

1st September 2022

NBN Co
Via: Product Development Forum

Re: RMID1064 - SAU Variation Discussion Paper - August 2022

ACCAN thanks the NBN for the opportunity to comment on the *SAU Variation: Proposed changes* discussion paper. ACCAN is supportive of NBN's decision to withdraw the March Variation and submit a new Special Access Undertaking (SAU) variation. The direction of the proposed changes put forward in the discussion paper is certainly on the right path and we look forward to continuing to engage with NBN throughout this process to ensure that NBN's future regulatory framework meets the needs of consumers.

Pricing construct and price controls

ACCAN is pleased to see NBN has proposed transitioning away from CVC charges on all services by 2026. This will work towards minimising the potential of unexpected price increases due to surges in network usage, improving the overall certainty of wholesale prices. NBN has proposed this transition occur over the next four years, with the price of CVC eventually decreasing to \$0. ACCAN notes that the largest decrease in price occurs at the end of the transition period and we would encourage NBN to explore ways in which this price decrease could be brought forward.

We are supportive of the price levels to be introduced in June 2023 for the high speed tiers (100 Mbps and faster services). However we are concerned that price decreases on high speed services are at the expense of increased prices for slower speed tiers. Indeed the majority of consumers purchase services with download speeds of 50 Mbps and slower,¹ so it is imperative that the prices of these services are fit for purpose. Comparing the prices put forward in the latest discount roadmap,² both the 12 Mbps service and the 50 Mbps service will have higher monthly costs with less CVC inclusions. Whilst we are aware that the switch to CVC utilisation based billing will mitigate some of this effect, we remain concerned regarding the affordability of these services and we are opposed to any proposals that result in real price increases of the 12 Mbps, 25 Mbps and 50 Mbps speed services upon acceptance of the SAU. We recommend that the NBN consider alternative price levels with a greater focus on reducing the cost of speed tiers of 50 Mbps and below.

¹ ACCC, 2022, *NBN Wholesale Market Indicators Report June quarter 2022 report*, <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report/june-quarter-2022-report>

² NBN Co, 2022, *WBA4 TC-4 Bundles Discount Roadmap* <https://www.nbnco.com.au/content/dam/nbn/documents/sell/wba/2022/wba4-tc-4-bundles-discount-roadmap-20220628.pdf>

A key concern for ACCAN of the previous SAU variation was of price certainty, particularly for the entry level service. The Weighted Average Price Cap (WAPC) with appropriate side constraints will be able to address these concerns. NBN has proposed that the WAPC may increase at CPI prior to NBN achieving its Core Services Annual Building Block Revenue Requirement. There is a question as to the appropriateness of use of CPI, but without a clear link to prices at this point, using CPI to reflect NBN's costs may be the next best alternative prior to NBN's forecast revenues meeting its allowable revenues.

ACCAN considers that the individual sub-cap price control of CPI on the entry level service is necessary to create pricing certainty. Furthermore we consider the mechanism of the sub-cap price control appropriate and recommend that the NBN utilise a 5% rather than 10% range to provide greater certainty regarding future price changes. In addition, ACCAN is supportive of the 7 proposed pricing principles which NBN must have regard to when changing prices or setting new prices and must state how it has done so in an annual pricing roadmap.

Framework for efficient cost recovery and inclusion

In principle, ACCAN supports the adoption of a WAPC as the key form of price regulation, as it will incentivise NBN to maximise revenue through increasing take up of services. A key question will be whether the Building Block Model and Core Services ABBRR, as inputs into the WAPC, are appropriate and we look forward to seeing more detail in this regard.

Initial Cost Recovery Account (ICRA)

ACCAN supports NBN's proposed treatment of the ICRA. NBN has proposed to adjust the ICRA to allow NBN the opportunity to earn revenues in excess of the Annual Building Block Revenue Requirement (ABBRR) sufficient to achieve a standalone investment-grade credit rating with a benchmark gearing level. Furthermore, NBN has proposed that the amount of ICRA that NBN will be allowed to recover in any financial year will be capped as per a method which will be detailed in the SAU, with the goal of ensuring the ICRA recovery will be predictable, constrained and transparent. ACCAN agrees with the principle that the ICRA recovery needs to be predictable, constrained and transparent and we look forward to seeing more detail of this proposal.

Expenditure framework

ACCAN has previously raised concerns regarding the scope of the expenditure assessment framework originally proposed in the March Variation.³ Therefore we support the proposal to redefine the definitions of prudence and efficiency, as well as amend the expenditure objective regarding 'compliance with regulatory requirements' such that it does not include compliance with Government policy or other Government directions issued to NBN. It is in the consumer interest that any Government led projects are explicit via legislation or regulation as this will allow for greater transparency regarding the extent to which Government policy impacts consumer prices. In addition, ACCAN is pleased that NBN has proposed that the SAU would not contain a specific requirement that the ACCC undertake a financeability test.

³ ACCAN, 2022, *Submission to the ACCC: Proposed Variation to the NBN Co Special Access Undertaking* <https://accan.org.au/accans-work/submissions/2001-proposed-variation-to-the-nbn-co-special-access-undertaking>

Service standards

ACCAN is supportive of the proposal to include in the SAU a mechanism in which service standards and rebates will be proposed for each regulatory cycle as part of the Replacement Module Application, and for the service levels offered in the Wholesale Broadband Agreements (WBA) to be no worse off than the regulated benchmarks included in the SAU.

ACCAN considers that a safety net of wholesale obligations to deliver minimum standards regarding timeframes for faults and repairs, new connections and appointment keeping is needed and should be set out within the SAU. The service standards and associated rebates for the first regulatory cycle should be more ambitious than those set out in WBA 4. As discussed in ACCAN's submission to the March variation, service quality issues are one of the key problems consumers raise with ACCAN and this is reflected in the proportion of complaints to the TIO related to reliability issues.

We are aware that improvements to service standards can be costly, yet poor reliability costs consumers in time and productivity, particularly with increased work from home arrangements. Additionally poor service costs small business through loss of revenue when EFTPOS is down, and online channels don't work. Furthermore, poor reliability costs RSPs who must deal with the increase in call volumes to customer support and associated TIO costs. Lastly, inadequate reliability costs NBN due to a poor reputation and as consumers disconnect from the network due to dissatisfaction. It is for these reasons that we urge the NBN to consider ways in which service quality can be improved beyond the levels stated in the WBA4.

The timeframes established under the Customer Service Guarantee (CSG) provide a good basis for consumer expectations when it comes to telecommunications reliability, yet currently only covers standard telephone services. ACCAN recommends NBN establish timeframes for service standards which will allow retailers to meet the timeframes set out in the Customer Service Guarantee. Additionally, compensation amounts should also be set in line with the current CSG.

Setting wholesale service standards in line with the CSG would ensure that as an industry, consumer protections do not regress as we move from traditional forms of communication to digital channels. For example, NBN's WBA 4 allows for 9 business days to connect a premise in an urban area that has a fixed line network connection but needs premises equipment installed (i.e a network termination device).⁴ Whilst the CSG requires telcos to connect a consumer living in an urban area to a brand new fixed line phone service within 5 working days.⁵ Should NBN miss its 9 business day timeframe for connection, a rebate of \$7.50 per day, capped at a maximum of 30 rebate days is payable to RSPs. Under the CSG, consumers can expect \$14.52 of compensation per working day, after 5 days this escalates to \$48.40 per working day where connection timeframes are missed. Arguably consumers are now more dependent on broadband than fixed line phone given the plethora of applications that utilise the internet, and service standards need to reflect the essential nature of the service, as such, incentives for NBN to meet these expectations need to be appropriately set.

Additionally, benchmarks for meeting timeframes must be set to 95%, as it is not reasonable that NBN can miss 1 in 10 appointments, or fault rectification timeframes without triggering any

⁴ NBN Co, *Wholesale Broadband Agreement 4 Service Levels Schedule*, <https://www.nbnco.com.au/content/dam/nbn/documents/sell/wba/2021/sfaa-wba-nbn-ethernet-service-levels-schedule-20210505.pdf>

⁵ ACMA, *Customer Service Guarantee*, <https://www.acma.gov.au/customer-service-guarantee>

corrective measures. The absolute number of missed appointments or missed fault rectification timeframes will be significant and unacceptable under the proposed benchmarks.

NBN has invested significantly in upgrading the network and therefore we would expect the improved service brought about by the upgrades to be reflected in greater service standards and benchmarks. Furthermore, as NBN moves from the build stage into operational business as usual, we would consider that fewer new connections will be required, allowing NBN to meet requirements with less resources than previously. Discussions regarding service levels, associated costs and the trade-offs involved need to be open and transparent so that a co-design approach can be taken, which will ultimately result in greater consumer satisfaction. ACCAN considers that it would be useful for NBN to make public how well it has been meeting all WBA 4 service standards and benchmarks to allow for a comprehensive review regarding which areas of greatest consumer detriment need to be addressed.

ACCAN is supportive of the proposal that if the ACCC does not accept the benchmark service standards and rebates that NBN has proposed as part of its Replacement Module Application, then the ACCC will have the powers to set alternative service standards and rebates. Additionally we support the mechanism which would allow benchmark service standards to be reviewed during a regulatory cycle if changes were made to consumer safeguards and retail-level regulation in order to support retail service level obligations should they be set. Regarding network performance reporting, ACCAN is supportive of this being established through Record Keeping Requirements (RKR) set by the ACCC. Having the ACCC set a RKR would allow for greater flexibility in the reporting requirements and would allow for comparison between networks should the RKR capture competing broadband networks.

ACCC role and reserve powers

ACCAN supports the proposal that the SAU will confer additional powers to the ACCC in matters regarding the WACC methodology, benchmark service standards and rebates and NBN's Cost Allocation Manual. Additionally, powers to review material changes to NBN's price structures appears sensible however more detail on how this mechanism would work in practice is needed, including what would be regarded as a 'material change'. The drafting of this proposal will be important such that it doesn't diminish the regulatory certainty in which the SAU is intended to provide the industry.

NBN has proposed that from 2032 the ACCC conduct a review and reset of NBN's revenue and pricing regulation framework, subject to the existing propose-respond framework of regulation. ACCAN considers that it is good practice to review the regulatory framework in order to account for any unforeseen circumstances. We question whether the propose-respond framework will be the most efficient way in which this review could be conducted, in that it could be adding additional unnecessary steps into the process.

ACCAN supports the proposal for the expiry of the SAU before 2040 should the network be privatised. NBN expects that the regulatory arrangements following expiration of the SAU triggered by privatisation will be informed by the processes set out in Part 3 of the *National Broadband Network Companies Act 2011 (Cth)*. Part of this process will involve the Productivity Commission carrying out an inquiry. The inquiry and resultant report must have regard to factors including, but not limited to, equity of access to broadband, competition, degree of market power, the need to

maintain, replace and upgrade technology and retail prices of services supplied over the NBN. This inquiry will be beneficial in setting NBN's post-privatisation regulatory arrangements.

Other areas of industry concern

Outages

NBN has proposed to create a working group to address concern regarding the volume of outages, specifically focusing on the notification process, context for emergency outages and consideration of the planned maintenance window. ACCAN supports NBN's efforts to work collaboratively with industry in order to create resolutions which benefit the consumer. That said, the timeframe for any material improvements from this process will exceed the SAU acceptance, meaning that improvements cannot be embedded within the SAU at this time.

ACCAN understands that a key pain point regarding planned outages is due to not being notified with sufficient time prior to the outage so that the consumer can make alternative arrangements, yet NBN should be providing at least 10 business days' notice of a planned outage. More immediate improvements should be sought through firstly making metrics on how often NBN meets its notification timeframes for planned outages publicly available. Secondly, NBN needs to be incentivised to meet the notification timeframe for planned outages. This could be achieved through a rebate payable to RSPs and passed onto the affected consumer where the timeframe is missed, in addition to outages being classified as unplanned where timeframes are missed. As the Network Availability metric excludes planned outages, it is vital that planned outages are appropriately defined. Therefore, we consider a planned outage should only include those which meet the notification timeframe.

Dropout threshold

ACCAN is acutely aware of the frustration felt by consumers who experience consistent dropouts yet not severe enough to warrant remedial action by NBN. Consumers find it difficult to understand the distinction between what constitutes a Performance Incident and a Fault, as from the consumers perspective, they know that the service is not meeting their expectations and they need the issue to be resolved. Indeed, this confusion and lack of perceived action from the network adds to the frustration already experienced. We recommend changing the Performance Incident threshold such that if 1 or 2 dropouts occur in a 24 hour period and the RSPs raises a trouble ticket then NBN will investigate and seek to improve the performance of the service. Where a consumer experiences 3 or more dropouts within a 24 hour period, then this would constitute a fault and NBN must undertake assurance activities.

We are aware that NBN must find a balance between prioritising faults and serious performance incidents rather than transient issues. We consider that more visibility regarding this issue would assist in addressing the issue such as making available the number of services experiencing Performance Incidents and Faults, and to what extent does NBN take corrective action in each instance? Understanding the scale of the issue will further assist ACCAN in our assessment of what the appropriate course of action is as part of the SAU process.

Utilisation management commitment

ACCAN shared the concerns with industry regarding the proposed utilisation management commitment in the March Variation and we support the NBN to consider the feedback provided as they consider what reasonable amendments should be made.

Low income consumers

ACCAN was disappointed to understand that NBN has retained its proposal from the March Variation to address affordability concerns through hosting a low income forum for the first two years of the SAU. ACCAN maintains the position that the SAU should contain a broad obligation for NBN to introduce targeted measures which improve the affordability of its services for low income consumers. The service or services NBN introduces should be approved by a low income committee, made up of consumer representatives and representatives of organisations working directly with low income households.

That said, we are not opposed to the proposal of NBN hosting a low income forum as there is merit to taking a more holistic approach to meeting the needs of low income consumers in getting connected and staying connected to the network, given the numerous and conflating barriers to getting online. This could be achieved via a low income forum that brings together industry stakeholders, not-for-profit groups, consumer advocacy groups and government agencies, in addition to an obligation for NBN to introduce a targeted service. ACCAN recommends that the forum is held once a year until 2032, rather than just in the first 2 years of the SAU taking place. The outcomes of the forum should be publicly conveyed. As part of the ACCC's review of NBN's revenue and price regulation framework in 2032, the outcomes and effectiveness of the low income forum and targeted measures should be assessed.

Data capped plans

ACCAN welcomes NBN's consideration of how to continue to service consumers who would like to continue purchasing data capped plans. In considering the design aspects of such a service, ACCAN considers that it is important that where a consumer meets their data capped, then the service is at best shaped, or alternatively stopped. We would be opposed to a situation where consumers purchasing this service exceed the data limit and are then charged extra for exceeding the limit. As mentioned in the discussion paper, the service appeals to consumers who are budget conscious and therefore safeguards should be in place to not disadvantage consumers who choose this service. ACCAN cannot say what the most appropriate size of cap, or associated pricing should be at this stage however we encourage NBN to work with RSPs, and continue to engage with ACCAN as this service is developed.