



Australian  
Competition &  
Consumer  
Commission

# **Interim access determination for the superfast broadband access service**

## Explanatory Note

July 2016



Australian Competition and Consumer Commission

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On 29 July 2016, the ACCC declared the Superfast Broadband Access Service (SBAS) under section 152AL of the CCA. The ACCC then commenced a public inquiry under Part 25 of the *Telecommunications Act 1997* (Cth) (the Telco Act) to make a final access determination (FAD) for the SBAS and combined the SBAS FAD inquiry with its Local Bitstream Access Service (LBAS) FAD inquiry.

For a newly declared service such as the SBAS, the ACCC can, and in some circumstances must, make an Interim Access Determination (IAD) to operate until a FAD is made.<sup>1</sup>

The ACCC has made this IAD for the SBAS as it considers it is unlikely a final access determination (FAD) in relation to access to the Service will be made within the next six months and there is a need provide certainty to access seekers and access providers regarding terms and conditions of access to the SBAS until a FAD can be made. The IAD applies from 29 July 2016 to 28 July 2017 unless revoked sooner.

This Explanatory Note is a guide to the IAD for the SBAS.

The ACCC considers the IAD will promote the Long Term Interests of End Users (LTIE) by setting prices for the SBAS that more closely reflect the regulated prices currently charged for similar services on other superfast broadband networks (which is likely to bring them closer to their underlying efficient cost). Including non-price terms and conditions (NPTCs) in the SBAS IAD will also promote the LTIE by providing a fall-back position for parties to use if they cannot agree commercial terms to facilitate access to the SBAS in the short term. For these reasons, this IAD benchmarks SBAS terms and conditions against other regulated terms for comparable services.

## SBAS prices

Consistent with the SBAS Declaration Final Decision,<sup>2</sup> the IAD sets separate prices for SBAS Fibre Access Broadband (FAB) services supplied in Telstra's South Brisbane and Velocity estate networks and other SBAS services. Table 1 sets out price terms for the IAD.

**Table 1: Price terms for SBAS services – Telstra FAB services and other (non-FAB) SBAS services**

Services	Port (end-user access) charge	Aggregation charge
	Charge per port per month	Rate per Mbps per month
Telstra FAB Services – Zone 1	\$22.14	\$29.27
Telstra FAB Services – Zones 2/3	\$26.87	\$29.27
Other non-Telstra (non-FAB) SBAS services	\$27.00	\$17.50

For the purposes of the IAD, the ACCC has decided to limit the number of products the terms and conditions of access<sup>3</sup> specified in the IAD will apply to. Specifically, the IAD terms and conditions will be limited to the supply of the key entry-level SBAS products – a 25/5 Mbps data rate tier product<sup>4</sup> for all non-FAB SBAS services and for FAB services the IAD will be limited to a 30/1 Mbps data rate tier product. (This is the FAB service product tier closest to the entry-level 25/5Mbps product tier, which is already supplied on Telstra's South Brisbane and Velocity estate networks).

SBAS operators can offer other SBAS products not specified in the IAD at commercially negotiated prices.

<sup>1</sup> Section 152BCG of the *Competition and Consumer Act 2010* (CCA).

<sup>2</sup> ACCC, *Superfast Broadband Access Service declaration inquiry: Final Decision*, July 2016.

<sup>3</sup> This is the case for both the price and non-price terms and conditions.

<sup>4</sup> This typically includes a monthly download limit of at least 50GB.

## Pricing of SBAS on all non-Telstra networks

The ACCC considers the general (non-FAB) SBAS product,<sup>5</sup> for which the IAD specifies terms and conditions of access, has significant similarities with that supplied under the Local Bitstream Access Service (LBAS) FAD.<sup>6</sup> Hence, the ACCC considers that LBAS pricing represents an appropriate price benchmark for the SBAS. The LBAS FAD prices were set with reference to NBN pricing in NBN Co's Wholesale Broadband Agreement (WBA) for the Access Virtual Circuit (AVC) component (access charge) of its 25/5 Mbps product tier. The IAD therefore sets a port (access) charge for the non-FAB SBAS at \$27 per port per month (consistent with the LBAS FAD and the NBN WBA charge which was accepted as reasonable by the ACCC in respect of NBN Co's Special Access Undertaking (SAU)).

In contrast to the LBAS the SBAS, as supplied by a number of providers, may require relatively more aggregation or carriage of data back further into the network to a Point of Interconnection (POI) or to an access seeker's Point of Presence (POP). The SBAS IAD therefore includes an aggregation component of \$17.50 per Mbps per month for the general (non-FAB) SBAS service, benchmarked against the Connectivity Virtual Circuit (CVC) component of the 25/5 Mbps product tier in NBN Co's WBA.<sup>7</sup>

In addition to data rates, access services can also be specified with respect to a number of quality of service characteristics. The ACCC considers the product specified in the LBAS FAD is a reasonable benchmark for the minimum service characteristics for the non-FAB SBAS service, given their significant similarities. As a result, the IAD specifies that in meeting the Standard Access Obligations (SAOs), a carrier or carriage service provider providing a non-FAB SBAS service must offer a product with the following characteristics:

- a downstream data transfer rate of 25 megabits per second (peak information rate)
- an upstream data transfer rate of 5 megabits per second (peak information rate)
- residential-grade service characteristics
- if requested by the access seeker, a prioritised, symmetric bitstream of sufficient capacity to provide a voice service.

The ACCC has not included service characteristics with respect to the use of data and voice ports, as was included in the LBAS declaration, given the range of different network configurations that can be used to supply the SBAS (e.g. FTTB, FTTN) and the potential for end-users to self-supply their own network termination devices. However, the ACCC notes that the provision of the SBAS under the SBAS Declaration and this IAD will involve the use of ports on a network termination device at the end-users premises.

## Pricing of SBAS FAB services on Telstra's South Brisbane and Velocity estate networks

In the SBAS Declaration Final Decision, the ACCC accepted that the commercial supply of the FAB SBAS service is on a similar basis to the wholesale ADSL (WADSL) service and the wholesale line

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<sup>5</sup> All SBAS services other than those supplied on the Telstra FAB network are non-FAB SBAS services.

<sup>6</sup> The LBAS FAD applies to superfast services supplied on small networks constructed, or extended beyond 1 km, after 1 January 2011

<sup>7</sup> While the ACCC is aware of NBN Co's current trial of dimension-based discounting for its CVC product component, in benchmarking the (non-FAB) SBAS service aggregation component against the \$17.50 NBN CVC charge for its 25/Mbps product tier, the ACCC has had regard to:

- the maximum prices NBN Co can charge under the SAU
- that the ACCC found these maximum prices to be appropriate with respect to the NBN in assessing the SAU, having regard to the matters it is required to consider in assessing the SAU, including reasonableness and the LTIE
- the WBA price being commercially offered by NBN Co is lower than the SAU price
- the limited period over which the SBAS IAD will operate (12 months)
- the changing nature of the CVC dimension discounting that will occur over time
- the trial nature of the NBN dimension discounting; and
- the need to provide certainty for access seekers and providers over the period of the IAD.

rental (WLR) service.<sup>8</sup> This reflects that Telstra's FAB service has been developed to function within Telstra's PSTN network architecture and ordering and business systems (which were built for the legacy copper network). Accordingly, the ACCC considers that the current regulated prices for the WADSL (and their component charges) are the best available regulated benchmark for the price terms and conditions of the FAB SBAS service in this IAD.

The ACCC notes that Telstra currently supplies its FAB service with an active voice service, which it has argued (in the SBAS Declaration inquiry) is necessary to reflect Telstra's network architecture.<sup>9</sup> Consistent with the ACCC's approach in the WADSL FAD inquiry<sup>10</sup> the IAD does not prevent Telstra from only supplying an SBAS FAB service where there is an active voice service supplied to the end-user. The ACCC notes this does not prevent Telstra from supplying a SBAS FAB service without an active voice service should it decide to do so.

The ACCC notes that further service characteristics for the SBAS FAB service have not been included in the IAD as all relevant and necessary FAB service characteristics are in the SBAS declaration itself.<sup>11</sup>

### ***Providers not subject to the Standard Access Obligations***

The ACCC has taken a conservative approach in the IAD, to ensure sufficient weight has been given to the technical feasibility and costs of supplying the SBAS service and the legitimate commercial interests of access providers. Therefore, for the 12 month period of the IAD, the ACCC has exempted from the Category A SAOs:

- those SBAS suppliers who supply a SBAS or LBAS to 20,000 or less end-users nationwide<sup>12</sup> and
- the supply of the SBAS on TransACT's FTTN (VDSL) network in the ACT and its HFC networks in parts of regional Victoria, to allow it 12 months to implement the necessary network and systems changes to supply a Layer 2 SBAS product on these networks.<sup>13</sup>

### ***Non-price terms and conditions***

The ACCC has set non-price terms in this IAD consistent with those in the recent Domestic Transmission Capacity Service FAD.<sup>14</sup> These non-price terms and conditions apply to the supply of SBAS services specified in this IAD and cover: Billing and notifications; Creditworthiness and security; General dispute resolution procedures; Confidentiality provisions; Suspension and termination; Liability and Indemnity; Communications with end-users; Network modernisation and upgrade notice periods; Changes to operating manuals; Recourse to regulated terms.

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<sup>8</sup> ACCC, *Superfast broadband access service declaration inquiry - final decision*, July 2016, p. 36.

<sup>9</sup> Telstra, *Response to the Commission's Superfast Broadband Access Service Declaration Inquiry – Draft Decision*, p. 16.

<sup>10</sup> ACCC, *Public inquiry to make a final access determination for the Wholesale ADSL service*, Final Report, May 2013, Public version, pp. 74-78.

<sup>11</sup> This reflects the ACCC's view in the SBAS declaration Final Decision following consideration of the issues raised by Telstra in its submission to the superfast broadband access service declaration inquiry. See ACCC, *Superfast broadband access service declaration inquiry - final decision*, July 2016, p. 36 and Telstra, *Submission to the Superfast broadband access service declaration inquiry – draft decision*, 2015, p. 12.

<sup>12</sup> Clause 5.3 of *Interim Access Determination No. 1 of 2016 (SBAS)* includes carriers and their associates. In calculating the number of end-users supplied, an SBAS/LBAS supplier's retail and wholesale end-users (in all geographic locations) are counted.

<sup>13</sup> Wholesale access obligations in respect of TransACT's supply of a Layer 3 Wholesale Interconnection Service defined in the *Telecommunications (Network Exemption – TransACT Upgraded VDSL Networks) Instrument 2012* and *Telecommunications (Network Exemption – TransACT Very Small Scale Networks) Instrument 2012* will continue to operate during the period of the IAD.

<sup>14</sup> ACCC, *Public Inquiry to make a Final Access Determination for the Domestic Transmission Capacity Service: Final Report*, April 2016.