



Draft Notice to Vary NBN Co Special Access Undertaking Competitive Carriers' Coalition Submission

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Australian Competition and Consumer Commission

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Via email: isolde.lueckenhausen@acc.gov.au

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Dear Ms Lueckenhausen,

The Competitive Carriers' Coalition (CCC) welcomes the opportunity to contribute to the ACCC's draft notice to vary the NBN Co Special Access Undertaking (SAU), and the accompanying Response to Submissions Paper.

The CCC would like to note the lengthy process of refining the SAU and acknowledge the in principle agreement with the majority of variations included in the draft. With the small changes and improvements raised below the CCC believes that the resulting SAU, if agreed upon, will be able to conclude this process. The points raised below are not non-negotiable, and the CCC is a happy to assist in expediting the conclusion of this process.

In this submission the CCC expresses its support, concerns and points of note with regard to the draft notice to vary. These are focused around the following variations:

1. Operation and interaction of the SAU and Part XIC
2. Pricing Matters
3. Newly Proposed Variations.



Operation and Interaction of the SAU and Part XIC

Regulatory Recourse & Standard Forms of Access Agreements (SFAAs)

The CCC is supportive of the removal of the clause requiring that particular terms and conditions, set out in the SAU, are required to be established in SFAAs. The outcome being that NBN Co must supply services on regulated terms, as provided in Regulatory Determinations, in line with the normal operation of Part XIC.

Services to which the SAU relates

With regard to potential ambiguity about the services that the SAU relates to, the CCC supports the assumption that ACCC Regulatory Determinations about ACCC declared services are justified as being not inconsistent with the SAU, as the SAU does not specifically apply to that service.

Pricing Matters

Regulatory Oversight of NBN Pricing of New Services

Amendments that enable the ACCC to have oversight over NBN pricing of new and zero-priced services are supported by the CCC. The time frame of 2 years for the ACCC to intervene in pricing of new services, and 6 months for zero-priced services allows sufficient time for the access seekers or the ACCC to examine the possibility of inappropriate pricing. Amendments that allow regulatory safeguards by the ACCC in pricing matters are important to ensure there is a level of accountability in pricing decisions by NBN Co.

Periodic ACCC review of NBN Co pricing

There is some concern that the pricing review constraints, outlined in the draft variation, are too restrictive. The CCC believes that it is of utmost importance that the ACCC has the ability to intervene in price matters if it is deemed necessary, either by its self or access seekers for the benefit of end-users. Precluding the ability to intervene before 2018 is believed to be overly restrictive.

The CCC would support amendments that preclude a review before 2015, with subsequent reviews able to be commenced at the earliest, three years from the commencement of a prior review.



In considering the need for a review of pricing, and in the review process itself, the Commission should be guided by the long-term interest of end-users and NBN Co's legitimate concern for net revenue neutrality in support of its need to recover its costs.

CVC Pricing

Restriction of pricing reviews are of particular importance with regard to CVC pricing, which is expected to see major market changes in the next five years, and is already the subject of much contention, and may require a review earlier than 2018. It would provide greater comfort to access seekers were there provisions that allowed the ACCC to have a formal role in reviewing CVC pricing.

Long-term Revenue Constraint Methodology

The CCC is supportive of amendments to the draft SAU that confirm the long-term revenue constraint model does not permit NBN Co to raise its prices above the 1.5% CPI cap.

Newly Proposed Variations

Amendments to address information imbalances

The CCC supports the variations proposed by Telstra that would address the information imbalance between NBN Co, ACCC, end-users and access seekers. This is supported on the basis of greater transparency improve decision making ability with regard to business modelling.

Reference and Non-Reference Offers

The amendments to the SAU that would remove the distinction between "reference" and "non-reference" offers is supported by the CCC so long as the areas where the distinction makes a material difference remains.

The CCC believes that the use of "services known" and "services unknown" provides less ambiguity and greater simplicity for decisions regarding service conduct.



Conclusion

The Draft Notice to Vary the SAU is consistent, on the most part, with the view of the Competitive Carriers' Coalition. The points that are raised above give rise to some minor amendments that would provide access seekers the confidence that NBN Co should function under sufficiently competitive conditions that are subject to regulatory oversight.

Kind Regards,

Competitive Carriers' Coalition