ACCC further consultation on pricing for the SBAS and LBAS final access determinations

March 2017

Introduction

The purpose of this consultation paper is to obtain stakeholder comment on three pricing proposals we are considering following consideration of submissions to our draft decision on the Superfast Broadband Access Service (SBAS) and Local Bitstream Access Service (LBAS) final access determinations (FADs). As these proposals were not flagged in our draft decision, this consultation provides the opportunity for stakeholders to comment before we make any final decision on whether or not to incorporate them into the FADs.

We are also considering other issues raised in submissions to the draft decision, but do not believe they require further consultation. We note in particular that we intend to undertake further modelling in relation to the SBAS small provider exemption before a final decision is made on the appropriate cut-off level. This responds to concerns raised by the SBAS provider Spirit Telecom that the exemption level should be set higher.

Background

We made our draft decision on the FADs on 22 December 2016. The draft decision report and draft FADs were released for public consultation on 9 January 2017. The closing date for submissions was 17 February 2016. The draft decision documents and submissions are available on our website.

The SBAS and LBAS draft decision provided for:

- Prices set to ensure that SBAS and LBAS reflected NBN pricing dynamics – particularly in respect of the aggregation (CVC) price component.
- Provision for the Government's proposed Regional Broadband Scheme (RBS) charge to be absorbed in these prices under the expectation that the 25/5 Mbps NBN prices were fully inclusive of a geographic cross-subsidy for these RBS services.
- Due to the cost and time needed to remove the active voice line requirement, pricing of the Telstra Fibre Access Broadband (FAB) service based on cost modelling of Telstra's wholesale ADSL service.
- The application of a regulated aggregation charge for the LBAS.
- Use of anchor pricing regulation, where regulated prices are specified only for the entry level 25/5 Mbps (and Telstra 30/1 Mbps) superfast broadband services.
- Use of the ACCC's standard non-price terms and conditions.
- A small provider exemption due to the high compliance costs relative to the benefits of wholesale access on these networks. The cut-off for this exemption was proposed to be 12,000 end-user SBAS and LBAS services.

A key objective in determining the draft decision prices was that retail service providers (RSPs) and end users supplied via SBAS and LBAS networks should not be any worse off than if they were supplied by the NBN.

The draft decision prices for the SBAS and LBAS services are shown in Table 1 below.

Table 1: Draft decision FAD prices

SBAS and LBAS (excluding Telstra FAB services)

Charge component	Initial price	Subsequent price
Port per month - 25/5 Mbps	$27.00	The price for the NBN Co product AVC TC-4 25/5 Mbps as amended from time to time
Aggregation charge per Mbps/month	$15.25	The price for the NBN Co product CVC TC-4 as amended from time to time

Telstra FAB services

Charge component	2016-17	2017-18	2018-19	2019-20	2020-21
Port Zone 1 per month	$23.45	$23.76	$24.07	$24.07	$24.07
Port Zone 2/3 per month	$28.46	$28.84	$29.22	$29.22	$29.22
Aggregation per Mbps/month	$16.65	$14.12	$11.63	$11.63	$11.63

Among the issues raised by submitters in response to our draft decision, we have decided that the following three pricing issues in particular would benefit from further comment by stakeholders prior to us making a final decision. These issues are:

- Concerns by LBAS providers about the impact of the Government's proposed RBS charge on their businesses, and the draft decision's position that the charge be absorbed within the FAD price caps
- Telstra stating that that it did not have the existing systems capability to charge different prices for aggregation between traffic originating on its wholesale ADSL and wholesale fibre networks
- A proposal from NBN Co that following its adoption of CVC discounting related to CVC capacity per end user purchased by individual RSPs, that a similar approach be adopted for CVC capacity obtained from SBAS and LBAS networks using NBN Co's schedule of discounts in its Standard Form of Access Agreement (SFAA), the Wholesale Broadband Agreement (WBA).

These issues and our initial assessment of them are elaborated on below.

Pricing issues for stakeholder comments

Treatment of the RBS charge in benchmark prices

We made provision in the draft FADs for the prices based on NBN price benchmarks to absorb the Government's proposed RBS charge on superfast local access lines, to help fund NBN Co's supply of non-commercial regional fixed wireless and satellite services. This was based on the expectation that the NBN benchmark prices for the 25/5 Mbps service were fully inclusive of a geographic cross-subsidy for these regional services.

Taking account that NBN's prices were set to enable RSPs to match pre-existing broadband offers and NBN Co has an objective of recovering costs from higher priced products and growth in usage over time,[1] it is quite conceivable that the existing prices for the 25/5 Mbps service do not contain a significant cross-subsidy.[2] Instead, most or all of the cross-subsidy could be recovered from higher product tiers and usage that NBN Co expects to become an increasing source of its revenues in the future. This method of recovering the cross-subsidy over time is facilitated by the initial cost recovery account (ICRA) and the long term revenue constraint methodology (LTRCM) that form part of the Special Access Undertaking (SAU). Together these allow the NBN's initial annual losses to be capitalised and recovered over later years of the SAU term. Subtracting the RBS charge amount from the 25/5 Mbps NBN prices as proposed in the draft decision could therefore potentially push SBAS and LBAS providers' prices for a similar service below costs.

Accepting the above reasoning, the draft decision pricing approach could mean that we are requiring SBAS and LBAS providers to defer the recovery of the RBS charge or their costs (or a portion thereof). With a number of these providers indicating in submissions or elsewhere that absorption of the RBS charge would mean they would be unable to recover their costs or make no margin on the 25/5 Mbps service, we now consider it may be better to treat the NBN prices as approximate cost benchmarks for these providers and allow the RBS charge to be added on top of the benchmark price (to the extent that these providers choose to, or are able to do so commercially).

We note that the practical effect of allowing the RBS charge to be added to the NBN benchmark prices could be limited given the possibility of overbuild of SBAS and LBAS networks by the NBN and any countervailing power RSPs may have in choosing whether or not to use SBAS and LBAS networks if these networks do not meet NBN Co's pricing offers.

Rebalancing of the Telstra price benchmarks

Telstra has submitted that its FAB and wholesale ADSL traffic are aggregated on the same AGVC services and its current network, systems and process are not able to accommodate different aggregation charges between the two traffic types. To do so would require Telstra to incur significant implementation costs within a limited timeframe prior to the expected incorporation of the South Brisbane and Velocity networks into the NBN, and which would need to be recovered in wholesale prices.[3]

Telstra proposed that for these and other reasons that the preferred option would be for the ACCC to benchmark FAB prices to regulated wholesale ADSL prices. However, as a less preferred alternative, Telstra proposed that the ACCC could peg the FAB aggregation charge to the higher regulated charge for wholesale ADSL aggregation and adjust the port price downwards so the equivalent revenue requirement could be achieved based on the service specific modelling and charges determined using the FLSM. Telstra also submitted it could require RSPs to purchase separate (additional) AGVC services for the FAB, but this would also require Telstra to incur implementation costs and likely increase RSP costs beyond any savings made as a result of the lower regulated AGVC prices.[4]

---

[1] NBN Co, *Supporting Submission NBN Co Special Access Undertaking,* 28 September 2012, pp. 8, 100, 113-114.

[2] Our reasoning is that if 25/5 Mbps prices were set to allow RSPs to match existing ADSL and cable broadband offers, the prices for these legacy services do not incorporate a cross-subsidy for fixed wireless and satellite services in regional Australia.

[3] Telstra submission to draft decision pp. 5-6.

[4] *Ibid.* pp. 7-8

The costs to Telstra and RSPs of introducing differential aggregation charges are acknowledged. We don't consider this justifies reverting to the regulated wholesale ADSL prices in their entirety. Rather, we consider that allowing the aggregation charge to be the same as wholesale ADSL and lowering the port charges to compensate for the rise in aggregation revenue that Telstra would be expected to receive can achieve a similar outcome to that of the draft decision in accordance with the legislative criteria.

The resulting rebalanced charges (assuming current fixed line regulatory settings for the wholesale ADSL service) are shown in Table 2 below.

Table 2: Rebalanced Telstra FAB service price benchmarks

Charge component	2016-17	2017-18	2018-19	2019-20	2020-21
Port Zone 1 per month	$18.06	$16.03	$13.01	$13.01	$13.01
Port Zone 2/3 per month	$23.07	$21.10	$18.15	$18.15	$18.15
Aggregation per Mbps/month	$29.27	$29.27	$29.27	$29.27	$29.27

Applying RSP-specific discounting to SBAS and LBAS CVC charges

For the draft decision we proposed that the SBAS and LBAS CVC prices be linked to the NBN's, including the discounts offered under dimension-based discounting. Under the NBN's discounting formula that applied at the time, this would have caused the CVC charge to fall as average capacity (per AVC) increased across all RSP using the NBN. The draft decision also flagged that if NBN were to adopt RSP-specific CVC discounting, that we would seek to apply a uniform discount in setting a SBAS and LBAS FAD price.

NBN Co has since adopted an RSP discounting model to apply from 1 June 2017 and has proposed in its submission to the draft decision that the FADs could require that SBAS and LBAS providers give discounts to each RSP based on their respective CVC capacity per AVC on individual SBAS and LBAS networks, using NBN Co's schedule of discounts reported in its WBA. These discounts are reproduced in Table 3 below.

Table 3: NBN Co's RSP-specific discounts for CVC dimensioning from 1 June 2017

DBD by RSP Tier Structure (TC-4 CVC)		
CVC Dimensioning Tiers kbps	DB Discount	Effective Price
0 to 399	$0.00	$17.50
400 to 549	$0.75	$16.75
550 to 699	$1.25	$16.25
700 to 849	$1.75	$15.75
850 to 999	$2.50	$15.00
1000 to 1149	$3.25	$14.25
1150 to 1299	$4.00	$13.50
1300 to 1449	$4.75	$12.75
1450 to 1599	$5.50	$12.00
1600 to 1749	$6.25	$11.25
1750 to 1899	$6.75	$10.75
1900 to 2049	$7.25	$10.25
2050 to 2199	$7.75	$9.75
2200 to 2349	$8.00	$9.50
2350 to 2499	$8.25	$9.25
2500 to 2649	$8.50	$9.00
2650 to 2799	$8.75	$8.75
2800 to 2949	$9.00	$8.50
2950 to 3099	$9.25	$8.25
3100 and Above	$9.50	$8.00

Source: http://www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-cvc-dimension-based-discount-notice_effective_1_June_2017_2016_20170227.pdf

The adoption of NBN Co's proposal for SBAS and LBAS would see the CVC charge notionally set at $17.50 and discounted for each RSP on each SBAS and LBAS network according to NBN Co's schedule of CVC dimensioning discounts shown in Table 3 above.

We consider there is merit in NBN Co's proposal. This is because it is expected to send better cost and investment signals than a charge based on an industry average. However, we welcome stakeholder views and evidence of any potential effects of the proposal.

We expect that in order to maintain appropriate regulatory oversight of CVC prices it will be necessary to require NBN Co to provide the CVC discounting information to the ACCC via a record keeping rule (RKR), which we would use publish the discounts and reference in the FADs. Further to this, were NBN Co to make major changes to the structure or application of these discounts, we may need to consider whether it would be appropriate to vary the FADs.

Information for providing comments

Comments on the above pricing proposals should be sent to us by **no later than close of business on Friday 7 April 2017**.

Comments should be provided by e-mail (ideally in an attached PDF or Microsoft Word document) to: superfastbroadbandinquiry@accc.gov.au cc to: Nicole.Ross@accc.gov.au.

Please contact Nicole Ross on (03) 9290 1957 if you have any questions with respect to this consultation.

We expect to make a final decision on the SBAS and LBAS FADs by June 2017.

Confidentiality

To foster an informed and consultative process, all comments will be considered as public and will be posted on our 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 comments. The public version of the comments should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or ‘c-i-c’.

We have published a Confidentiality Guideline which sets out the process parties should follow when submitting confidential information to communications inquiries commenced by us. The Guideline describes our legal obligations with respect to confidential information, the process for submitting confidential information and how we will treat confidential information provided to us. A copy of the Guideline can be downloaded from our website.

The ACCC-AER information policy: the collection, use and disclosure of information is also a useful reference and can be downloaded from our website.