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Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601
By email: nbn@acc.gov.au

RE: Proposed Variation to the NBN Co Special Access Undertaking

INTRODUCTION

Thank you for the opportunity to express the Internet Association of Australia (IAA) perspective on the proposed variation to the NBN Co's Special Access Undertaking (SAU). Many of IAA's members are small to medium sized Internet Service Providers (ISPs) who are also NBN Retail Service Providers (RSPs). Our response is primarily to represent the perspective of our members, from whom we have gathered feedback and input to inform our submission, as well as in support of the general well-being of the internet and the internet industry.

IAA recognises the need to update the framework to ensure it remains fit for purpose given the vast changes to the telecommunications landscape since the currently existing SAU was implemented in 2013. As the SAU establishes the regulatory framework through which NBN Co provides access to the NBN, the variation will significantly affect the delivery of NBN to Australians. We acknowledge the efforts of NBN Co in engaging with industry and other stakeholders in late 2021 prior to lodging this variation. However, while the proposed variation addresses some of the shortcomings raised by industry, we are concerned about new issues that would likely arise if this proposed variation was accepted. In particular, we believe that NBN Co's new pricing model and approach to earning revenue will pose challenges to fostering competition in the market, and will not promote the long term interests of end-users. As such, we recommend the ACCC to reject the proposed variation as it does not satisfy s 152CBD(2) of the *Competition and Consumer Act 2010*.

Moreover, with the recent change in government, IAA believes this to be a good opportunity to reassess the reason for NBN Co's existence and review the proposed variation through this lens. The Labor government identified that NBN is \$28 billion over budget and is failing to meet the basic tenets of its reason for existence. NBN Co was built to provide high-speed, high-quality broadband for all to improve Australian lives and economy. Affordable internet that is also reliable, of good quality, and high-speed is vital to all Australians and should not be considered a luxury. This has become increasingly clear in recent years as Australians have dealt with the COVID-19 pandemic and natural disasters, where access to reliable NBN has been important for many Australians to stay connected. As the SAU establishes the mechanism for setting prices, we believe that this is an opportunity to ensure that this national resource is committed to providing internet access to all Australians while remaining affordable, reliable and fit-for-purpose.

OUR RESPONSE

PRICING

We are concerned that the proposed pricing and product constructs will not be sufficient, particularly in the long term and that it will expose retailers, and therefore customers, to great cost increases. In addition, the proposed model is also likely to adversely affect competition in the industry. While we welcome the removal of CVC in higher speed products, we note that the retention of CVC in the lower speed products will mean that there will be greater costs burdens placed on cheaper services, thereby disadvantaging both retailers as well as low-income Australians.

According to feedback from members, the proposed model will likely result in greater overage bills as slower speed services doesn't necessarily equate to less data being used. Under the current pricing model, the high utilisation of data on slower speed services is offset by the CVC on faster services. However, this will no longer be available for RSPs to manage under the proposed model, thereby meaning reduced flexibility for RSPs to offer greater services to suit the diverse needs of customers. Moreover, the retention of CVC for lower speed products will also mean uncertainty for both RSPs and customers.

As Australia faces an economic recession, it is vital that all Australians have access to affordable and reliable internet. This is particularly so in the post COVID-19 era which has seen an unprecedented reliance on the internet as more people work and study from home, and conduct much of their daily life online. Moreover, the industry is seeing a rapid increase in data usage across Australia. For example, IAA's own network hit over 900Gbps recently and has been close to reaching 1Tbps. These spikes usually occur due to software updates such as on gaming platforms. Under the proposed pricing structure, the potential cost of delivery for RSPs during these times of high traffic would be extremely high, which would likely have a flow on cost to customers in the long term.

Industry is seeing other broadband products increasingly becoming more affordable, thereby making NBN less appealing for customers. This creates difficulty for RSPs to compete with other products as NBN is too expensive compared to 5G or third-party fibre to the home products. Members have expressed frustration that the high wholesale cost and NBN Co's own business enterprise positioning suggests NBN Co to be competing with the marketplace rather than acting as an underlying infrastructure provider.

The proposed variation is also likely to specifically affect smaller RSPs. Many smaller RSPs buy NBN services through aggregators – often preferred by NBN Co. As the proposed SAU does not provide any incentives to aggregators to pass on any cost savings from the new pricing structure, we consider it unlikely cost savings will pass on to smaller RSPs. Not only will this have a flow-on effect in terms of costs for customers, but also hinders competition in the industry.

REVENUE

The proposed SAU variation seems to be very much focused on cost recovery for NBN Co, at the expense of providing NBN at an affordable and reliable rate for RSPs, and in turn the Australian public. The ICRA component and under-overs approach further suggest that not only is NBN Co's focus on recovery of accumulated losses, but that it is going beyond cost recovery to focus on

making more revenue. Furthermore, the revenue sought is above what is necessary for the efficient operation of network and it is likely to be detrimental to market competition for RSPs. Multiple members have commented that NBN Co is acting like a competitor to other telecommunications providers at times in their efforts to secure revenue streams such as through approaching large corporate customers directly and pushing products through organisations that aren't telecommunications providers, thereby making it difficult for RSPs to rely on NBN Co. Furthermore, this is unlikely to incentivise NBN Co to operate more efficiently. Again, this will have negative flow-on effects to customers, thereby not being the long term interests of end-users as needs to be considered by the ACCC.

Furthermore, we strongly believe that NBN Co should look to recover costs over a longer period to take public interest and industry interest into greater consideration. We reiterate NBN Co's existence as a national, public-funded resource. As per Labor government's policy to "keep the NBN in public hands,"¹ we emphasise that the approach that should be taken is a long term cost recovery schedule over an extended period, as opposed to making returns on investment as soon as possible in order to become a profitable privatised. It is vital that NBN Co is committed to providing Australians with good quality, high speed communications at an affordable price.

SERVICES

MTM Technologies

IAA supports NBN Co's expansion of the SAU to include MTM services, on the condition that there is sufficient clarity and efficiency in the operation of the SAU in relation to these MTM technologies. In particular, we emphasise that a substantial service quality improvement should be reflected following the expansion than what was experienced by users in previous standards.

Regional Services

We note there is currently no commercial incentive to invest in NBN in regional areas. We believe this should be addressed by NBN Co in line with its purpose to provide reliable and good quality communications to all Australians.

SERVICE QUALITY

IAA is concerned that NBN Co has not proposed to add any commitments or improve its performance against standards in the SAU variation. The efficiency of NBN Co and its quality of service is a serious issue that needs to be addressed. The lack of a direct link between NBN Co's proposed prices to its underlying costs is very concerning as it provides no basis to determine whether the proposed pricing model is a reflection of its efficient operation. Given that the ACCC is required to consider whether the SAU encourages economically efficient use of the infrastructure, NBN Co's failure to provide this nexus means that we are unable to find this to be in the promotion of LTIE. Again, we emphasise that NBN Co's priority should be on delivering high quality, and reliability. Its focus on ROI to justify high prices without showcasing efficiency goes against the very basic principles of its existence.

¹ <https://www.alp.org.au/policies/fixing-the-nbn>

Moreover, according to member feedback, the disparity in quality of different technology types is a great issue for RSPs and customers. In particular, fixed wireless products should meet the same standards as fixed technology. According to one member, a customer who was previously using bonded ADSL copper at 50Mbps moved over to fixed wireless NBN following the decommissioning of ADSL copper by Telstra. However, the client experienced lower speeds and lower quality, thereby resulting in a worse experience with NBN, highlighting the under-dimensioning of the replacement services.

Both industry and the Australian public have expressed concerns at the high costs for NBN despite network outages and sub-par technology choices. Thus, we strongly support NBN Co being subject to greater reporting requirements, such as a comprehensive reporting framework as suggested by the ACCC. We believe it beneficial to further incentivise NBN Co to ensure greater efficiency in their operation as well as addressing service quality issues, thereby promoting LTIE.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the proposed variation to the NBN Co's Special Access Undertaking. We acknowledge the efforts of ACCC in conducting this review, and engaging with industry and other stakeholders to ensure the NBN Co SAU is fit-for-purpose and in promotion of the long term interests of Australian consumers as well as the economy. To that end, we believe that the proposed SAU variation should not be accepted due to its likely negative effects on Australian industry and consumers.

Thus, on behalf of our members and in support of the public interest of the internet more generally, IAA reiterates our call to urge the government to fundamentally reassess the operation and objectives of NBN Co. We also urge the government to direct NBN Co to further engage with RSPs and consumers to ensure the delivery of a national resource that is consistently reliable, accessible and high quality. We believe the proposed variation should be considered from such a perspective, and that this is in line with the considerations that ACCC must have with respect to promoting the long term interests of the end-user in deciding whether or not to accept the proposed variation.

IAA acknowledges that a SAU variation is necessary, given the changes in the technological landscape since the current SAU was accepted. To this end, we are committed and sincerely look forward to continue engaging with NBN Co, the ACCC, industry and other stakeholders to ensure an SAU variation that best serves Australians and our economy.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as

social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark

Chief Executive Officer
Internet Association of Australia