

2 May 2013

Mr Richard Home
General Manager
NBN Engagement and Coordination Branch
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

ACMA file reference: ACMA2013/210-8

Dear Mr Home

ACCC Draft Decision on the Special Access Undertaking Lodged by NBN Co and Consultation Paper to Vary the NBN Co Special Access Undertaking

I am writing to outline the ACMA's views in regards to the *ACCC Draft Decision on the Special Access Undertaking Lodged by NBN Co on 18 December 2012* (herein referred to as the Draft Decision) and the *Consultation Paper – variation of NBN Co Special Access Undertaking* (herein referred to as the Consultation Paper) released by the ACCC on 4 April 2013.

Retail Level Regulatory Requirements

Section 6.1.3.2 of the Draft Decision outlines the ACCC's views on retail-level regulatory requirements including the Customer Service Guarantee (CSG) Standard and Priority Assistance (PA). As the regulatory body responsible for administration of the CSG and PA arrangements, the ACMA has a particular interest in ensuring the effective ongoing operation of these important consumer safeguard arrangements.

The ACMA concurs with the ACCC's view that "NBN Co has not made any general commitments in the Special Access Undertaking (SAU) to address its role in supporting retail-level regulatory requirements that apply in downstream markets. This may create significant compliance issues for RSPs if SFAAs and Access Agreements are inconsistent with such requirements".

The ACMA is especially concerned if elements of the SAU could effectively require or encourage access seekers to obtain waivers from their customers in relation to their rights under the CSG Standard. This may undermine the opportunity for end users to access current consumer safeguards designed to protect their long term interests.

Service Levels

Section 6.2 of the Draft Decision discusses the service levels specified in the SAU. The ACMA generally supports the ACCC's preliminary views in relation to the service level commitments included in the lodged SAU. In this context, we have reviewed the Consultation Paper.

Consultation Paper Proposal

The Consultation Paper proposes that service level issues should be removed from the SAU, and be subject to negotiation between NBN Co and access seekers, requiring the deletion of Schedule 1J (including Annexure 1) and Schedule 2F, and references to these provisions.

The ACMA agrees that service level issues should be removed from the SAU and would benefit from further commercial negotiation between NBN Co and Access Seekers be required to achieve suitable ongoing arrangements which balance the interests of NBN Co, Access Seekers, end users of telecommunications services and the government's established retail-level regulatory requirements.

Where NBN Co and Access Seekers may be unable to reach agreement on the relevant terms and conditions, I note that the ACCC may be required to intervene via an Access Determination or Binding Rules of Conduct.

If the ACCC is required to intervene, the ACMA would encourage the ACCC to ensure that the terms and conditions between NBN Co and Access Seekers allow for Access Seekers to meet their retail-level regulatory requirements, as well as providing service levels that adequately balance the interests of NBN Co and Access Seekers.

The ACMA would be willing to share our experiences regarding CSG and PA arrangements at anytime to assist the ACCC.

It would also be useful in the ACCC Decision on the SAU to confirm that relevant Undertakings and other arrangements between parties need to remain cognisant of the existing regulatory obligations of the parties.

Lastly, it might also be of benefit to remind parties that governments could change regulatory obligations from time to time in response to identified needs and any agreed arrangements could also consider what processes would be employed to negotiate any necessary amendments.

Yours sincerely



Paul White

Executive Manager, NBN and Industry Monitoring Branch