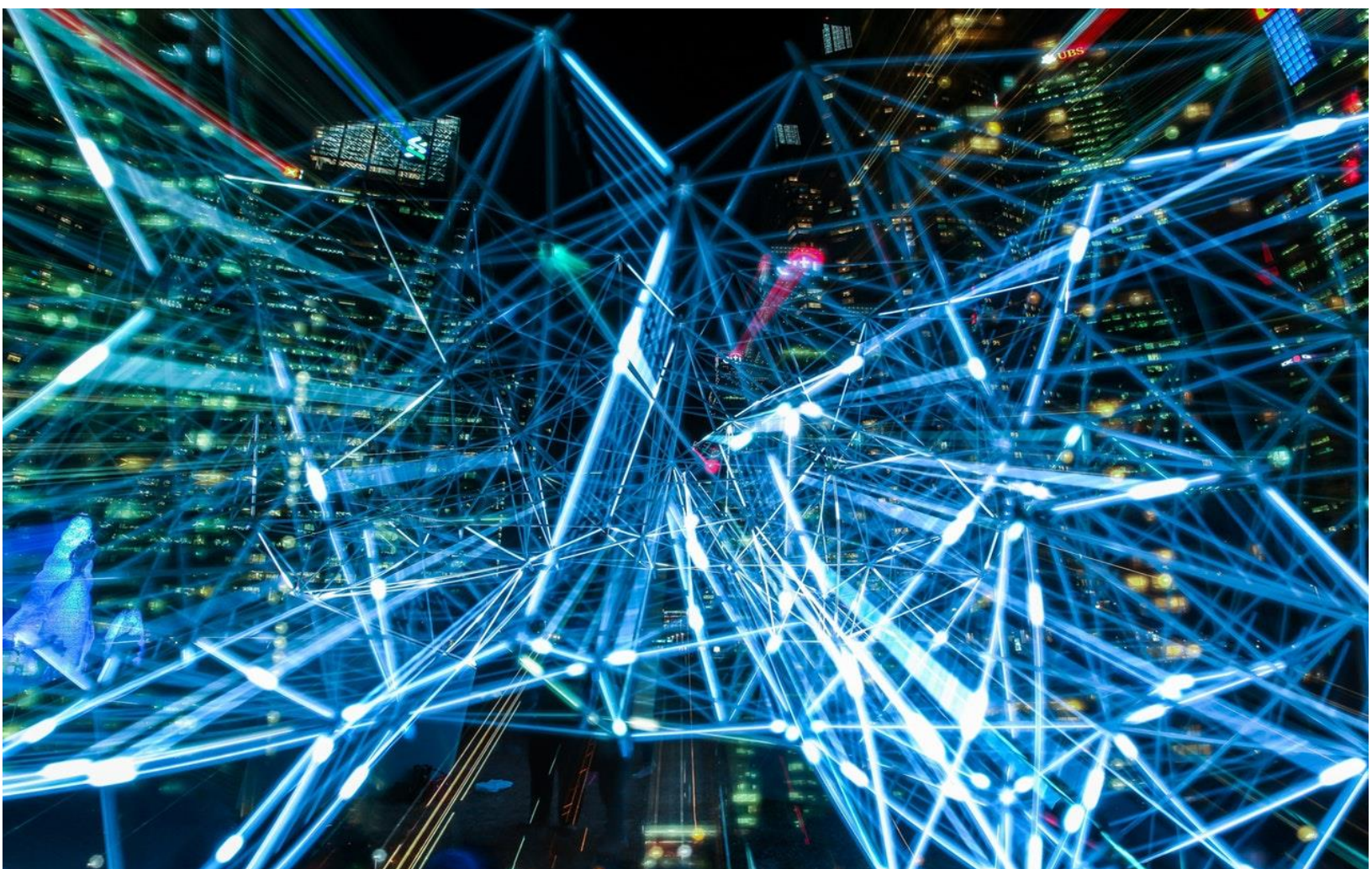


House of Representatives Standing Committee on Economics

Inquiry into impediments to business investment

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Introduction and overview

The NSW Business Chamber (Chamber) welcomes the opportunity to provide a response to the Inquiry into Impediments to Business Investment (Business Investment Inquiry). The Chamber notes that the Business Investment Inquiry requests information on the impact of innovation policies, at the Commonwealth and State government levels, on business investment and the role of innovation policies in encouraging greater business investment, having regard to approaches taken in other countries. The Chamber's submission focuses on the need for reliable access to high speed broadband as a source of innovation, specifically the current rollout of the NBN.

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 connections 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, in some cases, months while transitioning to the NBN. Other businesses have cited reliability concerns with the NBN and have expressed a desire to return to previous ADSL connections. 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.

The Chamber cannot stress strongly enough that businesses rely on access to fast, reliable broadband not only as a source of competitiveness and innovation but for their survival. It is an essential service now and into the future and is critical to enable further domestic and international investment in Australia.

Need to consider the full broadband supply chain

Effective and reliable end use broadband services to customers (both residential and business) depends 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) and the end use customers themselves.

The Chamber made a submission to the ACCC's *Inquiry into NBN wholesale service standards* in February 2018. We raised concerns on the terms of reference for that Inquiry as they were limited to wholesale service standards. While wholesale service standards do impact on end use business or residential customers, it is not possible for these customers to seek redress or remedy under a wholesale agreement in circumstances where they have no direct contractual relationship with the wholesaler or NBN Co.

We recommended the terms of the ACCC Inquiry be expanded to look at the full NBN supply chain as retailers are the ultimate entity which end use customers engage with. We submitted the entire supply chain should be considered if the ACCC is considering regulatory interventions.

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 Business Investment Inquiry should be whether additional regulation is necessary to improve service delivery and protect businesses 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 where advertised speeds have not achieved¹.

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

- Monitoring and enforcing compliance with obligations and service standards.

¹ 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.

- 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 groups². 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.

Importantly, the Guarantee is broadband technology neutral and covers for the provision of service by alternative providers of satellite, fixed wireless and fixed line services. This recognises that access to fast, reliable broadband is an essential service now and into the future.

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 of their willingness to pay for higher speed plans. We understand the economic viability of the NBN would be improved if more customers adopted higher speed plans.

Some businesses have indicated 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 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 also exist between energy networks and large customers.

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, these enterprise level arrangements are in their infancy, and need to be promoted.

² 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.

Given the bargaining power of NBN Co, strong business protections will need to be in place for these groups to confidently negotiate such arrangements.

New rules Australian Communications and Media Authority

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 some detail has 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.

Commonwealth Government – Telecommunications Consumer Safeguards Review

Following the release of the Chamber's NBSG, the Commonwealth announced the Telecommunications Consumer Safeguards Review³. The Review appears to foreshadow a NBSG arrangement, however it is still very early days and the Review will be structured through a staged approach.

Action needs to be taken now. Accordingly, the Business Investment Inquiry is an opportunity to influence improved operational outcomes for business customers in line with those expected of other essential services. To this end, 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 businesses in transitioning to national broadband services.

Recommendations:

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

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:

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http://www.minister.communications.gov.au/mitch_fifield/news/government_announces_telecommunications_consumer_safeguards_review#.WvOcdUqWaUk

- 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 requiring fire and lift registration due to the NBN impacting on legacy systems and where a new NBN phone service would be affected by an electricity blackout. 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.