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## **Submission to Senate Environment and Communications Legislation Committee inquiry into the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019 and the Telecommunications (Regional Broadband Scheme) Charge Bill 2019**

20 December 2019

### **Summary**

Commpete—an industry alliance for competition in digital communications markets—welcomes this opportunity to contribute to the Senate Environment and Communications Legislation Committee’s inquiry into the:

- Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019 (**the TLA (CC) Bill**); and
- Telecommunications (Regional Broadband Scheme) Charge Bill 2019 (**the RBS Charge Bill**);

(collectively, **the legislative package**).

Commpete represents non-dominant telecommunication service providers. Our members provide fixed and mobile voice and data services across a range of customer segments, including residential, SME, corporate, and government. Our members acquire access services from a range of wholesale suppliers, including NBN Co.

In short:

- Commpete supports the legislative package and considers on balance that its various measures help to promote competition.
- Commpete supports the regional broadband scheme (**RBS**) because it helps to level the playing field faced by retail service providers (**RSPs**) using the NBN vis-à-vis NBN comparable providers. It does this by sharing the cost of the subsidy of NBN’s fixed wireless and satellite services in uncommercial areas more fairly across the sector, rather than leaving it to be borne entirely by RSPs using the NBN. We would prefer to see the levy imposed more broadly across the sector (and to be accompanied by a write-down of NBN’s

assets) but rather than further add to the delayed implementation of the scheme, we consider that such an extension should be examined at the statutory review.

- Commpete is concerned about the prospect of further delay to the long overdue reform of the cross subsidy problem.

## **The RBS Bill**

Commpete supports the policy intent of the Bill. As wholesale prices are set on a national basis, NBN must supply wholesale fixed wireless and satellite services in non-commercial regional and remote areas of Australia at prices that are below the cost of supply. This is covered by an internal cross-subsidy from NBN's supply of broadband services in metropolitan areas. As is widely recognised, this arrangement is neither sustainable nor competitively fair and must be reformed.<sup>1</sup>

Ideally any subsidy necessary to sustain NBN's supply of fixed wireless and satellite services in uncommercial areas should be funded directly from the Commonwealth budget. That would be the least distortionary approach. It should also coincide with a write-down of NBN's assets in recognition that some services/areas will never be supplied commercially. However, as these measures are not on the table,<sup>2</sup> the RBS that is provided for in the legislative package is a reasonable step in the right direction. It is certainly preferable to the alternative of maintaining restrictions on the development of infrastructure competition to protect the existing internal cross-subsidy. However, a write-down will continue to be necessary.

The proposed RBS will help level the playing field faced by NBN RSPs vis-à-vis NBN comparable providers and the vertically integrated Tier 1 carriers. Presently it is the NBN RSPs that are funding the total cost of NBN's internal cross subsidy of the uncommercial areas. This unduly puts NBN RSPs—especially those without any comparable access network infrastructure—at a cost disadvantage when competing in downstream retail markets against the vertically integrated Tier 1 carriers and the NBN comparable providers. The proposed RBS goes some way to rectifying this by sharing the costs of the subsidy for uncommercial areas proportionally among comparable fixed infrastructure providers.

The RBS charge base should be as large as practicable in the interests of allocative efficiency. Exemptions should be minimised. Accordingly, it is appropriate that the RBS apply to NBN comparable networks serving medium and large business/enterprise customers, especially now that NBN has bolstered its wholesale offerings into such markets. It would also be odd if:

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<sup>1</sup> Michael Vertigan, Alison Deans, Henry Ergas and Tony Shaw, *Independent Cost-Benefit Analysis of Broadband and Review of Regulation Report: Volume 1 — National Broadband Network Market and Regulatory Report*, August 2014 ('Vertigan report') 21, 102. Explanatory Memorandum, Telecommunications (Regional Broadband Scheme) Charge Bill 2019, 8.

<sup>2</sup> Explanatory Memorandum, Telecommunications (Regional Broadband Scheme) Charge Bill 2019, 25.



- residential broadband lines in commercial areas incurred the RBS charge but business/enterprise lines in the same areas did not;
- broadband lines used by business/enterprise customers in commercial areas did not contribute to the RBS when the RBS contributes to the cost of supplying fixed wireless and satellite broadband services to business/enterprise customers/sites (as well as residential premises) in the uncommercial areas.

The few exemptions that are provided are generally reasonable and should be retained; namely:

- the exemption of the each carrier's first 25,000 services in operation (**SIOs**) for the first five years;
- the exemption of the first 55,000 SIOs for each carrier in a greenfield areas for the first five years;
- the exemption of carriers with fewer than 2,000 SIOs; and
- the exemption of networks transitioning under definitive agreements.

However, the upper limit of 55,000 SIOs for the greenfields exemption should be increased to something in the order of 150,000–200,000. Although this particular exemption would not apply to any individual member of Commpete, we do consider that such greenfields networks can provide an important competitive constraint on NBN pricing and their entry and development over the next few years should be actively encouraged and fostered.

The exclusion of mobile broadband services from the RBS charge base also should be reconsidered given it is based on short-term<sup>3</sup> forecasts of their substitutability for fixed broadband services. However, this can be done at the statutory review stage and need not further delay the introduction of the RBS.

### **The TLA (CC) Bill**

Commpete supports the establishment of the Statutory Infrastructure Provider (**SIP**) regime as proposed. As Commpete supports the introduction of the RBS, it is appropriate that NBN is subject to an obligation requiring it to continue to supply network services in the uncommercial areas.

Commpete also supports in principle the proposed amendments to the superfast network rules (which do not currently apply to any individual members of Commpete). Although functional separation may be a suitable alternative to structural separation in the circumstances envisaged in the Bill, it demonstrably is an insufficient remedy in respect of essential network facilities such as the NBN. We recognise that the TLA (CC) Bill does not alter the structural separation arrangements governing the NBN. Nonetheless Commpete takes this opportunity to reiterate

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<sup>3</sup> Relative to the multi-decade duration of the RBS.



that the continuation of NBN's structural separation is of fundamental importance and must not be watered down at any time in the future.

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