

Submission to the ACCC inquiry into NBN access pricing and wholesale service standards

Public version

11 September 2020

Macquarie Telecom Group (Macquarie) provides the following comments in response to the ACCC's consolidated consultation on nbn access pricing and wholesale service standards.

Lack of accessibility and predictability under the WBA remains a concern

The lack of clarity, accessibility and transparency of the wholesale broadband agreement (WBA) generally is a continuing concern. Macquarie and other retail service providers (RSPs) need to invest significant resources into understanding and applying the WBA and determining any rights we may have under the contract. We have little or no real ability to negotiate the terms of the WBA given our lack of effective bargaining power relative to nbn Co. Particularly for smaller RSPs, the WBA itself can present a significant barrier to effective participation in the market.

We consider that it is an important part of the role of the ACCC to ensure that the terms on which nbn Co offers services that are reasonable and transparent. Macquarie believes that a complete overhaul is required to simplify the terms, to improve transparency and ensure that the terms offered to RSPs by nbn Co are appropriate to support the kind of innovation in pricing and service offerings at the retail level by RSPs that will stimulate vigorous retail competition.

Generally our observation is that nbn Co's WBA4 proposals in relation to access pricing for entry level broadband products and wholesale service standards seem designed as a commercial compromise to fend off regulatory intervention in the form of a final access determination (FAD), but still fail to deliver on simplification, transparency and certainty for RSPs.

WBA4 pricing proposals for entry level broadband plans remain reliant on rebates and do not meet the industry standard for wholesale price certainty for RSPs

The WBA4 pricing proposals remain reliant on a discounts, credit and rebate Annexure, retaining an unnecessary complexity in establishing the price. Some certainty for entry level nbn wholesale products is provided through nbn Co's commitment to provide a 2 year forward looking discounts roadmap, however, nbn Co only commits to ensuring that the roadmap remains accurate and stable for 12 months at a time. Our industry is accustomed to longer periods of wholesale regulated price certainty.

There remains a long list of circumstances in WBA4 in which entitlement to a rebate or credit is excluded and where it is stated that entitlement to rebates and credits "does not accrue" which requires further explanation by nbn Co.

We submit that it is only the enormous imbalance in bargaining power of nbn as against its RSPs that enables nbn Co to sustain such an uncertain pricing mechanism and maintain such discretions.

We have continuing concerns around nbn Co's subsequent installation charges

Proposed reductions to service transfer charges and transfer reversal charges appear positive. A moderate level of additional clarity is also provided through proposed amendments in WBA4 that would clarify that nbn Co will not levy subsequent installation charges for reactivation of a UNI or AVC at a Premises. However, even with these amendments, RSPs bear the risk that nbn Co will exercise discretion to impose the charge where nbn determines that significant work was required to perform the reactivation.

It is our experience that:

- the method for determining whether a subsequent installation charge applies under the WBA relies on information that only nbn Co has access to;
- the nbn Co operations manual provides (at section 4.7.1) that nbn Co will in each case seek consent to the details of a quote provided by nbn Co before charging an installation charge. However, the nbn Co ordering portal and ordering process:
 - does not provide sufficient information for an RSP to be able to determine how the WBA is being applied;
 - does not provide sufficient details of the information nbn Co has relied on to establish that the charge is justified in each case; and
 - contrary to the operations manual, does not provide a quote or seek consent of the RSP to the details of a quote before the charge is imposed.

Further, nbn Co's invoices do not provide information to verify that the charge is appropriate in each case.

Under WBA4 nbn Co has also proposed amendments to its billing dispute process under which it seeks to build in its own tolerance for a 25% margin of error in its own billing calculations. Under the proposed WBA4 Head Terms on Billing Disputes, nbn Co has proposed that if for 75% or more of total charges (and other amounts that were the subject of the billing dispute) nbn determines that there was no error in nbn's calculation of the amounts, then nbn can suspend the RSP's right to withhold payment of all disputed amounts. It is unfair for nbn Co to expect that its RSPs should wear the risk of 25% margin of error in nbn's own billing calculations that no RSP is in a position to verify.

nbn Co's conduct in relation to these additional charges concerns us for a number of reasons:

- It highlights that nbn Co stands to gain a commercial advantage through maintaining a complex and impenetrable and one-sided WBA.
- nbn Co's WBA, ordering processes and invoices do not put retail service providers in a position to be able to pass these costs through to end customers. We believe that if we were to pass WBA charges on to end customers on the same terms, we may be exposed to unfair terms claims under the Australian Consumer Law for lack of transparency and accessibility.
- nbn Co's imposition of unfair terms under the WBA is conduct that nbn Co can only sustain by virtue of its position as a monopoly wholesale infrastructure provider. Any provider that faced effective competition would not be able to continue to offer to supply services on such unreasonable, unfair and unintelligible terms without losing customers.

WBA4 proposed changes to pricing for enterprise ethernet services raise questions

We note that under WBA4 nbn has proposed permanent changes to the recurring charges for two NNI Bearer Profiles only, which nbn states are intended to make permanent the discounts available under the current WBA3 Discounts, Credits and Rebates List. nbn Co has proposed permanent reductions (of more than 50%) for the installation and activation charges for the same two NNI profiles.

It is not clear how nbn Co can justify making existing 50% (or greater) discounts permanent for the recurring charges for only two NNI bearer profiles and for their activation and installation and not to others, or how nbn Co will reconcile the issue this creates with pricing relativity

between those now permanently discounted profiles and the once off (activation and installation) and recurring, charges for all other NNI bearer profiles.

-END-