



ACCC inquiries into NBN access pricing and wholesale service standards

Consultation paper

August 2020

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1. Executive summary

This consultation paper seeks comment on a range of proposed changes to the terms and conditions on which NBN Co provides its wholesale services to other service providers. These include:

- reductions to entry level pricing that will serve as an anchor for higher speed products, to promote competition and protect consumers in the migration to the NBN
- measures to provide more certainty over future access product and pricing offers, to reduce risk and encourage more efficient use of the NBN, and
- a revised set of service standard commitments, including stronger rebate arrangements for poor performance, to drive improvements in appointment keeping, fault rectification, connections, and speed assurance.

NBN Co has provided these proposals as part of the NBN access pricing inquiry and the NBN wholesale service standards inquiry as it progresses negotiations with industry on the next version of its wholesale broadband agreement (WBA4). NBN Co has committed to incorporating these changes into WBA4, if the ACCC determines this is an acceptable resolution, after consulting with stakeholders, and decides to finalise the two inquiries.

This represents a significant step in progressing the inquiries and follows extensive discussion between NBN Co and the ACCC, taking into account stakeholder feedback over the course of the inquiries. Both inquiries were started out of concerns that prevailing access terms were limiting competition and efficiency in downstream markets for NBN services, and placing consumers at greater risk of poor outcomes.

NBN Co's pricing and service standards proposals for WBA4 are set out in detail in the documents attached to this consultation paper. The paper discusses proposed access arrangements in light of the ACCC's previous consideration of these matters during the two inquiries.

It is our current view that NBN Co's pricing and service standards proposals for WBA4 would constitute reasonable access terms. We consider that the pricing proposals will decrease the costs and improve the quality of retail services underpinned by NBN Co's 12/1 Mbps product. This is likely to allow consumers that do not require a higher speed service to transition to the NBN on a similarly priced retail plan and receive a similar quality service. We also consider that proposed access arrangements will provide an effective anchor for higher speed services and provide additional certainty about pricing over the term of WBA4. On service standards, we consider the proposed access arrangements represent clear service level commitments and appropriately allocate risk, provide effective incentives and will likely lead to improved end-user outcomes.

We now seek feedback from access seekers and other interested parties on NBN Co's proposed access arrangements with respect to each inquiry and our current view that they constitute reasonable terms. We also seek feedback on whether the benefits that we anticipate from the arrangements would be likely to be realised or whether there would be unintended consequences from their implementation.

If our current view is confirmed following this consultation, NBN Co has advised us that it would implement the access terms and conditions as a package within its next Wholesale Broadband Agreement (WBA), scheduled to commence in December 2020 and run for two years. If not, we would look to implement a revised package of measures, which could still occur via the WBA should NBN Co agree to do so.

We are intending to proceed quickly in this stage of the inquiries to minimise any delay in the commencement of the new terms and conditions of access. We consider that this is reasonable in the current circumstances, given the previous consultation that has occurred, and with the recognition that the parties have negotiated other mutually beneficial terms of access, which may be at risk of delay if we were to provide more time for consideration. Accordingly, we are asking parties to raise significant issues at an early stage and to adhere to the strict deadline that has been set for written submissions

We acknowledge that while the package is a significant step change from the current access arrangements, it does not look to implement all of the proposals that we have heard in the course of the inquiries and takes a different approach on implementing some of the access arrangements that we referenced in our position papers. It is important to note that in making our decisions we are required to focus, amongst other matters, on the long-term interests of end-users, and also consider the direct costs of providing access and balance the often competing interests of the access provider and access seekers.

2. Introduction

2.1. Role of regulation

The wholesale terms of access to the National Broadband Network (NBN) are of fundamental importance to competition and efficiency in dependent markets, and so have a strong bearing on whether end-users can obtain communication products at a reasonable price and reliability that meet their needs.

For instance, wholesale access terms could dictate barriers to entry faced by service providers, the products and prices that they can offer and their ability to find ways to operate at reduced cost and/or with improved quality.

Ordinarily, good faith commercial negotiation between the supplier and acquirer of a service could be expected to result in reasonable commercial arrangements, on matters where the parties' commercial interests align or the parties have similar bargaining power so that a suitable compromise would result on matters where they have opposing interests.

However, where one party has power in a market, as NBN Co does as the near to ubiquitous provider of last mile fixed access, there is the real potential for commercial negotiation alone to lead to sub-optimal outcomes.

Recognising this, wholesale access to the NBN is not left only to commercial negotiation but is also subject to regulatory oversight. This means that wholesale terms of access to the NBN can potentially be developed either via commercial negotiation leading to a commercial agreement or via regulatory processes leading to an access determination.

2.2. Relationship between our access inquiries and commercial access agreements

The ACCC inquiries are occurring in the context of NBN Co moving to finalise its next Wholesale Broadband Agreement (WBA), and so wholesale terms of access to the NBN could potentially be set by commercial agreement, or through a regulatory determination.

These two pathways are not mutually exclusive, as negotiation could successfully resolve a broad range of access terms for inclusion in the commercial agreement, while a regulatory instrument would focus on those areas that remain contentious.

Nor are the commercial and regulatory pathways towards the development of NBN access terms entirely separate, as positions reached in one process can have a direct influence for the other. For instance, positions foreshadowed in a regulatory process could influence commercial negotiations, and vice versa.

However, once an access agreement has been finalised by NBN Co and signed by an access seeker, and there are matters that are covered by both the access agreement and an access determination, the access determination has no effect to the extent to which it is inconsistent with the access agreement.

In this particular instance, NBN Co has responded to the positions that we have outlined in each of our inquiries by proposing to revise the commercial offer that it would be willing to implement as a package via its next WBA. NBN Co has indicated that it would proceed to make this commercial offer if doing so would resolve all outstanding matters that have arisen in both of the inquiries.

2.3. Background to current inquiries

NBN wholesale service standards inquiry

In November 2017, the ACCC commenced the NBN wholesale service standards inquiry to determine whether wholesale service standards on the NBN are appropriate, and to consider whether regulation of NBN wholesale service standards is necessary to improve consumer experiences.

The decision to launch the inquiry was made in the context of a high number of complaints from consumers around poor experiences on the NBN, particularly in relation to consumers connecting to NBN services and having faults repaired, as well as concerns raised by industry that service standards are not adequate to ensure a positive consumer experience on the NBN. We also recognised at the commencement of the inquiry that although the NBN rollout was ongoing, NBN Co had become a major network operator and a focus on service delivery had become more important.

In September 2018, the ACCC accepted an enforceable undertaking from NBN Co to offer a set of service level improvements to access seekers through amendments to the WBA. NBN Co committed in the undertaking to include: payment of rebates for every late connection or fault rectification (not just those below its 90 per cent performance objective threshold), a new rebate for missed appointments, simplification of processes and conditions for claiming rebates, and a range of additional reporting commitments (particularly in relation to fixed wireless services).

We undertook further consultation seeking stakeholder views on key longer terms issues that had been raised in the course of the inquiry but not addressed within the enforceable undertaking.

On 1 October 2019, we released our draft decision and draft final access determination (FAD) for consultation. This proposed NBN wholesale service terms, including: daily rebates for late connections and unresolved faults, increased rebates for missed appointments and a requirement for retail service providers (RSPs) to pass on this rebate to consumers, monthly rebates for fixed wireless services in congested cells or connected to congested backhaul links and fixed line services that fail to meet certain minimum speed objectives and, enhanced reporting and automation requirements to promote better information flows, transparency and supply-chain coordination.

On 2 April 2020, we released a position paper updating the ACCC's position in regard to key aspects of the inquiry, having regard to submissions from stakeholders on the draft decision and draft FAD. We considered that a FAD would be required to resolve the matters raised in the inquiry and improve the service outcomes for NBN end-users.

Inquiry into NBN access pricing

On 14 October 2019, the ACCC commenced a public inquiry into the prices that NBN Co charges access seekers to use the NBN for supplying residential grade broadband services.

On 2 April 2020, after considering submissions received, we published a position paper that indicated the nature and direction of any FAD that the ACCC may make on finalisation of the inquiry.

The position paper confirmed that we would focus on basic speed broadband access and pricing certainty more generally, with a view to promoting competition and efficiency in NBN markets as well as allow consumers to migrate their services to the NBN without price shock.

Deferral and recommencement of inquiries

We placed our inquiries on hold in April 2020 to allow stakeholders to focus on responding to the COVID-19 pandemic, as well as continue commercial negotiations over the new WBA in the knowledge of the positions we had then reached in our inquiries.

Consistent with our advice at that time, we are now recommencing the inquiries so that we could be in a position if necessary to issue a FAD before the expiry of the current commercial agreements in November 2020. Our current view is that there is not a need to make a determination, given the improvements that NBN has committed to.

2.4. NBN Co's proposed access arrangements

NBN Co has continued to engage with access seekers and brief us on material developments in its development of the new WBA to meet a December commencement date, and thereby avoid any further rollover of the current commercial arrangements. This has included providing access seekers with advanced drafts of some of the terms and conditions of access to be included in the WBA.

On 13 August 2020, NBN Co gave us a written outline of proposed access arrangements that it would be willing to implement as a package via its WBA, a copy of which is provided at **Attachment 1** to this consultation paper. As is apparent on the face of the written outline, the proposed access arrangements represent a material change from those that are currently in effect.

NBN Co also provided us with an additional document, which demonstrates how the commercial package responds to the various findings that we have previously made in our inquiries, a copy of which is provided at **Attachment 2**.

The proposed access terms appear to be a significant improvement to the access terms that are currently in effect, as assessed against the criteria set out in Part XIC of the *Competition and Consumer Act 2010 (Cth)* (CCA) that must be taken into account by the ACCC in making an NBN access determination.

Should the resulting commercial offer represent reasonable terms of access regarding the matters that have been of concern during the inquiries, then this would remove the need for an access determination.

NBN Co's proposed access arrangements are discussed below, with price-related measures and wholesale service standards detailed in Parts A and B of this paper respectively.

2.5. Submissions to this consultation paper

The ACCC welcomes submissions from interested parties in response to this consultation paper by close of business on **11 September 2020**.

The above date for submissions has been set having regard to the previous consultation that has occurred on the relevant access arrangements, and with the recognition that the parties have negotiated other mutually beneficial terms of access that only come into operation with the execution of WBA4. WBA3 expires, unless further extended, at the end of November 2020.

Parties that wish to respond to this consultation paper are encouraged to carefully consider the issues and provide their views within the time allowed. Given the timeframe, late submissions will likely not receive full consideration. We also encourage parties to raise any significant issues with us at an early stage in the consultation period.

Under the access hierarchy set out in the CCA, should an access seeker sign up to a commercial access agreement, then an access determination has no effect during the term of the access agreement to the extent to which it is inconsistent with the access agreement. Hence, it is important that interested parties satisfy themselves as to the reasonableness or otherwise of the proposed access arrangements that are included in NBN Co's offer.

Similarly, it is also important that any aspects of NBN Co's proposed terms that are not considered to be reasonable are notified to us in submissions so that they can, if necessary, be resolved within a timeframe that allows the inquiries to be finalised ahead of access seekers deciding whether to execute the next commercial agreement. Any such issues could potentially be resolved via refinements to the commercial package, or failing that via an access determination.

We recognise that given the importance of the issues, parties would wish to wait until the proposed access arrangements have been reduced to commercial drafting before providing their submissions. This would potentially assist in closing any ambiguities that may be present in the attached detailed outline, as well as to test for unintended consequences from the proposed commercial drafting itself.

Hence, in setting the closing date for submissions we have had regard to NBN Co's advice that it intends to circulate its commercial drafting by no later than 21 August 2020.

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'.

The ACCC has prepared guidelines for parties wishing to submit confidential information to communications inquiries. The *ACCC-AER information policy: the collection, use and disclosure information* sets out the general policy of the ACCC and the Australian Energy Regulator (AER) on the collection, use and disclosure of information. A copy of the guideline can be downloaded from the ACCC's website.¹

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 to nbn@acc.gov.au.

2.6. The regulatory assessment framework

In respect of each inquiry, we have assessed NBN Co's proposed access arrangements against the matters contained in section 152BCA of the CCA, which the ACCC would need to take into account if it were to make an access determination.

Should we reach a view that the proposed access arrangements are reasonable, then we would not proceed to make a FAD. This would be on the basis that incorporation of the proposed access arrangements into WBA4 would constitute reasonable terms of access, and an access determination would not significantly improve on those terms.

¹ ACCC, *ACCC/AER Information Policy*, June 2014.

The criteria are broad in scope, firstly requiring consideration of the long-term interests of end-users (LTIE) of the services that are supplied by means of NBN access services. This in turn requires an examination of the extent to which an access arrangement promotes competition and encourages efficient investment in and use of infrastructure by which services are supplied. The criteria also include consideration of the direct costs of providing access, and the legitimate business interests of the access provider on the one hand, and of access seekers on the other. Each of the criteria is discussed in further detail in Annexure A of this paper.

Importantly, we apply these criteria to the totality of the measures that make up the proposed access arrangements as they apply to each inquiry, rather than to assess each component measure individually. Taking this perspective better allows any inter-relationships between individual components of the offer to be taken into account. It is also consistent with NBN Co's advice to us that it would be willing to implement the revised offer via the new WBA only as a package.

In saying that it will still be necessary to consider whether any of the component measures make the overall package unreasonable due to a significant shortcoming with what has been proposed.

One or more component measures may still cause the package of measures to inhibit the development of competitive markets or discourage economic efficiency, or tilt the potential benefits too far in favour of the access provider at the expense of the legitimate interests of access seekers. This could result from the intended operation of the relevant terms or due to commercial or operational impediments to those terms operating as intended.

2.7. Structure of this consultation paper

The remainder of this consultation paper is divided into two parts. Part A reviews NBN Co's access pricing proposals as they relate to the inquiry into NBN access pricing. Part B reviews NBN Co's service standards proposals as they relate to the NBN wholesale service standards inquiry. The paper is set out as follows:

Part A - NBN Co's access pricing proposal

- Chapter 3 provides an overview of our views on access pricing issues and a comparative analysis of NBN Co's access pricing proposal.
- Chapter 4 considers NBN Co's access pricing proposal against the legislative framework. It also lists questions for consideration by stakeholders.

Part B - NBN Co's service standards proposal

- Chapter 5 discusses the key topics raised in the NBN wholesale service standards inquiry, the principles that we consider should apply to the formulation of wholesale terms that cover those topics, and NBN Co's service standards proposal.
- Chapter 6 considers NBN Co's service standards proposal against the legislative framework and lists questions for consideration by stakeholders.

Part A – NBN Co’s access pricing proposal

3. Discussion of the price related terms of the proposed access arrangements

3.1. Views on NBN Co pricing issues reached in the inquiry

In our pricing inquiry, we have found that certain price related terms of access to the NBN are impeding competition and efficiency objectives, and placing consumers at greater risk of being unable to migrate to the NBN without price shock.

We found that the following measures would assist in addressing these concerns:

- Improving the commercial value of NBN Co’s entry-level access bundle, by lowering its price and/or increasing its Connectivity Virtual Circuit (CVC) inclusions when used to supply a broadband product.
- Giving greater certainty over how the price-related terms of all of NBN Co access products would change over time, to mitigate risks that access seekers face when developing their downstream product offers.
- Simplifying access terms that made it difficult to predict likely costs from month to month, in particular the terms and conditions that are associated with CVC utilisation limits.
- Reducing and standardising charges that are imposed when services are transferred, to reduce a barrier to churn and discourage transfer processes that place end-users at risk of service interruptions.

We indicated our intention not to adopt certain measures that had been proposed in submissions for the purposes of this inquiry:

- Fundamental reform of the product construct, e.g., to remove the CVC component, as in the absence of a suitable alternative this would have implications for efficient cost recovery and/or the range of products and prices available to end-users.
- The direct regulation of the price-related terms of access to NBN Co’s higher speed tiers, as this was not needed to protect consumers under the forced migration model and risked reducing flexibility to price to maximise use and allow the recovery of direct costs of providing access. In addition, consumers can still indirectly benefit from heightened competition in the NBN market as a result of improved entry level product offerings.
- The regulation of price related terms for NBN Co’s wireless and satellite access networks, because there is no forced migration to the NBN in those network footprints and ADSL/2+ services remain available.
- Setting transfer-related charges at zero, as this would risk inefficient use of transfer processes. Further, the \$5 charge proposed by NBN would be unlikely to impede competition.

We also indicated that we would further consider the need for revisions to the access terms of a voice-only product for those use cases where mobile voice access is not available or practicable. Whether there would be a need for regulated terms for voice-only services may be driven by a number of factors, including trends in mobile substitution, profiles of consumers that may be in particular need for fixed line voice services, and whether their

needs can be more efficiently addressed by tailored industry and government programs and policies. We will continue to monitor development in this area.

3.2. Comparison of the proposed access arrangements with our position paper views

3.2.1. Improving the commercial value of NBN Co's entry-level access bundle

NBN Co has proposed access arrangements that would improve the value of its entry-level product, which supports the supply of a basic-speed, high-quota retail broadband product. NBN Co calls this product the modified entry-level bundle ('mELB').

The proposed price-related terms for the mELB are specified in Table 1 below and represent an initial reduction of \$1.50 per month below the prices that would otherwise apply on commencement in December 2020. This reduces by a further \$2.20 per month in May 2021 before remaining steady over the remainder of the two year term of WBA4.

As also illustrated in Table 1 below, the proposed price related terms appear to be an effective implementation of the findings that we have made regarding the price range that would likely be reasonable for this access product. These findings were that:

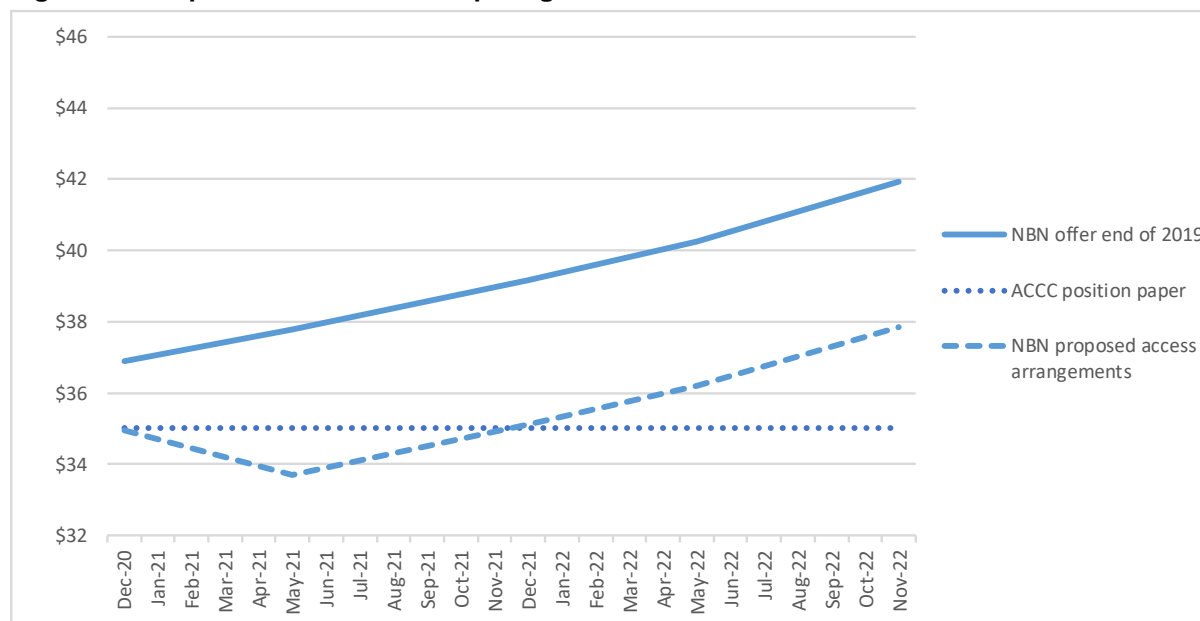
- The access price for the mELB should be no more than \$25.70 as at May 2020, so that it allowed an access seeker to provision at least 1.31 Mbps of CVC per service within a target wholesale price of \$35 per month.
- The pricing should be updated over time so that an access seeker could increase its CVC provisioning by 20 per cent per annum without increasing its nominal cost per service.

Table 1: Comparison of NBN Co's proposed access arrangements for the mELB and ACCC position paper

	Dec 2020		May 2021 to Nov 2022		
NBN proposed access arrangements					
mELB effective charge (\$)		24.70	22.50		
CVC inclusion at \$35 wholesale charge (Mbps)		1.44	1.71		
	May 2020	Dec 2020	May 2021	Dec 2021	May 2022
ACCC position poaper					
mELB effective charge (\$)	25.72	24.72	23.81	22.42	21.34
CVC inclusion at \$35 wholesale charge (Mbps)	1.31	1.44	1.55	1.72	1.86
	May 2020	Dec 2020	May 2021 to Nov 2022		
ACCC position paper (levelisation)					
mELB effective charge (\$)	25.72	24.72	22.52		
CVC inclusion at \$35 wholesale charge (Mbps)	1.31	1.44	1.71		

Figure 1 below compares the costs to acquire a mELB under the proposed and current wholesale pricing respectively. These costs have been derived on the basis that an access seeker would need to provision 1.44 Mbps of CVC for each mELB in order to supply a high quota retail broadband product in December 2020, and that this requirement will steadily increase at a rate of 20 per cent per annum.

Figure 1: Comparison of costs of acquiring a 12/1 service



As shown above, the proposed mELB pricing would result in lower wholesale charges over the entire WBA4 period when compared with NBN Co’s mELB pricing that it announced in September 2019. Compared with our April position paper, the proposed commercial offer provides a cost reduction below our \$35 target in the first half of the WBA4 term, which is then offset by higher costs in the later months.

We note that levelisation has not been raised in our inquiry previously. However, we consider it has two potential advantages over a more gradual adjustment to mELB prices.

First, it removes the distinction in pricing of the mELB and ELB bundle products sooner than would otherwise be the case. This in turn obviates the complex rules that now dictate whether an access seeker will face mELB or ELB prices.

Second, it mitigates a risk that network capacity requirements for mELB access services may materialise more quickly than have been forecast. In this regard, we acknowledge that there is some uncertainty around the level of CVC requirements that will emerge following the easing of lock-down restrictions associated with COVID-19. However, we note that the proposed mELB pricing would allow a 42.5 per cent increase in associated CVC provisioning as at May 2021 while maintaining a \$35 wholesale price point.

3.2.2. Giving greater certainty over how the price-related terms of all of NBN Co access products would change over time

The proposed commercial offer includes a series of measures intended to provide greater price certainty over time, including:

- The mELB offer will not be withdrawn over the term of WBA4, and any other TC-4 bundle product could not be withdrawn except after consultation with industry and giving 12 months’ notice. Further NBN Co must provide access seekers with a replacement proposition offering at least equivalent value to the withdrawn bundle product.
- NBN Co will introduce a 2-year pricing roadmap that would set out maximum effective Access Virtual Circuit (AVC) and overage charges, and minimum CVC inclusions, for each of its TC-4 bundle products for at least a two-year period. The

roadmap will be updated so that it never provides less than 12 months forward visibility. The annual review cannot unwind price caps and CVC inclusion floors.

- The proposed pricing roadmap would fix the CVC overage charge at \$8/Mbps over the WBA4 term, thereby mitigating the risk that additional CVC would be charged at up to \$17.50/Mbps, which is the maximum price that would be available under NBN Co's Special Access Undertaking (SAU).
- The Discount Credit & Rebate (DCR) List will be incorporated into WBA4, with standard rules around variation, withdrawal, suspension, introduction and extension rules for its various discounts, credits, rebates and waivers.

A number of submissions to our inquiry expressed concern with the level of uncertainty over future pricing and the implications this has for competition and efficiency in NBN markets. This is because uncertainty over pricing can have serious consequences, as access seekers would need to mitigate the risk of significant increases in their costs by withholding value from their retail offers and/or incurring the cost and disruption of flowing through higher retail prices to its customer base. Uncertainty over costs also has the potential to discourage firms from entering markets or cause them to exit.

As such, by reducing uncertainty and risk, the proposed access arrangements would appear to reduce the likelihood of these concerns emerging in future.

We note that a key source of this risk has been NBN Co's use of time-limited discounts as its primary pricing mechanism. These have not been the subject of any specific commitments such as price caps and withdrawal processes as was the case with its previously standard product offers that had been developed for its SAU.

We recognise that the proposed access arrangements do not provide a direct prohibition on NBN Co effectively reverting to a heavy reliance on short term discounts. However, we consider that it is unlikely that NBN Co would look to supplant its own bundle product construct in this manner only having just completed a migration of access services onto it. If however this were to occur, it would likely have implications for our future regulatory reviews.

We note that the proposed price related access arrangements are in addition to the price certainty measures that are contained in NBN Co's SAU. In this regard, the SAU provides a CVC price cap that NBN Co is to review periodically once the rollout has reached a specified coverage metric, which has now been satisfied. Consequently, this pending CVC price review will provide a further opportunity for NBN Co to provide longer-term certainty over its intentions regarding its pricing of CVC.

3.2.3. Simplifying access terms that made it difficult to predict likely costs from month to month

The proposed access arrangements provide for the simplification of the mELB offer via its realignment with the ELB product pricing from May 2021. This will mean that access seekers that supply limited-quota basic-speed broadband plans will no longer need to closely monitor network utilisation by those specific end-users or risk facing unexpectedly high access charges.

This is further to NBN Co's recent simplification of the CVC utilisation limits that trigger higher access charges. Under the recently revised approach, an additional charge is payable should the access seeker use more than 95 per cent of its purchased CVC capacity in more than 30 hours in a 30 day period, which would provide additional time to correct network management practices and avoid the charge where network utilisation levels are at such high levels.

We note that the method of calculating the additional charge that is payable when the CVC utilisation limit is not met is not straightforward. Rather than being a simple amount, it in effect requires an RSP to forgo all “discount amounts” they would otherwise have been entitled to receive in respect of services supplied over the relevant CVCs. This varies from month to month and across access seekers, depending upon the amount of CVC that has been purchased over the month and mix of speed tiers acquired.

That said, we understand that the additional charge is rarely levied in practice and in that circumstance this would not be a material issue for access seekers.

3.2.4. Reducing and standardising charges that are imposed when services are transferred

The proposed access arrangements include a \$5 charge for service transfers and reversals. NBN Co implemented this price on an interim basis following the commencement of our inquiry due to strong concerns with the \$22.50 charge that was then in place.

Consistent with our views when issuing our position paper, we consider that applying a common level of charge across these charge items is a positive step and that setting the charge at a relatively low amount of \$5 is reasonable.

We also understand that NBN Co will set its service reactivation charge also at \$5. In our view, applying a common charge across service transfers and reactivations has the benefit of discouraging transfer practices from emerging that would involve a loss of service for the end-user.

4. ACCC consideration of the price related terms of the access proposal against the regulatory assessment framework

This section provides our views on how the proposed entry level price offer and related pricing certainty measures will promote the LTIE and other reasonableness criteria along with other matters we would be required to take into account if we were to make a FAD offering similar terms.

We have undertaken this analysis over a 2 year timeframe which is consistent with the duration of the proposed access arrangements should they be implemented via the next WBA. We would likely need to reconsider our approach to assessing the reasonableness of NBN access pricing to apply beyond that timeframe, given the likelihood that the migration to the NBN would have concluded and in light of other market developments. This could include reconsidering the wholesale access product that we use as a pricing anchor, or whether to move away from our current anchoring and benchmark methodology entirely.

4.1. Applying the framework to the access terms

Our consideration of how NBN Co's price related measures that are contained in the proposed access arrangements meet the criteria for making a FAD is undertaken on a 'with and without' basis, where the 'with' is the set of NBN prices including the new price related measures and the 'without' is the expected set of NBN prices without the measures.

Our aim is to assess the incremental impact of the price related measures that are contained in the proposed access arrangements, rather than assessing all NBN prices and other terms and conditions offered in the WBA4.

Long-term interests of end-users

NBN Co's proposed mELB and pricing certainty measures will decrease the costs and improve the quality that can be offered supplying 12/1 and other services to end customers. This occurs directly via the lower prices for the mELB, the pricing certainty provisions for all bundled TC-4 products and indirectly through the anchoring effect of the mELB price and available CVC inclusions on other NBN products.

Those ADSL customers transitioning to the NBN that do not require a higher speed service will be key beneficiaries, as they will be able to transition to the NBN on a retail plan at a similar price they are paying at the moment and receive a similar quality service as they are currently getting.

Promoting competition

The mELB pricing changes should lower the costs and make it easier for those RSPs specialising in supply of 12/1 services to compete by helping to underpin a source of differentiation in the market. This should also prompt a competitive response by a range of RSPs in either offering 12/1 services or sharpening their retail offers for speeds above 12/1 to be able to compete with the more competitive 12/1 offers.

The mELB pricing and certainty changes could also mean that providers supplying services on fixed wireless and mobile networks will sharpen their retail offers in order to compete with the supply of the 12/1 entry level services offered by RSPs over the NBN.

Any-to-any connectivity

As the mELB and related pricing certainty changes will help to encourage some consumers to take up NBN Co retail services that they could not otherwise continue to afford, this increases the availability and capability of communications above what they would have otherwise been, leading to an improvement in any-to-any connectivity.

Efficient use of and investment in infrastructure

The mELB and related pricing changes should encourage the efficient use of the NBN infrastructure that is in place by helping to encourage greater take-up of entry level services on the network and for customers to remain on the network. Over time this should also encourage more customers to take up higher speed services on the NBN as well, further contributing to efficient use of and investment in infrastructure.

Similarly, the proposed access arrangements will further encourage efficient use of the NBN by reducing uncertainty over future pricing and simplifying the operation of some of the price-related access terms and thereby facilitating access seekers to develop more efficient retail plans.

The proposed access arrangements will potentially require additional investment in network capacity over time. In the short term, the extent of any such additional investment will depend upon the level of demand growth that NBN Co had already factored into its immediate investment plans, and the amount of idle capacity it has available from previous investments.

In this regard, we would expect the level of additional network capacity that NBN Co would need to add as a consequence of the proposed price-related access arrangements would be relatively modest, as long term industry forecasts are broadly consistent with the growth in CVC utilisation that is implicit in the proposed mELB prices.

The proposed access arrangements encourage such investment to occur more efficiently. NBN Co is still able to charge RSPs more for higher speed plans within the constraints of the price anchoring effect of the mELB and the pricing certainty measures. This means that when end customers require higher speeds than those offered on legacy services on transferring to the NBN, they pay more to help encourage investment in the network to supply such services.

Access seekers that are more reliant on the 12/1 service to serve their end users are expected to experience a rise in margins and/or end user demand for these services that will improve their ability to recover the cost of investments in their own infrastructure to supply NBN services. The pricing certainty measures will provide greater predictability of wholesale pricing outcomes that will help promote investment to support retail services dependent on these wholesale prices.

Legitimate business interests

We consider that the proposed price-related access arrangements do not undermine NBN Co's legitimate business interests. They are in line with commitments that NBN Co made in providing the SAU that end customers should not be worse off on transitioning to the NBN, and simplifying and providing greater certainty over future price paths will address sources of inefficiency in NBN markets from which NBN Co also stands to gain.

We acknowledge that the mELB pricing commitment will likely limit the revenue yield that NBN Co can earn from entry level retail products, although NBN Co will also benefit from more connections to its network than otherwise, potentially better setting it up for improved revenues over the longer term. The price related access arrangements also still allow NBN

Co some flexibility to recover more of its costs from its highest speed plans where these are offered in a way that provides additional value to the end-user.

Persons who have a right to use the declared service

We consider that the mELB pricing and pricing certainty measures will lower the costs and/or improve the quality of NBN services provided to access seekers, both directly and via the anchoring effect on other products. Similarly, the proposed access arrangements that simplify and promote certainty over future pricing better support access seekers to compete on their merits in downstream markets by mitigating a significant source of risk. This should enable these access seekers to improve their margins on the sale of NBN products and/or increase the quality of their NBN offers to increase sale of NBN products to end users.

Direct costs of providing access

We consider that as NBN Co has put forward the mELB and pricing certainty offer, it should enable NBN Co to recover the direct costs of access.

Given that the mELB and pricing certainty proposal is well below the cost that NBN Co has been allowed to recover in its SAU and to enable delivery of a service equivalent to the supply of a competitive ADSL retail service, we do not consider the proposal allows NBN Co to recover monopoly profits.

Economically efficient operation

The mELB and related pricing changes are likely to better accord with low-speed end customers' willingness to pay and therefore provide improved incentives for NBN Co to produce at least cost and expand the provision of services to these customers. This also applies for any higher speed products on which the mELB will have an anchoring effect.

Safe and reliable operation

The proposed access arrangements are unlikely to have a direct or indirect effect that would compromise the safe or reliable operation of the NBN.

Other criteria on which NBN Co's proposed access arrangements have minimal bearing

We do not consider that NBN Co's WBA4 proposed access arrangements have any major bearing upon extensions or enhancements of capability borne by others or on the supply of other eligible services by NBN Co or RSPs.

Any other relevant matters

We consider that acceptance of NBN Co's WBA4 proposed access arrangements will aid certainty and consistency due to the certainty measures that have been included for the TC-4 discount bundles and the overage charge.

Acceptance of the proposed access arrangements has also been made contingent on the views of submitters in response to this consultation.

Other restrictions on pricing

In relation to other restrictions, we do not consider that the NBN Co's WBA4 proposed access arrangements undermine other regulatory restrictions that would apply if a FAD were made in its place. Namely:

- The mELB does not prevent NBN Co from achieving national uniform pricing, noting that it is a national uniform price and it was available to NBN Co to price its higher speed and non-TC-4 services in such a manner to support national uniform pricing.
- The NBN WBA4 access arrangements do not discriminate as they are available to all access seekers at the same price and on the same terms.

4.2. List of questions

In providing a submission, we invite stakeholders to comment on NBN Co's proposed access arrangements on pricing and the issues raised in our assessment of it above.

Some questions stakeholders may wish to consider are:

1. Do you consider that the contents of the proposed access arrangements on pricing will be beneficial to the long-term interests of end users?
2. Are there any deficiencies or unforeseen consequences that would need to be addressed before the intended benefits of the proposed access arrangements on pricing could be realised?
3. Do you consider the proposed price related access arrangements are reasonable having regard to the regulatory assessment framework?

Part B – NBN Co’s service standards proposals

5. Discussion of service standards in NBN Co’s proposed access arrangements

In the NBN wholesale service standards inquiry we reached positions in regard to the key aspects of NBN Co’s wholesale service standards as they currently apply. We considered that current wholesale arrangements with respect to key aspects of service delivery should be improved in order to improve service outcomes for end-users on the NBN.

This chapter discusses each of the key topics raised in the inquiry, the previous positions taken by the ACCC, and terms within NBN Co’s proposal in respect of each matter.

5.1. Connections and faults

Failed connections

In the draft decision and position paper we considered that, as a general principle, NBN Co should only confirm to the access seeker that a connection is complete, and begin charging for that service, after conducting appropriate testing to ensure installation activities are successful.² We considered that this would considerably reduce the number of ‘new service never worked’ (NSNW) faults. These are new connections that do not function as expected after being confirmed by NBN Co as being successfully completed.

NBN Co’s proposed access arrangements includes a new Failed Connection Rebate designed to refund the recurring wholesale charges for NSNW connections on a pro-rated basis for the period until the fault is rectified. This should ensure that NBN Co is not charging for new services that it are not actually functioning.

NBN Co’s proposed access arrangements do not include new installation processes that would result in fewer NSNW faults occurring in the first place. However, we note that NBN Co has flagged improved installation processes for further development. NBN Co has committed to consulting with RSPs during FY21 on the potential introduction of automated testing to significantly reduce and/or eradicate NSNW issues, and determine the viability and utility of such a technical solution.

Delayed connections and unresolved faults

For delayed connections and unresolved faults we proposed the principle that rebates should accrue on a daily basis where the relevant service level is not met. We also considered rebates for delayed connections should apply to all standard connections (including where the service level is one business day).³

The downstream impacts of delayed connections and unresolved faults are a significant source of frustration for consumers. In the draft decision and position paper we considered that daily rebates provide more effective incentives for NBN Co to connect services promptly and rectify faults in a timely manner. A daily rebate would more closely match consumers’

² ACCC, *NBN Wholesale Service Standards Inquiry – Position Paper*, April 2020, p.6. ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, sections 4.1.1.3 & 4.1.1.4, pp. 21-22.

³ ACCC, *NBN Wholesale Service Standards Inquiry – Position Paper*, April 2020, pp.8-9. ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, section 4.1.2.3-4.1.2.4, pp. 25-28 and sections 4.1.3.3-4.1.3.4, pp. 30-32.

experience of the issue and support RSPs to provide services to a standard that meets consumers' expectations, particularly where they are without a service for a period of time.⁴

NBN Co's proposed access arrangements includes rebates that accrue on a daily basis (subject to rebate caps):

- For delayed connections the daily rebate is \$7.50 per business day for non-priority assistance customers and \$10 per business day for priority assistance customers, capped at 30 business days.
- For unresolved faults the daily rebate is \$15 per business day for non-priority assistance faults and \$20 per business day for priority assistance faults, capped at 60 business days.

NBN Co has proposed to extend rebate eligibility to AVC TC-2 services designed for business applications, in addition to residential grade AVC TC-4 services. NBN Co would also apply rebates automatically, without the need for RSPs to submit claims where NBN Co misses a service level.

NBN Co's proposed rebates are below what we set out in the draft decision and position paper.⁵ However, we note that NBN Co's proposal to apply the rebates to AVC TC-2 services would extend the application of daily rebates to business grade services.

We also note that new connections (and hence connection issues) are likely to become less prominent with the end of the NBN rollout. The quantum of the fault rebate is similar to the Customer Service Guarantee (CSG) rebate for residential customers that applies for the first five business days (\$14.52), and that only a small proportion of faults remain unresolved after five business days.

Overall the structure of both rebates is also consistent with the principles set out in the draft decision, and will therefore provide more targeted incentives than currently apply in NBN Co's WBA.

5.2. Missed appointments

In the wholesale service standards inquiry we considered that, as a general principle, missed appointment rebates should take into account the cost and inconvenience to the end-user when NBN Co missed an appointment, while at the same time provide a strong incentive for NBN Co to reduce the rate of missed appointments.

During the inquiry we acknowledged that missed appointments are particularly frustrating to end-users. In light of the direct impact on consumers, and limited scope for RSPs to take measures to ameliorate the impact, we considered it appropriate for NBN Co to pay a rebate for missed appointments and for RSPs to pass-through the rebate to affected end-users.⁶

NBN Co's proposed access arrangements includes a missed appointment rebate of \$50 for the first missed appointment, and \$75 for each subsequent rescheduled missed appointment. NBN Co proposes to reduce this amount by 50 per cent where it attends the appointment on the same day with the end-user's consent, despite missing the appointment

⁴ ACCC, *NBN Wholesale Service Standards Inquiry – Position Paper*, April 2020, pp.8-9. ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, pp. 25-28, 30-32.

⁵ The Draft Decision proposed rebates of \$13.50 per business day for late connections (capped at 20 business days), and \$20 per business day, escalating to \$30 per business day after 5 business days, for unresolved faults (capped at 40 business days).

⁶ ACCC, *NBN Wholesale Service Standards Inquiry – Position Paper*, April 2020, p.11. ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, sections 4.1.4.3 & 4.1.4.4, pp. 34-36.

window for the service level. NBN Co will pay the rebate automatically without requiring the RSP to submit a claim for it.

While NBN Co's proposed access arrangements for the first missed appointment is less than the \$75 proposed in the draft decision, we consider it is a closer reflection of the harm than the current \$25 rebate. Additionally, NBN Co's proposed access arrangements provides a new incentive to attend appointments on the same day if it misses the service and it is convenient to the end-user. We consider that while this option adds some complexity, it could also result in better outcomes for end-users. Consistent with the draft decision, RSPs would also be required under the WBA to take reasonable steps to ensure that they pay or credit missed appointment rebates to the relevant consumer. This and other pass-through requirements are discussed further in section 5.5.

5.3. Underperforming service speeds

In the wholesale service standards inquiry we considered that, as a general principle, NBN Co should be responsible for the speed and performance of its wholesale product and not charge for services that it does not provide.⁷ This principle was mainly directed toward fibre to the node, fibre to the building and fibre to the curb (FTTN/B/C) and fixed wireless technologies. We also considered that wholesale service level terms should include commitments in relation to NBN Co's provision of information on service speed, and where relevant, congestion.

FTTN/B/C services

FTTN/B/C services are generally defined by downstream peak information rates (PIRs) or overlapping PIR ranges (12 Mbps, 25 Mbps, 25-50 Mbps, and 25-100 Mbps) with a minimum speed commitment of either 12 Mbps or 25 Mbps depending on the technology and status of the line, known as the PIR Objective.

In addition to providing timely and accurate speed information, we considered that NBN Co should pay rebates for services that:

- have a maximum attainable speed of less than 50 per cent of the maximum speed specified by the wholesale speed tier (the 'speed performance rebate'), or
- are not capable of meeting the PIR Objective (the 'PIR Objective rebate').⁸

Speed performance information

NBN Co's proposed access arrangements includes the provision of a daily line rate report and weekly speed reports available to RSPs through its 'service health' platforms and application programming interfaces (APIs) to help RSPs manage service speeds post connection. This creates a Historical Supported Speed (HSS) and a minimum assured speed (assured rate) which is then available for subsequent connections on the line at the time an RSP runs a service qualification prior to placing a new connection order.

We consider NBN Co's introduction of the HSS baseline and the incorporation of this data into its service qualification system is a significant improvement and resolves speed information concerns for services that have been connected to the NBN. The minimum assured speed also serves to clarify service speed commitments. We welcome stakeholder views on NBN Co's new approach on speed performance information.

⁷ ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, sections 4.1.5.3 & 4.1.5.4, pp. 41-46.

⁸ ACCC, *NBN Wholesale Service Standards Inquiry – Position Paper*, April 2020, pp.16-18., ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, pp.41-46.

Speed performance rebate

Under NBN Co's proposed access arrangements a speed performance rebate is not payable where the RSP knows at the time of order the maximum speed the line is capable of, as well as the minimum assured rate.

However, where speed performance information is not available to the RSP via NBN Co's service qualification system at the time of placing a connection order, or that information proves to be inaccurate, NBN Co will provide a once-off \$20 rebate to the RSP if the line achieves lower than 50 per cent of the high end of the 25-50 Mbps or 25-100 Mbps bandwidth profiles selected by the RSP.

NBN Co proposes to provide a rebate on a once-off basis for the purpose of compensating the RSP for their costs of managing the customer in accordance with the ACCC Broadband Speed Claims Guidance. Accordingly, NBN Co has not proposed a pass-through requirement for this rebate.

We consider that the availability of accurate and timely information on service speeds and capabilities by NBN Co will support RSPs in the marketing and sale of the most appropriate product to an end-user, relative to what their connection can support. Where RSPs are able to make informed choices when purchasing wholesale service products with respect to a line's speed capabilities, remedies such as the speed performance rebate proposed by the ACCC in the draft FAD and position paper may not be appropriate where the service does not perform in accordance with the ordered product. We note that the one-off speed performance rebate that is proposed by NBN Co is the same amount as that proposed in the draft FAD and position paper and that RSPs would be able to adjust wholesale service products that underperform. We welcome stakeholder views on NBN Co's new proposal with respect to the speed performance rebate and availability of HSS information.

PIR Objective rebate

In respect of the PIR Objective rebate, NBN Co's proposed access arrangements proposes a graduated rebate for each month the service achieves less than the PIR Objective (downlink), depending on the number of months the service has been in remediation. This rebate is proposed as \$10 for months 0-3, \$15 for months 4-6 and \$20 per month after 6-months, backdated to the time the trouble ticket that initiated the remediation process was acknowledged. Automatic application of a rebate for services that are in remediation would ensure that there are financial incentives for NBN Co to deliver on the minimum speed requirements it has committed to within the WBA. We note that the rebate is initially less than the rebate amount proposed in the draft FAD and position paper but accept that the escalation would provide incentives to NBN Co to investigate and resolve remediation cases in a timely manner.

Fixed wireless services

For services on the fixed wireless network, NBN Co's design standard is to provide services to an average throughput of at least 6 Mbps during the busy hours⁹ (and less than 0.25 per cent packet loss on backhaul links¹⁰). Where the fixed wireless network is impacted by network congestion during the busy hours, services may not meet end-user expectations.

In the wholesale service standards inquiry we considered that NBN Co should provide RSPs with information on whether a new customer is likely to be connected to a congested cell or congested backhaul link and to provide RSPs with maximum attainable speed information

⁹ NBN Co, Media release: NBN Co unveils new plans for its Fixed Wireless network, 18 December 2018.

¹⁰ NBN Co, *Monthly progress report (customer experience)*, January 2020.

based on the signal levels recorded at the time of installation for each fixed wireless service within two days of installation. This would allow RSPs to advise their customers appropriately prior to placing an order.

We also proposed the introduction of a fixed wireless rebate¹¹ where the 30 day average busy hour speed falls below the 6 Mbps design metric or where the cell is served by any backhaul link(s) with greater than 0.25 per cent packet loss.¹²

Wireless service speed information

NBN Co proposes to commit to providing fixed wireless backhaul reporting on a similar basis to the voluntary reporting it has been providing for the past year. In respect of its congestion reporting, NBN Co proposes that WBA4 terms allow for the development of an improved metric. It has also flagged that it is investigating the provision of granular, regularly updated visibility of actual service performance to RSPs.

Wireless speed performance rebate

NBN Co's proposed access arrangements includes a rebate of \$20 for each month that an Ethernet (Wireless) AVC TC-4 product is persistently congested during that month. A cell is persistently congested where its performance falls below NBN Co's 6 Mbps design standard, and for backhaul congestion, where the backhaul links operate below NBN Co's backhaul metric (i.e. where the link operates with average packet loss of 0.25 per cent or greater). This is consistent with the approach we proposed in the draft decision.

5.4. Service information and operational matters

The draft decision and position paper stated our position on a number of topics relating to service information and operations:

- the extent to which RSPs have access to timely and appropriate service information
- operational terms that specify how NBN Co measures its performance against its service level commitments, and
- NBN Co's regular reporting to RSPs on its aggregate performance against its service level commitments.

Availability of operational service information

In the draft decision and position paper we considered that, as a general principle, NBN Co should make service specific information about the progress of appointments, connections and faults available to access seekers in a way that is accurate, timely and accessible. We also considered that information on whether a relevant service level has been missed should also be provided and be able to be used by RSPs to inform end-users where appropriate.¹³

NBN Co currently provides RSPs with 'near to real time' connect order and incident progress information. NBN Co's proposed access arrangements includes a commitment to provide RSPs with service level activity outcomes and exclusion data and reporting via the Service Portal and business-to-business (B2B) APIs.

We consider that improvements to automated IT systems are consistent with the RSP requirements to be able to manage consumer services.

¹¹ In the draft decision we proposed a fixed wireless rebate of \$20 per month.

¹² ACCC, *NBN Wholesale Service Standards Inquiry – Position Paper*, April 2020, pp.16-17., ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, pp.41-46

¹³ ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, sections 4.3.1.3 & 4.313.4, pp.52-53. ACCC, *NBN Wholesale Service Standards Inquiry – Position Paper*, April 2020, p.26.

Service level measurement and exclusions

Service level measurement and exclusions refer to the starting point from which NBN Co begins measuring its performance against a service level timeframe, and the circumstances in which it is able to pause or 'stop the clock' on the measurement of its performance, until the relevant service level activity is complete.

In the draft decision and position paper we considered that, as a general principle, NBN Co should only extend service level timeframes under limited specified circumstances.¹⁴ We also considered that the cause for the delay should be communicated to the RSP and clearly logged when relied upon.

NBN Co's proposed access arrangements lists the circumstances under which measurement begins, ends, and the circumstances where it may be paused. NBN Co has set out a revised comprehensive set of exclusions in its proposal.

Overall we consider that improved reporting commitments and IT capability to provide operational information in a more timely way (described above), and clarity about when NBN Co may 'stop the clock' on measuring its performance against a service level, will provide RSPs with greater confidence in the NBN Co's operational practices.

Reporting of service level metrics

In the inquiry we proposed as a general principal that NBN Co should provide regular reports to access seekers about the overall performance of its network and that this should include its performance meeting service levels by location, service class and network.¹⁵

NBN Co has proposed to adopt all changes proposed by the ACCC except where aggregating reporting results in NBN Co disclosing confidential information of an RSP.

5.5. Consumer safeguards

The Australian telecommunications consumer safeguards framework is currently under review. This inquiry necessarily focuses on the wholesale terms within NBN Co's access agreements with RSPs. However, NBN wholesale terms have a part to play in ensuring telecommunications consumer safeguards are fit for purpose in a post-rollout NBN environment.

The Consumer Safeguards Review Part B final report on reliability of services is particularly relevant to the wholesale service standards inquiry. This has foreshadowed a number of future changes to the safeguards framework.¹⁶ As set out in our April position paper, the ACCC is working closely with the ACMA and the Department of Infrastructure, Transport, Regional Development and Communications (the Department) regarding the overall framework for consumer safeguards and standards.

Our inquiry has focused on three topics related to consumer safeguards:

- the degree to which NBN Co's wholesale terms support RSPs in meeting their Customer Service Guarantee and Priority Assistance obligations,
- how NBN Co's wholesale terms may adapt to new consumer safeguards, and
- RSP pass-through obligations to ensure that consumers receive the benefit of wholesale rebates paid by NBN Co under the WBA.

¹⁴ ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, sections 4.2.3.-4.2.4, pp. 49-50. ACCC, *NBN Wholesale Service Standards Inquiry – Position Paper*, April 2020, p.24.

¹⁵ ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, sections 4.3.2.3 & 4.3.2.4, pp.54-55. ACCC, *NBN Wholesale Service Standards Inquiry – Position Paper*, April 2020, pp.27-28

¹⁶ See section 1.3 of this report for more detail on the Department's Consumer safeguards review.

Customer Service Guarantee and Priority Assistance

In the draft decision and position paper we considered that NBN Co should support the delivery of NBN services in line with existing consumer safeguards where they apply.¹⁷

In particular, we considered that NBN Co should also prioritise priority assistance (PA) connections and faults over standard connections and faults. These are consumers who have a diagnosed life threatening medical condition, and that may require their telephone to access emergency medical treatment or advice in the event of a rapid, life threatening deterioration in their medical condition.¹⁸

We note that NBN Co's proposed access arrangements includes a simplified calculation and claims process for CSG compensation. This should help to facilitate RSP claims where NBN Co has contributed to the RSP's CSG liability to the consumer.

We also acknowledge that NBN Co's proposed rebate framework for delayed connections and unresolved faults features greater rebate amounts for PA customers than non-PA customers. The higher rebates should provide incentives to resolve connections and faults for PA customers that complement operational processes that prioritise those consumers.

Adapting to new or changing consumer safeguards

In the draft decision and position paper we considered that NBN Co should make a specific commitment to updating its WBA terms in response any changes to the consumer safeguards framework that may affect NBN services.

We proposed a term that would require NBN Co to negotiate in good faith to give effect to matters related to new consumer safeguards in accordance with the principle that NBN Co will supply services to support RSPs in meeting their obligations to consumers.

NBN Co has proposed to provide RSPs with a contractual commitment to conduct a four week consultation period with RSPs with respect to potentially changing the WBA if a regulatory event occurs and the RSP identifies that they cannot comply with an obligation imposed under an applicable law as a result of a regulatory event and comply with the WBA, unless the WBA is changed.

Pass-through of wholesale rebates to consumers

The question of how RSPs should treat or respond to rebates paid by NBN Co to RSPs for failing to meet service levels, and the extent they should pass-through rebate amounts to end-users, has been a key issue in this inquiry.

As part of the enforceable undertaking accepted by the ACCC, NBN Co introduced a requirement that RSPs take reasonable steps to ensure that affected end-users receive a fair value benefit (in a monetary or other form) of those rebates paid to RSPs (the 'pass through' requirement).

We agree with the principle that consumers should be compensated where they have suffered a detriment due to poor performance of the NBN. However, with the exception of missed appointment rebates, we did not propose to include a provision within the wholesale terms requiring general pass through of rebates to consumers.

¹⁷ ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, sections 4.4.3 – 4.4.4, pp. 58-59. ACCC, *NBN Wholesale Service Standards Inquiry – Position Paper*, April 2020, p.31

¹⁸ ACIF C609:2007 PA for Life Threatening Medical Conditions Industry Code.

We noted that pass-through terms within NBN Co's wholesale contract would have several drawbacks. Our primary concern was that a general pass through requirement may limit the ability of RSPs to offer differentiated remedies to customers in cases of poor experience. Additionally, as a term within the wholesale contract, NBN Co would be put in the position of 'policing' RSPs compliance with the pass-through terms.

We consider that if there were to be stronger requirements, this is likely to be best achieved through direct retail regulation rather than wholesale arrangements. We have worked with the Australian Communications and Media Authority (ACMA) as they consider the need for regulatory measures to apply across the NBN supply chain.

NBN Co's proposed access arrangements would require the full pass through of missed appointment rebates (consistent with the draft decision). Under NBN Co's proposal RSPs would also be required to pass-through the fair value benefit of the following rebates:

- the connection rebate
- the failed connection rebate
- the service fault rebate
- the PIR Objective rebate, and
- the wireless speed performance rebate.

We note that NBN Co proposes to consult with RSPs to develop guidance on what constitutes 'fair value' pass-through. This recognises that some RSPs offer remedies that mitigate the impact of service faults, such as offering back-up services to ensure consumers remain connected.

NBN Co has not proposed RSP pass-through requirements for the FTTN/B/C speed performance rebate on the basis that the purpose of the rebate is to compensate the RSP for their costs of managing the customer in accordance with the ACCC Broadband Speed Claims Guidance.

6. ACCC consideration of the service standards related terms of the access proposal against the regulatory assessment framework

We first set out our general approach to considering NBN service standards in the draft decision. This described the features we consider the NBN service standards framework should include. Consistent with the draft decision and position paper, we consider that this approach addresses the relevant matters the ACCC must take into account when considering whether to make an access determination. These matters are set out in Annexure A.

In particular, we consider NBN service standards should:

- have clear service level commitments by NBN Co
- allocate risk and responsibility between NBN Co and RSPs appropriately
- provide effective incentives on NBN Co to improve its performance, and
- result in better end-user outcomes.¹⁹

Clear service level commitments

Certainty by way of clear service level commitments promotes competition by providing RSPs with a reliable basis on which to develop differentiated product offerings within retail markets.

Retail competition provides incentives for RSPs to improve their service quality and customer experience in order to gain or avoid losing customers. However, RSPs cannot meaningfully compete on service quality without certainty regarding the underlying service levels framework. Particularly, smaller RSPs may rely on rebates from NBN Co to offer end-users appropriate remedies, compared to larger RSPs who may have the scale and capacity to offer more remedies in the absence of meaningful rebates.

We consider that NBN Co's service standards should provide strong service commitments on a per-service basis. Service commitments should be clear and specific, and apply to each individual service rather than only as aggregate commitments that relate to NBN Co's overall service performance (i.e. that a particular service level will be met 'x' per cent of the time). Commitments should also be clear with respect to all aspects of the wholesale product that can have a significant effect on consumer experience, including missed appointments, failed connections, delayed connections, unresolved faults and underperforming service speeds.

In order to provide services that meets its customers' needs and expectations, RSPs must have sufficient certainty about services delivered over the NBN. This includes not only the technical specifications and performance of NBN Co's products, but also commitments about what actions will be taken if the specified quality of service cannot be delivered, what remedies (including rebates) will be provided and what processes will be in place for an RSP to access those remedies. Certainty around remedies (including rebates) is particularly important due to their key role in allowing RSPs to better manage end-user expectations and outcomes.

We do not consider that the current WBA terms provide sufficient certainty around the services that they can deliver to consumers, and this is likely to be constraining their RSPs' ability to plan strategies for operating and competing in retail markets.

¹⁹ ACCC, *NBN Wholesale Service Standards Inquiry - Draft Decision*, October 2019, Chapter 3, pp.13-18.

However, we consider that NBN Co's WBA4 proposal would significantly improve the clarity of the current service level commitments by:

- introducing new daily rebates where NBN Co does not meet its connections or fault rectification
- introducing new FTTN/B/C and fixed wireless rebates that provide remedies where NBN Co fails to meet certain performance standards, and
- improving its reporting processes, including the implementation of 'near to real time' operational information about the status of connections faults, service level outcomes and exclusions data.

We also note that NBN Co's proposed access arrangements provide a clear timeframe for the implementation of improved service standard measures as part of its WBA4 terms.

Appropriate allocation of risk and responsibility

NBN Co's service standards should appropriately allocate risk and responsibility between NBN Co and RSPs to promote good end-user experiences. Generally, this means that the party that can best manage, or has responsibility for, the relevant portion of the supply chain should be accountable for it.

This principle is consistent with both NBN Co's legitimate business interests, and the interests of access seekers who have a right to use NBN services, as it would align the WBA terms with RSPs' obligations in the retail market and NBN Co's commitments in providing the declared services.

We consider that the WBA terms have not always struck an appropriate balance between RSP interests with NBN Co's. In particular, while RSPs are necessarily accountable to consumers for the retail services they provide, aspects of NBN Co's WBA commitments do not currently provide for recourse where NBN Co does not meet a service commitment. This concern is compounded to the extent that RSPs do not have timely access to service specific operational information to facilitate management of NBN services for their customers.

NBN Co's WBA4 proposed access arrangements improves on the allocation of risk and responsibility between NBN Co and RSPs by clarifying and extending its service level commitments, and improving its reporting of operational outcomes to RSPs, as discussed above.

Effective incentives to improve service outcomes

Financial incentives on NBN Co, by way of commercial rebates, are the primary contractual mechanism to ensure NBN Co meet its service level commitments. Where set at an appropriate level, commercial rebates provide an incentive for NBN Co to maintain, improve and invest in the operationally efficient provision of the services.

NBN Co's WBA4 proposed access arrangements provides greater incentives on NBN Co to improve its service outcomes by increasing its rebate liability if it fails to meet its service commitments, through the introduction of connection and fault rebates that accrue over time, and new speed performance rebates in respect of FTTN/B/C and fixed wireless services.

We acknowledge that NBN Co will incur costs associated with both the implementation of an improved service level framework and may incur higher ongoing costs if its ongoing liability to pay rebates is increased. In the position paper we considered that service level improvements were appropriate taking into account NBN Co's legitimate business interests,

including the direct costs of providing access to NBN services. We have not revisited these factors, as NBN Co would have taken these into account in preparing its proposal.

Improved end-user outcomes

The ACCC considers the term LTIE refers to the end-users' economic interests, which include lower prices, increased quality of service and greater diversity and scope in product offerings. Measures in NBN Co's proposed access arrangements have a direct relationship to the quality of NBN retail services RSPs will be able to provide over the term of WBA4.

We consider NBN Co's proposed access arrangements is a marked improvement over the current WBA terms and that this will set the baseline for future commercial negotiations. In particular we note:

- Improvements to the structure of the rebates mechanisms and increased incentives on NBN Co to meet its service commitments should result in better overall performance.
- In a competitive retail market improved service levels at the wholesale level will result in a better service outcome for consumers. Better outcomes for consumers will also be driven by RSP pass-through designed to ensure consumers get the benefit of wholesale rebates paid by NBN Co where appropriate.
- Consumers will also benefit from operational improvements to improve reporting, as this will arm RSPs with information to be able to manage consumer experiences.

6.1. List of questions

We welcome stakeholder comments on the matters discussed above. In particular, the parts of the proposal which offer a new, or more developed, approach to a service standard commitment not previously canvassed in the wholesale service standards inquiry. For example, the proposal concerning underperforming services and the list of service level measurement exclusions.

Some questions stakeholders may wish to consider are:

1. Do you consider that the contents of the proposed access arrangements on service standards will be beneficial to the long-term interests of end users?
2. Are there any deficiencies or unforeseen consequences that would need to be addressed before the intended benefits of the proposed access arrangements on service standards could be realised?
3. Do you consider the proposed access arrangements on service standards to be reasonable having regard to the regulatory assessment framework?

Annexure A: Matters the ACCC must take into account in making an access determination

The ACCC must have regard to the matters specified in section 152BCA(1) of the CCA when making a FAD.

These matters are:

- (a) whether the FAD will promote the long-term interests of end-users (LTIE) of carriage services or services supplied by means of carriage services
- (b) the legitimate business interests of a carrier or CSP who supplies, or is capable of supplying, the declared service, and the carrier's or provider's investment in facilities used to supply the declared service
- (c) the interests of all persons who have rights to use the declared service
- (d) the direct costs of providing access to the declared service
- (e) the value to a person of extensions, or enhancement of capability, whose cost is borne by someone else
- (f) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility
- (g) the economically efficient operation of a carriage service, a telecommunications network or a facility.

Section 152BCA(1) matters reflect the repealed section 152CR(1) matters that the ACCC was required to take into account in making a final determination in an access dispute. The ACCC intends to interpret the sections 152BCA(1) matters in a similar manner to the approach taken in access disputes.

Sections 152BCA(2) set out other matters that the ACCC may take into account in making a FAD. More specifically, these provisions allow the ACCC to take into account the characteristics, costs, revenues and demand for other eligible services supplied by (or capable of being supplied by) the carrier or CSP of the relevant declared service.

The ACCC can also take into account any other matters it thinks are relevant.²⁰

The ACCC's views on how the matters in section 152BCA should be interpreted for the FAD process are set out below.

Long-term interests of end-users

The first matter for the ACCC to consider when making a FAD is whether the determination 'will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services'.²¹

The ACCC has published a guideline explaining what it understands by the phrase 'long term interests of end-users' in the context of its declaration responsibilities.²² This approach to the LTIE was also used by the ACCC in making determinations in access disputes. The

²⁰ CCA, ss. 152BCA(3).

²¹ CCA, ss. 152BCA(1)(a).

²² ACCC, '[A guideline to the declaration provisions for telecommunications services under Part XIC of the Competition and Consumer Act 2010](#)', August 2016, in particular pp. 28–31.

ACCC considers that the same interpretation is appropriate for making FADs in relation to the declared NBN Access Service.

In the ACCC's view, particular terms and conditions promote the interests of end-users if they are likely to contribute towards the provision of:

- goods and services at lower prices
- goods and services of a high quality, and/or
- a greater diversity of goods and services.²³

The ACCC also notes that the Australian Competition Tribunal (Tribunal) has offered guidance in its interpretation of the phrase 'long-term interests of end-users' (in the context of access to subscription television services):

Having regard to the legislation, as well as the guidance provided by the Explanatory Memorandum, it is necessary to take the following matters into account when applying the touchstone – the long-term interests of end-users:

- End-users: "end-users" include actual and potential [users of the service]...
- Interests: the interests of the end-users lie in obtaining lower prices (than would otherwise be the case), increased quality of service and increased diversity and scope in product offerings... [T]his would include access to innovations ... in a quicker timeframe than would otherwise be the case...
- Long-term: the long-term will be the period over which the full effects of the...decision will be felt. This means some years, being sufficient time for all players (being existing and potential competitors at the various functional stages of the ... industry) to adjust to the outcome, make investment decisions and implement growth — as well as entry and/or exit — strategies.²⁴

To consider the likely impact of particular terms and conditions on the LTIE, the CCA requires the ACCC to have regard to whether the terms and conditions are likely to result in:

- promoting competition in markets for carriage services and services supplied by means of carriage services
- achieving any-to-any connectivity, and
- encouraging the economically efficient use of, and economically efficient investment in:
- the infrastructure by which listed carriage services are supplied, and
- any other infrastructure by which listed services are, or are likely to become, capable of being supplied.²⁵

Promoting competition

In assessing whether particular terms and conditions will promote competition, the ACCC will analyse the relevant markets in which the declared services are supplied (retail and

²³ ACCC, '[A guideline to the declaration provisions for telecommunications services under Part XIC of the Competition and Consumer Act 2010](#)', August 2016, p. 28..

²⁴ *Re Seven Network Limited (No 4)* [2004] ACompT 11 at [120]

²⁵ CCA, s. 152AB(2).

wholesale) and consider whether the terms set in those markets remove obstacles to end-users gaining access to telephony and broadband services.²⁶

Obstacles to accessing these services include the price, quality and availability of the services and the ability of competing providers to provide telephony and broadband services.

The ACCC is not required to precisely define the scope of the relevant markets in which the declared services are supplied. The ACCC considers that it is sufficient to broadly identify the scope of the relevant markets likely to be affected by the ACCC's regulatory decision.

Any-to-any connectivity

The CCA gives guidance on how the objective of any-to-any connectivity is achieved. It is achieved only if each end-user who is supplied with a carriage service that involves communication between end-users is able to communicate, by means of that service, with each other end-user who is supplied with the same service or a similar service. This must be the case whether or not the end-users are connected to the same telecommunications network.²⁷

The ACCC considers that this criterion is relevant to ensuring that the terms and conditions contained in FADs do not create obstacles for the achievement of any-to-any connectivity.

Efficient use of and investment in infrastructure

In determining the extent to which terms and conditions are likely to encourage the economically efficient use of and investment in infrastructure, the ACCC must have regard to:

- whether it is, or is likely to become, technically feasible for the services to be supplied and charged for, having regard to:
 - the technology that is in use, available or likely to become available
 - whether the costs involved in supplying and charging for, the services are reasonable or likely to become reasonable, and
 - the effects or likely effects that supplying and charging for the services would have on the operation or performance of telecommunications networks
- the legitimate commercial interests of the supplier or suppliers of the services, including the ability of the supplier or suppliers to exploit economies of scale and scope
- incentives for investment in the infrastructure by which services are supplied; and any other infrastructure by which services are, or are likely to become, capable of being supplied, and
- the risks involved in making the investment.²⁸

The objective of encouraging the 'economically efficient use of, and economically efficient investment in ... infrastructure' requires an understanding of the concept of economic efficiency. Economic efficiency consists of three components:

- productive efficiency — this is achieved where individual firms produce the goods and services that they offer at least cost

²⁶ CCA, s. 152AB(4). This approach is consistent with the approach adopted by the Tribunal in *Telstra Corporations Limited (No 3)* [2007] A CompT 3 at [92]; *Telstra Corporation Limited* [2006] A CompT 4 at [97], [149].

²⁷ CCA, s. 152AB(8).

²⁸ CCA, ss. 152AB(6) and (7A).

- allocative efficiency — this is achieved where the prices of resources reflect their underlying costs so that resources are then allocated to their highest valued uses (i.e. those that provide the greatest benefit relative to costs), and
- dynamic efficiency — this reflects the need for industries to make timely changes to technology and products in response to changes in consumer tastes and in productive opportunities.

On the issue of efficient investment, the Tribunal has stated that:

An access charge should be one that just allows an access provider to recover the costs of efficient investment in the infrastructure necessary to provide the declared service.²⁹

... efficient investment by both access providers and access seekers would be expected to be encouraged in circumstances where access charges were set to ensure recovery of the efficient costs of investment (inclusive of a normal return on investment) by the access provider in the infrastructure necessary to provide the declared service.³⁰

... access charges can create an incentive for access providers to seek productive and dynamic efficiencies if access charges are set having regard to the efficient costs of providing access to a declared service.³¹

Legitimate business interests

The second matter requires the ACCC to consider ‘the legitimate business interests’ of the carrier or CSP when making a FAD.³²

In the context of access disputes, the ACCC considered that it was in the access provider’s legitimate business interests to earn a normal commercial return on its investment.³³ The ACCC is of the view that the concept of ‘legitimate business interests’ in relation to FADs should be interpreted in a similar manner, consistent with the phrase ‘legitimate commercial interests’ used elsewhere in Part XIC of the CCA.

For completeness, the ACCC notes that it would be in the access provider’s legitimate business interests to seek to recover its costs as well as a normal commercial return on investment having regard to the relevant risk involved. However, an access price should not be inflated to recover any profits the access provider (or any other party) may lose in a dependent market as a result of the provision of access.³⁴ Further, the Federal Court has ruled that the regulatory framework did not require that the determination provide for full cost recovery in respect of the consequential costs or losses that a service provider may incur.³⁵

The Tribunal has taken a similar view of the expression ‘legitimate business interests’.³⁶

²⁹ *Telstra Corporation Ltd (No. 3)* [2007] ACompT 3 at [159].

³⁰ *Ibid* at [164].

³¹ *Ibid* at [176].

³² CCA, ss. 152BCA(1)(b).

³³ ACCC, [Resolution of telecommunications access disputes – a guide, March 2004 \(revised\)](#) (Access Dispute Guidelines), p. 56.

³⁴ ACCC, [Access pricing principles — Telecommunications](#), July 1997 (1997 Access Pricing Principles), p. 9.

³⁵ *Telstra Corporation Ltd v ACCC* (2017) 344 ALR 511 at [95]–[133].

³⁶ *Telstra Corporation Limited* [2006] ACompT 4 at [89].

Persons who have a right to use

The third matter requires the ACCC to consider ‘the interests of all persons who have the right to use the service’ when making a FAD.³⁷

The ACCC considers that this matter requires it to have regard to the interests of access seekers. The Tribunal has also taken this approach.³⁸ The access seekers’ interests would not be served by higher access prices to declared services, as it would inhibit their ability to compete in the provision of retail services.³⁹

People who have rights to currently use a declared service will generally use that service as an input to supply carriage services, or a service supplied by means of carriage service, to end-users.

The ACCC considers that this class of persons has an interest in being able to compete for the custom of end-users on the basis of their relative merits. This could be prevented from occurring if terms and conditions of access favour one or more service providers over others, thereby distorting the competitive process.⁴⁰

However, the ACCC does not consider that this matter calls for consideration to be given to the interests of the users of these ‘downstream’ services. The interests of end-users will already be considered under other matters.

Direct costs of providing access

The fourth matter requires the ACCC to consider ‘the direct costs of providing access to the declared service’ when making a FAD.⁴¹

The ACCC considers that the direct costs of providing access to a declared service are those incurred (or caused) by the provision of access, and includes the incremental costs of providing access.

The ACCC interprets this matter, and the use of the term ‘direct costs’, as allowing consideration to be given to a contribution to indirect costs. This is consistent with the Tribunal’s approach in an undertaking decision.⁴² A contribution to indirect costs can also be supported by other matters.

However, the criterion does not extend to compensation for loss of any ‘monopoly profit’ that occurs as a result of increased competition.⁴³

The ACCC also notes that the Tribunal has considered the direct costs criterion ‘is concerned with ensuring that the costs of providing the service are recovered.’⁴⁴ The Tribunal has also noted that the direct costs could conceivably be allocated (and hence recovered) in a number of ways and that adopting any of those approaches would be consistent with this matter.⁴⁵

³⁷ CCA, ss. 152BCA(1)(c).

³⁸ *Telstra Corporation Limited* [2006] ACompT 4 at [91].

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ CCA, ss. 152BCA(1)(d) (FAD).

⁴² Application by Optus Mobile Pty Limited and Optus Networks Pty Limited [2006] ACompT 8 at [137].

⁴³ See Explanatory Memorandum for the *Trade Practices Amendment (Telecommunications) Bill 1996*, p. 44: [T]he ‘direct’ costs of providing access are intended to preclude arguments that the provider should be reimbursed by the third party seeking access for consequential costs which the provider may incur as a result of increased competition in an upstream or downstream market.

⁴⁴ *Telstra Corporation Limited* [2006] ACompT 4 at [92].

⁴⁵ *Telstra Corporation Limited* [2006] ACompT 4 at [139].

Extensions or enhancements of capability

The fifth matter requires that the ACCC consider 'the value to a party of extensions, or enhancements of capability, whose cost is borne by someone else' when making a FAD.⁴⁶

In the 1997 Access Pricing Principles, the ACCC stated that this matter:

...requires that if an access seeker enhances the facility to provide the required services, the access provider should not attempt to recover for themselves any costs related to this enhancement. Equally, if the access provider must enhance the facility to provide the service, it is legitimate for the access provider to incorporate some proportion of the cost of doing so in the access price.⁴⁷

The ACCC considers that this application of section 152BCA(1)(e) is relevant to making a FAD.

Safe and reliable operation

The sixth matter requires the ACCC to consider 'the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility' when making a FAD.⁴⁸

The ACCC considers that this matter requires that terms of access should not compromise the safety or reliability of carriage services and associated networks or facilities, and that this has direct relevance when specifying technical requirements or standards to be followed.

The ACCC has previously stated in the context of model non-price terms and conditions, it is of the view that:

...this consideration supports the view that model terms and conditions should reflect the safe and reliable operation of a carriage service, telecommunications network or facility. For instance, the model non-price terms and conditions should not require work practices that would be likely to compromise safety or reliability.⁴⁹

The ACCC considers that these views will apply in relation to this matter for the making of a FAD.

Economically efficient operation

The ACCC must consider 'the economically efficient operation of a carriage service, a telecommunications network facility or a facility' when making a FAD.⁵⁰

The ACCC has noted that the phrase 'economically efficient operation' embodies the concept of economic efficiency as discussed earlier under the LTIE. That is, it calls for a consideration of productive, allocative and dynamic efficiency. The ACCC has also noted (in the context of resolving access disputes) that the ACCC may consider whether particular terms and conditions enable a carriage service, telecommunications network or facility to be operated efficiently.⁵¹

Consistent with the approach taken by the Tribunal, the ACCC considers that in applying this matter, it is relevant to consider the economically efficient operation of:

⁴⁶ CCA, ss. 152BCA(1)(e).

⁴⁷ [1997 Access Pricing Principles](#), p. 11.

⁴⁸ CCA, ss. 152BCA(1)(f) (FAD).

⁴⁹ ACCC, [Final determination – Model Non-price Terms and Conditions](#), November 2008, p. 8.

⁵⁰ CCA, ss. 152BCA(1)(g).

⁵¹ [Access Dispute Guidelines](#), p. 57.

- retail services provided by access seekers using the access provider's services or by the access provider in competition with those access seekers, and
- the telecommunications networks and infrastructure used to supply these services.⁵²

Other eligible services

In making a FAD that applies/apply to a carrier or CSP who supplies, or is capable of supplying, the declared services, the ACCC may, if the carrier or provider supplies one or more eligible services,⁵³ take into account:

- the characteristics of those other eligible services
- the costs associated with those other eligible services
- the revenues associated with those other eligible services, and
- the demand for those other eligible services.⁵⁴

The Explanatory Memorandum to the Bill that introduced section 152BCA(2) states that this provision is intended to ensure that the ACCC, in making an AD, does not consider the declared service in isolation, but also considers other relevant services.⁵⁵ As an example, the Explanatory Memorandum states:

...when specifying the access price for a declared service which is supplied by an access provider over a particular network or facility, the ACCC can take into account not only the access provider's costs and revenues associated with the declared service, but also the costs and revenues associated with other services supplied over that network or facility.⁵⁶

Any other relevant matters

The ACCC may also take into account any other matters that it thinks are relevant when making a FAD.

The ACCC is of the view that considerations of regulatory certainty and consistency will be important when setting the terms and conditions of a FAD.

The ACCC also considers that it should have regard to:

- submissions in response to its consultation processes, and
- other information provided to the ACCC by stakeholders.

Considerations of these other relevant matters do not limit the matters that the ACCC may have regard to when making a FAD.

Restrictions on access determinations

Section 152BCB imposes certain restrictions on the ACCC's ability to make an access determination.

More specifically, the ACCC is restricted in making an access determination that would have any of the following effects:

- preventing a service provider who already has access to the declared service from obtaining a sufficient amount of the service to be able to meet its reasonably anticipated requirements,

⁵² *Telstra Corporation Limited* [2006] ACompT 4 at [94]–[95].

⁵³ 'Eligible service' has the same meaning as in section 152AL of the CCA.

⁵⁴ CCA, s. 152BCA(2) sets out other matter that the ACCC may take into account in making a FAD.

⁵⁵ Explanatory Memorandum, *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010*, p. 178.

⁵⁶ *Ibid.*

- preventing a carrier or CSP from obtaining a sufficient amount of the service to be able to meet its reasonably anticipated requirements,
- preventing a person from obtaining, by exercise of a pre-rules right, a sufficient level of access to the declared service to be able to meet their actual requirements,
- depriving any person of a protected contractual right,
- resulting in an access seeker becoming the owner (or one of the owners) of any part of a facility without the consent of the owner of the facility,
- requiring a person (other than an access seeker) to bear an unreasonable amount of costs of:
 - extending or enhancing the capability of a facility, or
 - maintaining extensions to or enhancement of the capability of a facility,
- requiring a carrier or CSP to provide an access seeker with access to a declared service if there are reasonable grounds to believe that:
 - the access seeker would fail, to a material extent, to comply with the terms and conditions on which the carrier or provider provides, or is reasonably likely to provide, that access; or
 - the access seeker would fail, in connection with that access to protect the integrity of a telco network or to protect the safety of individuals working on, or using services supplied by means of, a telco network or a facility.

The ACCC is also unable to make an access determination (under section 152BCB(3)) that is inconsistent with any of the SAOs that are, or will be, applicable to a carrier or CSP.

NBN-specific restrictions

The legislation also provides for specific restrictions on the making of access determinations in relation to NBN corporations, that is, the ACCC must not make an access determination that would have the effect of:

- imposing requirements or prohibitions on an NBN corporation that are inconsistent with conduct authorised under section 151DA(2) or (3) of the CCA (relating to a refusal to supply a service)⁵⁷
- preventing an NBN corporation from engaging in conduct that is reasonable necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities,⁵⁸ or
- discriminating between access seekers in relation to any or all of the Category B SAOs applicable to an NBN corporation.⁵⁹

⁵⁷ CCA, ss. 152BCB(3B).

⁵⁸ CCA, ss. 152BCB(3C)..

⁵⁹ CCA, ss. 152BCB(4A). These provisions do not apply where the NBN corporation has reasonable grounds for believing that an access seeker will not comply with its obligations: CCA, ss. 152BCB(4B).



nbn's proposed commercial offer to address matters which are the subject of the ACCC Public Inquiries

nbn has undertaken a process of consultation with industry for over 12 months to obtain feedback about our pricing, service standards and various other commitments which form part of the current contractual arrangements with RSPs. This is not a simple task given the number and diversity of stakeholders that are involved and the complex and inter-linked nature of the issues that are raised and need to be resolved. Our objective has always been to identify how WBA4 can better serve the needs of RSPs, the needs of nbn and the needs of end user customers who use the nbn™ network in homes and businesses across Australia.

We have sought to achieve industry consensus on WBA4 in a collaborative and measured manner, so nbn and RSPs can transition to the new WBA in a timely and coordinated way. However, the COVID pandemic has made this task even more difficult given the disruption it has caused to industry, end user customers and nbn, and the need to prioritise the immediate challenges faced by end users during this time. But this crisis has also brought into sharper focus the needs and expectations of the people who use the nbn™ network in homes and businesses across Australia. WBA4 needs to enable a step change improvement in customer experience across industry.

Below is a high-level table outlining the benefits that WBA4 will deliver compared with the current arrangements in WBA3 for matters raised in the ACCC's NBN access pricing inquiry and the NBN wholesale service standards inquiry (noting WBA4 covers many other areas which are not described below). nbn recognises that we have not addressed every single issue raised by different RSPs. What we have created is a package for WBA4 which addresses the biggest issues with a step change improvement compared to WBA3, establishing the foundation for the telecommunications industry to be able to deliver a greatly enhanced customer experience to the people of Australia on the nbn™ network.

nbn firmly believes that this WBA4 package will support a more collaborative partnership between nbn and RSPs, aligning incentives, clarifying accountabilities and creating the opportunity for everyone to enjoy the superior economics and performance that come with delivering a better customer experience on the nbn™ network.

Issue	Status Quo	Proposed WBA4 Commercial Position																		
Entry Level Pricing	<ul style="list-style-type: none"> As part of a separate process, nbn has made commitments in relation to modified Entry Level Bundle (mELB) as follows: <table border="1" data-bbox="495 1075 1167 1310"> <thead> <tr> <th></th> <th>Oct-20</th> <th>May-21</th> </tr> </thead> <tbody> <tr> <td>mELB Effective Charge</td> <td>\$26.60</td> <td>\$26.60</td> </tr> <tr> <td>CVC Inclusion at \$35 Total Wholesale Charge</td> <td>1.2 Mbps</td> <td>1.2Mbps</td> </tr> </tbody> </table>		Oct-20	May-21	mELB Effective Charge	\$26.60	\$26.60	CVC Inclusion at \$35 Total Wholesale Charge	1.2 Mbps	1.2Mbps	<ul style="list-style-type: none"> In addition to the commitments already made by nbn on mELB, nbn proposes to commit to further effective charge reductions for the term of WBA4: <table border="1" data-bbox="1256 1075 1995 1310"> <thead> <tr> <th></th> <th>Dec-20</th> <th>May-21 to Nov-22</th> </tr> </thead> <tbody> <tr> <td>mELB Effective Charge</td> <td>\$24.70</td> <td>\$22.50</td> </tr> <tr> <td>CVC Inclusion at \$35 Total Wholesale Charge</td> <td>1.4Mbps</td> <td>1.7Mbps</td> </tr> </tbody> </table> <ul style="list-style-type: none"> In addition, nbn proposes to commit to not withdraw the mELB for the term of WBA4. 		Dec-20	May-21 to Nov-22	mELB Effective Charge	\$24.70	\$22.50	CVC Inclusion at \$35 Total Wholesale Charge	1.4Mbps	1.7Mbps
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Issue	Status Quo	Proposed WBA4 Commercial Position
Pricing Certainty	<ul style="list-style-type: none"> WBA3 does not contain any over-arching pricing commitments in relation to nbn's Bundled Discounts as this has been managed outside the WBA construct as a separate process. 	<p>nbn proposes to commit in WBA4 to publishing a 2 Year TC-4 Bundles Discount Roadmap so industry has guidance about nbn's future pricing, showing:</p> <ul style="list-style-type: none"> the maximum Bundled Discount effective charge and maximum CVC overage charges that applies to the AVC and CVC components over the coming 2 years; the minimum CVC capacity inclusions that make up the Bundled Discount over the same 2 years. <p>nbn will commit to ensuring that the published 2 Year TC-4 Bundles Discount Roadmap at all times provides forward visibility for at least the next 12 months (i.e. will be updated prior to there being less than 12 months forward visibility).</p> <p>The current charges and inclusions already committed to in nbn's 2019 Pricing Review Consultation Closure Paper issued in November 2019 will constitute the initial TC-4 Bundles Discount Roadmap and will incorporate the additional changes to mELB discussed above.</p> <p>When updated, the new TC-4 Bundles Discount Roadmap:</p> <ul style="list-style-type: none"> will cover at least the 2-year period from the date of that update, and can only maintain or improve on existing effective charges or CVC inclusions already committed in the then current Roadmap. <p>The DCR List will be included as part of WBA4, rather than being a separate document, as Annexures to the WBA4 Price Lists.</p> <p>WBA4 will set out a series of safeguards that relate to any changes to the TC-4 Bundles Discounts, to provide greater certainty to RSPs.</p>
Service Transfer Charge	<ul style="list-style-type: none"> This charge is currently \$22.50 with a \$17.50 Waiver in place. 	<ul style="list-style-type: none"> This charge will be permanently reduced to \$5.
New Service Never Worked (NSNW)	<ul style="list-style-type: none"> Service is charged from the time that a connection order is completed. 	<ul style="list-style-type: none"> nbn will implement a billing solution whereby charges for any period between the date a connection order is completed and when the service is working will be refunded directly to the RSP when a Trouble Ticket is raised in relation to the service within 20 Business Days of the completed connection order.
Connection Rebates	<p>As part of the Service Levels Improvements variation agreement offered to RSPs in October 2018:</p>	<p>nbn proposes to pay a new daily rebate as follows:</p> <ul style="list-style-type: none"> For Standard and Accelerated Connections: \$7.50 for each business day in excess

Issue	Status Quo	Proposed WBA4 Commercial Position
	<ul style="list-style-type: none"> • nbn commits to pay a once-off \$25 rebate for Standard Connections (but not Accelerated Connections) when connection timeframes are not met. • Rebate paid automatically to RSPs, with no requirement to make a claim; • Requirement to lodge accurate connection forecast information to be eligible for rebate was removed; • RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid. 	<ul style="list-style-type: none"> • of the applicable service level, capped at 30 business days; • For Priority Assistance customers: \$10 per business day in excess of the applicable service level, capped at 30 business days; • RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid. <p>The rebate will be payable in respect of connections for both AVC TC-4 and AVC TC-2 services.</p> <p>The requirement for RSPs to lodge forecast information to nbn will be removed. This also removes the connection rebate forecasting eligibility criteria to receive a connection rebate.</p>
Service Fault Rebates	<p>As part of the Service Levels Improvements variation agreement offered to RSPs in October 2018:</p> <ul style="list-style-type: none"> • nbn commits to pay a once-off \$25 rebate when fault timeframes are not met. • Rebate paid automatically to RSPs, with no requirement to make a claim; • RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid. 	<p>nbn proposes to pay a new daily rebate as follows:</p> <ul style="list-style-type: none"> • For non-Priority Assistance customers: \$15 per business day in excess of the applicable Service Level for nbn™ Ethernet missed End User Fault Service Levels capped at 60 business days; • For Priority Assistance customers: \$20 for each business day in excess of the applicable Service Level capped at 60 business days; • RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid. <p>The rebate will be payable in respect of connections for both AVC TC-4 and AVC TC-2 services.</p>
Missed Appointments Rebate	<p>As part of the Service Levels Improvements variation agreement offered to RSPs in October 2018:</p> <ul style="list-style-type: none"> • nbn commits to pay a \$25 rebate paid when nbn misses the agreed appointment timeframe for customer appointments for connections and fault restoration. • RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid. 	<p>nbn proposes to pay a new daily rebate as follows:</p> <ul style="list-style-type: none"> • \$50 when the initial appointment time is missed; • \$75 for each subsequent appointment that is missed for the same order or Trouble Ticket <p>If nbn is able to attend to the appointment on the same day and the customer is still present and willing to allow the attendance of the technician outside the appointment window, the rebate would be reduced by 50%</p> <p>RSPs will be required to take reasonable steps to pass on the full amount of the rebate to the impacted customer.</p>

Issue	Status Quo	Proposed WBA4 Commercial Position								
Measurement of Trouble Tickets	<ul style="list-style-type: none"> Measurement of duration of Trouble Tickets commences when nbn Accepts the Trouble Ticket from an RSP. 	<ul style="list-style-type: none"> nbn will continue to measure Trouble Tickets from the time they are Accepted, rather than moving to the time the Trouble Ticket has been Acknowledged by nbn. 								
PIR Objective Rebate (FTTN/B/C)	<ul style="list-style-type: none"> No rebate in relation to the PIR Objective. 	<ul style="list-style-type: none"> A new rebate will be introduced when a FTTN/B/C service is unable to achieve at least the PIR Objective speed for that service. In the case of FTTN services in co-existence with legacy networks, the PIR Objective is 12Mbps. For FTTN services outside of co-existence, the PIR Objective is up to 25Mbps. In the case of FTTC and FTTC services, the PIR Objective is up to 25 Mbps. Once an RSP has raised a trouble ticket in relation to the service, and nbn has determined the issue lies on nbn's network, nbn will place the service into Remediation, and seek to increase the service speed to at least the PIR Objective Speed. Until that Remediation is successfully completed, and from the time the RSP has raised the issue with nbn, the following rebates will be paid each month by nbn: <table border="1" data-bbox="1406 783 1803 1010"> <thead> <tr> <th>Month</th> <th>Rebate</th> </tr> </thead> <tbody> <tr> <td>0-3</td> <td>\$10 per month</td> </tr> <tr> <td>4-6</td> <td>\$15 per month</td> </tr> <tr> <td>>6</td> <td>\$20 per month</td> </tr> </tbody> </table> Accrual of the rebate will commence from the time of Acknowledgement of the Trouble Ticket that results in Remediation rather than the time at which the service is put into Remediation. RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid. 	Month	Rebate	0-3	\$10 per month	4-6	\$15 per month	>6	\$20 per month
Month	Rebate									
0-3	\$10 per month									
4-6	\$15 per month									
>6	\$20 per month									
FTTN/B/C Underperforming Speed Rebate	<ul style="list-style-type: none"> No rebate in relation to underperforming speeds on the FTTN/B/C networks 	<ul style="list-style-type: none"> RSPs will be provided with Historical Supported Speed (HSS) information at the time of placing an order, which will include an Assured Rate for the line. If RSPs order a 25-50Mbps or 25-100Mbps bandwidth profile and the service is capable of achieving the Assured Rate, even if that Assured Rate is below the ACCC speed expectation (i.e. capable of achieving at least 50% of the maximum speed for that bandwidth profile), then no rebate will be paid. 								

Issue	Status Quo	Proposed WBA4 Commercial Position
		<ul style="list-style-type: none"> If an Assured Rate is not available, or proves to be inaccurate (i.e. the service cannot achieve the Assured Rate), and the service cannot achieve the ACCC speed expectation, a once-off \$20 will be automatically paid to the RSP, with no requirement to pass this through to the customer.
Availability of Speed Reports	<ul style="list-style-type: none"> nbn has voluntarily provided a range of speed reports to RSPs but has made no commitment to do so in WBA3. 	<ul style="list-style-type: none"> nbn will provide the following information as part of WBA4: <ul style="list-style-type: none"> Daily Line Rate Report Once a new service has been connected for the first time, nbn will establish the Assured Rate for that line, which will be available to all RSPs. While not a WBA4 commitment, RSPs acquiring a service will be able to view Historical Supported Speed information in near to real time in nbn's Service Health Summary portal.
Fixed Wireless Underperforming Speed Rebate	<ul style="list-style-type: none"> No rebate in relation to underperforming speeds on the Fixed Wireless network 	<ul style="list-style-type: none"> nbn will pay a \$20 rebate for each month for each fixed wireless service supplied via a wireless network cell that is Persistently Congested during that month. This includes those cells: <ul style="list-style-type: none"> connected via a transmission backhaul link with an average busy hour link packet loss of greater than 0.25% over that month; or with an average busy hour downlink throughput of less than 6Mbps over that month.
Fixed Wireless Maximum Attainable Speed Information	<ul style="list-style-type: none"> No information provided in relation to maximum attainable speed of a Fixed Wireless service when first connected. 	<ul style="list-style-type: none"> No information provided in relation to maximum attainable speed of a Fixed Wireless service when first connected.
Fixed Wireless Reporting	<ul style="list-style-type: none"> Commitment to provide weekly report to RSPs in relation to average speed throughput of fixed wireless radio access network in the busy hour. Voluntary provision of weekly report to RSPs in relation to packet loss performance of fixed wireless backhaul transit links. 	<ul style="list-style-type: none"> Commitment to provide weekly reporting on both fixed wireless radio access network and backhaul transit links. Process to update reporting metrics should more appropriate measures be identified.
Pass-through of Rebates	<ul style="list-style-type: none"> Some rebates required RSP to take reasonable steps to ensure that end users receive a 'fair value benefit' of any rebates (whether in monetary or other form). 	<ul style="list-style-type: none"> Some rebates will not have any pass-through requirements, some will be required to be passed through in full, while others will have a 'fair value benefit' requirement. nbn will provide guidance to RSPs as to how fair value pass-through may be delivered.

Issue	Status Quo	Proposed WBA4 Commercial Position
Service Level Exclusions	<p>nbn may only ‘stop the clock’ in its measurement of End User Connection service levels and End User Fault rectification service levels to the extent that nbn’s performance of those activities is affected by the following matters:</p> <ol style="list-style-type: none"> 1. A Force Majeure Event. 2. nbn’s ability to perform in accordance with the Service Level, Performance Objective or Operational Target is adversely affected by an Excluded Event or a Customer Event. 3. Any inability of nbn or its Personnel to gain access to a location necessary to perform works. 4. In respect of the FTTC Network, any failure to obtain, or withdrawal of, an In-building Wiring Consent. 5. Where Customer selects an Appointment in respect of an order or Trouble Ticket that is not the earliest available appointment. 6. Any act or omission of RSP, any Downstream Service Provider or any End User in connection with moving, removing or altering any part of the nbnTM Network or installing nbnTM Equipment other than in accordance with any associated terms of supply, installation or use or any applicable Authorisation to Alter Document. 7. In respect of nbnTM Ethernet (Satellite): <ol style="list-style-type: none"> (i) nbn or its Personnel not being able to make contact with the Appointment Representative to schedule an appointment in accordance with the WBA; (ii) any de-prioritisation, reduction of maximum data transfer rate, rejection of order, rejection of modification or suspension that has been validly applied in accordance with the WBA; (iii) any issues inherent in the Satellite Network (including Satellite Limitations); or 	<p>nbn may only ‘stop the clock’ in its measurement of End User Connection service levels and End User Fault rectification service levels to the extent that nbn’s performance of those activities is affected by the following matters:</p> <ol style="list-style-type: none"> 1. any of the matters set out in the ACCC’s Draft FAD; 2. the RSP selecting an appointment that is not the earliest available appointment for that End User Connection or End User Fault rectification activity; 3. a trouble ticket having a ‘resolved’ status; 4. any act or omission of RSP, any Downstream Service Provider or any End User in connection with moving, removing or altering any part of the nbnTM Network or installing nbnTM Equipment other than in accordance with any associated terms of supply, installation or use or any applicable Authorisation to Alter Document; 5. any inability of nbn or its Personnel to gain access to a location necessary to perform works; 6. in respect of the FTTC Network, any withdrawal of an In-Building Wiring Consent; 7. the relevant Ordered Product being subject to any Ordering Freeze, Service Reduction or Suspension that has been validly imposed by nbn in accordance with the WBA; 8. in respect of nbnTM Ethernet (Satellite): <ol style="list-style-type: none"> (i) nbn or its Personnel not being able to make contact with the Appointment Representative to schedule an appointment in accordance with the WBA; (ii) any de-prioritisation, reduction of maximum data transfer rate, rejection of order, rejection of modification or suspension that has been validly applied in accordance with the WBA; (iii) any issues inherent in the Satellite Network (including Satellite Limitations); or (iv) any End User Connection or End User Fault activity that relates to the first Satellite Test Service supplied to RSP;

Issue	Status Quo	Proposed WBA4 Commercial Position
	<p>(iv) any End User Connection or End User Fault activity that relates to the first Satellite Test Service supplied to RSP.</p>	<ol style="list-style-type: none"> 9. any failure of, or inability to supply products, services, facilities or infrastructure by, a third party where the third party is unable to perform its obligations to nbn as a result of an event that would have otherwise constituted a Force Majeure Event if the obligations to be performed by the third party had arisen under the WBA; 10. the implementation of any Upgrade or relocation or replacement of any POI or Temporary POI in accordance with the WBA; 11. any inaccuracy, incompleteness, inadequacy in performance or unavailability of the FNN/ULL Database; 12. obtaining a Government Agency approval, permit or licence; 13. an electricity company, utility or other third party performing any works or providing any other inputs, including as part of any design process conducted in conjunction with nbn; 14. a Monitoring Status being applied to any Trouble Ticket; 15. a Held Status being applied to any order or Trouble Ticket for nbn to perform any Design Site Qualification, a Network Activity or Interference Mitigation; or 16. any other matter, thing, event or circumstance as determined by nbn from time to time provided that: <ol style="list-style-type: none"> (i) nbn has first consulted with WBA customers in relation to nbn's proposal to extend the period for measuring End User Connection and End User Fault rectification service levels in response to that matter, thing, event or circumstance; (ii) nbn has informed the ACCC of the outcome of nbn's consultation with Access Seekers; and (iii) the ACCC does not notify nbn that the ACCC objects to nbn proceeding with its proposal. <p>nbn confirms this is an exhaustive list of exclusions for End User Connection and End User Fault rectification service levels. For clarity, this list does not limit the exclusions that nbn may apply to the measurement of any other service levels, including in respect of Appointments related to End User Connections or End User Faults.</p>

Issue	Status Quo	Proposed WBA4 Commercial Position
Real-Time Order and Incident Management	<ul style="list-style-type: none"> No commitments in relation to provision of such information. nbn currently provides RSPs with 'near to real time' reporting for connections and faults. 	<ul style="list-style-type: none"> Existing 'near to real time' RSP reporting for connections and faults will be accompanied by a new "Supplementary Service Level Report" which will contain details regarding nbn's performance at a greater level of granularity. This reporting will be subject to WBA Standard Process change rights and processes. SLA outcomes and exclusion data and reporting in nbn's Service Portal and the B2B system via operational changes, rather than WBA4 commitments. Service level reports will be delivered via B2B APIs to allow easier consumption by RSPs. New weekly service level reports will be provided to RSPs via nbn's Customer Centre, which is an expansion of current monthly commitments.
Service Level Reporting	<ul style="list-style-type: none"> nbn provides detailed monthly performance reporting to RSPs on their own performance outcomes within 10 business days of the relevant month. 	<ul style="list-style-type: none"> nbn will provide clearer commitments in relation to the level of detail provided in the monthly reports, which will continue to be provided within 10 business days of the end of the month. nbn will also provide RSPs with overall performance data across all RSPs, broken down by location, service class and network, with the exception of information that would disclose the confidential information of an RSP (e.g. Priority Assistance performance)
Support for Consumer Safeguards	<ul style="list-style-type: none"> No commitments in relation to how nbn addresses any future changes to the consumer safeguards framework. 	<ul style="list-style-type: none"> nbn will provide RSPs with a contractual commitment to conduct a 4 week consultation with a view to potentially changing the WBA if a Regulatory Event occurs and the RSP identifies that they cannot comply with an obligation imposed under an applicable law as a result of a Regulatory Event and comply with the WBA, unless the WBA is changed.
Payment of rebates	<ul style="list-style-type: none"> Initially WBA3 required RSPs to make a claim in relation to Connection and Service Fault rebates when nbn did not meet the 90% Performance Objective. The Service Levels Improvements variation agreement offered by nbn in October 2018 removed the requirement to make a claim in relation to most commercial rebates. 	<ul style="list-style-type: none"> TC-4 and TC-2 rebates will be paid automatically by nbn, with no requirement for RSPs to claim them. Current claim processes will continue to apply in relation to Enterprise Ethernet services.



Wholesale Broadband Agreement 4 Proposal

Introduction

There is no doubt that 2020 has been a challenging year so far for everyone in the telecommunications industry and indeed, all Australians. Together we have worked as an industry to ensure Australians continue to have access to high speed broadband in these unprecedented times, collaborating to manage the financial, operational and network challenges. This willingness to find mutually acceptable resolutions has been critical to our success.

There is still great uncertainty for Australia and the world. In the face of this uncertainty, it is important that the telecommunications industry continues to work together and prioritises delivering a positive customer experience to Australians, given the ever-increasing importance of telecommunications connectivity in this changing world.

The ACCC decision in April 2020 to put on hold the NBN access pricing inquiry and the NBN wholesale service standards inquiry (**Public Inquiries**) was welcomed by **nbn**, however it has led to some uncertainty about the way forward in relation to our Wholesale Broadband Agreement 4 (**WBA4**). We believe it is important at this point in time to gain greater certainty so we can move forward with industry under a new and more balanced agreement.

With this in mind, **nbn** has submitted a proposal to the ACCC which we believe resolves the issues in the Public Inquiries and enables **nbn** to offer the industry a package under WBA4. This will deliver a better customer experience for Australians, give RSPs greater certainty and simplicity, and ensure **nbn** is able to continue to invest in the maintenance and upgrade of the **nbn** network over time to keep pace with customer needs.

nbn's proposal

In formulating this proposal, **nbn** is conscious of the need to balance all the different interests of RSPs, regulators, Government and **nbn** itself. This inevitably involves a degree of compromise. Our guiding principle is to ensure WBA4 provides the foundation for a better customer experience across the industry.

We are also conscious of timing. Our previous Wholesale Broadband Agreement known as WBA3 expires on 30 November 2020. Extending WBA3 is not preferred because this will delay the introduction of significant benefits to industry and end-users under WBA4. Therefore, **nbn** has decided to offer the further commitments to the ACCC outlined in the proposal below so that industry can move forward in accordance with the current WBA4 timetable and reap these benefits soon.

We consider that the overall package of significant enhancements proposed by **nbn** in WBA4 will deliver on the key objectives of the Public Inquires, particularly in relation to:

- a) providing greater pricing certainty for customers migrating to the **nbn** for the first time;
- b) ensuring that customers are supplied with a service that matches their expectations regarding speed; and
- c) providing **nbn** with even stronger incentives to meet its service standards for connections, fault repair, appointment keeping, and network performance.



nbn's proposal, which is outlined in detail below, delivers the following key outcomes for RSPs and end-users:

- Significant additional included CVC capacity for **nbn**'s modified Entry Level Bundle (mELB), supporting the smooth migration of end-users from legacy networks to the **nbn** network through to the end of 2022. This includes commitments to maintain the mELB pricing and CVC inclusions over that period.
- Increased certainty for RSPs about future pricing levels for **nbn**'s key residential services through publication of a 2-year pricing roadmap for the TC-4 Bundles Discounts, as well as other commitments.
- Permanent reduction of the Service Transfer charge from \$22.50 to \$5.
- Introduction of a new billing solution to rebate charges to RSPs when a new service does not work after it is initially connected.
- Introduction of new daily rebates where **nbn** does not meet its connections or fault rectification timeframes, rather than a single one-off payment.
- Increased rebates where **nbn** does not attend to end-user appointments within the required timeframes on the day of the appointment, with rebates escalated should a subsequent appointment also be missed.
- New PIR Objective rebate where a service does not meet the minimum downlink speed requirements on **nbn**'s FTTN/B/C networks (12Mbps when a service is in co-existence with legacy networks, 25Mbps after that co-existence period). This rebate will continue to be paid until the service is able to achieve this minimum speed objective, with the monthly rebate amount escalating the longer it takes to resolve the issue.
- Improved information provided to RSPs to allow them to ensure that end-users are placed on speed tiers that match the capabilities of **nbn**'s fixed line networks. Where this information is not available at the time of connection of the service, or proves to be inaccurate, **nbn** will provide a one-off rebate to compensate RSPs for the costs of managing this with their customers. **nbn** will also commit to a minimum "assured speed" for copper lines, and remediate lines that fall below that assured speed.
- New rebates will be provided where **nbn**'s fixed wireless network does not meet service performance targets for the radio access network and the backhaul transmission links for the network.
- **nbn** will also commit to providing additional fixed wireless reporting in WBA4.
- For the rebates described above, and for all rebates other than for Enhanced SLAs and those related to Enterprise Ethernet services, **nbn** will move away from manual claim processes for rebates and towards the automated application of rebates to RSPs' monthly invoices. This will help remove cost and complexity for RSPs.
- Enhanced reporting provided to RSPs to allow them to better manage their customers during connection and fault rectification activities.

nbn proposes that these enhancements to its wholesale pricing and service standards would be included in WBA4, providing RSPs with contractual certainty that they will be delivered over the two-year term of WBA4, if the ACCC determines this is an acceptable resolution after consulting with stakeholders and decides to close both the Public Inquiries.

We recognise this will involve a tight timetable for industry, however **nbn** believes that a speedy resolution of the issues arising under the Public Inquiries is now crucial due to the impending expiry of WBA3 on 30 November 2020 and the lead time required for the steps that **nbn** and RSPs need to take in order to allow all RSPs to move onto the new WBA4 by its 1 December 2020 start date.

Item	ACCC Position Paper	WBA4 proposal									
ACCC inquiry into NBN access pricing											
Broadband access product	<p><i>"We consider that a 12/1 Mbps speed access product bundle is most likely to lead to a like-for-like product for most consumers when migrating to the NBN, and so do not intend to similarly test whether the AVC speed tier should be increased."</i></p>	<p>nbn agrees with the ACCC that a 12/1 Mbps access product should remain as the entry level option to enable a smooth migration to the nbn network in line with the ACCC's principles.</p>									
Broadband access pricing and allowance for growth in CVC inclusions	<p><i>"... our proposed alternative broadband access product bundle would have a minimum charge of between \$24.80 and \$25.70, which would allow between 1.31 and 1.42 Mbps of CVC to be acquired for a \$35 monthly cost."</i></p> <p><i>"While we agree that 30 percent would appear a relevant benchmark to what would be observed inclusive of high speed broadband access services, we are not convinced that basic broadband access services would have CVC requirements that grow at this rate. This is because at least some of this aggregate growth will be driven by demand profiles that would naturally select a high speed broadband product. That is, bandwidth requirements for high speed access products would grow faster than the expected aggregate growth rate, and basic-speed access services would grow at a slower rate. Consequently, we are proposing to maintain the 20 per cent annual growth rate that NBN Co has built into its modified ELB offer."</i></p>	<p>What nbn has already committed on mELB:</p> <p>nbn has already committed to changes to the mELB Bundles Discount which will result in an effective charge of \$26.60 with effect from October 2020, which allows RSPs to acquire 1.2Mbps of CVC for a \$35 monthly wholesale cost (in addition to the mELB effective price reductions implemented in May 2020 and October 2019).</p> <p>Additional commitments as part of this WBA4 proposal:</p> <p>nbn proposes the following effective charges and CVC inclusions for mELB in WBA4 to address the ACCC's views in the April Position Paper:</p> <table border="1" data-bbox="1234 858 1955 1094" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: center;">Dec-20</th> <th style="text-align: center;">May-21 to Nov-22</th> </tr> </thead> <tbody> <tr> <td>mELB Effective Charge</td> <td style="text-align: center;">\$24.70</td> <td style="text-align: center;">\$22.50</td> </tr> <tr> <td>CVC Inclusion at \$35 Total Wholesale Charge</td> <td style="text-align: center;">1.4Mbps</td> <td style="text-align: center;">1.7Mbps</td> </tr> </tbody> </table> <p>Rationale for these additional changes:</p> <p>nbn has considered the ACCC's proposed 20% annual growth figure for mELB CVC inclusions, and while we do not consider there is strong evidence for such a high growth rate for the 12/1 Mbps speed tier, we have adopted an effective 20% annual growth rate from December 2019 until December 2022 to reach a resolution as part of the overall WBA4 package.</p> <p>It is worth noting that nbn introduced a range of enhancements to its CVC arrangements in May 2020 which have the effect of reducing the amount of CVC capacity that RSPs are required to pay for when acquired as part of a bundles discount. Key elements include the</p>		Dec-20	May-21 to Nov-22	mELB Effective Charge	\$24.70	\$22.50	CVC Inclusion at \$35 Total Wholesale Charge	1.4Mbps	1.7Mbps
	Dec-20	May-21 to Nov-22									
mELB Effective Charge	\$24.70	\$22.50									
CVC Inclusion at \$35 Total Wholesale Charge	1.4Mbps	1.7Mbps									

Item	ACCC Position Paper	WBA4 proposal
		<p>introduction of National CVC Pooling (to replace the existing CSA-level pooling of CVC inclusions), and increase of the Overage Waiver Threshold from 300Mbps to 1.5Gbps per CSA. As a result of reducing the amount of CVC that RSPs are required to pay for, the effect of these changes is to reduce the future growth trajectory for CVC that RSPs pay for, including for mELB.</p> <p>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.</p> <p>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.</p>
Pricing Certainty	<p><i>“We have also previously expressed concerns about NBN Co’s use of discounts, including in our assessment of NBN Co’s proposed variation to the SAU. We continue to hold these concerns due to the financial risk that uncertainty poses, which cannot be readily mitigated.</i></p>	<p>Commitments as part of this WBA4 proposal:</p> <p>nbn proposes to continue publishing a 2 Year TC-4 Bundles Discount Roadmap so industry has guidance about nbn’s future pricing. The current charges and inclusions already committed to in nbn’s 2019 Pricing Review Consultation Closure Paper issued in November 2019 will</p>

Item	ACCC Position Paper	WBA4 proposal
	<p><i>Since NBN Co introduced the modified ELB product and its 25/5 Mbps bundle product, the vast majority of NBN Co’s products are now implemented through discount constructs. Although we acknowledge that some discounting is specifically contemplated within the SAU, almost all NBN product offers are now expressed as discounts. In other words, discounting has become the predominant means by which NBN Co establishes its core product specifications and sets its prices.”</i></p> <p><i>“Were we to proceed to make an AD for entry level products, this would bring a higher degree of certainty to the composition and price of these particular access products. It would however not address concerns in relation to the use of discounts by NBN Co more generally. We will further consider how to provide greater certainty beyond entry level products consistent with the intended operation of the SAU, should that be necessary subject to any relevant developments in WBA4 discussions.”</i></p>	<p>constitute the initial TC-4 Bundles Discount Roadmap and will incorporate the additional changes to mELB discussed above.</p> <p>In addition, nbn will commit to maintaining the TC-4 Bundles Discount Roadmap showing:</p> <ul style="list-style-type: none"> • the maximum Bundled Discount effective charge and maximum CVC overage charges that applies to the AVC and CVC components over the coming 2 years; • the minimum CVC capacity inclusions that make up the Bundled Discount over the same 2 years. <p>nbn will commit to ensuring that the published 2 Year TC-4 Bundles Discount Roadmap at all times provides forward visibility for at least the next 12 months. When updated, the new TC-4 Bundles Discount Roadmap:</p> <ul style="list-style-type: none"> • will cover at least the 2-year period from the date of that update, and • can only maintain or improve on existing effective charges or CVC inclusions already committed in the then current Roadmap. <p>nbn also proposes to commit to the following safeguards for the term of WBA4 to provide certainty to RSPs in relation to mELB and the TC-4 Bundles Discounts:</p> <ul style="list-style-type: none"> • nbn cannot withdraw mELB, or increase the effective charge or decrease the CVC inclusions of TC-4 Bundles Discounts relative to the 2-year Pricing Roadmap. • To decrease the effective charge or increase the CVC inclusions of TC-4 Bundles Discounts relative to Pricing Roadmap, nbn must consult with RSPs and provide at least 1 months’ notice. • To introduce a new bandwidth profile into the TC-4 Bundles Discounts or to make operational process changes, nbn must consult with RSPs and provide at least 3 months’ notice. • To withdraw a speed tier from the TC-4 Bundles Discount (other than mELB, which nbn is not permitted to withdraw), nbn must give at least 12 months’ notice. This will be the subject of extensive consultation with industry and nbn must provide RSPs with a replacement proposition and information on migration of affected services. Any replacement proposition will offer at least equivalent value to the withdrawn TC-

Item	ACCC Position Paper	WBA4 proposal
		<p>4 Bundles Discount speed-tier unless the underlying Product, Product Component or Product Feature is being withdrawn in accordance with the SAU.</p> <ul style="list-style-type: none"> • nbn must give RSPs at least 6 months’ notice of any other changes, for example, if it has: <ul style="list-style-type: none"> ○ decreased the effective charge of the TC-4 Bundles Discounts below the roadmap commitment and wants to increase it again (but cannot go beyond the roadmap commitment), or ○ increased CVC inclusions of the TC-4 Bundles Discounts above roadmap commitment and wants to decrease again (but not below the roadmap commitment) • If RSPs agree to amend the WBA to incorporate new pricing approaches, then nbn would be entitled to replace/enhance the TC-4 Bundles Discount Roadmap commitments. • nbn would also be able to change the TC-4 Bundles Discount and TC-4 Bundles Discount Roadmap commitments in response to a Regulatory Event as defined in WBA4, as well as to comply with applicable law, a Tax Change Event, and as necessary to comply with our non-discrimination obligations. <p>nbn proposes to provide a simplified DCR List as part of WBA4 with standard rules around variation, withdrawal, suspension, introduction and extension rules for discounts, credits, rebates and waivers. The DCR List will become Annexures to the WBA4 Price Lists, so all price-related terms for prices and discounts are in the WBA.</p> <p><u>Rationale for these changes:</u> These changes will substantially improve the level of pricing certainty enjoyed by RSPs. The effect of these safeguards acting together will also provide certainty that any replacement discounting proposition will offer at least equivalent value to the withdrawn bundle over the remainder of the term of the TC-4 Bundles Discount Roadmap unless the underlying Product, Product Component or Product Feature is being withdrawn in accordance with nbn’s product withdrawal processes under the SAU and WBA (as applicable).</p>

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		<p>The published 2 Year TC-4 Bundles Discount Roadmap establishes clearly defined boundaries for the effective charges and value that nbn can offer over its term. If nbn introduces new discount arrangements that are not TC-4 Bundles Discounts, the commitments in WBA4 mean that any new arrangements will be offered either in parallel with the TC-4 Bundles Discounts or offer at least equivalent value to them over the term of the then current TC-4 Bundles Discount Roadmap. Thus, these new discount arrangements cannot result in worse outcomes for RSPs during the term of WBA4.</p>
CVC utilisation conditions	<p><i>"... we are intending to consider further whether CVC utilisation conditions should apply to entry-level access products in particular, and if so what form they should take."</i></p>	<p>nbn substantially simplified CVC utilisation conditions in response to feedback received from RSPs during the 2019 pricing consultation process. This included simplifications to the CVC utilisation conditions themselves, the amounts payable when breaches occur, and the process by which RSPs can manage compliance with the CVC utilisation conditions.</p> <p>The new CVC utilisation conditions for the TC-4 Bundles Discounts came into effect from 1 May 2020 but nbn has agreed not to enforce the consequences of CVC utilisation condition breaches as part of the CVC COVID-19 Credit to support RSPs during the COVID-19 pandemic. Once this is lifted in September 2020, we will monitor the effectiveness of the new conditions and continue to engage with RSPs on opportunities for improvement.</p> <p>To the extent that the ACCC is considering whether CVC utilisation conditions should continue to apply to entry-level products, and in what form, it is unclear how nbn or RSPs would be able to operationalise different CVC utilisations conditions for different products, given the shared nature of CVC.</p> <p>Seeking to build in differential CVC utilisation conditions for different products would likely introduce substantial complexity and operational cost for both nbn and RSPs.</p>
Voice-only access product	<p><i>"...we will consider whether the introduction of a voice-only NBN access product would promote the LTIE. Again, we would intend to consider this principally from the perspective of whether this is required to allow a smooth transition of some customers given their existing fixed line voice products are also being withdrawn with the rollout of the NBN."</i></p>	<p>Consumers continue to be able to make a smooth migration to the nbn network in relation to voice-only based on nbn's current ELB wholesale pricing.</p>
Service Transfer Charge	<p><i>"A gaining access seeker pays a transfer charge when an end-user moves from one access seeker to another. NBN Co has</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u></p>

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	<p><i>reduced its transfer charge from \$22.50 to \$5.00 per transfer in response to access seekers raising strong concerns regarding the existence and level of these charges</i></p> <p><i>... Subject to any final views, we are of the view that the \$5.00 charge appears reasonable to apply over an extended period, and we do not consider that a strong case can be made on competition and efficiency grounds for this charge to be set at zero. This includes for intra-company transfers. A small transfer charge would also contribute towards the recovery of the efficient costs of processing any transfers that fall out of the automated process, and discourage inefficient use of the transfer process."</i></p>	<p>nbn proposes a price reduction (via inclusion in the WBA4 Price List) of the Service Transfer Charge to \$5.</p> <p>Rationale for the change: While activities associated with Service Transfers result in low costs to nbn in many instances, there still remain a material number of instances in which nbn incurs significant costs as a result of truck rolls and provision of new equipment. nbn agrees with the ACCC's characterisation of a small charge being a reasonable means of recovering these higher costs across all Service Transfer activities.</p>
ACCC inquiry into NBN Wholesale Service Standards		
<p>NSNW (New Service Never Worked)</p>	<p><i>"We consider it important that NBN Co has strong commitments at the wholesale level for confirming new connections are working and the circumstances in which it can start charging for services supplied.</i></p> <p><i>Although we consider that the general principle set out in our draft decision, that NBN Co would only commence charging after installation testing is complete is appropriate, we acknowledge that for some network technologies certain actions will be required from other parties before NBN Co can perform installation testing. We therefore consider some flexibility is required for the implementation of the general rule. In respect of NBN Co's submission that it requires a modem to be present and activated for FTTN/B connection testing, we consider a reasonable approach is for NBN Co to apply a 'pending' status to the connect order while it is awaiting modem connection. We would propose that no wholesale</i></p>	<p>Commitments as part of this WBA4 proposal: nbn proposes a NSNW billing solution whereby charges for the period between the date a connection order is completed and when the service is working will be refunded directly to the RSP invoice on a pro rata daily basis when an RSP raises a Trouble Ticket within 20 Business Days.</p> <p>Rationale for the change: Through WBA4 negotiations with RSPs there is a clear consensus that a billing solution is the first and right step to take for this process.</p> <p>The refund of charges by way of a rebate supports RSPs' retail level obligations whereby they cannot commence charging a customer until a service is working, and in addition the billing solution is technology agnostic and works independently of nbn's other applicable commercial rebates.</p>

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	<p><i>charges would apply for this period and NBN Co's service level for measuring connections would effectively be paused while the 'pending' status applies to the connection order. Consistent with current operational practice, NBN Co may ultimately cancel or reject the order if the necessary action is not taken.</i></p> <p><i>Finally, we note that the WBA already states that if NBN Co accepts that an access seeker has paid charges that it should not have paid, then it will ensure charges for those service are credited to the access seeker on a pro rata daily basis."</i></p>	<p>Feedback from RSPs on introducing automated testing on FTTP/N/B (we already have this in place for FTTC and HFC) was mixed as it results in complex changes to RSP system and process that come at a cost.</p> <p>In addition to the commitments above, nbn intends to consult with RSPs during FY21 on the potential introduction of automated testing to significantly reduce and/or eradicate NSNW issues and determine the viability and utility of such a technical solution.</p>
<p>Connection Rebate</p>	<p><i>"The proposed terms in the draft FAD maintained NBN Co's existing service level timeframes for connections ... as specified in the WBA. Further, the draft FAD terms incorporated:</i></p> <ul style="list-style-type: none"> <i>• a connection rebate of \$13.50 per business day for each missed connection service level, up to a cap of 20 business days [nbn comment – i.e. a cap of \$270]</i> <p><i>Having considered the views of stakeholders, we remain of the view that the rebate amounts and structures proposed in the draft FAD strike an appropriate balance between providing a meaningful incentive on NBN Co and supporting RSPs to provide a service that meets end-user expectations, and the potential cost and business impact on NBN Co.</i></p> <p><i>...we consider that rebates should apply to all missed connection ... service levels, including for accelerated connections, Priority Assistance (PA) connections.... NBN Co should pay rebates to RSPs automatically where a service level is missed."</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u></p> <p>nbn proposes as part of this overall WBA4 package:</p> <ol style="list-style-type: none"> 1. For Standard and Accelerated Connections, the new Connection Rebate will be \$7.50 per business day in excess of the applicable Service Level for nbn™ Ethernet Standard and Accelerated Connections and will be capped at 30 business days (i.e. up to a cap of \$225). 2. For PA customers, the new Connection Rebate will be \$10 per business day in excess of the applicable Service Level capped at 30 business days (i.e. up to a cap of \$300). 3. The rebate will be paid automatically with no requirement for the RSP to claim it. 4. The rebate will be payable in respect of connections for both AVC TC-4 and AVC TC-2 services. 5. The RSP will be required to take reasonable steps to pass-on a fair value benefit (monetary or otherwise) to the customer which recognises the inconvenience caused to the customer and provides some measure of compensation for the inconvenience caused. <p><u>Rationale for these changes:</u></p> <p>The rebate arrangement described above is an amended and simplified version of the daily rebates that have previously been proposed by nbn to RSPs during the course of WBA4 negotiations. nbn has taken on board feedback from interested parties on our previous proposals, and considerably simplified our approach.</p>

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		<p>With these changes, we think we have struck the right balance between simplicity and clarity, whilst ensuring the model incentivises customer positive service delivery outcomes, including having regard to customer vulnerability, needs and circumstances.</p> <p>We recognise that these rebates are lower than those proposed by the ACCC, however nbn has included significant additional value in other parts of this WBA4 proposal which will result in longer term benefits for RSPs and end users than short-term compensatory payments.</p> <p>We also believe a longer capping period than that proposed by the ACCC will better address any 'long-tail' delays to accompany nbn's case management process whereby nbn employ case managers, including to resolve aged connection orders (28 calendar days or more).</p>
<p>Service Fault Rebate</p>	<p><i>"The proposed terms in the draft FAD maintained NBN Co's existing service level timeframes for ... fault rectification as specified in the WBA. Further, the draft FAD terms incorporated:</i></p> <ul style="list-style-type: none"> • a fault rebate of \$20 per business day, escalating to \$30 per business day after 5 business days, up to a cap of 40 business days. [nbn comment – i.e. a cap of \$1150] <p><i>Having considered the views of stakeholders, we remain of the view that the rebate amounts and structures proposed in the draft FAD strike an appropriate balance between providing a meaningful incentive on NBN Co and supporting RSPs to provide a service that meets end-user expectations, and the potential cost and business impact on NBN Co.</i></p> <p><i>...we consider that rebates should apply to all ... fault service levels, including for [Priority Assistance] fault rectification. NBN Co should pay rebates to RSPs automatically where a service level is missed."</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u></p> <p>nbn proposes as part of this overall WBA4 package:</p> <ol style="list-style-type: none"> 1. The new Service Fault Rectification Rebate will be a flat rebate of \$15 per business day in excess of the applicable Service Level for nbnTM Ethernet missed End User Fault Service Levels which will be capped at 60 business days (i.e. a cap of \$900). 2. The new Priority Assistance Rebate will be a flat rebate of \$20 for each business day in excess of the applicable Service Level capped at 60 business days (i.e. a cap of \$1,200). 3. The rebate will be paid automatically with no requirement for the RSP to claim it. 4. The rebate will be payable in respect of connections for both AVC TC-4 and AVC TC-2 services. 5. The RSP will be required to take reasonable steps to pass-on a fair value benefit (monetary or otherwise) to the customer which recognises the inconvenience caused to the customer and provides some measure of compensation for the inconvenience caused. <p><u>Rationale for these changes:</u></p> <p>As per above, the rebate arrangement described above is an amended and simplified version of the daily rebates that have previously been proposed to RSPs. It takes on board feedback from interested parties on our previous proposals with a simplified approach, while still</p>

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		<p>ensuring the model incentivises customer positive service delivery outcomes and has regard to customer vulnerability, needs and circumstances.</p> <p>The fault rectification rebate of \$15 is many multiples of the daily wholesale charge being significantly higher than the daily wholesale charge for the 50/20 TC-4 bundle @ \$45 per month. As per above, nbn has also included significant additional value in other parts of this WBA4 proposal which will result in longer term benefits for RSPs and end users.</p> <p>We also believe a longer capping period than that proposed by the ACCC will better address any 'long-tail' delays to accompany nbn's case management process whereby nbn employ case managers, including to resolve aged trouble tickets (7 calendar days or more).</p>
Measurement of Trouble Tickets	<p><i>"In respect of the measurement of end-user faults, the draft FAD terms specified that service levels for fault rectification begins from the time of trouble ticket acknowledgement (as opposed to trouble ticket acceptance). The draft decision set out our view that timely validation of trouble tickets should be undertaken as part of NBN Co's ordinary operational processes and should therefore be included within the calculation of time.</i></p> <p><i>We further maintain the view that service levels for faults should begin from the time of trouble ticket acknowledgement (as opposed to trouble ticket acceptance)."</i></p>	<p>nbn does not intend to change the measurement of Trouble Tickets to commence from Trouble Ticket Acknowledgement as we firmly believe it is not in the interests of customers to reverse this improvement as it will only lead to longer timeframes for the issue to be resolved along with associated costs to systems and reporting for no benefit.</p> <p>Quality of information supplied to nbn in trouble tickets is the responsibility of RSPs. Measuring nbn performance from Trouble Ticket Acceptance stops the scenario where nbn has to place a trouble ticket into pending as a first response and the customer is without a service for a longer period of time because the Trouble Ticket was not submitted correctly by the RSP in the first instance.</p> <p>Trouble Ticket Acceptance measurement puts the responsibility on the RSP to ensure a trouble ticket has all the information nbn requires to immediately commence rectifying a fault.</p>
Missed Appointments	<p><i>"We maintain our view in the draft decision that NBN Co should be incentivised to meet its appointment service levels on a per-service basis by paying a rebate of \$75 to RSPs and that this rebate should in turn, be paid to end-users."</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u> nbn proposes as part of this overall WBA4 package:</p>

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		<ol style="list-style-type: none"> 1. \$50 for each ‘Initial Actual Appointment’ relating to either a connection or a Trouble Ticket that is not attended by nbn within the appointment window (up from \$25 under WBA3). 2. \$75 for each ‘Subsequent Rescheduled Actual Appointment’ relating to the same connection or a Trouble Ticket that is not attended by nbn within the appointment window (up from \$25 under WBA3). 3. In each case, the appointment rebate is reduced by 50% if nbn attends the Appointment on the day, but just not within the Appointment Window, and the customer is still present, able and willing to admit the attendance of the nbn technician outside of the agreed Appointment Window. 4. The rebate will be paid automatically with no requirement for the RSP to claim it. 5. The RSP will be required to take reasonable steps to pass-on the full amount of the rebate to the affected customer, which recognises the inconvenience caused to the customer and provides some measure of compensation for the inconvenience caused. <p><u>Rationale for these changes:</u></p> <p>The ‘step change’ for the Missed Appointment rebates recognises the greater impact that such missed appointments have on customers and the operation of the rebates should ensure that nbn is incentivised to prioritise the service delivery accordingly. As per above, nbn has included significant additional value in other parts of this WBA4 proposal which will result in longer term benefits, in addition to these short-term compensatory payments.</p>
PIR Objective Rebate (FTTN/B/C)	<i>“In relation to FTTN/B/C services, the draft FAD proposed a rebate of \$20 for each month that the downstream PIR that a service is capable of achieving is less than the PIR Objective (downlink). As noted above, the PIR Objective (downlink) is 12Mbps for the most basic speed tier and, 25Mbps for all other speed tiers (25Mbps; 25-50Mbps; 25-100Mbps) except for FTTN services during coexistence when it is 12 Mbps.</i>	<p><u>Commitments as part of this WBA4 proposal:</u></p> <p>nbn proposes as part of this over WBA4 package:</p> <ol style="list-style-type: none"> 1. The trigger for the PIR Objective rebate is where a service is unable to achieve its PIR Objective and nbn designates the service in Remediation. The rebate then continues to be paid for each month the service remains in Remediation. 2. Accrual of the rebate will commence from the time of Acknowledgement of the Trouble Ticket that results in Remediation rather than the time at which the service is put into Remediation.

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	<p><i>The ACCC's view on rebate amounts is that a \$20 rebate amount is likely to be appropriate for all instances of service speed underperformance.</i></p> <p><i>In accordance with the draft FAD, our view is that there should be no obligation on an RSP to first lodge a Trouble Ticket for NBN Co to investigate and resolve an underperformance issue on its network."</i></p>	<p>3. nbn will not place any time limit on when the trouble ticket needs to be raised by the RSP on the basis that the PIR Objective rebate is only applied from the time of Acknowledgement of the Trouble Ticket.</p> <p>4. The rebate amount will be paid per month at a fixed amount that scales higher in proportion to the length of time since the Trouble Ticket was Acknowledged for the service:</p> <table border="1" data-bbox="1294 485 1688 711"> <thead> <tr> <th>Month</th> <th>Rebate</th> </tr> </thead> <tbody> <tr> <td>0-3</td> <td>\$10 per month</td> </tr> <tr> <td>4-6</td> <td>\$15 per month</td> </tr> <tr> <td>>6</td> <td>\$20 per month</td> </tr> </tbody> </table> <p>5. The rebate will be paid automatically with no requirement for the RSP to claim it.</p> <p>6. The RSP will be required to take reasonable steps to pass-on a fair value benefit (monetary or otherwise) to the customer which recognises the inconvenience caused to the customer and provides some measure of compensation for the inconvenience caused.</p> <p><u>Rationale for these changes:</u> nbn needs to verify that the cause of the failure to achieve the PIR Objective is on the nbn network or in nbn's control before it is liable to pay this rebate. However, once this is verified, the rebate will be payable from the time of Acknowledgement of the Trouble Ticket to cater for the time lapse.</p> <p>A rebate that scales upwards the longer that a service is in Remediation should ensure that nbn is incentivised to prioritise the service delivery accordingly.</p>	Month	Rebate	0-3	\$10 per month	4-6	\$15 per month	>6	\$20 per month
Month	Rebate									
0-3	\$10 per month									
4-6	\$15 per month									
>6	\$20 per month									
<p>FTTN/B/C underperforming speed rebate</p>	<p><i>"... the draft FAD proposed a rebate for each month that the downstream PIR that a FTTN/B/C service is capable of achieving is below the upper range of the lower service tier. That is, where it is less than:</i></p> <ul style="list-style-type: none"> <i>50 Mbps for an AVC with a PIR of up to 100 Mbps,</i> 	<p><u>Commitments as part of this WBA4 proposal:</u> nbn proposes as part of this overall WBA4 package:</p>								

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	<ul style="list-style-type: none"> • 25 Mbps for an AVC with a PIR of up to 50 Mbps, and • 12 Mbps for an AVC with a PIR of up to 25 Mbps <p><i>The ACCC's view on rebate amounts is that a \$20 rebate amount is likely to be appropriate for all instances of service speed underperformance.</i></p> <p><i>The ACCC considers that measurement of the speed objective and commitment for fixed line services should be with respect to monthly average downstream PIR rather than simply downstream PIR. We agree with the submission made by NBN Co that the rebate should not capture services that underperform periodically throughout the month.</i></p> <p><i>We no longer propose a speed commitment of 12 Mbps (downlink) for an AVC-T4 with a maximum achievable PIR (downstream) of up to 25 Mbps as this speed tier is already covered by the PIR Objective.</i></p> <p><i>The ACCC's view is that the speed assurance provisions should not apply to AVC TC-4 services required to support an AVC TC-2 bandwidth profile supplied in respect of the same premises. We note that TC-2 services are used for business services, and not the residential services which are the focus of the current inquiry.</i></p> <p><i>For fixed line services our view is that the speed assurance rebate should not apply in circumstances where:</i></p> <ul style="list-style-type: none"> • an access seeker or end-user fails to cooperate with NBN Co in relation to remediation activities, or • an access seeker does not allow NBN Co to downgrade an underperforming fixed line service to avoid paying a rebate in the subsequent month. 	<ol style="list-style-type: none"> 1. Using Dynamic SQ, nbn will make Historical Supported Speed (HSS) information available to RSPs at the time of placing a connection order. 2. The availability of HSS will be determined by the presence of an Assured Rate field in the SQ to RSPs. This represents the threshold under which nbn will allow an RSP to raise a Performance Incident, and also forms part of the Dynamic SQ inaccuracy threshold. The HSS is generally only available for premises that have already had a service connected to the nbn network. 3. If the RSP chooses to order a service at 25-50 or 25-100 Mbps bandwidth profiles despite the Assured Rate being below the ACCC speed expectation (i.e. at least 50% of the speed tier maximum) for the relevant bandwidth profile, then no rebate will be payable. 4. If an Assured Rate is not available via Dynamic SQ at the time of placing a connection order and the line cannot achieve the ACCC speed expectation, nbn will provide a once-off \$20 rebate. 5. Where an Assured Rate is available via Dynamic SQ at the time of placing a connection order, but proves to be inaccurate and the line cannot achieve the Assured Rate, and the RSP has ordered a service for which the line cannot achieve the ACCC speed expectation, nbn will also provide a once-off \$20 rebate to the RSP to compensate the RSP for having to contact the customer and potentially change plan. 6. The rebate will be paid automatically with no requirement for the RSP to claim it. There will be no requirement for the RSP to pass-through this rebate to customers as the rebate is for the RSPs in recognition of the effort taken to manage the customer in accordance with the ACCC's Broadband Speed Claims Guidance. <p><u>Rationale for these changes:</u></p> <p>This a fair approach which enables RSPs to make informed choices working with their end users. Under this approach, the RSP either receives the information from nbn it needs before placing a connection order (and can make an informed choice up front as to what bandwidth profile to order) or nbn will compensate the RSP for the effort to manage the customer in</p>

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	<p><i>We accept NBN Co's arguments in relation to its obligation to pay a rebate in circumstances where it is unable to properly test a line or determine the causal location of the speed issue because of a lack of access to the end-user premise.</i></p> <p><i>We consider it reasonable that NBN Co not be required to pay a rebate in circumstances where it is not allowed (by the RSP) to downgrade an underperforming service or where it is unable to remediate the service because of the actions of the end-user."</i></p>	<p>accordance with the ACCC's Broadband Speed Claims Guidance where the line cannot achieve the ACCC speed expectation for the 25-50 or 25-100 Mbps bandwidth profile.</p> <p>Importantly, RSPs have the ability to manage their customer as they see fit, which enables RSPs to operate consistently with the ACCC Broadband Speed Claims Guidance. This includes nbn still providing support for and encouraging RSPs to raise performance incidents where the Assured Rate is not met. nbn notes the ACCC's view that a 12Mbps downlink speed commitment is no longer required in relation to the 25Mbps speed tier, as this is addressed by the PIR Objective rebate.</p>
<p>Availability of speed reports in connection with PIR Objective and FTTX Speed Performance rebates</p>	<p><i>"For fixed line services, we consider that NBN Co should provide timely and reliable service speed information to RSPs."</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u></p> <p>nbn proposes as part of this overall WBA4 package:</p> <ol style="list-style-type: none"> 1. A Line Rate Report will be available on a daily basis with information to help RSPs manage service speeds post connection. <p>In addition to the commitment above, the following will also be implemented:</p> <ol style="list-style-type: none"> 2. RSPs acquiring a service will also be able to view HSS information in Service Health Summary in near real time, and the next day via Service Health Reporting for any of their active services after a line has been connected and is transmitting data. 3. Once sufficient data has been collected for a service, nbn establishes the Assured Rate for the line on approximately day 10 and makes the HSS and Assured Rate available via Dynamic SQ for prospective RSPs after approximately 21 days.
<p>Fixed Wireless underperforming speed rebate</p>	<p><i>"For fixed wireless services, the draft FAD proposed the introduction of a fixed wireless rebate, requiring NBN Co to pay a \$20 payment to RSPs for each end-user service within a fixed wireless cell where the 30 day average busy hour speed falls below the 6 Mbps design metric or where the cell is served by any backhaul link(s) with greater than 0.25 per cent packet loss.</i></p> <p><i>For fixed wireless services, our view is that the \$20 rebate amount in the draft FAD is appropriate.</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u></p> <p>nbn will pay a \$20 rebate for each month for each fixed wireless AVC TC-4 Product Component that is supplied using a wireless network cell that is Persistently Congested during that month.</p> <p>Persistently Congested during a month means:</p> <ol style="list-style-type: none"> 1. that Wireless Network cell is connected to a Point of Interconnection by a transmission backhaul link that is reported by nbn as having an Average Busy Hour

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	<p><i>In relation to fixed wireless services, we consider that NBN Co should be able to propose alternative metrics that it considers to be more reflective of the end-user customer experience on its fixed wireless network to trigger the fixed wireless rebates. These would replace the current cell congestion and backhaul congestion metrics, following consultation with access seekers. For example, NBN Co has identified there is potential in some circumstances for its backhaul congestion metric to identify additional backhaul links beyond those actually congested.</i></p> <p><i>Additionally, the ACCC accepts NBN Co’s drafting suggestion that would mean the fixed wireless rebate calculations align with NBN Co’s reporting cycles and can be operationalised.</i></p> <p><i>As with other rebates, we maintain the view that NBN Co should be required to pay the rebate directly to RSPs without the need for them to submit a claim.”</i></p>	<p>Link Packet Loss of 0.25% or more for the last Link Packet Loss Reporting Period ending in that month; or</p> <ol style="list-style-type: none"> the Average Downlink Throughput of that Wireless Network cell is reported by nbn as being less than 6 Mbps for the last Downlink Throughput Reporting Period ending in that month. <p>To enable nbn and RSPs to establish an alternative metric that better reflects the experience of end users, nbn may amend the Persistently Congested definition after consulting with RSPs for a period of at least 4 weeks and providing RSPs with at least 30 business days’ notice of the change.</p> <p><u>Rationale for these changes:</u> nbn considers that the approach proposed in WBA4 aligns with the ACCC’s proposed position.</p>
<p>Fixed Wireless maximum attainable speed information</p>	<p><i>“[NBN Co should] provide maximum attainable speed data, post-connection.</i></p> <p><i>We consider that requiring NBN Co to provide RSPs with maximum attainable speed data for fixed wireless services (as it does for FTTN/B/C services) will enable RSPs to provide better and more accurate information about these services to individual customers. It will also promote better selling practices in accordance with the ACCC’s broadband speed claims industry guidance. In response to NBN Co’s submission that the maximum attainable speed measurement is inherently limited,</i></p>	<p>nbn maintains the view that the maximum attainable speed when a Fixed Wireless service is first connected is not a meaningful piece of information due to the inherent problems as expressed in our previous written submissions.</p> <p>However, nbn recognises that RSPs need access to relevant, timely information about the quality of the services that they supply to end-users. To that end, nbn is investigating the provision of granular, regularly updated visibility of actual service performance to RSPs. We are still scoping out the IT and data requirements for this initiative, but consider that this would deliver more relevant and actionable information for RSPs than a static view of maximum attainable speed.</p>

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	<p><i>we note that NBN Co could provide appropriate qualifications on the measurement methods used.”</i></p>	
<p>Fixed Wireless Reporting</p>	<p><i>“In respect of fixed wireless services, the draft FAD terms required NBN Co to provide weekly performance reporting by 2 business days after the end of each week that includes fixed wireless congestion metrics and NBN Co’s plans to remediate congested fixed wireless cells and congested backhaul links. The draft FAD terms also required NBN Co to provide prospective fixed wireless performance information to RSPs to enable them to identify whether prospective fixed wireless end-users are likely to be located within a congested cell.</i></p> <p><i>We consider [there should be] a requirement for NBN Co to provide weekly fixed wireless performance reporting by 2 business days after the end of each week that includes fixed wireless congestion metrics and NBN Co’s plans to remediate congested fixed wireless cells and congested backhaul links.</i></p> <p><i>In relation to fixed wireless services, we consider that NBN Co should be able to propose alternative metrics that it considers to be more reflective of the end-user customer experience on its fixed wireless network to trigger the fixed wireless rebates. These would replace the current cell congestion and backhaul congestion metrics, following consultation with access seekers. For example, NBN Co has identified there is potential in some circumstances for its backhaul congestion metric to identify additional backhaul links beyond those actually congested.”</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u> nbn proposes as part of this overall WBA4 package:</p> <ol style="list-style-type: none"> 1. We will commit to providing fixed wireless backhaul reporting on a similar basis to the voluntary reporting we have been providing for the past year. We will continue to commit to provide the existing fixed wireless radio access network (RAN) performance information. 2. However, there are limitations to the backhaul reporting as it currently captures some backhaul links which are not subject to congestion and needs to be refined, so this needs to be clarified in WBA4. 3. We would also need to ensure that there was an appropriate process in WBA4 which allows the fixed wireless metrics that nbn reports on to be updated if nbn develops an improved metric than the current packet loss measure. Likewise, should an improved metric be developed that covers what is currently provided in the RAN reporting, we would need a mechanism that allows that reporting to change as well. <p><u>Rationale for these changes:</u> nbn has been happy to provide the fixed wireless backhaul information to RSPs on a voluntary basis since the need to do so was identified last year. The proposal above confirms that this voluntarily provided information will continue to be provided to RSPs under WBA4, but that there will be a process to allow this reporting to be updated should more appropriate network performance metrics be developed.</p>

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Rebate pass-through	<p><i>"...our view is that there should not be a general pass through requirement for rebates imposed at the wholesale level, except in the case of missed appointments.</i></p> <p><i>However, consumers should receive the benefit from rebates paid to RSPs. There is a clear consumer benefit to allowing RSPs to offer differentiated, tailored and innovative remedies to consumers in cases of consumer detriment. These should be supported by wholesale rebates where service issues are caused by NBN Co missing its service levels. In many cases, this benefit may arise instead of, or in addition to, direct financial compensation.</i></p> <p><i>... While some RSPs will offer direct compensation to affected consumers, it may be better and more efficient to allow them the flexibility to determine remedies based on the customers' particular experiences, and where practical, offering consumers a choice between financial compensation and other remedies."</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u></p> <p>As described above, nbn has included provisions that require a fair value benefit pass-through of some of the rebates that will be included as part of the overall package. We consider that this is an important measure to ensure that consumers actually receive the benefit from rebates that are paid to RSPs.</p> <p>We will develop guidance as to what types of pass-through are considered fair value pass-through in consultation with RSPs.</p> <p><u>Rationale for the change:</u></p> <p>To provide RSPs with confidence in how to comply without impacting RSP innovation.</p>
Service Level Exclusions	<p><i>"The draft FAD terms stated that NBN Co may only 'stop the clock' in its measurement of connection and fault rectification service levels to the extent that these are affected by:</i></p> <ul style="list-style-type: none"> <i>• an end-user's request to change the date of an appointment</i> <i>• a 'pending' status on a ticket awaiting action from the RSP or end-user</i> <i>• acts of the RSP, downstream providers, or end-users that are not in accordance with the WBA terms or that are unlawful – including refusing NBN Co access to premises</i> <i>• multi-dwelling unit equipment or in-building wiring issues</i> 	<p><u>Commitments as part of this WBA4 proposal:</u></p> <p>nbn may only 'stop the clock' in its measurement of End User Connection service levels and End User Fault rectification service levels to the extent that nbn's performance of those activities is affected by the following matters:</p> <ol style="list-style-type: none"> 1. any of the matters set out in the ACCC's Draft FAD; 2. the RSP selecting an appointment that is not the earliest available appointment for that End User Connection or End User Fault rectification activity; 3. a trouble ticket having a 'resolved' status; 4. any act or omission of RSP, any Downstream Service Provider or any End User in connection with moving, removing or altering any part of the nbnTM Network or installing nbnTM Equipment other than in accordance with any associated terms of supply, installation or use or any applicable Authorisation to Alter Document;

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	<ul style="list-style-type: none"> • <i>issues caused by the network, systems, equipment or facilities of the RPS, downstream provider, or end-user, or</i> • <i>a force majeure event.</i> <p><i>Additionally, the draft FAD terms stated that NBN Co must also clearly log when any of these exclusions are relied upon.</i></p> <p><i>We maintain the view that there should be an exhaustive list of exclusions that NBN Co may rely on to ‘stop the clock’ on its measurement of service levels for connections and faults. This is important to promote clarity over which party is responsible for carrying forward operational processes relating to connections and faults. Building IT capability so RSPs are aware of when an exclusion is relied on should also be pursued at an appropriate time.</i></p> <p><i>We accept NBN Co’s submission that there are additional exclusions should also be included so that this term better aligns with the roles and responsibilities of NBN Co and RSPs that current apply under the WBA.”</i></p>	<ol style="list-style-type: none"> 5. any inability of nbn or its Personnel to gain access to a location necessary to perform works; 6. in respect of the FTTC Network, any withdrawal of an In-Building Wiring Consent; 7. the relevant Ordered Product being subject to any Ordering Freeze, Service Reduction or Suspension that has been validly imposed by nbn in accordance with the WBA; 8. in respect of nbn[™] Ethernet (Satellite): <ol style="list-style-type: none"> (i) nbn or its Personnel not being able to make contact with the Appointment Representative to schedule an appointment in accordance with the WBA; (ii) any de-prioritisation, reduction of maximum data transfer rate, rejection of order, rejection of modification or suspension that has been validly applied in accordance with the WBA; (iii) any issues inherent in the Satellite Network (including Satellite Limitations); or (iv) any End User Connection or End User Fault activity that relates to the first Satellite Test Service supplied to RSP; 9. any failure of, or inability to supply products, services, facilities or infrastructure by, a third party where the third party is unable to perform its obligations to nbn as a result of an event that would have otherwise constituted a Force Majeure Event if the obligations to be performed by the third party had arisen under the WBA; 10. the implementation of any Upgrade or relocation or replacement of any POI or Temporary POI in accordance with the WBA; 11. any inaccuracy, incompleteness, inadequacy in performance or unavailability of the FNN/ULL Database; 12. obtaining a Government Agency approval, permit or licence; 13. an electricity company, utility or other third party performing any works or providing any other inputs, including as part of any design process conducted in conjunction with nbn; 14. a Monitoring Status being applied to any Trouble Ticket; 15. a Held Status being applied to any order or Trouble Ticket for nbn to perform any Design Site Qualification, a Network Activity or Interference Mitigation; or

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		<p>16. any other matter, thing, event or circumstance as determined by nbn from time to time provided that:</p> <ul style="list-style-type: none"> (i) nbn has first consulted with WBA customers in relation to nbn's proposal to extend the period for measuring End User Connection and End User Fault rectification service levels in response to that matter, thing, event or circumstance; (ii) nbn has informed the ACCC of the outcome of nbn's consultation with Access Seekers; and (iii) the ACCC does not notify nbn that the ACCC objects to nbn proceeding with its proposal. <p>nbn confirms this is an exhaustive list of exclusions for End User Connection and End User Fault rectification service levels. For clarity, this list does not limit the exclusions that nbn may apply to the measurement of any other service levels, including in respect of Appointments related to End User Connections or End User Faults.</p>
<p>Real time order and incident information</p>	<p><i>"In the draft decision we considered that, as a general principle, NBN Co should record service specific information about the progress of appointments, connections and faults and make this available to access seekers in a way that is accurate, timely and accessible. This should include whether a relevant service level has been missed and be able to be used by RSPs to inform end-users where appropriate.</i></p> <p><i>The ACCC draft FAD terms required NBN Co to have IT systems in place to automate the transfer of all regular and ongoing operational information provided to RSPs. Where relevant operational information is not yet automated, NBN Co would maintain an IT roadmap setting out timeframes for the consultation and development of IT systems with this capability.</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u></p> <p>nbn proposes as part of this overall WBA4 package:</p> <ol style="list-style-type: none"> 1. To accompany existing 'near to real time' reporting for connections and faults, nbn will provide RSPs with a new "Supplementary Service Level Report which will contain details regarding nbn's performance at a greater level of granularity. This reporting will be subject to WBA Standard Process change rights and processes. 2. SLA outcomes and exclusion data and reporting in nbn's Service Portal and the B2B system via operational changes, rather than WBA4 commitments. 3. We will also deliver service level reports via B2B APIs for a more seamless, easier to consume format for RSPs. New weekly service level reports will be provided to RSPs via the Customer Centre which is an expansion of our current monthly commitment. <p><u>Rationale for these changes:</u></p>

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	<p><i>We consider that the provision of operational information via automated IT systems is important for good consumer outcomes and should continue to be a focus for improvement. This is essential for RSPs to be able to manage end-user services, keep end-users informed of the status of their services, and improve on their own systems and processes. Our draft decision identified a number of information types that we considered should be incorporated into automated IT systems. We consider these should be pursued at an appropriate time once NBN Co resumes business as usual operations. There should also be a general presumption that where information about wholesale services is provided on a regular basis, that this be integrated within NBN Co’s B2B access and service portal or other B2B systems so it can be made use of by RSPs.”</i></p>	<p>This new reporting commitment will enable RSPs to better manage customer expectations by providing information RSPs can use to keep customers updated on the progress of their connect orders and incidents along with setting expectations on applicable rebates RSPs and customers can expect to receive.</p>
<p>Service Level reporting</p>	<p><i>“The draft FAD terms included that NBN Co would provide monthly reporting to RSPs within 10 business days of the relevant month. The terms specified that NBN Co would report its performance for each service level activity completed for the RSP, as well as NBN Co’s performance across all RSPs, broken down by location, service class and network (where applicable).</i></p> <p><i>We consider NBN Co should clearly commit to reporting on its performance in respect of each service level activity</i></p> <p><i>[NBN Co’s concern] could be addressed by including a condition that NBN Co is not required to provide reporting to the extent that it would disclose information that is confidential to an access seeker.”</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u> nbn proposes to adopt all changes proposed by the ACCC except where aggregating reporting results in nbn disclosing Confidential Information of an RSP (e.g. Priority Assistance).</p>

Item	ACCC Position Paper	WBA4 proposal
Support for safeguards	<p><i>“We consider that NBN Co should make a clear commitment to access seekers that if changes are made to the consumer safeguards framework during the term of an access agreement, further discussions will take place to assess the need for wholesale terms to be updated to provide additional support required for RSPs to meet their safeguard obligations. If negotiations proceed, they should occur within a reasonable timeframe and in good faith.”</i></p>	<p><u>Commitments as part of this WBA4 proposal:</u></p> <p>nbn proposes to provide RSPs with a contractual commitment to conduct a 4 week consultation period with RSPs with respect to potentially changing the WBA if a Regulatory Event occurs and the RSP identifies that they cannot comply with an obligation imposed under an applicable law as a result of a Regulatory Event and comply with the WBA, unless the WBA is changed.</p>

Additional Commitments offered by nbn as part of WBA4

nbn is also proactively developing a large number of additional commitments which **nbn** intends to offer as part of WBA4 which will benefit RSPs and end users in the longer term, as summarised below. These items must be taken into account in assessing this WBA4 package as many of these items come at a significant cost and result in trade-offs against some of the other items proposed in the Public Inquiries. These are not commitments that **nbn** is obliged to make, but are investments **nbn** has proactively chosen to offer because we believe will they help improve the customer experience and/or reduce costs and complexity for industry. As noted previously, **nbn** has been guided by customer experience in weighing up the appropriate ways to focus our investments. These items are not yet finalised and are subject to WBA4 negotiations.

No.	Description
1.	Service Health Summary: nbn will commit to providing all RSPs with access to the Service Health Summary (SHS). The SHS is a new test and diagnostic tool that will provide RSPs with a quick, simple and accurate view of the ‘health’ of their nbn service. It will serve as an indispensable precursor to assurance processes, including Performance Assurance. The SHS will be backed with new availability and response time SLAs to ensure RSPs have confidence in the reliability and efficiency of the new system. The SHS will also assist the industry in reducing the number of instances of No Fault Found and Repeated Faults, which will remove cost and waste out of the nbn ecosystem. Under WBA4, the SHS will initially be available for nbn ™ Ethernet over the nbn FTTN/B/C and HFC networks (and subsequently for nbn ™ Ethernet over the other access technologies over time).
2.	6-day per week assurance appointments for residential customers in Urban areas: nbn will offer assurance related appointments on a 6-day per week basis in Urban areas at no additional charge to the RSP or customer. nbn is also actively considering offering 6-day per week assurance-related appointments for Rural areas based on future demand and we are continuing to assess this. Saturday appointments will be especially popular with Urban residential customers, who value convenience, and will therefore improve CX outcomes. It will also help manage the levels of demand for appointments on Mondays and Tuesdays, which are in high demand owing to the unavailability of appointments on a Saturday. Under WBA4, Saturday appointments in Urban areas for assurance activities (and Rural areas based on demand) will initially be available for “standard faults” (i.e. excluding “Performance Incidents”) for nbn ™ Ethernet (and potentially more broadly in the future).
3.	RSP ability to cancel, reschedule or update an appointment up to 4 hours (not 1 business day) before time of appointment: Under WBA4, RSPs will have the ability to cancel appointments up to 4 hours before the time of the appointment. This is down from 1 business day under WBA3. This will provide RSPs with more flexibility in supporting customers needing to reschedule or cancel their appointments at short notice. It will reduce the number of wasted trucks rolls that occur when appointments can’t be kept by the customer or cancelled/rescheduled by the RSP given the notice requirement. It will ensure that appointments, which are a scarce resource, are less likely to be wasted and can be made available for customers that are able to use them. It will also reduce the number of instances in which Late Cancellation charges might be levied (if and when they are applied.) This change will be available for all standard appointments in connection with nbn ™ Ethernet over the nbn ™ Fibre, FTTN/B/C and HFC networks.

No.	Description
4.	Improved Trouble Ticket closure process and associated codes: nbn will provide more granular, supplementary information to RSPs in respect of trouble ticket resolution, to assist the RSP in understanding the next best action or the specifics of information to communicate with customers, as well as manage compliance with retail contracts and regulations.
5.	Future Remediation Framework (aka “Network Activity”): nbn will run Remediation under a fully redesigned process that uses a new parent / child ticket management system. This system will reduce RSP costs and operational burdens by eliminating the need for RSPs to track multiple tickets to understand the status of Remediation activity. It will also provide RSPs with improved network visibility, including the ability to determine where Remediation activity is affecting more than one service. In addition, the redesign of the Remediation processes will provide RSPs with clearer, more regular and more meaningful status updates, which in turn will enable them to better manage their customers’ expectations.
6.	Customer BYO modem performance information: Where nbn detects that a variant of customer-supplied (BYO) modem is performing poorly, nbn will inform the RSP, in which case the RSP is required to inform the customer at the next end user contact event that their modem might be adversely affecting the speed and stability of their nbn™ powered retail service. Raising customer awareness of issues being driven by the customer’s own modem choice is important and valuable, and can lead to improved service performance outcomes.
7.	nbn to provide free RSP modem fleet performance reports and free RSP modem testing services: nbn will provide RSPs with regular modem fleet performance reports for FTTN/B modems deployed on the nbn™ FTTN/B network. These reports will detail speed and stability performance versus the minimum quality standards and compared to whole of base performance. In addition, nbn will offer free RSP modem testing services to RSPs, at suitable test facilities, for new, to-be-deployed modems on the nbn™ FTTN/B network (subject to reasonable use limitations). These services will test modems against nbn’s minimum quality standards to assist in identifying potentially underperforming RSP-supplied modems prior to large scale deployment on the nbn™ FTTN/B network.
8.	Simplify CSG Compensation claims process: nbn will no longer require RSPs to provide nbn with the apportioned amount of CSG Compensation they believe nbn needs to pay them. Rather, RSPs will be able to provide nbn with the full amount of CSG they have paid to their customers and nbn will take accountability for determining the apportioned amount. This will reduce RSP overheads, complexity and operational burdens.
9.	Improved CVC Modification SLA: nbn will reduce the Service Level for CVC Modifications to 1 Business Day (under WBA4) from 5 Business Days (under WBA3). This will enable RSPs to manage their capacity near real-time.
10.	New Performance Objective for the NPIS availability: nbn will introduce a new Performance Objective of 99% for Appointment lodgement (Appointment received from RSP to Appointment Reserved notification sent to RSP by nbn). This is a new Performance Objective under WBA4; there is no equivalent under WBA3.
11.	Improved Completion Advice Performance Objectives: nbn will increase the performance objective Completion Advices delivered within 30 minutes from the time of completion of the End User Connection (FTTN and FTTB) to 70% or more (up from 50% or more). With Completion Advices delivered within 30 minutes from the time of completion of the service transfer increasing to 90% or more (up from 50% or more).

No.	Description
12.	<p>Sharing of RSP submissions to WBA and PDF consultations: nbn already enables RSPs to have non-confidential submissions to WBA consultation shared via the MSFAAF. Similarly, non-confidential submissions to PDF consultations are made available on the PDF Portal. To improve RSP confidence in this process, nbn is looking to enable self-publication by RSPs of non-confidential PDF responses.</p>
13.	<p>Consolidate appointment-related processes in the WBA Operations Manual for simplicity: nbn will redraft the WBA Operations Manual to consolidate the appointment-related processes in one chapter. This will make it clearer and simpler for those who rely on these processes on a day-to-day basis, as well as create a shorter, easier to manage and less duplicative WBA Operations Manual.</p>
14.	<p>Improve WBA-related communications with RSPs: The nbn Wholesale Supply team will progressively adopt existing digital channels to manage WBA-related contract communications with RSPs. One of the goals is to move the management of the WBA out of email inboxes and into the nbn Customer Centre. This will ensure that all RSPs have a “one stop shop” via the nbn Customer Centre for the key contract communications between nbn and RSPs, including new contracts, EOIs, consultations, change notices and other contract notices. This will improve efficiency, accessibility, and manageability of WBA-related contract communications, as well as removing key-person risk that exists in the current email-centric approach, which is especially important given the resourcing pressures within nbn and RSP organisations.</p>
15.	<p>WBA4 transition: it is nbn’s intention to support RSPs in implementing specific WBA4 changes via an incentive program. nbn intends to provide co-funding to RSPs to assist in implementing these changes providing RSPs with a more seamless transition and provide a faster evolution within their organisation to WBA4. The funding may be available across multiple business functions (e.g.: CX, reporting, improving assurance related capabilities). A full list will be available closer to the WBA4 effective date.</p>