



## Record of oral submission to the ACCC

Matter name:	<b>Telstra TPG application for merger authorisation (MA1000021)</b>
Attendees:	
ACCC:	<ul style="list-style-type: none"><li>• Deputy Chair Mick Keogh</li><li>• Commissioner Anna Brakey</li><li>• Commissioner Liza Carver</li><li>• Wendy Peter – General Counsel</li><li>• Richard York – A/g Chief Economist</li><li>• Sarah Proudfoot – EGM Infrastructure Division</li><li>• Daniel McCracken-Hewson – GM Merger Investigations</li><li>• Mark Basile – Executive Director, Merger Investigations</li><li>• Mandy Bendelstein – Director, Merger Investigations</li><li>• Tim Byrne – A/g Director, Merger Investigations</li><li>• Andrew Gun – A/g Deputy General Counsel, MEAD Legal</li><li>• Case team:<ul style="list-style-type: none"><li>○ Janet Li, Caylie McDonald</li></ul></li></ul>
Singtel/Optus:	<p><b>Singtel</b></p> <ul style="list-style-type: none"><li>• Kuan Moon Yuen (<b>KMY</b>) – Chief Executive Officer</li></ul> <p><b>Optus</b></p> <ul style="list-style-type: none"><li>• Paul O’Sullivan (<b>PO</b>) – Chairman</li><li>• Kelly Bayer Rosmarin (<b>KBR</b>) – Chief Executive Officer</li><li>• Nick Kusalic – General Counsel</li><li>• Suzie Pasialis – Deputy General Counsel</li></ul> <p><b>Legal representatives</b></p> <ul style="list-style-type: none"><li>• Haydn Flack – Partner, MinterEllison</li><li>• Linda Evans – Partner, Herbert Smith Freehills</li></ul>

Merger authorisation no.:	MA1000021		
Date:	27 September 2022		
Time:	4:00 pm AEST		
Phone to <input type="checkbox"/>	Phone from <input type="checkbox"/>	Meeting <input checked="" type="checkbox"/>	Other <input type="checkbox"/>

ACCC staff met with Singtel and Optus to discuss the Telstra/TPG merger authorisation application. During the meeting, Singtel and Optus provided a document for the ACCC's consideration (attached to this oral submission). The following points were discussed.

### Singtel/Optus background

1. Singtel is a Singapore listed company. It has approximately a \$44 billion market capitalisation and has been listed since 1993. Singtel has operations all around the world including Optus in Australia, which is a 100% owned subsidiary of Singtel. Singtel also has other telecommunications operations in the Philippines, Thailand and Indonesia. Singtel also operates an IT services company, NCS (which is a 100% owned subsidiary of Singtel). Singtel just expanded into Australia's IT industry and made two large acquisitions of Australian IT companies.

2. Singtel acquired Optus in 2001. Singtel is governed by a board, with a management committee that sits underneath. Singtel makes decisions (such as deployment of capital)



3. Since 2016, Singtel has injected capital expenditure investment of more than [redacted] into Optus. In the last few years, that figure has been closer to [redacted] per year, which is mostly due to technological advancements (i.e. upgrading from 4G to 5G). Every technological iteration requires more capital. The telecommunications industry is capital intensive and coverage plays a big part of competing effectively.

4. Singtel understands the complexities of the telecommunications markets worldwide. Singtel operates telecommunications networks across islands in Indonesia and the Philippines.

5. Singtel also understands the opportunities technology advancements provide to operators. Over the last few years, the shifts in technology have become major market shaping transition periods. Singtel was previously the second biggest telecommunications provider in the Philippines. After investing very heavily in 4G technology, Singtel was able to displace the market leader to become the largest provider in the Philippines. Singtel is familiar with competing in different market environments in various positions of dominance.

### Singtel's and Optus' concerns about the proposed merger authorisation

6. Singtel submitted that the proposed transaction complicates Optus' business case and puts it business further at risk. Optus noted several issues which have impacted its business case:

- a. the proposed sharing of network between Telstra and TPG
- b. Telecommunications sector security reforms and
- c. Telstra's access to TPG's spectrum.

This combination makes Optus' business case very tricky and would require Optus to spend more money to develop technology to effectively compete.

#### Sharing of network between Telstra and TPG

7. Optus submitted that the amount of traffic on an operators' network plays a large role in costs. There are fixed and operating costs for running a network. The greater traffic one operator has, the more the operator can benefit from the cost curve. Given Telstra's already dominant position, Telstra will have a significant cost advantage if the proposed transaction proceeds. Optus submitted that the proposed transaction would entrench Telstra's scale and efficiency; and scale is vital for Telstra entrenching its dominance.

#### Government Security Guidance

8. The regulatory environment in the Australian telecommunications industry has changed dramatically over the last few years and has had a significant impact on Optus.
9. Approximately five years ago, Singtel analysed the Optus business case and decided to [REDACTED], the Australian government introduced the Government Security Guidance in 2018. This disrupted Optus' expansion plans as most of Singtel's investment in 4G technology was in Huawei, including in regional areas. When the industry faced another technological refresh with 5G two years ago, Optus had to make a decision to change out its 4G Huawei equipment in order to implement a 5G network. [REDACTED]
10. The time delays and overall costs to Optus as a result of the Government Security Guidance is [REDACTED]. TPG has also been affected by the Government Security Guidance. While this change has set Optus back, the proposed transaction would allow TPG to sidestep these costs.
11. Singtel explored the business case of Optus investing in 5G [REDACTED]
12. [REDACTED]
13. The Government Security Guidance and the proposed transaction make Australia a very challenging environment for competitors because there would be one dominant regional player. This can quickly erode the competitive telecommunications environment nationwide. Other countries have demonstrated that a monopoly environment will not be great for consumers in the long term. Several historic examples illustrating the importance of infrastructure based competition were provided, including delayed access to SMS in New

Zealand. While there may be efficiencies in the short term with TPG being a stronger player, TPG will eventually become a MVNO in regional areas in the long term.

#### Telstra's access to TPG's spectrum

14. Spectrum caps for individual operators exist because spectrum is critical in supplying telecommunication services. Spectrum is more important than capital expenditure infrastructure as spectrum is a scarce resource, unlike money. The regulations have very specific caps for low, mid and high band spectrum. The proposed transaction renders those caps useless. Telstra will receive a larger allocation of spectrum than they should.
15. Singtel is particularly concerned with Telstra's acquisition of additional spectrum resulting from the proposed transaction. The more spectrum one operator has, the greater its capacity, particularly in terms of efficiency and speed. Generally, there is always a trade-off between capacity and speed. However, the trade-off becomes smaller the more spectrum one operator has.
16. Singtel contended that the merger of TPG and Vodafone Hutchison Australia (VHA) in 2018 combined the third and fourth largest telecommunications operators. The proposed transaction will essentially mean merging the largest, third largest and fourth largest companies. The proposed transaction will thus create a monopoly from an infrastructure standpoint. A lot of the consequences the ACCC speculated and hypothesised about during the TPG/VHA merger investigation would now become a reality.

#### **Consequences for TPG's independence**

17. Singtel explained that technology is consistently evolving. Put simply, the proposed transaction will result in Telstra and TPG operating on only one radio network in regional areas. If there is only one set of infrastructure owned by Telstra, TPG will not have full control of its own pricing and offerings. It is important to consider how much autonomous variation TPG will be able to offer. Telstra will be in control of TPG's future roadmap, and the future of TPG's network will be solely in Telstra's hands.

#### **Optus' future investment**

18. Singtel understands that some customers consider coverage at a nationwide level while others consider coverage in a hyper localised context. [REDACTED]

19. [REDACTED] Singtel is committed to looking after its customers in Australia, but is concerned about the implications of the proposed transaction for customers and for Australia.

20. [Redacted]

21. [Redacted]

22. [Redacted]

23. Singtel has shown consistent investment in Optus' regional network over the last 8-10 years. The aim was to [Redacted]

24. Singtel acknowledges that all networks require a level of maintenance capital expenditure, and investments cannot be considered at a binary level. [Redacted]

25. [Redacted]

**Network infrastructure sharing**

26. Singtel is aware of successful examples of network sharing practices in other parts of the world. In Singapore, the second and third largest telecommunications providers came together under a MOCN arrangement. The second and third largest providers can now compete more effectively against Singtel, the largest telecommunication operator in Singapore. Singtel believes there are other countries also considering similar arrangements (i.e. second or third or fourth largest players co-operating with each other), but is not aware of any instances where the largest operator has consolidated with another operator. . Singtel believes consolidation with the largest player in a country would be anti-competitive.

27. Singtel also submitted that while there has been successful examples of passive network sharing in other countries, that kind of operating model would not work when it is combined with active networks that require maintenance and replacement on a regular basis. For

example, electronic aspects of networks require regular upgrading. In contrast, fibre does not need replacing for 10-20 years. The issue would be which operator is required to bear the cost of those repairs and maintenance.

- 28. Further, height is particularly important when building towers in regional Australia. If an operator was to lease/share another operator's tower, it would receive a lower position than the operator that owns the infrastructure. This impacts the quality of coverage between the two operators. Sharing towers is therefore not attractive in regional Australia. This is not the same in metropolitan Australia because of infrastructure saturation.
- 29. Even if the ACCC believes that having only one infrastructure provider is an innovative solution, and that Australia should shift towards neutral host arrangements, the proposed merger authorisation is still not appropriate in its current form as it does not reflect a positive blueprint for the future.

**Optus' views on the counterfactual**

- 30. Historically, Optus has had network sharing arrangements with TPG. Optus believes it would be better for competition if the spectrum sharing arrangement was between Optus and TPG, as opposed to Telstra and TPG. [REDACTED]

- a. Telstra has a large market share in regional Australia. [REDACTED]

- 31. [REDACTED]

- 32. [REDACTED]

- 33. [REDACTED]

