

Public version

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Grahame O'Leary
Director
Transmission and Facilities Access Section
Mobiles, Transmission and Consumer Branch
Australian Competition and Consumer Commission

By email: grahame.oleary@acc.gov.au
Copied to: peter.palmato@acc.gov.au

Dear Mr O'Leary

RE: Access to Telecommunications Facilities: ACCC review of the corporate control percentage Consultation Paper

Thank you for the opportunity to comment on the ACCC's *Access to Telecommunications Facilities: ACCC review of the corporate control percentage consultation paper* (**Consultation Paper**).

TPG Telecom's response to the questions in the Consultation Paper are annexed.

TPG Telecom believes access to facilities and telecommunications towers is crucial for us to maintain and improve the quality and geographic scope of our services. More importantly, it is vital such access is available on fair and reasonable grounds to enable us to effectively compete in the mobiles market.

The issue of tower access is particularly relevant given recent transactions involving the sale of interests in carrier related tower companies. The effect of these transactions is Amplitel and ATN now hold the first and second largest tower portfolios in Australia. These tower companies are both affiliated with carriers – Amplitel is 51% owned by Telstra and ATN is currently 30% owned by Singtel, the parent company of Optus.

The relationship between tower companies and their carrier affiliated shareholders means it is possible that carriers will try to leverage this position by seeking to increase their rivals' costs and improve their own competitive positions. These incentives are present regardless of whether the carrier affiliated shareholder holds a minority or majority interest in the tower companies.

Without an effective facilities access regime, there is a risk access seekers such as TPG Telecom will face increased costs and lower service quality to access facilities and telecommunications towers. This can only lead to decreased competition, higher prices and the inefficient use of infrastructure, which overall does not promote the long-term interests of end-users or the other important statutory objects set out in section 3(1) of the *Telecommunications Act 1997* (**Telco Act**).

Accordingly, we urge the ACCC to ensure the facilities access regime continues to be effective and appropriate safeguards are in place to preserve access to passive telecommunications infrastructure into the future.

This can be achieved by the ACCC recommending the Minister make a determination to the effect that companies are deemed to be related to each other and form a 'carrier company group' under the new facilities access regime where the corporate control threshold exceeds 10%, in accordance with section 581W(3) of the Telco Act.

A figure of 10% is consistent with the 'direct interest' threshold for the Foreign Investment Review Board (**FIRB**), as reinforced by the recent *Security of Critical Infrastructure Act 2018* in the context of concerns regarding influence and interference via corporate shareholdings. It is also consistent with the concept of a 'blocking stake' referred to in the *ACCC Merger Guidelines 2008*, being the minimum interest that is competitively relevant.

Lower corporate control threshold needed to protect and preserve access to facilities and telecommunications towers into the future

TPG Telecom believes a corporate control threshold of 10% is appropriate to ensure the new facilities access regime will continue to be effective in the event Singtel further decreases its interest in ATN, or Telstra decides to sell part of its interest in Amplitel.

In April 2022, ATN announced it would acquire Axicom. TPG Telecom understands ATN's current shareholding consists of Singtel at 30% and AustralianSuper at 70%. Following the Axicom acquisition, Singtel's shareholding in the combined ATN/Axicom business will decrease to 18%. AustralianSuper's shareholding will increase to 82%.¹

Singtel's 18% shareholding will be close to the current 15% default. **[c-i-c]**

It is crucial the facilities access regime continues to be effective even where a carrier affiliated shareholder has a minority shareholding of 10%. This will ensure third party access seekers will continue to be able to seek ACCC intervention in the event of a dispute regarding access terms. **[c-i-c]**

Greater influence and reliance on carrier affiliated shareholders where balance of shareholding held by passive infrastructure investors

We believe a 10% shareholding by a carrier affiliated shareholder is sufficient to influence day-to-day decisions and operations of the tower company. This is particularly relevant where the remainder of the interest in the tower company is held by passive infrastructure investors. Specifically:

- In the case of ATN, AustralianSuper is a superannuation fund.
- In the case of Amplitel, 49% of its shares are held by a consortium comprising the Future Fund, Commonwealth Superannuation Corporation and Sunsuper, and is managed by Morrison & Co.

¹ See Singtel media release, *AustralianSuper, Singtel and Australian Tower Network to acquire Axicom*, 1 April 2022 <https://www.singtel.com/about-us/media-centre/news-releases/australiansuper--singtel-and-australia-tower-network-to-acquire->

The Future Fund is Australia's sovereign wealth fund. CSC and Sunsuper are superannuation funds.

In this respect, we believe the carrier affiliated shareholders will have greater influence over the operations and strategic direction of the tower companies, given their experience in the sector. [c-i-c]

We believe board membership, voting rights and veto rights should also form part of the ACCC's consideration of the influence of minority shareholders. We do not have any visibility over the shareholders agreements of ATN and Amplitel and therefore it is difficult for us to provide further comment on this.

The involvement of the carriers in tower companies also raises concerns from an information sharing perspective, given they will gain access to commercially sensitive information about their rivals' costs and network. The influence of a minority shareholding can also manifest in discrimination on non-price terms, such as the shifting of risk and delays in approvals.

We encourage the ACCC to review any policies in place at tower companies to prevent inappropriate information sharing to the affiliated carrier shareholder and carriers and to ensure that a non-discriminatory approach is undertaken.

[c-i-c]

If you would like to discuss any aspect of this letter further, please do not hesitate to contact Stephanie Phan, Industry Strategy Manager TPG Telecom at [REDACTED].

Yours sincerely

[REDACTED]

J
General Manager – External Affairs
TPG Telecom Limited

Annexure: TPG Telecom response to ACCC Questions

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

Please see the body of our submission.

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

TPG Telecom believes 10% ownership by a carrier shareholder in a telecommunications tower or facilities operator is sufficient for entities to be considered related.

A figure of 10% is consistent with the 'direct interest' threshold in FIRB as reinforced by the recent *Security of Critical Infrastructure Act 2018* in the context of concerns regarding influence and interference via corporate shareholdings. It is also consistent with the concept of a 'blocking stake' referred to in the *ACCC Merger Guidelines 2008*, being the minimum interest that is competitively relevant.

- 3. What factors should be considered in determining whether carrier entities are sufficiently related?**

Please see the body of our submission.

- 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?**

Please see the body of our submission. TPG Telecom believes a minority shareholding of 10% is sufficient for a carrier affiliated shareholder to influence the day-to-day decisions and operations of tower or facilities operations. Such influence can be reinforced by shareholders agreements and cross-directorships, so it is also necessary to consider the circumstances in which such other arrangements may commonly exist (i.e., to protect minority shareholders that have material economic interests of 10% or more).

This will also depend on the identity of the remaining shareholders – i.e. the presence of passive infrastructure investors means the carrier affiliated shareholder will have disproportionately greater influence.

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

Please see the body of our submission.

- 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?**

We do not have visibility over the shareholder agreements between carrier affiliated shareholders and other shareholders and therefore it is difficult to respond to this question.

Even if shareholders agreements do not currently exist, there is no regulatory impediment to such agreements being implemented at any point in the future and hence any manner of control could be conferred by such arrangements at any future time.

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

Please see the body of our submission.

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

Please see the body of our submission.

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

In August 2021, TPG Telecom announced a strategic review of our mobile tower and rooftop sites. We will announce the outcome of that review in due course.

As the ACCC is aware, in February 2022, Telstra and TPG Telecom announced a landmark mobile operator core network sharing (**MOCN**) agreement, which includes physical site sharing and radio access network sharing in regional Australia and on urban fringes. The MOCN is subject to ACCC approval.