



TELSTRA GROUP LIMITED

Submission to ACCC Consultation on proposed variation to the NBN Co Special Access Undertaking

Public Version

September 2023



Introduction

Telstra welcomes the opportunity to provide feedback on the proposed variation to the NBN Co Special Access Undertaking (SAU) as submitted in August 2023 (**proposed SAU variation**). The proposed SAU variation follows an extended consultation process, throughout which Telstra has provided formal submissions and views in stakeholder workshops.

This submission sets out Telstra's response to the proposed SAU variation on the key issues set out in the ACCC Consultation Paper. We also note the ACCC intent to take previously provided submissions and views into account in making its assessment of the proposed SAU variation against the statutory criteria. Where relevant we have noted those views below.

General Regulatory Framework

The ACCC process has resulted in positive changes to the framework for regulating access to the NBN. We acknowledge that NBN Co has been receptive to ACCC and some (but by no means all) stakeholder feedback. We do, however, consider there is scope for further improvement in relation to price and service quality. That said, we accept the ACCC's preliminary view that the proposed SAU variation addresses the concerns raised by the ACCC in their Draft Decision to reject the November 2022 SAU variation. We also consider there is greater benefit to industry and consumers from expedited implementation of the proposed SAU variation and, consequently, WBA5. Our position therefore is that the ACCC should now move to make a Final Decision as quickly as possible to resolve ongoing uncertainty caused by a protracted process. Further delays will materially impact RSPs and ultimately our customers.

It is important that the ACCC, NBN Co and industry continue to work together to ensure the delivery of a high quality NBN service that meets the needs of consumers. Once implemented, the regulatory framework provides the ACCC with more opportunity to scrutinise NBN Co's expenditure and forecasts which will have an impact on future pricing. There is also scope to introduce changes to service quality where systemic issues are identified during a regulatory cycle, and then when making a replacement module. As set out in the Consultation Paper, "...a key feature of the arrangements proposed by NBN Co is engagement with industry stakeholders and consumer advocacy groups as part of the replacement module process." Telstra agrees with the ACCC that active and responsive engagement by NBN Co is essential and the ACCC should carefully monitor how effective this engagement is going forward. As set out below, this is particularly the case with the Low-Income Forum and proposed improvements to service quality.

Pricing Issues

Pricing of 50 Mbps and below bundled offers

The 'floor and ceiling' approach included by NBN Co in the proposed SAU variation was subject to earlier consultation. Our response to that consultation set out a view that the approach was a clear step backward and would leave customers worse off. However, we considered that it was more important for NBN Co to choose an option and submit the SAU as quickly as possible. NBN Co has now done this, with a 'floor and ceiling' proposed that is equivalent to Option 2 previously put forward.

As set out in our previous submission, the 'floor and ceiling' approach is the result of NBN Co incorrectly forecasting demand and revenue. Further, the analysis undertaken by NBN Co misrepresented the RSP market by incorrectly defining RSP archetypes. All Telstra customers will be worse off under the 'floor and ceiling' approach relative to the approach proposed by NBN Co in the November SAU variation. A wholesale price floor will also limit the extent to which RSPs can discount to specific retail customer cohorts. This is particularly the case with Option 2, which creates the biggest increase in Telstra's costs in supplying customers with connectivity.



Given the above, we consider there are further improvements NBN Co could make that would lead to better outcomes regarding pricing for consumers and industry. The issues associated with the SAU and alternative options have been aired and discussed, and Telstra has provided many submissions arguing for lower wholesale prices. It is now, however, time to close out the process and prevent any further delays that will have a detrimental impact on RSPs and customers. As such, we accept the ACCC view that the NBN Co proposal was the one supported by the greatest number of RSPs. Given this, Telstra considers the most benefit will be delivered to RSPs and in turn, customers from early acceptance and implementation of the proposed pricing approach.

Low income and digital inclusion forum

We agree with the ACCC view set out in the Consultation Paper that the proposed SAU variation appears to offer strengthened commitments on the remit of the forum and gives transparency over the forum's views and NBN Co's response to them. Supporting the needs of low-income users is an important element of the SAU and has the potential to contribute positively to improving the digital literacy and inclusion of all Australians. Whilst we consider that material improvements have been made, there is still more that can be done by NBN Co to improve the digital outcomes of all customers.

For example, as highlighted in previous submissions¹, we maintain the view that NBN Co should develop a specific proposal for a baseline low-income package for endorsement by the Low-Income Forum as a matter of priority. Whilst we would prefer it to be codified as part of an SAU, we accept the ACCC's view that developing a low-income package and key performance indicators for digital inclusion is something that forum members can choose to develop. We look forward to participating in the Low-Income Forum and will continue to advocate for such outcomes outside the SAU process so that the benefits of the NBN network can be accessed by all.

In addition, we strongly believe that an independent chair will drive better outcomes in the LTIE. We note the ACCC view that there could be merit in such an approach and recommend the required minor variation to the SAU needed to facilitate this should be made prior to acceptance (on the understanding this would not lead to any delays in implementation).

Timing of the entry level product review

The proposed SAU variation includes new provisions that would enable the ACCC to approve a change in the entry level product ahead of making a replacement module determination, to ensure a change can take place in the first year of a regulatory cycle. Telstra supports this change and considers this will give the ACCC necessary flexibility whilst also providing certainty for RSPs in the setting of new Entry Level Offer (which are subject to more restrictive price controls) for subsequent regulatory periods.

1 July 2024 price changes

Telstra acknowledges the reasons behind the ACCC support for the annual price change scheduled by NBN Co for July 2024 and the ACCC position that altering the price position at this point in the cycle may impact NBN Co's efficient cost recovery. However, we refer to points made in our previous submissions that the price increases come at a time when Telstra customers are facing increased cost of living pressures.² We also reiterate that a more affordable pricing structure would encourage further efficient use of the NBN network infrastructure.³

¹ Telstra, June 2023, Submission to ACCC NBN Co Special Access Undertaking Draft Decision, pg. 10

² Telstra, June 2023, Telstra Submission in relation to NBN's proposed SAU Variation s2.2 p8.

³ Telstra, February 2023, Telstra Submission in relation to NBN's proposed SAU Variation s2.3.1 p18.



Service Quality

Telstra has set out views on the service quality aspects of the SAU in previous submissions⁴. We acknowledge that the proposed SAU variation represents an improvement to the regulatory framework, not least because it incorporates benchmark service standards where service quality was previously not included in the SAU. That said, there has been little progress made in relation to service quality since the November 2022 SAU variation other than the inclusion of changes proposed by NBN Co as part of WBA5 negotiations. As we have previously noted, we continue to believe that these changes will have a limited impact on the actual service quality that will be experienced by end users.

In the Consultation Paper, the ACCC position is that NBN Co's proposed changes "...seek to address, or introduce a process for addressing, the gaps identified by stakeholders and our draft decision with regards to the benchmark service standards framework..." Telstra's position is that there are significant further improvements to be made to the NBN customer experience, however, these are now not best addressed through the current SAU variation process. Rather, we consider these can be achieved in future through, the Statutory Infrastructure Provider (SIP) regime and the replacement module process. Nevertheless, despite our view that further significant improvements are required, as set out elsewhere in this submission there is more benefit to RSPs and customers from expedited implementation of the SAU variation.

Telstra also notes the proposed SAU variation includes consultation and reporting measures, including the publication of a service improvement plan and service performance review for each financial year of the first regulatory cycle. These should be accompanied by an ACCC-initiated Record Keeping Rule (RKR), as consulted on earlier this year, to ensure transparency of performance and the inclusion of metrics that reflect the customer experience. It is important that NBN Co performance in relation to service quality is monitored and assessed independently to ensure any issues that arise can be addressed either mid-regulatory cycle (if systemic) or as part of the replacement module process when it is clear that adequate improvements are not being made.

Telstra notes that on 6 September 2023 NBN Co provided to the ACCC an indicative FY24 service improvement plan.⁵ Given the timing, Telstra has been unable to review this plan in detail. In any event, we note that it lacks certain details such as milestones for each initiative which limit the ability to provide meaningful feedback. Telstra is also disappointed that NBN Co does not appear to intend to consult with industry on the initiatives that should be included in the FY24 plan.

Other Issues

Treatment of capital contributions and changes to building block model parameters

Telstra is satisfied with the changes that NBN Co have made to the treatment of capital contributions and the BBM parameters. We align with the views of the ACCC that the focus on net capital expenditure adopts a more transparent approach and the treatment of investments contributed to by other parties should not lead to inflated prices. Specifically, we are satisfied that NBN Co have addressed our concerns regarding:

Third party funding and government grants: Telstra supports the decision by NBN Co to adopt a more consistent approach to the treatment of capital contributions from government and third parties. This approach supports the position Telstra adopted in our June submission, aligning with the ACCC position.⁶

⁴ See, for example, Telstra, June 2023, Telstra Submission in relation to NBN's proposed SAU Variation s2.1 and Telstra, February 2023, Telstra Submission in relation to NBN's proposed SAU Variation s2.1.

⁵ NBN Co, 6 September 2023, nbn indicative FY24 Annual Service Improvement Plan – ACCC and Industry Update.

⁶ Telstra, June 2023, Telstra Submission in relation to NBN's proposed SAU Variation s3.2 p15.



Improved transparency: Telstra supports the approach by NBN Co to adopt a more transparent approach to the BBM public explanatory notes for asset classes and weighted average asset lives calculations. We believe this addresses the concerns the ACCC raised in their April 2023 Draft Decision outlining areas of refinement NBN Co needed to make.⁷

Weighted Average Asset Lives: We agree with the proposal by NBN Co for depreciation of assets commissioned pre-FY24 to be treated separately from depreciation for assets commissioned from the start of FY24. This aligns with Telstra's position on this matter in our June 2023 submission.⁸

Proposed expenditure for the first regulatory cycle and ACCC powers

Telstra has commented in our previous submissions on the SAU that historical investment by NBN Co has been inefficient and we reiterate that position in this submission.^{9,10,11} However, we accept that the proposed SAU variation attempts to address this moving forward by conferring the ACCC with sufficient powers to request information and documents in future Replacement Module expenditure reviews.

⁷ ACCC, April 2023, Variation to the NBN Co Special Access Undertaking, Draft Decision, s4.6.3, p50

⁸ Telstra, June 2023, Telstra Submission in relation to NBN's proposed SAU Variation s3.2 p15.

⁹ Telstra, Response to Proposed Variation to the NBN Co Special Access Undertaking, 20 July 2022, s3.8

¹⁰ Telstra, February 2023, Telstra Submission in relation to NBN's proposed SAU Variation s2.5.1 p22.

¹¹ Telstra, June 2023, Telstra Submission in relation to NBN's proposed SAU Variation s2.4.1 p12.