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Jane van Beelan  
Chief Legal and Regulatory Officer  
NBN Co Limited  
By email: [janevanbeelen@nbnco.com.au](mailto:janevanbeelen@nbnco.com.au)

Dear Jane

### **Arrangements from 1 July 2023 under current special access undertaking**

I am writing to advise you of the ACCC's proposed approach to the first regulatory cycle of the subsequent regulatory period under NBN Co's special access undertaking (SAU) (commencing 1 July 2023) in light of NBN Co's proposal to vary the SAU. In particular, we advise that the ACCC does not propose to make a replacement module determination under the current SAU at this time.

#### *Arrangements under the current special access undertaking*

NBN Co's SAU was accepted by the ACCC in 2013 and is scheduled to operate until 2040. The initial regulatory period (Module 1) of the SAU ends on 30 June 2023 and the subsequent regulatory period (Module 2) will operate from 1 July 2023 until 2040.

Module 2 of the current SAU provides for the making of replacement modules that apply for a period of 3 to 5 years (a regulatory cycle). These replacement modules are intended to specify various detailed elements for a regulatory cycle that feed into the long term revenue control framework set out in the SAU. The first regulatory cycle of the subsequent regulatory period is scheduled to commence on 1 July 2023.

The replacement module process first requires NBN Co to submit a replacement module application (an RMA). An RMA must include a long-term revenue constraint proposal (which includes building block parameters) and a RAB roll forward proposal. The ACCC is required to consider an RMA as a variation to the SAU under Part XIC of the *Competition and Consumer Act 2010*.

If the ACCC has not accepted an RMA, the ACCC is required to issue a replacement module determination (an RMD) at least 20 business days prior to the last day of the initial regulatory period or a regulatory cycle (as they case may be). Like an RMA, an RMD would relevantly determine the matters that comprise a long-term revenue constraint proposal and a RAB roll forward proposal.

#### *NBN Co's proposal to vary the SAU*

The ACCC has been conducting an extensive consultation on NBN Co's proposal to vary the SAU. The ACCC is currently assessing and consulting on the SAU variation submitted by NBN Co in November 2022. NBN Co's SAU variation incorporates proposed changes to the long term regulatory framework and specifies certain parameters for the first regulatory cycle from 1 July 2023.

We understand that NBN Co is considering whether to resubmit a revised SAU variation proposal to address concerns raised during consultation.

In the event the ACCC accepts any SAU variation by NBN Co, this will lead to significant changes to the regulatory framework under the SAU. However, due to ongoing consultations on various aspects of NBN Co's SAU variation proposal, the SAU variation process will not be finalised before 1 July 2023. The current SAU will therefore continue to operate until any SAU variation proposal is accepted by the ACCC.

*Proposed approach to the first regulatory cycle of the subsequent regulatory period*

The ACCC has not accepted any RMA lodged by NBN Co for the first regulatory cycle of the subsequent regulatory period. However, the ACCC does not presently propose to make any RMD for the regulatory cycle commencing on 1 July 2023. The ACCC considers this course of action is appropriate given the ongoing assessment of the SAU variation and the limited practical benefits to consumers or industry of making an RMD in the current situation. We note the following points specifically:

- If the ACCC accepts an SAU variation proposal lodged by NBN Co, any arrangements put in place for the first regulatory cycle by an RMD would cease to have any effect and would be replaced by the new arrangements specified in the varied SAU. Further, the framework under the proposed SAU variation is fundamentally different to the current SAU. An RMD made under the current SAU for the first regulatory cycle will be unlikely to act as a transitory step towards arrangements that would be established should an SAU variation be accepted.
- The current terms and conditions of supply of NBN Co's services will not be affected in any practical way in the short term in the absence of any RMD for the first regulatory cycle. Key elements contained in Module 2 of the SAU, such as price controls, product development and product withdrawal, will continue to operate regardless of whether an RMD is in place. Further, current service standards will continue to apply under existing contractual arrangements.
- The matters that would normally be specified through an RMD relate to the long term revenue controls under the current SAU, and will have no practical implications for prices in the immediate term. However, these matters will be important should a varied SAU not come into effect through the current process and the current SAU continues to operate beyond the immediate term. Key matters that would need to be determined in this situation include building block parameters, the length of the regulatory cycle, and RAB roll forward mechanisms.
- Any RMD for the first regulatory cycle at this stage would add a further regulatory process and create a risk of regulatory burden for NBN Co and the industry.

Although we do not propose to make any RMD at this stage, the ACCC reserves its position in this respect, particularly if a revised framework cannot be established through the current SAU variation process in a timely manner. In this situation, the ACCC would expect NBN Co to engage constructively with the ACCC and industry to establish suitable arrangements for the first regulatory cycle under the current SAU.

Please note we intend to publish this letter on the ACCC's website.

If you would like to discuss further, please contact Scott Harding ([scott.harding@acc.gov.au](mailto:scott.harding@acc.gov.au)).

Yours sincerely



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