



Contact officer: Scott Harding
Contact phone: (03) 9658 6434

28 April 2022

Level 17, 2 Lonsdale Street
Melbourne Vic 3000
GPO Box 3131
Canberra ACT 2601
tel: (03) 9290 1800
www.accc.gov.au

Ms Jane van Beelen
Chief legal and regulatory officer
NBN Co Limited
Level 13, 100 Mount Street
NORTH SYDNEY NSW 2060

By email: janevanbeelen@nbnco.com.au

Dear Ms van Beelen

Re: NBN Co Special Access Undertaking variation - section 152CBH request for further information

I refer to NBN Co's proposed special access undertaking variation lodged with the ACCC on 29 March 2022 (**variation**) and to subsequent information provided to the ACCC by NBN Co on 5 and 6 April 2022. I also refer to correspondence from NBN Co on 5 April 2022, 6 April 2022, 10 April 2022 and 13 April 2022, and correspondence from the ACCC on 8 April 2022 and 12 April 2022, regarding confidentiality claims made by NBN Co and publication of the variation. I refer to the ACCC's letter to NBN Co on 27 April 2022 regarding resolution of confidentiality claims over the supporting material to the variation.

Summary

The purpose of this letter is to request further information from NBN Co in relation to the variation lodged by NBN Co on 29 March 2022. This is a formal request for information pursuant to section 152CBH of the *Competition and Consumer Act 2010 (CCA)*.

The request for NBN Co is set out at **Attachment A**. The ACCC requests a response from NBN Co as follows:

- Part A of the information request, by **2pm Friday 13 May 2022**
- Part B of the information request, by **2pm Friday 6 May 2022**

We note that the statutory deadline for accepting or rejecting the SAU variation will be extended by the period of time that this request remains unfulfilled.

Next steps

Staff would be pleased to meet with NBN Co to discuss any questions about this information request.

If you wish to make a confidentiality claim over any information provided in response to this letter, the ACCC will consider those claims consistent with the process adopted by the ACCC for considering confidentiality claims in relation to this matter.

Please note that this letter will be published on the ACCC website.

If you wish to discuss the matter further, please contact Scott Harding on (03) 9658 6434.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Sarah Proudfoot', with a long horizontal flourish extending to the right.

Sarah Proudfoot
Executive General Manager
Infrastructure Division

Attachment A - Information request

Pursuant to section 152CBH of CCA, the ACCC requests that NBN Co give the ACCC the following further information with respect to NBN Co's proposed special access undertaking variation:

Part A

1. *For the weighted average cost of capital (WACC), all relevant supporting materials, primary source data, calculations and inputs into the calculation of WACC parameters, including but not limited to:*
 - a. *The calculation of gamma, including all primary source data and estimations and statistics package programming used for all the dividend drop-off studies used to support the proposed gamma.*
 - b. *The calculation of the trailing average cost of debt, including all primary source data and including all supporting materials for the proposed credit rating and including any calculations pertaining to transition (if applicable) and any Excel-based/equivalent true up calculations.*
 - c. *The actual calculation of the debt raising costs.*
 - d. *The calculation of the market risk premium, including all primary source data and including any statistics package programming and Excel workbooks used for the calculation of the dividend growth model-implied market risk premium.*
 - e. *The calculations employed for the risk-free rate, including all primary source data.*
 - f. *All primary source data, comparator set and estimations and statistics package programming relevant to the proposed benchmark beta.*
 - g. *All primary source data, comparator set and calculations relevant to the proposed benchmark gearing.*
 - h. *All primary source data and calculations employed for the proposed forecast inflation rate.*

Part B

2. *In respect of each item of information in the supporting material provided to the ACCC by NBN Co (Supporting Submissions) over which NBN Co claims confidentiality, detailed information and evidence regarding the basis on which NBN Co maintains that the information is confidential, including but not limited to:*
 - a. *all information which NBN Co wishes the ACCC to take into account in substantiating the confidentiality claim made;*
 - b. *detailed information regarding the harm to NBN Co that would result from disclosure of the information;*
 - c. *whether the information is already published in a similar form, such as the forecast financial aggregates to 2023-24 published in the NBN Co 2021 Corporate Plan, and, if so, details of how the disclosure of that information would result in commercial harm to NBN Co notwithstanding that it is already published in a similar form;*
 - d. *details of any available measure(s) that, if adopted by the ACCC in disclosing the information, would operate to mitigate the commercial harm to NBN Co that would result from disclosure (e.g. disclosure at an aggregated level);*
 - e. *for each item of information in respect of which NBN Co claims commercial harm and/or uncertainty in the telecommunications market would result from disclosure*

because the information could (i) provide competitors or suppliers with an unfair commercial advantage and/or (ii) enable competitors, suppliers, industry participants and/or other interested parties to draw inferences about' NBN Co's expected activities, network operations and/or costs in future years:

- i. the identity of the competitors, suppliers, industry participants and/or other interested parties of relevance;*
 - ii. details of the inferences about NBN Co's expected activities, network operations and/or costs in future years that could be drawn by each of the persons identified in response to i. above;*
 - iii. particulars of the commercial harm to NBN Co and/or uncertainty in the telecommunications industry that would result from disclosure; and*
 - iv. details of how the drawing of the inferences identified in response to ii. above would result in commercial harm to NBN Co and/or uncertainty in the telecommunications industry identified in response to iii. above;*
- f. for each item of information in respect of which NBN Co claims commercial harm would result from disclosure because of the risks to NBN Co of disclosure arising from rule 10b-5(b) made by the SEC under the Securities Exchange Act of 1934:*
- i. details of how NBN Co's circumstances differ from corporations that operate in US debt markets and disclose forecast information;*
 - ii. details of any public statements that have been made by NBN Co in relation to the cessation of the public release by NBN Co of forecast information due to the risk of disclosure arising under US securities laws, in addition to those previously made by NBN Co following the release of its 2021 Corporate Plan in August 2021; and*
 - iii. whether NBN Co has discussed the information with any investors (e.g. with any US issuer in a private meeting) and, if so, particulars of the discussion(s);*
- g. for each item of information in respect of which NBN Co claims disclosure would harm its commercial negotiating position in respect of supply arrangements with third parties (including competitors), details of whether and why the confidentiality claim applies to the entirety of the information marked for redaction; and*
- h. for each item of information in respect of which NBN Co claims there is particular sensitivity, such that information could not be exchanged even under bilateral arrangements, details of whether and why the confidentiality claim applies to the entirety of the information marked for redaction.*

3. *Detailed information substantiating any confidentiality claim which NBN Co makes in respect of information contained in the Supporting Submissions in relation to each of the following:*

- a. the building block model*
- b. forecast information in support of Replacement Module Application*
- c. NBN Co's cost allocation manual, and*
- d. Analysys Mason 2022 Report (Attachment 3),*

Including in each case at least the information requested in paragraph 2 above.