

25 January 2012

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

Dear Mr Home,

**RE: ACCC's Initial Consultation on NBN Co's Special Access Undertaking**

Nextgen welcomes the release of NBN Co's proposed Special Access Undertaking (SAU) and the opportunity to respond to the first stage of the Australian Competition and Consumer Commission's (ACCC) public consultation process.

We understand that this initial consultation phase is intended to frame the key issues for more detailed consideration in the ACCC's upcoming supplementary consultation paper.

The rollout of a wholesale-only NBN will significantly alter the structure and behaviour of telecommunications markets in Australia and is designed to lead to more effective competition based on a level playing field for all. The regulatory framework that underpins its operation will be important for establishing a sustainable and competitive industry framework in the emerging NBN environment.

The lodgement of NBN Co's proposed SAU and this ACCC inquiry are critical step towards ensuring that the appropriate regulatory framework and safeguards are in place for the supply of services over the NBN as it progressively becomes the planned monopoly provider of fixed-line services. This SAU inquiry process is particularly important given the bilateral agreements NBN Co has reached with Telstra and Optus for the progressive migration of traffic to the NBN.

Against this background, Nextgen continues to review the SAU and the associated documentation and has not reached a definitive view on many of the key issues.

An initial review, however, suggests that one of the key overarching issues relevant to this proposed SAU and the ACCC's assessment relates to the matter of 'certainty'.

It is fair to assume that NBN Co believes that the SAU as lodged will provide it with the certainty it needs to meet the Government's policy objectives.

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The ACCC's assessment should consider NBN Co's views on the certainty it requires within an SAU to deliver on these objectives, in light of the certainty the proposed SAU will provide NBN Co's customers and against the Long Term Interests of End Users (and the other relevant statutory criteria to be applied by the ACCC). This is particularly relevant given that NBN Co itself will not directly sell to end-users but instead a range of customers of NBN Co buying wholesale products will be the channel to end-users.

Within this context, Nextgen believes the following issues may warrant further consideration and focus in the ACCC's supplementary consultation paper:

- The extent to which the ACCC has sufficient regulatory oversight powers of NBN Co's activities over the duration of the proposed 30-year undertaking period.
- Broad examination of whether the proposed SAU ensures the appropriate balance between providing certainty to industry about NBN Co's forward activities, and allowing NBN Co flexibility to make future pricing and supply decisions. This should be assessed in the context of the Government's policy objectives for the NBN (as they relate to the ACCC's statutory criteria), the progressive withdrawal of copper-based alternative services and the 'level playing field' arrangements.
- The scope and protections in the proposed SAU for NBN Co providing services/products beyond its intended scope. The ACCC should have particular regard for the potential impacts on existing markets and what controls exist to prevent inadvertent impact on relevant and related markets.
- The proposed balance between 'price-controlled offers' and those where NBN Co will have more pricing and supply flexibility (eg, other AVC's, business services, multicast services, ancillary services), and the relative pricing levels between the different product components (AVC, CVC and other). In particular, the ACCC should consider the impact on competition and investment in relevant markets, including existing markets and those expected to develop to complement the NBN (including wholesale markets). As part of its review of the price controls, the ACCC should also consider whether the 'anti-avoidance provisions' provide for sufficient detail and controls to avoid gaming, for example the potential to increase prices through product substitution in order to avoid other controls.
- The design of NBN Co's proposed products and the impact that this is likely to have on the development of complementary markets.
- The design and implementation of NBN Co's Regulatory Asset Base (RAB) approach and methodology in the context of it being a supplier of various wholesale layer 2 products and services. This should also include consideration of the rate of return analysis and proposed prudence commitments.

- The adequacy and scope of the review arrangements built into the proposed SAU and how these will interact with the planned legislative review.
- The proposed non-price terms and conditions in the proposed SAU and how these interact with those proposed in NBN Co's Wholesale Broadband Agreement.

Nextgen looks forward to participating in the next stage of the ACCC's public inquiry.

Should you have any questions about any of the issues listed in this letter please contact me on (03) 8613 3310 or at [michael.ackland@nn.com.au](mailto:michael.ackland@nn.com.au).

Yours sincerely



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