

## ***Competition and Consumer Act 2010 (Cth) (CCA)***

### **Notice pursuant to clause 4.5 of NBN Co's Special Access Undertaking**

**TO: NBN Co Limited (ACN 136 533 741) (NBN Co)**

#### **Background**

1. On 13 December 2013, the Australian Competition and Consumer Commission (ACCC) accepted NBN Co's Special Access Undertaking (SAU), which operates until 2040.
2. The SAU has a modular structure, with different provisions applying at different times. Module 0 operates for the full duration of the SAU. Module 1 started on commencement of the SAU and will operate until 30 June 2023. Module 2 commences on 1 July 2023 and applies until the expiry of the SAU on 30 June 2040. The modular structure was adopted to reflect NBN Co's different operating environments over time, with Module 1 designed to broadly coincide with the rollout phase and Module 2 designed to apply once NBN Co was operating as an established provider.
3. A feature of Module 2 is that replacement modules will be introduced. Replacement modules will operate for 3 to 5 year periods and will include more details on terms of access and related matters. Replacement modules will operate concurrently with Module 2.
4. NBN Co must provide the ACCC with a Replacement Module Application no less than 9 months before the commencement of Module 2. Under the SAU, the ACCC will provide NBN Co with no less than 12 months written notice that it is required to provide a Replacement Module Application.
5. This means the ACCC must notify NBN Co before 30 September 2021 that it is required to submit a Replacement Module Application. NBN Co must then provide a Replacement Module Application before 30 September 2022.
6. The ACCC will assess NBN Co's Replacement Module Application against the relevant legislative criteria and then either accept the application or issue a replacement module determination before the commencement of Module 2.

#### **Requirement under the SAU for NBN Co to submit a replacement module application**

7. In accordance with clauses 4.5(b) and 4.5(c) of the SAU, the ACCC gives notice to NBN Co that it must provide a Replacement Module Application no later than 30 September 2022.
8. As set out in clause 4.5(e) of the SAU, the Replacement Module Application must:
  - specify a proposed Regulatory Cycle commencing on 1 July 2023, which must be either 3, 4 or 5 years in duration
  - include a Long-Term Revenue Constraint Methodology Proposal in accordance with clause 4.6 of the SAU
  - include a Regulatory Asset Base Roll Forward Proposal in accordance with clause 4.7 of the SAU

- if the duration of the Regulatory Cycle proposed is less than 5 years, include all of the forecasts referred to in clause 4.6 of the SAU for each Financial Year that is within 5 Financial Years of the commencement of the proposed Regulatory Cycle but is not within the proposed Regulatory Cycle; and
- include any other matters that NBN Co proposes to form part of that Replacement Module.

Dated this 20th day of September 2021

A handwritten signature in blue ink that reads "Anna Brakey". The signature is written in a cursive style with a large initial 'A'.

Anna Brakey

Commissioner

Australian Competition and Consumer Commission