Competition and price changes in telecommunications services in Australia 2016-17

February 2018
Competition and price changes in telecommunications services in Australia 2016–17

February 2018
EXECUTIVE OFFICE

19 December 2017

The Hon. Mitch Fifield MP
Minister for Communications and the Arts
Parliament House
CANBERRA ACT 2600

Dear Minister

The Australian Competition and Consumer Commission (ACCC) is required under the Competition and Consumer Act 2010 (CCA) to review and report annually on:

- competitive safeguards within the Australian telecommunications industry under subsection 151CL(1) of the CCA and
- changes in the prices paid by consumers for telecommunications services under paragraph 151CM(1)(a) of the CCA.

This year, the ACCC has produced a combined report fulfilling the above requirements.

Enclosed is the combined report for the 2016–17 financial year. Subsections 151CL(5) and 151CM(3) of the CCA require you to table the report in each House of Parliament within 15 sitting days of receipt.

Yours sincerely

Rod Sims
Chairman
Contents

**List of shortened forms** vi

**Types of internet access platforms** x

1 Executive summary 1
   1.1 Introduction 1
   1.2 Wholesale market indicators 1
   1.3 Retail market indicators 2
   1.4 Consumer indicators 6
   1.5 ACCC activities 7

2 Competition indicators 9
   2.1 Wholesale market indicators 9
   2.2 Retail market indicators 17
   2.3 Consumer trends and related issues 37

3 ACCC activities in communications 44
   3.1 Access to telecommunications networks 44
   3.2 National Broadband Network 46
   3.3 Structural separation of Telstra 47
   3.4 Monitoring and reporting 50
   3.5 Enforcement activities 51
   3.6 Merger, authorisation and third line forcing reviews 54
   3.7 Advice, advocacy and contributions to policy processes 56

4 Appendices 60
   Appendix 4.1 Access to telecommunications services 61
   Appendix 4.2 NBN Regulatory framework 64
   Appendix 4.3 Telstra’s structural separation and other Telecommunications Act provisions 66
   Appendix 4.4 Record keeping rules 69
   Appendix 4.5 Price monitoring methodology: calculating real changes in weighted average prices 71
# List of shortened forms

<table>
<thead>
<tr>
<th>Shortened Form</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2G/3G/4G/5G</td>
<td>second/third/fourth/fifth generation mobile communications</td>
</tr>
<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
</tr>
<tr>
<td>ACCAN</td>
<td>Australian Communications Consumer Action Network</td>
</tr>
<tr>
<td>ACCC</td>
<td>Australian Competition and Consumer Commission</td>
</tr>
<tr>
<td>ACL</td>
<td>Australian Consumer Law</td>
</tr>
<tr>
<td>ACMA</td>
<td>Australian Communications and Media Authority</td>
</tr>
<tr>
<td>ADSL</td>
<td>asymmetric digital subscriber line</td>
</tr>
<tr>
<td>AGVC</td>
<td>aggregating virtual circuit</td>
</tr>
<tr>
<td>AVC</td>
<td>access virtual circuit</td>
</tr>
<tr>
<td>BPMR</td>
<td>Broadband Performance Monitoring and Reporting</td>
</tr>
<tr>
<td>BROC</td>
<td>binding rule of conduct</td>
</tr>
<tr>
<td>CAN</td>
<td>customer access network</td>
</tr>
<tr>
<td>CCA</td>
<td><em>Competition and Consumer Act 2010</em></td>
</tr>
<tr>
<td>CVC</td>
<td>connectivity virtual circuit</td>
</tr>
<tr>
<td>DSL</td>
<td>digital subscriber line</td>
</tr>
<tr>
<td>DSLAM</td>
<td>digital subscriber line access multiplexer</td>
</tr>
<tr>
<td>DTCS</td>
<td>domestic transmission capacity service</td>
</tr>
<tr>
<td>ESA</td>
<td>exchange service area</td>
</tr>
<tr>
<td>FAD</td>
<td>final access determination</td>
</tr>
<tr>
<td>FOAS</td>
<td>fixed originating access service</td>
</tr>
<tr>
<td>Foxtel</td>
<td>Foxtel Management Pty Limited</td>
</tr>
<tr>
<td>FTAS</td>
<td>fixed terminating access service</td>
</tr>
<tr>
<td>FTTB</td>
<td>fibre to the basement</td>
</tr>
<tr>
<td>FTTN</td>
<td>fibre to the node</td>
</tr>
<tr>
<td>FTTP</td>
<td>fibre to the premises</td>
</tr>
<tr>
<td>GB</td>
<td>gigabyte</td>
</tr>
<tr>
<td>HFC</td>
<td>hybrid fibre coaxial</td>
</tr>
<tr>
<td>iiNet</td>
<td>iiNet Limited</td>
</tr>
<tr>
<td>IoT</td>
<td>internet of things</td>
</tr>
<tr>
<td>LBAS</td>
<td>local bitstream access service</td>
</tr>
<tr>
<td>LCS</td>
<td>local carriage service</td>
</tr>
<tr>
<td>LSS</td>
<td>line sharing service</td>
</tr>
<tr>
<td>MB</td>
<td>megabits</td>
</tr>
<tr>
<td>Mbps</td>
<td>megabits per second</td>
</tr>
<tr>
<td>MHz</td>
<td>megahertz</td>
</tr>
<tr>
<td>MNO</td>
<td>mobile network operator</td>
</tr>
<tr>
<td>MoU</td>
<td>memorandum of understanding</td>
</tr>
<tr>
<td>MTAS</td>
<td>mobile terminating access service</td>
</tr>
<tr>
<td>MTM</td>
<td>multi-technology mix</td>
</tr>
<tr>
<td>MVNO</td>
<td>mobile virtual network operator</td>
</tr>
<tr>
<td>NBN</td>
<td>national broadband network</td>
</tr>
<tr>
<td>NBN Co</td>
<td>National Broadband Network Co Limited (also referred to as nbn)</td>
</tr>
<tr>
<td>Optus</td>
<td>SingTel Optus Pty Limited</td>
</tr>
<tr>
<td>PB</td>
<td>petabyte</td>
</tr>
<tr>
<td>POI</td>
<td>points of interconnection</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>RAF</td>
<td>regulatory accounting framework</td>
</tr>
<tr>
<td>RKR</td>
<td>record keeping rule</td>
</tr>
<tr>
<td>RSPs</td>
<td>retail service providers</td>
</tr>
<tr>
<td>SAU</td>
<td>special access undertaking</td>
</tr>
<tr>
<td>SBAS</td>
<td>superfast broadband access service</td>
</tr>
<tr>
<td>SFAA</td>
<td>standard form of access agreement</td>
</tr>
<tr>
<td>SSU</td>
<td>structural separation undertaking</td>
</tr>
<tr>
<td>SIO</td>
<td>services in operation</td>
</tr>
<tr>
<td>SMS</td>
<td>short messaging service</td>
</tr>
<tr>
<td>TB</td>
<td>terabyte</td>
</tr>
<tr>
<td>TEM</td>
<td>Telstra Economic Model</td>
</tr>
<tr>
<td>Telstra</td>
<td>Telstra Corporation Limited</td>
</tr>
<tr>
<td>TIO</td>
<td>Telecommunications Industry Ombudsman</td>
</tr>
<tr>
<td>TPG</td>
<td>TPG Telecom Limited</td>
</tr>
<tr>
<td>TPG Group</td>
<td>includes TPG Telecom Limited, iNet, Internode, Adam Internet, AAPT, Westnet, TransACT, Pipe Networks, Netspace, Agile Communications and Chime Communications</td>
</tr>
<tr>
<td>ULLS</td>
<td>unconditioned local loop service</td>
</tr>
<tr>
<td>USO</td>
<td>universal service obligation</td>
</tr>
<tr>
<td>VDSL</td>
<td>very high bit rate digital subscriber line</td>
</tr>
<tr>
<td>VHA</td>
<td>Vodafone Hutchison Australia Pty Limited</td>
</tr>
<tr>
<td>Vocus</td>
<td>Vocus Communications Limited</td>
</tr>
<tr>
<td>Vocus Group</td>
<td>includes Vocus Communications Limited M2, Dodo, iPrimus, Eftel, Club Telco, Nextgen Networks, Amnet, Commander, Engin and Southern Cross Telco</td>
</tr>
<tr>
<td>VoIP</td>
<td>voice over internet protocol</td>
</tr>
<tr>
<td>WLR</td>
<td>wholesale line rental</td>
</tr>
<tr>
<td>WADSL</td>
<td>wholesale asymmetric digital subscriber line</td>
</tr>
</tbody>
</table>
## Competition and price changes in telecommunications services in Australia 2016–17

<table>
<thead>
<tr>
<th>Service Type</th>
<th>Change 2013–14</th>
<th>Change 2016–17</th>
<th>Proportion of All Plans with Unlimited Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed broadband</td>
<td>▼ 9.4%</td>
<td>▼ 4.5%</td>
<td>26%</td>
</tr>
<tr>
<td>Mobile services</td>
<td>▼ 3.1%</td>
<td>▼ 7.1%</td>
<td>▲ 46%</td>
</tr>
<tr>
<td>Wireless broadband</td>
<td>▼ 6.7%</td>
<td>▼ 5.5%</td>
<td>▲ 86%</td>
</tr>
</tbody>
</table>

* Compound annual growth rate 2013–14 to 2016–17

### Method of Download

<table>
<thead>
<tr>
<th>Method</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed</td>
<td>91.6%</td>
</tr>
<tr>
<td>Mobile</td>
<td>5.5%</td>
</tr>
<tr>
<td>Wireless</td>
<td>2.6%</td>
</tr>
</tbody>
</table>

Growth in data downloads: ▲ 43%
NBN activations increased

1.1m » 2.4m

While services provided over Telstra legacy copper network declined from 8.4 to 7.5 million services

Mobile only users increased*

5.8m » 6.7m

Key ACCC projects

Communications sector market study

Industry guidance on advertising broadband speeds

Broadband performance monitoring and reporting program

* Mobile phone users without a fixed-line home telephone

Sources
ACCC record keeping rules and estimates based on publicly available information
Telstra Economic Model (public version)
ABS, Internet Activity (8153.0)
NBN Co, National Broadband Network – Rollout Information
Australian Communications and Media Authority, Communications Report 2016-17
Types of internet access platforms

**Dial-up** uses the voice band frequencies to transmit internet data over the copper access network and has a headline data download transmission rate at a maximum of 56 kilobits per second.

**DSL**, including asymmetric digital subscriber line (**ADSL**), uses the copper access network to provide an internet service. DSL operates at higher frequencies than voice services, and therefore is a form of broadband which operates independently of and simultaneously with the provision of traditional voice services over the same copper pair.

**ADSL2+** is a DSL technology commonly used in the copper access network to provide high data rates over copper pair telephone lines up to about 4 km in length. It is typically installed in telephone exchanges or alternatively in nodes closer to the end customers. The downlink data rate is usually significantly greater than the uplink data rate.

**Very high bit rate Digital Subscriber Line 2** (**VDSL2**) is a DSL technology used to provide high data rates over copper pair telephone lines of up to about 1 km in length. It is typically used in fibre to the node (**FTTN**) or fibre to the basement (**FTTB**) deployments. It can also include vectoring to help remove the impact of crosstalk from one copper line to another. It is able to provide symmetric data services.

**Hybrid fibre coaxial (HFC) cable** is a combination of optical fibre and coaxial cable, which can be used to provide high data rate broadband services, in addition to pay TV and voice services.

**Fibre** refers to optical fibre which can be used to provide high data rate broadband services by transmitting information as light signals.

**WiFi** is a technology for wireless local area networking.

**Wireless broadband** services are offered through both mobile and fixed wireless retail services:

- Mobile wireless data services have evolved from mobile phone technology, which use various portions of the radio frequency spectrum. Mobile network technologies allow users to both move between geographic areas or cells and roam between different mobile networks. Users can access mobile wireless broadband networks using 2G, 3G or 4G voice handsets or non-voice service equipment such as USB modems or datacards.

- Fixed wireless networks use similar technology to that used in mobile wireless networks. Significantly higher data rates and/or longer transmission distances can be attained from these networks by using fixed directional antenna only (that is, mobility is not supported by these networks).

Note: Many consumers now connect their devices at home or work via a wireless router, even if it is a fixed line broadband connection to the internet. This is considered to be a fixed line service rather than a wireless service, because the underlying internet connection is via a fixed line connected to the customer’s premises.

**Satellite broadband** uses satellites to relay data signals sent and received via a satellite dish by isolated end-users to and from a ground station connected to a broadband network.
1 Executive summary

1.1 Introduction

The Australian Competition and Consumer Commission (ACCC) is required by the Competition and Consumer Act 2010 (CCA) to review and report annually to the Minister for Communications and the Arts on competition safeguards within the Australian telecommunications industry, and on changes in the prices paid by consumers for telecommunications services.\(^1\)

The ACCC has traditionally produced two separate reports to meet these requirements, and published them in a single document.\(^2\) For 2016−17 the ACCC has prepared a single, integrated report that covers both requirements.

The 2016−17 report also focuses on indicators derived from data collected by the ACCC and other agencies, and on outlining relevant ACCC activities. This report should be read in conjunction with the findings from the ACCC’s in-depth market study of the communications sector.\(^3\) That study includes detailed examination of competition and competitive trends in a number of communications markets. The draft market study report was released on 30 October 2017 and the final report is due for release in early 2018.\(^4\)

The 2016−17 report includes a new approach to estimating the real changes in prices. This approach has been applied to data from 2014 to 2017, and therefore may give results that differ from previous publications. Moreover, in previous reports, the ACCC has reported on a fixed voice index that tracks prices paid for fixed voice services. Given the declining importance of standalone voice services, the ACCC opted to instead focus on service bundles that include fixed voice services in combination with broadband services.

1.2 Wholesale market indicators

1.2.1 NBN rollout and migration

National broadband network (NBN) deployment and activations accelerated during the year, with almost 5.3 million premises passed (by fibre and fixed wireless networks) and over 2.4 million activations by 30 June 2017.\(^5\) Regional areas still represent the majority of NBN activations (around 60 per cent) given the initial focus of the rollout on these areas. Numbers of legacy DSL services provided over Telstra Corporation Limited’s (Telstra) customer access network (CAN) continued to trend downwards as more services migrated to the NBN.

---

1 Under ss. 51CL(1) paragraph 151CM(1)(a) of the CCA respectively.
2 Previous ACCC telecommunications reports (incorporating Competition in the Australian telecommunications sector and Price changes for telecommunications services in Australia) can be found on the website at https://www.accc.gov.au/publications/accc-telecommunications-report.
3 More information on the communications sector market study, including draft and final reports can be found on the website at https://www.accc.gov.au/about-us/market-studies/communications-sector-market-study.
4 Publication of the final report on the market study will occur after this annual report is completed and potentially before this report is tabled in Parliament and made public.
1.2.2 Market shares

At a national level across all access technologies there are four main NBN wholesale access seekers: Telstra, TPG Telecom Limited (TPG), SingTel Optus Pty Limited (Optus) and Vocus Communications Limited (Vocus). Telstra continues to have the largest market share for wholesale services in operation (SIOs) on the NBN, at 50 per cent. TPG and Optus have the next largest shares with 23 and 13 per cent respectively, followed by Vocus with 8 per cent. Telstra’s share has increased since 2015–16, rising from 48 per cent, while the shares of TPG and Optus have slightly declined.

Differences emerge when the data is examined by region and by access technology. With the introduction of the NBN, Telstra’s wholesale market share in regional areas, at 55 per cent, is significantly lower than it is on the copper legacy network (96 per cent). However, Telstra’s market share in regional areas remains higher than it is in metropolitan areas (42 per cent). In metropolitan areas TPG and Optus have a larger share (compared to national figures) with 31 per cent and 18 per cent respectively.

Wholesale NBN satellite services continue to be dominated by smaller providers such as Australian Private Networks Pty Ltd (Australian Private Networks) and SkyMesh Pty Ltd (SkyMesh) with 35 per cent and 24 per cent respectively. NBN’s fibre and fixed wireless wholesale market shares more closely resemble NBN wholesale market shares. Telstra has a slightly larger wholesale market share of NBN’s fixed wireless access technologies with 56 per cent compared to fibre-based services where it has a 51 per cent market share.

Despite these differences across regions and technologies, Telstra has slightly increased its market share of wholesale NBN services across all access technologies (with the exception of fixed wireless) and regions since 2015–16.

1.2.3 NBN services acquired

The most popular speed tiers acquired on the NBN are 25 megabits per second (Mbps) download followed by the 12 Mbps and 100 Mbps download tiers. Particular retail service providers (RSPs) are overrepresented in certain speed tiers. For example, TPG and Optus acquire a higher proportion of their speeds at 100 Mbps than Telstra and Vocus. Telstra acquires a particularly large proportion of its services at the 25 Mbps speed tier (69 per cent of Telstra’s NBN services).

1.2.4 Legacy wholesale changes

The number of Telstra exchange service areas (ESAs) with access seekers acquiring wholesale unconditioned local loop services (ULLSs) and line sharing services (LSSs) to supply downstream consumers declined slightly over the year to June 2017. This reflects the migration of services from Telstra’s CAN to the NBN.

Telstra continues to dominate regional wholesale services (in Bands 3 and 4) while access seekers modestly increased their share of services in metropolitan areas (Bands 1 and 2) from 50 to 52 per cent over the period.

1.3 Retail market indicators

1.3.1 Real retail price changes

For this report, the ACCC has estimated changes in real retail prices while adjusting for non-price characteristics, consumer spending behaviour, and inflation. Service plans were grouped according to their characteristics, and the average prices of those categories were compared over time. This means that the observed price changes may reflect changes in sticker prices, or changes in the value of service inclusions at a given price, or both. As such,
the price changes could be interpreted as either the changes in prices for a given type and quantity of service, or the change in value consumers obtain for a given price.

All sectors experienced a decline in real prices between 2014 and 2017, when comparing plans with similar characteristics, and adjusting for both consumer spending behaviour and inflation (table 1.1). The post-paid mobile services sector experienced the greatest decline during that period, with prices falling by 7.6 per cent. The results suggest that, for all services, prices have generally been falling relative to service inclusions and inflation. For many services, the results are driven more by increases in plan inclusions for a given price.

Table 1.1: Real changes in average prices
Adjusted for non-price characteristics, consumer spending patterns, and inflation.

<table>
<thead>
<tr>
<th></th>
<th>2014−15</th>
<th>2015−16</th>
<th>2016−17</th>
<th>Average(^{\dagger}) 2014−17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-NBN</td>
<td>-1.8%</td>
<td>-1.2%</td>
<td>-11.2%</td>
<td>-4.8%</td>
</tr>
<tr>
<td>NBN</td>
<td>-2.5%</td>
<td>-8.2%</td>
<td>-4.5%</td>
<td>-5.1%</td>
</tr>
<tr>
<td>Total fixed internet</td>
<td>-1.8%</td>
<td>-2.1%</td>
<td>-9.4%</td>
<td>-4.5%</td>
</tr>
<tr>
<td>Post-paid mobile</td>
<td>-8.1%</td>
<td>-10.1%</td>
<td>-4.4%</td>
<td>-7.6%</td>
</tr>
<tr>
<td>Prepaid mobile(^{\S})</td>
<td>-5.9%</td>
<td>-11.1%</td>
<td>2.4%</td>
<td>-5.0%</td>
</tr>
<tr>
<td>Total mobile services</td>
<td>-7.7%</td>
<td>-10.3%</td>
<td>-3.1%</td>
<td>-7.1%</td>
</tr>
<tr>
<td>Wireless broadband</td>
<td>-9.8%</td>
<td>0.2%</td>
<td>-6.7%</td>
<td>-5.5%</td>
</tr>
</tbody>
</table>

1.3.2 Fixed broadband services

Fixed broadband services are broadband internet services provided over fixed networks such as Telstra’s CAN, HFC cable networks, the various NBN fixed access technologies and other fibre-based networks.\(^{9}\)

While there are some limitations in the methodology used to calculate market shares, the data available suggests that market shares for providers of fixed broadband remained relatively stable over the period. Telstra maintained a retail market share of 41 per cent, while the merged TPG-iiNet Limited (iiNet) accounted for 26 per cent. Optus continued a trend of gaining market share and accounted for 18 per cent (compared to 16 per cent in 2015–16).

Notwithstanding the relative stability in market shares, prices for fixed broadband services have fallen on average, when non-price characteristics are accounted for (table 1.1). That is, when comparing plans with similar characteristics, average prices declined by approximately 9.4 per cent in 2016–17. The decline is apparent for both NBN and non-NBN services. The results can be largely attributed to improvements in data allowances in successive years at various price points, which have driven the decline in the average prices for various product categories. This suggests that, in a broad sense, plans are providing better value.

The range of plans and bundles available has also been relatively dynamic. Between 2014 and 2017, on average, less than half (43 per cent) of the plans that were available in a given year were also available in the previous year.

---

\(6\) See appendix 4.5 for details on methodology. Average annual growth rate for 2014−17 is calculated as a compound annual growth rate.

\(7\) Average annual growth rate for 2014−17 is calculated as a compound annual growth rate.

\(8\) Includes prepaid plans with 28 or 30 day expiry only.

\(9\) The NBN access technologies include FTTP, FTTN, FTTB, HFC cable and fixed wireless.
Key developments during the year relevant to fixed broadband include Vodafone Hutchison Australia’s (VHA) announcement in October 2016 of its intention to begin offering fixed broadband services over the NBN in 2017. Vodafone subsequently launched NBN services in a number of cities in early December 2017. Mobile virtual network operator (MVNO) Amaysim also launched NBN services in May 2017.

In addition, Singaporean service provider MyRepublic also entered the fixed line market in November 2016. MyRepublic has sought to differentiate itself from existing NBN service providers by offering only one NBN product, with unlimited downloads and speeds based on an underlying NBN 100 Mbps download access service.

### 1.3.3 Mobile phone services

Mobile phone services refer to the provision of voice and data services over a mobile handset.

Retail market shares for mobile services have largely remained stable over the past five years. Telstra continues to have the largest share at 43 per cent, followed by Optus with 28 per cent and VHA with 18 per cent. A number of MVNOs, who acquire wholesale end-to-end mobile services from the mobile network operators (MNOs) to offer retail services account for the remaining 11 per cent.

There were more prepaid plans available than post-paid plans at low price ranges in 2017. Plans priced below $20 accounted for around 20 per cent of prepaid plans, compared to 13 per cent of post-paid plans. At least eight service providers offered prepaid plans at the $10 price point, with credit expiry ranging from one week, to one month, to several months.

There was an overall reduction in the price of mobile services for the period among similar plans, with prices falling on average by 3.1 per cent (table 1.1). There were, however, different developments for post-paid and prepaid services. While the real price of prepaid mobile plans increased by 2.4 per cent, price increases were only observed in the higher priced product categories (above $60), whereas price decreases were observed for lower priced categories (below $60), after adjusting for the main non-price characteristics.

The increases in prepaid prices should be read with care, as they partly reflect changes in other characteristics that were not accounted for in the analysis. Compared to other services, prepaid service plans tended to be more heterogeneous in the way inclusions were structured. The observed price increase is partly due to changes in other inclusions and contract conditions (e.g. within-network credit). These appeared to be more prominent in higher priced prepaid plans.

At the same time, the real price of post-paid plans fell by 4.4 per cent. The reduction in post-paid prices was a major driver of the observed reduction in prices for total mobile services (as the vast majority of mobile services are post-paid).

---

14 Non-price characteristics included data allowances, contract length, and unlimited call and sms inclusions. Prepaid plans were limited to those with either 28 or 30 day credit expiry.
1.3.4 Wireless broadband services

Wireless broadband services refer to data-only services provided over mobile networks, relevant to devices such as USB modems, dongles and tablets.

For wireless broadband services, Telstra retained its substantial lead in retail market share with 65 per cent, while Optus increased its market share for wireless broadband services by 2 per cent to 15 per cent. MVNOs collectively accounted for around 13 per cent of the market, which, despite being 1 percentage lower than the previous year, remained substantially larger than VHA’s 7 per cent share.

Wireless broadband was another category where prices have dropped significantly, with a comparison of similar plans showing a decline of approximately 7 per cent between 2015−16 and 2016−17 (table 1.1). In addition, RSPs improved the value of their wireless broadband plans by increasing the included data allowances consumers receive at various price points.

There were a number of developments during the year which will shape the markets for mobile and wireless services in the coming years. In April 2017, TPG acquired spectrum in the 700 Megahertz (Mhz) band and announced its intention to build its own mobile network. While TPG is already a mobile retailer, through reselling VHA’s mobile services, the deployment of its own network may provide it with the ability to offer new and innovative services in the mobile and fixed line markets.

MNOs continue to invest in expanding the geographic reach of their networks as well as make enhancements to their existing network footprint. Optus reported investment of $1.5 billion over the year to expand the reach of its 4G network and implement 4.5G upgrades (which deliver faster mobile broadband speeds). Telstra announced it would deploy 577 new 3G/4G base stations and up to 250 small cells to improve coverage under the Federal Government’s Mobile Black Spot Program. VHA also announced expenditure of almost $2 billion in 2017 on network expansion and upgrades.

As well as network investment for today’s mobile services, the MNOs also announced various plans to deliver new services in the future. This includes trials of 5G technologies as well as network modifications to accommodate emerging Internet of Things (IoT) technologies. IoT technologies have a wide range of industrial and consumer applications to provide productivity improvements and new services. Highlighting the continuing technological

---


21 The IoT refers to communication between devices or ‘things’ not previously connected to the internet. Connecting devices allows data to be transmitted, analysed and acted on in a huge range of contexts across the economy and society. Uses range from agriculture, logistics, medical devices and consumer wearables. IoT devices can be connected via various networks, including mobile networks operated by the MNOs.

\subsection*{1.3.5 Fixed voice}

Fixed voice services are those that are provided over a dedicated access line on a fixed network that allow various calling options such as local, national and international calls and calls to mobiles. This category also includes voice over internet protocol (VoIP) where that service has the same functional characteristics as a traditional fixed voice service.

Telstra continues to be the largest provider of fixed voice services, though its share has been declining over the last five years. The available data suggests that Telstra’s share declined by approximately 8–9 per cent over the past four to five years as the shares of other providers, particularly Optus and the now merged TPG-iNet, have increased. The merger of TPG and iiNet in 2016 means that this entity is now the second largest provider of these services.

\subsection*{1.4 Consumer indicators}

Usage of fixed voice services continued to decline over the period. While the number of fixed voice services in operation saw a small decline from 8.9 million to 8.8 million, the number of voice call minutes from fixed line originating calls declined by 3 billion from 19 to 16 billion minutes. This suggests that while the number of fixed voice SIOs is declining slowly, the services are also being used less by the remaining fixed voice customers.

In contrast, mobile voice minutes increased significantly from 59 billion to 66 billion over the year. The number of mobile SIOs also increased from 25.2 million to 25.9 million. This includes 6.7 million mobile only users, an increase from 5.8 million in 2015–16.

The number of internet subscribers continued to grow during the year and exceeded 40 million as at 30 June 2017. Mobile phone handsets continue to be the most prevalent means by which to access the internet by a considerable margin, accounting for almost 66 per cent of all broadband subscriptions. Growth in subscribers using fibre technology also occurred during the year, reflecting the rollout of the NBN’s fibre-based access technologies.

As in previous years, volumes of data downloaded continued to increase, in both the fixed and mobile broadband services markets. Overall data download volumes increased 43 per cent between June 2016 and June 2017 quarters. Download volumes increased 42 per cent (from 2050 Petabytes (PB) to 2913 PB) for fixed line broadband and 45 per cent (from 121 PB to 175 PB) for mobile handsets. While accounting for the lowest proportion of downloads, wireless broadband services recorded a growth in downloads of almost 72 per cent over the year from 48 PB to 83 PB. Over the past five years download volumes over both fixed and mobile networks have increased dramatically, rising 375 per cent since 2013. This trend is facilitated by increasing download allowances by fixed and mobile service providers, as well as the practice of un-metering certain content.\footnote{Un-metering refers to the practice of service providers excluding certain internet traffic from the download quotas of customers.}

Fixed networks account for around 92 per cent of all downloads, a proportion which has remained relatively stable despite the sustained growth in mobile handset and wireless broadband downloads. Continued appetite for high quality content streaming services may be one driver of continued growth in downloads over fixed networks.

Complaints to both the ACCC and Telecommunications Industry Ombudsman (TIO) rose sharply during the year: the ACCC recorded a 58 per cent increase in communications sector related complaints from the previous year, while the TIO reported an increase of almost 40 per cent. A key driver in the rise of complaints to the TIO were NBN-related

\begin{itemize}
  \item[23] Un-metering refers to the practice of service providers excluding certain internet traffic from the download quotas of customers.
\end{itemize}
Complaints which increased 159 per cent compared to the previous year. The number of NBN complaints, however, represented a small proportion of new premises activated, with 6.7 fault complaints and 8.3 connection complaints per 1000 premises activated. However, the significant ramp up in NBN activations during the year has given prominence to consumer issues in relation to migration and NBN performance.

1.5 ACCC activities

Broadband speeds and performance issues have been a particular focus for the ACCC reflecting growing consumer issues as NBN migration ramps up. During the year we worked with stakeholders to develop a set of principles to guide retailers in their advertisements of fixed line broadband plans. We have continued to develop this framework during the year to encourage industry to provide information about realistic speeds consumers can expect during busy hours. We also received Government support to establish a broadband performance monitoring and reporting program to provide consumers with accurate and independent information on broadband speeds. During the year we also commenced investigations into potentially misleading conduct in relation to speed representations. Together, these initiatives should improve transparency and the accuracy of information provided to consumers as they move to superfast networks.

We commenced our market study into the communications sector in September 2016. The market study is looking at current and emerging trends and issues which are likely to significantly affect competition over the next few years including implications for economic regulation of the sector. Stakeholder consultation has exposed a wide range of issues which we have been examining in further detail during the year. A draft report containing 29 recommendations was released in late October 2017 and we expect to release a final report in early 2018.

The ACCC made a number of key determinations in relation to access to telecommunications services during the year. These included a decision to continue to regulate access to wholesale ADSL services for a further five years to promote competition for fixed broadband retail services while NBN migration continues. The ACCC also set terms and conditions of access for superfast broadband services provided over non-NBN superfast broadband networks.24

The ACCC released a draft decision in May 2017 to not regulate wholesale domestic mobile roaming. This service would have allowed consumers to access mobile services through another operator’s network when outside the coverage area of their own network. The ACCC’s draft decision was that declaration of the service would not lower prices or improve retail services—this decision was retained in the final report.25

In March 2017, the Federal Court dismissed Telstra’s application for judicial review of the fixed line services final access determinations (FADs) that the ACCC had made in October 2015. The FADs had included adjustments to the pricing model to reflect payments made by National Broadband Network Co Limited (NBN Co) to Telstra relating to the migration of customers and the leasing of assets.

The ACCC undertook a number of projects in relation to the NBN during the year, with the key activity being the continuing assessment of NBN Co’s proposed variation to its special access undertaking (SAU). The SAU sets out the terms and conditions for access to the NBN. The proposed variation to the SAU is primarily to reflect the new access technologies that have been incorporated into the multi-technology mix (MTM) NBN. In March 2017 the ACCC

24 Superfast broadband networks refers to broadband networks with a data rate normally greater than 25 megabits per second (Mbps).
made a draft decision to not accept NBN Co’s proposed variation and work on this will likely continue into 2018.

The ACCC also undertook a number of activities supporting the structural separation of Telstra and migration of consumers from Telstra’s network to the NBN. These included a number of compliance and monitoring activities. The ACCC also reported on the service delivery agreements between Telstra and NBN Co to identify measures the parties should take to prevent Telstra from obtaining an advantage over competitors through its agreements with NBN Co.

In addition to a number of investigations under the Australian Consumer Law (ACL), telecommunications-specific and general competition law, the ACCC continued its initiatives to promote compliance and consumer education. In June 2017, the ACCC released consumer guidance on how consumers can protect themselves from unauthorised consumer transfer (where consumers are switched to another communications provider without their consent).

The ACCC continued its advocacy and advice roles during the year, providing advice to the Minister for Communications on allocation limits for the 700 MHz spectrum auction held in April 2017. The ACCC also contributed to a number of policy reviews including those of the universal service obligation, Part XIB of the CCA, the Australian Communications Consumer Action Network and the TIO.

Chapter 3 contains further information on the full range of the ACCC’s activities in the communications sector for the 2016–17 year.
2  Competition indicators

2.1  Wholesale market indicators

2.1.1  NBN rollout and migration to NBN services

NBN deployment and activations accelerated rapidly during the 2016–17 year across all access technologies. Both the number of premises passed and premises activated more than doubled. As at 30 June 2017, the NBN had passed almost 5.3 million premises and more than 2.4 million premises had been activated (table 2.1).

Table 2.1:  NBN rollout—premises passed and activations

<table>
<thead>
<tr>
<th>Service type</th>
<th>Description</th>
<th>30 June 2014</th>
<th>30 June 2015</th>
<th>30 June 2016</th>
<th>30 June 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fibre</td>
<td>Premises passed</td>
<td>492 262</td>
<td>896 994</td>
<td>2 062 991</td>
<td>4 777 672</td>
</tr>
<tr>
<td></td>
<td>Premises activated</td>
<td>151 127</td>
<td>399 854</td>
<td>942 356</td>
<td>2 183 524</td>
</tr>
<tr>
<td></td>
<td>Premises not yet serviceable</td>
<td>99 852</td>
<td>60 314</td>
<td>57 787</td>
<td>268 114</td>
</tr>
<tr>
<td>Wireless</td>
<td>Premises covered</td>
<td>112 208</td>
<td>268 397</td>
<td>420 524</td>
<td>517 543</td>
</tr>
<tr>
<td></td>
<td>Premises activated</td>
<td>16 553</td>
<td>47 473</td>
<td>117 514</td>
<td>184 681</td>
</tr>
<tr>
<td>Satellite</td>
<td>Premises activated</td>
<td>42 948</td>
<td>38 288</td>
<td>38 764</td>
<td>74 928</td>
</tr>
<tr>
<td>Total (fibre and wireless)</td>
<td>Premises passed/covered</td>
<td>604 470</td>
<td>1 165 391</td>
<td>2 483 515</td>
<td>5 295 215</td>
</tr>
<tr>
<td>Total (all service types)</td>
<td>Premises activated</td>
<td>210 628</td>
<td>485 615</td>
<td>1 098 634</td>
<td>2 443 133</td>
</tr>
</tbody>
</table>

Source:  NBN Co National Broadband Network Rollout Information.

Currently 60 per cent of NBN activations are in regional classified points of interconnection (POIs), reflecting that the NBN rollout has prioritised regional areas (figure 2.1). Metropolitan activations will grow as the rollout advances.

Figure 2.1: Comparison of NBN wholesale broadband services by geography


Figure 2.2 illustrates the changing composition of fixed line services as a result of NBN migration and structural reform of the sector. The number of fixed line NBN SIOs increased by almost 132 per cent between 30 June 2016 and 30 June 2017 to over 2.1 million activations, corresponding with a decline in total legacy services (provided over Telstra’s copper access network) from 8.4 million to around 7.5 million services. The total number of legacy SIOs declined by 11 per cent over the year, a significantly faster rate than the previous year when services declined by just over 4 per cent. These trends demonstrate the accelerating migration of consumers’ services from Telstra’s copper network to the NBN which will continue as the rollout progresses over the next few years.

Source: Telstra Economic Model (public version), NBN Co National Broadband Network Rollout Information.
2.1.2 NBN wholesale market indicators

Wholesale market shares on the NBN

NBN Co provides the ACCC with data on the number of SIOs on the network. This includes services on the FTTP, FTTB, FTTN, HFC and fixed wireless access technologies. This information is published on the ACCC website in the NBN Wholesale Market Indicators Report, which provides a count of the number of SIOs through a variety of lenses to provide multiple views of the NBN market.

Using this information the ACCC can provide a picture of wholesale market share changes on the NBN including by access technology and geography. It also allows the ACCC to monitor the wholesale service profiles of access seekers on the NBN such as speed tiers and capacity acquired.

National market shares, all access technologies

At a national level across all access technologies, there are four main NBN wholesale access seekers: Telstra, TPG, Optus and Vocus. Telstra has the largest national market share with 50 per cent of the NBN broadband SIOs, followed by TPG with 23 per cent, Optus with 13 per cent and Vocus at 8 per cent.\(^2\) This is shown in Figure 2.3. Telstra has increased its NBN wholesale market share by 2 percentage points since June 2016 (figure 2.3) and Vocus has also increased market share by 2 percentage points. TPG, Optus and small wholesale providers have lost market share during the year.

Market shares by access technology

By access technology Telstra has 51 per cent of wholesale fibre-based services (FTTP, FTTN, FTTC and HFC) (figure 2.4). Telstra has also increased its market share since 2016 on fibre based services while TPG has lost 4 percentage points of market share over the year. At 56 per cent, Telstra also has the largest number of fixed wireless services (figure 2.5).\(^3\) The picture is different for satellite services where smaller operators have a stronger market presence. As shown in figure 2.6, Australian Private Networks has the largest number of satellite broadband SIOs with 35 per cent, while SkyMesh holds 24 per cent.\(^4\)


\(^4\) Ibid.
Figure 2.3: National wholesale market share for NBN broadband services


Figure 2.4: National wholesale market share of NBN fibre-based services

Competition and price changes in telecommunications services in Australia 2016–17

Figure 2.5: National wholesale market share of NBN fixed wireless services

![National wholesale market share of NBN fixed wireless services](image)


Figure 2.6: National wholesale market share of NBN satellite broadband services

![National wholesale market share of NBN satellite broadband services](image)


Market shares by region

Figures 2.7 and 2.8 compare the wholesale market shares in metropolitan POIs and regional POIs for June 2017. Telstra’s dominance in metro areas is less substantial than it is in regional areas. TPG Group and Optus have a much larger market share in metro areas compared to regional areas, whereas Vocus Group’s market share is about the same in both geographic areas. Smaller providers have a significantly greater market share in regional areas than metro areas which may be explained by the dominance of small providers in satellite broadband services on the NBN (as discussed above). Figures 2.9 and 2.10 show the corresponding metro and regional market shares for 2016, showing that Telstra has increased its wholesale market share in both metro and regional Australia over the year.
Speed tier profile

NBN Co sells wholesale services in a range of speed tiers, principally: 12/1 Mbps, 25/5 Mbps, 25/10 Mbps, 50/20 Mbps and 100/40 Mbps. These speed tiers contribute to the download/upload speeds RSPs are able offer to consumers.

Table 2.2 shows that the most popular NBN access services acquired by RSPs are the (up to) 25 Mbps download followed by the 12 Mbps and 100 Mbps download speed tiers.\(^32\)

\(^32\) ibid. Tables may not add up to 100 due to rounding.
Competition and price changes in telecommunications services in Australia 2016–17

Table 2.2: Distribution of speed tiers

<table>
<thead>
<tr>
<th>Speed tier ('Up to' download/upload in Mbps)</th>
<th>Percentage of wholesale services</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/1</td>
<td>29</td>
</tr>
<tr>
<td>25/5 and 25/10</td>
<td>56</td>
</tr>
<tr>
<td>50/20</td>
<td>4</td>
</tr>
<tr>
<td>100/40</td>
<td>12</td>
</tr>
</tbody>
</table>


There are indications that large RSPs are acquiring a larger proportion of services within particular speed tiers, and that this may flow through to differentiation at the retail level (table 2.3). While all RSPs acquire the majority of their services at a download access speed of 25 Mbps or less, Vocus Group predominantly acquires 12 Mbps services. TPG Group and Optus both acquire a more significant proportion of their services at higher speeds (above 25 Mbps) than Telstra or Vocus Group.

Table 2.3: Speed tiers by RSP (as a percentage of total services)

<table>
<thead>
<tr>
<th></th>
<th>12 Mbps</th>
<th>25 Mbps</th>
<th>50 Mbps</th>
<th>100 Mbps</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telstra</td>
<td>20</td>
<td>69</td>
<td>3</td>
<td>9</td>
<td>100</td>
</tr>
<tr>
<td>TPG</td>
<td>42</td>
<td>39</td>
<td>3</td>
<td>15</td>
<td>100</td>
</tr>
<tr>
<td>Optus</td>
<td>29</td>
<td>42</td>
<td>11</td>
<td>18</td>
<td>100</td>
</tr>
<tr>
<td>Vocus</td>
<td>47</td>
<td>45</td>
<td>2</td>
<td>7</td>
<td>100</td>
</tr>
<tr>
<td>Others</td>
<td>24</td>
<td>53</td>
<td>5</td>
<td>18</td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td>29</td>
<td>56</td>
<td>4</td>
<td>12</td>
<td>100</td>
</tr>
</tbody>
</table>


Note: Totals may not add up to 100 due to rounding.

Capacity acquisition

As at 30 June 2017 RSPs were acquiring on average 1.09 Mbps per end-user of network capacity on the NBN. This is referred to as connectivity virtual circuit (CVC) capacity. This is an increase on the 1.04 Mbps per end-user average as at 30 June 2016 (figure 2.11).

Telstra's wholesale ADSL (WADSL) customers on average acquired 0.31 Mbps per end-user as at 30 June 2017. This is referred to as Aggregated Virtual Circuit (AGVC) capacity. The AGVC has also been steadily growing, rising from 0.23 Mbps per end-user as at 30 June 2016.

The amount of network capacity that RSPs provision can determine the throughput speeds they make available to end-users, particularly during the busy period. This has a strong impact on the quality and reliability with which end-users can access applications that require constant and high-throughput capacity such as video streaming. Accommodating increased use of data intensive services and applications is likely to be driving growth in both CVC and AGVC on the NBN and Telstra ADSL networks respectively.

33 ibid.
34 ibid.
35 Figures displayed may not add up to 100 due to rounding.
Wholesale services on legacy networks

Wholesale DSLAM activity

In relation to the wholesale digital subscriber access line multiplexer (DSLAM) activity at Telstra exchanges, the average number of wholesale equipment-based access seekers has remained stable at around four per ESA. Access seekers deploy DSLAMs at exchanges to supply voice and broadband services over Telstra’s CAN to consumers using their own infrastructure. The number of Telstra ESAs with access seekers acquiring wholesale ULLS or LSS to supply consumers with broadband and voice services decreased slightly during the year from 606 to 597. The number of SIOs also declined across the range of services (voice, DSL, ULLS and LSS) which reflects the migration of end-users from legacy services provided over Telstra’s CAN to the NBN.

Copper-based broadband market share by ULLS band

Telstra retains a dominant position in providing copper-based retail services in regional and remote areas as shown in ULLS Band 3 and 4 in figure 2.12. This reflects the commercial challenges that competitors face deploying infrastructure and providing services to consumers connected to rural and regional exchanges. This is likely to continue until the NBN rollout is completed and copper based services are switched off. Telstra maintains a stable market share in the provision of ULL Band 1 and 2 (in metropolitan areas) though there has
been a marginal reduction in its market share between 2016 and 2017 due to increasing DSLAM competition.

Figure 2.12: Copper based broadband market share by ULL band

![Copper based broadband market share by ULL band](image)

Source: June 2017 Telstra Customer Access Network record keeping rule (RKR) data, various years.

2.2 Retail market indicators

2.2.1 Fixed broadband services

Fixed broadband services are broadband internet services provided over fixed networks such as Telstra’s copper network, HFC, the NBN and other fibre-based networks. Services provided over mobile networks are discussed below. NBN-based services are FTTP, FTTC, HFC and fixed wireless (that is, all services other than satellite). A change in the methodology for calculating market shares this year incorporates NBN fixed line and fixed wireless services. Market shares for previous years have been restated accordingly.

The analysis of non-NBN services is limited to ADSL, HFC and non-NBN fibre, depending on the availability of statistical information.

There are some limitations in the methodology currently employed to calculate market shares using SIO data obtained under ACCC record keeping rules (RKRs). As a result the market share figures are largely indicative of the key trends in fixed broadband market shares over time.

**Market shares for fixed broadband services**

According to the data collected from carriers under the RKR, Telstra remains the largest provider of fixed broadband services (figure 2.13). Overall, market shares for fixed broadband have been relatively stable, with marginal gains in market share being made by Optus, at the expense of both Vocus Group and the collective smaller service providers represented by the ‘Other’ category.

---

40 ibid.
Figure 2.13: Retail market share for fixed broadband services

Source: Division 12 RKR data for all named carriers except Vocus Group, whose figures are based on publicly available data, and ABS, Internet Activity Australia (8153.0).

The Roy Morgan research on fixed broadband market share used in the ACCC’s communications sector market study has some differences to the ACCC’s figures (figure 2.14) which are collected from a limited number of service providers. However, it broadly indicates a similar market share structure with Telstra dominant, followed by TPG Group and Optus.

As the predominant number of fixed services migrate to the NBN over the coming years, the ACCC will consider introducing new RKRs to obtain accurate and comprehensive retail market share data to resolve the current limitations described above.
The range of fixed broadband services on offer

The market for broadband plans has been relatively dynamic, with service providers constantly introducing new plans and either removing or altering existing plans. Between 2013−14 and 2016−17, on average, less than half (43 per cent) of the plans that were available in a given year were also available in the previous year. This suggests that the price and non-price characteristics of the service offering can change considerably year to year.

The choice of plans available at each price point

Service providers offer plans at various price points. The number and variety of plans available varies between the price points.

For NBN plans, there is a higher concentration of plans in the $60 to $90 range, and fewer plans available below $50 or above $120 (figure 2.15). For non-NBN plans, the number of plans was greatest in the $60–90 range in 2017 (figure 2.16). The distribution of plans for all fixed broadband services has changed somewhat since 2015.

Fixed broadband plans vary by characteristics such as data allowance, speed, voice and entertainment services, as well as contract terms and conditions.

Figure 2.17 shows the various combinations of data allowance and advertised speed available at various prices. It shows that, on these two factors, the variety of plans available to consumers will vary according to both their willingness to pay and their access to NBN services. It is also clear that plans differ according to factors other than data allowances and advertised speeds.

Source: Roy Morgan Single Source (Australia), January to December 2016, n = 300 025, Australian Households.

42 ACCC estimates based on analysis of publicly available plans.
43 Excludes satellite and fixed wireless services. As this comparison is of advertised speeds, it does not represent the speed experienced by consumers.
Figure 2.15: Percentage of NBN plans at each price-point

Source: ACCC estimates based on publicly available information.

Figure 2.16: Percentage of non-NBN plans at each price-point

Source: ACCC estimates based on publicly available information.
Figure 2.17: Combinations of speed (advertised) and data allowances at various price-points

$60 and under price range (non-NBN left, NBN right)

$61 to $85 price range (non-NBN left, NBN right)

$86 and over price range (non-NBN left, NBN right)

Source: ACCC estimates based on publicly available information.

Note: This analysis assumes that 'unlimited' plans are the equivalent of 3333 gigabyte (GB). Non-NBN services include ADSL, Cable, and fibre services. NBN services do not include satellite services.
There is some evidence that overall, offerings of some non-price characteristics have improved. For example, ACCC analysis of fixed broadband plans suggests that data allowances for otherwise similar plans have risen in recent years. That is, when comparing similar plans (holding other characteristics constant), the average data allowance increased by roughly 39 per cent in 2016–17.\footnote{Non-price characteristics include contract length, the inclusion of voice and entertainment packages, and specific call inclusions. In this instance, data allowance was not kept constant.}

**The range of prices available for popular plan types**

There have also been changes to the service offerings for certain types of plans, with particular non-price characteristics. This includes plans with unlimited data allowances, and those with the most common download speed.

Unlimited data allowances have become more prevalent in recent years, increasing from 5 per cent of all available plans in 2013–14 to 26 per cent in 2016–17.\footnote{Based on analysis of publicly available plans collected by the ACCC. There were 27 unlimited plans in 2013–14 (out of 511 plans) and 103 unlimited plans in 2017 (out of 394 plans).} For plans that include an unlimited data quota, the range of prices increased between 2013–14 and 2016–17, while the median price decreased (figure 2.18). The spread of prices for plans with unlimited data allowances represents variance across other non-price characteristics, such as speed, voice and entertainment services, and contract conditions.

The market for plans with a 25 Mbps (advertised) download speed represents the most popular download speed for consumers, based on the NBN Wholesale Market Indicators Report (2017).\footnote{The NBN Wholesale Market Indicators Reports which are published quarterly are available at: https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report/reports.} In this segment, there has been a reduction in both the range of prices and the median price (figure 2.19).

**Figure 2.18: Price ranges for unlimited data; fixed internet plans**

Range between maximum and minimum values; first and third quartiles.

---

44 Non-price characteristics include contract length, the inclusion of voice and entertainment packages, and specific call inclusions. In this instance, data allowance was not kept constant.

45 Based on analysis of publicly available plans collected by the ACCC. There were 27 unlimited plans in 2013–14 (out of 511 plans) and 103 unlimited plans in 2017 (out of 394 plans).

Figure 2.19: Price ranges for 25 Mbps download speed (advertised); NBN

Range between maximum and minimum values; median; first and third quartiles.

Source: ACCC estimates based on publicly available information.

Note: Includes standalone broadband plans, as well as broadband bundles with voice and entertainment packages.

Average price changes for fixed broadband services

The ACCC has developed a new approach to estimate average changes in price for fixed broadband services (see appendix 4.5). This approach compares the average prices of different categories of plans, thereby accounting for differences in non-price characteristics. The approach also adjusts for consumer spending behaviour and inflation, in order to present an estimate of the price changes experienced by consumers.

The analysis shows that, when comparing similar plans, real prices for fixed broadband services fell by 9.4 per cent during 2016–17, largely attributed to improvements in data allowance. To place this in a historical context, annual price changes were estimated from 2013–14, and are represented as an index in figure 2.20. The figure shows that there has been a downward trend in price since 2013–14, although the decline has been stronger in 2016–17 than in previous years (driven by non-NBN service prices).
**Figure 2.20: Changes in average prices, 2014 to 2017 for fixed internet services**

Combined fixed internet (top); non-NBN (bottom left) and NBN services (bottom right).

Source: ACCC estimates based on Division 12 RKR and publicly available information.

### 2.2.2 Mobile phone services

In this report, mobile services include voice, short messaging service (SMS), and data services that are delivered over 2G, 3G or 4G technologies\(^\text{47}\) to mobile phone handsets. This is distinct from wireless broadband (discussed in section 2.2.3), which includes only data transfer over the same networks.

\(^{47}\) The data collected by the ACCC from service providers does not distinguish between these mobile technologies.
The market for mobile phone services continues to be the largest among telecommunications services in terms of the absolute number of services in operation. There were around 25.9 million mobile handsets in Australia in June 2017, which is an increase of 2.4 per cent from the previous year.\(^{48}\)

**Market shares for mobile services**

The retail market is dominated by three service providers, each of which is also a MNO that owns and operates its own network (figure 2.21). Several smaller service providers are also present in the retail market, providing services on leased infrastructure as MVNOs. The MVNOs accounted for around 11 per cent of SIOs in 2016–17.

Telstra holds the largest market share of 43 per cent, followed by Optus and VHA with 28 per cent and 18 per cent respectively. The market shares have been largely stable in the past five years, with only small changes occurring from 2015–16 to 2016–17.

**Figure 2.21: Retail market share for mobile handsets**

![Figure 2.21: Retail market share for mobile handsets](chart.png)

Source: ACCC Division 12 RKR and ABS, *Internet Activity Australia (8153.0).*

**The range of mobile service plans on offer**

The distribution of mobile service plans by price has remained relatively stable in the past three years. For instance, the concentration of post-paid plans stayed relatively constant between 2014–15 and 2016–17, with the highest proportion of plans in the $20 to $50 range (figure 2.22).

There were more prepaid than post-paid plans available at low price ranges. Between 2015 and 2017, prepaid prices have consistently been concentrated around the $10-$50 range (figure 2.23). In 2016–17, plans priced below $20 accounted for around 20 per cent of prepaid plans, compared to 13 per cent of post-paid plans. At least eight service providers offered prepaid plans at the $10 price point.

Compared to post-paid plans, prepaid plans offered a much wider range of contract types, with credit expiry ranging from one week to several months. Service plans that were designed to last up to 12 months were not readily comparable with those that would expire after seven days, or within one month. As such, the analysis of prepaid plans in this section is limited to those plans with a 28 or 30 day expiry.

---

\(^{48}\) Mobile handsets are hand held, mobile devices used to transmit or communicate data, images or voice over a cellular network. The numbers are taken from the ACCC Division 12 RKR.
One of the key differences between the post-paid and prepaid plans on offer is the amount of data included. In 2016–17, post-paid customers had a wider range of data allowances to choose from than prepaid customers (figure 2.24).

**Figure 2.22: Percentage of post-paid plans at each price-point**

![Graph showing percentage of post-paid plans at each price-point for 2015, 2016, and 2017.](image)

Source: ACCC estimates based on publicly available information.

**Figure 2.23: Percentage of prepaid plans at each price-point**

![Graph showing percentage of prepaid plans at each price-point for 2015, 2016, and 2017.](image)

Source: ACCC estimates based on publicly available information.

Note: Includes prepaid plans with 28 or 30 day expiry only.
Figure 2.24: Data allowances at various price-points, for post-paid and prepaid mobile services

Source: ACCC estimates based on publicly available information.
Note: Includes prepaid plans with 28 or 30 day expiry only.

Growth in data inclusions in mobile plans

Mobile phone plans are available with data allowances of varying sizes (figure 2.25). The range of data allowances available for both prepaid and post-paid plans has expanded since 2014, largely due to the continuing growth in the size of the largest allowances.

For prepaid services, the median and mean data allowances were 600 MB and 1.4 GB respectively in 2013–14, increasing to 2 GB and 3.5 GB respectively in 2016–17. For post-paid, the median data allowance increased from 1.5 GB to 5 GB during the period, with mean data allowance rising from 1.7 GB to 7.5 GB.

The increase in post-paid mobile plan data allowance over time is also evident across various price points. For example, according to ACCC estimates, the lowest spending 20 per cent of mobile service consumers now have a larger range of data inclusion options to choose from than in 2014–15 (figure 2.26).49

Analysis of mobile phone plans suggest that with price and other non-price characteristics50 held constant, data quotas improved by approximately 49 per cent in 2017, or 41 per cent on average between 2014 and 2017.51

49 Consumers with a monthly post-paid mobile spend of $32 or less are considered to be within the lowest spending quintile, based on Division 12 RKR bill samples collected by the ACCC.
50 Non-price characteristics include contract length, SMS inclusions and call inclusions. Data allowance was not held constant in this instance.
51 Based on analysis of publicly available plans collected by the ACCC.
Figure 2.25: Range of data allowances for prepaid and post-paid mobile services

Prepaid (left) and post-paid (right). Range between maximum and minimum values; median; first and third quartiles.

Source: ACCC estimates based on publicly available information.
Note: Includes prepaid plans with 28 or 30 day expiry only.

Figure 2.26: Range of data allowance options for low spending post-paid mobile consumers

Source: ACCC estimates based on publicly available information.
Average prices continue to fall for mobile services

Similar to the analysis of fixed broadband plans, the ACCC has estimated price changes in mobile phone services by comparing the average prices of different categories of plans (see appendix 4.5).

Average prices for mobile services have continued to decline from 2015–16 to 2016–17, when comparing similar plans (figure 2.27). On average, prices fell in real terms by around 3 per cent over the period. This continues an overall downward trend from 2014. There are, however, different developments for post-paid and prepaid service. For post-paid services, prices fell by approximately 4 per cent in 2016–17, which is less than in the previous year. Post-paid services account for around 82 per cent of mobile services and, as such, are the main driver for the observed price changes in overall mobile services.

For prepaid services, a sharp fall in price in 2015–16 has been followed by an increase of 2.4 per cent between 2015–16 and 2016–17. While the real price of prepaid mobile plans increased by 2.4 per cent during 2016–17, price increases were only observed in the higher priced product categories (above $60), whereas price decreases were observed for lower priced categories (below $60), after adjusting for the main non-price characteristics.52

However, this result may reflect changes in characteristics that were not accounted for in the analysis, (such as within-network credit and flexible credit inclusions). This was particularly relevant to prepaid prices, given the varied structures of prepaid plans. Compared to other services, prepaid service plans tended to be more heterogeneous in the way inclusions were structured, and not all such inclusions could be included in the analysis. The observed price increase is partly due to changes in other inclusions and, as such, the result is to be interpreted with care.

52 Including data allowances, contract length, and unlimited call and SMS inclusions.
As is the case with fixed internet, the reduction in average mobile service prices could have different effects on consumer behaviour. Some consumers may opt to spend a similar amount per month and move to a plan that offers more value. This would be in line with trends of increasing data usage, which show that broadband data usage per mobile service customer has increased 36 per cent in 2017 (53 per cent per year on average between 2013–14 and 2016–17). Analysis of 1300 bill samples from 2013–14 and 2016–17 suggest that consumers are opting for more value rather than reducing their monthly expenditure.54

54 The median rate plan cost stayed identical between the two sampled years, at $60. Furthermore, the mean rate plan cost increased from $52.84 in 2013–14 to $66.97 in 2016–17.
2.2.3 Wireless broadband services

Services covered in this section are mobile connections other than via mobile handsets where data is accessed by means of USB modems, dongles and tablets. Services provided by wireless modems connected to fixed line networks are also not included, as they are captured in fixed line broadband services, discussed at section 2.2.1.

This market has become increasingly significant with the greater use of sim-enabled tablet computers.

Market shares for other wireless broadband services

Telstra maintains its leading position in the supply of other wireless broadband services, with 65 per cent of the market share. However, Optus increased its market share by 2 percentage points to 15 per cent during the year. VHA has retained market share of 7 per cent for the fourth consecutive year. Other providers’ market shares have seen a small decline but still represent a significant share of the market (figure 2.28) at 13 per cent.

Figure 2.28: Retail market share for wireless broadband services

The range of wireless broadband plans available to consumers

The distribution of wireless broadband plans is most concentrated in the $20 to $50 range (figure 2.29). The distribution of wireless broadband plans by price has remained relatively stable in the past three years. The range of prices has also remained relatively consistent, with plans offered both at $10 and at over $100.

A range of data allowances is available at each price point, and while several factors will influence the price of a plan, there appears to be some positive correlation between price and data allowances (figure 2.30).

55 Wireless broadband services also excludes fixed wireless services (where the receiving device is stationary).
At the same time, the wireless broadband plans available in the marketplace have changed in terms of non-price characteristics. Most notably, the range of data inclusions has increased significantly in the past year, where the highest available data allowance for wireless broadband reached 200 GB in 2016–17, compared to 25 GB in 2013–14. The median data allowance also increased between 2013–14 and 2016–17 (figure 2.31).

Analysis of wireless broadband plans suggests that with price and contract length held constant, data allowances increased by approximately 86 per cent between 2016 and 2017, or 33 per cent on average between 2014 and 2017.\footnote{Based on analysis of publicly available plans collected by the ACCC.}

\textbf{Figure 2.29: Percentage of wireless broadband plans at each price point}

\textbf{Figure 2.30: Range of wireless broadband data allowances at each price point}

\hspace{1cm}

Source: ACCC estimates based on publicly available information.
Average prices continue to fall for wireless broadband services

When comparing similar plans, average prices for wireless broadband fell in real terms by almost 7 per cent in 2016–17, after being stable in the previous year (figure 2.32). From 2013–14 to 2016–17, the average annual price fall was 5.5 per cent. Similar to fixed internet, the decrease in overall real average prices can be partly attributed to the increase in data allowances over successive years.

As with other services, the average price changes of wireless broadband plans were calculated by comparing the average prices of different classes of plan. Further information on the methodology used can be found in appendix 4.5.
Competition and price changes in telecommunications services in Australia 2016–17

Figure 2.32: Average price changes for wireless broadband services

Growth rate (%)

Index

Source: ACCC estimates based on Division 12 RKR and publicly available information.

2.2.4 Fixed voice services

Fixed voice services are those provided over a dedicated access line on a fixed network plus the provision of various calling options. These services include line rental and local, national, international calls and calls to mobiles. This category also includes VoIP services that are provided in a similar manner to traditional fixed voice services (i.e. by supplying a handset and geographic telephone number) including over the NBN.

Market shares

The ACCC does not collect data on all providers of fixedline voice services hence it is not possible to provide a definitive picture of the shares of providers in this market. Figure 2.33 is based on data available from the four largest market participants only (Telstra, Optus, TPG Group and Vocus Group), and hence presents a picture of the ‘relative’ shares of these providers, rather than a representative picture of the entire market.

As at 30 June 2017 Telstra held the largest share, as has been the case for a number of years, though there are indications that this share has declined over time. The available data suggests that Telstra’s share may have declined by approximately 8–9 per cent over the past four to five years as the shares of other providers, particularly Optus and the now merged TPG-iiNet, have increased. The merger of TPG and iiNet in 2016 means that this entity is now the second largest provider of these services.
The ACCC obtained data on fixed voice market shares from Roy Morgan as part of its market study of the communications sector. That research employed a different methodology to the one used for this report, and hence concluded with different shares for each provider in this market. Nonetheless, this research is broadly consistent with the ACCC’s data and indicates that Telstra, Optus, TPG Group and Vocus Group account for 96 per cent of fixed voice services in Australia, with Telstra capturing two-thirds of the market.

Due to rounding, figures may not add up to 100 per cent.
Fixed voice pricing

Increasingly, fixed voice plans have included unlimited call options. This has reduced the importance of individual call tariffs and flagfalls for consumers. The range of standalone fixed voice services on offer varies according to the call inclusions (figure 2.35).

Source: ACCC analysis of publicly available data.

Given the declining importance of fixed voice services generally, the ACCC has opted to focus on service bundles that include fixed voice services in combination with broadband services rather than reporting a price index for fixed voice services alone. As such, the analysis of fixed broadband plans in section 2.2.1 includes plans where fixed voice services are bundled with broadband services.

2.3 Consumer trends and related issues

2.3.1 Consumer trends

Consumers continue to favour mobile over fixed voice services

In 2016–17 the number of mobile phone voice SIOs continued to rise, increasing from 25.2 million to 25.9 million. In contrast, the number of fixed line SIOs fell from 8.9 million to 8.8 million over the same period. Mobile phone only users also increased from 5.8 million to 6.7 million during the same period. Further, the total voice call minutes of mobile originating calls grew, pushing up the total number of voice call minutes, notwithstanding a fall in fixed line originating calls.

These developments are illustrated in figures 2.36 and 2.37, and suggest that consumer preference for mobile over fixed line services for voice calls is a continuing trend.

Figure 2.36: Comparison of mobile and fixed-line SIOs, and mobile-only users

Source: ACCC Division 12 RKR and Australian Communications and Media Authority (ACMA) Communications Reports.

59 ACCC Division 12 RKR.
60 ibid.
Mobile handsets remain the most common way to access the internet

The number of internet subscribers continued to grow during the year and exceeded 40 million subscriptions as at 30 June 2017. Of all of the technologies available for access to the internet, mobile phone handsets continue to be the most prevalent by a large margin. Outside of mobile handsets, mobile wireless services and DSL are the most common access technology.\(^{62}\) Sharp growth in subscribers using fibre technology also occurred during the year. This reflects the rollout of the NBN’s fibre based access technologies with subscriptions more than doubling over the year.\(^{63}\) This is likely to increase rapidly in future years as the NBN rollout continues.

These developments are illustrated in figures 2.38 and 2.39.

\(^{62}\) Mobile wireless services refer to services provided via a data-card, dongle, USB modem or tablet SIM card. Unless otherwise specified, references to wireless services exclude data services provided via mobile handsets such as smartphones.

Continuing growth in data downloads

Consumers continue to download increasing amounts of data across all access technologies. The total volume downloaded increased from 2,097,654 Terabytes (TB) in the three months ended 30 June 2016 to 2,995,972 TB in the three months ended 30 June 2017, an increase of 43 per cent. Continued growth in the consumption of content streaming services, social media and other applications that increasingly incorporate content-rich and video components are likely to be key drivers of these trends.
Each access technology experienced significant increases. The volume of data downloaded via mobile handsets was up 45 per cent during the year, though this was smaller than the 69 per cent increase the previous year. Data volumes downloaded via wireless broadband increased by 72 per cent, while volumes over fixed internet technologies rose by 42 per cent (down from 52 per cent last year). While growth in data downloads for fixed line broadband is slower than wireless and mobile handsets, fixed line access technologies continue to account for around 92 per cent of all data downloaded. This is reflected in figure 2.40.

**Figure 2.40: Volume of data downloaded by access technology**

![Graph showing volume of data downloaded by access technology](image)

Source: ABS, *Internet Activity Australia* (8153.0).

### 2.3.2 Telecommunications complaints

#### Complaints to the TIO

The TIO provides a dispute resolution service for small businesses and residential customers who have a complaint about their telephone or internet service. In 2016–17 the TIO received 158,016 complaints, an increase of 41 per cent compared with the previous year. This marks the end of the downward trend in complaints that has occurred since 2011–12.

The top issues complained about across all service types were related to connection delays, faults and associated billing issues, including being billed for no or poor service.

Figure 2.41 shows the number of complaints received by the TIO over the past six years.

---


During the year complaints about internet services increased by 64 per cent, displacing mobile services as the highest source of complaints. Landline and mobile service complaints also increased over the year by 30 per cent and 27 per cent respectively.\textsuperscript{66}

**Table 2.4: Complaints to the TIO by service type in 2016–17\textsuperscript{67}**

<table>
<thead>
<tr>
<th>Type of service</th>
<th>Percentage of complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internet</td>
<td>40</td>
</tr>
<tr>
<td>Landline</td>
<td>26</td>
</tr>
<tr>
<td>Mobile</td>
<td>33</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>

**NBN complaints**

In 2016–17, of the total number of complaints received by the TIO, 27 195 (or 17 per cent) were about services delivered over the NBN, of which 16 221 were fault complaints.\textsuperscript{68} This is a significant increase on the 10 487 complaints about services delivered over the NBN in 2015–16. This may be reflective of the communications industry experiencing unprecedented change, with migration to the NBN entering a peak roll-out phase.

The top complaint issues included new connection delays, unusable internet services, unusable landline (fixed line) services, new landline connection delays and slow internet data speeds.\textsuperscript{69}

It should be noted that the number of complaints about services delivered over the NBN reflects a small proportion of the overall number of new premises activated. The TIO reported 6.7 fault complaints and 8.3 connection delay complaints per 1000 premises activated.\textsuperscript{70} However, the significant ramp up in NBN activations during the year has given prominence to consumer issues in relation to migration and NBN performance.

\textsuperscript{66} TIO, 2016–17 Telecommunications Industry Ombudsman Annual Report, 18 October 2017, p. 27.

\textsuperscript{67} ibid. Totals may not add up to 100 due to rounding.

\textsuperscript{68} ibid, p. 28.

\textsuperscript{69} ibid, p. 29.

\textsuperscript{70} ibid, p. 28.
Complaints to the ACCC

In 2016–17 the ACCC received 4384 consumer complaints and enquiries about the communications industry, a 58 per cent increase from the previous year. Table 2.5 displays the most common type of conduct under the ACL subject of complaints to the ACCC about the communications sector.

The ACCC receives complaints from consumers and businesses about a wide range of issues. Our approach is to focus on those circumstances that will, or have the potential to, harm the competitive process or result in widespread consumer detriment. The ACCC does not resolve individual disputes but does consider complaints in accordance with its public compliance and enforcement policy, and complaints which would be best resolved by other agencies are forwarded. Over 46 per cent of contacts raised concerns that were referred to a more appropriate organisation for resolution, particularly the TIO.

The information provided by complainants assists the ACCC to identify matters for further investigation. The ACCC’s investigations regarding communications matters are discussed further in chapter 3.

Table 2.5: ACCC complaints by conduct type

<table>
<thead>
<tr>
<th>Type of conduct</th>
<th>Number of complaints 2015–16</th>
<th>Number of complaints 2016–17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 18—Misleading or deceptive conduct</td>
<td>914</td>
<td>1831</td>
</tr>
<tr>
<td>Section 54—Guarantee as to acceptable quality</td>
<td>732</td>
<td>1166</td>
</tr>
<tr>
<td>Section 29(1)(b)—False representations regarding services</td>
<td>165</td>
<td>521</td>
</tr>
<tr>
<td>Section 36—Wrongly accepting payment</td>
<td>126</td>
<td>227</td>
</tr>
<tr>
<td>Section 60—Guarantee as to due care and skill</td>
<td>158</td>
<td>180</td>
</tr>
<tr>
<td>Section 29(1)(i)—False representation price</td>
<td>102</td>
<td>152</td>
</tr>
<tr>
<td>Section 29(1)(a)—False representations goods</td>
<td>33</td>
<td>90</td>
</tr>
<tr>
<td>Section 62—Guarantee as to reasonable time for supply</td>
<td>55</td>
<td>87</td>
</tr>
<tr>
<td>Section 40—Assertion of right to payment for unsolicited goods or services</td>
<td>85</td>
<td>70</td>
</tr>
<tr>
<td>Section 56–57—Guarantee relating to the supply of goods by description, sample or demonstration</td>
<td>34</td>
<td>65</td>
</tr>
</tbody>
</table>

Source: ACCC complaints data.

Reflecting trends reported by the TIO, complaints to the ACCC regarding the NBN increased significantly during the year. However, all of the key fixed and mobile service providers saw significant increases in complaints, ranging from 40 per cent for Telstra to 124 per cent for iiNet. As shown in table 2.5, complaints regarding conduct such as false representations, guarantees as to acceptable quality and misleading or deceptive conduct were some of the key sources of complaints this year.

Considering this data alongside the TIO complaints data suggests that internet services and specifically NBN services are emerging as key contributors to consumer dissatisfaction in the communications sector.

Issues regarding the migration and connection process as well as the quality and the performance of services over the NBN not meeting expectations are likely to be significant sources of these complaints. Further discussion of the ACCC’s involvement in addressing these issues is contained in section 3.5.
3 ACCE activities in communications

This chapter describes activities undertaken by the ACCC in relation to the communications sector during 2016–17. The ACCC performs specific roles under the CCA in relation to the communications markets (under Parts XIB and XIC), as well as undertaking activities in the sector pursuant to its more general functions (such as merger assessments and consumer protection). This chapter reports the ACCC’s activities in relation to:

- regulating access to telecommunications networks including the NBN
- the structural separation of Telstra
- monitoring and reporting
- enforcement and compliance
- mergers, authorisation and third line forcing
- advice, advocacy and contributions to policy processes.

The ACCC reports regularly on these activities in relation to communications markets in its quarterly publication ACCCount and yearly in the ACCC Annual Report.\(^{72}\)

3.1 Access to telecommunications networks

Part XIC of the CCA allows the ACCC to declare certain communications services where it is in the long-term interests of end-users to do so. Once a service is declared, the ACCC can set regulated terms and conditions of access, including price. This is often done via an access determination although it may also be effected through a binding rule of conduct. There are currently 11 declared communications services, further details of which are set out in appendix 4.1.

In 2016–17, the ACCC’s activities in this area covered services for wholesale ADSL, domestic wholesale mobile roaming and non-NBN superfast broadband services. The Federal Court also upheld previous ACCC determinations on Telstra fixedline services.

3.1.1 Wholesale ADSL service

The ACCC concluded a declaration inquiry into a wholesale ADSL service in February 2017, deciding to maintain declaration of the service for a further five years. The wholesale ADSL service is a point-to-point service that enables internet service providers to deliver high speed fixedline broadband internet to their customers using equipment of another network provider.

The ACCC considered that maintaining declaration of the wholesale ADSL service on a national basis will promote the long-term interests of customers during the transition to the NBN. Continued declaration will lead to a more competitive retail sector, with greater choices for end-users and better prices. Submissions from industry generally supported the ACCC’s approach.

3.1.2 Court upholds ACCC prices for fixedline services

On 28 March 2017 the Federal Court dismissed Telstra’s application for judicial review of the fixedline services FADs the ACCC made in October 2015. These FADs specified price and non-price terms of access to Telstra’s declared fixedline telecommunications services for the period 1 November 2015 to 30 June 2019.

In making the FADs, the ACCC had made adjustments to its pricing model to recognise the arrangements Telstra had entered into with NBN Co. These arrangements covered the migration of Telstra customers to the NBN, the leasing of Telstra fixedline assets to NBN Co, and the corresponding payments Telstra would receive over the regulatory period. Telstra sought to have the FADs set aside on the grounds that, in making these adjustments, the ACCC made various legal errors.

The Court rejected all of Telstra’s grounds of review, recognising that ACCC decisions involve evaluating a range of competing factors, and that its role as the regulator is to consider all relevant information to arrive at an outcome that will promote the long-term interests of end-users.

3.1.3 Non-NBN high-speed internet services

The ACCC concluded its combined inquiry to make FADs for the superfast broadband access service (SBAS) and the local bitstream access service (LBAS) on 26 May 2017. These are wholesale services provided on ‘non-NBN’ fixed line superfast broadband networks including those operated by Telstra (the South Brisbane and Velocity estates fibre networks), TPG, Vocus, LBN Co, Opticomm, and OPENetworks.

The decisions specify the price and non-price terms for the supply of the SBAS and LBAS to internet service providers, in the absence of a commercial agreement. The final decision links LBAS and SBAS prices to NBN prices, while at the same time seeks to avoid setting prices below the reasonable costs for SBAS and LBAS providers. It also attempts to ensure that regulation is proportionate to the size of the non-NBN superfast broadband sector as a whole and the networks within it.

The prices are expected to help drive better service performance for retail customers of superfast broadband providers as they will allow service providers to buy greater amounts of capacity at a lower average price. The FADs expire on 28 July 2021.

3.1.4 Wholesale domestic mobile roaming

In September 2016 the ACCC commenced an inquiry into whether to declare a wholesale domestic mobile roaming service. The ACCC’s inquiry was to explore whether the difference in geographic coverage between Australia’s mobile networks is leading to reduced competition or inefficient outcomes and whether declaring a domestic mobile roaming service would be in the long-term interests of end-users. Domestic mobile roaming allows consumers to access mobile services through another operator’s network when outside of the coverage area of their own service provider’s network.

On 5 May 2017 the ACCC released a draft decision proposing not to declare. The ACCC’s preliminary finding was that the national retail mobile market is exhibiting signs of reasonably effective competition. Given this, there was insufficient evidence to suggest that declaration of a mobile roaming service in regional and rural areas would further lower prices or improve services, given the higher costs in servicing these areas.

On 2 June 2017, Vodafone sought judicial review of the inquiry. The ACCC decided to proceed with the public inquiry while responding to Vodafone’s application for judicial review. On 23 October 2017 the ACCC made a final decision not to declare domestic mobile...
roaming. The ACCC separately proposed a number of measures to improve mobile phone coverage and quality of service in regional Australia.\footnote{The ACCC’s Measures to address regional mobile issues paper can be found on the ACCC website at https://www.accc.gov.au/regulated-infrastructure/communications/mobile-services/domestic-mobile-roaming-declaration-inquiry-2016/regional-mobile-issues-paper.}

3.1.5 Updated guidelines on declaration of telecommunications services

On 11 August 2016 the ACCC issued a revised guideline on the declaration of telecommunications services under Part XIC of the CCA. The guideline provides information on the key concepts the ACCC applies in considering whether to declare a service, including the long-term interests of end-users test. It also outlines the processes for declaring a service, including an explanation of the differences between how an NBN service and a non-NBN service can be declared.

The guideline is an update to an earlier guide released in July 1999. It reflects changes to Part XIC since that time, and utilises more recent examples to illustrate how the ACCC will generally approach a declaration inquiry.

3.1.6 Quarterly reporting of access agreements

Carriers or carriage service providers who supply declared services must lodge quarterly reports with the ACCC regarding all new, varied, cancelled and in-force access agreements for declared services.

During 2016–17, seven more parties provided reports on their access agreements than in the previous year. The increase is attributable to a review of non-reporting declared service suppliers conducted in 2015–16 and the ACCC’s decision to declare the SBAS in July 2016.

3.2 National Broadband Network

The \textit{Telecommunications Act 1997} (Telecommunications Act) and Part XIC of the CCA sets out the legislative basis for access to NBN services. NBN Co’s special access undertaking (SAU) is another key part of the framework. The SAU establishes principles for regulating access to the NBN until June 2040. Appendix 4.2 provides further information on the ACCC’s role in regulating the NBN.

The key ACCC activities for 2016–17 were assessing NBN Co’s proposed variation to its SAU and assessing NBN Co’s revenue controls for the year.

3.2.1 Variation to NBN Co special access undertaking

During the year, the ACCC continued its assessment of a proposed variation to NBN Co’s SAU. The main purpose of the variation is to incorporate FTTN, FTTB and HFC technologies into the SAU, to reflect the current NBN model.

The ACCC made a draft decision on 28 March 2017 not to accept NBN Co’s proposed variation. The ACCC considered that a number of proposed changes would not promote the long-term interests of end-users and were not reasonable. These included:

- changes to service definitions that would allow future technologies introduced by NBN Co to be covered by the SAU without a further variation
- removing the definition ‘network boundary point’ from service definitions
- locking in provisions relating to ‘co-existence’ and ‘remediation’ for FTTN and FTTB services, which would allow NBN Co to provide services at lower data rates in certain circumstances for the remainder of the SAU term.
The ACCC’s draft decision provided guidance on how NBN Co can address these concerns and introduce these new technologies into the SAU.

NBN Co withdrew its initial application for variation in March 2017 and submitted a revised proposal in June 2017. The revised version reflects the stakeholder views on non-price matters in the consultation on the previous application and the views set out in the ACCC’s draft decision.

During the SAU variation process, NBN pricing has become a key issue for stakeholders. In response, NBN Co commenced a consultation process on changes to its pricing model. Given that any changes to the pricing model must be incorporated into a varied SAU, the ACCC announced on 8 October 2017 that it would halt its consideration of the variation to the SAU until a position on the pricing model has been reached.

3.2.2 Determination on NBN revenue controls

Under the NBN Co SAU, the ACCC must make annual determinations specifying the amount of revenue that NBN Co is allowed to earn for each financial year. On 23 June 2017, the ACCC issued its final determination accepting NBN Co’s submission on its revenue controls for 2015–16.74

3.2.3 Quarterly reports on the NBN wholesale market

During the year the ACCC continued to release quarterly reports on the NBN wholesale market. These reports provide a detailed view of the size and structure of emerging NBN wholesale access markets as NBN services become more widely available. The reports are informed by data the ACCC receives from NBN Co pursuant to the NBN services in operation RKR.

Over the year the reports demonstrated the significant growth in NBN SIOs including in the new HFC access technology. The data collected for these reports is used in the analysis contained in section 2.1.2 of this report. The quarterly reports are available on the ACCC’s website.75

3.3 Structural separation of Telstra

Telstra’s structural separation undertaking (SSU) implements the structural separation of Telstra through the migration of end-users to the NBN. The SSU outlines how Telstra will progressively stop supplying telephone and broadband services over its copper and HFC networks and commence supplying these over the NBN.

To promote competition until the NBN is completed, the SSU contains interim equivalence and transparency measures, which require Telstra to supply regulated services to its wholesale customers and own retail business units on equivalent terms. These measures also require Telstra to identify and take steps to address any instance of non-equivalence. For further information on these frameworks and the ACCC’s role, see appendices 4.2 and 4.3.

The ACCC’s activities in this area for the year related to continued monitoring and improving Telstra’s compliance with the requirements of its SSU and migration plan. The ACCC also conducted and participated in a number of initiatives to improve the migration process for consumers.


3.3.1 Telstra’s compliance with structural separation undertaking

The ACCC must monitor and report to the Minister each financial year on Telstra’s compliance with its SSU obligations. The report for 2016–17 was tabled in Parliament on 27 April 2017. \(^7^6\)

The report showed a reduction in the number of breaches reported by Telstra compared to the previous year. The most common issue reported by Telstra continues to be failure to prevent the unauthorised disclosure of wholesale customer’s confidential or commercially sensitive information to its retail unit. The report noted that breaches arise from incidents of staff error.

The ACCC also identified two additional breaches of Telstra’s price equivalence and transparency obligations. These related to delays by Telstra updating its rate card after the ACCC fixedline services and domestic transmission capacity service determinations.

While Telstra generally complied with its migration plan obligations during the year it reported a number of minor breaches. Telstra has outlined the steps it has implemented in response to the breaches and the ACCC is satisfied that Telstra has taken appropriate action to address these compliance issues.

Appendix 4.3 has more information on Telstra’s SSU and the ACCC’s role.

3.3.2 Review of Telstra’s information security remediation

On 4 October 2016 the ACCC announced Telstra had completed its information security remediation program, in pursuance of its compliance with the SSU. The remediation related to its commitment to ensure that sensitive wholesale customer information is not disclosed to Telstra’s retail businesses. The compliance concerns largely arose from Telstra’s legacy IT systems not being designed to support these information security obligations.

The ACCC took part in this process by appointing an independent expert consultant to conduct a thorough review of Telstra’s remediation project. The consultant alerted Telstra to a number of information security issues which Telstra addressed through adopting a more rigorous approach to the remediation project.

3.3.3 Reporting obligations under the SSU

Under Telstra’s structural separation undertaking, Telstra is required to provide the ACCC with financial reports from its internal financial reporting management system (the Telstra Economic Model (TEM)). These reports are provided quarterly, half-yearly and annually and they detail Telstra’s costs, revenues and demand, as well as compare internal and external wholesale prices. They are used by the ACCC to assess the extent to which price equivalence has been achieved between Telstra’s wholesale customers and its own retail business units. Data from the TEM reports are also used in section 2 to demonstrate the long-term trend of declining demand for legacy fixed line services.

Once submitted by Telstra, the ACCC publishes the TEM reports on its website.\(^7^7\)

---


3.3.4 Variation to Telstra’s migration plan

On 20 July 2016 the ACCC approved a variation to Telstra’s migration plan. The variation implements improvements to the process for end-users migrating to the MTM NBN.78 These changes provide greater assurance and certainty to end-users that they will not prematurely lose their voice and broadband services before migrating to the NBN. The changes will also give internet service providers more time to complete their migration activities.

3.3.5 ACCC report on Telstra-NBN service delivery agreements

In September 2016 the ACCC released a report on the competition implications of Telstra’s involvement in the rollout of the NBN. This involvement arises under service delivery agreements between Telstra and NBN Co that were entered into in December 2015 and April 2016. The ACCC expressed concerns that the agreements may advantage Telstra over other RSPs in a number of ways. These include by giving Telstra a ‘head start’ in connecting customers to NBN HFC services, preferential service activation and/or repair of NBN broadband services for its own customers, and greater insight than its competitors into the NBN rollout.

The ACCC’s report concluded that further reporting measures should be developed to address these specific concerns. In response, during 2016−17 both Telstra and NBN Co commenced producing quarterly reports: Telstra reporting to the ACCC on the number of new HFC connections, and NBN Co reporting to NBN access seekers on operational outcomes where Telstra is the service delivery partner. NBN Co also agreed to provide additional guidance on rollout progress in areas subject to a NBN Co-Telstra HFC delivery agreement. These measures address the concerns identified in the ACCC’s report.

3.3.6 NBN migration activities

As discussed above, Telstra’s structural separation is occurring through the progressive migration of consumers’ telephone and broadband services from being delivered over Telstra’s copper network to the NBN. The ACCC provides information to consumers to assist them in migrating to the NBN, including information about:

- how the NBN will be provided
- what consumers need to do to move to the NBN
- how migration to the NBN can impact services such as medical and fire alarms and emergency lift phones
- things to consider when selecting an NBN service provider.79

During 2016−17, the ACCC updated information on its website for consumers and small businesses to inform them of key disconnection dates, such as the withdrawal of NBN’s Interim Satellite Service in February 2017 and the disconnection of fire alarms and lift phones for migration to the NBN in June 2017.80

---

78 MTM refers to the fibre-to-the-node, fibre-to-the-basement and hybrid-fibre coaxial access networks used by NBN Co.
In 2016–17 the ACCC participated in various stakeholder working groups on consumer issues associated with migrating to the NBN. These include:

- the Communications Alliance NBN Over-the-Top Services Transition Working Group
- the Communications Alliance Copper Migration Processes and Solutions Working Committee
- the Monitored Fire Alarm and Lift Phone Migration Roundtable convened by the Department of Communications and the Arts.

The ACCC also continued to attend, as an observer, quarterly NBN Co Public Information on Migration briefings.

### 3.4 Monitoring and reporting

The ACCC has established RKRs to specify information certain communications providers must keep and provide to the ACCC on an ongoing basis. The ACCC uses this information to monitor competition and market developments, and to inform regulatory decisions.

A summary of RKRs that were in operation as of 30 June 2017 is at appendix 4.4.

#### 3.4.1 Review of record-keeping rules

In May-June 2017 the ACCC reviewed the ongoing need for the Telstra Exchange Facilities RKR, reaching the view that it should expire on completion of its term on 14 July 2017. This RKR was originally implemented in 2008 following a number of complaints from access seekers concerning delays in obtaining access to Telstra exchanges. The RKR required Telstra to report monthly on a number of metrics in relation to access to its exchanges, including the number of exchanges with queued access seekers and exchanges that are ‘capped’ (out of space).

After considering submissions from stakeholders and other developments, including the rollout of the NBN, the ACCC determined that this RKR was no longer necessary.

In June 2017 the ACCC commenced a public inquiry into whether the NBN Services in Operation RKR (and associated disclosure direction) should be extended, varied or allowed to expire. This RKR requires NBN Co to provide information on the number of wholesale AVC services in operation, the amount of CVC capacity being acquired and average CVC utilisation over the NBN. The disclosure direction requires NBN Co to provide the ACCC with extracts from the NBN RKR for publication by the ACCC in the NBN Wholesale Market Indicators Report (discussed in section 3.2).

The ACCC sought views from interested parties as to whether additional information should be included in the NBN RKR and disclosure direction, specifically, whether expanded rules could include more detailed AVC and CVC reporting and whether reporting could be more frequent.

On 18 September 2017 the ACCC extended the operation of the RKR for another three years and commenced further consultation on a variation to the RKR. The ACCC is also proposing to vary the CVC reporting requirements and make other minor changes to account for the MTM services.

#### 3.4.2 Tariff filing

Tariff filing refers to the provision by service providers to the ACCC of certain information about changes in prices. The ACCC has general telecommunications tariff filing powers and Telstra-specific tariff filing powers under Part XIB of the CCA.
During 2016–17 Telstra complied with the requirements to give the ACCC tariff filing information, which is a statement setting out any proposed pricing changes for a basic carriage service at least seven days before the change occurs.\(^{81}\)

### 3.5 Enforcement activities

#### 3.5.1 Consumer safeguard activities

The ACCC uses a range of compliance and enforcement tools to encourage compliance with the ACL including litigation, infringement notices, enforceable undertakings and administrative resolutions. A key part of the ACCC’s work involves providing guidance to industry and consumers to encourage compliance and minimise the need for enforcement action.

The ACCC receives a large number of complaints in relation to communications services each year, many of which relate to the role of other consumer bodies such as the TIO or state consumer protection bodies. Where the alleged conduct is egregious and systemic, it may trigger the ACCC to utilise its compliance and enforcement tools particularly where it relates to priorities for the ACCC as part of its Compliance and Enforcement Policy.\(^{82}\)

As discussed in chapter 1, the ACCC and TIO have recorded a sharp increase in the number of consumer complaints regarding new connections to, and services delivered over, the NBN as it reaches scale. Broadband speeds and performance claims are one of the ACCC’s current Compliance and Enforcement Policy priorities.

The ACCC has developed a three-limbed strategy to address the underlying issues behind the increase in complaints in relation to speeds and service performance on the NBN. The first limb is the introduction of the Broadband Performance Monitoring and Reporting program (BPMR) to provide consumers with comparable information about the performance of fixed broadband services. The second limb is the promotion of clear industry guidance on how to provide meaningful and accurate information when advertising broadband speeds for fixed broadband services. The third limb is to investigate conduct that may breach the ACL and take appropriate enforcement action when we find instances of misleading conduct.

**Broadband performance monitoring and reporting program**

On 7 April 2017 the Australian Government announced funding for the ACCC to implement a fixed BPMR. This will involve the ACCC publishing information about the speed at which fixed broadband services typically operate, and other metrics relevant to measuring broadband performance and applications consumers commonly use.

The program will use hardware-based devices to perform remote testing of around 4000 households to determine typical speeds on NBN services at various points throughout the day, including busy periods.

As at 30 June 2017 the ACCC was in the process of appointing a third-party testing provider to measure and report to the ACCC on the performance of various broadband services, technologies, speed plans and geographical areas. Over 8000 expressions of interest had also been received from potential volunteers.

The ACCC expects the program to have begun implementation by the end of the 2017 calendar year, with reporting to occur in the first quarter of the 2018 calendar year.

---

81. Basic carriage service has the meaning given by s. 174 of the *Telecommunications Act 1991*, as in force before 1 July 1997, but does not include a service supplied to an existing carrier.

Guiding principles for advertising broadband speeds

On 10 February 2017 the ACCC published principles to help guide internet service providers in the marketing of broadband speeds, including how to make clear statements on the typical speeds consumers can expect during busy hours. These principles are:

- consumers should be provided with accurate information about typical busy period speeds that the average consumer on a broadband plan can expect to receive
- wholesale network speeds or theoretical speeds taken from technical specifications should not be advertised without reference to typical busy period speeds
- information about the performance of promoted applications should be accurate and sufficiently prominent
- factors known to affect service performance should be disclosed to consumers
- performance information should be presented in a manner that is easily comparable by consumers, for example by adopting standard descriptive terms that can be readily understood and recognised
- retail service providers should have systems in place to diagnose and resolve broadband speed issues.

Building on the above principles, the ACCC published further detailed guidance on the marketing of broadband services on 21 August 2017. Following the release of the guidance we expect to see retailers moving away from advertising maximum potential speeds to providing information about realistic speeds consumers can expect to experience during busy evening periods.

The ACCC will review whether advertising practices have improved significantly and follow this with appropriate enforcement action where problematic conduct is still occurring.

3.5.2 Other compliance and enforcement activity

During the year the ACCC undertook other integrated compliance and advocacy activity to address the ongoing issue of unauthorised transfers including providing consumer guidance and raising the issue in public forums.

Unauthorised transfers occur where consumers are switched, or attempted to be switched, from one communications service provider to another without their express knowledge or informed consent.

Service providers seeking to transfer consumers without informed consent will often create the impression that they are calling from the consumer’s existing provider, when this is not the case. They may also falsely claim that they are checking on the discount being offered to the consumer, or that there will be no change to the consumer’s service if they sign up.

In June 2017, the ACCC released a consumer guide on ‘Unauthorised transfer of phone and internet services’ on the ACCC consumer website to better educate consumers on how to avoid becoming a victim of an unauthorised customer transfer.83

In addition, the ACCC continues to investigate concerns arising in relation to third party billing practices and the involvement of communication retailers.

---

83 Unauthorised customer transfers occur where a customer is switched, or attempted to be switched, from one telecommunications service provider to another without their express knowledge or informed consent. See ACCC, Unauthorised transfer of phone and internet services at https://www.accc.gov.au/consumers/internet-phone/unauthorised-transfer-of-phone-internet-services.
3.5.3 Consumer education initiatives

The ACCC provides information, tips and tools to help consumers understand their ACL rights and to raise awareness about communications issues. The ACCC website also includes tips on choosing phone, internet and mobile plans, guidance on how to manage data usage and in-app purchases, and information on international mobile roaming.84

3.5.4 Investigations

In 2016–17, the ACCC advanced eight in-depth investigations in the communications sector under the ACL. Five of these investigations were underway at the start of the reporting period and two remained on foot as at 30 June 2017. Investigations may be resolved in different ways, including through litigation, the issuing of infringement notices or by accepting enforceable undertakings or administrative resolution.

3.5.5 Infringement notices and court-enforceable undertakings

The ACCC can issue an infringement notice where it has reasonable grounds to believe a person has contravened certain consumer protection laws. The payment of infringement notice penalties is not an admission of a contravention of the CCA. The ACCC also resolves alleged contraventions of the ACL by accepting court-enforceable, undertakings under s. 87B of the CCA.

In June 2017, Sprint Telco Pty Ltd (Sprint Telco) paid a penalty of $10 800 following the issue of an infringement notice by the ACCC. The ACCC issued the infringement notice because it had reasonable grounds to believe that Sprint Telco made a false or misleading representation to a consumer during a telemarketing call in October 2016, in which the consumer was transferred from Telstra to Sprint Telco. It is alleged that Sprint Telco represented to the consumer that Sprint Telco was acting as Telstra’s agent or with Telstra’s approval, when that was not the case.

In June 2017, the ACCC accepted a court enforceable undertaking from Optus Mobile agreeing to compensate customers following an investigation into concerns that Optus Mobile was providing less data than advertised to consumers. The undertaking relates to three separate incidents in 2015 and 2016 where Optus Mobile decided to reduce some of the data, calls and/or text inclusions offered with particular prepaid products without telling affected customers. After discussions with the ACCC, Optus Mobile agreed to credit affected customers with an amount of data, calls and/or texts equivalent to the amount each consumer missed out on.

3.5.6 Litigation

Legal action is taken where, having regard to all the circumstances, the ACCC considers litigation is the most appropriate way to achieve its enforcement and compliance objectives. The ACCC is more likely to proceed to litigation in circumstances where the conduct is particularly egregious, where there is reason to be concerned about future behaviour or where the party involved is unwilling to provide a satisfactory resolution.

During the year, the ACCC successfully litigated one matter. On 2 March 2017, the Federal Court ordered the corporations trading as SoleNet and Sure Telecom (the SoleNet/Sure Telecom Companies) and Mr James Harrison to pay penalties totalling $250 000 and be restrained from carrying on a business or supplying services in connection with telecommunications for a period of two years. The Court also disqualified Mr Harrison from managing corporations for three years, and ordered consumer refunds and payment of the ACCC’s costs.

84 The ACCC website containing this consumer information is available at https://www.accc.gov.au/consumers/internet-phone.
These penalties followed a finding by the Court in December 2016 that the SoleNet/Sure Telecom Companies had engaged in unconscionable conduct in connection with the supply of telecommunications services. This included customers being transferred from one SoleNet/Sure Telecom company to another without their knowledge or informed consent, and being subject to unjustified demands for payment of early termination or cancellation fees. The Court also found that in the cases of four of the six customers who gave evidence in the proceeding, the SoleNet/Sure Telecom Companies engaged in undue harassment in connection with the supply of services and payment for services.

In April 2017, the ACCC announced it had instituted proceedings against Apple over alleged misleading consumer representations. As at 30 June 2017 this matter was ongoing.

3.5.7 Anti-competitive conduct

The ACCC investigates anti-competitive conduct under both the telecommunications specific provisions (Part XIB) and general anti-competitive conduct provisions (Part IV) of the CCA. The ACCC also has a number of roles under the Telecommunications Act in relation to a number of provisions including those concerning the NBN, access to facilities and the numbering plan, as set out in appendix 4.3.

In 2016–17 the ACCC investigated 11 allegations of potential contraventions of the CCA and of the Telecommunications Act specific to telecommunications markets. These included complaints of misuse of market power under the telecommunications-specific anti-competitive conduct provisions in Part XIB of the CCA.

Four of the 11 investigations concerned allegations of non-compliance with the ‘level playing field’ provisions in Parts 7 and 8 of the Telecommunications Act. The level playing field provisions prevent non-NBN superfast networks from supplying residential or small business users unless a layer 2 bitstream service is available for supply, and the services are supplied on a wholesale only basis. More information on the level playing field provisions is in appendix 4.2.

3.6 Merger, authorisation and third line forcing reviews

This section outlines the ACCC activities in relation to communications related merger reviews, third-line forcing notifications and authorisations under the CCA.

3.6.1 Mergers

The ACCC assesses the impact on competition of proposed and completed mergers and acquisitions under s. 50 of the CCA, which prohibits mergers and acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition. More information about mergers that the ACCC has reviewed is available on the ACCC’s mergers register.

During the year, the ACCC assessed one significant acquisition in the communications sector.

---


86 Part XIB contains the ‘competition rule’ which prohibits a carrier or carriage service provider from engaging in anti-competitive conduct and provides for the ACCC to respond to such conduct quickly by way of a ‘competition notice.’ More information is contained in the ACCC’s Telecommunications Competition Notice Guidelines at https://www.accc.gov.au/system/files/Telecommunications%20Competition%20Notice%20Guidelines%20-%20September%202015.pdf.

The ACCC assessed and did not oppose the acquisition by Vocus Communications of Nextgen Networks Group Pty Ltd and two development projects (together, Nextgen). The ACCC announced its decision on 22 September 2016.

The ACCC found that the services supplied by Vocus and Nextgen were largely complementary. Further, for the limited services in which the parties did overlap, Vocus and Nextgen did not compete closely such that it was unlikely that the proposed acquisition would substantially lessen competition in relation to the supply of any of those services.

As part of its assessment, the ACCC considered vertical integration issues given that the transaction removed a significant non-vertically integrated supplier of wholesale transmission services. The ACCC considered that smaller networks reliant on wholesale transmission may be disadvantaged compared to vertically integrated rivals. The ACCC concluded that the increased vertical integration was unlikely to substantially lessen competition because of the presence of excess capacity in the wholesale transmission market and the competitive constraint from other wholesale suppliers (Telstra, TPG and Optus).

**Merger guidelines**

The ACCC publishes guidelines to provide information on the analytical framework that it applies when reviewing mergers under s. 50 of the CCA. The ACCC has also previously published separate guidelines on its approach to media mergers.

In August 2016 the ACCC published draft revised media merger guidelines. The revised guidelines set out issues that may be relevant in media transactions, including diversity of media voices, the impact of technological change and access to content. The guidelines include a number of case studies to illustrate the ACCC’s approach in past media mergers. In November 2016 the ACCC decided to defer finalising the Media Merger Guidelines until the passage of the Broadcasting Legislation Amendment (Media Reform) Bill 2016.

### 3.6.2 Authorisation applications

Under Part VII of the CCA, the ACCC may grant protection from legal action for potential breaches of the competition provisions of the CCA (except for misuse of market power) if it is satisfied that the proposed conduct results in a net public benefit. 88

In 2016–17 the ACCC did not receive any communications-related authorisation applications.

### 3.6.3 Third line forcing applications

Third line forcing is a type of exclusive dealing prohibited by ss. 47(6) and 47(7) of the CCA. Third line forcing involves the supply of goods or services on condition that the purchaser buys goods or services from a particular third party, or a refusal to supply because the purchaser will not agree to that condition. It is a breach of the CCA regardless of the effect on competition, unless it relates to products or services provided by related bodies corporate.

Parties wishing to engage in third line forcing conduct that is in the public interest can lodge a notification or application for authorisation with the ACCC under Part VII of the CCA.

---

88 Authorisation applications for mergers are dealt with by the Australia Competition Tribunal rather than the ACCC.
In 2016–17, the ACCC received, and did not object to, a number of notifications of third line forcing involving participants in the communications industry, including:

- In January 2017 Foxtel Management Pty Ltd (Foxtel) proposed to offer consumers discounted subscriptions to Foxtel Play (a content service provided over the internet) on condition that those consumers acquire certain digital news services and newspapers from Nationwide News Pty Ltd.\(^9\)

- In January 2017 Telstra proposed to offer to supply communications products and/or services, or supplying such products and/or services, at a discount to members of the UNiDAYS website.\(^9\)

- In June 2017 Telstra Shops operating under licence from Telstra proposed to offer a range of communications and related goods or services (including mobile phones) and/or promotional goods or services (including cinema tickets) to customers on condition that they acquire communications services and/or related goods or services from Telstra.\(^9\)

### 3.7 Advice, advocacy and contributions to policy processes

The ACCC provides advice to government on certain communications matters and contributes views to policy and law reform processes affecting the sector. During the year, the ACCC provided advice to the Minister following a request and also participated in a number of policy processes concerning the communications sector.

The ACCC also conducts market studies to support its various functions. Market studies may enable the identification of competition issues and possible solutions, as well as confirming competition is functioning effectively.

#### 3.7.1 ACCC communications market study

A major focus for the ACCC during the year has been a market study on the Australian communications sector. The study commenced in September 2016 with the release of an issues paper.\(^9\)

The study is examining issues affecting competition and efficiency in communications markets into the next five years, recognising that the sector is going through a period of significant change. The aim of the study is to assist in identifying issues for regulatory focus in the short, medium and long terms.

The issues paper attracted more than 1,100 submissions by consumers, businesses and smaller service providers. Some common issues raised in submissions were:

- calls for better availability and transparency of product information to assist purchasing decisions
- concern that communications infrastructure and services will not meet consumers’ needs, particularly due to growing data demands and faster upload/download speeds and emerging applications

---


- concern that competitive markets on the NBN may not develop, with the potential barriers being either the NBN CVC pricing model or absence of wholesale inputs to support entry by smaller RSPs
- strong mobile competition in metropolitan areas but limited competition in regional areas, and polarised views as to whether regulatory action is required
- the implications of over-the-top communications apps/services for traditional communications services and their regulation, with ‘level playing field’ type arguments being advanced.

A stakeholder forum was held in Sydney on 3 and 4 July 2017. Topics discussed included immediate issues of concern (such as NBN competition and pricing) and more forward looking issues (such as potential substitution between fixed and wireless technologies and Internet of Things services). There was also a session on consumer-related issues, such as consumer information and consumer experience and expectations on the NBN.

There was wide participation in the forum, ranging from large communications service providers, small and new entrant service providers, consumer groups and industry bodies. A draft report of the market study findings was released in October 2017 containing 29 recommendations spanning a range of competition and consumer issues across the sector. A final report is expected in early 2018.

### 3.7.2 Advice on allocation limits for unsold 700 MHz spectrum

Following a request from the Minister for Communications and the Arts on 5 October 2016, the ACCC provided advice on the appropriate allocation limits for an auction of two 15 MHz parcels of unsold 700 MHz digital dividend spectrum. Allocation limits are used to ensure that competition considerations are taken into account in spectrum auctions.  

The ACCC recommended that the Minister impose an allocation limit on the unsold 700 MHz auction such that no person or specified group of persons would be able to hold more than two 20 MHz parcels in the 700 MHz band as a result of the auction.

The auction of the unsold 700 MHz spectrum occurred in April 2017, with the ACCC’s recommended allocation limits imposed.

### 3.7.3 Submissions to policy processes

During the year the ACCC contributed to several processes examining consumer issues in communications markets, including:
- the Productivity Commission’s inquiry into the telecommunications universal service obligation (USO)
- a review of Part XIB of the CCA
- a review of the Australian Communications and Consumer Action Network (ACCAN)
- a review of the TIO.

**Inquiry into the telecommunications universal service obligation**


---

93 Under the *Radiocommunications Act 1992*, the issue of a spectrum license is treated as an acquisition for the purposes of s. 50 of the CCA. When requested, the ACCC provides advice to the Minister for Communications on setting competition limits in new spectrum auctions.

The ACCC submissions supported reframing the USO to include both voice and broadband services of a baseline quality. The ACCC also noted that while the NBN rollout ensures universal access to broadband service, NBN fixed wireless and satellite infrastructure may not provide adequate voice services, in which case competitive tendering should be used to select a USO provider.

**Consultation on review of Part XIB**

In October 2016 the Department of Communications and the Arts commenced consultation on telecommunications specific anti-competitive conduct provisions in Part XIB.\(^95\)

The ACCC made a submission on 6 October 2016 supporting the repeal of the provisions on the condition that the Government’s proposed amendments to s. 46 of the CCA are made. The ACCC considered that the proposed changes to s. 46 would enable issues associated with market power in the telecommunications sector to be dealt with effectively under the general anti-competitive conduct provisions in the CCA. The ACCC noted the value of consistent anti-competitive conduct provisions that apply across the economy.

**Review of the Australian Communications and Consumer Action Network**

In October 2016, the Department of Communications undertook a review of s. 593 of the *Telecommunications Act 1997*. This section relates to funding for consumer bodies representing the interests of communications consumers and research into communications issues.\(^96\) As ACCAN is currently the only recipient of funds under s. 593, the review sought views on the effectiveness of ACCAN’s consumer representation, whether it is appropriate to provide ACCAN or other consumer bodies with funding for research and whether any other activities should be funded under s. 593.

In November 2016 the ACCC provided a submission expressing support for ACCAN as the peak telecommunications consumer body. The ACCC submission also suggested improvements to the current funding arrangements, greater consultation between ACCAN and government departments and regulators on the selection of research projects, and further funding for ACCAN in coordinating consumer education material on communications matters.

In June 2017, the Department of Communications released the final report on the ACCAN review adopting a number of the ACCC’s recommendations.\(^97\) These recommendations included retaining s. 593 of the Telecommunications Act, establishing a new funding agreement with ACCAN and introducing greater flexibility for funding longer-term research projects.

---

\(^95\) Department of Communications and the Arts, Consultation on the telecommunications anti-competitive conduct laws, available at https://www.communications.gov.au/have-your-say/consultation-telecommunications-anti-competitive-conduct-laws.

\(^96\) Department of Communications and the Arts, Consumer representations review (ACCAN), submissions available at: https://www.communications.gov.au/have-your-say/consumer-representation-review-accan.

Telecommunications Industry Ombudsman independent review

The TIO engaged a consultant in May 2017 to undertake an independent review to consider whether changes are needed to deliver effective dispute resolution in a high volume complaint environment.

In June 2017, the ACCC made a submission to the review. The ACCC said that the TIO had a crucial role to play in monitoring and resolving consumer complaints issues, particularly in relation to services delivered over the NBN, and in identifying systemic trends within the broader communications regulatory framework. The ACCC also said that an effective TIO scheme must involve collecting, identifying and analysing a clear data set of NBN-related complaints.

New MoU with Australian Communications and Media Authority

The ACCC and the Australian Communications and Media Authority signed a revised memorandum of understanding (MoU) on 15 December 2016. The MoU sets out a framework for engagement and consultation between the agencies, with key guiding principles. The document was developed with a view to reinvigorating consultation between the two agencies, and demonstrates the agencies’ commitment to effective engagement and the benefits of collaboration. It replaces an MoU from 1999.

4 Appendices
Appendix 4.1 Access to telecommunications services

Declared services

Under Part XIC of the Competition and Consumer Act 2010 (the CCA), a carriage service, or service that facilitates the supply of a carriage service, can be declared. Once a service is declared, an access seeker can then obtain access to that service. There is no general right of access without declaration. A telecommunications service can be declared if:

- the ACCC declares a service after holding a public inquiry
- the ACCC accepts a special access undertaking (SAU) for the service or
- in the case of a service supplied by NBN Co—NBN Co publishes a standard form of access agreement (SFAA) relating to access to the service on its website.

Providers of declared services must comply with certain access obligations, including a requirement to supply the service on request and to provide interconnection with facilities.

There are currently 11 declared services under Part XIC (excluding national broadband network (NBN) services). The table below describes each of these services.

### Declared telecommunications services as of 30 June 2017

<table>
<thead>
<tr>
<th>Service</th>
<th>Description</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholesale asymmetric digital subscriber line (ADSL)</td>
<td>A point-to-point service that allows access seekers to provide a broadband ADSL internet service to a customer using Telstra’s equipment.</td>
<td>14 February 2012 to 13 February 2017</td>
</tr>
<tr>
<td>Local carriage service (LCS)</td>
<td>A service that carries local telephone calls from one end-user to another. Access seekers use the service to resell local calls.</td>
<td>1 August 2014 to 31 July 2019</td>
</tr>
<tr>
<td>Fixed originating access service (FOAS)</td>
<td>Allows a customer of a retail service provider that does not have its own fixed line network to make a telephone call on another service provider’s network (pre-selection and override). The FOAS does not include pre-selection and override services for telephone calls provided over the NBN. The FOAS also allows call origination for the facilitation of special number services including 13/1300 and 1800 numbers.</td>
<td>1 August 2014 to 31 July 2019</td>
</tr>
<tr>
<td>Fixed terminating access service (FTAS)</td>
<td>Allows a customer who is provided a fixed line phone from one retail service provider to receive a call from a person using another retail service provider’s network.</td>
<td>1 August 2014 to 31 July 2019</td>
</tr>
<tr>
<td>Service</td>
<td>Description</td>
<td>Duration</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Wholesale line rental (WLR)</td>
<td>Allows an access seeker to rent an active copper line from an access provider and on-sell the rented line to customers. When bundled with other services (such as the LCS and FOAS pre-selection and override), WLR allows access seekers to provide customers with a fixed voice service package to make local, national, long-distance, international and fixed to mobile telephone calls.</td>
<td>1 August 2014 to 31 July 2019</td>
</tr>
<tr>
<td>Line sharing service (LSS)</td>
<td>A service for access to the non-voice frequency spectrum of unconditioned wire between a customer and a telephone exchange. It allows access seekers to provide broadband services to customers using their own equipment if the customer has an active voice service. Currently Telstra is the sole supplier of the LSS to access seekers.</td>
<td>1 August 2014 to 31 July 2019</td>
</tr>
<tr>
<td>Unconditioned local loop service (ULLS)</td>
<td>A service for access to the unconditioned wire between a customer and a telephone exchange. It allows an access seeker to provide voice and broadband services to customers using their own equipment.</td>
<td>1 August 2014 to 31 July 2019</td>
</tr>
<tr>
<td>Mobile terminating access service (MTAS)</td>
<td>A service provided by a mobile network operator to fixed line operators and other mobile network operators to connect and terminate a voice call or an SMS on its mobile network.</td>
<td>1 July 2014 to 30 June 2019</td>
</tr>
<tr>
<td>Domestic transmission capacity service (DTCS)</td>
<td>A wholesale only point-to-point high capacity service used for the transmission of communications traffic (such as voice, data or video).</td>
<td>28 March 2014 to 31 March 2019</td>
</tr>
<tr>
<td>Local bitstream access service (LBAS)</td>
<td>A point-to-point superfast carriage service used to carry communications in digital form between a point of interconnection and an end customer. It is a non-NBN fixed network service capable of offering download speeds of 25 Mbps or more that was built or extended more than 1 km since 1 January 2011 (unless exempted).</td>
<td>The declaration took effect on 13 April 2012. It does not expire.</td>
</tr>
<tr>
<td>Service</td>
<td>Description</td>
<td>Duration</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Superfast broadband access service (SBAS)</td>
<td>A point-to-point superfast carriage service used to carry communications in digital form between a point of interconnection and an end customer. It is a non-NBN fixed network service capable of offering download speeds of 25 Mbps or more, or a Fibre Access Broadband service with maximum download speeds of 30 Mbps or 100 Mbps, that is not captured or exempted from the LBAS declaration (unless otherwise exempted from the SBAS declaration).</td>
<td>29 July 2016 to 28 July 2021</td>
</tr>
</tbody>
</table>

**Access determinations**

Under Part XIC of the CCA, parties are free to negotiate the terms and conditions of access to declared services. Where parties are unable to agree on the terms and conditions of access, an access seeker can rely on the regulated terms set by the ACCC in an access determination. An access determination contains a base set of price and non-price terms and conditions of access to a declared service. Where there are inconsistencies between a commercial agreement (access agreement) and an access determination, the terms and conditions in the access agreement will prevail over the regulated terms and conditions set by the ACCC.

The ACCC must undertake a public consultation process (public inquiry) before making a final access determination (FAD).

**Binding Rules of Conduct**

The binding rules of conduct (BROC) are rules that specify the terms and conditions relating to compliance with the standard access obligations. Under s. 152BD of the CCA, the ACCC can, where it considers there is an urgent need to do so, make a BROC. BROCs can also specify the manner in which a carrier or carriage service provider must comply with any or all the standard access obligations. The maximum duration of a BROC is 12 months.

---

99 The ACCC maintains a register of access determinations under s. 152BCW and can be accessed at http://registers.accc.gov.au/content/index.phtml/itemid/971651.
Appendix 4.2 NBN Regulatory framework

The ACCC has a number of responsibilities in the regulation of the National Broadband Network (NBN) through Part XIC of the Competition and Consumer Act 2010 (the CCA). We have a role in determining the terms and conditions of access to services provided over the NBN, including through special access undertakings and access determinations. We also publish and maintain explanatory material about the non-discrimination obligations that apply to NBN Co, and are involved in determining and reviewing the locations of the NBN points of interconnect.

Points of interconnection

An NBN point of interconnection (POI) is the physical location that allows retail service providers and wholesale service providers to connect to the NBN. In 2012 the ACCC published a list of POIs under s. 151DB of the CCA. This list is available on our website.\(^\text{100}\)

As of October 2014, all 121 permanent POIs were active and ready for interconnection. As of September 2016, there were at least four NBN wholesale access seekers present at 118 of the 121 POIs acquiring CVC capacity from NBN Co.\(^\text{101}\)

NBN services are being provided through the 121 listed POIs and the five temporary POIs, which NBN Co established on an interim basis to facilitate the early rollout of the NBN. Currently, NBN Co is migrating existing users from the temporary, to the permanent, POIs, and expects to complete this process by December 2018.\(^\text{102}\)

Non-discrimination provisions

NBN Co and providers of layer 2 bitstream services over designated superfast telecommunications networks are subject to certain non-discrimination obligations. In general, these providers must not discriminate:

- between access seekers in complying with their standard access obligations
- between access seekers in the carrying on of activities related to the supply of declared services
- in favour of themselves in the supply of declared services.\(^\text{103}\)

The ACCC has a role in enforcing the non-discrimination provisions under both the CCA and the Telecommunications Act 1997. The ACCC can seek orders from the Federal Court under s. 152BB(1AA) of Part XIC of the CCA.

Level playing field provisions

Non-NBN networks capable of supplying a superfast carriage service, wholly or principally to residential or small business customers, must not be used unless:

- a layer 2 bitstream service is available for supply
- services supplied on the network are supplied on a wholesale-only basis.

---


\(^\text{103}\) Sections 152ARA and 152AXC of the CCA.
These provisions only apply to services supplied over superfast networks built, extended, altered or upgraded since 1 January 2011. The provisions do not apply to services provided over wireless, satellite or NBN networks. There are also a number of statutory and Ministerial exemptions from the level playing field provisions. The intent of these level playing field provisions is to ensure that non-NBN networks capable of supplying a superfast carriage service operate on a similar basis to NBN networks.\textsuperscript{104}

\textsuperscript{104} The level playing field provisions are set out in Parts 7 and 8 of the \textit{Telecommunications Act 1997}. 
Appendix 4.3 Telstra’s structural separation and other Telecommunications Act provisions

Telstra’s structural separation undertaking

Telstra’s Structural Separation Undertaking (SSU) implements structural separation of Telstra through the migration of end-users to the national broadband network (NBN). The SSU outlines how Telstra will progressively stop supplying telephone and broadband services over its copper and hybrid fibre coaxial (HFC) networks and commence supplying these services over the NBN.

The SSU contains interim equivalence and transparency measures, which require Telstra to supply regulated services to its wholesale customers and own retail business units on equivalent terms. This is to promote competition until the NBN is completed. The measures also require Telstra to identify and take steps to address any instance of non-equivalence.

On 27 February 2012 the ACCC accepted Telstra’s SSU. The SSU commenced on 6 March 2012. The SSU contains four key elements:

- a commitment by Telstra to cease the supply of fixed line carriage services using telecommunications networks over which Telstra is in a position to exercise control from the Designated Day—which is expected to be the day on which the construction of the new wholesale-only NBN will be concluded
- interim equivalence and transparency obligations regarding access to Telstra’s regulated services in the period leading up to the Designated Day
- compliance monitoring processes, to provide the ACCC with transparency over Telstra’s compliance with the SSU
- the Migration Plan, which forms part of the SSU. The Migration Plan sets out how Telstra will progressively transfer its fixed line customers onto the NBN.

Reporting obligations under the SSU

Telstra has reporting obligations under the SSU that require it to provide the ACCC with financial reports from the Telstra Economic Model (TEM). The TEM is Telstra’s internal financial reporting management system used in its day to day business, and it relies on the same financial accounts that Telstra uses for its public reporting.

The ACCC monitors and reports to the Minister for Communications on Telstra’s compliance with its SSU obligations each year by providing a report to the Minister.

The ACCC has noted that Telstra’s SSU continues to deliver significantly better outcomes in terms of equivalence for wholesale customers and enhanced transparency regarding Telstra’s compliance than were realised under the previous operational separation arrangements.


Clause 18 and schedule 9 of the SSU.

Migration plan

The migration plan outlines how Telstra will progressively migrate voice and broadband services from its copper and HFC networks to the NBN as the new network is rolled out. On 27 February 2012 the ACCC approved Telstra’s draft migration plan which commenced on 7 March 2012. Since then there has been several variations to the original migration plan.109

Replacement required measures

Telstra’s migration plan requires Telstra to develop, and provide to the ACCC, six ‘required measures’ that relate to the operating processes it will follow when disconnecting customers from its copper and HFC networks.

Other activities under the Telecommunications Act

Access to facilities

Under the *Telecommunications Act 1997* (Telecommunications Act) access providers must give other communications providers access to certain telecommunications facilities for them to install their own equipment.

Access disputes

While the ACCC no longer has an arbitration role under the CCA, the ACCC continues to have a role arbitrating disputes under the Telecommunications Act where the parties fail to agree on the appointment of an arbitrator. The ACCC can arbitrate disputes about access to certain facilities, the provision of pre-selection and number portability. The ACCC has also made a code relating to access to certain telecommunications facilities under the Telecommunications Act.110

Numbering Plan

The ACCC is a member of the ACMA’s Numbering Advisory Committee and actively engages with the ACMA about numbering issues. The ACMA is responsible for developing and administering a numbering plan, which may include rules about number portability. The numbering plan sets out the framework for the numbering of carriage services in Australia and the use of numbers in connection with the supply of these services.111

Number portability

Number portability allows consumers to change their service provider and retain the same telephone number. The Australian Communication and Media Authority (ACMA) can only include rules about number portability in the numbering plan if directed to do so by the ACCC. Any rules the ACMA includes about number portability must be consistent with ACCC directions. The ACCC has previously directed the ACMA to include rules in the numbering plan regarding local number portability, free phone and local rate number portability, and mobile number portability. The ACMA’s Numbering Plan 2015 includes rules consistent with the ACCC’s number portability directions.

---

111 Part 22, Division 2 of the Telecommunications Act.
Report on international rules of conduct

Division 3 of Part 20 of the Telecommunications Act sets out a mechanism for the government to deal with unacceptable conduct by international operators. An international telecommunications operator is considered to be engaging in unacceptable conduct if it:

- uses its market power in a manner that is, or is likely to be, contrary to the national interest
- uses any legal rights or legal status that it has as a result of foreign laws in a manner that is, or is likely to be, contrary to the national interest
- engages in any other conduct in a manner that is, or is likely to be, contrary to the national interest.

The Minister is empowered by the Telecommunications Act to make rules of conduct to prevent, mitigate or remedy any unacceptable conduct by an international telecommunications operator. The Minister introduced such rules in 1997, which:

- authorise the ACCC to make determinations of a legislative nature, imposing requirements, prohibitions or restrictions on carriers or carriage service providers
- authorise the ACCC to give directions to carriers or carriage service providers of an administrative nature that impose requirements, prohibitions or restrictions
- require carriers and carriage service providers to comply with ACCC determinations and administrative directions
- authorise the ACCC to make information available to the public, a specified class of persons or a specified person.

The ACCC did not conduct any investigations into unacceptable conduct by an international carrier during 2016–17.
Appendix 4.4 Record keeping rules

The following table sets out the record keeping rules in operation as at 30 June 2017.\(^{112}\)

<table>
<thead>
<tr>
<th>Record Keeping Rule</th>
<th>Information collected</th>
<th>Rationale</th>
<th>Reporting period and disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access to Telstra exchange facilities(^{113})</td>
<td>Telstra must report on access to its exchange facilities including capped exchanges and exchanges with queued access seekers.</td>
<td>To provide oversight of any decision to cap an exchange and to monitor access seeker queues to exchanges.</td>
<td>Monthly. Telstra must publicly disclose certain information.</td>
</tr>
<tr>
<td>Audit of Telecommunications Infrastructure Assets</td>
<td>Specified carriers must report on the location of their core network and Customer Access Network (CAN) infrastructure.</td>
<td>To provide the ACCC with a consistent and coherent infrastructure database to inform regulatory decisions.</td>
<td>Annually. The ACCC publishes aggregated data on a periodic basis.</td>
</tr>
<tr>
<td>Building Block Model</td>
<td>Telstra must provide data on actual usage and historical asset values. It must also provide forecast data on service demand, operating expenditure and capital expenditure.</td>
<td>The ACCC uses this data in the Fixed Line Services Model which is used to determine prices for the regulated fixed line services.</td>
<td>Actual usage data—annually. Other required data—at the ACCC’s request and at the start of a price review prior to each regulatory period. The ACCC makes the information available in accordance with a disclosure notice.(^{114})</td>
</tr>
<tr>
<td>Division 12</td>
<td>Specified carriers must report on the retail prices charged for certain services including fixed line voice, mobile and internet services. Carriers must also provide data on revenue and usage, which enable the ACCC to calculate price movements.</td>
<td>To provide information that enables the ACCC to report annually, as required, to the Minister on the changes in the prices paid for telecommunications services in Australia (the Division 12 Report).</td>
<td>Annually. No public disclosure. However, the ACCC’s annual Division 12 Report contains estimated price indices for telecommunications services based on this RKR data.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Record Keeping Rule</th>
<th>Information collected</th>
<th>Rationale</th>
<th>Reporting period and disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>NBN Services in Operation&lt;sup&gt;115&lt;/sup&gt;</td>
<td>NBN Co must provide information on the take-up of NBN access services, the amount of capacity being acquired and the average utilisation of that capacity over the NBN.</td>
<td>To allow the ACCC to monitor the rate and level of take-up of different NBN services, assess competition as it develops on the NBN and to inform regulatory decisions.</td>
<td>Quarterly. NBN Co must provide a quarterly NBN Wholesale Market Indicators report containing certain data collected under the RKR for publication.</td>
</tr>
<tr>
<td>Regulatory Accounting Framework (RAF)</td>
<td>Telstra must provide certain financial information and service usage data for retail and wholesale communications services.</td>
<td>To assist the ACCC with key decisions and reporting functions including declaring services, setting regulated prices under an access determination and reporting on the state of competition in telecommunications markets.</td>
<td>Biannually. No public disclosure. (This RKR was discontinued in October 2017).</td>
</tr>
<tr>
<td>Telstra CAN</td>
<td>Telstra must provide information on the number of retail and wholesale services in operation on its network. This data is disaggregated by exchange service areas and access seekers.</td>
<td>To allow the ACCC to analyse competition and industry trends in telecommunications markets.</td>
<td>Quarterly. No public disclosure of the data but Telstra provides a summary of the quarterly results for publication.</td>
</tr>
</tbody>
</table>

<sup>113</sup> After a review of this RKR in early 2017, the ACCC decided to allow the TEF RKR to expire on 14 July 2017.

<sup>114</sup> The ACCC gave Telstra a disclosure notice regarding the RKR information provided as part of the inquiry into making final access determinations for the fixed line services. The disclosure notice provides that the ACCC will publish a public version of the RKR information and establishes confidentiality arrangements for full disclosure of the RKR information to access seekers.

<sup>115</sup> As of 30 June 2017, this RKR was under review by the ACCC.
Appendix 4.5 Price monitoring methodology: calculating real changes in weighted average prices

The 2016–17 report includes a new approach to estimating the real changes in prices. This approach has been applied to data from 2014 to 2017, and so may give results that differ from previous publications. The new approach makes further attempts to account for non-price factors, and involves larger samples of service plan data. It also involves an improved method of accounting for consumer behaviour, using samples of confidentialised customer bills collected as part of the Division 12 Record Keeping Rule (RKR).

Each plan as a bundle of characteristics

When measuring price changes for telecommunications services, ideally, like-for-like comparisons would be made between similar products. This is complicated by the heterogeneous, complex nature of telecommunications services. That is, these services are sold as plans which dictate that, for a given price, consumers will receive certain:

- quantities of services (e.g. data allowances, call inclusions)
- qualities of services (e.g. speed)
- conditional or per unit charges (e.g. call rates)
- contract conditions (e.g. length, minimum term).

The markets for fixed and mobile telecommunications services are each comprised of a range of plans that differ across both price and non-price characteristics. These differentiated plans have varying degrees of substitutability, as consumers make trade-offs between the characteristics in order to maximise value according to their own preferences.

Changes in non-price characteristics over time can make it difficult to compare products from different time periods.

Given that there are several characteristics that define each plan (and hence, its value to a consumer), an appropriate quality adjustment is required to usefully compare prices over time. In determining its price monitoring approach for the 2016–17 report, the ACCC conceptualised telecommunications service plans as bundles of characteristics that are valued by consumers (a hedonic approach).

Comparing categories of service plans

The ACCC chose to focus its analysis on retail service plans (as opposed to aggregated revenue or demand data), in order to better account for the changes in non-price characteristics. This allowed for a method that is well suited to the nature of the products and markets, the available data, and the objective of estimating year-on-year price changes.116

The method used in the 2016–17 report involves classifying service plans into product categories; calculating the average price for a given product category in a given year; and comparing those average prices between years. Categories were set according to the following characteristics:

- for broadband plans, by contract length, data quota (divided into classes), the inclusion of voice and entertainment packages, and specific call inclusions (unlimited local, national, and mobile calls)
- for postpaid mobile plans, by contract length, data quota (classes), unlimited calls, and unlimited SMS inclusions

---

- for pre-paid mobile plans, by data quota (classes), unlimited calls, and unlimited SMS inclusions
- for mobile broadband plans, by contract length, and data quota (classes).

The price comparisons for each product category are then aggregated in order to calculate the average price change for fixed broadband, post-paid mobile, prepaid mobile, and mobile broadband services.

**Relevance of price changes to consumers**

While the ACCC has focused its analysis on service plans in order to better account for non-price characteristics, it also sought to produce estimates of price changes that would reflect the perspective of consumers. As such, price changes were adjusted to reflect consumer spending behaviour and inflation.

The range of plans available in each of the telecommunications service markets suggests a wide range of consumer preferences and/or willingness to spend. The ACCC assumes that consumer preferences are segmented by levels of monthly expenditure. For example, the proportion of the population spending between $100 and $110 per month in one year would likely spend a similar amount in the next year.

This assumption implies that price changes that occur in one market segment may not be relevant to consumers in other segments. For example, if price changes were observed in only one segment of the market (say, the higher priced, high download plans), then consumers who were not interested in those plans would not experience any price change.

As such, the average price changes for each product category were weighted according to the likely proportion of consumers who would be affected by the change.\(^\text{117}\)

Furthermore, the observed changes in average price were then adjusted for inflation, using the Consumer Price Index. This allowed the reported price changes to reflect the context of changing prices in other consumer goods and services.

**Inference and caveats**

The method outlined above is intended to provide an indication of how, on average, prices have changed for consumers in each of the relevant service markets. However, inferences should be made with care, in recognising the limitations of the analysis.

**Changes in price or value?**

Service plans were grouped according to their characteristics, and the average prices of those categories were compared over time. This means that the observed price changes may reflect changes in sticker prices, or changes in the value of service inclusions at a given price, or both. As such, the price changes could be interpreted as either the changes in prices for a given type and quantity of service, or the change in value consumers obtain for a given price.

Changes in price and value are also linked in the consumer experience. For many characteristics (such as data allowances), all else being equal, consumers would prefer to maximise their consumption at a given price point. As plan offerings change, consumers may find that they could move to a plan with the same price but with more data, or a plan with the same data at a lower price. Regardless of which plan they choose, the consumer is facing an improved set of choices in both price and value.

---

\(^{117}\) As part of the Division 12 Record Keeping Rule, the ACCC collects confidentialised samples of consumer bills for fixed internet and mobile. These samples are used as a guide to consumer behaviour (in terms of monthly expenditure).
Competition and price changes in telecommunications services in Australia 2016–17

The focus on average prices

Price changes are estimated by comparing average prices of each product group. This means that price changes can be influenced by the introduction or removal of plans, as opposed to changes in the prices of existing plans.

This approach was taken in recognition that within each product category, plans would still vary in terms of some non-price characteristics. For instance, data allowances were classified by ranges as opposed to the exact number of gigabytes. The alternative approach of narrowing each product category would risk reducing the number of products that were deemed comparable from year to year.

Product categories being introduced or dropped

If a new product category is introduced for the first time, a price change would not be estimated for that product category until the subsequent year. This is due to the lack of a comparable average price for that product category.

If a product category that existed in a previous year is no longer offered, a price change would not be estimated for that product category.

Plans being introduced or dropped

For a given year, the average price for each product category is calculated based on all plans within that category available that year. If a new plan is introduced that fits an existing product category, it would be included in the analysis. Plans would only be included in the price analysis of a given year if they were available during that year.¹¹⁸

Average movements in data quotas

Changes in average prices for similar types of plans could have different effects on consumers. For instance, if faced with a reduction in price (all things being equal), it is possible that consumers would opt to move to a cheaper plan with similar non-price characteristics. Alternatively, they may opt to spend a similar amount per month and move to a plan that offers more value.

While it is unclear which outcome would be more common, analysis of historical internet bill samples collected under the Division 12 RKR in 2013 and 2016 suggests that some consumers of fixed broadband services may have decreased their expenditure while others have not.¹¹⁹ That is, it is likely that at least some consumers will not reduce their expenditure on telecommunications services when faced with a price decrease. The scenario of consumers opting for more services (rather than lower expenditure) would be in line with trends observed in recent data.

- The ABS Internet Activity Survey shows that broadband data usage per customer has increased 39 per cent on average between 2014 and 2017.¹²⁰

¹¹⁸ For fixed broadband services, service plan data was collected at a point in time to reflect the entire financial year. For mobile services, several data points were collected during the financial year.

¹¹⁹ Based on approximately 1300 bills per type of access technology. The average ADSL consumer spent $75 in 2012–13, reducing to $62 in 2015–16, suggesting customers may have opted for cheaper plans. The average NBN consumer spent $80 in 2012–13, increasing marginally to $84 in 2015–16, suggesting that many NBN customers were opting for more content rather than cheaper plans.

Analysis of the Household, Income, and Labour Dynamics in Australia (HILDA) data by the Bureau of Communications and Arts Research (BCAR 2017) shows that the average household expenditure on telephone rent, calls and internet charges increased marginally between 2013 and 2015.\textsuperscript{121}

For these consumers, the real reductions in price have been translated into a gain in value, rather than a decrease in monthly expenditure.

It is possible to estimate the increase in value that would be approximately equivalent to average weighted price reduction in figure 2.20. By classifying plans by price (in $10 increments), and non-price characteristics\textsuperscript{122} (excluding data quotas), it is possible to make like-for-like comparisons of average data quotas for several categories of plans.


\textsuperscript{122} Non-price characteristics include contract length, the inclusion of voice and entertainment packages, and specific call inclusions.