



Submission in response to  
ACCC consultation

**NBN Co's Response to  
ACCC Draft Decision –  
50/20 Mbps cost  
certainty**

Public Version

June 2023

## EXECUTIVE SUMMARY

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1. Optus welcomes the opportunity to provide further feedback on NBN Co's additional proposals to address 50/20 Mbps cost certainty as part of NBN Co's Special Access Undertaking (SAU) Variation (November SAU Variation).<sup>1</sup>
2. Optus reiterates its views in its submission to the ACCC's draft decision that the ACCC should not accept NBN Co's November SAU Variation due to the lack of cost certainty for RSPs and lack of clear linkage between NBN Co's increased prices and service quality. Further, NBN Co's additional proposals do not form part of the current SAU variation application, and as such can play no part in the ACCC's consideration of the current SAU Variation.
3. In saying that, we understand that the additional proposals have been published to assist in considering what NBN Co may include in any future SAU variation if the current SAU Variation is rejected or withdrawn.
4. Optus does not consider that the two capping approaches proposed by NBN Co are reasonable nor do they promote the long terms interests of end-users (LTIE). Both approaches would lead to further price increases beyond those necessary once the November SAU pricing comes into effect and undermine competition and the efficient operation of downstream retail markets.
5. The two options put forward by NBN Co do not address the cost certainty issues raised by Optus in its submission to the ACCC's draft decision. Certainty through each regulatory determination period can be achieved by ensuring that NBN Co's 3-year pricing roadmap is a binding commitment. This, along with firm commitments around AVC utilisation reporting, would allow RSPs to efficiently manage their wholesale costs and have positive impacts on competition and retail service provision in downstream retail markets.
6. Further, NBN Co's failure to make any meaningful improvements to service levels to address longstanding and existing customer service issues around line performance and dropouts, despite proposed higher pricing, remains unreasonable. There are too many instances where customers are suffering poor experience that are not adequately addressed under NBN Co's existing service standards and rebate framework.
7. Optus again urges the following way forward, that:
  - (a) The ACCC immediately issue an Interim Access Determination (IAD) reflecting the three-year pricing roadmap recently released by NBN Co. This would have the effect of locking in wholesale pricing for the next three years and provide the retail industry with the certainty needed to design retail NBN products.
  - (b) The ACCC reject the revised SAU.
  - (c) NBN Co, the Government, ACCC and industry work together to address current issues with NBN service and quality levels. Should NBN Co refuse to address these concerns, the Government can make minimum wholesale standards under the SIP legislation.

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<sup>1</sup> NBN Co, Response to ACCC Draft Decision – 50/20 Mbps cost certainty, June 2023.

## THE SAU VARIATION REMAINS UNREASONABLE

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8. In its Draft Decision the ACCC noted for the first Regulatory Cycle, that the change in pricing approach (particularly in relation to the most prolific wholesale tier, the 50Mbps tier) could contribute to cost uncertainty, particularly in relation to managing overage costs.<sup>2</sup>
9. The ACCC suggested that measures be implemented by NBN Co to assist RSPs with managing their wholesale costs. Optus noted in its submission in response to the ACCC it generally supported measures to address cost uncertainty.
10. The ACCC specifically suggested additional transparency and reporting by NBN Co regarding timelier and more detailed AVC utilisation data. Optus supports such additional reporting measures as it ensures RSPs are more completely informed and enables them to make decisions how to better manage their wholesale costs.
11. The ACCC also suggested NBN Co consider applying a billing rule to cap the maximum combined AVC and CVC charge that a service would attract under this wholesale offer. Such a billing rule could operate so that a service acquired under the 50 Mbps wholesale offer would not exceed the monthly cost of the residential grade 100 Mbps wholesale offer (i.e. initially \$55 per month).
12. As such, NBN Co has proposed two options it says could address the ACCC's concerns:
  - (a) A floor/ceiling proposal (NBN Co's preferred approach); or
  - (b) An average cap option.
13. NBN Co also notes that a Telstra proposal of a per service cap of \$53 on the cost of individual 50/20 Mbps services without other changes to the pricing framework (including to national pooling of bundled services) is not commercially viable for NBN Co as it would have a revenue impact on NBN Co of around \$220 million per annum.<sup>3</sup>
14. Notwithstanding Optus' views in its submission to the ACCC's draft decision that cost certainty would be achieved by a binding pricing roadmap, Optus' comments are set out below.

### **Neither capping approach is reasonable nor will promote the LTIE**

15. As Optus has noted, it considers cost certainty would be promoted by ensuring NBN Co's 3-year pricing roadmap is binding.
16. In response to the ACCC's draft decision NBN Co has proposed two cap alternatives to potentially assist RSPs in managing costs in the transition to its new pricing approach.
  - (a) A floor/ceiling cap:
    - (i) Would apply to all Bundled TC-4 offers (of 50Mbps or lower) where the charge for an individual AVC and CVC utilised by that AVC would be calculated independently on a per service basis

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<sup>2</sup> ACCC, Draft Decision, p.

<sup>3</sup> NBN Co, Response to ACCC Draft Decision – 50/20 Mbps cost certainty, June 2023, p. 4.

and capped at no more than the price of the 100/20 flat rate offer (initially \$55 in FY24).

- (ii) Individual AVCs would also have a floor price set at the fixed bundle charge for each speed tier.
- (iii) No other charges (including bundle charges, CVC inclusions, CVC overage and flat rate charges);
- (iv) the total wholesale cost of an individual 50Mbps service would be constrained to be at most the flat rate charge for the 100/20 tier; and

(b) An 'average' cap approach:

- (i) Caps the maximum monthly average combined charge for the 50/20 bundled offer (so the average charge for 50/20 services does not exceed the 100/20 flat rate charge(\$55)).
- (ii) If the average charge exceeds the flat rate charge over a month NBN Co would rebate back the difference.
- (iii) The average charge option does not apply to individual services but operates on the average charges across all 50/20.
- (iv) The level of the average charge cap would change in FY25 and FY26 to reflect any changes to the 100/20 wholesale price.

17. In considering these approaches against what is proposed in the November SAU Variation, Optus notes **[CiC begins]**

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21. **[CiC ends]**

22. Further, we note NBN Co has submitted that these two cap approaches are revenue neutral. However, Optus does not believe this to be the case. We consider that under either approach it is likely to lead to more revenue for NBN Co as they remove CVC pooling for RSPs.

23. For these reasons, Optus does not consider either capping approach as proposed is consistent with the legislative criteria as being reasonable or promoting the LTIE and are likely to lead to further retail price rises on top of those already needed once NBN Co's new pricing approach comes into effect.

24. Further, we reiterate our views that there continues to be insufficient cost certainty for RSPs through each regulatory cycle and consider this can be addressed by a commitment/obligation that NBN Co's 3-year pricing roadmap should be binding.

25. Optus again urges the ACCC to immediately issue an Interim Access Determination (IAD) reflecting the three-year pricing roadmap recently released by NBN Co. This would have the effect of locking in wholesale pricing for the next three years and provide the retail industry with the certainty needed to design retail NBN products.

### **Additional reporting is essential to support RSPs**

26. Optus notes there is little margin on NBN services and any small change in costs can have a significant impact on an RSP. As such, Optus submits the additional daily and monthly AVC utilisation reporting will be essential to RSPs to assist them in making timely and fully informed decisions about how best to manage their wholesale costs.
27. Optus notes NBN Co has proposed this additional AVC utilisation reporting for the 50/20 Mbps wholesale tier. However, in addition to the 50/20 Mbps wholesale offer, Optus considers that additional reporting should be in place for the high-speed broadband wholesale offers as well. That is, NBN Co should also report daily and monthly AVC utilisation for all high-speed TC-4 bundled offers above 50/20 Mbps. This additional reporting would further support RSPs in efficiently managing their wholesale costs.
28. NBN Co has not yet advised when it would be able to have the relevant data generated and APIs in place for sharing AVC utilisation data, and while we understand NBN Co can share this data (once generated) via a web portal, it would be preferable if NBN Co had the data generated at least 12 weeks prior to 1 October 2023 and relevant APIs in place as soon as possible to support RSPs when the November SAU pricing comes into effect.
29. As such, we would welcome a firm timing commitment/obligation on NBN Co for this work to be done. Given RSPs' reliance on this information and the benefits it could have, we consider this to be a reasonable commitment that further supports the efficient and competitive operation of downstream retail markets.

### **Service standards must be addressed for the SAU to be reasonable**

30. Notwithstanding the above, Optus reiterates its views that the November SAU Variation remains unreasonable because there are no meaningful improvements in service levels that will address longstanding and existing customer issues in light of NBN Co's proposed wholesale price increases.
31. As Optus stated in its submission to the ACCC's draft decision, the intention was always for the SAU variation to establish clear linkages between price and service quality. The November SAU Variation and further proposals fail to do so.
32. It is long overdue for NBN service standards to start addressing service quality issues, such as dropouts and poor line performance, and for this to be done proactively by NBN Co. Such commitments should be possible over the term of the SAU given that NBN Co intends to upgrade its copper-based technologies.
33. Optus' concerns are heightened given NBN Co's refusal to consider service improvements in WBA5. Optus has raised four matters in WBA5 negotiations, that it would like addressed as a first step in improving customer experience. These are:
  - (a) Dropouts – Optus has sought definitions to distinguish between an unexpected dropout and an outage and clarity how dropouts relate to service availability targets.
  - (b) Service level exemptions/exceptions for co-existence – Optus has requested that the lower PIR objectives for customers in co-existence be removed now that the rollout is complete.
  - (c) Proactive fault creation by NBN Co – NBN Co has full visibility of a service's performance and should therefore proactively create fault cases for underperforming services and pay the related PIR objective rebate.

- (d) Connection service level timeframes for the Fibre Connect program should be reduced to be in line with the standard connection FTTP service level timeframes.
34. We consider these suggestions are relatively simple and appropriate first steps in starting to address customer experience issues. All of the above have been rejected.
35. If NBN Co is to increase its wholesale prices in future to recover its costs – which the ACCC notes it must do so – then it's not unreasonable that as a result consumers should receive some benefit. An 'on paper' improvement of a higher performance objective (for which there are no consequences if the performance objective is not met) is not, in Optus' view, reasonable because it is not clear this will translate to a meaningful service quality improvement for consumers.
36. There continues to be insufficient commitments in the minimum benchmark service standards and the service standards process for these to provide an appropriate link between price and quality. There are three overarching consumer-oriented outcomes that should underpin any benchmark service standards and service quality framework. These are:
- (a) Services should be easy and simple to connect in a timely fashion;
  - (b) Services should be reliable and perform to agreed standards; and
  - (c) Services should be fixed promptly if issues arise.
37. Optus does not consider that NBN Co's proposed:
- (a) service improvement plan;
  - (b) service performance review process;
  - (c) commitment to update SAU benchmark service standards once WBA5 service standards are finalised; and
  - (d) commitment to consult stakeholders about measures that should be prioritised during the first regulatory cycle;
- will have any meaningful impact on addressing existing consumer issues.
38. For example, customers continue to experience extended delays in works needed to remediate line performance. This is already a known issue and in many cases NBN Co has already been paying rebates for extended periods of time (e.g. more than 18 months).
39. Optus has a small business customer whose FTTN line currently achieves approximately **[CiC begins] [CiC ends]**. After a history of performance issues NBN Co finally acknowledged the line needed remediation more than 18 months ago. The customer's remediation date has been pushed out multiple times and the most recent advice does not even include an estimated remediation date.
40. Optus has another customer whose FTTN line currently achieves approximately **[CiC begins] [CiC ends]**. Again, this was raised more than 18 months ago and again this customer has had their remediation date pushed out multiple times and again the most recent advice does not even include an estimated remediation date.
41. While both customers receive rebates under NBN Co's rebate framework, the limitations in their line performance would impact their ability to use their internet service for basic

functions such as video calling, transferring files, or multiple people using the internet at once. Despite Optus following up these cases, it is completely unclear when NBN Co will remediate these lines.

42. Optus is also aware of cases where NBN Co tries to remediate lines via the Fibre Connect program (where customers must take a higher speed tier and stay connected for a minimum period of time or NBN Co will levy a charge on RSPs). This has occurred even where the customer's FTTN line was not achieving the PIR objectives in the WBA (**CiC begins**] [**CiC ends**]). It is only after intervention by Optus was the customer's line remediated via the COAT program, which does not require customers to upgrade their speed tier or stay connected on a higher speed tier for a minimum period of time.
43. Optus has concerns that NBN Co too readily seeks to address remediation issues via the Fibre Connect program (incurring additional costs to the customer), when in fact a customer's line may not meet the PIR objectives in the WBA nor the legislated objectives in section 360S of the Telecommunications Act, and should be remediated without the customer having to incur additional costs just so their line can support basic online functions.
44. Optus considers these instances show clear issues with NBN Co's approach to addressing underperforming lines and we again urge NBN Co, the Government, the ACCC and industry to work together to address current issues with NBN service and quality levels.
45. Should NBN Co refuse to address these concerns as part of the existing SAU Variation process, Optus submits the Government can make minimum wholesale standards under the SIP legislation to address these customer experience issues and ensure NBN lines support everyday online activities in line with Australians' expectations.