



8 November 2019

Mr. Scott Harding
Director, NBN & Pricing Coordination
Australian Competition and Consumer Commission
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Nathan.Sargent@acc.gov.au

Dear Mr. Harding,

Submission to ACCC Consultation on NBN Wholesale Service Standards Inquiry Draft Decision

This letter provides Telstra's response to the ACCC's NBN Wholesale Services Inquiry Draft Decision and accompanying Draft Final Access Determination (**FAD**).

The consultation period for the Draft Decision comes at a time when Telstra is intensively engaged in numerous workstreams relating to ongoing access to the NBN, most significantly NBN Co consultations on the WBA4. The complexities these workstreams raise in terms of ensuring alignment and consistency mean that we are unable to provide a full response to the ACCC consultation for Principle 5 in the Draft Decision and Clause 4.3 in the Draft FAD in the requested timeframe. We will make a supplementary submission providing a detailed response on this issue as soon as possible.

The timing of the ACCC's Final Decision is, however, critical to the current WBA4 negotiations and Telstra is keen to ensure that the ACCC will be in a position to make its Final Decision as soon as possible (i.e. the December timeframe suggested in the Draft Decision). As a result, this letter sets out our high level position in response to the Draft Decision and to the majority of consultation questions and principles that have informed the Draft FAD.

If you would like to discuss or have any questions on the submission, please contact Justine Bond on (02) 9866 0269 or Justine.Bond@team.telstra.com.

Yours sincerely,

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TELSTRA'S SUBMISSION TO THE ACCC'S NBN WHOLESALE SERVICE STANDARDS INQUIRY DRAFT DECISION AND DRAFT FAD TERMS

Introduction

The ACCC's NBN Wholesale Service Standards Inquiry (the Inquiry) is part of a complex regulatory and commercial environment which seeks to ensure a positive customer experience on the NBN. Delivering a great customer experience on the NBN is not solely within the control of one party – customers rely on their RSP to deliver a great customer experience and while RSPs can control elements of that experience, they are heavily reliant upon NBN Co to play its part in ensuring that its network can support the delivery of services to the customer.

Telstra's customer service vision for the NBN comprises service experience, network experience and value for money components. While these extend beyond the scope of this Inquiry, regulated terms for service standards are critical to delivering positive customer service experiences, and will play a significant role as commercial negotiations for the WBA4 progress. By the time the WBA4 is in place the NBN will be the primary broadband network that is used by RSPs to serve the needs of their customers. Further, the WBA4 will have precedence over any future ACCC regulatory instrument made during the term of the agreement. It is therefore crucial that NBN Co and RSPs work closely together to ensure that the WBA4 is fit for purpose over its term and enables and supports RSPs to deliver the services their customers want and need. Notwithstanding this, given the imbalance in bargaining power between NBN Co and RSPs, commercial negotiations alone cannot be relied on to achieve this outcome. The ability to fall-back on regulated service standards is necessary to ensure the long-term interests of end-users are promoted.

As noted in previous submissions to the Inquiry, the WBA3 could leave customers worse off as a result of migrating to the NBN and does not provide the level of service customers expect. As with the Undertaking, the Draft Decision and Draft FAD are significant steps towards improving this situation before RSPs are locked into WBA4, by providing regulatory fall-back for RSPs who are unable to commercially negotiate satisfactory terms relating to service standards. Regulated terms will also provide a solid starting point for WBA4 negotiations, which are now underway. Accordingly, Telstra strongly supports the ACCC's Draft Decision that "...regulated terms are likely to be required to improve end-user experiences on the NBN."

This submission provides Telstra views on the consultation questions and principles contained within the Draft Decision, as well as the terms in the Draft FAD. Telstra is broadly supportive of the approach taken by the ACCC. We do, however, consider that there are areas where the Draft FAD could be further strengthened to improve customer outcomes on the NBN. We are also mindful that WBA4 negotiations have recently commenced and, while it is critical that a Final FAD is in place as soon as possible, there is a need for flexibility to respond to any issues that may not be able to be resolved via the commercial negotiations.

In addition to the views set out in this submission, Telstra also refers the ACCC to previous submissions to the Inquiry [c-i-c] [c-i-c].



Consultation Questions

The Draft Decision includes three consultation questions that the ACCC invites submissions on. Telstra's response to those questions is provided below.

1. *Do you agree with the specific principles we consider should be used to guide the formulation of wholesale terms?*

Telstra broadly supports the specific principles adopted by the ACCC to guide the formulation of wholesale terms. The principles adopted by the ACCC address areas where service quality issues are having a negative impact on the experience of end-users, as well as the reputation of NBN Co.

Critically, the ACCC recognises the gap between the retail obligations on RSPs and NBN Co's commitments under its wholesale terms. While NBN Co has made some changes and improvements during the term of WBA3 (for example, to service level reporting and other information), these changes have not gone far enough. Telstra agrees with the ACCC principle that wholesale terms should provide effective incentives for NBN Co to meet its service commitments and improve performance. Retail market competition and the threat of further regulatory intervention, mean that RSPs already face incentives to deliver a good customer experience. To date, NBN Co has not faced similar incentives. The alignment of incentives between RSPs and NBN Co is a prerequisite to ensuring customers receive the level of service they expect on the NBN. There is a real need to focus on the ongoing customer experience on the NBN, particularly as the rollout nears completion, and it is not clear at this stage that commercial negotiations will sufficiently support this.

Telstra strongly supports the ACCC's Draft Decision not to include a pass-through requirement in the Draft FAD, with the exception of missed appointments. As noted by the ACCC, a pass-through requirement has a number of drawbacks including complexity of administration and the imposition of costs that typically outweigh the rebate being provided. Further, a pass-through requirement does not recognise the initiatives RSPs have themselves introduced to minimise the impact of NBN service level failures on their customers. RSPs need flexibility to provide their customers with different solutions to best address service failures. Obligations placed on NBN Co to meet its service levels should generally not be reflected at the retail level because NBN Co and RSPs have fundamentally different structural incentives and because doing so would cripple the potential for the highly competitive retail market to produce innovative approaches to improving consumer outcomes.

Telstra understands the reason the ACCC continues to require a pass-through requirement for missed appointments due to customer impact, although there is no evidence that rebate pass-through leads to an improved customer experience. It is, however, worth noting that these service level failures do impose costs on RSPs in addition to the customer inconvenience. Such costs include those associated with rescheduling missed appointments, customer service costs and operational costs of passing through the rebate. As a principle, Telstra considers that this should be recognised in the quantum of the rebate and the proportion that is required to be passed on to the customer. We would be pleased to provide further details of these costs if that would be helpful.



2. *Do you agree with the terms in the draft FAD instrument and application of the regulatory criteria to these terms?*

Overall Telstra agrees with the terms in the draft FAD instrument and application of the regulatory criteria to these terms. There are, however, areas where Telstra believes the Draft FAD can be strengthened to promote the long term interests of end users. Telstra's comments on the terms in the draft FAD instrument are provided at Appendix A to this submission. Where relevant, comments on draft FAD terms are also provided in our response to the Consultation Questions and Draft Decision Principles.

3. *How do you consider the ACCC should proceed with the inquiry in the context of WBA4 negotiations (e.g. timing for the introduction and expiry of regulated terms)? Would you support the ACCC hosting an industry forum on service standards?*

In the context of WBA4 negotiations, the most critical factor is that the ACCC is in a position to publish a Final Decision and FAD as soon as possible to support those negotiations. This would provide the regulatory fallback that RSPs may need should commercial negotiations not provide the required improvement in terms relating to service standards. To date, two consultation papers relating to WBA4 have been released by NBN Co and the current timeframe provided by NBN Co indicates they intend to be in a position to finalise WBA4 by April 2020 (with a consultation draft in January 2020). A Final Decision and FAD would therefore need to be in place by the end of 2019 at the latest.

At this stage it is difficult to determine whether an industry forum would assist with WBA4 negotiations. This would depend on timing and context. It is likely that a forum would be useful if issues arise as WBA4 negotiations progress after the ACCC's Final Decision and those issues need to be resolved at an industry level, or if there is a need to resolve those issues within additional regulated terms.

To further support WBA negotiations and promote the long term interests of end users, Telstra proposes that an additional 'regulatory recourse' clause be included in the FAD. Such a clause would apply where the ACCC makes or varies a FAD or BROCC relating to service standards and allow for the parties to the WBA to negotiate the proposed changes in good faith. Telstra proposes the same regulatory recourse clause the ACCC has applied in other FADs on the basis they are likely to promote the long term interests of end users.¹

The need for a regulatory recourse clause is particularly important in this case as there is a high level of uncertainty surrounding WBA4 and how the regulated terms will interact with commercial negotiations. This uncertainty is caused, in part, as nbn transitions from a build company to an operational company and might seek to make substantial changes to WBA3. A regulatory recourse clause would provide for the ACCC to amend or make new FAD terms (or a BROCC) during the course of commercial negotiation if it is considered doing so would be in the long term interests of end users. Further, the clause would allow for the amendment or introduction of clauses should issues arise during the term of WBA4. WBA4 will be in operation in the post-rollout environment, during which new unanticipated issues may arise separate to those captured by clause 12 in the Draft FAD.

Expiration of the FAD should align with expiration of the WBA to enable potential inclusion of new terms or amendments to existing FAD terms before commencement of the next version

¹ See, for example, 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.



of the WBA. That is, consideration of changes to, or the need for, the FAD should commence at least 6 months prior to expiry of the WBA to support commercial negotiations.

Draft Decision Principles

The Draft Decision includes principles that have influenced the development of draft FAD terms intended to address a number of issues raised during the inquiry. This section of Telstra's submission provides our response to those principles and any related Draft FAD terms.

1. *NBN Co should only confirm to the access seeker that a connection is completed, and begin charging for that service, after conducting appropriate testing to ensure installation activities are successful.*

As noted by the ACCC, ACMA rules require RSPs not to charge consumers unless their NBN service is operational. At the same time, many RSPs (including Telstra) are independently offering 'no service no fee' terms for customers, or (for example) the ability to exit their NBN contract within 30 days if they are not happy with their experience. A number of RSPs are also offering NBN plans with no lock-in contracts or on a monthly basis, which provides customers the opportunity to change service providers if they are not satisfied with their service for any reason. In contrast, absent the Draft FAD, NBN Co requires RSPs to pay the full service fee. This presents a pertinent example of where RSPs are striving to provide the best NBN experience to customers possible in the circumstances, yet they are not supported by NBN Co.

The Draft Decision sets out the ACCC position that NBN Co should not be charging for wholesale services that are not successfully provisioned. Telstra agrees with this position and supports the inclusion of clause 2.2 in the Draft FAD.

2. *Connection rebates should apply to all standard connections and accrue on a daily basis if the relevant service level is not met.*

Previous Telstra submissions have set out our view that one-off rebate payments by NBN Co of \$25 is insufficient and provides no incentive for NBN Co to meet its service level. Further, before implementation of the undertaking, the rebate amount only applied when NBN Co did not meet its 90 per cent performance threshold. In the Draft Decision, the ACCC proposes that connection rebates should apply to all standard connections and accrue on a daily basis if the relevant service level is not met. Telstra strongly supports this proposal and the inclusion of clause 2.3 in the Draft FAD which ensures that the rebate applies to all missed service levels for standard connections, including those where the service level is one business day, accelerated connections and priority assistance (**PA**) connections.

The ACCC has made a draft decision that the connection rebate be equal to the total of \$13.50 for each full or partial business day that NBN Co does not meet the relevant service standard, up to a cap of \$270. The daily rebate amount is set with regard to 6 months revenue for a 'typical' NBN residential offer divided over the 20 business day rebate period. This is a significant improvement on the limited applicability of the one-off \$25 rebate under WBA3. The basis for calculating the daily rebate amount is reasonable and Telstra supports consistency across the different products.

Telstra understands the application of the cap of \$270 is intended to ensure the cost impact of the rebate amount is proportionate and not unnecessarily onerous on NBN Co. However, there may be instances where the cap is reached and customers remain unconnected. It is not clear what will incentivise NBN Co post-rebate to ensure customers are ultimately



connected to the NBN within a reasonable timeframe and the ACCC states that beyond this point, issues with connections may need to be addressed through other processes. While those other processes remain undefined, the cost of such delayed connections will be borne by RSPs, e.g. through the provision of interim services. At the very least Telstra suggests NBN Co be required to report to the ACCC those connections that are significantly delayed and the reasons behind the delays. In the absence of a financial incentive for significant delays, it may be that this additional regulatory oversight will act as an incentive on NBN Co.

Telstra notes the daily rebate rate is slightly lower than current levels of CSG compensation for the first 5 days and significantly lower for subsequent days – if a connection was delayed up to the cap of \$270 (20 business days) the equivalent CSG payment would be \$798.60 for consumers and \$919.60 for businesses. Telstra supports the rebate payment being separate from the CSG (as set out in previous submissions). However, the Draft FAD does not address concerns raised during the Inquiry relating to the CSG and RSP ability to claim CSG payments from NBN Co. This is discussed in more detail in response to Principle 9 below.

3. Fault rebates should accrue on a daily basis if the relevant service level is not met.

As with connection rebates, Telstra supports the proposal to include Draft FAD terms that support fault rebates that accrue on a daily basis. We agree that a daily rebate for faults will support RSPs to deliver retail services that meet end user expectations, particularly through providing ongoing customer support and remedies. We also hold the same concerns in relation to the CSG which are discussed in more detail in response to Principle 9 below.

4. Missed appointment rebates should take into account the cost and inconvenience to the end-user when an appointment is missed, while at the same time provide a stronger incentive to reduce the rate of missed appointments

The Draft Decision includes a proposal to increase the \$25 rebate for missed appointments included in the undertaking to \$75 alongside a requirement that RSPs must take reasonable steps to ensure their customers receive a fair value benefit. Telstra supports the increase in the missed appointments rebate as it reflects more accurately the inconvenience and cost imposed by NBN Co failing to meet scheduled appointments. It also mirrors the Missed Appointment charge, levied on RSPs, in NBN Co's Price List. As noted above, Telstra understands the reasoning for requiring RSPs to pass through missed appointment rebates. However, RSPs also incur costs as a result of missed appointments and these should be recognised in the quantum of the rebate and the proportion that is passed on to the customer.²

Telstra also considers that NBN Co should face additional penalties where a subsequent appointment is missed – specifically, that the second missed appointment on an order or ticket should generate a higher rebate than the first missed appointment. This reflects the additional inconvenience and frustration experienced by customers (and RSPs) who experience ongoing problems with their NBN service. This would also provide additional incentive for NBN Co to reduce the rate of missed appointments for the second time.

5. NBN Co should be responsible for the speed and performance of its wholesale product and not charge for services that it does not provide

Telstra's views with respect to the speed and performance of NBN services remain as set out in our previous submissions. In particular, Telstra believes NBN Co must provide accurate

² See Telstra Corporation submission to the NBN Wholesale Service Standards Inquiry March 2019 [c-i-c] [c-i-c]



and timely information to RSPs about the performance of a service –from the point of sale through to the customer’s continuing use of the service. Further, NBN Co must support the regulations Telstra and other RSPs face with respect to the service.

Telstra supports Principle 5 and consider the Draft FAD terms are a useful first step in ensuring that NBN Co takes responsibility for the speed and performance of its services. We welcome the introduction of a \$20 rebate for those services that do not meet the peak information rate (**PIR**) Objective and view this as a useful step in incentivising NBN Co to ensure that as many customers as possible are able to realise the benefits the NBN was designed to deliver. Telstra believes it is important that NBN Co be incentivised to remediate lines, or address interference or repair lines that are not capable of meeting the baseline PIR Objective. Telstra has previously stated that RSPs should not be required to continue paying the list price for services that are not performing as expected, e.g. because they require remediation, interference mitigation or have been placed in a Repair Profile and we consider the Draft FAD will pick up at least some of those situations.

Telstra understands and supports the ACCC’s objective in Clause 4.3 of the Draft FAD, which is aimed at ensuring NBN Co does not sell speed tiers that cannot be supported by a particular line. Telstra notes the ACCC requests views from RSPs on its proposed mechanism and the appropriate rebate amount to meet the aim of the Draft Decision. Telstra views this as a relatively complex area, as it involves interplay between the expectations placed on RSPs (in terms of the remedies that they must offer to their customers) and NBN Co’s pricing. As the issue of speed (including whether it is acceptable for the use case and is as represented to the customer) is key to the customer experience, Telstra believes it is important to get the incentives placed upon NBN Co right. To that end, Telstra is giving further consideration to this aspect of the Draft FAD and will revert to the ACCC at the earliest opportunity with our comments.

With respect to Fixed Wireless, Telstra is supportive of the Draft FAD terms. We agree with the ACCC’s assessment that providing more information to RSPs via the birth certificate will enable RSPs to have more informed conversations with end users at the point of sale. The proposed \$20 rebate for each service within a Fixed Wireless cell where the cell itself falls below NBN Co’s 6 Mbps design metric or is impacted by backhaul congestion will incentivise NBN Co to remediate cells/services and enable RSPs to provide further support to their customers.

Nevertheless, despite the Draft FAD terms being welcome, Telstra does have reservations about the longer term. This is because throughput is likely to continue to grow and NBN Co will need to invest to upgrade cells and backhaul links. Telstra also questions whether the 6 Mbps design metric will remain appropriate in future.

6. *To ensure a robust service level framework, NBN Co should only extend service level timeframes under limited specified circumstances, for example if NBN Co is waiting for customer or RSP action before completing a connection or remediating a fault, or NBN Co operations are affected by a force majeure event.*

Telstra’s previous submissions have set out our concerns regarding the starting point from which NBN Co starts measurement of performance against service levels and the circumstances in which it is able to ‘stop the clock’ on measurement. The Draft Decision includes proposals that directly address these concerns. In line with this, the Draft FAD includes terms that:

- Specify that service levels begin from the time of order acknowledgment rather than acceptance (as included in the WBA); and



- Set out more clearly the circumstances in which NBN Co may stop the clock.

Telstra strongly supports the inclusion of these terms. We agree with the ACCC view that timely validation of trouble tickets should be undertaken as part of NBN Co's ordinary operational processes, and that commencing service level timeframes from trouble ticket acknowledgment more closely aligns with the end-user's experience of the fault. We also agree with the ACCC view that service level exclusions should be appropriate and clearly defined.

In previous submissions, Telstra raised a concern that, at present, where NBN Co excludes an appointment or suspends performance measurement for a connection or fault rectification, no explanation is provided for why this has occurred. As a result there is no opportunity – or simple process available – for an RSP to dispute an exclusion if appropriate. While the Draft FAD provides clarity it could be enhanced through an additional clause requiring NBN Co, where appropriate, to advise RSPs when a service level exclusion has been applied. Greater transparency in relation to the use of exclusions or stop the clock reporting – including improving the usability of the current stop the clock reports – will also improve the end-user experience as RSPs will be able to communicate more effectively with their customers.

7. *NBN Co should record service specific information about the progress of appointments, connections and faults and make this available to access seekers in a way that is accurate, timely and accessible. This should include whether a relevant service level has been missed and is able to be used by RSPs to inform end-users where appropriate.*

Telstra supports Principle 7 and Clause 7 of the Draft FAD terms. The more information that is available to RSPs about all aspects of an NBN service the better RSPs are able to accurately communicate with end-users. Further, Telstra agrees that automation of information transfer is preferable as manual extraction and analysis of data takes time and is prone to error.

As the ACCC recognises, there are costs to making the necessary changes to systems to enable such automation. These costs will be incurred by both NBN Co and RSPs. Telstra supports the ACCC's Draft Decision that NBN Co should maintain a roadmap, including timeframes for consultation with RSPs and implementation of an automated solution. Telstra acknowledges that NBN Co already maintains the Integrated Product Roadmap (IPR), which is updated quarterly and is made available via the Product Development Forum. However, Telstra considers the IPR does not always contain sufficient detail relating to IT systems/interface changes. A pain point for Telstra has been that NBN Co frequently makes changes to IT systems/interfaces with little notice to RSPs, who themselves need time to understand the change and implement it in their own systems. For this reason, a separate IT roadmap would be welcomed by Telstra and we would be keen to see it implemented at the earliest opportunity.



8. *NBN Co should provide regular reports to access seekers about the overall performance of its network. This should include its performance meeting service levels by location, service class and network.*

Telstra supports the ACCC's Draft Decision to clarify NBN Co's reporting requirements. As the ACCC notes, NBN Co has already reverted to providing the more detailed level of reporting that it previously provided under the WBA2 and it also now provides additional reporting relating to Fixed Wireless services.

This level of reporting is important to RSPs, who will be better informed regarding NBN Co's performance and will enable RSPs to identify systemic issues, e.g. in particular geographic areas or technologies. By ensuring RSPs are fully informed regarding NBN Co's performance, they are better placed to work with NBN Co to manage any issues that arise. To that end, Telstra will of course continue to work with NBN Co to determine what other reporting would be useful to RSPs and their customers and we will look to NBN Co to build upon the baseline reporting requirements established by the FAD as required.

9. *NBN Co should support the delivery of NBN services in line with existing consumer safeguards, where they apply. PA connections and faults should be prioritised over standard connections and faults. NBN Co should commit to updating the WBA service standards to support any changes to the consumer safeguards framework that affect NBN services.*

Telstra agrees with the ACCC proposal to include a 'regulatory recourse' clause in the Draft FAD that would require NBN Co to negotiate amendments to the WBA to support any changes to the telecommunications consumer safeguards framework. However, as noted above, the clause does not allow for changes in response to other issues or concerns that may arise during commercial negotiations for WBA4 or the term of WBA4 – for example, terms may be proposed by NBN Co that do not promote the interests of end users or competition on its merits; additional regulatory obligations that may be imposed on RSPs; or there may be unanticipated post-rollout consumer issues that need to be urgently addressed. As such, an additional regulatory recourse clause should be included in the FAD to allow negotiation or to insert new regulated terms (via a varied or new FAD or BROCC) if required. Telstra acknowledges that this may result in a level of regulatory uncertainty. However, this uncertainty would be minimised if the ACCC were to adopt the same regulatory recourse clause it has historically applied in other FADs, as it is clear that the clause would only apply where an issue arises that warrants the development of new regulated terms, which is a high hurdle.

The Draft FAD term requires NBN Co to negotiate with an access seeker in good faith and in a reasonable timeframe (being no more than 90 days) if there are changes to the telecommunications safeguards framework. Telstra agrees that this is a reasonable timeframe from commencement of negotiations. To strengthen this clause, it would be appropriate to either include an additional timeframe for initiation of the discussion following changes to the regulatory framework or specify that the 90 days applies from the date the change to the regulatory framework is implemented (i.e. the Consumer Safeguards Event).

Notwithstanding that Telstra believes the CSG regime should be subject to review, CSG should continue to be supported by NBN Co. As set out above in our response to Principle 2, we do have concerns about the ongoing treatment of the CSG in the context of the WBA. As documented in previous submissions, the current process for claiming CSG payments has resulted in Telstra making no successful claims and NBN Co have not progressed any proposal to improve the process.



In the Draft Decision, the ACCC notes concerns raised by stakeholders relating to the CSG including the overly complex nature of the CSG compensation claims process. These have not been addressed in the Draft FAD despite that ACCC stating that "...NBN Co's wholesale terms for CSG compensation could be strengthened to ensure they are effective in determining the extent to which their CSG liabilities are due to factors arising from wholesale services."

Telstra agrees with the Principle included in the Draft Decision that "NBN Co should support the delivery of NBN services in line with existing consumer safeguards, where they apply." This is not, however, reflected in terms in the Draft FAD. Telstra considers that, pending finalisation of the Consumer Safeguards Review, the CSG should be appropriately recognised in any final FAD with the inclusion of a clause requiring implementation of a simplified process for recovering CSG payments from NBN Co. This could take the form of the process followed by Telstra Wholesale which provides an accepted and demonstrated template.³

Further, under the Draft FAD, in the absence of the ability to claim CSG from NBN Co, RSPs who provide CSG services will be left with a shortfall given the difference between NBN rebates and CSG payments.

Telstra does not consider that, where CSG payments are made, these should be used to reduce any NBN service level rebate payable given the different purpose of the CSG and NBN rebates.⁴ Netting off CSG payments also means that RSPs who provide CSG services are not compensated for the customer facing costs incurred when NBN Co fails to meet its service standards. Further, keeping the 'regimes' separate also ensures that changes can be made to the CSG at the retail level without the need to make potentially complex changes at the wholesale level.

Other issues

Liability and indemnity

The ACCC has made a draft decision not to include liability or indemnity terms within the Draft FAD.

Telstra agrees with the ACCC that terms and conditions relating to liability are often agreed through commercial negotiation. However, in this instance, commercial negotiation has not resulted in outcomes that support the customer experience and appropriate allocation of risk.

This is particularly the case with respect to the third party claims provisions within the WBA. Telstra continues to consider the third party claims provisions in the WBA are unreasonable.

As noted by the ACCC in the First Discussion Paper, the third party claims provisions effectively transfer the risk of certain matters within NBN Co's areas of responsibility to either customers or RSPs. Where RSPs are unable to pass through the "Model Undertaking" to customers, either RSPs are forced to bear unlimited liability and/or customers must bear losses incurred as a result of an NBN Co breach. This is inappropriate and Telstra considers the ACCC should make a FAD term that addresses this issue and limits any obligation on a RSP to require an end user not to make a claim against NBN Co to only loss or damage

³ See Telstra Corporation's submission to the ACCC Inquiry into NBN Wholesale Service Standards, March 2019.

⁴ Telstra acknowledges that further consideration may need to be given to the treatment of CSG compensation to ensure no over-recovery of costs.



suffered by end users as a result of factors or circumstances that are not within NBN Co's control or scope of responsibility.

Non-serviceable premises

As the NBN rollout has progressed, it has become increasingly apparent that there is a need to impose an obligation on NBN Co to deal with non-serviceable premises. Telstra's position on this is set out in further detail below.

Serviceability is a critical element in the supply chain for nbn services

The NBN rollout is predicated on a build, migrate, disconnect model. Generally, this involves a pre-build phase in which the majority of premises in a region are made serviceable, followed by the declaration of Ready for Service (**RFS**) for that region. Premises then have an 18 month migration window in which to connect to the NBN before their legacy services are disconnected in accordance with the Definitive Agreements and Telstra's Migration Plan at the region's Disconnection Date (**DD**). Allowances exist for premises that have not been made serviceable at 6 months prior to the DD, whereby they are granted an additional 6 months before mandatory disconnection by being placed in a Service Continuity Region (with its own Service Continuity Region Disconnection Date – **SCRDD**).

Prior to, and during the migration window, RSPs and NBN Co actively engage with customers in a region, including advertising commercial offers and providing communications about upcoming disconnection obligations. Generally, these contact programs are based on the assumption that customers can actually connect to the NBN, with non-serviceable premises falling into exception management.

Irrespective of the serviceability status of a premises, Telstra has an obligation under the Migration Plan to provide a mandatory disconnection notification at approximately 3 months prior to the DD or SCRDD for a region. This obligation applies directly to our retail end users, as well as to our wholesale customers (who may or may not advise their end users). This is clearly a concerning notification to receive for customers at premises which are non-serviceable.

NBN Co's serviceability performance in rollout regions has been steadily decreasing

Commencing with disconnection wave 51 (with RFS dates for the relevant regions of approximately August 2016), the number of premises that remain non-serviceable at the SCRDD (24 months post-RFS) has increased significantly. Where previously there were small numbers for every wave that could be managed individually, the numbers have increased to multiple thousands of premises per disconnection wave (per month).

Since February 2019, on a month-by-month basis, Telstra and NBN Co have agreed to further extend the disconnection obligations for these premises when they remain non-serviceable, firstly by 150 business days, then by another 150 business days. Currently there are approximately 8,000 premises in this category, some of which have been non-serviceable for up to and beyond 36 months.

Telstra is concerned that, despite these growing numbers, NBN Co is not dedicating sufficient resources to delivering serviceability to these "left behind" premises, and has not publically recognised this issue or provided any sort of plan to address the long tail of non-serviceability.



NBN Co has publically indicated the number of premises left behind could be as high as 100,000⁵.

A serviceability objective would promote the LTIE and is within the scope of this enquiry

The impact of this increasing non-serviceability on end users and industry is significant and disruptive, including:

- Confusion and uncertainty for end users at affected premises in these waves who have received multiple marketing communications from RSPs (and potentially disconnection notifications), only to find that they cannot connect to the NBN, and haven't been disconnected from legacy services.
- RSPs managing these legacy services increasingly need to dedicate resources to checking serviceability and are unable to provide the customer with any assurances around when they will be able to connect to the NBN, or when they will be subject to disconnection from legacy services.
- Telstra continues to implement manual processes to minimise the risk of disconnecting these customers who would be left without any fixed line options, including seeking additional regulatory forbearances and advising wholesale customers of extensions on a location by location basis.
- Compounding these impacts is a lack of legislative or regulatory measures that compel NBN Co to complete 'saturation' of serviceability in rollout regions. This is despite the Definitive Agreements, the Migration Plan, the nbn Statement of Expectations and the Migration Assurance Framework all making reference to an 18 month migration window and an expectation on NBN Co to deliver serviceability in a reasonable timeframe.

A serviceability objective in the FAD would incentivise NBN Co to dedicate appropriate resources to delivering serviceability in a reasonable timeframe, and would enhance competition by improving RSP and end user certainty as to when they will be able to connect to the NBN.

Telstra proposes that the serviceability objective would include the following:

- NBN Co to establish a process by which end users at long term non-serviceable premises can request connectivity (as orders currently cannot be placed at non-serviceable premises) to assist NBN Co with prioritisation;
- Where a request is made in the process above, NBN Co should make that premises serviceable within 30 Business Days; and

⁵ On 30 August 2019 in association with the release of its NBN Co Corporate Plan 2020-23 on, NBN Co stated that the achievement of its commitment to complete the network build as forecast to occur in June 2020, "excludes approximately 100,000 premises defined as 'complex installations', which includes properties that are difficult to access and some culturally significant areas and heritage sites" (<https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-on-track-for-network-completion>). Telstra is unclear whether the full 100,000 premises referenced by NBN Co are expected to rely upon existing or future disconnection deferral arrangements, we have assumed that at least a certain proportion of these premises are included in this forecast volume.



- NBN Co to publish a weekly report setting out every Location ID (LoCID) in the long term unserviceable category with estimated dates for each premises to be made serviceable.



APPENDIX A

Telstra's views on the terms in the Draft FAD instrument – specifically, whether those terms capture the principles set out in the Draft Decision - are set out in the table below. Note that comments in relation to the principles are captured in the main body of this submission. That is, even where we have not fully agreed with the Principles in the Draft Decision, we nonetheless give an indication here as to whether the principles have been captured by the Draft FAD terms.

Draft FAD	Analysis
1. Appointments	Telstra considers that the main principles relating to appointments have been captured in the Draft FAD.
2. End User Connections	<p>The Draft Decision notes that the Draft FAD also includes terms relating to End User Connections adopted as part of NBN Co's Undertaking. Telstra considers that the inclusion of these terms should be explicit in the Draft FAD.</p> <p>For clarity, Telstra also proposes that Clause 2.4 be amended to refer to the cap of 20 business days:</p> <p>2.4 The Connection Rebate is equal to the total of \$13.50 for each full or partial Business Day that the End User Connection is completed in excess of the relevant service level, up to a cap of 20 business days, which is a cap of \$270</p>
3. End User Faults	<p>Telstra considers that the main principles relating to end user faults have been captured in the Draft FAD.</p> <p>For clarity, however, Telstra proposes that Clause 3.2 be amended as follows:</p> <p>3.2 NBN Co will pay a rebate for each End User Fault including Priority Assistance Fault that is not rectified by NBN Co in accordance with the relevant service level in clause 3.1 (Fault Rectification Rebate).</p> <p>As with End User Connection, Telstra also proposes that Clause 3.5 be amended to refer to the cap of 40 business days:</p> <p>3.3 The Fault Rectification Rebate is equal to the total of \$20.00 for each full or partial Business Day in the first 5 Business Days, and \$30.00 for each full or partial Business Day thereafter, from the day after the relevant service level until the End User Fault is rectified, up to a cap of 40 business days, which is a cap of \$1150</p>
4. FTTN/B/C service speed assurance	Telstra considers that the main principles relating to FTTN/B/C service speed assurance have been captured in the Draft FAD.
5. Wireless Network service speed assurance	Telstra considers that the main principles relating to wireless network service speed assurance have been captured in the Draft FAD.
6. Payment of rebates	Telstra considers that the main principles relating to the payment of rebates have been captured in the Draft FAD.



7. Availability of service information	Telstra considers that the main principles relating to the availability of service information have been captured in the Draft FAD.
8. Service level exclusions	Telstra considers that the main principles relating to service level exclusions have been captured in the Draft FAD.
9. Service level reporting	Telstra considers that the main principles relating to service level reporting have been captured in the Draft FAD.
10. Wireless Network performance reporting	<p>Clause 10.1 of the Draft FAD sets out the requirement on NBN Co to provide a Wireless Performance Report to access seekers. It does not, however, include a requirement on NBN Co to provide plans to remediate congested fixed wireless cells. Clause 10.1(a)(iv) does refer to planned Upgrades but cross-refers to Clause 9.2(a)(ii) which does not exist in the Draft FAD.</p> <p>Clause 10.1(c) requires a forecast of the month during the next 6 months in which each Wireless Network cell is expected to become a Priority Upgrade Cell, however does not refer to plans to remediate.</p>
11. Wireless Network maximum attainable speed information	Telstra considers that the main principles relating to wireless network maximum attainable speed information have been captured in the Draft FAD.
12. Implementation of future consumer safeguards	Telstra considers that the main principles relating to the implementation of future consumer safeguards have been captured in the Draft FAD.