

20th February 2023

Sean Riordan
General Manager
Communications Markets and Advocacy
Australian Competition and Consumer Commission
Via email

Dear Sean,

Re Proposed variation to the NBN Co Special Access Undertaking Consultation Paper – January 2023

Aussie Broadband Limited (**Aussie Broadband**) welcomes the opportunity to respond to the ACCC's Consultation Paper (dated January 2023) on the proposed variation to the nbn Special Access Undertaking (**SAU**). We appreciate the opportunity to provide our views on the issues and questions provided within the paper.

Aussie Broadband is focused on moving forward with the ACCC and NBN Co to ensure there is a path to the implementation of this SAU. Overall, we see the revised SAU as a positive step forward. However, we do still hold concerns. The main areas of concern are regarding the power that the ACCC will hold in the post 2032 as we believe that more needs to be done to address the gaps in the ACCC's regulatory powers in Module 3. The other concern is affordability and how the SAU, and future price rises, will be in direct contrast to the NBN Co's Statement of Expectations (19 Dec 2022) that the enduring purpose of the NBN is to provide fast, reliable, and affordable connectivity. Aussie Broadband's wish is for the ACCC to focus on ensuring that Australians are not disadvantaged by NBN future pricing of what is now an essential service.

General regulatory framework and modular structure

Aussie Broadband agrees with ACCC's observation that incorporating the replacement module process could provide a more straightforward and streamlined process. In particular, we believe the requirement for NBN Co to consult with access seekers and consumer groups in preparing its replacement module applications is beneficial and assists to promote the LTIE. Aussie Broadband also supports the ACCC's proposal to assess whether timeframes allow enough time at each step for NBN Co to prepare the relevant materials, and for consultation and ACCC assessment. We agree that it is important for the ACCC to assess whether all relevant scenarios are accounted for with a view of closing any procedural gaps and mitigating the risk of any unintended consequences. In regard to the change of control provisions, Aussie Broadband believes it is appropriate for the SAU to expire on a change of control occurring.

Post-2032 arrangements

Aussie Broadband is concerned that Module 3 appears to limit some of the prescriptive rules and power that apply to the ACCC, particularly in making a replacement module determination. We do not believe that a principled-based approach that seeks to replace regulatory requirements provides certainty to both NBN Co and retailers in the post 2032 period.

Aussie Broadband appreciates NBN Co's requirement to set revenue allowance for a financial year to provide an opportunity to achieve a stable stand-alone investment grade credit rating within a regulatory cycle. However, we believe this requirement should exist on the condition that NBN Co both invest and operate efficiently. We are particularly concerned with the risk of NBN Co setting inefficient high pricing to pay down its debt over a compressed timeframe in order to allow them to achieve and maintain a credit rating from the commencement of Module 3. We also hold particular concern that the proposed Module 3 principles fail to provide the required incentives for NBN Co to operate in a prudent and efficient manner. The concern is that to achieve a stand-alone investment grade credit rating NBN Co may be required to pass-through inflated prices to RSPs that would otherwise fail an efficiency test.

Aussie Broadband believes more needs to be done to address the gaps in the ACCC's regulatory powers in Module 3 to reflect the general regulatory framework provided for pre-2032 arrangements. This would include the effectiveness of the regulatory module process and ACCC's statement of approach. In particular, we believe that the ACCC's ability to stipulate access terms should not be subject to the limiting principles currently provided in Module 3.

Pricing and product constructs

Aussie Broadband supports NBN Co's Statement of Expectations regarding the purpose of NBN to provide fast, reliable, and affordable connectivity to enable Australia to seize the economic opportunities before it and service the best interests of consumers. It is on this basis that we want to see this purpose reflected in the SAU.

The ACCC should be clear on how the SAU is delivering the consumer affordable internet. Further, we believe the SAU needs to ensure that NBN Co offer products and pricing that promote the take up and utilisation of the NBN and support retail service providers to meet consumer needs at affordable prices. Aussie Broadband considers the increases in price of the low-speed tiers as the greatest risk to the NBN Co's SAU proposal. It is likely that this will result in more price sensitive customers leaving the NBN for alternative and lower cost technologies (FWA, Mobile Broadband, Satellite). Such a scenario will leave those RSP/End Users remaining on NBN to foot-the-bill in relation to achieving the overall Building Block Model (BBM) revenue targets.

Aussie Broadband consider there to be a customer benefit in the merging of the 12 Mbps and 25 Mbps plans at the same cost level. The convergence will be a positive outcome for customers as it will result in entry level customers having access to speed tiers that support what should be seen as a minimum speed for internet access.

Aussie Broadband's principal concern is the numerous and uncontrollable variables associated with NBN Co requiring an 'investment grade credit rating' and how these interact with the long-term interests of end users. Furthermore, the recent Statement of Expectations states that the enduring purpose of the NBN is to provide fast, reliable, and affordable connectivity. We believe that it is not possible to ensure the long-term interests of end users with the uncertainty around specifying a credit rating requirement.

However, given the framework above, the key driver of concern is around the effective cost of the NBN 50 plan. Whilst we would prefer it did not increase so significantly, we understand that the primary purpose is to allow an overall reduction in price for higher speeds. Overall, we agree that these changes will enable more Australians to get access to faster speeds. Via this access to high-speed tiers, we expect to see greater social and economic benefits flowing from the NBN.

Aussie Broadband also acknowledges that the increase in price for the NBN 50 plan as the most popular plan will be seen as a huge impact for RSPs to wear and will likely lead to price increases for consumers in a time when consumers are already being hit hard by cost-of-living impacts. The cost gap between the 50 Mbps and the 100 Mbps plan will vary for RSPs, dependant on customer usage on the plans that will incur CVC costs. The goal for every RSP will be to find a balance in costs and usage to reduce the variable impact of customer usage. Aussie Broadband will be looking to optimise its costs if the SAU is implemented in its current format.

In relation to low-income measures and supporting universal access for low-income users, Aussie Broadband believe that NBN Co and the government should provide clear options for people who need support to ensure access to internet at an affordable price.

Price controls and transparency measures

Aussie Broadband is supportive of the introduction of price controls to mitigate large price shocks for RSPs and end users. We will continue to support the ACCC acquiring the appropriate powers to ensure NBN Co is not over-recovering the Initial Cost Recovery Account (ICRA) and continuing promoting the LTIE.

Our view on the WAPC is that as a framework it is a consistent way for NBN Co to support the change in prices on an annual basis. However, Aussie Broadband believes it has inherent risks in its design regarding what occurs in the future if NBN service growth does not eventuate and the ICRA is spread across less services, thus leading to higher price rises.

We are also concerned about the CPI link given the current inflationary pressures that are being seen across the board in Australia and globally. As a result, we want to ensure there is a mechanism in place to ensure the CPI link to the WAPC is connected to a historically lower level of CPI versus what we are noticing in the current day. As an example, if we are in a position of sustained high CPI numbers, we could potentially see pricing increase significantly, i.e., average 6% CPI over a 10-year period would result in a 50/20Mbps AVC increasing from \$50 to \$84 over that timeframe; an outcome not in the long-term interests of end users.

NBN Co's approach to the BBM

The Building Block Model (BBM) information is appropriate for the purpose of the SAU and understanding what path NBN is on. Aussie Broadband is concerned that the end goal from the BBM will be greatly impacted if NBN Co does not achieve its connected premises goal. We question what will happen to the remaining services on the NBN and how their achievement of revenue targets will be impacted if the connected premises goal is not achieved.

Regarding depreciation and useful economic lives of assets, Aussie Broadband considers there to be no major issue with the assumptions provided in the BBM.

Recovery of accumulated losses

Aussie Broadband welcome NBN Co's modification to the approach in recovering the ICRA. We agree that the partial recovery of ICRA over time is to be predictable, constrained, and transparent. As a result, we appreciate that the proposed change will seek to ensure there is no over recovery against past losses other than to the extent necessary to enable NBN Co to achieve and maintain a standalone investment grade credit rating. Aussie Broadband have no further suggestions besides from maintaining focus on ensuring pricing is set independently to NBN Co's cost base and revenue cap.

Expenditure Criteria

Aussie Broadband believes that where the ACCC cannot make a replacement module determination within the prescribed time, the terms proposed by NBN Co in its replacement module application should not come into effect by default. Although we note the two-month extension, we still consider there to be a current weak point in the proposed process and relevant time should be granted while the relevant decision is yet to be made.

To assist this issue, Aussie Broadband proposes a more prescribed process to apply. For example, we note that current SAU variation does not set out the type of supporting documentation NBN Co is obliged to submit with a replacement module application. While the ACCC may have the ability to request information under clause 6.3, any delay in this process has the potential to contribute to the issue of timing.

Aussie Broadband appreciates the new obligation for NBN Co to consult with stakeholders on its planned capex and opex prior to submission of a replacement module application for a regulatory cycle, as per clause 5.7. We recognise this could provide a means for the identification of broader costs and benefits to be considered by NBN Co in the development of its regulatory application and provides a safeguard to assist with proper regulatory assessment. We also appreciate NBN Co will be required to provide a report that summarises the views put to them during consultation and NBN Co's response to the ACCC.

However, Aussie Broadband also notes the ACCC's observations that the SAU variation does not provide a requirement for NBN Co to submit a cost-benefit analysis or business case to support any planned expenditures as part of its replacement module application. Although consultation could provide an alternative means for NBN Co to share its planned expenditures and for stakeholders to consider, we believe that a business case may provide a more robust opportunity to support this consultation process to ensure stakeholders have access to adequate information. It may also assist in the ACCC making a replacement module determination within the prescribed time and filling the information gap within this process accordingly. Aussie Broadband questions what other means NBN Co will use to demonstrate that its management has followed a robust process and given due consideration to the prudence and efficiency of its planned expenditures during the SAU's expenditure reviews.

Aussie Broadband believes a business case could include NBN Co's reasoning for differing decisions and the likely impact on the interests of its customers or retail competition. Further, it could include how prudence and efficiency has been considered by NBN Co in relation to their major planned capex expenditures. Therefore, we agree a business case may become a beneficial supporting tool to ensure NBN Co is in the right position to demonstrate the prudence and efficiency of their decisions and be valuable to enabling assessment of expenditure reviews by any stakeholder or ACCC pursuant to the SAU.

Cost allocation and accounting separation

Aussie Broadband welcomes the cost allocation and accounting separation arrangements as we believe they will provide greater transparency to ensure costs are being allocated in accordance with cost allocation principles/methodologies. We want to ensure that there is no cross subsidy and anticompetitive outcomes and that the introduction of the accounting split between "core" and "non-core" makes sense. Aussie Broadband's major concern is that the splitting of costs could be used to decrease the costs associated with NBN Co's pricing models for non-core services (EE / FWA etc), which would then provide NBN Co a pricing advantage versus competitors in those markets. Therefore, we request that the ACCC ensure that costs are split appropriately.

Weighted average cost of capital

In regard to the weighted average cost of capital (WACC), Aussie Broadband have no major issue with the assumptions provided that the NBN Co's nominal WACC is 7.7 percent in 2023-24, 7.7 percent in 2024-25 and 7.8 percent in 2025-26 over the period of the first regulatory cycle. Aussie Broadband also expects that the ACCC will be conservative in determining the WACC for future regulatory periods.

Incorporating other access technologies

Aussie broadband believes that all NBN related technologies should be covered by the SAU variation. We see no issue with the SAU including the multi-technology mix (MTM) technologies (FTTN, FTTB, FTTC and HFC networks) and introducing network boundary points for the included technologies.

Service quality

Aussie Broadband is supportive of NBN Co's proposal to include service standards within the SAU framework, including the consideration of NBN Co pricing and service quality for each regulatory cycle via a cost pass-through mechanism. We are also supportive of the ACCC review powers to consult and set benchmark service standards at either the beginning of, or during a regulatory cycle. We believe that benchmark service standards are important in promoting the LTIE by providing a minimum standard that an end-user can expect when purchasing NBN access. Therefore, it is our view that all required steps should be taken to ensure sufficient regulatory oversight and safeguards are in place. This includes any required flexibility to respond to unforeseen events and address current issues impacting consumers.

Reporting

Aussie Broadband is supportive of ongoing improvements to operational reporting, but also believe that the SAU should contain minimum reporting commitments to support monitoring benchmark service standards without restricting future improvements, including the proposed development of an ACCC Record Keeping Rule. We consider Record Keeping Requirements are essential in ensuring NBN Co remain subject to comprehensive reporting commitments. However, we also note that public reporting enabled through a Record Keeping Rule would not be expected to be implemented until 2024 and would also be subject to future consideration by the ACCC. While Aussie Broadband appreciates that NBN Co will provide monthly network utilisation reporting and quarterly reporting on the shared network, we believe NBN Co should continue its own public reporting on congestion, network availability, and connection and assurance performance, among other things, for the foreseeable future.

ACCC functions and powers

Aussie Broadband requests that NBN Co and ACCC are clear on the path to the introduction of the SAU and that the highest level of transparency is provided which specifically focuses on the efficient operations of a government business enterprise which is also the monopolistic wholesaler. Price controls should provide RSPs and consumers a level of safety that an essential service such as internet access does not become unaffordable in the future.

Lastly Aussie Broadband is focused on moving forward with the ACCC and NBN to ensure there is a path forward on the SAU. The guiding principle we are looking for from all parties is to keep any major changes minimal to ensure implementation in a timely manner.

Warm regards,



Jonathan Prosser
Chief Strategy Officer
Aussie Broadband Limited