

4 June 2018

Mr Scott Harding
Director, NBN & Pricing Coordination
Mobiles, Transmission and Consumer
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

By email: scott.harding@acc.gov.au

Dear Mr Harding,

Long Term Revenue Constraints Methodology 2016-17: Draft Determination and Price Compliance Report 2016-17

We refer to Telstra's submission on the ACCC's Draft Determination on the Long-Term Revenue Constraint Methodology (**LTRCM**) and Price Compliance Report for the 2016-2017 financial year.

Telstra's submission raises the following issues (notwithstanding the fact that these are not directly relevant to **nbn**'s compliance with the LTRCM for 2016-2017):

- the treatment of the nbn50 and nbn100 bundled offers (**High Bandwidth Bundles**) as a discount, rather than an NBN Offer; and
- the regulatory treatment of **nbn**'s expenditure for certain categories of **nbn** services.

nbn responds to each of these points briefly below.

The High Bandwidth Bundles are discounts, not NBN Offers

Telstra's submission does not accurately describe the nature of the High Bandwidth Bundles in the context of the Wholesale Broadband Agreement (**WBA**) or Special Access Undertaking (**SAU**).

The High Bandwidth Bundles are discounts offered in relation to existing Product Components and Product Features. The discount for the High Bandwidth Bundles use the existing price structure in the WBA and the SAU, which enable **nbn** to offer discounts off existing prices and maximum regulated prices that have been established under the WBA and SAU respectively. The elements of the price structure established by the SAU and the WBA remain in place and there is no change to the price structure.

In the WBA context, the High Bandwidth Bundles were implemented by means of the Discount, Credits and Rebates List, meaning that each of the relevant pricing elements in the **nbn** Ethernet



Price List remains intact. Consequently, the High Bandwidth Bundles do not change the pricing structure under the WBA.

nbn specifically consulted with its customers on the method for delivering the High Bandwidth Bundles and proposed the use of a Discount to be included in the Discounts, Credits and Rebates List. The use of a discount was supported by many customers because it has the benefit of speed and flexibility. The discount also has the benefit of using the existing price structure as the base-line for offering the discounts. **nbn**'s consultation paper made it very clear that the High Bandwidth Bundles were being implemented using discounts under the WBA.

The High Bandwidth Bundles also constitute discounts under the SAU and cannot constitute NBN Offers.

In particular:

- the SAU establishes a system of Maximum Regulated Prices for NBN Offers;
- the definition of Maximum Regulated Prices in the SAU, through the definition of Price, specifically excludes discounts, credits and rebates;
- the Product Components and Product Features relevant to the High Bandwidth Bundles are already part of the SAU (or will be, in the case of FTTB, FTTN and HFC, if the SAU Variation is accepted) and already NBN Offers;
- the SAU specifically contemplates and regulates the way discounts may be offered by **nbn** and specifies how those discounts interact with the Maximum Regulated Price; and
- the product withdrawal provisions in Schedule 1I of the SAU do not apply to pricing and discount arrangements, which are instead subject to the provisions in Schedule 1C of the SAU.

If the High Bandwidth Bundles constituted an NBN Offer for the purposes of the SAU, then there would be two or more Maximum Regulated Prices for the same underlying Product Feature (e.g. the 50/20 AVC product feature). The SAU does not contemplate two or more Maximum Regulated Prices for the same Product Feature. SAU price compliance would also become extremely complicated.

The SAU specifically contemplates the discounting and bundling approach taken in the High Bandwidth Bundles, without affecting the NBN Offers under the SAU.

SAU permits nbn to include costs from new and trial nbn services

Telstra's suggestion about the lack of clarity in relation to the regulatory treatment of new and trial **nbn** services is incorrect. The SAU specifically permits all expenditure incurred by **nbn** in connection with **nbn**'s networks, network elements and other related assets to be included in the calculation of its Annual Building Block Revenue Requirement, Regulatory Asset Base and Initial Cost Recovery Account if that expenditure meets the prudence conditions set out in the SAU (i.e. the Prudent Cost Condition and the Prudent Design Condition). The SAU also specifically requires all revenue earned by **nbn** in connection with **nbn**'s networks, network elements and other related assets to be accounted for in these calculations.



In regard to the Prudent Design Condition, subject to also meeting the Prudent Cost Condition, Capital Expenditure can be included through multiple pathways, including updates to the Network Design Rules or a Permitted Variation. Capital Expenditure from the service types identified by Telstra are all capable of being included through compliance with the Prudent Design Condition.

I would be happy to discuss any of the matters set out above.

Yours sincerely

A handwritten signature in blue ink that reads 'Matthew Cole'. The signature is fluid and cursive, written on a light-colored rectangular background.

Matthew Cole
General Manager Access Regulation