

20 January 2012

Mr David Jones  
Acting General Manager, Adjudication  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601

By email: [david.jones@accc.gov.au](mailto:david.jones@accc.gov.au)

Dear Mr Jones,

**NBN Co Limited: Optus HFC Subscriber Agreement  
Withdrawal of applications for authorisations A91271-A91273 and new applications for  
authorisation**

I refer to the applications for authorisation made by NBN Co Limited (**NBN Co**) on 29 August 2011 pursuant to sections 88(1A), 88(1) and 88(8) of the Competition and Consumer Act 2010 (Cth) (**CCA**) in relation to the HFC Subscriber Agreement between NBN Co and SingTel Optus Pty Ltd and other Optus entities (**Optus**) dated 23 June 2011 (**Applications**).

The HFC Subscriber Agreement includes an anti-disparagement provision. The anti-disparagement provision was one of the provisions the subject of the Applications. NBN Co and Optus have agreed to amend the anti-disparagement provision.

Accordingly, NBN Co hereby:

- gives notice that it withdraws the Applications pursuant to section 88(16) of the CCA; and
- lodges new applications for authorisation of certain provisions of the HFC Subscriber Agreement, including the anti-disparagement provision with the agreed amendments.

Enclosed are the following:

- Application forms A, B and E (being applications for authorisation of certain provisions of the HFC Subscriber Agreement, including the anti-disparagement provision with the agreed amendments);
- a confidential and non-confidential version of a supporting submission from NBN Co;
- a confidential and non-confidential version of an expert report prepared for NBN Co and Optus by Frontier Economics dated December 2011; and
- a letter on behalf of Optus enclosing a non-confidential version of a supporting submission from Optus.

NBN Co requests that the confidential version of its supporting submission and annexures be excluded from the Public Register. NBN Co makes this request on the basis that this version and its confidential annexures are documents in respect of NBN Co's commercial activities that are confidential to NBN Co.

The disclosure of these documents and the information contained in them would unreasonably and adversely affect NBN Co in respect of its lawful business, commercial and financial affairs. The documents contain information that has a commercial value that would be destroyed or diminished if the information were disclosed. The confidential supporting submission contains information in relation to which binding confidentiality obligations apply. The disclosure of this information publicly would place NBN Co in breach of those obligations. Further, the supporting submission contains information that has not been shared between NBN Co and Optus (being confidential as between the parties).

NBN Co will promptly pay the prescribed fee of \$10,500 by electronic funds transfer on Monday morning 23 January 2012.

Please contact me if you would like to discuss this letter.

Yours sincerely,



**Caroline Lovell**  
Principal, Regulatory Affairs