

# Response to Industry Submissions to NBN Co's Industry Consultation

## Evolving NBN Co's Enterprise Build Contracting Model

18 May 2020



Commercial-in-Confidence

Response to Industry Submissions to **NBN** Co's Industry Consultation Paper

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## 1. Overview

On 7 February 2020, NBN Co published a telecommunications industry consultation paper to seek views on how NBN Co could:

- (a) share prospective enterprise and government customer (**customer**) demand for **nbn**<sup>™</sup> fibre network builds with Retail Service Providers (**RSPs**) on a transparent and non-discriminatory basis; and
- (b) evolve its enterprise build contracting model (**Consultation**).

NBN Co received **19 industry submissions in total** (15 RSPs, 3 Managed Service Providers (**MSPs**) and 1 customer). A wide range of perspectives were provided, including:

- an opinion that NBN Co's participation in the enterprise market is not warranted and should not be permitted (2 respondents);
- an opinion that an RSP or MSP should facilitate the execution of a stand-alone build-only contract between their customers and NBN Co (8 respondents);
- an opinion that NBN Co has a direct and continuing role to play in educating the market and stimulating demand for its wholesale services but should not contract directly with customers or participate in their retail tenders (6 respondents); and
- an opinion that the direct customer build contracting model should be re-established, with greater transparency and process to ensure compliance with NBN Co's obligations, as this model increased competition and choice (11 respondents).



## 2. Dealing with prospective customer build opportunities

As NBN Co continues to engage with customers to understand their infrastructure requirements and to educate and stimulate demand for NBN Co's wholesale services, it becomes aware of customer demand for **nbn**<sup>TM</sup> fibre network builds to meet their capacity and coverage requirements.

Questions 1 to 3 of the Consultation were designed to explore ways in which NBN Co could help educate customers about their **nbn**<sup>TM</sup> network options.

**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**<sup>TM</sup> 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**<sup>TM</sup> 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?*

### Industry submissions

A wide range of responses were submitted ranging from an open marketplace for RSPs and MSPs to submit expressions of interest within 8 hours of NBN Co posting the sales lead to NBN Co removing itself completely from the process.

11 of the submissions favoured a model where NBN Co would refer customers to its website, where standard information about all RSPs should be listed such as contact details, geographical areas of operation and business grade products and services offered on the **nbn**<sup>TM</sup> network.



6 submissions proposed different versions of a customer sales lead registration webpage

- which NBN Co would use to post customer sales leads for RSPs to bid for, or
- which NBN Co would provide to customers for them to:
  - compare different RSP offerings before engaging with their chosen RSP(s) to progress further, or
  - actively manage the procurement of telecommunications services.

In addition, 8 respondents stated that NBN Co should make more detailed information available about RSPs and MSPs on its website (such as geographic coverage, products and services offered on the **nbn**<sup>™</sup> network, customer experience score) whereas 7 respondents stated their preference to retain the level of RSP information currently available on the website.

Furthermore, NBN Co understands that some customers will only permit NBN Co to share prospective customer build opportunities with their nominated RSPs, which may prove complicated given NBN Co's non-discrimination obligations.

### **NBN Co's response**

Based on the industry perspectives shared in the submissions, NBN Co is of the view that the current approach where NBN Co shares the List of Business Providers on its public website, should continue. NBN Co will not develop a new model for sharing sales leads with RSPs and MSPs.



### 3. Evolving NBN Co's enterprise build contracting model

(A) Questions 4 to 6 and 8 in the Consultation were designed to explore ways to enable:

- RSPs to offer contracts to customers for a shorter term than the term of an RSP's build contract with NBN Co (question 4);
- customers to start the **nbn**<sup>TM</sup> network build in parallel to their existing telecommunications services contracts (question 5);
- customers to seamlessly transition between RSPs during the term of an RSP's build contract with NBN Co (question 6); and
- NBN Co's deferred charge liability to shift from RSPs towards customers (question 8).

**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)?*

**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 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?*



## Industry submissions

A wide range of responses were submitted for each question, which are summarised below.

- **Question 4:** 2 respondents were of the view that RSPs, and not NBN Co, should manage the length of their customer contracts whereas 17 respondents were in favour of NBN Co enabling shorter term contracts.
- **Question 5:** 7 respondents proposed to re-establish the direct customer build agreement. 8 respondents stated that they would like NBN Co to enable a separation of the build and service contracts via RSPs facilitating the execution of a direct build agreement between NBN Co and their customers. 4 respondents were of the view that there was no need for customers to commence the infrastructure build prior to the expiry of their existing telecommunications services contracts.
- **Question 6:** only 2 respondents out of 19 were supportive of the novation approach if there were clear pre-agreed rules and if they did not have to administratively facilitate the novation.
- **Question 8:** 6 respondents suggested that RSPs should not have a deferred charge liability to NBN Co after the 3<sup>rd</sup> anniversary of their build contract with NBN Co, whether or not NBN Co had fully recovered its build costs. 9 respondents were of the view that the deferred charge liability should remain with the customer. 4 respondents stated that NBN Co had no role to play in this matter.

- (B) Question 7 in the Consultation sought to invite industry feedback in relation to the situation where customers wish to rely on the **nbn**<sup>TM</sup> network and an alternative network in parallel. An example could be a customer choosing non-**nbn** infrastructure for its primary links and choosing the **nbn**<sup>TM</sup> network for its redundant links.

**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?*

## Industry submissions

8 respondents submitted a response to this question. All were in favour of blended network solutions to enable diversity and resilience. 1 respondent stated that this was a matter for RSPs to handle based on their customer requirements. 1 respondent called on NBN Co to develop physical redundancy access options on the **nbn**<sup>TM</sup> network for business customers and cited physically diverse **nbn**<sup>TM</sup> Enterprise Ethernet links as an example.



## NBN Co's response

Based on the industry perspectives shared in the submissions, NBN Co has identified the following 4 options for discussion with industry participants. NBN Co is inviting industry input on all options to understand RSPs' preferences.

### Option 1 – RSP to facilitate a build contract between their customer and NBN Co

Under this option, an RSP would enter into a contract with a customer for the provision of telecommunication services (**Customer Contract**) only and facilitate the execution of a build contract between the customer and NBN Co for the **nbn**<sup>TM</sup> network infrastructure build at nominated customer sites.

Build contract and build charges liability would be between the customer and NBN Co.

Following NBN Co's announcement on 30 January 2020 that it would evolve its enterprise contracting model so that RSPs will have the direct contractual relationship with enterprise customers for build activities, this is not NBN Co's preferred way forward.

### Option 2 – Expanded Revenue Pool

Under this option, an RSP (**First RSP**) would enter into a Customer Contract and would enter into a Technology Extension Contract (**TEC**) Deal Module with NBN Co for the **nbn**<sup>TM</sup> network infrastructure build at nominated customer sites.

The customer may terminate the Customer Contract with First RSP during the term of the Deal Module and enter into a subsequent Customer Contract with one or more alternative RSPs (**Subsequent RSPs**).

Should this occur, First RSP would keep the Deal Module with NBN Co on foot, including its deferred charge liability to NBN Co. If the customer remains on the **nbn**<sup>TM</sup> network, NBN Co would offset revenue received from Subsequent RSP(s) under their WBAs for the premises listed in the First RSP's Deal Module during the term (including any agreed extension), thereby reducing First RSP's deferred charge liability under the First RSP's Deal Module.

There would be no need for Subsequent RSPs to sign a Deal Module with NBN Co for the customer premises.

To reduce the deferred charge liability of the First RSP under the First RSP's Deal Module, 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 First RSP's deferred charge liability.



### 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.

### 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 the Customer Contract 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 applicable break amount to NBN Co and apply early termination charge to the customer (if applicable);
2. keep the Deal Module on foot until it expires and pay any residual deferred charges to NBN Co (if any, given that the deferred charge liability could be reduced under Option 2 – Expanded Revenue Pool above); or



3. 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. As in Option 2 – Expanded Revenue Pool above, 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.

## Next steps

NBN Co is 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 would like to meet with RSPs individually to discuss the different perspectives outlined in this document in detail and to jointly explore which options would most likely address the industry aspirations.

NBN Co would like to conclude discussions by **Friday 12<sup>th</sup> June 2020**.

Following the discussions with industry participants, NBN Co will aim to issue the consultation close out paper by **Thursday 18<sup>th</sup> June 2020**.

Please email Leila Riffi ([leilariffi@nbnco.com.au](mailto:leilariffi@nbnco.com.au)) or contact your NBN Co account manager should you wish to meet with NBN Co and discuss the content of this paper.

NBN Co will treat information provided in the discussions as confidential (and is not expecting submissions in writing). For the avoidance of doubt, NBN Co reserves the right to publish anonymised and unattributable data from the information received.

NBN Co will also consult with relevant government agencies on this paper and the outcome of the discussions with RSPs, in particular the ACCC, and so reserves the right to provide a description of information NBN Co receives to them on a commercial-in-confidence basis.