

Comments on the ACCC Draft Communications Sector Market Study

The purpose of this market study is to gain an understanding of the communications sector which “will enable us to determine how we can best ensure that economic regulation is responsive to changing market circumstances and that only regulations necessary to address market failure, promote competition and protect consumers are in place. This includes ensuring that over the longer term innovation and investment are not stifled, competition is encouraged and the interests of consumers are well served” (p11).

It is apparent, reading the report and from our own experience, that there are distinct geographic differences in the communications sector market. We believe that a more nuanced understanding of the market would have been possible if the study had considered the market along geographic lines (using the ABS Remoteness Categories, for example). In doing so, the proposed actions and recommendations could have been more closely tailored to addressing specific issues reflecting these geographic differences which contribute to the existence of the digital divide.

The significance of geographic differences is evident, for example, from discussions relating to wholesale aggregation services and transmission. The study recognises on p84 that in regional and rural areas 500-1000 services in operation are required in order to make direct connection to NBN POIs commercially viable, double what is required in metropolitan areas. Similarly, p91 notes that competition in the supply of transmission services, including to NBN POIs, is limited along some regional routes and this impacts on the downstream supply of voice and data services. Furthermore, on p94 it is anticipated that “competition will remain limited at some regional ESAs” (see also p98). We believe these examples clearly demonstrate the need for the study to assess metropolitan and regional/remote/very remote communications markets separately. Proposed Action 9 tacitly acknowledges this by singling out transmission services in regional and rural areas for particular attention (p147). A similar approach should have applied to the market study in its entirety. As it currently stands, the study offers comparatively little for consumers in regional and particularly remote and very remote areas.

We note that throughout the study there is very little reference to the Skymuster satellite service despite claims that the study has looked at competition in the supply of retail voice and broadband services irrespective of the technology and networks used to deliver them (p35). Instead the discussion and the proposed recommendations and actions are largely relevant only to consumers who use fixed line broadband services. We understand the ACCC’s focus on fixed line services as only c.3% of the Australian population is connected by satellite, however satellite services almost a third of our population in the NT.

Data presented in this study (and elsewhere) indicates that 91% of mobile services are provided by only 3 firms and 96% of fixed broadband is provided by only 4 firms; this market concentration is exacerbated in regional and remote Australia. We note that the study acknowledges long standing competition issues regarding internet interconnection with key networks and lack of information available for the 2004 inquiry into whether the ACCC should declare an internet interconnection service (p101). However, given that more than a decade has passed, we suggest the ACCC should revisit this matter as it is clear that peering arrangements between Telstra, TPG, Optus and Vocus are resulting in weaker competition regarding the supply of transit services. Proposed Action 11, that TTOV should maintain on their websites the criteria and policies to which they have regard when assessing peering requests from other networks (p150), is not sufficient to address this long standing competition issue, and therefore we welcome proposed Action 12 (p150).

Proposed Recommendations 5, 21 and 29 – Government investment in the NBN and the Regional Broadband Scheme

We support the first part of proposed Recommendation 5, which states that Government should reconsider whether NBN Co should be obliged to recover the full cost of its investment through its prices. It seems increasingly unlikely that the NBN will be able to achieve this without Government intervention to protect it from competition and these measures will further distort the market. Rather than embed structural flaws and further entrench one provider in this space (i.e. essentially repeat the TUSO situation with data services instead of voice), Government should accept a significant write-down on its investment with the nbn rather than seek to introduce policies designed to limit competition with the NBN in order that it receives its anticipated ROI. We are therefore supportive of proposed Recommendation 21, particularly “Regulation should not constrain competition with the NBN”.

However, in relation to proposed Recommendation 29, we do not support direct budget funding arrangements for the Regional Broadband Scheme as this will leave regional, and remote and very remote consumers subject to the uncertainties associated with the Australian Government’s annual budget process and risk that budget cuts to the Scheme would see consumers in these areas experience reduced services.

Proposed Action 6 – Wholesale service standards

We note that the ACCC will consider whether it is necessary to include service level terms within NBN Co’s regulated terms of access but query why service standards are only being considered for fixed line broadband; surely service standards should apply to ALL NBN services? Failure to do so risks further entrenching the digital divide between those who have fixed line broadband (i.e. predominately metropolitan users), and those who rely on the Skymuster service (i.e. predominately regional, remote and very remote users).

Additionally, this action, whilst welcome, only addresses wholesale service levels. Given that RSPs are responsible for making CSG payments to consumers, yet compensation/rebates are limited at the wholesale service level, RSPs are more likely to demand that consumers waive their CSG rights. This is unlikely to result in a better service for the consumer. Service standards should apply throughout the entire supply chain and, to that end, we believe that accompanying Action 6 should be a recommendation for Government to commence the review of the CSG as soon as possible, and that the CSG should apply to voice and data (broadband) services.

Proposed Action 9 – Transmission services

Regarding transmission costs, information presented in section 5.3 clearly suggests there are economies of scale issues in regional and remote Australia that form, if not absolute barriers, then at least strong disincentives to entry for smaller providers. The draft report states that the ACCC will simply work with industry to understand scale issues (p146), suggesting no further action will be taken. However, on p147 it is clear that transmission services in regional and rural areas will be considered as part of the DCTS declaration and Final Access Determination (proposed Action 9). We suggest that greater clarity is required in the discussion on p146 to make it clear that additional action will be taken.

We support the ACCC's intention to examine transmission services used to supply mobile services particularly in remote areas, and whether transmission used to provide mobile backhaul in these areas (such as towers subsidised through the MBSP) should be distinguished from other transmission services (p97).

Proposed Action 10 – Dark fibre

We support the proposed action to collect data on dark fibre (p149) and note that it is consistent with Recommendation 6 of the 2015 *Regional Telecommunications Review* regarding data collection on underutilised regional assets including dark fibre. We would encourage the ACCC to share aspects of this data that may be of assistance to potential investors in telecommunications.

Proposed Action 20 – Broadband performance monitoring and reporting program

While moves by the ACCC to promote greater transparency of information available to consumers in order to facilitate informed choice are welcome, we are aware that the broadband performance monitoring and reporting program currently applies only to fixed line broadband. Claims that this program will “help to improve consumer awareness and understanding of NBN speeds, as well as increase the incentive for service providers to increase their peak hour speeds and performance” (p123; see also similar remarks on p132, and in section 5.4.9) are misleading, as this program will not benefit those consumers reliant on mobile, fixed wireless or satellite broadband.

Sections within the final market study relating to this program should make it clearer that it is only applicable for consumers who received fixed line broadband by specifically stating that mobile, fixed wireless and satellite broadband are not covered by the monitoring and reporting program. We would like to take this opportunity to call on the ACCC to expand their broadband performance monitoring and reporting program to include consumers who rely on the Skymuster service, fixed wireless or mobile. Or alternatively, to identify what measures they proposed to take to enable consumers who rely on these technologies for their broadband services to access information around speed and performance that is relevant for their circumstances. Failure to do so risks widening the existing digital divide.

Mobile Black Spots Program – draft finding

It is extremely disappointing that the ACCC has not seen fit to identify any proposed action or recommendation in relation the Government's Mobile Black Spots Program, particularly given its observations that through this program the Government is subsidising individual commercial concerns and may be limiting competition by providing MNOs with a competitive advantage in particular areas (p189). Failure to follow through the draft finding with a strong recommendation that future infrastructure funding through the MBSP be tied to open access requirements does a great disservice to consumers in areas with limited or no mobile coverage, the majority of whom live in regional and remote areas. We strongly urge the ACCC to include a recommendation consistent with its draft finding.

The remainder of our submission contains Confidential material which is not for publication (Attachment B).