Submission to ACCC's wholesale service standards inquiry 13 January 2020

Key points

The market structure is complex, and both NBN Co and others in the supply chain need to work cooperatively to deliver good consumer outcomes. Consumer safeguards are best progressed via the Department of Communications and the Arts (the department), the Australian Competition and Consumer Commission (ACCC), the Australian Consumer and Media Authority (ACMA) and industry working closely on an integrated and cohesive future framework that can address issues at both the wholesale and retail layer as set out in the Part B report.

NBN Co over time has improved its performance both in connecting premises to its network, and rectifying faults for which it is responsible. This has occurred while it has been building its network and ongoing high-level performance should be expected under post-build 'steady state' operation.

NBN Co is now in the process of re-negotiating its commercial service levels. That process should be allowed to run its course and its outcomes should be taken into account in considering the need and form of any more direct regulatory intervention.

Inappropriate rebate arrangements are a significant concern. This is a key reason for the approach set out in the Part B report, which focuses on broader performance obligations and alternative incentive mechanisms. Rebates risk embedding both direct and administrative costs in the industry that will flow through to consumers generally and which would be difficult to address over time.

Some of the proposed rebates, such as those focused on the performance of NBN Co's fixed wireless network, may also carry the risk of constraining investment in other areas of benefit to consumers. Administration of arrangements to pass through such rebates through to consumers is likely to be complex, and the costs may outweigh the benefits.

The proposed FAD terms are proposed to be in place until 2022, a period in which NBN Co will be in the final stages of construction and migration activities, and short term intervention by the ACCC at this point may be disruptive.

Introduction

On 1 October 2019, the ACCC released a draft decision indicating that regulated terms are likely to be required to improve end-user experiences on the National Broadband Network (NBN). In parallel, the ACCC set out proposed regulated terms in a draft final access determination (FAD).

The department welcomes the opportunity to provide a submission to the ACCC's wholesale service standards inquiry. The department apologises for the delay in lodging the submission but has decided to do so now in light of the release by the Minister for Communications, Cyber Safety and the Arts (the Minister) on 17 December 2019 of the final report and recommendations from Part B of the Consumer Safeguards Review (reliability of services). The Part B report is particularly relevant to the ACCC's consideration of wholesale service standards, the need for intervention, and how any such intervention is best implemented.

Given relevant recommendations in the Part B report, the focus of consumer safeguards work should be on the department, the ACCC, the ACMA and industry working closely on an integrated and cohesive future framework that can address issues at both the wholesale and retail layer, including areas where there are shared responsibility between NBN Co, retailers and others in the supply chain, to provide an optimal consumer safeguard framework for the future.

While providing effective safeguards for consumers, this future framework needs to give appropriate weight to the operation of commercial and competitive forces. The strong improvement in wholesale service delivery by NBN Co in the recent past demonstrates a less interventionist approach can bear fruit. For example, 'right first time' connections, faults repaired within agreed timeframes and overall complaints have improved markedly. This is at a time when NBN Co is still working hard to roll out its network and to migrate services to it. We remain concerned that a more interventionist approach at this time will embed in the industry costly regulatory mechanisms that will be detrimental overall in the long term and difficult to adjust in future.

Inappropriate rebate arrangements are a key concern in this regard. This is a key reason for the approach set out in the Part B report. In general, if rebates are to be progressed, the following principles should be considered:

- the rebate being in line with the impact on the party affected;
- the party causing the impact being responsible for the rebate; and
- the rebate flowing through to the party experiencing the impact.

In practice, this would mean there are no windfall gains for any party and retailers as well as wholesalers would be liable to contribute, with the beneficiaries of rebates enjoying the full benefit as intended.

In our assessment of these issues, we concluded such a system would be difficult to deliver, even from a whole-of-government approach and the benefit would not clearly outweigh the cost. This view is informed by long-standing concerns about the operation of the Consumer Service Guarantee (CSG). Such approaches run the risk of embedding significant costs in the industry to the long term detriment of consumers overall. In this context, we consider the better focus is on broader performance obligations and alternative incentive mechanisms, with a view to developing a more optimal framework for the future. Given its focus on wholesale service levels, it would be even more difficult for the ACCC to deliver an effective end-to-end framework.

It is not clear from the draft decision that the ACCC has considered the overall cost to the industry of the approach proposed, relative to the benefit, particularly in an environment where NBN Co is continuing to rollout infrastructure and migrating customers but has markedly improved its performance and this is set to continue given the completion of the rollout. While the ACCC has indicated that it considers the draft FAD will not impose unreasonable costs on NBN Co, given the potential for further flow-on costs in the wider industry to fully realise the benefits of its approach, an industry-wide costing should be developed and released for comment before a final decision.

In this context, the preferable approach is for the Part B model to be implemented and tested before more intrusive mechanisms such as those proposed in the draft decision are revisited.

As the ACCC has recognised, the Australian market structure for fixed line broadband and voice services involves a multiple party supply chain. There needs to be shared responsibility across the supply chain to secure sound consumer outcomes.

Retailers need suitable wholesale inputs including from NBN Co, so that they can confidently design and ultimately sell high quality and reliable products to residential and business consumers.

Equally, retailers are responsible for many aspects of the NBN consumer experience. Beyond engaging with a wholesaler to get a physical network connection in place, retailers directly manage systems to convert wholesale services into a usable retail product, and in many cases, also directly supply consumer equipment such as modems and gateways. While NBN Co provides local access network infrastructure, retailers also need to have backhaul arrangements to provide internet connectivity beyond NBN Co's different points of interconnect. Issues with the reliability or speed of a broadband service can be due to issues in different parts of the supply chain, but retailers in all cases maintain a contractual relationship with the consumer and must therefore play a key role in assisting to troubleshoot and resolve issues.

NBN Co has negotiated three versions of its wholesale broadband agreement (WBA). While there are concerns from retailers that NBN Co's wholesale service levels have fallen short of retail requirements in these agreements, the company's network and organisational capability has continued to increase. As a result, NBN Co has progressively sought to improve the terms it can offer through each WBA, and to better align supply of wholesale services that can support retail level obligations. The company is currently in the process of negotiating WBA4 with retail providers.

NBN Co has argued that it has strong incentives to bilaterally negotiate with RSPs a mutual uplift in consumer service standards under WBA4. This negotiation process currently underway should be allowed to play out unfettered by ACCC regulatory intervention. An option for the ACCC would be to consider what improvements arise from WBA4 negotiations. For example, given the forthcoming completion of its network rollout, NBN Co is moving into a more stable operating environment, and the WBA4 negotiation process may result in commercial agreement on steps to improve consumer experience that should be taken into account.

The final report from Part B of the Consumer Safeguards Review recommends wholesale level regulation of connections, repairs, and appointment keeping timeframes to underpin whole of industry performance on connecting and repairing individual services. In addition, the report recommends retail level requirements for clear consumer information around service commitments from retailers together with transparency of performance.

The need for a FAD is therefore best considered after the recommendations from the Part B report are implemented. The Part B report provides for the department to work cooperatively with the ACCC and ACMA in this process.

As set out below in more detail, in finalising its decision the ACCC should have regard to:

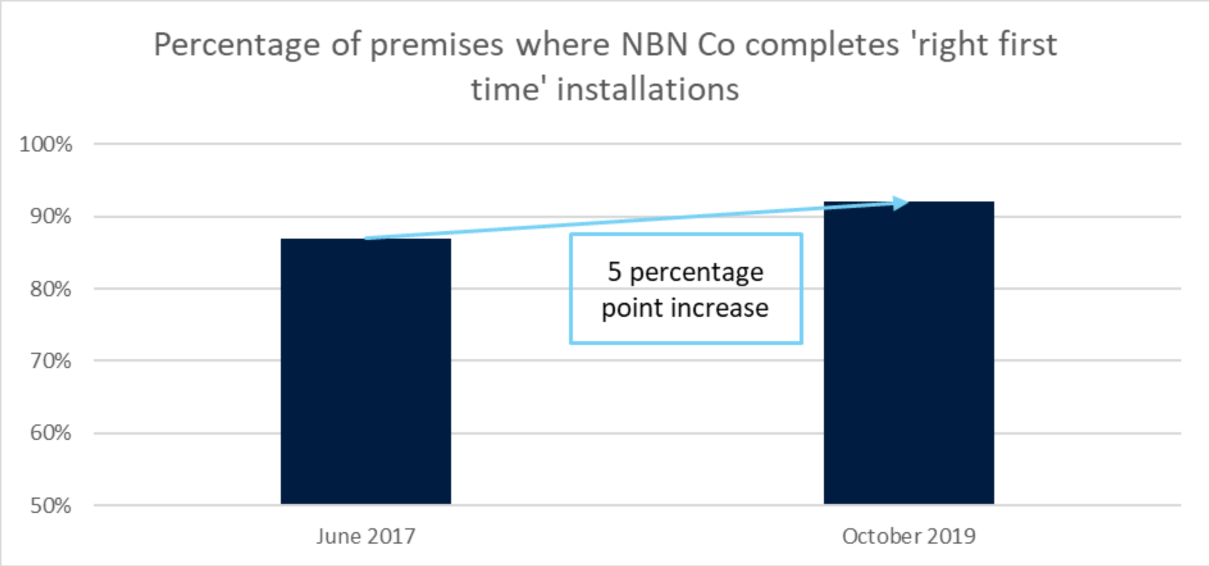
1) the need for intervention in light of improvements in NBN Co's performance
2) creating the right incentives across a complex market structure
3) flexibility and coordination with other policy processes
4) the appropriateness and cost of rebate and pass through requirements
5) incentives to identify and address underperforming broadband services
6) timing and impact on remaining rollout and migration activities

If the ACCC does decide to proceed with the FAD, detailed consideration should be given to the issues identified in 4) and 5), including their interaction with the arrangements set out in the Part B report. In particular, consideration should be given to alternative pass through arrangements including for NBN Co to pay wholesale rebates directly to consumers. Careful consideration should also be given to the level of the rebate for underperforming services.

Improvement in NBN Co's performance

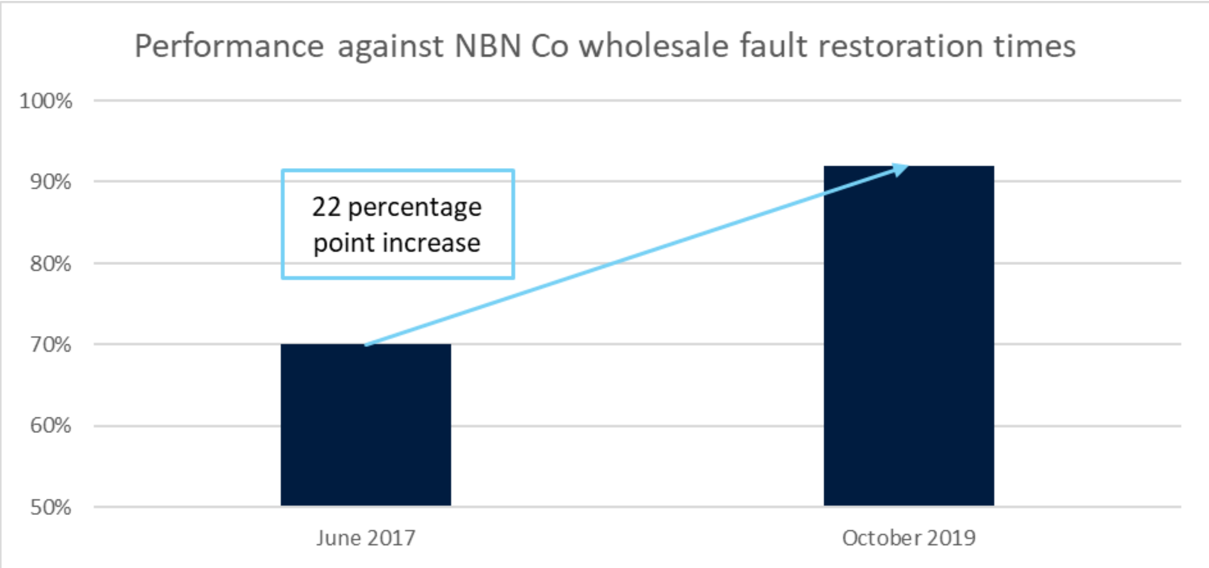
There have been notable improvements in NBN Co's performance against its wholesale service standards since June 2017; and this increase has been achieved with little regulatory intervention.

Figure 1: Right first time connections by NBN Co



As shown in Figure 1, since June 2017, the percentage of homes and businesses successfully connected to the NBN local access network at the first installation has increased five percentage points in the period concerned. It is also worth noting that this has been on top of a high performance base of 87%. Conversely, the number of unsuccessful installations has reduced by around 40% in the same period - previously around 13% installations were not completed right first time, whereas now only around 8% of installations are not completed right first time.

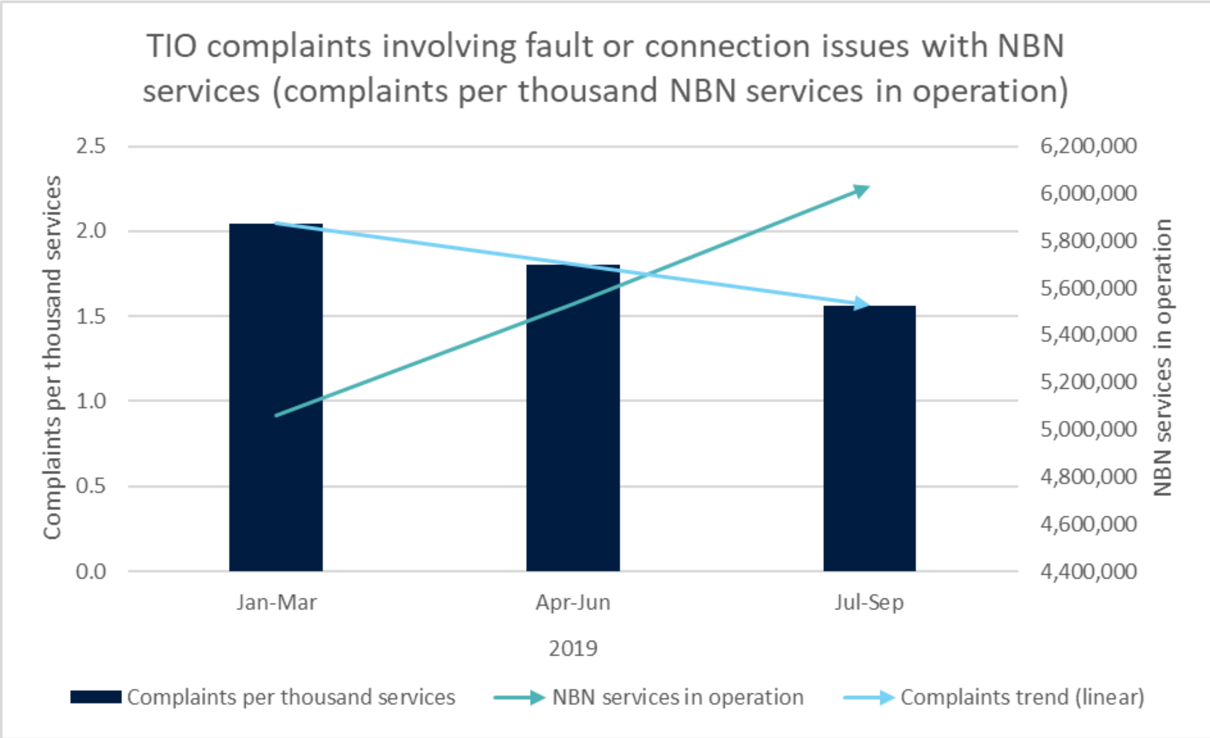
Figure 2: Faults resolved by NBN Co within agreed timeframes



As shown in Figure 2, since June 2017, NBN Co has improved its performance in meeting its wholesale fault timeframes by 22 percentage points. Conversely, the number of faults not addressed within wholesale timeframes has decreased by around 70% in the same period - previously around 30% of faults were not addressed within timeframes whereas now only around 8% of faults are now not addressed within timeframes.

Additionally, according to ACMA's report, *Telecommunications complaints-handling 2018–19*, complaints to retailers about broadband services delivered over the NBN have reduced throughout the reporting period and average 193 per 10,000 services compared to complaints about the old fixed broadband network which average 369 per 10,000 services. So the level of complaints involving services delivered over the NBN network is running at about half the level of complaints on the legacy fixed network.

Figure 3: Complaints to the TIO involving fault or connection issues with NBN services



As shown in Figure 3, there has recently been a marked decrease in complaints escalated to the TIO involving fault or connection issues with NBN services[1]. This has fallen from just over 2 complaints per 1000 active NBN services to approximately 1.5 complaints per 1000 active NBN services. Importantly, reducing complaints to the TIO has come at a time when NBN Co continues to expand the number of premises connected to its network.

These improved outcomes have been achieved without significant regulatory intervention on service standards. Importantly, whilst such a marked improvement is occurring, generating large increases in consumer welfare, market processes should be allowed to play out. The ACCC should continue to observe these metrics and revisit the proposal for a FAD if the model proposed in the Part B report does not bear fruit.

By contrast, if the ACCC does intervene with a FAD now it will likely worsen consumer outcomes. In particular, the processes currently under way to improve the consumer experience will likely stop; and instead NBN will direct its energies to minimising the payment of rebates to RSPs, and getting into lengthy disputes with RSPs over who is at fault and whether a rebate is in fact payable. As noted above, it is also unclear from the draft decision what the overall impact of the proposed interventions on the overall cost structure for the industry and ultimately for consumers will be.

Creating the right incentives across a complex market structure

Consumer outcomes on the NBN are necessarily a product of an end-to-end supply chain involving multiple parties. A focus only on issues within the control of NBN Co, however well designed, will

[1] Note: The TIO does not deal with all complaints, it provides a dispute resolution service for small business and residential consumers who have an unresolved complaint about their telephone or internet service.

only be a partial solution, and may give rise to unintended consequences elsewhere in the supply chain, particularly if regulatory intervention creates incentives for other parts of the supply chain to shift costs. The ultimate goal for government, industry and regulators should be to implement arrangements so that the entire supply chain (NBN Co, retailers and aggregators) have the right incentives to get consumers connected, maintain reliable services, and to focus on identifying and resolving problems promptly.

There is a risk that without some corresponding retail level obligations, implementing a wholesale rebate arrangement will create an adversarial structure which will focus industry efforts on identifying and assigning liability within specific parts of the supply chain. The broader objective should be to focus industry to collectively manage issues on behalf of consumers and businesses to improve access to reliable telecommunications services.

Given the market structure, the department would also highlight the importance of seeking to maximise accountability and transparency across the supply chain both as an incentive for good performance and to assist in resolving any systemic issues that might arise.

Flexibility and coordination with other policy processes

As noted above, on 17 December 2019 the Minister publicly released the final report and recommendations from Part B of the Consumer Safeguards Review, dealing with reliability of services. The report makes recommendations in relation to both wholesale and retail arrangements.

On 28 November 2019, the Telecommunications Reform Package was re-introduced by the Minister into the Parliament, including provisions to establish a Statutory Infrastructure Provider (SIP) scheme. Subject to the passage of this legislation, the SIP arrangements provide for Ministerial rule-making powers that could be applied to wholesale providers.

Any arrangements that are introduced to improve or safeguard consumers must be flexible enough to accommodate retail differentiation, can be adjusted over time and are supported through the supply chain. The regulatory hierarchy under Part XIC of the *Competition and Consumer Act 2010*, which applies to NBN wholesale access arrangements, makes guaranteeing this flexibility and support through the supply chain complicated.

Wholesale level arrangements

For many residential and business consumers, access to a fixed broadband or voice service is ultimately reliant on wholesale services provided through the NBN Co local access network. In most cases, NBN Co is the default wholesale fixed infrastructure provider, but in certain cases, there are other alternative providers in the market. The department estimates more than 400,000 premises are served by alternative providers.

Regulatory equivalence between similar market participants is an important principle. If NBN Co is obliged to provide a minimum level of wholesale services to facilitate a good consumer experience, then so should other wholesalers that operate on a similar basis.

Recognising NBN Co and other similar fixed line infrastructure providers of last resort may not face consistent competition from other networks, the report from the consumer safeguards review (Part B) includes recommendations that these networks be subject to mandatory timelines and overall performance benchmarks for connections, repairs and appointment keeping.

Subject to passage, the SIP legislation is one possible mechanism that could be used to set baseline wholesale service standards across the industry.

The department would welcome further discussions with the ACCC on what standards should be set, and how other similar network providers could be regulated.

In particular, the department would like to pursue a co-operative approach with the ACCC in improving wholesale and retail service standards in a coordinated way. This is best done through first implementing the recommendations from Part B of the Consumer Safeguards Review.

Only thereafter should the ACCC consider if there are any significant gaps that would make a FAD necessary.

Retail requirements

The ACCC's draft decision and draft FAD are in part, intended to require NBN Co to provide reasonable ongoing assistance to industry to meet retail level obligations, including where services are supplied in accordance with legacy voice safeguards, such as the CSG or Priority Assistance (PA) arrangements. The general principle that NBN Co (and other wholesalers as appropriate) should provide reasonable support to assist in delivery of retail level safeguards is supported.

The ACCC has recognised changes to retail safeguards are a possibility, and has made provision in its draft FAD to require NBN Co to seek to negotiate, in good faith, revised access agreements to accommodate changes to retail level safeguards. However, other parts of the proposed FAD set out a number of specific requirements that would likely need to be revised in light of broader regulatory changes at the retail level if the FAD is made.

As set out in the Part B report, retailers of broadband and voice services should be held to account for the services they offer, and be required to clearly set out commitments to deal with reliability issues. This would mean consumers and small businesses were aware of timeframes for connections and repairs, and associated remedies, while allowing industry to make these points of competitive distinction.

Under this approach, retailers would be required to set out remedies, but would have commercial flexibility. For example, retailers could elect to offer refunds or credits, provide interim or alternative services, supply service continuity options (such as modems with fail-over to mobile networks) and/or allow consumers 'no cost' contract exit.

The best way to provide an optimal consumer safeguards framework for the future and to avoid duplication is for the recommendations from the Part B report to be implemented first. Once this occurs, the need for further regulatory action can be better judged.

Rebate and pass through requirements

As noted in the introduction, the rebate arrangements raise significant design, implementation and cost issues, with potential long term implications for the industry and consumers. A key issue is whether rebates should be reimbursements of payments or restitution of costs, or are more broadly designed to act as incentives. As a general observation, most of the ACCC's proposed rebates are clearly constructed as incentive payments that go beyond actual service charges and are deliberately constructed with this objective. By contrast, in respect of broadband speed rebates, if a rebate is to be put in place, it could have regard to the difference in wholesale price between the next lowest wholesale speed tier and the wholesale speed tier being paid for (noting that the situation where a retailer is purchasing the lowest possible wholesale speed tier would also need to be considered).

There are diverse views in stakeholder submissions[2] on the draft decision and FAD on the issue of whether or not wholesale rebates are required, and if so, whether those rebates should be 'passed through' (either in part or in full) to consumers.

[2] www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-service-standards-inquiry/draft-decision-submissions

In relation to some of the matters dealt with in the proposed FAD, such as rebates to address underperforming broadband speeds, there may be some level of shared industry responsibility. For example, the cost of any rebate in such a situation may best be apportioned between the wholesaler and retailer.

However, assuming the appropriate quantum of the rebate is established, careful consideration would be required to ensure each contributed the appropriate amount and that the costs of administering such a scheme did not outweigh the benefits (noting administrative costs would ultimately be reflected in retail prices paid by consumers).

The following hypothetical example may serve to illustrate the potential complexities of rebate arrangements. Say a consumer is sold an NBN service with an advertised peak speed of up to 50 Mbps and the provider sources an NBN product that all accept should deliver that, but it routinely performs well below the advertised peak speed. On investigation, it might be found that in some instances underperformance is due to issues in the NBN Co network and in others instances this is due an RSP issue (e.g. under provisioning of backhaul). In which case then rebates should be split accordingly. However, all this assumes mechanisms to identify and agree responsibility, and mechanisms to make the rebate payments required from multiple parties, within a cost structure below the cost of the rebate. There may also be a question whether a more appropriate and proportional rebate might be based on the difference between the retailer's price for the 50 Mbps service and the next lower tier service.

Given considerations such as these, the Part B report recommends the better focus is on broader performance obligations and alternative incentive mechanisms.

Implementation of a pass through arrangement

Similarly, as a matter of principle, if wholesale rebates are intended to compensate consumers for loss of service or reduced quality service, then the full value (100%) of any rebates would be made available to consumers, notwithstanding any legitimate costs incurred by intermediaries or retailers. There should certainly be no 'windfall' gains to intermediaries or retailers. However, this also raises a number of challenges.

While there are a range of ways of potentially arranging for pass through of rebates, or of the value of the rebate, none are straightforward and all are difficult when a FAD cannot directly extend to retailers or intermediaries.

For example, if pass through were to be pursued, one option could be to create 'back to back' obligations to require pass through from NBN Co, to the retailer and ultimately on to the consumer (noting in some cases there may be wholesale aggregators between NBN Co and the retailer). Given these factors, this process could be administratively complex and time consuming for both industry and consumers, difficult to enforce, and ultimately costly for consumers.

An alternative pass through option could be for NBN Co to pay wholesale rebates directly to consumers. However, this would appear to rely on retailers agreeing to provide NBN Co with access to consumer billing or account information. This may avoid a potential windfall gain to retailers and result in direct compensation for consumers who are disadvantaged, however, it may also raise commercial sensitivities and would need to be reconciled with NBN Co's wholesale-only operation.

Given the range of issues set out above, in the first instance the preferred option is again to work to implement the Part B report, and then, if necessary, consider the need for further intervention.

Incentives to identify and address underperforming services

Consumers rightfully expect to receive the broadband speeds they pay for, and there should be robust processes in place so retailers and wholesalers support this objective.

Regulation at the wholesale level alone cannot achieve this, noting retailers also have requirements to responsibly advertise and market retail speeds and manage their own networks to allow consumers to receive the speeds that they pay for.

For example, the ACCC has already issued comprehensive guidance to retailers on standardised terms for advertising broadband services, and also reports on retailer speed performance via the Measuring Broadband Australia program (which creates incentives to ensure that retailers appropriately provision capacity to deliver the speeds that have been marketed). The ACCC in a number of cases has also successfully sought court enforceable undertakings where retailers sold consumers broadband plans where the speeds were not capable of being delivered.

At the retail layer, the Telecommunications Service Provider (NBN Service Migration) Determination 2018 introduced by the ACMA in 2018 requires a retailer to check the wholesale speed of a copper based (FTTN, FTTB or FTTC) NBN service shortly after it is connected. If a service is not performing as contracted, retailers must not charge for this service or must offer other remedies such as allowing the consumer to exit the contract, move to a lower speed tier or seek to negotiate another remedy if the applicable speed cannot be achieved.

NBN Co does not ultimately control or have visibility over the broadband speeds that are advertised and marketed to consumers by individual retailers, nor does NBN Co necessarily have visibility over remedies that may be offered by a retailer to address any speed related concerns (including those required under ACMA rules).

Accordingly, there is risk that the speed related rebates in the form proposed may unduly shift risk and cost to NBN Co, which is arguably better managed by the retailer under existing arrangements. However, the ACCC has raised some pertinent concerns around potential information asymmetry between NBN Co and retailers (p. 42 of the draft decision), and it would be preferable in the first instance to focus on arrangements so that retailers have access to timely and high quality information on the wholesale speed that can be achieved.

Proposed fixed wireless rebates

There have been issues with congestion in some parts of NBN Co's fixed wireless network. This reflects fixed wireless capacity constraints, and means capacity must be carefully managed across users. In recent years, increases in data usage, take-up rates, and simultaneous users at peak time within the fixed wireless network have created pockets of demand that were not envisaged in the original 2010 network design, resulting in pockets of network congestion. To address this, NBN Co committed an additional $800m to capacity upgrades in its *2019 Corporate Plan*[3], with an active program to increase capacity on congested cells and backhaul links.

As a result of this program, NBN Co has been able to significantly reduce fixed wireless cell and backhaul link congestion during 2019, and the vast majority of cells and backhaul links are now operating above NBN Co's fixed wireless design threshold. The company expects to reduce congestion on both cells and backhaul links to less than one per cent.

By increasing the capacity of individual fixed wireless sites and backhaul, NBN Co is working to align the capacity of fixed wireless towers to appropriately support its defined performance thresholds.

Maintaining these performance thresholds is likely to remain challenging as average data demand increases on the network over time. NBN Co will continue to monitor its fixed wireless network and undertake upgrades as required so that services meet its performance thresholds.

The ACCC has observed that mandating fixed wireless rebates is not without risk, given that fixed wireless services are provided on a non-commercial basis. If uneconomic rebates are mandated by

[3] NBN Co, *NBN Co Corporate Plan 2019–22*, p. 65

regulation, it could impede ongoing investment to support delivery of high quality services in regional Australia. For example, increasing capacity and promoting take-up of fixed wireless services in regional and remote Australia are also important issues to address, alongside busy hour performance of fixed wireless services.

Requiring NBN Co to pay monthly rebates in relation to congested fixed wireless services is unlikely to create a meaningful additional incentive to NBN Co (given steps taken so far, and the scale of investment and technical challenges of increasing capacity in this part of its network).

Hence, under the ACCC's proposed approach, regional network investment could be distorted in an economically inefficient manner — directed to reduce peak congestion, rather than directed at lifting the overall capacity of the network and increasing take up by rural consumers.

As such a rebate approach is not seen as the correct way to proceed to raise consumer welfare in regional areas covered by wireless networks. An alternative approach could be for NBN Co to provide ongoing transparency on its annual investment in the fixed wireless network to lift network performance, coupled with ongoing performance reporting to the ACCC, ACMA or the department.

As well as proposing per service rebates, the ACCC has also indicated NBN Co should be required to provide a 'birth certificate' identifying the maximum attainable speed for individual fixed wireless connections. Retailers should have access to relevant information on attainable wholesale speeds to inform interaction with consumers. However, this proposal may need further consideration, noting the challenges of managing shared capacity (against the dedicated capacity that can be delivered, for example over an individual FTTx connection).

FTTx related rebates

Wholesalers should reasonably address any underlying infrastructure issues that unduly impact the speed of a broadband service.

NBN Co and retailers have put detailed arguments to the ACCC on what thresholds, expressed as peak information rates (PIR), could be used to identify underperforming wholesale services.

In specific cases the proposed PIR thresholds set out by the ACCC may not operate as intended. In particular, a number of FTTx services are in a period of co-existence, meaning they are not operated at full capacity by NBN Co to prevent degradation to legacy broadband services (such as ADSL) still being used by other consumers. NBN Co has commenced activities to end co-existence and is progressively doing this on an area by area basis.

Given the end of co-existence is subject to broader migration activities that NBN Co does not fully control, the ACCC would need to take this into account in settling any FTTx related rebates and associated PIR thresholds.

Timing and impact on remaining rollout and migration activities

As the department noted in its March 2018 submission to the first stage of the inquiry, NBN Co is in the midst of completing one of the largest and most complex infrastructure projects in Australia's history. At that time, the department cautioned against imposing additional regulation and costs while NBN Co was both a builder and operator of the NBN, on the basis that this could slow the network rollout or disproportionately divert operational focus. However, the department agreed in principle that more stringent standards (as distinct from rebates) could be considered from when NBN Co enters a 'steady-state' of operation.

In the intervening period, NBN Co has made significant progress in both build and migration activities, and is on track to complete the build phase of the network by mid-2020. However, remaining migration activities will occur up until late 2021 or 2022. Efficient completion of the

NBN and migration activities remains a valid factor that the ACCC should continue to consider in making broader decisions on need, extent and timing of any regulatory intervention.

A number of NBN migration related rules were introduced by the ACMA in 2018, in part in response to poor coordination and concerns around 'buck passing' between different parts of industry.

Among the NBN rules introduced by ACMA, the Telecommunications Service Provider (NBN Service Migration) Determination 2018 works together with the Telecommunications (NBN Continuity of Service) Industry Standard 2018 to minimise the likelihood of consumers being left without a working telecommunications service for extended periods when moving to the NBN.

As a result of these rules, if there is a problem with getting a new NBN service working as part of the migration process, consumers should not be left without a working service. Further, where NBN services are delivered using the existing copper network (e.g. FTTx), the ability of a consumer's line to deliver the speed tier specified in their retail plan is verified by their retailer.

These regulatory arrangements should also be factored into decisions around the need to make a FAD at this point in time while migration activities are still underway.

Conclusion

It is important to develop and implement a coordinated consumer safeguards framework that reflects the significant changes in market structure and is appropriate for the future. Such a framework should underpin reasonable consumer expectations and be proportionate and balanced. This means providing well targeted incentives for all relevant parts of the supply chain to support delivery of reliable and quality services to the community.

Arrangements should seek to minimise administrative costs to all parts of industry, be cost-effective overall and seek to maximise scope for competition. They should seek to avoid embedding in the industry significant new costs that will ultimately flow through to consumers, while having potentially limited practical benefit. Such amounts would be better directed to investment to improve consumer experience overall.

The department considers the best approach in the first instance is to work co-operatively with the ACCC, ACMA and industry to implement the recommendations from the Part B report. Once that has been done and tested, further intervention can be considered if it then appears needed.