



ACCC preliminary view on LTRCM capital expenditure and operating expenditure for 2020-21

On 29 October 2021, NBN Co submitted its regulatory information for the 2020-21 financial year as part of the annual Long Term Revenue Constraint Methodology (LTRCM) process.

The LTRCM process occurs under the current NBN Co Special Access Undertaking (the SAU), which is one of the key components of the regulatory framework governing the supply of NBN Co's wholesale services. An objective of the LTRCM is to provide the opportunity for NBN Co to recover its prudently and efficiently incurred costs, including allowing for an appropriate return on its investments, over the term of the SAU. While the current SAU only applies to fibre-to-the-premises, fixed wireless and satellite services, the LTRCM determination includes expenditure associated with all of the access technologies that NBN Co provides under the multi-technology mix.

In accordance with the SAU, the ACCC must make an LTRCM determination for each financial year of Module 1 of the SAU (until 30 June 2023) that specifies key matters. These include NBN Co's annual allowable revenues, unrecovered costs, the initial cost recovery account (which allows recovery of initial losses later in the SAU period) and compliance with expenditure requirements specified in the current SAU. As part of this process, the ACCC must issue a preliminary view on NBN Co's compliance with SAU expenditure requirements and a draft LTRCM determination prior to making a final determination.

This note sets out our preliminary view on NBN Co's compliance with its expenditure rules for the 2020-21 period as required under the SAU and some other related matters.

Preliminary view on expenditure compliance for 2020-21

Under clause 1E.1.2(c)(vii), the ACCC must provide NBN Co with a preliminary view on the extent to which the ACCC proposes to determine substitute amounts of capital expenditure or operating expenditure (as opposed to the values provided by NBN Co) for the period in question.

The ACCC has reviewed and considered the regulatory information provided by NBN Co for the purposes of the LTRCM determination and has reached a preliminary view for 2020-21. The ACCC's preliminary view is that it does not intend to determine a substitute amount of capital expenditure in accordance with clause 1D.3.2(d) of the SAU or a substitute amount of operating expenditure in accordance with clause 1E.8.2(c) of the SAU.

Other relevant matters

Review of the NBN regulatory framework

In June 2021, the ACCC held an industry roundtable to commence a review of the regulatory framework for wholesale access to the NBN. Following the roundtable, the ACCC convened a series of working groups to consider issues in more detail. We anticipate that this consultation process will inform NBN Co's proposed SAU variation, which we expect to be submitted to the ACCC in early 2022. If accepted by the ACCC, the SAU variation may result in changes to the LTRCM process in the future.

We also anticipate that this process will provide an appropriate forum to consider many of the issues that have been raised through the LTRCM process in the past. For example, concerns around cross-subsidisation between NBN Co's core regulated products and the services NBN Co operates in competitive markets will be considered in the review of the NBN regulatory framework.

Transition to module 2 of the SAU

Under the current SAU, the present annual ex-post LTRCM process will end in June 2023 (at the end of SAU Module 1). After this time, the assessment of NBN Co's expenditure will take place on a forecast basis every 3 to 5 years through replacement module applications (SAU Module 2).

As part of this process, the ACCC must provide NBN Co with 12 months written notice that it is required to submit a replacement module application. On 20 September 2021, we provided notice to NBN Co that it is required to submit a replacement module application to the ACCC by 30 September 2022. This notice was provided to fulfill our obligations under the current SAU and assumes that there is no change to the SAU before that time. We will consider appropriate transitional arrangements if the SAU is varied.

Price control compliance

The ACCC also has a role under the SAU to assess NBN Co's compliance with the maximum regulated prices and price controls set out in Schedule 1C of the SAU. We will set out our decision on price compliance in the LTRCM determination documents.

In previous LTRCM processes, submissions have raised some concerns about NBN Co's use of discounts to implement new product and pricing initiatives. These issues have been discussed in our product and pricing working group series and we expect NBN Co's SAU variation proposal to address these concerns.

Next steps

The ACCC is required to follow the process set out in the current SAU prior to publishing a final LTRCM determination. The next stage of the process involves the release of a draft LTRCM determination. We will publish this in the first quarter of 2022 for public consultation. Although we are not requesting submissions on this preliminary view, we will consider any feedback on this statement received by 11 February 2022 in the draft LTRCM determination.

We expect NBN Co will provide adequate transparency during the 2020-21 LTRCM process, including providing interested parties with access to relevant confidential information under appropriate confidentiality arrangements.