

Submission to the ACCC – NBN Access Pricing Inquiry

PUBLIC VERSION

6 December 2019





nbn submission to ACCC – NBN Access Pricing Inquiry

6 December 2019

Copyright

This document is subject to copyright and must not be used except as permitted below or under the Copyright Act 1968 (Cth). You must not reproduce or publish this document in whole or in part for commercial gain without the prior written consent of **nbn** co (**nbn**). You may reproduce and publish this document in whole or in part for educational or non-commercial purposes as approved by **nbn** in writing.

© 2019 **nbn** co limited. All rights reserved. Not for general distribution.

Disclaimer

This document is provided for information purposes only. The recipient must not use this document other than with the consent of **nbn** and must make its own inquiries as to the currency, accuracy and completeness of this document and the information contained in it. The contents of this document should not be relied upon as representing **nbn**'s final position on the subject matter of this document, except where stated otherwise. Any requirements of **nbn** or views expressed by **nbn** in this document may change as a consequence of **nbn** finalising formal technical specifications, or legislative and regulatory developments.

Environment

nbn asks that you consider the environment before printing this document.



Table of Contents

1	Executive summary.....	4
2	Detailed overview of submission.....	8
3	The end user benefits of nbn 's responsive pricing approach.....	22
4	The ACCC must place significantly greater weight on nbn 's investment incentives and the LTIE.....	35
5	nbn 's discounting approach falls squarely within the principles accepted by the ACCC under the SAU	46
6	Detailed responses to the ACCC's pricing approach	52
7	The ACCC must consider the SAU framework and the mandatory criteria under the CCA	59



1 Executive summary

- 1.1 The **nbn**[™] Network has been built to bring high-speed broadband to all Australians to lift the digital capability of the nation, with substantially faster speeds than those available on ADSL/ADSL2+. While **nbn** understands migrating customers with minimal disruption is an important policy goal, this goal is already being realised via **nbn**'s pricing approach and the outcomes are evident in the retail market.
- 1.2 **nbn** does not support ACCC intervention on pricing of entry level services because it will create artificial incentives for end users to remain on 12/1 **nbn** entry level services that are unlikely to satisfy their changing usage habits as many more devices run concurrently and puts at risk the ability for Australia to realise the full benefit of the investment in the **nbn**[™] Network.
- 1.3 Significant investment has been made in the **nbn**[™] Network by the Government on behalf of Australian taxpayers. This investment has been accepted by the ACCC as being in accordance with the principles in the Special Access Undertaking (**SAU**) accepted by the ACCC in 2013, which provides Australians with the opportunity to recover their investment in the **nbn**[™] Network. It is therefore critical that **nbn**'s ability to recover its investment and its incentives to maintain and continue to invest in the **nbn**[™] Network are not undermined through unwarranted regulatory intervention.
- 1.4 Consumers across Australia already benefit from **nbn**'s wholesale pricing through comparable retail prices to legacy ADSL/ADSL2+ services and are experiencing a smooth transition to **nbn**. Many of the **nbn** retail plans provide higher speeds and "unlimited" data compared to the legacy ADSL/ADSL2+ plans, providing greater value for end users. For example, the retail market today features 29 retail **nbn** plans priced at \$60 or under, provided across 19 different RSPs with nearly half of these "entry level" plans being unlimited data plans – a greater proportion than previously observed.
- 1.5 The average retail price for a 12/1 **nbn**-powered service with unlimited data allowance in 2019 is \$62, compared with average retail prices for ADSL/ADSL2+ services in both 2019 (\$72) and 2012 (\$101). In addition, end users can (on average) purchase retail **nbn** plans with a superior bandwidth profile of 50Mbps (downstream) / 20Mbps (upstream) for a comparable price to ADSL/ADSL2+ plans. This is shown in Figure 1 below. Importantly, the average ADSL/ADSL2+ prices below reflect only "on-net" or "metro" services; the national average price of ADSL/ADSL2+ services is likely to be higher when taking into account the higher prices that apply for "off-net" or "regional" ADSL/ADSL2+ services.

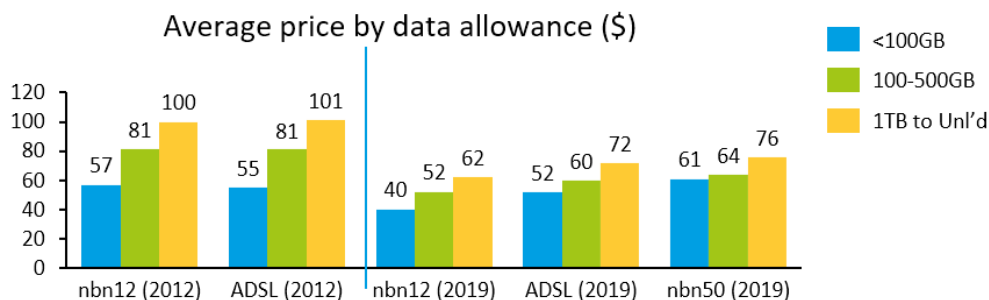


Figure 1: Average monthly charges for ADSL/ADSL2+ and nbn plans (2012 versus 2019)¹

- 1.6 The above **nbn** and legacy ADSL/ADSL2+ comparisons will be further enhanced upon implementation of **nbn**'s recently announced pricing initiatives. These initiatives include a reduction in charges and an increase in CVC inclusions for the Entry Level Bundle (**ELB**) discount, rebalancing of the 25/5Mbps service to a more "intermediate" service, national pooling of CVC, AVC over-dimensioning where supported by the network, as well as a rolling two-year roadmap of bundle discounts and CVC inclusions, updated annually.
- 1.7 The ACCC has placed over-reliance on the need to replicate a single \$60 retail price point for entry level services with unlimited data. There has never been a single "entry level plan" offered at a single price in the Australian retail market, but rather there has always been a diverse range of retail prices for such services on ADSL/ADSL2+ networks.
- 1.8 There is no evidence to suggest that adopting an arbitrary retail price point as the basis for ACCC intervention on wholesale entry level pricing would lead to efficient outcomes for end users or even be passed on to end users. In addition, Australian taxpayers will be negatively impacted if **nbn** is now required by the ACCC to bear the entire cost of increased usage in respect of 12/1 services under the ACCC's proposal to index CVC inclusions over time. To justify the significant investment by Australian taxpayers, **nbn** has always openly forecast a user-pays model. There are significant end user benefits associated with increased usage and **nbn** must be able to retain the flexibility to capture a portion of this value through its pricing.

¹ Internal analysis by **nbn** based on **nbn**'s retail broadband trackers, September 2019. The retail data relied upon by **nbn** for the purpose of this submission is based on monthly tracking data of retail broadband plans from 2012 onwards. The number of RSPs for which retail plans were tracked between 2012 to 2017 ranged from 11 to 15; that number has increased to more than 30 RSPs from 2018 onwards.



- 1.9 The ACCC's analysis has focussed only on outcomes for Australians in metropolitan areas and has not taken into account the material benefits that end users have received in regional, rural and remote areas as a result of **nbn's** national wholesale prices to bridge the digital divide. For example, major RSPs still differentiate between "on-net" and "off-net" legacy services²:
- (a) TPG charges \$59.99 per month for its unlimited "on-net" ADSL2+ service, which is offered in selected exchanges in metropolitan Australia. However, for its equivalent high-data allowance "off-net" services, TPG charges between \$79.99 per month (300GB) and \$99.99 per month (500GB), with no unlimited option; and
 - (b) iiNet charges \$59.99 for its 500GB "on-net" ADSL2+ service, and \$79.99 for an unlimited service (including other bundled services). However, for its equivalent high-data allowance "off-net" services, iiNet charges \$89.99 per month, with 250GB each of peak and off-peak data, again with no unlimited option.
- 1.10 Both RSPs and regional end users have benefitted from **nbn's** bridging of the digital divide. The addressable market for broadband services is now national and is no longer limited to CBD, metropolitan and large regional areas. In the legacy Unconditioned Local Loop Service (**ULLS**) wholesale pricing environment - which led to the legacy ADSL/ADSL2 retail pricing on which the ACCC is focussed in its Inquiry - there was virtually no competition in the regional and remote Band 3 and Band 4 areas, with end users in those areas facing high prices and significantly less choice. **nbn's** pricing approach has delivered meaningful competition in these areas for the first time.
- 1.11 To bridge this digital divide, fixed line services (including 12/1 entry level services) need to contribute to a cross-subsidy which is expressly contemplated by legislation and the SAU and independently estimated at \$7.09 per fixed line service, per month. This necessary cross-subsidy and its impact on pricing has not been considered by the ACCC in its Discussion Paper, even though it is a direct cost to **nbn** which must be taken into account by the ACCC.³
- 1.12 The ACCC's Discussion Paper also has not considered the impact of certain elements of the current statutory and SAU framework. First, any binding rules of conduct (**BROC**) or access determination (**AD**) has no effect to the extent to which it is inconsistent with the SAU. Secondly, the ACCC has not

² On-net services are offered on an RSP's network and are typically limited to Metro and outer Metro areas. Off-net services are resold services over the Telstra network, usually outside these areas.

³ CCA, ss 152BCA(1) and 152BDAA(1). See section 7 of this submission.



considered the effect of any changes in the price for entry level services for some technologies (but not others) on **nbn**'s ability to engage in conduct that is reasonably necessary to achieve uniform national pricing. Finally, the Discussion Paper does not contain a detailed assessment or explanation of the mandatory statutory criteria in section 152BCA or 152BDAA of the CCA, with the ACCC instead using its own alternative principles.

- 1.13 **nbn** is confident its existing approach to pricing and its recently announced pricing changes comprehensively address the ACCC's concerns, while balancing the complex considerations set out above and the different demands of RSPs. **nbn** will continue to work with RSPs and monitor the market as required to continue promoting the best outcomes for RSPs and end users whilst ensuring **nbn**'s investment incentives are not undermined.



2 Detailed overview of submission

- 2.1 **nbn** welcomes the opportunity to respond to the issues raised in the ACCC's Discussion Paper on NBN Access Pricing (**Discussion Paper**).
- 2.2 Any intervention on pricing by the ACCC at this time would be premature and potentially counter-productive given that there is already smooth end user migration occurring. It would be premature because **nbn** is already addressing the issues raised by the ACCC as part of **nbn**'s wide range of recently announced pricing initiatives, which deliver value and price certainty to RSPs and end users. Intervention at this point would be potentially counter-productive because it creates uncertainty and disincentives for future commercial agreement.
- 2.3 **nbn** believes that the making of an AD or BROC on pricing in the manner foreshadowed in the Discussion Paper will undermine the LTIE, **nbn**'s efficient pricing and investment decisions, and **nbn**'s legitimate business interests in recovering and earning a return on its efficiently incurred investment, to the detriment of Australian households and businesses.

Criticality of investment in the **nbn**TM Network

- 2.4 The **nbn**TM Network is Australia's largest and most complex infrastructure project. It covers a geographic area of over seven million square kilometres, with over ten million premises currently able to connect to it. **nbn** currently supplies more than six million active end user services over seven unique access technologies. The number of active services on the **nbn**TM Network is forecast to grow substantially in the next two years as the volume roll-out and end user migrations are completed.
- 2.5 Significant investment has been made in the **nbn**TM Network by the Government on behalf of Australian taxpayers to deliver high-speed, resilient and secure broadband to all Australians. This investment has been accepted by the ACCC as being in accordance with the prudence principles in the SAU.⁴
- 2.6 The SAU provides Australian taxpayers with the opportunity to recover their investment in the **nbn**TM Network within the pricing constraints approved by the ACCC. It is critical to Australia's international competitiveness and to business and residential users of broadband that **nbn**'s incentives to maintain and continue to invest in the **nbn**TM Network are not undermined through regulatory intervention

⁴ Each of **nbn**'s investment decisions have been overseen by the ACCC through the LTRCM process under the SAU. None of **nbn**'s costs have been disallowed or otherwise opposed by the ACCC through this process.



which goes beyond the scope and intent of the existing SAU. This is particularly important given **nbn**'s wholesale-only structure and its sole reliance on regulated revenues. This contrasts with the position of RSPs that have broader discretion as to how they price and differentiate their services in downstream retail markets.

- 2.7 **nbn**'s investment challenges are not static; they are ongoing. For Australians to have access to the network they deserve at the lowest cost, as per **nbn**'s mandate under its Statement of Expectations (SoE), **nbn** must operate and re-invest capital in its networks over time to meet consumer demand and competition from the market, including by upgrading and reinvesting in infrastructure, and developing and supplying new products that end users want. The cost of maintaining the **nbn**TM Network is significant, and includes the cost of supporting increasing data usage, which has required significant investments in **nbn**'s transit network, and particularly in **nbn**'s HFC and fixed wireless networks.

Smooth migration is already occurring in a dynamic and competitive retail market

- 2.8 **nbn**'s mandate under its SoE is to ensure that "all Australians have access to very fast broadband as soon as possible, at affordable prices, and at least cost to taxpayers". **nbn** operates within the scope of its mandate as set out in the SoE, and explicitly takes account of entry level and more affordable pricing options, while at the same time balancing **nbn**'s other complex objectives and considerations.
- 2.9 Like the ACCC, **nbn** is concerned to make sure that no customers are treated unfairly. **nbn** does not agree that **nbn**'s wholesale pricing "has resulted in inefficient and unfair outcomes for consumers who have no need for the higher speeds that **nbn** makes possible".⁵ This conclusion does not take into account the diverse nature of the retail market for **nbn**'s services, the diversity of prices and service variants at the entry level, and the vastly greater usage patterns of end users on the **nbn**TM Network compared to legacy ADSL/ADSL2+ networks. Not only is there no demonstrated market failure which the ACCC needs to remedy, but **nbn**'s ongoing price reductions have benefitted all users of the **nbn**TM Network.
- 2.10 These benefits include lower retail price points, higher data allowances and higher speeds, for no additional cost.⁶ Furthermore, real prices for retail telecommunications services have declined significantly as a result of the rollout of the **nbn**TM Network, in stark contrast to other key utilities. For

⁵ Discussion Paper, p. 7.

⁶ See section 3 for examples of each of these scenarios.



instance, while average electricity prices have increased 224% since 2000, the telecommunications price index has declined 6%, including a 22% decline between 2014 to 2019, over the same period during which the rollout and take-up of the **nbn**TM Network gathered pace.⁷

- 2.11 The retail market today features 29 retail **nbn** plans priced at \$60 or under, provided across 19 different RSPs.⁸ With nearly half of these “entry level” plans being unlimited data plans – a greater proportion than previously observed – it is clear that RSPs are already able to respond to end user demand through strong and dynamic competition of the type sought by the ACCC.
- 2.12 On average across the most popular bundled speed tiers, **nbn**’s effective wholesale prices have reduced by between 12% to 34% since April 2016. This includes an effective price reduction of 13% for services on the 12/1 speed tier and 27% for services on the 100/40 speed tier since April 2016, as illustrated in the tables below. Since 2016, the effective price of CVC capacity has more than halved.⁹ Further reductions in price will also take place by May 2020.

Bundled components	Effective price (April 2016)*	Effective price (2017: DBD-R)	Effective price (December 2019)	Effective price reduction by December 2019
Entry Level Bundle (12/1Mbps AVC TC-4; 0.15Mbps CVC)	\$25.75	\$25.20	\$22.50	\$3.25 (13%)
Modified Entry Level Bundle (12/1Mbps AVC TC-4; 1Mbps CVC)	\$40.63	\$35.40	\$35.00	\$5.63 (14%)
Bundle25 (25/5Mbps AVC TC-4; 1.25Mbps CVC)	\$48.00	\$41.40	\$37.00	\$11.00 (23%)
Bundle50 (50/20Mbps AVC TC-4; 2Mbps CVC)	\$68.13	\$57.40	\$45.00	\$23.13 (34%)
Bundle100 (100/40Mbps AVC TC-4; 3Mbps CVC)	\$89.63	\$73.40	\$65.00	\$24.63 (27%)
Bundle100 (100/20Mbps AVC TC-4)	-	-	-	-

* Takes into account 50kbps of included CVC TC-4 capacity at no cost above the AVC TC-4 price

Table 1a: Effective bundled pricing (April 2016 to December 2019)

⁷ See AlphaBeta, ‘Australian Broadband Affordability’, March 2019 and Australian Bureau of Statistics 6401.0, Consumer Price Index – September 2018, Table 7 (Group, Sub-group and expenditure class weighted average of eight capital cities).

⁸ Internal analysis by **nbn** based on **nbn**’s retail broadband trackers. See above n. 1.

⁹ Based on CVC pricing of \$17.50 per Mbps in 2016.



Bundled components	Effective price (April 2016)*	Effective price (2017: DBD-R)	Effective price (May 2020)	Effective price reduction by May 2020
Entry Level Bundle (12/1Mbps AVC TC-4; 0.15Mbps CVC)	\$25.75	\$25.20	\$22.50	\$3.25 (13%)
Modified Entry Level Bundle (12/1Mbps AVC TC-4; 1.1Mbps CVC)	\$42.38	\$36.60	\$35.00	\$7.38 (17%)
Bundle25 (25/5Mbps AVC TC-4; 1.25Mbps CVC)	\$48.00	\$41.40	\$37.00	\$11.00 (23%)
Bundle50 (50/20Mbps AVC TC-4; 2.25Mbps CVC)	\$72.50	\$60.40	\$45.00	\$27.50 (38%)
Bundle100 (100/40Mbps AVC TC-4; 3.75Mbps CVC)	\$102.75	\$82.40	\$65.00	\$37.75 (37%)
Bundle100 (100/20Mbps AVC TC-4; 3.75Mbps)	\$102.75	\$82.40	\$58.00	\$44.75 (44%)

* Takes into account 50kbps of included CVC TC-4 capacity at no cost above the AVC TC-4 price

Table 1b: Effective bundled pricing (April 2016 to May 2020)

- 2.13 Alongside these improvements, research commissioned by **nbn** earlier this year ranks Australia as one of the most affordable countries for broadband out of 22 advanced industrial countries.¹⁰
- 2.14 An analysis of the retail market demonstrates that, amongst other things, end users today have access to:
- (a) *more speed*: **nbn** retail pricing is equivalent to legacy ADSL/ADSL2+ pricing for entry level products, but with vastly superior geographic coverage and speeds over time;
 - (b) *greater choice*: there is a higher proportion of unlimited plans available at an entry level retail price point than ever before; and
 - (c) *more value*: at the entry level and above, retail prices have typically stayed stable or reduced while inclusions and speeds have increased, offering “more-for-less” across the board.¹¹

¹⁰ AlphaBeta, ‘Australian Broadband Affordability’, March 2019.

¹¹ Internal analysis by **nbn** based on **nbn**'s retail broadband trackers. See above n. 1.



- 2.15 Facilitated by **nbn**'s dynamic approach to wholesale pricing and discounting, RSPs have been able to deliver a smooth migration to the **nbn**TM Network through a combination of price reductions, increased data allowances and/or higher **nbn** speed tiers.
- 2.16 **nbn** is incentivised to continue working proactively with RSPs to create the right conditions that will allow all industry participants to compete in the long term and for all Australians to enjoy the full benefit of the **nbn**TM Network, through both general pricing and targeted initiatives (as occurs in any competitive market).
- 2.17 It is also important to recognise that different RSPs have different business models, customers and cost profiles. Therefore, not all **nbn** pricing will be required, or supported, by all RSPs. However, **nbn**'s efficient pricing decisions, absent the distortionary effect of vertical integration, has led to outcomes which cater for a broad range of RSPs and which promote the LTIE (assuming lower wholesale prices are passed through to end users, or used by RSPs to provide enhanced retail features or other valued services for the benefit of end users).
- 2.18 Consequently, an AD or BROCC is not necessary in respect of **nbn**'s pricing, given the extensive number of entry level offerings in the market that offer significant value and higher speeds relative to legacy ADSL/ADSL2+ services, ensuring a smooth migration to the **nbn**TM Network. These positive outcomes have emerged in the absence of direct regulation by the ACCC and have been realised through an alignment of incentives and the SAU regulatory architecture previously approved by the ACCC.

nbn's cross-subsidy is an important element of the SAU and nbn's investment incentives and direct costs

- 2.19 **nbn** has a core objective to bridge the digital divide for all Australians. A key mechanism used to achieve this is a system of pricing that involves a very significant cross-subsidy to support non-commercial fixed wireless and satellite networks and some fixed-line services in higher cost regional and rural areas. The importance of this cross-subsidy is recognised in the SAU, which states that the price terms and conditions in the SAU are "reasonably necessary for NBN Co to achieve uniform national wholesale pricing in accordance with the requirements of the Statement of Expectations".¹²
- 2.20 To bridge the digital divide that prevailed in Band 3 and Band 4 areas under the legacy ULLS pricing model, all fixed line services must contribute to the cross-subsidy, including 12/1 entry level services.

¹² SAU, Background, paragraph I.



The cross-subsidy is a real and direct cost¹³ independently estimated at \$7.09 per fixed line service per month.¹⁴ If entry level end users do not contribute, other end users will need to contribute disproportionately more, which undermines the ability of **nbn** to offer more affordable prices for higher speed services except to those few end users who place a very high premium on performance, seriously undermining **nbn**'s cost recovery.

- 2.21 In making any comparison between legacy ADSL/ADSL2+ pricing and pricing for **nbn**'s entry level services, the ACCC must take this geographic disparity and **nbn**'s cross-subsidy into account and avoid focusing its analysis simply on areas with ULLS-based competition, as the ACCC has incorrectly done in the Discussion Paper.
- 2.22 The ACCC's pricing approach to entry level services will deliver less benefits to end users at a higher cost. **nbn**'s targeted initiatives have achieved, and will continue to achieve, positive outcomes for end users, including those end users who stand to benefit the most from transitioning to the **nbn**TM Network.

nbn's discounting approach falls squarely within the principles established by the SAU

- 2.23 **nbn** has developed and implemented a discounting approach that falls squarely within the principles accepted by the ACCC under the SAU. In the ACCC's 2013 Draft Decision in respect of the SAU, the ACCC observed that it is "crucial that the regulatory regime can operate in a manner that is responsive to changing circumstances and can efficiently resolve issues if and when they arise".¹⁵
- 2.24 Under the SAU pricing structure, a Maximum Regulated Price (**MRP**) operates as a price ceiling only and **nbn** can change that price as permitted by the SAU, including by discounting that price. **nbn**'s ability to have price flexibility was explicitly recognised by the ACCC at the time it was assessing the SAU.¹⁶ Furthermore, ACCC intervention on existing pricing in the SAU was intended to be limited to 'revenue neutral' rebalancing to ensure the significant investment by Australian taxpayers in the **nbn**TM Network could not be undermined by regulatory action.¹⁷

¹³ These costs fall within the scope of the LTRCM, which the ACCC assesses to ensure they are consistent with the prudence provisions of the SAU.

¹⁴ BCR, 'NBN non-commercial services funding options: Final Report', March 2016, p. 7.

¹⁵ ACCC, 'ACCC Draft Decision on the Special Access Undertaking lodged by NBN Co on 18 December 2012', April 2013, p. 14.

¹⁶ Ibid, section 5.3.3.

¹⁷ SAU, Schedule 1G.3.



- 2.25 Between February 2017 and October 2018, **nbn** conducted an extensive period of pricing consultation with the industry (**Pricing Evolution**). Pricing Evolution included the introduction of the Focus on 50 Campaign in December 2017 and a range of bundle discounts in 2018, with the aim of improving end user experience and promoting take-up of targeted entry level discounts and higher-speed services across the **nbn**TM Network.
- 2.26 The significant benefits for RSPs and end users from the Pricing Evolution changes could simply not have occurred in a timely manner without the use of discounts. Prior to the implementation of these initiatives, CVC congestion had been increasing and the outcomes were relatively poor for end users. Decisive action was required and **nbn**'s discounting approach, in combination with ACCC initiatives such as in relation to broadband speed claims and the Measuring Broadband Australia program, delivered quick and efficient outcomes, directly leading to a reduction in CVC congestion and significant improvements in end user experience.
- 2.27 Without the ability to discount prices in the way expressly contemplated under the SAU, **nbn** would have not been able to introduce and test the effectiveness of its pricing initiatives such as bundle discounts. This is because an actual price reduction would have been subject to the SAU's price controls and/or the **nbn**TM Ethernet Price List under the WBA, and **nbn** would have had limited or no ability to further modify the price should it have been found to not deliver the expected end user outcomes. Without the ability to discount, **nbn** would necessarily need to be more conservative and limited in its proposed pricing responses to emerging RSP and end user issues.
- 2.28 This discounting approach enabled the benefits of reduced effective prices to be delivered to end users quickly and efficiently. RSPs have been able to develop their own commercial and pricing strategies to deliver a diversity of price points, inclusions and product options. Further, the efficacy and extent of **nbn**'s consultation and collaboration has prepared and enabled RSPs to implement retail plans promptly following the introduction of wholesale discounts. For example, in the case of the Focus on 50 promotion, retail plans were launched by many RSPs the day after the discount was introduced, such was the level of market demand for additional CVC capacity.¹⁸

¹⁸ **nbn** held a final briefing for RSPs in respect of the Focus on 50 campaign on 13 December 2017, following an initial briefing on 3 November 2017. At least seven participating RSPs launched advertising campaigns in respect of their associated retail plans on 14 December 2017.



- 2.29 Moreover, **nbn** has always sought to ensure price certainty for RSPs through its practice of replacing withdrawn or expired discounts with even more RSP-favourable alternatives.¹⁹ **nbn** has acted decisively to further enhance this transparency and certainty by committing to a rolling two-year roadmap of bundle discounts and CVC inclusions, updated annually. Consistent with the importance that **nbn** places on supporting competition and positive customer outcomes, **nbn** remains open to further sensible initiatives to increase RSP certainty, in response to industry and ACCC feedback.
- 2.30 **nbn**'s pricing has also driven outcomes which track alongside or over-deliver to RSPs and end users compared with the forecasts provided to the ACCC by **nbn** at the time of the ACCC's SAU acceptance and which have been relied upon by the ACCC in its analysis.²⁰ In particular, **nbn**'s FY20 effective CVC price of [Commercial-in-Confidence] is significantly lower than the 2013 forecast FY20 CVC price of [Commercial-in-Confidence], while **nbn**'s FY19 ARPU of \$46 is also equivalent to the 2013 forecast FY19 ARPU of [Commercial-in-Confidence]. **nbn**'s discounting and pricing approach supports the greater data usage by Australians today than was anticipated or modelled at the time of the ACCC's SAU acceptance.
- 2.31 While the ACCC has focused on RSP price certainty, the broader issue is whether industry certainty is being promoted, including for **nbn**. For end users to continue to enjoy the benefits of the dynamic retail pricing driven by **nbn**'s pricing and discounting approach, regulatory certainty is critical. Proposed intervention of the type described in the ACCC's Discussion Paper will significantly undermine the regulatory certainty needed to deliver these benefits to Australians, which is critical to promote the LTIE.

The ACCC's proposed model would undermine Australians' investment in the nbn™ Network and the LTIE

- 2.32 Regulatory intervention on pricing is not warranted, as discussed above. In addition, there are several major problems with the ACCC's proposed regulatory intervention based on a \$60 retail price point for unlimited data 12/1 services and the ACCC's fixed assumptions about increases in CVC utilisation.

¹⁹ The High Bandwidth Bundles Discount, Fixed Wireless and Wireless Plus Bundles Discounts and Entry Level Bundles Discount each specify a minimum withdrawal period of 6 months. **nbn** also offers a number of other limited term and supplementary discounts with shorter withdrawal periods, such as the Forward 2.0 Rebate and Fast 2.0 Rebate, which can be withdrawn on 30 days' notice.

²⁰ On 15 February 2013, **nbn** provided to the ACCC supporting data and materials regarding **nbn**'s forecasts for, amongst other matters, CVC pricing and ARPU.



- 2.33 First, the ACCC's proposed benchmark retail price point of \$60 cannot be shown to be the single 'efficient' price point and too much weight has been placed by the ACCC on this \$60 price point. Even if there was a single national price for services delivered over the legacy network (which **nbn** does not accept there is or was), it could not be assumed to be efficient compared with a new network with different objectives required by Government and without considering other factors like the time value of money, cost increases driven by usage demand and the longer-term implications of any regulated pricing.
- 2.34 The \$60 price point is based on legacy ULLS pricing available only in CBD, metropolitan and large regional areas, which was based on a theoretical cost model that the ACCC itself has moved away from with its shift to a building block approach for fixed line services. In contrast, **nbn**'s policy mandate is to rectify the shortcomings of ULLS-based pricing by delivering competitive broadband on a national basis, including in remote areas left behind by the previous ULLS pricing approach.²¹
- 2.35 In addressing these shortcomings and creating competition for retail broadband in previously underserved parts of the market, **nbn** submits that its pricing and discounting approach is leading to efficient outcomes which ultimately promote the LTIE.
- 2.36 Secondly, Australian taxpayers will be negatively impacted if **nbn** is now required by the ACCC to bear the entire cost of increased usage over the **nbn**TM Network under the ACCC's proposal to index CVC capacity over time. To justify the significant investment by Australian taxpayers, **nbn** has always planned for and openly forecast a user-pays model as a feature of **nbn**'s two-part pricing approach.²² There are significant end user benefits associated with increased usage and **nbn** submits that it must be able to retain the flexibility to capture a portion of the resulting value through this pricing approach. The ACCC's model would also incentivise gaming by RSPs, who could place high-use end users on the anchor product without being required to bear any associated cost implications.
- 2.37 It is inefficient and detrimental to the LTIE for the ACCC to effectively encourage end users who are using large volumes of data to remain on entry level plans once their broadband habits exceed that of a true entry level user (both in terms of data consumed and the number of concurrent devices operating). This would be a step backward for Australia and would undermine the reason that **nbn** was

²¹ Telstra's wholesale prices for the ULLS were geographically de-averaged. Refer to section 4 for further information.

²² Usage growth on **nbn**'s 12/1 services was never intended to be provided without cost increases over time, as per the forecast pricing provided by **nbn** to the ACCC on 15 February 2013.



created: to ensure that all Australians have affordable access to very fast broadband. It would also be contrary to the LTIE because it will undermine the user experience of all end users by requiring the allocation of an overwhelming proportion of the CVC allowance to high-use end users on entry level services, rather than encouraging end users to migrate to the appropriate broadband speed for their current and evolving needs.

- 2.38 End user demand on the **nbn**TM Network is highly dynamic and constantly changing, and this will continue to change into the future. **nbn** is best placed to manage changes in traffic growth on the **nbn**TM Network over time using the existing pricing framework in conjunction with ongoing engagement with RSPs, rather than being limited by static assumptions. Flexibility must be maintained to avoid any unintended outcomes for end users, RSPs and **nbn** from regulated pricing and fixed assumptions about traffic growth in a time of ongoing evolution in end user habits.
- 2.39 **nbn** cannot support the ACCC's proposed approach, which would effectively require the absorption by **nbn** of all the demand growth in over 20% of its customer base without the ability to cost-recover. This would render impossible the cross subsidisation required to bridge the digital divide, and undermine **nbn**'s incentives to re-invest in the **nbn**TM Network.

Some price regulation is out of scope

- 2.40 **nbn** considers that there are certain elements of the current statutory and SAU framework that are critical to the Inquiry and which have not been considered by the ACCC in the Discussion Paper.
- 2.41 First, the SAU sets out MRPsTM for all FTTP, Fixed Wireless and Satellite-based services, including the 12/1 entry level service and gives **nbn** the ability to determine how to price and/or discount below those MRPs. As the ACCC is aware, any AD or BROCC has no effect to the extent to which it is inconsistent with the SAU and therefore any AD or BROCC cannot deal with entry level prices for these technologies.²³
- 2.42 Secondly, **nbn** has given effect to uniform national pricing through the MRPs applicable to FTTP, Fixed Wireless and Satellite in the SAU, and through the pricing of FTTN, FTTB, FTTC and HFC-based services in the **nbn**TM Ethernet Price List under the WBA. The Prices for the 12/1 service across all technologies remain uniform.²⁴ Under sections 152BCB(3C) and 152BDA(3C) of the CCA, the ACCC must not make an AD or BROCC to the extent that it would have the effect of preventing **nbn** from engaging in conduct

²³ CCA, ss 152CBIA and 152CBIB.

²⁴ Please refer to the Prices set out in the **nbn**TM Ethernet Price List under WBA 3.



that is reasonably necessary to achieve uniform national pricing of eligible services supplied by **nbn** to RSPs. The ACCC does not consider in the Discussion Paper how any changes in the price for entry level services for some technologies (but not others) will impact on **nbn** engaging in conduct that is reasonably necessary to achieve uniform national pricing.

- 2.43 Finally, the ACCC must, when making an AD or BROCC, have regard to the mandatory statutory criteria in sections 152BCA and 152BDAA of the CCA. The Discussion Paper does not contain a detailed assessment or explanation of these mandatory statutory criteria (other than areas of incidental overlap between these criteria and the ACCC's pricing principles).
- 2.44 **nbn** submits that, when properly considered, the mandatory statutory criteria do not support regulatory intervention on **nbn**'s pricing. This is discussed in further detail in section 7.

nbn's collaborative pricing approach with RSPs and the ACCC

- 2.45 **nbn** is driven by commercial incentives and social objectives to work closely with RSPs to implement efficient pricing initiatives. **nbn**'s pricing initiatives over the years have been wide ranging, aimed at achieving outcomes to benefit the industry at large while prioritising the needs and evolving usage behaviour of end users.²⁵
- 2.46 **nbn** introduces and refines its wholesale pricing by both taking into account and balancing industry feedback, acknowledging that different RSPs have different needs and preferences. **nbn** has consulted extensively and proactively with RSPs to introduce new pricing arrangements to meet changing circumstances, including in relation to entry level services to ensure that there remains a smooth migration path from legacy ADSL/ADSL2+ networks to the **nbn**TM Network without retail price shock.
- 2.47 **nbn** submits that its recent and announced pricing changes comprehensively address the ACCC's concerns, while balancing at the same time the complex considerations set out above. Further, **nbn** will continue to work with RSPs, monitor the market and respond to ACCC concerns as required to continue promoting the best outcomes for RSPs and end users.
- 2.48 The approach in **nbn**'s recent pricing consultation includes the following initiatives, amongst other improvements to CVC utilisation conditions and AVC activation charges. Importantly, these initiatives do not mark the end of **nbn**'s pricing consultation with RSPs; **nbn** is already developing further

²⁵ Refer to Appendix A for examples of **nbn**'s recent discounts, credits and rebates.



targeted discounts and initiatives, and will work with the industry and the ACCC to refine these and introduce new initiatives over time.

Initiative	Description
Modified ELB	A reduction in the additional charge that applies where an RSP's average monthly peak CVC usage across ELB services exceeds 150kbps from \$22.50 to \$5.70, further reducing to \$4.90 per Entry Level AVC in May 2020 and \$4.10 per Entry Level AVC in October 2020. The modified ELB was introduced by nbn on 1 October 2019.
Rebalancing B25	An effective reduction in the charge and included CVC for the 25Mbps bundle discount for both fixed line and fixed wireless services from \$45 with 2Mbps of included CVC to \$37 with 1.25Mbps of included CVC (effectively providing RSPs with an additional 0.25Mbps CVC capacity, or a saving of \$2 per bundle depending on RSP CVC allocation)
Updating B50	Increase in the CVC inclusion for the fixed line 50Mbps and Wireless Plus bundle discounts from 2Mbps per AVC to 2.25Mbps (in May 2020) and 2.5Mbps (in May 2021), with no change in the effective charge of \$45.
New TC-4 speed tiers²⁶	Developing the following TC-4 (PIR) ²⁷ AVC speed tiers and associated bundle discounts: <ul style="list-style-type: none"> • 100/20 Mbps bundle discount with 3.75Mbps of included CVC, increasing to 4.25Mbps of included CVC in May 2021, at an effective monthly charge of \$58; • 250/25 Mbps bundle discount with 4.75Mbps of included CVC, increasing to 5.25Mbps of included CVC in May 2021, at an effective monthly charge of \$68; and • Up to 1000/50 Mbps bundle discount with 5.75Mbps of included CVC, increasing to 6.25Mbps of included CVC in May 2021, at an effective monthly charge of \$80.
AVC overhead allowance	AVC over-dimensioning to accommodate RSP protocol overhead and increase the achievable layer 2 peak downstream speed where network capacity permits.
National CVC pooling	CVC allocation included within bundle discounts will be pooled nationally, rather than by CSA. This will allow RSPs to make more efficient use of CVC capacity included in bundle discounts and help decrease RSP costs and improve busy-hour end user experience.
Roadmap of bundle discounts and CVC inclusions	An annual review of bundle discounts and CVC inclusions more generally, including a roadmap of charges and CVC inclusions until 2021, to be refreshed every year, providing two-year visibility over nbn 's upcoming pricing changes

Table 2: Summary of recent nbn pricing initiatives²⁸

²⁶ References to speeds throughout this submission do not relate to end user speeds; rather, any speeds reflect the wholesale layer 2 peak information rate bandwidth provided to the RSP. As RSPs are aware, the end user experience, including speeds actually achieved over the **nbn**TM access network, depend on the configuration over which services are delivered to a premises, whether the end user is using the service during the busy period, and some factors outside **nbn**'s control (like in-home equipment quality, the chosen broadband plan, or how a service provider designs its network).

²⁷ The precise nature of the PIR commitment for HFC is subject to consultation and further change, as detailed in the AVC Higher Speed Tier Product Construct Paper.

²⁸ See Appendix D for further details.



2.49 As the ACCC notes in its Discussion Paper (which was released before **nbn** announced a number of these initiatives), **nbn**'s modified ELB discount will likely permit an access seeker to supply a 12/1 unlimited data retail product for \$60 per month (including GST).²⁹

2.50 RSPs have also responded positively to **nbn**'s proposed changes, with one RSP commenting:

*"We see the new wholesale pricing from **nbn** as really good news for consumers – we believe it will lead to lower prices for some of the new high-speed plans, and enough bandwidth that internet service providers should be able to avoid any evening slowdown from congestion".³⁰*

2.51 Further RSP feedback is set out in section 3 of this submission.

2.52 Given the positive RSP feedback to these initiatives, and noting the ACCC's own preference for commercially negotiated outcomes, **nbn** submits the ACCC should give the market a reasonable opportunity to respond to these initiatives. **nbn** is confident that these initiatives, together with other initiatives currently being developed by **nbn**, will result in efficient outcomes for end users, and that **nbn** and RSPs' incentives will address any future RSP and end user needs more effectively than can be achieved by regulation.

nbn's submissions

2.53 **nbn**'s detailed submissions are structured as follows:

- (a) section 3 outlines the end user benefits of **nbn**'s proactive and consultative approach to pricing;
- (b) section 4 describes the why the ACCC's pricing principles must place significantly greater weight on **nbn**'s investment incentives and the LTIE;
- (c) section 5 outlines how **nbn**'s pricing approach falls squarely within the principles agreed by the ACCC at the time of the ACCC's SAU acceptance;

²⁹ Discussion Paper, s. 7.3.2.

³⁰ Phil Britt, Managing Director (Aussie Broadband). See 9News, 'NBN prices to fall after provider wraps talks with telcos', 27 November 2019, <<https://www.9news.com.au/national/nbn-internet-pricing-plan-optus-vodafone-telstra/357e2d49-5b22-4dbd-9f0d-a3e4f232383c>>.



- (d) section 6 sets out detailed responses to the proposals set out in the Discussion Paper, including:
 - (i) the ACCC's characterisation of the retail market for **nbn** services, including the proposed \$60 entry level price point;
 - (ii) the ACCC's proposal for CVC indexation over time; and
 - (iii) the nature of the ACCC's pricing principles; and
- (e) section 7 describes why the ACCC must consider the SAU framework and the statutory criteria set out in the CCA.



3 The end user benefits of **nbn**'s responsive pricing approach

- 3.1 **nbn**'s mandate under its SoE is to ensure that “all Australians have access to very fast broadband as soon as possible, at affordable prices, and at least cost to taxpayers”.
- 3.2 In pursuit of this overarching objective, **nbn** has implemented a pricing and discounting approach which prioritises the affordability of its services, ensuring there remains a smooth transition path for end users migrating from legacy ADSL/ADSL2+ services to the **nbn**TM Network, including at the entry level. Moreover, **nbn**'s practice of replacing expired or withdrawn discounts with targeted and, often, more RSP-favourable replacements, demonstrates the alignment of **nbn**'s incentives with RSPs, and **nbn**'s commitment to maintaining price certainty and facilitating a smooth transition for all end users.
- 3.3 The end user benefits of this pricing and discounting approach are wide-ranging. Retail **nbn** plans today deliver greater speeds, more value and greater choice to end users than ever before. **nbn**'s analysis demonstrates that retail **nbn** pricing for **nbn**'s services is, on average, equivalent to or less than pricing for legacy ADSL/ADSL2+ plans, but with vastly superior speeds over time.
- 3.4 The ACCC's comment that recent wholesale pricing of basic speed access products has meant that retail pricing more generally is no longer anchored to the efficient pricing that emerged over competitive ADSL/ADSL2+ networks is incorrect.³¹ The evidence does not support the ACCC's conclusions as to the impact of **nbn**'s pricing on end user migration.
- 3.5 Further, **nbn**'s pricing has responded promptly to address critical industry issues identified by RSPs and the ACCC, such as network congestion and usage growth. For example, between February 2017 and February 2018, average network bandwidth congestion per week per service across the **nbn**TM Network reduced from 290 minutes to 12 minutes, an improvement of more than 95%.³² This evidence contradicts the ACCC's statement that the current approach to wholesale pricing may be creating material risks of cost increases, e.g. to manage demand for busy hour network capacity.³³ **nbn** is

³¹ Discussion Paper, p. 7.

³² Excludes **nbn**TM Sky MusterTM services. See other important information including how this is calculated at www.nbnco.com.au.

³³ Discussion Paper, p. 7.



incentivised to continue prioritising end user experience through its future pricing and discounting initiatives.

- 3.6 The outcomes facilitated by **nbn**'s wholesale pricing demonstrate the broad alignment of interests between **nbn** and RSPs. Through increased retail competition driven by lower wholesale costs, these outcomes are also clearly to the benefit of end users, illustrating that **nbn** is already achieving, and in many cases exceeding, the retail market and end user objectives sought by the ACCC.

nbn's wholesale pricing helps facilitate a smooth transition to the nbn™ Network for all end users

- 3.7 **nbn**'s wholesale pricing and discounting approach has led to equivalent or lower retail prices compared to legacy ADSL/ADSL2+ plans, ensuring a smooth transition to the **nbn**™ Network.

- 3.8 In particular, **nbn** has:

- (a) developed entry level offerings which facilitate a smooth transition to the **nbn**™ Network for end users taking up entry level services, such as ELBs on the 12/1 speed tier;
- (b) introduced several discounts, credits and rebates aimed at reducing CVC charges for RSPs, encouraging higher CVC provisioning and improving end user experience on the **nbn**™ Network,³⁴ and
- (c) consulted on, refined and improved each of these initiatives over time to respond to evolving market demand and feedback, such as increasing CVC inclusions on bundled discounts and, as part of the modified ELB discount, reducing the charge that applies where an RSP's average monthly peak usage across relevant services exceeds the relevant inclusion.³⁵

- 3.9 These initiatives have meant that, on average across bundled speed tiers, **nbn**'s wholesale prices have reduced by between 12% and 34% since April 2016. **nbn**'s initiatives have also created significant improvements in the take-up of higher speed tiers, superior service quality, wider geographic coverage

³⁴ Refer to Appendix A for examples of **nbn**'s discounts, credits and rebates.

³⁵ The additional charge that is applied when the average monthly peak usage across relevant services exceeds the included 150kbps has been reduced from \$22.50 to \$5.70, plus an additional CVC charge of \$8/Mbps to accommodate higher data users. The additional charge will be further scaled down to \$4.90 in May 2020 and to \$4.10 in October 2020. Other recent **nbn** initiatives are described in paragraph 2.48.



and increased service provider opportunity (including in an increasingly competitive and diversified retail market). As the ACCC itself acknowledges, decreases in peak hour congestion over the **nbn**TM Network are attributable “in large part to NBN Co’s pricing initiatives”, as well as related actions by the ACCC including Measuring Broadband Australia and guidance regarding retail broadband speed advertising.³⁶

3.10 These initiatives also represent substantial investments. As broken down in the table below, the estimated revenue forsaken by **nbn** (compared with the relevant MRPs as set out in the SAU) in respect of some of the CVC discounts, credits and rebates made available to RSPs exceeds

[Commercial-in-Confidence].

3.11 **nbn** is not aware of any wholesale operators in any other comparable jurisdictions who have adopted a pricing approach that has been as dynamic, responsive and effective as **nbn**’s pricing approach to changes in market conditions. This approach is supported by the SAU and the principles agreed with the ACCC at that time.

3.12 As a result of these campaigns and as described below, the following outcomes can be directly observed at the retail level:

- (a) **nbn** plans typically offer more value at retail prices equivalent to or lower than retail prices for ADSL/ADSL2+ services;
- (b) **nbn** services are far cheaper than legacy ADSL/ADSL2+ services for end users in regional, rural and remote areas, as well as increasing service availability and retail competition;

³⁶ ACCC, Discussion Paper, p. 27.



- (c) a higher proportion of unlimited plans than ever before is available at a retail price point of \$60 or below; and
- (d) price anchoring is already being observed in respect of higher speed services.

3.13 The end user benefits outlined above are enhanced when recognising that most end users are not required to pay line rental in addition to charges for their retail **nbn** service, unlike in the legacy ADSL/ADSL2+ world.

3.14 Further, as **nbn** continues to work with RSPs to develop targeted pricing and discounting campaigns, so too will these benefits, and the broader macroeconomic benefits of the **nbn**TM Network, continue to be delivered.

nbn's plans typically offer more value at retail prices equivalent to or lower than prices for ADSL/ADSL2+, facilitating a smooth migration from legacy networks

3.15 **nbn**'s pricing initiatives have driven an average retail price point for 12/1 services that is already at or less than \$60, and is lower than pricing for legacy ADSL/ADSL2+ services, thus achieving the ACCC and **nbn**'s objective to ensure a smooth transition from legacy networks without price shock.³⁷

3.16 The average retail price for a 12/1 **nbn**-powered service with unlimited data allowance in 2019 is \$62, compared with the higher average retail prices for ADSL/ADSL2+ services in both 2019 (\$72) and 2012 (\$101). The average retail prices for ADSL/ADSL2+ services are likely to be even higher than retail services when taking into account the more expensive "off-net" or "regional" ADSL services. These average retail prices are reflected in Figure 1 in section 1 above.

3.17 Research also indicates that **nbn**-powered entry level services represent better value for money compared to ADSL/ADSL2+ services. For example, today:

- (a) end users can, on average, purchase retail **nbn** plans with a superior bandwidth profile of 50Mbps (downstream) /20 Mbps (upstream) for a comparable price to ADSL/ADSL2+ plans; and

³⁷ Discussion Paper, s 4.1.1.



(b) for services with a 12/1 bandwidth profile, end users can, on average, purchase a greater data allowance of between 100GB to 500GB for the same price as a data allowance of under 100GB for an equivalent ADSL/ADSL2+ service.³⁸

3.18 The comparable pricing between ADSL/ADSL2+ services and **nbn** services is also evident when isolating key entry level plans, being plans with a retail price of \$50 or a 100GB data allowance, and plans with a retail price of \$60 or an unlimited data allowance. For plans meeting these criteria, **nbn** plans have historically been less expensive on average than ADSL/ADSL2+ plans, and are substantially equivalent on price in 2019.³⁹ In fact, over time, there has been a downward trend in retail pricing for entry level **nbn** services, including compared with legacy ADSL/ADSL2+ plans.

3.19 **nbn** accordingly does not agree with the ACCC's view that retail pricing is no longer anchored to the pricing over ADSL/ADSL2+ networks.⁴⁰

3.20 While prices between these ADSL/ADSL2+ plans and **nbn** plans are equivalent, the speeds available on **nbn** services are vastly superior to speeds available on ADSL/ADSL2+ services. Speeds on **nbn** plans have also more than doubled since 2016, as demonstrated in the graph below.⁴¹

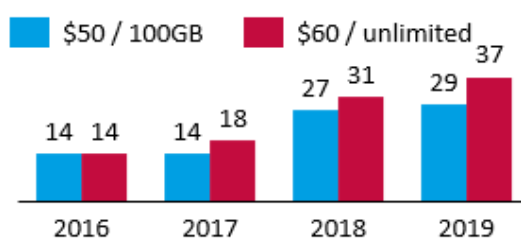


Figure 2: Average speed of key entry level nbn plans (2016 to 2019)

3.21 The average speeds above reflect that RSPs offer retail plans with different **nbn** speeds at the same price. For example, one RSP may sell a 12/1 service at \$60, and another may sell a 25/5 or higher service at \$60.⁴²

3.22 Further, the increase from 2016 to 2019 in the average speeds for these retail plans demonstrates more than just a decline in effective prices; it also reflects the greater diversity today in speed-based

³⁸ Internal analysis by **nbn** based on **nbn**'s retail broadband trackers. See above n. 1.

³⁹ Ibid.

⁴⁰ Discussion Paper, p. 7.

⁴¹ Internal analysis by **nbn** based on **nbn**'s retail broadband trackers. See above n. 1.

⁴² For example, Vodafone offers a 25/5 service at a retail price of \$59, while TPG's 12/1 service is sold at a retail price of \$60.



retail pricing. In 2016, end users acquiring \$50/100GB allowance data or \$60/unlimited data plans would typically experience the same average speed of 14Mbps. However in 2019, end users on \$60/unlimited data plans experience an average speed of 37Mbps, compared with an average speed of 29Mbps for end users on \$50/100GB data plans. Effective price signalling is taking place regarding the relative value of different **nbn** speed tiers.

3.23 Notably, similar trends are evident in respect of both entry level and higher speed **nbn** plans. For example, in 2013, Telstra priced its ADSL2+ plans with a 500GB data allowance at \$130. In contrast, today Telstra supplies its unlimited data **nbn** plan with a speed tier of 100Mbps (downstream) / 40Mbps (upstream) for \$120 (through Telstra) or \$95 (through Belong). These comparisons do not allow for inflation, meaning that, in real terms, the effective reduction in pricing on retail **nbn** services is even greater.

nbn services are far cheaper than legacy ADSL/ADSL2+ services for end users in remote areas

3.24 In addition to helping to ensure a smooth transition to the **nbn**TM Network, **nbn**'s pricing has also delivered significantly less expensive broadband services for end users in regional, rural and remote areas compared with legacy ADSL/ADSL2+ services.

3.25 For non-**nbn** based pricing, major RSPs differentiate between “on-net” and “off-net” services. On-net services are offered on an RSP’s network and are typically limited to metro and outer metro areas. Off-net services are resold services over the Telstra network, usually outside these areas. Prices for off-net services serving regional, rural and remote areas are higher than equivalent on-net services, as shown in Figure 3 below and described in paragraph 1.8 above.

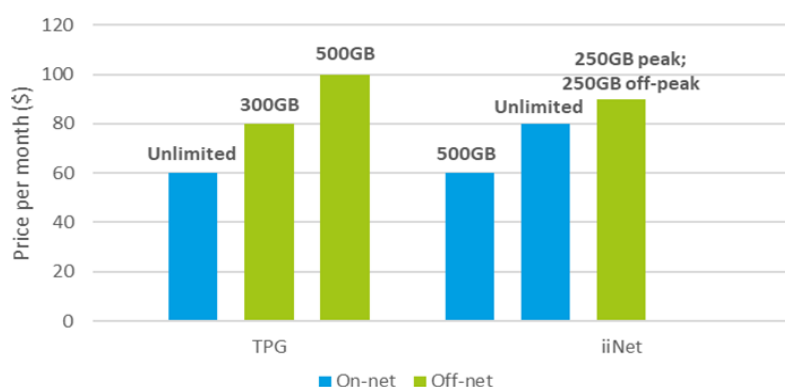


Figure 3: Example of on-net vs off-net charges for legacy ADSL/ADSL2+ services



3.26 The ACCC’s analysis has focussed only on outcomes for Australians in metropolitan areas, and has not taken into account the material benefits that end users have received in regional, rural and remote areas as a result of **nbn**’s commitment to closing the digital divide through its substantial internal cross-subsidy.⁴³

A higher proportion of unlimited retail plans than ever is available at a retail price point of \$60

3.27 While **nbn** acknowledges the ACCC’s observation that some RSPs have made the commercial decision to withdraw their 12/1 services from the retail market, the ACCC does not have sufficient regard to the context in which these withdrawals have occurred.⁴⁴ For instance, in many cases, the withdrawal of a 12/1 entry level service by an RSP was accompanied by the introduction of a higher-speed service for the same price.

3.28 Further, there is also a higher proportion of unlimited retail **nbn** plans than ever before at a retail price point of \$60 or less. As at June 2019, 47% of all these retail plans priced at \$60 or less came with unlimited data caps. This includes unlimited 12/1 plans offered by RSPs such as Belong, Harbour ISP, as well as sub-\$60 unlimited plans on higher speed tiers by some RSPs, for example MATE Communicate (50/20) and Barefoot Telecom (50/20).

3.29 The trend towards unlimited retail **nbn** plans is illustrated below and reflects the strong range of competition at the retail level.

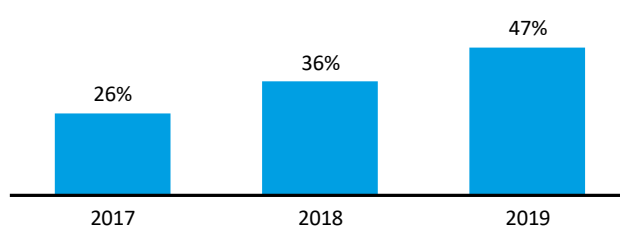


Figure 4: Unlimited retail plans as a proportion of total nbn retail plans priced at \$60 or less

3.30 These unlimited retail plans are also more available to end users given more broadband plans today are typically offered on a “month-to-month” basis than ever before. Many RSPs (including the largest RSPs serving the majority of Australians) now offer this as a “standard” plan feature.

⁴³ See section 4 for further discussion regarding **nbn**’s cross-subsidy.

⁴⁴ Discussion Paper, pp. 33-34.



3.31 Month-to-month plans provide significant flexibility to end users, who are no longer expected to commit to a term of 24 months. In addition to enabling end users to take up plans with a smaller financial commitment, casual plans also allow end users to switch between retail plans more frequently, driving competition and giving end users more opportunity to take up the latest discounts and other promotions.

An increasing proportion of end users are connecting to the nbn™ Network within 6 months of becoming able to do so

3.32 nbn disagrees with the ACCC's statement that an average "lag" of at least 12 months "is built into NBN Co's business planning" in respect of migrations and the suggestion that this is due to end users choosing to wait to transition to the nbn™ Network.⁴⁵ nbn's data indicates that the rate at which end users migrate to the nbn™ Network is accelerating so end users obtain the benefits of nbn sooner.

3.33 The proportion of end users who connect to the nbn™ Network within 180 days (or 6 months) of the nbn™ Network becoming available in their area has increased over time:

- (a) across all access technologies (excluding Satellite), the rate of take up of nbn services at 180 days from the Ready to Connect (RTC) date has increased significantly from [Commercial-in-Confidence]; and
- (b) on the FTTC and HFC networks, which serve the majority of premises in the nbn™ Network rollout footprint for the 2018-19 financial year, the combined rate of take-up at 180 days from the RTC date has increased from [Commercial-in-Confidence].

3.34 The figures presented by the ACCC do not set out all of the relevant context, as they do not account for the timing of when premises become RTC within the financial year.⁴⁶ For example, take-up of an nbn service within the first few months of a financial year would involve a shorter transition to the nbn™ Network than suggested in the table.

⁴⁵ ACCC, Discussion Paper, p. 12.

⁴⁶ ACCC, Discussion Paper, Table 2.1.



- 3.35 The ACCC has also not taken into account other factors which influence the timing of end user transition to the **nbn**TM Network. For instance:
- (a) end users who were not previously connected to an ADSL/ADSL2+ service typically take longer to connect to the **nbn**TM Network following their premises becoming RTC;
 - (b) **nbn** has observed a greater prevalence of “below-the-line” discounts and other promotions for retail **nbn** plans typically offered by RSPs to end users nearing the end of their migration window, and it is likely that some end users may choose to wait to take up these promotional offers; and
 - (c) some end users may not have access to accurate and timely information about the availability of the **nbn**TM Network in their area due to factors outside **nbn**’s control.

Anchoring for higher speed services is already being observed

- 3.36 In addition to facilitating a smooth transition to the **nbn**TM Network, the ACCC notes that “basic speed access products should act as an anchor” for higher speed services.⁴⁷ As discussed further in section 4, **nbn** has always sought to maintain low price increments between speed tiers to encourage uptake and move end users up the speed curve, including by reducing effective pricing for its higher speed services over time.⁴⁸ **nbn**’s price reductions demonstrate that the type of anchoring desired by the ACCC is already occurring at the wholesale level, with benefits flowing through to the retail level.
- 3.37 For instance, in 2016, Optus offered an unlimited 12/1 plan for a retail price of \$80. Today, Optus’s entry level **nbn** offer is an unlimited 50/20 plan at a retail price of \$70. This reflects a 12.5% reduction in price since 2016, with a vastly superior speed tier.
- 3.38 Similarly, in 2016, Telstra offered a 1000GB 25/5 **nbn** plan for a retail price of \$115. Today, Telstra’s unlimited entry level offer is \$90, on the 50/20Mbps speed tier, reflecting a retail price drop of more than 20% with the superior speed tier now included with the offer, as well as unlimited data.
- 3.39 These outcomes demonstrate that **nbn** plans have offered “more-for-less” over time, with entry level plans already acting as an effective anchor on higher-speed plans, while achieving and exceeding the

⁴⁷ ACCC, Discussion Paper, p. 21.

⁴⁸ For example, see a summary of **nbn**’s recent pricing and discounting initiatives in Appendix A.



ACCC's and **nbn**'s objective that **nbn** access products should be at least functionally equivalent to legacy offers.⁴⁹

- 3.40 By contrast, the ACCC's proposed anchor product would impose significant limitations on **nbn**'s ability to earn a return on its investment without delivering a better customer experience or promoting the LTIE. In particular, as outlined in further detail in section 4, the ACCC's proposal would:
- (a) limit **nbn**'s ability to grow its ARPU through CVC traffic growth over time, by embedding indexed CVC inclusions based on static and arbitrary regulatory principles; and
 - (b) perversely incentivise high-use end users to remain on overly generous entry level plans with potential impacts on their customer experience, rather than moving up the speed tiers as always forecast. This undermines the economically efficient outcome of moving high-use end users up the value chain.
- 3.41 The ACCC's proposal is also out of line with international benchmarks. To the extent regulated anchor products have been implemented in respect of superfast fibre operators in comparable jurisdictions, operators have retained a significant degree of freedom in respect of their other services.
- 3.42 For example, in New Zealand, individual maximum regulated prices will apply from 2020 to Chorus' basic fibre broadband and fibre-based voice services equivalent to those available in respect of legacy copper infrastructure, but Chorus is otherwise "free to structure its prices for other [fibre fixed line access services] as it sees fit".⁵⁰ Similarly, in the United Kingdom, Openreach is required to offer a basic anchor virtual unbundled local access (**VULA**) service at a regulated price, but the prices for VULA services on all other bandwidths (whether higher or lower) are subject only to limited regulation.⁵¹
- 3.43 **nbn** submits that the way in which the ACCC perceives an "anchor product" regime should be aligned with how the model operates in practice in other comparable jurisdictions, which focus on offering a higher degree of flexibility for non-anchored services. In any event, price anchoring is already taking place in the manner sought by the ACCC.

⁴⁹ ACCC Discussion Paper, s 4.1.1. Further, the ACCC expressed concerns in section 4.3 of the Discussion Paper, that **nbn**'s pricing approach had the potential to reduce the range and/or lessen the quality of basic speed plans and that budget-conscious consumers may be forced to choose more expensive plans. These concerns have been shown to be unfounded.

⁵⁰ See *Telecommunications (New Regulatory Framework) Amendment Act 2018* (NZ) s 227(2) and Commerce Commission New Zealand, "New regulatory framework for fibre", 9 November 2018, at footnote [46].

⁵¹ UK Office of Communications, "Wholesale Local Access Market Review", March 2018.



nbn is incentivised to continue delivering price certainty for RSPs

- 3.44 In the discounts it has introduced to date, **nbn** has sought to carefully balance industry demands for speedy discount implementation with the requirement for price certainty, as also described by the ACCC in the Discussion Paper.⁵² **nbn** has also included within its various Pricing Evolution discount terms notice periods of not less than 6 months for withdrawal or changes to discounts.⁵³
- 3.45 There has been no practical uncertainty associated with **nbn**'s discounting arrangements because, given the broad alignment of interests between **nbn** and RSPs, **nbn** has never withdrawn or otherwise abandoned any discounts without implementing a suitable (and in most cases, more targeted and beneficial) replacement. However, **nbn** acknowledges that some RSPs need more time to plan for price changes, which is why **nbn** is introducing a two-year roadmap of bundle discounts and CVC inclusions, updated annually.
- 3.46 It is in **nbn**'s interests to ensure that its pricing arrangements meet the needs of RSPs and end users and accordingly encourage the take up of **nbn** services. This incentive will continue to be the case, even during the continued evolution of the telecommunications industry over the next three to five years.
- 3.47 The impact of these incentives is not theoretical, but is playing out in practice. For instance, in response to **nbn**'s latest pricing initiatives, including a rolling two-year roadmap of bundle discounts and CVC inclusions updated on an annual basis, one RSP noted:
- "We welcome the announcement from NBN Co which has positively responded to feedback from retailers by increasing data capacity in the key bundles and providing forward price certainty".⁵⁴*
- 3.48 It is also important to recognise that RSPs have different business models, customers and cost profiles, and there may not always be uniform support for any given wholesale discounting approach. **nbn** appreciates in this regard the challenges faced by RSPs in a highly dynamic and competitive retail market, and is committed to maintaining and growing its consultative, collaborative approach to pricing and discounting. Static regulated outcomes will not offer the same benefits to the broader interests of RSPs and end users.

⁵² Discussion Paper, s 4.1.3.

⁵³ The notice period for amendments and withdrawal varies between discounts. See above n. 19.

⁵⁴ Andrew Sheridan, VP of Regulatory and Public Affairs (Optus). See Communications Day 27 November 2019, p. 3.



nbn is delivering broader macroeconomic benefits beyond a smooth and efficient migration

- 3.49 The benefits of **nbn**'s pricing and discounting approach extend beyond a smooth and efficient migration to the **nbn**TM Network.
- 3.50 Australian broadband is now amongst the most affordable and accessible in the world, ranking 7th lowest among 22 advanced industrial countries.⁵⁵ In fact, between 2014 to 2019 - coinciding with the same period over which the **nbn**TM Network rollout gathered pace - the telecommunications price index has fallen 22%. There is a legitimate question as to whether broadband pricing can continue to fall in real terms and whether this is promoting the LTIE, given the impact on **nbn**'s ability to invest in network upgrades and service improvements.
- 3.51 Growth in the price of telecommunications (including broadband) is also substantially slower than other key utilities and markets. While the telecommunications price index has declined 6% since 2000, the price indices for electricity (224%), health (134%) and rent (79%) have all increased over the same period, while Australia's CPI has grown 63%.

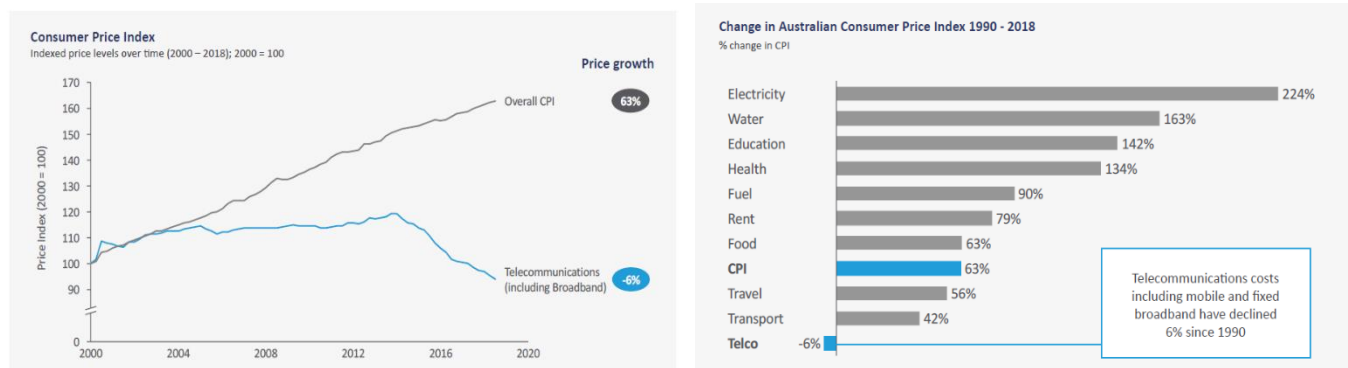


Figure 5: Telecommunications prices have declined while other key utilities and CPI have surged⁵⁶

- 3.52 End users and the Australian economy have also benefitted from the **nbn**TM Network through job creation and industry growth, as well as social and financial benefits such as connecting and empowering regional, rural and remote communities. By the time the rollout completes at the end of June 2020, the **nbn**TM Network is expected to add more than \$10 billion per year to Australia's economy.⁵⁷

⁵⁵ AlphaBeta, 'Australian Broadband Affordability', March 2019.

⁵⁶ Australian Bureau of Statistics 6401.0, Consumer Price Index – September 2018, Table 7 (Group, Sub-group and expenditure class weighted average of eight capital cities).

⁵⁷ Connecting Australia Report, p. 14.



nbn will continue working closely with RSPs to deliver value to RSPs and end users

- 3.53 The outcomes set out in this section 3 demonstrate that the retail market for **nbn** services is dynamic and competitive, with a particularly broad range of entry level offerings with increased data allowances and greater flexibility for end users to move between plans. This is consistent with the ACCC's recent observation that there "is strong price competition in the broadband services market, particularly for services on the NBN".⁵⁸
- 3.54 This strong competition is expected to become even more dynamic with the recent announcement of **nbn**'s new pricing initiatives, as summarised in paragraph 2.48 and described further in Appendix D.
- 3.55 Once these improvements are implemented, it is expected that the market will respond with an even greater diversity of retail plans, including more 12/1 plans.
- 3.56 **nbn** submits that the **nbn**TM Network has driven efficient and more competitive outcomes in the retail market, as described in this section 3. Any regulatory intervention by the ACCC despite these outcomes will result in significant harm to the interests of end users, RSPs and **nbn**, and would undermine investment certainty and future investment incentives, as further described in section 4.

⁵⁸ Market Study Final Report 2018, section 4.1.6.



4 The ACCC must place significantly greater weight on **nbn**'s investment incentives and the LTIE

- 4.1 **nbn** must invest and reinvest in its network to meet current RSP and end user needs, and to cater for the future needs of Australians. The **nbn**TM Network needs to be constantly maintained and upgraded to ensure Australia does not fall behind, for example by rolling out new infrastructure, implementing new technologies, and developing new products that end users want to purchase, at the prices they are willing to pay.
- 4.2 In addition, **nbn** has the key objective of lifting the digital capability of Australia, including through bridging Australia's digital divide by ensuring that all Australians can access affordable, high-speed broadband regardless of where they live.
- 4.3 To achieve this goal, **nbn** incurs a substantial internal cross-subsidy for the non-commercial services it delivers over its fixed wireless and satellite networks, and for certain fixed-line services in certain high-cost areas. This cross-subsidy was not a feature of the ADSL/ADSL2+ pricing regime, with the result that end users in regional Australia paid much more for fixed line services and did not have the breadth of RSP choice that they do today.
- 4.4 These investment objectives and challenges, including the cross-subsidy, must be carefully considered and balanced in developing pricing for **nbn**'s services, as described further in this section 4.

The ACCC's pricing principles do not sufficiently take into account **nbn's investment incentives or the LTIE**

- 4.5 In developing **nbn**'s pricing, a number of diverse and competing challenges and objectives need to be carefully considered and balanced. This includes the interests of RSPs, the promotion of the LTIE and **nbn**'s legitimate business interests.
- 4.6 Pricing for legacy ADSL/ADSL2+ services involved a very limited subset of objectives and a specific approach to setting prices based on a (largely) theoretical and contested TSLRIC pricing model. By contrast, **nbn**'s products span across a range of access technologies and product features, are internally cross-subsidised to close the digital divide, and must be responsive to changing market demands in an era of significant evolution within the industry and in end user behaviour.



4.7 **nbn** has not developed its individual prices to be reflective of the incremental cost of each product component or access technology. This has always been an explicit feature of **nbn**'s pricing approach and reflects that it is the overall recovery of costs, rather than the recovery of individual cost elements, which is the relevant consideration. This allows **nbn** the flexibility to develop pricing to encourage efficient use of the network, and reflect RSP and end user behaviour, and thus provide **nbn** with a more efficient path to overall cost recovery. This is also a central feature of the design of the long-term cost recovery framework included in the SAU. As the ACCC acknowledged in its 2013 Draft Decision:

“By ensuring that access seekers, and their end-users, that do not wish to pay higher prices for higher quality services are not forced to do so, end-users that do value higher quality services will bear proportionally more of the costs of the NBN upgrade. To the extent that this results in those users who highly value the greater capabilities of the NBN relative to the copper and HFC networks contributing more towards the recovery of the costs of investing in the NBN, efficient use of the network is more likely to be encouraged.”⁵⁹

4.8 **nbn** submits that this approach is the most appropriate and equitable approach. Movement away from the user-pays model previously approved by the ACCC would require certain end users to face weaker price signals based on their usage or the value they derive from the service, imposing higher costs on other users and undermining efficient use of the network. This would be inequitable and impracticable.

4.9 To meet the diverse needs of RSPs and end users within the constraints set out above, a diverse product and pricing portfolio needs to be developed and maintained.⁶⁰ In doing so, some of the key challenges faced by **nbn** and the industry are:

- (a) the requirement to build fixed wireless and satellite networks, and a significant volume of fixed line services, that are loss making. **nbn** services must take into account a significant cross-subsidy to close the digital divide across the country;
- (b) the inherent challenges of building the largest ever national infrastructure project in Australia's history and the legitimate business interest in recovering the cost of, and earning a return on, this investment;

⁵⁹ ACCC, 'ACCC Draft Decision on the Special Access Undertaking lodged by NBN Co on 18 December 2012', 18 December 2012, section 5.3.3.

⁶⁰ A diverse product and pricing portfolio is a key goal of **nbn**'s in the 2020-23 Corporate Plan.



- (c) the mandate under the SoE to ensure that “all Australians have access to very fast broadband as soon as possible, at affordable prices, and at least cost to taxpayers”;
- (d) the need to retain the ability to introduce products, offers and services that end users want, at the prices end users are willing to pay, and the considerable demand risk in relation to these products;
- (e) as **nbn** has always openly forecast, the need to engage in pricing which will encourage growth in ARPU to drive cost recovery and reinvestment in the network;
- (f) the importance of being able to introduce targeted offers aimed at encouraging underrepresented groups to transition to the **nbn**TM Network; and
- (g) that investment and cost recovery challenges are not static; they are ongoing. **nbn** requires certainty and the ability to earn a reasonable rate of return so that it can extend its current investment and continue to invest in new infrastructure.

nbn requires pricing flexibility to enable it to innovate, invest and re-invest

- 4.10 **nbn** must invest and reinvest in the **nbn**TM Network to meet evolving RSP and end user needs and to deliver products that end users want to purchase at the prices they are willing to pay.
- 4.11 As discussed in section 5, **nbn**'s ability to promptly implement changes to address industry feedback and meet end user requirements has largely been made possible through the ability for **nbn** to discount. As many RSP participants noted in relation to the High Bandwidth Bundles discounts, introducing the bundles under a discount arrangement provided benefits of speed and flexibility, while aligning with the optional nature of the bundles (which are available alongside existing offers). It has also allowed **nbn** to readily improve and refine its offerings over time.
- 4.12 **nbn** has been incentivised to introduce these initiatives – and, as demonstrated by its most recent pricing initiatives, remains so incentivised – by giving effect to the user-pays model, which allows for a future uplift in ARPU as demand increases.
- 4.13 This is not a new objective. As described in **nbn**'s 2010 Corporate Plan, “The balance between AVC and CVC pricing has been designed to enable NBN Co to drive – and benefit from - substantial increased



usage in the future. This has been achieved by keeping the AVC as low as possible in order to encourage consumers up the speed tiers, and relying on CVC revenues to drive ARPU growth.”⁶¹

4.14 This point has also been acknowledged by the ACCC, which noted “NBN Co’s projected revenue growth is heavily reliant on an increase in take-up of these higher speed services in the long-term and may have been a driver of the recent price and product changes”.⁶²

4.15 If **nbn** were prevented from growing its ARPU (e.g. through the ACCC’s proposed fixed indexation of CVC inclusions as discussed in section 5 below), this would undermine **nbn**’s ability to earn a reasonable return on its investment and to reinvest in the **nbn**TM Network, including through upgrade paths across access technologies and installing or launching new infrastructure, such as possible new fixed wireless towers and satellites.

4.16 Growth in ARPU will also enable the introduction of targeted offers aimed at encouraging underrepresented groups to transition to the **nbn**TM Network. This is a key focus area for **nbn** as it seeks to bridge the digital divide for the groups of end users who most need that bridge, such as the elderly and low-income end users. **nbn** notes that it is currently consulting with RSPs on a number of these initiatives.

4.17 Finally, the ACCC’s pricing proposals will deliver less benefits to end users, and at a higher cost, than **nbn**’s targeted pricing initiatives. **nbn**’s initiatives have achieved, and will continue to achieve, positive outcomes for end users, focusing on those end users who stand to benefit the most from transitioning to the **nbn**TM Network.

nbn’s mandate is to lift the digital capability of all Australians

4.18 In addition to these investment challenges, **nbn** also needs to provide products that end users want at the prices end users are willing to pay for those products. Although there is considerable demand risk in relation to the products that **nbn** supplies, the **nbn**TM Network was not built to satisfy the static demands of end users at the time it was built. End users and taxpayers expect **nbn** to continue to develop products for current circumstances and for the future.

⁶¹ Corporate Plan 2011-13, p. 103.

⁶² ACCC, ‘Communications Sector Market Study – Final Report’, April 2018, p. 93 (**Market Study Final Report 2018**).



- 4.19 This challenge was expressly stated by **nbn** in the 2011-13 Corporate Plan, in which it was noted that “a key driver to NBN Co’s pricing philosophy has been to maintain low price increments between the different access speed tiers in order to encourage End-Users to migrate up the speed curve”.⁶³
- 4.20 The **nbn**TM Network is a long-term investment for the future of Australia and was not designed just to mimic the outcomes already possible on legacy ADSL/ADSL2+ networks. It would not make sense to build a national broadband network with such a huge investment if end users were incentivised to remain on speed tiers which do not allow them to realise the full value of the **nbn**TM Network.
- 4.21 Similarly, in its final report on the Communications Sector Market Study, the ACCC observed that:
- “Continued low-take up of high-speed services may have consequences for efficient use of the NBN infrastructure if the network is not utilised as intended and only provides low-speed broadband services. This may also impact NBN Co’s ability to recover its efficient costs of investment, which relies on assumptions of significant take-up of higher speed (and higher priced) services”.*⁶⁴
- 4.22 The pricing approach proposed by the ACCC in the Discussion Paper would have precisely this impact. End users that are not genuinely “entry level” in their usage habits or in their willingness to pay will be incentivised to remain on entry level services rather than taking up higher speed services. This take-up is critical not only to **nbn**’s “ability to recover its efficiently incurred investment”, but also to unlocking the benefits of the **nbn**TM Network for Australia more broadly.
- 4.23 Any proposal by the ACCC which seeks to embed CVC inclusions for entry level services based on an arbitrary and static approach to regulation would lead to a downward shift in speed tiers, driving inefficient use of the significant infrastructure built on behalf of Australian taxpayers.
- 4.24 To avoid this undesirable outcome, **nbn**’s pricing and discounting initiatives to date have been aimed at driving uptake of higher speed services, while ensuring through its ELB offering that there remains a smooth migration path as a “safety net” for those end users who only wish to take up entry level **nbn** services for their basic internet needs (e.g. web browsing, email, social media, etc) or telephony-only services. In so doing, **nbn** has demonstrated the alignment of its incentives with those of RSPs and end users and accordingly the efficient and pro-competitive nature of **nbn**’s pricing approach.

⁶³ **nbn**, ‘Corporate Plan 2011-13’, p. 100.

⁶⁴ Market Study Final Report 2018, p. 36.



nbn is bridging the digital divide

- 4.25 As part of **nbn**'s pricing approach, **nbn** has been addressing the critical issue of bridging Australia's digital divide, ensuring that all Australians are able to access affordable, high-speed broadband regardless of where they live.
- 4.26 To bridge the digital divide, **nbn** has been required to embed in its pricing an internal cross subsidy for non-commercial fixed wireless and satellite services and a large volume of fixed-line services in regional, rural and remote areas, as described further in this section 4. As a result, there are now more end users connected to broadband than ever before. Take-up of **nbn** services is progressing at a rapid pace, with over 6 million homes and businesses now connected to a plan over the **nbn**TM Network, compared with 4.4 million in September 2018.⁶⁵

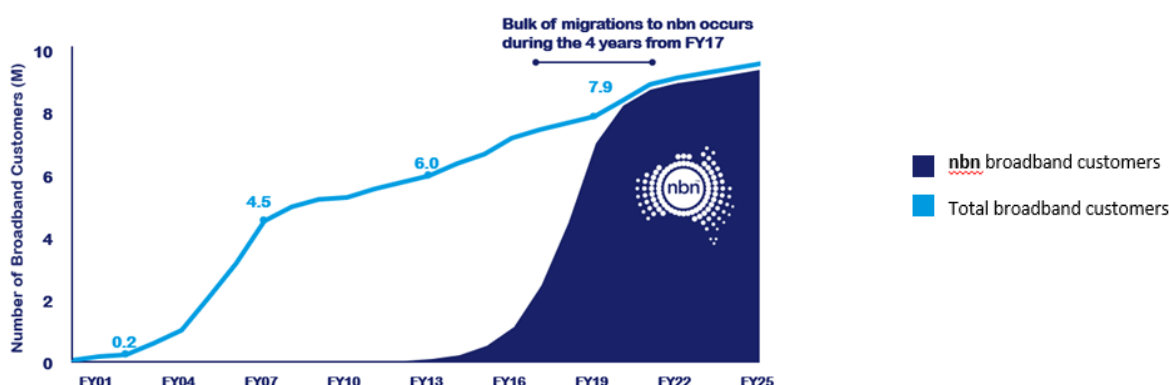


Figure 7: Projected take-up of nbn services over time⁶⁶

- 4.27 Further, many end users connecting to the **nbn**TM Network are connecting to fixed broadband services for the first time. 220,000 regional households with children that had either below average or no internet in 2014 are now connected to the internet through the **nbn**TM Network.⁶⁷
- 4.28 RSPs have also benefitted from an increase in the addressable broadband market. The addressable market for broadband services has been enlarged significantly, and is now properly national, rather than an addressable market limited to CBD, metropolitan and large regional areas.

⁶⁵ **nbn**, Monthly Progress Report, September 2019.

⁶⁶ **nbn**, 'The transition years', as presented by **nbn** Chairman to CommsDay Summit, 10 April 2017.

⁶⁷ **nbn**, 'Connecting Australia', June 2019 (**Connecting Australia Report**).



4.29 There are now many RSPs serving end users in regional, rural and remote areas through services delivered over **nbn**'s fixed wireless and satellite networks. The number of NBN Access Seeker Groups⁶⁸ acquiring fixed wireless and satellite services directly from **nbn** has increased steadily over time, as set out in Table 4 below.

[Commercial-in-Confidence]⁶⁹

4.30 In addition, the average number of Access Seeker Groups connected to **nbn**'s Regional POIs (excluding Satellite) has increased from [Commercial-in-Confidence]. This is a clear indication of increasing consumer choice being available in these areas.

[Commercial-in-Confidence]⁷⁰

⁶⁸ Consistent with the ACCC Disclosure Direction provided to **nbn** in respect of the NBN Services in Operation Record Keeping and Reporting Rules, an "NBN Access Seeker Group" means two or more Access Seekers who are acquiring services from **nbn** and that are related to each other.

⁶⁹ **nbn**'s SkyMuster Satellite service was launched on 7 April 2016, with the Interim Satellite Service being withdrawn on 28 February 2017. As such, information on the number of Access Seeker Groups connected to the (long term) Satellite POI as at 30 June 2016 has not been included here.

⁷⁰ 'Regional' POIs are those designated as such in the document titled "Listed Points of Interconnection - NBN Corporation", published by the ACCC on 2 November 2012.



- 4.31 End users in these areas have benefitted significantly from the increased penetration of broadband and competition in these areas, including through lower retail prices driven by uniform national pricing when compared with the “off-net” retail broadband prices charged under the previous model.
- 4.32 **nbn**'s data indicates that major RSP market shares have stayed relatively stable between 2012 and 2019, while fixed broadband penetration grew from [Commercial-in-Confidence] of premises across the various fixed technologies.⁷¹ This shows that RSPs have been able to maintain their respective market positions while growing their subscriber numbers through the increased penetration rate of the **nbn**TM Network.
- 4.33 As a result of the above, along with the speed benefits of the **nbn**TM Network more generally:
- (a) monthly data consumption on the **nbn**TM Network has increased by 820% between December 2012 and June 2019, with similar usage between regional and metropolitan areas;⁷²
 - (b) Australians' average download speeds have more than doubled over the last five years;⁷³ and
 - (c) Australia ranks highly for the most equal access to high speed broadband in the world, in keeping with **nbn**'s mandate to bridge the digital divide and despite the unique challenges posed by Australia's geography and population distribution.⁷⁴
- 4.34 By contrast, there was a vast digital divide in respect of ADSL/ADSL2+ networks, particularly from a geographical perspective. In the legacy world, while end users in metropolitan and major regional and rural areas generally had access to fixed line ADSL/ADSL2+ services, most end users in remote areas of Australia had virtually no access to competitive fixed broadband services at affordable prices.
- 4.35 As the ACCC noted in its Telecommunications Competitive Safeguards Report 2012-13, at the time **nbn** was ramping up deployment of its network, Telstra's DSLAM coverage in remote exchange service areas was only 39.7%.

⁷¹ Venture Insights, Telco Market Outlook Model, as provided to **nbn** on 15 April 2019.

⁷² Minister for Communications, Cyber Safety and the Arts, 'NBN underpins growth in Australia's data demand', 2 December 2019.

⁷³ AlphaBeta, 'Speed Check: Calibrating Australia's broadband speeds', October 2019.

⁷⁴ Ibid.

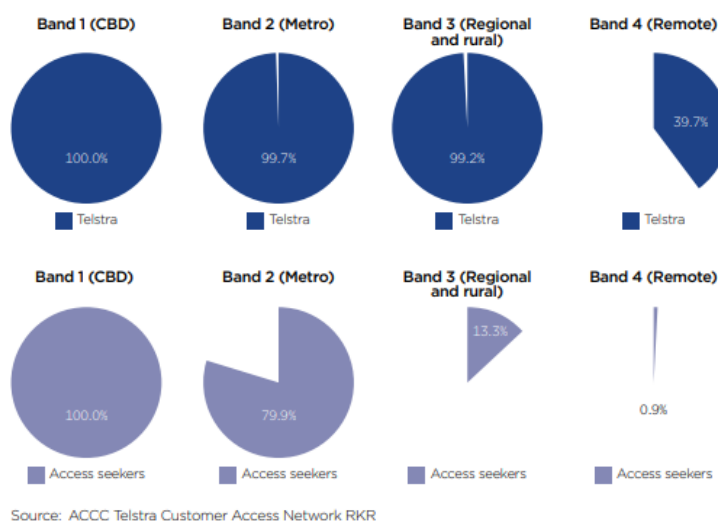


Figure 8: Telstra and access seeker DSLAM coverage⁷⁵

4.36 Further, as depicted in Figure 8 above, at that time, competitive activity by RSPs was largely limited to ULLS Band 1 and 2 areas, with virtually no competition to Telstra in Band 3 (Regional and rural) and Band 4 (Remote) areas. This model created a significant gap in digital inclusion for end users in Band 3 and Band 4 areas, given the dearth of affordable broadband options in those areas in the absence of any meaningful competition. However, end users in these low-density locations are amongst those who stand to gain the most from an uplift in digital inclusivity. In fact, end users outside CBD and Metro areas account for nearly half (48%) of all data usage on the **nbn**TM Network.⁷⁶

nbn incurs a significant internal cross-subsidy to support its fixed wireless and satellite networks and bridge the digital divide

4.37 Achieving uniform national wholesale pricing has been a key goal of **nbn**'s since its 2011-13 Corporate Plan.⁷⁷ Initial prices at commercial launch were designed to deliver uniform national wholesale pricing, consistent with government policy at that time. As **nbn** now faces a price cap on its prices, the practical effect is that **nbn** would not be able to recover its costs of providing services in these loss-making areas unless it was able to increase its revenues from higher speed services and entry in adjacent markets.

4.38 The cross-subsidy incurred by **nbn** in furtherance of the objective of achieving uniform national wholesale pricing is a real and substantial cost. 2016 data from the then Bureau of Communications Research (**BCR**) estimates that the NPV loss of providing these services to FY2040 is approximately \$9.8

⁷⁵ ACCC, 'Telecommunications Competitive Safeguards for 2012-13', February 2014.

⁷⁶ Gavin Williams, Chief Development Officer (**nbn**). See Communications Day 1 November 2019, p. 1.

⁷⁷ **nbn**, 'Corporate Plan 2011-13', 17 December 2010, section 8.7 (**Corporate Plan 2011-13**).



billion, effectively comprising a monthly subsidy (in FY2015 real terms) of approximately \$110 per satellite premises, and \$105 per fixed wireless premises.⁷⁸

- 4.39 **nbn** notes that BCR's estimates were based on an assumption that **nbn** does not discount prices for services delivered over the fixed wireless or satellite networks below the MRPs set out in the SAU. This means that in the case of services delivered over the fixed wireless network (in respect of which **nbn** does offer discounts below the MRPs), the NPV loss to **nbn** would be even greater than estimated by BCR.
- 4.40 In practice, the cross-subsidy means that for every fixed-line end user, **nbn** must contribute an amount of \$7.09 (based on BCR's estimates) to the cross-subsidy (or to the Regional Broadband Scheme (**RBS**) fund, once implemented). Importantly, this contribution must come from every fixed-line end user – end users on entry level 12/1 services are not exempt from the cross-subsidy. If wholesale pricing for these entry level services did not take this into account, the amount would have to be found from another source. However, there is simply no other source from which these amounts can be obtained, given **nbn**'s wholesale only structure and line of business restrictions.
- 4.41 This cross-subsidy was not required to be built into the pricing models of legacy ADSL/ADSL2+ networks, as there was no requirement for the operators of those networks to achieve uniform national wholesale pricing, nor to provide services other than where it made commercial sense to do so. In fact, Telstra's wholesale prices for the Unconditioned Local Loop Service (**ULLS**) were geographically de-averaged with a very negative impact on broadband competition in regional, rural and remote Australia.⁷⁹
- 4.42 For example, as set out in Table 6 below, the monthly charges for Telstra's ULLS service in Band 4 areas greatly exceeded monthly charges in Band 1, 2 and 3 areas. This led to end users in regional, rural and remote areas paying significant premiums for "off-net" services.

⁷⁸ BCR, 'NBN non-commercial services funding options: Final Report', March 2016, p. 7.

⁷⁹ *Pricing Principles for the Unconditioned Local Loop Service (ULLS) Determination 2009* (Cth).



Band	Jul 2011 – Oct 2015	Nov 2015 – Jun 2019
1	\$16.21	\$14.68
2	\$16.21	\$14.68
3	\$16.21	\$14.68
4	\$48.19	\$43.65

Table 6: Telstra ULLS monthly charges on a per service per month basis (Bands 1 to 4)⁸⁰

- 4.43 **nbn** is subject to price regulation and an overall revenue cap across its entire business, meaning it is wholly reliant on the cross-subsidy being factored into its regulated pricing to ensure it can continue bridging the digital divide.
- 4.44 **nbn** has made, and continues to make, a substantial investment in its internal cross-subsidy to ensure that regional and remote end users can access retail broadband at affordable prices. The cross-subsidy has been incorporated into **nbn**'s cost base and it is squarely within **nbn**'s legitimate business interests to recover this investment.
- 4.45 To recover these costs, **nbn** requires all services (including entry level services) to contribute to the cross-subsidy. The effect of the ACCC's proposal to index CVC inclusions over time for 12/1 services is that **nbn** will be deprived of the ability to cover the cross-subsidy, because **nbn**'s ability to benefit from any CVC upside associated with traffic growth at the entry level of the market will be increasingly constrained. This means that, for the more than 20% of **nbn**'s customer base currently taking up 12/1 services, **nbn** will be inhibited in its legitimate business interest in recovering these costs.
- 4.46 The Discussion Paper does not sufficiently consider the cross-subsidy, **nbn**'s investment incentives or the various other challenges associated with **nbn**'s mandate to deliver affordable high-speed broadband to all Australians. This creates the real risk that the outcomes of the Inquiry could undermine **nbn**'s incentives to continue in the loss-making fixed wireless and satellite networks, thus potentially deepening the digital divide that the industry is solving for today.

⁸⁰ Telstra, 'Telstra Wholesale Rate Card', 4 May 2017. These charges do not include initial capital expenditure required of access seekers in respect of DSLAM and backhaul, as well as ongoing costs in respect of Telstra Exchange Building Access (TEBA).



5 **nbn's** discounting approach falls squarely within the principles accepted by the ACCC under the SAU

- 5.1 **nbn** has developed and implemented a pricing and discounting approach that promotes the LTIE and complies with the principles accepted by the ACCC under the SAU. **nbn** rejects the ACCC's statements in the Discussion Paper that **nbn's** pricing has moved away from these principles.
- 5.2 In particular, **nbn** disagrees with the ACCC's statement in the Discussion Paper that "NBN Co's approach to developing product and pricing offers has moved away from some of the key objectives and principles that underpinned our assessment of the SAU".⁸¹
- 5.3 Rather, as described in detail in this section:
- (a) existing investment in the **nbn**TM Network has occurred in accordance with the SAU, and this investment has been approved by the ACCC in accordance with the Long-Term Revenue Constraint Methodology (**LTRCM**);⁸²
 - (b) **nbn's** pricing and ARPU track alongside or over-deliver on the forecasts provided to the ACCC at the time of the ACCC's SAU acceptance; and
 - (c) to the extent there has been market evolution (e.g. increased CVC demand per service), **nbn** has responded appropriately to this evolution using the pricing flexibility allowed under the SAU itself.

nbn's discounting approach falls within the scope of the SAU principles

- 5.4 In 2013, the ACCC approved a pricing structure to apply to the NBN Access Service under the SAU. This pricing structure applied to services over the FTTP, fixed wireless and satellite access technologies.⁸³
- 5.5 Under the SAU pricing structure, an MRP is set or introduced as a "price ceiling" but **nbn** is otherwise free to price below that MRP (or discount against it). The underlying principle behind this approach is that **nbn** can charge less, but not more, than the MRP. Further, when this principle is coupled with the

⁸¹ ACCC, Discussion Paper, section 4.2.

⁸² SAU, Schedule 1E.

⁸³ Any Access Determination which is inconsistent with the SAU pricing and pricing structure has no effect to the extent of the inconsistency.



fact that **nbn** has the opportunity, but has no guarantee, about its ability to recover its investment under this framework, it is **nbn** that needs to directly manage the demand risk associated with its pricing practices. For **nbn** to manage this risk, some flexibility to price experiment through discounting is critical.

- 5.6 **nbn**'s ability to refine pricing and engage in price experimentation through price discounting was recognised around the time the SAU was accepted. In the ACCC's 2012 draft SAU decision, the ACCC stated that, as an "overarching point", **nbn** should be given a suitable amount of flexibility "to ensure that the most appropriate regulatory pricing approach is in place".⁸⁴ The ACCC also noted that "the approach to regulated pricing must be suitably flexible to adapt to a range of possible future scenarios".⁸⁵
- 5.7 Similarly, in the Discussion Paper, the ACCC contemplates the use of a "rebate type mechanism" given the "significant benefit in moving quickly" to drive the retail pricing changes sought by the ACCC.⁸⁶
- 5.8 **nbn** has adopted a dynamic and market-driven discounting approach which has allowed all RSPs to respond promptly to end user needs and behaviours, including changing usage habits. For example, RSPs quickly responded to the Focus on 50 promotion, which addressed the urgent demand for additional CVC capacity, by launching new retail plans within one day of the promotion commencing.⁸⁷ At the same time, there have been no adverse price shocks for end users as a result of this discounting approach.⁸⁸
- 5.9 If **nbn** had not adopted price discounting, there would have been a high risk of delay, which may have exacerbated the capacity and congestion issues being experienced by end users at the time.⁸⁹ For example, an actual price reduction would have been subject to the SAU's price controls and/or the **nbn**TM Ethernet Price List under the WBA, and **nbn** would have had limited or no ability to further modify the price should it have been found to not deliver the expected end user outcomes. In these circumstances, it could be expected that a much more conservative approach to introducing such

⁸⁴ ACCC, 'ACCC Draft Decision on the Special Access Undertaking lodged by NBN Co on 18 December 2012', 18 December 2012, section 5.3.3.

⁸⁵ *Ibid*, section 5.3.2.

⁸⁶ Discussion Paper, s 7.3.5.

⁸⁷ See above n. 18.

⁸⁸ In section 4.3 of the Discussion Paper, the ACCC notes that a central objective of the SAU is to minimise price shocks for consumers and businesses using the **nbn**. No such price shocks have occurred.

⁸⁹ This paragraph responds to section 4.2 of the Discussion Paper.



permanent changes would have occurred. This would have led to a pricing framework that would have been unresponsive to critical market pressures, and which could not have delivered value to RSPs and end users, compared with the immediate improvement in end user experience following the introduction of the price discounts.

- 5.10 As the ACCC has previously accepted, end users will benefit when **nbn** and RSPs are able to respond commercially and dynamically to unknown future market conditions.⁹⁰ Experts also confirmed at the time that price experimentation is efficient to better gauge the state and responsiveness of downstream demand and its likely evolution.⁹¹

nbn's pricing and ARPU track alongside or over-deliver on the forecasts provided to the ACCC at the time of the ACCC's SAU acceptance

- 5.11 By operating within the principles accepted by the ACCC in the SAU, end users have enjoyed lower pricing than forecast, and ARPU is at the level forecast, by **nbn** and provided to the ACCC in 2013.⁹²
- 5.12 In particular, compared with **nbn's** 2013 forecasts and taking into account **nbn's** modified ELB discount, end users have benefitted as follows:

Information provided in 2013 forecast for FY2020 and in nbn's Corporate Plan 2011-13	nbn's delivery FY20	End user benefits
Entry levels prices (12/1 AVC with 1Mbps CVC inclusion) forecast to stay relatively flat at [Commercial-in-Confidence] ⁹³	✓	Entry level prices @ \$35.00 ⁹⁴ ([Commercial-in-Confidence] lower than forecast), with CVC overage at \$8 per Mbps ([Commercial-in-Confidence] lower than forecast).
Usage-based charging model (for CVC)	✓	Usage-based charging model (for CVC)

⁹⁰ See for example ACCC, 'ACCC Draft Decision on the Special Access Undertaking lodged by NBN Co on 18 December 2012', 18 December 2012, p. 9, in which the ACCC recognises the importance of allowing for "flexibility to respond to changing circumstances".

⁹¹ **nbn**, 'Submission in response to ACCC consultation paper in relation to **nbn's** variation to the NBN Co Special Access Undertaking', 25 August 2017 at [12].

⁹² See above n. 22.

⁹³ The price for the 12/1 AVC TC-4 Product Component was forecast to initially decline from \$24.00 to [Commercial-in-Confidence].

⁹⁴ This price is for an ELB with 0.85Mbps of additional CVC capacity above the 0.15Mbps of included CVC capacity. The ACCC's calculation of the bundled price being \$38.25 in Table 5.1 of the Discussion Paper needs to be updated based on **nbn's** modified ELB discount. The effective price of \$35.00 is referred to in section 5.4 of the Discussion Paper.



Information provided in 2013 forecast for FY2020 and in nbn's Corporate Plan 2011-13	nbn's delivery FY20	End user benefits
CVC pricing was always expected to decrease over time. For FY2020, forecast to be [Commercial-in-Confidence]	✓	CVC prices decreased to [Commercial-in-Confidence]
Progressive reduction of prices on higher speed tiers	✓	Wholesale costs of nbn services on speed tiers above 12/1 Mbps have effectively decreased over time
Usage would grow over time and for FY2020, forecast to be [Commercial-in-Confidence]	✓	Usage has increased to [Commercial-in-Confidence] Increased usage has been offset by cost per unit reductions for CVC capacity lower than in nbn's 2012 forecast.
ARPU would increase to [Commercial-in-Confidence] (FY19)	✓	ARPU has increased to \$46 (FY19).

Table 7: nbn's delivery against 2013 forecasts

- 5.13 At the same time as nbn has been meeting and over-delivering on its forecasts, end users have received more value by being able to acquire services at higher speeds and at lower prices. The proportion of end users taking up nbn services with a speed tier of 50Mbps and above (66%) is significantly greater than originally forecast (39%).⁹⁵ This has not been a case of forcing consumers to pay more, as end users on 50Mbps nbn plans still pay a comparable price to ADSL/ADSL2+ plans.
- 5.14 CVC pricing has reduced significantly over time, to a current average effective CVC price of [Commercial-in-Confidence].⁹⁶ This is significantly lower than the forecast pricing provided by nbn to the ACCC in 2013, as illustrated in the graph below.⁹⁷ nbn expects that its recently announced pricing initiatives will also continue to drive down effective CVC pricing.

⁹⁵ See above n. 22. See also nbn, 'How we're tracking: October 2019', <<https://www2.nbnco.com.au/corporate-information/about-nbn-co/updates/dashboard-october-2019>>.

⁹⁶ nbn has delivered lower CVC pricing, notwithstanding the ACCC's concerns in section 6 of the Discussion Paper that RSPs are dependent on nbn sharing economies in the form of lower prices. Clearly, nbn has done so.

⁹⁷ Current average effective CVC price as at September 2019.



[Commercial-in-Confidence]⁹⁸

- 5.15 In 2013, shortly after **nbn**'s SAU submission, **nbn** also provided detailed supporting information and data to the ACCC and interested RSPs regarding its projected growth in ARPU from increasing CVC demand.⁹⁹
- 5.16 As demonstrated in the graph below, **nbn**'s ARPU projections in 2013 reflected steady growth in ARPU over time.

[Commercial-in-Confidence]

⁹⁸ The forecast CVC pricing specified in this graph was provided to the ACCC on 15 February 2013.

⁹⁹ See above n. 20.



5.17 Importantly, although demand growth has been greater than expected, and **nbn**'s pricing has been lower than forecast, **nbn** has also provided more value to RSPs over time (e.g. through new discounts or additional CVC inclusions). This has facilitated strong retail competition and led to RSP initiatives which have ultimately benefitted end users, as described in section 3. In doing so, **nbn** has recognised, and continues to recognise, its role in responding to market conditions, which may vary from expectations and require that **nbn** refine its pricing and discounting approach from time to time.

Any proposed pricing approach by the ACCC must be consistent with the SAU principles

- 5.18 For end users to continue to enjoy the benefits of **nbn**'s dynamic pricing behaviour, regulatory certainty is critical. One key mechanism which underpins the SAU is the price review mechanism in Schedule 1G of the SAU.
- 5.19 Under this mechanism, the ACCC or **nbn** may initiate a price review, for example, a reduction in a particular price. However, any revenue loss arising from such a price reduction would need to be offset by an increase in prices/revenue elsewhere so as to result in a 'revenue neutral' outcome.¹⁰⁰
- 5.20 There is no ability under the SAU for the ACCC to unilaterally reduce prices (or increase **nbn**'s cost of supply of a Product in the form of, say, CVC indexation) in the manner now proposed by the ACCC, which would have a very negative and damaging impact on **nbn**'s overall revenue earning capacity by limiting **nbn**'s ability to grow ARPU as data usage increases over time. This outcome is not consistent with the revenue-neutral principle agreed in the SAU.
- 5.21 Furthermore, **nbn**'s CVC product component (other than satellite) and pricing operates on a technology-neutral basis. Given that the price of CVC for FTTP and fixed wireless is set in the SAU and operates on a technology-neutral basis, there is little flexibility to "unbundle" the CVC price for the technologies not covered by the SAU.
- 5.22 The ACCC must also have regard to these complex considerations, including the SAU principles, in order to encourage investment and reinvestment in the **nbn**TM Network and promote the LTIE.

¹⁰⁰ SAU, s 1G.3.8.



6 Detailed responses to the ACCC's pricing approach

- 6.1 **nbn** submits that there is no need for the ACCC to put in place the detailed pricing methodology proposed in section 7 of the ACCC's Discussion Paper given there is no market failure which justifies regulatory intervention. In the absence of market failure, commercial negotiations provide the best mechanism for achieving economically efficient outcomes. In **nbn**'s view, no relevant market failure has been established to justify any regulatory intervention on **nbn**'s pricing.
- 6.2 Given **nbn**'s record of delivering commercially negotiated outcomes which address evolving market demands, it is vital that the ACCC let the effects of **nbn**'s recent pricing announcements take their course. This would also be consistent with the ACCC's view that an "industry-led solution on pricing that meets the objectives of NBN Co and its customers will lead to better outcomes for consumers".¹⁰¹
- 6.3 **nbn** considers that any regulated entry level product of the type proposed in the Discussion Paper runs the risk that RSPs will not be incentivised to pass on any cost savings. The ACCC's proposed pricing approach may only facilitate a value transfer to private companies for the purposes of allowing RSPs to maintain their margins.
- 6.4 There are also several major problems with the ACCC's proposed pricing methodology:
- (a) there is no evidence provided to justify the proposed ACCC regulation based on a \$60 retail price point other than the ACCC's own views on what reflects an appropriate entry level price;
 - (b) the ACCC's CVC indexation proposal means that **nbn** is expected to bear the entire cost of increased usage for entry level services over the **nbn**TM Network for a significant proportion of its subscriber base; and
 - (c) the ACCC relies on a mischaracterisation of the retail market for **nbn** services, as described in Appendix C.
- 6.5 **nbn** also responds in this section 6 to the ACCC's analysis of **nbn**'s service transfer charges.

¹⁰¹ ACCC, 'Update on ACCC assessment of NBN Co's SAU variation', October 2017.



The \$60 retail price point is not the single efficient price point for entry level nbn services

- 6.6 **nbn** submits that the ACCC has placed over-reliance on the existence and/or the critical need to replicate a single \$60 retail price point. There has never been a single “entry level plan” at a single price point in the Australian residential broadband market, whether for legacy ADSL/ADSL2+ services or **nbn** services. Further, the Discussion Paper does not set out any data which demonstrates the proportion of end users who were paying a retail price of \$60, or the average price paid by all end users.
- 6.7 In practice, RSPs have developed their own commercial and pricing strategies, which has resulted in a diversity of price points, inclusions and product options, exactly as would be expected in a competitive retail market.
- 6.8 **nbn** has performed detailed analysis which demonstrates that, for plans offered by the six major RSPs:¹⁰²
- (a) in 2010, the retail price for ADSL/ADSL2+ plans with a data allowance of more than 200GB (including unlimited plans) ranged between \$70 and \$190. Of 10 plans meeting these criteria, only one was priced less than \$100;
 - (b) in 2013, the retail price for ADSL/ADSL2+ plans with a data allowance of 500GB and above (including unlimited plans) ranged from \$55 to \$130; and
 - (c) in 2019, there were only two retail ADSL/ADSL2+ plans with a data allowance of 500GB and above (including unlimited plans), ranging from \$105 to \$110.
- 6.9 Further, considering a broader range of ADSL plans across a wider base of RSPs, **nbn**'s data indicates that \$60 is at the minimum end of the wide range of retail prices for unlimited ADSL/ADSL2+ plans. The price range for ADSL/ADSL2+ plans with an unlimited data allowance in 2019 is \$52 to \$104, compared with a range of \$55 to \$120 in 2012, as shown in Figure 11 below.

¹⁰² Telstra, Optus, Internode, iiNet, TPG, Dodo. These RSPs represent more than 85% of the subscribers in the market. Refer to Appendix B for details.

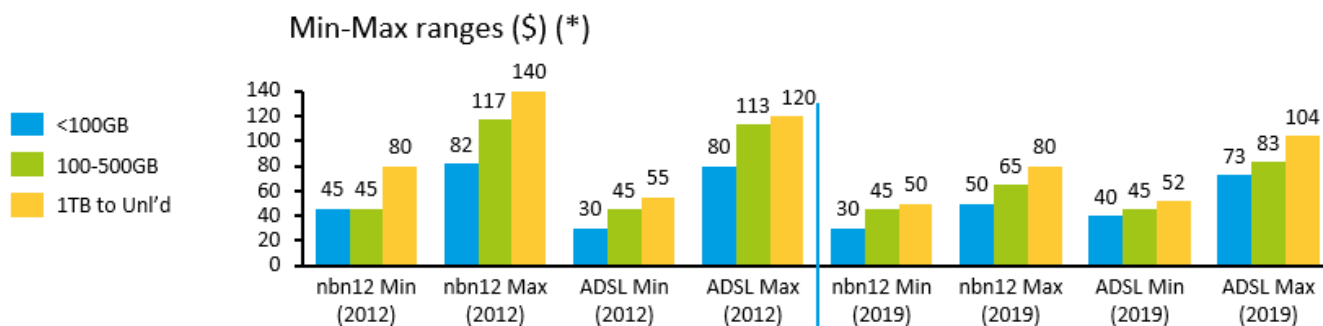


Figure 11: Price ranges for ADSL/ADSL2+ and entry level nbn plans by data allowance¹⁰³

- 6.10 Given the broad range of retail prices for ADSL/ADSL2+ products with the ACCC's stated characteristics, and in the absence of any data regarding the number of end users on those plans, it is unclear why the ACCC has focused on \$60 as the price point for a regulated entry level product. The ACCC's choice of this price point appears to be entirely arbitrary.
- 6.11 It is also not unclear why any regulated entry level product at a \$60 price should feature unlimited data. The ACCC has not established why this should be the case, rather than (say) a plan with 100GB of included data, which is also a commonly available option in the market, and is arguably more representative of an "entry level" plan.
- 6.12 In addition, even to the extent \$60 retail plans were offered by RSPs on ADSL/ADSL2+ networks, this price point was only available in areas with ULLS-based competition, and was not a national price.
- 6.13 **nbn's** entry level pricing, enhanced by **nbn's** latest pricing initiatives, shows that entry level end user requirements are already being achieved.

The ACCC's CVC indexation proposal is inconsistent with the usage-based pricing principle

- 6.14 The ACCC also proposes in section 7.3.4 of the Discussion Paper an approach to index CVC inclusions over time to account for growth in network bandwidth demand.
- 6.15 **nbn** submits that any proposal to index CVC inclusions would be at odds with the usage-based pricing principle accepted under the SAU.

¹⁰³ Internal analysis by **nbn** based on **nbn's** retail broadband trackers. See above n. 1.



- 6.16 **nbn** cannot support an approach which would effectively require it to absorb all the demand growth in over 20% of its customer base without any ability to recover those costs from RSPs in accordance with the user-pays principle. Such an approach would undermine **nbn**'s cost recovery curve, render impossible the cross subsidisation required to bridge the digital divide, and undermine incentives to re-invest in the **nbn**TM Network.
- 6.17 **nbn** submits that the ACCC's analysis should also take into account the broader commercial implications for **nbn** of an anchor entry level service with indexed CVC allowance over time. Increasing CVC allowance in an anchor product to account for future growth in demand would require **nbn** to either increase the CVC allowance of its other products over time to incentivise end users to move to higher speed services, or implement other initiatives to maintain the attractiveness of those services. The ACCC has failed to model and fully appreciate the scale of this impact on **nbn**'s higher speed services. This impact would be more pronounced given the ACCC's proposed anchor product does not take into account **nbn**'s internal cross-subsidy.
- 6.18 Furthermore, the impact of an overly generous CVC capacity allowance will fundamentally affect **nbn**'s ability to recoup its investment and reduce its capacity for any further investment.

nbn's proposed changes to service transfer-related charges

- 6.19 **nbn** notes the ACCC's comments in the Discussion Paper regarding **nbn**'s Service Transfer and Transfer Reversal charges.
- 6.20 Currently, **nbn** charges various fees when activating AVCs. A service transfer, which occurs when an active **nbn** service is migrated between two RSPs, attracts a charge of \$22.50, while AVC re-activation, where an inactive line is brought back into service, currently attracts a charge of \$0 across all technologies.¹⁰⁴
- 6.21 In its Pricing Review Consultation Closeout Paper, **nbn** confirmed it will temporarily discount service transfer fees from \$22.50 to \$5.00, effective from 29 November 2019 to 30 November 2020. **nbn** also proposed in the Closeout Paper to standardise all AVC activation charges as part of the WBA4 process to provide a longer-term resolution to this concern, which gives the industry more certainty.

¹⁰⁴ **nbn** currently waives its right to require RSPs to pay the \$15.00 charge for Access Component Reactivation in respect of the **nbn**TM Ethernet (Satellite) Network. The **nbn**TM Ethernet Price List charge for Access Component Reactivation across all other access technologies is \$0.



- 6.22 **nbn** considers that its proposed improvements will deliver the outcomes sought by the ACCC, being to ensure that the level of these charges do not inhibit competitive behaviour or risk end user experience while ensuring that the transfer process is not used inefficiently by RSPs.
- 6.23 In this regard, **nbn**'s objectives are aligned with the ACCC's and **nbn** is working closely with RSPs, as it will with the ACCC, as to the nature of any further changes to these charges, including as part of the WBA4 process.

nbn is already meeting and exceeding the ACCC's principles

- 6.24 **nbn** considers that ACCC's pricing principles do not sufficiently have regard to the complex environment in which **nbn** provides its services, and should instead adopt the decision-making criteria that the ACCC is required to apply when carrying out its statutory functions under Part XIC of the CCA.
- 6.25 In any event, taking into account the recently implemented ELB modifications following **nbn**'s recent pricing consultation, **nbn**'s existing pricing already satisfies the ACCC's principles. In particular, **nbn**'s pricing:
- (a) *ensures that end users are no worse off as a consequence of migrating to the **nbn**TM Network.* This is evidenced through the wide variety of entry level offers available at prices equal to or lower than charges for equivalent legacy ADSL/ADSL2+ services, as described in section 3 above;
 - (b) *basic speed access products should act as an anchor.* As described in section 3, **nbn**'s pricing and discounting approach in respect of entry-level services has already led to the anchoring of higher-speed services;
 - (c) *ensures price certainty.* Again, as described in section 3, the alignment of interests between **nbn**, RSPs and end users means that **nbn** is incentivised to ensure, and will continue to deliver, price certainty for RSPs. This is also demonstrated through **nbn**'s practice of replacing expired or withdrawn discounts with targeted and, often, more RSP-favourable replacements, and **nbn**'s recent announcement to introduce a rolling two-year roadmap of pricing and discounting initiatives, updated on an annual basis;
 - (d) *is not unduly complex.* **nbn** has developed a suite of targeted discounts in close and extended consultation with RSPs. In doing so, **nbn** has carefully balanced a range of



competing considerations, including industry economics and costs, long-term end user benefits, and **nbn**'s organisational objectives, including under its SoE. **nbn** also continues to refine its pricing and products in response to RSP feedback, as reflected by **nbn**'s recent announcement that it would permit CVC capacity to be pooled nationally. The majority of **nbn**'s discounts and initiatives are applied automatically at a system level, and there is no requirement for RSPs to claim them;

- (e) *meets consumer demand*. **nbn** has regularly refined and improved its pricing and discounting approach to respond to RSP and end user feedback, particularly in relation to growing data consumption. As the ACCC has acknowledged, some of these initiatives “are credited with producing a sustained increase in CVC per AVC purchased by RSPs and rise in the take-up of 50Mbps services that saw a dramatic improvement in the performance of end-user NBN services during 2018”. This is further demonstrated through the changes proposed in **nbn**'s recent pricing consultation;
- (f) *promotes downstream competition*, as evidenced by the dynamic and competitive retail market for **nbn** services. As noted elsewhere in this submission, the ACCC has noted that there is strong price competition in the broadband services market, particularly for services delivered over the **nbn**[™] Network. There is also significant non-price competition as demonstrated by the variety of offers, inclusions and bundles offered by RSPs in respect of **nbn** services. Both price and non-price competition are likely to increase under the modified ELB discount; and
- (g) *are designed to give **nbn** an opportunity to recover its efficiently incurred costs*. **nbn** has balanced the interests of RSPs and end users with **nbn**'s own legitimate business interest to recover its efficiently incurred costs. **nbn**'s two-part pricing approach ensures that while AVC charges are set low, **nbn** is given an opportunity to recover its efficiently incurred costs through CVC revenue over time as data consumption and demand increases.



Summary of section

- 6.26 The critical issues highlighted in this section illustrate:
- (a) the potential consequences of regulation based on arbitrary principles, which do not apply the mandatory statutory criteria set out in the CCA and the principles which underpin the SAU;
 - (b) the unique constraints under which **nbn** operates and the products and services which it offers, which simply cannot be compared to those of legacy ADSL/ADSL2+ providers; and
 - (c) that **nbn** in consultation with the industry is best placed to adjust **nbn**'s pricing regime to reflect changes in the dynamic environment in which it operates.
- 6.27 **nbn** submits that the ACCC should instead adopt a pricing analysis which takes into account all of the mandatory statutory reasonableness criteria. This would require the ACCC to have sufficient regard to the various factors and challenges faced by **nbn** in determining its pricing, as outlined in section 7.



7 The ACCC must consider the SAU framework and the mandatory criteria under the CCA

7.1 In this section, **nbn** wishes to highlight certain requirements which apply to the ACCC when determining **nbn** pricing, namely:

- (a) the MRPs for Fixed Wireless, Satellite and FTTP services are set under the SAU and therefore any AD or BROCC on pricing for these services has no effect to the extent it is inconsistent with the MRPs set out in the SAU;
- (b) the ACCC must not make an AD or BROCC that would have the effect of preventing **nbn** from engaging in conduct that is reasonably necessary to achieve uniform national pricing of eligible services supplied by **nbn** to RSPs; and
- (c) the ACCC must have regard to the mandatory statutory reasonableness criteria in analysing whether any AD or BROCC is required (which **nbn** submits is not the case).

An AD or BROCC has no effect to the extent it relates to Fixed Wireless, Satellite and FTTP services (which are covered under the SAU)

7.2 As described elsewhere in this submission, **nbn** has adopted a mix of seven access technologies in the deployment of the **nbn**TM Network, including services supplied over the Fixed Wireless, Satellite and FTTP networks (each of which are covered under the SAU).

7.3 Under the CCA, any AD or BROCC has no effect to the extent it is inconsistent with an SAU that is in operation.¹⁰⁵ The SAU sets out the MRPs for all speed tiers provided over the Fixed Wireless, Satellite and FTTP Networks.

7.4 This means that, if the ACCC issues an AD or BROCC in respect of pricing for services supplied over the Fixed Wireless, Satellite and FTTP networks, that AD or BROCC will have no effect to the extent those prices are inconsistent with the MRPs for those services set out under the SAU.

¹⁰⁵ CCA, ss 152CBIA and 152CBIB.



The ACCC must not make an AD or BROC that would have the effect of preventing nbn from engaging in conduct that is reasonably necessary to achieve uniform national pricing

- 7.5 The ACCC must not make an AD or BROC that would have the effect of preventing **nbn** from engaging in conduct that is reasonably necessary to achieve uniform national pricing of eligible services supplied by **nbn**.¹⁰⁶
- 7.6 As outlined above, the MRPs for services supplied over the Fixed Wireless, Satellite and FTTP networks are set out under the SAU and cannot be modified through an AD or BROC.¹⁰⁷ Further, the Prices for services supplied over FTTN, FTTB, FTTC and HFC are set out in the WBA. The MRPs for Fixed Wireless, Satellite and FTTP and the Prices for FTTN, FTTB, FTTC and HFC are uniform for each relevant speed tier. For example, the MRP / Price for the AVC TC-4 12/1 speed tier is \$24.00.
- 7.7 Given that the ACCC cannot effectively regulate **nbn**'s pricing for Fixed Wireless, Satellite and FTTP because these are covered under the SAU, any price intervention by the ACCC is limited to services supplied over the FTTN, FTTB, FTTC and HFC networks upon the expiry of access agreements. However, it follows that if an AD or BROC sought only to reduce the price for entry level services on FTTN, FTTB, FTTC and HFC networks, this would take out of alignment the uniform pricing as described above.
- 7.8 The ACCC would have to consider how this non-uniformity complies with section 152BCB(3C) or section 152BDA(3C) of the CCA.

The ACCC must apply the mandatory criteria set out in the CCA

- 7.9 The ACCC's proposal to test the fitness for purpose of **nbn**'s product and pricing developments against a set of general pricing principles risks undermining the statutory regime which applies to the ACCC when considering whether to issue an AD or BROC. In this regard, the detailed reasonableness criteria set out in the CCA should be paramount in the ACCC's consideration of whether to regulate through an AD or BROC, not the general pricing principles put forward by the ACCC.¹⁰⁸
- 7.10 The Discussion Paper does not contain a detailed assessment or explanation of these mandatory statutory criteria (other than areas of incidental overlap between these criteria and the ACCC's pricing

¹⁰⁶ CCA, ss 152BCB(3C) and 152BDA(3C).

¹⁰⁷ CCA, ss 152CBIA and 152CBIB.

¹⁰⁸ CCA, ss 152BCA(1), 152BDAA(1), 152BCB(3C) and 152BDA(3C).



principles). Rather, the ACCC refers to the statutory criteria in a general sense in its outline of the legislative framework, without applying these criteria to the potential regulation of **nbn**'s entry level pricing.¹⁰⁹

7.11 **nbn** submits that this is not a case that requires a balancing between competing factors, some of which weigh in favour and some of which weigh against regulatory intervention. Rather, for the reasons set out in this section 7, none of the mandatory criteria that the ACCC must have regard to, when properly considered, are in favour of regulatory intervention on **nbn**'s pricing.

The ACCC's proposed approach will not promote the LTIE

7.12 Whether the ACCC's approach promotes the LTIE depends on, amongst other things, the extent to which the ACCC's approach:

- (a) promotes competition in markets for listed services; and
- (b) encourages the economically efficient use of, and investment, in infrastructure.¹¹⁰

7.13 **nbn** submits that the ACCC's proposed approach relies on static regulation which will undermine competition in retail broadband markets. While **nbn**'s approach to pricing and discounting has driven retail market dynamism, the ACCC's proposal would reduce differentiation within the market, and would not be capable of responding to RSP and end user issues in the responsive and dynamic manner achieved by **nbn** in consultation with RSPs.

7.14 Further, the ACCC's proposed regulated entry level product does not encourage the economically efficient use of or investment in infrastructure. Rather, as described in paragraphs 7.27 to 7.29 of this section 7, there is no evidence to demonstrate the efficiency of the \$60 retail price on which the ACCC's regulated entry level product will be based. The ACCC's approach may also have broader impacts on the efficient operation and use of the **nbn**TM Network, such as discouraging take-up of higher speed tiers by end users and detracting from **nbn**'s more targeted and efficient pricing and discounting initiatives.

7.15 In addition, as outlined in section 4 of this submission, regulatory intervention on pricing could disincentivise **nbn** from making further investments in the **nbn**TM Network, including because there is

¹⁰⁹ Discussion Paper, Annexure B.

¹¹⁰ CCA, s 152AB(2).



no guarantee that the ACCC will not make further regulatory interventions which prevent **nbn** from earning a return on those investments.

- 7.16 For these reasons, the ACCC's proposed approach would not promote the LTIE. On the contrary, as described earlier in this submission, the ACCC's proposed approach:
- (a) incentivises end users, particularly high-usage end users that are not genuinely entry-level in their requirements, to remain on 12/1 services, risking the realisation by Australians of the full benefit of their significant investment in the **nbn**TM Network;
 - (b) would limit **nbn**'s ability to introduce targeted offers aimed at encouraging underrepresented groups to transition to the **nbn**TM Network; and
 - (c) risks constraining and distorting, without adequate reasoning or evidence, commercial negotiations between **nbn** and access seekers, noting **nbn**'s practice of consulting extensively with RSPs on the discounts, credits and rebates that **nbn** has introduced over time. This would risk undermining the otherwise aligned incentives between **nbn** and access seekers in relation to promoting the interests of end users.

The ACCC's proposed approach will be contrary to the legitimate business interests of nbn

- 7.17 The ACCC notes that it will "have regard to NBN Co's costs to provide access, and its legitimate interests in recovering its efficiently incurred operating costs and to continue to invest in its networks and systems, and earn an appropriate return on prudent investment".¹¹¹ However, as outlined in section 4, **nbn** submits that there has been virtually no consideration of these interests given the nature of the proposals set out in the Discussion Paper.
- 7.18 The LTRCM only gives **nbn** the opportunity to recover the significant investment by Australian taxpayers in the **nbn**TM Network. There is no guarantee that **nbn** will recover this investment.
- 7.19 Any incremental increases to **nbn**'s cost base – including through any arbitrary CVC indexation over time – will increase the size of the challenge facing **nbn**, increasing the risk that Australian taxpayers will not be able to recover their investment in **nbn**. If the ACCC's proposed pricing approach precludes

¹¹¹ ACCC, Discussion Paper, section 7.2.



nbn from recovering its investments, the LTRCM does not provide the means by which **nbn** can recover these investments.

- 7.20 Further, the scale of the investment in the fixed wireless and satellite networks has only been possible due to **nbn**'s cross-subsidised approach to investment, and it would fundamentally undermine **nbn**'s legitimate business interests if the ACCC were to further limit **nbn**'s ability to recover this substantial investment. **nbn** notes in this regard the Government's observations that the cross-subsidy "is not sustainable and ongoing funding for essential regional broadband services is at risk".¹¹²

The ACCC's proposed approach would be contrary to the interests of all persons who have the right to use the declared service

- 7.21 The ACCC's proposed approach would be contrary to the interests of all persons who have the right to use the declared service, including access seekers, downstream service providers and end users.

7.22 In relation to access seekers and downstream service providers:

- (a) to the extent these service providers will profit from the ACCC's proposed regulated entry level product, this would only be in the short term interests of those service providers, at the cost of significant broader and longer-term problems this will create as discussed in section 4 of this submission (e.g. by disincentivising end users from taking up higher speed **nbn** services over time, and by reducing the ability for access seekers to differentiate their entry level product offerings);
- (b) as currently proposed by the ACCC, while direct access seekers may benefit from the proposal to regulate **nbn**'s wholesale price so as to support the provision of a regulated entry level product based on a retail price point of \$60, the ACCC has not, in fact, considered whether it will require RSPs to make available such a retail product (including through downstream service providers). In doing so, the ACCC risks merely facilitating a value transfer from **nbn** to private companies, who will have little incentive to change their current approaches to retail pricing instead of growing their margins.

The ACCC must consider nbn's cross subsidy, which is a direct cost of providing access to the declared service

¹¹² Explanatory Memorandum to the *Telecommunications (Regional Broadband Scheme) Charge Bill 2017* (Cth).



7.23 One of the key challenges that **nbn** must consider when setting its prices is its internal cross-subsidy, estimated at \$7.09 per line, as described in section 4 above. There are no other means of recovering this cross-subsidy other than through the price of fixed line services, including entry level services. The cross-subsidy represents a real and direct cost in the supply of declared services. However, the Discussion Paper does not refer to this critical challenge.

7.24 If **nbn** is prevented from recovering this cross-subsidy, any regulatory intervention would impact the fundamental economics of **nbn**. As the ACCC has itself acknowledged, the “cross subsidies between the low and high cost services [mean that] the prices of NBN high-speed broadband services in metropolitan areas may be higher than expected if they were supplied on a purely commercial basis”.¹¹³

The value to persons of extensions, or enhancement of capability, whose cost is borne by others

7.25 This factor is not relevant to the ACCC’s proposed approach.

The operational and technical requirements necessary for the safe and reliable operation of the nbn™ Network

7.26 This factor is not relevant to the ACCC’s proposed approach.

The economically efficient operation of the nbn™ Network

7.27 The ACCC’s proposed approach will not promote the economically efficient operation of the **nbn™** Network for the reasons set out in section 5 of this submission. A regulated entry level product based on a specified retail price point without regard to the cost of usage growth over time is not a suitable manner to encourage the economically efficient use of and investment in infrastructure.

7.28 In particular:

- (a) the Discussion Paper does not demonstrate why a retail price point of \$60 as the basis for determining a regulated unlimited entry level product on the 12/1 speed tier is an efficient price point, and one which would promote the LTIE;
- (b) on the ACCC’s own admission, low-take up of high-speed services (which the ACCC risks by perversely incentivising the ongoing take-up of 12/1 services even for high-use end users),

¹¹³ Market Study Final Report 2018, section 3.2.3.



“may have consequences for efficient use of the NBN infrastructure if the network is not utilised as intended and only provides low-speed broadband services. This may also impact NBN Co’s ability to recover its efficient costs of investment, which relies on assumptions of significant take-up of higher speed (and higher priced) services”;¹¹⁴

- (c) it would not be economically viable to operate the **nbn**TM Network if **nbn** were forced to bear substantial cross-subsidy costs (and all associated demand risks) with no opportunity to recoup this investment through other means;
- (d) any regulated price will necessarily be of a static nature and will not be capable of responding to emerging market and end user demands in the successful manner achieved by **nbn**’s efficient and dynamic discounting approach; and
- (e) the ACCC’s proposed approach compounds the commercial challenges for fixed line telecommunications networks in Australia, which could discourage future investment in telecommunications networks, including by **nbn**.

7.29 The ACCC has failed to demonstrate that any regulated entry level product would encourage the economically efficient use of, and investment in, the **nbn**TM Network. Rather, there is a real likelihood that the proposed approach would instead detract from investments in the economically efficient operation of the **nbn**TM Network. This is because, like any other company, **nbn** has a finite capacity to invest in these initiatives.

7.30 By diverting resources away from these market-driven initiatives, the ACCC’s proposed approach will have a negative overall impact on the LTIE. This is particularly the case because the ACCC’s proposed approach, by disincentivising end users from taking up higher speed services and realising the full benefit of the **nbn**TM Network.

7.31 The mis-application of, or failure to apply, the statutory criteria could result in unintended outcomes, such as:

¹¹⁴ Market Study Final Report 2018, p. 36.



- (a) the Inquiry identifying issues which cannot be resolved through regulation because regulatory intervention in respect of those issues through an AD or BROCC would not be justified or appropriate when applying the statutory criteria; or
- (b) the imposition of a pre-determined regulatory outcome in respect of the identified issues, which would be a departure from the regulatory approach of reaching a regulatory outcome only after applying the statutory criteria and would risk disproportionate regulation.



Appendix A Summary of recent **nbn** pricing and discounting initiatives

DBD-I and DBD-R

1. **nbn** first introduced a CVC Dimension Based Discount in 1 June 2016, with a number of key aims, including encouraging RSPs to provide high quality bandwidth services on the **nbn**TM Network and to provide greater forward price certainty to RSPs in relation to their CVC costs.
2. **nbn** consulted extensively with RSPs in respect of both the original “DBD-I” discount (which offered a “stepped” discount on CVC charges based on an industry wide, industry average CVC to AVC calculation) and the “DBD-R” discount (which linked an RSP’s CVC price to the amount of CVC consumed by each RSP per AVC).
3. These initiatives not only provided significant discounts and price certainty to RSPs (who could, with the introduction of DBD-R, maintain a substantial degree of control over their CVC charges), but ultimately benefitted the LTIE.

Focus on 50

4. The Focus on 50 campaign comprised the F50 Credit, which is a credit on the acquisition of 50/20 AVC TC-4 and 25-50/5-20 AVC TC-4, and the CVC Boost Credit, which is a credit on the acquisition of CVC TC-4 based on an RSP increasing relevant AVC-to-CVC dimensioning. Both of these credits were offered via the Discounts, Credits and Rebates List as credits off the existing price structure (and Prices) established under the WBA.
5. These credits were also offered within the scope of the MRP structure established by the SAU. Further, **nbn** extended the availability of this campaign to 31 October 2018 to allow more time for RSPs to be operationally ready to implement the bundle discounts that were introduced from May 2018.
6. The outcomes from the Focus on 50 campaign were very positive, with the average number of minutes of bandwidth congestion per week, per service across the whole network falling from 3 hours and 51 minutes in November 2017 to only 18 minutes in May 2018 (at which time the high bandwidth bundles discount was introduced). Over the same period, the percentage of premises connected to wholesale **nbn** plans of 50Mbps or higher increased from 16% to 44%, reflecting the significant end user benefits of the campaign.



Bundle discounts

7. **nbn** also consulted extensively with RSPs in relation to the implementation of the various bundle discounts available to RSPs today. These commenced in May 2018 with the introduction of a number of High Bandwidth Bundle discounts, which bundled together for the first time AVC charges with an included amount of CVC TC-4 capacity for a single bundled charge, available in respect of services across **nbn**'s fixed line network. The bundle discounts were generally well received by RSPs as a balanced approach which continued the end user experience improvements set in motion by the Focus on 50 campaign.
8. **nbn** subsequently introduced a range of Fixed Wireless Bundles discounts extending the availability of bundles discounts to the **nbn**TM Fixed Wireless network, as well as an Entry Level Bundle (**ELB**) discount targeted at providing value and certainty for low usage wholesale services with a 12/1 bandwidth profile.

Modified ELB, Bundle 25, new higher speed tiers and other initiatives

9. **nbn** has also recently announced a range of other targeted initiatives in response to RSP and ACCC feedback. These are summarised in paragraph 2.48 and described in further detail in Appendix D.



Appendix B nbn, ADSL and HFC plans over time (major RSPs)

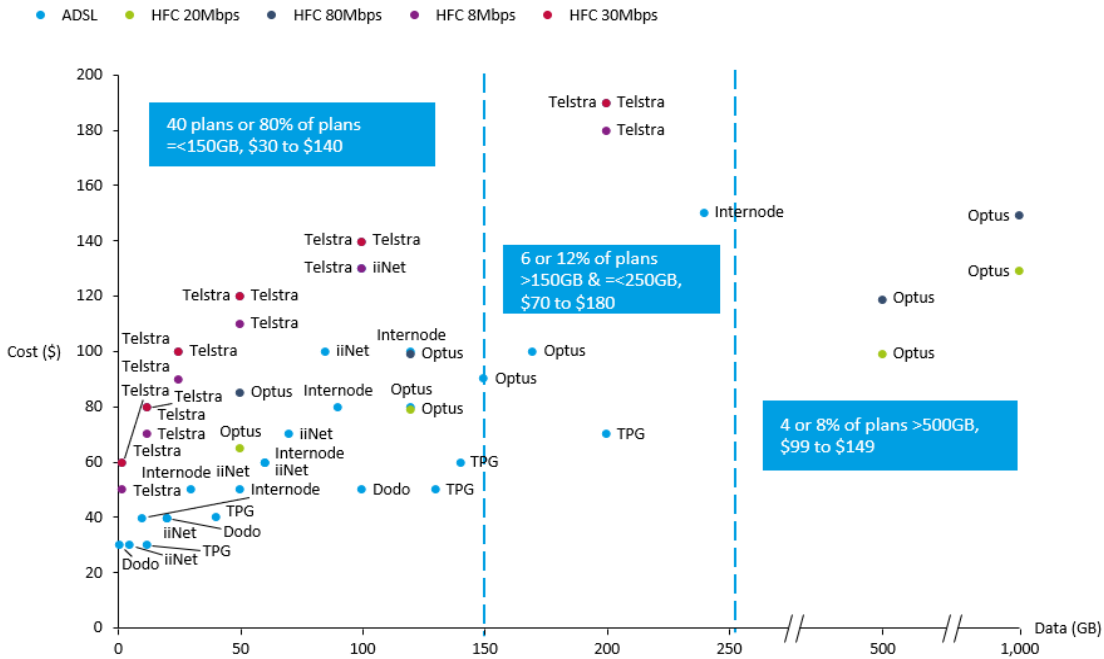


Figure B1: Non-nbn plans by 6 major RSPs, ADSL & HFC, May 2010

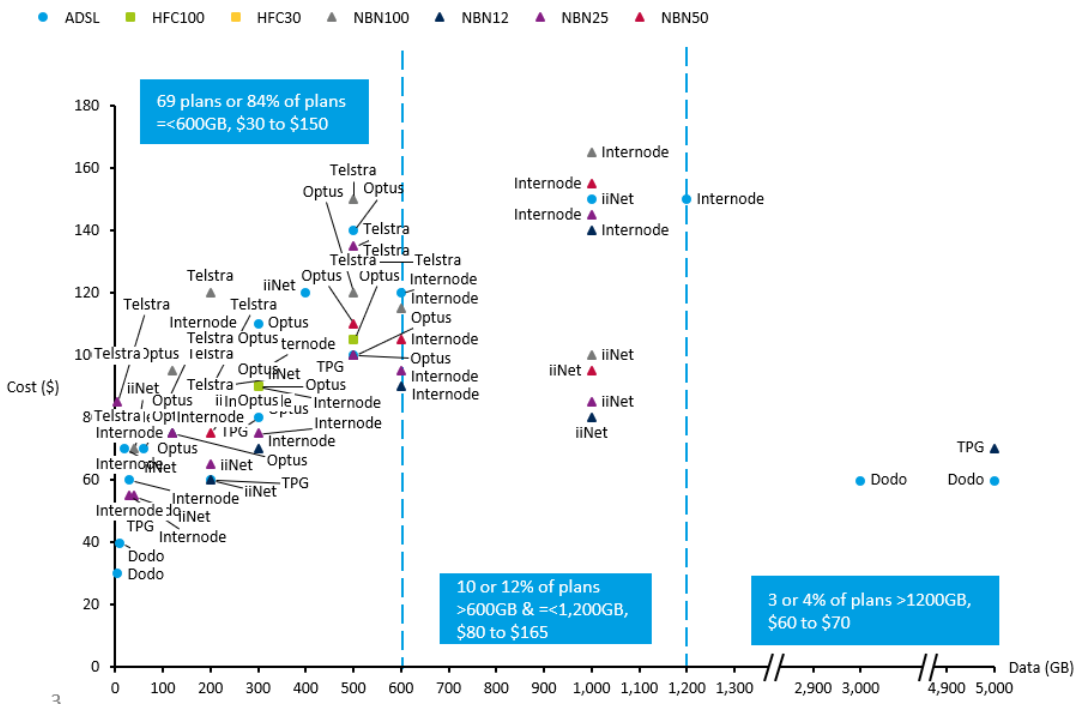


Figure B2: nbn and non-nbn plans by 6 major RSPs, nbn, ADSL & HFC, May 2013



Appendix C Inaccuracies in the ACCC's Discussion Paper regarding product and pricing developments in the fixed broadband segment

1. The ACCC sets out in section 6 of its Discussion Paper a summary of product and pricing developments in the retail fixed broadband market. **nbn** describes in this Appendix C a number of inaccuracies and omissions in the Discussion Paper in respect of those developments.

Product and pricing withdrawals occur in the usual course and for many reasons

2. **nbn** considers that the ACCC's analysis should be revised to reflect the totality of the circumstances in which the retail fixed broadband segment has developed. For example:
 - (a) RSPs are responsible for setting retail prices, and may do so for a number of reasons, including promotional offers to drive market share growth;
 - (b) product and pricing withdrawals by RSPs have been accompanied by the introduction of superior products with higher **nbn** speed tiers and at comparable prices; and
 - (c) there is still a wide variety of entry level plans offered with unlimited data and at a retail price point of \$60 or less, as outlined above.

Optus's \$70 retail nbn plan was never withdrawn

3. The ACCC observes that the retail price for the 50Mbps (downstream) / 20Mbps (upstream) **nbn** plan offered by Optus increased from \$70 per month to \$85 per month with the inclusion of calls and a sports streaming subscription, but that the \$70 plan was subsequently reinstated without add-ons.¹¹⁵
4. This is incorrect. **nbn**'s tracking of retail plans shows that the \$70 retail **nbn** plan (without calls and sports streaming add-ons) offered by Optus has always been available alongside the \$85 plan (with calls and sports streaming add-ons), and was never in fact withdrawn. Optus's promotions are one example of the dynamic competition and product differentiation offered by RSPs at the retail level, which the ACCC must take into account in its analysis of the retail market.

¹¹⁵ ACCC, Discussion Paper, p. 34.



The ACCC has mischaracterised the typical end user migration path to the nbn™ Network

5. The ACCC states that:
 - (a) “A material number of consumers would have to pay more when migrating to the NBN even if they did not require an upgraded plan, which is unreasonable under a forced migration model”;
 - (b) “The price of higher speed plans that are available over the NBN could now be set higher than the additional value they represent over and above ADSL plans”; and
 - (c) “All consumers are at more risk of not finding an NBN product that represents fair value to them, reducing NBN demand and/or risking inefficient bypass of the NBN in future for lower quality or higher cost alternative services.”¹¹⁶
6. **nbn** strongly disagrees with these statements.
7. The ACCC appears to be comparing a scenario in which end users exclusively take up **nbn** plans offered by their existing ADSL/ADSL2+ RSP when migrating to the **nbn**™ Network. However, in doing so, the ACCC should also have regard to the typical migration path and the broader state of the retail market. Transitioning end users have a significant degree of choice in selecting retail **nbn** plans across a range of **nbn** RSPs, and many elect to exercise this choice by taking up higher speed (and more expensive) **nbn** services, including with a different RSP to the RSP from which they obtained legacy ADSL/ADSL2+ services.
8. In addition to more carefully analysing these various product and pricing changes in the retail market over time, the ACCC should also take into account the fact that most, if not all RSPs, offer “below-the-line” discounts to transitioning end users in order to avoid churn of their own customers, or to attract end users from other RSPs. In this regard, **nbn** considers that the ACCC should invite RSPs to submit data regarding the nature and value of any “below-the-line” discounts and promotional offers made available to migrating end users.

¹¹⁶ ACCC, Discussion Paper, p. 34.



Appendix D **nbn's pricing consultation closure paper**

Attached as separate document.