

Commpete Submission
Consumer Safeguards Review
Part B – Reliability of Services
18 January 2019



Commpete welcomes the opportunity to comment on Part B of the Department of Communications and the Arts (DoCA) Consumer Safeguards Review in relation to reliability of services.

About Us

Our Coalition, founded in 2004, was formed to unite the challenger providers and give us a consistent voice. We continue to work with regulators, government, and other industry participants to advance the interests of competition and our members for the benefit of the consumer and the telecommunications sector overall.

With this in mind, Commpete last year published a set of policy proposals and principles it believes would create a more sustainable competitive environment across communications markets.

Among these is the proposal for a Competition Impact statement to be included in all new policy and regulatory initiatives.

Real competition is the cornerstone of what drives us.

Introduction

Commpete acknowledge that current Consumer Safeguards are based around fixed services and that any new Consumer Safeguards Framework needs to:

- Be inclusive of current technologies.
- Favour co-regulation, best practice and commercial arrangements to deliver consumer protection and benefits, before consideration of any possible regulatory intervention.
- Promote competition in the telecommunications sector that allows for investment and innovation, ultimately resulting in greater choice for the Consumer.

The discussion paper rightly acknowledges the fundamental changes to wholesale and retail communications markets that will occur as the NBN reaches the final stages of its rollout. The Proposals while well intended run at cross purpose to and duplicate the work across other Regulators, Departments and Bodies working on solutions for service reliability. These changes create an opportunity to have a clear and straightforward regulation structure.

There are both Principles and Proposals listed within the consultation document, and we have addressed the combined topics.

However, Commpete submits it is crucial that any new arrangements are designed with a clear focus on the objectives of the NBN. Chief among these objectives was the creation of a rigorous, competitive market for fixed line retail services.

In a competitive and challenger environment, members will have differing views, here we have presented our agreed upon position. We encourage the Department to also consider submissions from our individual members.

Response to Reliability of Services Review Paper

Principle 1: Telecommunications is an essential service, and the entire industry needs to be responsible for keeping consumers connected

While acknowledging customer connectivity is essential, the challenger RSP is dependent on the upstream providers, more than those incumbents that still possess their own wholesale infrastructure and can only provide solutions based on what the wholesale network provider makes available and operate the aspects within their control. Any regulation must be cognisant of the need for co-ordination and co-operation between the end-user, their RSP and the underlying wholesale provider to ensure consumers remain connected.

Principle 2: Consumer safeguards are best delivered through direct regulation to support public policy.

Co-regulation, best practice and commercial arrangements allow for Consumer protection and benefits, direct regulation should only be applied when this process fails.

Principle 3: Consumers should get what they pay for.

Commpete agrees that this fundamental principle must be upheld, but we note that this is already supported within existing best practice and Consumer regulation. There are aspects within the supporting detailed information that provide cause for concern, for example, the words “not billed” for periods of non-working service, would likely present challenges as billing systems cannot necessarily support this suggestion that billing should be halted for faulty services, due to a number of services being billed in advance and the lack of seamless, end-to-end reconciliation of charges between wholesale and retail providers. Such measures, if adopted would place undue hardship upon small RSPs as they lack the resources of the larger providers. We also recommend compensation should not be prescribed but agreed upon commercially by the parties.

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

Competition in telecommunications allows for investment, innovation and choice for the Consumer, best practice and co-regulation could potentially negate the need for mandatory rules. It is Commpete’s position that regulation should only be introduced where this has failed. We also have concerns with some of the detailed comments included in the proposal, such as:

- A. The challenger RSP is dependent on the upstream providers even more than the Incumbents due to their possession of legacy, or access to alternative, network infrastructure.
- B. Timeframes need to be able to be achieved by the network provider – as the RSP will have no control of many aspects, such as the performance of the sub-contractors of NBN.
 - a. Punitive penalties should not be applied to small RSPs who don’t necessarily have control over the supply and connection of each service, as network performance is delivered by the upstream provider.

- b. Who is NBN going to pay the compensation of \$25 to and how are they going to apply it? Will all RSPs be able to pass this on to the consumer? To a small RSP, the timing of these payments, and the associated matching and reconciliation, especially if this becomes a regular exercise, could compromise their cashflow planning, or at the very least introduce significant additional administrative effort.
- C. Who determines the responsible party if an appointment is missed? If the Retailer is required to refund the customer, how do they ensure reimbursement from the network provider? Commpete agrees the responsibility for future safeguards must be appropriately shared by retailers and wholesalers. It is important to ensure there is a workable system to resolve consumer complaints and grant compensation where warranted, but it is also important that those responsible for service failure are held accountable.

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

Commpete is deeply concerned at the proposed requirement for retailers to “find another way to keep customers connected” at no additional cost in the event of a fault. This proposal would not have proceeded if it was subject to analysis under a Competition Impact regime such as that we have proposed, so serious is this risk.

NBN is intended to be the sole provider of fixed line residential broadband services to the majority of Australians. There is typically no alternative access network available to challenger retailers.

- D. To ensure supply of a “free” alternative service, it will fall to the RSP to seek and pay for a backup service connection. This is detrimental to competition, as it favours those large retailers with their own mobile network, and effectively shuts out those small RSPs with no alternative network to supply.
- E. Integrated incumbents will have a distinct advantage over all other retailers who become liable for the cost of connection problems over which they have no control, and this is harmful to competition and will ultimately disadvantage the consumer.
- F. Challenger RSPs would need to seek an MVNO arrangement with one of their own fixed line competitors. This would inevitably entail a marginal cost, and would be negotiated in circumstances where the challenger had minimal negotiating power, as the MNO would know the RSP needs the mobile service, as without it their fixed line business would be at risk.

Issues for Comment

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

Yes, but NBN should be consulted and need to be sufficiently resourced and incentivised where the connection issue or repair is related to the network. Any timeframe needs to also take into account the RSP’s need to liaise and/or coordinate the upstream provider activity where they are involved.

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

The imposition of such a regime is of itself burdensome, regardless of the amount of compensation. There is also a risk the overall cost of administering any such regime is just passed on to all consumers via increased monthly fees for the service.

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

Compensate the RSPs that do offer Priority Assistance, rather than forcing all RSPs to offer the service as this simply drives additional cost and increases the barrier to entry for competitors.

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?

To make RSPs seek approval from ACMA to differentiate their service will ultimately result in a commodity market where competitor providers can only compete on brand (which favours the large well-known providers) and price. Such a limitation would rob consumers the right to select the product that has reliability timeframes that suit them.

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

Potentially, but RSPs would expect to be compensated by the upstream provider where the frequent and recurring faults were network related.

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

Agree and state service levels in consumer agreement and provide agreed compensation and/or provide right to terminate for persistent breach, but any and all cost associated with such remedial action must be borne by the responsible party.

Alternative service arrangements should not be mandated as many small service providers do not have alternatives available, and those who do should continue to be able to differentiate themselves to consumers that lack trust in the fixed connection.

Ultimately the best remedy is to ensure the fixed connections for every consumer are fit for purpose and any faults are rectified in a timely manner. This requires cooperation and transparency from each of the providers involved and responsible for the delivery of the service.

Principle 4: Network reliability is an important purchasing consideration and should be transparent.

Customers have access to information and what they are purchasing, this is already regulated for and presented/published in an SFOA/OTC/Customer contract and (generally) available online from all RSP's.

Additional regulations in this area will not necessarily provide additional Consumer benefit but may add further data overload or confusion to their purchase decision-making.

The ability for consumers to seek either a low cost service product or a high end premium service must be preserved, and in a competitive market this ensures consumer choice.

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.

- G. Network Infrastructure reports on reliability and connectivity – we expect this requirement will be placed predominantly with Network infrastructure providers as opposed to retailers.

Issues for Comment

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

The risk with publishing network reliability data is that it won't be understood or is misinterpreted by consumers, but the simplest service levels that provide the most insight are service availability and service restoration time. In the case of NBN, due to the multiple access technologies deployed, these service levels would need to be measured and reported for each access technology.

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

In the case of NBN, network reliability information could be published on its website and made available in such a form that RSPs could publish it too, clearly denoting it has been provided by NBN. Retail service providers could also include network availability information, including outage notification and resolution timeframes, on their websites, but rather than being required to report this information to the ACMA, ACMA should simply rely on reports from NBN - these could be supplied monthly or quarterly.

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

Rather than mandating the method of notification of outages and resolution timeframes to consumers, this should remain at the discretion of the RSP. Some RSPs provide SMS alerts to consumers via subscription services and include "live" updates or notifications on their websites their customers likely value this and it represents a competitive advantage for the RSP.

There may be merit in requiring NBN to notify outages and resolution timeframes in a prescribed manner or at least ensuring the same information is made available in a timely manner to all RSPs and that they can then easily convey it to their customers - beyond simply updating their website, this could include providing RSPs with API access to their back-end network management systems.

Principle 5: Arrangements should incorporate public accountability and transparency.

Reporting; mandatory repair, connection and appointment keeping timeframes should be public and comparable. The challenger RSP is dependent on the upstream providers, more than the Incumbents and can only provide reports for what is within their control. This would duplicate network supplier data and place a hardship on small businesses and RSPs.

Principle 6: Data collection, analysis and reporting should drive improved outcomes.

Competition and innovation should be a key driver for improved outcomes, not necessarily data collection.

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.

- H. review all reporting requirements and replace with a clear and non-duplicating data report.

- I. how are small RSPs going to provide reporting and/or accurate reporting around this, their business may not have the systems or staffing to support this data provision, this would impact small RSPs and introduce new barriers to entry, thereby potentially reducing competition.
- J. Reporting timeframes should be meaningful and achievable for small RSPs.
- K. For fixed services, NBN needs to be the default provider of such data, supplemented by RSPs, but making sure collation and reporting of the data is not so burdensome that it impacts on the cost of those services to the consumer.

Issues for comment

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)?

Time to connect, time to repair and missed appointments for each access technology. NBN should provide this data and only have it supplemented as required by RSPs. Note all three measures can be gamed and probably will be to present a more favourable situation, so suitable controls and checks will need to be in place to ensure the integrity of reporting.

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

Depends on the total effort required across all organisations involved, including ACMA itself, NBN and the RSPs.

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?

Service reliability for fixed services has improved greatly over the last 12 months, as NBN has undertaken significant measures and steps to address its widely reported shortcomings and although they still have considerable work to do to continue this transformation, we do not think it is necessary nor fair to conclude that the retail service provider community is also culpable. Therefore any measures that add additional obligation or cost to RSPs are unwarranted.

The only additional measures suggested would be to ensure the ACMA receives all the information necessary directly from NBN, rather than seeking all the information it can think of in a scattergun approach from all industry participants

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

Potential to drive some small RSPs out of business with some aspects of these proposals, or at the very least result in increased prices for consumers due to the greater compliance costs associated with offering the services.

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?

Proposals as drafted include many varied comments, options and possibilities and are not presented in a coordinated or detailed manner, which suggests they are more ideas grouped together rather than part of

an overall strategy. We would therefore suggest that DoCA engage again with the industry once feedback from this first round of consultation is received and digested.

A couple of observations worth noting is that DoCA and ACMA need to be cognisant of the fact that the NBN network is still being rolled out and therefore the concerns and issues of today differ somewhat to those that we can anticipate once the rollout is completed in 2020. This consultation document also remains silent on the issues presented by the mixed access technology solution deployed by NBN. The issues and concerns regarding reliability differ greatly from one fixed access technology to another, and we therefore strongly recommend that this is taken into consideration and addressed as part of this review.

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

A foundation principle of the NBN policy was that the NBN would be the single national access network. It would provide services on a wholesale-only, non-discriminatory basis to encourage the entry of retail competitors on a level playing field. Although well intended, proposals such as those outlined in the consultation document have the potential to limit and stifle competition thereby restricting innovation.

Commpete believes the only enduring incentive to drive across the board improvements in customer services is the threat of the loss of customers to competitors. Encouraging competitive choice should therefore be a primary consideration in setting safeguards. It is disappointing that the discussion paper does not speak to this point, but we remain committed to engaging with the Department on the Consumer Safeguards Review and delivery of an improved framework that protects consumers and ensures they benefit from continued competition in the sector and its associated product and service innovation benefits.

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