

17<sup>th</sup> February 2023

Australian Competition & Consumer Commission (ACCC)

By email: [nbn@acc.gov.au](mailto:nbn@acc.gov.au)

Re: NBN Co SAU variation (November 2022)

## Introduction

We thank the ACCC for the opportunity to provide X Integration's (XI) viewpoint on the proposed variation to the NBN CO Special Access Undertaking (SAU).

XI is an access seeker on the NBN network, directly connected to all 121 POIs. We principally provide services through our consumer brand, Leaptel. We also provide service to consumers on other non-nbn Superfast Broadband Access Service (SBAS) networks, and the outcome of the NBN SAU is important for SBAS due to the benchmarking between nbn and non-nbn networks through the ACCC SBAS final access determination inquiry process.

We have been an active participant in the SAU process previously, providing submissions and participating in discussions with NBN Co and the ACCC.

While we welcome some of the changes that NBN Co has made based upon the feedback submitted, we remain concerned that the proposed SAU fails to address the concerns raised by industry and other stakeholders.

In our response we have focused on the areas that concern us most and where we feel we can offer considered input.

Ultimately however, we cannot support the proposed SAU at this time.

## OUR RESPONSE

### *PRICING AND PRODUCT CONSTRUCT*

The logical outcome from the SAU will be that most end users will pay more for their NBN service should this SAU be adopted.

This outcome cannot be in doubt. Increasing the price on the 50Mbps speed tier from \$45 to \$50 while retaining CVC coverage until July 2026, means a price increase on over 60% of the services that NBN Co sells.

NBN Co is clearly positioning the 100Mbps/20Mbps offering as the new mass market offering by reducing its price to \$55 and removing CVC. While in isolation no price reduction should be dismissed, this needs to be regarded part of the larger pricing and product construct.

Consequently, we anticipate that should the SAU be accepted by the ACCC, that the 50Mbps speed tier will lose its position as the mass market offering and be replaced by the 100Mbps/20Mbps speed tier. This would in many ways replicate what occurred with the shift from 25Mbps to 50Mbps following the introduction of the \$45 50Mbps bundle in December 2017. We therefore anticipate that 60% or more services will be on the 100Mbps/20Mbps within 3 years of the implementation of this SAU.

The overall decision to remove CVC on speeds over 100Mbps is a positive step, however the gradual phase out on speeds of 50Mbps and below is disheartening. While CVC will be gone by July 2026, in the meantime NBN Co is positioning its pricing to shift users off these plans over that period of time.

Furthermore, NBN Co has made no concrete commitments to ensure there is a suitable offering for low-income and low-data users post 2026. Based upon the modelling the ACCC has provided, there is likely to be significant price shocks post 2026 for these users.

We question the effectiveness of the consultative role that a low-income forum would play in ensuring NBN Co is able to provide an effective low-income offering in light of this price shock. As NBN Co cannot provide both an effective low-income offering that meets the needs of low-income users (which are not dissimilar to other users), while also meeting NBN Co's revenue targets.

The role of the low-income forum should be strengthened if this CVC phase out process is retained on 50Mbps and below speed tiers. It should be able to have a strong role in the process for establishing low-income NBN plans post 2026.

Logically, NBN Co should develop these specific offerings now, there is nothing that stops them from doing so while also removing CVC across their entire product range. A cynic would suggest that NBN Co wants RSPs to be incentivised to mass market 100Mbps or higher plans over the three-year phase out period rather than giving them the opportunity to market better value offerings at cheaper prices that don't have CVC.

Lastly, we are satisfied that the ACCC has sufficient power to object to withdrawal that NBN Co may propose. The consultation paper raises concerns that NBN Co can object when directed by the shareholder minister. We have no concerns with this as we see this as the appropriate exercise of a shareholder minister to carry out for a government owned enterprise. Ultimately the shareholder minister is held accountable through the political process.

As it stands, the positives on the pricing and product construct are outweighed by the negatives. It is impossible to argue that raising prices on end users who are already struggling with cost-of-living pressures is good for the LTIE. Therefore, based upon the Pricing and Product Construct we cannot support the SAU as it stands.

### *CPI INCREASES*

The SAU proposes that NBN Co should be able to increase its prices by CPI or 5% (whichever is higher) each year. This would represent a significant shift in the way fixed-line broadband is sold in this country.

While there needs to be provisions for NBN Co to raise prices, doing so on an annual basis on a fixed CPI basis will decouple NBN Co's revenue and costs from one another.

Furthermore, with CPI at 7.8% (highest since 1990), the proposition is not based around the more digestible low inflation environment in which CPI based mechanisms have previously been accepted by consumers.

At most, NBN Co should be allowed to increase its prices by CPI or 5% (whichever is lower). CPI increases should be phased in from 3 years after the implementation of the SAU, given that that the SAU as proposed already offers a substantial revenue increase for NBN Co. This would help cushion the impact of the initial price increase due to the new price and product construct.

Should NBN Co wish to seek an increase higher than CPI or 5%, it should be required to provide reasons for doing so to the ACCC so that the ACCC can evaluate the necessity of the increase. Should the ACCC reject the increase, the ultimate power to increase beyond CPI/5% should rest with the shareholding ministers, as they are accountable through government to the public.

However, based upon the current proposed CPI increase mechanism, we cannot support the SAU as it stands.

### *POST-2032 ARRANGEMENTS*

As it stands, Module 3 will in our opinion deliver a price shock once implemented in 2032, and disincentives NBN Co to operate in an efficient manner. End users will have already experienced significant price increases under the CPI price increase model, and Module 3 will further decouple NBN Co's revenue and costs.

NBN Co justifies this by its need to pay off the portion of its historic losses that it is continuing to claim, alongside its need to maintain a investment grade credit rating. The outcome of this will be price shocks for consumers.

Furthermore, a regulatory arrangement that sets price floors close to 10 years out, and deprives the ACCC of the ability to intervene to set prices below those price floors can never be considered to be in the LTIE.

The post-2032 arrangements as proposed mean we cannot support the SAU without amendment.

## *SERVICE QUALITY AND STANDARDS*

XI values the SAU's commitments to higher service standards than the previous SAU. However, in some areas the proposed SAU seems to offer service standards that are below the standards set out in WBA4.

One avenue to justify the increased cost to consumers of NBN services under the SAU would be around providing a better quality service. The current SAU simply doesn't offer standards high enough to justify the price increase.

NBN Co needs to establish standards that conform with end user expectations about home broadband in a post-COVID world. In this environment, more people rely on their home broadband for critical productive tasks (such as work and learning), and the fault thresholds set out in the SAU simply don't meet end user's expectations.

If NBN Co fails to address its service quality standards, it leaves itself vulnerable to increased competition from Wireless Home Broadband products that can offer lower cost solution that can often provide better reliability than NBN Co services.

## *REPORTING*

We note that NBN Co has not committed to certain sets of reporting that it had already proposed under the March SAU proposal, as these are now likely to be covered by the development of record keeping rules (RKR). NBN Co should commit to the same level of reporting as it had already proposed and not be contingent upon the RKR process to be open and transparent about its service standards.

## CONCLUSION

XI again thanks the ACCC for its ongoing consultation process on the SAU. Establishing a SAU that meets the LTIE is fundamental to the telecommunications industry in this country, and more broadly for the country as a whole. A modern developed country must provide cost-effective high quality home broadband to its citizens, and the NBN network is crucial to delivering on what is increasingly viewed by consumers as an essential service.

As it stands we simply cannot support the SAU that NBN Co has proposed. We have outlined out specific areas of objection above.

Setting aside the LTIE provisions under the CCA for one moment, it is important to address the end user's likely reaction to the SAU should it be accepted. Consumers already believe the NBN costs too much and delivers too little. While those in industry understand that the NBN Co network was compromised by a shift to the multi-technology-mix (MTM) following a change in government, consumers largely do not care about who was to blame, they just expect a broadband service that meets their reasonable needs.

In particular, FTTN services currently suffer the most faults, and many FTTN services cannot achieve the 100Mbps speed tier that NBN Co is pushing so aggressively with its proposed pricing construct. Yet NBN Co wishes to increase the wholesale cost of plans that many FTTN users fall back on simply because the NBN network is unable to deliver speeds of 100Mbps (or higher to them). FTTN users will have the right to feel particularly aggrieved should this SAU proposal be allowed. They will be paying more for very much the same.

NBN Co has taken significant steps to address the network quality lottery that MTM applies to individual premises, with the rollout of its fibre connect upgrade program. However this program is not scheduled to cover the entire FTTN footprint, and the gradual rollout of the program continues through to December 2025, well after the SAU has begun.

More broadly, NBN Co's pursuit of commercial returns and paying off historical accumulated losses fails to recognise its position as a government owned company. It is unclear to us why end users should be paying more for a government owned company to deliver higher commercial level financial returns. NBN Co has had tremendous success refinancing its government debt on private markets despite not making commercial level returns. Therefore we consider the requirement for NBN Co to achieve commercial level returns to be excessive.

We appreciate that NBN Co is constrained by the requirements placed on it by government, which is why we conclude the only solution to resolve the ongoing stalemate on the SAU is for properly considered government intervention. Simply put, the LTIE cannot be reconciled against the current commercial constraints placed upon NBN Co's pricing by the governing instruments that are currently in place for NBN.

Should the present government believe that end users should pay more for their NBN connections, and that annual CPI based price increases are the way forward, then it

needs to publicly indicate that this is the way forward. It cannot simply throw the SAU process back to industry again. Industry does not have the ability to Houdini its way out of a mess that was ultimately created by government and politics to begin with.

XI therefore remains firmly opposed to the SAU as currently proposed. It does not support the LTIE, and in many areas will not encourage NBN to operate in an efficient manner as set out in the CCA. We believe the ACCC has no choice but to reject this proposed NBN Co SAU.

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