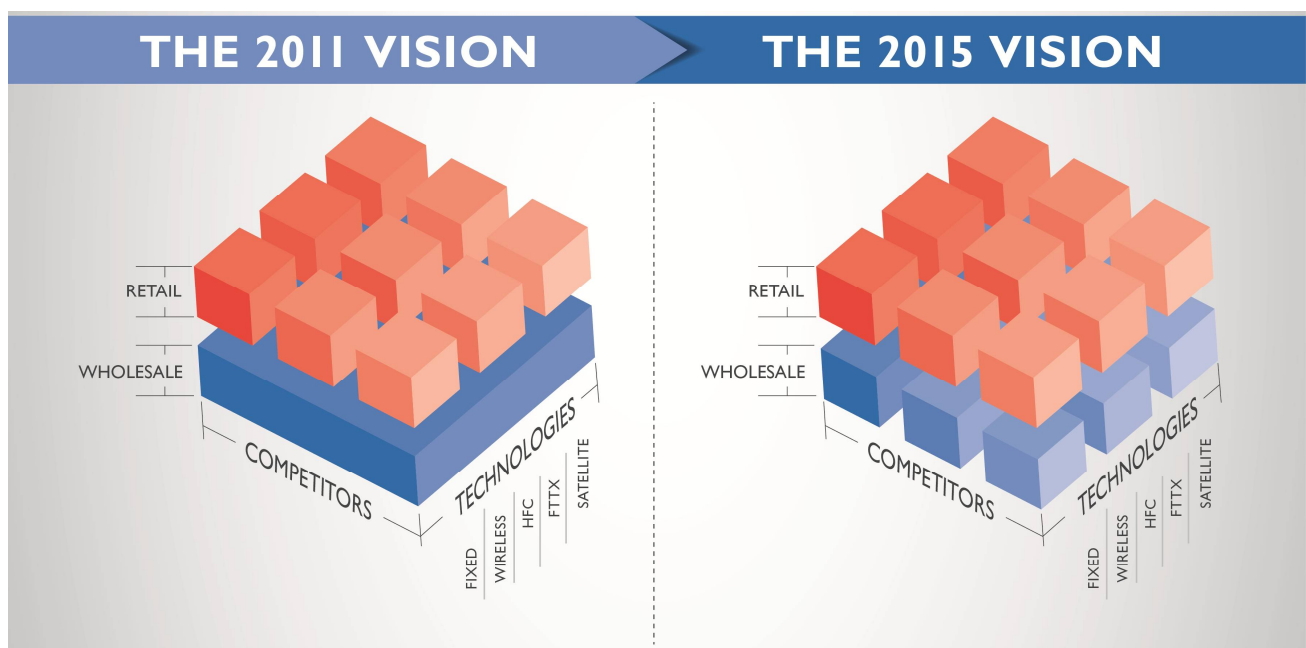


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COMPETITION & REGULATORY UPDATE

MULTIPLE COMPETITION MIX

The Australian government released a package of telecommunications amendments that apparently embrace competition at a number of levels. In the short term, they allow competition between infrastructure providers and facilitate competition between retailers. In the longer term, they envisage greater competition between infrastructure technologies. In this publication we discuss each area of competition, and whether vertical separation promotes competition overall.



WHOLESALE COMPETITION

In March 2011, NBN Co was created by legislation to construct a wholesale only monopoly national fixed line network to provide high speed broadband throughout Australia at uniform national prices.

As Michael Creighton wrote, "Life finds a way." In September 2013, TPG Telecom announced plans to compete. It intended to connect 500,000 units by extending its fibre network to the basement of apartment buildings in capital cities. The Australian Competition and Consumer Commission (ACCC) confirmed in September 2014 that these extensions would not be subject to the open access requirements for the new superfast networks because they fell within an exception in the *Telecommunications Act* allowing network owners to extend existing infrastructure by up to one kilometre.

In December 2014, the Australian Government fundamentally changed course. Wholesale competition would be encouraged. NBN Co would compete with other infrastructure providers. Uniform prices would be replaced with price caps allowing NBN Co to engage in price competition.

The difficulty remains as Australia's sweeping plains but the universal coverage objective still rides. The government announced there will be an infrastructure provider of last resort, likely to be NBN Co in most areas, saddled with the obligation to provide services in uneconomic areas. The cost of providing broadband to uneconomic areas will be funded by broadband users in cities through a levy imposed on broadband network owners. This will make explicit the cost that was previously hidden in the uniform national price. The amount of the levy will be determined by the Bureau of Communications Research. The Vertigan Review estimated the cost of providing high speed broadband to rural and remote Australia at \$3.6 billion more than the willingness to pay for such services.

TECHNOLOGY BASED COMPETITION

NBN was initially tasked with connecting at least 90 percent of Australian premises with fibre to the premises (FTTP).

In 2014, the new Australian government fundamentally altered that objective.

First, it announced in April that the network would no longer be primarily FTTP but instead comprise a "multi-technology mix." NBN Co was free to determine the most efficient technology for each region in order to achieve download data rates of at least 50 megabits per second (Mbps) to 90 percent of premises. In general, this is more than double the current typical maximum speeds of ADSL2+. Technologies, however, continue to evolve and where infrastructure competition is accessible, faster internet speeds may yet be seen, particularly in cities. By way of example only, and appreciating that many factors contribute to overall internet speed, Google Fiber is offering 1000 Mbps in some American cities.

Then, in December, the government foreshadowed that flexibility should be maintained to provide for the potential future disaggregation of NBN Co into separate businesses based on access technology - although to date no such separation has yet been required. The Government stated that there will be a requirement for NBN Co to maintain separate accounts for each of its access technologies (Fixed wireless, HFC, FTTx, Satellite and Transit Networks). If these government statements are converted into the regulatory environment - something which cannot, in the current political climate, be assured - the importance to the government of wholesale competition as an ideological foundation would be clear.

RETAIL COMPETITION FACILITATED BY VERTICAL SEPARATION

In response to TPG Telecom's plans to extend its fibre network to apartment buildings, the government imposed new carrier licence conditions which initially impose open access obligations and then, from 1 July 2015, require entities providing broadband services to residential customers to separate their wholesale and retail companies (including wholly separate directors and employees).

The intention is to facilitate retail competition on a level playing field by preventing vertical integration. The government has taken this step because it is not satisfied that the access regime set out in Part XIC of the *Competition and Consumer Act 2010* (Cth) addresses concerns that vertically integrated wholesalers will favour their own retail

operations. The history of litigation between Telstra and the ACCC, supports that position.

It remains to be seen whether the promotion of retail competition will optimise competition overall.

Some industries, including telecommunications, exhibit significant economic efficiencies from vertical integration. Telecommunications companies face rapidly changing consumer demands, high investment costs and significant asset specificity and complexity. Each of these factors suggests efficiencies from vertical integration. Overseas, vertical unbundling has created its own difficulties. The United Kingdom experienced deceleration of broadband line growth in the three years following BT's functional separation in 2005. Electricity is another industry where vertical integration can increase efficiency. The National Electricity Market in Australia has recently seen a spate of mergers between retailers and generators.

The carrier licence conditions will promote retail competition. Time will tell the extent to which the restrictions, and associated regulatory uncertainty, may chill infrastructure based competition. By January 2015, TPG Telecom had temporarily removed its fibre to the basement product from sale.

MORE INFORMATION

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