

# **nbn** supplementary submission to the ACCC – Variation to the NBN Co Special Access Undertaking

29 September 2016





nbn supplementary submission to the ACCC – Variation to the NBN Co Special Access Undertaking

29 September 2016

## Copyright

This document is subject to copyright and must not be used except as permitted below or under the Copyright Act 1968 (Cth). You must not reproduce or publish this document in whole or in part for commercial gain without the prior written consent of nbn co (**nbn**). You may reproduce and publish this document in whole or in part for educational or non-commercial purposes as approved by **nbn** in writing.

© 2016 nbn co limited. All rights reserved. Not for general distribution.

## Disclaimer

This document is provided for information purposes only. The recipient must not use this document other than with the consent of **nbn** and must make its own inquiries as to the currency, accuracy and completeness of this document and the information contained in it. The contents of this document should not be relied upon as representing **nbn**'s final position on the subject matter of this document, except where stated otherwise. Any requirements of **nbn** or views expressed by **nbn** in this document may change as a consequence of **nbn** finalising formal technical specifications, or legislative and regulatory developments.

## Environment

**nbn** asks that you consider the environment before printing this document.



# Contents

<b>1. Introduction</b>	<b>1</b>
<b>2. Regulatory framework</b>	<b>2</b>
2.1 Scope of the SAU Variation and the ACCC's assessment	2
2.2 Alternative approaches	3
2.3 SAU/SAU Variation does not set out all of the terms and conditions of access to the MTM	3
2.4 Statutory criteria	4
<b>3. Service description</b>	<b>5</b>
3.1 Incorporating new access technologies	5
3.2 UNI definition	6
3.3 Removal of network boundary point definition	6
<b>4. Co-existence Period and Remediation</b>	<b>8</b>
4.1 Co-existence Period	8
4.2 Remediation	9
<b>5. Rollout progress information</b>	<b>10</b>
<b>6. Dispute management</b>	<b>12</b>
<b>7. NBN Offers and Other Charges</b>	<b>13</b>
7.1 Current price structure and its application to the additional MTM technologies	13
7.2 Relevance of pricing on competing infrastructure	14
7.3 Differences in Other Charges across technology types	14
7.4 HFC Standard Installation	16
<b>8. PDF consultation process</b>	<b>18</b>



# 1. Introduction

1. **nbn** has reviewed the submissions lodged by other interested parties in response to the ACCC's Consultation Paper in regard to the variation to the NBN Co Special Access Undertaking (**SAU**), as lodged by **nbn** on 27 May 2016.
2. To assist the ACCC in its consideration of the SAU Variation, **nbn** has prepared this supplementary submission to address a number of the points made by other interested parties. The submission is intended to be read together with **nbn**'s supporting submission (lodged on 27 May 2016) and **nbn**'s submission in response to the consultation paper (lodged on 26 August 2016).
3. In summary, **nbn** submits that nothing in the submissions from other interested parties provides a basis for the ACCC to reject the SAU Variation.
4. Despite the guidance provided by the ACCC in its Consultation Paper, a number of submissions raise issues that are clearly not within the scope of the current assessment process. In view of this, **nbn** is making two types of comments: comments on submissions that raise matters outside the scope of the ACCC's assessment of the SAU Variation; and substantive comments on matters within that scope.
5. Following the order in which they are discussed in the ACCC's Consultation Paper (where relevant), **nbn**'s comments relate to the following topic areas:
  - (a) the regulatory framework applicable to the ACCC's acceptance of the SAU Variation – section 2;
  - (b) the changes to the service description in relation to the incorporation of new access technology variants (such as FTTdp), the UNI definition, and the removal of the network boundary point definition – section 3;
  - (c) the Co-existence Period and Remediation provisions for FTTB and FTTN – section 4;
  - (d) the rollout progress information commitments – section 5;
  - (e) the changes to the dispute resolution arrangements – section 6;
  - (f) NBN Offers and Other Charges – section 7; and
  - (g) the PDF consultation process – section 8.
6. Please note that this is not an exhaustive submission and **nbn** does not necessarily agree with those aspects of other parties' submissions that are not addressed here.



## 2. Regulatory framework

7. In section 2 of the Consultation Paper, the ACCC describes the regulatory framework that applies to **nbn** and the criteria for the ACCC's assessment of an SAU Variation. A number of interested parties have made submissions on some aspects of this section 2 of the Consultation Paper and **nbn** responds to those issues in this section.

### 2.1 Scope of the SAU Variation and the ACCC's assessment

8. As the ACCC indicates in the Consultation Paper, it is important to focus on the proper assessment of the SAU Variation to determine which issues are outside scope:

*"the ACCC's assessment of the SAU variation will be an assessment of the varied terms, the effects of the varied terms, and the interaction of the varied terms with unchanged provisions in the SAU. In other words, the ACCC proposes to assess varied terms in the context of the whole SAU. However, the ACCC does not consider the assessment of the SAU variation to be a reassessment of each existing provision in the SAU."<sup>1</sup>*

9. A number of submissions made by interested parties involve re-opening issues that are settled in the original SAU and hence would involve a re-assessment of the SAU if considered again. These submissions have not heeded the ACCC's advice<sup>2</sup> to "clearly explain the link between the varied terms and unvaried terms if making submissions on terms that have not been marked up as varied terms."
10. For example, the CCC states that "it is therefore essential for the ACCC to apply the section 152CBD(2) criteria to the SAU (as varied) as a whole, when considering whether to accept the Variation."<sup>3</sup> There is no proper legislative basis for this statement; it is very clear from the legislation that the ACCC assessment does not involve applying the criteria to the varied SAU as a whole.
11. Also, the CCC and Optus make submissions about CVC pricing. Neither the CCC nor Optus make any submission about why CVC pricing applied to the particular technologies covered by the SAU Variation (i.e. FTTB, FTTN and HFC) is in any way different to the existing technologies incorporated in the SAU as accepted by the ACCC. The CCC and Optus' submissions (as discussed further in section 7.1 below) involve a re-assessment of this issue.
12. **nbn** assumes that the ACCC will not consider these submissions which would require the ACCC to re-assess existing provisions in the SAU.

---

<sup>1</sup> ACCC, Consultation Paper, p.14

<sup>2</sup> ACCC, Consultation Paper, p.15.

<sup>3</sup> CCC submission, p.3.



## 2.2 Alternative approaches

13. In addition, **nbn** submits that the ACCC's role when assessing the SAU Variation is to assess whether it meets the statutory criteria. The ACCC's role is not to seek to analyse whether there is a better or 'more reasonable' alternative.
14. There are a number of submissions made by interested parties which invite the ACCC to consider a range of alternatives rather than assessing the variation itself. **nbn** submits that the ACCC's role is to assess the SAU Variation rather than to assess whether any number of known or possibly unknown alternatives exist.
15. For example, Telstra submits<sup>4</sup> that the ACCC's review "should not preclude the ACCC from considering whether the SAU could be further varied to improve the operation of the SAU from an Access Seeker point of view".
16. Optus also submits that "it is important for the ACCC to acknowledge that there may be other charging distributions which better promote the LTIE than the current AVC-CVC split."<sup>5</sup> This submission seeks to re-open a settled issue under the current SAU, but also requests the ACCC to consider a range of other options rather than the content of the variation itself.

## 2.3 SAU/SAU Variation does not set out all of the terms and conditions of access to the MTM

17. Neither the SAU nor the SAU Variation seeks to cover the field of all issues relevant to the MTM technologies. **nbn** notes previous acknowledgements by the ACCC that the SAU does not set out all of the terms and conditions of access.<sup>6</sup> In respect of a matter that the SAU (or, in this case, the SAU Variation) does not address, it is open for parties to reach agreement on that matter or, failing agreement, for the ACCC to step in using its AD/BROC powers under the CCA. This issue is further highlighted in following sections of this supplementary submission.
18. Submissions by Optus<sup>7</sup> in particular are that by accepting the SAU Variation, the parties are precluded from reaching agreement on matters not covered by the SAU or SAU Variation and that the ACCC is precluded from intervening to ensure terms and conditions are reasonable.
19. There is a wide range of subject matter which is not contained in the SAU or the SAU Variation, as can be seen from **nbn's** Wholesale Broadband Agreement. Optus' submissions in this regard overstate the effect of accepting the SAU Variation. The effect of having accepted the SAU, and the effect of accepting the SAU Variation, must be considered on a case-by-case basis depending on the scope of the SAU and the SAU Variation respectively.

---

<sup>4</sup> Telstra submission, p.5.

<sup>5</sup> Optus submission, pp 15, 18

<sup>6</sup> ACCC Draft Decision, 2012, pp 34-35

<sup>7</sup> Optus submission, pp. 3, 6-8, 10.



## 2.4 Statutory criteria

20. Finally, **nbn** notes that some submissions from interested parties are limited to a consideration of whether the SAU Variation promotes the LTIE. Telstra<sup>8</sup>, Optus<sup>9</sup> and ACCAN<sup>10</sup> state that the variation (or some aspect of it) does not promote the LTIE. However, this is too narrow a characterisation of the relevant tests, which are set out in s 152CBD(2) via s 152CBG(4). **nbn**'s supporting submission sets out in detail the relevant statutory tests and why the SAU Variation meets those tests.
21. Optus also submits<sup>11</sup> that the new MTM technologies are already covered in the LTRCM provisions and that, as a result, the focus of the ACCC's assessment should be on promotion of competition, the efficient use of **nbn** infrastructure and the interests of access seekers. This submission invites the ACCC to limit the matters that the ACCC must take into account. However, the ACCC must have regard to all of the relevant statutory criteria (and each relevant limb of each criteria). The ACCC cannot ignore a criterion. Again, **nbn**'s supporting submission sets out in detail why the SAU Variation meets the statutory criteria.

---

<sup>8</sup> Telstra submission, p.3.

<sup>9</sup> Optus submission, p.3 and throughout.

<sup>10</sup> ACCAN submission, p.1.

<sup>11</sup> Optus submission, p.9.



## 3. Service description

### 3.1 Incorporating new access technologies

22. Telstra<sup>12</sup>, Optus<sup>13</sup> and the CCC<sup>14</sup> have made submissions regarding some aspects of the mechanism included in the SAU Variation for incorporating new access technologies within the scope of the NBN Access Service over time. However, these concerns are unfounded because they are based on a number of misunderstandings regarding the purpose, operation and effect of the mechanism. In response, **nbn** highlights the following points:
- (a) Purpose – the mechanism provides a means for the SAU’s description of the NBN Access Service to incorporate provision of that service over a broader range of access technologies over time without the need to vary the SAU. This makes the NBN Access Service more technology neutral, and will provide for a more time and cost efficient means of managing the SAU in a dynamic technology environment.
  - (b) Operation – the description of the NBN Access Service is linked to the definition of ‘NBN Co Network’, and the mechanism to incorporate new access technologies (as a means of providing the NBN Access Service) is contained in a new part (g) to that definition. The key feature of the mechanism is that a new access technology will be recognised as being part of the ‘NBN Co Network’ when **nbn** uses that new access technology to supply a Product that has been introduced or varied in accordance with the product development arrangements in Schedule 1I or Schedule 2D.
  - (c) Effect – when the mechanism is used to incorporate a new access technology, its effect is to expand the scope of the NBN Access Service (e.g. to incorporate provision of the service over FTTdp). However, it is important to note three points. First, all other aspects of the NBN Access Service are unchanged (e.g. it remains a Layer 2 service between and including a UNI used to serve a Premises and the NNI used to serve that Premises). Second, the SAU Variation does not anticipate the products that will be provided over a new access technology; indeed, as described above, the mechanism works by **nbn** following the SAU’s product development arrangements. As part of consulting on proposed products, the SAU (Schedules 1I and 2D) would also require **nbn** to consult on the proposed prices, service levels and technical attributes. Third, once the relevant products are introduced, the ACCC would have the reserve power (under Schedules 1C and 2B) to set different Maximum Regulated Prices for associated new NBN Offers or Other Charges up to two years after introduction. As such, the products introduced in this context would be treated no differently under the varied SAU to products introduced in

---

<sup>12</sup> Telstra submission, p.3 and p.6.

<sup>13</sup> Optus submission, pp.21-22.

<sup>14</sup> CCC submission, pp.9-10.





respect of access technologies already incorporated in the NBN Access Service (i.e. the mechanism makes the NBN Access Service more technology neutral).

### 3.2 UNI definition

23. Optus<sup>15</sup> has submitted in relation to the UNI definition that the “lack of provision of NTD by NBN Co should not automatically apply to any future (or variant of any existing) NBN access technologies absent of any robust discussion on the product specification through forums such as the PDF.” However, as is the case in relation to the mechanism for incorporating new access technologies into the description of the NBN Access Service, Optus’ concern is unfounded because it is based on a misunderstanding of the UNI definition. In response, **nbn** highlights the following points:

- (a) UNI is defined in clause 1A.3.1 of the SAU Variation. In sub-clause (a), there is a general definition – “A UNI is the physical interface to which NBN Co supplies the NBN Access Service in respect of a Premises.” This is complemented in sub-clause (b) (and without limiting sub-clause (a)) by more specific definitions for each of the currently incorporated access technologies (i.e Fibre, FTTB, FTTN, HFC, fixed wireless and satellite).
- (b) Only sub-clause (a) is relevant to any new access technologies that are incorporated into the NBN Access Service in accordance with the relevant mechanism, and this sub-clause does not presume (contrary to Optus’ submission) the location of the UNI. As such, the UNI for a Product supplied using a new access technology could be located on an NTD, on a passive NTD or at some other specified location(s).
- (c) As discussed in section 3.1 above, in order to use the mechanism to incorporate a new access technology into the NBN Access Service, **nbn** first has to have introduced or varied a relevant Product in accordance with the product development arrangements in Schedule 1I or Schedule 2D. These arrangements involve consultation via the Product Development Forum, which is entirely consistent with Optus’ submissions in this situation.

### 3.3 Removal of network boundary point definition

24. Telstra<sup>16</sup> and Optus<sup>17</sup> have made similar submissions in relation to the removal of the network boundary point definition in the SAU Variation. These submissions focus on the need for certainty and clarity. In response, **nbn** highlights the following points:

- (a) Telstra has submitted that “at this point in time it would be appropriate to include the description of the NEBS boundaries from the existing WBA for the network boundary point in the SAU ...”. **nbn** notes that the definition of NEBS boundaries from section 12.2 of the WBA Product Description – NEBS (which Telstra goes on to quote) is expressed in almost

---

<sup>15</sup> Optus submission, p.23.

<sup>16</sup> Telstra submission, pp.7-8.

<sup>17</sup> Optus submission, pp.21-22 and pp.23-24.



identical terms to the scope of the NBN Access Service as described in the SAU Variation. As such, and consistent with **nbn**'s previous submissions, the definition of the NBN Access Service is clear and it would be redundant to have a separate network boundary point definition in the SAU Variation that is duplicative in nature.

- (b) Optus has submitted that the existing SAU's network boundary point definition should not be removed and that new UNI definitions for FTTN, FTTB and HFC could be included. **nbn** notes two points. First, as with **nbn**'s response to Telstra's submission, it would be redundant to have a network boundary point definition in the SAU that essentially duplicates the definition of the NBN Access Service. Second, it would be problematic to include a much more detailed network boundary point definition in the SAU (such as WBA2's definition of 'NBN Co Network Boundaries', which is different to the description in WBA2 of NEBS boundaries) because such a definition would need to incorporate by reference, or draw on technical details from, **nbn** technical documents, in which case the definition cannot be confidently expected to remain appropriate over the term of the SAU.
- (c) It is therefore most appropriate, as in so many other areas, to leave the technical detail to be defined in the WBA/SFAA, which means that it can evolve over time and with scope for ACCC intervention if required as described in section 2.3 above. As the ACCC is aware, various aspects of the original SAU lodged with the ACCC in 2012 were removed in the accepted version of the SAU. Removal of this content simply meant that there was no regulatory endorsement of those removed matters. Removing the definition of the network boundary point has the same effect.



## 4. Co-existence Period and Remediation

### 4.1 Co-existence Period

25. Telstra<sup>18</sup>, Optus<sup>19</sup> and ACCAN<sup>20</sup> have each commented on the provisions relating to the Co-existence Period in the SAU Variation. In response, **nbn** highlights the following points:
- (a) Telstra says that it understands the purpose of including Co-existence Period provisions in both the SAU Variation and the WBA/SFAA and also says that it is entirely appropriate for **nbn** to provide clarity to access seekers and their end users about the expected performance of the NBN Access Service.
  - (b) Telstra is of the view that the definition of 'Co-existence Period' in the SAU Variation is too broad and is currently being negotiated with access seekers in the context of the replacement agreement for WBA2. However, the definition in the SAU Variation is based on the WBA2 definition. Concerns raised by Telstra can be set out in more detailed provisions in the WBA/SFAA.
  - (c) Optus' comments that it is "too early to lock down the rules [on the Co-existence Period] in the SAU for a 24 year period" and that "[i]t is better to continue to rely on the terms in the WBA-SFAA agreements", indicate that Optus has misunderstood the approach taken in the SAU Variation to the drafting of the Co-existence Period provisions. In this context, **nbn** highlights the following two points. First, the drafting of the Co-existence Period provisions in the SAU Variation follows the same approach as the SAU generally, which (as described earlier in this supplementary submission) leaves more detailed terms to be defined over time in the WBA/SFAA. The SAU is not the appropriate vehicle for detailed, process-related terms and conditions. Second, noting that FTTB and FTTN were only launched in 2015, **nbn** is still in the process of acquiring practical experience in regard to the management of the Co-existence Period. This means that (consistent with Optus' comments) it would be very difficult at this stage to define detailed provisions that can be confidently expected to remain appropriate over the relevant time period. Optus' submissions in this regard in fact support **nbn**'s approach to leave these process issues to be defined in the WBA/SFAA.
  - (d) In regard to ACCAN's comments about the provision of information to end-users (via their RSPs) about the operation of the Co-existence Period, **nbn** notes that these relate to detailed operational matters. For the same reasons as described above in relation to Optus' comments, **nbn** considers that it is most appropriate for such matters to be left to evolve over time in the WBA/SFAA.

---

<sup>18</sup> Telstra submission, pp.9-10.

<sup>19</sup> Optus submission, pp.25-19.

<sup>20</sup> ACCAN submission, pp.2-3.



## 4.2 Remediation

26. Telstra<sup>21</sup>, Optus<sup>22</sup> and ACCAN<sup>23</sup> have also each commented on the provisions relating to Remediation in the SAU Variation. In response, **nbn** highlights the following points:
- (a) Telstra believes it is appropriate for the Remediation provisions to be included in the SAU Variation for the duration of Module 2 (because Remediation is not transitory in nature). **nbn** welcomes Telstra's support in this regard. **nbn** also notes Telstra's comments on possible improvements to Remediation timeframes under the WBA and that Telstra is not submitting that these timeframes should be included in the SAU Variation. This is consistent with **nbn**'s view that it remains most appropriate for such details to be left to evolve over time in the WBA/SFAA.
  - (b) Optus and ACCAN make very similar comments in regard to Remediation as in regard to the Co-existence Period, and **nbn** makes the same points in response.

---

<sup>21</sup> Telstra submission, p. 10.

<sup>22</sup> Optus submission, pp.27-29.

<sup>23</sup> ACCAN submission, pp.2-3.



## 5. Rollout progress information

27. A number of interested parties made comments in regard to the changes to the rollout progress information commitments in the SAU Variation. In response, **nbn** highlights the following points:
- (a) The SAU commitments are made in relation to provision of information to Access Seekers. **nbn** also provides relevant information to the general public on its website, separate from the commitments in the SAU.
  - (b) It is appropriate that the SAU contains a set of commitments regarding the rollout information **nbn** will make available to access seekers, with sufficient flexibility for **nbn** to respond to changes to its rollout planning processes and evolving customer requirements. The SAU is not intended to limit information that **nbn** has an incentive to provide including detailed rollout information to assist customers to plan and market the sale of services using the **nbn**<sup>TM</sup> network.
  - (c) Optus<sup>24</sup> has expressed a concern that **nbn** may require them to accept certain conditions to gain access to rollout progress information. Telstra<sup>25</sup> states it has no objection to **nbn** having this ability provided that **nbn** does not require access seekers who have an existing access agreement (such as the WBA) to sign a separate agreement (the relevant conditions should instead be incorporated into the existing access agreement). **nbn** notes that the changes in the SAU Variation simply make clear that if access seekers want to receive **nbn**'s rollout progress information, then they will need to enter into an appropriate form of agreement with **nbn**. In the case of **nbn**'s customers, this would remain the WBA, while other access seekers would need to sign a separate agreement for the purpose of accessing the rollout progress information.
  - (d) With reference to p.25 of **nbn**'s supporting submission, Optus<sup>26</sup> has stated that it is unclear what **nbn** was referring to in regard to the consultation process conducted by **nbn** to improve the metrics used in its rollout plans. To be more specific, **nbn** sought feedback on possible changes to its 3-year construction rollout plan and monthly RFS rollout plan. This occurred via direct engagement, including with Optus, by **nbn**'s sales team in February and March 2016.
  - (e) Optus<sup>27</sup> and ACCAN<sup>28</sup> have expressed views that the 3-year construction rollout plan commitments should cover Fixed Wireless. **nbn** notes that the commitments in the SAU as it currently applies do not include Fixed Wireless. Nonetheless, rollout information on Fixed Wireless has been provided by **nbn** in each of the 3-year plans it has issued, which

---

<sup>24</sup> Optus submission, p.31.

<sup>25</sup> Telstra submission, p.15.

<sup>26</sup> Optus submission, p.30.

<sup>27</sup> Optus submission, p.32.

<sup>28</sup> ACCAN submission, p.4.



is consistent with **nbn**'s commercial incentives to make this information available to its customers when **nbn** is in a position to do so.

- (f) ACCAN<sup>29</sup> has claimed that changes in the SAU Variation would reduce the available rollout progress information to the detriment of smaller access seekers. **nbn** does not accept that this is the case. All **nbn** customers have access to exactly the same rollout progress information through **nbn**'s customer portal, and can directly engage with their **nbn** account manager to obtain additional insights into the state of the rollout.

---

<sup>29</sup> ACCAN submission, p.3.



## 6. Dispute management

28. Telstra<sup>30</sup> states it has no objection to **nbn** “appointing an additional Resolution Advisor, including for transitional purposes, or where additional support is required, nor with a Resolution Advisor being a body corporate”, but goes on to comment that it is not clear what circumstances **nbn** is seeking to address given that the existing dispute management process is untested.
29. In response, **nbn** acknowledges, as noted in **nbn**’s supporting submission<sup>31</sup>, that to date **nbn** has not had any disputes with customers. However, **nbn** has accumulated experience with the appointment, and now re-appointment, of the Resolution Advisor and Pool members in accordance with the SAU, and it is this experience that has informed the small number of changes to clarify, enhance and refine the Dispute Management provisions. **nbn** considers that the rationale for each of the changes is self-evident, but highlights the following points:
- (a) as discussed on p.114 of **nbn**’s supporting submission, the change to clause 2.1(b) of Annexure 1 to Schedule 1H to allow for the appointment of new Pool members over time (rather than just the re-appointment of existing Pool members) will help to ensure that the Pool can be maintained to achieve a beneficial balance of skills, experience and expertise, particularly in light of any resignations from the Pool during the term of appointment; and
  - (b) as noted on p.115 of **nbn**’s supporting submission, the change to clause 5.3 of Annexure 1 to Schedule 1H to extend the application of the Resolution Advisor appointment process to the appointment of an additional Resolution Advisor will help to clarify the existing arrangements set out in the Approved Resolution Advisor Terms of appointment, which establishes the role of Alternate Advisor. (In this context, **nbn** notes that the SAU currently contemplates multiple Resolution Advisors (see clause 6(a)(iii) of Annexure 1 to Schedule 1H).

---

<sup>30</sup> Telstra submission, p.16.

<sup>31</sup> **nbn** Supporting Submission, p.28.



## 7. NBN Offers and Other Charges

30. A number of interested parties have commented on the pricing of NBN Offers and Other Charges in the SAU Variation.
31. In response, **nbn** sets out below some points in respect of: the current price structure and its application to the additional MTM technologies; the relevance of pricing on competing infrastructure; the differences in Other Charges across technology types; and HFC Standard Installation.
32. At the outset, however, **nbn** reiterates that (as discussed in **nbn**'s supporting submission<sup>32</sup>) it has appropriate incentives in regard to how it prices over time and that this will involve ongoing engagement with industry on the evolution of pricing structures and levels.

### 7.1 Current price structure and its application to the additional MTM technologies

33. Optus<sup>33</sup> and the CCC<sup>34</sup> have made submissions about the current price structure under the SAU and the application of that pricing structure to the additional MTM technologies. Optus has also stated that "it is important for the ACCC to acknowledge that there may be other charging distributions which better promote the LTIE than the current AVC-CVC split."<sup>35</sup> In response, **nbn** highlights the following points:
- (a) The SAU Variation does not involve any change to **nbn**'s pricing structure nor, more particularly, does it involve any change to the pricing level of CVC. As such, as discussed in section 2.2 above, Optus' and the CCC's submissions relate to matters that are not within the scope of the current assessment process.
  - (b) Nonetheless, **nbn** notes that:
    - (i) the CCC fails to acknowledge the fact that the construction of the **nbn**<sup>TM</sup> network involves significant capital investment and that any change to the pricing structure (and associated levels) must account for **nbn**'s need to recover certain amounts of revenue over time (consistent with its legitimate business interests);
    - (ii) the MRPs in the SAU provide a 'ceiling' on the Prices **nbn** may charge – they do not prevent **nbn** from lowering Prices. **nbn** has a clear incentive to encourage take-up and utilisation of the **nbn**<sup>TM</sup> network, as well as encouraging RSPs to dimension their networks to maximise end-user experience;

---

<sup>32</sup> **nbn** Supporting Submission, p.55.

<sup>33</sup> Optus submission, p.4 and pp.12-18.

<sup>34</sup> CCC submission, pp.5-8.

<sup>35</sup> Optus submission, p.18.





- (iii) **nbn's** response to these incentives was demonstrated when it reduced the CVC Price from \$20 to \$17.50 per Mbps (in February 2015). More recently, **nbn** has introduced a Dimension Based Discounting (DBD) scheme. This has resulted in a further reduction in the effective TC-4 CVC price, on all network excluding satellite, from \$17.50 to \$15.75 per Mbps (for the first applicable discount period), with further moves in the discount available as the industry average CVC capacity per end-user changes. **nbn** is also working to evolve the DBD construct so that it is based on an RSP-specific (rather than an industry average) calculation of CVC dimensioning.<sup>36</sup> Industry consultation will begin shortly on a proposed approach; and
- (iv) in any event, the SAU as it currently applies includes a reserve power for the ACCC to undertake price rebalancing (for example, as between AVC and CVC) subject to certain conditions, and the SAU Variation does not include any changes to the relevant provisions.

## 7.2 Relevance of pricing on competing infrastructure

34. The CCC<sup>37</sup> has submitted that to avoid price shocks, **nbn's** services "should be priced at a level that is no higher than the price of functionally equivalent services, regardless of the infrastructure over which they are provided." By way of example, the CCC submits that **nbn** should charge no more than TPG does for its FTTB service. In response, **nbn** highlights the following points:
- (a) The only situation in which the potential for price shock is relevant to how **nbn** prices its services is in regard to the mandatory disconnection of end-users from legacy networks as part of the rollout of the **nbn**<sup>TM</sup> network. It is bizarre to submit that there is a potential for price shock arising from the existence of infrastructure-based competition to **nbn**.
  - (b) Given the ACCC's recent declaration of the Superfast Broadband Access Service (SBAS)<sup>38</sup>, access seekers will, in some locations, be able to choose between **nbn** and another access provider.
  - (c) The SAU's price controls specify Maximum Regulated Prices. These do not preclude **nbn** from responding to infrastructure-based competition and, as noted earlier, **nbn** has appropriate incentives in regard to how it prices over time.

## 7.3 Differences in Other Charges across technology types

35. ACCAN<sup>39</sup> and Telstra<sup>40</sup> have made submissions about differences in the MRPs for certain Other Charges in the SAU Variation across the different technology types, specifically referring to the Other

---

<sup>36</sup> **nbn** Corporate Plan 2017, p.39.

<sup>37</sup> CCC submission, p.6.

<sup>38</sup> ACCC, Superfast Broadband Access Service declaration inquiry – Final decision, July 2016.



Charges in regard to Equipment Modification (attendance at Premises required), Equipment Repair, Equipment Removal, Late Cancellation (Site visit required) and Missed Appointment.

36. The MRPs for the Late Cancellation (Site visit required) and Missed Appointment Other Charges are: \$0 in respect of the NBN Co Fibre Network and NBN Co Wireless Network; and \$75 in respect of the NBN Co FTTB Network, NBN Co FTTN Network and NBN Co HFC Network.<sup>41</sup> **nbn** highlights the following points in regard to these differences:

- (a) In respect of the FTTB, FTTN and HFC networks, an MRP of \$75 is intended to recover the costs that **nbn** incurs each time a Late Cancellation (Site visit required) or Missed Appointment occurs (noting that, in each case, a site visit has been arranged with a Customer and a truck roll initiated). Charges of this nature are standard industry practice and the proposed level of the charges is comparable with those charged by other carriers who perform equivalent activities.<sup>42</sup>
- (b) **nbn** currently waives the charges in WBA2 for Late Cancellation (Site Visit Required) and Missed Appointment in respect of the NBN Co FTTB Network, NBN Co FTTN Network, NBN Co Satellite Network and NBN Co HFC Network.<sup>43</sup> As such, the effective outcome is currently the same as Fibre and Wireless.
- (c) In respect of the Fibre and Wireless networks, **nbn** may consider in future introducing a non-Zero Price for these Other Charges, and this is provided for in clause 1C.5.4 of the SAU as it currently applies (**nbn** would be required to provide 6 months' notice and to consult on the proposed non-Zero Price).

37. The MRPs for Equipment Modification (attendance at Premises required), Equipment Removal and Equipment Repair Other Charges are:<sup>44</sup>

- (a) 'Hourly Labour Rate plus cost of materials' in respect of the NBN Co Fibre Network and NBN Co Wireless Network;
- (b) 'Hourly Labour Rate charged for a minimum of 3 hours' in respect of the NBN Co FTTB Network and NBN Co FTTN Network; and

---

<sup>39</sup> ACCAN submission, pp.1-2.

<sup>40</sup> Telstra submission, p.17.

<sup>41</sup> Note that the MRPs for the Late Cancellation (Site visit required) and Missed Appointment Other Charges in respect of the NBN Co Satellite Network are currently as set out in clause 3.3(b) of the WBA2 Price List.

<sup>42</sup> For example, Telstra Wholesale charges between \$80.00 and \$95.00 ex-GST (depending on location) for Late Withdrawal of a ULLS Request (see section B2.8 of the Telstra Wholesale Rate Card dated 6 November 2015).

<sup>43</sup> Ancillary Charges Waiver Discount Notice, clause 2.1(n)-(o), available at:

[http://www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-ancillary-charges-waiver-discount-notice\\_20160804.pdf](http://www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-ancillary-charges-waiver-discount-notice_20160804.pdf)

<sup>44</sup> Note that the MRPs for the Equipment Modification (attendance at Premises required) and Equipment Repair Other Charges in respect of the NBN Co Satellite Network are currently as set out in clause 3.2(b) of the WBA2 Price List.



- (c) 'Hourly Labour Rate charged for a minimum of 3 hours, plus cost of materials' in respect of the NBN Co HFC Network.

38. **nbn** highlights the following points in regard to the differences between these Other Charges:

- (a) **nbn** currently waives the charges in WBA2 for Equipment Modification (attendance at Premises required), Equipment Removal and Equipment Repair in respect of Fibre, FTTB, FTTN, HFC and Wireless.<sup>45</sup> As such, the effective outcome (no charge) is currently the same in all cases.
- (b) In respect of the Fibre, Wireless and HFC networks, a 'cost of materials' component is included in the MRP because **nbn** supplies the NTD in respect of these networks and, as a result, materials may be required to undertake Equipment Modification (attendance at Premises required), Equipment Removal and Equipment Repair activities. This is not the case in respect of the FTTB and FTTN networks.
- (c) The inclusion of a minimum number of hours in the MRPs applicable to FTTB, FTTN and HFC reflects a change in the approach **nbn** has taken to specifying such Prices over time, and is intended to also account for ticket of work based charging by **nbn's** contractors. **nbn** notes that a number of MRPs in the SAU as it currently applies do specify a minimum number of hours (for example, No Fault Found (Truck Roll Required) in respect of Fibre and Wireless).
- (d) In respect of the Fibre and Wireless networks, **nbn** may consider in future introducing 3 hour minimums to match those applicable to FTTB, FTTN and HFC. This is provided for in the SAU as it currently applies through the interaction of clauses 1C.1.3(b) and 1C.5.1.

## 7.4 HFC Standard Installation

39. Although not objecting to the inclusion of a definition of HFC Standard Installation, Optus<sup>46</sup> has made submissions related to how the definition in Annexure 5 to Schedule 1C in the SAU Variation is linked to the possible future introduction by **nbn** of 'End User HFC-NTD Installation'. In response, **nbn** highlights the following points:

- (a) At this stage, **nbn** is still in the process of developing End User HFC-NTD Installation – it has not yet been introduced.
- (b) End User HFC-NTD Installation, which is only relevant in situations where most of the relevant Connecting Equipment is already in place at a Premises (including the HFC Wall Outlet), is intended to achieve time and cost savings in the rollout of **nbn's** HFC network

---

<sup>45</sup> Ancillary Charges Waiver Discount Notice, clause 2.1(f), (g) and (i), available at:

[http://www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-ancillary-charges-waiver-discount-notice\\_20160804.pdf](http://www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-ancillary-charges-waiver-discount-notice_20160804.pdf)

<sup>46</sup> Optus submission, pp.36-38.



by avoiding unnecessary truck rolls. **nbn** is also engaging with access seekers in regard to other installation options, including one in which the access seeker (on **nbn**'s behalf) arranges for the HFC-NTD to be sent to the Premises for the end user to install.

- (c) The definition of End User HFC-NTD Installation in the SAU Variation, which is based on the WBA2 definition, is expressed at a relatively high level and serves to identify the defining characteristics of this method of NTD installation. It does not set out, and would not do so even if they were currently available, all of the operational details that will be relevant to how this method is ultimately implemented, including how exceptions will be handled. This follows the same approach as the SAU generally, which (as described earlier in section 2.3 of this supplementary submission) leaves more detailed terms to be defined over time in the WBA/SFAA.
- (d) **nbn** has every incentive to ensure that the eventual introduction of End User HFC-NTD Installation, including all associated operational details, serves to promote take-up and usage of the **nbn**<sup>TM</sup> network.



## 8. PDF consultation process

40. Telstra<sup>47</sup> has commented that **nbn**'s consultation process is not always transparent and it would be appropriate for the SAU to set out commitments to address this, subject to confidentiality safeguards. In response, **nbn** highlights the following points:
- (a) The SAU Variation does not involve any changes to the product development provisions set out in Schedules 1I and 2D and as such Telstra's comments are not within the scope of the current assessment process and would involve a re-assessment of these existing provisions of the SAU. This is another example of the principle discussed in section 2.1 above.
  - (b) Nonetheless, **nbn** acknowledges Telstra's feedback and notes that the existing SAU provisions already contemplate a range of different consultation methods that can be used as appropriate in particular circumstances. **nbn** has appropriate incentives to use the PDF to consult effectively, and will continue to work with PDF participants over time on proposed improvements to **nbn**'s consultation processes.

---

<sup>47</sup> Telstra submission, p.16.