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Submission in response to NBN Co Special Access Undertaking - SAU variation Aug 2023

(Public version)

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Introduction

We are a small Retail Service Provider (RSP) that specializes in providing the best latency, jitter, and packet loss to game servers for our niche residential end-user customer base. We welcome the opportunity to respond to NBN Co's SAU variation (Aug 2023) and provide insight from a small RSPs point of view. A bit of context about us is we have not yet on-boarded directly with NBN Co as an RSP (09/09/2023) and we currently gain access to the Layer 2 NBN Co access network through a Wholesale RSP. We do have intentions of onboarding directly to NBN Co in the near future. The NBN Co SAU variation will directly affect Wholesale RSP(s) which in turn will affect us and our end-users. We would like to emphasize that there is a market of RSPs that have not directly on-boarded with NBN Co and use Wholesale RSPs to gain access to the NBN Co access network. We hope the point of view of RSPs like us are being considered in the SAU variation decisions.

Direct Response to SAU variation Aug 2023

There are two main points we find concerning with the SAU variation.

The first main point we find concerning is "1C.2.6 Connectivity Virtual Circuit Offers (iii) Page 96":

(iii) an Access Seeker must at all times associate at least the following number of AVCs with each Connectivity Virtual Circuit Offer (TC-4), based on the associated CVC Class Offer:

Relevant CVC Class Offer	Minimum number of associated AVCs based on relevant Connectivity Virtual Circuit Offer (TC-4)		
	CVC symmetrical Data Transfer Rates CIR (TC-4) of 100 Mbps	CVC symmetrical Data Transfer Rates CIR (TC-4) of 125 Mbps	CVC symmetrical Data Transfer Rates CIR (TC-4) of 150 Mbps – 1,000 Mbps
0	0 AVCs	202 AVCs	71 additional AVCs per 25 Mbps CVC increment above 125 Mbps
1	0 AVCs	166 AVCs	65 additional AVCs per 25 Mbps CVC increment above 125 Mbps
2	0 AVCs	151 AVCs	58 additional AVCs per 25 Mbps CVC increment above 125 Mbps

We find it concerning that NBN Co can dictate to RSPs the minimum number of associated AVCs based on relevant CVC (TC-4). We believe free-market RSPs should be able to determine their AVC to CVC contention ratios themselves. We believe if NBN Co can dictate minimum AVC to CVC contention ratios to RSPs this has the potential to kill free-market RSP innovation.

The **second main point** we find concerning is in regards to the "Flat-Rate Offer" CVC-free services increasing with the Consumer Price Index (CPI) inflation rate. We have not seen public data to suggest

operating NBN Co's access network increases with the rate of CPI. We believe the logic of increasing the prices of CVC-free services to match CPI needs to be investigated in detail and published to the public transparently. We believe investigating if other public/private access networks in Australia and around the world increase with the rate of the respective countries' CPI should be investigated for comparison. We understand there would be a lot of variables and nuances that would come into play, but we believe the public should be given a breakdown of the operating expenses (OPEX) of operating the NBN Co access network. For clarity, this breakdown should be directly related to the OPEX required to run the NBN Co access network and should not include administration OPEX (Accounting, Sales, Marketing, etc.). These are some of the OPEX costs you would need to know to determine if the OPEX of the NBN Co access network is increasing with CPI:

DUCT (Pits, conduits, cabinets) Leasing OPEX costs, Fixed Wireless Tower Leasing OPEX costs, Fixed Wireless Spectrum Leasing OPEX costs, Wireless Tower Backhaul OPEX costs, Fibre Backhaul OPEX costs (NBN Co access network to NBN Co POI), Network Equipment licensing OPEX costs (FTTN Node, FTTB Node, FTTC DPU/NCD, FTTP NTD/GPON, HFC NTD/Head-end, Fixed Wireless NTD/CPE/PE, Satellite NTD/CPE/Satellite/Ground Station, Routers, Switches, Firewalls), Network Equipment support costs (FTTN Node, FTTB Node, FTTC DPU/NCD, FTTP NTD/GPON, HFC NTD/Head-end, Fixed Wireless NTD/CPE/PE, Satellite NTD/CPE/Satellite/Ground Station, Routers, Switches, Firewalls), Network Equipment maintenance costs (FTTN Node, FTTB Node, FTTC DPU/NCD, FTTP NTD/GPON, HFC NTD/Head-end, Fixed Wireless NTD/CPE/PE, Satellite NTD/CPE/Satellite/Ground Station, Routers, Switches, Firewalls), NBN POI Data Centre Leasing OPEX costs, NBN POI Data Centre Maintenance OPEX costs, Server maintenance/support OPEX costs, Network Monitoring OPEX costs, Server Monitoring OPEX costs, IT support/engineering/development OPEX costs, Power (NBN Co acess network) OPEX costs. We believe the CAPEX costs of being able to support bandwidth growth of the NBN Co access network such as Additional Fibre Backhaul Capacity CAPEX costs, SFP Module CAPEX costs, and Network Equipment CAPEX costs would have to be included in this calculation.

We understand this would be a very complicated task and NBN Co is required to provide a Return on Investment (ROI) for building Australia's National Broadband Network. With this data, we believe NBN Co should be able to provide an SAU variation (All services CVC-free) with the margins required to be able to provide the target ROI to the commonwealth (after a certain period of time) and operate in full (NBN Co access network, staff (support, sales, marketing, accounting, etc.), and much more).

Essentially we suspect increasing the CVC-free services pricing with CPI is not backed by data and is a way for NBN Co to recover lost revenue from not being able to charge for CVC anymore. The OPEX costs of running the NBN Co access network shouldn't be anywhere near CPI (It might actually get cheaper year on year) and being able to handle more bandwidth on the NBN Co access network wouldn't cost much at all to build additional fibre backhaul in the access network (It would be cents per Mbit to increase the capacity of their access network).

Additional comments

We would like to see the barrier to entry to on-board directly with NBN Co become an easier and shorter process with maximum onboarding duration deadlines. We would like NBN Co to be more open to RSPs that only want to on-board to x1 NBN Co POI for example. This will help new RSPs validate the market before expanding to additional NBN Co POIs. This will encourage competition and innovation in the RSP industry. We think the work done to reduce NNI costs to help new RSPs compete was positive.

Conclusion

We understand the NBN Co SAU variation process has been proceeding for years now and many RSPs are worn out and suffering from it (including us). We would like to add that we believe our end-user customer base is the most affected by the existing artificial CVC construct. We do a lot of network monitoring (1sec interval) and notice that CVC congestion seems to be the main cause for latency, jitter, and packet loss issues on the NBN Co access network. We acknowledge the opportunity for the SAU to be updated is rare and we think this is the opportunity to get it right. We don't believe the proposed SAU variation should be accepted. We suspect a lot of RSPs are willing to accept the proposed SAU variation due to it being better than the current state of things, but if it is accepted we don't think end-users will respond well to the year-on-year CPI price increases. We suspect over time this will result in end-users churning away from the NBN Co access network altogether making the situation worse. We would endorse a transparent NBN Co SAU variation with all services being CVC-free and a breakdown of NBN Co OPEX and CAPEX costs and justifications on their margins required to operate and provide an ROI to the commonwealth.

With that said we do endorse accepting the current SAU variation if it can be used as a tourniquet to stop the bleeding, but the ACCC and NBN Co SAU process does not stop and a new SAU variation is proposed next year.

We understand that we might be misinterpreting or missing information and could be wrong about situations. We appreciate the effort from the industry, NBN Co, ACCC, and stakeholders and hope it all turns out the best for Australia.