



ACCC inquiry into NBN wholesale service standards

Discussion paper

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List of abbreviations and acronyms

ACCC – Australian Competition and Consumer Commission
ACMA – Australian Communications and Media Authority
AER – Australian Energy Regulator
AVC – Access virtual circuit
BROC – Binding rule of conduct
CCA – Competition and Consumer Act 2010 (Cth)
CSG – Customer Service Guarantee
CVC – Connectivity virtual circuit
FAD – Final Access Determination
FTTB – Fibre to the building or Fibre to the basement
FTTN – Fibre to the node
FTTP – Fibre to the premises
HFC – Hybrid fibre coaxial
IAD – Interim Access Determination
LTIE – Long-term interests of end-users
NBN – National Broadband Network
NBN Co – National Broadband Network Company
NNI – Network-network interface
POI – Point of interconnection
RSP – Retail Service Provider
SAU – Special access undertaking
SAO – Standard access obligation
SFAA – Standard form access agreement
TCP Code – Telecommunications Consumer Protections Code
TIO – Telecommunications Industry Ombudsman
UNI – User network interface
WBA – Wholesale Broadband Agreement
WBA 2 – Wholesale Broadband Agreement 2
WBA 3 – Wholesale Broadband Agreement 3

Glossary

Access agreements – an agreement between a carrier (access provider) and an access seeker for the supply of declared services. The requirements for a legally valid Access Agreement are set out in section 152BE of the *Competition and Consumer Act 2010*.

Access determinations – written determinations made by the ACCC relating to terms and conditions for access to a declared service.

Access seeker – a content service provider or carriage service provider that makes, or proposes to make, a request to NBN Co for access to its services, as defined in section 152AG of the *Competition and Consumer Act 2010*.

AVC (access virtual circuit) – an Ethernet-based Layer 2 virtual connection that carries traffic to and from an end-user on NBN Co's fibre, wireless, or satellite networks.

Binding rules of conduct – written rules made by the ACCC specifying any or all terms and conditions for compliance with Standard Access Obligations or requiring compliance with any or all applicable Standard Access Obligations in a manner specified in the rules. These rules are made when there is an urgent need to do so.

Carriage service – defined in section 7 of the *Telecommunications Act 1997* as a service for carrying communications by means of guided and/or unguided electromagnetic energy.

Customer Service Guarantee – a standard designed to encourage service improvement and guard against poor service. Phone companies that are required to comply with it, or who choose to comply with it must meet minimum performance requirements for specified services and they will be required to compensate customers when these minimum requirements are not met.

CVC (connectivity virtual circuit) – NBN Co defines this as an Ethernet-based Layer 2 virtual capacity for the transport of customer traffic from multiple end-users within a Connectivity Serving Area on an aggregated basis and presented at the Network-Network Interface at the point of interconnect associated with that Connectivity Serving Area.

Final Access Determination – a determination that can only be made after a public inquiry has been undertaken under *Part 25 of the Telecommunications Act 1997*. Amongst other things it may specify terms and conditions of access to a declared service, impose other requirements on an access provider such as NBN Co and specify the terms and conditions on which a it must comply with the requirements and deal with any other matter relating to access to the declared service.

Initial Access Determination – a determination that may be made on an interim basis in circumstances where the ACCC has not previously made an access determination, typically where a final access determination is unlikely to be finalised in the next 6 months.

Listed carriage service – a carriage service of the type listed in section 16 of the *Telecommunications Act 1997*, that is, a carriage service between two points where at least one point is in Australia.

NBN access service – NBN Co describes this as a Layer 2 service supplied on the NBN Co network between and including: a User Network Interface on a Network Termination Device; and the Network-Network Interface at the point of interconnect associated with the relevant Network Termination Device, for the purpose of enabling an access seeker or another service provider that is a customer of an access seeker to supply carriage or content services.

NNI (network-network interface) – a physical interface between the NBN Co network and the access seeker's network at the point of interconnect.

Operational targets – non-binding aspirational targets located under WBA, they may be developed into service levels in the future.

Performance objectives – a performance objective is typically measured as the percentage of time that NBN Co is required to achieve the service level for a particular activity under the WBA. For example, where NBN Co sets a specific appointment time for an end-user connection, its service level will be to attend that end-user's premises at that time or within 15 minutes thereafter and its performance objective, i.e., the proportion of occasions it satisfies this, is set at 90 per cent or more.

POI (point of interconnect) – the geographical point where traffic stops being carried on the network of the access seeker and is given to the network owned by NBN Co to carry.

Retail Service Providers – refers to providers of services to consumers, these people may be wholesale customers of NBN Co or may purchase services from wholesale customers

Retail Customer – an end user of NBN services.

Standard Access Obligations – obligations imposed on NBN Co in relation to the supply of its declared services under Division 2 of Part XIC of the CCA.

SAU (special access undertaking) – a voluntary undertaking given to the ACCC by a supplier of a telecommunications service specifying the terms and conditions upon which it agrees to supply a listed carriage service or a service which facilitates the supply of a listed carriage service.

Service Levels – the service levels set out in a service levels schedule in the WBA, these are benchmarks NBN Co employs for different activities, they are typically measured in terms of time; performance objective are binding objective employed by NBN Co for each activity under the Service Levels these measured as the percentage of occurrences that NBN has satisfied its own Service Level.

Standard Form of Access Agreement (SFAA) – a document published on the NBN Co website which sets out terms and conditions on which NBN Co is obliged to enter into in an Access Agreement with an access seeker upon request, and declares the services to which it relates.

Telecommunications Consumer Protections Code – an industry code that provides a number of consumer safeguards for mobile, landline and internet consumers. These safeguards are set out in clear rules that telecommunications providers must follow when communicating and dealing with consumers.

Wholesale Customer – a customer of NBN Co who purchases products from NBN Co.

Wholesale broadband agreement (WBA) – The WBA sets out comprehensive price and non-price terms in relation to the supply of NBN Co's services; and the processes for providing NBN Co's customers with operational and technical information in relation to those services. The WBA is a Standard Form of Access Agreement.

1. Introduction

The Australian Competition and Consumer Commission (ACCC) has announced a public inquiry to determine whether wholesale service standards on the National Broadband Network (NBN) are appropriate, and to consider whether regulation is necessary to improve consumer experiences.

The decision to launch the inquiry was made in the context of a high number of complaints from consumers around poor experiences on the NBN, particularly in relation to consumers connecting to NBN services and having faults repaired, as well as concerns raised by industry that the service standards are not adequate to ensure a positive consumer experience on the NBN.

Wholesale service standards are currently set out in commercial access agreements between NBN Co and its wholesale customers (retail service providers, or RSPs). These include performance objectives and operational targets that apply to NBN Co's products and services, requirements to take corrective action if operational targets are not met, and a framework within which wholesale customers can claim compensation for retail customers or receive commercial rebates where NBN Co has failed to meet a specific service level.

While their application is at the wholesale level, NBN Co's commitments to wholesale operational outcomes are a major factor within the NBN supply chain affecting customer experiences and competition in retail markets for NBN services.

We consider that it is an appropriate time for the ACCC to examine NBN wholesale service standards. The NBN is now reaching its peak rollout stage, meaning that NBN Co's role as a service provider, as opposed to a network builder, is becoming more significant as a greater number of consumers connect to the NBN. This has led to increased focus on the nature and quality of consumer experiences on the NBN, particularly as complaints from consumers about their experiences when migrating and being connected to the NBN have increased considerably. As the scale and pace of the NBN rollout picks up, the ACCC is concerned that consumer experience issues may continue to increase unless improvements are made along the supply chain. Further, reviews of NBN consumer experiences to date suggest that the wholesale service standards that have been set through commercial negotiation may not be promoting good consumer outcomes.

The ACCC can set regulated terms and conditions of access to NBN services under Part XIC of the *Competition and Consumer Act 2010* (Cth) (CCA) to promote the long-term interests of end-users (LTIE). This includes an ability for the ACCC to determine regulatory terms on an interim basis while a long-term determination is considered. Regulated terms and conditions of access determined by the ACCC will operate as a fall-back position during discussions between NBN Co and RSPs.

This discussion paper outlines the key issues for the inquiry and invites submissions from interested parties on these and other related issues. In particular, we are seeking input to inform our view on making interim regulated terms in the first half of 2018. In considering whether to make interim regulated terms, we will consider the cost implications for NBN Co in meeting improved wholesale service standards together with the benefits to consumers through improved operational outcomes.

1.1. Scope of inquiry

In this paper, we use 'NBN wholesale service standards' to refer to:

- NBN Co's service levels as set out in its Wholesale Broadband Agreement (WBA) with RSPs, including performance objectives and operational targets for service levels, as well as requirements for NBN Co to take corrective action and provide compensation or commercial rebates if service standards are not met, and
- other non-price aspects of NBN Co's wholesale arrangements that are likely to influence consumer experience.

The inquiry will look at the wholesale service standards most likely to influence end-user experience. This will include an examination of:

- the scope of wholesale service standards,
- the appropriateness of incentives for NBN Co to remedy service failures,
- the adequacy of compensation available to NBN Co's wholesale customers, to ensure that consumers at a retail level receive appropriate redress when wholesale standards are not met,
- wholesale service standards in the context of the supply chain, including the implications for retail service levels and co-ordination between wholesale and retail providers,
- the level of transparency around service outcomes, and
- any other wholesale activities that influence consumer experience.

The purpose of this discussion paper is to seek views from stakeholders on issues relating to wholesale service standards on the NBN. The ACCC may also seek information from relevant stakeholders by issuing notices under section 155 of the CCA.

The ACCC is considering whether regulatory intervention is necessary, and, if so whether to make a final access determination (FAD) that will include non-price terms and conditions. It will also consider whether more immediate action is required by means of an interim access determination (IAD) or a binding rule of conduct (BROC). These regulatory options are discussed in Sections 3 and 4 of this paper.

1.2. Consultation

The ACCC encourages industry participants and other interested parties to make submissions to this discussion paper, including reasons to support their views.

To foster an informed and consultative process, all submissions will be considered as public submissions and will be posted on the ACCC's website. Interested parties wishing to submit commercial-in-confidence material to the ACCC should submit both a public and a commercial-in-confidence version of their submission. The confidential version of the submission should clearly identify the commercial-in-confidence material by bookending the confidential material with an appropriate symbol of 'c-i-c'. The public version should ensure that all confidential material has been removed and replaced with 'c-i-c'. The ACCC has prepared guidelines for parties wishing to submit confidential information to communications inquiries.

The *ACCC-AER information policy: the collection, use and disclosure information* sets out the general policy of the ACCC and the Australian Energy Regulator (AER) on the collection,

use and disclosure of information. A copy of the guideline can be downloaded from the ACCC's website.¹

The ACCC prefers to receive submissions in electronic form, in either PDF or Microsoft Word format which allows the submission text to be searched. Submitters should ensure that redacted information is not searchable or otherwise able to be disclosed. Please email submissions by **5pm Friday, 16 February 2018** to nbn@acc.gov.au and copy to:

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1.3. Structure of this paper

The remainder of this discussion paper is structured as follows:

- Section 2 provides a brief background to the current inquiry. It describes how NBN services are supplied to consumers, the NBN supply chain and the arrangements that apply in each stage. It also provides an overview of the concerns that have been raised in other contexts about consumer experiences on the NBN and the consideration of these issues by the ACCC and other parties.
- Section 3 provides an overview of the legislative framework and the regulatory instruments available to the ACCC if regulatory measures on services standards are required.
- Section 4 discusses our approach to examining service levels. This includes the matters the ACCC must have regard to in considering whether to make an access determination or binding rule of conduct, different approaches the ACCC could take in making these instruments, and consideration of interim and longer term regulatory measures.
- Section 5 discusses the wholesale service standards that NBN Co currently has in place. It explains the key service levels and other associated arrangements (such as recourse and compensation arrangements) as well as other non-price terms we have identified as most likely to influence customer experiences on the NBN. It identifies a range of specific matters we are seeking stakeholder views on.
- Section 6 discusses the interaction between NBN wholesale service standards and other elements of the NBN supply chain, and the implications for retail service standards.

¹ See: <https://www.accc.gov.au/publications/accc-aer-information-policy-collection-and-disclosure-of-information>

2. Background

This section provides an overview of NBN services and the supply chain, including the relevant markets and the relevant commercial, regulatory and legislative arrangements. This inquiry is being conducted in parallel with other projects and inquiries which are also examining NBN consumer experience issues.

2.1. NBN services

NBN Co was established in 2009 as a government business enterprise, with a mandate to supply wholesale-only high-speed broadband access services to reach all Australians using a mix of access technologies. NBN Co's mandate is set through a Statement of Expectations provided by the government, which is also supplemented by policy directives and correspondence. The current Statement of Expectations, dated 24 August 2016, sets out a number of goals to guide NBN during the rollout which include service quality and continuity for consumers.²

NBN Co provides a wholesale 'last mile' access service. This 'last mile' refers to the final leg of telecommunications infrastructure that directly connects a consumer.³ NBN Co provides the capacity to supply broadband services of different speeds to consumers through the NBN Ethernet Product, which:

- is an Ethernet-based Layer 2 virtual connection that carries traffic between a User Network Interface (UNI) used to serve a premises and a point of interconnection (POI),
- is supplied by means of the fibre to the premises network (FTTP), fibre to the building (FTTB) network, fibre to the node (FTTN) network, hybrid fibre coaxial cable (HFC) network, wireless network or satellite network,
- enables an NBN customer, or its downstream service provider, to supply a carriage service or content service to a premises,
- comprises four product components which a NBN customer must acquire: the Network-Network Interface (NNI), Connectivity Virtual Circuit (CVC), Access Virtual Circuit (AVC) and UNI, and
- also comprises some optional product features that an NBN customer may elect to acquire such as multicast and enhanced fault rectification services.⁴

The NBN is now reaching its peak rollout phase, with 35,000 to 45,000 end-users being connected to the network each week.⁵ In July 2017, the NBN rollout reached 50 per cent completion and in October 2017, NBN Co announced that it activated 3 million premises.⁶ NBN Co expects to connect a further 1.4 million premises this financial year.⁷ However, on 27 November 2017 NBN Co announced that it would be delaying its rollout of the HFC Network, which is likely to impact this forecast.⁸

² [NBN Co Ltd – Statement of Expectations](#), 24 August 2016.

³ The range of a 'last mile' access service varies, between a few metres to several kilometres.

⁴ NBN Co, Wholesale Broadband Agreement, NBN Ethernet Product Module, Product Description, Part A; The NBN Ethernet Product, p 5.

⁵ See: <https://www.nbnco.com.au/corporate-information/about-nbn-co/corporate-plan/weekly-progress-report.html>

⁶ NBN Co, [nbn hits 3 million: Now the hard work starts again](#), 16 October 2017.

⁷ NBN Co, [Corporate Plan 2018-21](#), August 2017, p 9.

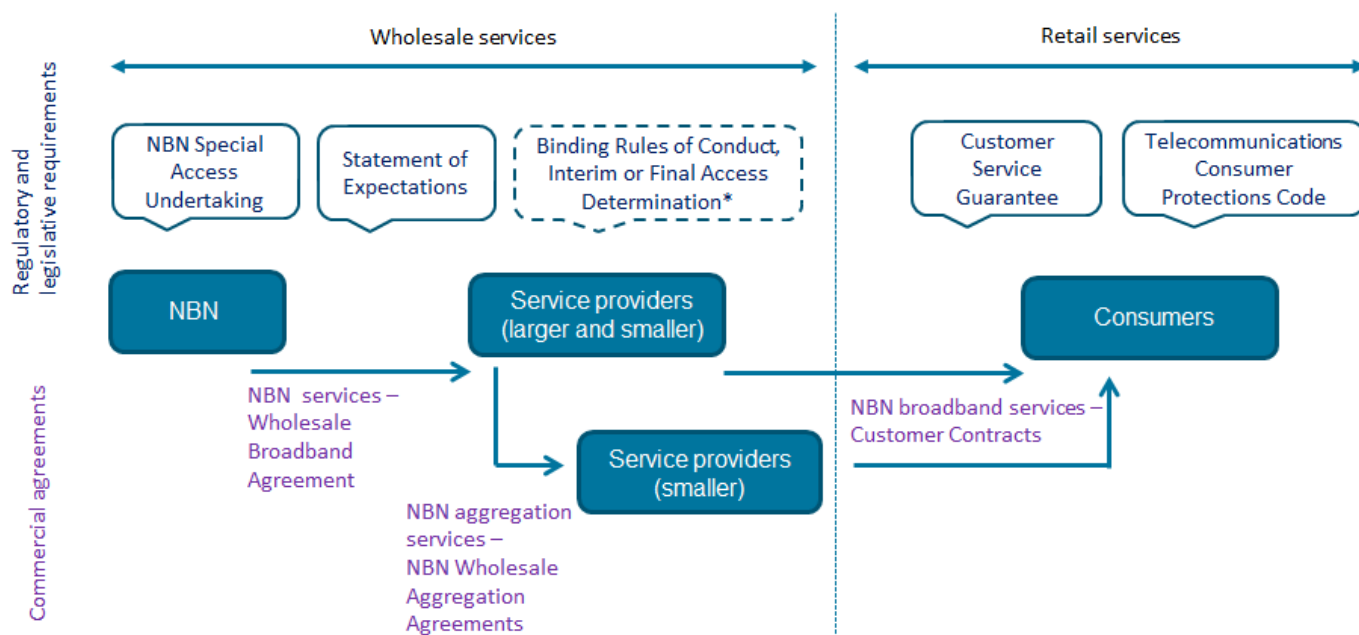
⁸ NBN Co, [NBN Co takes customer experience improvement program to new levels](#), 27 November 2017.

2.2. NBN supply chain

A number of suppliers are involved across the NBN supply chain in providing NBN broadband services to consumers. Diagram 1 sets out a high level overview of the key elements of the NBN supply chain.

Each element of the supply chain is described below, including the markets relevant to this inquiry: markets for wholesale NBN wholesale services, NBN aggregation services, and NBN retail services.

Diagram 1 Key elements of the NBN supply chain



* Binding Rules of Conduct, Interim and Final Access Determinations are discussed further in Section 3.

2.2.1. Wholesale services

Larger RSPs will typically acquire wholesale NBN services directly from NBN Co and then combine them with other communication services such as transmission, interconnection and internet services to supply retail NBN broadband services to consumers.

While there are a number of next-generation fibre network operators in Australia offering wholesale access services, NBN Co has the largest network and it is a monopoly provider in most geographic areas of its network rollout. NBN Co faces some competition from mobile and non-NBN fixed wireless networks, and this may increase over time, but these networks currently provide only limited competitive constraints where they are available and have similar technical capabilities.⁹

Smaller RSPs may find it more cost effective, given their scale, to acquire NBN aggregation services from a larger service provider rather than establishing a direct relationship with NBN Co. In this case, the larger service provider will supply an aggregation service that combines a wholesale NBN service with other wholesale products such as transmission,

⁹ ACCC, Communications sector market study draft report, pp 73-76.

interconnection and internet services in a bundled product. The smaller RSPs then use these services to supply retail NBN broadband services to consumers.

In some cases, service providers may adopt a hybrid approach and directly acquire wholesale NBN services from NBN Co at some NBN POIs but also acquire NBN aggregation services from other service providers at additional NBN POIs (where they may not have the scale to directly connect to all NBN POIs).

As noted in Diagram 1, there are regulatory and legislative requirements and standard commercial terms that apply to wholesale NBN services. These are outlined below.

Special Access Undertaking

NBN Co's Special Access Undertaking (SAU) forms a key component of the regulatory framework governing price and other non-price terms on which NBN Co will supply services over the NBN to its wholesale customers. The SAU sets out the principles for regulating access to the NBN until June 2040. The ACCC accepted the current SAU in December 2013 following an extensive consultation and assessment process.¹⁰

While some non-price terms are set out in NBN Co's SAU, the SAU does not describe wholesale service standards that NBN Co must meet in providing wholesale services. These terms are subject to commercial agreement between NBN Co and its wholesale customers.¹¹

Wholesale Broadband Agreement

NBN Co's WBA sets out the full contractual terms on which NBN Co provides NBN services to its wholesale customers. This includes a description of its products and prices, terms in which RSPs can interconnect and order products, as well as other non-price terms and conditions. NBN Co's WBA is a standard form access agreement (SFAA) and is published on NBN Co's website.¹²

On 17 November 2017, NBN Co released a revised WBA with updated terms and conditions, including the addition of terms relating to the supply of services under the multi-technology mix model. The revised WBA, which is known as WBA 3, replaced the previous version of the WBA that had been in place since December 2013. NBN Co has been in discussions with its wholesale customers on the development of WBA 3 since September 2015.

Notably, WBA 3 contains a service levels schedule within the ethernet product module which sets out a number of service levels, performance objectives and operational targets for NBN Co's products and services. Other terms included in WBA 3, such as risk and liability provisions, can also impact service incentives and outcomes. Section 5 discusses these terms in detail.

Aggregation agreements

Wholesale agreements for the supply of NBN wholesale aggregation services will also be in place where RSPs obtain services from NBN aggregators. We do not currently have visibility of these agreements or the extent to which they contain terms and conditions relating to NBN service levels.

¹⁰ NBN Co, [Special Access Undertaking](#), December 2013.

¹¹ NBN Co initially proposed service levels be included in the SAU, however these were ultimately removed due to concerns from the ACCC and industry, including the adequacy of the proposed service levels and concerns about 'locking in' service levels in the SAU while the NBN was in the very early stages of its rollout.

¹² See: <https://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba.html>

2.2.2. Retail services

RSPs have primary responsibility for the contractual arrangements and relationships with consumers. During the NBN migration phase, NBN Co may have direct contact with consumers. For example, NBN contractors may visit consumers' premises to install equipment or send correspondence about the availability of NBN services. However, even during this phase, the RSP, not NBN Co, is responsible for supplying NBN broadband services to the consumer and will be the primary point of contact for the consumer.

As illustrated in Diagram 1, consumers may be supplied with a retail NBN broadband service by a larger RSP who directly acquires NBN services from NBN Co, or a smaller RSP who acquires an NBN aggregation service from another service provider.

RSPs generally contract with their customers about the price and non-price terms of supply of their retail NBN broadband service. As with the wholesale arrangements, RSPs will often incorporate service level commitments in their customer contracts, which will include some of the kinds of service commitments that are detailed in the WBA. For example, the WBA includes service levels for connections, faults and appointments while retail customer contracts will also generally, include terms and conditions for installation and equipment, faults and maintenance and appointments and rescheduling. These are set out in further detail in section 6 and Annexure C.

There is strong price competition in the retail market for NBN broadband services. However, there appears to be limited competition at this stage on quality of services (speed and performance) on the NBN.¹³

Diagram 1 also illustrates some of the regulatory and legislative requirements that apply to retail NBN connections.

Importantly, RSPs are also subject to broader consumer safeguards, including those set out in the Australian Consumer Law and specific telecommunication safeguards such as the Customer Service Guarantee (CSG) standard, and the Telecommunications Consumer Protections (TCP) Code. If the RSP does not meet their commitments to a customer, they may be liable for compensation or other remedial action. These safeguards are explored further in section 5.

Customer Service Guarantee

The CSG sets out performance standards in relation to the supply of standard telephone services, including voice grade services used to connect to the internet.¹⁴ The CSG does not apply to mobile services, internet or broadband services, customer equipment or pre-selection delays. Under the CSG requirements, RSPs must meet maximum timeframes for connection of a CSG service, repair of a fault or service difficulty, and attending appointments with customers. While these requirements only apply to a standard telephone service and not to broadband services, performance standards set out in the CSG are still relevant to the NBN to the extent that it is used to provide fixed line voice services.

Consumers can waive their rights under the CSG standard.¹⁵ For example, an RSP may offer a cheaper price if a consumer is prepared to waive some or all of their rights to compensation. However, rights under the CSG standard cannot be waived for Telstra services where the service is supplied in fulfilment of the universal service obligation.¹⁶ RSPs

¹³ ACCC, Communications sector market study draft report, pp 69-70.

¹⁴ *Telecommunications (Customer Service Guarantee) Standard 2011*, Part 2.

¹⁵ *Telecommunications (Customer Service Guarantee) Standard 2011*, s 31.

¹⁶ *Telecommunications (Consumer Protection and Service Standards) Act 1999*, s 120(7).

may make an interim or alternative service available in order to meet the CSG timeframes. For example, consumers may be supplied with a mobile service.

Where a consumer has not waived their rights, an interim or alternative phone service is not available and the CSG timeframes are not met, compensation is available for each working day that connections or fault rectifications are delayed beyond the maximum timeframes or where an appointment is not kept. Telstra, Optus and a few smaller RSPs currently comply with the CSG – most other RSPs have asked their customers to waive the CSG.

Priority assistance

Priority assistance is a special customer status for consumers who have life-threatening medical conditions that depend on a reliable fixed-line home telephone service to be able to call for assistance if needed.¹⁷ Priority assistance customers are entitled to priority connection and fault repair of their telephone service, within a 24 hour timeframe in urban and rural areas and a 48 hour timeframe in remote areas.

Telstra is the only carrier who is required to provide priority assistance services in conjunction with its universal service obligation. However, the 24 and 48 hour timeframes do not apply when Telstra has to rely on infrastructure or other services being provided by another network owner (e.g. NBN Co).¹⁸ Other RSPs may also choose to offer priority assistance services.

Telecommunications Consumer Protections Code

The TCP Code is an industry code that contains rules and requirements for RSPs when dealing with consumers. Among other things, the TCP Code imposes information requirements on RSPs and rules in relation to complaints handling.¹⁹ This includes that a complaint handling process must be accessible, transparent and free of charge, that complaints will be treated fairly and dealt with objectively and efficiently, that complaints will be analysed to identify and prevent the recurrence from systemic issues and that records of complaints must be kept. The TCP Code is currently being reviewed.

2.3. Concerns about service standards

As NBN Co is nearing its peak rollout stage, there has been a corresponding increase in the number of complaints from consumers about their poor experiences migrating to, or being connected to the NBN. The matters that have been the subject of complaints include matters set out in NBN Co's wholesale service standards. Concern about the high numbers of poor consumer experiences has been the subject of government, regulatory and industry focus as outlined below. These are also set out in further detail in sections 5 and 6.

2.3.1. Issues raised in Communications Sector Market Study draft report

The ACCC has considered NBN consumer experience issues through our communications sector market study, which released its draft report on 30 October 2017. The report highlights a number of concerns around NBN service level standards and other non-price terms of access, including concerns relating to risk allocation, ineffective co-ordination, poor risk management and limited compensation. These issues are likely to impact the NBN consumer experience and lead to inefficiencies if left unresolved.

¹⁷ See: <https://www.acma.gov.au/Industry/Telco/Carriers-and-service-providers/Universal-service-obligation/priority-assistance-carriers-service-providers-acma>

¹⁸ Telstra, [Priority assistance for Life threatening medical conditions policy](#), paragraph 5.3.2.

¹⁹ See: <https://www.acma.gov.au/Industry/Telco/Reconnecting-the-customer/TCP-code/the-tcp-code-telecommunications-consumer-protections-code-acma>

2.3.2. Issues raised by service providers in the context of negotiating WBA 3

While WBA 3 is generally understood to include many improvements of the previous version of the WBA, we understand a number of RSPs have indicated to NBN Co that they have concerns with aspects of WBA 3 including in relation to the service standards committed to by NBN Co. Several RSPs have approached the ACCC to raise these concerns. While these RSPs identified a range of concerns, there was also some commonality across the issues raised.

2.3.3. Retail complaints

The Telecommunications Industry Ombudsman (TIO) has reported on complaints about services delivered over the NBN. The TIO annual report for 2016/17, reported 27,195 complaints about services delivered over the NBN.²⁰ This is an increase of 159.3 per cent on complaints from the previous year.²¹ Of these complaints, 16,221 were fault complaints about services delivered over the NBN and 11,224 were about delays in connection to the NBN.²²

2.4. Related projects and inquiries

We note there are several other related projects and inquiries that are also examining issues relevant to this service standards inquiry. These are set out below.

NBN wholesale service standards form part of a broad set of issues relating to the consumer experience on the NBN. Consumer experiences are also affected by issues relating to pricing, speed and performance. The ACCC is engaging with NBN Co and RSPs to address some of these concerns, including by issuing industry guidance on broadband speed claims, investigating and taking action where RSPs are misleading consumers or are not making this information clear, and commencing our broadband performance monitoring and reporting program.²³

In mid-2017, the Minister of Communication commissioned the Australian Communications and Media Authority (ACMA) to investigate issues relating to the NBN customer experience. Under this program the ACMA is gathering information from NBN Co and RSPs at different points across the supply chain to identify where customer issues most commonly arise and how those issues can be either avoided or resolved more quickly.²⁴

The Government also convened an industry roundtable on NBN migration issues in August 2017. The roundtable included Communications Alliance, and Chief Executive Officers of each of NBN Co, Optus, Telstra, TPG and Vocus.²⁵

The parliamentary Joint Standing Committee on the National Broadband Network is undertaking an inquiry into the NBN rollout, which included looking at consumer experiences on the NBN. The Committee released its first report on 29 September 2017. In the report, the Committee recommended that appropriate consumer protections be established for broadband services, including service connection and fault repair timeframes, minimum

²⁰ Telecommunications Industry Ombudsman, [Telecommunications Industry Ombudsman 2016/17 Annual Report](#), October 2017, p. 28.

²¹ Ibid, p 28.

²² Ibid, pp 28-29.

²³ See: <https://www.accc.gov.au/consumers/national-broadband-network/broadband-speeds>

²⁴ Minister for the Department of Communications and the Arts, [Turnbull Government bolsters NBN customer experience program](#), 1 August 2017.

²⁵ Minister for the Department of Communications and the Arts, [Industry action to address NBN migration issues](#), 22 August 2017.

network performance and reliability, and compensation arrangements when these standards are not met.²⁶

Questions

1. Are the key elements of the NBN supply chain as they relate to this inquiry captured in Diagram 1? Are there any additional aspects of the supply chain that should be considered as a part of this inquiry?
2. Are the non-price terms and conditions in NBN wholesale aggregation supply agreements the same, or similar to, those in the WBA? Is there a mechanism in these agreements to allow service level terms to be updated to reflect the relevant changes in WBA 3? What are the implications, if any, where these terms and conditions are not the same?
3. If the ACCC was to make an IAD or FAD as a part of this inquiry, how would this impact the terms and conditions in the WBA and NBN wholesale aggregation service agreements?
4. Overall, how do stakeholders view the operation of the CSG standard in the context of the NBN, considering its origins as a measure for voice services provided by a vertically integrated service provider?

²⁶ See: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Broadband_Network/NBN/First_report

3. Regulatory framework

This section sets out the regulatory and commercial framework relevant to this inquiry. This includes the telecommunications access regime in Part XIC of the CCA, the ACCC's powers under Part XIC to make FADs, IADs and BROCs and other ACCC powers that may be used to assist this inquiry.

3.1. Telecommunications access regime

The telecommunications access regime is set out in Part XIC of the CCA. There is no general right to access telecommunications services in Australia, and access is usually unregulated unless a service has been declared or regulated. Part XIC sets out the means by which a service can be declared and when declared, the means by which the terms and conditions of access to a declared service can be specified.

3.1.1. NBN Co declared services

NBN Co must only supply services that are 'declared' services. Part XIC of the CCA sets out three means by which services that are supplied by NBN Co, or are capable of being supplied by NBN Co, may become declared services:

- NBN Co can provide the ACCC with a SAU,
- NBN Co can publish a SFAA, or
- the ACCC can declare an NBN service following a public inquiry.²⁷

The NBN access service was declared when the current SAU was accepted by the ACCC and came into operation in December 2013.²⁸ Additionally, NBN Co published an SFAA (its WBA) which has the effect of declaring the services to which it relates.²⁹

In supplying declared services, NBN Co must comply with standard access obligations (SAOs) set out in the CCA.³⁰ These require that NBN Co must, if requested to do so by a service provider, supply the services so that the service provider can provide carriage services and/or content services. NBN Co is also obliged to, among other things, permit interconnection of facilities of service providers with the facilities owned or controlled by NBN Co.

NBN Co must not, in complying with any of its SAOs, discriminate between access seekers.

3.1.2. Part XIC hierarchy of instruments

Part XIC of the CCA allows the ACCC to set default price and non-price terms of access to a declared service. The terms made by the ACCC can operate as a fall-back that parties can rely on if they are unable to otherwise reach agreement about access. This recognises the primacy of commercial agreements, and will apply without parties having to revert to the ACCC.

These Part XIC provisions mean that the terms and conditions of access may be set out in different documents. As such, any conflict between these documents is resolved by establishing a 'hierarchy' of access instruments.

²⁷ CCA ss 152AL(8A), (8D), (8E).

²⁸ See: <http://registers.accc.gov.au/content/index.phtml/itemId/1130255>

²⁹ See: <https://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba.html>

³⁰ CCA s 152AXB.

These are:

- access agreements, which are commercial contracts between the access provider (NBN Co for NBN declared services) and an access seeker which set out negotiated terms and conditions of supply,³¹
- SAUs given by the access provider and accepted by the ACCC, which are documents given by the access provider proposing the terms and conditions on which it will offer access to its services,³²
- BROCs, which are written temporary rules made by the ACCC in relation to the supply of a declared service, where there is an urgent need to make such rules. A Broc can specify how a service provider must comply with the SAOs for a particular service and to set any or all of the terms and conditions on which compliance must be effected,³³ and
- access determinations, which are written determinations made by the ACCC relating to access to a declared service, specifying any or all of the terms and conditions for compliance with any or all of the SAOs.³⁴

Terms and conditions about a particular matter in an instrument that is higher on the above list will prevail over terms and conditions about the same matter specified in instruments lower in the list. In other words, regulatory instruments lower in the list have no effect to the extent that they are inconsistent with instruments that are higher in the list.³⁵

3.1.3. NBN Wholesale Broadband Agreement

On 17 November 2017, NBN Co published the WBA 3 on its website.³⁶ WBA 3 sets out comprehensive price and non-price terms relating to the supply of NBN services by NBN Co. It also sets out the processes for providing NBN Co's customers with operational and technical information in relation to those services.

Once entered into by an access seeker, WBA 3 becomes an access agreement for the purposes of the regulatory hierarchy set out above. Accordingly, as an access agreement, the terms and conditions in WBA 3 will prevail to the extent of any inconsistency with other regulatory instruments in accordance with the hierarchy.

3.2. ACCC access determinations and binding rules of conduct

The ACCC may make an access determination under the Part XIC with respect to declared NBN services. It may also make an IAD or a Broc.

3.2.1. Access determinations

An FAD or IAD may, among other things:

- specify terms and conditions of access to the NBN declared service,
- impose other requirements on NBN Co and specify the terms and conditions on which it must comply with those requirements, and
- deal with any other matter relating to access to the NBN declared service.³⁷

³¹ CCA s 152BE.

³² CCA s 152CBA.

³³ CCA s 152BD.

³⁴ CCA s 152BC.

³⁵ CCA ss 152BCC, 152BDE, 152CBIA, 152CBIB, 152CBIC, 152CBID.

³⁶ WBA version 3 replaced the previous Wholesale Broadband Agreement that was in operation immediately prior to the publication of WBA 3.

³⁷ CCA s 152BC(3).

The ACCC can only make a FAD if it has held a public inquiry about a proposal to make an access determination under Part 25 of the *Telecommunications Act 1997*, and has prepared a report on the inquiry.³⁸ The ACCC announced it had commenced a public inquiry into NBN wholesale service standards on 2 November 2017.³⁹

3.2.2. Interim access determinations and binding rules of conduct

Part XIC also allows the ACCC to set regulated terms on a short term or interim basis where required.

The ACCC may make an IAD relating to NBN declared services as the ACCC has not previously made an access determination in relation to these services.⁴⁰ An IAD can specify the same kinds of terms that can be set out in an access determination, but is made on an interim basis.

The ACCC may separately make a BROCC that specifies any or all of the terms and conditions on which NBN Co is to comply with its standard access obligations.⁴¹ However, the ACCC may only make a BROCC if it considers there is an urgent need to do so.⁴²

Procedural fairness does not need to be observed before issuing either an IAD⁴³ or a BROCC.⁴⁴

3.3. Criteria for making final access determinations and BROCCs

In making a FAD or BROCC, the ACCC is required to take into account a number of matters. These include:

- whether the access determination or BROCC will promote the LTIE;
- the legitimate business interests of a carrier or carriage service provider who supplies, or is capable of supplying, the declared service, and the carrier's or provider's investment in facilities used to supply the declared service;
- the interests of all persons who have rights to use the declared service;
- the direct costs of providing access to the declared service;
- the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility; and
- the economically efficient operation of a carriage service, a telecommunications network or a facility.⁴⁵

The ACCC may also take into account any other matters that it thinks are relevant.⁴⁶

Our approach to taking these matters into account is set out in section 4.

³⁸ CCA s 152BCH(1)(a)-(b).

³⁹ See: <https://www.accc.gov.au/media-release/accc-inquiry-into-nbn-wholesale-service-standards>

⁴⁰ CCA s 152BCG(2).

⁴¹ CCA s 152BD(1).

⁴² CCA s 152BD(1).

⁴³ CCA s 152BCG(4).

⁴⁴ CCA s 152BD(6).

⁴⁵ CCA s 152BCA(1); s 152BDAA(1).

⁴⁶ CCA s 152BCA(3); s 152BDAA(3).

3.4. Other ACCC powers

The ACCC also has information gathering powers under the CCA. We may require that a person (or company) provide information to the ACCC where it is relevant to the performance of a function, or exercise of a power, under Part XIB or XIC of the CCA.⁴⁷

Part XIB of the CCA provides that the ACCC may make record-keeping rules requiring carriers and carriage service providers to keep records and provide reports of information in those records to the ACCC.⁴⁸ The ACCC may disclose these reports, or extracts of these reports, if it is satisfied that this would be likely to promote competition in markets for listed carriage services or facilitate the operation of Part XIB or XIC.⁴⁹

⁴⁷ CCA s 155(1), (9). See also: [ACCC guidelines – use of s. 155 powers](#).

⁴⁸ CCA s 151BU(1).

⁴⁹ CCA s 151BUA(1), (2).

4. ACCC approach to examining service levels

This section discusses the ACCC's approach to determining whether the regulation of NBN service standards is required, the matters that must be taken into account in making an access determination or BROOC and different approaches that may be considered when making an access determination or BROOC.

4.1. Regulation of NBN service standards and relevant matters for consideration in making an access determination or BROOC

The telecommunications specific access regime in Part XIC of the CCA, as outlined in section 3, is designed to ensure that service providers have access to monopoly and other bottleneck infrastructure. While the regime recognises the primacy of commercial negotiations, by allowing the ACCC to set default price and non-price terms and conditions it enables service providers to supply competitive communications services to consumers where there are limited incentives for, or significant barriers to the development of, infrastructure based competition.

As set out in section 2, NBN services are monopoly services and the ACCC currently regulates price and non-price terms and conditions of access to those services.

While the ACCC generally regulates both price and service standards of monopoly infrastructure, NBN Co's service standards are not currently regulated. When we approved the SAU in 2013 the NBN was in the early stages of its rollout and we were not satisfied it was reasonable to lock in service standards at that time. However, we indicated that service standard terms may be implemented through regulatory access determinations if they are unable to be agreed between NBN Co and service providers.⁵⁰

We have noted in the previous FAD inquiries for fixed line services, which covered the domestic transmission capacity service and the mobile terminating access services⁵¹ (the previous FAD inquiries for non-price terms and conditions), that non-price terms and conditions on which access is provided to a regulated service can play an important role in promoting the LTIE. In particular, they can directly affect the degree of competition and economic efficiency that develops in the supply of downstream services to consumers. In this regard, these non-price terms and conditions impact both the interests of service providers who have rights to use the regulated service and the downstream services available to consumers, including the quality of those services.

For example, service standard commitments by a service provider incentivise that provider to improve customer focus, service delivery and performance. For a monopoly service provider, service standards that include meaningful and measurable commitments that are enforceable and include remedies or penalties, will enable its customers (both wholesale and retail service providers) to deliver quality retail services in downstream markets. This will enable RSPs to compete on quality and customer services. Competition may also be promoted in the supply of NBN wholesale aggregation services if service providers have greater certainty, through enforceable recourse and compensation arrangements, around service standards being met.

Non-price terms and conditions, including service standards, can also impact the legitimate business interests of the provider of a regulated service, such as NBN Co, and impact on the direct costs of providing access. For example, enhancements to NBN service standards

⁵⁰ ACCC, [Variation of NBN Co Special Access Undertaking – explanatory statement](#), October 2013, p. 91.

⁵¹ ACCC, Telecommunications Final Access Determination inquiries – non-price terms and conditions and supplementary prices, Position paper, May 2014, p 6.

such as shorter connection and fault handling timeframes, may lead to higher costs that need to be recovered in the supply of these wholesale services.

These considerations reflect the matters that we must take into account under sections 152BCA and 152BDAA of the CCA in making an access determination or BROCC. We propose to consider these matters as part of this inquiry. Our preliminary view is that not all of the matters listed in section 152BCA will be relevant to a decision to make a FAD about NBN service standards.

However, we note that under section 152BCA and 152BDAA we may take into account any other matters that we consider to be relevant.

We are interested in the views of stakeholders about the matters we must consider in making an access determination or BROCC with respect to service standards, and whether there are other matters that we should take into account in making an access determination or BROCC.

We are particularly interested in understanding the cost implications on NBN Co of expanding the commitments that are currently covered in the service levels schedule, and the extent to which additional costs may be passed on to its wholesale customers and ultimately, to consumers. It is important to note that while there may be NBN service standards in dispute, or not included in WBA 3, this may reflect different commercial positions, including potential cost impacts. For example, specific service standards that are significantly different to those currently in place could impact the costs faced by NBN Co and passed on to RSPs and consumers. We are particularly interested to understand whether these issues were a part of the commercial negotiation process and how decisions around any service standard / cost trade-offs were made and incorporated into WBA 3.

4.2. Approach to making an access determination or BROCC for NBN service standards

As a part of our assessment in making an access determination or BROCC, we will also examine the scope of any such regulatory instrument and in particular:

- the continuum of possible approaches if an access determination or BROCC is put in place, and
- the timeframes for which an access determination or BROCC are considered and whether there are any urgent or immediate issues that require addressing.

These issues are explored below.

4.2.1. Possible approaches for an access determination or BROCC

In considering the making of an access determination or BROCC for NBN service levels, there is a continuum of possible approaches that may be put in place. These include:

- developing overarching principles to guide commercial negotiations, rather than detailed terms and conditions about service standards.,
- specifying service standards. that would promote the LTIE, but are unlikely to be agreed through commercial negotiation, or
- specifying all-encompassing service standards.

Each of these approaches will need to be assessed against the statutory criteria. However, we make the following observations.

In previous FAD inquiries for non-price terms and conditions, we focused on specific terms and conditions that had typically raised competition concerns by access seekers.⁵² We concluded that the LTIE would be promoted by ensuring that there is a regulatory fall-back for such matters. We also noted the potentially significant costs associated with a FAD which encompassed all non-price terms and conditions,⁵³ particularly in the absence of evidence that there was a widespread problem or significant imbalance in bargaining power that had impacted the competitive process.

That said, in making a targeted set of non-price terms and conditions for those declared services, we also noted we would continue to monitor any competition concerns arising from matters that proved contentious in commercial negotiations and:

- consider making a BROCC to urgently address matters as they arise, and
- also examine any unreasonable non-price terms and conditions or conduct around those terms and conditions in an enforcement context under Parts XIB or XIC of the CCA.

In examining the default non-price terms and conditions that would apply in those inquiries, we sought to ensure there would be a set of terms and conditions that:

- filled any gaps in an access agreement where parties could not reach commercial agreement,
- provided certainty over terms and conditions of access for access seekers that do not have an access agreement and are solely reliant on a FAD, and
- were readily applicable in a commercial setting, that is, were expressed in a manner that 'fits' with contractual arrangements.⁵⁴

As outlined in section 2.3.2 and discussed in 5.2 below, some RSPs have raised specific concerns with us about aspects of the service standards that NBN Co has committed to in WBA 3 and how these are impacting their customers. This suggests that overarching principles to guide commercial negotiations may not be effective and there may be a need for an access determination or BROCC. However, we are interested in stakeholder views on this issue.

The inquiry will also examine specific issues that have arisen in recent commercial negotiations between NBN Co and its customers through the WBA process, including the relative bargaining positions of all parties and the effectiveness of negotiations in achieving service standards that will lead to competitive and efficient market outcomes. We will also examine any service standards that are in dispute. This will help to inform the possible approach for any access determination and, in particular, whether regulatory fall-back position for NBN service standards is required.

We are interested to understand from all stakeholders whether there is a significant degree of inequality in bargaining power between NBN Co and access seekers and if so, the degree to which this has impacted commercial negotiations, particularly in relation to service standards set out in WBA 3. We are also interested to understand if there are any service standards in dispute and whether there are additional service standards that should be included in a regulatory fall-back position that have not been included in WBA 3.

⁵² ACCC, Telecommunications Final Access Determination inquiries – non price terms and conditions, Final Decision for MTAS and views for fixed line services and DTCS, August 2015, p 5-7.

⁵³ Specifically, costs imposed on the access provider to incorporate FAD terms into its standard contractual offer and regulator costs in monitoring compliance with that requirement.

⁵⁴ ACCC, Telecommunications Final Access Determination inquiries – not price terms and conditions, Discussion Paper, October 2014, p 10.

4.2.2. Timeframes for which an access determination or BROC is being considered

We propose to examine the timeframes for which any access determination or BROC for NBN service standards are considered and whether there are any urgent or immediate issues that should be addressed through regulatory intervention. As set out below, the timeframes could impact the matters that we must take into account in making an access determination or BROC.

A key factor which may determine the timeframes for which an access determination or BROC are considered is the NBN Co's rollout forecasts which are set out in Table 1. This illustrates that the NBN rollout is now well advanced and in 2017/18 there is a forecast peak in terms of the incremental premises ready for service. Further, in 2018/19 there is a forecast peak in terms of the incremental premises activated. Following this period, the incremental premises ready for service will significantly reduce, reflecting that NBN Co will have rolled the network out to most Australian premises, and the number of incremental premises activated will begin to diminish as NBN Co approaches its forecast take up rate of 73-75 per cent of premises.

Table 1 – NBN Co forecast ready for service and activated premises 2017/18 to 2020/21 (millions)⁵⁵

	2016/17 (actual)	2017/18	2018/19	2019/20	2020/21
Total premises ready for service	5.7	8.7	11.2	11.6	11.7
Incremental premises ready for service	2.8	3.0	2.5	0.4	0.1
Total premises activated	2.4	4.4	6.9	8.1	8.6
Incremental premises activated	1.3	2.0	2.5	1.2	0.5

We note that these annual forecasts may be impacted by NBN Co's announcement in late November 2017 about its new HFC rollout initiatives.⁵⁶ Specifically, that there will be a delay of the current rollout timing for new HFC areas while NBN Co undertakes remediation works to meet a higher level of service quality. However, NBN Co has said that even with these changes it remains on target to connect 8 million active consumers by 2020.

The above rollout information illustrates both the scale of the ready for service and activation activities to be undertaken by NBN Co over the next four years, as well as the different stages and intensity of activity and the relatively complex and changeable environment in which this is occurring. In this regard, we note NBN Co's focus is currently on both managing the network rollout and ensuring customer experience that meets RSP and customer expectations.

These timeframes have implications for the nature and scope of any regulatory intervention in respect of service standards. For example, in the shorter term, when there are still a significant number of premises being made ready for service and activated, there could be a different approach, or different NBN service standards covered, compared to the medium to

⁵⁵ NBN Co, Corporate Plan 2018-21, p 36 and 39.

⁵⁶ NBN Co, Media release NBN Co takes customer experience improvement program to new levels, 27 November 2017.

longer term when these activities will be significantly reduced. In the shorter term, regulatory terms and conditions around NBN service standards that impact consumer experience in relation to service activation may promote competition in downstream markets by enabling RSPs to compete on non-price matters.

The nature of the matters that have been raised with us to date by RSPs suggest concerns will likely change as the NBN rollout progresses and that the current environment in which any access determination or BROOC is made will likely be different to the future environment in which the network build is complete.

Further, we understand that there may be some areas of concern where more immediate regulatory intervention could promote the LTIE (through an IAD or BROOC). For example, ensuring appropriate incentives are in place for NBN Co to meet its current service standards, potentially through revised compensation arrangements. We are seeking views from interested parties as to whether there are any specific NBN service standard issues that require urgent or more immediate regulatory intervention and the reasons why this is the case.

Similarly, over the longer term, the negotiating position of the parties may be further entrenched, which may require different default non-price terms and conditions.

Timeframes for which an access determination or BROOC about NBN service standards could be considered include:

- Short term – during the peak periods of the rollout (ready for service and activation activities) over 2018 and 2019 as NBN continues to deploy the network and customers transition to the NBN. This could also be further broken down into an immediate period early in 2018 when any immediate, high impact issues could be addressed and a later period, such as 2018/19, when any other short term issues requiring further examination could be addressed.
- Medium term – post the immediate period, but before the network has been fully deployed, e.g. 2019/20 and 2020/21.
- Long term – post the rollout in 2020/21, when there has been a period of consolidation and a more mature / stable environment exists where consumer experience is the main focus.

Questions

5. Are there any 'other matters' that should be considered in making an access determination or BROOC in relation to non-price terms and conditions relating to NBN Co's service standards?
6. Have commercial negotiations about the NBN service standards been effective in obtaining competitive and efficient outcomes in the relevant markets? Please explain the reasons why these negotiations have or have not been successful and the main factors that have influenced the outcome of these negotiations.
7. Do you consider regulated fall-back service standards are required for NBN service standards? If so, should they cover all service standards, specific standards only or broad principles for negotiating service standards? Please provide reasons for your answers and in doing so describe your relevant experiences in negotiating NBN service standards and how those experiences inform your preferred approach.
8. What NBN service standards do you consider should be covered by any access determination or BROOC? Please provide reasons.

9. Are there specific NBN service standards that we should examine as a matter of urgency or for more immediate regulatory intervention? Please provide reasons.
10. Do the timeframes for the rollout of the NBN impact on any decision to make an access determination or BROCC? If so, how should these timeframes be assessed in any decision to make an access determination?

5. NBN wholesale service standards

As noted previously, NBN wholesale service standards include its service levels and related arrangements (such as performance objectives, operational targets and recourse for not meeting certain levels of service) and other aspects of NBN Co's wholesale arrangements that are likely to influence the consumer experience. NBN Co's service levels and related arrangements are specified in the service levels schedule of WBA 3.

This section discusses the current service level arrangements and other relevant non-price terms as specified in WBA 3. Section 5.1 provides an overview of the elements of the service level arrangements and other non-price terms we think are most likely to influence the consumer experience. Section 5.2 discusses previous consideration of NBN wholesale service standards by the ACCC and other parties, including concerns raised by various parties in these processes. Section 5.3 identifies specific issues for consultation.

5.1. Overview of current arrangements

5.1.1. Service levels and related arrangements

The key elements of the service levels schedule are the service levels, the performance objectives and the recourse arrangements when certain levels of service are not met. The service level commitments offered by NBN Co are to its wholesale customers.

A service level is a benchmark figure set by WBA 3, which typically is measured in days or hours and is a target committed to by NBN Co in relation to an individual event within the consumer's lifecycle experience. For example, in respect of an end user connection, where NBN Co says it will attend a premises at a particular time, the relevant service level is that the premises will be attended either at that time or within 15 minutes of that time.⁵⁷

A performance objective is typically measured as the percentage of time that NBN Co is required to achieve the service level for a particular activity. For example, where NBN Co sets a specific appointment time for an end-user connection, its service level will be to attend that end-user's premises at that time or within 15 minutes thereafter and its performance objective, i.e., the proportion of occasions it satisfies this, is set at 90 per cent or more.⁵⁸

A failure to achieve a performance objective⁵⁹ will have consequence for NBN Co. For instance, NBN Co may be required to take all reasonably necessary steps to address this failure (corrective action) and this may also lead to rebates being paid to wholesale customers. NBN may also be liable to pay CSG compensation to its customers in certain circumstances where a customer or a downstream RSP has paid a penalty to its customers.⁶⁰

The following sections provide a summary of the service levels, performance objectives and rebates and compensation within the WBA service levels schedule which we have identified as being of particular relevance to current issues surrounding NBN.

A more detailed summary of the service levels schedule is set out in Annexure B.

⁵⁷ WBA 3, nbn™ Ethernet Product Module, Service Levels Schedule, paragraph 2.1.

⁵⁸ Ibid., paragraph 2.2.

⁵⁹ Service Levels means any service level set out in the Service Schedule, these are benchmarks NBN Co employs for different activities, they are typically measured in terms of time; Performance Objective are binding objective employed by NBN Co for each activity under the Service Levels these measured as the percentage of occurrences that NBN has satisfied its own Service Level.

⁶⁰ WBA 3, nbn™ Ethernet Product Module, Service Levels Schedule, p.3.

End user connections

The service levels schedule sets business day targets, by which NBN Co aims to complete connections of end users to its network. These apply from the time a connection order is acknowledged and assigned an 'acknowledged' status by NBN Co (order acknowledgment). The target timeframes will depend on the technology supplied, the availability of the infrastructure to the end user and the location of the premises.

Some services technologies such as wireless may be connected in as few as 1-9 days, while at the upper range services supplied over the satellite network may require up to 20 days or even 35 days for isolated areas..

In respect of these end user connections service levels, NBN Co aims to achieve the following performance objectives:

- 90 per cent minimum (standard and accelerated connections);
- 95 per cent service transfer orders,⁶¹ and
- 100 per cent priority assistance orders.⁶²

Where NBN Co fails to achieve its performance objective for end user connections, NBN may be required to pay a rebate to the affected wholesale customer.

This rebate is paid at a rate of \$25 per connection for the difference between the proportion of connections performed in a relevant month and the 90 per cent performance target for standard connections.

The customer must meet certain conditions to be entitled to the rebate. The key conditions are:

- the customer must maintain and retain up-to-date and accurate records relevant to each accelerated connection and priority assistance connection,⁶³
- the service levels will not apply where the customer fails to comply with the relevant order process set out in the WBA operations manual,⁶⁴ and
- the customer must provide certain customer forecast plans and certain requirements regarding accuracy of forecasts must be met.⁶⁵

Service fault rectification

An end user fault is typically a failure of a single NBN ordered product to perform substantially in accordance with its product description.⁶⁶ The service level timeframe for service fault rectifications are measured from the time that a notification is raised and a record of the fault is made. In most instances, the service level timeframe will be between 5:00pm the next business day⁶⁷. Longer service level timeframes may apply, such as in more remote areas or where supplementary plant work or attendance is required, in which case the timeframe can be up to 5:00pm on the fourth business day. For those faults

⁶¹ A service transfer order means a Connect Order for Service Transfer, Connect Outstanding Transfer or Transfer Reversal which is submitted as a "Transfer Service Order" in accordance with the WBA Operations Manual.

⁶² Priority Assistance Connection means the connection and activation of access components on the basis that they will be used as an input to the supply of a downstream priority assistance service ordered by a customer as a Priority Assistance Connection.

⁶³ WBA 3, nbn™ Ethernet Product Module, Service Levels Schedule, paragraph 1.3.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ See WBA 3 Dictionary "End User Fault" & "Service Fault".

⁶⁷ For urban areas and locations where external or internal plant work or NBN attendance at the premises is not required.

deemed priority assistance faults, rectification will generally be within 24 hours. The performance objectives for service fault rectifications are:

- 100 per cent of the time for priority assistance faults; and
- 90 per cent for all other service faults.

NBN Co may be required to pay a rebate in respect of service faults. This is paid at a rate of \$25 for each customer end user fault multiplied by the difference between the 90% performance objective and actual performance.

Network Fault Rectification

For faults affecting multiple products ordered from NBN Co (network faults) NBN Co's required response times will depend on the impact of the fault and the urgency of the required response with the Category 1 Incidents (the most severe) to be responded to within 30mins and rectified within 6 hours, while Category 4 (the least severe) are to be responded to within 4 hours and these faults are to be rectified within 28 hours. NBN seeks to achieve::

- 90 per cent of responses in accordance with the relevant service level; and
- 90 per cent of rectifications taking place in accordance with the relevant service level.

Enhanced fault rectification

Enhanced fault rectification is a premium service offered by NBN Co which provides enhanced service levels.⁶⁸ There are different enhanced fault rectification products available, each with different process and fault rectification service levels. The service levels for rectification of enhanced faults from the time of the trouble ticket acknowledgement will, in all instances range from 4-12 hours for urban areas or major rural areas with uncomplicated faults and 32-40 in more remote areas where more substantial works are required.

NBN Co seeks to achieve its service levels 95 per cent or more of the time for enhanced fault rectification.

If NBN Co does not achieve an enhanced fault rectification service level in respect of the ordered product it will be liable for penalties as follows:

- first occurrence – the relevant service recurring charge payable by the customer in the billing period; and
- first and each subsequent occurrence – for each hour in excess of the service level 20 per cent of the AVC and UNI recurring charge payable by the customer for the billing period

⁶⁸ See NBN WBA 3 Ethernet Module, Product Description, Clause 6.

End user connection appointments and end user fault rectification appointments

The Service Schedule sets out the timeframes for attending end user appointments and end user fault rectification appointments⁶⁹; these mirror each other and are as follows:

Window for End User Appointments and End User Fault Rectification Appointments	Service Level
Attend a Premises at a particular time	Attend at that time or within 15 minutes
Attend a Premises within a 4 hour period	Attend within the period or within 15 minutes
Attend a premises in a major rural area within a period of between 4 and 5 hours	Attend within the period
Attend a premises in a Minor Rural Area, Remote Area, Isolated Area or Limited Access Area within a period of between 4 and 5 hours	Attend within the period or within 45 minutes thereafter

NBN Co has set the following performance objectives in respect of end user appointments and end user fault rectification appointments:

- 90 per cent or more of actual appointments kept in accordance with the service level;
- 5 per cent or less initial appointments rescheduled; and
- 95 per cent or more rescheduled initial appointments subsequently kept in accordance with the service level.

Network performance and availability

The network availability performance objectives describe NBN Co's commitments to reduce the total number of minutes its network is unavailable over a 12 month period. NBN Co will aim to achieve network availability performance objectives for each of its relevant ordered products of:

- 99.70 per cent in respect of products supplied over the satellite network;
- 99.90 per cent in respect of all other networks.

Utilisation management

For certain shared network resources on parts of NBN Co's transit network, it will dimension the busy hour throughput of shared network resources at a minimum of 350kbps, for each service ordered with a bandwidth profile of between 12/1 and 100/40, and 2Mbps for each service ordered with a bandwidth profile of 250/100 or greater.

If NBN Co considers use of a shared network resource exceeds a 70 per cent threshold for a continuous period of 30 minutes or more on 3 or more occasions during a 21 day period, NBN Co will aim to bring the shared resource back within the utilisation threshold within 15 business days.

⁶⁹ An end user fault is a failure of a single NBN ordered product to perform substantially in accordance with its product description.

Measurement and corrective action

NBN Co commits to measure and monitor its performance, and produce reports based on that information, in relation to each service level activity and its network availability via monthly and quarterly performance reports.

If it does not achieve a performance objective, as soon as is reasonably practical, NBN Co will:

- Inform the wholesale customer of the reasons for the non-achievement;
- provide that customer with a corrective action plan that sets out the relevant corrective action that NBN Co will undertake to address the non-achievement;
- undertake the relevant corrective action; and
- notify the customer as soon as reasonably practicable after the corrective action is taken by NBN Co.

5.1.2. Other wholesale terms impacting service level incentives and outcomes

Through our initial consultation with RSPs, we have recognised several common items which are related to wholesale service terms that we believe are also likely to be critical to the end-user experiences. These are set out below.

Material service failures

A material service failure involves at least 90 per cent of services on a given network or from a single POI experiencing faults for at least 24 hours. Where this is the case NBN Co has a service restoration target that specifies that it must resolve the event within a certain period of time. The service restoration targets are 3 business days for a component failure and 20 business days for a general failure.

A material service failure will be deemed resolved on the date NBN Co determines that either 90 per cent of the relevant service faults are rectified, or a substantial portion of the faults have been rectified, taking into account any factors NBN Co considers relevant.

Third party claim regime

WBA 3 includes a model undertaking under the WBA head terms. This operates to encourage wholesale customers to flow through model terms to their retail consumer contracts, so that terms of this undertaking binds a consumer. The effect of this undertaking is to limit, as far as possible, NBN Co's liability from claims by consumers. The wholesale customer must assign any rights against the consumer, which arise under the model undertaking to NBN Co.

Where a wholesale customer:

- fails to deliver this assignment through a binding model undertaking, or
- fails to take any other possible steps to protect NBN Co from loss,

and that customer could have limited NBN Co's losses in its arrangements involving the consumer, the wholesale customer will effectively have to indemnify NBN Co.⁷⁰

⁷⁰ WBA 3, Head Terms, Clause E2.5(c).

Where a customer has delivered up a model undertaking or otherwise limited NBN Co's liability, the customer is also required to provide NBN Co with all reasonable assistance in its defence.⁷¹

The customer is also required to indemnify NBN Co against any loss suffered by it where the claim is connected to a breach of the WBA or a negligent act by the wholesale customer.⁷²

Liability caps

To the extent permitted by law, the liability of each party to the other is capped at:

- \$200 million for a given year;⁷³ and
- for a single claim, the greater of \$5 million or half of the annual cap limit (i.e. \$100 million).⁷⁴

Liability caps will not apply in certain circumstances, in particular, in the case of the indemnities under WBA, instances of fraud, or in relation to negligent or wilful acts that cause death, serious injury or damage to tangible property.

5.2. Previous consideration of NBN wholesale service standards and concerns raised

Through our ongoing consultation with RSPs, as well as research we conducted through the Communications Sector Market Study and other information we have received, we have identified several common concerns about the wholesale service levels and other non-price terms and conditions that impact wholesale service level incentives and service outcomes within WBA 3. We consider that these are matters that may be contributing to poor and at times detrimental, consumer experiences, and that this is reflected in the rising number of customer complaints surrounding NBN services.

At a high level, these concerns include that:

- Service levels and performance objectives employed under WBA 3 may not be appropriate to ensure a good consumer experience. Particular focus in this respect has focused on consumer connections, fault rectifications and both connections and fault rectification appointments.
- The recourse and compensation payable when these services levels and performance objectives are not met is not sufficient to incentivise NBN Co to supply services that meet specified service levels. As a result some RSPs are either trying to avoid paying compensation to customers or are making compensation payments but without themselves being compensated. They may also be incurring costs to mitigate the impacts on consumers.

The following discussion details the concerns that we have observed across the supply chain. While the inquiry more generally and this section specifically will have a wholesale focus, we also recognise that it will be important to also consider the flow on impacts to the downstream retail services. The impact on retail service standards is considered at Section 6.

⁷¹ WBA 3, Head Terms, Clause E2.5(e).

⁷² WBA 3, Head Terms, Clause E2.5(f).

⁷³ WBA 3, Head Terms, Clause E1.5(a).

⁷⁴ WBA 3, Head Terms, Clause E1.5(f).

5.2.1. Issues raised in the communications market study draft report

On 30 October 2017 we released the communications sector market study draft report, which amongst other matters, set out the concerns expressed by some stakeholders at particular non-price terms and conditions both within WBA 3 and the now superseded WBA2. To address these concerns, the draft report proposed that the ACCC examine non-price terms of access, particularly the service standards being proposed for access to NBN services, and the impact that these may be having on consumer experiences on the NBN.⁷⁵

The following concerns were identified in the draft report in relation to NBN wholesale service levels:

- the wholesale service levels and their appropriateness (the primary concern being that current NBN service levels do not represent an appropriate baseline to ensure a positive end-user experience),
- recourse to compensation was insufficient in circumstances where NBN Co does not meet wholesale service levels (several RSPs indicated WBA 3 needed 'more teeth'), and
- coordination and information flows to assist service levels being met were necessary.

We observed that NBN Co was consulting with RSPs about WBA 3 and this provided the opportunity for the above concerns to be raised and examined.

NBN Co's supplementary submission to the communications market study stated that the service level timeframes contained in WBA 3 for both activation and assurance activities would be set by the practical limitations of the rollout (including managing NBN Co's costs appropriately).⁷⁶ As a result, it did not expect material changes to those service levels during the rollout period.

We also noted our concerns and specifically that without changes to these service level standards, there may be inefficiencies and/or poor consumer outcomes as a result of the lack of incentives and accountability on NBN Co to meet its service level targets.

5.2.2. Issues raised by service providers in the context of WBA 3 negotiations

During the process of WBA 3 negotiations other concerns have been raised by wholesale customers relating to non-price terms. These concerns include:

- the service levels for a variety of matters, including priority assistance, fault rectification and remediation of services, are inadequate, as well as there being no service levels that apply for services during coexistence⁷⁷,
- limitations with the rebate arrangements in place, including the new end user fault rectification rebate, which is cumbersome,
- limitations on the incentives in place for NBN Co to repay CSG compensation payments to wholesale customers who pay CSG to their customers, and
- That particular risk and liability provisions do not appropriately reflect the balance of risk and responsibility in the delivery of NBN services or incentivise NBN Co to invest in its network to mitigate against serious issues arising. This includes the material service failure regime, discussed above.

⁷⁵ ACCC, Communications Sector Market Study, Draft Report, p. 135-138.

⁷⁶ NBN Co, *nbn supplementary submission to the ACCC Communications Sector Market Study*, 21 August 2017, pp. 16–17.

⁷⁷ Coexistence is where NBN services are supplied simultaneously with legacy services and special services in FTTN and FTTB areas. During co-existence, NBN Co may not be able to meet certain data rate commitments that would have otherwise been available.

5.3. Issues for consultation

5.3.1. Scope of NBN Co's service standards

As discussed above, the service levels schedule in WBA 3 sets out the performance objectives NBN Co aims to achieve in relation to certain service standards. NBN Co states that the service levels schedule is designed to track the full life-cycle of the end user experience, commencing with connections and working through to network performance. As such, these include matters such as end user connections, end user fault rectification, customer appointments, network fault restoration and network availability.⁷⁸

We consider that NBN Co's full life-cycle approach is a sensible way to recognise and implement appropriate service standards. We consider that, overall, the service levels employed in WBA 3 appear to cover key aspects of service delivery by NBN Co, although we note that there may be other aspects of NBN Co's service delivery that are not covered by service levels (such as the delivery of services during coexistence).

In this regard, we consider that any poor customer experiences that can be traced back to NBN Co's service level commitments are more likely to result from the specific details of the commitments rather than from a lack of scope with the service standards. We are interested in stakeholder views on this matter.

In addition to the general scope of service level commitments, we note that some areas of the schedule provide stronger commitments than others. For example, the service levels schedule distinguishes between performance objectives and operational targets. Performance objectives are binding and some have consequences in the form of rebates or obligations on NBN Co to take corrective action. Conversely, operational targets are included for other activities for aspirational purposes only and do not give rise to an obligation on the part of NBN Co to take steps to address the deficiency. NBN Co notes that they may be developed into a service level in future.

End-user connections, end-user fault rectifications and enhanced fault rectifications are all areas where performance objectives apply and rebates apply in cases where the performance objective is not met. However, we also note that some exclusions and conditions apply to these rebates. For example, the end-user connection rebate does not include accelerated or priority assistance connections, although we note that the performance objective for priority assistance is set at 100 per cent, rather than the 90 per cent for standard connections. Similarly, premises in limited access areas are excluded from the scope of the service fault rebate.

There are some specific areas where NBN Co employs both performance objectives and operational targets. These include remediation, interference mitigation, network availability and limited access areas. An advantage of operational targets is that they are often quite clearly defined. In particular, the operational targets for remediation set down clearer timelines than the performance objective. The disadvantage of operational targets is that they are not binding in any way and do not provide for any recourse, including corrective action, for failing to meet the targets.

Finally, we note that some service standards may either increase or decrease in importance as NBN Co moves past the peak phase of the rollout and becomes, primarily, a wholesale service or access provider. It appears that all service standards in the service levels schedule will continue to remain relevant post-build but with different levels of significance. For example, service standards around end-user connections, appointments activations and completion advices will remain relevant insofar as newly established premises connect to the

⁷⁸ Greater detail in relation to this can be found in part 3.2.

NBN. However, they will play a smaller role as the connection of existing premises to the NBN will have been completed. Conversely, service fault rectification will continue to grow in importance as the rollout progresses.

An issue we will consider in this inquiry is whether additional service standards are required for the remainder of the NBN rollout to address any migration specific concerns and whether additional service standards are required for after completion of the NBN rollout.

In considering the scope of service level commitments in this inquiry, we will have regard to the cost implications on NBN Co of any potential expansion in the scope of commitments. This includes extension of service levels into new areas, introducing rebates or compensation mechanisms for service levels where no such arrangements currently apply, or for converting operational targets into more binding commitments.

We note that NBN Co would already factor in the cost of meeting service level commitments as part of its ordinary business operations. Therefore, certain improvements to these commitments are unlikely to have cost implications. However, we recognise that significant changes to its service level commitments may create additional costs for NBN Co. These cost implications will be considered together with any associated changes to NBN Co's incentives or positive impacts on the consumer experience.

Questions

11. Does the service levels schedule appropriately cover the most important aspects of the end-user life cycle? If not, what matters have been excluded from the service levels schedule? Are there areas in the service levels schedule where the scope of service standards should be extended?
12. Are there any service standards where commercial rebates for not meeting performance objectives are likely to improve end-user experiences?
13. Are there any additional service level commitments that would be desirable during the rollout phase?
14. Are there any additional service level commitments that should be applied for post-rollout?

5.3.2. Service level timeframes and performance objectives

As discussed in section 5.1, the WBA service levels include a number of timeframes and measures that refer to different elements of the end-user lifecycle experience (the specific service standards). This section discusses the level of NBN Co's commitments and the performance objectives that NBN Co aims to achieve for the specific service standards.

NBN Co has stated that the service standards timeframes contained in the WBA for activation and assurance activities are set by the practical limitations of the rollout (including managing NBN Co's costs appropriately).⁷⁹ However, feedback to the ACCC's communications sector market study included general dissatisfaction with a number of NBN service standards and concerns that the current NBN service standards do not represent an appropriate basis to support a positive end-user experience.

We consider that the service level timeframes must balance certainty and reliability of operational outcomes for NBN services and the cost to NBN Co of providing services. Reducing service level timeframes will increase the cost of supplying each service if operational changes are required. While increased costs will initially be borne by NBN Co, it is likely that these will ultimately be passed on to RSPs and/or consumers. Conversely,

⁷⁹ NBN Co, *nbn supplementary submission to the ACCC Communications Sector Market Study*, 21 August 2017, pp 16-17.

insufficient service outcomes will negatively affect consumer experience on the NBN and competition in retail markets. For example, long or uncertain timeframes for connections or fault rectification risk falling short of end-user expectations.

While these expectations may be based in part on historical experience with Telstra's copper access network and utility services, they may also arise from the need for continuity of services. Further, end-users may be reluctant to engage in switching behaviour unless they have confidence that this will not cause delays, and RSPs ability to differentiate on service quality will be constrained if they are not sufficiently certain about NBN Co's operational performance.

Generally, we consider that the service level timeframes should allow RSPs to meet end-user expectations on the NBN as well as other regulatory or legislative requirements (such as the CSG or Priority Assistance obligations). Any changes to the service level timeframes should have the subsequent effect of improving end-user experience, or retail competition. This may include the ability for RSPs to strengthen their commitments to end-users within retail contracts.

For service levels and performance objectives relating to NBN Co's provisioning and management of the network (such as dimensioning of shared network infrastructure), clear and binding performance objectives and reporting commitments can provide certainty to RSPs that NBN Co is effectively managing network capacity across its network. This is particularly important to RSPs who advertise using the typical busy period speeds that consumers can expect to receive.⁸⁰

End-user expectations

We consider that there are three main categories of service standards that have the greatest impact on consumer experience. These are connection timeframes and related connection issues, fault repair timeframes, and standards for keeping appointments. Operational expectations in respect of these service standards have formed to some degree through end-users' experience with non-NBN networks in the provision of voice and broadband services.

In particular, the CSG framework developed for voice services on Telstra's copper network has played a part in setting end-user expectations. It is difficult to draw direct comparisons between the CSG timeframes and WBA service levels. However, we note that in many cases the WBA service levels appear to be similar to the CSG maximum time frames, and in some cases appear to be designed to assist RSPs in meeting their CSG obligations. For example:

- Under the CSG, where a service has previously been installed, the maximum timeframe for a connection is 2 working days. Under the WBA, the service level for standard connections that can be remotely provisioned is 1 business day.
- For connections that require further works, the CSG provides maximum timeframes of between 5 and 20 working days for urban areas and 10 and 20 working days for rural and remote areas. Under the WBA, the corresponding service levels for standard connections are between 9 and 14 business days for urban areas⁸¹ and 14 and 20 business days for rural and remote areas.
- The WBA allows RSPs to place an accelerated connection order where the NBN connection is used to supply a standard telephone service to an end-user at a premise that does not have an existing standard telephone service connected. These timeframes

⁸⁰ See: ACCC Broadband Speed Claims Industry guidance, August 2017.

⁸¹ With the exception of NBN satellite services which is 20 business days in urban areas.

are all within the 5, 10 and 15 working day maximum timeframes under the CSG for new service connections that are close to existing infrastructure.

- WBA service levels for fault rectification and appointments closely align with the CSG maximum timeframes.

Although the WBA service standards are broadly similar to the CSG maximum timeframes, they are not necessarily indicative of the operational outcome an RSP may expect for each individual connection. The connection performance objectives in the WBA provide that NBN Co will aim to achieve the service level for standard connections and accelerated connections at least 90 per cent of the time based on the total number of connections for all RSPs each month. Similarly, the performance objective for end-user faults and kept appointments is to achieve the service level at least 90 per cent of the time.

In addition to the lack of specificity of the service levels to individual services, the WBA service levels schedule does not provide commitments for up to 10 per cent of services where it does not achieve the service level for a standard connection or fault. In these cases, concerns about RSPs' ability to manage outcomes for end-users is likely to be more pronounced.

Effect of strengthening service level timeframes and performance objectives

The WBA service level timeframes and performance objectives for connections, fault rectification and appointments may be strengthened to more closely align to individual service outcomes. However, end-user experience will only be able to benefit from these changes if NBN Co is able to practically meet these targets within cost constraints.

Further, the effect on competition in retail markets of strengthening service level timeframes is not certain. Greater certainty around operational outcome may allow some RSPs to differentiate on the basis of service quality, but it is not clear the extent to which this would lead to corresponding changes to the contractual commitments within RSPs' retail contracts with end-users.

Operational targets

The WBA also includes non-binding operational targets which are aspirational and do not give rise to corrective action, compensation or rebates. NBN Co monitors and reports on its performance against the operational targets in its monthly and quarterly performance reports to RSPs. It also states that these operational targets may be developed into service levels in the future.⁸²

We note that a number of the operational targets relate to activities that are directly relevant to the experience of some end-users. These include timeframes for estimating the available bandwidth profiles and timeframes for remediating copper lines for business grade (TC-2) services that are not able to achieve certain data rates, and connection and fault timeframes for limited access areas serviced by the NBN satellite network, that are not reasonably accessible by road.⁸³

As the matters covered by operational targets appear to be highly relevant to the consumer experience for certain categories of customers, we would be interested in exploring the potential of converting the operational targets into performance objectives or introducing other recourse arrangements (potentially including rebates). As discussed above, we will consider the cost implications on NBN Co of expanding the commitments currently covered

⁸² WBA 3, nbn™ Ethernet Product Module, Service Levels Schedule, section 19.

⁸³ WBA 3, nbn™ Ethernet Product Module, Service Levels Schedule, Part D.

by operational targets, together with impacts on NBN Co's incentives and the consumer experience.

Questions

15. Does the CSG framework provide an appropriate benchmark for assessing the WBA service levels and performance objectives? If not, are there other benchmarks that should be considered?
16. Do you consider that reducing service level timeframes or improving performance objectives for particular service levels would have the effect of improving end-user experience? If so, how?
17. What other mechanisms could provide incentives to NBN Co to improve service standards and consumer experiences if shortened timeframes or improved performance objectives are not possible?
18. How should the cost implications on NBN of reduced service level timeframes or increased performance objectives be weighed against the potential for better consumer experience outcomes?
19. Are the service levels and performance objectives for network availability and utilisation management adequate to provide certainty that NBN Co is effectively managing network capacity across its network, particularly during busy hours of service?
20. Would it be feasible to introduce more binding commitments for matters currently covered by operational targets? If so, over what timeframes?

5.3.3. Recourse and compensation

As discussed in section 3.2, NBN Co may be required to provide financial compensation to RSPs in cases where certain performance objectives or levels of service are not met. NBN Co may be liable to pay compensation in relation to end-user connections, service fault rectifications, enhanced fault rectifications, for payments RSPs have made to consumers under the CSG standard and costs of providing interim services to priority assistance customers where performance objectives are not met. The compensation that NBN Co may be required to pay are discussed in the following sections.

Connection rebates

As noted in section 3.2, NBN Co is required to pay RSPs a connection rebate for every standard connection that does not meet the relevant service level timeframe below the 90 per cent performance objective. This rebate is paid at the rate of \$25 per connection where the timeframe is not met below the 90 per cent threshold. The payment of this rebate is also subject to a number of conditions.

The following observations can be made about the connection rebate:

- The rebate is payable as a lump sum to each RSP on a monthly basis. The rebate is not attributable to the specific end-users that have experienced connection timeframes that are longer than the service level timeframes.
- The rebate is only payable if the 90 per cent performance objective is not met. There is no rebate payable if the objective is met, but the extent or severity of missed timeframes above the threshold is significant.
- The rate at which the rebate is made is fixed at \$25 and does not depend on the period by which the service level is not achieved.

- The rebate applies only to standard connections. It does not apply to accelerated connections, service transfer orders or priority assistance connections.⁸⁴
- RSPs are required to submit monthly connection forecasts to NBN Co to be eligible for the rebate. Further, the amount of the rebate is contingent on certain forecast accuracy conditions.

We consider that the connection rebate regime provides some incentives on NBN Co to connect consumers to the NBN in a timely manner. For each customer below the performance objective for which the service level timeframes for connection is not met, NBN Co will incur a financial penalty. However, we also consider that these incentives are limited by a number of factors.

First, NBN Co is not required to pay any rebate for the first 10 per cent of end user connections that exceed the service level timeframes. This could potentially provide incentives to NBN Co to deprioritise certain individual premises if it considers it likely that its overall performance objective will be met.

Second, the rebate is payable at the fixed rate of \$25 for each connection that exceeds the service level timeframe. The extent to which the service level timeframes are not met is not considered. This could give NBN Co incentives to deprioritise individual connections for which the service level timeframes have already been exceeded. Incentives to prioritise connections that have already exceeded the service level timeframes could potentially be strengthened to change the way the rebate is calculated, for example by applying the rebate on a daily basis or by increasing the rate of the rebate the longer the connection timeframe exceeds the service level.

We also note that the rebate is paid to RSPs as a lump sum and is not attributable to individual premises where the service level timeframe has been missed. This is notwithstanding the extent of any individual cases of poor performance.

Although we note the potential limitations of the financial incentives on NBN Co with regards to connections and the absence of direct financial payments for individual cases of poor performance, NBN Co may have other ways to ensure individual cases are addressed appropriately. We would be interested in stakeholder views on NBN Co's performance regarding connection timeframes and the influence of the rebate arrangements on its performance. We would also be interested in other measures NBN Co has in place to better target individual cases of poor performance and whether they are effective in practice.

Finally, it is not immediately clear why the conditions around forecast plans and forecast accuracy are in place. We would be interested in further explanation from NBN Co about the rationale for this condition and views from RSPs on how it impacts on their ability to claim connection rebates.

Service fault rebates

Service fault rebates operate in a similar way to connection rebates. Service fault rebates are payable where fault rectification service levels for end user faults are not met below the 90 per cent performance objective at a fixed rate of \$25 for each instance. Some other key observations about the service fault rebate are as follows:

- Service fault rebates are only payable in relation to end user faults. They are not available in relation to priority assistance faults, enhanced faults or external faults.
- Service level fault rebates do not apply for faults in limited access areas.

⁸⁴ Although NBN Co may be required to reimburse the costs of providing interim services for priority assistance customers.

- For instances where the RSP is eligible for the service fault rebate and CSG compensation is available for the same end user fault, NBN Co may reduce the service fault rebate by the amount of CSG compensation paid.
- NBN Co may also adjust the service fault rebate in cases where the RSP is eligible for compensation under the material service failure provisions.

We consider that the service fault rectification rebate has very similar incentive properties to the connection rebate. Although the rebate appears to provide some incentive for NBN Co to rectify end user faults in a timely manner, this incentive is limited by a number of factors. These are that the rebate does not apply to the first 10 per cent of faults that exceed the service levels timeframes for rectification and the extent to which the fault rectification timeframes are not met are not factored into the rebate calculation. Further, we note that the service fault rebate also is not attributable to individual instances of poor service regarding fault rectification.

We would be interested in stakeholder views on NBN Co's performance regarding end user fault rectification and the influence of the rebate arrangements on its performance. We would also be interested in any further measures NBN Co has in place besides the service fault rebate, to better target individual cases of poor performance.

We would also be interested in views from interested parties as to whether the conditions around CSG and material service failure are appropriate.

Enhanced fault rectification

NBN Co is required to pay an enhanced fault rectification rebate for each ordered product where the enhanced fault rectification service level is not met. For the first instance in a billing period, the rebate will be equal to the enhanced fault rectification recurring charge (i.e., the recurring charge will be refunded). For the first and subsequent instances a further rebate of 20 per cent of the recurring AVC charge will be refunded for each hour above the rectification timeframes.

We note that the enhanced fault rectification rebate differs from the standard fault rebate in that the rebate is payable for each instance where the service level is not met and appears to be attributable to individual consumers. Further, the rebate increases the longer the rectification timeframes are exceeded.

We consider that these arrangements provide stronger incentives on NBN Co to rectify faults for consumers with the enhanced service and provides for direct recourse for the consumer. We also note that this is an optional feature for which consumers who value faster rectification of faults can pay extra.

We would be interested in understanding further the extent to which RSPs are purchasing enhanced fault rectification services on behalf of consumers, given the optional nature of these product features. We would also be interested in whether they have been effective in promoting prompt fault rectification and whether individual consumers are receiving the benefits of the rebate in practice.

Compensation for costs under the customer service guarantee standard

The WBA 3 service levels schedule includes a process that allows an RSP to claim CSG compensation back from NBN Co when it has paid consumers in relation to accelerated connections, end-user fault rectifications, appointments for end-user connections, and appointments for end-user fault rectification.

To claim CSG compensation from NBN Co, WBA 3 requires that RSPs submit claims for each individual contravention that has occurred. Service providers must also quantify the proportion of compensation NBN Co has caused or to which it has contributed. NBN Co is not obliged to make CSG payments to RSPs unless they have, among other conditions, taken and used all reasonable endeavours to avoid or mitigate its liability to pay CSG compensation where NBN Co may be liable. This may create an incentive for an RSP to request consumers to waive their CSG rights.

The CSG standard was designed for voice services provided by a vertically integrated RSP. However, it continues to be an important part of the broader consumer framework insofar as fixed line voice services are supplied over the NBN. We also recognise that the separation of the NBN supply chain into wholesale and retail segments introduces an additional layer of complexity and the need for coordination between the different segments of the supply chain. It is therefore important that CSG arrangements at the wholesale level are appropriate to allow the scheme to operate effectively and to ensure that CSG costs are borne by the responsible parties over the supply chain.

As noted previously, we have heard concerns through the market study and in discussions with a number of RSPs about the CSG arrangements NBN Co has in place. These concerns include difficulties in the claims procedure, timeframes for receiving reimbursement of CSG costs from NBN Co, difficulties in apportioning CSG costs between parties and the need to take steps to avoid CSG liability, including requesting consumers to waive their CSG rights.

We are interested in further information from NBN Co and RSPs about how the wholesale CSG arrangements are working in practice and whether potential improvements to the process can be developed. In particular, we would be interested in further understanding how the claims process works, the extent to which CSG costs have been reimbursed by NBN Co, whether changes introduced into WBA 3 are promoting a more effective process and the processes by which CSG costs are allocated between NBN Co and RSPs.

Although our focus on the CSG standard will remain primarily on the wholesale arrangements that are currently in place, we will consider the operation of CSG refunds within the context of the entire NBN supply chain.

Questions

21. Does the level of the connection and fault rebates and their structure provide appropriate incentives for NBN Co to connect premises and rectify faults in a timely manner?
22. Does the level of the connection and fault rebates and their structure provide appropriate incentives for NBN Co to address individual cases of poor performance regarding connections and service faults?
23. Do the specific service levels for connections allow retail service providers to meet their CSG and priority assistance obligations (as opposed to the availability of compensation or rebates from NBN Co under the WBA)?
24. Are there any other measures in place besides the connection and fault rebates to deal with individual cases of poor performance regarding end user connections and service faults? Are these measures effective?
25. Why are forecast plan and forecast accuracy conditions in place for the connection rebate? How are these conditions affecting RSPs' ability to claim connection rebates?
26. Are the enhanced fault rectification rebates resulting in faster fault rectification for those consumers purchasing this service? To what extent are the enhanced fault rectification rebates flowing through to consumers?

27. How is the process for claiming CSG costs from NBN Co working in practice? To what extent have RSPs been able to claim CSG costs from NBN Co?
28. Are changes to the CSG arrangements introduced into WBA 3 promoting more effective processes?
29. What is the process for determining how CSG costs are allocated between NBN Co and RSPs?

5.3.4. Other non-price terms

As noted previously we will be examining other aspects of NBN Co's wholesale arrangements that we consider likely to influence the customer experience as part of this inquiry. In section 5.1 we identified material service failures, the third party claim regime and liability caps as further non-prices aspects of WBA 3 that are most likely to influence the consumer experience.

One of the reasons why we have identified these issues for further examination is that they relate to the allocation of risk between NBN Co and RSPs. We consider that an appropriate allocation of risk between parties along the supply chain is essential to ensuring all parties face good incentives for the areas for which they are responsible and ensuring positive consumer experiences. We would also be interested in whether there are other elements of NBN Co's wholesale arrangements not specifically mentioned in this discussion paper that relate to the allocation of risk and incentives on NBN Co and in other parts of the supply chain.

Material service failures

We understand the material service failure provisions are new to WBA 3 and have therefore only recently come into effect. The provisions provide additional commitments to rectify certain mass service faults within a specified timeframe. Further, the provisions have the effect of reducing limitations on NBN Co's liability in relation to significant network outages that meet the criteria for a material service failure.

WBA2 did not recognise material service failures and their inclusion in WBA 3 reflects an improvement in the commitments offered by NBN Co. However, it is not clear whether the current provisions provide appropriate protections for consumers or opportunities for recourse in the event of significant network outages, or whether the provisions provide appropriate incentives for NBN Co.

For example, 90 per cent of consumers from a single point of interconnect must be affected by an outage and the outage must persist for a certain period of time (up to 20 days for a general failure) before an event can be classified as a material service failure. For network outages that do not meet the 90 per cent coverage criteria but are nonetheless significant and widespread, NBN Co is not required to meet the material service failure provisions. Also, any outage, regardless of how widespread it is, is not subject to the reduced liability limits if the rectification timeframes are met.

Further, the provisions do not appear to provide for any direct compensation mechanism for material service faults, unlike, for example, the commercial rebate for service faults. They only provide for reductions in the limits on liability for NBN Co. Although a direct financial penalty is only one of a range of factors that will influence NBN Co's incentives, the lack of a direct connection between material service failures, and a financial consequence, may not represent an appropriate incentive.

Although the material service failure provisions are new, we would be interested in stakeholder views on whether they are likely to provide appropriate protections and opportunities for recourse for significant network outages. We would also be interested in views on the likely influence these provisions will have on NBN Co's incentives to prevent or quickly rectify significant network outages.

Third party claims

The third party claims provisions in WBA 3 appear to require RSPs to either prevent their customers from making claims against NBN Co through specified terms in their retail

contracts with consumers or to indemnify NBN Co for any claims made by consumers. Although there appear to be some exceptions where NBN Co will retain liability, the provisions are non-specific and appear to apply broadly across all areas of NBN Co's operation.

We consider a likely effect of the third party claim provisions is to transfer the risk of certain matters within NBN Co's areas of responsibility to either consumers or RSPs. If a failure by NBN Co within its areas of responsibility creates a cost on a consumer and the consumer's retail contract prevents claims against NBN Co, that consumer would be required to bear these costs. If the retail contract does not include the relevant terms required by NBN Co, the RSP may be liable for these costs if the consumer brings a claim against NBN Co.

We consider that the third party claims regime is unlikely, by itself, to provide good incentives on NBN Co as it reduces or removes some of the potential financial consequences of poor performance.

We would be interested in further explanation from NBN Co on the rationale for the third party regime provisions. We would also be interested to understand whether RSPs intend to flow through the model terms to retail contracts.

Questions

30. Do the matters identified in this section represent the key aspects of WBA 3 that relate to the allocation of risk and incentives?
31. Are the material service failure provisions likely to provide appropriate protections and incentives for NBN Co in relation to significant network outages?
32. What impact is the third party claims regime likely to have in practice, including on RSPs, consumers and NBN Co's incentives?
33. Are RSPs flowing through or intending to flow through the model terms under the third party claims provisions to retail contracts?
34. Are there examples from other sectors where an upstream service provider has required downstream providers to contractually prevent claims being brought against it or otherwise indemnify it from claims?
35. How likely is it that liability caps will be reached? What type of event could potentially see the caps being reached?
36. Are there any comparable situations where liability caps have been imposed? If so, how are these caps structured and at what levels are the caps set?

6. Implications for retail service standards

As set out in sections 3 and 4, the ACCC has a role regulating the wholesale access price and non-price terms and conditions for NBN services.

While our role does not extend to regulating the retail supply of NBN services, wholesale NBN service standards are likely to impact the standards that flow through to downstream retail NBN broadband services. In addition, in making an access determination or BROCC we must take into account whether the LTIE will be promoted, which necessarily means we need to take into account the impact on retail NBN services. As a result, we consider it relevant for this inquiry to examine the implications of the wholesale NBN service standards for the supply of retail NBN broadband services.

To the extent that markets do not appear to be functioning effectively, with wholesale NBN service standards not being passed through to the retail level, or there being a limited degree of reciprocity, we will seek to understand why this is the case and consider possible measures to address this issue. This may involve making an access determination or BROCC that sets NBN service standards. However, there may also be alternative measures beyond access regulation that could be put in place by industry or other regulators such as the ACMA.

This section provides further detail to the discussion in section 2.3.2 about the current retail service standards for NBN broadband services, with a focus on connections, faults and appointments and outlines how these differ from the wholesale NBN service standards in relation to these matters. It then examines the retail concerns arising about connections, faults and appointments which are manifesting in complaints to the TIO. Finally we examine possible service standard and information flow issues along the supply chain and how they may impact the retail broadband market.

6.1. Current retail service standards for NBN broadband services

As outlined in section 2.2.2, RSPs have customer contracts in place, which include commitments to their customers about service standards, some of which reflect the NBN service standards included in the WBA. This includes retail terms and conditions for connection and installation, faults and appointments.

We have examined the retail terms and conditions for some larger and smaller RSPs supplying NBN broadband services. These are outlined in Annexure C for Telstra, Optus, TPG, Aussie Broadband and Exetel. In summary:

- For connection and installation of a retail NBN broadband service, Telstra, Optus, TPG and Exetel do not include specific timeframes. Aussie Broadband states that it aims to connect a service within 30 days (although it is not liable for any delay in connecting).
- For rectification of faults for a retail NBN broadband service, Telstra, Optus, TPG and Exetel do not include specific timeframes. Aussie Broadband states that where it is responsible for an outage or fault, and it requires an onsite visit, it commits to restoration of the service within 14 days and that where it does not require a service call it commits to resolving the outage in 2 working days.
- For appointments relating to a retail NBN broadband service (e.g. for connections or fault rectification) Telstra and TPG do not include specific timeframes and Optus, Aussie Broadband and Exetel do not include any explicit terms and conditions.

This illustrates that at the retail level, many RSPs do not specify timeframes in customer contracts for connection and installation, fault rectification and appointments relating to broadband services. However, these matters are often the subject of consumer complaints,

which is discussed further below. It appears that many timeframes specified in the retail terms and conditions generally relate to CSG services, particularly the standard telephone service, not a broadband service.

This is in direct contrast to the wholesale NBN service standards, which as outlined in section 5.1.1 set specific timeframes for connection of services, rectification of faults and appointments (for connections and faults). These differ depending on the NBN technology at the premise, the availability of the NBN infrastructure at the premise and the location of the premise. There are also corresponding performance objectives for these service levels, which for connections and fault rectification are linked to commercial rebates or compensation that are available to RSPs.

While not a part of the WBA 3 service standards, the commercial terms include missed appointment fees that may be charged by NBN Co when the consumer is not present for an NBN appointment, although it currently waives these fees.⁸⁵ If NBN Co were to begin charging missed appointment fees, we expect RSPs would be likely to pass on these charges directly to consumers. In contrast, we understand that there is no redress available to consumers if NBN Co does not attend an appointment or does not attend within the specified timeframes.

6.2. Retail complaints about NBN service standard areas

As outlined in section 2.3.3, in 2016–17 the TIO received 27,195 complaints about services delivered over the NBN. Of these complaints, 16,221 were fault complaints about services delivered over the NBN and 11,224 were about delays in connection to the NBN.⁸⁶

The top complaint issues about NBN services in 2016–17 were about connection delays, unusable internet services and slow data speeds.⁸⁷

While an increase in complaints is somewhat expected given the increasing number of households connected to the NBN, the TIO considers that the large number of complaints about service and connection issues is cause for concern.⁸⁸ Even adjusted for the increase in activations, there was a 79 per cent increase in NBN fault and connection delay complaints to the TIO on a per premise basis between July–December 2016 and January–June 2017.⁸⁹

Of complaints about the NBN to the ACCC in the first half of 2017, approximately 69 per cent related to service performance issues. The most common complaint about service delivery issues relate to data throughput speeds being below those advertised by, or purchased from, RSPs.

This information suggests that customers are experiencing issues in relation to NBN broadband connection and fault rectification, as well as speed performance, and this is manifesting itself with an increasing number of retail complaints. These are also areas where, as outlined above, the wholesale NBN service standards do not appear to be flowing through to commitments in retail customer contracts for NBN broadband services.

⁸⁵ WBA 3, Price List - nbn Ethernet Product Module, clause 5; NBN Co, Discounts, Credits and Rebates List, clause 8.

⁸⁶ Telecommunications Industry Ombudsman, [Telecommunications Industry Ombudsman 2016/17 Annual Report](#), October 2017, p. 28.

⁸⁷ Ibid, p. 29.

⁸⁸ Telecommunications Industry Ombudsman, *Media release - Complaints from residential consumers and small businesses about landline phones, mobile phones and internet services increase*, 18 October 2017

⁸⁹ Telecommunications Industry Ombudsman, [Telecommunications Industry Ombudsman 2016/17 Annual Report](#), October 2017, p. 29. This reflects the percentage change over this period in fault complaints and connection delay complaints against the total number of premises connected.

6.3. Issues for consultation

As set out in sections 6.1 there appears to be a disconnect between the NBN service standards specified at the wholesale level, as in WBA 3, and those which exist in retail customer contracts for NBN broadband services. This may be, in part, leading to NBN customer experience issues and increasing customer complaints about NBN connections and fault rectification.

As with all supply chains, the effective provision of retail NBN broadband services needs to be supported by underlying wholesale NBN service standards and coordinated operational arrangements and information flows between NBN Co, RSPs and the consumer. The underlying wholesale arrangements do not need to be transparent to the consumer, but they do need to reflect the shared responsibility between NBN Co and RSPs in supplying fixed line broadband services and ensure that those best placed are managing the relevant risks.

One aspect of this is how the relevant service standards flow through from the wholesale to retail level. Back-to-back commercial agreements that mirror the terms and conditions of supply down the supply chain, particularly in terms of service standards, recourse and compensation should assist with this outcome. This does not currently appear to be occurring.

We are interested to understand why this is the case and what is causing this apparent disconnect. For example, RSPs may not have confidence that NBN services standards will be met (reflecting past performance) or in the compensation available or recourse where this is the case. As a result, RSPs may be deciding not to flow wholesale NBN service standard commitments through to retail service standards. We note that this aligns with the information we have received to date about both concerns with NBN service standards not being met and there being limitations to the compensation arrangements.

Alternatively, there may be insufficient competition at the retail level to incentivise RSPs to differentiate NBN broadband services through service standards relating to connections, fault handling and appointments. While this is a possibility, we consider it is less likely, particularly given there are four larger RSPs and a significant number of smaller RSPs competing for market share as the NBN is being rolled out. Further, we are seeing a significant degree of price competition and it is likely RSPs would also seek to differentiate based on non-price service standards, such as connections, faults and appointments where practicable.

Along with understanding the drivers for this disconnect, we are also seeking to explore and understand potential measures that may be put in place to address this issue. Depending on the drivers this may include making an access determination or BROCC, where this would promote the LTIE, however it may also include alternative measures beyond the scope of wholesale access regulation administered by the ACCC. For example:

- putting in place measures to enable transparency about NBN Co performance against service standards or about complaints about NBN service standards not being met,
- extending or varying the CSG to include retail broadband services, or
- strengthening the existing telecommunications complaint handling measures to include NBN Co and other wholesale services providers.

We are interested to understand stakeholder views about measures which may encourage greater alignment between wholesale and retail NBN services standards, in order to promote the LTIE.

Questions

37. Why do retail customer contracts for NBN broadband services not, in general, reflect the wholesale NBN service standards, particularly for connections, faults and appointments? Please detail the key drivers for this and provide evidence to illustrate.
38. Are there any measures that could be put in place to achieve greater alignment of wholesale and retail NBN service standards and are any measures considered likely to be more effective than others?

Annexure A – list of questions

NBN supply chain

1. Are the key elements of the NBN supply chain as they relate to this inquiry captured in Diagram 1? Are there any additional aspects of the supply chain that should be considered as a part of this inquiry?
2. Are the non-price terms and conditions in NBN wholesale aggregation supply agreements the same, or similar to, those in the WBA? Is there a mechanism in these agreements to allow service level terms to be updated to reflect the relevant changes in WBA 3? What are the implications, if any, where these terms and conditions are not the same?
3. If the ACCC was to make an IAD or FAD as a part of this inquiry, how would this impact the terms and conditions in the WBA and NBN wholesale aggregation service agreements?
4. Overall, how do stakeholders view the operation of the CSG standard in the context of the NBN, considering its origins as a measure for voice services provided by a vertically integrated service provider?

ACCC approach to examining service levels

5. Are there any 'other matters' that should be considered in making an access determination or BROCC in relation to non-price terms and conditions relating to NBN Co's service standards?
6. Have commercial negotiations about the NBN service standards been effective in obtaining competitive and efficient outcomes in the relevant markets? Please explain the reasons why these negotiations have or have not been successful and the main factors that have influenced the outcome of these negotiations.
7. Do you consider regulated fall-back service standards are required for NBN service standards? If so, should they cover all service standards, specific standards only or broad principles for negotiating service standards? Please provide reasons for your answers and in doing so describe your relevant experiences in negotiating NBN service standards and how those experiences inform your preferred approach.
8. What NBN service standards do you consider should be covered by any access determination or BROCC? Please provide reasons.
9. Are there specific NBN service standards that we should examine as a matter of urgency or for more immediate regulatory intervention? Please provide reasons.
10. Do the timeframes for the rollout of the NBN impact on any decision to make an access determination or BROCC? If so, how should these timeframes be assessed in any decision to make an access determination?

Scope of NBN Co's service standards

11. Does the service levels schedule appropriately cover the most important aspects of the end-user life cycle? If not, what matters have been excluded from the service levels schedule? Are there areas in the service levels schedule where the scope of service standards should be extended?
12. Are there any service standards where commercial rebates for not meeting performance objectives are likely to improve end-user experiences?
13. Are there any additional service level commitments that would be desirable during the rollout phase?

14. Are there any additional service level commitments that should be applied for post-rollout?

Service level timeframes and performance objectives

15. Does the CSG framework provide an appropriate benchmark for assessing the WBA service levels and performance objectives? If not, are there other benchmarks that should be considered?

16. Do you consider that reducing service level timeframes or improving performance objectives for particular service levels would have the effect of improving end-user experience? If so, how?

17. What other mechanisms could provide incentives to NBN Co to improve service standards and consumer experiences if shortened timeframes or improved performance objectives are not possible?

18. How should the cost implications on NBN of reduced service level timeframes or increased performance objectives be weighed against the potential for better consumer experience outcomes?

19. Are the service levels and performance objectives for network availability and utilisation management adequate to provide certainty that NBN Co is effectively managing network capacity across its network, particularly during busy hours of service?

20. Would it be feasible to introduce more binding commitments for matters currently covered by operational targets? If so, over what timeframes?

Recourse and compensation

21. Does the level of the connection and fault rebates and their structure provide appropriate incentives for NBN Co to connect premises and rectify faults in a timely manner?

22. Does the level of the connection and fault rebates and their structure provide appropriate incentives for NBN Co to address individual cases of poor performance regarding connections and service faults?

23. Do the specific service levels for connections allow retail service providers to meet their CSG and priority assistance obligations (as opposed to the availability of compensation or rebates from NBN Co under the WBA)?

24. Are there any other measures in place besides the connection and fault rebates to deal with individual cases of poor performance regarding end user connections and service faults? Are these measures effective?

25. Why are forecast plan and forecast accuracy conditions in place for the connection rebate? How are these conditions affecting RSPs' ability to claim connection rebates?

26. Are the enhanced fault rectification rebates resulting in faster fault rectification for those consumers purchasing this service? To what extent are the enhanced fault rectification rebates flowing through to consumers?

27. How is the process for claiming CSG costs from NBN Co working in practice? To what extent have RSPs been able to claim CSG costs from NBN Co?

28. Are changes to the CSG arrangements introduced into WBA 3 promoting more effective processes?

29. What is the process for determining how CSG costs are allocated between NBN Co and RSPs?

Other non-price terms

30. Do the matters identified in this section represent the key aspects of WBA 3 that relate to the allocation of risk and incentives?
31. Are the material service failure provisions likely to provide appropriate protections and incentives for NBN Co in relation to significant network outages?
32. What impact is the third party claims regime likely to have in practice, including on RSPs, consumers and NBN Co's incentives?
33. Are RSPs flowing through or intending to flow through the model terms under the third party claims provisions to retail contracts?
34. Are there examples from other sectors where an upstream service provider has required downstream providers to contractually prevent claims being brought against it or otherwise indemnify it from claims?
35. How likely is it that liability caps will be reached? What type of event could potentially see the caps being reached?
36. Are there any comparable situations where liability caps have been imposed? If so, how are these caps structured and at what levels are the caps set?

Implications for retail service standards

37. Why do retail customer contracts for NBN broadband services not, in general, reflect the wholesale NBN service standards, particularly for connections, faults and appointments? Please detail the key drivers for this and provide evidence to illustrate.
38. Are there any measures that could be put in place to achieve greater alignment of wholesale and retail NBN service standards and are any measures considered likely to be more effective than others?

Annexure B – Summary of WBA 3 service levels

NBN Co's Wholesale Broadband Agreement (WBA) Service Levels Schedule sets out the Performance Objectives that NBN will aim to achieve for certain Service Levels.

A failure by NBN to achieve a Service Level or a Performance Objective may give require NBN to take Corrective Action or provide rebates. NBN may also be liable to pay CSG Compensation to its Customers in certain circumstances where a customer or a downstream RSP has paid damages.⁹⁰

The Service Schedule is in five parts:

- Part A: Describes NBN's service levels and performance objectives including those that have commercial rebates if not achieved;
- Part B: sets out NBN's measurement, monitoring and reporting obligations and the mechanics involved in corrective action if NBN does not meet a performance objective;
- Part C: prescribes the circumstances in which CSG compensation will be payable by NBN;
- Part D: Lists NBN's non-binding aspirational targets, which may develop into relevant service levels at a time in the future;
- Part E: contains sets rules for interpretation and exclusions within the Service Schedule.

This summary concentrates on Part A.

Service Connections

Part A is designed to track the end user life cycle experience and sets base level targets by which NBN Co will complete the specified activity (e.g. the number of business days in which NBN Co will connect an end user premises) it sets these targets with respect to:

- End User Connections
- End User Connection Appointments and Professional Splitter installation appointments
- Activations
- Completion Advices
- Interference Mitigation
- Trouble Ticket Management
- Service Fault rectification
- Enhanced fault rectification
- End User Fault rectification Appointments
- Voiceband Reinstatement
- Modifications

Each service level represents a base level target by which NBN will complete the specified activity. These will differ depending on the type of activity, location of premises, extent of the physical infrastructure available at the premises and the network technology used.

The Service Schedule then sets out a performance objective for each activity, typically represented as a percentage of the service level target met, that NBN Co will aim to achieve for the service level. The performance objectives are generally measured each month based on the total number of activities for each service level, with some performance objectives measured over long periods.

⁹⁰ WBA 3, nbn™ Ethernet Product Module, Service Levels Schedule, p.3.

While a failure to meet a service level or performance objective is not a breach of the WBA, if NBN Co fails to achieve a service level or performance objective NBN Co may be required to take corrective action.

Additionally and in limited circumstances, the wholesale customer may claim compensation or commercial rebates where NBN Co has failed to meet a service level.

CSG Compensation

In certain circumstances Customers may claim CSG Compensation in relation to:

- Accelerated Connections;
- Appointments associated with End User Connections;
- End User Fault rectifications; and
- End User Fault rectification appointments

In circumstances where a customer or a downstream RSP contravenes a performance standard pursuant to the CSG standard and that the Customer or Downstream Service Provider is liable to pay damages for that contravention and that contravention is wholly or partly contributed to by an act or omission of NBN Co.

End User Connections

The Service Schedule sets business day targets by which NBN Co aims to complete end user connections. The target timeframes depend on the type of technology supplied and the availability of the infrastructure to the end user and the location of the premises.

Target time frames for relevant technologies in different regions and their Performance Objectives

	Urban	Major Rural	Minor Rural	Remote	Performance Objective
End User Connections					
Fibre Network	1-14 days (Service Class 0 N/A)	1-19 days (Service Class 0 N/A)	1-19 days (Service Class 0 N/A)	1-19 days (Service Class 0 N/A)	90% minimum 95% Service Transfer Orders 100% Priority Connections
Wireless Network	1-9 days (Service Class 4 N/A)	1-14 days (Service Class 4 N/A)	1-14 days (Service Class 4 N/A)	1-19 days (Service Class 4 N/A)	90% minimum 95% Service Transfer Orders 100% Priority Connections
Satellite Network ⁹¹	1-20 days (Service Class 7 N/A)	1-20 days (Service Class 7 N/A)	1-20 days (Service Class 7 N/A)	1-20 days (Service Class 7 N/A) 1-35	90% minimum 95% Service Transfer Orders

⁹¹ In isolated areas Service Class 8 is 35 days and service class 9 is one day and in limited access areas service class 9 is 1 day

				days in Isolated areas	100% Priority Connections
FTTB and FTTN Networks	1-14 days (Service Class 10 N/A)	1 – 19 days (Service Class 10 N/A)	1 – 19 days (Service Class 10 N/A)	1 – 19 days (Service Class 10 N/A)	90% minimum 95% Service Transfer Orders 100% Priority Connections
HFC Network	9 – 14 days (Service Class 20 N/A)	N/A	N/A	N/A	90% minimum 95% Service Transfer Orders 100% Priority Connections

NB: Service classes 0, 4, 7, 10, and 20 apply to premises within a service class for a relevant technology that are not serviceable for the purposes of NBN

In relation to any Accelerated Connection and Priority Connection a Customer is required to maintain accurate records and correspondence and must be willing to provide these to NBN upon request

Connection Rebate

In circumstances where actual performance by NBN Co fails to achieve the relevant service level for end user connections, these do not apply to Priority Assistance Connections or Accelerated Connections. This Rebate is calculated according to the following formula

$$\text{Connection Rebate} = (90\% - \text{Actual Performance}) \times \text{total connections} \times \$25$$

Where:

Actual Performance means the percentage of Total Connections performed in accordance with the relevant Service Levels for relevant Standard Connections in the relevant month

Total Connections means the total number of Standard Connections in Service Classes 1, 2, 5, 8, 11, 12, 21, 22 and 23

NBN will only pay a Connection Rebate if:

The NBN Rollout Forecast Accuracy for the relevant month is between 80% and 120% and the Customer has submitted a Lock-in Customer Forecast with a Customer Forecast Accuracy between 70% and 130% for that month; or

The NBN Rollout Forecast Accuracy for the relevant month is less than 80% or greater than 120% and the Customer has submitted the Customer Forecast that was due by the start of the month before the relevant month, where:

$$\text{NBN Rollout Forecast Accuracy} = \frac{\text{SAM Performance}}{\text{Number of SAMs in Lock-in NBN Forecast + Early SAMS + New SAMS}}$$

$$\text{NBN Rollout Forecast Accuracy} = \frac{\text{SAM Performance}}{\text{Number of SAMs in Lock-in NBN Forecast + Early SAMS + New SAMS}}$$

If NBN does not achieve, or notifies a customer that it expects not to achieve, a Service Level for a Priority Assistance Connection at a Service Class 3 Premises where a Power Supply with battery backup is installed; and

The Customer provides the relevant contracted end user with an interim service for the period until a connection is achieved, NBN will pay the Customer that Interim Service Amount.

End User Connection Appointments and Professional Splitter Installation Appointments

The Service Schedule sets out the timeframes for attending an end user appointment. The time frame will depend on the nature of the appointment and the location of the premises, these are as follows:

Appointment Window	Service Level
Attend a Premises at a particular time	Attend at that time or within 15 minutes
Attend a Premises within a 4 hour period	Attend within the period or within 15 minutes
Attend a premises in a major rural area within a period of between 4 and 5 hours	Attend within period
Attend a premises in a Minor Rural Area, Remote Area, Isolated Area or Limited Access Area within a period of between 4 and 5 hours	Attend within the period or within 45 minutes thereafter

Performance Objectives

NBN will attempt to maintain the following benchmarks:

- 90% or more of actual appointments kept in accordance with the Service Level
- 5% or less Initial Actual appointments rescheduled
- 95% or more Initial Actual Appointments that were previously rescheduled kept in accordance with the Service Level

Remediation

Where a product has either been:

- ordered by an NBN Customer and NBN has accepted that order, or
- in respect of NBN Platform Interfacing Service and the Sandpit, is supplied by NBN to the Customer in accordance with the WBA Operations Manual,

and it is deemed that remediation work is required, then in respect of:

- Standard Remediation Solutions which include replacing short copper cable runs (i.e. less than 50m and not distribution copper cable runs) and related joints or such other activities as may be determined by NBN from time to time, but does not include activities that require consent of a third party.
- Custom Remediation Solutions which involve more involved activities such as replacement of long cable runs, construction work and network equipment installations.

NBN will aim to achieve the following performance objectives:

- 90% or more completed before the relevant Remediation Target Date for remediation cases NBN opens between the start date for WBA 3 and Enhanced Remediation Date (being the date 3 months after the start date); and
- 90% or more completed the earlier of before the relevant Remediation Target Date or 2 years from the date NBN opens the relevant Remediation Case.

Service Fault Rectification

Rectification of End Users Faults from appearance of a Trouble Ticket Acceptance

Premises Location	Fibre Network, FTTB Network, FTTN Network, HFC Network and Wireless Network	Satellite Network	Priority Assistance Fault Rectification Service (Hours)
Urban area and other locations where End User Fault does not require external or internal plant work or NBN attendance at Premises	5:00pm next Business day	5:00pm next Business Day 5:00pm third business day (where internal or external plant work or NBN Attendance required)	24 hours except where the a remote area requires external or internal plant work in which case 48 hours
Major Rural Area or Minor Rural Area where End User Fault requires external or internal plant work or NBN attendance at premises	5:00pm second Business Day	5:00pm third business day	
Remote area or Minor Rural Area where End User Fault require external or internal plant work or NBN attendance at the Premises	5:00pm third Business Day	5:00pm fourth Business Day	
Isolated Area where End User Fault requires external or internal plant work or NBN attendance at premises	N/A	5:00pm tenth Business Day	
Limited Access Area where end user fault requires external or internal plant work or NBN	N/A	N/A	

attendance at Premises

Rectification in accordance with relevant service level	90% or more	100%
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The service levels for a Network Fault Response and Rectification of a Network Fault Responses and Rectification of Network Faults from the time an Infrastructure Restoration Trouble Ticket is Raised by NBN, are:

Incident Priority	Network Fault Response (hours)	Network Fault Rectification (hours)
Category 1 (Events where the Urgency of the response is either critical or the impact extensive and both are at least High urgency and Significant impact)	0.5	6
Category 2 (Events where the Urgency of the response is either High or the impact Significant and both are at least Medium urgency and Moderate impact)	1	12
Category 3 (Events where the Urgency of the response is either High or the impact Significant and both are at least Medium urgency and Minor impact)	2	20
Category 4 (Events that are typically of minor or moderate impact and of low urgency)	4	28

Network Faults Responded to in accordance with the relevant Service Levels	90% or more
Network Faults rectified in accordance with the relevant Service Levels	90% or more

Service Fault Rebate, Costs Reimbursement

Customer rebates may be payable in a limited number of instances and are calculated according to the following formula:

$$\text{Service Fault Rebate} = (90\% - \text{Actual Performance}) \times \text{Customer End User Faults}$$

If NBN does not achieve, or notifies a customer that it expects not to achieve Priority Assistance Fault Rectification Service Level and the customer provides the relevant Contracted End User with an Interim service for the period until the fault is rectified NBN will pay the customer the Interim Service Amount as calculated according to the WBA operations manual or as agreed by NBN and the Customer.

Conditions of this Section

The Service Levels do not apply where the End User Faults and Network Faults are caused by use of an NBN Product, which is in breach of the NBN Ethernet Fair Use Policy; and

The Service Levels for Service Faults to not apply if the customer does not use the correct notification procedure

Rectification of Enhanced Faults from the time of Trouble Ticket Acknowledgment

Urban Area / Major Rural Area and Remote Area where the Enhanced Fault does not require external or internal plant work or NBN attendance at Premises	Major Rural Area and Minor Rural Area where the Enhanced Fault requires external or internal plant work at NBN attendance at Premises	Remote Area where the Enhanced Fault or internal plant work or NBN attendance at Premises
4-12 hours depending on Fault Rectification Service Option	18-26 hours depending on Fault Rectification Service Option	32-40 hours depending on Fault Rectification Service Option
Relevant Service Level		95% or more

Enhanced Fault Rectification Rebate

Where NBN fails to achieve an Enhanced Fault Rectification Service Level, NBN will pay a rebate to the Customer, per ordered product, as follows:

First occurrence in Billing Period

The relevant Enhanced Fault Rectification Service Recurring Charge payable by the Customer in the relevant Billing Period

+

For each full hour in excess of the Service Level for the Enhanced Fault Rectification Service, 20% of the AVC and UNI recurring Charges payable by the Customer for that Billing Period.

Each subsequent occurrence in the Billing Period

For each full hour in excess of the Service Level for the Enhanced Fault Rectification Service, 20% of the AVC and UNI recurring Charges payable by the Customer for that Billing Period.

End User Fault Rectification Appointments

Service Levels for trouble ticket appointments to attend a premises made by the customer and confirmed by NBN for rectification of end user faults

Appointment Window	Service Level
Attend a Premises at a particular time	Attend at time or within 15 mins
Attend a Premises within a 4 hour period	Attend within period or within 15 mins
Attend a Premises in a Major Rural Area within a period of between 4 and 5 hours	Attend within the period
Attend a Premises in a Minor Rural Area, Remote Area, Isolated Area or Limited Access Area within a period of 4 and 5 hours	Attend within the period or within 45 mins

Performance Objectives

NBN will attempt to maintain the following benchmarks:

- 90% Actual Trouble Ticket Appointments kept in accordance with the Service Levels;
- 5% or less Initial Actual appointments rescheduled; and

- 95% or more Initial Actual Appointments that were previously rescheduled kept in accordance with the Service Level.

Network Performance and Availability

NBN will aim to achieve Network Availability of:

- 99.70% in respect of ordered products supplied by means of the Satellite Network;
- 99.90% in respect of all other networks.

Both performance objectives apply over a 12 month period.

Unavailable time is measured as the total number of minutes that each relevant ordered product which NBN has agreed to supply was unavailable during that 12 month period.

Utilisation Management Performance Objectives

For certain shared network resources on parts of NBN Co's transit network, NBN will dimension the busy hour throughput of shared network resources at a minimum of 350kbps, for each service ordered with a bandwidth profile of between 21/1 and 100/40, and 2Mbps for each service ordered with a bandwidth profile of 250/100 or greater.

If NBN Co considers use of a shared network resources exceeds a 70% threshold for a continuous period of 30mins or more on 3 or more occasions during a 21 day period, NBN will aim to bring the shared resource back within the utilisation threshold within 15 business days.

Annexure C – table of service standards in NBN retail contracts

Service provider	Installation / connection	Faults	Appointments
Telstra	<p>Outlines installation processes for different NBN network technologies (e.g. FTTB, FTTN, HFC and Fixed Wireless), including actions undertaken by NBN Co, Telstra and the consumer.</p> <p>States that the consumer must provide Telstra and NBN Co 'reasonable assistance to enable the installation to be complete, including being present as reasonably requested and providing access.'⁹²</p> <p>No specific timeframes for installation or connection are specified.</p>	<p>For voice services – Telstra aims generally to repair basic telephone services within timeframes that align with the CSG maximum timeframes once it is informed of the fault.⁹³</p> <p>For broadband services – No specific timeframes for fault repair are specified. Telstra will use 'reasonable efforts to fix the problem as soon as possible.'⁹⁴</p>	<p>For broadband services – Telstra will 'use due care and skill in organising your appointment time and there may be other statutory guarantees, implied conditions or warranties under consumer protection laws that cannot be excluded which may apply. However, given that we are not solely responsible for the installation of your NBN Service or equipment needed to use the NBN Services, we cannot promise that your appointment time will be met and there may be some circumstances where your appointment cannot go ahead at the scheduled time or date.'⁹⁵</p>
Optus	<p>Outlines actions that must be undertaken by NBN Co, Optus and the consumer for connection to occur, with specific details for NBN Fibre and Fixed Wireless.</p> <p>It is also noted that 'you may be required to be present for the installation and setup of the service. Depending on the status of the cabling to your street and premises, installation of the service may need to take place over two days which may not be consecutive days. You may be</p>	<p>No specific timeframes are specified. Optus will repair faults within its network.⁹⁷</p> <p>Optus is not responsible for repairing any fault in the service where the fault is caused by a supplier's network (e.g. NBN Co). Where the fault is in a supplier's network and it becomes aware of the fault Optus will notify the supplier of the fault and request that it be corrected promptly, but not bear any further liability.⁹⁸</p>	<p>No specific terms are included in relation to appointments.</p>

⁹² Telstra, Our Customer Terms, Services on the nbn network, Consumer Services on the NBN Section, Part A – General Terms for Consumer Services on the NBN, clause 6.

⁹³ Telstra, Our Customer Terms, Home Phone Services, Part A – General, clause 6.4.

⁹⁴ Telstra, Our Customer Terms, BigPond service section, Part A – General Terms for BigPond services, clause 13.2.

⁹⁵ Telstra, Our Customer Terms, Services on the nbn network, Part A – General Terms for Consumer Services on the NBN, clause 7.2.

	<p>required to give multiple technicians access to your premises for this purpose.⁹⁶</p> <p>No specific timeframes are specified.</p>		
TPG	<p>Outlines various processes, depending on whether the premises have already been connected to the NBN. If the premises have been connected 'installation generally can be completed without the need for you to be physically present' and where the premises have not been connected then 'you will need to be present at the premises at a time and date that is nominated by us.'⁹⁹</p> <p>No specific timeframes are specified.</p>	<p>States that:</p> <ul style="list-style-type: none"> • while TPG 'will endeavour to make NBN Access services available to customer 24 hours a day, 7 days a week, NBN access services are not fault free and we cannot guarantee uninterrupted service, or the speed, performance or quality of the service.' • 'There are many factors outside our control that may affect NBN services.' • 'There may be circumstances where TPG needs to escalate the fault to NBN Co.'¹⁰⁰ <p>No timeframes are specified for addressing faults.</p>	<p>For installation appointments TPG will 'use due care in organising your appointment time and there may be other statutory guarantees, implied conditions or warranties under consumer protection laws that cannot be excluded which may apply. However, given that TPG is not solely responsible for the installation of your NBN Service or equipment needed to use the NBN Services, TPG cannot promise that your appointment time will be met and there may be circumstances where your appointment cannot go ahead at the scheduled time or date.'¹⁰¹</p>
Aussie Broadband	<p>States that Aussie Broadband 'will aim to connect your service within 30 days.'¹⁰²</p> <p>Aussie Broadband 'will not be liable for any delay in connecting your service.'¹⁰²</p>	<p>States that 'in the event of a service outage or fault for which we are responsible, and where that outage requires an onsite visit we commit to restoration of the service within 14 days subject to a force majeure event. Where an outage does not require a service call we</p>	<p>No specific terms found in relation to appointments.</p>

⁹⁷ Optus, Consumer Terms, clause 7.4(a).

⁹⁸ Optus, Consumer Terms, clause 7.4 (b) and (c).

⁹⁶ Optus, Optus Internet Service, Service Description, cl 4.1.1.

⁹⁹ TPG, Service Description Terms – NBN. clause 3.

¹⁰⁰ TPG, Service Description Terms – NBN. clauses 7.1, 7.2 and 7.5.

¹⁰¹ TPG, Service Description Terms – NBN. clause 3.

¹⁰² Aussie Broadband, Retail Broadband Terms and Conditions, Our Obligations to you.

Exetel

States that 'the Customer must reasonably co-operate with Exetel to allow Exetel, or a supplier, to establish and supply the service to the Customer safely and efficiently.' Exetel 'will provide the Service to the Customer with reasonable care and skill. In the event of unexpected faults Exetel will use reasonable endeavours to ensure the Service is restored as soon as possible.'¹⁰⁴

No specific timeframes for installation or connection are specified.

commit to resolving the outage within 2 working days.'¹⁰³

No specific timeframes are specified. States that Exetel 'will repair faults within the Exetel network used to supply the Service.'¹⁰⁵ Exetel is not responsible for repairing any fault in the service where the fault is caused by a supplier's network (e.g. NBN Co), equipment that is not owned by our fibre carrier or facilities outside Exetel's network.

Where the fault is in a supplier's network and it becomes aware of the fault it will notify the supplier of the fault and request that it be corrected promptly, but not bear any further liability.'¹⁰⁶

No specific terms found in relation to appointments.

¹⁰³ Aussie Broadband, Retail Broadband Terms and Conditions, Our Obligations to you.

¹⁰⁴ Exetel, Residential Fibre Broadband, Terms and Conditions, clauses 6.1 and 6.2.

¹⁰⁵ Exetel, Residential Fibre Broadband, Terms and Conditions, clause 8.5.

¹⁰⁶ Exetel, Residential Fibre Broadband, Terms and Conditions, clause 8.5 and 8.6.