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1 November 2022

By email: [REDACTED]

Ms Liza Carver
Commissioner
Australian Competition and Consumer Commission
Level 28, 135 King Street
Sydney, NSW 2000

Copy Mandy Bendelstein mandy.bendelstein@acc.gov.au
 Jennifer Barron jennifer.barron@acc.gov.au

Dear Ms Carver

Telstra and TPG proposed MOCN arrangements – submission and proposal in relation to term of merger authorisation

We refer to the Statement of Preliminary Views (**SOPV**) published by the ACCC in relation to this matter on 30 September 2022. This letter is sent on behalf of both Telstra and TPG.

Capitalised terms in this letter that are not otherwise defined have the same meaning as in Telstra and TPG's application for merger authorisation.

The parties have separately lodged a response to the various substantive issues raised in the SOPV (**SOPV Response**).

However, amongst other things, in assessing the term of the Proposed Transaction, the SOPV:

- expresses a preliminary view that it is necessary for the ACCC to have regard to both the long-term and short-term impacts of the Proposed Transaction; and
- points to preliminary concerns regarding TPG's competitive position and presence after decommissioning its sites in the 17% Regional Coverage Zone, and whether this would leave it in a weak position to recommence a rollout of independent infrastructure in the future.

The Applicants' position is that the Proposed Transaction will not give rise to any anti-competitive detriment, over any time horizon – while delivering pro-competitive benefits (including in terms of infrastructure competition over the short and long term) and verifiable public benefits associated with the Proposed Transaction. Further evidence will be provided to the ACCC in response to the SOPV reinforcing these points.

Nonetheless, given the comments made in the SOPV:

- The Applicants are open to the ACCC granting merger authorisation on condition that the ACCC can review the Proposed Transaction again within eight years. The Applicants enclose a draft

joint undertaking pursuant to s87B of the *Competition and Consumer Act 2010 (Act)*, which would enable this commitment (the **Joint Undertaking**).

- TPG is prepared to retain a significant proportion of its sites in the 17% Regional Coverage Zone and encloses an undertaking pursuant to s87B of the Act, which would commit TPG to retaining existing leases and licences that provide TPG with access to one or more of 300 select sites in the 17% Regional Coverage Zone (the **Sites Undertaking**). This is in addition the sites (up to 169) transferred to Telstra under the Proposed Transaction but which TPG takes back if the Proposed Transaction ends. Collectively, with the Sites Undertaking in place, TPG would retain approximately 60% of its total sites within the 17% Regional Coverage Zone throughout the period of the Joint Undertaking (i.e. the period until the ACCC has an opportunity to re-assess).

Further information about each of these undertakings is set out below.

Joint Undertaking

The SOPV states that:

- The Spectrum Authorisation differs from other merger authorisations in that it involves authorisation of ongoing pooling and use of spectrum by the parties over time, rather than authorisation of a single transaction.
- The ACCC is therefore considering the appropriate term of merger authorisation, should it be granted. If a period is granted that is shorter than the term of the relevant agreements, the ACCC acknowledges that this may require the parties to seek reauthorisation at some point in the future.
- The ACCC expresses a preliminary view that it is necessary to have regard to both the long-term and short-term impacts of the Proposed Transaction. Specifically, the SOPV states that the ACCC is considering “*how much weight to give to short-term competitive effects which are more readily predictable, as against long-term effects which are more difficult to predict with specificity but have the potential to affect the relevant markets more substantially if they eventuate.*” (at paragraph 5.32)
- In relation to the potential long-term effects of authorisation, the SOPV refers to concerns arising from the consequences of TPG “*shutting down a significant portion of its mobile network and Telstra gaining significant spectrum holdings (the licences for which expire between 2028 and 2032).*” (at paragraph 1.15)

Given the comments made in the SOPV regarding the potential for a shorter term of authorisation, the Applicants wish to assist the ACCC and other stakeholders to understand the practical commercial implications for the Proposed Transaction, should the ACCC grant authorisation for a period shorter than the term of the relevant Agreements.

To that end, the Applicants enclose a draft undertaking pursuant to s87B of the Act, which provides as follows:

- 4.1 *The Undertaking Signatories commit to cease giving effect to the Agreements, except to the extent necessary to give effect to the Transition-Out Period, unless by 8 years from the date that the original authorisation of the Proposed Transaction takes effect:*

- (a) *the Undertaking Signatories have received, either unconditionally or on terms and conditions that are acceptable to both of the Undertaking Signatories acting reasonably, a notice in writing from the ACCC stating, or stating to the effect, that the ACCC does not propose to intervene or seek to prevent the parties from continuing to give effect to the Agreements; or*
- (b) *the ACCC or Australian Competition Tribunal has made a final determination to grant authorisation pursuant to Part VII, Division 1 of the Act, the effect of which is to grant the Undertaking Signatories authorisation to continue giving effect to the Agreements:*
 - (i) *on an unconditional basis; or*
 - (ii) *subject to conditions which are, in the reasonable opinion of the Undertaking Signatories, acceptable.*

This commitment provides the ACCC, and stakeholders, with certainty that, should the ACCC grant formal merger authorisation, as sought by the parties, the Applicants will ensure that:

- the ACCC will be given an opportunity to re-assess the competitive effects associated with the entire Proposed Transaction within eight years (noting that the ACCC would commence its review within 6-7 years, in order for this to be in place by the end of the 8-year period); and
- should the ACCC (or the Tribunal) form the view at that time that any likely competitive detriment that has arisen or (at that time) is likely to arise, is not outweighed by the continued public benefits associated with the Proposed Transaction, the Applicants will cease giving effect to the conduct (i.e. through the existing Transition-Out Period).

This approach avoids the ACCC needing to reach a concluded view as part of the current formal authorisation process concerning the speculative (and long-term) claims of Optus regarding whether it will continue to compete and invest in regional areas. It also avoids the ACCC being forced to reach a concluded view as to any long-term effects of the Proposed Transaction on either absolute or quality-adjusted prices. Instead, having regard to evidence as it emerges over the next 6-8 years, if the ACCC (or the Tribunal) are not satisfied that the arrangements should continue, then the Proposed Transaction will be unwound, including the spectrum sharing arrangements.¹

The proposed timing for an ACCC or Tribunal decision under the Joint Undertaking (i.e. eight years from the date on which the original authorisation takes effect) addresses any long-term uncertainty raised in the SOPV while:

- ensuring that the Applicants can realise the commercial benefits of the Proposed Transaction which are expected to accrue over time including TPG's anticipated uplift in customers over that period; and
- providing a long enough period for the ACCC to re-assess technological developments, including the timing of any future rollout of 6G in Australia, which is not currently expected to commence until after 2030.

¹ The Transition-Out Period and associated commitments under the Agreements had been negotiated and agreed specifically to ensure TPG has the commercial ability to re-consider and re-establish its network following any termination of the Proposed Transaction.

Site Undertaking

One of the two potential concerns raised by the ACCC in relation to infrastructure-based competition, is that the Proposed Transaction may “remove” TPG as a potential future infrastructure investor within parts of regional and rural Australia (paragraph 5.51). The ACCC appears concerned that TPG’s planned decommissioning of tower infrastructure, once the MOCN is established, could restrict its ability to unwind the MOCN (and therefore entrench ongoing reliance on access to Telstra’s sites and network).²

For the reasons set out in section 6.2 of the SOPV Response, TPG does not consider that the Proposed Transaction will remove it as a potential future infrastructure investor within regional Australia. In negotiating the Proposed Transaction, TPG was mindful to protect its optionality and capacity to move away from the MOCN in the future, such as at any of the option renewal points, or in the event of termination. The Transition-Out Period under the Agreements provides ample time for TPG to re-establish 749 sites plus an additional [Confidential to TPG] sites in the 17% Regional Coverage Zone (i.e. to match the sites it would have in a targeted build counterfactual). In fact, given that TPG would have a materially enhanced customer base at this time by virtue of the Proposed Transaction, it will have a likely business case to roll out many more sites than this, and a period of 36 months would allow for this to occur.

In any event, the Proposed Transaction will likely enhance, not reduce, the level of TPG’s direct infrastructure investment within the Australian retail mobile market. In particular:

- Absent the Proposed Transaction, there is no real commercial likelihood that TPG would undertake any material investment in regional areas. As the ACCC appears to have accepted, there is no real commercial likelihood that TPG would rollout more than a limited number of additional sites (around [Confidential to TPG]) in the 17% Regional Coverage Zone.
- With the Proposed Transaction, TPG will have a greater incentive to invest in its network and services because the Proposed Transaction provides TPG with a network augmentation (through active sharing of Telstra’s regional RAN within the MOCN area), which allows TPG to extend the benefits of any investment in service innovation and differentiation across a significantly expanded national network, improving returns on investment.
- TPG will be incentivised to invest more heavily in its RAN in metropolitan areas [Confidential to TPG]

Taken together, this will likely lead to overall greater network investment by TPG with the Proposed Transaction than in any realistic counterfactual.

Nonetheless, having regard to the preliminary concern raised by the ACCC in the SOPV, TPG encloses with this letter a draft undertaking pursuant to s87B of the Act, which provides as follows:

3.1 TPG commits to refrain from:

- (a) terminating any licence or lease (a **Licence**) pursuant to which TPG is granted access to one or more of the 300 mobile sites (**Retained Site**) set out in **Annexure A**, each of which is within the Regional Coverage Zone; or

² SOPV, para [5.47] to [5.49].

- (b) *taking any action that causes TPG to commit a breach of any Licence that would entitle the licensor or landlord of a Retained Site (**Licensor**) to terminate the Licence,*

unless

- (c) *the Licensor is in breach of the Licence and, in consequence, TPG is entitled to terminate the Lease;*
- (d) *the ACCC consents in writing to TPG terminating a Licence or taking any action that would entitle the Licensor to terminate the Licence; or*
- (e) *a period of eight years has elapsed since the original authorisation of the Proposed Transaction has taken effect.*

3.2 *For the avoidance of doubt, nothing in this Undertaking:*

- (a) *requires TPG to renew a Licence that expires;*
- (b) *prevents a Licensor from terminating a Licence; or*
- (c) *prevents TPG from terminating a Licence for reasons outside of its control or where required by law.*

Taken in conjunction with the sites (up to 169) transferred to Telstra under the Proposed Transaction but which TPG takes back if the Proposed Transaction ends, TPG will retain access to around 60% of its current sites in the 17% Regional Coverage Zone up to the time the ACCC re-assesses the Proposed Transaction under the Joint Undertaking (no later than 8 years from authorisation).

The position of TPG under the Site Undertaking means TPG can easily match and surpass the site numbers under any commercially realistic counterfactual and does not anticipate a need to roll out to more than approximately **[Confidential to TPG]** 6G new sites during the Transition-Out Period.

In terms of the 300 sites that have been selected by TPG to be retained: **[Confidential to TPG]**

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

All of the 300 sites are well positioned across Australia.

The sites that TPG proposes to decommission are not of strategic value. The cost of retaining them would have a materially adverse impact on TPG's business case for the Proposed Transaction without any strategic benefit. Indeed, if TPG were to roll out 6G in the 17% Regional Coverage Zone upon termination of the Agreements (or should the Agreements not be re-authorised by the ACCC), it would not choose to do so at a large number of the sites to be decommissioned.

Moreover, given the greater choice of third-party sites now available, TPG will be in a better position to choose preferable sites in the event that it looks to do so in the future.

ACCC retains its ability to determine the Application

The proposed s 87B undertakings do not substantively alter either the terms of the application or the underlying Agreements.

The parties remain commercially and contractually committed to giving effect to the Agreements for their full term in the manner outlined in the Application. The Joint Undertaking is not premised on shortening the term of those Agreements or giving either party any new or alternative right to terminate them. The Site Undertaking also does not alter any of the terms of the Agreements,

The only party that is provided with any new or varied right is the ACCC (or Tribunal) which has power to prevent the Agreements from continuing for their full term. The undertakings provide the ACCC with confidence that it will be provided with a certain and transparent opportunity to re-consider the competitive effect of the Proposed Transaction in light of market developments and to intervene, if it considers it necessary to do so (subject to review by the Tribunal), and that TPG will retain access to a material proportion of its regional sites in the intervening period.

For these reasons:

- The undertakings do not, we submit, have any substantive effect on the ACCC's consideration of the efficiency or other benefits identified by the parties (including the pro-competitive effects of the MOCN deal in regional areas).
- However, we submit that it is appropriate and necessary for the ACCC to take into account the undertakings, its ability to re-assess the Agreements, and TPG retaining a selection of sites in the 17% Regional Coverage Zone in forming a view as to the likelihood and materiality of any competitive effects of the Proposed Transaction.

In the circumstances, the parties also do not anticipate that this will require any change to the timeframe for authorisation. Nonetheless, we recognise the ACCC will wish to consult on the terms of the draft undertakings and have sought to provide this correspondence at the earliest opportunity and at the same time as the SOPV Response, to ensure that it has an opportunity to do so.

Yours faithfully

Simon Muys
Partner
Gilbert + Tobin

Andrew Low
Partner
Gilbert + Tobin

Jodi Gray
Partner
Corrs Chamber Westgarth

[Redacted signature lines]

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Telstra Corporation Limited (ACN 051 775 556) and TPG Telecom Limited (ACN 096 304 620)

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1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by:
- (a) Telstra Corporation Limited ACN 051 775 556 (**Telstra**); and
 - (b) TPG Telecom Limited ACN 096 304 620 (**TPG**),
- (together, **the Undertaking Signatories**).
- 1.2. A reference in the Undertaking to ‘the Undertaking Signatories’ refers to Telstra and TPG both jointly and severally.

2. Background

The parties to the Spectrum Transaction

Telstra

- 2.1. Telstra is an ASX-listed telecommunications and technology company. Telstra supplies retail mobile services, retail fixed bundles and standalone data services and retail fixed standalone voice services. Telstra operates the largest mobile network in Australia, covering around 33% of the country’s land mass and reaching 99.5% of the population. Telstra also provides wholesale services, including wholesale mobile services to MVNOs.

TPG

- 2.2. TPG is a full-service telecommunications company listed on the ASX. On 13 July 2020, Vodafone Hutchison Australia (**VHA**) (the former name of TPG) and TPG Corporation Limited (formerly named TPG Telecom Limited) merged, which combined two complementary businesses with a comprehensive portfolio of fixed and mobile products. Several brands fall under TPG in Australia, which include Vodafone, TPG, iiNet, AAPT, Internode, Lebara and felix. TPG provides services to consumers, small and medium enterprises, government, large corporate enterprises and wholesale customers.
- 2.3. TPG is the third biggest mobile network in Australia, by coverage and subscriber numbers, and also operates and supplies fixed broadband services in Australia with extensive on-net infrastructure and next-generation networks. TPG offers nationwide National Broadband Network, ADSL2+, Fibre Optic and Ethernet broadband access, telephony services, SIM Only Mobile plans and various business networking solutions.

The Spectrum Transaction

- 2.4. Telstra and TPG have entered into three interrelated agreements in respect of a Multi-Operator Core Network (**MOCN**) commercial arrangement:
- (a) MOCN Service Agreement dated 17 February 2022 (**MOCN Agreement**);
 - (b) Spectrum Authorisation Agreement – MOCN Area dated 17 February 2022 (**Spectrum Authorisation**); and

- (c) Mobile Site Transition Agreement dated 17 February 2022 (**Site Agreement**),
- (together, the **Agreements**).
- 2.5. The Spectrum Authorisation is deemed to be an acquisition within the meaning of section 50 of the *Competition and Consumer Act 2010* (Cth) (the **Act**) pursuant to section 68(1) of the *Radiocommunications Act 1992* (Cth) (the **Spectrum Transaction**).

The ACCC's review

- 2.6. The Undertaking Signatories have made an application for a merger authorisation pursuant to section 88 of the Act in respect of the Spectrum Transaction.
- 2.7. On 23 May 2022, the Undertaking Signatories lodged their application for merger authorisation and supporting submission with the ACCC.
- 2.8. On 31 May 2022, the ACCC commenced a public consultation process. The ACCC undertook market inquiries and considered information provided by the Undertaking Signatories, industry participants and others. The purpose of the ACCC's inquiries was to obtain information relevant to its assessment of the effects of the Spectrum Transaction on competition and whether the likely public benefits from the Spectrum Transaction outweigh any likely public detriment.
- 2.9. On 30 September 2022, the ACCC released a Statement of Preliminary Views. This document provided a summary of issues raised during the public consultation process and outlined the ACCC's preliminary views about the Spectrum Transaction and issues about which it seeks further information.
- 2.10. The Statement of Preliminary Views acknowledged the immediate and short-term public benefits of enhanced service quality to Telstra and TPG customers, but noted that these benefits needed to be assessed against any potential long-term detriments, particularly in relation to understanding the potential long-term impact on Optus' incentives to continue investing in its mobile network in regional and rural Australia, which are difficult to predict.
- 2.11. As the Spectrum Transaction involves authorisation of ongoing use of spectrum over time, the ACCC stated that it was considering whether to authorise the Spectrum Transaction for the duration of the Agreements, or for a shorter period that may require Telstra and TPG to seek reauthorisation at some point in the future.

The Undertaking

- 2.12. The Undertaking Signatories do not consider that the Spectrum Transaction would have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market contrary to section 50 of the Act. Nor do the Undertaking Signatories consider that the Spectrum Transaction would result in any public detriment that would outweigh the public benefits. However, to address the ACCC's concerns as to any potential long-term detriments as set out in the Statement of Preliminary Views, the Undertaking Signatories offer this Undertaking pursuant to section 87B of the Act.
- 2.13. The effect of the Undertaking is that the Undertaking Signatories commit to cease giving effect to the Agreements, except to the extent necessary to give effect to the Transition-Out Period, unless by 8 years from the date that the original authorisation of the Spectrum Transaction takes effect:

- (a) the Undertaking Signatories have received, either unconditionally or on terms and conditions that are acceptable to both of the Undertaking Signatories acting reasonably, a notice in writing from the ACCC stating, or stating to the effect, that the ACCC does not propose to intervene or seek to prevent the Undertaking Signatories from continuing giving effect to the Agreements; or
- (b) the ACCC or Australian Competition Tribunal has made a final determination to grant authorisation pursuant to Part VII, Division 1 of the Act, the effect of which is to grant the Undertaking Signatories authorisation to continue giving effect to the Agreements:
 - (i) on an unconditional basis; or
 - (ii) subject to conditions which are, in the reasonable opinion of the Undertaking Signatories, acceptable.

3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

- (a) this Undertaking is executed by the Undertaking Signatories; and
- (b) this Undertaking so executed is accepted by the ACCC

(the **Commencement Date**).

4. Termination of the Agreements unless further ACCC approval or authorisation is granted

4.1. The Undertaking Signatories commit to cease giving effect to the Agreements, except to the extent necessary to give effect to the Transition-Out Period, unless by 8 years from the date that the original authorisation of the Proposed Transaction takes effect:

- (a) the Undertaking Signatories have received, either unconditionally or on terms and conditions that are acceptable to both of the Undertaking Signatories acting reasonably, a notice in writing from the ACCC stating, or stating to the effect, that the ACCC does not propose to intervene or seek to prevent the Undertaking Signatories from continuing to give effect to the Agreements; or
- (b) the ACCC or Australian Competition Tribunal has made a final determination to grant authorisation pursuant to Part VII, Division 1 of the Act, the effect of which is to grant the Undertaking Signatories authorisation to continue giving effect to the Agreements:
 - (i) on an unconditional basis; or
 - (ii) subject to conditions which are, in the reasonable opinion of the Undertaking Signatories, acceptable.

5. Cessation of Ongoing Obligations

Withdrawal

- 5.1. The Undertaking Signatories may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

- 5.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 5.3. The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Survival

- 5.4. Unless and until this Undertaking is withdrawn in accordance with clause 5.1, clauses 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 survive completion of clause 4.

6. Disclosure of this Undertaking

- 6.1. The Undertaking Signatories acknowledges that the ACCC may:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.

7. No Derogation

- 7.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by the Undertaking Signatories of any term of this Undertaking.
- 7.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that the Undertaking Signatories do not fully implement and/or perform their obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

8. Change of Control

- 8.1. In the event that a Change of Control is reasonably expected to occur, the Undertaking Signatories must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on the Undertaking Signatories pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified the

Undertaking Signatories in writing that a section 87B undertaking under this clause is not required.

9. Costs

- 9.1. The Undertaking Signatories must pay all of their own costs incurred in relation to this Undertaking.

10. Notices

Giving Notices

- 10.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Merger, Exemptions & Digital Division

With a copy sent to: mergersru@acc.gov.au
Attention: Director, Remedies Unit
Policy, Coordination & Remedies Branch
Merger, Exemptions & Digital Division

- 10.2. Any notice or communication to Telstra pursuant to this Undertaking must be sent to:

Name: Bill Gallagher

Email Address: [REDACTED]

- 10.3. Any notice or communication to TPG pursuant to this Undertaking must be sent to:

Name: Trent Czinner

Email Address: [REDACTED]

- 10.4. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).

- 10.5. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 10.6. The Undertaking Signatories must notify the ACCC of a change to their respective contact details within three Business Days.

- 10.7. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 10.4 and 10.5, will be taken to be received.

11. Defined terms and interpretation

Definitions in the Dictionary

11.1. A term or expression starting with a capital letter:

- (c) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
- (d) which is defined in the *Corporations Act 2001* (Cth), but is not defined in the Dictionary, has the meaning given to it in the *Corporations Act 2001* (Cth).

Interpretation

11.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by Telstra Corporation Limited (ACN 051 775 556) pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of director	Signature of a director/company secretary
Name of director (print)	Name of director/company secretary (print)
Date	Date

Executed by TPG Telecom Limited (ACN 096 304 620) pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of director	Signature of a director/company secretary
Name of director (print)	Name of director/company secretary (print)
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

Date

and signed on behalf of the Commission:

Chair

Date

Schedule 1 – Dictionary and interpretation

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means the agreements referred to in clause 2.4 of this Undertaking.

ASX means Australian Securities Exchange.

Australian Competition Tribunal is the Australian Competition Tribunal as constituted under Part III of the Act.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Change of Control means:

- the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Telstra or TPG to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- the sale or transfer of any assets necessary, or which may be necessary, to enable Telstra or TPG to continue to comply with this Undertaking in its entirety.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Corporations Act means the *Corporations Act 2001* (Cth).

MOCN means Multi-Operator Core Network.

MOCN Agreement means the MOCN Service Agreement entered into between Telstra and TPG dated 17 February 2022.

MVNO means Mobile Virtual Network Operator.

Optus means Singtel Optus Pty Limited.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

Site Agreement means the Mobile Site Transition Agreement entered into by Telstra and TPG dated 17 February 2022.

Spectrum Authorisation means the Spectrum Authorisation Agreement – MOCN Area entered into between Telstra and TPG dated 17 February 2022.

Spectrum Transaction has the meaning given to it in clauses 2.4 and 2.5 of this Undertaking.

Telstra means the entity referred to in clause 1.1.(a) of this Undertaking.

TPG means the entity referred to in clause 1.1.(b) of this Undertaking.

Transition-Out Period has the meaning given in clause 16.1(d) of the MOCN Agreement.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Undertaking Signatories has the meaning given to it in clause 1.1 of this Undertaking.

2. Interpretation

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
 - (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
 - (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
 - (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
 - (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
 - (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;

- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
 - (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
 - (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
 - (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
 - (p) in performing its obligations under this Undertaking, the Undertaking Signatories will do everything reasonably within their power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
 - (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.
-

Undertaking to the Australian Competition and Consumer Commission

**Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by TPG
Telecom Pty Ltd ACN 096 304 620**

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1 Person giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by TPG Telecom Limited ACN 096 304 620 (**TPG**).

2 Background

The parties to the Spectrum Transaction

Telstra

- 2.1 Telstra Corporation Limited ACN 051 775 556 (**Telstra**) is an ASX-listed telecommunications and technology company. Telstra supplies retail mobile services, retail fixed bundles and standalone data services and retail fixed standalone voice services. Telstra operates the largest mobile network in Australia, covering around 33% of the country's land mass and reaching 99.5% of the population. Telstra also provides wholesale services, including wholesale mobile services to MVNOs.

TPG

- 2.2 TPG is a full-service telecommunications company listed on the ASX. On 13 July 2020, Vodafone Hutchison Australia (**VHA**) (the former name of TPG) and TPG Corporation Limited (formerly named TPG Telecom Limited) merged, which combined two complementary businesses with a comprehensive portfolio of fixed and mobile products. Several brands fall under TPG in Australia, which include Vodafone, TPG, iiNet, AAPT, Internode, Lebara and felix. TPG provides services to consumers, small and medium enterprises, government, large corporate enterprises and wholesale customers.
- 2.3 TPG is the third biggest mobile network in Australia, by coverage and subscriber numbers, and also operates and supplies fixed broadband services in Australia with extensive on-net infrastructure and next-generation networks. TPG offers nationwide National Broadband Network, ADSL2+, Fibre Optic and Ethernet broadband access, telephony services, SIM Only Mobile plans and various business networking solutions.

The Proposed Transaction

- 2.4 Telstra and TPG have entered into three interrelated agreements in respect of a Multi-Operator Core Network (**MOCN**) commercial arrangement in certain regional and urban fringe areas of Australia. This is an area in which around 17% of the population resides and is known as the Regional Coverage Zone.
- 2.5 Specifically, Telstra and TPG have entered into the following three interrelated agreements (the **Agreements**):
- (a) MOCN Service Agreement dated 17 February 2020 (**MOCN Agreement**);
 - (b) Spectrum Authorisation Agreement – MOCN Area dated 17 February 2022 (**Spectrum Authorisation**); and

(c) **Mobile Site Transition Agreement dated 17 February 2022 (Site Agreement),**

(together, the **Proposed Transaction**).

- 2.6 As part of the Proposed Transaction, TPG will transfer up to 169 sites in the Regional Coverage Zone to Telstra and had intended to decommission the sites in that zone that are not transferred to Telstra.
- 2.7 The Spectrum Authorisation is deemed to be an acquisition within the meaning of section 50 of the *Competition and Consumer Act 2010* (Cth) (the **Act**) pursuant to section 68(1) of the *Radiocommunications Act 1992* (Cth).

The ACCC's review

- 2.8 On 23 May 2022, TPG and Telstra (the **Applicants**) made an application for a merger authorisation pursuant to section 88 of the Act in respect of the Spectrum Transaction.
- 2.9 On 31 May 2022, the ACCC commenced a public consultation process. The ACCC undertook market inquiries and considered information provided by the Applicants, industry participants and others. The purpose of the ACCC's inquiries was to obtain information relevant to its assessment of the effects of the Spectrum Transaction on competition and whether the likely public benefits from the Spectrum Transaction outweigh any likely public detriment.
- 2.10 On 30 September 2022, the ACCC released a Statement of Preliminary Views (**SOPV**) in which it states that it intends to consider the Spectrum Authorisation in the context of the broader effects of the Proposed Transaction. The SOPV provided a summary of issues raised during the public consultation process and outlines the ACCC's preliminary views about the Proposed Transaction and issues about which it seeks further information.
- 2.11 In the SOPV, the ACCC acknowledges the immediate and short-term public benefits of enhanced service quality to Telstra and TPG customers as a result of the Proposed Transaction. However, the ACCC also raises a concern that, by TPG decommissioning tower infrastructure in the Regional Coverage Zone, *"the threat of future network expansion by TPG in the Regional Coverage Zone will be diminished; and that it will be in a weaker position to re-negotiate when seeking to renew contract terms with Telstra in the future."*

The Undertaking

- 2.12 TPG does not consider that the Proposed Transaction would have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market contrary to section 50 of the Act. Nor does TPG consider that the Proposed Transaction would result in any public detriment that would outweigh the public benefits. However, to address the ACCC's concern in relation to TPG decommissioning its tower infrastructure in the Regional Coverage Zone, TPG offers this Undertaking pursuant to section 87B of the Act.

3 The Undertaking

3.1 TPG commits to refrain from:

- (a) terminating any licence or lease (a **Licence**) pursuant to which TPG is granted access to one or more of the 300 mobile sites (**Retained Site**) set out in **Annexure A**, each of which is within the Regional Coverage Zone; or
- (b) taking any action that causes TPG to commit a breach of any Licence that would entitle the licensor or landlord of a Retained Site (**Licensor**) to terminate the Licence,

unless

- (c) the Licensor is in breach of the Licence and, in consequence, TPG is entitled to terminate the Licence;
- (d) the ACCC consents in writing to TPG terminating a Licence or taking any action that would entitle the Licensor to terminate the Licence; or
- (e) a period of eight years has elapsed since the original authorisation of the Proposed Transaction took effect.

3.2 For the avoidance of doubt, nothing in this Undertaking:

- (a) requires TPG to renew a Licence that expires;
- (b) prevents a Licensor from terminating a Licence; or
- (c) prevents TPG from terminating a Licence for reasons outside of its control or where required by law.

4 Commencement of this Undertaking

4.1 This Undertaking comes into effect when:

- (a) this Undertaking is executed by TPG; and
 - (b) this Undertaking so executed is accepted by the ACCC.
- (the **Commencement Date**).

5 Cessation of Ongoing Obligations

Withdrawal

5.1 TPG may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

- 5.2 The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 5.3 The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Survival

- 5.4 Unless and until this Undertaking is withdrawn in accordance with clause 5.1, clauses 1, 2, 5, 6, 7, 8, 9, 10 and 11 survive.

6 Disclosure of this Undertaking

- 6.1 TPG acknowledges that the ACCC may:
- (a) make this Undertaking (excluding Annexure A) publicly available;
 - (b) publish this Undertaking (excluding Annexure A) on its Public Section 87B Undertakings Register and Public Merger Authorisations Register; and
 - (c) from time to time publicly refer to this Undertaking provided that it does not make public the confidential content of Annexure A.

7 No Derogation

- 7.1 This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by TPG of any term of this Undertaking.
- 7.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that TPG does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

8 Change of Control

- 8.1 In the event that a Change of Control is reasonably expected to occur, TPG must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on TPG pursuant to this Undertaking, or on terms that are otherwise acceptable

to the ACCC, unless the ACCC has notified TPG in writing that a section 87B undertaking under this clause is not required.

9 Costs

- 9.1 TPG must pay all of its own costs incurred in relation to this Undertaking.

10 Notices

Giving notices

- 10.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergerauthorisations@acc.gov.au

Attention: Executive General Manager

Mergers, Exemptions and Digital Division

With a copy sent to: mergersru@acc.gov.au

Attention: Director, Remedies Unit

Policy, Coordination & Remedies Branch

Mergers, Exemptions and Digital Division

- 10.2 Any notice or communication to TPG pursuant to this Undertaking must be sent to:

Name: Trent Czinner

Email address:

- 10.3 If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).

- 10.4 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 10.5 TPG must notify the ACCC of a change to its contact details within three Business Days.
- 10.6 Any notice or communication will be sent to the most recently advised contact details and subject to clause 10.3 and 10.4, will be taken to be received.

11 Defined terms and interpretation

Definitions in the Dictionary

- 11.1 A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary; or

- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

11.2 Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by TPG Telecom Limited (ACN 096 304 620) pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of director	Signature of a director/company secretary
Name of director (print)	Name of director/company secretary (print)
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

Date

and signed on behalf of the Commission:

Chair

Date

Schedule 1 – Dictionary and interpretation

1 Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means the agreements referred to in clause 2.5 of this Undertaking.

Applicants has the meaning given to it in clause 2.8 of this Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Change of Control means:

- the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Telstra or TPG to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- the sale or transfer of any assets necessary, or which may be necessary, to enable Telstra or TPG to continue to comply with this Undertaking in its entirety.

Commencement Date means the date described in clause 4.1 of this Undertaking.

Corporations Act means the *Corporations Act 2001* (Cth).

MOCN means Multi-Operator Core Network.

MOCN Agreement means the MOCN Service Agreement entered into between Telstra and TPG dated 17 February 2022.

Proposed Transaction has the meaning given to it in clause 2.5 of this Undertaking.

Public Merger Authorisations Register means the ACCC's public register of merger authorisations, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Regional Coverage Zone means the areas in which the MOCN will operate, being certain regional and urban fringe areas which comprise around 17% of the Australian population coverage (in the 81.4% - 98.8% population coverage area).

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

Site Agreement means the Mobile Site Transition Agreement entered into by Telstra and TPG dated 17 February 2022.

Spectrum Authorisation means the Spectrum Authorisation Agreement – MOCN Area entered into between Telstra and TPG dated 17 February 2022.

Telstra means the entity referred to in clause 2.1 of this Undertaking.

TPG means the entity referred to in clause 1.1 of this Undertaking.

Tribunal is the Australian Competition Tribunal as constituted under Part III of the Act.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

2 Interpretation

In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;

- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, BP will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

