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# Response to NBN Co's WBA4 - pricing & service proposals - ACCC inquiries into NBN access pricing & wholesale service standards

## Introduction

On 20 August 2020, the ACCC recommenced the NBN access pricing inquiry, the NBN wholesale service standards inquiry and began consultation on a set of commitments NBN Co proposes to incorporate into the next version of its wholesale broadband agreement (WBA4).

NBN Co has committed to incorporating these changes into WBA4, if the ACCC determines this is an acceptable resolution, after consulting with stakeholders, and decides to finalise the two inquiries.

Vocus welcomes this opportunity to provide a response to NBN Co's WBA4 proposals on pricing and wholesale service standards.

### ***Fundamental reform on pricing still needed***

Vocus reiterates our call for NBN Co to fundamentally reform its wholesale pricing model to be affordable, predictable and simple. These objectives can be met by the elimination of the CVC construct and the introduction of flat rate speed tiers.

NBN Co's approach to CVC continues to create significant commercial risk and uncertainty for RSPs. Due to increasing CVC costs and customers' changing data demands, Vocus no longer sells entry-level NBN 12Mbps plans and increased the retail price of 25Mbps plans. A \$60 retail price point with unlimited data will be very difficult to offer if the current CVC construct is going to be in place for the next 2 years. In short, NBN Co's pricing model is not in the long-term interests of end-users.

In the absence of fundamental reforms to its pricing and the CVC construct, NBN Co should quickly move to reduce the price of CVC across all speed tiers and provide for appropriate indexation of CVC inclusions to account for real-world consumer demand. Data usage has continued to outpace CVC inclusions entrenching the challenge faced by Vocus of providing affordable broadband to price-sensitive consumers. Moreover, the significant risk of this increasing consumption continues to be borne by RSPs.

NBN Co's proposed modified entry-level bundle does not allow us to provide ADSL-equivalent entry-level plan. Accordingly, substitution of mobile or fixed wireless products for NBN broadband services will continue to grow, as RSPs seek better margins than available in reselling NBN.

Vocus is concerned that NBN Co's pricing-related proposals will likely inhibit efficient competition, customer choice and increase incentives for access seekers to explore product and pricing options with competing networks.

### ***Consumer experience & fairness***

NBN Co's proposals concerning wholesale service standards do not adequately recognise that RSPs bear considerable financial risk and responsibility to manage our customers' expectations and provide a good consumer experience. RSPs should not be required to pay for services at a wholesale level when our customers are not receiving what they paid for.

The service level rebates need to be clearly structured to enable Vocus to manage our customer relationships and expectations.

Definitions in WBA4 of events and associated charges around activation and assurance should specify that NBN Co should not charge RSPs when there is no dataflow or unacceptable data flow. What is “unacceptable” should be linked to actual customer experience impact in addition to any measurement criteria.

## Part A - NBN Co’s access pricing proposal

*The proposed mELB does not enable Vocus to provide ADSL-equivalent entry-level plans*

NBN Co has proposed access arrangements that would improve the value of its entry-level product: the modified entry-level bundle (‘mELB’). The proposed price-related terms for the mELB represent an initial reduction of \$1.50 per month below the prices that would otherwise apply on commencement in December 2020. This reduces by a further \$2.20 per month in May 2021 before remaining steady over the remainder of the two-year term of WBA4<sup>1</sup>.

Vocus welcomes NBN Co’s price reduction. However, NBN Co needs to go further and offer a wholesale product at the same cost as comparable ADSL products, to ensure legacy customers are no worse off when migrating to NBN.

The proposed mELB does not enable Vocus to provide ADSL-equivalent entry-level plans: there is not sufficient CVC included. NBN Co’s entry-level product should include sufficient CVC to address average user requirements as they exist today and projected requirements up to the end of 2022.

Vocus disagrees with the statement in the consultation paper that “... an access seeker could increase its CVC provisioning by 20 per cent per annum without increasing its nominal cost per service”. This analysis appears to overlook that RSPs must pay overage over and above the inclusion once it reaches the \$35 price point. For example, assume a dodo customer on a NBN12 plan only used the included bandwidth. The mELB cost would increase by approximately ~\$0.28 per month until the next CVC increase. Accordingly, even from the outset, RSPs will be required to pay more than \$35 given the demand that NBN12 customers generate on the network.

*NBN25 speed tier should be the entry-level tier*

Vocus submits that focusing on NBN12 as an ‘anchor’ price point for higher speed tiers is not appropriate given the higher speed that many ADSL customers experience today. NBN Co’s 12Mbps speed tier product is more appropriate for voice-only products and the subset of consumers who have low data requirements.

If the policy objective is to meaningfully bridge the digital divide, then the NBN25 speed tier should be priced as the ‘entry-level speed tier’. The need for affordable broadband does not equate to low data usage requirements. Vocus wants to sell products that meet our customers’ needs, so they can enjoy the many benefits that connectivity brings. It is highly unlikely that Vocus will offer a mainstream NBN12 product based on NBN Co’s proposed mELB product that will provide an equivalent price and experience to ADSL products.

At this stage, Vocus is unlikely to change from our current position of NBN50 being our ‘hero’ unlimited data product. It provides a better customer experience at a very similar wholesale price to NBN25 plans. Given NBN Co’s current pricing, we cannot sufficiently differentiate NBN25 and NBN50 plans when the variation is \$2 in wholesale cost (\$43 vs \$45 for 2mbps included CVC), and our customers would expect at least a \$5 to \$10 difference in retail pricing between these two speed tiers.

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<sup>1</sup> See table 1, page 10 of the [consultation paper](#).

### ***Greater certainty over price-related terms***

NBN Co's proposed commercial offer includes a series of measures intended to provide greater price certainty over time, including:

- The mELB offer will not be withdrawn over the term of WBA4, and any other TC-4 bundle product could not be withdrawn except after consultation with industry and giving 12 months' notice. Further NBN Co must provide access seekers with a replacement proposition offering at least equivalent value to the withdrawn bundle product.
- NBN Co will introduce a 2-year pricing roadmap that would set out maximum effective Access Virtual Circuit (AVC) and overage charges, and minimum CVC inclusions, for each of its TC-4 bundle products for at least a two-year period. The roadmap will be updated so that it never provides less than 12 months forward visibility. The annual review cannot unwind price caps and CVC inclusion floors.
- The proposed pricing roadmap would fix the CVC overage charge at \$8/Mbps over the WBA4 term, thereby mitigating the risk that additional CVC would be charged at up to \$17.50/Mbps, which is the maximum price that would be available under NBN Co's Special Access Undertaking (SAU).
- The Discount Credit & Rebate (DCR) List will be incorporated into WBA4, with standard rules around variation, withdrawal, suspension, introduction and extension rules for its various discounts, credits, rebates and waivers.

Vocus welcomes the additional certainty from NBN Co and looks forward to reviewing NBN Co's pricing roadmap. Vocus also welcomes the Discount Credit & Rebate List being incorporated into WBA4.

### ***Simplifying access terms that made it difficult to predict likely costs from month to month***

The proposed access arrangements provide for the simplification of the mELB offer via its realignment with the ELB product pricing from May 2021. This will mean that access seekers that supply limited-quota basic-speed broadband plans will no longer need to closely monitor network utilisation by those specific end-users or risk facing unexpectedly high access charges.

Vocus welcomes any move toward simplification from NBN Co. However, for the reasons highlighted above, Vocus is unlikely to offer a mELB product.

### ***Reducing and standardising charges that are imposed when services are transferred***

The proposed access arrangements include a \$5 charge for service transfers and reversals. Vocus welcomes NBN Co's proposed reduction in the service transfer fee to a \$5 charge. As Vocus previously submitted, NBN Co should not benefit from a customer's choice to switch retail providers.

## Part B – NBN Co’s service standards proposals

### ***Failed connections***

NBN Co’s proposal include a new Failed Connection Rebate designed to refund the recurring wholesale charges for new service never worked (NSNW) connections on a pro-rated basis for the period until the fault is rectified. This should ensure that NBN Co is not charging for new services that are not actually functioning.

Vocus welcomes NBN Co’s proposal. NBN Co should only begin charging for a service after conducting appropriate testing to ensure installation activities are successful. To meaningfully assess how this proposal will work in practice, NBN Co needs to clearly explain:

- The definition of “fault rectified” - is a fault rectified at the point of data flow or when NBN Co clears the fault as “resolved”?
- The defined testing parameters to understand if a connection is failed or NSNW.

### ***Delayed connections and unresolved faults***

NBN Co’s proposal include rebates that accrue daily (subject to rebate caps):

- For delayed connections the daily rebate is \$7.50 per business day for non-priority assistance customers and \$10 per business day for priority assistance customers, capped at 30 business days.
- For unresolved faults the daily rebate is \$15 per business day for non-priority assistance faults and \$20 per business day for priority assistance faults, capped at 60 business days.

NBN Co has proposed to extend rebate eligibility to AVC TC-2 services designed for business applications, in addition to residential grade AVC TC-4 services. NBN Co would also apply rebates automatically, without the need for RSPs to submit claims where NBN Co misses a service level.

Vocus welcomes NBN Co’s proposal to move from a flat rebate structure to a rebate that accrues daily. The proposed rebate caps do not appropriately incentivise NBN Co to promptly resolve issues and are not aligned with our customers’ expectations. NBN Co should continue to pay the rebate until the unresolved fault is rectified.

However, to meaningfully assess how these rebates will work in practice, NBN Co needs to clearly explain:

- At what stage of a delayed connection or unresolved fault does the rebate start?
- Why are the rebates for delayed connections and unresolved faults not the same? (The end result for a customer is they do not have a working service.)
- How does the rebate work in the case of a repeat fault? For example, where a fault has been rejected by NBN Co and raised again by Vocus as unresolved. In this scenario, when does the rebate start?

### ***Missed appointments***

NBN Co’s proposal includes a missed appointment rebate of \$50 for the first missed appointment, and \$75 for each subsequent rescheduled missed appointment. NBN Co proposes to reduce this amount by 50 per cent where it attends the appointment on the same day with the end-user’s consent, despite missing the appointment window for the service level. NBN Co will pay the rebate automatically without requiring the RSP to submit a claim for it.

Vocus submits that the missed appointment rebate should be at least \$75. The amount of the rebate needs to be closer aligned with the cost and inconvenience to our customers when an appointment is missed and provide a strong incentive on NBN Co to improve consumer outcomes.

## ***Underperforming service speeds***

### *Speed performance information*

NBN Co's proposal includes providing a daily line rate report and weekly speed reports available to RSPs through its 'service health' platforms and application programming interfaces to help RSPs manage service speeds post connection. This creates a Historical Supported Speed and a minimum assured speed which is then available for subsequent connections on the line at the time an RSP runs a service qualification prior to placing a new connection order.

Vocus welcomes NBN Co's proposal to provide this speed performance information.

### *Speed performance rebate*

Under NBN Co's proposal a speed performance rebate is not payable where the RSP knows at the time of order the maximum speed the line is capable of, as well as the minimum assured rate.

However, where speed performance information is not available to the RSP via NBN Co's service qualification system at the time of placing a connection order, or that information proves to be inaccurate, NBN Co will provide a once-off \$20 rebate to the RSP if the line achieves lower than 50 per cent of the high end of the 25-50 Mbps or 25-100 Mbps bandwidth profiles selected by the RSP. NBN Co proposes to provide a rebate on a once-off basis for the purpose of compensating the RSP for their costs of managing the customer in accordance with the ACCC Broadband Speed Claims Guidance.

Vocus highlights that NBN Co should be responsible for the speed and performance of its wholesale product and not charge for services that it does not provide.

Vocus is concerned how NBN Co will handle speed performance rebates in practice. Vocus submits that a flat rebate of \$20 for each month that the service's speed is underperforming is insufficient. A tiered approach should be taken so that higher speed tiers receive a higher rebate to appropriately compensate customers who are not getting what they paid for.

### *PIR Objective rebate*

NBN Co has proposed a graduated rebate for each month the service achieves less than the PIR Objective (downlink), depending on the number of months the service has been in remediation. This rebate is proposed as \$10 for months 0-3, \$15 for months 4-6 and \$20 per month after 6-months, backdated to the time the trouble ticket that initiated the remediation process was acknowledged.

Vocus welcomes automatic application of a rebate for services that are in remediation. NBN Co needs to clarify if a customer could be eligible for both the PIR Objective rebate and the speed performance rebate.

## ***Service information and operational matters***

### *Availability of operational service information*

NBN Co's proposal includes a commitment to provide RSPs with service level activity outcomes and exclusion data and reporting via the Service Portal and business-to-business APIs.

Vocus welcomes NBN Co reducing some of the operational complexity of the activation process. NBN Co should also promptly provide RSPs with updates concerning any changes or planning changes to activation processes; provide real time reporting of issues or delays in the provisioning of services, including missed appointments to assist RSPs in providing our customers with a good consumer experience. NBN Co should provide this information in one portal so RSPs do not have to go to numerous sources to review NBN Co service information.

### *Reporting of service level metrics*

Vocus welcomes that NBN Co has proposed to adopt all changes proposed by the ACCC concerning reporting of service level metrics (except where aggregating reporting results in NBN Co disclosing confidential information of an RSP).

### ***Fixed wireless***

NBN Co proposes to commit to providing fixed wireless backhaul reporting on a similar basis to the voluntary reporting it has been providing for the past year. In respect of its congestion reporting, NBN Co proposes that WBA4 terms allow for the development of an improved metric. It has also flagged that it is investigating the provision of granular, regularly updated visibility of actual service performance to RSPs.

NBN Co's proposal includes a rebate of \$20 for each month that an Ethernet (Wireless) AVC TC-4 product is persistently congested during that month. Vocus submits that a rebate of \$20 is not sufficient to meet consumer expectations. There should be a scaled approach, where the customer receives a higher rebate for each month the cell is persistently congested.

Vocus remains concerned about NBN Co's fixed wireless products. Technical issues are still to be remediated and further investment needs to be made in upgrading these services rather than displacing issues onto RSPs.

### ***Consumer safeguards***

#### *Adapting to new or changing consumer safeguards*

NBN Co has proposed to provide RSPs with a contractual commitment to conduct a four week consultation period with RSPs concerning potentially changing the WBA if a regulatory event occurs and the RSP identifies that they cannot comply with an obligation imposed under an applicable law as a result of a regulatory event and comply with the WBA, unless the WBA is changed.

Vocus welcomes this commitment from NBN Co to consult with RSPs if there are new or changing consumer safeguards.

#### *Pass-through of wholesale rebates to consumers*

As part of the enforceable undertaking accepted by the ACCC, NBN Co introduced a requirement that RSPs take reasonable steps to ensure that affected end-users receive a fair value benefit (in a monetary or other form) of those rebates paid to RSPs (the 'pass through' requirement).

NBN Co's proposal would require the full pass through of missed appointment rebates.

Under NBN Co's proposal RSPs would also be required to pass-through the fair value benefit of the following rebates:

- the connection rebate,
- the failed connection rebate,
- the service fault rebate,
- the PIR Objective rebate, and
- the wireless speed performance rebate.

Vocus welcomes NBN Co's proposal to consult with RSPs to develop guidance on what constitutes 'fair value' pass-through.

How Vocus will pass through a benefit to consumers will in part depend on NBN Co's operational processes and information flows concerning these wholesale rebates. For example, RSPs need real or near real-time notification from NBN Co that we will receive a wholesale service level rebate. In this digital world, our customers, especially those running small businesses or working from home, expect us to have access to this information.

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