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Re: Service standards for superfast fixed broadband services – Consumer remedies for missed service levels

ACCAN thanks the ACMA for the opportunity to contribute to its consultation on service standards for superfast fixed broadband services. ACCAN supports the draft Determination and considers it a significant step towards improving consumer outcomes in the telecommunication industry.

ACCAN has called for arrangements which deal with the tension between wholesale and retail end-user obligations, as well as incentives to comply in the form of end-user compensation.¹ We consider that the draft Determination creates a transparent streamlined mechanism that will encourage improved performance from retail carriage service providers (CSPs) and will compensate a consumer for any loss suffered when service standards are not met. Creating suitable lines of accountability from the wholesale provider to the consumer will create networks responsive to consumer needs.

However, we recommend the draft Determination set the retail service level commitments in relation to timeframes for RSPs connecting a service and fault rectification to those set out in the Customer Service Guarantee as opposed to allowing retail CSPs to set the standards themselves as this would produce better outcomes for consumers. This should be underpinned by regulated wholesale service standards for all fixed network operators.

Rebate pass-through

ACCAN welcomes the proposal for the pass through of rebates in some form that retail CSPs receive from their network operator when the operator does not meet regulated service standards or service standards set out in contractual agreements. ACCAN maintains that the full amount should be passed through and where possible this should be an automatic process. Importantly, the Determination means that consumers will not need to have knowledge of the wholesaler and

¹ ACCAN, 2016, *A guarantee for the future*.

<https://accan.org.au/files/Submissions/ACCAN%20policy%20position%20on%20a%20customer%20service%20and%20reliability%20standard.pdf>

retailer's individual obligations, ensuring the consumers interaction remains solely with the retailer where there is a direct contractual relationship.

The pass-through requirement in the draft Determination applies to rebates for failure to meet agreed timeframes for connecting services, rectifying reported faults, missed appointments and speed undertakings with one exception - the nbn Co FTTB/N/C connection performance rebate. The FTTB/N/C performance rebate is a rebate paid by nbn Co under the WBA 4 to a retail CSP where a line achieves lower than 50 per cent of the highest speed on the customers plan *and* speed performance information is not available to the retail CSP, or that information is inaccurate. ACCAN does not consider nbn's approach of paying the retail CSP a one-off compensation with no obligation to pass through to the consumer reasonable. ACCAN has previously stated that in this instance, there is still a level of inconvenience and harm being caused to the consumer through being sold a service which is not possible to receive which should be compensated for.²

1. Should the rebate pass-through obligations for unmet connection, fault, appointment-keeping and speed service standards apply to providers of all superfast carriage services as stipulated in the draft Determination? If not, what obligations should providers of non-NBN carriage services have? What would be the ramifications for consumers on non-NBN services if no obligations were required?

Providers of all superfast carriage services should be obliged to pass through rebates for unmet connection, fault, appointment-keeping and speed service standards. ACCAN continues to call for the government to set wholesale service standards for all networks. Without this, consumers being served by non-nbn networks will not benefit from the draft Determination, the ramifications being that consumers will continue to receive poor service quality from the embedded network by which they are served by. Applying the draft Determination for all networks now will provide flexibility should wholesale rebates be mandatory for all networks in the future.

Furthermore, without the clarity and level playing field provided by the Minister setting wholesale service standards covering all networks, there is the potential for significant confusion amongst consumers as to what rebates they can expect to receive from their networks when service standards are missed.

2. Other than the missed appointment rebate, is it appropriate that rebates be passed through to affected consumers either in a monetary form or as an appropriate mitigation measure?

It is necessary that all rebates be passed through to affected consumers either in a monetary form or as an appropriate mitigation measure. ACCAN considers that the draft Determination recognises that when service standards are not met, it is the end-user that is harmed. The harm from missed commitments can be significant. The COVID-19 pandemic has highlighted how reliant consumers are on telecommunications service. As an essential service, telecommunications allow small businesses to operate, households to learn and work from home, and for people to access telehealth as well as stay connected to each other. Missed service standards create considerable disruption for consumers and small businesses, costing them time and money. ACCAN has estimated that at a minimum, consumers spent between \$106-\$130 million in time contacting their retail CSP to resolve

² ACCAN, 2020, ACCAN submission to the ACCC inquiries into NBN access pricing and wholesale service standards <http://accan.org.au/our-work/submissions/1810-accq-inquiries-into-nbn-access-pricing-and-wholesale-service-standards>

issues between February 2019 – February 2020.³ It is only equitable that mitigation measures or compensation are provided when issues occur.

It is appropriate for the draft Determination to provide flexibility in the way the value of rebates is to be passed through to the consumer as mitigation measures are often preferred to compensation. In particular, measures which ensure continuity of service and allow consumers to access telecommunications should be provided where possible. That being said, it is important that consumers are able to understand what these options are. If a retailer is to provide a mitigation measure then this should be provided at no extra charge to the consumer, the measures must be explained in an easy, straightforward way to the consumer and the consumer must agree to the measures that will be taken.

3. Is the definition of ‘appropriate mitigation measure’ suitable?

The definition of ‘appropriate mitigation measure’ given in the draft Determination is generally suitable:

appropriate mitigation measure means a benefit supplied, directly or indirectly, to the consumer that:

- (a) *corresponds with the reason for the rebate being payable by the network operator; and*
- (b) *mitigates, fully or substantially, any loss or detriment suffered by the consumer caused by the failure of the network operator to meet the service standard to which the rebate applies.*

However, the wording ‘substantially’ in part (b) should be removed as it may create problems and flexibility in the interpretation of the definition. For example, if a retail CSP manages to reduce the time a consumer spends without broadband access from 2 weeks to 1 week, this may be considered as substantially mitigating the detriment suffered by the consumer. However, there is still a considerable amount of time and harm for which the consumer is without internet access. If the mitigation measure cannot fully alleviate the loss or detriment suffered by the consumer, then the consumer should be entitled to compensation.

Pass-through handling costs

4. Is it reasonable to require the full amount of a rebate (or appropriate mitigation measure) to be passed along the supply chain to the end user? If not, what alternative can be suggested? Please provide details.

It is reasonable to require the full amount or appropriate mitigation measure to be passed along to the end user for multiple reasons:

- The end user is the one predominantly harmed by the failure of the network operator.
- ACCAN recognises that there will be administration costs incurred by the retail CSP from faults which have occurred further down in the supply chain. However, retail CSPs will have

³ ACCAN, 2020, *The Cost of Still Waiting*. Unpublished.

incurred these costs regardless of whether a rebate is paid or not and are likely to be factored into their operating costs.

- ACCAN considers that the full amount of a rebate should be passed along the supply chain to the end user, as an alternative where retail CSPs are entitled to a proportion of the rebate has significant costs. Given that the rebate amount provided by nbn under the WBA 4 is insufficient to fully compensate consumers for the harm, inconvenience and time spent resolving issues, once retailers have taken a proportion of this rebate, the consumer's compensation will be minimal. This issue will be compounded where there are multiple CSPs in the supply chain, each taking a proportion of the rebate.
- Additionally, if retailers took a proportion of the rebate, this will make it difficult for consumers to understand their rights due to inconsistent rebate levels, in particular where resellers are involved as a consumer purchasing a service from a reseller will be entitled to a smaller amount.
- Lastly ACCAN considers that the level of rebates provided to a consumer should not be a point of differentiation for retail CSPs. As the consultation paper notes, the ACMA is aware of one retailer who already passes on rebates as a point of differentiation. Our understanding is that the majority of retailers do not feel the need differentiate themselves in this way because their marketing has historically been based primarily on price and bundled offers. Based on this observation, ACCAN does not foresee retailers passing on the full rebate if they are given flexibility of doing so. Therefore, to protect the interests of consumers, it is necessary that the Determination requires that rebates to be passed on in full.

Retail service level commitments

The requirement for retail service level commitments in relation to timeframes for connecting a service and rectifying faults, and providing consumers clear and accurate information about these commitments before they enter into a contract, is vital to improving consumer outcomes. This will enable an informed consumer to know and understand their rights when commitments are not met and allow recourse to remedies when complaints are escalated to the TIO, ensuring better consumer outcomes.

An important aspect in driving accountability is the publication of retail CSP's performance in meeting the service standards. This will create incentives for retailers to strive to meet their contractual agreements as their reputation will be harmed if they do not meet the standards.

The consultation paper recognises that there is limited transparency between contractual arrangements between non-nbn network operators and their retail CSPs. If these arrangements are not as comprehensive as the nbn's WBA4, non-NBN retail CSPs may find it difficult to set meaningful service level commitments. ACCAN considers that this is another reason why the Minister should set wholesale service standards which cover all networks. This would create transparency and ensure that retail CSPs are able to set service level commitments which are underpinned by network service standards.

5. Should it be a requirement for retail CSPs to make retail service level commitments as stipulated in the draft Determination (noting that the requirement to pass through rebates would still apply)? If not, what level of commitments should retail CSPs be required to make and how should this be communicated to their customers?

ACCAN considers that retail CSPs should not be allowed to set their own retail service level commitments. The timeframes set out by nbn in its Wholesale Broadband Agreement creates a ceiling for many of the retail service level commitments however there is no guarantee that retail CSPs will match nbn's timeframes. Retail service level commitments have never been a point of differentiation and we do not consider that the draft Determination will incentivise retail CSPs enough to compete on service standards.

If the draft Determination does incentivise retail CSPs to compete on service standards, the consequence may be that services with shorter timeframes for connection and fault rectification are sold at a premium. Consumers who are unable to afford, or do not anticipate fault rectification timeframes to be important, will continue to receive low service standards. The purpose of reliability timeframes is to provide minimum safeguards available to all consumers, and allowing retail CSPs to set their own service level commitments will not achieve this.

Legislating timeframes for connecting a consumer's premises and for fault rectification will make it easy for a consumer to know what to expect, regardless of which retail CSP they choose. ACCAN considers that doing so will produce the best outcomes for consumers. A single standard is simple for retailers to communicate, and for consumers to understand their rights. Furthermore, it reduces the complexity and burden on the regulator to monitor and enforce the standard, increasing the likelihood of compliance.

The level of commitments retail CSPs should be required to make should be the same as the commitments made under the Customer Service Guarantee (CSG). However, they should be defined in terms of days (not working days). We are aware that the certain timeframes set out in the WBA 4 are longer than those in the CSG, however the WBA4 provides retail CSPs with a contractual commitment to conduct a four week consultation period with retail CSPs with respect to potentially changing the WBA if a regulatory event occurs, which prevents a retail CSP from complying with an obligation. This means there is a mechanism for adjusting WBA4 to avoid any inconsistency with a new service standard. ⁴

Retail service level commitments should be communicated to consumers prior to their purchasing of the service and should be placed on the retail CSPs website in an easy to understand, accessible format. If the commitments are uniformly set by the draft Determination, they should also be communicated via the ACMA's website.

⁴ NBN Co, *Head Terms Wholesale Broadband Agreement*, <https://www.nbnco.com.au/content/dam/nbnco2/2021-wba4/wbadocs/sfaa-wba-head-terms-20201129.pdf>

Consumer information

6. Does the draft Determination specify the provision of all the information consumers should have access to about service levels for connections and faults?

ACCAN considers the draft Determination to be comprehensive and provides all the information consumers require in relation to service levels for connections and faults.

7. Does the draft Determination specify an effective way of allowing consumers to be aware of retail service level commitments (and remedies) to enable them to make an informed choice before choosing a telco provider? Are there more effective ways of promoting consumer awareness?

The draft Determination specifies an effective way of allowing consumers to be aware of retail service level commitments and remedies.

Record keeping

ACCAN supports the proposal that retail CSPs be required to maintain records to demonstrate compliance to the Determination. Additionally, the requirement for CSPs to publish their performance in meeting service level commitments on a monthly basis on their website will likely result in significant consumer benefit, so long as this is in an easy to access and understand format. This will allow potential customers to assess whether a retail CSP is likely to meet its service level commitments by looking at its ability to do so in the past. As such, retail CSPs will be incentivised to meet their commitments.

We recommend that the ACMA collect data from the larger retail CSPs in relation to the rebates passed through to consumers as well as their compliance with retail service level commitments, and that this data be included in the ACMA's annual Communications Report, similarly to the way the CSG is reported on. Providing this information publicly will give a greater understanding to the sector's performance at both the wholesale and retail level.

8. In what ways could the record-keeping and reporting obligations be streamlined to keep costs to a minimum?

If retail level commitments were the same across all retail CSPs, the reporting framework would be the same, making it more streamlined, and easier to compare performance as well as making it easier for the ACMA to monitor compliance.

Similarly, if minimum national wholesale service standards and wholesale rebate requirements were set across all networks, the record-keeping required by retail CSPs would also be streamlined as it would not have to be tailored to whichever network they are purchasing a service from.

Commencement timeframes

9. When should obligations in the ACMA's draft Determination for rebate pass-through and retail service level commitments commence? What factors should be considered in setting the commencement date?

As the Determination will create significant benefits for consumers, it should be implemented as soon as practically possible.