



28 November 2013

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Communications Group  
Australian Competition and Consumer Commission  
GPO Box 520  
MELBOURNE VIC 3001  
*By email: Anna.Barker@acc.gov.au*

Dear Ms Barker

### **Varied November 2013 NBN Co Special Access Undertaking**

Thank you for the opportunity to provide comments on the varied NBN Co Special Access Undertaking (SAU), lodged on 19 November 2013.

Optus notes that it has been almost two and a half years since NBN Co undertook initial industry consultation on the SAU in its Discussion Paper of July 2011. Optus welcomes NBN Co's acceptance of the amendments put forward by ACCC in the October 2013 Notice to Vary.

Following extensive industry consultation the variations to the SAU, proposed by the ACCC and accepted by NBN Co, provide a clear acknowledgment that NBN Co has to operate within a framework of regulatory oversight. This is so notwithstanding the protections inherent in its status as a wholesale-only supplier. Under the varied SAU NBN Co will retain the discretion to propose access terms, but the ACCC will have greater opportunity to act as the independent arbiter of those terms. In particular, access prices will be subject to tighter price control arrangements with more frequent opportunities for ACCC oversight. Optus supports the variations that achieve this outcome.

Ultimately, the test of the SAU is how it operates in practice, in particular whether it can adapt to changing market circumstances. Experience in telecommunications and other regulated industries suggest that regulatory arrangements need to be fine-tuned over time. This is likely to be the case with this SAU which may need to change to reflect operational changes resulting from NBN Co's current strategic review. Until that review is completed the varied SAU should provide a reasonable set of arrangements to regulate access to the NBN.

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One practical issue that will determine the successful implementation of the SAU is how it operates in conjunction with NBN Co's Wholesale Broadband Agreement (WBA). While the amended SAU now contains adequate provisions for ACCC oversight, there is some uncertainty about the status of access agreements (such as the WBA) where terms are in dispute and those terms have not been subject to a regulatory determination. In this context, Optus welcomes the ACCC's clarification in the Notice to Vary that:

*Where the ACCC has not yet determined disputed terms prior to the execution of commercial agreements, the ACCC expects that NBN Co will include disputed terms in commercial agreements on an interim basis only, pending the ACCC's determination of regulated terms.<sup>1</sup>*

Optus submits that the interests of end-users of NBN Co's services will be promoted through the adoption of the November 2013 SAU and the operation of the above principle in circumstances where provisions in access agreements are in dispute.

Yours sincerely



Andrew Sheridan  
Head of Interconnect & Economic Regulation

<sup>1</sup> ACCC, Variation of the NBN Co SAU Explanatory Statement, October 2013, p.12.