



Level 4, 580 George St  
Sydney, NSW 2000

[www.commpete.org.au](http://www.commpete.org.au)

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**By Email:**

Mr Bruce Mikkelsen  
General Manager (A/g) Merger Investigations  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601

Dear Mr Mikkelsen

**Commpete: MA1000021 – Telstra TPG Spectrum Transaction – response to Statement of Preliminary Views (public version)**

**Introduction and summary**

Commpete – an industry alliance for competition in digital communications – (**Commpete**) welcomes this opportunity to respond to the Australian Competition and Consumer Commission's (**ACCC**) Statement of Preliminary Views on Telstra Corporation Limited (**Telstra**) and TPG Telecom Limited's (**TPG**) application for merger authorisation for proposed spectrum sharing in regional Australia (**Application**) under the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Commpete notes the concerns the ACCC has raised in its Statement of Preliminary Views, specifically in relation to the competition impacts in the wholesale supply of mobile services to MVNOs and the effects of spectrum concentration on long-term industry structure and considers these concerns to be well-founded.

This response addresses the questions posed by the ACCC's Statement of Preliminary Views and gives further detail in support of Commpete's submission of 21 June 2022 (**Submission**) that the Application be rejected.

As set out in its Submission, Commpete considers that the proposed transaction is likely to substantially lessen competition in both the retail and wholesale markets for mobile telecommunications services in Australia (and cause significant public detriment) primarily because it will increase and further entrench the market dominance of Telstra.

Telstra is already the dominant player in the market and the proposed transaction is likely to increase the actual and perceived gap between the coverage and performance of the Telstra network nationally and the networks of Optus and TPG. This in turn is likely to increase Telstra's already outsized market share of the national mobile market and also create a disincentive for Optus (and potentially others) to continue to invest aggressively in improving and extending its own network.

For its part, TPG will have little incentive to invest in regional and remote areas if the proposed transaction goes ahead because it will rely on the MOCN. This is likely to reduce TPG's incentive to acquire spectrum in the 2028 spectrum auction, reducing competition and further entrenching Telstra's dominance. Commpete considers that TPG is focused on the substantial and immediate commercial



benefits it will receive as a result of the proposed transaction, rather than providing any long term benefits to the industry or improving the state of competition.

Competition will enable connectivity, as well as help deliver a breadth of innovative digital product service offerings. Bridging the gap between regional and metropolitan Australia is a game changer for the sector and for the Australian society and economy, and even more so where choice, value and flexibility is afforded more broadly at a national level.

People in rural, regional and remote communities rely on ICT services as a utility more than people in metropolitan areas, as they have different priorities for remaining connected such as during times of emergency.

Commpete believes distributing the benefits of digital technology irrespective of where you work, play, travel or live is a national public imperative.

If the framework where Government and regulators have greatest opportunity to play an active role are designed and set up to best serve public interests from the beginning, this will provide a stronger baseline to distribute greater opportunities for the future.

Credible and experienced mobile operators exist today. The reason why they are not a potential alternative acquirer of TPG's spectrum is caused by the lack of regulated wholesale access to mobile networks in Australia, which prevents alternative operators gaining a substantial foothold in Australia.

At the expiry of the term of the proposed MOCN arrangement between Telstra and TPG, there is no incentive for Telstra to continue to provide access to TPG under the MOCN and Telstra may seek to exercise its dominance by reducing access or increasing prices. Similarly Telstra does not have incentives to provide MVNOs with equivalent wholesale services currently or under the proposed transaction. Commpete considers that the proposed transaction will embed Telstra dominance in both the wholesale and retail markets going forward.

The proposed transaction is also likely to reduce competition for grants under the Commonwealth and State grant programs designed to increase coverage in blackspot areas. Neutral host providers rely on providing access to third parties and the proposed transaction is likely to remove TPG from potentially acquiring these services making the business cases of these providers more difficult. This, in combination with the absence of regulated roaming, is likely to reduce competition for these grants and leave the Commonwealth and State governments funding Telstra to improve its coverage in blackspot areas further cementing its market dominance.

The proposed transaction will lessen the scope for existing neutral host operators to expand their activities in regional areas and will reduce the incentives and likelihood of further neutral host operators entering this market.

Commpete considers that this lessening of competition and the associated public detriment could be substantially ameliorated by imposing an obligation on Telstra to provide high quality wholesale access to the **whole** of the Telstra mobile network on reasonable terms to any party which requires such access. Such mandated access would need to be made available to both MVNOs and mobile network operators seeking to roam onto the Telstra network and would need to provide sufficient functionality to enable wholesale customers to differentiate their product offerings and offer innovative solutions to their customers (i.e. "thick" MVNO services). Such access would need to be priced to ensure that MVNOs are able to compete vigorously in the retail market, while also providing a reasonable wholesale return to Telstra.

Currently Telstra not only dominates the market in terms of market share and revenue, it also extracts a disproportionately high share of the profits earned from mobile telecommunications in Australia, with wholesale customers forced to operate with comparatively low margins. The availability of such a product would also incentivise other MNOs to similarly provide attractive wholesale offerings or risk losing what wholesale customers they currently have. These wholesale dynamics are more commonly

observed overseas, and in Commpete’s view, the presence of these competitive market structures when allowed to develop, without ongoing hinderance, will provide greater flow on benefits to end users.

Commpete considers that a mandated access regime of this type, if properly implemented, would address the negative impact of the proposed transaction on competition and would help to bring the Australian wholesale mobile market into line with opportunities present in international markets and aligning to new benchmarks would also help to create an enhanced level of competition at the retail level.

Without a mandated access regime of this type, Commpete considers that the public benefits claimed by the Application do not outweigh the detriments created by this substantial lessening of competition. Commpete observes that many of the public benefits claimed are theoretical. In particular, many of these benefits stem from the reduction in the number of MNOs that operate, or may seek to operate in the future, in the 17% Regional Coverage Zone. If the ACCC authorises the Application despite these concerns, then these promised benefits should be made conditions to ensure that they are delivered for the benefit of consumers.

While dominant players such as Telstra have the resilience and resources to pursue lengthy legal action, non-dominant providers (including the members of Commpete) must prioritise immediate decisive regulatory actions which will produce timely competitive and commercial benefits. A mandated access regime would balance these dynamics, create certainty in current and future operations to new entrants and existing market participants resulting in a regulatory framework that is more useful as well as a reliable, more long term and permanent backstop for all in achieving competition outcomes for Australians.

Against this backdrop, Commpete sets out its responses to the ACCC’s questions in further detail below. For ease of reference, this response uses the same sections as in the ACCC’s Statement of Preliminary Views and quotes each question.

### **State of competition between MNOs**

- 1. The ACCC seeks any views and submissions on its discussion of the factors affecting competition between mobile network operators in Australia, including:*
- a. the importance of each factor (e.g. price, geographic coverage, network reliability, speed) on competition between MNOs;*
  - b. whether MNOs’ network investments (including in expanding coverage or densification of sites, and the acquisition of spectrum) have been influenced by investments by their competitors, and if so, the extent to which they have been;*
  - c. the extent to which an MNO’s geographic coverage in regional areas influences its overall success in acquiring and maintaining customers in metropolitan and regional areas;*
  - d. the importance of MNOs being able to supply 5G in metropolitan and regional areas in acquiring and maintaining customers, and alternatively, the significance of the competitive detriment to an MNO if it was to not supply 5G;*
  - e. the degree to which MVNOs competitively constrain MNOs.*

Commpete considers price, geographic coverage, network reliability and speed are all important factors for the purposes of competition.

Commpete considers that increased regional coverage is essential for competition between MNOs and MVNOs for regional consumers. It is not possible for MNOs and MVNOs to compete for

consumers in regions where they do not have coverage because no service can be provided. Due to the increased distances likely to be travelled by regional consumers, increased coverage for these consumers outside of the immediate areas where they live and work is likely to be required.

Unlike fixed networks, mobile network coverage and capacity in regional areas can also affect competition in metropolitan areas, since mobile customers gain value from a mobile service which is effective over a broader range of areas. An advantage in geographic coverage in a regional area translates to more use cases for mobile customers, and thus more overall success in acquiring and maintaining customers in both metropolitan and regional areas.

The proposed transaction is likely to make TPG a stronger retail competitor in metropolitan markets as a result of its increased regional coverage. However, Commpete does not consider that TPG will become a strong competitor in regional areas. TPG's Vodafone is a metropolitan direct brand and TPG would have to undertake substantial investment in developing a regional retail presence and brand awareness in order for it to compete for regional consumers. Telstra will continue to have the mobile network with the greatest coverage in regional areas making it difficult for TPG and Optus, and MVNOs that rely on wholesale access, to compete. This position will continue under the proposed transaction.

In addition to the competitive advantage that geographical coverage provides for both metropolitan and regional consumers, the availability of 5G is likely to be a significant competitive advantage regardless of the primary location of the consumer. 5G provides increased speeds and lower latency than earlier generations of mobile coverage. Commpete considers that 5G will become increasingly important as more services rely on higher speeds and increased bandwidth to provide additional functionality.

Commpete agrees with the preliminary view of the ACCC that the availability of 5G technology is an increasingly critical focus of competition in the supply of mobile services. Commpete considers that access to 5G will become increasingly important for MNOs and MVNOs to compete for all consumers regardless of their primary geographical location. The delay in TPG's access to 5G services under the MOCN as well as Telstra's investment plans to expand the availability of 5G indicates that Telstra holds similar views.

All consumers desire increased coverage and better services, such as the availability of 5G. MVNOs' ability to compete with MNOs to provide mobile services to consumers ultimately depends on the availability of the services from MNO wholesalers. The experience of Commpete's members is that Telstra is reluctant to grant wholesale access which is equivalent to that which it provides to its retail arm. Telstra's wholesale mobile offering is typically limited in terms of coverage and ability to customise the services being made available. The wholesale services generally available to MVNOs in Australia enable branded resale of the wholesale service and restrict the MVNOs ability to develop their own plans or differentiate their service offering. This limits the ability of MVNOs to actively compete and provide a competitive constraint to MNOs. The proposed transaction will, if anything, reduce Telstra's incentives to provide improved wholesale access.

Commpete also agrees with the ACCC's view that leaders in the adoption of transformative new technologies like 5G can gain an advantage over competitors. In Commpete's view, these early adopters enjoy a commercial and brand perception head-start during which they can develop their in-house MVNOs and sub-brands, and lock in mobile users with contracts – at the expense of competitors without that advantage. Delayed access to these technologies results in the delayed ability to innovate and test those innovations in a live market, extending the competitive disparity.

The increased dominance of Telstra and reduced prospect of the spectrum held by TPG being used to develop a mobile network that competes with Telstra (however small) as contemplated by the counterfactuals means that wholesale competition is likely to be reduced by the proposed transaction, and the availability of wholesale services is likely to become more limited as a result.

MVNOs are limited in their ability to competitively constrain MNOs due to the limitations in the wholesale services available and the bargaining power dynamics in MNO-MVNO wholesale relationships. These dynamics are inherently imbalanced, as the MNOs serve as both upstream suppliers upon which MVNOs are heavily, if not fully dependent on for the fundamental source of their supply, and competitors at the retail level. The proposed transaction is likely to decrease Telstra's incentives to provide wholesale access on terms which are comparable to those it offers to its retail business.

### **Key elements of the Proposed Transaction**

- 2. The ACCC seeks views and submissions on whether the elements of the Proposed Transaction, if authorised, are likely to impact the way in which MNOs compete, including the impact of:*
- a. the non-discrimination provisions under the MOCN Service Agreement on TPG;*
  - b. the carve-outs to the non-discrimination provisions under the MOCN Service Agreement on TPG;*
  - c. Telstra gaining access to TPG's spectrum holdings under the Spectrum Authorisation Agreement.*

Commpete refers to its comments in the Submission in relation to the variable charge that is payable by TPG under the arrangement. As discussed in the Submission, Commpete considers that the inclusion of variable charges, as well as on a per SIO basis, is likely to increase the effective marginal cost of TPG acquiring and servicing additional retail customers in the 17% Regional Coverage Zone and thus is a disincentive to TPG competing to attract new customers in that Zone. Other regulators, such as the European Commission, have steered away from the disincentives created by increases in marginal cost in the design of wholesale mobile access remedies. This reinforces Commpete's view that the proposed transaction is unlikely to result in TPG becoming competitive in regional areas.

Commpete notes that this variable cost is likely to be reflected in the pricing for any wholesale services offered by TPG limiting the competitive discipline that their availability would otherwise have on the wholesale market.

Commpete understands that Telstra will gain immediate access to TPG's spectrum outside the 17% Regional Coverage Zone under the proposed transaction. Telstra's services will immediately improve as a result of its increased spectrum. In addition, the cost of further investment by Telstra will be reduced by its increased holdings of low band spectrum. Commpete notes that low band spectrum requires less infrastructure investment to deliver the same coverage area as shown in the following table:<sup>1</sup>

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<sup>1</sup> ZTE APT 700MHz: Best choice for nationwide coverage (June 2013) page 9 available at: <https://www.gsma.com/spectrum/wp-content/uploads/2013/07/ZTE-LTE-APT-700MHz-Network-White-Paper-ZTE-June-2013.pdf>).

Morph		Dense Urban	Urban	Suburban	Rural
<b>Cell Edge User Throughput</b>	kbps	512	256	128	64
<b>700MHz</b>					
<b>UL Cell Range</b>	km	0.70	1.21	3.37	8.48
<b>Coverage Area</b>	Km2	0.95	2.84	22.16	140.37
<b>800MHz</b>					
<b>UL Cell Range</b>	km	0.63	1.09	3.04	7.65
<b>Coverage Area</b>	Km2	0.78	2.33	18.06	114.22
<b>1.8GHz</b>					
<b>UL Cell Range</b>	km	0.38	0.64	1.67	4.40
<b>Coverage Area</b>	Km2	0.27	0.80	5.42	37.71
<b>1.9GHz</b>					
<b>UL Cell Range</b>	km	0.36	0.61	1.58	4.17
<b>Coverage Area</b>	Km2	0.25	0.72	4.87	33.84
<b>2.1GHz</b>					
<b>UL Cell Range</b>	km	0.32	0.55	1.43	3.77
<b>Coverage Area</b>	Km2	0.21	0.60	4.00	27.69
<b>2.3GHz</b>					
<b>UL Cell Range</b>	km	0.30	0.51	1.31	3.44
<b>Coverage Area</b>	Km2	0.17	0.50	3.35	23.08
<b>2.6GHz</b>					
<b>UL Cell Range</b>	km	0.27	0.45	1.16	3.04
<b>Coverage Area</b>	Km2	0.14	0.40	2.63	18.06

Table 3-1 Uplink Coverage Comparison of Typical Scenarios

Telstra will hold 65-70% of the low band spectrum available in Australia. Optus would have to undertake substantially more investment to provide a similar service to Telstra given its more limited holdings of low band spectrum.

### International Experience

*3. The ACCC invites information and submissions on whether and how the experience of overseas network sharing arrangements is relevant to the Proposed Transaction. The ACCC particularly invites any overseas examples of network sharing arrangements (now or in the past) that are comparable to the agreements under the Proposed Transaction, and information on the efficiencies achieved and the impact on competition.*

As noted in Commpete's Submission, the Application is significantly different to the infrastructure sharing arrangements increasingly seen overseas and which are structured as joint ventures giving the parties joint ownership and control of the network assets (both passive and active elements). See, for example, Mobile Broadband Network Limited, a joint venture between the UK's Everything Everywhere and Hutchison's Three, and Cornerstone Telecommunications Infrastructure Limited, a joint venture between the Vodafone and O2 in the UK.

Commpete does not consider that the benefits of infrastructure sharing arrangements as demonstrated by overseas models are comparable to the Application. Commpete nonetheless considers that they remain relevant as a point of comparison to what is proposed by the Application in form and effect.

The Application is also significantly different to a neutral host network. Neutral hosting is a model whereby an independent party owns both passive infrastructure (such as mobile towers) and also has access to spectrum and RAN and provides access to these assets on an open access basis to MNOs and MVNOs. Neutral hosting has many natural advantages in regional areas. It has the potential to improve competition and enhance the economically efficient deployment and use of infrastructure in areas where it is not economically efficient to duplicate infrastructure. Neutral hosting is emerging rapidly as an important model in overseas jurisdictions, including: Canada, the US and the UK. Commpete considers that the further emergence and development of neutral hosting models in Australia would produce a positive competitive benefit in the Australian market, as it is already doing in overseas markets. If the Application were to go ahead, it is likely to substantially limit the potential positive impact of the large scale emergence of neutral hosting models in Australia.

#### **The future with and without the Proposed Transaction**

- 4. The ACCC invites views on each of the above counterfactuals, including about:*
- a. the commercial likelihood of each counterfactual;*
  - b. the ability and incentives of each MNO to invest in regional infrastructure in each counterfactual;*
  - c. the utilisation of spectrum by each MNO, including TPG's ability and/or incentive to monetise any unused spectrum, and which entities (including neutral host providers) would be likely to purchase or lease such spectrum;*
  - d. technical factors relating to spectrum holdings and network infrastructure that may impact the type of agreement that can be entered into between TPG and Optus in the future without the Proposed Transaction and the likely timing of any such agreement;*
  - e. TPG's ability to innovate and differentiate its product and service offering under each counterfactual.*

Commpete does not have information as to TPG's commercial objectives in relation to its possible use of its spectrum in the counterfactual. Nonetheless, Commpete considers that it would be commercially irrational for TPG to not use its spectrum holdings in regional areas in some way. In particular, Commpete notes that TPG has already undertaken significant investment in acquiring its spectrum holdings and developing its mobile brand. As discussed above in relation to question 1, Commpete considers that TPG would be advantaged in the market for retail mobile services by having broader coverage (for both metropolitan and regional consumers).

On this basis, Commpete considers that the TPG partial build, TPG/Optus agreement or alternative TPG/Telstra agreement are the most likely commercial counterfactuals, but does not discount the TPG full build counterfactual. The TPG partial build, TPG/Optus agreement or alternative TPG/Telstra agreement are likely to be the lowest cost use of TPG's spectrum holdings with the most significant benefit (depending on the terms of any agreement and any authorisation required) when compared with the TPG full build counterfactual. Commpete also does not discount the possibility that TPG may seek to commercialise its spectrum holdings by providing it to one or more neutral hosting providers.

In each of the counterfactuals that Commpete considers likely, the investment incentives of Telstra, TPG and Optus would be greater than under the factual. In particular, Commpete considers that TPG would have limited incentives to undertake further investments in the 17% Regional Coverage Zone under the factual as represented by the Application. Telstra's investment incentives are unlikely to be

significantly different from that of its announced “T25 Strategy” as referred to in Commpete’s Submission (but the cost of this investment by Telstra may be lower). Optus’ commercial incentives to invest are also likely to be lower than under the factual than under any of the counterfactuals due to the risk that new investment in regional areas will cease to provide value for money in the factual.

Commpete does not consider that TPG’s ability to differentiate its product and service offering under each counterfactual will be significantly different to the factual, but we cannot be sure of this view because our access to the Application remains heavily redacted by TPG. However, Commpete notes that the presence of increased competition in the wholesale market under each of the counterfactuals caused by the likely increased investment by TPG and Optus is likely to lead to greater opportunities for MVNOs to provide competitive discipline on the MNOs.

Commpete is not in a position to comment on any technical issues relating to spectrum holdings and network infrastructure that may impact on the type of agreement that may be entered into between Optus and TPG under that possible counterfactual.

### **The appropriate timeframe**

*5. The ACCC invites views on the appropriate timeframe over which competitive effects are likely to arise as a result of the Proposed Transaction.*

*6. The ACCC invites comments on the weight which should be given to short-term and to long-term competitive effects of the Proposed Transaction.*

Commpete considers that the Application represents a potential turning point in the provision of mobile services in Australia at both a wholesale and retail level. This is demonstrated by the term of the potential agreement between Telstra and TPG, which is 10 years and includes up to two renewals by TPG of five years each. The market for mobile services may change dramatically in that time. In particular, new networks, including neutral host networks, may be developed using the spectrum the subject of the Application. The Application may foreclose the development of these alternative mobile networks.

Given these potential long term consequences of the Application, Commpete considers that the appropriate timeframe over which the competitive effects of the Application should be considered reflects the term of the agreement for which authorisation is sought. Commpete considers that over this time period significant investment using the spectrum held by TPG and subject to the Application may be undertaken by either TPG or a third party, and any public benefit or competitive detriment is likely to arise.

### **Price-based competition**

*7. The ACCC invites views on the impact of the Proposed Transaction on price competition, including:*

*a. whether TPG would have the ability and incentive to raise prices under the Proposed Transaction;*

*b. whether Telstra would have the ability and incentive to raise prices under the Proposed Transaction;*

*c. the impact on Optus’ pricing decisions if the Proposed Transaction improves Telstra’s quality of service;*

*d. the impact of the fees payable by both Telstra (for spectrum use) and TPG under the Proposed Transaction.*



Commpete refers to its comments and concerns about the presence of variable costs in the transaction documents and their likely impact on TPG's pricing, as discussed in Commpete's response to question 2 above and in Commpete's Submission. In particular, Commpete considers that TPG is unlikely to compete in regional markets because of the variable cost included in the proposed transaction.

Commpete agrees with the ACCC's preliminary view that the likely improvement in TPG's service from the proposed transaction is likely to lead it to seek to increase prices. In particular, its level of service will be more similar to Telstra's (particularly for metropolitan consumers who do not rely on regional services). This incentive is likely to reduce price competition in the mobile market given TPG's current price competitiveness.

Commpete does not consider that the proposed transaction will result in Telstra having any increased incentive to engage in price competition. Telstra will improve its services under the proposed transaction. It currently prices those services at a premium. This premium is likely to continue given that TPG does not receive an equivalent level of service under the proposed transaction (i.e. it does not replicate Telstra's coverage outside of the 17% Regional Coverage Zone and includes a delay on the availability of 5G services) and has to pay Telstra a variable cost for providing services in the 17% Regional Coverage Zone.

#### **Impact on infrastructure competition**

*8. The ACCC invites views on the impact of the Proposed Transaction on the MNOs' mobile infrastructure investment incentives and how changes to their incentives might impact competition, including:*

*a. the impact of the Proposed Transaction on TPG's incentive to invest in regional and remote areas of Australia;*

*b. the impact of the Proposed Transaction on Optus' ability and incentive to invest in regional and remote areas of Australia;*

*c. the impact Optus reducing its investment in regional Australia would have on Telstra's incentives to invest in regional and remote areas of Australia; and*

*d. the timeframe over which the impact on these investment incentives is likely to be felt.*

Commpete agrees with the ACCC's preliminary view that TPG is likely to become reliant on the MOCN in the 17% Regional Coverage Zone and is unlikely to undertake any significant investment in that Zone. TPG will be able to service its consumers in this Zone under the MOCN making it unlikely that it would be willing to incur the additional costs from further developing its mobile network. This will mean that Australia will be limited to two mobile networks in regional areas under the proposed transaction.

In Commpete's view, TPG's investment incentives would be greatest under the TPG partial build counterfactual, but are still likely to be greater under the TPG/Optus agreement or alternative TPG/Telstra agreement counterfactuals when compared with the likely investment and investment incentives under the proposed transaction. Under the proposed transaction, TPG has little incentive to invest in regional and remote areas as it will rely on the MOCN.

Commpete considers that Optus' incentive to invest in regional areas may be reduced by the proposed transaction, but agrees with the ACCC's preliminary view that Optus is unlikely to cease all investment. However, any reduction in investment is likely to have significant long term impacts for competition at both the wholesale and retail level. In particular, to the extent Telstra and TPG offer wholesale services to MVNOs (which Commpete does not consider is encouraged by the proposed transaction), then the coverage of that service is likely to be limited to the coverage made available by

Optus, which is their competitor at a wholesale level. Accordingly, any reduction in investment by Optus may lead to a corresponding reduction in wholesale services given that Commpete considers that Telstra and TPG are unlikely to compete against each other to provide these services where Optus does not offer a similar service. As noted above, Commpete considers that Optus would be likely to need to make greater investments than Telstra to achieve the same level of service given its lower spectrum holdings.

Commpete notes that substantial Commonwealth and State grant schemes have been made available to develop regional mobile infrastructure. In most cases, these grant programs in the past have benefited MNOs directly (with only limited requirements to share passive infrastructure). However, it is increasingly being recognised that that it is more equitable and beneficial for these to be predicated on neutral host arrangements that are open to multiple operators. Commpete members, such as Pivotel and Field Solutions Group, compete for these grant funds. In order to do so, Pivotel and Field Solutions Group rely on being able to provide their neutral host services to other MNOs and MVNOs. TPG and Telstra are likely to rely on the Telstra network following the proposed transaction reducing the number of parties that Pivotel and Field Solutions Group can provide their services to. This is likely to reduce competition from Pivotel and Field Solutions Group in these grant programs because their ability to develop a business case for the investment contemplated by the grants will be reduced.

### **Impact on wholesale mobile competition**

*9. The ACCC invites views from MVNOs on the impact of the Proposed Transaction on competition for the supply of wholesale services.*

Commpete's members are particularly concerned with the market for wholesale mobile services. Commpete does not consider that TPG is likely to provide significant competitive discipline on Telstra for the provision of wholesale services. Commpete considers that TPG is more likely to want to provide retail services (particularly to metropolitan consumers) using its access to the MOCN in competition with Telstra. Commpete notes that TPG in wholesale releases is fairly limited over time. The increase in TPG's coverage provided by the MOCN is unlikely to incentivise TPG to provide a broader wholesale service given the variable charging included in the MOCN, which would be likely to be reflected in any wholesale service made available by TPG.

Commpete expects that Telstra will continue to compete against Optus at a wholesale level seeking to retain its coverage advantage when compared with Optus and the wholesale services it provides. The coverage and service quality of wholesale services available may reduce if Optus reduces investment as set out above.

Similarly, Commpete does not consider that the nature of the wholesale services available are likely to improve. As noted in Commpete's Submission, wholesale services in Australia are generally limited to "thin" reseller arrangements that restrict the ability of MVNOs to provide differentiated products and services.

A healthy and competitive wholesale mobile market is essential to delivering innovation and competition to retail consumers. At present, Commpete does not consider that the wholesale market is competitive. Commpete does not consider that the proposed transaction provides incentives for greater competition in the wholesale market. Commpete considers that wholesale competition will only be significantly enhanced by appropriate regulatory intervention. Competition in the market for wholesale mobile services in Australia is already behind where it should be. If the proposed transaction proceeds it will become significantly worse. The ACCC should be looking at steps to improve this situation either through conditions imposed on the proposed transaction or through its other regulatory powers under Part XIC of the CCA.

## Spectrum

*10. The ACCC invites views on the impact of the Proposed Transaction on markets for the acquisition of spectrum licences, including about the impact on TPG's and Optus' incentives to acquire spectrum licences covering regional areas of Australia.*

Commpete reiterates its views sets out in its Submission. Commpete considers that the Application will further entrench Telstra's position by providing it with additional spectrum (some of which will be used exclusively by Telstra outside of the MOCN arrangement). This will make it more difficult for a third party (including new entrant neutral host network operators and smaller and niche alternative infrastructure providers) to obtain the spectrum necessary to develop a competing mobile services network covering the same geographic area, exacerbating Telstra's already-dominant market position by extending their control over this scarce resource.

Furthermore, Commpete considers that TPG's incentives to acquire spectrum that may be used in the 17% Regional Coverage Zone for the duration of the proposed transaction will be reduced for the same reasons that Commpete considers that TPG's investment incentives will be reduced by the proposed transaction. That is, TPG is likely to rely on the MOCN arrangement under the proposed transaction rather than seek to invest in its network in the 17% Regional Coverage Zone or acquire the spectrum required to do so.

Similarly, Commpete considers that the incentives for Optus to acquire spectrum that may be used in the 17% Regional Coverage Zone are likely to be reduced. This reflects Commpete's view that Optus' incentives to invest in that Zone may be reduced by the proposed transaction given that the spectrum can only be used with corresponding investment in physical infrastructure.

More broadly, lack of investment in spectrum licences covering regional areas of Australia is likely to lead to worse terms being offered to those who seek access.

Accordingly, Commpete considers that competition for spectrum is likely to be reduced by the proposed transaction with Telstra's market power in acquiring spectrum strengthened.

## Tower infrastructure

*11. The ACCC invites views on the impact of the Proposed Transaction on the acquisition of mobile network infrastructure services.*

Commpete re-iterates its comments made above and in its Submission that the proposed transaction may foreclose the development of neutral host arrangements that are likely to seek access to tower infrastructure in competition with MNOs. In addition potential competition for the acquisition of mobile network infrastructure services will be reduced by the reduction in the number of mobile networks in the 17% Regional Coverage Zone from 3 to 2.

## Fixed wireless services and enterprise mobility services

*12. The ACCC invites views and further information on:*

*a. the impact of the Proposed Transaction on the supply of fixed wireless access services, including the impact on TPG's short- and long-term ability and incentives to offer fixed wireless access services in the Regional Coverage Zone;*

*b. the impact of the Proposed Transaction on the supply of enterprise mobility services, including the impact on TPG of the exclusion of Telstra enterprise customers and customers with 'special services' from the non-discrimination obligations under the Proposed Transaction.*

Commpete does not have any views that are specific to the impact of the proposed transaction on fixed wireless and enterprise mobility services. As discussed above, Commpete considers that the proposed transaction will likely reduce wholesale competition and incentives to invest in infrastructure. The consequences of these impacts may be to restrict the ability for members of Commpete to provide fixed wireless services and enterprise mobility services if the proposed transaction proceeds.

### **Public benefits**

*13. The ACCC invites views and any further information in relation to any additional public benefits likely to result from the Proposed Transaction.*

Commpete reiterates its views on the likely public benefits from the proposed transaction as set out in its Submission. In particular, Commpete does not consider that the public benefits claimed are likely to offset the public detriments from the reduction in competition as described above and in the Submission.

### **Network improvements, innovation and increased consumer choice**

*14. The ACCC invites views and further information on:*

- a. whether there is congestion on the Telstra network, and if so, the nature and extent;*
- b. to the extent congestion is an issue, the ways outside of the Proposed Transaction in which could Telstra address congestion;*
- c. what steps Telstra would need to take to relieve any congestion in the Regional Coverage Zone if it obtains access to the pooled spectrum under the Proposed Transaction;*
- d. the timeline under which Telstra customers within the Regional Coverage Zone would expect to see congestion relief if Telstra obtains access to the pooled spectrum under the Proposed Transaction;*
- e. whether the Proposed Transaction, if it proceeds, would impact on TPG's ability to differentiate its service offering;*
- f. the extent to which network improvements, innovation and consumer choice could be enhanced (to the same or some extent) in each of the counterfactuals set out above in section 5;*
- g. the extent to which these public benefits are likely to endure for the proposed length of the arrangements, which in the ACCC's preliminary view is likely to be 20 years.*

Commpete reiterates its views on the likely public benefits from the proposed transaction as set out in its Submission. Commpete considers that the greatest benefit from the proposed transaction will accrue to Telstra. Telstra's access to 65-70% of regional low band spectrum under the proposed transaction will allow it to entrench its dominance in the national mobile market and further inhibit potential infrastructure competition.

Commpete considers that any benefit from the increased coverage available to Telstra and TPG under the proposed transaction are likely to be offset by the significant reduction in infrastructure competition and the ongoing limited availability of wholesale services that MVNOs rely on to compete.

## Reduced network costs and more efficient utilisation of infrastructure

15. The ACCC invites views and further information on:

a. the magnitude of the cost savings likely to be achieved from consolidating infrastructure under the Proposed Transaction, and where any costs savings are likely to flow;

b. the extent to which reduced network costs or more efficient utilisation of infrastructure could be enhanced (to the same or some extent) in each of the counterfactuals set out above in section 5;

c. what initial and ongoing costs Telstra and TPG are likely to incur under the Proposed Transaction to achieve this consolidation.

Commpete acknowledges that mobile network infrastructure is expensive and that sharing these costs between users has advantages. However, in Commpete's view, these benefits could be obtained without the level of competitive detriment that is likely to arise from the proposed transaction. In particular, these benefits have been obtained in other jurisdictions using different structures to those proposed by the Proposed Authorisation.

## Environmental benefits

16. The ACCC invites further views and information about whether environmental benefits are likely to flow from the Proposed Transaction and their magnitude, compared to the different counterfactual scenarios (discussed in section 5).

Commpete does not have any further views on the environmental benefits claimed to arise as a result of the proposed transaction, but reiterates its comments above that alternative models that have been adopted in other jurisdictions with lower competitive detriments are likely to result in the same or similar environmental benefits.

## Public detriments

17. The ACCC invites views and any further information in relation to any additional public detriments likely to result from the Proposed Transaction.

Commpete does not have any further views on the public detriments from the proposed transaction. As discussed above, Commpete is concerned that the proposed transaction will reduce infrastructure competition and the availability of wholesale services. Commpete considers that these public detriments are likely to outweigh any public benefits.

## Effects of spectrum concentration on long-term industry structure

18. The ACCC invites views and further information about the possible impacts of the Proposed Transaction, particularly as a result of the pooling of spectrum holdings, on the long-term structure of the industry.

As discussed above, Commpete is concerned that the proposed transaction gives Telstra access to additional spectrum entrenching Telstra's dominance. This is likely to reduce competition in wholesale and retail markets, as well as infrastructure competition.

### **Network diversity**

*19. The ACCC invites views and any further information in relation to any reduced network diversity likely to result from the Proposed Transaction.*

Commpete does not have any further views on the proposed transaction's impacts on network diversity.

### **Employment impacts**

*20. The ACCC invites views and any further information in relation to any employment impacts likely to result from the Proposed Transaction.*

Commpete does not have any further views on the proposed transaction's impacts on employment.

### **Conclusion**

In summary, Commpete considers that the proposed transaction is likely to substantially lessen competition in both the retail and wholesale markets for mobile telecommunications services in Australia (and cause significant public detriment) primarily because it will increase and further entrench the market dominance of Telstra. The public benefits from the proposed transaction are unlikely to outweigh these competitive detriments.

In order to ensure that wholesale and retail competition is promoted for the benefit of consumers beyond the proposed transaction, Commpete reiterates its call for regulation of wholesale access to Telstra's mobile networks.

Commpete thanks the ACCC for its Statement of Preliminary Views, and welcomes their continued detailed and broad assessment of the long-term strategic impacts to competition. Commpete would welcome the opportunity to discuss this response with you further to address any queries that may arise.

Please contact Michelle Lim, Chair, Commpete by email at [REDACTED] if you would like to arrange a meeting.

Yours faithfully

Michelle Lim  
Chair