

***National Broadband Network: Regulatory Reform  
for 21<sup>st</sup> Century Broadband  
- ACCC Perspective***



**Australian  
Competition &  
Consumer  
Commission**

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## Overview

1. State of competition
2. Elements of reform package
3. Implications for ACCC work program



## State of competition

- *Extent of competition for fixed line services*
  - *original expectations*
  - *as compared to mobile networks*



## Structural issues

- Vertical integration
  - Access and service provision
  
- Horizontal integration
  - HFC ownership
  - Subscription television interests
  
- Market concentration



## Extent of competition

- Competition is 'patchy'
- Concentrated in metropolitan areas
- Competition dependent upon regulation



## Investment

- Fixed line infrastructure
  - DSLAM equipment
  - HFC networks
  - Customer access network



## DSL services in operation

	Telstra SIOs	ULLS/LSS SIOs
December 2007	3,190,000	755,000
June 2008	3,205,000	891,000
June 2009	3,071,000	1,268,000



## Reforms

- Structural arrangements
- Access regime
- Competition safeguards
- Consumer safeguards



## The regulatory framework

- The appropriate regulatory framework will depend on extent of market power *and* structural arrangements
- The access regime and measures to discourage anti-competitive conduct (i.e. the enforcement and compliance regime) are complementary in promoting competition
- Important to take a holistic approach



## Structural arrangements

- Overview of current structure of incumbent
  - Incumbent is highly vertically and horizontally integrated.
  - Incumbent is subject to accounting and operational separation provisions.
    - But these do not address its incentive/ability to discriminate against competitors.



## Structural arrangements

- Overview of reforms
  - Vertical
    - Full / functional separation
  
  - Horizontal
    - Limits on spectrum acquisition
    - Divestiture of HFC and/or subscription TV interests



## Structural arrangements

### ➤ ACCC perspectives

- Vertical arrangements
  - Structural separation is the only framework which will ensure equivalence in access during transition
  - The current operational separation regime is not an appropriate structural arrangement for Telstra
  - Functional separation is an improvement on the current operational separation arrangements but will still not ensure equivalence



## Structural arrangements

### ➤ Horizontal arrangements

- Current market conditions
  - Requiring Telstra to divest its HFC network could introduce a new infrastructure-based competitor in the telecommunications sector.
  - Requiring Telstra to divest its stake in Foxtel could increase competition in media markets



## Overview of current access regime

- Declaration (regulation) of services
- Mechanisms to determine terms of access
  - Negotiation
  - Undertakings – no scope to modify
  - Arbitrations – bilateral
- Non-binding pricing principles and model terms and conditions



## Proposed reforms

- Undertakings for established services and arbitrations to end
- Access determinations and binding rules of conduct to commence
  - Will enable up-front price and non-price terms and conditions to be set
- Ability to determine “fixed principles” which can apply over longer time period than access determinations



## ACCC perspectives

- The proposed reforms should provide for
  - More timely access
  - Greater regulatory certainty for all parties
  - Reduced costs
- This should lead to more competition, lower prices and better services for consumers



## Part XIB – anti-competitive conduct

- Overview of current arrangements
  - Competition Rule: must not engage in “anti-competitive conduct”
  - The ACCC can issue a Part A Competition Notice if it has ‘reason to believe’
  - ACCC must first issue a Consultation Notice



## Part XIB – anti-competitive conduct

### ➤ Reforms

- Remove requirement for the ACCC to consult with recipient of a Part A Competition Notice
- Clarify that Part XIB applies to content services delivered by carriers and CSPs in telecommunications markets



## Part XIB – anti-competitive conduct

### ➤ ACCC perspectives

- Simplify administrative obligations on the ACCC to enable the ACCC to respond quickly to anti-competitive conduct when appropriate.
- Provide certainty on the application of Part XIB to content services delivered by carriers and CSPs.
- These reforms will facilitate swift ACCC action.



## Consumer Safeguards

- The ACCC does not have a direct role in administering a number of telecommunications consumer protection safeguards
  - But some of these matters impact on competition and access regulation in the sector
- Long term – universal access should be facilitated by NBN rollout
- Transition period - benefits of immediate, large scale changes to current funding mechanisms short lived in light of NBN



## Potential consequences

- Fixed Services Review
  - Declarations
  
- Setting access terms
  
- Implications for Tribunal exemption decisions



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