

28 September 2012

Mr Richard Home
a/g Group General Manager
Communications Group
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

By email: richard.home@accc.gov.au

Dear Richard,

NBN Co's Special Access Undertaking (SAU)

For the purposes of section 152CBA of the *Competition and Consumer Act 2010 (CCA)*, NBN Co lodges the enclosed 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 Co's Supporting Submission in relation to the SAU;
- A short Overview Paper on the SAU for the information of interested parties;
- NBN Co's Network Design Rules;
- The following reports by independent experts commissioned via NBN Co's lawyers, which review key aspects of the SAU:
 - Professor Janusz Ordover and Dr Allan Shampine (**Ordover and Shampine**) – address the high level design of the SAU (including the 30 year term, modular structure and regulatory recourse arrangements in Module 1), the nature and strength of incentives for investment, expenditure efficiency, pricing, product development and withdrawal, service quality, and engagement with Customers on non-price terms, and the significance of NBN Co's wholesale only status and its broader context to simplifying the task of developing appropriate long term regulatory arrangements.
 - Synergies Economic Consulting (**Synergies**) – address the efficiency of the specific mechanisms set out in the SAU including the various elements of the LTRCM and pricing commitments made via the Reference Offers, Non-Reference Offers and Other Charges.
 - Professor Bob Officer and Dr Steven Bishop (**Officer and Bishop**) – address the specification of the weighted average cost of capital approach (WACC) included in Module 1 (and associated tax treatments) and also address the WACC principles set out in Module 2 for use in the subsequent 20 years of the SAU.

- **Analysys Mason** – address the prudence and efficiency of the initial design of NBN Co's fibre, wireless and satellite networks. *Note: we are providing the ACCC with both a public and commercial-in-confidence version of this report. Only the public version should be published by the ACCC, although the commercial-in-confidence version can be identified as having been provided as well.*

NBN Co acknowledges the substantive and constructive pre-lodgement engagement between the ACCC and NBN Co in relation to the redevelopment of the SAU. This has assisted NBN Co in revising the SAU to address issues raised by the ACCC and industry in relation to the December 2011 SAU. We look forward to the ACCC commencing its consultation process in relation to the SAU and to continuing to engage constructively with the ACCC during its consideration of the SAU.

The SAU lodged today has been revised substantially compared to SAU that was lodged in December 2011, in response to feedback from the ACCC and access seekers on that SAU, and as a result of the ongoing consultation on the Wholesale Broadband Agreement via the Contract Development Process. The revised SAU makes the following significant changes relative to the December 2011 SAU:

- Instead of setting all terms and conditions for a 30 year term, the revised SAU features a modular structure, with different terms and conditions operating in discretely defined time periods, allowing the operation of the SAU to evolve to meet changing circumstances. Detailed terms in the SAU will fall away after 10 years (Module 1), with NBN Co needing to submit SAU variations to the ACCC every 3-5 years to lock in detailed terms. If NBN Co's proposed terms are not accepted, the ACCC will be able to set those terms via Access Determinations or Binding Rules of Conduct provided these are consistent with the SAU.
- Expands the scope of the declared services to include Ancillary Services. Terms and conditions relating to the Facilities Access Service are set out in the SAU in connection with the satisfaction of NBN Co's interconnection obligations in relation to the NBN Access Service and Ancillary Services.
- Introduces reference offers which cover all the elements of NBN Co's products required to deliver an end-to-end service over the NBN. These reference offers cover the elements required to deliver an entry-level broadband and telephony service, mass-market residential broadband, and entry-level business grade service. The reference offers cannot be withdrawn in the period for which they apply. The SAU also includes the mechanism by which these reference offers can evolve over time, subject to ACCC oversight.
- Provides for the ACCC to have a clear oversight role on any matter not covered by the SAU, including a commitment to flow through ACCC decisions into the next SFAA NBN Co publishes. The SAU also commits that NBN Co will offer a co-terminus SFAA term of no longer than 2 years, to ensure that all Access Seekers are able to avail themselves of regulated terms set by the ACCC at the same time, and within a reasonable time frame.
- Increases the transparency of the pricing of NBN Co's products. Initial prices of all products are included in the SAU, and provide a ceiling on the prices of these products when they are introduced. There is also a commitment to set prices with reference to pricing principles described in the SAU, and a requirement to publish the rationale behind new prices and how they comply with those principles.
- Introduces a standard incentive-based approach to expenditure after the network build period, which will allow the ACCC to assess and approve NBN Co forecasts of expenditure, and if found to not be reasonable, allow the ACCC to propose its own forecasts for inclusion in the long term revenue constraint methodology.

- Defines the minimum service levels that must be included in any SFAA.
- Reduces the number of non-price terms and conditions included in the SAU, with drafting to make the scope of the subject matter addressed by the SAU explicit, so that the scope of the subject matter that can be addressed by regulatory recourse is also explicit.

NBN Co will also be publishing public versions of its SAU documents on its website following their lodgement with the ACCC: <http://www.nbnco.com.au/getting-connected/service-providers/sau.html>.

Please do not hesitate to contact me if you have any queries in relation to the documentation provided.

Yours sincerely,

for Caroline Lovell

Principal, Regulatory Affairs and Industry Engagement