06 September 2023

ACCC
By email: nbn@accc.gov.au

Re: NBN Co SAU Variation (August 2023)

We thank the ACCC for the opportunity to provide X Integration's (XI) perspective on the most recently proposed variation to the NBN Co Special Access Undertaking (SAU).

XI is an access seeker on the NBN network and is directly connected to all 121 POIs. We primarily provide residential services through our challenger consumer brand, Leaptel. We also provide further residential services on non-nbn Superfast Broadband Access Service (SBAS) networks, which is presently awaiting the finalisation of this SAU process to allow the conclusion of final access determination for SBAS networks.

The extended timeline for the SAU process has had material implications for XI, much like the rest of the telecommunication industry. The ongoing uncertainty around service standards and pricing has made it difficult to proceed confidently with future plans on the NBN network.

We note the ongoing commitment of all parties but particularly NBN Co, the ACCC and industry, to finalise the SAU process while recognizing the importance of engagement and consultation to allow an SAU to be formulated that could reasonably be supported by all parties and accepted by the ACCC.

Therefore, XI **supports** the adoption of the August 2023 SAU variation. NBN Co has made significant modifications to its original variation lodged in March 2022, and further improvements from the November 2022 variation.

Focusing on the changes since the November 2022 variation, we approve of the move to a floor and ceiling implementation for bundled TC-4 offerings. By capping the pricing of TC-4 services at $55, as per the feedback from the ACCC and industry in response to the previous variation, NBN has constructed a mechanism that will ensure a greater degree of price certainty for RSPs when offering bundled TC-4 services. While we acknowledge the implementation of a floor price is a change some oppose, the modeling provided by NBN Co on this was instructive and convincing.

For challenger brands such as ourselves, the floor and ceiling implementation will soften the transition out of the overage waiver that NBN Co. At present, when the overage waiver is exceeded, it can create a CVC price cliff that drastically increases costs for challenger brands that have yet to achieve economies of scale. The floor and ceiling approach will minimize the impact of this transition by capping prices. This will help level the playing field for challenger brands.

We do note that NBN Co has not committed to the exact value of the overage waiver in the SAU but has committed to having one in WBA5. In the WBA5 the value has been set at present at 700Mbps and we believe based upon our modelling that this will be a suitable amount for challenger brands to achieve economies of scale prior to having to start paying overage on bundled TC-4 services.

NBN Co is actively addressing concerns from the industry about the pricing of the Network to Network Interface (NNI) service. We acknowledge the significant strides made in NBN Co's pricing structure, and are especially pleased with the rollout of the NNI 10G Starter Offer from 1 July 2024, which supports challenger brands and promotes a more equitable market. We remain hopeful that NBN Co's pledge to review NNI Pricing by 30 June 2027 will incorporate an impartial evaluation of the NNI service charges. Despite the improvements by NBN Co in the latest SAU variation, we believe the costs for the 10G and 100G ports remain high. Nevertheless, considering the advancements, we are inclined to back the SAU variation, even with our ongoing reservations about NNI pricing.

Apart from the recent changes in pricing, NBN Co has pledged to enhance service standards throughout its network. They have adopted service level standards consistent with the WBA5 process, a notable improvement from the lesser standards of WBA4. Additionally, NBN Co will seek opinions from access seekers and share their insights on its yearly service enhancement strategy and performance evaluation. Even though the service improvement strategy is not obligatory, it sits within a competitive broadband landscape where any failure by NBN Co to uplift its service standards could harm its reputation. Beyond the improvement plan and the SAU, the continued project to replace the FTTN/C network with fibre is expected to resolve many prominent fixed line service challenges.

NBN Co has also addressed concerns raised about the post-2032 regulatory framework that has addressed the concerns raised regarding the November 2022 variation. The new framework will give the ACCC a greater role in the transition to a new replacement module and help ensure that the new framework avoids price shocks for industry and consumers. We feel the new framework balances this need with NBN Co's requirement to maintain its credit rating objective.

Overall, we strongly believe that it is in the long-term interests of end users that the ACCC accept this August 2023 NBN Co SAU Variation. NBN Co has constructed a variation that balances its own commercial requirements alongside the need for industry and consumers for a national broadband network that delivers price and quality certainty.

In doing this, it is important to consider the proposed SAU variation in contrast to the current NBN pricing and operational environment that the current regulation has delivered. Under the current CVC/TC-4 bundled regime, RSPs are wedged between consumer's varying and increasing usage demands, and a pricing module that charges based on usage that RSPs cannot control. The outcome has been price uncertainty for RSPs and more importantly, variable service standards for consumers delivered entirely by an artificial pricing construct.

By moving away from the CVC model, albeit not fully until FY26, NBN Co is dispensing with a system that has failed all parties. It has resulted in consumers paying for speeds that they often have not received and caused immense reputation harm to NBN Co and to the telecommunications industry in Australia. The CVC model has also artificially constrained the broadband speeds available to consumers by inflating the cost of higher speed plans beyond the consumer will to pay for them. Building a revenue model that allows CVC to be removed is a massive improvement for all parties and should allow NBN Co to encourage take-up of higher broadband speeds in conjunction with its fibre upgrade program.

By moving to a model of annual price rises outlined in the three year roadmap, industry no longer has to choose between sacrificing revenue or sacrificing service quality. This is in the LTIE of end users because when they are assessing the offerings of RSPs, the speeds advertised on the plans will largely be reflective of the speeds they receive.

While annual price increases will be a significant change to the fixed line telecommunications market, and there may be consumer discontent, ultimately these increases are in the LTIE. It is only with continued investment in the NBN network that the network can be maintained. Without increases in revenue, it will be difficult for NBN to continue to make the capital investments necessary to ensure its network meets the needs and expectations of consumers into the future while also paying for the historical cost of building the present network.

With the annual price increases in this SAU variation, NBN Co will now be able to confidently assess its revenue growth, allowing it to efficiently invest in the NBN network to allow it to provide the high-quality broadband services that it was established to provide. This is overwhelmingly in the LTIE.

We again thank the ACCC and NBN Co for their commitment to the SAU Variation process and reiterate our view that this variation be accepted.

Kind Regards,

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