

ACMA submission to ACCC NBN wholesale service standards inquiry

Response to discussion paper

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Introduction

The Australian Communications and Media Authority (ACMA) is Australia's regulator for telecommunications, broadcasting, some online content and radiocommunications. Our strategic intent is to make communications and media work in Australia's public interest. The ACMA's regulatory roles include ensuring that consumer, citizen and audience safeguards are efficient, effective and reflect community standards.

The ACMA has a particular interest in the experience of consumers in the telecommunications industry, and a current focus on improving the experience of consumers as they transition to and use services provided via the National Broadband Network (the new network)¹.

The ACMA welcomes the opportunity to comment on the ACCC's NBN wholesale service standards inquiry. We consider that there are several aspects of the wholesale service standards that could be changed to support an improved retail service experience.

Submission Overview

The ACCC's inquiry into NBN wholesale service standards seeks to determine whether regulated (non-price) terms should be set for the supply of wholesale services on an interim or long term basis in order to promote the long term interests of end users.

Drawing on the ACMA's recent industry information gathering exercise, this submission observes that:

- deficiencies at both the wholesale and retail layers are contributing to the difficulties some consumers are experiencing with new network services;
- the ACMA is currently developing new rules for retail service providers (RSPs) to address some of these consumer difficulties;
- the ACMA is most keenly interested in changes to wholesale service standards which will directly support an improved consumer experience;
- key areas in which wholesale arrangements could be changed to improve the consumer experience include:
 - setting appropriate and achievable wholesale performance standards which support:
 - clear and accurate information flows across the new network service supply chain all the way to the customer; and
 - appropriate and achievable retail performance levels for consumers; and
 - an incentive structure that better ensures wholesale services meet these performance standards.

The ACMA expresses no view on whether changes of this kind are best pursued via an interim or long term ACCC determination. However, we are of the view that any regulatory intervention at the wholesale layer should flow through to the consumer in order to facilitate a positive experience when migrating to and using the new network.

¹ Throughout this report, the ACMA distinguishes between the National Broadband Network—the wholesale broadband network being built across Australia—and NBN Co—the company responsible for its rollout.

Context – *improving the NBN consumer experience*

The ACMA has had concerns for some time about how the industry is helping consumers migrate to the new network.

Data² from the Telecommunications Industry Ombudsman (TIO) showed a 159.3 per cent increase in new network-related complaints between 2015-16 and 2016-17.

While this figure was an important indicator of increasing consumer problems with new network services, the TIO data was neither granular nor comprehensive³ enough to give reliable insights into the nature, scale and cause of the problems experienced by consumers and small business.

In August 2017, we announced an [increased focus](#) on the problems some consumers face when migrating to and using the new network including a program of work to collect detailed information from industry, consumers and businesses. We used our statutory powers to obtain information from industry participants involved in providing services using the new network, and released a [public report](#) of our findings.

Data was gathered from 16 selected RSPs for the three-month period 1 April to 30 June 2017 with major findings as follows:

- > **Customer numbers** — as at 30 June 2017, there were 2.23m customers on the NBN.
- > **Supply chain** — the supply chain from NBN Co to the customer involves multiple entities and is non-linear, making it difficult in some circumstances for the selected RSPs to update and provide information to their customers.
- > **Appointments** — data about appointments was unavailable from seven of the selected RSPs. RSPs either had limited visibility about the appointments made or rescheduled by NBN Co with their customers, or held no history of their customers' appointments. Of the selected RSPs that could provide appointment-keeping data, 0.7 per cent of their appointments were reported as being missed.
- > **Connections** — during the three month period, 19,844 complaints were made to the selected RSPs about connection issues. The industry average for RSPs to connect a customer ranged between 22 and 45 days and varied significantly across the different technology types.
- > **Faults** — during the three month period, 24,973 complaints were made to the selected RSPs about service quality (faults and speed). The industry average time taken to resolve faults varied between four and nine days.
- > **Complaints** — the 44,817 customer complaints to the selected RSPs were largely about service quality; that is, faults and speed (55.7 per cent of total complaints) and then about connection issues (44.3 per cent of total complaints).
- > **Resolving complaints** — there is wide-ranging variability of RSP performance, in terms of being able to resolve connection and fault related complaints. For FTTP, the average time for the selected RSPs to resolve connection-related complaints ranged between two and 169 calendar days, with an industry average of 28 calendar days.
- > **Compensation** — the selected RSPs paid or otherwise made available to their customers a total of \$6.64m in compensation.

² Page 13 of the ACCC Discussion Paper

³ Because the TIO seeks to resolve escalated complaints – its data does not include complaints made to and resolved by RSPs.

To address these issues, the ACMA considered that direct regulatory intervention was warranted and on 21 December 2017, the Minister for Communications announced that the ACMA would introduce [a range of measures](#) aimed at improving the consumer experience.

The ACMA is developing new rules to:

- specify the minimum information that RSPs must provide to consumers before they sign up for a service on the new network;
- require RSPs to 'line test' new services on the new network to ensure lines are working and faults are identified early;
- enable consumers to be reconnected to legacy network services, if that fallback is needed; and
- specify minimum standards for CSPs' complaints-handling processes and a requirement for CSPs to report their complaint numbers to the ACMA so that changes can be monitored.

Consultation on the detail of the new rules will commence in early 2018, with the rules to be in place by the end of June 2018.

Separately, the Minister for Communications has also foreshadowed a review and associated public consultation process on the overall framework for telecommunications consumer safeguards.

Relationship between wholesale and retail standards

Information

As our industry data shows, deficiencies at the wholesale and retail layers are contributing to the issues some consumers are experiencing.

A key deficiency is in the absence of good information flows through the supply chain all the way to the customer. This affects the customers both of RSPs that have a direct wholesale relationship with NBN Co and RSPs that use intermediate wholesale aggregators or resellers. Better information flows between wholesalers and retailers should lead to clearer communications to the customer.

For example, appointments is one area where deficient communication flows are impacting on the consumer experience. Our view is that primary responsibility for the relationship with customers should always lie with the customer's RSP. However, we found that some RSPs had limited visibility about the appointments made or rescheduled by NBN Co with their customers. Other RSPs did not hold any history of their customers' appointments. This suggests that deficiencies in the availability of information and the flow of information between the wholesale and retail layers is hampering the ability of some RSPs to communicate key information to their customers.

Separately, our analysis of sample complaints provided by selected RSPs indicated that the quality, timing and efficacy of RSP complaints-handling deteriorated when RSPs were required to liaise with a wholesale provider(s) to manage and resolve a customer's complaint.

Improvements to wholesale service standards that facilitate RSPs having easy, timely and reliable access to information about appointments, faults and other consumer-relevant information may reduce the problems we have seen arise due to the complex supply chain.

The ACMA is currently making a [Consumer Information Standard](#). RSPs will be required to provide consumers with specific information to support informed decision making about new network services. The ACMA will be consulting on the information standard in the coming weeks.

We will liaise closely with the ACCC and industry in the event that our (retail) Information Standard can usefully be supported by corresponding wholesale information obligations.

Service delivery

Another matter our industry data serves to highlight is the disjunction between wholesale standards and retail standards when it comes to connection and fault rectification time frames. Some highlights of our findings are noted on page 2.

While WBA3 does contain service level timeframes and performance objectives, these timeframes and objectives do not give retailers confidence about service delivery in the case of any individual consumer. We note the reasons for this are canvassed in the ACCC's discussion paper.

However, two particular circumstances warrant closer consideration. Indeed, they may suggest an approach that prioritises particular wholesale standards that apply only for that subset of RSPs with corresponding consumer-facing obligations.

Priority Assistance framework

Priority Assistance (PA) ensures that there is at least one service provider offering people with life-threatening medical conditions an urgent connection and repair service. It also provides an ongoing heightened level of service reliability. Under current arrangements, Telstra is the only provider that is required to offer this service, although PA timeframes for customers using a Telstra Priority Assistance service do not apply when a service is delivered over a non-Telstra network. IPrimus also provides PA and other providers offer PA-like services.

At 30 June 2016, there were 211,259 PA customers, an increase from 186,745 in the previous year. The continuing demand for PA indicates that the availability of the service remains important to consumers with serious medical conditions.

We note that WBA3 has set the performance objective for PA to 100 per cent. We consider this to be a minimum acceptable performance objective for PA connections. However, we are not aware that relevant stakeholders have visibility of the performance level actually being achieved.

We consider there may be benefit in ensuring existing retail level PA obligations are reflected at the wholesale level at least for those retailers that provide PA services. We note that establishing obligations (as opposed to objectives) at the wholesale level could not only better support those current PA providers but also facilitate and support initiatives by other RSPs to offer (or continue to offer) services analogous to PA on the new network.

The ACCC's discussion paper notes on page 32 that WBA3 does not provide for end-user connection rebates in the case of PA connections. A revised compensation structure or service level guarantees could also better support PA providers and analogous initiatives.

Customer Service Guarantee

The Customer Service Guarantee (CSG) Standard protects residential and small business customers against extended connection and fault rectification timeframes. Under the CSG, RSPs are required to meet performance standards and provide customers with financial compensation when these standards are not met. The CSG Standard specifies timeframes for the connection of specified services, the repair of faults and the attendance of appointments by service providers. Customers are entitled to compensation if these time frames are not met.

The CSG continues to apply to standard telephone services provided over the new network, wherever a RSP does not obtain a CSG waiver. Telstra, under a provision of its carrier licence conditions, must offer CSG compliant services. Some RSPs offer similar services with similar CSG protections. We are aware that many RSPs routinely seek CSG waivers from customers, which must be agreed to or a service will not be provided. This suggests there is a reluctance or inability of RSPs to meet the CSG timeframes.

Assured delivery of CSG compliant services at the retail level is dependent on a corresponding commitment by the wholesale provider regarding connection and repair times.

As with PA, the ACMA considers there may be benefit in ensuring existing retail level CSG obligations are reflected at the wholesale level at least for those retailers who provide or are obliged to provide CSG compliant services.

It has been raised with the ACMA by industry that CSG services standards and WBA3 service standards for connections and fault rectification are not well aligned across the supply chain. They should be. Where possible, wholesale service standards should reflect regulated retail safeguards to allow RSPs confidently to provide those safeguards.

It should be noted that the CSG framework was developed for legacy voice services using Telstra's copper network, and its requirements do not apply to broadband services. It has been put to the ACMA that the CSG timeframes therefore are not appropriate for services on a network that is currently undergoing rapid deployment, or uses different infrastructure.

In this regard we note that the CSG regime has been in place for many years and that current consumer expectations have been set by reference to the regime. If CSG connection timeframes are genuinely not practicable for new network services, then the reasons for that need to be clearly articulated and consumer expectations reset.

Confidence in service delivery timeframes

The ACCC's October 2017 draft report of its Communications Sector market study observes that the majority of RSPs compete on price, but not on service factors such as timeliness of connection and fault rectification. We note that it is difficult for RSPs to compete on service factors which they do not control and cannot confidently promise.

We are mindful of the potential benefits of RSPs offering different service levels at different price points. However, we consider that robust wholesale service standards would improve the ability of RSPs to confidently meet reasonable consumer expectations in relation to connections, fault rectification and appointments. Our information-gathering exercise demonstrates some consumers are experiencing extended delays and even a prolonged loss of service during migration.

Incentive structures need to support delivery of services that meet performance standards

There are a number of issues raised in the ACCC's discussion paper that relate to performance standards and compensation arrangements. We agree that consideration should be given to whether the current compensation arrangements provide an effective incentive to deliver against the performance standards. Consideration should be given to whether and how the benefit of any compensation paid at the wholesale level might flow through to consumers, including whether the amount of compensation should be proportionate to the length of time a service is affected.

We note that generally, where service levels under the WBA3 are not met, compensation is only payable to an RSP when this occurs in greater than 10 per cent of cases (and this is only available for those connections above that threshold). Compensation is set at a fixed level. This necessarily means that there is no direct relationship between compensation payable by NBN Co for any substandard performance and an individual consumer's experience. Moreover, the compensation arrangements appear to create weak incentives for NBN Co to prioritise rectifying faults that have exceeded the service level threshold. The ACMA's information gathering exercise demonstrated that some consumers experienced missed appointments (sometimes repeatedly so) and waited long periods of time to have faults rectified.

The ACMA notes that compensation is not fixed under the enhanced fault rectification scheme, so it would be worth examining whether this compensation scheme creates better incentives to rectify service issues.

In any case, the ACMA's data collection exercise suggests that RSPs are reluctant to claim compensation from NBN Co, even where it is likely to be payable. While the reasons for this are not entirely clear, it has been suggested to the ACMA that the complex and time consuming 'claim' process is likely to be a factor. Accordingly, there is value in the ACCC seeking to understand why certain conditions around forecast plans and accuracy are in place with respect to the compensation process. We are of the view that simplifying this process is likely to lead to improved outcomes for RSPs, and consumers.

Conclusion

As the national regulator for telecommunications, our strategic intent is to make communications work in Australia's public interest. In this context, we presently have a strong interest in ensuring a positive consumer experience as services move to the new network.

The industry data collected by the ACMA through a recent statutory information gathering process demonstrates that deficiencies at the wholesale and retail layers are contributing to consumer issues. We are tackling some of the pressing 'retail' issues and believe setting appropriate and achievable wholesale performance standards can lead to an improved consumer experience.

Any changes to wholesale service standards should be directed to improving the consumer experience by supporting:

- efficient information flows across the new network service supply chain; and,
- appropriate and achievable retail performance levels for consumers;

They should also be:

- appropriate well aligned with regulatory interventions at other points along the new network supply chain; and
- be supported by appropriate compliance incentives.

We note that the Department of Communications and Arts' forthcoming consumer safeguards review may also consider such issues in the context of the post-rollout consumer protection framework.