

17 January 2012

Mr Michael Cosgrave
Group General Manager
Communications Group
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

By email: michael.cosgrave@accc.gov.au

Dear Michael,

NBN Co's Special Access Undertaking (SAU)

In NBN Co's 20 December 2011 supporting submission in relation to the SAU we noted that a number of expert reports were being prepared on NBN Co's behalf and would be lodged once finalised.

The purpose of this letter is to lodge with the ACCC the attached expert report from Synergies Economic Consulting (Synergies) in support of NBN Co's SAU. Both the Synergies report and this letter can be posted on the ACCC's website.

Synergies was instructed by Webb Henderson, on behalf of NBN Co, to provide independent advice on whether particular mechanisms in the SAU are efficient. In considering efficiency, Synergies was instructed to consider the following three aspects of efficiency as conventionally understood by economists: productive efficiency; allocative efficiency; and dynamic efficiency. In so doing, Synergies was also instructed to approach this as an exercise in constrained optimisation, with the relevant constraints being those as set out in the Statement of Expectations, in particular the requirements on NBN Co to:

- recover costs plus a rate of return;
- adopt uniform national wholesale pricing; and
- roll-out a nationwide network with a specified mix of technology, coverage and speed.

In this context, Synergies has confirmed that, in its view, the following SAU mechanisms can reasonably be expected to be efficient:

- NBN Co's proposed 'building block model' and regulatory asset base methodology for the recovery of its costs following the expiry of the ICRA, and the use of an organisation-wide revenue cap to limit the expected net present value of NBN Co's prudently incurred investments to zero;

- the inclusion of actual capital expenditure and operating expenditure into NBN Co's regulatory asset base in the event that NBN Co has complied with the prudency processes that apply to NBN Co under Schedule 8 of the SAU;
- the adoption of a straight line depreciation methodology for the term of the SAU;
- the 30 year term of the SAU;
- NBN Co's proposed loss capitalisation approach, as implemented through the Initial Cost Recovery Account;
- the single ICRA / RAB-based approach to cover all capital expenditure in respect of NBN Co fibre, wireless and satellite networks and related systems and platforms; and
- flexibility in setting the initial price points for new products on the basis that NBN Co's existing suite of wholesale products as they exist at that time and the existence of alternative wholesale products is likely to provide an 'anchoring' or constraining effect on NBN Co's price setting behaviour.

Synergies also found that key aspects of the SAU, in particular basing the RAB on actual costs and straight line depreciation and adopting a single ICRA / RAB approach, have the benefit of simplicity (or of reduced complexity as compared to the alternatives).

Synergies' conclusions add weight to NBN Co's previous submission that the ACCC should accept the SAU. In this regard, the Synergies report is relevant to the ACCC's assessment of whether the terms and conditions of the SAU are reasonable in accordance with section 152CBD(2)(b)(ii) of the *Competition and Consumer Act 2010* (CCA), particularly in the context of considering:

- whether the long-term interests of end-users have been promoted through encouraging the economically efficient use of, and the economically efficient investment in the infrastructure by which listed services are supplied and any other infrastructure by which listed services are, or are likely to become, capable of being supplied; and
- the economically efficient operation of a carriage service, a telecommunications network or a facility.

It is also relevant to highlight that Synergies' conclusions relating to efficiency are conditioned on uniform national wholesale pricing, which is appropriate given that section 152CBD(5A) of the CCA provides that the ACCC must not reject the SAU for a reason that concerns price-related terms and conditions that are reasonably necessary to achieve uniform national pricing of eligible services supplied by NBN Co to service providers and utilities.

Please do not hesitate to contact me if you have any queries in relation to the documentation provided.

Yours sincerely,



Caroline Lovell
Principal, Regulatory Affairs