TELSTRA GROUP LIMITED

Submission in relation to NBN’s proposed SAU variation

Public version

24 July 2023

Introduction

Telstra appreciates the ACCC organising the recent stakeholder meeting on NBN Co's fourth pricing proposal for its SAU variation to introduce a wholesale price floor. The stakeholder meeting demonstrated that there are no further reasons for any more delays to the resolution of this process. The issues associated with the SAU and alternative options have been aired and discussed, and Telstra has provided many submissions arguing for lower wholesale prices and improvements to wholesale service quality. However, it is now time to close out the SAU as delays are materially impacting RSPs and ultimately our customers.

The proposal for a wholesale price floor is to raise NBN Co's revenue by limiting the ability of RSPs to optimise their customers' plans/costs

The primary reason for NBN Co to propose a wholesale price floor is because it incorrectly forecast its demand and revenue for the November 2022 SAU. NBN Co encouraged RSPs to migrate heavy usage customers on 50/20 plans to 100/20 plans in order to optimise their costs, while promoting its November 2022 SAU proposal. Now NBN Co is concerned by the impact that customer optimisation of their wholesale plans would have relative to its November 2022 revenue forecast – "*Reverting back to the November Variation in light of this new information means nbn would be unable to achieve a revenue neutral outcome*".[1]

The introduction of the price floor will reduce the extent to which RSPs can optimise their customers' wholesale plans (to minimise their costs) and increase NBN Co's revenue to help it realise its November 2022 revenue forecast.

Concerns that RSPs will face different costs are incorrect and misplaced

The introduction of a wholesale price floor is not because of concerns that some RSPs might face different average costs than others. This is demonstrated by two issues with NBN Co's analysis.

First, the analysis of RSP archetypes is not representative of the market. For example, Telstra doesn't fit into any of NBN Co's archetypes as we have a wide range of customer types across multiple brands that would fit into all the categories that NBN Co describes. The impact on Telstra and we suspect most other RSPs is oversimplified. The analysis claims that a Type 1 RSP with high optimisation would be able to pay below-average costs of $48.30 for a 50/20 customer, even though the price is $50 + overage. This is clearly impossible, unless NBN Co's analysis assumes that Type 1 RSPs with high optimisation are cross-subsidising the costs of 12/1 and 25/5 customers (and NBN Co loads some of the $50 cost of 50/20 plans to the cost of 12/1 and 25/5 customers in its analysis). Herein lies the problem of the wholesale price floor – the consequence of removing the opportunity for RSPs to optimise their cost base by introducing a wholesale price floor will remove the potential to cross subsidise, which will harm vulnerable and low-income customers who can only afford lower speed plans.

Second, the cost difference for a 50/20 plan between an RSP that does no optimisation ($50.40) and Type 1 RSPs that do a high amount of optimisation ($48.30) is just 4% ($2.10) on NBN Co's analysis. This is much less cost variation than currently exists between RSPs under NBN Co's current pricing structure.[2] The analysis also assumes that any cross subsidies are loaded onto the 12/1 and 25/5 plans – if the cost is loaded onto the 50/20 plan where the cost is actually incurred, then the cost difference between RSPs would likely be a little less than 0.8% ($0.40).

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[1] NBN Co, *Response to ACCC Draft Decision*, July 2023, p. 22.

[2] Previous NBN Co pricing structures have been designed to result in cost variation between RSPs – the RSP-based "dimension-based discounting" pricing resulted in different costs purely because of the characteristics of RSPs' customer bases.

Further, it is not true to assume that smaller RSPs are unable to migrate their customers between plans. NBN Co's current price structure requires RSPs to analyse their customers' usage and book CVC capacity on a daily or weekly basis. It is not credible to claim, and there is no evidence provided to support, the idea that those same RSPs will not be able to analyse their customers' usage and migrate to more optimal plans under the new price structure. The proposed cap on NBN Co's prices was simply to avoid the need to do so.

Indeed, it is the fact that RSPs will optimise their customers' plans, and NBN Co's incorrect forecast of that optimisation despite encouraging RSPs to do it, that has led to the proposal of a wholesale price floor and consequent delay of the SAU process.

NBN Co has a strong financial incentive to delay the resolution of the SAU

NBN has a strong financial incentive to delay the introduction of the regime as the current wholesale price structure (under WBA4) is leading to significant increases in the costs faced by RSPs. NBN Co's average revenue increases with every delay, to the point that it will likely fall once the SAU is accepted and implemented.

The reason for this is that NBN Co paused its long-standing practice of increasing CVC inclusions in the bundles. The last increase was in May 2022. The pause was a surprise to RSPs including because NBN Co's SAU, once accepted, would again increase CVC inclusions every year.

NBN Co accepts that it must compensate RSPs for its delays

NBN Co has proposed to pay RSPs a total of $12M compensation (at a future date) because of the delays to the resolution of the SAU and RSPs' complaints to NBN Co. The proposed $12M payment is insufficient compensation for the increased costs to RSPs.

Telstra estimates that RSPs are collectively currently facing [**CIC Begins**] [**CIC Ends**] higher CVC costs each month under the current WBA4 than they would face under any of the options presented by NBN Co, due to ongoing usage growth and no increase in CVC inclusions since May 2022. This cost gap will increase over the coming months.

The Shareholder Ministers wrote to NBN Co instructing them that interim wholesale pricing before the next WBA is agreed "*should not be a step backwards from the perspective of retailers*".[3]
For NBN Co to comply with that instruction, it will need to lift its compensation to [**CIC Begins**] [**CIC Ends**], assuming the SAU is accepted in October 2023, with implementation following on 1 December 2023.

If monetary payments are not suitable for NBN Co, then Telstra proposes that NBN Co immediately lift its CVC inclusions for bundles to a level that ensures RSPs are not taking a step backwards from the date of the Shareholder Ministers' letter to NBN Co. At a minimum, NBN Co should immediately increase CVC inclusions by an equivalent amount as occurred in May 2022.

NBN should choose the compromise option 3, and just get on with lodging the SAU

Of NBN Co's proposed options for a wholesale price floor, option 3 is a compromise between options 1 and 2. NBN Co should move ahead with option 3 and lodge the variation so the ACCC is able to quickly complete its process.

To be clear, our customers will be worse off under all three options relative to the November SAU proposal. It is a step backward. A wholesale price floor will limit the extent to which RSPs can discount to specific retail customer cohorts.

[3] Shareholder Ministers' letter to NBN Co.

All three options will also make Telstra materially worse off relative to the November SAU. Telstra will bear the majority share of the industry burden of NBN Co's proposed wholesale price floor.
Option 2 will be the worst solution for Telstra, as it will create the biggest increase in our costs of supplying customers with connectivity.

Option 3 is a compromise between 1 and 2, and in a very marginal way reduces the negative impact of a wholesale price floor to consumers and RSPs.

Additional comments for the ACCC to keep in mind

The broader regulatory regime that will be applied to NBN under the SAU is an "unders and overs" regime. As has been discussed throughout the process to date, this means that NBN Co will get to keep any "overs" relative to NBN Co's forecasts, but it will have to absorb the consequences of any "unders" relative to its forecasts. That feature provides a monopoly access provider such as NBN Co with strong incentives to accurately forecast and, in combination with a weighted average price cap, strong incentives to grow demand that are consistent with the way competitive markets operate. These incentives are what make parts of the SAU in the long-term interests of end users.

Those incentives are undermined if NBN Co's response to under-performing against its forecasts is to raise its average revenue through price increases and price restructures. A pro-competitive response would be to revise its forecasts down and look for ways to increase demand to over-shoot the revised forecast in future periods.

Not only will the ACCC need to place close scrutiny on NBN Co's response to "unders and overs" once the SAU is accepted, it will also need to ensure that the response/resolution to "unders" is similar to the response/resolution to "overs" so that there is no future bias resulting from the application of the future regulatory regime.

It is clear that NBN Co would under shoot its November 2022 forecasts, and hence it is seeking to introduce a wholesale price floor to remedy that before it is constrained by an accepted SAU. It is doubtful that NBN Co would have initiated a similar discussion on how to lower its SAU prices if it had discovered it was going to overshoot its November 2022 forecasts. There is, therefore, already the risk of an intrinsic bias in the "unders and overs" regime.

Finally, the impact of introducing a wholesale price floor will effectively eliminate the extent to which RSPs are able to cross subsidise the cost of 12/1 and 25/5 plans with 50/20 CVC inclusions. This is unequivocally adverse to low-income customers and customers in vulnerable circumstances. In the current circumstances, where there is close scrutiny being applied to how RSPs are able to help their customers in times of need, the ACCC should recognise that NBN Co introducing a wholesale price floor will make it more difficult for RSPs to help the customers that need the most help. We also repeat our calls for NBN to introduce a low income wholesale product, which can be done outside the SAU process so as not to cause further delay.

That said, Telstra recommends that NBN Co choose option 3, submit the revised SAU in coming days, and the ACCC move quickly to consider it.