



27 October 2016

Australian Competition and Consumer Commission  
Level 20, 175 Pitt St  
Sydney NSW 2000

**By email:** [commsmarketstudy@acc.gov.au](mailto:commsmarketstudy@acc.gov.au)

Dear Commission,

The Digital Industry Group Incorporated (DIGI) welcomes the opportunity to provide comments in response to the recent Issues Paper released by the Australian Competition and Consumer Commission (ACCC) on *Competition in evolving communications markets*.

DIGI comprises representatives from Google, Facebook, Twitter, Microsoft and Yahoo!. DIGI members collectively provide various digital services to Australians ranging from Internet search engines and other digital communications platforms. These services and platforms facilitate new distribution, marketing and revenue generating channels for Australian businesses and content creators. They are also driving fundamental changes to the way that business is conducted and content is created and distributed.

DIGI thanks the ACCC for the opportunity to make this submission. If you have any questions or require any additional information, please let me know.

Kind regards,

A handwritten signature in black ink that reads "N Buskiewicz". The signature is fluid and cursive, with a large, stylized 'N' and 'B'.

Nicole Buskiewicz  
Managing Director  
DIGI

## **DIGI submission to the ACCC's Issues Paper *Competition in evolving communications markets***

### *1. Executive summary*

DIGI understands that the ACCC seeks to conduct the study to examine the changing communications landscape to test whether evolving markets are structured so there can be confidence they will operate efficiently. The ACCC is also seeking information on how the changing landscape is affecting competition in communications markets and whether there are implications for the way or extent to which the sector is regulated.

As demonstrated within this submission, the proliferation of content, applications and services available online through digital services (referred to as “OTT services” in the Issues Paper), has delivered enormous choice and value to Australian consumers and businesses. However, as network operators diversify into OTT-style offerings, the division between them and broadband network service providers will become more complex and blurred.

DIGI welcomes the opportunity to provide the ACCC with the following comments in response to the areas of focus identified in the Issues Paper, that is, OTT services and traditional telecommunications networks. While this submission is not intended as a comprehensive statement of DIGI's position in relation to the questions raised in the Issues Paper, we have an interest in many of the matters raised and hope that this response provides some useful context for the ACCC.

### *2. Background: the benefits of digital or 'OTT' services*

Before turning to the specific questions raised in the Issues Paper, we wanted to provide, by way of background, some insights into the ways in which digital services are used by Australian households and businesses, and the benefit that this has within the Australian society and economy.

McKinsey&Co found that while digital services have the potential to deliver significant economic and societal value, this benefit is only just starting to be realised. Specifically, McKinsey found:

“The speed and scale of adoption of social technologies by consumers has exceed that of previous technologies. Yet consumers and companies are far from capturing the full potential impact of these technologies. Indeed, new uses, technical advances and social business models will evolve, driven by user innovation and advances in technology.”<sup>1</sup>

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<sup>1</sup> *The social economy: unlocking value and productivity through social technologies*, 2012, McKinsey&Company p.3. <http://www.mckinsey.com/industries/high-tech/our-insights/the-social-economy>

#### a. Consumer and social benefits

Many aspects of Australian daily life are now being conducted online. People are able to stay in touch with family and friends throughout the day, across cities, across the country and around the world, and also receive news and information instantaneously. Research has shown that this has improved people's sense of well-being. For example, in a recent Facebook study, researchers found that: "[t]he more people talked one-on-one, such as writing wall posts or comments, especially with close friends, the more their well-being improved".<sup>2</sup>

Many DIGI member services are used for socially beneficial purposes, including:

- Microsoft's Skype Translator, which now allows for audio translation in real time across English, Russian, Spanish, French, German, Chinese (Mandarin), Italian, Portuguese (Brazilian), and Arabic, enabling more people to connect across the world.
- Google Maps, which was engineered in Australia, last year saved Australian users 29 hours on the roads, on buses and trains and walking.
- And Twitter, which operates in over 40 languages and gives everyone the power to create and share ideas instantly, bringing people together across national, social and cultural boundaries.

The proliferation of content, applications and services available online has delivered enormous value directly to consumers. This includes greater consumer access to information, banking and healthcare, communities of common interest, new forms of media and entertainment, and civic participation.

#### b. Business and economic benefits

DIGI members make a significant contribution to Australian businesses, including those in traditional sectors, which can transform and evolve thanks to digital technologies. Indeed, Deloitte's *The Connected Continent II* Report found that "digital businesses are not a standalone industry category that sells to non-digital businesses; digital technologies are a strong part of the core and operation of these businesses [across different sectors],"<sup>3</sup> and there are countless examples of Australian businesses utilising digital tools and services to grow their business.

One example is Quadlock, a Melbourne start-up that has used digital services and advertising to grow their business that now exports to over 100 countries.<sup>4</sup> Similarly, Vuly, an Australian trampoline manufacturer, which started off as an online-only business has grown

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<sup>2</sup> *The Relationship between Facebook Use and Well-Being Depends on Communication Type and Tie Strength*, Facebook research paper, July 2016. <https://research.facebook.com/publications/the-relationship-between-facebook-use-and-well-being-depends-on-communication-type-and-tie-strength/>

<sup>3</sup> *The Connected Continent II: how digital technology is transforming the Australian economy*, Deloitte, 2015, p.2 <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-connected-continent-ii-2015-300315.pdf>

<sup>4</sup> Facebook Business, Success stories, Quadlock. <https://www.facebook.com/business/success/quad-lock>

rapidly since its inception, with annual revenue from its Australian retail operations increasing from around \$1 million in 2007 to around \$30 million today. Today, Vuly trampolines are sold across a number of countries in the Americas, Europe, and the Middle East.<sup>5</sup>

McKinsey also found that social technologies (being technology that allows people to connect and communicate online, referred to in the Issues Paper as “OTT services”) can improve knowledge worker productivity by 20-25%<sup>6</sup>. While in a recent study, Deloitte Access Economics found that small to medium sized businesses that have advanced levels of digital engagement are 1.5 times more likely to be growing revenue, are 8 times more likely to be creating jobs, are 7 times more likely to be exporting, and are 14 times more likely to be innovating by offering new products and services, compared to businesses with basic levels of digital engagement.<sup>7</sup>At the macro level, in the past year alone, Google’s digital technologies supported \$15.1 billion in benefits for Australian business: “although different concepts, this economic activity is broadly equivalent in scale to half the annual output of the agriculture industry and double the size of the airline industry”<sup>8</sup>.

Against this background, DIGI believes that the many success stories of Australians engaging digital services to their benefit, some of which we have highlighted above, supports the observation made in the Issues Paper that “rapidly evolving technological developments, structural change within the sector, product innovation and changing consumer preferences are all contributing to a changing communications environment.”<sup>9</sup>

### *3. Comments on focus areas: OTT services and broadband networks*

As the ACCC is aware, DIGI members provide services that bring people and businesses together, and to do this, digital services rely on broadband access networks for distribution to, and access by, end-user consumers. Due to the popularity and increasingly integrated use of digital services in Australian daily life and in the Australian economy, digital services stimulate broadband demand and investment.

In fact, the popularity of digital services has led to a growing trend towards diversification of network operators into the OTT sector. One example is Telstra’s T-Box, which connects to a Telstra home broadband connection to stream TV and other content via the internet. Likewise, OTT services are significantly investing in internet infrastructure, as evidenced by the recent announcement by Facebook and Google to build the first direct cable system between Los Angeles and Hong Kong with ultra high capacity. The implication of these

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<sup>5</sup> *Connected Small Businesses 2016*, Deloitte Access Economics, p.10. <https://www.deloitte.com/au/connected-small-business>

<sup>6</sup> *The social economy: unlocking value and productivity through social technologies*, 2012, McKinsey&Company. <http://www.mckinsey.com/industries/high-tech/our-insights/the-social-economy>

<sup>7</sup> *Connected Small Businesses 2016*, Deloitte Access Economics, p.2. <https://www.deloitte.com/au/connected-small-business>

<sup>8</sup> *Google Economic Impact: Australia 2015*, AlphaBeta, 2015 p.9 [http://media.wix.com/ugd/f01257\\_178469dfca6e48ef9ae11f34efb2ff0b.pdf](http://media.wix.com/ugd/f01257_178469dfca6e48ef9ae11f34efb2ff0b.pdf)

<sup>9</sup> ACCC Issues Paper, p 4, para 1.2. <https://www.accc.gov.au/system/files/Comms%20Market%20Study%20-%20Issues%20Paper%20-%20September%202016.pdf>

trends is that it will be extremely difficult, if not impossible, to create 'OTT' specific regulations because the definition of who is an OTT is becoming increasingly more complex.

DIGI believes that there is a symbiotic relationship between the providers of digital services and telecommunications network operators, in which both sets of providers and their respective end-users benefit from the delivery of new and innovative online services. As digital services continue to grow and evolve, consumer connectivity demand increases.

It follows that digital services propel growth in broadband access subscriber numbers and hardware device development. This helps drive telecommunication service provider revenues, and in turn telecommunications infrastructure build-out. One example of this is Deloitte's analysis of *The Economic Impact of Facebook*. In this report, Deloitte identified "connectivity effects" as one aspect of the economic impact through Facebook-motivated internet use and purchases of devices. Specifically, Deloitte found:

"Facebook-enabled economic impact of connectivity estimated in this study is captured by internet plan providers and local retailers of devices. As Facebook does not sell either of these products or services, the effects are accrued entirely by the members of its ecosystem."<sup>10</sup>

Despite this mutually beneficial relationship, digital services and telecommunication services are fundamentally different in a variety of ways. Digital services are technically different, consumer expectations and behaviours are different and the market dynamics for the provision of online services is highly competitive. Consumers do not want or expect digital services to provide them with precisely the same functionality as traditional voice and messaging services, nor do they expect to enter into formal exclusive subscriber contracts for digital services.

In addition, consumers have many competitive OTT options. Consumers typically use a variety of OTT apps because switching is as easy and fast as clicking on an app icon. The average consumer, for example, has 20-30 apps on their phone.<sup>11</sup>

By contrast, consumers tend to employ a single option for a wireline network-based voice service and a single option for a wireless voice service. The typical consumer does not order wireline services from multiple local network-based carriers at once nor do most people carry multiple mobile phones from different carriers. Because switching between OTT apps on a call-by-call basis is so much easier and faster than switching between traditional network-based telephone companies, there's no compelling need for interoperability among providers of OTT services as there is for interoperability among providers of traditional telephone services.

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<sup>10</sup> *Facebook's Global Economic Impact: a report for Facebook, Deloitte, 2015* p.10  
<http://www2.deloitte.com/uk/en/pages/technology-media-and-telecommunications/articles/the-global-economic-impact-of-facebook.html>

<sup>11</sup> Statista.com based on data from the Google *Our Mobile Planet Report, 2013*.  
<https://www.statista.com/chart/1435/top-10-countries-by-app-usage/>

Given the symbiosis between OTT services and network operators, the interests of the consumer are advanced when these marketplaces are efficient; consumers want, and pay for, broadband services because of what they can do with it, while the availability of over-the-top services enhances the value that consumers attribute to broadband services. As such, existing regulations such as portability and interoperability requirements may be difficult to apply to a service that merely uses ‘telephone numbers’ as identifiers, but that does not route calls over a public switched telephone network. For example, with respect to data portability, people can already download contacts, backup message history, and send chat history attached to an email. With respect to the lack of interoperability, it is important to consider that consumers who wish to use a different digital service do not need to switch providers and port their means of identity in order to do so, but instead can adopt multiple services on the same handset and use multiple forms of identity. Consumer communications apps are offered for free or at a low price, and are easily downloadable. And consumers are not bound to a specific term or spend.<sup>12</sup>

In addition, the rationale behind the regulatory regime applied to traditional telecommunications operators does not apply to digital services. In particular, we note that:

- telecommunications operators own and control underlying broadband access infrastructure;
- there are few market players;
- there are high barriers to market entry; and
- it is costly and difficult for customers to switch between services.

By contrast, online service providers do not control underlying broadband access points, there are many providers and the digital market environment of online service providers is highly dynamic and fiercely competitive. Apps like Messenger, WhatsApp, Skype, Snapchat, Viber, LINE, weChat, Telegram, iMessage, Allo, and many others face competition by a high number of players, driven by relative low barriers to entry and expansion, no or very low switching costs on the user side, and widespread multi-homing behaviour. The digital services market is also subject to continuous new entrants and fierce service and feature competition.

The Issues Paper also asks about the competitive impact of bundling digital services with telecommunications services. As one analysis observes:

“Bundling of services, including broadband, messaging and video could potentially make switching more difficult for consumers. Next generation communications tend to counteract the impact of bundling by allowing consumers to pick and mix the applications they want.”<sup>13</sup>

We note that there is potential for traditional telecommunications network operators to leverage their control of the physical network but also, potentially, their control over customer

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<sup>12</sup> *Brian Williamson*, ‘Next generation communications & the level playing field - what should be done?’ (June 2016) Communications Chamber.

<sup>13</sup> *Id.*, page 23.

billing channels and directory services, their ability to bundle or pre-load applications, and their ability to secure advantageous channels and arrangements with device manufacturers. The larger network operators also benefit from the incumbency advantages they continue to enjoy as a result of inherited customer bases.

Conversely, digital service providers are dependent on the traditional telecommunications providers' underlying network(s) for securing access to their users, users are entirely dependent on their telecom provider for the broadband connectivity that enables them to access online services. Consequently, to maintain a competitive and dynamic digital ecosystem, rules may need to be considered that ensure that

- I. providers of online services that are unaffiliated with traditional telecommunications providers are not foreclosed or otherwise competitively disadvantaged;
- II. the digital ecosystem continues to generate robustly competitive, innovative, feature-rich online services; and
- III. consumers continue to enjoy freedom of choice in selecting their online services.

Ultimately ensuring an efficient marketplace is often the most effective and dynamic method of advancing the interests of consumers. There is symbiosis among digital services providers and internet service providers. Consumers want, and pay for, broadband services because of what they can do with it. The availability of over-the-top services enhances the value that consumers attribute to broadband services – they increase consumers' return on investment, so to speak. Greater consumer demand for broadband services facilitates greater investments in and improvements to broadband networks (including, in some cases, investments by OTT providers themselves) which enable yet more innovative applications for use on the networks.<sup>14</sup>

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<sup>14</sup> *Applications and Networks: The Chicken or the Egg, the Role of Digital Applications in Supporting investment and the European Economy*, WIK-Consult, March 2015.  
[http://www.wik.org/index.php?id=studiedetails&L=1&tx\\_ttnews%5BbackPid%5D=85&tx\\_ttnews%5Btt\\_news%5D=1702&cHash=6a5a758243c9018024f69050a5c75299](http://www.wik.org/index.php?id=studiedetails&L=1&tx_ttnews%5BbackPid%5D=85&tx_ttnews%5Btt_news%5D=1702&cHash=6a5a758243c9018024f69050a5c75299)