

NBN Co's Industry Consultation Close Out Paper

Evolving NBN Co's Enterprise Build Contracting Model

19 June 2020

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1. Overview

On 18 May 2020, NBN Co published a response paper to provide a summary of industry submissions to NBN Co's Industry Consultation Paper on:

- dealing with prospective customer build opportunities; and
- evolving NBN Co's enterprise build contracting model.

NBN Co invited retail service providers (**RSPs**) individually to discuss potential options to evolve the model and explore how NBN Co and RSPs could collaboratively address the different industry views.

9 individual discussion sessions were held with RSPs, during which NBN Co:

- described the four options listed in the response paper; and
- sought each retail service provider's views on:
 - the advantages and disadvantages of each option; and
 - any other options NBN Co should consider.

2. Preferred model

NBN Co has received overwhelming support from RSPs for option 3 (3-year TEC Deal Module).

Out of the 9 RSPs who engaged in discussions with NBN Co,

- 8 were in favour of option 3;
- 1 was in favour of option 4 (Downstream Payment Arrangement); and
- none were in favour of option 2 (Expanded Revenue Pool).

NBN Co has previously stated that it would not offer option 1 (RSP to facilitate a build contract between their customer and NBN Co).

3. Approach to introduce chosen model

NBN Co will finalise the details and implementation requirements of options 3 and 4. Once finalised, NBN Co will incorporate the required drafting changes in the standard Technology Extension Contract (**TEC**) to introduce the chosen model, which will include a combination of options 3 and 4. NBN Co does not intend to prescribe which option should apply to particular infrastructure build requests and would rather like to provide options for RSPs to select based on their and their customer's specific needs on a case by case basis. There may be eligibility criteria and requirements that apply to the options, which NBN Co will finalise and share in the draft TEC.



How the above options impact customers, including their ability to readily switch RSPs, will vary based on their contract with their RSP and the model chosen by their RSP to manage their deferred charge liability when contracting with NBN Co for fibre builds at nominated customer sites. NBN Co will communicate this key dependency when requested to provide indicative proposals to customers for technology changes using the TEC model, which customers can then take to their RSP for the RSP to contract with NBN Co.

Below are the details of each option as previously communicated in NBN Co's response paper:

Option 3 – 3-year TEC Deal Module

This option aims to address the feedback from 6 respondents to the consultation that RSPs should not have a deferred charge liability to NBN Co after the 3rd anniversary of their build contract with NBN Co, whether or not NBN Co had fully recovered its build costs under the Deal Module.

Under this option, NBN Co would offer TEC Deal Modules with a term of 3 calendar years and reduce the amount of deferred charges in the Deal Module to correspond to a 3-year term.

NBN Co acknowledges that it will make a return on its infrastructure build beyond the 3-year TEC Deal Module term. Accordingly, NBN Co would not charge the First RSP the full incremental cost of the build in the 3-year Deal Module term. Instead, NBN Co would apply standardised commercial modelling for achieving cost recovery over 5 years, which it would satisfy separately and in addition to the First RSP's Deal Module.

NBN Co notes that the current 5-year TEC Deal Module term reflects commitments agreed with the Australian Competition and Consumer Commission (**ACCC**) in its s87B Undertaking dated 8 October 2019. The introduction of a 3-year term with corresponding deferred charges for TEC Deal Modules will require ACCC approval to a variation of that Undertaking (in addition to progressing through NBN Co's own rigorous internal approval process, including complying with its regulatory and policy obligations).

Option 4 – Downstream Payment Arrangement

Under this option, a downstream payment arrangement would be introduced into the standard TEC Deal Module to provide RSPs with an option to enable NBN Co to enforce the deferred charge liability directly against their customer. An RSP might want to do this if the customer terminates their customer contract with the RSP during the term of the RSP's Deal Module with NBN Co.

First RSP would enter into a customer contract, which would contain the downstream payment arrangement wording. First RSP would enter into a TEC Deal Module with NBN Co for the infrastructure build at nominated customer sites. The Deal Module would contain corresponding downstream payment arrangement wording permitting the First RSP to assign to NBN Co the customer's liability for any residual deferred charge liability, for enforcement by NBN Co.



The customer may terminate the customer contract with First RSP during the term of the Deal Module and enter into a customer contract with one or more Subsequent RSPs.

Should this occur, First RSP would select 1 of the following options at their sole discretion:

1. terminate the Deal Module, pay any residual deferred charges to NBN Co and apply early termination charges to the customer (if applicable); or
2. exercise the downstream payment arrangement option and transfer to NBN Co the ability to enforce the deferred charge liability directly against the customer. At this point, the customer would become liable for any residual deferred charge liability at the end of the First RSP's Deal Module term. If the customer orders WBA services through Subsequent RSPs, the WBA charges paid by the Subsequent RSPs would reduce the customer's deferred charge liability to NBN Co. Subsequent RSPs would need to allow NBN Co to utilise their WBA billing information, for the limited purpose of offsetting their WBA spend at customer sites against the customer's deferred charge liability to NBN Co. If this consent is not provided, the customer would be liable for the full deferred charge amount without setoff against its RSPs' WBA spend.

Next steps

NBN Co remains committed to invest in its partnership with RSPs to ensure that, together, we are in the best position to deliver tailored broadband services that customers need to succeed.

NBN Co will finalise the details and implementation requirements of options 3 and 4. NBN Co's final position on these options will be communicated when NBN Co publishes the final version of the updated TEC for execution by RSPs.

Considering other industry consultations currently with RSPs to respond to, NBN Co would like to issue the new draft version of the Technology Extension Contract (**TEC 7**) to RSPs for review in early July 2020.

NBN Co will continue to consult with relevant government agencies on this paper and the chosen model, which may impact the anticipated release date of the TEC 7.

Please contact your NBN Co account manager or email Leila Riffi (leilariffi@nbnco.com.au) should you have any questions or comments regarding the content of this paper.