

**TELSTRA CORPORATION LIMITED**

**Telstra's Varied Migration Plan**

Supplementary submission in support

5 June 2015

## 1. Overview

On 20 March 2015, Telstra lodged a Varied Migration Plan (the **Plan**) with the Australian Competition and Consumer Commission (**ACCC**). The ACCC released the Plan for public consultation on 1 April 2015.

The ACCC has now brought to our attention several relatively minor issues raised in the course of the consultation. This supplementary submission and proposed amendments to the Plan seek to further clarify how the Plan is intended to operate or to resolve those issues.

The proposed amendments to the Plan are confined to the following:

- An amendment to clause 7.2(b) to ensure alignment between the Plan and the Definitive Agreements on the deadline for setting a default Disconnection Date for Rollout Regions;
- Clarification to the order stability period (**OSP**) to provide for its operation after the Disconnection Date (which is intended to simplify its operation) and to ensure that the OSP does not prevent reinstatement of services post the Disconnection Date where an In-Train Order has been placed at the Premises (consistent with the FSAM 32+ arrangements); and
- A temporary new exception for services registered as being supporting fire alarms and lift phones to apply only during 2015 that will enable the period for managed disconnection to be extended in line with In-Train Orders (i.e. 120 Business Days after the Disconnection Date).

We also take the opportunity in this supplementary submission to provide further explanation of aspects of the Plan where the ACCC has indicated to Telstra that more information may assist stakeholders to understand what is intended.

## 2. Alignment of Clause 7.2(b) with Definitive Agreements

We have proposed a minor change to clause 7.2(b), which is the clause that ‘deems’ the Disconnection Date for a Rollout Region to be the second Friday of the month if a date has not been set six months prior to the Disconnection Date.

The Plan originally had the deadline set from the Region’s Ready For Service (RFS) date, which was not consistent with the Definitive Agreements between Telstra and NBN Co, which state that the date would be calculated back from the second Friday of the month, or the deemed Disconnection Date.

This means that there will only be one date each month on which all ‘deemed’ Disconnection Dates are set for Rollout Regions.

Using the date consistent with the Definitive Agreements will benefit industry as it will be a simpler process and it will be easier to operationalise as in its previous form the drafting could have resulted in different dates for different Rollout Regions. The change means there will be only one date each month on which all ‘deemed’ Disconnection Dates are set for Rollout Regions – nine months before the Disconnection Date in that month – and will apply to Premises which have not had a Disconnection Date otherwise notified. By calculating the Disconnection Date by reference to the second Friday of the month, these rollout regions will have their deemed Disconnection Date set at the same time.

## 3. Minor Change to OSP

On 1 May 2015, Telstra issued a consultation paper setting out some proposed changes to the OSP. Based on the proposal set out in the consultation paper and taking into account the feedback Telstra received, the following clarifications are proposed to the OSP:

- Minor amendments are proposed to clause 13 and its explanatory note, to clarify that the OSP can apply both before and after the Disconnection Date and to reflect the proposed change in the commencement of the OSP to five Business Days after the Disconnection Date. Telstra notes that

the heading of the relevant Migration Plan Principle was clear on this point<sup>1</sup>, but the heading in the Plan referred only to the period prior to the Disconnection Date; and

- Two minor amendments have been made to the description of OSP excluded order types in Schedule 9 to clarify both the position of orders received after the Disconnection Date, and to ensure that the OSP does not prevent Telstra from restoring services from soft dial tone following confirmation of an In-Train Order at the Premises.

If the ACCC approves our proposed changes to the OSP, the OSP will operate from five Business Days after the Disconnection Date and will then apply throughout the period until 25 Business Days (following which, from 26 Business Days after the Disconnection Date, Telstra will commence its managed disconnection process). This is within the window allowed in the Plan and will be separately communicated to industry upon acceptance by the ACCC. It is not a change that is proposed to the Plan itself.

Telstra believes that the proposed amendments to the OSP benefit all Retail Service Providers (RSPs), including because:

- They now ensure that no restrictions are placed on Copper Services or HFC Services (other than cease sale) before the Disconnection Date;
- Rather than limiting transaction activities during the lead up to the Disconnection Date, the OSP now focuses on the post Disconnection Date period, which is when restrictions are likely to be of less concern to end users, most of which should have completed migration; and
- It ensures that the OSP arrangements are aligned with the FSAM32+ arrangements, including the treatment of In-Train Orders and the delayed commencement of managed disconnection.

By delaying the commencement of the OSP, the proposed change also aligns with the Migration Plan Principles (MPPs) in that it:

- Ensures that the OSP must be applied for the shortest period reasonably required (MPPs, section 17(2)(c)); and
- To the extent it is in Telstra's control, minimises disruption to the supply of Copper Services and HFC Services (MPPs, sections 17(2)(a) and 10(1)).

#### **4. Minor Change to allow transitional arrangements for Premises with Copper Services supporting registered fire alarms and lift phones**

Telstra notes that some feedback has been received from stakeholders around the disconnection of certain over-the-top services that are supplied over Telstra's copper network – notably lift phones and back to base fire alarms.

The MPPs acknowledge that the responsibility for managing the migration of these services does not lie with Telstra under the Plan. This is also reflected in clause 2.2 of the Plan.

A number of initiatives are currently in process in relation to these services, including:

- NBN Co will establish a register of fire alarm and lift phone services, that will operate similarly to the 'medical alarms register' that it currently maintains;
- Both the Department and NBN Co will undertake an engagement strategy with a range of stakeholders aimed at reinforcing the need for end-users, fire alarm service providers and lift phone service providers to safely manage the migration of these services to the national broadband network (NBN) before they become subject to disconnection. This will include engagement with bodies corporate, fire alarm service providers, lift service operators and Government agencies – who all have an important role to play in managing the migration of these 'over the top' services.

To allow time for this information and engagement process to take place, Telstra has agreed to vary the Plan to allow a longer maximum migration period for Premises containing these services with a Disconnection Date during calendar 2015 only, before they are mandatorily disconnected. This longer period aligns with the period now allowed for In-Train Orders (120 Business Days post the Disconnection Date).

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<sup>1</sup> See 2015 Migration Plan Principles at section 17.

To give effect to these changes, Telstra has clarified in clause 14.1(b) of the Plan the timing of the disconnection of these services, which is explained in clause 15.5. This clause provides that where Telstra is notified by NBN Co that a Copper Service is being used to supply a registered fire alarm or a lift phone at a Premises, Telstra may continue to supply Copper Services to that Premises until Copper Services at that Premises are cancelled (under business as usual processes), or up to 120 Business Days after the Disconnection Date. Fire alarms and lift phones must be registered with NBN Co on or before the date which is 25 Business Days after the Disconnection Date, in order to benefit from this extension.

This clause is a transitional measure as it is intended that industry arrangements will assist with the migration of fire alarm and lift phone services ahead of the Disconnection Date (and will not rely on an extension to the Disconnection Date over the longer term). Clause 15.5 of the Plan will therefore only apply to Premises within Rollout Regions that have a Disconnection Date that occurs during 2015.

The new disconnection measures will also only apply where:

- The applicable fire alarm or lift phone service has been registered with NBN Co; and
- The fire alarm or lift phone service is not supplied in a common area within a multi-dwelling unit (referred to as MDU Common Areas in the Plan). Copper Services supplied within Premises that are MDU Common Areas are already subject to a different and longer disconnection timeframe under clause 1.4 of the Plan.

These transitional arrangements for Premises with lift phones and fire alarms are intended to encourage stakeholders to participate in the development of industry measures to manage these services (early in the migration window), at the same time ensuring that end users have enough time to migrate these services while the engagement and communications process around fire alarm and lift phone services takes place.

Telstra notes however that this additional time is for services with a Disconnection Date falling in 2015 and the registration of these services with NBN Co will not prevent these Copper Services from ultimately being mandatorily disconnected at the end of the 120 Business Day period. Accordingly, end users will still need to take active steps to ensure that their fire alarm and lift phone services are migrated to a service on the NBN well before the relevant Disconnection Dates to ensure ongoing continuity of service.

## **5. Other matters considered that are not proposed changes to the Plan**

### **5.1 Definition of In-Train Order Premises**

Telstra understands that questions have been raised regarding the definition of In-Train Order Premises that will apply from 1 January 2016 and, in particular, whether the one month pre Disconnection Date period for NBN Connected Premises (to qualify as an In-Train Order) is sufficient for new connections, particularly where they involve complex business migrations.

Telstra acknowledges this question. However, we believe it is premature at this stage to make a permanent change to the definition of In-Train Order Premises to allow further operational experience to be gained under the new FSAMs32+ approach. We consider this experience is needed before we can better understand what changes, if any, need to be made to the process for managing In-Train Order Premises. For this reason, we are continuing to monitor the operation of the post-Disconnection Date processes, and welcome feedback on issues if they arise.

Telstra intends to consult further with the ACCC and industry in the coming months on whether we believe further changes to the definition of In-Train Order Premises are required, and if so, the nature of those changes.

### **5.2 Required Measure and replacement Schedules**

The ACCC also raised a question, based on feedback during the consultation process, that under clause 5.2(g) of the Plan, which sets out the proposed new process for the acceptance of Required Measures and Replacement Schedules to accommodate the new NBN technologies, the ACCC may not object to a modified Schedule where the process is consistent with 'generally accepted industry arrangements'.

Telstra's reason for including the reference to 'generally accepted industry arrangements' was to ensure updated processes can be developed with confidence based on general industry arrangements – some

of which may still be under development at the time that it is preparing its replacement Schedules this year. In Telstra's view, the Plan processes should describe and reflect the outcome of industry discussions and agreement and should not lead or dictate the outcome of those discussions. It would also not be productive for industry for an ACCC rejection of an updated process to undermine industry discussions and agreement around the same process.

We note that while clause 28 of the MPPs does not refer explicitly to 'generally accepted industry arrangements', clause 41 of the MPPs states that the ACCC cannot make any determination which is inconsistent with 'Industry Migration Arrangements'. This would include an objection to a proposed Required Measure or updated Schedule. We therefore consider that the reference is compliant with the principles, even if not identical to the language used in the principles.

## **6. Conclusion**

The three amendments proposed to the Plan simplify the operation of the Plan and improve the migration process for all service providers and the migration experience of end users. The changes are minor in nature and respond to issues raised by the ACCC and stakeholders as part of the Plan consultation process.

The Plan with proposed amendments remains consistent with the MPPs.

Telstra is therefore pleased to submit an amended and final version of the Plan to the ACCC for approval under section 577BF(2) of the Telecommunications Act.