

OPTUS

**Fair Share Contribution
Submission**

September 2023

EXECUTIVE SUMMARY

1. In the past several years, Australia has witnessed the emergence and growth of large Digital Content Providers, better known “streamers”. The best-known examples are large gaming companies such as Epic games, content providers such as Netflix, YouTube, Disney, Amazon Prime, and the video content sharing platforms such as Facebook and Instagram and Tik Tok.
2. Their emergence has delivered considerable benefits for consumers in enabling Australians to engage with new digital content applications. But it has also brought huge disruption to other sectors of the economy.
3. The ACCC’s longstanding review into the impacts of digital platforms has demonstrated the market power they now hold and the negative impacts this can have on other businesses. In December 2021 ACCC Chairman Rod Sims noted that *“while offering many benefits to consumers, the digital platforms also present a range of challenges in terms of competition and consumer protection. Agencies around the world have identified significant harm to consumers and small businesses arising from the continuing growth and entrenched position of the large digital platforms”*.¹
4. An example is the impact on the traditional media market. Following a detailed review by the ACCC, the Australian government acted to address the market imbalance between the large digital players and the traditional media companies through the establishment of the media bargaining code.
5. The largest streamers have built highly profitable businesses in Australia. Google, for example, is reported to have received \$8.4 billion in revenue from Australia in 2022.² According to the ACCC, Meta collected around \$5 billion in advertising revenue across Facebook and Instagram in 2022.³ They have done this using telecommunications infrastructure to both connect with their customers and deliver their content to their customers.

The Challenge

6. Over the past five years traffic on telecommunications networks has increased five-fold. This growth has largely arisen from services provided by those providers such as streaming, video, messaging and gaming services. This exponential growth in traffic from these services has placed a massive strain on the communications infrastructure with the telcos having to make huge capital investment to meet this increasing demand. Up to 80 per cent of the peak network traffic relates to these content services.
7. The challenge for the telecommunications sector is that these streamers do not pay for their traffic to be carried over the telecommunications access infrastructure. The current situation is akin to car owners paying for all the costs of heavy goods vehicles on the roads. This creates an unfunded investment burden that potentially puts the sustainability of telecommunications investment at risk.

¹ [G7 Enforcers Summit of Competition Authorities discusses competition in digital markets | ACCC](#)

² <https://www.smh.com.au/technology/google-quietly-makes-billions-from-australia-as-twitter-hogs-headlines-20230502-p5d4wu.html>

³ ACCC, DPI6, p.10

8. The risks would have far reaching consequences for Australia's economic and social well-being. It would place many Government policy objectives for digital Australia – now regarded as an essential service – in danger.

Solution and Benefits

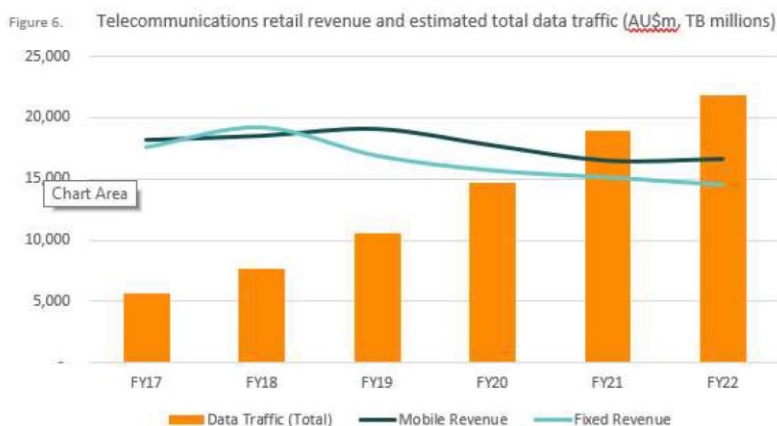
9. These risks can be addressed by government policy intervention to require nominated large streamers to make a fair contribution to the investment costs they create and from which they profit. This could be achieved through the establishment of regulated commercial arrangements or the establishment of a digital levy that is used to support ongoing investment.
10. Other countries are already acting – the UK, Spain, France and Switzerland have all implemented digital services taxes or levies. It is gaining momentum in further developed countries too.
11. Failure to act on this issue means a significant investment gap will open and Australia does not fulfill its digital potential and will lag other countries.
12. There are multiple ways in which the providers could make a fair share contribution: a per unit charge directly levied by telcos; negotiating commercial arrangements similar to the Media Bargaining Code, or a digital levy on streamers' revenue to directly support new telecommunications capacity.

WHY GOVERNMENT SHOULD BE CONCERNED AND ACT NOW?

13. Telecommunications providers are undeniably pivotal in the modern economy, assuming an ever-increasing significance in various facets of our modern lifestyles, given the profound reliance on connectivity. Currently, fixed broadband and mobile networks serves as a central point for a variety of activities, including everyday tasks, at-home learning, healthcare services, financial transactions, work-related activities, corporate meetings, information sharing, and entertainment.
14. Government has recognised the importance of critical technologies in its Critical Technologies Statement⁴. It noted that these technologies can impact Australia's national interest, including our:
 - Economic prosperity
 - National security; and
 - Social cohesion.
15. A resilient and sustainable communications sector is imperative to safeguard Australia's national security and safety. Recent unprecedented events, such as wildfires, floods, and the global pandemic, have starkly highlighted the indispensable requirement for multiple redundant networks. As we look to the future, the Australian Government's ambitious aspiration of establishing a leading digital economy by 2030 hinges on the establishment of a robust, competitive, and fundamentally strong communications sector.

⁴ <https://www.industry.gov.au/publications/critical-technologies-statement>

16. Venture Insights has undertaken a state of the industry review for Optus with the report published in June. The review confirms that *“the telecommunications industry is the backbone of the digital economy. It enables constant digital activity across supply chains and into businesses and homes. It is the platform for future growth of digital applications that drive productivity improvements across the Australian economy”*.
17. However, it has also illuminated some more sobering findings about the telecommunications sectors' overall financial health and sustainability.
 - The industry has been subject to significant price deflation. Whilst the overall consumer price index has risen 33% since June 2012, prices for telecommunications fell 25% over the same period.
 - Industry revenues have been in decline for a number of years.
 - Overall industry Return on Invested Capital (ROIC) has collapsed over the last five years and whilst it has improved slightly since the pandemic it is below cost of capital.
18. Several factors have played a role to this, notably the fierce competition within the sector, which has effectively kept prices low. Nevertheless, a significant challenge persists: the relentless surge in usage is met with limited monetisation opportunities for the industry, owing to the prevalence of fixed monthly pricing plans. The shift away from usage-based pricing, driven by consumer preferences and the desire to mitigate bill-related surprises, has been the industry's prevailing response. Since 2017, network traffic has increased fivefold, yet revenues have seen a downward trend.



19. The surge in Australian telecommunications network usage is chiefly fuelled by streamers, which represent up to 80% of peak period traffic. These companies rely on Australian consumers adopting higher-quality, high-speed broadband services, contingent upon ongoing investments by telecommunications providers. Notably, while some streaming services charge customers extra for improved stream quality (e.g. Ultra High Definition vs. Basic definition services), streamers do not contribute financially to the costs associated with the traffic carried by telecommunications providers on their behalf.
20. This creates a unique dilemma. All telecommunication providers must invest further to support the growth in traffic, but the commercial benefits of this investment are uncertain. Streamers determine the bandwidth capacity required to carry their traffic through decisions made on the type of compression technology they use. For example, the required bandwidth to deliver traffic using High Efficiency Video Coding (HEVC)

codec is around half of that required using Advanced Video Coding (AVC).⁵ Yet the streamers do not face the costs of their decisions, as the cost of creating this capacity lies primarily with the telecommunication providers. Streamers acquire additional revenue and profit through the provision of high bandwidth services, but communications providers incur additional costs and receive no additional revenue from either consumers or streamers to deliver these services.

21. This situation profoundly affects both industries. The telecommunications industry faces unparalleled financial challenges, while streamers enjoy robust profits. Essentially, streamers benefit significantly from a substantial cross-subsidy provided by the Australian communications sector and internet users, leading to an unsustainable imbalance that permeates the entire telecommunication ecosystem.



22. An emerging concern revolves around the capability of Australian telecommunication providers to sustain the required investment growth, given the prevailing industry revenue and returns. Any deficiency in investment would likely jeopardise Australia's capacity to fulfil the digital infrastructure needs essential for achieving our digital aspirations.
23. This situation is not unique to Australia – it is an issue that overseas operators have also identified. Vodafone has noted that industry returns across European markets have been below cost of capital for a decade with a resultant \$480 billion investment gap to achieving the European Union's digital agenda. European operators have highlighted that the absence of any contribution from streamers for the traffic they generate is directly contributing to the expected digital investment gap they have warned about. A report by Axon Partners for the European telcos has called on the EU to ensure that a small number of the very large digital providers contribute to the costs of the investment they are generating.⁶

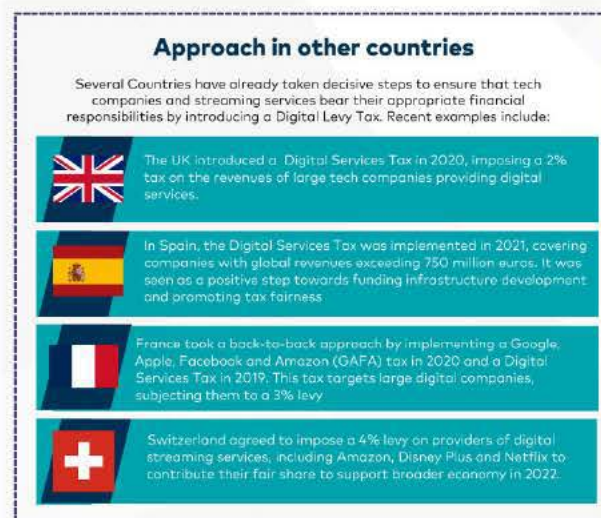
WHAT SHOULD BE DONE?

24. The dynamic nature of the digital landscape calls for modernised legislative and regulatory settings that can effectively address emerging challenges and opportunities. This is not an issue that can be solved by the market due to the significant imbalance in power between these large global organisations and the local telecommunications companies. Updating frameworks to keep pace with technological advancements and shifts in market power is crucial in ensuring a robust and adaptable digital ecosystem.

⁵ <https://www.synopi.com/bandwidth-required-for-hd-fhd-4k-video>;
<https://www.avaccess.com/blogs/guides/h264-vs-h265-difference>

⁶ <https://www.telefonica.com/en/wp-content/uploads/sites/5/2023/02/Axon.pdf>

25. streamers operate under unique digital business models that differ from traditional revenue streams. Optus considers there is a strong case for the leading streamers to make fair share contributions towards the costs of the access infrastructure investment costs they generate and from which they profit.
26. Encouraging their fair share contribution aligns with the evolving nature of the digital economy, recognising the need to accommodate and regulate these new forms of digital commerce.
27. Recently the EU Parliament backed a call for the establishment of a 'policy framework' where large traffic generators contribute fairly to the adequate funding of telecom network without prejudice to net neutrality. This builds on previous initiatives by various European that have already taken decisive steps to ensure that tech companies and streaming services bear their appropriate financial responsibilities by introducing a Digital Levy Tax.
28. Regulation to implement a fair share contribution could take a number of different forms.
29. Firstly, it could seek to implement commercial charging arrangements for streamers use of telecommunications infrastructure. This could take the form of either:
 - A per unit usage charge billed against traffic costs. This would be analogous to the existing interconnect charging arrangements that exists between telecommunications companies for use of each other's networks. This could be established by the ACCC; or
 - A negotiated settlement of costs between individual streamers and the individual telcos analogous to the Media Bargaining Code.
30. An alternative approach would be to set up a Digital Levy. The streamers could be required to pay a levy based on their annual revenue into an infrastructure fund. This fund could then be allocated to telecommunications companies based on their share of annual investments made in specified types of infrastructure. This would have the advantage of tying the fair share contribution directly infrastructure investment.
31. Absent a contribution from the streamers to the investment costs then any funding shortfall in investment could only be met through increases in broadband prices on all customers.



THE BENEFITS OF SUCH AN APPROACH ARE SUBSTANTIAL

32. There are considerable broader economic and community benefits from implementing a Fair Share Contribution on the large streamers.
33. In a report for Optus, global expert consultancy Competition Economists Group (CEG) examined the current arrangement and evaluated its effect on future investment needs. CEG conclude that the ability to recover costs efficiently from both consumer and content creators matters for two key reasons:

- It could result in higher investment across mobile and fixed broadband networks; and
- It could result in lower retail broadband prices for the majority of Australian consumers.

Increased investment benefits the Australian economy and communities

34. The additional revenue generated from a fair share contribution will help to promote industry sustainability by providing additional funding to future investment in digital infrastructure. Such investment is also likely to generate additional economic benefits such as higher levels of GDP and additional Jobs growth. The Axon report by European telecommunications providers estimate that an annual contribution to communications infrastructure by the leading OTTs would generate an additional \$117 billion dollars in GDP by 2025.
35. More advanced networks with greater coverage of fibre to the premise and 5G or 6G wireless services is also likely to speed up our shift to a digital economy. Analysis by the Business Council of Australia shows that Australia could be \$210 billion better off over the next 20 years if we speed up our shift to a digital economy.⁷
36. Increased investment is also likely help with addressing the digital divide. The revenue generated from a fair share contribution is most likely to be used to enhance digital infrastructure in remote and regional communities. Improved connectivity for our regions is likely to foster economic development, improve educational opportunities and reduce social disparities. Addressing the digital divide in this way can also unlock economic opportunities for individuals and communities. By ensuring equal access to digital infrastructure and resources, Australians from all backgrounds can participate in the digital economy, start online businesses, and access remote job opportunities.
37. Reflecting this, many Government digitalisation goals – including the aim to be a leading digital economy and society by 2030⁸; using digital technology to deliver \$100b in agricultural production⁹; having simple, secure and connected public services for all people and business¹⁰; and being the most cyber secure nation by 2030¹¹ - are dependent on telecommunications access infrastructure being rolled out everywhere and capable of supporting high speeds.

More equitable pricing

38. By ensuring streamers contribute their fair share, the government can also help to protect consumers from higher data costs, promote affordable pricing, and ensures Australians have access to a diverse range of digital services. Any contributions from streamers towards capacity costs may help to improve price equity.
39. Currently there is limited differentiation in pricing across broadband plans and high-users of broadband services are effectively being subsidised by low-users of broadband services. Any contribution from the streamers will increase the flexibility for

⁷ https://www.bca.com.au/_210_billion_boost_by_driving_the_digital_economy

⁸ PM&C, 2021, Digital Economy Strategy 2030

⁹ Department of Agriculture, Water and the Environment: Ag2030 (2022)

¹⁰ Department of Finance: Data and Digital Government Strategy (2023)

¹¹ Department of Home Affairs: Australian Cyber Security Strategy 2023-2030 (2022)

telecommunications providers to lower prices of their services, especially for low users of broadband services.

40. CEG's analysis goes further and suggests that a contribution from the streamers is likely to result in lower retail broadband prices for the majority of Australian consumers.

Promoting more resilient and secure networks

41. There are growing expectations and obligation on telecommunication providers to ensure that networks are safe, secure and resilient and to address threats to customers from abuse of services such as scams, fraud and misinformation. Telecommunications providers have made substantial investments in recent years to identify and block scam messages traversing their networks. The Minister for Communications recently noted that over one billion scams have been blocked in the last year as a result actions taken by the telecommunications industry to disrupt scam activity, including over 256 million scam calls and 85 million scam texts in the last quarter alone¹².
42. A fair share contribution by the streamers will enable them to play their part in contributing to the investment required by telecommunication providers to meet these growing expectations and help to keep Australia's telecommunications network safe, secure and resilient.

Global leadership in developing regulatory settings for a modern digital economy.

43. An examination of the issues raised in this submission would also provide an opportunity for Australia to continue to take a leadership position in the development of new policies and regulation that are fit for purpose for the modern digital economy. It would directly build on work undertaken by the ACCC and current parliamentary committees to examine impacts of the large streamers on the Australian economy and wider society.
44. Such a move would also be consistent with developments overseas. Recently the EU Parliament backed a call for the establishment of a 'policy framework' where large traffic generators contribute fairly to the adequate funding of telecommunications networks without prejudice to net neutrality.

¹² [Over one billion telco scams blocked in the last year | Ministers for the Department of Infrastructure](#)