

**23 March 2012**

Ms Kathryn Wood  
Communications Group  
Australian Competition and Consumer Commission

By email: [accessdeterminations@acc.gov.au](mailto:accessdeterminations@acc.gov.au)

**NBN Co submission to ACCC public inquiry to make an access determination for the local bitstream access service**

NBN Co Ltd (NBN Co) welcomes the opportunity to comment on the ACCC's public inquiry to make an access determination for the local bitstream access service (LBAS). While we recognise that the issues raised in the discussion paper are predominately matters for network operators other than NBN Co, we wish to take this opportunity to make the following general comments on any LBAS access determination.

As noted in the ACCC's discussion paper, the revised explanatory memorandum to the *Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Bill 2011 (NBN Access Bill)* states that the level playing field provisions are designed to ensure that providers (other than NBN Co) of superfast broadband networks in Australia can provide consumers with outcomes similar to those available on the National Broadband Network (NBN) and to ensure that NBN Co operates on a more level regulatory playing field to assist it to achieve the range of objectives for which it has been established.<sup>1</sup> NBN Co considers that any price and non-price terms for the LBAS set out in an access determination needs to have regard to this legislative intent.

NBN Co has been directed by its shareholder ministers, amongst other things, to develop a network to provide a layer 2 wholesale bitstream service, to achieve specified coverage, speed, and technology outcomes as well as offer a uniform wholesale price nationally.<sup>2</sup> NBN Co has had regard to these directions in developing the terms and conditions of access, including price-related terms, set out in NBN Co's Wholesale Broadband Agreement (WBA) and Special Access Undertaking (SAU) lodged with the ACCC on 5 December 2011.

NBN Co will be delivering services to 100per cent of Australian premises, with 7per cent of premises being serviced by satellite and wireless networks with higher per-user costs than typical fibre networks. In contrast, providers competing with NBN Co using superfast broadband networks will be utilising fixed-line technology to target low cost and high density markets with higher willingness to pay<sup>3</sup> and will typically be in greenfield builds rather than brownfield.

Therefore while these networks may provide similar services to those provided on the NBN (eg. Layer 2 Ethernet-based services), the scope of these networks, including costs incurred in delivering services are likely to be very different to the NBN. For example, in addition to being able to selectively provide services in economically attractive locations, it may also be the case that the Points of Interconnection are provided using an entirely different model to that of NBN Co – potentially ranging from being located in capital cities, to only being provided on a highly distributed basis close to each access network that is deployed. This will also have significant impacts on the cost of delivering these services.

<sup>1</sup> ACCC Public inquiry to make an access determination for the local bitstream access service – discussion paper, February 2012,p.5

<sup>2</sup> Statement of Expectations from shareholder Ministers, 17 December 2010

<sup>3</sup> Revised Explanatory Memorandum, Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Bill 2011, p.13.

Depending on the economics faced by the network provider, the appropriate pricing structure for cost recovery may also differ materially from that selected by NBN Co – for example, the balance between access and usage-related charges may need to be different for different providers.

Clearly there will be material differences in the costs faced by providers of LBAS services over superfast broadband networks in selected geographic areas compared to those faced by NBN Co as a national provider of services over a range of network technologies. As such any prices determined for the LBAS through an ACCC access determination are not likely to be indicative of the efficient costs of providing services on the NBN. NBN Co considers that this is consistent with the intent of the *Competition and Consumer Act 2010* (CCA), as the LBAS declaration (and as such any access determination) is not intended to apply to services delivered on the NBN.

In addition, given that the network and services deployed by other network providers may be different to those deployed by NBN Co, it may also be the case that different non-price terms and conditions are appropriate in the LBAS access determination. Again, this would be appropriate and consistent with the intent of the CCA.

Please do not hesitate to contact me or Singithi Silva in our regulatory team on (03) 93601 5315 if you have any queries in relation to anything contained in this letter.

Yours sincerely



**Caroline Lovell**  
Principal, Regulatory Affairs and Industry Engagement