



ACCC submission to Part B of the Consumer Safeguards Review – Reliability of services

January 2019

1. Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the Department of Communications and the Arts' (the Department's) consultation on Part B of the Consumer Safeguards Review (the Review).

The ACCC is the economy-wide competition regulator responsible for enforcing the *Competition and Consumer Act 2010* (Cth). We protect Australian consumers by fostering competitive, efficient, fair and informed Australian markets, including telecommunications markets. This includes our work in investigating and enforcing breaches of the Australian Consumer Law (ACL).

The ACCC supports a comprehensive review of the reliability safeguards to ensure they are fit for purpose and meet consumer needs. The significant changes that have taken place in the telecommunications industry mean that the current safeguards only apply to specific services, whereas consumers rely on a range of communications networks for their telecommunications services.

The ACCC's submission to this part of the Review is set out in two parts. The first part discusses some general themes and observations identified in the consultation paper, while the second part addresses each of the proposals and individual questions proposed by the Department.

Consumer safeguards need to be reviewed in light of the change in market structure

There has been a significant change to the market structure of the telecommunications industry since many of the existing consumer safeguards were introduced.¹ The introduction of the National Broadband Network (NBN) will replace Telstra's vertically integrated legacy network with NBN Co's wholesale-only broadband network. This will ultimately result in the structural separation of Telstra.

As noted in the Department's consultation paper, the current reliability safeguards were designed to apply primarily to Telstra voice services, or voice services supplied by other retail service providers (RSPs), over its copper network. We note that as a vertically integrated operator selling both wholesale and retail telecommunications services, Telstra is also subject to equivalence and transparency obligations within its Structural Separation Undertaking. These obligations ensure that Telstra's wholesale customers receive equivalent price and quality for a range of regulated services, including asymmetric digital subscriber line (ADSL) services. Therefore, the quality of service that Telstra provides to its retail business must also be made available to other RSPs.

With the introduction of the NBN, end users experiences are no longer determined by a single party, and are instead influenced by NBN Co and RSPs at the wholesale and retail levels respectively. Although RSPs have an important role in determining end user outcomes such as connection and fault rectification timeframes, these outcomes are influenced significantly by NBN Co. In the legacy environment, appropriate reliability safeguards for meeting minimum standards could be achieved by applying them directly to Telstra. Applying such safeguards in a similar way to the RSPs are unlikely to be effective in an NBN context without appropriate consideration of NBN Co's responsibilities in the supply chain and the imposition of appropriate safeguards at the wholesale level.

¹ For example, the Customer Service Guarantee (CSG), Priority Assistance (PA) and Network Reliability Framework (NRF) were all introduced when Telstra was responsible for wholesale aspects of the supply chain.

The consumer experience is influenced by several factors, including competition

There is currently a significant amount of regulatory and policy activity aimed at improving the consumer experience in the telecommunications industry. The ACCC considers that policy settings that promote competitive tension between providers and create incentives that focus on the consumer experience will provide long term benefits for consumers and for the market more generally.

Strong consumer safeguards in telecommunications markets are necessary. For many consumers, telecommunications is an essential service. Broadly speaking, we consider that consumers should be able to expect service quality at competitive standards and competitive prices, and have sufficient information to be able to make a choice.

Telecommunications markets are dynamic, often include complex product offerings, and are characterised by high levels of innovation. In order to compete, providers often seek to differentiate their services from other providers. The ACCC considers that this service differentiation is important to allow consumers choice, so they can select a service that best meets their needs. In order for this competitive process to be effective, consumers need to be able to choose between providers and change providers if they are not satisfied with their service. To this end, we support provisions that allow consumers to switch providers if reliability standards do not meet their needs.

We note that service reliability may be more important for some consumers than others. Many consumers now have multiple telecommunications services, which are provided over different infrastructure. This provides a form of redundancy, where consumers can use an alternative service if one fails. For some of these consumers, service reliability may be less of a concern relative to other considerations (such as price), provided minimum service requirements are met. However, other consumers may not have access to an alternative service or may value service reliability more highly. These are likely to include elderly or vulnerable consumers, people with life-threatening medical conditions, and those who do not have access to reliable mobile coverage.

Provided that adequate minimum standards are in place, market differentiation should be allowed to cater for a range of consumer preferences. However, it must be clear to consumers at the time of purchase that a service may be cheaper, but is also of a lower standard. The ACCC agrees that information about what is, or is not, included in the service is important at the point of sale so that consumers can make informed choices. For example, we consider that RSPs that cannot meet priority assistance standards must clearly state this in their advertising and offer information.

There are some important principles that should be considered if mandatory rules are to be put in place

Safeguards are essential to ensure that consumers, particularly vulnerable consumers, have access to reliable telecommunications services and access to effective recourse when things go wrong. Broadband services are now as important, if not more important, than fixed-line voice services for many consumers. Therefore, having access to timely connections and repair, and appropriate recourse, is as important for broadband as it was for fixed-line voice when the safeguards were first developed.

To ensure that any new safeguards are as effective as possible, we consider that there are some important principles that can provide useful guidance. These are particularly important if the safeguards are introduced through mandatory standards, particularly where the responsibility for meeting rules and timeframes is likely to be shared.

These principles include:

- Ensuring that the rules are targeted at the right segment of the market. We consider that safeguards need to be directed at the party who is best placed to address the particular issue.
- Ensuring that any retail obligations are supported by wholesale arrangements. This is critically important in the context of the changed market structure, described above.
- Ensuring there is adequate overall coordination to ensure that good customer outcomes are achieved across the supply chain.
- Considering the interaction of any new proposals with other existing legislative powers, including the ACL and CCA.

The ACCC is considering similar matters in its NBN wholesale service standards inquiry

The ACCC is currently considering NBN wholesale service standards in a public inquiry commenced under the *Telecommunications Act 1997* (Cth). In this inquiry, we are considering some similar matters to the Department, such as service level standards for connections, repairs and appointments.

The NBN wholesale service standards inquiry is examining whether wholesale service standards on the NBN are appropriate, and 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 (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.

On 11 September 2018, the ACCC accepted a court enforceable undertaking from NBN Co which includes a number of changes to the rebates framework as well as additional reporting of its service levels.² The ACCC recently released a second discussion paper seeking further input on matters raised by stakeholders in the inquiry that were not fully addressed in the enforceable undertaking. Submissions for this process close on 15 February 2019 and the inquiry is expected to conclude in the second half of 2019.

The ACCC welcomes the opportunity to engage further with the Department about the service standards inquiry and specifically, the interaction between wholesale service standards and retail standards to ensure that the outcomes for consumers is positive.

² The undertaking can be found on the ACCC public register: <https://www.accc.gov.au/public-registers/undertakings-registers/nbn-co-limited>

2. ACCC response to proposals

2.1. Proposal 1 – Mandatory rules will cover how consumers and small businesses are connected, and stay connected to fixed telecommunications networks, including appointments.

The consultation paper proposes that general service reliability standards setting out mandatory rules and timeframes should be established and enforceable by the ACMA. These standards would apply to all fixed networks and service providers including wholesalers. Under the standards, consumers would not be billed until their service is connected or restored (calculated on a daily basis), and wholesalers would be prevented from charging for any period where a network connection is not made or has a fault. The consultation paper also proposes new rules around appointments and increased transparency where a major incident prevents providers from complying with maximum timeframes.

Proposals 1 and 2 are based on the following three principles:

- Principle 1: Telecommunications is an essential service, and the entire industry needs to be responsible for keeping consumers connected.
- Principle 2: Consumer safeguards are best delivered through direct regulation to support public policy.
- Principle 3: Consumers should get what they pay for.

We agree with the proposal to broaden the scope of consumer safeguards to apply to broadband services. This acknowledges the increased importance of being able to access broadband services, which, among other things, enables users to engage with government services and connect with society more broadly. This is also consistent with the policy intent of the NBN, which is to provide access to broadband to all homes and businesses across Australia. We also agree that any new standard should be enforceable to provide the right incentives to service providers to comply with the standard. If the ACMA is to be responsible for ensuring compliance with the standard, it must be supported with resources to undertake a robust enforcement program.

In principle, we agree that consumers should not be billed when they do not have a working service. However, consumers may face other costs in the process of waiting for the service to become fully functional again. For example, some consumers may have home businesses that rely on a working connection, and therefore may lose significant value while waiting for a fault to be repaired. The Customer Service Guarantee (CSG) standard recognises this and provides monetary compensation for each day in excess of the CSG timeframes for faults and connections. Under the new standard, taking for example a \$60 per month plan, the daily saving for a consumer would be equivalent to around \$2.³ This is a substantial reduction in the value received by consumers relative to the compensation received under the CSG standard. We consider that stronger incentives would apply if an RSP was not only unable to bill a customer if the service is not working, but also remained liable to pay compensation, such as currently required under the CSG standard, if timeframes for connections or fixing faults were not met.

We note that under Proposal 2, consumers would also receive an interim service if service providers cannot meet the timeframes of the standard, which would mitigate this concern.

³ Calculated as \$60 divided by 30 days.

2.2. Proposal 2 – Providers must focus on keeping customers connected to a service if timeframes cannot be met.

The consultation paper proposes that if a service provider cannot meet connection or fault rectification timeframes, it must find another way to keep the consumer connected at no additional cost. Under the proposal, consumers must be made aware of the remedy they will receive if timeframes cannot be met. Service providers must also offer backup arrangements for consumers with a diagnosed life threatening medical condition when signing them up, and they cannot reject the provision of service solely on the grounds of having to provide this service. The proposal would also require the network provider to reimburse the retailer for the cost of providing any backup service if they are responsible for the timeframes not being met. If an appointment is missed, the consumer would also be paid \$100 by the party responsible for attending the appointment.

The ACCC agrees that consumers should get the service that they pay for and that service continuity is important for many consumers. However, we consider that there may be some additional factors to consider before mandating the provision of an alternative service, such as the following:

- There may be other ways to compensate customers for a connection or fault rectification delay, and this could be a way for RSPs to differentiate their product offerings in the market.
- Requirements to offer a backup or alternative service may disadvantage RSPs who do not operate their own mobile networks because they may face higher costs to acquire alternative services (likely a mobile service or 4G modem backup) for their customers than RSPs with their own mobile networks.
- Many customers are already able to stay connected in the event of a connection delay or fault through the use of an alternative service (e.g. a mobile or wireless service). Therefore, it may be more appropriate to consider targeting the mandatory provision of back-up or alternative services to those consumers who do not have access to an alternative service or those who rely on service continuity. These are likely to include elderly or vulnerable consumers, those who require priority assistance, or those who live in areas without adequate mobile coverage.
- Mandating the provision of an alternative service, even if targeted, would require that RSPs have a comprehensive network platform to support all customers who may have life threatening illnesses or require priority assistance. In practice, those customers are likely to be dispersed and may not have access to, or be able to receive an alternative service.

If there is to be differentiation in the market, consumers should be made aware of the timeframes for connection and fault rectification, and the remedies available to the consumer if these timeframes cannot be met at the point of sale. This will allow consumers to shop around and make an informed choice between providers. We also note that allowing consumers to switch providers is an essential element for competition and as such we would support provisions that allow consumers to switch providers without penalty if reliability standards do not meet their needs, noting that it would need to be clear when this could occur.⁴

We also note that being referred from retailer to wholesaler and back again in an attempt to resolve an issue with their service is a point of frustration for many end-users. This is a concern with the existing CSG arrangements, and it is part of the reason why most RSPs

⁴ For instance, it may not be appropriate to allow a consumer to terminate their contract if their broadband needs change during the contractual term.

request that their customers waive their rights under the CSG standard as a term of service. The creation of diagnostic tools that help identify the party responsible for a delay, would assist in addressing this issue.

Questions

1. Are the proposed timeframes to connect or repair a service reasonable?

The proposed timeframes would be an improvement for consumers located outside of significant urban areas and those with no connection in place. However, the proposed timeframes might increase the resources required for network providers to meet the new safeguards. In addition, the ACCC notes that going from four geographical categories (urban, major rural, minor rural and remote) to two (significant urban and other), might not capture the complexities of connection and repair of services in rural and remote regions and may require further exploration with industry. The ACCC has also received feedback from industry as part of the NBN wholesale service standards inquiry that any safeguards that are imposed at the retail level must be supported at the wholesale level. This would also be required if mandatory timeframes were imposed for matters that required input from the wholesale level.

2. Will the proposed arrangements and penalties for missed appointments provide suitable incentives for industry?

The increase in penalties for missed appointments will provide greater incentives for service providers to attend appointments on time. We also consider that the proposed \$100 payment to consumers for missed appointments may potentially be more reflective of consumers' opportunity cost of staying home to be available for the appointment.

We note that as part of the ACCC's NBN wholesale service standards inquiry, we recently accepted a court-enforceable undertaking from NBN Co to amend its existing access agreements with its customers, and its standard form access agreement, to include a \$25 rebate for each missed appointment. We will observe the effect this rebate has on incentives in the market during the second stage of the service standards inquiry. We would be happy to discuss our observations with the Department as it considers appropriate incentives for industry.

3. Are there other options that could help maximise service continuity for people with a diagnosed life threatening medical condition?

The ACCC considers that service continuity is essential for people with a diagnosed life-threatening medical condition and agrees that it is appropriate for such consumers to be provided with a back-up or alternative service to ensure service continuity. We are aware that there are some limitations to the current priority assistance arrangements and we agree that it is timely they are reviewed to ensure that the safeguards are effective post the rollout of the NBN. As identified in our NBN wholesale service standards inquiry, the way the priority assistance arrangements are implemented over the NBN is complex because no single entity has control of the whole supply chain.⁵ This also means that the original rationale for requiring Telstra to be the only party subject to priority assistance obligations may no longer apply.

The ACCC acknowledges the Department's concern that most priority assistance customers do not have a choice of provider. We consider that there should be a minimum of one designated provider, but the costs and benefits of extending the obligations to more providers should be explored further. The Department may also wish to consider whether

⁵ ACCC, *NBN wholesale service standards inquiry: second discussion paper*, 7 December 2018, pp.15-16.

there are non-regulatory options available to encourage RSPs to offer this safeguard so that consumers with life-threatening medical conditions have a choice of providers. If it is optional for RSPs to offer this safeguard, it should be clear to consumers which service providers offer this safeguard at the point of sale and provisions should be included for consumers to terminate a contract without penalty if they subsequently require higher standards for medical reasons and their service provider does not offer such a service.

In considering other options to maximise service continuity for these consumers, we consider that any regulatory measures should be targeted to, and commensurate with, the specific consumer harm. We are also of the view that it is essential that any retail obligations are supported by appropriate wholesale standards. Further, we consider that a high level of compliance (for example, performance objectives of 100 per cent) should be expected and enforced for these safeguards because of the potential for risk or harm to the consumer.

4. Should providers be able to seek approval from the ACMA to offer services with different reliability timeframes on a product by product basis (which if approved would then become binding)? If so, what process and criteria would best support this?

Provided a minimum reliability standard is met, the ACCC considers that allowing service providers to offer different reliability timeframes would create an additional dimension on which service providers could differentiate their products. This naturally extends to different reliability timeframes on a product-by-product basis. However, it is critical that consumers are informed of the differences in reliability between products so that they are able to compare different offerings and make an informed choice about the best product for their own needs.

Clear, comparable information is essential to allow consumers to choose a service that meets their needs. However, consumers may place less weight on some service features, such as reliability, at the pre-sale stage, but reliability may become more important during the life of the contract if network problems emerge. Even if reliability timeframes are clearly disclosed prior to sale, many consumers will place more weight on price or plan inclusions when comparing products. For this reason, we would support a minimum standard that could apply across the industry, but allow providers to differentiate their products.

Under the ACCC's broadband speed claims guidance⁶, the ACCC sets out several best practice principles in advertising retail offerings to the market. RSPs now report typical busy hour speeds for each of their products in a transparent manner, which allows consumers to easily compare the speeds of products offered by different RSPs. Timeframes for connection and fault rectification and the remedies for failure to meet these timeframes under different products could be reported in a similar manner. However, there must be a focus on ensuring such information is user-friendly and apply to actual or intended usage. For example, reliability standards could be disclosed as adequate for basic emails and internet searching, but not for video-on-demand services. Otherwise, consumers may feel overwhelmed by the volume and complexity of information and what it means for their usage.

5. Should consumers be given the option to exit their service contract without penalty where frequent or recurring faults occur?

In principle, the ACCC agrees that consumers should get what they pay for. If they are not getting what they pay for because a service provider has repeatedly failed to provide the purchased service, the consumer should be able to shop around for another service and exit the existing service contract without penalty. Consumers' ability to shop around for a different service should provide incentives to RSPs to provide a more reliable service.

⁶ See: <https://www.accc.gov.au/publications/broadband-speed-claims-industry-guidance>

The ability for customers to exit their service contracts without penalty in these instances is consistent with their consumer guarantee rights under the ACL.⁷ However, we are aware that some consumers may not be aware of their ACL rights and it may be difficult for individual consumers to seek redress. We would support processes that make it easier for consumers to exit their contract if their service is not fit-for-purpose.

We also note that consumers may not be able to seek a remedy under the ACL if the supplier fails to meet a consumer guarantee due to the actions of another party. Therefore, it is necessary to determine which party in the supply chain is responsible for the recurring faults. If the cause of the fault lies at the wholesale level and the RSP has made attempts to get the wholesaler to rectify the fault without success, there is little benefit to the consumer in exiting the service contract to switch to a different provider, as the new service provider will also be subject to the same issues. We would support the development of better diagnostic tools to determine which party is at fault, and for this information to be communicated to consumers so they can make an informed decision.

Regardless of which party is at fault, the definition of 'frequent or recurring' will be important in determining the reasonableness of allowing consumers to exit their service contract without penalty.

6. How can industry best ensure consumers are not left without a working fixed connection for lengthy periods? What alternative service arrangements are reasonable?

The ACCC considers that other stakeholders are best-placed to decide what alternative arrangements would be appropriate for consumers, taking into consideration evidence from consumer consultation processes.

We consider that it may be appropriate to allow RSPs the opportunity to compete on service reliability to appeal to a range of consumers that place differing values on reliability, noting that some RSPs already provide 4G backup services as a way of differentiating their product offerings in the market. We note that other RSPs may not have the infrastructure to be able to provide this same level of service, but may be able to appeal to end users that may not necessarily demand the same level of reliability. We consider that consumers should be able to choose from a variety of retail offerings and should be provided with information in a user-friendly way so that they are able to compare products.

2.3. Proposal 3 – Network infrastructure providers that support the supply of retail services to consumers will be required to publish network reliability metrics and to report to the ACMA on network performance.

The consultation paper proposes that reporting requirements should apply to all network operators, regardless of size, that support the supply of retail services to consumers. This includes mobile network operators and fixed network providers such as NBN Co and other networks that provide 'last mile' connections. Network reliability is described in the consultation paper as the percentage of time that consumers are able to connect to the network. This proposal is based on the principle that network reliability is an important purchasing consideration and should be transparent.

The ACCC recognises that making information available to consumers can address information asymmetries, improve the operation of markets and lead to better consumer

⁷ Frequent or recurring faults may be classified as a 'major' defect with the service. Under the ACL, consumers are able to exit their service contracts without penalty where there is a 'major' defect.

outcomes where the information helps facilitate informed consumer purchasing decisions. However, there should be a clear rationale for the imposition of new reporting requirements, having regard to the nature of the network and the market in which it operates. With respect of mobile networks in particular, we note that the reliability of the three mobile networks is generally well publicised, with serious network outages often reported in the media and MNOs advising customers of network problems. We do not consider Proposal 3 provides a clear rationale for why reliability metrics should apply to mobile networks at this stage.

We consider there are a range of practical matters to work through before network reliability publication requirements could inform consumer purchasing decisions. The ACCC encourages the Department to consider the following aspects of Proposal 3, discussed further below:

- the scope of the proposal and cost of developing and implementing like-for-like comparative metrics to a range of networks with differing technical characteristics, and
- the benefit consumers would receive from additional network reliability information compared with other sources of information that may be more readily available (such as the number of faults raised by RSPs on behalf of consumers, or RSP complaint statistics on service reliability and performance).

The ACCC considers that concepts of reliability are multifaceted and difficult to define in a way that would be useful from a consumer's perspective. At the simplest level, reliability could measure the time services on a network are subject to a total loss of connectivity due to either planned or unplanned outages. However, other factors could also contribute to a consumer's experience of a network's reliability, such as intermittent drop outs, poor data rates, or network coverage in the case of mobile networks.

The ACCC's experience is that it is often difficult and resource intensive for network providers and RSPs to identify whether the source of an issue is within the network or elsewhere (including a customer's device). This is a result of the complexity of the supply chain for communications services. For example, on the NBN, measurement of whether connectivity for a service is lost is determined on the basis of 'trouble tickets' raised by NBN Co or an RSP on behalf of the consumer. The ACCC notes that submissions to the wholesale service standards inquiry have raised concerns about the 'trouble ticket' processes.⁸

We also note that there are additional complexities associated with publishing comparable reliability metrics for mobile networks. Our experience in our 2016 Domestic Mobile Roaming Declaration Inquiry and our 2018 Regional Mobiles Issues Forum found that there are:

- a range of factors on which mobile consumers make purchasing decisions, such as plan inclusions and geographic coverage and network quality may be just one aspect of this, and
- challenges in defining clear and consistent mobile coverage metrics between network providers which allow for accurate like-for-like coverage comparisons. For example, at our 2018 Forum the mobile network operators (MNOs) explained that they use different underlying engineering assumptions, algorithms and/or data to predict coverage. While the MNOs and the Australian Mobile Telecommunications Association (AMTA) are currently working to improve mobile coverage comparability for consumers, their different approaches can make finding common metrics challenging.

⁸ ACCC, *NBN wholesale service standards inquiry: second discussion paper*, 7 December 2018, pp. 19-20.

The ACCC considers that the challenge of defining metrics would be compounded if the proposal sought to define comparative metrics across different network technologies in a way that would allow consumers to make accurate 'like for like' comparisons, because each technology may have unique characteristics which cannot be compared accurately across the different technology types.

The cost of implementing new network reliability metrics must be weighed against the utility of that information to consumers. The ACCC notes that network reliability may play a limited role in consumers' purchasing decisions and some consumers may not understand the difference between network coverage and network quality. Further, as noted above, network quality factors are most likely secondary to other factors such as price, speed and other characteristics of the service.⁹ This is consistent with the current retail practices which often do not emphasise the underlying network or network provider, and hold the retailer responsible for managing any service issues experienced by the end-users.¹⁰ In many cases customers for a particular service may not have knowledge of the network infrastructure provider, and in some cases, consumers will not have a choice of network infrastructure provider.

The ACCC considers that as an alternative to defining new network reliability metrics, a better source of information to inform consumer experience could be derived from RSP complaint statistics or network fault rates. This information is likely to be more readily available, and also more closely aligned with actual end-user experience of the network. This could be a matter to consider in implementing the recommendations made to Part A of this Review on improving TIO complaints data and reporting of that data.

Questions

1. What information on network reliability is most meaningful and valuable to consumers?

For information to be meaningful and valuable to consumers it should correlate closely with the likely consumer experience on the network. Metrics that state network availability as a percentage of time all users could access the network (e.g. 'up time' of 99.95%) are unlikely to be useful to consumers, especially when they exclude planned outages, and outages deemed to be outside of the control of the network operator.

If the Government were to mandate availability metrics, these may be better expressed as the number of planned and unplanned outages typically experienced on a service within a set timeframe, with the average outage time. Similar metrics may be used to indicate network congestion. For example, NBN Co provides monthly public reports on the average per service number of minutes of bandwidth congestion per week across its network.¹¹

Further, it is important that network providers are publishing information based on consistent and clearly defined metrics.

2. How should network reliability information be made publicly available, and how often should providers be required to report to the ACMA?

⁹ Research within the UK suggest that, for residential customers, the promise of the product or service made by the service provider (in terms of speed, capacity, coverage, etc.) and price are the principal considerations. See: Jigsaw, Quality of Service in Telecoms, p. 20. <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/digital-comms-review/conclusions-strategic-review-digital-Communications>. Further, a joint research project by the Australian Communications Consumer Action Network (ACCAN), the Centre for Sustainable and Responsible Organisations and Deakin University in 2011 highlighted the complexity of purchasing decisions and the issue of 'optimism bias'. See: <https://accan.org.au/files/Reports/Seeking%20Straight%20Answers%20Report.pdf>

¹⁰ E.g. NBN Co directs consumers to contact their respective RSP for any network outage issues. See: <https://www1.nbnco.com.au/corporate-information/contact-us-form>

¹¹ See <https://www1.nbnco.com.au/corporate-information/about-nbn-co/updates/dashboard-october>

As noted above, information about network reliability would be of greater benefit to consumers if it was explained in terms of the customer's proposed usage of the service, rather than technical metrics. Network reliability information may be provided directly to the public (e.g. via the infrastructure provider's website). However, it is also important for this information to be communicated to the RSP (where the RSP differs from the infrastructure network provider) as they will have responsibility for managing the consumer's experience.

The question of whether or how often network providers should be required to report to the ACMA depends on the specific metrics that are proposed to be put in place. The ACCC considers that reporting requirements should be considered on a network-by-network basis and designed to target specific concerns. For example, the ACCC notes that NBN Co recently agreed to report publicly on the performance of its fixed-wireless network to provide transparency over how it is responding to network congestion issues on this network.¹²

3. If and how should consumers be advised of major outages and timeframes for remediation?

Information about planned and unplanned network outages is likely to be of value to consumers with services on those networks. It is common for infrastructure providers of essential services to publish this information on their websites, and to map affected areas. Email and SMS messages could also be used to inform consumers of planned or unplanned outages (noting that some RSPs already do this). The Department may wish to give further consideration to how special needs consumers are advised of outages, particularly planned outages. We consider that vulnerable consumers or consumers with life threatening illnesses will likely require targeted measures to ensure that service reliability is prioritised. For example, being given prior notice of planned network outages and clear timeframes will assist to mitigate any harm to those consumers.

2.4. Proposal 4 – The ACMA will be responsible for the collection of data relating to fixed connections, repairs and appointments, with reporting obligations applying at both wholesale and retail level. The ACMA will publish the results.

The consultation paper proposes that the ACMA will collect and publish information from across industry on connections, repairs and appointments, including performance against mandatory timeframes. The ACMA will be able to assess the effectiveness of industry processes in meeting connection and repair timeframes, and to review regulatory settings. The data collected will also form an important evidence base for the ACMA when considering actions to improve industry performance and the customer experience.

The proposal is based on the following two principles:

- Principle 5: arrangements should incorporate public accountability and transparency.
- Principle 6: Data collection, analysis and reporting should drive improved outcomes.

The ACCC acknowledges that data collection, analysis and reporting can be a useful mechanism for driving improved outcomes. For example, the ACCC's Measuring Broadband Australia program has been effective in driving changes in provider behaviour and has been used as a point of differentiation by some RSPs in their advertisements. We agree in principle that reliable and accurate information about connections, repairs and appointment would be useful for consumers, industry, regulators and government.

¹² See <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-service-standards-inquiry/nbn-enforceable-undertaking>

However, the ACCC is also aware that the complexity and large volume of information regarding telecommunications purchasing decisions can be confusing for consumers who are overwhelmed by the volume of information. It is important to consider what information is most important for consumers and how it can be presented in a useful way. The ACCC submits that consumer information needs to be simple, comparable and meaningful in order to be useful for consumers. Particular consideration should also be given to ensuring that the data collected and reported accounts for the relationship between wholesale and RSPs and is appropriately frequent.

The ACCC considers that transparent consumer complaint statistics could be a useful alternative way of informing consumers about the reliability of different network services without requiring additional reporting metrics. Currently, only the absolute number of complaints are reported against each carriage service provider. We consider that reporting on the number of complaints per 1000 customers for each service provider would provide consumers with a valuable benchmark against which to assess reliability and customer service. In addition, it would be useful to report on the type or nature of complaints and the time taken to resolve the issue.

Questions

1. What industry data should be provided to the ACMA for analysis and reporting, and how often should this be provided (for example, monthly, quarterly)?

The ACMA should prioritise collecting data that is likely to drive improved outcomes for consumers and assist in monitoring the effect of regulatory settings. It may be useful to continually monitor the appropriateness of the mandatory timeframes and compliance with the timeframes by requiring industry to report on how much timeframes are missed by. It may also be useful to understand how issues with connections, faults and appointments are experienced for different categories of consumers, including by location, technology type and service class where relevant. As noted above, the industry data collected should carefully account for the relationship between wholesale and RSPs.

The frequency of data collection and reporting should strike a balance between ensuring useful and reliable information, and limiting the burden and compliance costs for service providers. Quarterly reports may be more realistic and appropriate than monthly reports and sufficient to drive meaningful outcomes. For example, we have released quarterly reports as part of the Measuring Broadband Australia program, and the NBN Wholesale Market Indicators report.¹³ We consider that the quarterly reports as part of the Measuring Broadband Australia program have had an impact on market behaviour, noting that several RSPs are advertising their MBA results to consumers, and that we have seen some evidence of RSPs improving congestion outcomes following a report that identifies relative underperformance.

2. How often should the ACMA publish reports and analysis (for example, monthly, quarterly or half yearly)?

We consider that other parties may be better-placed to comment on the optimal frequency of reporting. However, we note that the decision on the frequency of reporting should weigh up several factors, including: the timeliness of information available to inform consumer decision-making, the resources required by the ACMA to analyse and publish the data, and the burden on RSPs to provide the data necessary for the reports.

We suggest that any data published by the ACMA should be presented in such a way that is useful to consumers, industry and regulators. We consider that data should be easily

¹³ See: <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report>

accessible and reported in a granular, disaggregated way to allow for thorough analysis. There should also be adequate information sharing provisions with regulators and Government

Further, we note that Part A of the Review recommends that the ACMA receive and report on a range of new data, in addition to the reporting proposed in Part B. The ACMA will need to consider how this data is presented to consumers in a meaningful way. For instance, the ACMA may need to publish high level information that allows consumers to make comparisons between network providers, rather than relying on solely detailed reports.

2.5. General issues for comment

1. Do the proposals in this paper address the major issues of concern with the current framework for reliability of services? If not, what additional measures could be included?

In the ACCC's NBN wholesale service standards inquiry, RSPs have raised practical concerns about the application of reimbursement provisions within NBN Co's WBA relating to CSG liabilities and priority assistance interim services.¹⁴ The ACCC considers that specific obligations on network providers and processes for coordination between wholesale and retail providers may be required for the reimbursement measures proposed in the consultation paper to work effectively.

2. Are there any unforeseen issues or unintended consequences of the proposals?

We note that there are several areas that will need to be carefully thought through in order to balance or manage any potential issues and consequences. In making any new regulations, there is a trade-off to be made between the benefit to consumers of additional safeguards and the costs associated with additional regulation. This is not to say that service providers (retail and wholesale) should not incur higher costs to meet optimal reliability levels. However, the increase in costs, as well as the potential implications for industry incentives, competition in the market, and service affordability, should be carefully considered.

We also note that Proposals 1 and 2 incorporate a shift from a daily financial incentive to meet service timeframes to an obligation to provide an alternative service, which is likely to be at variable cost between different service providers and over time, as well as the threat of enforcement action in relation to the standard. The impact of this shift on incentives for service providers to rectify connection delays and faults in a timely manner should be carefully considered. Appropriate measurement of timeframes is also necessary to ensure service providers face the right incentives.

3. What considerations should be taken into account in implementing the proposals outlined in this paper (based on forecast completion of the NBN rollout by 2020), including practical timeframes for implementation?

The terms in NBN Co's access agreements with RSPs, NBN Co's published WBA, and the telecommunications access regime set out in Part XIC of the CCA should be considered by the Department. The ACCC notes that the access hierarchy set out in Part XIC gives precedence to commercially negotiated terms over regulated terms. While standards operate independently of this hierarchy, the interaction between standards and terms could potentially be complicated if agreed wholesale terms are inconsistent with new standards or if retail standards do not match wholesale standards.

4. Are there any other issues that should be brought to the Government's attention?

¹⁴ See: ACCC, *NBN wholesale service standards inquiry: second discussion paper*, 7 December 2018, pp. 15-18.

The ACCC does not wish to bring any other issues to the Government's attention at this time. The ACCC would welcome further engagement on the proposals set out in the Part B consultation paper.