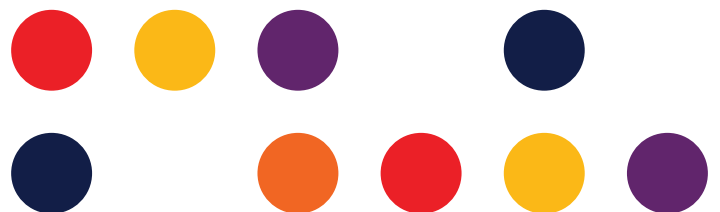


Superfast Broadband Access Service – further consultation

ACCC

November 2023

Public version



Submission

Thank you for consulting further with stakeholders regarding the ACCC's Superfast Broadband Access Service (**SBAS**) final access determination inquiry.

Given the ACCC is consulting further on discrete matters, this submission does not repeat feedback previously provided by TPG Telecom to the ACCC inquiry via earlier submissions, including:

- the ACCC should benchmark the SBAS against NBN Co's 25/5 Mbps speed tier only and not regulate the 50/20 Mbps speed tier;
- there is no evidence to suggest SBAS providers are charging excessive amounts for non-recurring charges which are well above costs, such that it would warrant ACCC intervention; and
- the ACCC should continue to allow SBAS providers the opportunity to pass on the Regional Broadband Scheme (**RBS**) levy, in order to protect their legitimate business interests.

We assume the ACCC will take all previous submissions into account in making its final decision.

Benchmarking regulated maximum prices for SBAS services

TPG Telecom supports the ACCC's straightforward approach of benchmarking regulated SBAS access prices against the NBN, compared to alternative forms of regulation. For example, alternatives such as developing a Building Block Model or determining retail costs for several non-NBN networks involving different technology, systems and costs would be a complex and resource intensive exercise.

However, we believe anchoring SBAS access prices to the NBN should be implemented in a cautious manner, considering the clear differences in scale and cost profile between NBN and non-NBN providers. Otherwise, the ACCC risks creating an environment where non-NBN providers have no ability or incentive to provide compelling and differentiated offers due to the stifling effects of regulation. This would further shield NBN from competition in a market where structural barriers already hamper effective competition.

In this regard, TPG Telecom considers the ACCC should implement benchmarking by requiring SBAS providers offer a service under option 1 of the consultation paper – i.e. benchmarked against NBN Co's bundled AVC TC-4 and CVC TC-4 (access and usage) product components, plus CVC overage charges – upon reasonable request from an access seeker, as the SBAS applies today.

For the avoidance of doubt, the ACCC should clarify this means the benchmark will relate only to NBN Co's maximum 'ceiling' price, such that SBAS providers are not required to adopt the same minimum 'floor' charge as NBN Co. This would give SBAS providers an opportunity

to offer cheaper services and prevent distortion of the broadband market through the ACCC setting a minimum charge across the wholesale sector.

This would preserve the ability of SBAS access providers to adopt alternative price structures, such as a single charge inclusive of usage, without being beholden to NBN Co's Average Combined Charge, as defined in the Special Access Undertaking accepted on 17 October 2023.

Notably, NBN Co's Average Combined Charge is no more than a forecast dictated by NBN Co. A major sensitivity in NBN Co's calculation is forecast CVC usage, which determines NBN Co's forecast CVC overage and is a key input into calculating NBN Co's Average Combined Charge.¹ Requiring SBAS providers to adopt the same forecasts would place them in a position where they are always reactive and subject to NBN Co's pricing decisions, rather than being able to compete directly with NBN Co on their own merits.

SBAS providers should not be bound by forecasts made by a competing provider and should rather be allowed to maintain independence and flexibility to offer a single price based on their own forecasts, cost profile, technology and customer mix.

TPG Telecom otherwise welcomes the ACCC's proposal to allow a 6-month period for SBAS providers to adjust their pricing after any changes to applicable NBN charges.

Regulation of Network-to-Network Interface (NNI) charges

TPG Telecom does not support the ACCC regulating NNI charges. The ACCC's approach would further homogenise the broadband market, by creating undifferentiated providers who have no ability or incentive to offer truly innovative services due to the restraints imposed by regulation.

As a provider with significant scale, NBN Co can spread access costs across a larger base of customers. If the ACCC forces non-NBN providers to charge the same NNI costs as NBN Co, this will diminish their ability to recoup legitimate costs and effectively compete in the wholesale broadband market.

The ACCC's proposal to regulate NNI charges also does not give due regard to the strong constraint NBN Co imposes on the broadband market, which would prevail if the ACCC does not regulate NNI costs.

Network performance reporting obligations

We note the ACCC's draft instrument (dated 23 March 2023) indicated a start date of 1 January 2024 for network performance reporting obligations. If the ACCC decides to adopt any network performance reporting obligations, TPG Telecom considers the ACCC should

¹ NBN Co has forecast CVC usage growth at 8.8% in FY24, 10.3% in FY25 and 9.6% in FY 26. See NBN Co, *Public version: Forecast in support of nbn's Amended SAU Variation (14 August 2023)*.



provide SBAS providers with at least six months to comply with any new obligations. This is consistent with the amount of time the ACCC is proposing to allow SBAS providers to implement pricing changes following any adjustment by NBN Co.