

2 May 2013

General Manager
NBN Engagement and Group Coordination Branch
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Via Email: richard.home@accc.gov.au

RE: Consultation Paper – variation of NBN Co Special Access Undertaking

ACCAN thanks the ACCC for the opportunity to comment. ACCAN welcomes the ACCC's expert analysis and suggested variations to the SAU. We support the greater role proposed for the ACCC in several areas and the increased certainty proposed for the ACCC's role in setting terms and conditions.

2.3.1.2 Commitments by NBN Co to share information and consult

As the Draft Decision correctly states, there is a strong need not just for consultation but also for regulatory fallback particularly for future scenarios where NBN Co may face weak incentives to develop new products in line with evolving end-user demand.

In relation to consultation, we welcome the proposal for the SAU to be varied in such a way that membership and participation in the Product Development Forum is extended to include consumer advocacy groups.

We would support a broad definition of consumer groups similar to the definition found in the Telecommunications Act 1997. Section 593 of the Act relevantly says:

“consumer body” means a body or association that represents the interests of consumers.

A narrow definition would be inadvisable as the nature of the products and services delivered over broadband may in the future be quite varied and the types of groups that may wish to have input from an end-user standpoint may consequently be diverse (i.e. not only consumer bodies established with a specific telecommunications remit).

The participation of such groups in the PDF would be best facilitated by NBN Co and the ACCC giving written notice inviting consumer bodies to attend and informing bodies that may be affected by upcoming decisions. Invitations should be published on the relevant official web sites of both NBN Co and the ACCC.

2.3.2 Product withdrawal

We welcome the variation requiring NBN Co to provide the same amount of written notice to consumer groups as it provides to its customers and the additional ACCC veto power over product withdrawal where the withdrawal would not promote the long-term interests of end-users.

2.4.1 Pricing of individual products

Given the long timeframe of the SAU, we welcome ACCC powers to determine prices for new products.

2.4.1.2 Ability for relative price levels to change in response to unforeseen circumstances

ACCAN supports the variation to provide for NBN Co's prices to be subject to periodic revenue neutral price rebalancing to allow for situations where prices are not promoting efficient use of the network.

2.5.1 Service levels

As ACCAN's previous submission indicated, we are not comfortable with some service level commitments which for example do not allow service providers to meet current timeframe requirements for connections. The ACCC's Draft Decision notes correctly that "without clear, enforceable commitments from NBN Co about the timing of corrective action, access seekers lack the ability to make assurances to customers regarding the quality of their service offerings". We therefore support the removal of service level commitments from the SAU in order to allow for further negotiation and the formulation of proper incentives for compliance.

We look forward to participating in further discussions with the ACCC on the future development of service level commitments.

Sincerely,

Jonathan Gadir

Senior Adviser – Policy and Research