

21 July 2023

Australian Competition and Consumer Commission
Via email to: nbn@acc.gov.au

aussiebroadband.com.au

Re NBN Co's revised pricing proposal submission – 4 July 2023

Aussie Broadband Limited (**Aussie Broadband**) welcomes the opportunity to respond to NBN Co's revised pricing proposal as part of the Special Access Undertaking (**SAU**) variation. We appreciate the opportunity to provide our views on the pricing options put forward in the proposal ("the Modified Floor and Ceiling Proposal").

Aussie Broadband is eager to finalise the SAU variation process and gain certainty around NBN Co's regulatory and pricing structure for wholesale services and reasserts its desire for a resolution of the process such that implementation can occur this calendar year.

Whilst the floor and ceiling framework proposed by NBN Co is not our preferred pricing structure, and we reiterate our preference for the SAU construct tabled in November 2022, in the interests of an expedited outcome, we accept the framework in principle (subject to an appropriate level of cost mitigation being provided by NBN Co) and outline our position on the proposals below.

In selecting from the proposed options, Aussie Broadband urges the ACCC to consider the benefit to consumers over the 36-month period (FY24 through FY26), rather than simply focus on the immediate term. We believe a balanced view will provide the least-worst option for consumers, retail service providers (**RSPs**) and competition in the telco sector, noting that NBN has advised of its neutrality over the choice of option.

In summary, Aussie Broadband's position is that Option 2 is our preferred option. Option 2 enables the greatest price-certainty over the combined FY24 – 26 period for RSPs and consumers, encourages the greatest level of market competition and delivers the best outcome for price-sensitive consumers. When it comes to the Transitional Payment and Timing considerations, Aussie Broadband's position is that the \$12 million transitional pool needs to be significantly increased and/ or CVC inclusions be immediately increased. Further, implementing the new SAU in the current calendar year is critical.

How Aussie Broadband has assessed the options

It is Aussie Broadband's view that the three proposed options present trade-offs between optimising in-year costs (the temporal argument); balancing the interests of the three types of RSPs as classified by NBN Co versus facilitating downstream competition (the market entrant and growth RSP argument); and providing long term price protection for price-sensitive customers versus FY24 price optimisation for Type 1 RSPs (the lower-income argument).

The Temporal Argument

The temporal argument focuses on FY24 cost optimisation versus FY25 and FY26 optimisation. RSPs with a high proportion of 25Mbps and 50Mbps customers, and whose customers have industry average CVC utilisation, optimise their cost outcomes in FY24 by adopting the lowest floor cost; NBN Co's Option 1. However, for this cost-certainty to continue into FY25 and FY26, confidence is required that CVC inclusions will keep pace with usage

growth. Aussie Broadband has little to no confidence that this will be the case. This confidence is further eroded by the design of NBN Co's CVC inclusion review process which, as designed, only mitigates 50% of this exposure.

As a result, the overage rate of Option 1 will come into play, thus driving the highest level of price-uncertainty of the presented options. This uncertainty could be minimised by:

- i. increasing the amount of included CVC (bundle inclusions) and,
- ii. reducing the potential overage cost.

Over this period, the greatest price certainty for RSPs will be achieved by limiting the impact of planning errors, i.e., limiting the financial cost of getting CVC forecasts wrong. This would lead toward Option 2 being the better option in terms of LTIE.

The market entrant and growth RSP argument

The market entrant and growth RSP argument centres on NBN Co's 'promotion of competition in downstream markets' position presented in section 4.1 of their Modified Floor and Ceiling Proposal:

*"To the extent that nbn's wholesale prices provide a more level playing field between RSPs, this should promote efficient investment by, and competition between, existing RSPs and entry by new RSPs, to the benefit of end-users in terms of greater choice and value (lower price and/or higher quality)."*¹

RSPs classed by NBN Co as Type 1 benefit most under Option 1 by nature of the low usage profiles of their historic customer bases. By contrast, the customer bases of today's smaller RSPs, including Aussie Broadband, skew toward higher usage profiles. This high-usage profile increases when looking at newly acquired customers of smaller and growth RSPs. These customers typically skew to being technology-savvy and by association, have higher usage profiles. As households and small business continue to adopt high data usage technologies (namely video calling) and IoT, the demand on CVC inclusions will continue to increase. Option 1 by design penalises those RSPs that attract higher-usage customers and does so to the benefit of large incumbent RSPs with large low-usage customer profiles, the impact of which is the further un-levelling of the playing field in favour of large RSPs.

The lower-income argument

The lower-income argument flows from the temporal argument and focuses on the relationship between total-monthly-cost and 'inclusions', i.e. what you get for your money. <Commercial in confidence>

[REDACTED]

[REDACTED] <Commercial in confidence> It is these price-sensitive customers that NBN refers to under the "impact on consumer choice and retail prices" argument in section 4.1 of their Modified Floor and Ceiling Proposal.

"Impact on consumer choice and retail prices (in particular on 12 and 25 Mbps services) – A feature of nbn's wholesale pricing to date is that CVC charging allows RSPs to provide 'capped' data plans for lower-usage customers at a lower retail price point than for the more widely used 'uncapped' plans. This is one of the reasons that nbn has not proposed immediately moving to AVC-only pricing for all speed tiers. Doing so would have the effect of increasing prices for lower-usage customers on 12, 25 and 50 Mbps plans, which would have detrimental impacts on these end-user cohorts, likely lead to customers leaving the nbn network (thus reducing the efficient use of the network) [emphasis added], and require nbn to recover a greater share of its fixed network costs from remaining customers."³

The most beneficial outcome for price-sensitive customers is to maximise the inclusions they receive and to provide a construct which enables the maximum number of Australians to access the full capability of the NBN, as opposed to being limited to using "capped data" plans. Following the temporal argument, under Option 1, it is likely that prices will rise in FY25 and FY26 at a greater rate compared to Option 2. Such a scenario would likely lead to more price-sensitive customers adopting "capped data" plans as these plans represent the entry-price. Specifically, the greater the price rises overall, the greater the number of customers selecting the lowest price option. Viewed from the lower-income argument, Option 1 provides the least favourable outcome for lower-income Australians.

¹ NBN Co, Modified Floor and Ceiling Proposal - 4 July 2023, p. 12

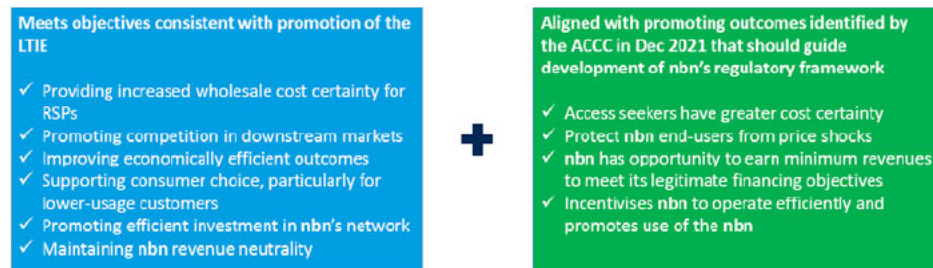
² Aussie Broadband Consumer Fixed Conjoint Study, November 2022.

³ NBN Co, Modified Floor and Ceiling Proposal - 4 July 2023, p. 12

Assessment of Options against NBN and ACCC regulatory objectives

Applying Aussie Broadband's assessment approach to our understanding of the combined objectives of the ACCC and NBN Co (summarised in the graphic⁴ provided by the ACCC below), we are of the view that Option 1 provides the least preferred outcome, as it primarily benefits the Type 1 RSP over and above the other categories of RSP, thereby reducing competition, and it provides the least price-certainty for price sensitive customers. This Option, we believe, is least likely to keep pace with customers' demand for bandwidth, which means ultimately consumer choice is reduced, not enhanced.

Assessment against regulatory objectives



As outlined earlier, Aussie Broadband's preferred option is Option 2 as it enables the greatest price-certainty over the combined FY24 – 26 period for RSPs, allowing them to best manage planning risk. Further, of the provided options it has the greatest opportunity to provide a level playing field, which assists new market entrants and all categories of RSPs, and in doing so, delivers the greatest level of market competition. This ultimately benefits consumers, as it creates an environment of better price certainty which in turn facilitates greater competition and industry differentiation (ultimately benefiting consumers).

As stated above, Option 1 is Aussie Broadband's least preferred option. Aussie Broadband's position is that although Option 3 appears as the compromise, its design provides greatest benefit to Type 1 RSPs versus the rest of market, and as such fails to optimise outcomes for new market entrants and growth RSPs. This scenario unfairly impacts lower-income households in particular, who are most price-sensitive.

Transitional Payment

Aussie Broadband appreciates the acknowledgement by NBN Co that a form of relief is needed. Our understanding is that the relief is designed to offset the already incurred — and now largely redundant — investments that RSPs made in readiness for the November SAU. In addition, Aussie Broadband's view is that the transitional payment should be greatly increased to offset the revenue and cost imbalance between NBN Co and RSPs, resulting from revenue benefits NBN Co has gained from current pricing being held stable, and to counteract the costs driven by no CVC inclusion increases.

Windfall revenue

NBN Co has enjoyed unanticipated benefits because of the delay in SAU implementation and has received windfall revenue at the expense of RSPs, skewing the loss/ gain continuing in NBN's favour. A potential mechanism to balance this is to calculate an offset payment by backdating "new" SAU pricing to the original implementation date of 1 July 2023. This calculation should be added to the proposed \$12 million transitional pool. In all circumstances, the proposed transition pool is patently insufficient to cover the ongoing and increasing cost exposures being incurred by RSPs as a direct result of the protracted process.

⁴ ACCC, ACCC Roundtable 14 July Presentation, 14 July, p. 9

No CVC inclusion increases

By NBN Co's own admission, the FY23 period saw another period of dramatic data growth⁵:

"Customers in Australia are consuming more data than ever to do the things they love like streaming 4K on multiple devices, online education and next level gaming, or conference calls and uploading and downloading large files for work," Ms McNamara said... "Technology has advanced, data use on the nbn network has tripled in six years..."

Despite this growth, CVC inclusions over the period did not change. <Commercial in confidence > [REDACTED]

[REDACTED] <Commercial in confidence > This lack of CVC inclusion growth benefited NBN at the expense of RSPs. The transitional pool should be further increased to rectify this imbalance.

Aussie Broadband's view is that failure to add these components to the proposed \$12 million transitional pool indicates that the ACCC and related stakeholders are willing to allow NBN Co to optimise its own economic position in full knowledge of the detrimental impacts that it pushes to the RSP community and Australian consumers. It is worth noting that if the transitional pool increased to say \$60 million that would represent only ~2% of NBN Co's FY22 EBITDA; a small cost to NBN Co but a meaningful one to RSPs which is more reflective of the cost imposts being borne by RSPs as a result of the delays and CVC utilisation growth.

Finally, whilst it does not relate directly to the transitional payment, it should be noted that the protracted consultation period has provided NBN Co with the benefit of previously unknown planning information. Namely, greater clarity on the CVC optimisation risk. This clarity has enabled NBN Co to use the current round of consultation to offset this risk and improve its future economic position at the known expense of RSPs (and thus the view of RSPs that the loss of CVC pooling is detrimental). In mitigating its own risks, NBN Co has passed those through to the RSP community, further skewing the equilibrium in NBN Co's favour.

Timing of implementation and subsequent price rises

Aussie Broadband remains committed to a constructive consultation process to expedite the implementation of a new pricing construct. We have demonstrated our willingness to engage, be transparent and actively consider all stakeholders throughout. At this point in time, we feel obligated to call out the risk to Australian consumers that the planned July 2024 review of NBN Co's pricing poses. Under the current scenario, it is possible that RSPs and consumers will be faced with a double price shock, notably on the 50Mbps and 25Mbps tiers, within a 6-month period. A double-shock scenario would benefit only NBN Co, and detrimentally impact the end-user— Australian households and small businesses. We accept that the elongated timeframe for negotiating a new SAU has introduced additional economic stress to NBN Co, as it has done so for RSPs. However, we cannot accept that Australian households and small businesses face a double-shock scenario designed to benefit only NBN Co.

With that in mind we strongly urge the ACCC and related stakeholders to actively forego the planned July 2024 pricing review in favour of providing cost-of-living relief in the form of stable pricing from NBN Co to Australian households and small businesses. We recommend that the July 2024 CPI increase be deferred and included in the July 2025 increase to provide a reasonable initial period of price certainty for end users.

We appreciate the opportunity to provide our views on the pricing options put forward in the Modified Floor and Ceiling Proposal, and we would be willing to discuss our views in further detail at your convenience.

Sincerely,



Jonathan Prosser
Chief Strategy Officer
Aussie Broadband Limited

⁵ NBN Co, Playford residents are Australia's biggest nbn data users, media statement, 18 July 2023.
<https://www.nbnco.com.au/corporate-information/media-centre/media-statements/playford-residents-are-australias-biggest-nbn-data-users>