

nbn supporting submission

Variation to the NBN Co Special Access Undertaking

8 May 2019





nbn submission to ACCC – Variation to the NBN Co Special Access Undertaking

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1. Introduction and overview

1. **nbn**'s Special Access Undertaking (**SAU**) is a key part of the regulatory framework that governs the terms on which **nbn** supplies services to access seekers over the period to 30 June 2040.
2. The SAU was accepted by the ACCC on 13 December 2013 and commenced operation on this date (**SAU Commencement Date**).
3. Within the SAU, there are three provisions that expire at the end of the Financial Year that is 5 years after the SAU Commencement Date (i.e. 30 June 2019):
 - (a) the endorsed network change provisions in clauses 1D.8 to 1D.12 of the SAU (**Endorsed Network Change Provisions**);
 - (b) the dispute resolution provisions in clause 1H.5 and Annexure 1 to Schedule 1H of the SAU (**Dispute Resolution Provisions**); and
 - (c) the detailed Product Development Forum processes in Annexure 1 to Schedule 1I of the SAU (**Detailed PDF Processes**),(together, the **Expiring Provisions**).
4. **nbn** is giving the ACCC this variation to the SAU in accordance with section 152CBG(2) of the *Competition and Consumer Act 2010* (Cth) (**CCA**). This variation seeks to extend the operation of the Expiring Provisions from the current expiry date of 30 June 2019 to the end of the Initial Regulatory Period, which ends on 30 June 2023.
5. The variation is denoted by the following changes:
 - (a) underlined words are additions to the original wording in the SAU; and
 - (b) words that are struck-out are deletions from the original wording in the SAU.
6. It is these mark-ups that constitute the variation. The remainder of the SAU is left unchanged and is not subject to the variation.
7. The variation does not include any of the changes proposed in **nbn**'s 2017 variation (withdrawn in November 2018), which was focussed on expanding the scope of the SAU's service, product and pricing provisions to include FTTB, FTTN and HFC access technologies.
8. **nbn** intends to pursue an amended version of the 2017 variation in due course. **nbn** is currently in the process of working through the feedback provided by the ACCC in November 2018, including in relation to price-related matters. These matters are not covered by, and are outside the scope of, this variation.



9. This submission:
 - (a) provides an introduction and overview – section 1;
 - (b) sets out the relevant statutory criteria that apply to the ACCC’s assessment of the variation – section 2;
 - (c) explains how the extension of the Endorsed Network Change provisions satisfies the statutory criteria – section 3;
 - (d) explains how the extension of the Dispute Resolution Provisions satisfies the statutory criteria – section 4; and
 - (e) explains how the extension of the Detailed PDF Processes satisfies the statutory criteria – section 5.
10. The amendments proposed in the variation are minor in nature. The variation only seeks to extend the Expiring Provisions to 30 June 2023 (the end of the Initial Regulatory Period). **nbn** submits that, relative to a situation where the Expiring Provisions are not extended, the variation satisfies the applicable statutory criteria and should be accepted by the ACCC on this basis.
11. As mentioned above, the Expiring Provisions expire on 30 June 2019. Accordingly, **nbn** is seeking approval of the variation prior to this date.
12. This would allow the Expiring Provisions to operate continuously until 30 June 2023, without creating a gap during which such provisions will not have any effect. This gap would create regulatory uncertainty for **nbn** and access seekers and would be avoided if the Expiring Provisions were extended.

2. Statutory framework

2.1 Introduction

13. **nbn**’s SAU and any variations made to the SAU are governed by Part XIC of the CCA.
14. According to section 152CBG(4) of the CCA, the ACCC must apply section 152CBD to the variation *“in a corresponding way to the way in which it applies to an undertaking”*.¹
15. Based on the ACCC’s views in the *NBN Co Special Access Undertaking – Final Decision (Final SAU Decision)*,² **nbn** understands that the ACCC will be assessing the variation, rather than the existing provisions of the SAU, against the relevant statutory criteria. This will include an assessment of the

¹ There are currently no Procedural Rules which are in force which would apply to the SAU.

² ACCC, Final SAU Decision, December 2013, p. 109.



interaction of the subject matter of the variation (i.e. extension of the Expiring Provisions until 30 June 2023) with the existing SAU provisions.

16. In the ACCC's Consultation Paper regarding **nbn's** 2017 proposed variation to the SAU, the ACCC stated that the ACCC's assessment of that variation "*will be an assessment of the varied terms, the effects of the varied terms, and the interaction of the varied terms with unchanged provisions in the SAU*".³ The ACCC proposed to assess the varied terms "*in the context of the whole SAU*", but clarified that the assessment of the SAU variation would not be a "*reassessment of each existing provision in the SAU*".⁴
17. The variation in this case is very minor and limited to extending the operation of the Expiring Provisions. Consequently, **nbn** submits that the ACCC's analysis in the current case can largely be focused upon the Expiring Provisions, independently of the other provisions of the SAU.
18. This approach would ensure that the ACCC's assessment is appropriately targeted and would avoid the ACCC reconsidering afresh the SAU as a whole or reconsidering any provisions of the SAU that are not affected by this variation.

2.2 Statutory criteria for acceptance of the variation

19. The ACCC must not accept a variation unless the ACCC is satisfied that:
 - (a) the terms and conditions specified in the variation in relation to **nbn's** compliance with the Category B standard access obligations (**SAOs**) are:
 - (i) consistent with the Category B SAOs;⁵ and
 - (ii) reasonable;⁶
 - (b) if the variation states that **nbn** will engage in specified conduct in relation to access to the service subject to the variation,⁷ the conduct of **nbn** as specified in the variation will promote the long-term interest of end-users (**LTIE**) of carriage services or of services supplied by means of carriage services;⁸

³ ACCC, Variation to NBN Co Special Access Undertaking, Consultation Paper, August 2017, section 1.4, p. 9.

⁴ ACCC, Variation to NBN Co Special Access Undertaking, Consultation Paper, August 2017, section 1.4, p. 9.

⁵ CCA, section 152CBD(2)(b)(i).

⁶ CCA, section 152CBD(2)(b)(ii).

⁷ CCA, section 152CBA(3B)(a).

⁸ CCA, section 152CBD(2)(ca)(i).



- (c) if the variation states that **nbn** will engage in specified conduct in relation to access to the service on terms and conditions specified in the variation,⁹ the terms and conditions are reasonable;¹⁰
 - (d) if the variation states that **nbn** will engage in specified conduct in relation to the activities specified in section 152CBA(3C), the conduct of **nbn** as specified in the variation will promote the LTIE of carriage services or of services supplied by means of carriage services.¹¹
20. In addition, the ACCC:
- (a) must not accept this variation unless the ACCC has consulted publicly in relation to it;¹² and
 - (b) must decide to accept or reject the variation to the undertaking within 6 months of receipt.¹³
21. As the ACCC recognised in its Final SAU Decision,¹⁴ there is significant overlap between:
- (a) the “reasonableness” test that applies to assessing the terms and conditions of the variation in relation to compliance with the Category B SAOs and the terms or conditions applicable to conduct in relation to access; and
 - (b) the “LTIE” test that applies to conduct in relation to access and conduct in relation to activities specified in section 152CBA(3).
22. In determining whether terms and conditions in the variation are reasonable, the ACCC must have regard to:¹⁵
- (a) whether the terms and conditions promote the LTIE of carriage services or of services supplied by means of carriage services;
 - (b) the legitimate business interests of the carrier or carriage service provider concerned, and the carrier's or provider's investment in facilities used to supply the declared service concerned;
 - (c) the interests of persons who have rights to use the declared service concerned;

⁹ CCA, section 152CBA(3B)(b).

¹⁰ CCA, section 152CBD(2)(ca)(ii).

¹¹ CCA, section 152CBD(2)(cb).

¹² CCA, section 152CBD(2)(d).

¹³ CCA, section 152CBG(2).

¹⁴ ACCC, Final SAU Decision, December 2013, p. 50.

¹⁵ CCA, section 152AH.



- (d) the direct costs of providing access to the declared service concerned;
- (e) the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility; and
- (f) the economically efficient operation of a carriage service, a telecommunications network or a facility.

23. In considering whether terms and conditions in the variation regarding compliance with the Category B SAOs promote the LTIE (as part of the “reasonableness” test), and separately whether any conduct relating to access to the service specified in the variation or conduct relating to activities specified in section 152CBA(3C) will promote the LTIE, the ACCC must have regard to:¹⁶

- (a) promoting competition in markets for listed services;
- (b) achieving any-to-any connectivity in relation to carriage services that involve communication between end-users; and
- (c) encouraging the economically efficient use of, and investment in, the infrastructure by which the listed services are supplied and any other infrastructure by which listed services are or are likely to become capable of being supplied.

2.3 Counterfactual when assessing reasonableness and the LTIE

24. In the ACCC’s draft decision regarding **nbn**’s previous variation to the SAU (submitted in May 2016), the ACCC had regard to the “*counterfactual scenario where the variation is not accepted*” when considering whether the proposed variation promoted the LTIE and was reasonable.¹⁷

25. In line with this approach, **nbn** submits that, when applying reasonableness and LTIE tests to this variation, the ACCC should consider the regulatory counterfactual – that is, the scenario that would apply if the current SAU is maintained without any variation. In the context of the Expiring Provisions, the relevant counterfactual is the situation that would apply if the Expiring Provisions were not extended until 30 June 2023 (as provided for in the variation) and were instead allowed to expire on 30 June 2019.

26. However, other than the counterfactual mentioned above, the application of the reasonableness and LTIE tests should not consider alternative or hypothetical options. The focus of the assessment

¹⁶ CCA, section 152AB(2).

¹⁷ ACCC, Variation to NBN Co Special Access Undertaking, Draft Decision, section 1.2, p. 67.



should be on whether the content of the variation itself satisfies the statutory criteria, not whether other options would better satisfy the statutory criteria.¹⁸

2.4 Application of statutory criteria to the content of the variation

27. In the Final SAU Decision, the ACCC categorised the operative clauses of the SAU according to which assessment criteria applied.¹⁹ Relevantly to the Expiring Provisions, the ACCC held that:

- (a) the Endorsed Network Change Provisions (as "*conditions for including capital expenditure into the RAB in Module 1*") were terms and conditions relating to compliance with the Category B SAOs;²⁰
- (b) the Dispute Resolution Provisions related to conduct, and terms and conditions upon which **nbn** will engage in conduct, relating to access;²¹ and
- (c) the Detailed PDF Processes related to conduct relating to activities specified in section 152CBA(3B).²²

28. Applying these classifications, the ACCC must not accept the variation unless the ACCC is satisfied that:

- (a) the extension of the Endorsed Network Change Provisions to 30 June 2023 is consistent with the Category B SAOs and is reasonable;
- (b) the extension of the Dispute Resolution Provisions to 30 June 2023 is reasonable and will promote the LTIE of carriage services or of services supplied by means of carriage services; and
- (c) the extension of the Detailed PDF Processes to 30 June 2023 will promote the LTIE of carriage services or of services supplied by means of carriage services.

2.5 Assessment of the variation

29. **nbn** submits that the ACCC should be satisfied that the variation meets the relevant criteria set out in the CCA.

30. In the Final SAU Decision, the ACCC found that the Endorsed Network Change Provisions, the Dispute Resolution Provisions and the Detailed PDF Processes satisfied the relevant statutory criteria.

¹⁸ ACCC, Final SAU Decision, December 2013, p. 50. See also *Telstra Corporation Limited* [2006] ACompT 4, [150]; *Seven Networks Limited (No 4)* (2005) ATRP 42-056, [119].

¹⁹ ACCC, Final SAU Decision, December 2013, section 4.4.

²⁰ ACCC, Final SAU Decision, December 2013, section 4.4.1, p. 52.

²¹ ACCC, Final SAU Decision, December 2013, section 4.4.2, p. 53.

²² ACCC, Final SAU Decision, December 2013, section 4.4.3, p. 54.



31. **nbn** considers that, since that time, there have been no relevant changes that would justify a different conclusion being reached, and that the same basis on which the ACCC found these provisions to satisfy the statutory criteria applies to the extension of these provisions to 30 June 2023.
32. In summary:
- (a) Extending the Endorsed Network Change Provisions would continue to encourage efficient investment in, and operation of, **nbn**'s network, by ensuring that relevant network changes reflect the needs of access seekers and end-users. The extension of these provisions is therefore reasonable.
 - (b) Extending the Dispute Resolution Provisions would continue to provide a framework for resolving relevant disputes between **nbn** and access seekers in an unbiased, efficient and consistent manner. The extension of these provisions is therefore reasonable and will promote the LTIE.
 - (c) Extending the Detailed PDF Processes would continue to encourage a high level of transparency and consultation in **nbn**'s development of new products, which would ultimately result in products that access seekers and end-users' value. The extension of these provisions will therefore promote the LTIE.

3. Endorsed Network Change Provisions

3.1 Overview

33. The SAU allows **nbn** to make four types of network changes in respect of which **nbn** can recover its costs of investment:
- (a) network changes made in accordance with the "Network Design Rules";²³
 - (b) network changes made in accordance with "Permitted Variations" from the Network Design Rules;²⁴
 - (c) network changes that have been endorsed by access seekers and/or the ACCC in accordance with the process in clauses 1D.8 to 1D.12 of the SAU (**Endorsed Network Changes**);²⁵ and

²³ SAU, clause 1D.6(a).

²⁴ SAU, clause 1D.6(b).

²⁵ SAU, clause 1D.6(c).



- (d) network changes determined or permitted by the ACCC, including through an access determination or binding rules of conduct.²⁶
- 34. Capital expenditure incurred by **nbn** in connection with assets that are materially consistent with, or within the scope of, any of the network changes above may be included in **nbn**'s Regulatory Asset Base (**RAB**).²⁷
- 35. The Endorsed Network Change Provisions establish a customer engagement model for network investment. They seek to align **nbn**'s investment in its network with the interests and priorities of access seekers and end-users, to maximise efficiency of investment.
- 36. The Endorsed Network Change Provisions expire on 30 June 2019.
- 37. According to the Endorsed Network Change Provisions, **nbn** is obliged to:
 - (a) select preferred network change options in accordance with certain criteria;²⁸
 - (b) publish a prudency implementation paper in respect of each network change option;²⁹ and
 - (c) consult with access seekers and consumer advocacy groups in relation to the prudency implementation paper.³⁰
- 38. Any access seeker or consumer advocacy group has the ability to object to a preferred network change option (if it satisfies certain conditions), in which case a dispute is created and the ACCC has the power to accept or reject the preferred network change option (based on given decision-making criteria).³¹
- 39. A preferred network change option will only be regarded as an "Endorsed Network Change" (and capital expenditure associated with that network change may only be included in the RAB) if:
 - (a) no access seeker or consumer advocacy group has raised an objection to the preferred network change option (following consultation);

²⁶ SAU, clause 1D.6(c).

²⁸ SAU, clauses 1D.8.2, 1D.8.3.

²⁹ SAU, clause 1D.8.4.

³⁰ SAU, clause 1D.9.

³¹ SAU, clause 1D.10.



- (b) an access seeker or consumer advocacy group has raised an objection to the preferred network change option, but the objection does not satisfy the prescribed conditions (e.g. the access seeker has not participated in the consultation process); or
- (c) an access seeker or consumer advocacy group has raised an objection to the preferred network change option, but the ACCC has decided to accept the preferred network change option.³²

3.2 ACCC's assessment in the Final SAU Decision

40. In its Final SAU Decision, the ACCC stated that the Endorsed Network Change Provisions:

"... should encourage efficient investment. This is because access seekers and consumer advocacy groups (and potentially end-users) would be able to inform NBN Co about whether network design choices are efficient and deliver network capacity and service quality that end-users desire and are willing to pay for."³³

41. The ACCC also considered that the Endorsed Network Change Provisions "provide certainty to NBN Co that any expenditure associated with a new product may be recovered by NBN Co via its revenue methodology. The ACCC considers that this will encourage efficient investment by NBN Co."³⁴

3.3 Assessment of extension of Endorsed Network Change Provisions

42. Since the commencement of the SAU, **nbn** has not used the Endorsed Network Change Provisions. This is because all capital expenditure in respect of network changes has been made in accordance with the Network Design Rules or a Permitted Variation to the Network Design Rules.

43. Nevertheless, **nbn** considers that the basis on which the ACCC accepted the Endorsed Network Change Provisions in its Final SAU Decision remains applicable.

44. The operation of the Endorsed Network Change Provisions until the end of the Initial Regulatory Period would continue to encourage efficient investment in (and operation of) **nbn**'s network, which is one of the elements of the "reasonableness" test.

45. Efficient investment would continue to be achieved by providing a mechanism through which access seekers and consumer advocacy groups can participate in determining which network changes are efficient (where such network changes are not otherwise made in accordance with the Network Design Rules or a Permitted Variation to the Network Design Rules). In particular, the Endorsed Network Change Provisions ensure that the relevant network changes reflect the needs of access seekers and end-users, thereby ensuring the efficient operation of **nbn**'s network.

³² SAU, clause 1D.11.

³³ ACCC, Final SAU Decision, December 2013, section 8.3.3, p. 99.

³⁴ ACCC, Final SAU Decision, December 2013, section 6.3.3.4, p. 81.



46. Moreover, the Endorsed Network Change Provisions provide an additional pathway through which **nbn** can ensure that its capital expenditure in respect of network changes is included in the RAB, in circumstances where a network change is not in accordance with the Network Design Rules or a Permitted Variation to the Network Design Rules. Although the SAU already provides for the ACCC to determine or permit network changes even after the scheduled expiry of the Endorsed Network Change Provisions, having a customer engagement process in place provides additional flexibility to **nbn**, which is in its legitimate business interests.
47. For these reasons, **nbn** submits that extending the Endorsed Network Change Provisions to 30 June 2023 is reasonable.

4. Dispute Resolution Provisions

4.1 Overview

48. The Dispute Resolution Provisions in clause 1H.5 and Annexure 1 to Schedule 1H of the SAU create a framework for resolving disputes that may arise between **nbn** and access seekers in relation to the supply of declared services. These provisions include:
- (a) an obligation for **nbn** to include in its standard form of access agreement (**SFAA**) provisions stating that disputes may be resolved by expert determination or panel arbitration;
 - (b) processes for appointing a resolution advisor;
 - (c) processes for appointing the members of a panel for the purposes of panel arbitration (including the selection of members of the pool from which members of the panel may be selected);
 - (d) processes for terminating the appointment of a resolution advisor or pool member;
 - (e) processes for adopting dispute guidelines; and
 - (f) obligations for **nbn** to bear the costs of appointing and maintaining a resolution advisor and pool members.
49. The Dispute Resolution Provisions expire on 30 June 2019.
50. The Dispute Resolution Provisions are designed to provide access seekers with an important role in the dispute resolution process, including in the appointment of resolution advisors and pool members and in the adoption of dispute guidelines. This seeks to ensure that the dispute resolution process is independent and unbiased.
51. The Dispute Resolution Provisions also provide the ACCC with several backstop powers, including a power to:



- (a) approve or reject a proposed resolution advisor or pool member;³⁵
- (b) approve or reject proposed terms of appointment for panel members;³⁶
- (c) direct **nbn** to terminate a resolution advisor or pool member;³⁷
- (d) approve (or require variations to) dispute guidelines proposed by **nbn**;³⁸ and
- (e) give directions to a resolution advisor in relation to the performance of their functions.³⁹

4.2 ACCC's assessment in its Final SAU Decision

52. In its Final SAU Decision, the ACCC stated that:

*"... the dispute resolution provisions in the SAU incorporate sufficient safeguards to ensure that decision-makers will be independent and free from bias, and will therefore promote the long-term interests of end-users. The ACCC also considers that these provisions are reasonable."*⁴⁰

4.3 Assessment of extension of Dispute Resolution Provisions

53. **nbn** considers that the same basis on which the ACCC found the Dispute Resolution Provisions to satisfy the LTIE and to be reasonable applies to the extension of these provisions to 30 June 2023.
54. Since the commencement of the SAU, **nbn** has incorporated the obligations in the Dispute Resolution Provisions into **nbn**'s SFAAs. These provisions have been used to appoint (and re-appoint) a resolution advisor and pool members.
55. Given that there have been no relevant disputes under the WBA to date, the dispute resolution process envisaged in the SAU has not yet been used. However, **nbn** considers that the Dispute Resolution Provisions provide a useful framework for guaranteeing that any disputes that will arise in the future are resolved in an impartial and unbiased manner (e.g. through an independent resolution advisor, pool members and panel members).
56. The Dispute Resolution Provisions also promote the efficient resolution of disputes, by creating a predictable and well-established framework for resolving such disputes in a timely manner.
57. As the ACCC noted in its Final SAU Decision, a dispute resolution process that provides for the *"efficient, consistent and unbiased resolution of disputes"* promotes the interests of access seekers,

³⁵ SAU, Schedule 1H, clauses 1(c), 2(e).

³⁶ SAU, Schedule 1H, clause 3(c).

³⁷ SAU, Schedule 1H, clause 5(d).

³⁸ SAU, Schedule 1H, clause 6(c).

³⁹ SAU, Schedule 1H, clause 7.

⁴⁰ ACCC, Final SAU Decision, December 2013, section 9.2, p. 106.



the legitimate business interests of **nbn** and **nbn's** investment in facilities used to supply declared services, and is therefore "reasonable".⁴¹

58. Extending the Dispute Resolution Provisions until 30 June 2023 would continue to facilitate efficient, consistent and unbiased resolution of disputes, by ensuring that the same dispute resolution framework that has applied since the commencement of the SAU continues to apply until the conclusion of the Initial Regulatory Period.
59. Conversely, not extending the Dispute Resolution Provisions until 30 June 2023 would result in significant uncertainty being created for both **nbn** and access seekers. The current Wholesale Broadband Agreement (**WBA**), which expires in November 2019, specifically refers to the Dispute Resolution Provisions in the SAU and relies on resolution advisors and pool members appointed in accordance with the SAU. If a relevant dispute arose under the WBA after the expiry of the Dispute Resolution Provisions, the status of resolution advisors and pool members appointed under the SAU would be unclear even where they are still within the nominal term of their appointment.
60. Accordingly, **nbn** considers that the extension of the Dispute Resolution Provisions, and the efficient, consistent and unbiased resolution of disputes that these provisions facilitate, would promote the interests of access seekers, the legitimate business interests of **nbn** and **nbn's** investment in facilities used to supply declared services. For these reasons, the extension of the Dispute Resolution Provisions is in the LTIE and is reasonable.

5. Detailed PDF Processes

5.1 Overview

61. The Detailed PDF Processes in Annexure 1 to Schedule 1H of the SAU include processes relating to:
 - (a) membership of the PDF;
 - (b) submission of ideas to the PDF (by access seekers and consumer advocacy groups);
 - (c) prioritisation and publication of ideas submitted to the PDF;
 - (d) **nbn's** criteria for assessing ideas submitted to the PDF;
 - (e) workshops and formal submissions held as part of the PDF; and
 - (f) finalisation of products, product components and product features (including **nbn's** obligations to publish product construct papers).
62. The Detailed PDF Processes expire on 30 June 2019.

⁴¹ ACCC, Final SAU Decision, December 2013, section 9.2, pp. 105–106.



63. Importantly, **nbn**'s broader obligations regarding product development, including the obligation to implement a PDF, does not arise under the Detailed PDF Processes, but rather under clause 11.3 of the SAU, which only expires at the end of the Initial Regulatory Period (30 June 2023). This variation does not seek to vary the duration period of these broader product development obligations.

5.2 ACCC's assessment in its Final SAU Decision

64. In its Final SAU Decision, the ACCC stated that the Detailed PDF Processes:

"... should encourage transparency and consultation in the development of product ideas. This is likely to be in the interests of access seekers and end-users as it should encourage the development of products that are valued by access seekers and end-users."...⁴²

65. The ACCC also stated that it was *"satisfied that the PDF processes provide an appropriate initial framework for facilitating effective consultation between NBN Co and participants about developing and varying products"...*⁴³

66. The ACCC considered that the five-year duration of the Detailed PDF Processes was reasonable on the basis that such processes *"are novel and their effectiveness in promoting engagement and information sharing between NBN Co and participants is untested"...*⁴⁴

67. According to the ACCC, *"the operational experience gained over the five year duration of the PDF processes will provide a basis on which to consider the processes to be applied to the product development forum in the future"...*⁴⁵

5.3 Assessment of extension of Detailed PDF Processes

68. The Detailed PDF Processes have been used extensively since the commencement of the SAU, with **nbn** using these processes to consult on a large number of new products, including product ideas contributed by access seekers through the PDF.

69. During this time, the Detailed PDF Processes have provided a range of mechanisms and options for access seekers and consumer advocacy groups to become involved in the product development process. These provisions have also delivered an appropriate level of certainty and consistency to PDF participants, while also ensuring flexibility in the operation of the PDF, so as to allow the PDF to be effectively used for a variety of different types of new products and product ideas.

⁴² ACCC, Final SAU Decision, December 2013, section 6.3.2.2, p. 78.

⁴³ ACCC, Final SAU Decision, December 2013, section 6.3.2.2, p. 78.

⁴⁴ ACCC, Final SAU Decision, December 2013, section 6.3.2.2, p. 79.

⁴⁵ ACCC, Final SAU Decision, December 2013, section 6.3.2.2, p. 79.



70. Building on the extensive product set that had already been introduced by December 2013 or set out in the Initial Products List⁴⁶, over the 5 years the SAU has been in place over 40 product ideas have been consulted on via the PDF.⁴⁷
71. The extensive use of the Detailed PDF Processes has demonstrated that these processes are effective in encouraging transparency and consultation in the development of product ideas, and therefore ensuring that **nbn** develops products that access seekers and end-users' value. In turn, this encourages efficient investment in, and use of, **nbn's** network, which is one of the elements of the LTIE test.
72. Accordingly, **nbn** considers that it is in the LTIE that the Detailed PDF Processes be extended until 30 June 2023.
73. Moreover, extending the Detailed PDF Processes until 30 June 2023 promotes certainty for all PDF participants, including access seekers and consumer advocacy groups. Through extensive use of the Detailed PDF Processes since the commencement of the SAU, access seekers have familiarised themselves with the relevant processes.
74. Allowing these provisions to expire on 30 June 2019 would mean that the SAU regulatory framework would no longer formally guide the operational details of the PDF process. **nbn** considers that this would result in a degree of uncertainty for **nbn** and access seekers, which would ultimately not be in either the legitimate business interests of **nbn** or the interests of access seekers.
75. The continued existence of predictable and clear processes that have withstood the test of time is optimal for facilitating effective engagement from access seekers and consumer advocacy groups in relation to **nbn's** product development and ensuring that as many stakeholders participate in the process as possible. This certainty and predictability is an additional factor for why an extension of the Detailed PDF Processes until 30 June 2023 promotes the LTIE.

⁴⁶ SAU, Attachment D.

⁴⁷ This excludes consultation associated with the initial development of, and ongoing enhancements to, products not covered by the SAU (including products supplied on **nbn's** FTTB, FTTN, FTTC and HFC networks). **nbn** has sought to comply with the Detailed PDF Processes when engaging in consultation regarding products supplied on **nbn's** FTTB, FTTN, FTTC and HFC networks, notwithstanding that the Detailed PDF Processes, and PDF obligations more broadly, do not apply to such products.