



Statement of Issues

4 May 2017

APN Outdoor Group Limited – proposed merger with oOh!media Limited

Purpose

1. APN Outdoor Group Limited (**APN**) and oOh!media Limited (**OML**) propose to merge (the **proposed merger**).
2. This Statement of Issues:
 - gives the Australian Competition and Consumer Commission's (**ACCC's**) preliminary views on competition issues arising from the proposed merger
 - identifies areas of further inquiry
 - invites interested parties to submit comments and information to assist our assessment of the issues.

Overview of ACCC's preliminary views

3. The legal test which the ACCC applies in considering the proposed merger is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
4. The ACCC divides its preliminary views into three categories: 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In relation to this matter, the ACCC has three 'issues of concern'.

Issues of concern

Reduction in competition in the supply of out-of-home advertising services

5. The ACCC's preliminary view is that the proposed merger is likely to result in a substantial lessening of competition in the supply of out-of-home (**OOH**) advertising services (also known as "outdoor" advertising services) in Australia.

6. The proposed merger would result in the consolidation of the number one and number two providers of OOH advertising services (**OOH providers**) in Australia and create a market leader with over 50 per cent share of the OOH advertising market¹ and a substantial share in three of the four main OOH categories, as defined by the Outdoor Media Association (**OMA**)²: roadside billboards; roadside other; transport/transit; and retail/lifestyle/other (the exception being 'roadside other').
7. The ACCC does not consider that media agencies are likely to begin supplying OOH advertising services themselves, as they lack any strong incentive to do so given that advertising costs are generally passed onto their customers.
8. The ACCC's preliminary view is that the proposed merger is likely to result in higher prices for OOH advertising and/or reduced service levels, and possibly less innovation.

Increase in barriers to entry and expansion

9. A combined APO-OML would be the only OOH provider with a presence in each of the OOH advertising categories. As noted above, the ACCC understands that a combined APO-OML would have a substantial share in three of the four main OOH categories.
10. It is the ACCC's preliminary view that this unrivalled presence would enable a combined APO-OML to offer OOH advertising services across multiple categories, forming a 'one-stop shop' for many advertisers/media agencies who buy advertising services in more than one category. Such bundling is likely to increase barriers to entry/expansion for other players.

Reduction in competition for the leasing of OOH advertising sites

11. The ACCC is also of the preliminary view that the proposed merger is likely to result in a substantial lessening of competition for OOH advertising sites as a result of the loss of the competitive tension that currently exists between APO and OML in site negotiations and tender processes. This is likely to harm site owners through lower site rent.

Making a submission

12. The ACCC is seeking submissions from interested parties, particularly on the following key issues:
 - whether the price of OOH advertising services is likely to increase as a result of the proposed merger
 - the likelihood of new entry or expansion in OOH advertising services in Australia
 - the impact of the proposed merger on landlords/site owners.

¹ A reference to market share in this Statement of Issues means market share by value (revenue) unless otherwise specified.

² The OMA is the peak body for the OOH advertising industry.

13. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
14. Interested parties should provide submissions by no later than 5pm on **19 May 2017**. Responses may be emailed to mergers@acc.gov.au with the title: *Submission re: APO/OML - attention Madeleine Houghton/John Rouw*. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Madeleine Houghton on (02) 9230 3816 or John Rouw on (03) 9290 1402.
15. The ACCC anticipates making a final decision on **6 July 2017**; however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at www.acc.gov.au/mergersregister.

Confidentiality of submissions

16. The ACCC will not publish submissions regarding the proposed merger. The ACCC will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. The ACCC's [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

About ACCC 'Statements of Issues'

17. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
18. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Timeline

16 December 2016	ACCC commenced review under the Merger Process Guidelines.
30 January 2017	Closing date for submissions from interested parties. ACCC assessing information provided during market inquiries and consulting with merger parties on any relevant issues or concerns arising.
1 February 2017	ACCC requested further information from the merger parties.

13 February 2017	ACCC received further information from the merger parties.
17 February 2017	Former provisional date for announcement of findings (9 March 2017) delayed (to 16 March 2017), given the time required for merger parties to respond to 1 February information request, and to allow the ACCC to consider the information provided.
10 March 2017	The merger parties requested that the ACCC delay the timeline to allow them to provide further information to the ACCC. Former provisional decision date of 16 March 2017 delayed (to 4 May 2017).
4 May 2017	ACCC releases Statement of Issues
19 May 2017	Deadline for submissions from interested parties in response to this Statement of Issues
6 July 2017	Anticipated date for ACCC final decision

The parties

APO

19. APO is an OOH provider listed on the Australian Securities Exchange (**ASX**) (following an initial public offering (**IPO**) in 2014). APO offers advertising services from OOH sites in Australia and New Zealand including billboards, transit advertising, and advertising at airport and rail sites (see Industry Background section below for more information on the different OOH categories). APO also owns Catch, a product designed to connect advertisers with transit commuters through their mobile devices by providing free Wi-Fi and content access, and GSP Print, which provides printing services that are predominantly used by APO.
20. APO was established in 2004 through the combination of Cody, Australian Posters and Buspak, which at the time were owned by APN News & Media Limited. APO is no longer associated with APN News & Media Limited, which separately owns and operates Adshel (a competing OOH provider).
21. The ACCC understands that APO has approximately 20 to 30 per cent of OOH advertising revenue in Australia. According to its 2014 ASX Prospectus (**APO Prospectus**),³ APO occupies leading positions in its core areas of focus. APO states that it is:
 - number-one in billboards in Australia and New Zealand (by number of panels) in major cities and metropolitan regions
 - number-one in large-format digital billboards in Australia and New Zealand (by number of panels)

³ APN Outdoor Group Limited Prospectus, *Initial public offering of ordinary shares*, 27 October 2014, page 10, <http://www.asx.com.au/asxpdf/20141111/pdf/42tmjj3bq3yr54.pdf>.

- the number-one provider of rail advertising on roadside locations and cross track across Australia and New Zealand (by number of panels)
- in a leading position in airports across Australia and New Zealand.

22. APO states that these leading positions are underpinned by:

- an extensive portfolio of geographically diverse, premium high-traffic capital city-based sites
- long-term contractual relationships with landlords and asset owners who sell advertising space/sites
- scale and strength of existing operations across OOH categories.

23. Additionally, APO states that it has been a market leader in the digitisation of OOH advertising. APO describes itself as having the first mover advantage in large-format digital advertising opportunities, with a strong pipeline of potential conversions (of static sites) and new sites throughout Australia.

OML

24. OML is an OOH provider listed on the ASX (also following an IPO in 2014). OML offers advertising services at OOH sites in Australia and New Zealand including billboards, retail advertising, location-based advertising (including within buildings, universities, pubs, cafés and fitness centres) and advertising at airport sites. OML also owns and operates the content production business Junkee Media, and Cactus Imaging which provides printing services. The ACCC understands that OML has more than 30 per cent of OOH advertising revenue in Australia.

25. In its 2014 ASX Prospectus (**OML Prospectus**)⁴, OML states that it:

- is the overall market leader by share of revenue in the supply of OOH advertising services
- holds the number-one position in the supply of OOH roadside services by number of sites. OML's national roadside billboard portfolio offers advertisers a diverse broadcast advertising mix, with OML operating over 4,000 national sites which reach the vast majority of Australia's adult population on a weekly basis
- holds the number-one position in the supply of OOH advertising services in airports, with approximately 70 per cent share by revenue. OML's 'Fly' division provides coverage across all domestic airport terminals in Australia. OML is the exclusive provider to Qantas Lounges
- holds the number-one position in the retail category with greater than 70 per cent share by revenue. OML is the market leader in the relatively high-

⁴ oOh!media Limited Prospectus, *Initial Public Offering of Ordinary Shares*, 5 December 2014, <http://investors.oohmedia.com.au/FormBuilder/Resource/module/E4ATEEIQ0kSnc4yT1XnXrg/docs/reports/oOh!media-Prospectus.pdf>.

growth retail and place (cafés, office buildings, universities etc.) categories, which grew 19.1 per cent in FY2014 compared with the OOH industry average growth of 7.8 per cent

- has the market leading position in the OOH categories which provide advertisers with the highest return on investment (**ROI**).⁵
26. OML states that its portfolio includes an extensive range of long-term OOH advertising sites with limited re-contracting risk each year. As at 31 August 2014:
- OML's Road division (excluding represented sites⁶) had an average initial lease period of 10 years, with 61 per cent of the portfolio due to mature post CY2018 and 10 per cent or less of leases/licences due for renewal between CY2014-18
 - 55 per cent of OML's Retail portfolio was not due to mature until post-2018
 - OML had no single contract renewal during the following five years that would materially impact earnings if not renewed.⁷
27. Like APO, OML has invested significantly in digitisation of its OOH inventory in the past five years. APO and OML are considered to be the industry leaders in the investment into and supply of digital OOH advertising opportunities in Australia.

Industry background

28. There are a variety of platforms available to advertisers to advertise their products, including television (free-to-air and 'pay TV'), print (such as newspapers and magazines) and online/digital. They may also seek to achieve publicity through being featured in news and social media. The supply of advertising platforms to advertisers has gone through a number of changes in recent years, in particular with the decline of print media and the growth in digital/online media, such as Google and Facebook.
29. OOH advertising is an advertising platform that reaches consumers on the move or in particular environments. OOH advertising opportunities are diverse, ranging from very large high impact banners and large-format billboards on the side of roads, to advertising on bus shelters, in stations, on trains, taxis and buses, at leisure centres, in public toilets and in shopping malls and supermarkets.
30. Different market participants divide OOH advertising into categories in different ways, but they are broadly consistent.
31. For example, OML classifies its operations and offerings as follows:

⁵ OML Prospectus, pages 12 and 19.

⁶ As set out at page 45 of the OML Prospectus, owned sites are those where OML holds the master lease/licence to the site and generally owns the physical infrastructure. Represented sites are those where OML acts as the sales representative on behalf of the party that either owns the site or holds the master lease/licence.

⁷ OML Prospectus, page 14.

- 'Road' – large format roadside billboards
- 'Retail' – sites located in retail precincts such as shopping centres and supermarkets
- 'Fly' – sites in airport terminals and lounges
- 'Locate by oOh!' – sites in high dwell time environments such as CBD office buildings, cafés, pubs, universities, gyms and sports centres.⁸

32. APO defines its key formats as:

- digital billboards
- static roadside billboards
- transit (bus and tram) advertising
- rail (train and station) advertising
- airport advertising.⁹

33. The OMA, refers to four different categories of OOH advertising:

- roadside billboards (large and small-format billboards)
- roadside - other (this includes bus/tram shelters, kiosks, phone booths, mobile billboards and public toilets, and is also referred to as 'street furniture')
- transport/transit (this includes train externals, railway stations, bus interchanges, bus/tram internals and airport internals and externals (although 'airports' are sometimes viewed as a distinct category))
- retail/lifestyle/other (this includes shopping centres, malls, pubs and cafés, medical centres, petrol stations, public toilets and convenience stores).

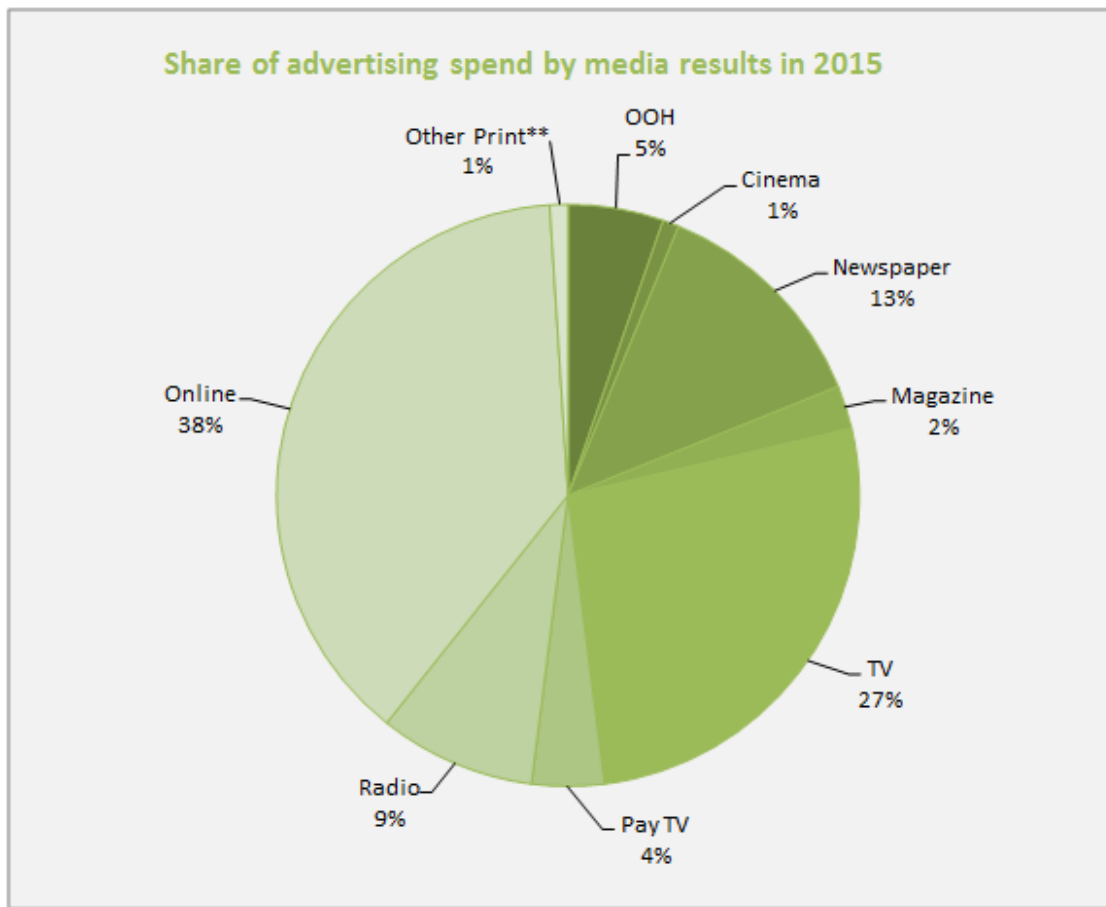
34. The ACCC will refer to the OMA's classification in the rest of this Statement of Issues.

35. According to the Commercial Economic Advisory Service of Australia (**CEASA**), OOH advertising represents approximately 5.3 per cent of total advertising industry spend in Australia, as shown in **Figure 1** below.

⁸ OML Website, Investors, the Company, viewed 2 May 2017, http://investors.oohmedia.com.au/Investor-Centre/?page=Home&_ga=1.92088028.730520369.1481025380.

⁹ APO Website, About Us, What we do, viewed 2 May 2017, <http://www.apnoutdoor.com.au/about-us/what-we-do>.

Figure 1: Total advertising expenditure in main media in 2015

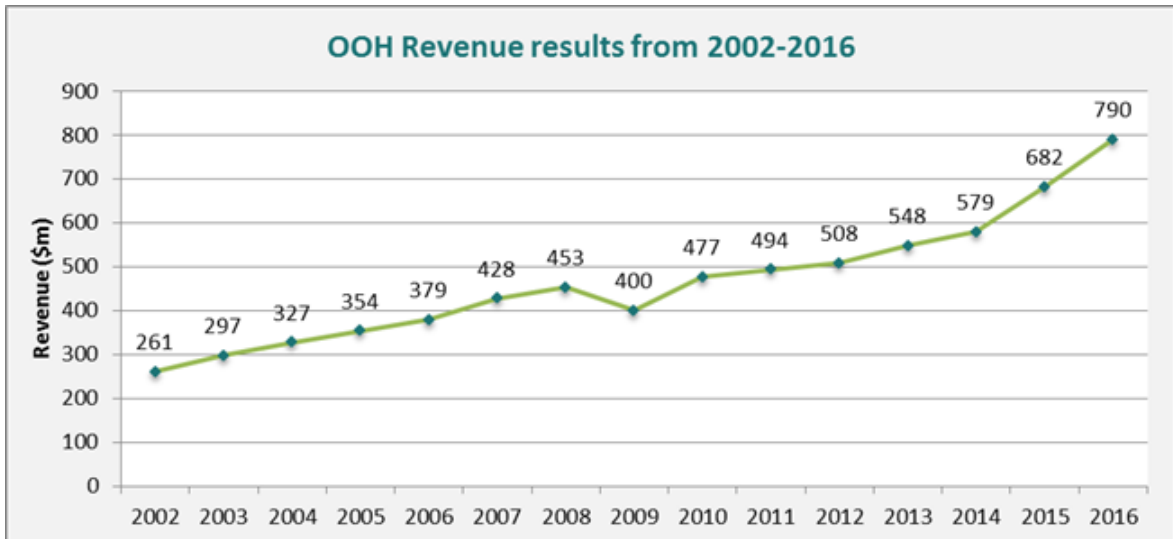


Source data: OMA and CEASA (excluding classified and directories)¹⁰
**Other print includes business and rural publications

¹⁰ OMA Industry Performance, Economic, viewed 2 May 2017, <http://oma.org.au/facts-and-figures/industry-performance>.

36. As shown in **Figure 2** below, 2016 was the seventh consecutive year of growth in OOH advertising, with revenue of \$790 million, a more than 15 per cent increase on the previous year.

Figure 2: OOH advertising revenue, 2002-2016



Source data: OMA, from figures reported to OMA by market participants¹¹

37. The reach of OOH has also increased, with the overall audience for OOH advertising increasing for the sixth consecutive year since records began, according to the OOH industry's measurement system Measurement of Outdoor Visibility and Exposure (**MOVE**), with 2016 data showing overall audience growth of 2.8 per cent.¹²

OOH advertising supply chain

38. OOH providers act as intermediaries between advertisers/media agencies and site owners. The sites are the means by which to reach the ultimate viewers (consumers) of OOH advertising. The main OOH providers in Australia and their estimated shares of OOH advertising are set out in **Table 1** below.

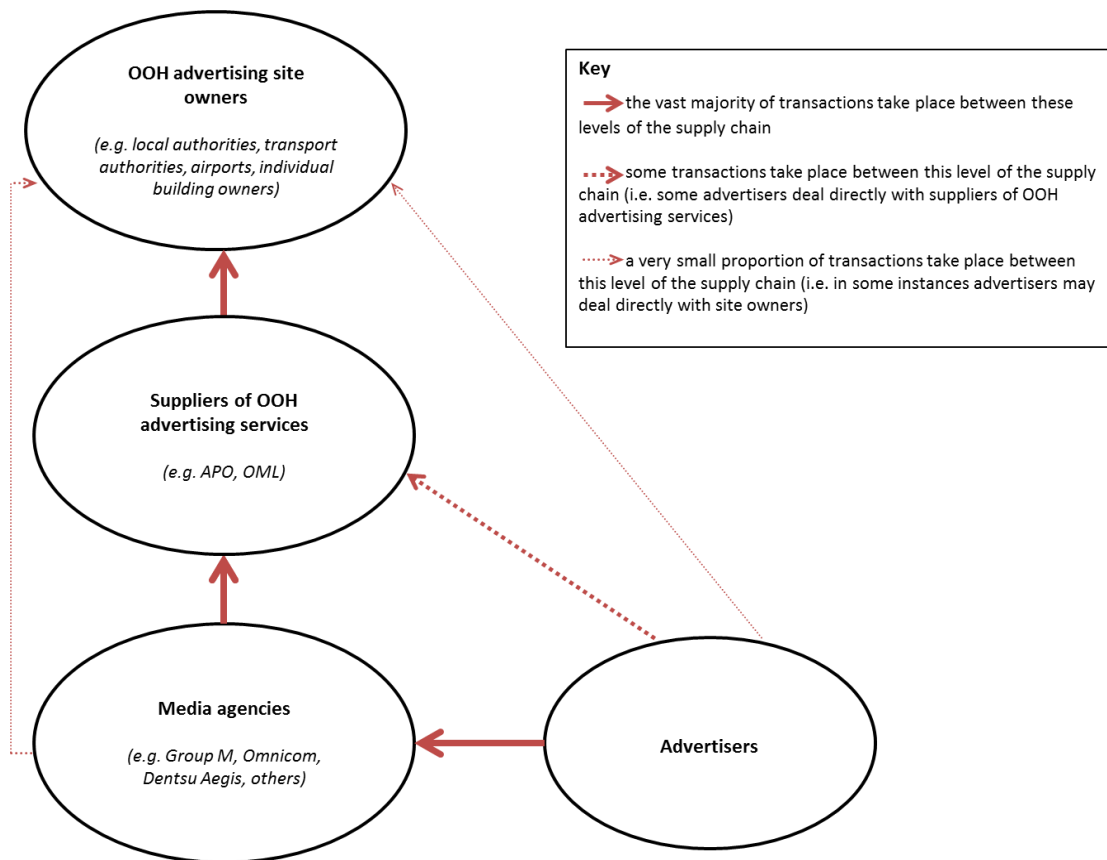
¹¹ OMA Industry Performance, Revenue Results, viewed 2 May 2017, <http://oma.org.au/facts-and-figures/industry-performance>. The OMA states on its website that it generates performance reporting for the OOH industry through the compilation of revenue results and share of advertising spend for its members, which comprise 90 per cent of the industry. It notes that the 2014 figures have been adjusted to reflect changes in OMA membership, as well as a minor adjustment due to over-reporting.

¹² MOVE Website, MOVE 2016 Data Update, viewed 2 May 2017, <http://moveoutdoor.com.au/know/2016-data-update>.

Table 1: OOH providers' estimated market shares by revenue

OOH provider	Estimated market share range (by revenue)
APO	20-30%
OML	30-35%
Combined APO-OML	50-65%
Adshel	10-15%
JCDecaux	5-10%
QMS	5-10%
Other	5-10%

Figure 3: OOH supply chain



Advertisers

39. Advertisers are businesses that buy advertising services to advertise their products/services; they are the ultimate customers of OOH providers. Purchasers of OOH advertising vary widely in terms of size and experience. The largest buyers include Federal and State Governments and large national and international corporations (for example, Telstra, Vodafone, ANZ, Apple and Coca-Cola). In Australia, most advertising services are purchased through media agencies – see below.

Media agencies

40. Media or advertising agencies are contracted by advertisers to research, plan and buy advertising space for advertising campaigns. They prepare a strategy for allocating an advertising campaign budget to various media channels, which is subsequently approved by their advertiser client. The ACCC understands that around 80 per cent of OOH advertising spend in Australia is channelled through the top five media agency groups – Dentsu Aegis, GroupM, Omnicom Media Group, Publicis Media and Universal McCann.
41. As a result, for OOH providers, the key channel to advertisers is through media agencies. For example, OML's Prospectus states that in FY2013 approximately 87% of OML's media revenue was generated through media agencies.¹³

Site owners

42. Site owners are the landlords that own sites used for OOH advertising. They enter into contracts (generally leases or licences) with OOH providers which grant OOH providers the right to use the sites in return for payment of rents to the site owners (either fixed rents, variable rents expressed as a percentage of advertising sales or a combination of both).
43. These rights are obtained either through bilateral negotiations (for smaller, single property site owners) or through formal tender processes (for site owners with multiple sites – such as shopping centre operators, rail networks and local authorities).
44. In general, site owners and advertisers/media agencies do not deal with each other directly, due mainly to the fact that advertisers and media agencies value a comprehensive, convenient national OOH provider, and dealing directly with individual site owners would greatly increase transaction costs. A notable exception is the Scentre Group (Westfield), which operates its own in-house retail advertising services business, BrandSpace (the ability of site owners to bypass OOH providers is explored further below from paragraphs 91 to 100).

Evolution of digital technologies in OOH advertising

45. OOH advertising can generally be classified as either 'static' (or 'classic') – essentially a printed poster – or digital – essentially a screen with changing images. The digitisation of OOH advertising has been a key contributor to revenue growth in the industry over the past five years; digital billboards have been the fastest growing area in OOH during this period. Digital technologies present numerous industry revenue opportunities, including: area
 - increased yield: greater yield from highly-trafficked sites with digital technology allowing for multiple advertisers per minute, time-of-day advertising and contextual advertising opportunities
 - increased addressable market: increased ability to access time-sensitive advertising spend such as 'sale' or 'limited time' offers (for example, retailers holding short-term sales promotions)

¹³ OML Prospectus, page 60.

- increased engagement and interactivity: digital advertising networks in the right environments provide advertisers with additional engagement opportunities, including interactive touch screens and mobile integration, allowing advertisers to customise their messages to a specific location, time of day, or special event.

Regulation of OOH advertising

46. Regulation of OOH advertising is focused principally on sites and development approvals, including regulations concerning advertising structures.

Development approval for new sites - roadside locations

47. The approval process for a new outdoor advertising site in roadside locations is regulated by various levels and agencies of government, with location, aesthetic and environmental impact, road safety, heritage and content requirements being major variables during the planning of and approval for a new site.
48. It can take many years to secure approvals; however, once approved, permits are typically issued in most states on a perpetual basis and further protected by 'Existing Use Rights' legislation.¹⁴ However, some local government areas limit approvals before re-application to a maximum of 15 years. The site-approval process and the duration of permits act somewhat to entrench the incumbent site operator.
49. OOH providers typically hold multi-year contracts with local councils, state and federal governments and transit operators for the exclusive right to display advertising on their sites.

Development approval for new sites - other locations

50. Site placement in internal environments such as airports, shopping centres, supermarkets, and place-based categories (for example, cafés, universities, pubs, indoor social and sports centres) is by agreement with the property owners, and generally no council permits are required.

Market definition

Relevant markets

51. Consistent with previous ACCC reviews,¹⁵ the ACCC's preliminary view is that the relevant markets for assessing the potential effects on competition of the proposed merger are national markets for:

¹⁴ 'Existing Use Rights' legislation refers to legislation that preserves the use of property rights where a certain use of property was initially lawful but becomes prohibited under a new planning regime. If the current use has previously been legally permitted, it may continue. See, for example, Fact Sheet on Existing User Rights, NSW Government, viewed 2 May 2017, <http://www.armidale.nsw.gov.au/sites/armidale/files/public/images/documents/armidale/Planning%20and%20Dev%20docs/Fact%20Sheets/fact%20sheet%20-%20existing%20use%20rights.pdf>.

¹⁵ ACCC, 2012 Review of *Outdoor Media Operations Pty Ltd - proposed acquisition of EYE Corp Pty Ltd*. See further <http://registers.accc.gov.au/content/index.phtml/itemId/1079598/fromItemId/751043>.

- a. the supply of OOH advertising services
- b. the leasing of OOH advertising sites from landlords.

Product market

52. The ACCC's starting point for delineating the relevant markets in which to assess the competitive effects of the proposed merger involves identifying the products actually or potentially supplied by the parties. The ACCC then considers what other products constitute sufficiently close substitutes to provide a significant source of constraint on the merged firm.

The supply of OOH advertising services

53. The ACCC has considered whether the relevant product market in which to assess the competitive impact of the proposed merger is a broad advertising market, or a market for OOH advertising.
54. In determining the relevant product market, the ACCC has considered the extent to which OOH advertising is substitutable for advertising services in other channels.
55. The ACCC's preliminary view is that other advertising services, such as television and online, are not sufficiently close substitutes for OOH advertising services to exert strong constraints on OOH providers.
56. Market inquiries and other information indicate that advertisers generally acquire advertising solutions across different advertising media. The ACCC understands that advertisers often use different advertising media, including OOH, side-by-side in an advertising campaign. Advertisers who require OOH advertising typically also use other advertising media to varying degrees depending on the focus of the advertising campaign they are running, the product or service and the intended audience.
57. The ACCC understands that OOH advertising offers special characteristics that are not easily replicated by advertising in other media channels. The special characteristics of OOH advertising include:¹⁶
 - its 'high impact' nature: OOH achieves good 'cut-through' because it tends to stand by itself and not be cluttered or grouped together with other advertisements, as is the case with other advertising media
 - greater control over placement of advertising, which is important for branding. The ACCC notes that the importance of this to advertisers has been highlighted recently by the boycott by a number of significant global and Australian advertisers of Google online digital advertising due to concerns about the lack of control over the placement of advertisements¹⁷

¹⁶ See, for example, OMA, Strengths of Out-Of-Home (OOH), viewed 2 May 2017, <http://www.oma.org.au/using-ooh/strengths-of-ooh>.

¹⁷ In that regard, a spokesperson for Nestlé is reported as stating that "*Globally, Nestlé has decided to pause our media buying with Google/YouTube and Google Display Network pending reassurances from them on actions to address the problem of brand advertising appearing on inappropriate websites*". See,

- OOH advertising is particularly suitable for highly visual, limited information advertising, able both to broadcast widely and capture a large audience
- OOH advertising can be locally targeted (for example, a billboard advertising a fast-food outlet 2 km ahead)
- OOH advertising has dominant visibility for its audience in their immediate location and is involuntary, in the sense that it is 'inescapable' and cannot be 'switched off', unlike many alternative advertising channels, such as broadcast media (for example, television)
- advertisers are able to use OOH advertising to tailor their campaigns more precisely, either to achieve greater scale (in terms of total audience reach) or to adopt a more selective approach to target customers in specific regions and/or demographics.

58. The OMA has recently commissioned research which suggests that when people are out of home they are significantly more alert compared with screen time at home. Its research states that "*alertness is known to lead to ad recall and action*".¹⁸
59. The merger parties have themselves publicly emphasised the special characteristics of OOH advertising.
60. For example, the APO Prospectus states that "*management believes that there are a number of characteristics that make outdoor advertising a unique medium that delivers benefits to advertisers*", going on to list a number of such benefits, including "*targeted advertising*" and "*captive audience and repeat exposure*". It also refers to OOH advertising as being "*complementary to other advertising mediums*".¹⁹
61. Similarly, the OML Prospectus summarises the differentiating characteristics of OOH as an advertising medium as follows: "*Out Of Home companies with broad and diverse advertising platforms, such as oOh!media, have the differentiated ability to both broadcast widely and capture a large audience through the use of certain media (e.g. roadside billboards), and be highly focused and address a targeted audience due to its location-based nature (e.g. outside supermarkets) which facilitates one-on-one engagement with the consumer.*"²⁰

for example, articles in the Australian Financial Review on 26 March 2017, "*Holden and Kia pull ads from YouTube as Google boycott widens*" (<http://www.afr.com/business/media-and-marketing/advertising/holden-and-kia-pull-ads-from-youtube-as-google-boycott-widens-20170326-gv6lad>); 27 March 2017, "*Vodafone and Nestle pull Australian Google advertisements*" (<http://www.afr.com/business/media-and-marketing/advertising/vodafone-and-nestle-pull-australian-google-advertisements-20170327-gv77uj>); 28 March 2017, "*Telstra pulls YouTube advertising as Australian boycott picks up*" (<http://www.afr.com/business/media-and-marketing/advertising/telstra-pulls-youtube-advertising-as-australian-boycott-picks-up-20170328-gv893a>).

¹⁸ OMA and Hoop, Get the Primal Advantage with Out Of Home, page 9, viewed 2 May 2017, <http://www.theprimaladvantage.com.au/OOH%20-%20The%20Primal%20Advantage.pdf>. See also: <http://www.theprimaladvantage.com.au/>.

¹⁹ APO Prospectus, page 31.

²⁰ OML Prospectus, page 30.

62. The year-on-year revenue growth in OOH advertising described above (at paragraph 36) appears to suggest that it is of increasing importance to advertisers. In announcing its interim results for the six months to June 2016, APO noted that “*the Australian Outdoor media market continued to exhibit superior growth and was up 18% on the prior corresponding period.*”²¹ APO and OML have both reported substantial revenue growth of 10 per cent and 20.1 per cent respectively for the 2016 calendar year.²²
63. The growth of OOH advertising as a percentage of total advertising spend also appears to suggest its increasing importance to advertisers. The OMA’s figures show that as a percentage of total advertising spend OOH has increased steadily from 4.6 per cent in 2011 to 5.3 per cent in 2015, while, with the exception of online advertising, advertising spend on most other advertising media has declined.²³ This can be seen in **Table 2** below. The growth in online advertising has come at the expense of newspaper, magazine and television advertising, and has not led to falls in OOH advertising.

Table 2: Share of advertising spend

Share of advertising spend by media results (%)					
	2011	2012	2013	2014*	2015
OOH	4.6	4.6	4.8	5.1	5.3
Cinema	0.7	0.8	0.9	0.8	0.9
Newspaper	22.1	18.9	16.6	15.0	12.7
Magazine	5.6	4.4	3.5	3.0	2.4
TV	33.1	31.8	30.6	29.3	26.7
Pay TV	3.7	4.0	4.4	4.1	4.0
Radio	9.4	9.3	9.0	9.0	8.7
Online	19.0	24.5	28.4	32.9	38.3
Other Print**	1.8	1.7	1.8	0.8	1.0

Source: OMA²⁴ and CEASA (excluding classified and directories)

*2014 figures have been adjusted to reflect changes in online media reporting methodology

**Other print includes business and rural publications

²¹ APO Interim Results Announcement, Year to 30 June 2016, page 2,

http://investors.apnoutdoorcorporate.com/FormBuilder/_Resource/_module/H8ozxbRXd0mvH1pjbvB8PEQ/file/APO-2016-HY-results.pdf.

²² APO Annual Report 2016, page 6, <http://investors.apnoutdoorcorporate.com/Investor-Centre/?page=Annual-Reports>;

OML Annual Report 2016, page 5,

http://investors.oohmedia.com.au/FormBuilder/_Resource/_module/E4ATEEIQ0kSnc4yT1XnXrg/docs/reports/annual/oOh!-Annual-Report-2016.pdf.

²³ Although the ACCC notes that recent Standard Media Index data suggests that media agency spend on digital in Australia slipped 1.7 per cent in February 2017 compared with the same time in 2016 – see Australian Financial Review article of 7 April 2017, “*How Google and Facebook’s trillion-dollar duopoly strangles the internet*”, <http://www.afr.com/business/media-and-marketing/advertising/how-google-and-facebooks-trillion-dollar-duopoly-strangles-the-internet-20170328-gv7zxi>.

²⁴ OMA, Industry Performance, viewed 2 May 2017, <http://oma.org.au/facts-and-figures/industry-performance>.

64. OML has put this growth down to OOH signage “typically being ‘unmissable’ to passers-by”, in contrast to “the audience fragmentation believed to be impacting FTA [free-to-air] TV, radio and other forms of media which can be turned off, skipped, or fast-forwarded by consumers as new alternative technologies emerge”.²⁵
65. In the light of the above, the ACCC’s preliminary view is that OOH has special characteristics that distinguish it from other advertising media such that advertisers and media agencies will continue to require OOH advertising even if OOH providers were to raise prices by five to 10 per cent. Therefore, the ACCC’s preliminary view is that the supply of OOH advertising services forms a separate relevant product market for the purposes of the ACCC’s assessment of the proposed merger.
66. The ACCC notes that distinct concerns have been raised in relation to particular OOH categories. The ACCC acknowledges that OOH categories are differentiated and that many advertising campaigns use a variety of OOH categories depending on the particular focus of the campaign, the product or service and the intended audience. While different OOH categories may be substitutes for many advertising campaigns, the ACCC understands that there are circumstances where this is not the case and that the particular characteristics of a particular OOH category are such that other OOH categories are not close substitutes for it.
67. Given the concerns set out below in relation to the broader market for the supply of OOH advertising services, the ACCC is of the preliminary view that it is unnecessary to consider whether there may be separate relevant markets for one or more individual categories of OOH advertising. However, the ACCC is continuing to explore this issue.

The leasing of OOH advertising sites from landlords

68. The ACCC also considers that there is a relevant market for the leasing of OOH advertising sites from landlords. From the perspective of a landlord, when it is leasing/licensing its advertising site(s), it is restricted to choosing between OOH providers (such as OML and APO). OOH providers compete for sites by offering rents. The ACCC considers that it is appropriate to consider this as a separate relevant market.

Geographic market

69. The ACCC is of the preliminary view that the appropriate geographic market in which to consider the competitive effects of the proposed merger is likely to be a national market.
70. The ACCC understands that the major media agencies (which, as stated above, account for approximately 80 per cent of OOH advertising spend in Australia) generally seek a national package of OOH advertising services.

²⁵ OML Prospectus, page 12. The OML Prospectus also describes OOH, at page 30, as “the fastest growing traditional media in the advertising industry, with expenditure increasing at a [compound annual growth rate] of 8.0% over the four years between 2009 and 2013. This is more than triple the rate of certain traditional media sectors, such as FTA TV and radio, which grew at a [compound annual growth rate] of 2.6% and 2.3%, respectively.”

71. The ACCC also understands that OOH advertising campaigns are generally run on a national basis. The main advertisers, which tend to be large national or multinational corporations with a national presence, seek to reach consumers with a nation-wide campaign message.
72. Although OOH providers can be state-based, many use on-seller or resale arrangements with larger OOH providers (primarily APO and OML) in order to have national representation and attract advertising spend from major national/international OOH advertisers or media agencies.
73. The ACCC acknowledges that advertisers often need to reach consumers in a particular city or part of a city, metropolitan area or part of a metropolitan area, or local or regional area, and also seek to reach certain demographic categories of consumers within a city or metropolitan area. Similarly, the precise geographic location of a particular billboard can also be important to advertisers. For example, in the case of directional advertising (where an advertiser would use a roadside billboard to direct customers to its store), advertisers would need a specific billboard in close proximity to its store.
74. In that light, the ACCC is still considering whether there may also be narrower local and/or regional markets for the supply of OOH advertising services, in addition to a national market.
75. Similar reasoning applies in relation to the market for leasing OOH sites from landlords. OOH providers seek to establish a national inventory of sites and competition for sites is not limited to OOH providers located in the specific location of those sites. Therefore, the ACCC is also of the preliminary view that this market is likely to be national in scope.

The ACCC invites comments from market participants on its preliminary views as to the definition of the relevant markets. In particular, market participants may wish to comment on:

- The extent to which advertisers/media agencies would viably switch or threaten to switch to advertising services in other media channels in the event of a five to 10 per cent price rise in the cost of OOH advertising services, and, if so, which advertising services.
- The extent to which there may be separate, narrower markets for individual categories of OOH advertising, or narrower local and/or regional markets for the supply of OOH advertising services, in addition to a national market.
- Whether changes in relative prices have been a factor in the growth of OOH advertising as a proportion of total advertising spending. For example, has the price of OOH advertising changed relative to other advertising media? If so, has this had any effect on the use of OOH or other advertising media? Is there any data available on this issue?

Issue of concern: reduction in competition in the supply of OOH advertising services

76. The ACCC's preliminary view is that the proposed merger is likely to result in a substantial lessening of competition in the supply of OOH advertising services in Australia.
77. The proposed merger would result in the horizontal aggregation of the two largest OOH providers and create a market leader with over 50 per cent of OOH advertising in Australia. The merged firm would be the only OOH provider in Australia with a presence in all OOH categories. The ACCC is concerned that the significant degree of concentration that would result from the proposed merger, and the removal of the competition that currently exists between APO and OML as each other's closest competitors, may lead to an increase in prices or a reduction in service levels/quality and possibly less innovation, harming advertisers.

Market concentration, removal of competitive tension and creation of a 'one-stop shop'

78. The supply of OOH advertising services in Australia is characterised by a small number of large providers and a number of much smaller providers. The APO Prospectus states that the four largest providers by revenue – APO, OML, JCDecaux and Adshel – accounted for approximately 80 per cent of the market.²⁶ The ACCC understands that the merger parties are the two main providers of OOH advertising services in Australia, each with a substantial market share.
79. The proposed merger would further increase market concentration. Based on data published by the OMA²⁷ and data provided by market participants, a combined APO-OML would have a share of between 50 and 65 per cent of OOH advertising in Australia. In addition, that data also suggests that the merged firm would have a share of greater than 50 per cent in three of the four main categories of OOH advertising identified above at paragraph 33 (the exception being 'roadside – other', a category in which neither merger party has significant operations). Market feedback suggests the merged firm would have: between 70 and 85 per cent of large-format billboard advertising services, with more than 90 per cent of large-format billboards in metropolitan Sydney and Melbourne and more than 90 per cent coverage of all major arterial roads in Australian capital cities; and a near-monopoly position in the supply of OOH advertising services to airports in Australia, with more than 90 per cent of that category.²⁸
80. The next largest competitors would have a significantly smaller share of OOH advertising services than a combined APO-OML, and generally focus only on specific OOH categories. The third and fourth largest competitors are Adshel, with an estimated 10 to 15 per cent share of OOH advertising services, and JCDecaux, with an estimated five to 10 per cent share. The ACCC understands

²⁶ APO Prospectus, pages 7 and 27.

²⁷ The ACCC notes, as stated in footnote 11 above, that the OMA's reporting for the OOH industry comprises 90 per cent of the industry.

²⁸ The ACCC understands that in the last six years, the merger parties have been the only providers of OOH advertising services to win or retain tenders by the major airports in Australia.

that both have a focus on the 'roadside - other' category (see categorisation at paragraph 33 above), and are primarily active in 'street furniture', such as advertising on bus shelters. The rest of the market is very fragmented, with participants holding very small market shares.

81. The OML Prospectus notes that: "*APN Outdoor is the major competitor to oOh!media in the Roadside (Billboards) and Airports segments; and JCDecaux and Adshel primarily operate within the Roadside (Others) and Transit segments, where oOh!media has a minimal presence.*"²⁹
82. The APO Prospectus notes that "*Of the four major outdoor advertising operators in Australia, JCDecaux and Adshel are predominantly focused on street furniture, a category in which APN Outdoor does not currently operate. Smaller operators typically focus on niche formats, in single geographies or regional markets, or do not have a multi-format offering.*"³⁰
83. The ACCC understands that advertisers/media agencies have benefited from competition between APO and OML. Currently, advertisers and media agencies are able to play one merger party off against the other when seeking OOH advertising services. Market participants have expressed concerns that this competitive tension would be lost as a result of the proposed merger and that the merged firm would have the ability to increase prices, reduce service levels and/or possibly reduce innovation (although the ACCC acknowledges that a combined APO-OML would still have incentives to innovate given the additional revenue opportunities it creates – see paragraph 45 above).
84. In addition, a combined APO-OML would be the only OOH provider present across all OOH categories. This would enable it to make a comprehensive, cross-category offering that could not be matched by any other OOH provider.

Barriers to entry and expansion

85. The ACCC's preliminary view is that the threat of entry or expansion in the supply of OOH advertising services is unlikely to constrain a price increase or a decrease in service/quality levels or innovation imposed by a combined APO-OML.
86. The information before the ACCC indicates that there are significant barriers to new entry and to expansion by existing competitors in the supply of OOH advertising services. Barriers appear to be higher in relation to some OOH categories than others and in certain geographic areas, in particular in the Sydney and Melbourne metropolitan areas. For example, market participants have cited the example of large-format billboards in and around Sydney's central business district, referring in particular to the stringent development and planning-approval processes that apply.³¹

²⁹ OML Prospectus, page 34.

³⁰ APO Prospectus, page 7.

³¹ The ACCC understands that a sufficient number of attractive OOH sites in these Sydney and Melbourne locations will always be crucial to any national advertising campaign involving OOH advertising, due to population density.

87. While entry on a small scale may be feasible (there are some examples of smaller regional OOH providers with a limited number of sites and generally in a single OOH category³²), there appear to be substantial barriers to expanding beyond a regional base. These include:

- **Sites are limited and become available irregularly:** agreements for OOH sites come up for renewal sporadically, not necessarily offering the scale required for new entry. In addition, many OOH advertising sites are not put out to tender but are privately negotiated when they come up for renewal. The ACCC notes in that regard that the OML Prospectus observes that: *“A large proportion of leases/licences are confidentially negotiated between landowners and Out Of Home advertising providers. In oOh!media’s experience, many of these are typically not put out to tender ahead of renewal. In regional Australia, leases/licences are typically individually negotiated and therefore less susceptible to competitive tenders.”*³³
- **Long term leases/licence agreements with options to renew:** OOH sites are often subject to long-term lease or licence agreements. Initial terms are often between five and 10 years, with options to renew, and in some cases even longer. For example, the ACCC understands that APO’s contracts with key transit site owners, Yarra Trams and Sydney Trains, were entered into for 10 and 15-plus years respectively.³⁴

The ACCC notes that the APO Prospectus states that APO’s top 10 contracts were expected to account for approximately 44 per cent of its FY2014 revenue, and that these contractual relationships *“have been held for greater than 10 years.”*³⁵ Similarly, the OML Prospectus states that *“typically, leases/licences are set for an initial term of five to 10 years with renewal options for another five or more years.”*³⁶

- **Incumbency advantages in renegotiating agreements:** even when existing sites become available to the market, the incumbent operator typically has a significant advantage in retaining those sites. This is because the incumbent operator knows when the agreement is up for renewal and is able to negotiate its renewal well in advance. APO has stated that *“key contractual relationships have been typically held for over 10 years and renewed several times.”*³⁷

In addition, as regards billboards, the ACCC understands that the vast majority of potential billboard sites, in particular in metropolitan areas, are already occupied by existing billboard infrastructure, and that in many cases the incumbent OOH provider owns the existing billboard infrastructure. The ACCC understands that this creates a risk for a new OOH provider, as to knock down and replace the existing infrastructure is

³² Although the ACCC understands that many smaller OOH providers are represented by larger providers in order to attract better advertising opportunities (see footnote 6 above).

³³ OML Prospectus, page 38.

³⁴ APO Prospectus, page 46.

³⁵ APO Prospectus, page 8.

³⁶ OML Prospectus, page 45.

³⁷ APO Prospectus, page 46.

not only costly, but it also often requires fresh planning approval, which can be difficult to obtain, even if a billboard has been located there in the past (see below). The need to reconstruct the infrastructure would also stop a site owner from earning revenue during the reconstruction period, creating a further incentive to remain with the incumbent OOH provider.

- **Lengthy and difficult regulatory approval processes:** OOH is regulated on several levels (for example, by city, state and road authorities), and thus many approvals may be needed (see paragraphs 46 to 49 above).
 - a. For example, the ACCC understands that planning laws place stringent restrictions on the creation of new billboard sites, and applicants must adhere to strict requirements relating to location, environmental impact and safety. The ACCC understands that obtaining the necessary approvals for the establishment of new billboard sites imposes a significant barrier to entry/expansion, particularly in metropolitan areas.
 - b. Even when planning approval is available, the process of negotiation with owners of potential sites and obtaining necessary approvals from regulatory authorities is time-consuming and costly. In that regard, OML has observed that the “*new site approval process and ongoing permits act to somewhat entrench the incumbent site operator*”,³⁸ and that “*oOh!media’s sound competitive position is premised on the long and complex regulatory approval process, scarcity of sites and landlord diversity, which make it relatively difficult for new entrants to develop substantial national scale in the industry*”.³⁹
- **Previous experience and reputation:** the ACCC understands that government tenders for OOH advertising services generally stipulate that applicants must be able to demonstrate previous experience in the relevant OOH advertising category in Australia; and that some require potential bidders to demonstrate previous experience in Australia in a specific category. This makes it difficult for a smaller competitor (or new entrant) to win a government tender as a means of expanding their market share or entering the market with minimum efficient scale.
- **The importance of data insights and metrics:** the ACCC understands that OOH advertising also benefits from increasingly detailed consumer data and analytical capabilities.⁴⁰ OOH providers with scale and scope, such as APO and OML, have sophisticated data on audiences for each particular OOH asset, and are therefore able to provide advertising customers with highly tailored OOH campaign solutions that are supported by empirically measurable audience reach metrics.

88. These barriers to expansion also mean that timely entry on a scale sufficient to constrain the merged firm is unlikely. The additional scale and scope that the merged firm will attain (larger inventory across a greater number of formats)

³⁸ OML Prospectus, page 39.

³⁹ OML Prospectus, page 45.

⁴⁰ OMA, Audience Measurement, viewed 2 May 2017, <http://www.oma.org.au/audience-measurement>.

further raises barriers to entry and expansion by amplifying the barriers discussed above (see also below, paragraphs 101 to 106).

89. The merged firm's greater scale and scope will provide it with competitive advantages that smaller current and potential rivals will not readily be able to overcome. Although scope and scale may provide some short term benefits, particularly for large advertisers and media agencies since they allow an OOH provider to offer better coverage in terms of total audience reach for an advertising campaign, the ACCC is concerned that these advantages will ultimately weaken competitive constraints and protect the merged firm's enhanced market power.
90. In that light, the ACCC's preliminary view is that it is unlikely that any new entry or expansion by existing competitors would be sufficient or timely enough to prevent a combined APO-OML from profitably increasing prices.

Countervailing power: threat of advertiser bypass

91. Countervailing power exists when buyers have special characteristics that enable them to credibly threaten to bypass the merged firm, such as by vertically integrating into the upstream market, establishing importing operations or sponsoring new entry, such that this constrains any attempted increase in market power by a supplier.⁴¹
92. Countervailing power is more than the ability of one large buyer to negotiate favourable terms and price relative to other buyers. A significant proportion of customers must be shielded from the effects of market power if countervailing power is to prevent a substantial lessening of competition in the relevant market(s).
93. The ACCC's market inquiries in relation to the proposed merger have indicated that the threat of bypass is limited: it appears unlikely that a large advertiser or media agency would bypass a combined APO-OML and deal directly with site owners in response to a price increase or a decrease in the level of service/quality in the supply of OOH advertising services.
94. This is principally because ownership of individual OOH sites is highly fragmented and individual site owners generally lack the scale of inventory or experience needed to satisfy an advertiser's/media agency's requirements for an advertising campaign, in terms of reach and frequency of audience. As noted above, the top five media agencies account for approximately 80 per cent of OOH advertising spend and typically run national advertising campaigns.
95. In addition, OOH providers such as OML and APO provide a range of services that facilitate access by advertisers/media agencies to OOH advertising sites. Advertisers and media agencies are generally time-poor and rely on these intermediaries for a range of services, including maintenance and servicing of sites, which they could not easily carry out themselves (market participants have indicated that the management and development of OOH sites is highly specialised).

⁴¹ See ACCC Merger Guidelines, paras. 7.48-7.51, page 47, <https://www.accc.gov.au/system/files/Merger%20guidelines.pdf>.

96. In that light, there are significant incentives for advertisers/media agencies to deal with an OOH provider that can provide a comprehensive, national, multi-OOH category response to an OOH advertising brief – a ‘one-stop shop’ for all or most of their OOH advertising needs – without having to negotiate directly with many individual site owners. Advertisers/media agencies are unlikely to deal directly with potentially thousands of site owners (which would increase transaction costs).
97. The ACCC understands that there may be some limited exceptions to this. If a site owner is very large (in terms of the number of advertisements that can be placed), strategically important to advertisers, and has the capability to maintain its own infrastructure and negotiate deals directly with advertisers/media agencies, then it may have some ability to deal directly with advertisers/media agencies.
98. For example, Scentre Group (Westfield), which owns multiple shopping centres across Australia, deals directly with advertisers/media agencies through its BrandSpace division. Similarly, the ACCC understands that some large airport owners/operators may be in a position to deal directly with advertisers/media agencies or sponsor new entry. This is essentially because:
- large airport owners/operators tend to own all of the advertising sites within an airport and often (at least in the case of the larger airports) have in-house sales and marketing teams which could deal directly with advertisers, and
 - airport owners/operators already have relationships with advertisers because many of them are also tenants in the airport.
99. However, the ACCC considers that only a very limited number of site owners have the scale, resources, experience or inclination to deal directly with advertisers/media agencies.
100. The ACCC does not consider that advertisers or media agencies are likely to vertically integrate and begin supplying OOH advertising services themselves or to sponsor new entry in response to an increase in prices/decrease in quality/service levels by a combined APO-OML. In particular, media agencies lack any strong incentive to do so, given that advertising costs are generally passed onto their customers.

The ACCC invites comments from market participants as to whether the proposed merger would remove a key source of competition in the supply of OOH advertising services in Australia. Market participants may wish to comment in particular on the following:

- The extent to which APO and OML have competed in the past and compete currently.
- The extent to which a combined APO-OML would be constrained by other providers of OOH advertising services.
- The extent to which existing providers of OOH advertising services could expand or new entrants could enter OOH advertising services in response to an attempt by the merged firm to increase prices or decrease quality/service levels.

- The minimum efficient scale and scope a new entrant would require in order to compete with a combined APO-OML in the supply of OOH advertising services.
- The extent to which the sporadic nature of tenders/contract renewals for OOH advertising affects a new entrant's ability to reach efficient scale and scope in a timely manner.
- Any examples of recent attempts at entry or expansion and whether any such attempts have been successful or not, and why.
- Whether other OOH providers have grown organically or via acquisition of smaller players, and the extent to which such growth could be repeated in the future.
- How the proposed merger would change the potential for entry and/or expansion.
- The extent to which advertisers/media agencies could deal directly with site owners or otherwise exercise countervailing power.

Issue of concern: increase in barriers to entry and expansion

101. The ACCC's preliminary view is that the scale and scope of a combined APO-OML would enable it to offer OOH advertising services across multiple categories in ways that would make it harder for single-category OOH providers to enter and expand. This is likely to increase barriers to entry/expansion and result in a substantial lessening of competition.
102. While currently the merger parties are not individually present in all OOH categories, as described above a combined APO-OML would be the only OOH provider with a presence in each of the OOH advertising categories; in addition, it would have a substantial share in three of the four main OOH categories.
103. The merged firm would be able to make a comprehensive, cross-category bundled offering that could not be matched by any other OOH provider.
104. The ACCC acknowledges that bundling is a common practice and does not necessarily raise competition concerns. Furthermore, the ACCC understands that the merger parties already use a bundled sales approach across the categories in which they are present and across locations. These bundles often include significant discounts compared with the cost of purchasing categories separately.
105. However, the ACCC is concerned that the proposed merger would enable the merged firm to offer bundles of OOH advertising services across OOH categories in ways that smaller, single-category OOH providers (actual and potential) could not easily replicate. The merged firm may be able to leverage its position in categories where it is dominant to limit competition from competitors in other categories. This is a particular concern given that there appear to be economies of scale and scope for OOH providers.

106. As a result, existing OOH competitors may be substantially hindered in their ability to compete with a combined APO-OML, and new entrants deterred or prevented from entering.

The ACCC welcomes comments in relation to a combined APO-OML's ability and incentive to supply a bundle of OOH advertising services in ways that may raise barriers to entry/expansion or otherwise lessen competition. In particular, market participants may wish to comment on:

- How important it is for advertisers/media agencies to be able to access a comprehensive, national portfolio of OOH advertising services ('one-stop shop').
- Whether there is a particular bundle or combination of OOH advertising services that is particularly attractive to a large number of media agencies/advertisers.
- How the combined APO-OML could bundle its OOH services in ways that lessen competition and raise barriers to entry and expansion.
- The extent to which spare capacity is or could be included in an offer for OOH advertising services.
- To what extent it is possible for OOH providers who do not currently offer a bundle of services to assemble a competing bundle or to compete with bundled offerings.
- The effect the inability to offer a bundle has on the ability of OOH providers to compete in the relevant market.

Issue of concern: reduction in competition for the leasing of OOH advertising sites

107. The ACCC's preliminary view is that the proposed merger is likely to substantially lessen competition for the leasing (or licensing) of OOH advertising sites through the removal of the competitive tension that currently exists between APO and OML in acquiring sites.
108. In an effectively competitive market for OOH sites, the threat of losing sites to competitors spurs OOH providers to present high quality offers to site owners (in terms of price, service and innovation). As set out above, the proposed merger will significantly increase concentration in OOH advertising services in Australia.
109. Some site owners of OOH advertising have expressed concerns that they would have very limited viable alternatives to a combined APO-OML. These concerns have come from both large public and private site owners (that is, those tendering out a group of OOH advertising sites at once) and small private site owners (those who are seeking to lease a small number of sites or just a single site).
110. The ACCC is concerned that the proposed merger will give a combined APO-OML the ability to reduce the remuneration (that is, rent or licence fees) paid to site owners, or to impose more onerous conditions in leases/licences.

Barriers to entry and expansion

111. Many of the same barriers to entry and expansion described above in relation to the market for the supply of OOH advertising services apply to the market for leasing OOH advertising sites.
112. In particular, market feedback suggests that there are significant barriers to competing effectively in tender processes for OOH advertising sites, particularly because of the tender requirements often imposed. The ACCC understands, for example, that new entrants and smaller competitors lack the resources and expertise to meet the applicant criteria in the majority of tenders run by large state transit organisations. In addition, the scale and scope of a combined APO-OML and the attractiveness of advertising opportunities it would be able to offer is likely to result in site owners – in particular larger site owners – being more likely to lease sites to the merged firm.
113. In that light, the ACCC's preliminary view is that it is unlikely that any new entry or expansion by existing competitors would be sufficient or timely enough to sufficiently constrain a combined APO-OML.

Countervailing power: threat of site owner bypass

114. The ability of landlords to bypass OOH providers and sell their advertising space directly to advertising/media agencies was explored in paragraphs 91 to 100 above. As set out in those paragraphs, except for a very limited number of landlords, the ACCC is of the preliminary view that most site owners do not have the resources, experience or inclination to deal directly with advertisers/media agencies.

The ACCC invites further comments on its preliminary views in relation to possible constraints on a combined APO-OML in the acquisition of OOH advertising sites. In particular, market participants may wish to comment on:

- The feasibility of the owner of one site or a number of sites dealing directly in an efficient way with advertisers.
- Any examples of site owners (other than BrandSpace) entering or contemplating entering the direct supply of OOH advertising services, particularly in the supply of large-format billboard sites.
- Whether large site owners would consider sponsoring entry or expansion in response to a decrease in rents or service levels imposed by a combined APO-OML.

ACCC's future steps

115. As noted above, the ACCC is now seeking submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions are to be received by the ACCC no later than **19 May 2017** and should be e-mailed to mergers@acc.gov.au.
116. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.

117. The ACCC intends to announce its final view publicly by **6 July 2017**. However, the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement to explain its final view.