Submission to DCITA

Emerging Market Structures in Communications Sector

TransACT Communications Pty. Limited

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Executive Summary

TransACT welcomes the ACCC's report and the Government's ongoing interest in monitoring the evolution of the Communications Market in Australia. It also appreciates the opportunity to contribute to informed debate on the various issues that have been tabled in the ACCC's report.

The ACCC recommends exploring legislation to force Telstra to divest its HFC network on the grounds that this may encourage Telstra to invest in upgrading its copper network to compensate for the lost Pay TV capability. For two-thirds of Australia, major investment in local loop infrastructure is needed in order to equip the community for a broadband future. For this sector of the market, facilities-based broadband competition is *not* an appropriate policy objective. It raises the spectre of the catastrophic losses that were incurred as a result of the duplicate Pay TV rollouts. Recognising a period of natural monopoly may be the only way to attract investment, but wherever natural monopolies prevail, it is also reasonable to require infrastructure owners to grant open access to network capacity on fair commercial terms.

The immediate effects of Telstra divesting its HFC network would be felt only in that other third of the Australian market where, not only is there reasonable broadband infrastructure, but also for the most part where there are already multiple competing broadband networks. Increasing the level of competition may not improve the outcome for consumers either in this market area or in the rest of Australia. However, divestiture deserves consideration as a means of curbing Telstra's dominance in the Australia market since this could improve the prospects for both competition and infrastructure investment.

The ACCC recommends exploring legislation to force Telstra to divest its 50% stake in Foxtel. It is quite obvious why Telstra might be motivated to use every means at its disposal to repress competition from infrastructure operators such as TransACT that attack its near-monopoly in local loop access. It also easy to show how preventing infrastructure operators from obtaining vital content, or making it available only on discriminatory terms, can be an effective means of thwarting competition. Finally, it is possible to highlight features of Foxtel's Section 87B undertakings that can be used with the effect of ensuring that any access granted does not pose a competitive threat. It is a matter of judgement as to whether Telstra's influence in Foxtel has in fact contributed to this outcome. However, TransACT strongly supports the ACCC's recommendation as valuable step towards dismantling the obstacles to competition and progress.

The ACCC recommends legislation to increase access to Pay TV content for broadband content. The history of Pay TV in Australia is not an especially happy one, and past problems have culminated in a situation where Foxtel is today a strongly dominant purchaser of content. In particular, Foxtel has exclusive access to much of the premium content that other network operators need in order to offer a competitive service. If Foxtel was not also in the retail Pay TV distribution business (through its satellite network and its close links with Telstra's HFC network), this may not be a problem. However, unless a more open access regime can be established, it is difficulty to see a truly competitive industry developing. The issues associated with legislation are complex, but on balance TransACT considers that legislative intervention has the potential to ensure better outcomes for Australia.

The ACCC recommends giving the TIO jurisdiction over complaints involving Pay TV services when provided as part of a bundled service. TransACT does not believe this is an appropriate approach but suggests other mechanisms for alleviating concerns that may exist in relation to the protection of customer interests in a bundled service environment.