

NBN Co's Wholesale Broadband Agreement (WBA) and Special Access Undertaking (SAU)

NBN Co Workshop Series
Sydney/Melbourne
July 2011

Disclaimer

This document sets out NBN Co's proposals in respect of certain aspects of the National Broadband Network. The contents of this document represent NBN Co's current position on the subject matter of this document. The contents of this document should not be relied upon by our stakeholders (or any other person) as representing NBN Co's final position on the subject matter of this document, except where stated otherwise. NBN Co's position on the subject matter of this document may also be impacted by legislative and regulatory developments in respect of the National Broadband Network.



Jim Hassell

Head of Product Development & Sales

NBN Co

John Sproule

Manager, Industry Engagement
NBN Co Limited

Agenda

**WBA
Development**

**SAU
Background**

**Key elements
of the SAU**

**The Next
Steps**

Q&A

WBA Goals

- Meet the needs of our industry
- Logical structure
- Direct language
- Clear and concise
- Provide long term contractual baseline
- Reasonable and consistent



WBA update

Recap of our Consultation



Process

- NBN Co has to date completed two rounds of public consultation on the WBA, inviting written submissions from interested parties.
- Round 1 respondents were also provided with the opportunity to participate in “deep dive” sessions to assist NBN Co further understand the feedback provided.

Engagement

- 22 formal submissions were received covering a broad spectrum of issues.
- NBN Co has also performed in excess of 100 hours of face to face customer “deep dives”.
- Feedback was provided primarily on exception basis.

Outcomes

- NBN Co was able to gain a much more detailed knowledge of the issues and concerns of the industry in a way that may not have otherwise been possible.
- This knowledge has been used to revise and improve the drafting of the WBA to address the needs of both NBN Co and its customers in what we believe is a balanced and appropriate manner.

Extensive amendments have been introduced as a direct result of industry feedback

What you told us – the common threads

Risk and Liability



The Risk and Liability provisions lacked balance and were inappropriate.

Change Management



NBN Co held too much discretion to change fundamental terms without adequate protection.

Attribution of Blame



Clauses restricting criticism of NBN Co and its operations were inappropriate.

Access To Premises



Premises consents required placed too much burden on NBN Co's customers.

Dispute Management



The dispute process was not truly independent due to the nature of the appointment of both the Resolution Panel and the Advisor.

Documentation



Customers were understandably eager to see documents not made available through the previous consultations.

Linkage to the SAU



Customers wanted more information about the interplay between the SAU and the WBA.

How has NBN Co responded?

Risk and Liability

The contractual module has been redrafted. Issues addressed include:

- The removal of “gross” negligence concept to lower liability thresholds
- NBN Co commitment to maintaining equivalent levels of insurance
- The removal of the reduction of NBN Co’s liability if it fails to recover costs from upstream providers
- Improved customer indemnity provisions

Change Management

Three major protections are now offered:

- Material overarching price and non-price terms and conditions now set out in new Module I
- Lengthy price validity periods set out in the Price Schedule
- NBN Co commitments to provide extended notification prior to any change to core contractual terms

NBN Co's Response (Con't)

Attribution of Blame

Obligation removed entirely

Access To Premises

NBN Co customers now only responsible for acquiring consents from the End User of the premises where the NBN Co service is to be installed

Dispute Management

ACCC has a role in the appointment of the resolution adviser to the dispute management process and the arbitration panel members

Documentation

Additional documents, including the PDF Processes and Product Catalogue will be made available on the NBN Co website this week

Documents now provided

The Product Catalogue contains:

- **Product Descriptions**
- **Service Levels**
- **Price**
- **Technical and Operational Details** (Ops Manual launched separately)

The Product Development Forum Processes

- Provides NBN Co's approach to managing its non-discriminatory and transparent commitments to product development through a public forum.
- It addresses the identification of ideas through to development lifecycle to launch.
- Allows entities to participate in submitting ideas to NBN Co independently of whether or not they have entered into the WBA.

Other material amendments include

POI Relocation

12 months minimum notice of any planned relocations

Operations Manual

A two tiered approach recognising the early stages of our operation, followed by a commitment to consult on amendments in future years

Other Amendments

Interim satellite services supply terms to be introduced later in the year. Provisions introduced to ensure terms are easily introduced into the WBA

Document Presentation

Although not yet in final form, the document has been rationalised and a more direct language adopted for ease of reference and clarity

Caroline Lovell

Principal, Regulatory Affairs

NBN Co Limited

Agenda

**WBA
Development**

**SAU
Background**

**Key elements
of the SAU**

**The Next
Steps**

Q&A

Why a SAU?

All NBN Co services are declared, and therefore regulated

NBN Co services can only be supplied if:

- the service has been declared by the ACCC, or
- NBN Co publishes a Standard Form of Access Agreement (SFAA) for that service, or
- an SAU is in operation for that service.

Currently, each trial agreement is a SFAA

NBN Co is planning to publish a SFAA (WBA) and lodge a SAU

- Operate as complementary documents and facilitate balance between certainty and flexibility
- SAU – framework containing key commitments to ACCC and customers and provide NBN Co with degree of regulatory certainty that it can recover investment in the NBN
- WBA – detailed terms and conditions of supply

Key considerations for SAU design (1)

The SAU has to cater for many variables as NBN Co deploys its network, even with the Telstra/Optus deals:

- Large upfront investment, with supply cost uncertainty
- Demand uncertainty due to new capabilities of network
- Operational uncertainties – core systems, processes and workforce optimisation
- Extended start-up period where costs will exceed revenues
- Wholesale-only nature of business reduces NBN Co's ability to access other (retail) markets and revenue streams to recover costs
- Explicit cross-subsidies of high-cost networks
- Government policy directions (e.g. battery back-up, 93% fibre footprint, new developments)

Key considerations for SAU design (2)

The SAU also needs to balance NBN Co's needs with those of access seekers, which include:

- high levels of price certainty of key NBN Co products
- price path predictability on range of NBN Co products
- confidence that NBN Co's costs are prudently incurred
- confidence that product development focuses on products that drive investment, competition and innovation in downstream markets
- certainty on key non-price terms

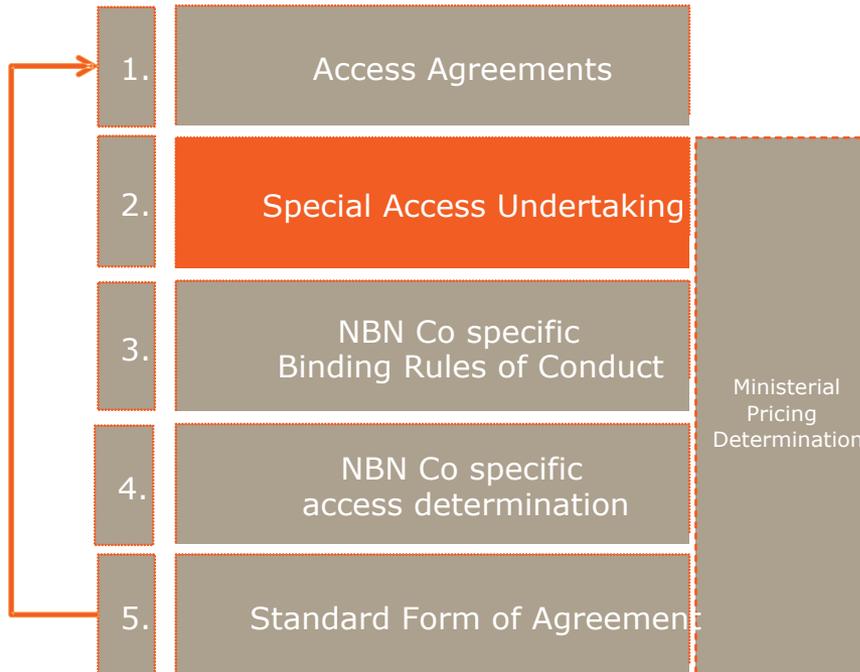
The above factors will be taken into account by the ACCC as part of the 'reasonableness' criteria under Part XIC of the Competition and Consumer Act, along with other factors

Key considerations for SAU design (3)

- **NBN Co prices should be set to allow it to recover prudently incurred costs, including a reasonable rate of return, and no more.**
- **Pricing certainty should be provided for both NBN Co and access seeker**
 - With defined review points for ACCC decisions about pricing arrangements
 - Sufficient flexibility to deal with changing circumstances
- **NBN Co should have incentives to invest in new products and infrastructure**
- **Rate of return should reflect risks associated with investment**
- **Need for NBN Co to raise debt finance over time**
- **Independent and fair dispute resolution process**
- **Network upgrade procedures to address impact on customers**
- **Transparent consultation processes, particularly in relation to product development**
- **Address NBN Co's obligations to meet Government objectives**
- **NBN Co's non-discrimination obligation**
- **Legislation sets hierarchy of regulatory instruments**

Interaction of WBA, SAU & Access Determinations

- NBN Co is formulating the SAU & WBA by reference to the legislative priority in the CCA. Therefore, Access Agreements will ordinarily prevail over access determinations and binding rules of conduct
- NBN Co's non-discrimination obligation has been a key factor in formulating the WBA and the change management and dispute resolution processes



Regulatory documents that sit higher in the hierarchy prevail over documents lower in the hierarchy to the extent of any inconsistency. Ministerial pricing determinations prevail over inconsistent terms within SAUs, binding rules of conduct and access determinations

- NBN Co will have the flexibility to vary agreements after notice and consultation with access seekers. This will allow NBN Co to change the agreement similarly with all access seekers, without any individual access seeker having a right of veto over the change

- However, NBN Co expressly provides regulatory protection within the WBA for the benefit of access seekers by:

- committing that the exercise of NBN Co's rights under the WBA will be consistent with the SAU (e.g. to change prices)
- recognising that an access seeker may request the ACCC to intervene during the consultation window in respect of the change management process
- NBN Co will also include SAU-type protections within a separate WBA module in the lead up to the approval of the SAU to provide additional comfort to access seekers.

When NBN Co and an RSP execute an agreement based on the SFAA, it becomes an access agreement for the purpose of Part XIC

Key Elements of the SAU

- An overall 30 year term, comprising:

Period	Composition
Initial 10 year period	Initial 5 year period subject to upfront approval by the ACCC, followed by a reset of key parameters for the subsequent 5 year period.
Subsequent 20 year period	Comprising 5 year regulatory control periods, in which NBN Co confers certain powers and function on the ACCC to periodically review cost and price. This is similar to the approach used in other regulated industries.

- **Key principles are locked in to provide certainty and the ACCC has a significant ongoing role to ensure the SAU remains relevant.**
- **Service and product commitments**
- **Price controls on key products and ‘price shock’ mechanism applying to all products**
- **Prudent costs rolled into regulatory asset base**
- **Long term cost recovery only**

Balance between certainty and regulatory oversight

Issue	Items 'locked-in' by SAU	Powers to be conferred on ACCC
Costs	<ul style="list-style-type: none"> Approach to inclusion of costs in regulatory asset base and recovery of initial losses 	<ul style="list-style-type: none"> Approval of approach to prudency Approval of opex forecasts (after first 5 years) Approval of business as usual capex (after 10 years) Approval of capex prudency approach for significant capex upgrades (after 10 years) Approval of approach to depreciation
WACC	<ul style="list-style-type: none"> Approach to establishing WACC (CAPM) Key WACC parameters that are specific to NBN Co 	<ul style="list-style-type: none"> Power for ACCC to review economy-wide parameters at regular intervals (after first 5 years)
Pricing	<ul style="list-style-type: none"> Some products will be covered by explicit price cap arrangements Treatment of products that are not covered by price cap 	<ul style="list-style-type: none"> Review of products subject to price controlled offers (after 10 years) Approval of criteria for reset of price controlled offers (after 10 years)

Tony Neilson

Senior Advisor, Regulatory Affairs

NBN Co Limited

Agenda

**WBA
Consultation**

**SAU
Background**

**Key elements
of the SAU**

**The Next
Steps**

Q&A

SAU Overview

- DR methods
- Rights & Obligations for Industry Relevant disputes

The SAU consists of a short core body, with the details in 15 Schedules

Non-Price Commitments

- Access to Systems
- Confidentiality
- Credit Management
- Contract Lifecycle Management

- Consultation Principles
- Rollout progress
- Major planned work
- Review of POIs

- Price reporting
- Price control compliance
- RAB reporting
- Demand information
- Prudency compliance
- ACCC review of reporting parameters

- Initial Network Design
- Some deemed categories of capex
- Prudent Design Condition and Prudent Cost Condition for new investments
- 5 year opex forecast approval by ACCC
- 5 year BAU capex forecast approval by ACCC

Long-term relevancy and cost recovery

- Regulatory Asset Base
- Initial Loss Recovery
- Operation of revenue cap
- WACC parameters, and ACCC review process
- ACCC approval of depreciation profile change

- Product Roadmap
- Product Development Forum
- Minor changes
- Product Withdrawal

- Regulatory review periods
- Price review
- Capex/opex review
- WACC review
- Non-price review

- Service Description
- Implementation via Product Components

Service & Product Descriptions

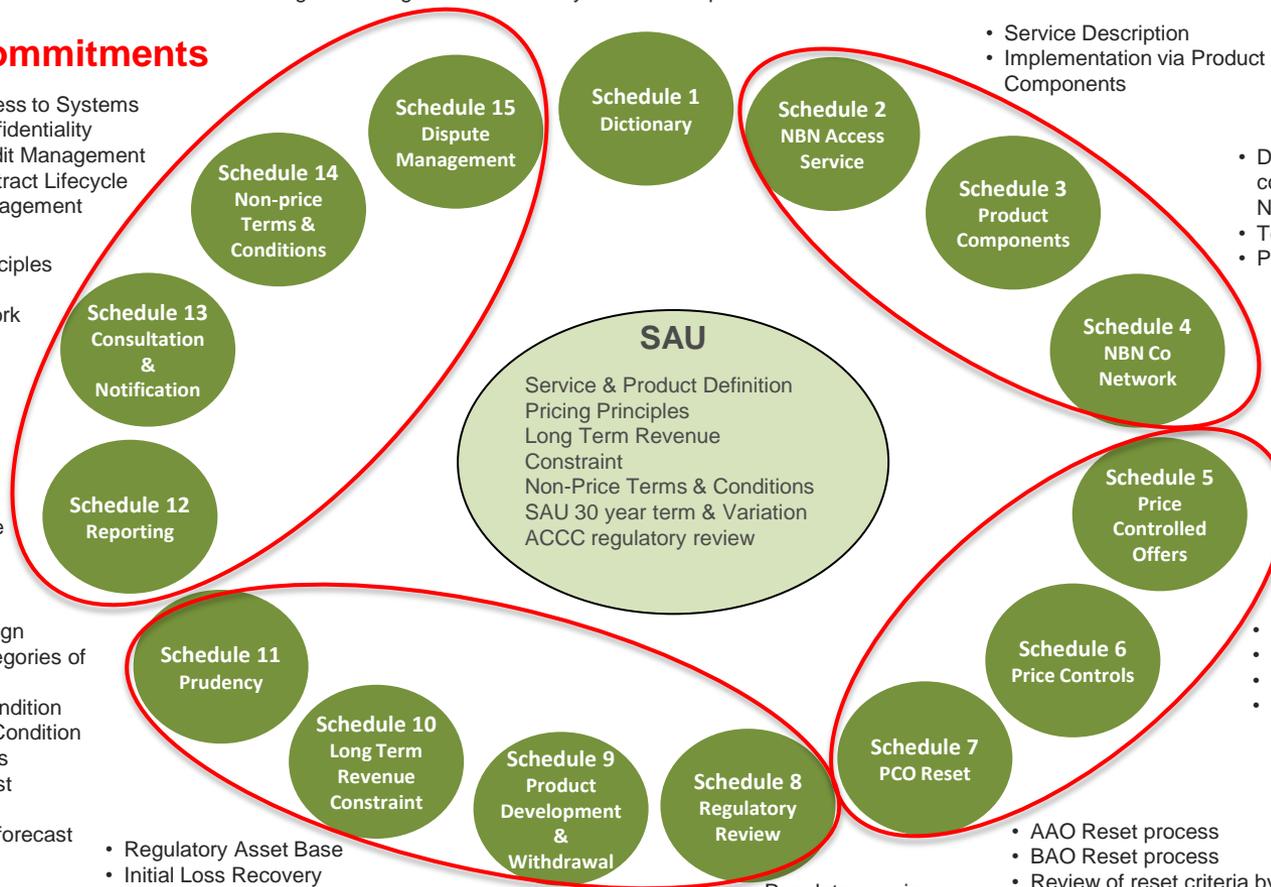
- Describes 4 product components (UNI, AVC, CVC, NNI)
- Terms of supply
- POI locations
- Key features of all 3 networks (Fibre, Wireless, Satellite)

- Definition of BAO & AAO for each network
- CVC Offer
- NNI Offer

- Initial ceiling prices for 5 years
- Operation of CPI-CPI/2 basket
- Price Shock Mechanism
- Handling of CPI events, ACCC approval of prices

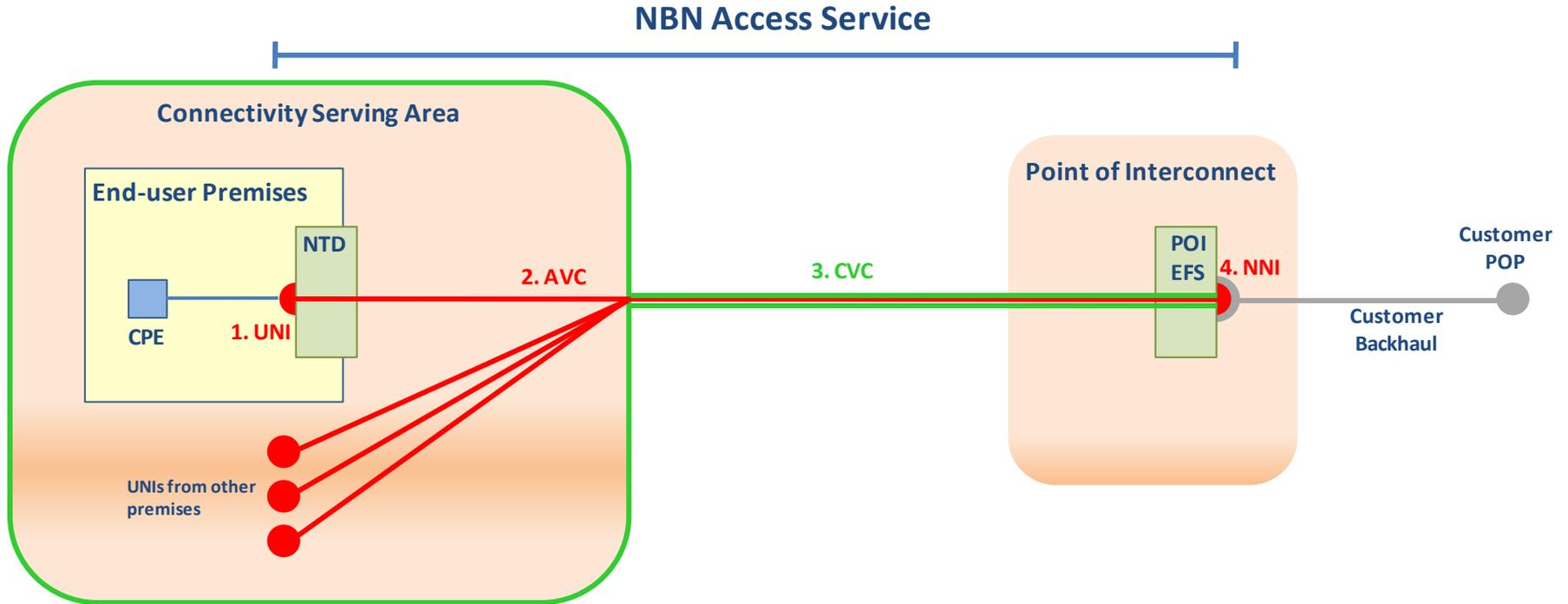
Pricing Commitments

- AAO Reset process
- BAO Reset process
- Review of reset criteria by ACCC
- Expansion of CVC Offer
- NNI Reset process



The SAU lays out commitments for the 30 year term, and establishes the principles that will provide NBN Co with the opportunity of recovering its prudently incurred costs

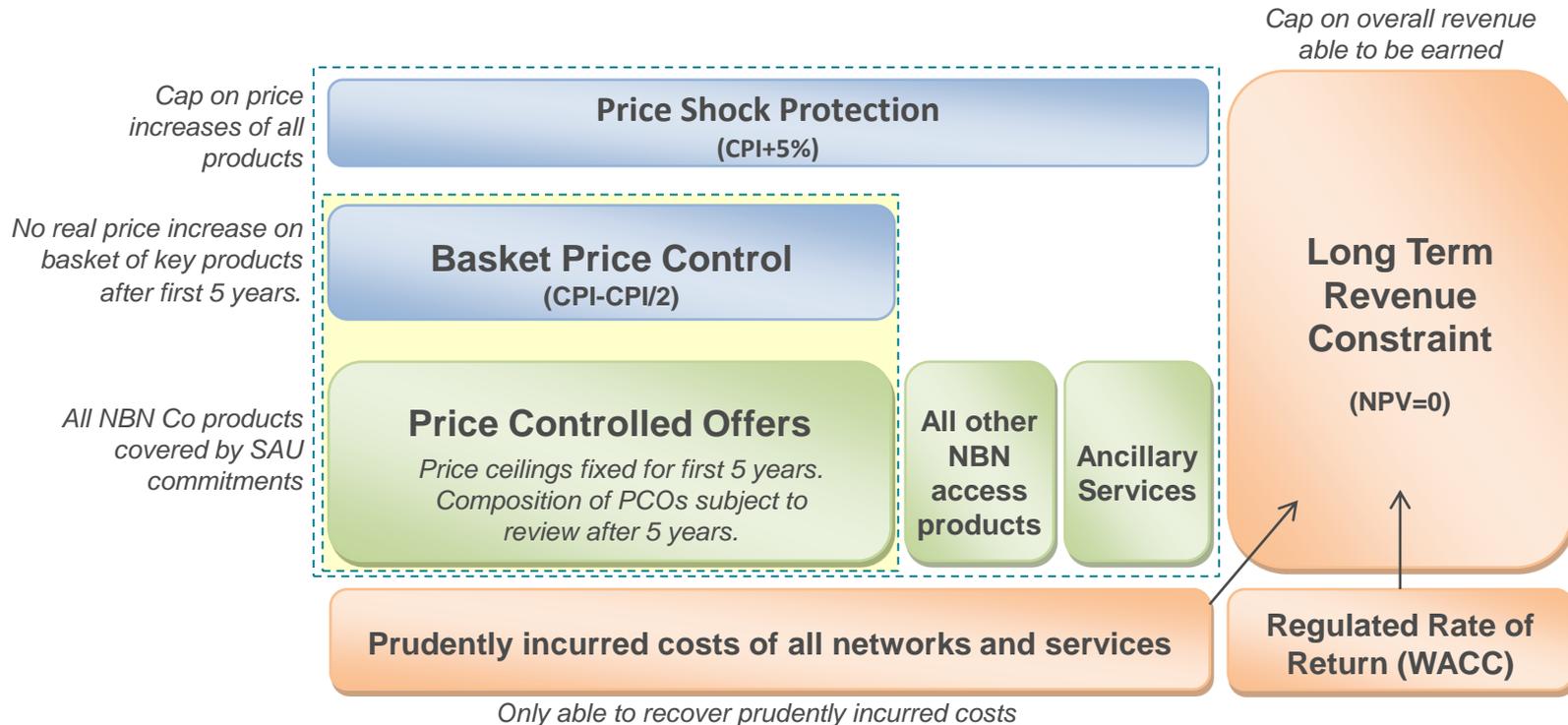
NBN Access Service



- NBN Access Service is provided between the UNI (customer premises) and NNI (at the POI)
- The NBN Access Service **covers all Layer 2 services** on fibre, wireless and satellite networks
- The service is provided via initial product components (UNI, AVC, CVC, NNI) and product features
- Additional product components and features will be released via product development processes defined in SAU and WBA

Overview of SAU Pricing and Revenue Commitments

The pricing and revenue commitments operate together in an integrated manner to provide a balance between pricing certainty and pricing flexibility



Key SAU Commitments: Pricing

Price Controlled Offers to initially include:

Issue	Composition
Basic Access Offer	<ul style="list-style-type: none">• NBN Co's entry level access link offering, comprising AVC and UNI• Comprises 12 Mbps downlink / 1 Mbps uplink, UNI-D access and option to acquire access to UNI-V.
Anchor Access Offer	<ul style="list-style-type: none">• NBN Co's most popular access link offering, comprising AVC and UNI• Initially comprises 12 Mbps downlink / 1 Mbps uplink, UNI-D access and option to acquire access to UNI-V.• Composition expected to change over time
Connectivity Virtual Circuit	<ul style="list-style-type: none">• NBN Co's aggregation link offering for each Connectivity Serving Area• Applies to TC-4 bandwidth (TC-4)
Network-Network Interface	<ul style="list-style-type: none">• NBN Co's physical interface at the Point of Interconnect

Key SAU Commitments: Pricing

- **Maximum Regulated Prices (MRP)**

- MRP for all Price Controlled Offers set for the first five years of the SAU (i.e. no nominal price increase). NBN Co may offer prices within a WBA up to the MRP, but not above

Price Controlled Offer	Price
Basic Access Offer	\$24.00 per month, per SIO
Anchor Access Offer	\$24.00 per month, per SIO
Connectivity Virtual Circuit	\$20.00 per Mbps per month
Network-Network Interface	\$200 per month for 1000base LX (10 km range) \$400 per month for 10GbaseLR (10 km range)

- after the initial 5 year period, a single price control basket established for the Price Controlled Offers. Weighted average MRPs could increase in nominal terms by half the CPI rate (i.e. $CPI-CPI/2$)
- **The composition of this basket would be reviewed at regular intervals, and subject to ACCC approval**
- **Products outside the basket would have a degree of pricing flexibility, but subject to:**
 - a “price shock” protection that applies to all products which limits annual price changes
 - the “anchoring” effect of the price controlled offers
 - validity periods in access agreements
 - over the long term, NBN Co’s company wide revenue cap

Operation of Price Controls (over SAU term)

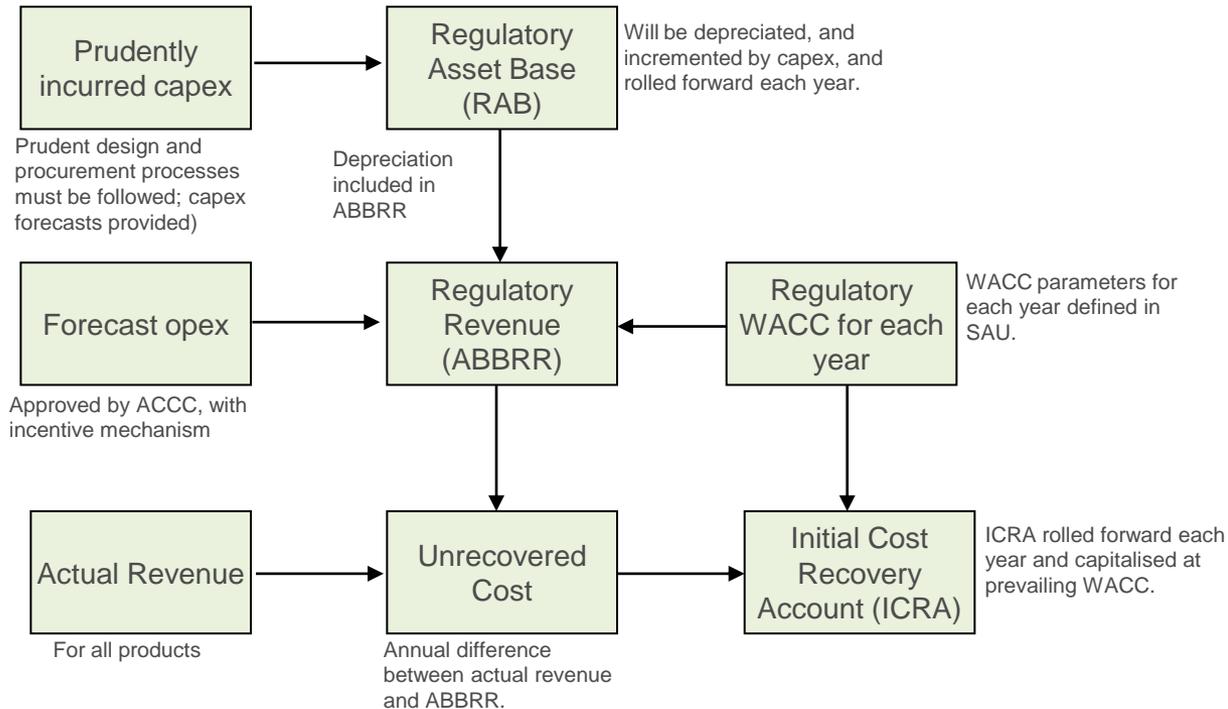
Time Period	First 5 years	Next 5 years	Every 5 years thereafter
Price Control Applied	Maximum Regulated Price <i>The MRP is defined for each PCO, and cannot be increased for 5 years</i>	Basket Price Control <i>Annual weighted increase in the MRP for the PCOs must be less than CPI-CPI/2</i>	Basket Price Control <i>Annual weighted increase in the MRP for the PCOs must be less than CPI-CPI/2</i>
Price Controlled Offers (PCOs)	BAO ("12/1") AAO ("12/1") CVC TC-4 NNI	BAO (initially 12/1) AAO (initially 12/1) CVC TC-4 NNI	"BAO" "AAO" "CVC TC-4" "NNI" <i>Composition subject to review process</i>
Review of criteria for PCOs	None	None	Review of PCO criteria, subject to ACCC approval
Reset of PCOs	None	Reviewed at years 5 & 8, following criteria in SAU	Reviewed periodically during each period, using PCO criteria applied at that time.
ACCC approval required	None	ACCC approval of any changes to PCO basket	ACCC approval of any changes to PCO basket
Price Shock Protection	Price Shock Protection applies to all products (CPI+5%)		

Key SAU Commitments: Revenue Constraint

Long Term Revenue Constraint (LTRC)

- Regulates total revenues to allow NBN Co to achieve a return on capital (WACC), a return of capital (depreciation), and recover its operating expenses, but no more
- Prudently incurred costs are rolled into a Regulatory Asset Base (RAB)
- Allows capitalisation of initial losses for later recovery
- **Once the initial losses are recovered, NBN Co will be under a Building Block Revenue constraint, which caps the annual revenues it is able to earn**

Key SAU Commitments: Revenue Constraint



ABBRR = Annual Building Block Revenue Requirement
= WACC * RAB + Depreciation + Opex + Tax Allowance

Once the initial costs have been recovered, the ABBRR forms the annual cap on revenues that NBN Co is able to earn.

Key SAU Commitments: Prudency

Prudency Arrangements

- NBN Co would only be able to recover costs – both capex and opex – that could be demonstrated to be prudently incurred
- Capex must satisfy two principles for inclusion in asset base:
 - “Prudent Design Condition” – commitments to prudency of future design, including customer engagement on future product development
 - “Prudent Cost Condition” – commitments to procurement processes, which are subject to regular review.
- Some costs are “deemed” to be prudent e.g. expenditure required to fulfil directions from the Australian Government (e.g. fibre to 93% of premises), certain agreements reached on an arms’ length basis (such as Telstra infrastructure arrangements)
- Opex forecast and incentive mechanism applies after first 5 years
- Business-as-usual capex will be subject to forecast and incentive mechanism, while special projects to be subject to bespoke regime.

Key SAU Commitments: Non-Price

Non-Price

- Product Development and Withdrawal
- Consultation and Notification Processes – Network Rollout, Major Upgrades, POI location
- Review of POI locations – 5 yearly reviews, utilising criteria agreed with the ACCC
- Dispute Management – bilateral or industry-wide resolution process. Detailed in WBA.
- General issues – access to IT platforms, Confidentiality, Credit Management, Contract Lifecycle
- Reporting – commitments on key reporting items, ACCC review role

SAU pre-lodgement consultation

- Feedback sought in relation to SAU design described in Discussion Paper by 19th August.
- Further briefings and ‘deep dives’ on the Discussion Paper available
- NBN Co continuing engagement with the ACCC and will take industry feedback into account in finalising the SAU
- NBN Co currently plans to release draft SAU before lodging

Jim Hassell

Head of Product Development & Sales
NBN Co

Agenda

**WBA
Consultation**

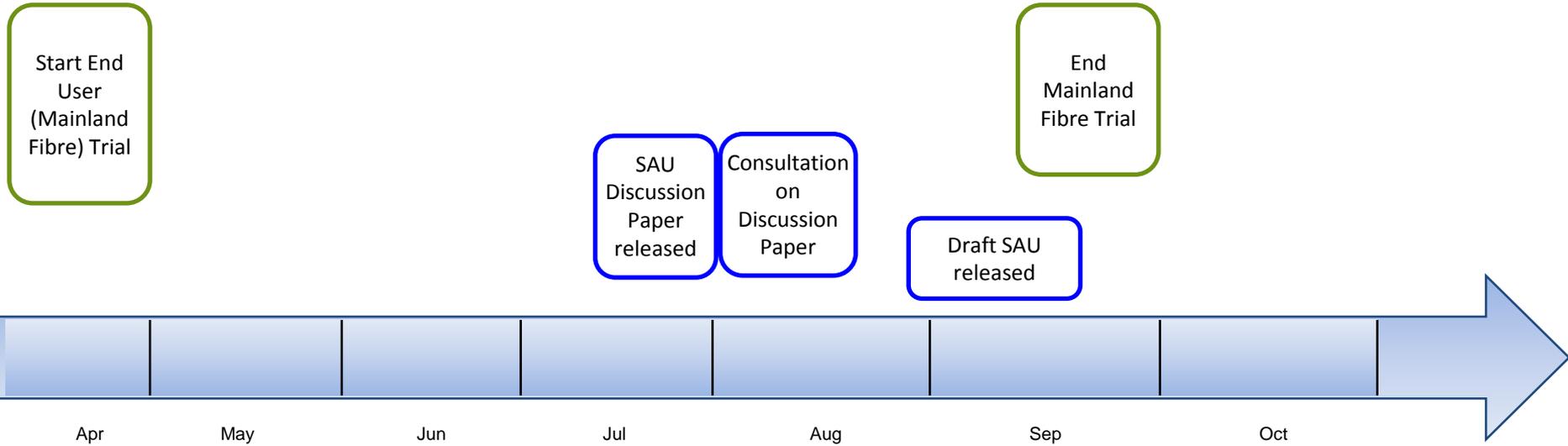
**SAU
Background**

**Key elements
of the SAU**

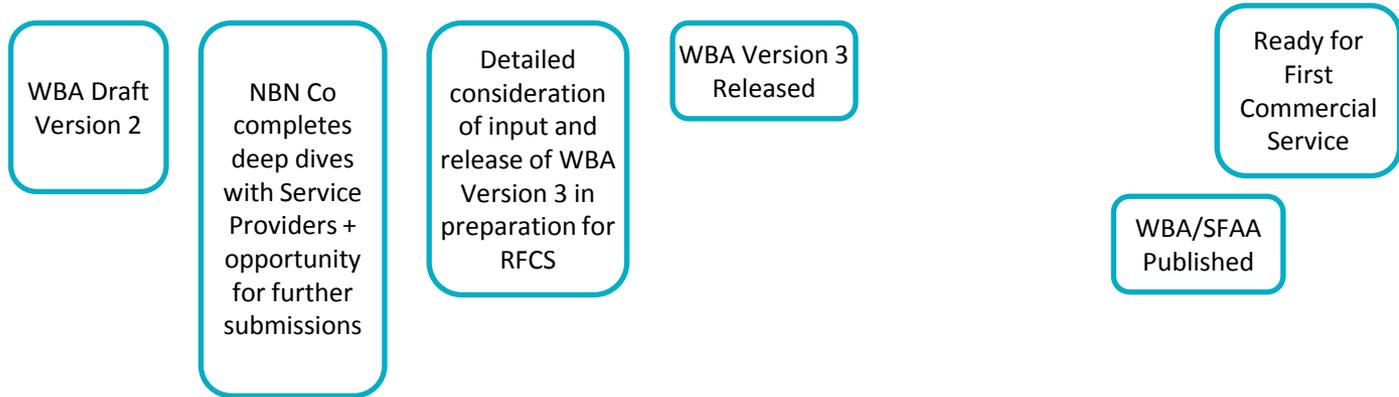
**The Next
Steps**

Q&A

Engagement timeline



NBN Co WBA Plan – Critical Dates



Agenda

**WBA
Consultation**

**SAU
Background**

**Key elements
of the SAU**

**The Next
Steps**

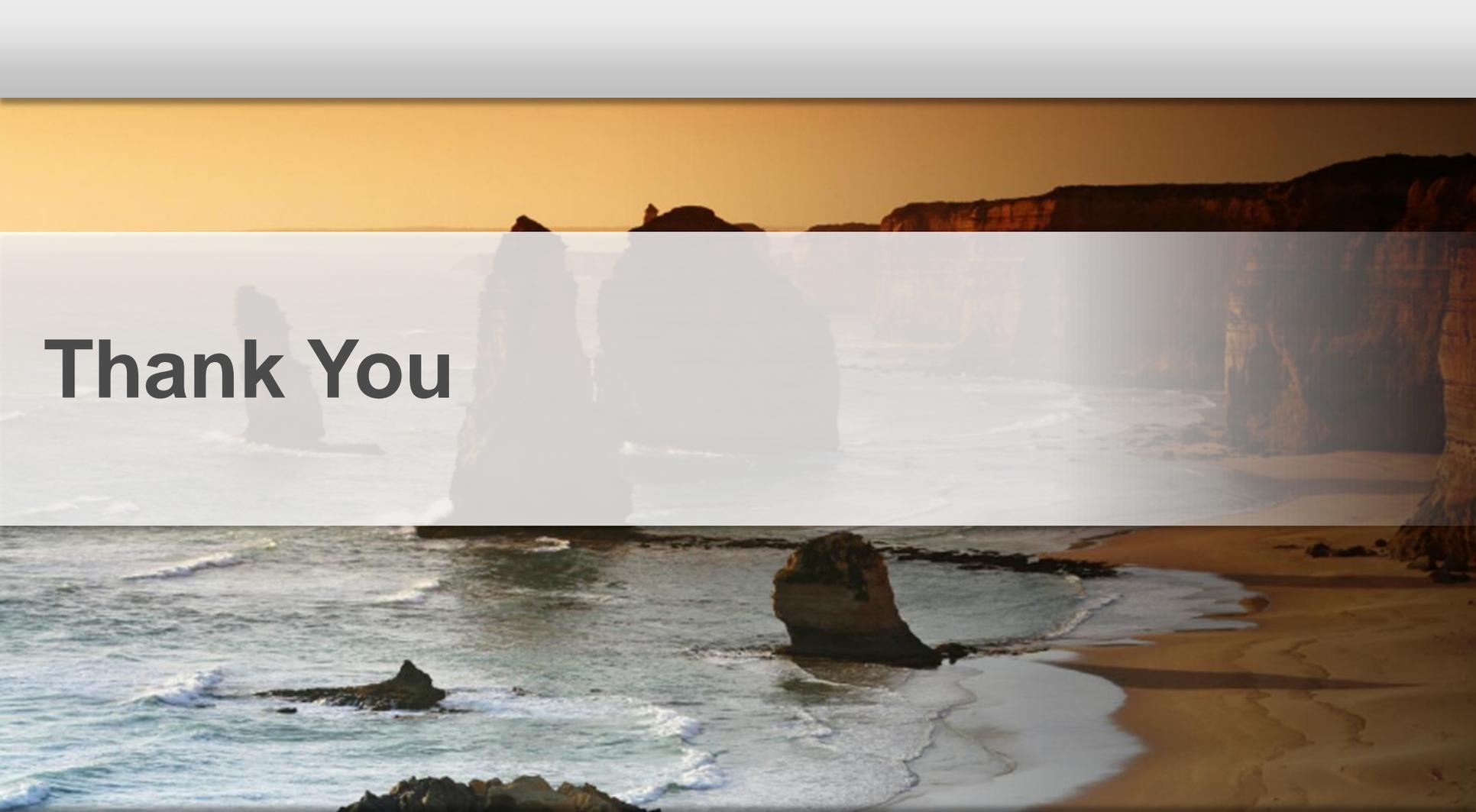
Q&A

Q & A Session

Caroline Lovell, Principal, Regulatory Affairs
NBN Co Limited

John Sproule, Manager, Industry Engagement
NBN Co Limited

Tony Neilson, Senior Advisor
NBN Co Limited



Thank You

Disclaimer

This document sets out NBN Co's proposals in respect of certain aspects of the National Broadband Network. The contents of this document represent NBN Co's current position on the subject matter of this document. The contents of this document should not be relied upon by our stakeholders (or any other person) as representing NBN Co's final position on the subject matter of this document, except where stated otherwise. NBN Co's position on the subject matter of this document may also be impacted by legislative and regulatory developments in respect of the National Broadband Network.

