

30 June 2022

Kathryn Wood
Director
Mobiles and Consumer Engagement
Infrastructure Division
Australian Competition and Consumer Commission

Via email: [REDACTED]

Dear Ms Wood

Allocation limits for the 3.4 GHz and 3.7 GHz bands

TPG Telecom Limited welcomes the opportunity to make this further submission to the Australian Competition and Consumer Commission (**ACCC**) in response to its consultation paper on allocation limits for the 3.4 and 3.7 GHz bands (**Consultation Paper**).

TPG and Telstra submitted an application for ACCC authorisation of interrelated agreements in respect of a Multi-Operator Core Network (**MOCN**) commercial arrangement on 23 March 2022, which was after the ACCC released its Consultation Paper on 2 March 2022.

It is unclear whether the proposed MOCN arrangement raises any matters related to the ACCC's advice on allocation limits that were not mentioned in its Consultation Paper, but which the ACCC now considers relevant.

Given how important the allocation limits are, and the mismatch in timing between the ACCC's proposed advice on allocation limits and its decision on the proposed MOCN arrangement, we request the ACCC further consult on its proposed approach before finalising its advice.

TPG appreciates the ACCC intends to finalise its advice to the ACMA by 1 August 2022. If timing is a consideration, a targeted consultation may be warranted, particularly if the ACCC intends to comment on matters related to the proposed MOCN arrangement.

Spectrum authorisations and geographic boundaries

We recognise the ACCC may feel it is necessary to consider spectrum authorisation agreements (particularly longer-term authorisations) when providing its advice on allocation limits.

However, TPG is unclear how the ACCC proposes to approach this topic due to the lack of precedent. Spectrum authorisation agreements were not considered in the advices given by the ACCC for recent auctions, so it is unclear how the ACCC (or the ACMA) would treat authorisation agreements now for the purpose of setting allocation limits for the 3.4 and 3.7 GHz bands.

We propose the ACCC distinguishes between short-term authorisation agreements and long-term authorisation agreements.

We are strongly of the view that short-term authorisation agreements should not form part of the ACCC's consideration of allocation limits for spectrum. Short-term authorisations have a limited impact on the long-term structure of spectrum holdings and for this reason should be deemed immaterial to the ACCC's advice on allocation limits.

Determining if an agreement is “short-term” requires judgment; it may depend on the duration of the agreement, renewal terms and the intent of the respective parties to the agreement.

Acknowledging these things, in TPG’s view a spectrum authorisation agreement would be considered short-term if it provided a party with access to another party’s spectrum for a period of time ranging from a few hours to a few years.

We are also cognisant that mismatched boundaries between the proposed MOCN arrangement, existing spectrum licences and proposed spectrum licences could lead to ambiguous advice on the allocation limits for some parts of Australia if the geographic areas are not carefully considered.

Relationship between ACCC advice and ACMA auction rules

The issues raised above are novel and a targeted consultation would mitigate the risk of unintended consequences by providing transparency on the ACCC’s intent and afford impacted parties due process.

Historically, the ACMA has issued legislative instruments which set out the procedures to be applied in allocating spectrum, known as ‘auction rules’.¹ These auction rules include rules to determine whether two prospective bidders are ‘affiliated’ for the purposes of a spectrum auction. Affiliated parties are prevented from bidding separately.

The Australian Communications and Media Authority (**ACMA**) has responsibility for drafting and issuing the auction rules. The auction rules have historically been impacted by any Ministerial determinations regarding allocation limits, for which the Minister has sought the ACCC’s advice. As a result of recent legislative amendments, the ACMA now sets the allocation limits and requests advice from the ACCC.

We recognise the ACCC is not required to comment on auction rules, including any potential bid restrictions imposed on affiliated bidders. We do not believe there is any reason for the ACCC to do so in this instance.

However, given the ACCC’s allocation limits advice will impact auction rules set by the ACMA, we believe it is important for potentially impacted parties to have the opportunity to respond to issues raised by the ACCC which may not yet have been subject to public consultation.

If you would like to discuss this letter further, please contact me on mobile [REDACTED], or via email at [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to read 'Trent Czinner', written over a light blue horizontal line.

Trent Czinner
Group Executive, Legal & External Affairs and Company Secretary
TPG Telecom Limited

¹ See, for example, *Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018*; *Radiocommunications (Spectrum Licence Allocation – 26 GHz Band) Determination 2020*.