



# NBN Co Special Access Undertaking

Long Term Revenue Constraint  
Methodology Draft Determination 2021-22

and

Price compliance reporting 2021-22

May 2023



Australian Competition and Consumer Commission

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## List of abbreviations and acronyms

ACCC	Australian Competition and Consumer Commission
CFO	Chief Financial Officer
ICRA	Initial Cost Recovery Account
NBN	National Broadband Network
NBN Co	NBN Co Limited
PwC	PricewaterhouseCoopers
RAB	Regulatory Asset Base
SAU	Special Access Undertaking

## Executive Summary

The ACCC proposes to accept without modification NBN Co's nominated values for its long-term revenue constraint methodology (the revenue constraints) for 2021-22, including the:

- annual building block revenue requirement (allowable revenue) – the amount of revenue NBN Co is allowed to earn in each financial year
- regulatory asset base (RAB) – the net value of NBN Co's regulated assets, and
- initial cost recovery account (ICRA) – an account for accumulating (and rolling forward) NBN Co's initial unrecovered costs.

The ACCC is also satisfied that NBN Co's prices for 2021-22 did not exceed the maximum regulated prices allowed at any point and that the prudency conditions for expenditure, set out in the current SAU, have been satisfied. The draft determination is based on NBN Co's submission of regulatory information, provided in accordance with its current special access undertaking (the SAU).

On 28 April 2023, NBN Co provided an updated total revenue figure for its 2021-22 revenue constraints submission which included an additional \$42.7 million in grants and other third-party payments it has recognised as 'other income' (and associated decreases in its revenue shortfall and ICRA balance). The ACCC has made its draft determination based on these updated figures.

The revenue constraints are a component of the framework to regulate the National Broadband Network (NBN). The ACCC uses this process to determine the amount of revenue NBN Co is allowed to earn through its prices, including a return on investment, over the term of the current SAU, which is set to expire in 2040. While the current SAU only applies to fibre-to-the-premises, fixed wireless, and satellite services; the revenue constraints include expenditure associated with all the access technologies that NBN Co provides under the multi-technology mix.

This draft determination follows the ACCC's preliminary view on NBN Co's capital and operating expenditure for 2021-22, which was published in December 2022. The ACCC did not receive any submissions in response to its preliminary view. The ACCC now invites submissions on this draft determination until 26 May 2023.

The ACCC is currently consulting on a reset of the regulatory arrangements for the NBN to make them fit for purpose in light of changes to NBN Co's operating environment and stakeholder expectations. NBN Co has proposed significant changes to these arrangements in an SAU variation that it submitted to the ACCC in November 2022.<sup>1</sup> These changes have the potential to bring significant benefits if implemented as part of a robust framework, including measures that would be likely to provide stronger incentives to NBN Co to invest and operate in a prudent and efficient manner. These measures include:

- adopting price cap regulation which aims to strengthen incentives to achieve revenue, cost, and demand targets
- providing ex-ante and ex-post oversight by the ACCC over both the prudency and efficiency of expenditures, with each to have their ordinary meanings
- requiring NBN Co to consult with stakeholders on its expenditure and pricing proposals, with the aim of promoting investment in projects of most value to customers and to reduce the risk of unnecessary price rises

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<sup>1</sup> The ACCC published the proposed SAU variation in November 2022, a public consultation paper in January 2023, and a draft decision on the SAU variation on 2 May 2023.

- bringing service quality and pricing into the scope of the SAU so that expenditure proposals can be assessed with consideration to both measures.

We expect that the ACCC would need to conduct more extensive expenditure assessments should a varied SAU be accepted, which would require greater scrutiny over the prudence and efficiency of NBN Co's expenditures for the regulatory periods following its acceptance than is required for the current revenue constraints assessment.

# 1. Introduction

The ACCC has made a draft determination on NBN Co's revenue constraints for 2021-22 in accordance with clause 1E.1.2 of NBN Co's SAU.

The ACCC's draft determination is that the values proposed by NBN Co for allowable revenues, the RAB, ICRA, and all associated inputs have been determined in accordance with the requirements set out in the SAU. Based on the information provided, the ACCC is satisfied that the prudency requirements for expenditure under the SAU have been met, and that NBN Co's prices did not exceed maximum regulated prices at any point during 2021-22.

## 1.1. Revenue constraints process

NBN Co's current SAU specifies the overarching framework that regulates access to the NBN and in its current form is set to apply until June 2040.

The SAU establishes the revenue constraints process to determine NBN Co's annual regulated revenue, regulated asset base and an account to accumulate initial unrecovered costs that NBN Co can recover later in the SAU period. The process gives NBN Co the opportunity to recover costs in accordance with the conditions outlined in the SAU.

The SAU requires NBN Co to submit regulatory information to the ACCC each financial year for the purposes of our assessment. NBN Co's submission must include the financial information necessary to determine its allowable revenue under the SAU. NBN Co must also certify that its prices have not exceeded the maximum regulated prices, set in the SAU, during the relevant financial year.

The ACCC's role is to:

- assess whether NBN Co's capital expenditure and operating expenditure meet the relevant requirements in the SAU for inclusion in the RAB and allowable revenue
- assess if the relevant revenue constraint components have been calculated in accordance with the formulas set out in the SAU, and
- determine whether the expenditures (as set out in NBN Co's proposal) should be included in the revenue constraints determination.<sup>2</sup>

The ACCC may determine not to include values submitted by NBN Co or determine substitute values that differ from those submitted by NBN Co, provided the values are determined in accordance with schedule 1D and 1E of the SAU.<sup>3</sup> The factors that the ACCC must consider when determining a substitute amount of capital or operating expenditure are set out in the SAU.<sup>4</sup>

The current SAU adopts a modular structure. In module 1 of the SAU (until 30 June 2023), the ACCC must make annual determinations that specify the amount of revenue NBN Co is allowed to earn on an ex-post basis.

Under the current SAU, the revenue constraint methodology adopts a different approach in module 2 (from 1 July 2023) and is calculated on an ex-ante basis for each replacement module for the remainder of the SAU period that applies until 2040.

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<sup>2</sup> For more detail on each of these assessment requirements see the 2017-18 revenue constraints draft determination, pp. 8-9.

<sup>3</sup> Clause 1E.1.2(c)(iv) of the SAU.

<sup>4</sup> See clauses 1D.3.2(d) and 1E8.2(c) of the SAU.

## 1.2. Review of the NBN regulatory framework

NBN Co submitted an SAU variation proposal to the ACCC on 29 November 2022.

NBN Co is seeking to vary the SAU to incorporate fibre-to-the-node and other copper-based technologies to create a single regulatory framework for all NBN technologies. The SAU variation also proposes changes to other key elements of the SAU, including product and pricing commitments, the framework for NBN Co's cost recovery, rules for how the ACCC would assess future network expenditure, and the service standards framework.

The ACCC is consulting publicly on the SAU variation proposal and will assess the proposed SAU variation against the statutory criteria having regard to stakeholder submissions.<sup>5</sup> We expect that any changes to the revenue constraints in the SAU variation proposed will apply from 1 July 2023 onwards.

## 1.3. Submissions to preliminary view

In December 2022 we published our preliminary view on NBN Co's capital and operating expenditure and invited submissions by 3 February 2023. We did not receive any submissions.

## 1.4. Structure of report

This report outlines the ACCC's revenue constraints draft determination and price compliance review for 2021-22. The structure of the report is as follows:

- Section 2 sets out NBN Co's submission of regulatory information
- Section 3 sets out the ACCC's draft assessment of NBN Co's expenditure compliance
- Section 4 sets out the ACCC's draft assessment of NBN Co's financial information
- Section 5 sets out the ACCC's draft assessment of NBN Co's price compliance
- Section 6 sets out the ACCC's draft determination for 2021-22.

## 1.5. Consultation

We are seeking stakeholder views on this draft determination by 26 May 2023. We will then prepare our final determination for 2021-22 by 30 June 2023.

The ACCC encourages industry participants and other interested parties to make submissions to this draft determination, including reasons to support their views.

To foster an informed and consultative process, all submissions will be considered as public submissions and will be posted on the ACCC's website. Interested parties wishing to submit commercial-in-confidence material to the ACCC should submit both a public and a commercial-in-confidence version of their submission. The confidential version of the submission should clearly identify the commercial-in-confidence material by bookending the confidential material with an appropriate symbol of 'c-i-c'. The public version should ensure that all confidential material has been removed and replaced with 'c-i-c'.

Further information on the process parties should follow when submitting confidential information to the ACCC is available in the ACCC/AER Information Policy, which outlines the ACCC's general policy on the collection, use and disclosure of information.

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<sup>5</sup> The ACCC's consultation on the SAU variation proposal is available at: [NBN Co SAU variation 2022](#).



The ACCC prefers to receive submissions in electronic form, in either PDF or Microsoft Word format, which allows the submission text to be searched. Submitters should ensure that redacted information is not searchable or otherwise able to be disclosed.

Please email submissions by 26 May 2023 to [nbn@acc.gov.au](mailto:nbn@acc.gov.au).

## 2. NBN Co's 2021-22 regulatory information

On 31 October 2022, NBN Co submitted its regulatory information for 2021-22. This information consisted of NBN Co's actual, forecast, and proposed financial information, an expenditure compliance report, a procurement compliance report, and a price compliance report.

To support its submission, NBN Co also lodged three independent assurance reports from PricewaterhouseCoopers (PwC), a price compliance spreadsheet, a revenue constraint spreadsheet, and a copy of its chart of accounts.

On 28 April 2023, NBN Co provided an updated total revenue figure for its 2021-22 revenue constraints submission, discussed in section 4 of this draft determination.

The ACCC has published public versions of NBN Co's regulatory information on its website.<sup>6</sup>

### 2.1. Expenditure compliance

NBN Co's regulatory information included an expenditure compliance report for 2021-22, provided in accordance with clause 1F.2.1(a) of the SAU. This report contained certification from NBN Co's Chief Financial Officer (CFO) that NBN Co's proposed capital and operating expenditure complies with the relevant expenditure conditions set out in the current SAU. NBN Co has not reported any exceptions in relation to its capital expenditure and operating expenditure and has proposed that all expenditure incurred over 2021-22 be included in the RAB and allowable revenues respectively.

As in previous years, NBN Co engaged PwC to perform an independent limited assurance review in relation to the design of controls applicable to capital and operating expenditure prudence under the current SAU. PwC's report expresses an unqualified opinion and complements the certification from NBN Co's CFO.

In its regulatory information, NBN Co submitted a procurement rules compliance report in accordance with clause 1F.2.3(a) of the SAU. The report contained a certification from NBN Co's Executive General Manager, Procurement that NBN Co has developed and maintained Procurement Rules that satisfy the relevant conditions in clause 1D.5.1 of the SAU.

### 2.2. Financial information

In addition, NBN Co submitted its actual and proposed financial information for 2021-22. This submission consisted of the following six schedules:

- Schedule 6 – Statement of Capital Expenditure, Disposals, Construction in Progress, Asset Lifetimes and Taxation Asset Lifetimes
- Schedule 7 – Statement of Operating Expenditure
- Schedule 8 – Statement of Interest Expense
- Schedule 9 – Statement of Revenue
- Schedule 10 – Statement of Revenue Constraints Methodology and RAB items, and
- Schedule 11 – Statement of Material Operating Expenditure, Capital Expenditure and Construction in Progress Variances.

NBN Co also submitted a spreadsheet that set out the underlying calculations of NBN Co's proposed allowable revenue, RAB and ICRA values.

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<sup>6</sup> See: <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/national-broadband-network-nbn-access-regulation/nbn-co-special-access-undertaking/ltrcm-2021-22>.

We have summarised the key financial information submitted by NBN Co for the 2021-22 revenue constraints determination along with a comparison of the percentage change of the corresponding values in the previous period (Table 2.1).

**Table 2.1: Summary of NBN Co's financial information, 2020-21 and 2021-22 (nominal)<sup>7</sup>**

	2020-21 (\$'000)	2021-22 (\$'000)	Percentage Change
Operating expenditure	4,174,955	3,118,259	-25.3%
Capital expenditure	3,282,773	2,186,718	-33.4%
Construction in progress (start of period)	1,699,456	1,148,404	-32.4%
Interest expense	771,036	605,921	-21.4%
Revenue	4,629,109	5,146,022	11.2%
Unrecovered costs	2,724,175	1,073,625	-60.6%
RAB (end of period)	28,737,716	29,327,381	2.1%
Allowable revenue	7,353,283	6,219,647	-15.4%
ICRA (end of period)	36,183,087	39,078,007	8.0%

Source: NBN Co, *Revenue Constraints Methodology spreadsheet 2021-22*

NBN Co also lodged three independent assurance reports from PwC to support its actual and proposed financial information submissions. This included:

- a reasonable assurance audit report for Schedules 6 to 9: PwC's opinion in this report was unqualified and complements the audit of NBN Co's general purpose financial statements
- a factual findings of agreed upon procedures report for Schedule 10: PwC checked that in respect of years prior to 2021-22, the relevant values in the revenue constraints methodology spreadsheet are in accordance with the ACCC's 2020-21 determination; in respect of 2021-22, the relevant input values are extracted from Schedules 6 to 9 into the revenue constraints methodology spreadsheet; and the relevant calculations are undertaken in accordance with the SAU in order to arrive at the output values in Schedule 10, and
- a limited assurance engagement on the design and implementation of controls around expenditure compliance in relation to NBN Co.

### 2.3. Price compliance reporting

In its regulatory information, NBN Co submitted a price compliance report and a price compliance spreadsheet for the period from 1 July 2021 to 30 June 2022.<sup>8</sup>

The price compliance report provides certification from NBN Co's CFO that the pricing of NBN Offers and Other Charges over the period from 1 July 2021 to 30 June 2022 satisfied the relevant requirements in Schedule 1C of the SAU.<sup>9</sup> The report does not identify any exceptions although there is some qualifying language that expresses negative assurance

<sup>7</sup> These figures have been rounded to the nearest thousand.

<sup>8</sup> Pursuant to clause 1F.3(a) of the SAU.

<sup>9</sup> The certification provided by NBN Co's CFO was informed by a range of investigations and testing conducted by NBN Co.

conclusions, similar in nature to the expenditure compliance report and the procurement rules compliance report.<sup>10</sup>

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<sup>10</sup> Negative assurance is a technique commonly used by auditors to provide a representation that particular facts are believed to be accurate since no conflicting/contrary evidence has been found. NBN Co has had regard to Australian Standard on Assurance Engagement 3150 "Assurance Engagements on Controls" in developing the qualifying language in the certification.

## 3. Assessment of expenditure compliance and reporting

### 3.1. SAU requirements

#### Expenditure compliance

As part of its submission of regulatory information to the ACCC, NBN Co must submit a report signed by its CFO (or an authorised delegate) that certifies that:

- capital expenditure proposed for inclusion in the RAB was incurred in accordance with the prudent cost condition and the prudent design condition.<sup>11</sup>
- operating expenditure proposed for inclusion in the allowable revenue was incurred in accordance with the relevant SAU provisions.<sup>12</sup>

If NBN Co's CFO (or delegate) is not satisfied that NBN Co's capital expenditure or operating expenditure fulfil these requirements, then the CFO (or delegate) must identify in a report to the ACCC the nature and extent of the non-compliance and offer a substitute amount of capital expenditure or operating expenditure for consideration by the ACCC.

#### Procurement rules

NBN Co must develop and maintain procurement rules that contain a competitive tendering and procurement process, and that satisfy the following conditions set out in clause 1D.5.1 of the SAU:

- the procurement process must seek to generate an efficient and competitive outcome by encouraging a reasonable and proportionate amount of competitive tension between tender participants and minimising the possibility of anti-competitive conduct among tender participants
- there must be a clear process for the calling, conducting, assessment and awarding of tenders, which meet reasonable requirements of procedural fairness, probity, fair dealing, and good industry practice
- any decision to approve a tender that is not the lowest price tender must be appropriately justified and documented
- the basis for the undertaking of works and services must be in accordance with good industry practice, with the basis of payment for works and services clearly specified
- there be a process for managing contracts (both before and after the award of tenders) that accords with good industry practice and seeks to achieve value for money and the lowest Total Cost of Ownership.<sup>13</sup>

NBN Co must also provide the ACCC with a copy of the procurement rules within 30 days of making any material amendments to the rules.

As part of its submission of regulatory information to the ACCC, NBN Co must include a procurement rules compliance report signed by the Chief Procurement Officer (or a successor role). This report must certify that NBN Co's procurement rules satisfy the SAU requirements for the relevant financial year.

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<sup>11</sup> See clauses 1D.4 and 1D.6 of the SAU.

<sup>12</sup> See clauses 1E.8.2 and 1E.8.3 of the SAU. The capital and operating expenditure requirements in the SAU are generally process-based; that is, the establishment of conforming contracts and open & competitive tendering processes.

<sup>13</sup> Which is defined in the SAU as all costs incurred or likely to be incurred over the economic life of the Relevant Assets calculated on a net present value basis, including Capital Expenditure, Operating Expenditure and costs that arise in connection with any variations, changes, augmentations, or enhancements to the Relevant Assets (including expansions of the capacity, functionality and geographic reach of the Relevant Assets).

## 3.2. ACCC's draft decision

### **Expenditure compliance**

The ACCC has assessed NBN Co's expenditure compliance by considering the expenditure compliance report signed by NBN Co's CFO, the PwC limited assurance reports and NBN Co's supporting submission.

The ACCC's draft position is that the information provided by NBN Co is reasonable for the purpose of demonstrating that it has processes and controls in place to ensure that its expenditure is in accordance with the prudency conditions set out in the SAU. The reasons for this view are set out below.

### **ACCC consideration of expenditure compliance**

The expenditure compliance report did not identify any exceptions during 2021-22, though it did use some qualifying language in expressing its negative assurance conclusion. Therefore, the ACCC considered other supporting materials to determine the extent to which the certification is reliable. This included consideration of the:

- adequacy of NBN Co's procurement rules
- processes and controls in place supporting compliance with the prudency conditions in the current SAU, and
- effectiveness of the processes and controls.

### ***Adequate procurement rules***

The SAU requires NBN Co to provide a copy of its procurement rules to the ACCC within 30 days after the SAU commencement date and within 30 days after NBN Co makes any material amendments to the procurement rules.<sup>14</sup> The relevant procurement rules for this period came into effect on 1 July 2021. The ACCC has reviewed these procurement rules and verified that they comply with the relevant provisions of the SAU. We have also considered NBN Co's procurement rules compliance report to determine the appropriateness of NBN Co's procurement rules.

### ***Processes and controls in place***

To determine whether there are processes and controls in place to encourage compliance with the prudency conditions in the current SAU, the ACCC has considered PwC's assurance report regarding the design of controls applicable to capital expenditure and operating expenditure. We note that PwC tested whether NBN Co has adequate controls in place to ensure that capital expenditure and operating expenditure is incurred in accordance with the prudent design and prudent cost conditions.

### ***Processes and controls operating effectively***

To assess whether NBN Co has complied with these processes and procedures, the ACCC has considered the additional information provided by NBN Co in its supporting submission regarding its internal audit work and compliance processes.

NBN Co has completed an internal audit at the request of the CFO to review, document and test underlying business processes along with the design and operating effectiveness of controls relating to capital expenditure and operating expenditure prudency to satisfy the

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<sup>14</sup> Clause 1D.5.2 of the SAU.

prudent design condition and capital expenditure prudent cost condition (and equivalent for operating expenditure) in the SAU.<sup>15</sup>

NBN Co's internal audit process involved performing process walkthroughs with relevant staff (for example in relation to each of the different network types), confirming end-to-end process maps, identifying, and reconfirming relevant control objectives and control procedures, and testing of control design and effectiveness.

Once the series of cross-functional workshops with relevant subject matter experts and the relevant controls had had been identified and reconfirmed, NBN Co then proceeded to undertake control testing. This involved developing appropriate samples with the methodology based on generally accepted internal audit sampling criteria.<sup>16</sup> NBN Co selected an appropriate judgment sample based on the relevant guidance to test the effectiveness for each control procedure. A total of 174 samples were tested to confirm the operating effectiveness of the prudent design and prudent cost controls.

NBN Co then undertook testing for each of the sample items to confirm all aspects of the controls were operating as designed. For each relevant control procedure, applicable supporting documentation was identified, recorded, and reviewed for its appropriateness. This involved reviewing documentation such as procurement records, contracts, purchase orders and network design documents for applicability and appropriate authorisation. Based on NBN Co's internal audit sample testing, no exceptions were identified regarding expenditure compliance.<sup>17</sup>

The ACCC has considered the details in NBN Co's supporting submission as well as the PwC assurance reports that provide a further independent check of NBN Co's relevant processes and controls. The ACCC's view is that, based on the information provided, NBN Co's expenditure complies with the relevant prudency conditions set out in the current SAU.

## **Procurement compliance**

The ACCC considers that NBN Co has provided a procurement rules compliance report that satisfies the requirements of the SAU. NBN Co submitted that there is no reported exception in relation to this report, which relates to whether over the period from 1 July 2021 to 30 June 2022, and that the procurement rules satisfied the requirements in clause 1D.5.1 of the SAU.

NBN Co has advised that it updated its purchasing rules to the 'procurement policy' which took effect from 1 July 2021. This contained minor changes to incorporate uplifted purchasing controls.

The ACCC is satisfied with NBN Co's procurement compliance for the purposes of the revenue constraints determination.

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<sup>15</sup> See NBN Co's 2021-22 revenue constraints supporting submission, p. 12-15 for more detail on NBN Co's internal audit processes.

<sup>16</sup> In general, NBN Co Internal Audit utilises judgmental sampling in accordance with relevant assurance standards and guidelines (including Auditing Standard of Australia 530 Audit Sampling and the Institute of Internal Auditors 'International Professional Practices Framework' Practice Advisory – 2320 – Audit Sampling).

<sup>17</sup> Nevertheless, as in previous years, any such investigation and testing are necessarily subject to inherent limitations; there is an unavoidable risk that some deficiencies may not be detected, regardless of how carefully and thoroughly the work is planned and performed.

## 4. Assessment of NBN Co's financial information

### 4.1. SAU requirements

NBN Co is required to submit forecasts of certain information (forecast financial information) by no later than 30 June prior to the commencement of each financial year during the initial regulatory period (the period from the commencement of the SAU to 30 June 2023). This financial information must include forecasts of capital expenditure by asset type, operating expenditure, disposals by asset type and the opening and closing value of construction in progress.<sup>18</sup> NBN Co's forecast financial information is confidential.

#### **Actual financial information**

By 31 October after the end of each financial year of the initial regulatory period, NBN Co must provide to the ACCC a report that sets out actual financial information for the previous financial year. This includes the values of the June quarter Consumer Price Index (CPI), capital expenditure, revenue, operating expenditure, disposals, interest expense, accounting and tax asset lifetimes, the risk-free rate, and the nominal rate of return.<sup>19</sup>

NBN Co must also provide information that sets out any material variance between the forecast financial information and the actual financial information, including a justification for the variances.<sup>20</sup>

#### **Proposed financial information**

By 31 October after the end of each financial year of the initial regulatory period, NBN Co must also provide to the ACCC its proposed values for that financial year regarding the:

- allowable revenue, including the inputs to this value
- opening and closing values of the RAB and ICRA (nominal and real)
- opening and closing value of construction in progress, and
- unrecovered cost.

#### **Forecast financial information**

On 30 June 2021, NBN Co submitted its forecast financial information for 2021-22. This submission was comprised of:

- Capital Expenditures, by Asset Type
- Disposals, by Asset Type
- the opening value and closing value of Construction in Progress, and
- Operating Expenditure.

NBN Co's forecast financial information is confidential.

### 4.2. ACCC's draft decision

Following consideration of the materials contained in NBN Co's submission, the ACCC is satisfied that NBN Co has calculated its proposed values for the RAB, allowable revenue and ICRA in accordance with the formulas set out in the SAU.

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<sup>18</sup> Clause 1F.1.2 of the SAU.

<sup>19</sup> Clause 1F.1.3(a) of the SAU.

<sup>20</sup> Clause 1F.1.3(b) of the SAU.



As noted in sections 2.2 and 3.2 above, the ACCC is satisfied that the information provided by NBN Co is reasonable for demonstrating that it has processes and controls in place to ensure that its capital and operating expenditures used in its RAB calculations is in accordance with the prudency conditions set out in the current SAU.

Therefore, the ACCC's draft decision is to accept the values proposed by NBN Co without amendment.

## **Financial information reporting**

In assessing whether NBN Co's proposed revenue constraints values have been calculated in accordance with the SAU, the ACCC has considered NBN Co's actual and proposed financial information, NBN Co's revenue constraints methodology spreadsheet that sets out the calculations used by NBN Co to determine its proposed values for the RAB, allowable revenue and ICRA and the reasonable assurance reports from PwC regarding this financial information.

### ***Assurance***

The declaration provided by NBN Co's CFO and the independent audit reports prepared by PwC also provide the ACCC with assurance that the financial information has been prepared in accordance with the relevant provisions of the SAU.

The reasonable assurance audit of the actual financial information provides the ACCC with assurance that NBN Co has prepared the financial information in Schedules 6-9 in accordance with the Regulatory Accounting and Allocation Manual (the Manual). PwC's unqualified audit opinion complements the existing auditing of NBN Co's general purpose financial statements. We consider that the PwC report provides independent verification that NBN Co's financial statements have been accurately adjusted in accordance with the alternate accounting treatments specified in the Manual.

The agreed upon procedures performed by PwC (with NBN Co) with respect to the revenue constraints and RAB information provide the ACCC with some additional comfort that NBN Co's statement of financial information includes information that has been extracted and calculated correctly.

### ***Statement of material variances***

NBN Co's submission of regulatory information included a statement of material variances (Schedule 11)<sup>21</sup> which sets out the variances between forecast and actual financial information, and the reasons for these variances.<sup>22</sup> The statement also provides reasons for any significant differences between forecast and actual expenditure.

The ACCC has reviewed the statement of material variances and is satisfied that it does not raise any significant concerns regarding the variances between forecast and actual capital and operating expenditure.

### ***Treatment of expenditure funded by grants or third-party payments***

On 14 December 2022, the ACCC notified NBN Co of its preliminary view in relation to the capital and operating expenditure amount proposed by NBN Co in its 2021-22 revenue constraints proposal. We noted that provided NBN Co has appropriately excluded capital expenditures that were funded by grants or other third-party payments, the ACCC did not

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<sup>21</sup> In accordance with clause 1F.1.3(b) of the SAU.

<sup>22</sup> The statement of material variances has been classified as 'confidential of particular sensitivity'.

intend to determine a substitute amount of capital expenditure or operating expenditure in our 2021-22 determination.

On 28 April 2023 NBN Co advised the ACCC that expenditures funded by grants or other third-party payments (which include funding received from developer contributions and commercial works charges, government grants and the Regional Broadband Scheme levy) are categorised as 'other revenue' and 'other income' in the 2021-22 revenue constraints. NBN Co advised that this revenue and income is deducted from its allowable revenue, which reduces NBN Co's unrecovered costs capitalised in the ICRA.

NBN Co provided an updated total revenue figure for its 2021-22 submission which included an additional \$42.7 million in grants and other third-party payments it has recognised as 'other income'. NBN Co also provided updated figures for unrecovered costs and the closing nominal ICRA balance, both reduced by \$42.7 million. The updated figures were provided in a document titled '*LTRCM Spreadsheet: 2021-22 Amended*'<sup>23</sup> and are included in section six of this draft determination.

The ACCC has considered the updated information NBN Co has provided regarding expenditure funded by grants and third-party payments. We do not intend to determine a substitute amount of capital expenditure in accordance with clause 1D.3.2(d) of the SAU or determine a substitute amount of operating expenditure in accordance with clause 1E.8.2(c) of the SAU.

The ACCC has made its determination based on the updated figures in NBN Co's 2021-22 revenue constraints submission and noting the value of grants and other third-party payments compared to NBN Co's total capital expenditure and regulatory asset base. We will consider the treatment of any grants or third-party payments received by NBN Co in 2022-23 and included in its 2022-23 revenue constraints proposal.

## 5. Assessment of price compliance

### 5.1. SAU requirements

NBN Co's submission of regulatory information must include a price compliance report, signed by its CFO (or an authorised delegate) certifying that the prices of the supply of its services did not exceed at any point the maximum regulated prices set by Schedule 1C of the SAU for that financial year. NBN Co must also provide to the ACCC such other information that NBN Co considers is reasonably necessary for the ACCC to assess NBN Co's compliance with Schedule 1C of the SAU.

The ACCC's assessment of NBN Co's price compliance relates strictly to the maximum regulated price as set out in section 1F.3 of the SAU.

### 5.2. NBN pricing list changes

Throughout the 2021-22 financial year, NBN Co made several changes to its price list. NBN Co's Wholesale Broadband Agreement price list was introduced and updated over the period to 30 June 2022 and amongst other changes to terms and conditions included the following price changes:<sup>24</sup>

- amendments to CVC TC-4 Prices by reducing the charge from \$17.50 / Mbps to \$15.75 / Mbps.

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<sup>23</sup> Published on the ACCC's website.

<sup>24</sup> NBN Co, Regulatory information supporting submission, 2021-22, p.17. Available at ACCC website: <https://www.accc.gov.au/system/files/NBN%20Co%20-%20SAU%20-%202021-22%20Regulatory%20Information%20-%20LTRCM%20Supporting%20Submission.pdf>

- the introduction of new 2-10 Gbps NBN Enterprise Ethernet bandwidth profiles.

### 5.3. ACCC's draft decision

Based on NBN Co's price compliance report and supporting submission, the ACCC is satisfied that NBN Co's prices in 2021-22 did not exceed the maximum regulated prices set out in Schedule 1C of the SAU, and that NBN Co has met its price compliance obligations in the SAU. Further, we consider that most of NBN Co's services are currently supplied at prices below the maximum regulated prices specified in the SAU.

We note that the price compliance spreadsheet also contained prices for new products. These new products do not have prices specified in the SAU. NBN Co can determine prices for new products under the SAU, though the ACCC could initiate a price review to ensure that new prices are set in a manner that promotes competition and the efficient use of the network, if it considers that this would be appropriate.

## 6. The ACCC's revenue constraints draft determination

For the reasons set out in this document, we have determined the values in Table 6.1 for the purposes of the 2021-22 revenue constraints draft determination. We have taken these values from NBN Co's submission of regulatory information.<sup>25</sup>

The ACCC is also satisfied that NBN Co's prices for 2021-22 did not exceed at any point the maximum regulated price applicable at any point in time, in accordance with Schedule 1C of the SAU.

**Table 6.1 2021-22 revenue constraints draft determination<sup>26</sup>**

Year	2021-22
<b>CPI and Cumulative Inflation Factor</b>	
June Quarter CPI (annual percentage change) – as per Attachment C to the SAU	6.145%
Cumulative Inflation Factor – as per Clauses 1E.9.4(b) and (c)	1.191
<b>Rate of return – as per Clause 1E.7.1</b>	
Risk free rate of interest – as per Clause 1E.7.1(b) and (c)	1.534%
Nominal rate of return – as per Clause 1E.7.1(a)	5.034%
<b>Regulatory Asset Base (\$'000 REAL) – as per Clause 1D.2.1</b>	
Real RAB (start period) – as per Clause 1D.2.1(a) and (b)	25,617,207
Real capital expenditure	1,836,427
Real disposals	-
Real straight-line depreciation	2,824,215
Real RAB (end period) – as per Clause 1D.2.1(b)	24,629,418
<b>Regulatory Asset Base (\$'000 NOMINAL) – as per Clause 1D.2.2</b>	
Nominal RAB (start period) – as per Clauses 1D.2.1(a) and 1D.2.2	28,737,716
Nominal straight-line depreciation (as per Clause 1E.9.1(b))	3,362,923
Nominal RAB (end period) – as per Clause 1D.2.2	29,327,381
<b>Allowable revenue (\$'000 NOMINAL) – as per Clause 1E.4.1</b>	
Return on capital	1,446,529
Nominal regulatory depreciation – as per clause 1E.9.1(c)	1,597,053
Nominal operating expenditure	3,118,259
Net tax allowance	-
Annual construction in progress allowance – as per Clause 1E.10	57,806
Allowable revenue	6,219,647
<b>Taxation calculations (\$'000 NOMINAL) – as per Clause 1E.9.3</b>	
Nominal revenue	5,146,022
Add value of assets received for nil consideration	180,969

<sup>25</sup> In accordance with Clause 1E.1.2(c)(vi) of the SAU.

<sup>26</sup> The clause references in this table refer to the formulas in the SAU. Note: figures have been rounded.

<i>Less nominal operating expenditure</i>	3,118,259
<i>Less nominal tax depreciation</i>	3,032,391
<i>Less interest expense</i>	605,921
Taxable profit – as per Clause 1E.9.3	(1,429,580)
Tax loss carried forward (Start period) – as per Clause 1E.9.3	(25,320,244)
Tax loss carried forward (End period) – as per Clause 1E.9.3	(26,749,825)
Net tax allowance – as per Clause 1E.9.3	-
<b>ICRA and CFRA (\$'000 NOMINAL) – as per Clause 1E.5</b>	
ICRA (start period) – as per Clause 1E.5.2	36,183,087
Unrecovered cost – as per Clause 1E.5.1	1,073,625
ICRA (end period) – as per Clause 1E.5.2	39,078,007
Carry forward revenue adjustment – as per Clause 1E.5.3	n/a