

NBN Co Industry Consultation Paper: Evolving NBN Co's Enterprise Build Contracting Model

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Commercial-in-Confidence

NBN Co Industry Consultation paper

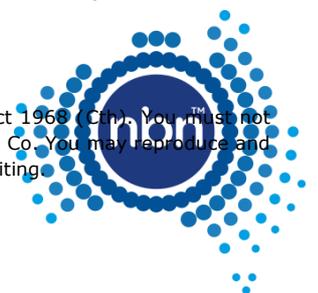
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1. Consultation purpose

On 30 January 2020, NBN Co announced that it would evolve its enterprise contracting model so that Retail Service Providers (RSPs) will have the direct contractual relationship with enterprise customers.

Previously, NBN Co has at times contracted directly with enterprise and government customers (Customers) to build infrastructure ahead of those Customers engaging one or more RSPs to provide operational broadband services.

NBN Co, through inbound interest and via our industry engagement team, will play a continued role to engage with Customers to understand their infrastructure requirements and to educate and stimulate demand for NBN Co's wholesale services. As a result, we anticipate that we will become aware of prospective Customer demand for **nbn**[™] fibre network builds to meet their capacity and coverage requirements.

As part of the announcement we identified the need to consult with industry to guide the model for sales leads to be shared with RSPs on a transparent and non-discriminatory basis. This document is intended to help establish the model and ensure that NBN Co and RSPs are collaborating in the most effective way for the benefit of Customers, subject to NBN Co's non-discrimination and transparency obligations (including NBN Co's commitments set out in the Undertaking accepted by the ACCC on 8 October 2019 and in the Business **nbn** RSP Bulletin on End User Deal Constructs issued on 19 December 2019).

We note that NBN Co's announcement and this Consultation Paper do not apply to NBN Co's well-established New Developments Program and Technology Choice Program, which will continue.

2. Dealing with prospective Customer build opportunities

The **nbn**[™] network is an open access, wholesale-only network designed to provide services to help meet the unique needs of businesses of all sizes.

As the market develops and more organisations seek fibre builds to meet their growing connectivity requirements, NBN Co aspires to ensure that its recently announced policy of no longer signing build contracts directly with Customers does not inadvertently reduce Customer choice. Larger organisations are sophisticated purchasers and make their own decisions about their procurement strategies, however NBN Co would like to explore ways of helping educate Customers about their **nbn**[™] network options.

One approach might be to simply publish all prospective Customer build opportunities to all RSPs in some form of marketplace (noting the confidentiality challenges this may create). NBN Co is keen to hear views on how such a marketplace might work, potentially as some type of active selection tool for Customers, with the ability for RSPs to submit expressions of interest.



Another approach, as is in place today with the List of Business Providers on NBN Co's public website, could be to publish a list of all prequalified RSPs to Customers for Customers to select the RSP(s) they may wish to contact.

NBN Co is keen to hear the industry's views about the following points:

Question 1: *How would the industry propose that any prospective Customer build opportunities that NBN Co becomes aware of be made available to all RSPs on a non-discriminatory basis? How could this fit within Customers' existing procurement practices to ensure it is valuable to Customers?*

Question 2: *How would the industry propose for Customers to become aware of RSPs' capabilities and offerings regarding the build of **nbn**[™] infrastructure in a non-discriminatory manner? Would RSPs like NBN Co to publish optional checklists or information guides for Customers regarding RSPs' capabilities and offerings (whether drafted by industry groups, business organisations, RSPs or NBN Co)?*

Question 3: *What information do RSPs wish NBN Co provides to Customers about each RSP's capabilities and offerings? One approach would be for NBN Co to publish which RSPs offer the relevant business **nbn**[™] product in their retail packages. What types of matters should be used as the criteria e.g. qualification menu, which Customers could then select from to make their choices?*

3. Enabling short-term Customer contracts

Market trends suggest that many Customers have a strong desire for shorter term contracts with their chosen RSP(s). They see value in being able to test the market regularly and change RSP(s) if desired. They may therefore be reluctant to commit to a five year term with RSPs seeking to back-to-back their five year build contract term with NBN Co and mitigate their deferred charge liability to NBN Co. NBN Co also understands that certain Customer's procurement policies do not permit five year telecommunication services contracts for sites other than in regional or remote areas.

As such, NBN Co believes it is important for the industry to consider mechanisms to address this Customer preference. For example, allowing the Customers to change RSPs without charge to the end user or either RSP, when continuing to use the **nbn**[™] network for their connectivity needs and also enabling NBN Co to have contractual certainty for recovery of its charges.

One option may be for RSPs' retail offers to Customers to de-link the infrastructure commitment with NBN Co and the term for carriage services, with NBN Co facilitating novation of the NBN Co's deferred charge obligation between RSPs, in the event that an RSP's telecommunications services contract expires prior to the fulfilment of the NBN Co's deferred charge in the build contract.



Question 4: *How do you suggest RSPs could be enabled to offer contracts to Customers with a duration shorter than the duration of RSP's deferred payment contract with NBN Co (up to five years)?*

4. Constructing fibre ahead of service transition

Feedback from larger customers indicates a general preference for the **nbn**TM network build to occur in parallel to existing telecommunications services contracts because it enables Customers to:

- plan the transition of their sites to the **nbn**TM network based on their existing telecommunications contracts' end dates;
- quickly contract for build activities on a cost recovery basis without the need to undertake a lengthier and more complex renewal or re-tendering of their telecommunications services contract;
- move between RSPs on the **nbn**TM network at lower cost and less business impact along a timeline they control; and
- mitigate the financial consequences of the change of RSPs such as, for example, losing the benefit of negotiated discounts and reverting to Standard Form of Agreement Rates.

Question 5: *To allow for lead time to construct fibre, how does the industry suggest build contracts are established in advance of the expiry of the existing telecommunications services contracts?*

Question 6: *Where customers wish to do so, how would the industry propose to best enable seamless transition between RSPs for Customers during the term of an RSP's build contract with NBN Co?*

Question 7: *Are there considerations RSPs believe NBN Co should take into account for Customers who wish to use blended networks running over both underlying NBN Co and other infrastructure?*

5. Level playing field for all RSPs

The end customer build construct shifted the NBN Co's deferred charge liability from RSPs towards Customers. This construct removed the need for RSPs to:

- commit to pay NBN Co or another infrastructure provider for the fibre build costs, which meant all RSPs could compete on an equal footing regardless of their access to capital or infrastructure;
- project manage the build activities, which meant all RSPs could compete for large enterprise accounts; and



- accommodate fibre builds into their telecommunications services offer, which enabled them to offer a short-term contract to meet Customers' requirements.

Question 8: *How would RSPs propose that Customers retain the deferred charge liability in a model where the fibre build contract is entered into between the RSPs and NBN Co independently of the telecommunications services contract entered into between the RSPs and their Customers? Would the option of inter-RSP novation of the build commitment above be sufficient to achieve this outcome? What other mechanisms would you suggest?*

6. Other matters

Question 9: *Are there other ways in which Customer procurement processes for telecommunications services could be further simplified, whether in relation to information sharing, cycle time, total cost of ownership, baseline contractual terms or other attributes?*

7. Next steps

NBN Co invites written submissions from industry participants by close of business on 28 February 2020. Please email your submissions to ContractManager@nbnco.com.au.

NBN Co will treat all submissions as confidential unless marked otherwise or made public other than by NBN Co. However, NBN Co will also consult with relevant government agencies, in particular the ACCC, and so reserves the right to provide submissions received to them on a commercial-in-confidence basis. For the avoidance of doubt, NBN Co reserves the right to publish anonymised and unattributable data from submissions.

In parallel with this consultation, NBN Co welcomes the opportunity to meet with industry participants individually, to discuss your submission in more detail and obtain feedback. If you would prefer to provide verbal feedback rather than make a written submission, please email Leila Riffi (leilariffi@nbnco.com.au) or contact your NBN Co account manager to request a meeting.