

nbn Special Access Undertaking Variation 2022 – Supporting submission

Part B: Pricing and price controls

November 2022

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Part B: Contents

Structure of Submission	4
7 Pricing structure and levels	5
7.1 nbn’s pricing in the original SAU	5
7.2 Pricing proposed in the Variation	6
7.3 Cost-reflective prices	7
7.4 Efficient price signals.....	8
7.5 Competitive constraints	10
7.6 Transition period from CVC TC-4 to Flat-Rate Offers.....	12
7.7 NNI pricing.....	16
7.8 Low-income measures	16
7.9 Treatment of planned products.....	18
8 Weighted Average Price Control and other pricing commitments	19
8.1 Introduction	19
8.2 The WAPC.....	20
8.3 Other measures that promote price certainty.....	25
8.4 nbn’s use of discounts.....	29
8.5 Implementation of new pricing under WBA5	30



Structure of Submission

This Submission describes the proposed material changes to the SAU and explains why this comprehensive package of regulatory obligations and constraints meets the relevant statutory criteria by which such an SAU variation must be assessed. The Submission also describes the specific commitments proposed in respect of the First Regulatory Cycle (FY24 to FY26). Detailed information can be found in the following chapters:

Executive summary and key narratives	Introduction	Part A chapter 1
	Summary of how the Variation addresses ACCC and industry feedback	Part A chapter 2
	State of competition	Part A chapter 3
	Demand for higher speeds will continue to grow	Part A chapter 4
	The rationale for investing in fibre	Part A chapter 5
	The Variation supports economically efficient outcomes	Part A chapter 6
Pricing and price controls	Pricing structure and levels	Part B chapter 7
	Weighted Average Price Control and other pricing commitments	Part B chapter 8
Non-price terms	Incorporation of MTM technologies	Part C chapter 9
	Service quality commitments	Part C chapter 10
	Service level reporting and transparency	Part C chapter 11
	Carry over Module 1 commitments and Accounting Separation	Part C chapter 12
ACCC roles and powers	Replacement Module provisions	Part D chapter 13
	nbn proposes an expanded role for the ACCC	Part D chapter 14
	Price review mechanism	Part D chapter 15
Key inputs to nbn's Regulated Revenue Requirement	Recovery of initial costs	Part E chapter 16
	Regulatory Asset Base and nbn's cost allocation approach	Part E chapter 17
	WACC	Part E chapter 18
Efficiency of nbn's Expenditure and Demand Forecasts	Cost pass-through mechanism	Part F chapter 19
	Expenditure assessment framework	Part F chapter 20
	Specific commitments in respect of the First Regulatory Cycle	Part F chapter 21
	Expenditure forecasts	Part F Appendix A
	Demand forecasts	Part F Appendix B
Statutory assessment	The Variation satisfies the Statutory Criteria	Part G chapter 22
	Statutory role of the ACCC	Part G chapter 23
Guide to the SAU and other background materials	Overview of the SAU	Part H chapter 24
	nbn's mandate and regulatory framework	Part H chapter 25
	Statement of Expectations	Part H chapter 26



7 Pricing structure and levels

nbn's initial approach to the level and structure of its prices and regulatory settings was informed by the policy and commercial factors at play at the time.

As a telecommunications provider operating in a rapidly evolving competitive environment, **nbn** can best meet the needs of end-users by remaining flexible in its approach to pricing to address changes in the market, while also responding to the needs of RSPs by providing predictable and stable wholesale prices.

The Variation proposes significant changes to the structure of **nbn**'s wholesale prices, including the move to "AVC-only" pricing for speed tiers 100 Mbps and above from 1 July 2023, and the transition of all fixed-line and fixed wireless TC-4 speed tiers to Flat-Rate Offers by 1 July 2026. This will simplify pricing for RSPs, increase price stability and predictability and incentivise the use of the network's higher-speed capabilities. During the transition to AVC-only pricing, **nbn** will shift to charging for CVC TC-4 on an actually utilised basis, rather than provisioned capacity. The Variation also proposes price reductions for many TC-4 speed tiers relative to those included in the March Variation.

In combination with the new price controls discussed in chapter 8, the pricing proposed in the Variation will promote both the efficient use of the network and the LTIE.

7.1 **nbn**'s pricing in the original SAU

nbn's approach to establishing its prices in the 2010 to 2011 period was informed by the policy and commercial factors at play at the time, including:

- the Federal Government's desire to address the lack of high-speed broadband in Australia and reshape the telecommunications sector;¹
- the Federal Government's expectation that **nbn** would achieve uniform national wholesale pricing and recognise the importance of maintaining affordability to drive take-up rates; and
- **nbn**'s expectation that it would have the opportunity, but not the guarantee, to recover its upfront fixed costs, including an appropriate rate of return, over the term of the SAU.

In this context, **nbn** did not develop individual prices to reflect the underlying costs of each product component, speed tier or access technology. Instead, **nbn**'s initial pricing was designed to allow RSPs to provide a smooth transition for end-user to the **nbn**[®] network. In particular, many of the prices for **nbn**'s key entry level services were established by reference to equivalent legacy services in the market at that time (in particular, the price of ADSL2+ services), rather than by reference to their underlying costs. As **nbn** noted in 2012:²

... initial prices (which are then subject to the CPI-1.5% Individual Price Increase Limit for the remainder of the SAU) have been struck to facilitate migration from the legacy networks to the NBN rather than to achieve cost recovery at as fast a rate possible.

nbn also adopted a "user pays" model and developed a two-part (AVC/CVC) usage-based pricing. Initial Maximum Regulated Prices were also included in the SAU.

This initial approach to pricing has meant that, to date, **nbn** has under-recovered its prudently incurred costs, with the SAU providing the opportunity to recover those costs (including an appropriate rate of return) over time.

¹ See, for example, the Joint Standing Committee on the National Broadband Network, *Rollout of the National Broadband Network – First Report*, 31 August 2011, section 2.1: https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jcnbn/report.htm.

² **nbn**, *Supporting Submission - NBN Co Special Access Undertaking*, 28 September 2012, p. 113: <https://www.accc.gov.au/system/files/NBN%20Co%20Special%20Access%20Undertaking%20%2828%20September%202012%29.pdf>.



7.2 Pricing proposed in the Variation

In developing its approach to the pricing proposed in the Variation, **nbn** has sought to balance multiple considerations to best meet the needs of RSPs and end-users. **nbn**'s high fixed costs and low variable costs mean that **nbn** has to make decisions about how these costs will be most efficiently allocated among different products and types of users. Moreover, as a telecommunications provider operating in a rapidly evolving competitive environment, **nbn** must remain flexible in its pricing approach to address changes in the market, while also responding to the needs of RSPs by providing certainty as to **nbn**'s wholesale prices.

nbn's pricing in the Variation is guided by the following outcomes of the ACCC working groups convened in 2021:

- **Outcome 1:** “[**nbn**] has the opportunity to earn the minimum revenues it needs to meet its legitimate financing objectives, including to transition to a stand-alone investment-grade credit rating.”
- **Outcome 2:** “[**nbn**] end-users are protected from price shocks and from prices that are higher than necessary in later years.”
- **Outcome 3:** “The regulatory framework provides incentives for [**nbn**] to operate efficiently and promote use of the [network].”
- **Outcome 4:** “[**nbn**] access seekers have greater certainty over the costs that they will face when using [the network].”³

nbn's proposed pricing also focuses on the key principles of regulatory economics that will promote the achievement of these outcomes. These are:

- **Ensuring prices are cost-reflective:** Achieving Outcome 1 requires that **nbn** sets prices such that all efficient costs of providing broadband services are covered and **nbn** can meet its “*legitimate financing objectives*”. Furthermore, there are significant economic efficiency gains from setting prices that are cost-reflective, and doing so will similarly promote the achievement of Outcome 3 as it creates incentives for **nbn** to “*operate efficiently and promote the use of the [network]*”.
- **Sending efficient price signals:** Sending efficient price signals to users will increase the use of the network and make it more achievable for **nbn** to earn its required revenues. This will promote both Outcomes 1 and 3.
- **Providing price stability and predictability:** Increasing price stability and predictability will directly address Outcomes 2 and 4. These measures are described further in chapter 8.
- **Meeting competitive threats:** **nbn** faces significant competition in the provision of broadband services, and constructing a pricing schedule that accounts for this is critical for **nbn** to have the opportunity to recover its efficient costs and meet Outcome 1.

By following and balancing these principles, **nbn** has delivered major changes to its pricing model, including:

- modifying the price structure, including phasing out CVC charging, in response to ACCC and industry feedback;
- committing to a significant package of new pricing stability and certainty arrangements (see chapter 8), including constraining average price increases to no more than CPI during the path to cost recovery; and
- ensuring published list prices align with effective prices.

Together, these changes will promote both the efficient use of the network and the LTIE.

³ ACCC, *NBN Co Special Access Undertaking: Summary of Industry Working Group Outcomes*, December 2021, p. 1: https://www.accc.gov.au/system/files/ACCC%20-%20Summary%20of%20Industry%20working%20groups%20report_0.pdf.



7.3 Cost-reflective prices

There are two aspects to cost-reflective pricing. First, **nbn** seeks to achieve prices that will allow it to recover its prudent and efficient costs. Second, the ACCC has expressed the view that prices for different products should reflect the specific costs of providing those products.

7.3.1 Achieving prices that recover prudent and efficient costs

To set cost-reflective prices, **nbn** has adopted two key measures.

First, **nbn** has identified a set of prices and price controls that should, over time, provide it with an opportunity to reach its projected Annual Building Block Revenue Requirement, and eventual recovery of a limited amount of **nbn**'s initial losses (**ICRA**), in conjunction with the natural growth in demand for higher speed tiers. In other words, while **nbn**'s revenue is projected to remain below its annual building block revenue requirement for a number of years, the proposed prices are cost-reflective over the medium term, provided they increase by CPI on average for the foreseeable future.

Second, **nbn** has taken measures to ensure that the Prices included in its annual Tariff List (see section 8.3.2.2) are more closely linked to the effective prices that RSPs pay under the WBA. The ACCC and RSPs have indicated concerns that **nbn**'s past effective prices may have been de-linked from **nbn**'s prudent and efficient costs, due in part to **nbn**'s historic discounting practices. To address these concerns, **nbn** is proposing a set of discounting rules that ensure the Prices in the Tariff List will be updated to maintain a closer link to the effective market prices for **nbn**'s services over time, including associated broad-based, long-term discounts. Critically, **nbn** will achieve this without creating unreasonable price shocks that would affect **nbn**'s ability to meet Outcomes 2 and 4 described above.

Some RSPs have suggested that **nbn**'s prices should not be permitted to increase without a commensurate increase in service standards. While **nbn** strives to maintain and improve its services, this suggestion is based on a misunderstanding of the regulatory model applied to **nbn**. The building block methodology is used to estimate the prudent and efficient costs of providing the specified services and service levels. In chapter 10 of Part C of this Submission, **nbn** sets out a detailed specification of **nbn**'s proposed services standards – that is, the service standards that **nbn** can deliver at the prices established in the SAU, which are currently below **nbn**'s efficient costs, and will remain so for some time.

If **nbn**'s costs increase as a result of service-level improvements demanded by end-users, then **nbn** should have the opportunity to recover this cost. Similarly, if **nbn**'s prices need to increase from the current levels in order to recover the reasonable costs of meeting the existing service standards, that would also be legitimate. From an economic regulatory perspective, the critical link is not between prices and service levels, but between prices and the allowed annual revenue to recover the costs associated with the delivery of the specified standards.



7.3.2 Achieving prices that reflect the costs of providing individual products

nbn seeks to maintain nation-wide pricing consistent with its objective of lifting the digital capability of all Australians, and to meet the expectations of **nbn**'s Shareholder Ministers that **nbn** should provide reliable and affordable services to meet the current and future broadband needs of all Australians, no matter where they live or work. There are, however, significant differences in the costs of providing different products in different geographic areas and for common network costs there is a very wide range of potentially efficient cost allocation methodologies, leading to many different potential pricing outcomes.

To address these challenges, **nbn** has focused on setting prices for individual products by reference to the need to send efficient signals to end-users and to meet competitive constraints in the market, each discussed further below. In practice, these constraints mean that **nbn**'s prices must support an explicit cross-subsidy between its fixed-line services on one hand, and wireless and satellite services on the other. While the Regional Broadband Scheme (**RBS**) recognises the need for such a cross-subsidy, in practice **nbn** is the dominant contributor to this scheme, with only minimal levels of subsidies paid by a subset of competitive network providers, leaving **nbn** susceptible to cherry-picking in profitable or lower-cost areas served by wireless operators who do not incur the **RBS** levy.

nbn notes that while the proposed move away from including a variable CVC component in **nbn**'s wholesale charges may appear to be inconsistent with the objective of achieving cost-reflective prices, there are other factors at play. While it is common to charge two-part tariffs that separately recover fixed costs and marginal costs of providing a product, the evolution and the maturation of the **nbn**[®] network has meant that the marginal cost of data is diminishing for **nbn**'s fixed-line networks for most residential applications. In fact, **nbn** accepts that the economic efficiency benefits of two-part tariffs must be balanced against the complexities and risks they create for RSPs; equally, it is important to understand the risks and implications of moving away from two-part tariffs. As discussed in section 7.6, a transition period to AVC-only pricing (i.e., to TC-4 Flat-Rate Offers) will be required to maintain cost-reflective prices due to commercial constraints, and to minimise any price shocks for RSPs and end-users.

7.4 Efficient price signals

There are two interrelated goals **nbn**'s price signals are seeking to achieve:

- **Goal 1: Maximise take-up and use of the network.** Because **nbn** has a high proportion of fixed costs, having more end-users on the network allows **nbn** to reduce its average costs, and thus reduce prices. Greater usage of the network allows end-users to derive greater utility from the same base of fixed costs.
- **Goal 2: Maximise economic efficiency of **nbn**'s pricing:** Overall economic efficiency is maximised when more fixed costs are recovered from end-users with lower demand elasticity – i.e., end-users who are relatively less sensitive to prices when deciding whether to connect to the **nbn**[®] network or to move up or down a speed tier. A Ramsey pricing approach is typically adopted to achieve this objective.

Considering these goals, **nbn** has come to the view that its prices should: (1) promote higher speed tiers; and (2) ensure end-users contribute equitably to the fixed and common cost of the network. These two pricing considerations are discussed further below.



7.4.1 The role of higher speed tiers

nbn considers that the demand for higher access speed tiers will grow at a rate faster than that expressed by the ACCC in its May 2022 consultation paper,⁴ based on modelling performed by **nbn** that has been independently reviewed by Roberson and Associates. **nbn**'s pricing therefore attempts to address this anticipated demand.

To promote more efficient use of its network, **nbn** needs to reduce the price differential for higher speed services for the more price-sensitive customers. Residential end-user demand for higher speed tiers is currently quite elastic, and so price is a key factor in end-users' decisions to move up a speed tier. Therefore, having a lower price difference between speed tiers will likely incentivise more end-users to move to a higher speed tier, where that is appropriate for their anticipated level of demand. As shown in Table B1 below, **nbn** will materially reduce the wholesale headline bundle prices for the residential high-speed services.

nbn's pricing structure for higher speed tiers is as follows:

Table B1. Pricing proposal for high-speed TC-4 bundles based on current usage

TC-4 bandwidth profile	A: Current fixed charge in bundle discount	B: July 2022 attributed provisioned CVC capacity ¹	C: Current inclusion of CVC in bundle discount	A+(B-C) × CVC overage charge ² : Current average combined charge	Proposed monthly AVC-only charge ³	Change compared to combined charge
Home Fast [100/20 Mbps]	\$58.00	4.19 Mbps	4.50 Mbps	\$55.55	\$55.00	-1.1%
Home Superfast [250/25 Mbps]	\$68.00	4.87 Mbps	5.75 Mbps	\$60.99	\$60.00	-1.6%
Home Ultrafast [up to ~1000/50 Mbps]	\$80.00	6.73 Mbps	7.00 Mbps	\$77.82	\$70.00	-10.0%
100/40 Mbps	\$65.00	3.30 Mbps	4.50 Mbps	\$55.39	\$58.00	4.7%
250/100 Mbps⁴	\$100.00	3.52 Mbps	5.75 Mbps	\$82.13	\$100.00	21.8%
500/200 Mbps⁴	\$160.00	9.20 Mbps	6.25 Mbps	\$183.62	\$160.00	-12.9%
1000/400 Mbps⁴	\$230.00	15.96 Mbps	7.00 Mbps	\$301.67	\$230.00	-23.8%

¹ Based on measured National Peak Utilisation by speed tier, uniformly scaled to provisioned capacity based on average CVC headroom provisioned across all RSPs in July 2022 (~22%).

² The current CVC overage price is \$8.00/Mbps of provisioned CVC capacity, estimated based on July 2022 utilisation for like-for-like comparison.

³ **nbn** will remove the CVC component of the pricing for these speed tiers by 1 July 2023 if the Variation is accepted by 31 March 2023 or within three months of acceptance if the Variation is accepted after 31 March 2023.

⁴ Legacy high-speed tier plans are primarily sold to business customers, and typically exhibit very low network utilisation during residential peak hours, and therefore the current combined charge reported in this table is artificially low. The current combined charge reported is also impacted by usage measurement volatility (due to small sample sizes) as these three plans have a combined customer cohort of less than 6,000 as of July 2022.

⁴ ACCC, *Proposed variation to the NBN Co Special Access Undertaking*, Consultation paper, May 2022: <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/national-broadband-network-nbn-access-regulation/nbn-co-sau-variation-march-2022/consultation-paper>.



7.4.2 Incentivising efficient use of nbn speed offerings

nbn has many end-users with high data usage who subscribe to low-speed plans. These users could be expected to have high willingness to pay for broadband services, but in effect ‘free-ride’ on the situation such that RSPs find it difficult to pass variable data costs on to them. Having high-data users on these plans means that RSPs must either provision more CVC bandwidth, or if not (for cost reasons), have those high-data users disproportionately use the available CVC bandwidth, which results in a worse experience for other (lower-use) customers. Additionally, this does not align with the general pricing principle that it is more efficient for users with lower demand elasticities to take on a larger share of the costs.

In theory, this issue could be solved if RSPs charged two-part retail tariffs to users – consistent with the wholesale AVC and CVC pricing currently used by **nbn**. Users would then pay a variable component reflecting on their data usage, in addition to a fixed charge. High-data users would pay more, meaning they would be better off on a higher speed tier with a larger (or uncapped) data allowance. However, **nbn** has heard from RSPs that two-part tariffs and the associated uncertainty over total monthly bills are not accepted at the retail level, and that RSPs are effectively forced by competitive pressures to offer fixed price plans.

Given this situation at the retail level, the current two-part tariff at the wholesale level has created challenges for the market instead of promoting efficiency as it was intended to. For example, when heavy network users, prone to large file transfers such as game updates, take up residential retail plans, this can create pricing uncertainty for RSPs as a result of CVC charging. Additionally, RSPs have stated that it takes a significant effort and cost to manage their CVC provisioning.

Hence, **nbn** has agreed to fully phase out TC-4 CVC charging by July 2026 to afford RSPs greater pricing certainty and reduced organisational complexity. **nbn** will bring forward the transition to AVC-only pricing for all its high-speed plans, starting within three months of any accepted SAU variation.

The immediate removal of CVC charging for the higher speed tiers and proposed reduction of the CVC overage charge in the First Regulatory Cycle should significantly reduce the risk to RSPs of high-data users remaining on inappropriate plans. The narrowing of the wholesale pricing differentials between the lower and higher speed tiers should encourage such users to migrate to more appropriate high-speed plans.

7.5 Competitive constraints

As discussed in chapter 3 of Part A of this Submission, **nbn** faces many competitive pressures. Competitors with alternative networks can cherry-pick those end-users most profitable to them because of geographic area, data usage, and technology preference – leaving other potential customers behind. On the other hand, **nbn** was conceived and undertaken with the explicit purpose of ensuring all Australians have equitable access to broadband. This section further analyses competitive pressures in specific markets and how it supports the pricing proposed in the Variation.

7.5.1 Pricing constraints from competition for low-data usage customers

nbn faces particular competition in the low-data usage market segment. RSPs who also operate mobile networks specifically target this segment in population-dense areas as it is highly profitable for them to have as many low-data users on their wireless networks as can fit onto their respective spectrum. **nbn** is aware that RSPs are marketing the move away from fixed-line voice-only products to wireless services by offering more competitive prices. In the case of voice-only services, lowering **nbn**’s TC-4 price would benefit end-users, and is expected to



deliver higher retention rates, which would offset the lower ARPU. Considering this example, it is clear that **nbn** must ensure that low-speed products remain price-competitive.

Table B2 below shows **nbn**'s proposed price rebalancing for **nbn**'s current entry level bundle (**ELB**) product and the proposed price reduction to the entry level 25/5 Mbps product, in both cases in relation to **nbn**'s fixed-line and fixed wireless networks only. The price for the voice-only service (fixed-line only) will be reduced. The price of the current ELB product (12/1 Mbps) using greater than 0.1 Mbps of CVC will increase, to encourage the migration to 25/5 Mbps product. **nbn** notes that following this price change, the broadband 12/1 Mbps service will still be significantly below the benchmark \$35 wholesale price required to support a \$60 retail price point.

Table B2. Pricing proposal for voice-only, entry level, and Bundled Offers

TC-4 bandwidth profile	A: Current fixed charge in Bundles Discount	B: July 2022 Attributed Provisioned CVC capacity	C: Current inclusion of CVC in Bundles Discount	A+(B-C) x CVC overage charge ² : Current combined charge	D: Proposed AVC charge	E: July 2022 actual CVC utilisation	F: Proposed inclusion of CVC in Bundled TC-4 Offer	D+(E-F)x CVC price ³ : Estimated combined charge	Change comparing combined charges
12/1 Mbps (Capacity usage ≤ 0.1 Mbps) ¹	\$22.50	0.08 Mbps	0.15 Mbps	\$21.94	\$12.00	0.04 Mbps	0.00 Mbps	\$12.29	-44%
12/1 Mbps⁴ (Capacity usage > 0.1 Mbps)	\$22.50	1.06 Mbps	0.15 Mbps	\$29.78	\$24.40	0.87 Mbps	0.00 Mbps	\$31.36	5.3%
25/5 Mbps and 25/10 Mbps	\$37.00	1.94 Mbps	1.60 Mbps	\$39.69	\$26.00	1.59 Mbps	0.20 Mbps	\$37.10	-6.5%
50/20 Mbps and Wireless Plus	\$45.00	3.05 Mbps	2.65 Mbps	\$48.21	\$50.00	2.50 Mbps	2.50 Mbps	\$50.02	3.8%

¹ This offer is only available on **nbn** fixed-line networks, not fixed wireless or satellite.

² The current TC-4 CVC overage price is \$8.00/Mbps of provisioned CVC capacity.

³ The proposed TC-4 CVC overage price is \$8.00/Mbps of utilised CVC capacity, estimated based on July 2022 utilisation for like-for-like comparison.

⁴ Fixed wireless 12/1 Mbps services currently have a Bundles Discount charge of \$45, with 2 Mbps of provisioned CVC inclusions, equating to ~\$37.48 combined charge (reflecting that any CVC inclusions not used by these services can be used to offset usage by other services). The proposed SAU Bundled TC-4 Offer price represents a significant price reduction for the FW 12/1 broadband offer of more than \$6.

7.5.2 Pricing constraints from competition for mid- and high-data users

Non-**nbn** fixed-line operators have been expanding and increasing competition for high-profit margin customers in the mid- and high-data users category. RSPs who also operate mobile or fixed wireless networks are increasingly shifting metropolitan customers onto wireless technologies by marketing high speeds and value for money, focusing on low-usage customers where wireless networks have a natural cost advantage. This puts significant downward pressure on **nbn**'s take-up and revenue from this segment.

nbn must optimise its pricing structure such that it can offer competitive pricing for low-usage customers whilst optimising cost recovery for mid- to high-data users. **nbn** observes a strong correlation between the demand for bandwidth and an end-user's speed selection, with average- to high-usage customers typically selecting 50 Mbps or higher speed tier services. This segment accounts for 77% of **nbn**'s users and is critical in ensuring that **nbn** achieves overall cost reflective prices.



nbn's pricing proposal in the Variation optimises revenue recovery from this segment via a combination of marginal price increases (at less than the rate of inflation) and reduced pricing relativities between speed tiers, to incentivise upgrades by customers with higher price elasticity for speed. These price changes are expected to shift more cost recovery to this consumer cohort, in turn reducing upward pricing pressures on more price-sensitive cohorts of **nbn**'s customer base, improving access to the network in the longer term.

7.6 Transition period from CVC TC-4 to Flat-Rate Offers

7.6.1 A managed transition period is required

As discussed in section 7.4.2, **nbn** has agreed to move away from pricing with a CVC TC-4 component for most products by July 2026 to afford RSPs greater price certainty and reduced organisational complexity. However, **nbn** considers that the financial impacts for **nbn**, as well as the commercial impacts on some RSPs that would arise as a result of an immediate shift to AVC-only pricing, means that a transition period is required to phase out existing pricing with a CVC TC-4 component.

The removal of CVC TC-4 means **nbn** would have to increase wholesale AVC charges if it were to recover the same revenue from low-speed products. At the same time, RSPs would no longer have an incentive to offer data-capped plans that can be sold to consumers at lower prices than unlimited data plans. This means that some customers would see their plans immediately transition to unlimited data plans with higher minimum costs than under the current model. Considering the potential for some RSPs to transition low-data customers to their own networks, a study commissioned by **nbn** estimated that 70,000 customers would leave **nbn**'s network because of this price increase.⁵ Alternatively, **nbn** could maintain AVC charges on low-speed plans at its current level and shift the recovery of costs to speed tiers of 50/20 and above. However, as discussed in section 7.3, this would interfere with **nbn** sending efficient price signals. **nbn** considers it extremely challenging to both maintain cost-reflective prices and immediately remove the CVC overage charge.

nbn's pricing proposed in the Variation rebalances overage charges towards bundle fixed charges at a reasonable pace, minimising immediate impacts on low-usage consumers whilst delivering increased pricing certainty. At the same time, **nbn** intends to commence consideration of a new wholesale offer that is targeted at end-users with a low usage and basic connectivity requirement, potentially in the form of a wholesale data-capped offer. This offer is expected to bridge the pricing gap left by removal of usage charges on the entry level portfolio. **nbn** intends to commence industry consultation for such an offer no later than 1 July 2024, noting that such a data-capped offer will not be necessary until July 2026 when **nbn** has transitioned to Flat-Rate pricing on all TC-4 offers.

Table B3. Transitional pricing for CVC TC-4 overage charges*

Dates	CVC TC-4 Overage maximum price
1 July 2023 – 30 June 2024	\$8.00 per Mbps
1 July 2024 – 30 June 2025	\$7.00 per Mbps
1 July 2025 – 30 June 2026	\$6.00 per Mbps
1 July 2026 onwards	\$0.00 per Mbps

* Does not apply to Satellite services

⁵ Accenture, *The nbn Effect: How the nbn® Network Adds Value to Our Lives*, August 2021:

<https://www.nbnco.com.au/content/dam/nbn/documents/media-centre/media-statements/2021/accenture-consumer-value-report-2021.pdf>.



A transition period phasing out pricing with a CVC component (see Table B3 above) will also benefit competition between RSPs. **nbn** currently waives the overage charge on the first 1.5 Gbps of provisioned CVC TC-4 per POI, which reduces barriers to entry and expansion for smaller RSPs. Thirty of the smallest RSPs currently derive significant benefit from this waiver. The immediate removal of CVC TC-4 charges would thus disproportionately affect smaller RSPs and create a risk that retail competition will reduce.

During the transition period to AVC-only pricing, **nbn** will also reduce operational complexity for RSPs by only charging RSPs for the overage their customers actually use (i.e., a shift from charging for provisioned CVC TC-4 to one based on CVC TC-4 utilisation). **nbn** understands RSPs are concerned that the management of CVC provisions represents significant complexity, risk, and cost to RSPs. This measure will remove all CVC forecasting risk for RSPs, which will improve their financial stability and reduce their workload.

7.6.2 Commitment to adjust CVC TC-4 inclusions on lower speed tiers

nbn has previously received feedback from industry that using pricing consultations to set CVC inclusions under the TC-4 bundles discount is resource-intensive and that it provides little certainty to RSPs. Usage forecasts have also often been a source of contention between **nbn** and RSPs. To address these concerns, and consistent with measures included in the March Variation, **nbn** is committing in the Variation to move to a formula-based approach to set CVC inclusions for Bundled TC-4 Offers to reflect actual changes in network utilisation over time, providing 50% of any usage growth back to RSPs as CVC inclusion increases, and to increase the frequency of adjustment to twice a year to help smooth the effective price path.

This new approach to bundled inclusions is expected to significantly improve cost certainty for RSPs by substantially reducing **nbn**'s level of discretion in adjusting CVC inclusions. Increased frequency of the adjustment should reduce cashflow fluctuations for RSPs – with CVC inclusions for Bundled TC-4 Offers adjusting automatically every six months, CVC inclusions will keep in closer alignment with customer usage, which should in turn reduce unexpected CVC Overage. Finally, **nbn**'s commitment to provide 50% of any usage growth back as a bundle inclusion at no additional charge means that **nbn** is only monetising half of the potential overage growth (on those products that still have CVC), limiting the risk to RSPs of cost increases from potential demand shocks.

nbn notes that this commitment will only remain relevant until such time as **nbn** has transitioned existing Bundled TC-4 Offers to Flat-Rate Offers, which the Variation commits to having occur by no later than 1 July 2026. While only relevant for the First Regulatory Cycle of Module 2, this commitment will help provide an additional level of certainty to RSPs as the transition to Flat-Rate Offers takes place, and should reduce the level of pricing uncertainty that RSPs are exposed to during this period. See Box 1 for further details of these arrangements.

Box 1: Automatic adjustment to CVC inclusions for Bundled TC-4 Offers

nbn is committing to adjust the amount of included CVC TC-4 capacity for each Bundled TC-4 Offer after 1 July 2023 (except the 12/1 Mbps offer) twice each Financial Year on 1 January and 1 July (each an **Adjustment Date**). On and from each Adjustment Date, the applicable amount of CVC Inclusion in each Bundled TC-4 Offer will be adjusted in accordance with the following formula:

$$CVC\ Inclusion_{AD} = CVC\ Inclusion_{PAD} + CVC\ Inclusion\ Adjustment$$

where the **PAD** or **Previous Adjustment Date** refers to the immediately preceding Adjustment Date.

The **CVC Inclusion Adjustment** will be determined based on the below formula:

$$CVC\ Inclusion\ Adjustment = \frac{MBHT_{MP} - MBHT_{PMP}}{2} \times 50\%$$



where:

MP or Measurement Period means:

(i) in respect of an Adjustment Date of 1 January in a given year (t), the period between 1 April_(t-1) to 30 September_(t-1); and

(ii) in respect of an Adjustment Date of 1 July in a given year (t), the period between 1 October_(t-1) to 31 March_(t).

PMP or Previous Measurement Period means, in respect of a Measurement Period, the corresponding six-month period in the preceding calendar year.

MBHT or Mean Busy Hour Throughput means, in Mbps (rounded to two decimal places), in respect of the Bundled TC-4 Offer Group of which the Bundled TC-4 Offer forms part, the average National Daily Peak Utilisation across a Measurement Period or Previous Measurement Period (as applicable), calculated based on the sum of the National Daily Peak Utilisation for each day in that period, divided by the number of days in that period.

National Daily Peak Utilisation means on a given day for a given Bundled TC-4 Offer Group, the sum of Daily CSA Peak Utilisation across all CSAs and all Access Seekers, divided by the total number of AVC TC-4 Product Components in that Bundled TC-4 Offer Group supplied to all Access Seekers across all CSAs on that day.

Daily CSA Peak Utilisation means, in Mbps, on a given day for a given Bundled TC-4 Offer Group and a given Access Seeker in a CSA, the sum of download usage (in megabits) observed by nbn during the relevant Daily Peak Hour across all AVC TC-4 Product Components in that Bundled TC-4 Offer Group supplied on that day to that Access Seeker in that CSA, divided by 3,600 (seconds).

Daily Peak Hour means, on a given day for a CSA, the 60-minute period during which nbn observes the highest aggregate download usage (in megabits) across all AVC TC-4 Product Components supplied in that CSA on that day.

The formula provides for a smooth adjustment of CVC inclusions by calculating the absolute change in data usage between the average use of the immediately passed six-month period and the average use of the same period in the prior year, halved to transform from an annual to six-month change. 50% of the change in usage over the applicable six-month period is applied to the CVC inclusions (meaning, in the case of usage growth, increased inclusions at no additional charge).

nbn will inform RSPs of the relevant CVC inclusion that will apply two months before each Adjustment Date by updating the then-current Tariff List. These CVC inclusion adjustments will not apply to the 12/1 Mbps Bundled Offers. In addition to adjustments committed under the above formula, nbn may from time to time, by notice to RSPs increase the CVC inclusion for a Bundled TC-4 Offer.

An illustrative example of how the formula in Box 1 would apply in practice is provided in Box 2.



Box 2: Automatic CVC TC-4 Inclusion formula example (illustrative only)

To determine the CVC Inclusion Adjustment on 1 January 2024, the six-month average daily MBHT between 1 April 2023 and 30 September 2023 (MBHT_{MP}) will be subtracted from the six-month daily MBHT Average of the prior year (MBHT_{PMP}) between 1 April 2022 to 30 September 2022), and divided by two due to the adjustment occurring twice a year. The CVC Inclusion Adjustment will constitute 50% of this amount (usage risk equally shared between **nbn** and RSPs). The 1 July 2024 CVC Inclusion Adjustment would then follow in a similar manner and reference the difference in the average daily MBHT between the two six-month periods of 1 October 2023 to 31 March 2024 and 1 October 2022 to 31 March 2023.

The First Inclusion Adjustment in 2024 on 1 January 2024 for the 50/20 Mbps plan would be:

Baseline 50/20 Mbps inclusion: 2.50 (illustrative)

50/20 Mbps MBHT_{1 April 2023 and 30 September 2023} = 2.65 Mbps (illustrative)

50/20 Mbps MBHT_{1 April 2022 and 30 September 2022} = 2.45 Mbps (illustrative)

$$\text{CVC Inclusion Adjustment 1 Jan 2024} = \frac{2.65 - 2.45}{2} \times 50\% = 0.05 \text{ Mbps}$$

Updated 50/20 Mbps plan inclusion from the 1 January 2024 = 2.50 + 0.05 = 2.55 Mbps

The second Inclusion Adjustment in 2024 on 1 July 2024 for the 50/20 Mbps plan would be:

Updated baseline 50/20 Mbps inclusion: 2.55 Mbps (illustrative)

50/20 Mbps MBHT_{1 October 2023 to 31 March 2024} = 2.75 Mbps (illustrative)

50/20 Mbps MBHT_{1 October 2022 to 31 March 2023} = 2.55 Mbps (illustrative)

$$\text{CVC Inclusion Adjustment 1 July 2024} = \frac{2.75 - 2.55}{2} \times 50\% = 0.05 \text{ Mbps}$$

Updated 50/20 Mbps plan inclusion from the 1 July 2024 = 2.55 + 0.05 = 2.60

7.6.3 Implementation issues for new TC-4 Offers

The implementation of the Bundled TC-4 Offers and TC-4 Flat-Rate Offers, and the introduction of utilisation-based billing for the Bundled TC-4 Offers⁶ require system changes to be made by **nbn** and potentially by RSPs as well. It is likely that RSPs will want to consider new approaches to provisioning CVC capacity once the TC-4 Flat-Rate and Bundled TC-4 Offers are introduced, and **nbn** will be supporting additional flexibility for RSPs by introducing the capability to over-provision aggregate TC-4 bandwidth, such that the sum of the TC-4 CVC bandwidth may exceed the capacity of the NNI acquired by the RSP, which will also necessitate changing TC-4 CVC bandwidth from a Committed Information Rate (**CIR**) to a Peak Information Rate (**PIR**) basis. **nbn** is also making additional commitments in the Variation in relation to management of network utilisation, which will become increasingly important as all TC-4 services transition to Flat-Rate Offers. These implementation issues are discussed in detail in sections 10.4 and 10.5 of Part C of this Submission.

⁶ Note – utilisation-based billing will not apply for Satellite TC-4 services, which will continue with the current provisioned capacity approach.



7.7 NNI pricing

A number of RSPs have made submissions regarding **nbn**'s NNI charges. Specifically, these submissions have raised issues regarding:

- the scaling implications of the current NNI pricing structure, particularly for smaller-scale RSPs;
- the cost of setting up NNIs;
- the cost of Virtual NNI (**V-NNI**); and
- the difficulty for smaller RSPs to share NNI costs.

nbn understands these concerns and is looking to ensure these issues are appropriately addressed. **nbn** believes that this is best done via **nbn**'s existing product and pricing development processes rather than by including commitments in the Variation. These issues warrant appropriate time and attention which, given the timeline of the Variation, **nbn** does not believe can occur prior to lodgement. Attempting to do so would create risks that inadequate fixes are locked in for the long term.

Instead, **nbn** has:

- provided immediate pricing relief to RSPs by reducing the recurring charges for the 1G NNI (1000BaseLX and 1000BaseEX) and V-NNI by 50%, effective 1 November 2022, implemented as price changes and reflected in updated Maximum Regulated Prices in the Variation; and
- commenced industry consultation on NNI pricing and upgrade path issues. This industry consultation process commenced on 31 October 2022 and will run in parallel to the ACCC's assessment of the Variation.

7.8 Low-income measures

nbn is focused on lifting the digital capability of Australia, and is aware of the need to consider all cohorts of end-users, particularly the more vulnerable. This reflects the purpose set for **nbn** by Government to provide fast, reliable and affordable connectivity, to promote digital inclusion and equitable access to affordable and reliable broadband services. To date, **nbn** has put in place over 20 initiatives and programs specifically targeting low-income, vulnerable and unconnected end-users.

Affordability is a complex policy issue and there are several factors, including affordable access to devices and digital literacy, which influence the perceived affordability of broadband services in Australia and several ways in which those affordability concerns can be addressed.

These issues are beyond the scope of the SAU. However, as a contribution to addressing affordability, **nbn** has made a commitment in the Variation to establish a working group to continue to consult on, and develop, targeted initiatives to improve access for low-income users. **nbn** believes that the commitment is appropriate at this time, given the role that **nbn** will increasingly play in ensuring that as many end-users as possible are able to access broadband services.

The commitment will apply throughout the Subsequent Regulatory Period of the SAU, is reflected in the Pricing Principles that **nbn** must have regard to changing or setting new prices, and will sit beside the other initiatives and programs that **nbn** has already put in place to support low-income, vulnerable and unconnected end-users, and which are being progressed with industry consultation and engagement.



From **nbn**'s inception, there has been an expectation from Government that **nbn** would have a focus on providing affordable access to broadband services to all Australians. In the first Statement of Expectations issued to **nbn** in 2010, the then Shareholder Ministers identified that:⁷

access to affordable high speed broadband is essential to the way Australians communicate and do business. It will drive productivity, improve education and health service delivery and better connect our cities, regional, rural and remote communities.

Having completed the scale rollout of the network in 2020, it is now critical that the benefits provided by this network are made as widely available as possible, to deliver on the expectations of Government and the wider community.

Previous consultation on low-income measures has given rise to a range of views within the industry. While there is a degree of support for **nbn** bringing a broad-based low-income offer to market, there is not a clear consensus on how such an offer should be funded. For example, if **nbn** were to introduce a broad-based low-income offer, this could be financially challenging for **nbn** and the industry, and would lead to price increases for full-priced services if implemented through a cross-subsidy. Some RSPs have instead expressed a preference that a broad-based low-income offer could be addressed in the retail market or by Government.

As acknowledged in the ACCC convened working groups in 2021, affordability is a complex policy issue and there are several factors (including affordable access to devices and digital literacy) which influence the perceived affordability of broadband services in Australia, and several ways in which those affordability concerns can be addressed. **nbn** considers that it is not the role of the SAU to solve these complex social policy issues through a broad-based offer.

The alternative approach posited by **nbn** during consultation with RSPs is for **nbn** to continue progressing its efforts in lifting the digital capability of Australia through targeted approaches to reach low-income households, including through discounting and rebates from time to time. **nbn** considers that this remains an appropriate option to address any affordability concerns identified by **nbn**, the industry and the ACCC over time and accordingly **nbn** does not propose to include any specific low-income offer in the SAU.

nbn believes that there is scope to improve cross-industry discussion on supporting low-income and other vulnerable groups of end-users, and therefore **nbn**'s Variation includes the following commitments, which will apply during the Subsequent Regulatory Period of the SAU (i.e., until FY32):

1. **nbn** commits to convening an annual industry working group on low-income and related accessibility issues;
2. this group will be convened and chaired by **nbn**, and will be focused on targeted initiatives to improve access for low-income, vulnerable and unconnected end-users to the **nbn**[®] network;
3. **nbn** would provide a report before each forum on progress of its targeted initiatives to improve access for low-income, vulnerable and unconnected end-users;
4. the working group will be open to representatives of not-for-profit, telecommunications and consumer advocacy groups, government agencies and RSPs. **nbn** may establish reasonable limits on the number of working group members and meeting participants (such as by asking some groups to be representatives of a broader set of members), to promote meaningful engagement; and
5. **nbn** will also commit to publishing an annual update on its activities in relation to low-income, vulnerable and unconnected end-users.

⁷ Statement of Expectations to **nbn**, December 2010, <https://www.nbnco.com.au/content/dam/nbnco/documents/statement-of-expectations.pdf>



nbn notes that this is an expanded commitment relative to that proposed in the March Variation, which only committed to convening the low-income forum during the First Regulatory Cycle of the Subsequent Regulatory Period. **nbn** believes that this longer-term commitment is appropriate, given the increasing role that **nbn** plays in ensuring that as many Australians as possible are able to access the network that has been put in place over the last decade. Direct engagement with all relevant stakeholders will increase the likelihood of more effective solutions being developed.

In addition to this commitment, **nbn** has already put in place over 20 initiatives and programs targeted at various low-income, vulnerable and unconnected end-users, including low-income families, older Australians, indigenous and remote communities,⁸ and those with disabilities, which are being progressed with industry consultation and engagement. These include Digital Inclusion 4 Online Learning,⁹ Retirement Village Pilot, Communities in Isolation program, and our Seniors campaign.¹⁰ Further details of **nbn** initiatives are provided in **nbn**'s Annual Report for 2022, in the "Customer experience, partnerships and connected communities" section.¹¹

7.9 Treatment of planned products

The Variation also addresses the treatment of specific new TC-4 products that **nbn** anticipates will be introduced prior to the transition date to the TC-4 Flat-Rate Offers and Bundled TC-4 Offers described in this chapter. The new products include:

- the Fixed Wireless Home Fast and Fixed Wireless Home Superfast speed tiers,¹² which **nbn** commenced consultation on in August 2022 via the Product Development Forum (**PDF**); and
- the Smart Places NBN Offers for the new **nbn** Smart Places product,¹³ which will extend fibre connectivity to certain non-premises locations, which **nbn** commenced consultation on in June 2022 via the PDF.

Consultation and development of these new TC-4 products is well advanced, and should **nbn** ultimately decide to introduce them prior to the new price constructs coming into effect, it is important that the Variation provides appropriate treatment of them. The Variation explicitly addresses the transition of existing products to the new pricing constructs on and from the Price Transition Date,¹⁴ and in particular ensures that RSPs get the benefit of these new products having their pricing converted to the Flat Rate and Bundled TC-4 Offers that will apply to the already existing **nbn** Ethernet TC-4 services.

Given that these are new products which have not yet been introduced, the Variation preserves the ACCC's existing power to make a resetting regulatory determination on the prices they are introduced at, for up to 24 months from the time they are introduced.¹⁵

⁸ See, for example: "Customer experience, partnerships and connected communities" section of **nbn**'s Annual Report 2022, pp. 38-39:

<https://www.nbnco.com.au/content/dam/nbn/documents/about-nbn/reports/reports-and-publications/Customer-experience-partnerships-and-connected-communities.pdf>.

⁹ See, for example: <https://www.nbnco.com.au/content/dam/nbn/documents/sell/testing-arrangements/2021/sfaa-test-description-digital-inclusion-for-online-learning-trial-20211101.pdf>.

¹⁰ See, for example: <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-encourages-seniors-to-embrace-the-internet-and-enjoy-more-meaningful-connections>.

¹¹ **nbn**, Annual Report 2022, pp. 30-39: <https://www.nbnco.com.au/content/dam/nbn/documents/about-nbn/reports/financial-reports/nbn-co-annual-report-2022.pdf>

¹² Variation, cl 2B.3.1.

¹³ Variation, cl 2B.3.3.

¹⁴ As per cl 2B.1.4(a) of the Variation, this is the date on which **nbn** first supplies the Flat Rate Offers and Bundled TC-4 Offers, which must be on or before the later of 1 July 2023 and three months following the date the Variation is accepted.

¹⁵ Variation, cl 2F.5.3.



8 Weighted Average Price Control and other pricing commitments

8.1 Introduction

nbn recognises the importance of forward-looking price certainty for RSPs, including to enable RSPs to structure retail offerings based on **nbn** services. This will support RSPs' ability to optimise and position their retail service offerings and, in turn, will promote retail competition for **nbn**-based services.

In response to the ACCC's feedback on **nbn**'s March Variation, **nbn** is proposing to adopt a broad-based Weighted Average Price Control (**WAPC**) for all **nbn** services with only limited exceptions.

The WAPC covers recurring and non-recurring charges for all **nbn** services other than those categorised as Competitive Services, and subject to the exclusion of a limited number of charges that are not well-suited to a WAPC (e.g., charges expressed on a time and materials basis).

In addition to the broad-based WAPC, **nbn**'s proposal also includes sub-caps that limit the price changes that can be made to particular individual products within the overall basket control.

nbn's proposed WAPC promotes:

- **allocative efficiency** by providing a financial incentive for **nbn** to maximise revenue (subject to applicable individual price controls) by adapting its relative prices over time;
- **dynamic efficiency** by providing a financial incentive for **nbn** to invest in (and encourage RSPs to invest in) products that meet the evolving needs of end-users; and
- **competition** by creating a workable level of certainty for RSPs to plan, undertake and manage their investments in **nbn**-based services.

In addition to the WAPC, the Variation delivers a range of other measures that enhance the certainty and transparency of **nbn**'s wholesale pricing, including:

- the establishment of **Pricing Principles** that apply for the Subsequent Regulatory Period;
- provision of a **Statement of Pricing Intent** by **nbn** for each Regulatory Cycle;
- annual publication of a **Tariff List**, and **three-year Pricing Roadmap**; and
- additional commitments in relation to **nbn**'s use of discounts.

The package of measures included in the Variation provides RSPs with increased certainty and predictability on **nbn**'s wholesale prices.

The price control measures described in this chapter relate to the Subsequent Regulatory Period (to the end of FY32), with the price control arrangements in the Post-2032 Regulatory Period to be established at that time.



8.2 The WAPC

8.2.1 Overview of the WAPC

In the Variation, **nbn** is proposing to adopt a broad-based WAPC for all **nbn** services with only limited exceptions. In doing so, it is taking up the feedback received in response to the March Variation. This framework applies throughout the Subsequent Regulatory Period (i.e., until FY32). The table below describes the key features of the WAPC included in the Variation.

Table B4. Key features of the WAPC

Feature	Description
Scope of the WAPC	The WAPC covers recurring and non-recurring charges for all nbn services other than those categorised as Competitive Services, and subject to the exclusion of a limited number of charges that are not well-suited to a WAPC (e.g., charges expressed on a time and materials basis).
A transition to 'cost-reflective' price levels, as nbn does not presently recover its ABBRR and will not do so for several years	Under the WAPC, the 'basket' of prices will be allowed to increase each year on average (on a 'use-it-or-lose-it' basis) at: <ul style="list-style-type: none"> • CPI during an initial glidepath period (i.e., before nbn is expected to first achieve its Core Services ABBRR, which is currently expected to be between FY30-32); and thereafter • a percentage that allows nbn's forecast annual revenues from services covered by the WAPC (based on allowable Core Services BBM revenues and a defined ICRA drawdown) over the Regulatory Cycle in present value terms.
A range of sub-caps (individual price controls) for products included in the WAPC	<ul style="list-style-type: none"> • The Average Combined Charge on the Entry Level Offer will not increase by more than the percentage change in CPI per year – this TC-4 offer is available on nbn's fixed-line and fixed wireless networks and is initially the 25/5 Mbps service. • With the exception of the Entry Level Offer, the Average Combined Charge for each Bundled TC-4 Offer and the price for each TC-4 Flat-Rate Offer will not increase by more than 5% or the percentage change in CPI per year (whichever is greater) – these offers are available on nbn's fixed-line and fixed wireless networks. See Box 3 below for further details. • The Entry Level Offer will be reviewed and changed if appropriate to a different speed tier. • The AVC price of Satellite TC-4 products will not increase by more than the percentage change in CPI per year, while the CVC (TC-4) price for Satellite will not increase above its current price.
Past period weights	Consistent with standard implementations of a WAPC, nbn proposes the use of 'past period' weights. For setting prices in the next Financial Year, these weights will be based on actual quantities over the 12-month period ending on 31 March of the current Financial Year. ¹⁶
Introduction of new services and withdrawal of existing services	<ul style="list-style-type: none"> • The ACCC retains the power to review prices of new services for two years after introduction. • New services introduced in the 12-month period between 1 April and 31 March will be included in the WAPC from the subsequent 1 July. • The ACCC will retain the power to veto the withdrawal of a product covered by the SAU's service description. • Withdrawn services will be subject to special treatment under the WAPC that captures the price impact of moving existing demand to alternative services. The ACCC will have a role in approving this treatment for services with a recurring charge.

¹⁶ Using these weights avoids the problem that in setting tariffs from 1 July, the relevant weights would not be known at the time of announcing the tariffs (1 May).



Feature	Description
Cost pass-throughs and compliance factors	<p>As well as the CPI and X terms, the formulation of the price control includes ‘PT’ and ‘EM’ factors,¹⁷ which relate to:</p> <ul style="list-style-type: none"> • (PT) allowable ‘cost pass-throughs’ for defined (and ACCC-approved) cost changes; and • (EM) an ‘excess mechanism’ adjustment that provides for a reduction in future prices to the extent the actual weighted average price change exceeded that allowed. This may arise because of a divergence between the forecast and actual usage of CVC demand for bundled TC-4 services.
Use of TC-4 combined charge and bundle offer group for price control purposes	<p>nbn’s proposal to use a TC-4 combined charge in the application of the WAPC and individual sub-cap price controls provides additional certainty to RSPs as the combined charge considers both the fixed bundle charge as well as the average average charge incurred by RSPs in acquiring the bundled offer, ensuring that the WAPC and sub-cap frameworks account for price movements driven by changes in usage of the network. In addition, the proposed methodology of measuring average usage across multiple offers in each bundle offer group provides additional price certainty and stability, accounting for the impact of end-user migrations between bundled offers within the same group.¹⁸</p>

Box 3: Treatment of Bundle Offer Groups using Average Combined Charge

The use of an Average Combined Charge for the WAPC and individual price controls involves measurement of National Daily Peak Utilisation for each Bundled TC-4 Offer, which can create a number of practical challenges, including small sampling issues for some technology variants or niche speed tiers resulting in pricing volatilities. In addition, end-user migrations en masse on key speed tiers could also have distortionary impacts on combined charge measurements.

To overcome these challenges, **nbn** has proposed the following grouping for Bundled TC-4 Offers. The National Daily Peak Utilisation measurement for each group will include all services from its constituent Bundled TC-4 Offers, and each constituent Bundled TC-4 Offer will report the same National Daily Peak Utilisation for price control and inclusion adjustment purposes. This is expected to deliver significantly higher stability in the combined charge measurement and accurately reflect price movement rather than those potentially artificially created from migrations.

Bundled TC-4 Offer Group	Bundled TC-4 Offers
Voice Only Group	12/1 Mbps (Voice only)
Entry Level Group	12/1 Mbps (Non-Voice Only), 25/5 Mbps, 25/10 Mbps, 25/5-10 Mbps.
Mass Market Group	50/20 Mbps, 25-50/5-20 Mbps, FW Plus (75/10 Mbps)

¹⁷ That is, for a given year *t*, **nbn’s** prices are bound by the following equation:

$$(1 + CPI_t)(1 - X_t)(1 + PT_t)(1 + EM_t) \geq \frac{\sum_{m=1}^M p_t^m q_{t-1.25}^m}{\sum_{m=1}^M p_{t-1}^m q_{t-1.25}^m}$$

¹⁸ The combined charge for a bundled offer is sensitive to the average network utilisation measured for that offer. In the instance where significant migration is expected between two **nbn** bundled offers, and where customers on the offers exhibit materially different utilisation levels, the migration is expected to have a distortionary impact on the average usage of at least one of the bundled offers. For example, migration of customers from 12/1 Mbps service to 25 Mbps services is expected to significantly reduce the average usage of the 25 Mbps service, leading to a reduction in the combined charge for the 25 Mbps service over time. **nbn** proposes that the utilisation for the 12/1 Mbps broadband, 25/5 Mbps and 25/10 Mbps services to be measured as a single bundled offer group, accounting for the impact of end-user migrations between bundled offers within the same group, and ensuring that the combined charge for the purpose of WAPC and sub-cap compliance is not influenced by this migration.



The stylised example below sets out the practical implications of Bundle Offer Groups in a scenario where half of the 12/1 Mbps broadband users are migrated to the new entry level 25/5 Mbps offer.

Baseline	Services	Utilisation	Combined Charge
12/1 Mbps (Non-VO)	400,000	0.80	\$30.80
25/5 Mbps, 25/10 Mbps	1,000,000	1.60	\$37.20
Total	1,400,000	1.37	\$35.40

Hypothetical Migration Scenario - No Grouping	Services	Utilisation	Combined Charge
12/1 Mbps	200,000	0.80	\$30.80
25/5 Mbps, 25/10 Mbps	1,200,000	1.47	\$36.10
Total	1,400,000	1.37	\$35.40

Hypothetical Migration Scenario - Bundled TC-4 Offer Group	Services	Utilisation	Combined Charge
12/1 Mbps	200,000	1.37	\$35.40
25/5 Mbps, 25/10 Mbps	1,200,000	1.37	\$35.40
Total	1,400,000	1.37	\$35.40

Based on current network utilisation observations, 12/1 Mbps customers have significantly lower usage compared to customers on 25 Mbps. Without the Bundled TC-4 Offer Group approach to measuring utilisation, migration of customers from 12/1 Mbps service to 25 Mbps services is expected to significantly dilute the average utilisation of the 25 Mbps offers, leading to a reduction in the reported combined charge for the 25 Mbps offers, and reductions to the CVC inclusion of the 25 Mbps offer (based on the 50% automatic adjustment formula), also noting that the 12/1 Mbps offer is not eligible for inclusion adjustments. **nbn's** proposed Bundled TC-4 Offer Group treatment accounts for the potential distortionary impact of these migrations and ensures that combined charge for the purpose of WAPC and sub-cap compliance is stable and accurately reflecting underlying changes in pricing.

8.2.2 The WAPC promotes economic efficiency

A WAPC of the form proposed by **nbn** can produce wholesale prices that are likely to promote the achievement of productive, allocative and dynamic efficiency.¹⁹

8.2.2.1 Promoting productive efficiency

The WAPC promotes productive efficiency by setting a control on wholesale prices that allows revenues to diverge from costs over a regulatory period, with no (or only partial) true-ups in subsequent periods. One of the resulting financial incentives is to minimise costs (subject to meeting relevant service and other standards), and hence promote productive efficiency, in order to maximise profits.

¹⁹ As noted in the Frontier Economics report accompanying this Submission, this is well supported in the academic literature on price caps. See Frontier Economics, *Further assessment of NBN Co's proposed SAU pricing arrangements*, November 2022, p. 13.



8.2.2.2 Promoting allocative efficiency

The WAPC promotes allocative efficiency by providing a financial incentive for **nbn** to maximise revenue (subject to applicable individual price controls) by adapting its relative prices over time. **nbn** will maximise its profits by appropriately factoring in changes in end-user willingness to pay that also reflect the nature and extent of infrastructure-based competition.

nbn considers that it is well understood that:

- efficient use of infrastructure requires that the access price for a service should recover no less than the incremental cost of providing a service;
- if the price of each service is set only to recover the incremental costs of providing that service, there are a number of costs that **nbn** is unable to recover. This is because there are a number of costs that are not incremental to any particular service, but that instead are common to a number of services; and
- if **nbn** is to recover its efficient costs overall, **nbn** will need to set prices to earn more than incremental costs relating to each of its services.

nbn is subject to significant competitive and commercial constraints on its pricing, preventing it from raising prices to a level that would allow it to recover its ABBRR. As a result, **nbn** is strongly motivated to minimise losses driven by these constraints by adopting price structures that are efficient, in the sense that the prices:

- maximise profit by efficiently marking up incremental costs, taking into account willingness to pay; but
- do not allow for over-recovery of (annualised) costs overall.

8.2.2.3 Dynamic efficiency

The WAPC promotes dynamic efficiency by providing a financial incentive for **nbn** to invest in (and encourage RSPs to invest in) products that meet the evolving needs of end-users. The treatment of new products in the WAPC, in particular the delayed X-factor reset until the start of the next Regulatory Cycle, allows **nbn** to increase its revenues through innovation. **nbn** will maximise its profits by introducing new products that generate incremental revenues that exceed their incremental costs. Such new products will be complementary to existing products or substitutes to existing products that attract a higher willingness to pay from end-users.

More generally, the proposed WAPC also promotes dynamic efficiency by providing **nbn** and RSPs with regulatory certainty about **nbn**'s path towards cost recovery, and how the WAPC will apply once **nbn**'s forecast revenues converge with its forecast costs (ABBRR). This certainty will promote ongoing investment by **nbn** and RSPs.

8.2.3 The WAPC promotes competition

In addition to promoting economic efficiency, **nbn**'s WAPC proposal promotes competition by creating a reasonable level of certainty for RSPs to plan, undertake and manage their investments in **nbn**-based services, while allowing **nbn** to respond to changing market demand conditions. An overly onerous pricing certainty commitment would undermine the utility of the WAPC in promoting allocative and productive efficiencies. Rather, the approach should be balanced, taking into account the specific characteristics of broadband services,



which operate in a more dynamic market than other kinds of utility services. This was recognised by the ACCC in its consideration of the FANOC SAU:²⁰

... market conditions – such as cost and demand conditions – relevant to pricing access for gas and electricity assets are (to a large degree) reasonably well understood both by the regulator and market participants ... Using a weighted average price cap in these circumstances is likely therefore to result in more stable and predictable adjustments to prices over time. This differs from the case of broadband services, where both the cost involved and the demand for the services are less certain, and may require substantial price variations over time to allow prices to adjust to evolving market conditions.

In that context, the protections afforded by **nbn**'s WAPC allow for a reasonable degree of price certainty, as:

- the application of the WAPC and sub-cap price controls on a 'use-it-or-lose-it' basis prevents **nbn** banking price changes over multiple years and then applying them in a single year;
- the maintenance of a CPI cap on the entry level product both provides certainty for that product but also acts as an 'anchor' for price changes on other products via substitution effects;²¹
- products with bundled CVC inclusions are accounted for in the WAPC and the applicable 5% or CPI sub-caps on an 'Average Combined Charge' basis, and are subject to both ex-ante and ex-post compliance tests on those sub-caps;
- in respect of Bundled TC-4 Offers and Flat-Rate Offers (which are not Entry Level Offers), the greater flexibility to change the price remains limited to the greater of 5% or CPI, meaning that in times of moderate inflation (say 3%), real price increases of less than 2% will be allowed at maximum (balanced against lower price increases for other products). For example, an **nbn** offer with a \$70 wholesale price could only experience a real price increase of less than \$1.50 per customer per month;²² and
- the Pricing Roadmap to be published by 1 May in a given Financial Year sets out the maximum Prices for the next Financial Year (Year 1 of the Pricing Roadmap) and indicative prices for two subsequent Financial Years (Year 2 and Year 3 of the Pricing Roadmap). The prices in Year 2 of the Pricing Roadmap will be constrained in terms of the relativity between prices when the Tariff List is subsequently set by **nbn** for that year.

Finally, **nbn** notes that the degree of certainty it provides to RSPs appears greater than that which RSPs provide to their own retail customers, with RSPs generally able to implement retail price increases with a typical 30-60-day notice period. Similarly, **nbn**'s proposals offer no less certainty than that offered by retailers to customers for other kinds of telecommunications services, where price changes can occur much more frequently,²³ or in other regulated industries.²⁴

²⁰ ACCC, *Assessment of FANOC's Special Access Undertaking in relation to the Broadband Access Service – Draft Decision*, December 2007: <https://www.accc.gov.au/system/files/ACCC%20draft%20decision%20on%20FANOC%20SAU%20-%20Dec%2007.pdf>.

²¹ That is, while there is a general sub-cap on changes in prices of TC-4 products of the greater of 5% or CPI, there will be further limits imposed by the entry level sub-cap at CPI because the difference in price between the entry level product and other products is tied via a chain of substitution. This is further analysed in the Frontier Economics report, which further highlights why a stricter (sub-CPI) control would increase **nbn**'s cost recovery risks.

²² For example, with a CPI of 3%, the \$70 per customer per month Home Ultrafast plan could only increase in real terms by $\$70 \times \frac{(1+5\%)}{(1+3\%)} - \$70 = \$1.36$.

²³ For example, Telstra has recently introduced an annual pricing review into its post-paid mobile data plans, and "prices may increase by Consumer Price Index in July each year"; see: <https://www.telstra.com.au/support/mobiles-devices/our-plans-and-pricing-are-changing> (accessed October 2022); Optus provides for its month-to-month plans to increase on 30 days' notice; see: <https://www.optus.com.au/mobile/plans/shop> (accessed October 2022).

²⁴ **nbn** understands that most regulatory regimes in Australia allow for yearly price changes.



8.3 Other measures that promote price certainty

nbn recognises the importance of providing reasonable forward-looking price certainty for RSPs, including to enable RSPs to structure retail offerings based on **nbn** services. This will support RSPs' ability to optimise and position their retail service offerings and, in turn, will promote retail competition for **nbn**-based services.

Pricing predictability should also give RSPs enough confidence in their forecasted costs to invest in marketing **nbn**'s products. This could potentially increase the number of end-users on the network and allow customers to make more informed choices about their preferred speed tiers.

The Variation contains an integrated package of measures that addresses RSPs' concerns about the degree of pricing certainty they face, while still affording **nbn** the ability to respond to changing market conditions.

As set out in the preceding section, **nbn**'s proposed WAPC and sub-caps on individual services provide a long-term constraint on price increases and will help to deliver greater pricing certainty to RSPs. In addition, the Variation introduces Pricing Principles into the SAU to provide clarity over the matters to which **nbn** must have regard in setting new Prices.

Prior to the start of each Regulatory Cycle, **nbn** is committing to publish a Statement of Pricing Intent that will describe **nbn**'s pricing objectives over that Regulatory Cycle. By 1 May each year, **nbn** will publish an annual SAU Tariff List and a three-year Pricing Roadmap. The SAU Tariff List will set out the Prices that would become maximum Prices from 1 July of that year.

The three-year Pricing Roadmap will set out indicative (non-binding) prices for the second and third year. The Statement of Pricing Intent, annual SAU Tariff List and three-year Pricing Roadmap will need to have regard to the Pricing Principles. In addition, a new 'relativity' mechanism will prevent **nbn** from setting prices for TC-4 services that materially differ (relative to each other) from the prices published in its Pricing Roadmap the year before.

The Variation also delivers a number of new commitments in relation to **nbn**'s use of discounts, and provides the ACCC with powers in relation to them.

nbn considers that this package of measures increases transparency and price certainty for RSPs, and promotes the LTIE.

8.3.1 Establishment of Pricing Principles

It is both efficient and commercially rational for **nbn** to set its prices in ways that account for both its own costs and the willingness to pay of end-users for a different service. This requires judgement and discretion over prices, particularly given the multi-product nature of **nbn**'s networks and the competition that **nbn** faces from other services, such as mobile and fixed wireless.

In the ACCC May 2022 consultation paper, the ACCC noted that regulated firms in other sectors give firm commitments that their pricing discretion will be exercised in an agreed-on manner.²⁵ **nbn** agrees that it is reasonable to provide further clarification on how any **nbn** pricing discretion will be exercised to achieve desirable outcomes. Pricing principles provide a useful way of setting out the key objectives that **nbn** is seeking to achieve when setting its prices, as well as constraints to its discretion. In developing these principles, **nbn** has had regard to regulatory frameworks that apply to firms in other sectors (such as energy and water), where similar principles are used to constrain a utility's pricing discretion to achieve specified outcomes.

²⁵ ACCC, *Proposed variation to the NBN Co Special Access Undertaking*, Consultation paper, May 2022, p. 27: <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/national-broadband-network-nbn-access-regulation/nbn-co-sau-variation-march-2022/consultation-paper>.



As such, **nbn** has included a set of Pricing Principles in the Variation. The SAU will require **nbn** to have regard to these principles when changing prices or setting new prices over the term of Module 2 (i.e., until the end of FY32). These principles and their rationale are described in Table B5.

Table B5. Proposed Pricing Principles and their rationale

Pricing principle	Rationale
When changing prices or setting new prices, nbn will have regard to:	
The efficient costs of nbn supplying services.	To ensure that nbn considers whether and how its prices relate to efficient costs, and thereby promote prices that enhance allocative efficiency.
The objective of maximising efficient network access to, and usage of, the nbn [®] network.	As above, and including how efficient costs are recovered across different services.
The objective of maintaining affordable access to its network.	To be consistent with the Government’s policy objective of maximising the economic and social benefits of the network by reliably and affordably meeting the current and future broadband needs of households and businesses.
The objective of maintaining a diversity of offers at a reasonable price relative to each other.	To provide for end-user choice and mitigate concerns that nbn will use its pricing discretion to migrate consumers to higher-value products where end-users do not attach additional value to these products.
The ability of nbn ’s customers and end-users to manage price transitions.	To ensure that nbn will take into account (for example) operational considerations for its customers relating to migrations of end-users between plans.
The outcomes of the Low-Income Forum.	To ensure that nbn accounts for its commitment to the multilateral working group to identify possible targeted initiatives to improve access to the nbn [®] network for low-income, vulnerable and unconnected users. See section 7.8 for further details on the proposed operation of this forum.

nbn considers that the proposed Pricing Principles respond to, and are consistent with, the views put forward by stakeholders in terms of ensuring access to affordable services and improving price certainty. At the same time, the principles recognise that in setting prices, **nbn** must have regard to its ability to recover its efficient costs overall. How the potential trade-offs between these objectives will be managed and resolved in the future will be detailed through the Statement of Pricing Intent described in the next section.

8.3.2 Measures to promote tariff transparency and predictability

To ensure that RSPs have a clear view of **nbn**’s pricing directions at any point in time, **nbn** is proposing to publish a Statement of Pricing Intent, an annual SAU Tariff List and a three-year Pricing Roadmap. These work together with the WAPC and Pricing Principles to provide RSPs with short-, medium-, and long-term visibility of the direction of **nbn**’s pricing, thus providing them with greater confidence to invest in the development of their product and marketing strategies.



8.3.2.1 Statement of Pricing Intent

The Statement of Pricing Intent will be published by 1 May preceding the start of each Regulatory Cycle, and will apply for all years of that Regulatory Cycle. The Statement of Pricing Intent provides RSPs, consumers and other stakeholders with clear and accessible information about upcoming **nbn** pricing strategies in each three- to five-year Regulatory Cycle. The Statement of Pricing Intent will describe **nbn**'s medium-term pricing objectives and strategies, as well as providing information on how **nbn** is considering the broader context within which the prices will be set.

The Statement of Pricing Intent will set out a description of:

- the financial objectives **nbn** is seeking to achieve, including TC-4 target volumes, mix, and ARPU;
- the pricing strategies that **nbn** intends to adopt, and how they take into account the Pricing Principles;
- any intended change to price structures; and
- areas of likely product innovation and development that are expected to influence **nbn**'s prices.

nbn can only update the Statement of Pricing Intent for a Regulatory Cycle if there has been a material change in circumstances that was beyond **nbn**'s reasonable control and that could not have been foreseen. Any such change can only be made after **nbn** consults with RSPs and provides them with at least 12 months' notice, or if an update is approved in writing with the ACCC.

8.3.2.2 Tariff List and three-year Pricing Roadmap

The Tariff List will be published by 1 May each year and include the Prices that will apply from the start of the next Financial Year (i.e., 1 July) for all Core Services covered by the SAU. This should allow ample time for RSPs to adjust prices, notify customers, and adjust marketing accordingly – noting that month-to-month contracts are increasingly common choices for consumers.²⁶

The three-year Pricing Roadmap will be published by 1 May each year and include indicative (non-binding) prices for the following two years (i.e., the two years following the year covered in the Tariff List).

Both the SAU Tariff List and three-year Pricing Roadmap will be consistent with the WAPC framework and **nbn**'s Statement of Pricing Intent. As described above, **nbn**'s proposed WAPC and sub-caps on individual services provide a long-term constraint on price increases and will help to deliver greater pricing certainty to RSPs.

The Prices set out in the Tariff List will provide RSPs with visibility, before the start of each Financial Year, of any changes **nbn** proposes to make to its Prices at the start of the Financial Year (e.g., to account for the change in CPI allowed by the WAPC framework, as discussed in the preceding sections). The Prices in the SAU Tariff List will become the maximum Prices **nbn** can charge for the upcoming Financial Year. This will provide transparency by providing RSPs with visibility over maximum potential prices over the course of the Financial Year, and clearly establish the baseline from which prices can evolve in future years under the WAPC framework.

While some RSPs have suggested that the period of binding tariffs should be extended beyond one year, **nbn** considers there is little evidence that providing binding wholesale prices two years ahead is necessary to promote the LTIE. RSPs have noted that because **nbn** was providing price certainty of up to two years on its TC-4 Bundles Discount, this should be brought into this SAU. **nbn** notes that the circumstances surrounding the Bundles Discount Pricing Roadmap do not apply to the proposed pricing structure in the Variation, as **nbn** is now putting

²⁶ **nbn** understands from RSPs that lock-in contracts represent a minority of consumers, in some cases less than 20% of total subscribers.



forward a package of pricing commitments and structural pricing reforms that fundamentally change the level of pricing certainty delivered to RSPs.

nbn may update the SAU Tariff List during a Financial Year, but may only lower prices set out in the SAU Tariff List published on 1 May prior to the start of that Financial Year.²⁷ **nbn** will keep the SAU Tariff List current throughout the Financial Year. That is, any reduction in Prices to a level below the maximum Prices will be reflected in the Tariff List. These commitments provide RSPs with further assurance that they will be protected from unforeseen price increases.

Finally, the Variation includes a new relativity mechanism to prevent **nbn** from setting prices for TC-4 services in the SAU Tariff List that are materially different (relative to each other) to the prices it had published in its three-year Pricing Roadmap from the year before. This mechanism will ensure that **nbn** will not be able to significantly change pricing relativity in a way that could impact RSPs' commercial and investment decisions. This new mechanism is described in Box 4.

nbn considers that this relativity mechanism will help to provide greater pricing certainty to RSPs by significantly limiting **nbn**'s ability to deviate from the relativities between the indicative prices provided for the second year in each three-year Pricing Roadmap. At the same time, **nbn** considers that the mechanism provides sufficient flexibility to **nbn** to optimise pricing efficiency in response to changing market circumstances. **nbn** does not consider that more onerous controls, such as binding prices for years beyond the first year, are justifiable in light of **nbn**'s need to adjust and rebalance prices to dynamically respond to the market.

Box 4: Relativity mechanism to increase year-to-year price certainty

Under this mechanism, **nbn** will calculate a parameter (δ^m) for all m TC-4 services that reflects the difference between:

- the indicative price for the TC-4 service that was published in **nbn**'s three-year Pricing Roadmap from the year before (i.e., the second-year pricing in the Pricing Roadmap published on 1 May the year before); and
- the proposed price for the TC-4 service that will apply from the start of the next Financial Year (i.e., from 1 July following the published SAU Tariff List).

When setting the prices in the SAU Tariff List, **nbn** will ensure that the spread between the minimum and maximum values of δ^m does not exceed \$1 (i.e., $Max\{\delta^m\} - Min\{\delta^m\} \leq \1). This will prevent **nbn** from materially changing pricing relativity between products beyond the Pricing Roadmap.

This mechanism can be understood with the help of an example. Suppose **nbn** initially forecasted CPI to be 2% in Year 2 of the Pricing Roadmap and set forward-looking prices to increase by around that amount. However, actual CPI in Year 2 is 3.5%. Further assume that TC-4 Product A is a highly price-sensitive product, such that a price increase of 3.5% would cause substitution to other networks and an under-recovery of costs, such that **nbn** wished to maintain the initial proposed increase (to \$35, as set out in the table below).

The mechanism would mean that prices for Products B and C could not increase by more than \$1 above the Pricing Roadmap price for that year, even though there would otherwise be flexibility under the WAPC and sub-cap constraints (greater of CPI or 5%) to allow for a higher increase. Product D would not be affected, as it is not a TC-4 product.

²⁷ The only circumstance where **nbn** can adjust the Price upwards after the Tariff List has been published on 1 May is where a new Replacement Module takes effect on 1 July and includes different price controls to those that were used at the time the Tariff List was published.



Prices applying in year 2 of the roadmap if forecast CPI is 2% vs 3.5% actuals						
Offer	Quantities	p_t	p_{t+1} Roadmap	p_{t+1} Tariff List	δ^m	
TC4 Product A	25	\$34	\$35	\$35	\$0.0	
TC4 Product B	60	\$50	\$51	\$52	+\$1.0	
TC4 Product C	15	\$55	\$56	\$57	+\$1.0	
Product D	10	\$100	\$102	\$102	NA	
					<i>Min</i> { δ^m }	\$0.00
					<i>Max</i> { δ^m }	\$1.00
					Differential	\$1.00

The consequence of the mechanism will be that **nbn** will be constrained (delayed) from introducing pricing changes that significantly alter the pricing relativity of its offers.

nbn will demonstrate compliance with the relativity mechanism annually in the SAU Tariff List. If the ACCC considers that **nbn** has not complied with the relativity mechanism, it can request **nbn** to provide an alternative Tariff List that complies with the mechanism and, in the event that **nbn** disagrees with the ACCC's assessment of non-compliance, issue its own price determination. Separately, **nbn** can apply to the ACCC to exempt one or more TC-4 services from the relativity mechanism in a given year. This may capture instances where compliance with the relativity mechanism constrains **nbn**'s ability to price efficiently up to its WAPC allowance. In considering whether to accept or reject this exemption, **nbn** proposes that the ACCC should consider the LTIE and **nbn**'s ability to price up to its WAPC allowance.

8.4 nbn's use of discounts

RSPs have previously expressed concerns with **nbn**'s use of discounts, and whether they lead to potential pricing uncertainty by introducing a gap between what is charged in practice and the Maximum Regulated Prices that **nbn** could charge if the discounts were removed. The Variation will increase the pricing certainty on discounts by:

- only withdrawing discounts in accordance with the terms specified when the discount is introduced (this is an existing SAU commitment);
- expanding this existing SAU commitment by requiring **nbn** to provide minimum notice periods for any withdrawal or reduction in discounts, as follows:
 - one month's notice for short-term discounts (i.e., six months or less when first introduced);
 - three months' notice for long-term discounts;
- requiring that if **nbn**'s TC-4 revenue in a given year is more than 5% less than what undiscounted TC-4 revenue would have been (had **nbn** charged list prices), **nbn** must reduce its Maximum Regulated Prices such that, if those reduced Maximum Regulated Prices had applied in the relevant year, the 5% threshold would not have been surpassed. Considering the WAPC and individual pricing sub-caps, this would act to reduce prices in future periods (this measure was proposed in the March Variation, and retained); and
- conferring additional powers on the ACCC if **nbn**'s discounting practices involve the use of discounts as a default pricing structure.

In addition to providing greater certainty, this package of discounting rules means that the Prices in the Tariff List will track the effective market prices for **nbn**'s services over time, addressing a key concern previously associated with **nbn**'s use of broad-based discounts.



8.5 Implementation of new pricing under WBA5

If the Variation is accepted, **nbn** plans to implement the new pricing for TC-4 Flat-Rate Offers and the Bundled TC-4 Offers through WBA5. **nbn** is engaged in an industry consultation on WBA5 in parallel with the Variation process so that RSPs and end-users can obtain the benefit of the new TC-4 pricing construct as soon as practicable.

To assist RSPs to plan for the transition to the new pricing construct, **nbn** has committed in the Variation to:

- within 20 Business Days after the Variation is accepted, provide RSPs and the ACCC with a proposed process and timeline in which **nbn** will supply the TC-4 Flat-Rate Offers and Bundled TC-4 Offers; and
- commence supplying the TC-4 Flat-Rate Offers and Bundled TC-4 Offers on or before the later of 1 July 2023 and three months after the Variation is accepted.

In proposing this transition mechanism, **nbn** has sought to balance the need for RSP certainty about the timeframe in which the new pricing will commence with the significant and resource-intensive technological and operational changes that **nbn** will need to make after acceptance of the Variation to begin supplying the new TC-4 Flat-Rate Offers and Bundled TC-4 Offers, and the corresponding technological and operational changes that RSPs will need to make. The new pricing construct involves more than price changes and includes, for example, a new utilisation-based billing mechanism and NNI overbooking functionality (see section 7.6).

nbn expects that a maximum three-month timeframe should accommodate RSPs as they plan for this transition, including assessing any changes they may wish to make to their wholesale speed tier mix to maximise the benefits of the new pricing construct for end-users.

As discussed in chapter 7, the new pricing construct replaces the two-part AVC/CVC TC-4 pricing that exists in the SAU and WBA today for all access technologies except Satellite. As a consequence, the Variation provides that for non-Satellite access technologies, the TC-4 Flat-Rate Offers and Bundled TC-4 Offers replace a range of pre-existing Offers that will be withdrawn from the date **nbn** commences supplying the TC-4 Flat-Rate Offers and Bundled TC-4 Offers. In response to these changes, **nbn** intends to make proposals in WBA5, which will include:

- introducing the new TC-4 Flat-Rate Offers and Bundled TC-4 Offers;
- removing two-part AVC/CVC TC-4 pricing for non-Satellite technologies and certain discounts that are based on that pricing. This includes the TC-4 Bundles Discount (and Pricing Roadmap, given the new Tariff List commitments in the Variation) and the TC-4 Business Bundles Discount associated with Basic CVCs (which account for less than 0.05% of TC-4 services as at February 2022);
- necessary adjustments to other TC-4 discounts, such as the Take 2 rebate, the upcoming Light Up and Step Up rebates, and the TC-4 Business Bundles Discount associated with Bundled CVCs, to reflect the new TC-4 Flat-Rate Offers and Bundled TC-4 Offers; and
- amendments to facilitate the introduction of utilisation-based billing and NNI overbooking functionality. This includes the associated change in CVC TC-4 from CIR to PIR for all access technologies except Satellite.

In addition to transitioning existing TC-4 bundle services onto the new TC-4 Flat-Rate Offers and Bundled TC-4 Offers, RSPs will need to transition any TC-2 Business Bundles currently using basic TC-4 AVCs as the underlying service.