NBNCo
Bringing broadband to life

18 December 2012

Mr Michael Cosgrave
Group General Manager
Communications Group
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

By email: michael.cosgrave@accc.gov.au

Dear Michael,

Alignment of NBN Co's Special Access Undertaking (SAU) with Contract Development Process (CDP) outcomes

On 30 November 2012, NBN Co concluded the Contract Development Process (**CDP**) for its Wholesale Broadband Agreement (**WBA**). This year long process has involved extensive multilateral and bilateral consultation between NBN Co and its customers and has facilitated the substantial development and improvement of the WBA.

Some of the non-price related terms and conditions incorporated into the Special Access Undertaking (**SAU**), as lodged by NBN Co on 28 September 2012, are now out of alignment with the final draft of the WBA (as developed via the CDP) because further engagement between NBN Co and customers between 28 September 2012 and 30 November 2012 resulted in additional customer favourable changes to these terms and conditions. The particular aspects of the SAU affected include the terms and conditions set out in the Dispute Management Rules (Annexure 1 to Schedule 1H), Confidentiality and IPR (Annexure 2 to Schedule 1H), Risk Management (Annexure 3 to Schedule 1H) and Service Level Schedule (Annexure 1 to Schedule 1J).

In order for the amended terms and conditions to be efficiently considered by the ACCC as part of the SAU assessment process, NBN Co will withdraw from the ACCC's consideration the SAU lodged on 28 September 2012 (**Withdrawn SAU**) and relodge an SAU on substantially similar terms incorporating the CDP related changes and a small number of other minor amendments to clarify the operation of the SAU[1] (**Amended SAU**). The refinements in the Amended SAU are outlined in Attachment A to this letter. A mark up of the Amended SAU (new Annexures have been replaced without any mark up shown) has been enclosed to assist stakeholders to identify the changes from the Withdrawn SAU.

NBN Co submits that the changes introduced into the Amended SAU result in improved and clearer terms for customers and end users, and enhance the reasonableness of the SAU as result.

Please accept this letter as notification that NBN Co is formally withdrawing the SAU lodged on 28 September 2012 and lodging the enclosed SAU with the ACCC for the purposes of section 152CBA of

[1] As described in NBN Co's letter to the ACCC on December 4 2012, and other minor changes.

the Competition and Consumer Act 2010 (**CCA**) for consideration in accordance with the framework in Division 5 of Part XIC of the CCA.

On 28 September 2012, NBN Co also lodged a supporting submission and four independent expert reports. NBN Co confirms that the ACCC should also consider these documents (supplemented by the material outlined in Attachment A to this letter and NBN Co's letter of 4 December 2012) as supporting material for the Amended SAU. The Network Design Rules provided to the ACCC on 28 September 2012 continue to apply to the Amended SAU.

NBN Co will also be publishing the Amended SAU on its website following lodgement with the ACCC. This letter is not commercial-in-confidence and its contents may be published on the ACCC's website.

NBN Co may submit additional material in respect of the SAU as the ACCC's assessment of the SAU progresses.

Please do not hesitate to contact me if you have any queries in relation to any of the above.

Yours sincerely,

Caroline Lovell

Caroline Lovell
Principal, Regulatory Affairs and Industry Engagement