



29 September 2016

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Additional Submission in response to ACCC consultation paper 'Variation to NBN Co Special Access Undertaking' dated 20 July 2016

The Competitive Carriers' Coalition (**CCC**) makes this additional submission to draw the attention of the ACCC to recent comments by NBN Co Limited (**NBN Co**) which, the CCC considers, clearly demonstrate that NBN Co's current pricing model does not meet the reasonableness criteria for pricing established by the ACCC when the SAU was assessed.

As noted in our previous submission, in assessing the SAU, the ACCC established the principle that

To the extent that a functionally equivalent service is available, the ACCC considers that end-users should not be made worse off by virtue of their migration to the NBN. In particular, to ensure that initial maximum regulated prices will promote the long-term interests of end users, it is important that end users do not experience a 'price shock' due to migration to the NBN.¹

In response to recent public debate about the inadequacy of the current CVC pricing model, NBN Co CEO Bill Morrow appears to be suggesting that the solution is simply for RSPs to increase their prices. He has been quoted as saying to RSPs:

They have to look at their cost structure, they have to look at what retail price that they can actually command and have they even tried going out to see what people are willing to pay.²

These reported comments appear to represent an explicit recognition by Mr Morrow that under NBN's current pricing structure, RSPs have little alternative other than to either offer a reduced standard of service or to raise prices. This clearly demonstrates that NBN pricing structure fails to meet the ACCC's reasonableness criteria. NBN Co's position appears to be that consumers transitioning to NBN will be forced to either accept a reduced standard of service or to pay a higher price for an equivalent standard of service. In either case, end-users are clearly "made worse off by virtue of their migration to the NBN" in direct contravention of the reasonableness principle outlined above.

¹ Final decision: *NBN Co Special Access Undertaking* – December 2013 at paragraph 7.1

² See **A study in slow: Telcos, NBN, trade blows over broadband charges** Debbie Schipp, news.com.au September 28, 2016 10:07am www.heraldsun.com.au/business/a-study-in-slow-telcos-nbn-trade-blows-over-broadband-charges/news-story/e36722e86bf289ffe85f36381834e4a3 and also **NBN stirs broadband cost fears** September 24, 2016 9:00am Lilly Vitorovich Australian Associated Press <http://www.news.com.au/finance/business/breaking-news/nbn-stirs-broadband-cost-fears/news-story/d23c3894be1a2b90278fef40e162cf38>



It is also worthwhile to note that Mr Morrow's suggestion that RSPs will be required to increase their retail price is based on NBN's currently "discounted" CVC pricing.

Mr Morrow said NBN has cut the CVC from \$20 to \$15.75 and it will drop further.

"We see this thing going down near the \$10 level with the amount of consumption or data usage that we forecast into the future," he said.³

That is, Mr Morrow is suggesting that RSPs will be required to increase their retail price to end-users in order to maintain the level of service that the end users were receiving prior to transition, or offer a degraded level of service, **even** at a CVC price which is almost 25% lower (and potentially moving to a price that is 50% lower) than the CVC price which is enshrined in the proposed SAU Variation.

As noted in our previous submission the proposed SAU Variation would apply a rate of \$20 per Mbps for CVC capacity to all of the MTM services which are not covered by the current SAU. This price would then be locked in with no effective opportunity for regulatory review of this price for the 30 year duration of the SAU.

While NBN is currently offering some (inadequate) discount on CVC pricing. This discount is not reflected in the SAU Variation and is subject to variation at will by NBN Co. As noted above, NBN Co is suggesting that CVC pricing could ultimately fall to around \$10 per Mbps⁴. (Accordingly it is difficult to comprehend why NBN Co would consider that it is appropriate, reasonable or in the LTIE to be proposing to extend a CVC price of \$20 per Mbps to MTM services. That is a price that is 100% higher than what NBN Co itself sees as ultimately likely to be an appropriate price.

In light of the above the CCC reiterates its view that it is not reasonable nor in the LTIE to accept NBN Co's proposed SAU Variation.

³ **NBN stirs broadband cost fears** op cit

⁴ Notwithstanding the claim by Mr Morrow quoted above, even under the RSP-based dimension pricing model on which NBN Co is currently consulting, it does not appear to be possible for the CVC price to fall below \$11.50 per Mbps.