



## Inquiry into NBN access pricing

### Introduction

The Department of Communications and the Arts (the Department) welcomes the opportunity to provide a submission to the Australian Competition and Consumer Commission's (ACCC) inquiry into the prices NBN Co charges access seekers to use the National Broadband Network (NBN) to supply entry-level broadband. In its Discussion Paper, the ACCC has foreshadowed making an access determination, setting price and non-price terms for NBN entry-level wholesale services.

The Department appreciates the thoroughness of the ACCC's Discussion Paper. On balance, the Department considers that the ACCC should not make an access determination at this time. We have reached this conclusion because:

- 1) We have a different perspective on some of the underlying assumptions expressed in the Discussion Paper. In particular:
  - a. We consider that the proposed principles could place a greater emphasis on the need to encourage long term sustainable investment in fixed-line telecommunications.
  - b. A \$60 ADSL service may not be a suitable comparison to an entry-level NBN Co service.
- 2) We consider that intervention could be counterproductive because:
  - a. The package of discounts that NBN Co implemented on 1 October 2019 has addressed the immediate concerns that have been expressed by the ACCC.
  - b. There is some doubt over whether an access determination could validly set prices for the fibre-to-the-premises (FTTP), fixed wireless and satellite networks.
  - c. NBN Co's projected return is a modest 3.2%, which is below the regulated rate of return specified in the Special Access Undertaking (SAU) and further below the comparable commercial cost of capital expected by other infrastructure providers. Regulatory intervention could reduce this further, and jeopardise NBN Co's ability to continue to invest in bringing fibre closer to consumers, which will enable them to access higher speed broadband plans over time.
  - d. The flexibility afforded NBN Co in the SAU, in the form of NBN Co's ability to set discounts, has led to demonstrable benefits to the broader market.
  - e. Intervention by the ACCC could reduce investment in the mobile market below economically efficient levels, delay 5G network upgrades, reduce choice for consumers and reduce the market discipline being imposed on NBN Co from challenger mobile brands. Mobile networks would be competing against regulatory-mandated below-cost pricing on the fixed network, which sends the wrong investment signals.

Because of these factors, we suggest that in the first instance, the ACCC, retailers and NBN Co work to refine a negotiated solution for entry-level services for inclusion in the fourth Wholesale Broadband Agreement (WBA4).

The ACCC has generated a useful debate about the regulatory framework that applies to NBN Co. With the large scale completion of the network rapidly approaching, the ACCC and NBN Co could use this opportunity to revise the SAU so that it takes account of the lessons learned over the past six years. A negotiated agreement would be preferable to an access determination and would provide the market with certainty.



If the ACCC does propose to set NBN Co's prices following this inquiry, then it should consider what methodology should be used, including consideration of the building block model<sup>1</sup> based on the efficient costs of providing NBN superfast broadband services.

## **1) A different perspective on assumptions in the Discussion Paper**

### ***a) The proposed principles should place more emphasis on sustainable investment***

The Discussion Paper proposes an approach for assessing NBN access pricing, which would be used to assess whether NBN Co access products and associated pricing would promote the long-term interests of end-users (LTIE). Specifically, the ACCC has identified the following criteria:

- 1) End-users should be no worse off as a consequence of migrating to the NBN.
- 2) Basic speed access products should act as an anchor.
- 3) Price certainty.
- 4) Pricing arrangements should not be unduly complex.
- 5) Prices should meet consumer demand.
- 6) Prices should promote downstream competition.
- 7) NBN Co should have the opportunity to recover efficiently incurred costs.

In accordance with section 152BCA(1) of the *Competition and Consumer Act 2010* (CCA), the ACCC's consideration of an access determination must take into account whether the determination will promote the LTIE. We note that as provided by section 152BCA(1), the ACCC should also have regard to the:

- 1) Legitimate business interests of the supplier of the declared services.
- 2) Investment made by the supplier of the declared services.
- 3) Interests of all persons who have rights to use the declared service.
- 4) Direct costs associated with providing the declared service.
- 5) Economically efficient operation of a telecommunications network.

The ACCC could consider including these in the list of principles. We consider that encouraging capital investment in the telecommunications sector is vital for the LTIE, and the potential negative implications an access determination could have on investment should be considered. This includes impacts on investor confidence and risk appetite, and the ultimate flow-on impacts on consumers.

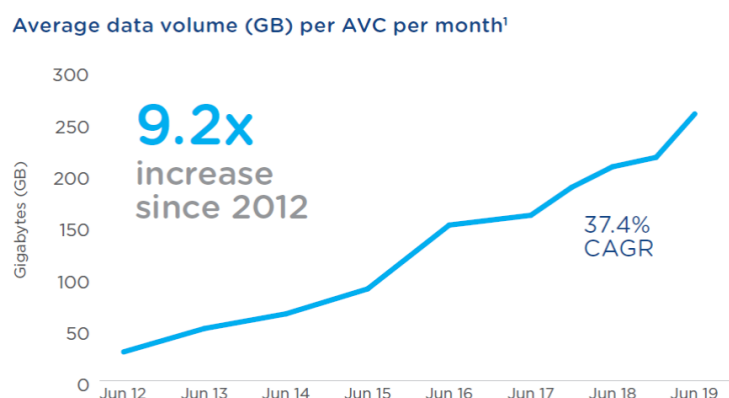
Prices need to incentivise further investment in the network to maximise outcomes for consumers and the economy. If this does not occur, consumers may not be able to access the higher speed plans they will demand over time, and NBN Co will not be able to push fibre deeper into the network and closer to the consumer. This would leave Australia worse off.

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<sup>1</sup> Currently reflected in the SAU.



Figure 1<sup>2</sup>, below, shows that as the NBN network has been rolled out, household consumption of broadband on the NBN has risen on average, 37 per cent per year, from 27 Gigabits per month in 2012 to 255 gigabits per month in 2019. Consumers will demand higher speed plans into the future which will require further investment by NBN Co and other local access network providers such as Opticomm. While the level of investment required will vary across NBN Co's network, if the ACCC regulates reductions in NBN Co's wholesale pricing, NBN Co and other networks will have no incentive to make such investments.



***b) NBN products at \$60 per month offer better value than ADSL – they are not comparable and ADSL should not “anchor” NBN services.***

The ACCC has cited examples of retailers offering ADSL services for \$60 per month, including TPG and Dodo, and proposes that those prices be used as the comparator against which NBN Co's entry-level services are examined. The Department considers that a \$60 NBN service (which retailers can viably offer using NBN Co's entry-level bundle) offers better value than ADSL services, particularly in regional areas.

- 1) In metropolitan areas, the majority of major ADSL providers do not offer unlimited \$60 plans at this point in time. Major providers, including Optus (\$70), iiNet (\$69.99), iPrimus (\$80) and Telstra (\$90)<sup>3</sup> all charge between \$10 and \$30 higher per month for their unlimited ADSL offerings than their more cheaply priced rivals. While Dodo and TPG offer unlimited data \$60 plans<sup>4</sup>, they are not representative of the entry-level retail market and cannot necessarily be relied on as a benchmark. These services are also not provided nationwide. The ACCC could consider using average ADSL prices nationwide when comparing against NBN services, where wholesale prices are geographically averaged. A comprehensive comparison should consider the impact on consumers across Australia, not just in some areas.

Further, consumers migrating to the NBN have the opportunity to access far higher levels of speed, capacity and reliability than is available through ADSL services. In terms of performance, ADSL is not comparable with the NBN. For example, in the Measuring Broadband Australia Report 7, published in November 2019, the average download speed of ADSL services was

<sup>2</sup> NBN Corporate Plan 2020-2023, page 26.

<sup>3</sup> See Optus pricing at [www.optus.com.au/shop/broadband/home-broadband/plans?bt=UDSL&tl=LAU&SID=con:bhomeb:3up:1:jul17:fixed:adsl](http://www.optus.com.au/shop/broadband/home-broadband/plans?bt=UDSL&tl=LAU&SID=con:bhomeb:3up:1:jul17:fixed:adsl), iiNet pricing at [www.iinet.net.au/internet-products/broadband/plans/?naked-dsl](http://www.iinet.net.au/internet-products/broadband/plans/?naked-dsl), iPrimus pricing at [www.iprimus.com.au/index.html#!/internet](http://www.iprimus.com.au/index.html#!/internet), and Telstra pricing at [www.telstra.com.au/internet/plans-a?adobe\\_mc\\_sdid=SDID%3D3FC413CB6573CE3F-483D6D2219F5555F%7CMCORGID%3D98DC73AE52E13F1E0A490D4C%40AdobeOrg%7CTS%3D1575260518&adobe\\_mc\\_ref=https%3A%2F%2Fwww.telstra.com.au%2Finternet](http://www.telstra.com.au/internet/plans-a?adobe_mc_sdid=SDID%3D3FC413CB6573CE3F-483D6D2219F5555F%7CMCORGID%3D98DC73AE52E13F1E0A490D4C%40AdobeOrg%7CTS%3D1575260518&adobe_mc_ref=https%3A%2F%2Fwww.telstra.com.au%2Finternet).

<sup>4</sup> See Dodo critical information summary at [www.dodo.com/sites/dodo/files/cis/Dodo%20ADSL%20CIS.pdf](http://www.dodo.com/sites/dodo/files/cis/Dodo%20ADSL%20CIS.pdf) and TPG pricing at [www.tpg.com.au/services/adsl-plans](http://www.tpg.com.au/services/adsl-plans).



8.3 Mbps, a level which is below NBN Co's entry level plan and which does not approach the speed accessed by most NBN end-users. This reflects the inherent limitations of comparing ADSL to the NBN. The Measuring Broadband Australia Report also shows that ADSL services have greater latency and higher rate of outages than NBN fixed services.

- 2) NBN Co's pricing is not geographically-differentiated. NBN Co's fixed-line pricing is set nationally, with revenues from more lucrative metropolitan areas cross-subsidising services in regional and remote Australia. As a result, Australians in locations with smaller retail markets can access superfast broadband at prices that are broadly consistent with those in urban Australia. In contrast, the Unconditioned Local Loop Service (ULLS) that is used to provide ADSL has prices based on four bands, with the fourth band covering regional and rural areas priced significantly higher at a wholesale and retail level. Under the ACCC's Final Access Determination for Fixed Line Services from October 2015, at the wholesale level, ULLS bands 1-3 are priced at \$14.68 per line per month, while ULLS band 4 is priced at \$43.65 per line per month. This geographically differentiated wholesale pricing translates to higher regional retail prices for ADSL. For example, Dodo currently offers unlimited metropolitan area ADSL plans for \$60 per month, but has priced regional unlimited plans at \$90 per month.<sup>5</sup>

## 2) Intervention by the ACCC at this time may prove counterproductive

### *a) NBN Co is addressing ACCC's concerns about pricing*

Concerns have been expressed that NBN Co's entry-level wholesale pricing could be unfair to consumers transitioning to the NBN from legacy ADSL contracts. There are also concerns about NBN Co's Connectivity Virtual Circuit (CVC) charges and transfer fees. The Department is of the view that NBN Co has already moved to address those concerns in the short to medium term and an access determination may be counterproductive at this point.

NBN Co has taken three steps to address concerns:

- 1) NBN Co has introduced a revised entry-level bundle that allows retailers to add CVC at a reduced price of \$5.70, enabling a 12/1 Mbps wholesale product with 1 Mbps of CVC for \$35. The change, which came into effect on 1 October 2019, represents a significant discount on the previous pricing and should allow retailers to offer a \$60 per month retail product to end-users. NBN Co has also committed to further reductions to the fee for adding CVC to the entry-level bundle to enable a CVC increase of 0.1 Mbps in May 2020 to 1.1 Mbps and a further 0.1 Mbps increase to 1.2 Mbps in October 2020, which is beyond the expected completion date for the NBN, at the same \$35 wholesale price point. Further, NBN Co has committed to undertaking an annual review of CVC inclusions.

NBN Co's efforts are bearing fruit. The Department is aware that take-up of NBN Co's entry-level bundle has increased by over 140 per cent under NBN Co's revised pricing arrangements. This shows retailers are responding to the new pricing, which will ultimately benefit consumers wanting entry-level products. There are already a number of NBN unlimited retail plans at the ACCC's desired price of \$60 per month or less<sup>6</sup>, and the strong take-up of the new entry-level pricing should support the continued availability, and potentially the growth, of products at this price. Therefore, the Department's view is that it may be premature to regulate NBN Co's entry-level prices without monitoring the impact of the revised entry-level bundle over the next few months, particularly when NBN Co is pricing well within the levels permitted under the SAU.

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<sup>5</sup> See Dodo critical information summary at [www.dodo.com/sites/dodo/files/cis/Dodo%20ADSL%20CIS.pdf](http://www.dodo.com/sites/dodo/files/cis/Dodo%20ADSL%20CIS.pdf)

<sup>6</sup> For example, as at 1 November 2019 TPG offers an unlimited 12/1 Mbps NBN plan priced at \$59.99, Spintel has an unlimited 25/5 Mbps plan for \$59.95, and Vodafone offers an unlimited 25/5 Mbps plan for \$59.



- 2) NBN Co has already committed to improving price certainty through a two-year roadmap with prices and CVC inclusions, and to carry out an annual review of CVC pricing in consultation with industry. The annual review will provide up-to-date information on demand growth and other market factors, which will inform NBN Co's inclusions. These mechanisms provide flexibility to adjust to up-to-date information as it becomes available, rather than locking in outcomes over an extended period.
- 3) NBN Co has also moved to discount transfer fees from \$22.50 to \$5.00. This change will help enable end-users to churn between providers and thereby improve competition outcomes. NBN Co has suggested that a permanent arrangement could be put in place through WBA4.<sup>7</sup>

### ***b) There is doubt that the ACCC can set prices for all of the network***

The CCA places limits on the ACCC's ability to regulate the price and non-price terms and conditions for the supply of NBN Co's wholesale products. Two limitations that are particularly relevant are the elevated position of the SAU in the hierarchy of regulatory tools in Part XIC of the CCA, and the NBN-specific provisions associated with uniform national wholesale pricing.

The CCA provides that access determinations have no effect to the extent they are inconsistent with an SAU (section 152CBIA). NBN Co's SAU was accepted by the ACCC on 13 December 2013. From the outset, NBN Co's SAU deliberately afforded the company flexibility in how it establishes the price and non-price terms and conditions for accessing its wholesale services. When the ACCC accepted the revenue and pricing limits in the SAU, it expected that it would provide NBN Co with the opportunity to recover its costs, reinvest in the NBN and provide a modest return on investment.

The SAU provides that NBN Co can determine its prices for its access services, subject to price caps for certain services and the long-term revenue constraint methodology.<sup>8</sup> The SAU already sets a maximum wholesale price for NBN Co's 12/1Mbps offer (the NBN Co service that is most similar to an ADSL service) at \$24 per service in operation per month for the Access Virtual Circuit (AVC) component and \$20 per Mbps per month for the CVC component.

The Discussion Paper indicates that any access determination that followed this inquiry would be directed at 'an access product that comprised a TC-4 Ethernet access service supplied with a 12/1 Mbps speed tier'.<sup>9</sup> Given the basis for pricing NBN Co 12/1 Mbps services is set out in the SAU, our initial view is that the ACCC cannot use access determinations to set access prices for equivalent services provided over NBN Co's FTTP, fixed wireless and satellite networks, or at least there would be legal doubt if this was attempted through an access determination.

The Department notes that because inclusion of Multi-Technology Mix (MTM) technologies in the SAU was previously rejected<sup>10</sup>, price terms could be set for the non-SAU technologies. However, we suggest that this would lead to poor consumer outcomes for the following reasons:

- 1) NBN Co's network deployment plans show that the proportion of ready to connect premises covered by the SAU is expected to be around 25 per cent of its total connectable premises at the

<sup>7</sup> See page 10 of the NBN pricing review consultation paper 2 at [www.nbnco.com.au/content/dam/nbnco2/2019/documents/media-centre/pricing-review-2019-consultation-paper-2.pdf](http://www.nbnco.com.au/content/dam/nbnco2/2019/documents/media-centre/pricing-review-2019-consultation-paper-2.pdf)

<sup>8</sup> NBN Co's ability to generate a return on investment is both facilitated and constrained by the Long Term Revenue Constraint Methodology (LTRCM), which allows the ACCC to make determinations that limit NBN Co's annual revenues. The LTRCM comprises a number of elements, which provide for NBN Co to recoup its construction and operating costs plus a modest return. Also see sections 1C.1.4 and 2B.1.4 of the SAU.

<sup>9</sup> ACCC Discussion Paper, page 8.

<sup>10</sup> Comprised of the fibre-to-the-node, fibre-to-the-curb and hybrid fibre-coaxial networks.



end of the network build in July 2020.<sup>11</sup> Applying an ACCC access determination to some technology types but not others would add unnecessary and confusing layers of complexity for consumers, retailers and NBN Co, and effectively discriminate against some end-users on a technology basis. Instead, it would be preferable to have all technologies covered by a consistent price setting methodology.

- 2) The SAU contains an integrated building block model for determining NBN Co's regulated return across the business. While the SAU was designed to cover the entirety of NBN Co's business case, it no longer covers the majority of the network. Setting prices for fibre-to-the-node, fibre-to-the-curb and hybrid fibre-coaxial products would undermine the Long Term Revenue Constraint Methodology agreed to by the ACCC in the SAU.
- 3) If the ACCC were to regulate prices for the MTM technologies, it may prevent uniform national wholesale pricing. Section 152BCB(3C) of the CCA provides that the ACCC cannot make an access determination that would have the effect of preventing an NBN corporation from engaging in conduct that is reasonably necessary to achieve uniform national pricing across the technology types throughout Australia.<sup>12</sup>

There are options for resetting NBN Co's prices within the provisions of the existing SAU. For example, the Discussion Paper notes that NBN Co committed in the SAU to annually review the price of the CVC TC-4 product "with a view to reducing prices as aggregate demand increases".<sup>13</sup> Further, the ACCC can require NBN Co to rebalance its pricing subject to expected revenue neutrality.<sup>14</sup> The ACCC is able to conduct two of these price reviews in the initial ten year module (that is, by 30 June 2023).

The ACCC could consider undertaking such a price review instead of issuing a Final Access Determination. However, in the medium term, and as set out more fully below, the Department is of the view that the best way forward is for NBN Co and the ACCC to amend the existing SAU based on the learnings of the past six years to cover all of NBN Co's access technologies.

### ***c) NBN Co needs to cover its costs and generate a return on investment for taxpayers***

In accepting the SAU in December 2013, the ACCC noted that:

*The revenue provisions [in the SAU] should provide NBN Co with the opportunity to recover, through access prices, the efficient and prudent costs of providing the relevant services, including an appropriate return on investment.*<sup>15</sup>

Similarly, successive Governments have reiterated an expectation that NBN Co will cover its costs and generate a modest return. This is in the long-term interests of taxpayers that have invested in the NBN. The Department considers that a return on investment, whether made by taxpayers or the private sector, should factor into the ACCC's regulatory decisions in relation to telecommunications pricing.

As NBN infrastructure ages and consumer demand for bandwidth and service quality increase, it will be necessary for NBN Co to invest in pushing fibre closer to the consumer, upgrading

<sup>11</sup> This figure is derived from Table 3 (RTC Profiles) from page 49 of NBN Co's *Corporate Plan 2020-2023*.

<sup>12</sup> We note that NBN Co can itself move away from Uniform National Wholesale Prices, but that the regulatory framework prevents the ACCC from requiring this.

<sup>13</sup> See clause 1C.4.3(d) of the SAU.

<sup>14</sup> See clause 1G.3.1 of the SAU. This means that any revenue lost by reducing entry-level prices could be balanced by gains to higher level products.

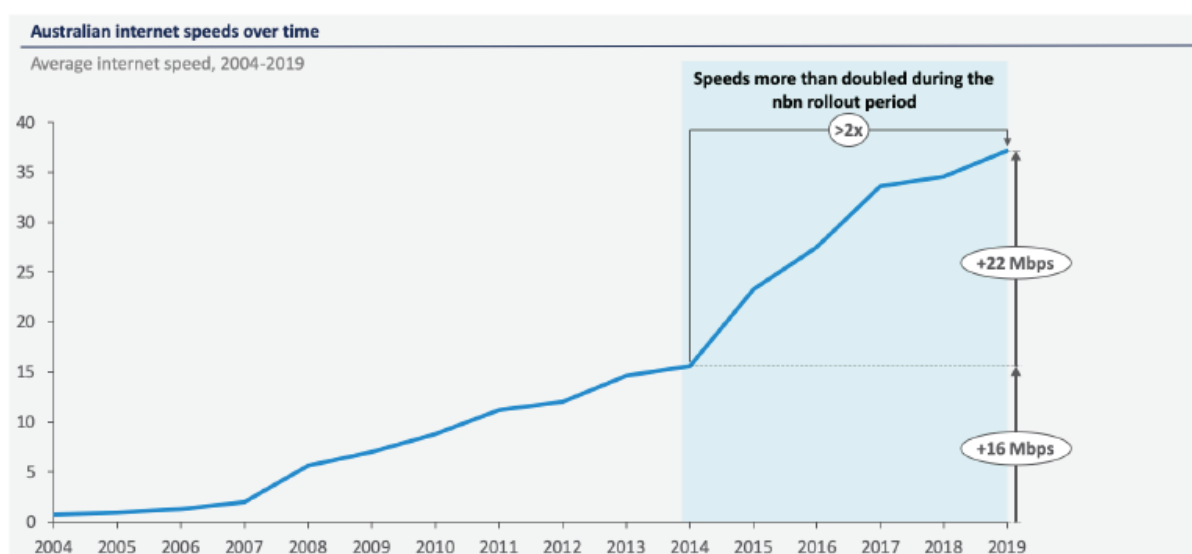
<sup>15</sup> ACCC *Final Decision: NBN Co Special Access Undertaking – December 2013*, page 13



equipment to maintain capacity and improving services. NBN Co operates a high cost and low margin business. The need to generate sufficient cash flows to cover the costs of upgrading equipment should be taken into account. If an access determination is made that does not provide NBN Co with an opportunity to provide for upgrades and generate a return on its investment then the quality of services available to end-users will decline over time. In addition, the incentive to invest in better services over time could be lost.

The Government already accepts a low forecast rate of return on its equity investment of 3.2 per cent which is far below the regulated rate of return specified in the SAU<sup>16</sup> and further below the commercial return other infrastructure providers would require when making infrastructure investments. If the ACCC makes an access determination this will put at risk NBN Co's ability to deliver a return to shareholders which is economically efficient, for a number of reasons:

- 1) NBN Co competes against a number of competitors servicing new developments, such as Opticomm, Uniti Wireless and Spirit Telecom. These companies would have less incentive to invest in local access networks and service new developments with high speed broadband.
- 2) NBN Co would have less incentive to upgrade its network and push fibre closer to consumers. Figure 2<sup>17</sup> below shows the NBN investment has increased average speeds for consumers from 10 Mbps in 2011 to 37 Mbps in 2019. ACCC intervention could affect this trajectory. Figure 2 also shows continual investment in the NBN over time has steadily increased consumer internet speeds driving higher demand and better services.



- 3) Mobile networks compete against NBN Co at the entry level. Mobile networks have become the dominant networks for voice traffic. 4G already competes with fixed-line broadband at the entry level and 5G will be an even stronger competitor. Below cost pricing on the NBN will cause the mobile networks to invest less, and delay upgrades to 5G. This could harm consumer outcomes. This issue is expanded on further, below.

One of the reasons for building the NBN was to create a faster and more reliable network capable of serving Australia's future online needs and facilitating the country's participation in the digital

<sup>16</sup> The SAU allows for a rate of return on the Government's equity investment equal to the 10-year Government bond rate plus 3.5 per cent. See page 123 of the SAU, section 1E.7.1.

<sup>17</sup> AlphaBeta 2019 *Speed Check*, page 6.



economy. The introduction of temporary bundling discounts such as ‘Focus on 50’ by NBN Co increased access to affordable and reliable services with more speed and capacity than anything available over the ADSL network. In effect, the discounts have improved the experience for millions of Australians, and allowed them to more fully engage in the digital economy. The Department is concerned that an access determination covering the entry-level bundle would have the opposite effect. It would be likely to create a financial incentive for many retailers to encourage end-users to abandon higher bandwidth plans, which would impede the flow on benefits that come from fuller participation in the digital economy.

Further, the option of “anchoring” the full NBN product suite to a 12/1 product that is benchmarked to ADSL pricing would be problematic. As described above, ADSL is not comparable to the NBN. ADSL services offer far lower speeds and capacity than NBN, and are supplied using a historic network that is fully depreciated and not being upgraded. Conversely, NBN Co uses new infrastructure which will continue to be upgraded.

#### ***d) NBN’s discounts provide flexibility that benefits consumers***

The Department acknowledges that the price caps contained within the SAU were designed as a mechanism to adjust down prices as NBN Co progressively lowered them as the market developed. The SAU achieves this by tying the price of NBN Co products to the average price charged in the previous year plus an increase equal to the inflation rate minus 1.5 per cent. NBN Co has instead used discounts, which are explicitly excluded from this calculation, to enable it to adjust its prices flexibly in response to market conditions as well as to industry and regulator concerns, while still being able to make a reasonable return.

NBN Co is using discounts that are significantly below the SAU price caps (30 per cent or more for some products) because it is responding to the market and is constrained by competition from mobiles for entry-level services. This shows there is no need for immediate intervention and such intervention could in fact be harmful to the competitive dynamic.

By using discounts, NBN Co has flexibly set prices without lowering the ceiling set by the SAU. This is most evident in the CVC TC4 product, which had an initial price of \$20 per Mbps per month. The demand for CVC TC4 continues to increase year on year, with NBN Co’s latest Corporate Plan noting that average monthly data volume per AVC has increased at 37.4 per cent per annum since 2012<sup>18</sup>. To enable retailers to offer attractive pricing, NBN Co has reduced its CVC charge to less than half its initial price.

NBN Co’s capacity to quickly adapt prices to market developments provides advantages to retailers and end-users. For example, in December 2017, NBN launched its ‘Focus on 50’ promotion, which discounted the wholesale prices associated with the 50Mbps speed tier. Focus on 50 was welcomed by the ACCC for encouraging retailers to take up higher speed services and enabling them to transfer their customers to the 50Mbps speed tier.<sup>19</sup>

#### ***e) An access determination might unintentionally regulate the mobile sector***

The Department is of the view that mobile services increasingly compete directly with fixed-line networks in the entry-level market. Mobile Network Operators are the dominant suppliers of voice services. 4G and 5G directly compete with fixed-line broadband entry-level products. NBN Co is under increasing pressure in the entry-level market from mobile operators. This provides a far

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<sup>18</sup> See NBN Co Corporate Plan, page 26 [www.nbnco.com.au/content/dam/nbnco2/2019/documents/media-centre/corporate-plan-report-2020-2023.pdf](http://www.nbnco.com.au/content/dam/nbnco2/2019/documents/media-centre/corporate-plan-report-2020-2023.pdf).

<sup>19</sup> See ACCC media release on 10 May 2018 [www.accc.gov.au/media-release/nbn-users-shift-to-higher-speeds](http://www.accc.gov.au/media-release/nbn-users-shift-to-higher-speeds).





greater and better targeted discipline than what can be imposed through regulation. Mobile network operators are actively marketing fixed modems that enable multiple home devices to connect to a mobile service.<sup>20</sup> NBN Co has taken action to react to these competitive forces, and is offering more value to its customers (including pricing well below the caps in the SAU). These are positive developments from a competition perspective that we should seek to preserve.

If regulation were used to lower NBN Co's entry-level pricing, it may dissuade mobile competitors. This could have the effect of:

- 1) Lowering investment and innovation in the mobile market
- 2) Reducing the types of mobile services available, particularly for low income consumers
- 3) Reducing the competitive pressure and market discipline on NBN Co; and
- 4) Delaying and reducing investment in 5G services.

Whilst NBN Co is taxpayer-funded, mobile operators are not. By requiring to NBN Co to lower the price of entry-level services, the ACCC would reduce competition in that market, and mobile providers may simply cease to service those markets. This would have a substantial negative impact and should be avoided.

### 3) Proposed way forward – WBA4 and a revised SAU

Rather than setting NBN Co's prices through an access determination, the Department considers that there is an opportunity for the ACCC to:

- 1) In the short term, continue to actively engage on this issue in the context of negotiations for WBA4, to assist the parties to achieve further improvements.
- 2) In the medium term, work with NBN Co on a new SAU (or SAU variation) covering all access technologies.

While we acknowledge that a revised SAU would take time to develop, the Department considers that this is the best path forward. A revised SAU would provide an opportunity to:

- 1) Include the MTM technologies (and indeed, any further technologies that NBN Co may deploy) within the SAU. This would provide certainty for consumers, retailers, NBN Co and the ACCC on the prices that can be charged, and what returns might be generated; and
- 2) Revisit NBN Co's price caps. This would enable the ACCC and NBN Co to take stock of the lessons learned over the past six years - in terms of product design, demand for data and bandwidth, emerging competition, the costs in deploying the network and the revenues that are achievable.

## Conclusion

The Department trusts that this submission is a useful contribution to the ACCC's deliberations.

In summary, the Department considers that an access determination should not be put in place at this time. We consider that the NBN Co has already responded effectively to the immediate concerns that have been identified. Moreover, putting in place an access determination could be

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<sup>20</sup> Telstra offers a large range of 4G and 5G compatible home modems (see [www.telstra.com.au/internet/mobile-broadband#devices](http://www.telstra.com.au/internet/mobile-broadband#devices)). Optus and Vodafone also target home users with mobile home modems (see [www.optus.com.au/shop/broadband/mobile-broadband/wireless-modems/](http://www.optus.com.au/shop/broadband/mobile-broadband/wireless-modems/) and [www.vodafone.com.au/mobile-broadband/modems](http://www.vodafone.com.au/mobile-broadband/modems)).



counterproductive because it could discourage capital investment, stymie NBN Co's ability to upgrade the network over time, and disrupt NBN Co's mobile competitors, leading to lower investments, reduced choice, and reduced discipline on NBN Co.

In the short term, we propose that the ACCC, NBN Co and retailers continue to refine a negotiated solution for inclusion in WBA4.

In the medium term the Department proposes that the SAU be revised. The Department could play an active role in assisting with that process. A revised SAU is preferable to the proposed access determination because:

- 1) An access determination on entry-level prices is likely to fail to address all relevant NBN products.
- 2) Legislation prohibits an access determination covering all of NBN Co's technology types, and the ACCC is prevented from making an access determination that would have the effect of preventing NBN Co from engaging in conduct that is reasonably necessary for it to offer uniform wholesale pricing.
- 3) An access determination is unlikely to be sufficiently flexible to allow NBN Co to respond to rapidly changing circumstances and stakeholder concerns.

A revised SAU could be designed in such a way that it would not be burdened by those constraints.

If the ACCC does propose to set prices from this inquiry, then it should consider relevant approaches to doing so, including using a "building block" model based on the efficient costs of providing NBN superfast broadband services. Such an approach is consistent with the approach for other network infrastructure industries.

We would be grateful for the opportunity to discuss the issues raised in this submission. The contact officer in the Department for this matter is Tristan Kathage, Assistant Secretary, Competition Branch. Mr Kathage is contactable on 02 6271 1951 or at [tristan.kathage@communications.gov.au](mailto:tristan.kathage@communications.gov.au).

