limited scope of TPG's existing network in the relevant area and TPG's limited ability to expand its network means the competitive constraint provided by the TPG network is insubstantial;

  b. the competitive benefits of sharing the TPG spectrum with Telstra are greater than those of sharing it with Optus under a potential Optus/TPG arrangement;[45]

  c. the proposed Telstra/TPG arrangement has no material effect on TPG or Telstra's incentive or ability to differentiate or innovate because:[46]

    i. the proposed Telstra/TPG arrangement provides TPG with control of its services; and

    ii. Telstra's incentives to differentiate are mostly driven by Optus, not TPG;

  d. there is an increase in competition from TPG entering the segment of the market for customers who value network coverage and quality;[47]

  e. the proposed Telstra/TPG arrangement will alleviate capacity constraints for Telstra, enabling it to expand output and reduce prices;[48] and

[43] Feasey report, paras 112-122.

[44] Feasey report, para 115.

[45] Feasey report, para 116.

[46] Feasey report, paras 117-118.

[47] Feasey report, para 119.

[48] Feasey report, para 120.

f. the proposed Telstra/TPG arrangement will have no effect on the asymmetries in the retail market shares between Telstra and TPG, will not align their costs, and will therefore have no effect on either their incentive or ability to participate in any co-ordinated agreement.[49]

6.2 Near to medium term competition

106. In this section, I explain that Mr Feasey's analysis of competition over the near to medium term assumes that benefits of the proposed Telstra/TPG arrangement for competitors are also benefits to competition, an assumption that is more consistent with perfect competition than with competition on differentiated products.

107. This assumption is an important underpinning of Mr Feasey's conclusion that the proposed Telstra/TPG arrangement would not, or would not be likely to, substantially lessen competition in the relevant markets.

108. In contrast, once the nature of competition on differentiated products is taken into account, the analysis I present in section 4 demonstrates that the proposed Telstra/TPG arrangement would, or would be likely to, lessen competition in the near to medium term in the relevant markets.

6.2.1 Economic framework for analysis

109. Mr Feasey appears to assume that the effect of the proposed Telstra/TPG arrangement on competition results directly from the net effect of the arrangement on individual competitors. He says that competition as a process is improved by the proposed Telstra/TPG arrangement because:[50]

a. the network efficiencies that Telstra and TPG can gain from the proposed Telstra/TPG arrangement;

are greater than

b. the network efficiencies Optus might gain from a potential Optus/TPG arrangement.

110. I note that the framing of Mr Feasey's analysis in terms of the net effects of the proposed Telstra/TPG arrangement on individual competitors runs counter to his statement that:[51]

> …the relevant question for the assessment of a merger is how the transaction will affect the competitive process, or conditions of competition in the market as a whole, and not how it might affect the competitive position of any individual firm.

111. In particular, it could only be expected that the full extent of any network efficiencies would be passed on to consumers in the near term if the market was perfectly competitive.[52] However, Mr Feasey specifically states that competition in the relevant markets takes place on the basis of differences in the services or quality of services that are offered,[53] whereas perfect competition involves firms providing identical products.

112. In my opinion, Mr Feasey's linking of the effect of the proposed Telstra/TPG arrangement on competitors with the effect on competition misses an important conceptual focal point, ie, the manner in which the proposed Telstra/TPG arrangement will affect the degree of differentiation and therefore competition between rivals.

---

[49] Feasey report, para 121. I do not address the question of coordinated effects in this report.

[50] Feasey report, paras 67-69.

[51] Feasey report, para 68.

[52] This sets aside the question of incentives to invest.

[53] Feasey report, para 73.

113. Mr Feasey's approach to conceptualising competition does not explain how, or the extent to which, lower costs or greater capabilities conferred by the proposed Telstra/TPG arrangement on Telstra can credibly give rise to changes in the services that Telstra provides in the relevant market in a way that improves competition. Taken to its logical end point, Mr Feasey's contention would imply that, even if Optus did not exist, the proposed Telstra/TPG arrangement would still improve competition because Telstra and TPG are strengthened as competitors.

114. If Mr Feasey's contention is that improving the competitive position of any one competitor necessarily improves the position of competition as a process, then I disagree. Such a contention appears to conflate the effect of the proposed Telstra/TPG arrangement on *competitors* with the effect of the proposed Telstra/TPG arrangement on *competition*. Mr Feasey himself warns in his report that this is not the correct point of focus for competition analysis.[54]

6.2.2 Likely competitive effects

115. Mr Feasey states that:

a. the competitive benefits of sharing the TPG spectrum with Telstra are greater than the benefits of sharing it with Optus under a potential Optus/TPG arrangement;[55]

b. there is an increase in competition from TPG entering the segment of the market for customers who value network coverage and quality;[56] and

c. the proposed Telstra/TPG arrangement will alleviate capacity constraints for Telstra, enabling it to expand output and reduce prices.[57]

116. First, I describe above that I disagree with the idea that the effects on competition can be assessed by comparing the network efficiencies that arise under the proposed Telstra/TPG arrangement as compared to those that may arise under a potential Optus/TPG arrangement.

117. In contrast, the economic framework I present at section 4 indicates that *the process* by which lower costs or greater productive capabilities may give rise to greater rivalry and improved competition in the short to medium term depends on *the relative degree of differentiation* between MNOs. I explain that because the proposed Telstra/TPG arrangement increases the extent of differentiation between Telstra and Optus, this reduces the closeness and so degree of competition between them. It also reduces the incentives that Telstra might otherwise have to pass on lower costs or greater capabilities to its customers in the form of lower prices and/or better network quality.

118. Second, I agree with Mr Feasey that price competition will be increased by TPG entering the part of the market for customers for whom the provision of 4G and 5G services in the relevant area is important.[58] This reduces the degree of differentiation between Optus and TPG in the short run, increasing competition for the reasons I set out in section 4.

119. However, the proposed Telstra/TPG arrangement will also improve Telstra's network quality, which has a counteracting effect of increasing differentiation and thereby weakening competition with Optus. Mr Feasey does not discuss this effect.

---

[54] Feasey report, para 68.

[55] Feasey report, para 116.

[56] Feasey report, para 119.

[57] Feasey report, para 120.

[58] Feasey report, para 104 (b).

120. Third, the alleviation of any capacity constraints may give Telstra the ability to reduce prices, but Telstra may not have the incentive to do so if it does not face close competitive constraints.

121. As to the *incentive* for Telstra to offer competitive prices on its network, Mr Feasey explains that the competitive constraint on Telstra provided by Optus' investments in its network in the relevant area will be significant under both the proposed Telstra/TPG arrangement and the counterfactual scenario. Mr Feasey goes on to explain that:[59]

> The loss of competition because Optus will not benefit from a network sharing agreement with TPG in the factual is likely to be insubstantial and will in any event certainly be less than the gains in competition arising from the benefits that Telstra will obtain from using the TPG spectrum to alleviate congestion in the factual.

122. By this statement, Mr Feasey again appears to conflate the effects of the proposed Telstra/TPG arrangement on *competitors* with the effects of the proposed Telstra/TPG arrangement on *competition*.

123. The process of competition is promoted by rivalry between firms. Within the framework for competition that I explain at section 4, Telstra's incentive to compete strongly and pass benefits on to consumers depends upon the strength of its rivalry with Optus. This appears broadly consistent with Mr Feasey's view that Optus is Telstra's closest competitor and that Telstra's conduct will be driven by Optus' investments in the relevant area.[60]

124. When considered in totality and having regard to the process of how competition works in the relevant market, I explain in section 4 that the proposed Telstra/TPG arrangement would, or would be likely to, result in a lessening of competition in the relevant markets in relation to its effects on price over the near to medium term, as compared with the circumstances likely to prevail under a potential Optus/TPG arrangement.

6.3 Medium to long term competition

125. Mr Feasey does not set out an economic framework for assessing the incentive for MNOs to invest in network quality in regional areas, but he does comment on the effect of the proposed Telstra/TPG arrangement on the ability and incentive for MNOs to make such investment.

126. The principal difference between my analysis and that of Mr Feasey is that, in section 5.2, I examine how the proposed Telstra/TPG arrangement would affect both Telstra's and TPG's network quality, thereby affecting Optus' incentive to invest in order to improve its network quality. Mr Feasey does not examine this relationship. Our different analysis of Optus lead to different conclusions as regards Telstra's incentives to invest.

6.3.1 Competitive effects on TPG's conduct

127. Mr Feasey states that TPG's network will be decommissioned under any alternative network sharing scenario, whether with Telstra or Optus.[61] Similarly, I assume that there is no realistic prospect of TPG undertaking substantial investment in its own network in urban fringe or regional areas under either the proposed Telstra/TPG arrangement or a potential Optus/TPG arrangement.

128. It follows that the proposed Telstra/TPG arrangement has no effect on TPG's incentive to invest in network quality in the defined coverage area.

[59] Feasey report, para 72(b).

[60] Feasey report, para 70.

[61] Feasey report, para 64.

6.3.2 Competitive effects on Optus' conduct

129. Mr Feasey states that Optus' incentive and ability to invest in and improve its network will not be diminished by the proposed Telstra/TPG arrangement. He states that:[62]

> …I consider that Optus' capacity to invest in and improve its network in the relevant area in order to compete effectively with Telstra, as it has done to date, will persist in both the factual and counterfactual scenarios and that its incentive to invest in order to meet competition from Telstra and TPG post-transaction would not diminish either.

130. In a footnote to this paragraph, Mr Feasey says:[63]

> I do not think it appropriate or necessary to consider the second-order responses to the agreement in this assessment and my conclusions do not depend on any assumptions about how Optus would compete.

131. By these statements, Mr Feasey appears to be suggesting that:

    a. there is no direct (or first-order) effect of the proposed Telstra/TPG arrangement on Optus' ability and incentives to invest because the arrangement does not involve Optus; and

    b. he does not think it is appropriate to consider the indirect (or second-order) effects of the proposed Telstra/TPG arrangement on the ability and incentives for investment of Optus, including the nature or extent to which the incentives for Optus to invest may be affected by the regional quality offered by its rivals.

132. In section 5 I explain that these indirect effects on Optus' incentives to invest arising from the proposed Telstra/TPG arrangement may be important and on this basis I consider them in this report. Further, a counterfactual involving a potential Optus/TPG arrangement would have direct and important effects on Optus' incentives to invest.

133. In particular, I explain in section 5.2 above that the incentive for Optus to invest may be greater under a potential Optus/TPG agreement, as compared to the proposed Telstra/TPG arrangements, reflecting the balance of the following considerations:

    a. an upward strategic force exerted by TPG on Optus' investment in network quality;

    b. an increased downward strategic force exerted by Telstra on Optus' investment in network quality; and

    c. increased incentives for Optus to undertake investments in urban fringe and regional areas, because it is able to do so at lower cost.

134. Further, Optus' ability to make investments in network quality would increase under an Optus/TPG arrangement, because Optus may be able to make these investments at lower cost and enjoy greater income from access fees and charges on TPG, than under the proposed Telstra/TPG arrangement.

6.3.3 Competitive effects on Telstra's conduct

135. Mr Feasey states that Telstra's incentive to invest in its network in the relevant area is not affected by TPG ceasing to operate or develop a network of its own because:[64]

---

[62] Feasey report, para 69.

[63] Feasey report, footnote 68, p 25.

[64] Feasey report, para 115.

a. TPG would also cease to operate a network in the relevant area under the counterfactual scenarios; and

b. the very limited scope of TPG's existing network in the relevant area and TPG's limited ability to expand its network means the competitive constraint provided by the TPG network is insubstantial.

136. I agree that TPG is not likely to invest in a network in the relevant area under either the proposed Telstra/TPG arrangement or a potential Optus/TPG arrangement. It follows that Telstra's incentive to invest in the relevant area is not directly affected by changes in the strategic force exerted by TPG under the proposed Telstra/TPG arrangement.

137. The difference between my conclusion and those of Mr Feasey with respect to Telstra's incentives to invest arise because Mr Feasey does not consider the indirect effect of the proposed Telstra/TPG arrangement on Optus' incentive to invest.

138. Mr Feasey observes that the primary constraint on Telstra's investment conduct arise from Optus, rather than TPG:[65]

> …any pressure on Telstra to upgrade its own sites to 5G would come primarily from Optus and not from TPG. Overall, this means that even if the counterfactual were to involve TPG retaining its network in the relevant area, the impact of the agreement on Telstra's incentive to invest in its network in the relevant area would be insignificant in itself and when compared to the competitive constraint on Telstra that is imposed by Optus.

139. However, Mr Feasey concludes that Telstra's investment conduct would not be affected by reference to its competition from Optus,[66] since the significance of the competitive constraint imposed by Optus, in terms of its investment conduct, is not affected by the proposed Telstra/TPG arrangement.[67]

140. I agree with Mr Feasey that Telstra's investment is driven by that of Optus.[68] In my opinion, Optus is likely to invest less under the proposed Telstra/TPG arrangement for the reasons set out in paragraph 89 above. It follows that the reduced incentive of Optus to invest will lead to less investment by Telstra in the medium to long term (see section 5.2).

---

[65] Feasey report, para 65.

[66] Feasey report, para 72.

[67] Feasey report, para 69.

[68] Feasey report, para 70.

7. Declaration

141. In accordance with the requirements of the Code:

a. I acknowledge I have read and complied with the code and agree to be bound by it, and that my opinions are based wholly or substantially on specialist knowledge arising from my training, study or experience; and

b. I declare that I have made all inquiries that I believe are desirable and appropriate, and that no matters of significance that I regard as relevant have, to my knowledge, been withheld from the Court.

[redacted]

Greg Houston
28 June 2022

Annexure A – Instructions

MinterEllison.

27 June 2022

BY EMAIL

Greg Houston
HoustonKemp Economists
161 Castlereagh Street
Sydney
NSW 2000

Dear Greg

Instructions – Optus: Effect of Telstra / TPG network sharing arrangement

1. Introduction

1.1 We, together with Herbert Smith Freehills (**HSF**), act for Singtel Optus Pty Ltd (**Optus**) in relation to the proposed multi-operator core network (**MOCN**) commercial arrangement between TPG Telecom Limited (**TPG**) and Telstra Corporation Limited (**Telstra**) (the **Proposed Transaction**).

1.2 On 23 May 2022, TPG and Telstra lodged an application with the Australian Competition and Consumer Commission (the **ACCC**) seeking authorisation in relation to the Proposed Transaction pursuant to section 88 of the *Competition and Consumer Act 2010* (Cth). On 31 May 2022, the ACCC listed the Proposed Transaction on the merger authorisations register and issued a market inquiries letter.[1]

1.3 On behalf of Optus, we are instructed to retain you as an independent expert in relation to the Proposed Transaction to provide your expert opinion based on your knowledge and experience.

2. Scope of Work

2.1 HoustonKemp has experience in matters of this nature and expertise regarding the industry. Having regard to your specialised knowledge, training and expertise, please consider the following matters in relation to the supply of mobile services in Australia (either on a retail or wholesale basis):

(a) Please explain the economic concepts which underpin how competition takes place in the markets for retail mobile services and wholesale mobile services in Australia.

(b) Please explain the way in which the Proposed Transaction can be expected to affect competition in the markets referred to above.

(c) Please review the expert report prepared by Richard Feasey dated 20 May 2022 and identify the extent to which you agree with the conclusions and reasoning which underpin Mr Feasey's report. To the extent you reach different conclusions to those arrived at by Mr Feasey, please explain why that is the case.

3. Background materials

3.1 In preparing your report, we request that you have regard to:

(a) The Application lodged by Telstra and TPG dated 23 May 2022.

(b) The expert report of Richard Feasey dated 20 May 2022.

[1] https://www.accc.gov.au/public-registers/mergers-registers/merger-authorisations-register/telstra-corporation-limited-and-tpg-telecom-limited-proposed-spectrum-sharing

3.2 Any further documents referred to in your report which have been provided to you in the course of this engagement. We request that those additional documents be listed in a schedule to your report.

4. Your duties and responsibilities as an independent expert

4.1 Please find enclosed as **Attachment A** to this letter a copy of the Federal Court's Harmonised Expert Witness Code of Conduct (**Code**). The Code applies to you as an independent expert witness. The Code will be familiar to you. We ask that you read the Code and comply with it when preparing any report for Optus. This includes referring to specific matters addressed in the Code.

Do not hesitate to contact us if you have any questions.

Yours sincerely

[redacted]

Haydn Flack
Partner

[redacted]

Annexure B – Curriculum vitae

Greg Houston

Partner

HoustonKemp Economists
Level 40, 161 Castlereagh St
Sydney NSW 2000
T:
E:

QUALIFICATIONS

1982, B.Sc. (Honours) in Economics, University of Canterbury, New Zealand

PROFESSIONAL ROLES

Competition and Consumer Committee of the Law Council of Australia

Who's Who Legal: Expert in Competition Economics

OVERVIEW

Greg is a founding partner of HoustonKemp. He is an expert in the application of economics to assist high stakes decision-making in competition, finance, policy and regulatory matters.

In the antitrust sphere, Greg is regularly sought to advise on the competitive effects of proposed merger transactions, and to provide expert testimony in antitrust enforcement proceedings. His evidence has been cited favourably in numerous proceedings before the Federal Court, the Competition Tribunal and in the decisions of Australian and international arbitrators. For many years, Greg has been listed by Who's Who Legal as one of the world's leading competition economists. Most recently, Greg was recognised in WWL's Thought Leaders – Competition 2020 for his contributions to competition economics.

On regulatory matters, Greg has played a substantial role in shaping the development of economic regulatory regimes governing communications, energy, transport and water services infrastructure in Australia and the Asia Pacific region. His clients in this area include governments, regulators, infrastructure service providers and trade associations.

Greg is also the foremost expert in the region on the application of economics to critical questions arising in securities class actions, insider trading and market manipulation. He has filed expert reports in numerous proceedings concerning the adequacy and effect of disclosures in relation to listed and unlisted securities, in both Australia and New Zealand. Greg's evidence was accepted in the only two wrongful disclosure matters for which final judgment on substantive elements was informed by economic evidence before the Federal Court.

Greg holds a first class honours degree in economics from the University of Canterbury, and is a member of the Competition and Consumer Committee of the Law Council of Australia.

SELECTED PROJECT EXPERIENCE

Chapman Tripp & DLA Piper/Foodstuffs, 2021

Prepared advice, analysis and expert reports in relation to the New Zealand Commerce Commission's market study of the retail grocery sector. One report examined the empirical evidence on the nature and intensity of competition set out in the Commission's draft report, whilst the other report examined the international comparison of grocery prices undertaken by the Commission.

Ashurst, King & Wood Mallesons/Ovato-Are Media, 2021

Advice and expert reports submitted to the Australian Competition and Consumer Commission and the New Zealand Commerce Commission in relation to attaining clearance in Australia and New Zealand for magazine publisher Are Media to acquire the magazine distribution business of Ovato.

Clayton Utz/Port of Newcastle Operations, 2021

Expert report and evidence given before the Competition Tribunal in the context of its review of the decision by the Australian Competition and Consumer Commission to authorise collective bargaining for port access services by Hunter Valley coal producers.

DBCT Management, 2018-2019

Prepared multiple expert reports submitted to the Queensland Competition Authority's review of the presently declared status of coal handling services provided at the Dalrymple Bay Coal Terminal and whether these satisfy criteria (a) and (b) of the Queensland access regime.

Johnson Winter & Slattery/Ramsay Healthcare, 2017-2019

Prepared expert reports and gave oral testimony in the context of Federal Court proceedings brought by the Australian Competition and Consumer Commission against Ramsay Healthcare in relation to conduct by Coffs Harbour-based surgeons.

Westpac Banking Corporation, 2018

Prepared an expert report, submitted to the Productivity Commission, in response to the draft finding in its banking competition inquiry that each of Australia's banks holds substantial market power.

Wilson Harle/Wilson Parking, 2017-2018

Prepared an expert report submitted in High Court of New Zealand proceedings (settled shortly before trial) brought by the Commerce Commission concerning the competitive effects of an already completed merger transaction in the car parking sector.

King & Wood Mallesons, 2017-2018

Advised a major digital platform service provider on competition matters arising in the Australian Competition and Consumer Commission's digital platforms inquiry, and the development of the news media and digital platforms bargaining code.

Port of Newcastle, 2015-2020

Prepared advice and expert reports submitted to the National Competition Council on matters arising in applying the criteria for declaration under Part IIIA, in the context of applications by Glencore and the NSW Minerals Council seeking recommendation that navigation service be declared, and PNO's application for recommendation that the declaration of services be revoked.

Minter Ellison Rudd Watts/Complete Office Supplies, 2017

Prepared expert reports submitted in High Court of New Zealand proceedings concerning the proposed acquisition of OfficeMax by Platinum Equity injunction..

Minter Ellison/CrownBet, 2017

Prepared expert reports and gave oral testimony in Australian Competition Tribunal proceedings concerning the effect on competition and the public benefits arising from the proposed acquisition of Tatts by Tabcorp.

Bird & Bird/Generic Health, 2016

Expert reports and testimony in Federal Court proceedings concerning the damages arising from infringement of a pharmaceutical patent in relation to a pharmaceutical patent.

Ashurst and Gilbert + Tobin/Confidential client, 2014-2016

Analysis and advice prepared in context of an Australian Competition and Consumer Commission investigation of agreements between a supplier and its major customers that are alleged to harm competition.

Australian Government Solicitor/Commonwealth of Australia, 2014-2015

Expert report on competition and trade in tobacco products, prepared in the context of the World Trade Organisation dispute settlement proceedings concerning Australia's tobacco plain packaging legislation

Corrs/Australian Competition and Consumer Commission, 2013-2014

Expert report filed in the Federal Court on the price effects of an alleged market sharing arrangement in relation to the supply of forklift gas, prepared in the context of proceedings brought against Renegade Gas (Supagas).

Ashurst/BlueScope, 2013-2014

Expert reports submitted to the Australian Competition and Consumer Commission in the context of the clearance of three approved transactions in the domestic steel industry.

Australian Government Solicitor/ACCC, 2013-2014

Analysis and advice prepared in the context of the Australian Competition and Consumer Commission review of the proposed acquisition of petrol retailing sites in South Australia.

Annexure C – Confidential documents referenced

142. This annexure lists the confidential documents to which I refer in this report, ie:

[redacted]

[redacted]

Sydney
Level 40
161 Castlereagh Street
Sydney NSW 2000

Phone: +61 2 8880 4800