

**Australian Competition and Consumer Commission
NBN Co SAU Variation Lodged 27 May 2016**

Submission by

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Executive summary

The National Broadband Network (NBN) is a national infrastructure project that will have a significant effect on social cohesion and productivity through Australia's participation in the global digital economy and by providing access to a range of new and innovative digital services, including Government information and service delivery, telecommunications and consumer oriented products and services. On 27 May 2016, NBN Co lodged a variation (NBN Co, 2016a) to its Special Access Undertaking (SAU) with the Australian Competition and Consumer Commission (ACCC). The ACCC provided a consultation paper (ACCC, 2016) outlining key issues regarding NBN Co's proposed variation to its SAU. The variations proposed by NBN Co include changes to service descriptions, co-existence and remediation provisions, and rollout information. Overall, the SAU variation should in a majority of aspects be rejected as it aims to reinforce the reduced reliability and service performance of Multi-Technology Mix (MTM) NBN, introduces technical outcomes that will be detrimental to consumers, particularly those that fall outside the footprint of the technologies to be used in the pre-September 2013 NBN and aims to reduce the open and transparent publication of information about the NBN rollout progress, which is vital for market competition and for consumer awareness.

Variations

On 27 May 2016, NBN Co lodged a variation (NBN Co, 2016a) to its Special Access Undertaking (SAU) with the Australian Competition and Consumer Commission (ACCC). The ACCC provided a consultation paper (ACCC, 2016) outlining key issues regarding NBN Co's proposed variation to its SAU.

The supporting documents to NBN Co's SAU variation include expert reports that were carefully constructed to support NBN Co's SAU variation whilst not entering into areas that would demonstrate the SAU variation is an overall negative outcome for a fair and open competitive telecommunications market and for consumers. It appears that Analysys Mason were asked to not consider a range of matters that would have affected the outcomes presented in its report, including a comparison with FTTP and the recent analysis by major international telecommunication companies comparing HFC and FTTP, for example. The rate of return approach and principles analysis does not take into account the potential for consumers to demand that payment occurs for link performance rather than a speed tier approach that was appropriate when all customers would have FTTP, fixed wireless or satellite but this no longer remains the case. Consumers are not being provided with fair pricing with the introduction of technologies that provide "up to" performance and reduced reliability. The report on the transition from FTTP to inferior technologies does not take into account performance, reliability and open competitive outcomes identified in previous agreements between the ACCC and NBN Co and the ACCC would be justified in refusing the SAU variations on the basis that it is a backwards step for competition and consumer protection.

Proposals for variations to the service description to incorporate FTTN, FTTB and HFC should be opposed because the definitions of the NBN access service and user network interface (UNI), as well as changes to the SAU dictionary, provide evidence that the network design is being degraded below that agreed upon earlier, that customers will not be provided with services capable of meeting similar standards and yet customers will be asked to pay the same for speed tiers whilst many will not receive value for money. The reduction in service quality, increase in service class 0 premises and other factors associated with NBN Co's direction post September 2013 are not in the market and consumer interest.

Changes to the definition of the UNI will lead to reduced performance and reliability, and an increase in consumer complaints. Currently the UNI and everything behind it is part of the NBN which provides consumers with some clarity as to responsibility when a fault occurs. By adopting a non-standard definition of the UNI and removing the NBN Co providing NTD for FTTN/B is a shift back to the "bad old days" of ADSL2+ with consumers uncertain as to responsibility and service providers having the option to misdirect consumer complaints by pointing at the customer purchased NTD/firewall. This shift will also make it increasingly difficult to gather access network performance data.

The Layer 2 service variation is inconsistent with industry norms where a supplier is in control of both ends of the link or channels used to provide the Layer 2 service. Failure to be in control of both end points will introduce service performance and reliability inconsistencies and the potential for access seekers and customers to receive variable service quality outcomes.

The technical shift will have implications out to 2040 and one of the consequences will be to reduce the opportunity for a consistent view and implementation of access networks thereby improving overall service quality.

The new co-existence and remediation provisions are a strong indicator of the inferior technologies now being utilized by NBN Co and to satisfy Telstra's demands for concessions whilst Telstra takes over much of the NBN rollout. The arguments for the co-existence and remediation provisions benefit Telstra and are to the detriment of the remainder of the telecommunications industry and consumers. For a competitive telecommunications market to develop there is a key requirement that customers be shifted onto the NBN as quickly as possible and whilst it may not be apparent from the submission, the changes provide increased flexibility to NBN Co and Telstra to delay the completion of the NBN rollout for difficult to get to premises whether this is a group or individual.

NBN Co's SAU variation proposal to effectively reduce the rollout information provided both to access seekers and the general public through its websites and quarterly reports should be opposed. Post September 2013, NBN Co has slowly reduced the information available about the state of the NBN rollout and the lack of information is to the detriment of smaller access seekers, tier 2 and 3 retail service providers and customers.

The recent reduction of information available on NBN Co's build prep map (NBN Co, 2016b) is an example of how NBN Co is reducing visibility of the NBN rollout.

A vital consumer service is provided by the NBN Tracker (Finder, 2016) and NBN Co appears to be taking steps to further reduce the information available for public dissemination.

The reduction in rollout information will invariably benefit the larger telecommunication companies at the expense of smaller providers and consumers. NBN Co's assurances to RSPs should be discounted as being not of the same standard as to what is being provided now and is open to abuse. The use of an online platform for the dissemination of information is reasonable if the amount of information being made available is not less than that committed to in the current SAU and access to this information is not restricted. Public access to information has been severely restricted post September 2013 and this is an indicator of what is to come if NBN Co's SAU variation is accepted.

Design rules

The ACCC should take this opportunity to revisit NBN Co's SAU design rules submission and to ask NBN Co to provide a more reasonable statement of the design. The document is of marginal value other than to highlight the lack of quality and reliability post September 2013. The document gives the impression that it is in some way a description of the engineering associated with the NBN, but it should not make this inference. NBN Co's design rules include vague statements and a lack of important detail (Gregory, 2015b) and the changes to this document (Gregory, 2015a) in recent years again highlights the reduction in quality and reliability of the current NBN design.

Political interference

NBN Co's SAU variations appear to have been tailored to provide political outcomes, whether it be to facilitate Telstra's increasing involvement with the NBN rollout, which is to the detriment of an open and fair telecommunications market, to facilitate a reduction in overall quality, performance and reliability or to ensure that there is reduced visibility of the state of the NBN rollout in the lead-up to the 2019 Federal Election (or earlier).

The subtle moves by NBN Co to reduce quality, reliability and visibility will inevitably mean that NBN Co will join the telecommunications industry chorus arguing against the ACCC's proposal for access network performance monitoring. With the pre-September 2013 NBN design, NBN Co would be able to remain a bystander whilst the ACCC puts its case to the Government about the need for access network performance monitoring but now NBN Co would need to position itself with the remainder of the telecommunications industry in opposing performance monitoring lest the reduced performance and reliability of the post September 2013 NBN becomes public.

Whilst the telecommunications industry may oppose access network performance monitoring, if it were put in place the outcome would be more satisfied customers, a reduction in complaints and a focus on the second rate NBN being rolled out now.

The ACCC should not be a party to providing the Coalition Government with relief.

References

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