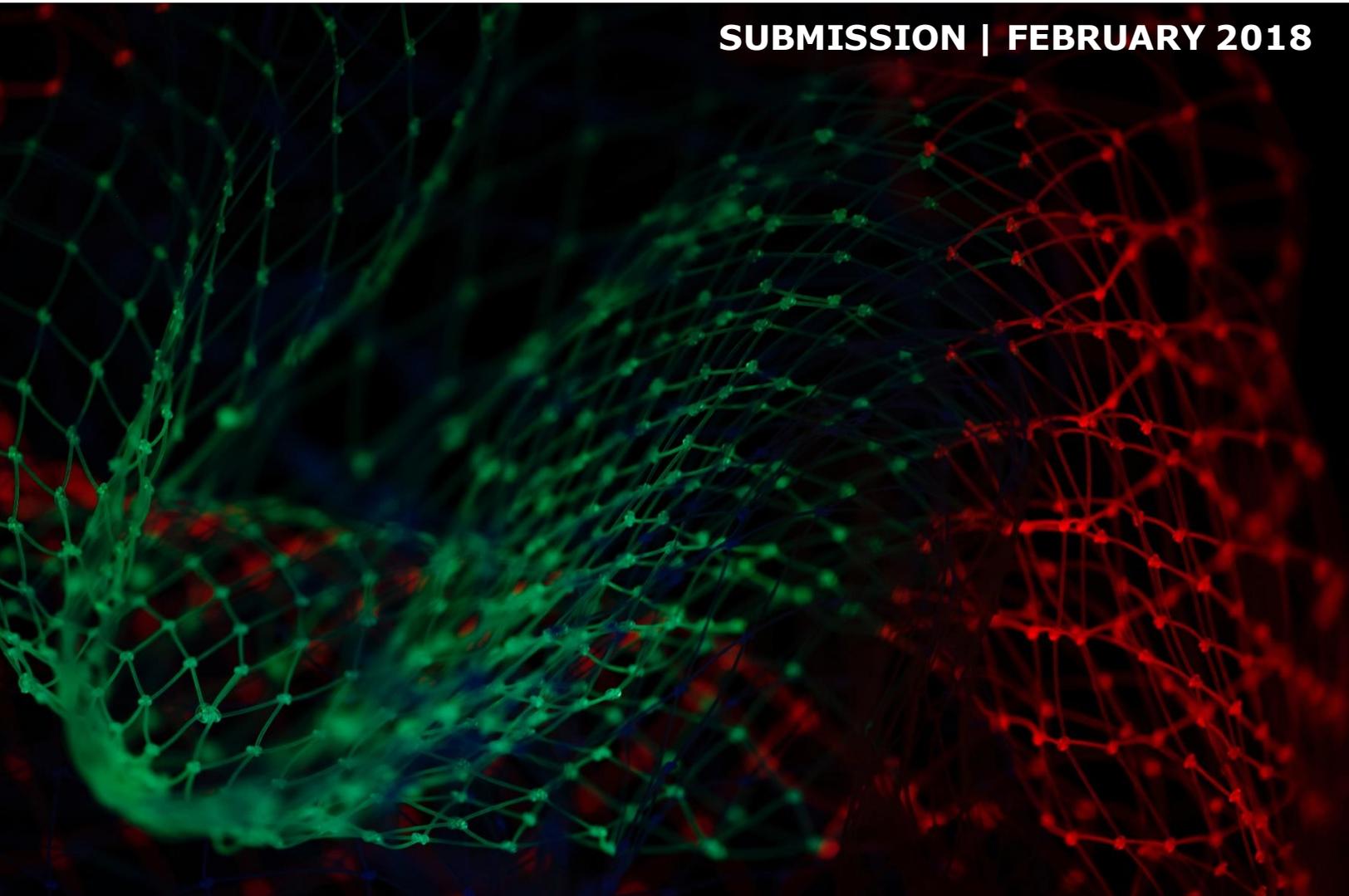


# ACCC Inquiry into NBN wholesale service standards

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## Recommendations:

The NBN inquiry should be broader in scope and not only focus on the relationship between NBN Co and wholesalers (including aggregators), but look at the full NBN supply chain as retailers are ultimately the entity which the end use customer engages with.

A National Broadband Service Guarantee (NBSG) be developed and enforced by the ACCC. The focus of the NBSG would be to ensure efficient investment in, and efficient operation and use of, broadband services with specific focus on price, quality, safety, reliability, fault rectification and continuance of supply.

## Introduction and overview

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide a response to the ACCC inquiry to NBN wholesale service standards ('NBN inquiry').

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.

## Transitioning to the NBN – experience of business

The Chamber's [2017 NBN and Telecommunications Survey](#) ('Survey') found delays and disruptions with the NBN roll out are costing NSW businesses, on average, more than \$9,000, 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.

As confirmed by the Survey, the transition to the NBN for some businesses has been expensive and frustrating with additional capital outlays necessary to maintain phone and internet connection and in some instances considerable inconvenience and lost revenue arising from service failures. The Chamber has heard from businesses across NSW who were left with no landline phone or EFTPOS functionality for weeks and months while transitioning to the NBN. Other businesses have sighted reliability concerns with the NBN and have expressed a desire to return to previous ADSL connections.

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Additional feedback from our members has indicated that there is a need for greater support for businesses to update to fibre to the premises (FTTP) connectivity in view of its superior performance.

**Need to consider the full broadband supply chain**

Effective and reliable end use broadband services to customers (both residential and business) relies on cooperation between NBN Co, service providers who purchase wholesale services (wholesalers), subcontractors who install NBN hardware, and retail service providers (retailers) who supply end use broadband services (and other telecommunications services) to end use customers and the end use customers themselves.

The terms of reference of the NBN inquiry appears to be limited to wholesale service standards. While wholesale service standards have flow on effects they are in some respects less relevant to the end use business or residential customer as it is not possible for customers to seek redress or remedy under a wholesale agreement when the customer does not have a direct contractual relationship with the wholesaler or NBN Co under a wholesale agreement.

While there is a need to review the Service Access Undertaking (SAU) for NBN Co, the NBN inquiry should be broader in scope and not only focus on the relationship between NBN Co and wholesalers (including aggregators), but look at the full NBN supply chain as retailers are ultimately the entity which the end use customer engages with. The entire supply chain should be considered if the ACCC is considering regulatory interventions as indicated in the inquiry scope. With the potential of 5G and other new technologies it would be important that these are included in any service level agreements also, and that emerging and future technologies are allowed for.

The transition issues detailed above are borne out of service failures caused by a lack of accountability and coordination between parties in the broadband supply chain. The focus of the NBN inquiry should be on customer outcomes, and whether additional regulation is necessary to improve service delivery and protect business and residential customers.

The Chamber acknowledges recent initiatives by both NBN Co and retailers to voluntarily and proactively manage some of these issues. For example, NBN Co announced initiatives to improve the connection, migration and service experience for businesses, including case

management for complex migrations. Telstra has compensated its customers for selling plans with speeds not achieved<sup>1</sup>.

However, more should 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 NBN Co, wholesaler and retailers. The failure to effectively assign responsibility and achieve timely rectification of service failures results in complaints to the Telecommunications Industry Ombudsman (TIO) at the end of a frustrating customer experience.

## **A National Broadband Service Guarantee**

The Chamber notes a similarity with another essential service - energy. The Australian Government together with the States and Territories developed a National Energy Customer Framework (NECF) to bolster protections, include service obligations on networks and retailers and encourage competition for the provision of retail services. The NECF addressed concerns of business and residential energy customers regarding the shared responsibilities of network providers and energy retailers around connection/disconnection which made it difficult to know who to turn to for fault rectification.

The NECF is based on a *'tripartite'* view of the energy industry as there are *arrangements* between customers, retailers and networks. For example, an application for the provision of connection services is made to a network by a retailer (retailer-network) on behalf of the customer (retailer-customer), however the customer has a relationship with the network for information on faults and blackouts (network-customer) and the customer has an obligation to provide certain information to both the retailer and network (customer-network-retailer).

A National Broadband Service Guarantee (NBSG), ensuring efficient investment in, and efficient operation and use of, broadband with specific focus on price, quality, safety, reliability, fault rectification and continuance of supply would result in improved collaboration in the delivery of broadband services and help reduce the frustration and confusion currently faced by consumers in resolving faults and service failures.

The Chamber submits improving customer outcomes for broadband services is one that encompasses *shared* NBN Co, wholesaler (including aggregators), retailer and customer responsibilities, the NBSG should mandate:

- The sharing and exchange of information between the NBN Co, wholesalers and retailers on faults and emergencies, service interruptions and charges for connections. This is particularly important for priority assistance customers, and businesses

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<sup>1</sup> 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.

requiring fire and lift registration due to NBN impacting on legacy systems. At present the onus is on the business customer to inform both NBN Co/wholesaler and retailer, but the obligation should extend to the NBN Co/wholesaler-retailer. This occurs in the NECF for life support customers.

- Specifications and quality checks of installation work and coordination of such works as well as technical requirements.
- Connection offers containing terms and conditions relevant to the connection and service levels.
- Effective management of customer site visits. This requires maintaining accurate records of end use customers and ensuring visibility of customer appointments across the broadband supply chain.
- Requirements to maintain service continuity when customers migrate to the NBN. Specifically, 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.
- Guaranteed service standards where the business customer is entitled to compensation for a failure to deliver to the standards.
- A compliance, performance and reporting regime underpinned by enforcement provisions which include civil penalties.
- Establishment of a customer consultative group (made up of business, community and residential stakeholders) to advise on broadband impacts.

The NBSG would be enforced by a single regulator, ideally the ACCC, with specific responsibilities including:

- Monitoring and enforcing compliance with obligations and service standards.
- Reporting on the performance of the broadband market and individual retailers, including information on broadband speeds, trends in connections and disconnection of customers for non-payment of bills and priority assistance requests.
- Approving policies retailers must implement to assist residential and business customers who are facing financial hardship and looking for help to manage their bills.
- Providing guidance on, or streamline any authorisation requirements, to set up joint broadband buyers groups<sup>2</sup>. This may include a group of businesses that pool their collective demand and place one or more tenders into the market calling for proposals to meet their broadband needs, for example moving from Fibre to the Node/Street to Fibre to the Premises.
- Working with businesses to develop appropriate compensatory measures where service standards are not met. This should involve leveraging off the findings of the Chamber's Survey.

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<sup>2</sup> The ACCC under subsections 88(1A) and (1) of the Competition and Consumer Act 2010 (CCA) may require buyers groups to be authorised to engage in conduct that may contain a cartel provision or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the CCA.

## **Review of Service Access Undertaking (SAU) for NBN Co**

The SAU relates to the terms of access, including the economic regulation of price. Consumer behaviour and demand for data have changed significantly since the SAU was contemplated including how the components of NBN pricing were developed. The end use price flows through to customers in terms willingness to pay for higher speed plans. We understand the economic viability of the NBN would be improved if more customers adopted higher plans.

Some members have revealed a willingness to pay for 100MB/s symmetrical upload/download speed services if they were guaranteed a timely connection and reliable supply (no drop outs or throttled speeds in peak times). We also understand that NBN Co will consider entering into direct contractual arrangements with buyer's groups in certain circumstances for bespoke FTP connections (as an example). NBN Co would invoice the business customer directly. These sorts of contractual arrangements exist between energy networks and large customers and do not involve a retailer.

## **NBN Co announcement on Hybrid Coaxial-Fibre (HFC)**

The Chamber has also been made aware of situations at greenfield business site developments and other locations where an NBN service has been 'declared' in an area so no new connection infrastructure will be put in (or existing ADSL or cable utilised) until the NBN service is connected – which can be 18 months or more. This puts businesses in limbo in terms of signing up to new ADSL or cable plans as providers have limited incentive to offer non-NBN services during this period. 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 meaning that businesses in NBN 'declared' areas will suffer ongoing uncertainty in terms of their connection.

On one hand it is commendable if the HFC announcement 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.

In addition, the aforementioned broadband buyers groups may be a solution for some businesses to both accelerate the rollout of 100 MB/s broadband and at a fair price. However, strong business protections will need to be in place for these groups to confidently negotiate such arrangements.

## **Next steps**

The Chamber understands that the Australian Communications and Media Authority (ACMA) will be consulting on new rules (to be in place by 1 July 2018) on wholesalers and retailers to improve the customer experience when moving to the NBN. While detail has not been released, in the absence of a NBSG, we are encouraged there will be requirements on retailers to maintain service continuity when customers migrate to the NBN (including in the event the connection fails) and post-connection line testing to proactively identify faults.

Access to fast, reliable and affordable broadband internet is an essential service for Australian businesses, in particular the ability to *upload* and update information quickly is a vital business requirement to remain competitive as is the ability to make and receive calls.

The NBN inquiry is an opportunity to influence improved operational outcomes for business customers in line with those expected of other essential services. A NBSG, if implemented correctly, would significantly reduce the number of complaints to the TIO but more importantly, reduce the considerable expense and frustration faced by business in transitioning to the NBN.