



Contact officer: Gemma Smith
Contact phone: 03 9290 1405

Level 17, 2 Lonsdale Street
Melbourne Vic 3000
GPO Box 3131
Canberra ACT 2601
tel: (03) 9290 1800
www.accc.gov.au

6 May 2022

Caroline Coops
Partner
King & Wood Mallesons

Tihana Zuk
Partner
Ashurst

By email

Dear Ms Coops and Ms Zuk

Re: Application for Authorisation AA1000670 – Telstra Corporation Limited, NBN Co Limited & Ors – Information Request

I refer to the abovementioned application for authorisation lodged with the Australian Competition and Consumer Commission (the **ACCC**) on 31 March 2022 by Telstra Corporation Limited, NBN Co Limited and Telstra Limited (the **Applicants**).

To assist with its assessment of this application, the ACCC is seeking further information. The information the ACCC requires is set out at **Attachment A** to this letter.

Please provide this information as soon as possible and in any case by no later than **COB 13 May 2022**. The information may be provided by email to exemptions@accc.gov.au.

Under section 89 of the *Competition and Consumer Act 2010*, the ACCC is able to exclude documents (or parts of documents) from its public register because they are confidential. If you wish to request exclusion from the public register for any documents (or parts of documents) provided in response to the ACCC's request, please clearly indicate this when providing the documents.

Subject to our consideration of any request for exclusion from the public register of any of the information contained in your response, your response will be placed on the public register.

A copy of this letter, including **Attachment A**, will also be placed on the public register once you have provided a response.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Gemma Smith on 03 9290 1405 or gemma.smith@accc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Camilleri', written in a cursive style.

Lyn Camilleri

General Manager
Competition Exemptions

Attachment A: ACCC request for further information

We have adopted the defined terms as set out in the Application and Submission lodged with the ACCC on 31 March 2022 and additional submission on public benefits dated 28 April 2022.

General

1. Please provide additional detail on Telstra Group's current corporate structure, including where the existing entities to be renamed ServeCo and InfraCo Fixed and the relevant assets that are the subject of the Corporate Restructure currently fit.
2. Authorisation is sought for the Applicants and also in respect of the related entities of each Applicant, whether or not those entities exist or are related entities at the time of the Application. Please explain:
 - a. why authorisation is also sought for such entities, and
 - b. any potential impacts of such entities having the benefit of authorisation.
3. Authorisation for the provisions identified at paragraph 3.12 is sought "for as long as they remain on foot". Please:
 - a. provide more information as to why authorisation is required for those particular provisions beyond the rest of the Proposed Conduct, and
 - b. explain any implications if authorisation were granted for a defined period of time, such as the term of authorisation sought for the remainder of the Proposed Conduct, or for a fixed term beyond that.

Claimed public benefits

4. Please state if any of the claimed public benefits have already been realised prior to the Corporate Restructure. If so, please explain how these benefits have been realised and what impact, if any, authorisation would have.

Greater transparency

In relation to the claimed public benefit of greater transparency for shareholders:¹

5. Please provide any evidence or information to support and/or quantify this claimed benefit.
6. In relation to the separation of ServeCo and InfraCo Fixed into separate legal entities, please explain:
 - a. how this separation will result in the claimed efficiencies as compared to ServeCo and InfraCo Fixed operating as separate business units within the Telstra Group
 - b. the ways in which management would be better able, or better encouraged, to drive performance once ServeCo and InfraCo Fixed become separate legal

¹ Application, 31 March 2022, paragraph 7.2(a)

entities (ie. please explain the source of the claimed improved performance), and

- c. the benchmarking Telstra currently conducts for InfraCo Fixed and explain how making InfraCo Fixed as a separate legal entity would make that benchmarking easier or more effective.
7. In relation to the information that will be made available to investors following the Corporate Restructure, that could not or would not be made available in the absence of the restructure, please explain:
- a. the additional financial metrics that will be measurable once ServeCo and InfraCo Fixed become separate legal entities, that are not measurable if they operate as separate business units
 - b. the additional financial metrics that Telstra will report to the public once ServeCo and InfraCo Fixed become separate legal entities (compared to separate business units). In the response, please explain what prevents Telstra from reporting these metrics in the absence of ServeCo and InfraCo Fixed becoming separate legal entities.
8. With reference to the information referred to above, please provide an explanation of the value of this information to investors.
9. Please estimate the time period in which the Applicants expect such benefits to be realised.

Enhanced focus on operations and strategy, supporting innovation

In relation to the claimed public benefit that the Corporate Restructure will allow ServeCo and InfraCo Fixed to improve the focus on the operations of, and facilitate individual strategies for each business unit and deliver the associated value to Telstra's broad shareholder base over time,² please explain and provide examples of:

10. how the Corporate Restructure will increase the ability or incentive of management to create innovative products and services
11. why, in the absence of the Corporate Restructure, InfraCo Fixed cannot bring in "specialised asset managers to ensure that the assets are run as efficiently as possible over time",³ and
12. the ways in which "separate Boards and management teams" will improve the performance of ServeCo and InfraCo Fixed.⁴

Flexibility for future value realisation opportunities

In relation to the claimed public benefit that legal separation will create flexibility for potential value realisation opportunities:⁵

² Application, 31 March 2022, paragraph 7.2(b)

³ Submission, 31 March 2022 p. 15.

⁴ Submission, 31 March 2022 p. 15.

⁵ Application, 31 March 2022, paragraph 7.2(c)

13. The ACCC notes that realisation of this public benefit seems to depend on the extent and form of any future partial or full sale of the businesses. Please explain:
- a. the plans, if any, that have been considered by Telstra's Board and/or management for the partial or full sale of ServeCo, InfraCo Fixed or Amplitel Pty Ltd (**Amplitel**)
 - b. the likely time frame for any partial or full sale of ServeCo, InfraCo Fixed or Amplitel
 - c. the factors that Telstra will consider in deciding whether to sell ServeCo, InfraCo Fixed or Amplitel, and what proportion of the entities to sell, and in what form (e.g. share sale vs trade sale), and
 - d. if Telstra has had any approaches or interest from potential investors in ServeCo, InfraCo Fixed or Amplitel. If so, please provide details.
14. Please elaborate on the 'value realisation opportunities' the Telstra Group expects to take advantage of, and how the Proposed Conduct will facilitate this in the absence of the sale of any of the businesses (given the Applicants submit any future transactions in respect of InfraCo Fixed or ServeCo should be excluded from the ACCC's assessment).⁶
15. Please explain how substantial this benefit is likely to be, and provide any documents or information supporting these views.
16. Please estimate the time period in which the Applicants expect such benefits to be realised, and provide any documents or information supporting these views.

Other benefits associated with the creation of a passive infrastructure only business

In relation to the claimed public benefit that the Corporate Restructure provides other benefits associated with the creation of a passive infrastructure only business:⁷

17. Please identify and explain the 'concrete benefit' that will result from the Proposed Conduct said to be evidenced by the industry trend towards functional and legal separation. In your response:
- a. please detail this in relation to ServeCo and InfraCo Fixed and how this claimed benefit goes beyond what is already covered in sub-paragraphs 7.2(a)-(c) of the Application, and
 - b. please estimate the time period in which the Applicants expect such benefits to be realised.
18. Please identify any outcomes resulting from the creation of Amplitel that may assist the ACCC in assessing this public benefit. For example:
- a. Has Amplitel entered any agreements (including revisions of previous agreements) for the use of mobile towers since its creation on 31 August 2021? If so, please provide details.

⁶ Submission, 31 March 2022, p. 13.

⁷ Application, 31 March 2022, paragraph 7.2(c)

- b. Has the transfer of assets to Amplitel resulted in an increase in the use of the mobile tower infrastructure?

Impacts/costs of the Corporate Restructure

- 19. Please detail the expected costs/impacts of undertaking the Corporate Restructure, including (but not limited to):
 - a. ongoing additional financial costs such as the creation of “separate Boards and management teams” for ServeCo and InfraCo Fixed and any other duplication of function and operations, and
 - b. the potential loss of synergies (we note increased synergies is generally one of the key arguments supporting the efficiency of integrating separate entities).
- 20. Please set out the time period over which the Telstra Group expects any such costs/impacts resulting from the Corporate Restructure to occur.