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Submission on Inquiry into co-investment in multi-carrier regional mobile infrastructure

Commpete – an industry alliance for competition in digital communications – welcomes this opportunity to submit to the House Communications and the Arts Committee in relation to its inquiry into co-investment in multi-carrier regional mobile infrastructure (the **Inquiry**).

1. Introduction

Commpete is an alliance representing non-dominant telecommunication service providers (challengers) in Australia. Our members are some of Australia's most dynamic digital communications providers who build, operate and provide, 4G, 5G, fixed wireless networks, retailing and wholesaling of fibre and broadband and mobile voice and data services across a range of customer segments, including residential / consumers, SME, corporate, and government, in our cities as well as rural, regional and remote regions across Australia.

For over 20 years, Commpete and its members have engaged with and helped to design policy and regulatory reforms that have increased competition and encouraged both challenger and incumbent telecommunication service providers to deliver more to their customers, especially those in regional Australia.

Today, Commpete remains firmly supportive of policy that supports a pro-competitive industry structure and technology neutral regulation – elements critical to a level playing field, which leads to vibrant competition, and better outcomes for end-users. Therefore, Commpete strongly supports co-investment by the Government in regional telecommunications with a focus on improving competitive outcomes as well as addressing the issue of regional coverage.

We recognise that regional Australia is highly underserved due to the dual effects of:

- limited telecommunication infrastructure; and
- the limited choice in telecommunications service providers.

In our view, the success of co-investment should ultimately be measured by the extent to which it supports the ability of all telecommunications market participants to deliver value, flexibility and choice for consumers and businesses in regional and remote communities in a manner that can be self-sustaining in the longer term.

2. Executive Summary

Commpete strongly supports co-investment by the Government in telecommunications infrastructure and services in regional Australia provided such initiatives ensure improved competitive outcomes as well as coverage.

Commpete's members see the Inquiry as an opportunity to:

- incentivise open access infrastructure; and
- ensure that wholesale settings are appropriate to maximise economic opportunities and social benefits for regional communities and businesses.



Commpete believes that co-investment can deliver better outcomes for the community if it is structured in a way that not only stimulates network investment, but also maximises the potential for retail service layer based competition.

In this way, the co-investment that ensures improved competition is an opportunity for challengers to be enablers for regional Australia and to deliver better choice through presence of competitive providers.

3. The current state of competition in Australia

Commpete has concerns about the lack of effective competition in the mobile sector. Mobile communications have never been more important. The use of mobile devices dominates our personal and business life in a way which was not imagined when the current regulatory arrangements were put into place 25 years ago.

With the development of new technologies such as 5G, there are unparalleled opportunities for innovation and diversity in the mobile sector. The current environment, in which mobile network operators (**MNOs**) face limited competitive challenges, will not drive innovation and enhanced competition. There is increased potential for mobile virtual network operators (**MVNOs**) to take an active role in driving innovation in the sector, which will lead to better outcomes for consumers.

Competition in the provision of mobile services has failed to develop at a comparable pace to the technological developments in the industry – mobile competition in Australia is in a similar position to that which prevailed 25 years ago. Three MNOs continue to dominate the mobile market with very little ability for others to challenge their position. MVNOs require fair and reasonable terms for wholesale access to the networks of MNOs in order to provide true competition in the market and ensure better outcomes for consumers. The market share of MVNOs has failed to grow significantly over that period and in fact has been predicted to decline from approximately 15% to about 6%, as Telstra and Optus have acquired MVNOs, reducing competitive pressures in the market (which would result in the MNOs holding 94% of the market share).¹ This is because Australian MNOs have been reluctant wholesalers and routinely place significant limitations on their wholesale customers (for example, by controlling and limiting the technology and amount of network coverage that is provided to MVNOs), severely restricting the ability of MVNOs to compete effectively.

Our concern about this lack of competition is exacerbated by the newly announced deal between Telstra and TPG. This deal will potentially see mobile competition reduced even further, as TPG will be significantly reliant on receiving access to the Telstra wholesale network, which is approximately 1 million km² smaller than Telstra's retail network. This will mean that there will be a reduction in the number of mobile networks in Australia from (potentially) four prior to the TPG/Vodafone merger, to effectively only two and a half.

The main forms of competition in the mobile market are now limited to non-price factors, such as bundling of extra content, non-mobile rewards and loyalty programs, geographic coverage, network quality, download speeds, and new pricing models on data usage (such as speed-limited data plans, tethering-limited data plans etc). Commpete is concerned that, because MVNOs rely on MNOs' infrastructure, MNOs are in a strong bargaining position and are largely able to dictate the terms of wholesale service agreements required by MVNOs to operate. If the proposed Telstra/TPG arrangement is approved, Commpete expects that it will become even more difficult for MVNOs to negotiate the reasonable wholesale terms necessary to enable them to compete effectively in the market.

¹ See <https://www.itnews.com.au/news/australias-mvno-market-to-shrink-as-telcos-take-control-555644>.



In Commpete's view, a failure to promote competition:

- produces sub-optimal outcomes for regional consumers in terms of choice;
- disadvantages subscribers to providers other than the funded entity;
- fails to maximise efficiency;
- entrenches the market dominance of the incumbent operator (or operators); and
- means that taxpayer investment benefits a single commercial entity rather than benefiting the industry and consumers more broadly.

Commpete considers that the most effective means to improve competition in the mobile market is to require MNOs (and particularly Telstra as the MNO with the largest mobile network coverage) to provide wholesale access on fair and reasonable terms to other MNOs and MVNOs.

4. Access to towers/coverage areas by MVNOs

Australians should have retail choice and competition when the infrastructure used to provide services is paid for with taxpayer money.

The Mobile Black Spot Program seeks to ensure coverage in black spots where there is no existing coverage by providing funding for MNOs to invest in sites in those areas. MNOs generally seek to invest to extend their existing network on a contiguous basis. As a result, it will often be the case that MNOs with smaller mobile networks will have less incentive to participate because the funding under the Mobile Black Spot Program will not lead to an extension of their contiguous network, but instead a spot of coverage that is otherwise disconnected. This discourages their involvement in the Mobile Black Spot Program.

Commpete has in the past urged the Federal and State Governments to ensure that wholesale access to all subsidised sites (for example those funded through the Mobile Black Spot Program, but also through other programs) is made available on an open access basis. Open access to publicly funded telecommunications infrastructure promotes competition, helps to distribute the benefits of the subsidy more broadly and mitigates the limited investment incentives discussed above. Guidelines generally expect those granted funding to offer co-location access to other MNOs. Grantees are also permitted—though not incentivised—to offer roaming access to other MNOs.

However, there has been limited sharing of passive infrastructure or co-location at sites in regional Australia, including sites that have been funded through the Mobile Black Spot Program. The limited uptake in co-location is demonstrated by Tables 4.3 and 4.5 of the Australian Competition and Consumer Commission's (**ACCC**) Mobile Infrastructure Report 2022 (September 2022) (at pages 14 and 15):



Table 4.3: Total number of Federal Government Mobile Black Spot Program sites by MNO & ABS Remoteness Area - 2020 to 2022

	2020	2021	2022
Major Cities of Australia			
Telstra	8	11	14
Inner Regional Australia			
Optus	22	26	41
Telstra	187	222	234
TPG	8	8	8
Outer Regional Australia			
Optus	21	22	30
Telstra	276	320	340
TPG	44	44	43
Remote Australia			
Optus	16	17	21
Telstra	87	96	102
TPG	8	8	8
Very Remote Australia			
Optus	34	37	44
Telstra	72	87	98
Total			
Optus	93	102	136
Telstra	630	736	788
TPG	60	60	59



Table 4.5: Co-located sites as percentage (%) of total sites by MNO & ABS Remoteness Area - 2020 to 2022

	2020	2021	2022
Major Cities of Australia			
Optus	84.9	83.4	80.3
Telstra	46.0	46.2	46.4
TPG	92.2	89.1	92.9
Inner Regional Australia			
Optus	63.4	62.5	60.9
Telstra	35.5	35.3	35.8
TPG	85.3	85.4	85.4
Outer Regional Australia			
Optus	52.9	52.9	52.4
Telstra	26.1	25.9	25.6
TPG	75.7	75.3	75.7
Remote Australia			
Optus	40.9	41.2	41.1
Telstra	11.8	11.7	11.9
TPG	61.7	62.9	64.5
Very Remote Australia			
Optus	26.7	25.8	27.8
Telstra	4.7	4.4	4.8
TPG	62.5	62.5	62.5
Total			
Optus	73.7	72.7	70.5
Telstra	35.1	34.9	35.0
TPG	89.5	87.2	90.0

In particular, Table 4.3 demonstrates the significant funding that the Federal Government has invested in its Mobile Black Spot Program. Table 4.5 then shows the limited co-location that has occurred across Australia despite this investment. That is, the expectation in the guidelines for these programs is not achieving the desired sharing of passive infrastructure.

In addition, the guidelines of these programs (and presumably the grant agreements) have historically been silent about the grantee providing access to the expanded coverage areas to any wholesale MVNO customers the MNO may host on its network. This gives the grantee undue discretion to foreclose access to publicly funded expansions of mobile network coverage.

In 2020, Commpete identified 148 Telstra sites that had received public funds under the Mobile Black Spot Program which were not accessible to the MVNOs on those host networks. This is because Telstra only offers its wholesale MVNO customers access to co-funded coverage expansions if the subsidised base station happens to be situated within Telstra’s existing wholesale coverage area. That wholesale coverage area generally mirrors the combined network footprint of the other MNOs. Commpete expects this to continue if Telstra’s proposed multi-operator core network with TPG gets authorised by the ACCC. That is, there will be no guarantee that MVNOs will be provided with increased wholesale access in the regional coverage zone if the Telstra and TPG multi-operator core network is authorised.

Consequentially, MVNOs on Telstra’s wholesale 4G network are denied access to the expanded coverage made possible by 148 mobile sites co-funded under the Mobile Black Spot Program. In effect, this means that the MNOs are leveraging public funds to build and entrench



an unfair market advantage for themselves, by unfairly withholding their full mobile network footprint from would-be MVNO competitors in an area.

For regional Australians this means that there is less choice of alternative providers because the service funded by taxpayer money is not available from other providers in that area.

Despite the fact that people living and working in the affected areas may now be better served in terms of coverage (i.e. they now have coverage where previously there may have been none), they continue to be underserved in terms of choice of retailer. Critically, this means that public funds will have been used to deny them the better value, innovation, and customer experience that vibrant competition from MVNOs can bring.

Thus, co-investment programs should instead seek to improve both coverage and competition by ensuring wholesale access to funded sites is required to be provided to MVNOs (and MNOs), for the ultimate benefit of end-users.

5. Support for neutral host infrastructure models (particularly in wireless)

In Commpete's view, emerging active neutral host models are very promising. The potential to allow multiple operators to utilise the same electronics *and* infrastructure should increase the rate of return on investment if utilisation can be maximised.

Active neutral hosting is a model whereby an independent party owns and operates both passive infrastructure (such as mobile towers) and the radio access network (**RAN**) required to provide mobile services and provides access to these assets on an open access basis to participating MNOs and MVNOs.

Active 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. Active neutral hosting is emerging rapidly as an important model in overseas jurisdictions and the NSW Regional Connectivity Program has recently invested in a program to explore neutral host RAN sharing in regional areas of NSW.

We believe all major mobile providers should support these models commercially to maximise the effectiveness of any co-investment from the Commonwealth. Major mobile providers that receive funding should be compelled to participate in neutral hosting models and operate any of their own the co-funded sites on an open access network sharing basis.

6. Wholesale access and open access priority play a key role in improving value, flexibility and choice for regional Australia

A sustainable investment model is required in order to continue to realise coverage aims for growing communities in regional Australia.

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, 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.



We caution that the greater the cash contribution from the private sector, the more likely it is that the private investor will want to realise its own commercial return on the co-contribution investment.

Therefore, the terms and conditions of any co-investment funding should include conditions on private sector co-contribution, including that co-funding agreements must not contain restraints or exclusivity provisions that could have the effect of delivering more significant benefits to a private co-investor (from the grant) than to the community at large or the interests of local end users. Commpete considers that efficiency and optimal competitive outcomes are maximised where the recipient of co-investment funds is required to provide wholesale access/network sharing to the relevant network assets to both other MNOs and to MVNOs.

The conditions of co-investment should also require reporting to the Commonwealth on the ways third parties have leveraged the Commonwealth funding and managed the assets over the longer term. Such reporting will assist in ensuring that local communities continue to benefit from the grant funding and the original objectives of the grant are achieved.

7. Conclusion

In order to ensure that wholesale and retail competition is promoted for the benefit of consumers, Commpete reiterates its call for recipients of co-investment funds to be required to provide wholesale access/network sharing to the relevant network assets to both other MNOs and to MVNOs.

Commpete would welcome the opportunity to discuss this response with you further to address any queries that may arise.

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