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Graeme O'Leary
Director
Transmission and Facilities Access Section
Mobiles, Transmission and Consumer Branch
Australian Competition and Consumer Commission
Grahame.oleary@acc.gov.au

CC: peter.palmato@acc.gov.au

Dear Graeme,

ATN submission to the ACCC corporate control percentage consultation paper April 2022

Thank you for inviting Australia Tower Network Pty Ltd ACN 643 875 165 (ATN) to participate in the ACCC industry review of the corporate control percentage prior to submitting a recommendation to the Minister.

As the ACCC's Consultation Paper notes at section 4.2¹, ATN was formed by Singapore Telecommunications Limited (Singtel) to support the divestment of the Optus Mobile Pty Ltd (Optus) passive telecommunications infrastructure to AustralianSuper (AusSuper). Singtel initially retained a minority 30% ownership stake, however ATN's recent acquisition of the Axicom tower business has further diluted Singtel's ownership to 18%. AusSuper now owns 82% of the ATN business.

ATN is not part of a "carrier company group" in the same manner as the structure of the Telstra Group. Telstra has a carrier licence, has retained its Towers business through the establishment of Amplitel (which is a 51% owned subsidiary), and another entity within the Telstra Group is a major customer of Amplitel. While Singtel is not a carrier in Australia and has limited practical ability to influence ATN operations through its minority shareholding of 18% in ATN. More importantly, ATN only has a customer relationship with the Singtel-owned Optus organisation.

Nevertheless, ATN is impacted by the current corporate control percentage in the amended *Telecommunications Act 1997* (Cth) (Telco Act), and accordingly is keen to ensure the independent nature of its operation is understood as part of this review process.

Whilst Singtel owns 100% of Optus, we believe it is important to differentiate Singtel's ownership of Optus as a mobile network operator from its 18% investment stake in the

¹ ACCC, 'Access to Telecommunications Facilities: ACCC review of the Corporate Control Percentage' (April 2022) (ACCC Consultation Paper) p 6.

telecommunications infrastructure portfolio that is managed and owned by ATN. This is because of the following:

- Consistent with AusSuper's investment strategy, ATN's objective is to grow and develop a substantial digital infrastructure portfolio capability in Australia.
- The leadership team and foundation workforce of ATN were not transferred from Optus to ATN; and
- Although Optus staff have provided certain limited supply chain transition services to ATN during the start-up phase, that is scheduled to end on 17 August 2022.

Moreover, ATN's current workforce (>30 people) has been carefully selected from the industry to bring a broad range of backgrounds including from the telecommunications, infrastructure and construction industries, MNOs, industry service providers and other tower operators. A key example is the ATN Chief Executive Officer, Cameron Evans, who comes from the utilities and infrastructure sector. ATN has not employed any current or recently departed Optus employees and with the upcoming integration of ATN and Axicom, the portfolio will be further distanced from its Optus origins and the Optus workforce.

In addition to the composition of its workforce, ATN has developed a different management structure and is implementing best of breed IT systems dedicated to promoting and managing the use of its portfolio by customers. With the occupation of ATN's infrastructure being core business, there will inherently be a greater focus towards encouraging increased utilisation by all mobile carriers and other wireless service providers.

ATN's responses to the ACCC questions in clause 8.3 of the consultation paper are set out in Schedule 1 below.

ATN appreciates the opportunity to submit on this topic and look forward to working with the ACCC on this, and many other matters in the future.

Yours Sincerely,



Peter Preller
Acting General Counsel
ATN Pty Ltd

Schedule 1:

ATN submission on the ACCC s 581ZH review of the corporate control percentage.

1) *What factors should be considered in identifying an appropriate corporate control percentage in relation to a carrier company group?*

ATN appreciates the theoretical concern that arose during drafting of the Telstra Corporation and Other Legislation Amendment Act 2021 and outlined in section 6 of the ACCC's Consultation Paper.² Namely,

'Tower operators that only hold passive tower assets... are not required to hold a carrier licence. This meant that a non-carrier tower operator would not be subject to the same requirements as carriers with respect to the facilities access regime set out in Schedule 1 to the Telco Act and the ACCC's Facilities Access Code'.³

ATN does not consider this theoretical concern warrants any corporate control percentage in the Telco Act. The original purpose of the Facilities Access Code in 1999 was to support competition and encourage co-location in the burgeoning area of telecommunications and technology within a market environment where incumbent operators had little motivation to support growth of competitor operators. Since that time, mobile networks have grown substantially and the increasingly competitive nature of mobile telecommunications in a mature market has constrained revenue growth within the industry, leading to capital conservation and resulting in the recent divestment of non-core infrastructure assets by Telstra, Optus and TPG.

MNOs have relinquished operational control and divested their passive tower infrastructure as the strategic importance and uniqueness of that infrastructure has declined. Network coverage between operators now increasingly overlaps as a result of co-locations or establishment of sites nearby. The availability and range of solutions for MNOs is often competitive with several options usually available including towers, monopoles, guyed masts, building rooftops, utility poles, light poles, electricity stanchions, large signs, water tanks, silos and other such structures. Furthermore, there are hundreds of new towers being built per annum, further increasing the competitive nature of the market.

The emergence of new tower companies from MNO divestments demonstrates a well-established independent industry is in place to service MNOs.

Moreover, although ATN is satisfied its operational practises and commercial approach to administration and management of its infrastructure portfolio exceeds the baseline

² ACCC Consultation Paper, p 9.

³ Ibid.

Facilities Access Code requirements, as a non-carrier infrastructure owner who generates income from the utilisation of its physical assets, ATN is particularly concerned the imposition of a Facilities Access Code between carrier and non-carrier entities will create a market distortion where carriers may have rent-seeking incentives to involve the regulator, requiring substantial resources and management distraction from responding parties.

While ATN does not consider that any corporate control percentage is necessary, ATN suggests the factors that should be considered as part of the assessment for an appropriate corporate control percentage include:

- What forms of structural/operational separation exist with any shareholding MNO;
- Level of shareholder involvement in and control over commercial operations;
- Composition of staff involved in leadership (and whether MNO-appointed), operation and administration of the portfolio;
- Vision and strategic intentions of the tower company and its shareholders;
- Incentives of the tower company;
- Market environment and nature of competition;
- Resourcing plans being implemented to support co-locations (sales, co-location coordinators and SMEs to enable rapid access to infrastructure);
- The nature of application assessment processes for access seekers including efforts to make the process faster, more efficient and effective for co-locating carriers; and
- Employee incentive structures (if any).

2) *What percentage ownership by a carrier shareholder in a telecommunications tower or facilities operator is sufficient for entities to be considered related?*

To properly determine an appropriate control percentage, ATN believes an understanding of the operational context facing MNOs is important. ATN sets this out below, as well as how the current corporate control percentage would affect ATN.

Operational context faced by MNOs

As the ACCC Consultation Paper identifies at section 3,⁴ MNOs use different types of infrastructure to provide coverage solutions, depending on a range of factors. The infrastructure used by MNOs in their mobile networks is essentially a patchwork of towers, interspersed with other coverage solutions (including rooftops, small structures and in-building systems). The relative importance of any particular site in an MNO's network depends on a range of circumstances. Fundamentally, the types of infrastructure that MNOs invest in is driven by two key factors - coverage and capacity.

⁴ ACCC Consultation Paper, p 5.

In earlier stages of mobile network deployment, coverage is key – with mountain top locations and the tallest possible structures in an area being the prime positions. When usage at a site location increases, the requirement to service even more customers simultaneously (i.e. capacity) grows.

MNOs address network capacity through spectrum (and the improved efficiency provided by newer technology 3G, 4G, 5G, etc) in the first instance and then by installing more “infill” sites.⁵ When infill sites are required, absolute height becomes less important, and in many situations excessive height becomes problematic.

With mobile network coverage already being available to most of the larger populated areas of Australia, MNOs now primarily focus their capital investment on alleviating network capacity and congestion (currently through the improved operating efficiency offered by 5G technology). Smaller proportions of overall investment are allocated to incremental coverage expansion (e.g. regional/remote town, highway and black spot coverage). In low usage locations where commercial returns are not available – black spots and remote locations – government intervention and/or joint investment is often required to address market failure.

In this context of mature mobile networks being upgraded by MNOs to support capacity requirements at their existing positions on towers, with comparatively minor rollout of incremental network coverage expansion, the notion or ability for an incumbent MNO to materially hinder another MNO’s rollout or upgrade activity is marginal, even if an MNO were to own 100% of a tower portfolio.

How the current Corporate Control Percentage affects ATN

On 1 October 2021, Singtel entered into an agreement to sell a 70% stake in ATN to AusSuper, with Singtel retaining the remaining 30% shareholding. This resulted in ATN being structurally separated and operating entirely independently from Optus. Singtel’s shareholding interest in ATN was further diluted to 18% following the recent Axicom transaction. Despite this, the amendments to the Telco Act have introduced a circumstance where ATN would fall within the new regulatory jurisdiction. ATN submits the establishment of 15% corporate control percentage appears to be a disproportionate intervention that may lead to unintended outcomes.

⁵ The current deployment and rollout of 5G technology by MNOs is performed as an upgrade of existing 3G and 4G sites with older equipment being replaced by newer components at the same physical antenna positions as the older equipment in most cases.

What percentage ownership is sufficient for entities to be considered related

When considering the context set out above, ATN does not believe there is any merit diverging from the default Corporations Act 2001 corporate control percentage of greater than 50%. To the extent that a corporate control percentage must be established at all, ATN recommends the appropriate level would be consistent with the *Corporations Act 2001* (Cth) at greater than 50%, or in any case a level greater than 33%.

ATN further notes the imposition of ownership percentages below the current level of greater than 50% in the *Corporations Act 2001* (Cth) may become a disincentive to funds partnering for future investment or establishment of new infrastructure. This could have unintended consequences for the industry when sourcing capital to meet its substantial investment needs.

3) What factors should be considered in determining whether carrier entities are sufficiently related?

We presume this question is determining whether carrier entities are sufficiently related to a telecommunication tower or facilities operator to influence its operations and management.

In practise, for any high value investment, the majority shareholder will act in its best interests, while its representatives on the board must act in the best interests of the company. Shareholder representatives of a trust involving the investment of any superannuation fund are particularly aware of these responsibilities. For example, the major shareholder of ATN is AusSuper which has an obligation to act in the best interests of its members.

...[CIC]...Therefore, for a carrier entity to be sufficiently related to a telecommunication tower or facilities operator, that carrier entity would have to have a substantial shareholding.

As per our response in 2) above, ATN recommends the appropriate level would be consistent with the *Corporations Act 2001* (Cth) at greater than 50%, or in any case a level greater than 33%.

4) What level of ownership by a carrier shareholder would be required such that a carrier may be able to influence the day-to-day decisions and operations of a tower or facilities operator?

In theory, MNO carrier shareholders with greater than 50% ownership might be able to influence day-to-day decisions and operations (although we still query whether there is an incentive to do so adverse to the interests of other MNOs).

5) *Are there reasons to believe that a carrier company group would favour its own carrier shareholder? Please provide details.*

ATN does not consider it likely that a tower operator would favour its own carrier shareholder because the underlying driver and motivation originally attracting investment from non-carrier shareholders is the generation of stable revenue from sale and leaseback arrangements, with the prospects for additional income upside generated from proactive marketing and increased utilisation from third party occupiers.

For completeness, ATN is not part of a “carrier company group” in the same manner as the structure of the Telstra Group that included the formation of Amplitel. Specifically:

- Amplitel is a majority owned (51%) subsidiary within the Telstra Group where Telstra appointed its own executives as Chair and CEO of Amplitel⁶ and another entity within the Telstra Group is a major customer of Amplitel;
- Singtel is not a carrier in Australia (therefore, it is not a carrier shareholder);
- Singtel is a minority investor in ATN with limited practical ability to influence ATN operations; and
- ATN only has a customer relationship with the Singtel-owned Optus organisation.

6) *Are there policies in place such that carrier shareholders potentially abstain from voting on matters that involve the carrier shareholder? If so, how would these be governed in practice?*

...[CIC]...

For the operation of ATN there is a clear separation between Singtel shareholders, Singtel representatives on the ATN Board and ATN Management. ATN Management has the delegated authority to enter into agreements and manage its operations without Board approval.

7) *Are there any current or potential issues carriers have in relation to access to facilities and infrastructure owned and operated by new operators?*

⁶ See, e.g., 'Telstra sells 49 per cent of Towers business for \$2.8 billion and announces returns for shareholders' (30 June 2021), available at: [https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf%20F/300621-Telstra-sells-49-per-cent-of-Towers-business-for-\\$2.8-billion-and-announces-returns-for-shareholders.pdf](https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf%20F/300621-Telstra-sells-49-per-cent-of-Towers-business-for-$2.8-billion-and-announces-returns-for-shareholders.pdf)

Since commencing operations, ATN has proactively approached and engaged with a range of customers including MNOs and other licensed carriers. ATN has received favourable feedback and is not aware of any issues.

8) *Are there any other considerations relevant to the determination of an appropriate corporate control percentage that the ACCC should be aware of?*

Although Singtel has retained a minority shareholding interest in ATN as an investment, ATN is an independent entity with the majority shareholder being AustralianSuper. During Singtel's portfolio divestment process, AustralianSuper's asset purchase proposal included the stated vision to develop ATN as the leading *independent* mobile network infrastructure provider for Australia and outlined the marketing strategy which involved proactively managing the portfolio to generate income from third parties and to actively support multiple MNO's on ATN sites in shortest possible times. These principles were endorsed by Singtel with AustralianSuper being selected as the purchaser for the asset sale.

There is a transitional service agreement in place until approximately 17 August 2022 whereby Optus has continued to provide certain supply chain services to ATN, until ATN establishes its operational capability. Beyond the transition period, Optus will no longer be involved with operation of the ATN portfolio. Optus will be a customer of ATN.

ATN's current workforce (>30 people), has been carefully selected from the industry to maximise ATN success and bring a broad range of backgrounds including from MNOs, industry service providers and other tower operators. A key example is the ATN Chief Executive Officer, Cameron Evans, who comes from the utilities sector. ATN has not employed any current or recently departed Optus employees and with the upcoming integration of ATN and Axicom, the portfolio will be further distanced from its Optus origins and the Optus workforce.

In addition to the composition of its workforce, ATN has developed a different management structure and is implementing best of breed IT systems dedicated to managing use of its portfolio by customers. With the use of ATN's infrastructure being core business, there will inherently be a greater focus towards encouraging increased utilisation by all mobile carriers and other wireless service providers.

During ATN's early formation stages, the organisation has not employed any current or recently departed Optus employees. The upcoming operational integration between ATN and Axicom for ongoing portfolio management of the combined portfolio would further diminish any potential for operational bias.

In order for the investment by AustralianSuper to be successful, ATN will need to perform tower and facility management services more efficiently and add more customers than



Australia Tower Network Pty Ltd
ABN 59 643 875 165
PO Box 321, Lindfield, NSW 2070

admin@atn.site
www.atn.site

Optus historically has. The capability and skillset secured through the Axicom acquisition will support this plan.

The ability to quickly offer new revenue opportunities for carriers through existing sites in its portfolio will help them rapidly connect customers in new areas and is a critical part of the ATN value proposition. In contrast to MNO outsourcing operational practices, ATN will achieve these outcomes using key elements including in-house property, engineering and site access in combination with development of best-in-class support systems and processes.

ATN is designed to be an entirely new, technology driven company. Its operational implementation and executive decisions demonstrate the focus and determination to proactively embrace revenue generation from all potential infrastructure customers.

9) Are there any events in the foreseeable future regarding the telecommunications tower market in Australia that the ACCC should be aware of?

Other than the publicly announced sale of the TPG tower portfolio and the commencement of a sale process by Broadcast Australia, ATN is not aware of any further events the ACCC should be aware of.