

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
ACCC Discussion Paper

**ACCC inquiry into NBN
access pricing**

Public Version

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EXECUTIVE SUMMARY

1. Optus welcomes the Australian Competition and Consumer Commission (ACCC) inquiry into NBN access pricing. Due to the interaction between access agreements and regulatory instruments under the Act, it is important that any proposed regulatory instrument be finalised prior to the end of this year so that the terms can be implemented into the next version of the Wholesale Broadband Agreement (WBA4).
2. The focus of this inquiry is on the entry level 12 Mbps NBN product and proposed changes to the Entry Level Bundle. Optus notes that this issue has now been finalised with NBN Co adopting a new ELB construct in October. It is not clear what role this inquiry would have with regards to the ELB.
3. Rather than focusing on 12 Mbps pricing, Optus submits this pricing review should focus on ensuring NBN pricing promotes the long term interests of end-users (LTIE) into the future, reflecting the growing data consumption of end-users. Given the majority of customers are also on 50 Mbps and above, this inquiry should focus on ensuring the full range of consumer NBN bundle products promote positive consumer outcomes.
4. Irrespective of which speed tier is selected, it is more likely the associated CVC that will determine the benefit of any NBN product or bundle, and hence whether the pricing construct promotes the LTIE. Optus therefore considers the focus for this NBN pricing inquiry should be to review the CVC arrangements and ensure that it meets the LTIE.
5. Optus further notes there are concerns about NBN Co's ongoing use of the Discounts, Credits and Rebates (DCR) schedule which is currently separate to WBA3.
6. While we acknowledge the use of the DCR has enabled positive price movements, there continues to be transparency and certainty issues relating to the development, introduction and withdrawal of discounts. The DCR is a major driver of customer experience as the introduction/withdrawal of short-term discounts or the staggered waiver of certain charges directly impact the pricing RSPs can offer to end users and does not provide market certainty.
7. It is clear that the bundle approach to NBN pricing is to remain for the long term. It is no longer appropriate to utilise the DCR to set the main access prices for the NBN. Optus submits that the ACCC should require NBN Co to adopt the bundle format within WBA4 and cease using the DCR to offer the set of bundled offers.
8. Optus also acknowledge issues relating to NBN service transfers. As NBN reaches scale, and the initial problems with new connections decline, there will be a future role for NBN service transfer processes to operate between RSPs.
9. We welcome the proposed reduction in the service transfer cost from \$22.50 to \$5 per service transfer (or service transfer reversal) from 1 December 2019 to 30 November 2020. However, we consider that these changes should be introduced as a formal and permanent change to the WBA Pricelist rather than a short-term discount. There should also be no charge for a Rejected Service Transfer Transaction or a Rejected Reversal.

ACCC PRICING INQUIRY

10. This submission discusses four issues:
 - (a) Any pricing principles adopted must remain secondary to the LTIE;
 - (b) Focus of this inquiry should not be on anchor pricing;
 - (c) Rebalancing or removing the CVC construct will promote the LTIE; and
 - (d) The need for greater price certainty.

Pricing principles are secondary to the long term interest of end-users

11. The ACCC has proposed several pricing principles in its future approach to assessing NBN access pricing. These include:
 - (a) End-users should be no worse off as a consequence of migrating to the NBN;
 - (b) Basic speed access products should act as an anchor;
 - (c) Price certainty;
 - (d) Pricing arrangements should not be unduly complex;
 - (e) Prices should meet consumer demand;
 - (f) Prices should promote downstream competition; and
 - (g) NBN Co should have the opportunity to recover efficiently incurred costs.
12. At a high level, Optus broadly supports many of these pricing principles, but it is not clear the purpose of the principles and how the ACCC proposes to use them within the legislative framework. These pricing principles cannot and should not be used in a manner which does not meet the legislative criteria – namely the LTIE. It is not clear, for example, that relying on price anchoring will promote the LTIE. And it is far from clear that focusing on 12 Mbps pricing would promote the LTIE in the current market and given future expectations over demand.
13. In particular, we consider that CVC price reform should remain a priority. This meets several of the pricing principles noted above, as well as promoting the LTIE.
14. Getting the variable CVC charge and the fixed AVC charge to better reflect the underlying cost of the product will be the most effective and efficient approach in which to improve customer experience and improve the downstream competitive and consumer outcomes.

Focus should not be on anchor pricing

15. The ACCC considers that “having an NBN basic speed product would promote efficient use of the network, as it provides a price-quality mix that would best suit a specific and significant group of consumers.”¹ Further, that these basic speed products should remain stable over time to anchor prices for higher speed services over time.
16. Optus acknowledges comments made in 2013 that efficient NBN pricing “may require prices to be anchored to existing services so as to encourage take-up and smooth

¹ ACCC, 2019, ACCC inquiry into NBN access pricing, Discussion Paper, October, p.25

transition from legacy products.”² However, it has now been around 10 years since the first NBN pricing and product paper, and it is clear that the manner of usage over the NBN has changed materially. Further, the transition to the NBN is now largely complete, and will be completed during the period of any proposed regulatory instrument. The LTIE would be promoted by a pricing structure that reflects the way end-users consume broadband now and into the future. It is not clear that adopting a price structure designed in 2010 is appropriate in 2020.

17. Moreover, it is not clear what role the 12 Mbps AVC will have, or should have, in the NBN into the future. We observe that the demand and take-up of 50 Mbps services and above is increasing each quarter partially driven by the various DCRs that have been introduced.
18. Since the ACCC NBN Market Indicators quarterly reports have been made available, there has been an increase in the take up of higher speed tiers. In particular, there has been a significant shift in the proportion of NBN access services away from 12 Mbps services. In March 2016, 32 per cent of fixed line services was for 12 Mbps, dropping to 16 per cent in September 2019.
19. Optus further notes that one of the main reasons end-users remain on 12 Mbps AVCs is because their NBN access line does not support higher speed AVCs. As the ACCC would be aware, under the ACCC retail rules RSPs are not permitted to sell higher speed AVCs to end-users on speed limited access lines.
20. It follows that there is no basis to set an anchor price based on the lowest speed tier option available. Promoting efficient pricing for the majority of end-users would better promote the LTIE.

Changing the AVC-CVC construct will be in the LTIE

21. Optus submits that the ACCC should focus on changing the current AVC-CVC construct to enable more efficient use of the NBN. Such an approach would promote the LTIE more than focusing on 12 Mbps AVC prices.
22. The NBN's greatest advantage over competing technologies is its ability to handle very large amounts of data throughput at low additional cost. To promote the LTIE, the pricing model adopted by NBN Co should accentuate this advantage rather than neutralise it by charging for data throughput. This, in turn, means that usage of the network must be affordable and designed to promote such usage. But the current pricing model sets throughput charge materially above the incremental cost to provide the data.
23. This inquiry should review the CVC product construct, with the aim of either removing the costs associated with CVC capacity and/or reducing it significantly to meet current end-user demand for bandwidth. The access prices levied by NBN Co, in particular the CVC component, continue to be a critical factor influencing consumer take-up and demand for services on the NBN.
24. The supply of the CVC product component is essentially the upstream bottleneck with implications for all retail offers, irrespective of the RSP. It cannot be avoided nor can it be provisioned with a level of absolute certainty to meet the needs of its retail customers (i.e. the end consumer). For example, provisioning issues may arise where demand for bandwidth by a consumer (or consumers, more collectively) exceed forecasted levels.
25. Optus observes that the market benefits that have arisen due to the adoption of the NBN bundle pricing construct largely flows from the reduction in the effective CVC price. For

² Optus, 2013, Submission to the ACCC Consultation Paper: NBN Co Limited 2012 Special Access Undertaking, January, p.91

example, the introduction of the Focus on 50 credit was an example where Optus experienced significant drops in CVC congestion and associated customer complaints. This demonstrates the potential that could be unleashed if the CVC constraint was removed permanently.

Price certainty

26. As noted by the ACCC, the current wholesale pricing structure is set by NBN Co through the use of a “*Discounts, Credits and Rebates list, which does not form part of its WBA or any SFAA.*”³ This approach to introduce short term price changes via the DCR List does not provide price certainty for access seekers. It does not offer RSPs the commercial certainty that is commensurate with the potential costs required to effect the change.
27. In particular,
 - (a) The duration period is not fixed, and can be varied, amended, or withdrawn with short notice. While the DCR List requires that a time period must be specified, the applicable term for the price change can be amended or withdrawn with three-month notice period.
 - (b) The price change can also be extended at any time before the current period expires. However this extension does not need to be provided with any minimum notice period.
28. Optus recognises that the DCR approach may be a quick method through which NBN Co can introduce new pricing and products; however, it also enables NBN Co to withdraw these products at its own discretion, as per the terms of the Notice.
29. Such short notice periods are likely to cause significant concern for the NBN products, as the introduction of bundled products may require significant re-engineering of RSPs’ NBN network. The removal of a discount, credit or rebate also means that all existing services on those offers will be moved to another offer, which can be detrimental to the product economics. There is no requirement for DCR to apply for a term commensurate with consumer plans, and there is no option for grandfathering of services on those ‘withdrawn’ offers for a limited period beyond the expiry of the offer period.
30. For example, NBN Co made the decision to remove 12 Mbps AVC from the High Bandwidth Bundle construct.⁴ The effect of this was to materially increase the price of providing 12 Mbps services; and as a result, RSPs moved customers off this access speed onto the cheaper 25 Mbps or 50 Mbps bundle. Our ability to move customers was also limited by NBN access lines that could not support speeds higher than 12 Mbps.
31. While these offers provide a reduction on the per-component prices set out in the WBA Price List, there is no price certainty provided beyond the period to which these prices have been notified to apply. Optus therefore submits that the DCR List should not be used for the purpose of introducing new pricing products or making material price changes. Consequently, the current bundle construct should move from the DCR and form the basis of the regulatory instrument that may come from this inquiry.

³ ACCC, 2019, ACCC inquiry into NBN access pricing, Discussion Paper, October, p.14

⁴ The Senate, Environment and Communications Legislation Committee, Estimates, 24 May 2018. pp.95-6