



Submission by AAPT Limited (30 March 2012)

to

**ACCC Supplementary Consultation Paper on
“NBN Co Special Access Undertaking” (dated 10 February
2012)**



Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (**ACCC**) supplementary consultation paper on the "*NBN Co Special Access Undertaking*", dated 10 February 2012 (**Supplementary Consultation Paper**).
2. AAPT notes that the ACCC cannot accept the NBN Co Special Access Undertaking (**SAU**) if the terms and conditions are not reasonable and are not consistent with the category B standard access obligations. In this submission, AAPT sets out the reasons why it considers the terms and conditions contained in the SAU are unreasonable and therefore cannot be accepted by the ACCC.

Executive summary

3. In determining whether the SAU is reasonable and therefore acceptable, the ACCC is required to have regard to the factors set out in section 152AH of the *Competition and Consumer Act 2011 (CCA)*, including whether the terms and conditions contained in the SAU promote the long-term interests of end-users (**LTIE**). However, this list of factors is not exhaustive and it is open to the ACCC to consider other factors to ascertain the reasonableness of the SAU.
4. **Non-Discrimination Obligations** - First and foremost, AAPT considers that the SAU can only be reasonable if it includes an explicit commitment by NBN Co to not discriminate between access seekers and in favour of itself. In AAPT's view, the non-discrimination obligations under Part XIC of the CCA (**Non-Discrimination Provisions**) are akin to the concept of the overarching commitment to equivalence which is included in the Telstra Structural Separation Undertaking (**SSU**) relating to the wholesale supply of regulated services.
5. AAPT sees the Non-Discrimination Provisions as an overarching obligation on NBN Co to provide equivalent access to all access seekers. The Non-Discrimination Provisions serve as a "safety net" in circumstances where a Standard Form of Access Agreement (i.e. the Wholesale Broadband Agreement



or **WBA**), a special access undertaking (**SAU**) and other regulatory instruments (i.e. access determinations (**AD**) and binding rules of conduct (**BROC**)) may fall short of achieving open, transparent and non-discriminatory access to the National Broadband Network (**NBN**). The inclusion of a Non-Discrimination commitment in the SAU is discussed in further detail at paragraphs 10 to 14 below.

6. **Lack of regulatory oversight** – AAPT considers that the issue of the lack of regulatory oversight in the SAU is two-fold. First, there is clearly a gap in regulatory oversight due to the operation of the legislative hierarchy made up of the SAU, Access Agreements, BROCs and ADs (**Regulatory Hierarchy**). Secondly, the current drafting in the SAU seeks to implement the Regulatory Hierarchy in way that substantially narrows the circumstances in which access seeker can seek regulatory recourse to the ACCC via an AD or BROC. A framework where there is insufficient regulatory oversight of disputes arising during negotiations or from the existing terms of the SAU or WBA would clearly be unworkable. The predictable outcome will be that either disputes are unlikely to be satisfactorily resolved or access seekers will be forced to agree to NBN Co terms they would otherwise not accept. Such circumstances are clearly not in the LTIE. While including a Non-Discrimination commitment would assist in ensuring the access seekers are not discriminated against and NBN Co cannot favour itself or its larger customers, it would be far more practical and efficient to also have in place an effective process for resolving disputes in a timely manner.
7. **The appropriate hierarchy** - AAPT considers that the current interaction between the SAU and WBA is unclear and there is great potential for confusion. There have been mixed message provided to industry as to whether it is the terms of the SAU or the terms of an Access Agreement that will prevail in the event of any inconsistencies. For example, AAPT notes that the provisions dealing with Points of Interconnection (**POI Provisions**) contained in the SAU provides for ACCC approval and stakeholder consultations before NBN Co can establish a new POI location. In contrast, the POI Provisions in the WBA give NBN Co



full discretion in establishing a new POI location, subject only to a notice period. It is entirely unclear to AAPT how such differences are to be reconciled.

8. While the Regulatory Hierarchy is what it is, AAPT considers it is open to NBN Co to implement a more workable interaction between the SAU, WBA, BROCs, ADs and Access Agreements. In AAPT's view the following interaction between those documents and instruments makes good sense:

- o The SAU includes an attached set of 'mandatory terms' which is essentially the standard form of agreement (ie the WBA) which must be assessed by the ACCC for reasonableness as part of its assessment of the SAU;
- o The SAU must provide for full or substantial uplift of any AD or BROc;
- o The WBA is interpreted such that the SAU has primacy over its terms; and
- o Any Access Agreement must contain the WBA terms which have been assessed and accepted by the ACCC and, because of the strict operation of the Non-Discrimination Provisions (enshrined in the SAU as a Non-Discrimination commitment), cannot contain different terms and condition except where:
 - i. that change is a legislative exception; or
 - ii. it is required to address an indirect discriminatory effect (including a change required to level the playing field) and approved by the ACCC as meeting that carve out.

This proposed hierarchy is discussed in further detail in response to question 11 below.

9. **30-year term is too long** – According to NBN Co, a 30 year term is reasonable because it will provide for regulatory certainty and there are review processes in place to ensure the SAU has ongoing relevance. AAPT considers that a 30 year term is unnecessarily long when considered in the context that there is a lack of:
- o appropriate regulatory oversight; and
 - o independent review and variation processes included in the SAU.



In light of this, a 30 year term would actually create significant regulatory uncertainty for access seekers rather than provide for certainty. This would not be in the LTIE as such uncertainty could discourage efficient investments. The unreasonableness of the 30-year term is discussed in further detail in the responses to questions 7 to 10 below.

A Non-discrimination commitment

10. AAPT considers that the Non-Discrimination Provisions “sit over” rather than “sit within” the framework of the regulatory documents and instruments which make up and are subject to the Regulatory Hierarchy. AAPT believes this is consistent with the legislative intent of the Non-Discrimination Provisions which was expressed as follows:

To further reinforce the open access principles underpinning the NBN, the Access Bill also sets out a clear non-discrimination obligation applying to NBN Co, giving effect to the Government's commitment for NBN Co to provide equivalent access to all access seekers.¹

11. AAPT sees the Non-Discrimination Provisions as an overarching obligation on NBN Co to provide equivalent access to all access seekers. The overarching nature of the Non-Discrimination Provisions is implicitly evident in the legislative provisions which also prohibit the ACCC from making an AD or issuing a BROC which has the effect (direct or indirect) discrimination between access seekers. Moreover, NBN Co could still be found to be in breach of the Non-Discrimination Provisions for not ensuring equivalent access for access seekers, even where the discrimination is the result of the regulatory hierarchy.
12. AAPT acknowledges that the Non-Discrimination Provisions may not explicitly require access terms and conditions to be reasonable or that they must necessarily suit the particular needs and requirements of access seekers.

¹ Revised Explanatory Memorandum to the Telecommunications Legislation Amendment (National Broadband Network Measures-Access Arrangements) Bill 2011, p. 11.

² NB: The numbering of questions is not as per the Supplementary Discussion Paper.

³ See for example the “ARTC Hunter Valley Access Undertaking 2011” available on the ACCC website at <http://www.accc.gov.au/content/index.phtml/itemId/994049>.



Nevertheless, AAPT considers that these will be the effective outcomes of the Non-Discrimination Provisions if they are interpreted such that network access providers cannot discriminate between access seekers or discriminate in favour of itself (except in limited and clearly defined circumstances).

13. For these reasons, AAPT considers that the SAU should include an explicit Non-Discrimination commitment which should be interpreted as:
 - o an over-riding obligation which NBN Co must always be conscious of in implementing the SAU;
 - o the safety net which access seekers can rely upon even in the absence of an effective regulatory oversight regime; and
 - o preventing certain behaviour of NBN Co which, although it does not necessarily arise due to there being a discriminatory access term or condition in place, is nevertheless inherently discriminatory in nature and effect (for example: implementing an IT system that only larger access seekers could afford to install).
14. AAPT considers that such a Non-Discrimination commitment would go a long way to making the SAU more reasonable for acceptance by the ACCC.

ACCC Questions in Supplementary Consultation Paper

Below are AAPT's responses to some of the specific questions raised by the ACCC in its Supplementary Discussion Paper.²

Establishing an effective regulatory framework

1. Are there terms and conditions that are not contained in the SAU which you consider should be established prior to parties entering into long-term Access Agreements?

Yes. AAPT considers the SAU should:

² NB: The numbering of questions is not as per the Supplementary Discussion Paper.



- contain an explicit Non-Discrimination commitment as discussed at paragraphs 4 - 5 and 10 – 14 above;
- attach an indicative WBA which contains ‘mandatory terms’ that are to be assessed by the ACCC for reasonableness as part of its assessment of the SAU (refer to paragraph 8 above and the responses to question 11 below); and
- implement a framework which adopts a more workable Regulatory Hierarchy as discussed at paragraph 8 above.

Regulatory Recourse Dispute

2. Are the types of disputes that may be notified through the dispute resolution process sufficient to resolve disputes between NBN Co and access seekers about access to the relevant services? In providing your views, please consider that the ACCC has powers under Part XIC of the CCA for setting terms and conditions of access to declared services, such as making Access Determinations and Binding Rules of Conduct, and can issue Procedural Directions in relation to negotiations.

No. AAPT considers that circumstances in which access seekers may seek regulatory recourse is too limited to provide for effective dispute resolution. AAPT notes that the Regulatory Recourse Dispute framework is only available for matters not covered by the SAU and only applies to the period before an access seeker enters into an Access Agreement.

AAPT considers that the SAU should provide for a mechanism to fully or substantially uplift any AD or BROCC. In the absence of such a mechanism, AD or BROCC would effectively be rendered redundant.

3. Is the dispute resolution procedure likely to result in the effective resolution of disputes? Are the dispute resolution timeframes, the permitted ACCC decisions, and the criteria to be applied by the ACCC when making a decision, likely to result in the effective resolution of disputes?



While AAPT can understand the need for dispute resolution timeframes to ensure timely outcomes, this cannot be at the expense of the effective resolution of the dispute. Nor should prescribed timeframes be used to narrow access seekers' right to such effective resolution (as is the case in the current SAU).

Flexibility should be given to the ACCC to extend or amend its decision-making process to the extent necessary having regard to the nature of the dispute and the interests of NBN Co and access seekers.

4. Is it appropriate that the ACCC only has a choice of adopting one set of terms and conditions proposed by the parties without amendments? For instance, there may be a scenario where the ACCC considers that neither set of terms and conditions promotes the long-term interests of end-users.

No. AAPT considers that once the ACCC is given appropriate jurisdiction under an access undertaking, it must not be hampered by conditions constructed by NBN Co. It is unreasonable to restrict the ACCC to accepting one set of terms when neither may be appropriate or where additional terms would better assist in achieving a more effective resolution.

That said, AAPT agrees the opportunities for gaming the process should be minimised. This can be better achieved by giving the ACCC flexibility to accept or not accept submitted terms or to formulate additional terms rather than make the ACCC a slave to a process.

5. Is it clear that the ACCC decisions under the dispute resolution processes will be binding on all parties?

If the ACCC is posing such a question, then AAPT considers that it must not be clear in all circumstances. AAPT considers it appropriate for the ACCC's decisions under the dispute resolution processes to be binding and the SAU should reflect this unambiguously.

If the process for the implementation of the ACCC decisions is not clear, it should be open for the ACCC to provide guidance on what actions it considers will amount to compliance with its binding decision.



6. Overall, are the regulatory recourse dispute resolution provisions contained in NBN Co's proposed SAU consistent with the legislative criteria in section 152CBD of the CCA?

No. It is neither reasonable nor in the LTIE for the SAU to provide for dispute resolution processes that is so limited in scope as to have little or no utility for access seekers.

Term, variation, withdrawal and extension of the SAU

7. Are the commitments in the SAU likely to satisfy the legislative criteria for the proposed term of the SAU? Please identify those commitments that do.

No. Refer to paragraph 9 above. AAPT considers that a term of no more than 10 years, which broadly aligns with the time estimated to complete national rollout of the NBN, would be more reasonable in light of the evolving regulatory landscape. This is subject to there to being a commitment in the SAU for NBN Co to arrange an independent review of the SAU by the 5th anniversary of the SAU. Given AAPT's various other concerns, if no such review is offered, then AAPT considers that a 5-year term would strike a more appropriate balance between regulatory certainty and the need to properly assess and ensure the ongoing relevance of the SAU.

8. Are there commitments in the SAU that are unlikely to satisfy the legislative criteria for the proposed term of the SAU? Please identify these commitments.

Refer to paragraph 9 and response to question 7 above.

9. Do the obligations in the SAU for NBN Co to review the SAU and give variations to the ACCC mean that the commitments in the SAU are likely to be reasonable and in the long-term interests of end-users for the proposed term?

No, because under the SAU, the content of such variations is to be determined by NBN Co rather than as a result of an independent review.



10. Does the good faith review obligation in clause 1.2 of Schedule 9 (Review and Variation of Aspects of SAU) enhance the effectiveness or independence of the reviews that NBN Co is required to conduct under the SAU?

No. Exercising good faith falls short of committing to conduct an independent review and does little to ensure the correct issues will be reviewed and the appropriate outcome (ie in a variation or new SAU) is achieved.

Interaction with the Wholesale Broadband Agreement and other external documents

11. Are there any significant issues caused by references to ‘the WBA’ or other documents in the SAU?

AAPT does not consider that the principle of closely linking the SAU to the WBA is unreasonable. However, AAPT is concerned about the category of references to the WBA in the SAU that make commitments which rely on or are subject to provisions of the WBA.

As the ACCC rightly highlights, these references may have the effect of defining the commitments in the SAU only by reference to a document that is not subject to review by the ACCC, thereby giving NBN Co the discretion to vary the scope of those commitments during the term of the SAU without ACCC oversight.

AAPT considers this would be unreasonable because it would result in regulatory uncertainty and would also undermine the whole special access undertaking assessment process, particularly given there is currently very limited scope for the ACCC to address any inappropriate outcome via an AD or a BROCC.

In AAPT’s view, references to the WBA in the SAU should only be for the purpose of specifying terms to be included in the WBA (ie standard form access agreement). Contrary to the ACCC’s views, AAPT considers that there is scope for the ACCC to have a role in assessing the reasonableness of the WBA. AAPT considers that the term “WBA” should really equate to a set of “mandatory” terms which:



- are included in the SAU in the form of an Indicative WBA attachment;
- must be included in an Access Agreement to be negotiated; and
- are subject to the ACCC's assessment for reasonableness as part of its assessment of the SAU.

AAPT notes that the principle of having mandatory terms which must be transposed to an access agreement negotiated between parties is not a novel concept.³ While the WBA (as the ACCC indicates) sits outside the legislative hierarchy made up of Access Agreements, BROCs and ADs, the WBA is clearly intended to be the precursor from which all Access Agreements originate. So, while NBN Co and an access seeker may negotiate different terms and conditions from those set out in the WBA, AAPT considers that a correct interpretation of the Non-Discrimination Provisions (ie a strict interpretation) means that the ability to deviate from the WBA “mandatory” terms would be very limited.⁴

12. Have references to ‘the WBA’ or ‘Access Agreements’ been used appropriately in the SAU?

AAPT considers there should be a clear distinction between the concepts behind the terms “WBA” (ie the standard form of access agreement) and “Access Agreements” (ie the executed contract following negotiation of the WBA terms). However, if the approach outlined in the response to question 11 above is adopted, AAPT considers there will be less confusion surrounding the use and interaction of the two terms.

³ See for example the “ARTC Hunter Valley Access Undertaking 2011” available on the ACCC website at <http://www.accc.gov.au/content/index.phtml/itemId/994049>.

⁴ Refer to AAPT's and the CCC's submission in response to ACCC Discussion Paper titled “*Part XIC non-discrimination guidelines - ACCC explanatory material relating to Part XIC antidiscrimination provisions for NBN Co and providers of declared Layer 2 bitstream services over designated superfast telecommunications networks - Draft*”, December 2011



13. Have the terms ‘Access Seeker’ and ‘Customer’ been used appropriately in the SAU?

While AAPT can understand the need for a distinction between the terms ‘Access Seeker’ and ‘Customer’, AAPT considers that, to the extent practicable, any benefit to be enjoyed by a Customer should be able to be enjoyed by an Access Seeker as a prospective Customer. This is in line with the Non-Discrimination Obligations which require (subject to very limited exceptions) supply to be provided on equal terms between access seekers. Moreover, this framework would also facilitate entry for new starters and would clearly be in the LTIE.

14. Do the recitals or assertions of fact in the SAU assist in the interpretation of other parts of the SAU?

No.

Obligations to develop systems, documents or processes

15. Are there any other systems, documents and processes that should be included in the SAU?

AAPT considers there should be flexibility for appropriate systems, documents and processes to be developed over time as the need for them becomes apparent. That is, while it is useful to have some pre-defined systems for example, these should not be set in stone.

16. Are the features or qualities that NBN Co has specified for these systems, documents and processes appropriate?

The appropriateness of the specified feature aside, AAPT considers the SAU should give the ACCC the ability, where necessary, to review existing and proposed features and be informed by consultation with NBN Co and access seekers on what are the appropriate parameters for undertaking such a review.



Obligations to consult

17. Should there be greater ACCC oversight of consultation processes? Does the SAU provide sufficient opportunity for the ACCC to review consultation processes in order to assess whether they have been effective?

Yes. AAPT considers that consultation by NBN Co will only be effective if there is some form of ACCC oversight. Otherwise there is a risk that consultations may be conducted only at face value and will do little to resolve any prevailing issues. An independent party like the ACCC is in a better position to ensure that the outcome of a consultation appropriately balances the interests of NBN Co and access seekers. AAPT's view is that the SAU generally does not currently provide for sufficient ACCC oversight.

Obligations to publish information

18. Do the publishing obligations in the SAU provide sufficient detail and types of information? Is there other information that access seekers or other members of the public would require in relation to the supply of the NBN Access Service? Is the proposed timing and location of publication appropriate?

AAPT's general view is that the current commitments, while welcomed, only go part way to provide transparency and visibility for access seekers. Clearly, the nature and form of information required to achieve transparency may vary over time and this will need to be dealt with by including in the SAU a broad commitment to address current and future information asymmetries to the extent necessary.

Obligations regarding NBN Co's exercise of contractual rights

19. Are the constraints on NBN Co contained in the SAU in relation to its exercise of contractual rights effective and reasonable?

As discussed in the response to question 11 above, AAPT considers that there is scope to bring the WBA within the ambit of the ACCC's assessment of the SAU. In addition, there is scope for the WBA to be interpreted as having the lower priority despite it not originally falling within the Regulatory Hierarchy.



While the Regulatory Hierarchy would mean Access Agreements have precedent over both the SAU and WBA, AAPT considers that a strict interpretation of the Non-Discrimination Provisions means that the ability for an Access Agreement to deviate from the WBA (ie mandatory) terms would be very limited.

NBN Access Service

20. How does the service description for the NBN Access Service compare against the principles that the ACCC has previously specified for service descriptions?

At this stage, AAPT does have detailed comments about the service description for the NBN Access Service. Nevertheless AAPT is concerned that issues in relation to the service description may only become apparent over time.

Accordingly, a 5-year review of the SAU is crucial to ensure that, among other things, the service description (which defines the scope of SAU) remains reasonable and relevant in the context of the prevailing issues.

Product components

21. Is the 'Product Component' construct reasonable? What are the effects of the product component-based product construct on downstream markets in which carriage services or content services are supplied?

At this stage, AAPT does have detailed comments about the Product Components for the NBN Access Service. Nevertheless AAPT is concerned that issues in relation to the Product Component may only become apparent over time. Accordingly, there should be scope for an access seeker and NBN Co to jointly develop new Product Components as necessary. In addition, a 5-year review of the SAU is crucial to ensure that, among other things, the Product Components (which narrow the scope of the service description) remains reasonable and relevant in the context of the prevailing issues.

Ancillary services

22. Are the definitions of the ancillary services accurate and complete? Are there ancillary services supplied by NBN Co which would fall outside the scope of the definition but which should be included?



AAPT's view is that ancillary services should be interpreted as any service which NBN Co is required to supply with the NBN Access Service, without which NBN Co cannot comply with its Category B SAOs. That is, ancillary services are any services that will facilitate an access seeker's ability to provide carriage services and/or content services. Accordingly the SAU must place an unambiguous commitment on NBN Co to supply such ancillary services.

Service levels

23. Should service levels be specified in the SAU for the NBN Access Service?

Yes. AAPT considers there should be a service level regime which aims to encourage performance by the NBN Co and its compliance with the SAU. This is particularly important for a monopoly infrastructure provider whose incentive will arguably be to maximise profit in return for the least amount of investment.

In the same vein, the consequences for a breach of an SLA must be meaningful and of sufficient magnitude to provide incentive on NBN Co to improve its service standards to meet SLAs rather than wait to be called to account. An SLA regime would promote efficient investment and in turn promote the LTIE.

Product development and withdrawal

24. Is the approach to product development likely to promote efficient investment in network capacity and network upgrades?

No. AAPT considers that many of the conditions placed on access seekers in the product development process (which is in contrast to NBN Co's wide discretion in relation to product ideas and its consultation with customers) is likely to discourage efficient investment in new products and the further development of existing products. Customers should have equal status with NBN Co on the products to be developed and any disagreements should be subject to ACCC regulatory oversight. AAPT supports the principles that prospective customers should have an ability to take part in the product development process in some form, if not with equal status, and this should reflect their willingness to sign up.



In addition, the scope of products and services offered by NBN Co should be as wide as possible in order to meet the needs of the broadest number of access seekers.

Price structures

AAPT shares the concerns raised by other industry stakeholders and does not propose to repeat those concerns in detail in this submission but will make the following general statements:

- AAPT considers that the current pricing proposed under the SAU and WBA should be low enough to encourage competitive entry of new retail service providers (**RSPs**) that may offer innovation and other benefits to end users;
- AAPT opposes any inbuilt commercial flexibility to change (ie raise) prices as this creates uncertainty for RSPs and could act to discourage competitive entry by new comers; and
- NBN Co should always to be conscious of its non-discrimination obligations to ensure that its pricing structure does not favour larger customers who currently have a large customer base which allows them to recoup costs and make a return within a shorter timeframe than smaller customers. For example any rebates should be aimed at encouraging competition by lowering barriers to entry for smaller retail service providers by addressing indirect discrimination to level the playing field. Subject to this exception, all pricing offered to retail service providers must be on equal terms.
- The pricing provided in the SAU should be comprehensive and should include initial prices for all of NBN Co's other product components, product features or ancillary services and should be published. Where specific pricing is not provided, the SAU should, at the very least, set out the basis (eg cost-based model) for which such pricing is to be determined.



- The ACCC, as informed by consultation with industry stakeholders, should have a broad and well defined role in approving and, where necessary, setting prices, including but not limited to determining the method for calculating the annual revenue requirement components.
- The ACCC's role in assessing whether costs incurred by NBN Co have been done so in a prudent and efficient manner should be broader than is currently provided for under the SAU and should be ongoing. AAPT notes that this is not an unusual arrangement to be included in an access undertaking made and accepted under the CCA.

WBA development and Access Agreement change management

25. Should the SAU contain commitments around the scope of the WBA? If so, are the current commitments likely to be effective, and are they sufficient and reasonable?

Yes, the SAU should contain commitments around the scope of the WBA. As discussed above in the response to questions 11 and 12, AAPT considers it appropriate for the SAU to have, as an attachment, the WBA which sets out the “mandatory” terms which must be included in an Access Agreement.

26. Are the consultation obligations in the SAU relating to development of the WBA reasonable? Should they apply more broadly, to ‘Access Seekers’ and not just ‘Customers’?

No. Any consultation obligations should clearly apply to all access seekers, whether they are existing or prospective customers (as practicable).

Changes to Access Agreements

27. AAPT shares many of the concerns raised by other stakeholders about NBN Co's ability to make changes and is of the general view that the relevant provisions are not reasonable because obligations in relation to undertaking consultations and incorporating stakeholders' views and ACCC feedback is unclear. While the SAU provides that NBN Co may only implement the change in a manner consistent with an IAD or BROCC, this falls short of a commitment



to include all the benefits flowing from such instruments. In addition clause 14.3(e) and (f) only mention IADs and appear to be silent on whether a subsequent AD would get incorporated. AAPT's concerns would be greatly allayed if there was ACCC oversight to ensure the proposed changes are necessary and consistent with the Non-Discrimination Provisions and any AD or BROCC is fully incorporated into all Access Agreements.

Dispute management

28. AAPT agrees with the ACCC that the dispute resolution processes in the SAU should provide for the efficient, consistent and unbiased resolution of disagreements that arise under Access Agreements. In addition, dispute resolution procedures should minimise the opportunity for gaming and be documented with sufficient clarity to ensure that parties understand the rights and obligations that arise from them, but with sufficient flexibility that they are able to efficiently resolve a range of disputes of different complexities.
29. AAPT considers the dispute resolution processes in the SAU do not meet these criteria because they are not documented with sufficient clarity and contain too many carve outs to be an effective mechanism for resolving disputes. AAPT's concerns would be greatly allayed if there was ACCC oversight to ensure that disputes are resolved in accordance with the Non-Discrimination Provisions and any AD or BROCC is fully incorporated into all Access Agreements.

Other issues

30. As above, AAPT considers the many of the remaining commitments in the SAU discussed in the Supplementary Discussion Paper are not reasonable because they are not documented with sufficient clarity resulting in uncertainty about their operation. AAPT's concerns would be greatly allayed if there was general ACCC oversight available to ensure stakeholders are consulted, Non-Discrimination Provisions are complied with and ADs and BROCCs are fully incorporated into all Access Agreements.