

20 April 2023

ACCC

By email: superfastbroadbandinquiry@acc.gov.au

Re: Superfast broadband access service – access determination inquiry – Instrument Exposure Draft March 2023

X Integration (XI) welcomes the opportunity to respond to the Superfast broadband access service (SBAS) Instrument Exposure Draft (IED) published for comment 23 March 2023.

Restatement of Draft Decision Submission

As the IED reflects the position reached in the ACCC's draft decision published in October 2022, this means it does not yet incorporate any changes in the ACCC's position following the submissions made by XI and other stakeholders to that draft decision. XI's feedback on the IED should be considered within the parameters of the October 2022 draft decision as published by the ACCC.

XI maintains the positions articulated in our response to the draft decision. We firmly believe that stringent regulation of SBAS provider pricing and service quality is essential, given that these providers often hold a monopoly in delivering fixed-line superfast broadband.

In the absence of robust regulation, especially regarding ancillary charges, SBAS providers will persist in exploiting their market power, as demonstrated in recent years, to increase their revenue at the expense of the long-term interests of end (LTIE) users. Absent strong regulation to protect the LTIE, SBAS providers can be relied upon to place commercial returns ahead of any other consideration.

We are concerned that if the ACCC decides to modify its draft decision, stakeholders might not have the opportunity to provide feedback on those changes before the implementation of the Final Access Determination (FAD).

Position on Instrument Exposure Draft

XI is largely satisfied with how the IED implements the ACCC's October 2022 Draft Decision. We will specifically comment on the changes to Schedule 2 and Schedule 13.

Schedule 2 – Prices

Schedule 2 - Pricing effectively clarifies that the regulated wholesale products encompassed by the SBAS FAD will adhere to NBN Co's pricing structure. Likewise, this approach has been consistently applied to non-recurring charges as well.

We wish to express our concern about the lack of clarity provided by the IAD regarding the inapplicability of the Regional Broadband Scheme (RBS) Levy. We appreciate the removal of Application clause 1.4 from the SBAS Interim Access Determination No 1 of 2021, which previously allowed the passing on of the RBS Levy. However, considering the RBS Levy's importance, we believe the ACCC should be more explicit in its final decision by including a clear statement that the RBS Levy cannot be charged to Access Seekers.

We fully support the mandatory inclusion of the 25/10Mbps wholesale product in the SBAS. The ACCC informed us that one party mentioned they do not currently offer this specific SBAS configuration to themselves or third parties. The 25/10Mbps product caters to budget-conscious consumers who use their connections for videoconferencing, which has driven an increase in upload utilization since the COVID-19 pandemic. To align with the LTIE, SBAS networks should have access to the same products available on the NBN network, which includes the 25/10Mbps product. Therefore, the FAD should encompass this offering.

If a provider has not yet developed the necessary configuration to deliver a 25/10Mbps service, it is their responsibility to address this issue in order to comply with the requirements set forth in the final SBAS decision. Based on our own experience with network configuration, implementing such a change should be relatively minor in terms of both time and cost for an SBAS provider.

Schedule 13 – Network performance reporting

The inclusion of network performance reporting will mean that for the first time SBAS providers will be required to report on their service quality to access seekers. As a result, Schedule 13 would be an entirely new component of the SBAS FAD.

Broadly speaking Schedule 13 performs strongly in setting out a minimum set of reporting standards for an SBAS providers' network. We appreciate the extensive detail outlined in Section 13.4 which will allow Access Seekers, such as XI, to better present SBAS products to consumers without us being taken by surprise about ongoing issues that may impact them. Section 13.4 should deliver much needed transparency on SBAS service standards.

Fundamentally we believe Schedule 13 gets the balance right between the need to transparency for Access Seekers and end users, while not placing an onerous reporting burden on SBAS providers

We acknowledge the ongoing development and refinement of reporting and service standard requirements, such as the Statutory Infrastructure Provider regime and the ACCC's Service quality and network performance record keeping rule for superfast broadband networks. As suggested in the October 2022 SBAS Draft Decision, we hope that the ACCC remains open to incorporating minimum service standards into future inquiries as part of the non-price terms, potentially through a FAD variation or a similar approach.

Conclusion

X Integration (XI) again thanks the ACCC for the opportunity to respond to the Superfast broadband access service Instrument Exposure Draft published for comment on 23 March 2023.

We reiterate our support for the SBAS FAD process, as well as our concerns regarding the wielding of monopoly power by some SBAS providers. We strongly believe in the importance of rigorous regulation to protect Access Seekers and end users from potential abuses of market power.

If the ACCC should have any questions or wish to discuss this matter please feel free to contact us.

Christopher Enger
Operations Manager
X Integration & Leap Telecommunications
Email: c.enger@xi.com.au
Phone: (03) 9909 3101