



ACCC INQUIRY INTO NBN ACCESS PRICING DISCUSSION PAPER

**SUBMISSION BY
VODAFONE HUTCHISON AUSTRALIA**

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Introduction

Vodafone Hutchison Australia Pty Limited (**VHA**) is pleased to provide this submission to the ACCC's consultation on NBN access pricing.

While the ACCC has quite rightly identified that it is no longer possible for the industry to provide a viable entry level NBN product priced at \$60, we believe the focus should be on establishing the nbn25 speed tier product as the entry level product, not the nbn12.

When reviewing the Special Access Undertaking (**SAU**) in 2013, the ACCC recognised that the 25/5 speed tier was functionally equivalent to ADSL. As we approach 2020 and data consumption continues to grow at significant rates, the 12/1 speed tier falls far short of even the most price conscious fixed broadband user's requirements. Much like the mobile industry's evolution from 2G to 4G and now 5G, NBN Co must move its baseline product with the times. Providing entry level NBN consumers with a viable nbn25 product would ensure they receive a similar speed and quality as the maximum uncontended speed of an ADSL2+ service. If the nbn12 speed tier is the focus of the ACCC's regulatory measures, then 50 percent of end-users on ADSL2+ will be worse off when migrating to the NBN. This is inconsistent with the ACCC's principle that end-users should be no worse off as a consequence of migrating to the NBN.

VHA recommends that a nbn25 bundled entry level product be introduced which is priced at a flat rate of \$35 with no CVC charge. Simply 'resetting' the entry level economics with an AVC price of \$35 is not a sustainable solution while the CVC component remains. CVC costs will continue to increase, and price uncertainty will continue, thus thoroughly undermining the advantages of resetting the entry level economics. Regulation that is focused only on an entry level product anchor price and does not address the fundamental problem of NBN's two-part AVC/CVC pricing construct will inevitably deliver only a new but similarly unsustainable short-term solution.

In addition to having a sustainable entry level NBN product price, it is important to have in place an overall NBN pricing framework that encourages RSPs to sell faster speed services. This can only be achieved by removing the CVC 'speed and performance tax.' NBN Co needs to outline a clear path to abolishing the CVC charge and shifting to AVC-only pricing by 2021. This will optimise the benefits of the NBN for end-users and deliver NBN Co's target ARPU. If NBN Co's pricing review does not produce a clear path to abolishing the CVC charge, then we entreat the ACCC to use its powers under the Telecommunications access regime to ensure a sustainable pricing solution.

Given the high fixed and sunk costs of the NBN, and the fact that the majority of variable costs are managed directly by RSPs (such as backhaul from NBN POIs and IP Transit) the underlying average cost of the nbn12 product is virtually the same as the nbn100 product. Therefore, the CVC charge needs to be understood as a purely artificial speed constraint which is an attempt to extract value from the NBN asset by holding customer experience to ransom. For an economic regulator, the key question must be whether it is an efficient pricing arrangement which gives consumers value and transparency. VHA does not believe that

it is, and it is severely limiting the consumer benefits of the NBN. In New Zealand, where Chorus NZ uses a straight subscription fee pricing model to deliver fixed broadband services, 95 percent of consumers are on plans 25Mbps or higher, while in Australia 61 percent of consumers are on plans below 25Mbps.

As long as the CVC charge is in place, it is not possible to deliver price stability over time given the ongoing increases in CVC costs. For example, NBN Co's recent proposed changes include a revised nbn12 bundle, which includes 1Mbps of CVC, still at \$35, but with a reduced penalty charge of \$5.70 and a CVC overage charge of \$8/Mbps. This is still not viable as it assumes CVC demand is not increasing. VHA's estimate is that this product ends up costing RSPs around \$43. For the nbn25 bundle, NBN Co is proposing a price of \$37, which at first appearance indicates an \$8 reduction on the current effective charge of \$45. However, NBN Co has proposed to reduce the CVC allocation from 2Mbps to 1.25Mbps despite consumer demand continuing to increase. In the face of this growing demand, we expect that within months of this change being implemented RSPs will have to purchase additional CVC at a cost of \$8/Mbps, which will result in the \$8 reduction on the nbn25 bundle charge being immediately fully consumed by additional CVC overage costs.

Response to the ACCC's questions

VHA makes the following comments in relation to the issues raised in the ACCC's discussion paper.

Background	
<p>1. Are there any other NBN product elements, or features of commercial access agreements not mentioned in Section 2 of the paper, that have a major bearing on basic speed access products and entry level retail plans on the NBN? What are these?</p>	<p>VHA agrees that NBN Co needs to provide a viable entry level product. It is our view that the ACCC's focus should be on ensuring that the 25/5 speed tier becomes the viable entry level product. This will have the added benefit of improving Australia's position on international broadband league tables at no additional impost to NBN Co.</p> <p>Since 2011, the typical price of the nbn12 and nbn25 products has increased by more than 60 percent, driven by the ongoing increases in CVC costs per end-user. As a result, these speed tiers are no longer viable and RSPs have either withdrawn the sale of these products or are not actively promoting them in favour of higher speed tier products.</p> <p>Ad hoc NBN discount offers based on the current pricing structure do not deliver price certainty. It is important to focus on the causes of the entry level product unviability rather than the symptoms. The problems inherent in the AVC/CVC pricing structure (and the underlying ongoing cost increases it produces) can only be resolved by abolishing the CVC construct.</p> <p>In other words, simply 'resetting' the entry level economics with an AVC price of \$35 is not a sustainable solution while the CVC component remains, as CVC costs will continue to rise. RSPs require certainty of all elements of NBN Co's pricing across the entire TC4 product suite.</p>

ACCC approach to examining NBN access pricing	
<p>2. How do you consider the 'no worse off' condition for migration of legacy customers onto the NBN should operate?</p>	<p>At the wholesale level, to meet the ACCC's 'no-worse-off' condition, NBN Co needs to provide a viable entry level product at the 25/5 speed tier which is priced at a flat \$35 per month.</p> <p><u>Speed</u></p> <p>The entry level NBN product must deliver a speed performance no less than the fastest typical speed achieved on ADSL2+, which is the widespread legacy broadband technology (noting that some HFC customers received a higher speed than ADSL2+).</p> <p>As acknowledged by the ACCC, the 25/5 speed tier on the NBN would offer a similar speed and quality as the maximum uncontended speed of an ADSL2+ service. In its discussion paper the ACCC states that the median speed on ADSL2+ services is within the range of 10 to 15Mbps. If we conservatively assume a median of 10Mbps on ADSL2+, then 50 percent of end-users on ADSL2+ would typically receive speeds in excess of 10Mbps, with ADSL2+ services capable of delivering speeds up to 25Mbps.</p> <p>We note that the NBN speed tiers are created by throttling the speed performance of the connection. For example, the nbn12 product is throttled at 12Mbps. This means that it will never actually achieve 12Mbps. While the ACCC's Measuring Broadband Australia program does not report the average download speeds during busy hours for the nbn12 product, from the average speeds reported for other speed tiers we can infer an average speed of ~10Mbps for the nbn12 product.</p> <p><u>This means that 50 percent of end-users on ADSL2+ will be worse off if migrating to the nbn12 product as the entry level NBN product.</u> This is inconsistent with the ACCC's stated principle that end-users should be no worse off as a consequence of migrating to the NBN.</p> <p><u>Price</u></p> <p>As well as a wholesale price of \$35 that allows RSPs to deliver a viable entry level product to end-users at \$60, we agree with the ACCC that there should be a reasonable degree of wholesale price certainty for RSPs. As mentioned above, the typical price of the nbn12 and nbn25 products has increased by more than 60 percent, driven by the ongoing increase in CVC costs per end-user. Price certainty can only be delivered by abolishing the CVC construct.</p>
<p>3. Do you consider that price regulation of a basic speed access product</p>	<p>Regulation focused only on an entry level product anchor price that does not address the fundamental problem of NBN's two-part AVC/CVC pricing structure runs the risk of delivering only a short-term solution. As long as</p>

<p>would serve as an effective price anchor on higher speed NBN services? If so, for what range of higher speed TC-4 access products would the price terms for a TC-4 12/1 speed access product provide an effective price anchor?</p>	<p>the CVC component is in place, it is not possible to deliver price stability over time given the ongoing increases in CVC costs.</p> <p>In addition to setting an optimised entry level product price, it is important to have in place an overall NBN pricing framework that encourages RSPs to sell faster speed services. This can only be achieved by removing the CVC charge. NBN Co needs to outline a clear path to abolishing the CVC and shifting to AVC-only pricing by 2021. This will optimise the benefits of the NBN for end-users and deliver NBN Co's target ARPU.</p>
<p>4. Do you have any comments on the pricing principles proposed by the ACCC for assessing NBN Co's access prices?</p>	<p>Given the high fixed and sunk costs of the NBN, and the fact the RSPs bear the majority of the variable costs (capacity to NBN POIs and IP transit) the underlying average cost of the nbn12 product is virtually the same as the nbn100 product. Therefore, the AVC/CVC construct needs to be understood as an artificial speed constraint which has been designed to extract value from the NBN asset. For an economic regulator the key question must be whether it is an <u>efficient</u> pricing arrangement. VHA does not believe that it is, and it is severely limiting the consumer benefits of the NBN.</p> <p>The fundamental problem with the current pricing structure is that the underlying incentives centre on driving RSP behaviour through congestion uncertainty. As peak usage increases through time, RSPs who seek to deliver a consistent customer experience are required to increase the capacity of often hundreds of CVC connections. This is an unduly complex process, particularly as the rate of usage growth fluctuates over time.</p> <p>If an RSP established such an opaque and uncertain pricing arrangement for retail consumers, we would expect the ACCC to take action under Australian Consumer Law. If NBN Co's pricing review does not produce a clear path to abolishing the CVC charge, then we entreat the ACCC to use its powers under the Telecommunications access regime to ensure a sustainable and certain pricing solution.</p> <p>Rising costs and risks of congestion are counterproductive elements of the current NBN pricing structure that are impacting NBN Co's entire TC4 product set. We accept that offering various speed tiers of AVC is an appropriate way of optimising the utility of the NBN, but the addition of very expensive aggregation circuits (CVC) that results in RSPs unnecessarily constraining the capacity of handover points between NBN and RSP networks is unnecessary and counterproductive.</p> <p>If the AVC/CVC construct remains in place, 'overage' CVC allocations should not be used as a revenue generating tool. NBN Co should at least ensure that the allocation of CVC is always above the Average Busy Hour Throughput required for the average end-user. The current CVC</p>

	bandwidth allocations in NBN's proposed 'bundles' are set too low and all CVC bundle allocations must be increased by at least 50 percent.
5. Do you consider that any other changes to NBN Co's current approach to pricing NBN access services are required to provide pricing certainty for access seekers and to safeguard the interests of end-users?	The only certainty offered by NBN Co's current approach is ongoing price instability and unnecessary congestion. At the heart of this issue is the proposed CVC inclusion increases of 10 to 12 percent each year when NBN Co expects usage to increase by 28 percent year on year. As outlined in our answer to Question 4, until the CVC is abolished, the proposed bundled CVC allocations must be increased by at least 50 percent.
NBN access pricing	
6. Do the pricing features covered in this section represent the key pricing elements bearing on the supply of entry level NBN services to end-users by RSPs?	RSPs also bear additional NBN access costs at each POI to be able to deliver a baseline service. These include costs for NNI and rack space.
7. Do the service transfer charges identified in this section represent the key pricing elements bearing on service transfers?	As outlined previously, it is VHA's view that NBN Co's service transfer fee is toxic to competition, is an unnecessary cost burden on RSPs (particularly new entrants and smaller providers) and must be removed. While we welcome NBN Co's proposal to reduce the transfer fee, the charge should reflect the cost of providing the service. To date NBN Co has not outlined the cost rationale for this charge and we urge the ACCC to consider establishing pricing principles for all NBN charges.
Product and pricing developments in retail fixed-line broadband markets	
8. Are there any additional retail pricing and product changes relevant to this inquiry that resulted from NBN Co's product and pricing changes that took effect in 2018?	NBN Co's 2018 pricing changes were welcome, however, these improvements were based on the end-user usage profile in 2018 and did not include any future adjustments to address the ongoing growth in usage. This has meant that the underlying viability problems have remained. This issue is most acute at the entry level (nbn12 and nbn25 products) but is increasingly felt by RSPs at the higher speed tiers. As discussed above, NBN Co's recent proposals do not resolve the issue.
9. Are there any further retail pricing and product changes that are being contemplated due to NBN Co's 2018 pricing changes?	Based on customer feedback VHA previously took the decision not to sell the nbn12 product, instead promoting the nbn25 as the NBN entry level product, priced at \$59. Given the underlying viability issues with the nbn25 product driven by ongoing increases in CVC costs per end-user, we will likely reduce the promotion of this product or consider withdrawing it from sale.
10. What retail pricing and product changes have you made or are contemplating	As outlined in our response to NBN's second pricing consultation discussion paper, while these proposed changes are an improvement on current arrangements, they increase the complexity of its pricing regime

<p>in response to NBN Co's pricing changes outlined in its second consultation paper?</p>	<p>by giving additional CVC allocations for the higher speed tiers while at the same time reducing CVC bandwidth allocations at the lower speed tiers (or not providing enough CVC bandwidth allocations for new bundles).</p> <p>The net outcome of this 'give and take' approach is that RSPs will be in no better position to deliver a viable product suite in 2020 than currently, and they will face significant viability challenges from 2021 onwards. This will result in RSPs being forced to manage major cost increases as end-user data consumption continues to grow, with a very high likelihood that these cost increases will end up being passed directly onto end-users, or there will be an increased incidence of network congestion.</p>
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Considerations for potential regulated NBN access pricing

<p>11. Which TC-4 ethernet broadband access service speed tier(s) are most relevant to the objective of providing a smooth migration for all or most consumers?</p>	<p>As outlined in our response to question 2, NBN Co needs to provide a viable entry level product at the 25/5 speed tier.</p> <p>VHA previously took the decision not to sell the nbn12 product, instead promoting the nbn25 as the NBN entry level product which we sell at \$59 however under NBN's current pricing structure (and their recent proposals) this is not sustainable.</p> <p>In our experience, customers in the entry level NBN market do not make a rational choice based on speed. Further, we query the notion that the ACCC appears to be suggesting that there is a base of consumers who are actively seeking slow broadband services and would prefer a slower speed over a faster more reliable experience at the same retail price. Instead, the primary reason behind their choice of product is the monthly retail price and their desire to continue to pay what they have paid for their legacy/ADSL service. This segment of the market is price conscious and will select the NBN product with the lowest price. These customers are typically looking for an unlimited data plan priced at \$60 or lower.</p> <p>Providing these consumers with a viable nbn25 product would ensure they receive a similar speed and quality as the maximum uncontended speed of an ADSL2+ service. If the 12/1 speed tier is the focus of any regulatory measures, then 50 percent of end-users on ADSL2+ will be worse off when migrating to the NBN.</p>
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CVC requirements on commencement

<p>12. What level of CVC dimensioning for the basic broadband access product do you consider is needed to support a smooth transition of ADSL/ADSL2+ customers to the NBN for a retail price point of \$60 with</p>	<p>In 2020, an nbn25 bundled product priced at \$35 will require at least 2Mbps of included CVC to avoid overage charges.</p> <p>Further, until the CVC charge is abolished, the CVC inclusion must be increased in line with increasing annual usage (currently 28 percent year on year according to NBN Co) to remain viable.</p>
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<p>unlimited data? Could this same level of provisioning be supported on the ADSL/ADSL2+ network for the same price point?</p>	
Adjusting CVC requirements to account for growth in traffic	
<p>15. What rate of indexing of the CVC dimensioning is required on a basic broadband access service for it to continue to provide for a smooth migration over the course of the rollout? Could this same rate of indexing be supported on the ADSL/ADSL2+ network?</p>	<p>As outlined in our response to question 12, until the CVC charge is abolished, the CVC inclusion must be increased in line with increasing annual usage (currently 28 percent year on year according to NBN Co) to remain viable. A crucial consideration is that the average usage of ADSL/ADSL2+ consumers has increased since 2011 and will continue to increase as they migrate to the NBN.</p>
<p>16. How should the required growth in CVC dimensioning be accommodated in developing price related terms for the basic speed access product and does this put the \$60 retail price point with unlimited data at risk?</p>	<p>On current NBN Co pricing a \$60 retail price point with unlimited data is not sustainable for either of the nbn12 and nbn25 products.</p> <p>As outlined above, a nbn25 bundled product priced at \$35 will require at least 2Mbps of included CVC in 2020 to avoid overage charges and be viable at the \$60 retail price point. However, simply 'resetting' the entry level economics with an AVC price of around \$35 is not a sustainable long-term solution while the CVC component remains, as CVC costs will continue to rise. Until the CVC charge is abolished, the CVC inclusion must be increased in line with increasing annual usage to remain viable.</p>
New product and pricing offer, or use of discount notices?	
<p>17. What do you see as the pros and cons of establishing the price related terms and conditions of access to a basic broadband access product by way of a new product bundle or being implemented by way of a partial waiver/discount?</p>	<p>We agree with the ACCC assessment that this product could be delivered in a more straight-forward manner by NBN. Ad hoc NBN discount offers based on the current pricing structure do not deliver price certainty.</p> <p>A nbn25 bundled product priced at \$35 with at least 2Mbps of included CVC should suffice in 2020 with CVC inclusions increased in line with increasing annual usage. Ultimately, the CVC charge needs to be abolished. If NBN Co's pricing review does not produce a clear path to achieving this, then we entreat the ACCC to use its powers under the Telecommunications access regime to ensure a sustainable pricing solution.</p>
Implications for transformation costs and scale economies	
<p>18. Will NBN Co's proposed pricing in its second consultation paper allow access seekers to rationalise their CVCs?</p>	<p>No. As outlined above, while these proposed changes are an improvement on current arrangements, they increase the complexity of its pricing regime by giving additional CVC allocations for the higher speed tiers while at the same time reducing CVC bandwidth allocations at the lower speed tiers (or not providing enough CVC bandwidth allocations for new bundles).</p>

	<p>The net outcome of this 'give and take' approach is that RSPs will be in no better position to deliver a viable product suite in 2020 than currently, and they will face significant viability challenges from 2021 onwards. This will result in RSPs being forced to manage major cost increases as end-user data consumption continues to grow, with a very high likelihood that these cost increases will end up being passed directly onto end-users, or there will be an increased incidence of network congestion.</p>
<p>19. What further approaches could be considered to facilitate opportunities to reduce transformation costs and/or allow access seekers to exploit scale economies in respect of the basic broadband access product?</p>	<p>VHA recommends simplification of the pricing structure that eliminates the CVC component and the addition of a capacity buffer to ensure more customers get a consistent speed experience. Each NBN speed tier should have a minimum speed performance guarantee (e.g. 20Mbps for nbn25, 40Mbps for nbn50 and 80Mbps for nbn100) with the following rate card.</p> <ul style="list-style-type: none"> • nbn25: \$35 • nbn50: \$45 • nbn100: \$55 • nbn250: \$65 <p>This pricing structure would allow RSPs to upsell end-users to faster speed services as their speed preferences change through time and allow NBN Co to grow ARPU in a positive, value led way.</p>
<p>Support for a limited and unlimited quota basic speed retail product</p>	
<p>20. What is your preferred approach to preserving sufficient flexibility to offer limited quota plans over a basic broadband access product?</p>	<p>VHA doesn't intend to offer limited quota retail products to our customers. Overwhelmingly, our customers don't want to worry about usage limits and appreciate the benefits of unlimited usage plans.</p>
<p>21. Should this be left to individual dimensioning choices of access seekers acquiring a scalable basic access product or should a separate limited quota access product be developed?</p>	<p>No. End-users don't understand that an NBN service currently can vary between RSPs.</p>
<p>22. What do you consider to be the level of CVC dimensioning that would support a limited quota, basic speed retail plan?</p>	<p>Essentially the CVC allocation must be at a level that does not cause busy hour congestion for the typical consumer. This will change through time.</p>

A comparable access cost when supplying basic speed retail plans on the NBN	
23. Are there any features of NBN Co's new ELB offer that favours some access seekers or business models over others when it is used to supply a basic speed broadband plan? What are these features?	N/A. VHA does not sell this product.
Application to NBN Co's wireless access networks	
24. What approach do you consider should be adopted in respect of basic broadband access products that are supplied over NBN Co's fixed wireless or satellite access technologies?	N/A. VHA doesn't offer services over NBN Co's fixed wireless or satellite access networks.
25. Are RSPs likely to differentiate their prices based on access technology if the Entry Level Bundle is not available over Fixed Wireless networks?	N/A.
Implications for competing networks	
26. Do you consider that NBN Co implementing its revised ELB offer to support a basic speed broadband product would likely have the effect of inhibiting efficient competition?	<p>No. We support the ACCC's view that NBN Co's proposals would not have this effect.</p> <p>We agree with the ACCC's assertion that it is important that NBN Co is exposed to competition at the network level however this is being undermined by a number of measures. These include legislative restrictions on alternative infrastructure, the proposed introduction of a tax on alternative fixed networks (the Regional Broadband Scheme) and a wholesale pricing structure which has perversely constrained the uptake of higher broadband speeds.</p>
Implications for access revenues and costs	
27. What changes, if any, should we make to this framework for assessing the likely effect of price related terms and conditions for a basic broadband access product on NBN Co's revenues? What changes to input assumptions should we make?	<p>As outlined above, providing a viable nbn25 product priced at \$60 would ensure price conscious consumers receive a similar speed and quality as the maximum uncontended speed of their ADSL2+ service. This should encourage these consumers to migrate to the NBN sooner.</p> <p>Ultimately the CVC component needs to be abolished to encourage RSPs to upsell end-users to faster speed services as their speed preferences change through time. This will in turn allow NBN Co to grow ARPU in a positive, value led way.</p>

<p>29. How material a contribution to network provisioning costs would growth in CVC dimensioning for basic broadband access services make?</p>	<p>Please refer to our responses above, in particular to questions 2. and 4.</p>
<p>Service transfer and transfer reversal charges</p>	
<p>30. What level of charges do you consider reasonable for these service transfer and reversal charges? Should these be implemented by way of a price change or via a discount?</p>	<p>This should be a cost-based charge. We remain sceptical that \$5 is a true reflection of the cost involved in processing the transaction.</p>