



3 December 2017

Australian Competition and Consumer Commission
Communications Sector Market Study
Via email: commsmarketstudy@acc.gov.au

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Dear Sir/Madam,

The NSW Business Chamber (The Chamber) welcomes the opportunity to comment on the draft Communications Sector Market Study ('the Study').

As you may be aware, the Chamber is one of Australia's largest business support groups, with a direct membership of more than 20,000 businesses and providing services to over 30,000 businesses each year. The Chamber works with businesses spanning all industry sectors including small, medium and large enterprises. Operating throughout a network in metropolitan and regional NSW, the Chamber represents the needs of business at a local, State and Federal level.

The Chamber's [2017 NBN and Telecommunications Survey](#) ('the Survey') found that delays and disruptions with the NBN roll out are costing NSW businesses, on average, more than \$9000, specifically:

- 39% of businesses reported having to wait **more than 4 weeks** for their service to be fully operational, with some businesses reporting **no internet or phone availability** at all during this period.
- 45% were dissatisfied with the NBN service, and complained of it being **inferior** to its original supply such as **ADSL2**.
- 42% of businesses reported NBN as being **unreliable**.
- Inadequate information about **necessary equipment** (EFTPOS machines, modem/routers) **upgrades** to ensure compatibility with the NBN.
- Some businesses were **disconnected inadvertently** due to NBN work despite not being an NBN supplied customer.

Many of the Survey findings align with those in the Study. Accordingly, we support the forthcoming [ACCC inquiry into NBN wholesale service standards](#) as wholesale service standards have a flow on effect to residential and business customers and we would anticipate that the inquiry will likely delve deeper into these issues.

The Chamber accepts and commends recent initiatives by both the NBN Co (wholesaler) and retail service provider (retailers) to voluntarily and proactively manage some of these issues. For example, NBN Co has announced initiatives to improve the connection, migration and service experience for Australian businesses, including case management for complex migrations. Telstra has compensated its customers for selling them plans and speeds which were impossible to achieve¹.

However, more could be done to improve the experience and level of service provided to businesses (and residential customers) connecting to the NBN. We see the issues relate primarily to a lack of accountability, responsibility and cooperation between the wholesaler and the retailer rather than just one particular party.

There are three stages to consider:

1. The ACCC and the Australian Communications and Media Authority (AMCA) work with the wholesaler and retailers to voluntarily mitigate and remedy these issues – including updating the Telecommunications Consumer Protections Code.
2. The ACCC and ACMA rely on their respective statutory powers to enforce consumer protections and service outcomes.
3. The ACCC and ACMA undertake a legislative ‘gap analysis’ to ascertain whether the current broadband consumer protections are robust enough to address these issues.

Should Option 3 be required, we note many of these same issues have been experienced in energy markets. The Commonwealth Government (alongside the States and Territories) developed a National Energy Customer Framework (NECF), which has been successfully adopted by all States and Territories (excluding Western Australia and the Northern Territory).

The NECF has been developed in recognition that energy is an essential service for all Australians and provides strong national protections. It operates in a complementary way with general consumer protection laws.

¹ For example, for those on fibre to the node (FTTN) the maximum theoretical speed capable is 75 mbps and this is before you take into account distance to the node, congestion, condition of the copper wire. Advertised plans of 100mbps are unattainable on FTTN technology.

Access to fast, reliable broadband internet is an essential service for Australian businesses (analogous to energy in many ways), from small to large. If the legislative gap analysis reveals deficiencies, the ACCC/ACMA may need to investigate the merits of a similar framework for broadband; a **National Broadband Customer Framework (NBCF)**. This investigation should follow the Council of Australian Government (COAG) principles of best practice regulation and minimise regulatory burden.

Irrespective of the decisions taken above, a likely best practice framework (whether it be self-regulatory, co-regulatory or non-regulatory) for improving customer outcomes for broadband services is one that encompasses *shared* wholesaler and retailer responsibilities:

- The sharing and exchange of information between the wholesaler and retailer on faults and emergencies, service interruptions and charges for connections.
- Connection offers that contain terms and conditions relevant to the connection and service levels.
- The management of customer enquiries, complaints and claims.
- The management of the connection, disconnection and reconnection of premises, including where the disconnection has resulted to non-NBN customers due to NBN work.
- Dispute resolution and consultation procedures.
- Treatment of confidential information.
- The liability of the wholesaler and retailers for acts and omissions.
- Guaranteed service levels and if the wholesaler or retailer fails to meet a relevant guaranteed service level, the customer is entitled to a payment.

The Chamber has also been made aware of situations at greenfield business site developments where an NBN service has been declared in an area so no other connection infrastructure will be put in until the service is connected – which can be 18 months or more. This timeframe is likely to increase with the NBN Co announcement to temporarily pause all new orders over its Hybrid Coaxial-Fibre (HFC) until current rollout is ready to connect.

On one hand it is commendable if it increases the quality and reliability of the final product/service but does have other implications to consider for those waiting on a service.

As noted by NBN Co, it is working with the existing infrastructure owners of both the ADSL and HFC networks to be sure those who may wait a bit longer to switch to services on the NBN will still have access to their existing services. This means existing (non-NBN) ADSL and HFC customers should continue to access their current non-NBN service while these changes are made. There will need to be a framework for ensuring the fulfilment of this commitment.

Thank you for the opportunity to comment on the Study. For more information please contact Robert Millar on 02 9458 7324 or at robert.millar@nswbc.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Paul Orton".

Paul Orton
Director, Policy & Advocacy