



Telstra Submission in relation to NBN's proposed SAU variation

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EXECUTIVE SUMMARY

Telstra welcomes this opportunity to review the proposed SAU variation and identify the changes needed so we can have confidence the SAU will promote the long-term interests of end users (LTIE) and can be accepted by the ACCC under the legislative framework.

Telstra recognises the challenges facing NBN Co in balancing the primary objectives of the NBN – to provide high-speed broadband to all Australians and delivering an efficient return on the investment, and the guardrails it must work within. However, we do not believe those objectives are mutually exclusive and are proposing what we believe constructive amendments to improve the chances of delivering both.

Unfortunately the proposed SAU variation, while taking some steps in the right direction, continues to put both objectives at risk through a pricing structure that will see wholesale price increases significantly, and by not doing enough to improve customer service standards. In its current form it actively and perversely encourages RSPs to take actions that will decrease the number of customers using the NBN and therefore the returns that can be achieved.

Given the long term of the SAU as varied, potentially expiring in 2040, the ACCC consultation is a critical opportunity to deliver better service quality for customers at prices that are fair and affordable, and to maximise utilisation of the digital infrastructure that underpins growth in the digital economy.

As it is currently drafted, the proposed SAU variation will harm customers and taxpayers. Our major concerns with the proposed SAU variation are:

- The SAU seeks to lock in service standards most of which were negotiated two years ago, for the next three years, despite known concerns that customers are not getting the service quality they are paying for. There is also no incentive or consequence for NBN Co failing to meet the service standards it is promising (e.g. NBN Co charges RSPs a 100/20 price when a significant proportion of its lines do not reach these speeds).
- The SAU will lead to a substantial increase in the wholesale price for the 50/20 plan. The price cap for NBN Co's most popular 50/20 plan will increase by 8% at the outset of the SAU, an additional 15.8% to FY26, and an additional 31% until FY32. The price reductions to some plans will only be transitory, as the SAU would allow NBN to wind the price reductions back relatively quickly.
- The SAU will delay Australia's transition to a globally competitive digital economy. Increasing wholesale prices will mean the NBN remains underutilised – while other countries are delivering to their citizens 1Gbps speeds, NBN Co forecasts to have 96% of customers on speeds one tenth of that or less by 2024. Adequate broadband on the NBN will be less affordable for lower income families who are otherwise already suffering substantial cost of living pressures. These factors lead to lower economic growth and associated tax income, meaning lower returns to the tax payers who have heavily invested in NBN Co.
- Customers that remain on the MTM should not have to pay more for low service quality. Despite its FTTP investment, NBN Co forecasts 3.5M (40%) premises will still be connected to FTTN/B/C by FY26, reducing only 0.5M from FY24. The SAU should not force these customers to pay for the FTTP upgrade, until they benefit from it. The SAU should not increase price to force RSPs to migrate heavy users on 50/20 plans to high-speed tiers, particularly for those 39% of 50/20 customers whose NBN lines cannot support higher speeds.
- Customers should not have to pay for cost inefficiency. NBN Co's historic inefficiency has been significant. The SAU would constrain the ACCC's ability to exclude inefficient costs associated with Government policy projects, and prevent the ACCC from ensuring efficient costs are recovered in a way that promotes the LTIE.

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- NBN must focus on improving its core business rather than non-core activities. NBN has had a strong incentive to overbuild competitive infrastructure and focus on non-core activities, which risks harming competitive markets and distracting NBN Co from improving core services. NBN Co forecasts it will spend \$934M from FY24 to FY26 on non-core parts of its business – a proportion of this could instead be spent on improving service quality for its core business of supplying broadband to residential and small business customers.
 - NBN Co has substantial market power that needs ongoing regulatory oversight. The proposed SAU variation removes regulatory oversight protections that exist today. One example is the requirement that the ACCC allows NBN to earn a stand alone investment grade credit rating, that would override the statutory objective of promoting the LTIE. This would not be in the LTIE because it might be factors that are outside the ACCC's control that are the reasons for NBN Co not obtaining an investment grade credit rating.
 - While a weighted average price cap is the right approach, the proposed formula should be simplified and needs to be linked to reasonable revenue forecasts to ensure a predictable path to cost recovery. The current proposal would give NBN revenue above its forecasts if it eliminated low priced plans and forced customers onto higher priced plans.

We believe there are simple remedies to these customer harms, that could be adopted by NBN Co in a variation to its proposal. In particular:

- To improve service quality: NBN should provide a rebate to customers when its lines do not meet the speed of the plan that is being paid for. Material failures to meet Benchmark Service Standards must have consequences for NBN Co. NBN Co must provide RSPs with adequate notice of planned outages. Service standards relating to customer faults and performance incidents need to be enhanced.
- To ensure prices promote the LTIE: Do not raise the 50/20 price at the outset of the SAU. Instead, leave the 50/20 plan price at \$45 + overage and, if price increases are justified, raise the AVC price in a measured way by 2.5% over time. Customers on the MTM should not have to pay more until they have willingly migrated to FTTP, and should certainly not be forced onto high speed tiers their lines cannot support or that they do not need. The cost of overage per customer on the 50/20 plan should otherwise be capped at \$3, to protect heavy users of 50/20 plans whose NBN lines cannot support 100/20 speeds. The WAPC should be linked to a reasonable forecast of NBN Co's revenue.
- To protect customers from paying for inefficiency: There must be stronger thresholds to ensure future expenditure is efficient. The cost of government policy objectives should not automatically flow through to NBN Co's prices, and costs should not be recovered from end users who do not benefit from them. This can be achieved by the ACCC having powers to remove capex and opex from the cost base that shouldn't be recovered from particular groups of end users, or through appropriate allocations of costs to services.
- Protection of competitive markets: The ACCC should retain its unfettered ability to exclude costs that are not central to NBN Co's wholesale broadband services, to ensure NBN focuses on improving its core business rather than non-core activities. The allocation of costs between core and competitive services should also be more transparent with stronger principles to protect competitive markets.

NBN has a very high investment grade credit rating today, albeit not stand alone. It is not the responsibility of the ACCC to ensure NBN Co maintains an investment grade credit rating, as that depends critically on NBN Co's governance, spend efficiency, strategy, capital structure, and many other factors beyond the ACCC's control. However, when taking the above solutions into account, in particular



leaving the 50/20 price at \$45 + overage and allowing the AVC to increase by 2.5% each year thereafter, it is shown that NBN Co could achieve the FFO/Debt and debt/EBITDA financial metrics for NBN to achieve a stand-alone credit rating.

If its proposed SAU variation were accepted, NBN Co would become one of the most profitable utilities in Australia, compared to twenty seven other utilities with similar risk profiles. NBN Co would have the highest free cashflow to debt, and cash return, the second highest cashflow to revenue, and the lowest debt/EBITDA ratio.

The solutions proposed in this submission would fix the remaining issues in the proposed SAU variation and allow the industry to move forward with confidence that the outcomes for customers will improve.

01 Introduction

There are four features needed in the SAU to ensure it provides reasonable outcomes for customers and taxpayers:

- Low-cost wholesale access to NBN Co's bottleneck services to ensure affordable broadband and to enable growth in Australia's digital economy, enabling strong social returns to tax-payers' investments;
- Better service quality so Australians' fixed broadband lines consistently work;
- Protections ensuring end-users are not paying for NBN Co's cost inefficiency; and
- Sufficient opportunities for regulatory oversight where substantial market power exists.

The first SAU proposal did not deliver any of these features. The substantial RSP input and review, the ACCC workshops and the Ministers' intervention helped ensure end users were not locked into a future SAU that would have been substantially harmful to end users.

While the second proposal from NBN Co is a step in the right direction – there are still important changes needed to help ensure an SAU will not harm the LTIE and can be accepted by the ACCC.

The proposed SAU variation will operate potentially until 2040. It is therefore critical that the SAU is not accepted until the industry is confident that it will promote the long-term interests of end users.

One challenge to building confidence in the path ahead is the ongoing lack of transparency in relation to the outcomes that would arise from the SAU. Without this information, it is impossible to gain comfort that the proposed SAU variation would promote the long-term interests of end users. For instance, there has been no publication of:

- What the starting Weighted Average Price Cap would actually be for FY24, and other years in the First Regulatory Cycle;
- How that Weighted Average Price Cap would align to forecast revenue;
- What prices would apply for the second and third years of the first regulatory period (i.e. the Three-Year Pricing Roadmap);
- What proportions of individual capex and opex items have been allocated to core regulated services;
- Details of major capital projects underlying a substantial increase in claimed costs, including the impact on take-up and service quality, the costs, and the economic return.

Telstra is also subject to confidentiality restrictions imposed by NBN Co in the WBA4. Those restrictions prevent Telstra from including data that demonstrates issues in the service quality experienced by our customers.

Telstra welcomes this opportunity to identify those changes needed so that the SAU could be accepted by the ACCC under the legislative framework.

02 Major remaining concerns with the SAU

2.1. Customers would continue to suffer poor NBN service quality for the foreseeable future

Service quality is a critical component of the regulatory framework that applies to the NBN given the impact it has on customer experience. The quality of service provided by NBN Co has been subject to significant discussion for some time, as part of commercial negotiations and regulatory processes such as the ACCC nbn wholesale service standards inquiry which commenced in 2017.

The revised SAU variation submitted by NBN Co represents an improvement to the regulatory framework in that it:

- Incorporates Benchmark Service Standards where service quality was previously not included in the SAU;
- Includes a process for updating Benchmark Service Standards between regulatory periods in response to, for example, changes in consumer demand or operational requirements; and,
- Provides the ACCC with limited powers to set Benchmark Service Standards during a regulatory period, including to back-to-back new retail obligations.

This is a significant step change from the current environment where service standards are commercially negotiated and RSPs have little to no recourse where an imbalance of bargaining power exists.

While the inclusion of Benchmark Service Standards in the proposed SAU is positive, there is limited change in the actual service quality that would be experienced by end users. The Benchmark Service Standards proposed by NBN Co seeks to, with limited exceptions, lock in service standards that were introduced over two years ago, for the next three years, and that are resulting in poor outcomes for customers.

Further changes are required to the SAU so that end users can be confident that current issues will be rectified and service quality generally will be improved. At a high level these are:

- Improving and expanding the baseline to ensure customers get the service quality that they are paying for, including in relation to speed, planned outage notification and priority assistance;
- Compensating customers where NBN Co is unable to support the speed tier expectation that it charges RSPs for; and,
- Including performance incentives so that NBN Co is held to account when it doesn't deliver the service quality it promises.

Absent changes to the baseline service standard, accompanied by incentives to deliver them and make ongoing improvements, the proposed SAU variation should not be accepted by the ACCC.

2.1.1. Wholesale NBN service standards are a key driver of poor customer service

Wholesale NBN service standards are a key driver of poor customer experience. This is reflected in Telstra's Use NPS, which focuses on the day-to-day experience of customers on the NBN. While RSPs have a significant role to play in providing a satisfactory experience, the impact of NBN service quality is evidenced through the strong correlation between network performance and Use NPS. Most notably reliability and speed of NBN service are drivers of Use NPS. This is shown through:

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- Customers who experience more drops in their NBN service, have a significantly higher rate of dissatisfaction with the service being provided by their RSP.¹
 - Customers with what is considered by NBN to be a ‘low’ number of drops i.e., less than 10 drops in their service per day, experience significant frustration and low satisfaction with their NBN service.
 - HFC and FTTN customers experience the lowest Use NPS or service satisfaction (FTTN customers are most likely to not achieve NBN plan speeds, and HFC customers suffer from service continuity issues).

One of the key drivers of poor customer experience is when customers’ NBN lines do not deliver their plan speeds. As of January 2023, [c-i-c]% of Telstra’s FTTN residential customers on 50 Mbps plans had NBN lines unable to achieve 50 Mbps. Similarly, [c-i-c]% of Telstra’s FTTN residential customers on 100 Mbps plans had NBN lines unable to achieve 100 Mbps. These customers have limited options to address the inability of their service to achieve its nominal speed plan other than downgrading to an even lower speed tier, or a technology upgrade, which may come at a higher cost.²

Other customer (and RSP) pain points based on Telstra’s customer interactions are notification of planned outages and NBN Co not supporting priority assistance obligations, both of which have a detrimental impact on customers including those in vulnerable circumstances. This is supported by the results of a survey conducted by Venture Insights in January 2023, which showed speed problems, random drops, service faults and unannounced planned outages as those issues most affecting customer satisfaction with their NBN service.

2.1.2. The SAU would lock in service standards from two years ago for the next three years

There is a clear need for improvements in NBN service quality to improve the customer experience and to ensure that customers get the service quality that they are paying for. It is simply not sufficient for NBN Co to include service standards in an SAU that are already not meeting consumer expectations or ignore ongoing concerns, and then face little consequence for not meeting those standards. As noted by the ACCC, the included service standards were substantially agreed to in 2020 under WBA4 and, as proposed by NBN Co, would continue until 2026. They do not address current issues that are having a real customer impact, nor do they acknowledge issues or ‘gaps’ that have consistently been raised by RSPs commercially and during this process.

2.1.3. NBN forecasts to spend \$934M on non-core services, while service standards for its core are effectively no better

In its supporting submission NBN Co sets out a concern that any proposal to “*introduce and entrench higher service standards on those access technologies that are subject to overbuild... would divert capex that is more efficiently spent on upgrading the network over time, or would impact NBN Co’s ability to maintain the network to meet existing service quality commitments.*” However, NBN Co has not provided any information on the cost implications of the service quality measures that have been proposed by RSPs to date other than a view that extending rebates to lines that measure below 100% of PIR would cost approximately \$90 million per annum based on existing pricing. The absence of cost information from NBN Co makes it difficult for stakeholders to undertake a cost-benefit assessment of improvements in service quality. Telstra’s view is that this should be part of the regulatory framework, to determine whether NBN Co’s expenditure on service quality is efficient and provides benefit to consumers. It is also important to note that some aspects of service quality that have been proposed for

¹ Evidenced by a drop in NPS scores as the number of drops in a customers’ NBN service increases.

² The Fibre Connect Program is opt-in and relies on customers committing to a higher speed plan (minimum 100/20 for upgrades from FTTN and 250/25 for upgrades from FTTC) for 12 months.

inclusion in the baseline – such as planned outage notification – are existing standards that should not result in significant (if any) cost.

The view that 'higher' service standards should not be introduced on existing technologies that may, in the future, be upgraded does not recognise the high proportion of consumers that will continue to receive their NBN service on those technologies for at least the initial regulatory period. The ACCC Consultation Paper notes that *"...the 50 Mbps speed tier accounted for 55.4% of the market in June 2022 and, as such, it may not be unreasonable for retailers to expect improvements to benchmark service standards in line with rising prices."*

NBN Co forecasts show that 5.3m premises³ will still be on MTM technology by the end of the first regulatory period. At the same time, NBN is increasing its FTTP capex from \$0.48m in FY21 to \$2.1b in 2026 diverting capex away from other technologies even though a significant proportion of customers will not benefit from the fibre connect program during this regulatory period. Indeed, NBN forecasts that there will be approximately 4.5 million additional premises ready to connect to FTTP, but less than one million premises will actually take up FTTP by the end of the regulatory period. This may be due to the fact that any network upgrade will require customers to opt in and commit to a higher cost speed tier. Further consideration should therefore be given to whether it would be more beneficial to allocate expenditure to existing technologies for this regulatory period to support an appropriate baseline service quality rather than on a network upgrade that will initially only be available to a small number of consumers, who may not necessarily choose to change given the higher price commitment. Expenditure on improved service quality for existing technologies does not need to be diverted from the FTTP upgrade, which will have future positive outcomes, but perhaps more appropriately from 'non-core' services on which NBN is forecast to spend \$934 million. The FTTP upgrade has the potential to solve many problems experienced by consumers, but we need to ensure that those consumers are not detrimentally impacted by the change in focus before they are able to take advantage of the benefits of FTTP.

As set out elsewhere in this submission, the approach being taken by NBN Co means that consumers on existing technologies will bear the cost of a network upgrade for which the majority will receive no benefit in the short to medium term. It is not right that most customers pay an increased price for their service with no appreciable increase in the quality of that service, which is effectively what the SAU variation proposes.

2.1.4. SOLUTION: NBN Co must provide a rebate if its lines cannot support the speeds it charges RSPs for

As set out above, one of the key drivers of poor customer experience is when NBN lines do not deliver their plan speeds. This is particularly the case for customers on FTTN, where one third of customers on 50 Mbps plans cannot achieve 50 Mbps and almost half of customers on 100 Mbps plans cannot achieve 100 Mbps. These customers may not be able to upgrade their technology or do not want to downgrade to a lower speed tier, leaving RSPs in a situation of paying for an NBN service they do not receive.

Under WBA4 NBN Co is able to charge RSPs prices for 50/20 and 100/20 speeds supplied on FTTC, FTTB and FTTN lines, but can supply speeds as low as 25Mbps without any rebates. If NBN Co charges a 50Mbps or 100Mbps price, it must assure its lines are capable of delivering 50Mbps or 100Mbps. If it cannot, it must provide the maximum speed the line is capable of, and a rebate to RSPs. NBN Co must identify and automatically pay the rebate, and remove all obstacles to RSPs and end users claiming it.

While the WBA4 includes a PIR Objective Rebate, it is insufficient. The PIR Objective Rebate applies to FTTB, FTTC, and FTTN lines that cannot support 25/5 in the case of FTTB and FTTN and 50/20 in the

³ Including HFC services which, although they may not experience the speed issues of other technologies, experience other service quality issues such as drop outs and inadequate outage notification.

case of FTTC, and when NBN Co has committed to ameliorate the speed or rectify a performance incident.⁴ For end users who purchases a 100/20 or 50/20 plan, whose line delivers just over 25/5 (FTTB/N) or 50/20 (FTTC), NBN Co charges the full wholesale price in circumstances where they do not deliver what is promised. This has been carried into the proposed SAU variation.

The lack of adequate speed assurances in the SAU affects a large proportion of end users. Nearly 40% of TC4 end users are on FTTB, FTTC, and FTTN lines, for which RSPs are paying NBN Co for plan speeds well in excess of the 25Mbps speed that NBN Co assures.⁵

If NBN Co charges a 50/20 or 100/20 price, it must assure the line is capable of those speeds and if it is not, then provide the maximum line speed and a rebate.

WBA4 also has obstacles for RSPs receiving the rebate, which need to be removed. Despite NBN Co having detailed performance reporting of its line speeds, before the rebate is paid:

- RSPs must identify a problem on NBN Co's network and lodge a trouble ticket (if paid, rebates accrue from this point);
- NBN Co must make its own determination the issue lies with its network;
- NBN Co will then place the service into remediation; and,
- NBN Co must complete the remediation.

These obstacles must be removed. NBN Co has sufficient information to identify which of its lines do not meet its plan speeds, and can automatically provide rebates where that is the case.

In contrast to the WBA4 commercial agreement, RSPs face retail regulations that require them to provide the line speeds being advertised to customers. The ACCC has published the following guidelines for RSPs:

- *"RSPs should avoid using 'up to' speed claims, as these can give the impression that the speed advertised at the top of the range is likely to be achievable at all times, including during the busy period."*⁶
- *"In circumstances where an RSP is unable to provide timely resolution of a speed problem (whether as a result of its own network or the underlying access network), the RSP should provide the consumer with:*
 - **refunds, compensation or billing reductions or rebates to reflect actual experienced speeds,**
 - *the option to move to a plan that better reflects the typical busy period speeds able to be achieved for their individual service, and/or*
 - *the opportunity to exit their contract without further charge with appropriate refunds or compensations [emphasis added]."*⁷

NBN Co must provide rebates, to allow RSPs to most efficiently and effectively meet their retail regulations.

⁴ NBN Co, *WBA4: Service Levels Schedule*, s5.3.

⁵ ACCC, *NBN SIO RKR*, June 2022, Table 1.

⁶ ACCC, *Broadband Speed Claims: Industry Guidance*, October 2020, s3.7.

⁷ ACCC, *Broadband Speed Claims: Industry Guidance*, October 2020, s3.61.

The provision of rebates is also consistent with customer expectations about what should happen when a service cannot meet its plan speed. Venture Insights tested various scenarios with respondents to its customer survey and found that, where a speed issue was unable to be addressed, a price discount to reflect lower speed performance (38% of respondents) was the next best alternative to a non-NBN solution (49% of respondents). Only 17% of respondents thought dropping to a lower speed plan was an acceptable option.

2.1.5. SOLUTION: Material failure to meet performance objectives must have consequence

While rebates apply where some service standards are not met, there is no overall consequence on NBN Co where it does not deliver its forecast (and funded) service quality to consumers. NBN Co has consistently maintained that, as it is "...not an unconstrained monopoly broadband provider" with increased competition in its commercial operations, it has sufficient incentive to meet and provide enhanced service standards. However, many of the issues raised by RSPs, have been raised in commercial negotiations and other forums (such as the ACCC's wholesale service standards inquiry) for many years. NBN Co's failure to materially improve service standards in the SAU contradicts its position that there is no imbalance in bargaining power, and it faces ongoing pressure to improve. This is also supported by the inclusion of a Baseline Service Standard based on WBA4 standards that have already been in place for two years and are not reflective of current concerns, nor address shortfalls in the consumer experience.

In its consultation paper, the ACCC observes that "*[t]he proposed service standards framework does not include an explicit performance incentive scheme, which would provide NBN Co with direct financial benefits for exceeding service standard commitments that inform the regulation of its prices and costs for falling short of those commitments.*" Telstra agrees that the proposed SAU falls short in this regard. As noted by the ACCC, such incentives are a key feature of other regulatory frameworks. Failure to include an appropriate scheme effectively removes the interaction between price and service quality and may provide an incentive "...to reduce service performance below the level reasonably expected by end-users in order to reduce costs and increase margins", a risk recognised by NBN Co in its supporting submission. Telstra is additionally concerned about whether the SAU variation will give the ACCC sufficient powers during the Post 2032 Regulatory Period where NBN Co's performance means adjustments are needed mid-Regulatory Cycle – see section 4.11 of this submission.

The details of an explicit performance incentive scheme that promotes the LTIE should include the following elements:

- An assessment of what a 'material failure' to meet service standards is. For example, missing a proportion of the service levels included in the Baseline Service Quality.
- Clear consequence of failure to meet service standards. This could be reduced capex inclusions in subsequent regulatory periods (consistent with other regulated sectors) or a WAPC 'penalty'. In contrast to rebates, this type of financial consequence would closely reflect the link between price and service quality.

The regulatory framework should also include a mechanism that enables an assessment of the benefits of service quality related expenditure being proposed by NBN Co. There is currently limited transparency about the drivers for expenditure or the benefits it is intended to deliver to consumers. The purpose of such an assessment will be to ensure that consumers pay no more than necessary for improvements or changes in service quality. The assessment would answer two key questions – first, whether the proposed investment is necessary i.e., wanted by consumers and/or RSPs and, second, whether the investment is efficient. The inclusion of significant expenditure devoted to FTTP in the initial regulatory period, at the expense of improving existing technologies which service the majority of customers, illustrates the need for such an assessment.

2.1.6. SOLUTION: NBN must provide customers with adequate notice of planned outages

The WBA includes an SLA that NBN Co will provide RSPs with 10 business days' notification of a planned outage. This period is required for RSPs to be able to manage customer impacts including any special embargoes for enterprise customers, wholesale customer notification requirements and the supply of interim services if required. Advance notice also enables customers to plan their service use as needed, something which is increasingly important as more people work and study from home.

Telstra's experience is that a significant proportion of planned outages do not meet the 10 business days' SLA. In a recent 6-month period:

- Well over half of planned outages did not meet the 10 business days' SLA.
- Close to one third of customers who experienced a planned outage received less than 1 hours' notice.

The notification of planned outages has not been included in the proposed SAU despite it being raised by RSPs as a key area of concern for customers. A majority of consumers (92%) surveyed by Venture Insights confirmed that 10 or more days' notice of a planned outage was acceptable. Below 10 days was generally less acceptable, with only 50% of respondents considering 5 days' notice acceptable. This confirms the need for NBN Co to meet its SLA and to be held to account through inclusion in the Baseline Service Standard.

Telstra notes a Communications Alliance Working Group (CA-WG) has been convened to determine the process for planned outage notification between NBN Co and RSPs. While the outcomes of the CA-WG should be incorporated into the WBA once finalised, there is still a need for the NBN to be held to account to meet the fundamental outage notification period of 10 business days. Given NBN Co performance to date on planned outage notification, and the detrimental customer impact, it is not sufficient for planned outage notification to be omitted from the SAU based on the existence of the CA-WG.

Outage performance metrics should also be included in the proposed RKR and accompanying public reporting. The specific elements of outage performance to be included in the RKR should be confirmed once the CA-WG has concluded its work.

Telstra also considers that where NBN fails to meet the 10 business days' outage notification requirement, the duration of any planned outage should be added to the network availability calculation (i.e., reflecting the network as unavailable) to reflect the customer experience. It is misleading for NBN Co to report a network availability measure that omits 'planned' outages that have not been appropriately notified.

2.1.7. SOLUTION: Enhance service standards relating to faults and performance incidents to improve the customer experience

The SAU variation includes a proposal to lower the dropout threshold for faults to greater than 7 within a 24-hour period (from greater than 9) on the basis that the increase in costs – from exposure to truck roll and rebate costs – is appropriate when balanced against the benefits the reduced threshold will bring. Telstra supports this proposal. RSPs have consistently raised unexpected dropouts as a key source of customer complaints, with 9 dropouts well above the point at which they become a source of frustration for customers and impact on their NBN experience. Indeed, the outcomes of the consumer survey conducted by Venture Insights showed that the majority of respondents (92%) regarded five dropouts per day to be a fault that regarded action, with a significant proportion (72%) considering three dropouts per day as a fault.

The lowering of the dropout threshold from greater than 9 to greater than 7 means that services experiencing a dropout rate of between 4 and 6 in a 24 hour will be subject to NBN Co's performance incident regime. In its supporting submission, NBN Co sets out a view that “[t]he performance incident

framework is often overlooked in discussions regarding the dropout threshold...".¹¹ While we cannot speak on behalf of other RSPs, the Performance Incident Framework (PIF) is never overlooked when Telstra is thinking about managing services experiencing dropouts or other service issues. To the contrary, we initiate around 700 incidents through the PIF each month. The PIF has many positive aspects, not least the 7-day monitoring post assurance to ensure a service continues to work correctly. However, the longer timeframes (a technician visit cannot be scheduled for at least 3 business days compared to the next day for a fault) with no associated compensation means that services that do not meet the fault threshold may cause ongoing customer frustration, while also imposing cost on RSPs who often provide alternate solutions (such as plan discounts, increased mobile data or interim solutions).

We therefore recommend Performance Incidents should be included under the Service Fault Rebates, as contained in section 8.5 of the Benchmark Service Standards. The introduction of a rebate for services experiencing a Performance Incident where the related service level is not met would be welcomed by customers. We consider the most efficient way to introduce this is for performance incidents to be calculated as Rebate Days (section 20.4 of the Benchmark Service Standards), and to receive the same rebate amount (section 8.5(b) of the Benchmark Service Standards).

We also propose that the post-assurance monitoring associated with Performance Incidents should be expanded to all fault restorations. Expanding the monitoring program would enable confirmation that a fault repair has been effective, thereby removing the need for a fault to be re-reported if the repair was ineffective.

2.1.8. SOLUTION: Extend Priority Assistance timeframes, aligned with Telstra's timeframes, to all service classes to protect vulnerable customers

Priority Assistance (PA) is critical for customers who need consistent access to communications for medical or other purposes. Telstra has consistently requested NBN Co to update its PA service levels to align with the commitments we have made to our PA customers. At present, NBN Co does not meet PA connection timeframes for all service classes. There is a gap between Telstra's PA timeframes and NBN Co timeframes for physical connections, which are likely those without an existing service in place. This means that vulnerable customers may be without a service or reliant on an interim service that may not be a complete substitute in some circumstances.

Further, NBN Co does not provide any PA timeframes for Fixed Wireless, which is now a more common technology. PA timeframes should be extended to Fixed Wireless to avoid customers reliant on that technology being without an NBN service for critical communications.

Telstra recognises that we are the only RSP that provides PA for customers. Our experience is that this has meant NBN Co has no commercial incentive to update its PA timeframes. Over the last two years Telstra has provided interim solutions in response to over 30,000 incidents related to NBN activations or assurance incidents at a cost of almost [c-i-c]. Extending NBN's standards to all service classes and aligning with Telstra's commitments to its PA customers would go some way towards addressing this.

As noted above, while the SAU provides the ACCC with powers to make changes to the service quality baseline for new retail obligations, it ignores existing obligations that are reliant on the wholesale service provided by NBN Co. The inclusion of updated PA timeframes in the regulatory framework established by the SAU will provide the recourse necessary for Telstra to continue to support our most vulnerable customers.

2.1.9. SOLUTION: Additional service standards to improve the customer experience

There are additional service standards that are needed to address identified gaps in being able to provide customers with a good experience on the NBN. As noted above, some of these may be too complex for inclusion in the Baseline Service Standard. However, it is important to acknowledge that more work needs to be done outside the regulatory framework to ensure ongoing improvement and recognise changes in the operating environment. These include:

Update connection timeframes to reflect the current operating environment

The current timeframes are those developed when NBN Co was rolling out its network and undertaking a high proportion of physical connections i.e., a visit to the premise was required. Now that the number of physical connections has significantly reduced, the need to queue connection requests until a technician is available has also reduced. We consider it should now be possible to reduce the timeframes for new connections. This should be reflected in the Baseline Service Standard as follows:

- For physical connections across all Fibre, FTTN, FTTB, FTTC, HFC and Wireless network service classes, reduce timeframes from 9, 14 & 19 Business Days to 4, 9 & 14 Business Days respectively, to align with Accelerated Connections.
- For logical connections, align the performance objectives with service transfer timeframes.
- Amend connection timeframe performance objective to 90% of Physical Connections completed within relevant timeframe; and 95% of Logical Connections completed within relevant timeframe.

The connection timeframes for the Fibre Connect program should also be included in the Baseline Service Standard given the significant capital expenditure dedicated to rolling out that program.

'Right, first time' metrics to reduce repeat incidents

In FY22, [c-i-c]% of fault repair tickets had repeat incidents within 30 days. The detriment to customers experiencing repeat incidents is then exacerbated by an NBN requirement for RSPs to complete a T&D checklist, resulting in delays to addressing the recurring fault. This is primarily due to, in Telstra's experience, NBN Co closing fault repair tickets too quickly. The number of repeat incidents, or the customer frustration associated with repeat incidents, could be reduced through:

- The inclusion of right, first time metrics for connections and faults;
- Metrics for newly activated services e.g., no faults in work carried out to provision a service within 20 business days with a 90% performance target;
- Monitoring fault repairs for 7 days to avoid repeat incidents (as set out above in relation to faults and performance incidents); and,
- Removal of the requirement for RSPs to complete a T&D checklist for the same incident report within a 30-day period.

Some of the detail of these elements may be best addressed in the WBA rather than the SAU, although monitoring of fault incidents and no faults in newly activated services are fundamental elements of what NBN should be delivering and should be incorporated into the SAU.

Exclusion criteria updated and clearly defined to reduce delays to resolving customer problems

NBN Co applies a number of exclusions to service standards which 'stop the clock' leading to longer timeframes for connections and fault repairs. For example, if NBN miss an appointment that needs to be rescheduled, the incident will be put into 'pending'. Similarly, orders or service requests will be placed into pending for minor clarifications that should not push out timeframes for resolution i.e., clarification could be provided within the original timeframe. The use of exclusions is, in Telstra's experience, inconsistent to the extent that it is difficult to forecast use of exclusion criteria. This has an impact on RSPs operationally and can sometimes mean it is difficult to communicate with customers about the status of their service, leading to frustration and confusion.

The exclusion criteria used by NBN Co should be updated and the circumstances (when and how) in which criteria will apply clearly defined. For example, when the use of 'stop the clock' provisions apply during connections. Telstra acknowledges that there is a key role played by RSPs in relation to exclusions e.g., when information is required to be provided by RSPs. As such, refining the approach to exclusions should be done in conjunction with industry and incorporated into the WBA once finalised.

Improved data provision to RSPs to enhance customer communication

The provision of data and information from NBN Co is critical for RSPs to be able to effectively communicate with customers about the status of their service. In its supporting submissions, NBN Co acknowledges that RSPs require appropriate information to support interactions with customers and sets out enhancements that have been made to operational systems to support RSPs in ensuring customers receive the service they pay for. Telstra agrees that NBN Co has, in conjunction with industry, made ongoing improvements to information provision. However, further changes are needed.

The overriding principle should be that NBN ordering, assurance and ticketing systems should be sufficient to support the Baseline Service Standard. There also needs to be alignment between RSPs obligations and NBN commitments. For example, there is currently a misalignment between RSPs' 'implement resolution' obligation and NBN Co response to complaints which require their input or action. RSPs may miss their obligation target when NBN Co do not resolve the issue within 10 business days for a non-urgent complaint or two business days for an urgent complaint.

Telstra considers that NBN should consult with industry to determine the data needed to effectively support customers and improve the customer experience. This may include:

- Up-to-date and historical half hour usage, real time reporting on any breaches of agreed thresholds.
- Improved data accuracy, with an obligation on NBN Co to fix known issues in a timely manner, especially for mission critical data.
- Improved RSP data accessibility, including ability to raise requests for more detailed information on demand.
- Information to support RSP complaint handling obligations within set timeframes.

The level of consultation required to improve the provision of information likely means this needs to be dealt with outside the SAU process. However, the outcomes may be incorporated into future variations to ensure RSPs get the baseline information needed to communicate effectively with customers.

2.2. The SAU will lead to a substantial increase in the wholesale price for the 50/20 plan

NBN proposes to reduce the price of higher speed tiers and for voice only plans, which is welcomed. Those wholesale price changes need to be assessed in the context that those plans are currently over-priced and leading to inefficient under-utilisation of the NBN. For example, while 40% of fixed premises could attain 1 Gbps speed on the NBN, existing wholesale prices have led to the situation that less than 1% of customers take up these speeds. 73% of NBN Co's fixed-line footprint could achieve over 100 Mbps speeds, while only 18% of customers took up plans with speeds of 100 Mbps or more.⁸

Further, those price reductions are only transitory, as the proposed SAU would lock in the ability for NBN Co to increase the prices for all plans on an ongoing basis – by CPI for the weighted average of all core price points and by the greater of CPI and 5% for each individual plan – without the possibility of future regulatory oversight. Under the SAU, it would take NBN Co just two years of price increases under the proposed price caps to more than remove the proposed price reduction on 100Mbps.⁹

But more importantly, NBN Co proposes to increase the price for the most popular 50/20 plan at the outset of the SAU, as well as give itself the protection from future regulatory intervention to raise this price each year until 2040, even when those price increases are not in the LTIE. This price increase will outweigh the limited and transitory price reductions for other plans, because the 50/20 plan will remain NBN Co's most popular plan until at least FY26.¹⁰ All things considered, the wholesale price for 50/20 plans will increase by 8% at the outset of the SAU, by an additional 15.8% over the first Regulatory Cycle (FY24 to FY26), and by an additional 27.6% thereafter (FY27 to FY32).

These calculations are based on the average wholesale price for a 50/20 plan being approximately \$48.20 in July 2022. This was made up of the \$45 AVC charge and \$3.20 of overage. The proposed SAU variation would result in the average wholesale price for a 50/20 plan increasing to \$52.01 (an 8% increase) in July 2023 – the start of the first Regulatory Cycle. This reflects all the factors changing RSPs costs, including:

- A \$5 increase in the AVC price;
- A reduction in overage charged for due to the shift from capacity to utilisation based charging (removing 22% CVC headroom);
- An increase in the overage charged for due to the reduction in the CVC included in the plan (from 2.65 to 2.5 Mbps); and,
- An increase in the overage charged due to growth in customers' usage, forecast to be 10.4% CAGR.

The proposed SAU variation would then allow a price cap of \$60.20 for the 50/20 plan at July 2026 (a 15.8% increase from July 2023), and a price cap of \$76.84 by FY32 (an additional 27.6% increase from July 2026). These ongoing price cap increases are a result of:

- the bundle price increasing by the greater of CPI and 5% each year;

⁸ Telstra, *Response to Proposed Variation to the NBN Co Special Access Undertaking*, 20 July 2022, p. 12. See section 3.5 more generally for comparisons to international peers.

⁹ Assuming 5% price increases allowed under the SAU, the \$55 price point for the 100/20 plan would increase to \$57.75 for the second year and \$60.63 for the third year. The current price is \$58.

¹⁰ NBN Co, *Forecasts in support of nbn's SAU Variation*, as at September 2022.

- the amount of overage charged increasing by changing inclusions on a biannual basis for only 50% of growth in CVC utilisation; and,¹¹
- no impact as a result of the elimination of CVC from FY27, as NBN Co would be allowed to add any foregone overage to the AVC price at that time.

These changes culminate in a substantial increase in the price cap for the 50/20 plan, illustrated below. Also illustrated is the impact of our proposal to leave the 50/20 price at \$45 + overage, but allowing that price to increase by 2.5% each year thereafter.

Figure 1: Annual average wholesale price for 50/20 plan



It should be noted that NBN Co has not provided a Pricing Roadmap or WAPC for the first regulatory period. Therefore, there may be additional issues with how NBN Co interprets the SAU to set prices for the First Regulatory Cycle (and following Regulatory Cycles). We have requested copies of these documents as they are necessary for a public consultation and to form views as to whether the terms and conditions of the SAU are in the LTIE. Telstra would be concerned about the ACCC accepting the proposed variation unless this information is provided as we consider it is necessary for the ACCC to assess whether the terms of the proposed variation are reasonable, and therefore acceptable, in accordance with the *Competition and Consumer Act 2010* (Cth).

2.3. The SAU would delay Australia’s transition to a digital economy

The NBN has the potential to drive significant growth in Australia’s digital economy, however it remains underutilised, with approximately 30% of premises choosing not to take up a high-speed broadband service.¹² Only through increased use of digital infrastructure will Australia be able to realise productivity gains and shape our future prosperity over the coming decades. The communications sector is critical to the success of Australia’s landmark Digital Economy strategy with estimates of the benefits of digitisation to be as much A\$315 billion over the next decade, with the potential to create up to a quarter of a million

¹¹ These changes are subject to the WAPC that applies to all prices.

¹² NBN Co, Weekly Progress Report (Build), 09 February 2023.

new jobs by 2025.¹³ To achieve these ambitious goals, it is imperative that we have the right regulatory settings and prices in place.

The reset of the SAU comes at such a pivotal time with Australia's digital transformation to be driven by the creation of new data-driven business models, platforms, and e-commerce enabled by high use of high-speed broadband. This will only occur if the NBN provides access to affordable high-speed broadband. Unfortunately, NBN's SAU does not do this. At this pivotal time, NBN Co is seeking to raise wholesale prices substantially.

The Government's objectives in relation to NBN are clearly articulated in the Government's Statement of Expectations to NBN Co as "...provide(ing) fast and reliable and **affordable connectivity** to enable Australia to seize the economic opportunities before it and service the best interests of consumers.. whilst also "operat(e)ing on a commercial basis, drive a culture of efficiency and innovation that yields results, and meet the highest standards of transparency, governance and accountability" (emphasis added).¹⁴ We remain concerned that NBN Co's SAU prioritises its profit at the expense of significant economic and social benefits. In our view, this misses a significant opportunity and will further hinder Australia's digital progress.

2.3.1. We need affordable and universal access to broadband for all Australians to support Australia's digital economy ambitions

The SAU risks jeopardising Australia's digital economy ambitions given that digital and telecommunications technologies have the potential to reduce the digital divide between high and low income quintiles, enabling those in lower income quintiles to participate in the digital economy and enable firms to enhance productivity. Innovation and accessibility are key to the success of digital technology adoption. Telstra outlined the reasons why it is not in the long-term interests of end users for NBN Co to raise wholesale prices in our July 2022 submission. Those reasons remain relevant in the context of NBN Co's current proposal – NBN Co's prices would remain the highest in the world, taxpayer's investment in the NBN would remain inefficiently underutilised, low utilisation of the NBN positions Australia poorly for adopting new technologies, putting at risk the potential economic benefits of the NBN and reducing the returns to taxpayers.¹⁵

2.3.2. To be competitive internationally, Australia needs to have access to world class internet speeds

Comparatively, Australia's fixed broadband speeds lag those of other advanced economies. GREX Consulting report that in New Zealand, the vast majority of New Zealanders take up high speed plans – 18% of Chorus GPON customers take up 1 Gbps speeds and approximately 70% of Chorus connections are on 100 Mbps. ¹⁶ In Australia, by 2025 NBN expects 48% of customers will be taking a 50Mb speeds. Importantly, by 2026, NBN Co only expects 3% of customers taking up speeds of "up to" 1000Mbps.¹⁷ This disparity is startling and highlights just far behind Australia is compared with other advanced economies. In addition, as highlighted previously in Telstra's July 2022 submission, relative to international peers, Australia's penetration of high-speed fixed broadband remains very low.¹⁸ Low speed broadband and low take up will not drive the innovation and new business opportunities that a developed and digital economy requires.

¹³ [Digital innovation expected to deliver \\$315B to Aussie economy - ARN \(arnnet.com.au\)](https://www.arnnet.com.au)

¹⁴ Nbn SoE, December 2022, [December-2022-NBN-Co-SOE.pdf \(infrastructure.gov.au\)](https://www.infrastructure.gov.au),

¹⁵ Telstra, *Response to Proposed Variation to the NBN Co Special Access Undertaking*, 20 July 2022, p 8-27.

¹⁶ GREX Consulting, *New Zealand Broadband Market & Regulatory Landscape Presentation*, 2021, p. 19

¹⁷ [NBN Co Draft Statement of Pricing Intent.pdf \(accc.gov.au\)](https://www.accc.gov.au),

¹⁸ See Telstra, *Response to Proposed Variation to the NBN Co Special Access Undertaking*, 20 July 2022, pg 10, Link Economics, 2022 analysis

Enabling technology will assist in facilitating growth of the digital economy, which was worth an estimated US\$11.5 trillion in 2022, or 16% of global GDP, growing 2.5 times faster than global GDP in the 15 years prior to the pandemic.¹⁹ In Australia, modelling from PwC suggests that the digitisation of the Australian economy would add AUD\$90 bn and 250,000 jobs to the Australian economy by 2025.²⁰ As noted by the OECD (2020), digital technologies have the potential for “*individuals to participate in society, firms to boost productivity, and governments to go digital and adopt a user-driven approach.*”²¹ Importantly “*Digital innovation not only gives rise to new goods and services, but it also creates opportunities for new business models and markets, and it can drive efficiencies in the public sector and beyond. Digital technologies and data spur innovation in a wide range of sectors, including education, health, finance, insurance, transportation, energy, agriculture, fisheries and manufacturing, as well as the ICT sector itself.*”²²

2.3.3. The impact of the SAU will be felt more broadly across the economy

Crucially, the impact of NBN Co’s revenue aspirations need also to be assessed by the effect it will have on the telecommunications sector downstream. The pricing of NBN services will have a potentially detrimental impact on innovation, competition, and optimising end-user experiences. RSPs invest significantly in complementary infrastructure such as software, organisational skills and digital applications that are necessary in diffusing the benefits of the nation’s core internet infrastructure. Additionally, RSPs invest in technologies and skills required to optimise network performance so that end-users receive quality services. The RSPs invest in ensuring that the network is reliable, secure, resilient, and able to scale when required. Service providers that depend on the NBN want solutions that enable them to respond to a rapidly changing digital landscape and enable RSPs to develop customised services and products that meet these needs.

Estimates by the Centre of International Economics (CIE) show that in FY20 approximately one-third of the internet capital stock is NBN-related, while the remaining two-thirds is non-NBN. Accordingly, “*Any reduction in investment is likely to be across each of these categories and has the potential to reduce the quality of services.*”²³ RSPs invest in developing and maintaining core infrastructure such as backhaul links, which underpin the delivery of mobile services. Some invest in mobile networks that serve as critical alternative technologies when NBN Co’s network or services go down. The investment by industry and RSPs is critical in ensuring the uptake and diffusion of digital and telecommunication technologies by businesses and the community. Under the current SAU, such investment will not be promoted further risking Australia’s digital prosperity.

In addition, the government has and will need to continue to invest in digital infrastructure (e.g. FTTP overlay) to enable faster technology over time. This will enable emerging technologies such as Artificial Intelligence and real time video applications to really accelerate in adoption. The returns to the Government from continued investment and accelerated adoption of technology are high and come from many sources (increased GDP, increased tax income, return to equity from NBN Co). In our view, it is essential when setting prices for NBN Co to take a broader view of the benefits.

As Professor Sappington finds “*For a service like broadband, even prices below average incremental cost can promote allocative efficiency. This is the case because broadband adoption entails externalities: expanded broadband use by one party can generate benefits for other parties. To illustrate, widespread*

¹⁹ Extant research, 14th ITU Kaleidoscope Conference, National Communications Authority, [Global Digital Economy Estimated To Worth US\\$11.5 Trillion- Ursula - The Vaultz News](#)

²⁰ PwC, 2022, <https://www.pwc.com.au/industry/telecommunications/assets/2022-australian-tmt-outlook.pdf>

²¹ OECD, 2021, [Chapter 1. Going digital: An integrated approach to policy making in the digital age | OECD Digital Economy Outlook 2020 | OECD iLibrary \(oecd-ilibrary.org\)](#)

²² OECD, [Innovation | OECD Going Digital Toolkit](#),

²³ CIE Report, *Investment and rate of return*, 2021 (Report prepared for Telstra)

adoption of broadband can enhance the ability of researchers to collaborate remotely, thereby increasing the likelihood of new discoveries (e.g., life-saving medicines) that can benefit many individuals other than the original broadband adopters. Widespread broadband adoption will also facilitate distance learning at all levels of education and enhance the availability and efficacy of telemedicine, with corresponding benefits for all Australian citizens.”²⁴

Even NBN Co’s own commissioned report by AlphaBeta (2020), notes the broadness of these benefits including up to 25,000 new jobs by 2022, a \$6.4Bn increase in GDP by 2024 and 12,000 new businesses.²⁵

The SAU should not presume that government’s only return is to its equity in NBN Co. Indeed, the justification for Government contributions to equity are very infrequently to earn a commercial return. The SAU, as proposed by NBN clearly does not require NBN Co to recover all its past inefficient costs. Nonetheless, we think that the potential social and economic returns from the Government’s investment in NBN are very high, in terms of the Australian digital economy, but we are not going to realise those returns under the substantial price increases and no material improvement in service quality under the SAU. Other countries are delivering to their citizens 1Gbps speeds while NBN’s ambition is to have 96% of customers on speeds one tenth of that or less by 2024.²⁶

Increasing wholesale NBN prices and not increasing service quality will also reduce the return to tax payers of their investment in NBN Co. Tax payers invested in NBN Co to grow the digital economy, increase accessibility and improve affordability. These outcomes would also substantially improve economic growth and associated tax income. These social returns to tax payers would far outweigh any increase in return to equity NBN Co might provide to Government by raising wholesale prices. But they are less likely to arrive if NBN Co increases its wholesale prices as it would be permitted to under the proposed SAU variation.

2.3.4. SOLUTION: Leave the 50/20 plan price at \$45 + overage for FY24, and increase the AVC by 2.5% annually thereafter

With the majority of 50/20 customers on the MTM (3.9M or 82% of customers on the 50/20 plan)²⁷ and not able to benefit from service quality improvements, the proposed increase to the 50/20 price is not in the LTIE. An optimal pricing strategy that would assist consumers in reducing their cost-of-living pressures would be to gradually raise prices over the longer term, rather than at the beginning of the SAU.

The 50/20 price should remain at \$45 + overage at the outset of the SAU and allowed to increase 2.5% per annum thereafter.

As demonstrated in section 3, this solution would reduce the impact of higher prices on consumers and still provide NBN Co with a path to the credit rating it desires.

2.4. Customers stuck on the MTM should not have to pay more for low service quality

Despite NBN Co’s investment in an FTTP overlay network, the majority of customers subject to the proposed terms of the SAU will remain on NBN’s MTM network until at least FY26 – the number of active premises connected to FTTN/B/C will still be 3.5M (40%) in FY26, reducing only 0.5M (6 percentage points) from FY24.²⁸ Even beyond the first Regulatory Cycle, there will always likely be a

²⁴ Sappington report, [Regulating Wholesale Broadband Services in Australia \(acc.gov.au\)](https://www.accc.gov.au/publications/Regulating-Wholesale-Broadband-Services-in-Australia), pg 10

²⁵ AlphaBeta, Economic Impact Analysis, 2020, [PowerPoint Presentation \(nbnco.com.au\)](https://www.nbnco.com.au/powerpoint-presentation)

²⁶ [NBN Co Draft Statement of Pricing Intent.pdf \(acc.gov.au\)](https://www.accc.gov.au/publications/NBN-Co-Draft-Statement-of-Pricing-Intent.pdf), pg 4

²⁷ ACCC, *NBN Wholesale Market Indicators*, September 2022.

²⁸ NBN Co, *Forecasts in support of nbn’s SAU Variation*, as at September 2022.

cohort of customers that will be stuck on MTM technologies and not have the FTTP overlay network. There will also be a cohort of customers for which 50/20 speeds are sufficient.

NBN Co argues it needs to raise the price for the 50/20 plan (by 15.8%²⁹ over the first Regulatory Cycle) to increase its revenue, because its overall costs are now higher. However, its costs are higher because NBN Co is rolling out an FTTP overlay network, in parallel to the MTM network, that involves spending an additional \$5.2B in capex (real \$ at June 2021) and an unknown amount of opex from FY21 to FY26.³⁰

The SAU Variation would place the burden of these additional costs on customers on the 50/20 plan, many of whom will be stuck on the MTM and will not be migrated to the FTTP overlay network in the first Regulatory Cycle (3.9M or 82% of customers on the 50/20 plan are currently on MTM technologies³¹), or for whom 50/20 speeds are sufficient. They would pay higher prices to pay for but not benefit from the more consistent speed and service quality performance of the FTTP overlay network. This would not be in the long-term interests of end users.

2.4.1. RSPs should not be forced to migrate 50/20 customers to 100/20 to avoid higher prices

It has been suggested that RSPs can avoid the impact of the 50/20 price increase by migrating heavier users to 100/20 plans. The idea behind this view is that heavy 50/20 end users can have their wholesale prices capped at \$55 if they are migrated to 100/20. Migrating heavy users up from 50/20 will bring down the average average cost of remaining 50/20 end users.

However, this logic is flawed and would be detrimental to the LTIE for the following reasons.

Almost [c-i-c] of Telstra's 50/20 customers, many of which will be heavy users, cannot achieve 100/20 speeds on NBN Co's network. RSPs cannot migrate those customers to 100/20 speeds that their line does not support. In these cases, RSPs will be forced to pay higher wholesale prices for heavy use customers.

Retail prices are higher for 100/20 than 50/20. To migrate 50/20 customers to 100/20 plans would require RSPs having conversations with each of them to persuade them to pay higher retail prices. This imposes a substantial cost on RSPs, which is not in the LTIE.

It has been suggested that RSPs could buy a 100/20 wholesale plan and shape it down to 50/20 to avoid paying higher 50/20 NBN prices for high use customers. This is not in the LTIE, as it requires the RSPs to incur cost and complexity to enable this type of scheme, the aim of which is just to avoid the harmful impact of NBN Co's proposed SAU. NBN Co should not be charging higher prices for these customers in the first place. It would also distort NBN Co reporting of customers of speed tiers – NBN Co might sell many 100/20 plans, when in fact many customers would be shaped down to 50/20. NBN Co should not increase the price of the 50/20 plan from \$45 + overage to \$50 + overage for this reason. But if it does, then NBN Co should cap the \$50 + overage price so that no individual end user is charged more than \$53, so that RSPs are not then required to invent and invest in complex and costly workarounds.

If RSPs are expected to migrate customers to 100/20 plans to avoid the 50/20 price increase, then they need time to do develop and invest in an effective customer migration process that involves the right level of communication with end users. NBN Co is building in plenty of time to operationalise its aspects of the SAU, RSPs would need plenty of time to operationalise and invest in a customer migration process. Therefore, 50/20 prices shouldn't be changed at the outset of the SAU. RSPs should be given a year after the SAU is accepted to undertake a customer migration process. Therefore, NBN should only

²⁹ This comprises 8% at the outset and the higher of 5% and CPI each year thereafter. See section 2.2.1.

³⁰ NBN Co, *Supporting Submission – Part F*, November 2022, Table F12. Includes FTTN-FTTB build, HFC and Connect capex associated with NBN Co's Network Upgrade Initiative.

³¹ ACCC, *NBN Wholesale Market Indicators*, September 2022.

be permitted to increase the price of the 50/20 plan after a year, consistent with an annual price control linked to CPI.

NBN Co has not issued a Pricing Roadmap for the First Regulatory Cycle. It is therefore, uncertain as to how NBN Co will set 50/20 and 100/20 prices over that period. It could be that NBN Co substantially raises the 100/20 price point soon after customers are migrated, undermining their migration decision.

NBN Co's price increase could instead force RSPs to ration their customers' usage on 50/20 plans, rather than migrate them up to 100/20 plans. This would avoid the high overage costs for heavy users, and avoid a costly process of forcing customers up to 100/20 plans. This would not be in the LTIE as it will result in inefficiently low usage of the NBN.

2.4.2. SOLUTION: Customers should not pay more until they willingly migrate to higher speed tiers on FTTP

There is no doubt that the FTTP overlay network will provide better speeds and service quality to those that need it, but to gain these benefits customers must first have the FTTP overlay network installed at their premise, willingly migrate to a 100/20 or 250/50 or higher plans, and pay the higher wholesale costs associated with those plans.

NBN Co should be entitled to charge more as they migrate customers from MTM onto FTTP, to recover the incremental costs of the FTTP overlay network, and the proposed SAU variation allows NBN Co to do so.

However, we have concerns that NBN Co is forcing customers onto FTTP and charging higher prices for higher speed tiers, in circumstances where those customers do not need or are unwilling to pay for that migration.

2.4.3. SOLUTION: Cap the overage cost of 50/20 customers so the cost of the 50/20 plan cannot exceed the cost of the 100/20 plan

If NBN Co is enabled to increase the price of the 50/20 plan to \$50 + overage and expects heavy users to migrate to 100/20 plans, then there must be protections for end users whose NBN lines cannot support 100/20 speeds.

These customers would be protected if NBN were to cap the overage cost per customer on the 50/20 plan to \$3. In this case the maximum cost of supplying any customer on a 50/20 plan would be \$53, and the cost of the 100/20 plan would be \$55.

If NBN Co does not consider there to be constraints in migrating customers from 50/20 to 100/20 plans, then this cap would have no material effect on NBN Co, yet provide a reasonable protection to end users in the event such constraints do exist, as we believe they do.

2.5. Customers should not have to pay for NBN's cost inefficiency

2.5.1. NBN's historic inefficiency has been significant

NBN Co's historic expenditure has been substantially inefficient. Telstra's July 2022³² submission set out the historic incentives and processes that encouraged NBN Co to spend inefficiently, provided measures of historical inefficiency compared to NBN Co's international and domestic peers, and showed that the

³² Telstra, *Response to Proposed Variation to the NBN Co Special Access Undertaking*, 20 July 2022, s3.8.

costs NBN Co incurred to establish its fixed broadband monopoly (subscriber costs) should not be recovered from end users.³³

NBN Co's historic inefficiencies include:

- The costs NBN Co incurred to prevent competition and establish a monopoly valued at approximately \$9.6 billion.³⁴
- The significant costs NBN Co has incurred to implement social policy objectives, that no commercial enterprise would have incurred and should not attract a commercial return. For example, the Productivity Commission found "*Early obligations to prioritise its regional rollout came at a cost of revenue foregone from delaying the serving of revenue rich metropolitan areas,*" the report noted, "*until much later than a genuine commercially-oriented business would have done.*"³⁵
- NBN Co has also operated different mandates at different times to roll out different technologies, in some cases resulting in inefficient duplication of spend.
- There are many other instances, where NBN Co has spent too much for inputs that have not delivered (e.g. NBN Co had to not accept HFC orders for a lengthy period as it installed devices that proved to interfere with its network).

To our knowledge of NBN Co's supporting submissions, there is no estimate of efficient costs. Instead, NBN Co appears to claim all its historic costs are efficient and prudent. Yet NBN Co has proposed to write down its ICRA by \$29.3B in FY23 dollars (from \$41.8B to \$12.5B).³⁶ This write-down is not in recognition of NBN Co's historical inefficiency, but is to ensure NBN Co has an opportunity to achieve its planned cashflows, that would allow it to achieve a certain credit rating at some future time. There is a circularity in NBN Co's argument, because if it sought to recover only its efficient costs and bore the consequences that would have on its capital structure, then NBN Co would be in a better position to achieve an investment grade credit rating.

Notwithstanding NBN Co's reasoning for the write down, NBN Co achieving its cashflow ambitions is not sufficient evidence that its increase in prices to meet those ambitions is in the LTIE. The ACCC must in some way assess whether NBN Co's proposed write down is sufficient to ensure end users are not paying for inefficient costs that NBN Co should not be entitled to recover under the LTIE criteria.

Our analysis shows that the \$29.3B write down can be broken into \$12.7B (FY23 present value) of payments NBN Co made to close down competitors and establish itself as a fixed monopoly, payments which should not be recovered from end users,³⁷ and the remaining \$16.6B can be attributed to cost inefficiency.

To put this into context, the present value of NBN Co's opex and capex expenditure in FY23 dollars is \$99.2B.³⁸ Therefore, the write down contributed to inefficient spend is equivalent to 17% of the present value of NBN Co's costs.

³³ Telstra, *Response to Proposed Variation to the NBN Co Special Access Undertaking*, 20 July 2022, s3.8.

³⁴ Telstra, *Response to Proposed Variation to the NBN Co Special Access Undertaking*, 20 July 2022, s3.8.4, pg. 26

³⁵ Productivity Commission, <https://www.pc.gov.au/competitive-neutrality/investigations/nbn-co/nbn-co-report18.pdf>, pg. 9

³⁶ NBN Co, *09-23 Public Core Services Building Block Model*.

³⁷ See Telstra's initial submissions.

³⁸ This is calculated by carrying forward NBN Co's nominal opex and capex by its nominal rate of return to FY23.

We believe there is a risk that this understates NBN Co's historical inefficiency and that unless more cost is recognised as inefficient and excluded from the cost base, end users could end up paying for NBN Co's inefficiency, which would not be in the LTIE. If NBN Co were to write off its ICRA in entirety, this would be equivalent to recognising that 29% of the present value of NBN Co's historic costs were inefficient (net of subscriber costs). This would be a more reasonable reflection of NBN Co's inefficiency.

2.5.2. There must be strong thresholds to ensure future expenditure is efficient

From FY24, there must be strong thresholds to ensure that additional opex and capex included in the BBM is efficient, with sufficient scrutiny placed on NBN Co's forecasts.

The capex included in the BBM has a long-lasting effect on future annual costs and prices (as there would be no cap on price increases in the Post Initial Glidepath Period, other than how much capex and opex is included in the BBM). It is critical that only efficient capex is allowed, in the first place, and that capex is recovered only from demand that is intended to benefit from that investment on an ongoing basis.

The SAU allows for the ACCC to reject and replace NBN Co's capex and opex forecasts in the LTRCM, having regard to Expenditure Factors that include "any other relevant matters". The Expenditure Factors will not be present for the forecasts underlying the first Regulatory Cycle, but those forecasts can effectively be accepted or rejected by the ACCC by accepting or rejecting the proposed SAU variation. This makes an assessment of the efficiency of NBN's opex and capex forecasts for the first regulatory period important for the assessment of the SAU.

Before discussing the opex and capex forecasts, we note that NBN Co's supporting submissions express its forecasts in real terms, yet the forecasts provided by NBN Co are in nominal terms. We would expect that NBN Co undertakes commercial forecasting in nominal terms as this is what the business expects to actually spend. Furthermore, in supporting submissions most of the drivers of opex and capex referred to by NBN Co drive nominal costs rather than real costs. Therefore, our discussion below is in the context of NBN Co's forecast of nominal opex and capex, as we believe this is the more appropriate basis with which to assess NBN Co's forecasts.

Ex-ante opex forecasts for the first Regulatory Cycle

We note that since the Minister declared the NBN built and fully operational, in FY21, NBN Co's nominal opex is forecast to fall at a CAGR of -16%, from \$4.1B (FY21) to \$2.9B (FY23). For the first Regulatory Cycle (FY24 to FY26) NBN Co forecasts nominal opex to remain relatively steady at approximately \$2.9B each year.

This overstates NBN Co's efficient opex for the first Regulatory Cycle. NBN Co argues that its real opex will decrease over time,³⁹ but that CPI increases its opex, so that nominal opex remains flat. We agree that NBN Co will find ways to reduce its opex due to productivity improvements and incentives to be more efficient than it has been in the past, but we do not agree that NBN Co's productivity improvements will be outweighed by upward pressure from CPI inflation (which measures the prices for a basket of consumer prices not a basket of NBN Co's opex inputs). For instance, NBN Co's direct operating costs are based on specific inputs and materials that are distinct from the consumer basket of goods, and labour costs and other operating costs have not been increasing at the elevated rate of CPI in recent years.

We would expect NBN Co's efficient nominal opex to decline by 2-3% per annum from FY23. We note that all the reasons in NBN Co's supporting submission for real opex reductions, are actually reasons for its nominal opex to reduce. For instance, NBN Co points to reductions in outsourced services and IT helpdesk functions and marketing and product costs – which should lead to reductions in nominal opex, as NBN Co pays vendors in nominal dollars not real dollars.

³⁹ NBN Co, *Supporting Submission – Part F*, November 2022, Table F15.

Further we note that NBN Co's opex forecasts for FY24 and FY25 are 10% to 12% higher in their forecasts provided for the November 2022 variation than they were in their forecasts provided for their March 2022 variation. We do not consider that such a high increase is warranted.

Ex-ante capex forecasts for the first Regulatory Cycle

Excluding capex associated with the FTTP overlay network, NBN Co's capex should be expected to decrease every year due to productivity improvements and stronger incentives for efficiency.

NBN Co forecasts its nominal capex (excluding FTTP capex) to decrease by a CAGR of 26%, from \$2.8B in FY21 to \$1.6B in FY23.⁴⁰ For the first Regulatory Cycle (FY24 to FY26) nominal capex (excluding FTTP capex) is forecast to further decrease at a CAGR of 9%, from \$1.6B in FY23 to \$1.2B in FY26. We would expect NBN Co's nominal capex (excluding FTTP capex) to decrease due to productivity improvements, and it is encouraging that NBN Co has incorporated strong productivity improvements in its non-FTTP spend.

However, we suspect that NBN Co could spend \$200M more capex each year to help customers suffering poor service quality and not yet migrated to the FTTP network, along the lines of the suggestions set out in section 2. This could be compensated for by redirecting some of the \$934M NBN Co forecasts it will spend on non-core activities, or delaying an equivalent amount of FTTP expenditure into later periods. This could be a more optimal outcome for managing end users' service quality.

The concern with NBN Co's capex forecasts is that FTTP capex increases from \$0.4B in FY21 to \$2.1B in FY26. This is a substantial increase in capex. NBN Co also forecasts that there will be approximately 4.5M additional premises ready to connect to FTTP as a result of the FTTP overlay network roll out. That results in a capex cost of approximately \$1800 per premise ready to connect. This is higher than the NZ Chorus total cost per premise of AU\$1500 for FTTP connections.⁴¹ NBN Co also forecasts that only less than one million premises will actually take up the FTTP network by the end of the first Regulatory Cycle.

There has been no exposure to NBN Co's business case or economic analysis to justify its FTTP investment as efficient and prudent. Therefore, it is not possible to determine the efficiency or otherwise of NBN's proposed FTTP spend. Yet it is used as a key justification for raising wholesale prices. Until there is greater transparency of this spend, the benefits, and the efficiency of it, there cannot be confidence that the proposed SAU variation will promote the LTIE.

In addition, it is not in the LTIE to recover this FTTP capex from customers remaining on the MTM, who do not get the benefits of the FTTP network.

Ex-post capex reviews

The ACCC will also have the ability to undertake ex-post reviews of NBN Co's capex. These will be difficult to undertake and have quite difficult potential consequences for NBN Co's cost recovery, particularly if it is shown to have spent inefficiently over the ex-post period.

We agree that the ex-post review should be undertaken in the context of information that NBN Co could have had available to it at the time the investment was made. That is, NBN Co cannot be assumed to have access to information that it was in no position to have at that time. This is consistent with the premise that NBN Co be allowed the opportunity to recover its efficient costs and is compensated for the risk of investment.

⁴⁰ NBN Co, *Forecasts in support of nbn's SAU Variation*, as at September 2022.

⁴¹ Telstra, *Response to Proposed Variation to the NBN Co Special Access Undertaking*, 20 July 2022, s3.8.3.1.

However, this does not mean that the regulatory regime should “insure” NBN Co against losses from investment decisions that do not turn out. A project might have a probability of not generating sufficient demand, but NBN Co might decide to invest in any case. One would only be able to ascertain this if NBN Co submitted major capex proposals on a project base and submitted business cases for those projects to both ex-ante and ex-post ACCC reviews.

Further, the recovery of a project’s costs should not be recovered from end users that do not benefit from the project. Just because some users have a propensity to pay more does not mean it is in the LTIE for them to pay more to recover the costs of investments that do not benefit them.

Ex-post reviews must also take into account service quality performance. If NBN proposes to spend additional capex to achieve improved service quality, and an ex-post capex review identifies that service quality did not improve, then that capex should be removed from the BBM and should not feed through to higher prices.

The ex-post capex review is drafted in the SAU in a way that requires the ACCC to consider only what NBN has efficiently spent or not spent.⁴² The SAU needs to accommodate scenarios whereby NBN Co might have spent an efficient and prudent amount of money, but it is not in the LTIE to recover that cost from end users. This type of expenditure should not be recovered from prices set in the SAU, but the current drafting seems to require the ACCC to include it.

Notwithstanding the above, the problem of information asymmetry (no-one but NBN Co will know) will remain. NBN Co will also justifiably have changing capex priorities (NBN Co will and should inevitably spend capital on a mix of projects different to what it anticipated at the beginning of a 3-5 year regulatory cycle). These obstacles are overcome by NBN Co ex ante capital proposals being project-based and structured like business cases, with objectives, benefits and costs set out. This allows independent parties to assess whether the capex is efficient from an ex-ante and ex-post perspective.

2.5.3. It may not be in the LTIE to recover spend associated with policy objectives from some services

As discussed above, it is not clear that the proposed SAU variation would allow the ACCC to assess that some expenditures should be recovered from some users and not others. This is particularly the case for Government Policy Project Notices. In so far as the ACCC makes a Replacement Module Determination, any capex or opex to be incurred on a project or program that is the subject of a Government Policy Project Notice will be:⁴³

- Deemed to be prudent;
- Subject to an assessment as to whether it is efficient have regard to Expenditure Factors, including any other relevant matters.

Government Policy Project Notices will improve transparency of NBN spend. However, expenditure under Government Policy Project Notices must not lead to terms and conditions that do not promote the LTIE.

Government has different avenues for funding NBN Co expenditures – a reduced return from NBN Co where NBN Co absorbs those costs, higher payments from end users where NBN Co might raise prices, or by directly paying grants to NBN Co. And the Government has existing powers to ensure costs are recovered in an appropriate way – it can issue Ministerial Pricing Determinations and Government has provided the ACCC with the power to ensure that the terms and conditions under which NBN Co supplies declared services are in the LTIE. The SAU should not undermine any of the above governance mechanisms, in particular the powers given to the ACCC to ensure the LTIE.

⁴² SAU, s2G.5.10(b)

⁴³ s5.9(c)(i)

It is not always the case that Government will have a view or be the best party to form a view as to which method of funding is in the LTIE. It might be the case that a Government Policy Project Notice does not specify this. It might also be the case that a Government Policy Project Notice does specify this, but in a way that is detrimental to the LTIE.⁴⁴ Therefore, the ACCC will be required to form a view on whether the costs associated with a Government Policy Project Notice should be borne by end users or ultimately by Government, when making a Replacement Module Determination.

This will require careful consideration by the ACCC of the Government project or program as to whether (i) the associated expenditure is productively efficient and (ii) whether and how price terms and conditions should be adjusted to ensure allocative, productive and dynamic efficiency.

By way of hypothetical example, Government might require NBN to undertake a project to roll out fibre infrastructure to every street pole in Australia to enable “smarter” street poles, where the costs of doing so might far outweigh the willingness to pay of NBN Co’s Smart Places end users. Under the proposed SAU variation, that expenditure would be deemed prudent, and NBN would be entitled to recover the costs, and NBN Co could recover those costs from fixed broadband TC4 customers who gain no benefit from smarter street poles. This would not be in the LTIE. Instead, the ACCC should have the ability to make a decision as to who should pay for efficient expenditure to implement that project.

2.5.4. SOLUTION: Opex and Capex proposals should be project based and subject to thorough assessment

NBN Co ex ante capital proposals should be project-based and structured like business cases, with objectives, benefits and costs set out. This allows independent parties to assess whether the capex is efficient from an ex-ante and ex-post perspective.

The Queensland Competition Authority (QCA) outlined a methodology for factors that should be considered in delivering prudent and efficient capital expenditure for Aurizon.⁴⁵ There are elements to this methodological approach that could be used to assess whether spending is efficient and prudent including:

- Is the project supported by a Business Case or Feasibility Study? Is the project consistent with the asset management strategy?
- Is there a reasonable expectation of the demand for capacity to support the project?
- Does the project support whole of supply chain efficiencies?
- Is the procurement delivery methodology selected for the project reasonable?
- Was the minimisation of whole of life costs considered adequately?
- Was a cost competitive procurement process used to complete the project?
- Do the elements of the project benchmark reasonably against similar projects?

Further, in relation to major policy projects, the ACCC could have regard to assessments undertaken by an independent statutory body such Infrastructure Australia to determine whether spend associated with policy objectives is in the LTIE. Infrastructure Australia could use its expertise in assessing the economic value of infrastructure projects to appraise the prudence of future NBN investment and its cost efficiency to determine whether the investment is in the LTIE.

2.5.5. SOLUTION: Changes to recovery of capital costs

⁴⁴ Other than by making a Ministerial Pricing Determination, Part XIC does not allow the ACCC to divest responsibility for ensuring an SAU is in the LTIE back to the Government. While the Government Policy Notice is a good way of increasing transparency, it is not a guarantee that outcomes arising from the Notice will be in the LTIE.

⁴⁵ QCA, 2020, <https://www.qca.org.au/wp-content/uploads/2020/02/flagstaff-flowchart-methodology-assessment-of-aurizon-network-2018-19-capex.pdf>

The ACCC should be able to attribute different parts of allowable capex and opex to different groups of customers and to other sources of cost recovery. While the cost allocation framework allocates costs between core and non-core services, it might be in the LTIE for some capex and opex to be recovered from services within the group of core services and not others, and it might be in the LTIE for some costs to be recovered from sources other than end users.

2.6. NBN must focus on improving its core business rather than non-core activities

NBN has had a strong incentive to overbuild competitive infrastructure and focus on non-core activities. This has arisen because NBN Co has sought to recover losses in core services by expanding into competitive areas. This cross subsidisation can be harmful to the LTIE and anti-competitive to commercial entities operating in competitive markets.

2.6.1. The risk of harm to competitive markets and distraction from core markets is high

With NBN Co continuing to focus on enterprise customers for example, there is a risk that NBN Co harms commercial businesses already in those markets, succumbs to strong incentives to discriminate against competitors,⁴⁶ and breaches competitive neutrality policy.⁴⁷ By engaging directly with enterprise customers with the aim of influencing their choice of product solutions using their wholesale market monopoly NBN Co has the potential to limit competition in the enterprise market. In Telstra's submission to the 2020 Joint Standing Committee on the NBN it was noted that the direct engagement with the enterprise market was having an impact on the ability of RSPs and NBN Co to work together and promote competition and was potentially limiting competition in the enterprise market.⁴⁸

It would be a worse outcome if NBN Co is able to crowd out competitive activity by subsidising and de-risking its investments in competitive markets, using the cost recovery methodology in the SAU. While NBN Co has sought to be more transparent about how it allocates its costs between core and non-core services, the proposed approach still has problems when considering that this approach could last until 2040.

First, it will be very difficult for industry and the ACCC to constantly monitor NBN Co's cost allocation approach for the next seventeen years and seek changes when changes are needed. This is too difficult a role at the best of times, made more difficult by there being very little exposure of NBN Co's actual allocation outcomes to public scrutiny. Relative to the regulatory frameworks overseas, the SAU proposes to expose extremely limited information on cost allocation, that would not enable proper ongoing scrutiny.⁴⁹

Second, the proposed allocation methodology allows NBN Co to "insure" risky non-core investments against core cashflows. For example, assume NBN makes a substantial capital investment in FTTP with the aim of growing Enterprise Ethernet demand to constitute 20% of all NBN Co's services. It would be in the LTIE for NBN Co to allocate all future costs associated with that capital to non-core (Enterprise

⁴⁶ <https://www.accc.gov.au/public-registers/telecommunications-registers/s103-formal-warnings-register/formal-warning-to-nbn-co-for-breach-of-non-discrimination-obligations>

⁴⁷ Nbn, 2022, <https://www.nbnco.com.au/content/dam/nbn/documents/about-nbn/reports/corporate-plan/nbn-co-corporate-plan-2022.pdf>

⁴⁸ Telstra, 2020,

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Broadband_Network/smallbusinessandcase/Submissions

⁴⁹ See, for example, the cost allocation documentation that Chorus is required to expose, recognising the Chorus does not have the same degree of creep into competitive markets as NBN (https://comcom.govt.nz/_data/assets/pdf_file/0029/294275/Analysis-Mason-on-behalf-of-Chorus-Initial-RAB-Opex-allocation-7-June-2022.pdf). This documentation consists of 248 pages of detailed cost allocation inputs, methodology and outputs. NBN Co proposes to expose only its methodology to scrutiny, which is documented in just 14 pages.



Ethernet) services. It is not clear from NBN Co's allocation method that all those costs would be allocated to non-core. For instance, if it required an investment in new FAN Plant or DWDM infrastructure, would it be allocated between core and non-core services based on overall usage of the asset category? Additionally, if it turned out that NBN Co's Enterprise Ethernet only ended up constituting 2% of demand, would that mean 98% of the costs that should be allocated to Enterprise Ethernet end up being allocated to core services? The issue is that the proposed cost allocation appears to be on the basis of asset category rather than on a project basis, and allocation is based on historic demand rather than projected demand, resulting in project costs being allocated to services that might obtain no benefit from the project.

Third, the cost allocation methodology appears to allocate no ICRA to competitive services, despite investments in competitive services contributing to NBN Co both incurring and potentially recovering some of its accumulated losses.

Fourth, far too little RAB and ABBRR is allocated to non-core. What is possible to ascertain is that the proportions of the nominal ABBRR and RAB allocated to core services are significantly higher than the proportions of revenue earned from, and opex and capex allocated to, core services, as illustrated in Table 3 below.⁵⁰ For example, for the First Regulatory Cycle NBN Co expects to earn 96-97% of revenue from core services and allocates 92%-94% of capex to core services. However, the BBM allocates approximately 98% of the RAB to Core services. This suggests an error in the allocation methodology, that is impossible for us to ascertain without more transparency. However, based on Table 3 below, we'd expect an allocation of RAB and ABBRR to core services in the order of 93% to 96% to be reasonable.

Table 3: NBN Co forecast allocations between core and non-core services

		FY21(A)	FY22(A)	FY23	FY24	FY25	FY26
Revenue	Core	\$ 4.60	\$ 5.03	\$ 5.32	\$ 5.61	\$ 5.79	\$ 6.16
	Total	\$ 4.71	\$ 5.11	\$ 5.44	\$ 5.78	\$ 6.00	\$ 6.39
	%	97.6%	98.5%	97.7%	97.0%	96.5%	96.4%
Capex (\$B)	Core	\$ 3.22	\$ 2.12	\$ 2.92	\$ 3.34	\$ 2.76	\$ 3.05
	Total	\$ 3.28	\$ 2.19	\$ 3.09	\$ 3.57	\$ 2.99	\$ 3.28
	%	98.1%	97.0%	94.5%	93.6%	92.5%	93.1%
Opex	Core	\$ 4.14	\$ 3.08	\$ 2.90	\$ 2.86	\$ 2.86	\$ 2.91
	Total	\$ 4.17	\$ 3.12	\$ 2.96	\$ 2.93	\$ 2.95	\$ 3.01
	%	99.3%	98.6%	98.2%	97.5%	97.0%	96.8%
Depreciation	Core				\$ 2.33	\$ 2.65	\$ 2.93
	Total				\$ 2.35	\$ 2.67	\$ 2.95
	%	n/a	n/a	n/a	99.5%	99.5%	99.5%
Nominal RAB	Core				\$ 31.45	\$ 31.56	\$ 31.68
	Total				\$ 31.97	\$ 32.19	\$ 32.42
	%	n/a	n/a	n/a	98.4%	98.1%	97.7%
Nominal ABBRR	Core				\$ 7.68	\$ 8.07	\$ 8.42
	Total				\$ 7.80	\$ 8.22	\$ 8.59
	%	n/a	n/a	n/a	98.4%	98.2%	98.1%

2.6.2. SOLUTION: The ACCC should retain its unfettered ability to exclude costs that are not central to NBN Co's wholesale broadband services to residential and small business

⁵⁰ NBN Co, Forecasts in support of nbn's SAU Variation; NBN Co SAU, Attachment J.

customers

In light of the above concerns and NBN Co's struggles to improve broadband service quality benchmarks, NBN Co's focus should be entirely on core activities. It should have no focus on non-core distractions. NBN Co should not overbuild competitive infrastructure or undertake risky non-core investments that would impair its efficient recovery of costs. While the ACCC is not in a position to allow or disallow NBN Co's commercial activities, it must be in a position over the term of the SAU to protect the markets which NBN Co monopolises and end users against any potentially harmful or anticompetitive activity until 2040, should the proposed SAU variation be accepted.

Under the existing SAU there is no constraint on the ACCC's ability to allocate NBN Co's costs between core and non-core services. The proposed SAU variation would give the ACCC the ongoing ability, but also the responsibility, to determine whether NBN Co's cost allocations are in the LTIE.

To exercise this responsibility, NBN Co should be required to publish all inputs, methodologies and outputs associated with its cost allocations, and be required to demonstrate the following:

- All costs allocated to core are central to its core wholesale business, and exclude things like marketing and P&A to retail customers;
- All capex and opex is allocated on a project basis to the services and end users that benefit from that capex and opex;
- Services and end users that are not intended to benefit from a project's capex and opex are not allocated its cost (to prevent cross subsidisation at the time of the spend and for the life of the project); and,
- The allocation of costs to core services does not insure NBN Co's risky non-core investments.

2.7. NBN Co has substantial market power that needs ongoing regulatory oversight

2.7.1. NBN Co's market power

NBN Co has substantial market power that needs ongoing regulatory oversight.

We disagree with NBN Co's claims that it faces significant and increasing competition from alternative operators. Whilst we acknowledge some "fringe" competition from fixed line operators, NBN Co is still the dominant firm in the supply of wholesale broadband services. This is evident by NBN Co's high market share and its pricing actions which highlight that it consistently sets its prices independently, with all other firms in the market behaving as price takers. Historically, NBN Co has shown no evidence of lowering its prices in response to fringe competitors, who have at best, a very small amount of market share, often in localised geographies where entry is supported. While NBN Co says its reducing some prices as part of the SAU because of competition, a competitive firm would reduce prices, not wait over a year for an undertaking to do so to be approved. Therefore, NBN Co's pricing behaviour aligns with that of a traditional monopolist.

NBN Co also points to mobile and fixed wireless competitors as exerting a significant influence on the market in which they operate. As has been found by the ACCC on numerous occasions and as also discussed in WIK's 2022 analysis⁵¹, mobile services are imperfect substitutes and churn to mobile services is both sub optimal and inefficient. Appendix 2 of this submission responds directly to NBN Co's claims.

There are also many indicators that demonstrate NBN Co is not subject to usual competitive forces. We have highlighted in this and previous submissions that NBN Co enjoys low returns on its existing assets and has been inefficient in its expenditure. NBN Co's productive efficiency does not align with best practice benchmarks within private organisations in the sector who will seek high returns on their assets. As a monopoly NBN Co has been able to cross-subsidise incomes between its loss-making activities and its profitable activities. Any firm engaging in these practices under competitive market conditions would not survive in the long run.

Given this lack of competitive constraint, it is important that the SAU proposal would not lock out appropriate regulatory oversight in the future, particularly where that regulatory oversight exists today.

2.7.2. The proposed SAU variation removes regulatory oversight protections that exist today

NBN Co has only limited protections from regulatory intervention under its existing SAU. This is because:

- It only applies to FTTP, FW and Satellite services. Approximately 70% of active premises connected to the NBN are outside the scope of the existing SAU;
- It does not prevent the ACCC from setting wholesale service standards with regard to all services;
- The Initial Regulatory Period in the existing SAU expires on 30 June 2023, meaning thereafter NBN Co must lodge Replacement Module Applications, which the ACCC would assess as variations to the SAU, and the ACCC can make Replacement Module Determinations if it is not satisfied with what NBN Co proposes; and,
- The Maximum Regulated Prices and the Long Term Revenue Constraint Methodology are not Fixed Principles.

⁵¹ WIK Consult Report, *International benchmark on broadband prices, user behaviour and outcomes: A Study for Telstra*, December 2021.

In a practical sense, the ACCC can provide regulatory certainty and set price and non-price terms and conditions that meet the LTIE, without accepting the proposed SAU variation. It could issue an Access Determination instead.

Therefore, the proposed SAU variation has a high hurdle to ensure it is reasonable and remains reasonable for its considerable term, without unduly limiting the ACCC's legislated right to intervene when the long-term interests of end users are not being met.

There are several areas where the proposed SAU variation unduly limits the ACCC's right to intervene in the future:

- The ACCC would be prevented from intervening on price except if NBN breached the price caps;
- The ACCC cannot intervene on pricing for the first regulatory period;
- The ACCC is constrained by the requirement NBN achieves and maintains a SACR;
- The ACCC is unable to set wholesale service benchmarks until after FY26; and,
- The ACCC is unable to assess the prudence and efficiency of spend associated with Government Policy Project Notices.

Customers would be put at future risk of NBN Co setting terms and conditions that are harmful to their interests, and the ACCC's legislated right to intervene would be removed. If the proposed SAU variation were to be accepted, then customers should be compensated by NBN Co for these protections against future intervention. However, NBN Co also wants to raise average prices and not improve service quality benchmarks in a material way. This would harm the LTIE.

2.7.3. SACR should not become a specific constraint on regulatory parameters

The ability of NBN Co to raise debt and equity in the future depends on its actual credit rating not its SACR, with credit rating agencies unlikely to alter this approach until such time as they determine that there is a risk that the Government will allow NBN Co to default on its debt without some intervention (which is different to the time NBN Co is privatised).⁵² It could be the case that potential bond buyers would consider that the Government will not allow NBN Co to default on debt well beyond the date NBN Co is partially or fully privatised.

Based on this assessment, a regulatory guarantee of a SACR is not needed for NBN Co to participate in financial markets as stated in the SAU, and it would not be in the LTIE to raise prices to achieve a SACR when that is not necessary for NBN to sell future bonds.

Further, the ability for NBN Co to obtain a SACR is impacted by a range of financial indicators, other than just the ability to recover debt. These indicators include, coverage of interest or debt commitments, gearing and margin. In addition to these quantitative measures, there are qualitative factors that credit ratings agencies will consider including:⁵³

- a. Country risk.
- b. Industry sector factors, including:
 - i. Competitive environment,
 - ii. Regulatory environment,
 - iii. Technical positioning, and
 - iv. Volatility of earnings.
- c. Business level factors, including:

⁵² INCENTA, 2022, Criteria for an investment grade stand-alone credit rating for NBN Co Limited

⁵³ *ibid*

- i. Business model,
 - ii. Market share,
 - iii. Financial policy,
 - iv. Liquidity,
 - v. Presence of an expectation of parental support (a private business or government), and
 - vi. Other institutional support
- d. Other factors, including:
- i. Environmental and social factors.

Many of the factors are within NBN Co control, but completely outside the control of the ACCC or others in industry. If the SAU has an overarching requirement that NBN Co achieve and maintain a standalone investment grade credit rating, then NBN Co could relax all these other factors, which would then require an increase in wholesale prices to compensate. In these scenarios, there would be very little the ACCC could do to prevent this harm to the LTIE. Requiring the ACCC to ensure NBN Co achieves a SACR is also unprecedented in regulatory frameworks, to our knowledge.

Telstra supports the opportunity for NBN Co to obtain an investment grade credit rating, however this should not be predicated on regulatory protection either through the determination of ICRA, or through regulatory intervention constraints post 2032.⁵⁴ If the SAU provides NBN Co strong incentives to spend efficiently and ensures prices are in the LTIE, then that should prove sufficient to allow NBN Co the opportunity to secure a SACR. There currently is no regulatory protection for NBN Co under its existing SAU and there is no basis provided by NBN Co for its inclusion in the revised SAU.

2.8. The WAPC formula needs to be linked to reasonable NBN Co revenue forecasts to ensure a predictable path to cost recovery

NBN Co describes the intent of the WAPC formula as follows:

“The introduction of a WAPC will address RSP concerns about pricing certainty, transparency and demand risks in respect of nbn wholesale prices. A WAPC creates a stronger link between nbn’s efficient costs and its overall price levels.”⁵⁵

“More generally, the proposed WAPC also promotes dynamic efficiency by providing nbn and RSPs with regulatory certainty about nbn’s path towards cost recovery, and how the WAPC will apply once nbn’s forecast revenues converge with its forecast costs (ABBRR). This certainty will promote ongoing investment by nbn and RSPs.”⁵⁶

We generally agree with the intent of the WAPC, however, there are issues in its application that will need to be addressed.

2.8.1. Its overly complicated formulation means it will provide no certainty or predictability

The WAPC formula is incredibly complicated – overly so. In some scenarios, the formula is represented below:

$$(1 + CPI_t)(1 - X_t)(1 + PT_t)(1 + EM_t) \geq \frac{\sum_{m=1}^M p_t^m q_{t-1.25}^m}{\sum_{m=1}^M p_{t-1}^m q_{t-1.25}^m}$$

To be solved simultaneously with:

⁵⁴ nbn, 2022, https://www.accc.gov.au/system/files/SAU%20variation_2.pdf

⁵⁵ NBN, SAU Supporting Submission – Exec Summary, p. 6.

⁵⁶ NBN Co, SAU Submission, s8.2.2.3

$$\sum_{t=1}^T \sum_{m=1}^M (1 + CPI_t)(1 - X_t)p_{t-1}^m q_t^m \cdot \text{Cumulative Discount Factor}_t$$

$$= \sum_{t=1}^T \text{Annual WAPC Revenue Requirement}_t \cdot \text{Cumulative Discount Factor}_t$$

$$\frac{(1 + CPI_{t-2})(1 - X_{t-2})(1 + PT_{t-2})(1 + EM_{t-2})}{\frac{\sum_{m=1}^M p_{t-2}^m q_{t-3.25}^m}{\sum_{m=1}^M p_{t-3}^m q_{t-3.25}^m}} - 1$$

$$PT_t = \frac{(1 + PT'_t)}{(1 + PT'_{t-1})} - 1$$

Where:

$$PT'_t = \frac{AP_t}{(1 + CPI_t)(1 - X_t)(1 + EM_t) \sum_{m=1}^M p_{t-1}^m q_{t-1.25}^m}$$

In other scenarios, some of these factors don't apply. Combined, the formula is a mix of forecasts, current year and previous year values for prices, demand, CPI, and WACC. We do not believe that this formula provides any certainty to RSPs about future prices and NBN Co's path to cost recovery. For example, it would be impossible for RSPs to use the formula to predict a path for future prices that could be used in a business decision.

NBN Co has thus far failed to provide a working example of the WAPC, only a template spreadsheet with no data in it, despite a formal request for this information. It is not clear that the WAPC will work as intended. Telstra would be concerned should the ACCC accept the proposed variation without a worked example of the WAPC being provided by NBN Co that demonstrates its operation. A worked example of the WAPC is necessary for the ACCC to assess whether the terms of the proposed variation are reasonable, and therefore acceptable.

Experience in energy markets suggests that the more complicated a WAPC formula becomes, the less able it is to provide the economic efficiency objectives it is capable of providing.

2.8.2. The WAPC allows NBN to earn excess revenue

Telstra agrees that under a WAPC, NBN should be able to keep any revenue it earns as a result of signing up more customers that it forecast within a Regulatory Cycle. However, the construct of the WAPC in the SAU allows NBN to earn revenue in excess of its forecasts, well beyond this.

The reason for this is because the weighted average price control is not calibrated to NBN Co's forecast revenue in the Subsequent Regulatory Period. In the WAPC formula the next financial year and the last financial year are both based on demand 1.25 years ago. This means that any change in the level or composition/mix of demand is not factored into the WAPC, even that which is factored into NBN Co's forecasts.

In relation to the changes in the level of demand, Telstra agrees that NBN Co should be permitted to benefit from more customers connecting to the NBN network above what it forecasts under the WAPC for a Regulatory Cycle. This encourages NBN Co to increase its revenue by setting lower prices and increasing demand, which is in the LTIE.

However, in the Subsequent Regulatory Period, NBN retains the benefit of that higher demand until the WAPC Factor Change Year, importantly, which could never arise. We believe that NBN Co should benefit from demand growth beyond its forecasts, but that benefit be limited to within the Regulatory Cycle.

In relation to changes in the composition/mix of demand, the WAPC formula allows NBN to keep all revenue in excess of its revenue forecasts due to changes in the composition of demand. This is because the formula multiplies last year and current year prices by the same composition of demand from 1.25 years ago. This is not in the LTIE.

For example, assume at the beginning of FY25 NBN raises prices for low value products and lowers prices for high value products. It is a realistic likelihood that NBN would comply with its WAPC, if the average of the new prices weighted by demand 1.25 years ago is not much higher than the average of the new prices also weighted by demand 1.25 years ago (changes in demand as a result of price changes don't factor into the WAPC formula). As a result, NBN Co could earn higher revenue under the WAPC than what it had forecast for that year. Further, because the WAPC resets the base composition of demand each time it is assessed, NBN will continue to earn that excess revenue in each future year until the WAPC Factor Change Year, which could never arise.

This has material detriment for the LTIE.

First, NBN Co will face incentives to increase revenue by raising prices for low margin plans and reducing prices for high margin plans, as long as those price changes are consistent with the WAPC formula based on demand 1.25 years ago. This would harm lower income customers and benefit higher income customers, and likely overall be detrimental to the LTIE.

Second, it is feasible that the WAPC would allow NBN Co over time to set prices for low value plans to equal prices for high value plans, and earn higher revenue (and average revenue) overall.

Third, NBN gets to keep the revenue as a result of the changed composition of demand, even when that revenue is materially higher than its forecast revenue. NBN Co's revenue forecasts would have little meaning, and NBN Co would not achieve its intent of providing certainty to RSPs of NBN Co's path to cost recovery.

Fourth, it might be investment by RSPs that encourages their customers to migrate to higher margin plans, rather than changes in NBN Co prices. The WAPC would provide no reward to RSPs, by providing relief to wholesale pricing in a way that means NBN Co still gets to achieve its revenue forecast.

2.8.3. Using demand 1.25 years prior unreasonably delays benefits of growing the market

The WAPC covers a large number of price points, many of which might be difficult for NBN Co to initially forecast and measure historical demand. However, the 1.25 year delay in recognising demand changes means that the benefits of increased demand to end users are slowed down to the profit of NBN Co. For instance, if there is an increase in demand, NBN Co should retain the benefit of that within the regulatory cycle. However, that should then be passed on to consumers, and that would be delayed by 1.25 years, which is not in the LTIE.

The WAPC should be linked to NBN Co's forecast revenue, by reference to NBN Co's proposed prices and forecast demand. If a historical approach is adopted, the delay must be minimised. It is noted that the NBN Co complies with a current Record Keeping Rule that requires NBN Co to provide to the ACCC most of the demand data material to the WAPC compliance within 28 days of every quarter.⁵⁷ NBN Co will be able to establish systems and processes to ensure contemporary reporting of demand.

⁵⁷ NBN Market Indicators RKR.

2.8.4. SOLUTION: The WAPC should be aligned to a reasonable forecast of NBN Co's revenue, rather than demand 1.25 years prior

The solution is simply to calculate the weighted average price for the next financial year in the WAPC formula on the basis of demand forecast for that next financial year (rather than the demand 1.25 years ago). Under this approach NBN would still expect to earn its forecast revenue, and be able to keep any excess revenue by increasing demand more than it forecast. NBN Co would also get to keep any increase in revenue as a result of an improvement in the composition of demand within any year.

This is similar to the approach that NBN Co proposes to use to determine the WAPC for the Post-2032 Regulatory Period. For that period the WAPC is based on forecast demand.

We note that price controls have previously been used in Australia based on a prior period demand. However, these cases generally apply price controls to baskets of services that broadly reflect a collection of prices that an individual pays. In this case the price control is applied to all services across all different types of customers buying different products.

03 NBN has every opportunity to make these changes and achieve a stand-alone credit rating

NBN Co suggests a key consideration for the ACCC in its assessment of NBN Co's SAU variation is that it have an opportunity to achieve a standalone investment grade credit rating. NBN Co suggests substantial upfront and ongoing price increases are necessary for this opportunity. However, it can be demonstrated that NBN Co can set wholesale prices that are affordable, and result in financial performance that is favourable compared to other utilities in Australia with similar risk profiles to NBN Co and that can still allow NBN Co to achieve an investment grade credit rating.

3.1. NBN Co would become one of the most profitable utilities in Australia under the SAU

To demonstrate whether NBN Co's proposed financial targets provide sufficient return, we have benchmarked two scenarios of NBN Co's forecasts against the financial performance of twenty-five Australian electricity and gas utilities regulated by the AER, and Chorus and OpenReach in New Zealand and the UK. The first NBN Co scenario is based on the substantial price increases proposed in the SAU variation. The second NBN Co scenario is based on NBN Co earning a TC4 ARPU of \$45 allowing for 2.5% increases from FY25 onwards. The comparator companies were chosen to minimise potential bias:

- They are subject to similar regulatory regimes;
- There exists sufficient public information available to undertake a comparative analysis; and,
- The investment and risk profiles from the perspective of competitive investors are comparable.

Using published revenue, opex, capex, and interest expense data, we can compare a set of financial performance measures. Table 4 below summarises the highest value, and the 25th and 50th percentiles of the reference companies for six financial metrics, including profit, cashflow, capex investment, debt to profit, free cashflow to debt, and cash return.⁵⁸ Table 4 also includes the forecasts for those same metrics for NBN Co at FY26 and FY32.

⁵⁸ In undertaking this analysis, we have considered that NBN Co has entered into long term lease arrangements for its infrastructure assets, whilst the reference companies sourced for this comparison own their infrastructure assets. To account for this difference and minimise potential bias in the analysis, NBN Co's EBITDA and FFO exclude the lease cost of those assets (as those financial measures exclude infrastructure capex for the reference companies).

Table 4: NBN Co Financial comparison to 25 Australian utility companies

Financial Metric	NBN Co Forecast (FY26-FY32)	NBN Co \$45 ARPU + 2.5% CPI (FY26-FY32)	Value that only 25% of reference companies outperform	Value that only 50% of reference companies outperform	NBN Co Forecast (FY32 rank relative to 27 reference companies)	NBN Co \$45 ARPU + 2.5% CPI (FY32 rank relative to 27 reference companies)
Profit (EBITDA/Revenue)	52.9%-69.0%	48.1%-63.6%	74.4%	68.9%	14 th highest	20 th highest
Cashflow (FFO/Revenue)	41.0%-63.0%	35.0%-54.0%	52.0%	46.0%	2 nd highest	5 th highest
Investment (Capex/Revenue)	67.1%-30.9%	74.0%-36.3%	52.4%	39.9%	22 nd highest	17 th highest
Debt to profit (Debt/EBITDA)	8.5-2.7	10.8-5.3	5.5	6.5	2 nd lowest	7 th lowest
Free cashflow to debt (FCF/Debt)	-3.0%-23.0%	-5.0%-10.0%	3.5%	1%	1 st highest	1 st highest
Cash return (FFO/Assets)	8.2%-19.0%	6.3%-13.7%	7.8%	6.0%	1 st highest	2 nd highest

The evaluation demonstrates that NBN Co would become one of the most profitable utilities in Australia by FY32 on its forecasts of revenue and cost. NBN Co would have the highest free cashflow to debt, and cash return, the second highest cashflow to revenue, and the lowest debt/EBITDA ratio.

If NBN Co instead maintains their 50/20 at \$45 + CPI, it would still have the highest free cashflow to debt, the second highest cash return, the second lowest debt to profit, and second highest cashflow to revenue.

3.2. NBN has a path to a Stand-Alone Credit Rating (SACR) if it adopts our proposed solutions

Our analysis also indicates that NBN Co can set an affordable wholesale price as suggested in in section 2, and still achieve an SACR. Incenta Economic Consulting's report shows that NBN would have the opportunity to achieve an investment grade stand-alone credit rating if NBN's Debt/EBITDA ratio fell below 4.5x and FFO/Debt ratio grew higher than 13%.⁵⁹ As demonstrated in Table 5 below, if NBN Co's 50/20 price remained at \$45 at the outset of the SAU and was allowed to increase by 2.5% each year thereafter, NBN reaches the required FFO/Debt ratio by FY31 and the Debt/EBITDA multiple by FY33. We note that rating agencies could rate NBN Co with a standalone investment grade credit rating prior to these dates, on the expectation that the regulatory regime would deliver the forecast outcomes.

⁵⁹ Incenta, *Criteria for an investment grade stand-alone credit rating for NBN Co Limited*, October 2022.

Table 5: NBN Co forecast financial metrics (December forecast)

Metric	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34
Revenue (\$B)	5.48	5.56	5.80	6.05	6.31	6.58	6.87	7.17	7.48	7.81	8.15
TC-4 ARPU (\$/TC4)	\$ 45.00	\$ 46.13	\$ 47.28	\$ 48.46	\$ 49.67	\$ 50.91	\$ 52.19	\$ 53.49	\$ 54.83	\$ 56.20	\$ 57.60
EBITDA (after infra. Lease)	\$ 2.5	\$ 2.6	\$ 2.8	\$ 3.1	\$ 3.4	\$ 3.7	\$ 4.1	\$ 4.4	\$ 4.8	\$ 5.1	\$ 5.5
Cost of Debt	\$ 0.73	\$ 0.77	\$ 0.81	\$ 0.84	\$ 0.84	\$ 0.84	\$ 0.83	\$ 0.81	\$ 0.77	\$ 0.71	\$ 0.63
Funds from Operations (FFO)	\$ 1.8	\$ 1.8	\$ 2.0	\$ 2.2	\$ 2.6	\$ 2.9	\$ 3.2	\$ 3.6	\$ 4.0	\$ 4.4	\$ 4.9
Free Cash Flow (FCF)	-\$ 1.8	-\$ 1.1	-\$ 1.3	\$ 0.1	\$ 0.0	\$ 0.3	\$ 0.7	\$ 1.6	\$ 2.3	\$ 2.7	\$ 3.2
Debt (\$B start of year)	\$ 26.0	\$ 27.8	\$ 28.9	\$ 30.2	\$ 30.1	\$ 30.1	\$ 29.8	\$ 29.1	\$ 27.6	\$ 25.3	\$ 22.6
Debt (\$B end of year)	\$ 27.8	\$ 28.9	\$ 30.2	\$ 30.1	\$ 30.1	\$ 29.8	\$ 29.1	\$ 27.6	\$ 25.3	\$ 22.6	\$ 19.4
Enterprise Value (\$B)	\$ 38.2	\$ 39.2	\$ 41.8	\$ 46.4	\$ 51.0	\$ 55.9	\$ 60.9	\$ 66.0	\$ 71.4	\$ 76.9	\$ 82.6
Debt/EBITDA	10.9	11.1	10.8	9.7	8.8	8.0	7.2	6.3	5.3	4.4	3.5
Debt/FFO	15.3	15.7	15.2	13.4	11.8	10.3	9.0	7.7	6.3	5.1	4.0
FFO/Debt	7%	6%	7%	7%	9%	10%	11%	13%	16%	20%	25%

04 Responses to the ACCC's consultation questions

Below are our responses to each of the ACCC's questions in the consultation paper, referenced to the above sections where relevant.

4.1. General regulatory framework and modular structure

- The suitability and completeness of the proposed regulatory module processes, including the new pre-lodgement consultation requirement and the proposed timeframes
 - Telstra is generally comfortable with the module structure.
 - The SAU should make clear that the terms and conditions of competitive services are outside the scope of the SAU, to avoid the ACCC from being prevented from using its powers under Part XIC of the Act.
 - While it is useful to have timeframes in place for the module process, the timeframes are tight, particularly when there might be material issues to resolve with additional data needed. It should be assumed that everyone will work efficiently to meet the timeframes, and it should also be expected that there will be circumstances where timeframes cannot be met for a wide range of genuine reasons. There should be nothing preventing the ACCC from making Replacement Module Determinations or exercising its other roles, late and retrospectively, if the reason for the lateness is genuine and reasonable.
 - Clause 9.4 of the variation requires the SAU to be revisited where NBN considers a material error or deficiency exists. This should be an objective test, so that if there is any material error or deficiency then NBN Co must propose a variation to the SAU to address that material error or deficiency.
- The appropriateness of the change in control provisions to terminate the SAU then in operation.
 - While the change in control provision is a good reason to terminate the SAU, there are other related events that could mean the SAU is no longer in the LTIE. For example, Government might privatise NBN Co by means other than a sale of equity, such as selling a very long-term lease. Another example is if NBN Co's capital is materially restructured (e.g. to avoid a potential default on debt, for preparation for an equity sale, or for some other reason), with the effect of NBN not needing to earn as high revenues to be commercially successful, or vice versa.

4.2. Post-2032 arrangements

- Whether the proposed arrangements achieve an appropriate balance between providing regulatory certainty to both NBN Co and retailers about how matters are to be determined through the replacement module process, and flexibility to determine arrangements that better respond to conditions and regulatory best practice at the time?
 - Section 2 outlines several concerns with respect to the operation of post 2032 arrangements.
 - More generally, it is clear that a regulatory regime with the best of intentions will likely not be suitable in ten (let alone seventeen) years time. Therefore, there must be enough flexibility in the SAU to allow the ACCC to address issues that arise in those timeframes. We question whether it would be prudent for the SAU to require NBN Co to ask the Shareholder Ministers at some future point (say in 2032) whether it should continue with the SAU, withdraw the SAU or begin a process of varying the SAU to suit the circumstances at the time. This would create a natural review point to ensure the SAU is still fit for purpose from 2032 to 2040, and provide a

balance between the market's desire for regulatory flexibility and NBN Co's desire to be protected from future regulatory intervention.

- Whether the proposed Module 3 principles are likely to provide appropriate incentives on NBN Co to operate in a prudent and efficient manner and safeguard against price shocks while allowing it a reasonable opportunity to achieve a stand-alone credit rating before the end of the SAU term. If not, what changes to the principles would you propose?
 - Telstra is concerned about shocks as NBN Co transitions between the Subsequent Regulatory Period and the Post-2032 Regulatory Period. The ICRA drawdown is one potential cause of price shock.
- Whether the proposed arrangements are likely to result in any undue complexity or whether there are gaps in the regulatory framework that could lead to any unintended consequences?
 - sB.3.2(b) requires the Forecast Nominal ABBRR to be calculated to satisfy the NPV=0 expectation. It is not clear how this is intended to operate in practice, and perhaps a working model could be added to the BBM at least for the First Regulatory Cycle.
 - sB.3.3 determines how the Real RAB should be determined. It must also accommodate the outcomes of ex-post capex reviews, where such reviews revise down the Real RAB.
- Whether the proposed arrangements appropriately mitigate the risk of price shocks that could result from NBN Co pricing its services to achieve a stand-alone credit rating for the duration of each regulatory cycle in the post 2032 period.
 - The requirement to allow NBN Co a reasonable opportunity to achieve and maintain an investment grade credit rating, s 3B.3.1(c), should not be in the SAU, for the reasons set out in section 2.7.3.
 - As discussed in section 2.8, the WAPC is overly complex and does not provide much predictability for RSPs nor does it prevent the risk of price shocks.

4.3. Pricing and product constructs

- Are stakeholders supportive of the proposed approach to encourage uptake of wholesale services at higher speed tiers, including migrating 12 Mbps broadband access towards a 25 Mbps speed tier, and more-intensively used 50/20 Mbps services to the 100/20 Mbps tier? Do retailers have the capability to manage individual AVCs onto the wholesale speed tier that would optimise their costs under the proposed pricing model? If not, what assistance might they need to achieve this? What would be the cost outcomes for a retailer that could not optimise in this manner?
 - No, Telstra is not supportive of increasing the price of the 50/20 plan to “encourage” adoption of 100/20 speed tiers, or for increasing the price of the 12/1 data service, for the reasons set out in sections 2.1, 2.2 and 2.3.
 - RSPs cannot optimise individual AVCs because: [c-i-c] of 50/20 services are delivered on NBN lines not capable of delivering 100/20, Telstra is not prepared to migrate customers to 100/20 but shape them to 50/20 just so NBN can report higher uptake of 100/20 while customers actually receive 50/20; the cost of Telstra contacting millions of customers to initiate a conversation with them about moving up speed tiers and pay higher retail prices is prohibitive; and RSPs cannot impose higher retail prices when RSPs are “encouraged” to migrate customers up speed tiers, then this will disrupt retail price structures generally in the market, and RSPs will need time before the threat of higher 50/20 prices is imposed.

- If the 50/20 price is increased to encourage customers to migrate up to 100/20, then Telstra would need approximately six months after the SAU is accepted and a Price Roadmap is issued, before the 50/20 price increase to efficiently and effectively migrate customers and reasonably minimise the threat of higher 50/20 prices. We also propose that the overage for the 50/20 plan be capped at \$3, so that customers on lines that do not support 100/20 speeds do not face costs as high as the 100/20 price.
- In this context, the mechanism proposed to adjust plan inclusions over time is problematic. If heavy users of the 50/20 plan are migrated to 100/20 over time, it is possible that average CVC utilisation would decrease. This should not result in decreases in 50/20 plan inclusions, as it appears possible under the drafting of the proposed SAU variation.
- The gap in minimum access costs between the 50 Mbps and 100 Mbps services is relatively small, and narrows further once the cost of CVC overage is factored in. Do stakeholders consider that the proposed wholesale pricing model is suitably calibrated so that both the 50 Mbps and 100 Mbps wholesale speed tiers remain viable inputs that will support retail product and price differentiation?
 - The 50/20 plan wholesale price would be \$52.78 on average over FY24 (starting at \$52.01 and increasing due to overage) under the proposed SAU variation. The 100/20 plan wholesale price will be \$55. NBN has not provided a Pricing Roadmap for the first Regulatory Cycle, so it is not clear how these price relativities will change in FY25 and FY26. The 50/20 price should remain at \$45 + overage, but allowed to increase by 2.5% per annum, to maintain a better price relativity to the 100/20 plan.
 - While we appreciate that NBN Co's intent is to reduce the CVC price to zero, it is possible for NBN Co to later raise prices for zero-priced offers. We would recommend that additional wording be included to clarify that NBN Co's ability to change zero-priced offers does not extend to allow nbn to change its Flat-Rate Offers to re-introduce CVC pricing.
- The effectiveness of low-income measures could depend on a high level of engagement from low-income representatives, and NBN Co having a strong incentive to respond efficiently to their recommendations. Does the current proposal make these things likely? What other commitments if any could be needed so that low income and other disadvantaged consumers can receive a reasonable level of support?
 - NBN Co has had more than ten years to develop low-income measures. Adding a requirement to meet once a year to discuss what low-income measures might be possible, is unlikely to result in any additional low-income measures.
 - NBN Co is only required to "have regard to" the outcomes of the Low-Income Forum as a Pricing Principle. This is a very weak mechanism to incorporate outcomes from those forums. Even if NBN Co does "have regard to" those outcomes, at best this would only deal with pricing changes with respect to low-income and vulnerable customers and not any other sort of commitments. The ACCC still retains minimal powers to require further commitments in relation to these customers.
- Does the SAU provide sufficient support for low use customers, particularly those that require maximum speeds of 12 Mbps or 25 Mbps beyond the first regulatory period?
 - Telstra supports NBN Co's proposal to reduce the access prices of 12/1 services to support the basic connectivity needs of customers including voice only customers. The SAU will make it more expensive for those 12/1 customers needing very small amounts of data, given the voice only version has no CVC inclusions. The 12/1 service should have 0.15 Mbps inclusion at no additional charge to ensure such needs can be met in the short term.

- In the longer term, we consider it would be more appropriate if the SAU did not distinguish between voice only and low use broadband – i.e nbn just offered a 12/1 offer with 0.15 Mbps inclusion for \$12 a month AVC. We expect this would provide minimal impost on nbn and ensure better customer outcomes/experience.
- In relation to the ability to bypass regulatory consideration of product withdrawals, are there sufficient protections against NBN Co pushing wholesale services to higher yielding tiers in future by withdrawing or placing limitations on access to lower yielding tiers?
 - As discussed in section 2.8, the WAPC provides NBN Co with an incentive to reduce its sales of low yielding plans and pushing customers onto high yield plans. While the SAU has protections against product withdrawal, it doesn't protect end users from NBN Co raising barriers to customers taking up low yielding plans.

4.4. Price controls and transparency measures

- Would better cost certainty and efficiency outcomes be achieved by some limitation being continued on the X factor beyond the annual cost break-even point that NBN projects it will achieve during the 2030 financial year?
 - The X factor in the Subsequent and Post-2032 period should include a penalty if NBN Co materially failed to reach its service quality benchmarks. See section 2.1.5.
- Is there sufficient assurance over the long-term price path?
 - The Tariff List and Pricing Roadmap will provide greater certainty about future prices. The discounting protection is likely to be insufficient and allow NBN Co to make material price changes that could drive uncertainty in the market.
 - There is insufficient oversight of the Statement of Pricing Intent and NBN Co has a great deal of discretion as to its contents. This makes it a poor constraint on actions that might harm the LTIE. In addition, given the Pricing Roadmap must be consistent with the Statement of Pricing Intent, NBN Co could add items in the Statement of Pricing Intent that would harm the LTIE, and then be required to carry through with them in the Pricing Roadmap. This structure would likely lead to outcomes that harm the LTIE.
 - We note the draft Statement of Pricing Intent does not provide satisfactory information that would allow RSPs to understand how NBN Co intends to change prices. It does not provide the demand information at a sufficient level of detail, ARPU is needed for each year of the Regulatory Cycle (and ARPU needs to be defined – by reference to services or premises). Under financial objectives it includes forecasts of ABBRR rather than its forecast of actual revenue objective for the period.
- Will NBN Co have appropriate incentives to manage demand risks and operate efficiently in the post-2032 period should it be able to drawdown the ICRA balance regardless of the scale of real price increases this could require?
 - NBN Co does not need to draw down the ICRA to be in a future position to achieve an investment grade credit rating. Further, setting prices to add a tax above the economic cost of providing services (to recover the ICRA) will be economically inefficient, and not be in the LTIE. See section 3.
 - We cannot reliably comment on what demand risks are likely to arise beyond 2032. What is important is that the ACCC has the ability to step in should there be a need. The ACCC appears to have the ability to set a Replacement Module Determination in the Post-2032

period that can choose a different price path to that proposed by NBN Co. If this is correct, we anticipate that the ACCC would prevent adverse price shocks.

- Do stakeholders have views on the operation of the WAPC as specified in the SAU variation proposal, noting the complexity of the formulas, etc.? Would the WAPC operate appropriately in different scenarios such as where new products are added or replace an existing product?
 - No worked example of the WAPC has been provided. As a result, it is unclear how the WAPC will operate and whether it would be in the LTIE. It is unknown how the WAPC would operate in different scenarios given its overly complex nature. We would be concerned if the ACCC accepted the SAU variation without this detail being provided by NBN Co given the WAPC is such a central price control under the SAU.
 - While a template WAPC is made available, NBN Co has not provided the actual WAPC calculation for FY24. This is needed to forecast how prices are expected to change in the first regulatory period and to comment on the operation of the WAPC.
 - The WAPC formula has no relationship to NBN's forecast revenue. To determine the weighted average of prices for the next period, it uses the composition of demand from 1.25 years prior. This creates strong incentives for NBN to earn revenue in excess of its forecasts in ways that are detrimental to the LTIE. See section 3 for specific comments on the WAPC formula.

4.5. NBN Co's approach to the BBM

- Is there sufficient information in the public version of the BBM for stakeholders to meaningfully engage on key aspects of NBN Co's proposed approach to the BBM?
 - Except for information about which costs are allocated to core and non-core, there is sufficient information to meaningfully engage on key aspects of the BBM.
 - It is important to note though, that many aspects of the BBM play little role in determining NBN's pricing until at least 2030. Therefore, there not much attention will be applied to many of the inputs until future Regulatory Cycles when they become relevant.
- Are the changes to NBN Co's approach to depreciation, including changes to asset lives and categorisation of asset classes, appropriate or seek to reflect the useful economic lives of these assets?
 - Asset lives in the SAU should be defined with regard to economic lives, which might differ to lives adopted in NBN Co's audited accounts. We note that the asset lives are not included in the SAU, so that there is scope in future to change them if it becomes clear that they are unreasonable.
 - The remaining lives of assets used to depreciate assets rolled forward into FY24 appear to not reflect the remaining accounting lives NBN Co has used to depreciate those assets in the past. For example, Active Plant has a standard life of 7 years, and a remaining life of 6.38 years. In the seven years to FY24, NBN Co has spent \$3.8B on Active Plant in real terms (Active Plant purchased more than seven years prior would be fully depreciated). The weighted average remaining life of this capital is 3.7 years (rather than 6.38). If this approach is used to determine the remaining lives of all asset categories, it has a material effect on the ABBRR for the Subsequent Regulatory Period, bringing forward the WAPC Factor Change Year to FY28, all other things constant. The approach to determine remaining life is also inconsistent with the proposed SAU. S2G.5.5 requires the weighted average remaining lifetime to be used, but the BBM instead divides the real closing RAB by the real depreciation. This is not a reason to change the first 3 modules of the SAU, but has a material impact on the values of the Real RAB and Real Depreciation specified in Attachment J.

- One additional point is that c2G.2.4(f) requires an NPV test to be undertaken in each regulatory cycle. This is carried forward from the previous SAU. It is not clear how this test would be undertaken or whether it is satisfied in by NBN Co's proposed replacement modules. Indeed, with previous errors in the inflation calculation, it might have been the case that NBN Co has (very technically) been in breach of this clause as it exists in the current SAU. If it's not clear how compliance with this clause would be achieved or whether it can be, then it should be removed, so it doesn't pose a constraint to future decision making.
- It is not clear how the BBM treats the infrastructure remediation credit from Telstra. It is a substantial amount. It should be recognised in the BBM as payment to NBN Co each year of each regulatory cycle, even though the time of the payment will be in the future and largely at the discretion of NBN Co.
- We have not been able to reconcile the nominal capex figures in Annexure J of the SAU with the nominal capex figures in NBN Co's forecast information and BBM.

4.6. Recovery of accumulated losses

- Do the proposed methodologies NBN Co has used in developing its proposed opening ICRA balance of \$12.5 billion represents an appropriate approach to achieving and maintaining a standalone investment grade credit rating?
 - The ICRA has no economic basis and should not be retained in the revised SAU. Historically, the ICRA represented NBN Co's accumulated losses, including inefficient costs that NBN Co should not be able to recover under the legislative framework.⁶⁰ In the revised SAU the ICRA is a measurement of how much debt NBN Co wants to repay in the future. The ICRA recovery as proposed by NBN Co does not promote the LTIE due to its narrow focus on debt repayment. Charging higher prices to pay down debt will not promote competition, nor encourage more efficient use of infrastructure. It will also not encourage NBN Co to invest efficiently in infrastructure, as new efficient investment opportunities can be funded by additional equity, or debt, albeit at a higher interest rate. The government continues to fund NBN Co through equity investment, with the most recent example being a commitment to further funding in October 2022.
 - The need to recover \$12.5B of ICRA, to pay down debt, could be obviated by NBN Co's shareholder(s)⁶¹ restructuring NBN Co's capital. The government (and other potential shareholders) could reduce NBN Co's debt through a capital restructure. Such a restructure would mean NBN Co no longer needs to recover \$12.5B of ICRA, but it would still have a right to raise prices to recover it under the SAU.
 - NBN Co should have an opportunity to earn an investment grade credit rating, however, this should not be a constraint on ensuring the price and service quality levels are set in the LTIE. NBN Co's credit rating depends on many factors other than what is in control of the ACCC or the broader regulatory regime. (see section 2.7.3). Even with more reasonable prices than proposed in the SAU, NBN Co will have the opportunity to earn an investment grade credit rating (see section 3.2).
- Do the proposed arrangements likely promote efficient investment in and use of the NBN?
 - The SAU effectively guarantees NBN Co a stand-alone investment grade credit rating, which does not promote efficient investment in the NBN. NBN Co's credit rating depends critically on

⁶⁰ Telstra, *Response to NBN Co's Discussion Paper on proposed changes to the SAU*, s.4.1

⁶¹ Noting that it is possible for Government to sell 49% of NBN Co to multiple private shareholders, and the SAU would continue to apply.

how much opex and capex NBN spends, regardless of its inefficiency. Without stronger protections to ensure NBN's costs are efficient, including inefficiency imbedded in the \$12.5B remaining ICRA, the proposed arrangements could result in NBN Co setting prices that recover those inefficient costs, which would not be in the LTIE.

- The \$12.5B ICRA is also likely to embed costs relating to assets that are far beyond their economic life. Therefore, if prices are set to recover those costs, then those prices will be higher than necessary to recover the costs of the resources used to supply the service. Those prices would be economically inefficient generally, and not encourage the efficient use of infrastructure.
- The \$12.5B ICRA is also predicated on the NBN Co's capital structure, which could change in the future, yet ICRA would be locked in by the SAU. For example, at some future time, the Government could increase its equity investment in NBN Co and pay down its debt levels, giving NBN Co a much easier path to achieving and maintaining an investment grade credit rating. The quantum of the \$12.5bn ICRA and the means of recovering it in the SAU, would no longer be in the LTIE.
- Do the commitments to extinguish residual ICRA balances at the end of the subsequent regulatory period and the post-2032 regulatory period resolve concerns around future price and regulatory uncertainty beyond 2040?
 - Extinguishing the ICRA balances would promote the LTIE. NBN Co had an opportunity to build the NBN at optimal efficiency, and it was generally agreed that NBN Co should have an opportunity to recover its upfront efficient costs over time. However, it has become evident that a large proportion of its costs are inefficient, an outcome that arose likely because any inefficient cost that it might incur would be included in its cost pool. Such an approach encourages inefficiency.
 - However, this in of itself does not resolve concerns about future prices and regulatory uncertainty in the longer term. The SAU seeks increases to the price cap every year for a very long time. This is not in the LTIE.
- Does the proposal to determine ICRA drawdown amounts ahead of each regulatory cycle, subject to the condition that the total amounts specified in the SAU can be recovered, provides a suitable safeguard against price shocks or prices that are higher than needed given the more fundamental limitation proposed on the ACCC's power to make a determination in the post-2032 regulatory period?
 - There will be greater certainty if the amount of ICRA to be drawn down each regulatory cycle is determined and made transparent each regulatory cycle.
 - However, the ICRA drawdown amounts are likely to embed inefficient costs, increasingly over time as it reflects the historical cost of assets that are far past their economic lives. There is nothing in the SAU that requires the ICRA drawdown amounts to be used to pay down debt, a risk that is heightened if NBN Co decides to spend more capex and opex than it forecasts today. Indeed, the SAU might allow the ICRA drawdown to be used to fund an investment project quite separate to the core regulated services rather than reduce debt. For these reasons, it would not be in the LTIE to allow any ICRA drawdown.

4.7. Expenditure criteria

More general comments on the expenditure criteria are set out in s2.5.

- What alternative process measures could be considered to safeguard against a regulatory module coming into effect without proper regulatory assessment?
 - Time frames for the ACCC undertaking processes under the SAU should be guidelines, and parties strongly encouraged to adhere to them. However, if the ACCC is unable to meet them before proper consideration of the issues can be undertaken, there should be no decision deemed. It would be relatively simple in the context of the subsequent regulatory period, to make revisions to many parameters within a Regulatory Cycle, without materially affecting the terms and conditions. For instance, the exact parameters of a cost pass through event in the Subsequent Regulatory Period is unlikely to have any impact on pricing if they are set a month or two after the SAU determined timeframes.
 - It is inappropriate for the ACCC to be deemed to have made a Determination in accordance with NBN Co's Replacement Module Application if it fails to make a Determination within 20 days prior to the last day of the Initial Regulatory Period/Cycle is appropriate. While Telstra appreciates the need for NBN Co to have regulatory certainty, it seems preferable and more consistent with standard practice for the existing SAU module to be rolled over until the ACCC makes a decision, rather than the ACCC having been deemed to have made a new ACCC Replacement Module Determination on the same terms as NBN Co's Replacement Module Application.

- How important is the preparation of a business case to enabling assessment of the prudence and efficiency of major planned capex expenditures?
 - It is a feature of good governance for companies to plan their spend on capex and opex on a project basis. Doing so enables companies to test the costs and benefits of those projects, and to compare projects against one another when budgets are constrained. The SAU should put the ACCC in a position to assess whether NBN Co's spend is prudent and efficient on a project basis. This will also be critical for community consultation, so the community of RSPs can provide input to NBN as to whether some projects are higher priority than others having regard to their customers' priorities and willingness to pay.

- If a business case would be valuable, what key requirements would it need to incorporate so that it could be relied upon in expenditure reviews that are undertaken pursuant to the SAU?
 - A business case should include details of the costs and benefits. On the costs, the incremental capex and opex should be set out, as well as any capex and opex savings that might arise in other areas. On the benefits, the group of customers that will benefit should be identified, along with how the project would deliver those benefits and when. The revenue implications should also be clear.
 - The information must allow for an assessment of whether the project is worthwhile from the perspective of customers (i.e. do the benefits outweigh the costs), prudence (i.e. whether NBN would earn an economic return from the project), and efficiency (i.e. is the project the best way of achieving benefits, including in relation to other projects).

4.8. Cost allocation and accounting separation

- Would the proposed cost allocation principles and framework for the subsequent regulatory period provide for effective accounting separation of NBN Co's competitive services from its monopoly services?
 - The ACCC should not be constrained from requiring NBN Co to choose a different allocation of opex and capex to services. It appears that the SAU allows the ACCC to do this.

- The SAU should not define Core Services as all services supplied by NBN Co other than specified Competitive Services. This is too broad a definition and provides NBN Co with an umbrella protection against future regulatory intervention in relation to any services that might “fall through the cracks”. Instead, the SAU should specify the Core Services and assume that the SAU terms do not apply to all other services.
- It is noted that reclassification of services can only be dealt with by a Replacement Module Application or an ACCC Replacement Module Determination, potentially once every five years. This is likely to be too infrequent to prevent harm that might arise from the misclassification of services.
- CSAS should not be considered a core service. It is not clear how much cost NBN Co has incurred on this service, how much revenue it earns, so it might not make a material difference to the quantum of cost. However, it is not clear that CSAS should enjoy any protections from future regulatory oversight that the SAU gives in relation to other core services.
- The ACCC’s determination of various costs resulting from a recategorization of core or competitive services are required to be “in accordance with the Cost Allocation Principles and the Cost Allocation Manual”. However this is inconsistent with the principle that the ACCC is not bound by NBN Co’s Cost Allocation Manual (see 2G 6.3(g)). We would suggest that the ACCC “may” have regard to NBN Co’s Manual if it recategorizes services.
- Is the initial cost allocation manual submitted by NBN Co fit for purpose and clear in its approach to cost allocation between NBN Co’s core and non-core services?
 - As discussed in s2.6, the cost allocation methodology lacks sufficient detail to determine whether the cost allocations are reasonable. There is a stark difference to the level of detail provided by Chorus in the New Zealand regulatory context. We suggest NBN Co replicates the level of detail in the Chorus manual, before any allocations are locked into Attachment J of the SAU.
- Are the proposed cost allocation principles for the subsequent regulatory period, and cost allocation manual, likely to reflect relevant cost drivers and appropriately allocate costs between NBN Co’s core and non-core services?
 - With the lack of detail it is not possible to determine whether the costs are appropriately allocated between core and non-core services. As discussed in section 2.6, one concern is that it appears to be an ex-post allocation, which means a cost incurred for the purpose of a non-core service can end up being allocated to a core service. This would “insure” NBN Co’s risk investments in non-core services, using the demand from core services.
 - As discussed in section 2.6, approximately 98% of the RAB is allocated Core, which is too high. A 93% to 96% allocation of RAB to core services would be reasonable.
 - The ICRA is fully allocated to core services, which would harm the LTIE. A proportion of the ICRA should be allocated to non-core services. It is unreasonable for NBN Co to load the full burden of reducing its debt or achieving a standalone credit rating on core services, while it also earns profit from non-core services.
- Are the processes for periodically reviewing cost allocations for the subsequent regulatory period through the replacement module process, and for considering cost allocations for new services in the subsequent regulatory period, appropriate and adaptable to changing market and other conditions?

- Do the proposed cost allocation framework and accounting separation procedures achieve the right balance between appropriate flexibility on implementation and effective ACCC oversight, regulatory control, and recourse where necessary?

4.9. Weighted average cost of capital

- NBN Co's proposed objectives to which regard must be had in estimating the nominal vanilla WACC for the purposes of all regulatory cycles of the subsequent regulatory period and the post-2032 regulatory period (other than the first regulatory cycle): producing reliable estimates of the market cost of capital in a wide range of plausible market conditions; promoting stability in the rate of return over time.
 - The WACC should be set in a way that promotes the LTIE. It's not clear that NBN Co's proposed objectives help or hinder the setting of a WACC that promotes the LTIE, so we question why the SAU would need to specify other objectives.
- NBN Co's proposed WACC values for the first regulatory cycle, including with respect to the scope of the benchmark firms and other aspects of the methodology and input parameter values used by NBN Co in estimating its proposed WACC values.
 - The proposed WACC values have very little impact in the first regulatory cycle. While we think that the benchmark WACC is overstated, that will likely only be relevant to the second regulatory cycle. The ACCC has the power to change the WACC approach for the second regulatory cycle, and we strongly support that power.
- Whether the proposed sample of benchmark firms used by NBN Co for the estimation of gearing and beta are appropriate. In particular, whether the resulting benchmark would be reasonable to adopt for NBN Co as a wholesale access provider.
 - NBN Co has a very unique position in the Australian telecommunications market, that is fundamentally different to most telecommunications companies overseas. Those differences affect the systematic risks faced by investors, most importantly of debt holders (given the perception that the Government would guarantee debt). Thus, while a benchmark approach to the WACC is broadly appropriate, much care must be given to what the right benchmarks are.
 - We agree, however, that it is unlikely to have an effect on the first regulatory period. It will be important that no precedent is taken from the first regulatory period WACC periods that constrains a thorough analysis of an appropriate WACC for the second regulatory period.

4.10. Incorporating other access technologies

- We are seeking stakeholder views regarding the clarity of drafting on the included MTM definitions and service descriptions. Specifically, we are seeking feedback on NBN Co's proposed network boundaries for each of the new MTM networks.
 - See section 4.14.

4.11. Service quality

- whether the proposed regulatory oversight is sufficient to promote the adoption of benchmark service standards that reflect more closely end-user service requirements and willingness to pay
 - The regulatory oversight included in the SAU is relatively broad and a positive change to what is in place today. It enables the ACCC to:
 - Amend the Benchmark Service Standards if a Retail Service Standard Regulation is made or a Systemic Service Standard Event occurs during a Regulatory Cycle.

- Accept or reject NBN Co's replacement module application (which must include a service standards proposal) for the subsequent regulatory period
 - If it rejects the replacement module application, an ACCC replacement module determination would determine benchmark service standards for the relevant regulatory cycle and the date by which NBN Co must reflect those standards in its SFAA.
 - Accept or reject changes to service levels proposed by NBN Co following access seeker consultation.
- Telstra considers the ACCC role is likely to promote the adoption of benchmark service standards that more closely reflect end-user service requirements and willingness to pay. However, the strength of the regulatory oversight is dependent on a high level of consultation and accompanying transparency.
- As set out in section 1.5 of this submission, Telstra's view is that proposed changes to service standards should demonstrate the benefits of the change. They should also consider and appropriately reflect the views of stakeholders through transparent consultation and demonstrated consideration of those views. Our experience to date is that NBN Co consultation is not always responsive to stakeholder views. The proposed regulatory oversight may correct this, however there should be an obligation on NBN Co to transparently set out stakeholder views on proposals, how NBN has addressed (or, if not, why not) those views and the benefits of the proposed change.
- It is also important that the initial Benchmark Service Standards address current concerns and service issues. This is particularly important for any existing RSP obligations that are not captured as the proposed SAU only appears to allow for the ACCC to amend the benchmark service standards in response to a new Retail Service Standard Regulation.
- whether clause 5.10(b)(iv) and (d) (Main Body of the SAU variation) would permit the ACCC to establish a mid-cycle regulatory review mechanism and/or introduce a service performance incentive scheme for a regulatory cycle of the post-2032 regulatory period
 - Clause 5.10(b)(iv) and (d) appears to permit the ACCC to establish a performance incentive scheme connected to performance objectives during the post-2032 regulatory period but not to establish a mid-cycle review mechanism.
 - This is because the ACCC can take any action (or function or make a determination) that would be "reasonably necessary for, or ancillary to, giving effect to an ACCC Replacement Module Determination". The establishment of a mid-cycle incentive scheme that was designed to support the performance objectives set by the ACCC in its ACCC Replacement Module Determination would likely be ancillary to giving effect to the ACCC Replacement Module Determination as it would encourage NBN Co's fulfilment of those objectives. However, an express provision to this effect would put the matter beyond doubt.
 - On the other hand, a mid-cycle regulatory review mechanism (for example, that would allow the ACCC to review the existing performance objectives and change them) may not be "reasonably necessary" to give effect to the performance objectives in the ACCC's Replacement Module Determination, and it is unlikely to be considered "ancillary to" giving effect to the Determination as its purpose is to revisit the performance objective regime rather than support existing obligations.
 - We would also suggest that the drafting of clause 5.10(d) be amended to include the exercise of powers, such as the power to enforce the determination against NBN Co (e.g., "...perform such functions, undertake such activities, exercise such powers and make such determinations...").

- whether proposed regulatory safeguards provide sufficient flexibility during a regulatory cycle to respond to unforeseen events
 - The ACCC's power to request changes to the service standards during a regulatory cycle can only be exercised when a Retail Service Standard Regulation is made, or a Systemic Service Standard Event occurs.
 - A System Service Standard Event is defined as a new event or circumstance:
 - arising during a Regulatory Cycle that results in a recurring material adverse impact on Access Seekers' access to a Service Standards Product due to a matter for which NBN Co is responsible; and
 - In respect of which the ACCC considers, acting reasonably, that NBN Co has not taken reasonable steps to address the recurring material adverse impact on Access Seekers.
 - In its supporting submission NBN states that the variation gives the ACCC powers to respond to "systemic and unforeseen issues". However, the definition included in the proposed SAU does not appear to support the ability to respond to 'unforeseen issues' which may arise during a regulatory cycle. Telstra considers that the ACCC should be able to respond to new issues that may rise that may not restrict access to a Service Standards Product but may still have a material impact on customers or RSPs. This could be accommodated by removal of the 'access to a Service Standards Product' and the inclusion of end-users i.e., "...recurring material impact on Access Seekers or End User".

- whether the proposed benchmark service standards for the first regulatory period address current issues that could be impacting NBN consumers and, are reasonable. In addition, whether there is sufficient clarity and certainty with regards to service quality in the proposed benchmark service standards
 - As set out in section 2.1 of this submission. Telstra does not consider that the proposed benchmark service standards for the first regulatory period address current issues that could be impacting NBN consumers.
 - While the inclusion of baseline service quality in the SAU is positive, Telstra does not consider the baseline included by NBN Co is appropriate. It is largely based on existing service standards set out in the WBA and does not address issues that are known pain points for customers and have been consistently raised by RSPs in commercial negotiations and other forums (such as ACCC workshops). Further, while the proposed SAU provides the ACCC with powers to make changes to service quality within a regulatory period, these powers are limited to systemic new issues or changes to RSP obligations. This means that there continues to be existing RSP obligations that NBN does not currently support, such as Telstra's Priority Assistance commitments.
 - Telstra's position is that the baseline must be set with regard to the service that customers should be receiving rather than the status quo. It must also ensure that NBN appropriately supports existing RSP obligations, particularly those designed to support vulnerable customers. As a result, the baseline should be amended and expanded to address existing concerns that have not been commercially resolved, rather than pushing them into future iterations or external processes.
 - That said, the baseline is not intended to capture all elements of service quality but rather key elements to support the fundamental customer expectation that they get what they pay for. It is a baseline upon which additional commitments can be made or negotiated commercially through the WBA process rather than a complete list. Telstra agrees with NBN Co that commercial negotiations are – in theory - the most effective means to evolve service standards

in a way that responds to consumer and RSP concerns. However, where commercial negotiations are imbalanced, a regulatory framework that provides a fallback is needed to ensure a baseline quality of service is provided.

- Section 2.1 of this submission sets out the key elements of service quality that Telstra considers should be included in the SAU.

4.12. Reporting

- We seek stakeholder views on whether NBN Co's proposed performance and operational reporting commitments for the first regulatory cycle are appropriate and in the LTIE.
- We do not consider NBN Co's reporting to be sufficient. We consider the ACCC needs to issue an RKR to ensure an adequate amount of reporting, and ensure flexibility of the reporting over time to adapt to new situations.

4.13. ACCC functions and powers

- our proposed approach to assessing the sufficiency and effectiveness of the proposed functions and powers that are to be conferred on the ACCC. Are there any other checks that we should be doing on the powers and functions that have been proposed to be conferred?
- whether there are any further functions and powers that should be conferred so that the proposed regulatory controls will be effective, and to ensure the SAU variation promotes the LTIE, and its terms and conditions are reasonable over time
- whether the limits that apply to the exercise by the ACCC of the functions and powers conferred on it by the varied SAU are certain and readily ascertainable.
- whether the proposed new clauses providing for general powers for the ACCC to request information in relation to its exercise of functions and powers and consult with third parties will ensure decisions are made on an informed basis, and that this occurs in an open and transparent process
- See section 2.7.

4.14. Additional changes needed to the drafting of the SAU

4.14.1. Community consultation

The community consultation obligations in the SAU variation are not sufficiently comprehensive or effective, especially when compared to other industry regimes (as was discussed in Telstra's initial submission).

Community consultation obligations are vague and should be more specific. Community consultation has been described in the variation as consultation and consideration of views from Access Seekers and Consumer Advocacy Groups, but it does not outline any specific measures required to do so. The SAU should specify how consultation with consumers is to occur and minimum requirements (e.g. NBN Co must prepare a report explaining consumer benefits and justifying any deviations between NBN Co's plans and community objectives).

Where NBN Co wishes to change the Benchmark Service Standards, NBN Co must submit a Benchmark Service Standards Change Proposal which specifies:

- (i) NBN Co's final proposed changes to the Benchmark Service Standards;

- (ii) a summary of submissions from Access Seekers which were received by NBN Co during the submission period under clause 21.2.3(b)(ii) and a copy of such submissions subject to any confidentiality requirements of such Access Seekers;
- (iii) an explanation of any changes NBN Co has made to the draft proposal on which it consulted, having considered such submissions; and
- (iv) NBN Co’s proposal for the date by which any amendments to the SFAA published in accordance with clause 8 will be made to reflect the proposed changes

NBN Co should also be required to engage in and reflect the result of community consultation as part of a Benchmark Service Standards Change Proposal.

4.14.2. Definitions

Telstra has set out additional changes relating to the definitions contained in the SAU in the table below. We have not done a full review of the proposed SAU to determine whether all terms are included in the definitions and would suggest that this be undertaken by NBN Co to ensure completeness.

We also note the proposed SAU includes references to external documents such as the WBA Operations Manual. This is particularly the case with the Baseline Service Standards e.g., faults or performance incidents must be raised in accordance with the relevant module of the Operations Manual. While this (and other references) may be technically correct, the reference to specific sections of an external document risks the SAU being incorrect if changes are made to that document. Telstra’s view is that the SAU should be drafted as a standalone document to avoid confusion and ensure all elements are integrated appropriately.

Definitions

Issue	Description	Comment
NBN Serviceability	Definition of ‘NBN Serviceable’	<p>The definition of ‘NBN Serviceable’ now includes locations that are also serviceable by means of NBN Co Smart Places. While this provides some greater clarity, there is still little transparency surrounding how NBN Co determines whether a location is non-serviceable (i.e. using the service qualification system). The definition of NBN Co Service Qualification System has been removed.</p> <p>Definition of NBN Serviceable should be updated to provide clarification and definition of NBN Co Service Qualification System added in line with the clarification requested.</p>
FTTB/C/N Subsequent Installation	Definitions of ‘FTTB/FTTN Subsequent Installation’ and ‘FTTC Subsequent Installation’	<p>Telstra considers that the definition of Subsequent Installation for FTTB/C/N needs to be amended as it appears to give NBN Co the right to charge to reactivate an inactive copper pair (see paragraph (c) of the definition which refers to at a Premises where ‘an Ordered Product is currently being, <i>or has previously been, supplied</i>’) and does not align with the WBA definitions. Telstra’s concern is with the italicised words.</p>

		The corresponding WBA definitions are more specific around service classes, so Telstra suspects the problem has arisen from trying to simplify the drafting for the SAU (since service classes are not a concept used in the SAU).
Remediation of Service Faults	Definitions of 'Network Activity' and 'Service Fault'	<p>The proposed SAU does not address the concerns raised by Telstra regarding the definitions of 'Network Activity' and 'Service Fault' in response to NBN Co's MTM variation consultation process. We continue to have the following concerns with these proposed definitions:</p> <ul style="list-style-type: none"> • Definition of Network Activity: it is confusing for the SAU definition to be narrower than that in the WBA. In the WBA, 'Network Activity' can be undertaken to rectify 'Performance Incidents' – which are issues impacting the performance of an nbn co Product, most notably speed or unexpected dropouts. The SAU definition contains no reference to actions to rectify Performance Incidents. • Definition of Service Fault: As with Network Activity above, the proposed definition in the SAU does not align with that in the WBA. In particular, it does not refer to 'Performance Incidents'. Telstra believes this definition should be aligned with that used in the WBA.
Performance Incidents	Definition of 'Performance Incident'	There is no definition included in the proposed SAU. This should be included given inclusion of Performance Incidents in the Baseline Service Standard.
Personnel	Definition of 'Personnel'	<p>NBN Co has excluded people acting as its contractors, who are also Access Seekers, as personnel. It will mean any Access Seeker who is also a contractor to NBN Co will not be "Personnel" which will affect various entitlements of all RSPs under the SAU, not just entitlements of the RSP who is the contractor. It is unclear why NBN Co should be able to avoid responsibility for certain of its obligations under the SAU simply because those obligations happen to be undertaken by a contractor who is also an Access Seeker.</p> <p>The impacts mean that:</p> <ul style="list-style-type: none"> • a Force Majeure Event can now occur (and NBN Co is excused from performance) where a circumstance is in the reasonable control of an Access Seeker, also acting as NBN Co's contractor, etc there are certain reporting implications, e.g. NBN Co will avoid a fault or failure in a Central Splitter arising from a failure by an Access Seeker contractor to exercise due care

		<p>and skill in installation of the Central Splitter constituting a Service Fault (with the consequence that it would be excluded from being an End User Fault or Network Fault NBN Co is required to report on in clause 3D.2.5);</p> <ul style="list-style-type: none"> • attendance of Access Seeker contractors at a Premises will not be included as an Incorrect Callout, Late Cancellation (Site Visit Required), Missed Appointments, No Fault Found (Truck Roll Required), On Site Maintenance Call Outs, Professional Wiring Services, Set-up Cross Connect, Set-up NBN Co Co-location (Lockable Full Equipment Rack), Set-up NBN Co Co-location (Lockable Half Equipment Rack), Set-up NBN Co ODF Termination Point. This appears to result in the charges associated with Incorrect Callout etc not being subject to the MRPs in clause 1C.4.2 if these services are provided by an Access Seeker as contractor etc to NBN Co.
<p>Telstra Migration Plan</p>	<p>Definition of 'Telstra Migration Plan'</p>	<p>Definition is new and fixed in time to the MP in existence as at Second SAU Variation Date.</p> <p>It is unclear why NBN Co has considered it necessary to fix the Migration Plan in time to the version of the Migration Plan in existence at the Second SAU Variation Date given these references relate to the way in which Special Services and particular types of Special Services are defined in the Migration Plan. Telstra considers this should more appropriately refer to the Migration Plan as amended from time to time.</p>

ATTACHMENT B: Response to NBN Co’s claims regarding State of competition

NBN Co states “nbn is not an unconstrained monopolist for high-speed broadband services in Australia. In this regard, nbn should not be considered as a ‘traditional’ infrastructure monopoly provider of essential services”.⁶² Telstra disagrees with this assertion and provides the following evidence to show that NBN Co faces no or only very limited competition. In our view, it is this distinct lack of competitive constraint which leads to economic inefficiencies and in turn, higher prices that are not in the LTIE.

NBN Co’s claims do not consider some important context which has entrenched the monopoly nature of the NBN including that NBN Co paid to shut down Telstra and Optus’ networks, both of which are contractually and legally prevented from competing against the NBN.

NBN Co has also derived some significant advantages by virtue of its government ownership including lower cost of debt. This includes government provided debt at a rate less than half the benchmark rate, amounting to interest savings of over \$2 billion as of 30 June 2022,⁶³ providing it a significant advantage.

The below table responds directly to some of NBN Co’s claims.

Table 6: NBN Co claims and response

<i>NBN Co claim</i>	<i>Telstra Response</i>
<p><u>Extent of substitutes</u></p> <p><i>It is also generally recognised that NBN Co faces increasing competition from 4G, 5G and other fixed wireless networks, alternative fixed-line networks and low-earth orbit satellite operators, in respect of residential services.</i> ⁶⁴</p>	<p>NBN Co faces limited competition at the competitive fringe.</p> <p>If NBN Co faced effective competition, there would be evidence of falling prices and improved service quality (absent any regulatory intervention). As discussed in section 2.2, NBN Co’s prices have been increasing and service standards are diminishing over time, reflective of NBN Co’s monopoly power.</p> <p>Recent ACCC research shows the continued need for a fixed line service, showing that the volume of data downloaded over the NBN per SIO continuing to increase, with consumers downloading significantly more per SIO on the nbn than those customers using mobile or satellite. ⁶⁵ In addition, ACMA’s December 2020 research also showed a declining preference for mobile only internet, highlighting that 16% of households were mobile-only for internet at home (with mobile broadband or mobile phone). This is down from 21% in 2015.⁶⁶ The ACMA also found that there has been a considerable increase in the data intensive applications such as working from home/telehealth consult/video conferencing and audio content over the past year, with ACMA noting that all of these applications are better suited to a fixed line service.</p>
<p>Satellite as a substitute</p>	<p>The extent of competition introduced by LEO satellites in metro areas is expected to be small. Network economics dictate that it is</p>

⁶² NBN Co, [SAU supporting submission \(executive summary and key narratives\).pdf \(accc.gov.au\)](#), pg. 25

⁶³ Australian Government Competitive Neutrality Complaints Office, Investigation no. 18, pg. 1

⁶⁴ NBN Co, [SAU supporting submission \(executive summary and key narratives\).pdf \(accc.gov.au\)](#), SAU Supporting Submission, Executive Summary and Key Narratives, Pg. 26

⁶⁵ ACCC, Internet Activity RKR, June 2022, [Internet activity report For the period ending 31 December 2021 \(accc.gov.au\)](#)

⁶⁶ ACMA, [Mobile-only Australia: living without a fixed line at home | ACMA, December 2020](#)

<p><i>Satellite technology is currently undergoing significant and rapid changes. This is creating risks of unpredictability in future consumer demand and buying behaviour. NBN Co considers it will likely face significantly increasing competition from substitute technologies that are currently unknown, unforeseen, or only emerging, such as low earth orbit satellite (LEOSAT) technologies.⁶⁷</i></p>	<p>always less expensive to carry data over fixed line networks rather than mobile or satellite network. The introduction of LEO satellites does not alter this.</p> <p>In the foreseeable future it is likely that LEO satellites will not be able to serve a material number of premises in metro areas, where NBN Co operates fixed line networks. This is because LEO satellite operators serve customers by sharing their limited spectrum assets, which would be quickly utilised in dense urban areas. As capacity is utilised, attainable speeds will decline and whatever attractiveness a LEO service has relative to a fixed line service will decline.</p> <p>LEO satellites offer greater potential for regional areas, where population density is much lower compared to urban areas and the availability of alternative networks to meet connectivity requirements such as high-speed broadband is much more limited.</p>
<p>5G Home Broadband/Fixed Wireless as a substitute</p> <p><i>The presence of 5G home broadband services in the market, advertised as NBN alternatives and priced lower than equivalent NBN services, creates very strong competitive constraints on NBN Co's residential and small-business pricing. As 5G coverage rapidly increases, 5G broadband services will become increasingly vigorous competitors, making it challenging for NBN Co to raise prices in a manner that would be inefficient or detrimental to competition or consumers.⁶⁸</i></p>	<p>Only very small number of services exist at this time with the latest ACCC Internet Activity Report showing a total of 345,000 Home Wireless broadband services, an increase of only 46,000 services from the prior half.⁶⁹</p> <p>While 5G fixed wireless services are still emerging, they have the potential to introduce some level of competition against NBN Co's monopoly in fixed broadband markets.⁷⁰ Today and in the foreseeable future, we expect the extent of this competition to remain low and in certain select areas as 5G geographic coverage is currently limited compared to NBN coverage, and 5G network expansion is still underway. Consequently, there is currently significantly less capacity on the 5G network compared to the NBN – the 5G network is not able to service the same number of end-users as NBN.</p> <p>As stated for Telstra's full year results: "...fixed wireless is not necessarily the right solution for every customer. It's definitely a very viable and particularly attractive option for customers whose experience may not be the best, either because they're in a, perhaps a fibre to the node area, where they've got a long lead line on their service and therefore they're not receiving the best experience, or where they're getting a fixed wireless service, but over an NBN network, whereas in fact a 5G fixed wireless solution could be more interesting. So we're launching on a targeted basis..."⁷¹</p>

⁶⁷ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives, Pg. 38

⁶⁸ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives, [SAU supporting submission \(executive summary and key narratives\).pdf \(acc.gov.au\)](#), Pg. 32

⁶⁹ ACCC, Internet Activity RKR, June 2022, [Internet activity report For the period ending 31 December 2021 \(acc.gov.au\)](#)

⁷⁰ [Telstra - supplementary submission to the LBAS & SBAS declaration inquiry 0.pdf \(acc.gov.au\)](#)

⁷¹ Telstra, Telstra Full Year Results Presentation, 13 August 2020 – Transcript, <https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf%20F/140820-FY20-Transcript.pdf> p.18.

	<p>NBN's price resilience is a sign of monopolistic behaviour. As discussed in our July 2022 submission, 5G Home wireless broadband is generally at lower prices than the equivalent fixed line services).⁷² As such, if 5G Home Broadband services were such a strong constraint, NBN Co's prices would be expected to be at least in line with this substitute service.</p>
<p>Fixed Line Alternatives as a substitute</p> <p><i>Competition from alternative fixed-line network operators is also intensifying. The pricing of services on competing networks in respect of residential services is usually below NBN Co's pricing as expected given that they serve limited geographic regions and do not incur losses that arise from having an obligation to operate a national network connecting premises and supplying services upon reasonable request.</i>⁷³</p>	<p>The latest Internet Activity RKR as at 30 June 2022 calculates that the number of alternative fibre connections (FTTB, FTTC, FTTN, FTTP) was a mere 210,000⁷⁴ (or approximately 2% of SIOs)⁷⁵</p> <p>The ACCC itself has already examined whether alternative fixed line operators act as sufficient substitutes to NBN services and have specifically commented on the lack of effective competition stating:</p> <p><i>"competition at the wholesale level is unlikely to be effective in most areas of Australia in the foreseeable future. Economic and technical barriers to entry generally prevent multiple network providers from operating in the same service area and competing at a wholesale level, particularly outside of densely populated metro areas."</i>⁷⁶</p> <p><i>"Competition from non-NBN network operators appears to be generally limited to point-to-point fibre networks in business districts, and existing multi-point networks of limited reach covered by the SBAS declaration."</i>⁷⁷</p> <p>We agree with the ACCC's view and note NBN Co has not provided any additional evidence to support a change in position.</p>
<p>MBB as a substitute</p> <p><i>Of these 2.9 million premises, approximately 2.4 million (or 83%) are connected to a fixed wireless network or use a mobile device alone, underscoring the current substitutability of, and growing competitive pressure exerted by, these services.</i>⁷⁸</p>	<p>MBB is generally not viewed as a full substitute to NBN services.</p> <p>The ACCC have stated, <i>"At this stage, the impact of wireless as a substitute for fixed line broadband is likely to be small due to its limited footprint. This means only a limited amount of consumers currently have a choice of access technology."</i>⁷⁹</p> <p><i>"Mobile broadband services are considered by most end-users as a complementary service, rather than as a direct substitute for fixed line broadband. Most end-users appear to maintain a preference for fixed line broadband to perform data intensive activities given the</i></p>

⁷² Telstra, July 2022 submission, [Submission - Telstra - Public - NBN Co SAU Variation March 2022 - 20 July 2022.pdf \(acc.gov.au\)](#), pg. 24

⁷³ NBN, SAU Supporting Submission, Executive Summary and Key Narratives, [SAU supporting submission \(executive summary and key narratives\).pdf \(acc.gov.au\)](#), pg. 35

⁷⁴ ACCC, Internet Activity RKR, 30 June 2022

⁷⁵ NBN SIOs + Non NBN SIOs (Fibre) only.

⁷⁶ ACCC, *Superfast Broadband Access Services and Local Bitstream Access Services declaration inquiry*, Final Decision, July 2021, pg. 11

⁷⁷ ACCC, *Superfast Broadband Access Services and Local Bitstream Access Services declaration inquiry*, Final Decision, July 2021, pg. 12

⁷⁸ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives, Pg. 26, [SAU supporting submission \(executive summary and key narratives\).pdf \(acc.gov.au\)](#).

⁷⁹ ACCC, *Superfast Broadband Access Service and Local Bitstream Access Service declaration inquiry* – Final Decision, July 2021 pg. 12

	<p><i>increasing need for non-limiting data allowances and reliable download and upload speeds.”⁸⁰</i></p> <p>Studies by ACMA show that mobile services are not appropriate for all applications, e.g. remote working, and therefore are not a complete substitute. The ACMA study also found that users in the lower income quintile who are forced to take MBB as a substitute are forced to make this purchasing decision based on the high cost of NBN services, however in doing so, these customers miss out on the full functionality of a fixed NBN service, in turn driving the Digital Divide.⁸¹</p>
<p>Market Conduct</p> <p>NBN Co’s market share⁸²</p>	<p>NBN Co states their market share is 68%. We disagree and consider NBN Co’s market share to be considerably higher. First, NBN Co has incorrectly defined the market. MBB should not be viewed as a substitute. FWA and Fixed Line Alternatives, whilst they are technical substitutes, are limited in their competitive impact given small number of SIOs. See previous discussion.</p>
<p>NBN churn⁸³</p>	<p>Churn measures presented by NBN Co are biased. The churn rate mentioned by NBN Co in their supporting submission was “3.6% of all connected premises, increasing from 2.72% in FY20.”⁸⁴ Further to this NBN Co states that if they did not respond to customers choosing to leave the network this rate could be as high as “4% by FY23.”⁸⁵ A churn rate of 3.6% is low when compared to the telecommunications sector industry average which is estimated to have a churn rate as high as between 20-40%.⁸⁶ This suggests that substitutability in the sector is still quite low, despite the competitive pressures alluded to by NBN Co in their SAU supporting submission.⁸⁷</p>
<p><i>NBN Co has observed that competitors generally select population-dense areas to cherry-pick (e.g., central business districts or high density inner urban residential areas and MDUs like apartment complexes) or areas in which there is</i></p>	<p>Refer Fixed Line Alternatives as a substitute</p> <p>Refer NBN churn</p>

⁸⁰ ACCC, Superfast Broadband Access Service and Local Bitstream Access Service declaration inquiry – Final Decision, July 2021 pg. 10

⁸¹ ACMA, [Mobile-only Australia: living without a fixed line at home | ACMA, December 2020](#)

⁸² NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives, Pg. 26, [SAU supporting submission \(executive summary and key narratives\).pdf \(accc.gov.au\)](#)

⁸³ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives, Pg. 27, [SAU supporting submission \(executive summary and key narratives\).pdf \(accc.gov.au\)](#)

⁸⁴ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives, [SAU supporting submission \(executive summary and key narratives\).pdf \(accc.gov.au\)](#), pg. 27, Section 3.2

⁸⁵ Ibid.

⁸⁶ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0267935> Nguyen, Nhu Y, Tran Van Ly, Dao Vu Truong Son, 20222, *Churn prediction in telecommunications industry using kernel Support Vector Machines*, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0267935>

⁸⁷ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives, [SAU supporting submission \(executive summary and key narratives\).pdf \(accc.gov.au\)](#), pg. 27, Section 3.2

<p><i>no (or limited) existing infrastructure (e.g., new housing developments and business parks).⁸⁸</i></p>	
<p>Investment Incentives</p> <p>MNO vs NBN investment</p> <p><i>Mobile Network Operators (MNOs) (i.e., Telstra, Optus and TPG Telecom) have strong commercial incentives to increase their ‘on-net’ customer base by steering and migrating customers from NBN services to their own fixed wireless (particularly 5G) networks.....⁸⁹</i></p> <p><i>...attractiveness of low-use customers to MNOs and other wireless operators, the incentive for MNOs to add fixed wireless users to their mobile networks where they have spare capacity and the eventual evolution from 5G to 6G will persist⁹⁰</i></p>	<p>NBN to mobile substitution is not efficient competition – it’s a limited and suboptimal response from customers and RSPs to NBN Co’s inefficiently high wholesale prices.</p> <p>NBN Co’s incremental costs are decreasing with supply (i.e. they have high fixed costs and low variable costs). Alternatively, operating customers on Fixed Wireless networks has a relatively low incremental cost for a few customers, but once FW providers hit some level of scale, their incremental costs become very high (either due to the cost of degrading mobile service quality or having to build more towers/backhaul/spectrum/etc) meaning it can only be used in select and limited circumstances. Refer FW as a substitute</p> <p>MNOs also have limited spectral capacity and share that capacity between fixed wireless and mobile customers. The more spectrum used by an MNO for fixed wireless or mobile to bypass the NBN, the poorer the service quality that MNO can deliver to their mobile customers which is again, a sub optimal competitive response.</p>
<p>Cost Advantages</p> <p><i>Despite the fact they are marketed as direct substitutes for a NBN fixed-line service, 4G/5G fixed wireless services to premises are not required to pay the Regional Broadband Scheme (RBS) levy. This gives them a \$7.45 per month (indexed annually), per chargeable premises cost advantage over nbn.⁹¹</i></p>	<p>Mobile infrastructure is overwhelmingly utilised for the provision of mobile services, and has a fundamentally different cost structure to NBN Co. Extending mobile coverage is expensive, and in many regional areas this is uneconomic on a standalone basis. MNOs can fund ongoing regional expansion due to their own national customer base valuing regional coverage, competitive dynamics in the mobile market, and funding assistance from Governments. It is incorrect for NBN Co to state that mobile networks, including those offering limited FW access, have a \$7.45 per month cost advantage over NBN Co.</p> <p>NBN Co overstates the extent of mobile substitution, and any extension of the RBS to mobile services would be to the detriment of Australia’s connectivity ambitions. Instead of seeking to tax potential competitors NBN Co should focus on ensuring its product offers and associated pricing meets the needs of Australians.</p>
<p>Market Observations</p> <p><i>Prices for connectivity products have experienced declines in real and quality-adjusted terms.⁹²</i></p>	<p>Overall advertised prices for NBN fixed broadband services have continued to increase. From 2020–21 to 2021–22, per month retail prices on lower-priced plans (at the 25th percentile) increased by 3.6% to \$72.50, those at the median price point increased by 4.7% to \$89 and those on higher-priced plans (at the 75th percentile) increased by 9% to \$109.⁹³</p>

⁸⁸ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives ,[SAU supporting submission \(executive summary and key narratives\).pdf \(acc.gov.au\)](#), pg. 27 (Section 3.2)

⁸⁹ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives ,[SAU supporting submission \(executive summary and key narratives\).pdf \(acc.gov.au\)](#), pg. 28 (Section 3.3.1)

⁹⁰ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives ,[SAU supporting submission \(executive summary and key narratives\).pdf \(acc.gov.au\)](#), pg. 29 (Section 3.3.1)

⁹¹ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives ,[SAU supporting submission \(executive summary and key narratives\).pdf \(acc.gov.au\)](#), pg. 30 (Section 3.3.1)

⁹² NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives ,[SAU supporting submission \(executive summary and key narratives\).pdf \(acc.gov.au\)](#), pg. 40 (Section 3.7)

⁹³ [ACCC Communications market report 2021-22](#), pg. 8

	<p>In contrast, advertised prices for mobile or mobile broadband services remained generally neutral or decreased.⁹⁴</p>
<p>Other</p> <p><i>Fixed line competitors... “ do not incur losses that arise from having an obligation to operate a national network connecting premises and supplying services upon reasonable request”⁹⁵</i></p>	<p>The Regional Broadband Scheme ensures that comparable broadband networks, including fixed line competitors, pay for the losses on NBN’s network.</p> <p><i>“The Regional Broadband Scheme applies to all NBN-comparable networks. Under the Scheme, carriers will be required to pay \$7.10 per month for each premises on their network with an active high speed superfast broadband service provided over a local access line. It is intended that carriers would pay a charge for all premises serviced by fibre-to-the-premises (FTTP), fibre-to-the-node (FTTN), fibre-to-the-basement (FTTB), fibre-to-the-curb (FTTC) and hybrid fibre-coaxial (HFC) network.”⁹⁶</i></p> <p>The revenue raised through the levy is intended to be sufficient to fully compensate NBN Co’s losses on those services and effectively eliminates any competitive disadvantages associated with the provision of those non-commercial services.</p> <p>In 2020, the ACCC calculated the levy to be \$7.03 based on modelling designed to offset to offset total expected net losses to 2040.⁹⁷</p> <p>The CNCO has also found that <i>“NBN Co being compensated under the Regional Broadband Scheme levy arrangements for losses from its fixed-wireless and satellite services, means that past directives to prioritise regional areas do not represent a source of current competitive disadvantage of government ownership.”⁹⁸</i></p>
<p>NBN Co states that <i>“Even if only some of NBN Co’s services are subject to competition, the competitive constraint will be imposed on all of NBN Co’s pricing, particularly when nbn is selling via averaged pricing.”⁹⁹</i></p>	<p>Under the proposed SAU, prices are expected to increase further – see section 2.2.</p> <p>There is no historical evidence of nbn co responding to any competition – for example, refer to our July 2022 submission which showcased a comparison of Telstra, Optus and TPG fixed wireless and NBN plans which offer at least 50 Mbps of data finds that in almost all cases, the fixed wireless plans are cheaper or the same compared to their equivalent retail NBN plan.¹⁰⁰ If NBN Co’s claims were accurate, we would have expected to see NBN Co reduce prices to match competition but that has not occurred.</p>

⁹⁴ Ibid., pg 12

⁹⁵ NBN Co, SAU Supporting Submission, Executive Summary and Key Narratives, [SAU supporting submission \(executive summary and key narratives\).pdf \(accc.gov.au\)](#), pg. 35, (Section 3.4)

⁹⁶ [Regional Broadband Scheme \(infrastructure.gov.au\)](#)

⁹⁷ ACCC, [Report on modelling of the Regional Broadband Scheme Levy initial base component - October 2020.pdf \(accc.gov.au\)](#), pg.16

⁹⁸ Productivity Commission, [NBN Co - AGCNCO Investigation report no 18 \(pc.gov.au\)](#), pg. 70

⁹⁹ NBN Co, [SAU supporting submission \(executive summary and key narratives\).pdf \(accc.gov.au\)](#), pg. 26 (Section 3.2)

¹⁰⁰ Telstra, July 2022 submission, [Submission - Telstra - Public - NBN Co SAU Variation March 2022 - 20 July 2022.pdf \(accc.gov.au\)](#), pg. 26

For nbn to continue maintaining customers in this environment (and recover the substantial investments in its network), nbn will need to ensure that its services continue to deliver value-for-money, which may require nbn to reduce prices or increase inclusions.”¹⁰¹

NBN Co’s forecasts indicate that it is aiming to increase TC4 ARPU, and increase the number of premises active on its network and the number of TC4 services purchased. This not a forecast typical of a business truly concerned about competition.

¹⁰¹ NBN Co, [SAU supporting submission \(executive summary and key narratives\).pdf \(accc.gov.au\)](#), pg. 32 (Section 3.3.1)