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Dear ACCC

Australia Tower Network: MA100021 – Telstra TPG Spectrum Transaction – submission


Australia Tower Network Pty Ltd ACN643 875 165 (ATN) greatly appreciates the opportunity to provide a submission to the ACCC on the Telstra TPG Spectrum Transaction.

ATN understands the ACCC is considering only merger authorisation relating to the use by Telstra of the TPG spectrum, which is deemed to be an acquisition under section 50 of the *Competition and Consumer Act 2010 (Cth) (C&C Act)*. The wider context is that the Applicants have entered into three interrelated agreements (the MOCN Service Agreement, a Spectrum Authorisation Agreement, and a Mobile Site Transition Agreement) and they have asked for the combined impact of these agreements to be considered.

The Radiocommunications Act 1992 (Cth) (Radcomms Act) and the C&C Act have aligned objectives of protecting the long-term public interest and competition. In furtherance of these objectives ATN believes there is an alternative approach to the proposed sharing of TPG spectrum with Telstra. The current market conditions, supported by the regulatory frameworks, already encourage the efficient use of spectrum which then creates a competitive market for telecommunications services for the long-term benefit of end-users. Importantly, recent new entrants into the market for Telecommunications radio access infrastructure, such as ATN, further improve competition by providing access to all major carriers and over 200 business and government customers. For these reasons, it is ATN's submission that the proposed spectrum pooling requires close consideration as it is likely to result in a distortion of mobile telecommunications market that is detrimental to the long-term public interest.

ATN's full submission is set out in the Attachment.

Yours Sincerely,



Cameron Evans
Chief Executive Officer
Australia Tower Network Pty Ltd

Attachment:

Australia Tower Network: MA1000021 – Telstra TPG Spectrum Transaction – submission

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1. Summary of ATN's Submission

ATN is a new but significant strategic investor in digital infrastructure. Within its portfolio, ATN owns and operates in excess of \$1B of wireless sites in rural and regional Australia. ATN is currently building 250 new sites in rural and regional and blackspot areas, representing an investment of \$150M - \$200M to enhance Australia's digital intensity and support further 5G deployment in rural and regional Australia. Although ATN has a mandate to further develop and expand Australia's digital capability, ATN can only invest where there is a market for the infrastructure.

For over 30 years, the Australian telecommunications market has competitively operated with three (3) national MNOs as a foundation. There is a degree of concern that retreating to a 2.5 MNO model, where spectrum and infrastructure for the regional market is concerned, may adversely distort Australia's mobile network market investment dynamics over the medium to long term.

The current market conditions, the regulatory frameworks, and the ACMA's processes used to allocate spectrum result in a carefully considered use of telecommunications spectrum and other assets. ATN believes the proposed spectrum merger requires close consideration, as the recent widespread MNO divestment of mobile network tower infrastructure has fundamentally changed the nature of mobile network deployment and the operating dynamic for the Australian telecommunications industry. Modification of regulated spectrum allocations at this early stage of telco tower company operations will deter and defer regional investment for both the new tower companies and the MNOs.

Furthermore, the recent creation of the ATN group, Amplitel and most recently TPG's sale of tower infrastructure to OMERS Infrastructure Management alongside existing tower companies such as BAI has generated incentives to improve efficiencies and competition in the market for telecommunications radio access infrastructure. Over 12,000 telecommunications sites – being most of the sites in Australia – now have substantial or total independence from their previous MNO owners.

ATN submits there is strong link between a competitive telecommunications market and broad-based incentives to build competitive infrastructure. A particular benefit of competitive telecommunications infrastructure is increased diversity and resilience for public mobile network communications during major events and natural disasters such as bushfires, cyclones, and floods where the ability for the public to maintain communication is more critical than ever.

Although ATN has a mandate to further develop and expand Australia's digital capability, ATN can only invest where there is a market for the infrastructure.

Notwithstanding the potential loss of diversity and resilience for public mobile telephone networks, in those cases where consolidation of infrastructure is advocated and has merit, ATN suggests it may be more appropriate to implement these solutions in ways that preserve the market's existing spectrum limits. Advanced features such as network slicing, so spectrum resources remain attributed to the original owners, are one such method.

2. ATN History

ATN is a recent entrant in the market for passive mobile telecommunication infrastructure, particularly tower and rooftops sites used by mobile carriers.

ATN commenced operations on 1 April 2021 as a 100% Singtel owned subsidiary. On 17 November 2021 AustralianSuper purchased 70% of ATN for \$1.9B. On 9 May 2022 AustralianSuper and Singtel purchased Axicom for \$3.6B, increasing the AustralianSuper investment in ATN to \$2.6B and 82% and reducing Singtel's investment to 18%. In this short period of time ATN has become Australia's leading independent provider of passive telecommunications site with approximately 4,300 of sites. ATN are also deploying approximately 700 new macro towers, including 250 in rural and regional Australia.

3. Spectrum is a critical long-term asset allocated by the ACMA

We note the objective of the Radcomms Act (s3) is, "... to promote the long-term public interest derived from the use of the spectrum by ...".

In line with this objective, the allocation of Australia's multi-billion spectrum assets is a strategic and long-term allocation process administered by spectrum and competition experts at the ACMA. Each time spectrum is allocated, the AMCA considers the long-term public interest, which includes factoring in the needs of rural and regional Australia.

The objective of the Radcomms Act operates in significant alignment with the object of the C&C Act which is "to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection."

Due to the similarity in the objectives of the *Radcomms Act* and the *C&C Act*, and the specialisation within the ACMA, the ACCC should give weight to the ACMA's spectrum allocation decisions.

As recently as December 2021 the ACMA limited Telstra's access to low-band spectrum holdings. In December 2021, the ACMA auctioned 850/900 MHz low band spectrum, which is the same spectrum Telstra is now requesting access to. TPG recently merged with Vodafone despite the ACCC's competition concerns and subsequently TPG purchased mid-band spectrum from Dense Air. These transactions have substantially consolidated the spectrum being merged under the Telstra – TPG agreement. Providing more spectrum access to Telstra would further circumvent the aforementioned allocation limits.

4. Assessment of the long-term public interest of the Telstra – TPG agreement

ATN is concerned about the enduring impacts of the proposed Telstra – TPG agreement on the provision of mobile telecommunications services in Australia for the following reasons.

Telstra does not require access to the TPG spectrum in the 81% - 96% population coverage areas

Telstra already operates approximately 1,500 more mobile sites in remote and very remote areas and through these sites, Telstra provides service to 1M km² more of Australia's landmass than its nearest competitor. That coverage superiority enables Telstra to dominate the market share of rural and regional

Australians. Unfortunately, there are consistently complaints from regional and rural Australia about the lack of coverage in particular locations.

The Federal Government Blackspot program along with State and regional co-investment schemes involving MNOs arose due to the market failure in these areas. Arguably a contributor to the market failures is a result of MNO investment return horizons being much shorter than those of infrastructure investors.

In this context, the role of the recent tower company spinoffs (Amplitel, ATN and TPG's towers) as participants and neutral providers of infrastructure throughout Australia will fundamentally change the investment behaviour and rollout decisions of MNOs.

That dynamic requires a level of stability in the MNO operating environment. Competitor network equalising mechanisms, such as spectrum allocation limits, are one of the key aspects that serve to level the competitive network operating environment and foster viable MNO competition.

Through this point of reference, ATN queries where the benefit to competition across the MNOs is served by permitting the dominant MNO to benefit from an uplift in spectrum that steps back to 81% of the Regional Coverage Zone. Although the saving and benefit to Telstra is evident, the longer-term consequences would appear to be more uncertain.

While we agree this Telstra/TPG sharing concept should be tested, we also suggest the future benefits require thorough scrutiny. That scrutiny requires examination that looks beyond the expert report that accompanied the Telstra/TPG submission.

The rollout of *competitive* 5G services throughout Australia would appear to require some level of regulatory intervention with a view to the long-term viability for all participants. The table below shows the small gains in population coverage beyond 98.5%.

Although we appreciate the argument that previously unutilised and underutilised spectrum would serve the population better through the mechanism being suggested, we do not align with a view it would be appropriate for those spectrum holdings to be made available to the dominant market provider. The underutilisation of spectrum at a point in time is common and part of the design of spectrum allocation, including that in rural and regional Australia most spectrum is underutilised as the population density does not exist to utilise the spectrum. We feel it is an important point that spectrum is not monopolised, and that it is allocated to encourage competition.

Network Coverage Comparison	Telstra	Optus	TPG
Population	99.4%	98.5%	96%
Area (square kilometres)	2.6m	1.5m	0.6m
Sites in 81.4% - 98.8% Population zone (Telstra – TPG Application P.8)	3,700	2,500	725
Sites in ABS Remoteness Zones of Remote and Very Remote (approx.)	2,000	500	100

5. Below are responses to the information requested in the ACCC letter of 31 May 2022 titled Telstra and TPG application for merger authorisation for proposed spectrum sharing in regional Australia – interested party consultation

The likely impact of the Telstra/TPG arrangement on prices, including mobile services, fixed bundles, and data services.

Although retail activities of MNOs are beyond the purview of ATN, we anticipate something akin the following chain of events if a spectrum merge and MOCN proceeds:

- Telstra and Optus would actively campaign towards their existing customer bases with compelling sign-up / sign-on incentives targeted to regional areas that exceed the usual promotions for

customers willing to commit 12–24-month terms. Prices are unlikely to lower, but service inclusions may increase.

- TPG would implement a widespread hyped up regional 5G marketing campaign with a range of special promotional offers.
 - TPG will grow its regional market share at the expense of Telstra and Optus due to a combination of experimentation, protest against the incumbent providers and price sensitivity.
 - Some metro-based customers who have preferred Telstra and Optus due to their superior coverage will also consider moving across to TPG on lower priced plans.
- As is occurring in metro markets, TPG will pursue targeted migration of customers off the NBN Co onto its newly available regional fixed wireless network product.
- After its initial promotional budgets are depleted and the near-term excitement has faded, TPG's ongoing incremental regional growth and continued success will be subject to:
 - Consumer acceptance of TPG's discount proposition compared to the Telstra, Optus or MVNO products available; and
 - TPG's ability to continue providing a budget solution to regional customers based on its MOCN unit cost for regional service compared to Telstra's costs (i.e., what mechanisms exist in the MOCN agreement to limit dumping).
- Optus' ability to retain regional customers and travellers will also depend on the unit cost available to TPG through the Telstra/TPG agreements.
- Telstra/TPG operating agreement pricing and utilisation controls will determine speed and timing for depletion of the aggregated MOCN spectrum back to the levels Telstra as a standalone MNO already experiences.

Throughout the above evolution, regional consumers and travellers who value MNO regional coverage performance would have the benefit of targeted attractive offerings from MNOs and many may be inclined to trial TPG services. However, at some point in the future, we expect these consumer-favourable circumstances would change and the offerings will become more superficial.

The likely impact of the Telstra/TPG arrangement on non-price aspects of competition, including product and service offerings, contracts, network coverage, bundling options, speed, customer service and service quality.

As above, we expect in early stages of the Telstra/TPG arrangement, regional consumers would enjoy consistent speed and service quality. Historic lessons about poor network performance and poor customer service are unlikely to repeat unless an MNO misjudges product demand.

ATN notes that MNOs address customer capacity and network congestion through either the use of spectrum or the densification of network infrastructure. Spectrum is considered the quicker and lower cost approach, although it is not the only mechanism available.

As MOCN network utilisation levels begin to approach congested levels – often noticeable to end users through reduced network data speed – the Telstra/TPG arrangement contract provisions are likely to determine triggers for network site densification. Likewise, any potential future Regional Coverage Zone (RCZ) augmentation or growth would be determined through their agreement.

It is reasonable to assume that Telstra's Amplitel division is very likely to be the infrastructure provider engaged to resolve MOCN densification and rollout activity for Telstra and TPG. This will likely decrease the opportunity and commercial incentive for growth of independent tower infrastructure providers throughout Australia.

Furthermore, Telstra has indicated it sees the proposed arrangement with TPG would mean there is an opportunity for it to reduce expenditure.¹

With a consolidated Telstra/TPG network operating model, the reduction of TPG's network coverage footprint from certain regional areas, along with the reduced competitive tension in the market, raises uncertainty about the impact to telecommunications network resilience and diversity for regional communities during natural disaster events or emergencies.

Although it may be true that when MNOs operate from the same location, they are equally vulnerable to an issue at that location, independently operating networks generally have sufficient operating differences (different transmission pathways, different generator suppliers and field service arrangements etc.) such that site outages won't always impact every MNO at the same time, meaning emergency calls can still be supported when MNOs operate discrete networks. This type of physical diversity would no longer be available (from the 81% RCZ, rather than the current TPG footprint reaching 96%) in a scenario where Telstra and TPG operate through a MOCN arrangement.

The likelihood of other competitors expanding their network coverage and quality to constrain the services provided by Telstra and TPG under the Telstra/TPG arrangement.

There may not appear to be as much incentive for Optus to continue expanding its regional network coverage footprint in a competitive environment where both Telstra and TPG operate in lockstep within the RCZ. Incentives for Optus to compete for rural customers and blackspot funding would diminish given its reduced differentiation, market share, ARPU, roaming revenues (from TPG) and margins. In that scenario, Telstra may routinely secure even greater proportions of government funding, further entrenching its overall network advantage and market dominance.

On this particular topic, ATN notes the expert report compiled by Mr Richard Feasey for Telstra and TPG. There appear to be areas of this report that warrant deeper consideration. ATN suggests some alternate opinions and expert conclusions should also be canvassed.

ATN believes this is an area of key concern for consumers over the long term, because if Optus withdraws from meaningfully pursuing RCZ gains, Telstra's competitive motivation would likely also eventually diminish. ATN expects the currently budgeted near-term MNO regional rollout expenditure activities would proceed, after which there would be a substantial decline in further new regional coverage deployment expenditure as capital budgets would prioritise managing MOCN network congestion and there would no longer be a competitive driver for meaningful expansion of network coverage.

There is also some uncertainty about the impact to telecommunications network resilience and diversity for regional communities during natural disaster events or emergencies in a scenario where telecommunications services are consolidated, rather than operating through independent networks.

The extent and likelihood of public benefits and detriments, claimed by the applicants or otherwise, arising from the Telstra/TPG arrangement.

From an infrastructure perspective, ATN is likely to be adversely impacted by this proposed merger activity. ATN loses at least one potential customer for its sites in the RCZ and any future utilisation by Telstra is likely to be delayed, due to sharing of spectrum postponing the need for site densification.

During the past 12 months ATN's primary shareholder, AustralianSuper, has invested \$5.9Bn into the Australian telecommunications industry on the basis of the current spectrum allocations. As already discussed above, ordinarily, competition for efficient use of spectrum resources is determined by ACMA

are¹ Reference: Nikos Katinakis, Telstra Group Executive Networks & IT said ""The application of the spectrum is immediate, so in other words we don't have to go crazy with any incremental capital." Communications Day 22/02/2022

through robust processes, with strict competition limits imposed on MNOs to ensure an equitable network operating market exists.

The Telstra/TPG submission indicates TPG's network currently provides 4G service to 96% of Australia's population. Under the arrangement intended to assist TPG with delivering 5G services, TPG would benefit from an incremental 2.8% population increase in access to regional customers in return for agreeing to a "spectrum pooling" arrangement that will enable Telstra to pay TPG for access to additional spectrum that postpones further investment across a portion of its network that services almost ~17% of Australia's population. The submission further indicates Telstra can also use a portion of 3.6GHz spectrum beyond the 17% Regional Coverage Zone (to further service remote customers).²

The sovereign risk associated with permitting the dominant incumbent MNO to circumvent ACMA spectrum competition limits, defer capital investment and undermine the regional market balance through an arrangement that modifies its infrastructure utilisation in this manner has the potential to be damaging to investment in the industry.

The submission has not explained why the spectrum pooling arrangement should apply throughout the 17% Regional Coverage Zone, with the effect of consolidating network infrastructure and reducing regional network diversity back to 81% population coverage, particularly when TPG's network footprint currently provides service to 96% of the population.

Any other competition issues relevant to the ACCC's consideration of the proposed arrangement – Spectrum allocations.

Throughout the years, TPG and its predecessors, Vodafone Australia, Hutchison Australia, and Vodafone Hutchison Australia (VHA) have historically entered sharing agreements with both Telstra (MOCN) and Optus (MORAN) to offset operating costs. The original drivers for those sharing approaches, the root cause of TPG's weaker performance compared to its peers, and its failure to utilise spectrum in regional and remote parts of Australia is attributed to a range of factors over a long period of time.

Arguably, it does not appear those historic sharing transactions have resulted in particularly favourable outcomes for TPG or its predecessors. With this viewpoint, it is worthwhile considering whether the process of TPG relinquishing a significant portion of its current network footprint and revisiting the pathway of MOCN infrastructure with spectrum sharing may be a more damaging and difficult approach to reverse.

Potentially an alternative would be to invest in strategically pursuing incremental regional network growth using its spectrum and leveraging the new industry competitive dynamic available from multiple dedicated infrastructure providers such as Amplitel, ATN/Axicom and BAI to assist with expanding TPG's coverage upwards from 96% of Australia's population.

² Section 2 of Telstra's submission indicates TPG provides coverage to 96% of the population and that will increase to 98.8%. Telstra will gain access to spectrum in the "relevant area" being the Regional Coverage Zone that provides service to 81.4% to 98.8% of Australia's population and beyond.