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16 June 2023

Sean Riordan
General Manager
Communications Markets and Advocacy
Australian Competition and Consumer Commission
Via email

Dear Sean,

Re NBN Co letter: further targeted responses to issues raised in draft decision.

Aussie Broadband Limited (**Aussie Broadband**) welcomes the opportunity to respond to NBN Co's further targeted submissions (dated 2 June 2023) on the 50 Mbps product pricing certainty.

50/20 Mbps cost certainty

Aussie Broadband appreciates the release of further information by NBN Co concerning the 50/20 Mbps service and believes that the additional information is helpful for retail service providers (**RSPs**) to determine the impact of the proposed Special Access Undertaking (**SAU**) variation.

Aussie Broadband is concerned that the 'Floor and Ceiling' approach, whilst elegant in design, will have detrimental impacts on the end user by increasing retail prices on the 12 Mbps, 25 Mbps and, to a lesser degree, 50 Mbps plan tiers. While the proposed framework seeks to provide price certainty to RSPs on the 50/20 Mbps service, we are concerned that it will have unintended impacts on the pricing of the lower speed tiers due to the removal of the existing national Connectivity Virtual Circuit (**CVC**) pooling arrangement. The Floor and Ceiling framework proposed by NBN Co replaces the existing national CVC pooling, referred to as "pooled overage calculation" in section 3.3 of NBN Co's 2 June 2023 submission.

Aussie Broadband was a loud and repeated advocate for national CVC pooling (as opposed to point of interconnect (**POI**) CVC pooling) on the fundamental basis that it was patently unfair and inefficient, yielding excess revenue for NBN. This argument was ultimately accepted, and national pooling was introduced. As long as CVC remains in place, we maintain that the argument for national pooling remains valid. Furthermore, the practical application of national CVC pooling under the current SAU encourages innovation by RSPs, promoting the smoothing of CVC costs across Access Virtual Circuits (**AVC**), ultimately reducing total cost-to-serve. Aussie Broadband rejects the opinion that developing and managing these innovations is cost prohibitive.
This type of innovation has been core to Aussie Broadband's method of operating since our inception, and it is our view that neither size nor scale should be viewed as a barrier to innovation.

Loss of this CVC pooling capability, as proposed by the Floor and Ceiling approach, will increase the up-side cost risk on the 12 Mbps and 25 Mbps plans, with the ceiling being the same as the 50 Mbps at $55pm. The 12 Mbps and 25 Mbps plans have low CVC inclusions, meaning that even 'average' use will likely drive the cost to the right. Without the ability to supplement CVC allowances from the combined 12 Mbps, 25 Mbps and 50 Mbps pool, RSPs lose the ability to cost manage efficiently. This will force RSPs to find alternative mechanisms to reduce cost risk.

In the view of Aussie Broadband, this is likely to result in two outcomes:

- an increase to the retail price of the 12 Mbps and 25 Mbps plans, or
- the exit of RSPs from the 12 Mbps and 25 Mbps plan tiers.

Both outcomes do not favour the long-term interest of the end-user and result in an anticipated reduction in competition. By nature of the lower retail cost of the 12 Mbps and 25 Mbps plans, the typical consumers skew toward lower-income households. These households will bear the impact of the price rises resulting from RSP's inability to innovate using national CVC pooling under the Floor and Ceiling framework.

Aussie Broadband's submission is that the ACCC and NBN Co should look for alternatives other than the proposed Floor and Ceiling approach. So long as the CVC construct exists, these alternatives should continue to enable RSP innovation, avoiding the ACCC limiting retail diversity.

Provided that the key concerns of the ACCC can be addressed by NBN Co, Aussie Broadband's view is that the 'least worst' option is to enact the pricing and cost structures set out in NBN Co's Special Access Undertaking variation lodged by NBN Co on 29 November 2022 (November SAU Variation). Aussie Broadband submits that it is in the broad collective interests of all stakeholders (government, NBN Co, the ACCC, RSPs and the end-user) to accept the pricing constructs set out in the November SAU Variation – notably those captured in NBN Co's Pricing Roadmap for FY24–FY26.

Failing that, Aussie Broadband encourages NBN Co and ACCC to re-assess the Floor and Ceiling Approach to provide avenues for RSPs side cost optimisation. To that end, the Average Price Cap Option proposed in section 3.4 of NBN Co's Response to the ACCC Draft Decision provides an acceptable solution in Aussie Broadband's view. Using the 50/20 tier as an example, Aussie Broadband's understanding is that the cap would be calculated using the average usage of all 50/20 services versus their included capacity pool. Based on projected usage changes, at the industry level, over the FY24–26 time period, the $55 cap would provide enough headroom to enable RSP cost management beneath it while at the same time providing the cost-certainty outcomes sought by the ACCC.

Aussie Broadband understands that the Capped Option retains national pooling across all CVC-included tiers, i.e., 12, 25 and 50. As explained above, retaining national pooling would further enable cost optimisation by RSPs, therefore providing a greater likelihood of avoiding detrimental price rises on the 12 and 25 plans.

Failing the acceptance of either the Capped Option or the November SAU Variation, further examples of alternative approaches could include:

- the reduction of AVC prices for the 100 and above speed tiers by $2 – $3.
- provide additional commitments to co-fund activities to incentivise end-users to adopt higher-speed-tiers and the potential to revisit the CVC inclusion levels.
- decrease the cost of overage for RSPs.

It remains Aussie Broadband's position that settings that enable the reduction in monthly retail prices on higher speed tiers will optimise the outcomes for end-users and NBN Co. The lower these prices, the more users will self-select to adopt higher speed tiers, the greater the comparative ARPU that flows to NBN Co, and the greater the received experience benefits for end-users. Such optimisations have the greatest likelihood of maximising the benefit of the NBN for the greatest number of Australians.

Beyond our concerns regarding the detrimental impact to end-users, it should also be noted that this proposed change, notably late in the development of the proposed SAU, is unfair and detrimental to those RSPs who have made significant investments in technology to work within a framework that was reasonably expected to continue for at least another three years. This change penalises RSPs that have invested in innovation to avoid price increases for consumers while diminishing the return on investment made in the long-term interests of the end-users.

Warm regards,

Jonathan Prosser
Aussie Broadband Limited