

Demand Aggregation in the Telecommunications Environment



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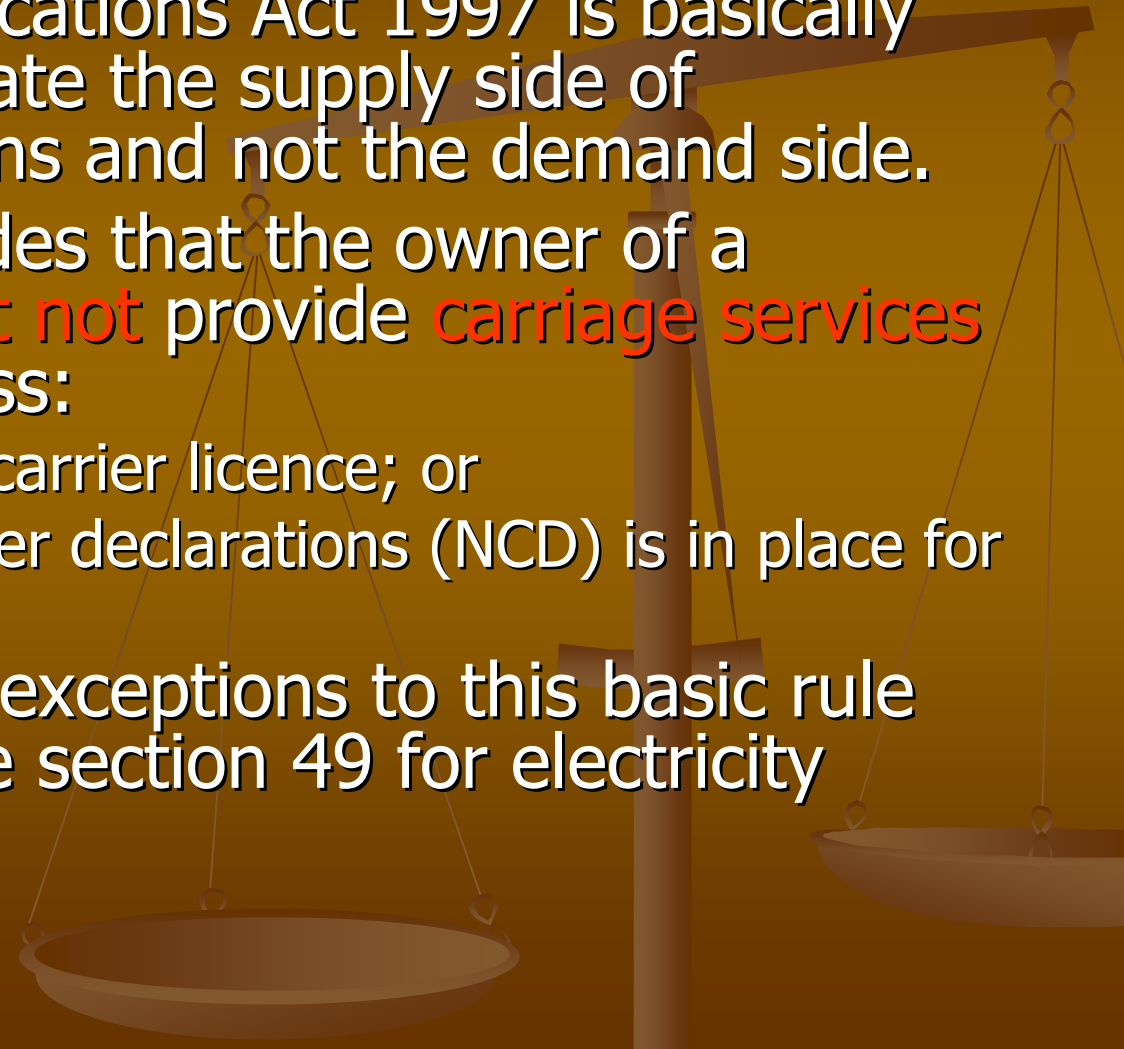
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Agenda



- Telecommunications Infrastructure
 - Types of infrastructure/supply side regulation
 - A cost/benefit position of aggregation
 - Community
 - Telecommunications provider
- What is Demand Aggregation
- Trade Practice Issues
 - Monopsony
 - Rules of Participation
 - Market definition
- Conclusion

Telecommunications Infrastructure

- The Telecommunications Act 1997 is basically designed to regulate the supply side of telecommunications and not the demand side.
 - Section 42 provides that the owner of a **network unit** **must not** provide **carriage services** to the **public** unless:
 - The owner has a carrier licence; or
 - A nominated carrier declarations (NCD) is in place for the network unit.
 - There are certain exceptions to this basic rule under for example section 49 for electricity supply bodies.
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Telecommunications Infrastructure

- Section 42 is designed to regulate the supply side of telecommunications by prohibiting a non carrier from supplying carriage services to the public unless an NCD is in place.
- A **network unit** is broadly defined through a number of provisions within the Telecommunications Act.
- Put simply a network unit is a line-link of a statutory distance, which is either or a combination of a wire, cable, optical fibre, tube, **conduit**, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy.
- **Public** is any third party who does fit with an immediate circle of persons (section 23)
- **Carriage Services** means a service for carrying communications by means of guided and/or unguided electromagnetic energy. (Section 7)

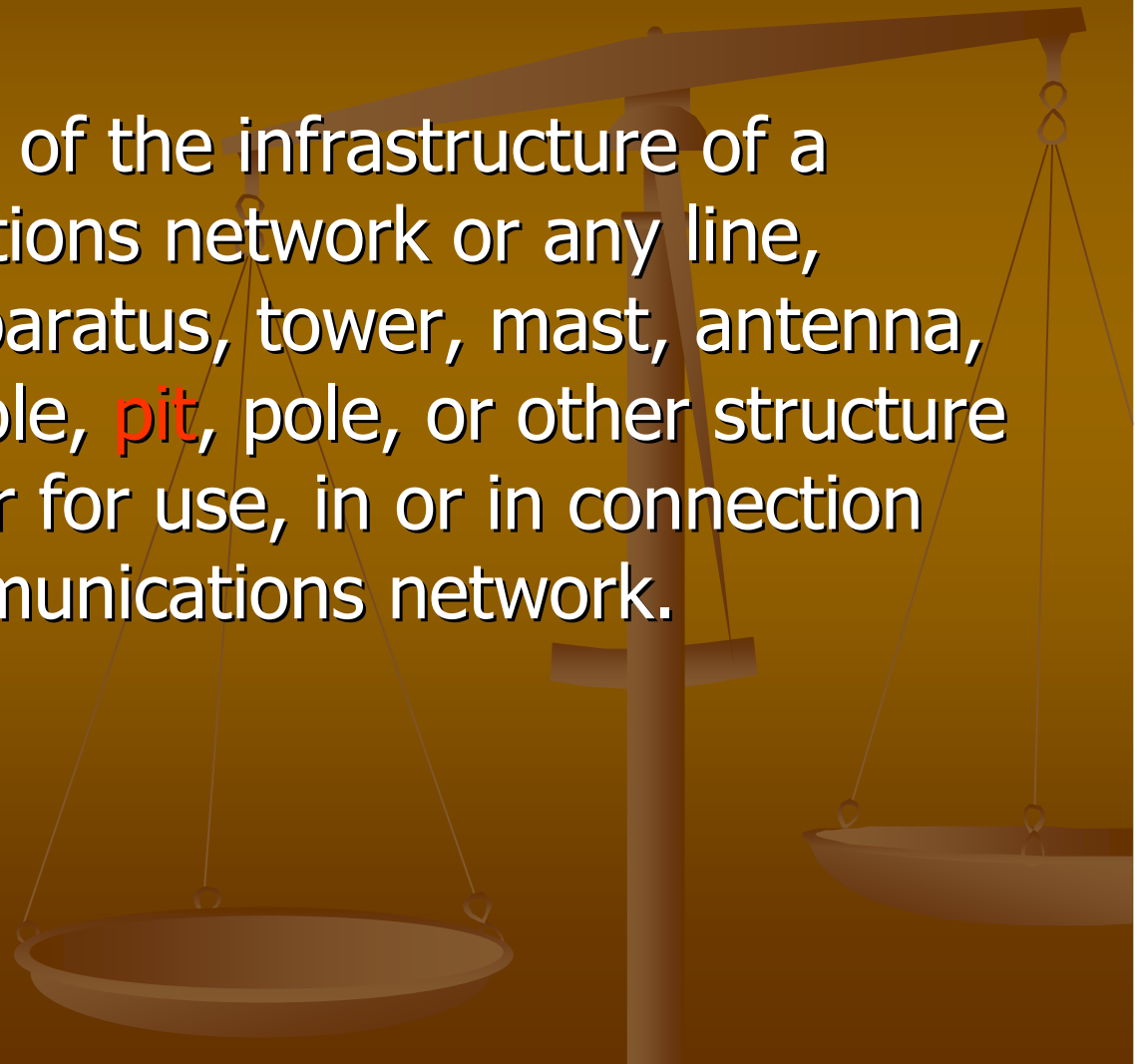
Telecommunications Infrastructure

- Telecommunications Market : see Section 151AF of the Trade Practices Act.
 - A **market** in which carriage services, goods or services for use in connection with a carriage service or access to **facilities** are supplied or acquired.
- **Market** is defined in section 4E of the TPA and is a very complex concept even though it is a simple idea. Basically a market is:
 - the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive. (Qld Wire Industries case approved by the High Court on appeal)


Telecommunications Infrastructure

■ Facilities

- Means any part of the infrastructure of a telecommunications network or any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole, or other structure or thing used or for use, in or in connection with a telecommunications network.



Provider's Business Case

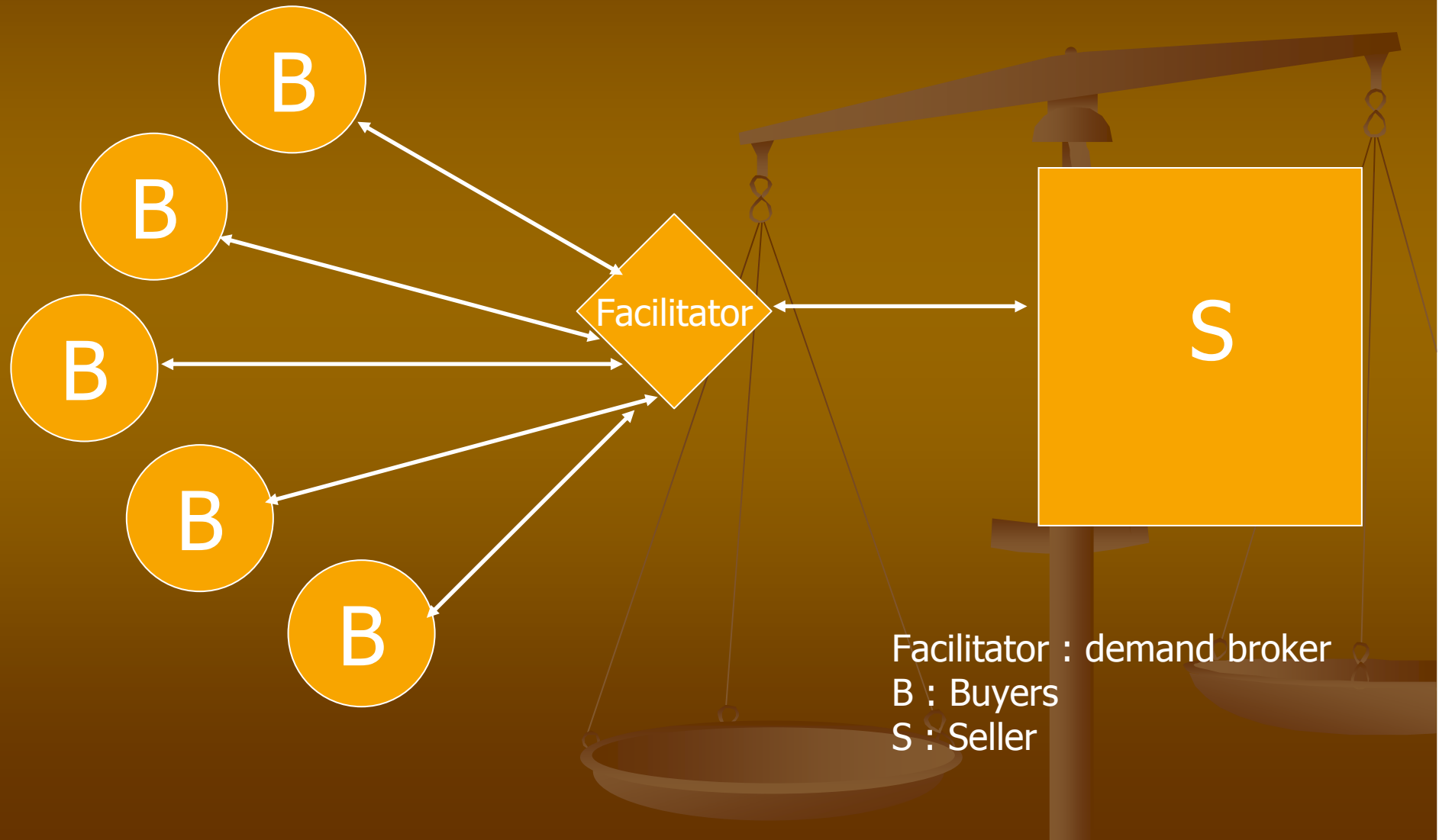
- Telecommunication providers are private organisations that have to operate in a profitable market framework.
 - So where is the business case to warrant investing in a market.
 - What is the ROI.
 - Small communities in regional Australia may present too small a Market for providers to Invest in them
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Demand Aggregation



- Definition – converting a market's estimated telecommunications demand into identifiable demand prior to the introduction of a telecommunications service to create an acceptable level of certainty.
- Demand aggregation attempts to address market penetration prior to the delivery of the service.

What is Demand Aggregation



Demand Aggregation Strategies

- Anchor Tenant
 - Usually local government authority , or state government department in area or federal government department in area
- Demand Clustering : creating aggregated demand by grouping the community demand
- Demand Creation creating new demand



Trade Practice Issues



- Monopsony: a monopoly power can cause harm whether there is a monopoly on the seller side or a monopsony on the buyer side (a buyer's monopoly).
- Aggregation of buyers can cause of monopsony within a market.
- The rules of aggregated buying power needs to be carefully implemented.

Trade Practice Issues

- Should one company/**buying group** so dominate **a market** as to prevent competition among suppliers, the company/**buying group** would have a **monopsony** instead of a monopoly, the improper control of prices to the consumer. The antitrust/TPA challenge would require proof the company/**buying group** did not prevent competition for best price and/or did not **obstructed free entry by new suppliers**.

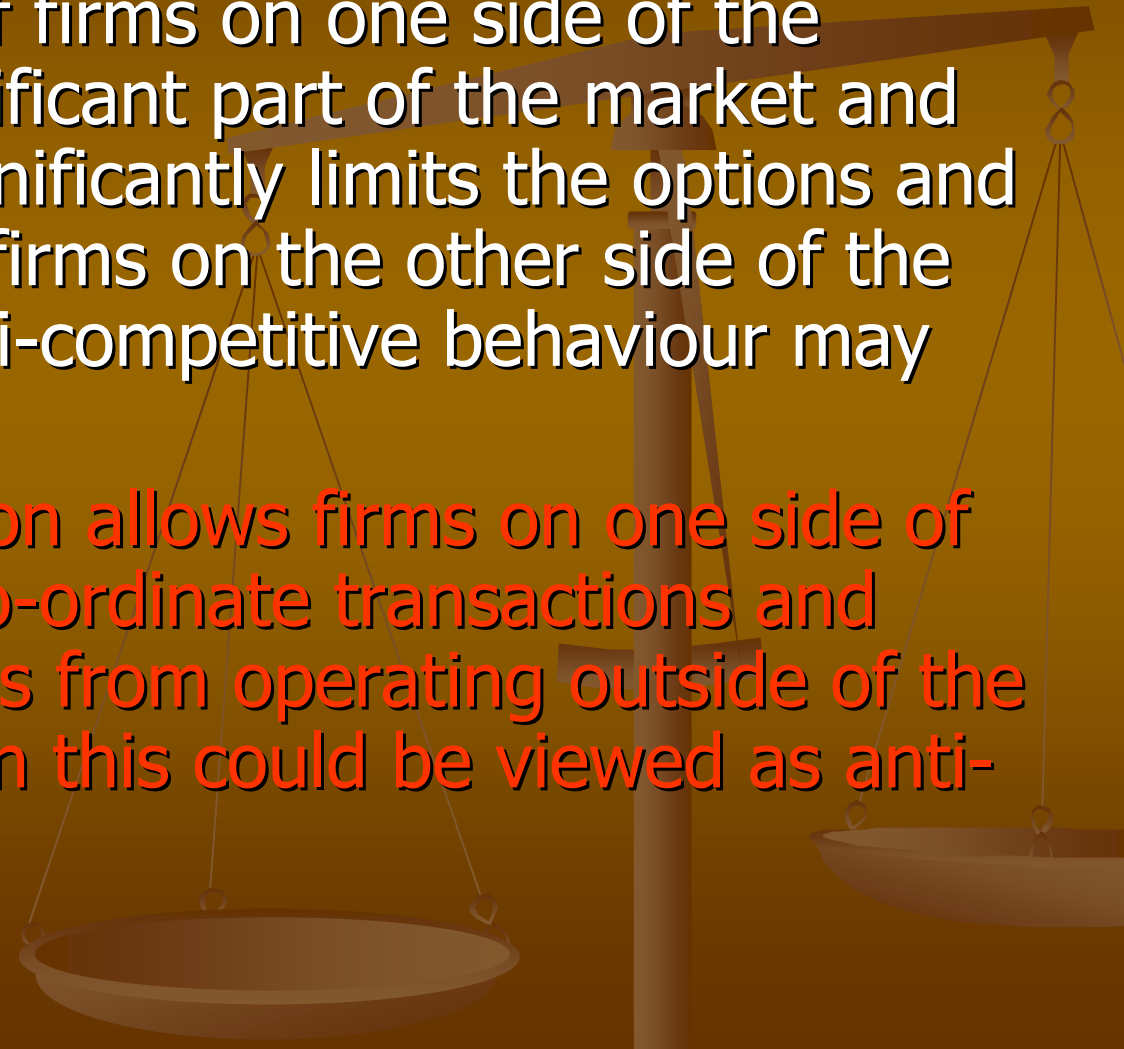
Aggregated Buying Power

7 issues of concern (Core Research)

1. Competitive concerns in a wholesale market may arise where one side of the wholesale market (Buyer) is relatively fragmented and the other side is concentrated, & where market pricing is relatively unsophisticated. Unsophisticated pricing regimes is an undefined aspect.
2. Involvement of significant co-ordination in trading activities by one side of the market (Buyers) is highly likely to be anti-competitive. ACCC authorisation is recommended

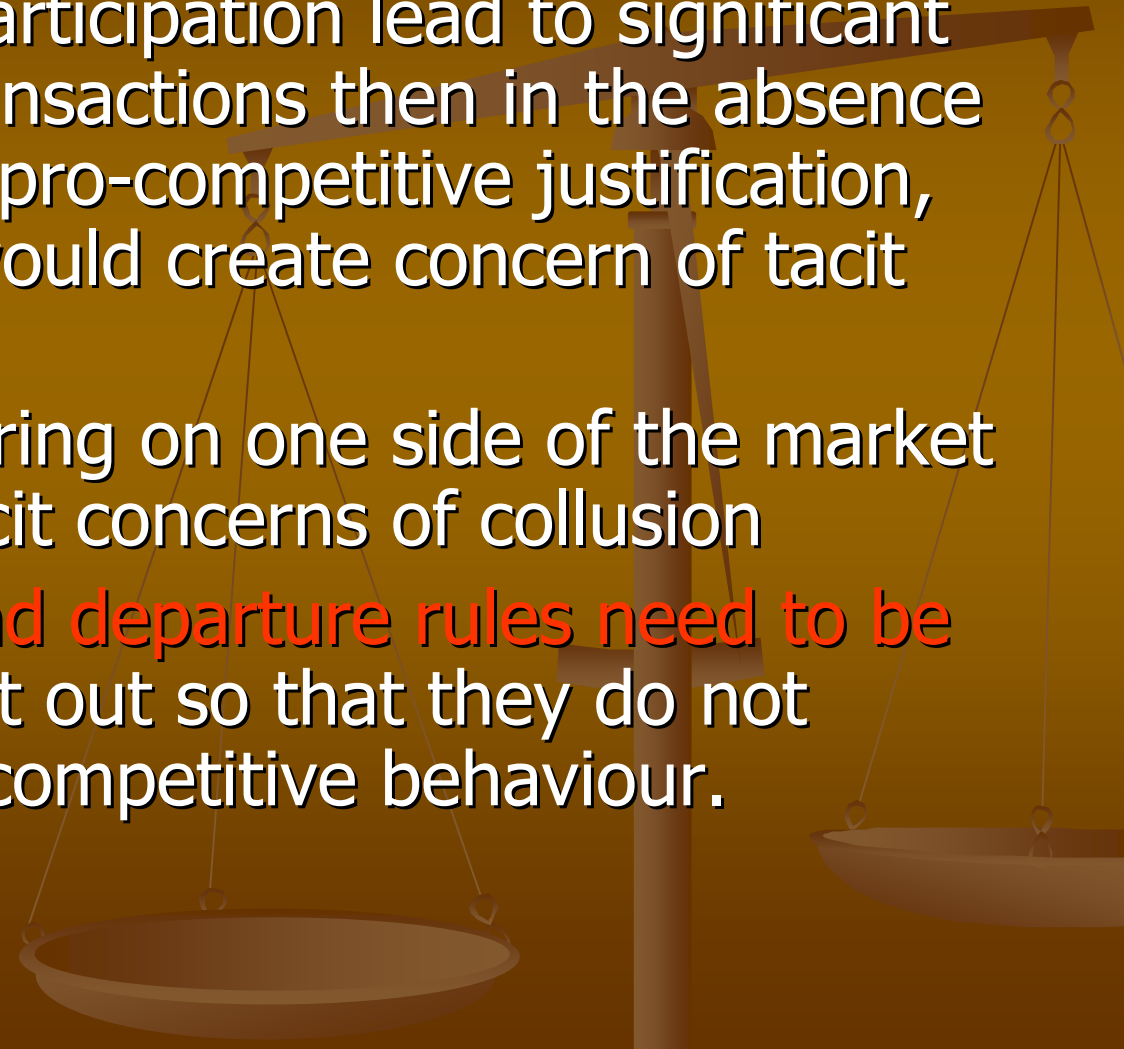
Aggregated Buying Power

7 issues of concern (Core Research)

3. If the number of firms on one side of the market is a significant part of the market and as such, this significantly limits the options and alternatives for firms on the other side of the market then anti-competitive behaviour may arise.
 4. If the aggregation allows firms on one side of the market to co-ordinate transactions and prevent the firms from operating outside of the aggregation then this could be viewed as anti-competitive.
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Aggregated Buying Power

7 issues of concern (Core Research)

5. If the rules of participation lead to significant uniformity of transactions then in the absence of a reasonable pro-competitive justification, then the **rules** would create concern of tacit collusion.
 6. Information sharing on one side of the market would create tacit concerns of collusion
 7. **Access, entry and departure rules need to be carefully** thought out so that they do not amount to anti-competitive behaviour.
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Relevant TPA Provisions



- Section 45A – price fixing arrangements with competitors
- Section 4D – Primary Boycotts
- Section 47 – Third Line Forcing
- Section 46 – Misuse of Market Power
- Section 45 in combination with section 47 – Contracts or arrangements which are likely to **substantially lessen** competition in **a market** and exclusive dealing that is likely to substantially lessen competition.

Conclusion

- Provides demand aggregation is carefully documented and complies with the TPS then it is legal.
- The ACCC has stated in other demand aggregation areas that it will view each case separately.
- The conservative position is that it is **recommended** that either the demand broker or the relevant community seek authorisation from the ACCC prior entering into an demand aggregation arrangement. This will protect all concerned.
- A standard set of rules and contracts for demand aggregation for communities should be developed and submitted to ACCC for tacit approval/authorisation.