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30 May 2023

To: Australian Competition and Consumer Commission

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RE: Draft Decision – Variation to the NBN Co Special Access Undertaking

INTRODUCTION

Thank you for the opportunity to express the Internet Association of Australia's (**IAA**) perspective on the ACCC's Draft Decision on the variation to the NBN Co Special Access Undertaking (**Draft Decision**).

As a member-based association representing Australia's Internet community, IAA has been actively involved in the SAU variation process. Our membership is largely comprised of small to medium sized internet service providers (**ISPs**) and retail service providers (**RSPs**), many of whom are access seekers to the NBN Co network. Our response is primarily in representation of these members, as well as for the public good of the Internet and the Internet and telecommunications industry more broadly.

IAA supports the Draft Decision to reject the variation to the NBN Co SAU submitted in November 2022 (**November 2022 SAU**). However, we disagree with some matters the ACCC have indicated it finds to be reasonable, and acceptable. In our response to the November 2022 SAU, we noted our concerns particularly with regards to the pricing of the 50 Mbps service, uncertainty surrounding NNI charges and services for low-income consumers, and service quality and standards. We appreciate the additional information provided by NBN Co with regards to NNI pricing and service quality. However, we are not convinced that this is enough to provide certainty or assurance to RSPs, and therefore consumers, that the SAU is fit for purpose. Therefore, IAA does not believe that

the SAU variation would be acceptable even with the additional changes proposed by NBN Co in response to the Draft Decision.

OUR RESPONSE

PRICING

We reiterate our concerns about the 12 Mbps (broadband) and 50 Mbps services, which the ACCC has indicated it considers reasonable in its Draft Decision.

We do not consider that concerns over the increased pricing to the 12 Mbps broadband service has been appropriately addressed. We appreciate that in its 24 March 2023 letter to the ACCC (**March letter**), NBN Co expressed that it will change the requirements of the Voice-Only Bundled Offer to allow for some basic broadband usage. However, we note that this does not materially address the increased cost to what is the current entry level broadband service as the existing structure of the service will remain.

Thus, the increase to the 12 Mbps broadband plan will still mean a disproportionate effect on low-income disadvantaged consumers. As Australians become increasingly reliant on the Internet, ensuring that everyone has access to the Internet is a pivotal part of NBN Co's establishment and purpose. This is of further concern as the Low-Income Forum has not yet convened. Although we understand that NBN Co has committed to establishing the Forum, this in and of itself does not provide any assurance as to how low-income disadvantaged consumers will be suitably and appropriately serviced.

IAA understands that the ACCC has taken the view that the \$5 increase in the minimum charge for the 50 Mbps service is reasonable and would be accepted by the ACCC. Noting that this is an increase that has been opposed by both RSPs, and ACCAN, we reiterate our concerns expressed in previous submissions regarding the NBN Co SAU variation.

The reasoning provided by ACCC in its Draft Decision for determining the price increase to be reasonable notes the need for NBN Co to have opportunity to recover its costs. We therefore reiterate our feedback from our response to the November 2022 SAU that this suggests the need for greater work between NBN Co and government to resolve these concerns of debt and recovery, rather than pose greater costs for RSPs and therefore consumers.

We understand that NBN Co has expressed its intention to provide additional tools in the form of new APIs and data reporting to assist RSPs identify ways to optimise their costs, which the ACCC has supported. However, we note that the SAU variation process is not happening in a vacuum. With rising inflation rates, and overall increases to Australians' cost of living, the difficulty that RSPs will face in encouraging consumers to transition to the wholesale 100 Mbps is a real concern that must be taken into account. In addition, it is also necessary to recognise that the nbn faces real competition such as from 5G and satellite services which are increasingly becoming more popular and affordable options as consumers are finding ways to reduce their cost of living. The expectation that RSPs will be able to transition customers to the 100 Mbps in light of the current context is not realistic, and we believe this will disadvantage not only RSPs, but also the nbn more generally as Australians opt for alternative networks.

Therefore, we do not agree with the ACCC's determination of the pricing of the 12 Mbps (broadband) and 50 Mbps services as being reasonable.

NNI

We appreciate NBN Co's further efforts with respect to the NNI pricing since the November 2022 SAU, and we welcome the reductions in the monthly recurring charges, for the 10G NNI charges as set out in NBN Co's recent response to the Draft Decision. However, IAA does not accept this proposal overall sufficiently addresses the concerns raised by industry, due to the remaining high cost for NNI activation charges.

We note that in its response, NBN Co cites POI upgrades as the reason for the NNI activation charges. However, it is very unclear as to the justification for this pricing, given that POI upgrades should come from CVC/AVC costs. The high costs for activation, remain out of line, and do not reflect the cost of equipment, even despite the proposed discounts.

We understand that NBN Co has also proposed to provide rebates for 'returned' ports to offset activation charges for upgraded ports. However, it seems that this will not provide great practical benefit in certain cases, such as when RSPs that have multiple lower capacity ports seek to upgrade to a single larger capacity port, due to the 'bundling' arrangement of the ports, the rebate will only be given for one port, rather than for all that are being returned.

Therefore, IAA does not accept the proposed NNI pricing, and request NBN Co to provide further information that justifies the costs set out for NNI activation charges.

SERVICE STANDARDS

We agree with the ACCC's views that the benchmark service standards for the first regulatory cycle as specified in the November 2022 variation, nor the framework for setting the standards are reasonable. We also agree with its recommendations that there should be formal commitments to incorporate RSP feedback into NBN Co's benchmark service standards.

Although we note that in its recent response to the Draft Decision, NBN Co has proposed further service standards enhancements for the first regulatory cycle since the November 2022 variation, we believe that these proposed standards are still not fit for purpose. In particular, we recommend the fault threshold to be set to >5 in a 24 hour period, that repeats for at least 48 hours.

We understand that the proposals are set to levels proposed for the WBA5, for which NBN Co has already conducted some consultation since late 2022. However, we note that the consultations were not conducted publicly, with NBN Co requesting feedback specifically from access seekers and consumer advocacy groups specifically such as via dedicated account managers. We further note that as per its recent response to the Draft Decision, NBN Co proposes to continue to use these avenues (dedicated account management and operational engagement teams, and Product Development Forum) to consult on service standards going forward.

Although IAA understands that there may be legitimate reasons for focusing consultation via these channels, this proposal does not appropriately account for all relevant stakeholders who should be part of the consultation process. For example, the Product Development Forum is limited to customers, access seekers, consumer advocacy groups. Therefore, under this requirement, IAA is

not a PDF Participant and also not an access seeker to have a dedicated account manager, and therefore will not be able to participate in consultations regarding future benchmark service standards. Similarly, IAA has not been a part of the WBA5 consultations so far, including the service standards which have now been proposed to be adopted for the first regulatory cycle.

This poses a disproportionate disadvantage to smaller RSPs who are not able to engage in consultation processes due to their limited resources. Many of IAA members rely on us to make submissions that reflect their perspective for this purpose. Due to confidentiality arrangements, IAA is also limited from engaging in consultations on behalf of our members. We believe that other similar industry associations, or other stakeholders may face similar situations.

Therefore, we recommend that NBN Co broadens its plans for consultations to include other relevant stakeholders.

CONCLUSION

Once again, IAA appreciates the opportunity to respond to the ACCC's Draft Decision on the NBN Co SAU Variation.

We recognise that the SAU variation process has been an iterative process and the latest iteration is a great improvement than when this process first started. With consultations regarding the SAU variation starting in 2021, we note that this has been a long process and appreciate the efforts of all stakeholders involved.

We further note that there is a delicate and important consideration of providing certainty via a finalised SAU variation that can soon be implemented to provide the benefits that are included as part of the variation, as well as carefully deliberating on matters that will have a real impact on RSPs and consumers, and the nbn more generally to ensure a framework that will be fit for purpose, in the long term.

To that end, we are not convinced that the latest iteration, nor the additional proposals provided by NBN Co in response to the Draft Decision sufficiently establishes a framework that will benefit all Australians.

We strongly recommend further consideration of the issues raised in this response to ensure an appropriate SAU, and look forward to further engagement with the ACCC, NBN Co, industry, consumer advocacy groups and other stakeholders to achieve this.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark
Chief Executive Officer
Internet Association of Australia