

Regulatory Impact Statement

Amending NBN Co's Non-Discrimination Obligations to allow it to conduct pilots or trials with specific persons

NBN Co is subject to strict non-discrimination obligations. These are set out in Part XIC of the *Competition and Consumer Act 2010* (CCA). They require NBN Co not to discriminate between access seekers when supplying services or interconnection, and also not to discriminate between access seekers in carrying on related activities. The obligations ensure that all access seekers receive the same services, on the same terms and conditions, with the same level of information and support. In other words, the obligations ensure that access seekers access the National Broadband Network (NBN) on a level playing field with a view to promoting fair and effective retail competition.

In its *National Broadband Network Market and Regulatory Report*, the Vertigan panel proposed that NBN Co should be allowed to discriminate between access seekers under Part XIC of the CCA, where that discrimination aids efficiency or is authorised by the ACCC. The panel also proposed that the non-discrimination obligations be removed if NBN Co faces effective competition in the long term.

The Government announced in its 11 December 2014 policy statement, *Telecommunications Regulatory and Structural Reform*, that it did not agree with this recommendation, but would bring forward legislation to allow NBN Co to conduct pilots and trials without breaching its non-discrimination obligations. In relation to the panel's proposal to relax the non-discrimination obligations more generally, the Government announced that this recommendation will be considered by the Productivity Commission as part of the review it is required to undertake under the *National Broadband Network Companies Act 2011* (the NBN Companies Act) after the NBN rollout is completed.

This regulatory impact statement considers options relating to non-discrimination, including the Government's preferred option to allow NBN Co to discriminate in conducting pilots and trials.

Context

On 7 April 2009, in announcing the NBN initiative, the then Government indicated that NBN Co would be wholesale-only and operate on an open access basis, subject to oversight by the ACCC. NBN Co would also provide equivalent access to all access seekers. In requiring NBN Co to operate on a wholesale-only open access basis with no retail arm, the then Government was seeking to provide an open platform for the development of retail competition and to respond to concerns about barriers to competition in the telecommunications market flowing from the vertical integration of network owners. The commitment to non-discrimination reflected concerns that even a wholesale-only operator may have incentives to favour some providers over others – for example, its largest customers, or customers who also provide it with access to specific services it requires.

To give effect to this commitment to non-discrimination, the then Government proposed legislation to impose non-discrimination obligations on NBN Co. Recognising that a blanket

requirement to offer equal treatment to all access seekers can lead to inefficient outcomes, the legislation proposed three exceptions from the non-discrimination obligation:

1. where NBN Co has reasonable grounds to believe that an access seeker would fail to comply with the terms and conditions proposed by NBN Co (for example, because the access seeker has repeatedly failed to do so in the past);
2. in grounds or circumstances specified by the ACCC; and
3. where discrimination aids efficiency.

The concept that an access provider may offer different terms and conditions to different access seekers, where that differentiation aids efficiency, already exists in the general access regime in Part IIIA of the CCA.

Parliament subsequently amended the bill to remove all of the exceptions other than the one relating to an access seeker failing to comply with proposed terms and conditions.

Accordingly, when the legislation was passed as the *Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Act 2011*, the non-discrimination obligations applying to NBN Co were quite broad.

Under Part XIC, NBN Co must not discriminate between access seekers in the supply of declared services (section 152AXC) and in conducting related activities such as developing or enhancing services, planning for a facility or network, or giving information to access seekers (section 152AXD). NBN Co is also prevented from discriminating in favour of itself in regard to the supply of declared services.

Assessing the problem

Discrimination can take a number of forms. It can encompass the simple differentiation of non-price terms and conditions – for example, the time to connect or repair a service, or the type of interface used to access a service – in response to access seeker requirements. It can also encompass more significant discrimination, such as offering volume or term discounts to access seekers who meet particular requirements of the access provider, or offering a particular type of service to only a few access seekers who agree to certain criteria such as committing up-front resources to the task.

Some discrimination can promote innovation and competition. Generally, it is recognised that in some circumstances discrimination can promote economic efficiency by allowing businesses to tailor prices and products to more specific market segments. This in turn can promote experimentation in developing new products and services in response to market demand. These issues were considered in the 1993 Hilmer Report on National Competition Policy, where the Independent Committee of Inquiry examined whether an existing prohibition on price discrimination in the CCA should remain. The Committee considered that “price discrimination generally enhances economic efficiency” (page 79), while noting that in some cases price discrimination can lessen competition where it allows a firm to entrench its market power by creating strong ties with certain customers and thereby restricting market entry by competitors (page 75).

The Committee argued that anti-competitive conduct which can derive from price discrimination is best handled by general laws against such conduct, and therefore price discrimination should be permitted because of the potential efficiency benefits. These strictures were adopted by the then Government in 1995, which removed the ban on price discrimination from competition legislation and ensured that the general access regime under Part IIIA of the CCA permits discrimination where it aids efficiency.

The key issue is to distinguish between discrimination that has beneficial impacts in terms of innovation and promoting efficiency, and discrimination that amounts to conduct that would damage competition in the market place. The CCA generally attempts to preclude the latter through general competition law. However, the Parliament decided, in relation to NBN Co's non-discrimination obligations, that general competition law would not be sufficient and therefore imposed a blanket ban on most discrimination. A key issue for debate since 2011 has therefore been whether the non-discrimination obligations are harming efficiency.

The Independent Costs-Benefit Analysis of Broadband and Review of Regulation (the Vertigan panel) considered NBN Co's non-discrimination obligations in its 2014 statutory review under section 152EOA of the CCA (Statutory Review). The Vertigan panel recognised that discrimination can have significant efficiency benefits:

Rather, the strongest case for allowing discrimination to occur is that it may replicate some of the incentives for innovation that would occur in a vertically integrated firm: for example, by ensuring that an RSP [retail service provider] that bears special risks in innovating receives greater rewards than those RSPs that merely imitate its conduct if and when it succeeds. In that way, allowing greater scope for discrimination would help reduce some of the costs of structural separation, enhance the scope to coordinate risky upstream and downstream investment and partly restore incentives for the development of innovative services (Statutory Review, page 48).

The Vertigan panel proposed amendments to NBN Co's non-discrimination obligations to re-introduce an efficiency-based exemption matching the one rejected by the Parliament in 2011. The panel also proposed removing the non-discrimination obligations altogether in the longer term if NBN Co faces effective competition.

It can be argued that many of the benefits of discrimination can be achieved under current laws. NBN Co can offer different wholesale services with different service levels to retail service providers to on-sell to their customers – for example, it can design specific products for corporate customers, small businesses and residential customers, which retailers can then use to target those market segments. The non-discrimination obligations do not prohibit experimentation, segmentation or differentiation by end-user. However, because they restrict NBN Co from discriminating *between* its customers, they create practical difficulties for NBN Co in conducting pilots or trials, and also discourage NBN Co's customers from bringing ideas for new products or services to NBN Co.

In the case of NBN Co, when it wishes to trial a new product or service, it complies with its obligations if it makes the product or service available to all its customers on the same terms and conditions. This can create practical difficulties where, for example, NBN Co has limited capacity on its network for a trial service. To trial its interim satellite service, for example, NBN Co had to use additional time and resources to develop an acceptable trial process that recognised capacity limits. Similarly, NBN Co may not be able to conduct a properly focussed trial with wholesale customers who possess some intellectual property, as those customers may be wary of sharing that intellectual property with their competitors.

The non-discrimination obligations may also create concerns outside of pilots or trials. VHA argued, in its submission to the Vertigan review, that because NBN Co is required to comply with the obligations it has set prices for its Connectivity Virtual Circuit at a one-size-fits-all level. The service capacity is sold in large blocks, which means that providers with a small number of customers must pay for the base level of capacity whether they use it or not. VHA noted that the obligations conferred a lack of flexibility on NBN Co which hampered service innovation and the emergence of new business models.

In the case of NBN Co's customers, the current obligations do not address the problem of free riding. Under the obligations, if a retail service provider approached NBN Co with a proposal to trial a new product, NBN Co would need to inform all its wholesale customers of the product idea. This may discourage retail service providers from collaborating with NBN Co on innovative products or services because they may need to share their innovation with their competitors before even working out its full potential, and before it is commercialised.

As a result, two potential responses may occur. One is that retail providers may simply not innovate. This is perhaps unlikely – the pressure of competition, especially where there is a level playing field for all retail providers, will encourage retail providers to differentiate their service offerings from each other. A more likely response is that innovation by retail providers is more likely to be focussed on areas that those providers directly control and where they do not have to share their innovations, such as specific content packages, data allowances or pricing points. Retail service providers could, however, limit co-operation with NBN Co that could be beneficial in developing more innovative products and services. As a result, end-users may have poorer access to new or improved products and services.

Industry stakeholders generally are concerned that any changes to the obligations could be to the detriment of overall competition. They are not convinced that their individual organisations would be able to benefit from a relaxation of the non-discrimination obligations.

This leads to a further key issue for the Government - to what extent any relaxation of the non-discrimination obligations could encourage NBN Co to favour one or more access seekers over other access seekers, for example, by offering lower prices or other more favourable terms and conditions, and whether such conduct would lessen competition. Access seekers receiving such beneficial treatment could gain a competitive advantage over other firms in the sector. In designing any changes to the non-discrimination obligations, the Government therefore needs to consider the extent to which any changes would promote anti-competitive conduct; the extent to which such conduct could be prevented or addressed by existing competition laws such as sections 45 and 46 of the CCA, and Part XIB of the CCA; and the extent to which changes would promote experimentation and innovation. In other words, can changes to the non-discrimination obligations be designed with appropriate safeguards so that experimentation and innovation can take place and overall competition will not be lessened?

The Government considered this issue in developing its 11 December 2014 policy statement. The Government's view was that the time is not right for a complete relaxation of the non-discrimination obligations. It may also not yet be appropriate to attempt to insert a broader exemption for discrimination that aids efficiency. Such issues are best considered after the NBN is built and fully operational, as part of the statutory review by the Productivity Commission under the NBN Companies Act. However, the Government accepted that the current laws restrict innovation, and therefore considered that they should be amended to permit NBN Co to engage in pilots and trials of new products and services.

Objective

The Government's objective is to ensure that obligations on NBN Co can effectively prohibit discrimination that may produce anti-competitive effects, while also promoting experimentation and innovation that could increase efficiency and end-user benefits.

Options

Four options have been considered:

1. status quo – retain the current non-discrimination obligations;
2. adopt the Vertigan panel’s recommendations (allowing discrimination that aids efficiency, and removing the obligations altogether in the longer term);
3. allow NBN Co to engage in pilots and trials that have been authorised by the ACCC; and
4. allow NBN Co to engage in pilots and trials without ACCC authorisation but with sufficient transparency so that the ACCC could take swift enforcement action if it considered NBN Co’s conduct was anti-competitive.

There is also the theoretical option of removing the non-discrimination obligations at this time. However, this was not proposed by the Vertigan review, which considered that removal should only take place in the longer term if NBN Co faces effective competition. The Government response also made clear that the Government did not intend to remove the obligations at this time. Consequently, the option is not considered further.

Option 1: Status quo – retain the current non-discrimination obligations

Under this option, the obligations set out in sections 152AXC and 152AXD in Part XIC would be unchanged. NBN Co would have to offer the same services, on the same terms and conditions, to all access seekers and in conducting related activities, including pilots and trials, would need to ensure it complied with the law. The only discrimination permitted would be in the limited circumstance where NBN Co believed an access seeker would not comply with its obligations.

NBN Co and access seekers could propose pilots and trials, noting however that these could be subject to the practical and commercial difficulties outlined above.

Option 2: Adopt the Vertigan panel’s recommendations

Under this option, the Government would implement the panel’s recommendations in this area. The obligations on NBN Co in Part XIC would be replaced with provisions that allow NBN Co to discriminate in situations where it would aid efficiency or is otherwise authorised by the ACCC. NBN Co would also be required to seek authorisation from the ACCC for any agreements that substantially differ from its standard terms and conditions.

The Vertigan panel also proposed disclosure obligations, without elaborating on what they could comprise. Measures similar to those already in Part XIC could be adopted. For example, where NBN Co proposes to enter into an agreement with an access seeker that differs from its standard form access agreement in a substantial way, NBN Co must publish and lodge a statement of difference with the ACCC. Affected parties would have an opportunity to object to the ACCC about an agreement. The ACCC would also be able to make an instrument setting out circumstances in which particular forms of service differentiation would be feasible, which could provide greater certainty to industry and end-users.

The Government would continue to monitor the market place so that, in the longer term, if NBN Co faces effective competition the Government would then make a decision on whether or not to remove the non-discrimination obligations altogether.

Option 3: Allow NBN Co to engage in pilots and trials that have been authorised by the ACCC

Under this option, the non-discrimination obligations would be amended so that NBN Co can conduct pilots or trials where the ACCC has previously authorised the pilot or trial (including the timeframe for the trial, the parties to the trial and the particular conduct to be undertaken as part of the trial). The ACCC would be required to publish details of the pilot or trial, so

other industry members could object to the ACCC if they did not consider the activity being undertaken was a real pilot or trial, or considered that NBN Co's conduct was anti-competitive.

Option 4: Allow NBN Co to engage in pilots and trials without ACCC authorisation but with sufficient transparency so that the ACCC could take swift enforcement action if it considered NBN Co's conduct was anti-competitive

Under this option, amendments would be made to the law to enable NBN Co to undertake trials and pilots without breaching its non-discrimination obligations. The ACCC would not be required to authorise a pilot or trial, but NBN Co would be required to notify the ACCC of a pilot or trial before entering into an arrangement to conduct the pilot or trial. Once the notification is published, NBN Co would be free to conduct the pilot or trial. Additional safeguards would be built into the law to guard against the potential for anti-competitive conduct. These would include:

- specifying a maximum timeframe for a pilot or trial in legislation;
- requiring NBN Co's notification to the ACCC to be in a form specified by the ACCC.

Obligations on NBN Co to publish a standard form of access agreement for all its services would be relaxed so it was not required to publish such a standard form for a service that is a pilot or trial service. If the ACCC considered that the pilot or trial was not a real pilot or trial it would be able to take enforcement action against NBN Co using its standard powers under the CCA and the *Telecommunications Act 1997*.

Analysis of options

This section discusses the relative costs and benefits of the three options and their impacts on stakeholders, namely carriers (access seekers), the ACCC and end-users.

The key criteria used in the assessment are whether the option achieves the Government's twin objectives of promoting innovation while also providing safeguards against undue discrimination which could harm competition. The analysis also considers the degree to which the option provides certainty for industry that particular activities can take place or that a customer of NBN Co will be able to compete on a level playing field.

Option 1: Status quo – retain the current obligations

Advantages:

- Promotes competition at the retail level by ensuring there is a level playing field for retail service providers on the NBN.
- Promotes certainty for industry that all access seekers will have access to the same terms and conditions in all circumstances (except for the limited exemption where NBN Co believes an access seeker will not fulfil its obligations).
- Saves NBN Co from being pressured to vary the terms and conditions that it offers retail service providers.
- The non-discrimination obligations were only introduced in 2011 and access seekers have planned their operations on the basis that NBN Co operates on a non-discriminatory basis. Accordingly, there is merit in taking further time to see if change is warranted.

Disadvantages:

- Does not address fundamental concern that the non-discrimination obligations could inhibit innovation and the development of new or improved services for end-users.

- Although pilots or trials may take place, these will usually be initiated by NBN Co which, because it is structurally separated from retail providers, will have less exposure to end-users and therefore may not be as responsive to end-users' requirements.
- Innovation by retail providers may be limited and end-users may therefore not benefit from faster development of new products or services.

Option 2: Adopt the Vertigan panel's recommendation

Advantages:

- Relaxation of the non-discrimination obligations where it aids efficiency or in circumstances specified by the ACCC would encourage innovation while providing some safeguards against anti-competitive effects. For example, NBN Co would be required to prove that proposed discrimination would either provide it with more efficient outcomes, or would promote greater efficiency within industry or the market place generally.
- Disclosure requirements will provide industry with transparency of NBN Co's conduct. This would then provide scope for parties to determine whether they can also seek access to any differentiated terms and conditions.
- Changes to permit pilots and trials will provide access seekers who undertake such trials with incentives to promote innovation.

Disadvantages:

- The option could promote greater industry uncertainty and give rise to challenges to discriminatory agreements. In some circumstances it may be difficult to prove that a particular proposal actually promotes efficiency, and there may be circumstances where a proposal that would help NBN Co operate on a more efficient basis would nonetheless not promote greater industry efficiency and may in fact have anti-competitive outcomes. There is therefore a risk that this option could tie up industry and regulatory resources and divert NBN Co's attention away from the general rollout.
- The ACCC could address this risk by providing clearer guidance on what conduct it considers acceptable, but there will always be a gap between the interests of the regulator and the incentives of commercial operators and no guidance by the regulator can predict all the ways in which the market will attempt to innovate and permit discrimination. There is also a risk of regulatory overreach in that the regulator may be too conservative and reject conduct that may not in the long-term prove anti-competitive.
- The non-discrimination obligations were only introduced in 2011 and access seekers have planned their operations on the basis that NBN Co operates on a non-discriminatory basis. There is therefore merit in allowing the current obligations to continue largely as they are, but perhaps with some small changes to better promote innovation.

Option 3: Allow NBN Co to engage in pilots and trials that have been authorised by the ACCC

Advantages:

- Relaxation of the non-discrimination obligations can promote efficiency and encourage innovation.
- Changes to permit pilots and trials will provide access seekers who undertake such trials with incentives to promote innovation.

- ACCC publication of information about the pilot or trial will promote transparency on what is taking place while preserving commercial-in-confidence information.
- Change to the non-discrimination obligations is limited and does not affect their fundamental operation in guaranteeing a level playing field for access seekers.
- The risks associated with a wider relaxation of the non-discrimination obligations set out under option 2 are averted.

Disadvantages:

- Should up-front authorisation of all proposals to differentiate terms and conditions be required, the ACCC would have to review all such proposals. This could tie up regulatory resources and delay some commercial agreements, imposing costs on NBN Co and its customers.
- There is also a risk of regulatory failure – the ACCC’s approach could be too conservative, meaning that genuine pilots or trials are not authorised because the ACCC is concerned that there may be anti-competitive impacts.
- Doesn’t address wider problems with the non-discrimination obligations, although in this regard the Government was concerned that it may be too early to amend the obligations and that they should be reviewed by the Productivity Commission as part of its statutory review.

Option 4: Allow NBN Co to engage in pilots and trials without ACCC authorisation but with sufficient transparency so that the ACCC could take swift enforcement action if it considered NBN Co’s conduct was anti-competitive

Advantages:

- The option has the same advantages as option 3, but with two key added benefits. First, pilots or trials will be able to be conducted flexibly in response to market circumstances, promoting more timely innovation, while safeguards will continue to be in place to prevent anti-competitive outcomes. Second, the option avoids the delay costs inherent in option 3.
- Change to the non-discrimination obligations is limited and does not affect their fundamental operation in guaranteeing a level playing field for access seekers.
- The risks associated with a wider relaxation of the non-discrimination obligations set out under option 2 are averted.

Disadvantages:

- Absence of up-front authorisation means there is a risk that some conduct could occur that has anti-competitive effects. However, as NBN Co would need to notify the ACCC of proposed conduct before the pilot or trial commences, this risk is considered low. Furthermore, the ACCC would be able to take enforcement action.
- The option means that there will continue to be some uncertainty within industry about whether particular proposals will be subject to regulatory action, but this is an issue that industry must consider in relation to all market activities. Again, up-front notification to the regulator will ensure that the regulator can quickly identify any concerns and industry can adjust proposals to reflect this.
- Doesn’t address wider problems with the non-discrimination obligations, although in this regard the Government was concerned that it may be too early to amend the obligations

and that they should be reviewed by the Productivity Commission as part of its statutory review.

Preferred option

Option 4 is the preferred approach, because it is likely to produce the highest net benefit of all the options. It best balances the Government's objectives (promoting innovation while ensuring adequate safeguards are in place to preclude undue discrimination that may harm competition). It places a lower regulatory burden on industry and the regulator than option 3. It is more market-based than option 3, in that no prior authorisation is required. The absence of prior authorisation does not mean that there will be less transparency than under option 3 – under both options, NBN Co would have to notify the ACCC and publish the notice. It means, on the contrary, that market participants will be better placed to judge that a pilot or a trial may deliver good commercial outcomes and test that for themselves, rather than the regulator being required to mimic the incentives of market participants. Option 4 does not preclude anti-competitive conduct being penalised; the proscriptions in the CCA on such conduct would continue to apply and the ACCC would be able to take action if it considered it warranted.

Option 1 does not address the Government's objectives, though it does at least provide certainty to industry that the current level playing field delivered by the non-discrimination obligations will continue. However, it would also mean that innovation on the NBN could be limited, for the reasons given above.

Option 2 addresses the panel's concerns, but departs from the non-discrimination obligations introduced in 2011 and by which access seekers have planned their operations. It could lead to considerable industry uncertainty about the impacts of the option on competition, which could have a chilling effect on investment decisions.

Option 3 addresses the Government's objectives, but the role given to prior authorisation could result in delays to pilots or trials that could reduce their commercial utility, add to regulatory costs on business and potentially limit the benefits of the change if the regulator proved too conservative in its assessments of proposals.

Consultation

There was extensive consultation in early 2014 as part of the Vertigan review. For the Regulatory Report, the panel released a Regulatory Framing Paper in February 2014 to take soundings from industry and the public on key factors that should be considered. The panel received 43 submissions. For the Statutory Review, the panel released a consultation paper in March 2014 to seek views from industry and the public on the telecommunications access arrangements. The panel received 15 submissions.

The Statutory Review was released in July 2014, allowing industry considerable time to provide feedback to the Government on its recommendations. The Department of Communications consulted carriers and industry organisations in relation to the panel's recommendations. In those consultations stakeholders indicated a general support for promoting more innovation on the NBN, but expressed concerns that any changes to the non-discrimination obligations could harm competition.

The Government consulted industry stakeholders on an exposure draft of the legislation and on the early assessment RIS, sending the documents to major telecommunications carriers (about 20 industry members) and to key organisations including the Australian Communications Consumer Action Network, Communications Alliance and the Competitive

Carriers' Coalition (CCC). The Government also provided the draft RIS and legislation to the ACCC for comment.

Six submissions were received. Opinion was divided on the non-discrimination proposals. One submission proposed broadening the changes to permit any discrimination that aids efficiency. Another supported the proposed changes but sought a specific exemption for itself. Four submissions indicated concern that the changes could advantage larger providers over smaller ones, especially in the context of NBN Co migrating services from Telstra's networks to the NBN. While the Government accepts that there are risks of such advantages being conferred, it also notes that general competition law provides adequate powers to the ACCC to monitor the sector and take action against anti-competitive conduct.

No submitters commented on the regulatory burden measurement costings in the early assessment RIS.

Implementation and Evaluation

The Government issued a media statement on 11 December 2014 indicating its response to the Vertigan report and its proposal to amend legislation to permit limited discrimination relating to pilots and trials. Legislation is expected to be introduced during the Spring 2015 sittings of the Parliament. Should the Parliament pass the legislation, the Government would evaluate the impacts of the changes through its normal industry monitoring and consultation processes. This includes ACCC monitoring, such as its annual reports on competition in the telecommunications sector.

Regulatory Burden Measurement

Options	Preferred	Regulatory Burden Measurement
1: Status quo	No	Neutral
2: Amend Part XIC of the CCA to enable NBN Co to discriminate between access seekers where it aids efficiency or is authorised by the ACCC.	No	Administrative Cost –NBN Co would need to report discrimination to the ACCC.
3: Amend Part XIC of the Competition and Consumer Act to suspend the non-discrimination obligations for a pilot or trial, subject to ACCC authorisation.	No	Administrative Cost –NBN Co would need to notify the ACCC, which would then need to authorise the conduct. Delay cost – if the ACCC takes time to authorise proposals, there may be a delayed commercial benefit for industry.
4: Amend Part XIC of the Competition and Consumer Act to suspend the non-discrimination obligations for a pilot or trial, subject to notifying the ACCC.	Yes	Administrative Cost – NBN Co would need to notify the ACCC.

Assumptions (option 1)

None – there is no change in regulatory burden for the status quo option.

Average Annual Regulatory Costs (from business as usual)				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total by Sector	(\$0)	\$0	\$0	(\$0)

Assumptions (option 2)

- This option has a greater administrative overlay than options 3 or 4 (preferred). Given that discrimination between access seekers would be generally permitted it is expected that more proposals would be submitted to NBN Co for consideration and

therefore there would be an increase in the discrimination notices provided to the ACCC.

- This increase is assumed to be 200% over the three notices a year average in Option 4 – that is, on average, 9 notices a year.

Average Annual Regulatory Costs (from business as usual)				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total by Sector	\$0.093	\$0	\$0	\$0.093

Assumptions (option 3)

- NBN Co would accept 3 proposals per year over the next 10 years to conduct pilots or trials. The ACCC would need to examine and authorise each proposal.
- The ACCC would need to allocate 1.0 FTE for up to 8 weeks per year to assess each proposal.
- Delay costs to industry would be generated by the authorisation process. These are difficult to judge, and would depend on the nature of the proposal and envisaged benefits. As this option is not preferred, we have not attempted to calculate the delay costs.

Average Annual Regulatory Costs (from business as usual)				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total by Sector	\$0.062	\$0	\$0	\$0.062

Assumptions (option 4 - preferred)

- Option 4 has similar assumptions to option 3 but the costs are half of that option because it does not involve ACCC authorisation.
- NBN Co would accept 3 proposals per year over the next 10 years to conduct pilots or trials.
- Based on costings for varying access agreements it is estimated that each proposal requires 1.0 FTE for 4 weeks per year to lodge the notification document with ACCC and manage follow-up consultation.

Regulatory Burden and Cost Offset Estimate Table

Average Annual Regulatory Costs (from business as usual)				
Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total by Sector	\$0.031	\$0	\$0	\$0.031
Cost offset (\$million)	Business	Community Organisations	Individuals	Total by Source
Agency	(\$0.031)	\$0	\$0	(\$0.031)
Are all new costs offset?				
<input checked="" type="checkbox"/> yes, costs are offset <input type="checkbox"/> no, costs are not offset <input type="checkbox"/> deregulatory, no offsets required				
Total (Change in costs - Cost offset) (\$million) (\$0.031)				

The regulatory cost offsets noted in the above table have been identified within the Communications portfolio. These cost offsets relate to the Identity Checks for Prepaid Mobile Services reforms.