

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission

given for the purposes of section 87B

by

NBN Co Limited

ACN 136 533 741

Person giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by NBN Co Limited ACN 136 533 741 (**NBN Co**) of Level 40-41, 360 Elizabeth Street, Melbourne 3000 in the State of Victoria for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Background

2. NBN Co is an Australian Government-owned corporation responsible for designing, building and operating the National Broadband Network (**NBN**). NBN Co is a carrier and an NBN corporation for the purposes of Part XIC of the CCA.
3. Part XIC of the CCA imposes transparency obligations that require NBN Co not to offer an eligible service unless it has published the terms and conditions for access to that eligible service. In addition, NBN Co is subject to non-discrimination obligations under Part XIC of the CCA which require that it must supply declared services and carry out certain related activities in a way which does not discriminate between access seekers.
4. The ACCC is the independent statutory authority which is responsible, inter alia, for the enforcement of the telecommunications access regime contained in Part XIC of the CCA, including the transparency and non-discrimination obligations under sections 152CJA, 152AXC and 152AXD of the CCA.
5. On 8 October 2019, the ACCC issued a formal warning under subsection 103(4) of the *Telecommunications Act 1997* (Cth) in respect of NBN Co's contravention of the service provider rule set out in subsection 152BA(2) of the CCA by failing to comply with the non-discrimination obligations in section 152AXD of the CCA. A copy of the formal warning is attached to this Undertaking as Attachment A.

Conduct of concern and contraventions of the CCA

6. The formal warning describes matters that the ACCC is satisfied constitute failures by NBN Co to comply with the non-discrimination obligations in section 152AXD of the CCA and contravention of the service provider rule set out in subsection 152BA(2) of the CCA.

Admissions

7. NBN Co acknowledges that the ACCC considers that NBN Co has contravened the service provider rule set out in subsection 152BA(2) of the CCA by failing to comply with the rule in section 152AXD of the CCA.
8. NBN Co admits that it did not have appropriate processes in place to ensure compliance with the transparency obligations under section 152CJA in relation to its supply of Enterprise Ethernet and the non-discrimination obligations under sections 152AXC and 152AXD of the CCA in relation to its supply of Enterprise Ethernet and Build Activities to access seekers in the period 18 January 2018 to 27 February 2019.

Commencement of this Undertaking

9. This Undertaking comes into effect when:
 - 9.1. this Undertaking is executed by NBN Co; and
 - 9.2. this Undertaking so executed is accepted by the ACCC,
(the **Commencement Date**).
10. Subject to paragraph 13 below, this Undertaking expires on the day that is 5 years after the Commencement Date (the **Term**).

11. If any sections of the CCA are amended to not apply to NBN Co's activities in the market for business, enterprise and government, then NBN Co and the ACCC will discuss the continuing appropriateness of this Undertaking to ensure it is not inconsistent with the amended CCA.
12. On and from the commencement of this Undertaking, NBN Co undertakes to assume the obligations set out in paragraph 14 below for the Term for the purposes of section 87B of the CCA.
13. The ACCC may:
 - 13.1. within 9 months of the commencement of this Undertaking, review all continuing obligations contained in the Undertaking. NBN Co will, at its own expense, cause to be produced and provided to the ACCC copies of all documents reasonably required by the ACCC to conduct that review;
 - 13.2. at any time, expressly waive (in whole or in part) by written notice any of the obligations contained in this Undertaking; and
 - 13.3. at any time, by written notice reduce the duration of any continuing obligation contained in the Undertaking. The ACCC will consult with NBN Co before issuing any notice under this subparagraph.

Undertaking

14. NBN Co undertakes, for the purposes of section 87B of the CCA, that it will:
 - 14.1. Perform each action listed in the second column of Attachment B to this Undertaking by the date listed in the third column for the duration listed in the fourth column.
 - 14.2. On the following dates, provide the ACCC with a report (with supporting evidence) specifying the status of NBN Co's implementation of all Items under Attachment B of this Undertaking:
 - (a) 7 November 2019; and
 - (b) 8 April 2020.

Acknowledgments

15. NBN Co acknowledges that:
 - 15.1. the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
 - 15.2. the ACCC will, from time to time, make public reference to this Undertaking including in media statements and in ACCC publications; and
 - 15.3. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Definitions

16. Unless the context requires otherwise, the definitions specified in Attachment C have the same meanings in this Undertaking and Attachment B to this Undertaking.

Executed by

NBN Co Ltd ACN 136 533 741 by its authorised representatives:



.....
Signature of authorised representative

.....
Signature of authorised representative

Stephen Philip Rue

Paul Tyler

.....
Name of authorised representative

.....
Name of authorised representative

This 8th day of October 2019

This 8th day of October 2019

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth)



.....
Rodney Graham Sims
Chair

This 8th day of October 2019

Attachment A to s. 87B undertaking – FORMAL WARNING



FORMAL WARNING

Issued under subsection 103(4) of the Telecommunications Act 1997

To: NBN Co Limited ACN 136 533 741

O: Level 40-41
360 Elizabeth Street
Melbourne VIC 3000

The Australian Competition and Consumer Commission (ACCC) is satisfied that NBN Co Limited ACN 136 533 741 (NBN Co) has contravened the service provider rule set out in subsection 152BA(2) of the Competition and Consumer Act 2010 (CCA), by failing to comply with the rule in section 152AXD of the CCA.

The ACCC hereby issues a formal warning under subsection 103(4) of the Telecommunications Act 1997.

OBLIGATIONS IMPOSED UNDER SECTION 152AXD OF THE CCA

Section 152AXD of the CCA provides that:

- (1) An NBN Corporation must not, in carrying on any of the following activities, discriminate between access seekers:
 - (a) developing a new eligible service;
 - (b) enhancing a declared service;
 - (c) extending or enhancing the capability of a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
 - (d) planning for a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
 - (e) an activity that is preparatory to the supply of a declared service;
 - (f) an activity that is ancillary or incidental to the supply of a declared service;
 - (g) giving information to service providers about any of the above activities.

THE MATTERS THAT CONSTITUTE CONTRAVENTIONS

Provision of indicative Enterprise Ethernet pricing information to access seekers

NBN Co's treatment of Macquarie Telecom

1. On 1 December 2017, NBN Co provided access seekers with a copy of the document titled 'nbn Product Construct Paper: nbn™ Enterprise Ethernet (ES010): December 2017' (**First Enterprise Ethernet Product Consultation Paper**). The First Enterprise Ethernet Product Consultation Paper did not specify any indicative pricing for the Enterprise Ethernet service.
2. On 18 January 2018, a meeting took place between NBN Co and Macquarie Telecom Pty Limited ACN 082 930 916 (**Macquarie Telecom**) during which NBN Co provided Macquarie Telecom with information about the indicative pricing for the 'business nbn Enterprise Ethernet product', which was a new eligible service being developed by NBN Co (**Enterprise Ethernet service**).
3. In an annexure to a letter dated 25 January 2018, NBN Co provided Macquarie Telecom with tables setting out indicative pricing for the Enterprise Ethernet service (**Indicative Enterprise Ethernet Pricing**).
4. On 12 February 2018, a meeting took place between NBN Co and Macquarie Telecom during which a slide pack was presented to Macquarie Telecom that included the Indicative Enterprise Ethernet Pricing.

NBN Co's treatment of other access seekers

5. NBN Co did not give other access seekers an equivalent opportunity to consider the same information about the new eligible service being developed by NBN Co. The first occasion on which many or all other access seekers received from NBN Co the Indicative Enterprise Ethernet Pricing was on 29 May 2018. The conduct occurred in circumstances where:
 - (a) On 31 January 2018, Access Seeker 1 had requested access to all available pricing information;
 - (b) In early February 2018, Access Seeker 2 was informed that NBN Co's pricing would not be available until August 2018 and Access Seeker 2 asked about the prospects of getting earlier access to pricing information;
 - (c) On 27 February 2018, Access Seeker 2 indicated to NBN Co its interest in obtaining indicative pricing; and
 - (d) On 1 March 2018 and again on 7 March 2018, NBN Co advised Access Seeker 2 that its indicative pricing was yet to be released.

NBN Co carrying on related activities on a discriminatory basis

6. In carrying out the activities described in paragraphs 1 – 5 above, NBN Co discriminated between access seekers in carrying on the giving of information to service providers about a new eligible service that NBN Co was developing in breach of subsection 152AXD(1)(a) and (g) of the CCA and in contravention of subsection 152BA(2) of the CCA.

The Technology Extension Contract – Customer between NBN Co and Macquarie Telecom

Build Activities

7. From at least 5 April 2018, NBN Co has been supplying and offering to supply build activities, which are planning, design and construction activities undertaken to a business, enterprise or government end user's premises to change the access technology that NBN Co had originally proposed to use to service that premises and enable NBN Co to supply access seekers with business grade carriage services by means of this infrastructure, these services being:
 - (a) Ethernet TC-2, a declared service, and

- (b) Enterprise Ethernet, a new eligible service NBN Co was developing. (**Build Activities**).
8. NBN Co and Macquarie Telecom entered into:
- (a) the nbn™ Select – Technology Extension Contract – Customer dated 27 June 2018;
 - (b) the nbn™ – Deal Module for Technology Extension Contract – Customer dated 27 June 2018, which includes a migration plan (**Macquarie DM**); and
 - (c) the nbn™ - Deal Module for Technology Extension Contract – Customer dated 17 December 2018 (**Second Macquarie DM**).

for the supply of Build Activities.

9. Under the Macquarie DM, Macquarie Telecom acquired particular rights to receive a number of payments throughout the term of the Macquarie DM (**Network Preference Payments**). Save for the initial Network Preference Payment, the Macquarie DM specified that the funding must be used by Macquarie Telecom to assist with its marketing of and activities to generate demand.
10. Under the Macquarie DM, Macquarie Telecom also acquired particular rights in relation to the ordering of and payment for Build Activities, including:
- (a) the right to a Renewal Loss Adjustment; and
 - (b) the right to order Build Activities for Enterprise Ethernet.

NBN Co's treatment of Macquarie Telecom

A. Network Preference Payments

11. The Macquarie DM included provisions that oblige NBN Co to make Network Preference Payments to Macquarie Telecom.
12. NBN Co is required to make an Initial Network Preference Payment to Macquarie Telecom 60 calendar days after the Deal Module Commencement Date and, subject to Macquarie Telecom meeting certain targets, NBN Co must make five Additional Network Preference Payments 60 calendar days after the end of the financial year for the first, second and third years of the Deal Module. The Additional Network Preference Payments must be applied by Macquarie Telecom to marketing and demand generation activities.
13. The Network Preference Payments were offered in exchange for Macquarie Telecom agreeing, subject to certain specified exceptions, to use NBN Co for the supply of all off net fixed line carriage services for the term of the Macquarie DM, and migrate its current base of off net fixed line carriage services to NBN Co in accordance with the migration plan under the Macquarie DM, to end users at premises within the NBN footprint (the **Preferred Network Provider arrangement**).

B. Renewal Loss Adjustment

14. The Macquarie DM included provisions that relate to a Renewal Loss Adjustment.
15. The Renewal Loss Adjustment occurs where there is a reduction in the charges that Macquarie Telecom pays to NBN Co (for subsequent supply of declared services to end user premises) if an existing or new end user contract expires or is terminated and the end user customer does not agree or elect to extend the contract or enter into a new contract in respect of that premises.
16. The Renewal Loss Adjustment allows Macquarie Telecom a reduction in the charges that are otherwise payable for Build Activities under the Deferred Charges Arrangements.

C. Build Activities for Enterprise Ethernet installations

17. The Macquarie DM included provisions allowing for Macquarie Telecom to place orders for Build Activities for installations at no additional cost if the order is for Enterprise Ethernet and:
- (a) where there is an agreement to do an fibre-to-the-premises (FTTP) build; or

- (b) where identified as premises requiring an FTTP build at Macquarie Telecom's election in the future.

D. Reduction of the deferred charge in event of end user churn

- 18. In or about dates unknown but prior to 7 December 2018, NBN Co developed a contractual term for Build Activities for FTTP upgrades that gave Macquarie Telecom the right to cancel or terminate technology changes at end user sites up to a limit determined in the Second Macquarie DM, and have the deferred charge reduced.

NBN Co's treatment of other access seekers

- 19. NBN Co did not inform other access seekers of the terms and conditions upon which NBN Co was willing to supply Build Activities by reason that:
 - (a) NBN Co only disclosed to other access seekers the concept of the Preferred Network Provider arrangement;
 - (b) NBN Co did not disclose to other access seekers the details of the benefits available under equivalent terms and conditions of supply; and
 - (c) NBN Co did not inform other access seekers of the details of the eligibility criteria for equivalent terms and conditions of supply.
- 20. NBN Co engaged in the conduct described in paragraph 19 above in circumstances in which at least one access seeker, Access Seeker 3 had, on a date unknown but prior to 29 June 2018, asked to engage with NBN Co in respect of an offer for the supply of Build Activities. However, Access Seeker 3 was not made an offer by NBN Co.

NBN Co carrying on related activities on a discriminatory basis

- 21. In carrying on the activities described in paragraphs 9 - 19 above, NBN Co discriminated between access seekers in carrying on:
 - (a) extending or enhancing the capability of a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
 - (b) planning for a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
 - (c) an activity that is ancillary or incidental to the supply of a declared service; or
 - (d) giving information to service providers about any of these activities,in breach of subsection 152AXD(1)(c), (d), (f) and (g) of the CCA and in contravention of subsection 152BA(2) of the CCA.

Waiver of charges for Build Activities for FTTP upgrades

- 22. In or about dates unknown but prior to 28 August 2018, NBN Co developed two different methods for the payment of charges for Build Activities for FTTP upgrades at specified end user premises:
 - (a) payment of the costs of the upgraded installations upon completion of works (an **upfront charge**); and
 - (b) payment of charges after completion of works in accordance with a schedule of instalments (a **deferred charge**).
- 23. Under the contractual terms developed by NBN Co, a deferred charge for Build Activities is able to be fully or partially offset by revenue received by NBN Co for subsequent supply of declared services to the end user premises, with the effect that the charges for Build Activities are fully or partially waived by NBN Co. No waiver of charges is contractually available for an upfront charge.
- 24. These contractual terms were developed by NBN Co for the purposes of making offers to access seekers for Build Activities for FTTP upgrades at end user premises.

NBN Co's treatment of access seekers

25. In the period between 28 August 2018 and 9 October 2018, NBN Co made offers to access seekers in respect of Build Activities for FTTP upgrades as follows:
- (a) on 28 August 2018, NBN Co made an offer to supply Build Activities with a deferred charge to Access Seeker 4 in respect of two premises;
 - (b) on 3 September 2018, NBN Co made an offer to supply Build Activities with an upfront charge to Access Seeker 5 in respect of nine premises;
 - (c) on 27 September 2018, NBN Co made an offer to supply Build Activities with an upfront charge to Access Seeker 5 in respect of five premises;
 - (d) on 9 October 2018, NBN Co made an offer to supply Build Activities with a deferred charge to Access Seeker 4 in respect of three premises;
 - (e) on 9 October 2018, NBN Co made an offer to supply Build Activities with a deferred charge to Macquarie Telecom in respect of seven premises; and
 - (f) on a date unknown but prior to 13 February 2019, NBN Co made an offer to supply Build Activities with a deferred charge to Macquarie Telecom in respect of five premises.
26. By engaging in the conduct in paragraph 25, NBN Co did not afford access seekers an equivalent opportunity to acquire Build Activities on terms and conditions which had been afforded to other access seekers.
27. On a date unknown but prior to 26 February 2019, NBN Co informed Access Seeker 6 that Access Seeker 6 would need to have a minimum of 10 end user premises in order to obtain Build Activities with a deferred charge and instead would only be able to acquire Build Activities with an upfront charge. NBN Co engaged in the conduct in circumstances where it had previously made offers to other access seekers to supply Build Activities with a deferred charge for less than 10 premises.
28. By engaging in the conduct in paragraph 27, NBN Co did not afford an access seeker an equivalent opportunity to acquire Build Activities on terms and conditions which had been afforded to other access seekers.

NBN Co carrying on related activities on a discriminatory basis

29. In carrying on the activities described in paragraphs 22 – 28 above, NBN Co discriminated between access seekers in carrying on:
- (a) extending or enhancing the capability of a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
 - (b) planning for a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
 - (c) an activity that is ancillary or incidental to the supply of a declared service; or
 - (d) giving information to service providers about any of these activities,

in breach of subsection 152AXD(1)(c), (d), (f) and (g) of the CCA and in contravention of subsection 152BA(2) of the CCA.

Right to cancel and/or relocate technology changes for Build Activities for FTTP upgrades

30. In or about dates unknown but prior to 27 February 2019, NBN Co developed a contractual term for Build Activities for FTTP upgrades that gives the access seeker the right to:
- (a) cancel technology changes; and/or
 - (b) relocate technology changes.

at end user sites up to a limit determined in the contract (the churn allowance).

31. The churn allowance allows an access seeker that has a deferred charge to cancel the Build Activities at a set number of end user sites without paying a break amount and relocate these sites without incurring additional charges at the time of the churn.

NBN Co's treatment of access seekers

32. In the period between 5 November 2018 and 27 February 2019, NBN Co made agreements with access seekers in respect of Build Activities for FTTP upgrades as follows:
- (a) on 11 December 2018 and 12 December 2018, Access Seeker 7 and NBN Co respectively executed a Deal Module for FTTP upgrades without a churn allowance; and
 - (b) on 20 December 2018 NBN Co and Access Seeker 8 executed a Deal Module for FTTP upgrades without a churn allowance.
33. On dates unknown but between 20 December 2018 and 27 February 2019, NBN Co and Access Seeker 8 negotiated a variation to the Deal Module described in paragraph 32(b) to provide Access Seeker 8 the benefit of the churn allowance.
34. A formal variation of the Deal Module described in paragraph 32(b) was executed by NBN Co on 19 February 2019 and by Access Seeker 8 on 27 February 2019 to include the Churn Allowance.
35. Up to the date of this notice, NBN Co has not afforded Access Seeker 7 an opportunity to re-negotiate its Deal Module entered into on 11 December 2018 and 12 December 2018.
36. By engaging in the conduct in paragraphs 32 to 35, NBN Co did not afford an access seeker an equivalent opportunity to acquire Build Activities on the terms and conditions which had been afforded to other access seekers.

NBN Co carrying on related activities on a discriminatory basis


37. In carrying on the activities described in paragraphs 32 – 36 above, NBN Co discriminated between access seekers in carrying on:
- (a) extending or enhancing the capability of a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
 - (b) planning for a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
 - (c) an activity that is ancillary or incidental to the supply of a declared service; or
 - (d) giving information to service providers about any of these activities,
- in breach of subsection 152AXD(1)(c), (d), (f) and (g) of the CCA and in contravention of subsection 152BA(2) of the CCA.

Aggregate effect of NBN Co carrying on related activities on a discriminatory basis

38. In carrying on, in combination, all of the activities described in paragraph 1 – 37 above, NBN Co discriminated between access seekers in carrying on:
- (a) extending or enhancing the capability of a facility or telecommunications network by means of which a declared service is, or is to be, supplied,
 - (b) planning for a facility or telecommunications network by means of which a declared service is, or is to be, supplied;
 - (c) activities that are ancillary or incidental to the supply of a declared service; or
 - (d) the giving of information to service providers about any of these activities.

in breach of subsection 152AXD(1)(c), (d), (f) and (g) of the CCA and in contravention of subsection 152BA(2) of the CCA.

Date: 8/10/19



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Rodney Graham Sims
Chair
Australian Competition and Consumer Commission

Attachment B to s. 87B undertaking

Item	NBN Co Action	Implementation date	Performance period
1.	Consistent contract terms and deal assessment available to all access seekers		
1.1.	<p>NBN Co will ensure that access seekers have access on a non-discriminatory basis at all times to the following deal constructs (Standard Deal Constructs) for the supply of Build Activities:</p> <ul style="list-style-type: none"> • Deferred Charge construct (which may include an Upfront Charge) (Deferred Charge Construct); • Upfront Charge construct (Upfront Charge Construct); • Network Preference Payments construct if the criteria specified in the bulletin issued by NBN Co 31 July 2019 are satisfied (which is a variation on the Deferred Charge Construct) (Network Preference Construct). 	Commencement Date	Ongoing
1.2.	<p>NBN Co will ensure that access seekers have access on a non-discriminatory basis to the following portal based ordering constructs for the supply of Build Activities:</p> <ul style="list-style-type: none"> • the Enterprise Ethernet Portal for Enterprise Ethernet builds; and • the nbn Select Portal for FTTP builds. 	Commencement Date	Ongoing
1.3.	<p>NBN Co will ensure that access seekers have access on a non-discriminatory basis at all times to the following standard agreement types for the supply of Build Activities:</p> <ul style="list-style-type: none"> • the Technology Extension Contract which will be used for the Standard Deal Constructs; • the Deal Module under the Technology Extension Contract for Standard Deal Constructs; • the Enterprise Ethernet Build Contract, which will be used for Enterprise Ethernet builds via the Enterprise Ethernet Portal; and • the nbn Select Build Contract, which will be used for FTTP builds via the nbn Select Portal. 	Commencement Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
1.4.	<p>NBN Co will not impose on access seekers any requirement for an order for Build Activities to have a minimum number of sites in relation to any Standard Deal Construct, nbn Select Portal or Enterprise Ethernet Portal based ordering construct or standard agreement for the supply of Build Activities.</p> <p>This is subject to the qualification criteria for the Deferred Charge Construct specified in row 1.8 below.</p>	31 October 2019	Ongoing
1.5.	<p>For the purposes of:</p> <ol style="list-style-type: none"> 1. an Upfront Charge Construct under the Technology Extension Contract (including Build Activities for Enterprise Ethernet); 2. a Deferred Charge Deal under the Technology Extension Contract (including Build Activities for Enterprise Ethernet); 3. a site that is a "Category B" or "Category C" site in the Enterprise Ethernet Portal for Build Activities under the Enterprise Ethernet Build Contract <p>NBN Co must use the same method to estimate the capital costs of undertaking Build Activities (Common Build Cost Method). NBN Co's Common Build Cost Method must be based on best estimates of the costs to undertake Build Activities. These costs are based on:</p> <ul style="list-style-type: none"> • external costs set out in NBN Co's deployment contracts with its delivery partners; • NBN Co's internal costs of augmenting the capacity of the NBN Co access network for Enterprise Ethernet; and • internal labour costs of NBN Co's network planning and deployment division. <p>Any update to data or assumptions used in the Common Build Cost Method must be applied in all of NBN Co's dealings with access seekers after any update has been made, whether it is incorporated into an automated tool used in the Common Build Cost Method or not. Category B sites in the Enterprise Ethernet Portal (point 3 in this paragraph 1.5 above) rely only on the automated tool component of the Common Build Cost Method.</p>	31 October 2019	Ongoing

Item	NBN Co Action	Implementation date	Performance period
1.6.	For the purposes of a site that is a "Category A" site in the Enterprise Ethernet Portal, NBN Co will use the automated tool component of the Common Build Cost Method (as described above) to estimate the build costs of undertaking Build Activities under the Enterprise Ethernet Build Contract.	1 April 2020	Ongoing
1.7.	<p>For the purposes of a TEC Deal which includes an Upfront Charge, but not a Deferred Charge, NBN Co's Upfront Charges will be the aggregate amount comprising the following costs:</p> <ul style="list-style-type: none"> • estimated build cost of undertaking the Build Activities calculated by the Common Capital Cost Method; and • the program management resources offered to an end user of the Deal (if any). 	Commencement Date	Ongoing
1.8.	<p>For the purposes of a TEC Deal which includes a Deferred Charge, NBN Co's Deferred Charges will be the aggregate amount comprising the following costs:</p> <ul style="list-style-type: none"> • estimated build cost of undertaking the Build Activities calculated by the Common Build Costs Method; plus the following costs: • the program management resources offered to an end user (if any); • the incremental operational costs of supplying the WBA services, using the same standard costs; and • a standardised rate across all Deals and all access seekers for the cost of funding the above. <p>The amount of the Deferred Charge payable at the payment dates will be reduced by the Revenue Credit Amount (which is the WBA revenue for specified services on the new technology at the Build Sites).</p> <p>NBN Co will offer a Deferred Charge where it encompasses features no less favourable than:</p> <ul style="list-style-type: none"> • a Deal term of 5 years (which may be rolled over at the election of the access seeker as described below), although an access seeker may, at its election, pay back the Deferred Charge earlier than 5 years (whether through an offset of the Revenue Credit Amount or payment of instalment(s)), in which case the agreement terminates at that time (if there is a variation to an existing Deal Module, the term of the varied Deal Module will remain the same as the original term in the original Deal Module); • in relation to the payment of the Deferred Charge: 	31 October 2019	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	<ul style="list-style-type: none"> - a fixed 40% of the Deferred Charge less the Revenue Credit Amount will be payable by the access seeker at the end of 3 years; and - the remaining fixed 60% of the Deferred Charge will be payable by the access seeker at the end of the term less the Revenue Credit Amount (excluding any revenue credited from the year 3 offset); and • an ability for the access seeker to elect to roll-over at the end of the 5 year Deal term for the period specified by NBN Co (which will be up to 12 months) if the Revenue Credit amount has not fully offset the Deferred Charges. <p>NBN Co will calculate the forecast revenue based on the products that the access seeker states that it intends to order at the Deal sites using the new technology during the term (i.e. the Revenue Credit Amount). NBN Co will assume that revenue commences 60 calendar days following the target build completion date. If the forecast revenue would not pay back the Deferred Charge over the Deal term, then NBN Co will require the access seeker to pay an Upfront Charge for the shortfall and a Deferred Charge will be offered for the balance of the costs.</p> <p>Where NBN Co uses the Common Build Cost Method to estimate the capital cost of undertaking Build Activities, the Upfront Charge in this case will only include the portion of the capital cost that is not deferred. The project management resources (if any) will be included in the Deferred Charge calculation. The Deferred Charge calculation will be calculated in accordance with the principles in this Item 1.8, less the build cost component that is being paid upfront.</p> <p>NBN Co is permitted to honour, and execute a Deal Module, for any letters of offers or proposed Deal Modules that are based on NBN Co's business rules in place before implementing the above.</p>		
1.9.	<p>NBN Co will:</p> <ul style="list-style-type: none"> • develop a standard Churn Allowance provision that is available for all Deferred Charge Deals; • publish a full description of the Churn Allowance provision in the BSM Deals Manual (referred to in Item 3.1 below); and • ensure that, at the request of an access seeker, a Churn Allowance will be included in a Deal Module for Deals involving a Deferred Charge. 	31 October 2019	Ongoing

Item	NBN Co Action	Implementation date	Performance period
1.10.	<p>If an access seeker requests the inclusion of a Churn Allowance as part of any prospective Deferred Charge Deal, then:</p> <ul style="list-style-type: none"> NBN Co will calculate the number of "Churn Premises" by applying a flat 3% to the number of Build Sites in the Deal Module (noting that Churn Premises need to be a whole number and if a flat 3% of the number of Build Sites does not result in a whole number, the number of Churn Premises will be rounded down to the nearest whole number of Build Sites that is less than a flat 3% of the number of Deal Sites in the Deal Module); during the term of the deal, the access seeker may request that NBN Co perform a technology change at additional end users' premises, up to the pre-calculated number of Churn Premises; and NBN Co's cost for performing the technology change at the Churn Premises will be recovered by NBN Co adding an amount to the Deferred Charge. That amount will be calculated by multiplying up to 3% (which must correspond to the number of whole Churn Premises) by the sum of the proposed Deferred Charges plus (if any) the Upfront Charges for the Build Sites excluding the Churn Premises (or by another Common Build Cost Method used by NBN Co provided that it is applied in a non-discriminatory manner to all access seekers). This is equivalent to an up to 3% increase in what the Deferred Charges would have been without the Churn Allowance. <p>This obligation does not prevent NBN Co from identifying particular kinds of sites at which a Churn Allowance cannot be offered (e.g. a site in the fixed wireless or satellite footprint, which would be significantly more expensive to build than the average for the deal) provided that all access seekers are treated in a non-discriminatory manner in the application of that exclusion.</p>	Within 10 business days of the Commencement Date	Ongoing
1.11	<p>NBN Co will write to all access seekers that have a Deal Module executed between 5 November 2018 and 5 September 2019 (inclusive) and have not previously been offered a Churn Allowance or cancellation allowance for that Deal Module(s) (Eligible Access Seekers) to offer each Eligible Access Seeker an opportunity to amend its Deal Module(s) entered into between 5 November 2018 and 5 September 2019 (inclusive) to add the below churn and cancellation allowance provision, which will be based on NBN Co's business rules in place as at 27 February 2019 as described below, regardless of the number of sites in the Deal Module (noting that Churn Premises need to be a whole number).</p> <p>As at 27 February 2019, NBN Co had an allowance of 3% per annum for relocation and 7% per annum for cancellation. It will be offered to Eligible Access Seekers in accordance with the following (which excludes any historic requirement for a minimum number of sites):</p>	Within 10 business days of the Commencement Date	N/A

Item	NBN Co Action	Implementation date	Performance period
	<ul style="list-style-type: none"> • Use the total build costs for the premises in the Deal Module calculated at the time of entering into the Deal Module. • Add 3% for each year of the Deal Module term to the total build costs to arrive at the new total build costs (the 7% for cancellation does not need to be added to the total build costs because no new sites are added and built to as part of the cancellation right). • If the Deferred Charges from the Deal Module are greater than the new total build costs, then NBN Co will offer the Churn Allowance and leave the Deferred Charges unchanged. <p>If the Deferred Charges from the Deal Module are less than the new total build costs, then the Churn Allowance will only be offered if the access seeker agrees to an increase in the Deferred Charges to cover the amount of the shortfall between the Deferred Charges from the Deal Module and the new total build costs.</p>		
2.	Change management		
2.1.	<p>Immediacy of change notification: Subject to Item 3.3, if NBN Co varies a Standard Deal Construct by either offering a variation to an access seeker or agreeing to a variation with an access seeker, NBN Co will notify all other access seekers of the availability of the variation in writing within 10 business days. A variation to a Standard Deal Construct may include both rights and obligations of NBN Co and an access seeker. NBN Co will make the variation available to all access seekers on a prospective basis on the date that NBN Co provides notice of the variation. Throughout the Undertaking and attachments, 'prospective basis' means that NBN Co is not required to reopen previously executed deals.</p>	Commencement Date	Ongoing
2.2.	<p>Expiry of offers: All non-binding indicative offers given by NBN Co to an access seeker will expire on the later of:</p> <ul style="list-style-type: none"> • 60 business days after the offer is provided by NBN Co to the access seeker; and • the end customer's tender close date (if known and applicable). 	Within 5 Business Days of the Commencement Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	<p>For Deal Modules offered by NBN Co to an access seeker, the Deal Module will expire 30 days after it is offered by NBN Co to the access seeker (unless the access seeker requests a shorter expiry date).</p> <p>Prior to executing a Deal Module, NBN Co may amend any proposed Deal Module or non-binding indicative offer made to the access seeker due to:</p> <ul style="list-style-type: none"> • NBN Co ascertaining that the actual cost to undertake the build activity is different to its previous estimate of the cost of the build activity; • NBN Co discovers an error or mistake in the Deal Module or letter; or • a change in the access seeker's requirements. <p>Any such withdrawal would occur in the same way for all impacted access seekers. By way of example, if NBN Co amends the cost estimate for undertaking the Build Activities at particular premises, NBN Co would advise all access seekers which have a valid offer covering those particular premises based on the old cost estimate that it needs to be revised on a set date (i.e. the effective date of the new cost estimate) and provide the new cost estimate on that date to all access seekers as part of a new non-binding indicative offer.</p>		
3.	Informational equivalence		
3.1.	<p>NBN Co will develop a document called the BSM Deals Manual and ensure that all access seekers that:</p> <ul style="list-style-type: none"> • have signed the TEC, Enterprise Ethernet Build Contract, or the nbn Select Build Contract; or • have requested, in writing, a copy of any of those contracts, <p>and have not requested that they be removed from this distribution list (List of Access Seekers), have non-discriminatory access to the BSM Deals Manual.</p> <p>NBN Co will write to all access seekers that have executed a WBA, or subsequently execute a WBA, offering them an opportunity to be added to the List of Access Seekers if they are not on the list already.</p> <p>The BSM Deals Manual will contain:</p>	Within 5 Business Days of the Commencement Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	<ul style="list-style-type: none"> • details of all Standard Deal Constructs, including any eligibility criteria which might apply to the availability of any Standard Deal Construct and any information that must be provided by the access seeker to NBN Co; • a description of the Common Build Cost Method for the calculation of the Upfront Charge and Deferred Charge; • the methodology and principles for the availability of a Churn Allowance, including NBN Co's right to reject an access seeker's request to add a churn site which is currently under review by NBN Co; • a description of the Common Build Cost Method for the calculation of upfront build charges under the nbn Select Build Contract and the Enterprise Ethernet Build Contract; • the process that NBN Co will follow when entering into new Deal Modules; • NBN Co's process for notifying access seekers as new offers are made by NBN Co and advising access seekers of any new deal constructs; and • NBN Co's process for amending the BSM Deals Manual and notifying access seekers specified on the List of Access Seekers of any amendments. 		
3.2.	<p>NBN Co will notify all access seekers specified on the List of Access Seekers of any amendments made by NBN Co to the BSM Deals Manual within 10 business days of the making of any amendment.</p> <p>All amendments to the BSM Deals Manual will apply on a prospective basis effective from the date the notice is sent.</p>	Within 5 Business Days of the Commencement Date	Ongoing
3.3.	<p>if:</p> <ul style="list-style-type: none"> • NBN Co varies a Standard Deal Construct by either offering a variation to an access seeker or agreeing to a variation with an access seeker; and • NBN Co is aware another access seeker is participating in the same competitive tender process as the access seeker that was offered or agreed to the variation, and the access seeker has engaged NBN Co in relation to its tender response, 	Within 5 Business Days of the Commencement Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	NBN Co will notify that other access seeker within 2 business days of the variation, and the variation will apply on a prospective basis effective from the date the notice is sent.		
3.4.	<p>NBN Co will make available on NBN Co's public website a copy of the current standard version of the following contractual terms:</p> <ul style="list-style-type: none"> the Technology Extension Contract; the Deal Module; the Enterprise Ethernet Build Contract; and the nbn Select Build Contract. <p>If NBN Co makes an amendment to such standard versions of the above contractual terms, NBN Co will upload an updated version of such standard versions of the contractual terms to its public website within 15 business days of that amendment occurring.</p>	Within 5 Business Days of the Commencement Date	Ongoing
3.5.	NBN Co will, every three calendar months, send to all access seekers specified on the List of Access Seekers a bulletin that details any amendments that have been made in the preceding 3 months to any Standard Deal Construct, the Technology Extension Contract, Deal Module, Enterprise Ethernet Build Contract or nbn Select Build Contract, any further or replacement contractual arrangement, or to the BSM Deals Manual.	31 January 2020 for first bulletin	Ongoing on a quarterly basis
3.6.	NBN Co will provide to all WBA customers a letter which contains a summary of the key commercial terms of a Network Preference Deal and the eligibility criteria for such a Deal construct.	Commencement Date	N/A
3.7.	<p>NBN Co will publish on its website a document setting out the dollar amounts as at the publication date for the Enterprise Ethernet service that will be specified in Price Confirmations issued to WBA customers.</p> <p>This document can be removed once NBN Co has performed the action set out in Item 3.8.</p>	Within 5 Business Days of the Commencement Date	Within 5 Business Days of the Commencement Date to 31 October 2019 (or such earlier date that

Item	NBN Co Action	Implementation date	Performance period
			NBN Co performs the action in Item 3.8).
3.8	<p>NBN Co will publish the dollar amounts on offer in the nbn Enterprise Ethernet price list that forms part of the WBA standard form of access agreement published on NBN Co's website for each charge currently specified to be "By Price Confirmation" with the exception of the 0 Mbps OVC bandwidth option as that option is erroneous and will be deleted from the WBA.</p> <p>This WBA change will apply to orders placed after the publication date.</p> <p>The terms of the WBA will otherwise continue to apply including the existing WBA change and discount, credit and rebate processes.</p>	31 October 2019	N/A
3.9	<p>NBN Co will offer to each WBA customer a contractual variation that, immediately on execution, varies the Enterprise Ethernet Price List in that customer's WBA access agreement so that it specifies a dollar amount on offer for each "By Price Confirmation" charge for the Enterprise Ethernet service with the exception of the 0 Mbps OVC bandwidth option as that option is erroneous and will be deleted from the WBA.</p> <p>This WBA change will apply to orders placed after the effective date of the contractual variation.</p> <p>The terms of the WBA will otherwise continue to apply including the existing WBA change and discount, credit and rebate processes.</p> <p>Each such contractual variation will lapse after NBN Co has performed the action in Item 3.11 below and that action becomes effective.</p>	31 October 2019	N/A
3.10	<p>NBN Co will commence the consultation and change process in accordance with the provisions of the WBA in relation to the required WBA changes in order to publish dollar amounts on offer for the Enterprise Ethernet service in the Price List in the Enterprise Ethernet Product Module of the WBA where any charges are currently specified to be "By Price Confirmation" with the exception of the 0 Mbps OVC bandwidth option as that option is erroneous and will be deleted from the WBA.</p>	31 October 2019	N/A

Item	NBN Co Action	Implementation date	Performance period
3.11	<p>NBN Co will, following compliance with the WBA consultation process and change provisions under the WBA, notify to WBA customers the WBA changes required to publish dollar amounts on offer for the Enterprise Ethernet service in the Price List in the Enterprise Ethernet Product Module of the WBA where any charges are currently specified to be "By Price Confirmation" with the exception of the 0 Mbps OVC bandwidth option as that option is erroneous and will be deleted from the WBA.</p> <p>This WBA change will apply to orders placed after the effective date of the WBA change.</p> <p>The terms of the WBA will otherwise continue to apply including the existing WBA change and discount, credit and rebate processes.</p>	20 December 2019	N/A
4.	No circumvention		
4.1.	NBN Co will not engage in conduct that has the purpose or effect of impeding access seekers from gaining the benefit of the commitments it is providing in this Undertaking.	Commencement Date	Ongoing
5.	Compliance arrangements		
5.1.	NBN Co will appoint a person at a level equivalent to General Manager at NBN Co with suitable qualifications or experience in corporate compliance as a compliance officer (Compliance Officer). The Compliance Officer will have responsibility for ensuring the NDO Compliance Program is effectively designed, implemented and maintained. The Compliance Officer will provide oversight of all Deals offered by NBN Co's BSM Department, to ensure compliance with the non-discrimination obligations and with the transparency commitments in this undertaking. The Compliance Officer will report directly to the person who is the holder of the position currently titled Chief Strategy Officer (or equivalent if this title changes) who will have overall responsibility for NBN Co's compliance with the NDO Compliance Program.	Within 30 business days of the Commencement Date	Ongoing
5.2.	NBN Co will establish and maintain a compliance program in relation to compliance with its non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business	Within 45 business days of	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	grade services to access seekers, by NBN Co's BSM Department (as defined in the definition of NDO Compliance Program in Attachment C), which is consistent with the undertakings made by NBN Co as specified in this Attachment B.	the Commencement Date	
5.3.	<p>NBN Co will document the NDO Compliance Program and update its NBN Co training and compliance materials to reflect the undertakings made by NBN Co as specified in this Attachment B.</p> <p>NBN Co will ensure that its NDO Compliance Program includes the following:</p> <ul style="list-style-type: none"> • a requirement for all of NBN Co's BSM Department staff to report any NDO Compliance Program related issues and concerns to the Compliance Officer; • a guarantee that whistleblowers with non-discrimination obligation compliance concerns will not be disadvantaged in any way and that their reports will be kept confidential and secure; and • a clear statement that NBN Co will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department. <p>NBN Co will publish on its intranet the NDO training and compliance materials, and any subsequent updates of such documents.</p>	Within 45 business days of the Commencement Date	Ongoing
5.4.	NBN Co will ensure that all officers, NBN Co BSM staff and any other employee, agent or representative of NBN Co whose duties could result in them being concerned with conduct that may cause NBN Co to contravene its non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department will complete NDO compliance training annually. NBN Co must ensure that the training is conducted by a suitably qualified compliance or regulatory professional or legal practitioner with expertise in competition law, specifically regarding NBN Co's non-discrimination obligations.	Within 45 business days of the Commencement Date	Ongoing on an annual basis
5.5.	NBN Co will ensure all new officers, NBN Co BSM staff and any other employee, agent or representative of NBN Co whose duties could result in them being concerned with conduct that may cause NBN Co to contravene its non-discrimination obligations for the supply of Build Activities, and the supply of business	Within 45 business days of	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	grade services to access seekers, by NBN Co's BSM Department complete NDO compliance training as part of induction.	the Commencement Date	
5.6.	<p>NBN Co will engage a suitably qualified independent external compliance professional with expertise in competition law (Reviewer), to conduct an annual audit of NBN Co's compliance with its non-discrimination obligations, including advising on the continuing effectiveness of the NDO Compliance Program.</p> <p>The Reviewer will qualify as independent on the basis that they:</p> <ul style="list-style-type: none"> • did not design or implement the Compliance Program; • are not a present or past staff member or director of NBN Co; and • has not acted and/or does not act for, and does not consult and has not consulted to, NBN Co in any competition related matters, other than performing audits under this Undertaking. <p>NBN Co will use its best endeavours to ensure that, for each annual audit, the Reviewer has access to all relevant sources of information in NBN Co's possession and control, including:</p> <ul style="list-style-type: none"> • the ability to make enquiries of any officers, employees, representatives and agents of NBN Co; • documents relating to the NDO Compliance Program for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department, including all NDO training and compliance materials, complaints, staff training and induction program; and • any reports made to the Compliance Officer by staff in relation to NDO Compliance Program related issues and concerns with the NDO Compliance Program. <p>When undertaking the annual audit, the Reviewer must provide a finding as to whether NBN Co has acted consistently with its non-discrimination obligations and the NDO Compliance Program, and, if not:</p> <ul style="list-style-type: none"> • identify all instances of failure to comply; and • recommendations for rectifying those failures. <p>NBN Co will act promptly and with due diligence to address any failures identified by the Reviewer in the annual audit report.</p>	<p>By 30 September 2020 for the period from the Commencement Date to 30 June 2020.</p> <p>Then by 30 September 2021 for the period 1 July 2020 to 30 June 2021 and annually thereafter.</p>	Ongoing on an annual basis

Item	NBN Co Action	Implementation date	Performance period
6.	Reporting and record keeping		
6.1.	NBN Co will keep records of all NDO compliance training conducted with all officers, NBN Co BSM staff and any other employee, agent or representative of NBN Co whose duties could result in them being concerned with conduct that may cause NBN Co to contravene its non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department.	Within 45 business days of the Commencement Date	Ongoing
6.2.	NBN Co will provide to the ACCC all documents recording its NDO Compliance Program for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department, and any subsequent updates of such documents on reasonable request.	Within 45 business days of the Commencement Date	Ongoing
6.3.	NBN Co will prepare and maintain the list of access seekers (which is defined in row 3.1 above). NBN Co can remove an access seeker from the list following the access seeker's written request.	Commencement Date	Ongoing
6.4.	NBN Co will create and maintain an internal central register of all executed Build Deals and Build Deals offered to access seekers. Access to the central register will be given to all relevant BSM staff to enable staff to have visibility and understand what NBN Co has committed to access seekers historically. Relevant BSM staff are staff members who are involved in the development and administration of the offering contained in a letter of offer or Deal Module.	Commencement Date	Ongoing
6.5.	NBN Co will keep records of all complaints made by access seekers to NBN Co which describe a grievance in relation to NBN Co's compliance with its non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM	Commencement Date	Ongoing

Item	NBN Co Action	Implementation date	Performance period
	Department, and will notify the ACCC within 10 business days of receiving such complaint by providing details of that complaint.		
6.6.	<p>For each annual audit conducted as per Item 5.6 above, the Reviewer must prepare a report outlining the findings of the annual audit.</p> <p>The report will be provided to NBN Co management and Audit and Risk Committee.</p> <p>Within 20 business days of NBN Co's management and Audit and Risk Committee receiving that report, NBN Co must also provide a copy of that report to the ACCC, and, where a failure has been identified by the Reviewer in the report, NBN Co must inform the ACCC of:</p> <ul style="list-style-type: none"> • any steps that it has taken to implement the recommendations made by the Reviewer in that report; or • otherwise: <ul style="list-style-type: none"> – outline the steps that it proposes to take to implement the recommendations of the Reviewer and the timeframe for implementation to the ACCC; and – subsequently inform the ACCC once those steps have been implemented. 	The first review will be completed no later than 30 September 2020 for the period 1 July 2019 to 30 June 2020	Ongoing on an annual basis

Attachment C to s. 87B undertaking

Definitions

'ACCC' means the Australian Competition and Consumer Commission;

'Audit and Risk Committee' means the committee established by the NBN Audit and Risk Committee Charter issued on 5 February 2019;

'Board' means the board of directors appointed to NBN Co's board pursuant to its constitution;

'BSM' means NBN Co's business sales and marketing department;

'BSM Deals Manual' means the document developed and made available by NBN Co to all access seekers specified on the List of Access Seekers, which contains the information included in item 3.1 of Attachment B;

'Build Activities' are planning, design and construction activities undertaken by NBN Co to the premises of either business, enterprise or government end users in order to change the access technology that NBN Co had originally proposed to use to service that premises and enable NBN Co to supply access seekers with business grade wholesale services of Traffic Class 2 over FTTP and Enterprise Ethernet by means of this infrastructure. NBN Co's Technology Choice Program, including individual premises switch and area switch and NBN Co's new developments program are excluded for the purposes of this definition;

'Build Sites' means the premises specified in a Deal Module as requiring Build Activities;

'CCA' means the *Competition and Consumer Act 2010* (Cth);

'Churn Allowance' means a contractual term that allows an access seeker that has a Deferred Charge Deal to relocate Build Sites by cancelling the Build Activities for the Build Sites and requesting Build Activities for replacement Build Sites without changes to the charges at the time of the churn up to a pre-agreed limit determined prior to entering the Deal;

'Churn Premises' means the premises included in a Deferred Charge Deal identified by the access seeker as being subject to a Churn Allowance;

'Common Build Cost Method' means the method by which NBN Co estimates the capital costs of undertaking Build Activities (other than in NBN Co's fixed wireless or satellite footprint), such as a distance based cost calculator tool to estimate the capital cost of undertaking Build Activities, which may include a combination of manual and automated processes;

'Compliance Officer' means a person at a level equivalent to General Manager at NBN Co with suitable qualifications or experience in corporate compliance as a compliance officer appointed by NBN Co;

'Deal Module' means a contract issued by NBN Co and accepted by the relevant party to an executed Technology Extension Contract, which specifies the terms governing the Deal between the relevant party to that Technology Extension Contract and NBN Co;

'Deal' means a Deal Module between NBN Co and an access seeker governing the Build Activities to be made available to that access seeker by NBN Co at specified end user premises agreed between the parties;

'Deferred Charge Deal' means a Deal that includes a Deferred Charge;

'Deferred Charge' means a contractual term for the payment of charges for Build Activities for FTTP or Enterprise Ethernet upgrades at specified end user premises where the payment of charges is made after the completion of work in accordance with a schedule of instalments;

'Eligible Access Seekers' means all access seekers that have a Deal Module executed between 5 November 2018 and 5 September 2019 (inclusive) and who have not previously been offered a Churn Allowance for that Deal Module(s);

'Enterprise Ethernet Build Contract' means a standard form agreement provided by NBN Co to an access seeker for Build Activities for Enterprise Ethernet;

'Enterprise Ethernet Portal' means the service portal which enables access seekers and NBN Co to perform supported business transactions for Enterprise Ethernet over the internet using a web-based portal provided by NBN Co;

'Enterprise Ethernet' means the product described in the Enterprise Ethernet Product Module of the Wholesale Broadband Agreement published on NBN Co's website;

'FTTP' means fibre-to-the-premises access technology;

'List of Access Seekers' means a list of all access seekers that:

- (a) have signed the TEC, Enterprise Ethernet Build Contract, or the nbn Select Build Contract;
- (b) have requested, in writing, a copy of any of those contracts; or
- (c) have executed a WBA and have requested to be added to the list pursuant to row 3.1 of Attachment B,

and have not requested that they be removed from the list;

'NBN Co' means NBN Co Limited ACN 136 533 741;

'nbn Select Build Contract' means a standard agreement provided by NBN Co to an access seeker for the purpose of governing any Build Activities ordered through the NBN Select Portal;

'nbn Select Portal' means the service portal which will enable access seekers and NBN Co to perform supported business transactions related to requests to change access technology at a premises to FTTP technology using a web-based portal provided by NBN Co;

'NBN' means the National Broadband Network;

'NDO Compliance Program' means the compliance program that NBN Co commits to establish and maintain in relation to compliance with its non-discrimination obligations for the supply of Build Activities to access seekers, and the supply of business grade services to access seekers, by NBN Co's BSM Department;

'Network Preference Deal' means a Deferred Charge Deal that includes the payment of Network Preference Payments by NBN Co to an access seeker where that access seeker commits to on-demand technology upgrades and preferences the NBN for the supply of all fixed line services subject to certain exceptions;

'Network Preference Payments' means the incentive payments paid by NBN Co to an access seeker pursuant to a contractual term agreed between NBN Co and that access seeker under a Network Preference Deal;

'Revenue Credit Amount' means the WBA revenue for specified services at end user premises using the new technology agreed between the parties to a Deferred Charge Deal;

'Reviewer' means a suitably qualified external compliance professional with expertise in competition law, and who:

- (a) did not design or implement the NDO Compliance Program;
- (b) is not a present or past staff member or director of NBN Co; and
- (c) has not acted or does not act for, and does not consult and has not consulted to, NBN Co in any competition related matters, other than performing audits under this Undertaking;

'Standard Deal Constructs' means the standard deal constructs for each of the Deferred Charge Deal (which may include a partial Upfront Charge), Upfront Charge Deal, and Network Preference Deal;

'Technology Extension Contract' means a master agreement under which NBN Co and an access seeker can agree the terms of a Deal Module relating to the supply of Build Activities by NBN Co;

'Undertaking' means the section 87B undertaking given by NBN Co to the ACCC in this document, including Attachments A and B to the section 87B undertaking;

'Upfront Charge Deal' means a Deal that includes an Upfront Charge and does not involve any Deferred Charges;

'Upfront Charge' means a contractual term for the payment of charges for Build Activities for FTTP upgrades at specified end user premises where the payment of charges is made prior to completion of works under a Deal Module;

'WBA' means the wholesale broadband agreement, which is a standard access agreement published by NBN Co for the purposes of Part XIC of the CCA.