

29 June 2023

Supplementary Submission to ACCC re Draft Decision to NBN Co SAU Proposal.

Commpete confirms the original proposed approach in the SAU is preferred, and not the new proposed floor and ceiling construct. This is because, for example, the original proposal is more favourable for some providers to utilise the CVC underage in the national pool. That then can have a balancing effect on heavier end users. The original proposal is also seen as more favourable for new entrants and challenger providers whilst they build out their IT systems to support scale.

Commpete's view is the original proposal to retain a CVC component for speed tiers <100 Mbps, while removing it for those tiers ≥100 Mbps, was unlikely to promote the efficient use limb of the LTIE test as it will tend to force end-users to move up speed tiers and potentially well beyond their actual usage requirements. It is also likely to encourage greater mobile substitution than otherwise would occur, which would ultimately result in higher unit costs. This is where a fundamental change would lie, rather than increasing 'complexity to one speed plan' in the proposed new construct.

Therefore this proposal is not a preferred, and falls short. However, Commpete's overall position is that there comes a time when we need to accept, at least for now, the balance on these matters that the ACCC is prepared to accept.

Commpete is pleased with the attention NBN Co is placing on the near removal of 'switching fees'. Commpete believes the charges that should be removed include the "Service Transfer" and "Non-Infrastructure Transfer" Fees that NBN Co. levies of \$5 on each AVC transfer between RSP's. This charge negatively impacts challenger providers. The removal would also be favourable to bulk transfers during mergers and acquisitions as the market structure forms into the next phase until 2040.

Commpete believes they are unjustified taxes relating to electronic, zero cost transactions for end users switching retail service providers. The reduction in Network-to-network interface fees supports new market entrants, however now the NBN is built, we believe retail competition across small and larger players will be enhanced by removal of these switching fees.

We are encouraged these fees are being addressed.

Around the time of NBN Co's inception, a 2012 JP Morgan report provided a benchmark to Government on what success would look like for the delivery of a National Broadband Network. It stated with an effective competition policy and a healthy advanced economy, smaller businesses (i.e., the challengers outside the Big-3) would move to occupy 30% market share. This would 'level the playing field'. There have been many hurdles in which smaller providers have endured during this period, however it is pleasing the challengers have grown to approximately 22.5% market share.

Near removal of the switching fees in the SAU would be an example of a final item which does align to this original goal of the NBN.

Commpete is pleased with many outcomes in the current SAU, and the momentum which it is likely to deliver for challengers. But it is worthwhile reflecting on the history of voluntary undertakings – although lauded as one of the centrepieces of the 1998 industry process arrangements, accepted voluntary undertakings are extremely rare. Direct regulation is not the first option for NBN Co regulation. But perhaps it ought to have been.



In Commpete's view, it is now more imperative than ever that the ACCC should use whatever powers of suasion it can muster to move to a final draft and complete the assessment and approval of the subsequent (and hopefully final) variation proposal with maximum expedition.

Contact: Michelle Lim, Chair Commpete – michelle.lim@commpete.org.au, info@commpete.org.au