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Dear Interested Party

Request for submissions: Proposed merger of TPG with Vodafone

The Australian Competition and Consumer Commission (**ACCC**) is seeking comments from interested parties on TPG Telecom Limited's (**TPG**) proposed merger with Vodafone Hutchison Australia Pty Limited (**VHA**) (the **proposed merger**).

TPG supplies retail fixed broadband and voice services, mobile services and a range of wholesale telecommunications services. Its brands include TPG, iiNet and AAPT. VHA supplies retail and wholesale mobile services, and has commenced supplying fixed broadband services on the NBN in certain capital cities and regional centres. Further detail on TPG and VHA, and the proposed merger, can be found at **Attachment A**.

The ACCC's investigation is focused on the impact of the proposed merger on competition. In particular, we are seeking your views on:

- the likely impact of the merger on prices, including discounts, special offers and bundled offers
- the likely impact on non-price aspects of competition, including product and service offerings, call and data inclusions, contracts, network coverage, customisation and bundling options, speed, customer service and service quality
- how closely TPG and VHA currently compete, or would be likely to compete in the future absent the merger
- the likelihood of smaller competitors (i.e. competitors other than Telstra, Optus, TPG and Vodafone) expanding significantly or major new competitors commencing supply of mobile services.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section

50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by no later than **5pm on Wednesday 10 October 2018**. Responses may be emailed to TPG-Vodafone-Mergers@accc.gov.au with the title: *Submission re: TPG/VHA*. If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Morgan Woodland on 02 9230 9194 or Rachel Goldfeld on 03 9290 1438.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Tom Leuner
General Manager
Merger Investigations

Attachment A

TPG

TPG provides telecommunications services, including:

- retail fixed broadband and voice services to consumers, small business (SMEs), government, enterprises and wholesale customers on legacy networks, the NBN and its own fibre-to-the-basement network
- retail mobile services
- wholesale services, such as transmission and NBN aggregation services, to other telecommunications service providers.

TPG's key retail brands are TPG, iiNet, Internode and AAPT. TPG has approximately 1.9 million fixed broadband subscribers. TPG owns and operates its own voice, data and internet network infrastructure.

TPG supplies mobile services as a mobile virtual network operator (**MVNO**) and has approximately 421,000 mobile subscribers. In 2017, TPG announced plans to seek to become a Mobile Network Operator (**MNO**).¹

TPG's network infrastructure includes:

- over 400 DSLAM enabled telephone exchanges across Australia
- extensive inter-capital and metropolitan fibre optic transmission networks
- a fibre-to-the-basement network
- the international PPC-1 submarine cable connecting Australia and Guam, with onwards connectivity to USA and Asia.

TPG is listed on the Australian Securities Exchange (ASX:TPM). TPG's financial year 2017-18 revenue was \$2.49 billion.

VHA

VHA is the third largest telecommunications provider in Australia. VHA owns and operates its own 3G and 4G mobile network, which reaches nearly 97 percent of the Australian population. VHA's mobile customer base in Australia is approximately 5.98 million subscribers.

VHA also supplies wholesale mobile services to MVNOs for resale to retail customers under their own brands, including to TPG.

In 2017, VHA commenced supply of fixed broadband services through its NBN offering to customers in Sydney, Canberra, Melbourne, Perth, Brisbane, Geelong, Newcastle and Wollongong.

VHA is a 50:50 joint venture between Vodafone Group Plc and Hutchison Telecommunications (Australia) Limited. VHA is a privately owned entity, although the ultimate shareholders in VHA are publicly listed entities.

¹ <https://www.asx.com.au/asxpdf/20170412/pdf/43hgrdhpfm7jq0.pdf>

Proposed Merger

The proposed merger will be implemented by way of a Scheme of Arrangement. Existing VHA shareholders will collectively own 50.1% of the merged entity. Existing TPG shareholders will collectively own the remaining 49.9% of the merged entity. Following completion of the Scheme of Arrangement, the merged entity will be listed on the ASX and will be named 'TPG Telecom Limited'. Further details of the transaction can be found on the ASX website at <https://www.asx.com.au/asxpdf/20180830/pdf/43xv0j845mwx16.pdf>.

Joint Venture

In parallel to the proposed merger, TPG and VHA have also entered a separate joint venture agreement (**JV**). The scope of the JV is to acquire, hold and allocate 3.6 GHz spectrum. The parties will negotiate with the aim of expanding the business of the JV in the future, including to acquire future spectrum licences and/or facilitate various forms of efficient spectrum and network sharing including a shared 5G Radio Access Network. The parties have announced that the JV has registered as a participant in the upcoming 3.6 GHz spectrum auction scheduled for November 2018.

The ACCC is considering the impact of the JV on competition, both the short term effects on the 3.6 GHz spectrum auction and medium to longer term potential effects.

So that the ACCC can properly consider the potential impacts of the JV in the context of its merger investigation, the ACCC has accepted a s87B undertaking from the JV entity that limits the scope of the JV's activities for a period. The undertaking does not relate to the JV participating in the 3.6 GHz spectrum auction. The undertaking is published on the ACCC's undertakings register at <https://www.accc.gov.au/public-registers/undertakings-registers/s87b-undertakings-register/mobile-jv-pty-limited>.

Attachment B

1. Please provide a brief description of your business or organisation.
2. Please outline the reasons for your interest in the proposed acquisition, including any commercial relationship/s with either of TPG or VHA.

Questions for all interested parties

3. What has been the impact on competition of the entry of VHA into the provision of fixed broadband services?
4. What has been the impact on competition of TPG's entry into the mobiles market (as an MVNO)? What has been the impact of TPG's announcement to deploy its own mobile network? In your response, please provide examples.
5. How would TPG, VHA and other market participants likely compete in the future if the merger does not proceed, considering:
 - a. VHA's entry into the supply of fixed broadband services
 - b. TPG's anticipated deployment of its own mobile network
 - c. the rollout of 5G networks.
6. Are TPG and/or VHA's offers to customers differentiated from other market participants? If so, how?
7. Do you consider that by removing a competitor from mobiles or broadband, the proposed merger will result in higher prices or lower service levels? Will competition from Telstra, Optus, Vocus Group² and other telecommunication providers³ mean that the overall level of competition does not change significantly? Why or why not?

Questions for customers

8. Please list any products or services that you purchase from TPG, VHA or any other market participants. After your current service provider, who do you think is likely to be your next best option, and your next best option after that? Why?
9. Why did you choose your current telecommunications provider? Please explain which features are important to you (type of product offered, price, service level, combined fixed and mobile service offer, contract terms, other features).
10. Do you view mobile broadband as a substitute for fixed-line broadband for your current purposes? If not, do you think it will be a substitute in the future?
11. Do you value the ability to purchase your mobile phone services and fixed line services from the same service provider? If you currently purchase both services from one provider, do you receive a discount or additional inclusion of any kind?

Questions for telecommunications companies

12. Describe any bundled fixed and mobile offers you have and how many customers purchase these bundled offers. Please describe any cost advantages that arise

² Vocus Group includes the following brands: M2, Dodo, iPrimus, Eftel, Club Telco, NextGen Networks, Amnet, Commander, Engin and Southern Cross Telco.

³ Including MVNOs such as Amaysim, Woolworths, Aldi.

from providing bundled fixed and mobile services to customers.

13. What is the impact of bundling fixed and mobile products on competition in the relevant markets? Do you consider that bundled fixed and mobile products will become dominant in the near future? Is the ability to offer bundled fixed and mobile products likely to become critical in the near future to effectively compete?
14. Please describe the extent to which fixed and mobile voice and broadband products and services are currently substitutes, and the potential for future substitution. In your response, please consider the likely impact of the future rollout of 5G technology.
15. Please comment on whether you consider TPG, VHA or any other market participants to be particularly disruptive or innovative competitors (including on price, promotional activity, product innovation or new technologies)? Do other providers change their offers to respond to TPG or VHA? Please provide examples where possible.
16. Please discuss the likelihood of new entry or expansion into the supply of fixed/broadband, mobile and/or combined services. In your response, please consider the likely timeframe for market entry and provide details about any barriers to entry, such as:
 - a. economies of scale
 - b. costs of market entry
 - c. long-term customer contracts
 - d. the extent of brand loyalty
 - e. access to key inputs (such as spectrum or certain infrastructure)
 - f. regulatory barriers.

In your response, please consider if there are any specific barriers in relation to launching a 5G network or commencing supply of retail services on the NBN.

17. What is the likely impact of the proposed merger on existing MVNOs⁴ and/ or those companies seeking to be MVNOs? Noting TPG's anticipated mobile network deployment, do you consider the proposed merger would substantially affect competition in the supply of wholesale end-to-end services to MVNOs because the merger may remove TPG as a potential future option or reduce the incentive of the merged entity to supply wholesale end-to-end services?
18. Could combining TPG and VHA's infrastructure through the proposed merger, or alternatively under the JV, result in more competitive downstream mobile and fixed line markets? How could this occur to offset the smaller number of effective competitors?

Other information or comments

19. Please provide any additional information or comments, or identify other competition issues, that you consider relevant to the ACCC's review.

⁴ MVNOs resell end-to-end mobile services provided by Telstra, Optus and VHA (the MNOs).