ACCC
NBN WHOLESALE SERVICE STANDARDS DRAFT DECISION

SUBMISSION BY
VODAFONE HUTCHISON AUSTRALIA

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Introduction

Vodafone Hutchison Australia (**VHA**) welcomes the opportunity to provide further input on the ACCC's inquiry into NBN wholesale service standards.

We agree with the ACCC's assessment that NBN Co's existing service standard arrangements should be made more robust, and better align with the obligations to which Retail Service Providers (**RSPs**) are held. While regulatory intervention should always be a last resort, we support the ACCC's conclusion that regulated terms for NBN wholesale service standards, in the form of a Final Access Determination (**FAD**), would promote the long-term interest of end-users (**LTIE**).

As we have previously stated, with the upcoming Wholesale Broadband Agreement 4 (**WBA4**) and completion of the NBN rollout, now is the time for a fundamental revision of the WBA, framed around clear definitions of what constitutes a successful NBN connection and what constitutes a reliable or acceptable NBN service across different speed tiers. For this to occur, the connections and faults rebates structure and NBN Co's processes must ensure that RSPs are not out of pocket when there are connection or service reliability issues that are the responsibility of NBN Co.

VHA is pleased the ACCC has addressed the issue of failed connections being characterised as a "fault" in NBN's processes. Currently, NBN Co's approach leads to operational ambiguity about what constitutes a functional service and a successful connection. We strongly agree with the principle that NBN Co should only confirm to RSPs that a connection is completed, and begin charging for that service, after conducting appropriate testing to ensure installation activities are successful and to an acceptable performance standard.

In our submission to the second discussion paper, we welcomed the changes to the threshold for the payment of connection and service fault rebates and the simplification of the processes for RSPs to claim and receive rebates set out in the enforceable undertaking from NBN Co. However, we reiterated our concern that the one-off nature of rebates does not provide an incentive for NBN Co to address issues in a timely manner, as the extent to which timeframes are not met are not factored into the rebate calculation. We also questioned in some situations whether a continuation of the current rebate regime is the best way forward given it requires RSPs to carry the burden of managing the failures at the wholesale level through a complex and opaque payments regime.

We are pleased the ACCC has recognised these concerns and is proposing to apply rebates for delayed connections and fault rectifications on a daily basis rather than on a one-off basis. However, we believe the same daily rebate approach should apply for delayed connections and unresolved faults except in cases where there is an active legacy service. In many cases, end-users will not have active legacy services in place and therefore they will experience the same harm than where a service is not working due to a service fault.

Importantly, it is proposed that NBN Co will apply rebate amounts to RSP invoices without requiring RSPs to apply to NBN Co for the payment of rebates. We are also pleased that the ACCC understands that some RSPs have proactively put in place measures to minimise the impacts of connection delays and so is not proposing to include a general pass through requirement for these rebates (with the exception of missed appointments). This is important given the various measures industry has proactively put in place at significant cost. For example, VHA was first to market with our 'Instant Connect' and '4G back-up' services provided by our NBN modem which ensures our customer are connected as soon as they set up their Vodafone Wi-Fi Hub™ and remain connected in the event of a NBN fault.

Another important issue highlighted in our previous submissions to the ACCC is underperforming service speeds. Fundamentally, NBN Co currently does not commit to deliver a service with a minimum service level and, as a result, RSPs can be left paying for speeds that can't be delivered. NBN Co should be responsible for the speed and performance of its wholesale products and we support the ACCC's proposed introduction of minimum speed requirements and rebates for underperforming service speeds. However, we do not believe these minimum speed requirements are adequate and are contrary to consumers' expectations that they get what they have signed up to (indeed this is a general principle that is applied in Australian Consumer Law). Instead of a minimum speed requirement of 50 percent of the speed that a service is capable of achieving, NBN Co should meet a minimum speed requirement of at least 80 percent of the speed that a service is capable of achieving or be required to pay a rebate for each month this is not met.

A more sustainable solution would be for NBN Co to make adjustments to the speed throttling arrangements to help ensure that the 'sticker' speed tier (e.g. the nbn25 and nbn100 speed tiers) more closely reflect the typical speed the majority of end-users experience. VHA notes the ACCC's comments when releasing the fifth Measuring Broadband Australia Report that NBN end-users can never make full use of the speed tier because of the technical limitations NBN Co have introduced on their connections. VHA agrees with the ACCC's observation that NBN Co could resolve this confusion and problematic situation if "it allowed services to run five percent faster before enforcing speed limits." This is a worthy of topic of discussion (we believe the 'speed buffer' should be 20 percent higher) and we would welcome the ACCC commencing an assessment of this issue as a matter of priority.[1]

[1] https://www.accc.gov.au/media-release/differences-in-rsp-download-speeds-are-growing

Should the ACCC decide to make a determination, we would expect that this would commence in 2020 so that the FAD terms would operate as the baseline for clear WBA4 service level commitments on a per-service basis. It is also important that these new requirements are implemented in NBN Co's automated billing and IT systems to allow for verifiable and automated capability. These terms should be reviewed every two years to ensure that each future iteration of the WBA is consistent with the needs and expectations of Australian broadband consumers. This is important because, as we have previously highlighted and contrary to the ACCC's understanding, NBN Co does not bilaterally negotiate service standards with individual RSPs. Instead, as is appropriate, the same standards apply to NBN Co's interactions with all RSPs via the WBA.

End-user connections

Failed connections

As outlined in our previous responses to the ACCC's consultations, NBN Co has an important role to play in confirming that a new service is operational, yet it does not currently do this on a proactive basis. NBN Co commences charging RSPs for its wholesale service at the point in the activation process when they notify the RSP that the service has been connected.

As the ACCC has recognised, if the RSP subsequently identifies that the service is not working, NBN Co calls this a "new service never worked" (**NSNW**) fault and requires the RSP to lodge a trouble ticket for fault rectification. These cases are still reported as a successful connection, even though they are a failed connection.

NBN Co should not be charging RSPs when there are network connection failures of this nature. We are pleased the ACCC has sought to address the issue of NSNW connections by proposing to require NBN Co to successfully complete installation testing on the relevant AVC before commencing charging. We strongly agree that NBN Co should only confirm to the RSP that a connection is completed, and begin charging the RSP for that service, after conducting appropriate testing to ensure installation activities are successful.

NBN Co currently places an activation order for FTTC connections into a status that awaits the acknowledgement of data throughput from the end-user before concluding that the activation order has been completed and the service is operational. This process should be expanded across all network technologies and should also involve 'end-to-end' testing of the connection that includes the end-user's home modem or router. In other words, the definition of service parameters of a successful connection must deliver a result that an end-user would consider to be an active service. NBN Co should also continue to monitor and report to RSPs on the number of failed connections.

Delayed connections

Under its enforceable undertaking with the ACCC, NBN Co pays RSPs a one-off $25 rebate for each missed connection service level. While this was a step in the right direction, in our submission to the second discussion paper we raised concerns with the fact this rebate is fixed at $25 and the extent to which the fault rectification timeframes are not met are not factored into the rebate calculation.

As a result, RSPs are currently left to bear the case management costs of liaising with the end-user and NBN Co to rectify the issue as well as the cost of providing the customer with a back-up service, which in VHA's case is a connection to our 4G mobile network via a SIM in the customer's modem. The longer the delay, the larger the costs and the current arrangement does not acknowledge this reality.

In our submission to the second discussion paper, we reiterated our concern that the one-off nature of rebates does not provide an incentive for NBN Co to address issues in a timely manner as the extent to which timeframes are not met are not factored into the rebate calculation. We also questioned whether a continuation of the current rebate regime is the best way forward given it requires RSPs to carry the burden of managing the failures at the wholesale level through a complex and opaque payments regime. We are pleased the ACCC has sought to address this issue by proposing that the delayed connection rebates should accrue on a daily basis if the relevant service level is not met. We do think however that the same daily rebate should apply for delayed connections and unresolved faults except in cases where there is an active legacy service. In many cases end-users (such those moving into a new place), will not have an active legacy service in place and therefore will experience the same harm than where a service is not working due to a service fault.

Further, we agree that NBN Co should apply rebate amounts to RSP invoices without requiring RSPs to submit claims and provide accurate connection forecasts as has historically been the case. In many cases, the accuracy of these forecasts is out of the control of RSPs and dependent on changes in market conditions or NBN Co decisions. Therefore, we believe that the ACCC's proposal addresses these concerns. The ACCC has noted that NBN Co may be able to improve its service level performance by changing how it determines whether an area is 'ready to connect'. It has been our experience that NBN connection service level breaches generally relate to either a small number of service classes where additional infrastructure is required, or where NBN Co believes that the location possesses all required infrastructure, but in fact, does not. In our submission to the second discussion paper, we recommended that locations should have all infrastructure in place before being released as 'ready to connect'. The status of the infrastructure at a location should also be validated by NBN Co before being released as 'ready to connect.'

End-user faults

As with delayed connections, the $25 rebate in NBN Co's enforceable undertaking was a step in the right direction, however the one-off nature of the rebate means that RSPs are faced with continuing to pay NBN

Co a monthly wholesale charge for a non-operational service over an extended period. As a basic principle, RSPs shouldn't be out of pocket when there are NBN network service reliability issues caused by NBN Co.

An NBN service that is not working over an extended period is also extremely frustrating for end-users and the ACCC has identified that a significant number of end-users are impacted by unresolved NBN faults. To provide an adequate incentive to address unresolved faults in a timely manager, we support the application of rebates for fault rectifications on a daily basis rather than a one-off basis. Further, NBN Co will apply rebate amounts to RSP invoices without requiring RSPs to submit claims. We also agree with the ACCC that NBN Co's process for beginning measurement of end-user faults at trouble ticket acceptance by NBN Co rather than trouble ticket acknowledgement, is not justified.

Missed appointments

We agree with the principle that missed appointment rebates should take into account the cost and inconvenience to the end-user when an appointment is missed, while at the same time provide a stronger incentive to reduce the rate of missed appointments. In this regard, $75 is an appropriate rebate amount and is a significant increase on the $25 rebate in NBN Co's enforceable undertaking.

As with the ACCC's other proposals, we support the application of rebate amounts to RSP invoices without requiring RSPs to submit claims. The current rebates regime requires RSPs to carry the burden of managing the failures at the wholesale level through a complex and opaque payments regime. While in principle we support a pass-through arrangement for the missed appointment rebate, this will require timely notification and information from NBN Co. In addition, NBN Co must establish automated IT notification arrangement to allow RSPs systems to identify affected end-users.

Underperforming service speeds

As outlined previously, because the NBN has a range of broadband speed offers on its access network we believe that there needs to be a greater focus on minimum service standards for its product portfolio. NBN Co should be responsible for the speed and performance of all of its wholesale products and not charge RSPs for services that it cannot provide. In VHA's experience there needs to be more back-end support from NBN Co to enable RSPs to provide consumers with the service they are paying for and we are pleased the ACCC is proposing stronger wholesale commitments from NBN Co with respect to service speed and performance.

As the ACCC notes in its draft decision, the availability of speed information to RSPs is essential to support their sales and marketing activities and compliance with their requirements under the Australian Consumer Law and ACMA rules. It is our view that all services, not just the FTTN/B/C technologies, should have their speed performance delivered to an acceptable standard.

In our submission to the second discussion paper we noted that NBN Co is unable to share information on the maximum line speeds that its infrastructure delivers to our customers until after the service is

operational. Further, while NBN Co provides RSPs with weekly speed reports for existing FTTN/B connections, these figures are based on the results of a single, point in time test result and VHA has observed significant variability within these figures.

We welcome the ACCC's acknowledgement that the timing and type of information and how that information is provided by NBN Co can be improved, particularly prior to connection. Given the ACCC has identified that NBN Co already measures specific service information that it does not currently provide to RSPs, at a minimum NBN Co should immediately begin sharing this additional information with RSPs.

NBN Co's current wholesale speed commitments are another vitally important issue highlighted in our previous submissions to the ACCC. Fundamentally, NBN Co currently does not commit to deliver a wholesale service with a minimum service speed. For example, an NBN 100Mbps service can be provided to a RSP (and then to an end-user) with a broadband speed of 25Mbps (or slower) and NBN Co will still charge the RSP the 100Mbps service subscription price. The lack of clear service standards for each speed tier is a fundamentally flawed element of the NBN Co supply regime.

NBN Co should not be able to charge the full price for a wholesale service if it is not capable of delivering the speed associated with that service and it should provide clearer service speed commitments to RSPs. In our submission to the second discussion paper we suggested that there should be a clear and reasonable definition of throughput for each of NBN Co's speed tiers to ensure RSPs and consumers receive what they pay for. The current arrangement, whereby a service that achieves a peak throughput of 25Mbps would satisfy the criteria for the NBN 25Mbps, 50Mbps and 100Mbps speed tiers, is not acceptable when there is differentiated pricing for these services.

It is important to understand that the NBN speed tiers are created by throttling the speed performance of the connection. For example, the nbn25 service is throttled at 25Mbps. This means that it will never actually achieve 25Mbps. This unique NBN Co construction is not particularly intuitive to the end-user. In fact, we think this has created significant customer confusion.

As the ACCC has identified, under the WBA, for higher speed services on FTTN/B/C, the downstream peak information download rates (**PIR**) are expressed in terms of a range (i.e. 25-50Mbps and 25-100Mbps). While we appreciate there will be a variability in the performance of services on these networks, these ranges are far too broad and are not an appropriate minimum standard for fixed-line services. If the PIR ranges continue under WBA4 then they should be revised to 40-50Mbps and 80-100Mbps. Indeed, as outlined in our submissions to the NBN Co pricing reviews, we would prefer that NBN Co adds a 20 percent speed buffer to the speed tiers above the speed tier speed (e.g. nbn25 is throttled at 30Mbps, nbn100 is set at 120Mbps). This will ensure that the end-user is able to achieve a speed that is closer to (or a little better than) the 'sticker' speed.

We urge the ACCC to thoroughly assess this proposal. We believe this technical adjustment to NBN Co's service would allay significant customer confusion and frustration and will bring the NBN service experience closer to an end-user's reasonable expectations.

While we believe that the above proposal is a better solution, we do agree that the ACCC's proposed introduction of rebates for underperforming service speeds are an improvement on current arrangements. However, these should be aligned with the revised PIR objectives outlined above with NBN Co incentivised to meet a minimum speed requirement of 80 percent of the speed that a service is capable of achieving. Should the ACCC decide to introduce rebates for underperforming speeds, we suggest a rebate structure as below.

For an AVC with a PIR of up to 100Mbps:

- $10 for each month that the maximum attainable downlink information rate for a service is less than 80Mbps but above 50Mbps and $20 for each month that the maximum attainable downlink information rate is less than 50Mbps.

For an AVC with a PIR of up to 50Mbps:

- $10 for each month that the maximum attainable downlink information rate for a service is less than 40Mbps but above 25Mbps and $20 for each month that the maximum attainable downlink information rate is less than 25Mbps.

For an AVC with a PIR of up to 25Mbps:

- $10 for each month that the maximum attainable downlink information rate for a service is less than 20Mbps but above 12Mbps and $20 for each month that the maximum attainable downlink information rate is less than 12Mbps.

Service level measurement and exclusions

In our submission to the second discussion paper, we agreed with the ACCC that NBN Co.'s process in WBA3 for beginning measurement of end-user faults at trouble ticket acceptance by NBN Co. (rather than trouble ticket acknowledgement as was previously the case), is not justified. We support a reversion to the process under WBA2 where service levels for rectification of end-user faults begin from the time of trouble ticket acknowledgement.

In relation to 'Stop the clock' exclusions, we agree with the ACCC that NBN Co should only extend service level timeframes under limited specified circumstances as outlined in the draft FAD terms. These include, for example, if NBN Co is waiting for end-user or RSP action before completing a connection or remediating a fault, or NBN Co's operations are affected by a force majeure event.

Availability of service information

We agree NBN Co should record service specific information about the progress of appointments, connections and faults and make this available to RSPs in a way that is accurate, timely and accessible. An automated solution providing regular and ongoing operational information would assist RSPs to keep

customers informed with timely and accurate information regarding their NBN service. We therefore support the draft FAD terms.

Service level reporting

Under the WBA, NBN Co is required to publish a monthly report outlining its performance against its service levels for that month and, as noted by the ACCC, the level of detail in these monthly reports was reduced following the implementation of WBA3. For example, the report includes a metric called 'network availability', which is the percentage of time the NBN access network is available and operating (usually around 99.95 percent). It is unclear how this type of reporting is of benefit to consumers however. Reporting 99.95 percent reliability for example isn't particularly useful for the .05 percent of consumers who may be out of service for a lengthy period.

We agree NBN Co should provide regular reports to access seekers about the overall performance of its network. This should include its performance meeting service levels by location, service class and network as outlined in the draft FAD terms.