

The ACCC's market study of the (tele)communications sector

On 4 August 2016, the Australian Competition and Consumer Commission (ACCC) announced that it will undertake its next market study into the Australian "communications sector".

The ACCC will commence consultation with an issues paper, in late August, and will then release draft findings for comment before completing the market study in 2017.

The ACCC has stated that the communications sector market study is an opportunity for the ACCC to take stock of changes in the digital economy and a sector that contributes to Australia's economic growth.

What is the communications sector?

The communications sector encompasses both the traditional telecommunications sector and the media sectors. The ACCC's media release comments that the Australian communications sector is going through significant change. It refers to global developments in technology and product innovation, major structural change in Australia as the NBN is deployed and changes in consumer preferences for, and use of, communications services.

These changes highlighted by the ACCC are focused on the telecommunications sector, not the broader communications sector. If the market was looking at the communications sector more broadly, it could not ignore the fact that both the traditional broadcasting sector and telecommunications carriers are adopting similar business models, looking to offer content via over the top platforms to attract customers. In Australia, for example, we have seen the decline in popularity of free to air television, with hours viewed falling by around five per cent in 2014-15¹, and the corresponding increasing popularity of streaming video on demand services. This important change in consumer preferences will have far reaching competition implications.

Key issues

- It is not clear what sector the ACCC is actually considering. The media release does not focus on the broader communications sector, which encompasses both the traditional media and telecommunications sectors. The ACCC seems instead to be only looking at the narrower telecommunications market.
- If the market study will just focus on the telecommunications sector, there is a risk that this will be a missed opportunity and will be of limited value. The communications sector is undergoing a sustained period of fundamental and exciting change. This inevitably will have significant competition impacts – which may not be considered in the study.
- The Government has not asked the ACCC to undertake this market study unlike the East Coast Gas Inquiry . There is therefore a question of what influence this study will have on the policy processes of the Government and subsequent changes to competition laws.

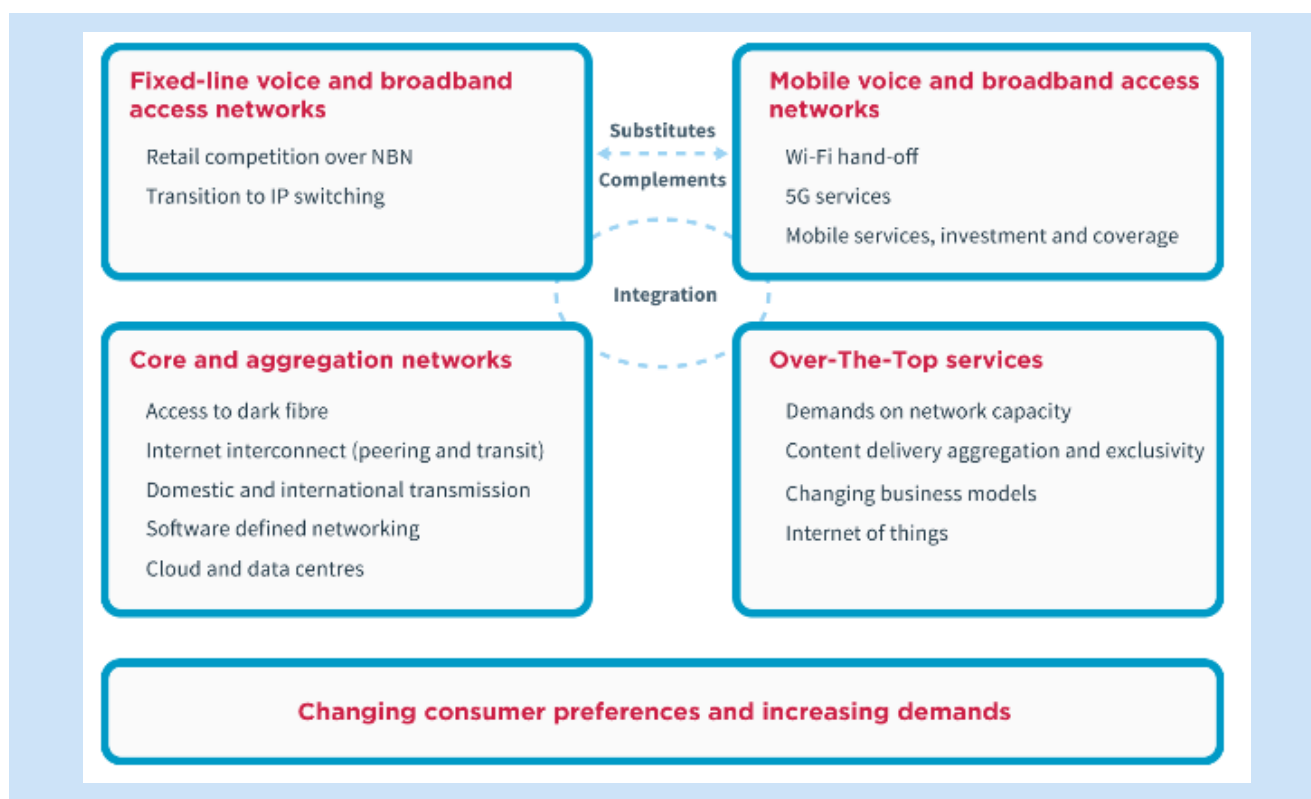
ACCC's views of objectives of the Market Study

The objectives for the study are to:

- Identify current and emerging trends and issues that are likely to significantly affect the efficiency and level of competition in relevant communication markets over the next three to five years, including issues associated with market power and the consequences of it being exercised.
- Consider these trends and issues for relevant markets, which will include, but not be limited to, those for the supply of:
 - Fixed and mobile network services
 - Core and aggregation network services such as internet protocol (IP) switching and domestic and international transmission
 - Services using over the top platforms and content delivery mechanisms.
- Consider the effect of consolidation, structural change and emerging business models in the Australian communications sector on efficiency and competition.
- Consider whether the transparency and comparability of consumer product information and costs of switching service provider impede competitive outcomes.
- Make findings and identify options that would better place the ACCC to address material issues, including in relation to whether current ACCC regulatory focus is appropriate to meet the requirements of the changing communications landscape.

Structure of the market study

The ACCC's media release contained the structure diagram below, which presumably indicates the ACCC's views of the structure of the relevant market segments that it will consider.



This diagram indicates, again, the telecommunications focus of the study. The Fixed-line voice and broadband access networks; Core and aggregation networks and Mobile voice and broadband access networks sectors are largely telecommunications market segments. The Over-The- Top services sector is where the traditional telecommunications and broadcasting/media sectors are converging to create what, to some, are the most interesting competition issues. It is not clear whether the ACCC intends to tackle these issues head on, or simply limit itself to considering issues such as peak demands on network capacity, as highlighted in the diagram.

We will issue a more detailed Briefing when the ACCC releases its issues paper anticipated to be by the end of August 2016.

¹ Australian Communications and Media Authority, Communications Report 2014-15.

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