

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to  
DITRDCA consultation

**Thematic review of the  
Customer Service  
Guarantee**

Public Version

March 2023

## EXECUTIVE SUMMARY

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1. Optus welcomes the opportunity to comment on the Department's Thematic Review of the Customer Service Guarantee (CSG).
2. There have been various regulatory and policy inquiries and consultations over the last several years that have considered issues related to consumer experience on the NBN. To date, regulatory action has largely focussed on retail obligations rather than examining issues holistically. In a vertically separated industry, direct regulation on retail providers (RSPs) cannot solve for all consumer experience issues, particularly where these issues are ultimately determined by the actions of the wholesale network operator. Despite these inquiries, no real progress has been made in reforming retail regulations that are out of date and no longer appropriate in a structurally separated industry.
3. The central goal of the NBN policy is to enable and promote retail competition to the benefit of end-users. The NBN was intended to fundamentally address impediments to retail competition that arose from the legacy industry structure, in particular, Telstra's integration as the ubiquitous network operator, access provider and largest telecommunications retailer.
4. Retail competition has already seen service enhancements and improvements for end-users, for example, modems that can switch to a backup mobile network to ensure continuity of fixed line services in the event of an outage. However, RSPs cannot by themselves address substandard service levels in separated wholesale networks. The regulatory approach should not be to expect RSPs to address all service deficiencies in the first instance, or to continue providing remedies where underlying NBN issues and poor network operator performance are not addressed. Without the underlying network standards being met, RSPs are limited in how they can improve customer service for end-users.
5. It is essential that there be robust wholesale regulation that sets an acceptable baseline of wholesale service standards, in order to support competition and transparency at the retail level. Current experience has demonstrated that wholesale-only network providers with market power are not setting sufficiently robust commercial service standards to the detriment of retail competition and consumer outcomes.
6. Optus does not consider that the current service standards proposed in NBN Co's Special Access Undertaking or being considered as part of current commercial negotiations are robust enough to deliver improved consumer experiences. There remain ongoing issues with NBN Co's performance and existing measures such as rebates, do not appear to be as effective as they should be in delivering improved service performance.
7. Optus has previously supported proposed SIP regulation and considers that is the logical first step in addressing consumer outcomes. Only when robust wholesale arrangements are in place, should consideration be given to the interaction with the retail market and whether certain retail regulation continues to be necessary. However, without necessary supporting wholesale arrangements, Optus considers there is a compelling case to remove CSG obligations. Retail service regulation can then be appropriately targeted at transparency, rather than prescriptive commitments.
8. Establishing a robust foundation for network operator performance and wholesale service delivery will provide certainty to retailers who can then respond flexibly to competition and consumer needs with transparency over their own service commitments as originally intended by the Government's NBN policy.

## SUBSTANTIAL REFORM IS NEEDED

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9. Optus welcomes the opportunity to provide comment on the Department's thematic review of the Consumer Service Guarantee (CSG) framework. There are a number of related topics to this and Optus notes it has provided extensive submissions to the Department, the ACCC and ACMA concerns with service standards and related regulation. There past inquiries have included:
  - (a) ACCC's inquiry into NBN Co's wholesale service standards;
  - (b) Department's Consumer Safeguards Review;
  - (c) The ACMA's proposed retail service standards for superfast broadband services;
  - (d) The Department's consultations on Statutory Infrastructure Provider (SIP) regulation; and
  - (e) The ACCC's consultations on NBN Co's Special Access Undertaking.
10. Optus' views throughout these consultations can be summarised as:
  - (a) Current CSG regulation is imbalanced and out of date for a changing industry;
  - (b) CSG is no longer an appropriate regulatory framework in a vertically separated industry;
  - (c) NBN Co's service standards are not equivalent to the CSG and do not promote the long term interests of end-users (LTIE),
  - (d) RSPs are dependent on network operators (such as, NBN Co) for addressing service issues and network operators can stymie proactive efforts;
  - (e) SIP regulation on wholesale network operators is needed before any further retail regulation is considered.
  - (f) There is little justification for direct regulation of quality of service issues at the retail level and if needed it should be targeted at specific problems;
11. These views are discussed further below.

### **Current regulation is imbalanced and out of date for a changing industry**

12. Optus considers the current CSG regulation is imbalanced and out of date given the changes in the telecommunications industry since the CSG framework was introduced.
13. There continues to be a decline in fixed voice services - over 2021-22, the number of fixed-line voice services across Telstra, Optus and TPG decreased by 5% to around 6.4 million services.<sup>1</sup> Usage has historically declined, although stabilised in 2022 for the

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<sup>1</sup> ACCC, Communications market report: 2021–22, p. 15. [https://www.accc.gov.au/system/files/22-71RPT\\_Communications%20Market%20Report\\_FA.pdf](https://www.accc.gov.au/system/files/22-71RPT_Communications%20Market%20Report_FA.pdf)

first time since 2017.<sup>2</sup> By contrast, mobile phones remain the most popular way to make voice calls with increased usage of messaging apps and over-the-top services.<sup>3</sup>

14. The CSG framework came into effect at a time when there was a very different industry structure – network competition was based on vertically integrated networks, amongst which Telstra was the largest network operator and provider and reliance and use of voice services was much higher than it is today.
15. However, the rollout of the NBN and migration from the Telstra and Optus legacy fixed line networks to the NBN, along with carrier separation requirements and access regulation (such as, obligations to supply wholesale services) applying to other non-NBN fixed line superfast broadband networks means the degree of vertical integration in the fixed line sector has significantly decreased.
16. This fundamental change in industry structure means that RSPs do not have the same level of control over key activities. While RSPs have the direct relationship with consumers and are responsible for plans, billing and other aspects of retail service provision, wholesale network operators have a significant impact on key aspects of consumer experience.
17. Optus considers the CSG, with its primary focus on retail obligations, is no longer fit for purpose. Optus submits that if consideration is being given to the regulatory framework to apply in an NBN world, the CSG requires close review and should be amended or removed as currently RSPs bear the risk and responsibility for compliance and NBN Co (the primary fixed line wholesale network operator) has very little accountability under the existing framework.

#### **NBN Co's service standards are not equivalent to CSG and remain inadequate**

18. The Department's consultation paper notes the ACCC is currently considering NBN Co's Special Access Undertaking (SAU) which includes service levels contained in NBN Co's wholesale broadband agreement (WBA, which itself is currently under re-negotiation).
19. It is well established that monopoly infrastructure providers do not face strong incentives to maintain or address quality of service issues. Where monopolists do not face competitive pressures, downstream providers and ultimately end-users could suffer with increased prices, reduced quality of service and reduced investment in maintaining or upgrading networks unless such matters are monitored and/or directly regulated.
20. Optus notes that the service standards proposed by NBN Co in its 2023 SAU are the same as those in the 2020 WBA4 and there are no meaningful changes to service levels being considered as part of the current WBA5 negotiations.
21. Optus refers the Department to its submission to the ACCC in that consultation process and notes our views that:

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<sup>2</sup> ACMA, Communications and media in Australia series: How we communicate - Executive summary and key findings, p. 3. [https://www.acma.gov.au/sites/default/files/2023-03/How%20we%20communicate\\_Executive%20summary%20and%20key%20findings\\_0.pdf](https://www.acma.gov.au/sites/default/files/2023-03/How%20we%20communicate_Executive%20summary%20and%20key%20findings_0.pdf)

<sup>3</sup> ACMA, Communications and media in Australia series: How we communicate - Executive summary and key findings, p. 1. [https://www.acma.gov.au/sites/default/files/2023-03/How%20we%20communicate\\_Executive%20summary%20and%20key%20findings\\_0.pdf](https://www.acma.gov.au/sites/default/files/2023-03/How%20we%20communicate_Executive%20summary%20and%20key%20findings_0.pdf)

- (a) NBN Co's service standards do not address current consumer experience issues (such as dropouts or speed underperformance; extended delays in network remediation activities and no firm commitments for addressing co-existence).
  - (b) The proposed benchmark service standards are unreasonable and do not promote the long term interests of end-users (LTIE).
22. Optus has the following more specific concerns about NBN Co's service standards:
- (a) Rebates are capped (unlike CSG compensation) and in some cases do not appear to be providing sufficient incentive to address issues. For example, Optus is aware that some customers have been waiting more than two years for network remediation activities for line underperformance, which would suggest rebates are not providing sufficient incentive for such matters to be addressed promptly. Further there are often delays or errors in NBN Co's rebate calculations and processing.
  - (b) NBN Co's service level timeframes are subject to a wide array of exclusions, exemptions and conditions, which means that either the service level can be excluded from applying or the 'clock stopped' in calculating the time taken to complete the activity and whether the service standard was 'met' or 'missed';
  - (c) There are no serious consequences for NBN Co if it fails to meet performance objectives;
  - (d) NBN Co's accelerated connections performance remains poor (which is directly relevant to supporting CSG connection timeframes).
23. Optus notes that NBN Co's accelerated connections performance has remained consistently poor, even now that peak volume rollout has passed. Despite this being a repeated topic of discussion there has been no improvement. NBN Co consistently fails to meet the performance objective for accelerated connections which means customers would not have their service connected within CSG timeframes. It cannot be said any plainer – the existing service commitments and performance do not support CSG-desired outcomes.
24. Further, where there are extended service level timeframes for activities such as network remediation (usually needed to address line underperformance) and lengthy delays in addressing such speed underperformance, this suggests that the rebates NBN Co has to pay do not provide sufficient incentive to NBN Co to address the issue promptly.
25. Optus considers consumers should not have to wait two years or longer for underperforming lines to be addressed. During that time consumers have a poor experience and, depending on the extent of underperformance, may be impacted in their ability to do online activities, such as video calls or having multiple users online simultaneously.
26. Optus also notes that the rebate framework, introduced as part of WBA4 in response to the ACCC's wholesale service standards inquiry, clearly does not go far enough. The extended delays before NBN Co addresses the issue suggest the rebate framework does not provide sufficient incentive to address issues promptly. Further, the actual rebate processes often involve delays and errors, with rebates sometimes paid many months after they were incurred or where service levels were incorrectly classed as being met.

27. Optus has strongly supported increased transparency on NBN Co's service performance (including rebates) as part of the ACCC's proposed Service Performance Record Keeping and Reporting Rule.
28. Optus notes that organisations, such as the ACMA or TIO, have previously expressed concern that a large number of industry retail providers seek CSG waivers from customers.<sup>4</sup> Optus considers this reflects RSPs' lack of confidence in wholesale support for the CSG. When CSG timeframes and processes are not adequately supported by wholesale standards, the majority of RSPs have little choice but to implement CSG waivers.
29. While there is a secondary liability process where an RSP can seek secondary damages from a network operator for their contribution to a delay in meeting a CSG performance standard, this has led to convoluted processes in determining what proportion of time NBN Co contributed to a delay and what proportion was the RSP's contribution.
30. In addition, it has been difficult for RSPs to even obtain the correct information from NBN Co in order to fulfil other CSG obligations (such as, information required for a mass service disruption exemption). The WBA still does not adequately support RSP's CSG processes and obligations. Unless there are direct requirements on a network operator, it is difficult for RSPs to ensure there are sufficient supporting wholesale commitments in commercial arrangements where bargaining positions are significantly imbalanced.
31. Optus also considers that NBN Co's service standards and operational processes and requirements can stymie the ability of RSPs to proactively address service issues (such as, dropouts). For example, RSPs are limited in their ability to raise a fault with NBN Co, without the customer raising a fault, even where the RSP may be able to determine there is an issue with the underlying network.
32. It is Optus' view that the service standards being considered as part of the SAU and in the WBA negotiations do not offer any real improvements or firmer commitments to address service performance issues and do not provide confidence to RSPs about wholesale service delivery and performance.
33. Optus considers that in considering whether consumer safeguards are needed, the first step is to focus on how the wholesale network operator provides their services. Only then once there is a robust framework in place for wholesale network operators should there be consideration of what, if any, regulation applies at the retail level.
34. Therefore, Optus firmly believes the first step is to put in place minimum benchmarks and standards as part of a SIP framework as a backup to any commercially negotiated commitments.

### **SIP regulation is needed**

35. Optus has previously indicated its support for direct SIP regulation and considers this is necessary to ensure consistent delivery of wholesale network operator services, with real consequences for failing to meet legislated benchmarks or standards. This would provide improved incentives to wholesale network operators to address performance issues.

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<sup>4</sup> See, for example, TIO, Submission to the ACMA's proposed service standards for superfast fixed broadband services: Consumer remedies for missed service levels, December 2020, p. 7.

36. Optus supports the proposed concept of wholesale standards for network operators because robust wholesale standards are the first step in addressing customer experience issues. Robust wholesale standards are necessary if RSPs are to have any confidence or certainty over how issues are dealt with by the network operator – and therefore if RSPs can have confidence to make any further service commitments to end-users.
37. Optus notes the Department has previously stated that the lack of competition faced by NBN Co justifies regulated wholesale timeframes for connections, fault repairs and appointment keeping matters.<sup>5</sup> Further, it was noted that enforceable wholesale reliability rules should also encourage improved outcomes for consumers at the retail level, providing more certainty to retailers to develop and offer a range of retail service offerings.<sup>6</sup> Optus supports these outcomes.
38. In considering retail level performance and accountability, the Department also advised against mandatory compensation arrangements, noting that mandatory compensation arrangements may actually compound consumer issues by encouraging ‘buck passing’ and internal industry debates around liability, rather than encouraging a focus on resolving the issue.<sup>7</sup>
39. Further, the Department identified an opportunity to rebalance retail regulations and “provide more scope for industry to compete and innovate”. The Department noted this involves a move away from a framework that necessarily focuses industry on minimal compliance against prescriptive rules, to one where industry has specific incentives to take greater responsibility for improving both the design and ongoing delivery of services they offer in the market.<sup>8</sup>
40. Optus agrees with the key concepts and sentiments of the Department’s final report and with the comments and recommendations regarding wholesale performance and accountability.
41. In particular, Optus agrees with comments that enforceable wholesale reliability rules would improve consumer outcomes and provide greater certainty to retailers allowing them to develop and offer a range of retail service offerings and the accompanying recommendations.
42. Optus considers the mechanisms exist, have already been through initial consultation and it would seem timely now with the rollout of the NBN finished to progress such reforms. Addressing these recommendations from this 2019 report would provide the necessary foundation upon which further retail regulation could be based, if needed.

### **Any direct retail regulation needs to address specific problems**

43. Optus supports regulation where specific problems or market failure are clearly identified, other measures (such as co-regulation) have failed to address the problem, and the regulation addresses these in the most efficient and least burdensome way.

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<sup>5</sup> Department of Communications and the Arts, Consumer Safeguards Review – Part B (reliability of services) – Final report, December 2019. p. 11.

<sup>6</sup> Department of Communications and the Arts, Consumer Safeguards Review – Part B (reliability of services) – Final report, December 2019. p. 11.

<sup>7</sup> Department of Communications and the Arts, Consumer Safeguards Review – Part B (reliability of services) – Final report, December 2019. p. 13.

<sup>8</sup> Department of Communications and the Arts, Consumer Safeguards Review – Part B (reliability of services) – Final report, December 2019. p. 14.

44. The role of any SIP regulation should be to establish a robust foundation of mandatory minimum wholesale commitments that provide certainty upon which RSPs, operating in a competitive retail industry, can build their own service commitments in response to market forces and consumer needs.
45. Direct retail regulation, while well intentioned, leaves RSPs with the cost and responsibility of providing remedies to customers where issues may actually be caused by poor wholesale network operator performance – whether this be offering continuity options or credits where there are delays in NBN connections or rectifying faults, despite the underlying cause of these issues potentially being outside the control of the RSP.
46. Once robust wholesale regulation is in place, consideration could then be given to what, if any, regulation is needed at the retail level, given the intention of NBN policy was to promote retail competition in order to benefit end-users.
47. Optus considers that the NBN retail markets are competitive, with RSPs looking to innovate and offer better customer experience and value for money. For example, RSPs introduced backup mobile services contained in modems to provide continuous service as an enhancement and backup to NBN fixed line services. Optus, for example, offers its Living Network features for NBN services, such as Optus Network Pulse, Optus Pause or GamePath.<sup>9</sup>
48. Optus notes the ACCC's Measuring Broadband Australia program provides transparency that monitored RSPs do not appear to be under provisioning NBN services. While RSPs could choose to make a price / quality trade off, many choose not to. We note further measures, such as the introduction of the Consumer Data Right in the telecommunications sector, is purported to assist consumers in switching providers.
49. We consider retail telecommunications is competitive and that if any regulation is needed it should be focussed on addressing a specific problem. This may include whether protections are warranted in areas of reduced retail competition (such as, outside of NBN Co's fixed line footprint).
50. Otherwise, Optus considers retail obligations should focus on transparency, although we note there is already a significant amount of information obligations on RSPs, such as, those in the ACCC's Broadband Speed Claims guidance material (in relation to the Australian Consumer law) or more prescriptive obligations, such as, the ACMA's Consumer Information Standard which requires a Key Facts Sheet containing certain information to be made available to consumers.
51. Optus considers direct retail regulation like the CSG should only remain if wholesale service standards or SIP regulation directly support CSG timeframes and processes. As such robust wholesale arrangements do not exist, Optus considers there is a compelling case for removing CSG obligations.

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<sup>9</sup> See <https://www.optus.com.au/living-network>