NBNCo
Bringing broadband to life

1 November 2012

Mr Richard Home
General Manager
NBN Engagement and Group Coordination Branch
Communications Group

By email: richard.home@accc.gov.au

Dear Richard,

Re: NBN Co Special Access Undertaking (SAU) – request for clarification

I refer to your letter of 26 October 2012 seeking clarification on two matters relating to NBN Co's Special Access Undertaking (SAU). Our response to your request is set out below.

Categorisation of SAU provisions

As required under section 152CBA(3A) of the CCA:

- in clause 1.1 of the SAU, NBN Co undertakes to be bound by the Category B SAOs (to the extent those obligations would apply to NBN Co); and
- in clause 1.2 of the SAU, NBN Co undertakes to comply with the terms and conditions specified in the SAU in relation to the Category B SAOs.

NBN Co submits that all of the terms and conditions in the SAU are terms and conditions in relation to section 152CBA(3A) of the *Competition and Consumer Act 2010* (CCA) and as such all of the terms and conditions in the SAU should be assessed by the ACCC pursuant to the criteria in section 152CBD(2)(b) of the CCA.

NBN Co submits that, as required by section 152CBD(2)(b) of the CCA, all of the terms and conditions of the SAU are consistent with the Category B SAOs and are reasonable (see sections 9 and 10.2 of NBN Co's Supporting Submission).

While the above is NBN Co's position in relation to all of the terms and conditions of the SAU, it is possible that the ACCC may adopt an alternative view that some or all of the conduct specified in Schedule 1I (Product Development and Withdrawal) may only fall within 'specified conduct' under section 152CBA(3C) of the CCA.

If the ACCC were to adopt such a view of any part of Schedule 1I of the SAU, NBN Co considers that in accordance with section 152CBD(2)(cb) of the CCA the specified conduct in Schedule 1I will promote the long-term interests of end-users (LTIE) for the reasons set out in section 10.3 of the Supporting Submission.

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