

[Annexure 2 to nbn letter to ACCC – June 2023](#)
[Changes to November SAU Variation: entry level offer provisions](#)

Context to this document:

In Annexure 2 to its letter to the ACCC of 24 March 2023, **nbn** noted that:

- under the November SAU Variation, the Entry Level Offers for the first year of a given Regulatory Cycle will be the Entry Level Offers from the previous Regulatory Cycle;
- this allows the Entry Level Offers for that first year to be known with certainty at the time **nbn** prepares and publishes the Tariff List for that first year (regardless of whether the ACCC has made an ACCC Replacement Module Determination for the upcoming cycle by that time); and
- **nbn** considered that position could be made clearer in the SAU text, and proposed a change to clarify that matter.

In its Draft Decision, the ACCC stated:

NBN Co submitted in its March letter that there would be practical difficulties to implementing a change to the entry level product for the first year of a regulatory cycle if we make this decision as part of the replacement module determination. NBN Co has therefore indicated that it would be willing to amend its SAU variation proposal to provide for any change to this entry level product designation being deferred until the second year of a regulatory cycle. While we are open to a SAU variation providing for outcomes that are practicable to implement, if NBN Co were to submit a revised SAU variation proposal, we would encourage NBN Co to consider whether a redesignation could take effect more quickly than the change that NBN Co has recently proposed.

To clarify, **nbn** considers that such practical difficulties would arise if the ACCC determined the Entry Level Offers as part of making Replacement Module Determination *after* a particular point in time – being 31 March before the start of a new Regulatory Cycle. This is because the proposed SAU framework assumes that all information relevant for preparing the Tariff List for the first year of a Regulatory Cycle (published by 1 May before the cycle starts) will be known at least a month before **nbn** publishes that Tariff List (i.e., known by 31 March before the cycle starts). For example, practical difficulties would arise if the ACCC set the Entry Level Offers as part of a Replacement Module Determination on 15 June before the cycle starts, as **nbn** would already have published its Tariff List for the upcoming Financial Year, and when doing so would not have known which services were subject to the specific price control applying to Entry Level Offers.

nbn has further considered this issue and identified an alternative approach that we believe addresses the concern raised by the ACCC in its Draft Decision. This approach provides the option for the ACCC to make an initial decision which sets the Entry Level Offers for the first Financial Year of the upcoming Regulatory Cycle (provided that decision is made by 31 March before the new cycle starts), while later making a separate Replacement Module Determination which sets (among other things) the Entry Level Offers for the second and later years of the Regulatory Cycle. This initial decision could be a stand-alone decision (which **nbn** has referred to below as a ‘Transitional Entry Level Offer Determination’) or could be part of any ‘Draft Replacement Module Determination’ made by the ACCC (noting that **nbn**’s March

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and November 2022 variations provided that the ACCC may issue such a draft Replacement Module Determination).

If the ACCC has not made such an initial decision by 31 March before the new Regulatory Cycle starts, the existing arrangements proposed by **nbn** would apply – i.e., for the purposes of the Tariff List published by **nbn** for the first financial year of the new Regulatory Cycle, the Entry Level Offers would be those from the previous Regulatory Cycle.

This alternative proposal would ensure that:

- should the ACCC wish to change the Entry Level Offer for a new Regulatory Cycle, that change could take effect in the first year of that new Regulatory Cycle, even if the ACCC has not made a Replacement Module Determination by 31 March before the new cycle starts; and
- **nbn** has the certainty required to develop the Tariff List (and Pricing Roadmap and Statement of Pricing Intent) that must be published by 1 May before the new cycle starts.

This document sets out those proposed changes, and minor consequential changes – shown in track / mark-up against extracts of the November SAU Variation and the related drafting in Annexure 2 to **nbn**'s letter of 24 March 2023, as published on the ACCC's website on 2 May 2023.

Changes:

[...]

5 Replacement Module Applications and ACCC Replacement Module Determinations

[...]

5.12 Transitional Entry Level Offer Determinations for the Subsequent Regulatory Period

- (a) By 31 March of the Financial Year immediately preceding the first Financial Year of each Regulatory Cycle within the Subsequent Regulatory Period (other than the First Regulatory Cycle), the ACCC may issue a determination which sets the Entry Level Offers for that first Financial Year of that Regulatory Cycle (a Transitional Entry Level Offer Determination).
- (b) If the ACCC issues a Transitional Entry Level Offer Determination in accordance with clause 5.12(a), the ACCC must publish that determination on its website.

[...]

6.2 Manner in which functions and powers are performed or exercised

In the course of performing or exercising the following functions and powers conferred on the ACCC by this Special Access Undertaking pursuant to section 152CBA(10A) of the CCA:

- (a) requesting that NBN Co provide particular information in support of a Replacement Module Application under clause 5.2(c)(ii);
- (b) issuing an ACCC Replacement Module Determination under clauses 5.8, 5.10(f) or 5.13~~2~~, or a Draft Replacement Module Determination under clause 5.11;
- (c) issuing a Transitional Entry Level Offer Determination under clause 5.12

[...]

the ACCC will give NBN Co a reasonable opportunity to make submissions in respect of material issues relevant to the relevant request, determination, decision or statement before it is issued or made.

[...]

Commented [A1]: Note to the ACCC: this is a new clause in Module 0 of the SAU, to give effect to the position described above – allowing the ACCC to make a separate initial decision which sets the Entry Level Offers for the first year of an upcoming Regulatory Cycle.

Commented [A2]: Note to the ACCC: this minor change flows from the position described above.

Attachment C Dictionary

1 Definitions

[...]

Entry Level Offer means, for each Regulatory Cycle in the Subsequent Regulatory Period, an NBN Offer determined to be an “Entry Level Offer” in accordance with clause 2B.4.

~~(a) — for the First Regulatory Cycle, the NBN Offers set out in clause 4A.5; and~~

~~(b) — in each later Regulatory Cycle in the Subsequent Regulatory Period, the NBN Offers determined to be “Entry Level Offers” in the ACCC Replacement Module Determination for that Regulatory Cycle in accordance with clause 2B.4.~~

[...]

Transitional Entry Level Offer Determination has the meaning given to that term in clause 5.12.

[...]

Schedule 2B Pricing Framework

[...]

2B.2 Pricing certainty and transparency

[...]

1B.2.2 Statement of Pricing Intent

[...]

- (d) If the ACCC has not issued an ACCC Replacement Module Determination by 31 March [of the Financial Year immediately](#) preceding the first Financial Year of a Regulatory Cycle in the Subsequent Regulatory Period, then:
- (i) in publishing a Statement of Pricing Intent for that Regulatory Cycle under clause 2B.2.2(a), NBN Co must:
 - (A) [assume that Regulatory Cycle will be of the duration set out in any Draft Replacement Module Determination Decision, if one has been made, and otherwise](#) assume that Regulatory Cycle will be at least 3 years in duration (unless fewer than 3 years remain in the Subsequent Regulatory Period, in which case, the Statement of Pricing Intent must be for the number of years remaining in the Subsequent Regulatory Period);
 - (B) assume [that the Entry Level Offers for each Financial Year of the Regulatory Cycle are the Entry Level Offers applicable for the first Financial Year of that Regulatory Cycle pursuant to clause 2B.4.2\(b\) that will be determined in the ACCC Replacement Module Determination for that Regulatory Cycle;](#) and
 - (C) state those assumptions in the Statement of Pricing Intent;
 - (ii) if the ACCC Replacement Module Determination for that Regulatory Cycle determines a different length Regulatory Cycle than that assumed by NBN Co pursuant to clause 2B.2.2(d)(i)(A), NBN Co must publish an updated Statement of Pricing Intent to account for that difference;
 - (iii) if the ACCC Replacement Module Determination for that Regulatory Cycle determines ~~different~~ Entry Level Offers [for the second and later Financial Years of that Regulatory Cycle which are different from the Entry Level Offers applicable for the first Financial Year of that Regulatory Cycle pursuant to clause 2B.4.2\(b\) to those assumed by NBN Co pursuant to clause 2B.2.2\(d\)\(i\)\(B\),](#) NBN Co may publish an updated Statement of Pricing Intent to account for that difference; and
 - (iv) any update to a Statement of Pricing Intent pursuant to clauses 2B.2.2(d)(ii) and ~~(iii)~~ [2B.2.2\(d\)\(iii\)](#) must be published by NBN Co within 40 Business Days of the ACCC Replacement Module Determination for the relevant Regulatory Cycle being issued under clause 5.8(a) (or being taken to be in effect under clause 5.9(d)).

[...]

Commented [A3]: Note to the ACCC: Annexure 2 of nbn's letter to the ACCC of 24 March 2023 proposed minor changes to clause 2B.2 of the November SAU Variation to allow for key pricing documents to be updated if they are issued by nbn before the ACCC has made a Replacement Module Determination (RMD) for an upcoming Regulatory Cycle.

That version of clause 2B.2 is extracted below, and shows additional proposed changes in track – being minor changes arising from the proposed position on Entry Level Offers described above.

That clause 2B.2 is shown here first (before other substantive changes relating to nbn's proposed position on Entry Level Offers) to ensure that the changes in this rider are presented in numerical order.

Commented [A4]: Note to the ACCC: this change clarifies that, in the event the ACCC had issued a *draft* RMD (but has not issued a final RMD) by 31 March before an upcoming Regulatory Cycle, then for the purposes of issuing a Statement of Pricing Intent (SPI) for the upcoming cycle by 1 May, nbn should assume that the duration of the upcoming cycle is the duration stated in the draft RMD.

Commented [A5]: Note to the ACCC: the SPI for a Regulatory Cycle is required to cover the whole Regulatory Cycle. nbn must publish an SPI by 1 May before a new cycle starts. If by 31 March before a new cycle starts, the ACCC has not made an RMD setting the Entry Level Offers for that cycle, nbn will need to make an assumption when preparing the SPI about what the Entry Level Offers will be throughout the Regulatory Cycle. This clause specifies that in that case, nbn will assume that the Entry Level Offers for the cycle will be those applying for the first year of the cycle (which will be known one way or the other – by virtue of clause 2B.4.2(b), below).

Commented [A6]: Note to the ACCC: this change clarifies that, if the ACCC makes an RMD which sets the Entry Level Offers for the second and later years of a Regulatory Cycle that are different to the Entry Level Offers applying for the first year of the Regulatory Cycle, then nbn may update the (already published) SPI for that cycle to account for that difference.

2B.2.4 Pricing Roadmap

[...]

- (f) If the ACCC has not issued an ACCC Replacement Module Determination by 31 March of the Financial Year immediately preceding the first Financial Year of a Regulatory Cycle in the Subsequent Regulatory Period, then:
- (i) in publishing a Pricing Roadmap by 1 May of the Financial Year immediately preceding the ~~earliest~~ first Financial Year of that Regulatory Cycle under clause 2B.2.4(a), NBN Co must assume that the Entry Level Offers for each Financial Year of the Regulatory Cycle are the Entry Level Offers applicable for the first Financial Year of that Regulatory Cycle pursuant to clause 2B.4.2(b) ~~that will be determined in the ACCC Replacement Module Determination for that Regulatory Cycle~~ and state that assumption in the Pricing Roadmap; and
 - (ii) if the ACCC Replacement Module Determination for that Regulatory Cycle determines ~~different~~ Entry Level Offers for the second and later Financial Years of that Regulatory Cycle which are different from the Entry Level Offers applicable for the first Financial Year of that Regulatory Cycle pursuant to clause 2B.4.2(b) ~~to those assumed by NBN Co pursuant to clause 2B.2.4(f)(i)~~, NBN Co may update the Pricing Roadmap within 40 Business Days of the ACCC Replacement Module Determination for that Regulatory Cycle being issued under clause 5.8(a) (or being taken to be in effect under clause 5.9(d)) to account for that difference.

[...]

2B.4 Entry Level Offers

1B.4.1 Requirements for Entry Level Offers ~~for a Regulatory Cycle~~

- ~~(a) For the First Regulatory Cycle, the Entry Level Offers are set out in clause 4A.5.~~
- ~~(b)(a)~~ For each Regulatory Cycle after the First Regulatory Cycle, an Entry Level Offer must be proposed in any Replacement Module Application and determined in any ACCC Replacement Module Determination in respect of each of the NBN Co Fibre Network, NBN Co FTTB Network, NBN Co FTTN Network, NBN Co FTTC Network, NBN Co HFC Network and NBN Co Wireless Network, in accordance with clause 2B.4.1(c).
- (b) In addition to clause 2B.4.1(a), for the first Financial Year of each Regulatory Cycle (other than the First Regulatory Cycle), an Entry Level Offer may be determined by the ACCC in a Transitional Entry Level Offer Determination in respect of each of the NBN Co Fibre Network, NBN Co FTTB Network, NBN Co FTTN Network, NBN Co FTTC Network, NBN Co HFC Network and NBN Co Wireless Network, in accordance with clause 2B.4.1(c).
- (c) Each Entry Level Offer proposed under clause 2B.4.1(a), and determined under clause 2B.4.1(a) or clause 2B.4.1(b) ~~in any Replacement Module Application or determined in any ACCC Replacement Module Determination for each Regulatory Cycle after the First Regulatory Cycle~~ must be an NBN Offer that:
- (i) is a Bundled TC-4 Offer or a Flat-Rate Offer that has been introduced by NBN Co for more than 24 months (assessed as at 1 July of the first Financial Year in the applicable Regulatory Cycle) or which is set out in clause 2B.3.1(a) or clause 2B.3.1(b);

Commented [A7]: Note to the ACCC: by 1 May each year, **nbn** must publish a three-year Pricing Roadmap (**Roadmap**) to apply from 1 July of the coming Financial Year, in which the Prices for the second and third years are indicative.

If by 31 March before a new Regulatory Cycle starts, the ACCC has not made a final RMD which sets the Entry Level Offers for the second and later years of that cycle, then for the purposes of preparing the Roadmap to be published ahead of the new cycle:

- **nbn** will at least know the Entry Level Offers for the first year of the upcoming cycle – by virtue of clause 2B.4.2(b), below; and
- **nbn** will need to assume what the Entry Level Offers will be for the second and later years of the cycle.

This change clarifies that in that context, for the purposes of publishing the Roadmap, **nbn** must assume that the Entry Level Offers for the second and third years of the cycle are the same as for the first year of the cycle.

Commented [A8]: Note to the ACCC: this change clarifies that, if by 31 March before a new Regulatory Cycle starts, the ACCC has not made a final RMD which sets the Entry Level Offers for the second and later years of that cycle, but later makes a final RMD that sets different Entry Level Offers to those assumed by **nbn** for the purposes of publishing the Roadmap, then **nbn** may update the Roadmap to account for that difference.

Commented [A9]: Note to the ACCC: the changes proposed to this clause give effect to the position described above (which is proposed in response to the suggestion in the ACCC's Draft Decision regarding the timing of changes to the Entry Level Offers).

In particular:

- clause 2B.4.1 will establish the criteria for Entry Level Offers, which must be proposed in an RMA / set in an RMD, and may be set (for the first year of a cycle) in a separate, initial decision made by the ACCC (a 'Transitional Entry Level Offer Determination'); and
- clause 2B.4.2 then sets out the hierarchy for determining the Entry Level Offers in any given scenario.

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- (ii) has an Offer Download Rate that is lower than the Offer Download Rate of any NBN Offer forming part of the Most Ordered TC-4 Download Offer Group, unless the Offer Download Rate of an NBN Offer forming part of the Most Ordered TC-4 Download Offer Group is the lowest Offer Download Rate of any NBN Offer that satisfies clause 2B.4.1(c)(i), in which case an NBN Offer forming part of the Most Ordered TC-4 Download Offer Group must be specified as the Entry Level Offer;
 - (iii) subject to clause 2B.4.1(d), has the same Offer Download Rate as each other Entry Level Offer specified on each other NBN Co Network referred to in clauses [2B.4.1\(a\)](#) and [2B.4.1\(b\)](#); and
 - (iv) is reasonably considered by NBN Co, in the case of a Replacement Module Application, or [by the ACCC](#), in the case of [any of an ACCC Replacement Module Determination, a Draft Replacement Module Decision or a Transitional Entry Level Offer Determination](#), to be NBN Co's entry level-service.
- (d) For the purposes of clause 2B.4.1(c)(iii), if there is no set of NBN Offers with the same Offer Download Rate on each of the NBN Co Networks referred to in clauses [2B.4.1\(a\)](#) and [2B.4.1\(b\)](#), then:
- (i) the NBN Offers with the same Offer Download Rate supplied over the greatest number of NBN Co Networks referred to in clauses [2B.4.1\(a\)](#) and [2B.4.1\(b\)](#) must be specified as Entry Level Offers for those NBN Co Networks; and
 - (ii) the NBN Offers supplied over the remaining NBN Co Networks which have Offer Download Rates that are most similar to the Offer Download Rates of the NBN Offers specified under clause 2B.4.1(d)(i) must be specified as the Entry Level Offers on those NBN Co Networks.
- (e) In this clause 2B.4.1:
- (i) **Most Ordered TC-4 Download Offer Group** comprises the Bundled TC-4 Offers and Flat-Rate Offers with the same Offer Download Rates that are supplied in the greatest numbers across all of the NBN Co Networks referred to in clauses [2B.4.1\(a\)](#) and [2B.4.1\(b\)](#), assessed based on data from the full Financial Year most recently ended at the time the Entry Level Offers are being proposed in a Replacement Module Application or determined in an ACCC Replacement Module Determination; and
 - (ii) **Offer Download Rate** means, in respect of a Bundled TC-4 Offer or Flat-Rate Offer, the maximum downlink Data Transfer Rate of the AVC TC-4 for that NBN Offer.

2B.4.2 Determining Entry Level Offers

The Entry Level Offers for each Financial Year in the Subsequent Regulatory Cycle will be as follows:

- (a) [for each Financial Year of the First Regulatory Cycle, the NBN Offers set out in clause 4A.5;](#)
- (b) [for the first Financial Year of each later Regulatory Cycle in the Subsequent Regulatory Period, the NBN Offers determined to be "Entry Level Offers" in accordance with clause 2B.4.1, as set out in the following document:](#)
 - ~~(iii)~~(i) [if, by 31 March of the Financial Year immediately preceding the first Financial Year of the relevant Regulatory Cycle, the ACCC has:](#)
 - (A) [made an ACCC Replacement Module Determination for that Regulatory Cycle, the ACCC Replacement Module Determination for that Regulatory Cycle;](#)

Commented [A10]: Note to the ACCC: this clause sets out the hierarchy for determining the Entry Level Offers in any given scenario.

In short:

- if the ACCC makes a final RMD by 31 March before a new cycle starts, then the RMD would set the Entry Level Offers for each year of the upcoming cycle;
- if the ACCC does not intend to make a final RMD by 31 March before a new cycle starts, it could instead make a separate, initial decision to set the Entry Level Offers for the first year of the upcoming cycle, and then later make an RMD which sets the Entry Level Offers for the second and third years of the cycle. The ACCC could choose to make such an initial decision as a stand-alone decision (referred to as a "Transitional Entry Level Offer Determination") or as part of a draft RMD; and
- if the ACCC has not made such an initial decision, or a final RMD, by 31 March before a new cycle starts, the Entry Level Offers for the first year of that cycle will be those from the previous cycle.

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(B) not made an ACCC Replacement Module Determination for that Regulatory Cycle but has made a Draft Replacement Module Determination Decision for that Regulatory Cycle, the Draft Replacement Module Determination Decision;

(C) not made an ACCC Replacement Module Determination or a Draft Replacement Module Determination Decision for that Regulatory Cycle but has made a Transitional Entry Level Offer Determination in respect of the first Financial Year of that Regulatory Cycle, the Transitional Entry Level Offer Determination; or

(ii) if paragraph (i) does not apply, the ACCC Replacement Module Determination for the previous Regulatory Cycle; and

(c) for the second and later Financial Years of each later Regulatory Cycle in the Subsequent Regulatory Period, the NBN Offers determined to be “Entry Level Offers” in accordance with clause 2B.4.1, as set out in the ACCC Replacement Module Determination for that Regulatory Cycle.

[...]

Schedule 2E Additional price controls

[...]

2E.2 Individual price controls

2E.2.1 Entry Level Offers

- (a) Subject to clause 2E.4, when publishing the Tariff List for Financial Year t under clause 2B.2.3(a) (other than for the first Financial Year of the First Regulatory Cycle), the Forecast Average Combined Charge during that Financial Year for each Bundled TC-4 Offer that is an Entry Level Offer for that Financial Year (as determined in accordance with clause 2B.4.2) must be no greater than:

$$ACC_{t-1} \times (1 + CPI_t)$$

where:

- (i) ACC_{t-1} means the weighted average of:

- (A) the Average Combined Charge during the period from 1 July to 31 March of Financial Year $t - 1$; and
 (B) the Forecast Average Combined Charge for the period from 1 April to 30 June of Financial Year $t - 1$,

weighted by the number of the days in each of the periods in paragraphs (A) and (B); and

Exception: If Financial Year t is the second Financial Year of the Subsequent Regulatory Period, the period referred to in clause 2E.2.1(a)(i)(A) will commence on the Price Transition Date, rather than 1 July of Financial Year $t - 1$.

- (ii) CPI_t means the December Quarter CPI published in Financial Year $t - 1$.

- (b) For each Financial Year t (other than the first Financial Year of the Subsequent Regulatory Period), the Prices included in the Tariff List published under clause 2B.2.3(a) for each Flat-Rate Offer which is an Entry Level Offer ~~when the Tariff List is published~~ for that Financial Year (as determined in accordance with clause 2B.4.2) must be no greater than:

$$p_{t-1} \times (1 + CPI_t)$$

where:

- (i) CPI_t means the December Quarter CPI published in Financial Year $t - 1$; and
 (ii) p_{t-1} means the average Price in the Tariff List of the relevant Entry Level Offer during Financial Year $t - 1$, calculated as the sum of:
 (A) the Price in the Tariff List that applied on each day from 1 July to 31 March of Financial Year $t - 1$; and
 (B) the Price that is forecast to be set out in the Tariff List on each day from 1 April to 30 June of Financial Year $t - 1$,

divided by the number of the days in Financial Year $t - 1$.

Commented [A11]: Note to the ACCC: the changes to these clauses make clear that, for the purposes of applying the Entry Level Offer price controls, the relevant Entry Level Offers are determined in accordance with clause 2B.4.2, as described above.

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Exception: If Financial Year t is the second Financial Year of the Subsequent Regulatory Period, p_{t-1} means the average Price in the Tariff List of the relevant Entry Level Offer during Financial Year $t - 1$, calculated as the sum of:

- the Price in the Tariff List that applied on each day from the Price Transition Date to 31 March of Financial Year $t - 1$; and
- the Price that is forecast to be set out in the Tariff List on each day from 1 April to 30 June of Financial Year $t - 1$,

divided by the number of days from the Price Transition Date to 30 June of Financial Year $t - 1$, inclusive.

- (c) ~~For the purposes of this clause 2E.2.1, the Bundled TC 4 Offers and Flat Rate Offers which are Entry Level Offers when publishing the Tariff List under clause 2B.2.3(a) for the first Financial Year of a Regulatory Cycle (other than the First Regulatory Cycle) will be the Entry Level Offers for the last Financial Year of the previous Regulatory Cycle.~~

[...]