



Internet
Association
of Australia

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15 December 2022

Australian Competition and Consumer Commission
GPO Box 3131
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By email: superfastbroadbandinquiry@accc.gov.au

RE: Superfast Broadband Access Service – Access Determination Inquiry

INTRODUCTION

Thank you for the opportunity to express the Internet Association of Australia's (IAA) perspective on the Australian Consumer and Competition Commission's (ACCC) draft decision on the Superfast Broadband Access Service Access Determination Inquiry (SBAS Inquiry).

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet Service Providers (ISPs), some of whom are also Retail Service Providers (RSPs) on the Superfast Broadband Access Service (SBAS) network.

IAA have been actively involved in the consultations surrounding the SBAS Inquiry. Since submitting to the ACCC's consultation on its Discussion Paper in December 2021, we have consulted with our membership on this issue. We have thus consolidated our position on some of the issues raised in the SBAS Inquiry since our previous response. Our submission to this draft decision is primarily in representation of the perspective of our members, and for the public good of the internet more generally.

From the outset, IAA broadly supports the ACCC's proposals in its draft determination. However, we strongly recommend the ACCC to expand its regulatory remit in the market to ensure the efficiency, reliability and affordability of the SBAS network. We believe this to be critical to both the long-term interests of end-users (LTIE), as well as RSPs who are on the SBAS network.

SBAS PRICING

REGULATED PRICE COMPONENTS

While we support the ACCC's proposal to regulate the 25/5-10 Mbps and 50/20 Mbps speed tiers, we do not believe this is sufficient. Given the final access determination (FAD) will apply until 28 July 2026, it is important to note that it is widely expected by industry that there will be greater uptake of the higher speed tiers by consumers in the near future. We therefore oppose the proposal that the ACCC only regulate speed tiers up to 50/20Mbps, as this will not protect the LTIE who seek to access higher speed tiers such as, and beyond 100/20Mbps services.

We recommend the ACCC to expand its regulated price components to benchmark all residential TC-4 speed tiers to NBN Co pricing in its FAD. This will provide increased consistency as it reflects the currently regulated services for NBN Co. In addition, this will avoid the FAD from soon becoming redundant and therefore negatively affecting the LTIE as Australia sees an increase in consumer demand for higher speed services.

NON-RECURRING AND ANCILLARY CHARGES

We support the ACCC's proposal to regulate certain non-recurring and ancillary charges. However, we again posit that the ACCC do not go far enough in these measures. In response to the ACCC's specific request for views on network-to-network interface (NNI) service charges and the state-based aggregation service charges, we strongly recommend that these ancillary charges be regulated by the ACCC.

In consultation with our members, we have heard that both charges are indeed above-cost and an impediment to retail competition. In addition, both NNI and the state-based aggregation service charges seem to be unjustified in terms of the true costs associated with the service. Such high fees reduce the number of RSPs that will be capable of selling SBAS services, thereby impeding retail competition. As a result, this is not in the LTIE.

NNI

While the NNI charges set by SBAS providers may reflect NBN Co pricing, we note that NBN Co are currently in the process of starting consultations to address issues surrounding the unnecessarily high costs for NNI. We expect that this will at least partly reduce RSP concerns surrounding the NNI charges.

As such, we strongly recommend the ACCC include NNI charges as part of the FAD, to be benchmarked against NBN Co's NNI service charges. As we can expect NBN Co's NNI charges to decrease in the near future, it is important that SBAS providers be obliged to follow suit. This will provide consistency as well as increase the likelihood of such charges reflecting the true costs associated with the set up and management of NNI services.

State-based Aggregation Service Charge

We understand the ACCC have also specifically sought feedback on whether to regulate the state-based aggregation service charges levied by SBAS providers. Again, we strongly recommend these charges be regulated by the ACCC.

The state-based aggregation service charge has been reported by one of our members as a major issue in servicing customers on the SBAS network due to the high costs involved. We understand that the price of this service has increased by 40% in only 18 months. In addition, this steep increase does not align with increases in any backhaul build and improvement of the infrastructure to justify such costs.

Indeed, one of our members has asserted that the state-based aggregation service charge seems to be an unnecessary levy motivated by revenue building and other operational costs rather than based on SBAS providers' actual need to recover costs for this state-based aggregation service.

Members have reported that the justification provided by Unity indicates that the state-based aggregation charges are being partly used to offset broader business operational costs, rather than covering the state-based aggregation service, for which the charges are nominally intended.

It is further important to consider that Unity does not operate in a vacuum. In the context of the broader SBAS market where Unity has in effect, a monopoly, the implications for RSPs are greater. Since Unity has introduced the state-based aggregation charges, other providers have followed suit. While previously, SBAS providers were absorbing the cost of their aggregation model, this is being pushed on to RSPs, and ultimately, on to customers. It does not make sense that these charges are now levied on top of the access prices - at a flat rate, regardless of the speed tier being provided - and especially where the charges also seem to be used as a way to offset other business operations rather than the services the charges are supposed to be for.

The decision to state-aggregate is part of SBAS providers' business model. As they do not enjoy the same economies of scale as NBN Co, state-aggregation is simply part of their business operations. This should be reflected in the overall pricing construct for services.

It is important also that as these networks are independently operated to the NBN, it requires additional effort for RSPs to join them, hence fewer RSPs offer services to consumers. Barriers such as these additional charges further discourage RSPs from joining, and worsen the options for consumers, and hence competition.

Thus, as per ACCC's draft determination that the RBS levy should be absorbed by the SBAS providers as part of the regulated access prices, the same should apply for the state-based aggregation charges. It is of no doubt that smaller RSPs are ultimately having to push these extra costs to customers, and it is thus not in the LTIE to allow these charges to go unregulated. We therefore strongly encourage the ACCC to include the state-based aggregation charges in its FAD, and undertake a closer review of the charges, to determine whether they are justified and necessary, and if not, determine that the regulated access prices are also inclusive of the state-based aggregation services.

NON-PRICE TERMS AND CONDITIONS

SERVICE QUALITY REPORTING

We strongly support the ACCC's proposal to mandate SBAS providers to provide greater information with regard to its service quality. We reiterate our position from our 2021 submission that it is crucial that RSPs are made aware of an SBAS provider's actual service performance.

The poor quality provided by SBAS providers is a serious issue affecting many RSPs and their end-customers. One of our RSP members reported that outages can last days, with no redress provided by the SBAS providers. For example, Opticomm (owned by Unity) had an outage in Harpley Werribee, Victoria which started 9 December 2022 at 14:30 and lasted until 11 December 2022 at 14:30. Opticomm have told our member that no compensation will be due, despite this outage having affected 152 of our member's services. This is not an isolated incident.

The RSP has had to deal with complaints lodged with the Telecommunications Industry Ombudsman (TIO) due to disgruntled customers despite the underlying issue resting with the SBAS network. Customers have demanded compensation for lost wages where they are unable to work from home, which is a necessity in this day and age. Due to issues with the TIO's own complaints handling model, the RSPs are being blamed for issues outside of their control.

We therefore recommend that SBAS providers be obliged to tell RSPs of the actual service performance, regardless of whether the RSP has requested this information or not. It is imperative

that RSPs and in turn, the end-customer are aware of the actual service quality at time of purchase.

We also recommend that there is a mandate for the quarterly reporting by SBAS providers be made readily accessible and available to the general public so there is greater awareness regarding the service quality amongst customers. RSPs often find that customers are switching between RSPs due to poor quality, despite the fact that it is often only one SBAS provider servicing the area, and thus the performance levels cannot be expected to improve between RSPs where the issue is ultimately with the underlying infrastructure. There should be greater attempt to help customers understand this, and the reporting by SBAS providers may be one way to achieve this. However, it is important that this information is actively passed on to customers in order to achieve this objective.

We believe this will help manage customers' expectations and therefore, frustrations, which will also assist RSPs who are often mistakenly blamed for poor service quality. This will also hopefully encourage SBAS providers to improve their services as awareness grows about their responsibility for poor service quality. Thus, we believe to be in the overall LTIE as well as in the best interests of RSPs.

EXCLUSIONS FOR THE SBAS ACCESS DETERMINATION

IAA have consolidated our position on exclusions for the SBAS Access Determination since our submission to the Discussion Paper. While we view that there may be areas where competition is possible in areas where there are multiple SBAS providers, we do not believe this justifies not applying the standard access obligations in those areas. While competition between providers should be encouraged, there should still maintain a minimum baseline of obligations which should always apply. We reiterate our concerns that inferior service quality may result from the lack of such regulation. SBAS providers should be encouraged to exceed the standards imposed by the obligations, but at the least, should meet such standards, and therefore the imposition of standard access obligations is still necessary.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the Superfast Broadband Access Service Access Determination Inquiry. We broadly support the proposals outlined in the draft determination and view it to be a valuable step in the right direction with regards to the SBAS network. However, as it stands, we are not confident that the ACCC's draft determination will be sufficient to protect the LTIE, nor will it promote competition or efficiency in the industry. We therefore strongly recommend the ACCC to expand its regulatory oversight. We also lend our support to the submission made by X Integration and believe it to provide great context and detail in this matter. We look forward to working with the ACCC, industry and other stakeholders to ensure a fit-for-purpose SBAS Access Determination that will be in the best interest of Australian customers and telecommunications industry.

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