



Industry Forum on NBN Co's Proposed SAU Variation: Revised Pricing Options

Industry Forum Summary

14 July 2023

Online via Microsoft Teams

Disclaimer

This document is not a verbatim record of the industry forum, rather a summary of the issues raised by forum participants. The forum was conducted under the Chatham House Rule and as such comments have not been attributed to any group, firm or individual except with their prior consent. The views and opinions expressed are those of the participants and do not reflect the ACCC's views or position on the issues summarised here.

Welcome and introduction

ACCC Commissioner Anna Brakey welcomed attendees, outlined the purpose of the industry forum, and invited attendees to contribute to the discussion on the proposed pricing options.

Ms Brakey noted that the role of the forum was to provide all stakeholders the opportunity to obtain information about, and provide feedback on, the pricing options that NBN Co is considering for inclusion in any revised SAU variation proposal. Ms Brakey noted also that the forum's intention was to allow for collaborative discussion to assist NBN Co in finalising its considerations of price-related measures that may be included in any revised SAU proposal.

Ms Brakey also encouraged all attendees to focus on achieving an outcome in the long-term interests of end users, which is the key objective of the legislative regime.

Ms Brakey also referred to the five outcomes that could guide the development of a varied SAU, developed during working groups in 2021. In particular that:

- NBN Co has the opportunity to earn the minimum revenues it needs to meet its legitimate financing objectives, including to transition to a standalone investment grade credit rating
- NBN Co end users are protected from price shocks and from prices that are higher than necessary in later year
- the regulatory framework provides incentives for NBN Co to operate efficiently and promote the end use of the NBN

- NBN access seekers have greater certainty over the costs that they will face when using the NBN; and
- There is a clear and robust quality of service framework so that access seekers and end users know what to expect from NBN services, including a review mechanism so that service standards remain fit for purpose.

Ms Brakey noted that the ACCC will ultimately consider any revised SAU variation proposal in accordance with the statutory criteria and following the required public consultation.

Ms Brakey indicated the ACCC will look to run any further public consultation in a streamlined manner and move to a final decision on any revised proposal in the timeliest manner possible, whilst ensuring procedural fairness.

Representatives from the Department of Infrastructure, Transport, Regional Development and Communications and the Arts (the Department) also provided opening remarks, stating that:

- From a government policy perspective, there is great importance placed on the SAU.
- A revised SAU provides the best prospect to deliver long term benefits to consumers and it is desirable to continue the process to reach this outcome.
- Any SAU variation proposal should deliver an outcome that enables and supports equitable and affordable access to end users, and to provide cost certainty to all retailers, irrespective of size, to foster competition. The proposal should also allow NBN Co to be a sustainable company that can continue to efficiently invest to meet Australia's connectivity needs. The Department noted that this is consistent with the approach the ACCC is taking using the underpinning principles noted.
- Good progress has been made on the SAU variation process after the 'reset' in the middle of last year, and that progress has continued since the ACCC draft decision. The Department indicated that while the current path looks good, there are still issues that need to be addressed.
 - One of the issues raised in the draft decision is the issue of cost certainty, and the Department noted they are interested in how it will work for both large and small retail service providers (RSPs).
- It was pleased with the level of transparency shown by NBN Co, and its upfront approach to issues raised by the ACCC in the draft decision.
- Engagement on the NBN Co pricing proposal is encouraged and noted that feedback from the forum would be important when NBN Co puts forward its new SAU variation.
- The Department is serving as an observer and noted that this is an exercise between the regulator, NBN Co, and industry.

NBN Co Presentation: Revised Pricing Options

NBN Co provided an overview of the proposed pricing variants for traffic class 4 services offered on a speed tier of 50 Mbps or a lower speed tier, of which it is considering selecting one for inclusion in its pending SAU variation proposal. This broadly covered detail of the 3 proposed pricing models, transitional credit, assessment against regulatory objectives and indicative timing for SAU variation and implementation of the next wholesale broadband agreement. NBN Co indicated that the offers for these speed tiers that were contained in the November 2022 SAU variation are not being considered for a new SAU variation.

NBN Co noted that it has responded to the ACCC draft decision and the five outcomes and acknowledged that feedback indicated that while a lot was done, there was more to do. NBN Co considered the previous pricing proposal may lead to a competitive advantage for a

cohort of RSPs (generally larger, incumbent RSPs) that are able to optimise to a far greater extent than was anticipated, leading to uncertainty in NBN Co's returns and potentially impacting the sustainability of its business. NBN Co noted that due to this, the SAU process has been extended, but it remains committed to the SAU process as being the best path of regulatory certainty. NBN Co concluded its opening remarks by reiterating its intention to relodge an SAU variation capable of acceptance, and to implement it as soon as possible.

Initial RSP feedback

Participants noted that from a broader RSP perspective there are concerns around the delays in NBN submitting a revised SAU proposal, which has resulted in increased costs under the current wholesale broadband agreement. One participant also raised concerns about NBN Co's change in position from the November 2022 proposal where it was encouraging RSPs to engage in optimisation strategies. While participants indicated they would preference their pricing option in written submissions, most stressed the need for NBN to submit a revised SAU proposal as quickly as possible so that any pricing and product changes can be made by 1 December. Participants also called on NBN Co to publish a revised 3-year pricing roadmap promptly to aid retail price planning.

Ms Brakey indicated that the forum was being held to help streamline the process. Ms Brakey noted that the ACCC proposes to run a streamlined consultation process once it receives the revised proposal and remains committed to proceed as fast as practicable under its statutory obligations, but the ACCC has an obligation to undertake genuine consultation. Ms Brakey said the ACCC will provide further guidance once a revised SAU proposal is lodged.

Overview of Pricing Options

NBN Co outlined the 3 potential floor and ceiling pricing options it is considering for inclusion in any new SAU variation proposal. It considered these options would address core stakeholder feedback on the need for cost certainty and respond to feedback on its initial proposal prepared in response to the ACCC's draft decision. NBN Co stated that the 3 options have similar revenue outcomes for NBN Co and will maintain its FY2023 average revenue per user (rather than increase it).

- All 3 options have a \$55 price ceiling for 50Mbps and below speed tiers, which is in line with the feedback in the ACCC draft decision. Each option also imposes a price floor that, with per service billing, removes national CVC pooling across services.
- There is variation in the 50 Mbps floor pricing between the proposed options and options 2 and 3, both provide a lower overage rate.
- All 3 options have increased 50 Mbps CVC inclusions, with option 2 increasing the CVC inclusion for 50 Mbps from 2.5 Mbps to 3.5 Mbps.
- Option 1 has a greater focus on the reduction in the price floor.
- Option 2 has a greater focus on the overage price over the 3-year transition period.
- Option 3 provides an intermediate option.
- All 3 options include the overage rate for the 3-year transition period, until NBN Co moves to an AVC only pricing model.

To help RSPs understand which pricing option may be right for them, NBN Co provided an overview on analysis into the 3 archetypes against the pricing proposals:

- RSPs who have a high proportion of entry-level customers and can implement sophisticated wholesale optimisation.

- RSPs who have a low entry level customer base but are capable of sophisticated wholesale optimisation.
- RSPs who lack scale and capability to wholesale optimise.

NBN Co considered that the proposed options deliver lower overall average access costs and a narrower spread of costs across access seeker types compared to both the November 2022 proposal and the current WBA-4 in the absence of high-level wholesale optimisation.

One participant queried whether NBN Co has a preference of the proposed pricing options, and requested further detail on how NBN Co intends to decide on the model presented in the SAU variation. NBN Co noted that the pricing options were intentionally presented in a neutral way as it is seeking honest feedback and preferences from RSPs, and encouraged RSPs to include any rationale on what lead what they may feel is the best option in the consultation process. This will help it determine which option to put forward in its revised SAU proposal.

A participant queried whether, when the commercials were being assessed for the 3 options, NBN Co gave any consideration into whether transitioning from pooled to unconstrained usage will increase data demand from end-users. NBN Co noted that it did not assume a significant increase in data usage, but this may depend on the option that is chosen. NBN Co indicated that this is an area they would like greater clarity from RSPs on, specifically on how RSPs manage their traffic and encouraged this to be included in their submissions.

Several participants commented that as the pricing models still include CVC the risk will fall onto RSPs, and that the pricing proposal selected will still likely favour some RSPs over others.

Transitional credits

NBN Co presented its proposal on transitional credits, which have been incorporated into the proposed pricing models due to feedback that there was a need to consider material relief due to the delay in providing an SAU that could be accepted. NBN Co outlined that the proposal is for \$12 million which will be spread across all RSPs. NBN Co explained that the transitional credit would be used to offset the costs of usage growth and implementation of the new pricing model. Further, NBN Co noted that allocation of the transitional credit would be based on RSP services-in-operation, with a \$10,000 fixed amount per RSP. NBN Co noted that it aims to credit RSPs within 2 months of an SAU acceptance, and that timing may be altered due to billing cycles.

Some participants noted that if the proposed timeline was not achieved, the transitional credits would not be adequate, and that if further delays were expected NBN Co should immediately increase CVC inclusions.

Timing of SAU lodgement and WBA-5

NBN Co addressed timing, noting that the SAU variation is a complex and significant decision which will impact to 2040. NBN Co reiterated that it is seeking to lodge as soon as possible, and that discussions during the forum and from the ACCC's consultations will be considered by NBN Co prior to any lodgement of a revised SAU variation proposal. NBN Co's expected timing was that:

- it would relodge any revised SAU variation, containing one of the 3 pricing options, by mid-August.
- it expected the ACCC would take 8 weeks after commencing consultation to make a final decision on any revised SAU variation (i.e. by mid-October, assuming NBN lodges by mid-August), and 6 weeks is the minimum time required for WBA-5

issuance, RSP governance, and execution after the decision and based on the assumption of acceptance.

- if the SAU proposal was accepted in the proposed timeline, it would seek to implement WBA-5 at the start of December.

NBN Co noted that it would share a final draft of the WBA-5 to RSPs immediately after lodgement of any revised SAU variation proposal so that they could review, operationalise, and execute the WBA-5 by the start of December.

NBN Co recognised that there are challenges if the WBA-5 is not capable of being implemented at the start of December. Both NBN Co and RSPs have limited resourcing over the Christmas period, and any delay in NBN submitting its proposal or the subsequent consultation and approval process could push WBA-5 implementation to either February or March 2024. NBN Co also noted that the WBA-4 is set to expire at the end of September 2023, and it is currently considering options to extend the WBA-4 which it proposed to share with RSPs by late-July / early August.

Participants generally agreed that the proposed timing would likely generate issues, as RSPs did not have clarity on when they would need to implement pricing changes. Several participants considered that retail price increases that come into effect over the Christmas period would be undesirable from an end-user perspective.

One participant raised concern that if the WBA-5 implementation is delayed beyond December this could result in two price rises for end users within 6 months, as NBN Co has indicated it will review (increase) prices in July of each year. Participants sought clarity on whether NBN Co could forego these increases, but NBN Co reiterated the need to consider its options.

Several participants stressed the growing cost of delays, with capacity usage now outgrowing year-old inclusions in bundles and generating higher overage costs. One questioned whether NBN Co has conducted a calculation of overage growth as per the Minister's instructions that RSPs not be made worse off and whether NBN Co has considered increasing inclusions. NBN Co noted that a review of data usage was undertaken, and it showed that usage growth was not exceeding its forecasts. However, it also noted that the transitional credit would aim to assist RSPs for usage growth during this period.

NBN Co explained that CVC inclusions for the SAU variation are calculated looking at previous usage, and as such would be reflected on 1 January 2024, and this was included in the forecasting process. NBN Co also responded to a query on whether CVC adjustments will be made if the SAU variation is not implemented until 1 Feb 2024, noting that there will be another review in the fourth quarter of this year. NBN Co noted that there is an increase in inclusions in all the proposed pricing options, especially Option 2. NBN Co noted the potential need to modify the timing of its inclusions review.

Participants queried the ACCC timeline and the streamlined consultation process. Ms Brakey confirmed that there remains a statutory obligation to consult, and that consultation must allow enough time for genuine engagement. Ms Brakey noted, however, that it will seek to consider all the consultation done to date, and that the ACCC proposed that any further consultation will focus on new issues rather than issues already considered in previous consultation. The ACCC indicated that it was hopeful that when NBN submits any revised SAU variation proposal it will have considered feedback and that the proposal would be capable of acceptance. However, it was noted that this remains out of the control of the ACCC.

NBN Co also noted that it is seeking to address all the issues outlined in the ACCC draft decision and that this forum is also being used to address issues before any lodgement, with

the goal to lodge in an expedited way. NBN Co also responded to concerns that issues raised in the draft decision may not be adequately addressed by indicating that all the issues raised in its March 2023 letter and the ACCC draft decision are being considered and it plans to provide the ACCC with drafting before any revised SAU variation is lodged. Ms Brakey noted that there is an intention for a transparent approach to be taken by NBN Co.

One participant queried whether the ACCC was able to give an early indication whether the new SAU variation was capable of acceptance. Ms Brakey noted that it would look to replicate its approach to the November proposal i.e., release the proposal as soon as it is received and provide guidance in its consultation paper on issues which it seeks RSP consideration. The ACCC noted that consultation would depend on what NBN includes in its SAU variation, and that, assuming that there are no new issues raised by NBN in its proposal, a minimum consultation period of 3 weeks would be provided to stakeholders from publication of the SAU variation proposal to provide comment.

A participant inquired whether, if there were further delays to the SAU variation lodgement, the ACCC could use another regulatory instrument to set pricing at least for the first year to provide certainty for RSPs and end users. Ms Brakey noted that the option is there, however that the fastest way for certainty is for NBN Co to submit a proposal capable of acceptance.

Next Steps

NBN Co and the ACCC outlined a tentative timeframe for next steps in the SAU process:

- 21 July 2023 – Stakeholder responses due to the ACCC on NBN Co's proposed pricing options
- 14 August 2023 – NBN Co lodgement of its SAU variation proposal with the ACCC
- Mid to late August 2023 – ACCC publishes NBN Co's SAU variation proposal and an ACCC consultation paper.