



ACCC industry roundtable on regulatory arrangements under NBN Co's special access undertaking

Industry roundtable summary

18 June 2021
Cliftons Venues
Margaret Street, Sydney and online via Teams

Disclaimer

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

Welcome and introduction

ACCC Chair Rod Sims and Commissioner Anna Brakey welcomed attendees, outlined the purpose of the industry roundtable and invited attendees to contribute to the discussion of topics of interest to them.

Representatives from the Department of Infrastructure, Transport, Regional Development and Communications (the Department) also provided opening remarks.

- The NBN is now built and fully operational.
- The NBN has demonstrated its importance in supporting the needs of both households and businesses during the COVID-19 pandemic, including during periods of very high demand for high-speed broadband.
- The Government supports the roundtable and appropriate amendments to NBN Co's current special access undertaking (SAU) to provide long-term certainty for all stakeholders.
- The Government is seeking a number of objectives from a revised SAU. This includes arrangements to support the sector to supply high quality broadband services at affordable prices, allow NBN Co to invest, meet its debt obligations and deliver an appropriate positive return to shareholders, and to support the ongoing sustainability of the retail broadband sector.

- The Government considers that the SAU needs to cover all NBN technologies and that pricing arrangements could be simplified to provide greater certainty to retailers about future costs.
- The Government is also open to longer term changes to NBN Co's pricing construct that are commercially negotiated between NBN Co and retailers and overseen by the ACCC.
- It is important that all parties have adequate opportunities to contribute to this process. The Department will work closely with both the ACCC and NBN Co to support the process. NBN Co and the ACCC are both seeking genuine consultation and stakeholders are encouraged to engage in good faith.

Presentations

NBN Co and other attendees provided short presentations to help facilitate discussion at the roundtable. NBN Co presented its objectives in seeking a variation to its SAU and the pricing options presented in its latest consultation paper.¹ In its presentation, and subsequent discussions throughout the day, NBN Co raised similar points to those raised in its consultation paper.

Two access seekers then presented on issues that they face under the current NBN pricing model and outlined alternative pricing models for consideration. ACCAN presented views on important consumer outcomes that should be considered in revising the SAU.

Summary of discussions

It is an appropriate time to review the regulatory arrangements specified in NBN Co's SAU

Attendees agreed the current regulatory framework for wholesale access to the NBN should be reviewed and that NBN Co's SAU should be updated.

Attendees provided support for the following propositions:

- The SAU should cover all of the access technologies that NBN Co provides.
- Other changes to the current SAU may be needed if it is extended to apply to the multi-technology mix services (which are the access technologies that sit outside the scope of the current SAU).
- A consultative review process would provide the best prospects for the revised SAU to meet the needs of the access provider, access seekers and end-users.

Many attendees indicated that it would not be appropriate to simply extend the current SAU so that it applies to the multi-technology mix services.

Some attendees also spoke to a potential need for interim measures to be established while the SAU is developed.

¹ The consultation is available on NBN Co's website: <https://www.nbnco.com.au/content/dam/nbn/documents/media-centre/media-statements/2021/nbnco-spcial-access-undertaking-variation-2021-discussion-paper.pdf>

Access arrangements need to consider market expectations regarding price and service quality

Consumers have expectations about price, quality and choice

Attendees consider consumers have certain expectations about the NBN in relation to quality of service, price and choice, and that to be successful a revised SAU should allow these expectations to be reasonably met.

An attendee noted that following the COVID-19 pandemic consumers now see their telecommunications services as essential and have heightened expectations that they will be able to activate services and have any faults rectified in a timely manner. Further, consumers now expect that they can reliably access the broadband speeds that they need to use a variety of online applications.

An attendee noted that at the same time consumers still expect steady (or even falling) prices for the same (or better) service quality. In particular, consumers remain reluctant to materially increase the proportion of their income that is spent on telecommunications services. A number of attendees expressed their support for measures that would keep affordable NBN products in the market.

An attendee noted consumers also have an expectation that the NBN will narrow the digital divide and so an objective of uniform national pricing should help guide this process. In particular, consumers in regional, rural and remote areas expect uniform prices for uniform services notwithstanding the associated technical challenges.

An attendee noted consumers expect a choice of retail provider and a choice of service offering. Several attendees spoke to the benefits of retail competition and product differentiation in the market for meeting diverse consumer needs.

Both price and non-price terms of access need to be considered

Several attendees spoke to the benefits of considering both the price and key non-price terms of access to the NBN. Meeting attendees generally agreed that:

- It will be important to understand the standard of service quality that will be associated with any proposed pricing level.
- Significant progress has been made regarding the standard of service quality following the ACCC's wholesale service standards inquiry, with a variety of improved terms incorporated into WBA4.
- Some gaps still remain however with regards to service quality issues.

There were differing views on how these service standards issues should be addressed over the longer term and whether service standard measures should be addressed within any revised SAU.

Views on product structure and pricing

Suitable high level principles

The ACCC proposed three high level principles to support the long term interests of end-users through a revised SAU:

- Access arrangements should support a range of retail service offerings that represent value to different categories of end-users.

- Access seekers should have reasonable certainty over access costs over time for a given level of quality.
- The access provider should have a reasonable opportunity, but not the guarantee, to earn an appropriate return on its efficient investment and recover its efficient operating costs.

Attendees were broadly supportive of these principles. Some attendees nominated additional principles to address competition, efficiency or equity objectives. These included that the revised SAU should:

- Encourage the efficient use of the network, such as by increasing demand or lowering costs to meet a given level of demand.
- Reduce barriers that new entrants might otherwise face.
- Establish a minimum standard of service quality and allow nationally uniform pricing.

Access seekers want greater cost certainty

The uncertainty over access costs that NBN Co's current product and pricing construct causes was a recurring point of discussion.

Attendees pointed to the inclusion of a significant volumetric charge and the lack of a binding mechanism to reduce the level of these charges where network capacity is growing strongly.

In this regard, most attendees focused their comments on NBN Co's bundle discount arrangements and price construct which combines an access virtual circuit (AVC) with a nominated amount of connectivity virtual circuit (CVC) capacity for a fixed price, with additional CVC available for purchase on a volumetric (per Mbps) basis.

An attendee also noted recurrent network to network (NNI) charges at each point of interconnection (POI) that are based on the interface capacity are an additional volumetric charge that should be considered.

A number of attendees noted that they cannot easily mitigate the associated risks to their business caused by uncertainty over their key input cost, and this impeded them in the retail market.

In its discussion paper released prior to the roundtable, NBN Co provided three options for its AVC and CVC charging. These included an option similar to the current product and price structure (involving AVC and CVC bundles subject to maximum regulated prices under the SAU, rather than the current bundle discount arrangements), the removal of CVC charging completely, and an option where CVC would be removed for AVCs of 100 Mbps and above with potential reductions in the overage charge.

Several attendees commented that:

- The volumetric CVC charge is a major cause of cost uncertainty.
- Their preference would be for a pricing structure without CVC charging.
- Australia is the only market with the CVC charge.

One attendee supported re-establishing a version of the dimension based discounting (DBD) CVC pricing model with recalibrated CVC charges. This model would set the CVC price for the average CVC dimensioning rate (Mbps per AVC) at the effective yield currently being achieved on bundled and overage CVC combined, with the charge significantly reducing as dimensioning rate increased.

Some attendees also expressed support for a review of NNI charges (particularly the upfront price to establish the 10 Gbps NNI) to ensure this charge is not a barrier for niche providers and new access seekers as they look to bring new, very high speed NBN plans to market.

Special arrangements are needed for low-income households

There was broad support among attendees for special measures to support low income households to access broadband plans that meet their needs.

However, a clear consensus was not reached on the form these measures should take or how it should be funded. Some participants suggested it was a matter for the Government to address through alternative policy measures.

Regulatory arrangements should support a range of retail offerings

Attendees broadly agreed that the SAU should support product differentiation in the retail market.

Attendees discussed whether volumetric CVC charges were necessary to allow both lower priced products on the one hand, and higher priced premium products to remain in the market. Attendees suggested this proposition should be tested by investigating overseas markets such as New Zealand, the United Kingdom and Singapore which do not appear to feature a CVC pricing component. Attendees considered this research could assist in identifying alternative approaches to products and pricing that could also preserve a variety of affordable and more premium product offers.

Discounting should be allowed for legitimate commercial reasons

Attendees were asked for their views on NBN Co's current discounting practices, noting that NBN Co's TC-4 bundle discount arrangements are not maximum regulated prices under the terms of the SAU and this has been a source of pricing uncertainty. Responses included that:

- If the fundamental issue of pricing uncertainty can be resolved in the SAU, then the current issues with discounting (which effectively prices access below the current CVC price cap) would largely go away.
- Discounts can be done for legitimate commercial reasons, such as to help establish or confirm demand for new products (such as higher speed services) at different pricing levels.
- Some type of regulatory control on discounting may be required to keep the operation of discounts more closely aligned with competition and efficiency objectives.

One attendee suggested that NBN Co's heavy reliance on discounts seemed to have been motivated by pricing flexibility. They suggested that NBN Co would have more flexibility by using discounts, compared to a situation where new products are introduced as new NBN offers under the SAU.

Design features of the price control mechanism

The ACCC posed that future regulatory controls might conceivably take the form of direct controls over certain price related access terms, along with more flexible arrangements for other prices. The ACCC also sought views on whether some services, such as those

provided to enterprise end customers in a competitive market, should sit outside the price and revenue controls.

A number of attendees expressed the following views:

- Regulatory price controls should align prices with costs.
- There should be measures that prevent cross-subsidisation of the competitive enterprise segment from mass market revenues.
- The enterprise segment should sit outside the SAU framework.

There was some difference in views between attendees on the treatment of fixed and variable cost components in the design of the regulatory price controls. Some attendees considered the incremental cost of supplying higher speed access was low and that the regulatory price controls should only allow for a small uplift for higher speed services. Others questioned what consequence this could have for the efficient recovery of fixed costs from having a broader spread of price points in the market and the implications for maintaining incentives for new investment to support higher speeds.

One attendee noted that the price controls need to be subject to periodic review as the demand profile for higher bandwidth products changes.

Revenue controls should support recovery of efficient costs

Attendees were, in general, supportive of the high-level principles proposed by the ACCC for considering appropriate revenue outcomes from a revised SAU. These are:

- NBN Co should be able to recover efficiently incurred costs.
- NBN Co should face incentives to make efficient investments.
- NBC Co should have the opportunity to generate sufficient cash flows to operate efficiently and continue to invest.

Many attendees agreed that there is a need to undertake an assessment of the efficiency of the expenditure incurred by NBN Co during the rollout of the NBN, including NBN Co's capitalised losses (initial cost recovery account, or ICRA).

Attendees (retail service providers in particular) considered that the revised SAU should provide for NBN Co's costs to be assessed on a forward looking basis (i.e., ahead of incurrence), as should the efficiency of investment plans.

Some attendees offered to also assist in developing a building block model (BBM) for the NBN and spoke to the benefits of the BBM being developed in a transparent and collaborative process.

The efficiency of historical expenditure/ICRA should be assessed

Attendees raised concerns about whether the costs incurred by NBN Co during the rollout of the network were efficiently incurred. Some attendees provided the following comments:

- The current SAU only provides for a prudency review with some cost categories deemed to be prudent, and does not apply an efficiency standard.
- The efficiency of the historical expenditure and reasonableness of the ICRA balance should be considered as part of the process of developing a revised SAU.
- Subscriber costs incurred by NBN Co do not represent efficient costs of access to the NBN as they are payments to Telstra and Optus for not competing with NBN Co, and on this basis should not form part of the ICRA.

Some attendees discussed whether an appropriate rate of return has been applied in calculating NBN Co's revenue requirement and ICRA balance, noting that NBN Co's target rate of return has been significantly lower than the rates applied under the SAU.

In contrast, it was also noted that because NBN Co has operated within the policy framework set by the Government, it should be provided with the opportunity to recover from its access charges the costs associated with delivering the Government's policy objectives.

Many participants agreed that the current regulatory arrangements do not provide sufficient certainty for industry on issues such as the timeframe and schedule over which NBN Co would seek to recover its losses.

A new building block model should be developed

Several attendees supported the development of a new BBM. They agreed with the following observations:

- The existing model used to assess compliance with the current SAU long term revenue constraint does not provide linkages between the efficient costs of the NBN and the prices charged for NBN services.
- The ACCC's development of a new BBM needs to be a transparent process and access seekers should have the opportunity be involved in its development.
- The BBM should be capable of attributing costs to specific NBN services, such as between mass market services and enterprise services.

There should be incentives for new investments on the NBN

Attendees agreed that the SAU should provide incentives for NBN Co to continue to maintain and upgrade the network to improve service quality and meet consumer demand. Several attendees also noted:

- It is important to have efficiency reviews for new investment going forward.
- NBN Co is upgrading its fibre-to-the-node (FTTN) and fibre-to-the-curb (FTTC) networks with fibre-to-the-premises (FTTP) technology in specific areas. This raises a question of from how broad a customer base these costs should be recovered.

Next steps

The roundtable attendees agreed to continue working together on the matters raised. Some attendees expressed a preference for establishing working groups that focus on particular areas of the regulatory arrangements as a way forward. The ACCC is considering how this can be implemented.

Most attendees acknowledged any process to revise the SAU will take some time. Some stakeholders suggested that interim measures may be required while the regulatory framework is being considered.

Attendees

The industry roundtable was hosted by the ACCC. Eighteen other organisations registered for the forum, including telecommunication service providers, consumer groups, industry bodies and government.

Australian Communications and Media Authority (ACMA)

Australian Communications Consumer Action Network (ACCAN)

AGL

Aussie Broadband

Commpete

Communications Alliance

Department of Infrastructure, Transport, Regional Development and Communications

Foxtel

Internet Association of Australia

Launtel

Macquarie Telecom

MyRepublic

NBN Co

Optus

Telstra

TPG

Vocus

Yurika

ACCC Industry Roundtable Agenda
Regulatory arrangements under NBN Co's Special Access Undertaking

18 June 2021

Cliftons Venues, Level 13, 60 Margaret Street, Sydney, NSW 2000
and remote access via Microsoft Teams

Time	Topic
08:45 – 09:15	Registration, tea and coffee
09:15 – 09:20	Welcome
09:20 – 09:30	<p>Introduction to the Roundtable</p> <p>This brief session will outline the purpose of the forum, the ACCC's role and intended outcomes for the day</p>
09:30 – 09:45	Opening remarks from The Department of Infrastructure, Transport, Regional Development and Communications
09:45 – 10:45	<p>Session 1: NBN Co's proposals for varying the SAU</p> <p>NBN Co to present on the options that are outlined in its SAU discussion paper released on 7 June 2021. This includes 20 minutes for Q&A.</p>
Morning Tea (30 minutes)	
11:15 – 12:15	<p>Session 2: RSP presentations on varying the SAU</p> <p>RSPs and ACCAN to present on the issues that should be addressed in the new SAU and provide their perspectives on the current arrangements and possible alternatives. This includes 20 minutes for Q&A.</p>
Lunch Break (45 minutes)	
13:00 – 14:00	<p>Session 3: Price controls</p> <p>This session will explore possible alternatives for the general price construct and price controls to apply under a revised SAU, including the design principles by which to assess these alternatives.</p> <p>Discussion will canvass:</p> <ul style="list-style-type: none"> • Suitable price control design principles

	<ul style="list-style-type: none"> • Ideas to improve certainty for NBN Co and access seekers • How to maintain a breadth of retail products in the market • The need for any controls on discounting • Requirement for, and form of, a low income product • Direct and more flexible price control options • Reset period for price related regulatory controls
Afternoon Tea (30 minutes)	
14:30 – 15:30	<p>Session 4: Revenue controls</p> <p>This session will discuss options for establishing a binding revenue constraint and arrangements for new investment and expenditure, including the design principles by which these options should be assessed.</p> <p>Discussion will canvass:</p> <ul style="list-style-type: none"> • Suitable objectives for the revenue control mechanism • Alternative options for incorporating accumulated losses in the building block model • Approaches to creating incentives for efficient and timely investment • Approach to assessing new investments and expenditure and reflecting them in revenue controls • Reporting and transparency arrangements
Break (15 minutes)	
15:45 – 16:30	<p>Model for ongoing engagement and concluding remarks</p> <p>This session will discuss options for ongoing engagement on the topics raised at the Roundtable. This will include consideration of whether, and if so when, the Roundtable should reconvene, whether any working groups should be formed to consider important matters of detail, and how to integrate the working of the Roundtable with broader consultation on these matters that NBN Co or the ACCC undertakes.</p> <p>The session will conclude with a wrap-up of progress made on the day.</p>
Light refreshments (30 minutes)	