



14 August 2023

Ms Sarah Proudfoot
Executive General Manager, Infrastructure Division
Australian Competition and Consumer Commission
By email: sarah.proudfoot@acc.gov.au

CC:

Ms Gina Cass-Gottlieb – Chair
Ms Anna Brakey – Commissioner
Ms Liza Carver – Commissioner
Mr Peter Crone – Commissioner

Dear Ms Proudfoot,

Withdrawal of nbn's November SAU Variation and lodgement of amended variation to nbn's Special Access Undertaking

We refer to the proposed variation to **nbn's** Special Access Undertaking (**SAU**) submitted to the Australian Competition and Consumer Commission (**ACCC**) on 29 November 2022 (**November Variation**). **nbn** wishes to inform the ACCC that it withdraws the November Variation with immediate effect.

nbn is now in a position to submit an amended variation to **nbn's** Special Access Undertaking to the ACCC. This lodgement follows further engagement with stakeholders on the November SAU Variation and consideration of the matters raised in stakeholder feedback and in the ACCC's Draft Decision on the November SAU Variation published on 2 May 2023 (**Draft Decision**).

The enclosed variation to **nbn's** Special Access Undertaking (**Amended SAU Variation**) is provided to the ACCC pursuant to s152CBG of the Competition and Consumer Act 2010 (**CCA**), together with related documents described further below. The Amended SAU Variation represents numerous significant changes to the way in which **nbn's** products, wholesale pricing and revenues are regulated under the existing SAU. **nbn** considers that the Amended SAU Variation:

- is capable of acceptance by the ACCC;
- addresses all the key matters raised in the Draft Decision;
- on balance improves price and regulatory certainty, in turn promoting competition and efficiency;
- relative to the November Variation includes new and enhanced price and non-price commitments;
- responds to stakeholder concerns about residual cost certainty by introducing a floor and ceiling for the average combined change for the 50 Mbps speed tier services and below; and
- benefits from extensive engagement with the ACCC, RSPs and industry stakeholders.



nbn is aligned with industry in the desire to bring the variation process to a close so that the price and non-price benefits of an updated SAU can be realised by RSPs, **nbn** and, most importantly, end users of the **nbn**[®] network.

Lodgement following significant industry consultation

Lodgement of the Amended SAU Variation follows significant consultation with industry and consumer stakeholders over the last two years. The consultation process has included the ACCC's Industry Roundtable on regulatory arrangements under **nbn**'s Special Access Undertaking held in June 2021, the subsequent series of ACCC Working Groups conducted throughout the remainder of 2021, the industry forum held in August 2022, consecutive ACCC consultations following lodgement of the November Variation and the Draft Decision and, most recently, consultations including an industry forum held in July 2023 on the floor and ceiling pricing options that could apply to services of 50 Mbps and below.

The current regulatory process is atypical – the SAU Variation is a major resetting of the regulatory framework that governs **nbn** and not a standard utility-style regulatory proposal under a defined set of regulatory rules and processes. **nbn** has put considerable time and resources into industry stakeholder consultations, reflecting its commitment to develop an updated SAU that is fit for purpose and will deliver the intended benefits for industry.

The Amended SAU Variation reflects a package of commitments and should be accepted

nbn considers that the Amended SAU Variation is a comprehensive response to the concerns of RSPs and addresses each of the key outcomes of the industry Working Groups. It also addresses feedback provided in relation to the November Variation, while ensuring that **nbn** retains the regulatory opportunity to be a sustainable commercial wholesale only enterprise and to implement government policy. The Amended SAU Variation represents a strong regulatory framework which would supplement:

- the other obligations and scrutiny faced by **nbn** as a wholesale-only provider and a Government Business Enterprise; and
- the commercial and market-based incentives that **nbn** already faces on account of being a wholesale-only provider, which is subject to significant competition and revenue sufficiency risk.

In that context, the Amended SAU Variation is an integrated package of proposals which, taken together, comprise an appropriate variation to the SAU that meets the relevant statutory assessment criteria, including (as relevant) that the terms of the Amended SAU Variation are reasonable and promote the long-term interests of end-users.

nbn therefore submits that the Amended SAU Variation should be accepted. **nbn** considers that acceptance of the Amended SAU Variation is preferable to a scenario in which it is not accepted, in which case the existing SAU would remain in effect – and the product and pricing provisions of the existing SAU would continue to apply only to particular services provided over **nbn**'s FTTP, fixed wireless and satellite networks; thereby continuing the prospect of regulatory inconsistency and ensuring long-term regulatory uncertainty.¹

¹ In addition, in that scenario, the existing SAU would continue to require **nbn** to offer two-part (AVC-CVC) pricing in respect of **nbn**[™] Ethernet TC-4 services on its fixed line and fixed wireless networks, and the provisions of the existing SAU regarding the Long Term Revenue Constraint Methodology would remain unchanged.



If accepted, the Amended SAU Variation will vary **nbn**'s current SAU which was:

- accepted by the ACCC under s152CBC(2) of the CCA on 13 December 2013; and
- varied by way of a variation accepted by the ACCC under s152CBG(3) of the CCA on 1 April 2021.

Documents enclosed

The Amended SAU Variation comprises a Variation Execution Document, and an Annexure 1 to the Variation Execution Document, being a mark-up to the current SAU as varied on 1 April 2021.

To assist the ACCC in its consideration of the Amended SAU Variation **nbn** also encloses:

- **nbn**'s submission in support of the Amended SAU Variation (including summary of inflation and WACC updates in Appendix C);
- a Compare showing changes in mark-up against the November SAU Variation and explanatory notes on key changes in the form of balloon comments, together with a Table of Explanations, which is referred to in certain explanatory notes and provides further information about key changes since the November SAU Variation;
- an Indicative Three-Year Pricing Roadmap and WAPC Model;
- a financial forecasts file FY24-26 (public and confidential versions);
- supporting documentation for the Building Block Model (BBM), comprising:
 - BBM relating to the period up to the end of FY23 (public and confidential versions) and a related BBM Handbook; and
 - BBM relating to the period from FY24 onwards (public and confidential versions) and a related BBM Handbook.

Next steps

nbn considers that the commitments in the Amended SAU Variation address the needs and concerns of stakeholders and now welcomes the ACCC's public consultation process. **nbn** remains ready and willing to continue its constructive engagement with the ACCC and other stakeholders during and following the ACCC's consultation process.

Ultimately, the SAU variation submitted by **nbn** must balance the needs and concerns of all parties, and afford **nbn** the opportunity to remain a sustainable commercial enterprise and meet the current and future broadband needs of Australia, in accordance with government policy.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jane van Beelen', is written over a light blue horizontal line.

Jane van Beelen
Chief Legal & Regulatory Officer, nbn