



Submission in response to the ACCC's Consultation
Paper on ACCC inquiries into NBN
access pricing and
wholesale service standards

11 September 2020

Public Version

1. Introduction

- 1.1 Commpete's members welcome the opportunity to make submissions on nbn Co's WBA4 proposals as they relate to pricing and wholesale service standards. We remain committed to working with the ACCC and with nbn Co and intermediaries to ensure that:
- 1.1.1 nbn's wholesale service offerings can support the customer experience outcomes that Commpete's members aspire to deliver and need to deliver in order to attract and retain customers; and
 - 1.1.2 that regulation is imposed where required to promote the long term interests of consumers where there is evidence that nbn Co is not otherwise incentivised to act consistently with those long term interests and where nbn Co's conduct will otherwise remain unconstrained because of nbn's status as a monopoly wholesale infrastructure provider.
- 1.2 We appreciate that this consultation provides an opportunity for challenger RSPs to participate in the WBA4 negotiation process. For many of our members the length and complexity of the WBA makes it inaccessible and deters small organisations from participating in consultation processes around negotiation of subsequent iterations of the WBA.
- 1.3 For many challenger RSPs, prior experience has been that investing time and resources required to participate fully in nbn Co consultation process does not pay off in that in the past it has achieved very little movement from nbn Co in return in those negotiations.
- 1.4 Small organisations have a very stark lack of bargaining power and at this stage we are relying on the ACCC's scrutiny of nbn Co's conduct and willingness to intervene in order to ensure that nbn Co delivers fit for purpose wholesale terms and conditions.
- 1.5 Many of the persistent issues under consideration as part of this consultation (or with nbn Co's WBA4 proposals generally) are issues that have had an impact on our members' businesses since the first iteration of the WBA and remain largely inadequately resolved now in the fourth iteration of those terms. This is particularly concerning now that we are nearing the end of 2020 and we await the Minister for Communications, Cyber Safety and the Arts' decision about whether to declare the nbn built and fully operational.
- 1.6 Commpete is not confident that a privatised nbn Co would be any better incentivised to deliver the WBA improvements Commpete seeks than a Government owned nbn Co has been.
- 1.7 Commpete therefore urges the ACCC to consider our submissions that nbn Co's WBA4 proposals do not go far enough and further amendments would be required in order to make the proposed WBA4:
- 1.7.1 more accessible for challenger RSPs;
 - 1.7.2 more transparent; and

- 1.7.3 more appropriate as a wholesale offering that will support the provision of retail services at a price and quality that challenger RSPs need to deliver to win market share.
- 1.8 In our view a FAD is still required to address issues that nbn Co's WBA4 proposal has failed to address, most significantly, the following key issues:
 - 1.8.1 Nbn Co's proposals in relation to the Underperforming Speed Rebate do not support an acceptable standard for RSPs around broadband speed performance. Any retail level regulation should factor in the limited ability for RSPs to recover any rebate from nbn Co for lines performing below the nbn assured data rates and should factor in that the once off \$20 rebate from nbn Co is only available to RSPs if the performance of a line is both below the nbn assured data rate and is more than 50% below the maximum speed for the selected bandwidth profile for the product; and
 - 1.8.2 the inclusions and pricing adjustments nbn Co has made in relation to the TC-4 bundles should be made permanent. Higher CVC capacity should be made available to RSPs across all nbn product pricing to accommodate what we believe will be a permanent shift in broadband demand across the Australia prompted by increased remote working as a result of the COVID-19 pandemic.

2. Submissions in relation to nbn Co's WBA4 pricing proposals

There remains an unacceptable lack of transparency and certainty around pricing in the WBA4 pricing proposals

- 2.1 In our view, the WBA4 pricing proposals presented by nbn Co do not go far enough to address the unacceptable lack of transparency and certainty around nbn Co pricing for our members.
- 2.2 The WBA4 proposal only partially addresses our concerns around the uncertainty that arises from nbn's use of discounts and rebates to deliver reduced prices for RSPs.
- 2.3 Although nbn Co is proposing to incorporate some of the proposed pricing changes as direct amendments to the WBA4 Price List, and has included the Discounts, Credits and Waivers Annexure as an Annexure to the Price List, there remains a reliance on offering discounts, credits and rebates which are temporary only and subject to withdrawal on 3 months' notice.
- 2.4 Nbn Co commits not to withdraw the mELB offer over the term of the WBA4, however, the forward-looking roadmap applies for TC-4 products only, and does not bind nbn Co in relation to the stability of pricing offers and inclusions for other nbn products.

It does not appear that nbn Co has any intention of using revised pricing of the TC-4 bundles as anchoring or influencing its pricing approach to higher tier offerings

- 2.5 Nbn Co's comments suggest that nbn Co is reluctant to treat the TC-4 bundles as creating an anchor for higher or lower tiered nbn products. Nbn Co states:

“In adopting a 20% CVC growth rate as part of this proposal, the interaction of the ELB (“voice only”) and mELB pricing creates practical implementation issues for nbn. Using the current approach for mELB, as the CVC inclusion at a total wholesale cost of \$35 increases, at some point the effective charge for mELB is less than that for ELB (\$22.50). To address this, nbn proposes to increase CVC inclusions at a rate greater than 20% in the period to May 2021, and “levelise” the mELB effective charge and CVC inclusion over the period from May 2021 to December 2022. This means RSPs will enjoy the benefits of higher CVC inclusions earlier than would otherwise be the case.

- 2.6 This reluctance runs contrary to the ACCC’s expectation that “*reductions to entry level pricing will serve as an anchor for higher speed products, to promote competition and protect consumers in the migration to the NBN*”.
- 2.7 In our view, in response to COVID-19, nbn was quickly able to provision an additional 40% CVC capacity to RSPs at no additional cost. While we believe there has been a more permanent retail shift in demand and willingness to pay for greater capacity, nbn Co appears largely reluctant to deliver any permanently changed product and pricing constructs to respond to this more permanent shift in retail demand. We would support nbn Co provisioning far greater than 20% growth in CVC inclusion in the entry level bundle and would suggest that the trajectory needs to be reset in light of a more permanently changed retail demand profile.
- 2.8 In relation to the mELB bundle, nbn Co states:
- To date, the CVC inclusions available on mELB at a total wholesale charge of \$35 have been sufficient to meet the average usage of mELB customers, and this will remain the case under nbn’s proposal. However, we note that there is a small percentage of customers on 12/1 Mbps service who are very high data users, and who may drive a disproportionate amount of usage growth. These customers are also likely to fully utilise the available 12/1 Mbps AVC bandwidth as a result of their high upstream and downstream usage, and have poor experience outcomes that are unrelated to the available CVC capacity. The performance issues experienced by these high-use customers cannot be resolved by additional CVC capacity, and only a move to higher AVC speed tiers will deliver significantly improved performance outcomes. In nbn’s view, this is an important area for both RSPs and nbn to do further work on, and is unrelated to the level of mELB inclusions.*
- 2.9 This supports the proposition that the entry level bundle may be wrongly configured, in that, for this undisclosed small percentage of customers on the 12/1Mbps service, the price settings work, but the inclusions do not.
- 2.10 Further, that the jump to the next price bracket of inclusions is not seen as delivering sufficient value to switch to a higher AVC tier for consumers/RSPs. If nbn Co is not prepared to carry the benefits of the re-worked mELB pricing into its pricing of its 25/5 and 25/10 and higher AVC pricing, then we would expect to see the group nbn describes as “high-use customers” on the 12/1 bundles grow.

Under WBA4 nbn Co still maintains a complex process for RSPs to claim discounts, credits and waivers

- 2.11 nbn requires RSPs to submit a claim for any discounts/credits and waivers, it does not use its own data to automatically process those where they apply.
- 2.12 In relation to the additional charge that is payable by RSPs if the CVC utilisation limit is not met. We support the ACCC’s observation that the charge is not straight forward. This is

another example of terms of the WBA being overly complex and lacking in transparency. This WBA term in effect would require RSPs to have access to nbn data in order to be able to calculate or verify the charges with any certainty, and this of itself is a material issue for access seekers, particularly challenger access seekers.

Our members have continuing concerns around nbn Co's adherence to its own WBA and WBA operations manual when it imposes additional installation charges

- 2.13 While we are supportive of the move to reduce the service transfer charge and transfer reversal charge and the clarity that nbn Co will not charge subsequent installation charges for Access Component Reactivation, a number of our members continue to have concerns that nbn Co is not adhering to the terms of its own WBA operations manual in imposing these charges.

3. Submissions in relation to nbn Co's WBA4 wholesale service standards proposals

Nbn Co's Underperforming Speed Rebate proposal is overly complex and doesn't support an acceptable retail level experience

- 3.1 Nbn's proposal for the FTTN/B/C Underperforming Speed Rebate is not fit for purpose, it is not straight forward and it does not adequately support RSPs', consumers' or (we submit), the ACMA's or ACCC's expectations of an acceptable retail level consumer experience for broadband speed performance.
- 3.2 Nbn will not pay any underperforming speed rebate if an RSP elects to place an order for a 25-50 or 25-100 Mbps bandwidth profile where the service is only capable of achieving a lower Assured Rate. In particular even if the Assured Rate is below the ACCC's standard (capable of achieving at least 50% of the maximum speed for that bandwidth profile) nbn will pay no rebate.
- 3.3 Rather than the nbn Co offering a service qualification and order process which blocks an RSP from placing the order, nbn will accept the order, even where nbn has historical data to suggest that the speeds achievable on that line are at less than 50% of the maximum speed for the selected bandwidth profile.
- 3.4 The Assured Data rate for any line (i.e. nbn's commitment to RSPs about what a line can actually deliver) appears to be determined by nbn Co by reference to historical service qualification data, and only where there has been a prior nbn service on the line capable of rendering that data to nbn Co.
- 3.5 Nbn will only pay the rebate if:
- 3.5.1 no Assured Rate was available at the time of order and the line does not deliver 50% or more of the maximum speed for the selected bandwidth profile; or
 - 3.5.2 the Assured Rate was available but inaccurate and the line does not deliver 50% or more of the maximum speed for the selected bandwidth profile (noting here that nbn will not pay the rebate based on failing to deliver to its own Assured Data rate alone).
- 3.6 nbn has stated that it will pay the Underperforming Speed Rebate without a requirement for an RSP to lodge a claim to be paid that amount. However it would also be incredibly difficult

for an RSP to verify whether nbn is in fact paying the rebate in all cases where the RSP is entitled to that rebate. To do so would presumably require the RSP to capture screen shots about the Assured Data rate made available at the order stage.

3.7 In addition, the rebate proposed by nbn Co is a once off \$20 payment to the RSP. If the ACCC accepts this position in nbn Co's WBA4, then any retail level compensation regime should not require the RSP to compensate a consumer beyond what can be recovered from nbn Co, as where:

3.7.1 Nbn Co could not provide the committed rate at the time the RSP placed the order;
or

3.7.2 nbn Co information provided at the time of the order was inaccurate;

the RSP's would be unable to predict that the service would not deliver to the ACCC's Broadband Speed Claims Guidance and the only remedy available to the RSP in that case is a \$20 once off rebate from nbn Co.

3.8 At minimum we would ask the ACCC to consider requiring nbn Co under a FAD to provide at least quarterly reporting both to the ACCC and the ACMA (for the purpose of aligning the approach to retail service standard regulation) around the nbn Assured Data rates available across nbn Co's network and the amounts of Underperforming Speed Rebate payments nbn Co makes.

Nbn Co's WBA4 service standards proposal does not address a number of issues that the FAD would have addressed

3.9 The following table measures the nbn Co WBA4 proposed response against the features of the ACCC proposed FAD which Commpete's earlier submissions noted would be beneficial for the industry:

Included in the ACCC proposed FAD and supported by Commpete	nbn Co WBA4 proposal
Clear formulae for calculating the rebates payable for wholesale service standard failures	nbn Co's proposals are still complex and calculated on the basis of data only available to nbn Co, making the accuracy of their application difficult for RSPs to scrutinise or challenge. The list of service level exclusions has grown longer in nbn Co's WBA4 proposal.
Removal of the 10% threshold for payment by nbn Co of any rebates in relation to end user connections or faults that exceed service level timeframes, and therefore removal of the potential for inequality of outcomes for RSPs with relatively small proportions of their customer base actually connected to the national broadband network	This issue is not addressed in nbn Co's WBA4 proposals. Rebates proposed are still only available "in excess of the applicable service level" into which nbn Co builds its own preferred tolerance.
Increased rebates payable by nbn Co for missed appointments and for connections not being completed within the service level period so that they better align to the real	Partially addressed by nbn Co's proposal that the rebate for subsequent missed appointments is increased from \$25 to \$75. However we reject nbn's assertion in its submission that rebates available in these

<p>impact on end users of poor wholesale service delivery by nbn Co</p>	<p>circumstances are somehow tradeable against value delivered elsewhere in nbn Co's WBA4 pricing proposal. This comment is distinctly out of touch with the views of and inconvenience to retail customers of nbn Co missed appointments.</p> <p>Partially addressed by nbn Co's proposal in relation to connection rebates, however nbn has proposed lower rebates than those included in the ACCC's draft FAD, suggesting the FAD is required to achieve the appropriate standard.</p>
<p>Increased rebates over time for delayed fault rectification, therefore incentivising speedy fault resolution</p>	<p>Largely addressed and relatively in line with the proposed FAD, rebates proposed are still only available "in excess of the applicable service level" into which nbn Co builds its own preferred tolerance.</p>
<p>The inclusion of service speed assurance rebates</p>	<p>Our detailed submissions above set out why nbn Co's proposals on Underperforming Speed Rebate proposals are unacceptable and a FAD obligation would be appropriate.</p>
<p>The inclusion (in clause 12 of the FAD) of a requirement for nbn Co to give wholesale effect to regulation dealing with consumer safeguards by seeking to amend the access agreement to give effect to that regulation or legislation within 90 days after its making or enactment.</p>	<p>This issue is not addressed in nbn Co's WBA4 proposals.</p> <p>A FAD obligation would be appropriate.</p>