



8 December 2022

Sean Riordan
General Manager, Communications Markets and Advocacy
Australian Competition and Consumer Commission
Level 17, Casselden Place
2 Lonsdale St
Melbourne, VIC, 3000
By email: sean.riordan@acc.gov.au
cc: superfastbroadbandinquiry@acc.gov.au

Dear Sean,

Superfast broadband access service – access determination inquiry draft decision

nbn welcomes the opportunity to comment on the ACCC's superfast broadband access service (**SBAS**) draft decision. As we outlined in our submission to the discussion paper¹, **nbn** considers the long-term interest of end users (**LTIE**) will best be promoted by regulatory settings which are applied symmetrically and in a technologically agnostic manner across all providers of a regulated service. The ACCC's draft decision takes several steps in the right direction to ensure a regulatory level playing field, and **nbn** encourages the ACCC to reflect these steps in its final decision.

Price and non-price terms

The continued alignment of SBAS price terms to the prices applicable to similar **nbn** services (and Wholesale ADSL in the case of the Fibre Access Broadband product) is an appropriate approach that will ensure consistency and uniformity for both RSPs and end users. It also avoids unnecessary and potentially duplicative effort that would be required to develop an alternative approach, at a time when the comprehensive **nbn** special access undertaking process is expected to set out the long term, efficient pricing framework for **nbn** services.

nbn also supports the requirement for SBAS providers to provide greater clarity on their non-price terms and conditions. A transparency approach to non-price terms allows for easier comparison between different SBAS providers (and **nbn**), whilst allowing providers to maintain a degree of control over their terms that reflect the capabilities and extent of their networks.

Exemptions

The ACCC's decision to remove existing small provider exemptions is a positive step towards a regulatory level playing field. In conjunction with the ACCC's recently published Industry Guidance on the Carrier Separation Rules, **nbn** considers this decision will improve clarity and awareness of the obligations that apply to small

¹ **nbn**, response to ACCC's superfast broadband access service access determination inquiry, Feb 2022



providers with respect to wholesale supply. Consistent availability of SBAS across all providers of superfast broadband services will support retail competition on a nationally uniform basis and is in the LTIE.

Similarly, **nbn** supports the ACCC's decision to refrain from providing competition-based exemption for SBAS providers. Providing such exemptions would likely be confusing for RSPs and end users and would be cumbersome to administer effectively. Whilst **nbn** does not object to competition-based exemptions *per se*, we consider to the extent they are to be entertained, competition-based exemptions should be considered holistically (including all substitutable services) and should apply to all competitive providers of substitutable services in the relevant market.

Regional Broadband Scheme

nbn welcomes the ACCC's decision to require SBAS providers to account for the regional broadband scheme (**RBS**) levy within, not in addition to, regulated prices that are charged to RSPs. This is consistent with the cross-subsidisation model in place for **nbn**'s fixed line services and aligns to the decision to anchor SBAS prices to **nbn** prices for similar services (noting **nbn**'s prices are inclusive of the RBS levy).

Whilst not the specific subject of this inquiry, **nbn** also notes the growing substitutability of commercial non-**nbn** 4G/5G fixed wireless services for fixed line services. Currently, these services are not required to contribute to the RBS base, despite marketing themselves as alternatives to fixed line networks. This provides a material competitive advantage to the competitive fixed wireless operators in the market for superfast broadband services. Every end-user that migrates from an RBS contributing fixed line network to a competitive fixed wireless network reduces the pool of funding available to subsidise the ongoing operation of **nbn**'s uneconomic fixed wireless and satellite networks. This does not represent a regulatory level playing field.

There will be several opportunities for this to be considered, including the next SBAS declaration inquiry, and the ACCC's RBS review which is due to occur before 2025.

To discuss further, please contact Matthew Scott, Principal Regulatory Advisor - Consumer & Network at matthewscott1@nbnc.com.au.

Yours sincerely

Sarah Alderson
General Manager Regulatory Affairs – Consumer and Network