



Our ref: AA1000607
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Dear Sir/Madam

Telstra Corporation Limited, Telstra Limited and NBN Co Limited application for authorisation AA1000607 – interested party consultation

On 31 March 2022, the Australian Competition and Consumer Commission (the **ACCC**) received an application for authorisation from Telstra Corporation Limited (**Telstra Corporation**), Telstra Limited and NBN Co Limited (**NBN Co**) (together, the **Applicants**). This letter is to invite you to comment. You are welcome to pass this letter on to others who may wish to make submissions.

Background

In June 2011, Telstra Corporation and NBN Co entered into a suite of agreements (the **Definitive Agreements**) which facilitate the rollout of the national broadband network (the **NBN**). The Definitive Agreements include the following:

- Implementation and Interpretation Deed
- Subscriber Agreement, and
- Infrastructure Services Agreement.

The Definitive Agreements were amended in December 2014 to reflect changes to the rollout of the NBN. Relevantly, the Definitive Agreements:

- provide NBN Co with access to Telstra infrastructure
- provide for the transfer of ownership of Telstra's copper and Hybrid Fibre Coaxial (**HFC**) networks to NBN Co
- require NBN Co to make payments to Telstra as Telstra progressively disconnects customers from its legacy copper fixed-line network and broadband customers from its HFC network, and
- includes a fixed-line network preference commitment for Telstra to use NBN Co's network.

Conduct by Telstra Corporation, NBN Co and NBN Co's related entities in entering into, and giving effect to, the Definitive Agreements is authorised for the purposes of section 51(1) of the *Competition and Consumer Act 2010* (Cth) (the **CCA**) by section 577BA of the *Telecommunications Act 1997* (Cth) (the **Original Statutory Authorisation**).

The Original Statutory Authorisation does not extend to Telstra Corporation's related entities as at the time the Definitive Agreements were entered into, Telstra Corporation did not have any related entities that were required to carry out obligations under the Definitive Agreements.

The application for authorisation

The Telstra Group is undertaking a legal restructure of its organisation and the Applicants submit that in order for the Definitive Agreements to continue to operate as intended, they will require some amendments.

For example, the active parts of Telstra's network, as well as Telstra's customer base (retail and most wholesale customers) will be transferred to Telstra Limited (to be re-named 'ServeCo' in the restructure). Telstra Limited (which, as a related entity of Telstra Corporation, is not a party to the Definitive Agreements) will, therefore, be required to agree to and give effect to certain limited rights and obligations under the Definitive Agreements. The proposed amendments to the Definitive Agreements are set out in a new agreement between the Applicants (the **Amending Agreement**). The Amending Agreement provides for:

- the extension of certain rights and obligations in the Subscriber Agreement and Implementation and Interpretation Deed to Telstra Limited (to be renamed ServeCo), and
- the amendment and/or creation of certain rights and obligations in the Subscriber Agreement and Implementation and Interpretation Deed to reflect the inclusion of the Telstra Limited business (to be renamed ServeCo) and related entities.

The Applicants are seeking authorisation¹ under the CCA for specific provisions in the Amending Agreement. Authorisation would give them legal protection from competition laws to engage in conduct to give effect to the Amending Agreement (the **Proposed Conduct**). Authorisation is also sought in respect of the related entities of each Applicant.

Please refer to paragraph 3.4 of the application for authorisation (enclosed) for further information about the specific provisions in the Amending Agreement for which authorisation is sought.

The Applicants submit that the purpose of this application is to seek ACCC authorisation to provide similar protection to the Applicants and their related entities (following the legal restructure of the Telstra Group) to that currently provided to Telstra Corporation, NBN Co and its related entities under the Original Statutory Authorisation.

The ACCC's role is to assess whether the Proposed Conduct would result or be likely to result in a benefit to the public, and whether the benefit would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct. It is not the ACCC's role in this process to authorise Telstra's legal restructure or to authorise the entering into, and giving effect to, the Definitive Agreements (which is authorised by section 577BA of the *Telecommunications Act 1997* (Cth)). However, the ACCC may consider such relevant information in its assessment of the likely public benefits and detriments of the Proposed Conduct.

The Applicants are seeking authorisation until 30 June 2034, which is the latest potential end date of the majority of relevant provisions. The Applicants have noted that there are several provisions which may continue to operate beyond June 2034 and as such the Applicants are seeking authorisation in relation to those provisions for as long as they remain on foot. A full copy of the application for authorisation is available on the ACCC's [authorisations public register](#).

Making a submission

The ACCC invites you to make a submission on the application for authorisation. In making your submission, please provide information, evidence and views about the likely public benefits, effects on competition and any other public detriment that you consider will result from the Proposed Conduct.

¹ For information about Authorisations, please see <https://www.accc.gov.au/business/exemptions/authorisation>

If you intend to provide a submission, please do so by **29 April 2022**. If you wish to request an extension, please contact us on the details below as early as possible. Submissions after the due date (or after any extension granted) may not be taken into account.

Please email your submission to exemptions@acc.gov.au, with the subject 'AA1000607– Telstra Corporation Limited, Telstra Limited and NBN Co Limited – submission'. Alternatively, if you would like to provide comments orally, please contact Ellie Dwyer or Gemma Smith via the details at the end of this letter.

Your submission **will** be placed on the ACCC's [authorisations public register](#) on its website, unless you have made a request (with reasons) for us to exclude part or all of the submission from the public register (see [Guidelines for Excluding Information from the Public Register](#) for further information).

Timetable

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information, and an up to date version (including any changes) will be posted on the public register.

| Indicative date | Stage in assessment process |
|--------------------------------|--|
| 31 March 2022 | Lodgement of application and supporting submission. |
| 6 April 2022 | Public consultation process begins. |
| 29 April 2022 | Closing date for submissions from interested parties. |
| 10 May 2022 | Applicant responds to issues raised in the public consultation process. |
| June - July 2022 | Draft determination. |
| July - August 2022 | Public consultation on draft determination including any conference if called. |
| August - September 2022 | Final determination. |

This letter has been placed on the ACCC's public register. If you have any questions or wish to discuss any aspect of this matter, please do not hesitate to contact Ellie Dwyer on 03 9290 1874 or Gemma Smith on 03 9290 1405, or via email exemptions@acc.gov.au.

Yours sincerely



Jaime Martin
Director A/g
Competition Exemptions