



TELSTRA CORPORATION LIMITED

NBN ACCESS PRICING

Public version

23 July 2021

[CIC begins] = information not to be released even with a confidentiality undertaking



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EXECUTIVE SUMMARY

Telstra welcomes the opportunity to provide this submission following the ACCC's NBN Access Pricing Roundtable. We are keen to participate in an open and transparent process that leads to a revised nbn co Special Access Undertaking (**SAU**) which supports Australia's digital economy ambitions.

nbn co's latest pricing proposals do not support Australia's digital economy ambitions

The communications sector has undergone a great deal of transformation since the SAU was first accepted in 2013 and these changes have amplified over the last year. A significant impact of the COVID-19 pandemic has been the accelerated digitisation of Australian society, with many people continuing to work and study from the places that are most convenient to them.

While these market changes present a great opportunity to turn Australia into a leading digital economy, it places even more focus on the fundamental problem of the wholesale pricing model for NBN services. At a time when there has been no fundamental change in the level and structure of NBN pricing, contracted CVC has increased by 142%.¹ The current regulatory framework needs to change. It imposes no genuine pricing constraints, with retail service providers (**RSPs**) facing high and uncertain prices.

nbn co's SAU Discussion Paper puts forward three pricing constructs for industry consideration.² These constructs attempt to lock in higher and increasing prices, and in doing so they do not provide the solution to current pricing issues. Telstra estimates the new constructs represent an average price increase of around 20% from 1 May 2021 for the most popular NBN speed tier (50Mbps), meaning wholesale prices would be well above efficient costs. The proposal would result in significantly higher APRU for nbn co of between [CIC begins] [REDACTED] [CIC ends] — far exceeding their Corporate Plan target ARPU of \$49 in FY24. These constructs would also result in significant increases in cost for RSPs, as the increases in AVC fixed charges far outweigh the reduction in average. Telstra estimates that it would face higher costs of up to [CIC begins] [REDACTED] [CIC ends]. The constructs are provided with no justification. While the expectation is that nbn co would develop a new building block model (**BBM**), it is clear that this has not occurred and prices are not underpinned by an assessment of efficient costs. Combined with the proposed ongoing price increases greater than CPI, the proposal would certainly not be in the interests of end-users.

There are a number of related price issues that need to be resolved. First, wholesale prices are too high and are expected to increase further. This will ultimately lead to a combination of higher retail prices or reduced service quality. Second, the current pricing structure leads to significant cost uncertainty for RSPs. The unique approach of charging for CVC is creating this uncertainty. The level and structure of NBN prices needs to be considered together and assessed against the long-term interest of end-users (**LTIE**) (see Attachment A for summary of legislative criteria).

There also needs to be a clearer link between NBN wholesale prices and the level of service quality provided. Telstra's view is that it is now timely to consider the baseline level of service quality as part of the ACCC's review of NBN prices. While WBA4 represented a significant step change in commercially negotiated service standards, there are gaps and it is clear that more needs to be done to ensure consumers receive a service that meets expectations. The future BBM needs to establish a price that enables nbn co to deliver a baseline quality of service that supports a great end-user experience, and

¹ Increase between March 2019 to 2021, calculated from ACCC wholesale markets indicators report. Reports available from <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report/previous-reports>.

² Accessible at <https://www.nbnco.com.au/content/dam/nbn/documents/media-centre/media-statements/2021/nbnco-spacial-access-undertaking-variation-2021-discussion-paper.pdf>.



which gives nbn co the opportunity and incentive to invest more to improve that baseline level of service over time. Telstra believes that as part of the ACCC's upcoming workshops the baseline level of service quality must be considered, along with prices.

The ACCC should lead the review of NBN prices

It is Telstra's expectation that in developing revised NBN prices and a new regulatory regime to operate through nbn co's SAU, a new BBM will be established to set efficient prices. The process to develop the BBM needs to be transparent, inclusive and completed in a timely way. The development of new pricing arrangements also needs to consider the baseline level of service quality that is provided by nbn co.

Telstra believes full consideration of these issues can only be achieved if the ACCC leads the process. The ACCC has in the past applied a BBM to regulation of Telstra's legacy copper network and through the Australian Energy Regulator regulates electricity and gas transmission and distribution networks. As part of these processes the ACCC has had to consider the links between prices and service quality. The ACCC is best placed to lead the process to develop a BBM for NBN pricing and more broadly, the new regulatory arrangements to apply to nbn co.

Through an ACCC-led process with commitment from all industry participants, including nbn co, we can identify a new regulatory framework that provides a clear and transparent process to set sustainable, efficient prices. It will then be up to nbn co to submit an SAU variation proposal consistent with the outcomes of the ACCC process. Prices need to be predictable, they need to support Australia's digitisation, and they need to promote the efficient use of, and investment in, the NBN. Such pricing would promote the LTIE and meet the legitimate needs of RSPs, nbn co and Government.



01 THE SAU VARIATION PROPOSAL

It has been nearly ten years since nbn co's SAU was originally accepted. At that time the NBN had fewer than 100,000 activated premises. Today the build phase of the NBN is complete and over 11 million Australian households and businesses can access high speed broadband. The recent experience with COVID-19 has highlighted the importance of NBN access and its role in the digitisation of the Australian economy. The NBN is driving changes in the way Australians use broadband technology to live, work and connect. It is therefore an appropriate juncture to build a regulatory regime and ensure the SAU is fit-for-purpose for the next phase of the NBN's operation.

1.1. The existing SAU

The NBN SAU specifies price and non-price terms and conditions for NBN access, establishing the pricing and cost recovery framework applying to the NBN. The SAU was approved by the ACCC in 2013 after detailed consultation between nbn co, the ACCC and industry stakeholders and applies until 2040. It was accepted before the adoption of the multi technology mix (**MTM**) approach and therefore only applies to nbn co's fibre-to-the-premises, fixed wireless and satellite networks. In practical terms, this means only 25% of NBN services are covered by the existing SAU.³

In terms of pricing aspects, there are two core elements of the SAU. First, the SAU sets maximum regulated price caps for each of nbn co's offers, with annual price adjustments limited to CPI-1.5%. These caps are significantly higher than current NBN prices, i.e. they are not a binding constraint on pricing and create uncertainty for RSPs. Second, the SAU sets out a Long Term Revenue Constraint Methodology (**LTRCM**, essentially a **BBM**). However, the LTRCM **BBM** is not used to set prices but is instead used as a mechanism to recover all efficient and inefficient NBN costs. Under this mechanism, only when unrecovered costs are recouped will the LTRCM **BBM** actually constrain nbn co's revenues and prices — this is not expected to happen until at least FY65-FY70, if ever.

The SAU also allows nbn co to make offers available under the Discounts, Rebates and Credits provision. Today most services taken by RSPs are supplied as "discounts" under this provision. This has led to significant pricing uncertainty for RSPs as these offers fall outside the SAU regulatory framework and do not attract any regulatory protections or certainty.

1.2. The SAU variation proposal

With the NBN build complete, nbn co has proposed changes to its SAU. The key changes in the SAU variation proposal relate to new pricing, which nbn co considers will deliver both "*increased certainty and predictability to RSPs*" and the inclusion of all **MTM** technologies to introduce a "*consistent and integrated approach to the regulation of our services*".⁴

Three TC-4 pricing constructs are presented for consideration. Two options involve **AVC**-only pricing on some or all fixed line and fixed wireless speed tiers. nbn co also propose new long-term price control options to regulate the proposed pricing changes. The three updated pricing constructs are:

- **Construct 1:** increased **AVC** bundle price, and a reduction in the overage cost per Mbps (from \$8/Mbps to \$6/Mbps).

³ Data accessed from nbn co's weekly reports at <https://www.nbnco.com.au/corporate-information/about-nbn-co/corporate-plan/weekly-progress-report>.

⁴ Accessible at <https://www.nbnco.com.au/content/dam/nbn/documents/media-centre/media-statements/2021/nbnco-spacial-access-undertaking-variation-2021-discussion-paper.pdf>, pg. 1-2.



- **Construct 2:** increased AVC bundle prices, with no overage charges for high speed bundles (100 Mbps and above).
- **Construct 3:** increased AVC bundle prices, with no overage charges across the board.

Table 1: nbn co's alternative pricing constructs

Proposed Pricing Constructs	Bundle pricing type	Construct 1			Construct 2			Construct 3		
		Prop. Effective Charge	Prop. CVC Inclusion (Mbps)	Prop. Overage Rate (Mbps)	Prop. Effective Charge	Prop. CVC Inclusion (Mbps)	Prop. Overage Rate (Mbps)	Prop. Effective Charge	Prop. CVC Inclusion (Mbps)	Prop. Overage Rate (Mbps)
ELB [12/1] ⁸	Entry Level Bundle	\$25.5	0.15	\$6	\$22.5	0.15	\$8	\$35.0	NA	\$0
B25 [25/5, 25/10] ⁹	Standard Bundles	\$39	1.60		\$37	1.60		\$40-\$45	NA	
B50 [50/20] and Wireless Plus ¹⁰		\$48	2.65		\$50	3.00		\$51-\$55	NA	
Home Fast [100/20] ¹¹	High Speed Bundles	\$60	4.70		\$60-\$63	NA	\$60-\$63	NA		
Home Superfast [250/25]		\$70	6.40		\$70-\$76	NA	\$70-\$76	NA		
Home Ultrafast (up to ~1000/50) ¹²		\$82	7.00		\$82-\$100	NA	\$82-\$100	NA		
Premium Bundle [100/40] ¹³		\$67	4.70		\$67-\$68	NA	\$67-\$68	NA		
Premium Bundle [250/100]		\$105	6.40		\$105-\$110	NA	\$105-\$110	NA		
Premium Bundle [500/200]		\$165	7.00		\$165-\$170	NA	\$165-\$170	NA		
Premium Bundle [1000/400] ¹²		\$235	7.00		\$235-\$245	NA	\$235-\$245	NA		

Source: nbn co, nbn Special Access Undertaking Variation 2021 – Discussion Paper, June 2021.

Telstra's key concern is that there appears to be no basis for the proposed prices. Prices are not based on an assessment of efficient costs under a BBM or any measure of costs. And while nbn co states the alternative pricing constructs are largely a rebalancing of charges and are revenue neutral — “Each of these options incorporates an element of “rebalancing” the total charges faced by RSPs from variable charges to fixed charges”⁵ — there is no analysis illustrating that revenue neutrality or the level of revenue they are neutral to. It is therefore impossible to ascertain the reasonableness of the proposals under the legislative criteria.

1.3. What does the SAU variation proposal provide to end-users?

The proposed variations result in significant change compared to the existing SAU. While they may provide significant benefit to nbn co they will cause material harm to end-users. Notably, the proposals deliver a substantial wholesale price increase and significant regulatory and price protection to increase prices further, while providing no incentive for efficient expenditure on the network. The proposals:

- **Substantially increase the price paid by RSPs:** depending on the construct, Telstra estimates that it would be up to [CIC begins] [CIC ends].
- **Lock in ongoing and unspecified price increases:** the proposal to lock in unspecified price increases of greater than CPI in a revised SAU has no justification nor link to efficient costs.
- **Give significant regulatory protection to nbn co with no additional benefits to end-users:** the current SAU only covers approximately 25% of nbn co's services (FTTP, fixed wireless and satellite).⁶ The remaining 75% of services are subject to regulatory pricing arrangements under Part XIC of the *Competition and Consumer Act 2010 (the Act)*. By seeking to include FTTC, FTTN,

⁵ See *nbn SAU Variation 2021 – Discussion Paper*, section 3.3.2 Proposed TC-4 pricing constructs for consideration, p. 10

⁶ Based on sum of TC-4 services in *NBN Wholesale Market Indicators Report March quarter 2021 report* (ACCC, 21 May 2021).



FTTB and HFC services in a revised SAU, future regulatory decisions relating to these services would be locked out. With substantial protections for nbn co, including a freedom to increase prices, the proposed SAU may provide significant benefit to nbn co but potentially causes material harm to RSPs and end-users, as future changes in the market and customer circumstances would not be able to be addressed by regulators.

- **Allow nbn co to recover inefficient costs:** currently the SAU provides a mechanism to recover all costs with an assessment of prudence only (not efficiency), provides a return equal to the WACC despite nbn co's internal rate of return being lower, and does not provide sufficient transparency to avoid cross subsidies from regulated to competitive markets. None of this would change under the proposed SAU variations. Further, the opportunity to address these issues for technologies not currently covered by the SAU would be removed by inclusion of the additional MTM technologies.
- **Ignore the link between prices and service quality:** no changes to how service quality is assessed are proposed and there is no definition of the baseline level of service to be provided. The proposal asks for higher prices in conjunction with minimal specification over service quality, allowing service quality to be significantly lowered after prices are locked in. This would not be in the long-term interests of end-users.

02 MOVING TO SUSTAINABLE WHOLESALE PRICES

2.1. Setting prices using a building block model

A BBM is a common regulatory approach to set efficient prices for monopoly infrastructure whilst allowing the infrastructure provider to recoup its efficiently incurred costs and maintain incentives for future investment. It has been applied extensively in Australia and overseas to set prices for electricity, gas, water and telecommunications services.

The expectation now is that a BBM will be applied to set NBN prices (or a subset of prices for specified regulated services). This follows a statement of expectations issued by the Minister for Communications to the ACCC in October 2020, which stated in part:

...the ACCC should work constructively with my Department and NBN Co on how best to develop a comprehensive regulatory solution on NBN's wholesale pricing... In developing an agreed SAU variation with NBN Co, the ACCC could have regard to the Vertigan Panel's Recommendation 19 that the ACCC should use a "building block" cost model. In my view, work could begin on such a model immediately in accordance with the framework under the SAU and the ACCC could include NBN technologies not currently covered by the SAU in this building block cost model...⁷

As noted, nbn co's SAU does include a LTRCM BBM. Unlike BBMs applied in other industries, the LTRCM BBM does not exclude inefficient costs and is not used to set prices.

2.2. nbn co's approach to setting prices

Given the Minister's statement of expectations to the ACCC we were expecting nbn co to build and apply a BBM. However, based on its SAU variation proposal that is yet to occur. Rather, the proposal locks in substantial increases in price whilst attempting to address some of industry's concerns relating to price structure, rather than seeking to set prices based on efficient costs under a BBM.

Further, the proposal will result in higher prices that will overshoot nbn co's Corporate Plan APRU target. Such an outcome will be detrimental to industry, customers and Australia's digital economy ambitions. Across all three constructs – Telstra estimates FY23 ARPU will range between [CIC begins] [REDACTED] [CIC ends] — far exceeding nbn co's Corporate Plan target of \$49.

Without a genuine and detailed consideration of how to apply a BBM to set NBN prices and what future regulatory framework best supports the LTIE, the key issues RSPs have raised previously in relation to inefficient, unsustainable and uncertain prices will persist.

2.2.1. Price structure issues

Ultimately, for the ACCC to be able to accept the varied SAU it needs to be consistent with the legislative criteria in the Act. This involves consideration of the price-related terms and conditions (level and structure) as well as the non-price terms and conditions.

For the price-related terms, while both price structure and price level need to be considered, neither can be considered in isolation. They need to work together to deliver predictable wholesale pricing terms that support Australia's digitisation and which promote the efficient use of, and investment in, the NBN.

⁷ Accessible at <https://www.communications.gov.au/documents/statement-expectations-australian-competition-and-consumer-commission>.

Critically, the level of efficient costs nbn co is permitted to recover, hence the price level it can charge, has a key bearing on pricing construct and design considerations.

For example, in its SAU Discussion Paper⁸, nbn co suggests that usage-based charges are necessary to enable lower cost plans that improve accessibility and affordability of NBN services for some end-user cohorts, and claims that under “AVC-only” pricing, end-users purchasing services based on speed tiers of 50 Mbps or below would likely face a significant price-shock in the form of an average increase of \$120 per year in their NBN retail prices. However, at the conclusion of its inquiries into nbn co’s wholesale pricing and service standards in 2020, the ACCC found that the new arrangements introduced by nbn co to allow an efficient RSP to supply an unlimited 12/1 retail broadband product over the NBN for an access cost of around \$35 per month would “*allow for more affordable entry level products for consumers*”.⁹ This recent example shows the importance of the effective overall input cost to RSPs represented by nbn co’s wholesale pricing, as well as the price structure, when it comes to considering the likely flow-on impact for affordability of retail pricing.

That said, there are some very important issues pertaining to efficient NBN price structures that will need to be considered when it comes to assessing the price-related terms of the SAU variation against the legislative criteria in the Act:

- If CVC charging is to be retained in any form, these will include whether nbn co should move away from charging for capacity to usage-based billing, as Telstra has previously recommended and which nbn co has indicated in its SAU Discussion Paper it is open to considering.¹⁰
- The impact of any proposed pricing structure on RSP incentives and ability to support a positive end-user experience on the NBN, and to differentiate their offerings based on performance as well as price. Relatedly:
 - For any constructs involving “AVC-only” charging, it will need to be determined how traffic will be managed, so to enable RSPs to support their in-market speed claims in compliance with the relevant regulatory requirements.
 - Where CVC charging remains an aspect of the charging construct, the impact of this on the customer experience needs to be considered. For example, to the extent that CVC charges represent a material proportion of NBN access costs for RSPs, this will inherently incentivise RSPs to make decisions which restrict the customer experience on the NBN (e.g. reducing their advertised busy hour speeds), to minimise their exposure to these charges.
- The impact of any structure(s) on price certainty, stability and complexity for RSPs (and the flow on impact for the LTIE of RSP risk exposure to uncertain input costs and/or complex pricing structures which are difficult to translate into lasting retail offers) also needs to be considered.

Following the ACCC Roundtable, Telstra’s expectation (which the ACCC has recently confirmed) is that the ACCC will host a series of workshops covering issues relevant to the formulation of a revised SAU, including the issue of price structure. We look forward to providing our input to the ACCC on potential price structures that may meet the relevant legislative criteria (including working through any of the issues raised by any of the potential structures) through these workshops and the following work to be covered by the ACCC’s process. In parallel we will also seek to provide input to nbn co to help it evolve

⁸ Accessible at <https://www.nbnco.com.au/content/dam/nbn/documents/media-centre/media-statements/2021/nbnco-spcial-access-undertaking-variation-2021-discussion-paper.pdf> (see pg.14).

⁹ <https://www.accc.gov.au/media-release/improved-wholesale-arrangements-benefit-broadband-customers>.

¹⁰ Accessible at <https://www.nbnco.com.au/content/dam/nbn/documents/media-centre/media-statements/2021/nbnco-spcial-access-undertaking-variation-2021-discussion-paper.pdf> (see p.19).

thinking on related operational and product design considerations, which should help advance and support the discussions facilitated by the ACCC.

2.2.2. The link between prices and service quality

While price is the key focus of this submission, it should not be viewed in isolation from other aspects of the NBN service. Equally important is consideration of the quality of service that consumers receive in exchange for the price paid.

In 2020 the ACCC finalised its public inquiries into NBN wholesale service standards and entry level pricing. At the time, the ACCC concluded that revised access arrangements under WBA4 largely addressed concerns raised in both inquiries. Further, the market remained “*in a period of significant transition*” with developments such as the completion of the initial NBN build and migration of customers still underway. Changes to the regulatory arrangements under the SAU were also likely with the transition to module 2 and a variation to finally incorporate the MTM. As such, the ACCC stated that it needed to understand the potential implications of all pending developments before deciding whether default access terms are required in order to promote the LTIE following WBA4.¹¹

Telstra's view is that it is now timely to consider the baseline level of service quality as part of the ACCC's review of the regulatory arrangements that apply to the NBN. This baseline level of service quality should be linked to the wholesale price charged for NBN access, with any future spend on service quality subject to an efficiency review. This is discussed in more detail below.

There is a clear link between price and service quality, which has been recognised in other jurisdictions where service quality is part of a broader regulatory approach. For example:

- United Kingdom: Ofcom applies quality of service remedies to a range of wholesale broadband services, including regulated minimum quality standards, transparency measures and service level agreements.
- Singapore: detailed and comprehensive set of quality standards set as part of competitive bidding process for the provision of wholesale services.
- Canada: minimum standards and rules set by an industry body guided by regulatory principles on scope and purpose (e.g. focused on service quality for the most important products and aspects of quality for consumers).
- New Zealand: will implement a new price-quality regime in 2022 which, at a high level, regulates the price and minimum quality standards of fibre fixed line access services. Information disclosure regulation will also require publication of performance information.

It is important for default access terms to be set as part of a broader regulatory approach for two main reasons. First, to establish a clear baseline of service quality, which reflects the service a consumer can reasonably expect to receive, in line with the initial price set. Second, to put in place a mechanism which ensures any future expenditure associated with improvements in service quality is efficient.

It is critical that the status quo is not accepted as the starting point for service quality. Rather, the baseline should be set with regard to the service that consumers should be receiving rather than what is currently provided. Further, such terms need to be aligned to the ongoing customer experience on the NBN which requires an increased focus on improved service quality and reliability, and mainstream

¹¹ See ACCC 2020, *Inquiries into NBN access pricing and wholesale service standards*, Final report, accessible at <https://www.accc.gov.au/system/files/Inquiries%20into%20NBN%20access%20pricing%20and%20wholesale%20service%20standards%20-%20Final%20report.pdf>.



adoption of much higher speeds. Telstra believes there needs to be consideration of the speeds that customers can currently access on the NBN, and consideration of how to encourage end-users to use those higher speeds. The latter will be influenced by price levels and price structure.

In its 2021 Corporate Plan, nbn co recognised the need to meet the challenges presented by COVID-19 and the changing landscape of broadband use in Australia as they move beyond the initial build. nbn co also acknowledged that *“demand is increasing and some elements of the network are not capable of providing access to the highest wholesale speed plans.”* This recognition resulted in nbn co committing to invest in fibre to enable FTTN premises to convert to FTTP, as well as improving capacity across HFC and FTTC. Such investments are now inherent in the NBN wholesale cost and the resulting capability should be reflected in any baseline service quality going forward.

In Telstra's view additional elements of the baseline service quality would comprise at a minimum:

- Service standards and associated rebates related to connections, faults and appointments as included in WBA4.
- Improved outage notification requirements, including inclusion of outages that do not meet those requirements in network availability reporting.
- Recognition of a service fault at a lower threshold of drop faults.
- Delivery of a 50Mbps service to all residential premises (rather than the 90% committed to by nbn co in the latest corporate plan).
- Improved public performance reporting by nbn co that provides additional granularity and transparency.

This should form the basis for consultation on defining the baseline level of service quality going forward as part of the ACCC's current review. The clear link between price and service quality necessitates these issues being considered at the same time.

The efficient capital and operating expenditure to support this baseline level of service would be captured in the initial BBM with any future changes or improvements to quality of service subject to an efficiency assessment. The purpose of the assessment will be to ensure that consumers pay no more than necessary (in the form of future increases in price) for improvements in service quality. It would answer two key questions — first, whether the proposed investment is necessary, i.e. wanted by consumers and/or RSPs and, second, whether the investment is efficient.

Telstra considers an approach similar to that taken for energy distribution networks could provide some guidance. The AER Expenditure Forecast Assessment Guideline sets out the approach taken to determine whether expenditure proposals put forward by businesses are efficient. A range of techniques are applied, including economic benchmarking and cost-benefit analysis, to test the efficiency of proposed expenditure. For capital expenditure, the approach considers the need for the expenditure, and the efficiency of the proposed investment. Stakeholder consultation is incorporated which is particularly appropriate in assessing the need for investment.

Telstra recognises that there is inevitably a trade-off between price and quality. However, establishing a baseline level of service linked to the initial price level based on current consumer expectations of what the NBN should be delivering, alongside a mechanism for assessing future expenditure, will provide a sound basis going forward. It will ensure that nbn co will only raise prices when expenditure on service quality is justified and efficient. It is critical that the baseline level of service quality is considered along with the ACCC's consideration of efficient NBN prices.



2.3. The ACCC's role and information required to develop a BBM

Charges for accessing the NBN have a history of regular change. The charging for capacity (CVC) coupled with ongoing increasing demand by end-users has led to high, increasing and uncertain charges for RSPs, and what seems like a never-ending cycle of nbn co Product Development Forum and other NBN pricing consultations.¹² Despite these consultations, which have over time resulted in reductions in CVC prices, introduction of dimension based discounts, changes to the dimension based discount arrangements, and then the introduction of a range of bundled products, the pricing concerns of industry have not been addressed.

nbn co's latest proposals continue that trend. While nbn co is ultimately in control of its SAU and proposed variations to it, Telstra believes the ACCC should lead the development of the BBM and associated prices, and the baseline level of service quality, and nbn co should commit itself to this process. It will then be up to nbn co to include the outcomes of the ACCC-led process in an SAU variation proposal, and if it doesn't, the ACCC is able to issue an access determination to provide protections to end-users that make up approximately 75% of nbn co's customer base.

2.3.1. The ACCC should lead the price review process

At the moment there are two concurrent processes considering NBN prices. First, nbn co has released an SAU Variation Discussion Paper, and second, the ACCC has commenced a review of NBN prices. The expectation of industry is that a BBM will be developed to set prices for specified NBN products. This follows the Minister for Communications issuing a Statement of Expectations to the ACCC in October 2020. Conversely, nbn co has submitted a proposal for higher prices with no justification, and no supporting BBM.

Following the ACCC Roundtable, Telstra's expectation (which the ACCC has recently confirmed) is that the ACCC will host a series of workshops to develop the NBN BBM. We believe the ACCC is best placed to run a transparent and inclusive process. The ACCC (and Australian Energy Regulator) have a long history of regulating infrastructure providers through the use of BBMs to set regulated prices. For example, it has applied BBMs to Telstra's regulated fixed line services as well as to electricity and gas transmission and distribution networks.

Telstra believes that industry, including nbn co, should commit itself to an ACCC-led process. This is most likely to lead to NBN prices that are sustainable, efficient, and that promote the LTIE. We believe it is the most effective way for the price-related content of nbn co's SAU to be developed.

In the event that nbn co does not participate fully in the ACCC workshops, delays the process, is unable to provide necessary information or otherwise it appears the ACCC process will not be completed soon enough for nbn co to submit its SAU variation proposal this calendar year, Telstra believes a short term "circuit breaker" should be implemented. One option available to the ACCC would be to impose a Binding Rule of Conduct designed to provide price certainty and more sustainable input costs to industry for a period until the ACCC completes its NBN BBM review and nbn co submits its SAU variation

¹² For example, since 2016 there have been consultations and price changes relating to the introduction and subsequent amendments to the CVC dimension based discount scheme, the introduction of entry level, fixed wireless and high bandwidth bundles (2018), the introduction of a modified entry level bundle product, rebalancing of the 25/5 bundle discount, amendment to CVC bundle inclusions and national pooling of CVC (July 2019; September 2019), revisions to the price related terms of WBA4, responding to the ACCC's discussion paper on NBN pricing (April 2020), draft revisions to the price related contractual terms in WBA4, including the new bundles roadmap (2020), review of the modified entry level bundle and introduction of a working from home package (2020) and further pricing reviews commenced in 2021 (February 2021 then April 2021 on the bundles roadmap and longer term pricing; SAU discussion paper June 2021).

proposal consistent with that review. Without a short term solution RSPs will continue to face high and uncertain prices.

2.3.2. Key inputs and information requirements

There are a number of key questions to be answered and information required from nbn co in order to develop a BBM. Telstra believes that the planned ACCC workshops are the appropriate forum for interested stakeholders to consider these matters. The following are initial ideas on key questions and information requirements (which should not be taken to be exhaustive).

Table 2 Questions and information requirements to develop a BBM

Question / info requirement	Comment
BBM issues and inputs	
What service(s) does the BBM apply to?	What service(s) are the focus of the BBM? E.g. TC-4 residential and small business services (standard connections)?
What costs should be allocated to Enterprise and other services?	Regulated prices should recover costs incurred in the provision of regulated services. As nbn co operates in a range of markets, including competitive markets, such costs should not be recovered through regulated prices.
How are costs allocated?	Costs need to be transparently allocated to regulated services to ensure prices are set efficiently and cross subsidies avoided.
What value should we assign to the RAB?	The regulated asset value is a key “building block”. Should the RAB only reflect assets required to provide regulated services?
Does nbn co expect to recover its ICRA before FY65-F70?	The expected timeframe of cost recovery should be considered in establishing the new regulatory framework.
How and when should the ICRA be recovered?	As above. At what rate should these losses be capitalised? nbn co should have the <i>opportunity</i> to recover these costs (rather than guaranteed recovery). For example, it could have the opportunity to recover these costs in the future depending on its cost trends and demand growth — future cost reductions could provide the “space” to recover the ICRA via a levy on top of efficient prices.
What return should nbn co be allowed and to what costs should this be applied?	nbn co’s IRR is lower than its regulatory WACC. This raises the question of whether the CAPM/WACC methodology as generally applied is appropriate for nbn co, and what is a reasonable commercial return for nbn co. What return should be applied to the RAB v the ICRA (which likely includes some inefficient costs) also needs consideration.
How should previous non commercial costs be treated?	nbn co should not be guaranteed a return on or recovery of costs that were or become economically inefficient.
How should PSAA payments be treated?	These payments are not actual costs to build the NBN, but are costs to close down other networks that would otherwise compete against nbn co.
What efficiency measures should apply to opex/capex forecasts?	As key “building blocks” appropriate processes and mechanisms should apply to ensure only efficient costs are recovered. Should ongoing productivity improvements be assumed, and at what rate?
How should nbn co’s upgrade costs be treated in the BBM?	nbn co has announced additional expenditure (~ \$3.5B) to upgrade technology to 6 million homes to enable up to 1 Gbps connections. Should these upgrades be excluded from the BBM, e.g. because they are outside the regulated service captured by the BBM?

Question / info requirement	Comment
What asset lives should apply when depreciating nbn co's RAB?	What is the appropriate asset life/depreciation profile to support the LTIE?
What NBN take-up assumption should we make?	Are nbn co's take-up assumptions reasonable given digital economy ambitions? Should we be expecting more given the objectives of the NBN?
Price structure issues	
What price structures would reduce uncertainty and best serve nbn co and RSPs?	Most RSPs have concerns with the CVC price structure. What alternative pricing arrangements should be considered to improve outcomes?
Are there any reasons to maintain CVC pricing?	As above.
What can we learn from other jurisdictions?	It seems Australia stands alone in charging for CVC. What structures do other comparable jurisdictions apply?
What price cap arrangements should apply to regulated services?	To address price uncertainty the new regulatory framework should apply price caps. However, there are various ways price caps could be applied.
Service quality issues	
What baseline level of service quality should be provided?	What are the appropriate metrics to measure NBN service quality and what service quality is provided for each regulated service?
How should service quality increment for additional opex/capex?	When nbn co increases efficient opex/capex above base costs, how are the increments to service quality determined?
Other issues	
What capacity constraints currently exist on the NBN?	Understanding available capacity feeds into the pricing discussion. Is the NBN capacity constrained, do we need to price for scarcity? Or are incremental costs low, and what does this mean for efficient pricing?
What is nbn co's incremental cost of supplying additional capacity.	Relevant to understanding to extent to which CVC charges are efficient and more broadly what price structures may be efficient.
What is nbn co's long run incremental cost?	As above.
What cash flows are required to fund ongoing opex/capex and service debt?	At a minimum nbn co needs to be able to fund ongoing costs and service its debt obligations.



ATTACHMENT A: THE LONG-TERM INTERESTS OF END-USERS

Any nbn co SAU variation proposal should be assessed against the LTIE

Any proposed changes to nbn co's SAU need to be assessed against the legislative criteria in the *Competition and Consumer Act 2010 (the Act)*. Part XIC of the Act sets out the criteria that the ACCC must apply when assessing an SAU, and any variation of the SAU. Specifically, when assessing whether to accept or reject a proposed variation the ACCC must consider whether the variation is reasonable, having regard to whether the terms and conditions promote the long-term interest of end-users (**LTIE**) and the other reasonableness matters (section 152CBD(2)), and whether the terms and conditions are consistent with nbn co's category B SAOs.

In considering the LTIE, the ACCC must have regard to the following objectives:

- promoting competition in markets for listed services
- achieving any-to-any connectivity in relation to carriage services that involve communication between end-users, and
- encouraging the economically efficient use of, and economically efficient investment in, the relevant infrastructure (section 152AB(2) of the Act).

And to determine whether a particular term or condition is reasonable, the ACCC must have regard to:

- whether it promotes the LTIE
- the legitimate business interests of the carrier or carriage service provider (and the carrier or carriage service provider's investment in facilities used to supply the relevant declared service)
- the interests of persons who have rights to use the declared service
- the direct costs of providing access to the declared service
- operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility, and
- the economically efficient operation of a carriage service, a telecommunications network or a facility (section 152AH of the Act).

These are the criteria that need to be applied when assessing variations to the NBN SAU, and ideally nbn co should be demonstrating to all stakeholders how its proposals meet these criteria.