



Submission in response to
NBN Special Access
Undertaking Variation:
Response to ACCC Draft
Decision

**Floor and Ceiling –
Modified Pricing Options**

Public Version

July 2023

INTRODUCTION

1. Optus welcomes the opportunity to provide further comments on NBN Co's proposed pricing approach for its Special Access Undertaking (SAU) variation.
2. Australia's Digital Economy goals and the long-term interest of end-users (LTIE) is underpinned by access to high quality telecommunications networks. In order for the SAU to promote competition and the efficient use of high-speed broadband infrastructure, it must support the delivery of high-speed services through improving service quality and adopt pricing that supports consumer take up of high-speed services.
3. The assessment of these three options for sub-100 Mbps pricing plans should be made recognising the overall goal of NBN pricing. Namely, to encourage and provide incentives for end-users to choose to upgrade their plans, which drives both ARPU growth for NBN Co, and the efficient use of the high-speed broadband network.
4. Optus submits that on the evidence provided by NBN Co, it is clear that only Option 1 is consistent with these objectives – only Option 1 promotes the LTIE and is consistent with the pricing levels and structure of the 100 Mbps and above plans.
5. Option 1 maintains pricing relativities between sub-100 Mbps wholesale tiers so that it is attractive for RSPs to promote 50 Mbps as the main entry level product. While all prices are increasing under this SAU and future NBN price path, Option 1 presents the smallest cost differential between the 50 Mbps and 25 Mbps tiers.
6. In contrast, Options 2 and 3 are likely to create wholesale price incentives for RSPs to encourage end-users to downgrade their services to tiers below the 50 Mbps tier (that is, to the 25 Mbps or 12 Mbps tiers) particularly in the current economic environment where end-users are experiencing cost of living pressures.
7. Optus considers that under Options 2 and 3, with large cost difference between 25 Mbps and 50 Mbps services, consumers are not likely to see value in taking up more expensive higher speed tiers. There is a real likelihood that consumers would seek to downgrade their services to these low-speed tiers. This would likely result in the inefficient underuse of the NBN, undermining key Government policy goals and threatening the growth of the digital economy. As such, Options 2 and 3 do not satisfy the LTIE criteria.
8. Any pricing structure that encourages consumers to adopt ADSL-equivalent services should not be adopted.
9. Almost exactly one year ago the Minister wrote to NBN Co outlining expectations that the SAU be finalised in early 2023 for implementation on 1 July 2023. Delays caused by NBN Co's late lodgement of documents mean the process is now not likely to be finalised until late 2023.
10. As a matter of priority, Optus urges NBN Co to release an updated 3-year pricing roadmap by the beginning of August 2023 to provide certainty to RSPs without waiting for all supporting material to be prepared and lodged with the ACCC as part of a revised SAU variation. NBN Co should also commit to this 3-year pricing roadmap.
11. In particular, NBN Co needs to provide clarity on if it will proceed with its proposed annual price increases on 1 July which would leave RSPs potentially having to implement two price rises within a few months.

12. Ideally, the SAU would be finalised and WBA5 pricing would be in place by 1 December 2023 if NBN Co is still planning on increasing prices again on 1 July 2024. Optus does not consider terms to be reasonable if two price increases occur within six months and RSPs have been clear with NBN Co on the unreasonableness of implementing price increases over the Christmas period.
13. Further, as NBN Co is continuing to benefit from delays in finalising the SAU (the progress of which it has significant influence over) due to the increased costs of RSPs, Optus considers that the proposed transitional credits should be increased, to ensure all RSPs are compensated fairly for the delays that have occurred so far. The transitional credits should further increase if the pricing roadmap is not updated by August 2023, the SAU is not finalised and WBA5 is not implemented by 1 December 2023. Otherwise, the timing of price increases is unworkable and, coupled with the additional costs to RSPs, fundamentally unreasonable.
14. Therefore, Optus supports the following way forward and NBN Co should:
 - (a) adopt Option 1 pricing approach as this is the only option out of the three options proposed by NBN Co that promotes the LTIE;
 - (b) lodge the SAU variation with the ACCC by the end of July 2023;
 - (c) release an updated 3-year pricing roadmap as soon as possible and no later than the start of August 2023 without waiting for supporting SAU material to be finalised and lodged with the ACCC and commit to this pricing roadmap to provide pricing certainty to RSPs;
 - (d) provide clarity on whether the 1 July 2024 price rises are going ahead, noting it is unreasonable for RSPs and end-users for prices to increase twice within 6 months;
 - (e) increase the transitional credits to compensate RSPs for the delays it has contributed to in finalising the SAU process and further increase the transitional credits if the pricing roadmap is not updated by August 2023, the SAU is not finalised and WBA5 is not implemented by 1 December 2023.

PROPOSED PRICING OPTIONS

15. Optus refers to NBN Co's further pricing proposals contained in its paper 'NBN Special Access Undertaking Variation: response to ACCC Draft Decision, Floor and Ceiling – Modified pricing options', commercial discussions with NBN Co and NBN Co's presentation to industry at the industry forum on 14 July 2023.
16. Optus understands the three pricing options put forward by NBN Co to be:
- Option 1 – Reducing the bundle price for the 50 Mbps service (and hence the 'floor') from \$50 to \$48 and increasing the CVC inclusion from 2.5 Mbps to 2.6 Mbps from the date by which NBN Co implements the new pricing in FY24 (the 'Price Transition Date').
 - Option 2 – Retaining the same bundle price for the 50 Mbps service (\$50) and reducing the CVC overage rate from \$8/Mbps to \$5.50/Mbps and increasing the CVC inclusion for 50 Mbps services from 2.5 Mbps to 3.5 Mbps from the Price Transition Date in FY24 (with the overage rate reducing to \$4.50 and \$3.50 in future years).
 - Option 3 – Reducing the bundle price for the 50 Mbps service (and hence the 'floor') from \$50 to \$49, increasing the CVC inclusion for 50 Mbps services from 2.5 Mbps to 2.6 Mbps and reducing the overage rate from \$8/Mbps to \$6/Mbps (reducing to \$5 and \$4 in future years), each from the Price Transition Date in FY24.¹
17. Optus understands these three options relate to the 50Mbps tier as follows:

Table 1: NBN Co proposed pricing options - overage cost per Mbps

					Overage Cost per Mbps		
	Option	Floor Price	Ceiling Price	50Mbps Inclusion	Year 1	Year 2	Year 3
50Mbps Plan	June F&C	\$ 50.00	\$ 55.00	2.5Mbps	\$ 8.00	\$ 7.00	\$ 6.00
50Mbps Plan	1	\$ 48.00	\$ 55.00	2.6Mbps	\$ 8.00	\$ 7.00	\$ 6.00
50Mbps Plan	2	\$ 50.00	\$ 55.00	3.5Mbps	\$ 5.50	\$ 4.50	\$ 3.50
50Mbps Plan	3	\$ 49.00	\$ 55.00	2.6Mbps	\$ 6.00	\$ 5.00	\$ 4.00

18. Optus understands the overage costs for Option 1 are \$8.00/Mbps (Year 1); \$7.00/Mbps (Year 2) and \$6.00/Mbps (Year 3).
19. NBN Co has also advised that the November 2022 SAU variation proposed pricing approach is not available, even though this pricing approach currently remains before the ACCC.
20. Optus also understands that NBN Co now does not consider that RSPs should implement measures to improve efficiency and optimise their wholesale costs, despite encouraging RSPs to do so in their June 2023 pricing options paper (see section 5.5

¹ NBN Co, NBN Special Access Undertaking Variation: response to ACCC Draft Decision, Floor and Ceiling – Modified pricing options, July 2023, p. 14.

titled 'Overage can be reduced through plan optimisation by RSPs').² Optus considers it extremely disappointing that where RSPs have implemented measures to be more innovative and efficient to save costs, such measures are now to be removed from RSPs by NBN Co.

21. Our comments are based on the above information.

Only Option 1 will promote the LTIE

22. Based on these three options only, Optus considers that Option 2 and Option 3 will not promote the LTIE and that Option 1 is the only option that promotes the LTIE.
23. Options 2 and 3 are likely to create wholesale price incentives for RSPs to encourage end-users to downgrade their services to tiers below the 50 Mbps tier (that is, to the 25 Mbps or 12 Mbps tiers) particularly in the current economic environment where end-users are experiencing cost of living pressures.
24. The information provided by NBN Co at the industry forum clearly shows that Options 2 and 3 will lead to even higher prices for the 50Mbps tier (and above) without impacting the lowest two tiers (25Mbps and 12Mbps) as significantly. In other words, RSPs are likely to make higher margins on the lowest two tiers than on the 50 Mbps tier. Optus considers that under Options 2 and 3 consumers are not likely to see value in taking up more expensive higher speed tiers and therefore are likely to downgrade their speed tiers to below 50 Mbps.
25. Given that NBN Co has undertaken a number of programs to encourage customers onto the 50 Mbps tiers (e.g. the Focus on 50 program etc), the 50 Mbps tier represents a significant portion of the NBN customer base (approximately 55% of the TC-4 fixed line customer base). The 25 Mbps tiers and 12 Mbps tier represent around 14% (both 25 Mbps tiers) and 9%, respectively, of the TC-4 fixed line customer base.³
26. Adoption of Options 2 or 3 is likely to reverse that trend and push a materially greater number of end-users onto lower tier products. Optus notes that NBN Co claims that wholesale ARPU is the same across all three Options – although we understand this is a static analysis and the dynamic impact above has not been modelled. It is likely NBN Co would face a material drop in its ARPU under Options 2 and 3 as RSPs move end-users onto lower priced and more profitable low-speed tiers.
27. Optus submits that in the context of the NBN, a high-speed broadband network designed to deliver high-speed broadband to Australians, pricing approaches that encourage end-users to downgrade their services to ADSL-equivalent NBN tiers do not promote the LTIE.
28. Downgrading of retail services to ADSL-equivalent NBN tiers does not represent efficient use of, nor investment in, high-speed broadband infrastructure and is also likely to have

² NBN Co, NBN Special Access Undertaking Variation: Response to ACCC Draft Decision, 50/20 Mbps cost certainty. 17.

³ Calculations derived from 'Extracts of reports prepared under the amended Disclosure Direction provided to nbn co limited on 18 October 2021 in relation to the NBN Services in Operation Record Keeping and Reporting Rules' (March 2023 Market Indicators Report), <https://www.accc.gov.au/by-industry/telecommunications-and-internet/national-broadband-network-nbn-access-regulation/nbn-wholesale-market-indicators-report/march-quarter-2023-report>

a dampening effect on competition in retail markets, particularly in relation to higher speed broadband tiers (50Mbps and above tiers).

29. Quite simply, when high-speed broadband infrastructure has been deployed (and is continuing to be upgraded to deliver higher broadband speeds), pricing should maximise the take-up of high-speed broadband retail services by supporting a broad range of retail choice and improvements in quality of service and consumer experience.
30. In addition, the shareholder Ministers' statement of expectations (SoE) specifies that NBN Co will improve the NBN to support RSPs in enhancing quality of service and consumer experience; improve reliability to meet current and future demand and build digital capability through efficiently implementing upgrades to increase the proportion of premises with full fibre access (so that 90% of premises in the fixed line footprint have access to peak wholesale download speeds of up to 1Gbps).⁴ This is along with the Ministers' expectations that NBN Co undertake activities that improve the service quality of the NBN⁵ and the legislated speed target of 50Mbps for fixed line NBN services.
31. A pricing approach, such as Option 2 or Option 3, where pricing outcomes are likely to encourage end-users to downgrade their service speed tiers to ADSL-like speeds is not likely to be consistent with the above goals and expectations.

Line quality remains a problem

32. Optus understands that NBN Co appears to have now implemented a process so that customers who are receiving a rebate because their line fails to meet the PIR objective are now automatically eligible for the free change of access technology (COAT) fibre upgrade program to remediate their line. Optus welcomes this development.
33. However, these customers are only on the PIR objective rebate list to have their line remediated because they have lodged a fault. NBN Co is aware these lines do not achieve the PR objective, but offers no remediation options. NBN Co is not proactively identifying and upgrading underperforming customer lines without a customer complaint.
34. **[CiC]**
35. Optus considers that consistent with the Ministers' SoE and overall objectives of NBN policy, and the LTIE criteria, the SAU should:
 - (a) Ensure high-speed broadband infrastructure can deliver high speed services (not ADSL-equivalent services); and
 - (b) Implement pricing that supports take up of these high-speed broadband services.
36. Optus considers these additional points, including undertaking activities to improve service quality, are just as important (if not more so) as whether NBN Co maintains an investment-grade credit rating.
37. Optus considers that if pricing Options 2 or 3 encourage consumers to downgrade their services, there will be less of an impetus for NBN Co to ensure its network is capable of

⁴ Minister for Communications and Minister for Finance, NBN Co Ltd Statement of Expectations, 19 December 2022, p. 2. <https://www.infrastructure.gov.au/sites/default/files/documents/December-2022-NBN-Co-SOE.pdf>

⁵ Minister for Communications and Minister for Finance, NBN Co Ltd Statement of Expectations, 19 December 2022, p. 2

delivering high speed broadband, an overall decline in quality of service which will also adversely impact competition in downstream markets.

38. Optus considers that Option 1 is the only pricing approach that will promote competition in downstream markets and encourage the efficient use of and investment in infrastructure consistent with the LTIE criteria.

SAU should be lodged as soon as possible

39. One year ago (27 July 2022) the shareholder Ministers wrote to NBN Co stating that NBN Co should aim to have the SAU variation finalised in early 2023 for implementation as at 1 July 2023 to provide certainty to industry in relation to pricing and other matters.⁶ Optus notes costs continue to increase for RSPs while NBN Co continues to benefit from these delays.
40. Given the delays in the SAU process mean a final decision is now pushing into the latter half of this year, Optus urges NBN Co to lodge a revised variation as soon as possible with the ACCC and no later than by the end of July 2023.
41. Optus notes that RSPs have provided clear feedback to NBN Co that any retail price increases are virtually impossible to implement in a timely fashion over the Christmas/January period due to further delays in finalising the SAU. It would be wrong for NBN Co to impose a price rise on consumers at this period.
42. The SAU needs to be finalised as soon as possible so that WBA5 can be implemented prior to 1 December 2023.

Three-year pricing roadmap is required ASAP

43. In light of the above, Optus reiterates that as a matter of priority NBN Co should release an updated pricing roadmap by the start of August 2023 to provide cost certainty to RSPs and should commit to this pricing roadmap.
44. The 3-year pricing roadmap, released in May 2023, is now out of date in light of these subsequent alternative pricing proposals.
45. Optus submits that NBN Co should determine the pricing approach and immediately release an updated pricing roadmap by the start of August 2023 that it will commit to implementing, prior to formal lodgement of any supporting SAU material with the ACCC to avoid further delay and minimise uncertainty for RSPs.

NBN Co should provide clarity on future price increases

46. Further, Optus shares concerns about potentially needing to implement two price rises within a short period of time, based on the May 2023 3-year pricing roadmap that flags annual price increases on 1 July each year.
47. RSPs have advised NBN Co of the difficulties of implementing price increases over the Christmas/January period. It is unreasonable for both RSPs and for end-users if RSPs have to implement two price rises within 6 months, therefore RSPs need the pricing roadmap by August 2023, SAU finalised and WBA5 in place prior to 1 December 2023.

⁶ Minister for Communications and Minister for Finance, Letter to Ms Kate McKenzie, Chair NBN Co, 27 July 2022, <https://www.infrastructure.gov.au/sites/default/files/documents/nbn-co-sau-letter-to-nbn-co.pdf>

48. If NBN Co is unable to commit to the above, Optus argues the proposed price increase on 1 July 2024 should not go ahead. Optus encourages NBN Co to provide clarity to industry about whether the proposed 1 July 2024 price increase will go ahead as part of the three-year pricing roadmap update.

Transitional credits must be increased to compensate RSPs

49. Optus also notes that it could be in NBN Co's interest to delay finalisation of the SAU variation as it earns increased revenue under the WBA4 pricing. Optus does not consider NBN Co should benefit in this way when it directly determines the timing of the SAU process. We note NBN Co flagged in its March letter to the ACCC it intended to withdraw the current SAU Variation. NBN Co is yet to do so.
50. Given that RSPs manage costs differently, Optus submits that NBN Co should increase the transitional credits paid to RSPs in light of the delays that have occurred so far. Optus further supports this position if NBN Co intends to proceed with the 1 July 2024 price rise next year.
51. Further, if the pricing roadmap is not updated by August 2023, the SAU is not finalised and WBA5 is not implemented by 1 December 2023, NBN Co should further increase the transitional credits provided to RSPs.
52. Further, Optus considers transitional credits should increase further if the pricing roadmap is not updated by August 2023, the SAU is not finalised and WBA5 is not implemented by 1 December 2023. This is to ensure NBN Co has incentives to finalise the SAU variation process promptly. Otherwise, the timing of price increases is unworkable and, coupled with the additional costs to RSPs, fundamentally unreasonable.

The way forward

53. Optus supports the following way forward and NBN Co should:
- (a) adopt Option 1 pricing approach as this is the only option out of the three options proposed by NBN Co that promotes the LTIE;
 - (b) lodge the SAU variation with the ACCC by the end of July 2023;
 - (c) release an updated 3-year pricing roadmap as soon as possible and no later than August 2023 without waiting for supporting SAU material to be finalised and lodged with the ACCC and commit to this pricing roadmap to provide pricing certainty to RSPs;
 - (d) provide clarity on whether the 1 July 2024 price rises are going ahead, noting it is unreasonable for RSPs and end-users for prices to increase twice within 6 months;
 - (e) increase the transitional credits to compensate RSPs for the delays it has contributed to in finalising the SAU process and further increase the transitional credits if the pricing roadmap is not updated by August 2023, the SAU is not finalised and WBA5 is not implemented by 1 December 2023.