

16 June 2023

ACCC

By email: nbn@accc.gov.au

Re: NBN Co SAU variation – NBN responses to draft decision

X Integration welcomes the opportunity to respond to NBN Co's further targeted submissions. In this submission we will respond to the following NBN Co responses:

1. NBN Response to draft decision: NNI pricing (23 May 2023)
2. NBN Co response to draft decision: 50/20 Mbps cost certainty (2 June 20203)

NNI Pricing

As per it's 23 May 2023 response, NBN has proposed the following:

- Reduce the activation charges on 10G NNI to \$3,000 (from \$5,000)
- Reduce the activation charges on 100G NNI to \$20,000 (from \$30,000)
- Reduce the 10G NNI bearer recurring charges by 50% to \$200 per month where an RSP has a single 10G NNI group at a POI used either in single or diverse chassis configuration. This price reduction will cease to apply when the RSP adds additional 10G NNIs (bearers or Groups) or 100G NNIs at the same POI.

While we welcome NBN Co's acknowledgement that they charge too much for NNI activation by decreasing the NNI activation cost, the activation cost for both 10G NNIs and 100G NNIs remains excessive when compared to the cost for ports of the same capacity from other services in the telecommunications industry.

NBN Co argues that the costs it charges are driven by "the configuration of those ports to support 1G, 10G, or 100G, and the physical housing of the equipment and associated running costs", and that it has to balance "these constraints with commercial considerations of demand for various configurations, growth in traffic over time, and differing levels of utilisation leads to the provisioning by RSPs of a certain configuration of NNI." Therefore, it needs to deliver returns to pay for these costs over a 10-year asset life-cycle.

We can only ask, how is NBN Co any different to any other participant in the telecommunications industry? All service providers have built these costs into their product offerings, recognizing that charging excessively for activation of NNIs results in sub-optimal and inefficient network designs. The result of the current NBN NNI pricing structure is that RSPs avoid purchasing the right NNI solution for their network because they are restrained by the costs NBN imposes.

Any RSP that is serious about selling NBN Co needs to support the full TC-4 product mix, and therefore 1G NNIs are not suitable. When X Integration evaluated its approach to onboarding directly with NBN, it was immediately clear that we would be forced to rely on NBN Co's Virtual NNI (V-NNI) product not because it is the best option for our network, but instead it is the only one that is commercially viable.

To activate 10G at all 121 POIs would presently cost \$363,000 under the revised pricing NBN Co has proposed. This is quite simply not viable for new entrants to the market unless they have large scale investment behind them. And no new entrant would expect to see a return on that investment for some time. Therefore, small RSPs are particularly susceptible to the upfront activation costs of NNIs.

NBN Co actively encourages V-NNI as the solution to the NNI scaling problem for small providers. However, this introduces a third party to the equation, the backhaul provider who provides the V-NNI solution. This essentially locks the RSP, who needs to utilize V-NNI, into one backhaul provider as V-NNI is bundled with backhaul connectivity from the POI to the RSP's data centre. Furthermore, due to the business rules around V-NNI, the provider of the V-NNI port cannot overbook the capacity on their V-NNI port. This means even if a small RSP might never utilize 1G, it is taking up a full 1G on the V-NNI port provider's port. This means that the capacity on the V-NNI port is finite and at times we have been constrained from upgrading our CVC capacity on a V-NNI by the port being at capacity with the owner of the V-NNI port.

With the removal of TC-4 CVC on plans 100Mbps and over, there will be an increase in the sale of higher speed tiers, particularly the 1G TC-4 plan. Smaller RSPs are going to be constrained in their ability to compete in the market for these products. X Integration itself is unsure as to whether it will start offering 1G TC-4 plans on NBN, solely because of the restrictions of the V-NNI product that we are forced to adopt due to the activation costs of physical 10G NNIs.

What do NNI charges pay for?

It was revealing in its submission that NBN Co referred to the "physical housing of the equipment" when discussing NNI costs. NBN Co obtains revenue in a myriad of ways, not least of its recurring AVC charges. Why the cost of the physical housing of equipment in a POI is being recovered from NNI charges is unclear to us. NBN Co also already recovers some physical POI costs by charging for racks and half racks in their POIs. All revenue sources, not just NNI charges, should be paying for physical infrastructure that doesn't have a direct revenue source to pay for it.

X Integration believes strongly that proper examination of NBN Co's costs in relation to NNI charges is in order. NBN Co has never provided anything beyond broad assertions, such as in this response to the ACCC's draft decision. NBN Co should provide the ACCC with a breakdown of its POI costs and how it recovers them so that an independent party can accurately assess NBN Co's claims on this issue.

How should NNI costs be recovered?

As previously stated, the costs NBN Co legitimately needs to recover via NNI fees are not abnormal in the telecommunications industry. Ultimately an RSP is paying for a 10G port (or two in the case of a diverse chassis configuration) and the fibre optic cables that connect NBN Co's 10G port to the rest of their infrastructure in the POI.

This is no different to the costs a carrier may incur in connecting to another network in a data centre. Usually these costs, when one party is purchasing a service from another, are recovered either by being built into the price of the services sold over the NNI, or if a NNI charge is required, then through a monthly recurring charge.

NBN Co already charges an MRC for NNIs. NBN Co has proposed for a 10G NNI that the new MRC will be "\$200 per month where an RSP has a single 10G NNI group at a POI used either in single or diverse chassis configuration". Over NBN Co's own 10 year life cycle of the asset, this equates to \$24,000. This price alone is far above what the cost of 1 or 2 10G ports would be worth commercially. Additionally, 100G port prices have come down significantly over the past

several years, and NBN's MRC of \$2,400 is more than sufficient to cover the physical cost of 1 or 2 100G ports (depending on network configuration).

NNI charges should not be a barrier to SAU acceptance.

While we remain frustrated with NBN Co's intransigence on NNI charges, it would be counter-productive for all parties should NNI charges be an obstacle to SAU adoption. Ultimately the broader necessity of SAU adoption is too important.

We acknowledge that the ACCC can only accept or decline the SAU, so therefore NBN needs to put forward a proposal that can gain the acceptance of the ACCC. We therefore propose that as well as the most recent NNI changes that NBN Co has proposed, that NBN Co should submit to an independent examination of its NNI costs separate to the SAU process and as part of the SAU agree to be bound by the outcomes of this cost examination.

Such a process should involve the ACCC, NBN Co and independent experts who can provide objective analysis of the costs that NBN Co puts forward in justification for its NNI charges.

50/20Mbps cost certainty

Under NBN Co's November 2022 SAU the AVC price increase of the 50Mbps/20Mbps would have increased to \$50, while the 100Mbps/20Mbps AVC price would decrease to \$55 (from \$58) in conjunction with the removal of CVC from the 100Mbps (and above) speed tier.

RSPs expressed concern that a significant number of 50Mbps services would incur overage charges that meant that on average these services would cost the RSP more to maintain at 50Mbps than if the RSP migrated them to 100Mbps.

NBN Co proposed providing RSPs with reporting to identify 50Mbps services which RSPs would migrate to 100Mbps to cap their costs on these services. As argued by both RSPs and the ACCC, this would be a complicated exercise which would put an unnecessary burden on RSPs and the onus should sit with NBN Co to cap costs on RSPs behalf.

Smaller RSPs would be particularly vulnerable to the complexity of managing this requirement. Small RSPs often lack the technical resources to develop the capability for such management, or if they do undertake to do it, it means they incur a significant opportunity cost in terms of the allocation of technical/development resources that would have been allocated elsewhere.

As NBN Co had committed in the SAU to remove all CVC TC-4 charges by 1 July 2026, it is likely that the original SAU proposal would have meant smaller providers would have been unable to take advantage of the reporting NBN Co was proposing to allow RSPs to cap the costs of their 50Mbps services. This would leave smaller RSPs at a significant competitive disadvantage when retailing bundled speed tiers when compared to larger providers who could devote the resources necessary to take advantage of the 100Mbps price cap.

In some cases, some smaller RSPs had indicated they could exit the market for 50Mbps services, and this would not have been within the Long-Term Interests of End Users (LTIE) to see a decline in competitive offerings.

Floor and Ceiling Proposal for Bundled TC-4 Offers

X Integration welcomes NBN Co's floor and ceiling proposal for bundled TC-4 offers. We believe that this proposal will address many of the concerns around complexity that smaller RSPs, such as X Integration, and the ACCC raised, in response to the November 2022 SAU.

While we have some reservations at the imposition of a floor price and removal of the pooling of CVC from services that underutilize their allocated CVC, we acknowledge NBN Co's reasoning around the impact on NBN Co's revenue without a floor price.

For smaller RSPs, the ceiling construct gives us price certainty when offering plans to consumers. Furthermore, for RSPs that will transition out of the 700Mbps overage waiver over the course of the next 3 years in which TC-4 CVC remains, the new proposal will reduce the risk of a sudden price imposition once they cross the 700Mbps threshold.

We acknowledge that the floor and ceiling approach is not perfect. It remains complicated when compared to the flat price structure of the AVC only pricing on 100Mbps and above plans. But given NBN's commitment in the SAU to remove CVC charges on all speed tiers by 1 July 2026 we feel that the proposal meets NBN Co's commitment to offer a glide path approach to the phasing out of all CVC TC-4 charging.

We encourage the adoption of NBN Co's Floor and Ceiling proposal as part of the next SAU submission.

Average Cost Option

X Integration does not support the Average Cap Option that NBN Co has proposed as an additional alternative to the Floor and Ceiling proposal. We believe that this model is inferior to the Floor and Ceiling proposal which balances the needs of RSPs, consumers and NBN Co.

Conclusion

We thank both the ACCC and NBN Co for their ongoing commitment to the SAU process. Like many involved in the process we are eager to see an outcome that resolves the uncertainty around the SAU and can allow all parties to move forward into the next phase of the operation of NBN.

We welcome the adjustments NBN Co has made so far around bundled pricing certainty but encourage them to think further about the concerns raised regarding NNI charging.

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