Proposed variation to the NBN Co Special Access Undertaking

TPG Telecom response to ACCC draft decision and subsequent NBN proposals

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Public version

Introduction

TPG Telecom appreciates the opportunity to respond to the ACCC's *Draft decision - Variation NBN Co Special Access Undertaking* issued on 2 May 2023 (**Draft Decision**) and further information provided by NBN Co and published by the ACCC on 24 May and 5 June 2023.

We welcome the ACCC's Draft Decision to reject the proposed SAU variation. However, we are disappointed the ACCC considers many aspects of NBN Co's pricing proposal are reasonable and meet the long-term interest of end-users (**LTIE**) test.

In the Draft Decision, the ACCC endorses NBN Co exercising its market power to impose inflation-linked price increases. The ACCC should not be surprised if the industry moves towards a trend where retail prices increase in line with NBN Co's price increases. The flow-on impact of the ACCC's decision is clear: consumers should not expect price stability and affordability for their NBN service.

TPG Telecom has lodged numerous submissions to the ACCC and NBN Co since the review of the regulatory framework underpinning the NBN formally began two years ago in June 2021. This response does not repeat views previously expressed, which have set out TPG Telecom's concerns with NBN Co's various proposals, along with changes TPG Telecom believes are required for the SAU variation to meet the LTIE test. We assume the ACCC will take all previous submissions into account in reaching its final decision.

Pricing roadmap conflicts with NBN Co's obligations and claims

NBN Co's 3-year pricing roadmap confirms what TPG Telecom has suspected. NBN Co intends to continue increasing prices every year. The SAU permits NBN Co to do this until at least 2030, when NBN Co reaches annual cost recovery.

Under the pricing roadmap, consumers on the most popular NBN services will be subject to the highest price rises. Specifically, the NBN50 and NBN100 speed tiers will each increase by 5% in FY25 and 3.2% in FY26. This will impact 70% of NBN consumers, representing over 6.1 million households.[1]

In comparison, the services not subject to wholesale price rises in the next three years are the fastest speed tiers, being NBN500 and NBN1000. This makes it clear NBN Co is not concerned with affordability of its services. Despite "keeping prices affordable" and "provide fast, reliable and affordable connectivity" being included in NBN Co's Statement of Expectations, it appears NBN Co is not prioritising these obligations, or potentially ignoring them altogether.

[1] Based on the ACCC's NBN Wholesale Market Indicators Report, as of 31 March 2023.

In a climate where inflation is trending well above the target rate of 2% to 3%, the ability for NBN Co to impose inflation-linked price increases will result in further price shocks to consumers already facing cost of living constraints. The ACCC would be endorsing this outcome if the pricing proposal does not change.

The pricing roadmap also demonstrates NBN Co's intention to effectively withdraw the NBN12 broadband service. NBN12 consumers have relatively low broadband requirements, but NBN Co's pricing proposal will immediately impact their ability to afford basic connectivity services. In the Draft Decision, the ACCC notes "*NBN Co has submitted that this is not the case and that [the 12 Mbps wholesale offer] would continue to be offered and represent a lower cost option for some services.*"[2] The fact the forecast average combined charge for NBN12 and NBN25 services will be the same under the 3-year pricing roadmap shows NBN12 is effectively being withdrawn for broadband use. This cannot be disputed by NBN Co.

As TPG Telecom has stated in past submissions, while we believe resetting the entry level product to be at least the NBN25 speed tier is desirable, it must also be affordable. If NBN Co wishes to withdraw NBN12 from the market, then it should offer NBN25 at the same effective price point as the current NBN12 service.

The ACCC assumes NBN12 consumers will be able to upgrade to NBN25 "*for the same price that they pay today*".[3] However, this does not recognise the current retail price difference between NBN12 and NBN25 services. For example, TPG Telecom's iiNet brand offers NBN12 with unlimited data for $64.99 per month, while NBN25 with unlimited data is $74.99 per month. In effect, NBN12 consumers who have no choice but to move to NBN25 could face price increases of around 15% or $120 a year.

Further, NBN Co's Draft Statement of Pricing Intent shows it is expecting 0% take-up of the NBN12 service between FY24 and FY26. The only available conclusion for the ACCC is NBN Co's pricing model will lead to the effective withdrawal of the NBN12 service.

The Draft Decision states "*it would be economic for entry level retail services to migrate from a 12 Mbps speed to a 25 Mbps speed inclusion at little to no additional wholesale cost.*" This comment does not recognise the impact of wholesale price increases for NBN12 compared to the status quo. While there is theoretically little to no additional wholesale cost to migrate consumers when the SAU pricing proposal is considered in isolation, there is a significant cost increase when comparing the status quo (under existing in-market WBA4 prices) and the SAU pricing proposal. Given this, we believe the ACCC should more closely scrutinise NBN Co's claims with respect to the NBN12 service and further consider the negative impacts of such significant price increases for consumers with lower broadband needs.

[2] Draft Decision, page 36.
[3] Draft Decision, page 39.

In the Draft Decision, the ACCC states the proposed pricing constructs would "*provide NBN Co with flexibility to progressively rebalance its wholesale offers should this be needed to better meet market conditions while safeguarding against major price shocks*". This is based on NBN Co's claims it faces increasing competition.[4]

There is no indication from the 3-year pricing roadmap NBN Co intends to change its offers to respond to market conditions. In a competitive market, NBN Co would be expected to reduce or minimise price increases, increase service quality, or do both. This is what is expected by consumers of any other commercial entity in the telecommunications sector. The fact NBN Co is comfortable imposing annual price increases close to its potential maximum demonstrates it is not at all concerned with competition from other providers.

It is concerning to observe the ACCC endorsing NBN Co raising prices to provide NBN Co with an opportunity to recover its costs, while concurrently contemplating regulation through the Superfast Broadband Access Service that could prevent non-NBN providers from recouping their costs. If the ACCC believes it is reasonable for NBN Co to be able to adjust prices to meet 'market conditions', then it should take a light-handed approach to the regulation of non-NBN fixed providers. This will significantly increase the ability and incentive of non-NBN providers to provide compelling and differentiated services and act as a real competitive constraint on NBN.

Further, the ACCC states "*there is scope for retailers to reasonably and effectively manage the impact of small differences in wholesale charges for an upcoming financial year (compared to those it had expected) through reasonable updates to its retail offers.*" Unlike NBN Co, retailers face strong competition and cannot continuously raise prices without consequences. **[c-i-c]** Retailers will often have no choice but to absorb NBN Co's price increases for as long as possible. If retailers cannot pass on yearly cost increases imposed by NBN Co, the ACCC should expect to see further market consolidation.

The ACCC should also not be surprised if retail prices rise at a higher rate than NBN Co's 3-year pricing roadmap. This could be a reasonable measure taken by retailers to mitigate against the uncertainty and risks involved in NBN Co's pricing construct, which exposes retailers to annual product price increases of up to 5%, subject entirely to NBN Co's discretion, and adjustments leading to CVC inclusions potentially decreasing over time.

SAU pricing proposal does not improve certainty for retailers

The overall effect of the pricing proposal is the commercial uncertainty faced by retailers will shift from CVC overage to inflation and NBN Co's annual exercise of its price discretion. The additional certainty afforded to retailers under NBN Co's pricing proposal compared to the

[4] Draft Decision, page 45.

status quo is marginal at best. The pricing proposal will continue to make it difficult for retailers to invest and make long-term investment decisions.

Given the millions of households using NBN services, the impact of what could appear to be a small or marginal increase in wholesale prices is magnified. To promote certainty, NBN Co should not be allowed to increase product prices on an annual basis. It should only be able to decrease prices at the product level and must set prices for at least three years in advance.

An additional means of increasing certainty for retailers is to allow a longer time before NBN Co's price increases come into effect. Rather than being advised of prices on 1 May, effective on 1 July, price increases could take effect 6 months after notice. The concept of a financial year for prices to take effect is arbitrary. This is shown by NBN Co's current practice of changing CVC inclusions with effect from 1 May.

Retailers worse off under NBN Co's price certainty proposals

TPG Telecom does not support the two proposals put forward by NBN Co to address concerns regarding certainty for NBN50 services. The price floor and ceiling proposal is a complex mechanism which will only make one thing certain: NBN wholesale costs will increase even further.

TPG Telecom vehemently opposes the price floor and ceiling proposal. Any proposal to provide certainty for retailers cannot be traded by NBN Co removing national pooling of overage. This will only serve to further reduce the ability of retailers to manage NBN Co's ever-increasing costs. Further information is provided in **Confidential Attachment 1**.

We believe the ACCC should further scrutinise why differing views are presented concerning the impact of the proposed pricing changes. The ACCC attributes the differences to "*NBN Co basing its forecasts on industry averages whereas retailers are providing forecasts more reflective of their business*". The ACCC should place greater weight on the forecasts provided by retailers, who are better placed than NBN Co to provide a view as to the potential real-world impact of NBN Co's pricing proposal, rather than the models adopted by NBN Co, which we believe minimise the impact of its pricing proposals.

The average price cap mechanism does not address the concerns raised by the ACCC in relation to price certainty for individual NBN50 services. To provide certainty and address the ACCC's concerns, only a price ceiling should be set. This means the price of an NBN50 service should be capped at the price for NBN100 services, i.e. $55 in the first year.

The actual wholesale cost of NBN50 services will also depend on usage. The ACCC states "*[w]e also note that forecast growth in daily peak CVC utilisation continues to trend down with developments in popular busy hour applications, such as streaming, which if it continues would moderate growth in CVC overage revenues and the extent of cost increases for retailers*." However, the latest usage data does not show a downward trend. NBN Co's April 2023 Network TC-4 Usage Trends RSP Update issued on 11 May 2023 states **[c-i-c].** The

ACCC should not be led to believe short-term or transitionary declines in usage reflect an overall trend. Given continuous and increasing reliance on connectivity, we expect forecasted usage to increase into the foreseeable future.

The opaqueness and complexity of NBN Co's pricing proposal is also demonstrated by the fact usage is expected to increase, but NBN Co's pricing roadmap does not provide for a lift in CVC inclusions. NBN Co will in effect be 'double dipping' by imposing price increases while also obtaining more revenue from higher usage with stagnant CVC inclusions, which will not be offset by the annual decrease in overage costs until July 2026.

Protracted regulatory process only benefits NBN Co

As the ACCC is aware, NBN Co has frozen CVC inclusions under the TC-4 Bundles Discount Roadmap for the two-year period from 1 May 2022 to 30 April 2024. NBN Co's original rationale for doing this was because it was confident any new pricing in the SAU variation would commence by 1 July 2023.

It is obvious NBN Co will now miss this target date and it currently projects a new SAU variation will commence from October 2023 or within 3 months of acceptance. This October 2023 date assumes the ACCC will make a final decision to accept an SAU variation by as early as July 2023. Given NBN Co will not submit another revised SAU variation until late June 2023, we believe it is unlikely a new pricing proposal will come into effect before the end of 2023, taking into account the need for the ACCC to undertake further consultation on another SAU variation proposal and then reach a final decision.

TPG Telecom has advised NBN Co from the outset its original timelines were unrealistic, yet NBN Co ignored this feedback. NBN Co previously stated that if the SAU variation is delayed, it will review and consider whether to increase CVC inclusions, yet it has not followed through with this commitment.

It is not enough for NBN Co to argue usage is not increasing above forecasts as a reason to refuse to increase CVC inclusions. NBN Co's annual practice of increasing CVC reflects its acknowledgment that usage increases and the costs should be shared, as it suggests should occur under the SAU pricing proposal. The fact CVC usage is increasing means retailers are being forced to meet the cost of demand growth, while a drawn-out regulatory process continues, benefitting only NBN Co.

Confidential Attachment 1

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