

27 May 2016

Mr Michael Cosgrave
Executive General Manager
Infrastructure Regulation
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

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

Dear Mr Cosgrave,

Variation to nbn's Special Access Undertaking

nbn's Special Access Undertaking (SAU), as accepted by the ACCC on 13 December 2013, is a key part of the regulatory framework that governs the terms on which nbn supplies services to access seekers over the period to 30 June 2040.

In accordance with the Government's April 2014 Statement of Expectations (SOE), nbn has been transitioning to an optimised multi-technology mix (MTM) model. Now is an appropriate time for nbn to update the SAU by way of a variation to incorporate the additional MTM technologies (i.e. Fibre-to-the-Building or FTTB, Fibre-to-the-Node or FTTN and Hybrid Fibre Coaxial or HFC).

In accordance with section 152CBG of the Competition and Consumer Act 2010 (CCA), nbn lodges the enclosed variation to the SAU with the ACCC for consideration in accordance with the framework in Division 5 of Part XIC of the CCA.

We also enclose the following documents, all of which are public documents (with the exception of one expert report, as identified below), as is this covering letter:

- nbn's Supporting Submission in relation to the SAU variation;
- the following reports by independent experts commissioned via nbn's lawyers:
 - Professor Janusz Ordover and Dr Allan Shampine (Ordover and Shampine) – address whether the variation to incorporate the additional MTM technologies (FTTB, FTTN and HFC) would impact the views expressed in their September 2012 expert report in regard to the high level design of the SAU, the nature and strength of incentives for investment expenditure, efficiency, pricing, product development and withdrawal, service quality, and engagement with access seekers on non-price terms, and the significance of nbn's wholesale only status within the broader context of developing appropriate long term regulatory arrangements;



- Analysys Mason –address the prudence and efficiency of the following:
 - **nbn's** methodology and processes for determining which type of network it will deploy in particular geographical areas; and
 - **nbn's** initial design of its FTTB, FTTN and HFC networks; and
- Dr Steven Bishop and Professor Bob Officer (Bishop and Officer) – address whether the rate of return approach in Module 1 and the rate of return principles in Module 2 are reasonable when applied to the additional MTM technologies (FTTB, FTTN and HFC).

Please note that we are providing the ACCC with both a public and a 'confidential of particular sensitivity' version of the Analysys Mason report. Only the public version should be published by the ACCC, although the 'confidential of particular sensitivity' version can be identified as also having being provided.

In regard to the Analysys Mason report, **nbn** has determined the confidentiality status of the report's contents in accordance with the ACCC's April 2014 Confidentiality Guideline for submitting confidential material to ACCC communications inquiries. In a limited number of sections, **nbn** has identified material that is 'confidential of particular sensitivity' and as such will not be made available to any other parties, including under confidentiality arrangements. The relevant material relates to **nbn's** approaches to network selection and network dimensioning and is confidential of particular sensitivity for a number of reasons including how it could be used by infrastructure based competitors and by other parties involved in ongoing negotiations with **nbn**. **nbn** does not consider that a confidentiality agreement could be drafted in such a way that would adequately protect **nbn** from the risk of significant commercial harm.

nbn acknowledges the constructive pre-lodgement engagement between the ACCC and **nbn** in relation to SAU variation.

We look forward to the ACCC commencing its consultation process in relation to the SAU variation and to continuing to engage constructively with the ACCC during its consideration of the SAU variation.

Please let me know if you require any further information or would like to discuss anything in this letter or the attached documents.

Yours sincerely

A handwritten signature in black ink that reads 'Caroline Lovell'.

Caroline Lovell
Chief Regulatory Officer