Approach to Future Costing of the Regional Broadband Scheme

13 December 2024

Introduction

Commpete welcomes the opportunity to respond to the ACCC's consultation and position paper on the approach to future costing of the Regional Broadband (**RBS**) levy.

Commpete is an industry alliance for greater competition in telecommunications markets. Our members are smaller operators and stakeholders in the industry and have challenges that result from relatively smaller scale. However, our members are dynamic and innovative in their business operations and are important contributors to innovation and the robustness of competition in the sector.

Commpete provides a unique perspective to this consultation. In addition to supplying infrastructure to chargeable premises, many of our members supply to premises in nbn co's fixed wireless and satellite footprint in competition with nbn co. While nbn co receives RBS funding for supplying these subsidised premises, our members do not.

Recommendations

Before commenting on the specific questions raised by the ACCC, Commpete has two overarching recommendations.

The first recommendation is that <u>the ACCC should form a view as to whether the RBS cross subsidy is economically efficient and, if not, advise the Minister that the RBS should be wound down to zero</u>.

Wholesale access to nbn co's fixed wireless and satellite services is vitally important to the long-term interests of end users (**the LTIE**), particularly for smaller challenger service providers. However, the RBS levy does not promote the LTIE and is an economically inefficient cross subsidy. It should be phased out over the next five years, if not immediately.

The RBS provides no ongoing benefit to customers in regional areas, is not necessary to offset reasonable losses incurred by nbn co in the supply of fixed wireless and satellite services, and its continued collection harms customers and competition. This view is based on the following:

- **The RBS levy is simply an inefficient tax on competition**. While inside nbn co the RBS is a cross subsidy, outside nbn co it is just a plain and simple tax on competitors. Telcos must pay the RBS levy, yet none receive any benefit from the RBS funding despite competing for premises that nbn co is subsidised for. If the RBS is intended to support cross subsidies from low cost to high cost areas, then competitors that supply both should also be able to access RBS funding. Instead, these competitors not only fund their internal cross subsidy, they must also pay the RBS levy to fund nbn co's.

- **The RBS levy is not needed to sustain nbn co's internal cross subsidy**. nbn co does not risk a substantial threat from losing customers to competitors – nbn co has and is planning to increase its prices substantially under its SAU, and despite this, it forecasts its active premises to increase steadily. Part of the reason for this is that nbn co's competitors are capacity and capital constrained and cannot easily expand their networks to win more customers from nbn co.

- **Many network providers sustain internal cross subsidies and supply premises in nbn co's fixed wireless and satellite footprint, without RBS funding**. nbn co is the only telco to receive funding from the RBS levy. It is telling that three mobile network operators, who also offer nationally average pricing sustain their own internal cross subsidies without an RBS type scheme. It is true that mobile network operators receive government funding for mobile black spots, but nbn co also receives other government contributions to fund its fixed wireless network, including the recent $480m government contribution.

- **There is a high risk that the RBS levy is used to fund nbn co's response to competitive activity in the fixed wireless footprint, rather than to recover reasonable losses**. In 2023, the ACCC recognised:

  > *"As LEO satellite deployments gain pace, traditional satellite connections are declining. Around 15,700 customers cancelled NBN Sky Muster services over the year. This represents 15% of NBN Co's satellite services at the end of the 2022 financial year.* ***In a bid to remain competitive****, in June 2023 NBN Co launched a premium Sky Muster version, featuring 'burst' speeds of up to 100 Mbps and uncapped data. NBN Co has also commenced a fixed wireless and satellite upgrade program, which includes upgrading its fixed wireless network to 5G technology. The program will expand the fixed wireless footprint by up to 50 per cent to cover some former satellite-only eligible premises, introduce 2 new higher speed plans, and change the Sky Muster data limits and enhance network performance. The program will also include upgrades to meet its new proposed 'typical wholesale busy period speed' of at least 50 Mbps (download) on its fixed wireless network by the end of 2024.* [Emphasis added]

  It would be particularly inefficient to subsidise a loss making provider to protect them from competitors that are able to supply the same customers without the subsidy. When it comes time for the ACCC to measure the costs of supplying fixed wireless and satellite services, costs incurred to compete against other companies should not be included and funded.

- **There will be no reasonable losses to be funded by the RBS levy by FY30.** nbn co anticipates it will recover its fully allocated annual costs for core services from FY30.[1] This means prior to this point, there will be no reasonable losses to be funded by the RBS levy. Forecast revenue ($7,804M) plus RBS receipts ($45M) will be $121M higher than nbn co's forecasts fully allocated costs ($7,728M) in FY30. Reasonable losses will reduce to zero before this time as reasonable losses are less than losses on fully allocated costs. Therefore, the RBS should become redundant within the next five-year period that is the subject of the ACCC's advice.

- **Prior to FY30, nbn co is not expected to set prices that fully recover its own internal cross subsidy[2], so it would harm competition to require nbn co's competitors to do so**. The reasonable losses recovered from nbn co's competitors should be proportionate to the cross subsidy that nbn co recovers from its own customers.

Any future need for investment in fixed wireless or satellite premises should be discussed in the context of the broader universal service policy where more efficient supply opportunities and longer-term funding arrangements can be discussed and designed. This is particularly important in the context of nbn co facing substantial competition from LEO satellite and other technologies in its fixed wireless and satellite footprint (the Department of Communications reports there were around 130,000 Starlink subscribers over a year ago and this number is now understood to be greater than 200,000). It might simply be the case that nbn co is no longer the most efficient supplier of services in high-cost areas, and other suppliers should be considered for funding.

It is important to note that it is contingent on the ACCC to advise whether the RBS should apply at all. The advice the ACCC must give to the Minister under s13 and s17 of the *Telecommunications (Regional Broadband Scheme) Charge Act 2020* (**the Charge Act**) is "*in relation to the exercise of the Minister's power under subsection 12(4)* [and subsection 16(8)]" of the Charge Act. The Minister's power is to determine whether or not to make a determination, and if the Minister chooses to do so, to determine a single specified amount for the RBS levy. The Minister must have regard to advice by the ACCC and such other matter the Minister considers relevant.

In developing that advice, Commpete recommends that ACCC consider whether imposing such a tax on competition is consistent with the objects and regulatory

[1] ACCC, *Proposed Variation to the NBN Co Special Access Undertaking: Final Decision*, October 2023, page 1. Further, nbn co forecasts its revenue ($7,804M) plus RBS receipts ($45M) will be $121M higher than its fully allocated costs ($7,728M) in FY30; nbn co, *nbn 24-40 Public Core Services Building Block Model*, 2 December 2022.
[2] This is because until this time nbn co is not expected to earn revenue from core services and the RBS that recover its annual building block revenue requirement. See nbn co, *nbn 24-40 Public Core Services Building Block Model*, 2 December 2022.

policy of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (**the TCPSS Act**), which are to promote the LTIE and efficiency, among other things.[3]

Commpete's second recommendation is that, if the RBS levy is retained, the ACCC should give careful consideration to the objects of the TCPSS Act in advising what reasonable losses need to be recovered from the RBS levy, having regard to the fact that the RBS levy is ultimately paid by end users.

Even the most well-intentioned cross subsidies are fraught with the danger of becoming inefficient, an undue burden on those that must pay it, and harm the LTIE (the key objects of the TCPSS Act). This is certainly the case where there is competition in respect of services that contribute to the cross subsidy, as the cross subsidy will harm that competition). But in this case, there is also competition in respect of services that are being subsidised by the cross subsidy. The fact that competitors are able to supply customers without the benefits for the RBS subsidy, should set alarm bells that no subsidy is needed.

Part of the general problem with subsidies is that once they are expected, they become relied upon far beyond the time they are needed to achieve their objective. So it is very important for the ACCC to assess reasonable losses on the basis of the losses incurred to meet the objects of the TCPSS Act, not the losses that are actually incurred by nbn co. These measures of losses are very likely to be quite different. For example, the RBS levy is not intended to fund enhancements to nbn co's fixed wireless and satellite networks to allow it to compete against other fixed wireless and satellite networks, yet nbn co has actually incurred substantial cost doing so (as demonstrated by the ACCC quote above). This is particularly important while no other fixed wireless network operator competing for nbn co's fixed wireless customers are able to rely on funding from the RBS levy – they must compete on their merits.

Answers to the ACCC's Questions

1) Should the RBS be calculated on the basis of a BBM or DCF model?

- There are strong arguments for using the BBM, as it would help ensure consistency in costs between the SAU and the RBS.
- There is also much more scrutiny applied to costs in the BBM, with all inputs, calculation and methodologies scrutinised by many interested parties and experts before being adopted. The RBS in contrast has been modelled in a relatively opaque way, with no outside scrutiny.
- DCF models do not account for the depreciation of assets. A DCF model in this context would likely recover the costs of assets in an RBS levy well past those assets' economic lives. Doing so would mean future end users would

[3] The TCPSS Act follows the objects and regulatory policy of the *Telecommunications Act 1997*.

have to pay for the costs of assets that, by the definition of economic life, provide no value to anyone. The BBM fully depreciates these assets, so there is no ongoing recovery of them beyond their economic life.
- The revenue calculation should include the maximum revenue nbn co is able to earn from fixed wireless and satellite services, under the price controls. If there is a situation where nbn co prices these services less than what it is able to under the price controls, that is a commercial choice of nbn co and that commercial choice should not be funded by those end users who have to pay the RBS levy.

2) Should nbn co's historical losses incurred in the supply of fixed wireless and satellite services be excluded from the RBS levy calculation?

- Yes. nbn co itself does not plan to recover all its historically incurred losses under the SAU. The BBM is not a measure of prudently incurred costs, and it was well accepted in the SAU context that nbn co does not need to recover all its imprudently incurred costs in order to be financially sustainable on a forward-looking basis and able to be privatised. Therefore, to the extent nbn co does not expect to recover all its historic losses, competitors to nbn co should not have to pay nbn co for those historic losses either.
- Importantly, this begs the question of the BBM costs that nbn co does not expect to recover for the next five-year RBS period. These will not be included in nbn co's internal cross subsidy, so they should not be included in the RBS levy. Otherwise, nbn co would receive a greater levy from competitors' supply of chargeable premises than it earns from its own supply of chargeable premises.

3) Whether the modelling period for calculation of the RBS levy should be five-years instead of the 20-year modelling period we were required to adopt for our 2020 advice to the Minister.

- As discussed above, the RBS should be phased out over the next five years, so a five-year modelling period would be suitable.

4) Cost allocation

- The BBM is a fully allocated cost model. Care must be given to what costs are included in any calculation of an RBS levy to ensure consistency with the objects of the TCPSS Act.
- Avoidable cost is a better foundation for measuring reasonable losses. Avoidable cost represents what nbn co must incur in order to supply premises that would otherwise be unprofitable and would otherwise not be supplied. It excludes any costs that nbn co would incur in any case. The BBM cost allocation manual is premised on a full allocation of costs. So, for example, the costs of nbn co's corporate accounting system will be allocated to fixed wireless and satellite, even though nbn co would incur those costs regardless

of its supply of fixed wireless and satellite customers. The ACCC could make an initial estimate of avoidable costs by (i) including only those costs in the BBM that are allocated only to fixed wireless and satellite and (ii) carefully considering cost categories that are allocated also to other technologies, but only include them if it is clear that a proportion of those costs were incurred only because of nbn co's supply of fixed wireless and satellite premises.

- If there are premises that are unprofitable for nbn co to supply, yet unsubsidised competitors compete for them, then nbn co's losses in relation to these customers are not reasonable losses that should be funded by nbn co's competitors. This likely demonstrates that nbn co has been subject to technological stranding by more efficient competitors. While nbn co will continue to play an important part in competing for and supplying these premises, it would be inconsistent with the TCPSS Act objects for nbn co's competitors to compensate nbn co for that technological stranding.

5) Levy charging base

- The levy charging base excludes the first 55,000 chargeable premises in greenfield areas for each carrier. This threshold should be increased to 250,000. Greenfield developments provide no threat to nbn co's ability to cross subsidise fixed wireless and satellite services, and sometimes they are in nbn co's fixed wireless and satellite service areas, thereby reducing the costs nbn co might otherwise have to incur to supply premises in those areas. Further, service providers must incur high upfront costs to build infrastructure in greenfield areas. Requiring them to also contribute to nbn co's costs places an undue financial burden on them.
- The levy charging base should not be broadened, the levy should be phased out over the next five years for the reasons set out above.
- Even if the levy is retained, the funding base should not be broadened while there are no plans to broaden the list of telcos that can receive the funds.
- While it might appear attractive to broaden the base to reduce the per unit levy, this would be a spurious benefit. While it would reduce the harm any single end user suffers from the imposition of the levy, it would mean more end users suffer that harm.
- Importantly, before considering broadening the base, the ACCC should have regard to the people that would now have to pay the tax. These individuals have likely shifted away from nbn co as they are more price sensitive and more prone to cost of living pressures than those who remain with nbn co. They are less able to afford a new tax imposed on them. Because of this, the economic inefficiency of the tax imposed on them is likely to be proportionately greater than that of the tax imposed on end users who currently pay the tax.
- It is also notable that fixed wireless providers in nbn co's fixed line footprint are using and contributing to the costs of operating national mobile networks. As such they are likely also contributing to their own loss-making mobile service in regional and rural areas. If they must also pay an RBS levy, they

would likely end up supporting two cross subsidies – their own and nbn co's. This would not be competitive neutral, as nbn co makes no contribution to mobile network operators' cross subsidies.

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