



11 May 2015

Ms Nicole Ross
Director, Communications Group
Australian Competition and Consumer Commission
360 Elizabeth Street
Melbourne 3000

By email: fixedservices@accc.gov.au
Cc: Nicole.Ross@accc.gov.au
Cc: Robert.Wright@accc.gov.au

Dear Ms Ross,

Telecommunications Final Access Determination inquiries – Non-price terms and conditions and connection charges for fixed line services – draft decision

NBN Co Limited (**nbn**) welcomes the opportunity to comment on the ACCC's draft decision on the Telecommunications Final Access Determination (**FAD**) inquiries – Non-price terms and conditions and connection charges for fixed line services – Draft Decision (**the Draft Decision**).

As noted previously¹, **nbn**'s interest in the ACCC's combined FAD inquiry is focussed on the DTCS. **nbn** does not acquire any of the other (non-DTCS) services that form part of the combined FAD inquiry on NPTCs, and the associated FADs will not apply to services provided by **nbn**.

In this context, **nbn** does not have detailed comments on the drafting of the NPTCs proposed in the Draft Decision. However, we would like to provide the following comments in relation to the general approach to NPTCs proposed in the Draft Decision.

nbn supports the ACCC's draft decision to make a targeted set of non-price terms and conditions (NPTCs). As per **nbn**'s previous submissions², by focussing on those NPTCs where commercial agreement is less likely to result, a targeted FAD approach recognises the primacy of negotiated commercial outcomes, whilst recognising the role of terms and conditions included in FADs, where necessary.

nbn observes that the ACCC's proposed approach to regulatory recourse in the Draft Decision differs to the arrangement that applies in **nbn**'s context (whereby **nbn** has committed that any Standard Form of Access Agreement that is published has a term of no longer than two years). In the context of assessing **nbn**'s Special Access Undertaking (**SAU**), the ACCC noted that it did "...not propose to allow for regulatory intervention on disputed terms in an executed Access Agreement...because requiring regulated terms to be incorporated into Access Agreements would conflict with the primacy of commercial agreement that is established by Part XIC."³

¹ **nbn**, *Submission to ACCC FAD inquiry – discussion paper on NPTCs*, December 2014, p. 1.

² **nbn**, *Submission to ACCC FAD inquiry – discussion paper on NPTCs*, December 2014, p. 2.

³ ACCC, *Variation of NBN Co SAU – Response to submissions*, July 2013, p. 20.



However, **nbn** also notes the Government's Response to the Vertigan Review - that the committee's recommendation in relation to regulatory oversight (in an **nbn**TM context) will not be considered further until after the **nbn**TM rollout is complete.⁴

Please let me know if you would like to discuss any aspect of this letter.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Caroline Lovell', with a small flourish at the end.

Caroline Lovell
Chief Regulatory Officer

⁴ Australian Government, *Government Response to Vertigan Review*, provided as Attachment B to its policy paper "Telecommunications Regulatory and Structural Reform", December 2014, p. 15.