

7 June 2018

Mr Scott Harding  
NBN & Pricing Coordination  
Australian Competition and Consumer Commission  
GPO Box 520  
Melbourne Vic 3001

By e-mail: [nbn@accg.gov.au](mailto:nbn@accg.gov.au)

Dear Mr Harding

## RE: 2016-17 LTRCM DETERMINATION CONSULTATION

I refer to the ACCC's consultation paper *NBN Co Special Access Undertaking Long Term Revenue Constraint Methodology 2016-17: Draft Determination* released in April 2018 and subsequent submissions from Telstra dated 25 May 2018 and NBN Co dated 4 June 2018.

We note the concerns raised in Telstra's submission that:

- Classifying NBN Co's newly introduced nbn50 and nbn100 High Bandwidth bundled products as 'discounts' creates significant uncertainty for RSPs and limits regulatory oversight;
- NBN Co's new nbn50 and nbn100 bundles should be classified as new NBN Offers rather than discounts to existing offers; and
- The treatment of build costs related to trials and other enterprise ventures under the regulatory framework is unclear.

Optus considers that these matters raise questions regarding the application and interpretation of the regulatory framework governing NBN Co, its products and processes.

Optus agrees with Telstra that the nbn50 and nbn100 offers (the High Bandwidth Bundles) could be more appropriately classified as new NBN Offers, not as discounts to existing products. Just because the High Bandwidth Bundles do not involve new technical features, does not mean they cannot constitute a new offer.

There are a number of features that distinguish the High Bandwidth Bundle offers from being a simple discount, including:

- The fact the new pricing is only available when purchasing the relevant AVC and CVC products **together as a bundle**.
- NBN Co distinguishes between CVC components used for the bundles and those not used for the bundles. NBN Co requires that RSPs designate a CVC TC-4 product component as a 'Bundled CVC' during an order process for that CVC component, instead of a 'Basic' CVC component.

- The offer is subject to a cap on ordered bandwidth. If the ordered bandwidth exceeds the included bandwidth in the bundle, the RSP must pay overage charges (which would no longer be a 'discount').
- The CVC traffic purchased for the nbn50 and nbn100 bundles are not included in the over-all CVC traffic for calculating the existing CVC dimension-based discounts.
- Special congestion conditions (limitations) apply to CVC usage for the Bundled CVC component which do not apply for basic CVC component.
- RSPs needed to undertake process changes and a configuration build in order to implement the High Bandwidth Bundles – it was not just a simple calculation applied during billing.

For these reasons, Optus considers that the High Bandwidth Bundles effectively constitute new NBN offers and should be subject to the same regulatory obligations and framework as other NBN offers. This is notwithstanding that the High Bandwidth Bundles were implemented as part of the Discount, Credits and Rebates List instead of via the Product Development Forum.

Optus has reviewed NBN Co's responding submission and we do not believe that it sufficiently addresses these issues. The variations to the CVC construct in the new High Bandwidth Bundles are sufficient to conclude that they represent a new NBN Offer.

NBN Co argues that if the High Bandwidth Bundles were to constitute an NBN Offer for the purpose of the SAU then there would be two or more Maximum Regulated Prices for the same underlying Product Feature and this is not contemplated by the SAU. However, the Maximum Regulated Prices would apply to two different products – one MRP would apply to the High Bandwidth Bundle (nbn50 or nbn100) which is a combination of AVC and CVC components, while the other MRP would apply to product components are purchased alone and separate to the bundled components. We also observe that NBN Co treats the CVC element of the High Bandwidth Bundle as separate from the stand-alone CVC product construct, requiring separate dimensioning and ordering processes.

The uncertainty over whether the High Bandwidth Bundle offers will be available going forward on a long-term basis has implications for RSPs and their ability to confidently offer competitive NBN products to their end-users. Without additional regulatory protections, these bundle offers can be removed with minimal notice to the detriment of Access Seekers and ultimately, consumers.

Telstra also raised concerns about the treatment of costs associated with trials and enterprise venture builds. However, NBN Co argues that the SAU permits costs to be included from new and trial nbn services.

Optus does not dispute that such costs may be included. However, we do query whether these are 'prudent' and 'efficient' costs. It is difficult to see how costs to overbuild existing networks and infrastructure used to supply non-residential corporate and government customers (i.e., existing networks that are already subject to effective competition) are 'prudent' and 'efficient'. Without being able to review the Procurement Rules against which these costs are assessed, it is difficult to comment further. The lack of transparency over NBN Co's costs, the ACCC's assessment and how these costs are determined to be 'prudent' and 'efficient' remains concerning and we query, in this case, if the relevant test is satisfied.

Optus considers Telstra raises valid issues and concerns in its submission and would welcome further clarification from the ACCC on these points.

Yours sincerely

Luke Van Hooft  
Director Economic Regulation