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Competitive effects of the proposed Telstra-TPG arrangement

Supplementary expert report of Greg Houston

26 October 2022

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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). 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
2. I have previously prepared a report on the proposed Telstra/TPG arrangement (first Houston report or my first report).² This supplementary report should be read in conjunction with my first report, which includes details as to both my relevant experience and qualifications, and my acknowledgement and agreement to the terms of the Federal Court's Harmonised Expert Witness Code of Conduct (the Code).³
3. Minter Ellison has provided me with public versions of three expert reports, being:
 - a. a supplementary report prepared by Richard Feasey (supplementary Feasey report);⁴
 - b. a report prepared by Jorge Padilla of Compass Lexecon (Padilla report);⁵ and
 - c. a report prepared by Emma Ihaia of Link Economics.⁶
4. Minter Ellison has instructed me:⁷
 - a. to address the matters raised in the supplementary Feasey report and the Padilla report, insofar as they relate to the questions asked of me in Minter Ellison's letter of 27 June 2022 and the opinions set out in my first report; and
 - b. to identify any changes in the opinions expressed in my first report and, to the extent required, the reasons for any such changes.
5. In preparing my report, I have again 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.
6. I have structured my report as follows:
 - a. in section two I summarise the framework I applied in my first report and extend it in light of some observations by Mr Feasey;
 - b. in section three I identify two significant matters in relation to which Mr Feasey has mischaracterised statements in my first report;

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

² Houston, G, *Competitive effects of the proposed Telstra-TPG arrangement*, June 2022 (hereafter, first Houston report).

³ First Houston report, paras 9-13.

⁴ Feasey, R, *Expert report on the submissions of Optus and their experts in relation to the assessment of the competitive effects of the Telstra/TPG Telecom regional MOCN agreement*, July 2022.

⁵ Padilla, J, *Competitive assessment of the proposed TPG/Telstra sharing agreement*, July 2022 (hereafter, Padilla report).

⁶ Ihaia, E, *Public benefits and detriments from Telstra-TPG network sharing agreement*, July 2022.

⁷ Minter Ellison, *Instructions – Optus: Effect of Telstra/TPG network sharing arrangement*, 24 October 2022. I attach a copy of my instructions as Annexure A.

- c. in section four I explain why, in my opinion, the evidence is not sufficient to draw some of the conclusions set out in Mr Feasey's supplementary report;
- d. in section five I respond to comments on my first report from Dr Padilla;
- e. in section six I present my conclusions; and
- f. section seven contains my declaration, in accordance with the Code.

2. Framework for analysing competitive effects

7. In this section I summarise the framework I set out in my first report, note that Mr Feasey and I appear to agree on the use of that framework and extend my previous analysis in light of some observations by Mr Feasey.

2.1 Framework from my first report

8. Competition in the relevant markets takes place on a differentiated product basis.⁸ 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.⁹
9. The dimensions on which competition in the relevant markets principally takes place are:¹⁰
- 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; 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.
10. In the near to medium term, the differentiated Bertrand model of competition is an appropriate framework to apply in examining the competitive effects of the proposed arrangement.¹¹ An important insight of that model is that price competition is greatest and profits lowest when there is less differentiation between the firms in the market.¹²
11. 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 mobile network operators (MNOs).
12. In the medium to long term, MNOs' selection of the level and timing of investment in their network capabilities is likely to depend primarily upon the balance of three considerations, ie:¹³
- a. the strategic force, being the existing and anticipated intensity of competition, which is determined by the similarity in the network capabilities and performance of other MNOs;
 - b. the demand force, being the market demand for network capabilities and performance as reflected in the willingness of customers to pay for those quality attributes; and
 - c. the cost of the investment and the availability of the funds required.
13. I assume that the nature of the demand force is the same as between the proposed Telstra/TPG arrangement and any counterfactual scenario.¹⁴ Accordingly, the medium to long term competitive

⁸ First Houston report, para 26.

⁹ First Houston report, para 26.

¹⁰ First Houston report, para 27.

¹¹ First Houston report, para 38.

¹² First Houston report, para 39.

¹³ First Houston report, para 66.

¹⁴ First Houston report, para 67.

effects (and any associated public benefits) of the proposed Telstra/TPG arrangement should be assessed by reference to:¹⁵

- 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.

2.2 Apparent agreement on the appropriate framework

14. Mr Feasey appears largely to adopt the framework described in my first report, including its distinction between the principal means by which competition takes place in the near to medium term, and that over the medium to long term.¹⁶ Dr Padilla applies a similar framework, but adds an assessment of the 'direct effect' on the quality of service offered by the parties to an arrangement, ie, the immediate improvement in quality from customers being switched to a better network.¹⁷
15. The ACCC also applies a similar framework, giving separate consideration in its statement of preliminary views to competition between MNOs:
 - a. in the short run, on the basis of price and inclusions, which is heavily influenced by the degree of differentiation between the quality of the service offered by MNOs;¹⁸ and
 - b. over the long term, on the basis of infrastructure, which determines the extent of differentiation between MNOs.¹⁹
16. In relation to near to medium term competition, Mr Feasey appears to agree with the implications of the framework for the matters that need to be considered.²⁰
17. As to medium to long term competition, Mr Feasey:
 - a. appears to agree as to the relevance of one of the two forces I describe as driving competition, ie, the strategic force, which recognises the incentive for firms to become more differentiated so as to weaken price competition;²¹ but
 - b. makes no observation as to the relevance of the other two forces that I identified as affecting MNOs' selection of the level and timing of investment in their network capabilities, ie:²²
 - i. the demand force, being the demand for network capabilities and performance as reflected in the willingness of customers to pay for them; and

¹⁵ First Houston report, para 67.

¹⁶ Supplementary Feasey report, para 34. Mr Feasey describes mobile services as being differentiated. See, for example: Supplementary Feasey report, paras 10, 13, 24, 37 and 39.

¹⁷ Dr Padilla considers the direct effect of the proposed Telstra/TPG arrangement in section 5 of his report. See: Padilla report, paras 5.3-5.32.

Dr Padilla considers medium to long term competition on quality later in section 5 of his report. See: Padilla report, paras 5.33-5.56.

Dr Padilla considers the unilateral effect of the proposed Telstra/TPG arrangement on prices in section 6 of his report. See: Padilla report, paras 6.1-6.62. This includes a description of competition on prices similar to my own, ie, Dr Padilla states that 'Where a firm faces competitors with products that are closer substitutes to its own, the greater is the firm's incentive to set lower prices'. See: Padilla report, para 6.15.

¹⁸ ACCC, *Telstra Corporation Limited and TPG Telecom Limited – Application for merger authorization MA1000021*, Statement of preliminary views, September 2022, paras 3.1, 3.6 and 5.33-5.40.

¹⁹ ACCC, *Telstra Corporation Limited and TPG Telecom Limited – Application for merger authorization MA1000021*, Statement of preliminary views, September 2022, paras 3.1 and 5.41-5.61.

²⁰ Supplementary Feasey report, paras 37 and 40.

²¹ First Houston report, para 64. Supplementary Feasey report, paras 39 and 89.

²² First Houston report, para 66.

- ii. the cost of the investment and the availability of the funds required.

2.3 Difference between Optus and TPG's services

18. In my first report, I indicated that the proposed Telstra/TPG arrangement will cause TPG's service to become more similar to that of Optus, due to TPG's improved network coverage and performance in the defined coverage area. I also stated that, in the near to medium term, this effect would be expected to increase the closeness of competition between Optus and TPG, as compared with the counterfactual scenario.²³
19. In contrast, Mr Feasey states that he is not able to conclude with certainty whether TPG would be a closer or more distant competitor to Optus as a result of the proposed Telstra/TPG arrangement, relative to the counterfactual of a potential Optus/TPG arrangement.²⁴
20. I acknowledge that, on the information available to me, it is not possible to conclude whether Optus and TPG would be more similar under the proposed Telstra/TPG arrangement, or the potential Optus/TPG arrangement. This depends on the quality of the service that would be provided by Optus and TPG immediately after the proposed Telstra/TPG arrangement, or a potential Optus/TPG arrangement.
21. I accept that, in the near to medium term, the proposed Telstra/TPG arrangement may or may not increase the closeness of competition between Optus and TPG.²⁵ Rather, on the information available to me, the magnitude of this effect remains uncertain and depends on the extent to which TPG's quality improves under both arrangements, and Optus' under a potential Optus/TPG arrangement.

2.4 Extension of my analysis using this framework

22. Mr Feasey states that my application of the framework for assessing competition did not consider competition between the parties to the potential arrangements themselves, ie:²⁶
 - a. the extent of competition between Telstra and TPG under the proposed Telstra/TPG arrangement; or
 - b. the extent of competition between Optus and TPG under a potential Optus/TPG arrangement.
23. I acknowledge that my analysis did not explicitly incorporate this consideration, but note that the competitive effects to which it gives rise are uncertain.
24. First, in the medium to long run, the parties to a network sharing arrangement of the form proposed by Telstra/TPG²⁷ cannot be expected to compete on network quality within the area in which the agreement applies – because either:
 - a. one of the two parties is likely to control investment in that area; or
 - b. both parties must agree on investment in that area.
25. It cannot therefore be expected that there will be a material degree of medium to long term competition between the parties for services provided in the area over which the network and all related investment decisions are being shared. This conclusion applies to the relevant parties under

²³ First Houston report, paras 50-51.

²⁴ Supplementary Feasey report para 46.

²⁵ First Houston report, para 51.

²⁶ Supplementary Feasey report, para 40.

²⁷ I understand that some forms of network sharing arrangement can provide for the parties to differentiate their investment decisions and so network quality in the relevant coverage area, in which case there may be a degree of competition on network quality.

either the proposed Telstra/TPG arrangement or, depending on its form, a potential Optus/TPG arrangement.

26. Second, in the near to medium term, the effect of a network sharing arrangement on competition between the parties to the arrangement will depend on the balance between two considerations, ie:
- a. the effect of the arrangement on the degree of differentiation between the products offered by the network sharing partners – competition in the near to medium term is strengthened if firms provide a more similar product;²⁸ and
 - b. the level and structure of charges for network sharing and the influence this has on the incentive and ability of the parties to the network sharing arrangement to compete with one another.²⁹
27. The second of these effects is likely to weaken competition between the parties to an arrangement because:
- a. a wholesale charge levied on TPG by Telstra would be expected to reduce TPG's incentives to compete to win customers, as compared to the status quo, because TPG would need to pay Telstra some additional wholesale charges when a customer switched to TPG; and
 - b. a wholesale charge earned by Telstra from TPG would be expected to reduce Telstra's incentives to win customers from TPG, as compared to the status quo, because Telstra would lose revenue received from TPG when a customer switched from TPG to Telstra; while
 - c. a similar competition weakening effect can be expected to apply to charges levied on TPG and earned by Optus under the counterfactual of a potential Optus/TPG arrangement, the magnitude of which will be influenced by:
 - i. the quantum of the relevant charges;
 - ii. the scale of the coverage zone to which a potential Optus/TPG arrangement was to apply; and
 - iii. the share of Optus customers in that coverage zone relative to that of Telstra in the regional coverage zone.
28. Mr Feasey also identifies these effects when he describes competition between parties to a network sharing arrangement.³⁰
29. I do not have sufficient information to draw any conclusion as to the likely net effect of these considerations for competition between the parties under either the proposed Telstra/TPG arrangement or the counterfactual. Taking account of this consideration therefore has no certain effect on the conclusions I draw in my first report.

²⁸ Mr Feasey recognises the importance of this too. See: Supplementary Feasey report, paras 44 and 47.

²⁹ Mr Feasey agrees this is relevant and is principally a factual question. See: Supplementary Feasey report, paras 45, 51 and 52.

³⁰ Mr Feasey discusses whether TPG's ability to compete with Telstra will be affected by the wholesale payments that TPG will be making to Telstra under a network sharing agreement (similar to the second effect I describe in paragraph 26). See: Feasey supplementary report, para 51.

Mr Feasey discusses whether Telstra receiving wholesale charges from TPG will reduce Telstra's incentive to compete with TPG (the second effect I describe in paragraph 26). See: Supplementary Feasey report, para 49.

Mr Feasey says that TPG and Telstra sharing a network would reduce the differentiation between them, increasing price competition (the first effect I describe in paragraph 26). See: Supplementary Feasey report, para 47.

3. Mischaracterisations of my first report

30. Two observations made by Mr Feasey mischaracterise the assumptions, analysis or opinions set out in my first report. I describe these below.

3.1 Choice of the counterfactual

31. In my first report I made assumptions about the counterfactual scenario for the purpose of assisting to identify the essential distinctions in the economic propositions by which Mr Feasey and I conceptualise the nature of competition and its outcomes.³¹

32. Mr Feasey characterises my use of one of his assumptions as to the counterfactual as indicating that I:³²

...favour network sharing with Optus.

33. This misstates my position on the counterfactual, on which I have taken no view.

3.2 Role of the strategic force

34. Mr Feasey expresses some reservations about the framework I adopted for assessing medium to long term competition, stating that he is:³³

...not sure economic theory offers a very good insight...

into the way in which, in his experience, mobile operators make business decisions.³⁴

35. However, Mr Feasey's reservations as to the applicable framework appear to reflect a misapplication or misinterpretation of that framework, rather than any fundamental disagreement with the framework itself.

36. Mr Feasey states that:³⁵

The dominant incentive for mobile operators will invariably be to seek to narrow differences between themselves and the leader

37. On its face, this statement appears to contradict the implications of the assessment framework adopted by me. However, I am uncertain as to whether this represents a point of disagreement between myself and Mr Feasey because:

- a. I agree that mobile operators will always be seeking to make network improvements, which is a response to a combination of the demand force exerted by customers and reductions in costs (holding quality constant) over time – but Mr Feasey makes no observation on the role of these two forces under the framework for competition; and

³¹ First Houston report, paras 22 and 23.

³² Supplementary Feasey report, para 16.

³³ Supplementary Feasey report, para 89.

³⁴ Supplementary Feasey report, para 89.

³⁵ Supplementary Feasey report, para 91.

- b. my analysis of the incentives for mobile operators to differentiate on network quality was based on an assessment of the strategic force while holding the demand force constant – since I assumed that the demand force would not be affected by the proposed arrangement.³⁶
38. In my opinion, it is helpful for clarifying the basis for any framework-related disagreement in relation to the competition analysis to hold the demand force constant. If there were no strategic force encouraging service differentiation so that incentives to invest were determined only by the demand and cost forces, all MNOs could be expected to offer the same or similar network quality. However, such an outcome is very different from that which can be observed in relation to the mobile network services offered by Telstra, Optus and TPG.

³⁶ First Houston report, para 67.

4. Insufficient basis for Mr Feasey's conclusions

39. The principal difference between my competition assessment and that of Mr Feasey is in the direction and magnitude of each of the effects I have identified. In this section I describe why, in my opinion, the evidence is not sufficient to draw some of the conclusions presented by Mr Feasey in his supplementary report.

4.1 Importance of the defined coverage area

40. In setting the context for his conclusion, Mr Feasey observes that the proposed Telstra/TPG arrangement relates only to the provision of services in the defined coverage area and emphasises the importance of this for the competitive assessment.³⁷ He states that:

...any effects of the transaction will relate to the provision of services in an area in which a relatively small proportion (17%) of the Australian population live and which represents a relatively small part, in coverage terms, of Telstra's national network.³⁸

41. I disagree with this framing of the competition analysis.
42. Near to medium term competition on prices takes place on a national basis and so the competition effects of service quality changes in the defined coverage area will be translated into nation-wide price outcomes. However, this should not be taken to imply that those effects are insubstantial. The existence of national pricing does not change the extent to which the proposed Telstra/TPG arrangement may give rise to competition effects, but rather magnifies the number of consumers who may experience them, while also dampening their quantum if expressed in per consumer terms.
43. In the medium to longer term, competition on quality may take place by reference to regional or local considerations, ie, MNOs can and do make investment decisions at the local level. Nevertheless, the implications of such decisions can be expected to translate into nation-wide competitive effects that reflect the balance of the strategic and demand forces I describe at section 2. I also understand that the costs of, and benefits arising from, potential investments in 5G in the defined coverage area are very substantial, so that changes to those investments may have very significant effects in this area and, thereby, beyond.
44. It follows that I do not start from a position that any effects of the proposed Telstra/TPG arrangement on competition must be 'small'.³⁹

4.2 Importance of wholesale revenues

45. In my first report, I identified that wholesale revenues could contribute to an increased ability to invest for:⁴⁰
- a. Telstra, under the proposed Telstra/TPG arrangement; and
 - b. Optus, under a potential Optus/TPG arrangement.

³⁷ Supplementary Feasey report, paras 8-10.

³⁸ Supplementary Feasey report, para 10.

³⁹ Mr Feasey appears to make this assumption, when he says that: '...any effects of the transaction will relate only to a sub-set of Telstra's overall competitive capabilities...' and '...I consider that many of the competitive effects of the transaction – positive or negative – claimed in the Optus submissions are likely to be exaggerated.' Supplementary Feasey report, para 10.

⁴⁰ First Houston report, paras 86 and 92-93.

46. Mr Feasey contends that wholesale revenue from either arrangement would be insubstantial to the conditions of competition.⁴¹ For example, he states that Telstra expects to earn \$1.6 to \$1.8 billion in revenue over the 10 years of the proposed Telstra/TPG arrangement, which is a very small proportion of group and mobile revenue.⁴²
47. I am less confident than Mr Feasey that revenues of this magnitude would be insubstantial to competition. For example, I note that:
- a. these revenues would be earned in relation to the services provided over the defined coverage area, in which a relatively modest proportion of Australians live, work or travel; and
 - b. as a contribution towards profit or net cashflows that are available to invest, the significance of these revenues would be substantially greater than depicted by Mr Feasey in his comparison to gross revenues.
48. Notwithstanding these observations, consideration of these matters should turn on the facts – in particular, the significance of the potential stream of wholesale revenues to the feasibility and/or profitability of potential investment plans.
49. Mr Feasey does not refer to any such analysis and, accordingly, does not have a sufficient basis to draw his conclusion as to the insubstantiality of wholesale revenues for the conditions of competition.

4.3 Price competition between Optus and TPG

50. Mr Feasey is confident that the effect of the proposed Telstra/TPG arrangement on price competition between Optus and TPG is unlikely to be very substantial, whatever its direction.⁴³ Whilst I agree that the direction of the effect is uncertain, Mr Feasey's report does not include any explanation as to why the magnitude of the effect is likely to be small.
51. In my opinion, the magnitude of this effect depends upon:
- a. the change in the difference in quality levels between Optus and TPG;⁴⁴ and
 - b. the extent of competition between Optus and TPG under a potential Optus/TPG arrangement, which depends on the facts set out in section 2.4.
52. An assessment of the magnitude of each of these effects, and their net effect, depends upon the facts, such as those that I describe in section 2.4 in relation to the extent of competition between Optus and TPG under a potential Optus/TPG arrangement.
53. Mr Feasey does not refer to any such analysis and, accordingly, does not have a sufficient basis to draw any conclusion as to the magnitude of these effects.

4.4 Price competition between Telstra and TPG

54. Mr Feasey contends that competition between Telstra and TPG will be the 'dominant' effect in terms of price competition outcomes under the proposed arrangement⁴⁵ and that:⁴⁶

⁴¹ Supplementary Feasey report, para 50.

⁴² Supplementary Feasey report, footnote 69, p 22.

⁴³ Supplementary Feasey report, para 46.

⁴⁴ See framework at section 2.1 above.

⁴⁵ Supplementary Feasey report, para 71.

⁴⁶ Supplementary Feasey report, para 47.

I think it is clear that TPG will be a significantly closer competitor to Telstra under the merger than if sharing a network with Optus.

The increase in the pricing constraint which TPG imposes on Telstra as a result of becoming a materially closer competitor will, in my view, be significant.

55. In my opinion, there is insufficient information for Mr Feasey to draw the conclusion that;
- competition between Telstra and TPG will be stronger under the proposed Telstra/TPG arrangement; or
 - this effect will be greater than the magnitude of other effects on near to medium term competition.
56. Mr Feasey's report does not include any explanation as to the basis for this opinion, aside from stating that TPG will have a similar coverage, quality and availability of 5G services to Telstra in the defined coverage area.⁴⁷
57. I agree that the improvement in the network quality used by TPG in the defined coverage area will mean that TPG is likely to have a more similar service to Telstra than under a potential Optus/TPG arrangement.⁴⁸ However, this observation is not sufficient to draw the conclusion that the effect of the proposed Telstra/TPG arrangement on competition in the near term between Telstra and TPG will be any more significant (or 'dominant') than changes in competition between Optus and TPG, or Optus and Telstra.
58. There is insufficient information for me to draw any conclusion as to either how much more similar the quality level offered by Telstra and TPG will be under the proposed arrangement, relative to a potential Optus/TPG arrangement, or the magnitude of this effect on competition. It depends upon the degree to which:
- TPG's quality level increases under the proposed Telstra/TPG arrangement relative to a potential Optus/TPG arrangement; and
 - the extent to which regional coverage is important for determining overall quality.
59. Further, I describe in section 2.4 that competition between Telstra and TPG will be reduced by the existence of wholesale charges for network sharing, if they are part of the proposed Telstra/TPG arrangement. Together, the direction and size of these effects is unclear, and so the overall effect on competition between Telstra and TPG in the near term is uncertain.
60. Mr Feasey takes the level and structure of charges for network sharing into account when assessing competition between Optus and TPG under a potential Optus/TPG arrangement,⁴⁹ but he does not find this 'persuasive' in relation to the proposed Telstra/TPG arrangement.⁵⁰
61. In my opinion, it is not possible to conclude that this effect would be stronger with one arrangement than another, without considerable detail in relation to the nature of these proposed arrangements.

⁴⁷ Supplementary Feasey report, para 47.

⁴⁸ My reasoning is simply that TPG will become more similar to Telstra because it is sharing part of Telstra's network.

⁴⁹ Supplementary Feasey report, paras 44 and 45.

⁵⁰ Supplementary Feasey report, paras 49-50.

4.5 Incentive for Optus to invest

4.5.1 Strategic effect

62. Notwithstanding his recognition of its presence in the competition framework (which I note at section 3.2 above), Mr Feasey states that he does not agree that the direction of the strategic force is what motivates investment, ie:⁵¹

I would think it more likely that if TPG were to 'leapfrog' Optus in terms of network coverage and quality in the Regional Coverage Zone as a result of the transaction then this would prompt Optus to redouble, rather than reduce, its own efforts to improve the quality of its network in the Regional Coverage Zone.

63. I have not been able to discern any statement of economic principle or other basis in Mr Feasey's report to underpin this proposition.

64. It may be that Mr Feasey considers the demand force is more important than the strategic force, but it is not clear to me how the demand force would be affected by the proposed Telstra/TPG arrangement. In any case, elsewhere Mr Feasey indicates his agreement with the general proposition that firms will seek to differentiate themselves, although I have already noted that this proposition appears to contradict his statement as to the dominant incentive for MNOs to narrow differences between themselves.⁵²

65. More specifically, Mr Feasey says that it is counterintuitive that Optus' conduct could be primarily influenced by TPG, when TPG does not have a network in the defined coverage area.⁵³

66. Under the proposed Telstra/TPG arrangement, TPG will be able to use network capabilities within the defined coverage area that are superior to those of Optus. TPG will also have service quality that is most similar to that of Optus in respect of its regional coverage and capabilities. Since Telstra will become a more distant competitor, it seems reasonable, and far from counterintuitive, to conclude that Optus' conduct would primarily be influenced by TPG. Further, the increased distance between itself and Optus is also likely to mean that Telstra feels less pressure from Optus in terms of its own investment incentives.

67. Mr Feasey notes that Telstra has historically been the strongest influence on Optus' investment decisions.⁵⁴ I disagree with Mr Feasey's implication that the history of competitive interactions, in circumstances with different network quality relativities, is of much if any relevance to considerations of the drivers of competition in the future, subsequent to the proposed Telstra/TPG arrangement.

68. Mr Feasey states that the additional revenues for Optus from an Optus/TPG arrangement would be relatively trivial.⁵⁵ Mr Feasey supports this statement with a comparison of the wholesale revenues that Telstra expects to earn from the proposed Telstra/TPG arrangement as compared to revenues of the Telstra group and its mobile division.⁵⁶

69. In my opinion, Mr Feasey's comparison does not establish that wholesale revenues from either the proposed Telstra/TPG arrangement or a potential Optus/TPG arrangement would be trivial, since:

- a. these revenues would be earned over the defined coverage area, in which a relatively modest proportion of Australians live and work; and

⁵¹ Supplementary Feasey report, para 90.

⁵² Supplementary Feasey report, para 89.

⁵³ Supplementary Feasey report, paras 94(b)-(c).

⁵⁴ Supplementary Feasey report, paras 94(b) and 94(d).

⁵⁵ Supplementary Feasey report, para 101.

⁵⁶ Supplementary Feasey report, fn 69, p 22.

- b. as a contribution towards profit or net cashflows that are available to invest, the significance of these revenues would be substantially greater than depicted by Mr Feasey in his comparison to gross revenues.
70. Mr Feasey says that the more important consideration is the improved network quality that Optus obtains from a potential Optus/TPG arrangement.⁵⁷ I have no information as to how significant this may be.
71. Mr Feasey concludes that Optus' ability to invest in its network would be somewhat but not materially greater under a potential Optus/TPG arrangement than under the proposed arrangement.⁵⁸ In my opinion, Mr Feasey does not refer to sufficient facts to be able to draw this conclusion because he does not set out any details as to the basis of that potential arrangement.

4.5.2 Effect of sharing benefits of investment

72. Mr Feasey notes that under the proposed Telstra/TPG arrangement, the benefit of any investment made by Optus will be retained by Optus itself, whereas under a potential Optus/TPG counterfactual arrangement, Optus would be forced to share the benefit of its investment. He states that I did not consider this fact in my first report.⁵⁹
73. I agree with Mr Feasey that the sharing of benefits might be a factor that would reduce the incentive for Optus to invest under a potential Optus/TPG arrangement. It is also the case that the sharing of costs is a factor that would increase the incentive for Optus to invest under a potential Optus/TPG arrangement.⁶⁰
74. However, to draw any firm conclusion about the relative importance of these factors, as against the importance of the strategic effect that I have identified, it would be necessary to understand the details of a potential Optus/TPG arrangement. The relative importance of this effect is a question of fact that Mr Feasey does not consider. It would depend upon, amongst other things:
- a. the design of a potential Optus/TPG arrangement and the extent to which Optus would be able to retain the benefits of investments that it makes under that arrangement; and
 - b. the importance of the strategic effect under the proposed Telstra/TPG arrangement, in which Optus faces two competitors, each with higher network quality.
75. I note the emphasis that Mr Feasey gives in this aspect of his critique to the views of Optus management, which he says should be given greater weight than economic theory.⁶¹ Applying this same principle to the question of investment would lead to the conclusion that Optus would reduce its investment under the proposed Telstra/TPG arrangement.⁶²

⁵⁷ Supplementary Feasey report, para 102.

⁵⁸ Supplementary Feasey report, para 104.

⁵⁹ Supplementary Feasey report, para 94(e).

⁶⁰ The effect on incentives arising from the sharing of benefits between parties under a potential Optus/TPG arrangement would likely be substantially offset by the effect on incentives arising from the sharing of costs between those parties. This follows from assumptions as to the sharing of benefits and costs within an arrangement, which I describe in more detail at section 6.2 in relation to Telstra's incentives to invest.

⁶¹ Supplementary Feasey report, para 94(d).

⁶² In my first report I noted that Optus board papers indicate a large reduction in the net present value of investing in 5G in urban fringe and regional areas due to the proposed Telstra/TPG arrangement. First Houston report, para 90.

5. Dr Padilla's report

76. In this section I review the comments made by Dr Padilla in relation to my first report, in which he appears to draw two main conclusions, ie:
- a. Dr Padilla considers it 'unlikely' that the proposed Telstra/TPG arrangement will lead to Optus investing less;⁶³ and
 - b. Dr Padilla does not consider that the proposed Telstra/TPG arrangement will lead to a greater quality difference between Telstra and Optus and weaken the near to medium term constraint on Telstra.⁶⁴
77. I set out below why the first of these conclusions derives from a misapplication of the economic framework I have adopted, and why the available evidence is insufficient to draw Dr Padilla's second conclusion.

5.1 Misapplication of the economic framework

78. Dr Padilla considers it is 'highly unlikely' that Optus might respond to the proposed Telstra/TPG arrangement by choosing to limit its investment with the:⁶⁵

...hope of reducing the price competition it faces.

79. Dr Padilla gives two reasons for this opinion, ie:⁶⁶
- a. Optus enjoys a price premium over TPG, which likely reflects its investments in a high quality network. Optus is well positioned to continue to supply a high quality service, and if it were to reduce its investment Optus would forgo its price premium and so the most valuable customers in the market; and
 - b. Optus would not have the price-sensitive end of the market to itself by limiting its investment. Optus would be left competing in the segment of the market where competition is most intense if it were to focus solely on price-sensitive customers.
80. First, economic expertise alone does not assist with understanding what Optus may 'hope' to do. Rather, in economics, the usual governing assumption is that firms aim to maximise their profits – an assumption that I have adopted in relation to Optus in any circumstance. In my first report, I comment on the various factors that affect those profits, and how they may be affected by the proposed Telstra/TPG arrangement.

5.1.1 Giving up on a price premium is a mischaracterisation of the economic framework

81. Dr Padilla appears to imply that Optus can choose a level of investment such that it is either at the price-sensitive end of the market (low quality), or the premium end (high quality).

⁶³ Padilla report, para 2.5.

⁶⁴ Padilla report, para 6.23.

⁶⁵ Padilla report, para 5.55.

⁶⁶ Padilla report, para 5.55.

82. I assume that there is a spectrum of investment levels and timing that are available to MNOs.⁶⁷ This is consistent with documents from Optus that contemplate different levels and speeds of investment in 5G,⁶⁸ and my experience more generally of firms making investment decisions.
83. Accordingly, in my opinion, Dr Padilla is incorrect to characterise the choice available to Optus as being to offer either high quality services (and earn high profits) or low quality services (and earn low profits).⁶⁹ All firms would choose the high quality, high profit option if that really were the situation, and those profits would not be likely to be competed away.
84. Rather, in my opinion, the effect of the proposed Telstra/TPG arrangement on investment can best be examined by reviewing how the arrangement changes the various forces affecting the choice of investment by an MNO, with the assumption that the MNO has flexibility to choose any investment level and timing.
85. Dr Padilla implies that having a high quality network leads to higher prices and so it is unlikely that Optus would want to forgo these high prices.⁷⁰ I agree that an MNO with a higher quality network is likely to be able to charge higher prices, but this does not imply that such a strategy would allow the MNO to earn greater profits.
86. In my opinion, the degree to which better quality leads to higher prices depends upon:
- a. the quality level of rivals – the strategic force means that competition is greater when rivals have a more similar quality level, and greater competition will put pressure on prices to fall (or not rise as much as quality increases);⁷¹ and
 - b. the demand effect – the closer a firm's quality level is to that which more customers want, the greater is demand and the higher will be prices for services that best satisfy that demand; this means, for example, that I would expect prices to increase by less as a firm increased its quality level away from what customers wanted.
87. The profitability of different quality levels depends on the revenues that can be earned and the cost of making the investments required.⁷²
88. Dr Padilla contends that Optus would not want to give up its price premium.⁷³ However, this price premium is not static. The proposed Telstra/TPG arrangement increases the quality level for TPG, relative to the current situation, which is likely to diminish Optus' price premium.
89. In my opinion, the effect of the proposed Telstra/TPG arrangement can be analysed by considering its effect on each of the forces I describe in paragraph 12. It follows that I do not agree with Dr Padilla that Optus would not want to reduce investment levels because it would give up its price premium. Rather the effect of the proposed Telstra/TPG arrangement on investment can only be determined by examining how it would affect the different forces driving investment levels.⁷⁴

⁶⁷ First Houston report, paras 27 b and 60.

⁶⁸ Optus, *Regional 5G network strategy*, draft ExCo paper, 25 June 2022; and Optus, *Optus 5G business case*, Board paper, 24 July 2020, p 3.

⁶⁹ Dr Padilla implies that the choice is high quality and high profits, or low quality and low profits when he says that Optus would forgo a price premium if it reduced its quality, and he says that Optus would be left competing in the segment of the market where competition is most intense if it were to focus solely on price-sensitive customers. Padilla report, para 5.55.

⁷⁰ Padilla report, para 5.55 a.

⁷¹ First Houston report, paras 63-67.

⁷² First Houston report, para 66.

⁷³ Padilla report, para 5.55.

⁷⁴ I undertake this assessment in my first report. First Houston report, paras 55-102.

5.1.2 Economic framework focuses on the change to incentives

90. It is not my opinion that Optus would '...have the price sensitive end of the market to itself...' or that Optus would 'focus solely on price-sensitive customers...'.⁷⁵ I assume that Dr Padilla means there will be competition at the price sensitive end of the market, and so choosing that end will not be profitable for Optus.
91. I set out above that I do not view Optus' choice to be binary, between high and low quality. Rather, I assess the change in the incentives to invest between the proposed Telstra/TPG arrangement and a potential Optus/TPG arrangement.
92. There are a number of mobile virtual network operators (MVNOs) present in both of those situations, whom I assume are competing at the price sensitive end of the market. One of the key differences between the factual and counterfactual is the relative quality level of Optus and TPG. This changes the strategic force operating on the incentive to invest for Optus, ie:
- a. under a potential Optus/TPG arrangement, I assume that Optus would have a higher quality level than TPG and so investment by Optus that falls outside the scope of its arrangement with TPG and thereby increases the quality of its own network would weaken the extent to which it competes with TPG; whereas
 - b. under the proposed Telstra/TPG arrangement, I assume that Optus would have a lower quality level than TPG and so investment by Optus would strengthen the extent to which it competes with TPG.
93. This change in the strategic force reduces the incentive for Optus to invest under the proposed Telstra/TPG arrangement. The fact that there are competitors at the price sensitive end of the market does not affect this analysis because they exist in both states of the world.

5.2 Insufficient basis for Dr Padilla's conclusions

94. Dr Padilla contends – in contrast to the conclusion drawn by me – that the proposed Telstra/TPG arrangement would not create a greater quality difference between Telstra and Optus and thereby weaken the near to medium term constraint on Telstra's prices.⁷⁶ He provides three reasons, contending that:⁷⁷
- a. my analysis does not consider the likely changes in quality-adjusted prices and the resulting effect on rivals' prices;
 - b. my analysis focuses only on competition between Optus and Telstra; and
 - c. competition is likely to be stronger by lifting TPG's coverage up between that of Optus and Telstra than by leaving TPG with the worst coverage.
95. I explain below why I do not agree with these reasons, each of which relies upon assumptions for which there is no evidence.
96. First, Dr Padilla essentially states that:
- a. TPG's coverage would increase by significantly more under the proposed Telstra/TPG arrangement than a proposed Optus/TPG arrangement;⁷⁸

⁷⁵ Padilla report, para 5.55.

⁷⁶ Padilla report, para 6.23.

⁷⁷ Padilla report, para 6.23.

⁷⁸ Padilla report, para 6.23 a i.

- b. Telstra's quality would not be improved by much from the proposed Telstra/TPG arrangement;⁷⁹ and
- c. Optus' quality may not increase by much under a potential Optus/TPG arrangement.⁸⁰

97. Dr Padilla is less than firm in stating some of these conclusions. For example, he states⁸¹

It is not clear by how much the Counterfactual might impact Optus' quality.

98. In my opinion, on the information that is presently available to me there is not a sufficient basis to say by how much the network quality of each MNO will change under the proposed Telstra/TPG arrangement, or a potential Optus/TPG arrangement.

99. Even under Dr Padilla's assumptions, it would remain the case that:

- a. the proposed Telstra/TPG arrangement involves a higher quality of coverage for Telstra in the near to medium term than under any potential Optus/TPG arrangement; and
- b. a potential Optus/TPG arrangement involves a higher quality for Optus in the near to medium term than under the proposed Telstra/TPG arrangement.

100. It must follow that the difference in quality between Telstra and Optus with the proposed Telstra/TPG arrangement is larger than under a potential Optus/TPG arrangement. Competition in the near to medium term between Telstra and Optus will therefore be reduced – the only question is the significance of this change.

101. Second, Dr Padilla states that I have focused '...on only competition between Optus and Telstra.'⁸² On the contrary, I have now explicitly considered competition between each pair of firms.

102. Third, in Dr Padilla's opinion, competition is likely to be stronger by lifting TPG's coverage up between that of Optus and Telstra, than by leaving TPG with the worst coverage.⁸³ I presume this relates to competition in the near to medium term. Dr Padilla gives four reasons, ie:⁸⁴

- a. the proposed Telstra/TPG arrangement would increase TPG's 4G coverage so as to be much closer to Telstra than Optus' current coverage, increasing competitive pressure on Telstra while, on the other hand, the increase in Optus' quality under a potential Optus/TPG arrangement 'may be limited';
- b. while TPG would gain a coverage advantage over Optus, Optus scores better than TPG and Telstra on other quality metrics, which can be expected to be the primary driver of competition;
- c. the proposed Telstra/TPG arrangement would not substantially increase the perception of Telstra's quality; and
- d. the increased capacity in regional areas under the proposed Telstra/TPG arrangement may also lead to additional capacity being provided to MVNOs.

⁷⁹ Padilla report, para 6.23 a ii.

⁸⁰ Padilla report, para 6.23 a iii.

⁸¹ Padilla report, para 6.23.

⁸² Padilla report, para 6.23 b.

⁸³ Padilla report, para 6.23 c.

⁸⁴ Padilla report, para 6.23.

103. Some of these reasons are the same as those I consider in paragraph 96 above. For the reasons I set out there, the difference in the quality between Telstra and Optus with the proposed Telstra/TPG arrangement is greater than under a potential Optus/TPG arrangement. It follows that:
- a. competition on prices in the near to medium term will be weaker because of the greater differentiation between Telstra and Optus; and
 - b. the incentive for Telstra to invest is reduced, because Optus is a more distant competitor and it shares the benefits and cost of new investment with TPG.⁸⁵
104. I am unable to discern the basis for Dr Padilla's conclusion in his second point that competition on other metrics (not coverage) can be expected to be the primary driver of national prices.⁸⁶ I am also not able to say how the offers made to MVNOs would be different under the proposed Telstra/TPG arrangement, or a potential Optus/TPG arrangement.
105. It follows that I do not agree with Dr Padilla that my 'concerns are misplaced' as regards to the near to medium term constraint on Telstra.⁸⁷
106. In summarising, Dr Padilla also suggests that I have understated the direct benefits to consumers from the proposed Telstra/TPG arrangement.⁸⁸ My analysis focuses on changes to competition, rather than benefits to consumers. I assume that TPG's consumers will benefit from a better quality service under the proposed Telstra/TPG arrangement but, on the other hand, they are likely to be required to pay more for that higher quality service.
107. I am unable to draw any conclusion as to whether this may be a net benefit because it depends on consumers' preferences and how much they would be prepared to pay for a higher quality service. However, it does seem likely that consumers who most value regional coverage are not presently customers of TPG.

⁸⁵ I assume that investments reflect expected benefits that meet or exceed expected costs, and that the proposed Telstra/TPG arrangement provides for sharing of both the benefits and the costs of new investment on a similar basis.

⁸⁶ Padilla report, para 6.23 c ii.

⁸⁷ Padilla report, para 6.23.

⁸⁸ Padilla report, para 6.24.

6. Conclusion

108. In this section I provide my conclusion as to whether the expert reports I have reviewed cause me to change the opinions expressed in my first report and, to the extent required, the reasons for any such changes.
109. I remain of the opinion that the economic framework I set out in my first report is appropriate. I have amended the application of my framework in light of several observations by Mr Feasey, such that I have:
- a. added an assessment of competition in the near to medium term between the parties to an arrangement – see section 2.4 above;
 - b. revised my assumption as to whether Optus and TPG would be more similar under the proposed Telstra/TPG arrangement, or the potential Optus/TPG arrangement – see section 2.3 above; and
 - c. added an assessment of how the design of a network sharing arrangement affects the incentive of parties to the arrangement to invest in network quality – see section 4.5.2 above.
110. Drawing on these augmented considerations in the application of my economic framework, I conclude that:
- a. in relation to short to medium competition, I am no longer able to draw a conclusion as to the overall effect of the proposed Telstra/TPG arrangement on price competition; and
 - b. for medium to long term competition, I remain of the opinion that the proposed Telstra/TPG arrangement would:
 - i. lessen Optus' incentive and ability to invest in network quality; while
 - ii. in relation to Telstra, it would:
 1. increase its ability to invest in network quality; but
 2. reduce Telstra's incentive to invest in network quality – because it would have become more differentiated from Optus.
111. I summarise the basis for these conclusions below.

6.1 Near to medium term competition

112. In my first report, I explained that the proposed Telstra/TPG arrangement will reduce the closeness of competition between Telstra and Optus and increase the closeness of competition between Optus and TPG.⁸⁹ I judged that the combination of these effects was such that near to medium term competition in the relevant markets would be, or would be likely to be, lessened as a result of the proposed Telstra/TPG arrangement.⁹⁰
113. In this report, I also consider the extent of competition between Telstra and TPG under the proposed Telstra/TPG arrangement, and the extent of competition between Optus and TPG under a potential Optus/TPG arrangement.

⁸⁹ First Houston report, paras 47-51.

⁹⁰ First Houston report, paras 52-54.

114. The strength of price competition in the near to medium term between Telstra and TPG under the proposed Telstra/TPG arrangement will be:
- increased to the extent that the difference between their network quality lessens, as compared to a potential Optus/TPG arrangement; and
 - reduced due to charges for network sharing and the influence these have on the incentive and ability of Telstra and TPG to compete with one another.
115. The strength of price competition in the near to medium term between Optus and TPG under the proposed Telstra/TPG arrangement will be:
- affected by the difference between their network quality as compared to that under a potential Optus/TPG arrangement, although I am uncertain as to the direction and magnitude of this effect;⁹¹ and
 - increased due to charges for network sharing and the influence these have on the incentive and ability of Optus and TPG to compete with one another under a potential Optus/TPG arrangement.
116. The effect of the additional considerations I have incorporated into this report depend on the facts, such as the level and structure of charges for network sharing under the factual and counterfactual scenarios. These facts are not presently available to me, and so the net effect of these additional considerations is, for now, indeterminate.
117. Consistent with these additional considerations and uncertainties, I am now unable to draw a conclusion as to the overall effect of the proposed Telstra/TPG arrangement on price competition in the near to medium term. At table 6.1 below I summarise the reasons for this opinion and the information that could assist in drawing a more definitive conclusion.

Table 6.1: Near to medium term competitive effects of the proposed Telstra/TPG arrangement relative to a potential Optus/TPG arrangement – summary

	Competition between Optus and TPG	Competition between Telstra and TPG	Competition between Optus and Telstra	Overall effect
Overall conclusion	Uncertain	Uncertain	Reduction in competition ⁹²	Uncertain
Factors	<ul style="list-style-type: none"> Uncertain effect on competition given altered differentiation in quality between Optus and TPG in the factual, relative to the counterfactual. Strengthened competition in the factual, given the level and structure of charges for network sharing applying in the counterfactual. 	<ul style="list-style-type: none"> Strengthened competition due to reduced differentiation in quality between Telstra and TPG in the factual, relative to the counterfactual Weakened competition due to the level and structure of charges for network sharing in the factual, relative to the counterfactual. 	<ul style="list-style-type: none"> Weakened competition due to increased differentiation in quality between Optus and Telstra in the factual, relative to the counterfactual. 	

⁹¹ I have revised my assumption as to whether Optus and TPG would be more similar under the proposed Telstra/TPG arrangement, or the potential Optus/TPG arrangement – see section 2.3 above.

⁹² First Houston report, paras 47-49.

6.2 Medium to long term competition

118. In my first report, I explained that the effect of the proposed Telstra/TPG arrangement on competition depends upon the totality of its effects upon the strategic force, the demand force and the cost of investment.
119. I concluded that the proposed Telstra/TPG arrangement would lessen Optus' incentive and ability to invest in network quality. I noted that this was consistent with analysis by Optus' management that showed it would be profit maximising for Optus to reduce its investment in 5G under the arrangement.⁹³
120. In contrast, I found that the effect of the proposed Telstra/TPG arrangement on Telstra's incentive and ability to invest in network quality was unclear,⁹⁴ and that there was no significant effect on TPG's incentive and ability to invest in network quality.⁹⁵
121. In this supplementary report, I also consider the design of a network sharing arrangement, such as (but not limited to) the level and structure of charges for network sharing, on the incentive of parties to the arrangement to invest in network quality.
122. The effect of the design of the network sharing arrangements on Optus' incentive to invest is that, under a potential Optus/TPG arrangement, Optus would share some of the benefits and the costs of investment in the defined coverage area with TPG. Without more information on the design of that arrangement, I am unable to draw any conclusion as to the direction of this effect. The same applies for Telstra's incentive to invest under the proposed Telstra/TPG arrangement.
123. On a first principles basis, the application of my framework for competition analysis leaves as uncertain the effect that the proposed Telstra/TPG arrangement will exert on the combination of Optus' and Telstra's incentives to invest in network quality, as compared to a potential Optus/TPG arrangement. A determination of the overall effect on competition in the medium to long term will depend upon an assessment of facts that indicate the strength and direction of each of these individual effects on the incentive and ability to invest.
124. On the information presently available to me, as set out in paragraph 119 above, Optus would find it profitable to reduce its investment in network quality in the defined coverage area under the proposed Telstra/TPG arrangement. In light of this, and in the absence of information that suggests otherwise, I remain of the opinion that the proposed Telstra/TPG arrangement would lessen Optus' incentive and ability to invest in network quality.
125. In relation to the direction of the combined effect of the sharing of both benefits and costs between parties to a network sharing arrangement, I assume that under the Telstra/TPG arrangement, while the costs of investment will be shared between the parties (and so be reduced for each of them), the benefits of that investment will also be shared between the parties (and so be reduced for each of them), and that these two effects will largely be offsetting. This means that any increase in incentive for Telstra to invest because costs are shared with TPG will largely be offset by the extent of the reduction in the incentive for Telstra to invest because benefits are shared with TPG.
126. I therefore conclude that the proposed Telstra/TPG arrangement would:
 - a. increase Telstra's ability to invest in network quality; but

⁹³ First Houston report, paras 89-90.

⁹⁴ First Houston report, para 90.

⁹⁵ First Houston report, para 72.

- b. reduce Telstra's incentive to invest in network quality – because it would have become more differentiated from Optus.

127. At table 6.2 below I summarise the reasons for this opinion and the information that could assist in drawing a more definitive conclusion.

Table 6.2: Medium to long term competitive effects of proposed Telstra/TPG arrangement – summary

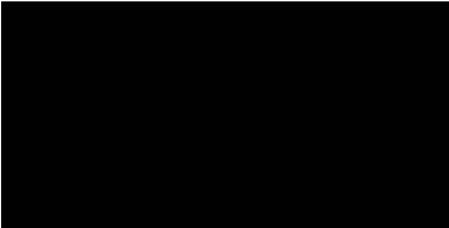
	Optus	Telstra	TPG	Overall effect
Overall conclusion	Reduced incentive and ability to invest	Increased ability, reduced incentive	None	Uncertain
Factors	<ul style="list-style-type: none"> Greater incentive to invest from increased differentiation between quality of Optus and Telstra. Reduce Optus' incentive to invest because TPG has a higher network quality than Optus. Increase in cost of investment, relative to counterfactual, reducing ability to invest for Optus. Increased incentive to invest because benefits of investment are not shared with TPG. Evidence from Optus on its investment plans. 	<ul style="list-style-type: none"> Reduction in incentive to invest because Telstra's quality advantage over Optus increases. Increase in ability and incentive to invest because costs are shared with TPG.⁹⁶ Reduction in incentive to invest because benefits are shared with TPG. 		

⁹⁶ As described above, I assume that benefits and costs are shared equally, and the net benefit of an investment is positive, so that the net benefit of any particular investment is a lower positive amount.

7. Declaration

128. 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.



Greg Houston
26 October 2022



Annexure A: Letter of instructions



24 October 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 refer to our letter of instruction to you dated 27 June 2022 (**June Letter**) and to your report of 28 June 2022 (**June Report**). This letter sets out further instructions regarding the preparation of a supplementary expert report to give consideration to additional materials relevant to this matter.

2. Instructions

2.1 Further to the questions set out in our June Letter, you are instructed to prepare a further written report which:

- (a) addresses the matters raised in:
 - (i) the supplementary report of Richard Feasey dated 25 July 2022; and
 - (ii) the expert report of Dr Jorge Padilla dated 26 July 2022, annexed to the Applicants' response to Optus' interested party submission (Tranche 2) dated 28 July 2022,insofar as they relate to the questions asked of you in our June Letter and the opinions set out in your June Report; and
- (b) identifies any changes in the opinions expressed in your June Report and, to the extent required, the reasons for any such changes.

3. Your duties and responsibilities as an independent expert

3.1 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.

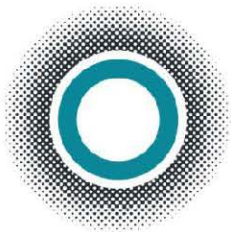
Do not hesitate to contact us if you have any questions.

Yours sincerely



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