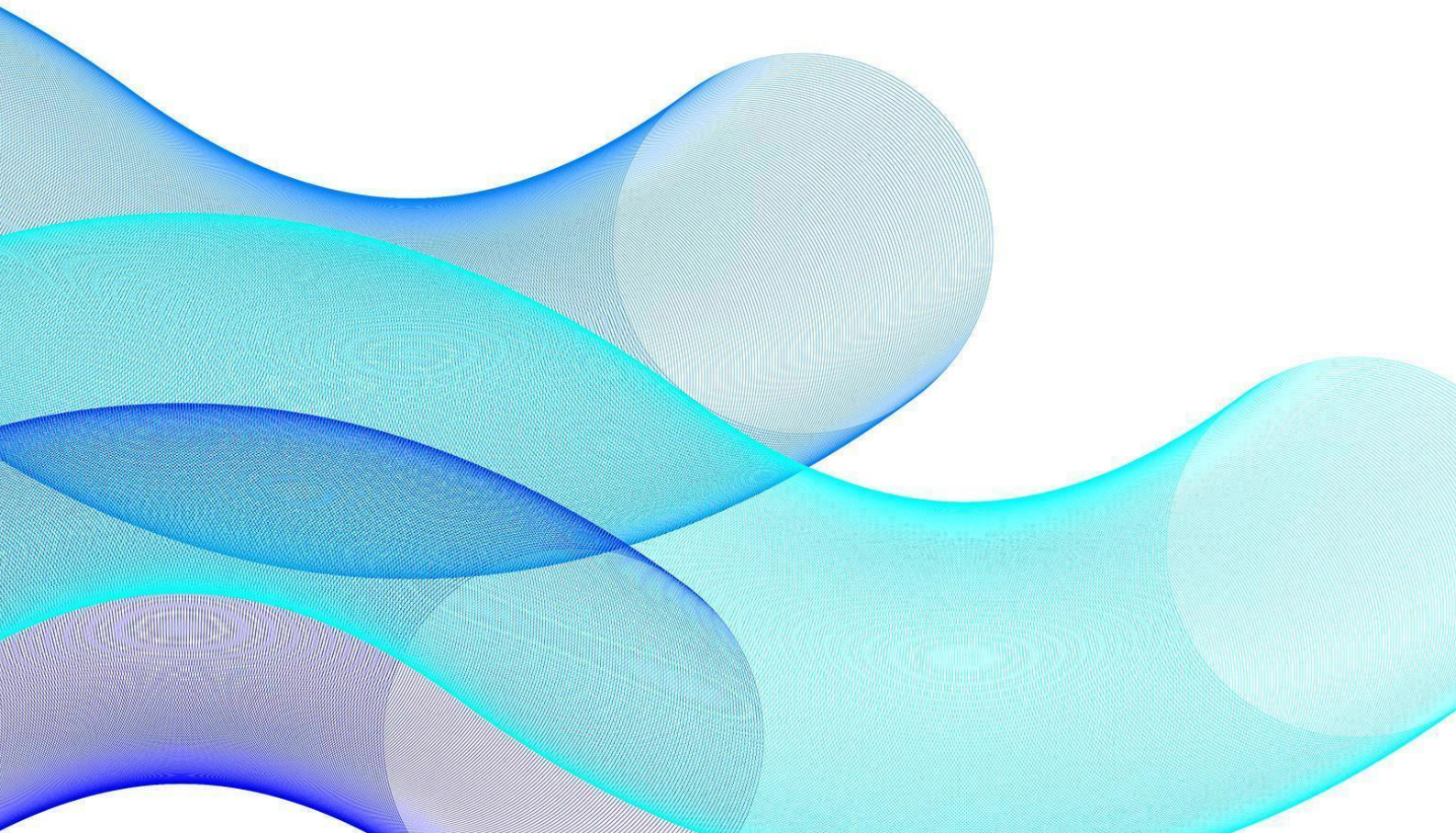

**Vocus' submission in response to
ACCC draft decision -**

**Variation to NBN Special
Access Undertaking
variation**

May 2023



Response to ACCC's draft decision

Vocus welcomes the opportunity to provide feedback to the Australian Competition and Consumer Commission (ACCC) on its draft decision on NBN's proposed variation to its Special Access Undertaking (SAU).

The SAU is a critical part of the regulatory framework that governs the terms on which NBN supplies services to retail service providers (RSPs).

Vocus serves residential consumers and small businesses through its brands, Dodo, iPrimus, and Commander. Vocus also provides wholesale NBN services to RSPs as well as Enterprise & Government customers directly under the Vocus brand.

Vocus submits that further improvements to NBN Co's pricing and product construct are still required for the SAU to be assessed as being reasonable and promoting the long-term interests of end-users (LTIE). Our major concern that remains unaddressed is the substantial proposed increase in the bundled charge for 50 Mbps plan, at a time when many are facing significant cost of living pressures. Telecommunications is one of the few spend areas that has historically never tracked to CPI and is not now.

Pricing and product constructs

Inefficient utilisation of the NBN

Vocus maintains that the likely impact of the pricing changes contained in the SAU variation are not reasonable.

In its draft decision, the ACCC accepted the price increase for the 50 Mbps wholesale plan as reasonable and noted that the increase in price will be partially offset by reductions in other speed offers. However, the reduction in the price of the 100 Mbps offer should not be at the expense of those consumers with lower willingness to pay, lower speed requirements or on lines not capable of providing 100 Mbps or higher speeds.

The proposed wholesale price increase for the 50 Mbps wholesale offer is 11% while the included usage is reduced by 6% - even before the variability of CVCs are included - the combined impact is ~14% worse for RSPs.

Further, the price reduction for 100 Mbps offer is only temporary given the ongoing price increases that NBN Co would be enabled to make under the proposed SAU. NBN has submitted its 3 - year pricing roadmap, and noted it is planning to index its total weighted average basket of wholesale prices to within inflation (which is high) in FY25 and FY26. Telecommunications spend has historically always tracked below CPI. In this pricing roadmap, the indicative prices for 100 Mbps speed tiers are increased by 5 per cent in FY25 and 3.2 per cent in FY26. NBN would still be enabled to raise individual wholesale prices by the higher of CPI or 5 per cent per annum up until 30 June 2032.

In its media release¹ responding to the ACCC's draft decision, NBN Co stated that "the entire proposed price framework encourages Retail Service Providers (RSPs) to match customers with heavy data consumption patterns to high speed **nbn** plans suitable for their needs." This framing overlooks the

¹ NBN Co Media Release, 2 May 2023, <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-acknowledges-accs-draft-decision-on-special-access-undertaking-sau-variation>

role of price as a major guiding factor in customer choice. From a consumer perspective, some customers do inform us if their service is not meeting their needs and we attempt to “right-plan” them onto a more suitable product. There will also be some customers that are heavier users on 50 Mbps services but have a low willingness to pay more. In both cases, NBN Co’s pricing should enable RSPs to provide our customers with products that meet their needs and align with their willingness to spend. 50 Mbps speed tier services have become the most popular plan in the market as they represent the midpoint of willingness to spend and an experience that meets most users’ requirements.

Vocus submits that NBN Co’s attempts to realise higher yields through the immediate price increase on the 50 Mbps plan will more materially impact demand than NBN Co has forecast.

Our experience suggests that NBN Co’s proposed pricing and construct of the 50 Mbps plan will drive a segment of customers to either downgrade their plan or consider alternative networks. This is not an outcome we want, nor does it promote efficient use of and investment in the NBN.

Even without the proposed price rises, the growth in total NBN access services stalled in the first half of FY23 and is flatter than expected in the second half. The ACCC stated:

“This is consistent with growing interest from more price sensitive consumers in exploring options for lower cost broadband. We also acknowledge that predominately voice and/or low-capacity broadband services would be more likely to be supported by alternative wireless networks.”

Vocus does not agree with the proposition that it is predominantly voice and/or low-capacity broadband services that would be more likely to be supported by alternative wireless networks. Firstly, price sensitivity does not equate to low use. Vocus’ dodo customers are those who traditionally require significant data (and therefore consume significant bandwidth) but seek to do so at the lowest available cost. Secondly, mobile network operators are targeting price sensitive customers beyond the voice and/or low-usage cohort by offering 50 Mbps plans as the entry level point on Home Wireless Plans, without data caps, and at prices \$15 to \$20 less than their NBN equivalent. The increased take up of alternative networks means that NBN will continue to remain underutilised, which is not in the long-term interests of end-users.

Affordability

The Government’s Statement of Expectations to NBN Co state that “the enduring purpose of the NBN is to provide fast, reliable and affordable connectivity to enable Australia to seize the economic opportunities before it and service the best interests of consumers.”

We reiterate that the 50 Mbps plan will become materially more expensive for RSPs to supply to our customers, even considering the move to a CVC utilisation model. In addition to the \$5 increase in minimum access cost, there will be a cost increase of \$1.20 due to the reduction in the CVC inclusion. Vocus will also lose the benefit of economies of scale, as the current inclusions on higher-speed tiers will no longer be available to be pooled across all AVCs – meaning the overage cost for a 50 Mbps plan will be higher still.

NBN Co’s view on the proposed pricing changes are based on market average CVC usage and does not equate to the situation faced by individual RSPs.

Vocus highlights that the current CVC inclusion of 2.65 Mbps is already too low and not in line with the growth in usage we are seeing in our network. We are already faced with material NBN supply cost

increases which will be exacerbated by NBN's proposed reduction in the CVC inclusion for the 50 Mbps plan. For RSPs to be able to partially mitigate consumer detriment, the CVC inclusion for the 50 Mbps in the proposed SAU variation should be at least 3 Mbps given the time that has elapsed since the SAU process commenced.

Vocus submits that NBN Co's proposed measures, including those set out in its letter of 24 March 2023, do not do enough to promote take up and retention of NBN services.

The ACCC notes that NBN Co has:

- previously offered targeted discounts to encourage connections to its network,
- proposed a low-cost voice only wholesale offer
- proposed resetting the 25 Mbps wholesale offer so that retailers can offer a higher speed inclusion in their entry level broadband plans

None of these measures meaningfully address the critical issue of affordability for existing price sensitive consumers. We understand this market segment well and reiterate that "price sensitive" should not be seen as a proxy for households that only need slow internet.

Vocus does not support the ACCC's finding that the proposed tariffs would likely reduce the average cost to serve our customers currently acquiring 25 Mbps speed plans. The construct of this product does not make entry level products more affordable. Effective wholesale prices for the 25 Mbps product will increase above current levels. While NBN proposes a lower monthly charge of \$26, the offer only includes 0.2 Mbps of CVC capacity compared to the 1.6 Mbps bundled today. The outcome of NBN Co's "give and take" approach is that to provide the same experience to our customers as we do today, we will need to spend \$0.20 more than the current monthly bundled charge of \$37 even before adding any variable overage charges.

We submit that NBN Co's revised variation should increase the CVC inclusion for 25 Mbps speed tier to 1.75 Mbps to account for current usage levels and more effectively promote take up and retention of NBN services.

Continued price uncertainty

Retail service providers need greater certainty over the costs we face when using the NBN. Vocus agrees with the ACCC's finding that the proposed pricing model for the 50 Mbps offer leaves open a very broad range of pricing outcomes. This cost uncertainty will be material for Vocus given the majority of our Retail base is on the 50 Mbps speed tier product. Vocus' previous submission also highlighted the operational complexity we will face in separating AVCs that attract overage from AVCs that do not attract overage.

NBN Co offering additional monitoring and reporting tools to provide insights into bandwidth consumption at the individual customer level will add inefficient costs of further investment in our own IT systems and provisioning processes. These inefficiencies further contribute to pricing pressures that are not in the interests of consumers.

We note the ACCC's suggestion that NBN Co should consider a cap which could operate so that a service acquired under the 50 Mbps offer could not exceed the monthly cost of the residential 100 Mbps offer. Vocus submits that while this would be an improvement, it does not remediate the commercial and operational challenges posed by NBN's dual pricing construct. Uncontrolled price

variance remains unacceptable even with the introduction of a cap as Vocus would still need to manage its traffic and the amount of overage used to maintain control of costs. Consequently, NBN Co's proposed construct with a mix of TC-4 bundled offers and AVC-only flat rate offers will not provide necessary cost certainty or simplicity in network operations.

Service quality

The SAU seeks to embed service standards, including many negotiated in 2020, for the next three years. Vocus agrees with the ACCC's concerns that the proposed benchmark service standards in the first regulatory period would be quickly superseded, and that the SAU variation does not commit NBN Co to effective consultation with RSPs about measures that could address known cases of poor service quality.

However, NBN Co needs to do more than it has proposed in its letter of 24 March 2023 to assist RSPs in delivering a positive customer experience. Consumers continue to suffer too many faults and outages, and many do not receive the line speeds that NBN Co charges RSPs for. We note the Telecommunications Industry Ombudsman's recent media release noted that complaints about having intermittent internet service or drop-outs increased in January – March 2023 quarter.² To be acceptable to consumers, NBN Co's revised SAU variation needs to meaningfully address these concerns and ensure NBN Co is held to account when it fails to meet those standards.

END

² Internet problems persist for telco consumers, TIO results steady against previous quarter, 10 May 2023, <https://www.tio.com.au/news/internet-problems-persist-telco-consumers-tio-results-steady-against-previous-quarter>