

## Submission

8 June 2023

Sean Riordan  
General Manager,  
Communications Markets and Advocacy  
ACCC

### Re: NBN Special Access Undertaking (SAU) Draft Decision

The Australian Communications Consumer Action Network (**ACCAN**) thanks the ACCC for the opportunity to provide further comment on the Variation to the NBN Co Special Access Undertaking Draft Decision consultation (**draft decision**).

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

ACCAN welcomes the opportunity to provide further comment on the additional information provided by NBN Co to the ACCC. Noting our previous submissions have set out our view on the draft decision in detail, we have limited our comments to the further documentation provided by NBN Co.

ACCAN considers that the further documentation provided by NBN Co does not adequately address the material concerns raised by ACCAN in our previous submissions. With respect to the further documentation provided by NBN Co. we consider that:

- NBN Co's proposal to formally introduce price floors is inconsistent with the efficient pricing of NBN services. It migrates NBN from a de facto price floor to a formal and endorsed model of minimum pricing across all speed tiers.
- the proposed treatment of gifted assets and cash, requires refinements to clarify that NBN Co cannot over-recover from consumers by recovering financing costs it does not incur.
- clarifications as to the intended operation of the replacement module determination process are appropriate to the extent that they do not impose any undue restrictions on the powers of the ACCC.
- refinements to the operation of the low-income forum fall well below consumer expectations and do not align with the long-term interests of end-users (**LTIE**).

ACCAN provides further comments on the proposed revision to the SAU in **Attachment A**. We note that our comments are based on a cursory review of the documents provided in the time available.

In keeping with our previous submission, we wish to note that ACCAN is not funded to provide detailed comments on the economic regulation of NBN Co. Accordingly, while we will always seek to represent consumers on matters critical to their interests, as in the case of NBN Co's SAU, we do not currently have the resources to engage with the proposed SAU processes as drafted.

We thank the ACCC for the opportunity to comment on the draft decision. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at [gareth.downing@accan.org.au](mailto:gareth.downing@accan.org.au).

Yours sincerely,

Dr Gareth Downing  
Deputy Chief Executive Officer

## **Attachment A. Further comments on the proposed SAU variation**

### **50/20 Mbps cost certainty**

ACCAN has reviewed NBN Co's proposed 'floor and ceiling proposal'. We consider that formal pricing floors are inconsistent with the efficient pricing of the network. The proposal migrates NBN Co from a series of de-facto price floors, which it has established via 'discounts' and 'bundling' to a formal system of price floors for services. ACCAN does not consider that the creation of pricing floors, and increasing the minimum cost of NBN services, is consistent with the efficient pricing of these services.

The limited graphical information provided by NBN Co appears to indicate that the bulk of 50/20Mbps users forego inclusion credits. Figure 1. as provided by NBN Co appears to indicate that this cohort of users are using below their existing inclusion. ACCAN struggles to understand why, given that there is widespread underutilisation of existing capacity, that the pricing framework should be revised to charge these consumers more, to cross-subsidise the usage patterns of high-demand consumers.

ACCAN does not support the unnecessary introduction of price floors. This approach, whether undertaken via discounting or formal approval of pricing floors, will provide a framework that will drive retailers to upsell consumers. Further, we consider that the introduction of price floors for 12/1Mbps and 25/5Mbps services will result in further declines in the affordability of these services, undermining the efficient use of the network by those consumers with lower capacity to pay.

Many higher-use consumers may genuinely desire higher speeds. However, a framework of pricing that pushes consumers to take up 100Mbps speed services, which cannot be supported by the infrastructure consumers have access to, is inappropriate. Market participants have already done considerable harm to the reputation of NBN services, primarily through the over-selling and under delivery of services. The decline in the standing of the telecommunications sector, is reflected in recent Roy Morgan research, which found that the telecommunications industry is the least trusted in Australia.<sup>1</sup>

This reputational harm, and the material historical information asymmetries present in the NBN broadband market, have undermined consumer willingness to pay for NBN services. Forcing consumers to take up higher speeds at a higher cost in the absence of the infrastructure being capable of delivery, will further harm NBN Co's reputation, reduce consumer willingness to take up NBN services at higher speeds and over the long-term result in the underutilisation of the network. Accordingly, we consider this approach is inconsistent with the LTIE.

### **Annexure 1**

ACCAN considers that further refinements to the SAU are required to clarify the intended treatment of cash and asset gifts made to NBN Co. In our view there is no sound economic basis for the inclusion of assets funded by third parties within NBN Co's regulatory asset base (**RAB**).

Including gifted assets, whether constructed by NBN Co or a third-party in the RAB may result in consumers paying for debt and equity financing costs that NBN Co has not and will not incur. Accordingly, we consider that any provisions regarding to the gifting of assets, must clearly provide

---

<sup>1</sup> Roy Morgan, 2023. *Telecommunications industry overtakes Social Media as the most distrusted industry*. Available at: <https://www.roymorgan.com/findings/9193-risk-monitor-telco-most-distrusted-industry-2023>

for gifted assets to be treated separately to assets funded by NBN Co which should form the core RAB. ACCAN considers that any provision that allows for the inclusion of gifted assets in the core RAB at a non-zero value, may lead to inequitable and inefficient over-recovery from consumers of non-real financing costs.

ACCAN understands the proposition put forward by NBN Co that a requirement to maintain separate asset accounts or RABs will involve regulatory costs. While we note that this is the case, maintaining separate asset accounts or RABs is common practice in regulated sectors, where the combination of gifted assets with RAB assets may result in over-recovery.

Further, we note that the regulatory burden in this instance, will in effect require NBN Co to track asset flows, a requirement it must acquit under existing accounting standards, and to maintain a separate record in an excel spreadsheet. Neither requirement is sufficiently onerous, in our view, to justify the combination of assets into a common RAB.

ACCAN is not opposed to NBN Co's revenue allowance reflecting an amount that provides for the prudent and efficient operation, maintenance and replacement of gifted assets. However, we do not consider that NBN Co should be allowed to recover financing costs that it has not incurred.

While the WAPC framework has been put forward as a mechanism through which to net-off any negative cost effects, reliance on the WAPC mechanism may entail an element of volume risk and accordingly any forecasting errors may result in a cross subsidy between services. While ACCAN has not had adequate time to consider these issues in detail, we encourage the ACCC to consider the potential effects of alternative treatments of gifted assets closely.

## **Annexure 2**

ACCAN considers the proposed clarifications to the intended operation of the replacement module determination process are appropriate. ACCAN supports the proposed refinements to the extent that they clarify the intended operation of the RMD process, and do not otherwise unduly restrict the powers of the ACCC.

## **Annexure 3. Low-income forum**

The proposed amendments to the low-income forum do not address ACCAN's concerns that there is a lack of obligations on NBN Co to develop products targeted to low-income consumers. We consider that the amendments as drafted will have little to no tangible effect on the requirements faced by NBN Co to provide such products.

In the absence of a genuine commitment to engagement on pricing, affordability and low-income measures for consumers, ACCAN considers that there is limited value in proceeding with the low-income forum. Noting the material resource limitations that ACCAN and other organisations face, and the lack of tangible progress on an affordable NBN service, we consider that only an obligation on NBN Co to offer targeted affordable services would advance action on affordability.

ACCAN appreciates and understands that NBN Co has genuine constraints on its ability to offer low-income products within the revenue envelope against which it needs to recover to fund its efficient costs. However, frank and honest engagement on these issues is necessary to advance improved outcomes for low-income consumers. If NBN Co is not able to act, it should state this, and allow the finite resources of community organisations to be redirected to other avenues for addressing these issues.

NBN Co should be regulated in keeping with the LTIE. We consider that in assessing the interests of end-users, greater emphasis must be placed on the end-users themselves, who have been left out of conversations about key matters impacting on them.

While promoting competition and efficiency are key to ensuring the LTIE, they are in and of themselves a subsidiary consideration to it. The LTIE is not a series of abstract economic or legal tests, but rather imposes an obligation on the ACCC to consider the tangible impact of a decision to accept or reject the SAU by reference to the impact that this decision has on end-users.

In practical terms, this means assessing the SAU against the LTIE. Genuine consideration must be given to how NBN pricing will exclude a significant cohort of Australian society. The SAU, as drafted, cannot be in the LTIE to the extent that it implies a pricing out of a material number of consumers from the NBN broadband market. Many consumers have limited alternative services to the NBN but there has been no genuine commitment to develop a product that would encourage their efficient use of existing infrastructure.

---

*The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.*

---