



10 May 2019

Mr Scott Harding  
Director, NBN & Pricing Coordination  
ACCC  
**Email: [nbn@acc.gov.au](mailto:nbn@acc.gov.au)**  
**cc: [Scott.Harding@acc.gov.au](mailto:Scott.Harding@acc.gov.au); [Damoon.Sadeghian@acc.gov.au](mailto:Damoon.Sadeghian@acc.gov.au)**

Dear Mr Harding

**Submission to LTRCM 2017-18 Draft Determination**

The attached provides Telstra's submission in response to the ACCC's Draft Determination on the 2017-2018 NBN Co Special Access Undertaking: Long Term Revenue Constraint Methodology.

If you would like to discuss or have any questions on the submission, please contact Kim Longin on (03) 8387 7288 or [kim.longin@team.telstra.com](mailto:kim.longin@team.telstra.com).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jane - 3'.

Jane van Beelen  
Compliance & Regulatory Affairs Executive  
Legal & Corporate Affairs  
[jane.vanbeelen@team.telstra.com](mailto:jane.vanbeelen@team.telstra.com)



## Introduction

Telstra welcomes the opportunity to respond to the ACCC's Draft Determination of nbn co's Special Access Undertaking (SAU) – Long Term Revenue Constraint Methodology (LTRCM) 2017-18. In making its Draft Determination, the ACCC has acknowledged and provided preliminary comments on issues we have previously raised. Telstra remains concerned at the pricing flexibility afforded to nbn co under the SAU and the lack of transparency in regard to its enterprise market activities. We discuss these issues in further detail below.

### NBN Bundle offers should be classified as NBN Offers under the SAU

As has been previously stated, Telstra considers that nbn co's bundles should be classified as NBN Offers under the SAU and therefore be subject to the SAU's regulatory constraints, including the annual price increase cap of CPI-1.5%. At present, it appears that nbn co believes it has discretion, over and above the ACCC, as to how the new pricing offers should be classified and has classified these offers as Discounts. If offers are classified as Discounts, nbn co can raise the wholesale prices to RSPs in April 2020 by removing the bundles. For the 25, 50 and 100Mbps speed tiers, the maximum price cap that applies is 38%, 53% and 26% above nbn co's corresponding bundle.

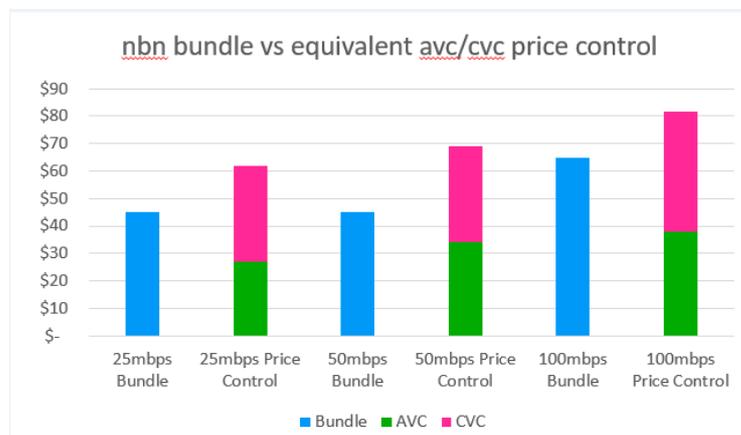


Figure 1: nbn bundle (Discount) vs NBN Offer price control

However, it's our understanding that there is no such authority or power given to nbn co in its SAU to exercise this discretion. Therefore, we believe the ACCC has the authority, and if there is uncertainty must exercise that authority, to decide on such classifications given its role in determining nbn co's adherence to the annual price cap.

We note that the ACCC has already cited concerns with nbn co's pricing conduct, as highlighted in a statement accompanying nbn co's SAU variation application withdrawal (October 2018). The ACCC stated that:

*implementing price changes through the discount mechanism means that the bundled offers or promotions are outside of the SAU framework and the price controls do not apply... We remain concerned that this undermines a central objective of the SAU which is to ensure certainty for access seekers and to minimise price shocks for consumers and businesses using the NBN.”<sup>1</sup>*

<sup>1</sup> ACCC, Update on ACCC assessment of NBN Co's SAU variation, October 2018,

<https://www.accc.gov.au/system/files/NPC%20-%20final%20-%20SAU%20variation%20-%20Public%20statement%20on%20withdrawal%20-%202022%20November%202018.pdf>



This is an important issue and getting this right is important for future nbn pricing conduct, particularly as nbn co is now routinely using discounts as their principal pricing tool. This has implications for RSPs' ability to plan and invest and impacts on certainty and pricing for consumers.

Following from above, we believe nbn co's bundles should have been included in its 2017-18 LTRCM submissions, most notably SAU Compliance worksheet. This would have seen price changes for the bundles assessed against the Maximum Price Cap specified under the SAU for the 2018-19 and future periods. We consider that not doing so puts nbn co in a minor breach of its SAU reporting commitments during this 2017-18 period.

Telstra also believes that given nbn co's SAU variation was withdrawn in October 2018, the overarching regulatory instrument governing supply and regulation of NBN services to RSPs is now outdated (i.e does not address the Multi Technology Mix (**MTM**)). This means that the industry is operating with neither certainty nor clarity at this critical time of transition. Should the ACCC not be open to finding that bundles are NBN Offers under the SAU (given that the instrument is to be revised), we would encourage the ACCC to employ alternative regulatory methods that may be available to it, with a view to setting the terms of supply across all NBN technologies, including price, for a specified duration, as a temporary measure until a new SAU variation is agreed.

### **The ACCC must take a more active role in assessing nbn co's conduct in the enterprise market**

Telstra continues to be concerned by nbn co's conduct into the enterprise market and the potential advantage gained by nbn co from its monopoly position for regulated services. We note the ACCC agrees with the principle that nbn co should not be able to use its position as a provider of regulated services to obtain an advantage in the supply of services in competitive markets.<sup>2</sup>

Telstra believes that nbn co's entry into this competitive market is good for competition, but only if its prices for enterprise services are not dependent on its unique ability to cross subsidise from other parts of its business, particularly where it is a protected monopoly with Commonwealth financing on favourable terms. It is important that the ACCC ensures it has sufficient information to ensure that infrastructure-based competition in this contestable market is not harmed by nbn co's conduct.

Telstra previously submitted that more extensive and granular reporting be imposed on nbn co in the form of a Regulatory Accounting Framework (**RAF**) to address this issue. The ACCC in their Draft Determination stated: *"At this stage, we have not formed a view on the necessity and utility of Telstra's suggestion for a more rigorous accounting framework. While there may be benefits to having increased transparency over nbn co's expenditure, it is important to first identify the objective and likely benefits that would be achieved through additional transparency and to focus the regulatory accounting framework accordingly."*<sup>3</sup>

By providing transparency through additional disaggregated cost and revenue information of nbn co's investment activities in competitive markets, a key objective of the RAF would be to promote efficient investment and sustainable infrastructure-based competition in fibre infrastructure. Corresponding benefits would include:

- limiting cross subsidies from residential to business/enterprise markets and thereby inefficient investment and consumption decisions;
- efficient investment activities by nbn co and thereby efficient use of taxpayer funds;

<sup>2</sup> ACCC, NBN Co Special Access Undertaking, Long Term Revenue Constraint Methodology 2017-2018: Draft Determination and Price compliance reporting 2017-2018, April 2019, pg. 13

<sup>3</sup> Ibid. pg.14



- a level playing field between nbn co and private entities in the enterprise market, promoting efficient investments by the private sector; and
- a competitive enterprise market which serves its end users efficiently.

Telstra considers that a RAF, appropriately designed, is the least intrusive intervention that can be imposed on nbn co to achieve these benefits. We would expect the benefits of the RAF to outweigh any burden, in part because at least some of the required information would be readily accessible by nbn co, e.g. direct capex expenditure by technology and customer type. To help ensure that any regulation remains fit for purpose, the ACCC could periodically review the efficacy of the RAF to determine if there is an ongoing need for the intervention or whether changes to the RAF are required.

Alternatively, the costs and revenues nbn co incurs and receives for technology upgrades for enterprise services could be excluded from the LTRCM process (and thereby excluded from nbn co's regulatory asset base). These services are not declared, and there is a lack of transparency in relation to them. Further, it is not clear that nbn co is recovering its costs of these upgrades, particularly where it faces infrastructure-based competition, as the efficiency of these costs has not been scrutinised. In these circumstances, it is not clear why these costs should be included in the LTRCM and nbn co be given the protections under the SAU that ensure those costs are recovered, including by residential customers.

Finally, while a RAF and/or greater cost scrutiny would go some way to addressing the above issues, Telstra also believes that nbn co should be providing more public information on its enterprise pricing to ensure there is no discrimination between RSPs.