

29 March 2012

General Manager
NBN Engagement and Group Coordination Branch
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Via email: richard.home@acc.gov.au

RE: SAU Supplementary Consultation Paper

ACCAN thanks the ACCC for the opportunity to provide comment to the supplementary consultation on NBN Co's Special Access Undertaking (SAU).

As the SAU sets up a significant part of the telecommunications industry's wholesale arrangements for the next three decades, ACCAN believes the ACCC must exercise caution when it comes to approving measures that confer unchecked discretion on the wholesale monopoly provider.

Nature of the SAU review mechanisms

The supplementary paper highlights that there is no scope for the ACCC or access seekers to propose or require a variation to the SAU during the term of the SAU.

We would submit that there should be such a power for both proposals from ACCC and access seekers and that the ACCC be able to enforce any variations that would be in the long-term interests of end users. It is not desirable that NBN Co have a unilateral power to decide whether or not a variation will be enacted.

Service level commitments

We would also submit it is desirable that service levels be specified in the SAU. These technical factors can potentially have a significant impact on the end-user experience and we agree with the discussion in the Paper pointing out that it can affect the amount that consumers (and not only access seekers) are willing to pay.

Given cost of living pressures and competitive mobile offerings, price is likely to continue to be a major consideration for consumers.

The degree of ACCC oversight of key pricing matters

Some access seekers have submitted to the earlier SAU consultation¹ that NBN Co's pricing proposal provides it with very few real pricing constraints and wide discretion, thereby potentially leading to higher wholesale prices for RSPs over time, and in turn resulting in less affordable services to consumers. In addition, the supplementary paper points out that the pricing methodology specified in the SAU does not provide for periodic review by the ACCC of key pricing matters.

We would urge the ACCC to take into account these access seeker concerns and be cautious in approving pricing methodology that does not have strong checks, given the monopoly power that NBN Co will have at the wholesale level.

Yours sincerely,

Jonathan Gadir
Senior Policy Adviser, ACCAN

¹ Telstra submission pp.11-12; Optus submission, p.2