
TELSTRA CORPORATION LIMITED

Submission to ACCC Consultation on Revised Variation to NBN Co Special Access Undertaking

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[CIC begins] = information not to be released without a confidentiality undertaking

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EXECUTIVE SUMMARY

Telstra is providing this submission in response to the Australian Competition and Consumer Commission's (ACCC's) "Variation to NBN Co Special Access Undertaking – Consultation Paper" dated August 2017 (**Consultation Paper**).

As noted by the ACCC and Telstra in previous consultation papers and submissions, NBN Co's Special Access Undertaking (**SAU**) is a key part of the regulatory framework that governs the price and other terms upon which NBN Co will supply its services to access seekers until 2040. NBN Co withdrew a previous SAU Variation (**Original Variation**) in June 2017 in response to an ACCC Draft Decision not to accept the variation following industry consultation. NBN Co subsequently submitted a new proposed variation to the SAU (**Revised Variation**) which is the subject of the current consultation.

NBN Co have addressed many of the concerns raised by the ACCC and stakeholders in relation to the Original Variation however a number of issues remain that Telstra considers should be addressed by NBN Co in order for the Revised Variation to be in the LTIE and enable access seekers to provide consumers with a seamless transition to the NBN and high quality NBN services. Although these issues are outlined in this submission for clarity of position, further detail is provided in previous Telstra submissions, in particular that made in response to the ACCC's Draft Decision.¹ In this respect, Telstra notes the ACCC statement in the Consultation Paper that it is still considering submissions made to the Draft Decision.

The primary concern raised by the ACCC in the Consultation Paper relates to industry concerns with the NBN pricing construct. While Telstra considers that this is an important issue, the ability of the ACCC to address concerns through the SAU variation process appears limited. In Telstra's view, under the existing SAU the ACCC's formal influence extends only to the rebalancing mechanism, which is unlikely to have any long-term significant impact. Telstra also questions whether the current structure of the Long-Term Revenue Constraint Mechanism (**LTRCM**), particularly in relation to cost allocation and recovery, is in the LTIE.

01 Service description and network boundary point

1.1. Proposed changes to NBN Access Service definition

As set out in its response to the Draft Decision, Telstra did not support extending the definition of the NBN Co Network to include 'any other telecommunications network...' on the basis that the broadening of the service description in this way would have potentially allowed NBN Co to provide products outside the scope of the NBN Co Ethernet Bitstream Service (NEBS) without appropriate consultation with the ACCC or access seekers, and where there may be no competitive need to do so. However, Telstra also considered that the removal of subclause (g) completely and limiting the definition of NBN Co Network to specific technologies was too restrictive. Specifically, Telstra proposed that subclause (g) should be amended to include a reference to future network technologies but to limit its inclusion to those technology types used to provide the NEBS.

¹ See Telstra, Submission to ACCC Draft Decision on Variation to NBN Co Special Access Undertaking, 28 April 2017. <https://www.accc.gov.au/system/files/NPC-submissions-%20Telstra%20-%20SAU%20draft%20variation%20-%20PUBLIC%20-%201%20May%202017.PDF>

In the Revised Variation NBN Co have removed the reference to 'any other telecommunications network' from the definition of NBN Co Network. However, in its supporting submission NBN Co notes that its "...strong expectation is that the ACCC will, in respect of future variations, take steps to ensure that the variation process becomes as streamlined as possible..." with reference to developing procedural rules under section 152ELA of the Competition and Consumer Act 2010 (**CCA**) to provide a more streamlined path to securing the approval of minor SAU variations in the future. While Telstra does not object to the concept of a streamlined approval process in principle, this should not occur at the expense of adequate industry consultation. Telstra also considers that the development of any such process should also be subject to industry consultation, not least as to what constitutes a minor variation.

1.2. Reinstatement of the network boundary point definition

Telstra supports the reinstatement of the current definition of Network Boundary Point for the reasons set out in section 1.2 of Telstra's submission to the Draft Decision.

02 Co-existence and remediation

2.1. The definition and timeframe for co-existence are appropriate

In previous submissions, Telstra considered it was premature to incorporate NBN Co's proposed definition of co-existence into the SAU because, at the time, the definition in the WBA was subject to negotiation. As a result, Telstra considered that the inclusion of a revised definition in the SAU could lead to inconsistency between the SAU, WBA and any industry-based solution. As noted by NBN Co, the definition of co-existence has now been agreed in the context of the WBA and, accordingly, Telstra supports its inclusion in the Revised Variation.

Telstra also supports limiting the operation of the co-existence provisions to module 1 of the SAU (by removing the proposed provisions from module 2) for the reasons set out in section 2.3 of Telstra's submission to the Draft Decision.

2.2. Remediation provisions are appropriate but should be included in module 2

As with the co-existence provisions, in previous submissions Telstra considered it was premature to incorporate NBN Co's proposed remediation provisions into the SAU because, at the time, the provisions in the WBA were subject to negotiation. Again, Telstra considered that the inclusion of revised provisions in the SAU could lead to inconsistency. These provisions have now been agreed in the context of the WBA and, accordingly, Telstra supports their inclusion in the Revised Variation.

In its Revised Variation NBN Co has proposed to limit the operation of the proposed remediation provisions to module 1 of the SAU. As set out in previous submissions (see, for example, Section 2.4 of Telstra's submission to the Draft Decision), Telstra does not consider that this limitation is necessary given that the potential need for remediation is not limited to the initial deployment of the FTTB/FTTN network and is not necessarily transitory in nature. Nor is remediation subject to a natural end date upon migration of legacy services to the NBN - rather, remediation beyond the migration window may be necessary. Although NBN Co notes that it will utilise the Replacement Module Application regime where remediation issues persist beyond the timeframe of module 1, Telstra's position is that inclusion in module 2 would provide greater certainty for NBN Co and RSPs.

2.3. There are limitations to the new provisions dealing with 'interference management'

NBN Co has made some refinements to the remediation provisions to address interference management. While the proposed provisions dealing with interference management are consistent with the WBA, Telstra considers that there are limitations to the provisions which will impact upon their effectiveness. First, the provisions do not state what options (if any) a customer and RSP would have in the case where NBN Co attempts Interference Mitigation but it is unsuccessful and where the Interference Event means that the Peak Information Rate (**PIR**) Objective cannot be achieved. Second, this uncertainty could persist for an extended period of time given there is no specific time commitment for Interference Mitigation to be completed.

Telstra considers that NBN Co should set a time period (for example, between 6 and 12 months) during which Interference Mitigation will be attempted. If unsuccessful after this time period then an alternate technology should be offered by NBN Co to the end user. Otherwise the existing Interference Mitigation process risks leaving an end-user permanently on a substandard service with no prospect of improvement.

2.4. Other means exist to receive information regarding services affected by co-existence and remediation

The Consultation Paper seeks views on whether NBN Co should provide further information regarding the number of services affected by the co-existence and remediation provisions. While welcoming increased transparency, Telstra considers that enhancements to the Historical Footprint List (**HFL**) provide sufficient additional visibility in relation to services affected by co-existence that will meet the needs of RSPs. Specifically, the HFL has been enhanced to include an additional attribute against each Location ID confirming the co-existence status of premises and RSPs have timely access to this information through an online portal. Further, Telstra believes existing remediation processes in the WBA should allow for effective identification of services undergoing formal remediation. **[c-i-c begins]**
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Instead of providing further information regarding the number of services affected by the co-existence and remediation provisions, Telstra believes that it is more appropriate that NBN Co focus on making improvements to processes and defining service levels that relate to resolution of instances of co-existence and remediation. **[c-i-c begins]** **[c-i-c ends]**

03 Pricing Terms

The Revised Variation includes the same proposed changes to the SAU price terms as the Original Variation. That is, the Revised Variation specifies NBN offers for services supplied over NBN Co's MTM networks. Telstra's previous submissions in relation to the application of price terms to MTM services continue to apply. Specifically, Telstra does not object to the application of price terms to MTM services but considers that the SAU should be updated to include pricing changes that have occurred since 2013.

The key concern in relation to NBN pricing is not the application of the SAU to the MTM services but rather the NBN pricing construct and the level of NBN prices in general. Telstra has raised its concerns with the NBN pricing construct in its response to the Draft Decision. While NBN Co is currently consulting on alternative pricing constructs that may address some of the concerns raised by industry, Telstra does not consider that changes to the pricing construct alone will have a long-term significant

impact. That is, if input costs continue to rise, it will become increasingly uneconomic for RSPs to deliver high-speed broadband services to end users at an acceptable price point or service levels.

The formal ability of the ACCC to address concerns associated with NBN pricing is limited to the price controls and rebalancing mechanism contained within the SAU, both of which are unlikely to have any long-term significant impact. Although ACCC acceptance of the Revised Variation means that the MTM services would be captured by the rebalancing mechanism, the revenue neutrality constraint presumably means that future increases in overall input costs will still occur. While the inclusion of the MTM services in the SAU provides a level of “certainty”, it does not go any way towards addressing the critical nature of the concerns that industry has with NBN pricing and the impact this will have on the supply of NBN services to end-users.

04 Other Issues

4.1 Rollout information remains insufficient

In its Revised Variation, NBN Co has not made any changes (relative to the Original Variation) to the proposed SAU amendments in respect of rollout information. As set out in previous submissions, Telstra considers that the proposed amendments fail to achieve an appropriate balance between accurate and timely provision of rollout information to stakeholders. This balance is critical for RSPs in network planning activities and, ultimately, in providing their customers with high quality NBN services. Further detail on Telstra’s position in respect of rollout information was provided in section 3 of Telstra’s submission to the Draft Decision.

4.2 The current variation process provides an opportunity to clarify the treatment of RBS receipts

The Consultation Paper notes Telstra’s submission to the Draft Decision that the current variation process provides an opportunity to clarify how receipts from the Regional Broadband Scheme (RBS) arrangements will be treated under the SAU. As set out in that submission, the RBS arrangement was never contemplated by the SAU. The SAU therefore does not accurately reflect the policy intent of the RBS and parts of the SAU relating to the LTRCM Framework (1E) and Regulatory Information (1F) therefore require amendment to accommodate the RBS arrangements. In particular, there is no provision for the regulatory accounting of RBS receipts. The Government’s Telecommunications Reform Package legislation has now been passed and the relevant details of the RBS are known. As such, the current variation process provides an ideal opportunity to amend the SAU to accommodate the RBS arrangement and clarify the treatment of RBS receipts. The importance of this additional transparency and accountability is heightened by NBN Co’s recent announcement that the footprint for the fixed wireless network is to be expanded.

Telstra’s submission to the Draft Decision also noted that there are no provisions in the SAU which require NBN Co to allocate its costs in a particular way. Amongst other things, Telstra considers that there should be separate Initial Cost Recovery Accounts (ICRA’s) and Annual Building Block Revenue Requirements (ABBRR’s) established, alongside separated financial information from NBN Co, and the establishment of appropriate cost allocation arrangements in respect of common costs (particularly between core and competitive services). This would assist in avoiding any incidence of inappropriate cost allocation or the inclusion of non-prudent costs in the LTRCM. On the latter, Telstra is concerned that the LTRCM does not place sufficient scrutiny on the costs included by NBN Co which are then ultimately borne by the end-user. Telstra therefore questions whether the current structure of the LTRCM is in the long-term interests of end users.