

11 September 2020

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email: nbn@accc.gov.au

Dear ACCC

ACCC inquiries into NBN access pricing and wholesale service standards

I welcome the opportunity to contribute further to these ACCC inquiries. I am pleased to see improvements to NBN wholesale arrangements reflected in NBN Co's proposed Wholesale Broadband Agreement (**WBA4**). I make further comments to:

- support key positive changes
- raise areas where NBN wholesale arrangements may need further adjustment, and
- ensure a clear and integrated future approach to telecommunications regulation.

The pass through requirements for rebates are a positive development

In my [November 2019 submission](#) to the ACCC's NBN Wholesale Service Standards Inquiry, I recommended the ACCC consider extending pass-through requirements for rebates for delayed connections and fault rectification. I am pleased to see the ACCC and NBN Co adopt this recommendation.

I also recommended rebates be automatically passed through to consumers. I am pleased the ACMA's future rules for passing through rebates to consumers will facilitate this. These rules alongside particular WBA4 terms should lead to an efficient pass through system. For example, I am supportive of NBN Co's proposal to pay rebates automatically to wholesale customers and proposed mechanisms to make it easier to assess any overlap with Customer Service Guarantee (CSG) payments.

I support these improvements being retained as part of the final arrangements for NBN wholesale service standards.

Areas where the NBN wholesale arrangements may need further adjustment

Rebate amounts and caps should reflect modern expectations when consumers experience problems with essential services

My office handles complaints about connection delays, missed appointments and delayed fault repair. When assessing a fair and reasonable resolution, we consider relevant legislative instruments. When handling complaints, we are likely to consider the WBA4 arrangements and the ACMA's pass through rules.

The detriment consumers experience when there are problems with internet connectivity has been exacerbated during the COVID-19 pandemic. In the current climate, internet is essential to how we live and work – we are reliant on it for study, work, to socially connect and to access healthcare, banking and other essential services. This reliance is likely to become a permanent feature of modern life.

Since the CSG framework was established, our reliance on being connected has increased considerably. Despite this increased reliance, the proposed framework may lead to reduced remedies for consumers, and also reduce performance incentives for industry.

The rebate amounts payable may lead to reduced remedies for consumers when compared with CSG payments. The cap for CSG payments for delayed connection and fault repair is \$25,000, and CSG payments are only available for voice services. Under the proposed rebate system for NBN services:

- delayed connection rebates would be capped at:
 - \$225 for non-priority assistance customers, and
 - \$300 for priority assistance customers.
- delayed fault repair rebates would be capped at:
 - \$900 for non-priority assistance customers, and
 - \$1,200 for priority assistance customers.

Rebate amounts and caps for delayed connections and fault repair should be reconsidered

I recommend the ACCC reconsider the proposed daily rebate amounts and the associated caps to ensure the framework supports consumers being able to receive reasonable compensation.

Increasing the daily rebate amounts payable and higher caps will better reflect community expectations. A clear and proportionate approach to rebates has the following benefits:

- It will ensure the pass through from retail service providers (RSPs) to consumers is reasonable. This could mean fewer circumstances in which consumers need to contact my office to obtain reasonable compensation.
- It will ensure RSPs are not unreasonably bearing these costs (for instance, by way of additional goodwill payments to the consumer) where the issue is connected to NBN Co's wholesale service delivery.
- It will enhance the rebate scheme's ability to incentivise good industry practice to ensure consumers are not waiting lengthy periods of time for connections and fault repairs to be completed.

Parameters for the proposed 'stop the clock' provisions should be clearer

Clear exclusions for connection and fault repair service levels could help prevent unintended consequences. These unintended consequences could include disproportionate delays in restoring connections and rebate amounts payable being unreasonably unavailable or reduced.

Including more examples of when consumer or supply chain member's act or omission could exclude a remedy

Under the proposed WB4A, there is an exclusion for any act or omission by the consumer or supply chain member, where that act or omission is outside of the terms of supply or what is lawful. To prevent unreasonable application of this broad exclusion, a more exhaustive list of examples could be included. Currently, the WBA4 only gives one example for this exclusion – refusing to allow NBN Co access to a location to perform works.

Narrowing exclusions that may capture ordinary wholesale service delivery activities

Based on complaints we handle about delayed connections and faults, I understand NBN Co performs design site qualification, network activity or interference mitigation in the ordinary course of business for all open tickets. In light of this, the 'held' status order or ticket exclusion may be too broad, as it could apply when NBN Co needs to determine what steps it needs to take next. It may be unreasonable for RSPs to manage consumer expectations around connectivity timeframes and rebates payable.

Likewise, it is our understanding that upgrading, relocating or replacing Point of Interconnects are also a standard aspect of activities to manage any active service that is current and connected. It does not appear reasonable that these activities would lead to a service level commitment exclusion.

Specifying the time for which each exclusion applies

In the proposed WB4A, there are very few exclusion provisions in which it is clear whether the exclusion applies for a period relevant to the circumstances, or whether the exclusion is indefinite. It should be clear in all exclusions how long NBN Co does not need to meet service level commitments.

If the clock is stopped entirely, rather than paused, the flow on to consumer expectations for connection and fault repair times, and rebates, is likely to be unreasonable. Using the appointment exclusion as an example:

- if an appointment is selected that is not the earliest available, work completed at that appointment could still result in further delays unrelated to the selection of the appointment time.
- it may be unreasonable for the exclusion to apply where a RSP chooses which appointment times to offer the consumer, and does not offer the consumer the earliest available appointment time.

- where the appointment exclusion applies, it may be more appropriate to pause the clock for the period between the earliest available appointment and the later appointment selected, and then recommence service level commitments.

The approach taken to most exclusions in the ACCC's previous draft determination should be applied. Most of the exclusions from the ACCC's previous draft determination that the WBA4 proposes to incorporate are clear about how long exclusions apply for. These exclusions clarify that the exclusion applies until the relevant issue is resolved, or the relevant circumstance no longer exists.

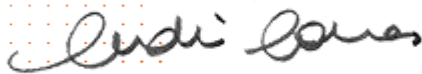
Ensuring a clear integrated approach for telecommunications regulation

As noted in my November 2019 submission to the ACCC's NBN Wholesale Service Standards Inquiry, I support a clear integrated approach to telecommunications regulation.

It is positive to see the ACCC and ACMA working together to support all members of the supply chain to meet pass through obligations. I look forward to the ACMA's future consultation on rules that will clarify how RSPs can pass through rebates or their fair value to consumers.

I note that there are outstanding consumer protection matters that NBN wholesale service delivery can significantly impact, including priority assistance service delivery (as raised in my November 2019 submission). I encourage the ACCC to continue its work with the ACMA to achieve a clear integrated approach. I also encourage the ACCC to consider overlaps between NBN wholesale service standards and the Department's ongoing work to implement the outcomes of the Consumer Safeguards Review Part B, service reliability.

Yours sincerely



Judi Jones,
Telecommunications Industry Ombudsman